

ESSB 6268 - H COMM AMD

By Committee on Civil Rights & Judiciary

ADOPTED 03/03/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that
4 individuals who abuse their intimate partners often misuse court
5 proceedings in order to control, harass, intimidate, coerce, and/or
6 impoverish the abused partner. Court proceedings can provide a means
7 for an abuser to exert and reestablish power and control over a
8 domestic violence survivor long after a relationship has ended. The
9 legal system unwittingly becomes another avenue that abusers exploit
10 to cause psychological, emotional, and financial devastation. This
11 misuse of the court system by abusers has been referred to as legal
12 bullying, stalking through the courts, paper abuse, and similar
13 terms. The legislature finds that the term "abusive litigation" is
14 the most common term and that it accurately describes this problem.
15 Abusive litigation against domestic violence survivors arises in a
16 variety of contexts. Family law cases such as dissolutions, legal
17 separations, parenting plan actions or modifications, and protection
18 order proceedings are particularly common forums for abusive
19 litigation. It is also not uncommon for abusers to file civil
20 lawsuits against survivors, such as defamation, tort, or breach of
21 contract claims. Even if a lawsuit is meritless, forcing a survivor
22 to spend time, money, and emotional resources responding to the
23 action provides a means for the abuser to assert power and control
24 over the survivor.

25 The legislature finds that courts have considerable authority to
26 respond to abusive litigation tactics, while upholding litigants'
27 constitutional rights to access to the courts. Because courts have
28 inherent authority to control the conduct of litigants, they have
29 considerable discretion to fashion creative remedies in order to curb
30 abusive litigation. The legislature intends to provide the courts
31 with an additional tool to curb abusive litigation and to mitigate
32 the harms abusive litigation perpetuates.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

4 (1) "Abusive litigation" means litigation where the following
5 apply:

6 (a)(i) The opposing parties have a current or former intimate
7 partner relationship;

8 (ii) The party who is filing, initiating, advancing, or
9 continuing the litigation has been found by a court to have committed
10 domestic violence against the other party pursuant to: (A) An order
11 entered under this chapter; (B) a parenting plan with restrictions
12 based on RCW 26.09.191(2)(a)(iii); or (C) a restraining order entered
13 under chapter 26.09, 26.26, or 26.26A RCW, provided that the issuing
14 court made a specific finding that the restraining order was
15 necessary due to domestic violence; and

16 (iii) The litigation is being initiated, advanced, or continued
17 primarily for the purpose of harassing, intimidating, or maintaining
18 contact with the other party; and

19 (b) At least one of the following factors apply:

20 (i) Claims, allegations, and other legal contentions made in the
21 litigation are not warranted by existing law or by a reasonable
22 argument for the extension, modification, or reversal of existing
23 law, or the establishment of new law;

24 (ii) Allegations and other factual contentions made in the
25 litigation are without the existence of evidentiary support; or

26 (iii) An issue or issues that are the basis of the litigation
27 have previously been filed in one or more other courts or
28 jurisdictions and the actions have been litigated and disposed of
29 unfavorably to the party filing, initiating, advancing, or continuing
30 the litigation.

31 (2) "Intimate partner" is defined in RCW 26.50.010.

32 (3) "Litigation" means any kind of legal action or proceeding
33 including, but not limited to: (i) Filing a summons, complaint,
34 demand, or petition; (ii) serving a summons, complaint, demand, or
35 petition, regardless of whether it has been filed; (iii) filing a
36 motion, notice of court date, note for motion docket, or order to
37 appear; (iv) serving a motion, notice of court date, note for motion
38 docket, or order to appear, regardless of whether it has been filed
39 or scheduled; (v) filing a subpoena, subpoena duces tecum, request
40 for interrogatories, request for production, notice of deposition, or

1 other discovery request; or (vi) serving a subpoena, subpoena duces
2 tecum, request for interrogatories, request for production, notice of
3 deposition, or other discovery request.

4 (4) "Perpetrator of abusive litigation" means a person who files,
5 initiates, advances, or continues litigation in violation of an order
6 restricting abusive litigation.

