

---

SENATE BILL 6364

---

State of Washington                      63rd Legislature                      2014 Regular Session

By Senators Kohl-Welles, Fraser, Keiser, Rolfes, and Cleveland

Read first time 01/22/14. Referred to Committee on Law & Justice.

1            AN ACT Relating to parental rights and responsibilities of sexual  
2 assault perpetrators and survivors; amending RCW 26.09.191 and  
3 26.33.170; reenacting and amending RCW 26.26.011; and adding new  
4 sections to chapter 26.26 RCW.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 26.26 RCW  
7 to read as follows:

8            The legislature finds that several studies estimate there are  
9 between twenty-five thousand and thirty-two thousand rape-related  
10 pregnancies in the United States annually. The legislature also finds  
11 that a substantial number of women who become pregnant as a result of  
12 sexual assault choose to give birth and raise their children. The  
13 legislature finds further that rape is one of the most under-reported  
14 and under-prosecuted serious crimes. The legislature also finds that  
15 rapists may use the threat of pursuing parental rights or custody to  
16 coerce survivors into not reporting or not assisting in the prosecution  
17 of the assault. The legislature finds that a rapist's pursuit of child  
18 custody or parental rights forces the survivor into an ongoing  
19 relationship with the rapist, effectively tethering the survivor to the

1 perpetrator and potentially increasing power and control over the  
2 survivor. The legislature also finds that a survivor who is forced to  
3 co-parent a child with the rapist will likely suffer traumatic  
4 psychological stress, making recovery more difficult and potentially  
5 affecting the ability to parent the child and promote the child's best  
6 interests. The legislature intends, therefore, to establish a process  
7 whereby a survivor who becomes pregnant as a result of a sexual assault  
8 and who elects to raise the child can seek the court's assistance in  
9 avoiding continued forced interactions with the rapist, and the  
10 consequent inability to fully heal from the assault.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.26 RCW  
12 to read as follows:

13 (1) This section applies in cases when a person is alleged to have  
14 committed a sexual assault that results in a pregnancy.

15 (2) For the purposes of this section, sexual assault may be proved  
16 by either:

17 (a) Evidence that a person was convicted of or pleaded guilty to  
18 sexual assault; or

19 (b) Clear, cogent, and convincing evidence that the person  
20 committed sexual assault.

21 (3) An allegation that a pregnancy resulted from a sexual assault  
22 may be raised under this chapter:

23 (a) In a petition to adjudicate parentage;

24 (b) In response to a petition to adjudicate parentage; or

25 (c) In a proceeding for rescission of an acknowledgement of  
26 paternity.

27 (4)(a) If there is an allegation that a pregnancy resulted from  
28 sexual assault, the court must conduct a fact-finding hearing on the  
29 allegation. The court may not enter any temporary orders providing  
30 residential time or decision making to the alleged perpetrator prior to  
31 the fact-finding hearing on the allegation.

32 (b) Prior to the fact-finding hearing, the court may order genetic  
33 testing to determine whether the alleged perpetrator is biologically  
34 related to the child. If genetic testing reveals that the alleged  
35 perpetrator is not biologically related to the child, the fact-finding  
36 hearing must be stricken.

1 (c) During the fact-finding hearing, the prior sexual activity or  
2 the reputation of the alleged victim is inadmissible except:

3 (i) As evidence concerning the past sexual conduct between the  
4 alleged victim and the alleged perpetrator, and only when such evidence  
5 is offered by the alleged perpetrator on the issue of whether the  
6 alleged victim consented to the sexual conduct that resulted in the  
7 pregnancy; or

8 (ii) When constitutionally required to be admitted.

9 (d) Evidence concerning the past sexual conduct between the alleged  
10 victim and alleged perpetrator may be introduced only if the court has  
11 ruled the evidence is admissible after an offer of proof has been made  
12 during an in camera hearing to determine whether the alleged  
13 perpetrator has evidence to impeach a witness when prior sexual conduct  
14 between the alleged perpetrator and alleged victim is denied. An offer  
15 of proof under this section includes reasonably specific information as  
16 to the date, time, and place of the past sexual conduct between the  
17 alleged victim and the alleged perpetrator.

18 (e) Unless the court finds during the in camera hearing that  
19 reasonably specific information as to date, time, or place, or some  
20 combination thereof, has been offered as to the prior sexual conduct  
21 between the alleged perpetrator and alleged victim, the court shall  
22 order counsel for the alleged perpetrator to refrain from inquiring  
23 into prior sexual conduct between the alleged victim and the alleged  
24 perpetrator.

