
SUBSTITUTE SENATE BILL 6730

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Strannigan, Roach, Long, Hargrove and Oke)

Read first time 02/06/98.

1 AN ACT Relating to restrictions in parenting plans; and amending
2 RCW 26.09.191.

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

4 **Sec. 1.** RCW 26.09.191 and 1996 c 303 s 1 are each amended to read
5 as follows:

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

15 (2)(a) The parent's residential time with the child shall be
16 limited if it is found that the parent has engaged in any of the
17 following conduct: (i) Willful abandonment that continues for an
18 extended period of time or substantial refusal to perform parenting
19 functions; (ii) physical, sexual, or a pattern of emotional abuse of a

1 child; (iii) a history of acts of domestic violence as defined in RCW
2 26.50.010(1) or an assault or sexual assault which causes grievous
3 bodily harm or the fear of such harm; or (iv) the parent has been
4 convicted as an adult of a sex offense under:

5 (A) RCW 9A.44.076 if, because of the difference in age between the
6 offender and the victim, no rebuttable presumption exists under (d) of
7 this subsection;

8 (B) RCW 9A.44.079 if, because of the difference in age between the
9 offender and the victim, no rebuttable presumption exists under (d) of
10 this subsection;

11 (C) RCW 9A.44.086 if, because of the difference in age between the
12 offender and the victim, no rebuttable presumption exists under (d) of
13 this subsection;

14 (D) RCW 9A.44.089;

15 (E) RCW 9A.44.093;

16 (F) RCW 9A.44.096;

17 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
18 between the offender and the victim, no rebuttable presumption exists
19 under (d) of this subsection;

20 (H) Chapter 9.68A RCW;

21 (I) Any predecessor or antecedent statute for the offenses listed
22 in (a)(iv)(A) through (H) of this subsection;

23 (J) Any statute from any other jurisdiction that describes an
24 offense analogous to the offenses listed in (a)(iv)(A) through (H) of
25 this subsection.

26 This subsection (2)(a) shall not apply when (c) or (d) of this
27 subsection applies.

28 (b) The parent's residential time with the child shall be limited
29 if it is found that the parent resides with a person who has engaged in
30 any of the following conduct: (i) Physical, sexual, or a pattern of
31 emotional abuse of a child; (ii) a history of acts of domestic violence
32 as defined in RCW 26.50.010(1) or an assault or sexual assault that
33 causes grievous bodily harm or the fear of such harm; or (iii) the
34 person has been convicted as an adult or as a juvenile has been
35 adjudicated of a sex offense under:

36 (A) RCW 9A.44.076 if, because of the difference in age between the
37 offender and the victim, no rebuttable presumption exists under (e) of
38 this subsection;

1 (B) RCW 9A.44.079 if, because of the difference in age between the
2 offender and the victim, no rebuttable presumption exists under (e) of
3 this subsection;

4 (C) RCW 9A.44.086 if, because of the difference in age between the
5 offender and the victim, no rebuttable presumption exists under (e) of
6 this subsection;

7 (D) RCW 9A.44.089;

8 (E) RCW 9A.44.093;

9 (F) RCW 9A.44.096;

10 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
11 between the offender and the victim, no rebuttable presumption exists
12 under (e) of this subsection;

13 (H) Chapter 9.68A RCW;

14 (I) Any predecessor or antecedent statute for the offenses listed
15 in (b)(iii)(A) through (H) of this subsection;

16 (J) Any statute from any other jurisdiction that describes an
17 offense analogous to the offenses listed in (b)(iii)(A) through (H) of
18 this subsection.

19 This subsection (2)(b) shall not apply when (c) or (e) of this
20 subsection applies.

21 (c) If a parent has been found to be a sexual predator under
22 chapter 71.09 RCW or under an analogous statute of any other
23 jurisdiction, the court shall restrain the parent from contact with a
24 child that would otherwise be allowed under this chapter. If a parent
25 resides with an adult or a juvenile who has been found to be a sexual
26 predator under chapter 71.09 RCW or under an analogous statute of any
27 other jurisdiction, the court shall restrain the parent from contact
28 with the parent's child except contact that occurs outside that
29 person's presence.