7 NEW SECTION. **Sec. 3.** (1) A party to a case may request from the
8 court an order restricting abusive litigation if the parties are
9 current or former intimate partners and one party has been found by
10 the court to have committed domestic violence against the other
11 party:

12 (a) In any answer or response to the litigation being filed,
13 initiated, advanced, or continued;

14 (b) By motion made at any time during any open or ongoing case;
15 or

16 (c) By separate motion made under this chapter, within five years
17 of the entry of an order for protection even if the order has since
18 expired.

19 (2) Any court of competent jurisdiction may, on its own motion,
20 determine that a hearing pursuant to section 4 of this act is
21 necessary to determine if a party is engaging in abusive litigation.

22 (3) The administrative office of the courts shall update the
23 instructions, brochures, standard petition, and order for protection
24 forms, and create new forms for the motion for order restricting
25 abusive litigation and order restricting abusive litigation, and
26 update the court staff handbook when changes in the law make an
27 update necessary.

28 (4) No filing fee may be charged to the unrestricted party for
29 proceedings under this section regardless of whether it is filed
30 under this chapter or another action in this title. Forms and
31 instructional brochures shall be provided free of charge.

32 (5) The provisions of this section are nonexclusive and do not
33 affect any other remedy available.

34 NEW SECTION. **Sec. 4.** (1) If a party asserts that they are being
35 subjected to abusive litigation, the court shall attempt to verify
36 that the parties have or previously had an intimate partner
37 relationship and that the party raising the claim of abusive
38 litigation has been found to be a victim of domestic violence by the

1 other party. If the court verifies that both elements are true, or is
2 unable to verify that they are not true, the court shall set a
3 hearing to determine whether the litigation meets the definition of
4 abusive litigation.

5 (2) At the time set for the hearing on the alleged abusive civil
6 action, the court shall hear all relevant testimony and may require
7 any affidavits, documentary evidence, or other records the court
8 deems necessary.

9 NEW SECTION. **Sec. 5.** At the hearing conducted pursuant to
10 section 4 of this act, evidence of any of the following creates a
11 rebuttable presumption that litigation is being initiated, advanced,
12 or continued primarily for the purpose of harassing, intimidating, or
13 maintaining contact with the other party:

14 (1) The same or substantially similar issues between the same or
15 substantially similar parties have been litigated within the past
16 five years in the same court or any other court of competent
17 jurisdiction; or

18 (2) The same or substantially similar issues between the same or
19 substantially similar parties have been raised, pled, or alleged in
20 the past five years and were dismissed on the merits or with
21 prejudice; or

22 (3) Within the last ten years, the party allegedly engaging in
23 abusive litigation has been sanctioned under superior court civil
24 rule 11 or a similar rule or law in another jurisdiction for filing
25 one or more cases, petitions, motions, or other filings, that were
26 found to have been frivolous, vexatious, intransigent, or brought in
27 bad faith involving the same opposing party; or

28 (4) A court of record in another judicial district has determined
29 that the party allegedly engaging in abusive litigation has
30 previously engaged in abusive litigation or similar conduct and has
31 been subject to a court order imposing prefiling restrictions.

32 NEW SECTION. **Sec. 6.** (1) If the court finds by a preponderance
33 of the evidence that a party is engaging in abusive litigation, and
34 that any or all of the motions or actions pending before the court
35 are abusive litigation, the litigation shall be dismissed, denied,
36 stricken, or resolved by other disposition with prejudice.

1 (2) In addition to dismissal or denial of any pending abusive
2 litigation within the jurisdiction of the court, the court shall
3 enter an "order restricting abusive litigation." The order shall:

4 (a) Impose all costs of any abusive civil action pending in the
5 court at the time of the court's finding pursuant to subsection (1)
6 of this section against the party advancing the abusive litigation;

7 (b) Award the other party reasonable attorneys' fees and costs of
8 responding to the abusive litigation including the cost of seeking
9 the order restricting abusive litigation; and

10 (c) Identify the party protected by the order and impose
11 prefiling restrictions upon the party found to have engaged in
12 abusive litigation for a period of not less than forty-eight months
13 nor more than seventy-two months.

