
HOUSE BILL 2884

State of Washington

56th Legislature

2000 Regular Session

By Representatives Constantine, Carlson, Grant, Radcliff, Kastama, Mastin, Keiser, Ruderman, Kessler, Dickerson, Tokuda, D. Sommers and Stensen

Read first time 01/21/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to relocation of children; amending RCW 26.09.260,
2 26.26.160, and 26.10.190; adding new sections to chapter 26.09 RCW; and
3 creating new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** By this act, the legislature intends to
6 supersede the state supreme court's decisions *In Re the Marriage of*
7 *Littlefield*, 133 Wn.2d 39 (1997), and *In Re the Marriage of Pape*,
8 Docket No. 67527-9, December 23, 1999.

9 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
10 section apply throughout sections 2 through 18 of this act and RCW
11 26.09.260 unless the context clearly requires otherwise.

12 (1) "Court order" means a temporary or permanent parenting plan,
13 custody order, visitation order, or other order governing the residence
14 of a child under this title.

15 (2) "Relocate" means a change in principal residence either
16 permanently or for a protracted period of time.

1 NEW SECTION. **Sec. 3.** APPLICABILITY. (1) The provisions of this
2 act apply to a court order regarding residential time or visitation
3 with a child issued:

4 (a) After the effective date of this act; and

5 (b) Before the effective date of this act, if the existing court
6 order does not expressly govern relocation of the child or if a person
7 entitled to residential time or visitation with the child under a court
8 order is planning to relocate.

9 (2) To the extent that a provision of this act conflicts with the
10 express terms of a court order existing prior to the effective date of
11 this act, then this act does not apply to those terms of that order
12 governing relocation of the child or an adult.

13 NEW SECTION. **Sec. 4.** GRANT OF AUTHORITY. When entering or
14 modifying a court order, the court has the authority to allow or not
15 allow a person to relocate the child.

16 NEW SECTION. **Sec. 5.** NOTICE REQUIREMENT. Except as provided in
17 section 8 of this act, a person who is entitled to residential time or
18 visitation with a child under a court order shall notify every other
19 person entitled to residential time or visitation with the child under
20 a court order if the person intends to relocate. Notice shall be given
21 as prescribed in sections 6 and 7 of this act.

22 NEW SECTION. **Sec. 6.** NOTICE--CONTENTS AND DELIVERY. (1) Except
23 as provided in sections 7 and 8 of this act, the notice of an intended
24 relocation must be given by:

25 (a) Personal service or any form of mail requiring a return
26 receipt; and

27 (b) No less than:

28 (i) Sixty days before the date of the intended relocation; or

29 (ii) No more than five days after the date that the person knows
30 the information required to be furnished under subsection (2) of this
31 section, if the person did not know and could not reasonably have known
32 the information in sufficient time to provide the sixty-days' notice,
33 and it is not reasonable to delay the relocation.

34 (2)(a) The notice of intended relocation must include: (i) An
35 address at which service of process may be accomplished during the
36 period for objection; (ii) a brief statement of the specific reasons

1 for the intended relocation; and (iii) a notice to the nonrelocating
2 person that an objection to the intended relocation of the child or to
3 the proposed revised residential schedule must be filed with the court
4 and served on the opposing person within thirty days or the relocation
5 of the child will be permitted. The notice shall not be deemed to be
6 in substantial compliance for purposes of section 9 of this act unless
7 the notice contains the following statement: "THE RELOCATION OF THE
8 CHILD WILL BE PERMITTED UNLESS, WITHIN THIRTY DAYS, YOU FILE A PETITION
9 AND MOTION WITH THE COURT TO BLOCK THE RELOCATION OR OBJECT TO THE
10 PROPOSED REVISED RESIDENTIAL SCHEDULE AND SERVE THE PETITION AND MOTION
11 ON THE PERSON PROPOSING RELOCATION AND ALL OTHER PERSONS ENTITLED BY
12 COURT ORDER TO RESIDENTIAL TIME OR VISITATION WITH THE CHILD."

