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HOUSE BILL 1397

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Ballasiotes, O'Brien, Delvin, Robertson, McDonald, Sheldon, Hatfield, Zellinsky, Kessler and Sullivan

Read first time 01/24/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to false accusations of child abuse or neglect;  
2 amending RCW 26.09.191; adding new sections to chapter 26.44 RCW; and  
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.44 RCW  
6 to read as follows:

7 If a court, during a judicial proceeding under this title relating  
8 to a parenting plan or child custody, finds by a preponderance of the  
9 evidence that a person has intentionally made a false allegation of  
10 child abuse or neglect or has induced another person to make a false  
11 allegation of child abuse or neglect during the judicial proceeding,  
12 the court may impose a monetary penalty not to exceed one thousand  
13 dollars against the person making or inducing another to make the  
14 accusation. The monetary penalty shall be awarded to the person  
15 against whom the false allegation is made. When the court imposes the  
16 monetary penalty, the court may also provide that reasonable attorneys'  
17 fees may be imposed if the person entitled to the monetary penalty  
18 incurs attorneys' fees to recover the penalty. The award may be

1 enforced in the same manner as other civil judgments. A "person" means  
2 a witness, a party, or a party's attorney.

3 The remedy provided by this section is in addition to any other  
4 remedy provided by law.

5 This section does not apply to unemancipated minors.

6 **Sec. 2.** RCW 26.09.191 and 1996 c 303 s 1 are each amended to read  
7 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  
20 extended period of time or substantial refusal to perform parenting  
21 functions; (ii) physical, sexual, or a pattern of emotional abuse of a  
22 child; (iii) a history of acts of domestic violence as defined in RCW  
23 26.50.010(1) or an assault or sexual assault which causes grievous  
24 bodily harm or the fear of such harm; or (iv) the parent has been  
25 convicted as an adult of a sex offense under:

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

29 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

36 (E) RCW 9A.44.093;

37 (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 (d) of this subsection;

4 (H) Chapter 9.68A RCW;

5 (I) Any predecessor or antecedent statute for the offenses listed  
6 in (a)(iv)(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 (a)(iv)(A) through (H) of  
9 this subsection.

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

12 (b) The parent's residential time with the child shall be limited  
13 if it is found that the parent resides with a person who has engaged in  
14 any of the following conduct: (i) Physical, sexual, or a pattern of  
15 emotional abuse of a child; (ii) a history of acts of domestic violence  
16 as defined in RCW 26.50.010(1) or an assault or sexual assault that  
17 causes grievous bodily harm or the fear of such harm; or (iii) the  
18 person has been convicted as an adult or as a juvenile has been  
19 adjudicated of a sex offense under:

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

23 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

30 (E) RCW 9A.44.093;

31 (F) RCW 9A.44.096;

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

35 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

23 (ii) RCW 9A.44.073;

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

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

28 (v) RCW 9A.44.083;

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

31 (vii) RCW 9A.44.100;

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

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

37 (e) There is a rebuttable presumption that a parent who resides  
38 with a person who, as an adult, has been convicted, or as a juvenile  
39 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)

1 of this subsection places a child at risk of abuse or harm when that  
2 parent exercises residential time in the presence of the convicted or  
3 adjudicated person. Unless the parent rebuts the presumption, the  
4 court shall restrain the parent from contact with the parent's child  
5 except for contact that occurs outside of the convicted or adjudicated  
6 person's presence:

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

9 (ii) RCW 9A.44.073;

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

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

14 (v) RCW 9A.44.083;

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

17 (vii) RCW 9A.44.100;

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

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

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

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

33 (ii) If the child was the victim of the sex offense committed by  
34 the parent requesting residential time, (A) contact between the child  
35 and the offending parent is appropriate and poses minimal risk to the  
36 child, (B) if the child is in or has been in therapy for victims of  
37 sexual abuse, the child's counselor believes such contact between the  
38 child and the offending parent is in the child's best interest, and (C)  
39 the offending parent has successfully engaged in treatment for sex

1 offenders or is engaged in and making progress in such treatment, if  
2 any was ordered by a court, and the treatment provider believes such  
3 contact is appropriate and poses minimal risk to the child.

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

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

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

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

1 finding, based on the evidence, that the supervisor has failed to  
2 protect the child or is no longer willing or capable of protecting the  
3 child.

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

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

32 (k) A court shall not order unsupervised contact between the  
33 offending parent and a child of the offending parent who was sexually  
34 abused by that parent. A court may order unsupervised contact between  
35 the offending parent and a child who was not sexually abused by the  
36 parent after the presumption under (d) of this subsection has been  
37 rebutted and supervised residential time has occurred for at least two  
38 years with no further arrests or convictions of sex offenses involving  
39 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW

1 and (i) the sex offense of the offending parent was not committed  
2 against a child of the offending parent, and (ii) the court finds that  
3 unsupervised contact between the child and the offending parent is  
4 appropriate and poses minimal risk to the child, after consideration of  
5 the testimony of a state-certified therapist, mental health counselor,  
6 or social worker with expertise in treating child sexual abuse victims  
7 who has supervised at least one period of residential time between the  
8 parent and the child, and after consideration of evidence of the  
9 offending parent's compliance with community supervision requirements,  
10 if any. If the offending parent was not ordered by a court to  
11 participate in treatment for sex offenders, then the parent shall  
12 obtain a psychosexual evaluation conducted by a state-certified sex  
13 offender treatment provider indicating that the offender has the lowest  
14 likelihood of risk to reoffend before the court grants unsupervised  
15 contact between the parent and a child.

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



1 contact between the parent and a child which may occur in the presence  
2 of the adjudicated juvenile who is residing with the parent.

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

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

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

36 (n) If the court expressly finds based on the evidence that  
37 contact between the parent and the child will not cause physical,  
38 sexual, or emotional abuse or harm to the child and that the  
39 probability that the parent's or other person's harmful or abusive

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

11 (3) There is a presumption that the parent's residential time with  
12 the child should be limited if it is found that the parent has made  
13 false accusations of child abuse or neglect during the course of the  
14 proceedings, and the parent knew the accusations to be false at the  
15 time of making the accusations.

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

20 (a) A parent's neglect or substantial nonperformance of parenting  
21 functions;

22 (b) A long-term emotional or physical impairment which interferes  
23 with the parent's performance of parenting functions as defined in RCW  
24 26.09.004;

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

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

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

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

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

36 ~~((4))~~ (5) In entering a permanent parenting plan, the court shall  
37 not draw any presumptions from the provisions of the temporary  
38 parenting plan.

1       (~~(5)~~) (6) In determining whether any of the conduct described in  
2 this section has occurred, the court shall apply the civil rules of  
3 evidence, proof, and procedure.

4       (~~(6)~~) (7) For the purposes of this section, a parent's child  
5 means that parent's natural child, adopted child, or stepchild.

6       NEW SECTION. **Sec. 3.** A new section is added to chapter 26.44 RCW  
7 to read as follows:

8       A person is guilty of a class C felony punishable in accordance  
9 with chapter 9A.20 RCW if the person intentionally: (1) Makes a false  
10 accusation of child abuse or neglect during a judicial proceeding under  
11 this title relating to a parenting plan or child custody, or (2)  
12 induces another person to make a false allegation of child abuse or  
13 neglect during a judicial proceeding under this title relating to a  
14 parenting plan or child custody.

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