14 (3) If the court finds by a preponderance of the evidence that
15 the litigation does not constitute abusive litigation, the court
16 shall enter written findings and the litigation shall proceed.
17 Nothing in this section or chapter shall be construed as limiting the
18 court's inherent authority to control the proceedings and litigants
19 before it.

20 (4) The provisions of this section are nonexclusive and do not
21 affect any other remedy available to the person who is protected by
22 the order restricting abusive litigation or to the court.

23 NEW SECTION. **Sec. 7.** (1) Except as provided in this section, a
24 person who is subject to an order restricting abusive litigation is
25 prohibited from filing, initiating, advancing, or continuing the
26 litigation against the protected party for the period of time the
27 filing restrictions are in effect.

28 (2) Notwithstanding subsection (1) of this section and consistent
29 with the state Constitution, a person who is subject to an order
30 restricting abusive litigation may seek permission to file a new case
31 or a motion in an existing case using the procedure set out in
32 subsection (3) of this section.

33 (3) (a) A person who is subject to an order restricting litigation
34 against whom prefiling restrictions have been imposed pursuant to
35 this chapter who wishes to initiate a new case or file a motion in an
36 existing case during the time the person is under filing restrictions
37 must first appear before the judicial officer who imposed the
38 prefiling restrictions to make application for permission to
39 institute the civil action.

1 (b) (i) The judicial officer may examine witnesses, court records,
2 and any other available evidence to determine if the proposed
3 litigation is abusive litigation or if there are reasonable and
4 legitimate grounds upon which the litigation is based.

5 (ii) If the judicial officer determines the proposed litigation
6 is abusive litigation, based on reviewing the records as well as any
7 evidence from the person who is subject to the order, then it is not
8 necessary for the person protected by the order to appear or
9 participate in any way. If the judicial officer is unable to
10 determine whether the proposed litigation is abusive without hearing
11 from the person protected by the order, then the court shall issue an
12 order scheduling a hearing, and notifying the protected party of the
13 party's right to appear and/or participate in the hearing. The order
14 should specify whether the protected party is expected to submit a
15 written response. When possible, the protected party should be
16 permitted to appear telephonically and provided instructions for how
17 to appear telephonically.

18 (c) (i) If the judicial officer believes the litigation that the
19 party who is subject to the prefiling order is making application to
20 file will constitute abusive litigation, the application shall be
21 denied, dismissed, or otherwise disposed with prejudice.

22 (ii) If the judicial officer reasonably believes that the
23 litigation the party who is subject to the prefiling order is making
24 application to file will not be abusive litigation, the judicial
25 officer may grant the application and issue an order permitting the
26 filing of the case, motion, or pleading. The order shall be attached
27 to the front of the pleading to be filed with the clerk. The party
28 who is protected by the order shall be served with a copy of the
29 order at the same time as the underlying pleading.

30 (d) The findings of the judicial officer shall be reduced to
31 writing and made a part of the record in the matter. If the party who
32 is subject to the order disputes the finding of the judge, the party
33 may seek review of the decision as provided by the applicable court
34 rules.

35 (4) If the application for the filing of a pleading is granted
36 pursuant to this section, the period of time commencing with the
37 filing of the application requesting permission to file the action
38 and ending with the issuance of an order permitting filing of the
39 action shall not be computed as a part of any applicable period of
40 limitations within which the matter must be instituted.

1 (5) If, after a party who is subject to prefiling restrictions
2 has made application and been granted permission to file or advance a
3 case pursuant to this section, any judicial officer hearing or
4 presiding over the case, or any part thereof, determines that the
5 person is attempting to add parties, amend the complaint, or is
6 otherwise attempting to alter the parties and issues involved in the
7 litigation in a manner that the judicial officer reasonably believes
8 would constitute abusive litigation, the judicial officer shall stay
9 the proceedings and refer the case back to the judicial officer who
10 granted the application to file, for further disposition.

11 (6)(a) If a party who is protected by an order restricting
12 abusive litigation is served with a pleading filed by the person who
13 is subject to the order, and the pleading does not have an attached
14 order allowing the pleading, the protected party may respond to the
15 case by filing a copy of the order restricting abusive litigation.

