

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6268

66th Legislature
2020 Regular Session

Passed by the Senate March 10, 2020
Yeas 49 Nays 0

President of the Senate

Passed by the House March 3, 2020
Yeas 90 Nays 6

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6268** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6268

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2020 Regular Session

By Senate Law & Justice (originally sponsored by Senators Rolfe, Kuderer, Wellman, Darneille, Hasegawa, Wilson, C., and Das)

READ FIRST TIME 01/31/20.

1 AN ACT Relating to abusive litigation; amending RCW 26.09.191 and
2 26.50.060; adding a new chapter to Title 26 RCW; creating a new
3 section; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that
6 individuals who abuse their intimate partners often misuse court
7 proceedings in order to control, harass, intimidate, coerce, and/or
8 impoverish the abused partner. Court proceedings can provide a means
9 for an abuser to exert and reestablish power and control over a
10 domestic violence survivor long after a relationship has ended. The
11 legal system unwittingly becomes another avenue that abusers exploit
12 to cause psychological, emotional, and financial devastation. This
13 misuse of the court system by abusers has been referred to as legal
14 bullying, stalking through the courts, paper abuse, and similar
15 terms. The legislature finds that the term "abusive litigation" is
16 the most common term and that it accurately describes this problem.
17 Abusive litigation against domestic violence survivors arises in a
18 variety of contexts. Family law cases such as dissolutions, legal
19 separations, parenting plan actions or modifications, and protection
20 order proceedings are particularly common forums for abusive
21 litigation. It is also not uncommon for abusers to file civil

1 lawsuits against survivors, such as defamation, tort, or breach of
2 contract claims. Even if a lawsuit is meritless, forcing a survivor
3 to spend time, money, and emotional resources responding to the
4 action provides a means for the abuser to assert power and control
5 over the survivor.

6 The legislature finds that courts have considerable authority to
7 respond to abusive litigation tactics, while upholding litigants'
8 constitutional rights to access to the courts. Because courts have
9 inherent authority to control the conduct of litigants, they have
10 considerable discretion to fashion creative remedies in order to curb
11 abusive litigation. The legislature intends to provide the courts
12 with an additional tool to curb abusive litigation and to mitigate
13 the harms abusive litigation perpetuates.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires
16 otherwise.

17 (1) "Abusive litigation" means litigation where the following
18 apply:

19 (a)(i) The opposing parties have a current or former intimate
20 partner relationship;

21 (ii) The party who is filing, initiating, advancing, or
22 continuing the litigation has been found by a court to have committed
23 domestic violence against the other party pursuant to: (A) An order
24 entered under this chapter; (B) a parenting plan with restrictions
25 based on RCW 26.09.191(2)(a)(iii); or (C) a restraining order entered
26 under chapter 26.09, 26.26, or 26.26A RCW, provided that the issuing
27 court made a specific finding that the restraining order was
28 necessary due to domestic violence; and

29 (iii) The litigation is being initiated, advanced, or continued
30 primarily for the purpose of harassing, intimidating, or maintaining
31 contact with the other party; and

32 (b) At least one of the following factors apply:

33 (i) Claims, allegations, and other legal contentions made in the
34 litigation are not warranted by existing law or by a reasonable
35 argument for the extension, modification, or reversal of existing
36 law, or the establishment of new law;

37 (ii) Allegations and other factual contentions made in the
38 litigation are without the existence of evidentiary support; or

1 (iii) An issue or issues that are the basis of the litigation
2 have previously been filed in one or more other courts or
3 jurisdictions and the actions have been litigated and disposed of
4 unfavorably to the party filing, initiating, advancing, or continuing
5 the litigation.

6 (2) "Intimate partner" is defined in RCW 26.50.010.

