

**SHB 2893 - H AMD 933**

By Representative McDonald

1           Strike everything after the enacting clause and insert the  
2 following:

3           "**Sec. 1.** RCW 26.09.191 and 2004 c 38 s 12 are each amended to  
4 read as follows:

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

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

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

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

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

10 (H) Chapter 9.68A RCW;

11 (I) Any predecessor or antecedent statute for the offenses  
12 listed in (a)(iv)(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 (a)(iv)(A) through (H)  
15 of this subsection.

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

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

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

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

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

35 (D) RCW 9A.44.089;

36 (E) RCW 9A.44.093;

37 (F) RCW 9A.44.096;

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

4 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

29 (ii) RCW 9A.44.073;

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

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

34 (v) RCW 9A.44.083;

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

37 (vii) RCW 9A.44.100;

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

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

4 (e) There is a rebuttable presumption that a parent who resides  
5 with a person who, as an adult, has been convicted, or as a  
6 juvenile has been adjudicated, of the sex offenses listed in (e)(i)  
7 through (ix) of this subsection places a child at risk of abuse or  
8 harm when that parent exercises residential time in the presence or  
9 residence of the convicted or adjudicated person. Unless the  
10 parent who resides with a convicted or adjudicated person rebuts  
11 the presumption, and the other parent agrees that contact with the  
12 parent in the presence or residence of the convicted or adjudicated  
13 person will not place the child at risk of abuse or harm, the court  
14 shall restrain the parent from contact with the parent's child  
15 except for contact that occurs outside of the convicted or  
16 adjudicated person's presence or residence:

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

19 (ii) RCW 9A.44.073;

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

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

24 (v) RCW 9A.44.083;

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

27 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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

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

1 court, and the treatment provider believes contact between the  
2 parent and child in the presence of the convicted or adjudicated  
3 person is appropriate and poses minimal risk to the child.

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

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

34 (j) If the court finds that the parent has met the burden of  
35 rebutting the presumption under (g) of this subsection and the  
36 other parent agrees that contact with the parent in the presence or  
37 residence of the convicted or adjudicated person will not place the  
38 child at risk of abuse or harm, the court may allow a parent  
39 residing with a person who, as an adult, has been convicted of a

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

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

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

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

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

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



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

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

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

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

1 (a) A parent's neglect or substantial nonperformance of  
2 parenting functions;

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

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

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

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

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

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

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

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

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

**EFFECT:** Strikes the provisions of the substitute bill, restoring the provisions of the original bill. Restrains a parent who lives with a person who has been convicted or adjudicated of a sex offense against a child from having contact with a child unless the convicted sex offender rebuts the presumption that contact will place the child at risk of abuse or harm and the other parent agrees that contact will not place the child at risk of abuse or harm. Adds that the restriction on visitation applies to contact that occurs in the convicted or adjudicated person's residence.