

RCW 26.09.191 Mandatory and discretionary limitations in parenting plans—Residential time, decision making, and dispute resolution—Determination not to impose limitations—Definitions. (1)

PURPOSE. Parents are responsible for protecting and preserving the health and well-being of their minor children. When a parent acts contrary to the health and well-being of the parent's child, or engages in conduct that creates an unreasonable risk of harm to a child, the court may, and in some situations must, impose limitations intended to protect the child from harm as described in this section and RCW 26.09.192.

(2) GENERAL CONSIDERATIONS.

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

(b) The weight given to the existence of a protection order issued under chapter 7.105 RCW or former chapter 26.50 RCW as to domestic violence is within the discretion of the court.

(c) In determining whether any of the conduct described in this section or RCW 26.09.192 has occurred, the court shall apply the rules of evidence and civil procedure except where the parties have opted for an informal family law trial pursuant to state or local court rules.

(3) DEFINITIONS. The definitions in this subsection apply throughout this section and RCW 26.09.192 unless the context clearly requires otherwise.

(a) "Abusive use of conflict" refers to a party engaging in ongoing and deliberate actions to misuse conflict. This includes, but is not limited to: (i) Repeated bad faith violations of court orders regarding the child or the protection of the child or other parent; (ii) credible threats of physical, emotional, or financial harm to the other parent or to family, friends, or professionals providing support to the child or other parent; (iii) intentional use of the child in conflict; or (iv) abusive litigation as defined in RCW 26.51.020. Litigation that is aggressive or improper but does not meet the definition of abusive litigation shall not constitute a basis for finding abusive use of conflict under this section. Protective actions as defined in this section shall not constitute a basis for a finding of abusive use of conflict.

(b) "Child" shall also mean "children."

(c) "Knowingly" means knows or reasonably should know.

(d) "Parenting functions" has the same meaning as in RCW 26.09.004.

(e) "Protective actions" are actions taken by a parent in good faith for the purpose of protecting themselves or the parent's child from the risk of harm posed by the other parent. "Protective actions" can include, but are not limited to: (i) Reports or complaints regarding physical, sexual, or mental abuse of a child or child neglect to an individual or entity connected to the provision of care or safety of the child such as law enforcement, medical professionals, therapists, schools, day cares, or child protective services; (ii) seeking court orders changing residential time; or (iii) petitions for protection or restraining orders.

(f) "Sex offense against a child" means any of the following offenses involving a child victim: (i) Any sex offense as defined in RCW 9.94A.030; (ii) any offense with a finding of sexual motivation; (iii) any offense in violation of chapter 9A.44 RCW other than RCW

9A.44.132; (iv) any offense involving the sexual abuse of a minor, including any offense under chapter 9.68A RCW; or (v) any federal or out-of-state offense comparable to any offense under (f)(i) through (iv) of this subsection.

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

(h) "Willful abandonment" has occurred when the child's parent has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. "Willful abandonment" does not include a parent who has been unable to see the child due to circumstances that include, but are not limited to: Incarceration, deportation, inpatient treatment, medical emergency, fleeing to an emergency shelter or domestic violence shelter, or withholding of the child by the other parent.

(4) RESIDENTIAL TIME LIMITATIONS.

(a) PARENTAL CONDUCT REQUIRING LIMITS ON A PARENT'S RESIDENTIAL TIME. A parent's residential time with the parent's child shall be limited if it is found that a parent has engaged in any of the following conduct:

(i) Willful abandonment that continues for an extended period of time;

(ii) Physical abuse or a pattern of emotional abuse of a child;

(iii) A history of acts of domestic violence as defined in RCW 7.105.010, an assault that causes grievous bodily harm or the fear of such harm, or any sexual assault; or

(iv) Sexual abuse of a child. Required limitations and considerations for a parent who has been convicted of a sex offense against a child or found to have sexually abused a child in the current case or a prior case are addressed in RCW 26.09.192.

