

SSB 5708 - H COMM AMD

By Committee on Juvenile Justice & Family Law

ADOPTED 04/14/2003

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

3 "NEW SECTION. **Sec. 1.** The legislature affirms that parents have
4 a paramount right to raise their minor children. The legislature also
5 recognizes that this paramount right must be considered in conjunction
6 with a minor child's interest in maintaining the strong emotional bonds
7 with others that the child has developed and relies upon. Therefore,
8 the legislature intends to establish internally consistent and rigorous
9 standards that must be met for a nonparent to obtain visitation with a
10 minor child.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.10 RCW
12 to read as follows:

13 (1) A nonparent may initiate a court proceeding for contact with a
14 child by filing a verified application to obtain court-ordered contact
15 when all of the following criteria are satisfied:

16 (a) The applicant is an individual with a parent-like relationship
17 with the child. To satisfy this criterion, the applicant must show
18 that:

19 (i) His or her relationship with the child has been parental in
20 nature for a substantial period of time;

21 (ii) A parent or custodian of the child consented to or allowed the
22 formation and establishment of the relationship or the relationship was
23 formed as a result of the unavailability or inability of any legal
24 parent to perform caretaking functions; and

25 (iii) His or her relationship with the child is beneficial; and

26 (b) A parent or custodian has substantially interfered with the
27 applicant's relationship with the child and the applicant has

1 unsuccessfully attempted to resolve any disagreement with the parent or
2 custodian before going to court.

3 (2)(a)(i) The court shall treat standing as a threshold issue. The
4 applicant bears the burden of establishing standing. If the applicant
5 does not satisfy this burden, the proceeding shall be dismissed.

6 (ii) Upon a finding that the applicant has standing, the applicant
7 shall come forward with evidence to show that the child would very
8 likely suffer harm if contact were not awarded. If the applicant
9 presents evidence that could allow a reasonable factfinder to conclude
10 that the child would very likely suffer harm, the burden shifts to the
11 parent or custodian to present evidence why the decision to refuse
12 contact is reasonable and in the best interests of the child.

13 (b) The court shall order contact if it finds that the applicant
14 has satisfied the burden of showing by clear and convincing evidence
15 that:

16 (i) The child would very likely suffer harm if contact is not
17 awarded; and

18 (ii) The parent's or custodian's denial of contact was unreasonable
19 and not in the child's best interests.

20 (3) If the court dismisses the proceeding for lack of standing, the
21 court shall award reasonable and necessary costs and fees to the
22 prevailing party unless there is a compelling reason to do otherwise.
23 In all other cases, the court may award such costs and fees as it deems
24 appropriate.

25 (4) If the parent or custodian fails to comply with a court order
26 awarding contact between the nonparent and the child, the nonparent may
27 file a motion to initiate a contempt action under RCW 26.09.160.

28 (5) For purposes of this section, the following definitions apply:

29 (a) "Applicant" means a nonparent who initiates a proceeding under
30 this statute.

31 (b) "Contact" includes all court-ordered arrangements by which a
32 nonparent is authorized to interact with a child other than custody,
33 conservatorship, guardianship, or joint or shared custody.

34 (c) "Harm" means that denial of contact results in substantial loss
35 and detriment to the child's physical, psychological, or emotional
36 well-being. The likelihood of harm must be beyond the normal short-
37 term distress a child suffers due to a change in circumstances.

1 (d) "Nonparent" includes any person not legally recognized as a
2 parent whether or not related by blood or marriage.

3 (e) "Parent-like relationship" means a very significant
4 relationship between a nonparent and a child in which the nonparent
5 undertook responsibilities and tasks commonly performed by parents and
6 commonly recognized as actions by someone in a parent-like
7 relationship. Excluded from this category are baby-sitters or other
8 employed caregivers.

9 (f) "Substantially interfered" means to have unreasonably and
10 greatly diminished the amount and quality of contact a nonparent has
11 had with the child. A reasonable reduction in the frequency or length
12 of contact previously enjoyed with the child is not a substantial
13 interference.