25 (f) The court may not admit evidence under this subsection unless  
26 it determines at the in camera hearing that:

27 (i) The evidence is relevant; and

28 (ii) The probative value of the evidence outweighs the danger of  
29 unfair prejudice.

30 (g) Evidence determined admissible under this section is admissible  
31 at trial to the extent the court enters an order specifying:

32 (i) The evidence that may be admitted; and

33 (ii) The areas with respect to which the alleged victim may be  
34 examined or cross-examined.

35 (5) In determining whether a pregnancy resulted from a sexual  
36 assault, a court may not draw any inferences or conclusions based on  
37 evidence that:

38 (a) The alleged perpetrator was voluntarily intoxicated;

1 (b) The alleged victim was voluntarily intoxicated;

2 (c) The alleged victim engaged in limited consensual sexual  
3 touching; or

4 (d) The alleged victim chose to give birth to and raise the child.

5 (6) If the court finds by clear, cogent, and convincing evidence  
6 that a person has committed sexual assault that resulted in a  
7 pregnancy, the court must:

8 (a) Enter an order holding that the person is not a parent of the  
9 child, if such an order is requested by the child's legal parent or  
10 guardian; or

11 (b) Enter an order consistent with the relief requested by the  
12 child's legal parent or guardian, provided that the court determines  
13 that the relief requested is in the best interests of the child.

14 (7) Absent the express written consent of the child's legal parent  
15 or guardian, a person who is found to have committed a sexual assault  
16 that resulted in pregnancy has:

17 (a) No right to an allocation of parental rights, including  
18 residential time or decision-making responsibilities for the child;

19 (b) No right to inheritance from the child; and

20 (c) No right to notification of, or standing to object to, the  
21 adoption of a child.

22 (8) If the court enters an order under subsection (6) of this  
23 section that is inconsistent with the information on the child's birth  
24 certificate, the court shall also order the birth certificate be  
25 amended in a manner that is consistent with the child's best interests  
26 and the wishes of the child's legal parent or guardian.

27 (9) If a person is found to have committed a sexual assault that  
28 resulted in a pregnancy, the court must order the person to pay child  
29 support or birth-related costs or both, unless such relief is not  
30 sought by the child's legal parent or guardian.

31 (10) The court may order an award of attorneys' fees under this  
32 section on the same basis as attorneys' fees are awarded under RCW  
33 26.09.140.

34 (11) Unless the parties and the court agree otherwise, the  
35 fact-finding hearing and any related proceedings under this section  
36 must be closed. The general public must be excluded and only those  
37 persons whom the court finds to have a direct interest in the case or  
38 in the work of the court may be admitted. Persons so admitted may not

1 disclose any information obtained at the hearing which would identify  
2 the parties involved or the child. The court may require the presence  
3 of witnesses deemed necessary to the disposition of the case.

4 **Sec. 3.** RCW 26.26.011 and 2011 c 283 s 1 are each reenacted and  
5 amended to read as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1) "Acknowledged father" means a man who has established a father-  
9 child relationship under RCW 26.26.300 through 26.26.375.

10 (2) "Adjudicated parent" means a person who has been adjudicated by  
11 a court of competent jurisdiction to be the parent of a child.

12 (3) "Alleged parent" means a person who alleges himself or herself  
13 to be, or is alleged to be, the genetic parent or a possible genetic  
14 parent of a child, but whose parentage has not been determined. The  
15 term does not include:

16 (a) A presumed parent;

17 (b) A person whose parental rights have been terminated or declared  
18 not to exist; or

19 (c) A donor.

20 (4) "Assisted reproduction" means a method of causing pregnancy  
21 other than sexual intercourse. The term includes:

22 (a) Artificial insemination;

23 (b) Donation of eggs;

24 (c) Donation of embryos;

25 (d) In vitro fertilization and transfer of embryos; and

26 (e) Intracytoplasmic sperm injection.

27 (5) "Child" means an individual of any age whose parentage may be  
28 determined under this chapter.

29 (6) "Commence" means to file the petition seeking an adjudication  
30 of parentage in a superior court of this state or to serve a summons  
31 and the petition.

32 (7) "Determination of parentage" means the establishment of the  
33 parent-child relationship by the signing of a valid acknowledgment of  
34 paternity under RCW 26.26.300 through 26.26.375 or adjudication by the  
35 court.

36 (8) "Domestic partner" means a state registered domestic partner as  
37 defined in chapter 26.60 RCW.

