
SENATE BILL 5162

State of Washington

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2013 Regular Session

By Senators Roach, Carrell, Rivers, Benton, Sheldon, Dammeier, Holmquist Newbry, Padden, Fraser, Frockt, and Chase

Read first time 01/22/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to prohibiting a child custody award to a suspect
2 in an active murder investigation; amending RCW 13.34.132, 26.09.191,
3 and 26.10.160; adding a new section to chapter 13.34 RCW; adding a new
4 section to chapter 26.09 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 Braden and Charlie Powell act of 2013.

8 **Sec. 2.** RCW 13.34.132 and 2011 c 309 s 28 are each amended to read
9 as follows:

10 A court may order that a petition seeking termination of the parent
11 and child relationship be filed if the following requirements are met:

12 (1) The court has removed the child from his or her home pursuant
13 to RCW 13.34.130;

14 (2) Termination is recommended by the department or the supervising
15 agency;

16 (3) Termination is in the best interests of the child; and

17 (4) Because of the existence of aggravated circumstances,
18 reasonable efforts to unify the family are not required.

1 Notwithstanding the existence of aggravated circumstances, reasonable
2 efforts may be required if the court or department determines it is in
3 the best interests of the child. In determining whether aggravated
4 circumstances exist by clear, cogent, and convincing evidence, the
5 court shall consider one or more of the following:

6 (a) Conviction of the parent of rape of the child in the first,
7 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
8 9A.44.079;

9 (b) Conviction of the parent of criminal mistreatment of the child
10 in the first or second degree as defined in RCW 9A.42.020 and
11 9A.42.030;

12 (c) Conviction of the parent of one of the following assault
13 crimes, when the child is the victim: Assault in the first or second
14 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child
15 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

16 (d) Conviction of the parent of murder, manslaughter, or homicide
17 by abuse of the child's other parent, sibling, or another child;

18 (e) Conviction of the parent of attempting, soliciting, or
19 conspiring to commit a crime listed in (a), (b), (c), or (d) of this
20 subsection;

21 (f) A finding by a court that a parent is a sexually violent
22 predator as defined in RCW 71.09.020;

23 (g) Failure of the parent to complete available treatment ordered
24 under this chapter or the equivalent laws of another state, where such
25 failure has resulted in a prior termination of parental rights to
26 another child and the parent has failed to effect significant change in
27 the interim. In the case of a parent of an Indian child, as defined in
28 RCW 13.38.040, the court shall also consider tribal efforts to assist
29 the parent in completing treatment and make it possible for the child
30 to return home;

31 (h) An infant under three years of age has been abandoned;

32 (i) Conviction of the parent, when a child has been born of the
33 offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest
34 under RCW 9A.64.020;

35 (j) Circumstances in which the parent is a named suspect in an
36 active murder investigation. The court shall review all available
37 evidence from law enforcement provided pursuant to section 3 of this

1 act in determining whether reunification may be detrimental to the
2 health, safety, or welfare of the child.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.34 RCW
4 to read as follows:

5 Upon the request of the court or department of social and health
6 services, any law enforcement agency conducting an active murder
7 investigation for which a named suspect is involved in a child
8 dependency proceeding pursuant to this chapter must provide to the
9 court and the department, in writing, any and all details of the
10 investigation that may be relevant to the child dependency proceeding.

11 **Sec. 4.** RCW 26.09.191 and 2011 c 89 s 6 are each amended to read
12 as follows:

13 (1) The permanent parenting plan shall not require mutual decision-
14 making or designation of a dispute resolution process other than court
15 action if it is found that a parent has engaged in any of the following
16 conduct: (a) Willful abandonment that continues for an extended period
17 of time or substantial refusal to perform parenting functions; (b)
18 physical, sexual, or a pattern of emotional abuse of a child; (~~(c)~~)
19 (c) 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 (d) the parent is a named
22 suspect in an active murder investigation.

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

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

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

12 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

38 (E) RCW 9A.44.093;

1 (F) RCW 9A.44.096;

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

5 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

30 (ii) RCW 9A.44.073;

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

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

35 (v) RCW 9A.44.083;

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

38 (vii) RCW 9A.44.100;

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

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

6 (e) There is a rebuttable presumption that a parent who resides
7 with a person who, as an adult, has been convicted, or as a juvenile
8 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)
9 of this subsection places a child at risk of abuse or harm when that
10 parent exercises residential time in the presence of the convicted or
11 adjudicated person. Unless the parent rebuts the presumption, the
12 court shall restrain the parent from contact with the parent's child
13 except for contact that occurs outside of the convicted or adjudicated
14 person's presence:

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

17 (ii) RCW 9A.44.073;

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

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

22 (v) RCW 9A.44.083;

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

25 (vii) RCW 9A.44.100;

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

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

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

33 (i) If the child was not the victim of the sex offense committed by
34 the parent requesting residential time, (A) contact between the child
35 and the offending parent is appropriate and poses minimal risk to the
36 child, and (B) the offending parent has successfully engaged in
37 treatment for sex offenders or is engaged in and making progress in

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

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

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

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

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

1 child in the presence of the convicted or adjudicated person is
2 appropriate and poses minimal risk to the child.

