

FORMATTING NOTE:

In initiatives, legislative bills and other proposed measures, language that is to be deleted from current statutes is represented by a "strikethrough" character and language that is to be added is underlined. Because these special characters cannot be formatted in all Internet browsers, a different set of symbols is used for presenting these proposals on-line. The symbols are as follows:

- Text that is surrounded by (({- text here -})) is text that will be DELETED FROM the existing statute if the proposed measure is approved.
- Text that is surrounded by {+ text here +} is text that will be ADDED TO the existing statute if the proposed measure is approved.
- {+ NEW SECTION+} (found at the beginning of a section or paragraph) indicates that ALL of the text in that section will become law if the proposed measure is approved.

* * *

INITIATIVE 233

AN ACT Relating to shared parental {- responsibility -} duties and residential provisions of {- permanent -} parenting plans; amending RCW 26.09.002, 26.09.004, 26.09.187, and 26.09.194; and adding a new section to chapter 26.09 RCW; and creating a new section.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. This act shall be known and may be cited as the shared parental {- responsibility -} duties act.

Sec. 2. Rcw 26.09.002 and 1987 c 460 are each amended to read as follows:

The state declares that maximizing and preserving children's access to and involvement with their parents during and after dissolution proceedings is an issue of fundamental state interest, and that maximizing and preserving children's access to and involvement with each of their parents is the single most significant action which can be taken to reduce societal distress, and which is the most cost-effective result for society at large, specifically in areas such as the school drop-out rate, the juvenile crime rate, and the breakdown of marriages.

The state declares that parents {- Parents -} have the responsibility {+ and the duty +} to make decisions and perform {- other -} parental functions necessary for the care and growth of their minor {- children -} child(ren).

The state declares that in {- In -} any proceeding between parents under this chapter, the best interests of the child(ren) shall be {+ determined by the parents of the child(ren) and shall be +} the standard by which the court {- determines and -} allocates {- the parties' -} {+ each parent's +} parental {- responsibilities -} {+ duties +} unless harmful to the child(ren).

The state {- recognizes -} declares that the fundamental importance of {+ each of the two +} {- the -} parent-child {- relationship -} {+ relationships +} to the {- welfare -} {+ present and future well-being +} of the child is paramount. {- and {+ t -}The state also declares +} that the relationship between the child and each parent

{- should -} {+ shall +} be fostered {+ and preserved +} unless {+ clearly +} inconsistent with the child's {- best interests -} {+ well being +}.

The {+ state declares that the +} best interests of the child are served by {- a -} parenting {- arrangement -} {+ arrangements +} that {+ preserve and promote each parent-child relationship and that +} best maintain{- s -} a child's emotional growth, health and stability, and physical care; {+ and that are ideally {- is -} as close to equal time as is possible in each case +}.

Further, the state declares that the best interest of the child is ordinarily served when the existing pattern of {- interaction -} {+ parenting +} between {- a -} {+ each +} parent and child is altered only to the extent necessitated by the changed {- relationship -} {+ circumstances +} of the parents or as required to protect the child from {+ clear +} physical, mental, or emotional harm.

Sec. 3. RCW 26.09.004 and 1987 c 460 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Temporary parenting plan" means a plan for parenting of the child pending final resolution of any action for dissolution of marriage, declaration of invalidity, or legal separation {- which is incorporated in a temporary order -}.

(2) "Permanent parenting plan" means a plan for parenting the child, including allocation of parenting {- functions -} {+ duties +}, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage, declaration of invalidity, or legal separation.

(3) "Parenting {- functions -} {+ duties +}" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions which are necessary for the care and growth of the child. The term "parenting {- functions -} {+ duties +}" includes the following:

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

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

(c) Attending to adequate education for the child, including remedial or other education essential to the {- best interests -} {+ needs +} of the child;

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

(e) Exercising appropriate judgment regarding the child's {- welfare -} {+ needs +}, consistent with the child's developmental level and the family's social and economic circumstances; and

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

{+ (4) "Shared parental {- responsibility -} duties" means both parents co-operating with each other and assisting each other as much as possible in order to perform parental {- duties -} functions and to fulfill the needs of the child(ren) and includes shared residential placement and mutual decision-making authority.

