

SHB 1543 - S COMM AMD

By Committee on Law & Justice

ADOPTED AND ENGROSSED 4/20/17

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 26.26
4 RCW to read as follows:

5 (1) This section applies in cases when a person alleged or
6 presumed to be a legal parent to a child is alleged to have committed
7 a sexual assault that resulted in the victim of the assault becoming
8 pregnant and subsequently giving birth to the child.

9 (2) For the purposes of this section, "sexual assault" means
10 nonconsensual sexual penetration that results in pregnancy.

11 (3) For the purposes of this section, the fact that the person
12 seeking parental rights or presumed to be a legal parent committed a
13 sexual assault that resulted in the victim of the assault becoming
14 pregnant and subsequently giving birth to the child may be proved by
15 either:

16 (a) Evidence that the person seeking parental rights or presumed
17 to be a legal parent was convicted of or pleaded guilty to a sexual
18 assault under RCW 9A.44.040, 9A.44.050, 9A.44.060, or a comparable
19 crime of sexual assault in any jurisdiction, against the child's
20 parent, and that the child was born within three hundred twenty days
21 after the sexual assault; or

22 (b) Clear, cogent, and convincing evidence that the person
23 seeking parental rights or presumed to be a legal parent committed
24 sexual assault, as defined in this section, against the child's
25 parent, and that the child was born within three hundred twenty days
26 after the sexual assault.

27 (4) An allegation that the child was born as the result of a
28 sexual assault may be raised under this chapter:

29 (a) In a petition to adjudicate parentage; or

30 (b) In response to a petition to adjudicate parentage.

31 The pleading making the allegation must be filed in a petition or
32 in a response to a petition in proceedings filed no later than four

1 years after the birth of the child, except that (i) the pleading
2 making the allegation that the child was born as a result of a sexual
3 assault may be filed at any time in proceedings pursuant to RCW
4 26.26.525; or (ii) for a period of two years after the effective date
5 of this section, a court may waive the time bar in cases in which a
6 presumed, acknowledged, or adjudicated parent was found in a criminal
7 or separate civil proceeding to have committed a sexual assault
8 against the parent alleging that the child was born as a result of
9 the sexual assault.

10 (5) If there is an allegation that the child was born as a result
11 of a sexual assault against the child's parent by the person seeking
12 parentage or presumed to be the parent of the child, the court must
13 conduct a fact-finding hearing on the allegation.

14 (a) The court may not enter any temporary orders providing
15 residential time or decision making to the alleged perpetrator prior
16 to the fact-finding hearing on the sexual assault allegation unless
17 both of the following criteria are satisfied: (i) The alleged
18 perpetrator is a presumed parent of the child; and (ii) the court
19 specifically finds that it would be in the best interests of the
20 child if such temporary orders are entered.

21 (b) Prior to the fact-finding hearing, the court may order
22 genetic testing to determine whether the alleged perpetrator is
23 biologically related to the child. If genetic testing reveals that
24 the alleged perpetrator is not biologically related to the child, the
25 fact-finding hearing must be stricken.

26 (c) Fourteen days prior to the fact-finding hearing, the party
27 alleging that the child was born as a result of a sexual assault
28 shall submit affidavits setting forth facts supporting the allegation
29 and shall give notice, together with a copy of the affidavit, to
30 other parties to the proceedings, who may file opposing affidavits.
31 Opposing affidavits must be submitted and served to other parties to
32 the proceeding five days prior to the fact-finding hearing.

33 (d) The court shall determine on the record whether affidavits
34 and documents submitted for the fact-finding hearing should be
35 sealed.

36 (6) If, after the fact-finding hearing or after a bench trial,
37 the court finds that the person seeking parental rights or presumed
38 to be a legal parent committed sexual assault, pursuant to the
39 standards set forth in subsection (3)(a) or (b) of this section,

1 against the child's parent, and that the child was born within three
2 hundred twenty days of the sexual assault the court must:

3 (a) Enter an order holding that the person seeking parental
4 rights or presumed to be a legal parent is not a parent of the child,
5 if such an order is requested by the child's legal parent or
6 guardian; or

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

10 (7) Absent the express written consent of the child's legal
11 parent or guardian, a person who is found to have committed a sexual
12 assault, as defined in this section, against the child's parent, and
13 that the child was born within three hundred twenty days of the
14 sexual assault has:

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

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

18 (c) No right to notification of, or standing to object to, the
19 adoption of the child.

