

2 **ESSB 5061** - CONF REPT
3 By Conference Committee

4 ADOPTED 3/9/94

5 Strike everything after the enacting clause and insert the
6 following:

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

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

18 (2)(a) The parent's residential time with the child shall be
19 limited if it is found that the parent has engaged in any of the
20 following conduct: (i) Willful abandonment that continues for an
21 extended period of time or substantial refusal to perform parenting
22 functions; (ii) physical, sexual, or a pattern of emotional abuse of a
23 child; or (iii) a history of acts of domestic violence as defined in
24 RCW 26.50.010(1) or an assault or sexual assault which causes grievous
25 bodily harm or the fear of such harm. This subsection shall not apply
26 when (c) of this subsection applies.

27 (b) The parent's residential time with the child shall be limited
28 if it is found that the parent resides with a person who has engaged in
29 any of the following conduct: (i) Physical, sexual, or a pattern of
30 emotional abuse of a child; or (ii) a history of acts of domestic
31 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
32 that causes grievous bodily harm or the fear of such harm. This
33 subsection (2)(b) shall not apply when (c) of this subsection applies.

34 (c) If a parent has been convicted as an adult of a sexual offense
35 under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has been found to
36 be a sexual predator under chapter 71.09 RCW, the court shall restrain

1 the parent from contact with a child that would otherwise be allowed
2 under this chapter. If a parent resides with an adult who has been
3 convicted, or with a juvenile who has been adjudicated, of a sexual
4 offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or who has
5 been found to be a sexual predator under chapter 71.09 RCW, the court
6 shall restrain the parent from contact with the parent's child except
7 contact that occurs outside that person's presence.

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

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

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

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

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

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

20 (a) A parent's neglect or substantial nonperformance of parenting
21 functions;

22 (b) A long-term emotional or physical impairment which interferes
23 with the parent's performance of parenting functions as defined in RCW
24 26.09.004;

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

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

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

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

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

36 (4) In entering a permanent parenting plan, the court shall not
37 draw any presumptions from the provisions of the temporary parenting
38 plan.

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

4 **Sec. 2.** RCW 26.10.160 and 1989 c 326 s 2 are each amended to read
5 as follows:

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

9 (2)(a) Visitation with the child shall be limited if it is found
10 that the parent seeking visitation has engaged in any of the following
11 conduct: (i) Willful abandonment that continues for an extended period
12 of time or substantial refusal to perform parenting functions; (ii)
13 physical, sexual, or a pattern of emotional abuse of a child; or (iii)
14 a history of acts of domestic violence as defined in RCW 26.50.010(1)
15 or an assault or sexual assault which causes grievous bodily harm or
16 the fear of such harm. This subsection shall not apply when (c) of
17 this subsection applies.

18 (b) The parent's residential time with the child shall be limited
19 if it is found that the parent resides with a person who has engaged in
20 any of the following conduct: (i) Physical, sexual, or a pattern of
21 emotional abuse of a child; or (ii) a history of acts of domestic
22 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
23 which causes grievous bodily harm or the fear of such harm.

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

34 (d)(i) The limitations imposed by the court under (a) or (b) of
35 this subsection shall be reasonably calculated to protect the child
36 from the physical, sexual, or emotional abuse or harm that could result
37 if the child has contact with the parent requesting visitation. If the
38 court expressly finds based on the evidence that limitations on

1 visitation with the child will not adequately protect the child from
2 the harm or abuse that could result if the child has contact with the
3 parent requesting visitation, the court shall restrain the person
4 seeking visitation from all contact with the child.

5 ~~((e))~~ (ii) The court shall not enter an order under (a) of this
6 subsection allowing a parent to have contact with a child if the parent
7 has been found by clear and convincing evidence in a civil action or by
8 a preponderance of the evidence in a dependency action to have sexually
9 abused the child, except upon recommendation by an evaluator or
10 therapist for the child that the child is ready for contact with the
11 parent and will not be harmed by the contact. The court shall not
12 enter an order allowing a parent to have contact with the child if the
13 parent resides with a person who has been found by clear and convincing
14 evidence in a civil action or by a preponderance of the evidence in a
15 dependency action to have sexually abused a child, unless the court
16 finds that the parent accepts that the person engaged in the harmful
17 conduct and the parent is willing to and capable of protecting the
18 child from harm from the person.

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

29 (e) If the court expressly finds based on the evidence that contact
30 between the parent and the child will not cause physical, sexual, or
31 emotional abuse or harm to the child and that the probability that the
32 parent's or other person's harmful or abusive conduct will recur is so
33 remote that it would not be in the child's best interests to apply the
34 limitations of (a) ~~(and)~~, (b), and (d) (i) and (iii) of this
35 subsection, or if the court expressly finds based on the evidence that
36 the parent's conduct did not have an impact on the child, then the
37 court need not apply the limitations of (a) ~~(and)~~, (b), and (d) (i)
38 and (iii) of this subsection. The weight given to the existence of a
39 protection order issued under chapter 26.50 RCW as to domestic violence

1 is within the discretion of the court. This subsection shall not apply
2 when (c) and (d)(ii) of this subsection apply.