13 (b) Except as provided in sections 7 and 8 of this act, the
14 following information shall also be included in every notice of
15 intended relocation, if available:

16 (i) The specific street address of the intended new residence, if
17 known, or as much of the intended address as is known, such as city and
18 state;

19 (ii) The new mailing address, if different from the intended new
20 residence address;

21 (iii) The new home telephone number;

22 (iv) The name and address of the child's new school and day care
23 facility, if applicable;

24 (v) The date of the intended relocation; and

25 (vi) A proposal for a revised schedule of residential time or
26 visitation with the child, if any.

27 (3) A person required to give notice of an intended relocation has
28 a continuing duty to promptly update the information required with the
29 notice as that new information becomes known.

30 NEW SECTION. **Sec. 7.** NOTICE--RELOCATION WITHIN THE SAME SCHOOL
31 DISTRICT. (1) When the intended relocation is within the school
32 district in which the child currently resides the majority of the time,
33 the person intending to relocate, in lieu of notice prescribed in
34 section 6 of this act, may provide actual notice by any reasonable
35 means to every other person entitled to residential time or visitation
36 with the child under a court order.

37 (2) A person who is entitled to residential time or visitation with
38 the child under a court order may not object to the intended relocation

1 of the child within the school district in which the child currently
2 resides the majority of the time, but he or she retains the right to
3 move for modification under RCW 26.09.260.

4 NEW SECTION. **Sec. 8.** LIMITATION OF NOTICES. (1) If a person is
5 entering a domestic violence shelter due to the danger imposed by
6 another person, notice may be delayed for twenty-one days. This
7 section shall not be construed to compel the disclosure by any domestic
8 violence shelter of information protected by confidentiality except as
9 provided by RCW 70.123.075 or equivalent laws of the state in which the
10 shelter is located.

11 (2) If a person is a participant in the address confidentiality
12 program pursuant to chapter 40.24 RCW or has a court order which
13 permits the party to withhold some or all of the information required
14 by section 6(2)(b) of this act, the confidential or protected
15 information is not required to be given with the notice.

16 (3) If a person is relocating to avoid a clear, immediate, and
17 unreasonable risk to the health or safety of a person, including a
18 child, notice may be delayed for twenty-one days.

19 (4) A person who believes that his or her health or safety or the
20 health or safety of the child would be unreasonably put at risk by
21 notice or disclosure of certain information in the notice may request
22 an ex parte hearing with the court to have all or part of the notice
23 requirements waived. If the court finds that the health or safety of
24 a person or a child would be unreasonably put at risk by notice or the
25 disclosure of certain information in the notice, the court may:

26 (a) Order that the notice requirements be less than complete or
27 waived to the extent necessary to protect confidentiality or the health
28 or safety of a person or child; or

29 (b) Provide such other relief as the court finds necessary to
30 facilitate the legitimate needs of the parties and the best interests
31 of the child under the circumstances.

32 (5) This section does not deprive a person entitled to residential
33 time or visitation with a child under a court order the opportunity to
34 object to the intended relocation before the relocation occurs.

35 NEW SECTION. **Sec. 9.** FAILURE TO GIVE NOTICE. (1) The failure to
36 provide the required notice is grounds for sanctions, including
37 contempt if applicable.

1 (2) In determining whether a person has failed to comply with the
2 notice requirements for the purposes of this section, the court may
3 consider whether:

4 (a) The person has substantially complied with the notice
5 requirements;

6 (b) The court order in effect at the time of the relocation was
7 issued prior to the effective date of this act and the person
8 substantially complied with the notice requirements, if any, in the
9 existing order;

10 (c) A waiver of notice was granted;

11 (d) A person entitled to receive notice was substantially harmed;
12 and

13 (e) Any other factor the court deems relevant.

14 (3) A person entitled to file an objection to the intended
15 relocation of a child may file such objection whether or not the person
16 has received proper notice.

