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SUPREME COURT

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SUPREME COURT OF THE STATE OF WASHINGTON

Final Order Parenting Plan, Thurston County Superior case No. 13-3-00643-1

ADAM CHARLES TORRES, Appellant

MEGAN JEWELL ROLAND-GARRISON (Torres), Respondent

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Appellant Brief

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Adam Torres

3012 Gardenia Ln SW apt. 14-102

Tumwater WA, 98512

253-283-2340

 ORIGINAL

## TABLE OF AUTHORITY

### Table of Cases

Motion for Temporary Relocation Order on August 26 2015

Thurston County case No.13-3-00643-1

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### Constitutional Provisions

None

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RCW 26.09.260 Modification of Parenting plan ..... pg. 5

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### Regulations and Rules

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Terms, definitions and RCW references

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## I. INTRODUCTION

1. Adam Torres, Petitioner/ Appellant
2. Megan (Roland-Garrison) Torres, Respondent
3. Dennis Schroader Jr., Attorney for Respondent
4. Kasey Omon, Respondent, Witness 1
5. Joy Benge, Respondent, Witness 2
6. Mallorie Smith, Respondent, Witness 3
7. Holly Krieg, Respondent, Witness 4
8. Not present: Michael Garrison, Husband (respondent)

## II. ASSIGNMENT OF ERROR

1A. The Trial Court has erred by awarding Mrs. Roland-Garrison ninety percent custody on November 10, 2015. The Lower Courts disregard of my facts brought forward on this day concerning abuse, neglect, maltreatment and by allowing Mrs. Roland-Garrison to relocate with Brayden has caused him emotional and physical distress because he has been distanced from Mr. Torres.

### ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

1. When is it ever ok for a Court to disregard evidence of abuse and allow a child to reside with an abusive/malfeasant party? (1A)
2. Why was the temporary relocation order restrained, more evidence about abuse brought forward on the date of the Bench Trial and then the relocation granted? (1A)
3. Is it justifiably spoken when The Trial Court mandates the young to live with the party that causes emotional and physical distress, judicially in that persons “best interest”? (1A)
4. If the child’s welfare was so important to Mrs. Roland – Garrison, why has our son been in the “low weight” 35 pounds range for the last four years while in her care for the majority of the time? (1A)
5. Is it judicially justifiable to remove a child out of there inhabited area where they thrive and flourish and insert them into a new city and on top of that distant them from the encouraging element of their life, and still expect them to thrive, flourish and remain complacent educationally, behaviorally and emotionally? (1A)
6. At the parent teacher conference that was held on the 23<sup>rd</sup> of March, 2016, at Brayden’s new school Mint Valley Elementary in Longview Washington. Before our sons doctor

diagnosed him with ADD, his teacher had stated, “that he just seemed to be withdrawn or lost when it came to studying.” Does this have anything to do with the physiological effect Brayden had just undergone from the Court’s decision to separate our son from his father and transplant him somewhere new and foreign? Removing him from the relative strength, nature and quality of stability that I the appellant possess for him conducive to the child’s best interest? (1A)

7. If a child were to show sudden changes in behavior or school performance, has yet to receive physical or medical care for problems pertaining to the development of the child, has learning problems or difficulty concentrating or lacks adult supervision, aren’t these some indicators of abuse or neglect? (1A)

### **III. STATEMENT OF THE CASE**

On or about the 28<sup>th</sup> of June 2015, formerly Ms. Roland (respondent) had sent me, Mr. Torres (appellant) a text message stating that she was going to be moving down to Longview Washington, to allow herself to move on with her life and to live with her boyfriend and that she was going to be taking our son Brayden with her (RP 1). My reaction was to research the rules and laws pertaining to changing or modifying the parenting plan via Relocation, RCW 26.09.260. I was aware at the time that in order to change county we would have to go back through court to get the approval. My rash decision to summon her Relocation packet was based on the number of accounts of bruises that I had written down to the date of August 26, 2015, which was the first Motion of this case. Although I have had to take a few out of state jobs to make it for myself, every time I return my son does remarkably better, emotionally, physically and educationally.

