
SUBSTITUTE SENATE BILL 5676

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Fraser and Kohl)

Read first time 02/28/95.

1 AN ACT Relating to restrictions on residential time for abusive
2 parents; and amending 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
2 in RCW 26.50.010(1) or an assault or sexual assault which causes
3 grievous bodily harm or the fear of such harm; or (iv) the parent has
4 been convicted as an adult of a sex offense under RCW 9A.44.079,
5 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, or chapter 9.68A RCW. This
6 subsection (2)(a) shall not apply when (c) or (d) 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; or (iii) the
14 person has been convicted as an adult of a sex offense under RCW
15 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, or chapter 9.68A RCW. This
16 subsection (2)(b) shall not apply when (c) or (d) of this subsection
17 applies.

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

29 (d) There is a rebuttable presumption that the court shall restrain
30 the parent from contact with a child that would otherwise be allowed
31 under this chapter when the parent has been convicted as an adult of a
32 sex offense under RCW 9A.64.020(1) or (2), 9A.44.073, 9A.44.076,
33 9A.44.083, and 9A.44.100. If a parent resides with a person who, as an
34 adult has been convicted, or as a juvenile has been adjudicated, of a
35 sex offense under RCW 9A.64.020(1), 9A.44.073, 9A.44.076, 9A.44.079,
36 9A.44.083, and 9A.44.100, the court shall restrain the parent from
37 contact with the parent's child except contact that occurs outside the
38 convicted or adjudicated person's presence.

39 (e) The presumption may be rebutted only after a finding that:

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

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

17 (f) If the court finds that the presumption has been rebutted, the
18 court may allow a parent who has been convicted as an adult of a sex
19 offense under RCW 9A.64.020(1) or (2), 9A.44.073, 9A.44.076, 9A.44.083,
20 and 9A.44.100 to have residential time with the child supervised by a
21 neutral and independent adult and pursuant to an adequate plan for
22 supervision of such residential time. The court shall not approve of
23 a supervisor for contact between the child and the parent unless the
24 court finds, based on the evidence, that the supervisor is willing and
25 capable of protecting the child from harm. The court shall revoke
26 court approval of the supervisor upon finding, based on the evidence,
27 that the supervisor has failed to protect the child or is no longer
28 willing or capable of protecting the child.

29 (g) A court may order unsupervised contact between the offending
30 parent and a child who was not sexually abused by the parent after the
31 presumption has been rebutted and supervised residential time has
32 occurred for at least one year with no further arrests or convictions
33 of sexual offenses involving children under chapter 9A.44 RCW, RCW
34 9A.64.020, or chapter 9.68A RCW and (i) the sexual offense of the
35 offending parent was not committed against a child, stepchild, or
36 adopted child of the offending parent, and (ii) the court finds that
37 unsupervised contact between the child and the offending parent is
38 appropriate and poses minimal risk to the child, after consideration of
39 the testimony of a state-certified therapist, mental health counselor,

1 or social worker with expertise in treating child sexual abuse victims
2 who has supervised at least one period of residential time between the
3 parent and the child, and after consideration of evidence of the
4 offending parent's compliance with probation requirements, if any. If
5 the offending parent was not ordered by a court to participate in
6 treatment for sex offenders, then the evidence shall include the
7 results of a psycho-sexual evaluation conducted by a state-certified
8 sex offender treatment provider indicating that the offender is not a
9 risk to reoffend.

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

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

33 (iii) If the court limits residential time under (a) or (b) of this
34 subsection to require supervised contact between the child and the
35 parent, the court shall not approve of a supervisor for contact between
36 a child and a parent who has engaged in physical, sexual, or a pattern
37 of emotional abuse of the child unless the court finds based upon the
38 evidence that the supervisor accepts that the harmful conduct occurred
39 and is willing to and capable of protecting the child from harm. The

1 court shall revoke court approval of the supervisor upon finding, based
2 on the evidence, that the supervisor has failed to protect the child or
3 is no longer willing to or capable of protecting the child.

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

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

22 (a) A parent's neglect or substantial nonperformance of parenting
23 functions;

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

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

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

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

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

36 (g) Such other factors or conduct as the court expressly finds
37 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 1994 c 267 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) Visitation with the child shall be limited if it is found
13 that the parent seeking visitation has engaged in any of the following
14 conduct: (i) Willful abandonment that continues for an extended period
15 of time or substantial refusal to perform parenting functions; (ii)
16 physical, sexual, or a pattern of emotional abuse of a child; ~~((or))~~
17 (iii) a history of acts of domestic violence as defined in RCW
18 26.50.010(1) or an assault or sexual assault which causes grievous
19 bodily harm or the fear of such harm; or (iv) the parent has been
20 convicted as an adult of a sex offense under RCW 9A.44.079, 9A.44.086,
21 9A.44.089, 9A.44.093, 9A.44.096, or chapter 9.68A RCW. This subsection
22 (2)(a) shall not apply when (c) or (d) of this subsection applies.

