

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2849

Chapter 38, Laws of 2004

58th Legislature
2004 Regular Session

SEX OFFENDER TREATMENT PROVIDERS

EFFECTIVE DATE: 7/1/04

Passed by the House February 14, 2004
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2004
Yeas 44 Nays 0

BRAD OWEN

President of the Senate

Approved March 22, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2849** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 22, 2004 - 4:24 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2849

Passed Legislature - 2004 Regular Session

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Kagi, Cody, Campbell, Bush and Schual-Berke; by request of Department of Health)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to eliminating credentialing barriers for sex
2 offender treatment providers; amending RCW 4.24.556, 18.155.020,
3 18.155.030, 18.155.040, 18.155.080, 18.155.090, 9.94A.670, 9.94A.820,
4 26.09.191, 26.10.160, and 71.09.350; reenacting and amending RCW
5 18.130.040 and 13.40.160; adding a new section to chapter 18.155 RCW;
6 and providing an effective date.

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

8 **Sec. 1.** RCW 4.24.556 and 2001 2nd sp.s. c 12 s 403 are each
9 amended to read as follows:

10 (1) A certified sex offender treatment provider, or a certified
11 affiliate sex offender treatment provider who has completed at least
12 fifty percent of the required hours under the supervision of a
13 certified sex offender treatment provider, acting in the course of his
14 or her duties, providing treatment to a person who has been released to
15 a less restrictive alternative under chapter 71.09 RCW or to a level
16 III sex offender on community custody as a court or department ordered
17 condition of sentence is not negligent because he or she treats a high
18 risk offender; sex offenders are known to have a risk of reoffense.
19 The treatment provider is not liable for civil damages resulting from

1 the reoffense of a client unless the treatment provider's acts or
2 omissions constituted gross negligence or willful or wanton misconduct.
3 This limited liability provision does not eliminate the treatment
4 provider's duty to warn of and protect from a client's threatened
5 violent behavior if the client communicates a serious threat of
6 physical violence against a reasonably ascertainable victim or victims.
7 In addition to any other requirements to report violations, the sex
8 offender treatment provider is obligated to report an offender's
9 expressions of intent to harm or other predatory behavior, whether or
10 not there is an ascertainable victim, in progress reports and other
11 established processes that enable courts and supervising entities to
12 assess and address the progress and appropriateness of treatment. This
13 limited liability provision applies only to the conduct of certified
14 sex offender treatment providers, and certified affiliate sex offender
15 treatment providers who have completed at least fifty percent of the
16 required hours under the supervision of a certified sex offender
17 treatment provider, and not the conduct of the state.

18 (2) Sex offender treatment providers who provide services to the
19 department of corrections by identifying risk factors and notifying the
20 department of risks for the subset of high risk offenders who are not
21 amenable to treatment and who are under court order for treatment or
22 supervision are practicing within the scope of their profession.

23 **Sec. 2.** RCW 18.130.040 and 2003 c 275 s 2 and 2003 c 258 s 7 are
24 each reenacted and amended to read as follows:

25 (1) This chapter applies only to the secretary and the boards and
26 commissions having jurisdiction in relation to the professions licensed
27 under the chapters specified in this section. This chapter does not
28 apply to any business or profession not licensed under the chapters
29 specified in this section.

30 (2)(a) The secretary has authority under this chapter in relation
31 to the following professions:

32 (i) Dispensing opticians licensed and designated apprentices under
33 chapter 18.34 RCW;

34 (ii) Naturopaths licensed under chapter 18.36A RCW;

35 (iii) Midwives licensed under chapter 18.50 RCW;

36 (iv) Ocularists licensed under chapter 18.55 RCW;

1 (v) Massage operators and businesses licensed under chapter 18.108
2 RCW;

3 (vi) Dental hygienists licensed under chapter 18.29 RCW;

4 (vii) Acupuncturists licensed under chapter 18.06 RCW;

5 (viii) Radiologic technologists certified and X-ray technicians
6 registered under chapter 18.84 RCW;

7 (ix) Respiratory care practitioners licensed under chapter 18.89
8 RCW;

9 (x) Persons registered under chapter 18.19 RCW;

10 (xi) Persons licensed as mental health counselors, marriage and
11 family therapists, and social workers under chapter 18.225 RCW;

12 (xii) Persons registered as nursing pool operators under chapter
13 18.52C RCW;

14 (xiii) Nursing assistants registered or certified under chapter
15 18.88A RCW;

16 (xiv) Health care assistants certified under chapter 18.135 RCW;

17 (xv) Dietitians and nutritionists certified under chapter 18.138
18 RCW;

19 (xvi) Chemical dependency professionals certified under chapter
20 18.205 RCW;

21 (xvii) Sex offender treatment providers and certified affiliate sex
22 offender treatment providers certified under chapter 18.155 RCW;

23 (xviii) Persons licensed and certified under chapter 18.73 RCW or
24 RCW 18.71.205;

25 (xix) Denturists licensed under chapter 18.30 RCW;

26 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

27 (xxi) Surgical technologists registered under chapter 18.215 RCW;

28 and

29 (xxii) Recreational therapists.

