
SENATE BILL 5038

State of Washington

58th Legislature

2003 Regular Session

By Senators Kastama and Esser

Read first time 01/13/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to adding a factor a court is to consider in
2 determining residential time between parents; and amending RCW
3 26.09.187.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read
6 as follows:

7 (1) DISPUTE RESOLUTION PROCESS. The court shall not order a
8 dispute resolution process, except court action, when it finds that any
9 limiting factor under RCW 26.09.191 applies, or when it finds that
10 either parent is unable to afford the cost of the proposed dispute
11 resolution process. If a dispute resolution process is not precluded
12 or limited, then in designating such a process the court shall consider
13 all relevant factors, including:

14 (a) Differences between the parents that would substantially
15 inhibit their effective participation in any designated process;

16 (b) The parents' wishes or agreements and, if the parents have
17 entered into agreements, whether the agreements were made knowingly and
18 voluntarily; and

1 (c) Differences in the parents' financial circumstances that may
2 affect their ability to participate fully in a given dispute resolution
3 process.

4 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

5 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve
6 agreements of the parties allocating decision-making authority, or
7 specifying rules in the areas listed in RCW 26.09.184(4)(a), when it
8 finds that:

9 (i) The agreement is consistent with any limitations on a parent's
10 decision-making authority mandated by RCW 26.09.191; and

11 (ii) The agreement is knowing and voluntary.

12 (b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole
13 decision-making to one parent when it finds that:

14 (i) A limitation on the other parent's decision-making authority is
15 mandated by RCW 26.09.191;

16 (ii) Both parents are opposed to mutual decision making;

17 (iii) One parent is opposed to mutual decision making, and such
18 opposition is reasonable based on the criteria in (c) of this
19 subsection;

20 (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)
21 and (b) of this subsection, the court shall consider the following
22 criteria in allocating decision-making authority:

23 (i) The existence of a limitation under RCW 26.09.191;

24 (ii) The history of participation of each parent in decision making
25 in each of the areas in RCW 26.09.184(4)(a);

26 (iii) Whether the parents have a demonstrated ability and desire to
27 cooperate with one another in decision making in each of the areas in
28 RCW 26.09.184(4)(a); and

29 (iv) The parents' geographic proximity to one another, to the
30 extent that it affects their ability to make timely mutual decisions.

31 (3) RESIDENTIAL PROVISIONS.

32 (a) The court shall make residential provisions for each child
33 which encourage each parent to maintain a loving, stable, and nurturing
34 relationship with the child, consistent with the best interests of the
35 child, the child's developmental level, and the family's social and
36 economic circumstances. The child's residential schedule shall be
37 consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191

1 are not dispositive of the child's residential schedule, the court
2 shall consider the following factors:

3 (i) The relative strength, nature, and stability of the child's
4 relationship with each parent(~~(, including)~~);

5 (ii) Whether a parent has taken greater responsibility for
6 performing parenting functions relating to the daily needs of the
7 child;

8 (~~(iii)~~) (iii) The agreements of the parties, provided they were
9 entered into knowingly and voluntarily;

10 (~~(iii)~~) (iv) Which parent is more likely to allow and encourage
11 the child frequent and continuing contact with the other parent;

12 (v) Each parent's past and potential for future performance of
13 parenting functions;

14 (~~(iv)~~) (vi) The emotional needs and developmental level of the
15 child;

16 (~~(v)~~) (vii) The child's relationship with siblings and with other
17 significant adults, as well as the child's involvement with his or her
18 physical surroundings, school, or other significant activities;

19 (~~(vi)~~) (viii) The wishes of the parents and the wishes of a child
20 who is sufficiently mature to express reasoned and independent
21 preferences as to his or her residential schedule; and

22 (~~(vii)~~) (ix) Each parent's employment schedule, and shall make
23 accommodations consistent with those schedules.

24 Factor (i) shall be given the greatest weight.

25 (b) The court may order that a child frequently alternate his or
26 her residence between the households of the parents for brief and
27 substantially equal intervals of time only if the court finds the
28 following:

29 (i) No limitation exists under RCW 26.09.191;

30 (ii)(A) The parties have agreed to such provisions and the
31 agreement was knowingly and voluntarily entered into; or

32 (B) The parties have a satisfactory history of cooperation and
33 shared performance of parenting functions; the parties are available to
34 each other, especially in geographic proximity, to the extent necessary
35 to ensure their ability to share performance of the parenting
36 functions; and

37 (iii) The provisions are in the best interests of the child.

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