

NOTES

ON PARENTING PLAN STATUTES & CASE LAW



Statutes

RCW 26.09.002

RCW 26.09.004(2)

RCW 26.09.181 – .194

Not all the statutes are copied here, but just the ones I believe to be relevant and the most important parts highlighted. They are also listed in the order in which I like to read them and in an order that I believe is the most logical progression.

You can Google “RCW” and find the following statutes there, according to their Title, Chapter and Section:

RCW 26.09.002

Policy.

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In **any proceeding** between parents under this chapter, **the best interests** of the child **shall be the standard** by which the court determines and allocates the parties' parental responsibilities. The **state recognizes** the fundamental importance of the **parent-child relationship** to the welfare of the child, and that the relationship between the child and **each parent should be fostered** unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child **are served** by a parenting arrangement that **best maintains** a child's emotional growth, health and stability, and physical care. Further, the **best** interest of the child is **ordinarily served when** the **existing pattern of interaction** between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

RCW 26.09.184

Permanent parenting plan.

(1) OBJECTIVES. The **objectives** of the permanent parenting plan are to:

(a) Provide for the child's physical care;

(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 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 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** consistent with RCW [26.09.002](#).

RCW 26.09.197

Issuance of temporary parenting plan — criteria.

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

(2) 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.

Criteria for establishing permanent parenting plan.

(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 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)**, 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 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) 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) 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.

RCW 26.09.004 Definitions.

The definitions in this section apply throughout this chapter.

(2) "**Parenting functions**" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. **Parenting functions include:**

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

(b) Attending to the daily 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 of the child;

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

(e) Exercising appropriate judgment regarding the child's welfare, 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.

RCW 26.09.191

Restrictions in temporary or permanent parenting plans.

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW [26.50.010](#)(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child ***shall be limited*** if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or ***substantial refusal to perform parenting functions***; (ii) physical, sexual, or a pattern of ***emotional abuse*** of a child; (iii) a history of acts of domestic violence as defined in RCW [26.50.010](#)(1) or an assault or sexual assault which causes grievous bodily harm ***or the fear of such harm***; or (iv) the parent has been convicted as an adult of a sex offense under:

... (b) The parent's residential time with the child ***shall be limited*** if it is found that the parent ***resides with a person who has engaged in*** any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW [26.50.010](#)(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

....(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court ***may preclude or limit*** any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of ***parenting functions***;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of ***parenting functions*** as defined in RCW [26.09.004](#);

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of ***parenting functions***;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The ***abusive use of conflict*** by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has ***withheld from the other parent*** access to the child for a protracted period without good cause; or

(g) Such ***other factors or conduct*** as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a ***permanent*** parenting plan, the court shall ***not draw any presumptions*** from the provisions of the ***temporary parenting plan***.

(6) In determining whether any of the conduct described in this section has occurred, ***the court shall apply the civil rules of evidence, proof, and procedure***.

(7) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW [18.320.010](#).

Case law

- Look at www.LegalWa.org, click on “Washington State Supreme and Appellate Court Decisions”
- Type “Kovacs” in the Search box.
- The one with the “67 Wn. App. 727” is the Court of Appeals case.
- The one with “121 Wn.2d 795” is the “2nd” appellate court, the Washington Supreme Court. Click on this one.

The father got custody at trial in Spokane County.

Mom appealed and the Court of Appeals gave custody back to her because she was the “primary caretaker”.

Dad appealed and the Supreme Court decision gave custody of the children back to the father because the mom’s “primary caretaker” doesn’t mean jack squat alone. The Supreme Court said that the trial court has to take into consideration ALL of the statutes above AND THEN determine custody. The Supreme Court said that Spokane Co. Superior Court got it right the first time because it considered all of the statutes. So, the Court of Appeals got it wrong with the “primary caretaker” factor.

I personally observe attorneys ALL THE TIME telling the court that the mother should have custody because she has been the primary caretaker. I see commissioners and judges saying the same thing. They’re all incompetent as far as I’m concerned because they are defying the policy, precedent and standard set by the Supreme Court.

The following quote comes out of the Kovacs case on pages 800-801:

“The residential placement **is to be** in the best interests of the child (RCW 26.09.002) and is to be made **only after** certain factors have been considered by the court (RCW 26.09.187(3)...The [law] does not create a presumption in favor of [custody] with the ‘primary caregiver’.”

In Re the Marriage of Kovacs, 121 Wn.2d 795, 854 P.2d 629 (1983).