

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 21, 1987.

Passed the House April 16, 1987.

Approved by the Governor May 18, 1987.

Filed in Office of Secretary of State May 18, 1987.

CHAPTER 460

[Substitute House Bill No. 48]

PARENTING—CHILD CUSTODY AND CHILD SUPPORT

AN ACT Relating to parenting; amending RCW 26.09.010, 26.09.040, 26.09.050, 26.09.070, 26.09.110, 26.09.160, 26.09.210, 26.09.220, 26.09.240, 26.09.260, 26.09.280, 26.09.255, 9A.40.060, 9A.40.070, 9A.40.080, 26.50.060, and 26.26.130; adding new sections to chapter 26.09 RCW; adding a new chapter in Title 26 RCW; creating new sections; repealing RCW 26.09.180, 26.09.190, 26.09.200, 26.09.230, and 26.09.250; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 157, Laws of 1973 1st ex. sess. as amended by section 1, chapter 32, Laws of 1975 and RCW 26.09.010 are each amended to read as follows:

CIVIL PRACTICE TO GOVERN—DESIGNATION OF PROCEEDINGS—DECREES. (1) Except as otherwise specifically provided herein, the practice in civil action shall govern all proceedings under this chapter, except that trial by jury is dispensed with.

(2) A proceeding for dissolution of marriage, legal separation or a declaration concerning the validity of a marriage shall be entitled "In re the marriage of and" Such proceeding may be filed in the superior court of the county where the petitioner resides.

(3) In cases where there has been no prior proceeding in this state involving the marital status of the parties or ((~~custody or~~)) support obligations for a minor child, a separate ((~~custody or~~)) support proceeding shall be entitled "In re the (((~~custody~~)-())support((~~or~~))) of"

(4) The initial pleading in all proceedings for dissolution of marriage under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter shall be denominated as provided in the civil rules for superior court.

(5) In this chapter, "decree" includes "judgment".

(6) A decree of dissolution, of legal separation, or a declaration concerning the validity of a marriage shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

NEW SECTION. Sec. 2. A new section is added to chapter 26.09 RCW to read as follows:

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. 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.

NEW SECTION. Sec. 3. A new section is added to chapter 26.09 RCW to read as follows:

DEFINITIONS. 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, 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" 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.

Sec. 4. Section 4, chapter 157, Laws of 1973 1st ex. sess. as amended by section 2, chapter 32, Laws of 1975 and RCW 26.09.040 are each amended to read as follows:

PETITION TO HAVE MARRIAGE DECLARED INVALID OR JUDICIAL DETERMINATION OF VALIDITY—PROCEDURE—FINDINGS—GROUNDS—LEGITIMACY OF CHILDREN. (1)

While both parties to an alleged marriage are living, and at least one party is resident in this state or a member of the armed service and stationed in the state, a petition to have the marriage declared invalid may be sought by:

(a) Either or both parties, or the guardian of an incompetent spouse, for any cause specified in subsection (4) of this section; or

(b) Either or both parties, the legal spouse, or a child of either party when it is alleged that the marriage is bigamous.

(2) If the validity of a marriage is denied or questioned at any time, either or both parties to the marriage may petition the court for a judicial determination of the validity of such marriage.

(3) In a proceeding to declare the invalidity of a marriage, the court shall proceed in the manner and shall have the jurisdiction, including the authority to provide for maintenance, ~~((custody, visitation, support))~~ a parenting plan for minor children, and division of the property of the parties, provided by this chapter.

(4) After hearing the evidence concerning the validity of a marriage, if both parties to the alleged marriage are still living, the court:

(a) If it finds the marriage to be valid, shall enter a decree of validity;

(b) If it finds that:

(i) The marriage should not have been contracted because of age of one or both of the parties, lack of required parental or court approval, a prior undissolved marriage of one or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage, and that the parties have not ratified their marriage by voluntarily cohabiting after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud, shall declare the marriage invalid as of the date it was purportedly contracted;

(ii) The marriage should not have been contracted because of any reason other than those above, shall upon motion of a party, order any action which may be appropriate to complete or to correct the record and enter a

decree declaring such marriage to be valid for all purposes from the date upon which it was purportedly contracted;

(c) If it finds that a marriage contracted in a jurisdiction other than this state, was void or voidable under the law of the place where the marriage was contracted, and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract or of a subsequent domicile of the parties, shall declare the marriage invalid as of the date of the marriage.

(5) Any child of the parties born or conceived during the existence of a marriage of record is legitimate and remains legitimate notwithstanding the entry of a declaration of invalidity of the marriage.

