
SUBSTITUTE HOUSE BILL 1930

State of Washington

65th Legislature

2017 Regular Session

By House Judiciary (originally sponsored by Representatives Frame, Rodne, and Jinkins)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to child custody; amending RCW 26.10.030,
2 26.10.032, 26.10.100, 26.10.160, 26.10.190, 26.10.200, 26.09.260, and
3 26.09.270; and adding new sections to chapter 26.10 RCW.

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

5 **Sec. 1.** RCW 26.10.030 and 2003 c 105 s 3 are each amended to
6 read as follows:

7 (1) Except as authorized for proceedings brought under chapter
8 13.34 RCW, or chapter 26.50 RCW in district or municipal courts, a
9 child custody proceeding is commenced in the superior court by a
10 person other than a parent, by filing a petition seeking custody of
11 the child in the county where the child is permanently a resident or
12 where the child is found, but only if the child is not in the
13 physical custody of one of its parents or if the petitioner alleges
14 that neither parent is a suitable custodian. In proceedings in which
15 the juvenile court has not exercised concurrent jurisdiction and
16 prior to a child custody hearing, the court shall determine if the
17 child is the subject of a pending dependency action.

18 (2) Notice of a child custody proceeding shall be given to ((the
19 ~~child's~~) any parent, guardian, and custodian of the child, who may
20 appear and be heard and may file a responsive pleading. The court

1 may, upon a showing of good cause, permit the intervention of other
2 interested parties.

3 (3) The petitioner shall include in the petition the names of any
4 adult members of the petitioner's household.

5 **Sec. 2.** RCW 26.10.032 and 2003 c 105 s 6 are each amended to
6 read as follows:

7 (1) A party seeking a custody order shall submit, along with his
8 or her (~~motion, an affidavit declaring~~) petition, a declaration
9 stating that the child is not in the physical custody of one of its
10 parents or that neither parent is a suitable custodian and setting
11 forth facts supporting the requested order. In a custody action
12 between a nonparent and a parent, the nonparent seeking custody has
13 the burden to show either: (a) Parental unfitness; or (b) that
14 placement with an otherwise fit parent would be detrimental to the
15 child's physical, mental, or emotional health. The party seeking
16 custody shall give notice, along with a copy of the (~~affidavit~~)
17 petition and any declarations, to other parties to the proceedings,
18 who may file opposing (~~affidavits~~) declarations.

19 (2) (~~The court shall deny the motion unless it finds that~~
20 ~~adequate cause for hearing the motion is established by the~~
21 ~~affidavits, in which case it shall set a date for hearing on an order~~
22 ~~to show cause why the requested order should not be granted.)) The
23 court shall deny the petition unless it finds that the declaration or
24 declarations establish adequate cause, meaning facts that, if true,
25 would show the parent is unfit or placement with an otherwise fit
26 parent would be detrimental to the child's physical, mental, or
27 emotional health.~~

28 (3) Temporary custody orders may issue upon entry of a finding of
29 adequate cause.

30 **Sec. 3.** RCW 26.10.100 and 1987 c 460 s 38 are each amended to
31 read as follows:

32 (~~The court shall determine custody in accordance with the best~~
33 ~~interests of the child)) A nonparent seeking custody from a parent
34 must prove, by clear, cogent, and convincing evidence, that: (1) The
35 parent is unfit; or (2) placement of the child with an otherwise fit
36 parent would be detrimental to the child's physical, mental, or
37 emotional health.~~

1 **Sec. 4.** RCW 26.10.160 and 2011 c 89 s 7 are each amended to read
2 as follows:

3 (1) A parent not granted custody of the child is entitled to
4 reasonable visitation rights except as provided in subsection (2) of
5 this section.

6 (2)(a) Visitation with the child shall be limited if it is found
7 that the parent seeking visitation has engaged in any of the
8 following conduct: (i) Willful abandonment that continues for an
9 extended period of time or substantial refusal to perform parenting
10 functions; (ii) physical, sexual, or a pattern of emotional abuse of
11 a child; (iii) a history of acts of domestic violence as defined in
12 RCW 26.50.010(~~((1))~~) or an assault or sexual assault which causes
13 grievous bodily harm or the fear of such harm; (~~((e))~~) (iv) a long-
14 term emotional or physical impairment which interferes with the
15 parent's performance of parenting functions as defined in RCW
16 26.09.004; (v) a long-term impairment resulting from drug, alcohol,
17 or other substance abuse that interferes with the performance of
18 parenting functions; (vi) the absence or substantial impairment of
19 emotional ties between the parent and the child; (vii) the abusive
20 use of conflict by the parent which creates the danger of serious
21 damage to the child's psychological development; or (viii) the parent
22 has been convicted as an adult of a sex offense under:

