
ENGROSSED HOUSE BILL 1563

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By Representatives Lantz, Delvin, Dickerson, Carrell, Upthegrove, Talcott, Kessler, Kagi, McDermott, Lovick, Moeller, Morrell, Murray, Pettigrew, Berkey, Kenney and Santos

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1 AN ACT Relating to visitation rights for nonparents; amending RCW
2 26.09.160, 26.09.260, 26.09.240, and 26.10.160; adding a new section to
3 chapter 26.10 RCW; creating a new section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature affirms that parents have a
6 paramount right to raise their minor children. The legislature also
7 recognizes that this paramount right must be considered in conjunction
8 with a minor child's interest in maintaining the strong emotional bonds
9 with others that the child has developed and relies upon. Therefore,
10 the legislature intends to establish internally consistent and rigorous
11 standards that must be met for a nonparent to obtain visitation with a
12 minor child.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.10 RCW
14 to read as follows:

15 (1) A nonparent may initiate a court proceeding for contact with a

1 child by filing a verified application to obtain court-ordered contact
2 when all of the following criteria are satisfied:

3 (a) The applicant is an individual with a parent-like relationship
4 with the child. To satisfy this criterion, the applicant must show
5 that:

6 (i) His or her relationship with the child has been parental in
7 nature for a substantial period of time;

8 (ii) A parent or custodian of the child consented to or allowed the
9 formation and establishment of the relationship or the relationship was
10 formed as a result of the unavailability or inability of any legal
11 parent to perform caretaking functions; and

12 (iii) His or her relationship with the child is beneficial; and

13 (b) A parent or custodian has substantially interfered with the
14 applicant's relationship with the child and the applicant has
15 unsuccessfully attempted to resolve any disagreement with the parent or
16 custodian before going to court.

17 (2)(a)(i) The court shall treat standing as a threshold issue. The
18 applicant bears the burden of establishing standing. If the applicant
19 does not satisfy this burden, the proceeding shall be dismissed.

20 (ii) Upon a finding that the applicant has standing, the applicant
21 shall come forward with evidence to show that the child would very
22 likely suffer harm if contact were not awarded. If the applicant
23 presents evidence that could allow a reasonable factfinder to conclude
24 that the child would very likely suffer harm, the burden shifts to the
25 parent or custodian to present evidence why the decision to refuse
26 contact is reasonable and in the best interests of the child.

27 (b) The court shall order contact if it finds that the applicant
28 has satisfied the burden of showing by clear and convincing evidence
29 that:

30 (i) The child would very likely suffer harm if contact is not
31 awarded; and

32 (ii) The parent's or custodian's denial of contact was unreasonable
33 and not in the child's best interests.

34 (3) If the court dismisses the proceeding for lack of standing, the
35 court shall award reasonable and necessary costs and fees to the
36 prevailing party unless there is a compelling reason to do otherwise.
37 In all other cases, the court may award such costs and fees as it deems
38 appropriate.

1 (4) If the parent or custodian fails to comply with a court order
2 awarding contact between the nonparent and the child, the nonparent may
3 file a motion to initiate a contempt action under RCW 26.09.160.

4 (5) For purposes of this section, the following definitions apply:

5 (a) "Applicant" means a nonparent who initiates a proceeding under
6 this statute.

7 (b) "Contact" includes all court-ordered arrangements by which a
8 nonparent is authorized to interact with a child other than custody,
9 conservatorship, guardianship, or joint or shared custody.

10 (c) "Harm" means that denial of contact results in substantial loss
11 and detriment to the child's physical, psychological, or emotional
12 well-being. The likelihood of harm must be beyond the normal short-
13 term distress a child suffers due to a change in circumstances.

14 (d) "Nonparent" includes any person not legally recognized as a
15 parent whether or not related by blood or marriage.

16 (e) "Parent-like relationship" means a very significant
17 relationship between a nonparent and a child in which the nonparent
18 undertook responsibilities and tasks commonly performed by parents and
19 commonly recognized as actions by someone in a parent-like
20 relationship. Excluded from this category are baby-sitters or other
21 employed caregivers.