Sec. 5. Section 5, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.050 are each amended to read as follows:

PROVISIONS FOR PARENTING PLAN—MAINTENANCE—DISPOSITION OF PROPERTY AND LIABILITIES. In entering a decree of dissolution of marriage, legal separation, or declaration of invalidity, the court shall ~~((consider, approve, or))~~ determine the marital status of the parties, make provision for ((child custody and visitation, the support of)) a parenting plan for any minor child of the marriage ((entitled to support)), make provision for the support of any child of the marriage entitled to support, consider or approve provision for the maintenance of either spouse, ((and)) make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party entitled to such a change.

Sec. 6. Section 7, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.070 are each amended to read as follows:

SEPARATION CONTRACTS. (1) The parties to a marriage, in order to promote the amicable settlement of disputes attendant upon their separation or upon the filing of a petition for dissolution of their marriage, a decree of legal separation, or declaration of invalidity of their marriage, may enter into a written separation contract providing for the maintenance of either of them, the disposition of any property owned by both or either of them, the ~~((custody, support, and visitation of))~~ parenting plan for their children and for the release of each other from all obligation except that expressed in the contract.

(2) If the parties to such contract elect to live separate and apart without any court decree, they may record such contract and cause notice thereof to be published in a legal newspaper of the county wherein the parties resided prior to their separation. Recording such contract and publishing notice of the making thereof shall constitute notice to all persons of such separation and of the facts contained in the recorded document.

(3) If either or both of the parties to a separation contract shall at the time of the execution thereof, or at a subsequent time, petition the court for dissolution of their marriage, for a decree of legal separation, or for a declaration of invalidity of their marriage, the contract, except for those terms providing for ~~((the custody, support, and visitation of))~~ a parenting plan for their children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties on their own motion or on request of the court, that the separation contract was unfair at the time of its execution.

(4) If the court in an action for dissolution of marriage, legal separation, or declaration of invalidity finds that the separation contract was unfair at the time of its execution, it may make orders for the maintenance of either party, the disposition of their property and the discharge of their obligations.

(5) Unless the separation contract provides to the contrary, the agreement shall be set forth in the decree of dissolution, legal separation, or declaration of invalidity, or filed in the action or made an exhibit and incorporated by reference, except that in all cases the terms ~~((for custody, support, and visitation))~~ of the parenting plan shall be set out in the decree, and the parties shall be ordered to comply with its terms.

(6) Terms of the contract set forth or incorporated by reference in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt, and are enforceable as contract terms.

(7) When the separation contract so provides, the decree may expressly preclude or limit modification of any provision for maintenance set forth in the decree. Terms of a separation contract pertaining to ~~((custody, support, and visitation of))~~ parenting plan for the children and, in the absence of express provision to the contrary, terms providing for maintenance set forth or incorporated by reference in the decree are automatically modified by modification of the decree.

(8) If at any time the parties to the separation contract by mutual agreement elect to terminate the separation contract they may do so without formality unless the contract was recorded as in subsection (2) of this section, in which case a statement should be filed terminating the contract.

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

PROCEDURE FOR DETERMINING PERMANENT PARENTING PLAN. (1) **SUBMISSION OF PROPOSED PLANS.** The petition and the response shall contain a proposed parenting plan where there are minor children of the parties. Where the petition or the response does not contain a proposed permanent parenting plan, the party who has filed a proposed permanent parenting plan may move for a default.

(2) Either party may file and serve an amended proposed permanent parenting plan according to the rules for amending pleadings.

(3) **AGREED PERMANENT PARENTING PLANS.** The parents may make an agreed permanent parenting plan.

(4) **MANDATORY SETTLEMENT CONFERENCE.** Where mandatory settlement conferences are provided under court rule, the parents shall attend a mandatory settlement conference. The mandatory settlement conference shall be presided over by a judge or a court commissioner, who shall apply the criteria in sections 9 and 10 of this act. The parents shall in good faith review the proposed terms of the parenting plans and any other issues relevant to the cause of action with the presiding judge or court commissioner. Facts and legal issues that are not then in dispute shall be entered as stipulations for purposes of final hearing or trial in the matter.

(5) **TRIAL SETTING.** Trial dates for actions involving minor children brought under this chapter shall receive priority. The final order or decree shall be entered not sooner than ninety days after filing and service.

NEW SECTION. Sec. 8. A new section is added to chapter 26.09 RCW to read as follows:

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 sections 9 and 10 of this act;
- (e) Minimize the child's exposure to harmful parental conflict;
- (f) Encourage the parents, where appropriate under sections 9 and 10 of this act, to meet their responsibilities to their dependent 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 section 2 of this act.