30 (b) The boards and commissions having authority under this chapter
31 are as follows:

32 (i) The podiatric medical board as established in chapter 18.22
33 RCW;

34 (ii) The chiropractic quality assurance commission as established
35 in chapter 18.25 RCW;

36 (iii) The dental quality assurance commission as established in
37 chapter 18.32 RCW;

1 (iv) The board of hearing and speech as established in chapter
2 18.35 RCW;

3 (v) The board of examiners for nursing home administrators as
4 established in chapter 18.52 RCW;

5 (vi) The optometry board as established in chapter 18.54 RCW
6 governing licenses issued under chapter 18.53 RCW;

7 (vii) The board of osteopathic medicine and surgery as established
8 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
9 18.57A RCW;

10 (viii) The board of pharmacy as established in chapter 18.64 RCW
11 governing licenses issued under chapters 18.64 and 18.64A RCW;

12 (ix) The medical quality assurance commission as established in
13 chapter 18.71 RCW governing licenses and registrations issued under
14 chapters 18.71 and 18.71A RCW;

15 (x) The board of physical therapy as established in chapter 18.74
16 RCW;

17 (xi) The board of occupational therapy practice as established in
18 chapter 18.59 RCW;

19 (xii) The nursing care quality assurance commission as established
20 in chapter 18.79 RCW governing licenses and registrations issued under
21 that chapter;

22 (xiii) The examining board of psychology and its disciplinary
23 committee as established in chapter 18.83 RCW; and

24 (xiv) The veterinary board of governors as established in chapter
25 18.92 RCW.

26 (3) In addition to the authority to discipline license holders, the
27 disciplining authority has the authority to grant or deny licenses
28 based on the conditions and criteria established in this chapter and
29 the chapters specified in subsection (2) of this section. This chapter
30 also governs any investigation, hearing, or proceeding relating to
31 denial of licensure or issuance of a license conditioned on the
32 applicant's compliance with an order entered pursuant to RCW 18.130.160
33 by the disciplining authority.

34 (4) All disciplining authorities shall adopt procedures to ensure
35 substantially consistent application of this chapter, the Uniform
36 Disciplinary Act, among the disciplining authorities listed in
37 subsection (2) of this section.

1 **Sec. 3.** RCW 18.155.020 and 2001 2nd sp.s. c 12 s 401 are each
2 amended to read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter:

5 (1) "Certified sex offender treatment provider" means a licensed,
6 certified, or registered health professional who is certified to
7 examine and treat sex offenders pursuant to chapters 9.94A and 13.40
8 RCW and sexually violent predators under chapter 71.09 RCW.

9 (2) "Certified affiliate sex offender treatment provider" means a
10 licensed, certified, or registered health professional who is certified
11 as an affiliate to examine and treat sex offenders pursuant to chapters
12 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09
13 RCW under the supervision of a certified sex offender treatment
14 provider.

15 (3) "Department" means the department of health.

16 (~~(3)~~) (4) "Secretary" means the secretary of health.

17 (~~(4)~~) (5) "Sex offender treatment provider" or "affiliate sex
18 offender treatment provider" means a person who counsels or treats sex
19 offenders accused of or convicted of a sex offense as defined by RCW
20 9.94A.030.

21 **Sec. 4.** RCW 18.155.030 and 2001 2nd sp.s. c 12 s 402 are each
22 amended to read as follows:

23 (1) No person shall represent himself or herself as a certified sex
24 offender treatment provider or certified affiliate sex offender
25 treatment provider without first applying for and receiving a
26 certificate pursuant to this chapter.

27 (2) Only a certified sex offender treatment provider, or certified
28 affiliate sex offender treatment provider who has completed at least
29 fifty percent of the required hours under the supervision of a
30 certified sex offender treatment provider, may perform or provide the
31 following services:

32 (a) Evaluations conducted for the purposes of and pursuant to RCW
33 9.94A.670 and 13.40.160;

34 (b) Treatment of convicted level III sex offenders who are
35 sentenced and ordered into treatment pursuant to chapter 9.94A RCW and
36 adjudicated level III juvenile sex offenders who are ordered into
37 treatment pursuant to chapter 13.40 RCW;

1 (c) Except as provided under subsection (3) of this section,
2 treatment of sexually violent predators who are conditionally released
3 to a less restrictive alternative pursuant to chapter 71.09 RCW.

4 (3) A certified sex offender treatment provider, or certified
5 affiliate sex offender treatment provider who has completed at least
6 fifty percent of the required hours under the supervision of a
7 certified sex offender treatment provider, may not perform or provide
8 treatment of sexually violent predators under subsection (2)(c) of this
9 section if the (~~certified sex offender~~) treatment provider has been:

10 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

11 (b) Convicted in any other jurisdiction of an offense that under
12 the laws of this state would be classified as a sex offense as defined
13 in RCW 9.94A.030; or

14 (c) Suspended or otherwise restricted from practicing any health
15 care profession by competent authority in any state, federal, or
16 foreign jurisdiction.

