
ENGROSSED SENATE BILL 5610

State of Washington 54th Legislature 1995 Regular Session

By Senators Smith, Deccio, Oke, Winsley, Roach and Schow

Read first time 01/30/95. Referred to Committee on Law & Justice.

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

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

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

7 If a court determines that a false accusation of child abuse or
8 neglect has been made during a proceeding under this title relating to
9 a parenting plan or child custody, and the person making or the person
10 enticing another to make the accusation knew it to be false at the time
11 the accusation was made, the court may impose a monetary penalty, not
12 to exceed one thousand dollars and reasonable attorneys' fees incurred
13 in recovering the penalty, against the person making the accusation.
14 For the purpose of this section, "person" includes a witness, a party,
15 or a party's attorney.

16 The remedy provided by this section is in addition to any other
17 remedy provided by law.

1 **Sec. 2.** RCW 26.09.191 and 1994 c 267 s 1 are each amended to read
2 as follows:

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

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

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

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

38 (d)(i) The limitations imposed by the court under (a) or (b) of
39 this subsection shall be reasonably calculated to protect the child

1 from physical, sexual, or emotional abuse or harm that could result if
2 the child has contact with the parent requesting residential time. If
3 the court expressly finds based on the evidence that limitation on the
4 residential time with the child will not adequately protect the child
5 from the harm or abuse that could result if the child has contact with
6 the parent requesting residential time, the court shall restrain the
7 parent requesting residential time from all contact with the child.

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

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

32 (e) If the court expressly finds based on the evidence that contact
33 between the parent and the child will not cause physical, sexual, or
34 emotional abuse or harm to the child and that the probability that the
35 parent's or other person's harmful or abusive conduct will recur is so
36 remote that it would not be in the child's best interests to apply the
37 limitations of (a), (b), and (d) (i) and (iii) of this subsection, or
38 if the court expressly finds the parent's conduct did not have an
39 impact on the child, then the court need not apply the limitations of

1 (a), (b), and (d) (i) and (iii) of this subsection. The weight given
2 to the existence of a protection order issued under chapter 26.50 RCW
3 as to domestic violence is within the discretion of the court. This
4 subsection shall not apply when (c) and (d)(ii) of this subsection
5 apply.

6 (3) There shall be a presumption that the parent's residential time
7 with the child should be limited if it is found that the parent has
8 made false accusations of child abuse or neglect during the course of
9 the proceedings, and the parent knew the accusations to be false at the
10 time of making the accusations.

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

15 (a) A parent's neglect or substantial nonperformance of parenting
16 functions;

17 (b) A long-term emotional or physical impairment which interferes
18 with the parent's performance of parenting functions as defined in RCW
19 26.09.004;

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

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

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

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

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

31 ~~((4))~~ (5) In entering a permanent parenting plan, the court shall
32 not draw any presumptions from the provisions of the temporary
33 parenting plan.

34 ~~((5))~~ (6) In determining whether any of the conduct described in
35 this section has occurred, the court shall apply the civil rules of
36 evidence, proof, and procedure.

37 NEW SECTION. Sec. 3. A new section is added to chapter 26.44 RCW
38 to read as follows:

1 A person who intentionally makes a false accusation of child abuse
2 or neglect knowing that the accusation is false, during a proceeding
3 under this title relating to a parenting plan or child custody, shall
4 be guilty of a class C felony punishable in accordance with chapter
5 9A.20 RCW.

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