(5) "Shared residential placement" means an order allocating {- each parent -} specific periods of residential time to each parent,

amounting in the aggregate to no less than 35% of the overnights on a monthly basis throughout the calendar year, in which a child is under the actual, direct, day-to-day care and supervision of each of the parents. +}

(6) "Right of first refusal" means that if a parent is using a day care facility to care for the child(ren) during that parent's residential time, the other parent shall have the option of performing parental duties for the child(ren) during the time period when the children are scheduled to be at the day care facility.

Sec. 4. RCW 26.09.184 and 1991 c 367 s 7 are each amended to read as follows:

(1) OBJECTIVES. The objectives of the {- permanent -} parenting plan are to:

(a) Provide for the child's physical care {+ and residential stability +};

(b) Maintain the child's emotional stability;

(c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;

(d) Set forth the {- authority and responsibilities -} {+ duties +} of each parent with respect to the child, consistent with the criteria in RCW 26.09.187{- and 26.09.191 -};

(e) Minimize the child's exposure to harmful parental conflict;

(f) Encourage the parents{- , where appropriate under RCW 26.09.187 and 26.09.191, -} to meet their responsibilities to their minor {- children -} child(ren) through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To {- otherwise protect the best interests of the child -} {+ fulfill the policy directives of +} {- consistent with -} RCW 26.09.002.

{+ (h) To provide maximum opportunity for each parent to interact with the child(ren) by performing parenting duties. +}

(2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority and residential provisions for the child(ren).

(3) DISPUTE RESOLUTION. A process for resolving disputes, other than court action, shall be provided unless {- precluded or limited by RCW 26.09.187 or 26.09.191 -} {+ RCW 26.09.191 applies +}. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action, but may not be used to permit deviations from the parenting plan without agreement of the parents.

In the dispute resolution process:

(a) Preference shall be given to carrying out the parenting plan;

(b) The parents shall use the designated process to resolve disputes relating to implementation of the plan{- , except those related to financial support, -} unless an emergency exists;

(c) Within seven calendar days of the end of the dispute resolution process, the person conducting the proceedings shall prepare a {- A -} written record {- shall be prepared -} of any agreement reached in counseling or mediation and of each arbitration {- award -} decision and shall provide a copy {- be provided -} to each parent {- party -};

(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award

attorneys' fees and financial sanctions to the prevailing parent;

(e) The parties have the right of review from the dispute resolution process to the superior court; and

(f) The provisions of (a) through (e) of this subsection shall be set forth in the {- decree -} parenting plan.

(4) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) The parenting plan shall allocate decision-making authority {- to one or both parties -} {- {+ jointly +} -} mutually to both parents regarding the children's education, health care, and religious upbringing {+ unless RCW 26.09.191 applies +}. The {- parties -} parents may incorporate an agreement related to the care and growth of {- the -} their child(ren) in these specified areas, or in other areas, into {- their -}{+ the parenting +} plan{- , consistent with the criteria in RCW 26.09.187 and 26.09.191 -}. Regardless of the allocation of decision-making in the parenting plan, either parent {- may -} {+ shall +} make emergency decisions {- affecting the health or safety of the child -} {+ while the child is under that parent's care and control +}.

(b) Each parent {- may -} {+ shall +} make decisions regarding the day-to-day care and control of the child while the child is {- residing -} {+ in the physical care and control of +} {- with -} that parent.

(c) When mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the dispute resolution process.

(5) RESIDENTIAL PROVISIONS FOR THE CHILD. The parenting plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions{- , consistent with the criteria in RCW 26.09.187 and 26.09.191 -}.

(6) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a {- {+ residential +} -} provision in a parenting plan {- or a child support order - } may result in a finding of contempt of court{- , -}under RCW 26.09.160 {- {+ or RCW 26.18.050 +} -}.

(7) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The permanent parenting plan shall set forth the provisions of subsections (3)(a) through (c), (4)(b) and (c), and (6) of this section.

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

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it {- finds -} {+ makes a written finding +} that {- any -} {+ a specific +} limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then {- in designating such a process -} the court shall {+ adopt an agreement between the parents. If there is no agreement, the court shall +} consider all relevant factors in designating a process, including:

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

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

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

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

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

(i) {- The agreement is consistent with any limitations on a parent's decision-making authority mandated by -}RCW 26.09.191 {+ does not apply +}; and

(ii) The agreement is knowing and voluntary.

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

{- (i) A -} {+ a +} limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

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

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

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

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

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

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

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions -} {+ order that decision making shall be {- equally -} mutually shared by the parents {- consistent with RCW 26.09 -} +}.