17 (4) Certified sex offender treatment providers and certified
18 affiliate sex offender treatment providers may perform or provide the
19 following service: Treatment of convicted level I and level II sex
20 offenders who are sentenced and ordered into treatment pursuant to
21 chapter 9.94A RCW and adjudicated juvenile level I and level II sex
22 offenders who are sentenced and ordered into treatment pursuant to
23 chapter 13.40 RCW.

24 **Sec. 5.** RCW 18.155.040 and 1996 c 191 s 86 are each amended to
25 read as follows:

26 In addition to any other authority provided by law, the secretary
27 shall have the following authority:

28 (1) To set administrative procedures, administrative requirements,
29 and fees in accordance with RCW 43.70.250 and 43.70.280;

30 (2) To establish forms necessary to administer this chapter;

31 (3) To issue a certificate or an affiliate certificate to any
32 applicant who has met the education, training, and examination
33 requirements for certification or an affiliate certification and deny
34 a certificate to applicants who do not meet the minimum qualifications
35 for certification or affiliate certification. Proceedings concerning
36 the denial of certificates based on unprofessional conduct or impaired

1 practice shall be governed by the uniform disciplinary act, chapter
2 18.130 RCW;

3 (4) To hire clerical, administrative, and investigative staff as
4 needed to implement and administer this chapter and to hire individuals
5 including those certified under this chapter to serve as examiners or
6 consultants as necessary to implement and administer this chapter;

7 (5) To maintain the official department record of all applicants
8 and certifications;

9 (6) To conduct a hearing on an appeal of a denial of a certificate
10 on the applicant's failure to meet the minimum qualifications for
11 certification. The hearing shall be conducted pursuant to chapter
12 34.05 RCW;

13 (7) To issue subpoenas, statements of charges, statements of intent
14 to deny certificates, and orders and to delegate in writing to a
15 designee the authority to issue subpoenas, statements of charges, and
16 statements of intent to deny certificates;

17 (8) To determine the minimum education, work experience, and
18 training requirements for certification or affiliate certification,
19 including but not limited to approval of educational programs;

20 (9) To prepare and administer or approve the preparation and
21 administration of examinations for certification;

22 (10) To establish by rule the procedure for appeal of an
23 examination failure;

24 (11) To adopt rules implementing a continuing competency program;

25 (12) To adopt rules in accordance with chapter 34.05 RCW as
26 necessary to implement this chapter.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.155 RCW
28 to read as follows:

29 The department shall issue an affiliate certificate to any
30 applicant who meets the following requirements:

31 (1) Successful completion of an educational program approved by the
32 secretary or successful completion of alternate training which meets
33 the criteria of the secretary;

34 (2) Successful completion of an examination administered or
35 approved by the secretary;

36 (3) Proof of supervision by a certified sex offender treatment
37 provider;

1 (4) Not having engaged in unprofessional conduct or being unable to
2 practice with reasonable skill and safety as a result of a physical or
3 mental impairment; and

4 (5) Other requirements as may be established by the secretary that
5 impact the competence of the sex offender treatment provider.

6 **Sec. 7.** RCW 18.155.080 and 1996 c 191 s 87 are each amended to
7 read as follows:

8 The secretary shall establish standards and procedures for approval
9 of the following:

10 (1) Educational programs and alternate training;

11 (2) Examination procedures;

12 (3) Certifying applicants who have a comparable certification in
13 another jurisdiction;

14 (4) Application method and forms;

15 (5) Requirements for renewals of certificates;

16 (6) Requirements of certified sex offender treatment providers and
17 certified affiliate sex offender treatment providers who seek inactive
18 status;

19 (7) Other rules, policies, administrative procedures, and
20 administrative requirements as appropriate to carry out the purposes of
21 this chapter.

22 **Sec. 8.** RCW 18.155.090 and 1990 c 3 s 809 are each amended to read
23 as follows:

24 The uniform disciplinary act, chapter 18.130 RCW, governs
25 unauthorized practice, the issuance and denial of certificates, and the
26 discipline of certified sex offender treatment providers and certified
27 affiliate sex offender treatment providers under this chapter.

28 **Sec. 9.** RCW 9.94A.670 and 2002 c 175 s 11 are each amended to read
29 as follows:

30 (1) Unless the context clearly requires otherwise, the definitions
31 in this subsection apply to this section only.

32 (a) "Sex offender treatment provider" or "treatment provider" means
33 a certified sex offender treatment provider or a certified affiliate
34 sex offender treatment provider as defined in RCW 18.155.020.

1 (b) "Victim" means any person who has sustained emotional,
2 psychological, physical, or financial injury to person or property as
3 a result of the crime charged. "Victim" also means a parent or
4 guardian of a victim who is a minor child unless the parent or guardian
5 is the perpetrator of the offense.

