
SUBSTITUTE HOUSE BILL 2197

State of Washington **63rd Legislature** **2014 Regular Session**

By House Judiciary (originally sponsored by Representative Jenkins)

READ FIRST TIME 01/23/14.

1 AN ACT Relating to objection to relocation in child custody cases;
2 and amending RCW 26.09.260 and 26.09.270.

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

4 **Sec. 1.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to read
5 as follows:

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

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

1 (a) The parents agree to the modification;

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

5 (c) The child's present environment is detrimental to the child's
6 physical, mental, or emotional health and the harm likely to be caused
7 by a change of environment is outweighed by the advantage of a change
8 to the child; or

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

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

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

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

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

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

33 (c) Does not result in a schedule that exceeds ninety overnights
34 per year in total, if the court finds that, at the time the petition
35 for modification is filed, the decree of dissolution or parenting plan
36 does not provide reasonable time with the parent with whom the child
37 does not reside a majority of the time, and further, the court finds
38 that it is in the best interests of the child to increase residential

1 time with the parent in excess of the residential time period in (a) of
2 this subsection. However, any motion under this subsection (5)(c) is
3 subject to the factors established in subsection (2) of this section if
4 the party bringing the petition has previously been granted a
5 modification under this same subsection within twenty-four months of
6 the current motion. Relief granted under this section shall not be the
7 sole basis for adjusting or modifying child support.

8 (6) The court may order adjustments to the residential aspects of
9 a parenting plan pursuant to a proceeding to permit or restrain a
10 relocation of the child. The person objecting to the relocation of the
11 child or the relocating person's proposed revised residential schedule
12 may file a petition to modify the parenting plan, including a change of
13 the residence in which the child resides the majority of the time(~~(~~
14 ~~without a showing of adequate cause other than the proposed relocation~~
15 ~~itself)~~). A modification based on an objection to relocation of the
16 child may not go forward without a finding of adequate cause based on
17 the factors enumerated in RCW 26.09.520. A hearing to determine
18 adequate cause for modification shall not be required (~~(so)~~) if a
19 finding of adequate cause, based on the factors enumerated in RCW
20 26.09.520, has previously been made with relation to an objection to
21 relocation, as long as the request for relocation of the child is being
22 pursued. In making a determination of a modification pursuant to
23 relocation of the child, the court shall first determine whether to
24 permit or restrain the relocation of the child using the procedures and
25 standards provided in RCW 26.09.405 through 26.09.560. Following that
26 determination, the court shall determine what modification pursuant to
27 relocation should be made, if any, to the parenting plan or custody
28 order or visitation order.

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

35 (8)(a) If a parent with whom the child does not reside a majority
36 of the time voluntarily fails to exercise residential time for an
37 extended period, that is, one year or longer, the court upon proper

1 motion may make adjustments to the parenting plan in keeping with the
2 best interests of the minor child.

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

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

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

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

25 (a) Any temporary custody order for the child during the parent's
26 absence shall end no later than ten days after the returning parent
27 provides notice to the temporary custodian, but shall not impair the
28 discretion of the court to conduct an expedited or emergency hearing
29 for resolution of the child's residential placement upon return of the
30 parent and within ten days of the filing of a motion alleging an
31 immediate danger of irreparable harm to the child. If a motion
32 alleging immediate danger has not been filed, the motion for an order
33 restoring the previous residential schedule shall be granted; and

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

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

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

25 **Sec. 2.** RCW 26.09.270 and 2011 c 336 s 691 are each amended to
26 read as follows:

27 A party seeking a temporary custody order or a temporary parenting
28 plan ~~((or))~~, modification of a custody decree or parenting plan, or
29 objecting to a notice of relocation shall submit together with his or
30 her motion, an affidavit setting forth facts supporting the requested
31 order ~~((or))~~, modification, or objection and shall give notice,
32 together with a copy of his or her affidavit, to other parties to the
33 proceedings, who may file opposing affidavits. The court shall deny
34 the motion or objection unless it finds that adequate cause for hearing
35 the motion or objection is established by the affidavits, in which case
36 it shall set a date for hearing on an order to show cause why the

1 requested order ((~~or~~)), modification, or objection should not be
2 granted.

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