S-0139.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5205**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Dhingra, Kuderer, and C. Wilson

AN ACT Relating to limitations in parenting plans related to parental conduct; amending RCW 26.09.191; and adding a new section to chapter 26.09 RCW.

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

**Sec.**  RCW 26.09.191 and 2021 c 215 s 134 are each amended to read as follows:

(1) ((~~The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action~~)) INTENT. The parent-child relationship is a fundamental right. Spending time with a child (residential time) and making significant decisions that affect a child's health and education are essential to the exercise of that fundamental right.

Parents are also responsible for protecting and preserving the health and well-being of their minor child. When a parent acts contrary to the health and well-being of their child, the court may, and in some situations must, impose limitations intended to protect a child from harm as described in this section.

For the purposes of this section "child" shall also mean "children."

For the purposes of this section "parenting functions" are as defined in RCW 26.09.004.

(2) RESIDENTIAL TIME LIMITATIONS.

(a) Parental conduct requiring limits on a parent's residential time.

A parent's residential time with their child shall be limited if it is found that ((~~a~~)) the parent has engaged in any of the following conduct:

((~~(a)~~)) (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;

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

((~~or (c) a~~)) (iii) A history of acts of domestic violence as defined in RCW 7.105.010 or an assault or sexual assault that causes grievous bodily harm or the fear of such harm ((~~or that results in a pregnancy.~~

~~(2)(a) The~~)); or

(iv) Sexual abuse of a child. Required limitations and considerations for a parent who has been convicted of a sexual offense against a child or found to have sexually abused a child are addressed in section 2 of this act.

(b) Parent residing with a person whose conduct requires limits.

A parent's residential time with the parent's child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: ((~~(i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual,~~))

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

((~~(iii) a~~)) (ii) A history of acts of domestic violence as defined in RCW 7.105.010 or an assault or sexual assault that causes grievous bodily harm or the fear of such harm ((~~or that results in a pregnancy; or (iv) the parent has been convicted as an adult of a sex offense under:~~

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

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

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

~~(D) RCW 9A.44.089;~~

~~(E) RCW 9A.44.093;~~

~~(F) RCW 9A.44.096;~~

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

~~(H) Chapter 9.68A RCW;~~

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

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

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

~~(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 7.105.010 or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:~~

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

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

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

~~(D) RCW 9A.44.089;~~

~~(E) RCW 9A.44.093;~~

~~(F) RCW 9A.44.096;~~

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

~~(H) Chapter 9.68A RCW;~~

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

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

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

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

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

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

~~(ii) RCW 9A.44.073;~~

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

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

~~(v) RCW 9A.44.083;~~

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

~~(vii) RCW 9A.44.100;~~

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

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

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

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

~~(ii) RCW 9A.44.073;~~

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

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

~~(v) RCW 9A.44.083;~~

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

~~(vii) RCW 9A.44.100;~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.~~

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

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

~~(iii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence pursuant to RCW 26.26A.465 to have committed sexual assault, as defined in RCW 26.26A.465, against the child's parent, and that the child was born within three hundred twenty days of the sexual assault.~~

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

~~(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iv) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iv) of this subsection. The weight given to the existence of a protection order issued under chapter 7.105 RCW or former chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.~~

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

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

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

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

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

~~(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development. Abusive use of conflict includes, but is not limited to, abusive litigation as defined in RCW 26.51.020. If the court finds a parent has engaged in abusive litigation, the court may impose any restrictions or remedies set forth in chapter 26.51 RCW in addition to including a finding in the parenting plan. Litigation that is aggressive or improper but that does not meet the definition of abusive litigation shall not constitute a basis for a finding under this section. A report made in good faith to law enforcement, a medical professional, or child protective services of sexual, physical, or mental abuse of a child shall not constitute a basis for a finding of abusive use of conflict;~~

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

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

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

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

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

~~(7) For the purposes of this section:~~

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

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

(iii) Sexual abuse of a child. Required limitations and considerations on a parent who resides with someone who has been convicted of a sexual offense against a child or found to have sexually abused a child are addressed in section 2 of this act.

(c) Parental conduct that may result in limits on a parent's residential time.

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

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

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

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

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

(v) A parent has engaged in the abusive use of conflict, which creates the danger of serious damage to the child's psychological development. Abusive use of conflict includes, but is not limited to, abusive litigation as defined in RCW 26.51.020. If the court finds a parent has engaged in abusive litigation, the court may impose any restrictions or remedies set forth in chapter 26.51 RCW in addition to including a finding in the parenting plan. Litigation that is aggressive or improper but does not meet the definition of abusive litigation shall not constitute a basis for a finding under this section. A report made in good faith to law enforcement, a medical professional, or child protective services of sexual, physical, or mental abuse of a child shall not constitute a basis for a finding of abusive use of conflict;

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

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

(d) Limitations a court may impose on a parent's residential time.

