
SENATE BILL 5676

State of Washington

54th Legislature

1995 Regular Session

By Senators Fraser and Kohl

Read first time 01/31/95. Referred to Committee on Law & Justice.

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.64.020(2),
5 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, or chapter 9.68A RCW. This
6 subsection shall not apply when (c) or (d) of this subsection applies.

7 (b) The parent's residential time with the child shall be limited
8 if it is found that the parent resides with a person who has engaged in
9 any of the following conduct: (i) Physical, sexual, or a pattern of
10 emotional abuse of a child; ~~((or))~~ (ii) a history of acts of domestic
11 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
12 that causes grievous bodily harm or the fear of such harm; or (iii) the
13 person has been convicted as an adult of a sex offense under RCW
14 9A.64.020(2), 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, or chapter
15 9.68A RCW. This subsection (2)(b) shall not apply when (c) of this
16 subsection applies.

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

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

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

1 (i) The offending parent has successfully engaged in court-approved
2 treatment for sex offenders or is engaged in and making progress in
3 such treatment and the treatment provider believes such contact is
4 appropriate and poses minimal risk to the child; and

5 (ii) If the child was sexually abused by the parent requesting
6 residential time and if the child is in or has been in therapy for
7 victims of sexual abuse, the child's counselor believes such contact
8 between the child and the offending parent is in the child's best
9 interest.

10 (f) If the court finds that the presumption has been rebutted, the
11 court may allow a parent who has been convicted as an adult of a sex
12 offense under RCW 9A.64.020(1), 9A.44.073, 9A.44.076, 9A.44.079,
13 9A.44.083, and 9A.44.100 to have residential time with the child
14 supervised by a neutral and independent adult and pursuant to an
15 adequate plan for supervision of such residential time. The court
16 shall not approve of a supervisor for contact between the child and the
17 parent unless the court finds, based on the evidence, that the
18 supervisor is willing and capable of protecting the child from harm.
19 The court shall revoke court approval of the supervisor upon finding,
20 based on the evidence, that the supervisor has failed to protect the
21 child or is no longer willing or capable of protecting the child.

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

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

1 evidence in a civil action or by a preponderance of the evidence in a
2 dependency action to have sexually abused a child, unless the court
3 finds that the parent accepts that the person engaged in the harmful
4 conduct and the parent is willing to and capable of protecting the
5 child from harm from the person.

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

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

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

33 (a) A parent's neglect or substantial nonperformance of parenting
34 functions;

35 (b) A long-term emotional or physical impairment which interferes
36 with the parent's performance of parenting functions as defined in RCW
37 26.09.004;

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

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

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

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

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

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

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

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

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

23 (2)(a) Visitation with the child shall be limited if it is found
24 that the parent seeking visitation has engaged in any of the following
25 conduct: (i) Willful abandonment that continues for an extended period
26 of time or substantial refusal to perform parenting functions; (ii)
27 physical, sexual, or a pattern of emotional abuse of a child; ~~((or))~~
28 (iii) a history of acts of domestic violence as defined in RCW
29 26.50.010(1) or an assault or sexual assault which causes grievous
30 bodily harm or the fear of such harm; or (iv) the parent has been
31 convicted as an adult of a sex offense under RCW 9A.64.020(2),
32 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, or chapter 9.68A RCW. This
33 subsection shall not apply when (c) or (d) of this subsection applies.

34 (b) The parent's ~~((residential time))~~ visitation with the child
35 shall be limited if it is found that the parent resides with a person
36 who has engaged in any of the following conduct: (i) Physical, sexual,
37 or a pattern of emotional abuse of a child; ~~((or))~~ (ii) a history of
38 acts of domestic violence as defined in RCW 26.50.010(1) or an assault

1 or sexual assault which causes grievous bodily harm or the fear of such
2 harm; or (iii) the person has been convicted as an adult of a sex
3 offense under RCW 9A.64.020(2), 9A.44.086, 9A.44.089, 9A.44.093,
4 9A.44.096, or chapter 9.68A RCW.

5 (c) ~~If a parent has been ((convicted as an adult of a sexual~~
6 ~~offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has~~
7 ~~been)) found to be a sexual predator under chapter 71.09 RCW, the court~~
8 shall restrain the parent from contact with a child that would
9 otherwise be allowed under this chapter. If a parent resides with an
10 adult or a juvenile who has been ~~((convicted, or with a juvenile who~~
11 ~~has been adjudicated, of a sexual offense under RCW 9A.64.020 or~~
12 ~~chapter 9.68A or 9A.44 RCW, or who has been))~~ found to be a sexual
13 predator under chapter 71.09 RCW, the court shall restrain the parent
14 from contact with the parent's child except contact that occurs outside
15 that person's presence.

16 (d) There is a rebuttable presumption that the court shall restrain
17 the parent from contact with a child that would otherwise be allowed
18 under this chapter when the parent has been convicted as an adult of a
19 sex offense under RCW 9A.64.020(1), 9A.44.073, 9A.44.076, 9A.44.079,
20 9A.44.083, and 9A.44.100. If a parent resides with an adult who has
21 been convicted, or a juvenile who has been adjudicated, of a sex
22 offense under RCW 9A.64.020(1), 9A.44.073, 9A.44.076, 9A.44.079,
23 9A.44.083, and 9A.44.100, the court shall restrain the parent from
24 contact with the parent's child except contact that occurs outside the
25 convicted or adjudicated person's presence.

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

27 (i) The offending parent has successfully engaged in court-approved
28 treatment for sex offenders or is engaged in and making progress in
29 such treatment and the treatment provider believes such contact is
30 appropriate and poses minimal risk to the child; and

31 (ii) If the child was sexually abused by the parent requesting
32 visitation and if the child is in or has been in therapy for victims of
33 sexual abuse, the child's counselor believes such contact between the
34 child and the offending parent is in the child's best interest.

35 (f) If the court finds that the presumption has been rebutted, the
36 court may allow a parent who has been convicted as an adult of a sex
37 offense under RCW 9A.64.020(1), 9A.44.073, 9A.44.076, 9A.44.079,
38 9A.44.083, and 9A.44.100 to have visitation with the child supervised
39 by a neutral and independent adult and pursuant to an adequate plan for

1 supervision of such visitation. The court shall not approve of a
2 supervisor for contact between the child and the parent unless the
3 court finds, based on the evidence, that the supervisor is willing and
4 capable of protecting the child from harm. The court shall revoke
5 court approval of the supervisor upon finding, based on the evidence,
6 that the supervisor has failed to protect the child or is no longer
7 willing or capable of protecting the child.

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

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

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

1 failed to protect the child or is no longer willing to or capable of
2 protecting the child.

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

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

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

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