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ENGROSSED SUBSTITUTE SENATE BILL 6268

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State of Washington

66th Legislature

2020 Regular Session

By Senate Law & Justice (originally sponsored by Senators Rolfe, Kuderer, Wellman, Darneille, Hasegawa, Wilson, C., and Das)

READ FIRST TIME 01/31/20.

1 AN ACT Relating to abusive litigation; amending RCW 26.09.191 and  
2 26.50.060; adding a new chapter to Title 26 RCW; and creating a new  
3 section.

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

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

1 lawsuits against survivors, such as defamation, tort, or breach of  
2 contract claims. Even if a lawsuit is meritless, forcing a survivor  
3 to spend time, money, and emotional resources responding to the  
4 action provides a means for the abuser to assert power and control  
5 over the survivor.

6 The legislature finds that courts have considerable authority to  
7 respond to abusive litigation tactics, while upholding litigants'  
8 constitutional rights to access to the courts. Because courts have  
9 inherent authority to control the conduct of litigants, they have  
10 considerable discretion to fashion creative remedies in order to curb  
11 abusive litigation. The legislature intends to provide the courts  
12 with an additional tool to curb abusive litigation and to mitigate  
13 the harms abusive litigation perpetuates.

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

17 (1) "Abusive litigation" means litigation where the following  
18 apply:

19 (a)(i) The opposing parties have a current or former intimate  
20 partner relationship;

21 (ii) The party who is filing, initiating, advancing, or  
22 continuing the litigation has been found by a court to have committed  
23 domestic violence against the other party pursuant to: (A) An order  
24 entered under this chapter; (B) a parenting plan with restrictions  
25 based on RCW 26.09.191(2)(a)(iii); or (C) a restraining order entered  
26 under chapter 26.09, 26.26, or 26.26A RCW, provided that the issuing  
27 court made a specific finding that the restraining order was  
28 necessary due to domestic violence; and

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

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

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

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

1 (iii) An issue or issues that are the basis of the litigation  
2 have previously been filed in one or more other courts or  
3 jurisdictions and the actions have been litigated and disposed of  
4 unfavorably to the party filing, initiating, advancing, or continuing  
5 the litigation.

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

7 (3) "Litigation" means any kind of legal action or proceeding  
8 including, but not limited to: (i) Filing a summons, complaint,  
9 demand, or petition; (ii) serving a summons, complaint, demand, or  
10 petition, regardless of whether it has been filed; (iii) filing a  
11 motion, notice of court date, note for motion docket, or order to  
12 appear; (iv) serving a motion, notice of court date, note for motion  
13 docket, or order to appear, regardless of whether it has been filed  
14 or scheduled; (v) filing a subpoena, subpoena duces tecum, request  
15 for interrogatories, request for production, notice of deposition, or  
16 other discovery request; or (vi) serving a subpoena, subpoena duces  
17 tecum, request for interrogatories, request for production, notice of  
18 deposition, or other discovery request.

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

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

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

29 (b) By motion made at any time during any open or ongoing case;  
30 or

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

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

37 (3) The administrative office of the courts shall update the  
38 instructions, brochures, standard petition, and order for protection  
39 forms, and create new forms for the motion for order restricting

1 abusive litigation and order restricting abusive litigation, and  
2 update the court staff handbook when changes in the law make an  
3 update necessary.

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

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

10 NEW SECTION. **Sec. 4.** (1) If a party asserts that they are being  
11 subjected to abusive litigation, the court shall attempt to verify  
12 that the parties have or previously had an intimate partner  
13 relationship and that the party raising the claim of abusive  
14 litigation has been found to be a victim of domestic violence by the  
15 other party. If the court verifies that both elements are true, or is  
16 unable to verify that they are not true, the court shall set a  
17 hearing to determine whether the litigation meets the definition of  
18 abusive litigation.

