

Parenting Plans & Family Violence: Keeping Kids Safe

Workshop for Washington Coalition of
Sexual Assault Programs

February 26, 2013

Leslie Savina, Northwest Justice Project

lsavina@nwjustice.org

Disclaimer

Here's the fine print:

This presentation provides general information concerning family violence and parenting plans in Washington State. It is not intended as a substitute for specific legal advice.

What is a Parenting Plan?

Just like it sounds: a plan for parenting a child, including allocation of time, decision making and resolving disputes.

A parenting plan is a court order.

RCW 26.09.040

What's in a Parenting Plan?

- Residential schedule
- Priorities within the schedule
- Restrictions
- Transportation arrangements
- Designation of custodian
- Relocation summary
- Decision-making
- Dispute resolution

RCW 26.09.184

In a Perfect World . . .

The court's goal is to “encourage each parent to maintain a loving, stable and nurturing relationship with the child, consistent with each child's developmental level and the family's social and economic circumstances.”

RCW 26.09.187(3)(a)

Residential Schedule Considerations

Factors the Court considers:

- The relative strength, nature, and stability of the child's relationship with each parent*
- Agreement of the parents
- Each parent's past and potential for future performance of parenting functions including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child

*Factor given the greatest weight

Residential Schedule Considerations

continued

- Emotional needs and developmental level of child
- Child's relationship with others (siblings and other important adults)
- Parents' wishes
- Child's wishes if sufficiently mature
- Parents' work schedules

RCW 26.09.187(3)(a) et seq.

Restrictions

HOWEVER, before the Court decides the residential schedule, the Court *must* determine whether there is a basis to restrict a parent's contact with children.

RCW 26.09.191(1) and (2)

Restrictions

In most cases, the Court *must* limit a parent's residential time with a child if that parent (or a person who lives with that parent) has engaged in any of the following conduct:

Basis for Mandatory Restrictions

- Willful abandonment of the children that continues for a long time, or the parent substantially refuses to perform parenting functions (care for the children); OR
- Physical, sexual or a pattern of emotional abuse of any child (whether it is the parent's child or someone else's); OR

Basis for Mandatory Restrictions

continued

- A history of acts of domestic violence or an assault or sexual assault that causes serious bodily harm or the fear of such harm; OR
- The parent has been convicted as an adult of one of a number of sex crimes, including rape of a child, child molestation, sexual misconduct with a minor, incest, or sexual exploitation of children, or the parent has been found to be a sexual predator.

Basis for Non-mandatory Restrictions

The court *may* choose to limit a parent's residential time if the court finds any of the following:

- The parent neglected or substantially failed to provide care for the children; OR
- The parent has a long-term emotional or physical problem that interferes with his/her ability to parent the children; OR

Basis for Non-Mandatory Restrictions

continued

- The parent has a long-term drug, alcohol or other substance abuse problem that interferes with the parent's ability to parent the children; OR
- The absence or substantial impairment of emotional ties between the parent and the child; OR
- That parent has engaged in the abusive use of conflict which has created a danger of serious damage to the child's psychological development; OR

Basis for Non-Mandatory Restrictions cont.

- The parent has denied the other parent contact with the child for a long time without a good reason; OR
- The court finds another reason that unrestricted contact with the parent would not be in the child(ren)'s best interest.

Sex Offenses & Parenting Plans

- The law *requires* restrictions
- The nature and extent of the mandatory restrictions depend upon:
 - the nature of the sex offense,
 - whether there was a criminal conviction, and
 - the identity of the victim

What is the Offense?

There is a range of sex offenses.

For example:

- 1st/2nd/3rd degree rape of a child
- 1st/2nd degree sexual misconduct
- 1st/2nd degree child molestation
- Incest
- Indecent liberties

Some convictions are “status offenses” (for example sex between a 15 year old and a 20 year old is 3rd degree rape of a child) and some convictions are for horrific assaults.

Who is the Victim?

If the child of the offender was *not* the victim of the sexual abuse, the offending parent has more opportunity to advocate for fewer restrictions.

Who is the Offender?

The offender may not be the parent.

It may be someone with whom the parent resides.

If so, there must still be restrictions to keep the child safe. These restrictions are very similar to the restrictions if the parent was the offender.

Restrictions

Restrictions in a parenting plan should be specific and focused on keeping the child and protective parent safe.

Restrictions can range from no contact to liberal visitation.

The offending parent should not be the primary residential parent.

RCW 26.09.191(2)

Restrictions: Sexual Predator

If the parent is a “sexual predator” the parent shall be restrained from *any* contact with the child.

RCW 26.09.191(2)(c)

Restrictions: Worst Offenses

Parent convicted of the “worst” offenses (rape of a young child, molestation) is considered a danger to the child.

Parent should not have contact with the child.

But

RCW 26.09.191(2)(d)

Rebuttable Presumption: If Child Was the Victim

If the child was the victim, the presumption of no visitation may be rebutted if:

- Contact is appropriate and poses minimal risk, AND
- Child is in therapy and therapist approves, AND
- Parent in treatment if court ordered, making progress, AND
- Treatment provider approves and believes minimal risk to child

Rebuttable Presumption: Limitations

Parent convicted of sex offense against his/her own child is able to rebut the presumption of no visitation.