(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, residential provisions for the child and financial support for the child consistent with the criteria in sections 9 and 10 of this act.

(3) **DISPUTE RESOLUTION.** A process for resolving disputes, other than court action, shall be provided unless precluded or limited by section 9 or 10 of this act. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In setting forth a dispute resolution process, the permanent parenting plan shall state that:

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

(4) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in sections 9 and 10 of this act. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) The plan shall state that:

- (i) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent;
- (ii) 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 plan shall include a residential schedule which designates in which parent's home each dependent 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 sections 9 and 10 of this act.

(6) CHILD SUPPORT. Provision shall be made for the financial support of the child in accordance with RCW 26.09.100, 26.09.130, and 26.09.135. The provision shall state the identity of the child for whom support is paid, the amount of support to be paid and by whom, provision for medical and dental insurance consistent with RCW 26.09.105, notice regarding mandatory wage assignments as required by RCW 26.09.135, and the terms under which the support obligation terminates.

(7) The plan shall state that if a parent fails to comply with a provision of a parenting plan, the other parent's obligations under the parenting plan are not affected.

NEW SECTION. Sec. 9. A new section is added to chapter 26.09 RCW to read as follows:

CRITERIA FOR ESTABLISHING PERMANENT PARENTING PLAN. (1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, if any limiting factor under section 10 of this act applies, or if 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 section 8(4)(a) of this act, where it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by section 10 of this act; and

(ii) The agreement is knowing and voluntary.

(b) **SOLE DECISION-MAKING AUTHORITY.** The court shall order sole decision-making to one parent when:

(i) A limitation on the other parent's decision-making authority is mandated by section 10 of this act;

(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 section 10 of this act;

(ii) The history of participation of each parent in decision making in each of the areas in section 8(4)(a) of this act;

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in section 8(4)(a) of this act; and

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

(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 section 10 of this act. Where the limitations of section 10 of this act 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, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(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;

(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; and

(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.

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 section 10 of this act;

(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.

(c) One household shall be designated the child's residence solely for purposes of jurisdiction, venue, and child support.

NEW SECTION. Sec. 10. A new section is added to chapter 26.09 RCW to read as follows:

LIMITATIONS IN ISSUANCE OF TEMPORARY OR PERMANENT PARENTING PLAN PROVISIONS. (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) Wilful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an act of domestic violence which rises to the level of a felony.

(2) 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: (a) Wilful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or

emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an act of domestic violence which rises to the level of a felony, unless the court expressly finds that the probability that the conduct will recur is so remote that it would not be in the child's best interests to apply the limitation or unless it is shown not to have had an impact on the child. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court.

(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 section 3 of this act;

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

Sec. 11. Section 11, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.110 are each amended to read as follows:

MINOR OR DEPENDENT CHILD—COURT APPOINTED ATTORNEY TO REPRESENT—PAYMENT OF COSTS, FEES, AND DISBURSEMENTS. The court may appoint an attorney to represent the interests of a minor or dependent child with respect to ~~((his custody, support, and visitation))~~ provision for the parenting plan in an action for dissolution of marriage, legal separation, or declaration concerning the validity of a marriage. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county.

Sec. 12. Section 16, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.160 are each amended to read as follows:

FAILURE TO COMPLY WITH DECREE OR TEMPORARY INJUNCTION—OBLIGATION TO MAKE SUPPORT OR MAINTENANCE PAYMENTS OR PERMIT CONTACT WITH CHILDREN NOT SUSPENDED—MOTION. The performance of parental functions and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit ((visitation)) contact with children is not suspended((, but he may move the court to grant an appropriate order)). An attempt by a parent, in either the negotiation or the performance of a parenting plan, to condition one aspect of the parenting plan upon another may be deemed to be in bad faith. If the court finds that a parent acted in bad faith in an attempt to condition parental functions, in a refusal to perform the duties provided in the parenting plan, or in the hindrance of performance by the other parent, the court has broad discretion to punish the conduct by a punitive award or other remedies, including civil or criminal contempt, and may consider the conduct in awarding attorneys' fees.

NEW SECTION. Sec. 13. A new section is added to chapter 26.09 RCW to read as follows:

PROPOSED TEMPORARY PARENTING PLAN. (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. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. 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 section 10 of this act 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 section 9(2) of this act, 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) A parent may make a motion for an order to show cause and the court may 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 section 10 of this act and is in the best interest of the child.

(5) If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary order or temporary parenting plan is vacated.