16 (b) If it is brought to the attention of the court that a person
17 against whom prefiling restrictions have been imposed has filed a new
18 case or is continuing an existing case without having been granted
19 permission pursuant to this section, the court shall dismiss, deny,
20 or otherwise dispose of the matter. This action may be taken by the
21 court on the court's own motion or initiative. The court may take
22 whatever action against the perpetrator of abusive litigation deemed
23 necessary and appropriate for a violation of the order restricting
24 abusive litigation.

25 (c) If a party who is protected by an order restricting abusive
26 litigation is served with a pleading filed by the person who is
27 subject to the order, and the pleading does not have an attached
28 order allowing the pleading, the protected party is under no
29 obligation or duty to respond to the summons, complaint, petition,
30 motion, to answer interrogatories, to appear for depositions, or any
31 other responsive action required by rule or statute in a civil
32 action.

33 (7) If the judicial officer who imposed the prefiling
34 restrictions is no longer serving in the same capacity in the same
35 judicial district where the restrictions were placed, or is otherwise
36 unavailable for any reason, any other judicial officer in that
37 judicial district may perform the review required and permitted by
38 this section.

1 **Sec. 8.** RCW 26.09.191 and 2019 c 46 s 5020 are each amended to
2 read as follows:

3 (1) The permanent parenting plan shall not require mutual
4 decision-making or designation of a dispute resolution process other
5 than court action if it is found that a parent has engaged in any of
6 the following conduct: (a) Willful abandonment that continues for an
7 extended period of time or substantial refusal to perform parenting
8 functions; (b) physical, sexual, or a pattern of emotional abuse of a
9 child; or (c) a history of acts of domestic violence as defined in
10 RCW 26.50.010(3) or an assault or sexual assault that causes grievous
11 bodily harm or the fear of such harm or that results in a pregnancy.

12 (2)(a) The parent's residential time with the child shall be
13 limited if it is found that the parent has engaged in any of the
14 following conduct: (i) Willful abandonment that continues for an
15 extended period of time or substantial refusal to perform parenting
16 functions; (ii) physical, sexual, or a pattern of emotional abuse of
17 a child; (iii) a history of acts of domestic violence as defined in
18 RCW 26.50.010(3) or an assault or sexual assault that causes grievous
19 bodily harm or the fear of such harm or that results in a pregnancy;
20 or (iv) the parent has been convicted as an adult of a sex offense
21 under:

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

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

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

31 (D) RCW 9A.44.089;

32 (E) RCW 9A.44.093;

33 (F) RCW 9A.44.096;

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

37 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

30 (H) Chapter 9.68A RCW;

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

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

38 (c) If a parent has been found to be a sexual predator under
39 chapter 71.09 RCW or under an analogous statute of any other
40 jurisdiction, the court shall restrain the parent from contact with a

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

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

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

15 (ii) RCW 9A.44.073;

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

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

20 (v) RCW 9A.44.083;

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

23 (vii) RCW 9A.44.100;

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

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

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

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

40 (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
4 least 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
7 least 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 the child was not
16 conceived and subsequently born as a result of a sexual assault
17 committed by the parent requesting residential time and that:

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

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

36 (g) The presumption established in (e) of this subsection may be
37 rebutted only after a written finding that the child was not
38 conceived and subsequently born as a result of a sexual assault
39 committed by the parent requesting residential time and that:

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

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

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

39 (i) If the court finds that the parent has met the burden of
40 rebutting the presumption under (g) of this subsection, the court may

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

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

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

1 sexual abuse victims who has supervised at least one period of
2 residential time between the parent and the child, and after
3 consideration of evidence of the offending parent's compliance with
4 community supervision requirements, if any. If the offending parent
5 was not ordered by a court to participate in treatment for sex
6 offenders, then the parent shall obtain a psychosexual evaluation
7 conducted by a certified sex offender treatment provider or a
8 certified affiliate sex offender treatment provider indicating that
9 the offender has the lowest likelihood of risk to reoffend before the
10 court grants unsupervised contact between the parent and a child.