22 (f) "Substantially interfered" means to have unreasonably and
23 greatly diminished the amount and quality of contact a nonparent has
24 had with the child. A reasonable reduction in the frequency or length
25 of contact previously enjoyed with the child is not a substantial
26 interference.

27 **Sec. 3.** RCW 26.09.160 and 1991 c 367 s 4 are each amended to read
28 as follows:

29 (1) The performance of parental functions and the duty to provide
30 child support are distinct responsibilities in the care of a child. If
31 a party fails to comply with a provision of a decree or temporary order
32 of injunction, the obligation of the other party to make payments for
33 support or maintenance or to permit contact with children is not
34 suspended. An attempt by a parent, in either the negotiation or the
35 performance of a parenting plan, to condition one aspect of the
36 parenting plan upon another, to condition payment of child support upon
37 an aspect of the parenting plan, to refuse to pay ordered child

1 support, to refuse to perform the duties provided in the parenting
2 plan, or to hinder the performance by the other parent of duties
3 provided in the parenting plan, shall be deemed bad faith and shall be
4 punished by the court by holding the party in contempt of court and by
5 awarding to the aggrieved party reasonable attorneys' fees and costs
6 incidental in bringing a motion for contempt of court.

7 (2)(a) A motion may be filed to initiate a contempt action to
8 coerce a parent to comply with an order establishing residential
9 provisions for a child or awarding contact with a child to a nonparent
10 under section 2 of this act. If the court finds there is reasonable
11 cause to believe the parent has not complied with the order, the court
12 may issue an order to show cause why the relief requested should not be
13 granted.

14 (b) If, based on all the facts and circumstances, the court finds
15 after hearing that the parent, in bad faith, has not complied with the
16 order establishing residential provisions for the child or awarding
17 contact with a nonparent, the court shall find the parent in contempt
18 of court. Upon a finding of contempt, the court shall order:

19 (i) The noncomplying parent to provide the moving party additional
20 time with the child. The additional time shall be equal to the time
21 missed with the child, due to the parent's noncompliance;

22 (ii) The parent to pay, to the moving party, all court costs and
23 reasonable attorneys' fees incurred as a result of the noncompliance,
24 and any reasonable expenses incurred in locating or returning a child;
25 and

26 (iii) The parent to pay, to the moving party, a civil penalty, not
27 less than the sum of one hundred dollars.

28 The court may also order the parent to be imprisoned in the county
29 jail, if the parent is presently able to comply with the provisions of
30 the court-ordered parenting plan or court order awarding contact with
31 a nonparent and is presently unwilling to comply. The parent may be
32 imprisoned until he or she agrees to comply with the order, but in no
33 event for more than one hundred eighty days.

34 (3) On a second failure within three years to comply with a
35 residential provision of a court-ordered parenting plan or court order
36 awarding contact with a nonparent, a motion may be filed to initiate
37 contempt of court proceedings according to the procedure set forth in

1 subsection (2)(a) and (b) of this section. On a finding of contempt
2 under this subsection, the court shall order:

3 (a) The noncomplying parent to provide the other parent or party
4 additional time with the child. The additional time shall be twice the
5 amount of the time missed with the child, due to the parent's
6 noncompliance;

7 (b) The noncomplying parent to pay, to the other parent or party,
8 all court costs and reasonable attorneys' fees incurred as a result of
9 the noncompliance, and any reasonable expenses incurred in locating or
10 returning a child; and

11 (c) The noncomplying parent to pay, to the moving party, a civil
12 penalty of not less than two hundred fifty dollars.

13 The court may also order the parent to be imprisoned in the county
14 jail, if the parent is presently able to comply with the provisions of
15 the court-ordered parenting plan or court order awarding contact with
16 a nonparent and is presently unwilling to comply. The parent may be
17 imprisoned until he or she agrees to comply with the order but in no
18 event for more than one hundred eighty days.