14 **Sec. 3.** RCW 26.09.160 and 1991 c 367 s 4 are each amended to read
15 as follows:

16 (1) The performance of parental functions and the duty to provide
17 child support are distinct responsibilities in the care of a child. If
18 a party fails to comply with a provision of a decree or temporary order
19 of injunction, the obligation of the other party to make payments for
20 support or maintenance or to permit contact with children is not
21 suspended. An attempt by a parent, in either the negotiation or the
22 performance of a parenting plan, to condition one aspect of the
23 parenting plan upon another, to condition payment of child support upon
24 an aspect of the parenting plan, to refuse to pay ordered child
25 support, to refuse to perform the duties provided in the parenting
26 plan, or to hinder the performance by the other parent of duties
27 provided in the parenting plan, shall be deemed bad faith and shall be
28 punished by the court by holding the party in contempt of court and by
29 awarding to the aggrieved party reasonable attorneys' fees and costs
30 incidental in bringing a motion for contempt of court.

31 (2)(a) A motion may be filed to initiate a contempt action to
32 coerce a parent to comply with an order establishing residential
33 provisions for a child or awarding contact with a child to a nonparent
34 under section 2 of this act. If the court finds there is reasonable
35 cause to believe the parent has not complied with the order, the court
36 may issue an order to show cause why the relief requested should not be
37 granted.

1 (b) If, based on all the facts and circumstances, the court finds
2 after hearing that the parent, in bad faith, has not complied with the
3 order establishing residential provisions for the child or awarding
4 contact with a nonparent, the court shall find the parent in contempt
5 of court. Upon a finding of contempt, the court shall order:

6 (i) The noncomplying parent to provide the moving party additional
7 time with the child. The additional time shall be equal to the time
8 missed with the child, due to the parent's noncompliance;

9 (ii) The parent to pay, to the moving party, all court costs and
10 reasonable attorneys' fees incurred as a result of the noncompliance,
11 and any reasonable expenses incurred in locating or returning a child;
12 and

13 (iii) The parent to pay, to the moving party, a civil penalty, not
14 less than the sum of one hundred dollars.

15 The court may also order the parent to be imprisoned in the county
16 jail, if the parent is presently able to comply with the provisions of
17 the court-ordered parenting plan or court order awarding contact with
18 a nonparent and is presently unwilling to comply. The parent may be
19 imprisoned until he or she agrees to comply with the order, but in no
20 event for more than one hundred eighty days.

21 (3) On a second failure within three years to comply with a
22 residential provision of a court-ordered parenting plan or court order
23 awarding contact with a nonparent, a motion may be filed to initiate
24 contempt of court proceedings according to the procedure set forth in
25 subsection (2)(a) and (b) of this section. On a finding of contempt
26 under this subsection, the court shall order:

27 (a) The noncomplying parent to provide the other parent or party
28 additional time with the child. The additional time shall be twice the
29 amount of the time missed with the child, due to the parent's
30 noncompliance;

31 (b) The noncomplying parent to pay, to the other parent or party,
32 all court costs and reasonable attorneys' fees incurred as a result of
33 the noncompliance, and any reasonable expenses incurred in locating or
34 returning a child; and

35 (c) The noncomplying parent to pay, to the moving party, a civil
36 penalty of not less than two hundred fifty dollars.

37 The court may also order the parent to be imprisoned in the county
38 jail, if the parent is presently able to comply with the provisions of

1 the court-ordered parenting plan or court order awarding contact with
2 a nonparent and is presently unwilling to comply. The parent may be
3 imprisoned until he or she agrees to comply with the order but in no
4 event for more than one hundred eighty days.

5 (4) For purposes of subsections (1), (2), and (3) of this section,
6 the parent shall be deemed to have the present ability to comply with
7 the order establishing residential provisions or awarding contact with
8 a nonparent unless he or she establishes otherwise by a preponderance
9 of the evidence. The parent shall establish a reasonable excuse for
10 failure to comply with the court-ordered contact with a nonparent or
11 the residential provision of a court-ordered parenting plan by a
12 preponderance of the evidence.

