
SENATE BILL 6275

State of Washington

53rd Legislature

1994 Regular Session

By Senators A. Smith, Owen, Roach, Ludwig, L. Smith, Hochstatter, Erwin, Oke, Skratek, Nelson, Bauer, Vognild and Winsley

Read first time 01/18/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to enforcement of visitation provisions of
2 parenting plans; amending RCW 26.09.260; and adding a new chapter to
3 Title 26 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that children of
6 dissolution have a need for financial and emotional support from both
7 parents. Studies show a link between enforcement of visitation and
8 payment of support. The state has become involved in the enforcement
9 of support, but provides no assistance in enforcing visitation. To
10 remedy this, the legislature intends to provide administrative redress
11 for violations of residential provisions of a court-ordered parenting
12 plan.

13 NEW SECTION. **Sec. 2.** Unless the context clearly requires
14 otherwise, the definitions in this section apply throughout this
15 chapter.

16 (1) "Department" means the department of social and health
17 services.

1 (2) "Parenting plan" means a plan for parenting a child, including
2 allocation of residential time, which plan is incorporated in any final
3 decree or decree of modification in any action for dissolution of
4 marriage, declaration of invalidity, or legal separation, and includes
5 custody orders.

6 (3) "Secretary" means the secretary of the department.

7 (4) "Visitation" refers to the residential time provisions in a
8 parenting plan for noncustodial persons.

9 NEW SECTION. **Sec. 3.** A person who is a party to a parenting plan
10 may initiate a petition with the department alleging residential
11 interference. To commence action under this chapter, the petitioner
12 shall:

13 (1) Allege in writing, under oath, that:

14 (a) A court has entered a parenting plan; and

15 (b) There is or has been interference with or a denial of
16 visitation rights; and

17 (2) Provide the department with supporting documents, including a
18 copy of the parenting plan if the department does not have a copy.

19 NEW SECTION. **Sec. 4.** (1) The department shall provide notice to
20 the alleged violator of the allegations under section 3 of this act and
21 require the alleged violator to either acknowledge the violation or
22 demand an administrative hearing before an administrative law judge.

23 (2) If the violation is acknowledged, an administrative finding of
24 residential interference shall be entered.

25 (3) If an administrative hearing is demanded, the office of
26 administrative hearings shall set a hearing date.

27 NEW SECTION. **Sec. 5.** (1) At the hearing, the petitioner shall
28 prove by a preponderance of evidence that a violation of the visitation
29 provisions of the parenting plan occurred.

30 (2) An administrative finding shall be entered if the
31 administrative law judge finds that a violation of the parenting plan
32 occurred.

33 (3) The administrative law judge may order the noncomplying parent
34 to:

1 (a) Provide the moving party additional time with the child. The
2 additional time shall be equal to the time missed with the child that
3 was due to the parent's noncompliance;

4 (b) Pay, to the moving party, all court costs and reasonable
5 attorneys' fees incurred as a result of the noncompliance, and any
6 reasonable expenses incurred in locating or returning a child; and

7 (c) Pay, to the moving party, a civil penalty not less than one
8 hundred dollars.

9 NEW SECTION. **Sec. 6.** After two findings of violation of the
10 residential provisions of the parenting plan under this chapter, a
11 petitioner may petition a court to change residential time provisions
12 of a parenting plan as provided for under RCW 26.09.260.

13 NEW SECTION. **Sec. 7.** An administrative finding under this chapter
14 may be appealed as provided for under chapter 34.05 RCW.

15 NEW SECTION. **Sec. 8.** The secretary shall adopt rules under
16 chapter 34.05 RCW to implement and enforce this chapter.

17 NEW SECTION. **Sec. 9.** The remedies in this chapter are cumulative
18 and are in addition to any other remedies provided by law.

19 **Sec. 10.** RCW 26.09.260 and 1991 c 367 s 9 are each amended to read
20 as follows:

21 (1) Except as otherwise provided in subsection (4) of this section,
22 the court shall not modify a prior custody decree or a parenting plan
23 unless it finds, upon the basis of facts that have arisen since the
24 prior decree or plan or that were unknown to the court at the time of
25 the prior decree or plan, that a substantial change has occurred in the
26 circumstances of the child or the nonmoving party and that the
27 modification is in the best interest of the child and is necessary to
28 serve the best interests of the child.

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

32 (a) The parents agree to the modification;

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

4 (c) The child's present environment is detrimental to the child's
5 physical, mental, or emotional health and the harm likely to be caused
6 by a change of environment is outweighed by the advantage of a change
7 to the child; or

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

13 (3) A conviction of custodial interference in the first or second
14 degree under RCW 9A.40.060 or 9A.40.070 or two findings of residential
15 interference under chapter 26.-- RCW (sections 1 through 9 of this act)
16 shall constitute a substantial change of circumstances for the purposes
17 of this section.

18 (4) The court may order adjustments to a parenting plan upon a
19 showing of a substantial change in circumstances of either parent or of
20 the child, and without consideration of the factors set forth in
21 subsection (2) of this section, if the proposed modification is only a:

22 (a) Modification in the dispute resolution process; or

23 (b) Minor modification in the residential schedule that:

24 (i) Does not change the residence the child is scheduled to reside
25 in the majority of the time; and

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

28 (iii) Is based on a change of residence or an involuntary change in
29 work schedule by a parent which makes the residential schedule in the
30 parenting plan impractical to follow.

31 (5) If the court finds that a motion to modify a prior decree or
32 parenting plan has been brought in bad faith, the court shall assess
33 the attorney's fees and court costs of the nonmoving parent against the
34 moving party.

35 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act shall
36 constitute a new chapter in Title 26 RCW.

--- END ---