
SUBSTITUTE HOUSE BILL 2979

State of Washington

59th Legislature

2006 Regular Session

By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Hasegawa, Chase, Roberts and Santos)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to addressing cultural upbringing in parenting
2 plans; and amending RCW 26.09.184, 26.09.015, and 26.09.187.

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

4 **Sec. 1.** RCW 26.09.184 and 1991 c 367 s 7 are each amended to read
5 as follows:

6 (1) OBJECTIVES. The objectives of the permanent parenting plan are
7 to:

8 (a) Provide for the child's physical care;

9 (b) Maintain the child's emotional stability;

10 (c) Provide for the child's changing needs as the child grows and
11 matures, in a way that minimizes the need for future modifications to
12 the permanent parenting plan;

13 (d) Set forth the authority and responsibilities of each parent
14 with respect to the child, consistent with the criteria in RCW
15 26.09.187 and 26.09.191;

16 (e) Minimize the child's exposure to harmful parental conflict;

17 (f) Encourage the parents, where appropriate under RCW 26.09.187
18 and 26.09.191, to meet their responsibilities to their minor children

1 through agreements in the permanent parenting plan, rather than by
2 relying on judicial intervention; and

3 (g) To otherwise protect the best interests of the child consistent
4 with RCW 26.09.002.

5 (2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent
6 parenting plan shall contain provisions for resolution of future
7 disputes between the parents, allocation of decision-making authority,
8 and residential provisions for the child.

9 (3) CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN. In
10 establishing a permanent parenting plan, the court shall consider the
11 cultural heritage and religious beliefs of a child.

12 (4) DISPUTE RESOLUTION. A process for resolving disputes, other
13 than court action, shall be provided unless precluded or limited by RCW
14 26.09.187 or 26.09.191. A dispute resolution process may include
15 counseling, mediation, or arbitration by a specified individual or
16 agency, or court action. In the dispute resolution process:

17 (a) Preference shall be given to carrying out the parenting plan;

18 (b) The parents shall use the designated process to resolve
19 disputes relating to implementation of the plan, except those related
20 to financial support, unless an emergency exists;

21 (c) A written record shall be prepared of any agreement reached in
22 counseling or mediation and of each arbitration award and shall be
23 provided to each party;

24 (d) If the court finds that a parent has used or frustrated the
25 dispute resolution process without good reason, the court shall award
26 attorneys' fees and financial sanctions to the prevailing parent;

27 (e) The parties have the right of review from the dispute
28 resolution process to the superior court; and

29 (f) The provisions of (a) through (e) of this subsection shall be
30 set forth in the decree.

31 (~~(4)~~) (5) ALLOCATION OF DECISION-MAKING AUTHORITY.

32 (a) The plan shall allocate decision-making authority to one or
33 both parties regarding the children's education, health care, and
34 religious upbringing. The parties may incorporate an agreement related
35 to the care and growth of the child in these specified areas, or in
36 other areas, into their plan, consistent with the criteria in RCW
37 26.09.187 and 26.09.191. Regardless of the allocation of decision-

1 making in the parenting plan, either parent may make emergency
2 decisions affecting the health or safety of the child.

3 (b) Each parent may make decisions regarding the day-to-day care
4 and control of the child while the child is residing with that parent.

5 (c) When mutual decision making is designated but cannot be
6 achieved, the parties shall make a good-faith effort to resolve the
7 issue through the dispute resolution process.

8 ~~((+5+))~~ (6) RESIDENTIAL PROVISIONS FOR THE CHILD. The plan shall
9 include a residential schedule which designates in which parent's home
10 each minor child shall reside on given days of the year, including
11 provision for holidays, birthdays of family members, vacations, and
12 other special occasions, consistent with the criteria in RCW 26.09.187
13 and 26.09.191.

14 ~~((+6+))~~ (7) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to
15 comply with a provision of a parenting plan or a child support order,
16 the other parent's obligations under the parenting plan or the child
17 support order are not affected. Failure to comply with a provision in
18 a parenting plan or a child support order may result in a finding of
19 contempt of court, under RCW 26.09.160.

20 ~~((+7+))~~ (8) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN.
21 The permanent parenting plan shall set forth the provisions of
22 subsections ~~((+3+))~~ (4)(a) through (c), ~~((+4+))~~ (5) (b) and (c), and
23 ~~((+6+))~~ (7) of this section.

24 **Sec. 2.** RCW 26.09.015 and 2005 c 172 s 17 are each amended to read
25 as follows:

26 (1) In any proceeding under this chapter, the matter may be set for
27 mediation of the contested issues before or concurrent with the setting
28 of the matter for hearing. The purpose of the mediation proceeding
29 shall be to reduce acrimony which may exist between the parties and to
30 develop an agreement assuring the child's close and continuing contact
31 with both parents after the marriage is dissolved. The mediator shall
32 use his or her best efforts to effect a settlement of the dispute.