At this time Ms. Roland and Mr. Garrison had been in courtship for four months, and I, Mr. Torres, had already recorded four major bruises (CP 1; RP 2) and a neck injury the ER evaluated (CCP 2). CP 1; RP 2, will outline all the facts that I had intended to speak about and wanted the Judges priority on this information that I had initially filed for Court August 26, 2015. CCP 2, is the Medical charted portion for Brayden and outlines a diagnoses for the symptoms present and weight at the time of admission.

This occurred on the evening of June 15, 2015. Ms. Roland missed the pickup date on the 14<sup>th</sup> and picked Brayden up 28 hours after my custody week on the 15<sup>th</sup>. She returns on the morning of the 16<sup>th</sup> and she says, "he slept on the couch wrong so his neck hurts". Not until the 19<sup>th</sup> when Brayden was back with me, where he was still unable to do most common movements until lunch because of the remaining discomfort and pain. Brayden was with me during the days and I tracked his progress as I watched him during the 16, 17 and 18<sup>th</sup> while Ms. Roland was at work those days.

The first belt bruise had occurred between the week of Ms. Roland's custody time, April 20-25 of 2015. During this time frame I was picking Brayden up from school and watching him until she came to pick him up after Ms. Roland had gotten off of work. As annotated in the 2014-15 OSD Calendar and handbook, submitted to this Court in January 2016, she had typically picked him up between the hours of 5-6:30 pm that week. The only day that I hadn't seen Brayden was Saturday. After receiving him on Sunday the 26<sup>th</sup> of April 2015, I had helped him get into the bath before bed time and noticed a similar bruise on his buttocks compared to the attachment submitted to the lower Court on the 10<sup>th</sup> of November 2015, the day of our Bench trial (EX 3). The bruise that was noticed on the 26<sup>th</sup> of April 2015 was only written down on said calendar, and it lasted eight days. The other belt bruise I had

photographed (EX 3) and written down had only occurred four days before the Court bench trial. I had received him one day prior to trial and the bruise lasted the entire duration of my week.

The next three bruises happen consecutively while in Ms. Roland's custodial care, finger prints bruises to each forearm and one set to Brayden's right shin area. The duration of these bruises had lasted four to six days each, which in accordance with RCW 9A.16.100; Use of force on children –Policy- Actions presumed unreasonable, paragraph 6: 'doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks.' These and all the other dates and remarks about bruises and random injuries are all indicators that point directly to types of physical child abuse.

The week of May 4-8, 2015 I had been picking Brayden up from school and had noticed the first forearm bruise on his left arm. The second was to his right shin on the week of May 18-22, 2015, Brayden had stayed with me for the 19<sup>th</sup> because he was ill but his mother had picked him up at 7:30 that evening. Yet for the rest of the week I had picked him up from school daily therefore I was able to track the duration of the bruise. The third bruise had occurred on Ms. Roland's custodial time during July 1-5, 2015, Brayden's birthday July 4, 2015 (CP 3 or 4). At the beginning of Mr. Torres' custodial week of July 6-12, 2015, Brayden had mentioned that he had received the bruise to his right forearm from his mother while they were at the store shopping for a birthday gift for him. Brayden said, "My mom had called me and I told her I was going to be coming but I had forgot because I was looking at toys. When she had come back she pulled me by my arm and we left the store" (RP 3; CP 3; CP 4; EX 3).

The fifth bruise (EX 3), occurred on the Saturday before Mr. Torres' custodial week, a few days before trial. The only time that Mr. Garrison had been home during the week of November 1-8, 2015 was for a few hours prior to bed time on the 7<sup>th</sup>. Ms. Roland testifies to other, however my evidence that was captured on the evening of the 9<sup>th</sup> at bath time and submitted to the lower court on the morning of the 10<sup>th</sup> of November at our Bench trial further supports my case of maltreatment and abuse (RP 4).

Furthermore, providing medical records to the lower court was to show the points of difference in weight over the course of the last few years since we have been separated. By providing these documents I would like the court to take into consideration these forms are composed by medical professionals, also with reference to my 'OSD calendar and handbook 2014-15,' listed in April, June, July and August plus the medical records cover a period of four years. Brayden has had significant weight issues while in the care of Ms. Roland for the majority of the time (RP 5).

