

SHB 1543 - S COMM AMD

By Committee on Law & Justice

ADOPTED AS AMENDED 04/20/2017

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 no later than
32 four years after the birth of the child.

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

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

12 (b) Prior to the fact-finding hearing, the court may order
13 genetic testing to determine whether the alleged perpetrator is
14 biologically related to the child. If genetic testing reveals that
15 the alleged perpetrator is not biologically related to the child, the
16 fact-finding hearing must be stricken.

17 (c) Fourteen days prior to the fact-finding hearing, the party
18 alleging that the child was born as a result of a sexual assault
19 shall submit affidavits setting forth facts supporting the allegation
20 and shall give notice, together with a copy of the affidavit, to
21 other parties to the proceedings, who may file opposing affidavits.
22 Opposing affidavits must be submitted and served to other parties to
23 the proceeding five days prior to the fact-finding hearing.

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

27 (6) If, after the fact-finding hearing or after a bench trial,
28 the court finds that the person seeking parental rights or presumed
29 to be a legal parent committed sexual assault, pursuant to the
30 standards set forth in subsection (3)(a) or (b) of this section,
31 against the child's parent, and that the child was born within three
32 hundred twenty days of the sexual assault the court must:

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

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

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

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

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

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

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

16 (9) If the court finds that the person seeking parentage or
17 presumed to be the parent committed a sexual assault, as defined in
18 this section, against the child's parent, and that the child was born
19 within three hundred twenty days of the sexual assault, and the legal
20 parent or guardian requests it, the court must order the person
21 seeking parentage or presumed to be the parent to pay child support
22 or birth-related costs or both.

23 (10) The legal parent or guardian may decline an order for child
24 support or birth-related costs. If the legal parent or guardian
25 declines an order for child support, and is either currently
26 receiving public assistance or later applies for it for the child
27 born as a result of the sexual assault, support enforcement agencies
28 as defined in this chapter shall not file administrative or court
29 proceedings to establish or collect child support, including medical
30 support, from the person seeking parentage or presumed to be the
31 parent who has been found to have committed a sexual assault, as
32 defined in this section, against the child's parent, and that the
33 child was born within three hundred twenty days of the sexual
34 assault.

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

1 (12) The court may order an award of attorneys' fees under this
2 section on the same basis as attorneys' fees are awarded under RCW
3 26.09.140.

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

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

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

28 (2)(a) The parent's residential time with the child shall be
29 limited if it is found that the parent has engaged in any of the
30 following conduct: (i) Willful abandonment that continues for an
31 extended period of time or substantial refusal to perform parenting
32 functions; (ii) physical, sexual, or a pattern of emotional abuse of
33 a child; (iii) 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; or (iv) the parent has been convicted as an
37 adult of a sex 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 (d) 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 (d) 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 (d) 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 (d) of this subsection;

16 (H) Chapter 9.68A RCW;

17 (I) Any predecessor or antecedent statute for the offenses listed
18 in (a)(iv)(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 (a)(iv)(A) through (H) of
21 this subsection.

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

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

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

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

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

4 (D) RCW 9A.44.089;

5 (E) RCW 9A.44.093;

6 (F) RCW 9A.44.096;

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

10 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

35 (ii) RCW 9A.44.073;

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

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

40 (v) RCW 9A.44.083;

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

3 (vii) RCW 9A.44.100;

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

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

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

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
24 least 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
27 least 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 (e)(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 (e)(i) through (vii) of
33 this subsection.

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

38 (i) If the child was not the victim of the sex offense committed
39 by the parent requesting residential time, (A) contact between the
40 child and the offending parent is appropriate and poses minimal risk

1 to the child, and (B) the offending parent has successfully engaged
2 in treatment for sex offenders or is engaged in and making progress
3 in such treatment, if any was ordered by a court, and the treatment
4 provider believes such contact is appropriate and poses minimal risk
5 to the child; or

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

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

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

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

1 any was ordered by a court, and the treatment provider believes
2 contact between the parent and child in the presence of the convicted
3 or adjudicated person is appropriate and poses minimal risk to the
4 child.

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

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

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

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

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

30 (l) A court may order unsupervised contact between the parent and
31 a child which may occur in the presence of a juvenile adjudicated of
32 a sex offense listed in (e)(i) through (ix) of this subsection who
33 resides with the parent after the presumption under (e) of this
34 subsection has been rebutted and supervised residential time has
35 occurred for at least two years during which time the adjudicated
36 juvenile has had no further arrests, adjudications, or convictions of
37 sex offenses involving children under chapter 9A.44 RCW, RCW
38 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that
39 unsupervised contact between the child and the parent that may occur
40 in the presence of the adjudicated juvenile is appropriate and poses

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

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

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

1 the child in the offender's presence if the parent resides with a
2 person who has been found by clear and convincing evidence in a civil
3 action or by a preponderance of the evidence in a dependency action
4 to have sexually abused a child, unless the court finds that the
5 parent accepts that the person engaged in the harmful conduct and the
6 parent is willing to and capable of protecting the child from harm
7 from the person.

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

14 (iv) If the court limits residential time under (a) or (b) of
15 this subsection to require supervised contact between the child and
16 the parent, the court shall not approve of a supervisor for contact
17 between a child and a parent who has engaged in physical, sexual, or
18 a pattern of emotional abuse of the child unless the court finds
19 based upon the evidence that the supervisor accepts that the harmful
20 conduct occurred and is willing to and capable of protecting the
21 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 to or capable
24 of protecting the child.

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

39 (3) A parent's involvement or conduct may have an adverse effect
40 on the child's best interests, and the court may preclude or limit

1 any provisions of the parenting plan, if any of the following factors
2 exist:

3 (a) A parent's neglect or substantial nonperformance of parenting
4 functions;

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

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

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

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

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

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

19 (4) In cases involving allegations of limiting factors under
20 subsection (2)(a)(ii) and (iii) of this section, both parties shall
21 be screened to determine the appropriateness of a comprehensive
22 assessment regarding the impact of the limiting factor on the child
23 and the parties.

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

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

30 (7) For the purposes of this section:

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

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

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

38 (1) An agency's, the department's, or a legal guardian's consent
39 to adoption may be dispensed with if the court determines by clear,

1 cogent and convincing evidence that the proposed adoption is in the
2 best interests of the adoptee.

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

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

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

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

20 NEW SECTION. Sec. 4. If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected."

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

ADOPTED AS AMENDED 04/20/2017

24 On page 1, line 2 of the title, after "survivors;" strike the
25 remainder of the title and insert "amending RCW 26.09.191 and
26 26.33.170; and adding a new section to chapter 26.26 RCW."

EFFECT: (1) Defines "sexual assault" for purposes of this act as nonconsensual sexual penetration that results in pregnancy.

(2) Requires that the pleading alleging a sexual assault by the presumed or alleged parent that resulted in the child's conception and birth must be filed no later than four years after the birth of the child.

(3) Allows civil rules of evidence and the trial court to determine the fact-finding schedule and the admissible evidence in the fact-finding hearing.

(4) The court may not order temporary residential time or decision making before the fact-finding hearing unless the alleged sexual assault perpetrator is the child's presumed parent, and the court specifically finds entry of the temporary order is in the child's best interests.

(5) Removes the requirement to dismiss a petition to adjudicate parentage with prejudice when the alleged perpetrator is the petitioner and genetic testing shows the alleged perpetrator is not biologically related to the child.

(6) The sexual assault perpetrator is not required to consent to adoption but the victim may waive the consent exemption in a declaration or sworn testimony.

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