
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 may petition the court for
8 visitation with a child at any time or may intervene in a pending
9 dissolution, legal separation, or modification of parenting plan
10 proceeding. A person other than a parent may not petition for
11 visitation under this section unless the child's parent or parents have
12 commenced an action under this chapter.

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

15 (3) A petition for visitation or a motion to intervene pursuant to
16 this section shall be dismissed unless the petitioner or intervenor can
17 demonstrate by clear and convincing evidence that a significant
18 relationship exists with the child with whom visitation is sought. If
19 the petition or motion is dismissed for failure to establish the

1 existence of a significant relationship, the petitioner or intervenor
2 shall be ordered to pay reasonable attorney's fees and costs to the
3 parent, parents, other custodian, or representative of the child who
4 responds to this petition or motion.

5 (4) The court may order visitation between the petitioner or
6 intervenor and the child between whom a significant relationship exists
7 upon a finding supported by the preponderance of the evidence that the
8 visitation is in the child's best interests and that denial of
9 visitation would result in a substantial likelihood of harm to the
10 child's physical, mental, or emotional well-being.

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) The court may consider the following factors when making a
22 determination of the child's best interests:

23 (a) The strength of the relationship between the child and the
24 petitioner;

25 (b) The relationship between each of the child's parents or the
26 person with whom the child is residing and the petitioner;

27 (c) The nature and reason for either parent's objection to granting
28 the petitioner visitation;

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

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

33 (f) The good faith of the petitioner;

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

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

37 (7) The restrictions of RCW 26.09.191 that apply to parents shall
38 be applied to a petitioner or intervenor who is not a parent. The

1 nature and extent of visitation, subject to these restrictions, is in
2 the discretion of the court.

3 (8) The court may order an investigation and report concerning the
4 proposed visitation or may appoint a guardian ad litem as provided in
5 RCW 26.09.220.

6 (9) Visitation granted pursuant to this section shall be
7 incorporated into the parenting plan for the child.

8 (10) The court may modify or terminate visitation rights granted
9 pursuant to this section in any subsequent modification action upon a
10 showing that the visitation is no longer in the best interest of the
11 child.

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

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

17 (2)(a) Visitation with the child shall be limited if it is found
18 that the parent seeking visitation has engaged in any of the following
19 conduct: (i) Willful abandonment that continues for an extended period
20 of time or substantial refusal to perform parenting functions; (ii)
21 physical, sexual, or a pattern of emotional abuse of a child; (iii) a
22 history of acts of domestic violence as defined in RCW 26.50.010(1) or
23 an assault or sexual assault which causes grievous bodily harm or the
24 fear of such harm; or (iv) the parent has been convicted as an adult of
25 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 visitation with the child shall be limited if it
13 is found that the parent resides with a person who has engaged in any
14 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 visitation 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 visitation, (A) contact between the child and the
27 offending parent is appropriate and poses minimal risk to the child,
28 and (B) the offending parent has successfully engaged in treatment for
29 sex offenders or is engaged in and making progress in such treatment,
30 if any was ordered by a court, and the treatment provider believes such
31 contact is appropriate and poses minimal risk to the child; or

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

1 any was ordered by a court, and the treatment provider believes such
2 contact is appropriate and poses minimal risk to the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (n) If the court expressly finds based on the evidence that
35 contact between the parent and the child will not cause physical,
36 sexual, or emotional abuse or harm to the child and that the
37 probability that the parent's or other person's harmful or abusive
38 conduct will recur is so remote that it would not be in the child's
39 best interests to apply the limitations of (a), (b), and (m)(i) and

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

9 (3)(a) Any person may petition the court for visitation rights at
10 any time including, but not limited to, custody proceedings. (~~The~~
11 ~~court may order visitation rights for any person when visitation may~~
12 ~~serve the best interest of the child~~) A petition for visitation under
13 this section shall be dismissed unless the petitioner can demonstrate
14 by clear and convincing evidence that a significant relationship exists
15 with the child with whom visitation is sought. If the petition is
16 dismissed for failure to establish the existence of a significant
17 relationship, the petitioner shall be ordered to pay reasonable
18 attorneys' fees and costs to the parent, parents, other custodian, or
19 representative of the child who responds to the petition.

20 If the petitioner establishes that a significant relationship
21 exists, the court may order visitation between the petitioner and the
22 child upon a finding supported by the preponderance of the evidence
23 that visitation is in the child's best interests and that denial of
24 visitation would result in a substantial likelihood of harm to the
25 child's physical, mental, or emotional well-being whether or not there
26 has been any change of circumstances.

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

29 (i) The strength of the relationship between the child and the
30 petitioner;

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

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

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

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

39 (vi) The good faith of the petitioner;

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

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

4 (c) The restrictions of RCW 26.09.191 that apply to parents shall
5 be applied to a petitioner or intervenor who is not a parent. The
6 nature and extent of visitation, subject to these restrictions, is in
7 the discretion of the court.

8 (4) Visitation granted under this section shall be incorporated
9 into the parenting plan for the child.

10 (5) The court may modify or terminate an order granting ((or
11 denying)) visitation rights whenever modification would serve the best
12 interests of the child. Modification of a parent's visitation rights
13 shall be subject to the requirements of subsection (2) of this section.

14 ~~((+5+))~~ (6) For the purposes of this section, a parent's child
15 means that parent's natural child, adopted child, or stepchild.

16 NEW SECTION. Sec. 3. This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately.

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