

HOUSE BILL REPORT

HB 1514

As Reported By House Committee On:
Judiciary

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 History:

Committee Activity:

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

Brief Summary of Substitute Bill

- Allows a court to modify 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 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

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 Substitute 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: (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 to increase the residential time to over 24 full days per year. 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 one year or longer, 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.

Substitute Bill Compared to Original Bill: The original bill did not require the court to apply the major modification criteria when a person is seeking a second minor modification in 24 months that does not result in a schedule of over 90 overnights. The substitute bill made technical corrections and reorganized the subsections for the purposes of clarity.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: 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.