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

25 (9) If the court finds that the person seeking parentage or
26 presumed to be the parent committed a sexual assault, as defined in
27 this section, against the child's parent, and that the child was born
28 within three hundred twenty days of the sexual assault, and the legal
29 parent or guardian requests it, the court must order the person
30 seeking parentage or presumed to be the parent to pay child support
31 or birth-related costs or both.

32 (10) The legal parent or guardian may decline an order for child
33 support or birth-related costs. If the legal parent or guardian
34 declines an order for child support, and is either currently
35 receiving public assistance or later applies for it for the child
36 born as a result of the sexual assault, support enforcement agencies
37 as defined in this chapter shall not file administrative or court
38 proceedings to establish or collect child support, including medical
39 support, from the person seeking parentage or presumed to be the
40 parent who has been found to have committed a sexual assault, as

1 defined in this section, against the child's parent, and that the
2 child was born within three hundred twenty days of the sexual
3 assault.

4 (11) If the court enters an order under subsection (10) of this
5 section providing that no child support obligation may be established
6 or collected from the person seeking parentage or presumed to be the
7 parent who has been found to have committed a sexual assault, the
8 court shall forward a copy of the order to the Washington state
9 support registry.

10 (12) The court may order an award of attorneys' fees under this
11 section on the same basis as attorneys' fees are awarded under RCW
12 26.09.140.

13 (13) Any party may move to close the fact-finding hearing and any
14 related proceedings under this section to the public. If no party
15 files such a motion, the court shall determine on its own initiative
16 whether the fact-finding hearing and any related proceedings under
17 this section should be closed to the public. Upon finding good cause
18 for closing the proceeding, and if consistent with Article I, section
19 10 of the state Constitution, the court may: (a) Restrict admission
20 to only those persons whom the court finds to have a direct interest
21 in the case or in the work of the court, including witnesses deemed
22 necessary to the disposition of the case; and (b) restrict persons
23 who are admitted from disclosing any information obtained at the
24 hearing that would identify the parties involved or the child.

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

27 (1) The permanent parenting plan shall not require mutual
28 decision-making or designation of a dispute resolution process other
29 than court action if it is found that a parent has engaged in any of
30 the following conduct: (a) Willful abandonment that continues for an
31 extended period of time or substantial refusal to perform parenting
32 functions; (b) physical, sexual, or a pattern of emotional abuse of a
33 child; or (c) a history of acts of domestic violence as defined in
34 RCW 26.50.010(~~((1+))~~) (3) or an assault or sexual assault (~~((which))~~)
35 that causes grievous bodily harm or the fear of such harm or that
36 results in a pregnancy.

37 (2)(a) The parent's residential time with the child shall be
38 limited if it is found that the parent has engaged in any of the
39 following conduct: (i) Willful abandonment that continues for an

1 extended period of time or substantial refusal to perform parenting
2 functions; (ii) physical, sexual, or a pattern of emotional abuse of
3 a child; (iii) a history of acts of domestic violence as defined in
4 RCW 26.50.010(~~((1))~~) (3) or an assault or sexual assault (~~((which))~~)
5 that causes grievous bodily harm or the fear of such harm or that
6 results in a pregnancy; or (iv) the parent has been convicted as an
7 adult of a sex offense under:

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

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

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

17 (D) RCW 9A.44.089;

18 (E) RCW 9A.44.093;

19 (F) RCW 9A.44.096;

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

23 (H) Chapter 9.68A RCW;

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

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

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

31 (b) The parent's residential time with the child shall be limited
32 if it is found that the parent resides with a person who has engaged
33 in any of the following conduct: (i) Physical, sexual, or a pattern
34 of emotional abuse of a child; (ii) a history of acts of domestic
35 violence as defined in RCW 26.50.010(~~((1))~~) (3) or an assault or
36 sexual assault that causes grievous bodily harm or the fear of such
37 harm or that results in a pregnancy; or (iii) the person has been
38 convicted as an adult or as a juvenile has been adjudicated of a sex
39 offense under:

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

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

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

10 (D) RCW 9A.44.089;

11 (E) RCW 9A.44.093;

12 (F) RCW 9A.44.096;

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

16 (H) Chapter 9.68A RCW;

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

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

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

24 (c) If a parent has been found to be a sexual predator under
25 chapter 71.09 RCW or under an analogous statute of any other
26 jurisdiction, the court shall restrain the parent from contact with a
27 child that would otherwise be allowed under this chapter. If a parent
28 resides with an adult or a juvenile who has been found to be a sexual
29 predator under chapter 71.09 RCW or under an analogous statute of any
30 other jurisdiction, the court shall restrain the parent from contact
31 with the parent's child except contact that occurs outside that
32 person's presence.

