
SENATE BILL 5269

State of Washington

57th Legislature

2001 Regular Session

By Senators McCaslin and Winsley

Read first time 01/17/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to conditions for orders for temporary or permanent
2 maintenance or division of property in certain proceedings for
3 dissolution of marriage, legal separation, or declaration of
4 invalidity; amending RCW 26.09.004, 26.09.015, 26.09.030, 26.09.040,
5 26.09.060, 26.09.080, and 26.09.090; and adding a new section to
6 chapter 26.09 RCW.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.09 RCW
9 to read as follows:

10 (1) In any proceeding for dissolution of marriage, legal
11 separation, or a declaration of invalidity, where there are no children
12 of the marriage dependent on either spouse, the court shall not enter
13 any order pertaining to temporary or permanent maintenance or division
14 of property until the court has received the report under subsection
15 (2) of this section.

16 (2) Within ten days of filing a motion for payment of spousal
17 maintenance or division of property and liabilities under subsection
18 (1) of this section, the court shall appoint a family court arbitrator
19 who shall meet with the parties or their representatives, either

1 jointly or separately, to review pertinent documents relating to the
2 financial resources and liabilities of the parties, including community
3 and separate property. Within thirty days from the date of filing the
4 petition, the family court arbitrator shall submit a report to the
5 court recommending temporary division of property or liabilities and
6 temporary maintenance, if appropriate. In developing the report
7 regarding division of property and liabilities, the family court
8 arbitrator shall adhere to the criteria in this chapter. The family
9 court arbitrator shall have all powers of the court relating to
10 subpoena and injunctive relief.

11 (3) The time periods in subsection (2) of this section may be
12 extended by the family court arbitrator for good cause.

13 (4) The parties to the proceedings, or the family court arbitrator,
14 may at any time apply to the court for an order requiring the good
15 faith cooperation and participation of the parties.

16 (5) The court shall give due consideration to the report submitted
17 by the arbitrator under subsection (2) of this section before entering
18 any decree for the division of property and for maintenance, if
19 appropriate.

20 (6) The administrator for the courts shall offer appropriate
21 educational and training courses for persons employed or appointed as
22 family court arbitrators.

23 (7) The supreme court is encouraged to adopt rules to implement
24 this section.

25 **Sec. 2.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read
26 as follows:

27 The definitions in this section apply throughout this chapter.

28 (1) "Temporary parenting plan" means a plan for parenting of the
29 child pending final resolution of any action for dissolution of
30 marriage, declaration of invalidity, or legal separation which is
31 incorporated in a temporary order.

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

37 (3) "Parenting functions" means those aspects of the parent-child
38 relationship in which the parent makes decisions and performs functions

1 necessary for the care and growth of the child. Parenting functions
2 include:

3 (a) Maintaining a loving, stable, consistent, and nurturing
4 relationship with the child;

5 (b) Attending to the daily needs of the child, such as feeding,
6 clothing, physical care and grooming, supervision, health care, and day
7 care, and engaging in other activities which are appropriate to the
8 developmental level of the child and that are within the social and
9 economic circumstances of the particular family;

10 (c) Attending to adequate education for the child, including
11 remedial or other education essential to the best interests of the
12 child;

13 (d) Assisting the child in developing and maintaining appropriate
14 interpersonal relationships;

15 (e) Exercising appropriate judgment regarding the child's welfare,
16 consistent with the child's developmental level and the family's social
17 and economic circumstances; and

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

19 (4) "Family court arbitrator" means a person with expertise and
20 experience in family law matters and conflict resolution who is
21 employed or appointed by the court to carry out the duties in section
22 1 of this act. Unless the parties stipulate to a nonlawyer arbitrator,
23 the person must be a member of the Washington state bar association who
24 has been admitted to the bar for a minimum of five years, or a current
25 or retired superior court judge or superior court commissioner.

26 **Sec. 3.** RCW 26.09.015 and 1991 c 367 s 2 are each amended to read
27 as follows:

28 (1) Except as provided in section 1 of this act, in any proceeding
29 under this chapter, the matter may be set for mediation of the
30 contested issues before or concurrent with the setting of the matter
31 for hearing. The purpose of the mediation proceeding shall be to
32 reduce acrimony which may exist between the parties and to develop an
33 agreement assuring the child's close and continuing contact with both
34 parents after the marriage is dissolved. The mediator shall use his or
35 her best efforts to effect a settlement of the dispute.

