

SHB 2237 - H AMD 909

By Representative Taylor

NOT CONSIDERED 03/07/2024

1 On page 21, after line 5, insert the following:

2 **"Sec. 3.** RCW 11.130.215 and 2022 c 243 s 8 are each amended to
3 read as follows:

4 (1) After a hearing under RCW 11.130.195, the court may appoint a
5 guardian for a minor, if appointment is proper under RCW 11.130.185,
6 dismiss the proceeding, or take other appropriate action consistent
7 with this chapter or law of this state other than this chapter.

8 (2) In appointing a guardian under subsection (1) of this
9 section, the following rules apply:

10 (a) The court shall appoint a person nominated as guardian by a
11 parent of the minor in a probated will or other record unless the
12 court finds the appointment is contrary to the best interest of the
13 minor. Any "other record" must be a declaration or other sworn
14 document and may include a power of attorney or other sworn statement
15 as to the care, custody, or control of the minor child.

16 (b) If multiple parents have nominated different persons to serve
17 as guardian, the court shall appoint the nominee whose appointment is
18 in the best interest of the minor, unless the court finds that
19 appointment of none of the nominees is in the best interest of the
20 minor.

21 (c) If a guardian is not appointed under (a) or (b) of this
22 subsection, the court shall appoint the person nominated by the minor
23 if the minor is twelve years of age or older unless the court finds
24 that appointment is contrary to the best interest of the minor. In
25 that case, the court shall appoint as guardian a person whose
26 appointment is in the best interest of the minor.

27 (3) In the interest of maintaining or encouraging involvement by
28 a minor's parent in the minor's life, developing self-reliance of the
29 minor, or for other good cause, the court, at the time of appointment
30 of a guardian for the minor or later, on its own or on motion of the
31 minor or other interested person, may create a limited guardianship
32 by limiting the powers otherwise granted by this article to the

1 guardian. Following the same procedure, the court may grant
2 additional powers or withdraw powers previously granted.

3 (4) The court, as part of an order appointing a guardian for a
4 minor, shall state rights retained by any parent of the minor, which
5 shall preserve the parent-child relationship through an order for
6 parent-child visitation and other contact, unless the court finds the
7 relationship should be limited or restricted under RCW 26.09.191 or
8 section 2 of this act; and which may include decision making
9 regarding the minor's health care, education, or other matter, or
10 access to a record regarding the minor.

11 (5) An order granting a guardianship for a minor must state that
12 each parent of the minor is entitled to notice that:

13 (a) The guardian has delegated custody of the minor subject to
14 guardianship;

15 (b) The court has modified or limited the powers of the guardian;
16 or

17 (c) The court has removed the guardian.

18 (6) An order granting a guardianship for a minor must identify
19 any person in addition to a parent of the minor which is entitled to
20 notice of the events listed in subsection (5) of this section.

21 (7) An order granting guardianship for a minor must direct the
22 clerk of the court to issue letters of office to the guardian
23 containing an expiration date which should be the minor's eighteenth
24 birthday.

25 **Sec. 4.** RCW 26.09.187 and 2007 c 496 s 603 are each amended to
26 read as follows:

27 (1) DISPUTE RESOLUTION PROCESS. The court shall not order a
28 dispute resolution process, except court action, when it finds that
29 any limiting factor under RCW 26.09.191 or section 2 of this act
30 applies, or when it finds that either parent is unable to afford the
31 cost of the proposed dispute resolution process. If a dispute
32 resolution process is not precluded or limited, then in designating
33 such a process the court shall consider all relevant factors,
34 including:

35 (a) Differences between the parents that would substantially
36 inhibit their effective participation in any designated process;

37 (b) The parents' wishes or agreements and, if the parents have
38 entered into agreements, whether the agreements were made knowingly
39 and voluntarily; and

1 (c) Differences in the parents' financial circumstances that may
2 affect their ability to participate fully in a given dispute
3 resolution process.

4 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

5 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve
6 agreements of the parties allocating decision-making authority, or
7 specifying rules in the areas listed in RCW 26.09.184(5) (a), when it
8 finds that:

9 (i) The agreement is consistent with any limitations on a
10 parent's decision-making authority mandated by RCW 26.09.191 and
11 section 2 of this act; and

12 (ii) The agreement is knowing and voluntary.

