
HOUSE BILL 2193

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Pedersen, Nealey, Kagi, Rivers, Orwall, Walsh, Eddy, Goodman, Roberts, Fagan, Ladenburg, Green, Ormsby, and Kenney

Prefiled 12/15/11. Read first time 01/09/12. Referred to Committee on Judiciary.

1 AN ACT Relating to third-party visitation; amending RCW 26.10.160;
2 adding a new chapter to Title 26 RCW; and repealing RCW 26.09.240.

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

4 NEW SECTION. **Sec. 1.** (1) Except as provided in subsection (2) of
5 this section, a person who is not the parent of the child may petition
6 for visitation with the child if the person has established an ongoing
7 and substantial relationship with the child.

8 (2) A person may not petition for visitation with a child if the
9 child's two parents, living together with the child, agree that
10 visitation should not be granted. For the purposes of this chapter
11 "parent" means a biological, adoptive, or adjudicated parent.

12 (3) A person has established an ongoing and substantial
13 relationship with a child if the person and the child have had a
14 relationship with substantial continuity for at least one year through
15 interaction, companionship, and mutuality, without expectation of
16 financial compensation.

17 NEW SECTION. **Sec. 2.** (1) A petition for visitation under section

1 of this act must be filed in the county where the child primarily
2 resides.

3 (2) The petitioner may not file a petition for visitation more than
4 once, unless:

5 (a) At least two years have passed since the final order issued on
6 the previous petition for visitation; and

7 (b) The petitioner shows there has been a substantial change in
8 circumstances of the nonmoving party or the child based on facts that
9 have arisen since, or facts that were unknown to the court at the time
10 of, the order issued on the previous petition for visitation.

11 (3) The petitioner must file with the petition an affidavit
12 alleging that:

13 (a) A sufficient relationship with the child exists or existed
14 before interference by the respondent; and

15 (b) The child would likely suffer harm or the substantial risk of
16 harm if visitation between the petitioner and child were not granted.

17 (4) The petitioner shall set forth facts in the affidavit
18 supporting the petitioner's requested order for visitation.

19 (5) The petitioner shall serve notice of the filing to each person
20 having legal custody of, or court-ordered residential time with, the
21 child. A person having legal custody or residential time may file an
22 opposing affidavit.

23 (6) If, based on the petition and affidavits, the court finds that
24 it is more likely than not that visitation will be granted, the court
25 shall hold a hearing.

26 (7) The court may not enter any temporary orders to establish,
27 enforce, or modify visitation under this section.

28 NEW SECTION. **Sec. 3.** (1)(a) At a hearing pursuant to section 2(6)
29 of this act, the court shall enter an order granting visitation if it
30 finds that the child would likely suffer harm or the substantial risk
31 of harm if visitation between the petitioner and the child is not
32 granted and that granting visitation between the child and petitioner
33 is in the best interest of the child.

34 (b) An order granting visitation does not confer upon the person
35 the rights and duties of a parent.

36 (2) In making its determination, the court shall consider the
37 respondent's reasons for denying visitation. It is presumed that a fit

1 parent's decision to deny visitation is in the best interest of the
2 child and does not create a likelihood of harm or a substantial risk of
3 harm to the child.

4 (3) To rebut the presumption, the petitioner must prove by clear
5 and convincing evidence that the child would likely suffer harm or the
6 substantial risk of harm if visitation between the petitioner and the
7 child were not granted.

8 (4) If the court finds that the petitioner has met the standard for
9 rebutting the presumption, or if there is no presumption because no
10 parent has custody of the child, the court shall consider whether it is
11 in the best interest of the child to enter an order granting
12 visitation. The petitioner must prove by clear and convincing evidence
13 that visitation is in the child's best interest. In determining
14 whether it is in the best interest of the child, the court shall
15 consider the following, nonexclusive factors:

16 (a) The love, affection, and strength of the current relationship
17 between the child and the petitioner and how the relationship is
18 beneficial to the child;

19 (b) The length and quality of the prior relationship between the
20 child and the petitioner before the respondent denied visitation,
21 including the role performed by the petitioner and the emotional ties
22 that existed between the child and the petitioner;

23 (c) The relationship between the petitioner and the respondent;

24 (d) The nature and reason for the respondent's objection to
25 granting the petitioner visitation;

26 (e) The effect that granting visitation will have on the
27 relationship between the child and the respondent;

28 (f) The residential time-sharing arrangements between the parties
29 having residential time with the child;

30 (g) The good faith of the petitioner and respondent;

31 (h) Any history of physical, emotional, or sexual abuse or neglect
32 by the petitioner, or any history of physical, emotional, or sexual
33 abuse or neglect by a person residing with the petitioner if visitation
34 would involve contact between the child and the person with such
35 history;

36 (i) The child's reasonable preference, if the court considers the
37 child to be of sufficient age to express a preference; and

38 (j) Any other factor relevant to the child's best interest.

1 NEW SECTION. **Sec. 4.** (1)(a) For the purposes of sections 1
2 through 3 of this act, the court shall, on motion of the respondent,
3 order the petitioner to pay reasonable attorneys' fees to the
4 respondent in advance and prior to any hearing, unless the court finds
5 that no financial hardship will be imposed upon the respondent.

