

CERTIFICATION OF ENROLLMENT

SENATE BILL 5598

65th Legislature
2018 Regular Session

Passed by the Senate March 6, 2018
Yeas 43 Nays 6

President of the Senate

Passed by the House March 2, 2018
Yeas 56 Nays 42

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5598** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5598

AS AMENDED BY THE HOUSE

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By Senators Pedersen, Angel, Rolfes, King, Darneille, Bailey, Brown, Mullet, Carlyle, Braun, Hobbs, Palumbo, Wellman, Keiser, Honeyford, Ranker, Nelson, Liias, McCoy, Billig, Cleveland, Hasegawa, Frockt, Conway, Rivers, Saldaña, Kuderer, Chase, Hunt, Fain, Walsh, Van De Wege, Rossi, Zeiger, Warnick, Becker, Takko, Wilson, Schoesler, and Hawkins

Read first time 01/31/17. Referred to Committee on Law & Justice.

1 AN ACT Relating to granting relatives, including but not limited
2 to grandparents, the right to seek visitation with a child through
3 the courts; amending RCW 26.10.160; adding a new chapter to Title 26
4 RCW; and repealing RCW 26.09.240.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Parent" means a legal parent whose rights have not been
10 terminated, relinquished, or declared not to exist.

11 "(2)(a) "Relative" means:

12 (i) Any blood relative, including those of half-blood, and
13 including first cousins, second cousins, nephews or nieces, and
14 persons of preceding generations as denoted by prefixes of grand,
15 great, or great-great;

16 (ii) Stepfather, stepmother, stepbrother, and stepsister;

17 (iii) A person who legally adopts a child or the child's parent
18 as well as the biological and other legally adopted children of such
19 persons, and other relatives of the adoptive parents in accordance
20 with state law;

1 (iv) Spouses of any persons named in (a)(i), (ii), or (iii) of
2 this subsection, even after the marriage is terminated;

3 (v) Relatives, as named in (a)(i), (ii), or (iii) of this
4 subsection, of any half sibling of the child; or

5 (vi) Extended family members, as defined by the law or custom of
6 an Indian child's tribe or, in the absence of such law or custom, a
7 person who has reached the age of eighteen and who is the Indian
8 child's grandparent, aunt or uncle, brother or sister, brother-in-law
9 or sister-in-law, niece or nephew, first or second cousin, or
10 stepparent who provides care in the family abode on a twenty-four
11 hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4).

12 (b) "Relative" does not include a person whose parental rights
13 have been terminated, relinquished, or determined not to exist with
14 respect to a child who is the subject of a petition under this
15 chapter.

16 NEW SECTION. **Sec. 2.** (1) A person who is not the parent of the
17 child may petition for visitation with the child if:

18 (a) The petitioner has an ongoing and substantial relationship
19 with the child;

20 (b) The petitioner is a relative of the child or a parent of the
21 child; and

22 (c) The child is likely to suffer harm or a substantial risk of
23 harm if visitation is denied.

24 (2) A person has established an ongoing and substantial
25 relationship with a child if the person and the child have had a
26 relationship formed and sustained through interaction, companionship,
27 and mutuality of interest and affection, without expectation of
28 financial compensation, with substantial continuity for at least two
29 years unless the child is under the age of two years, in which case
30 there must be substantial continuity for at least half of the child's
31 life, and with a shared expectation of and desire for an ongoing
32 relationship.

33 NEW SECTION. **Sec. 3.** (1) If a court has jurisdiction over the
34 child pursuant to chapter 26.27 RCW, a petition for visitation under
35 section 2 of this act must be filed with that court.

36 (2) Except as otherwise provided in subsection (1) of this
37 section, if a court has exclusive original jurisdiction over the
38 child under RCW 13.04.030(1) (a) through (d), (h), or (j), a petition

1 for visitation under section 2 of this act must be filed with that
2 court. Granting of a petition for visitation under this chapter does
3 not entitle the petitioner to party status in a child custody
4 proceeding under Title 13 RCW.