6 (2) An offender is eligible for the special sex offender sentencing
7 alternative if:

8 (a) The offender has been convicted of a sex offense other than a
9 violation of RCW 9A.44.050 or a sex offense that is also a serious
10 violent offense;

11 (b) The offender has no prior convictions for a sex offense as
12 defined in RCW 9.94A.030 or any other felony sex offenses in this or
13 any other state; and

14 (c) The offender's standard sentence range for the offense includes
15 the possibility of confinement for less than eleven years.

16 (3) If the court finds the offender is eligible for this
17 alternative, the court, on its own motion or the motion of the state or
18 the offender, may order an examination to determine whether the
19 offender is amenable to treatment.

20 (a) The report of the examination shall include at a minimum the
21 following:

22 (i) The offender's version of the facts and the official version of
23 the facts;

24 (ii) The offender's offense history;

25 (iii) An assessment of problems in addition to alleged deviant
26 behaviors;

27 (iv) The offender's social and employment situation; and

28 (v) Other evaluation measures used.

29 The report shall set forth the sources of the examiner's information.

30 (b) The examiner shall assess and report regarding the offender's
31 amenability to treatment and relative risk to the community. A
32 proposed treatment plan shall be provided and shall include, at a
33 minimum:

34 (i) Frequency and type of contact between offender and therapist;

35 (ii) Specific issues to be addressed in the treatment and
36 description of planned treatment modalities;

37 (iii) Monitoring plans, including any requirements regarding living

1 conditions, lifestyle requirements, and monitoring by family members
2 and others;

3 (iv) Anticipated length of treatment; and

4 (v) Recommended crime-related prohibitions.

5 (c) The court on its own motion may order, or on a motion by the
6 state shall order, a second examination regarding the offender's
7 amenability to treatment. The examiner shall be selected by the party
8 making the motion. The offender shall pay the cost of any second
9 examination ordered unless the court finds the defendant to be indigent
10 in which case the state shall pay the cost.

11 (4) After receipt of the reports, the court shall consider whether
12 the offender and the community will benefit from use of this
13 alternative and consider the victim's opinion whether the offender
14 should receive a treatment disposition under this section. If the
15 court determines that this alternative is appropriate, the court shall
16 then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of
17 sentence, within the standard sentence range. If the sentence imposed
18 is less than eleven years of confinement, the court may suspend the
19 execution of the sentence and impose the following conditions of
20 suspension:

21 (a) The court shall place the offender on community custody for the
22 length of the suspended sentence, the length of the maximum term
23 imposed pursuant to RCW 9.94A.712, or three years, whichever is
24 greater, and require the offender to comply with any conditions imposed
25 by the department under RCW 9.94A.720.

26 (b) The court shall order treatment for any period up to three
27 years in duration. The court, in its discretion, shall order
28 outpatient sex offender treatment or inpatient sex offender treatment,
29 if available. A community mental health center may not be used for
30 such treatment unless it has an appropriate program designed for sex
31 offender treatment. The offender shall not change sex offender
32 treatment providers or treatment conditions without first notifying the
33 prosecutor, the community corrections officer, and the court. If any
34 party or the court objects to a proposed change, the offender shall not
35 change providers or conditions without court approval after a hearing.

36 (5) As conditions of the suspended sentence, the court may impose
37 one or more of the following:

1 (a) Up to six months of confinement, not to exceed the sentence
2 range of confinement for that offense;

3 (b) Crime-related prohibitions;

4 (c) Require the offender to devote time to a specific employment or
5 occupation;

6 (d) Remain within prescribed geographical boundaries and notify the
7 court or the community corrections officer prior to any change in the
8 offender's address or employment;

9 (e) Report as directed to the court and a community corrections
10 officer;

11 (f) Pay all court-ordered legal financial obligations as provided
12 in RCW 9.94A.030;

13 (g) Perform community restitution work; or

14 (h) Reimburse the victim for the cost of any counseling required as
15 a result of the offender's crime.

16 (6) At the time of sentencing, the court shall set a treatment
17 termination hearing for three months prior to the anticipated date for
18 completion of treatment.

19 (7) The sex offender treatment provider shall submit quarterly
20 reports on the offender's progress in treatment to the court and the
21 parties. The report shall reference the treatment plan and include at
22 a minimum the following: Dates of attendance, offender's compliance
23 with requirements, treatment activities, the offender's relative
24 progress in treatment, and any other material specified by the court at
25 sentencing.

26 (8) Prior to the treatment termination hearing, the treatment
27 provider and community corrections officer shall submit written reports
28 to the court and parties regarding the offender's compliance with
29 treatment and monitoring requirements, and recommendations regarding
30 termination from treatment, including proposed community custody
31 conditions. Either party may request, and the court may order, another
32 evaluation regarding the advisability of termination from treatment.
33 The offender shall pay the cost of any additional evaluation ordered
34 unless the court finds the offender to be indigent in which case the
35 state shall pay the cost. At the treatment termination hearing the
36 court may: (a) Modify conditions of community custody, and either (b)
37 terminate treatment, or (c) extend treatment for up to the remaining
38 period of community custody.