19 (4) For purposes of subsections (1), (2), and (3) of this section,
20 the parent shall be deemed to have the present ability to comply with
21 the order establishing residential provisions or awarding contact with
22 a nonparent unless he or she establishes otherwise by a preponderance
23 of the evidence. The parent shall establish a reasonable excuse for
24 failure to comply with the court-ordered contact with a nonparent or
25 the residential provision of a court-ordered parenting plan by a
26 preponderance of the evidence.

27 (5) Any monetary award ordered under subsections (1), (2), and (3)
28 of this section may be enforced, by the party to whom it is awarded, in
29 the same manner as a civil judgment.

30 (6) Subsections (1), (2), and (3) of this section authorize the
31 exercise of the court's power to impose remedial sanctions for contempt
32 of court and is in addition to any other contempt power the court may
33 possess.

34 (7) Upon motion for contempt of court under subsections (1) through
35 (3) of this section, if the court finds the motion was brought without
36 reasonable basis, the court shall order the moving party to pay to the
37 nonmoving party, all costs, reasonable attorneys' fees, and a civil
38 penalty of not less than one hundred dollars.

1 **Sec. 4.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to read
2 as follows:

3 (1) Except as otherwise provided in subsections (4), (5), (6), (8),
4 and (10) of this section, the court shall not modify a prior custody
5 decree or a parenting plan unless it finds, upon the basis of facts
6 that have arisen since the prior decree or plan or that were unknown to
7 the court at the time of the prior decree or plan, that a substantial
8 change has occurred in the circumstances of the child or the nonmoving
9 party and that the modification is in the best interest of the child
10 and is necessary to serve the best interests of the child.

11 (2) In applying these standards, the court shall retain the
12 residential schedule established by the decree or parenting plan
13 unless:

14 (a) The parents agree to the modification;

15 (b) The child has been integrated into the family of the petitioner
16 with the consent of the other parent in substantial deviation from the
17 parenting plan;

18 (c) The child's present environment is detrimental to the child's
19 physical, mental, or emotional health and the harm likely to be caused
20 by a change of environment is outweighed by the advantage of a change
21 to the child; or

22 (d) The court has found the nonmoving parent in contempt of court
23 at least twice within three years because the parent failed to comply
24 with a court order awarding contact with a nonparent or the parent
25 failed to comply with the residential time provisions in the court-
26 ordered parenting plan, or the parent has been convicted of custodial
27 interference in the first or second degree under RCW 9A.40.060 or
28 9A.40.070.

29 (3) A conviction of custodial interference in the first or second
30 degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial
31 change of circumstances for the purposes of this section.

32 (4) The court may reduce or restrict contact between the child and
33 the parent with whom the child does not reside a majority of the time
34 if it finds that the reduction or restriction would serve and protect
35 the best interests of the child using the criteria in RCW 26.09.191.

36 (5) The court may order adjustments to the residential aspects of
37 a parenting plan upon a showing of a substantial change in
38 circumstances of either parent or of the child, and without

1 consideration of the factors set forth in subsection (2) of this
2 section, if the proposed modification is only a minor modification in
3 the residential schedule that does not change the residence the child
4 is scheduled to reside in the majority of the time and:

5 (a) Does not exceed twenty-four full days in a calendar year; or

6 (b) Is based on a change of residence of the parent with whom the
7 child does not reside the majority of the time or an involuntary change
8 in work schedule by a parent which makes the residential schedule in
9 the parenting plan impractical to follow; or

10 (c) Does not result in a schedule that exceeds ninety overnights
11 per year in total, if the court finds that, at the time the petition
12 for modification is filed, the decree of dissolution or parenting plan
13 does not provide reasonable time with the parent with whom the child
14 does not reside a majority of the time, and further, the court finds
15 that it is in the best interests of the child to increase residential
16 time with the parent in excess of the residential time period in (a) of
17 this subsection. However, any motion under this subsection (5)(c) is
18 subject to the factors established in subsection (2) of this section if
19 the party bringing the petition has previously been granted a
20 modification under this same subsection within twenty-four months of
21 the current motion. Relief granted under this section shall not be the
22 sole basis for adjusting or modifying child support.