23 (A) RCW 9A.44.076 if, because of the difference in age between
24 the offender and the victim, no rebuttable presumption exists under
25 (d) of this subsection;

26 (B) RCW 9A.44.079 if, because of the difference in age between
27 the offender and the victim, no rebuttable presumption exists under
28 (d) of this subsection;

29 (C) RCW 9A.44.086 if, because of the difference in age between
30 the offender and the victim, no rebuttable presumption exists under
31 (d) of this subsection;

32 (D) RCW 9A.44.089;

33 (E) RCW 9A.44.093;

34 (F) RCW 9A.44.096;

35 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
36 between the offender and the victim, no rebuttable presumption exists
37 under (d) of this subsection;

38 (H) Chapter 9.68A RCW;

39 (I) Any predecessor or antecedent statute for the offenses listed
40 in (a)(~~((iv))~~) (viii)(A) through (H) of this subsection;

1 (J) Any statute from any other jurisdiction that describes an
2 offense analogous to the offenses listed in (a)~~((iv))~~ (viii)(A)
3 through (H) of this subsection.

4 This subsection (2)(a) shall not apply when (c) or (d) of this
5 subsection applies.

6 (b) The parent's visitation with the child shall be limited if it
7 is found that the parent resides with a person who has engaged in any
8 of the following conduct: (i) Physical, sexual, or a pattern of
9 emotional abuse of a child; (ii) a history of acts of domestic
10 violence as defined in RCW 26.50.010~~((1))~~ or an assault or sexual
11 assault that causes grievous bodily harm or the fear of such harm; or
12 (iii) the person has been convicted as an adult or as a juvenile has
13 been adjudicated of a sex offense under:

14 (A) RCW 9A.44.076 if, because of the difference in age between
15 the offender and the victim, no rebuttable presumption exists under
16 (e) of this subsection;

17 (B) RCW 9A.44.079 if, because of the difference in age between
18 the offender and the victim, no rebuttable presumption exists under
19 (e) of this subsection;

20 (C) RCW 9A.44.086 if, because of the difference in age between
21 the offender and the victim, no rebuttable presumption exists under
22 (e) of this subsection;

23 (D) RCW 9A.44.089;

24 (E) RCW 9A.44.093;

25 (F) RCW 9A.44.096;

26 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
27 between the offender and the victim, no rebuttable presumption exists
28 under (e) of this subsection;

29 (H) Chapter 9.68A RCW;

30 (I) Any predecessor or antecedent statute for the offenses listed
31 in (b)(iii)(A) through (H) of this subsection;

32 (J) Any statute from any other jurisdiction that describes an
33 offense analogous to the offenses listed in (b)(iii)(A) through (H)
34 of this subsection.

35 This subsection (2)(b) shall not apply when (c) or (e) of this
36 subsection applies.

37 (c) If a parent has been found to be a sexual predator under
38 chapter 71.09 RCW or under an analogous statute of any other
39 jurisdiction, the court shall restrain the parent from contact with a
40 child that would otherwise be allowed under this chapter. If a parent

1 resides with an adult or a juvenile who has been found to be a sexual
2 predator under chapter 71.09 RCW or under an analogous statute of any
3 other jurisdiction, the court shall restrain the parent from contact
4 with the parent's child except contact that occurs outside that
5 person's presence.

6 (d) There is a rebuttable presumption that a parent who has been
7 convicted as an adult of a sex offense listed in (d)(i) through (ix)
8 of this subsection poses a present danger to a child. Unless the
9 parent rebuts this presumption, the court shall restrain the parent
10 from contact with a child that would otherwise be allowed under this
11 chapter:

12 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
13 was at least five years older than the other person;

14 (ii) RCW 9A.44.073;

15 (iii) RCW 9A.44.076, provided that the person convicted was at
16 least eight years older than the victim;

17 (iv) RCW 9A.44.079, provided that the person convicted was at
18 least eight years older than the victim;

19 (v) RCW 9A.44.083;

20 (vi) RCW 9A.44.086, provided that the person convicted was at
21 least eight years older than the victim;

22 (vii) RCW 9A.44.100;

23 (viii) Any predecessor or antecedent statute for the offenses
24 listed in (d)(i) through (vii) of this subsection;

25 (ix) Any statute from any other jurisdiction that describes an
26 offense analogous to the offenses listed in (d)(i) through (vii) of
27 this subsection.

