
HOUSE BILL 1930

State of Washington 65th Legislature 2017 Regular Session

By Representatives Frame, Rodne, and Jinkins

Read first time 02/03/17. Referred to Committee on Judiciary.

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~~) and neither parent is a suitable custodian. In proceedings in
15 which the juvenile court has not exercised concurrent jurisdiction
16 and prior to a child custody hearing, the court shall determine if
17 the 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 parent, guardian and custodian, who may appear and be heard
20 and may file a responsive pleading. The court may, upon a showing of
21 good cause, permit the intervention of other interested parties.

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

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

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

18 (2) (~~(The court shall deny the motion unless it finds that~~
19 ~~adequate cause for hearing the motion is established by the~~
20 ~~affidavits, in which case it shall set a date for hearing on an order~~
21 ~~to show cause why the requested order should not be granted.)~~)
22 Determination of adequate cause shall be pursuant to an order to show
23 cause. The show cause hearing shall not be set unless the court finds
24 that the declaration or declarations provide a prima facie showing of
25 adequate cause. A mere showing that nonparental custody of the child
26 is in the best interests of the child is insufficient to establish
27 adequate cause. The petition must be dismissed without the prima
28 facie showing. At the show cause hearing all parties are entitled to
29 present a declaration as to why the requested order should or should
30 not be granted. If adequate cause is not established and the order is
31 not granted, the petition must be dismissed.

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

34 (~~(The court shall determine custody in accordance with the best~~
35 ~~interests of the child))~~) A nonparent seeking custody from a parent
36 must prove, by clear, cogent, and convincing evidence, that the child
37 is not in the physical custody of one of its parents and: (1) The
38 parent is unfit; or (2) placement of the child with an otherwise fit

1 parent will result in actual detriment to the child's growth and
2 development.

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

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

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

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

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

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

34 (D) RCW 9A.44.089;

35 (E) RCW 9A.44.093;

36 (F) RCW 9A.44.096;

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

1 (H) Chapter 9.68A RCW;

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

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

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

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

17 (A) RCW 9A.44.076 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 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 if, because of the difference in age between
24 the offender and the victim, no rebuttable presumption exists under
25 (e) of this subsection;

26 (D) RCW 9A.44.089;

27 (E) RCW 9A.44.093;

28 (F) RCW 9A.44.096;

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

32 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

18 (ii) RCW 9A.44.073;

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

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

23 (v) RCW 9A.44.083;

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

26 (vii) RCW 9A.44.100;

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

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

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

1 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
2 was at least five years older than the other person;
3 (ii) RCW 9A.44.073;
4 (iii) RCW 9A.44.076, provided that the person convicted was at
5 least eight years older than the victim;
6 (iv) RCW 9A.44.079, provided that the person convicted was at
7 least eight years older than the victim;
8 (v) RCW 9A.44.083;
9 (vi) RCW 9A.44.086, provided that the person convicted was at
10 least eight years older than the victim;
11 (vii) RCW 9A.44.100;
12 (viii) Any predecessor or antecedent statute for the offenses
13 listed in (e)(i) through (vii) of this subsection;
14 (ix) Any statute from any other jurisdiction that describes an
15 offense analogous to the offenses listed in (e)(i) through (vii) of
16 this subsection.
17 (f) The presumption established in (d) of this subsection may be
18 rebutted only after a written finding that:
19 (i) If the child was not the victim of the sex offense committed
20 by the parent requesting visitation, (A) contact between the child
21 and the offending parent is appropriate and poses minimal risk to the
22 child, and (B) the offending parent has successfully engaged in
23 treatment for sex offenders or is engaged in and making progress in
24 such treatment, if any was ordered by a court, and the treatment
25 provider believes such contact is appropriate and poses minimal risk
26 to the child; or
27 (ii) If the child was the victim of the sex offense committed by
28 the parent requesting visitation, (A) contact between the child and
29 the offending parent is appropriate and poses minimal risk to the
30 child, (B) if the child is in or has been in therapy for victims of
31 sexual abuse, the child's counselor believes such contact between the
32 child and the offending parent is in the child's best interest, and
33 (C) the offending parent has successfully engaged in treatment for
34 sex offenders or is engaged in and making progress in such treatment,
35 if any was ordered by a court, and the treatment provider believes
36 such contact is appropriate and poses minimal risk to the child.
37 (g) The presumption established in (e) of this subsection may be
38 rebutted only after a written finding that:
39 (i) If the child was not the victim of the sex offense committed
40 by the person who is residing with the parent requesting visitation,

