
SUBSTITUTE SENATE BILL 5170

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Roach, Hochstatter, Schow, Stevens, Oke, Zarelli and Benton)

Read first time 03/05/97.

1 AN ACT Relating to false accusations of child abuse or neglect;
2 amending RCW 26.09.191; adding new sections to chapter 26.44 RCW; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.44 RCW
6 to read as follows:

7 If a court, during a judicial proceeding under this title relating
8 to a parenting plan or child custody, finds by a preponderance of the
9 evidence that a person has intentionally made a false allegation of
10 child abuse or neglect or has induced another person to make a false
11 allegation of child abuse or neglect in the context of completing that
12 parenting plan or child custody agreement, the court may impose a
13 monetary penalty not to exceed one thousand dollars against the person
14 making or inducing another to make the accusation. The monetary
15 penalty shall be awarded to the person against whom the false
16 allegation is made. When the court imposes the monetary penalty, the
17 court may also provide that reasonable attorneys' fees may be imposed
18 if the person entitled to the monetary penalty incurs attorneys' fees
19 to recover the penalty. The award may be enforced in the same manner

1 as other civil judgments. A "person" means a witness, a party, or a
2 party's attorney.

3 The remedy provided by this section is in addition to any other
4 remedy provided by law.

5 This section shall not apply to unemancipated minors.

6 **Sec. 2.** RCW 26.09.191 and 1996 c 303 s 1 are each amended to read
7 as follows:

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

17 (2)(a) The parent's residential time with the child shall be
18 limited if it is found that the parent has engaged in any of the
19 following conduct: (i) Willful abandonment that continues for an
20 extended period of time or substantial refusal to perform parenting
21 functions; (ii) physical, sexual, or a pattern of emotional abuse of a
22 child; (iii) a history of acts of domestic violence as defined in RCW
23 26.50.010(1) or an assault or sexual assault which causes grievous
24 bodily harm or the fear of such harm; or (iv) the parent has been
25 convicted as an adult of a sex offense under:

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

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

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

35 (D) RCW 9A.44.089;

36 (E) RCW 9A.44.093;

37 (F) RCW 9A.44.096;

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

4 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

29 (D) RCW 9A.44.089;

30 (E) RCW 9A.44.093;

31 (F) RCW 9A.44.096;

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

35 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

23 (ii) RCW 9A.44.073;

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

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

28 (v) RCW 9A.44.083;

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

31 (vii) RCW 9A.44.100;

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

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

37 (e) There is a rebuttable presumption that a parent who resides
38 with a person who, as an adult, has been convicted, or as a juvenile
39 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)

1 of this subsection places a child at risk of abuse or harm when that
2 parent exercises residential time in the presence of the convicted or
3 adjudicated person. Unless the parent rebuts the presumption, the
4 court shall restrain the parent from contact with the parent's child
5 except for contact that occurs outside of the convicted or adjudicated
6 person's presence:

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

9 (ii) RCW 9A.44.073;

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

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

14 (v) RCW 9A.44.083;

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

17 (vii) RCW 9A.44.100;

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

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

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

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

33 (ii) If the child was the victim of the sex offense committed by
34 the parent requesting residential time, (A) contact between the child
35 and the offending parent is appropriate and poses minimal risk to the
36 child, (B) if the child is in or has been in therapy for victims of
37 sexual abuse, the child's counselor believes such contact between the
38 child and the offending parent is in the child's best interest, and (C)
39 the offending parent has successfully engaged in treatment for sex

1 offenders or is engaged in and making progress in such treatment, if
2 any was ordered by a court, and the treatment provider believes such
3 contact is appropriate and poses minimal risk to the child.

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

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

16 (ii) If the child was the victim of the sex offense committed by
17 the person who is residing with the parent requesting residential time,
18 (A) contact between the child and the parent in the presence of the
19 convicted or adjudicated person is appropriate and poses minimal risk
20 to the child, (B) if the child is in or has been in therapy for victims
21 of sexual abuse, the child's counselor believes such contact between
22 the child and the parent residing with the convicted or adjudicated
23 person in the presence of the convicted or adjudicated person is in the
24 child's best interest, and (C) the convicted or adjudicated person has
25 successfully engaged in treatment for sex offenders or is engaged in
26 and making progress in such treatment, if any was ordered by a court,
27 and the treatment provider believes contact between the parent and
28 child in the presence of the convicted or adjudicated person is
29 appropriate and poses minimal risk to the child.

