
ENGROSSED HOUSE BILL 1773

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By Representatives Wolfe, Lambert, Schoesler, Ogden, Dickerson, Conway, Alexander, Cooper, Tokuda, Veloria, Radcliff, Stensen, D. Schmidt, Romero, Gombosky, Schindler, Keiser, Lantz, Rockefeller, Edmonds, Kenney, Scott and Lovick

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1 AN ACT Relating to visitation rights in nonparental actions for
2 child custody; amending RCW 26.09.240 and 26.10.160; and declaring an
3 emergency.

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

5 **Sec. 1.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read
6 as follows:

7 (1) A person other than a parent, if the person is related to a
8 child through consanguinity, marriage, or adoption, may petition the
9 court for visitation with ~~((a))~~ the child at any time or may intervene
10 in a pending dissolution, legal separation, or modification of
11 parenting plan proceeding. ~~((A))~~ The person ~~((other than a parent))~~
12 may not petition for visitation under this section unless the child's
13 parent or parents have commenced an action under this chapter.

14 (2) ~~((A))~~ The petition for visitation ~~((with a child by a person~~
15 ~~other than a parent))~~ must be filed in the county in which the child
16 resides.

17 ~~((A petition for visitation or a motion to intervene pursuant~~
18 ~~to this section shall be dismissed unless the petitioner or intervenor~~
19 ~~can demonstrate by clear and convincing evidence that a significant~~

1 relationship exists with the child with whom visitation is sought. If
2 the petition or motion is dismissed for failure to establish the
3 existence of a significant relationship, the petitioner or intervenor
4 shall be ordered to pay reasonable attorney's fees and costs to the
5 parent, parents, other custodian, or representative of the child who
6 responds to this petition or motion.

7 (4)) The court may order visitation between the petitioner or
8 intervenor and the child ((between whom a significant relationship
9 exists upon a finding supported by the evidence that the visitation is
10 in the child's best interests.

11 (5)(a) Visitation with a grandparent shall be presumed to be in the
12 child's best interests when a significant relationship has been shown
13 to exist. This presumption may be rebutted by a preponderance of
14 evidence showing that visitation would endanger the child's physical,
15 mental, or emotional health.

16 (b) If the court finds that reasonable visitation by a grandparent
17 would be in the child's best interest except for hostilities that exist
18 between the grandparent and one or both of the parents or person with
19 whom the child lives, the court may set the matter for mediation under
20 RCW 26.09.015.

21 (6)) if the petitioner or intervenor has demonstrated by clear,
22 cogent, and convincing evidence that:

23 (a) A significant relationship exists with the child with whom
24 visitation is sought;

25 (b) Denial of visitation would result in a substantial likelihood
26 of harm to the child's physical, mental, or emotional well-being; and

27 (c) Visitation is in the child's best interests.

28 If the petition or motion is dismissed, the petitioner or
29 intervenor shall be ordered to pay reasonable attorneys' fees and costs
30 to the parent, parents, other custodian, or representative of the child
31 who responds to the petition or motion.

32 (4) The court may consider the following factors when making a
33 determination of the child's best interests:

34 (a) The strength of the relationship between the child and the
35 petitioner or intervenor;

36 (b) The relationship between each of the child's parents or the
37 person with whom the child is residing and the petitioner or
38 intervenor;

1 (c) The nature and reason for either parent's objection to granting
2 the petitioner or intervenor visitation;

3 (d) The effect that granting visitation will have on the
4 relationship between the child and the child's parents or the person
5 with whom the child is residing;

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

7 (f) The good faith of the petitioner or intervenor;

8 (g) Any criminal history or history of physical, emotional, or
9 sexual abuse or neglect by the petitioner or intervenor; and

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

11 ~~((+7))~~ (5) The restrictions of RCW 26.09.191 that apply to parents
12 shall be applied to a petitioner or intervenor who is not a parent, but
13 who is related to the child through consanguinity, marriage, or
14 adoption. The nature and extent of visitation, subject to these
15 restrictions, is in the discretion of the court.

16 ~~((+8))~~ (6) The court may order an investigation and report
17 concerning the proposed visitation or may appoint a guardian ad litem
18 as provided in RCW 26.09.220.

19 ~~((+9))~~ (7) Visitation granted ~~((pursuant to))~~ under this section
20 shall be incorporated into the parenting plan for the child. If the
21 court grants visitation under this section, the court shall ensure that
22 the visitation time granted is divided between the primary residential
23 parent and the nonprimary residential parent in an amount proportionate
24 to the time awarded each parent under the parenting plan, unless such
25 arrangement is found by the court not to be in the best interest of the
26 child in maintaining contact with both parents.

