
HOUSE BILL 1618

State of Washington 64th Legislature 2015 Regular Session

By Representatives Kilduff, Rodne, Goodman, Orwall, and Jinkins

Read first time 01/23/15. Referred to Committee on Judiciary.

1 AN ACT Relating to objection to relocation in child custody
2 cases; and amending RCW 26.09.260 and 26.09.270.

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

4 **Sec. 1.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to
5 read as follows:

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

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

21 (a) The parents agree to the modification;

1 (b) The child has been integrated into the family of the
2 petitioner with the consent of the other parent in substantial
3 deviation from the 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
6 caused by a change of environment is outweighed by the advantage of a
7 change 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
12 the 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
15 substantial change of circumstances for the purposes of this section.

16 (4) The court may reduce or restrict contact between the child
17 and the parent with whom the child does not reside a majority of the
18 time if it finds that the reduction or restriction would serve and
19 protect the best interests of the child using the criteria in RCW
20 26.09.191.

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

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

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

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

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

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

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

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

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

1 (9) A parent with whom the child does not reside a majority of
2 the 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
9 in the best interest of the child. Adjustments ordered under this
10 section 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, then:

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

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

32 (12) If a parent receives military temporary duty, deployment,
33 activation, or mobilization orders that involve moving a substantial
34 distance away from the military parent's residence or otherwise have
35 a material effect on the military parent's ability to exercise
36 residential time or visitation rights, at the request of the military
37 parent, the court may delegate the military parent's residential time
38 or visitation rights, or a portion thereof, to a child's family
39 member, including a stepparent, or another person other than a
40 parent, with a close and substantial relationship to the minor child

1 for the duration of the military parent's absence, if delegating
2 residential time or visitation rights is in the child's best
3 interest. The court may not permit the delegation of residential time
4 or visitation rights to a person who would be subject to limitations
5 on residential time under RCW 26.09.191. The parties shall attempt to
6 resolve disputes regarding delegation of residential time or
7 visitation rights through the dispute resolution process specified in
8 their parenting plan, unless excused by the court for good cause
9 shown. Such a court-ordered temporary delegation of a military
10 parent's residential time or visitation rights does not create
11 separate rights to residential time or visitation for a person other
12 than a parent.

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

17 **Sec. 2.** RCW 26.09.270 and 2011 c 336 s 691 are each amended to
18 read as follows:

19 A party seeking a temporary custody order or a temporary
20 parenting plan ~~((~~or~~))~~, modification of a custody decree or parenting
21 plan, or objecting to a notice of relocation shall submit together
22 with his or her motion, an affidavit setting forth facts supporting
23 the requested order ~~((~~or~~))~~, modification, or objection and shall give
24 notice, together with a copy of his or her affidavit, to other
25 parties to the proceedings, who may file opposing affidavits. The
26 court shall deny the motion or objection unless it finds that
27 adequate cause for hearing the motion or objection is established by
28 the affidavits, in which case it shall set a date for hearing on an
29 order to show cause why the requested order ~~((~~or~~))~~, modification, or
30 objection should not be granted.

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