33 (2) Each superior court may make available a mediator. The
34 mediator may be a member of the professional staff of a family court or
35 mental health services agency, or may be any other person or agency
36 designated by the court. In order to provide mediation services, the
37 court is not required to institute a family court.

1 (3)(a) Mediation proceedings under this chapter shall be governed
2 in all respects by chapter 7.07 RCW, except as follows:

3 (i) Mediation communications in postdecree mediations mandated by
4 a parenting plan are admissible in subsequent proceedings for the
5 limited purpose of proving:

6 (A) Abuse, neglect, abandonment, exploitation, or unlawful
7 harassment as defined in RCW 9A.46.020(1), of a child;

8 (B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of
9 a family or household member as defined in RCW 26.50.010(2); or

10 (C) That a parent used or frustrated the dispute resolution process
11 without good reason for purposes of RCW 26.09.184(~~(+3)~~) (4)(d).

12 (ii) If a postdecree mediation-arbitration proceeding is required
13 pursuant to a parenting plan and the same person acts as both mediator
14 and arbitrator, mediation communications in the mediation phase of such
15 a proceeding may be admitted during the arbitration phase, and shall be
16 admissible in the judicial review of such a proceeding under RCW
17 26.09.184(~~(+3)~~) (4)(e) to the extent necessary for such review to be
18 effective.

19 (b) None of the exceptions under (a)(i) and (ii) of this subsection
20 shall subject a mediator to compulsory process to testify except by
21 court order for good cause shown, taking into consideration the need
22 for the mediator's testimony and the interest in the mediator
23 maintaining an appearance of impartiality. If a mediation
24 communication is not privileged under (a)(i) of this subsection or that
25 portion of (a)(ii) of this subsection pertaining to judicial review,
26 only the portion of the communication necessary for the application of
27 the exception may be admitted, and such admission of evidence shall not
28 render any other mediation communication discoverable or admissible
29 except as may be provided in chapter 7.07 RCW.

30 (4) The mediator shall assess the needs and interests of the child
31 or children involved in the controversy and may interview the child or
32 children if the mediator deems such interview appropriate or necessary.

33 (5) Any agreement reached by the parties as a result of mediation
34 shall be reported to the court and to counsel for the parties by the
35 mediator on the day set for mediation or any time thereafter designated
36 by the court.

1 **Sec. 3.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read
2 as follows:

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

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

12 (b) The parents' wishes or agreements and, if the parents have
13 entered into agreements, whether the agreements were made knowingly and
14 voluntarily; and

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

18 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

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

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

25 (ii) The agreement is knowing and voluntary.

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

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

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

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

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

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

1 (ii) The history of participation of each parent in decision making
2 in each of the areas in RCW 26.09.184(~~(+4)~~) (5)(a);

3 (iii) Whether the parents have a demonstrated ability and desire to
4 cooperate with one another in decision making in each of the areas in
5 RCW 26.09.184(~~(+4)~~) (5)(a); and

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

8 (3) RESIDENTIAL PROVISIONS.

9 (a) The court shall make residential provisions for each child
10 which encourage each parent to maintain a loving, stable, and nurturing
11 relationship with the child, consistent with the child's developmental
12 level and the family's social and economic circumstances. The child's
13 residential schedule shall be consistent with RCW 26.09.191. Where the
14 limitations of RCW 26.09.191 are not dispositive of the child's
15 residential schedule, the court shall consider the following factors:

16 (i) The relative strength, nature, and stability of the child's
17 relationship with each parent, including whether a parent has taken
18 greater responsibility for performing parenting functions relating to
19 the daily needs of the child;

20 (ii) The agreements of the parties, provided they were entered into
21 knowingly and voluntarily;

22 (iii) Each parent's past and potential for future performance of
23 parenting functions;

24 (iv) The emotional needs and developmental level of the child;

25 (v) The child's relationship with siblings and with other
26 significant adults, as well as the child's involvement with his or her
27 physical surroundings, school, or other significant activities;

28 (vi) The wishes of the parents and the wishes of a child who is
29 sufficiently mature to express reasoned and independent preferences as
30 to his or her residential schedule; and

31 (vii) Each parent's employment schedule, and shall make
32 accommodations consistent with those schedules.

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

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

38 (i) No limitation exists under RCW 26.09.191;

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

3 (B) The parties have a satisfactory history of cooperation and
4 shared performance of parenting functions; the parties are available to
5 each other, especially in geographic proximity, to the extent necessary
6 to ensure their ability to share performance of the parenting
7 functions; and

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

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