23 (6) The court may order adjustments to the residential aspects of
24 a parenting plan pursuant to a proceeding to permit or restrain a
25 relocation of the child. The person objecting to the relocation of the
26 child or the relocating person's proposed revised residential schedule
27 may file a petition to modify the parenting plan, including a change of
28 the residence in which the child resides the majority of the time,
29 without a showing of adequate cause other than the proposed relocation
30 itself. A hearing to determine adequate cause for modification shall
31 not be required so long as the request for relocation of the child is
32 being pursued. In making a determination of a modification pursuant to
33 relocation of the child, the court shall first determine whether to
34 permit or restrain the relocation of the child using the procedures and
35 standards provided in RCW 26.09.405 through 26.09.560. Following that
36 determination, the court shall determine what modification pursuant to
37 relocation should be made, if any, to the parenting plan or custody
38 order or visitation order.

1 (7) A parent with whom the child does not reside a majority of the
2 time and whose residential time with the child is subject to
3 limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion
4 of residential time under subsection (5)(c) of this section unless that
5 parent demonstrates a substantial change in circumstances specifically
6 related to the basis for the limitation.

7 (8) If a parent with whom the child does not reside a majority of
8 the time voluntarily fails to exercise residential time for an extended
9 period, that is, one year or longer, the court upon proper motion may
10 make adjustments to the parenting plan in keeping with the best
11 interests of the minor child.

12 (9) A parent with whom the child does not reside a majority of the
13 time who is required by the existing parenting plan to complete
14 evaluations, treatment, parenting, or other classes may not seek
15 expansion of residential time under subsection (5)(c) of this section
16 unless that parent has fully complied with such requirements.

17 (10) The court may order adjustments to any of the nonresidential
18 aspects of a parenting plan upon a showing of a substantial change of
19 circumstances of either parent or of a child, and the adjustment is in
20 the best interest of the child. Adjustments ordered under this section
21 may be made without consideration of the factors set forth in
22 subsection (2) of this section.

23 (11) If the court finds that a motion to modify a prior decree or
24 parenting plan has been brought in bad faith, the court shall assess
25 the attorney's fees and court costs of the nonmoving parent against the
26 moving party.

27 **Sec. 5.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read
28 as follows:

29 ~~((1))~~ Under section 2 of this act, a person other than a parent
30 may petition the court for visitation with a child ((at any time)) or
31 may intervene in a pending dissolution, legal separation, or
32 modification of parenting plan proceeding. ((A person other than a
33 parent may not petition for visitation under this section unless the
34 child's parent or parents have commenced an action under this chapter.

35 ~~(2) A petition for visitation with a child by a person other than~~
36 ~~a parent must be filed in the county in which the child resides.~~

1 ~~(3) A petition for visitation or a motion to intervene pursuant to~~
2 ~~this section shall be dismissed unless the petitioner or intervenor can~~
3 ~~demonstrate by clear and convincing evidence that a significant~~
4 ~~relationship exists with the child with whom visitation is sought. If~~
5 ~~the petition or motion is dismissed for failure to establish the~~
6 ~~existence of a significant relationship, the petitioner or intervenor~~
7 ~~shall be ordered to pay reasonable attorney's fees and costs to the~~
8 ~~parent, parents, other custodian, or representative of the child who~~
9 ~~responds to this petition or motion.~~

10 ~~(4) The court may order visitation between the petitioner or~~
11 ~~intervenor and the child between whom a significant relationship exists~~
12 ~~upon a finding supported by the evidence that the visitation is in the~~
13 ~~child's best interests.~~

14 ~~(5)(a) Visitation with a grandparent shall be presumed to be in the~~
15 ~~child's best interests when a significant relationship has been shown~~
16 ~~to exist. This presumption may be rebutted by a preponderance of~~
17 ~~evidence showing that visitation would endanger the child's physical,~~
18 ~~mental, or emotional health.~~

19 ~~(b) If the court finds that reasonable visitation by a grandparent~~
20 ~~would be in the child's best interest except for hostilities that exist~~
21 ~~between the grandparent and one or both of the parents or person with~~
22 ~~whom the child lives, the court may set the matter for mediation under~~
23 ~~RCW 26.09.015.~~