30 (d) There is a rebuttable presumption that a parent who has been
31 convicted as an adult of a sex offense listed in (d)(i) through (ix) of
32 this subsection poses a present danger to a child. Unless the parent
33 rebuts this presumption, the court shall restrain the parent from
34 contact with a child that would otherwise be allowed under this
35 chapter:

36 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
37 was at least five years older than the other person;

38 (ii) RCW 9A.44.073;

1 (iii) RCW 9A.44.076, provided that the person convicted was at
2 least eight years older than the victim;

3 (iv) RCW 9A.44.079, provided that the person convicted was at least
4 eight years older than the victim;

5 (v) RCW 9A.44.083;

6 (vi) RCW 9A.44.086, provided that the person convicted was at least
7 eight years older than the victim;

8 (vii) RCW 9A.44.100;

9 (viii) Any predecessor or antecedent statute for the offenses
10 listed in (d)(i) through (vii) of this subsection;

11 (ix) Any statute from any other jurisdiction that describes an
12 offense analogous to the offenses listed in (d)(i) through (vii) of
13 this subsection.

14 (e) There is a rebuttable presumption that a parent who resides
15 with a person who, as an adult, has been convicted, or as a juvenile
16 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)
17 of this subsection places a child at risk of abuse or harm when that
18 parent exercises residential time in the presence of the convicted or
19 adjudicated person. Unless the parent rebuts the presumption, the
20 court shall restrain the parent from contact with the parent's child
21 except for contact that occurs outside of the convicted or adjudicated
22 person's presence:

23 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
24 was at least five years older than the other person;

25 (ii) RCW 9A.44.073;

26 (iii) RCW 9A.44.076, provided that the person convicted was at
27 least eight years older than the victim;

28 (iv) RCW 9A.44.079, provided that the person convicted was at least
29 eight years older than the victim;

30 (v) RCW 9A.44.083;

31 (vi) RCW 9A.44.086, provided that the person convicted was at least
32 eight years older than the victim;

33 (vii) RCW 9A.44.100;

34 (viii) Any predecessor or antecedent statute for the offenses
35 listed in (e)(i) through (vii) of this subsection;

36 (ix) Any statute from any other jurisdiction that describes an
37 offense analogous to the offenses listed in (e)(i) through (vii) of
38 this subsection.

1 (f) The presumption established in (d) of this subsection may be
2 rebutted only after a written finding that:

3 (i) If the child was not the victim of the sex offense committed by
4 the parent requesting residential time, (A) contact between the child
5 and the offending parent is appropriate and poses minimal risk to the
6 child, and (B) the offending parent has successfully engaged in
7 treatment for sex offenders or is engaged in and making progress in
8 such treatment, if any was ordered by a court, and the treatment
9 provider believes such contact is appropriate and poses minimal risk to
10 the child; or

11 (ii) If the child was the victim of the sex offense committed by
12 the parent requesting residential time, (A) contact between the child
13 and the offending parent is appropriate and poses minimal risk to the
14 child, (B) if the child is in or has been in therapy for victims of
15 sexual abuse, the child's counselor believes such contact between the
16 child and the offending parent is in the child's best interest, and (C)
17 the offending parent has successfully engaged in treatment for sex
18 offenders or is engaged in and making progress in such treatment, if
19 any was ordered by a court, and the treatment provider believes such
20 contact is appropriate and poses minimal risk to the child.

21 (g) The presumption established in (e) of this subsection may be
22 rebutted only after a written finding that:

23 (i) If the child was not the victim of the sex offense committed by
24 the person who is residing with the parent requesting residential time,
25 (A) contact between the child and the parent residing with the
26 convicted or adjudicated person is appropriate and that parent is able
27 to protect the child in the presence of the convicted or adjudicated
28 person, and (B) the convicted or adjudicated person has successfully
29 engaged in treatment for sex offenders or is engaged in and making
30 progress in such treatment, if any was ordered by a court, and the
31 treatment provider believes such contact is appropriate and poses
32 minimal risk to the child; or

33 (ii) If the child was the victim of the sex offense committed by
34 the person who is residing with the parent requesting residential time,
35 (A) contact between the child and the parent in the presence of the
36 convicted or adjudicated person is appropriate and poses minimal risk
37 to the child, (B) if the child is in or has been in therapy for victims
38 of sexual abuse, the child's counselor believes such contact between
39 the child and the parent residing with the convicted or adjudicated

1 person in the presence of the convicted or adjudicated person is in the
2 child's best interest, and (C) the convicted or adjudicated person has
3 successfully engaged in treatment for sex offenders or is engaged in
4 and making progress in such treatment, if any was ordered by a court,
5 and the treatment provider believes contact between the parent and
6 child in the presence of the convicted or adjudicated person is
7 appropriate and poses minimal risk to the child.

