

SENATE BILL REPORT

SHB 1170

As Reported by Senate Committee On:
Human Services & Corrections, March 19, 2009

Title: An act relating to the modification of parenting plans based on the military service of a parent.

Brief Description: Modifying parenting plans based on the military service of a parent.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives McCoy, Rodne, Kelley, Warnick, Seaquist, Angel, Green, Shea, Sells, McCune, Kagi, Ormsby and Smith; by request of Washington State Bar Association).

Brief History: Passed House: 2/23/09, 97-0.

Committee Activity: Human Services & Corrections: 3/13/09, 3/19/09 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Jennifer Strus (786-7316)

Background: In dissolution cases in which minor children are involved, the parties must have a parenting plan that provides for the care of those children. The parenting plan must include an allocation of decision-making authority to one or both parents regarding the child's education, health care, and religious upbringing. The parenting plan must also set forth the child's residential time with each parent. The plan must include a specific residential schedule designating in which parent's home the child will reside on given days of the year.

Once a parenting plan is final, courts favor stability for the child and will not modify the parenting plan unless certain circumstances exist. The court can modify the nonresidential portions of a parenting plan upon a showing of a substantial change of circumstances to the child or either parent and the modification is in the child's best interest.

To modify the residential portions of a parenting plan, there must be a substantial change in circumstances to the child or the parent not requesting the modification and the modification

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must be necessary to serve the child's best interests. In addition, the court must find that either (1) the parents agree to the modification; (2) the child has been integrated into the petitioning parent's family with the other parent's consent in substantial deviation from the original parenting plan; (3) the child's present environment is detrimental to the child; or (4) the court has found the nonmoving parent in contempt of court at least twice in three years for failure to comply with residential time ordered.

If a parent with whom the child does not reside a majority of time (noncustodial parent) fails to exercise residential time with the child for an extended period (one year or longer), then the court may make adjustments to the parenting plan in keeping with the child's best interest.

Summary of Bill (Recommended Amendments): The effects of a parent's "military duties potentially impacting parenting functions" must not, by itself, be a substantial change of circumstances justifying a permanent modification of a parenting plan. For noncustodial parents, when the court is determining whether the noncustodial parent has failed to exercise residential time for one year, the court cannot count any time periods during which the parent failed to exercise residential time due to the bona fide effects of the parent's military duties.

A court may enter a temporary custody order for the child if the parent with whom the child resides a majority of time receives military orders (temporary duty, deployment, activation, or mobilization) that involve moving a substantial distance away or that would have a material effect on the parent's ability to exercise parenting functions and responsibilities. Any temporary order for the child during the parent's absence must end upon presentation to the court of an appropriate motion and order restoring the previous residential schedule with proof of notice of the parent's return provided to the temporary custodian. The order may be presented ex parte and will not impair the court's ability to conduct an expedited or emergency hearing to resolve the child's residential placement upon the parent's return and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child.

When a parent receives military orders that involve moving a substantial distance away or that would have a material effect on the parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights to a family member or another person, other than a parent, with a close and substantial relationship to the child, if such delegation is in the child's best interest. The court may not delegate residential time or visitation to a person who would otherwise be restricted due to abuse, abandonment, or other statutorily established factors under existing law.

The parties must try to resolve disputes about delegation through the dispute resolution process specified in their parenting plan, unless the court excuses them for good cause. The delegation does not create separate rights to residential time or visitation for the person other than a parent.

Upon a motion by the parent and for good cause shown, the court must hold an expedited hearing in custody and visitation matters when a parent's military duties have a material

effect on the parent's ability to appear in person at a hearing. The court must also allow the parent to present testimony and evidence by electronic means.

"Military duties potentially impacting parenting functions" means those obligations imposed, voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that parent's abilities to fulfill his or her responsibilities under a parenting plan. It includes, but is not limited to, deployment, activation, mobilization, and temporary duty.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): Removes the requirement that the effects of the military parent's military duties potentially impacting parenting functions be bona fide.

Clarifies that the temporary order for custody will end upon presentation to the court of a motion and order restoring the previous residential schedule.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: PRO: Troops have enough to worry about without worrying about whether something is happening with the custody of their children in their absence. There are many cases in which military personnel have lost custody or have had to try to deal with long custody proceedings while they are absent on military duty. This issue affects female military members more and more. This bill will add stability to the families and children affected by these situations.

OTHER: The judges feel that there are sufficient tools in place in the current statute to deal with military families. The bill would potentially create more problems than it would solve.

Persons Testifying: PRO: Representative McCoy, prime sponsor; Rick Bartholomew, Washington State Bar Association; Bob Rudolph, Veterans and Military Families for Progress; Nancy Bickford, Washington National Guard.

OTHER: Tom Parker, Superior Court Judge's Association.