1 (9) If a violation of conditions occurs during community custody,
2 the department shall either impose sanctions as provided for in RCW
3 9.94A.737(2)(a) or refer the violation to the court and recommend
4 revocation of the suspended sentence as provided for in subsections (6)
5 and (8) of this section.

6 (10) The court may revoke the suspended sentence at any time during
7 the period of community custody and order execution of the sentence if:
8 (a) The offender violates the conditions of the suspended sentence, or
9 (b) the court finds that the offender is failing to make satisfactory
10 progress in treatment. All confinement time served during the period
11 of community custody shall be credited to the offender if the suspended
12 sentence is revoked.

13 (11) Examinations and treatment ordered pursuant to this subsection
14 shall only be conducted by certified sex offender treatment providers
15 or certified (~~by the department of health pursuant to~~) affiliate sex
16 offender treatment providers under chapter 18.155 RCW unless the court
17 finds that:

18 (a) The offender has already moved to another state or plans to
19 move to another state for reasons other than circumventing the
20 certification requirements; or

21 (b)(i) No certified sex offender treatment providers or certified
22 affiliate sex offender treatment providers are available for treatment
23 within a reasonable geographical distance of the offender's home; and

24 (ii) The evaluation and treatment plan comply with this section and
25 the rules adopted by the department of health.

26 (12) If the offender is less than eighteen years of age when the
27 charge is filed, the state shall pay for the cost of initial evaluation
28 and treatment.

29 **Sec. 10.** RCW 9.94A.820 and 2000 c 28 s 36 are each amended to read
30 as follows:

31 (1) Sex offender examinations and treatment ordered as a special
32 condition of community placement or community custody under this
33 chapter shall be conducted only by certified sex offender treatment
34 providers (~~certified by the department of health~~) or certified
35 affiliate sex offender treatment providers under chapter 18.155 RCW
36 unless the court or the department finds that: (a) The offender has
37 already moved to another state or plans to move to another state for

1 reasons other than circumventing the certification requirements; (b)
2 the treatment provider is employed by the department; or (c)(i) no
3 certified sex offender treatment providers or certified affiliate sex
4 offender treatment providers are available to provide treatment within
5 a reasonable geographic distance of the offender's home, as determined
6 in rules adopted by the secretary; and (ii) the evaluation and
7 treatment plan comply with the rules adopted by the department of
8 health. A treatment provider selected by an offender under (c) of this
9 subsection, who is not certified by the department of health shall
10 consult with a certified sex offender treatment provider during the
11 offender's period of treatment to ensure compliance with the rules
12 adopted by the department of health. The frequency and content of the
13 consultation shall be based on the recommendation of the certified sex
14 offender treatment provider.

15 (2) A sex offender's failure to participate in treatment required
16 as a condition of community placement or community custody is a
17 violation that will not be excused on the basis that no treatment
18 provider was located within a reasonable geographic distance of the
19 offender's home.

20 **Sec. 11.** RCW 13.40.160 and 2003 c 378 s 3 and 2003 c 53 s 99 are
21 each reenacted and amended to read as follows:

22 (1) The standard range disposition for a juvenile adjudicated of an
23 offense is determined according to RCW 13.40.0357.

24 (a) When the court sentences an offender to a local sanction as
25 provided in RCW 13.40.0357 option A, the court shall impose a
26 determinate disposition within the standard ranges, except as provided
27 in subsection (2), (3), (4), (5), or (6) of this section. The
28 disposition may be comprised of one or more local sanctions.

29 (b) When the court sentences an offender to a standard range as
30 provided in RCW 13.40.0357 option A that includes a term of confinement
31 exceeding thirty days, commitment shall be to the department for the
32 standard range of confinement, except as provided in subsection (2),
33 (3), (4), (5), or (6) of this section.

34 (2) If the court concludes, and enters reasons for its conclusion,
35 that disposition within the standard range would effectuate a manifest
36 injustice the court shall impose a disposition outside the standard

1 range, as indicated in option D of RCW 13.40.0357. The court's finding
2 of manifest injustice shall be supported by clear and convincing
3 evidence.

4 A disposition outside the standard range shall be determinate and
5 shall be comprised of confinement or community supervision, or a
6 combination thereof. When a judge finds a manifest injustice and
7 imposes a sentence of confinement exceeding thirty days, the court
8 shall sentence the juvenile to a maximum term, and the provisions of
9 RCW 13.40.030(2) shall be used to determine the range. A disposition
10 outside the standard range is appealable under RCW 13.40.230 by the
11 state or the respondent. A disposition within the standard range is
12 not appealable under RCW 13.40.230.

