

HOUSE BILL ANALYSIS

HB 1514

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: Representatives Kastama and Wolfe.

Brief Summary of Bill

- Allows a court to modify the residential schedule in a parenting plan when the modification does not result in a schedule of over 90 overnights per year in total, when the court finds that the parenting plan does not provide reasonable time with the nonprimary residential parent, and when 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 one year or longer.
- 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

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.

There is a strong presumption in favor of custodial continuation and against modification. In re Marriage of McDole, 122 Wn.2d 604 (1993). The modification statute addresses when a court can make both major modifications and minor modifications to the various aspects of the parenting plan.

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 schedule 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 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 a minor modification in the residential schedule upon a showing of a substantial change in circumstances to either parent or the child 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 would be in the best interest of the child. Modification of the residential schedule under this provision cannot be the sole basis for a modification in child support.

If the nonprimary residential parent voluntarily fails to exercise residential time for one year or longer, the court may make adjustments to the 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.

Fiscal Note: Not requested.

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

Office of Program Research