

Rev. Code Wash. (ARCW)

§ 26.09.260. Modification of parenting plan or custody decree

- (1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section [*infra*], the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.
- (2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:
 - (a) The parents agree to the modification;
 - (b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;
 - (c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or
 - (d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.
- (3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.
- (4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.
- (5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:
 - (a) Does not exceed twenty-four full days in a calendar year; or
 - (b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or
 - (c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.
- (6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the

relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560 [*infra*]. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

- (7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.
- (8)
 - (a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.
 - (b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.
- (9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.
- (10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.
- (11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:
 - (a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and
 - (b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.
- (12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

- (13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

§ 26.09.405. Applicability

- (1) The provisions of RCW 26.09.405 through 26.09.560 [*infra*] and the chapter 21, Laws of 2000 amendments to RCW 26.09.260 [*supra*], *26.10.190, and 26.26B.090 apply to a court order regarding residential time or visitation with a child issued:
 - (a) After June 8, 2000; and
 - (b) Before June 8, 2000, if the existing court order does not expressly govern relocation of the child.
- (2) To the extent that a provision of RCW 26.09.405 through 26.09.560 [*infra*] and the chapter 21, Laws of 2000 amendments to RCW 26.09.260 [*supra*], *26.10.190, and 26.26B.090 conflicts with the express terms of a court order existing prior to June 8, 2000, then RCW 26.09.405 through 26.09.560 [*infra*] and the chapter 21, Laws of 2000 amendments to RCW 26.09.260 [*supra*], *26.10.190, and 26.26B.090 do not apply to those terms of that order governing relocation of the child.
- (3) The provisions of RCW 26.09.405 through 26.09.560 [*infra*] do not apply to visitation orders entered in dependency proceedings as provided in RCW 13.34.385.

§ 26.09.410. Definitions

The definitions in this section apply throughout RCW 26.09.405 through 26.09.560 [*infra*] and 26.09.260 [*supra*] unless the context clearly requires otherwise.

- (1) "Court order" means a temporary or permanent parenting plan, custody order, visitation order, or other order governing the residence of a child under this title.
- (2) "Relocate" means a change in principal residence either permanently or for a protracted period of time, or a change in residence in cases where parents have substantially equal residential time as defined by RCW 26.09.525 [*infra*].

§ 26.09.420. Grant of authority

When entering or modifying a court order, the court has the authority to allow or not allow a person to relocate the child.

§ 26.09.430. Notice requirement

Except as provided in RCW 26.09.460 [*infra*], a person with whom the child resides a majority of the time, or a person with substantially equal residential time, shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate. Notice shall be given as prescribed in RCW 26.09.440 and 26.09.450 [*infra*].

§ 26.09.440. Notice—Contents and delivery

- (1) Except as provided in RCW 26.09.450 and 26.09.460 [*infra*], the notice of an intended relocation of the child must be given by:
 - (a) Personal service or any form of mail requiring a return receipt; and
 - (b) No less than:

- (i) Sixty days before the date of the intended relocation of the child; or
 - (ii) No more than five days after the date that the person knows the information required to be furnished under subsection (2) of this section, if the person did not know and could not reasonably have known the information in sufficient time to provide the sixty-days' notice, and it is not reasonable to delay the relocation.
- (2)
- (a) The notice of intended relocation of the child must include: (i) An address at which service of process may be accomplished during the period for objection; (ii) a brief statement of the specific reasons for the intended relocation of the child; and (iii) a notice to the nonrelocating person that an objection to the intended relocation of the child or to the relocating person's proposed revised residential schedule must be filed with the court and served on the opposing person within thirty days or the relocation of the child will be permitted and the residential schedule may be modified pursuant to RCW 26.09.500 *[infra]*. The notice shall not be deemed to be in substantial compliance for purposes of RCW 26.09.470 *[infra]* unless the notice contains the following statement: "THE RELOCATION OF THE CHILD WILL BE PERMITTED AND THE PROPOSED REVISED RESIDENTIAL SCHEDULE MAY BE CONFIRMED UNLESS, WITHIN THIRTY DAYS, YOU FILE A PETITION AND MOTION WITH THE COURT TO BLOCK THE RELOCATION OR OBJECT TO THE PROPOSED REVISED RESIDENTIAL SCHEDULE AND SERVE THE PETITION AND MOTION ON THE PERSON PROPOSING RELOCATION AND ALL OTHER PERSONS ENTITLED BY COURT ORDER TO RESIDENTIAL TIME OR VISITATION WITH THE CHILD."
 - (b) Except as provided in RCW 26.09.450 and 26.09.460 *[infra]*, the following information shall also be included in every notice of intended relocation of the child, if available:
 - (i) The specific street address of the intended new residence, if known, or as much of the intended address as is known, such as city and state;
 - (ii) The new mailing address, if different from the intended new residence address;
 - (iii) The new home telephone number;
 - (iv) The name and address of the child's new school and day care facility, if applicable;
 - (v) The date of the intended relocation of the child; and
 - (vi) A proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation with the child, if any.
- (3) A person required to give notice of an intended relocation of the child has a continuing duty to promptly update the information required with the notice as that new information becomes known.

