

HOUSE BILL REPORT

HB 1403

As Passed House:
February 28, 2005

Title: An act relating to service by publication in actions to establish or modify parenting plans, for legal separation or invalidity of marriage, and for nonparental custody.

Brief Description: Authorizing service by publication in actions to establish or modify parenting plans, for legal separation or invalidity of marriage, and for nonparental custody.

Sponsors: By Representatives Dickerson, McDonald and Chase.

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/4/05, 2/9/05 [DP].

Floor Activity:

Passed House: 2/28/05, 89-0.

Brief Summary of Bill

- Allows alternative service of process in an establishment or modification of a parenting plan, in a legal separation or declaration of invalidity proceeding, and in a nonparental custody action where the child is in the physical custody of the petitioning party.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: Do pass. Signed by 7 members: Representatives Dickerson, Chair; Moeller, Vice Chair; McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Crouse, Lovick and Roberts.

Staff: Kara Durbin (786-7133).

Background:

In order to properly institute a lawsuit, a plaintiff must notify the defendant of the commencement of the suit by serving a summons on the defendant. This is called service of process. Generally, a defendant must be personally served with the summons. Individuals may be personally served either by delivering a copy of the summons to the defendant or by leaving a copy at the defendant's home with a person of suitable age and discretion.

If the defendant cannot be served personally, alternative forms of service of process are permissible. One alternative form of service of process is service by publication. Service by

publication is accomplished by publishing the summons in a newspaper of general circulation in the county where the action is brought once a week for six consecutive weeks. Under Washington's service by publication statute, service of the summons by publication is permissible in actions for "divorce in the cases prescribed by law."

Summary of Bill:

Service by publication is extended to the following types of family law proceedings:

- a) establishment or modification of a parenting plan or residential schedule;
 - b) legal separation;
 - c) declaration of invalidity; and
 - d) non-parental custody actions where the child is in the physical custody of the petitioning party.
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Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) This bill affects the ability of families to get secure court orders. This is mainly a technical fix. The statute already allows service by publication in divorce cases, but the statute only references divorce, not other types of family law cases. Under current law, in order to be able to use alternative service, the petitioner must show that the defendant left the state or is otherwise concealed. This is often difficult to prove. In many cases, there may not be a way to find the defendant and get the needs of the child met. Some judges are already authorizing alternative service in other types of family law cases, even though it is not clearly written into the statute.

Testimony Against: None.

Persons Testifying: (In support) Janet Helson, Washington State Bar Association Family Law Executive Committee.

Persons Signed In To Testify But Not Testifying: None.