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HOUSE BILL 2314

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Carrell, Boldt, Mielke, Pearson, Priest, McMahan and Hinkle

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1            AN ACT Relating to visitation rights for nonparents; amending RCW  
2 26.09.240, 26.10.160, 26.09.160, and 26.09.260; adding new sections to  
3 chapter 26.10 RCW; creating new sections; prescribing penalties; and  
4 declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.**    LEGISLATIVE INTENT.    The legislature affirms  
7 that parents have a paramount right to raise their minor children,  
8 including a fundamental right to provide the care, guidance, and  
9 discipline necessary to prepare their children for a productive,  
10 fulfilling life.    The legislature recognizes that ensuring this  
11 paramount right of parents is in the best interest of the families and  
12 minor children of the state of Washington.    The legislature further  
13 recognizes that in certain circumstances a minor child's interest in  
14 maintaining strong emotional bonds that the child has developed with  
15 others and relies upon should be considered.    The legislature intends  
16 to establish consistent and rigorous standards that must be met for a  
17 nonparent to obtain visitation with a minor child.

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

3        DEFINITIONS.    The definitions in this section apply throughout  
4 sections 3 through 5 of this act unless the context clearly requires  
5 otherwise.

6        (1) "Applicant" means a nonparent who initiates a proceeding under  
7 this chapter.

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

11       (3) "Grandparent" means a nonparent who is related to a child as  
12 grandparent by blood, marriage, or adoption.

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

17       (5) "Nonparent" includes any person not legally recognized as a  
18 parent whether or not related by blood, marriage, or adoption.

19       (6) "Parent-like relationship" means a very significant  
20 relationship between a nonparent and a child in which the nonparent  
21 undertook responsibilities and tasks commonly performed by parents and  
22 commonly recognized as actions by someone in a parent-like  
23 relationship. For nonparents other than grandparents and relatives,  
24 "parent-like relationship" includes significant financial support  
25 provided by the nonparent for the child's basic needs during the  
26 relationship. Excluded from the category of persons having a parent-  
27 like relationship with a child are baby-sitters or other caregivers who  
28 provided the child care for compensation or with the expectation of  
29 compensation, either directly or indirectly, in whole or in part.  
30 Compensation does not include incidental funds that the parent provides  
31 to the nonparent to be used for the benefit of the child.

32       (7) "Relative" means a nonparent who is not a grandparent and who  
33 is related to the child by blood, marriage, or adoption.

34       (8) "Substantially interfered" means to have unreasonably and  
35 greatly diminished the amount and quality of contact a nonparent has  
36 had with the child. A reasonable reduction in the frequency or length  
37 of contact previously enjoyed with the child is not a substantial  
38 interference.

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

3        VISITATION BY GRANDPARENTS.    (1) A grandparent may initiate a court  
4 proceeding for contact with a child by filing a verified application to  
5 obtain court-ordered contact under the following circumstances:

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

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

12        (iii) The relationship between the applicant and the child is  
13 beneficial to the child and to the applicant; or

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

18        (ii) A parent or custodian of the child consented to or allowed the  
19 formation and establishment of the relationship or the relationship was  
20 formed as a result of the unavailability or inability of any legal  
21 parent to perform caretaking functions;

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

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

26        (v) The relationship between the applicant and the child is  
27 beneficial to the child and to the applicant.

28        (2) Notwithstanding subsection (1) of this section, a grandparent  
29 may initiate a court proceeding for contact with a child by filing a  
30 verified application to obtain court-ordered contact under the  
31 following circumstances:

32        (a) The application is filed within twelve months following the  
33 effective date of this section;

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

1 (c) The relationship between the applicant and the child is  
2 beneficial to the child and to the applicant.

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

6 (b) Upon a finding that the applicant has standing, the applicant  
7 shall come forward with evidence to show that the child would very  
8 likely suffer harm if contact were not awarded. If the applicant  
9 presents evidence that could allow a reasonable fact finder to conclude  
10 that the child would very likely suffer harm, the burden shifts to the  
11 parent or custodian to present evidence why the decision to refuse  
12 contact is reasonable and in the best interests of the child.

13 (4) The court shall order contact if it finds that the applicant  
14 has satisfied the burden of showing by clear and convincing evidence  
15 that:

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

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

20 (5) If the court dismisses the proceeding for lack of standing, the  
21 court shall award reasonable and necessary costs and fees to the  
22 prevailing party unless there is a compelling reason to do otherwise.  
23 In all other cases, the court may award such costs and fees as it deems  
24 appropriate.