Looking through the medical records I would like the court to understand that my son's weight has always been on the top of my priority list for his health factor. When I had left in February of 2012 for welding school in Tulsa Oklahoma, he weighed 35 pounds. After I had been gone for a year, I had taken him to the ER for foot and mouth disease at the beginning of my custody week (CCP 5). Reference to the page listed in the appendix you will note that his weight was recorded medically at 33 pounds, two months after I had gotten back.

Medical report 2 (CCP 6), Brayden was taken into the ER for Dysuria. At this time he weighed in at 30 pounds, this accord was with his mother. Since Brayden and I are both uncircumcised, we boys need to take absolute special care of our personal hygiene otherwise medical issues can occur, especially since he has reflux of the kidney since birth. Exponential

detail should be paid towards Brayden's hygiene and since I am the father I understand what it takes to care for our son's health.

Medical report 3 (CCP 7) relates to a motor vehicle accident that Brayden's baby sitter had gotten into while he was in her care, Ms. Tammy Rhodes. At this time Brayden had weighed in at 37 pounds, nearly a year and a half since medical report 2. During this time I had been out of state trying to sustain a life for my family as a disabled Veteran seeking employment while VA worked on compensation packet. I had shortly returned to Washington in February 2015 as 90% disabled.

Returning to (CP 3 or CP 4) the picture of the scale that was submitted which was taken a few days prior to the return of my son to Ms. Roland in July of 2014 you will notice that our son gained 4.9 pounds of weight while he was traveling with me Over the Road for a month. After, it took four more months for my son to gain two additional pounds. During this time period Brayden was with Ms. Roland and Ms. Rhodes while I had started and ended my career as a truck driver, April 2014 to February 2015.

Correlating the neck injury sustained during June 16, 2015 (CCP 8) and a motor vehicle accident of December 5, 2014 (CCP 7), I revert back to the description of Abuse and Neglect for the "Use of force on children-Policy- Actions presumed unreasonable", as per RCW 9A.16.100; Paragraph 6 and RCW 26-44-020 verbatim definition; paragraph 1-3 (see attachments).

Medical report 5 (CCP 8), on this day Mr. Torres had taken Brayden to the ER after being brought over for the day while Ms. Roland attended work. She had dropped him off to me in the morning and said that his neck had been hurting him all morning since he had woken up. The summarization of the doctor's report is located within, also since I had

returned my son has started to gain weight again, this appointment recorded his weight to be 38 pounds (CCP 8).

The emotional and physical distress that has occurred within the time line of the November 10<sup>th</sup> court ruling for Ms. Roland's relocation, has only forced our son into a depressed state. Distancing my son from myself has internally shut him down. The point of my life has always been that encouraging factor to and for him. Providing him with healthy meals, developmental time and the cherishing love and support that he needs for his young growth, without my daily interaction with him creates a toll of emotional and physical distress that has been effecting his body.

Educationally there has been the times that I have been here locally and out of state. My first approach was to not allow Ms. Roland to enroll him in kindergarten so young but she had and I had gone along with her plan. As the school year had come to a close for 2013-2014, I had returned and was aware that he hadn't done so well that year. With his option to repeat the grade he had started at Southworth in Yelm, Washington and moved to Hansen in Olympia Washington for the second half of his second year of kindergarten, 2014-2015. When I was here there weren't any reports of him struggling, when it was him and I after school. His focus was attentive and his learning curve was coming around. Since the court granted relocation 2015-2016, his teacher at his current school in Longview Washington stated, "It just seems as if he is lost while asked to do an assignment." Ms. Roland had then gotten him medicated for ADD around January of 2016. The quality of his focus has increased but the emphasis of his studies haven't. While he had started out the year 2015-2016, at Tumwater Hill Elementary he started in a reading group, they had taught science experiments and had a steady pace of homework. After the first month his teacher had called

us to convene for a parent teacher conference so that we could discuss his concerns of study habits. The teacher had discussed with us that his habits were short and he needed extra help. Since Ms. Roland decided to move down to Longview Washington after the Judge denied her temporary order for relocation on August 26, 2015 the commute to bring Brayden to school on her weeks took an hour or slightly more twice a day.

The behavioral effects that abuse, neglect, maltreatment or malfeasance have on a child are devastating all around. It decrease the child's ability to learn, grow and fashion a loving bond between the aggressive parent more so forces them to shut down and feel left out or distanced from one. My son has grown two inches in the last year, 3/8 of an inch since the Court granted the relocation.

