
SENATE BILL 6330

State of Washington

53rd Legislature

1994 Regular Session

By Senators Owen, Erwin and Hargrove

Read first time 01/19/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to parenting; amending RCW 26.09.002, 26.09.004,
2 26.09.184, 26.09.187, 26.09.194, 26.09.197, 26.09.255, 26.09.260,
3 26.09.285, and 26.26.160; reenacting and amending RCW 26.09.191 and
4 26.26.130; adding new sections to chapter 26.09 RCW; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 26.09.002 and 1987 c 460 s 2 are each amended to read
8 as follows:

9 Parents have the responsibility to make decisions and perform other
10 parental functions necessary for the care and growth of their minor
11 children. In any proceeding between parents under this chapter, the
12 best interests of the child, the rights of the child, and the rights of
13 the parents shall be the ((~~standard~~)) governing principles by which the
14 court determines and allocates the parties' parental responsibilities.
15 The state recognizes the fundamental importance of the parent-child
16 relationships to the welfare of the child, and that the relationship
17 between the child and each parent should be fostered unless
18 inconsistent with the child's best interests and proven harmful to the
19 child. The best interests of the child are served by a parenting

1 arrangement that best maintains a child's emotional (~~(growth)~~), mental,
2 and physical health, growth, and stability(~~(, and physical care)~~).
3 Further, the best interest of the child is ordinarily served when (~~(the~~
4 ~~existing pattern of interaction between a)~~) the continued and frequent
5 contact between each parent and child is divided equally or nearly
6 equally between the parents and is altered only to the extent
7 necessitated by the changed (~~(relationship)~~) geographic proximity of
8 the parents or as required to protect the child from physical, mental,
9 or emotional harm.

10 The policy of the state is that each minor child has the right to
11 emotionally bond with, and have natural affection and respect for, both
12 natural parents; each minor child has the right to frequent and
13 continuing contact with both natural parents; and equal or nearly equal
14 contact between both parents is fundamental to the child's natural and
15 maximal stability, emotional security, growth, and adjustment. Each
16 minor child has the right to perceive both parents as a parent of
17 natural authority and influence and each parent has the right to care,
18 custody, and control of his or her child. To fulfill these rights and
19 keep these aspects of a natural parent-child relationship intact is
20 most commonly in the child's, as well as society's, best interest.

21 The policy of the state is to encourage cooperation between the
22 parents in raising their child. In effectuating this policy, the
23 courts shall discourage and deter either parent's unjustified attempts
24 to interfere with the child's natural relationship with the other
25 parent, or with the fundamental and legal rights of the child or other
26 parent, or shall consider that the more cooperative and sharing parent
27 is commonly the most fit parent for being awarded greater parenting
28 rights, privileges, and responsibilities when necessary, and that this
29 would normally be in the best interest of the child. The court shall
30 extend the virtues of fairness, acceptance, cooperation, and
31 reasonableness, and the understanding that these characteristics are
32 paramount to the welfare of the child by means of a presumption in
33 favor of joint parenting.

34 The policy of the state is that neither parent shall be preferred
35 over the other in determining residential provisions, daily control,
36 custody of the child, financial support of the child, decision-making
37 authority, or parental rights, on the basis of gender or the past
38 performance of a predetermined particular parenting role or function.

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

3 The definitions in this section apply throughout this chapter.

4 (1) "Joint parenting" means both parents having: Equal custodial
5 rights, mutual decision-making authority or equal distribution of the
6 areas of decision-making authority, equal or nearly equal sharing of
7 parenting responsibilities, and equal residential parenting time or as
8 equal as possible as determined by the practicabilities of each case.

9 (2) "Temporary parenting plan" means a plan for parenting of the
10 child pending final resolution of any action for dissolution of
11 marriage, declaration of invalidity, or legal separation which is
12 incorporated in a temporary order.

13 (~~(2)~~) (3) "Permanent parenting plan" means a plan for parenting
14 the child, including allocation of parenting functions, which plan is
15 incorporated in any final decree or decree of modification in an action
16 for dissolution of marriage, declaration of invalidity, or legal
17 separation.