(3) RESIDENTIAL PROVISIONS.

{- (a) -} The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child{- , consistent with {+ the best interests of the child +} the child's developmental level, and the family's social and economic circumstances -}. {- The child's residential schedule shall be consistent with RCW 26.09.191. -}

Unless the parents agree otherwise, {- {+ There is a presumption that -} the child's residential schedule shall provide shared {- parental responsibility -} residential placement in accordance with section {- 6 -} 3 of this act, and shall not allocate less than 35% of the overnights unless RCW 26.09.191 applies. +} {- Where the limitations of -} {+ When +} RCW 26.09.191 {- are not dispositive of the child's residential schedule -} {+ does not apply +}, the court shall consider the following factors {+ in making its decision +}:

{- (i) -} {+ (a) +} The relative strength, nature, and stability of the child's relationship with each parent {- including -};

{+ (b) To what extent each +} parent has {+ performed parenting functions{- , including those +} relating to the daily needs of the child -};

{- (ii) -} {+ (c) +} The agreements of the parties, provided

they were entered into knowingly and voluntarily;

- {- (iii) -} {+ (d) The extent to which each parent is likely to allow and encourage the child to have frequent and continuing contact with the other parent; +}
- {- (v) -} {+ (e) +} Each parent's past and potential for future performance of parenting {- functions -} duties;
- {- (iv) -} {+ (f) +} The emotional needs and developmental level of the child;
- {- (v) -} {+ (g) +} The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- {- (vi) -} {+ (h) +} The {- wishes of the parents and the -} wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
- {- (vii) -} {+ (i) +} Each parent's employment schedule, and shall make accommodations consistent with those schedules.

{- Factor (i) shall be given the greatest weight.

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

- (i) No limitation exists under RCW 26.09.191;
- (ii)(A) The parties have agreed to such provisions and the agreement was knowingly and voluntarily entered into; or
- (B) The parties have a satisfactory history of cooperation and shared performance of parenting functions; the parties are available to each other, especially in geographic proximity, to the extent necessary to ensure their ability to share performance of the parenting functions; and
- (iii) The provisions are in the best interests of the child. -}

Sec. 6. RCW 26.09.194 and 1987 c 460 s 13 are each amended to read as follows:

(1) {- A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. -} {+ Upon the filing of a summons and petition under this chapter in which there are minor {- children -} child(ren), the court {- clerk shall -} may issue an ex parte temporary parenting plan {- for the children -}. {- The -} An ex parte temporary parenting plan shall have a clear notice on its face {- specify -} that the {- children -} child(ren) shall have no less than 35% residential time with each parent. {- The -} A temporary parenting plan shall also order {- joint -} mutual decision making. {- The residential provisions of the temporary parenting plan may be completed by the petitioner and signed ex parte by the commissioner at the time of filing or it may be presented at a later time upon proper notice. -} If the temporary parenting plan is signed ex parte, the petitioner shall serve the summons, petition, and the ex parte temporary parenting plan together. {- An initial -} An ex parte temporary parenting plan {- that is signed ex parte -} shall have a clear notice prominently displayed on its face that the {- party -} +} {+ parent being served may move to amend the temporary parenting plan upon three court days notice to the other parent, with

the hearing to be held within five calendar days of service of the notice of the motion on the other parent. {- If the -} Ex parte temporary parenting plans issued at the time of filing of the summons and petition shall be served only by personal service upon the other parent. +}

(2) The parents may enter an agreed temporary parenting plan at any time as part of a temporary order {+ which shall be signed and entered by the court if both parents have signed and dated the proposed temporary parenting plan. +} {- The proposed temporary parenting plan may be supported by relevant evidence and shall be accompanied by an affidavit or declaration which shall state at a minimum the following:

(a) The name, address, and length of residence with the person or persons with whom the child has lived for the preceding twelve months;

(b) The performance by each parent during the last twelve months of the parenting functions relating to the daily needs of the child;

(c) The parents' work and child-care schedules for the preceding twelve months;

(d) The parents' current work and child-care schedules; and

(e) Any of the circumstances set forth in RCW 26.09.191 that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(2) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(a) A schedule for the child's time with each parent when appropriate;

(b) Designation of a temporary residence for the child;

(c) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with RCW 26.09.187(2), neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(d) Provisions for temporary support for the child; and

(e) Restraining orders, if applicable, under RCW 26.09.060. -}

(3) {- {+ (2 +) -} } A parent may make a motion for an order to show cause and the court may {+ amend the provisions of the +} {- enter a temporary order, including a -} temporary parenting plan, upon a showing of necessity.