13 (3) When a juvenile offender is found to have committed a sex
14 offense, other than a sex offense that is also a serious violent
15 offense as defined by RCW 9.94A.030, and has no history of a prior sex
16 offense, the court, on its own motion or the motion of the state or the
17 respondent, may order an examination to determine whether the
18 respondent is amenable to treatment.

19 The report of the examination shall include at a minimum the
20 following: The respondent's version of the facts and the official
21 version of the facts, the respondent's offense history, an assessment
22 of problems in addition to alleged deviant behaviors, the respondent's
23 social, educational, and employment situation, and other evaluation
24 measures used. The report shall set forth the sources of the
25 evaluator's information.

26 The examiner shall assess and report regarding the respondent's
27 amenability to treatment and relative risk to the community. A
28 proposed treatment plan shall be provided and shall include, at a
29 minimum:

- 30 (a)(i) Frequency and type of contact between the offender and
31 therapist;
- 32 (ii) Specific issues to be addressed in the treatment and
33 description of planned treatment modalities;
- 34 (iii) Monitoring plans, including any requirements regarding living
35 conditions, lifestyle requirements, and monitoring by family members,
36 legal guardians, or others;
- 37 (iv) Anticipated length of treatment; and
- 38 (v) Recommended crime-related prohibitions.

1 The court on its own motion may order, or on a motion by the state
2 shall order, a second examination regarding the offender's amenability
3 to treatment. The evaluator shall be selected by the party making the
4 motion. The defendant shall pay the cost of any second examination
5 ordered unless the court finds the defendant to be indigent in which
6 case the state shall pay the cost.

7 After receipt of reports of the examination, the court shall then
8 consider whether the offender and the community will benefit from use
9 of this special sex offender disposition alternative and consider the
10 victim's opinion whether the offender should receive a treatment
11 disposition under this section. If the court determines that this
12 special sex offender disposition alternative is appropriate, then the
13 court shall impose a determinate disposition within the standard range
14 for the offense, or if the court concludes, and enters reasons for its
15 conclusions, that such disposition would cause a manifest injustice,
16 the court shall impose a disposition under option D, and the court may
17 suspend the execution of the disposition and place the offender on
18 community supervision for at least two years. As a condition of the
19 suspended disposition, the court may impose the conditions of community
20 supervision and other conditions, including up to thirty days of
21 confinement and requirements that the offender do any one or more of
22 the following:

23 (b)(i) Devote time to a specific education, employment, or
24 occupation;

25 (ii) Undergo available outpatient sex offender treatment for up to
26 two years, or inpatient sex offender treatment not to exceed the
27 standard range of confinement for that offense. A community mental
28 health center may not be used for such treatment unless it has an
29 appropriate program designed for sex offender treatment. The
30 respondent shall not change sex offender treatment providers or
31 treatment conditions without first notifying the prosecutor, the
32 probation counselor, and the court, and shall not change providers
33 without court approval after a hearing if the prosecutor or probation
34 counselor object to the change;

35 (iii) Remain within prescribed geographical boundaries and notify
36 the court or the probation counselor prior to any change in the
37 offender's address, educational program, or employment;

1 (iv) Report to the prosecutor and the probation counselor prior to
2 any change in a sex offender treatment provider. This change shall
3 have prior approval by the court;

4 (v) Report as directed to the court and a probation counselor;

5 (vi) Pay all court-ordered legal financial obligations, perform
6 community restitution, or any combination thereof;

7 (vii) Make restitution to the victim for the cost of any counseling
8 reasonably related to the offense;

9 (viii) Comply with the conditions of any court-ordered probation
10 bond; or

11 (ix) The court shall order that the offender may not attend the
12 public or approved private elementary, middle, or high school attended
13 by the victim or the victim's siblings. The parents or legal guardians
14 of the offender are responsible for transportation or other costs
15 associated with the offender's change of school that would otherwise be
16 paid by the school district. The court shall send notice of the
17 disposition and restriction on attending the same school as the victim
18 or victim's siblings to the public or approved private school the
19 juvenile will attend, if known, or if unknown, to the approved private
20 schools and the public school district board of directors of the
21 district in which the juvenile resides or intends to reside. This
22 notice must be sent at the earliest possible date but not later than
23 ten calendar days after entry of the disposition.

24 The sex offender treatment provider shall submit quarterly reports
25 on the respondent's progress in treatment to the court and the parties.
26 The reports shall reference the treatment plan and include at a minimum
27 the following: Dates of attendance, respondent's compliance with
28 requirements, treatment activities, the respondent's relative progress
29 in treatment, and any other material specified by the court at the time
30 of the disposition.