28 (e) There is a rebuttable presumption that a parent who resides
29 with a person who, as an adult, has been convicted, or as a juvenile
30 has been adjudicated, of the sex offenses listed in (e)(i) through
31 (ix) of this subsection places a child at risk of abuse or harm when
32 that parent exercises visitation in the presence of the convicted or
33 adjudicated person. Unless the parent rebuts the presumption, the
34 court shall restrain the parent from contact with the parent's child
35 except for contact that occurs outside of the convicted or
36 adjudicated person's presence:

37 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
38 was at least five years older than the other person;

39 (ii) RCW 9A.44.073;

1 (iii) RCW 9A.44.076, provided that the person convicted was at
2 least eight years older than the victim;

3 (iv) RCW 9A.44.079, provided that the person convicted was at
4 least eight years older than the victim;

5 (v) RCW 9A.44.083;

6 (vi) RCW 9A.44.086, provided that the person convicted was at
7 least eight years older than the victim;

8 (vii) RCW 9A.44.100;

9 (viii) Any predecessor or antecedent statute for the offenses
10 listed in (e)(i) through (vii) of this subsection;

11 (ix) Any statute from any other jurisdiction that describes an
12 offense analogous to the offenses listed in (e)(i) through (vii) of
13 this subsection.

14 (f) The presumption established in (d) of this subsection may be
15 rebutted only after a written finding that:

16 (i) If the child was not the victim of the sex offense committed
17 by the parent requesting visitation, (A) contact between the child
18 and the offending parent is appropriate and poses minimal risk to the
19 child, and (B) the offending parent has successfully engaged in
20 treatment for sex offenders or is engaged in and making progress in
21 such treatment, if any was ordered by a court, and the treatment
22 provider believes such contact is appropriate and poses minimal risk
23 to the child; or

24 (ii) If the child was the victim of the sex offense committed by
25 the parent requesting visitation, (A) contact between the child and
26 the offending parent is appropriate and poses minimal risk to the
27 child, (B) if the child is in or has been in therapy for victims of
28 sexual abuse, the child's counselor believes such contact between the
29 child and the offending parent is in the child's best interest, and
30 (C) the offending parent has successfully engaged in treatment for
31 sex offenders or is engaged in and making progress in such treatment,
32 if any was ordered by a court, and the treatment provider believes
33 such contact is appropriate and poses minimal risk to the child.

34 (g) The presumption established in (e) of this subsection may be
35 rebutted only after a written finding that:

36 (i) If the child was not the victim of the sex offense committed
37 by the person who is residing with the parent requesting visitation,
38 (A) contact between the child and the parent residing with the
39 convicted or adjudicated person is appropriate and that parent is
40 able to protect the child in the presence of the convicted or

1 adjudicated person, and (B) the convicted or adjudicated person has
2 successfully engaged in treatment for sex offenders or is engaged in
3 and making progress in such treatment, if any was ordered by a court,
4 and the treatment provider believes such contact is appropriate and
5 poses minimal risk to the child; or

6 (ii) If the child was the victim of the sex offense committed by
7 the person who is residing with the parent requesting visitation, (A)
8 contact between the child and the parent in the presence of the
9 convicted or adjudicated person is appropriate and poses minimal risk
10 to the child, (B) if the child is in or has been in therapy for
11 victims of sexual abuse, the child's counselor believes such contact
12 between the child and the parent residing with the convicted or
13 adjudicated person in the presence of the convicted or adjudicated
14 person is in the child's best interest, and (C) the convicted or
15 adjudicated person has successfully engaged in treatment for sex
16 offenders or is engaged in and making progress in such treatment, if
17 any was ordered by a court, and the treatment provider believes
18 contact between the parent and child in the presence of the convicted
19 or adjudicated person is appropriate and poses minimal risk to the
20 child.

