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SENATE BILL 6730

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State of Washington                      55th Legislature                      1998 Regular Session

By Senators Strannigan, Roach, Long, Hargrove and Oke

Read first time 01/30/98. Referred to Committee on Law & Justice.

1            AN ACT Relating to restrictions in parenting plans; and amending  
2 RCW 26.09.191.

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

4            **Sec. 1.** RCW 26.09.191 and 1996 c 303 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; (iii) a history of acts of domestic violence as defined in RCW  
2 26.50.010(1) or an assault or sexual assault which causes grievous  
3 bodily harm or the fear of such harm; or (iv) the parent has been  
4 convicted as an adult of a sex offense under:

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

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

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

14 (D) RCW 9A.44.089;

15 (E) RCW 9A.44.093;

16 (F) RCW 9A.44.096;

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

20 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

7 (D) RCW 9A.44.089;

8 (E) RCW 9A.44.093;

9 (F) RCW 9A.44.096;

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

13 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

38 (ii) RCW 9A.44.073;

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

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

5 (v) RCW 9A.44.083;

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

8 (vii) RCW 9A.44.100;

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

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

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

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

25 (ii) RCW 9A.44.073;

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

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

30 (v) RCW 9A.44.083;

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

33 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

33 (ii) If the child was the victim of the sex offense committed by  
34 the person who is residing with the parent requesting residential time,  
35 (A) contact between the child and the parent in the presence of the  
36 convicted or adjudicated person is appropriate and poses minimal risk  
37 to the child, (B) if the child is in or has been in therapy for victims  
38 of sexual abuse, the child's counselor believes such contact between  
39 the child and the parent residing with the convicted or adjudicated

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

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

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

35 (j) If the court finds that the parent has met the burden of  
36 rebutting the presumption under (g) of this subsection, the court may  
37 allow a parent residing with a person who, as an adult, has been  
38 convicted of a sex offense listed in (e)(i) through (ix) of this  
39 subsection to have residential time with the child in the presence of

1 the convicted person supervised by a neutral and independent adult and  
2 pursuant to an adequate plan for supervision of such residential time.  
3 The court shall not approve of a supervisor for contact between the  
4 child and the parent unless the court finds, based on the evidence,  
5 that the supervisor is willing and capable of protecting the child from  
6 harm. The court shall revoke court approval of the supervisor upon  
7 finding, based on the evidence, that the supervisor has failed to  
8 protect the child or is no longer willing or capable of protecting the  
9 child.

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

33 (l) A court may order unsupervised contact between the parent and  
34 a child which may occur in the presence of a juvenile adjudicated of a  
35 sex offense listed in (e)(i) through (ix) of this subsection who  
36 resides with the parent after the presumption under (e) of this  
37 subsection has been rebutted and supervised residential time has  
38 occurred for at least two years during which time the adjudicated  
39 juvenile has had no further arrests, adjudications, or convictions of

1 sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020,  
2 or chapter 9.68A RCW, and (i) the court finds that unsupervised contact  
3 between the child and the parent that may occur in the presence of the  
4 adjudicated juvenile is appropriate and poses minimal risk to the  
5 child, after consideration of the testimony of a state-certified  
6 therapist, mental health counselor, or social worker with expertise in  
7 treatment of child sexual abuse victims who has supervised at least one  
8 period of residential time between the parent and the child in the  
9 presence of the adjudicated juvenile, and after consideration of  
10 evidence of the adjudicated juvenile's compliance with community  
11 supervision or parole requirements, if any. If the adjudicated  
12 juvenile was not ordered by a court to participate in treatment for sex  
13 offenders, then the adjudicated juvenile shall obtain a psychosexual  
14 evaluation conducted by a state-certified sex offender treatment  
15 provider indicating that the adjudicated juvenile has the lowest  
16 likelihood of risk to reoffend before the court grants unsupervised  
17 contact between the parent and a child which may occur in the presence  
18 of the adjudicated juvenile who is residing with the parent.

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

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



1 person engaged in the harmful conduct and the parent is willing to and  
2 capable of protecting the child from harm from the person.

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

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

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

31 (a) A parent's neglect or substantial nonperformance of parenting  
32 functions;

33 (b) A long-term emotional or physical impairment which interferes  
34 with the parent's performance of parenting functions as defined in RCW  
35 26.09.004;

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

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

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

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

7 (g) A parent's pattern of criminal activity within the sight or  
8 sound of the child, as evidenced by two or more criminal convictions;  
9 or

10 (h) 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 (6) For the purposes of this section, a parent's child means that  
19 parent's natural child, adopted child, or stepchild.

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