{- (4) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of RCW 26.09.191 and is in the best interest of the child.

(5) -} {+ ({- 3 -} 4) +} If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary order or temporary parenting plan is vacated {+ and prospectively shall be null and void +}.

NEW SECTION. Sec. 7. A new section is added to chapter 26.09 RCW to read as follows:

(1) There shall be a presumption that shared parental {- responsibility -} duties and shared residential placement is {- always -} in the best interests of minor child(ren) unless

(a) The parents have agreed to alternate residential arrangements; or

(b) A parent alleges that shared parental {- responsibility -} duties and/or shared residential placement would be detrimental to the child or children, in which case that parent {- has -} shall have the burden of establishing the allegation by clear and convincing evidence. Any such evidence shall be presented by oral testimony in open court and subject to cross-examination. An allegation of detriment under this subsection shall not be tried on affidavits or declarations.

(2) If a parent alleges that shared parental {- responsibility -} duties and/or shared residential placement would be detrimental to a particular child, the court may order {- a -} an investigation limited to whether a shared parental {- responsibility -} duties order and/or shared residential placement order is, or is not, appropriate regarding that particular child. If the court declines to enter a shared parental {- responsibility -} duties order and/or shared residential placement order regarding that particular child, the court shall enter written findings of fact and conclusions of law stating the reasons that shared parental {- responsibility -} duties and/or shared residential placement is found to be detrimental to {- the children -} that particular child and listing the evidence relied upon by the court in making the determination of detriment.

(3) No court {- may -} shall restrict or impede either parent's ability to effectively perform parenting {- functions -} duties by means of residential schedules or decision-making provisions unless there is a valid and proper finding of necessity pursuant to RCW 26.09.191.

(4) No court {- may -} shall enter any order altering or suspending or otherwise changing the provisions of any parenting plan without proper notice to both parents and a meaningful opportunity to be heard by both parents.

(5) Subsection (1)(b) of this section applies to orders brought pursuant to chapter 26.50 RCW except that it does not apply if the alleged conduct {- alleged -} constitutes a crime which has been reported to a police agency and a copy of that crime report is attached to the motion.

(7) Unless RCW 26.09.191 applies, the court shall approve any and all agreements of the parties regarding the care and control of their child(ren), including residential provisions and arrangements, and shall presume that any such arrangements or agreements are in the best interests of the child(ren).

(8) Unless RCW 26.09.191 applies, each parent has the right of first refusal regarding care and control of their child(ren). {- "Right of first refusal" means that if a parent is unable to provide for the care and control of the children during the time period that the parenting plan designates that parent as the residential parent, then the other parent shall perform the care and control of the children, if possible, until the designated parent is able to resume the care and control of the children. -}

(9) A parent may bring a motion to adjust the residential provisions of a permanent parenting plan for the purpose of applying the provisions of subsection (4), (5), and (6) of section 3 of this act if at least two years has elapsed since the entry of the most recent permanent parenting plan. The procedural provisions of CR 60(e) shall be used to commence this process and to provide notice. An adjustment to the residential schedule of a permanent parenting plan under this subsection shall be for no more than 50% of residential time, unless the parents agree otherwise. No change in circumstances

is required, but the motion shall be supported with a declaration detailing the proposed adjustments and stating how the adjustments will benefit the child(ren). A proposed parenting plan containing the requested adjustments shall be filed and served with the motion and declaration. This subsection applies only when parents reside in the same county or a county adjacent to the county in which the child(ren) reside. The motion shall only be brought in the venue where the child(ren) reside. The court shall grant the motion unless the other parent resists the proposed adjustment by producing a preponderance of evidence showing that the child(ren) would not benefit by the proposed adjustment.

A motion brought pursuant to this subsection is not an action to modify a permanent parenting plan within the meaning of RCW 26.09.260 or 26.09.270.

If the permanent parenting plan is adjusted and the result is less than 50% residential time to each parent, two years must elapse before a similar motion can be brought.

This section applies only to residential provisions of permanent parenting plans and may not be used for any other purpose.

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