
SUBSTITUTE HOUSE BILL 1543

State of Washington

65th Legislature

2017 Regular Session

By House Judiciary (originally sponsored by Representatives Doglio, Jinkins, Goodman, Senn, Robinson, Stonier, Kagi, Cody, Macri, Bergquist, Slatter, McBride, Peterson, Hudgins, Stanford, Frame, and Appleton)

READ FIRST TIME 02/13/17.

1 AN ACT Relating to parental rights and responsibilities of sexual
2 assault perpetrators and survivors; amending RCW 26.09.191 and
3 26.33.170; and adding new sections to chapter 26.26 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.26
6 RCW to read as follows:

7 The legislature finds that studies estimate there are between
8 twenty-five thousand and thirty-two thousand rape-related pregnancies
9 in the United States annually. The legislature also finds that a
10 substantial number of rape survivors who become pregnant as a result
11 of sexual assault choose to give birth and raise their children. The
12 legislature further finds that rape is one of the most underreported
13 and underprosecuted serious crimes. The legislature also finds that
14 rapists may use the threat of pursuing parental rights or custody to
15 coerce survivors into not reporting or not assisting in the
16 prosecution of the assault. The legislature finds that a rapist's
17 pursuit of child custody of parental rights forces the survivor into
18 an ongoing relationship with the rapist, effectively tethering the
19 survivor to the perpetrator and potentially increasing power and
20 control over the survivor. The legislature also finds that a survivor
21 who is forced to coparent a child with the rapist will likely suffer

1 traumatic psychological stress, making recovery more difficult. The
2 legislature also finds that other laws of this state recognize that a
3 child's safety and health may be undermined by having a parent/child
4 relationship with a biological parent who sexually assaulted the
5 child's other parent. The legislature intends, therefore, to
6 establish a process whereby a survivor who becomes pregnant as a
7 result of a sexual assault and who elects to raise the resulting
8 child can seek the court's assistance in avoiding continued forced
9 interactions with the rapist, thereby eliminating another barrier to
10 healing from the assault.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.26
12 RCW to read as follows:

13 (1) This section applies in cases when a person alleged or
14 presumed to be a legal parent to a child is alleged to have committed
15 a sexual assault that resulted in the victim of the assault becoming
16 pregnant and subsequently giving birth to the child.

17 (2) For the purposes of this section, "sexual assault" means
18 nonconsensual sexual penetration that is capable of causing
19 pregnancy.

20 (3) For the purposes of this section, the fact that the person
21 seeking parental rights or presumed to be a legal parent committed a
22 sexual assault that resulted in the victim of the assault becoming
23 pregnant and subsequently giving birth to the child may be proved by
24 either:

25 (a) Evidence that the person seeking parental rights or presumed
26 to be a legal parent was convicted of or pleaded guilty to a sexual
27 assault under RCW 9A.44.040, 9A.44.050, 9A.44.060, or a comparable
28 crime of sexual assault in any jurisdiction, against the child's
29 parent, and that the child was born within three hundred twenty days
30 after the sexual assault; or

31 (b) Clear, cogent, and convincing evidence that the person
32 seeking parental rights or presumed to be a legal parent committed
33 sexual assault, as defined in this section, against the child's
34 parent, and that the child was born within three hundred twenty days
35 after the sexual assault.

36 (4) An allegation that the child was born as the result of a
37 sexual assault may be raised under this chapter:

38 (a) In a petition to adjudicate parentage; or

39 (b) In response to a petition to adjudicate parentage.

1 (5) If there is an allegation that the child was born as a result
2 of a sexual assault against the child's parent by the person seeking
3 parentage or presumed to be the parent of the child, the court must
4 conduct a fact-finding hearing on the allegation within sixty days of
5 the filing of the pleading that raised the allegation.

