
HOUSE BILL 1274

State of Washington

66th Legislature

2019 Regular Session

By Representatives Shea and McCaslin

Read first time 01/17/19. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to parenting plans; and amending RCW 26.09.015,
2 26.09.187, 26.09.197, 26.09.260, and 2.56.180.

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

4 **Sec. 1.** RCW 26.09.015 and 2008 c 6 s 1044 are each amended to
5 read as follows:

6 (1) In any proceeding under this chapter, the matter may be set
7 for mediation of the contested issues before or concurrent with the
8 setting of the matter for hearing. The purpose of the mediation
9 proceeding shall be to reduce acrimony which may exist between the
10 parties and to develop an agreement assuring the child's close and
11 continuing contact with both parents after the marriage or the
12 domestic partnership is dissolved. The mediator shall use his or her
13 best efforts to effect a settlement of the dispute.

14 (2)(a) Each superior court may make available a mediator. The
15 court shall use the most cost-effective mediation services that are
16 readily available unless there is good cause to access alternative
17 providers. The mediator may be a member of the professional staff of
18 a family court or mental health services agency, or may be any other
19 person or agency designated by the court. In order to provide
20 mediation services, the court is not required to institute a family
21 court.

1 (b) In any proceeding involving issues relating to residential
2 time or other matters governed by a parenting plan, the matter may be
3 set for mediation of the contested issues before or concurrent with
4 the setting of the matter for hearing. Counties may, and to the
5 extent state funding is provided therefor counties shall, provide
6 both predecree and postdecree mediation at reduced or waived fee to
7 the parties within one year of the filing of the dissolution
8 petition.

9 (3) Each superior court shall create and provide a mediation form
10 that allows the parties to indicate the issues on which mediation is
11 being requested, the available times the parties are able to
12 participate in mediation, and any issue or issues for which a party
13 denies a request for mediation. A copy of the mediation form must be
14 submitted to the court with the results of any mediation or upon
15 filing a request for a court hearing.

16 (4)(a) Mediation proceedings under this chapter shall be governed
17 in all respects by chapter 7.07 RCW, except as follows:

18 (i) Mediation communications in postdecree mediations mandated by
19 a parenting plan are admissible in subsequent proceedings for the
20 limited purpose of proving:

21 (A) Abuse, neglect, abandonment, exploitation, or unlawful
22 harassment as defined in RCW 9A.46.020(1), of a child;

23 (B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1),
24 of a family or household member as defined in RCW 26.50.010(~~(+2)~~);
25 or

26 (C) That a parent used or frustrated the dispute resolution
27 process without good reason for purposes of RCW 26.09.184(4)(d).

28 (ii) If a postdecree mediation-arbitration proceeding is required
29 pursuant to a parenting plan and the same person acts as both
30 mediator and arbitrator, mediation communications in the mediation
31 phase of such a proceeding may be admitted during the arbitration
32 phase, and shall be admissible in the judicial review of such a
33 proceeding under RCW 26.09.184(4)(e) to the extent necessary for such
34 review to be effective.

35 (b) None of the exceptions under (a)(i) and (ii) of this
36 subsection shall subject a mediator to compulsory process to testify
37 except by court order for good cause shown, taking into consideration
38 the need for the mediator's testimony and the interest in the
39 mediator maintaining an appearance of impartiality. If a mediation
40 communication is not privileged under (a)(i) of this subsection or

1 that portion of (a)(ii) of this subsection pertaining to judicial
2 review, only the portion of the communication necessary for the
3 application of the exception may be admitted, and such admission of
4 evidence shall not render any other mediation communication
5 discoverable or admissible except as may be provided in chapter 7.07
6 RCW.

7 ~~((4))~~ (5) The mediator shall assess the needs and interests of
8 the child or children involved in the controversy and may interview
9 the child or children if the mediator deems such interview
10 appropriate or necessary.

11 ~~((5))~~ (6) Any agreement reached by the parties as a result of
12 mediation shall be reported to the court and to counsel for the
13 parties by the mediator on the day set for mediation or any time
14 thereafter designated by the court.

