

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5061**

53rd Legislature  
1994 Regular Session

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

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**President of the Senate**

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

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

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

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5061**

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AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1994 Regular Session

**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Fraser, Winsley and A. Smith)

Read first time 03/03/93.

1       AN ACT Relating to restrictions on residential time for abusive  
2 parents; amending RCW 26.10.160, 26.12.170, and 26.12.220; reenacting  
3 and amending RCW 26.09.191; adding a new section to chapter 26.12 RCW;  
4 and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

--- END ---