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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5676

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State of Washington

54th Legislature

1996 Regular Session

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

Read first time 02/02/96.

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

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

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

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

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

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

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

8 (B) RCW 9A.44.079 if, because of the age of the offender, no  
9 rebuttable presumption exists under (d) of this subsection;

10 (C) RCW 9A.44.086 if, because of the age of the offender, no  
11 rebuttable presumption exists under (d) of 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 age of the  
16 offender, no rebuttable presumption exists under (d) of this  
17 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; (~~(e)~~) (ii) a history of acts of domestic  
30 violence as defined in RCW 26.50.010(1) or an assault or sexual assault  
31 that 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 age of the offender, no  
35 rebuttable presumption exists under (e) of this subsection;

36 (B) RCW 9A.44.079 if, because of the age of the offender, no  
37 rebuttable presumption exists under (e) of this subsection;

38 (C) RCW 9A.44.086 if, because of the age of the offender, no  
39 rebuttable presumption exists under (e) of this subsection;

1        (D) RCW 9A.44.089;

2        (E) RCW 9A.44.093;

3        (F) RCW 9A.44.096;

4        (G) RCW 9A.64.020 (1) or (2) if, because of the age of the  
5 offender, no rebuttable presumption exists under (e) of this  
6 subsection;

7        (H) Chapter 9.68A RCW;

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

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

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

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

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

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

36       (ii) RCW 9A.44.073;

37       (iii) RCW 9A.44.076, provided that the person convicted was at  
38 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 residential time 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 sexually abused by the parent requesting  
2 residential time, (A) contact between the child and the offending  
3 parent is appropriate and poses minimal risk to the child, and (B) the  
4 offending parent has successfully engaged in treatment for sex  
5 offenders or is engaged in and making progress in such treatment, if  
6 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 sexually abused by the parent requesting  
9 residential time, (A) if the child is in or has been in therapy for  
10 victims of sexual abuse, the child's counselor believes such contact  
11 between the child and the offending parent is in the child's best  
12 interest, and (B) the offending parent has successfully engaged in  
13 treatment for sex offenders or is engaged in and making progress in  
14 such treatment, if any was ordered by a court, and the treatment  
15 provider believes such contact is appropriate and poses minimal risk to  
16 the child.

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

19        (i) If the child was not sexually abused by the person who is  
20 residing with the parent requesting residential time and who, as an  
21 adult, has been convicted, or as a juvenile has been adjudicated, of a  
22 sex offense listed in (e)(i) through (ix) of this subsection, (A)  
23 contact between the child and the parent residing with the convicted or  
24 adjudicated person is appropriate and that parent is able to protect  
25 the child in the presence of the convicted or adjudicated person, and  
26 (B) the convicted or adjudicated person has successfully engaged in  
27 treatment for sex offenders or is engaged in and making progress in  
28 such treatment, if any was ordered by a court, and the treatment  
29 provider believes such contact is appropriate and poses minimal risk to  
30 the child; or

31        (ii) If the child was sexually abused by the person who is residing  
32 with the parent requesting residential time and who, as an adult, has  
33 been convicted, or as a juvenile has been adjudicated, of a sex offense  
34 listed in (e)(i) through (ix) of this subsection, (A) if the child is  
35 in or has been in therapy for victims of sexual abuse, the child's  
36 counselor believes such contact between the child and the parent  
37 residing with the convicted or adjudicated person in the presence of  
38 the convicted or adjudicated person is in the child's best interest,  
39 and (B) the convicted or adjudicated person has successfully engaged in

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

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

31 (j) If the court finds that the parent has met the burden of  
32 rebutting the presumption, the court may allow a parent residing with  
33 a person who, as an adult, has been convicted of a sex offense listed  
34 in (e)(i) through (ix) of this subsection to have residential time with  
35 the child in the presence of the convicted person supervised by a  
36 neutral and independent adult and pursuant to an adequate plan for  
37 supervision of such residential time. The court shall not approve of  
38 a supervisor for contact between the child and the parent unless the  
39 court finds, based on the evidence, that the supervisor is willing and

