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HOUSE BILL 2992

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State of Washington

55th Legislature

1998 Regular Session

By Representative Boldt

Read first time 01/26/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to nonparental visitation rights; amending RCW  
2 26.10.160; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that persons who are  
5 not parents of a child, even those who have a strong familial  
6 relationship with the child, have at times been denied the right to  
7 appeal for visitation rights with the child by the judicial branch of  
8 state government, as occurred in *In re the Visitation of Natalie*  
9 *Troxel, Isabelle Rose Troxel, Minors*, 87 Wn.App. 131, 940 P.2d 698,  
10 1997. The legislature intends to clarify its intention that a  
11 nonparent may appeal for visitation rights with a child, even when  
12 there is no other proceeding before the court.

13 **Sec. 2.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read  
14 as follows:

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

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

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

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

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

19 (D) RCW 9A.44.089;

20 (E) RCW 9A.44.093;

21 (F) RCW 9A.44.096;

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

25 (H) Chapter 9.68A RCW;

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

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

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

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

1 person has been convicted as an adult or as a juvenile has been  
2 adjudicated of a sex offense under:

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

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

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

12 (D) RCW 9A.44.089;

13 (E) RCW 9A.44.093;

14 (F) RCW 9A.44.096;

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

18 (H) Chapter 9.68A RCW;

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

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

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

26 (c) If a parent has been found to be a sexual predator under  
27 chapter 71.09 RCW or under an analogous statute of any other  
28 jurisdiction, the court shall restrain the parent from contact with a  
29 child that would otherwise be allowed under this chapter. If a parent  
30 resides with an adult or a juvenile who has been found to be a sexual  
31 predator under chapter 71.09 RCW or under an analogous statute of any  
32 other jurisdiction, the court shall restrain the parent from contact  
33 with the parent's child except contact that occurs outside that  
34 person's presence.

35 (d) There is a rebuttable presumption that a parent who has been  
36 convicted as an adult of a sex offense listed in (d)(i) through (ix) of  
37 this subsection poses a present danger to a child. Unless the parent  
38 rebuts this presumption, the court shall restrain the parent from

1 contact with a child that would otherwise be allowed under this  
2 chapter:

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

5 (ii) RCW 9A.44.073;

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

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

10 (v) RCW 9A.44.083;

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

13 (vii) RCW 9A.44.100;

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

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

19 (e) There is a rebuttable presumption that a parent who resides  
20 with a person who, as an adult, has been convicted, or as a juvenile  
21 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)  
22 of this subsection places a child at risk of abuse or harm when that  
23 parent exercises visitation in the presence of the convicted or  
24 adjudicated person. Unless the parent rebuts the presumption, the  
25 court shall restrain the parent from contact with the parent's child  
26 except for contact that occurs outside of the convicted or adjudicated  
27 person's presence:

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

30 (ii) RCW 9A.44.073;

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

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

35 (v) RCW 9A.44.083;

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

38 (vii) RCW 9A.44.100;

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

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

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

8 (i) If the child was not the victim of the sex offense committed by  
9 the parent requesting visitation, (A) contact between the child and the  
10 offending parent is appropriate and poses minimal risk to the child,  
11 and (B) the offending parent has successfully engaged in treatment for  
12 sex offenders or is engaged in and making progress in such treatment,  
13 if any was ordered by a court, and the treatment provider believes such  
14 contact is appropriate and poses minimal risk to the child; or

15 (ii) If the child was the victim of the sex offense committed by  
16 the parent requesting visitation, (A) contact between the child and the  
17 offending parent is appropriate and poses minimal risk to the child,  
18 (B) if the child is in or has been in therapy for victims of sexual  
19 abuse, the child's counselor believes such contact between the child  
20 and the offending parent is in the child's best interest, and (C) the  
21 offending parent has successfully engaged in treatment for sex  
22 offenders or is engaged in and making progress in such treatment, if  
23 any was ordered by a court, and the treatment provider believes such  
24 contact is appropriate and poses minimal risk to the child.