36 (2) Each superior court may make available a mediator. The
37 mediator may be a member of the professional staff of a family court or
38 mental health services agency, or may be any other person or agency

1 designated by the court. In order to provide mediation services, the
2 court is not required to institute a family court.

3 (3) Mediation proceedings shall be held in private and shall be
4 confidential. The mediator shall not testify as to any aspect of the
5 mediation proceedings. This subsection shall not apply to postdecree
6 mediation required pursuant to a parenting plan.

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

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

14 **Sec. 4.** RCW 26.09.030 and 1996 c 23 s 1 are each amended to read
15 as follows:

16 Except as provided in section 1 of this act, when a party who
17 ~~((+1))~~ is a resident of this state, or ~~((+2))~~ is a member of the
18 armed forces and is stationed in this state, or ~~((+3))~~ is married to
19 a party who is a resident of this state or who is a member of the armed
20 forces and is stationed in this state, petitions for a dissolution of
21 marriage, and alleges that the marriage is irretrievably broken and
22 when ninety days have elapsed since the petition was filed and from the
23 date when service of summons was made upon the respondent or the first
24 publication of summons was made, the court shall proceed as follows:

25 (1) If the other party joins in the petition or does not deny that
26 the marriage is irretrievably broken, the court shall enter a decree of
27 dissolution.

28 (2) If the other party alleges that the petitioner was induced to
29 file the petition by fraud, or coercion, the court shall make a finding
30 as to that allegation and, if it so finds shall dismiss the petition.

31 (3) If the other party denies that the marriage is irretrievably
32 broken the court shall consider all relevant factors, including the
33 circumstances that gave rise to the filing of the petition and the
34 prospects for reconciliation and shall:

35 (a) Make a finding that the marriage is irretrievably broken and
36 enter a decree of dissolution of the marriage; or

37 (b) At the request of either party or on its own motion, transfer
38 the cause to the family court, refer them to another counseling service

1 of their choice, and request a report back from the counseling service
2 within sixty days, or continue the matter for not more than sixty days
3 for hearing. If the cause is returned from the family court or at the
4 adjourned hearing, the court shall:

5 (i) Find that the parties have agreed to reconciliation and dismiss
6 the petition; or

7 (ii) Find that the parties have not been reconciled, and that
8 either party continues to allege that the marriage is irretrievably
9 broken. When such facts are found, the court shall enter a decree of
10 dissolution of the marriage.

11 (4) If the petitioner requests the court to decree legal separation
12 in lieu of dissolution, the court shall enter the decree in that form
13 unless the other party objects and petitions for a decree of
14 dissolution or declaration of invalidity.

15 **Sec. 5.** RCW 26.09.040 and 1987 c 460 s 4 are each amended to read
16 as follows:

17 (1) While both parties to an alleged marriage are living, and at
18 least one party is resident in this state or a member of the armed
19 service and stationed in the state, a petition to have the marriage
20 declared invalid may be sought by:

21 (a) Either or both parties, or the guardian of an incompetent
22 spouse, for any cause specified in subsection (4) of this section; or

23 (b) Either or both parties, the legal spouse, or a child of either
24 party when it is alleged that the marriage is bigamous.

25 (2) If the validity of a marriage is denied or questioned at any
26 time, either or both parties to the marriage may petition the court for
27 a judicial determination of the validity of such marriage.

28 (3) In a proceeding to declare the invalidity of a marriage, the
29 court shall proceed in the manner and shall have the jurisdiction,
30 including the authority to provide for maintenance, a parenting plan
31 for minor children, and division of the property of the parties,
32 provided by this chapter.

33 (4) After hearing the evidence concerning the validity of a
34 marriage, if both parties to the alleged marriage are still living, the
35 court:

36 (a) If it finds the marriage to be valid, shall enter a decree of
37 validity;

38 (b) If it finds that:

1 (i) The marriage should not have been contracted because of age of
2 one or both of the parties, lack of required parental or court
3 approval, a prior undissolved marriage of one or both of the parties,
4 reasons of consanguinity, or because a party lacked capacity to consent
5 to the marriage, either because of mental incapacity or because of the
6 influence of alcohol or other incapacitating substances, or because a
7 party was induced to enter into the marriage by force or duress, or by
8 fraud involving the essentials of marriage, and that the parties have
9 not ratified their marriage by voluntarily cohabiting after attaining
10 the age of consent, or after attaining capacity to consent, or after
11 cessation of the force or duress or discovery of the fraud, shall
12 declare the marriage invalid as of the date it was purportedly
13 contracted;

