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**SENATE BILL 5920**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senator Warnick

1 AN ACT Relating to parenting plans; amending RCW 26.09.260; and  
2 creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that parental  
5 participation in a child's life is ideal for the development and  
6 well-being of the child, but that a parent's use of alcohol or drugs  
7 may be cause to limit that parent's participation in the child's life  
8 through restrictions in a parenting plan. The legislature also finds  
9 that many who are addicted to or abuse alcohol, drugs, or other  
10 substances can stop using and achieve sobriety, and those parents who  
11 can achieve and maintain sobriety for at least two years should be  
12 permitted to seek modification of a parenting plan with restrictions  
13 based on alcohol or drug use if a court deems it appropriate.

14 **Sec. 2.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to  
15 read as follows:

16 (1) Except as otherwise provided in subsections (4), (5), (6),  
17 (8), and (10) of this section, the court shall not modify a prior  
18 custody decree or a parenting plan unless it finds, upon the basis of  
19 facts that have arisen since the prior decree or plan or that were  
20 unknown to the court at the time of the prior decree or plan, that a

1 substantial change has occurred in the circumstances of the child or  
2 the nonmoving party and that the modification is in the best interest  
3 of the child and is necessary to serve the best interests of the  
4 child. The effect of a parent's military duties potentially impacting  
5 parenting functions shall not, by itself, be a substantial change of  
6 circumstances justifying a permanent modification of a prior decree  
7 or plan.

8 (2) In applying these standards, the court shall retain the  
9 residential schedule established by the decree or parenting plan  
10 unless:

11 (a) The parents agree to the modification;

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

15 (c) The child's present environment is detrimental to the child's  
16 physical, mental, or emotional health and the harm likely to be  
17 caused by a change of environment is outweighed by the advantage of a  
18 change to the child; or

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

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

27 (4) The court may reduce or restrict contact between the child  
28 and the parent with whom the child does not reside a majority of the  
29 time if it finds that the reduction or restriction would serve and  
30 protect the best interests of the child using the criteria in RCW  
31 26.09.191.

32 (5) The court may order adjustments to the residential aspects of  
33 a parenting plan upon a showing of a substantial change in  
34 circumstances of either parent or of the child, and without  
35 consideration of the factors set forth in subsection (2) of this  
36 section, if the proposed modification is only a minor modification in  
37 the residential schedule that does not change the residence the child  
38 is scheduled to reside in the majority of the time and:

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

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

5 (c) Does not result in a schedule that exceeds ninety overnights  
6 per year in total, if the court finds that, at the time the petition  
7 for modification is filed, the decree of dissolution or parenting  
8 plan does not provide reasonable time with the parent with whom the  
9 child does not reside a majority of the time, and further, the court  
10 finds that it is in the best interests of the child to increase  
11 residential time with the parent in excess of the residential time  
12 period in (a) of this subsection. However, any motion under this  
13 subsection (5)(c) is subject to the factors established in subsection  
14 (2) of this section if the party bringing the petition has previously  
15 been granted a modification under this same subsection within twenty-  
16 four months of the current motion. Relief granted under this section  
17 shall not be the sole basis for adjusting or modifying child support.

18 (6) The court may order adjustments to the residential aspects of  
19 a parenting plan pursuant to a proceeding to permit or restrain a  
20 relocation of the child. The person objecting to the relocation of  
21 the child or the relocating person's proposed revised residential  
22 schedule may file a petition to modify the parenting plan, including  
23 a change of the residence in which the child resides the majority of  
24 the time, without a showing of adequate cause other than the proposed  
25 relocation itself. A hearing to determine adequate cause for  
26 modification shall not be required so long as the request for  
27 relocation of the child is being pursued. In making a determination  
28 of a modification pursuant to relocation of the child, the court  
29 shall first determine whether to permit or restrain the relocation of  
30 the child using the procedures and standards provided in RCW  
31 26.09.405 through 26.09.560. Following that determination, the court  
32 shall determine what modification pursuant to relocation should be  
33 made, if any, to the parenting plan or custody order or visitation  
34 order.

