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HOUSE BILL 2251

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Lantz, Skinner, Tokuda, Darneille and Lovick

Read first time . Referred to Committee on .

1            AN ACT Relating to petitions for visitation for persons related to  
2 the child or acting in a parental role; amending RCW 26.09.240 and  
3 26.10.160; adding a new section to chapter 26.10 RCW; creating a new  
4 section; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.**    (1) In *Troxel v. Granville*, No. 99-138,  
7 decided June 5, 2000, the United States supreme court recognized that  
8 the right of parents in the care and custody of their children is a  
9 fundamental liberty interest.    The court also acknowledged that  
10 demographic changes in the past century have created complex family  
11 structures, and third-party visitation statutes reflect the changing  
12 realities of the American family.

13            (2) Legislatures and courts across the country recognize that  
14 families are composed of individuals who share an emotional attachment  
15 and intimacy developed over time, and that such emotional bonds do not  
16 necessarily require biological or marital relationships.    By acting in  
17 a caregiver or other significant emotionally involved role over a  
18 period of time, a third party may develop a substantial relationship  
19 with a child.    In some cases, arbitrarily depriving the child of that

1 relationship can cause psychological or emotional harm to the child.  
2 The legislature seeks to prevent the harm to children caused by the  
3 disruption of such significant bonds.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.10 RCW  
5 to read as follows:

6 (1) A person who is not a parent of the child may petition the  
7 court for visitation with the child if the petitioner can demonstrate  
8 that:

9 (a) There is a substantial relationship between the petitioner and  
10 the child;

11 (b) The petitioner has been unreasonably denied visitation with the  
12 child by a parent, custodian, or other person with primary decision-  
13 making authority over the child; and

14 (c) There has been a significant change in circumstances with  
15 either the child, the petitioner, or the parent, custodian, or other  
16 person having primary decision-making authority over the child that  
17 threatens the substantial relationship between the child and the  
18 petitioner. The change in circumstances could include, but is not  
19 limited to, a dissolution, legal separation, informal physical  
20 separation, death of a parent, or other significant change in the  
21 family structure.

22 (2)(a) If the court dismisses a petition for visitation brought  
23 under this section because the petitioner failed to demonstrate the  
24 requirements in subsection (1) of this section, the court must order  
25 the petitioner to pay reasonable attorneys' fees and costs to the party  
26 responding to the petition. Nothing in this subsection precludes a  
27 court from ordering attorneys' fees and costs under RCW 26.10.080.

28 (b) Petitions that are not dismissed by the court must be submitted  
29 to mandatory mediation before proceeding to trial. Upon petition of  
30 any party that mediation is not appropriate, the court may order or the  
31 mediator may determine that the case is not appropriate for mediation.  
32 Mediation shall be pursuant to mediation procedures established by  
33 court rules for third-party visitation cases.

34 (3)(a) Except as provided in (b) of this subsection, a petition for  
35 visitation brought under this section must be filed in the county in  
36 which the child resides.

37 (b) If a dissolution, legal separation, modification of parenting  
38 plan, or other custody proceeding is pending involving the child, the

1 petition for visitation under this section shall be filed in the county  
2 in which the proceeding is pending.

3 (4) The court may order visitation between the petitioner and the  
4 child if the petitioner shows and the court finds that:

5 (a) Denial of court-ordered visitation would result in a likelihood  
6 of harm to the child's physical, psychological, or emotional well-  
7 being;

8 (b) The likelihood of harm is beyond the normal short-term distress  
9 a child suffers due to a change in circumstances;

10 (c) Continuation of the substantial relationship between the child  
11 and the petitioner would likely have long-term benefits to the child;  
12 and

13 (d) Visitation would not substantially interfere with the  
14 relationship between the child and the parent, custodian, or other  
15 person with primary decision-making authority over the child.

16 (5) In determining the nature and extent of visitation, the court  
17 must consider the wishes of a child who is sufficiently mature to  
18 express reasoned and independent preferences as to visitation issues.

19 (6) The restrictions of RCW 26.10.160 that apply to parents shall  
20 apply to the petitioner under this section.