Although I have had to leave to Washington State on three occasions; my deployment to Iraq 2009-2010, to attend a vocational school in pursuit of a new career as a civilian directly after my exit from the military service and then worked for 90 days before getting fired as a disabled Veteran, to returning for a year then leaving again in an attempt to switch career fields in order to recover my life after losing everything because of the lack of financial funds and the devastating divorce. These weren't voluntary occasions, these needed to be done so that I can do right for my son and separated family.

Relating those facts to RCW 26.09.520 "Basis for determination"; 1. 'The relative strength, nature, quality, extent of involvement and stability of the child's relationship,' is in my favor. 3. 'Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting the relocation,' I had to do what it took to keep things going as the sole provider of the household even if it meant leave State to seek

employment. 5. 'The reason of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation,' (RP 1) clearly defines the reason why Ms. Roland wanted to relocate. Her employment was closer to Olympia, our son was in a great school and was making remarkable progress, our son wasn't distanced between us and he had left his community of friends that he had made. 6. 'The age developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, education, and emotional development, taking into consideration of any special needs the child may have,' The photographs of abuse would be the primary reason to not allow the relocation to happen, they physical aspect would have to be related to the medically indicated weight loss Brayden has undergone. Educationally Brayden was in a better school and had already gotten assigned to an encouraging additional reading group for extra help. Emotionally Brayden wouldn't have been detached from the person that provides for him the most since his birth, and special medication wouldn't be necessary if Brayden felt that he was supported and encouraged educationally. 7. 'The quality of life, resources, and the opportunity available to the child and to the relocating party in the current and proposed geographical area.' The current geographical area which Mr. Torres still resides in still offers Brayden his former school friends a vast array of children's resource buildings and the opportunity of after school activities that Brayden was forced to leave, still exist.

#### **IV. SUMMARY OF ARGUMENT**

Since day one our son has been the light to my life, although Ms. Roland and I have had our differences and are going our separate ways, I will not let my guard down especially in my son best interest. As the sole provider of the our household I had to go and find

employment to ensure that our lifestyle would be able to continue even though I had gotten medically discharged from the military after two deployments to the middle east and eight years of service to our County. As a dedicated stay at home father, I pride myself in my life accomplishments and cherish nothing else except the proper upbringing of my son. As Ms. Roland has gotten into this relationship with Mr. Garrison, I have seen enough bruises on my son to prove in any court that this form of treatment should not and will not be tolerated, and since their civil union in April 2016 I can only remove my son from the potential danger allowing him to feel at home and safe again. I know that the judgement of this case was erred and my records of facts deliberately point out why this case should get overturned to my benefit. Especially for my sons best interest.

#### **V. ARGUMENT**

1. When is it ever ok for a Court to disregard evidence of abuse and allow a child to reside with an abusive/malfeasant party?
2. Why was the temporary relocation order restrained, more evidence about abuse brought forward on the date of Bench Trial and then the relocation granted?
3. Is it justifiably spoken when The Trial Court mandates the young to live with the party that causes emotional and physical distress, judicially in that persons “best interest?”
4. If the child’s welfare was so important to Mrs. Roland – Garrison, why has our son been in the “low weight” 35 pounds range for the last four years while in her care for the majority of the time?
5. Is it judicially justifiable to remove a child out of there inhabited area where they thrive and flourish and insert them into a new city and on top of that distant them from the

encouraging element of their life, and still expect them to thrive, flourish and remain complacent educationally, behaviorally and emotionally?

6. At the parent teacher conference that was held on the 23<sup>rd</sup> of March, 2016, at Brayden's new school Mint Valley Elementary in Longview Washington. Before our sons doctor diagnosed him with ADD, his teacher had stated, "that he just seemed to be withdrawn or lost when it came to studying." Does this have anything to do with the physiological effect he had just undergone from the Court's decision to separate our son from his father and transplant him somewhere new and foreign? Removing him from the relative strength, nature and quality of stability that I the appellant possess for Brayden, conducive to the child's best interest?
7. If a child were to show sudden changes in behavior or school performance, has yet to receive physical or medical care for problems pertaining to the development of the child, has learning problems or difficulty concentrating or lacks adult supervision, aren't these some indicators of abuse or neglect?