17 NEW SECTION. **Sec. 10.** OBJECTION TO RELOCATION OR PROPOSED REVISED
18 RESIDENTIAL SCHEDULE. (1) A party objecting to the intended relocation
19 of a child or the proposed revised residential schedule shall do so by
20 filing the objection with the court and serving the objection on the
21 relocating party and all other persons entitled by court order to
22 residential time or visitation with the child by means of personal
23 service or mailing by any form of mail requiring a return receipt to
24 the relocating party at the address designated for service on the
25 notice of intended relocation and to other parties requiring notice at
26 their mailing address. The objection must be filed and served,
27 including a three-day waiting period if the objection is served by
28 mail, within thirty days of receipt of the notice of intended
29 relocation. The objection shall be in the form of: (a) A petition for
30 modification of the parenting plan pursuant to relocation; or (b) other
31 court proceeding adequate to provide grounds for relief.

32 (2) Unless the special circumstances described in section 8 of this
33 act apply, the person intending to relocate the child shall not,
34 without a court order, change the principal residence of the child
35 during the period in which a party may object. The order required
36 under this subsection may be obtained ex parte. If the objecting party
37 notes a court hearing to prevent the relocation for a date not more
38 than fifteen days following timely service of an objection to

1 relocation, the party intending to relocate shall not change the
2 principal residence of the child pending the hearing unless the special
3 circumstances described in section 8(3) of this act apply.

4 (3) The administrator for the courts shall develop a standard form,
5 separate from existing dissolution or modification forms, for use in
6 filing an objection to relocation.

7 NEW SECTION. **Sec. 11.** REQUIRED PROVISION IN RESIDENTIAL ORDERS.
8 Unless waived by court order, after the effective date of this act,
9 every court order shall include a clear restatement of the provisions
10 in sections 5 through 10 of this act.

11 NEW SECTION. **Sec. 12.** FAILURE TO OBJECT. (1) Except for good
12 cause shown, if a person entitled to object to the relocation of the
13 child does not file an objection with the court within thirty days
14 after receipt of the relocation notice, then the relocation of the
15 child shall be permitted.

16 (2) A nonobjecting person shall be entitled to the residential time
17 or visitation with the child specified in the proposed residential
18 schedule included with the relocation notice.

19 (3) Any person entitled to residential time or visitation with a
20 child under a court order retains his or her right to move for
21 modification under RCW 26.09.260.

22 (4) If a person entitled to object to the relocation of the child
23 does not file an objection with the court within thirty days after
24 receipt of the relocation notice, a person entitled to residential time
25 with the child may not be held in contempt of court for any act or
26 omission that is in compliance with the proposed revised residential
27 schedule set forth in the notice given.

28 (5) Any party entitled to residential time or visitation with the
29 child under a court order may, after thirty days have elapsed since the
30 receipt of the notice, obtain ex parte and file with the court an order
31 modifying the residential schedule in conformity with the proposed
32 residential schedule specified in the notice upon filing a copy of the
33 notice and proof of service of such notice. A party may obtain ex
34 parte and file with the court an order modifying the residential
35 schedule in conformity with the proposed residential schedule specified
36 in the notice before the thirty days have elapsed if the party files a

1 copy of the notice, proof of service of such notice, and proof that no
2 objection will be filed.

3 NEW SECTION. **Sec. 13.** TEMPORARY ORDERS. (1) The court may grant
4 a temporary order restraining relocation of a child or ordering return
5 of the child if the child's relocation has occurred if the court finds:

6 (a) The required notice of an intended relocation of the child was
7 not provided in a timely manner and the nonrelocating party was
8 substantially prejudiced;

9 (b) The relocation of the child has occurred without agreement of
10 the parties, court order, or the notice required by this act; or

11 (c) After examining evidence presented at a hearing for temporary
12 orders in which the parties had adequate opportunity to prepare and be
13 heard, there is a likelihood that on final hearing the court will not
14 approve the intended relocation of the child.