18 (~~(3)~~) (4) "Parenting functions" means those aspects of the
19 parent-child relationship in which the parent makes decisions and
20 performs functions necessary for the care and growth of the child.
21 Parenting functions include:

22 (a) Maintaining a loving, stable, consistent, and nurturing
23 relationship with the child;

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

30 (c) Attending to adequate education for the child, including
31 remedial or other education essential to the best interests of the
32 child;

33 (d) Assisting the child in developing and maintaining appropriate
34 interpersonal relationships;

35 (e) Exercising appropriate judgment regarding the child's welfare,
36 consistent with the child's developmental level and the family's social
37 and economic circumstances; and

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

1 **Sec. 3.** RCW 26.09.184 and 1991 c 367 s 7 are each amended to read
2 as follows:

3 (1) OBJECTIVES. The objectives of the permanent parenting plan are
4 to:

5 (a) Provide for the child's (~~(physical care))~~ mental, emotional,
6 and physical care and health;

7 (b) (~~(Maintain the child's emotional stability))~~ Provide for the
8 child's continuing and frequent contact with both parents;

9 (c) Provide for the child's changing needs as the child grows and
10 matures, in a way that minimizes the need for future modifications to
11 the permanent parenting plan;

12 (d) Set forth the authority and responsibilities of each parent
13 with respect to the child, consistent with RCW 26.09.002 and the
14 criteria in RCW 26.09.187 and 26.09.191;

15 (e) Minimize the child's exposure to harmful parental conflict by
16 ensuring that the more reasonable, cooperative, and sharing parent is
17 identified as the more fit parent to be named as residential parent or
18 custodial parent;

19 (f) Encourage the parents, where appropriate under RCW 26.09.187
20 and 26.09.191, to meet their responsibilities to their minor children
21 through agreements in the permanent parenting plan, rather than by
22 relying on judicial intervention; and

23 (g) To otherwise protect the best interests and rights of the child
24 and the rights of the parents consistent with RCW 26.09.002.

25 (2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent
26 parenting plan shall contain provisions for resolution of future
27 disputes between the parents, allocation of decision-making authority,
28 a statement regarding relocation with the child, the tax exemption for
29 the child, and residential provisions for the child.

30 (3) DISPUTE RESOLUTION. A process for resolving disputes, other
31 than court action, shall be provided unless precluded or limited by RCW
32 26.09.187 or 26.09.191. A dispute resolution process may include
33 counseling, mediation, or arbitration by a specified individual or
34 agency, or court action. In the dispute resolution process:

35 (a) Preference shall be given to carrying out the parenting plan;

36 (b) The parents shall use the designated process to resolve
37 disputes relating to implementation of the plan, except those related
38 to financial support, unless an emergency exists;

1 (c) A written record shall be prepared of any agreement reached in
2 counseling or mediation and of each arbitration award and shall be
3 provided to each party;

4 (d) If the court finds that a parent has used or frustrated the
5 dispute resolution process without good reason, the court shall award
6 attorneys' fees and financial sanctions to the prevailing parent;

7 (e) The parties have the right of review from the dispute
8 resolution process to the superior court; and

9 (f) The provisions of (a) through (e) of this subsection shall be
10 set forth in the decree.

11 (4) ALLOCATION OF DECISION-MAKING AUTHORITY.

12 (a) The plan shall allocate decision-making authority to one or
13 both parties regarding the children's education, health care, organized
14 extracurricular activities, and religious upbringing. The parties may
15 incorporate an agreement related to the care and growth of the child in
16 these specified areas, or in other areas, into their plan, consistent
17 with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the
18 allocation of decision-making in the parenting plan, either parent may
19 make ((emergency)) decisions affecting the health or safety of the
20 child.

21 (b) Each parent may make decisions regarding the day-to-day care
22 and control of the child while the child is residing with that parent.

23 (c) When mutual decision making is designated but cannot be
24 achieved, the parties shall make a good-faith effort to resolve the
25 issue through the dispute resolution process.