What then?

Only supervised visitation!

(Court may allow, but not required.)

Requirements of Supervised Visitation

- Supervised by neutral and independent adult
- Supervisor must be willing and capable of protecting the child
- Pursuant to an adequate plan

RCW 26.09.191(2)(h)

Rebuttable Presumption: If Child Not the Victim

If the child was *not* the victim, the presumption of no visitation may be rebutted if:

- Contact is appropriate, little risk, AND
- Parent attending court ordered treatment AND
- Treatment provider approves

RCW 26.09.191(2)(f)(i)

Rebuttable Presumption: Child Not the Victim

Parent convicted of sex offense but not against his/her own child is able to rebut the presumption of no visitation.

What then?

Rebuttable Presumption: Limitations When Child Not the Victim

Unsupervised visitation possible if:

- There has been supervised visitation for 2 years with no arrests/convictions for [certain] sex offenses
- Court finds minimal risk to child after consultation with [statutorily enumerated] experts
- Compliance with court ordered treatment
- Or, if no court ordered treatment, pending results of psychosexual evaluation

Convictions of “Lesser” Offenses

When a parent has been convicted of a less horrific offense (status offense) the “parent’s residential time shall be limited”.

RCW 26.09.191.(2)(b)

Limitations

What type of limitations/restrictions will protect a child when visiting with a parent who was convicted of a “lesser” sex offense?

(or if the parent is living with someone convicted of such an offense)

Some Ideas

First!

The non-offending parent must be the primary residential parent.

RCW 26.09.191(2)(a)

Second!

Any court-ordered limitation shall:

- Protect the child from harm AND
- Protect the non-offending parent from harm

RCW 26.09.191(2)(m)(i)

and. . . .

If the court finds that limitations on visitation will not adequately protect the child, the court *shall* restrain the offending parent from *all* contact with the child.

RCW 26.09.191(2)(m)(i)

Limitations

- Domestic violence treatment
- Substance abuse treatment
- Sexual deviancy evaluation
- Sex offender treatment
- Supervised visits

Sex Offense Without a Conviction

More commonly there is no conviction. One parent suspects, but cannot prove, their child has been sexually abused by the other parent or someone associated with the other parent.

How can the protective parent keep their child safe during visitation?

What Would You Do?

What are some strategies you have used to help keep children safe when sexual abuse is alleged?

Easiest scenario:

Court finds, by “clear and convincing evidence”, that the parent sexually abused the child.

Court cannot give that parent visitation,
unless

. . . .an evaluator or therapist recommends that the child is ready for contact and will not be harmed.

RCW 26.09.191(m)(ii)

Limitations: Best Practices

Be as specific as possible in creating a residential schedule

- Reduces disagreements
- Enforceable order
- Promotes predictability/stability for child

Supervised Visitation Options

- No visitation
- Supervised visitation center
- Supervised visitation by a professional
- Supervised visitation by someone other than a professional

Supervised Visitation: Best Practices

- **Visits Supervised by a 3rd party**
 - Select a neutral third party & confirm availability
 - Arrange exchanges so parties do not interact at drop-offs
 - EVERYONE (parties and supervisor) sign off on ground rules
 - > No physical contact (lap sitting, wrestling, changing diapers, bathing)
 - > No whispering, passing notes, hand signals
 - > No visitation at location where abuse occurred
- **Give the supervisor authority to suspend visitation if child at risk**
- **Use a separate supervised visitation order**

Conditions of Visitation without Supervision

- No alcohol or drugs
- Telephone contact with protective parent during visit
- Public place
- Limit third parties present
- Short duration
- No overnights
- No demeaning comments about other parent
- Children not to be used to relay messages

Restrictions on Time

- Restrict abusive parent's attendance at child's school, church and extracurricular events
- Phone/Skype contact between child and protective parent during visits (but parent should not ask child about the other parent during visit or calls)

Other Conditions Prior to Visitation

- Substance abuse evaluation/treatment
- Sexual deviancy evaluation/treatment
- Batterers' intervention program
- Comprehensive parenting classes
- Conditions of probation and parole

Best Practices – Treatment Orders

- Treatment orders

- Request progress reports be submitted to court and to the other party. The Court should order that the party ordered to get treatment sign a release.
- Clear language regarding what happens if treatment is discontinued or parent stops participating (e.g., visits shall stop or shall revert to supervised visits)
- Protective parent should be able to communicate problems to the provider
- Consider financial resources of the parents

Decision-Making

- Day to day care and control while child is residing with that parent and emergency decisions if health and safety is affected.
- NO joint decisions when there is a history of sexual abuse.

RCW 26.09.191(1)

Dispute Resolution

No dispute resolution process, except court action, when limiting factors under RCW 26.09.191 (domestic violence, sexual abuse).

RCW 26.09.187(1)

Best Practices

- Listen to the protective parent and his/her concerns about what is being proposed
- Ask questions – particularly if the parent seems uncomfortable/afraid about something being proposed
- Respect that the protective parent knows best how to keep her/his family safe
- No one size fits all – think outside the box!



“If we don’t
stand up for
children,
then we don’t
stand for much.”

Marian Wright Edelman