5 (3) Except as otherwise provided in subsections (1) and (2) of
6 this section, a petition for visitation under section 2 of this act
7 must be filed in the county where the child primarily resides.

8 (4) The petitioner may not file a petition for visitation more
9 than once.

10 (5) The petitioner must file with the petition an affidavit
11 alleging that:

12 (a) A relationship with the child that satisfies the requirements
13 of section 2 of this act exists or existed before action by the
14 respondent; and

15 (b) The child would likely suffer harm or the substantial risk of
16 harm if visitation between the petitioner and child was not granted.

17 (6) The petitioner shall set forth facts in the affidavit
18 supporting the petitioner's requested order for visitation.

19 (7) The petitioner shall serve notice of the filing to each
20 person having legal custody of, or court-ordered residential time
21 with, the child. A person having legal custody or residential time
22 with the child may file an opposing affidavit.

23 (8) If, based on the petition and affidavits, the court finds
24 that it is more likely than not that visitation will be granted, the
25 court shall hold a hearing.

26 (9) The court may not enter any temporary orders to establish,
27 enforce, or modify visitation under this section.

28 NEW SECTION. **Sec. 4.** (1)(a) At a hearing pursuant to section
29 3(8) of this act, the court shall enter an order granting visitation
30 if it finds that the child would likely suffer harm or the
31 substantial risk of harm if visitation between the petitioner and the
32 child is not granted and that granting visitation between the child
33 and the petitioner is in the best interest of the child.

34 (b) An order granting visitation does not confer upon the
35 petitioner the rights and duties of a parent.

36 (2) In making its determination, the court shall consider the
37 respondent's reasons for denying visitation. It is presumed that a
38 fit parent's decision to deny visitation is in the best interest of

1 the child and does not create a likelihood of harm or a substantial
2 risk of harm to the child.

3 (3) To rebut the presumption in subsection (2) of this section,
4 the petitioner must prove by clear and convincing evidence that the
5 child would likely suffer harm or the substantial risk of harm if
6 visitation between the petitioner and the child were not granted.

7 (4) If the court finds that the petitioner has met the standard
8 for rebutting the presumption in subsection (2) of this section, or
9 if there is no presumption because no parent has custody of the
10 child, the court shall consider whether it is in the best interest of
11 the child to enter an order granting visitation. The petitioner must
12 prove by clear and convincing evidence that visitation is in the
13 child's best interest. In determining whether it is in the best
14 interest of the child, the court shall consider the following,
15 nonexclusive factors:

16 (a) The love, affection, and strength of the current relationship
17 between the child and the petitioner and how the relationship is
18 beneficial to the child;

19 (b) The length and quality of the prior relationship between the
20 child and the petitioner before the respondent denied visitation,
21 including the role performed by the petitioner and the emotional ties
22 that existed between the child and the petitioner;

23 (c) The relationship between the petitioner and the respondent;

24 (d) The love, affection, and strength of the current relationship
25 between the child and the respondent;

26 (e) The nature and reason for the respondent's objection to
27 granting the petitioner visitation;

28 (f) The effect that granting visitation will have on the
29 relationship between the child and the respondent;

30 (g) The residential time-sharing arrangements between the parties
31 having residential time with the child;

32 (h) The good faith of the petitioner and respondent;

33 (i) Any history of physical, emotional, or sexual abuse or
34 neglect by the petitioner, or any history of physical, emotional, or
35 sexual abuse or neglect by a person residing with the petitioner if
36 visitation would involve contact between the child and the person
37 with such history;

38 (j) The child's reasonable preference, if the court considers the
39 child to be of sufficient age to express a preference;

40 (k) Any other factor relevant to the child's best interest; and

1 (1) The fact that the respondent has not lost his or her parental
2 rights by being adjudicated as an unfit parent.

