
HOUSE BILL 1107

State of Washington

63rd Legislature

2013 Regular Session

By Representatives McCoy, Shea, Appleton, Orwall, Jinkins, Morrell, Ryu, Green, and Freeman

Read first time 01/16/13. Referred to Committee on Judiciary.

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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