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

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

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

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

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

30 (l) A court may order unsupervised contact between the parent and
31 a child which may occur in the presence of a juvenile adjudicated of a
32 sex offense listed in (e)(i) through (ix) of this subsection who
33 resides with the parent after the presumption under (e) of this
34 subsection has been rebutted and supervised residential time has
35 occurred for at least two years during which time the adjudicated
36 juvenile has had no further arrests, adjudications, or convictions of
37 sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020,
38 or chapter 9.68A RCW, and (i) the court finds that unsupervised contact

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

18 (m)(i) The limitations imposed by the court under (a) or (b) of
19 this subsection shall be reasonably calculated to protect the child
20 from the physical, sexual, or emotional abuse or harm that could result
21 if the child has contact with the parent requesting residential time.
22 The limitations shall also be reasonably calculated to provide for the
23 safety of the parent who may be at risk of physical, sexual, or
24 emotional abuse or harm that could result if the parent has contact
25 with the parent requesting residential time. The limitations the court
26 may impose include, but are not limited to: Supervised contact between
27 the child and the parent or completion of relevant counseling or
28 treatment. If the court expressly finds based on the evidence that
29 limitations on the residential time with the child will not adequately
30 protect the child from the harm or abuse that could result if the child
31 has contact with the parent requesting residential time, the court
32 shall restrain the parent requesting residential time from all contact
33 with the child.

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

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

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

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

34 (3) The parent's residential time with the child shall be limited
35 if it is found that the parent is a named suspect in an active murder
36 investigation. Under no circumstances may the parent be designated as
37 the primary residential parent while the murder investigation is
38 pending.

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

5 (a) A parent's neglect or substantial nonperformance of parenting
6 functions;

7 (b) A long-term emotional or physical impairment which interferes
8 with the parent's performance of parenting functions as defined in RCW
9 26.09.004;

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

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

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

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

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

21 ~~((+4))~~ (5) In cases involving allegations of limiting factors
22 under subsection (2)(a)(ii) and (iii) of this section, both parties
23 shall be screened to determine the appropriateness of a comprehensive
24 assessment regarding the impact of the limiting factor on the child and
25 the parties.

26 ~~((+5))~~ (6) In entering a permanent parenting plan, the court shall
27 not draw any presumptions from the provisions of the temporary
28 parenting plan.

29 ~~((+6))~~ (7) In determining whether any of the conduct described in
30 this section has occurred, the court shall apply the civil rules of
31 evidence, proof, and procedure.

32 ~~((+7))~~ (8) For the purposes of this section:

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

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

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 26.09 RCW
2 to read as follows:

3 Upon the request of a party or the court, any law enforcement
4 agency conducting an active murder investigation for which a named
5 suspect is involved in a child custody proceeding pursuant to this
6 chapter or chapter 26.10 RCW must provide to the court, in writing, any
7 and all details of the investigation that may be relevant to the child
8 custody proceeding.

9 **Sec. 6.** RCW 26.10.160 and 2011 c 89 s 7 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; (iii) a
19 history of acts of domestic violence as defined in RCW 26.50.010(1) or
20 an assault or sexual assault which causes grievous bodily harm or the
21 fear of such harm; (~~(iv)~~) (iv) the parent is a named suspect in an
22 active murder investigation; or (v) the parent has been convicted as an
23 adult of a sex offense under:

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

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

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

33 (D) RCW 9A.44.089;

34 (E) RCW 9A.44.093;

35 (F) RCW 9A.44.096;

36 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age

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

3 (H) Chapter 9.68A RCW;

4 (I) Any predecessor or antecedent statute for the offenses listed
5 in (a)(~~(iv)~~) (v)(A) through (H) of this subsection;

6 (J) Any statute from any other jurisdiction that describes an
7 offense analogous to the offenses listed in (a)(~~(iv)~~) (v)(A) through
8 (H) of this subsection.

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

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

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

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

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

28 (D) RCW 9A.44.089;

29 (E) RCW 9A.44.093;

30 (F) RCW 9A.44.096;

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

34 (H) Chapter 9.68A RCW;

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

37 (J) Any statute from any other jurisdiction that describes an

1 offense analogous to the offenses listed in (b)(iii)(A) through (H) of
2 this subsection.

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

5 (c) If a parent has been found to be a sexual predator under
6 chapter 71.09 RCW or under an analogous statute of any other
7 jurisdiction, the court shall restrain the parent from contact with a
8 child that would otherwise be allowed under this chapter. If a parent
9 resides with an adult or a juvenile who has been found to be a sexual
10 predator under chapter 71.09 RCW or under an analogous statute of any
11 other jurisdiction, the court shall restrain the parent from contact
12 with the parent's child except contact that occurs outside that
13 person's presence.