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

1 (a) If the restriction is based upon a finding of drug, alcohol,  
2 or other substance abuse that interferes with the performance of  
3 parenting functions, a substantial change in circumstance is  
4 demonstrated when the moving parent shows by clear and convincing  
5 proof that the parent has not used drugs, alcohol, or other  
6 substances for more than 24 consecutive months, and the court shall  
7 modify the parenting plan appropriately. A moving parent may  
8 establish clear and convincing proof that the parent has not used  
9 drugs, alcohol, or other substances for more than 24 consecutive  
10 months by submitting to the court:

11 (i) A report indicating no use of drugs, alcohol, or other  
12 substances by the moving parent for a time period of 24 consecutive  
13 months or more within 90 days of filing for modification consisting  
14 of at least three random observed lab-based urinalysis tests per  
15 month, utilizing United States department of transportation testing  
16 protocols and standards, during that time period;

17 (ii) A report indicating no use of drugs, alcohol, or other  
18 substances by the moving parent for a time period of 24 consecutive  
19 months or more within 90 days of filing for modification consisting  
20 of hair or nail tests performed at least every 90 days, utilizing  
21 United States department of transportation testing protocols and  
22 standards, during that time period; or

23 (iii) Such evidence as the court deems appropriate to show that  
24 there has been no use of drugs, alcohol, or other substances by the  
25 moving parent for a time period of 24 consecutive months or more  
26 within 90 days of filing for modification.

27 (b) Unless otherwise directed by the court, testing facilities  
28 used to prepare reports to show no use of drugs, alcohol, or other  
29 substances by the moving parent must:

30 (i) Use United States department of health and human services  
31 substance abuse and mental health services administration accredited  
32 labs for processing samples;

33 (ii) Have at least one United States department of transportation  
34 certified collector on staff at all times and follow United States  
35 department of transportation protocols for testing; and

36 (iii) Have been in business continuously for at least three years  
37 performing the type of tests the moving parent will use to establish  
38 no use of drugs, alcohol, or other substances.

39 (c) A court maintains discretion to make modifications to a  
40 parenting plan where the moving parent demonstrates that the parent

1 has not used drugs, alcohol, or other substances for less than 24  
2 consecutive months as it deems appropriate.

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

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

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

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

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

30 (a) Any temporary custody order for the child during the parent's  
31 absence shall end no later than ten days after the returning parent  
32 provides notice to the temporary custodian, but shall not impair the  
33 discretion of the court to conduct an expedited or emergency hearing  
34 for resolution of the child's residential placement upon return of  
35 the parent and within ten days of the filing of a motion alleging an  
36 immediate danger of irreparable harm to the child. If a motion  
37 alleging immediate danger has not been filed, the motion for an order  
38 restoring the previous residential schedule shall be granted; and

39 (b) The temporary duty, activation, mobilization, or deployment  
40 and the temporary disruption to the child's schedule shall not be a

1 factor in a determination of change of circumstances if a motion is  
2 filed to transfer residential placement from the parent who is a  
3 military service member.

4 (12) If a parent receives military temporary duty, deployment,  
5 activation, or mobilization orders that involve moving a substantial  
6 distance away from the military parent's residence or otherwise have  
7 a material effect on the military parent's ability to exercise  
8 residential time or visitation rights, at the request of the military  
9 parent, the court may delegate the military parent's residential time  
10 or visitation rights, or a portion thereof, to a child's family  
11 member, including a stepparent, or another person other than a  
12 parent, with a close and substantial relationship to the minor child  
13 for the duration of the military parent's absence, if delegating  
14 residential time or visitation rights is in the child's best  
15 interest. The court may not permit the delegation of residential time  
16 or visitation rights to a person who would be subject to limitations  
17 on residential time under RCW 26.09.191. The parties shall attempt to  
18 resolve disputes regarding delegation of residential time or  
19 visitation rights through the dispute resolution process specified in  
20 their parenting plan, unless excused by the court for good cause  
21 shown. Such a court-ordered temporary delegation of a military  
22 parent's residential time or visitation rights does not create  
23 separate rights to residential time or visitation for a person other  
24 than a parent.

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

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