1 (A) contact between the child and the parent residing with the
2 convicted or adjudicated person is appropriate and that parent is
3 able to protect the child in the presence of the convicted or
4 adjudicated person, and (B) the convicted or adjudicated person has
5 successfully engaged in treatment for sex offenders or is engaged in
6 and making progress in such treatment, if any was ordered by a court,
7 and the treatment provider believes such contact is appropriate and
8 poses minimal risk to the child; or

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

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

37 (i) If the court finds that the parent has met the burden of
38 rebutting the presumption under (g) of this subsection, the court may
39 allow a parent residing with a person who has been adjudicated as a
40 juvenile of a sex offense listed in (e)(i) through (ix) of this

1 subsection to have visitation with the child in the presence of the
2 person adjudicated as a juvenile, supervised by a neutral and
3 independent adult and pursuant to an adequate plan for supervision of
4 such visitation. The court shall not approve of a supervisor for
5 contact between the child and the parent unless the court finds,
6 based on the evidence, that the supervisor is willing and capable of
7 protecting the child from harm. The court shall revoke court approval
8 of the supervisor upon finding, based on the evidence, that the
9 supervisor has failed to protect the child or is no longer willing or
10 capable of protecting the child.

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

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

1 of evidence of the offending parent's compliance with community
2 supervision requirements, if any. If the offending parent was not
3 ordered by a court to participate in treatment for sex offenders,
4 then the parent shall obtain a psychosexual evaluation conducted by a
5 certified sex offender treatment provider or a certified affiliate
6 sex offender treatment provider indicating that the offender has the
7 lowest likelihood of risk to reoffend before the court grants
8 unsupervised contact between the parent and a child.

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

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

1 the child from the harm or abuse that could result if the child has
2 contact with the parent requesting visitation, the court shall
3 restrain the person seeking visitation from all contact with the
4 child.

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

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

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

1 order issued under chapter 26.50 RCW as to domestic violence is
2 within the discretion of the court. This subsection shall not apply
3 when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of
4 this subsection apply.

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

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

14 ~~((+5))~~ (4) For the purposes of this section:

15 (a) "A parent's child" means that parent's natural child, adopted
16 child, or stepchild; and

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

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

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

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

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

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

1 (1) If the original custody order was entered by default,
2 agreement of the parties, or after trial with no specific findings of
3 the unfitness or actual detriment of the parents, the nonparent
4 custody order must be terminated unless custodians or a nonmoving
5 party demonstrates by clear, cogent, and convincing evidence the
6 current unfitness of the parent or actual detriment to the child.

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

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

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

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

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

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

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

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

36 (b) The child has been integrated into the family of the moving
37 party with the consent of the custodian and the other parent in
38 substantial 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 custodian in contempt of
6 court at least twice within three years because the custodian failed
7 to comply with the residential time provisions in the court-ordered
8 parenting plan, or the parent has been convicted of custodial
9 interference in the first or second degree under RCW 9A.40.060 or
10 9A.40.070.

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

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

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

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

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

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

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

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

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

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

39 (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 proposed
13 relocation itself. A hearing to determine adequate cause for
14 modification shall not be required so long as the request for
15 relocation of the child is being pursued. In making a determination
16 of a modification pursuant to relocation of the child, the court
17 shall first determine whether to permit or restrain the relocation of
18 the child using the procedures and standards provided in RCW
19 26.09.405 through 26.09.560. Following that determination, the court
20 shall determine what modification pursuant to relocation should be
21 made, if any, to the parenting plan or custody order or visitation
22 order.

23 (7) A parent with whom the child does not reside a majority of
24 the 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
26 expansion of residential time under subsection (5)(c) of this section
27 unless that parent demonstrates a substantial change in circumstances
28 specifically 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
36 not 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.

39 (9) A parent with whom the child does not reside a majority of
40 the time who is required by the existing parenting plan to complete

1 evaluations, treatment, parenting, or other classes may not seek
2 expansion of residential time under subsection (5)(c) of this section
3 unless that parent has fully complied with such requirements.

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

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

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

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

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

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

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

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

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

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