21 (7) For the purposes of this section:

22 (a) "Person who is not a parent of the child" means a person, other  
23 than the parent, who is related to the child by blood or would be  
24 related to the child by blood but for the fact the child is adopted, or  
25 who is related to the parent or child by marriage or would be related  
26 to the parent or child by marriage but for the fact the parents are not  
27 or have never been married, or who lived with the child in a parental  
28 or quasi-parental relationship; and

29 (b) "Unreasonably denied" means a denial of visitation with the  
30 child for irrational or unsubstantiated reasons.

31

32 **Sec. 3.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read  
33 as follows:

34 (1) Under section 2 of this act, a person other than a parent may  
35 petition the court for visitation with a child ((at any time)) or may  
36 intervene in a pending dissolution, legal separation, or modification  
37 of parenting plan proceeding. ((A person other than a parent may not  
38 petition for visitation under this section unless the child's parent or  
39 parents have commenced an action under this chapter.

1       ~~(2) A petition for visitation with a child by a person other than~~  
2 ~~a parent must be filed in the county in which the child resides.~~

3       ~~(3) A petition for visitation or a motion to intervene pursuant to~~  
4 ~~this section shall be dismissed unless the petitioner or intervenor can~~  
5 ~~demonstrate by clear and convincing evidence that a significant~~  
6 ~~relationship exists with the child with whom visitation is sought. If~~  
7 ~~the petition or motion is dismissed for failure to establish the~~  
8 ~~existence of a significant relationship, the petitioner or intervenor~~  
9 ~~shall be ordered to pay reasonable attorney's fees and costs to the~~  
10 ~~parent, parents, other custodian, or representative of the child who~~  
11 ~~responds to this petition or motion.~~

12       ~~(4) The court may order visitation between the petitioner or~~  
13 ~~intervenor and the child between whom a significant relationship exists~~  
14 ~~upon a finding supported by the evidence that the visitation is in the~~  
15 ~~child's best interests.~~

16       ~~(5)(a) Visitation with a grandparent shall be presumed to be in the~~  
17 ~~child's best interests when a significant relationship has been shown~~  
18 ~~to exist. This presumption may be rebutted by a preponderance of~~  
19 ~~evidence showing that visitation would endanger the child's physical,~~  
20 ~~mental, or emotional health.~~

21       ~~(b) If the court finds that reasonable visitation by a grandparent~~  
22 ~~would be in the child's best interest except for hostilities that exist~~  
23 ~~between the grandparent and one or both of the parents or person with~~  
24 ~~whom the child lives, the court may set the matter for mediation under~~  
25 ~~RCW 26.09.015.~~

26       ~~(6) The court may consider the following factors when making a~~  
27 ~~determination of the child's best interests:~~

28       ~~(a) The strength of the relationship between the child and the~~  
29 ~~petitioner;~~

30       ~~(b) The relationship between each of the child's parents or the~~  
31 ~~person with whom the child is residing and the petitioner;~~

32       ~~(c) The nature and reason for either parent's objection to granting~~  
33 ~~the petitioner visitation;~~

34       ~~(d) The effect that granting visitation will have on the~~  
35 ~~relationship between the child and the child's parents or the person~~  
36 ~~with whom the child is residing;~~

37       ~~(e) The residential time sharing arrangements between the parents;~~

38       ~~(f) The good faith of the petitioner;~~

1       ~~(g) Any criminal history or history of physical, emotional, or~~  
2 ~~sexual abuse or neglect by the petitioner; and~~

3       ~~(h) Any other factor relevant to the child's best interest.~~

4       ~~(7) The restrictions of RCW 26.09.191 that apply to parents shall~~  
5 ~~be applied to a petitioner or intervenor who is not a parent. The~~  
6 ~~nature and extent of visitation, subject to these restrictions, is in~~  
7 ~~the discretion of the court.~~

8       ~~(8) The court may order an investigation and report concerning the~~  
9 ~~proposed visitation or may appoint a guardian ad litem as provided in~~  
10 ~~RCW 26.09.220.~~

11       ~~(9) Visitation granted pursuant to this section shall be~~  
12 ~~incorporated into the parenting plan for the child.~~

13       ~~(10) The court may modify or terminate visitation rights granted~~  
14 ~~pursuant to this section in any subsequent modification action upon a~~  
15 ~~showing that the visitation is no longer in the best interest of the~~  
16 ~~child.))~~

