
HOUSE BILL 2322

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57th Legislature

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By Representatives Lantz, Kagi, Dickerson, Cox, Quall, Kessler, Kenney, Edwards, Fromhold and Conway

Read first time 01/14/2002. Referred to Committee on Judiciary.

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

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

5 NEW SECTION. **Sec. 1.** The legislature affirms that parents have a
6 paramount right to raise their minor children. The legislature also
7 recognizes that the paramount right must be considered in conjunction
8 with a minor child's interest in maintaining significant relationships
9 with nonparents. Therefore, the legislature intends to establish
10 internally consistent and rigorous standards that must be met for a
11 nonparent to obtain visitation with a minor child.

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

14 (1) A person who is not a parent of the child may petition the
15 court for visitation with the child if the petitioner can demonstrate
16 by a preponderance of the evidence that:

17 (a) There is a substantial and beneficial relationship between the
18 petitioner and the child;

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

4 (c) There has been a significant change in circumstances with
5 either the child, the petitioner, or the parent, custodian, or other
6 person having primary decision-making authority over the child that
7 substantially threatens the relationship between the child and the
8 petitioner. The change in circumstances could include, but is not
9 limited to, a dissolution, legal separation, informal physical
10 separation, death of a parent, or other significant change in the
11 family structure.

12 (2)(a) If the court dismisses a petition for visitation brought
13 under this section because the petitioner failed to demonstrate the
14 requirements in subsection (1) of this section, the court may order the
15 petitioner to pay reasonable attorneys' fees and costs to the party
16 responding to the petition. Nothing in this subsection precludes a
17 court from ordering attorneys' fees and costs under RCW 26.10.080.

18 (b) Petitions that are not dismissed by the court must be submitted
19 to mandatory mediation before proceeding to trial. Upon petition of
20 any party that mediation is not appropriate, the court may order or the
21 mediator may determine that the case is not appropriate for mediation.
22 Mediation shall be pursuant to mediation procedures established by
23 court rules for third-party visitation cases.

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

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

31 (c) Visitation granted pursuant to this section shall be
32 incorporated into the parenting plan for the child.

33 (4) The court may order visitation between the petitioner and the
34 child if the petitioner shows and the court finds by a preponderance of
35 the evidence that visitation is in the child's best interest and:

36 (a) Denial of court-ordered visitation would result in a likelihood
37 of substantial harm to the child's physical, psychological, or
38 emotional well-being;

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

3 (c) Continuation of the relationship between the child and the
4 petitioner would likely have substantial benefits to the child;

5 (d) Visitation would not substantially interfere with the
6 relationship between the child and the parent, custodian, or other
7 person with primary decision-making authority over the child; and

8 (e) If there is a residential schedule for the child, visitation is
9 reasonable based on the residential time-sharing arrangements between
10 the parents, custodian, or other person with primary decision-making
11 authority over the child.

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

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

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

19 (1) Under section 1 of this act, a person other than a parent may
20 petition the court for visitation with a child ((at any time)) or may
21 intervene in a pending dissolution, legal separation, or modification
22 of parenting plan proceeding. ((A person other than a parent may not
23 petition for visitation under this section unless the child's parent or
24 parents have commenced an action under this chapter.

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

27 (3) ~~A petition for visitation or a motion to intervene pursuant to~~
28 ~~this section shall be dismissed unless the petitioner or intervenor can~~
29 ~~demonstrate by clear and convincing evidence that a significant~~
30 ~~relationship exists with the child with whom visitation is sought. If~~
31 ~~the petition or motion is dismissed for failure to establish the~~
32 ~~existence of a significant relationship, the petitioner or intervenor~~
33 ~~shall be ordered to pay reasonable attorney's fees and costs to the~~
34 ~~parent, parents, other custodian, or representative of the child who~~
35 ~~responds to this petition or motion.~~

36 (4) ~~The court may order visitation between the petitioner or~~
37 ~~intervenor and the child between whom a significant relationship exists~~

1 upon a finding supported by the evidence that the visitation is in the
2 child's best interests.

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

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

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

15 (a) The strength of the relationship between the child and the
16 petitioner;

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

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

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

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

25 (f) The good faith of the petitioner;

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

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

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

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

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

38 (10) The court may modify or terminate visitation rights granted
39 pursuant to this section in any subsequent modification action upon a

1 ~~showing that the visitation is no longer in the best interest of the~~
2 ~~child.))~~

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

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

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

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

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

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

26 (D) RCW 9A.44.089;

27 (E) RCW 9A.44.093;

28 (F) RCW 9A.44.096;

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

32 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

20 (D) RCW 9A.44.089;

21 (E) RCW 9A.44.093;

22 (F) RCW 9A.44.096;

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

26 (H) Chapter 9.68A RCW;

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

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

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

34 (c) If a parent has been found to be a sexual predator under
35 chapter 71.09 RCW or under an analogous statute of any other
36 jurisdiction, the court shall restrain the parent from contact with a
37 child that would otherwise be allowed under this chapter. If a parent
38 resides with an adult or a juvenile who has been found to be a sexual
39 predator under chapter 71.09 RCW or under an analogous statute of any

1 other jurisdiction, the court shall restrain the parent from contact
2 with the parent's child except contact that occurs outside that
3 person's presence.

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

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

12 (ii) RCW 9A.44.073;

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

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

17 (v) RCW 9A.44.083;

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

20 (vii) RCW 9A.44.100;

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

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

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

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

37 (ii) RCW 9A.44.073;

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

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

3 (v) RCW 9A.44.083;

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

6 (vii) RCW 9A.44.100;

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

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

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

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

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

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

33 (i) If the child was not the victim of the sex offense committed by
34 the person who is residing with the parent requesting visitation, (A)
35 contact between the child and the parent residing with the convicted or
36 adjudicated person is appropriate and that parent is able to protect
37 the child in the presence of the convicted or adjudicated person, and
38 (B) the convicted or adjudicated person has successfully engaged in
39 treatment for sex offenders or is engaged in and making progress in

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

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

18 (h) If the court finds that the parent has met the burden of
19 rebutting the presumption under (f) of this subsection, the court may
20 allow a parent who has been convicted as an adult of a sex offense
21 listed in (d)(i) through (ix) of this subsection to have visitation
22 with the child 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 (i) If the court finds that the parent has met the burden of
31 rebutting the presumption under (g) of this subsection, the court may
32 allow a parent residing with a person who has been adjudicated as a
33 juvenile of a sex offense listed in (e)(i) through (ix) of this
34 subsection to have visitation with the child in the presence of the
35 person adjudicated as a juvenile, supervised by a neutral and
36 independent adult and pursuant to an adequate plan for supervision of
37 such visitation. The court shall not approve of a supervisor for
38 contact between the child and the parent unless the court finds, based
39 on the evidence, that the supervisor is willing and capable of

1 protecting the child from harm. The court shall revoke court approval
2 of the supervisor upon finding, based on the evidence, that the
3 supervisor has failed to protect the child or is no longer willing or
4 capable of protecting the child.

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

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

1 likelihood of risk to reoffend before the court grants unsupervised
2 contact between the parent and a child.

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

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

37 (ii) The court shall not enter an order under (a) of this
38 subsection allowing a parent to have contact with a child if the parent
39 has been found by clear and convincing evidence in a civil action or by

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

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

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

36 ~~(3) ((Any person may petition the court for visitation rights at~~
37 ~~any time including, but not limited to, custody proceedings. The court~~
38 ~~may order visitation rights for any person when visitation may serve~~

1 ~~the best interest of the child whether or not there has been any change~~
2 ~~of circumstances.~~

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

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

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

--- END ---