
SENATE BILL 5633

State of Washington

58th Legislature

2003 Regular Session

By Senator Kastama

Read first time 02/03/2003. Referred to Committee on Children & Family Services & Corrections.

1 AN ACT Relating to changing how the court determines the allocation
2 of residential time between parents; amending RCW 26.09.187; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature makes the following
6 findings:

7 (a) The 1987 legislature approved a new parenting act based on a
8 forty-page intent section titled "Replacing the Concept of Child
9 Custody - Commentary and Text," and this positive legislative action
10 was based on:

11 (i) A desire to update family law practices to be more reflective
12 of our current social practices and desires involving each parent with
13 their children of divorce;

14 (ii) A belief that use of statutory terms "child custody" and
15 "visitation" was outdated as children were not currently seen as
16 visitors to their second parents, and general practices too often
17 reflected a "win-lose" adversarial process, and in too many cases the
18 children were seemingly also divorced from the second parent;

1 (iii) Social science research had determined that in most cases,
2 but certainly not all, it was in the best interest of the children,
3 emotionally, psychologically, physically, and financially, to have an
4 active relationship with both parents, although legal system maintained
5 the old practices of limiting the children to "every other weekend"
6 with the second parent in nearly eighty percent of the cases;

7 (iv) There was a new belief that family law had to move away from
8 a notion of parents fighting to reestablish parental rights in a
9 divorce, a new reality needed to be instituted that placed a "duty" on
10 parents to remain involved in their children's lives, and parenting
11 plan documents were created to reflect a more accurate distribution of
12 parenting responsibilities based on actual parenting practices rather
13 than the previous "winner take all" approach that included
14 disproportionate parenting responsibilities and disregarded the
15 importance of parental involvement of the second parent; and

16 (v) Courthouse practices were previously based on limited knowledge
17 of the social research relating to children of divorce and it was
18 obvious that "every other weekend" was an easy court order to write
19 based on the previous reality that most primary working parents were
20 employed for five-day work weeks. It was necessary to create parenting
21 plan documents that required detailed specific residential schedules to
22 move away from almost automatic orders placing children with the second
23 parent on an every other weekend schedule;

24 (b) The Washington supreme court in 1999 researched permanent
25 parenting plan documents and found an unjustifiable number of decisions
26 where the second parent was still arbitrarily limited to every-other-
27 weekend residential schedules with their children; and

28 (c) The various institutions with an interest in family law have
29 failed to develop better processes to provide for a better and more
30 effective, and less adversarial, distribution of parenting time between
31 mothers and fathers to share the upbringing of their children of
32 divorce.

33 (2) The legislature intends to give direction to our judicial
34 system to ensure better outcomes for children of divorce and assure the
35 continuing involvement of each parent.

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

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

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

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

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

16 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

17 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve
18 agreements of the parties allocating decision-making authority, or
19 specifying rules in the areas listed in RCW 26.09.184(4)(a), when it
20 finds that:

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

23 (ii) The agreement is knowing and voluntary.

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

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

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

29 (iii) One parent is opposed to mutual decision making, and such
30 opposition is reasonable based on the criteria in (c) of this
31 subsection((+)).

32 (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)
33 and (b) of this subsection, the court shall consider the following
34 criteria in allocating decision-making authority:

35 (i) The existence of a limitation under RCW 26.09.191;

36 (ii) The history of participation of each parent in decision making
37 in each of the areas in RCW 26.09.184(4)(a);

1 (iii) Whether the parents have a demonstrated ability and desire to
2 cooperate with one another in decision making in each of the areas in
3 RCW 26.09.184(4)(a); and

4 (iv) The parents' geographic proximity to one another, to the
5 extent that it affects their ability to make timely mutual decisions.

6 (3) RESIDENTIAL PROVISIONS.

7 (a) The court shall make residential provisions for each child
8 which encourage each parent to maintain a loving, stable, and nurturing
9 relationship with the child, consistent with the child's developmental
10 level and the family's social and economic circumstances. The child's
11 residential schedule shall be consistent with RCW 26.09.191. There is
12 a presumption that the child's residential schedule shall include at
13 least one-third of a year in which the child resides with or is under
14 the actual, direct, day-to-day care and supervision of each of the
15 parents.

16 Where the limitations of RCW 26.09.191 are not dispositive of the
17 child's residential schedule, the court shall consider the following
18 factors:

19 (i) The relative strength, nature, and stability of the child's
20 relationship with each parent(~~(, including)~~);

21 (ii) Whether a parent has taken greater responsibility for
22 performing parenting functions relating to the daily needs of the
23 child;

24 (~~(iii)~~) (iii) The agreements of the parties, provided they were
25 entered into knowingly and voluntarily;

26 (~~(iii)~~) (iv) Each parent's past and potential for future
27 performance of parenting functions;

28 (~~(iv)~~) (v) The emotional needs and developmental level of the
29 child;

30 (~~(v)~~) (vi) The child's relationship with siblings and with other
31 significant adults, as well as the child's involvement with his or her
32 physical surroundings, school, or other significant activities;

33 (~~(vi)~~) (vii) The wishes of the parents and the wishes of a child
34 who is sufficiently mature to express reasoned and independent
35 preferences as to his or her residential schedule; and

36 (~~(vii)~~) (viii) Each parent's employment schedule, and shall make
37 accommodations consistent with those schedules.

38 Factor (i) shall be given the greatest weight.

1 (b) The court may order that a child frequently alternate his or
2 her residence between the households of the parents for brief and
3 substantially equal intervals of time only if the court finds the
4 following:

5 (i) No limitation exists under RCW 26.09.191;

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

8 (B) The parties have a satisfactory history of cooperation and
9 shared performance of parenting functions; the parties are available to
10 each other, especially in geographic proximity, to the extent necessary
11 to ensure their ability to share performance of the parenting
12 functions; and

13 (iii) The provisions are in the best interests of the child.

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