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

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

1 (ii) RCW 9A.44.073;
2 (iii) RCW 9A.44.076, provided that the person convicted was at
3 least eight years older than the victim;
4 (iv) RCW 9A.44.079, provided that the person convicted was at
5 least eight years older than the victim;
6 (v) RCW 9A.44.083;
7 (vi) RCW 9A.44.086, provided that the person convicted was at
8 least eight years older than the victim;
9 (vii) RCW 9A.44.100;
10 (viii) Any predecessor or antecedent statute for the offenses
11 listed in (d)(i) through (vii) of this subsection;
12 (ix) Any statute from any other jurisdiction that describes an
13 offense analogous to the offenses listed in (d)(i) through (vii) of
14 this subsection.
15 (e) There is a rebuttable presumption that a parent who resides
16 with a person who, as an adult, has been convicted, or as a juvenile
17 has been adjudicated, of the sex offenses listed in (e)(i) through
18 (ix) of this subsection places a child at risk of abuse or harm when
19 that parent exercises residential time in the presence of the
20 convicted or adjudicated person. Unless the parent rebuts the
21 presumption, the court shall restrain the parent from contact with
22 the parent's child except for contact that occurs outside of the
23 convicted or adjudicated person's presence:
24 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
25 was at least five years older than the other person;
26 (ii) RCW 9A.44.073;
27 (iii) RCW 9A.44.076, provided that the person convicted was at
28 least eight years older than the victim;
29 (iv) RCW 9A.44.079, provided that the person convicted was at
30 least eight years older than the victim;
31 (v) RCW 9A.44.083;
32 (vi) RCW 9A.44.086, provided that the person convicted was at
33 least eight years older than the victim;
34 (vii) RCW 9A.44.100;
35 (viii) Any predecessor or antecedent statute for the offenses
36 listed in (e)(i) through (vii) of this subsection;
37 (ix) Any statute from any other jurisdiction that describes an
38 offense analogous to the offenses listed in (e)(i) through (vii) of
39 this subsection.

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

5 (i) If the child was not the victim of the sex offense committed
6 by the parent requesting residential time, (A) contact between the
7 child and the offending parent is appropriate and poses minimal risk
8 to the child, and (B) the offending parent has successfully engaged
9 in treatment for sex offenders or is engaged in and making progress
10 in such treatment, if any was ordered by a court, and the treatment
11 provider believes such contact is appropriate and poses minimal risk
12 to the child; or

13 (ii) If the child was the victim of the sex offense committed by
14 the parent requesting residential time, (A) contact between the child
15 and the offending parent is appropriate and poses minimal risk to the
16 child, (B) if the child is in or has been in therapy for victims of
17 sexual abuse, the child's counselor believes such contact between the
18 child and the offending parent is in the child's best interest, and
19 (C) the offending parent has successfully engaged in treatment for
20 sex offenders or is engaged in and making progress in such treatment,
21 if any was ordered by a court, and the treatment provider believes
22 such contact is appropriate and poses minimal risk to the child.

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

27 (i) If the child was not the victim of the sex offense committed
28 by the person who is residing with the parent requesting residential
29 time, (A) contact between the child and the parent residing with the
30 convicted or adjudicated person is appropriate and that parent is
31 able to protect the child in the presence of the convicted or
32 adjudicated person, and (B) the convicted or adjudicated person has
33 successfully engaged in treatment for sex offenders or is engaged in
34 and making progress in such treatment, if any was ordered by a court,
35 and the treatment provider believes such contact is appropriate and
36 poses minimal risk to the child; or

37 (ii) If the child was the victim of the sex offense committed by
38 the person who is residing with the parent requesting residential
39 time, (A) contact between the child and the parent in the presence of
40 the convicted or adjudicated person is appropriate and poses minimal

1 risk to the child, (B) if the child is in or has been in therapy for
2 victims of sexual abuse, the child's counselor believes such contact
3 between the child and the parent residing with the convicted or
4 adjudicated person in the presence of the convicted or adjudicated
5 person is in the child's best interest, and (C) the convicted or
6 adjudicated person has successfully engaged in treatment for sex
7 offenders or is engaged in and making progress in such treatment, if
8 any was ordered by a court, and the treatment provider believes
9 contact between the parent and child in the presence of the convicted
10 or adjudicated person is appropriate and poses minimal risk to the
11 child.