26 (5) RESIDENTIAL PROVISIONS FOR THE CHILD. The plan shall include
27 a residential schedule which designates in which parent's home each
28 minor child shall reside on given days of the year, including provision
29 for holidays, birthdays of family members, vacations, and other special
30 occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

31 (6) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply
32 with a provision of a parenting plan or a child support order, the
33 other parent's obligations under the parenting plan or the child
34 support order are not affected. Failure to comply with a provision in
35 a parenting plan or a child support order may result in a finding of
36 contempt of court, under RCW 26.09.160.

37 (7) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The
38 permanent parenting plan shall set forth the provisions of subsections
39 (3) (a) through (c), (4) (b) and (c), and (6) of this section.

1 **Sec. 4.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read
2 as follows:

3 (1) DISPUTE RESOLUTION PROCESS. The court shall ~~((not))~~ order a
4 dispute resolution process, ~~((except))~~ or court action, when it finds
5 that any limiting factor under RCW 26.09.191 applies ~~((, or when it~~
6 ~~finds that either parent is unable to afford the cost of the proposed~~
7 ~~dispute resolution process))~~. If a dispute resolution process is not
8 precluded or limited, then in designating such a process the court
9 shall consider all relevant factors, including:

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

12 (b) The parents' wishes or agreements and, if the parents have
13 entered into agreements, whether the agreements were made knowingly and
14 voluntarily; and

15 (c) Differences in the parents' financial circumstances that may
16 affect their ability to participate fully in a given dispute resolution
17 process.

18 (2) ~~((ALLOCATION OF DECISION-MAKING AUTHORITY.~~

19 ~~(a))~~ AGREEMENTS BETWEEN THE ~~((PARTIES))~~ PARENTS. The court shall
20 approve agreements of the parties allocating decision-making authority,
21 ~~((or specifying rules in the areas listed in RCW 26.09.184(4)(a))~~
22 regarding residential provisions, and selecting a dispute resolution
23 process, when it finds that:

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

26 ~~((ii))~~ (b) The agreement is knowing and voluntary.

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

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

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

32 ~~(iii) One parent is opposed to mutual decision making, and such~~
33 ~~opposition is reasonable based on the criteria in (c) of this~~
34 ~~subsection;~~

35 ~~(c))~~ (3) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in
36 ~~((a) and (b) of this subsection))~~ this section, the court shall
37 ~~((consider))~~ issue an order that will enable each parent to participate
38 in decision making in a manner consistent with subsection (5) of this

1 section and after considering the following criteria in allocating
2 decision-making authority:

3 ~~((i))~~ (a) The existence of a limitation under RCW 26.09.191; and
4 ~~((ii) The history of participation of each parent in decision~~
5 ~~making in each of the areas in RCW 26.09.184(4)(a);~~

6 ~~(iii) Whether the parents have a demonstrated ability and desire to~~
7 ~~cooperate with one another in decision making in each of the areas in~~
8 ~~RCW 26.09.184(4)(a); and~~

9 ~~(iv))~~ (b) The parents' geographic proximity to one another, to the
10 extent that ~~((it affects their ability to make timely mutual~~
11 ~~decisions))~~ the distance between the parents would make mutual or equal
12 distribution of decision making unworkable.

13 ~~((3))~~ (4) RESIDENTIAL PROVISIONS.

14 ~~((a))~~ The court shall make residential provisions for each child
15 which encourage each parent to maintain a loving, stable, and nurturing
16 relationship with the child, consistent with the child's developmental
17 level and the family's social and economic circumstances. ~~((The~~
18 ~~child's residential schedule shall be consistent with))~~ Except as
19 provided in subsection (2) of this section, the court shall issue an
20 order that provides frequent and continuing contact between the child
21 and both parents consistent with subsection (5) of this section and
22 after considering the criteria in RCW 26.09.191. Where the limitations
23 of RCW 26.09.191 are not dispositive of the child's residential
24 schedule, the court shall consider the following factors:

25 ~~((i) The relative strength, nature, and stability of the child's~~
26 ~~relationship with each parent, including whether a parent has taken~~
27 ~~greater responsibility for performing parenting functions relating to~~
28 ~~the daily needs of the child;~~

29 ~~(ii))~~ (a) Which parent is more likely to allow the child frequent
30 and continuing contact with, and encourage affection and respect for,
31 the other parent, or act with appropriate discretion in allowing
32 contact with, and natural affection and respect between, the child and
33 other parent while protecting the child from harm;