21 (h) If the court finds that the parent has met the burden of
22 rebutting the presumption under (f) of this subsection, the court may
23 allow a parent who has been convicted as an adult of a sex offense
24 listed in (d)(i) through (ix) of this subsection to have visitation
25 with the child supervised by a neutral and independent adult and
26 pursuant to an adequate plan for supervision of such visitation. The
27 court shall not approve of a supervisor for contact between the child
28 and the parent unless the court finds, based on the evidence, that
29 the supervisor is willing and capable of protecting the child from
30 harm. The court shall revoke court approval of the supervisor upon
31 finding, based on the evidence, that the supervisor has failed to
32 protect the child or is no longer willing or capable of protecting
33 the child.

34 (i) If the court finds that the parent has met the burden of
35 rebutting the presumption under (g) of this subsection, the court may
36 allow a parent residing with a person who has been adjudicated as a
37 juvenile of a sex offense listed in (e)(i) through (ix) of this
38 subsection to have visitation with the child in the presence of the
39 person adjudicated as a juvenile, supervised by a neutral and
40 independent adult and pursuant to an adequate plan for supervision of

1 such visitation. The court shall not approve of a supervisor for
2 contact between the child and the parent unless the court finds,
3 based on the evidence, that the supervisor is willing and capable of
4 protecting the child from harm. The court shall revoke court approval
5 of the supervisor upon finding, based on the evidence, that the
6 supervisor has failed to protect the child or is no longer willing or
7 capable of protecting the child.

8 (j) If the court finds that the parent has met the burden of
9 rebutting the presumption under (g) of this subsection, the court may
10 allow a parent residing with a person who, as an adult, has been
11 convicted of a sex offense listed in (e)(i) through (ix) of this
12 subsection to have visitation with the child in the presence of the
13 convicted person supervised by a neutral and independent adult and
14 pursuant to an adequate plan for supervision of such visitation. The
15 court shall not approve of a supervisor for contact between the child
16 and the parent unless the court finds, based on the evidence, that
17 the supervisor is willing and capable of protecting the child from
18 harm. The court shall revoke court approval of the supervisor upon
19 finding, based on the evidence, that the supervisor has failed to
20 protect the child or is no longer willing or capable of protecting
21 the child.

22 (k) A court shall not order unsupervised contact between the
23 offending parent and a child of the offending parent who was sexually
24 abused by that parent. A court may order unsupervised contact between
25 the offending parent and a child who was not sexually abused by the
26 parent after the presumption under (d) of this subsection has been
27 rebutted and supervised visitation has occurred for at least two
28 years with no further arrests or convictions of sex offenses
29 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter
30 9.68A RCW and (i) the sex offense of the offending parent was not
31 committed against a child of the offending parent, and (ii) the court
32 finds that unsupervised contact between the child and the offending
33 parent is appropriate and poses minimal risk to the child, after
34 consideration of the testimony of a state-certified therapist, mental
35 health counselor, or social worker with expertise in treating child
36 sexual abuse victims who has supervised at least one period of
37 visitation between the parent and the child, and after consideration
38 of evidence of the offending parent's compliance with community
39 supervision requirements, if any. If the offending parent was not
40 ordered by a court to participate in treatment for sex offenders,

1 then the parent shall obtain a psychosexual evaluation conducted by a
2 certified sex offender treatment provider or a certified affiliate
3 sex offender treatment provider indicating that the offender has the
4 lowest likelihood of risk to reoffend before the court grants
5 unsupervised contact between the parent and a child.

6 (l) A court may order unsupervised contact between the parent and
7 a child which may occur in the presence of a juvenile adjudicated of
8 a sex offense listed in (e)(i) through (ix) of this subsection who
9 resides with the parent after the presumption under (e) of this
10 subsection has been rebutted and supervised visitation has occurred
11 for at least two years during which time the adjudicated juvenile has
12 had no further arrests, adjudications, or convictions of sex offenses
13 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter
14 9.68A RCW, and (i) the court finds that unsupervised contact between
15 the child and the parent that may occur in the presence of the
16 adjudicated juvenile is appropriate and poses minimal risk to the
17 child, after consideration of the testimony of a state-certified
18 therapist, mental health counselor, or social worker with expertise
19 in treatment of child sexual abuse victims who has supervised at
20 least one period of visitation between the parent and the child in
21 the presence of the adjudicated juvenile, and after consideration of
22 evidence of the adjudicated juvenile's compliance with community
23 supervision or parole requirements, if any. If the adjudicated
24 juvenile was not ordered by a court to participate in treatment for
25 sex offenders, then the adjudicated juvenile shall obtain a
26 psychosexual evaluation conducted by a certified sex offender
27 treatment provider or a certified affiliate sex offender treatment
28 provider indicating that the adjudicated juvenile has the lowest
29 likelihood of risk to reoffend before the court grants unsupervised
30 contact between the parent and a child which may occur in the
31 presence of the adjudicated juvenile who is residing with the parent.