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

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

28 (1) The same or substantially similar issues between the same or  
29 substantially similar parties have been litigated within the past  
30 five years in the same court or any other court of competent  
31 jurisdiction; or

32 (2) The same or substantially similar issues between the same or  
33 substantially similar parties have been raised, pled, or alleged in  
34 the past five years and were dismissed on the merits or with  
35 prejudice; or

36 (3) Within the last ten years, the party allegedly engaging in  
37 abusive litigation has been sanctioned under superior court civil  
38 rule 11 or a similar rule or law in another jurisdiction for filing

1 one or more cases, petitions, motions, or other filings, that were  
2 found to have been frivolous, vexatious, intransigent, or brought in  
3 bad faith involving the same opposing party; or

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

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

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

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

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

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

26 (3) If the court finds by a preponderance of the evidence that  
27 the litigation does not constitute abusive litigation, the court  
28 shall enter written findings and the litigation shall proceed.  
29 Nothing in this section or chapter shall be construed as limiting the  
30 court's inherent authority to control the proceedings and litigants  
31 before it.

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

35 NEW SECTION. **Sec. 7.** (1) Except as provided in this section, a  
36 person who is subject to an order restricting abusive litigation is  
37 prohibited from filing, initiating, advancing, or continuing the

1 litigation against the protected party for the period of time the  
2 filing restrictions are in effect.

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

8 (3) (a) A person who is subject to an order restricting litigation  
9 against whom prefiling restrictions have been imposed pursuant to  
10 this chapter who wishes to initiate a new case or file a motion in an  
11 existing case during the time the person is under filing restrictions  
12 must first appear before the judicial officer who imposed the  
13 prefiling restrictions to make application for permission to  
14 institute the civil action.

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

19 (ii) If the judicial officer determines the proposed litigation  
20 is abusive litigation, based on reviewing the records as well as any  
21 evidence from the person who is subject to the order, then it is not  
22 necessary for the person protected by the order to appear or  
23 participate in any way. If the judicial officer is unable to  
24 determine whether the proposed litigation is abusive without hearing  
25 from the person protected by the order, then the court shall issue an  
26 order scheduling a hearing, and notifying the protected party of the  
27 party's right to appear and/or participate in the hearing. The order  
28 should specify whether the protected party is expected to submit a  
29 written response. When possible, the protected party should be  
30 permitted to appear telephonically and provided instructions for how  
31 to appear telephonically.

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

36 (ii) If the judicial officer reasonably believes that the  
37 litigation the party who is subject to the prefiling order is making  
38 application to file will not be abusive litigation, the judicial  
39 officer may grant the application and issue an order permitting the  
40 filing of the case, motion, or pleading. The order shall be attached

1 to the front of the pleading to be filed with the clerk. The party  
2 who is protected by the order shall be served with a copy of the  
3 order at the same time as the underlying pleading.

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

9 (4) If the application for the filing of a pleading is granted  
10 pursuant to this section, the period of time commencing with the  
11 filing of the application requesting permission to file the action  
12 and ending with the issuance of an order permitting filing of the  
13 action shall not be computed as a part of any applicable period of  
14 limitations within which the matter must be instituted.

15 (5) If, after a party who is subject to prefiling restrictions  
16 has made application and been granted permission to file or advance a  
17 case pursuant to this section, any judicial officer hearing or  
18 presiding over the case, or any part thereof, determines that the  
19 person is attempting to add parties, amend the complaint, or is  
20 otherwise attempting to alter the parties and issues involved in the  
21 litigation in a manner that the judicial officer reasonably believes  
22 would constitute abusive litigation, the judicial officer shall stay  
23 the proceedings and refer the case back to the judicial officer who  
24 granted the application to file, for further disposition.

25 (6) (a) If a party who is protected by an order restricting  
26 abusive litigation is served with a pleading filed by the person who  
27 is subject to the order, and the pleading does not have an attached  
28 order allowing the pleading, the protected party may respond to the  
29 case by filing a copy of the order restricting abusive litigation.

30 (b) If it is brought to the attention of the court that a person  
31 against whom prefiling restrictions have been imposed has filed a new  
32 case or is continuing an existing case without having been granted  
33 permission pursuant to this section, the court shall dismiss, deny,  
34 or otherwise dispose of the matter. This action may be taken by the  
35 court on the court's own motion or initiative. The court may take  
36 whatever action against the perpetrator of abusive litigation deemed  
37 necessary and appropriate for a violation of the order restricting  
38 abusive litigation.

