SENATE BILL REPORT
SB 5399

As of January 31, 2019

Title: An act relating to child relocation by a person with joint decision-making authority and equal residential time.

Brief Description: Concerning child relocation by a person with joint decision-making authority and equal residential time.

Sponsors: Senators Pedersen, Walsh, Dhingra, Frockt, Kuderer, Salomon, Mullet, Palumbo, Holy, Wellman and Wilson, C..

Brief History:
Committee Activity: Law & Justice: 1/29/19.

Brief Summary of Bill

- Requires the court to use the factors in the Child Relocation Act for all parenting plans including those with substantially equal residential time.
- Removes the presumption in favor of relocation for parenting plans with substantially equal residential time.
- Defines substantially equal residential time to include arrangements in which 45 percent or more of the child's residential time is spent with each parent.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Child Relocation Act. The primary residential (custodial) parent has a presumptive right to move the children. Notice must be given to those entitled to visitation or residential time within 60 days before the date of the intended relocation. The notice must state the reasons for relocation of the child. The notice must include a statement that any objection to relocation must be filed and served within 30 days or relocation will be permitted. The new address, telephone number, name and address of the child's new school, and a proposed revised schedule of visitation or residential time should also be included, if available. Without a court order, the person desiring to relocate may not change the principal

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residence of the child during the period in which a party may object, unless the relocation is due to danger posed by another person.

Court Determination on Objections to Relocation. The best interest of the child is not the test applied by the courts. There is a rebuttable presumption the intended relocation of the child will be permitted. A person who objects to relocation of the child may rebut this presumption by showing the detrimental effect of relocation outweighs the benefit to the child and the relocating person based on:

- the strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons;
- prior agreements of the parties;
- whether disrupting contact between the child and the person with whom the child resides a majority of the time would be more detrimental than disrupting contact between the child and the person objecting to the move;
- whether a person entitled to residential time is subject to limitations based on the person's conduct;
- the reasons and good faith of each person for seeking or opposing the relocation;
- the age, developmental stage, and needs of the child;
- the quality of life, resources, and opportunities available to the child and the relocating party in the current and proposed geographic locations;
- the availability of alternative arrangements to continue the child's relationship with and access to the other parent;
- alternatives to relocation and whether it is feasible and desirable for the other party to relocate;
- the financial impact and logistics of the relocation or its prevention, and
- for a temporary order, the amount of time before a final decision can be made at trial.

No factor is given greater weight than another. The court may not consider as a factor whether the person intending to relocate will forego relocation if the child's relocation is prohibited, or whether the opposing party will relocate if the child's relocation is permitted.

Joint Parenting Plans. In a 2017 appellate case of *In re Marriage of Ruff & Worthley*, the court held the Child Relocation Act does not apply to a relocation that would modify a joint parenting plan from an existing 50/50 residential time designation to something other than joint and equal residential time. There is no presumption for a relocation when a joint parenting plan exists. The court does not apply the factors listed above for determining relocation. Instead the court uses a parenting plan modification law that differs from the Child Relocation Act. The court is required to retain the existing residential plan unless a substantial change has occurred in the circumstances of the child or the nonmoving party on the basis of facts unknown to the court when the residential plan was established, and relocation is in the best interest of the child.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): The Child Relocation Act applies to all parenting plans, including those with substantially equal residential time. Substantially equal residential time includes arrangements in which 45 percent or more of the child's residential time is spent with each parent. The percentage will be determined based on the designated

time in the court order, unless there is a substantial deviation in the plan agreed to by both parents.

For parenting plans with substantially equal residential time, the presumption for relocation does not apply. The court shall make a determination in the best interest of the child considering the factors in the Child Relocation Act.

The title of the bill will change.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: My ex-wife and I wrote a provision into our parenting plan which allows relocation. I am now remarried and my new wife received a mandatory medical residency assignment requiring her to relocate to Maryland. The court of appeals says that it does not matter what the parents agree, and the Child Relocation Act does not apply to shared parenting plans. This has been an unending period of uncertainty and it is very expensive because of the legal fees and rent. The court ruling makes it so I can not relocate with my child. I live in Seattle and it is very expensive to rent. My new wife lives in Maryland and so we are renting two houses. My child lives about 60 percent with me and this is not in the best interest of our child.

This bill fixes a hole in the Child Relocation Act. It takes the best interests of the child into consideration. A judge can determine what is best for the child. The original Child Relocation Act passed in 2000 and this issue was anticipated but unfortunately a provision addressing the issue was not included into the law. A colloquy on the floor of the house did not fit the law as written. The courts are interpreting the law in a way that was not intended. These types of shared parenting plans are becoming more common and so a legislative fix is needed.

One concern is what impact, if any, would a non-parental child visitation order have on a court's determination of what would constitute substantially equal residential time between the parents? If a third party has 20 percent visitation, and the parents have 40 percent each, then the parents do not have a substantially equal residential plan since the bill defines substantially equal as a 45 percent or more shared residential time with the child. An amendment would resolve the question the clarifies that 45 percent is between the parents without regard to third parties with visitation orders.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Richard Bartholomew, Domestic Relations Attorneys of Washington; Patrick Rawnsley, Family Law Executive Committee of the WSBA; Ethan Bergerson; David Ward, Legal Voice.

Persons Signed In To Testify But Not Testifying: No one.