
SENATE BILL 5061

State of Washington

53rd Legislature

1993 Regular Session

By Senators Fraser, Winsley and A. Smith

Read first time 01/11/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to restrictions on residential time for abusive
2 parents; amending RCW 26.10.160; and reenacting and amending RCW
3 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
14 an assault or sexual assault which causes grievous bodily harm or the
15 fear of such harm.

16 (2)(a) The court shall deny residential time to a parent and enter
17 a permanent restraining order prohibiting the parent from contacting
18 the child directly or indirectly, if the court finds in an action under

1 this chapter, or another court found in a prior civil or criminal
2 action, that:

3 (i) The child was conceived because one parent committed a sex
4 offense, as defined in RCW 9.94A.030, against the child's other parent;
5 or

6 (ii) The parent has sexually abused a child in the household at any
7 time during the parent's life or any other child within the previous
8 ten years.

9 (b)(i) The court shall require that a neutral third party supervise
10 any residential time the parent spends with the child if the court
11 finds in an action under this chapter, or another court found in a
12 prior civil or criminal action, that the parent physically abused the
13 child, or exhibits a pattern of emotional abuse of the child, or has
14 physically or sexually abused another child within the previous ten
15 years.

16 (ii) The neutral third party may not be a member of the offending
17 parent's family unless the nonoffending parent agrees to the
18 appointment. The offending parent has the burden of proving that the
19 proposed supervisor, whether or not a family member, is neutral,
20 independent, willing to supervise, and is capable of intervening
21 between the child and the parent if necessary. The court shall appoint
22 and have jurisdiction over the supervisor, may specify minimum
23 requirements of supervision, and may hold the supervisor in contempt if
24 the supervisor fails to adequately supervise the residential time. The
25 court shall enter findings of fact regarding the qualifications of the
26 appointed supervisor. The court shall notify the supervisor of the
27 court's requirements and the contempt provision. In addition, the
28 court may impose other limitations under (c) and (d) of this
29 subsection.

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

38 ((b)) (d) The limitations imposed by the court shall be
39 reasonably calculated to protect the child from physical, sexual, or

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

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

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

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

26 (b) A long-term emotional or physical impairment which interferes
27 with the parent's performance of parenting functions as defined in RCW
28 26.09.004;

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

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

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

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

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

1 (4) In entering a permanent parenting plan, the court shall not
2 draw any presumptions from the provisions of the temporary parenting
3 plan.

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

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

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

12 (2)(a) The court shall deny visitation or residential time to a
13 parent and enter a permanent restraining order prohibiting the parent
14 from contacting the child directly or indirectly, if the court finds in
15 an action under this chapter, or another court found in a prior civil
16 or criminal action, that:

17 (i) The child was conceived because one parent committed a sex
18 offense, as defined in RCW 9.94A.030, against the child's other parent;
19 or

20 (ii) The parent has sexually abused a child in the household at any
21 time during the parent's life or any other child within the previous
22 ten years.

23 (b)(i) The court shall require that a neutral third party supervise
24 any visitation or residential time the parent spends with the child if
25 the court finds in an action under this chapter, or another court found
26 in a prior civil or criminal action, that the parent physically abused
27 the child, or exhibits a pattern of emotional abuse of the child, or
28 has physically or sexually abused another child within the previous ten
29 years.

30 (ii) The neutral third party may not be a member of the offending
31 parent's family unless the nonoffending parent agrees to the
32 appointment. The offending parent has the burden of proving that the
33 proposed supervisor, whether or not a family member, is neutral,
34 independent, willing to supervise, and is capable of intervening
35 between the child and the parent if necessary. The court shall appoint
36 and have jurisdiction over the supervisor, may specify minimum
37 requirements of supervision, and may hold the supervisor in contempt if
38 the supervisor fails to adequately supervise the residential time. The

1 court shall enter findings of fact regarding the qualifications of the
2 appointed supervisor. The court shall notify the supervisor of the
3 court's requirements and the contempt provision. In addition, the
4 court may impose other limitations under (c) and (d) of this
5 subsection.

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

14 ~~((b))~~ (d) The limitations imposed by the court shall be
15 reasonably calculated to protect the child from the physical, sexual,
16 or emotional abuse or harm that could result if the child has contact
17 with the parent requesting visitation. If the court expressly finds
18 limitations on visitation with the child will not adequately protect
19 the child from the harm or abuse that could result if the child has
20 contact with the parent requesting visitation, the court shall restrain
21 the person seeking visitation from all contact with the child.

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

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

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

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