34 (b) The agreements of the parties, provided they were entered into
35 knowingly and voluntarily;

36 ~~((iii))~~ (c) Each parent's ~~((past and))~~ potential for future
37 performance of parenting functions;

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

1 ~~(v))~~ (d) The child's relationship with siblings and with other
2 significant adults, as well as the child's involvement with his or her
3 physical surroundings, school, or other significant activities;

4 ~~((vi))~~ (e) The wishes of the parents and the wishes of a child
5 who is sufficiently mature to express substantial reasoned and
6 independent preferences as to his or her residential schedule; and

7 ~~((vii))~~ (f) Each parent's employment schedule, and shall make
8 accommodations consistent with those schedules.

9 ~~((Factor (i) shall be given the greatest weight.~~

10 ~~(b) The court may order that a child frequently alternate his or~~
11 ~~her residence between the households of the parents for brief and~~
12 ~~substantially equal intervals of time only if the court finds the~~
13 ~~following:~~

14 ~~(i) No limitation exists under RCW 26.09.191;~~

15 ~~(ii)(A) The parties have agreed to such provisions and the~~
16 ~~agreement was knowingly and voluntarily entered into; or~~

17 ~~(B) The parties have a satisfactory history of cooperation and~~
18 ~~shared performance of parenting functions; the parties are available to~~
19 ~~each other, especially in geographic proximity, to the extent necessary~~
20 ~~to ensure their ability to share performance of the parenting~~
21 ~~functions; and~~

22 ~~((iii) The provisions are in the best interests of the child))~~

23 (5) DEVIATION FROM JOINT PARENTING.

24 (a) The court shall issue an order of joint parenting consistent
25 with the definition in RCW 26.09.004(1) and the provisions of this
26 section, unless:

27 (i) A parent waives his or her right to provisions of joint
28 parenting; or

29 (ii) The child who is sufficiently mature to express substantial
30 reasoned and independent preferences is opposed to joint parenting; or

31 (iii) The parent opposing joint parenting produces clear and
32 convincing evidence that limitations or restrictions to equal parenting
33 are required to protect the child from physical, mental, or emotional
34 harm consistent with RCW 26.09.191.

35 (b) If the court finds that such limitations or restrictions are
36 necessary, the court shall do so in a manner least restrictive to the
37 best interest of the child and the rights of the child and the parents,
38 as set forth in RCW 26.09.002. If the court finds it is necessary to

1 limit or restrict joint parenting, it shall issue written findings of
2 fact and conclusions of law specifying the reasons.

3 **Sec. 5.** RCW 26.09.191 and 1989 c 375 s 11 and 1989 c 326 s 1 are
4 each reenacted and amended to read as follows:

5 (1) The court shall appropriately consider equal distribution of
6 the area of decision-making authority as set forth in RCW
7 26.09.184(4)(a), however, the permanent parenting plan shall not
8 require mutual decision-making or designation of a dispute resolution
9 process other than court action if it is found that a parent has
10 engaged in any of the following conduct: (a) Willful abandonment that
11 continues for ((an extended)) a period of proven or verified time or
12 substantial refusal to perform parenting functions; (b) that there is
13 proven probable cause that a parent has or if a parent has been
14 convicted of physical, sexual, or has been proven to have conducted a
15 pattern of emotional abuse of a child; or (c) a proven history of acts
16 of domestic violence as defined in RCW 26.50.010(1) against the child
17 or an assault or sexual assault which causes grievous bodily harm or
18 the fear of such harm to the child.

19 (2)(a) The parent's residential time with the child shall be
20 limited in a manner consistent with RCW 26.09.187(5) if it is found
21 that the parent has probable cause to prove or has been proven to have
22 engaged in any of the following conduct: (i) Willful abandonment that
23 continues for an extended period of time or substantial refusal to
24 perform parenting functions; (ii) physical, sexual, or a pattern of
25 emotional abuse of a child; or (iii) a history of acts of domestic
26 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
27 which causes grievous bodily harm or the fear of such harm to the
28 child.

