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HOUSE BILL 1054

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State of Washington

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By Representatives Edmonds, Lambert, Ogden, Kagi, O'Brien, Haigh,  
Kenney and Lantz

Read first time 01/12/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to third-party visitation; amending RCW  
2 26.09.240 and 26.10.160; adding a new section to chapter 26.10  
3 RCW; creating a new section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** (1) In *Troxel v. Granville*, No. 99-138,  
6 decided June 5, 2000, the United States supreme court recognized  
7 that the right of parents in the care and custody of their  
8 children is a fundamental liberty interest. The court also  
9 acknowledged that demographic changes in the past century have  
10 created complex family structures, and third-party visitation  
11 statutes reflect the changing realities of the American family.

12 (2) Legislatures and courts across the country recognize that  
13 families are composed of individuals who share an emotional  
14 attachment and intimacy developed over time, and that such  
15 emotional bonds do not necessarily require biological or marital  
16 relationships. By acting in a caregiver or other significant  
17 emotionally involved role over a period of time, a third party may  
18 develop a substantial relationship with a child. In some cases,

1 arbitrarily depriving the child of that relationship can cause  
2 psychological or emotional harm to the child. The legislature seeks  
3 to prevent the harm to children caused by the disruption of such  
4 significant bonds.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.10  
6 RCW to read as follows:

7 (1) A person who is not a parent of the child may petition the  
8 court for visitation with the child if the petitioner can  
9 demonstrate that:

10 (a) There is a substantial relationship between the petitioner  
11 and the child;

12 (b) The petitioner has been unreasonably denied visitation with  
13 the child by a parent, custodian, or other person with primary  
14 decision-making authority over the child; and

15 (c) There has been a significant change in circumstances with  
16 either the child, the petitioner, or the parent, custodian, or  
17 other person having primary decision-making authority over the  
18 child that threatens the substantial relationship between the  
19 child and the petitioner. The change in circumstances could  
20 include, but is not limited to, a dissolution, legal separation,  
21 informal physical separation, death of a parent, or other  
22 significant change in the family structure.

23 (2)(a) If the court dismisses a petition for visitation brought  
24 under this section because the petitioner failed to demonstrate  
25 the requirements in subsection (1) of this section, the court must  
26 order the petitioner to pay reasonable attorneys' fees and costs to  
27 the party responding to the petition. Nothing in this subsection  
28 precludes a court from ordering attorneys' fees and costs under  
29 RCW 26.10.080.

30 (b) Petitions that are not dismissed by the court must be  
31 submitted to mandatory mediation before proceeding to trial. Upon  
32 petition of any party that mediation is not appropriate, the court  
33 may order or the mediator may determine that the case is not  
34 appropriate for mediation. Mediation shall be pursuant to mediation  
35 procedures established by court rules for third-party visitation  
36 cases.

1 (3)(a) Except as provided in (b) of this subsection, a petition  
2 for visitation brought under this section must be filed in the  
3 county in which the child resides.

4 (b) If a dissolution, legal separation, modification of  
5 parenting plan, or other custody proceeding is pending involving  
6 the child, the petition for visitation under this section shall be  
7 filed in the county in which the proceeding is pending.

8 (4) The court may order visitation between the petitioner and  
9 the child if the petitioner shows and the court finds that:

10 (a) Denial of court-ordered visitation would result in a  
11 likelihood of harm to the child's physical, psychological, or  
12 emotional well-being;

13 (b) The likelihood of harm is beyond the normal short-term  
14 distress a child suffers due to a change in circumstances;

15 (c) Continuation of the substantial relationship between the  
16 child and the petitioner would likely have long-term benefits to  
17 the child; and

18 (d) Visitation would not substantially interfere with the  
19 relationship between the child and the parent, custodian, or other  
20 person with primary decision-making authority over the child.

21 (5) In determining the nature and extent of visitation, the  
22 court must consider the wishes of a child who is sufficiently  
23 mature to express reasoned and independent preferences as to  
24 visitation issues.

25 (6) The restrictions of RCW 26.10.160 that apply to parents  
26 shall apply to the petitioner under this section.

27 **Sec. 3.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read  
28 as follows:

29 (1) Under section 1 of this act, a person other than a parent  
30 may petition the court for visitation with a child ((at any time))  
31 or may intervene in a pending dissolution, legal separation, or  
32 modification of parenting plan proceeding. ((A person other than a  
33 parent may not petition for visitation under this section unless  
34 the child's parent or parents have commenced an action under this  
35 chapter.

36 (2) ~~A petition for visitation with a child by a person other~~

1 than a parent must be filed in the county in which the child  
2 resides.

3 (3) A petition for visitation or a motion to intervene pursuant  
4 to this section shall be dismissed unless the petitioner or  
5 intervenor can demonstrate by clear and convincing evidence that a  
6 significant relationship exists with the child with whom  
7 visitation is sought. If the petition or motion is dismissed for  
8 failure to establish the existence of a significant relationship,  
9 the petitioner or intervenor shall be ordered to pay reasonable  
10 attorney's fees and costs to the parent, parents, other custodian,  
11 or representative of the child who responds to this petition or  
12 motion.

