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ENGROSSED HOUSE BILL 1050

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives McCoy and Appleton

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1 AN ACT Relating to residential provisions for children of parents  
2 with military duties; amending RCW 26.09.260; reenacting and amending  
3 RCW 26.09.004; and adding a new section to chapter 26.09 RCW.

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

5 **Sec. 1.** RCW 26.09.004 and 2009 c 502 s 1 are each reenacted and  
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter.

8 (1) "Military duties potentially impacting parenting functions"  
9 means those obligations imposed, voluntarily or involuntarily, on a  
10 parent serving in the armed forces that may interfere with that  
11 parent's abilities to perform his or her parenting functions under a  
12 temporary or permanent parenting plan or other temporary or permanent  
13 court order designating residential time with a child. Military duties  
14 potentially impacting parenting functions include, but are not limited  
15 to:

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

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

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

11 (2) "Parenting functions" means those aspects of the parent-child  
12 relationship in which the parent makes decisions and performs functions  
13 necessary for the care and growth of the child. Parenting functions  
14 include:

15 (a) Maintaining a loving, stable, consistent, and nurturing  
16 relationship with the child;

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

22 (c) Attending to adequate education for the child, including  
23 remedial or other education essential to the best interests of the  
24 child;

25 (d) Assisting the child in developing and maintaining appropriate  
26 interpersonal relationships;

27 (e) Exercising appropriate judgment regarding the child's welfare,  
28 consistent with the child's developmental level and the family's social  
29 and economic circumstances; and

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

31 (3) "Permanent parenting plan" means a plan for parenting the  
32 child, including allocation of parenting functions, which plan is  
33 incorporated in any final decree or decree of modification in an action  
34 for dissolution of marriage or domestic partnership, declaration of  
35 invalidity, or legal separation.

36 (4) "Temporary parenting plan" means a plan for parenting of the  
37 child pending final resolution of any action for dissolution of

1 marriage or domestic partnership, declaration of invalidity, or legal  
2 separation which is incorporated in a temporary order.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.09 RCW  
4 to read as follows:

5 A military parent seeking to establish a temporary or permanent  
6 parenting plan or other court order designating residential time or  
7 visitation rights may request the court to delegate the military  
8 parent's residential time or visitation rights, or a portion thereof,  
9 as provided under RCW 26.09.260 (11) and (12), when the military parent  
10 is or will be:

11 (1) Under temporary duty, deployment, activation, or mobilization  
12 orders that involve moving a substantial distance away from the  
13 military parent's residence or would otherwise have a material effect  
14 on the military parent's ability to exercise residential time or  
15 visitation rights; or

16 (2) Under temporary duty that involves being more than one night  
17 away from the military parent's residence at the time he or she is  
18 scheduled to have residential time or visitation.

19 **Sec. 3.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to read  
20 as follows:

21 (1) Except as otherwise provided in subsections (4), (5), (6), (8),  
22 and (10) of this section, the court shall not modify a prior custody  
23 decree or a parenting plan unless it finds, upon the basis of facts  
24 that have arisen since the prior decree or plan or that were unknown to  
25 the court at the time of the prior decree or plan, that a substantial  
26 change has occurred in the circumstances of the child or the nonmoving  
27 party and that the modification is in the best interest of the child  
28 and is necessary to serve the best interests of the child. The effect  
29 of a parent's military duties potentially impacting parenting functions  
30 shall not, by itself, be a substantial change of circumstances  
31 justifying a permanent modification of a prior decree or plan.

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

35 (a) The parents agree to the modification;

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

4 (c) The child's present environment is detrimental to the child's  
5 physical, mental, or emotional health and the harm likely to be caused  
6 by a change of environment is outweighed by the advantage of a change  
7 to the child; or

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

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

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

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

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

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

32 (c) Does not result in a schedule that exceeds ninety overnights  
33 per year in total, if the court finds that, at the time the petition  
34 for modification is filed, the decree of dissolution or parenting plan  
35 does not provide reasonable time with the parent with whom the child  
36 does not reside a majority of the time, and further, the court finds  
37 that it is in the best interests of the child to increase residential  
38 time with the parent in excess of the residential time period in (a) of

1 this subsection. However, any motion under this subsection (5)(c) is  
2 subject to the factors established in subsection (2) of this section if  
3 the party bringing the petition has previously been granted a  
4 modification under this same subsection within twenty-four months of  
5 the current motion. Relief granted under this section shall not be the  
6 sole basis for adjusting or modifying child support.

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

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

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

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

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 parent with whom the child resides a majority of the  
13 time receives (~~temporary duty, deployment, activation, or mobilization~~  
14 ~~orders from the military that involve moving a substantial distance~~  
15 ~~away from the parent's residence or otherwise would have a material~~  
16 ~~effect on the parent's ability to exercise parenting functions and~~  
17 ~~primary placement responsibilities)) or will receive temporary duty,  
18 deployment, activation, or mobilization orders that involve moving a  
19 substantial distance away from the military parent's residence or  
20 otherwise have a material effect on the military parent's ability to  
21 exercise residential time or visitation rights, or receives or will  
22 receive temporary duty that involves being more than one night away  
23 from the military parent's residence at the time he or she is scheduled  
24 to have residential time or visitation, then:~~

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

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

1       ~~((If a parent receives military temporary duty, deployment,~~  
2 ~~activation, or mobilization orders that involve moving a substantial~~  
3 ~~distance away from the military parent's residence or otherwise have a~~  
4 ~~material effect on the military parent's ability to exercise~~  
5 ~~residential time or visitation rights, at))~~ (a) A parent seeking to  
6 modify a parenting plan or court order designating residential time or  
7 visitation rights may request the court to delegate the parent's  
8 residential time or visitation rights, or a portion thereof, pursuant  
9 to (b) of this subsection when the parent:

10       (i) Receives or will receive temporary duty, deployment,  
11 activation, or mobilization orders that involve moving a substantial  
12 distance away from the military parent's residence or otherwise have a  
13 material effect on the military parent's ability to exercise  
14 residential time or visitation rights; or

15       (ii) Receives or will receive temporary duty that involves being  
16 more than one night away from the military parent's residence at the  
17 time he or she is scheduled to have residential time or visitation.

18       (b) Pursuant to (a) of this subsection and upon the request of the  
19 military parent, the court may delegate the military parent's  
20 residential time or visitation rights, or a portion thereof, to a  
21 child's family member, including a stepparent, or another person other  
22 than a parent, with a close and substantial relationship to the minor  
23 child for the duration of the military parent's absence, if delegating  
24 residential time or visitation rights is in the child's best interest.  
25 The court may not permit the delegation of residential time or  
26 visitation rights to a person who would be subject to limitations on  
27 residential time under RCW 26.09.191.

28       (c) If the parties have a parenting plan, the parties shall attempt  
29 to resolve disputes regarding delegation of residential time or  
30 visitation rights through the dispute resolution process specified in  
31 their parenting plan, unless excused by the court for good cause shown.  
32 ((Such))

33       (d) A court-ordered temporary delegation of a military parent's  
34 residential time or visitation rights does not create separate rights  
35 to residential time or visitation for 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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