13 (5) Any monetary award ordered under subsections (1), (2), and (3)
14 of this section may be enforced, by the party to whom it is awarded, in
15 the same manner as a civil judgment.

16 (6) Subsections (1), (2), and (3) of this section authorize the
17 exercise of the court's power to impose remedial sanctions for contempt
18 of court and is in addition to any other contempt power the court may
19 possess.

20 (7) Upon motion for contempt of court under subsections (1) through
21 (3) of this section, if the court finds the motion was brought without
22 reasonable basis, the court shall order the moving party to pay to the
23 nonmoving party, all costs, reasonable attorneys' fees, and a civil
24 penalty of not less than one hundred dollars.

25 **Sec. 4.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to read
26 as follows:

27 (1) Except as otherwise provided in subsections (4), (5), (6), (8),
28 and (10) of this section, the court shall not modify a prior custody
29 decree or a parenting plan unless it finds, upon the basis of facts
30 that have arisen since the prior decree or plan or that were unknown to
31 the court at the time of the prior decree or plan, that a substantial
32 change has occurred in the circumstances of the child or the nonmoving
33 party and that the modification is in the best interest of the child
34 and is necessary to serve the best interests of the child.

35 (2) In applying these standards, the court shall retain the
36 residential schedule established by the decree or parenting plan
37 unless:

1 (a) The parents agree to the modification;

2 (b) The child has been integrated into the family of the petitioner
3 with the consent of the other parent in substantial deviation from the
4 parenting plan;

5 (c) The child's present environment is detrimental to the child's
6 physical, mental, or emotional health and the harm likely to be caused
7 by a change of environment is outweighed by the advantage of a change
8 to the child; or

9 (d) The court has found the nonmoving parent in contempt of court
10 at least twice within three years because the parent failed to comply
11 with a court order awarding contact with a nonparent or the parent
12 failed to comply with the residential time provisions in the court-
13 ordered parenting plan, or the parent has been convicted of custodial
14 interference in the first or second degree under RCW 9A.40.060 or
15 9A.40.070.

16 (3) A conviction of custodial interference in the first or second
17 degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial
18 change of circumstances for the purposes of this section.

19 (4) The court may reduce or restrict contact between the child and
20 the parent with whom the child does not reside a majority of the time
21 if it finds that the reduction or restriction would serve and protect
22 the best interests of the child using the criteria in RCW 26.09.191.

23 (5) The court may order adjustments to the residential aspects of
24 a parenting plan upon a showing of a substantial change in
25 circumstances of either parent or of the child, and without
26 consideration of the factors set forth in subsection (2) of this
27 section, if the proposed modification is only a minor modification in
28 the residential schedule that does not change the residence the child
29 is scheduled to reside in the majority of the time and:

30 (a) Does not exceed twenty-four full days in a calendar year; or

31 (b) Is based on a change of residence of the parent with whom the
32 child does not reside the majority of the time or an involuntary change
33 in work schedule by a parent which makes the residential schedule in
34 the parenting plan impractical to follow; or

35 (c) Does not result in a schedule that exceeds ninety overnights
36 per year in total, if the court finds that, at the time the petition
37 for modification is filed, the decree of dissolution or parenting plan
38 does not provide reasonable time with the parent with whom the child

1 does not reside a majority of the time, and further, the court finds
2 that it is in the best interests of the child to increase residential
3 time with the parent in excess of the residential time period in (a) of
4 this subsection. However, any motion under this subsection (5)(c) is
5 subject to the factors established in subsection (2) of this section if
6 the party bringing the petition has previously been granted a
7 modification under this same subsection within twenty-four months of
8 the current motion. Relief granted under this section shall not be the
9 sole basis for adjusting or modifying child support.

