

SENATE BILL REPORT

SB 5212

As of January 29, 2009

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: Senators Kilmer, Kline, McCaslin, Hewitt, Haugen, Shin and Becker; by request of Washington State Bar Association.

Brief History:

Committee Activity: Human Services & Corrections: 1/29/09.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Jennifer Strus (786-7316)

Background: In dissolution cases in which minor children are involved, the parties must have a parenting plan that provides for the care of those 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 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 nonmoving parent in contempt of court at least twice in three years for failure to comply with residential time ordered.

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.

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.

Summary of 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" must not, by itself, be a substantial change of circumstances justifying a permanent modification of a parenting plan. For noncustodial parents, the bona fide effect of that parent's military duties must not be considered for purposes of calculating whether the parent failed to exercise residential time for an extended period.

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 ten 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 ten 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 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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