32 (m)(i) The limitations imposed by the court under (a) or (b) of
33 this subsection shall be reasonably calculated to protect the child
34 from the physical, sexual, or emotional abuse or harm that could
35 result if the child has contact with the parent requesting
36 visitation. If the court expressly finds based on the evidence that
37 limitations on visitation with the child will not adequately protect
38 the child from the harm or abuse that could result if the child has
39 contact with the parent requesting visitation, the court shall

1 restrain the person seeking visitation from all contact with the
2 child.

3 (ii) The court shall not enter an order under (a) of this
4 subsection allowing a parent to have contact with a child if the
5 parent has been found by clear and convincing evidence in a civil
6 action or by a preponderance of the evidence in a dependency action
7 to have sexually abused the child, except upon recommendation by an
8 evaluator or therapist for the child that the child is ready for
9 contact with the parent and will not be harmed by the contact. The
10 court shall not enter an order allowing a parent to have contact with
11 the child in the offender's presence if the parent resides with a
12 person who has been found by clear and convincing evidence in a civil
13 action or by a preponderance of the evidence in a dependency action
14 to have sexually abused a child, unless the court finds that the
15 parent accepts that the person engaged in the harmful conduct and the
16 parent is willing to and capable of protecting the child from harm
17 from the person.

18 (iii) If the court limits visitation under (a) or (b) of this
19 subsection to require supervised contact between the child and the
20 parent, the court shall not approve of a supervisor for contact
21 between a child and a parent who has engaged in physical, sexual, or
22 a pattern of emotional abuse of the child unless the court finds
23 based upon the evidence that the supervisor accepts that the harmful
24 conduct occurred and is willing to and capable of protecting the
25 child from harm. The court shall revoke court approval of the
26 supervisor upon finding, based on the evidence, that the supervisor
27 has failed to protect the child or is no longer willing to or capable
28 of protecting the child.

29 (n) If the court expressly finds based on the evidence that
30 contact between the parent and the child will not cause physical,
31 sexual, or emotional abuse or harm to the child and that the
32 probability that the parent's or other person's harmful or abusive
33 conduct will recur is so remote that it would not be in the child's
34 best interests to apply the limitations of (a), (b), and (m)(i) and
35 (iii) of this subsection, or if the court expressly finds that the
36 parent's conduct did not have an impact on the child, then the court
37 need not apply the limitations of (a), (b), and (m)(i) and (iii) of
38 this subsection. The weight given to the existence of a protection
39 order issued under chapter 26.50 RCW as to domestic violence is
40 within the discretion of the court. This subsection shall not apply

1 when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of
2 this subsection apply.

3 ~~(3) ((Any person may petition the court for visitation rights at
4 any time including, but not limited to, custody proceedings. The
5 court may order visitation rights for any person when visitation may
6 serve the best interest of the child whether or not there has been
7 any change of circumstances.~~

8 ~~(4) The court may modify an order granting or denying visitation
9 rights whenever modification would serve the best interests of the
10 child.)~~ Modification of a parent's visitation rights shall be
11 subject to the requirements of subsection (2) of this section.

12 ~~((+5))~~ (4) For the purposes of this section:

13 (a) "A parent's child" means that parent's legal child, whether
14 natural child, adopted child, "de facto" child, or stepchild; and

15 (b) "Social worker" means a person with a master's or further
16 advanced degree from a social work educational program accredited and
17 approved as provided in RCW 18.320.010.

18 **Sec. 5.** RCW 26.10.190 and 2000 c 21 s 21 are each amended to
19 read as follows:

20 (1) The court shall hear and review petitions ~~((for modifications
21 of a))~~ to change a final, nonparent parenting plan, custody order,
22 visitation order, or other order governing the residence of a child,
23 including terminating the order to return the child to the care of
24 the parent, and conduct any proceedings concerning a relocation of
25 the residence where the child resides a majority of the time,
26 pursuant to this chapter ~~((26.09 RCW))~~.

