**5598 AMH JUDI H5007.1 - NOT FOR FLOOR USE**

**SB 5598** - H COMM AMD

By Committee on Judiciary

**ADOPTED 03/02/2018**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Parent" means a legal parent whose rights have not been terminated, relinquished, or declared not to exist.

"(2)(a) "Relative" means:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the biological and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection, even after the marriage is terminated;

(v) Relatives, as named in (a)(i), (ii), or (iii) of this subsection, of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4).

(b) "Relative" does not include a person whose parental rights have been terminated, relinquished, or determined not to exist with respect to a child who is the subject of a petition under this chapter.

NEW SECTION. **Sec.**  (1) A person who is not the parent of the child may petition for visitation with the child if:

(a) The petitioner has an ongoing and substantial relationship with the child;

(b) The petitioner is a relative of the child or a parent of the child; and

(c) The child is likely to suffer harm or a substantial risk of harm if visitation is denied.

(2) A person has established an ongoing and substantial relationship with a child if the person and the child have had a relationship formed and sustained through interaction, companionship, and mutuality of interest and affection, without expectation of financial compensation, with substantial continuity for at least two years unless the child is under the age of two years, in which case there must be substantial continuity for at least half of the child's life, and with a shared expectation of and desire for an ongoing relationship.

NEW SECTION. **Sec.**  (1) If a court has jurisdiction over the child pursuant to chapter 26.27 RCW, a petition for visitation under section 2 of this act must be filed with that court.

(2) Except as otherwise provided in subsection (1) of this section, if a court has exclusive original jurisdiction over the child under RCW 13.04.030(1) (a) through (d), (h), or (j), a petition for visitation under section 2 of this act must be filed with that court. Granting of a petition for visitation under this chapter does not entitle the petitioner to party status in a child custody proceeding under Title 13 RCW.

(3) Except as otherwise provided in subsections (1) and (2) of this section, a petition for visitation under section 2 of this act must be filed in the county where the child primarily resides.

(4) The petitioner may not file a petition for visitation more than once.

(5) The petitioner must file with the petition an affidavit alleging that:

(a) A relationship with the child that satisfies the requirements of section 2 of this act exists or existed before action by the respondent; and

(b) The child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and child was not granted.

(6) The petitioner shall set forth facts in the affidavit supporting the petitioner's requested order for visitation.

(7) The petitioner shall serve notice of the filing to each person having legal custody of, or court-ordered residential time with, the child. A person having legal custody or residential time with the child may file an opposing affidavit.

(8) If, based on the petition and affidavits, the court finds that it is more likely than not that visitation will be granted, the court shall hold a hearing.

(9) The court may not enter any temporary orders to establish, enforce, or modify visitation under this section.

NEW SECTION. **Sec.**  (1)(a) At a hearing pursuant to section 3(8) of this act, the court shall enter an order granting visitation if it finds that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child is not granted and that granting visitation between the child and the petitioner is in the best interest of the child.

(b) An order granting visitation does not confer upon the petitioner the rights and duties of a parent.

(2) In making its determination, the court shall consider the respondent's reasons for denying visitation. It is presumed that a fit parent's decision to deny visitation is in the best interest of the child and does not create a likelihood of harm or a substantial risk of harm to the child.

(3) To rebut the presumption in subsection (2) of this section, the petitioner must prove by clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child were not granted.

(4) If the court finds that the petitioner has met the standard for rebutting the presumption in subsection (2) of this section, or if there is no presumption because no parent has custody of the child, the court shall consider whether it is in the best interest of the child to enter an order granting visitation. The petitioner must prove by clear and convincing evidence that visitation is in the child's best interest. In determining whether it is in the best interest of the child, the court shall consider the following, nonexclusive factors:

(a) The love, affection, and strength of the current relationship between the child and the petitioner and how the relationship is beneficial to the child;

(b) The length and quality of the prior relationship between the child and the petitioner before the respondent denied visitation, including the role performed by the petitioner and the emotional ties that existed between the child and the petitioner;

(c) The relationship between the petitioner and the respondent;

(d) The love, affection, and strength of the current relationship between the child and the respondent;

(e) The nature and reason for the respondent's objection to granting the petitioner visitation;

(f) The effect that granting visitation will have on the relationship between the child and the respondent;

(g) The residential time-sharing arrangements between the parties having residential time with the child;

(h) The good faith of the petitioner and respondent;

(i) Any history of physical, emotional, or sexual abuse or neglect by the petitioner, or any history of physical, emotional, or sexual abuse or neglect by a person residing with the petitioner if visitation would involve contact between the child and the person with such history;

(j) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference;

(k) Any other factor relevant to the child's best interest; and

(l) The fact that the respondent has not lost his or her parental rights by being adjudicated as an unfit parent.