31 At the time of the disposition, the court may set treatment review
32 hearings as the court considers appropriate.

33 Except as provided in this subsection (3), after July 1, 1991,
34 examinations and treatment ordered pursuant to this subsection shall
35 only be conducted by certified sex offender treatment providers or
36 certified (~~by the department of health pursuant to~~) affiliate sex
37 offender treatment providers under chapter 18.155 RCW. A sex offender
38 therapist who examines or treats a juvenile sex offender pursuant to

1 this subsection does not have to be certified by the department of
2 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
3 offender has already moved to another state or plans to move to another
4 state for reasons other than circumventing the certification
5 requirements; (B) no certified sex offender treatment providers or
6 certified affiliate sex offender treatment providers are available for
7 treatment within a reasonable geographical distance of the offender's
8 home; and (C) the evaluation and treatment plan comply with this
9 subsection (3) and the rules adopted by the department of health.

10 If the offender violates any condition of the disposition or the
11 court finds that the respondent is failing to make satisfactory
12 progress in treatment, the court may revoke the suspension and order
13 execution of the disposition or the court may impose a penalty of up to
14 thirty days' confinement for violating conditions of the disposition.
15 The court may order both execution of the disposition and up to thirty
16 days' confinement for the violation of the conditions of the
17 disposition. The court shall give credit for any confinement time
18 previously served if that confinement was for the offense for which the
19 suspension is being revoked.

20 For purposes of this section, "victim" means any person who has
21 sustained emotional, psychological, physical, or financial injury to
22 person or property as a direct result of the crime charged. "Victim"
23 may also include a known parent or guardian of a victim who is a minor
24 child unless the parent or guardian is the perpetrator of the offense.

25 A disposition entered under this subsection (3) is not appealable
26 under RCW 13.40.230.

27 (4) If the juvenile offender is subject to a standard range
28 disposition of local sanctions or 15 to 36 weeks of confinement and has
29 not committed an A- or B+ offense, the court may impose the
30 disposition alternative under RCW 13.40.165.

31 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of
32 confinement, the court may impose the disposition alternative under RCW
33 13.40.167.

34 (6) When the offender is subject to a standard range commitment of
35 15 to 36 weeks and is ineligible for a suspended disposition
36 alternative, a manifest injustice disposition below the standard range,
37 special sex offender disposition alternative, chemical dependency

1 disposition alternative, or mental health disposition alternative, the
2 court in a county with a pilot program under RCW 13.40.169 may impose
3 the disposition alternative under RCW 13.40.169.

4 (7) RCW 13.40.193 shall govern the disposition of any juvenile
5 adjudicated of possessing a firearm in violation of RCW
6 9.41.040(2)(a)(iii) or any crime in which a special finding is entered
7 that the juvenile was armed with a firearm.

8 (8) Whenever a juvenile offender is entitled to credit for time
9 spent in detention prior to a dispositional order, the dispositional
10 order shall specifically state the number of days of credit for time
11 served.

12 (9) Except as provided under subsection (3), (4), (5), or (6) of
13 this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the
14 court shall not suspend or defer the imposition or the execution of the
15 disposition.

16 (10) In no case shall the term of confinement imposed by the court
17 at disposition exceed that to which an adult could be subjected for the
18 same offense.

19 **Sec. 12.** RCW 26.09.191 and 1996 c 303 s 1 are each amended to read
20 as follows:

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

30 (2)(a) The parent's residential time with the child shall be
31 limited if it is found that the parent has engaged in any of the
32 following conduct: (i) Willful abandonment that continues for an
33 extended period of time or substantial refusal to perform parenting
34 functions; (ii) physical, sexual, or a pattern of emotional abuse of a
35 child; (iii) a history of acts of domestic violence as defined in RCW
36 26.50.010(1) or an assault or sexual assault which causes grievous

1 bodily harm or the fear of such harm; or (iv) the parent has been
2 convicted as an adult of a sex offense under:

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

6 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

13 (E) RCW 9A.44.093;

14 (F) RCW 9A.44.096;

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

18 (H) Chapter 9.68A RCW;

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

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

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

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

37 (B) RCW 9A.44.079 if, because of the difference in age between the

1 offender and the victim, no rebuttable presumption exists under (e) of
2 this subsection;

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

6 (D) RCW 9A.44.089;

7 (E) RCW 9A.44.093;

8 (F) RCW 9A.44.096;

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

12 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

37 (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 (d)(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 (d)(i) through (vii) of
13 this subsection.

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

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

25 (ii) RCW 9A.44.073;

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

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

30 (v) RCW 9A.44.083;

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

33 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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

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

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

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

36 (j) If the court finds that the parent has met the burden of
37 rebutting the presumption under (g) of this subsection, the court may
38 allow a parent residing with a person who, as an adult, has been

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

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

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

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

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

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

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

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

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

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

1 (b) A long-term emotional or physical impairment which interferes
2 with the parent's performance of parenting functions as defined in RCW
3 26.09.004;

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

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

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

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

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

15 (4) In entering a permanent parenting plan, the court shall not
16 draw any presumptions from the provisions of the temporary parenting
17 plan.