15 **Sec. 2.** RCW 26.09.187 and 2007 c 496 s 603 are each amended to
16 read as follows:

17 (1) DISPUTE RESOLUTION PROCESS. The court shall not order a
18 dispute resolution process, except court action, when it finds that
19 any limiting factor under RCW 26.09.191 applies, or when it finds
20 that either parent is unable to afford the cost of the proposed
21 dispute resolution process. If a dispute resolution process is not
22 precluded or limited, then in designating such a process the court
23 shall consider all relevant factors, including:

24 (a) Differences between the parents that would substantially
25 inhibit their effective participation in any designated process;

26 (b) The parents' wishes or agreements and, if the parents have
27 entered into agreements, whether the agreements were made knowingly
28 and voluntarily; ~~(and)~~

29 (c) Differences in the parents' financial circumstances that may
30 affect their ability to participate fully in a given dispute
31 resolution process; and

32 (d) Whether there are any issues for which mediation should not
33 be required based on a party's unwillingness to engage in mediation
34 on the issue or issues.

35 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

36 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve
37 agreements of the parties allocating decision-making authority, or
38 specifying rules in the areas listed in RCW 26.09.184(5)(a), when it
39 finds that:

1 (i) The agreement is consistent with any limitations on a
2 parent's decision-making authority mandated by RCW 26.09.191; and

3 (ii) The agreement is knowing and voluntary.

4 (b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole
5 decision-making to one parent when it finds that:

6 (i) A limitation on the other parent's decision-making authority
7 is mandated by RCW 26.09.191;

8 (ii) Both parents are opposed to mutual decision making;

9 (iii) One parent (~~is opposed to mutual decision making, and such~~
10 ~~opposition is reasonable based on the criteria in (c) of this~~
11 ~~subsection)) knowingly and voluntarily agrees to concede decision-
12 making authority to the other parent. The court shall verify that any
13 voluntary concession of decision-making authority is of that parent's
14 own volition.~~

15 (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)
16 and (b) of this subsection, the court shall consider the following
17 criteria in allocating decision-making authority:

18 (i) The existence of a limitation under RCW 26.09.191;

19 (ii) The history of participation of each parent in decision
20 making in each of the areas in RCW 26.09.184(5) (a);

21 (iii) Whether (~~the parents have~~) each parent has a demonstrated
22 ability, interest, and desire to cooperate with (~~one another~~) the
23 other parent in decision making in each of the areas in RCW
24 26.09.184(5) (a); and

25 (iv) The parents' geographic proximity to one another, to the
26 extent that it affects their ability to make timely mutual decisions.

27 (d) The court shall not presume that a parent, solely because of
28 his or her sex, is more qualified than the other parent to make
29 decisions regarding the child's care, education, health care, and
30 religious upbringing.

31 (e) The court shall enter written findings stating its reasons,
32 including the facts and evidence considered, supporting any finding
33 that sole decision making is in the best interest of the child.

34 (3) RESIDENTIAL PROVISIONS.

35 (a) The court shall make residential provisions for each child
36 which encourage each parent to maintain a loving, stable, and
37 nurturing relationship with the child, consistent with the child's
38 developmental level and the family's social and economic
39 circumstances. The court shall not presume that a parent, solely
40 because of his or her sex, is more qualified than the other parent to

1 engage in parenting functions or be provided with more residential
2 time with the child. The child's residential schedule shall be
3 consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191
4 are not dispositive of the child's residential schedule, the court
5 shall consider the following factors:

6 (i) The relative strength, nature, and stability of the child's
7 relationship with each parent;

8 (ii) The agreements of the parties, provided they were entered
9 into knowingly and voluntarily;

10 (iii) Each parent's past and potential for future performance of
11 parenting functions as defined in RCW 26.09.004(~~((3))~~) (2), including
12 whether a parent has taken greater responsibility for performing
13 parenting functions relating to the daily needs of the child;

14 (iv) The emotional needs and developmental level of the child;

