
HOUSE BILL 1050

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By Representatives McCoy and Appleton

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1 AN ACT Relating to residential provisions for children of parents
2 with military duties; amending RCW 26.09.260; reenacting and amending
3 RCW 26.09.004; and adding a new section to chapter 26.09 RCW.

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

5 **Sec. 1.** RCW 26.09.004 and 2009 c 502 s 1 are each reenacted and
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter.

8 (1) "Military duties potentially impacting parenting functions"
9 means those obligations imposed, voluntarily or involuntarily, on a
10 parent serving in the armed forces that may interfere with that
11 parent's abilities to perform his or her parenting functions under a
12 temporary or permanent parenting plan or other temporary or permanent
13 court order designating residential time with a child. Military duties
14 potentially impacting parenting functions include, but are not limited
15 to:

16 (a) "Deployment," which means the temporary transfer of a service
17 member serving in an active-duty status to another location in support
18 of a military operation, to include any tour of duty classified by the
19 member's branch of the armed forces as "remote" or "unaccompanied";

1 (b) "Activation" or "mobilization," which means the call-up of a
2 national guard or reserve service member to extended active-duty
3 status. For purposes of this definition, "mobilization" does not
4 include national guard or reserve annual training, inactive duty days,
5 or drill weekends; or

6 (c) "Temporary duty," which means the transfer of a service member
7 from one military base or the service member's home to a different
8 location, usually another base, for a limited period of time to
9 accomplish training or to assist in the performance of a noncombat
10 mission.

11 (2) "Parenting functions" means those aspects of the parent-child
12 relationship in which the parent makes decisions and performs functions
13 necessary for the care and growth of the child. Parenting functions
14 include:

15 (a) Maintaining a loving, stable, consistent, and nurturing
16 relationship with the child;

17 (b) Attending to the daily needs of the child, such as feeding,
18 clothing, physical care and grooming, supervision, health care, and day
19 care, and engaging in other activities which are appropriate to the
20 developmental level of the child and that are within the social and
21 economic circumstances of the particular family;

22 (c) Attending to adequate education for the child, including
23 remedial or other education essential to the best interests of the
24 child;

25 (d) Assisting the child in developing and maintaining appropriate
26 interpersonal relationships;

27 (e) Exercising appropriate judgment regarding the child's welfare,
28 consistent with the child's developmental level and the family's social
29 and economic circumstances; and

30 (f) Providing for the financial support of the child.

31 (3) "Permanent parenting plan" means a plan for parenting the
32 child, including allocation of parenting functions, which plan is
33 incorporated in any final decree or decree of modification in an action
34 for dissolution of marriage or domestic partnership, declaration of
35 invalidity, or legal separation.

36 (4) "Temporary parenting plan" means a plan for parenting of the
37 child pending final resolution of any action for dissolution of

1 marriage or domestic partnership, declaration of invalidity, or legal
2 separation which is incorporated in a temporary order.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.09 RCW
4 to read as follows:

5 If a parent seeking to establish a temporary or permanent parenting
6 plan or other court order designating residential time or visitation
7 rights is under military temporary duty, deployment, activation, or
8 mobilization orders that involve residing a substantial distance away
9 from the military parent's residence or otherwise have a material
10 effect on the military parent's ability to exercise residential time or
11 visitation rights, the parent may request the court to delegate the
12 military parent's residential time or visitation rights, or a portion
13 thereof, as provided under RCW 26.09.260(12).

14 **Sec. 3.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to read
15 as follows:

16 (1) Except as otherwise provided in subsections (4), (5), (6), (8),
17 and (10) of this section, the court shall not modify a prior custody
18 decree or a parenting plan unless it finds, upon the basis of facts
19 that have arisen since the prior decree or plan or that were unknown to
20 the court at the time of the prior decree or plan, that a substantial
21 change has occurred in the circumstances of the child or the nonmoving
22 party and that the modification is in the best interest of the child
23 and is necessary to serve the best interests of the child. The effect
24 of a parent's military duties potentially impacting parenting functions
25 shall not, by itself, be a substantial change of circumstances
26 justifying a permanent modification of a prior decree or plan.

27 (2) In applying these standards, the court shall retain the
28 residential schedule established by the decree or parenting plan
29 unless:

30 (a) The parents agree to the modification;

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

34 (c) The child's present environment is detrimental to the child's
35 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; or

3 (d) The court has found the nonmoving parent in contempt of court
4 at least twice within three years because the parent failed to comply
5 with the residential time provisions in the court-ordered parenting
6 plan, or the parent has been convicted of custodial interference in the
7 first or second degree under RCW 9A.40.060 or 9A.40.070.