10 (6) The court may order adjustments to the residential aspects of
11 a parenting plan pursuant to a proceeding to permit or restrain a
12 relocation of the child. The person objecting to the relocation of the
13 child or the relocating person's proposed revised residential schedule
14 may file a petition to modify the parenting plan, including a change of
15 the residence in which the child resides the majority of the time,
16 without a showing of adequate cause other than the proposed relocation
17 itself. A hearing to determine adequate cause for modification shall
18 not be required so long as the request for relocation of the child is
19 being pursued. In making a determination of a modification pursuant to
20 relocation of the child, the court shall first determine whether to
21 permit or restrain the relocation of the child using the procedures and
22 standards provided in RCW 26.09.405 through 26.09.560. Following that
23 determination, the court shall determine what modification pursuant to
24 relocation should be made, if any, to the parenting plan or custody
25 order or visitation order.

26 (7) A parent with whom the child does not reside a majority of the
27 time and whose residential time with the child is subject to
28 limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion
29 of residential time under subsection (5)(c) of this section unless that
30 parent demonstrates a substantial change in circumstances specifically
31 related to the basis for the limitation.

32 (8) If a parent with whom the child does not reside a majority of
33 the time voluntarily fails to exercise residential time for an extended
34 period, that is, one year or longer, the court upon proper motion may
35 make adjustments to the parenting plan in keeping with the best
36 interests of the minor child.

37 (9) A parent with whom the child does not reside a majority of the
38 time who is required by the existing parenting plan to complete

1 evaluations, treatment, parenting, or other classes may not seek
2 expansion of residential time under subsection (5)(c) of this section
3 unless that parent has fully complied with such requirements.

4 (10) The court may order adjustments to any of the nonresidential
5 aspects of a parenting plan upon a showing of a substantial change of
6 circumstances of either parent or of a child, and the adjustment is in
7 the best interest of the child. Adjustments ordered under this section
8 may be made without consideration of the factors set forth in
9 subsection (2) of this section.

10 (11) If the court finds that a motion to modify a prior decree or
11 parenting plan has been brought in bad faith, the court shall assess
12 the attorney's fees and court costs of the nonmoving parent against the
13 moving party.

14 **Sec. 5.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read
15 as follows:

16 ~~((1))~~ Under section 2 of this act, a person other than a parent
17 may petition the court for visitation with a child ((at any time)) or
18 may intervene in a pending dissolution, legal separation, or
19 modification of parenting plan proceeding. ((A person other than a
20 parent may not petition for visitation under this section unless the
21 child's parent or parents have commenced an action under this chapter.

22 ~~(2) A petition for visitation with a child by a person other than~~
23 ~~a parent must be filed in the county in which the child resides.~~

24 ~~(3) A petition for visitation or a motion to intervene pursuant to~~
25 ~~this section shall be dismissed unless the petitioner or intervenor can~~
26 ~~demonstrate by clear and convincing evidence that a significant~~
27 ~~relationship exists with the child with whom visitation is sought. If~~
28 ~~the petition or motion is dismissed for failure to establish the~~
29 ~~existence of a significant relationship, the petitioner or intervenor~~
30 ~~shall be ordered to pay reasonable attorney's fees and costs to the~~
31 ~~parent, parents, other custodian, or representative of the child who~~
32 ~~responds to this petition or motion.~~

33 ~~(4) The court may order visitation between the petitioner or~~
34 ~~intervenor and the child between whom a significant relationship exists~~
35 ~~upon a finding supported by the evidence that the visitation is in the~~
36 ~~child's best interests.~~

1 ~~(5)(a) Visitation with a grandparent shall be presumed to be in the~~
2 ~~child's best interests when a significant relationship has been shown~~
3 ~~to exist. This presumption may be rebutted by a preponderance of~~
4 ~~evidence showing that visitation would endanger the child's physical,~~
5 ~~mental, or emotional health.~~

6 ~~(b) If the court finds that reasonable visitation by a grandparent~~
7 ~~would be in the child's best interest except for hostilities that exist~~
8 ~~between the grandparent and one or both of the parents or person with~~
9 ~~whom the child lives, the court may set the matter for mediation under~~
10 ~~RCW 26.09.015.~~