25 (6) If the parent or custodian fails to comply with a court order  
26 awarding contact between the grandparent and the child, the grandparent  
27 may file a motion to initiate a contempt action under RCW 26.09.160.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 26.10 RCW  
29 to read as follows:

30 VISITATION BY RELATIVES. (1) A relative who is related to the  
31 child by blood, marriage, or adoption may initiate a court proceeding  
32 for contact with a child by filing a verified application to obtain  
33 court-ordered contact under the following circumstances:

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

36 (b) A parent or custodian of the child consented to or allowed the

1 formation and establishment of the relationship or the relationship was  
2 formed as a result of the unavailability or inability of any legal  
3 parent to perform caretaking functions;

4 (c) The child's parent or custodian has substantially interfered  
5 with the applicant's relationship with the child; and

6 (d) The relationship between the applicant and the child is  
7 beneficial to the child and to the applicant.

8 (2) Notwithstanding subsection (1) of this section, a relative may  
9 initiate a court proceeding for contact with a child by filing a  
10 verified application to obtain court-ordered contact under the  
11 following circumstances:

12 (a) The application is filed within twelve months following the  
13 effective date of this section;

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

18 (c) The child's parent or custodian has substantially interfered  
19 with the applicant's relationship with the child; and

20 (d) The relationship between the applicant and the child is  
21 beneficial to the child and to the applicant.

22 (3)(a) The court shall treat standing as a threshold issue. The  
23 applicant bears the burden of establishing standing. If the applicant  
24 does not satisfy this burden, the proceeding shall be dismissed.

25 (b) Upon a finding that the applicant has standing, the applicant  
26 shall come forward with evidence to show that the child would very  
27 likely suffer harm if contact were not awarded. If the applicant  
28 presents evidence that could allow a reasonable fact finder to conclude  
29 that the child would very likely suffer harm, the burden shifts to the  
30 parent or custodian to present evidence why the decision to refuse  
31 contact is reasonable and in the best interests of the child.

32 (4) The court shall order contact if it finds that the applicant  
33 has satisfied the burden of showing by clear and convincing evidence  
34 that:

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

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

1 (5) If the court dismisses the proceeding for lack of standing, the  
2 court shall award reasonable and necessary costs and fees to the  
3 prevailing party unless there is a compelling reason to do otherwise.  
4 In all other cases, the court may award such costs and fees as it deems  
5 appropriate.

6 (6) If the parent or custodian fails to comply with a court order  
7 awarding contact between the relative and the child, the relative may  
8 file a motion to initiate a contempt action under RCW 26.09.160.

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

11 VISITATION BY NONPARENTS OTHER THAN GRANDPARENTS AND RELATIVES.

12 (1) A nonparent other than a grandparent or a relative may initiate a  
13 court proceeding for contact with a child by filing a verified  
14 application to obtain court-ordered contact under the following  
15 circumstances:

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

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

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

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

26 (e) The child's parent or custodian has substantially interfered  
27 with the applicant's relationship with the child; and

28 (f) The relationship between the applicant and the child is  
29 beneficial to the child and to the applicant.

30 (2)(a) The court shall treat standing as a threshold issue. The  
31 applicant bears the burden of establishing standing. If the applicant  
32 does not satisfy this burden, the proceeding shall be dismissed.

33 (b) Upon a finding that the applicant has standing, the applicant  
34 shall come forward with evidence to show that the child would very  
35 likely suffer harm if contact were not awarded. If the applicant  
36 presents evidence that could allow a reasonable fact finder to conclude

1 that the child would very likely suffer harm, the burden shifts to the  
2 parent or custodian to present evidence why the decision to refuse  
3 contact is reasonable and in the best interests of the child.

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

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

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

11 (4) If the court dismisses the proceeding for lack of standing, the  
12 court shall award reasonable and necessary costs and fees to the  
13 prevailing party unless there is a compelling reason to do otherwise.  
14 In all other cases, the court may award such costs and fees as it deems  
15 appropriate.

16 (5) If the parent or custodian fails to comply with a court order  
17 awarding contact between the nonparent and the child, the nonparent may  
18 file a motion to initiate a contempt action under RCW 26.09.160.

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

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

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

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

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

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

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

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

17       ~~(a) The strength of the relationship between the child and the~~  
18 ~~petitioner;~~

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

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

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

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

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

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

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

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

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



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

3       ~~(10) The court may modify or terminate visitation rights granted~~  
4 ~~pursuant to this section in any subsequent modification action upon a~~  
5 ~~showing that the visitation is no longer in the best interest of the~~  
6 ~~child)) under section 3, 4, or 5 of this act.~~

7       **Sec. 7.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read  
8 as follows:

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

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

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

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

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

30       (D) RCW 9A.44.089;

31       (E) RCW 9A.44.093;

32       (F) RCW 9A.44.096;

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

36       (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

25 (D) RCW 9A.44.089;

26 (E) RCW 9A.44.093;

27 (F) RCW 9A.44.096;

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

31 (H) Chapter 9.68A RCW;

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

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

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

1 (c) If a parent has been found to be a sexual predator under  
2 chapter 71.09 RCW or under an analogous statute of any other  
3 jurisdiction, the court shall restrain the parent from contact with a  
4 child that would otherwise be allowed under this chapter. If a parent  
5 resides with an adult or a juvenile who has been found to be a sexual  
6 predator under chapter 71.09 RCW or under an analogous statute of any  
7 other jurisdiction, the court shall restrain the parent from contact  
8 with the parent's child except contact that occurs outside that  
9 person's presence.