3 NEW SECTION. **Sec. 5.** (1)(a) For the purposes of sections 2
4 through 4 of this act, the court shall, on motion of the respondent,
5 order the petitioner to pay a reasonable amount for costs and
6 reasonable attorneys' fees to the respondent in advance and prior to
7 any hearing, unless the court finds, considering the financial
8 resources of all parties, that it would be unjust to do so.

9 (b) Regardless of the financial resources of the parties, if the
10 court finds that a petition for visitation was brought in bad faith
11 or without reasonable basis in light of the requirements of sections
12 2 through 4 of this act, the court shall order the petitioner to pay
13 a reasonable amount for costs and reasonable attorneys' fees to the
14 respondent.

15 (2) If visitation is granted, the court shall order the
16 petitioner to pay all transportation costs associated with
17 visitation.

18 NEW SECTION. **Sec. 6.** (1) A court may not modify or terminate an
19 order granting visitation under section 4 of this act unless it
20 finds, on the basis of facts that have arisen since the entry of the
21 order or were unknown to the court at the time it entered the order,
22 that a substantial change of circumstances has occurred in the
23 circumstances of the child or nonmoving party and that modification
24 or termination of the order is necessary for the best interest of the
25 child.

26 (2)(a) If a court has jurisdiction over the child pursuant to
27 chapter 26.27 RCW, a petition for modification or termination under
28 this section must be filed with that court.

29 (b) Except as otherwise provided in (a) of this subsection, if a
30 court has exclusive original jurisdiction over the child under RCW
31 13.04.030(1) (a) through (d), (h), or (j), a petition for
32 modification or termination under this section must be filed with
33 that court.

34 (c) Except as otherwise provided in (a) or (b) of this
35 subsection, a petition for modification or termination under this
36 section must be filed in the county where the child primarily
37 resides.

1 (3) The petitioner must file with the petition an affidavit
2 alleging that, on the basis of facts that have arisen since the entry
3 of the order or were unknown to the court at the time it entered the
4 order, there is a substantial change of circumstances of the child or
5 nonmoving party and that modification or termination of the order is
6 necessary for the best interest of the child. The petitioner shall
7 set forth facts in the affidavit supporting the petitioner's
8 requested order.

9 (4) The petitioner shall serve notice of the petition to each
10 person having legal custody of, or court-ordered residential time or
11 court-ordered visitation with, the child. A person having legal
12 custody or residential or visitation time with the child may file an
13 opposing affidavit.

14 (5) If, based on the petition and affidavits, the court finds
15 that it is more likely than not that a modification or termination
16 will be granted, the court shall hold a hearing.

17 (6) The court may award reasonable attorneys' fees and costs to
18 either party.

19 **Sec. 7.** RCW 26.10.160 and 2011 c 89 s 7 are each amended to read
20 as follows:

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

24 (2)(a) Visitation with the child shall be limited if it is found
25 that the parent seeking visitation has engaged in any of the
26 following conduct: (i) Willful abandonment that continues for an
27 extended period of time or substantial refusal to perform parenting
28 functions; (ii) physical, sexual, or a pattern of emotional abuse of
29 a child; (iii) a history of acts of domestic violence as defined in
30 RCW 26.50.010(~~((1))~~) (3) or an assault or sexual assault which causes
31 grievous bodily harm or the fear of such harm; or (iv) the parent has
32 been convicted as an adult of a sex offense under:

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

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

1 (C) RCW 9A.44.086 if, because of the difference in age between
2 the offender and the victim, no rebuttable presumption exists under
3 (d) of 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
22 violence as defined in RCW 26.50.010(~~((1+))~~) (3) or an assault or
23 sexual assault that causes grievous bodily harm or the fear of such
24 harm; or (iii) the person has been convicted as an adult or as a
25 juvenile has been adjudicated of a sex offense under:

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

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

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

35 (D) RCW 9A.44.089;

36 (E) RCW 9A.44.093;

37 (F) RCW 9A.44.096;

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

1 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

26 (ii) RCW 9A.44.073;

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

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

31 (v) RCW 9A.44.083;