29 (b) The limitations imposed by the court shall be reasonably
30 calculated to protect the child from physical, sexual, or emotional
31 abuse or harm that could result if the child has contact with the
32 parent requesting residential time. If the court expressly finds, by
33 law, limitation on the residential time with the child will not
34 adequately protect the child from the harm or abuse that could result
35 if the child has contact with the parent requesting residential time,
36 the court shall restrain the parent requesting residential time from
37 all contact with the child.

1 (c) If the court expressly finds, by law, that contact between the
2 parent and the child will not cause physical, sexual, or emotional
3 abuse or harm to the child and that the probability that the parent's
4 harmful or abusive conduct will recur is so remote that it would not be
5 in the child's best interests to apply the limitations of (a) and (b)
6 of this subsection, or if the court expressly finds the parent's
7 conduct did not have an impact on the child, then the court need not
8 apply the limitations of (a) and (b) of this subsection. The weight
9 given to the existence of a protection order issued under chapter 26.50
10 RCW as to domestic violence is limited by law and within the discretion
11 of the court.

12 (3) A parent's involvement or conduct may have an adverse effect on
13 the child's best interests and bring harm to the child, and the court
14 may preclude or limit any provisions of the parenting plan in a manner
15 consistent with RCW 26.09.187(5), if any of the following factors
16 exist:

17 (a) A parent's neglect or substantial nonperformance of parenting
18 functions;

19 (b) A long-term emotional or physical impairment which (~~interferes~~
20 ~~with the parent's performance of~~) makes the parent unable to perform
21 parenting functions as defined in RCW 26.09.004;

22 (c) A proven long-term impairment resulting from drug, alcohol, or
23 other substance abuse that interferes with the performance of parenting
24 functions;

25 (d) The absence or substantial impairment of emotional ties between
26 the parent and the child;

27 (e) The abusive use of conflict by the parent which creates the
28 danger of serious damage to the child's psychological development;

29 (f) A parent has withheld from the other parent access to the child
30 for a protracted period without good cause; (~~or~~)

31 (g) A parent without just cause attempts to interfere with the
32 natural affection, bonding, or respect of a child toward the other
33 parent;

34 (h) A parent without just cause attempts to debase or nullify the
35 natural parenting role of the other parent; or

36 (i) Such other factors or conduct as the court expressly finds
37 adverse to the best interests of the child.

1 (4) In entering a permanent parenting plan, the court shall not
2 draw any presumptions from the provisions of the temporary parenting
3 plan.

4 (5) In determining whether any of the conduct described in this
5 section has occurred, the court shall apply the ~~((civil))~~ criminal
6 rules of evidence, proof, and procedure.

7 **Sec. 6.** RCW 26.09.194 and 1987 c 460 s 13 are each amended to read
8 as follows:

9 (1) A parent seeking a temporary order relating to parenting shall
10 file and serve a proposed temporary parenting plan by motion. The
11 other parent, if contesting the proposed temporary parenting plan,
12 shall file and serve a responsive proposed parenting plan. Either
13 parent may move to have a proposed temporary parenting plan entered as
14 part of a temporary order. The parents may enter an agreed temporary
15 parenting plan at any time as part of a temporary order. The proposed
16 temporary parenting plan may be supported by relevant evidence and
17 shall be accompanied by an affidavit or declaration which shall state
18 at a minimum the following:

19 (a) ~~The name((, address, and length of residence with the person or~~
20 ~~persons with whom the child has lived for the preceding twelve months))~~
21 and address of the affiant;

22 (b) ~~((The performance by each parent during the last twelve months~~
23 ~~of the parenting functions relating to the daily needs of the child))~~
24 The amount of residential time the affiant is willing to grant the
25 other parent;

26 (c) The degree to which the affiant is willing to cooperate with
27 the other parent in mutual decision making, or which area of decision-
28 making authority listed in RCW 26.09.184(4)(a) the affiant is willing
29 to grant the other parent;

30 (d) The parents' work and child-care schedules for the preceding
31 twelve months;

32 ~~((d))~~ (e) The parents' ((current)) proposed work and child-care
33 schedules; and

34 ~~((e))~~ (f) Any of the circumstances set forth in RCW 26.09.191
35 that are likely to pose a serious risk to the child and that warrant
36 limitation on the award to a parent of temporary residence or time with
37 the child pending entry of a permanent parenting plan, and the
38 affiant's proposed restrictions or limitations protecting the child

1 from harm yet limiting the child's and parent's rights in the least
2 restrictive manner.

