

FINAL BILL REPORT

SHB 1170

C 502 L 09
Synopsis as Enacted

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

Sponsors: House Committee on Judiciary (originally sponsored by Representatives McCoy, Rodne, Kelley, Warnick, Seaquist, Angel, Green, Shea, Sells, McCune, Kagi, Ormsby and Smith; by request of Washington State Bar Association).

House Committee on Judiciary
Senate Committee on Human Services & Corrections

Background:

In dissolution cases in which minor children are involved, the parties must have 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 regarding the child's education, health care, and religious upbringing. The parenting plan must also 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 may 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 to the parent not requesting the modification, and the modification must be necessary to serve the child's best interests. In addition, the court must find that: (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 non-moving 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 one year or longer, then the court may make adjustments to the parenting plan in keeping with the child's best interest.

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.

Summary:

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" will not, by itself, be a substantial change of circumstances justifying a permanent modification of a parenting plan. For noncustodial parents, when the court is determining whether the noncustodial parent has failed to exercise residential time for one year, the court may not count any time periods during which the parent failed to exercise residential time due to the effects of the parent's military duties.

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 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 10 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 if a motion is filed alleging an immediate danger of irreparable harm to the child.

When a parent receives military orders that involve moving a substantial distance away or that would have a material effect on the parent's ability to exercise residential time or visitation rights, the court may, at the request of the military parent, delegate that 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 to whom time is delegated.

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.

Votes on Final Passage:

House 97 0

Senate	45	0	(Senate amended)
House			(House refuses to concur)
Senate	49	0	(Senate amended)
House	93	0	(House concurred)

Effective: July 26, 2009