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HOUSE BILL 1170

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By Representatives McCoy, Rodne, Kelley, Warnick, Sequist, Angel, Green, Shea, Sells, McCune, Kagi, Ormsby, and Smith; by request of Washington State Bar Association

Read first time 01/14/09. Referred to Committee on Judiciary.

1 AN ACT Relating to the modification of parenting plans based on the  
2 military service of a parent; and amending RCW 26.09.004, 26.09.010,  
3 and 26.09.260.

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

5 **Sec. 1.** RCW 26.09.004 and 2008 c 6 s 1003 are each amended to read  
6 as follows:

7 The definitions in this section apply throughout this chapter.

8 (1) "Temporary parenting plan" means a plan for parenting of the  
9 child pending final resolution of any action for dissolution of  
10 marriage or domestic partnership, declaration of invalidity, or legal  
11 separation which is incorporated in a temporary order.

12 (2) "Permanent parenting plan" means a plan for parenting the  
13 child, including allocation of parenting functions, which plan is  
14 incorporated in any final decree or decree of modification in an action  
15 for dissolution of marriage or domestic partnership, declaration of  
16 invalidity, or legal separation.

17 (3) "Parenting functions" means those aspects of the parent-child  
18 relationship in which the parent makes decisions and performs functions

1 necessary for the care and growth of the child. Parenting functions  
2 include:

3 (a) Maintaining a loving, stable, consistent, and nurturing  
4 relationship with the child;

5 (b) Attending to the daily needs of the child, such as feeding,  
6 clothing, physical care and grooming, supervision, health care, and day  
7 care, and engaging in other activities which are appropriate to the  
8 developmental level of the child and that are within the social and  
9 economic circumstances of the particular family;

10 (c) Attending to adequate education for the child, including  
11 remedial or other education essential to the best interests of the  
12 child;

13 (d) Assisting the child in developing and maintaining appropriate  
14 interpersonal relationships;

15 (e) Exercising appropriate judgment regarding the child's welfare,  
16 consistent with the child's developmental level and the family's social  
17 and economic circumstances; and

18 (f) Providing for the financial support of the child.

19 (4) "Military duties potentially impacting parenting functions"  
20 means those obligations imposed, voluntarily or involuntarily, on a  
21 parent serving in the armed forces that may interfere with that  
22 parent's abilities to fulfill his or her responsibilities under a  
23 temporary or permanent parenting plan. Military duties potentially  
24 impacting parenting functions include, but are not limited to:

25 (a) "Deployment," which means the temporary transfer of a service  
26 member serving in an active-duty status to another location in support  
27 of combat or some other military operation, to include any tour of duty  
28 classified by the member's branch of the armed forces as "remote" or  
29 "unaccompanied";

30 (b) "Activation" or "mobilization," which means the call-up of a  
31 national guard or reserve service member to extended active-duty  
32 status. For purposes of this definition, "mobilization" does not  
33 include national guard or reserve annual training, inactive duty days,  
34 or drill weekends; or

35 (c) "Temporary duty," which means the transfer of a service member  
36 from one military base or the service member's home to a different  
37 location, usually another base, for a limited period of time to

1 accomplish training or to assist in the performance of a noncombat  
2 mission.

3 **Sec. 2.** RCW 26.09.010 and 2008 c 6 s 1004 are each amended to read  
4 as follows:

5 (1) Except as otherwise specifically provided herein, the practice  
6 in civil action shall govern all proceedings under this chapter, except  
7 that trial by jury is dispensed with.

8 (2) A proceeding for dissolution of marriage or domestic  
9 partnership, legal separation or a declaration concerning the validity  
10 of a marriage or domestic partnership shall be entitled "In re the  
11 marriage of . . . . . and . . . . . ." or "In re the domestic  
12 partnership of . . . . . and . . . . . ." Such proceedings may be  
13 filed in the superior court of the county where the petitioner resides.

14 (3) In cases where there has been no prior proceeding in this state  
15 involving the marital or domestic partnership status of the parties or  
16 support obligations for a minor child, a separate parenting and support  
17 proceeding between the parents shall be entitled "In re the parenting  
18 and support of . . . . ."

