

HOUSE BILL REPORT

ESHB 1514

As Amended by the Senate

Title: An act relating to modification of a parenting plan or custody decree.

Brief Description: Changing provisions relating to modification of a parenting plan or custody order.

Sponsors: By House Committee on Judiciary (Originally sponsored by Representatives Kastama and Wolfe).

Brief History:

Committee Activity:

Judiciary: 2/25/99, 2/26/99, 3/2/99 [DPS].

Floor Activity:

Passed House: 3/15/99, 95-2.

Senate Amended.

Passed Senate: 4/13/99, 42-2.

Brief Summary of Engrossed Substitute Bill

- Allows a court to make a minor modification to the residential schedule in a parenting plan when: (a) the modification does not result in a schedule over 90 overnights per year in total; (b) the court finds that the parenting plan does not provide reasonable time with the nonprimary residential parent; and (c) it is in the best interest of the child.
- Allows a court to modify the residential schedule if a parent voluntarily fails to exercise residential time for an extended period.
- Allows a court to make minor modifications to any nonresidential aspect of the parenting plan upon a showing of a substantial change of circumstances of either parent or the child if the adjustment is in the best interest of the child.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Staff: Trudes Hutcheson (786-7384).

Background:

Under Washington’s dissolution of marriage laws, divorcing couples with children must establish a parenting plan. The parenting plan must include: (a) a dispute resolution process for future disagreements; (b) an allocation of decision-making authority; and (c) a residential schedule.

The statute governing modification of parenting plans addresses when a court can make both major modifications and minor modifications. According to the cases interpreting the modification statute, there is a strong presumption in favor of custodial continuation and against modification.

A. Criteria for Making Major Modifications

Generally, a court may make major modifications to the parenting plan only if: (a) there has been a substantial change in circumstances of the child or the nonmoving parent (the parent not requesting the change) based upon facts that were not in existence or unknown when the original plan was entered; and (b) the modification is necessary to serve the child’s best interest.

With regard to the residential schedule, the court may make major modifications only if: (a) both parents agree; (b) both parents have already acquiesced in a deviation from the parenting plan that has resulted in the child being integrated into the petitioner’s family; (c) the present environment is detrimental to the child’s physical, mental, or emotional health and the benefit of changing the child’s residential schedule outweighs the harm likely to be caused by a change; or (d) the nonmoving parent has been in contempt of court at least twice within three years for failure to comply with the residential time provisions in the parenting plan, or the parent has been convicted of custodial interference.

B. Criteria for Making Minor Modifications

A court may make minor modifications to a parenting plan upon a showing of a substantial change in circumstances of either parent or the child if the proposed modification is only: (a) a modification in the dispute resolution process; or (b) a minor change in the residential schedule that does not change the primary residential

placement of the child and that either (i) does not exceed 24 full days per year or five full days per month, or (ii) is based on a change of residence or involuntary change in work schedule by a parent that makes the residential schedule in the parenting plan impractical.

C. Factors Considered to Limit or Preclude Residential Time with a Child

In establishing a parenting plan, the court may limit decision-making authority and limit or preclude residential time based upon child abuse, neglect, abandonment, or a history of domestic violence. The court may also limit or preclude residential time if the parent's conduct may have an adverse effect on the child. Factors to be considered include: neglect or substantial nonperformance of parenting functions, the parent's long-term emotional or physical impairment, the parent's long-term substance abuse, the absence of emotional ties, an abusive use of conflict which creates a danger to the child's psychological development, a parent's withholding the child from the other parent without good cause, and any other factor the court finds adverse to the child's best interest.

Summary of Bill:

Changes are made regarding when a court may make modifications to a parenting plan. The court may order a minor modification in the residential schedule upon a showing of a substantial change in circumstances to either parent or the child when the modification does not change the primary residence of the child and: (a) the modification does not result in a schedule over 90 overnights per year in total; (b) the court finds that the parenting plan does not provide reasonable time with the nonprimary residential parent; and (c) it would be in the best interest of the child. The criteria used for major modifications do not apply, unless the person seeking a minor modification under this new provision has already received a modification under the same provision within the past 24 months. Modification of any child support shall not be based solely on the modification of the residential schedule under this provision.

If the nonprimary residential parent voluntarily fails to exercise residential time for an extended period, the court may make adjustments to the parenting plan.

The court may reduce or restrict contact between the child and the nonprimary residential parent if it finds that the reduction or restriction would serve and protect the best interest of the child. The court must consider the same factors established for limiting or precluding decision making and residential time when entering into a parenting plan.

The court may order adjustments to any nonresidential aspects of the parenting plan upon a showing of a substantial change of circumstances of either parent or of the child if the adjustment is in the best interest of the child.

EFFECT OF SENATE AMENDMENT(S): Under the senate amendment, a parent whose residential time is already limited because of inappropriate conduct may not seek a modification in excess of 24 full days in a calendar year unless the parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation. Also under the senate amendment, a parent who is required to complete an evaluation, treatment, or parenting class may not seek modification of the residential schedule in excess of 24 full days in a calendar year unless the parent has complied with the requirement.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) The current law is unfair to those parents seeking additional time with their children. About 50 percent of parenting plans are amended after the first year. The lack of legislative history regarding minor modifications makes the current law confusing.

Testimony Against: None.

Testified: Pete Karademos, Washington State Bar Association Family Law Section; and Bill Harrington, American Fathers Alliance.