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

27 (i) If the child was not the victim of the sex offense committed by  
28 the person who is residing with the parent requesting visitation, (A)  
29 contact between the child and the parent residing with the convicted or  
30 adjudicated person is appropriate and that parent is able to protect  
31 the child in the presence of the convicted or adjudicated person, and  
32 (B) the convicted or adjudicated person has successfully engaged in  
33 treatment for sex offenders or is engaged in and making progress in  
34 such treatment, if any was ordered by a court, and the treatment  
35 provider believes such contact is appropriate and poses minimal risk to  
36 the child; or

37 (ii) If the child was the victim of the sex offense committed by  
38 the person who is residing with the parent requesting visitation, (A)  
39 contact between the child and the parent in the presence of the

1 convicted or adjudicated person is appropriate and poses minimal risk  
2 to the child, (B) if the child is in or has been in therapy for victims  
3 of sexual abuse, the child's counselor believes such contact between  
4 the child and the parent residing with the convicted or adjudicated  
5 person in the presence of the convicted or adjudicated person is in the  
6 child's best interest, and (C) the convicted or adjudicated person has  
7 successfully engaged in treatment for sex offenders or is engaged in  
8 and making progress in such treatment, if any was ordered by a court,  
9 and the treatment provider believes contact between the parent and  
10 child in the presence of the convicted or adjudicated person is  
11 appropriate and poses minimal risk to the child.

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

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

38 (j) If the court finds that the parent has met the burden of  
39 rebutting the presumption under (g) of this subsection, the court may

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

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

35 (l) A court may order unsupervised contact between the parent and  
36 a child which may occur in the presence of a juvenile adjudicated of a  
37 sex offense listed in (e)(i) through (ix) of this subsection who  
38 resides with the parent after the presumption under (e) of this  
39 subsection has been rebutted and supervised visitation has occurred for

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

21 (m)(i) The limitations imposed by the court under (a) or (b) of  
22 this subsection shall be reasonably calculated to protect the child  
23 from the physical, sexual, or emotional abuse or harm that could result  
24 if the child has contact with the parent requesting visitation. If the  
25 court expressly finds based on the evidence that limitations on  
26 visitation with the child will not adequately protect the child from  
27 the harm or abuse that could result if the child has contact with the  
28 parent requesting visitation, the court shall restrain the person  
29 seeking visitation 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 parent  
32 has been found by clear and convincing evidence in a civil action or by  
33 a preponderance of the evidence in a dependency action to have sexually  
34 abused the child, except upon recommendation by an evaluator or  
35 therapist for the child that the child is ready for contact with the  
36 parent and will not be harmed by the contact. The court shall not  
37 enter an order allowing a parent to have contact with the child in the  
38 offender's presence if the parent resides with a person who has been  
39 found by clear and convincing evidence in a civil action or by a



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

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

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

29 (3) Any person may petition the court for visitation rights at any  
30 time including, but not limited to, custody proceedings. A petition  
31 for visitation rights need not be filed contemporaneously with, or be  
32 preceded by, a proceeding for child custody, or any other proceeding.  
33 A petitioner under this section shall not be denied visitation rights  
34 merely because no other proceeding regarding the child, the child's  
35 family, or custody of the child has been filed by a parent of the  
36 child. The court may order visitation rights for any person when  
37 visitation may serve the best interest of the child whether or not  
38 there has been any change of circumstances. The court may consider the

1 following factors when making a determination of the child's best  
2 interests:

3 (a) The strength of the relationship between the child and the  
4 petitioner;

5 (b) The relationship between each of the child's parents and the  
6 petitioner, or between the person with whom the child is residing and  
7 the petitioner;

8 (c) The nature of and reason for either parent's objection to  
9 granting the petitioner visitation;

10 (d) The effect that granting visitation may have on the  
11 relationship between the child and the child's parents or between the  
12 child and the person with whom the child is residing;

13 (e) The residential time-sharing arrangements between the parents;

14 (f) The good faith of the petitioner;

15 (g) Any criminal history or history of physical, emotional, or  
16 sexual abuse or neglect by the petitioner; and

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

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

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

24 NEW SECTION. Sec. 3. If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

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