

SHB 1170 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED AND ENGROSSED 04/08/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 26.09.004 and 2008 c 6 s 1003 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter.

6 (1) "Temporary parenting plan" means a plan for parenting of the
7 child pending final resolution of any action for dissolution of
8 marriage or domestic partnership, declaration of invalidity, or legal
9 separation which is incorporated in a temporary order.

10 (2) "Permanent parenting plan" means a plan for parenting the
11 child, including allocation of parenting functions, which plan is
12 incorporated in any final decree or decree of modification in an action
13 for dissolution of marriage or domestic partnership, declaration of
14 invalidity, or legal separation.

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

19 (a) Maintaining a loving, stable, consistent, and nurturing
20 relationship with the child;

21 (b) Attending to the daily needs of the child, such as feeding,
22 clothing, physical care and grooming, supervision, health care, and day
23 care, and engaging in other activities which are appropriate to the
24 developmental level of the child and that are within the social and
25 economic circumstances of the particular family;

26 (c) Attending to adequate education for the child, including
27 remedial or other education essential to the best interests of the
28 child;

29 (d) Assisting the child in developing and maintaining appropriate
30 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) "Military duties potentially impacting parenting functions"
6 means those obligations imposed, voluntarily or involuntarily, on a
7 parent serving in the armed forces that may interfere with that
8 parent's abilities to perform his or her parenting functions under a
9 temporary or permanent parenting plan. Military duties potentially
10 impacting parenting functions include, but are not limited to:

11 (a) "Deployment," which means the temporary transfer of a service
12 member serving in an active-duty status to another location in support
13 of a military operation, to include any tour of duty classified by the
14 member's branch of the armed forces as "remote" or "unaccompanied";

15 (b) "Activation" or "mobilization," which means the call-up of a
16 national guard or reserve service member to extended active-duty
17 status. For purposes of this definition, "mobilization" does not
18 include national guard or reserve annual training, inactive duty days,
19 or drill weekends; or

20 (c) "Temporary duty," which means the transfer of a service member
21 from one military base or the service member's home to a different
22 location, usually another base, for a limited period of time to
23 accomplish training or to assist in the performance of a noncombat
24 mission.

25 **Sec. 2.** RCW 26.09.010 and 2008 c 6 s 1004 are each amended to read
26 as follows:

27 (1) Except as otherwise specifically provided herein, the practice
28 in civil action shall govern all proceedings under this chapter, except
29 that trial by jury is dispensed with.

30 (2) A proceeding for dissolution of marriage or domestic
31 partnership, legal separation or a declaration concerning the validity
32 of a marriage or domestic partnership shall be entitled "In re the
33 marriage of and" or "In re the domestic
34 partnership of and" Such proceedings may be
35 filed in the superior court of the county where the petitioner resides.

36 (3) In cases where there has been no prior proceeding in this state
37 involving the marital or domestic partnership status of the parties or

1 support obligations for a minor child, a separate parenting and support
2 proceeding between the parents shall be entitled "In re the parenting
3 and support of"

4 (4) The initial pleading in all proceedings under this chapter
5 shall be denominated a petition. A responsive pleading shall be
6 denominated a response. Other pleadings, and all pleadings in other
7 matters under this chapter shall be denominated as provided in the
8 civil rules for superior court.

9 (5) In this chapter, "decree" includes "judgment".

10 (6) A decree of dissolution, of legal separation, or a declaration
11 concerning the validity of a marriage or domestic partnership shall not
12 be awarded to one of the parties, but shall provide that it affects the
13 status previously existing between the parties in the manner decreed.

14 (7) In order to provide a means by which to facilitate a fair,
15 efficient, and swift process to resolve matters regarding custody and
16 visitation when a parent serving in the armed forces receives temporary
17 duty, deployment, activation, or mobilization orders from the military,
18 the court shall, upon motion of such a parent:

19 (a) For good cause shown, hold an expedited hearing in custody and
20 visitation matters instituted under this chapter when the military
21 duties of the parent have a material effect on the parent's ability, or
22 anticipated ability, to appear in person at a regularly scheduled
23 hearing; and

24 (b) Upon reasonable advance notice to the affected parties and for
25 good cause shown, allow the parent to present testimony and evidence by
26 electronic means in custody and visitation matters instituted under
27 this chapter when the military duties of the parent have a material
28 effect on the parent's ability to appear in person at a regularly
29 scheduled hearing. The phrase "electronic means" includes
30 communication by telephone, video teleconference, or the internet.