11 ~~(6) The court may consider the following factors when making a~~
12 ~~determination of the child's best interests:~~

13 ~~(a) The strength of the relationship between the child and the~~
14 ~~petitioner;~~

15 ~~(b) The relationship between each of the child's parents or the~~
16 ~~person with whom the child is residing and the petitioner;~~

17 ~~(c) The nature and reason for either parent's objection to granting~~
18 ~~the petitioner visitation;~~

19 ~~(d) The effect that granting visitation will have on the~~
20 ~~relationship between the child and the child's parents or the person~~
21 ~~with whom the child is residing;~~

22 ~~(e) The residential time sharing arrangements between the parents;~~

23 ~~(f) The good faith of the petitioner;~~

24 ~~(g) Any criminal history or history of physical, emotional, or~~
25 ~~sexual abuse or neglect by the petitioner; and~~

26 ~~(h) Any other factor relevant to the child's best interest.~~

27 ~~(7) The restrictions of RCW 26.09.191 that apply to parents shall~~
28 ~~be applied to a petitioner or intervenor who is not a parent. The~~
29 ~~nature and extent of visitation, subject to these restrictions, is in~~
30 ~~the discretion of the court.~~

31 ~~(8) The court may order an investigation and report concerning the~~
32 ~~proposed visitation or may appoint a guardian ad litem as provided in~~
33 ~~RCW 26.09.220.~~

34 ~~(9) Visitation granted pursuant to this section shall be~~
35 ~~incorporated into the parenting plan for the child.~~

36 ~~(10) The court may modify or terminate visitation rights granted~~
37 ~~pursuant to this section in any subsequent modification action upon a~~

1 ~~showing that the visitation is no longer in the best interest of the~~
2 ~~child.))~~

3 **Sec. 6.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read
4 as follows:

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

8 (2)(a) Visitation with the child shall be limited if it is found
9 that the parent seeking visitation has engaged in any of the following
10 conduct: (i) Willful abandonment that continues for an extended period
11 of time or substantial refusal to perform parenting functions; (ii)
12 physical, sexual, or a pattern of emotional abuse of a child; (iii) 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; or (iv) the parent has been convicted as an adult of
16 a sex offense under:

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

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

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

26 (D) RCW 9A.44.089;

27 (E) RCW 9A.44.093;

28 (F) RCW 9A.44.096;

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

32 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

20 (D) RCW 9A.44.089;

21 (E) RCW 9A.44.093;

22 (F) RCW 9A.44.096;

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

26 (H) Chapter 9.68A RCW;

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

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

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

34 (c) If a parent has been found to be a sexual predator under
35 chapter 71.09 RCW or under an analogous statute of any other
36 jurisdiction, the court shall restrain the parent from contact with a
37 child that would otherwise be allowed under this chapter. If a parent
38 resides with an adult or a juvenile who has been found to be a sexual

1 predator under chapter 71.09 RCW or under an analogous statute of any
2 other jurisdiction, the court shall restrain the parent from contact
3 with the parent's child except contact that occurs outside that
4 person's presence.

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

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

13 (ii) RCW 9A.44.073;

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

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

18 (v) RCW 9A.44.083;

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

21 (vii) RCW 9A.44.100;

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

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

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

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

38 (ii) RCW 9A.44.073;

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

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

5 (v) RCW 9A.44.083;

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

8 (vii) RCW 9A.44.100;

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

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

14 (f) The presumption established in (d) 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 parent requesting visitation, (A) contact between the child and the
18 offending parent is appropriate and poses minimal risk to the child,
19 and (B) the offending parent has successfully engaged in treatment for
20 sex offenders or is engaged in and making progress in such treatment,
21 if any was ordered by a court, and the treatment provider believes such
22 contact is appropriate and poses minimal risk to the child; or

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

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

35 (i) If the child was not the victim of the sex offense committed by
36 the person who is residing with the parent requesting visitation, (A)
37 contact between the child and the parent residing with the convicted or
38 adjudicated person is appropriate and that parent is able to protect