NEW SECTION. Sec. 14. A new section is added to chapter 26.09 RCW to read as follows:

ISSUANCE OF TEMPORARY PARENTING PLAN. After considering the affidavit required by section 13(1) of this act 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) Which parent has taken greater responsibility during the last twelve months for performing parenting functions relating to the daily needs of the child; 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.

Sec. 15. Section 21, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.210 are each amended to read as follows:

PARENTING AGREEMENTS—INTERVIEW WITH CHILD BY COURT—ADVICE OF PROFESSIONAL PERSONNEL. The court may interview the child in chambers to ascertain the child's wishes as to ~~((his custodian and as to visitation privileges))~~ the child's residential schedule in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be

in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court.

Sec. 16. Section 22, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.220 are each amended to read as follows:

PARENTING AGREEMENTS—INVESTIGATION AND REPORT. (1) In contested custody proceedings, and in other ~~((custody))~~ proceedings if a ~~((parent or the child's custodian))~~ party so requests, the court may order an investigation and report concerning ~~((custodian))~~ parenting arrangements for the child in an action for dissolution of marriage, legal separation, or declaration of invalidity. The investigation and report may be made by the staff of the juvenile court or other professional social service organization experienced in counseling children and families.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and ~~((his))~~ the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of twelve, unless the court finds that ~~((he))~~ the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive ~~((his))~~ the right of cross-examination prior to the hearing.

NEW SECTION. Sec. 17. Each parent shall have full and equal access to the education and medical records of the child absent a court order to the contrary.

Sec. 18. Section 24, chapter 157, Laws of 1973 1st ex. sess. as amended by section 1, chapter 271, Laws of 1977 ex. sess. and RCW 26.09.240 are each amended to read as follows:

VISITATION RIGHTS—NONPARENTS. ~~((A parent not granted custody of the child is entitled to reasonable visitation rights unless the~~

~~court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health:))~~ The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

Any person may petition the court for visitation rights at any time ~~((including, but not limited to, custody proceedings))~~.

The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child ~~((but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health))~~.

Sec. 19. Section 26, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.260 are each amended to read as follows:

MODIFICATIONS. (1) 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 ~~((his custodian))~~ the parents and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the ~~((custodian))~~ residential schedule established by the ~~((prior))~~ decree or parenting plan unless:

- (a) The ~~((custodian))~~ parents agree~~((s))~~ to the modification;
- (b) The child has been integrated into the family of the petitioner with the consent of the ~~((custodian))~~ other parent in substantial deviation from the parenting plan; or
- (c) The child's present environment is detrimental to ~~((his))~~ 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.

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

Sec. 20. Section 28, chapter 157, Laws of 1973 1st ex. sess. as amended by section 4, chapter 32, Laws of 1975 and RCW 26.09.280 are each amended to read as follows:

PARENTING PLANS—VENUE. Hereafter every action or proceeding to change, modify, or enforce any final order, judgment, or decree heretofore or hereafter entered in any dissolution or legal separation or declaration concerning the validity of a marriage, whether under this chapter or prior law, in relation to the ~~((care, custody, control, or support of))~~ parenting plan for the minor children of the marriage may be brought in the county where said minor children are then residing, or in the court in which said final order, judgment, or decree was entered, or in the county where the

parent or other person who has the care, custody, or control of the said children is then residing.

NEW SECTION. Sec. 21. A new section is added to chapter 26.09 RCW to read as follows:

RELATIONSHIP TO OTHER FEDERAL AND STATE STATUTES. Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, the court shall designate in a parenting plan one parent as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child resides the majority of the time shall be deemed to be the custodian of the child for the purposes of such federal and state statutes.

Sec. 22. Section 6, chapter 95, Laws of 1984 and RCW 26.09.255 are each amended to read as follows:

REMEDIES. A relative, as defined in RCW 9A.40.010, may bring civil action against any other relative (~~(who)~~) if, with intent to deny access to a child by (~~(another)~~) that relative of the child who has a right to physical custody of or visitation with the child or a parent with whom the child resides pursuant to a parenting plan order, the relative takes, entices, or conceals the child from that relative. The plaintiff may be awarded, in addition to any damages awarded by the court, the reasonable expenses incurred by the plaintiff in locating the child, including, but not limited to, investigative services and reasonable attorneys' fees.

NEW SECTION. Sec. 23. A new section is added to chapter 26.09 RCW to read as follows:

CONSTRUCTION—PENDING ACTIONS. Notwithstanding the repeals of prior laws, actions which were properly and validly pending in the superior courts of this state as of the effective date of this act shall be governed and may be pursued to conclusion under the provisions of law applicable thereto at the time of commencement of such action and all decrees and orders heretofore or hereafter in all other respects regularly entered in such proceedings are declared valid.