15 (2) The court may grant a temporary order authorizing the intended
16 relocation of the child pending final hearing if the court finds:

17 (a) The required notice of an intended relocation of a child was
18 provided in a timely manner or that the circumstances otherwise warrant
19 issuance of a temporary order in the absence of compliance with the
20 notice requirements and issues an order for a revised schedule for
21 residential time with the child; and

22 (b) After examining the evidence presented at a hearing for
23 temporary orders in which the parties had adequate opportunity to
24 prepare and be heard, there is a likelihood that on final hearing the
25 court will approve the intended relocation of the child.

26 NEW SECTION. **Sec. 14.** BASIS FOR DETERMINATION. The person
27 proposing to relocate with the child shall provide his or her reasons
28 for the intended relocation. There is a rebuttable presumption that
29 the intended relocation of the child will be permitted. A person
30 entitled to object to the intended relocation of the child may rebut
31 the presumption by demonstrating that the detrimental effect of the
32 relocation outweighs the benefit of the change to the child and the
33 relocating person, based upon the following factors:

34 (1) The relative strength, nature, quality, extent of involvement,
35 and stability of the child's relationship with each parent, siblings,
36 and other significant persons in the child's life;

1 (2) Whether disrupting the contact between the child and the person
2 with whom the child resides a majority of the time would be more
3 detrimental to the child than disrupting contact between the child and
4 the person objecting to the relocation;

5 (3) Whether either parent or a person entitled to residential time
6 with the child is subject to limitations under RCW 26.09.191;

7 (4) The reasons of each person for seeking or opposing the
8 relocation and the good faith of each of the parties in requesting or
9 opposing the relocation;

10 (5) The age, developmental stage, and needs of the child, and the
11 likely impact the relocation or its prevention will have on the child's
12 physical, educational, and emotional development, taking into
13 consideration any special needs of the child;

14 (6) The quality of life, resources, and opportunities available to
15 the child and to the relocating party in the current and proposed
16 geographic locations;

17 (7) The availability of alternative arrangements to foster and
18 continue the child's relationship with and access to the other parent;

19 (8) The alternatives to relocation and whether it is feasible and
20 desirable for the other party to relocate also;

21 (9) The financial impact and logistics of the relocation or its
22 prevention; and

23 (10) For a temporary order, the amount of time before a final
24 decision can be made at trial.

25 NEW SECTION. **Sec. 15.** FACTOR NOT TO BE CONSIDERED. In
26 determining whether to permit or restrain the relocation of the child,
27 the court may not admit evidence on the issue of whether the person
28 seeking to relocate the child will forego his or her own relocation if
29 the child's relocation is not permitted. Such evidence may be admitted
30 and considered if the child's relocation is restrained and other
31 parenting, custody, or visitation issues remain before the court, such
32 as a reversal of the parent with whom the child will reside the
33 majority of the time or other modification of the parenting plan.

34 NEW SECTION. **Sec. 16.** OBJECTIONS BY NONPARENTS. A court may not
35 restrict the right of a parent to relocate a child when the sole
36 objection to the relocation is from a third party, unless that third
37 party is entitled to residential time or visitation under a court order

1 and has served as the primary residential care provider to the child
2 for a substantial period of time during the thirty-six consecutive
3 months preceding the intended relocation.

4 NEW SECTION. **Sec. 17.** SANCTIONS. The court may sanction a party
5 if it finds that a proposal to relocate or an objection to an intended
6 relocation or proposed revised residential schedule was made to harass
7 a person, to interfere in bad faith with the relationship between the
8 child and another person entitled to residential time or visitation
9 with the child, or to unnecessarily delay or needlessly increase the
10 cost of litigation.

11 NEW SECTION. **Sec. 18.** PRIORITY FOR HEARING. A hearing involving
12 relocations or intended relocations of children shall be accorded
13 priority on the court's motion calendar and trial docket.

14 **Sec. 19.** RCW 26.09.260 and 1999 c 174 s 1 are each amended to read
15 as follows:

16 (1) Except as otherwise provided in subsections (4), (5), ~~((+7))~~
17 ~~(6), (8), and ((+9))~~ (10) of this section, the court shall not modify
18 a prior custody decree or a parenting plan unless it finds, upon the
19 basis of facts that have arisen since the prior decree or plan or that
20 were unknown to the court at the time of the prior decree or plan, that
21 a substantial change has occurred in the circumstances of the child or
22 the nonmoving party and that the modification is in the best interest
23 of the child and is necessary to serve the best interests of the child.

