

1 **SSB 5708** - H AMD TO JJFL COMM AMD (5708-S AMH JJFL H2538.1)**398**
2 **FAILED 4/14/03**
3 By Representative Carrell

4 Strike everything after line 2 of the amendment and insert the
5 following:

6 "NEW SECTION. **Sec. 1.** The legislature affirms that parents
7 have a paramount right to raise their minor children. The
8 legislature also recognizes that this paramount right must be
9 considered in conjunction with a minor child's interest in
10 maintaining the strong emotional bonds with others that the child
11 has developed and relies upon. Therefore, the legislature intends
12 to establish internally consistent and rigorous standards that must
13 be met for a nonparent to obtain visitation with a minor child.

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

16 For purposes of section 3 of this act, the following
17 definitions apply:

18 (1) "Applicant" means a nonparent who initiates a proceeding
19 under this statute.

20 (2) "Contact" includes all court-ordered arrangements by which
21 a nonparent is authorized to interact with a child other than
22 custody, conservatorship, guardianship, or joint or shared custody.

23 (3) "Harm" means that denial of contact results in substantial
24 loss and detriment to the child's physical, psychological, or
25 emotional well-being. The likelihood of harm must be beyond the
26 normal short- term distress a child suffers due to a change in
27 circumstances.

28 (4) "Nonparent" includes any person not legally recognized as
29 a parent whether or not related by blood or marriage.

30 (5) "Parent-like relationship" means a very significant
31 relationship between a nonparent and a child in which the nonparent

1 undertook responsibilities and tasks commonly performed by parents
2 and commonly recognized as actions by someone in a parent-like
3 relationship. Excluded from this category are baby-sitters or
4 other caregivers who provided care for compensation or with the
5 expectation of compensation, either directly or indirectly, in
6 whole or in part. Compensation does not include incidental funds
7 that the parent provides to the nonparent to be used for the
8 benefit of the child.

9 (6) "Substantially interfered" means to have unreasonably and
10 greatly diminished the amount and quality of contact a nonparent
11 has had with the child. A reasonable reduction in the frequency or
12 length of contact previously enjoyed with the child is not a
13 substantial interference.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 26.10
15 RCW to read as follows:

16 (1) A nonparent who is related to the child by blood, marriage,
17 or adoption may initiate a court proceeding for contact with a
18 child by filing a verified application to obtain court-ordered
19 contact under the following circumstances:

20 (a) (i) The application is filed during a pending dissolution,
21 legal separation, or modification of a parenting plan;

22 (ii) A parent or custodian of the child consented to or allowed
23 the formation and establishment of the relationship or the
24 relationship was formed as a result of the unavailability or
25 inability of any legal parent to perform caretaking functions; and

26 (iii) The relationship between the applicant and the child is
27 beneficial to the child and to the applicant; or

28 (b)(i) The application is filed within twelve months from the
29 date a final order is entered in a dissolution, legal separation,
30 or modification of a parenting plan or within twelve months of the
31 death of one of the child's parents;

32 (ii) A parent or custodian of the child consented to or allowed
33 the formation and establishment of the relationship or the
34 relationship was formed as a result of the unavailability or
35 inability of any legal parent to perform caretaking functions;

36 (iii) The child's parent or custodian has substantially
37 interfered with the applicant's relationship with the child;

1 (iv) The applicant has unsuccessfully attempted to resolve any
2 disagreement with the parent or custodian before going to court;
3 and

4 (iv) The relationship between the applicant and the child is
5 beneficial to the child and to the applicant.

6 (2) Notwithstanding subsections 1 (a) and (b) of this section,
7 a nonparent who is related to the child by blood, marriage, or
8 adoption may initiate a court proceeding for contact with a child
9 by filing a verified application to obtain court-ordered contact
10 under the following circumstances:

11 (i) The application is filed within twelve months following the
12 effective date of this act;

13 (ii) A parent or custodian of the child consented to or allowed
14 the formation and establishment of the relationship or the
15 relationship was formed as a result of the unavailability or
16 inability of any legal parent to perform caretaking functions; and

17 (iii) The relationship between the applicant and the child is
18 beneficial to the child and to the applicant.