13 (b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole
14 decision-making to one parent when it finds that:

15 (i) A limitation on the other parent's decision-making authority
16 is mandated by RCW 26.09.191 or section 2 of this act;

17 (ii) Both parents are opposed to mutual decision making;

18 (iii) One parent is opposed to mutual decision making, and such
19 opposition is reasonable based on the criteria in (c) of this
20 subsection.

21 (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)
22 and (b) of this subsection, the court shall consider the following
23 criteria in allocating decision-making authority:

24 (i) The existence of a limitation under RCW 26.09.191 or section
25 2 of this act;

26 (ii) The history of participation of each parent in decision
27 making in each of the areas in RCW 26.09.184(5) (a);

28 (iii) Whether the parents have a demonstrated ability and desire
29 to cooperate with one another in decision making in each of the areas
30 in RCW 26.09.184(5) (a); and

31 (iv) The parents' geographic proximity to one another, to the
32 extent that it affects their ability to make timely mutual decisions.

33 (3) RESIDENTIAL PROVISIONS.

34 (a) The court shall make residential provisions for each child
35 which encourage each parent to maintain a loving, stable, and
36 nurturing relationship with the child, consistent with the child's
37 developmental level and the family's social and economic
38 circumstances. The child's residential schedule shall be consistent
39 with RCW 26.09.191 and section 2 of this act. Where the limitations
40 of RCW 26.09.191 or section 2 of this act are not dispositive of the

1 child's residential schedule, the court shall consider the following
2 factors:

3 (i) The relative strength, nature, and stability of the child's
4 relationship with each parent;

5 (ii) The agreements of the parties, provided they were entered
6 into knowingly and voluntarily;

7 (iii) Each parent's past and potential for future performance of
8 parenting functions as defined in RCW 26.09.004(~~((3))~~) (2), including
9 whether a parent has taken greater responsibility for performing
10 parenting functions relating to the daily needs of the child;

11 (iv) The emotional needs and developmental level of the child;

12 (v) The child's relationship with siblings and with other
13 significant adults, as well as the child's involvement with his or
14 her physical surroundings, school, or other significant activities;

15 (vi) The wishes of the parents and the wishes of a child who is
16 sufficiently mature to express reasoned and independent preferences
17 as to his or her residential schedule; and

18 (vii) Each parent's employment schedule, and shall make
19 accommodations consistent with those schedules.

20 Factor (i) shall be given the greatest weight.

21 (b) Where the limitations of RCW 26.09.191 or section 2 of this
22 act are not dispositive, the court may order that a child frequently
23 alternate his or her residence between the households of the parents
24 for brief and substantially equal intervals of time if such provision
25 is in the best interests of the child. In determining whether such an
26 arrangement is in the best interests of the child, the court may
27 consider the parties geographic proximity to the extent necessary to
28 ensure the ability to share performance of the parenting functions.

29 (c) For any child, residential provisions may contain any
30 reasonable terms or conditions that facilitate the orderly and
31 meaningful exercise of residential time by a parent, including but
32 not limited to requirements of reasonable notice when residential
33 time will not occur.

34 **Sec. 5.** RCW 26.09.194 and 2008 c 6 s 1045 are each amended to
35 read as follows:

36 (1) A parent seeking a temporary order relating to parenting
37 shall file and serve a proposed temporary parenting plan by motion.
38 The other parent, if contesting the proposed temporary parenting
39 plan, shall file and serve a responsive proposed parenting plan.