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

7 (ii) If the child was the victim of the sex offense committed by
8 the person who is residing with the parent requesting visitation, (A)
9 contact between the child and the parent in the presence of the
10 convicted or adjudicated person is appropriate and poses minimal risk
11 to the child, (B) if the child is in or has been in therapy for victims
12 of sexual abuse, the child's counselor believes such contact between
13 the child and the parent residing with the convicted or adjudicated
14 person in the presence of the convicted or adjudicated person is in the
15 child's best interest, and (C) the convicted or adjudicated person has
16 successfully engaged in treatment for sex offenders or is engaged in
17 and making progress in such treatment, if any was ordered by a court,
18 and the treatment provider believes contact between the parent and
19 child in the presence of the convicted or adjudicated person is
20 appropriate and poses minimal risk to the child.

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

33 (i) If the court finds that the parent has met the burden of
34 rebutting the presumption under (g) of this subsection, the court may
35 allow a parent residing with a person who has been adjudicated as a
36 juvenile of a sex offense listed in (e)(i) through (ix) of this
37 subsection to have visitation with the child in the presence of the
38 person adjudicated as a juvenile, supervised by a neutral and

1 independent adult and pursuant to an adequate plan for supervision of
2 such visitation. The court shall not approve of a supervisor for
3 contact between the child and the parent unless the court finds, based
4 on the evidence, that the supervisor is willing and capable of
5 protecting the child from harm. The court shall revoke court approval
6 of the supervisor upon finding, based on the evidence, that the
7 supervisor has failed to protect the child or is no longer willing or
8 capable of protecting the child.

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

22 (k) A court shall not order unsupervised contact between the
23 offending parent and a child of the offending parent who was sexually
24 abused by that parent. A court may order unsupervised contact between
25 the offending parent and a child who was not sexually abused by the
26 parent after the presumption under (d) of this subsection has been
27 rebutted and supervised visitation has occurred for at least two years
28 with no further arrests or convictions of sex offenses involving
29 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW
30 and (i) the sex offense of the offending parent was not committed
31 against a child of the offending parent, and (ii) the court finds that
32 unsupervised contact between the child and the offending parent is
33 appropriate and poses minimal risk to the child, after consideration of
34 the testimony of a state-certified therapist, mental health counselor,
35 or social worker with expertise in treating child sexual abuse victims
36 who has supervised at least one period of visitation between the parent
37 and the child, and after consideration of evidence of the offending
38 parent's compliance with community supervision requirements, if any.

1 If the offending parent was not ordered by a court to participate in
2 treatment for sex offenders, then the parent shall obtain a
3 psychosexual evaluation conducted by a state-certified sex offender
4 treatment provider indicating that the offender has the lowest
5 likelihood of risk to reoffend before the court grants unsupervised
6 contact between the parent and a child.

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

32 (m)(i) The limitations imposed by the court under (a) or (b) of
33 this subsection shall be reasonably calculated to protect the child
34 from the physical, sexual, or emotional abuse or harm that could result
35 if the child has contact with the parent requesting visitation. If the
36 court expressly finds based on the evidence that limitations on
37 visitation with the child will not adequately protect the child from

1 the harm or abuse that could result if the child has contact with the
2 parent requesting visitation, the court shall restrain the person
3 seeking visitation from all contact with the child.

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

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

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

1 the discretion of the court. This subsection shall not apply when (c),
2 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this
3 subsection apply.

4 ~~(3) ((Any person may petition the court for visitation rights at~~
5 ~~any time including, but not limited to, custody proceedings. The court~~
6 ~~may order visitation rights for any person when visitation may serve~~
7 ~~the best interest of the child whether or not there has been any change~~
8 ~~of circumstances.)) A person other than a parent may petition the court
9 for visitation with a child under section 2 of this act.~~

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

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

16 NEW SECTION. Sec. 7. This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately."

20 Correct the title.

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