

2 **HB 1773 - H AMD 0056 ADOPTED 03/15/99**
3 By Representatives Wolfe and Lambert

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 26.09.240 and 1996 c 177 s 1 are each amended to read
8 as follows:

9 (1) A person other than a parent, if the person is related to a
10 child through consanguinity, marriage, or adoption, may petition the
11 court for visitation with ((a)) the child at any time or may intervene
12 in a pending dissolution, legal separation, or modification of
13 parenting plan proceeding. ((A)) The person ((other than a parent))
14 may not petition for visitation under this section unless the child's
15 parent or parents have commenced an action under this chapter.

16 (2) ((A)) The petition for visitation ((with a child by a person
17 other than a parent)) must be filed in the county in which the child
18 resides.

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

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

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

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

6 ~~(6))~~ if the petitioner or intervenor has demonstrated by clear,
7 cogent, and convincing evidence that:

8 (a) A significant relationship exists with the child with whom
9 visitation is sought;

10 (b) Denial of visitation would result in a substantial likelihood
11 of harm to the child's physical, mental, or emotional well-being; and

12 (c) Visitation is in the child's best interests.

13 If the petition or motion is dismissed, the petitioner or
14 intervenor shall be ordered to pay reasonable attorneys' fees and costs
15 to the parent, parents, other custodian, or representative of the child
16 who responds to the petition or motion.

17 (4) The court may consider the following factors when making a
18 determination of the child's best interests:

19 (a) The strength of the relationship between the child and the
20 petitioner or intervenor;

21 (b) The relationship between each of the child's parents or the
22 person with whom the child is residing and the petitioner or
23 intervenor;

24 (c) The nature and reason for either parent's objection to granting
25 the petitioner or intervenor visitation;

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

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

30 (f) The good faith of the petitioner or intervenor;

31 (g) Any criminal history or history of physical, emotional, or
32 sexual abuse or neglect by the petitioner or intervenor; and

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

34 ~~((7))~~ (5) The restrictions of RCW 26.09.191 that apply to parents
35 shall be applied to a petitioner or intervenor who is not a parent, but
36 who is related to the child through consanguinity, marriage, or
37 adoption. The nature and extent of visitation, subject to these
38 restrictions, is in the discretion of the court.

1 (~~(8)~~) (6) The court may order an investigation and report
2 concerning the proposed visitation or may appoint a guardian ad litem
3 as provided in RCW 26.09.220.

4 (~~(9)~~) (7) Visitation granted (~~(pursuant to)~~) under this section
5 shall be incorporated into the parenting plan for the child.

6 (~~(10)~~) (8) The court may modify or terminate an order granting
7 visitation (~~(rights granted pursuant to)~~) under this section in any
8 subsequent modification action upon a showing that the visitation is no
9 longer in the best interest of the child.

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

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

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

24 (A) RCW 9A.44.076 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 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 if, because of the difference in age between the
31 offender and the victim, no rebuttable presumption exists under (d) of
32 this subsection;

33 (D) RCW 9A.44.089;

34 (E) RCW 9A.44.093;

35 (F) RCW 9A.44.096;

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

1 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

26 (D) RCW 9A.44.089;

27 (E) RCW 9A.44.093;

28 (F) RCW 9A.44.096;

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

32 (H) Chapter 9.68A RCW;

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

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

38 This subsection (2)(b) shall not apply when (c) or (e) of this
39 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
38 court shall restrain the parent from contact with the parent's child

1 except for contact that occurs outside of the convicted or adjudicated
2 person's presence:

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

5 (ii) RCW 9A.44.073;

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

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

10 (v) RCW 9A.44.083;

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

13 (vii) RCW 9A.44.100;