6 (a) The court may not enter any temporary orders providing
7 residential time or decision making to the alleged perpetrator prior
8 to the fact-finding hearing on the sexual assault allegation unless
9 both of the following criteria are satisfied: (i) The alleged
10 perpetrator is a presumed parent of the child; and (ii) the court
11 specifically finds that the child would suffer irreparable harm if
12 such temporary orders are not entered.

13 (b) Prior to the fact-finding hearing, the court may order
14 genetic testing to determine whether the alleged perpetrator is
15 biologically related to the child. If genetic testing reveals that
16 the alleged perpetrator is not biologically related to the child, the
17 fact-finding hearing must be stricken. If genetic testing reveals
18 that the alleged perpetrator is not biologically related to the child
19 and the proceeding is a petition filed by the alleged perpetrator to
20 adjudicate parentage, the court shall also dismiss the petition with
21 prejudice.

22 (c) Fourteen days prior to the fact-finding hearing, the party
23 alleging that the child was born as a result of a sexual assault
24 shall submit affidavits setting forth facts supporting the allegation
25 and shall give notice, together with a copy of the affidavit, to
26 other parties to the proceedings, who may file opposing affidavits.
27 Opposing affidavits must be submitted and served to other parties to
28 the proceeding five days prior to the fact-finding hearing.

29 (d) The court shall determine on the record whether affidavits
30 and documents submitted for the fact-finding hearing should be
31 sealed.

32 (e)(i) The prior sexual activity or the reputation of the alleged
33 victim is inadmissible in the fact-finding hearing, subsequent
34 hearings under the same cause number, and in any subsequent trial
35 under the same cause number, except:

36 (A) As evidence concerning the past sexual conduct between the
37 alleged victim and the alleged perpetrator, and only when such
38 evidence is offered by the alleged perpetrator on the issue of
39 whether the alleged victim consented to the sexual conduct that
40 resulted in the pregnancy; and only if the court has ruled the

1 evidence is admissible after an offer of proof has been made in
2 affidavits filed prior to the closed fact-finding hearing to
3 determine whether the alleged perpetrator has evidence to impeach a
4 witness when prior sexual conduct between the alleged perpetrator and
5 alleged victim is denied. An offer of proof under this section
6 includes reasonably specific information as to the date, time, and
7 place of the past sexual conduct between the alleged victim and the
8 alleged perpetrator; or

9 (B) When constitutionally required to be admitted.

10 (ii) Evidence determined admissible under this subsection (5)(e)
11 is admissible at a fact-finding hearing and at a subsequent bench
12 trial to the extent the court enters an order specifying the evidence
13 that may be admitted, and the issues with respect to which the
14 alleged victim may be examined or cross-examined.

15 (f) In determining whether a pregnancy resulted from a sexual
16 assault, a court may not draw any inferences or conclusions based on
17 evidence that: (i) The alleged victim engaged in limited consensual
18 sexual touching; or (ii) the alleged victim chose to give birth to
19 and raise the child. Evidence that the alleged victim and/or alleged
20 perpetrator were voluntarily intoxicated at the time of an alleged
21 sexual assault shall not be a basis, in itself, to conclude that the
22 alleged victim consented to sexual activity or to conclude that the
23 alleged perpetrator did not commit a sexual assault.

24 (6) If, after the fact-finding hearing or after a bench trial,
25 the court finds that the person seeking parental rights or presumed
26 to be a legal parent committed sexual assault, pursuant to the
27 standards set forth in subsection (3)(a) or (b) of this section,
28 against the child's parent, and that the child was born within three
29 hundred twenty days of the sexual assault the court must:

30 (a) Enter an order holding that the person seeking parental
31 rights or presumed to be a legal parent is not a parent of the child,
32 if such an order is requested by the child's legal parent or
33 guardian; or

34 (b) Enter an order consistent with the relief requested by the
35 child's legal parent or guardian, provided that the court determines
36 that the relief requested is in the best interests of the child.

