
HOUSE BILL 2778

State of Washington

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By Representatives Fraser, Belcher, Forner, Paris, Jones, Scott, Mitchell, J. Kohl and Rasmussen

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1 AN ACT Relating to limitations on visitation and residential rights
2 of parents convicted of sex abuse against a child; amending RCW
3 26.10.160; and reenacting and amending RCW 26.09.191.

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

5 **Sec. 1.** RCW 26.09.191 and 1989 c 375 s 11 and 1989 c 326 s 1 are
6 each reenacted and amended to read as follows:

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

1 an assault or sexual assault which causes grievous bodily harm or the
2 fear of such harm.

3 (2)(a) The parent's residential time with the child shall be
4 limited if it is found that the parent has engaged in any of the
5 following conduct: (i) Willful abandonment that continues for an
6 extended period of time or substantial refusal to perform parenting
7 functions; (ii) physical, sexual, or a pattern of emotional abuse of a
8 child; or (iii) a history of acts of domestic violence as defined in
9 RCW 26.50.010(1) or an assault or sexual assault which causes grievous
10 bodily harm or the fear of such harm.

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

20 (c) The court shall require a neutral and independent adult to
21 supervise any court ordered residential time if a parent has been
22 convicted of a sex offense committed against any child within three
23 years before entry of an order adopting the parenting plan under this
24 chapter. The convicted parent has the burden of proving that the
25 proposed supervisor is neutral, independent, willing to supervise, and
26 is capable of intervening between the child and the parent if
27 necessary. The court shall have jurisdiction over the supervisor, may
28 specify minimum requirements of supervision, and may hold the
29 supervisor in contempt if the supervisor fails to adequately supervise
30 the residential time the parent spends with the child. The court shall

1 enter findings of fact regarding the qualifications of the appointed
2 supervisor. The court shall notify the supervisor of the court's
3 requirements and the contempt provision.

4 The court shall require supervision by a neutral and independent
5 adult for a minimum of one year. The court may reduce or terminate the
6 supervision period upon the recommendation of the mental health
7 professional who evaluates the child that terminating or reducing
8 supervision is in the child's best interest. The court may set periodic
9 reviews of the supervision order.

10 (d) Except as provided in (c) of this subsection, if the court
11 expressly finds that contact between the parent and the child will not
12 cause physical, sexual, or emotional abuse or harm to the child and
13 that the probability that the parent's harmful or abusive conduct will
14 recur is so remote that it would not be in the child's best interests
15 to apply the limitations of (a) and (b) of this subsection, or if the
16 court expressly finds the parent's conduct did not have an impact on
17 the child, then the court need not apply the limitations of (a) and (b)
18 of this subsection. The weight given to the existence of a protection
19 order issued under chapter 26.50 RCW as to domestic violence is within
20 the discretion of the court.

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

25 (a) A parent's neglect or substantial nonperformance of parenting
26 functions;

27 (b) A long-term emotional or physical impairment which interferes
28 with the parent's performance of parenting functions as defined in RCW
29 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 1989 c 326 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 (iii)
28 a history of acts of domestic violence as defined in RCW 26.50.010(1)

1 or an assault or sexual assault which causes grievous bodily harm or
2 the fear of such harm.

3 (b) The limitations imposed by the court shall be reasonably
4 calculated to protect the child from the physical, sexual, or emotional
5 abuse or harm that could result if the child has contact with the
6 parent requesting visitation. If the court expressly finds limitations
7 on visitation with the child will not adequately protect the child from
8 the harm or abuse that could result if the child has contact with the
9 parent requesting visitation, the court shall restrain the person
10 seeking visitation from all contact with the child.

11 (c) The court shall require a neutral and independent adult to
12 supervise any court ordered visitation time if a parent has been
13 convicted of a sex offense committed against any child within three
14 years before entry of an order adopting the visitation plan under this
15 chapter. The convicted parent has the burden of proving that the
16 proposed supervisor is neutral, independent, willing to supervise, and
17 is capable of intervening between the child and the parent if
18 necessary. The court shall have jurisdiction over the supervisor, may
19 specify minimum requirements of supervision, and may hold the
20 supervisor in contempt if the supervisor fails to adequately supervise
21 the visitation time the parent spends with the child. The court shall
22 enter findings of fact regarding the qualifications of the appointed
23 supervisor. The court shall notify the supervisor of the court's
24 requirements and the contempt provision.

25 The court shall require supervision by a neutral and independent
26 adult for a minimum of one year. The court may reduce or terminate the
27 supervision period upon the recommendation of the mental health
28 professional who evaluates the child that terminating or reducing
29 supervision is in the child's best interest. The court may set periodic
30 reviews of the supervision order.

1 (d) Except as provided in (c) of this subsection, if the court
2 expressly finds that contact between the parent and the child will not
3 cause physical, sexual, or emotional abuse or harm to the child and
4 that the probability that the parent's harmful or abusive conduct will
5 recur is so remote that it would not be in the child's best interests
6 to apply the limitations of (a) and (b) of this subsection, or if the
7 court expressly finds the parent's conduct did not have an impact on
8 the child, then the court need not apply the limitations of (a) and (b)
9 of this subsection. The weight given to the existence of a protection
10 order issued under chapter 26.50 RCW as to domestic violence is within
11 the discretion of the court.

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

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