

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5676

Chapter 303, Laws of 1996

54th Legislature
1996 Regular Session

ABUSIVE PARENTS--RESTRICTIONS ON RESIDENTIAL TIME AND VISITATION

EFFECTIVE DATE: 3/30/96

Passed by the Senate March 6, 1996
YEAS 45 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 5, 1996
YEAS 94 NAYS 1

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 30, 1996

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5676** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

March 30, 1996 - 4:37 p.m.

MIKE LOWRY

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5676

AS AMENDED BY THE HOUSE

Passed Legislature - 1996 Regular Session

State of Washington 54th Legislature 1996 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Fraser and Kohl)

Read first time 02/02/96.

1 AN ACT Relating to restrictions on residential time and visitation
2 for abusive parents; amending RCW 26.09.191 and 26.10.160; and
3 declaring an emergency.

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

5 **Sec. 1.** RCW 26.09.191 and 1994 c 267 s 1 are each amended to read
6 as follows:

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

16 (2)(a) The parent's residential time with the child shall be
17 limited if it is found that the parent has engaged in any of the
18 following conduct: (i) Willful abandonment that continues for an
19 extended period of time or substantial refusal to perform parenting

1 functions; (ii) physical, sexual, or a pattern of emotional abuse of a
2 child; ~~((or))~~ (iii) a history of acts of domestic violence as defined
3 in RCW 26.50.010(1) or an assault or sexual assault which causes
4 grievous bodily harm or the fear of such harm; or (iv) the parent has
5 been convicted as an adult of a sex offense under:

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

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

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

15 (D) RCW 9A.44.089;

16 (E) RCW 9A.44.093;

17 (F) RCW 9A.44.096;

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

21 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

7 (D) RCW 9A.44.089;

8 (E) RCW 9A.44.093;

9 (F) RCW 9A.44.096;

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

13 (H) Chapter 9.68A RCW;

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

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

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

21 (c) If a parent has been (~~convicted as an adult of a sexual~~
22 ~~offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has~~
23 ~~been~~) found to be a sexual predator under chapter 71.09 RCW or under
24 an analogous statute of any other jurisdiction, the court shall
25 restrain the parent from contact with a child that would otherwise be
26 allowed under this chapter. If a parent resides with an adult or a
27 juvenile who has been (~~convicted, or with a juvenile who has been~~
28 ~~adjudicated, of a sexual offense under RCW 9A.64.020 or chapter 9.68A~~
29 ~~or 9A.44 RCW, or who has been~~) found to be a sexual predator under
30 chapter 71.09 RCW or under an analogous statute of any other
31 jurisdiction, the court shall restrain the parent from contact with the
32 parent's child except contact that occurs outside that person's
33 presence.

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

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

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

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

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

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

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

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

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

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

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

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

38 (j) If the court finds that the parent has met the burden of
39 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 and
5 pursuant to an adequate plan for supervision of such residential time.
6 The court shall not approve of a supervisor for contact between the
7 child and the parent unless the court finds, based on the evidence,
8 that the supervisor is willing and capable of protecting the child from
9 harm. The court shall revoke court approval of the supervisor upon
10 finding, based on the evidence, that the supervisor has failed to
11 protect the child or is no longer willing or capable of protecting the
12 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 two
19 years with no further arrests or convictions of sex offenses involving
20 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW
21 and (i) the sex offense of the offending parent was not committed
22 against a child of the offending parent, and (ii) the court finds that
23 unsupervised contact between the child and the offending parent is
24 appropriate and poses minimal risk to the child, after consideration of
25 the testimony of a state-certified therapist, mental health counselor,
26 or social worker with expertise in treating child sexual abuse victims
27 who has supervised at least one period of residential time between the
28 parent and the child, and after consideration of evidence of the
29 offending parent's compliance with community supervision requirements,
30 if any. If the offending parent was not ordered by a court to
31 participate in treatment for sex offenders, then the parent shall
32 obtain a psychosexual evaluation conducted by a state-certified sex
33 offender treatment provider indicating that the offender has the lowest
34 likelihood of risk to reoffend before the court grants unsupervised
35 contact between the parent and a child.