24 ~~(6) The court may consider the following factors when making a~~
25 ~~determination of the child's best interests:~~

26 ~~(a) The strength of the relationship between the child and the~~
27 ~~petitioner;~~

28 ~~(b) The relationship between each of the child's parents or the~~
29 ~~person with whom the child is residing and the petitioner;~~

30 ~~(c) The nature and reason for either parent's objection to granting~~
31 ~~the petitioner visitation;~~

32 ~~(d) The effect that granting visitation will have on the~~
33 ~~relationship between the child and the child's parents or the person~~
34 ~~with whom the child is residing;~~

35 ~~(e) The residential time sharing arrangements between the parents;~~

36 ~~(f) The good faith of the petitioner;~~

37 ~~(g) Any criminal history or history of physical, emotional, or~~
38 ~~sexual abuse or neglect by the petitioner; and~~

1 ~~(h) Any other factor relevant to the child's best interest.~~

2 ~~(7) The restrictions of RCW 26.09.191 that apply to parents shall~~
3 ~~be applied to a petitioner or intervenor who is not a parent. The~~
4 ~~nature and extent of visitation, subject to these restrictions, is in~~
5 ~~the discretion of the court.~~

6 ~~(8) The court may order an investigation and report concerning the~~
7 ~~proposed visitation or may appoint a guardian ad litem as provided in~~
8 ~~RCW 26.09.220.~~

9 ~~(9) Visitation granted pursuant to this section shall be~~
10 ~~incorporated into the parenting plan for the child.~~

11 ~~(10) The court may modify or terminate visitation rights granted~~
12 ~~pursuant to this section in any subsequent modification action upon a~~
13 ~~showing that the visitation is no longer in the best interest of the~~
14 ~~child.))~~

15 **Sec. 6.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read
16 as follows:

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

20 (2)(a) Visitation with the child shall be limited if it is found
21 that the parent seeking visitation has engaged in any of the following
22 conduct: (i) Willful abandonment that continues for an extended period
23 of time or substantial refusal to perform parenting functions; (ii)
24 physical, sexual, or a pattern of emotional abuse of a child; (iii) a
25 history of acts of domestic violence as defined in RCW 26.50.010(1) or
26 an assault or sexual assault which causes grievous bodily harm or the
27 fear of such harm; or (iv) the parent has been convicted as an adult of
28 a sex offense under:

29 (A) RCW 9A.44.076 if, because of the difference in age between the
30 offender and the victim, no rebuttable presumption exists under (d) of
31 this subsection;

32 (B) RCW 9A.44.079 if, because of the difference in age between the
33 offender and the victim, no rebuttable presumption exists under (d) of
34 this subsection;

35 (C) RCW 9A.44.086 if, because of the difference in age between the
36 offender and the victim, no rebuttable presumption exists under (d) of
37 this subsection;

1 (D) RCW 9A.44.089;
2 (E) RCW 9A.44.093;
3 (F) RCW 9A.44.096;
4 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
5 between the offender and the victim, no rebuttable presumption exists
6 under (d) of this subsection;
7 (H) Chapter 9.68A RCW;
8 (I) Any predecessor or antecedent statute for the offenses listed
9 in (a)(iv)(A) through (H) of this subsection;
10 (J) Any statute from any other jurisdiction that describes an
11 offense analogous to the offenses listed in (a)(iv)(A) through (H) of
12 this subsection.
13 This subsection (2)(a) shall not apply when (c) or (d) of this
14 subsection applies.
15 (b) The parent's visitation with the child shall be limited if it
16 is found that the parent resides with a person who has engaged in any
17 of the following conduct: (i) Physical, sexual, or a pattern of
18 emotional abuse of a child; (ii) a history of acts of domestic violence
19 as defined in RCW 26.50.010(1) or an assault or sexual assault that
20 causes grievous bodily harm or the fear of such harm; or (iii) the
21 person has been convicted as an adult or as a juvenile has been
22 adjudicated of a sex offense under:
23 (A) RCW 9A.44.076 if, because of the difference in age between the
24 offender and the victim, no rebuttable presumption exists under (e) of
25 this subsection;
26 (B) RCW 9A.44.079 if, because of the difference in age between the
27 offender and the victim, no rebuttable presumption exists under (e) of
28 this subsection;
29 (C) RCW 9A.44.086 if, because of the difference in age between the
30 offender and the victim, no rebuttable presumption exists under (e) of
31 this subsection;
32 (D) RCW 9A.44.089;
33 (E) RCW 9A.44.093;
34 (F) RCW 9A.44.096;
35 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
36 between the offender and the victim, no rebuttable presumption exists
37 under (e) of this subsection;
38 (H) Chapter 9.68A RCW;