39 (c) If a party who is protected by an order restricting abusive  
40 litigation is served with a pleading filed by the person who is

1 subject to the order, and the pleading does not have an attached  
2 order allowing the pleading, the protected party is under no  
3 obligation or duty to respond to the summons, complaint, petition,  
4 motion, to answer interrogatories, to appear for depositions, or any  
5 other responsive action required by rule or statute in a civil  
6 action.

7 (7) If the judicial officer who imposed the prefiling  
8 restrictions is no longer serving in the same capacity in the same  
9 judicial district where the restrictions were placed, or is otherwise  
10 unavailable for any reason, any other judicial officer in that  
11 judicial district may perform the review required and permitted by  
12 this section.

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

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

24 (2)(a) The parent's residential time with the child shall be  
25 limited if it is found that the parent has engaged in any of the  
26 following conduct: (i) Willful abandonment that continues for an  
27 extended period of time or substantial refusal to perform parenting  
28 functions; (ii) physical, sexual, or a pattern of emotional abuse of  
29 a child; (iii) a history of acts of domestic violence as defined in  
30 RCW 26.50.010(3) or an assault or sexual assault that causes grievous  
31 bodily harm or the fear of such harm or that results in a pregnancy;  
32 or (iv) the parent has been convicted as an adult of a sex offense  
33 under:

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

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



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

4 (D) RCW 9A.44.089;

5 (E) RCW 9A.44.093;

6 (F) RCW 9A.44.096;

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

10 (H) Chapter 9.68A RCW;

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

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

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

18 (b) The parent's residential time with the child shall be limited  
19 if it is found that the parent resides with a person who has engaged  
20 in any of the following conduct: (i) Physical, sexual, or a pattern  
21 of emotional abuse of a child; (ii) a history of acts of domestic  
22 violence as defined in RCW 26.50.010(3) or an assault or sexual  
23 assault that causes grievous bodily harm or the fear of such harm or  
24 that results in a pregnancy; or (iii) the person has been convicted  
25 as an adult or as a juvenile has been adjudicated of a sex offense  
26 under:

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

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

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

36 (D) RCW 9A.44.089;

37 (E) RCW 9A.44.093;

38 (F) RCW 9A.44.096;

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

4 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

29 (ii) RCW 9A.44.073;

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

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

34 (v) RCW 9A.44.083;

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

37 (vii) RCW 9A.44.100;

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

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

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

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

29 (f) The presumption established in (d) of this subsection may be  
30 rebutted only after a written finding that the child was not  
31 conceived and subsequently born as a result of a sexual assault  
32 committed by the parent requesting residential time and that:

33 (i) If the child was not the victim of the sex offense committed  
34 by the parent requesting residential time, (A) contact between the  
35 child and the offending parent is appropriate and poses minimal risk  
36 to the child, and (B) the offending parent has successfully engaged  
37 in treatment for sex offenders or is engaged in and making progress  
38 in such treatment, if any was ordered by a court, and the treatment  
39 provider believes such contact is appropriate and poses minimal risk  
40 to the child; or

1 (ii) If the child was the victim of the sex offense committed by  
2 the parent requesting residential time, (A) contact between the child  
3 and the offending parent is appropriate and poses minimal risk to the  
4 child, (B) if the child is in or has been in therapy for victims of  
5 sexual abuse, the child's counselor believes such contact between the  
6 child and the offending parent is in the child's best interest, and  
7 (C) the offending parent has successfully engaged in treatment for  
8 sex offenders or is engaged in and making progress in such treatment,  
9 if any was ordered by a court, and the treatment provider believes  
10 such contact is appropriate and poses minimal risk to the child.

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

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

25 (ii) If the child was the victim of the sex offense committed by  
26 the person who is residing with the parent requesting residential  
27 time, (A) contact between the child and the parent in the presence of  
28 the convicted or adjudicated person is appropriate and poses minimal  
29 risk to the child, (B) if the child is in or has been in therapy for  
30 victims of sexual abuse, the child's counselor believes such contact  
31 between the child and the parent residing with the convicted or  
32 adjudicated person in the presence of the convicted or adjudicated  
33 person is in the child's best interest, and (C) the convicted or  
34 adjudicated person 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  
37 contact between the parent and child in the presence of the convicted  
38 or adjudicated person is appropriate and poses minimal risk to the  
39 child.