NEW SECTION. Sec. 24. A new section is added to chapter 26.09 RCW to read as follows:

PRIOR DECREES. (1) Decrees under this chapter involving child custody, visitation, or child support entered prior to the effective date of this section shall be deemed to be parenting plans for purposes of this chapter.

(2) The enactment of the 1987 revisions to this chapter does not constitute substantially changed circumstances for the purposes of modifying decrees entered under this chapter prior to the effective date of this section involving child custody, visitation, or child support.

(3) Actions brought for clarification or interpretation of decrees entered under this chapter prior to the effective date of this section shall be

determined under the law in effect immediately prior to the effective date of this section.

NEW SECTION. Sec. 25. INTENT. It is the intent of the legislature to reenact and continue the law relating to third-party actions involving custody of minor children in order to distinguish that body of law from the 1987 parenting act amendments to chapter 26.09 RCW, which previously contained these provisions.

NEW SECTION. Sec. 26. CIVIL PRACTICE TO GOVERN—DESIGNATION OF PROCEEDINGS—DECREES. (1) Except as otherwise specifically provided in this chapter, the practice in civil action shall govern all proceedings under this chapter, except that trial by jury is dispensed with.

(2) In cases where a party other than a parent seeks custody of a minor child, a separate custody proceeding shall be entitled "In re the custody of"

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter shall be denominated as provided in the civil rules for superior court.

NEW SECTION. Sec. 27. CHILD CUSTODY PROCEEDING—COMMENCEMENT—NOTICE—INTERVENTION. (1) Except as authorized for proceedings brought under chapter 26.50 RCW in district or municipal courts, a child custody proceeding is commenced in the superior court by a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

NEW SECTION. Sec. 28. PROVISIONS FOR CHILD SUPPORT, CUSTODY AND VISITATION. In entering an order under this chapter, the court shall consider, approve, or make provision for child custody, visitation, and the support of any child entitled to support.

NEW SECTION. Sec. 29. APPORTIONMENT OF EXPENSE. In a custody proceeding, the court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for the child's support.

NEW SECTION. Sec. 30. HEALTH INSURANCE COVERAGE—CONDITIONS. In entering a custody order under this chapter, the court shall require either or both parents to maintain or provide health

insurance coverage for any dependent child if the following conditions are met:

- (1) Health insurance that can be extended to cover the child is available to that parent through an employer or other organization; and
- (2) The employer or other organization offering health insurance will contribute all or a part of the premium for coverage of the child.

A parent who is required to extend insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of medical expenses, medical costs, or insurance premiums which are in addition to and not inconsistent with this section. "Health insurance" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

NEW SECTION. Sec. 31. MINOR OR DEPENDENT CHILD—COURT APPOINTED ATTORNEY TO REPRESENT—PAYMENT OF COSTS, FEES, AND DISBURSEMENTS. The court may appoint an attorney to represent the interests of a minor or dependent child with respect to custody, support, and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county.

***NEW SECTION. Sec. 32. SUPPORT PAYMENTS—TO WHOM PAID.** (1) *The court may, upon its own motion or upon motion of either party, order support payments to be made to:*

- (a) *The person entitled to receive the payments; or*
- (b) *The department of social and health services pursuant to chapters 74.20 and 74.20A RCW; or*
- (c) *The clerk of court as trustee for remittance to the person entitled to receive the payments.*

(2) *If payments are made to the clerk of court:*

- (a) *The clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order; and*
- (b) *The parties affected by the order shall inform the clerk of the court of any change of address or of other conditions that may affect the administration of the order.*

*Sec. 32 was vetoed, see message at end of chapter.

***NEW SECTION. Sec. 33. SUPPORT PAYMENTS—ORDER TO MAKE ASSIGNMENT OF PERIODIC EARNINGS OR TRUST INCOME—DUTY OF PAYOR TO WITHHOLD AND TRANSMIT.** The court may order the person obligated to pay support to make an assignment of a part of his or her periodic earnings or trust income to the person or

agency entitled to receive the payments: PROVIDED, That the provisions of RCW 7.33.280 in regard to exemptions in garnishment proceedings shall apply to such assignments. The assignment is binding on the employer, trustee or other payor of the funds two weeks after service upon him or her of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

**Sec. 33 was vetoed, see message at end of chapter.*

****NEW SECTION. Sec. 34. ORDER FOR CHILD SUPPORT—
CONTENTS—NOTICE OF MANDATORY WAGE ASSIGNMENT. (1)***
Every court order establishing a child support obligation shall state:

(a) That if a support payment is more than fifteen days past due in an amount equal to or greater than the support payable for one month, the obligee of the support payments may seek a mandatory wage assignment under chapter 26.18 RCW without prior notice to the obligor;

(b) The income of the parents, if known, or that their income is unknown, or the anticipated income upon which the support award is based;

(c) The support award as a fixed dollar sum or the formula by which the calculation of support is made;

(d) The specific day or date on which the support payment is due;

(e) The social security numbers, if known, of the obligor and obligee of the support payments; and

(f) The party or parties who have custody of each child for whom an order of support is entered.

