

2 **ESSB 5061** - H COMM AMD **ADOPTED 3-3-94**

3 By Committee on Judiciary

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "**Sec. 1.** RCW 26.09.191 and 1989 c 375 s 11 and 1989 c 326 s 1 are  
8 each reenacted and amended to read as follows:

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

18 (2)(a) The parent's residential time with the child shall be  
19 limited if it is found that the parent has engaged in any of the  
20 following conduct: (i) Willful abandonment that continues for an  
21 extended period of time or substantial refusal to perform parenting  
22 functions; (ii) physical, sexual, or a pattern of emotional abuse of a  
23 child; or (iii) a history of acts of domestic violence as defined in  
24 RCW 26.50.010(1) or an assault or sexual assault which causes grievous  
25 bodily harm or the fear of such harm. This subsection shall not apply  
26 when (c) of this subsection applies.

27 (b) The parent's residential time with the child shall be limited  
28 if it is found that the parent resides with a person who has engaged in  
29 any of the following conduct: (i) Physical, sexual, or a pattern of  
30 emotional abuse of a child; or (ii) a history of acts of domestic  
31 violence as defined in RCW 26.50.010(1) or an assault or sexual assault  
32 that causes grievous bodily harm or the fear of such harm. This  
33 subsection (2)(b) shall not apply when (c) of this subsection applies.

34 (c) If a parent has been convicted as an adult of a sexual offense  
35 under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has been found to  
36 be a sexual predator under chapter 71.09 RCW, the court shall restrain

1 the parent from contact with a child that would otherwise be allowed  
2 under this chapter. If a parent resides with an adult who has been  
3 convicted, or with a juvenile who has been adjudicated, of a sexual  
4 offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or who has  
5 been found to be a sexual predator under chapter 71.09 RCW, the court  
6 shall restrain the parent from contact with the parent's child except  
7 contact that occurs outside that person's presence.

8 (d)(i) The limitations imposed by the court under (a) or (b) of  
9 this subsection shall be reasonably calculated to protect the child  
10 from physical, sexual, or emotional abuse or harm that could result if  
11 the child has contact with the parent requesting residential time. If  
12 the court expressly finds based on the evidence that limitation on the  
13 residential time with the child will not adequately protect the child  
14 from the harm or abuse that could result if the child has contact with  
15 the parent requesting residential time, the court shall restrain the  
16 parent requesting residential time from all contact with the child.

17 ((+e)) (ii) The court shall not enter an order under (a) of this  
18 subsection allowing a parent to have contact with a child if the parent  
19 has been found in a civil or dependency action to have sexually abused  
20 the child, except upon recommendation by an evaluator or therapist for  
21 the child that the child is ready for contact with the parent and will  
22 not be harmed by the contact. The court shall not enter an order  
23 allowing a parent to have contact with the child if the parent resides  
24 with a person who is found in a civil or dependency action to have  
25 sexually abused a child, unless the court finds that the parent accepts  
26 that the person engaged in the harmful conduct and the parent is  
27 willing to and capable of protecting the child from harm from the  
28 person.

29 (iii) If the court limits residential time under (a) or (b) of this  
30 subsection to require supervised contact between the child and the  
31 parent, the court shall not approve of a supervisor for contact between  
32 a child and a parent who has engaged in physical, sexual, or a pattern  
33 of emotional abuse of the child unless the court finds based upon the  
34 evidence that the supervisor accepts that the harmful conduct occurred  
35 and is willing to and capable of protecting the child from harm. The  
36 court shall revoke court approval of the supervisor upon finding, based  
37 on the evidence, that the supervisor has failed to protect the child or  
38 is no longer willing to or capable of protecting the child.

1       (e) If the court expressly finds based on the evidence that contact  
2 between the parent and the child will not cause physical, sexual, or  
3 emotional abuse or harm to the child and that the probability that the  
4 parent's or other person's harmful or abusive conduct will recur is so  
5 remote that it would not be in the child's best interests to apply the  
6 limitations of (a) ~~((and))~~, (b), and (d) (i) and (iii) of this  
7 subsection, or if the court expressly finds the parent's conduct did  
8 not have an impact on the child, then the court need not apply the  
9 limitations of (a) ~~((and))~~, (b), and (d) (i) and (iii) of this  
10 subsection. The weight given to the existence of a protection order  
11 issued under chapter 26.50 RCW as to domestic violence is within the  
12 discretion of the court. This subsection shall not apply when (c) and  
13 (d)(ii) of this subsection apply.

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

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

20       (b) A long-term emotional or physical impairment which interferes  
21 with the parent's performance of parenting functions as defined in RCW  
22 26.09.004;

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

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

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

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

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

34       (4) In entering a permanent parenting plan, the court shall not  
35 draw any presumptions from the provisions of the temporary parenting  
36 plan.

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

1       **Sec. 2.** RCW 26.10.160 and 1989 c 326 s 2 are each amended to read  
2 as follows:

3       (1) A parent not granted custody of the child is entitled to  
4 reasonable visitation rights except as provided in subsection (2) of  
5 this section.

6       (2)(a) Visitation with the child shall be limited if it is found  
7 that the parent seeking visitation has engaged in any of the following  
8 conduct: (i) Willful abandonment that continues for an extended period  
9 of time or substantial refusal to perform parenting functions; (ii)  
10 physical, sexual, or a pattern of emotional abuse of a child; or (iii)  
11 a history of acts of domestic violence as defined in RCW 26.50.010(1)  
12 or an assault or sexual assault which causes grievous bodily harm or  
13 the fear of such harm. This subsection shall not apply when (c) of  
14 this subsection applies.