14 (ii) The marriage should not have been contracted because of any
15 reason other than those above, shall upon motion of a party, order any
16 action which may be appropriate to complete or to correct the record
17 and enter a decree declaring such marriage to be valid for all purposes
18 from the date upon which it was purportedly contracted;

19 (c) If it finds that a marriage contracted in a jurisdiction other
20 than this state, was void or voidable under the law of the place where
21 the marriage was contracted, and in the absence of proof that such
22 marriage was subsequently validated by the laws of the place of
23 contract or of a subsequent domicile of the parties, shall declare the
24 marriage invalid as of the date of the marriage.

25 (5) The provisions of section 1 of this act apply to proceedings
26 under this section.

27 (6) Any child of the parties born or conceived during the existence
28 of a marriage of record is legitimate and remains legitimate
29 notwithstanding the entry of a declaration of invalidity of the
30 marriage.

31 **Sec. 6.** RCW 26.09.060 and 2000 c 119 s 7 are each amended to read
32 as follows:

33 (1) In a proceeding for:

34 (a) Dissolution of marriage, legal separation, or a declaration of
35 invalidity; or

36 (b) Disposition of property or liabilities, maintenance, or support
37 following dissolution of the marriage by a court which lacked personal
38 jurisdiction over the absent spouse; either party may move for

1 temporary maintenance or for temporary support of children entitled to
2 support. The motion shall be accompanied by an affidavit setting forth
3 the factual basis for the motion and the amounts requested.

4 (2) As a part of a motion for temporary maintenance or support or
5 by independent motion accompanied by affidavit, either party may
6 request the court to issue a temporary restraining order or preliminary
7 injunction, providing relief proper in the circumstances, and
8 restraining or enjoining any person from:

9 (a) Transferring, removing, encumbering, concealing, or in any way
10 disposing of any property except in the usual course of business or for
11 the necessities of life, and, if so restrained or enjoined, requiring
12 him or her to notify the moving party of any proposed extraordinary
13 expenditures made after the order is issued;

14 (b) Molesting or disturbing the peace of the other party or of any
15 child;

16 (c) Going onto the grounds of or entering the home, workplace, or
17 school of the other party or the day care or school of any child upon
18 a showing of the necessity therefor;

19 (d) Knowingly coming within, or knowingly remaining within, a
20 specified distance from a specified location; and

21 (e) Removing a child from the jurisdiction of the court.

22 (3) Either party may request a domestic violence protection order
23 under chapter 26.50 RCW or an antiharassment protection order under
24 chapter 10.14 RCW on a temporary basis. The court may grant any of the
25 relief provided in RCW 26.50.060 except relief pertaining to
26 residential provisions for the children which provisions shall be
27 provided for under this chapter, and any of the relief provided in RCW
28 10.14.080. Ex parte orders issued under this subsection shall be
29 effective for a fixed period not to exceed fourteen days, or upon court
30 order, not to exceed twenty-four days if necessary to ensure that all
31 temporary motions in the case can be heard at the same time.

32 (4) In issuing the order, the court shall consider the provisions
33 of RCW 9.41.800.

34 (5) The court may issue a temporary restraining order without
35 requiring notice to the other party only if it finds on the basis of
36 the moving affidavit or other evidence that irreparable injury could
37 result if an order is not issued until the time for responding has
38 elapsed.

1 (6) The court may issue a temporary restraining order or
2 preliminary injunction and an order for temporary maintenance or
3 support in such amounts and on such terms as are just and proper in the
4 circumstances. The court may in its discretion waive the filing of the
5 bond or the posting of security. Any order for temporary maintenance
6 or support must comply with section 1 of this act if applicable.

7 (7) Restraining orders issued under this section restraining the
8 person from molesting or disturbing another party, or from going onto
9 the grounds of or entering the home, workplace, or school of the other
10 party or the day care or school of any child, or prohibiting the person
11 from knowingly coming within, or knowingly remaining within, a
12 specified distance of a location, shall prominently bear on the front
13 page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL
14 NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND
15 WILL SUBJECT A VIOLATOR TO ARREST.

