

SHB 1170 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED AS AMENDED 04/08/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 26.09.004 and 2008 c 6 s 1003 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter.

6 (1) "Temporary parenting plan" means a plan for parenting of the  
7 child pending final resolution of any action for dissolution of  
8 marriage or domestic partnership, declaration of invalidity, or legal  
9 separation which is incorporated in a temporary order.

10 (2) "Permanent parenting plan" means a plan for parenting the  
11 child, including allocation of parenting functions, which plan is  
12 incorporated in any final decree or decree of modification in an action  
13 for dissolution of marriage or domestic partnership, declaration of  
14 invalidity, or legal separation.

15 (3) "Parenting functions" means those aspects of the parent-child  
16 relationship in which the parent makes decisions and performs functions  
17 necessary for the care and growth of the child. Parenting functions  
18 include:

19 (a) Maintaining a loving, stable, consistent, and nurturing  
20 relationship with the child;

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

26 (c) Attending to adequate education for the child, including  
27 remedial or other education essential to the best interests of the  
28 child;

29 (d) Assisting the child in developing and maintaining appropriate  
30 interpersonal relationships;

1 (e) Exercising appropriate judgment regarding the child's welfare,  
2 consistent with the child's developmental level and the family's social  
3 and economic circumstances; and

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

5 (4) "Military duties potentially impacting parenting functions"  
6 means those obligations imposed, voluntarily or involuntarily, on a  
7 parent serving in the armed forces that may interfere with that  
8 parent's abilities to perform his or her parenting functions under a  
9 temporary or permanent parenting plan. Military duties potentially  
10 impacting parenting functions include, but are not limited to:

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

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

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

25 **Sec. 2.** RCW 26.09.010 and 2008 c 6 s 1004 are each amended to read  
26 as follows:

27 (1) Except as otherwise specifically provided herein, the practice  
28 in civil action shall govern all proceedings under this chapter, except  
29 that trial by jury is dispensed with.

30 (2) A proceeding for dissolution of marriage or domestic  
31 partnership, legal separation or a declaration concerning the validity  
32 of a marriage or domestic partnership shall be entitled "In re the  
33 marriage of . . . . . and . . . . . ." or "In re the domestic  
34 partnership of . . . . . and . . . . . ." Such proceedings may be  
35 filed in the superior court of the county where the petitioner resides.

36 (3) In cases where there has been no prior proceeding in this state  
37 involving the marital or domestic partnership status of the parties or

1 support obligations for a minor child, a separate parenting and support  
2 proceeding between the parents shall be entitled "In re the parenting  
3 and support of . . . . ."

4 (4) The initial pleading in all proceedings under this chapter  
5 shall be denominated a petition. A responsive pleading shall be  
6 denominated a response. Other pleadings, and all pleadings in other  
7 matters under this chapter shall be denominated as provided in the  
8 civil rules for superior court.

9 (5) In this chapter, "decree" includes "judgment".

10 (6) A decree of dissolution, of legal separation, or a declaration  
11 concerning the validity of a marriage or domestic partnership shall not  
12 be awarded to one of the parties, but shall provide that it affects the  
13 status previously existing between the parties in the manner decreed.

14 (7) In order to provide a means by which to facilitate a fair,  
15 efficient, and swift process to resolve matters regarding custody and  
16 visitation when a parent serving in the armed forces receives temporary  
17 duty, deployment, activation, or mobilization orders from the military,  
18 the court shall, upon motion of such a parent:

19 (a) For good cause shown, hold an expedited hearing in custody and  
20 visitation matters instituted under this chapter when the military  
21 duties of the parent have a material effect on the parent's ability, or  
22 anticipated ability, to appear in person at a regularly scheduled  
23 hearing; and

24 (b) Upon reasonable advance notice to the affected parties and for  
25 good cause shown, allow the parent to present testimony and evidence by  
26 electronic means in custody and visitation matters instituted under  
27 this chapter when the military duties of the parent have a material  
28 effect on the parent's ability to appear in person at a regularly  
29 scheduled hearing. The phrase "electronic means" includes  
30 communication by telephone, video teleconference, or the internet.

31 **Sec. 3.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to read  
32 as follows:

33 (1) Except as otherwise provided in subsections (4), (5), (6), (8),  
34 and (10) of this section, the court shall not modify a prior custody  
35 decree or a parenting plan unless it finds, upon the basis of facts  
36 that have arisen since the prior decree or plan or that were unknown to  
37 the court at the time of the prior decree or plan, that a substantial

1 change has occurred in the circumstances of the child or the nonmoving  
2 party and that the modification is in the best interest of the child  
3 and is necessary to serve the best interests of the child. The effect  
4 of a parent's military duties potentially impacting parenting functions  
5 shall not, by itself, be a substantial change of circumstances  
6 justifying a permanent modification of a prior decree or plan.