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

38 (m)(i) The limitations imposed by the court under (a) or (b) of
39 this subsection shall be reasonably calculated to protect the child
40 from the physical, sexual, or emotional abuse or harm that could

1 result if the child has contact with the parent requesting
2 residential time. The limitations shall also be reasonably calculated
3 to provide for the safety of the parent who may be at risk of
4 physical, sexual, or emotional abuse or harm that could result if the
5 parent has contact with the parent requesting residential time. The
6 limitations the court may impose include, but are not limited to:
7 Supervised contact between the child and the parent or completion of
8 relevant counseling or treatment. If the court expressly finds based
9 on the evidence that limitations on the residential time with the
10 child will not adequately protect the child from the harm or abuse
11 that could result if the child has contact with the parent requesting
12 residential time, the court shall restrain the parent requesting
13 residential time from all contact with the child.

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

29 (iii) The court shall not enter an order under (a) of this
30 subsection allowing a parent to have contact with a child if the
31 parent has been found by clear and convincing evidence pursuant to
32 RCW 26.26A.465 to have committed sexual assault, as defined in RCW
33 26.26A.465, against the child's parent, and that the child was born
34 within three hundred twenty days of the sexual assault.

35 (iv) If the court limits residential time under (a) or (b) of
36 this subsection to require supervised contact between the child and
37 the parent, the court shall not approve of a supervisor for contact
38 between a child and a parent who has engaged in physical, sexual, or
39 a pattern of emotional abuse of the child unless the court finds
40 based upon the evidence that the supervisor accepts that the harmful

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

6 (n) If the court expressly finds based on the evidence that
7 contact between the parent and the child will not cause physical,
8 sexual, or emotional abuse or harm to the child and that the
9 probability that the parent's or other person's harmful or abusive
10 conduct will recur is so remote that it would not be in the child's
11 best interests to apply the limitations of (a), (b), and (m)(i) and
12 (iv) of this subsection, or if the court expressly finds that the
13 parent's conduct did not have an impact on the child, then the court
14 need not apply the limitations of (a), (b), and (m)(i) and (iv) of
15 this subsection. The weight given to the existence of a protection
16 order issued under chapter 26.50 RCW as to domestic violence is
17 within the discretion of the court. This subsection shall not apply
18 when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of
19 this subsection apply.

20 (3) A parent's involvement or conduct may have an adverse effect
21 on the child's best interests, and the court may preclude or limit
22 any provisions of the parenting plan, if any of the following factors
23 exist:

24 (a) A parent's neglect or substantial nonperformance of parenting
25 functions;

26 (b) A long-term emotional or physical impairment which interferes
27 with the parent's performance of parenting functions as defined in
28 RCW 26.09.004;

29 (c) A long-term impairment resulting from drug, alcohol, or other
30 substance abuse that interferes with the performance of parenting
31 functions;

32 (d) The absence or substantial impairment of emotional ties
33 between the parent and the child;

34 (e) The abusive use of conflict by the parent which creates the
35 danger of serious damage to the child's psychological development.
36 Abusive use of conflict includes, but is not limited to, abusive
37 litigation as defined in section 2 of this act. If the court finds a
38 parent has engaged in abusive litigation, the court may impose any
39 restrictions or remedies set forth in chapter 26.--- RCW (the new
40 chapter created in section 10 of this act) in addition to including a

1 finding in the parenting plan. Litigation that is aggressive or
2 improper but that does not meet the definition of abusive litigation
3 shall not constitute a basis for a finding under this section. A
4 report made in good faith to law enforcement, a medical professional,
5 or child protective services of sexual, physical, or mental abuse of
6 a child shall not constitute a basis for a finding of abusive use of
7 conflict;

8 (f) A parent has withheld from the other parent access to the
9 child for a protracted period without good cause; or

10 (g) Such other factors or conduct as the court expressly finds
11 adverse to the best interests of the child.

12 (4) In cases involving allegations of limiting factors under
13 subsection (2)(a)(ii) and (iii) of this section, both parties shall
14 be screened to determine the appropriateness of a comprehensive
15 assessment regarding the impact of the limiting factor on the child
16 and the parties.

17 (5) In entering a permanent parenting plan, the court shall not
18 draw any presumptions from the provisions of the temporary parenting
19 plan.