NEW SECTION. **Sec.**  (1)(a) For the purposes of sections 2 through 4 of this act, the court shall, on motion of the respondent, order the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees to the respondent in advance and prior to any hearing, unless the court finds, considering the financial resources of all parties, that it would be unjust to do so.

(b) Regardless of the financial resources of the parties, if the court finds that a petition for visitation was brought in bad faith or without reasonable basis in light of the requirements of sections 2 through 4 of this act, the court shall order the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees to the respondent.

(2) If visitation is granted, the court shall order the petitioner to pay all transportation costs associated with visitation.

NEW SECTION. **Sec.**  (1) A court may not modify or terminate an order granting visitation under section 4 of this act unless it finds, on the basis of facts that have arisen since the entry of the order or were unknown to the court at the time it entered the order, that a substantial change of circumstances has occurred in the circumstances of the child or nonmoving party and that modification or termination of the order is necessary for the best interest of the child.

(2)(a) If a court has jurisdiction over the child pursuant to chapter 26.27 RCW, a petition for modification or termination under this section must be filed with that court.

(b) Except as otherwise provided in (a) of this subsection, if a court has exclusive original jurisdiction over the child under RCW 13.04.030(1) (a) through (d), (h), or (j), a petition for modification or termination under this section must be filed with that court.

(c) Except as otherwise provided in (a) or (b) of this subsection, a petition for modification or termination under this section must be filed in the county where the child primarily resides.

(3) The petitioner must file with the petition an affidavit alleging that, on the basis of facts that have arisen since the entry of the order or were unknown to the court at the time it entered the order, there is a substantial change of circumstances of the child or nonmoving party and that modification or termination of the order is necessary for the best interest of the child. The petitioner shall set forth facts in the affidavit supporting the petitioner's requested order.

(4) The petitioner shall serve notice of the petition to each person having legal custody of, or court-ordered residential time or court-ordered visitation with, the child. A person having legal custody or residential or visitation time with the child may file an opposing affidavit.

(5) If, based on the petition and affidavits, the court finds that it is more likely than not that a modification or termination will be granted, the court shall hold a hearing.

(6) The court may award reasonable attorneys' fees and costs to either party.

**Sec.**  RCW 26.10.160 and 2011 c 89 s 7 are each amended to read as follows:

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

(2)(a) Visitation with the child shall be limited if it is found that the parent seeking visitation has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010((~~(1)~~)) (3) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

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

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

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

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

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

(H) Chapter 9.68A RCW;

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

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

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

(b) The parent's visitation with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010((~~(1)~~)) (3) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

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

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

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

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

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

(H) Chapter 9.68A RCW;

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

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

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

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

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

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

(ii) RCW 9A.44.073;

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

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

(v) RCW 9A.44.083;

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

(vii) RCW 9A.44.100;

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

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

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

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

(ii) RCW 9A.44.073;

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

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

(v) RCW 9A.44.083;

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

(vii) RCW 9A.44.100;

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

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

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

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

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

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

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

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

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

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

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

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

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised visitation has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of visitation between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

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

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

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

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

(3) ((~~Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.~~

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

((~~(5)~~)) (4) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

NEW SECTION. **Sec.**  RCW 26.09.240 (Visitation rights—Person other than parent—Grandparents' visitation rights) and 1996 c 177 s 1, 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st ex.s. c 157 s 24 are each repealed.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act constitute a new chapter in Title 26 RCW."

Correct the title.

EFFECT: (1) Provides that if a juvenile court has exclusive original jurisdiction over the child in proceedings relating to dependency, termination of parental rights, or out-of-home placement, a petition for visitation, or a petition for modification of a visitation order, must be filed with that court. A person granted visitation is not entitled to party status in a child custody proceeding.

(2) Strikes a provision in the nonparental child custody statute that allows any person to petition for visitation with a child at any time and that allows a court to grant visitation if it is in the best interest of the child.

(3) Provides that the term "relative" does not include a person whose parental rights have been terminated, relinquished, or determined not to exist with respect to a child who is the subject of a petition under the act.