15 (v) The child's need for a frequent, continuing, and meaningful
16 relationship with both parents and the ability and willingness of
17 each parent to actively perform parenting functions for the needs of
18 the child;

19 (vi) The child's relationship with siblings and with other
20 significant adults, as well as the child's involvement with his or
21 her physical surroundings, school, or other significant activities;

22 (~~((vi))~~) (vii) The wishes of the parents and the wishes of a
23 child who is sufficiently mature to express reasoned and independent
24 preferences as to his or her residential schedule; and

25 (~~((vii))~~) (viii) Each parent's employment schedule, and shall
26 make accommodations consistent with those schedules. A parent's
27 employment schedule is not, by itself, a basis for limiting a
28 parent's residential time with a child if the parent has other
29 responsible persons approved by the court who can provide
30 transportation or care for the child during schedule conflicts.

31 Factor (i) shall be given the greatest weight.

32 (b) (~~(Where the limitations of RCW 26.09.191 are not dispositive,~~
33 ~~the court may order that a child frequently alternate his or her~~
34 ~~residence between the households of the parents for brief and~~
35 ~~substantially equal intervals of time if such provision is in the~~
36 ~~best interests of the child. In determining whether such an~~
37 ~~arrangement is in the best interests of the child, the court may~~
38 ~~consider the parties geographic proximity to the extent necessary to~~
39 ~~ensure the ability to share performance of the parenting functions.))~~

40 (i) There is a presumption that it is in the best interest of the

1 child to establish an equal residential schedule that provides each
2 parent with equal time and contact with the child unless:

3 (A) Factors present under RCW 26.09.191 require restrictions on
4 the child's residential schedule; or

5 (B) The parents have agreed on a parenting plan that allocates a
6 greater share of residential time with one parent.

7 (ii) For parenting plans that involve a school-aged child, the
8 court shall establish a residential schedule that provides
9 consistency for the child through the school week.

10 (c) A parent alleging that an equal residential schedule that
11 provides each parent with equal time and contact with the child would
12 not be in the best interest of the child has the burden of
13 establishing the allegation by clear and convincing evidence.

14 ~~((e))~~ (d) For any child, residential provisions may contain any
15 reasonable terms or conditions that facilitate the orderly and
16 meaningful exercise of residential time by a parent, including but
17 not limited to requirements of reasonable notice when residential
18 time will not occur.

19 (e) If the court does not enter a parenting plan providing for an
20 equal residential schedule that provides each parent with equal time
21 and contact with the child, the court shall enter written findings
22 stating its reason, including the facts and evidence considered that
23 support the finding that an equal residential schedule is not in the
24 best interest of the child. The court shall verify that any parenting
25 plan that is knowingly and voluntarily agreed upon by both parties is
26 made of their own volition.

27 (4) Any party who has knowingly provided false information in
28 their declarations or testimony regarding issues under the parenting
29 plan is subject to prosecution for false swearing or perjury under
30 chapter 9A.72 RCW.

31 **Sec. 3.** RCW 26.09.197 and 2007 c 496 s 604 are each amended to
32 read as follows:

33 After considering the affidavit required by RCW 26.09.194(1) and
34 other relevant evidence presented, the court shall make a temporary
35 parenting plan that is in the best interest of the child. In making
36 this determination, the court shall give particular consideration to:

37 (1) The presumption that it is in the best interest of the child
38 to establish an equal residential schedule that provides each parent
39 with equal time and contact with the child;

1 (2) The relative strength, nature, and stability of the child's
2 relationship with each parent; and

3 ~~((2))~~ (3) Which parenting arrangements will cause the least
4 disruption to the child's emotional stability while the action is
5 pending.

6 The court shall also consider the factors used to determine
7 residential provisions in the permanent parenting plan. The court
8 shall enter written findings stating its reasons, including the facts
9 and evidence considered supporting any finding that the temporary
10 parenting plan is in the best interest of the child. The court shall
11 verify that any temporary parenting plan that is knowingly and
12 voluntarily agreed upon by both parties is made of their own
13 volition.