24 (2) In applying these standards, the court shall retain the
25 residential schedule established by the decree or parenting plan
26 unless:

27 (a) The parents agree to the modification;

28 (b) The child has been integrated into the family of the petitioner
29 with the consent of the other parent in substantial deviation from the
30 parenting plan;

31 (c) The child's present environment is detrimental to the child's
32 physical, mental, or emotional health and the harm likely to be caused
33 by a change of environment is outweighed by the advantage of a change
34 to the child; or

35 (d) The court has found the nonmoving parent in contempt of court
36 at least twice within three years because the parent failed to comply

1 with the residential time provisions in the court-ordered parenting
2 plan, or the parent has been convicted of custodial interference in the
3 first or second degree under RCW 9A.40.060 or 9A.40.070.

4 (3) A conviction of custodial interference in the first or second
5 degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial
6 change of circumstances for the purposes of this section.

7 (4) The court may reduce or restrict contact between the
8 ~~((nonprimary residential))~~ child and the parent ~~((and a child))~~ with
9 whom the child does not reside a majority of the time if it finds that
10 the reduction or restriction would serve and protect the best interests
11 of the child using the criteria in RCW 26.09.191.

12 (5) The court may order adjustments to the residential aspects of
13 a parenting plan upon a showing of a substantial change in
14 circumstances of either parent or of the child, and without
15 consideration of the factors set forth in subsection (2) of this
16 section, if the proposed modification is only a minor modification in
17 the residential schedule that does not change the residence the child
18 is scheduled to reside in the majority of the time and:

19 (a) Does not exceed twenty-four full days in a calendar year; or

20 (b) Is based on ~~((a change of residence or))~~ an involuntary change
21 in work schedule by a parent which makes the residential schedule in
22 the parenting plan impractical to follow; or

23 (c) Does not result in a schedule that exceeds ninety overnights
24 per year in total, if the court finds that, at the time the petition
25 for modification is filed, the decree of dissolution or parenting plan
26 does not provide reasonable time with the ~~((nonprimary residential))~~
27 parent ~~((at the time the petition for modification is filed))~~ with whom
28 the child does not reside a majority of the time, and further, the
29 court finds that it is in the best interests of the child to increase
30 residential time with the ~~((nonprimary residential))~~ parent in excess
31 of the residential time period in (a) of this subsection. However, any
32 motion under this subsection (5)(c) is subject to the factors
33 established in subsection (2) of this section if the party bringing the
34 ~~((motion))~~ petition has previously been granted a modification under
35 this same subsection within twenty-four months of the current motion.
36 Relief granted under this section shall not be the sole basis for
37 adjusting or modifying child support.

38 (6) The court may order adjustments to the residential aspects of
39 a parenting plan pursuant to a proceeding to permit or restrain a

1 relocation. The person objecting to the relocation of a child or the
2 proposed revised residential schedule may file a petition to modify the
3 parenting plan, including a change of the residence in which the child
4 resides the majority of the time, without a showing of adequate cause
5 other than the proposed relocation itself. A hearing to determine
6 adequate cause for relocation shall not be required so long as the
7 request for relocation is being pursued. In making a determination of
8 a modification pursuant to relocation, the court shall first determine
9 whether to permit or restrain the relocation of the child using the
10 procedures and standards provided in sections 2 through 18 of this act.
11 Following that determination, the court shall determine what
12 modification pursuant to relocation should be made, if any, to the
13 parenting plan or custody order or visitation order.

14 (7) A ((nonprimary residential)) parent with whom the child does
15 not reside a majority of the time and whose residential time with the
16 child is subject to limitations pursuant to RCW 26.09.191 (2) or (3)
17 may not seek expansion of residential time under subsection (5)(c) of
18 this section unless that parent demonstrates a substantial change in
19 circumstances specifically related to the basis for the limitation.