7 (3) "Litigation" means any kind of legal action or proceeding
8 including, but not limited to: (i) Filing a summons, complaint,
9 demand, or petition; (ii) serving a summons, complaint, demand, or
10 petition, regardless of whether it has been filed; (iii) filing a
11 motion, notice of court date, note for motion docket, or order to
12 appear; (iv) serving a motion, notice of court date, note for motion
13 docket, or order to appear, regardless of whether it has been filed
14 or scheduled; (v) filing a subpoena, subpoena duces tecum, request
15 for interrogatories, request for production, notice of deposition, or
16 other discovery request; or (vi) serving a subpoena, subpoena duces
17 tecum, request for interrogatories, request for production, notice of
18 deposition, or other discovery request.

19 (4) "Perpetrator of abusive litigation" means a person who files,
20 initiates, advances, or continues litigation in violation of an order
21 restricting abusive litigation.

22 NEW SECTION. **Sec. 3.** (1) A party to a case may request from the
23 court an order restricting abusive litigation if the parties are
24 current or former intimate partners and one party has been found by
25 the court to have committed domestic violence against the other
26 party:

27 (a) In any answer or response to the litigation being filed,
28 initiated, advanced, or continued;

29 (b) By motion made at any time during any open or ongoing case;
30 or

31 (c) By separate motion made under this chapter, within five years
32 of the entry of an order for protection even if the order has since
33 expired.

34 (2) Any court of competent jurisdiction may, on its own motion,
35 determine that a hearing pursuant to section 4 of this act is
36 necessary to determine if a party is engaging in abusive litigation.

37 (3) The administrative office of the courts shall update the
38 instructions, brochures, standard petition, and order for protection
39 forms, and create new forms for the motion for order restricting

1 abusive litigation and order restricting abusive litigation, and
2 update the court staff handbook when changes in the law make an
3 update necessary.

4 (4) No filing fee may be charged to the unrestricted party for
5 proceedings under this section regardless of whether it is filed
6 under this chapter or another action in this title. Forms and
7 instructional brochures shall be provided free of charge.

8 (5) The provisions of this section are nonexclusive and do not
9 affect any other remedy available.

10 NEW SECTION. **Sec. 4.** (1) If a party asserts that they are being
11 subjected to abusive litigation, the court shall attempt to verify
12 that the parties have or previously had an intimate partner
13 relationship and that the party raising the claim of abusive
14 litigation has been found to be a victim of domestic violence by the
15 other party. If the court verifies that both elements are true, or is
16 unable to verify that they are not true, the court shall set a
17 hearing to determine whether the litigation meets the definition of
18 abusive litigation.

19 (2) At the time set for the hearing on the alleged abusive civil
20 action, the court shall hear all relevant testimony and may require
21 any affidavits, documentary evidence, or other records the court
22 deems necessary.

23 NEW SECTION. **Sec. 5.** At the hearing conducted pursuant to
24 section 4 of this act, evidence of any of the following creates a
25 rebuttable presumption that litigation is being initiated, advanced,
26 or continued primarily for the purpose of harassing, intimidating, or
27 maintaining contact with the other party:

28 (1) The same or substantially similar issues between the same or
29 substantially similar parties have been litigated within the past
30 five years in the same court or any other court of competent
31 jurisdiction; or

32 (2) The same or substantially similar issues between the same or
33 substantially similar parties have been raised, pled, or alleged in
34 the past five years and were dismissed on the merits or with
35 prejudice; or

36 (3) Within the last ten years, the party allegedly engaging in
37 abusive litigation has been sanctioned under superior court civil
38 rule 11 or a similar rule or law in another jurisdiction for filing

1 one or more cases, petitions, motions, or other filings, that were
2 found to have been frivolous, vexatious, intransigent, or brought in
3 bad faith involving the same opposing party; or

4 (4) A court of record in another judicial district has determined
5 that the party allegedly engaging in abusive litigation has
6 previously engaged in abusive litigation or similar conduct and has
7 been subject to a court order imposing prefiling restrictions.

8 NEW SECTION. **Sec. 6.** (1) If the court finds by a preponderance
9 of the evidence that a party is engaging in abusive litigation, and
10 that any or all of the motions or actions pending before the court
11 are abusive litigation, the litigation shall be dismissed, denied,
12 stricken, or resolved by other disposition with prejudice.