14 **Sec. 4.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to
15 read as follows:

16 (1) Except as otherwise provided in subsections (4), (5), (6),
17 ~~((8))~~ (7), (9), and ~~((10))~~ (11) of this section, the court shall
18 not modify a prior custody decree or a parenting plan unless it
19 finds, upon the basis of facts that have arisen since the prior
20 decree or plan or that were unknown to the court at the time of the
21 prior decree or plan, that a substantial change has occurred in the
22 circumstances of the child or the nonmoving party and that the
23 modification is in the best interest of the child and is necessary to
24 serve the best interests of the child. The effect of a parent's
25 military duties potentially impacting parenting functions shall not,
26 by itself, be a substantial change of circumstances justifying a
27 permanent modification of a prior decree or plan.

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

31 (a) The parents agree to the modification;

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

35 (c) The child's present environment is detrimental to the child's
36 physical, mental, or emotional health and the harm likely to be
37 caused by a change of environment is outweighed by the advantage of a
38 change to the child; ~~((e))~~

1 (d) The court finds that the nonmoving parent has demonstrated an
2 inability or unwillingness to allow the child frequent and meaningful
3 contact with the other parent based on the nonmoving parent's
4 violation, without good cause, of a provision of the residential
5 schedule of the parenting plan; or

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

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

14 (4) The court may reduce or restrict contact between the child
15 and the parent with whom the child does not reside a majority of the
16 time if it finds that the reduction or restriction would serve and
17 protect the best interests of the child using the criteria in RCW
18 26.09.191.

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

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

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

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

1 been granted a modification under this same subsection within twenty-
2 four months of the current motion. Relief granted under this section
3 shall not be the sole basis for adjusting or modifying child support.

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

21 (7) The court may order adjustments to the residential aspects of
22 a parenting plan upon a showing of a substantial change in the
23 employment schedule of either parent, and without consideration of
24 the factors set forth in subsection (2) of this section, if the court
25 finds that the adjustments are in the best interests of the child.

26 (8) A parent with whom the child does not reside a majority of
27 the time and whose residential time with the child is subject to
28 limitations pursuant to RCW 26.09.191 (2) or (3) may not seek
29 expansion of residential time under subsection (5)(c) of this section
30 unless that parent demonstrates a substantial change in circumstances
31 specifically related to the basis for the limitation.

32 ~~((+8))~~ (9)(a) If a parent with whom the child does not reside a
33 majority of the time voluntarily fails to exercise residential time
34 for an extended period, that is, one year or longer, the court upon
35 proper motion may make adjustments to the parenting plan in keeping
36 with the best interests of the minor child.

37 (b) For the purposes of determining whether the parent has failed
38 to exercise residential time for one year or longer, the court may
39 not count any time periods during which the parent did not exercise

1 residential time due to the effect of the parent's military duties
2 potentially impacting parenting functions.

3 ~~((9))~~ (10) A parent with whom the child does not reside a
4 majority of the time who is required by the existing parenting plan
5 to complete evaluations, treatment, parenting, or other classes may
6 not seek expansion of residential time under subsection (5)(c) of
7 this section unless that parent has fully complied with such
8 requirements.

9 ~~((10))~~ (11) The court may order adjustments to any of the
10 nonresidential aspects of a parenting plan upon a showing of a
11 substantial change of circumstances of either parent or of a child,
12 and the adjustment is in the best interest of the child. Adjustments
13 ordered under this section may be made without consideration of the
14 factors set forth in subsection (2) of this section.

