

# HOUSE BILL ANALYSIS

## HB 1515

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**Title:** An act relating to relocation under parenting plans.

**Brief Description:** Enacting relocation provisions for persons subject to parenting plans.

**Sponsors:** Representatives Carlson, Sheahan, Wolfe and Dickerson.

### Brief Summary of Bill

- Requires that a person with residential time with a child notify every other person with residential time of an intended change of residence.
- Requires the court to consider certain factors when determining whether to permit or restrict relocation of the child.

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### 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. In determining the provisions of the parenting plan, the court must consider the child's best interest.

The statutes do not explicitly address when a parent may or may not relocate the child or whether the parent must notify the other parent before changing residences.

In 1997, the state supreme court held that under the current statutes, a court does not have the authority to restrict a parent and child from moving away from the other parent, unless relocation would harm the child. Under the court's decision, the harm the child would suffer from relocation must be more than the normal distress suffered by a child because of travel, infrequent contact with a parent, or other hardships resulting from divorce. The court's opinion, by inference, places the burden of proof upon the parent seeking to restrict the relocation.

#### Summary of Bill:

A person entitled to residential time with the child under an order must notify every other person entitled to residential time of an intended change of residence. The court must apply certain standards when determining whether or not to permit or restrict relocation of the child.

### **A. Application**

The requirements in the bill apply anytime a person with residential time with the child is relocating. If a parenting plan issued before the effective date of the bill already has notice provisions, those provisions control to the extent they conflict with the notice requirements in the bill.

### **B. Notice**

#### **1. Service**

Notice must be given by personal service or any form of mail requiring a return receipt. If the relocation is within the same school district, notice may be given by any reasonable means.

Notice must be given no later than 60 days before the relocation. If the person could not have known of the change in time to comply with the 60-day requirement and it is not reasonably possible to extend the time of relocation, the person must provide notice within five days of the person knowing of the relocation or knowing the information required to be provided in the relocation notice.

#### **2. Contents**

The person relocating must provide the following information, if known, in the notice:

- the intended new residence address;
- the new mailing address;
- the new home telephone number;
- the date of the intended move;
- a brief statement of the reasons for the relocation;
- a proposal for a revised residential schedule; and
- a warning to the nonrelocating parent that he or she must file an objection to the relocation within 30 days or the relocation will be permitted.

### **C. Limitations on Notices**

Under certain circumstances, a person may seek a waiver or partial waiver of the notice requirement by petitioning the court. The person may petition the court ex parte, that is, without hearing from the other party.

If the court finds that the person's or child's safety would be at risk by notice or disclosure of certain information in the notice, the court may:

- (a) order that notice be given without some or all of the information;
- (b) waive the notice requirement; or
- (c) provide other relief as the court finds necessary to facilitate the legitimate needs of the parties and the best interests of the child.

If a parent already has a court-authorized confidential address or other court order permitting the withholding of certain information, the protected information is not required in the notice of relocation.

Notice may be automatically delayed for 15 days if the parent is entering into a domestic violence shelter or is temporarily relocating to avoid a clear, immediate risk to the person's or child's safety.

#### **D. Standards to be Applied by the Court**

The parent seeking relocation with the child must first show that relocation would benefit the child. The party opposing relocation must then demonstrate that the detrimental effect of relocation outweighs the benefit.

When determining whether to permit or restrain the relocation of a child, the court must consider:

- (a) the relative strength, nature, quality, extent of involvement, and stability of the child's relationship with the parents, siblings, and other significant persons in the child's life;
- (b) the impact on the child if the child's primary residential placement is changed;
- (c) whether either parent's residential time or decision-making authority is already limited due to the parent's conduct;
- (d) the reasons for the relocation and the opposition to relocation;
- (e) the likely impact relocation or its prevention will have on the child's physical, educational, and emotional development;
- (f) the quality of life, resources, and opportunities available to each party in the geographic locations;
- (g) the effect of the relocation or its prevention on the physical, mental, and emotional health of the parties;

- (h) feasible alternatives to relocation and whether it is possible for the other party to relocate also;
- (i) financial impact and logistics created by the relocation;
- (j) the good faith of each party; and
- (k) in the case of temporary orders, the amount of time before a final decision can be made.

The court may not consider whether the person seeking relocation will forgo his or her own relocation if the court prevents the child's relocation.

#### **E. Temporary Orders Permitting or Restraining Relocation**

The court may grant a temporary order restraining relocation, or order the return of a child that has already been relocated, if the required notice was not provided, the child's relocation was without the parties' agreement, or the court finds that in a final hearing for a permanent order, the court is likely to restrain relocation.

The court may grant a temporary order permitting relocation if the required notice was given, or if not given, circumstances warrant permitting relocation. Temporary relocation is also permitted if the court issues an order for a revised residential schedule and the court finds that it would likely permit the relocation at a final hearing.

#### **F. Third-party Objections**

A nonparent with residential time with the child may object to relocation, but the court may not restrain relocation based on the objection if the nonparent has not served as a primary care giver for the child within the past 36 months.

#### **G. Remedies for Failure to Provide Notice**

The court may consider a parent's failure to give notice as:

- (a) a factor in determining whether the relocation will be permitted;
- (b) a factor when modifying the parenting plan and in determining whether residential time should be modified;
- (c) a basis for ordering the return of the child;
- (d) cause for holding the person in contempt of court or ordering the person to pay the other party's attorney fees, unless the notice was in substantial compliance, or the order providing residential time was issued before the effective date of the act and the existing order did not have any provisions requiring notice, or a waiver of notice was granted.

#### **H. Miscellaneous**

If the nonrelocating parent does not file an objection within 30 days after receipt of the notice, the relocation is authorized except for good cause shown. In considering good cause,— the court must apply the standards established in the court rule addressing relief from a judgment or order. If the parties have not yet separated, no notice is required.

Hearings under RCW 26.09 must be given priority on the court's motion calendar.

Other sanctions may be imposed against a party acting in bad faith.

**Fiscal Note:** Not requested.

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

Office of Program Research