

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5061

Chapter 267, Laws of 1994

53rd Legislature
1994 Regular Session

ABUSIVE PARENTS--VISITATION RESTRICTIONS

EFFECTIVE DATE: 4/1/94

Passed by the Senate March 9, 1994
YEAS 45 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 9, 1994
YEAS 96 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5061** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 1, 1994 - 2:15 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5061

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1994 Regular Session

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, 26.12.170, and 26.12.220; reenacting
3 and amending RCW 26.09.191; adding a new section to chapter 26.12 RCW;
4 and declaring an emergency.

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

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

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

17 (2)(a) The parent's residential time with the child shall be
18 limited if it is found that the parent has engaged in any of the
19 following conduct: (i) Willful abandonment that continues for an

1 extended period of time or substantial refusal to perform parenting
2 functions; (ii) physical, sexual, or a pattern of emotional abuse of a
3 child; or (iii) a history of acts of domestic violence as defined in
4 RCW 26.50.010(1) or an assault or sexual assault which causes grievous
5 bodily harm or the fear of such harm. This subsection shall not apply
6 when (c) of this subsection applies.

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

14 (c) If a parent has been convicted as an adult of a sexual offense
15 under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has been found to
16 be a sexual predator under chapter 71.09 RCW, the court shall restrain
17 the parent from contact with a child that would otherwise be allowed
18 under this chapter. If a parent resides with an adult who has been
19 convicted, or with a juvenile who has been adjudicated, of a sexual
20 offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or who has
21 been found to be a sexual predator under chapter 71.09 RCW, the court
22 shall restrain the parent from contact with the parent's child except
23 contact that occurs outside that person's presence.

24 (d)(i) The limitations imposed by the court under (a) or (b) of
25 this subsection shall be reasonably calculated to protect the child
26 from physical, sexual, or emotional abuse or harm that could result if
27 the child has contact with the parent requesting residential time. If
28 the court expressly finds based on the evidence that limitation on the
29 residential time with the child will not adequately protect the child
30 from the harm or abuse that could result if the child has contact with
31 the parent requesting residential time, the court shall restrain the
32 parent requesting residential time from all contact with the child.

33 ((+e)) (ii) The court shall not enter an order under (a) of this
34 subsection allowing a parent to have contact with a child if the parent
35 has been found by clear and convincing evidence in a civil action or by
36 a preponderance of the evidence in a dependency action to have sexually
37 abused the child, except upon recommendation by an evaluator or
38 therapist for the child that the child is ready for contact with the
39 parent and will not be harmed by the contact. The court shall not

1 enter an order allowing a parent to have contact with the child if the
2 parent resides with a person who has been found by clear and convincing
3 evidence in a civil action or by a preponderance of the evidence in a
4 dependency action to have sexually abused a child, unless the court
5 finds that the parent accepts that the person engaged in the harmful
6 conduct and the parent is willing to and capable of protecting the
7 child from harm from the person.

8 (iii) If the court limits residential time under (a) or (b) of this
9 subsection to require supervised contact between the child and the
10 parent, the court shall not approve of a supervisor for contact between
11 a child and a parent who has engaged in physical, sexual, or a pattern
12 of emotional abuse of the child unless the court finds based upon the
13 evidence that the supervisor accepts that the harmful conduct occurred
14 and is willing to and capable of protecting the child from harm. The
15 court shall revoke court approval of the supervisor upon finding, based
16 on the evidence, that the supervisor has failed to protect the child or
17 is no longer willing to or capable of protecting the child.

18 (e) If the court expressly finds based on the evidence that contact
19 between the parent and the child will not cause physical, sexual, or
20 emotional abuse or harm to the child and that the probability that the
21 parent's or other person's harmful or abusive conduct will recur is so
22 remote that it would not be in the child's best interests to apply the
23 limitations of (a) ((and)), (b), and (d) (i) and (iii) of this
24 subsection, or if the court expressly finds the parent's conduct did
25 not have an impact on the child, then the court need not apply the
26 limitations of (a) ((and)), (b), and (d) (i) and (iii) of this
27 subsection. The weight given to the existence of a protection order
28 issued under chapter 26.50 RCW as to domestic violence is within the
29 discretion of the court. This subsection shall not apply when (c) and
30 (d)(ii) of this subsection apply.