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

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

28 (j) If the court finds that the parent has met the burden of  
29 rebutting the presumption under (g) of this subsection, the court may  
30 allow a parent residing with a person who, as an adult, has been  
31 convicted of a sex offense listed in (e)(i) through (ix) of this  
32 subsection to have residential time with the child in the presence of  
33 the convicted person supervised by a neutral and independent adult  
34 and pursuant to an adequate plan for supervision of such residential  
35 time. The court shall not approve of a supervisor for contact between  
36 the child and the parent unless the court finds, based on the  
37 evidence, that the supervisor is willing and capable of protecting  
38 the child from harm. The court shall revoke court approval of the  
39 supervisor upon finding, based on the evidence, that the supervisor

1 has failed to protect the child or is no longer willing or capable of  
2 protecting the child.

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

27 (l) A court may order unsupervised contact between the parent and  
28 a child which may occur in the presence of a juvenile adjudicated of  
29 a sex offense listed in (e)(i) through (ix) of this subsection who  
30 resides with the parent after the presumption under (e) of this  
31 subsection has been rebutted and supervised residential time has  
32 occurred for at least two years during which time the adjudicated  
33 juvenile has had no further arrests, adjudications, or convictions of  
34 sex offenses involving children under chapter 9A.44 RCW, RCW  
35 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that  
36 unsupervised contact between the child and the parent that may occur  
37 in the presence of the adjudicated juvenile is appropriate and poses  
38 minimal risk to the child, after consideration of the testimony of a  
39 state-certified therapist, mental health counselor, or social worker  
40 with expertise in treatment of child sexual abuse victims who has

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

14 (m)(i) The limitations imposed by the court under (a) or (b) of  
15 this subsection shall be reasonably calculated to protect the child  
16 from the physical, sexual, or emotional abuse or harm that could  
17 result if the child has contact with the parent requesting  
18 residential time. The limitations shall also be reasonably calculated  
19 to provide for the safety of the parent who may be at risk of  
20 physical, sexual, or emotional abuse or harm that could result if the  
21 parent has contact with the parent requesting residential time. The  
22 limitations the court may impose include, but are not limited to:  
23 Supervised contact between the child and the parent or completion of  
24 relevant counseling or treatment. If the court expressly finds based  
25 on the evidence that limitations on the residential time with the  
26 child will not adequately protect the child from the harm or abuse  
27 that could result if the child has contact with the parent requesting  
28 residential time, the court shall restrain the parent requesting  
29 residential time from all contact with the child.

30 (ii) The court shall not enter an order under (a) of this  
31 subsection allowing a parent to have contact with a child if the  
32 parent has been found by clear and convincing evidence in a civil  
33 action or by a preponderance of the evidence in a dependency action  
34 to have sexually abused the child, except upon recommendation by an  
35 evaluator or therapist for the child that the child is ready for  
36 contact with the parent and will not be harmed by the contact. The  
37 court shall not enter an order allowing a parent to have contact with  
38 the child in the offender's presence if the parent resides with a  
39 person who has been found by clear and convincing evidence in a civil  
40 action or by a preponderance of the evidence in a dependency action

1 to have sexually abused a child, unless the court finds that the  
2 parent accepts that the person engaged in the harmful conduct and the  
3 parent is willing to and capable of protecting the child from harm  
4 from the person.

5 (iii) The court shall not enter an order under (a) of this  
6 subsection allowing a parent to have contact with a child if the  
7 parent has been found by clear and convincing evidence pursuant to  
8 RCW 26.26A.465 to have committed sexual assault, as defined in RCW  
9 26.26A.465, against the child's parent, and that the child was born  
10 within three hundred twenty days of the sexual assault.

11 (iv) If the court limits residential time under (a) or (b) of  
12 this subsection to require supervised contact between the child and  
13 the parent, the court shall not approve of a supervisor for contact  
14 between a child and a parent who has engaged in physical, sexual, or  
15 a pattern of emotional abuse of the child unless the court finds  
16 based upon the evidence that the supervisor accepts that the harmful  
17 conduct occurred and is willing to and capable of protecting the  
18 child from harm. The court shall revoke court approval of the  
19 supervisor upon finding, based on the evidence, that the supervisor  
20 has failed to protect the child or is no longer willing to or capable  
21 of protecting the child.