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

34 (vii) RCW 9A.44.100;

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

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

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

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

12 (ii) RCW 9A.44.073;

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

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

17 (v) RCW 9A.44.083;

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

20 (vii) RCW 9A.44.100;

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

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

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

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

36 (ii) If the child was the victim of the sex offense committed by
37 the parent requesting visitation, (A) contact between the child and
38 the offending parent is appropriate and poses minimal risk to the
39 child, (B) if the child is in or has been in therapy for victims of
40 sexual abuse, the child's counselor believes such contact between the

1 child and the offending parent is in the child's best interest, and
2 (C) the offending parent has successfully engaged in treatment for
3 sex offenders or is engaged in and making progress in such treatment,
4 if any was ordered by a court, and the treatment provider believes
5 such contact is appropriate and poses minimal risk to the child.

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

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

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

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

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

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

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

34 (k) A court shall not order unsupervised contact between the
35 offending parent and a child of the offending parent who was sexually
36 abused by that parent. A court may order unsupervised contact between
37 the offending parent and a child who was not sexually abused by the
38 parent after the presumption under (d) of this subsection has been
39 rebutted and supervised visitation has occurred for at least two
40 years with no further arrests or convictions of sex offenses

1 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter
2 9.68A RCW and (i) the sex offense of the offending parent was not
3 committed against a child of the offending parent, and (ii) the court
4 finds that unsupervised contact between the child and the offending
5 parent is appropriate and poses minimal risk to the child, after
6 consideration of the testimony of a state-certified therapist, mental
7 health counselor, or social worker with expertise in treating child
8 sexual abuse victims who has supervised at least one period of
9 visitation between the parent and the child, and after consideration
10 of evidence of the offending parent's compliance with community
11 supervision requirements, if any. If the offending parent was not
12 ordered by a court to participate in treatment for sex offenders,
13 then the parent shall obtain a psychosexual evaluation conducted by a
14 certified sex offender treatment provider or a certified affiliate
15 sex offender treatment provider indicating that the offender has the
16 lowest likelihood of risk to reoffend before the court grants
17 unsupervised contact between the parent and a child.

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

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

4 (m)(i) The limitations imposed by the court under (a) or (b) of
5 this subsection shall be reasonably calculated to protect the child
6 from the physical, sexual, or emotional abuse or harm that could
7 result if the child has contact with the parent requesting
8 visitation. If the court expressly finds based on the evidence that
9 limitations on visitation with the child will not adequately protect
10 the child from the harm or abuse that could result if the child has
11 contact with the parent requesting visitation, the court shall
12 restrain the person seeking visitation from all contact with the
13 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
16 parent has been found by clear and convincing evidence in a civil
17 action or by a preponderance of the evidence in a dependency action
18 to have sexually abused the child, except upon recommendation by an
19 evaluator or therapist for the child that the child is ready for
20 contact with the parent and will not be harmed by the contact. The
21 court shall not enter an order allowing a parent to have contact with
22 the child in the offender's presence if the parent resides with a
23 person who has been found by clear and convincing evidence in a civil
24 action or by a preponderance of the evidence in a dependency action
25 to have sexually abused a child, unless the court finds that the
26 parent accepts that the person engaged in the harmful conduct and the
27 parent is willing to and capable of protecting the child from harm
28 from the person.

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

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

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

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

25 ~~((5))~~ (4) For the purposes of this section:

26 (a) "A parent's child" means that parent's natural child, adopted
27 child, or stepchild; and

28 (b) "Social worker" means a person with a master's or further
29 advanced degree from a social work educational program accredited and
30 approved as provided in RCW 18.320.010.

31 NEW SECTION. **Sec. 8.** RCW 26.09.240 (Visitation rights—Person
32 other than parent—Grandparents' visitation rights) and 1996 c 177 s
33 1, 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st
34 ex.s. c 157 s 24 are each repealed.

35 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act
36 constitute a new chapter in Title 26 RCW.

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