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SENATE BILL 5350

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State of Washington

59th Legislature

2005 Regular Session

By Senator Kastama

Read first time 01/21/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to shared parental responsibility; amending RCW  
2 26.09.004 and 26.09.187; adding a new section to chapter 26.09 RCW; and  
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** This act shall be known as the shared  
6 parental responsibility act.

7 **Sec. 2.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read  
8 as follows:

9 The definitions in this section apply throughout this chapter.

10 (1) "Temporary parenting plan" means a plan for parenting of the  
11 child pending final resolution of any action for dissolution of  
12 marriage, declaration of invalidity, or legal separation which is  
13 incorporated in a temporary order.

14 (2) "Permanent parenting plan" means a plan for parenting the  
15 child, including allocation of parenting functions, which plan is  
16 incorporated in any final decree or decree of modification in an action  
17 for dissolution of marriage, declaration of invalidity, or legal  
18 separation.

1 (3) "Parenting functions" means those aspects of the parent-child  
2 relationship in which the parent makes decisions and performs functions  
3 necessary for the care and growth of the child. Parenting functions  
4 include:

5 (a) Maintaining a loving, stable, consistent, and nurturing  
6 relationship with the child;

7 (b) Attending to the daily needs of the child, such as feeding,  
8 clothing, physical care and grooming, supervision, health care, and day  
9 care, and engaging in other activities which are appropriate to the  
10 developmental level of the child and that are within the social and  
11 economic circumstances of the particular family;

12 (c) Attending to adequate education for the child, including  
13 remedial or other education essential to the best interests of the  
14 child;

15 (d) Assisting the child in developing and maintaining appropriate  
16 interpersonal relationships;

17 (e) Exercising appropriate judgment regarding the child's welfare,  
18 consistent with the child's developmental level and the family's social  
19 and economic circumstances; and

20 (f) Providing for the financial support of the child.

21 (4) "Shared parental responsibility" means shared residential  
22 placement and mutual decision-making authority.

23 (5) "Shared residential placement" means an order awarding each of  
24 the parents periods of time, amounting to at least one-third of a year,  
25 in which a child resides with or is under the actual, direct, day-to-  
26 day care and supervision of each of the parents.

27 NEW SECTION. Sec. 3. A new section is added to chapter 26.09 RCW  
28 to read as follows:

29 (1) There shall be a presumption that shared parental  
30 responsibility is in the best interests of minor children unless:

31 (a) The parents have agreed to an award of residential placement or  
32 decision-making authority to only one parent; or

33 (b) The court finds that shared parental responsibility would be  
34 detrimental to the child or children.

35 (2) A parent alleging that shared parental responsibility would be  
36 detrimental to the child or children shall have the burden of  
37 establishing the allegation.

1 (3) If a parent alleges that shared parental responsibility would  
2 be detrimental to a particular child, the court, in making a  
3 determination whether a shared parental responsibility order is  
4 appropriate, may direct that an investigation be conducted in  
5 accordance with the provisions of RCW 26.09.220. If the court declines  
6 to enter a shared parental responsibility order, the court shall enter  
7 findings of fact and conclusions of law stating the reasons that shared  
8 parental responsibility is detrimental to the child or children.

9 **Sec. 4.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read  
10 as follows:

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

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

20 (b) The parents' wishes or agreements and, if the parents have  
21 entered into agreements, whether the agreements were made knowingly and  
22 voluntarily; and

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

26 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

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

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

33 (ii) The agreement is knowing and voluntary.

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

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

1 (ii) Both parents are opposed to mutual decision making;  
2 (iii) One parent is opposed to mutual decision making, and such  
3 opposition is reasonable based on the criteria in (c) of this  
4 subsection;

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

8 (i) The existence of a limitation under RCW 26.09.191;  
9 (ii) The history of participation of each parent in decision making  
10 in each of the areas in RCW 26.09.184(4)(a);

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

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

16 (3) RESIDENTIAL PROVISIONS.

17 (a) The court shall make residential provisions for each child  
18 which encourage each parent to maintain a loving, stable, and nurturing  
19 relationship with the child, consistent with the child's developmental  
20 level and the family's social and economic circumstances. The child's  
21 residential schedule shall be consistent with RCW 26.09.191. There is  
22 a presumption that the child's residential schedule shall provide  
23 shared parental responsibility in accordance with section 3 of this  
24 act. Where the limitations of RCW 26.09.191 are not dispositive of the  
25 child's residential schedule, the court shall consider the following  
26 factors:

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

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

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

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

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

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

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

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

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

11 (i) No limitation exists under RCW 26.09.191;

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

14 (B) The parties have a satisfactory history of cooperation and  
15 shared performance of parenting functions; the parties are available to  
16 each other, especially in geographic proximity, to the extent necessary  
17 to ensure their ability to share performance of the parenting  
18 functions; and

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

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