31 **Sec. 3.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to read
32 as follows:

33 (1) Except as otherwise provided in subsections (4), (5), (6), (8),
34 and (10) of this section, the court shall not modify a prior custody
35 decree or a parenting plan unless it finds, upon the basis of facts
36 that have arisen since the prior decree or plan or that were unknown to
37 the court at the time of the prior decree or plan, that a substantial

1 change has occurred in the circumstances of the child or the nonmoving
2 party and that the modification is in the best interest of the child
3 and is necessary to serve the best interests of the child. The effect
4 of a parent's military duties potentially impacting parenting functions
5 shall not, by itself, be a substantial change of circumstances
6 justifying a permanent modification of a prior decree or plan.

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

10 (a) The parents agree to the modification;

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

14 (c) The child's present environment is detrimental to the child's
15 physical, mental, or emotional health and the harm likely to be caused
16 by a change of environment is outweighed by the advantage of a change
17 to the child; or

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

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

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

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

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

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

5 (c) Does not result in a schedule that exceeds ninety overnights
6 per year in total, if the court finds that, at the time the petition
7 for modification is filed, the decree of dissolution or parenting plan
8 does not provide reasonable time with the parent with whom the child
9 does not reside a majority of the time, and further, the court finds
10 that it is in the best interests of the child to increase residential
11 time with the parent in excess of the residential time period in (a) of
12 this subsection. However, any motion under this subsection (5)(c) is
13 subject to the factors established in subsection (2) of this section if
14 the party bringing the petition has previously been granted a
15 modification under this same subsection within twenty-four months of
16 the current motion. Relief granted under this section shall not be the
17 sole basis for adjusting or modifying child support.

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

34 (7) A parent with whom the child does not reside a majority of the
35 time and whose residential time with the child is subject to
36 limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion
37 of residential time under subsection (5)(c) of this section unless that

1 parent demonstrates a substantial change in circumstances specifically
2 related to the basis for the limitation.

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

8 (b) For the purposes of determining whether the parent has failed
9 to exercise residential time for one year or longer, the court may not
10 count any time periods during which the parent did not exercise
11 residential time due to the effect of the parent's military duties
12 potentially impacting parenting functions.

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

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

24 (11) If the parent with whom the child resides a majority of the
25 time receives temporary duty, deployment, activation, or mobilization
26 orders from the military that involve moving a substantial distance
27 away from the parent's residence or otherwise would have a material
28 effect on the parent's ability to exercise parenting functions and
29 primary placement responsibilities, then:

30 (a) Any temporary custody order for the child during the parent's
31 absence shall end no later than ten days after the returning parent
32 provides notice to the temporary custodian, but shall not impair the
33 discretion of the court to conduct an expedited or emergency hearing
34 for resolution of the child's residential placement upon return of the
35 parent and within ten days of the filing of a motion alleging an
36 immediate danger of irreparable harm to the child. If a motion
37 alleging immediate danger has not been filed, the motion for an order
38 restoring the previous residential schedule shall be granted; and

1 (b) The temporary duty, activation, mobilization, or deployment and
2 the temporary disruption to the child's schedule shall not be a factor
3 in a determination of change of circumstances if a motion is filed to
4 transfer residential placement from the parent who is a military
5 service member.

6 (12) If a parent receives military temporary duty, deployment,
7 activation, or mobilization orders that involve moving a substantial
8 distance away from the military parent's residence or otherwise have a
9 material effect on the military parent's ability to exercise
10 residential time or visitation rights, at the request of the military
11 parent, the court may delegate the military parent's residential time
12 or visitation rights, or a portion thereof, to a child's family member,
13 including a stepparent or another person other than a parent with a
14 close and substantial relationship to the minor child for the duration
15 of the military parent's absence, if delegating residential time or
16 visitation rights is in the child's best interest. The court may not
17 permit the delegation of residential time or visitation rights to a
18 person who would be subject to limitations on residential time under
19 RCW 26.09.191. The parties shall attempt to resolve disputes regarding
20 delegation of residential time or visitation rights through the dispute
21 resolution process specified in their parenting plan, unless excused by
22 the court for good cause shown. Such a court-ordered temporary
23 delegation of a military parent's residential time or visitation rights
24 does not create separate rights to residential time or visitation for
25 a person other than a parent.

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

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30 On page 1, line 2 of the title, after "parent;" strike the

1 remainder of the title and insert "and amending RCW 26.09.004,
2 26.09.010, and 26.09.260."

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