1 (9) "Donor" means an individual who contributes a gamete or gametes  
2 for assisted reproduction, whether or not for consideration. The term  
3 does not include:

4 (a) A person who provides a gamete or gametes to be used for  
5 assisted reproduction with his or her spouse or domestic partner; or

6 (b) A woman who gives birth to a child by means of assisted  
7 reproduction, except as otherwise provided in RCW 26.26.210 through  
8 26.26.260 or 26.26.735.

9 (10) "Ethnic or racial group" means, for purposes of genetic  
10 testing, a recognized group that an individual identifies as all or  
11 part of the individual's ancestry or that is so identified by other  
12 information.

13 (11) "Fertility clinic" means a facility that provides assisted  
14 reproduction services or gametes to be used in assisted reproduction.

15 (12) "Gamete" means either a sperm or an egg.

16 (13) "Genetic parent" means a person who is the source of the egg  
17 or sperm that produced the child. The term does not include a donor.

18 (14) "Genetic testing" means an analysis of genetic markers to  
19 exclude or identify a man as the father or a woman as the mother of a  
20 child. The term includes an analysis of one or a combination of the  
21 following:

22 (a) Deoxyribonucleic acid; and

23 (b) Blood-group antigens, red-cell antigens, human-leukocyte  
24 antigens, serum enzymes, serum proteins, or red-cell enzymes.

25 (15) "Identifying information" includes, but is not limited to, the  
26 following information of the gamete donor:

27 (a) The first and last name of the person; and

28 (b) The age of the person at the time of the donation.

29 (16) "Man" means a male individual of any age.

30 (17) "Parent" means an individual who has established a parent-  
31 child relationship under RCW 26.26.101.

32 (18) "Parent-child relationship" means the legal relationship  
33 between a child and a parent of the child. The term includes the  
34 mother-child relationship and the father-child relationship.

35 (19) "Parentage index" means the likelihood of parentage calculated  
36 by computing the ratio between:

37 (a) The likelihood that the tested person is the parent, based on

1 the genetic markers of the tested person, genetic parent, and child,  
2 conditioned on the hypothesis that the tested person is the parent of  
3 the child; and

4 (b) The likelihood that the tested person is not the parent, based  
5 on the genetic markers of the tested person, genetic parent, and child,  
6 conditioned on the hypothesis that the tested person is not the parent  
7 of the child and that the parent is of the same ethnic or racial group  
8 as the tested person.

9 (20) "Physician" means a person licensed to practice medicine in a  
10 state.

11 (21) "Presumed parent" means a person who, by operation of law  
12 under RCW 26.26.116, is recognized as the parent of a child until that  
13 status is rebutted or confirmed in a judicial proceeding.

14 (22) "Probability of parentage" means the measure, for the ethnic  
15 or racial group to which the alleged parent belongs, of the probability  
16 that the individual in question is the parent of the child, compared  
17 with a random, unrelated person of the same ethnic or racial group,  
18 expressed as a percentage incorporating the parentage index and a prior  
19 probability.

20 (23) "Record" means information that is inscribed on a tangible  
21 medium or that is stored in an electronic or other medium and is  
22 retrievable in perceivable form.

23 (24) "Sexual assault" means any offense under chapter 9A.44 RCW  
24 capable of causing pregnancy.

25 (25) "Signatory" means an individual who authenticates a record and  
26 is bound by its terms.

27 ((+25)) (26) "State" means a state of the United States, the  
28 District of Columbia, Puerto Rico, the United States Virgin Islands,  
29 any territory or insular possession subject to the jurisdiction of the  
30 United States, or an Indian tribe or band, or Alaskan native village,  
31 that is recognized by federal law or formally acknowledged by state  
32 law.

33 ((+26)) (27) "Support enforcement agency" means a public official  
34 or agency authorized to seek:

35 (a) Enforcement of support orders or laws relating to the duty of  
36 support;

37 (b) Establishment or modification of child support;

38 (c) Determination of parentage; or

1 (d) Location of child support obligors and their income and assets.

2 **Sec. 4.** RCW 26.09.191 and 2011 c 89 s 6 are each amended to read  
3 as follows:

4 (1) The permanent parenting plan shall not require mutual decision-  
5 making or designation of a dispute resolution process other than court  
6 action if it is found that a parent has engaged in any of the following  
7 conduct: (a) Willful abandonment that continues for an extended period  
8 of time or substantial refusal to perform parenting functions; (b)  
9 physical, sexual, or a pattern of emotional abuse of a child; or (c) a  
10 history of acts of domestic violence as defined in RCW 26.50.010(1) or  
11 an assault or sexual assault (~~(which)~~) that causes grievous bodily harm  
12 or the fear of such harm or that results in a pregnancy.