## **VI. CONCLUSION**

The reason why I continue to fight for my son is because we have the strongest emotional bond. I pride myself in the work that I have done and completed for our Nation and Brayden is proud too. The toll of being where I was doesn't only effect the soldier it effects the household and loved ones too. The pride my son carries when he is in my care is a complete 180 degree turn from what I have been seeing for the last seven months. I have recorded his begging pleas to be able to spend more time with me and his endless requests to be able to come back and just stay with me is another reason why the lower Court had erred in this matter. My rash decision to summons Ms. Roland's relocation request was not to stop her

from moving on with her life but to allow my son to be with the person that has cared for him the most regardless of the distance between us. Having the ability to be back in Washington State and see firsthand how my son is being treated while I am here is extremely devastating and needs to stop, much less, being unable to physically see what was happening when I was away only adds to the frustration that it has taken me this long to potentially assume full custody of my child and allowing him to be safely removed from his current situation with his mother and stepfather.

I don't feel that Child Protective Services need to be involved because I am here and I will protect my son like I had our Nation. I didn't need the police to take pictures of my son bruises because I know what it takes to make a solid case. Facts and evidence are all the support that I need to rightfully seek justice for my son.

Due to my military experience and discharge I am a committed stay at home father and have been living off of a sustainable low income budget for a year and six months. This however was the reason why I was unable to seek judicial representation, however me being who I am and what I have and currently stand for only goes to prove that I can and will represent myself better than I could pay anyone to. Furthermore, at the Bench Trial I was unable to recopy all of the evidence and other matters that I had already submitted to Court and was unaware that the Judge was going to be unwilling to look back at the previous case documents, which left me with the only topic of the bruise for discussion on the date of Trial, November 10, 2015. Looking at the transcripts I will point out that my speech and ability to represent my case was daunting, you will notice I was very passionate about the Judge knowing what it was that I had just submitted and why I wanted to get the relocation order denied. I cannot control Ms. Roland's life and have no desire to, it was her choice to get

remarried and that's her life. What I am doing is showing the Court that there is an ongoing safety issue in her household and I do not want my son to be part of it.

Finally, I ask for this Court to understand my directive and the meaning of this petition. I seek to have the ruling of the Lower Court reversed and Mrs. Roland- Garrison relieved of the title Custodial Parent. I will selflessly assume the title and reestablish my son's life in his best interest (EX 1).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'AT', is written above a horizontal line.

Adam Torres, Appellant

**VII. APPENDIX**

RP 1: August 26, 2015 Hearing; Page 7: Lines 10-15 ..... pg. 5, 12

CP 1: Clerks paperwork; Statement – pages 58-61: 8/14/2015 ..... pg. 5, 6

Outline of material referenced

RP2: August 26, 2015 Hearing; Page 3: Lines 24-25 ..... pg. 5, 6

CCP 2: Confidential Clerks paperwork; Medical Record #5 – pages 142-147.... pg. 6

Date of admission - 6/16/2015

Actual report page; 144 – Admission diagnoses, code 723.1

145 – Arrival information “neck pain”

157 – ER discharge diagnoses

166 – Consent for service form signed by Mr. Torres

EX 3: Index to Exhibits; Photo of Brayden showing recent bruise ..... pg. 6, 7, 8

Exhibit No. 3

CP 3: Clerks paperwork; Attachment (photo): submitted 7/31/2015 ..... pg. 7, 9

Clerks pages 17-19 (scale or bruise photo)

CP 4: Clerks paperwork; Attachment (photo): submitted 7/31/2015 ..... pg. 7, 9

Clerks pages 32-34 (scale or bruise photo)