1 (I) Any predecessor or antecedent statute for the offenses listed
2 in (b)(iii)(A) through (H) of this subsection;

3 (J) Any statute from any other jurisdiction that describes an
4 offense analogous to the offenses listed in (b)(iii)(A) through (H) of
5 this subsection.

6 This subsection (2)(b) shall not apply when (c) or (e) of this
7 subsection applies.

8 (c) If a parent has been found to be a sexual predator under
9 chapter 71.09 RCW or under an analogous statute of any other
10 jurisdiction, the court shall restrain the parent from contact with a
11 child that would otherwise be allowed under this chapter. If a parent
12 resides with an adult or a juvenile who has been found to be a sexual
13 predator under chapter 71.09 RCW or under an analogous statute of any
14 other jurisdiction, the court shall restrain the parent from contact
15 with the parent's child except contact that occurs outside that
16 person's presence.

17 (d) There is a rebuttable presumption that a parent who has been
18 convicted as an adult of a sex offense listed in (d)(i) through (ix) of
19 this subsection poses a present danger to a child. Unless the parent
20 rebuts this presumption, the court shall restrain the parent from
21 contact with a child that would otherwise be allowed under this
22 chapter:

23 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
24 was at least five years older than the other person;

25 (ii) RCW 9A.44.073;

26 (iii) RCW 9A.44.076, provided that the person convicted was at
27 least eight years older than the victim;

28 (iv) RCW 9A.44.079, provided that the person convicted was at least
29 eight years older than the victim;

30 (v) RCW 9A.44.083;

31 (vi) RCW 9A.44.086, provided that the person convicted was at least
32 eight years older than the victim;

33 (vii) RCW 9A.44.100;

34 (viii) Any predecessor or antecedent statute for the offenses
35 listed in (d)(i) through (vii) of this subsection;

36 (ix) Any statute from any other jurisdiction that describes an
37 offense analogous to the offenses listed in (d)(i) through (vii) of
38 this subsection.

1 (e) There is a rebuttable presumption that a parent who resides
2 with a person who, as an adult, has been convicted, or as a juvenile
3 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)
4 of this subsection places a child at risk of abuse or harm when that
5 parent exercises visitation in the presence of the convicted or
6 adjudicated person. Unless the parent rebuts the presumption, the
7 court shall restrain the parent from contact with the parent's child
8 except for contact that occurs outside of the convicted or adjudicated
9 person's presence:

10 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
11 was at least five years older than the other person;

12 (ii) RCW 9A.44.073;

13 (iii) RCW 9A.44.076, provided that the person convicted was at
14 least eight years older than the victim;

15 (iv) RCW 9A.44.079, provided that the person convicted was at least
16 eight years older than the victim;

17 (v) RCW 9A.44.083;

18 (vi) RCW 9A.44.086, provided that the person convicted was at least
19 eight years older than the victim;

20 (vii) RCW 9A.44.100;

21 (viii) Any predecessor or antecedent statute for the offenses
22 listed in (e)(i) through (vii) of this subsection;

23 (ix) Any statute from any other jurisdiction that describes an
24 offense analogous to the offenses listed in (e)(i) through (vii) of
25 this subsection.

