
SUBSTITUTE SENATE BILL 5061

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Fraser, Winsley and A. Smith)

Read first time 03/03/93.

1 AN ACT Relating to restrictions on residential time for abusive
2 parents; amending RCW 26.10.160; and reenacting and amending RCW
3 26.09.191.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

16 (2)(a) If there is a conviction in a criminal action, or if a court
17 in an action under this chapter finds by clear and convincing evidence,
18 that a parent requesting residential time has sexually abused a child
19 living in the parent's household at any time during the parent's life

1 or any other child within the previous ten years, then there is a
2 rebuttable presumption that the court shall not allow residential time
3 to a parent and shall enter a permanent restraining order prohibiting
4 the parent from contacting the child directly or indirectly.

5 (b) The presumption may be rebutted only after a finding that:

6 (i) The offending parent has successfully engaged in court-approved
7 treatment for sexual offenders or is engaged in and making progress in
8 such treatment and the treatment provider believes such contact is
9 appropriate and poses minimal risk to the child; and

10 (ii) An adequate plan for supervision of such residential time in
11 accordance with the provisions of this chapter has been approved by the
12 court.

13 (c) If the court finds that the presumption has been rebutted, the
14 court may allow a parent who has been found to have sexually abused a
15 child to have residential time with the child supervised by a neutral
16 and independent adult. Unless the nonoffending parent approves the
17 supervisor, the court shall make a finding that the proposed supervisor
18 is neutral, independent, willing to supervise, and capable of
19 intervening between the child and the parent if necessary. The court
20 shall enter findings of fact regarding the qualifications of the
21 appointed supervisor and shall notify the supervisor of the court's
22 requirements regarding supervision. The court may immediately remove
23 the supervisor from the supervisory role upon evidence being presented
24 that the supervisor failed to supervise the residential time
25 adequately.

26 (d) The parent's residential time with the child shall be limited
27 if it is found that the parent has engaged in any of the following
28 conduct: (i) Willful abandonment that continues for an extended period
29 of time or substantial refusal to perform parenting functions; (ii)
30 physical, sexual, or a pattern of emotional abuse of a child; or (iii)
31 a history of acts of domestic violence as defined in RCW 26.50.010(1)
32 or an assault or sexual assault which causes grievous bodily harm or
33 the fear of such harm.

34 ((b)) (e) The limitations imposed by the court shall be
35 reasonably calculated to protect the child from physical, sexual, or
36 emotional abuse or harm that could result if the child has contact with
37 the parent requesting residential time. If the court expressly finds
38 limitation on the residential time with the child will not adequately
39 protect the child from the harm or abuse that could result if the child

1 has contact with the parent requesting residential time, the court
2 shall restrain the parent requesting residential time from all contact
3 with the child. If the parent requesting residential time is currently
4 residing with another person who has a history of physical or sexual
5 abuse of a child, whether that person is an adult or a juvenile, the
6 court shall order that all residential time take place outside the
7 presence of that person.

8 ~~((e))~~ (f) Except as provided in (a), (b), and (c) of this
9 subsection, if the court expressly finds that contact between the
10 parent and the child will not cause physical, sexual, or emotional
11 abuse or harm to the child and that the probability that the parent's
12 harmful or abusive conduct will recur is so remote that it would not be
13 in the child's best interests to apply the limitations of ~~((a) and~~
14 ~~(b))~~ (d) and (e) of this subsection, or if the court expressly finds
15 the parent's conduct did not have an impact on the child, then the
16 court need not apply the limitations of ~~((a) and (b))~~ (d) and (e) of
17 this subsection. The weight given to the existence of a protection
18 order issued under chapter 26.50 RCW as to domestic violence is within
19 the discretion of the court.

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

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

26 (b) A long-term emotional or physical impairment which interferes
27 with the parent's performance of parenting functions as defined in RCW
28 26.09.004;

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

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

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

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

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

1 (4) In entering a permanent parenting plan, the court shall not
2 draw any presumptions from the provisions of the temporary parenting
3 plan.

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

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

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

12 (2)(a) If there is a conviction in a criminal action, or if a court
13 in an action under this chapter finds by clear and convincing evidence,
14 that a parent requesting visitation has sexually abused a child living
15 in the parent's household at any time during the parent's life or any
16 other child within the previous ten years, then there is a rebuttable
17 presumption that the court shall not allow visitation to a parent and
18 shall enter a permanent restraining order prohibiting the parent from
19 contacting the child directly or indirectly.

20 (b) The presumption may be rebutted only after a finding that:

21 (i) The offending parent has successfully engaged in court-approved
22 treatment for sexual offenders or is engaged in and making progress in
23 such treatment and the treatment provider believes such contact is
24 appropriate and poses minimal risk to the child;

25 (ii) The child is in or has been in therapy for victims of sexual
26 abuse and the child's counselor believes such contact between the child
27 and the abuser is in the child's best interest; and

28 (iii) An adequate plan for supervision of such visitation in
29 accordance with the provisions of this chapter has been approved by the
30 court.

31 (c) If the court finds that the presumption has been rebutted, the
32 court may allow a parent who has been found to have sexually abused a
33 child to have visitation with the child supervised by a neutral and
34 independent adult. Unless the nonoffending parent approves the
35 supervisor, the court must make a finding that the proposed supervisor
36 is neutral, independent, willing to supervise, and capable of
37 intervening between the child and the parent if necessary. The court
38 shall enter findings of fact regarding the qualifications of the

1 appointed supervisor and shall notify the supervisor of the court's
2 requirements regarding supervision. The court may immediately remove
3 the supervisor from the supervisory role upon evidence being presented
4 that the supervisor failed to supervise the residential time
5 adequately.

6 (d) Visitation with the child shall be limited if it is found that
7 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.

14 ~~((b))~~ (e) The limitations imposed by the court shall be
15 reasonably calculated to protect the child from the physical, sexual,
16 or emotional abuse or harm that could result if the child has contact
17 with the parent requesting visitation. If the court expressly finds
18 limitations on visitation with the child will not adequately protect
19 the child from the harm or abuse that could result if the child has
20 contact with the parent requesting visitation, the court shall restrain
21 the person seeking visitation from all contact with the child. If the
22 parent requesting visitation is currently residing with another person
23 who has a history of physical or sexual abuse of a child, whether that
24 person is an adult or a juvenile, the court shall order that all
25 visitation take place outside the presence of that person.

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

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

1 order visitation rights for any person when visitation may serve the
2 best interest of the child whether or not there has been any change of
3 circumstances.

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

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