30 (h) If the court finds that the parent has met the burden of
31 rebutting the presumption under (f) of this subsection, the court may
32 allow a parent who has been convicted as an adult of a sex offense
33 listed in (d)(i) through (ix) of this subsection to have residential
34 time with the child supervised by a neutral and independent adult and
35 pursuant to an adequate plan for supervision of such residential time.
36 The court shall not approve of a supervisor for contact between the
37 child and the parent unless the court finds, based on the evidence,
38 that the supervisor is willing and capable of protecting the child from
39 harm. The court shall revoke court approval of the supervisor upon

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

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

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

32 (k) A court shall not order unsupervised contact between the
33 offending parent and a child of the offending parent who was sexually
34 abused by that parent. A court may order unsupervised contact between
35 the offending parent and a child who was not sexually abused by the
36 parent after the presumption under (d) of this subsection has been
37 rebutted and supervised residential time has occurred for at least two
38 years with no further arrests or convictions of sex offenses involving
39 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW

1 and (i) the sex offense of the offending parent was not committed
2 against a child of the offending parent, and (ii) the court finds that
3 unsupervised contact between the child and the offending parent is
4 appropriate and poses minimal risk to the child, after consideration of
5 the testimony of a state-certified therapist, mental health counselor,
6 or social worker with expertise in treating child sexual abuse victims
7 who has supervised at least one period of residential time between the
8 parent and the child, and after consideration of evidence of the
9 offending parent's compliance with community supervision requirements,
10 if any. If the offending parent was not ordered by a court to
11 participate in treatment for sex offenders, then the parent shall
12 obtain a psychosexual evaluation conducted by a state-certified sex
13 offender treatment provider indicating that the offender has the lowest
14 likelihood of risk to reoffend before the court grants unsupervised
15 contact between the parent and a child.

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

1 contact between the parent and a child which may occur in the presence
2 of the adjudicated juvenile who is residing with the parent.

3 (m)(i) The limitations imposed by the court under (a) or (b) of
4 this subsection shall be reasonably calculated to protect the child
5 from the physical, sexual, or emotional abuse or harm that could result
6 if the child has contact with the parent requesting residential time.
7 If the court expressly finds based on the evidence that limitations on
8 the residential time with the child will not adequately protect the
9 child from the harm or abuse that could result if the child has contact
10 with the parent requesting residential time, the court shall restrain
11 the parent requesting residential time from all contact with the child.

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

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

36 (n) If the court expressly finds based on the evidence that
37 contact between the parent and the child will not cause physical,
38 sexual, or emotional abuse or harm to the child and that the
39 probability that the parent's or other person's harmful or abusive

1 conduct will recur is so remote that it would not be in the child's
2 best interests to apply the limitations of (a), (b), and (m)(i) and
3 (iii) of this subsection, or if the court expressly finds that the
4 parent's conduct did not have an impact on the child, then the court
5 need not apply the limitations of (a), (b), and (m)(i) and (iii) of
6 this subsection. The weight given to the existence of a protection
7 order issued under chapter 26.50 RCW as to domestic violence is within
8 the discretion of the court. This subsection shall not apply when (c),
9 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this
10 subsection apply.

11 (3) There shall be a presumption that the parent's residential time
12 with the child should be limited if it is found, during a judicial
13 proceeding under this title relating to a parenting plan or child
14 custody, that the parent has made a false allegation of child abuse or
15 neglect or has induced another person to make a false allegation of
16 child abuse or neglect in the context of completing that parenting plan
17 or child custody agreement, and the parent knew the allegation to be
18 false at the time the allegation was made.

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

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

25 (b) A long-term emotional or physical impairment which interferes
26 with the parent's performance of parenting functions as defined in RCW
27 26.09.004;

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

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

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

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

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

1 (~~(4)~~) (5) In entering a permanent parenting plan, the court shall
2 not draw any presumptions from the provisions of the temporary
3 parenting plan.

4 (~~(5)~~) (6) In determining whether any of the conduct described in
5 this section has occurred, the court shall apply the civil rules of
6 evidence, proof, and procedure.

7 (~~(6)~~) (7) For the purposes of this section, a parent's child
8 means that parent's natural child, adopted child, or stepchild.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 26.44 RCW
10 to read as follows:

11 A person is guilty of a class C felony punishable in accordance
12 with chapter 9A.20 RCW if the person intentionally: (1) Makes a false
13 accusation of child abuse or neglect in the context of completing a
14 parenting plan or child custody agreement, or (2) induces another
15 person to make a false allegation of child abuse or neglect in the
16 context of completing a parenting plan or child custody agreement.

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