3 (2) At the hearing, the court shall enter a temporary parenting
4 order consistent with RCW 26.09.187(5) incorporating a temporary
5 parenting plan which includes:

6 (a) A schedule for the child's time with each parent when
7 appropriate;

8 ~~(b) ((Designation of a temporary residence for the child;~~

9 ~~(c)) Allocation of decision-making authority((, if any. Absent~~
10 ~~allocation of decision-making authority)) consistent with RCW~~
11 ~~26.09.187((2), neither party shall make any decision for the child~~
12 ~~other than those relating to day-to-day or emergency care of the child,~~
13 ~~which shall be made by the party who is present with the child)) (1)~~
14 and (3);

15 ~~((d)) (c) Provisions for temporary support for the child; and~~

16 ~~((e)) (d) Restraining orders, if applicable, under RCW 26.09.060.~~

17 (3) A parent may make a motion for an order to show cause and the
18 court may enter a temporary order, including a temporary parenting
19 plan, upon a showing of necessity.

20 (4) A parent may move for amendment of a temporary parenting plan,
21 and the court may order amendment to the temporary parenting plan, if
22 the amendment conforms to the limitations of RCW 26.09.191 and is in
23 the best interest of the child, and is consistent with RCW
24 26.09.187(5).

25 (5) If a proceeding for dissolution of marriage, legal separation,
26 paternity action, or declaration of invalidity is dismissed, any
27 temporary order or temporary parenting plan is vacated.

28 **Sec. 7.** RCW 26.09.197 and 1987 c 460 s 14 are each amended to read
29 as follows:

30 After considering the affidavit required by RCW 26.09.194(1) and
31 other relevant evidence presented, the court shall make a temporary
32 parenting plan that is in the best interest of the child and considers
33 the rights of the child and the rights of the parents consistent with
34 RCW 26.09.187(5). In making this determination, the court shall give
35 particular consideration to:

36 (1) Which parent ~~((has taken greater responsibility during the last~~
37 ~~twelve months for performing parenting functions relating to the daily~~
38 ~~needs of the child))~~ is more likely to allow the child frequent and

1 continuing contact between the child and the other parent and encourage
2 the child's natural affection and respect toward the other parent, or
3 act with appropriate discretion in allowing contact with and natural
4 affection and respect between the child and other parent while
5 protecting the child from harm; and

6 (2) Which parenting arrangements will cause the least disruption to
7 the child's emotional stability as described in RCW 26.09.002 while the
8 action is pending.

9 The court shall also consider the factors used to determine
10 residential provisions in the permanent parenting plan.

11 **Sec. 8.** RCW 26.09.255 and 1987 c 460 s 22 are each amended to read
12 as follows:

13 A relative, as defined in RCW 9A.40.010, may bring civil action
14 against any other relative if, with intent to deny access to a child by
15 that relative of the child who has a right to physical custody of or
16 visitation with the child or a parent (~~((with whom the child resides~~
17 ~~pursuant to a parenting plan order))~~ who has a right to time with the
18 child under the child's residential schedule, the relative takes,
19 entices, or conceals the child from that relative. The plaintiff may
20 be awarded, in addition to any damages awarded by the court, the
21 reasonable expenses incurred by the plaintiff in locating the child,
22 including, but not limited to, investigative services and reasonable
23 attorneys' fees.

24 **Sec. 9.** RCW 26.09.260 and 1991 c 367 s 9 are each amended to read
25 as follows:

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

34 (2) In applying these standards, the court shall retain the
35 residential schedule established by the decree or parenting plan
36 unless:

37 (a) The parents agree to the modification;

1 (b) The existing decree or parenting plan does not provide equal
2 parenting as defined in RCW 26.09.004(1);

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

6 ~~((e))~~ (d) The child's present environment is detrimental to the
7 child's physical, mental, or emotional health and the harm likely, as
8 defined in RCW 26.09.191, to be caused by a change of environment is
9 outweighed by the advantage of a change to the child; or

10 ~~((d))~~ (e) The court has found the nonmoving parent in contempt of
11 court at least twice within three years because the parent failed to
12 comply with the residential time provisions in the court-ordered
13 parenting plan, or the parent has been convicted of custodial
14 interference in the first or second degree under RCW 9A.40.060 or
15 9A.40.070.