13 (2) In addition to dismissal or denial of any pending abusive
14 litigation within the jurisdiction of the court, the court shall
15 enter an "order restricting abusive litigation." The order shall:

16 (a) Impose all costs of any abusive civil action pending in the
17 court at the time of the court's finding pursuant to subsection (1)
18 of this section against the party advancing the abusive litigation;

19 (b) Award the other party reasonable attorneys' fees and costs of
20 responding to the abusive litigation including the cost of seeking
21 the order restricting abusive litigation; and

22 (c) Identify the party protected by the order and impose
23 prefiling restrictions upon the party found to have engaged in
24 abusive litigation for a period of not less than forty-eight months
25 nor more than seventy-two months.

26 (3) If the court finds by a preponderance of the evidence that
27 the litigation does not constitute abusive litigation, the court
28 shall enter written findings and the litigation shall proceed.
29 Nothing in this section or chapter shall be construed as limiting the
30 court's inherent authority to control the proceedings and litigants
31 before it.

32 (4) The provisions of this section are nonexclusive and do not
33 affect any other remedy available to the person who is protected by
34 the order restricting abusive litigation or to the court.

35 NEW SECTION. **Sec. 7.** (1) Except as provided in this section, a
36 person who is subject to an order restricting abusive litigation is
37 prohibited from filing, initiating, advancing, or continuing the

1 litigation against the protected party for the period of time the
2 filing restrictions are in effect.

3 (2) Notwithstanding subsection (1) of this section and consistent
4 with the state Constitution, a person who is subject to an order
5 restricting abusive litigation may seek permission to file a new case
6 or a motion in an existing case using the procedure set out in
7 subsection (3) of this section.

8 (3) (a) A person who is subject to an order restricting litigation
9 against whom prefiling restrictions have been imposed pursuant to
10 this chapter who wishes to initiate a new case or file a motion in an
11 existing case during the time the person is under filing restrictions
12 must first appear before the judicial officer who imposed the
13 prefiling restrictions to make application for permission to
14 institute the civil action.

15 (b) (i) The judicial officer may examine witnesses, court records,
16 and any other available evidence to determine if the proposed
17 litigation is abusive litigation or if there are reasonable and
18 legitimate grounds upon which the litigation is based.

19 (ii) If the judicial officer determines the proposed litigation
20 is abusive litigation, based on reviewing the records as well as any
21 evidence from the person who is subject to the order, then it is not
22 necessary for the person protected by the order to appear or
23 participate in any way. If the judicial officer is unable to
24 determine whether the proposed litigation is abusive without hearing
25 from the person protected by the order, then the court shall issue an
26 order scheduling a hearing, and notifying the protected party of the
27 party's right to appear and/or participate in the hearing. The order
28 should specify whether the protected party is expected to submit a
29 written response. When possible, the protected party should be
30 permitted to appear telephonically and provided instructions for how
31 to appear telephonically.

32 (c) (i) If the judicial officer believes the litigation that the
33 party who is subject to the prefiling order is making application to
34 file will constitute abusive litigation, the application shall be
35 denied, dismissed, or otherwise disposed with prejudice.

36 (ii) If the judicial officer reasonably believes that the
37 litigation the party who is subject to the prefiling order is making
38 application to file will not be abusive litigation, the judicial
39 officer may grant the application and issue an order permitting the
40 filing of the case, motion, or pleading. The order shall be attached

1 to the front of the pleading to be filed with the clerk. The party
2 who is protected by the order shall be served with a copy of the
3 order at the same time as the underlying pleading.

4 (d) The findings of the judicial officer shall be reduced to
5 writing and made a part of the record in the matter. If the party who
6 is subject to the order disputes the finding of the judge, the party
7 may seek review of the decision as provided by the applicable court
8 rules.

9 (4) If the application for the filing of a pleading is granted
10 pursuant to this section, the period of time commencing with the
11 filing of the application requesting permission to file the action
12 and ending with the issuance of an order permitting filing of the
13 action shall not be computed as a part of any applicable period of
14 limitations within which the matter must be instituted.