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

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

29 (l) A court may order unsupervised contact between the parent and  
30 a child which may occur in the presence of a juvenile adjudicated of a  
31 sex offense who resides with the parent after the presumption has been  
32 rebutted and supervised residential time has occurred for at least one  
33 year during which time the juvenile adjudicated of a sex offense has  
34 had no further arrests or convictions of sex offenses involving  
35 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW,  
36 and (i) the court finds that unsupervised contact between the child and  
37 the parent that may occur in the presence of the juvenile adjudicated  
38 of a sex offense is appropriate and poses minimal risk to the child,  
39 after consideration of the testimony of a state-certified therapist,

1 mental health counselor, or social worker with expertise in treatment  
2 of child sexual abuse victims who has supervised at least one period of  
3 residential time between the parent and the child in the presence of  
4 the juvenile adjudicated of a sex offense, and after consideration of  
5 evidence of the adjudicated juvenile's compliance with probation or  
6 parole requirements, if any. If the juvenile adjudicated of a sex  
7 offense was not ordered by a court to participate in treatment for sex  
8 offenders, then the adjudicated juvenile shall obtain a psychosexual  
9 evaluation conducted by a state-certified sex offender treatment  
10 provider indicating that the offender has the lowest likelihood of risk  
11 to reoffend before the court grants unsupervised contact between the  
12 parent and a child which may occur in the presence of a juvenile  
13 adjudicated of a sex offense who is residing with the parent.

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

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

37 (iii) If the court limits residential time under (a) or (b) of this  
38 subsection to require supervised contact between the child and the  
39 parent, the court shall not approve of a supervisor for contact between

1 a child and a parent who has engaged in physical, sexual, or a pattern  
2 of emotional abuse of the child unless the court finds based upon the  
3 evidence that the supervisor accepts that the harmful conduct occurred  
4 and is willing to and capable of protecting the child from harm. The  
5 court shall revoke court approval of the supervisor upon finding, based  
6 on the evidence, that the supervisor has failed to protect the child or  
7 is no longer willing to or capable of protecting the child.

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

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

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

28 (b) A long-term emotional or physical impairment which interferes  
29 with the parent's performance of parenting functions as defined in RCW  
30 26.09.004;

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

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

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

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

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

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

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

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

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

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

23 (A) RCW 9A.44.076 if, because of the age of the offender, no  
24 rebuttable presumption exists under (d) of this subsection;

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

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

29 (D) RCW 9A.44.089;

30 (E) RCW 9A.44.093;

31 (F) RCW 9A.44.096;

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

35 (H) Chapter 9.68A RCW;

36 (I) Any predecessor or antecedent statute for the offenses listed  
37 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))~~ visitation with the child  
7 shall be limited if it is found that the parent resides with a person  
8 who has engaged in any of the following conduct: (i) Physical, sexual,  
9 or a pattern of emotional abuse of a child; ~~((or))~~ (ii) a history of  
10 acts of domestic violence as defined in RCW 26.50.010(1) or an assault  
11 or sexual assault ~~((which))~~ that causes grievous bodily harm or the  
12 fear of such harm; or (iii) the person has been convicted as an adult  
13 or as a juvenile has been adjudicated of a sex offense under:

14 (A) RCW 9A.44.076 if, because of the age of the offender, no  
15 rebuttable presumption exists under (e) of this subsection;

16 (B) RCW 9A.44.079 if, because of the age of the offender, no  
17 rebuttable presumption exists under (e) of this subsection;

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

20 (D) RCW 9A.44.089;

21 (E) RCW 9A.44.093;

22 (F) RCW 9A.44.096;

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

26 (H) Chapter 9.68A RCW;

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

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

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

34 (c) If a parent has been ~~((convicted as an adult of a sexual~~  
35 ~~offense under RCW 9A.64.020 or chapter 9.68A or 9A.44 RCW, or has~~  
36 ~~been))~~ found to be a sexual predator under chapter 71.09 RCW or under  
37 an analogous statute of any other jurisdiction, the court shall  
38 restrain the parent from contact with a child that would otherwise be  
39 allowed under this chapter. If a parent resides with an adult or a

1 ~~juvenile who has been ((convicted, or with a juvenile who has been~~  
2 ~~adjudicated, of a sexual offense under RCW 9A.64.020 or chapter 9.68A~~  
3 ~~or 9A.44 RCW, or who has been))~~ found to be a sexual predator under  
4 chapter 71.09 RCW or under an analogous statute of any other  
5 jurisdiction, the court shall restrain the parent from contact with the  
6 parent's child except contact that occurs outside that person's  
7 presence.

