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SENATE BILL 5234

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kastama, Shin, Swecker, Berkey, Haugen, Sheldon,  
Pridemore, Franklin, Keiser and Carrell

Read first time 01/15/2007. Referred to Committee on Human Services  
& Corrections.

1            AN ACT Relating to shared parental responsibility; amending RCW  
2 26.09.002, 26.09.004, and 26.09.187; adding a new section to chapter  
3 26.09 RCW; and creating new sections.

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

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

7            **Sec. 2.** RCW 26.09.002 and 1987 c 460 s 2 are each amended to read  
8 as follows:

9            Parents have the responsibility to make decisions and perform other  
10 parental functions necessary for the care and growth of their minor  
11 children. In any proceeding between parents under this chapter, the  
12 best interests of the child shall be the standard by which the court  
13 determines and allocates the parties' parental responsibilities. The  
14 state recognizes the fundamental importance of the parent-child  
15 relationship to the welfare of the child, and that the relationship  
16 between the child and each parent should be fostered unless  
17 inconsistent with the child's best interests. The best interests of  
18 the child are served by a parenting arrangement that best maintains a

1 child's emotional growth, health and stability, and physical care,  
2 therefore there shall be a presumption in favor of shared parental  
3 responsibility unless it is not in the child's best interest. Further,  
4 the best interest of the child is ordinarily served when the existing  
5 pattern of interaction between a parent and child is altered only to  
6 the extent necessitated by the changed relationship of the parents or  
7 as required to protect the child from physical, mental, or emotional  
8 harm.

9 **Sec. 3.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read  
10 as follows:

11 The definitions in this section apply throughout this chapter.

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

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

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

25 (a) Maintaining a loving, stable, consistent, and nurturing  
26 relationship with the child;

27 (b) Attending to the daily needs of the child, such as feeding,  
28 clothing, physical care and grooming, supervision, health care, and day  
29 care, and engaging in other activities which are appropriate to the  
30 developmental level of the child and that are within the social and  
31 economic circumstances of the particular family;

32 (c) Attending to adequate education for the child, including  
33 remedial or other education essential to the best interests of the  
34 child;

35 (d) Assisting the child in developing and maintaining appropriate  
36 interpersonal relationships;

1 (e) Exercising appropriate judgment regarding the child's welfare,  
2 consistent with the child's developmental level and the family's social  
3 and economic circumstances; and

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

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

7 (5) "Shared residential placement" means an order awarding each of  
8 the parents periods of time, amounting to at least one-third of a year,  
9 in which a child resides with or is under the actual, direct, day-to-  
10 day care and supervision of each of the parents. "Shared residential  
11 placement" does not necessarily mean the child must alternate his or  
12 her residence between the households of the parents for brief periods  
13 of time.

14 NEW SECTION. Sec. 4. A new section is added to chapter 26.09 RCW  
15 to read as follows:

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

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

20 (b) The limitations of RCW 26.09.191 are dispositive of the child's  
21 residential schedule; or

22 (c) The court finds that shared parental responsibility would be  
23 detrimental due to the age or needs of the child or children.

24 (2) A parent alleging that shared parental responsibility would be  
25 detrimental to the child or children shall have the burden of  
26 establishing the allegation by a preponderance of the evidence.

27 (3) If a parent alleges that shared parental responsibility would  
28 be detrimental to a particular child, the court, in making a  
29 determination whether a shared parental responsibility order is  
30 appropriate, may direct that an investigation be conducted in  
31 accordance with the provisions of RCW 26.09.220. If the court declines  
32 to enter a shared parental responsibility order under this section, the  
33 court shall enter findings of fact and conclusions of law stating the  
34 reasons that shared parental responsibility is not in the best interest  
35 of the child.

1       **Sec. 5.** 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)(a), when it  
22 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)(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)(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 best interests of the  
12 child, the child's developmental level, and the family's social and  
13 economic circumstances. There is a presumption that the child's  
14 residential schedule shall provide shared parental responsibility in  
15 accordance with section 4 of this act. The child's residential  
16 schedule shall be consistent with RCW 26.09.191. Where the limitations  
17 of RCW 26.09.191 are not dispositive of the child's residential  
18 schedule, the court shall consider the following factors:

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

23 (ii) Which parent is more likely to allow and encourage the child's  
24 frequent and continuing contact with the other parent;

25 (iii) The agreements of the parties, provided they were entered  
26 into knowingly and voluntarily;

27 ~~((+iii))~~ (iv) Each parent's past and potential for future  
28 performance of parenting functions;

29 ~~((+iv))~~ (v) The emotional needs and developmental level of the  
30 child and any special physical needs of the child;

31 ~~((+v))~~ (vi) Whether the child is a nursing child;

32 (vii) The child's relationship with siblings and with other  
33 significant adults, as well as the child's involvement with his or her  
34 physical surroundings, school, or other significant activities;

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

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

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

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

8        ~~(i) No limitation exists under RCW 26.09.191;~~

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

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

16        ~~(iii) The provisions are in the best interests of the child.)~~ For  
17 any child, residential provisions may contain any reasonable terms or  
18 conditions that facilitate the orderly and meaningful exercise of  
19 residential time by a parent, including one or more of the following:

20        (i) Requirements that residential times be specified;

21        (ii) Requirements of reasonable notice when residential time will  
22 not occur;

23        (iii) Any other reasonable condition determined to be appropriate  
24 in the particular case including but not limited to a domestic violence  
25 assessment.

26        (c) In any parenting plan in which the court finds that the parties  
27 do not have a satisfactory history of cooperation or the limitations of  
28 RCW 26.09.191 are dispositive; to the extent necessary, the parenting  
29 plan shall include a safe, neutral, and public location for the  
30 exchange of the child such as a school, day care, place of worship, or  
31 any other appropriate public facility.

32        NEW SECTION. Sec. 6. The administrative office of the courts,  
33 pursuant to funding provided specifically for this purpose, shall  
34 commission a study to commence by September 1, 2007. The study shall  
35 survey a statistically relevant number of geographically diverse final  
36 parenting plans in Washington to determine the allocation of  
37 residential time as between parents, including an analysis of gender

1 disparities between parents, and the impact of legal counsel on  
2 outcomes of parenting plan disputes. The study shall be completed and  
3 a report provided to the legislature, the governor, and to the public  
4 within two years of the effective date of this section.

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