19 (3) A nonparent who is not related to the child by blood,
20 marriage, or adoption may initiate a court proceeding for contact
21 with a child by filing a verified application to obtain court-
22 ordered contact under the following circumstances:

23 (a) The application is filed during a pending dissolution,
24 legal separation, or modification of a parenting plan;

25 (b) The applicant is an individual with a parent-like
26 relationship with the child;

27 (c) The relationship has been parent-like in nature for a
28 substantial period of time;

29 (d) A parent or custodian of the child consented to or allowed
30 the formation and establishment of the relationship or the
31 relationship was formed as a result of the unavailability or
32 inability of any legal parent to perform caretaking functions; and

33 (e) The relationship between the applicant and the child is
34 beneficial to the child and to the applicant.

35 (4) Notwithstanding subsection 3 of this section, a nonparent
36 who is not related to the child by blood, marriage, or adoption may
37 initiate a court proceeding for contact with a child by filing a
38 verified application to obtain court-ordered contact under the
39 following circumstances:

1 (a) The application is filed within twelve months following the
2 effective date of this act;

3 (b) The applicant is an individual with a parent-like
4 relationship with the child;

5 (c) The relationship has been parent-like in nature for a
6 substantial period of time;

7 (d) A parent or custodian of the child consented to or allowed
8 the formation and establishment of the relationship or the
9 relationship was formed as a result of the unavailability or
10 inability of any legal parent to perform caretaking functions; and

11 (e) The relationship between the applicant and the child is
12 beneficial to the child and to the applicant.

13 (5)(a)The court shall treat standing as a threshold issue. The
14 applicant bears the burden of establishing standing. If the
15 applicant does not satisfy this burden, the proceeding shall be
16 dismissed.

17 (b) Upon a finding that the applicant has standing, the
18 applicant shall come forward with evidence to show that the child
19 would very likely suffer harm if contact were not awarded. If the
20 applicant presents evidence that could allow a reasonable fact
21 finder to conclude that the child would very likely suffer harm,
22 the burden shifts to the parent or custodian to present evidence
23 why the decision to refuse contact is reasonable and in the best
24 interests of the child.

25 (6) The court shall order contact if it finds that the
26 applicant has satisfied the burden of showing by clear and
27 convincing evidence that:

28 (a) The child would very likely suffer harm if contact is not
29 awarded; and

30 (b) The parent's or custodian's denial of contact was
31 unreasonable and not in the child's best interests.

32 (7) If the court dismisses the proceeding for lack of standing,
33 the court shall award reasonable and necessary costs and fees to
34 the prevailing party unless there is a compelling reason to do
35 otherwise. In all other cases, the court may award such costs and
36 fees as it deems appropriate.

37 (8) If the parent or custodian fails to comply with a court
38 order awarding contact between the nonparent and the child, the

1 nonparent may file a motion to initiate a contempt action under RCW
2 26.09.160.

3 **Sec. 4.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to
4 read as follows:

5 ~~((1))~~ A person other than a parent may petition the court
6 for visitation with a child under section 3 of this act ~~((at any~~
7 ~~time or may intervene in a pending dissolution, legal separation,~~
8 ~~or modification of parenting plan proceeding))~~. ~~((A person other~~
9 ~~than a parent may not petition for visitation under this section~~
10 ~~unless the child's parent or parents have commenced an action~~
11 ~~under this chapter.~~

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

15 ~~(3) A petition for visitation or a motion to intervene~~
16 ~~pursuant to this section shall be dismissed unless the petitioner~~
17 ~~or intervenor can demonstrate by clear and convincing evidence~~
18 ~~that a significant relationship exists with the child with whom~~
19 ~~visitation is sought. If the petition or motion is dismissed for~~
20 ~~failure to establish the existence of a significant relationship,~~
21 ~~the petitioner or intervenor shall be ordered to pay reasonable~~
22 ~~attorney's fees and costs to the parent, parents, other~~
23 ~~custodian, or representative of the child who responds to this~~
24 ~~petition or motion.~~