27 ~~((+10))~~ (8) The court may modify or terminate an order granting
28 visitation ~~((rights granted pursuant to))~~ under this section in any
29 subsequent modification action upon a showing that the visitation is no
30 longer in the best interest of the child.

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

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

36 (2)(a) Visitation with the child shall be limited if it is found
37 that the parent seeking visitation has engaged in any of the following
38 conduct: (i) Willful abandonment that continues for an extended period

1 of time or substantial refusal to perform parenting functions; (ii)
2 physical, sexual, or a pattern of emotional abuse of a child; (iii) a
3 history of acts of domestic violence as defined in RCW 26.50.010(1) or
4 an assault or sexual assault which causes grievous bodily harm or the
5 fear of such harm; or (iv) the parent has been convicted as an adult of
6 a sex offense under:

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

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

17 (E) RCW 9A.44.093;

18 (F) RCW 9A.44.096;

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

22 (H) Chapter 9.68A RCW;

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

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

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

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

1 (A) RCW 9A.44.076 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 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 if, because of the difference in age between the
8 offender and the victim, no rebuttable presumption exists under (e) of
9 this subsection;

10 (D) RCW 9A.44.089;

11 (E) RCW 9A.44.093;

12 (F) RCW 9A.44.096;

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

16 (H) Chapter 9.68A RCW;

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

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

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

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

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

1 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
2 was at least five years older than the other person;
3 (ii) RCW 9A.44.073;
4 (iii) RCW 9A.44.076, provided that the person convicted was at
5 least eight years older than the victim;
6 (iv) RCW 9A.44.079, provided that the person convicted was at least
7 eight years older than the victim;
8 (v) RCW 9A.44.083;
9 (vi) RCW 9A.44.086, provided that the person convicted was at least
10 eight years older than the victim;
11 (vii) RCW 9A.44.100;
12 (viii) Any predecessor or antecedent statute for the offenses
13 listed in (d)(i) through (vii) of this subsection;
14 (ix) Any statute from any other jurisdiction that describes an
15 offense analogous to the offenses listed in (d)(i) through (vii) of
16 this subsection.
17 (e) There is a rebuttable presumption that a parent who resides
18 with a person who, as an adult, has been convicted, or as a juvenile
19 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)
20 of this subsection places a child at risk of abuse or harm when that
21 parent exercises visitation in the presence of the convicted or
22 adjudicated person. Unless the parent rebuts the presumption, the
23 court shall restrain the parent from contact with the parent's child
24 except for contact that occurs outside of the convicted or adjudicated
25 person's presence:
26 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
27 was at least five years older than the other person;
28 (ii) RCW 9A.44.073;
29 (iii) RCW 9A.44.076, provided that the person convicted was at
30 least eight years older than the victim;
31 (iv) RCW 9A.44.079, provided that the person convicted was at least
32 eight years older than the victim;
33 (v) RCW 9A.44.083;
34 (vi) RCW 9A.44.086, provided that the person convicted was at least
35 eight years older than the victim;
36 (vii) RCW 9A.44.100;
37 (viii) Any predecessor or antecedent statute for the offenses
38 listed in (e)(i) through (vii) of this subsection;

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

4 (f) The presumption established in (d) 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 parent requesting visitation, (A) contact between the child and the
8 offending parent is appropriate and poses minimal risk to the child,
9 and (B) the offending parent has successfully engaged in treatment for
10 sex offenders or is engaged in and making progress in such treatment,
11 if any was ordered by a court, and the treatment provider believes such
12 contact is appropriate and poses minimal risk to the child; or

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

23 (g) The presumption established in (e) 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 person who is residing with the parent requesting visitation, (A)
27 contact between the child and the parent residing with the convicted or
28 adjudicated person is appropriate and that parent is able to protect
29 the child in the presence of the convicted or adjudicated person, and
30 (B) the convicted or adjudicated person has successfully engaged in
31 treatment for sex offenders or is engaged in and making progress in
32 such treatment, if any was ordered by a court, and the treatment
33 provider believes such contact is appropriate and poses minimal risk to
34 the child; or

35 (ii) If the child was the victim of the sex offense committed by
36 the person who is residing with the parent requesting visitation, (A)
37 contact between the child and the parent in the presence of the
38 convicted or adjudicated person is appropriate and poses minimal risk
39 to the child, (B) if the child is in or has been in therapy for victims