15 (5) If, after a party who is subject to prefiling restrictions
16 has made application and been granted permission to file or advance a
17 case pursuant to this section, any judicial officer hearing or
18 presiding over the case, or any part thereof, determines that the
19 person is attempting to add parties, amend the complaint, or is
20 otherwise attempting to alter the parties and issues involved in the
21 litigation in a manner that the judicial officer reasonably believes
22 would constitute abusive litigation, the judicial officer shall stay
23 the proceedings and refer the case back to the judicial officer who
24 granted the application to file, for further disposition.

25 (6) (a) If a party who is protected by an order restricting
26 abusive litigation is served with a pleading filed by the person who
27 is subject to the order, and the pleading does not have an attached
28 order allowing the pleading, the protected party may respond to the
29 case by filing a copy of the order restricting abusive litigation.

30 (b) If it is brought to the attention of the court that a person
31 against whom prefiling restrictions have been imposed has filed a new
32 case or is continuing an existing case without having been granted
33 permission pursuant to this section, the court shall dismiss, deny,
34 or otherwise dispose of the matter. This action may be taken by the
35 court on the court's own motion or initiative. The court may take
36 whatever action against the perpetrator of abusive litigation deemed
37 necessary and appropriate for a violation of the order restricting
38 abusive litigation.

39 (c) If a party who is protected by an order restricting abusive
40 litigation is served with a pleading filed by the person who is

1 subject to the order, and the pleading does not have an attached
2 order allowing the pleading, the protected party is under no
3 obligation or duty to respond to the summons, complaint, petition,
4 motion, to answer interrogatories, to appear for depositions, or any
5 other responsive action required by rule or statute in a civil
6 action.

7 (7) If the judicial officer who imposed the prefiling
8 restrictions is no longer serving in the same capacity in the same
9 judicial district where the restrictions were placed, or is otherwise
10 unavailable for any reason, any other judicial officer in that
11 judicial district may perform the review required and permitted by
12 this section.

13 **Sec. 8.** RCW 26.09.191 and 2019 c 46 s 5020 are each amended to
14 read as follows:

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

24 (2)(a) The parent's residential time with the child shall be
25 limited if it is found that the parent has engaged in any of the
26 following conduct: (i) Willful abandonment that continues for an
27 extended period of time or substantial refusal to perform parenting
28 functions; (ii) physical, sexual, or a pattern of emotional abuse of
29 a child; (iii) a history of acts of domestic violence as defined in
30 RCW 26.50.010(3) or an assault or sexual assault that causes grievous
31 bodily harm or the fear of such harm or that results in a pregnancy;
32 or (iv) the parent has been convicted as an adult of a sex offense
33 under:

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

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

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

4 (D) RCW 9A.44.089;

5 (E) RCW 9A.44.093;

6 (F) RCW 9A.44.096;

7 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
8 between the offender and the victim, no rebuttable presumption exists
9 under (d) of this subsection;

10 (H) Chapter 9.68A RCW;

11 (I) Any predecessor or antecedent statute for the offenses listed
12 in (a) (iv) (A) through (H) of this subsection;

13 (J) Any statute from any other jurisdiction that describes an
14 offense analogous to the offenses listed in (a) (iv) (A) through (H) of
15 this subsection.

16 This subsection (2) (a) shall not apply when (c) or (d) of this
17 subsection applies.

18 (b) The parent's residential time with the child shall be limited
19 if it is found that the parent resides with a person who has engaged
20 in any of the following conduct: (i) Physical, sexual, or a pattern
21 of emotional abuse of a child; (ii) a history of acts of domestic
22 violence as defined in RCW 26.50.010(3) or an assault or sexual
23 assault that causes grievous bodily harm or the fear of such harm or
24 that results in a pregnancy; or (iii) the person has been convicted
25 as an adult or as a juvenile has been adjudicated of a sex offense
26 under:

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

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

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

36 (D) RCW 9A.44.089;

37 (E) RCW 9A.44.093;

38 (F) RCW 9A.44.096;

1 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
2 between the offender and the victim, no rebuttable presumption exists
3 under (e) of this subsection;

