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HOUSE BILL 2088

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By Representatives Carrell, Benton, Cairnes, Campbell, Chappell, Goldsmith, Smith, Fuhrman, Thompson, Boldt, Koster, Clements and Pelesky

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1 AN ACT Relating to joint residential placement; amending RCW  
2 26.09.004, 26.09.187, and 26.09.260; and adding new sections to chapter  
3 26.09 RCW.

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

5 NEW SECTION. **Sec. 1.** This act shall be known as the joint  
6 residential placement act of 1995.

7 NEW SECTION. **Sec. 2.** The legislature recognizes the fundamental  
8 importance of the parent-child relationship to the welfare of the  
9 child, and that the relationship between the child and each parent  
10 should be fostered unless clearly shown, in a particular case, to be  
11 detrimental to a minor child. The legislature further recognizes the  
12 inalienable right of each parent to be actively and meaningfully  
13 involved in his or her child's upbringing and that that right shall  
14 remain inviolate regardless of marital status. In furtherance of this  
15 recognition, the legislature finds and declares that it is the policy  
16 of this state to assure that minor children have frequent and  
17 continuing contact with both parents regardless of the marital status  
18 of the minor child's parents. In order to effectuate these important

1 public policies, both parents should exercise the responsibility to  
2 make decisions and perform other parental functions necessary for the  
3 care and growth of their minor children.

4 **Sec. 3.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter.

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

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

16 (3) "Parenting functions" means those aspects of the parent-child  
17 relationship in which the parent makes decisions and performs functions  
18 necessary for the care and growth of the child. Parenting functions  
19 include:

20 (a) Maintaining a loving, stable, consistent, and nurturing  
21 relationship with the child;

22 (b) Attending to the daily needs of the child, such as feeding,  
23 clothing, physical care and grooming, supervision, health care, and day  
24 care, and engaging in other activities which are appropriate to the  
25 developmental level of the child and that are within the social and  
26 economic circumstances of the particular family;

27 (c) Attending to adequate education for the child, including  
28 remedial or other education essential to the best interests of the  
29 child;

30 (d) Assisting the child in developing and maintaining appropriate  
31 interpersonal relationships;

32 (e) Exercising appropriate judgment regarding the child's welfare,  
33 consistent with the child's developmental level and the family's social  
34 and economic circumstances; and

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

36 (4) "Joint residential placement" means joint physical custody and  
37 joint legal custody.

1       (5) "Joint physical custody" means an order awarding each of the  
2 parents significant and substantially equal periods of time in which a  
3 child resides with or is under the actual, direct, day-to-day care and  
4 supervision of each of the parents.

5       (6) "Joint legal custody" means that the parents have voluntarily  
6 allocated, or the court has decreed, between them the decision-making  
7 rights, responsibilities, and authority relating to the health,  
8 education, safety, and welfare of a child.

9       NEW SECTION. Sec. 4. (1) There shall be a presumption that joint  
10 residential placement is in the best interests of minor children  
11 unless:

12       (a) The parents have agreed to an award of residential placement to  
13 only one parent; or

14       (b) The court finds, on the basis of clear, cogent, and convincing  
15 evidence, that joint residential placement would be detrimental to a  
16 particular child.

17       (2) A parent alleging that joint residential placement would be  
18 detrimental to a particular child shall have the burden of proving the  
19 allegation by clear, cogent, and convincing evidence. The phrase "the  
20 child's best interest" as used in this section shall be applied  
21 consistent with section 2 of this act.

22       (3) If a parent alleges that joint residential placement would be  
23 detrimental to a particular child, the court, in making a determination  
24 whether an award of joint residential placement is appropriate, shall  
25 direct that an investigation be conducted in accordance with the  
26 provisions of RCW 26.09.220. If the court declines to enter an order  
27 of joint residential placement, the court, at the request of either  
28 party, shall enter findings of fact and conclusions of law as part of  
29 the order denying joint residential placement.

30       NEW SECTION. Sec. 5. (1) Unless otherwise agreed to by the  
31 parents of the minor child whose residential placement is at issue, the  
32 court shall effectuate the following order of preference when  
33 addressing the residential placement of minor children:

34       (a) To both parents jointly. The court may require the parents to  
35 submit a plan for implementation of the joint residential placement  
36 order, or the parents acting individually or jointly may submit a joint  
37 residential placement plan to the court prior to issuance of the order;

1 (b) To either parent solely with visitation rights to the other  
2 parent. In making an order for residential placement to one parent,  
3 the court shall consider, among other factors, which parent is more  
4 likely to allow the child frequent and continuing contact with the  
5 other parent. The court shall not prefer a parent as residential  
6 parent on the basis of that parent's sex;

7 (c) If to neither parent, to the person or persons in whose home  
8 the child has been living in a wholesome and stable environment or to  
9 any other person or persons found by the court to be suitable and able  
10 to provide a wholesome and stable environment to the minor child.  
11 Unless the parents have consented, before the court makes an order  
12 awarding residential placement of a minor child to a person or persons  
13 other than a parent, the court shall enter findings and conclusions, on  
14 the basis of clear, cogent, and convincing evidence, that an award of  
15 residential placement to a parent would be detrimental to the child and  
16 that the award to the person to whom residential placement is to be  
17 given is required to serve the best interests of the child.

