
SENATE BILL 5450

State of Washington

68th Legislature

2023 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 a period greater than 24 months
12 should be permitted to seek modification of a parenting plan with
13 restrictions based on alcohol or drug use if a court deems it
14 appropriate.

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

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

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

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

12 (a) The parents agree to the modification;

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

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

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

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

28 (4) The court may reduce or restrict contact between the child
29 and the parent with whom the child does not reside a majority of the
30 time if it finds that the reduction or restriction would serve and
31 protect the best interests of the child using the criteria in RCW
32 26.09.191.

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

40 (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) 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 (b) 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 circumstances 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 a period greater than 24 months. The court shall
7 schedule a hearing when a substantial change in circumstances is
8 demonstrated and may make adjustments to the parenting plan in
9 keeping with the best interests of the minor child.

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

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

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

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

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

37 (a) Any temporary custody order for the child during the parent's
38 absence shall end no later than ten days after the returning parent
39 provides notice to the temporary custodian, but shall not impair the
40 discretion of the court to conduct an expedited or emergency hearing

1 for resolution of the child's residential placement upon return of
2 the parent and within ten days of the filing of a motion alleging an
3 immediate danger of irreparable harm to the child. If a motion
4 alleging immediate danger has not been filed, the motion for an order
5 restoring the previous residential schedule shall be granted; and

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

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

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

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