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

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

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

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

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

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

1 (i) If the child was not the victim of the sex offense committed by
2 the person who is residing with the parent requesting visitation, (A)
3 contact between the child and the parent residing with the convicted or
4 adjudicated person is appropriate and that parent is able to protect
5 the child in the presence of the convicted or adjudicated person, and
6 (B) the convicted or adjudicated person has successfully engaged in
7 treatment for sex offenders or is engaged in and making progress in
8 such treatment, if any was ordered by a court, and the treatment
9 provider believes such contact is appropriate and poses minimal risk to
10 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 visitation, (A)
13 contact between the child and the parent in the presence of the
14 convicted or adjudicated person is appropriate and poses minimal risk
15 to the child, (B) if the child is in or has been in therapy for victims
16 of sexual abuse, the child's counselor believes such contact between
17 the child and the parent residing with the convicted or adjudicated
18 person in the presence of the convicted or adjudicated person is in the
19 child's best interest, and (C) the convicted or adjudicated person has
20 successfully engaged in treatment for sex offenders or is engaged in
21 and making progress in such treatment, if any was ordered by a court,
22 and the treatment provider believes contact between the parent and
23 child in the presence of the convicted or adjudicated person is
24 appropriate and poses minimal risk to the child.

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

37 (i) If the court finds that the parent has met the burden of
38 rebutting the presumption under (g) of this subsection, the court may
39 allow a parent residing with a person who has been adjudicated as a

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

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

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

1 and the child, and after consideration of evidence of the offending
2 parent's compliance with community supervision requirements, if any.
3 If the offending parent was not ordered by a court to participate in
4 treatment for sex offenders, then the parent shall obtain a
5 psychosexual evaluation conducted by a state-certified sex offender
6 treatment provider indicating that the offender has the lowest
7 likelihood of risk to reoffend before the court grants unsupervised
8 contact between the parent and a child.

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

1 the harm or abuse that could result if the child has contact with the
2 parent requesting visitation, the court shall restrain the person
3 seeking visitation from all contact with the child.

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

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

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

1 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this
2 subsection apply.

3 (3)(a) Any person who is related to a child through consanguinity,
4 marriage, or adoption may petition the court for visitation ((rights))
5 with the child at any time including, but not limited to, custody
6 proceedings. The court may order visitation ((rights for any person
7 when visitation may serve the best interest of the child)) between the
8 petitioner and the child whether or not there has been any change of
9 circumstances if the petitioner has demonstrated by clear, cogent, and
10 convincing evidence that:

11 (i) A significant relationship exists with the child with whom
12 visitation is sought;

13 (ii) Denial of visitation would result in a substantial likelihood
14 of harm to the child's physical, mental, or emotional well-being; and

15 (iii) Visitation is in the child's best interests.

16 If the petition is dismissed, the petitioner shall be ordered to
17 pay reasonable attorneys' fees and costs to the parent, parents, other
18 custodian, or representative of the child who responds to the petition.

19 ((+4)) (b) The court may consider the following factors when
20 making a determination of the child's best interests:

21 (i) The strength of the relationship between the child and the
22 petitioner;

23 (ii) The relationship between each of the child's parents or the
24 person with whom the child is residing and the petitioner;

25 (iii) The nature and reason for either parent's objection to
26 granting the petitioner visitation;

27 (iv) The effect that granting visitation will have on the
28 relationship between the child and the child's parents or the person
29 with whom the child is residing;

30 (v) The residential time-sharing arrangements between the parents;

31 (vi) The good faith of the petitioner;

32 (vii) Any criminal history or history of physical, emotional, or
33 sexual abuse or neglect by the petitioner; and

34 (viii) Any other factor relevant to the child's best interest.

35 (c) The restrictions of RCW 26.09.191 that apply to parents shall
36 be applied to a petitioner or intervenor who is not a parent, but who
37 is related to the child through consanguinity, marriage, or adoption.
38 The nature and extent of visitation, subject to these restrictions, is
39 in the discretion of the court.

1 (4) Visitation granted under this section shall be incorporated
2 into the parenting plan for the child.

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

8 ~~((+5))~~ (6) For the purposes of this section, a parent's child
9 means that parent's natural child, adopted child, or stepchild.

10 NEW SECTION. Sec. 3. This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 immediately."

--- END ---