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ENGROSSED SUBSTITUTE SENATE BILL 5061

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State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Fraser, Winsley and A. Smith)

Read first time 03/03/93.

1 AN ACT Relating to restrictions on residential time for abusive  
2 parents; amending RCW 26.10.160; reenacting and amending RCW 26.09.191;  
3 and declaring an emergency.

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  
14 an assault or sexual assault which causes grievous bodily harm or the  
15 fear of such harm.

16 (2)(a) If there is a conviction in a criminal action, or if a court  
17 in an action under this chapter finds by clear and convincing evidence,  
18 that a parent requesting residential time has sexually abused a child  
19 living in the parent's household at any time during the parent's life

1 or any other child within the previous ten years, then there is a  
2 rebuttable presumption that the court shall not allow residential time  
3 to a parent and shall enter a permanent restraining order prohibiting  
4 the parent from contacting the child directly or indirectly.

5 (b) The presumption may be rebutted only after a finding that:

6 (i) The offending parent has successfully engaged in court-approved  
7 treatment for sexual offenders or is engaged in and making progress in  
8 such treatment and the treatment provider believes such contact is  
9 appropriate and poses minimal risk to the child;

10 (ii) If the child was sexually abused by the parent requesting  
11 residential time and if the child is in or has been in therapy for  
12 victims of sexual abuse, the child's counselor believes such contact  
13 between the child and the offending parent is in the child's best  
14 interest; and

15 (iii) An adequate plan for supervision of such residential time in  
16 accordance with the provisions of this chapter has been approved by the  
17 court.

18 (c) If the court finds that the presumption has been rebutted, the  
19 court may allow a parent who has been found to have sexually abused a  
20 child to have residential time with the child supervised by a neutral  
21 and independent adult. Unless the nonoffending parent approves the  
22 supervisor, the court shall make a finding that the proposed supervisor  
23 is neutral, independent, willing to supervise, and capable of  
24 intervening between the child and the parent if necessary. The court  
25 shall enter findings of fact regarding the qualifications of the  
26 appointed supervisor and shall notify the supervisor of the court's  
27 requirements regarding supervision. The court may immediately remove  
28 the supervisor from the supervisory role upon evidence being presented  
29 that the supervisor failed to supervise the residential time  
30 adequately.

31 (d) The parent's residential time with the child shall be limited  
32 if it is found that the parent has engaged in any of the following  
33 conduct: (i) Willful abandonment that continues for an extended period  
34 of time or substantial refusal to perform parenting functions; (ii)  
35 physical, sexual, or a pattern of emotional abuse of a child; or (iii)  
36 a history of acts of domestic violence as defined in RCW 26.50.010(1)  
37 or an assault or sexual assault which causes grievous bodily harm or  
38 the fear of such harm.

1       (~~(b)~~) (e) The limitations imposed by the court shall be  
2 reasonably calculated to protect the child from physical, sexual, or  
3 emotional abuse or harm that could result if the child has contact with  
4 the parent requesting residential time. If the court expressly finds  
5 limitation on the residential time with the child will not adequately  
6 protect the child from the harm or abuse that could result if the child  
7 has contact with the parent requesting residential time, the court  
8 shall restrain the parent requesting residential time from all contact  
9 with the child. If the parent requesting residential time is currently  
10 residing with another person who has a history of physical or sexual  
11 abuse of a child, whether that person is an adult or a juvenile, the  
12 court shall order that all residential time take place outside the  
13 presence of that person.

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

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

30       (a) A parent's neglect or substantial nonperformance of parenting  
31 functions;

32       (b) A long-term emotional or physical impairment which interferes  
33 with the parent's performance of parenting functions as defined in RCW  
34 26.09.004;

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

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

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

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

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

7 (4) In entering a permanent parenting plan, the court shall not  
8 draw any presumptions from the provisions of the temporary parenting  
9 plan.