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

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

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

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

23 (b) Is based on a change of residence of the parent with whom the
24 child does not reside the majority of the time or an involuntary change
25 in work schedule by a parent which makes the residential schedule in
26 the parenting plan impractical to follow; or

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

1 the current motion. Relief granted under this section shall not be the
2 sole basis for adjusting or modifying child support.

3 (6) The court may order adjustments to the residential aspects of
4 a parenting plan pursuant to a proceeding to permit or restrain a
5 relocation of the child. The person objecting to the relocation of the
6 child or the relocating person's proposed revised residential schedule
7 may file a petition to modify the parenting plan, including a change of
8 the residence in which the child resides the majority of the time,
9 without a showing of adequate cause other than the proposed relocation
10 itself. A hearing to determine adequate cause for modification shall
11 not be required so long as the request for relocation of the child is
12 being pursued. In making a determination of a modification pursuant to
13 relocation of the child, the court shall first determine whether to
14 permit or restrain the relocation of the child using the procedures and
15 standards provided in RCW 26.09.405 through 26.09.560. Following that
16 determination, the court shall determine what modification pursuant to
17 relocation should be made, if any, to the parenting plan or custody
18 order or visitation order.

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

25 (8)(a) If a parent with whom the child does not reside a majority
26 of the time voluntarily fails to exercise residential time for an
27 extended period, that is, one year or longer, the court upon proper
28 motion may make adjustments to the parenting plan in keeping with the
29 best interests of the minor child.

30 (b) For the purposes of determining whether the parent has failed
31 to exercise residential time for one year or longer, the court may not
32 count any time periods during which the parent did not exercise
33 residential time due to the effect of the parent's military duties
34 potentially impacting parenting functions.

35 (9) A parent with whom the child does not reside a majority of the
36 time who is required by the existing parenting plan to complete
37 evaluations, treatment, parenting, or other classes may not seek

1 expansion of residential time under subsection (5)(c) of this section
2 unless that parent has fully complied with such requirements.

3 (10) The court may order adjustments to any of the nonresidential
4 aspects of a parenting plan upon a showing of a substantial change of
5 circumstances of either parent or of a child, and the adjustment is in
6 the best interest of the child. Adjustments ordered under this section
7 may be made without consideration of the factors set forth in
8 subsection (2) of this section.

9 (11) If the parent with whom the child resides a majority of the
10 time receives temporary duty, deployment, activation, or mobilization
11 orders from the military that involve moving a substantial distance
12 away from the parent's residence or otherwise would have a material
13 effect on the parent's ability to exercise parenting functions and
14 primary placement responsibilities, then:

15 (a) Any temporary custody order for the child during the parent's
16 absence shall end no later than ten days after the returning parent
17 provides notice to the temporary custodian, but shall not impair the
18 discretion of the court to conduct an expedited or emergency hearing
19 for resolution of the child's residential placement upon return of the
20 parent and within ten days of the filing of a motion alleging an
21 immediate danger of irreparable harm to the child. If a motion
22 alleging immediate danger has not been filed, the motion for an order
23 restoring the previous residential schedule shall be granted; and

24 (b) The temporary duty, activation, mobilization, or deployment and
25 the temporary disruption to the child's schedule shall not be a factor
26 in a determination of change of circumstances if a motion is filed to
27 transfer residential placement from the parent who is a military
28 service member.

29 (12)(a) If a parent receives military temporary duty, deployment,
30 activation, or mobilization orders that involve moving a substantial
31 distance away from the military parent's residence or otherwise have a
32 material effect on the military parent's ability to exercise
33 residential time or visitation rights under a parenting plan or a court
34 order designating residential time or visitation rights, at the request
35 of the military parent, the court may delegate the military parent's
36 residential time or visitation rights, or a portion thereof, to a
37 child's family member, including a stepparent, or another person other
38 than a parent, with a close and substantial relationship to the minor

1 child for the duration of the military parent's absence, if delegating
2 residential time or visitation rights is in the child's best interest.
3 The court may not permit the delegation of residential time or
4 visitation rights to a person who would be subject to limitations on
5 residential time under RCW 26.09.191.

6 (b) If the parties have a parenting plan, the parties shall attempt
7 to resolve disputes regarding delegation of residential time or
8 visitation rights through the dispute resolution process specified in
9 their parenting plan, unless excused by the court for good cause shown.
10 ((Such))

11 (c) A court-ordered temporary delegation of a military parent's
12 residential time or visitation rights does not create separate rights
13 to residential time or visitation for a person other than a parent.

14 (13) If the court finds that a motion to modify a prior decree or
15 parenting plan has been brought in bad faith, the court shall assess
16 the attorney's fees and court costs of the nonmoving parent against the
17 moving party.

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