4 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

29 (ii) RCW 9A.44.073;

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

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

34 (v) RCW 9A.44.083;

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

37 (vii) RCW 9A.44.100;

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

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

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

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

15 (ii) RCW 9A.44.073;

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

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

20 (v) RCW 9A.44.083;

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

23 (vii) RCW 9A.44.100;

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

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

29 (f) The presumption established in (d) of this subsection may be
30 rebutted only after a written finding that the child was not
31 conceived and subsequently born as a result of a sexual assault
32 committed by the parent requesting residential time and that:

33 (i) If the child was not the victim of the sex offense committed
34 by the parent requesting residential time, (A) contact between the
35 child and the offending parent is appropriate and poses minimal risk
36 to the child, and (B) the offending parent has successfully engaged
37 in treatment for sex offenders or is engaged in and making progress
38 in such treatment, if any was ordered by a court, and the treatment
39 provider believes such contact is appropriate and poses minimal risk
40 to the child; or

1 (ii) If the child was the victim of the sex offense committed by
2 the parent requesting residential time, (A) contact between the child
3 and the offending parent is appropriate and poses minimal risk to the
4 child, (B) if the child is in or has been in therapy for victims of
5 sexual abuse, the child's counselor believes such contact between the
6 child and the offending parent is in the child's best interest, and
7 (C) the offending parent has successfully engaged in treatment for
8 sex offenders or is engaged in and making progress in such treatment,
9 if any was ordered by a court, and the treatment provider believes
10 such contact is appropriate and poses minimal risk to the child.

11 (g) The presumption established in (e) of this subsection may be
12 rebutted only after a written finding that the child was not
13 conceived and subsequently born as a result of a sexual assault
14 committed by the parent requesting residential time and that:

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

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

1 (h) If the court finds that the parent has met the burden of
2 rebutting the presumption under (f) of this subsection, the court may
3 allow a parent who has been convicted as an adult of a sex offense
4 listed in (d)(i) through (ix) of this subsection to have residential
5 time with the child supervised by a neutral and independent adult and
6 pursuant to an adequate plan for supervision of such residential
7 time. The court shall not approve of a supervisor for contact between
8 the child and the parent unless the court finds, based on the
9 evidence, that the supervisor is willing and capable of protecting
10 the child from harm. The court shall revoke court approval of the
11 supervisor upon finding, based on the evidence, that the supervisor
12 has failed to protect the child or is no longer willing or capable of
13 protecting the child.

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

28 (j) If the court finds that the parent has met the burden of
29 rebutting the presumption under (g) of this subsection, the court may
30 allow a parent residing with a person who, as an adult, has been
31 convicted of a sex offense listed in (e)(i) through (ix) of this
32 subsection to have residential time with the child in the presence of
33 the convicted person supervised by a neutral and independent adult
34 and pursuant to an adequate plan for supervision of such residential
35 time. The court shall not approve of a supervisor for contact between
36 the child and the parent unless the court finds, based on the
37 evidence, that the supervisor is willing and capable of protecting
38 the child from harm. The court shall revoke court approval of the
39 supervisor upon finding, based on the evidence, that the supervisor

1 has failed to protect the child or is no longer willing or capable of
2 protecting the child.

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

27 (l) A court may order unsupervised contact between the parent and
28 a child which may occur in the presence of a juvenile adjudicated of
29 a sex offense listed in (e)(i) through (ix) of this subsection who
30 resides with the parent after the presumption under (e) of this
31 subsection has been rebutted and supervised residential time has
32 occurred for at least two years during which time the adjudicated
33 juvenile has had no further arrests, adjudications, or convictions of
34 sex offenses involving children under chapter 9A.44 RCW, RCW
35 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that
36 unsupervised contact between the child and the parent that may occur
37 in the presence of the adjudicated juvenile is appropriate and poses
38 minimal risk to the child, after consideration of the testimony of a
39 state-certified therapist, mental health counselor, or social worker
40 with expertise in treatment of child sexual abuse victims who has