25 ~~(4) The court may order visitation between the petitioner or~~
26 ~~intervenor and the child between whom a significant relationship~~
27 ~~exists upon a finding supported by the evidence that the~~
28 ~~visitation is in the child's best interests.~~

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

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

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

3 ~~(a) The strength of the relationship between the child and~~
4 ~~the petitioner;~~

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

7 ~~(c) The nature and reason for either parent's objection to~~
8 ~~granting the petitioner visitation;~~

9 ~~(d) The effect that granting visitation will have on the~~
10 ~~relationship between the child and the child's parents or the~~
11 ~~person with whom the child is residing;~~

12 ~~(e) The residential time sharing arrangements between the~~
13 ~~parents;~~

14 ~~(f) The good faith of the petitioner;~~

15 ~~(g) Any criminal history or history of physical, emotional,~~
16 ~~or sexual abuse or neglect by the petitioner; and~~

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

18 ~~(7) The restrictions of RCW 26.09.191 that apply to parents~~
19 ~~shall be applied to a petitioner or intervenor who is not a~~
20 ~~parent. The nature and extent of visitation, subject to these~~
21 ~~restrictions, is in the discretion of the court.~~

22 ~~(8) The court may order an investigation and report~~
23 ~~concerning the proposed visitation or may appoint a guardian ad~~
24 ~~litem as provided in RCW 26.09.220.~~

25 ~~(9) Visitation granted pursuant to this section shall be~~
26 ~~incorporated into the parenting plan for the child.~~

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

31 **Sec. 5.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to
32 read 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)
35 of this section.

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

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

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

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

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

17 (D) RCW 9A.44.089;

18 (E) RCW 9A.44.093;

19 (F) RCW 9A.44.096;

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

23 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

16 (H) Chapter 9.68A RCW;

17 (I) Any predecessor or antecedent statute for the offenses
18 listed 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
21 (H) of this subsection.

22 This subsection (2)(b) shall not apply when (c) or (e) of
23 this 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
27 with a child that would otherwise be allowed under this chapter.
28 If a parent resides with an adult or a juvenile who has been
29 found to be a sexual predator under chapter 71.09 RCW or under an
30 analogous statute of any other jurisdiction, the court shall
31 restrain the parent from contact with the parent's child except
32 contact that occurs outside that person's presence.

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

1 (i) RCW 9A.64.020 (1) or (2), provided that the person
2 convicted 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
5 at least eight years older than the victim;

6 (iv) RCW 9A.44.079, provided that the person convicted was at
7 least 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
10 least 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
15 an offense analogous to the offenses listed in (d)(i) through
16 (vii) of this subsection.

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

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

29 (ii) RCW 9A.44.073;

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

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

34 (v) RCW 9A.44.083;

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

37 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

38 (ii) If the child was the victim of the sex offense committed
39 by the person who is residing with the parent requesting

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

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

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

1 supervisor has failed to protect the child or is no longer
2 willing or capable of protecting the child.

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

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

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

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

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

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

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

28 (n) If the court expressly finds based on the evidence that
29 contact between the parent and the child will not cause physical,
30 sexual, or emotional abuse or harm to the child and that the
31 probability that the parent's or other person's harmful or
32 abusive conduct will recur is so remote that it would not be in
33 the child's best interests to apply the limitations of (a), (b),
34 and (m)(i) and (iii) of this subsection, or if the court
35 expressly finds that the parent's conduct did not have an impact
36 on the child, then the court need not apply the limitations of
37 (a), (b), and (m)(i) and (iii) of this subsection. The weight
38 given to the existence of a protection order issued under chapter
39 26.50 RCW as to domestic violence is within the discretion of the

1 court. This subsection shall not apply when (c), (d), (e), (f),
2 (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection
3 apply.

4 ~~(3) ((Any person may petition the court for visitation rights~~
5 ~~at any time including, but not limited to, custody proceedings.~~
6 ~~The court may order visitation rights for any person when~~
7 ~~visitation may serve the best interest of the child whether or~~
8 ~~not there has been any change of circumstances.)) A person other~~

9 than a parent may petition the court for visitation with a child
10 under section 3 of this act.