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



1 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

26 (D) RCW 9A.44.089;

27 (E) RCW 9A.44.093;

28 (F) RCW 9A.44.096;

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

32 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

20 (ii) RCW 9A.44.073;

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

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

25 (v) RCW 9A.44.083;

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

28 (vii) RCW 9A.44.100;

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

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

34 (e) There is a rebuttable presumption that a parent who resides  
35 with a person who, as an adult, has been convicted, or as a juvenile  
36 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)  
37 of this subsection places a child at risk of abuse or harm when that  
38 parent exercises residential time in the presence of the convicted or

1 adjudicated person. Unless the parent rebuts the presumption, the  
2 court shall restrain the parent from contact with the parent's child  
3 except for contact that occurs outside of the convicted or adjudicated  
4 person's presence:

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

7 (ii) RCW 9A.44.073;

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

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

12 (v) RCW 9A.44.083;

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

15 (vii) RCW 9A.44.100;

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

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

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

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

31 (ii) If the child was the victim of the sex offense committed by  
32 the parent requesting residential time, (A) contact between the child  
33 and the offending parent is appropriate and poses minimal risk to the  
34 child, (B) if the child is in or has been in therapy for victims of  
35 sexual abuse, the child's counselor believes such contact between the  
36 child and the offending parent is in the child's best interest, and (C)  
37 the offending parent has successfully engaged in treatment for sex

1 offenders or is engaged in and making progress in such treatment, if  
2 any was ordered by a court, and the treatment provider believes such  
3 contact is appropriate and poses minimal risk to the child.

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

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

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

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

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

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

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

33 (k) A court shall not order unsupervised contact between the  
34 offending parent and a child of the offending parent who was sexually  
35 abused by that parent. A court may order unsupervised contact between  
36 the offending parent and a child who was not sexually abused by the  
37 parent after the presumption under (d) of this subsection has been  
38 rebutted and supervised residential time has occurred for at least two

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

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

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

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

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

37 (iii) If the court limits residential time under (a) or (b) of this  
38 subsection to require supervised contact between the child and the

1 parent, the court shall not approve of a supervisor for contact between  
2 a child and a parent who has engaged in physical, sexual, or a pattern  
3 of emotional abuse of the child unless the court finds based upon the  
4 evidence that the supervisor accepts that the harmful conduct occurred  
5 and is willing to and capable of protecting the child from harm. The  
6 court shall revoke court approval of the supervisor upon finding, based  
7 on the evidence, that the supervisor has failed to protect the child or  
8 is no longer willing to or capable of protecting the child.

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

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

27 (a) A parent's neglect or substantial nonperformance of parenting  
28 functions;

29 (b) A long-term emotional or physical impairment which interferes  
30 with the parent's performance of parenting functions as defined in RCW  
31 26.09.004;

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

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

37 (e) The abusive use of conflict by the parent which creates the  
38 danger of serious damage to the child's psychological development;



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

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

5 (4) In cases involving allegations of limiting factors under  
6 subsection (2)(a)(ii) and (iii) of this section, both parties shall be  
7 screened to determine the appropriateness of a comprehensive assessment  
8 regarding the impact of the limiting factor on the child and the  
9 parties.

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

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

16 (7) For the purposes of this section:

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

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

22 **Sec. 5.** RCW 26.33.170 and 1999 c 173 s 1 are each amended to read  
23 as follows:

24 (1) An agency's, the department's, or a legal guardian's consent to  
25 adoption may be dispensed with if the court determines by clear, cogent  
26 and convincing evidence that the proposed adoption is in the best  
27 interests of the adoptee.

28 (2) An alleged father's, birth parent's, or parent's consent to  
29 adoption may be dispensed with if the court finds that the proposed  
30 adoption is in the best interests of the adoptee and:

31 (a) The alleged father, birth parent, or parent has been found  
32 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,  
33 where the adoptee was the victim of the rape or incest; or

34 (b) The alleged father, birth parent, or parent has been found  
35 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,  
36 or has been found by clear, cogent, and convincing evidence to have

1 committed a sexual assault where the other parent of the adoptee was  
2 the victim of the (~~rape~~) sexual assault or incest and the adoptee was  
3 conceived as a result of the (~~rape or incest~~) sexual assault.

4 (3) Nothing in this section shall be construed to eliminate the  
5 notice provisions of this chapter.

6 NEW SECTION. **Sec. 6.** If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

--- END ---