

## Family Equality Act

House Bill 1050 H-0179.1 (shared parenting - 2019) combined with  
HB 1603 AMS LAW S-2477.1/17 (residential credit adjustment - 2017)

AN ACT Relating to parenting plans and child support; and  
amending RCW 26.09.187, 26.09.197, 26.09.260, 2.56.180, and 26.19.075.

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

**Sec. 1.** RCW 26.09.187 and 2007 c 496 s 603 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 that  
any 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 consider all relevant factors, 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  
agreements of the parties allocating decision-making authority, or  
specifying rules in the areas listed in RCW 26.09.184(5)(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; 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 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)~~) knowingly and voluntarily agrees to concede decision making authority to the other parent. The court shall verify that any voluntary concession of decision-making authority is of that parent's own volition.

(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(5) (a);

(iii) Whether (~~(the parents have)~~) each parent has a demonstrated ability, interest, and desire to cooperate with (one another) the other parent in decision making in each of the areas in RCW 26.09.184(5) (a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(d) The court shall not presume that a parent, solely because of his or her sex, is more qualified than the other parent to make decisions regarding the child's care, education, health care, and religious upbringing.

(e) The court shall enter written findings stating its reasons, including the facts and evidence considered, supporting any finding that sole decision making is in the best interest of the child.

(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 child's developmental level and the family's social and economic circumstances. The court shall not presume that a parent, solely because of his or her sex, is more qualified than the other parent to engage in parenting functions or be provided with more residential time with the child. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(~~((+3))~~) (2), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's need for a frequent, continuing, and meaningful relationship with both parents and the ability and willingness of each parent to actively perform parenting functions for the needs of the child;

(vi) 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))~~ (vii) 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))~~ (viii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

~~(b) ((Where the limitations of RCW 26.09.191 are not dispositive, 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 if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.))~~ There is a presumption that it is in the best interest of the child to establish an equal residential schedule that provides each parent with equal time and contact with the child unless:

(i) Factors present under RCW 26.09.191 require restrictions on the child's residential schedule; or

(ii) The parents have agreed on a parenting plan that allocates a greater share of residential time with one parent.

(c) A parent alleging that an equal residential schedule that provides each parent with equal time and contact with the child would not be in the best interest of the child has the burden of establishing the allegation by clear and convincing evidence.

~~((e))~~ (d) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

(e) If the court does not enter a parenting plan providing for an equal residential schedule that provides each parent with equal time and contact with the child, the court shall enter written findings stating its reason, including the facts and evidence considered that support the finding that an equal residential schedule is not in the best interest of the child. The court shall verify that any parenting

plan that is knowingly and voluntarily agreed upon by both parties is made of their own volition.

**Sec. 2.** RCW 26.09.197 and 2007 c 496 s 604 are each amended to read as follows:

After considering the affidavit required by RCW 26.09.194(1) and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) The presumption that it is in the best interest of the child to establish an equal residential schedule that provides each parent with equal time and contact with the child;

(2) The relative strength, nature, and stability of the child's relationship with each parent; and

~~((2))~~ (3) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

The court shall also consider the factors used to determine residential provisions in the permanent parenting plan. The court shall enter written findings stating its reasons, including the facts and evidence considered supporting any finding that the temporary parenting plan is in the best interest of the child. The court shall verify that any temporary parenting plan that is knowingly and voluntarily agreed upon by both parties is made of their own volition.

**Sec. 3.** RCW 26.09.260 and 2009 c 502 s 3 are each amended to read as follows:

~~(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, 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)~~(1) 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; ~~((e))~~

(d) The court finds that the nonmoving parent has demonstrated an inability or unwillingness to allow the child frequent and meaningful contact with the other parent based on the nonmoving parent's violation, without good cause, of a provision of the residential schedule of the parenting plan; or

(e) 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)~~(2) 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)~~(3) 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)~~(4) 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. 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)~~(5) 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)~~(6) (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)~~(7) 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)~~(8) 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)~~(9) 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 6 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)~~(10) 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)~~(11) 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.

**Sec. 4.** RCW 2.56.180 and 2007 c 496 s 202 are each amended to read as follows:

(1) The administrative office of the courts shall create a handbook explaining the sections of Washington law pertaining to the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. The handbook may also be provided in videotape or other electronic form and must be made available and easily accessible on the administrative office of the courts' web site.

(2) The handbook created under subsection (1) of this section shall be provided by the county auditor when an individual applies for a marriage license under RCW 26.04.140.

(3) In a dissolution or legal separation action filed under this chapter, the petitioner's counsel shall provide to the

petitioner a copy of the handbook created under subsection (1) of this section ((shall also be provided to the petitioner when)) at the time he or she files ((a)) the petition ((for dissolution, and to the respondent, unless the respondent did not file a response, notice of appearance, or any other paper in the case or did not appear in court)) and provide a copy of the handbook to be served along with the petition and summons upon the respondent. If the petitioner is unrepresented by counsel at the time the petition is filed, the court shall provide the petitioner with a copy of the handbook and direct that a copy of the handbook be served along with the petition and summons upon the respondent. The administrative office of the courts shall on an annual basis reimburse the counties for each copy of the handbook that is distributed by the court directly to family law parties under this section, provided that the county submits documentation of the number of handbooks distributed on an annual basis.