(2) Failure to comply with subsection (1) of this section does not affect the validity of the support order.

**Sec. 34 was vetoed, see message at end of chapter.*

NEW SECTION. Sec. 35. PAYMENT OF COSTS, ATTORNEY'S FEES, ETC. The court from time to time, after considering the financial resources of all parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his or her name.

NEW SECTION. Sec. 36. FAILURE TO COMPLY WITH DECREE OR TEMPORARY INJUNCTION—OBLIGATION TO MAKE SUPPORT PAYMENTS OR PERMIT VISITATION NOT SUSPENDED—MOTION. If a party fails to comply with a provision of an order or temporary order of injunction, the obligation of the other party to make payments for support or to permit visitation is not suspended, but the party may move the court to grant an appropriate order.

***NEW SECTION. Sec. 37. MODIFICATION OF ORDER FOR SUPPORT—TERMINATION OF SUPPORT—GROUNDS.** *The provisions of any order respecting support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of a substantial change of circumstances.*

Unless otherwise agreed in writing or expressly provided in the order, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

*Sec. 37 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 38. DETERMINATION OF CUSTODY—CHILD'S BEST INTERESTS. The court shall determine custody in accordance with the best interests of the child.

NEW SECTION. Sec. 39. TEMPORARY CUSTODY ORDER—VACATION OF ORDER. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in section 48 of this act. The court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

If a custody proceeding commenced under this chapter is dismissed, any temporary order is vacated.

NEW SECTION. Sec. 40. INTERVIEW WITH CHILD BY COURT—ADVICE OF PROFESSIONAL PERSONNEL. The court may interview the child in chambers to ascertain the child's wishes as to his or her custodian and as to visitation privileges. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court.

NEW SECTION. Sec. 41. INVESTIGATION AND REPORT. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodian arrangements for the child. The investigation and report may be made by the staff of the juvenile court or

other professional social service organization experienced in counseling children and families.

(2) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

NEW SECTION. Sec. 42. **HEARING—RECORD—EXPENSES OF WITNESSES.** Custody proceedings shall receive priority in being set for hearing.

A party may petition the court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the court deems necessary to determine the best interests of the child.

The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the court.

If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

NEW SECTION. Sec. 43. Each parent shall have full and equal access to the education and medical records of the child absent a court order to the contrary.

NEW SECTION. Sec. 44. VISITATION RIGHTS. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings.

The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health.

NEW SECTION. Sec. 45. POWERS AND DUTIES OF CUSTODIAN—SUPERVISION BY APPROPRIATE AGENCY WHEN NECESSARY. Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.

If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the court at any time upon petition by either party.

NEW SECTION. Sec. 46. CHILD CUSTODY ACTION BY RELATIVE. A relative, as defined in RCW 9A.40.010, may bring civil action against any other relative who, with intent to deny access to a child by another relative of the child who has a right to physical custody of the child, takes, entices, or conceals the child from that relative. The plaintiff may be awarded, in addition to any damages awarded by the court, the reasonable expenses incurred by the plaintiff in locating the child, including, but not limited to, investigative services and reasonable attorneys' fees.

NEW SECTION. Sec. 47. CHILD CUSTODY ORDER—MODIFICATION. (1) The court shall not modify a prior custody order unless it finds, upon the basis of facts that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the custodian and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the custodian established by the prior order unless:

- (a) The custodian agrees to the modification;
 - (b) The child has been integrated into the family of the petitioner with the consent of the custodian; or
 - (c) The child's present environment is detrimental to his or her 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.
- (2) If the court finds that a motion to modify a prior custody order has been brought in bad faith, the court shall assess the attorney's fees and court costs of the custodian against the petitioner.

