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SENATE BILL 5277

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State of Washington

60th Legislature

2007 Regular Session

By Senator Franklin

Read first time 01/15/2007. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to visitation rights for nonparents; amending RCW  
2 26.09.240 and 26.10.160; adding a new section to chapter 26.10 RCW;  
3 creating a new section; and declaring an emergency.

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

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

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

15 (1) For purposes of this section, the following definitions apply:  
16 (a) "Applicant" means a nonparent who initiates a proceeding under  
17 this statute.

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

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

8 (d) "Nonparent" includes any person not legally recognized as a  
9 parent whether or not related by blood or marriage.

10 (e) "Parent-like relationship" means a very significant  
11 relationship, including significant financial support provided by the  
12 nonparent for the child's basic needs during the relationship, between  
13 a nonparent and a child in which the nonparent undertook  
14 responsibilities and tasks commonly performed by parents and commonly  
15 recognized as actions by someone in a parent-like relationship.  
16 Excluded from this category are baby-sitters or other employed  
17 caregivers.

18 (f) "Substantially interfered" means to have unreasonably and  
19 greatly diminished the amount and quality of contact a nonparent has  
20 had with the child. A reasonable reduction in the frequency or length  
21 of contact previously enjoyed with the child is not a substantial  
22 interference.

23 (2) A nonparent may initiate a court proceeding for contact with a  
24 child by filing a verified application to obtain court-ordered contact  
25 when all of the following criteria are satisfied:

26 (a) The applicant is an individual with a parent-like relationship  
27 with the child. To satisfy this criterion, the applicant must show  
28 that:

29 (i) His or her relationship with the child has been parent-like in  
30 nature for a substantial period of time;

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

35 (iii) His or her relationship with the child is beneficial; and

36 (b) A parent or custodian has substantially interfered with the  
37 applicant's relationship with the child and the applicant has

1 unsuccessfully attempted to resolve any disagreement with the parent or  
2 custodian before going to court.

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

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

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

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

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

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

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

27 ~~((1))~~ Under section 2 of this act, a person other than a parent  
28 may petition the court for visitation ~~((with a child at any time or may~~  
29 ~~intervene in a pending dissolution, legal separation, or modification~~  
30 ~~of parenting plan proceeding))~~ only during a pending dissolution or  
31 legal separation, and prior to the entry of the order establishing the  
32 initial permanent parenting plan under this chapter. ~~((A person other~~  
33 ~~than a parent may not petition for visitation under this section unless~~  
34 ~~the child's parent or parents have commenced an action under this~~  
35 ~~chapter.~~

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

1       ~~(3) A petition for visitation or a motion to intervene pursuant to~~  
2 ~~this section shall be dismissed unless the petitioner or intervenor can~~  
3 ~~demonstrate by clear and convincing evidence that a significant~~  
4 ~~relationship exists with the child with whom visitation is sought. If~~  
5 ~~the petition or motion is dismissed for failure to establish the~~  
6 ~~existence of a significant relationship, the petitioner or intervenor~~  
7 ~~shall be ordered to pay reasonable attorney's fees and costs to the~~  
8 ~~parent, parents, other custodian, or representative of the child who~~  
9 ~~responds to this petition or motion.~~

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

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

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

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

26       ~~(a) The strength of the relationship between the child and the~~  
27 ~~petitioner;~~

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

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

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

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

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

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

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

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

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

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

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

15 **Sec. 4.** RCW 26.10.160 and 2004 c 38 s 13 are each amended to read  
16 as follows:

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

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

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

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

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

1 (D) RCW 9A.44.089;  
2 (E) RCW 9A.44.093;  
3 (F) RCW 9A.44.096;  
4 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age  
5 between the offender and the victim, no rebuttable presumption exists  
6 under (d) of this subsection;  
7 (H) Chapter 9.68A RCW;  
8 (I) Any predecessor or antecedent statute for the offenses listed  
9 in (a)(iv)(A) through (H) of this subsection;  
10 (J) Any statute from any other jurisdiction that describes an  
11 offense analogous to the offenses listed in (a)(iv)(A) through (H) of  
12 this subsection.  
13 This subsection (2)(a) shall not apply when (c) or (d) of this  
14 subsection applies.  
15 (b) The parent's visitation with the child shall be limited if it  
16 is found that the parent resides with a person who has engaged in any  
17 of the following conduct: (i) Physical, sexual, or a pattern of  
18 emotional abuse of a child; (ii) a history of acts of domestic violence  
19 as defined in RCW 26.50.010(1) or an assault or sexual assault that  
20 causes grievous bodily harm or the fear of such harm; or (iii) the  
21 person has been convicted as an adult or as a juvenile has been  
22 adjudicated of a sex offense under:  
23 (A) RCW 9A.44.076 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 (B) RCW 9A.44.079 if, because of the difference in age between the  
27 offender and the victim, no rebuttable presumption exists under (e) of  
28 this subsection;  
29 (C) RCW 9A.44.086 if, because of the difference in age between the  
30 offender and the victim, no rebuttable presumption exists under (e) of  
31 this subsection;  
32 (D) RCW 9A.44.089;  
33 (E) RCW 9A.44.093;  
34 (F) RCW 9A.44.096;  
35 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age  
36 between the offender and the victim, no rebuttable presumption exists  
37 under (e) of this subsection;  
38 (H) Chapter 9.68A RCW;

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

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

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

8 (c) If a parent has been found to be a sexual predator under  
9 chapter 71.09 RCW or under an analogous statute of any other  
10 jurisdiction, the court shall restrain the parent from contact with a  
11 child that would otherwise be allowed under this chapter. If a parent  
12 resides with an adult or a juvenile who has been found to be a sexual  
13 predator under chapter 71.09 RCW or under an analogous statute of any  
14 other jurisdiction, the court shall restrain the parent from contact  
15 with the parent's child except contact that occurs outside that  
16 person's presence.