1 supervised at least one period of residential time between the parent
2 and the child in the presence of the adjudicated juvenile, and after
3 consideration of evidence of the adjudicated juvenile's compliance
4 with community supervision or parole requirements, if any. If the
5 adjudicated juvenile was not ordered by a court to participate in
6 treatment for sex offenders, then the adjudicated juvenile shall
7 obtain a psychosexual evaluation conducted by a certified sex
8 offender treatment provider or a certified affiliate sex offender
9 treatment provider indicating that the adjudicated juvenile has the
10 lowest likelihood of risk to reoffend before the court grants
11 unsupervised contact between the parent and a child which may occur
12 in the presence of the adjudicated juvenile who is residing with the
13 parent.

14 (m)(i) The limitations imposed by the court under (a) or (b) of
15 this subsection shall be reasonably calculated to protect the child
16 from the physical, sexual, or emotional abuse or harm that could
17 result if the child has contact with the parent requesting
18 residential time. The limitations shall also be reasonably calculated
19 to provide for the safety of the parent who may be at risk of
20 physical, sexual, or emotional abuse or harm that could result if the
21 parent has contact with the parent requesting residential time. The
22 limitations the court may impose include, but are not limited to:
23 Supervised contact between the child and the parent or completion of
24 relevant counseling or treatment. If the court expressly finds based
25 on the evidence that limitations on the residential time with the
26 child will not adequately protect the child from the harm or abuse
27 that could result if the child has contact with the parent requesting
28 residential time, the court shall restrain the parent requesting
29 residential time from all contact with the child.

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

1 to have sexually abused a child, unless the court finds that the
2 parent accepts that the person engaged in the harmful conduct and the
3 parent is willing to and capable of protecting the child from harm
4 from the person.

5 (iii) The court shall not enter an order under (a) of this
6 subsection allowing a parent to have contact with a child if the
7 parent has been found by clear and convincing evidence pursuant to
8 RCW 26.26A.465 to have committed sexual assault, as defined in RCW
9 26.26A.465, against the child's parent, and that the child was born
10 within three hundred twenty days of the sexual assault.

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

22 (n) If the court expressly finds based on the evidence that
23 contact between the parent and the child will not cause physical,
24 sexual, or emotional abuse or harm to the child and that the
25 probability that the parent's or other person'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), (b), and (m)(i) and
28 (iv) of this subsection, or if the court expressly finds that the
29 parent's conduct did not have an impact on the child, then the court
30 need not apply the limitations of (a), (b), and (m)(i) and (iv) of
31 this subsection. The weight given to the existence of a protection
32 order issued under chapter 26.50 RCW as to domestic violence is
33 within the discretion of the court. This subsection shall not apply
34 when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of
35 this subsection apply.

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

1 (a) A parent's neglect or substantial nonperformance of parenting
2 functions;

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

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

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

11 (e) The abusive use of conflict by the parent which creates the
12 danger of serious damage to the child's psychological development.
13 Abusive use of conflict includes, but is not limited to, abusive
14 litigation as defined in section 2 of this act. If the court finds a
15 parent has engaged in abusive litigation, the court may impose any
16 restrictions or remedies set forth in chapter 26.--- RCW (the new
17 chapter created in section 10 of this act) in addition to including a
18 finding in the parenting plan. Litigation that is aggressive or
19 improper but that does not meet the definition of abusive litigation
20 shall not constitute a basis for a finding under this section. A
21 report made in good faith to law enforcement, a medical professional,
22 or child protective services of sexual, physical, or mental abuse of
23 a child shall not constitute a basis for a finding of abusive use of
24 conflict;

25 (f) A parent has withheld from the other parent access to the
26 child 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) In cases involving allegations of limiting factors under
30 subsection (2)(a)(ii) and (iii) of this section, both parties shall
31 be screened to determine the appropriateness of a comprehensive
32 assessment regarding the impact of the limiting factor on the child
33 and the parties.

34 (5) In entering a permanent parenting plan, the court shall not
35 draw any presumptions from the provisions of the temporary parenting
36 plan.