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

16 (5) For the purposes of this section, a parent's child means
17 that parent's natural child, adopted child, or stepchild.

18 **Sec. 6.** RCW 26.09.160 and 1991 c 367 s 4 are each amended to
19 read as follows:

20 (1) The performance of parental functions and the duty to
21 provide child support are distinct responsibilities in the care
22 of a child. If a party fails to comply with a provision of a
23 decree or temporary order of injunction, the obligation of the
24 other party to make payments for support or maintenance or to
25 permit contact with children is not suspended. An attempt by a
26 parent, in either the negotiation or the performance of a
27 parenting plan, to condition one aspect of the parenting plan
28 upon another, to condition payment of child support upon an
29 aspect of the parenting plan, to refuse to pay ordered child
30 support, to refuse to perform the duties provided in the
31 parenting plan, or to hinder the performance by the other parent
32 of duties provided in the parenting plan, shall be deemed bad
33 faith and shall be punished by the court by holding the party in
34 contempt of court and by awarding to the aggrieved party
35 reasonable attorneys' fees and costs incidental in bringing a
36 motion for contempt of court.

37 (2)(a) A motion may be filed to initiate a contempt action to
38 coerce a parent to comply with an order establishing residential

1 provisions for a child or awarding contact with a child to a
2 nonparent under section 3 of this act. If the court finds there
3 is reasonable cause to believe the parent has not complied with
4 the order, the court may issue an order to show cause why the
5 relief requested should not be granted.

6 (b) If, based on all the facts and circumstances, the court
7 finds after hearing that the parent, in bad faith, has not
8 complied with the order establishing residential provisions for
9 the child or awarding contact with a nonparent, the court shall
10 find the parent in contempt of court. Upon a finding of
11 contempt, the court shall order:

12 (i) The noncomplying parent to provide the moving party
13 additional time with the child. The additional time shall be
14 equal to the time missed with the child, due to the parent's
15 noncompliance;

16 (ii) The parent to pay, to the moving party, all court costs
17 and reasonable attorneys' fees incurred as a result of the
18 noncompliance, and any reasonable expenses incurred in locating
19 or returning a child; and

20 (iii) The parent to pay, to the moving party, a civil
21 penalty, not less than the sum of one hundred dollars.

22 The court may also order the parent to be imprisoned in the
23 county jail, if the parent is presently able to comply with the
24 provisions of the court-ordered parenting plan or court order
25 awarding contact with a nonparent and is presently unwilling to
26 comply. The parent may be imprisoned until he or she agrees to
27 comply with the order, but in no event for more than one hundred
28 eighty days.

29 (3) On a second failure within three years to comply with a
30 residential provision of a court-ordered parenting plan or court
31 order awarding contact with a nonparent, a motion may be filed to
32 initiate contempt of court proceedings according to the procedure
33 set forth in subsection (2)(a) and (b) of this section. On a
34 finding of contempt under this subsection, the court shall order:

35 (a) The noncomplying parent to provide the other parent or
36 party additional time with the child. The additional time shall
37 be twice the amount of the time missed with the child, due to the
38 parent's noncompliance;

1 (b) The noncomplying parent to pay, to the other parent or
2 party, all court costs and reasonable attorneys' fees incurred as
3 a result of the noncompliance, and any reasonable expenses
4 incurred in locating or returning a child; and

5 (c) The noncomplying parent to pay, to the moving party, a
6 civil penalty of not less than two hundred fifty dollars.

7 The court may also order the parent to be imprisoned in the
8 county jail, if the parent is presently able to comply with the
9 provisions of the court-ordered parenting plan or court order
10 awarding contact with a nonparent and is presently unwilling to
11 comply. The parent may be imprisoned until he or she agrees to
12 comply with the order but in no event for more than one hundred
13 eighty days.

