
HOUSE BILL 1907

State of Washington

54th Legislature

1995 Regular Session

By Representative Appelwick

Read first time 02/14/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to restrictions in residential time; and amending
2 RCW 26.09.191 and 26.10.160.

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

4 **Sec. 1.** RCW 26.09.191 and 1994 c 267 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; or (iii) a history of acts of domestic violence as defined in
2 RCW 26.50.010(1) or an assault or sexual assault which causes grievous
3 bodily harm or the fear of such harm. The parent's residential time
4 with the child shall be limited if the parent has been convicted as an
5 adult of a sex offense under RCW 9A.64.020 or chapter 9.68A or 9A.44
6 RCW. This subsection shall not apply when (c) of this subsection
7 applies.

8 (b) The parent's residential time with the child shall be limited
9 if it is found that the parent resides with a person who has engaged in
10 any of the following conduct: (i) Physical, sexual, or a pattern of
11 emotional abuse of a child; or (ii) a history of acts of domestic
12 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
13 that causes grievous bodily harm or the fear of such harm. If a parent
14 resides with an adult who has been convicted, or with a juvenile who
15 has been adjudicated, of a sex offense under RCW 9A.64.020 or chapter
16 9.68A or 9A.44 RCW, the court shall restrain the parent from contact
17 with the parent's child except contact that occurs outside that
18 person's presence. This subsection (2)(b) shall not apply when (c) of
19 this subsection applies.

20 (c) If a parent has been (~~convicted as an adult of a sexual~~
21 ~~offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has~~
22 ~~been~~) found to be a sexual predator under chapter 71.09 RCW, the court
23 shall restrain the parent from contact with a child that would
24 otherwise be allowed under this chapter. If a parent resides with an
25 adult who has been (~~convicted, or with a juvenile who has been~~
26 ~~adjudicated, of a sexual offense under RCW 9A.64.020 or chapter 9.68A~~
27 ~~or 9A.44 RCW, or who has been~~) found to be a sexual predator under
28 chapter 71.09 RCW, the court shall restrain the parent from contact
29 with the parent's child except contact that occurs outside that
30 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 physical, sexual, or emotional abuse or harm that could result if
34 the child has contact with the parent requesting residential time. If
35 the court expressly finds based on the evidence that limitation on the
36 residential time with the child will not adequately protect the child
37 from the harm or abuse that could result if the child has contact with
38 the parent requesting residential time, the court shall restrain the
39 parent requesting residential time from all contact with the child.

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

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

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

38 (3) A parent's involvement or conduct may have an adverse effect on
39 the child's best interests, and the court may preclude or limit any

1 provisions of the parenting plan, if any of the following factors
2 exist:

3 (a) A parent's neglect or substantial nonperformance of parenting
4 functions;

5 (b) A long-term emotional or physical impairment which interferes
6 with the parent's performance of parenting functions as defined in RCW
7 26.09.004;

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

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

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

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

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

19 (4) In entering a permanent parenting plan, the court shall not
20 draw any presumptions from the provisions of the temporary parenting
21 plan.

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

25 **Sec. 2.** RCW 26.10.160 and 1994 c 267 s 2 are each amended to read
26 as follows:

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

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

1 offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW. This
2 subsection shall not apply when (c) of this subsection applies.

3 (b) The parent's residential time with the child shall be limited
4 if it is found that the parent resides with a person who has engaged in
5 any of the following conduct: (i) Physical, sexual, or a pattern of
6 emotional abuse of a child; or (ii) a history of acts of domestic
7 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
8 which causes grievous bodily harm or the fear of such harm. If a
9 parent resides with an adult who has been convicted, or with a juvenile
10 who has been adjudicated, of a sex offense under RCW 9A.64.020 or
11 chapter 9.68A or 9A.44 RCW, the court shall restrain the parent from
12 contact with the parent's child except contact that occurs outside that
13 person's presence. This subsection (2)(b) shall not apply when (c) of
14 this subsection applies.

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

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

35 (ii) The court shall not enter an order under (a) of this
36 subsection allowing a parent to have contact with a child if the parent
37 has been found by clear and convincing evidence in a civil action or by
38 a preponderance of the evidence in a dependency action to have sexually
39 abused the child, except upon recommendation by an evaluator or

1 therapist for the child that the child is ready for contact with the
2 parent and will not be harmed by the contact. The court shall not
3 enter an order allowing a parent to have contact with the child if the
4 parent resides with a person who has been found by clear and convincing
5 evidence in a civil action or by a preponderance of the evidence in a
6 dependency action to have sexually abused a child, unless the court
7 finds that the parent accepts that the person engaged in the harmful
8 conduct and the parent is willing to and capable of protecting the
9 child from harm from the person.

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

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

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

38 (4) The court may modify an order granting or denying visitation
39 rights whenever modification would serve the best interests of the

1 child. Modification of a parent's visitation rights shall be subject
2 to the requirements of subsection (2) of this section.

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