

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2849**

58th Legislature  
2004 Regular Session

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

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**Speaker of the House of Representatives**

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

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

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

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2849**

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Passed Legislature - 2004 Regular Session

**State of Washington**

**58th Legislature**

**2004 Regular Session**

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

READ FIRST TIME 02/06/04.

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

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

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

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

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

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

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

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

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

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

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

35 (iii) Midwives licensed under chapter 18.50 RCW;

36 (iv) Ocularists licensed under chapter 18.55 RCW;

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

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

4 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

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

9 (x) Persons registered under chapter 18.19 RCW;

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

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

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

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

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

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

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

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

25 (xix) Denturists licensed under chapter 18.30 RCW;

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

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

28 and

29 (xxii) Recreational therapists.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

10 (1) Educational programs and alternate training;

11 (2) Examination procedures;

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

14 (4) Application method and forms;

15 (5) Requirements for renewals of certificates;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (ii) The offender's offense history;

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

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

28 (v) Other evaluation measures used.

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

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

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

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

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

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

3 (iv) Anticipated length of treatment; and

4 (v) Recommended crime-related prohibitions.

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

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

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

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

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

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

3 (b) Crime-related prohibitions;

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

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

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

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

13 (g) Perform community restitution work; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (D) RCW 9A.44.089;

13 (E) RCW 9A.44.093;

14 (F) RCW 9A.44.096;

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

18 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

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

6 (D) RCW 9A.44.089;

7 (E) RCW 9A.44.093;

8 (F) RCW 9A.44.096;

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

12 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

37 (ii) RCW 9A.44.073;

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

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

5 (v) RCW 9A.44.083;

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

8 (vii) RCW 9A.44.100;

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

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

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

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

25 (ii) RCW 9A.44.073;

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

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

30 (v) RCW 9A.44.083;

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

33 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

36 (l) A court may order unsupervised contact between the parent and  
37 a child which may occur in the presence of a juvenile adjudicated of a  
38 sex offense listed in (e)(i) through (ix) of this subsection who

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (D) RCW 9A.44.089;

11 (E) RCW 9A.44.093;

12 (F) RCW 9A.44.096;

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

16 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

4 (D) RCW 9A.44.089;

5 (E) RCW 9A.44.093;

6 (F) RCW 9A.44.096;

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

10 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

35 (ii) RCW 9A.44.073;

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 15.** This act takes effect July 1, 2004.

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