

HOUSE BILL REPORT

SSB 5399

As Passed House:
April 10, 2019

Title: An act relating to child relocation by a person with substantially equal residential time.

Brief Description: Concerning child relocation by a person with substantially equal residential time.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Walsh, Dhingra, Frockt, Kuderer, Salomon, Mullet, Palumbo, Holy, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/15/19, 3/22/19 [DP].

Floor Activity:

Passed House: 4/10/19, 63-32.

Brief Summary of Substitute Bill

- Provides that the Relocation Act applies to parenting plans where the parents have substantially equal residential time with the child.
- Eliminates the presumption in favor of relocation in cases where the parents have substantially equal residential time and requires the court determination to be based on the best interests of the child considering statutory factors.
- Establishes standards for determining substantially equal residential time.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Klippert, Orwall, Valdez, Walen and Ybarra.

Minority Report: Do not pass. Signed by 2 members: Representatives Dufault, Assistant Ranking Minority Member; Shea.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 1 member: Representative Graham.

Staff: Edie Adams (786-7180).

Background:

In dissolution or legal separation cases in which there are minor children, the court must establish a parenting plan that provides for the care of the minor children. The parenting plan must include an allocation of decision-making authority to one or both parents and establish a residential schedule for the child.

The residential schedule designates in which parent's home the child resides on given days of the year. A court must consider specific factors when determining the child's residential schedule. A court may order that the child frequently alternate his or her residence between the parents for brief and substantially equal intervals of time if it is in the child's best interest. The court may consider the geographic proximity of the parties to the extent necessary to ensure the ability of the parents to share parenting functions.

Modification of Parenting Plans.

Generally, a court may modify the residential provisions of a parenting plan only upon a showing of a substantial change of circumstances with respect to the child or the nonmoving party, and that the modification is in the best interests of the child. A person petitioning for a modification of the residential provisions must file an affidavit with supporting facts, and the court will deny the motion for a modification unless the court finds that adequate cause for the modification is presented in the affidavit.

Relocation Act.

Under the Relocation Act (Act), when a parent with whom a child resides the majority of the time intends to relocate, he or she must notify every other person who has residential time or visitation with the child of the intent to relocate. "Relocate" means a change in principal residence either permanently or for a protracted period of time.

The Act establishes procedures for the other persons with residential time or visitation with the child to object to the relocation. A person objecting to the relocation of the child may do so through a petition for modification of the parenting plan pursuant to relocation. The petitioner does not need to show adequate cause other than the proposed relocation, and a hearing to determine adequate cause is not required as long as the request for relocation is being pursued.

There is a rebuttal presumption that relocation will be permitted unless the objecting party demonstrates that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating parent. The court must base this determination on the following 11 nonweighted statutory factors:

- the relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons;
- prior agreements of the parties;

- whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental than disrupting contact between the child and the person objecting to the relocation;
- whether either parent or a person entitled to residential time with the child is subject to limitations on residential time;
- each person's reasons for seeking or opposing the relocation and good faith in requesting or opposing the relocation;
- the age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development;
- the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
- the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- alternatives to relocation and whether it is feasible and desirable for the other party to relocate;
- the financial impact and logistics of the relocation or its prevention; and
- for a temporary order, the amount of time before a final decision can be made at trial.

Joint and Equal Parenting Plans.

The issue of whether the Relocation Act applies to joint parenting plans where each parent has equal residential time with the child has been addressed in several court cases. In a 2017 Court of Appeals case, *In Re Marriage of Worthley*, the court held that the Act does not apply to a proposed relocation that would modify a 50/50 parenting plan to something other than joint and equal residential time with the child because it is in effect a change in residential placement that should be analyzed under the modification statute.

The court based its decision on both the plain language of the Act and policy considerations. The court relied on language in the Act that defined "relocation" as a change in the child's "principal" residence, and language that requires the parent "with whom the child resides a majority of the time" to give notice of the intended relocation to other parties with residential time with the child. The court also determined that requiring a parent with a 50/50 parenting plan to show adequate cause under the modification statute is supported by the policy under parenting laws that the best interests of the child are ordinarily served when there is continuity in the existing parent-child relationship.

Under the holding in *Worthley* and subsequent cases, a parent whose desired relocation would result in the termination of an existing joint and equal residential schedule must establish adequate cause to modify the residential schedule under the requirements of the modification statute, which requires a showing that there has been a substantial change in the circumstances of the child or the nonmoving parent.

Summary of Bill:

The Relocation Act applies to parenting plans where the parties have substantially equal residential time with the child. The definition of "relocate" is revised to include a change in residence in cases where parents have substantially equal residential time.

The presumption in favor of relocation does not apply in cases where the parents have substantially equal residential time. The court must base any determination on whether or not to allow relocation, and any modification to a court order governing the child's residence, on the best interests of the child considering the 11 nonweighted statutory factors.

Substantially equal residential time includes arrangements in which 45 percent or more of the child's residential time is spent with each parent, considering only the time spent with parents and not any residential time ordered for nonparents. The determination of the percentage must be based on the amount of time designated in the court order unless: there has been an ongoing pattern of substantial deviation from the residential schedule; both parents have agreed to the deviation; and the deviation is not based on circumstances beyond either parent's control.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill is intended to address some court cases that have made it very difficult for people to move when they have joint custody arrangements. This problem was anticipated when the Relocation Act (Act) was adopted. Legislators attempted to address the issue through a floor colloquy indicating that, for 50/50 parenting plans, no presumption would apply and the relocation decision would be based on the best interests of the child. However, the courts have found that the actual language in the Act precludes its application to 50/50 parenting plans.

In one case, the parents agreed to a procedure for deciding relocation issues and wrote the agreement into their parenting plan. When the father's new wife had to relocate for a medical residency, the relocation issue was brought to the court. The Court of Appeals said it did not matter what the parents had written into their parenting plan, and it did not matter what was in best interests of the child; the court had to dismiss the case without considering the family's circumstances because the Act does not apply. This makes it impossible to relocate, which creates significant financial burdens and emotional harm for everyone involved.

This is a serious problem for many families, since joint parenting plans are much more common now. It is not realistic to build the laws around the policy that families must always continue the status quo. Parents may need to relocate for many reasons, including housing, jobs, or caring for a sick family member. Right now there is no process for them to resolve these issues. The bill provides a good, balanced, and fair solution that is focused on the best interests of the children.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; Ethan Bergerson; and David Ward, Legal Voice.

Persons Signed In To Testify But Not Testifying: None.