

SENATE BILL REPORT

SB 5212

As Reported by Senate Committee On:
Human Services & Corrections, February 10, 2009

Title: An act relating to the modification of parenting plans based on the military service of a parent.

Brief Description: Modifying parenting plans based on the military service of a parent.

Sponsors: Senators Kilmer, Kline, McCaslin, Hewitt, Haugen, Shin and Becker; by request of Washington State Bar Association.

Brief History:

Committee Activity: Human Services & Corrections: 1/29/09, 2/10/09 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5212 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell and Kauffman.

Staff: Jennifer Strus (786-7316)

Background: In dissolution cases in which minor children are involved, the parties must have a parenting plan that provides for the care of those children. The parenting plan must include an allocation of decision-making authority to one or both parents regarding the child's education, health care, and religious upbringing. The parenting plan must also set forth the child's residential time with each parent. The plan must include a specific residential schedule designating in which parent's home the child will reside on given days of the year.

Once a parenting plan is final, courts favor stability for the child and will not modify the parenting plan unless certain circumstances exist. The court can modify the nonresidential portions of a parenting plan upon a showing of a substantial change of circumstances to the child or either parent and the modification is in the child's best interest.

To modify the residential portions of a parenting plan, there must be a substantial change in circumstances to the child or the parent not requesting the modification and the modification

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must be necessary to serve the child's best interests. In addition, the court must find that either: (1) the parents agree to the modification; (2) the child has been integrated into the petitioning parent's family with the other parent's consent in substantial deviation from the original parenting plan; (3) the child's present environment is detrimental to the child; or (4) the court has found the nonmoving parent in contempt of court at least twice in three years for failure to comply with residential time ordered.

If a parent with whom the child does not reside a majority of time (noncustodial parent) fails to exercise residential time with the child for an extended period (one year or longer), then the court may make adjustments to the parenting plan in keeping with the child's best interest.

Summary of Bill (Recommended Substitute): Procedures are created to address changes in a custody decree or parenting plan when a parent is unable to exercise residential time or visitation because of the parent's military duties.

The effects of a parent's "military duties potentially impacting parenting functions" must not, by itself, be a substantial change of circumstances justifying a permanent modification of a parenting plan. For noncustodial parents, in determining whether the parent has failed to exercise residential time for one year or longer, the court cannot count any time periods that the parent did not exercise residential time due to the bona fide effect of the parent's military duties potentially impacting parenting functions.

A court may enter a temporary custody order for the child if the parent with whom the child resides a majority of time receives military orders (temporary duty, deployment, activation, or mobilization) that involve moving a substantial distance away or that would have a material effect on the parent's ability to exercise parenting functions and responsibilities. However, the temporary custody order for the child during the parent's absence must end no later than ten days after the returning parent gives notice to the temporary custodian. This does not impair the court's ability to conduct an expedited or emergency hearing to resolve the child's residential placement upon the parent's return and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child.

When a parent receives military orders that involve moving a substantial distance away or would have a material effect on the parent's ability to exercise residential time or visitation rights, the court at the request of the parent may delegate the military parent's time to a family member or another person other than a parent with a close and substantial relationship to the child, if such delegation is in the child's best interest. The court may not delegate residential time or visitation to a person who would otherwise be restricted due to abuse, abandonment, or other statutorily established factors under existing law.

The parties must try to resolve disputes about delegation through the dispute resolution process specified in their parenting plan, unless the court excuses them for good cause. The delegation does not create separate rights to residential time or visitation for the person other than a parent.

Upon a motion by the parent and for good cause shown, the court must hold an expedited hearing in custody and visitation matters when a parent's military duties have a material

effect on the parent's ability to appear in person at a hearing. The court must also allow the parent to present testimony and evidence by electronic means.

"Military duties potentially impacting parenting functions" means those obligations imposed, voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that parent's abilities to fulfill his or her responsibilities under a parenting plan. It includes but is not limited to deployment, activation, mobilization, and temporary duty.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): The substitute bill clarifies language regarding whether the court can consider the time period that the noncustodial parent failed to exercise residential time due to military duties; clarifies that the family member or other person to whom residential time or visitation is delegated must be someone other than a parent and must have a close and substantial relationship to the child; clarifies that the delegation occur at the request of the parent; and requires parties to use the dispute resolution process when there is a dispute about delegation of residential time, not just visitation.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Parenting plans are complicated but are even more so when one of the parents is in the military. Military parents' visitation with their children should not become problematic because of their military service. This bill would allow for an expedited hearing as well as electronic testimony if the military parent is unable to attend the hearing. Some courts currently allow this but the bill would mandate it for those that do not. A number of parents have had to litigate these issues because there is no protection in current law, and this bill would help to reduce that. Military parents should not be penalize.

Persons Testifying: PRO: Senator Kilmer, prime sponsor; Rick Bartholomew, Washington State Bar Association; Mark San Souci, Department of Defense; Major General Timothy Lowenberg, State Military Department; Colonel John Carpenter, National Guard.