20 ((+7)) (8) If a ((nonprimary residential)) parent with whom the
21 child does not reside a majority of the time voluntarily fails to
22 exercise residential time for an extended period, that is, one year or
23 longer, the court upon proper motion may make adjustments to the
24 parenting plan in keeping with the best interests of the minor child.

25 ((+8)) (9) A ((nonprimary)) parent with whom the child does not
26 reside a majority of the time who is required by the existing parenting
27 plan to complete evaluations, treatment, parenting, or other classes
28 may not seek expansion of residential time under subsection (5)(c) of
29 this section unless that parent has fully complied with such
30 requirements.

31 ((+9)) (10) The court may order adjustments to any of the
32 nonresidential aspects of a parenting plan upon a showing of a
33 substantial change of circumstances of either parent or of a child, and
34 the adjustment is in the best interest of the child. Adjustments
35 ordered under this section may be made without consideration of the
36 factors set forth in subsection (2) of this section.

37 ((+10)) (11) If the court finds that a motion to modify a prior
38 decree or parenting plan has been brought in bad faith, the court shall

1 assess the attorney's fees and court costs of the nonmoving parent
2 against the moving party.

3 **Sec. 20.** RCW 26.26.160 and 1992 c 229 s 8 are each amended to read
4 as follows:

5 (1) Except as provided in subsection (2) of this section the court
6 has continuing jurisdiction to prospectively modify a judgment and
7 order for future education and future support, and with respect to
8 matters listed in RCW 26.26.130 (3) and (~~(4)~~) (5), and RCW
9 26.26.150(2) upon showing a substantial change of circumstances. The
10 procedures set forth in RCW 26.09.175 shall be used in modification
11 proceedings under this section.

12 (2) A judgment or order entered under this chapter may be modified
13 without a showing of substantial change of circumstances upon the same
14 grounds as RCW 26.09.170 permits support orders to be modified without
15 a showing of a substantial change of circumstance.

16 (3) The court may modify a parenting plan or residential provisions
17 adopted pursuant to RCW 26.26.130(~~(6)~~) (7) in accordance with the
18 provisions of chapter 26.09 RCW.

19 (4) The court shall hear and review petitions for modifications of
20 a parenting plan, custody order, visitation order, or other order
21 governing the residence of a child, and conduct any proceedings
22 concerning a relocation of the residence where the child resides a
23 majority of the time, pursuant to chapter 26.09 RCW.

24 **Sec. 21.** RCW 26.10.190 and 1989 c 375 s 24 are each amended to
25 read as follows:

26 (1) The court shall not modify a prior custody decree unless it
27 finds, upon the basis of facts that have arisen since the prior decree
28 or that were unknown to the court at the time of the prior decree, that
29 a change has occurred in the circumstances of the child or the
30 custodian and that the modification is necessary to serve the best
31 interests of the child. In applying these standards, the court shall
32 retain the custodian established by the prior decree unless:

33 (a) The custodian agrees to the modification;

34 (b) The child has been integrated into the family of the petitioner
35 with the consent of the custodian; or

36 (c) The child's present environment is detrimental to his or her
37 physical, mental, or emotional health and the harm likely to be caused

1 by a change of environment is outweighed by the advantage of a change
2 to the child.

3 (2) If the court finds that a motion to modify a prior custody
4 decree has been brought in bad faith, the court shall assess the
5 attorney's fees and court costs of the custodian against the
6 petitioner.

7 (3) The court shall hear and review petitions for modifications of
8 a parenting plan, custody order, visitation order, or other order
9 governing the residence of a child, and conduct any proceedings
10 concerning a relocation of the residence where the child resides a
11 majority of the time, pursuant to chapter 26.09 RCW.

12 NEW SECTION. Sec. 22. Captions used in this act are not any part
13 of the law.

14 NEW SECTION. Sec. 23. Sections 2 through 18 of this act are each
15 added to chapter 26.09 RCW and codified with the subchapter heading
16 "Notice requirements and standards for parental relocation."

--- END ---