36 (l) A court may order unsupervised contact between the parent and
37 a child which may occur in the presence of a juvenile adjudicated of a
38 sex offense listed in (e)(i) through (ix) of this subsection who
39 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 9A.64.020,
5 or chapter 9.68A RCW, and (i) the court finds that unsupervised contact
6 between the child and the parent that may occur in the presence of the
7 adjudicated juvenile is appropriate and poses minimal risk to the
8 child, after consideration of the testimony of a state-certified
9 therapist, mental health counselor, or social worker with expertise in
10 treatment of child sexual abuse victims who has supervised at least one
11 period of residential time between the parent and the child in the
12 presence of the adjudicated juvenile, and after consideration of
13 evidence of the adjudicated juvenile's compliance with community
14 supervision or parole requirements, if any. If the adjudicated
15 juvenile was not ordered by a court to participate in treatment for sex
16 offenders, then the adjudicated juvenile shall obtain a psychosexual
17 evaluation conducted by a state-certified sex offender treatment
18 provider indicating that the adjudicated juvenile has the lowest
19 likelihood of risk to reoffend before the court grants unsupervised
20 contact between the parent and a child which may occur in the presence
21 of the adjudicated juvenile who is residing with the parent.

22 (m)(i) The limitations imposed by the court under (a) or (b) of
23 this subsection shall be reasonably calculated to protect the child
24 from the physical, sexual, or emotional abuse or harm that could result
25 if the child has contact with the parent requesting residential time.
26 If the court expressly finds based on the evidence that limitations on
27 the residential time with the child will not adequately protect the
28 child from the harm or abuse that could result if the child has contact
29 with the parent requesting residential time, the court shall restrain
30 the parent requesting residential time from all contact with the child.

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

1 found by clear and convincing evidence in a civil action or by a
2 preponderance of the evidence in a dependency action to have sexually
3 abused a child, unless the court finds that the parent accepts that the
4 person engaged in the harmful conduct and the parent is willing to and
5 capable of protecting the child from harm from the person.

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

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

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

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

36 (b) A long-term emotional or physical impairment which interferes
37 with the parent's performance of parenting functions as defined in RCW
38 26.09.004;

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

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

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

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

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

12 (4) In entering a permanent parenting plan, the court shall not
13 draw any presumptions from the provisions of the temporary parenting
14 plan.

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

18 (6) For the purposes of this section, a parent's child means that
19 parent's natural child, adopted child, or stepchild.

20 **Sec. 2.** RCW 26.10.160 and 1994 c 267 s 2 are each amended to read
21 as follows:

22 (1) A parent not granted custody of the child is entitled to
23 reasonable visitation rights except as provided in subsection (2) of
24 this section.

25 (2)(a) Visitation with the child shall be limited if it is found
26 that the parent seeking visitation has engaged in any of the following
27 conduct: (i) Willful abandonment that continues for an extended period
28 of time or substantial refusal to perform parenting functions; (ii)
29 physical, sexual, or a pattern of emotional abuse of a child; ~~((or))~~
30 (iii) a history of acts of domestic violence as defined in RCW
31 26.50.010(1) or an assault or sexual assault which causes grievous
32 bodily harm or the fear of such harm; or (iv) the parent has been
33 convicted as an adult of a sex offense under:

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

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

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

7 (D) RCW 9A.44.089;

8 (E) RCW 9A.44.093;

9 (F) RCW 9A.44.096;

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

13 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

38 (D) RCW 9A.44.089;

39 (E) RCW 9A.44.093;

1 (F) RCW 9A.44.096;

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

5 (H) Chapter 9.68A RCW;

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

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

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

13 (c) If a parent has been (~~convicted as an adult of a sexual~~
14 ~~offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has~~
15 ~~been~~) found to be a sexual predator under chapter 71.09 RCW or under
16 an analogous statute of any other jurisdiction, the court shall
17 restrain the parent from contact with a child that would otherwise be
18 allowed under this chapter. If a parent resides with an adult or a
19 juvenile who has been (~~convicted, or with a juvenile who has been~~
20 ~~adjudicated, of a sexual offense under RCW 9A.64.020 or chapter 9.68A~~
21 ~~or 9A.44 RCW, or who has been~~) found to be a sexual predator under
22 chapter 71.09 RCW or under an analogous statute of any other
23 jurisdiction, the court shall restrain the parent from contact with the
24 parent's child except contact that occurs outside that person's
25 presence.