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

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

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

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

1 subsection to have visitation with the child in the presence of the
2 convicted person supervised by a neutral and independent adult and
3 pursuant to an adequate plan for supervision of such visitation. The
4 court shall not approve of a supervisor for contact between the child
5 and the parent unless the court finds, based on the evidence, that the
6 supervisor is willing and capable of protecting the child from harm.
7 The court shall revoke court approval of the supervisor upon finding,
8 based on the evidence, that the supervisor has failed to protect the
9 child or is no longer willing or capable of protecting the 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 visitation has occurred for at least two years
16 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 visitation between the parent
25 and the child, and after consideration of evidence of the offending
26 parent's compliance with community supervision requirements, if any.
27 If the offending parent was not ordered by a court to participate in
28 treatment for sex offenders, then the parent shall obtain a
29 psychosexual evaluation conducted by a state-certified sex offender
30 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 visitation has occurred for
38 at least two years during which time the adjudicated juvenile has had
39 no further arrests, adjudications, or convictions of sex offenses

1 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter
2 9.68A RCW, and (i) the court finds that unsupervised contact between
3 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 visitation between the parent and the child in the presence
9 of the adjudicated juvenile, and after consideration of evidence of the
10 adjudicated juvenile's compliance with community supervision or parole
11 requirements, if any. If the adjudicated juvenile was not ordered by
12 a court to participate in treatment for sex offenders, then the
13 adjudicated juvenile shall obtain a psychosexual evaluation conducted
14 by a state-certified sex offender treatment provider indicating that
15 the adjudicated juvenile has the lowest likelihood of risk to reoffend
16 before the court grants unsupervised contact between the parent and a
17 child which may occur in the presence of the adjudicated juvenile who
18 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 visitation. If the
23 court expressly finds based on the evidence that limitations on
24 visitation with the child will not adequately protect the child from
25 the harm or abuse that could result if the child has contact with the
26 parent requesting visitation, the court shall restrain the person
27 seeking visitation 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 visitation 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) Any person who is related to a child through consanguinity,
28 marriage, or adoption may petition the court for visitation ((rights))
29 with the child at any time including, but not limited to, custody
30 proceedings. The court may order visitation ((rights for any person
31 when visitation may serve the best interest of the child)) between the
32 petitioner and the child whether or not there has been any change of
33 circumstances if the petitioner has demonstrated by clear, cogent, and
34 convincing evidence that:

35 (i) A significant relationship exists with the child with whom
36 visitation is sought;

37 (ii) Denial of visitation would result in a substantial likelihood
38 of harm to the child's physical, mental, or emotional well-being; and

39 (iii) Visitation is in the child's best interests.

1 If the petition is dismissed, the petitioner shall be ordered to
2 pay reasonable attorneys' fees and costs to the parent, parents, other
3 custodian, or representative of the child who responds to the petition.

4 ~~((+4))~~ (b) The court may consider the following factors when
5 making a determination of the child's best interests:

6 (i) The strength of the relationship between the child and the
7 petitioner;

8 (ii) The relationship between each of the child's parents or the
9 person with whom the child is residing and the petitioner;

10 (iii) The nature and reason for either parent's objection to
11 granting the petitioner visitation;

12 (iv) The effect that granting visitation will have on the
13 relationship between the child and the child's parents or the person
14 with whom the child is residing;

15 (v) The residential time-sharing arrangements between the parents;

16 (vi) The good faith of the petitioner;

17 (vii) Any criminal history or history of physical, emotional, or
18 sexual abuse or neglect by the petitioner; and

19 (viii) Any other factor relevant to the child's best interest.

20 (c) The restrictions of RCW 26.09.191 that apply to parents shall
21 be applied to a petitioner or intervenor who is not a parent, but who
22 is related to the child through consanguinity, marriage, or adoption.
23 The nature and extent of visitation, subject to these restrictions, is
24 in the discretion of the court.

25 (4) Visitation granted under this section shall be incorporated
26 into the parenting plan for the child. If the court grants visitation
27 under this section, the court shall ensure that the visitation time
28 granted is divided between the primary residential parent and the
29 nonprimary residential parent in an amount proportionate to the time
30 awarded each parent under the parenting plan, unless such arrangement
31 is found by the court not to be in the best interest of the child in
32 maintaining contact with both parents.

33 (5) The court may modify or terminate an order granting (~~or~~
34 denying)) visitation rights whenever modification or termination would
35 serve the best interests of the child. Modification of a parent's
36 visitation rights shall be subject to the requirements of subsection
37 (2) of this section.

38 ~~((+5))~~ (6) For the purposes of this section, a parent's child
39 means that parent's natural child, adopted child, or stepchild.

1 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

--- END ---