§ 26.09.450. Notice--Relocation within the same school district

- (1) When the intended relocation of the child is within the school district in which the child currently resides the majority of the time, the person intending to relocate the child, in lieu of notice prescribed in RCW 26.09.440 *[supra]*, may provide actual notice by any reasonable means to every other person entitled to residential time or visitation with the child under a court order.
- (2) A person who is entitled to residential time or visitation with the child under a court order may not object to the intended relocation of the child within the school district in which the child currently resides the majority of the time, but he or she retains the right to move for modification under RCW 26.09.260 *[infra]*.

§ 26.09.460. Limitation of notices

- (1) If a person intending to relocate the child is entering a domestic violence shelter due to the danger imposed by another person, notice may be delayed for twenty-one days. This section shall not be construed to compel the disclosure by any domestic violence shelter of information protected by confidentiality except as provided by RCW 70.123.075 or equivalent laws of the state in which the shelter is located.

- (2) If a person intending to relocate the child is a participant in the address confidentiality program pursuant to chapter 40.24 RCW or has a court order which permits the party to withhold some or all of the information required by RCW 26.09.440(2)(b) [*supra*], the confidential or protected information is not required to be given with the notice.
- (3) If a person intending to relocate the child is relocating to avoid a clear, immediate, and unreasonable risk to the health or safety of a person or the child, notice may be delayed for twenty-one days.
- (4) A person intending to relocate the child who believes that his or her health or safety or the health or safety of the child would be unreasonably put at risk by notice or disclosure of certain information in the notice may request an ex parte hearing with the court to have all or part of the notice requirements waived. If the court finds that the health or safety of a person or a child would be unreasonably put at risk by notice or the disclosure of certain information in the notice, the court may:
 - (a) Order that the notice requirements be less than complete or waived to the extent necessary to protect confidentiality or the health or safety of a person or child; or
 - (b) Provide such other relief as the court finds necessary to facilitate the legitimate needs of the parties and the best interests of the child under the circumstances.
- (5) This section does not deprive a person entitled to residential time or visitation with a child under a court order the opportunity to object to the intended relocation of the child or the proposed revised residential schedule before the relocation occurs.

§ 26.09.470. Failure to give notice

- (1) The failure to provide the required notice is grounds for sanctions, including contempt if applicable.
- (2) In determining whether a person has failed to comply with the notice requirements for the purposes of this section, the court may consider whether:
 - (a) The person has substantially complied with the notice requirements;
 - (b) The court order in effect at the time of the relocation was issued prior to June 8, 2000, and the person substantially complied with the notice requirements, if any, in the existing order;
 - (c) A waiver of notice was granted;
 - (d) A person entitled to receive notice was substantially harmed; and
 - (e) Any other factor the court deems relevant.
- (3) A person entitled to file an objection to the intended relocation of the child may file such objection whether or not the person has received proper notice.

§ 26.09.480. Objection to relocation or proposed revised residential schedule

- (1) A party objecting to the intended relocation of the child or the relocating parent's proposed revised residential schedule shall do so by filing the objection with the court and serving the objection on the relocating party and all other persons entitled by court order to residential time or visitation with the child by means of personal service or mailing by any form of mail requiring a return receipt to the relocating party at the address designated for service on the notice of intended relocation and to other parties requiring notice at their mailing address. The objection must be filed and served, including a three-day waiting period if the objection is served by mail, within thirty days of receipt of the notice of intended relocation of the child. The objection shall be in the form of: (a) A petition for modification of the parenting plan pursuant to relocation; or (b) other court proceeding adequate to provide grounds for relief.
- (2) Unless the special circumstances described in RCW 26.09.460 [*supra*] apply, the person intending to relocate the child shall not, without a court order, change the principal residence of the child during the period in which a party may object. The order required under this subsection may be obtained ex parte. If the objecting party notes a court hearing to prevent the relocation of the child for a date not more than fifteen days following timely service of an objection to relocation, the party intending to relocate the child shall not change the

principal residence of the child pending the hearing unless the special circumstances described in RCW 26.09.460(3) [*supra*] apply.

- (3) The administrator for the courts shall develop a standard form, separate from existing dissolution or modification forms, for use in filing an objection to relocation of the child or objection of the relocating person's proposed revised residential schedule.