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

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

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

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

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

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

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

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

1       ~~(e) The residential time sharing arrangements between the~~  
2 ~~parents;~~  
3       ~~(f) The good faith of the petitioner;~~  
4       ~~(g) Any criminal history or history of physical, emotional, or~~  
5 ~~sexual abuse or neglect by the petitioner; and~~  
6       ~~(h) Any other factor relevant to the child's best interest.~~  
7       ~~(7) The restrictions of RCW 26.09.191 that apply to parents~~  
8 ~~shall be applied to a petitioner or intervenor who is not a~~  
9 ~~parent. The nature and extent of visitation, subject to these~~  
10 ~~restrictions, is in the discretion of the court.~~  
11       ~~(8) The court may order an investigation and report concerning~~  
12 ~~the proposed visitation or may appoint a guardian ad litem as~~  
13 ~~provided in RCW 26.09.220.~~  
14       ~~(9) Visitation granted pursuant to this section shall be~~  
15 ~~incorporated into the parenting plan for the child.~~  
16       ~~(10) The court may modify or terminate visitation rights~~  
17 ~~granted pursuant to this section in any subsequent modification~~  
18 ~~action upon a showing that the visitation is no longer in the best~~  
19 ~~interest of the child.)~~

20       **Sec. 4.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read  
21 as follows:

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

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

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

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

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

13 (H) Chapter 9.68A RCW;

14 (I) Any predecessor or antecedent statute for the offenses  
15 listed in (a)(iv)(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 (a)(iv)(A) through (H)  
18 of this subsection.

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

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

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

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

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

38 (D) RCW 9A.44.089;

1 (E) RCW 9A.44.093;

2 (F) RCW 9A.44.096;

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

6 (H) Chapter 9.68A RCW;

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

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

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

14 (c) If a parent has been found to be a sexual predator under  
15 chapter 71.09 RCW or under an analogous statute of any other  
16 jurisdiction, the court shall restrain the parent from contact  
17 with a child that would otherwise be allowed under this chapter.  
18 If a parent resides with an adult or a juvenile who has been found  
19 to be a sexual predator under chapter 71.09 RCW or under an  
20 analogous statute of any other jurisdiction, the court shall  
21 restrain the parent from contact with the parent's child except  
22 contact that occurs outside that person's presence.

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

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

31 (ii) RCW 9A.44.073;

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

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

36 (v) RCW 9A.44.083;

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

1 (vii) RCW 9A.44.100;

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

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

7 (e) There is a rebuttable presumption that a parent who resides  
8 with a person who, as an adult, has been convicted, or as a  
9 juvenile has been adjudicated, of the sex offenses listed in  
10 (e)(i) through (ix) of this subsection places a child at risk of  
11 abuse or harm when that parent exercises visitation in the  
12 presence of the convicted or adjudicated person. Unless the parent  
13 rebuts the presumption, the court shall restrain the parent from  
14 contact with the parent's child except for contact that occurs  
15 outside of the convicted or adjudicated person's presence:

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

18 (ii) RCW 9A.44.073;

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

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

23 (v) RCW 9A.44.083;

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

26 (vii) RCW 9A.44.100;

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

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

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

34 (i) If the child was not the victim of the sex offense  
35 committed by the parent requesting visitation, (A) contact between  
36 the child and the offending parent is appropriate and poses  
37 minimal risk to the child, and (B) the offending parent has  
38 successfully engaged in treatment for sex offenders or is engaged

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

4 (ii) If the child was the victim of the sex offense committed  
5 by the parent requesting visitation, (A) contact between the child  
6 and the offending parent is appropriate and poses minimal risk to  
7 the child, (B) if the child is in or has been in therapy for  
8 victims of sexual abuse, the child's counselor believes such  
9 contact between the child and the offending parent is in the  
10 child's best interest, and (C) the offending parent has  
11 successfully engaged in treatment for sex offenders or is engaged  
12 in and making progress in such treatment, if any was ordered by a  
13 court, and the treatment provider believes such contact is  
14 appropriate and poses minimal risk to the child.

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

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

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

1 progress in such treatment, if any was ordered by a court, and the  
2 treatment provider believes contact between the parent and child  
3 in the presence of the convicted or adjudicated person is  
4 appropriate and poses minimal risk to the child.

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

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

32 (j) If the court finds that the parent has met the burden of  
33 rebutting the presumption under (g) of this subsection, the court  
34 may allow a parent residing with a person who, as an adult, has  
35 been convicted of a sex offense listed in (e)(i) through (ix) of  
36 this subsection to have visitation with the child in the presence  
37 of the convicted person supervised by a neutral and independent  
38 adult and pursuant to an adequate plan for supervision of such

1 visitation. The court shall not approve of a supervisor for contact  
2 between the child and the parent unless the court finds, based on  
3 the evidence, that the supervisor is willing and capable of  
4 protecting the child from harm. The court shall revoke court  
5 approval of the supervisor upon finding, based on the evidence,  
6 that the supervisor has failed to protect the child or is no  
7 longer willing or capable of protecting the child.

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

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

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

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

32 (ii) The court shall not enter an order under (a) of this  
33 subsection allowing a parent to have contact with a child if the  
34 parent has been found by clear and convincing evidence in a civil  
35 action or by a preponderance of the evidence in a dependency  
36 action to have sexually abused the child, except upon  
37 recommendation by an evaluator or therapist for the child that the  
38 child is ready for contact with the parent and will not be harmed

1 by the contact. The court shall not enter an order allowing a  
2 parent to have contact with the child in the offender's presence  
3 if the parent resides with a person who has been found by clear  
4 and convincing evidence in a civil action or by a preponderance of  
5 the evidence in a dependency action to have sexually abused a  
6 child, unless the court finds that the parent accepts that the  
7 person engaged in the harmful conduct and the parent is willing to  
8 and capable of protecting the child from harm from the person.

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

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

34 ~~(3) ((Any person may petition the court for visitation rights~~  
35 ~~at any time including, but not limited to, custody proceedings.~~  
36 ~~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.~~

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

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

8       NEW SECTION.   **Sec. 5.** This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of  
10 the state government and its existing public institutions, and  
11 takes effect immediately.

--- END ---