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

40 (7) For the purposes of this section:

1 (a) "A parent's child" means that parent's natural child, adopted
2 child, or stepchild; and

3 (b) "Social worker" means a person with a master's or further
4 advanced degree from a social work educational program accredited and
5 approved as provided in RCW 18.320.010.

6 **Sec. 9.** RCW 26.50.060 and 2019 c 46 s 5038 are each amended to
7 read as follows:

8 (1) Upon notice and after hearing, the court may provide relief
9 as follows:

10 (a) Restrain the respondent from committing acts of domestic
11 violence;

12 (b) Exclude the respondent from the dwelling that the parties
13 share, from the residence, workplace, or school of the petitioner, or
14 from the day care or school of a child;

15 (c) Prohibit the respondent from knowingly coming within, or
16 knowingly remaining within, a specified distance from a specified
17 location;

18 (d) On the same basis as is provided in chapter 26.09 RCW, the
19 court shall make residential provision with regard to minor children
20 of the parties. However, parenting plans as specified in chapter
21 26.09 RCW shall not be required under this chapter;

22 (e) Order the respondent to participate in a domestic violence
23 perpetrator treatment program approved under RCW 26.50.150;

24 (f) Order other relief as it deems necessary for the protection
25 of the petitioner and other family or household members sought to be
26 protected, including orders or directives to a peace officer, as
27 allowed under this chapter;

28 (g) Require the respondent to pay the administrative court costs
29 and service fees, as established by the county or municipality
30 incurring the expense and to reimburse the petitioner for costs
31 incurred in bringing the action, including reasonable attorneys' fees
32 or limited license legal technician fees when such fees are incurred
33 by a person licensed and practicing in accordance with the state
34 supreme court's admission to practice rule 28, the limited practice
35 rule for limited license legal technicians;

36 (h) Restrain the respondent from having any contact with the
37 victim of domestic violence or the victim's children or members of
38 the victim's household;

1 (i) Restrain the respondent from harassing, following, keeping
2 under physical or electronic surveillance, cyberstalking as defined
3 in RCW 9.61.260, and using telephonic, audiovisual, or other
4 electronic means to monitor the actions, location, or communication
5 of a victim of domestic violence, the victim's children, or members
6 of the victim's household. For the purposes of this subsection,
7 "communication" includes both "wire communication" and "electronic
8 communication" as defined in RCW 9.73.260;

9 (j) Require the respondent to submit to electronic monitoring.
10 The order shall specify who shall provide the electronic monitoring
11 services and the terms under which the monitoring must be performed.
12 The order also may include a requirement that the respondent pay the
13 costs of the monitoring. The court shall consider the ability of the
14 respondent to pay for electronic monitoring;

15 (k) Consider the provisions of RCW 9.41.800;

16 (l) Order possession and use of essential personal effects. The
17 court shall list the essential personal effects with sufficient
18 specificity to make it clear which property is included. Personal
19 effects may include pets. The court may order that a petitioner be
20 granted the exclusive custody or control of any pet owned, possessed,
21 leased, kept, or held by the petitioner, respondent, or minor child
22 residing with either the petitioner or respondent and may prohibit
23 the respondent from interfering with the petitioner's efforts to
24 remove the pet. The court may also prohibit the respondent from
25 knowingly coming within, or knowingly remaining within, a specified
26 distance of specified locations where the pet is regularly found;
27 ((and))

28 (m) Order use of a vehicle; and

29 (n) Enter an order restricting the respondent from engaging in
30 abusive litigation as set forth in chapter 26.--- RCW (the new
31 chapter created in section 10 of this act). A petitioner may request
32 this relief in the petition or by separate motion. A petitioner may
33 request this relief by separate motion at any time within five years
34 of the date the order for protection is entered even if the order has
35 since expired. A stand-alone motion for an order restricting abusive
36 litigation may be brought by a party who meets the requirements of
37 chapter 26.--- RCW (the new chapter created in section 10 of this
38 act) regardless of whether the party has previously sought an order
39 for protection under this chapter, provided the motion is made within
40 five years of the date the order that made a finding of domestic

1 violence was entered. In cases where a finding of domestic violence
2 was entered pursuant to an order under chapter 26.09, 26.26, or
3 26.26A RCW, a motion for an order restricting abusive litigation may
4 be brought under the family law case or as a stand-alone action filed
5 under this chapter, when it is not reasonable or practical to file
6 under the family law case.