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

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

12 **Sec. 3.** RCW 26.12.170 and 1991 c 367 s 13 are each amended to read
13 as follows:

14 To facilitate and promote the purposes of this chapter, family
15 court judges and court commissioners may order or recommend family
16 court services, parenting seminars, drug and alcohol abuse evaluations
17 and monitoring of the parties through public or private treatment
18 services, other treatment services, the aid of physicians,
19 psychiatrists, other specialists, or other services or may recommend
20 the aid of the pastor or director of any religious denomination to
21 which the parties may belong.

22 If the court has reasonable cause to believe that a child of the
23 parties has suffered abuse or neglect it may file a report with the
24 proper law enforcement agency or the department of social and health
25 services as provided in RCW 26.44.040. Upon receipt of such a report
26 the law enforcement agency or the department of social and health
27 services will conduct an investigation into the cause and extent of the
28 abuse or neglect. The findings of the investigation may be made
29 available to the court if ordered by the court as provided in RCW
30 42.17.310(3). The findings shall be restricted to the issue of abuse
31 and neglect and shall not be considered custody investigations.

32 **Sec. 4.** RCW 26.12.220 and 1991 c 367 s 15 are each amended to read
33 as follows:

34 (1) The legislative authority of any county may authorize family
35 court services as provided in RCW 26.12.230. The legislative authority
36 may impose a fee in excess of that prescribed in RCW 36.18.010 for the

1 issuance of a marriage license. The fee shall not exceed eight
2 dollars.

3 (2) In addition to any other funds used therefor, the governing
4 body of any county shall use the proceeds from the fee increase
5 authorized by this section to pay the expenses of the family court and
6 the family court services under chapter 26.12 RCW. If there is no
7 family court in the county, the legislative authority may provide such
8 services through other county agencies or may contract with a public or
9 private agency or person to provide such services. Family court
10 services also may be provided jointly with other counties as provided
11 in RCW 26.12.230.

12 (3) The family court services program may hire professional
13 employees to provide the investigation, evaluation and reporting, and
14 mediation services, or the county may contract for these services, or
15 both. To facilitate and promote the purposes of this chapter, the
16 court may order or recommend the aid of physicians, psychiatrists, or
17 other specialists.

18 (4) The family court services program may provide or contract for:
19 (a) Mediation; (b) investigation, evaluation, and reporting to the
20 court; and (c) reconciliation; and may provide a referral mechanism for
21 drug and alcohol testing, monitoring, and treatment; and any other
22 treatment, parenting, or anger management programs the family court
23 professional considers necessary or appropriate.

24 (5) Services other than family court investigation, evaluation,
25 reconciliation, and mediation services shall be at the expense of the
26 parties involved absent a court order to the contrary. The parties
27 shall bear all or a portion of the cost of parenting seminars and
28 family court investigation, evaluation, reconciliation, and mediation
29 services according to the parties' ability to pay.

30 (6) The county legislative authority may establish rules of
31 eligibility for the family court services funded under this section.
32 The rules shall not conflict with rules of the court adopted under
33 chapter 26.12 RCW or any other statute.

34 (7) The legislative authority may establish fees for family court
35 investigation, evaluation, reconciliation, and mediation services under
36 this chapter according to the parties' ability to pay for the services.
37 Fees collected under this section shall be collected and deposited in
38 the same manner as other county funds are collected and deposited, and

1 shall be maintained in a separate account to be used as provided in
2 this section.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 26.12 RCW
4 to read as follows:

5 Any court rules adopted for the implementation of parenting
6 seminars shall include the following provisions:

7 (1) In no case shall opposing parties be required to attend
8 seminars together;

9 (2) Upon a showing of domestic violence or abuse which would not
10 require mutual decision making pursuant to RCW 26.09.191, or that a
11 parent's attendance at the seminar is not in the children's best
12 interests, the court shall either:

13 (a) Waive the requirement of completion of the seminar; or

14 (b) Provide an alternative, voluntary parenting seminar for
15 battered spouses; and

16 (3) The court may waive the seminar for good cause.

17 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and shall take
20 effect immediately."

21 **ESSB 5061** - CONF REPT
22 By Conference Committee

23 ADOPTED 3/9/94

24 On page 1, line 2 of the title, after "parents;" strike the
25 remainder of the title and insert "amending RCW 26.10.160, 26.12.170,
26 and 26.12.220; reenacting and amending RCW 26.09.191; adding a new
27 section to chapter 26.12 RCW; and declaring an emergency."

--- END ---