6 (b) The court may, on its own motion or the motion of the
7 respondent, order the petitioner to pay reasonable attorneys' fees and
8 costs to the respondent regardless of the outcome of the petition.

9 (2) If visitation is granted, the court shall order the petitioner
10 to pay all transportation costs associated with visitation.

11 NEW SECTION. **Sec. 5.** (1) A court may not modify or terminate an
12 order granting visitation under section 3 of this act unless it finds,
13 on the basis of facts that have arisen since the entry of the order or
14 were unknown to the court at the time it entered the order, that a
15 substantial change of circumstances has occurred in the circumstances
16 of the child or nonmoving party and that modification or termination of
17 the order is necessary for the best interest of the child.

18 (2) The petitioner must file a petition for modification or
19 termination in the county where the child primarily resides.

20 (3) The petitioner must file with the petition an affidavit
21 alleging that, on the basis of facts that have arisen since the entry
22 of the order or were unknown to the court at the time it entered the
23 order, there is a substantial change of circumstances of the child or
24 nonmoving party and that modification or termination of the order is
25 necessary for the best interest of the child. The petitioner shall set
26 forth facts in the affidavit supporting the petitioner's requested
27 order.

28 (4) The petitioner shall serve notice of the petition to each
29 person having legal custody of, or court-ordered residential time or
30 court-ordered visitation with, the child. A person having legal
31 custody or residential or visitation time may file an opposing
32 affidavit.

33 (5) If, based on the petition and affidavits, the court finds that
34 it is more likely than not that a modification or termination will be
35 granted, the court shall hold a hearing.

36 (6) The court may award reasonable attorneys' fees and costs to
37 either party.

1 **Sec. 6.** RCW 26.10.160 and 2011 c 89 s 7 are each amended to read
2 as follows:

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

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

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

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

21 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

25 (E) RCW 9A.44.093;

26 (F) RCW 9A.44.096;

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

30 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

18 (D) RCW 9A.44.089;

19 (E) RCW 9A.44.093;

20 (F) RCW 9A.44.096;

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

24 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

12 (ii) RCW 9A.44.073;

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

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

17 (v) RCW 9A.44.083;

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

20 (vii) RCW 9A.44.100;

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

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

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

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

37 (ii) RCW 9A.44.073;

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

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

5 (v) RCW 9A.44.083;

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

8 (vii) RCW 9A.44.100;

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

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

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

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

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

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

35 (i) If the child was not the victim of the sex offense committed by
36 the person who is residing with the parent requesting visitation, (A)
37 contact between the child and the parent residing with the convicted or
38 adjudicated person is appropriate and that parent is able to protect

1 the child in the presence of the convicted or adjudicated person, and
2 (B) the convicted or adjudicated person has successfully engaged in
3 treatment for sex offenders or is engaged in and making progress in
4 such treatment, if any was ordered by a court, and the treatment
5 provider believes such contact is appropriate and poses minimal risk to
6 the child; or

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

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

33 (i) If the court finds that the parent has met the burden of
34 rebutting the presumption under (g) of this subsection, the court may
35 allow a parent residing with a person who has been adjudicated as a
36 juvenile of a sex offense listed in (e)(i) through (ix) of this
37 subsection to have visitation with the child in the presence of the
38 person adjudicated as a juvenile, supervised by a neutral and

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

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

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

1 If the offending parent was not ordered by a court to participate in
2 treatment for sex offenders, then the parent shall obtain a
3 psychosexual evaluation conducted by a certified sex offender treatment
4 provider or a certified affiliate sex offender treatment provider
5 indicating that the offender has the lowest likelihood of risk to
6 reoffend before the court grants unsupervised contact between the
7 parent and a child.

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

34 (m)(i) The limitations imposed by the court under (a) or (b) of
35 this subsection shall be reasonably calculated to protect the child
36 from the physical, sexual, or emotional abuse or harm that could result
37 if the child has contact with the parent requesting visitation. If the
38 court expressly finds based on the evidence that limitations on

1 visitation with the child will not adequately protect the child from
2 the harm or abuse that could result if the child has contact with the
3 parent requesting visitation, the court shall restrain the person
4 seeking visitation from all contact with the child.

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

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

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

1 order issued under chapter 26.50 RCW as to domestic violence is within
2 the discretion of the court. This subsection shall not apply when (c),
3 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this
4 subsection apply.

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

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

14 ~~((5))~~ (4) For the purposes of this section:

15 (a) "A parent's child" means that parent's natural child, adopted
16 child, or stepchild; and

17 (b) "Social worker" means a person with a master's or further
18 advanced degree from a social work educational program accredited and
19 approved as provided in RCW 18.320.010.

20 NEW SECTION. **Sec. 7.** RCW 26.09.240 (Visitation rights--Person
21 other than parent--Grandparents' visitation rights) and 1996 c 177 s 1,
22 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st
23 ex.s. c 157 s 24 are each repealed.

24 NEW SECTION. **Sec. 8.** Sections 1 through 5 of this act constitute
25 a new chapter in Title 26 RCW.

--- END ---