

Relocation

RCW 26.09.405 through RCW 26.09.915

What you need to know when you are considering objecting to a relocation.

Only primary residential parents with a temporary or permanent parenting plan or other similar court order must give notice of a pending change in a child's residence. If your family does not have an applicable court order, then the relocation statute does not apply, and any pleadings related to a pending move must not be in the form of a relocation objection.

If your family does have an applicable court order, then the relocating parent must give notice of the move to the other parent, and the other parent must file a timely objection with the court.¹ If a timely objection is filed, then the court will permanently decide whether the primary parent is allowed to relocate the child after a trial.

The primary residential parent has a constitutional right to move. The relocation statute is designed to protect this right while giving the other parent a say if he or she believes the move would be detrimental to the child. Under the statute, it is presumed that the primary parent will be permitted to relocate with the child unless the objecting parent meets the **high burden** of rebutting that presumption.

Unless the relocating parent has obtained a court order, a child cannot be relocated during the statutory period allowed for objecting to the move. However, once the time to object is up, **the relocation is not automatically prevented or delayed while a relocation trial is pending.** If a parent wants to stop the move while the trial is pending, he or she must note a hearing for a temporary order to prevent the move within **15 days** of filing a timely objection.² A judicial officer will determine whether or not the move will be temporarily prevented, and he or she will record a temporary order. Either parent has the right to file a motion with the assigned trial judge to revise the commissioner's temporary order.

Rebutting the Presumption for Relocation

To rebut the presumption, an objecting parent must demonstrate that the **detrimental effect** of the relocation **outweighs the benefit of the change to the child and the relocating parent.** The judge will not only consider any advantages or disadvantages of the move to the child. He or she will also look at the benefits of the move for the relocating parent such as job opportunities and family support, including a new partner or spouse. The objecting parent has the burden of proving the problems with the move are greater than its benefits.

Factors Considered by the Court

In rebutting the presumption for relocation, the objecting parent should **address as many statutory factors as possible.** The factors are not weighted, so one factor is not automatically more important than another. These factors are found in RCW 26.09.520, and they are,

- (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;

¹ "The objection shall be in the form of: (a) A petition for modification of the parenting plan pursuant to relocation; or (b) other court proceeding adequate to provide grounds for relief." RCW 26.09.480(1).

² Absent circumstances in RCW 26.09.460(3), the child's resident cannot change pending the temporary hearing and resulting order. RCW 26.09.480(2).

- (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.

Time Before Final Decisions are Made at Trial

As noted above, **factor (11)** applies to temporary orders restricting relocation, and it considers how long it will be before a final decision on relocation can be made. The time before a final decision can be made varies depending on whether there is already a pending action and the case type of the pending action.

Cases with a Pending Action

In family court, **Petitions for Modification** are scheduled for trial within **1 year of filing**. **Dissolutions and Residential Schedules** where a guardian ad litem has been appointed are scheduled within **18 months and 14 months** respectively.

Dissolutions and Residential Schedule cases can also be heard by judges not assigned to family court. These cases often have no appointed guardian ad litem, but not always. Generally, trials outside family court are scheduled **within 18 months** of the trial assignment date.

A notice of relocation and objection to relocation can properly be filed up to the day of trial for the case types noted above. Again, there has to be a permanent or temporary parenting plan, or similar order, made in the case. The type of action that is pending will affect when the final decision on relocation will be made. Some examples of the differences are outlined below.

Example 1

Several years after a permanent parenting plan is entered placing both children with Mother, Father files a **Petition for Modification** because his son has been living with him by agreement for six months. The day after Father's petition is filed, or even up to the day of trial, Mother could give notice of a planned move with their daughter. If asked to make a temporary order pending trial, the judicial officer will look to the trial date for the modification action filed by Father before Mother gave notice of relocation and he objected. The relocation issue will be tried as part of the original modification action.

Example 2

A **Dissolution** or **Residential Schedule** petition has been filed, and a judicial officer has made temporary orders placing the child primarily with Father. If Father plans to change his residence, he must notify Mother of planned change, and Mother must object in proper form. Mother may or may not obtain new temporary orders pending the relocation trial, but the final relocation decision will be made as part of the dissolution trial.

Advancing the Trial Date

When an action is pending, the filing of a notice or objection to a relocation may be grounds to advance the trial date. This possibility depends on, among other things, the type of case that is pending, whether it is in family court, and how prepared you are for trial on all of the issues. To advance a trial date, you must obtain the court's approval upon motion as allowed by law.

Cases Without a Pending Action

When an objection to a move includes a Petition for Modification of an existing permanent parenting plan/residential schedule **solely** due to receiving notice of the primary parent's move, the case type is **Relocation**.

Relocation trials are scheduled within **6 months**. Relocation trials are given priority in family court, so filing an objection to get a quicker trial to resolve issues outside relocation is cutting in front of other parents who have been waiting to have their issues heard and resolved by the court. Plus, relocation trials **do not** resolve any requests for relief outside the issues involved in a potential change in a child's residence.

Do not use a relocation objection to "get even" with the other parent, or to lower your child support obligation because you lost your job. Relocation objections must be filed in good faith, and the relocation trial will not provide relief for issues outside relocation. You may be required to pay the other party's **attorney's fees** if your objection to relocation is frivolous, or if you should have filed your case under different legal grounds.