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

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



1 (a) A parent's neglect or substantial nonperformance of parenting  
2 functions;

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

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

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

11 (e) The abusive use of conflict by the parent which creates the  
12 danger of serious damage to the child's psychological development.  
13 Abusive use of conflict includes, but is not limited to, abusive  
14 litigation as defined in section 2 of this act. If the court finds a  
15 parent has engaged in abusive litigation, the court may impose any  
16 restrictions or remedies set forth in chapter 26.--- RCW (the new  
17 chapter created in section 10 of this act) in addition to including a  
18 finding in the parenting plan. Litigation that is aggressive or  
19 improper but that does not meet the definition of abusive litigation  
20 shall not constitute a basis for a finding under this section. A  
21 report made in good faith to law enforcement, a medical professional,  
22 or child protective services of sexual, physical, or mental abuse of  
23 a child shall not constitute a basis for a finding of abusive use of  
24 conflict;

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

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

29 (4) In cases involving allegations of limiting factors under  
30 subsection (2)(a)(ii) and (iii) of this section, both parties shall  
31 be screened to determine the appropriateness of a comprehensive  
32 assessment regarding the impact of the limiting factor on the child  
33 and the parties.

34 (5) In entering a permanent parenting plan, the court shall not  
35 draw any presumptions from the provisions of the temporary parenting  
36 plan.

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

40 (7) For the purposes of this section:

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

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

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

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

10 (a) Restrain the respondent from committing acts of domestic  
11 violence;

12 (b) Exclude the respondent from the dwelling that the parties  
13 share, from the residence, workplace, or school of the petitioner, or  
14 from the day care or school of a child;

15 (c) Prohibit the respondent from knowingly coming within, or  
16 knowingly remaining within, a specified distance from a specified  
17 location;

18 (d) On the same basis as is provided in chapter 26.09 RCW, the  
19 court shall make residential provision with regard to minor children  
20 of the parties. However, parenting plans as specified in chapter  
21 26.09 RCW shall not be required under this chapter;

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

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

28 (g) Require the respondent to pay the administrative court costs  
29 and service fees, as established by the county or municipality  
30 incurring the expense and to reimburse the petitioner for costs  
31 incurred in bringing the action, including reasonable attorneys' fees  
32 or limited license legal technician fees when such fees are incurred  
33 by a person licensed and practicing in accordance with the state  
34 supreme court's admission to practice rule 28, the limited practice  
35 rule for limited license legal technicians;

36 (h) Restrain the respondent from having any contact with the  
37 victim of domestic violence or the victim's children or members of  
38 the victim's household;

1 (i) Restrain the respondent from harassing, following, keeping  
2 under physical or electronic surveillance, cyberstalking as defined  
3 in RCW 9.61.260, and using telephonic, audiovisual, or other  
4 electronic means to monitor the actions, location, or communication  
5 of a victim of domestic violence, the victim's children, or members  
6 of the victim's household. For the purposes of this subsection,  
7 "communication" includes both "wire communication" and "electronic  
8 communication" as defined in RCW 9.73.260;

9 (j) Require the respondent to submit to electronic monitoring.  
10 The order shall specify who shall provide the electronic monitoring  
11 services and the terms under which the monitoring must be performed.  
12 The order also may include a requirement that the respondent pay the  
13 costs of the monitoring. The court shall consider the ability of the  
14 respondent to pay for electronic monitoring;

15 (k) Consider the provisions of RCW 9.41.800;

16 (l) Order possession and use of essential personal effects. The  
17 court shall list the essential personal effects with sufficient  
18 specificity to make it clear which property is included. Personal  
19 effects may include pets. The court may order that a petitioner be  
20 granted the exclusive custody or control of any pet owned, possessed,  
21 leased, kept, or held by the petitioner, respondent, or minor child  
22 residing with either the petitioner or respondent and may prohibit  
23 the respondent from interfering with the petitioner's efforts to  
24 remove the pet. The court may also prohibit the respondent from  
25 knowingly coming within, or knowingly remaining within, a specified  
26 distance of specified locations where the pet is regularly found;  
27 ((and))

