
SENATE BILL 6640

State of Washington 62nd Legislature 2012 1st Special Session

By Senators Roach, Benton, Chase, Swecker, Prentice, Fain, Hatfield, Hill, Frockt, Holmquist Newbry, Ericksen, Keiser, and Shin

Read first time 04/10/12. Referred to Committee on Human Services & Corrections.

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

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 Braden and Charlie Powell act of 2012.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Upon the request of the court or department of social and health
6 services, any law enforcement agency conducting an active homicide
7 investigation for which a named suspect is involved in a child
8 dependency proceeding pursuant to this chapter must provide to the
9 court and the department, in writing, any and all details of the
10 investigation that may be relevant to the child dependency proceeding,
11 including evidence of the suspects failure to cooperate, attempts to
12 obstruct, or actual obstruction of the investigation.

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

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

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

1 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

8 (E) RCW 9A.44.093;

9 (F) RCW 9A.44.096;

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

13 (H) Chapter 9.68A RCW;

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

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

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

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

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

32 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 if, because of the difference in age between the
36 offender and the victim, no rebuttable presumption exists under (e) of
37 this subsection;

38 (D) RCW 9A.44.089;

1 (E) RCW 9A.44.093;

2 (F) RCW 9A.44.096;

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

6 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

31 (ii) RCW 9A.44.073;

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

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

36 (v) RCW 9A.44.083;

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

1 (vii) RCW 9A.44.100;

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

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

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

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

18 (ii) RCW 9A.44.073;

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

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

23 (v) RCW 9A.44.083;

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

26 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Upon the request of a party or the court, any law enforcement
4 agency conducting an active homicide investigation for which a named
5 suspect is involved in a child custody proceeding pursuant to this
6 chapter or chapter 26.10 RCW must provide to the court, in writing, any
7 and all details of the investigation that may be relevant to the child
8 custody proceeding, including evidence of the suspects failure to
9 cooperate, attempts to obstruct, or actual obstruction of the
10 investigation.

11 **Sec. 6.** RCW 26.10.160 and 2011 c 89 s 7 are each amended to read
12 as follows:

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

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

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

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

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

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

4 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

29 (D) RCW 9A.44.089;

30 (E) RCW 9A.44.093;

31 (F) RCW 9A.44.096;

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

35 (H) Chapter 9.68A RCW;

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

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

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

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

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

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 (d)(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 (d)(i) through (vii) of
36 this subsection.

37 (e) There is a rebuttable presumption that a parent who resides
38 with a person who, as an adult, has been convicted, or as a juvenile

1 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)
2 of this subsection places a child at risk of abuse or harm when that
3 parent exercises visitation in the presence of the convicted or
4 adjudicated person. Unless the parent rebuts the presumption, the
5 court shall restrain the parent from contact with the parent's child
6 except for contact that occurs outside of the convicted or adjudicated
7 person's presence:

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

10 (ii) RCW 9A.44.073;

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

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

15 (v) RCW 9A.44.083;

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

18 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW
2 and (i) the sex offense of the offending parent was not committed
3 against a child of the offending parent, and (ii) the court finds that
4 unsupervised contact between the child and the offending parent is
5 appropriate and poses minimal risk to the child, after consideration of
6 the testimony of a state-certified therapist, mental health counselor,
7 or social worker with expertise in treating child sexual abuse victims
8 who has supervised at least one period of visitation between the parent
9 and the child, and after consideration of evidence of the offending
10 parent's compliance with community supervision requirements, if any.
11 If the offending parent was not ordered by a court to participate in
12 treatment for sex offenders, then the parent shall obtain a
13 psychosexual evaluation conducted by a certified sex offender treatment
14 provider or a certified affiliate sex offender treatment provider
15 indicating that the offender has the lowest likelihood of risk to
16 reoffend before the court grants unsupervised contact between the
17 parent and a child.

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

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

6 (m)(i) The limitations imposed by the court under (a) or (b) of
7 this subsection shall be reasonably calculated to protect the child
8 from the physical, sexual, or emotional abuse or harm that could result
9 if the child has contact with the parent requesting visitation. If the
10 court expressly finds based on the evidence that limitations on
11 visitation with the child will not adequately protect the child from
12 the harm or abuse that could result if the child has contact with the
13 parent requesting visitation, the court shall restrain the person
14 seeking visitation from all contact with the child.

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

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

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

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

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

24 (5) For the purposes of this section:

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

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

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