
SUBSTITUTE SENATE BILL 5212

State of Washington

61st Legislature

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By Senate Human Services & Corrections (originally sponsored by Senators Kilmer, Kline, McCaslin, Hewitt, Haugen, Shin, and Becker; by request of Washington State Bar Association)

READ FIRST TIME 02/12/09.

1 AN ACT Relating to the modification of parenting plans based on the
2 military service of a parent; and amending RCW 26.09.004, 26.09.010,
3 and 26.09.260.

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

5 **Sec. 1.** RCW 26.09.004 and 2008 c 6 s 1003 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter.

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

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

17 (3) "Parenting functions" means those aspects of the parent-child
18 relationship in which the parent makes decisions and performs functions

1 necessary for the care and growth of the child. Parenting functions
2 include:

3 (a) Maintaining a loving, stable, consistent, and nurturing
4 relationship with the child;

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

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

13 (d) Assisting the child in developing and maintaining appropriate
14 interpersonal relationships;

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

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

19 (4) "Military duties potentially impacting parenting functions"
20 means those obligations imposed, voluntarily or involuntarily, on a
21 parent serving in the armed forces that may interfere with that
22 parent's abilities to perform his or her parenting functions under a
23 temporary or permanent parenting plan. Military duties potentially
24 impacting parenting functions include, but are not limited to:

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

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

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

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

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

6 (2) A proceeding for dissolution of marriage or domestic
7 partnership, legal separation or a declaration concerning the validity
8 of a marriage or domestic partnership shall be entitled "In re the
9 marriage of and" or "In re the domestic
10 partnership of and" Such proceedings may be
11 filed in the superior court of the county where the petitioner resides.

12 (3) In cases where there has been no prior proceeding in this state
13 involving the marital or domestic partnership status of the parties or
14 support obligations for a minor child, a separate parenting and support
15 proceeding between the parents shall be entitled "In re the parenting
16 and support of"

17 (4) The initial pleading in all proceedings under this chapter
18 shall be denominated a petition. A responsive pleading shall be
19 denominated a response. Other pleadings, and all pleadings in other
20 matters under this chapter shall be denominated as provided in the
21 civil rules for superior court.

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

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

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

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

37 (b) Upon reasonable advance notice to the affected parties and for
38 good cause shown, allow the parent to present testimony and evidence by

1 electronic means in custody and visitation matters instituted under
2 this chapter when the military duties of the parent have a material
3 effect on the parent's ability to appear in person at a regularly
4 scheduled hearing. The phrase "electronic means" includes
5 communication by telephone, video teleconference, or the internet.

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

8 (1) Except as otherwise provided in subsections (4), (5), (6), (8),
9 and (10) of this section, the court shall not modify a prior custody
10 decree or a parenting plan unless it finds, upon the basis of facts
11 that have arisen since the prior decree or plan or that were unknown to
12 the court at the time of the prior decree or plan, that a substantial
13 change has occurred in the circumstances of the child or the nonmoving
14 party and that the modification is in the best interest of the child
15 and is necessary to serve the best interests of the child. The effect
16 of a parent's military duties potentially impacting parenting functions
17 shall not, by itself, be a substantial change of circumstances
18 justifying a permanent modification of a prior decree or plan.

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

22 (a) The parents agree to the modification;

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

26 (c) The child's present environment is detrimental to the child's
27 physical, mental, or emotional health and the harm likely to be caused
28 by a change of environment is outweighed by the advantage of a change
29 to the child; or

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

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

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

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

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

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

17 (c) Does not result in a schedule that exceeds ninety overnights
18 per year in total, if the court finds that, at the time the petition
19 for modification is filed, the decree of dissolution or parenting plan
20 does not provide reasonable time with the parent with whom the child
21 does not reside a majority of the time, and further, the court finds
22 that it is in the best interests of the child to increase residential
23 time with the parent in excess of the residential time period in (a) of
24 this subsection. However, any motion under this subsection (5)(c) is
25 subject to the factors established in subsection (2) of this section if
26 the party bringing the petition has previously been granted a
27 modification under this same subsection within twenty-four months of
28 the current motion. Relief granted under this section shall not be the
29 sole basis for adjusting or modifying child support.

30 (6) The court may order adjustments to the residential aspects of
31 a parenting plan pursuant to a proceeding to permit or restrain a
32 relocation of the child. The person objecting to the relocation of the
33 child or the relocating person's proposed revised residential schedule
34 may file a petition to modify the parenting plan, including a change of
35 the residence in which the child resides the majority of the time,
36 without a showing of adequate cause other than the proposed relocation
37 itself. A hearing to determine adequate cause for modification shall
38 not be required so long as the request for relocation of the child is

1 being pursued. In making a determination of a modification pursuant to
2 relocation of the child, the court shall first determine whether to
3 permit or restrain the relocation of the child using the procedures and
4 standards provided in RCW 26.09.405 through 26.09.560. Following that
5 determination, the court shall determine what modification pursuant to
6 relocation should be made, if any, to the parenting plan or custody
7 order or visitation order.

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

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

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

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

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

35 (11) If the parent with whom the child resides a majority of the
36 time receives temporary duty, deployment, activation, or mobilization
37 orders from the military that involve moving a substantial distance

1 away from the parent's residence or otherwise would have a material
2 effect on the parent's ability to exercise parenting functions and
3 primary placement responsibilities, then:

4 (a) Any temporary custody order for the child during the parent's
5 absence shall end no later than ten days after the returning parent
6 provides notice to the temporary custodian, but shall not impair the
7 discretion of the court to conduct an expedited or emergency hearing
8 for resolution of the child's residential placement upon return of the
9 parent and within ten days of the filing of a motion alleging an
10 immediate danger of irreparable harm to the child; and

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

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

36 (13) If the court finds that a motion to modify a prior decree or
37 parenting plan has been brought in bad faith, the court shall assess

1 the attorney's fees and court costs of the nonmoving parent against the
2 moving party.

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