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

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

34 (ii) RCW 9A.44.073;

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

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

39 (v) RCW 9A.44.083;

1 (vi) RCW 9A.44.086, provided that the person convicted was at least
2 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 (ix)
12 of this subsection places a child at risk of abuse or harm when that
13 parent exercises visitation in the presence of the convicted or
14 adjudicated person. Unless the parent rebuts the presumption, the
15 court shall restrain the parent from contact with the parent's child
16 except for contact that occurs outside of the convicted or adjudicated
17 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 least
24 eight years older than the victim;

25 (v) RCW 9A.44.083;

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

28 (vii) RCW 9A.44.100;

29 (viii) Any predecessor or antecedent statute for the offenses
30 listed in (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:

36 (i) If the child was not the victim of the sex offense committed by
37 the parent requesting visitation, (A) contact between the child and the
38 offending parent is appropriate and poses minimal risk to the child,
39 and (B) the offending parent has successfully engaged in treatment for

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

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

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

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

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

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

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

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

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

24 (l) A court may order unsupervised contact between the parent and
25 a child which may occur in the presence of a juvenile adjudicated of a
26 sex offense listed in (e)(i) through (ix) of this subsection who
27 resides with the parent after the presumption under (e) of this
28 subsection has been rebutted and supervised visitation has occurred for
29 at least two years during which time the adjudicated juvenile has had
30 no further arrests, adjudications, or convictions of sex offenses
31 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter
32 9.68A RCW, and (i) the court finds that unsupervised contact between
33 the child and the parent that may occur in the presence of the
34 adjudicated juvenile is appropriate and poses minimal risk to the
35 child, after consideration of the testimony of a state-certified
36 therapist, mental health counselor, or social worker with expertise in
37 treatment of child sexual abuse victims who has supervised at least one
38 period of visitation between the parent and the child in the presence
39 of the adjudicated juvenile, and after consideration of evidence of the

1 adjudicated juvenile's compliance with community supervision or parole
2 requirements, if any. If the adjudicated juvenile was not ordered by
3 a court to participate in treatment for sex offenders, then the
4 adjudicated juvenile shall obtain a psychosexual evaluation conducted
5 by a state-certified sex offender treatment provider indicating that
6 the adjudicated juvenile has the lowest likelihood of risk to reoffend
7 before the court grants unsupervised contact between the parent and a
8 child which may occur in the presence of the adjudicated juvenile who
9 is residing with the parent.

10 (m)(i) The limitations imposed by the court under (a) or (b) of
11 this subsection shall be reasonably calculated to protect the child
12 from the physical, sexual, or emotional abuse or harm that could result
13 if the child has contact with the parent requesting visitation. If the
14 court expressly finds based on the evidence that limitations on
15 visitation with the child will not adequately protect the child from
16 the harm or abuse that could result if the child has contact with the
17 parent requesting visitation, the court shall restrain the person
18 seeking visitation from all contact with the child.

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

33 (iii) If the court limits (~~residential time~~) visitation under (a)
34 or (b) of this subsection to require supervised contact between the
35 child and the parent, the court shall not approve of a supervisor for
36 contact between a child and a parent who has engaged in physical,
37 sexual, or a pattern of emotional abuse of the child unless the court
38 finds based upon the evidence that the supervisor accepts that the
39 harmful conduct occurred and is willing to and capable of protecting

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

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

20 (3) Any person may petition the court for visitation rights at any
21 time including, but not limited to, custody proceedings. The court may
22 order visitation rights for any person when visitation may serve the
23 best interest of the child whether or not there has been any change of
24 circumstances.

25 (4) The court may modify an order granting or denying visitation
26 rights whenever modification would serve the best interests of the
27 child. Modification of a parent's visitation rights shall be subject
28 to the requirements of subsection (2) of this section.

29 (5) For the purposes of this section, a parent's child means that
30 parent's natural child, adopted child, or stepchild.

31 NEW SECTION. Sec. 3. This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the
33 state government and its existing public institutions, and takes effect
34 immediately.

Passed the Senate March 6, 1996.

Passed the House March 5, 1996.

Approved by the Governor March 30, 1996.

Filed in Office of Secretary of State March 30, 1996.