14 (4) For purposes of subsections (1), (2), and (3) of this
15 section, the parent shall be deemed to have the present ability
16 to comply with the order establishing residential provisions or
17 awarding contact with a nonparent unless he or she establishes
18 otherwise by a preponderance of the evidence. The parent shall
19 establish a reasonable excuse for failure to comply with the
20 court-ordered contact with a nonparent or the residential
21 provision of a court-ordered parenting plan by a preponderance of
22 the evidence.

23 (5) Any monetary award ordered under subsections (1), (2),
24 and (3) of this section may be enforced, by the party to whom it
25 is awarded, in the same manner as a civil judgment.

26 (6) Subsections (1), (2), and (3) of this section authorize
27 the exercise of the court's power to impose remedial sanctions
28 for contempt of court and is in addition to any other contempt
29 power the court may possess.

30 (7) Upon motion for contempt of court under subsections (1)
31 through (3) of this section, if the court finds the motion was
32 brought without reasonable basis, the court shall order the
33 moving party to pay to the nonmoving party, all costs, reasonable
34 attorneys' fees, and a civil penalty of not less than one hundred
35 dollars.

36 **Sec. 7.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to
37 read as follows:

1 (1) Except as otherwise provided in subsections (4), (5),
2 (6), (8), and (10) of this section, the court shall not modify a
3 prior custody decree or a parenting plan unless it finds, upon
4 the basis of facts that have arisen since the prior decree or
5 plan or that were unknown to the court at the time of the prior
6 decree or plan, that a substantial change has occurred in the
7 circumstances of the child or the nonmoving party and that the
8 modification is in the best interest of the child and is
9 necessary to serve the best interests of the child.

10 (2) In applying these standards, the court shall retain the
11 residential schedule established by the decree or parenting plan
12 unless:

13 (a) The parents agree to the modification;

14 (b) The child has been integrated into the family of the
15 petitioner with the consent of the other parent in substantial
16 deviation from the parenting plan;

17 (c) The child's present environment is detrimental to the
18 child's physical, mental, or emotional health and the harm likely
19 to be caused by a change of environment is outweighed by the
20 advantage of a change to the child; or

21 (d) The court has found the nonmoving parent in contempt of
22 court at least twice within three years because the parent failed
23 to comply with a court order awarding contact with a nonparent or
24 the parent failed to comply with the residential time provisions
25 in the court-ordered parenting plan, or the parent has been
26 convicted of custodial interference in the first or second degree
27 under RCW 9A.40.060 or 9A.40.070.

28 (3) A conviction of custodial interference in the first or
29 second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a
30 substantial change of circumstances for the purposes of this
31 section.

32 (4) The court may reduce or restrict contact between the
33 child and the parent with whom the child does not reside a
34 majority of the time if it finds that the reduction or
35 restriction would serve and protect the best interests of the
36 child using the criteria in RCW 26.09.191.

37 (5) The court may order adjustments to the residential
38 aspects of a parenting plan upon a showing of a substantial
39 change in circumstances of either parent or of the child, and

1 without consideration of the factors set forth in subsection (2)
2 of this section, if the proposed modification is only a minor
3 modification in the residential schedule that does not change the
4 residence the child is scheduled to reside in the majority of the
5 time and:

6 (a) Does not exceed twenty-four full days in a calendar year;
7 or

8 (b) Is based on a change of residence of the parent with whom
9 the child does not reside the majority of the time or an
10 involuntary change in work schedule by a parent which makes the
11 residential schedule in the parenting plan impractical to follow;
12 or

13 (c) Does not result in a schedule that exceeds ninety
14 overnights per year in total, if the court finds that, at the
15 time the petition for modification is filed, the decree of
16 dissolution or parenting plan does not provide reasonable time
17 with the parent with whom the child does not reside a majority of
18 the time, and further, the court finds that it is in the best
19 interests of the child to increase residential time with the
20 parent in excess of the residential time period in (a) of this
21 subsection. However, any motion under this subsection (5)(c) is
22 subject to the factors established in subsection (2) of this
23 section if the party bringing the petition has previously been
24 granted a modification under this same subsection within twenty-
25 four months of the current motion. Relief granted under this
26 section shall not be the sole basis for adjusting or modifying
27 child support.

