

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1543

65th Legislature
2017 Regular Session

Passed by the House April 21, 2017
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 20, 2017
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1543** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1543

AS AMENDED BY THE SENATE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By House Judiciary (originally sponsored by Representatives Doglio, Jinkins, Goodman, Senn, Robinson, Stonier, Kagi, Cody, Macri, Bergquist, Slatter, McBride, Peterson, Hudgins, Stanford, Frame, and Appleton)

READ FIRST TIME 02/13/17.

1 AN ACT Relating to parental rights and responsibilities of sexual
2 assault perpetrators and survivors; amending RCW 26.09.191 and
3 26.33.170; and adding a new section to chapter 26.26 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.26
6 RCW to read as follows:

7 (1) This section applies in cases when a person alleged or
8 presumed to be a legal parent to a child is alleged to have committed
9 a sexual assault that resulted in the victim of the assault becoming
10 pregnant and subsequently giving birth to the child.

11 (2) For the purposes of this section, "sexual assault" means
12 nonconsensual sexual penetration that results in pregnancy.

13 (3) For the purposes of this section, the fact that the person
14 seeking parental rights or presumed to be a legal parent committed a
15 sexual assault that resulted in the victim of the assault becoming
16 pregnant and subsequently giving birth to the child may be proved by
17 either:

18 (a) Evidence that the person seeking parental rights or presumed
19 to be a legal parent was convicted of or pleaded guilty to a sexual
20 assault under RCW 9A.44.040, 9A.44.050, 9A.44.060, or a comparable
21 crime of sexual assault in any jurisdiction, against the child's

1 parent, and that the child was born within three hundred twenty days
2 after the sexual assault; or

3 (b) Clear, cogent, and convincing evidence that the person
4 seeking parental rights or presumed to be a legal parent committed
5 sexual assault, as defined in this section, against the child's
6 parent, and that the child was born within three hundred twenty days
7 after the sexual assault.

8 (4) An allegation that the child was born as the result of a
9 sexual assault may be raised under this chapter:

10 (a) In a petition to adjudicate parentage; or

11 (b) In response to a petition to adjudicate parentage.

12 The pleading making the allegation must be filed in a petition or
13 in a response to a petition in proceedings filed no later than four
14 years after the birth of the child, except that (i) the pleading
15 making the allegation that the child was born as a result of a sexual
16 assault may be filed at any time in proceedings pursuant to RCW
17 26.26.525; or (ii) for a period of two years after the effective date
18 of this section, a court may waive the time bar in cases in which a
19 presumed, acknowledged, or adjudicated parent was found in a criminal
20 or separate civil proceeding to have committed a sexual assault
21 against the parent alleging that the child was born as a result of
22 the sexual assault.

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

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

34 (b) Prior to the fact-finding hearing, the court may order
35 genetic testing to determine whether the alleged perpetrator is
36 biologically related to the child. If genetic testing reveals that
37 the alleged perpetrator is not biologically related to the child, the
38 fact-finding hearing must be stricken.

39 (c) Fourteen days prior to the fact-finding hearing, the party
40 alleging that the child was born as a result of a sexual assault

1 shall submit affidavits setting forth facts supporting the allegation
2 and shall give notice, together with a copy of the affidavit, to
3 other parties to the proceedings, who may file opposing affidavits.
4 Opposing affidavits must be submitted and served to other parties to
5 the proceeding five days prior to the fact-finding hearing.

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

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

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

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

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

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

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

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

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

37 (9) If the court finds that the person seeking parentage or
38 presumed to be the parent committed a sexual assault, as defined in
39 this section, against the child's parent, and that the child was born
40 within three hundred twenty days of the sexual assault, and the legal

1 parent or guardian requests it, the court must order the person
2 seeking parentage or presumed to be the parent to pay child support
3 or birth-related costs or both.

4 (10) The legal parent or guardian may decline an order for child
5 support or birth-related costs. If the legal parent or guardian
6 declines an order for child support, and is either currently
7 receiving public assistance or later applies for it for the child
8 born as a result of the sexual assault, support enforcement agencies
9 as defined in this chapter shall not file administrative or court
10 proceedings to establish or collect child support, including medical
11 support, from the person seeking parentage or presumed to be the
12 parent who has been found to have committed a sexual assault, as
13 defined in this section, against the child's parent, and that the
14 child was born within three hundred twenty days of the sexual
15 assault.

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

22 (12) The court may order an award of attorneys' fees under this
23 section on the same basis as attorneys' fees are awarded under RCW
24 26.09.140.