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

35 (a) A parent's neglect or substantial nonperformance of parenting
36 functions;

37 (b) A long-term emotional or physical impairment which interferes
38 with the parent's performance of parenting functions as defined in RCW
39 26.09.004;

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

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

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

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

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

12 (4) In entering a permanent parenting plan, the court shall not
13 draw any presumptions from the provisions of the temporary parenting
14 plan.

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

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

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

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

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

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

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

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

34 (iii) If the court limits residential time under (a) or (b) of this
35 subsection to require supervised contact between the child and the
36 parent, the court shall not approve of a supervisor for contact between
37 a child and a parent who has engaged in physical, sexual, or a pattern
38 of emotional abuse of the child unless the court finds based upon the
39 evidence that the supervisor accepts that the harmful conduct occurred

1 and is willing to and capable of protecting the child from harm. The
2 court shall revoke court approval of the supervisor upon finding, based
3 on the evidence, that the supervisor has failed to protect the child or
4 is no longer willing to or capable of protecting the child.

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

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

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

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

29 To facilitate and promote the purposes of this chapter, family
30 court judges and court commissioners may order or recommend family
31 court services, parenting seminars, drug and alcohol abuse evaluations
32 and monitoring of the parties through public or private treatment
33 services, other treatment services, the aid of physicians,
34 psychiatrists, other specialists, or other services or may recommend
35 the aid of the pastor or director of any religious denomination to
36 which the parties may belong.

37 If the court has reasonable cause to believe that a child of the
38 parties has suffered abuse or neglect it may file a report with the

1 proper law enforcement agency or the department of social and health
2 services as provided in RCW 26.44.040. Upon receipt of such a report
3 the law enforcement agency or the department of social and health
4 services will conduct an investigation into the cause and extent of the
5 abuse or neglect. The findings of the investigation may be made
6 available to the court if ordered by the court as provided in RCW
7 42.17.310(3). The findings shall be restricted to the issue of abuse
8 and neglect and shall not be considered custody investigations.

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

11 (1) The legislative authority of any county may authorize family
12 court services as provided in RCW 26.12.230. The legislative authority
13 may impose a fee in excess of that prescribed in RCW 36.18.010 for the
14 issuance of a marriage license. The fee shall not exceed eight
15 dollars.

16 (2) In addition to any other funds used therefor, the governing
17 body of any county shall use the proceeds from the fee increase
18 authorized by this section to pay the expenses of the family court and
19 the family court services under chapter 26.12 RCW. If there is no
20 family court in the county, the legislative authority may provide such
21 services through other county agencies or may contract with a public or
22 private agency or person to provide such services. Family court
23 services also may be provided jointly with other counties as provided
24 in RCW 26.12.230.

25 (3) The family court services program may hire professional
26 employees to provide the investigation, evaluation and reporting, and
27 mediation services, or the county may contract for these services, or
28 both. To facilitate and promote the purposes of this chapter, the
29 court may order or recommend the aid of physicians, psychiatrists, or
30 other specialists.

31 (4) The family court services program may provide or contract for:
32 (a) Mediation; (b) investigation, evaluation, and reporting to the
33 court; and (c) reconciliation; and may provide a referral mechanism for
34 drug and alcohol testing, monitoring, and treatment; and any other
35 treatment, parenting, or anger management programs the family court
36 professional considers necessary or appropriate.

37 (5) Services other than family court investigation, evaluation,
38 reconciliation, and mediation services shall be at the expense of the

1 parties involved absent a court order to the contrary. The parties
2 shall bear all or a portion of the cost of parenting seminars and
3 family court investigation, evaluation, reconciliation, and mediation
4 services according to the parties' ability to pay.

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

9 (7) The legislative authority may establish fees for family court
10 investigation, evaluation, reconciliation, and mediation services under
11 this chapter according to the parties' ability to pay for the services.
12 Fees collected under this section shall be collected and deposited in
13 the same manner as other county funds are collected and deposited, and
14 shall be maintained in a separate account to be used as provided in
15 this section.

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

18 Any court rules adopted for the implementation of parenting
19 seminars shall include the following provisions:

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

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

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

27 (b) Provide an alternative, voluntary parenting seminar for
28 battered spouses; and

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

30 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and shall take
33 effect immediately.

Passed the Senate March 9, 1994.

Passed the House March 9, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.