
SUBSTITUTE HOUSE BILL 1907

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Law & Justice (originally sponsored by Representative Appelwick)

Read first time 03/01/95.

1 AN ACT Relating to restrictions in residential time; and amending
2 RCW 26.09.191 and 26.10.160.

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

4 **Sec. 1.** RCW 26.09.191 and 1994 c 267 s 1 are each amended to read
5 as follows:

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

15 (2)(a) The parent's residential time with the child shall be
16 limited if it is found that the parent has engaged in any of the
17 following conduct: (i) Willful abandonment that continues for an
18 extended period of time or substantial refusal to perform parenting
19 functions; (ii) physical, sexual, or a pattern of emotional abuse of a

1 child; or (iii) a history of acts of domestic violence as defined in
2 RCW 26.50.010(1) or an assault or sexual assault which causes grievous
3 bodily harm or the fear of such harm. The parent's residential time
4 with the child shall be limited if the parent has been convicted as an
5 adult of a sex offense under RCW 9A.64.020 or chapter 9.68A or 9A.44
6 RCW. This subsection shall not apply when (c) of this subsection
7 applies.

8 (b) The parent's residential time with the child shall be limited
9 if it is found that the parent resides with a person who has engaged in
10 any of the following conduct: (i) Physical, sexual, or a pattern of
11 emotional abuse of a child; or (ii) a history of acts of domestic
12 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
13 that causes grievous bodily harm or the fear of such harm. If a parent
14 resides with a person who as an adult has been convicted or as a
15 juvenile has been adjudicated, or with a juvenile who has been
16 adjudicated, of a sex offense under RCW 9A.64.020 or chapter 9.68A or
17 9A.44 RCW, the court shall restrain the parent from contact with the
18 parent's child except contact that occurs outside that person's
19 presence. This subsection (2)(b) shall not apply when (c) of this
20 subsection applies.

21 (c) If a parent has been ~~((convicted as an adult of a sexual~~
22 ~~offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has~~
23 ~~been))~~ found to be a sexual predator under chapter 71.09 RCW, the court
24 shall restrain the parent from contact with a child that would
25 otherwise be allowed under this chapter. If a parent resides with an
26 adult who has been ~~((convicted, or with a juvenile who has been~~
27 ~~adjudicated, of a sexual offense under RCW 9A.64.020 or chapter 9.68A~~
28 ~~or 9A.44 RCW, or who has been))~~ found to be a sexual predator under
29 chapter 71.09 RCW, the court shall restrain the parent from contact
30 with the parent's child except contact that occurs outside that
31 person's presence.

32 (d)(i) The limitations imposed by the court under (a) or (b) of
33 this subsection shall be reasonably calculated to protect the child
34 from physical, sexual, or emotional abuse or harm that could result if
35 the child has contact with the parent requesting residential time. If
36 the court expressly finds based on the evidence that limitation on the
37 residential time with the child will not adequately protect the child
38 from the harm or abuse that could result if the child has contact with

1 the parent requesting residential time, the court shall restrain the
2 parent requesting residential time from all contact with the child.

3 (ii) The court shall not enter an order under (a) of this
4 subsection allowing a parent to have contact with a child if the parent
5 has been found by clear and convincing evidence in a civil action or by
6 a preponderance of the evidence in a dependency action to have sexually
7 abused the child, except upon recommendation by an evaluator or
8 therapist for the child that the child is ready for contact with the
9 parent and will not be harmed by the contact. The court shall not
10 enter an order allowing a parent to have contact with the child if the
11 parent resides with a person who has been found by clear and convincing
12 evidence in a civil action or by a preponderance of the evidence in a
13 dependency action to have sexually abused a child, unless the court
14 finds that the parent accepts that the person engaged in the harmful
15 conduct and the parent is willing to and capable of protecting the
16 child from harm from the person.

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

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

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

5 (a) A parent's neglect or substantial nonperformance of parenting
6 functions;

7 (b) A long-term emotional or physical impairment which interferes
8 with the parent's performance of parenting functions as defined in RCW
9 26.09.004;

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

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

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

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

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

21 (4) In entering a permanent parenting plan, the court shall not
22 draw any presumptions from the provisions of the temporary parenting
23 plan.

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

27 **Sec. 2.** RCW 26.10.160 and 1994 c 267 s 2 are each amended to read
28 as follows:

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

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

1 the fear of such harm. The parent's residential time with the child
2 shall be limited if the parent has been convicted as an adult of a sex
3 offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW. This
4 subsection shall not apply when (c) of this subsection applies.

5 (b) The parent's residential time with the child shall be limited
6 if it is found that the parent resides with a person who has engaged in
7 any of the following conduct: (i) Physical, sexual, or a pattern of
8 emotional abuse of a child; or (ii) a history of acts of domestic
9 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
10 which causes grievous bodily harm or the fear of such harm. If a
11 parent resides with a person who as an adult has been convicted or as
12 a juvenile has been adjudicated, or with a juvenile who has been
13 adjudicated, of a sex offense under RCW 9A.64.020 or chapter 9.68A or
14 9A.44 RCW, the court shall restrain the parent from contact with the
15 parent's child except contact that occurs outside that person's
16 presence. This subsection (2)(b) shall not apply when (c) of this
17 subsection applies.

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

29 (d)(i) The limitations imposed by the court under (a) or (b) of
30 this subsection shall be reasonably calculated to protect the child
31 from the physical, sexual, or emotional abuse or harm that could result
32 if the child has contact with the parent requesting visitation. If the
33 court expressly finds based on the evidence that limitations on
34 visitation with the child will not adequately protect the child from
35 the harm or abuse that could result if the child has contact with the
36 parent requesting visitation, the court shall restrain the person
37 seeking visitation from all contact with the child.

38 (ii) The court shall not enter an order under (a) of this
39 subsection allowing a parent to have contact with a child if the parent

1 has been found by clear and convincing evidence in a civil action or by
2 a preponderance of the evidence in a dependency action to have sexually
3 abused the child, except upon recommendation by an evaluator or
4 therapist for the child that the child is ready for contact with the
5 parent and will not be harmed by the contact. The court shall not
6 enter an order allowing a parent to have contact with the child if the
7 parent resides with a person who has been found by clear and convincing
8 evidence in a civil action or by a preponderance of the evidence in a
9 dependency action to have sexually abused a child, unless the court
10 finds that the parent accepts that the person engaged in the harmful
11 conduct and the parent is willing to and capable of protecting the
12 child from harm from the person.

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

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

36 (3) Any person may petition the court for visitation rights at any
37 time including, but not limited to, custody proceedings. The court may
38 order visitation rights for any person when visitation may serve the

1 best interest of the child whether or not there has been any change of
2 circumstances.

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

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