25 (13) Any party may move to close the fact-finding hearing and any
26 related proceedings under this section to the public. If no party
27 files such a motion, the court shall determine on its own initiative
28 whether the fact-finding hearing and any related proceedings under
29 this section should be closed to the public. Upon finding good cause
30 for closing the proceeding, and if consistent with Article I, section
31 10 of the state Constitution, the court may: (a) Restrict admission
32 to only those persons whom the court finds to have a direct interest
33 in the case or in the work of the court, including witnesses deemed
34 necessary to the disposition of the case; and (b) restrict persons
35 who are admitted from disclosing any information obtained at the
36 hearing that would identify the parties involved or the child.

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

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

11 (2)(a) The parent's residential time with the child shall be
12 limited if it is found that the parent has engaged in any of the
13 following conduct: (i) Willful abandonment that continues for an
14 extended period of time or substantial refusal to perform parenting
15 functions; (ii) physical, sexual, or a pattern of emotional abuse of
16 a child; (iii) a history of acts of domestic violence as defined in
17 RCW 26.50.010(~~((1))~~) (3) or an assault or sexual assault (~~((which))~~)
18 that causes grievous bodily harm or the fear of such harm or that
19 results in a pregnancy; or (iv) the parent has been convicted as an
20 adult of a sex offense under:

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

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

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

30 (D) RCW 9A.44.089;

31 (E) RCW 9A.44.093;

32 (F) RCW 9A.44.096;

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

36 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

24 (D) RCW 9A.44.089;

25 (E) RCW 9A.44.093;

26 (F) RCW 9A.44.096;

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

30 (H) Chapter 9.68A RCW;

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

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

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

38 (c) If a parent has been found to be a sexual predator under
39 chapter 71.09 RCW or under an analogous statute of any other
40 jurisdiction, the court shall restrain the parent from contact with a

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

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

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

15 (ii) RCW 9A.44.073;

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

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

20 (v) RCW 9A.44.083;

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

23 (vii) RCW 9A.44.100;

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

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

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

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

40 (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
4 least 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
7 least 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 the child was not
16 conceived and subsequently born as a result of a sexual assault
17 committed by the parent requesting residential time and that:

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

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

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

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

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

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

39 (i) If the court finds that the parent has met the burden of
40 rebutting the presumption under (g) of this subsection, the court may

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

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

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

1 sexual abuse victims who has supervised at least one period of
2 residential time between the parent and the child, and after
3 consideration of evidence of the offending parent's compliance with
4 community supervision requirements, if any. If the offending parent
5 was not ordered by a court to participate in treatment for sex
6 offenders, then the parent shall obtain a psychosexual evaluation
7 conducted by a certified sex offender treatment provider or a
8 certified affiliate sex offender treatment provider indicating that
9 the offender has the lowest likelihood of risk to reoffend before the
10 court grants unsupervised contact between the parent and a child.

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

38 (m)(i) The limitations imposed by the court under (a) or (b) of
39 this subsection shall be reasonably calculated to protect the child
40 from the physical, sexual, or emotional abuse or harm that could

1 result if the child has contact with the parent requesting
2 residential time. The limitations shall also be reasonably calculated
3 to provide for the safety of the parent who may be at risk of
4 physical, sexual, or emotional abuse or harm that could result if the
5 parent has contact with the parent requesting residential time. The
6 limitations the court may impose include, but are not limited to:
7 Supervised contact between the child and the parent or completion of
8 relevant counseling or treatment. If the court expressly finds based
9 on the evidence that limitations on the residential time with the
10 child will not adequately protect the child from the harm or abuse
11 that could result if the child has contact with the parent requesting
12 residential time, the court shall restrain the parent requesting
13 residential time from all contact with the child.

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

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

35 (iv) If the court limits residential time under (a) or (b) of
36 this subsection to require supervised contact between the child and
37 the parent, the court shall not approve of a supervisor for contact
38 between a child and a parent who has engaged in physical, sexual, or
39 a pattern of emotional abuse of the child unless the court finds
40 based upon the evidence that the supervisor accepts that the harmful

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (7) For the purposes of this section:

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

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

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

20 (1) An agency's, the department's, or a legal guardian's consent
21 to adoption may be dispensed with if the court determines by clear,
22 cogent and convincing evidence that the proposed adoption is in the
23 best interests of the adoptee.

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

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

30 (b) The alleged father, birth parent, or parent has been found
31 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,
32 or has been found by clear and convincing evidence to have committed
33 a sexual assault, where the other parent of the adoptee was the
34 victim of the rape (~~or~~) incest, or sexual assault and the adoptee
35 was conceived as a result of the rape (~~or~~) incest, or sexual
36 assault, unless the parent who is the victim indicates by affidavit
37 or sworn testimony that consent to adoption by the person who
38 committed the rape, incest, or sexual assault should occur.

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

3 NEW SECTION. **Sec. 4.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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