

FINAL BILL REPORT

ESHB 1514

C 174 L 99

Synopsis as Enacted

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).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

Under Washington's family law statutes, divorcing couples with children must establish a parenting plan that includes: (1) a dispute resolution process for future disagreements; (2) an allocation of decision-making authority; and (3) a residential schedule.

A court may make both major modifications and minor modifications to a parenting plan. However, there is a strong presumption in favor of custodial continuation and against modification.

Criteria for Making Major Modifications. Generally, a court may make major modifications to the parenting plan only if: (1) there has been a substantial change in circumstances of the child or the nonmoving parent (the parent not requesting the modification) based upon facts that were not in existence or unknown when the original plan was entered; and (2) 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: (1) both parents agree; (2) 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; (3) 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 (4) 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.

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: (1) a modification in the dispute resolution process; or (2) a minor change in the residential schedule that does not change the primary residential placement of the child and that either does not exceed 24 full days per year or five full days per month, or 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.

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:

The circumstances under which a court may make minor modifications to the residential schedule in a parenting plan are expanded. 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: (1) the modification does not result in a schedule over 90 overnights per year in total; (2) the court finds that the parenting plan does not provide reasonable time with the nonprimary residential parent; and (3) 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. A nonprimary residential parent who is required to complete a treatment or parenting classes or whose residential time is already limited due to inappropriate conduct, may not seek a minor modification under this new provision unless the parent has completed treatment or classes or has made significant changes related to the inappropriate conduct. Modification of any child support may 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.

Votes on Final Passage:

House 95 2

Senate 42 2 (Senate amended)

House 97 0 (House concurred)

Effective: July 25, 1999