17       **Sec. 4.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read  
18 as follows:

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

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

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

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

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

4 (D) RCW 9A.44.089;

5 (E) RCW 9A.44.093;

6 (F) RCW 9A.44.096;

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

10 (H) Chapter 9.68A RCW;

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

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

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

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

4 (H) Chapter 9.68A RCW;

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

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

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

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

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

29 (ii) RCW 9A.44.073;

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

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

34 (v) RCW 9A.44.083;

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

37 (vii) RCW 9A.44.100;

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

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

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

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

15 (ii) RCW 9A.44.073;

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

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

20 (v) RCW 9A.44.083;

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

23 (vii) RCW 9A.44.100;

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

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

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

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

38 (ii) If the child was the victim of the sex offense committed by  
39 the parent requesting visitation, (A) contact between the child and the



1 offending parent is appropriate and poses minimal risk to the child,  
2 (B) if the child is in or has been in therapy for victims of sexual  
3 abuse, the child's counselor believes such contact between the child  
4 and the offending parent is in the child's best interest, and (C) the  
5 offending parent has successfully engaged in treatment for sex  
6 offenders or is engaged in and making progress in such treatment, if  
7 any was ordered by a court, and the treatment provider believes such  
8 contact is appropriate and poses minimal risk to the child.

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

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

21 (ii) If the child was the victim of the sex offense committed by  
22 the person who is residing with the parent requesting visitation, (A)  
23 contact between the child and the parent in the presence of the  
24 convicted or adjudicated person is appropriate and poses minimal risk  
25 to the child, (B) 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 parent residing with the convicted or adjudicated  
28 person in the presence of the convicted or adjudicated person is in the  
29 child's best interest, and (C) the convicted or adjudicated person has  
30 successfully engaged in treatment for sex offenders or is engaged in  
31 and making progress in such treatment, if any was ordered by a court,  
32 and the treatment provider believes contact between the parent and  
33 child in the presence of the convicted or adjudicated person is  
34 appropriate and poses minimal risk to the child.

35 (h) If the court finds that the parent has met the burden of  
36 rebutting the presumption under (f) of this subsection, the court may  
37 allow a parent who has been convicted as an adult of a sex offense  
38 listed in (d)(i) through (ix) of this subsection to have visitation  
39 with the child supervised by a neutral and independent adult and

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

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

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

35 (k) A court shall not order unsupervised contact between the  
36 offending parent and a child of the offending parent who was sexually  
37 abused by that parent. A court may order unsupervised contact between  
38 the offending parent and a child who was not sexually abused by the  
39 parent after the presumption under (d) of this subsection has been

1 rebutted and supervised visitation has occurred for at least two years  
2 with no further arrests or convictions of sex offenses involving  
3 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW  
4 and (i) the sex offense of the offending parent was not committed  
5 against a child of the offending parent, and (ii) the court finds that  
6 unsupervised contact between the child and the offending parent is  
7 appropriate and poses minimal risk to the child, after consideration of  
8 the testimony of a state-certified therapist, mental health counselor,  
9 or social worker with expertise in treating child sexual abuse victims  
10 who has supervised at least one period of visitation between the parent  
11 and the child, and after consideration of evidence of the offending  
12 parent's compliance with community supervision requirements, if any.  
13 If the offending parent was not ordered by a court to participate in  
14 treatment for sex offenders, then the parent shall obtain a  
15 psychosexual evaluation conducted by a state-certified sex offender  
16 treatment provider indicating that the offender has the lowest  
17 likelihood of risk to reoffend before the court grants unsupervised  
18 contact between the parent and a child.

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

1 the adjudicated juvenile has the lowest likelihood of risk to reoffend  
2 before the court grants unsupervised contact between the parent and a  
3 child which may occur in the presence of the adjudicated juvenile who  
4 is residing with the parent.

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

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

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

38 (n) If the court expressly finds based on the evidence that  
39 contact between the parent and the child will not cause physical,

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

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

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

22 ~~((+5))~~ (4) For the purposes of this section, a parent's child  
23 means that parent's natural child, adopted child, or stepchild.

24 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and takes effect  
27 immediately.

--- END ---