18 (2) Allegations that residential placement with a parent would be  
19 detrimental to the child, other than a statement of that ultimate fact,  
20 shall not appear in the pleadings. The court may, in its discretion,  
21 exclude the public from hearings on this issue.

22 NEW SECTION. **Sec. 6.** Any order for the residential placement of  
23 a minor child entered by a court in this state or in any other state,  
24 subject to jurisdictional requirements, may be modified at any time  
25 after the effective date of this act to an order of joint residential  
26 placement in accordance with the provisions of this act.

27 NEW SECTION. **Sec. 7.** (1) An award of joint residential placement  
28 obligates the parties to exchange information concerning the health,  
29 education, safety, and welfare of the minor child, and unless otherwise  
30 allocated, apportioned, or decreed, the parents or parties shall confer  
31 with one another in the exercise of decision-making rights,  
32 responsibilities, and authority. Joint physical custody shall be  
33 structured by the court in such a way as to assure a child of frequent,  
34 continuing, and substantially equal residential time with both parents.

35 (2) Any order for joint residential placement may be modified or  
36 terminated upon the petition of one or both parents or on the court's  
37 own motion if it is shown, by clear, cogent, and convincing evidence,

1 that continued joint residential placement is detrimental to a  
2 particular child. At the request of either party, the court shall  
3 enter findings of fact and conclusions of law as part of the order  
4 modifying or terminating the joint residential placement order.

5 (3) In making an order of joint residential placement, the court  
6 shall specify the right of each parent to the physical control of the  
7 child in sufficient detail to enable a parent allegedly deprived of  
8 that control to enforce the court order and to enable law enforcement  
9 authorities to implement laws relating to parental kidnapping,  
10 residential placement, custodial interference, and any other applicable  
11 law.

12 **Sec. 8.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read  
13 as follows:

14 (1) DISPUTE RESOLUTION PROCESS. The court shall not order a  
15 dispute resolution process, except court action, when it finds that any  
16 limiting factor under RCW 26.09.191 applies, or when it finds that  
17 either parent is unable to afford the cost of the proposed dispute  
18 resolution process. If a dispute resolution process is not precluded  
19 or limited, then in designating such a process the court shall consider  
20 all relevant factors, including:

21 (a) Differences between the parents that would substantially  
22 inhibit their effective participation in any designated process;

23 (b) The parents' wishes or agreements and, if the parents have  
24 entered into agreements, whether the agreements were made knowingly and  
25 voluntarily; and

26 (c) Differences in the parents' financial circumstances that may  
27 affect their ability to participate fully in a given dispute resolution  
28 process.

29 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

30 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve  
31 agreements of the parties allocating decision-making authority, or  
32 specifying rules in the areas listed in RCW 26.09.184(4)(a), when it  
33 finds that:

34 (i) The agreement is consistent with any limitations on a parent's  
35 decision-making authority mandated by RCW 26.09.191; and

36 (ii) The agreement is knowing and voluntary.

37 (b) ~~((SOLE DECISION-MAKING AUTHORITY. The court shall order sole~~  
38 ~~decision-making to one parent when it finds that:~~

1       ~~(i) A limitation on the other parent's decision-making authority is~~  
2 ~~mandated by RCW 26.09.191;~~

3       ~~(ii) Both parents are opposed to mutual decision making;~~

4       ~~(iii) One parent is opposed to mutual decision making, and such~~  
5 ~~opposition is reasonable based on the criteria in (c) of this~~  
6 ~~subsection;~~

7       ~~(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)~~  
8 ~~and (b) of this subsection, the court shall consider the following~~  
9 ~~criteria in allocating decision-making authority:~~

10       ~~(i) The existence of a limitation under RCW 26.09.191;~~

11       ~~(ii) The history of participation of each parent in decision making~~  
12 ~~in each of the areas in RCW 26.09.184(4)(a);~~

13       ~~(iii) Whether the parents have a demonstrated ability and desire to~~  
14 ~~cooperate with one another in decision making in each of the areas in~~  
15 ~~RCW 26.09.184(4)(a); and~~

16       ~~(iv) The parents' geographic proximity to one another, to the~~  
17 ~~extent that it affects their ability to make timely mutual decisions))~~

18 COURT ORDERED DECISION-MAKING AUTHORITY. Absent an agreement between  
19 the parties in accordance with (a) of this subsection, the court shall  
20 order decision-making authority in accordance with the provisions of  
21 this act and RCW 26.09.191.