26 (f) The presumption established in (d) of this subsection may be
27 rebutted only after a written finding that:

28 (i) If the child was not the victim of the sex offense committed by
29 the parent requesting visitation, (A) contact between the child and the
30 offending parent is appropriate and poses minimal risk to the child,
31 and (B) the offending parent has successfully engaged in treatment for
32 sex offenders or is engaged in and making progress in such treatment,
33 if any was ordered by a court, and the treatment provider believes such
34 contact is appropriate and poses minimal risk to the child; or

35 (ii) If the child was the victim of the sex offense committed by
36 the parent requesting visitation, (A) contact between the child and the
37 offending parent is appropriate and poses minimal risk to the child,
38 (B) if the child is in or has been in therapy for victims of sexual

1 abuse, the child's counselor believes such contact between the child
2 and the offending parent is in the child's best interest, and (C) the
3 offending parent has successfully engaged in treatment for sex
4 offenders or is engaged in and making progress in such treatment, if
5 any was ordered by a court, and the treatment provider believes such
6 contact is appropriate and poses minimal risk to the child.

7 (g) The presumption established in (e) of this subsection may be
8 rebutted only after a written finding that:

9 (i) If the child was not the victim of the sex offense committed by
10 the person who is residing with the parent requesting visitation, (A)
11 contact between the child and the parent residing with the convicted or
12 adjudicated person is appropriate and that parent is able to protect
13 the child in the presence of the convicted or adjudicated person, and
14 (B) the convicted or adjudicated person has successfully engaged in
15 treatment for sex offenders or is engaged in and making progress in
16 such treatment, if any was ordered by a court, and the treatment
17 provider believes such contact is appropriate and poses minimal risk to
18 the child; or

19 (ii) If the child was the victim of the sex offense committed by
20 the person who is residing with the parent requesting visitation, (A)
21 contact between the child and the parent in the presence of the
22 convicted or adjudicated person is appropriate and poses minimal risk
23 to the child, (B) if the child is in or has been in therapy for victims
24 of sexual abuse, the child's counselor believes such contact between
25 the child and the parent residing with the convicted or adjudicated
26 person in the presence of the convicted or adjudicated person is in the
27 child's best interest, and (C) the convicted or adjudicated person has
28 successfully engaged in treatment for sex offenders or is engaged in
29 and making progress in such treatment, if any was ordered by a court,
30 and the treatment provider believes contact between the parent and
31 child in the presence of the convicted or adjudicated person is
32 appropriate and poses minimal risk to the child.

33 (h) If the court finds that the parent has met the burden of
34 rebutting the presumption under (f) of this subsection, the court may
35 allow a parent who has been convicted as an adult of a sex offense
36 listed in (d)(i) through (ix) of this subsection to have visitation
37 with the child supervised by a neutral and independent adult and
38 pursuant to an adequate plan for supervision of such visitation. The

1 court shall not approve of a supervisor for contact between the child
2 and the parent unless the court finds, based on the evidence, that the
3 supervisor is willing and capable of protecting the child from harm.
4 The court shall revoke court approval of the supervisor upon finding,
5 based on the evidence, that the supervisor has failed to protect the
6 child or is no longer willing or capable of protecting the child.

7 (i) If the court finds that the parent has met the burden of
8 rebutting the presumption under (g) of this subsection, the court may
9 allow a parent residing with a person who has been adjudicated as a
10 juvenile of a sex offense listed in (e)(i) through (ix) of this
11 subsection to have visitation with the child in the presence of the
12 person adjudicated as a juvenile, supervised by a neutral and
13 independent adult and pursuant to an adequate plan for supervision of
14 such visitation. The court shall not approve of a supervisor for
15 contact between the child and the parent unless the court finds, based
16 on the evidence, that the supervisor is willing and capable of
17 protecting the child from harm. The court shall revoke court approval
18 of the supervisor upon finding, based on the evidence, that the
19 supervisor has failed to protect the child or is no longer willing or
20 capable of protecting the child.

21 (j) If the court finds that the parent has met the burden of
22 rebutting the presumption under (g) of this subsection, the court may
23 allow a parent residing with a person who, as an adult, has been
24 convicted of a sex offense listed in (e)(i) through (ix) of this
25 subsection to have visitation with the child in the presence of the
26 convicted person supervised by a neutral and independent adult and
27 pursuant to an adequate plan for supervision of such visitation. The
28 court shall not approve of a supervisor for contact between the child
29 and the parent unless the court finds, based on the evidence, that the
30 supervisor is willing and capable of protecting the child from harm.
31 The court shall revoke court approval of the supervisor upon finding,
32 based on the evidence, that the supervisor has failed to protect the
33 child or is no longer willing or capable of protecting the child.