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

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

23 ~~(a) Modification in the dispute resolution process; or~~

24 ~~(b) Minor modification in the residential schedule that:~~

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

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

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

32 ~~(5))~~ Motion for modification of a decree or parenting plan
33 regarding residential provisions or decision-making authority shall be
34 accompanied by an affidavit or declaration with the same minimum
35 requirements as directed in RCW 26.09.194(1) (a) through (f). If the
36 nonmoving party wishes to contest the motion a responding affidavit
37 with the same minimum requirements is also required prior to a hearing
38 or trial.

1 (5) In determining a modification required by the relocation or
2 proposed relocation of one parent the court shall give preference to
3 the wishes of the parent not relocating, the wishes of a child who is
4 sufficiently mature to express reasoned and independent preference as
5 to his or her residential schedule, and the best interest of the child,
6 over the wishes of the relocating parent.

7 (6) Modifications granted under this section shall be consistent
8 with RCW 26.09.187(5).

9 (7) If the court finds that a motion to modify a prior decree or
10 parenting plan has been brought in bad faith, the court shall assess
11 the attorney's fees and court costs of the nonmoving parent against the
12 moving party.

13 **Sec. 10.** RCW 26.09.285 and 1989 c 375 s 16 are each amended to
14 read as follows:

15 Solely for the purposes of all other state and federal statutes
16 which require a designation or determination of ~~((custody))~~ a sole
17 custodian, a parenting plan shall designate ~~((the parent with whom the~~
18 ~~child is scheduled to reside a majority of the time))~~ one parent as the
19 custodian of the child for the sole and stated purpose of accommodating
20 the specific state or federal statute. However, this designation shall
21 not affect either parent's rights and responsibilities under the
22 parenting plan. ~~((In the absence of such a designation, the parent~~
23 ~~with whom the child is scheduled to reside the majority of the time~~
24 ~~shall be deemed to be the custodian of the child))~~ The court shall
25 consider which parent is more likely to allow the child frequent and
26 continued contact with, and encourage affection and respect for, the
27 other parent or act with appropriate discretion in allowing contact
28 with, and natural affection and respect between, the child and the
29 other parent while protecting the child from harm and which parent is
30 least likely to abuse said authority for the purposes of such federal
31 and state statutes.

32 NEW SECTION. **Sec. 11.** A new section is added to chapter 26.09 RCW
33 to read as follows:

34 Both natural parents shall obtain legal custody of their minor
35 child unless clear, convincing, and cogent evidence that proves that
36 severing of a parent's right to legal custody is necessary to protect
37 the child from harm is presented to the court.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 26.09 RCW
2 to read as follows:

3 A parent's right of mobility does not automatically include the
4 right to interfere with the best interest of the child, the child's
5 right to have contact with the other parent, or the rights of the other
6 parent, consistent with this chapter. Unless otherwise provided in the
7 decree or parenting plan neither parent may remove the child for the
8 purposes of changing residence or relocating for a protracted period of
9 time to a geographic distance that would substantially affect
10 provisions of the decree or parenting plan, without first obtaining
11 notarized consent from the other parent or a court ordered modification
12 consistent with RCW 26.09.260(5).

13 NEW SECTION. **Sec. 13.** A new section is added to chapter 26.09 RCW
14 to read as follows:

15 It shall be determined in the parenting plan which parent may claim
16 the tax exemption for each child. The court shall order alternating
17 the tax exemption of the child on an annual basis or, if more than one
18 child, shall order equal exemptions. This provision may be modified by
19 mutual written agreement of each of the parents and, if modified,
20 governed by the principles of just compensation.