19 (4) The initial pleading in all proceedings under this chapter  
20 shall be denominated a petition. A responsive pleading shall be  
21 denominated a response. Other pleadings, and all pleadings in other  
22 matters under this chapter shall be denominated as provided in the  
23 civil rules for superior court.

24 (5) In this chapter, "decree" includes "judgment".

25 (6) A decree of dissolution, of legal separation, or a declaration  
26 concerning the validity of a marriage or domestic partnership shall not  
27 be awarded to one of the parties, but shall provide that it affects the  
28 status previously existing between the parties in the manner decreed.

29 (7) In order to provide a means by which to facilitate a fair,  
30 efficient, and swift process to resolve matters regarding custody and  
31 visitation when a parent serving in the armed forces receives temporary  
32 duty, deployment, activation, or mobilization orders from the military,  
33 the court shall, upon motion of such a parent:

34 (a) For good cause shown, hold an expedited hearing in custody and  
35 visitation matters instituted under this chapter when the military  
36 duties of the parent have a material effect on the parent's ability, or

1 anticipated ability, to appear in person at a regularly scheduled  
2 hearing; and

3 (b) Upon reasonable advance notice and for good cause shown, allow  
4 the parent to present testimony and evidence by electronic means in  
5 custody and visitation matters instituted under this chapter when the  
6 military duties of the parent have a material effect on the parent's  
7 ability to appear in person at a regularly scheduled hearing. The  
8 phrase "electronic means" includes communication by telephone, video  
9 teleconference, or the internet.

10 **Sec. 3.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to read  
11 as follows:

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

24 (2) In applying these standards, the court shall retain the  
25 residential schedule established by the decree or parenting plan  
26 unless:

27 (a) The parents agree to the modification;

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

31 (c) The child's present environment is detrimental to the child's  
32 physical, mental, or emotional health and the harm likely to be caused  
33 by a change of environment is outweighed by the advantage of a change  
34 to the child; or

35 (d) The court has found the nonmoving parent in contempt of court  
36 at least twice within three years because the parent failed to comply

1 with the residential time provisions in the court-ordered parenting  
2 plan, or the parent has been convicted of custodial interference in the  
3 first or second degree under RCW 9A.40.060 or 9A.40.070.

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

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

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

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

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

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

36 (6) The court may order adjustments to the residential aspects of  
37 a parenting plan pursuant to a proceeding to permit or restrain a  
38 relocation of the child. The person objecting to the relocation of the

1 child or the relocating person's proposed revised residential schedule  
2 may file a petition to modify the parenting plan, including a change of  
3 the residence in which the child resides the majority of the time,  
4 without a showing of adequate cause other than the proposed relocation  
5 itself. A hearing to determine adequate cause for modification shall  
6 not be required so long as the request for relocation of the child is  
7 being pursued. In making a determination of a modification pursuant to  
8 relocation of the child, the court shall first determine whether to  
9 permit or restrain the relocation of the child using the procedures and  
10 standards provided in RCW 26.09.405 through 26.09.560. Following that  
11 determination, the court shall determine what modification pursuant to  
12 relocation should be made, if any, to the parenting plan or custody  
13 order or visitation order.

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

20 (8) If a parent with whom the child does not reside a majority of  
21 the time voluntarily fails to exercise residential time for an extended  
22 period, that is, one year or longer, the court upon proper motion may  
23 make adjustments to the parenting plan in keeping with the best  
24 interests of the minor child. The bona fide effect of a parent's  
25 military duties potentially impacting parenting functions shall not be  
26 considered for purposes of calculating the requisite time period for  
27 court action under this section.

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

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

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

7       (a) Any temporary custody order for the child during the parent's  
8 absence shall end no later than ten days after the returning parent  
9 provides notice to the temporary custodian, but shall not impair the  
10 discretion of the court to conduct an expedited or emergency hearing  
11 for resolution of the child's residential placement upon return of the  
12 parent and within ten days of the filing of a motion alleging an  
13 immediate danger of irreparable harm to the child; and

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

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

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

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