

# HOUSE BILL REPORT

## HB 1170

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to the modification of parenting plans based on the military service of a parent.

**Brief Description:** Modifying parenting plans based on the military service of a parent.

**Sponsors:** Representatives McCoy, Rodne, Kelley, Warnick, Seaquist, Angel, Green, Shea, Sells, McCune, Kagi, Ormsby and Smith; by request of Washington State Bar Association.

**Brief History:**

**Committee Activity:**

Judiciary: 1/22/09, 1/29/09 [DPS].

**Brief Summary of Substitute Bill**

- Addresses changes to custody decrees and parenting plans when a parent is unable to exercise residential time or visitation with a child because of the parent's military duties.
- Provides that any change in custody as a result of the custodial parent's military duties shall be temporary.
- Allows a court to delegate the residential time or visitation of a military parent to a person other than a parent during the military parent's absence.
- Requires the court to hold expedited hearings and allow testimony by electronic means when the military parent cannot appear in person.

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**HOUSE COMMITTEE ON JUDICIARY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Trudes Tango (786-7384)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

In dissolution cases in which minor children are involved, the parties must have a parenting plan that provides for the care of the minor children. The parenting plan must include an allocation of decision-making authority to one or both parents regarding the child's education, health care, and religious upbringing. The parenting plan must also set forth the child's residential time with each parent. The plan must include a specific residential schedule designating in which parent's home the child will reside on given days of the year.

Once a parenting plan is final, courts favor stability for the child and will not modify the parenting plan unless certain circumstances exist. The court can modify the nonresidential portions of a parenting plan upon a showing of a substantial change of circumstances to the child or either parent, and the modification is in the child's best interest.

To modify the residential portions of a parenting plan there must be a substantial change in circumstances to the child or to the parent not requesting the modification, and the modification must be necessary to serve the child's best interests. In addition, the court must find that either: (1) the parents agree to the modification; (2) the child has been integrated into the petitioning parent's family with the other parent's consent in substantial deviation from the original parenting plan; (3) the child's present environment is detrimental to the child; or (4) the court has found the non-moving parent in contempt of court at least twice in three years for failure to comply with residential time ordered.

If a parent with whom the child does not reside a majority of time (noncustodial parent) fails to exercise residential time with the child for an extended period (one year or longer), then the court may make adjustments to the parenting plan in keeping with the child's best interest.

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**Summary of Substitute Bill:**

Procedures are created to address changes in a custody decree or parenting plan when a parent is unable to exercise residential time or visitation because of the parent's military duties.

The bona fide effects of a parent's "military duties potentially impacting parenting functions" shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a parenting plan. For noncustodial parents, when the court is determining whether the noncustodial parent has failed to exercise residential time for one year, the court cannot count any time periods during which the parent failed to exercise residential time due to the bona fide effects of the parent's military duties.

A court may enter a temporary custody order for the child if the parent with whom the child resides a majority of time receives military orders (temporary duty, deployment, activation, or mobilization) that involve moving a substantial distance away or that would have a material effect on the parent's ability to exercise parenting functions and responsibilities. However, the temporary custody order for the child during the parent's absence must end no

later than 10 days after the returning parent gives notice to the temporary custodian. This does not impair the court's ability to conduct an expedited or emergency hearing to resolve the child's residential placement upon the parent's return and within 10 days of the filing of a motion alleging an immediate danger of irreparable harm to the child.

When a parent receives military orders that involve moving a substantial distance away or that would have a material effect on the parent's ability to exercise residential time or visitation rights, the court may delegate the military parent's time to a family member or another person, other than a parent, with a close and substantial relationship to the child, if such delegation is in the child's best interest. The court may not delegate residential time or visitation to a person who would otherwise be restricted due to abuse, abandonment, or other statutorily established factors under existing law.

The parties must try to resolve disputes about delegation through the dispute resolution process specified in their parenting plan, unless the court excuses them for good cause. The delegation does not create separate rights to residential time or visitation for the person other than a parent.

Upon a motion by the parent and for good cause shown, the court must hold an expedited hearing in custody and visitation matters when a parent's military duties have a material effect on the parent's ability to appear in person at a hearing. The court must also allow the parent to present testimony and evidence by electronic means.

"Military duties potentially impacting parenting functions" means those obligations imposed, voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that parent's abilities to fulfill his or her responsibilities under a parenting plan. It includes, but is not limited to deployment, activation, mobilization, and temporary duty.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill: (1) clarifies language regarding whether the court can consider the time period that the noncustodial parent failed to exercise residential time due to military duties; (2) clarifies that the family member or other person to whom residential time or visitation is delegated must be someone other than a parent and must have a close and substantial relationship to the child; and (3) requires parties to use the dispute resolution process when there is a dispute about delegation of residential time, not just visitation.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Deployed military parents should not have to worry about their custody orders being changed while they are out of the country. Courts have generally been indifferent to military parents. Simply being away should not be a substantial change in circumstances justifying a change in custody. Service members must have the opportunity to be involved in the custody proceedings. This bill respects the rights of deployed parents to make sure their rights are not impacted as they serve their country. Although the fiscal note states that the bill could result in courts holding more hearings, this bill will not create new hearings. This bill gives military parents the opportunity to solve custody issues before being deployed, helps streamline proceedings, and should decrease the number of hearings that would ordinarily be required to sort these issues out. The bill also encourages the dispute resolution process. The Board of Governors and the Family Law Section of the Washington State Bar Association support this bill. Washington has the seventh highest population of active duty military members. Given the stress of military life and of deployment, there are many divorces in the military. This issue is very important to many military parents. This bill will help improve the quality of life for those on military duty.

**Persons Testifying:** Representative McCoy, prime sponsor; Adam Torem, Washington State Bar Association; John Carpenter, National Guard Association of Washington; Mark Sansouci, U.S. Department of Defense; Nancy Bickford, Washington Military Department; and Bill Harrington.

**Persons Signed In To Testify But Not Testifying:** None.