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

16 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted  
17 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 least  
22 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 least  
25 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 (d)(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 (d)(i) through (vii) of  
31 this subsection.

32 (e) There is a rebuttable presumption that a parent who resides  
33 with a person who, as an adult, has been convicted, or as a juvenile  
34 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)  
35 of this subsection places a child at risk of abuse or harm when that  
36 parent exercises visitation in the presence of the convicted or  
37 adjudicated person. Unless the parent rebuts the presumption, the

1 court shall restrain the parent from contact with the parent's child  
2 except for contact that occurs outside of the convicted or adjudicated  
3 person's presence:

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

6 (ii) RCW 9A.44.073;

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

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

11 (v) RCW 9A.44.083;

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

14 (vii) RCW 9A.44.100;

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

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

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

22 (i) If the child was not the victim of the sex offense committed by  
23 the parent requesting visitation, (A) contact between the child and the  
24 offending parent is appropriate and poses minimal risk to the child,  
25 and (B) the offending parent has successfully engaged in treatment for  
26 sex offenders or is engaged in and making progress in such treatment,  
27 if any was ordered by a court, and the treatment provider believes such  
28 contact is appropriate and poses minimal risk to the child; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

10 ~~(3) ((Any person may petition the court for visitation rights at~~  
11 ~~any time including, but not limited to, custody proceedings. The court~~  
12 ~~may order visitation rights for any person when visitation may serve~~  
13 ~~the best interest of the child whether or not there has been any change~~  
14 ~~of circumstances.))~~ A person other than a parent may petition the  
15 court for visitation with a child under sections 3, 4, and 5 of this  
16 act.

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

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

23 **Sec. 8.** RCW 26.09.160 and 1991 c 367 s 4 are each amended to read  
24 as follows:

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

1 punished by the court by holding the party in contempt of court and by  
2 awarding to the aggrieved party reasonable attorneys' fees and costs  
3 incidental in bringing a motion for contempt of court.

4 (2)(a) A motion may be filed to initiate a contempt action to  
5 coerce a parent to comply with an order establishing residential  
6 provisions for a child or awarding contact with a child to a nonparent  
7 under sections 3, 4, and 5 of this act. If the court finds there is  
8 reasonable cause to believe the parent has not complied with the order,  
9 the court may issue an order to show cause why the relief requested  
10 should not be granted.

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

16 (i) The noncomplying parent to provide the moving party additional  
17 time with the child. The additional time shall be equal to the time  
18 missed with the child, due to the parent's noncompliance;

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

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

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

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

37 (a) The noncomplying parent to provide the other parent or party

1 additional time with the child. The additional time shall be twice the  
2 amount of the time missed with the child, due to the parent's  
3 noncompliance;

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

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

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

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

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

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

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

36 **Sec. 9.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to read  
37 as follows:

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

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

12 (a) The parents agree to the modification;

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

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

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

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

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

34 (5) The court may order adjustments to the residential aspects of  
35 a parenting plan upon a showing of a substantial change in  
36 circumstances of either parent or of the child, and without  
37 consideration of the factors set forth in subsection (2) of this

1 section, if the proposed modification is only a minor modification in  
2 the residential schedule that does not change the residence the child  
3 is scheduled to reside in the majority of the time and:

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

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

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

22 (6) The court may order adjustments to the residential aspects of  
23 a parenting plan pursuant to a proceeding to permit or restrain a  
24 relocation of the child. The person objecting to the relocation of the  
25 child or the relocating person's proposed revised residential schedule  
26 may file a petition to modify the parenting plan, including a change of  
27 the residence in which the child resides the majority of the time,  
28 without a showing of adequate cause other than the proposed relocation  
29 itself. A hearing to determine adequate cause for modification shall  
30 not be required so long as the request for relocation of the child is  
31 being pursued. In making a determination of a modification pursuant to  
32 relocation of the child, the court shall first determine whether to  
33 permit or restrain the relocation of the child using the procedures and  
34 standards provided in RCW 26.09.405 through 26.09.560. Following that  
35 determination, the court shall determine what modification pursuant to  
36 relocation should be made, if any, to the parenting plan or custody  
37 order or visitation order.

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

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

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

17 (10) The court may order adjustments to any of the nonresidential  
18 aspects of a parenting plan upon a showing of a substantial change of  
19 circumstances of either parent or of a child, and the adjustment is in  
20 the best interest of the child. Adjustments ordered under this section  
21 may be made without consideration of the factors set forth in  
22 subsection (2) of this section.

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

27 NEW SECTION. **Sec. 10.** Captions used in this act are not part of  
28 the law.

29 NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
30 preservation of the public peace, health, or safety, or support of the  
31 state government and its existing public institutions, and takes effect  
32 immediately.

--- END ---