20 (6) In determining whether any of the conduct described in this
21 section has occurred, the court shall apply the civil rules of
22 evidence, proof, and procedure.

23 (7) For the purposes of this section:

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

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

29 **Sec. 9.** RCW 26.50.060 and 2019 c 46 s 5038 are each amended to
30 read as follows:

31 (1) Upon notice and after hearing, the court may provide relief
32 as follows:

33 (a) Restrain the respondent from committing acts of domestic
34 violence;

35 (b) Exclude the respondent from the dwelling that the parties
36 share, from the residence, workplace, or school of the petitioner, or
37 from the day care or school of a child;

1 (c) Prohibit the respondent from knowingly coming within, or
2 knowingly remaining within, a specified distance from a specified
3 location;

4 (d) On the same basis as is provided in chapter 26.09 RCW, the
5 court shall make residential provision with regard to minor children
6 of the parties. However, parenting plans as specified in chapter
7 26.09 RCW shall not be required under this chapter;

8 (e) Order the respondent to participate in a domestic violence
9 perpetrator treatment program approved under RCW 26.50.150;

10 (f) Order other relief as it deems necessary for the protection
11 of the petitioner and other family or household members sought to be
12 protected, including orders or directives to a peace officer, as
13 allowed under this chapter;

14 (g) Require the respondent to pay the administrative court costs
15 and service fees, as established by the county or municipality
16 incurring the expense and to reimburse the petitioner for costs
17 incurred in bringing the action, including reasonable attorneys' fees
18 or limited license legal technician fees when such fees are incurred
19 by a person licensed and practicing in accordance with the state
20 supreme court's admission to practice rule 28, the limited practice
21 rule for limited license legal technicians;

22 (h) Restrain the respondent from having any contact with the
23 victim of domestic violence or the victim's children or members of
24 the victim's household;

25 (i) Restrain the respondent from harassing, following, keeping
26 under physical or electronic surveillance, cyberstalking as defined
27 in RCW 9.61.260, and using telephonic, audiovisual, or other
28 electronic means to monitor the actions, location, or communication
29 of a victim of domestic violence, the victim's children, or members
30 of the victim's household. For the purposes of this subsection,
31 "communication" includes both "wire communication" and "electronic
32 communication" as defined in RCW 9.73.260;

33 (j) Require the respondent to submit to electronic monitoring.
34 The order shall specify who shall provide the electronic monitoring
35 services and the terms under which the monitoring must be performed.
36 The order also may include a requirement that the respondent pay the
37 costs of the monitoring. The court shall consider the ability of the
38 respondent to pay for electronic monitoring;

39 (k) Consider the provisions of RCW 9.41.800;

1 (l) Order possession and use of essential personal effects. The
2 court shall list the essential personal effects with sufficient
3 specificity to make it clear which property is included. Personal
4 effects may include pets. The court may order that a petitioner be
5 granted the exclusive custody or control of any pet owned, possessed,
6 leased, kept, or held by the petitioner, respondent, or minor child
7 residing with either the petitioner or respondent and may prohibit
8 the respondent from interfering with the petitioner's efforts to
9 remove the pet. The court may also prohibit the respondent from
10 knowingly coming within, or knowingly remaining within, a specified
11 distance of specified locations where the pet is regularly found;
12 (~~and~~)

13 (m) Order use of a vehicle; and

14 (n) Enter an order restricting the respondent from engaging in
15 abusive litigation as set forth in chapter 26.--- RCW (the new
16 chapter created in section 10 of this act). A petitioner may request
17 this relief in the petition or by separate motion. A petitioner may
18 request this relief by separate motion at any time within five years
19 of the date the order for protection is entered even if the order has
20 since expired. A stand-alone motion for an order restricting abusive
21 litigation may be brought by a party who meets the requirements of
22 chapter 26.--- RCW (the new chapter created in section 10 of this
23 act) regardless of whether the party has previously sought an order
24 for protection under this chapter, provided the motion is made within
25 five years of the date the order that made a finding of domestic
26 violence was entered. In cases where a finding of domestic violence
27 was entered pursuant to an order under chapter 26.09, 26.26, or
28 26.26A RCW, a motion for an order restricting abusive litigation may
29 be brought under the family law case or as a stand-alone action filed
30 under this chapter, when it is not reasonable or practical to file
31 under the family law case.