RP 3: November 10, 2015 Bench Trial; Page 8: Lines 5-25 ..... pg. 7

November 10, 2015 Bench Trial; Page 9: Lines 1-2

RP 4: November 10, 2015 Bench Trial; Page 94: Lines 12-25 ..... pg. 8

November 10, 2015 Bench Trial; Page 95: Lines 1-22

RP 5: August 26, 2015 Hearing; Page 16: Lines 25 ..... pg. 8

August 26, 2015 Hearing; Pages 17: Lines 1-15

- CCP 5: Confidential Clerks paperwork; Medical Report #1– Pages 118 - 141 .. pg. 8  
Date of admission – 5/27/2013  
Actual report page; 16 – Weight 33 LBS
- CCP 6: Confidential Clerks paperwork; Medical Report #2 – Pages 96 - 117 .... pg. 8  
Date of admission – 6/4/2013  
Actual report page; 40 – Weight 30 LBS
- CCP 7: Confidential Clerks paperwork; Medical Report #3 – Pages 68 - 95 ..... pg. 9  
Date of admission – 12/5/2014  
Actual report page; 63 – Weight 37 LBS
- CCP8: Confidential Clerks paperwork; Medical Report (#5) – Pages 142 - 174 .. pg. 9, 10  
Date of admission – 6/16/2015  
Actual report page; 84 – Weight 38 LBS
- EX 1: Index to Exhibits; Petitioner’s Proposed Parenting Plan ..... pg. 16  
Exhibit No. 1

## **RCW 9A.16.100**

### **Use of force on children—Policy—Actions presumed unreasonable.**

It is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. Any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive.

[ 1986 c 149 § 1.]

## **RCW 26.09.260**

### **Modification of parenting plan or custody decree.**

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has

previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

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

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a

## RCW 26.09.520

### Basis for determination.

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

(1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;

(2) Prior agreements of the parties;

(3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;

(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;

(5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;

(6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

(7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;

(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

(10) The financial impact and logistics of the relocation or its prevention; and

(11) For a temporary order, the amount of time before a final decision can be made at trial.

[ 2000 c 21 § 14.]

### NOTES:

**Intent—Captions not law—2000 c 21:** See notes following RCW 26.09.405.

## RCW 26.44.020

### Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Child" or "children" means any person under the age of eighteen years of age.

(3) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(4) "Child protective services section" means the child protective services section of the department.

(5) "Children's advocacy center" means a child-focused facility in good standing with the state chapter for children's advocacy centers and that coordinates a multidisciplinary process for the investigation, prosecution, and treatment of sexual and other types of child abuse. Children's advocacy centers provide a location for forensic interviews and coordinate access to services such as, but not limited to, medical evaluations, advocacy, therapy, and case review by multidisciplinary teams within the context of county protocols as defined in RCW 26.44.180 and 26.44.185.

(6) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Court" means the superior court of the state of Washington, juvenile department.

(8) "Department" means the state department of social and health services.

(9) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(10) "Family assessment response" means a way of responding to certain reports of child abuse or neglect made under this chapter using a differential response approach to child protective services. The family assessment response shall focus on the safety of the child, the integrity and preservation of the family, and shall assess the status of the child and the family in terms of risk of abuse and neglect including the parent's or guardian's or other

caretaker's capacity and willingness to protect the child and, if necessary, plan and arrange the provision of services to reduce the risk and otherwise support the family. No one is named as a perpetrator, and no investigative finding is entered in the record as a result of a family assessment.

(11) "Founded" means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

(12) "Inconclusive" means the determination following an investigation by the department, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

(13) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

(14) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(15) "Malice" or "maliciously" means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(16) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

(17) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(18) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(19) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(20) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(21) "Screened-out report" means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

(22) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(23) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(24) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(25) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(26) "Unfounded" means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

[ 2012 c 259 § 1. Prior: 2010 c 176 § 1; 2009 c 520 § 17; 2007 c 220 § 1; 2006 c 339 § 108; (2006 c 339 § 107 expired January 1, 2007); 2005 c 512 § 5; 2000 c 162 § 19; 1999 c 176 § 29; 1998 c 314 § 7; prior: 1997 c 386 § 45; 1997 c 386 § 24; 1997 c 282 § 4; 1997 c 132 § 2; 1996 c 178 § 10; prior: 1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

## NOTES:

**Effective date—2012 c 259 §§ 1 and 3-10:** "Sections 1 and 3 through 10 of this act take effect December 1, 2013." [ 2012 c 259 § 15.]

**Family assessment response evaluation—Family assessment response survey—2012 c 259:** See notes following RCW 26.44.260.

**Effective date—2007 c 220 §§ 1-3:** "Sections 1 through 3 of this act take effect October 1, 2008." [ 2007 c 220 § 10.]