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

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

25 (ii) RCW 9A.44.073;

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

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

30 (v) RCW 9A.44.083;

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

33 (vii) RCW 9A.44.100;

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

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

1 (e) There is a rebuttable presumption that a parent who resides  
2 with a person who, as an adult, has been convicted, or as a juvenile  
3 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)  
4 of this subsection places a child at risk of abuse or harm when that  
5 parent exercises visitation in the presence of the convicted or  
6 adjudicated person. Unless the parent rebuts the presumption, the  
7 court shall restrain the parent from contact with the parent's child  
8 except for contact that occurs outside of the convicted or adjudicated  
9 person's presence:

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 (e)(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 (e)(i) through (vii) of  
25 this subsection.

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

28 (i) If the child was not 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 and (B) the offending parent has successfully engaged in treatment for  
32 sex offenders or is engaged in and making progress in such treatment,  
33 if any was ordered by a court, and the treatment provider believes such  
34 contact is appropriate and poses minimal risk to the child; or

35 (ii) If the child was the victim of the sex offense committed by  
36 the parent requesting visitation, (A) contact between the child and the  
37 offending parent is appropriate and poses minimal risk to the child,  
38 (B) if the child is in or has been in therapy for victims of sexual



1 abuse, the child's counselor believes such contact between the child  
2 and the offending parent is in the child's best interest, and (C) the  
3 offending parent has successfully engaged in treatment for sex  
4 offenders or is engaged in and making progress in such treatment, if  
5 any was ordered by a court, and the treatment provider believes such  
6 contact is appropriate and poses minimal risk to the child.

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

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

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

33 (h) If the court finds that the parent has met the burden of  
34 rebutting the presumption under (f) of this subsection, the court may  
35 allow a parent who has been convicted as an adult of a sex offense  
36 listed in (d)(i) through (ix) of this subsection to have visitation  
37 with the child supervised by a neutral and independent adult and  
38 pursuant to an adequate plan for supervision of such visitation. The

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

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

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

34 (k) A court shall not order unsupervised contact between the  
35 offending parent and a child of the offending parent who was sexually  
36 abused by that parent. A court may order unsupervised contact between  
37 the offending parent and a child who was not sexually abused by the  
38 parent after the presumption under (d) of this subsection has been

1 rebutted and supervised visitation has occurred for at least two years  
2 with no further arrests or convictions of sex offenses involving  
3 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW  
4 and (i) the sex offense of the offending parent was not committed  
5 against a child of the offending parent, and (ii) the court finds that  
6 unsupervised contact between the child and the offending parent is  
7 appropriate and poses minimal risk to the child, after consideration of  
8 the testimony of a state-certified therapist, mental health counselor,  
9 or social worker with expertise in treating child sexual abuse victims  
10 who has supervised at least one period of visitation between the parent  
11 and the child, and after consideration of evidence of the offending  
12 parent's compliance with community supervision requirements, if any.  
13 If the offending parent was not ordered by a court to participate in  
14 treatment for sex offenders, then the parent shall obtain a  
15 psychosexual evaluation conducted by a certified sex offender treatment  
16 provider or a certified affiliate sex offender treatment provider  
17 indicating that the offender has the lowest likelihood of risk to  
18 reoffend before the court grants unsupervised contact between the  
19 parent and a child.

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

1 adjudicated juvenile shall obtain a psychosexual evaluation conducted  
2 by a certified sex offender treatment provider or a certified affiliate  
3 sex offender treatment provider indicating that the adjudicated  
4 juvenile has the lowest likelihood of risk to reoffend before the court  
5 grants unsupervised contact between the parent and a child which may  
6 occur in the presence of the adjudicated juvenile who is residing with  
7 the parent.

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

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

31 (iii) If the court limits visitation under (a) or (b) of this  
32 subsection to require supervised contact between the child and the  
33 parent, the court shall not approve of a supervisor for contact between  
34 a child and a parent who has engaged in physical, sexual, or a pattern  
35 of emotional abuse of the child unless the court finds based upon the  
36 evidence that the supervisor accepts that the harmful conduct occurred  
37 and is willing to and capable of protecting the child from harm. The

1 court shall revoke court approval of the supervisor upon finding, based  
2 on the evidence, that the supervisor has failed to protect the child or  
3 is no longer willing to or capable of protecting the child.

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

18 ~~(3) ((Any person may petition the court for visitation rights at~~  
19 ~~any time including, but not limited to, custody proceedings. The court~~  
20 ~~may order visitation rights for any person when visitation may serve~~  
21 ~~the best interest of the child whether or not there has been any change~~  
22 ~~of circumstances.))~~ A person other than a parent may petition the court  
23 for visitation with a child under section 2 of this act and RCW  
24 26.09.240 only during a pending dissolution or legal separation, and  
25 prior to the entry of the order establishing the initial permanent  
26 parenting plan under chapter 26.09 RCW.

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

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

33 NEW SECTION. Sec. 5. This act is necessary for the immediate  
34 preservation of the public peace, health, or safety, or support of the  
35 state government and its existing public institutions, and takes effect

1 immediately.

--- END ---