NEW SECTION. Sec. 48. TEMPORARY CUSTODY ORDER OR MODIFICATION OF CUSTODY DECREE—AFFIDAVITS REQUIRED. A party seeking a temporary custody order or modification of a custody decree shall submit together with his or her motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

NEW SECTION. Sec. 49. VENUE. Every action or proceeding to change, modify, or enforce any final order, judgment, or decree heretofore or hereafter entered, whether under this chapter or prior law, in relation to the care, custody, control, or support of the minor children may be brought in the county where the minor children are then residing, or in the court in which the final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the children is then residing.

NEW SECTION. Sec. 50. RESTRAINING ORDERS—NOTICE—REFUSAL TO COMPLY—ARREST—PENALTY—DEFENSE—PEACE OFFICERS, IMMUNITY. (1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision excluding the person from the residence is a misdemeanor.

- (2) A person is deemed to have notice of a restraining order if:
- (a) The person to be restrained or the person's attorney signed the order;
 - (b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;
 - (c) The order was served upon the person to be restrained; or
 - (d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the

original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from the residence.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice.

NEW SECTION. Sec. 51. Sections 25 through 50 of this act shall constitute a new chapter in Title 26 RCW.

***Sec. 52. Section 1, chapter 95, Laws of 1984 and RCW 9A.40.060 are each amended to read as follows:**

(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, ((or)) other person having a lawful right to physical custody of or visitation with such person, or a parent with whom the child resides pursuant to a parenting plan order, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

(a) Intends to hold the child or incompetent person permanently or for a protracted period; or

(b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or

(c) Causes the child or incompetent person to be removed from the state of usual residence; or

(d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period or residential period authorized in a parenting plan with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to

physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or parenting plan order has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(3) Custodial interference in the first degree is a class C felony.

**Sec. 52 was vetoed, see message at end of chapter.*

**Sec. 53. Section 2, chapter 95, Laws of 1984 and RCW 9A.40.070 are each amended to read as follows:*

(1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, ((or)) other person having a lawful right to physical custody of or visitation with such person, or a parent with whom the child resides pursuant to a parenting plan order, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person during that same time period.

(2) The first conviction of custodial interference in the second degree is a gross misdemeanor. The second or subsequent conviction of custodial interference in the second degree is a class C felony.

**Sec. 53 was vetoed, see message at end of chapter.*

**Sec. 54. Section 3, chapter 95, Laws of 1984 and RCW 9A.40.080 are each amended to read as follows:*

(1) Any reasonable expenses incurred in locating or returning a child or incompetent person shall be assessed against a defendant convicted under RCW 9A.40.060 or 9A.40.070.

(2) In any prosecution of custodial interference in the first or second degree, it is a complete defense, if established by the defendant by a preponderance of the evidence, that the defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, ((and)) that the belief in the existence of the imminent physical harm was reasonable, that the defendant sought the assistance of the police, sheriff's office, or protective agencies of the state of Washington prior to committing the acts giving rise to the charges or within three hours thereafter, that the defendant thereafter did not leave the jurisdiction in which the acts occurred or change addresses within the jurisdiction, and that the defendant reported to the police or sheriff's department (a) the defendant's name, (b) the name and address of the child or incompetent person, and (c) the address and phone number where the defendant is residing.

(3) Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under RCW 9A.40.060 or 9A.40.070.

***Sec. 54 was vetoed, see message at end of chapter.**

Sec. 55. Section 7, chapter 263, Laws of 1984 as amended by section 5, chapter 303, Laws of 1985 and RCW 26.50.060 are each amended to read as follows:

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain a party from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling which the parties share or from the residence of the petitioner;

(c) On the same basis as is provided in chapter 26.09 RCW, ~~((award temporary custody and establish temporary visitation with regard to minor children of the parties, and restrain any party from interfering with the custody of the minor children))~~ the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(d) Order the respondent to participate in treatment or counseling services;

(e) Order other relief as it deems necessary for the protection of a family or household member, including orders or directives to a peace officer, as allowed under this chapter; and

(f) Require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee. If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including services fees, to the county or municipality incurring the expense.

(2) Any relief granted by the order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year.

(3) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.

Sec. 56. Section 14, chapter 42, Laws of 1975-'76 2nd ex. sess. as amended by section 8, chapter 41, Laws of 1983 1st ex. sess. and RCW 26.26.130 are each amended to read as follows:

(1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(2) If the judgment and order of the court is at variance with the child's birth certificate, the court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the court, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgment and orders shall be for periodic payments which may vary in amount. The court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the court deems just: **PROVIDED HOWEVER**, That the court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for support and other services previously furnished to the child.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the court shall consider all relevant facts, including, but not limited to:

- (a) The needs of the child;
- (b) The standard of living and circumstances of the parents;
- (c) The relative financial means of the parents;
- (d) The earning ability of the parents;
- (e) The need and capacity of the child for education, including higher education;
- (f) The age of the child;
- (g) The responsibility of the parents for the support of others; and
- (h) The value of services contributed by the custodial parent.