8 (h) If the court finds that the parent has met the burden of
9 rebutting the presumption under (f) of this subsection, the court may
10 allow a parent who has been convicted as an adult of a sex offense
11 listed in (d)(i) through (ix) of this subsection to have residential
12 time with the child supervised by a neutral and independent adult and
13 pursuant to an adequate plan for supervision of such residential time.
14 The court shall not approve of a supervisor for contact between the
15 child and the parent unless the court finds, based on the evidence,
16 that the supervisor is willing and capable of protecting the child from
17 harm. The court shall revoke court approval of the supervisor upon
18 finding, based on the evidence, that the supervisor has failed to
19 protect the child or is no longer willing or capable of protecting the
20 child.

21 (i) If the court finds that the parent has met the burden of
22 rebutting the presumption under (g) of this subsection, the court may
23 allow a parent residing with a person who has been adjudicated as a
24 juvenile of a sex offense listed in (e)(i) through (ix) of this
25 subsection to have residential time with the child in the presence of
26 the person adjudicated as a juvenile, supervised by a neutral and
27 independent adult and pursuant to an adequate plan for supervision of
28 such residential time. The court shall not approve of a supervisor for
29 contact between the child and the parent unless the court finds, based
30 on the evidence, that the supervisor is willing and capable of
31 protecting the child from harm. The court shall revoke court approval
32 of the supervisor upon finding, based on the evidence, that the
33 supervisor has failed to protect the child or is no longer willing or
34 capable of protecting the child.

35 (j) If the court finds that the parent has met the burden of
36 rebutting the presumption under (g) of this subsection, the court may
37 allow a parent residing with a person who, as an adult, has been
38 convicted of a sex offense listed in (e)(i) through (ix) of this
39 subsection to have residential time with the child in the presence of

1 the convicted person supervised by a neutral and independent adult and
2 pursuant to an adequate plan for supervision of such residential time.
3 The court shall not approve of a supervisor for contact between the
4 child and the parent unless the court finds, based on the evidence,
5 that the supervisor is willing and capable of protecting the child from
6 harm. The court shall revoke court approval of the supervisor upon
7 finding, based on the evidence, that the supervisor has failed to
8 protect the child or is no longer willing or capable of protecting the
9 child.

10 (k) A court shall not order unsupervised contact between the
11 offending parent and a child of the offending parent who was sexually
12 abused by that parent. A court may order unsupervised contact between
13 the offending parent and a child who was not sexually abused by the
14 parent after the presumption under (d) of this subsection has been
15 rebutted and supervised residential time has occurred for at least two
16 years with no further arrests or convictions of sex offenses involving
17 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW
18 and (i) the sex offense of the offending parent was not committed
19 against a child of the offending parent, and (ii) the court finds that
20 unsupervised contact between the child and the offending parent is
21 appropriate and poses minimal risk to the child, after consideration of
22 the testimony of a state-certified therapist, mental health counselor,
23 or social worker with expertise in treating child sexual abuse victims
24 who has supervised at least one period of residential time between the
25 parent and the child, and after consideration of evidence of the
26 offending parent's compliance with community supervision requirements,
27 if any. If the offending parent was not ordered by a court to
28 participate in treatment for sex offenders, then the parent shall
29 obtain a psychosexual evaluation conducted by a state-certified sex
30 offender treatment provider indicating that the offender has the lowest
31 likelihood of risk to reoffend before the court grants unsupervised
32 contact between the parent and a child.