7 (2) In applying these standards, the court shall retain the  
8 residential schedule established by the decree or parenting plan  
9 unless:

10 (a) The parents agree to the modification;

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

14 (c) The child's present environment is detrimental to the child's  
15 physical, mental, or emotional health and the harm likely to be caused  
16 by a change of environment is outweighed by the advantage of a change  
17 to the child; or

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

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

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

30 (5) The court may order adjustments to the residential aspects of  
31 a parenting plan upon a showing of a substantial change in  
32 circumstances of either parent or of the child, and without  
33 consideration of the factors set forth in subsection (2) of this  
34 section, if the proposed modification is only a minor modification in  
35 the residential schedule that does not change the residence the child  
36 is scheduled to reside in the majority of the time and:

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

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

5 (c) Does not result in a schedule that exceeds ninety overnights  
6 per year in total, if the court finds that, at the time the petition  
7 for modification is filed, the decree of dissolution or parenting plan  
8 does not provide reasonable time with the parent with whom the child  
9 does not reside a majority of the time, and further, the court finds  
10 that it is in the best interests of the child to increase residential  
11 time with the parent in excess of the residential time period in (a) of  
12 this subsection. However, any motion under this subsection (5)(c) is  
13 subject to the factors established in subsection (2) of this section if  
14 the party bringing the petition has previously been granted a  
15 modification under this same subsection within twenty-four months of  
16 the current motion. Relief granted under this section shall not be the  
17 sole basis for adjusting or modifying child support.

18 (6) The court may order adjustments to the residential aspects of  
19 a parenting plan pursuant to a proceeding to permit or restrain a  
20 relocation of the child. The person objecting to the relocation of the  
21 child or the relocating person's proposed revised residential schedule  
22 may file a petition to modify the parenting plan, including a change of  
23 the residence in which the child resides the majority of the time,  
24 without a showing of adequate cause other than the proposed relocation  
25 itself. A hearing to determine adequate cause for modification shall  
26 not be required so long as the request for relocation of the child is  
27 being pursued. In making a determination of a modification pursuant to  
28 relocation of the child, the court shall first determine whether to  
29 permit or restrain the relocation of the child using the procedures and  
30 standards provided in RCW 26.09.405 through 26.09.560. Following that  
31 determination, the court shall determine what modification pursuant to  
32 relocation should be made, if any, to the parenting plan or custody  
33 order or visitation order.

34 (7) A parent with whom the child does not reside a majority of the  
35 time and whose residential time with the child is subject to  
36 limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion  
37 of residential time under subsection (5)(c) of this section unless that

1 parent demonstrates a substantial change in circumstances specifically  
2 related to the basis for the limitation.

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

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

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

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

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

30 (a) Any temporary custody order for the child during the parent's  
31 absence shall end no later than ten days after the returning parent  
32 provides notice to the temporary custodian, but shall not impair the  
33 discretion of the court to conduct an expedited or emergency hearing  
34 for resolution of the child's residential placement upon return of the  
35 parent and within ten days of the filing of a motion alleging an  
36 immediate danger of irreparable harm to the child; and

37 (b) The temporary duty, activation, mobilization, or deployment and  
38 the temporary disruption to the child's schedule shall not be a factor

1 in a determination of change of circumstances if a motion is filed to  
2 transfer residential placement from the parent who is a military  
3 service member.

4 (12) If a parent receives military temporary duty, deployment,  
5 activation, or mobilization orders that involve moving a substantial  
6 distance away from the military parent's residence or otherwise have a  
7 material effect on the military parent's ability to exercise  
8 residential time or visitation rights, at the request of the military  
9 parent, the court may delegate the military parent's residential time  
10 or visitation rights, or a portion thereof, to a child's family member,  
11 including a stepparent or another person other than a parent with a  
12 close and substantial relationship to the minor child for the duration  
13 of the military parent's absence, if delegating residential time or  
14 visitation rights is in the child's best interest. The court may not  
15 permit the delegation of residential time or visitation rights to a  
16 person who would be subject to limitations on residential time under  
17 RCW 26.09.191. The parties shall attempt to resolve disputes regarding  
18 delegation of residential time or visitation rights through the dispute  
19 resolution process specified in their parenting plan, unless excused by  
20 the court for good cause shown. Such a court-ordered temporary  
21 delegation of a military parent's residential time or visitation rights  
22 does not create separate rights to residential time or visitation for  
23 a person other than a parent.

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

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28 On page 1, line 2 of the title, after "parent;" strike the  
29 remainder of the title and insert "and amending RCW 26.09.004,  
30 26.09.010, and 26.09.260."

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