32 (2) If a protection order restrains the respondent from
33 contacting the respondent's minor children the restraint shall be for
34 a fixed period not to exceed one year. This limitation is not
35 applicable to orders for protection issued under chapter 26.09,
36 26.10, 26.26A, or 26.26B RCW. With regard to other relief, if the
37 petitioner has petitioned for relief on his or her own behalf or on
38 behalf of the petitioner's family or household members or minor
39 children, and the court finds that the respondent is likely to resume
40 acts of domestic violence against the petitioner or the petitioner's

1 family or household members or minor children when the order expires,
2 the court may either grant relief for a fixed period or enter a
3 permanent order of protection.

4 If the petitioner has petitioned for relief on behalf of the
5 respondent's minor children, the court shall advise the petitioner
6 that if the petitioner wants to continue protection for a period
7 beyond one year the petitioner may either petition for renewal
8 pursuant to the provisions of this chapter or may seek relief
9 pursuant to the provisions of chapter 26.09, 26.26A, or 26.26B RCW.

10 (3) If the court grants an order for a fixed time period, the
11 petitioner may apply for renewal of the order by filing a petition
12 for renewal at any time within the three months before the order
13 expires. The petition for renewal shall state the reasons why the
14 petitioner seeks to renew the protection order. Upon receipt of the
15 petition for renewal the court shall order a hearing which shall be
16 not later than fourteen days from the date of the order. Except as
17 provided in RCW 26.50.085, personal service shall be made on the
18 respondent not less than five days before the hearing. If timely
19 service cannot be made the court shall set a new hearing date and
20 shall either require additional attempts at obtaining personal
21 service or permit service by publication as provided in RCW 26.50.085
22 or by mail as provided in RCW 26.50.123. If the court permits service
23 by publication or mail, the court shall set the new hearing date not
24 later than twenty-four days from the date of the order. If the order
25 expires because timely service cannot be made the court shall grant
26 an ex parte order of protection as provided in RCW 26.50.070. The
27 court shall grant the petition for renewal unless the respondent
28 proves by a preponderance of the evidence that the respondent will
29 not resume acts of domestic violence against the petitioner or the
30 petitioner's children or family or household members when the order
31 expires. The court may renew the protection order for another fixed
32 time period or may enter a permanent order as provided in this
33 section. The court may award court costs, service fees, and
34 reasonable attorneys' fees as provided in subsection (1)(g) of this
35 section.

36 (4) In providing relief under this chapter, the court may realign
37 the designation of the parties as "petitioner" and "respondent" where
38 the court finds that the original petitioner is the abuser and the
39 original respondent is the victim of domestic violence and may issue
40 an ex parte temporary order for protection in accordance with RCW

1 26.50.070 on behalf of the victim until the victim is able to prepare
2 a petition for an order for protection in accordance with RCW
3 26.50.030.

4 (5) Except as provided in subsection (4) of this section, no
5 order for protection shall grant relief to any party except upon
6 notice to the respondent and hearing pursuant to a petition or
7 counter-petition filed and served by the party seeking relief in
8 accordance with RCW 26.50.050.

9 (6) The court order shall specify the date the order expires if
10 any. The court order shall also state whether the court issued the
11 protection order following personal service, service by publication,
12 or service by mail and whether the court has approved service by
13 publication or mail of an order issued under this section.

14 (7) If the court declines to issue an order for protection or
15 declines to renew an order for protection, the court shall state in
16 writing on the order the particular reasons for the court's denial.

17 NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act
18 constitute a new chapter in Title 26 RCW.

19 NEW SECTION. **Sec. 11.** This act shall be construed liberally so
20 as to effectuate the goal of protecting survivors of domestic
21 violence from abusive litigation.

22 NEW SECTION. **Sec. 12.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2021."

27 Correct the title.

EFFECT: Retains the entirety of the underlying bill and adds an
effective date of January 1, 2021.

--- END ---