33 (l) A court may order unsupervised contact between the parent and
34 a child which may occur in the presence of a juvenile adjudicated of a
35 sex offense listed in (e)(i) through (ix) of this subsection who
36 resides with the parent after the presumption under (e) of this
37 subsection has been rebutted and supervised residential time has
38 occurred for at least two years during which time the adjudicated
39 juvenile has had no further arrests, adjudications, or convictions of

1 sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020,
2 or chapter 9.68A RCW, and (i) the court finds that unsupervised contact
3 between the child and the parent that may occur in the presence of the
4 adjudicated juvenile is appropriate and poses minimal risk to the
5 child, after consideration of the testimony of a state-certified
6 therapist, mental health counselor, or social worker with expertise in
7 treatment of child sexual abuse victims who has supervised at least one
8 period of residential time between the parent and the child in the
9 presence of the adjudicated juvenile, and after consideration of
10 evidence of the adjudicated juvenile's compliance with community
11 supervision or parole requirements, if any. If the adjudicated
12 juvenile was not ordered by a court to participate in treatment for sex
13 offenders, then the adjudicated juvenile shall obtain a psychosexual
14 evaluation conducted by a state-certified sex offender treatment
15 provider indicating that the adjudicated juvenile has the lowest
16 likelihood of risk to reoffend before the court grants unsupervised
17 contact between the parent and a child which may occur in the presence
18 of the adjudicated juvenile who is residing with the parent.

19 (m)(i) The limitations imposed by the court under (a) or (b) of
20 this subsection shall be reasonably calculated to protect the child
21 from the physical, sexual, or emotional abuse or harm that could result
22 if the child has contact with the parent requesting residential time.
23 If the court expressly finds based on the evidence that limitations on
24 the residential time with the child will not adequately protect the
25 child from the harm or abuse that could result if the child has contact
26 with the parent requesting residential time, the court shall restrain
27 the parent requesting residential time from all contact with the child.

28 (ii) The court shall not enter an order under (a) of this
29 subsection allowing a parent to have contact with a child if the parent
30 has been found by clear and convincing evidence in a civil action or by
31 a preponderance of the evidence in a dependency action to have sexually
32 abused the child, except upon recommendation by an evaluator or
33 therapist for the child that the child is ready for contact with the
34 parent and will not be harmed by the contact. The court shall not
35 enter an order allowing a parent to have contact with the child in the
36 offender's presence if the parent resides with a person who has been
37 found by clear and convincing evidence in a civil action or by a
38 preponderance of the evidence in a dependency action to have sexually
39 abused a child, unless the court finds that the parent accepts that the

1 person engaged in the harmful conduct and the parent is willing to and
2 capable of protecting the child from harm from the person.

3 (iii) If the court limits residential time under (a) or (b) of this
4 subsection to require supervised contact between the child and the
5 parent, the court shall not approve of a supervisor for contact between
6 a child and a parent who has engaged in physical, sexual, or a pattern
7 of emotional abuse of the child unless the court finds based upon the
8 evidence that the supervisor accepts that the harmful conduct occurred
9 and is willing to and capable of protecting the child from harm. The
10 court shall revoke court approval of the supervisor upon finding, based
11 on the evidence, that the supervisor has failed to protect the child or
12 is no longer willing to or capable of protecting the child.

13 (n) If the court expressly finds based on the evidence that
14 contact between the parent and the child will not cause physical,
15 sexual, or emotional abuse or harm to the child and that the
16 probability that the parent's or other person's harmful or abusive
17 conduct will recur is so remote that it would not be in the child's
18 best interests to apply the limitations of (a), (b), and (m)(i) and
19 (iii) of this subsection, or if the court expressly finds that the
20 parent's conduct did not have an impact on the child, then the court
21 need not apply the limitations of (a), (b), and (m)(i) and (iii) of
22 this subsection. The weight given to the existence of a protection
23 order issued under chapter 26.50 RCW as to domestic violence is within
24 the discretion of the court. This subsection shall not apply when (c),
25 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this
26 subsection apply.

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

31 (a) A parent's neglect or substantial nonperformance of parenting
32 functions;

33 (b) A long-term emotional or physical impairment which interferes
34 with the parent's performance of parenting functions as defined in RCW
35 26.09.004;

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

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

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

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

7 (g) A parent's pattern of criminal activity within the sight or
8 sound of the child, as evidenced by two or more felony convictions; or

9 (h) Such other factors or conduct as the court expressly finds
10 adverse to the best interests of the child.

11 (4) In entering a permanent parenting plan, the court shall not
12 draw any presumptions from the provisions of the temporary parenting
13 plan.

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

17 (6) For the purposes of this section, a parent's child means that
18 parent's natural child, adopted child, or stepchild.

--- END ---