1 Either parent may move to have a proposed temporary parenting plan
2 entered as part of a temporary order. The parents may enter an agreed
3 temporary parenting plan at any time as part of a temporary order.
4 The proposed temporary parenting plan may be supported by relevant
5 evidence and shall be accompanied by an affidavit or declaration
6 which shall state at a minimum the following:

7 (a) The name, address, and length of residence with the person or
8 persons with whom the child has lived for the preceding twelve
9 months;

10 (b) The performance by each parent during the last twelve months
11 of the parenting functions relating to the daily needs of the child;

12 (c) The parents' work and child-care schedules for the preceding
13 twelve months;

14 (d) The parents' current work and child-care schedules; and

15 (e) Any of the circumstances set forth in RCW 26.09.191 or
16 section 2 of this act that are likely to pose a serious risk to the
17 child and that warrant limitation on the award to a parent of
18 temporary residence or time with the child pending entry of a
19 permanent parenting plan.

20 (2) At the hearing, the court shall enter a temporary parenting
21 order incorporating a temporary parenting plan which includes:

22 (a) A schedule for the child's time with each parent when
23 appropriate;

24 (b) Designation of a temporary residence for the child;

25 (c) Allocation of decision-making authority, if any. Absent
26 allocation of decision-making authority consistent with RCW
27 26.09.187(2), neither party shall make any decision for the child
28 other than those relating to day-to-day or emergency care of the
29 child, which shall be made by the party who is present with the
30 child;

31 (d) Provisions for temporary support for the child; and

32 (e) Restraining orders, if applicable, under RCW 26.09.060.

33 (3) A parent may make a motion for an order to show cause and the
34 court may enter a temporary order, including a temporary parenting
35 plan, upon a showing of necessity.

36 (4) A parent may move for amendment of a temporary parenting
37 plan, and the court may order amendment to the temporary parenting
38 plan, if the amendment conforms to the limitations of RCW 26.09.191
39 and section 2 of this act and is in the best interest of the child.

1 (5) If a proceeding for dissolution of marriage or dissolution of
2 domestic partnership, legal separation, or declaration of invalidity
3 is dismissed, any temporary order or temporary parenting plan is
4 vacated.

5 **Sec. 6.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to
6 read as follows:

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

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

22 (a) The parents agree to the modification;

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

26 (c) The child's present environment is detrimental to the child's
27 physical, mental, or emotional health and the harm likely to be
28 caused by a change of environment is outweighed by the advantage of a
29 change to the child; or

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

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

38 (4) The court may reduce or restrict contact between the child
39 and the parent with whom the child does not reside a majority of the

1 time if it finds that the reduction or restriction would serve and
2 protect the best interests of the child using the criteria in RCW
3 26.09.191 and section 2 of this act.

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

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

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

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

29 (6) The court may order adjustments to the residential aspects of
30 a parenting plan pursuant to a proceeding to permit or restrain a
31 relocation of the child. The person objecting to the relocation of
32 the child or the relocating person's proposed revised residential
33 schedule may file a petition to modify the parenting plan, including
34 a change of the residence in which the child resides the majority of
35 the time, without a showing of adequate cause other than the proposed
36 relocation itself. A hearing to determine adequate cause for
37 modification shall not be required so long as the request for
38 relocation of the child is being pursued. In making a determination
39 of a modification pursuant to relocation of the child, the court
40 shall first determine whether to permit or restrain the relocation of

1 the child using the procedures and standards provided in RCW
2 26.09.405 through 26.09.560. Following that determination, the court
3 shall determine what modification pursuant to relocation should be
4 made, if any, to the parenting plan or custody order or visitation
5 order.

6 (7) A parent with whom the child does not reside a majority of
7 the time and whose residential time with the child is subject to
8 limitations pursuant to RCW 26.09.191 (~~((2) or (3))~~) or section 2 of
9 this act may not seek expansion of residential time under subsection
10 (5)(c) of this section unless that parent demonstrates a substantial
11 change in circumstances specifically related to the basis for the
12 limitation.