**Implementation—2007 c 220 §§ 1-3:** "The secretary of the department of social and health services may take the necessary steps to ensure that sections 1 through 3 of this act are implemented on their effective date." [ 2007 c 220 § 11.]

**Effective date—2006 c 339 § 108:** "Section 108 of this act takes effect January 1, 2007." [ 2006 c 339 § 404.]

**Expiration date—2006 c 339 § 107:** "Section 107 of this act expires January 1, 2007." [ 2006 c 339 § 403.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—Effective date—Short title—2005 c 512:** See notes following RCW 26.44.100.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Application—Effective date—1997 c 386:** See notes following RCW 13.50.010.

**Findings—1997 c 132:** "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [ 1997 c 132 § 1.]

**Effective date—1996 c 178:** See note following RCW 18.35.110.

**Severability—1984 c 97:** See RCW 74.34.900.

**Severability—1982 c 129:** See note following RCW 9A.04.080.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

## Children's Administration

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## What is Child Abuse and Neglect?

RCW 26-44-020 defines abuse and neglect as injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed. Abuse and neglect does NOT include the physical discipline of a child as defined in RCW 9A.16.100.

### Recognizing Child Abuse and Neglect: Signs and Symptoms

The first step in helping abused or neglected children is learning to recognize the signs of child abuse and neglect. The presence of a single sign does not prove child abuse is occurring in a family; however, when these signs appear repeatedly or in combination you should take a closer look at the situation and consider the possibility of child abuse.

The following signs may signal the presence of child abuse or neglect.

#### The Child:

- Shows sudden changes in behavior or school performance.
- Has not received help for physical or medical problems brought to the parents' attention.
- Has learning problems (or difficulty concentrating) that cannot be attributed to specific physical or psychological causes.
- Is always watchful, as though preparing for something bad to happen.
- Lacks adult supervision.
- Is overly compliant, passive, or withdrawn.
- Comes to school or other activities early, stays late, and does not want to go home.

#### The Parent:

- Shows little concern for the child.
- Denies the existence of or blames the child for the child's problems in school or at home.
- Asks teachers or other caretakers to use harsh physical discipline if the child misbehaves.
- Sees the child as entirely bad, worthless, or burdensome.
- Demands a level of physical or academic performance the child cannot achieve.
- Looks primarily to the child for care, attention, and satisfaction of emotional needs.

## The Parent and Child:

- Rarely touch or look at each other.
- Consider their relationship entirely negative.
- State that they do not like each other.

## Common Indicators:

- Physical Abuse
- Neglect
- Sexual Abuse
- Emotional Abuse

*Author: Child Welfare Information Gateway (<http://www.childwelfare.gov>)*

## CA

### Child Safety and Protection

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#### Adolescents

#### Adoption

#### Contracted Providers

Domestic Violence

Foster Parenting

Indian Child Welfare

Parent Resources

Publications

## Mandated Reporter Toolkit

- **Mandatory Reporter Video Presentation**
  - Watch the Video
  - Instructions on using Prezi
- **Protecting the Abused and Neglected Child** - An explanation of the Washington State mandatory reporting law on child abuse:
  - Read the Guide
- **What Mandated Reporters Need to Know about Racial Disproportionality in the Child Welfare System** - 8 minute YouTube video brochure:
  - Watch the Video (YouTube): English | Spanish

## More Resources

- **No Excuse music video** - Encourages youth being abused to stand up, don't be afraid, and get help:
  - View the Video (YouTube)
- **Child Protection Medical Consultant Network Information and Contact Sheet** - The Consultation Network provides statewide consultation and training regarding medical findings in cases of alleged child abuse and neglect:
  - Information Sheet
  - Medical Consultants Contact Sheet



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Date: June 16, 2016

To: The Clerk of the Supreme Court State of Washington

I, Adam Torres am submitting documents on behalf of my Case no. 92674-3 with the Supreme Court of the state of Washington. Attached at this date are the following forms;

1. Certified declaration of service for Dennis Schroader Jr. Attorney at law
2. Appellant Brief, 18 page report and additional pages of referenced material

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Date: June 16, 2016

I, Adam Torres certify that on the 16 day of June, 2016, I caused a true and correct copy of the Appellant Brief (title) to be served on Counsel (counsel or party) by USPS (method).



\_\_\_\_\_  
Signature

Adam Torres  
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