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

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

23 **Sec. 13.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read
24 as follows:

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

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

1 (A) RCW 9A.44.076 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 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 if, because of the difference in age between the
8 offender and the victim, no rebuttable presumption exists under (d) of
9 this subsection;

10 (D) RCW 9A.44.089;

11 (E) RCW 9A.44.093;

12 (F) RCW 9A.44.096;

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

16 (H) Chapter 9.68A RCW;

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

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

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

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

32 (A) RCW 9A.44.076 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 (B) RCW 9A.44.079 if, because of the difference in age between the
36 offender and the victim, no rebuttable presumption exists under (e) of
37 this subsection;

1 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

5 (E) RCW 9A.44.093;

6 (F) RCW 9A.44.096;

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

10 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

35 (ii) RCW 9A.44.073;

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

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

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

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

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

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

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

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

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

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

32 (j) If the court finds that the parent has met the burden of
33 rebutting the presumption under (g) of this subsection, the court may
34 allow a parent residing with a person who, as an adult, has been
35 convicted of a sex offense listed in (e)(i) through (ix) of this
36 subsection to have visitation with the child in the presence of the
37 convicted person supervised by a neutral and independent adult and
38 pursuant to an adequate plan for supervision of such visitation. The

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

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

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

1 9.68A RCW, and (i) the court finds that unsupervised contact between
2 the child and the parent that may occur in the presence of the
3 adjudicated juvenile is appropriate and poses minimal risk to the
4 child, after consideration of the testimony of a state-certified
5 therapist, mental health counselor, or social worker with expertise in
6 treatment of child sexual abuse victims who has supervised at least one
7 period of visitation between the parent and the child in the presence
8 of the adjudicated juvenile, and after consideration of evidence of the
9 adjudicated juvenile's compliance with community supervision or parole
10 requirements, if any. If the adjudicated juvenile was not ordered by
11 a court to participate in treatment for sex offenders, then the
12 adjudicated juvenile shall obtain a psychosexual evaluation conducted
13 by a (~~state-certified~~) certified sex offender treatment provider or
14 a certified affiliate sex offender treatment provider indicating that
15 the adjudicated juvenile has the lowest likelihood of risk to reoffend
16 before the court grants unsupervised contact between the parent and a
17 child which may occur in the presence of the adjudicated juvenile who
18 is residing with the parent.

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

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

1 abused a child, unless the court finds that the parent accepts that the
2 person engaged in the harmful conduct and the parent is willing to and
3 capable of protecting the child from harm from the person.

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

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

28 (3) Any person may petition the court for visitation rights at any
29 time including, but not limited to, custody proceedings. The court may
30 order visitation rights for any person when visitation may serve the
31 best interest of the child whether or not there has been any change of
32 circumstances.

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

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

1 **Sec. 14.** RCW 71.09.350 and 2001 2nd sp.s. c 12 s 404 are each
2 amended to read as follows:

3 (1) Examinations and treatment of sexually violent predators who
4 are conditionally released to a less restrictive alternative under this
5 chapter shall be conducted only by certified sex offender treatment
6 providers or certified (~~(by the department of health)~~) affiliate sex
7 offender treatment providers under chapter 18.155 RCW unless the court
8 or the department of social and health services finds that: (a) The
9 court-ordered less restrictive alternative placement is located in
10 another state; (b) the treatment provider is employed by the
11 department; or (c)(i) all certified sex offender treatment providers or
12 certified affiliate sex offender treatment providers become unavailable
13 to provide treatment within a reasonable geographic distance of the
14 person's home, as determined in rules adopted by the department of
15 social and health services; and (ii) the evaluation and treatment plan
16 comply with the rules adopted by the department of social and health
17 services.

18 A treatment provider approved by the department of social and
19 health services under (c) of this subsection, who is not certified by
20 the department of health, shall consult with a certified sex offender
21 treatment provider during the person's period of treatment to ensure
22 compliance with the rules adopted by the department of health. The
23 frequency and content of the consultation shall be based on the
24 recommendation of the certified sex offender treatment provider.

25 (2) A treatment provider, whether or not he or she is employed or
26 approved by the department of social and health services under
27 subsection (1) of this section or otherwise certified, may not perform
28 or provide treatment of sexually violent predators under this section
29 if the treatment provider has been:

30 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

31 (b) Convicted in any other jurisdiction of an offense that under
32 the laws of this state would be classified as a sex offense as defined
33 in RCW 9.94A.030; or

34 (c) Suspended or otherwise restricted from practicing any health
35 care profession by competent authority in any state, federal, or
36 foreign jurisdiction.

37 (3) Nothing in this section prohibits a qualified expert from

1 examining or evaluating a sexually violent predator who has been
2 conditionally released for purposes of presenting an opinion in court
3 proceedings.

4 NEW SECTION. **Sec. 15.** This act takes effect July 1, 2004.
Passed by the House February 14, 2004.
Passed by the Senate March 4, 2004.
Approved by the Governor March 22, 2004.
Filed in Office of Secretary of State March 22, 2004.