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

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

16 (ii) RCW 9A.44.073;

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

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

21 (v) RCW 9A.44.083;

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

24 (vii) RCW 9A.44.100;

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

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

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

1       (i) RCW 9A.64.020 (1) or (2), provided that the person convicted  
2 was at least five years older than the other person;  
3       (ii) RCW 9A.44.073;  
4       (iii) RCW 9A.44.076, provided that the person convicted was at  
5 least eight years older than the victim;  
6       (iv) RCW 9A.44.079, provided that the person convicted was at least  
7 eight years older than the victim;  
8       (v) RCW 9A.44.083;  
9       (vi) RCW 9A.44.086, provided that the person convicted was at least  
10 eight years older than the victim;  
11       (vii) RCW 9A.44.100;  
12       (viii) Any predecessor or antecedent statute for the offenses  
13 listed in (e)(i) through (vii) of this subsection;  
14       (ix) Any statute from any other jurisdiction that describes an  
15 offense analogous to the offenses listed in (e)(i) through (vii) of  
16 this subsection.  
17       (f) The presumption established in (d) of this subsection may be  
18 rebutted only after a written finding that:  
19       (i) If the child was not sexually abused by the parent requesting  
20 visitation, (A) contact between the child and the offending parent is  
21 appropriate and poses minimal risk to the child, and (B) the offending  
22 parent has successfully engaged in treatment for sex offenders or is  
23 engaged in and making progress in such treatment, if any was ordered by  
24 a court, and the treatment provider believes such contact is  
25 appropriate and poses minimal risk to the child; or  
26       (ii) If the child was sexually abused by the parent requesting  
27 visitation, (A) if the child is in or has been in therapy for victims  
28 of sexual abuse, the child's counselor believes such contact between  
29 the child and the offending parent is in the child's best interest, and  
30 (B) the offending parent has successfully engaged in treatment for sex  
31 offenders or is engaged in and making progress in such treatment, if  
32 any was ordered by a court, and the treatment provider believes such  
33 contact is appropriate and poses minimal risk to the child.  
34       (g) The presumption established in (e) of this subsection may be  
35 rebutted only after a written finding that:  
36       (i) If the child was not sexually abused by the person who is  
37 residing with the parent requesting visitation and who, as an adult,  
38 has been convicted, or as a juvenile has been adjudicated, of a sex  
39 offense listed in (e)(i) through (ix) of this subsection, (A) contact

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

9 (ii) If the child was sexually abused by the person who is residing  
10 with the parent requesting visitation and who, as an adult, has been  
11 convicted, or as a juvenile has been adjudicated, of a sex offense  
12 listed in (e)(i) through (ix) of this subsection, (A) if the child is  
13 in or has been in therapy for victims of sexual abuse, the child's  
14 counselor believes such contact between the child and the parent  
15 residing with the convicted or adjudicated person in the presence of  
16 the convicted or adjudicated person is in the child's best interest,  
17 and (B) the convicted or adjudicated person has successfully engaged in  
18 treatment for sex offenders or is engaged in and making progress in  
19 such treatment, if any was ordered by a court, and the treatment  
20 provider believes contact between the parent and child in the presence  
21 of the convicted or adjudicated person is appropriate and poses minimal  
22 risk to the child.

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

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

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

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

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

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

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

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

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

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

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

1 (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection  
2 apply.

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

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

12 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
13 preservation of the public peace, health, or safety, or support of the  
14 state government and its existing public institutions, and shall take  
15 effect immediately.

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