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

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

39 (j) If the court finds that the parent has met the burden of
40 rebutting the presumption under (g) of this subsection, the court may

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

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

37 (l) A court may order unsupervised contact between the parent and
38 a child which may occur in the presence of a juvenile adjudicated of
39 a sex offense listed in (e)(i) through (ix) of this subsection who
40 resides with the parent after the presumption under (e) of this

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

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

1 (ii) The court shall not enter an order under (a) of this
2 subsection allowing a parent to have contact with a child if the
3 parent has been found by clear and convincing evidence in a civil
4 action or by a preponderance of the evidence in a dependency action
5 to have sexually abused the child, except upon recommendation by an
6 evaluator or therapist for the child that the child is ready for
7 contact with the parent and will not be harmed by the contact. The
8 court shall not enter an order allowing a parent to have contact with
9 the child in the offender's presence if the parent resides with a
10 person who has been found by clear and convincing evidence in a civil
11 action or by a preponderance of the evidence in a dependency action
12 to have sexually abused a child, unless the court finds that the
13 parent accepts that the person engaged in the harmful conduct and the
14 parent is willing to and capable of protecting the child from harm
15 from the person.

16 (iii) The court shall not enter an order under (a) of this
17 subsection allowing a parent to have contact with a child if the
18 parent has been found by clear and convincing evidence pursuant to
19 section 1 of this act to have committed sexual assault, as defined in
20 section 1 of this act, against the child's parent, and that the child
21 was born within three hundred twenty days of the sexual assault.

22 (iv) If the court limits residential time under (a) or (b) of
23 this subsection to require supervised contact between the child and
24 the parent, the court shall not approve of a supervisor for contact
25 between a child and a parent who has engaged in physical, sexual, or
26 a pattern of emotional abuse of the child unless the court finds
27 based upon the evidence that the supervisor accepts that the harmful
28 conduct occurred and is willing to and capable of protecting the
29 child from harm. The court shall revoke court approval of the
30 supervisor upon finding, based on the evidence, that the supervisor
31 has failed to protect the child or is no longer willing to or capable
32 of protecting the child.

33 (n) If the court expressly finds based on the evidence that
34 contact between the parent and the child will not cause physical,
35 sexual, or emotional abuse or harm to the child and that the
36 probability that the parent's or other person's harmful or abusive
37 conduct will recur is so remote that it would not be in the child's
38 best interests to apply the limitations of (a), (b), and (m)(i) and
39 ~~((iii))~~ (iv) of this subsection, or if the court expressly finds
40 that the parent's conduct did not have an impact on the child, then

1 the court need not apply the limitations of (a), (b), and (m)(i) and
2 (~~(iii)~~) (iv) of this subsection. The weight given to the existence
3 of a protection order issued under chapter 26.50 RCW as to domestic
4 violence is within the discretion of the court. This subsection shall
5 not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and
6 (m)(ii) of this subsection apply.

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

11 (a) A parent's neglect or substantial nonperformance of parenting
12 functions;

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

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

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

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

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

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

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

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

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

38 (7) For the purposes of this section:

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

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

4 **Sec. 3.** RCW 26.33.170 and 1999 c 173 s 1 are each amended to
5 read as follows:

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

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

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

16 (b) The alleged father, birth parent, or parent has been found
17 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,
18 or has been found by clear and convincing evidence to have committed
19 a sexual assault, where the other parent of the adoptee was the
20 victim of the rape (~~or~~) incest, or sexual assault and the adoptee
21 was conceived as a result of the rape (~~or~~) incest, or sexual
22 assault, unless the parent who is the victim indicates by affidavit
23 or sworn testimony that consent to adoption by the person who
24 committed the rape, incest, or sexual assault should occur.

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

27 NEW SECTION. **Sec. 4.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected."

SHB 1543 - S COMM AMD
By Committee on Law & Justice

ADOPTED 4/20/17

1 On page 1, line 2 of the title, after "survivors;" strike the
2 remainder of the title and insert "amending RCW 26.09.191 and
3 26.33.170; and adding a new section to chapter 26.26 RCW."

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