16 (8) The court shall order that any temporary restraining order
17 bearing a criminal offense legend, any domestic violence protection
18 order, or any antiharassment protection order granted under this
19 section be forwarded by the clerk of the court on or before the next
20 judicial day to the appropriate law enforcement agency specified in the
21 order. Upon receipt of the order, the law enforcement agency shall
22 enter the order into any computer-based criminal intelligence
23 information system available in this state used by law enforcement
24 agencies to list outstanding warrants. Entry into the computer-based
25 criminal intelligence information system constitutes notice to all law
26 enforcement agencies of the existence of the order. The order is fully
27 enforceable in any county in the state.

28 (9) If a restraining order issued pursuant to this section is
29 modified or terminated, the clerk of the court shall notify the law
30 enforcement agency specified in the order on or before the next
31 judicial day. Upon receipt of notice that an order has been
32 terminated, the law enforcement agency shall remove the order from any
33 computer-based criminal intelligence system.

34 (10) A temporary order, temporary restraining order, or preliminary
35 injunction:

36 (a) Does not prejudice the rights of a party or any child which are
37 to be adjudicated at subsequent hearings in the proceeding;

38 (b) May be revoked or modified;

1 (c) Terminates when the final decree is entered, except as provided
2 under subsection (11) of this section, or when the petition for
3 dissolution, legal separation, or declaration of invalidity is
4 dismissed;

5 (d) May be entered in a proceeding for the modification of an
6 existing decree.

7 (11) Delinquent support payments accrued under an order for
8 temporary support remain collectible and are not extinguished when a
9 final decree is entered unless the decree contains specific language to
10 the contrary. A support debt under a temporary order owed to the state
11 for public assistance expenditures shall not be extinguished by the
12 final decree if:

13 (a) The obligor was given notice of the state's interest under
14 chapter 74.20A RCW; or

15 (b) The temporary order directs the obligor to make support
16 payments to the office of support enforcement or the Washington state
17 support registry.

18 **Sec. 7.** RCW 26.09.080 and 1989 c 375 s 5 are each amended to read
19 as follows:

20 In a proceeding for dissolution of the marriage, legal separation,
21 declaration of invalidity, or in a proceeding for disposition of
22 property following dissolution of the marriage by a court which lacked
23 personal jurisdiction over the absent spouse or lacked jurisdiction to
24 dispose of the property, the court shall, in accordance with the
25 requirements of section 1 of this act and without regard to marital
26 misconduct, make such disposition of the property and the liabilities
27 of the parties, either community or separate, as shall appear just and
28 equitable after considering all relevant factors including, but not
29 limited to:

30 (1) The nature and extent of the community property;

31 (2) The nature and extent of the separate property;

32 (3) The duration of the marriage; and

33 (4) The economic circumstances of each spouse at the time the
34 division of property is to become effective, including the desirability
35 of awarding the family home or the right to live therein for reasonable
36 periods to a spouse with whom the children reside the majority of the
37 time.

1 **Sec. 8.** RCW 26.09.090 and 1989 c 375 s 6 are each amended to read
2 as follows:

3 (~~(1)~~) In a proceeding for dissolution of marriage, legal
4 separation, declaration of invalidity, or in a proceeding for
5 maintenance following dissolution of the marriage by a court which
6 lacked personal jurisdiction over the absent spouse, the court may
7 grant a maintenance order for either spouse. The maintenance order
8 shall be in such amounts and for such periods of time as the court
9 deems just, in accordance with the requirements of section 1 of this
10 act and without regard to marital misconduct, after considering all
11 relevant factors including but not limited to:

12 (~~(a)~~) (1) The financial resources of the party seeking
13 maintenance, including separate or community property apportioned to
14 (~~him~~) the party, and (~~his~~) the party's ability to meet his or her
15 needs independently, including the extent to which a provision for
16 support of a child living with the party includes a sum for that party;

17 (~~(b)~~) (2) The time necessary to acquire sufficient education or
18 training to enable the party seeking maintenance to find employment
19 appropriate to (~~his~~) the party's skill, interests, style of life, and
20 other attendant circumstances;

21 (~~(c)~~) (3) The standard of living established during the marriage;

22 (~~(d)~~) (4) The duration of the marriage;

23 (~~(e)~~) (5) The age, physical and emotional condition, and
24 financial obligations of the spouse seeking maintenance; and

25 (~~(f)~~) (6) The ability of the spouse from whom maintenance is
26 sought to meet (~~his~~) the spouse's needs and financial obligations
27 while meeting those of the spouse seeking maintenance.

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