(b) PARENT RESIDING WITH A PERSON WHOSE CONDUCT REQUIRES RESIDENTIAL TIME LIMITATIONS. A parent's residential time with the child shall be limited if it is found that the parent knowingly resides with a person who has engaged in any of the following conduct:

(i) Physical abuse or a pattern of emotional abuse of a child;

(ii) A history of acts of domestic violence as defined in RCW 7.105.010, an assault that causes grievous bodily harm or the fear of such harm, or any sexual assault; or

(iii) Sexual abuse of a child. Required limitations and considerations on a parent who resides with someone convicted of a sex offense against a child or found to have sexually abused a child in the current case or a prior case are addressed in RCW 26.09.192.

(c) PARENTAL CONDUCT THAT MAY RESULT IN LIMITATIONS ON A PARENT'S RESIDENTIAL TIME. A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(i) A parent's neglect or substantial nonperformance of parenting functions;

(ii) A long-term emotional or physical impairment that interferes with the parent's performance of parenting functions;

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

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

(v) A parent has engaged in the abusive use of conflict which creates the danger of serious damage to the child's psychological development;

(vi) A parent has withheld from the other parent access to the child for a protracted period without good cause. Withholding does not include protective actions taken by a parent in good faith for the legitimate and lawful purpose of protecting themselves or the parent's child from the risk of harm posed by the other parent; or

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

(d) LIMITATIONS A COURT MAY IMPOSE ON A PARENT'S RESIDENTIAL TIME. The limitations that may be imposed by the court under this section shall be reasonably calculated to protect a child from the physical, sexual, or emotional abuse or harm that could result if a child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the other parent. The limitations the court may impose include, but are not limited to:

(i) SUPERVISED VISITATION. A court may, in its discretion, order supervised contact between a child and the parent.

(A) If the court requires supervised visitation, there is a presumption that the supervision shall be provided by a professional supervisor. This presumption is overcome if the court finds: (I) There is a lay person who has demonstrated through sworn testimony and evidence of past interactions with children that they are capable and committed to protecting the child from physical or emotional abuse or harm; and (II) the parent is unable to access professional supervision due to (1) geographic isolation or other factors that would make professionally supervised visitation inaccessible or (2) financial indigency that has been demonstrated by a general rule 34 waiver or other evidence that the parent's current income and necessary expenses do not allow for the cost of professional supervision.

(B) For all supervision, the court shall include clear written guidelines and prohibitions to be followed by the supervised party. No visits shall take place until the supervised parent and supervisor, or designated representative of a professional supervision program, have signed an acknowledgment confirming that they have read the court orders and the guidelines and prohibitions regarding visitation and agree to follow them. The court shall only permit supervision by an individual or program that is committed to protecting the child from any physical or emotional abuse or harm and is willing and capable of intervening in behaviors inconsistent with the court orders and guidelines.

(C) A parent may seek an emergency ex parte order temporarily suspending residential time until review by the court if: (I) The supervised parent repeatedly violates the court order or guidelines; (II) the supervised parent threatens the supervisor or child with physical harm, commits an act of domestic violence, or materially violates any treatment condition associated with any restrictions under this section (a missed counseling appointment does not constitute a violation); (III) the supervisor is unable or unwilling to protect the child and/or the protected parent; or (IV) the supervisor is no longer willing to provide service to the supervised parent. The court suspending residential time shall set a review hearing to take place within 14 days of entering the ex parte order.

(ii) EVALUATION OR TREATMENT. The court may order a parent to undergo evaluations for such issues as domestic violence perpetration, substance use disorder, mental health, or anger management, with collateral input provided from the other parent. Any evaluation report that does not include collateral input must provide details as to why and the attempts made to obtain collateral input.

(A) The court may also order that a parent complete treatment for any of these issues if the need for treatment is supported by the evidence and the evidence supports a finding that the issue interferes with parenting functions.

(B) A parent's residential time and decision-making authority may be conditioned on the parent's completion of an evaluation or treatment ordered by the court.

(iii) NO CONTACT. If, based on the evidence, the court expressly finds that limitations on the residential time with a child will not adequately protect a child from the harm or abuse that could result if a child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with a child.