21 **Sec. 14.** RCW 26.26.130 and 1989 c 375 s 23 and 1989 c 360 s 18 are
22 each reenacted and amended to read as follows:

23 (1) The judgment and order of the court determining the existence
24 or nonexistence of the parent and child relationship shall be
25 determinative for all purposes.

26 (2) If the judgment and order of the court is at variance with the
27 child's birth certificate, the court shall order that an amended birth
28 certificate be issued.

29 (3) The judgment (~~and~~), order, and parenting plan shall contain
30 other appropriate provisions directed to the appropriate parties to the
31 proceeding, concerning the duty of current and future support, the
32 extent of any liability for past support furnished to the child if that
33 issue is before the court, the custody and guardianship of the child,
34 visitation privileges with the child, if appropriate, residential time,
35 decision-making authority, parenting rights, the furnishing of bond or
36 other security for the payment of the judgment, or any other matter in
37 the best interest of the child consistent with chapter 26.09 RCW. The

1 judgment and order may direct the father and the mother to pay the
2 reasonable expenses of their child's delivery, costs of the mother's
3 pregnancy and confinement based on the parties proportional share of
4 income.

5 (4) Support judgment and orders shall be for periodic payments
6 which may vary in amount. The court may limit the father's liability
7 for the past support to the child to the proportion of the expenses
8 already incurred as the court deems just. The court shall not limit or
9 affect in any manner the right of nonparties including the state of
10 Washington to seek reimbursement for support and other services
11 previously furnished to the child.

12 ~~(5) ((After considering all relevant factors, the court shall order~~
13 ~~either or both parents to pay an amount determined pursuant to the~~
14 ~~schedule and standards adopted under *RCW 26.19.040.~~

15 ~~(6) On the same basis as provided in chapter 26.09 RCW, the court~~
16 ~~shall make residential provisions with regard to minor children of the~~
17 ~~parties, except that a parenting plan shall not be required unless~~
18 ~~requested by a party.~~

19 ~~(7))~~ Upon the court's determining the existence of the father and
20 child relationship it shall be assumed that the rights and the needs of
21 the child are the same as those of a dissolved marriage and that the
22 parenting rights and responsibilities of the father are equal to those
23 of the mother in determining a judgment, order, and parenting plan. A
24 parenting plan shall be determined under chapter 26.09 RCW. However,
25 if it is found that there exists an absence or substantial impairment
26 of emotional ties between a parent and the child, consideration may be
27 given to allowing an appropriate period for integration of the child
28 into the family, in consideration of the child's emotional welfare and
29 the best interests.

30 (6) In any dispute between the natural parents of a child and a
31 person or persons who have (a) commenced adoption proceedings or who
32 have been granted an order of adoption, and (b) pursuant to a court
33 order, or placement by the department of social and health services or
34 by a licensed agency, have had actual custody of the child for a period
35 of one year or more before court action is commenced by the natural
36 parent or parents, the court shall consider ~~((the best welfare and~~
37 ~~interests of the child, including the child's need for situation~~
38 ~~stability, in determining the matter of custody, and the parent or~~

1 ~~person who is more fit shall have the superior right to custody)) the~~
2 action under chapter 26.10 RCW.

3 **Sec. 15.** RCW 26.26.160 and 1992 c 229 s 8 are each amended to read
4 as follows:

5 (1) Except as provided in subsection (2) of this section the court
6 has continuing jurisdiction to prospectively modify a judgment and
7 order for future education and future support, and with respect to
8 matters listed in RCW 26.26.130 (3) and (4), and RCW 26.26.150(2)
9 (~~upon showing a substantial change of circumstances~~) on the same
10 basis as provided in RCW 26.09.260. The procedures set forth in RCW
11 26.09.175 shall be used in modification proceedings under this section.

12 (2) A judgment or order entered under this chapter may be modified
13 without a showing of substantial change of circumstances upon the same
14 grounds as RCW 26.09.170 permits support orders to be modified without
15 a showing of a substantial change of circumstance.

16 (~~(3) The court may modify a parenting plan or residential~~
17 ~~provisions adopted pursuant to RCW 26.26.130(6) in accordance with the~~
18 ~~provisions of chapter 26.09 RCW.))~~

19 NEW SECTION. **Sec. 16.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and shall take
26 effect immediately.

--- END ---