27 (2) If the order is granted and a parent has a child returned to
28 him or her, the parent may file a petition for entry of a parenting
29 plan under a separate cause number.

30 (3) If the court finds that a motion to modify or terminate a
31 prior custody ~~((decree))~~ order has been brought in bad faith, the
32 court shall assess the attorney's fees and court costs of the
33 custodian against the ~~((petitioner))~~ moving party.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 26.10
35 RCW to read as follows:

36 (1) If the original custody order was entered after trial with no
37 specific findings of the unfitness or actual detriment of the
38 parents, or by default, or by agreement of the parties, the nonparent

1 custody order must be terminated unless custodians or a nonmoving
2 party demonstrates by clear, cogent, and convincing evidence the
3 current unfitness of the parent or actual detriment to the child.

4 (2) If the original nonparent custody order was entered pursuant
5 to a finding of unfitness or actual detriment, the moving party must
6 demonstrate by a preponderance of evidence a substantial change in
7 his or her circumstances since the entry of the prior order,
8 specifically related to the basis for the custody order and the best
9 interests of the child.

10 NEW SECTION. **Sec. 7.** A new section is added to chapter 26.10
11 RCW to read as follows:

12 (1) The court may order adjustments to the residential aspects of
13 a residential schedule upon a showing of a substantial change in
14 circumstances of either parent or of the child if the proposed
15 modification is only a minor modification in the residential schedule
16 that does not change the residence the child is scheduled to reside
17 in the majority of the time and:

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

19 (b) Is based on a change of residence of the parent with whom the
20 child does not reside the majority of the time or an involuntary
21 change in work schedule by a parent that makes the residential
22 schedule in the parenting plan impractical to follow; or

23 (c) Does not result in a schedule that exceeds ninety overnights
24 per year in total, if the court finds that, at the time the petition
25 for modification is filed, the residential schedule does not provide
26 reasonable time with the parent with whom the child does not reside a
27 majority of the time and it is in the best interests of the child to
28 increase residential time with the parent in excess of the
29 residential time period in (a) of this subsection.

30 (2) The court may order adjustments to the residential aspects of
31 a parenting plan upon a showing that:

32 (a) The custodians and both parents agree to the modification;

33 (b) The child has been integrated into the family of the moving
34 party with the consent of the custodian and the other parent in
35 substantial deviation from the parenting plan;

36 (c) The child's present environment is detrimental to the child's
37 physical, mental, or emotional health, and the harm likely to be
38 caused by a change of environment is outweighed by the advantage of a
39 change to the child; or

1 (d) The court has found the nonmoving custodian in contempt of
2 court at least twice within three years because the custodian failed
3 to comply with the residential time provisions in the court-ordered
4 parenting plan, or the parent has been convicted of custodial
5 interference in the first or second degree under RCW 9A.40.060 or
6 9A.40.070.

7 (3) The court may order adjustments to the residential aspects of
8 a residential schedule pursuant to a proceeding to permit or restrain
9 the relocation of a child. The person objecting to the relocation of
10 the child or the relocating person's proposed revised residential
11 schedule may file a petition to change the residential schedule. A
12 hearing to determine adequate cause for modification is required so
13 long as the request for relocation of a child is being pursued. In
14 making a determination of a modification pursuant to relocation of a
15 child, the court shall first determine whether to permit or restrain
16 the relocation of the child using the procedures and standards
17 provided in RCW 26.09.405 through 26.09.560. Following that
18 determination, the court shall determine what modification pursuant
19 to relocation should be made, if any, to the residential schedule,
20 custody order, or visitation order.

21 (4) A parent with whom the child does not reside a majority of
22 the time and whose residential time with the child is subject to
23 limitations pursuant to RCW 26.10.160 may not seek expansion of
24 residential time unless that parent demonstrates a substantial change
25 in circumstances specifically related to the basis for the
26 limitation.

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

32 (6) The court may order adjustments to any of the nonresidential
33 aspects of a residential schedule upon a showing of a substantial
34 change of circumstances of a custodian, either parent, or of a child,
35 and that the adjustment is in the best interests of the child.