~~(6) ((In determining custody, a court, in accordance with the best interests of the child, shall consider all relevant facts including:~~

- ~~(a) The wishes of the child's parents or parent as to the child's custody and as to visitation;~~
- ~~(b) The wishes of the child as to the child's custodian and as to visitation privileges;~~
- ~~(c) The interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interests;~~
- ~~(d) The child's adjustment to home, school, and community; and~~
- ~~(e) The mental and physical health of all individuals involved.~~

~~The court shall not consider conduct of a proposed custodian that does not affect the welfare of the child:))~~ On the same basis as provided in chapter 26.09 RCW, the court shall make residential provisions with regard to minor children of the parties.

(7) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the department of social and health services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the natural parent or parents, the court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

NEW SECTION. Sec. 57. **SHORT TITLE.** This act shall be known as the parenting act of 1987.

NEW SECTION. Sec. 58. **SECTION CAPTIONS.** Section captions as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 59. **EFFECTIVE DATE.** This act shall take effect on January 1, 1988.

NEW SECTION. Sec. 60. **SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 61. The following acts or parts of acts are each repealed:

(1) Section 18, chapter 157, Laws of 1973 1st ex. sess., section 27, chapter 263, Laws of 1984 and RCW 26.09.180;

(2) Section 19, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.190;

(3) Section 20, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.200;

(4) Section 23, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.230; and

(5) Section 25, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.250.

Passed the House April 17, 1987.

Passed the Senate April 15, 1987.

Approved by the Governor May 18, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 18, 1987.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 32, 33, 34, 37, 52, 53 and 54, Substitute House Bill No. 48, entitled:

"AN ACT Relating to parenting."

This legislation is part of a comprehensive approach by the Legislature to respond to pressing children's issues. As a result, several bills overlap each other. Sections 32, 33 and 34 of Substitute House Bill No. 48 affect how child support payments are made. Substitute House Bill No. 420, an act creating the child support

registry, also affects the child support payments process. If both bills were signed into law, there would be conflicting interpretations of the law on support orders, wage assignments, and directions to the court. To eliminate this ambiguity, I believe Substitute House Bill No. 420, which is more thorough, should take precedence. Therefore, I have vetoed sections 32, 33 and 34 of Substitute House Bill No. 48.

Section 37 of Substitute House Bill No. 48 concerns modification of support orders and merely re-codifies RCW 26.09.170. Substitute House Bill No. 413 amends this section of law. The amended language is preferable and a veto of section 37 will eliminate ambiguity.

Sections 52, 53 and 54 amend statutes having to do with custodial interference. These sections are very similar to Substitute Senate Bill No. 5088, which I have vetoed. While I agree that non-custodial parents deserve fair treatment when their visitation rights are abused, I am concerned that involving the police in settling non-violent visitation disputes where harm to the child is not evident is an improper approach.

I have been asked to veto section 3(3)(f) because of concerns that it would give an unfair advantage to those more financially well-off in parenting/custodial decisions. However, as this is only one factor in a non-exclusive list of factors describing parenting functions, I am confident that the courts will not use this to discriminate against less well-off parents, usually women, in custody cases. However, if after experience it appears that discrimination is occurring, I will support a change to the law.

With the exceptions of sections 32, 33, 34, 37, 52, 53 and 54, Substitute House Bill No. 48 is approved."

CHAPTER 461

[Substitute House Bill No. 1156]

COMMUNITY REVITALIZATION PROGRAM—WASHINGTON STATE DEVELOPMENT LOAN FUND COMMITTEE—DISTRESSED AREAS—LOAN ELIGIBILITY—PERFORMANCE STANDARDS

AN ACT Relating to distressed area requirements in the community revitalization team program and the development loan fund program; amending RCW 43.165.010, 43.168.020, 43.168.040, 43.168.050, and 43.168.070; adding new sections to chapter 43.168 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 229, Laws of 1985 and RCW 43.165.010 are each amended to read as follows:

Unless the context clearly requires to the contrary, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of community development.

(2) "Director" means the director of the department.

(3) "Distressed area" means: (a) A county that has an unemployment rate that is twenty percent above the state-wide average for the previous three years; or (b) a community or area that has experienced sudden and severe or long-term and severe loss of employment, or erosion of its economic base due to decline of its dominant industries; or (c) an area within a county which area: (i) Is composed of contiguous census tracts; (ii) has a