28 (6) The court may order adjustments to the residential
29 aspects of a parenting plan pursuant to a proceeding to permit or
30 restrain a relocation of the child. The person objecting to the
31 relocation of the child or the relocating person's proposed
32 revised residential schedule may file a petition to modify the
33 parenting plan, including a change of the residence in which the
34 child resides the majority of the time, without a showing of
35 adequate cause other than the proposed relocation itself. A
36 hearing to determine adequate cause for modification shall not be
37 required so long as the request for relocation of the child is
38 being pursued. In making a determination of a modification
39 pursuant to relocation of the child, the court shall first

1 determine whether to permit or restrain the relocation of the
2 child using the procedures and standards provided in RCW
3 26.09.405 through 26.09.560. Following that determination, the
4 court shall determine what modification pursuant to relocation
5 should be made, if any, to the parenting plan or custody order or
6 visitation order.

7 (7) A parent with whom the child does not reside a majority
8 of the time and whose residential time with the child is subject
9 to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek
10 expansion of residential time under subsection (5)(c) of this
11 section unless that parent demonstrates a substantial change in
12 circumstances specifically related to the basis for the
13 limitation.

14 (8) If a parent with whom the child does not reside a
15 majority of the time voluntarily fails to exercise residential
16 time for an extended period, that is, one year or longer, the
17 court upon proper motion may make adjustments to the parenting
18 plan in keeping with the best interests of the minor child.

19 (9) A parent with whom the child does not reside a majority
20 of the time who is required by the existing parenting plan to
21 complete evaluations, treatment, parenting, or other classes may
22 not seek expansion of residential time under subsection (5)(c) of
23 this section unless that parent has fully complied with such
24 requirements.

25 (10) The court may order adjustments to any of the
26 nonresidential aspects of a parenting plan upon a showing of a
27 substantial change of circumstances of either parent or of a
28 child, and the adjustment is in the best interest of the child.
29 Adjustments ordered under this section may be made without
30 consideration of the factors set forth in subsection (2) of this
31 section.

32 (11) If the court finds that a motion to modify a prior
33 decree or parenting plan has been brought in bad faith, the court
34 shall assess the attorney's fees and court costs of the nonmoving
35 parent against the moving party.

36 NEW SECTION. **Sec. 8.** This act is necessary for the
37 immediate preservation of the public peace, health, or safety, or

1 support of the state government and its existing public
2 institutions, and takes effect immediately."

3 Correct the title.

EFFECT: The striking amendment to the striking amendment makes changes to who may petition for visitation and under what circumstances. This striking amendment:

- Allows a nonparent related to the child by blood, marriage, or adoption to petition for visitation when:
(a) the petition is filed during pending dissolution, legal separation, or modification of a parenting plan or within 12 months of the effective date of the act; (b) the parent allowed the relationship or the relationship was formed because the parent was unavailable and (c) the relationship is beneficial to the child and the nonparent;
or
(a) the petition is filed 12 months from the date a final order is entered in a dissolution, legal separation, or modification of a parenting plan or within 12 months of the death of a parent (b) the parent allowed the relationship or the relationship was formed because the parent was unavailable (c) the parent substantially interfered with the nonparent's relationship (d) the nonparent attempted to resolve the dispute before going to court and (e) the relationship is beneficial to the child and the nonparent.
- Allows a nonparent who is not related to the child to petition for visitation when:
(a) the petition is filed during pending dissolution, legal separation, or modification of a parenting plan or within 12 months of the effective date of the act; (b) the nonparent has a parent-like relationship with the child for a substantial period of time; (c) the parent allowed the relationship or the relationship was formed because the parent was unavailable (d) the relationship is beneficial to the child and nonparent.
- Provides that caregivers receiving or expecting compensation are not within the definition of "parent-like relationship" (Both striking amendments remove language in the senate bill that required the nonparent to provide financial support for the purpose of showing a "parent-like relationship");
- Keeps provisions that allow a nonparent to bring a contempt action for enforcement and that allow a party to a parenting plan to modify the plan if a parent is in contempt at least twice within three years (both striking amendments have these provisions but the senate bill did not).