(5) LIMITATIONS ON DECISION MAKING AND DISPUTE RESOLUTION. Except for circumstances provided in subsection (6)(b) of this section, the court shall order sole decision making and no dispute resolution other than court action if it is found that a parent has engaged in any of the following conduct:

(a) Willful abandonment that continues for an extended period;

(b) Physical, sexual, or a pattern of emotional abuse of a child;

(c) A history of acts of domestic violence as defined in RCW 7.105.010; or

(d) An assault that causes grievous bodily harm or the fear of such harm or any sexual assault.

(6) DETERMINATION NOT TO IMPOSE LIMITATIONS.

(a) If the court makes express written findings based on clear and convincing evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply limitations to residential time under subsection (4) of this section, then the court need not apply the limitations of subsection (4) of this section. This subsection shall not apply to findings of sexual abuse which are governed by RCW 26.09.192.

(b) If the court makes express written findings based on clear and convincing evidence that it would be contrary to the child's best interests to order sole decision making or preclude dispute resolution under subsection (5) of this section, the court need not apply those limitations. Where there has been a finding of domestic violence, there is a rebuttable presumption that there will be sole decision making. The court shall not require face-to-face mediation, arbitration, or interventions, including therapeutic interventions, that require the parties to share the same physical or virtual space if there has been a finding of domestic violence.

(c) In determining whether there is clear and convincing evidence supporting a determination not to impose limitations, the court shall consider and make express written findings on all of the following factors:

(i) Any current risk posed by the parent to the physical or psychological well-being of the child or other parent;

(ii) Whether a parent has demonstrated that they can and will prioritize the child's physical and psychological well-being;

(iii) Whether a parent has adhered to and is likely to adhere to court orders;

(iv) Whether a parent has genuinely acknowledged past harm and is committed to avoiding harm in the future; and

(v) A parent's compliance with any previously court-ordered treatment. A parent's compliance with the requirements for participation in a treatment program does not, by itself, constitute evidence that the parent has made the requisite changes.

(7) WHEN LIMITATIONS APPLY TO BOTH PARENTS.

(a) When mandatory limitations in subsection (4)(a) or (b) of this section apply to both parents, the court may make an exception in applying mandatory limitations. The court shall make detailed written findings regarding the comparative risk of harm to the child posed by each parent, and shall explain the limitations imposed on each parent, including any decision not to impose restrictions on a parent or to award decision making to a parent who is subject to limitations.

(b) When mandatory limitations under subsection (4)(a) or (b) of this section apply to one parent and discretionary limitations under subsection (4)(c) of this section apply to another parent, there is a presumption that the mandatory limitations shall have priority in setting the limitations of the residential schedule, decision making, and dispute resolution. If the court deviates from this presumption, the court shall make detailed written findings as to the reasons for the deviation.

(c) When discretionary limitations in subsection (4)(c) of this section apply to both parents, the court shall make detailed written findings regarding the comparative risk of harm to the child posed by each parent, and shall explain the limitations imposed on each parent, including any decision not to impose restrictions on a parent or to award decision making to a parent who is subject to limitations in subsection (4)(c) of this section.

(d) In making the determinations under (a), (b), or (c) of this subsection, the court shall consider the best interests of the child and which parenting arrangement best maintains a child's emotional growth, health and stability, and physical care. Further, the best interests of the child are ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

(8) RIGHTS TO APPEAL. Nothing in this section restricts any right to appeal. [2025 c 166 s 1; 2021 c 215 s 134; 2020 c 311 s 8; 2019 c 46 s 5020; 2017 c 234 s 2; 2011 c 89 s 6; 2007 c 496 s 303; 2004 c 38 s 12; 1996 c 303 s 1; 1994 c 267 s 1. Prior: 1989 c 375 s 11; 1989 c 326 s 1; 1987 c 460 s 10.]

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Effective date—2020 c 311: See RCW 26.51.901.

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—1996 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 s 3.]

Effective date—1994 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 s 6.]