7 (2) If a protection order restrains the respondent from
8 contacting the respondent's minor children the restraint shall be for
9 a fixed period not to exceed one year. This limitation is not
10 applicable to orders for protection issued under chapter 26.09,
11 26.10, 26.26A, or 26.26B RCW. With regard to other relief, if the
12 petitioner has petitioned for relief on his or her own behalf or on
13 behalf of the petitioner's family or household members or minor
14 children, and the court finds that the respondent is likely to resume
15 acts of domestic violence against the petitioner or the petitioner's
16 family or household members or minor children when the order expires,
17 the court may either grant relief for a fixed period or enter a
18 permanent order of protection.

19 If the petitioner has petitioned for relief on behalf of the
20 respondent's minor children, the court shall advise the petitioner
21 that if the petitioner wants to continue protection for a period
22 beyond one year the petitioner may either petition for renewal
23 pursuant to the provisions of this chapter or may seek relief
24 pursuant to the provisions of chapter 26.09, 26.26A, or 26.26B RCW.

25 (3) If the court grants an order for a fixed time period, the
26 petitioner may apply for renewal of the order by filing a petition
27 for renewal at any time within the three months before the order
28 expires. The petition for renewal shall state the reasons why the
29 petitioner seeks to renew the protection order. Upon receipt of the
30 petition for renewal the court shall order a hearing which shall be
31 not later than fourteen days from the date of the order. Except as
32 provided in RCW 26.50.085, personal service shall be made on the
33 respondent not less than five days before the hearing. If timely
34 service cannot be made the court shall set a new hearing date and
35 shall either require additional attempts at obtaining personal
36 service or permit service by publication as provided in RCW 26.50.085
37 or by mail as provided in RCW 26.50.123. If the court permits service
38 by publication or mail, the court shall set the new hearing date not
39 later than twenty-four days from the date of the order. If the order
40 expires because timely service cannot be made the court shall grant

1 an ex parte order of protection as provided in RCW 26.50.070. The
2 court shall grant the petition for renewal unless the respondent
3 proves by a preponderance of the evidence that the respondent will
4 not resume acts of domestic violence against the petitioner or the
5 petitioner's children or family or household members when the order
6 expires. The court may renew the protection order for another fixed
7 time period or may enter a permanent order as provided in this
8 section. The court may award court costs, service fees, and
9 reasonable attorneys' fees as provided in subsection (1)(g) of this
10 section.

11 (4) In providing relief under this chapter, the court may realign
12 the designation of the parties as "petitioner" and "respondent" where
13 the court finds that the original petitioner is the abuser and the
14 original respondent is the victim of domestic violence and may issue
15 an ex parte temporary order for protection in accordance with RCW
16 26.50.070 on behalf of the victim until the victim is able to prepare
17 a petition for an order for protection in accordance with RCW
18 26.50.030.

19 (5) Except as provided in subsection (4) of this section, no
20 order for protection shall grant relief to any party except upon
21 notice to the respondent and hearing pursuant to a petition or
22 counter-petition filed and served by the party seeking relief in
23 accordance with RCW 26.50.050.

24 (6) The court order shall specify the date the order expires if
25 any. The court order shall also state whether the court issued the
26 protection order following personal service, service by publication,
27 or service by mail and whether the court has approved service by
28 publication or mail of an order issued under this section.

29 (7) If the court declines to issue an order for protection or
30 declines to renew an order for protection, the court shall state in
31 writing on the order the particular reasons for the court's denial.

32 NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act
33 constitute a new chapter in Title 26 RCW.

34 NEW SECTION. **Sec. 11.** This act shall be construed liberally so
35 as to effectuate the goal of protecting survivors of domestic
36 violence from abusive litigation.

1 NEW SECTION. **Sec. 12.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2021.

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