15       (b) The parent's residential time with the child shall be limited  
16 if it is found that the parent resides with a person who has engaged in  
17 any of the following conduct: (i) Physical, sexual, or a pattern of  
18 emotional abuse of a child; or (ii) a history of acts of domestic  
19 violence as defined in RCW 26.50.010(1) or an assault or sexual assault  
20 which causes grievous bodily harm or the fear of such harm.

21       (c) If a parent has been convicted as an adult of a sexual offense  
22 under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has been found to  
23 be a sexual predator under chapter 71.09 RCW, the court shall restrain  
24 the parent from contact with a child that would otherwise be allowed  
25 under this chapter. If a parent resides with an adult who has been  
26 convicted, or with a juvenile who has been adjudicated, of a sexual  
27 offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or who has  
28 been found to be a sexual predator under chapter 71.09 RCW, the court  
29 shall restrain the parent from contact with the parent's child except  
30 contact that occurs outside that person's presence.

31       (d)(i) The limitations imposed by the court under (a) or (b) of  
32 this subsection shall be reasonably calculated to protect the child  
33 from the physical, sexual, or emotional abuse or harm that could result  
34 if the child has contact with the parent requesting visitation. If the  
35 court expressly finds based on the evidence that limitations on  
36 visitation with the child will not adequately protect the child from  
37 the harm or abuse that could result if the child has contact with the  
38 parent requesting visitation, the court shall restrain the person  
39 seeking visitation from all contact with the child.

1        ~~((e))~~ (ii) The court shall not enter an order under (a) of this  
2 subsection allowing a parent to have contact with a child if the parent  
3 in a civil or dependency action has been found to have sexually abused  
4 the child, except upon recommendation by an evaluator or therapist for  
5 the child that the child is ready for contact with the parent and will  
6 not be harmed by the contact. The court shall not order a child to  
7 have contact with the parent under (b) of this subsection if the parent  
8 resides with a person who in a civil or dependency action has been  
9 found to have sexually abused a child, unless the court finds that the  
10 parent accepts that the person engaged in the harmful conduct and the  
11 parent is willing to and capable of protecting the child from harm from  
12 the person.

13        (iii) If the court limits residential time under (a) or (b) of this  
14 subsection to require supervised contact between the child and the  
15 parent, the court shall not approve of a supervisor for contact between  
16 a child and a parent who has engaged in physical, sexual, or a pattern  
17 of emotional abuse of the child unless the court finds based upon the  
18 evidence that the supervisor accepts that the harmful conduct occurred  
19 and is willing to and capable of protecting the child from harm. The  
20 court shall revoke court approval of the supervisor upon finding, based  
21 on the evidence, that the supervisor has failed to protect the child or  
22 is no longer willing to or capable of protecting the child.

23        (e) If the court expressly finds based on the evidence that contact  
24 between the parent and the child will not cause physical, sexual, or  
25 emotional abuse or harm to the child and that the probability that the  
26 parent's or other person's harmful or abusive conduct will recur is so  
27 remote that it would not be in the child's best interests to apply the  
28 limitations of (a) ~~(and)~~, (b), and (d) (i) and (iii) of this  
29 subsection, or if the court expressly finds based on the evidence that  
30 the parent's conduct did not have an impact on the child, then the  
31 court need not apply the limitations of (a) ~~(and)~~, (b), and (d) (i)  
32 and (iii) of this subsection. The weight given to the existence of a  
33 protection order issued under chapter 26.50 RCW as to domestic violence  
34 is within the discretion of the court. This subsection shall not apply  
35 when (c) and (d)(ii) of this subsection apply.

36        (3) Any person may petition the court for visitation rights at any  
37 time including, but not limited to, custody proceedings. The court may  
38 order visitation rights for any person when visitation may serve the

1 best interest of the child whether or not there has been any change of  
2 circumstances.

3 (4) The court may modify an order granting or denying visitation  
4 rights whenever modification would serve the best interests of the  
5 child. Modification of a parent's visitation rights shall be subject  
6 to the requirements of subsection (2) of this section.

7 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
8 preservation of the public peace, health, or safety, or support of the  
9 state government and its existing public institutions, and shall take  
10 effect immediately."

11 EFFECT: The bill is rewritten. Restrictions on parent contact  
12 with a child are as follows:

13 (1) A parent who has been convicted of incest or other sex  
14 offenses, or is a "sexual predator," may not have contact with the  
15 parent's child.

16 (2) If the parent lives with a person who fits those categories,  
17 any contact the parent has with the child must be outside that person's  
18 presence.

19 (3) In other cases in which it is found that the parent or a person  
20 living with the parent has engaged in physical, sexual, or emotional  
21 abuse of the child or has engaged in domestic violence, the court may  
22 allow contact with the child with limitations imposed which are  
23 designed to protect the child. The court may not order contact with a  
24 child if the parent has been found in a civil or dependency action to  
25 have sexually abused the child unless the child's therapist recommends  
26 that the contact occur. If the court imposes a limitation that a  
27 supervisor supervise the contact, the supervisor must accept that the  
28 harmful conduct occurred and must be willing to and capable of  
29 protecting the child. If the court finds that a person with whom the  
30 parent resides has engaged in sexual abuse of a child, the court may  
31 not allow the parent to contact the child unless the parent accepts  
32 that the person engaged in the harmful conduct and the parent is  
33 capable and willing to protect the child from the other person.

34 (4) If the court expressly finds that contact between the parent  
35 and child will not harm the child then the court does not have to  
36 impose limitations on contact. This provision does not apply if the  
37 parent has been convicted of a sex offense or is a sexual predator,  
38 lives with a person who has been convicted of a sex offense or is a  
39 sexual predator, or if the child's therapist has not recommended  
40 contact between the parent and child.

41 The same rules apply to nonparental actions for child custody.

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