§ 26.09.500. Failure to object

- (1) Except for good cause shown, if a person entitled to object to the relocation of the child does not file an objection with the court within thirty days after receipt of the relocation notice, then the relocation of the child shall be permitted.
- (2) A nonobjecting person shall be entitled to the residential time or visitation with the child specified in the proposed residential schedule included with the relocation notice.
- (3) Any person entitled to residential time or visitation with a child under a court order retains his or her right to move for modification under RCW 26.09.260 [*supra*].
- (4) If a person entitled to object to the relocation of the child does not file an objection with the court within thirty days after receipt of the relocation notice, a person entitled to residential time with the child may not be held in contempt of court for any act or omission that is in compliance with the proposed revised residential schedule set forth in the notice given.
- (5) Any party entitled to residential time or visitation with the child under a court order may, after thirty days have elapsed since the receipt of the notice, obtain ex parte and file with the court an order modifying the residential schedule in conformity with the relocating party's proposed residential schedule specified in the notice upon filing a copy of the notice and proof of service of such notice. A party may obtain ex parte and file with the court an order modifying the residential schedule in conformity with the proposed residential schedule specified in the notice before the thirty days have elapsed if the party files a copy of the notice, proof of service of such notice, and proof that no objection will be filed.

§ 26.09.510. Temporary orders

- (1) The court may grant a temporary order restraining relocation of the child, or ordering return of the child if the child's relocation has occurred, if the court finds:
 - (a) The required notice of an intended relocation of the child was not provided in a timely manner and the nonrelocating party was substantially prejudiced;
 - (b) The relocation of the child has occurred without agreement of the parties, court order, or the notice required by RCW 26.09.405 through 26.09.560 [*infra, supra*] and the chapter 21, Laws of 2000 amendments to RCW 26.09.260 [*supra*], *26.10.190, and 26.26B.090; or
 - (c) After examining evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the court will not approve the intended relocation of the child or no circumstances exist sufficient to warrant a relocation of the child prior to a final determination at trial.
- (2) The court may grant a temporary order authorizing the intended relocation of the child pending final hearing if the court finds:
 - (a) The required notice of an intended relocation of the child was provided in a timely manner or that the circumstances otherwise warrant issuance of a temporary order in the absence of compliance with the notice requirements and issues an order for a revised schedule for residential time with the child; and
 - (b) After examining the evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the court will approve the intended relocation of the child.

§ 26.09.520. Basis for determination

The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

- (1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
- (2) Prior agreements of the parties;
- (3) Whether disrupting the contact between the child and the person seeking relocation would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
- (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
- (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
- (6) 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, taking into consideration any special needs of the child;
- (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
- (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (10) The financial impact and logistics of the relocation or its prevention; and
- (11) For a temporary order, the amount of time before a final decision can be made at trial.

§ 26.09.525. Substantially equal residential time

- (1) If the person proposing relocation of a child has substantially equal residential time:
 - (a) The presumption in RCW 26.09.520 [*supra*] does not apply; and
 - (b) In determining whether to restrict a parent's right to relocate with a child or in determining a modification of the court order as defined in RCW 26.09.410 based on the proposed relocation, the court shall make a determination in the best interests of the child considering the factors set forth in RCW 26.09.520.
- (2) For the purposes of this section and RCW 26.09.430 [*supra*], "substantially equal residential time" includes arrangements in which forty-five percent or more of the child's residential time is spent with each parent. In determining the percentage, the court must (a) consider only time spent with parents and not any time ordered for nonparents under chapter 26.11 RCW; and (b) base its determination on the amount of time designated in the court order unless: (i) There has been an ongoing pattern of substantial deviation from the residential schedule; (ii) both parents have agreed to the deviation; and (iii) the deviation is not based on circumstances that are beyond either parent's ability to control.

§ 26.09.530. Factor not to be considered

In determining whether to permit or restrain the relocation of the child, the court may not admit evidence on the issue of whether the person seeking to relocate the child will forego his or her own relocation if the child's relocation is not permitted or whether the person opposing relocation will also relocate if the child's relocation is permitted. The court may admit and consider such evidence after it makes the decision to allow or restrain relocation of the child and other

parenting, custody, or visitation issues remain before the court, such as what, if any, modifications to the parenting plan are appropriate and who the child will reside with the majority of the time if the court has denied relocation of the child and the person is relocating without the child.

§ 26.09.540. Objections by nonparents

A court may not restrict the right of a parent to relocate the child when the sole objection to the relocation is from a third party, unless that third party is entitled to residential time or visitation under a court order and has served as the primary residential care provider to the child for a substantial period of time during the thirty-six consecutive months preceding the intended relocation.

§ 26.09.550. Sanctions

The court may sanction a party if it finds that a proposal to relocate the child or an objection to an intended relocation or proposed revised residential schedule was made to harass a person, to interfere in bad faith with the relationship between the child and another person entitled to residential time or visitation with the child, or to unnecessarily delay or needlessly increase the cost of litigation.

§ 26.09.560. Priority for hearing

A hearing involving relocations or intended relocations of children shall be accorded priority on the court's motion calendar and trial docket.