
HOUSE BILL 2478

State of Washington

60th Legislature

2008 Regular Session

By Representatives McCoy, Bailey, Wallace, Chase, Appleton, Morrell, Kenney, Moeller, Sells, Dickerson, Lantz, Conway, Hurst, Smith, Kagi, and Barlow

Prefiled 12/20/07. Read first time 01/14/08. Referred to Committee on Judiciary.

1 AN ACT Relating to custody of children of parents deployed in the
2 military; and amending RCW 26.09.260.

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

4 **Sec. 1.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to read
5 as follows:

6 (1) Except as otherwise provided in subsections (4), (5), (6), (8),
7 and (10) of this section, the court shall not modify a prior custody
8 decree or a parenting plan unless it finds, upon the basis of facts
9 that have arisen since the prior decree or plan or that were unknown to
10 the court at the time of the prior decree or plan, that a substantial
11 change has occurred in the circumstances of the child or the nonmoving
12 party and that the modification is in the best interest of the child
13 and is necessary to serve the best interests of the child. Unless
14 agreed upon by both parties, the nonmoving party's absence, relocation,
15 or failure to comply with a custody decree or parenting plan shall not,
16 by itself, be a substantial change in circumstances justifying a
17 permanent modification of a custody decree or parenting plan if the
18 reason for the absence, relocation, or failure to comply is the party's
19 activation to military service and deployment out-of-state.

1 (2) In applying these standards, the court shall retain the
2 residential schedule established by the decree or parenting plan
3 unless:

4 (a) The parents agree to the modification;

5 (b) The child has been integrated into the family of the petitioner
6 with the consent of the other parent in substantial deviation from the
7 parenting plan;

8 (c) The child's present environment is detrimental to the child's
9 physical, mental, or emotional health and the harm likely to be caused
10 by a change of environment is outweighed by the advantage of a change
11 to the child; or

12 (d) The court has found the nonmoving parent in contempt of court
13 at least twice within three years because the parent failed to comply
14 with the residential time provisions in the court-ordered parenting
15 plan, or the parent has been convicted of custodial interference in the
16 first or second degree under RCW 9A.40.060 or 9A.40.070.

17 (3) A conviction of custodial interference in the first or second
18 degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial
19 change of circumstances for the purposes of this section.

20 (4) The court may reduce or restrict contact between the child and
21 the parent with whom the child does not reside a majority of the time
22 if it finds that the reduction or restriction would serve and protect
23 the best interests of the child using the criteria in RCW 26.09.191.

24 (5) The court may order adjustments to the residential aspects of
25 a parenting plan upon a showing of a substantial change in
26 circumstances of either parent or of the child, and without
27 consideration of the factors set forth in subsection (2) of this
28 section, if the proposed modification is only a minor modification in
29 the residential schedule that does not change the residence the child
30 is scheduled to reside in the majority of the time and:

31 (a) Does not exceed twenty-four full days in a calendar year; or

32 (b) Is based on a change of residence of the parent with whom the
33 child does not reside the majority of the time or an involuntary change
34 in work schedule by a parent which makes the residential schedule in
35 the parenting plan impractical to follow; or

36 (c) Does not result in a schedule that exceeds ninety overnights
37 per year in total, if the court finds that, at the time the petition
38 for modification is filed, the decree of dissolution or parenting plan

1 does not provide reasonable time with the parent with whom the child
2 does not reside a majority of the time, and further, the court finds
3 that it is in the best interests of the child to increase residential
4 time with the parent in excess of the residential time period in (a) of
5 this subsection. However, any motion under this subsection (5)(c) is
6 subject to the factors established in subsection (2) of this section if
7 the party bringing the petition has previously been granted a
8 modification under this same subsection within twenty-four months of
9 the current motion. Relief granted under this section shall not be the
10 sole basis for adjusting or modifying child support.

11 (6) The court may order adjustments to the residential aspects of
12 a parenting plan pursuant to a proceeding to permit or restrain a
13 relocation of the child. The person objecting to the relocation of the
14 child or the relocating person's proposed revised residential schedule
15 may file a petition to modify the parenting plan, including a change of
16 the residence in which the child resides the majority of the time,
17 without a showing of adequate cause other than the proposed relocation
18 itself. A hearing to determine adequate cause for modification shall
19 not be required so long as the request for relocation of the child is
20 being pursued. In making a determination of a modification pursuant to
21 relocation of the child, the court shall first determine whether to
22 permit or restrain the relocation of the child using the procedures and
23 standards provided in RCW 26.09.405 through 26.09.560. Following that
24 determination, the court shall determine what modification pursuant to
25 relocation should be made, if any, to the parenting plan or custody
26 order or visitation order.

27 (7) A parent with whom the child does not reside a majority of the
28 time and whose residential time with the child is subject to
29 limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion
30 of residential time under subsection (5)(c) of this section unless that
31 parent demonstrates a substantial change in circumstances specifically
32 related to the basis for the limitation.

33 (8) If a parent with whom the child does not reside a majority of
34 the time voluntarily fails to exercise residential time for an extended
35 period, that is, one year or longer, the court upon proper motion may
36 make adjustments to the parenting plan in keeping with the best
37 interests of the minor child.

1 (9) A parent with whom the child does not reside a majority of the
2 time who is required by the existing parenting plan to complete
3 evaluations, treatment, parenting, or other classes may not seek
4 expansion of residential time under subsection (5)(c) of this section
5 unless that parent has fully complied with such requirements.

6 (10) The court may order adjustments to any of the nonresidential
7 aspects of a parenting plan upon a showing of a substantial change of
8 circumstances of either parent or of a child, and the adjustment is in
9 the best interest of the child. Adjustments ordered under this section
10 may be made without consideration of the factors set forth in
11 subsection (2) of this section.

12 (11) If the court finds that a motion to modify a prior decree or
13 parenting plan has been brought in bad faith, the court shall assess
14 the attorney's fees and court costs of the nonmoving parent against the
15 moving party.

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