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HOUSE BILL 2246

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State of Washington                      65th Legislature                      2017 3rd Special Session

By Representatives Shea and Haler

Read first time 07/03/17. Referred to Committee on 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 (~~(7)~~) (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 2017 2nd sp.  
24 sess. (this act). A petition for rehearing and modification of a  
25 parenting plan under this section must be filed by July 31, 2018, and  
26 must set forth the specific provisions of chapter . . ., Laws of 2017  
27 2nd sp. sess. (this act) that warrant a review and modification of  
28 the parenting plan.

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

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

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

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

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

25 (a) Information on prenuptial agreements as contracts and as a  
26 means of structuring financial arrangements and other aspects of the  
27 marital relationship;

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

33 (c) Information on notice requirements and standards for parental  
34 relocation;

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

36 (e) Information on property rights, including equitable  
37 distribution of assets and premarital and postmarital property  
38 rights;

39 (f) Information on spousal maintenance;

- 1           (g) Information on domestic violence, child abuse, and neglect,  
2 including penalties;  
3           (h) Information on the court process for dissolution;  
4           (i) Information on the effects of dissolution on children;  
5           (j) Information on community resources that are available to  
6 separating or divorcing persons and their children.

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