(4) The information contained in the handbook created under subsection (1) of this section shall be reviewed and updated annually. The handbook must contain the following information:

(a) Information on prenuptial agreements as contracts and as a means of structuring financial arrangements and other aspects of the marital relationship;

(b) Information on shared parental responsibility for children, including establishing a residential schedule for the child in the event of the dissolution of the marriage, and guidelines on what is included in the parenting plan in order to maximize to the highest degree the amount of time the child may spend with each parent;

(c) Information on notice requirements and standards for parental relocation;

(d) Information on child support for minor children;

(e) Information on property rights, including equitable distribution of assets and premarital and postmarital property rights;

(f) Information on spousal maintenance;

- (g) Information on domestic violence, child abuse, and neglect, including penalties;
- (h) Information on the court process for dissolution;
- (i) Information on the effects of dissolution on children;
- (j) Information on community resources that are available to separating or divorcing persons and their children.

**Sec. 5.** The legislature intends to implement recommendations of the 2011 and 2015 child support schedule work groups pertaining to establishing a residential schedule credit. The legislature finds that updating the economic table is necessary to modernize the calculation of basic support obligations. The legislature further finds that both the 2011 and 2015 child support schedule work groups recognized the importance of establishing an adjustment to the basic support obligation determined under the economic table based on a shared residential schedule. The legislature finds that enacting both an update of the economic table and a residential schedule adjustment to the support obligation determined under the economic table are important in providing a modernized and equitable procedure for establishing child support obligations.

**Sec. 6.** RCW 26.19.075 and 2009 c 84 s 4 are each amended to read as follows:

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse or new domestic partner if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or new domestic partner is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on

any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

(vii) Extraordinary income of a child;

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning; or

(ix) Income that has been excluded under RCW 26.19.071(4) ~~((h))~~ (i) if the person earning that income asks for a deviation for any other reason.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children;

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter

13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) (~~**Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.~~

(e)) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this

section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

**Sec. 7.** A new section is added to chapter 26.19 RCW to read as follows:

(1) The court shall make an adjustment to the standard calculation for a shared residential schedule subject to the provisions in this section.

(2) An adjustment to the standard calculation based on the residential schedule may be made if there is a court order or findings made by an administrative law judge regarding the number of overnights the child or children spend with the obligor parent, and the number of overnights allocated to the obligor is equivalent to at least fourteen percent of annual overnights. The number of overnights in the court order or administrative law judge's findings

must be used to calculate the residential adjustment. The findings made by an administrative law judge may be based upon a written agreement between the parents or upon sworn testimony provided by a party at the administrative hearing for child support.

(3) The adjustment must be based on the table in RCW 26.19.020 and the formula set forth in the worksheet for calculating residential credit.

(4) An adjustment may not be made to the standard calculation based on the shared residential schedule if:

~~(a) The adjustment would result in insufficient funds in the household receiving the support transfer payment to meet the basic needs of the child;~~

~~(b)~~(a) The obligee's net income before receiving the support transfer payment is at or below one hundred twenty-five percent of the federal poverty level guidelines for one person; or

~~(c)~~(b) The child is receiving temporary assistance for needy families.

(5) To help parties estimate residential credit, the division of child support shall, if feasible and within available resources, create a residential credit calculator available online.

**Sec. 8.** A new section is added to chapter 26.19 RCW to read as follows:

RESIDENTIAL TIME TABLE. The TOTAL column represents the anticipated total out-of-pocket expenses expressed as a percentage of the basic child support obligation that will be incurred by the parent who will pay child support. The total expenses are the sum of transferred and duplicated expenses. The DUPLICATED column represents the duplicated expenses and reflects the assumption that when there is an equal sharing of residential time, fifty percent of the basic child support obligation will be duplicated. The number of ANNUAL OVERNIGHTS column will determine the particular fractions of TOTAL and DUPLICATED to be used in the residential time credit worksheet.

ANNUAL OVERNIGHTS



FROM	TO	TOTAL	DUPLICATED
1	51	0.000	0.000
52	55	0.062	0.011
56	60	0.070	0.014
61	65	0.080	0.020
66	70	0.093	0.028
71	75	0.108	0.038
76	80	0.127	0.052
81	85	0.150	0.070
86	90	0.178	0.093
91	95	0.211	0.122
96	100	0.250	0.156
101	105	0.294	0.195
106	110	0.341	0.237
111	115	0.388	0.280
116	120	0.434	0.321
121	125	0.476	0.358
126	130	0.513	0.390
131	135	0.544	0.417
136	140	0.570	0.438
141	145	0.591	0.454
146	150	0.609	0.467
151	155	0.623	0.476
156	160	0.634	0.483
161	165	0.644	0.488
166	170	0.652	0.491
171	175	0.660	0.494
176	180	0.666	0.495
181	183	0.675	0.500

(5) To help parties estimate residential credit, the division of child support shall, if feasible and within available resources, create a residential credit calculator available online.

**Sec. 6.** RCW 26.19.050 and 2005 c 282 s 37 are each amended to read as follows:

(1) The administrative office of the courts shall develop and adopt worksheets and instructions to assist the parties and courts in establishing the appropriate child support level and apportionment of support. The administrative office of the courts shall develop and adopt a worksheet for calculating residential credit that is consistent with the intent proposed residential schedule credit as set forth in the final report of the 2011 child support schedule workgroup. The administrative office of the courts shall attempt to the greatest extent possible to make the worksheets and instructions understandable by persons who are not represented by legal counsel.

(2) The administrative office of the courts shall develop and adopt standards for the printing of worksheets and shall establish a process for certifying printed worksheets. The administrator may maintain a register of sources for approved worksheets.

(3) The administrative office of the courts should explore methods to assist pro se parties and judges in the courtroom to calculate support payments through automated software, equipment, or personal assistance.

**Sec. 7.** This act takes effect October 1, 2023.

--- END ---