34 (k) A court shall not order unsupervised contact between the
35 offending parent and a child of the offending parent who was sexually
36 abused by that parent. A court may order unsupervised contact between
37 the offending parent and a child who was not sexually abused by the
38 parent after the presumption under (d) of this subsection has been

1 rebutted and supervised visitation has occurred for at least two years
2 with no further arrests or convictions of sex offenses involving
3 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW
4 and (i) the sex offense of the offending parent was not committed
5 against a child of the offending parent, and (ii) the court finds that
6 unsupervised contact between the child and the offending parent is
7 appropriate and poses minimal risk to the child, after consideration of
8 the testimony of a state-certified therapist, mental health counselor,
9 or social worker with expertise in treating child sexual abuse victims
10 who has supervised at least one period of visitation between the parent
11 and the child, and after consideration of evidence of the offending
12 parent's compliance with community supervision requirements, if any.
13 If the offending parent was not ordered by a court to participate in
14 treatment for sex offenders, then the parent shall obtain a
15 psychosexual evaluation conducted by a state-certified sex offender
16 treatment provider indicating that the offender has the lowest
17 likelihood of risk to reoffend before the court grants unsupervised
18 contact between the parent and a child.

19 (1) A court may order unsupervised contact between the parent and
20 a child which may occur in the presence of a juvenile adjudicated of a
21 sex offense listed in (e)(i) through (ix) of this subsection who
22 resides with the parent after the presumption under (e) of this
23 subsection has been rebutted and supervised visitation has occurred for
24 at least two years during which time the adjudicated juvenile has had
25 no further arrests, adjudications, or convictions of sex offenses
26 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter
27 9.68A RCW, and (i) the court finds that unsupervised contact between
28 the child and the parent that may occur in the presence of the
29 adjudicated juvenile is appropriate and poses minimal risk to the
30 child, after consideration of the testimony of a state-certified
31 therapist, mental health counselor, or social worker with expertise in
32 treatment of child sexual abuse victims who has supervised at least one
33 period of visitation between the parent and the child in the presence
34 of the adjudicated juvenile, and after consideration of evidence of the
35 adjudicated juvenile's compliance with community supervision or parole
36 requirements, if any. If the adjudicated juvenile was not ordered by
37 a court to participate in treatment for sex offenders, then the
38 adjudicated juvenile shall obtain a psychosexual evaluation conducted

1 by a state-certified sex offender treatment provider indicating that
2 the adjudicated juvenile has the lowest likelihood of risk to reoffend
3 before the court grants unsupervised contact between the parent and a
4 child which may occur in the presence of the adjudicated juvenile who
5 is residing with the parent.

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

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

29 (iii) If the court limits visitation under (a) or (b) of this
30 subsection to require supervised contact between the child and the
31 parent, the court shall not approve of a supervisor for contact between
32 a child and a parent who has engaged in physical, sexual, or a pattern
33 of emotional abuse of the child unless the court finds based upon the
34 evidence that the supervisor accepts that the harmful conduct occurred
35 and is willing to and capable of protecting the child from harm. The
36 court shall revoke court approval of the supervisor upon finding, based
37 on the evidence, that the supervisor has failed to protect the child or
38 is no longer willing to or capable of protecting the child.

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

15 ~~(3) ((Any person may petition the court for visitation rights at~~
16 ~~any time including, but not limited to, custody proceedings. The court~~
17 ~~may order visitation rights for any person when visitation may serve~~
18 ~~the best interest of the child whether or not there has been any change~~
19 ~~of circumstances.)) A person other than a parent may petition the court
20 for visitation with a child under section 2 of this act.~~

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

25 (5) For the purposes of this section, a parent's child means that
26 parent's natural child, adopted child, or stepchild.

27 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of the
29 state government and its existing public institutions, and takes effect
30 immediately.

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