15 ~~((11))~~ (12) If the parent with whom the child resides a
16 majority of the time receives temporary duty, deployment, activation,
17 or mobilization orders from the military that involve moving a
18 substantial distance away from the parent's residence or otherwise
19 would have a material effect on the parent's ability to exercise
20 parenting functions and primary placement responsibilities, then:

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

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

35 ~~((12))~~ (13) If a parent receives military temporary duty,
36 deployment, activation, or mobilization orders that involve moving a
37 substantial distance away from the military parent's residence or
38 otherwise have a material effect on the military parent's ability to
39 exercise residential time or visitation rights, at the request of the
40 military parent, the court may delegate the military parent's

1 residential time or visitation rights, or a portion thereof, to a
2 child's family member, including a stepparent, or another person
3 other than a parent, with a close and substantial relationship to the
4 minor child for the duration of the military parent's absence, if
5 delegating residential time or visitation rights is in the child's
6 best interest. The court may not permit the delegation of residential
7 time or visitation rights to a person who would be subject to
8 limitations on residential time under RCW 26.09.191. The parties
9 shall attempt to resolve disputes regarding delegation of residential
10 time or visitation rights through the dispute resolution process
11 specified in their parenting plan, unless excused by the court for
12 good cause shown. Such a court-ordered temporary delegation of a
13 military parent's residential time or visitation rights does not
14 create separate rights to residential time or visitation for a person
15 other than a parent.

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

20 (15) A parent may petition for a review and modification of a
21 parenting plan entered prior to the effective date of this section
22 based on the revised standards governing the establishment of
23 parenting plans provided under chapter . . . , Laws of 2019 (this
24 act). A petition for rehearing and modification of a parenting plan
25 under this section must be filed by July 31, 2020, and must set forth
26 the specific provisions of chapter . . . , Laws of 2019 (this act)
27 that warrant a review and modification of the parenting plan.

28 **Sec. 5.** RCW 2.56.180 and 2007 c 496 s 202 are each amended to
29 read as follows:

30 (1) The administrative office of the courts shall create a
31 handbook explaining the sections of Washington law pertaining to the
32 rights and responsibilities of marital partners to each other and to
33 any children during a marriage and a dissolution of marriage. The
34 handbook may also be provided in videotape or other electronic form
35 and must be made available and easily accessible on the
36 administrative office of the courts' web site.

37 (2) The handbook created under subsection (1) of this section
38 shall be provided by the county auditor when an individual applies
39 for a marriage license under RCW 26.04.140.

1 (3) In a dissolution or legal separation action filed under this
2 chapter, the petitioner's counsel shall provide to the petitioner a
3 copy of the handbook created under subsection (1) of this section
4 ((shall also be provided to the petitioner when)) at the time he or
5 she files ((a)) the petition ((for dissolution, and to the
6 respondent, unless the respondent did not file a response, notice of
7 appearance, or any other paper in the case or did not appear in
8 court)) and provide a copy of the handbook to be served along with
9 the petition and summons upon the respondent. If the petitioner is
10 unrepresented by counsel at the time the petition is filed, the court
11 shall provide the petitioner with a copy of the handbook and direct
12 that a copy of the handbook be served along with the petition and
13 summons upon the respondent. The administrative office of the courts
14 shall on an annual basis reimburse the counties for each copy of the
15 handbook that is distributed by the court directly to family law
16 parties under this section, provided that the county submits
17 documentation of the number of handbooks distributed on an annual
18 basis.

19 (4) The information contained in the handbook created under
20 subsection (1) of this section shall be reviewed and updated
21 annually. The handbook must contain the following information:

22 (a) Information on prenuptial agreements as contracts and as a
23 means of structuring financial arrangements and other aspects of the
24 marital relationship;

25 (b) Information on shared parental responsibility for children,
26 including establishing a residential schedule for the child in the
27 event of the dissolution of the marriage, and guidelines on what is
28 included in the parenting plan in order to maximize to the highest
29 degree the amount of time the child may spend with each parent;

30 (c) Information on notice requirements and standards for parental
31 relocation;

32 (d) Information on child support for minor children;

33 (e) Information on property rights, including equitable
34 distribution of assets and premarital and postmarital property
35 rights;

36 (f) Information on spousal maintenance;

37 (g) Information on domestic violence, child abuse, and neglect,
38 including penalties;

39 (h) Information on the court process for dissolution;

40 (i) Information on the effects of dissolution on children;

1 (j) Information on community resources that are available to
2 separating or divorcing persons and their children.

--- **END** ---