36 **Sec. 8.** RCW 26.10.200 and 1987 c 460 s 48 are each amended to
37 read as follows:

38 (1) A party seeking ((a temporary custody order or)) modification
39 or termination of a ((custody decree)) nonparent custody order or

1 residential schedule shall submit together with his or her motion,
2 ((~~an affidavit~~)) a declaration setting forth facts supporting the
3 requested ((~~order or~~)) modification or termination and shall give
4 notice, together with a copy of the ((~~affidavit~~)) declaration, to
5 other parties to the proceedings, who may file opposing
6 ((~~affidavits~~)) declarations. The court shall deny the motion unless
7 it finds that adequate cause for hearing the motion is established by
8 the ((~~affidavits~~)) declarations, which may include the moving party
9 demonstrating by a preponderance of the evidence a substantial change
10 in circumstances specifically related to the basis for the
11 limitation, in which case it shall set a date for hearing on an order
12 to show cause why the requested ((~~order or~~)) modification or
13 termination should not be granted.

14 (2) If the original custody order was entered with no specific
15 findings of unfitness or actual detriment of the parties, adequate
16 cause is not required.

17 **Sec. 9.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to
18 read as follows:

19 (1) Other than modifications pertaining to a nonparent custody
20 order governed by chapter 26.10 RCW and except as otherwise provided
21 in subsections (4), (5), (6), (8), and (10) of this section, the
22 court shall not modify a prior custody ((~~decree~~)) order or a
23 parenting plan unless it finds, upon the basis of facts that have
24 arisen since the prior ((~~decree~~)) order or plan or that were unknown
25 to the court at the time of the prior ((~~decree~~)) order or plan, that
26 a substantial change has occurred in the circumstances of the child
27 or the nonmoving party and that the modification is in the best
28 interest of the child and is necessary to serve the best interests of
29 the child. The effect of a parent's military duties potentially
30 impacting parenting functions shall not, by itself, be a substantial
31 change of circumstances justifying a permanent modification of a
32 prior ((~~decree~~)) order or plan.

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

36 (a) The parents agree to the modification;

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

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

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

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

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

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

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

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

30 (c) Does not result in a schedule that exceeds ninety overnights
31 per year in total, if the court finds that, at the time the petition
32 for modification is filed, the decree of dissolution or parenting
33 plan does not provide reasonable time with the parent with whom the
34 child does not reside a majority of the time, and further, the court
35 finds that it is in the best interests of the child to increase
36 residential time with the parent in excess of the residential time
37 period in (a) of this subsection. However, any motion under this
38 subsection (5)(c) is subject to the factors established in subsection
39 (2) of this section if the party bringing the petition has previously
40 been granted a modification under this same subsection within twenty-

1 four months of the current motion. Relief granted under this section
2 shall not be the sole basis for adjusting or modifying child support.

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

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

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

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

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

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

7 (11) If the parent with whom the child resides a majority of the
8 time receives temporary duty, deployment, activation, or mobilization
9 orders from the military that involve moving a substantial distance
10 away from the parent's residence or otherwise would have a material
11 effect on the parent's ability to exercise parenting functions and
12 primary placement responsibilities, then:

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

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

27 (12) If a parent receives military temporary duty, deployment,
28 activation, or mobilization orders that involve moving a substantial
29 distance away from the military parent's residence or otherwise have
30 a material effect on the military parent's ability to exercise
31 residential time or visitation rights, at the request of the military
32 parent, the court may delegate the military parent's residential time
33 or visitation rights, or a portion thereof, to a child's family
34 member, including a stepparent, or another person other than a
35 parent, with a close and substantial relationship to the minor child
36 for the duration of the military parent's absence, if delegating
37 residential time or visitation rights is in the child's best
38 interest. The court may not permit the delegation of residential time
39 or visitation rights to a person who would be subject to limitations
40 on residential time under RCW 26.09.191. The parties shall attempt to

1 resolve disputes regarding delegation of residential time or
2 visitation rights through the dispute resolution process specified in
3 their parenting plan, unless excused by the court for good cause
4 shown. Such a court-ordered temporary delegation of a military
5 parent's residential time or visitation rights does not create
6 separate rights to residential time or visitation for a person other
7 than a parent.

8 (13) If the court finds that a motion to modify a prior
9 ((deeree)) order or parenting plan has been brought in bad faith, the
10 court shall assess the attorney's fees and court costs of the
11 nonmoving parent against the moving party.

12 **Sec. 10.** RCW 26.09.270 and 2011 c 336 s 691 are each amended to
13 read as follows:

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

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