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

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

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

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

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

1 (a) Any temporary custody order for the child during the parent's
2 absence shall end no later than ten days after the returning parent
3 provides notice to the temporary custodian, but shall not impair the
4 discretion of the court to conduct an expedited or emergency hearing
5 for resolution of the child's residential placement upon return of
6 the parent and within ten days of the filing of a motion alleging an
7 immediate danger of irreparable harm to the child. If a motion
8 alleging immediate danger has not been filed, the motion for an order
9 restoring the previous residential schedule shall be granted; and

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

15 (12) If a parent receives military temporary duty, deployment,
16 activation, or mobilization orders that involve moving a substantial
17 distance away from the military parent's residence or otherwise have
18 a material effect on the military parent's ability to exercise
19 residential time or visitation rights, at the request of the military
20 parent, the court may delegate the military parent's residential time
21 or visitation rights, or a portion thereof, to a child's family
22 member, including a stepparent, or another person other than a
23 parent, with a close and substantial relationship to the minor child
24 for the duration of the military parent's absence, if delegating
25 residential time or visitation rights is in the child's best
26 interest. The court may not permit the delegation of residential time
27 or visitation rights to a person who would be subject to limitations
28 on residential time under RCW 26.09.191 or section 2 of this act. The
29 parties shall attempt to resolve disputes regarding delegation of
30 residential time or visitation rights through the dispute resolution
31 process specified in their parenting plan, unless excused by the
32 court for good cause shown. Such a court-ordered temporary delegation
33 of a military parent's residential time or visitation rights does not
34 create separate rights to residential time or visitation for a person
35 other than a parent.

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

1 **Sec. 7.** RCW 26.09.520 and 2019 c 79 s 3 are each amended to read
2 as follows:

3 The person proposing to relocate with the child shall provide his
4 or her reasons for the intended relocation. There is a rebuttable
5 presumption that the intended relocation of the child will be
6 permitted. A person entitled to object to the intended relocation of
7 the child may rebut the presumption by demonstrating that the
8 detrimental effect of the relocation outweighs the benefit of the
9 change to the child and the relocating person, based upon the
10 following factors. The factors listed in this section are not
11 weighted. No inference is to be drawn from the order in which the
12 following factors are listed:

13 (1) The relative strength, nature, quality, extent of
14 involvement, and stability of the child's relationship with each
15 parent, siblings, and other significant persons in the child's life;

16 (2) Prior agreements of the parties;

17 (3) Whether disrupting the contact between the child and the
18 person seeking relocation would be more detrimental to the child than
19 disrupting contact between the child and the person objecting to the
20 relocation;

21 (4) Whether either parent or a person entitled to residential
22 time with the child is subject to limitations under RCW 26.09.191 or
23 section 2 of this act;

24 (5) The reasons of each person for seeking or opposing the
25 relocation and the good faith of each of the parties in requesting or
26 opposing the relocation;

27 (6) The age, developmental stage, and needs of the child, and the
28 likely impact the relocation or its prevention will have on the
29 child's physical, educational, and emotional development, taking into
30 consideration any special needs of the child;

31 (7) The quality of life, resources, and opportunities available
32 to the child and to the relocating party in the current and proposed
33 geographic locations;

34 (8) The availability of alternative arrangements to foster and
35 continue the child's relationship with and access to the other
36 parent;

37 (9) The alternatives to relocation and whether it is feasible and
38 desirable for the other party to relocate also;

39 (10) The financial impact and logistics of the relocation or its
40 prevention; and

1 (11) For a temporary order, the amount of time before a final
2 decision can be made at trial.

3 **Sec. 8.** RCW 26.12.177 and 2011 c 292 s 7 are each amended to
4 read as follows:

5 (1) All guardians ad litem appointed under this title must comply
6 with the training requirements established under RCW 2.56.030(15),
7 prior to their appointment in cases under Title 26 RCW, except that
8 volunteer guardians ad litem or court-appointed special advocates may
9 comply with alternative training requirements approved by the
10 administrative office of the courts that meet or exceed the statewide
11 requirements. In cases involving allegations of limiting factors
12 under RCW 26.09.191 or section 2 of this act, the guardians ad litem
13 appointed under this title must have additional relevant training
14 under RCW 2.56.030(15) when it is available.

15 (2)(a) Each guardian ad litem program for compensated guardians
16 ad litem shall establish a rotational registry system for the
17 appointment of guardians ad litem under this title. If a judicial
18 district does not have a program the court shall establish the
19 rotational registry system. Guardians ad litem under this title shall
20 be selected from the registry except in exceptional circumstances as
21 determined and documented by the court. The parties may make a joint
22 recommendation for the appointment of a guardian ad litem from the
23 registry.