28 (m) Order use of a vehicle; and

29 (n) Enter an order restricting the respondent from engaging in  
30 abusive litigation as set forth in chapter 26.--- RCW (the new  
31 chapter created in section 10 of this act). A petitioner may request  
32 this relief in the petition or by separate motion. A petitioner may  
33 request this relief by separate motion at any time within five years  
34 of the date the order for protection is entered even if the order has  
35 since expired. A stand-alone motion for an order restricting abusive  
36 litigation may be brought by a party who meets the requirements of  
37 chapter 26.--- RCW (the new chapter created in section 10 of this  
38 act) regardless of whether the party has previously sought an order  
39 for protection under this chapter, provided the motion is made within  
40 five years of the date the order that made a finding of domestic

1 violence was entered. In cases where a finding of domestic violence  
2 was entered pursuant to an order under chapter 26.09, 26.26, or  
3 26.26A RCW, a motion for an order restricting abusive litigation may  
4 be brought under the family law case or as a stand-alone action filed  
5 under this chapter, when it is not reasonable or practical to file  
6 under the family law case.

7 (2) If a protection order restrains the respondent from  
8 contacting the respondent's minor children the restraint shall be for  
9 a fixed period not to exceed one year. This limitation is not  
10 applicable to orders for protection issued under chapter 26.09,  
11 26.10, 26.26A, or 26.26B RCW. With regard to other relief, if the  
12 petitioner has petitioned for relief on his or her own behalf or on  
13 behalf of the petitioner's family or household members or minor  
14 children, and the court finds that the respondent is likely to resume  
15 acts of domestic violence against the petitioner or the petitioner's  
16 family or household members or minor children when the order expires,  
17 the court may either grant relief for a fixed period or enter a  
18 permanent order of protection.

19 If the petitioner has petitioned for relief on behalf of the  
20 respondent's minor children, the court shall advise the petitioner  
21 that if the petitioner wants to continue protection for a period  
22 beyond one year the petitioner may either petition for renewal  
23 pursuant to the provisions of this chapter or may seek relief  
24 pursuant to the provisions of chapter 26.09, 26.26A, or 26.26B RCW.

25 (3) If the court grants an order for a fixed time period, the  
26 petitioner may apply for renewal of the order by filing a petition  
27 for renewal at any time within the three months before the order  
28 expires. The petition for renewal shall state the reasons why the  
29 petitioner seeks to renew the protection order. Upon receipt of the  
30 petition for renewal the court shall order a hearing which shall be  
31 not later than fourteen days from the date of the order. Except as  
32 provided in RCW 26.50.085, personal service shall be made on the  
33 respondent not less than five days before the hearing. If timely  
34 service cannot be made the court shall set a new hearing date and  
35 shall either require additional attempts at obtaining personal  
36 service or permit service by publication as provided in RCW 26.50.085  
37 or by mail as provided in RCW 26.50.123. If the court permits service  
38 by publication or mail, the court shall set the new hearing date not  
39 later than twenty-four days from the date of the order. If the order  
40 expires because timely service cannot be made the court shall grant

1 an ex parte order of protection as provided in RCW 26.50.070. The  
2 court shall grant the petition for renewal unless the respondent  
3 proves by a preponderance of the evidence that the respondent will  
4 not resume acts of domestic violence against the petitioner or the  
5 petitioner's children or family or household members when the order  
6 expires. The court may renew the protection order for another fixed  
7 time period or may enter a permanent order as provided in this  
8 section. The court may award court costs, service fees, and  
9 reasonable attorneys' fees as provided in subsection (1)(g) of this  
10 section.

11 (4) In providing relief under this chapter, the court may realign  
12 the designation of the parties as "petitioner" and "respondent" where  
13 the court finds that the original petitioner is the abuser and the  
14 original respondent is the victim of domestic violence and may issue  
15 an ex parte temporary order for protection in accordance with RCW  
16 26.50.070 on behalf of the victim until the victim is able to prepare  
17 a petition for an order for protection in accordance with RCW  
18 26.50.030.

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

24 (6) The court order shall specify the date the order expires if  
25 any. The court order shall also state whether the court issued the  
26 protection order following personal service, service by publication,  
27 or service by mail and whether the court has approved service by  
28 publication or mail of an order issued under this section.

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

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

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

1        NEW SECTION.    **Sec. 12.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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