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

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

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

18 (2)(a) If there is a conviction in a criminal action, or if a court  
19 in an action under this chapter finds by clear and convincing evidence,  
20 that a parent requesting visitation has sexually abused a child living  
21 in the parent's household at any time during the parent's life or any  
22 other child within the previous ten years, then there is a rebuttable  
23 presumption that the court shall not allow visitation to a parent and  
24 shall enter a permanent restraining order prohibiting the parent from  
25 contacting the child directly or indirectly.

26 (b) The presumption may be rebutted only after a finding that:

27 (i) The offending parent has successfully engaged in court-approved  
28 treatment for sexual offenders or is engaged in and making progress in  
29 such treatment and the treatment provider believes such contact is  
30 appropriate and poses minimal risk to the child;

31 (ii) If the child was sexually abused by the parent requesting  
32 visitation and if the child is in or has been in therapy for victims of  
33 sexual abuse, the child's counselor believes such contact between the  
34 child and the offending parent is in the child's best interest; and

35 (iii) An adequate plan for supervision of such visitation in  
36 accordance with the provisions of this chapter has been approved by the  
37 court.

1       (c) If the court finds that the presumption has been rebutted, the  
2 court may allow a parent who has been found to have sexually abused a  
3 child to have visitation with the child supervised by a neutral and  
4 independent adult. Unless the nonoffending parent approves the  
5 supervisor, the court must make a finding that the proposed supervisor  
6 is neutral, independent, willing to supervise, and capable of  
7 intervening between the child and the parent if necessary. The court  
8 shall enter findings of fact regarding the qualifications of the  
9 appointed supervisor and shall notify the supervisor of the court's  
10 requirements regarding supervision. The court may immediately remove  
11 the supervisor from the supervisory role upon evidence being presented  
12 that the supervisor failed to supervise the residential time  
13 adequately.

14       (d) Visitation with the child shall be limited if it is found that  
15 the parent seeking visitation has engaged in any of the following  
16 conduct: (i) Willful abandonment that continues for an extended period  
17 of time or substantial refusal to perform parenting functions; (ii)  
18 physical, sexual, or a pattern of emotional abuse of a child; or (iii)  
19 a history of acts of domestic violence as defined in RCW 26.50.010(1)  
20 or an assault or sexual assault which causes grievous bodily harm or  
21 the fear of such harm.

22       ~~((b))~~ (e) The limitations imposed by the court shall be  
23 reasonably calculated to protect the child from the physical, sexual,  
24 or emotional abuse or harm that could result if the child has contact  
25 with the parent requesting visitation. If the court expressly finds  
26 limitations on visitation with the child will not adequately protect  
27 the child from the harm or abuse that could result if the child has  
28 contact with the parent requesting visitation, the court shall restrain  
29 the person seeking visitation from all contact with the child. If the  
30 parent requesting visitation is currently residing with another person  
31 who has a history of physical or sexual abuse of a child, whether that  
32 person is an adult or a juvenile, the court shall order that all  
33 visitation take place outside the presence of that person.

34       ~~((e))~~ (f) Except as provided in (a), (b), and (c) of this  
35 subsection, if the court expressly finds that contact between the  
36 parent and the child will not cause physical, sexual, or emotional  
37 abuse or harm to the child and that the probability that the parent's  
38 harmful or abusive conduct will recur is so remote that it would not be  
39 in the child's best interests to apply the limitations of ~~((a) and~~

1 ~~(b))~~ (d) and (e) of this subsection, or if the court expressly finds  
2 the parent's conduct did not have an impact on the child, then the  
3 court need not apply the limitations of (~~(a) and (b))~~) (d) and (e) of  
4 this subsection. The weight given to the existence of a protection  
5 order issued under chapter 26.50 RCW as to domestic violence is within  
6 the discretion of the court.

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

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

16 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of the  
18 state government and its existing public institutions, and shall take  
19 effect immediately.

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