22       (3) RESIDENTIAL PROVISIONS.

23       ~~((a) The court shall make residential provisions for each child~~  
24 ~~which encourage each parent to maintain a loving, stable, and nurturing~~  
25 ~~relationship with the child, consistent with the child's developmental~~  
26 ~~level and the family's social and economic circumstances. The child's~~  
27 ~~residential schedule shall be consistent with RCW 26.09.191. Where the~~  
28 ~~limitations of RCW 26.09.191 are not dispositive of the child's~~  
29 ~~residential schedule, the court shall consider the following factors:~~

30       ~~(i) The relative strength, nature, and stability of the child's~~  
31 ~~relationship with each parent, including whether a parent has taken~~  
32 ~~greater responsibility for performing parenting functions relating to~~  
33 ~~the daily needs of the child;~~

34       ~~(ii) The agreements of the parties, provided they were entered into~~  
35 ~~knowingly and voluntarily;~~

36       ~~(iii) Each parent's past and potential for future performance of~~  
37 ~~parenting functions;~~

38       ~~(iv) The emotional needs and developmental level of the child;~~

1 ~~(v) The child's relationship with siblings and with other~~  
2 ~~significant adults, as well as the child's involvement with his or her~~  
3 ~~physical surroundings, school, or other significant activities;~~

4 ~~(vi) The wishes of the parents and the wishes of a child who is~~  
5 ~~sufficiently mature to express reasoned and independent preferences as~~  
6 ~~to his or her residential schedule; and~~

7 ~~(vii) Each parent's employment schedule, and shall make~~  
8 ~~accommodations consistent with those schedules.~~

9 Factor (i) shall be given the greatest weight.

10 (b) ~~The court may order that a child frequently alternate his or~~  
11 ~~her residence between the households of the parents for brief and~~  
12 ~~substantially equal intervals of time only if the court finds the~~  
13 ~~following:~~

14 (i) ~~No limitation exists under RCW 26.09.191;~~

15 (ii)(A) ~~The parties have agreed to such provisions and the~~  
16 ~~agreement was knowingly and voluntarily entered into; or~~

17 (B) ~~The parties have a satisfactory history of cooperation and~~  
18 ~~shared performance of parenting functions; the parties are available to~~  
19 ~~each other, especially in geographic proximity, to the extent necessary~~  
20 ~~to ensure their ability to share performance of the parenting~~  
21 ~~functions; and~~

22 (iii) ~~The provisions are in the best interests of the child))~~ The  
23 court shall make residential provisions for each child that encourage  
24 each parent to maintain a loving, stable, and nurturing relationship  
25 with the child, consistent with the child's developmental level and the  
26 family's social and economic circumstances. The child's residential  
27 schedule shall be consistent with the provisions of this act and RCW  
28 26.09.191.

29 **Sec. 9.** RCW 26.09.260 and 1991 c 367 s 9 are each amended to read  
30 as follows:

31 (1) Except as otherwise provided in sections 6 and 7 of this act  
32 and subsection (4) of this section, the court shall not modify a prior  
33 custody decree or a parenting plan unless it finds, upon the basis of  
34 facts that have arisen since the prior decree or plan or that were  
35 unknown to the court at the time of the prior decree or plan, that a  
36 substantial change has occurred in the circumstances of the child or  
37 the nonmoving party and that the modification is in the best interest  
38 of the child and is necessary to serve the best interests of the child.

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

4 (a) The parents agree to the modification;

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

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

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

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

20 (4) The court may order adjustments to a parenting plan upon a  
21 showing of a substantial change in circumstances of either parent or of  
22 the child, and without consideration of the factors set forth in  
23 subsection (2) of this section, if the proposed modification is only a:

24 (a) Modification in the dispute resolution process; or

25 (b) Minor modification in the residential schedule that:

26 (i) Does not change the residence the child is scheduled to reside  
27 in the majority of the time; and

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

30 (iii) Is based on a change of residence or an involuntary change in  
31 work schedule by a parent which makes the residential schedule in the  
32 parenting plan impractical to follow.

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



1        NEW SECTION.   **Sec. 10.**   Sections 2 and 4 through 7 of this act are  
2 each added to chapter 26.09 RCW.

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