(i) Protection of a child at risk of harm*.* Limitations that may be imposed by the court under this section shall be reasonably calculated to protect a child from the physical or emotional abuse or harm that could result if the child has contact with the parent requesting residential time and may include but are not limited to:

(A) Supervised visitation. A court may, in its discretion, order supervised contact between a child and the parent.

If the court requires supervised visitation, the court shall not approve of a nonprofessional supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of a child unless the court finds, based upon the evidence, that the supervisor acknowledges that the harmful conduct occurred and is willing and capable of protecting a child from harm. This may be accomplished by requiring an oath of supervisor attesting to the supervisor's acknowledgment of the harmful conduct, willingness to protect a child, and willingness to enforce any limitations contained in the parenting plan;

(B) Evaluation or treatment. The court may order a parent to undergo evaluations for such issues as substance abuse, mental health, anger management, or domestic violence perpetration, with collateral input provided from the other parent.

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

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

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

(ii) Protection of a parent at risk of harm. The limitations imposed by the court shall also be reasonably calculated to provide for the safety of a parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time.

(3) LIMITATIONS ON DECISION MAKING AND DISPUTE RESOLUTION.

A court shall limit joint decision making and dispute resolution if it is found that a parent has engaged in any of the following conduct:

(a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;

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

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

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

(4) DETERMINATION NOT TO IMPOSE LIMITATIONS.

(a) If the court makes express written findings based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply limitations to residential time pursuant to subsection (2) of this section or if the court makes express written findings that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of subsection (2) of this section. This subsection shall not apply to findings of sexual abuse which are governed by section 2 of this act.

(b) If the court makes express written findings that it would be contrary to the child's best interests to limit decision making or dispute resolution pursuant to subsection (3) of this section, the court need not apply those limitations. Where there has been a finding of domestic violence, the court may not require face-to-face mediation or counseling where both parties are required to be in the same room or virtual room.

(5) EXISTENCE OF A PROTECTION ORDER.

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

(6) WHEN LIMITATIONS APPLY TO BOTH PARENTS.

When mandatory limitations in subsection (2)(a) or (b) of this section apply to both parents, or when a mandatory limitation applies to one parent and the court finds, based on a discretionary factor in subsection (2)(c) of this section, that the other parent's time must also be limited in order to protect the child from physical or emotional abuse or harm, the court shall make findings regarding the comparative risk of harm to the child posed by each parent, and shall explain the limitations imposed on each parent, including any decision not to impose restrictions on a parent or to award decision making to a parent subject to limitations in subsections (2) and (3) of this section. In making these determinations, the court shall consider whether one parent caused or contributed to the basis for the other parent's conduct that is a basis for restrictions.

NEW SECTION. **Sec.**  A new section is added to chapter 26.09 RCW to read as follows:

(1) SEXUALLY VIOLENT PREDATORS.

If a parent has been found to be a sexually violent predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexually violent predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(2) CHILD SEXUAL ABUSE BY PARENT.

(a) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense against any child in this or another jurisdiction poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from all contact with the parent's child that would otherwise be allowed under this chapter.

(b) The court shall not enter an order allowing a parent to have contact with the parent's child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact.

(3) PARENT RESIDING WITH A PERSON FOUND TO HAVE SEXUALLY ABUSED A CHILD.

(a) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted of a sex offense against a child, or as a juvenile has been adjudicated of a sex offense against a child at least eight years younger, in this or another jurisdiction, places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence.

(b) The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(4) REBUTTING THE PRESUMPTION OF NO CONTACT.

(a) Offending Parent. The presumption established in subsection (2)(a) of this section may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has provided documentation that they have successfully completed treatment for sex offenders or are engaged in and making progress in such treatment, if any was ordered by a court; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has provided documentation that they have successfully completed treatment for sex offenders or are engaged in and making progress in such treatment, if any was ordered by a court.

(b) Parent Resides with Offending Person. The presumption established in subsection (3)(a) of this section may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has provided documentation that they have successfully completed treatment for sex offenders or are engaged in and making progress in such treatment, if any was ordered by a court; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has provided documentation that they have successfully completed treatment for sex offenders or are engaged in and making progress in such treatment, if any was ordered by a court.

(c) Contact if Presumption Rebutted. If the court finds that the parent has met the burden of rebutting the presumption under subsection (4)(a) of this section, the court may allow a parent who has been convicted as an adult of a sex offense against a child to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time.

(i) The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child;

(ii) If the court finds that the parent has met the burden of rebutting the presumption under subsection (4)(b) of this section, the court may allow a parent residing with a person who has been convicted of a sex offense against a child or adjudicated of a juvenile sex offense with a child at least eight years younger to have residential time with the child in the presence of that person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The supervisor may be the parent if the court finds, based on the evidence, that the parent is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor, including the parent, upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child;

(iii) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent;

(iv) A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under subsection (2) of this section has been rebutted pursuant to subsection (4)(a) of this section and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children and (A) the sex offense of the offending parent was not committed against a child of the offending parent and (B) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

**--- END ---**