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

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

22 (ii) RCW 9A.44.073;

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

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

27 (v) RCW 9A.44.083;

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

30 (vii) RCW 9A.44.100;

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

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

36 (e) There is a rebuttable presumption that a parent who resides
37 with a person who, as an adult, has been convicted, or as a juvenile
38 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)

1 of this subsection places a child at risk of abuse or harm when that
2 parent exercises visitation in the presence of the convicted or
3 adjudicated person. Unless the parent rebuts the presumption, the
4 court shall restrain the parent from contact with the parent's child
5 except for contact that occurs outside of the convicted or adjudicated
6 person's presence:

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

9 (ii) RCW 9A.44.073;

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

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

14 (v) RCW 9A.44.083;

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

17 (vii) RCW 9A.44.100;

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

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

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

25 (i) If the child was not the victim of the sex offense committed by
26 the parent requesting visitation, (A) contact between the child and the
27 offending parent is appropriate and poses minimal risk to the child,
28 and (B) the offending parent has successfully engaged in treatment for
29 sex offenders or is engaged in and making progress in such treatment,
30 if any was ordered by a court, and the treatment provider believes such
31 contact is appropriate and poses minimal risk to the child; or

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

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

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

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

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

30 (h) If the court finds that the parent has met the burden of
31 rebutting the presumption under (f) of this subsection, the court may
32 allow a parent who has been convicted as an adult of a sex offense
33 listed in (d)(i) through (ix) of this subsection to have visitation
34 with the child supervised by a neutral and independent adult and
35 pursuant to an adequate plan for supervision of such visitation. The
36 court shall not approve of a supervisor for contact between the child
37 and the parent unless the court finds, based on the evidence, that the
38 supervisor is willing and capable of protecting the child from harm.

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

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

18 (j) 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, as an adult, has been
21 convicted 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 convicted person supervised by a neutral and independent adult and
24 pursuant to an adequate plan for supervision of such visitation. The
25 court shall not approve of a supervisor for contact between the child
26 and the parent unless the court finds, based on the evidence, that the
27 supervisor is willing and capable of protecting the child from harm.
28 The court shall revoke court approval of the supervisor upon finding,
29 based on the evidence, that the supervisor has failed to protect the
30 child or is no longer willing or capable of protecting the child.

31 (k) A court shall not order unsupervised contact between the
32 offending parent and a child of the offending parent who was sexually
33 abused by that parent. A court may order unsupervised contact between
34 the offending parent and a child who was not sexually abused by the
35 parent after the presumption under (d) of this subsection has been
36 rebutted and supervised visitation has occurred for at least two years
37 with no further arrests or convictions of sex offenses involving
38 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW

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

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

1 juvenile has the lowest likelihood of risk to reoffend before the court
2 grants unsupervised contact between the parent and a child which may
3 occur in the presence of the adjudicated juvenile who is residing with
4 the parent.

5 (m)(i) The limitations imposed by the court under (a) or (b) of
6 this subsection shall be reasonably calculated to protect the child
7 from the physical, sexual, or emotional abuse or harm that could result
8 if the child has contact with the parent requesting visitation. If the
9 court expressly finds based on the evidence that limitations on
10 visitation with the child will not adequately protect the child from
11 the harm or abuse that could result if the child has contact with the
12 parent requesting visitation, the court shall restrain the person
13 seeking visitation 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 parent
16 has been found by clear and convincing evidence in a civil action or by
17 a preponderance of the evidence in a dependency action to have sexually
18 abused the child, except upon recommendation by an evaluator or
19 therapist for the child that the child is ready for contact with the
20 parent and will not be harmed by the contact. The court shall not
21 enter an order allowing a parent to have contact with the child in the
22 offender's presence if the parent resides with a person who has been
23 found by clear and convincing evidence in a civil action or by a
24 preponderance of the evidence in a dependency action to have sexually
25 abused a child, unless the court finds that the parent accepts that the
26 person engaged in the harmful conduct and the parent is willing to and
27 capable of protecting the child from harm from the person.

28 (iii) If the court limits visitation under (a) or (b) of this
29 subsection to require supervised contact between the child and the
30 parent, the court shall not approve of a supervisor for contact between
31 a child and a parent who has engaged in physical, sexual, or a pattern
32 of emotional abuse of the child unless the court finds based upon the
33 evidence that the supervisor accepts that the harmful conduct occurred
34 and is willing to and capable of protecting the child from harm. The
35 court shall revoke court approval of the supervisor upon finding, based
36 on the evidence, that the supervisor has failed to protect the child or
37 is no longer willing to or capable of protecting the child.

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

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

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

24 (5) For the purposes of this section:

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

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

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