
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 the accusation
10 knew it to be false at the time the accusation was made, the court may
11 impose a monetary penalty, not to exceed one thousand dollars and
12 reasonable attorneys' fees incurred in recovering the penalty, against
13 the person making the accusation. For the purpose of this section,
14 "person" includes a witness, a party, or a party's attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (a) A parent's neglect or substantial nonperformance of parenting
14 functions;

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

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

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

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

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

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

29 ~~((4))~~ (5) In entering a permanent parenting plan, the court shall
30 not draw any presumptions from the provisions of the temporary
31 parenting plan.

32 ~~((5))~~ (6) In determining whether any of the conduct described in
33 this section has occurred, the court shall apply the civil rules of
34 evidence, proof, and procedure.

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

37 A person who intentionally makes a false accusation of child abuse
38 or neglect knowing that the accusation is false, during a proceeding

1 under this title relating to a parenting plan or child custody, shall
2 be guilty of a class C felony punishable in accordance with chapter
3 9A.20 RCW.

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