

SHB 2979 - S AMD
By Senator Kastama

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that fostering deep
4 connections with both parents can help children develop a solid sense
5 of cultural identity and individuality. The legislature intends to
6 encourage the courts of our state to support frequent and significant
7 contacts between both parents and their children when it is in the best
8 interests of those children.

9 **Sec. 2.** RCW 26.09.002 and 1987 c 460 s 2 are each amended to read
10 as follows:

11 Parents have the responsibility to make decisions and perform other
12 parental functions necessary for the care and growth of their minor
13 children. In any proceeding between parents under this chapter, the
14 best interests of the child shall be the standard by which the court
15 determines and allocates the parties' parental responsibilities. The
16 state recognizes the fundamental importance of the parent-child
17 relationship to the welfare of the child, and that the relationship
18 between the child and each parent should be fostered unless
19 inconsistent with the child's best interests. The best interests of
20 the child are served by a parenting arrangement that best maintains a
21 child's emotional growth, health and stability, and physical care,
22 therefore there shall be a presumption in favor of shared parental
23 responsibility unless it is not in the child's best interest. Further,
24 the best interest of the child is ordinarily served when the existing
25 pattern of interaction between a parent and child is altered only to
26 the extent necessitated by the changed relationship of the parents or
27 as required to protect the child from physical, mental, or emotional
28 harm.

1 **Sec. 3.** 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) "Temporary parenting plan" means a plan for parenting of the
5 child pending final resolution of any action for dissolution of
6 marriage, declaration of invalidity, or legal separation which is
7 incorporated in a temporary order.

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

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

17 (a) Maintaining a loving, stable, consistent, and nurturing
18 relationship with the child;

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

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

27 (d) Assisting the child in developing and maintaining appropriate
28 interpersonal relationships;

29 (e) Exercising appropriate judgment regarding the child's welfare,
30 consistent with the child's developmental level and the family's social
31 and economic circumstances; and

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

33 (4) "Shared parental responsibility" means shared residential
34 placement and mutual decision-making authority.

35 (5) "Shared residential placement" means an order awarding each of
36 the parents periods of time, amounting to at least one-third of a year,
37 in which a child resides with or is under the actual, direct, day-to-
38 day care and supervision of each of the parents. "Shared residential

1 placement" does not necessarily mean the child must alternate his or
2 her residence between the households of the parents for brief periods
3 of time.

4 NEW SECTION. Sec. 4. A new section is added to chapter 26.09 RCW
5 to read as follows:

6 (1) There shall be a presumption that shared parental
7 responsibility is in the best interests of children unless:

8 (a) The parents have agreed to an alternate award of residential
9 placement or decision-making authority to only one parent;

10 (b) The limitations of RCW 26.09.191 are dispositive of the child's
11 residential schedule; or

12 (c) The court finds that shared parental responsibility would be
13 detrimental due to the age or needs of the child or children.

14 (2) A parent alleging that shared parental responsibility would be
15 detrimental to the child or children shall have the burden of
16 establishing the allegation by a preponderance of the evidence.

17 (3) If a parent alleges that shared parental responsibility would
18 be detrimental to a particular child, the court, in making a
19 determination whether a shared parental responsibility order is
20 appropriate, may direct that an investigation be conducted in
21 accordance with the provisions of RCW 26.09.220. If the court declines
22 to enter a shared parental responsibility order under this section, the
23 court shall enter findings of fact and conclusions of law stating the
24 reasons that shared parental responsibility is not in the best interest
25 of the child.

26 **Sec. 5.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read
27 as follows:

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

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

1 (b) The parents' wishes or agreements and, if the parents have
2 entered into agreements, whether the agreements were made knowingly and
3 voluntarily; and

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

7 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

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

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

14 (ii) The agreement is knowing and voluntary.

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

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

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

20 (iii) One parent is opposed to mutual decision making, and such
21 opposition is reasonable based on the criteria in (c) of this
22 subsection;

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

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

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

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

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

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 nurturing
37 relationship with the child, consistent with the best interests of the
38 child, the child's developmental level, and the family's social,

1 cultural, and economic circumstances. There is a presumption that the
2 child's residential schedule shall provide shared parental
3 responsibility in accordance with section 4 of this act. The child's
4 residential schedule shall be consistent with RCW 26.09.191. Where the
5 limitations of RCW 26.09.191 are not dispositive of the child's
6 residential schedule, the court shall consider the following factors:

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

11 (ii) The agreements of the parties, provided they were entered into
12 knowingly and voluntarily;

13 (iii) Each parent's past and potential for future performance of
14 parenting functions;

15 (iv) The emotional needs and developmental level of the child and
16 any special physical needs of the child;

17 (v) Whether the child is a nursing child;

18 (vi) The child's relationship with siblings and with other
19 significant adults, as well as the child's involvement with his or her
20 physical surroundings, school, or other significant activities;

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

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

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

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

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

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

34 (B) ~~The parties have a satisfactory history of cooperation and~~
35 ~~shared performance of parenting functions; the parties are available to~~
36 ~~each other, especially in geographic proximity, to the extent necessary~~
37 ~~to ensure their ability to share performance of the parenting~~
38 ~~functions; and~~

1 ~~(iii) The provisions are in the best interests of the child.)~~ For
2 any child, residential provisions may contain any reasonable terms or
3 conditions that facilitate the orderly and meaningful exercise of
4 residential time by a parent, including one or more of the following:

5 (i) Requirements that residential times be specified;

6 (ii) Requirements of reasonable notice when residential time will
7 not occur;

8 (iii) Any other reasonable condition determined to be appropriate
9 in the particular case including but not limited to a domestic violence
10 assessment.

11 (c) In any parenting plan in which the court finds that the parties
12 do not have a satisfactory history of cooperation or the limitations of
13 RCW 26.09.191 are dispositive; to the extent necessary, the parenting
14 plan shall include a safe, neutral, and public location for the
15 exchange of the child such as a school, day care, place of worship, or
16 any other appropriate public facility.

17 NEW SECTION. Sec. 6. The administrative office of the courts,
18 pursuant to funding provided specifically for this purpose, shall
19 commission a study to commence by September 1, 2006. The study shall
20 survey a statistically relevant number of geographically diverse final
21 parenting plans in Washington to determine the allocation of
22 residential time as between parents, including an analysis of gender
23 disparities between parents, and the impact of legal counsel on
24 outcomes of parenting plan disputes. The study shall be completed and
25 a report provided to the legislature, the governor, and to the public
26 within two years of the effective date of this section."

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27 On page 1, line 2 of the title, after "plans;" strike the remainder
28 of the title and insert "amending RCW 26.09.002, 26.09.004, and
29 26.09.187; adding a new section to chapter 26.09 RCW; and creating new

1 sections."

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