23 (b) The parent's ~~((residential time))~~ visitation with the child
24 shall be limited if it is found that the parent resides with a person
25 who has engaged in any of the following conduct: (i) Physical, sexual,
26 or a pattern of emotional abuse of a child; ~~((or))~~ (ii) a history of
27 acts of domestic violence as defined in RCW 26.50.010(1) or an assault
28 or sexual assault which causes grievous bodily harm or the fear of such
29 harm; or (iii) the person has been convicted as an adult of a sex
30 offense under RCW 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, or
31 chapter 9.68A RCW. This subsection (2)(b) shall not apply when (c) or
32 (d) of this subsection applies.

33 (c) If a parent has been ~~((convicted as an adult of a sexual~~
34 ~~offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has~~
35 ~~been))~~ found to be a sexual predator under chapter 71.09 RCW, the court
36 shall restrain the parent from contact with a child that would
37 otherwise be allowed under this chapter. If a parent resides with an
38 adult or a juvenile who has been ~~((convicted, or with a juvenile who~~

1 has been adjudicated, of a sexual offense under RCW 9A.64.020 or
2 chapter 9.68A or 9A.44 RCW, or who has been)) found to be a sexual
3 predator under chapter 71.09 RCW, the court shall restrain the parent
4 from contact with the parent's child except contact that occurs outside
5 that person's presence.

6 (d) There is a rebuttable presumption that the court shall restrain
7 the parent from contact with a child that would otherwise be allowed
8 under this chapter when the parent has been convicted as an adult of a
9 sex offense under RCW 9A.64.020(1) or (2), 9A.44.073, 9A.44.076,
10 9A.44.083, and 9A.44.100. If a parent resides with a person who, as an
11 adult has been convicted, or as a juvenile has been adjudicated, of a
12 sex offense under RCW 9A.64.020(1), 9A.44.073, 9A.44.076, 9A.44.079,
13 9A.44.083, and 9A.44.100, the court shall restrain the parent from
14 contact with the parent's child except contact that occurs outside the
15 convicted or adjudicated person's presence.

16 (e) The presumption may be rebutted only after a finding that:

17 (i) If the child was not sexually abused by the parent requesting
18 visitation, (A) contact between the child and the offending parent is
19 appropriate and poses minimal risk to the child, and (B) the offending
20 parent has successfully engaged in treatment for sex offenders or is
21 engaged in and making progress in such treatment, if any was ordered by
22 a court, and the treatment provider believes such contact is
23 appropriate and poses minimal risk to the child; or

24 (ii) If the child was sexually abused by the parent requesting
25 visitation, (A) if the child is in or has been in therapy for victims
26 of sexual abuse, the child's counselor believes such contact between
27 the child and the offending parent is in the child's best interest, and
28 (B) the offending parent has successfully engaged in treatment for sex
29 offenders or is engaged in and making progress in such treatment, if
30 any was ordered by a court, and the treatment provider believes such
31 contact is appropriate and poses minimal risk to the child.

32 (f) If the court finds that the presumption has been rebutted, the
33 court may allow a parent who has been convicted as an adult of a sex
34 offense under RCW 9A.64.020(1) or (2), 9A.44.073, 9A.44.076, 9A.44.083,
35 and 9A.44.100 to have visitation with the child supervised by a neutral
36 and independent adult and pursuant to an adequate plan for supervision
37 of such visitation. The court shall not approve of a supervisor for
38 contact between the child and the parent unless the court finds, based
39 on the evidence, that the supervisor is willing and capable of

1 protecting the child from harm. The court shall revoke court approval
2 of the supervisor upon finding, based on the evidence, that the
3 supervisor has failed to protect the child or is no longer willing or
4 capable of protecting the child.

5 (g) A court may order unsupervised contact between the offending
6 parent and a child who was not sexually abused by the parent after the
7 presumption has been rebutted and supervised visitation has occurred
8 for at least one year with no further arrests or convictions of sexual
9 offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or
10 9.68A RCW and (i) the sexual offense of the offending parent was not
11 committed against a child, stepchild, or adopted child of the offending
12 parent, and (ii) the court finds that unsupervised contact between the
13 child and the offending parent is appropriate and poses minimal risk to
14 the child, after consideration of the testimony of a state-certified
15 therapist, mental health counselor, or social worker with expertise in
16 treating child sexual abuse victims who has supervised at least one
17 period of visitation between the parent and the child, and after
18 consideration of evidence of the offending parent's compliance with
19 probation requirements, if any. If the offending parent was not
20 ordered by a court to participate in treatment for sex offenders, then
21 the evidence shall include the results of a psycho-sexual evaluation
22 conducted by a state-certified sex offender treatment provider
23 indicating that the offender is not a risk to reoffend.

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

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

1 enter an order allowing a parent to have contact with the child if the
2 parent resides with a person who has been found by clear and convincing
3 evidence in a civil action or by a preponderance of the evidence in a
4 dependency action to have sexually abused a child, unless the court
5 finds that the parent accepts that the person engaged in the harmful
6 conduct and the parent is willing to and capable of protecting the
7 child from harm from the person.

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

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