24 (b) In judicial districts with a population over one hundred
25 thousand, a list of three names shall be selected from the registry
26 and given to the parties along with the background information record
27 as specified in RCW 26.12.175(3), including their hourly rate for
28 services. Each party may, within three judicial days, strike one name
29 from the list. If more than one name remains on the list, the court
30 shall make the appointment from the names on the list. In the event
31 all three names are stricken the person whose name appears next on
32 the registry shall be appointed.

33 (c) If a party reasonably believes that the appointed guardian ad
34 litem is inappropriate or unqualified, charges an hourly rate higher
35 than what is reasonable for the particular proceeding, or has a
36 conflict of interest, the party may, within three judicial days from
37 the appointment, move for substitution of the appointed guardian ad
38 litem by filing a motion with the court.

1 (d) Under this section, within either registry referred to in (a)
2 of this subsection, a subregistry may be created that consists of
3 guardians ad litem under contract with the department of social and
4 health services' division of child support. Guardians ad litem on
5 such a subregistry shall be selected and appointed in state-initiated
6 paternity cases only.

7 (e) The superior court shall remove any person from the guardian
8 ad litem registry who has been found to have misrepresented his or
9 her qualifications.

10 (3) The rotational registry system shall not apply to court-
11 appointed special advocate programs.

12 **Sec. 9.** RCW 26.51.020 and 2021 c 215 s 143 and 2021 c 65 s 103
13 are each reenacted and amended to read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Abusive litigation" means litigation where the following
17 apply:

18 (a)(i) The opposing parties have a current or former intimate
19 partner relationship;

20 (ii) The party who is filing, initiating, advancing, or
21 continuing the litigation has been found by a court to have committed
22 domestic violence against the other party pursuant to: (A) An order
23 entered under chapter 7.105 RCW or former chapter 26.50 RCW; (B) a
24 parenting plan with restrictions based on RCW
25 26.09.191(~~((2)(a)(iii))~~) (4)(a)(iii); or (C) a restraining order
26 entered under chapter 26.09, 26.26A, or 26.26B RCW, provided that the
27 issuing court made a specific finding that the restraining order was
28 necessary due to domestic violence; and

29 (iii) The litigation is being initiated, advanced, or continued
30 primarily for the purpose of harassing, intimidating, or maintaining
31 contact with the other party; and

32 (b) At least one of the following factors apply:

33 (i) Claims, allegations, and other legal contentions made in the
34 litigation are not warranted by existing law or by a reasonable
35 argument for the extension, modification, or reversal of existing
36 law, or the establishment of new law;

37 (ii) Allegations and other factual contentions made in the
38 litigation are without the existence of evidentiary support; or

1 (iii) An issue or issues that are the basis of the litigation
2 have previously been filed in one or more other courts or
3 jurisdictions and the actions have been litigated and disposed of
4 unfavorably to the party filing, initiating, advancing, or continuing
5 the litigation.

6 (2) "Intimate partner" is defined in RCW 7.105.010.

7 (3) "Litigation" means any kind of legal action or proceeding
8 including, but not limited to: (a) Filing a summons, complaint,
9 demand, or petition; (b) serving a summons, complaint, demand, or
10 petition, regardless of whether it has been filed; (c) filing a
11 motion, notice of court date, note for motion docket, or order to
12 appear; (d) serving a motion, notice of court date, note for motion
13 docket, or order to appear, regardless of whether it has been filed
14 or scheduled; (e) filing a subpoena, subpoena duces tecum, request
15 for interrogatories, request for production, notice of deposition, or
16 other discovery request; or (f) serving a subpoena, subpoena duces
17 tecum, request for interrogatories, request for production, notice of
18 deposition, or other discovery request.

19 (4) "Perpetrator of abusive litigation" means a person who files,
20 initiates, advances, or continues litigation in violation of an order
21 restricting abusive litigation."

22 Correct the title.

EFFECT: Updates citations to RCW 26.09.191 to also include
references to section 2 of the act given that some provisions of
current RCW 26.09.191 are moved into a new section of law.

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