37 (7) Absent the express written consent of the child's legal
38 parent or guardian, a person who is found to have committed a sexual
39 assault, as defined in this section, against the child's parent, and

1 that the child was born within three hundred twenty days of the
2 sexual assault has:

3 (a) No right to an allocation of parental rights, including
4 residential time or decision-making responsibilities for the child;

5 (b) No right to inheritance from the child; and

6 (c) No right to notification of, or standing to object to, the
7 adoption of the child.

8 (8) If the court enters an order under subsection (6) of this
9 section that is inconsistent with the information on the child's
10 birth certificate, the court shall also order the birth certificate
11 be amended in a manner that is consistent with the child's best
12 interests and the wishes of the child's legal parent or guardian.

13 (9) If the court finds that the person seeking parentage or
14 presumed to be the parent committed a sexual assault, as defined in
15 this section, against the child's parent, and that the child was born
16 within three hundred twenty days of the sexual assault, and the legal
17 parent or guardian requests it, the court must order the person
18 seeking parentage or presumed to be the parent to pay child support
19 or birth-related costs or both.

20 (10) The legal parent or guardian may decline an order for child
21 support or birth-related costs. If the legal parent or guardian
22 declines an order for child support, and is either currently
23 receiving public assistance or later applies for it for the child
24 born as a result of the sexual assault, support enforcement agencies
25 as defined in this chapter shall not file administrative or court
26 proceedings to establish or collect child support, including medical
27 support, from the person seeking parentage or presumed to be the
28 parent who has been found to have committed a sexual assault, as
29 defined in this section, against the child's parent, and that the
30 child was born within three hundred twenty days of the sexual
31 assault.

32 (11) If the court enters an order under subsection (10) of this
33 section providing that no child support obligation may be established
34 or collected from the person seeking parentage or presumed to be the
35 parent who has been found to have committed a sexual assault, the
36 court shall forward a copy of the order to the Washington state
37 support registry.

38 (12) The court may order an award of attorneys' fees under this
39 section on the same basis as attorneys' fees are awarded under RCW
40 26.09.140.

1 (13) Any party may move to close the fact-finding hearing and any
2 related proceedings under this section to the public. If no party
3 files such a motion, the court shall determine on its own initiative
4 whether the fact-finding hearing and any related proceedings under
5 this section should be closed to the public. Upon finding good cause
6 for closing the proceeding, and if consistent with Article I, section
7 10 of the state Constitution, the court may: (a) Restrict admission
8 to only those persons whom the court finds to have a direct interest
9 in the case or in the work of the court, including witnesses deemed
10 necessary to the disposition of the case; and (b) restrict persons
11 who are admitted from disclosing any information obtained at the
12 hearing that would identify the parties involved or the child.

13 **Sec. 3.** 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
16 decision-making or designation of a dispute resolution process other
17 than court action if it is found that a parent has engaged in any of
18 the following conduct: (a) Willful abandonment that continues for an
19 extended period of time or substantial refusal to perform parenting
20 functions; (b) physical, sexual, or a pattern of emotional abuse of a
21 child; or (c) a history of acts of domestic violence as defined in
22 RCW 26.50.010(~~((1))~~) (3) or an assault or sexual assault (~~((which))~~)
23 that causes grievous bodily harm or the fear of such harm or that
24 results in a pregnancy.

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
30 a child; (iii) a history of acts of domestic violence as defined in
31 RCW 26.50.010(~~((1))~~) (3) or an assault or sexual assault (~~((which))~~)
32 that causes grievous bodily harm or the fear of such harm or that
33 results in a pregnancy; or (iv) the parent has been convicted as an
34 adult of a sex offense under:

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

1 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 if, because of the difference in age between
5 the offender and the victim, no rebuttable presumption exists under
6 (d) of 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
23 in any of the following conduct: (i) Physical, sexual, or a pattern
24 of emotional abuse of a child; (ii) a history of acts of domestic
25 violence as defined in RCW 26.50.010(~~((1))~~) (3) or an assault or
26 sexual assault that causes grievous bodily harm or the fear of such
27 harm or that results in a pregnancy; or (iii) the person has been
28 convicted as an adult or as a juvenile has been adjudicated of a sex
29 offense under:

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

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

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

39 (D) RCW 9A.44.089;

40 (E) RCW 9A.44.093;

1 (F) RCW 9A.44.096;

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

5 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

30 (ii) RCW 9A.44.073;

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

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

35 (v) RCW 9A.44.083;

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

38 (vii) RCW 9A.44.100;

39 (viii) Any predecessor or antecedent statute for the offenses
40 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 juvenile
6 has been adjudicated, of the sex offenses listed in (e)(i) through
7 (ix) of this subsection places a child at risk of abuse or harm when
8 that parent exercises residential time in the presence of the
9 convicted or adjudicated person. Unless the parent rebuts the
10 presumption, the court shall restrain the parent from contact with
11 the parent's child except for contact that occurs outside of the
12 convicted or adjudicated person's presence:

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

15 (ii) RCW 9A.44.073;

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

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

20 (v) RCW 9A.44.083;

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

23 (vii) RCW 9A.44.100;

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

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

29 (f) The presumption established in (d) of this subsection may be
30 rebutted only after a written finding that the child was not
31 conceived and subsequently born as a result of a sexual assault
32 committed by the parent requesting residential time and that:

33 (i) If the child was not the victim of the sex offense committed
34 by the parent requesting residential time, (A) contact between the
35 child and the offending parent is appropriate and poses minimal risk
36 to the child, and (B) the offending parent has successfully engaged
37 in treatment for sex offenders or is engaged in and making progress
38 in such treatment, if any was ordered by a court, and the treatment
39 provider believes such contact is appropriate and poses minimal risk
40 to the child; or

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

11 (g) The presumption established in (e) of this subsection may be
12 rebutted only after a written finding that the child was not
13 conceived and subsequently born as a result of a sexual assault
14 committed by the parent requesting residential time and that:

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

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

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

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

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

1 has failed to protect the child or is no longer willing or capable of
2 protecting the child.

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

27 (l) A court may order unsupervised contact between the parent and
28 a child which may occur in the presence of a juvenile adjudicated of
29 a sex offense listed in (e)(i) through (ix) of this subsection who
30 resides with the parent after the presumption under (e) of this
31 subsection has been rebutted and supervised residential time has
32 occurred for at least two years during which time the adjudicated
33 juvenile has had no further arrests, adjudications, or convictions of
34 sex offenses involving children under chapter 9A.44 RCW, RCW
35 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that
36 unsupervised contact between the child and the parent that may occur
37 in the presence of the adjudicated juvenile is appropriate and poses
38 minimal risk to the child, after consideration of the testimony of a
39 state-certified therapist, mental health counselor, or social worker
40 with expertise in treatment of child sexual abuse victims who has

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

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

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

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

5 (iii) The court shall not enter an order under (a) of this
6 subsection allowing a parent to have contact with a child if the
7 parent has been found by clear and convincing evidence pursuant to
8 section 2 of this act to have committed sexual assault, as defined in
9 section 2 of this act, against the child's parent, and that the child
10 was born within three hundred twenty days of the sexual assault.

11 (iv) 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, or
15 a pattern of emotional abuse of the child unless the court finds
16 based upon the evidence that the supervisor accepts that the harmful
17 conduct occurred and is willing to and capable of protecting the
18 child from harm. The court shall revoke court approval of the
19 supervisor upon finding, based on the evidence, that the supervisor
20 has failed to protect the child or is no longer willing to or capable
21 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))~~ (iv) of this subsection, or if the court expressly finds
29 that the parent's conduct did not have an impact on the child, then
30 the court need not apply the limitations of (a), (b), and (m)(i) and
31 ~~((iii))~~ (iv) of this subsection. The weight given to the existence
32 of a protection order issued under chapter 26.50 RCW as to domestic
33 violence is within the discretion of the court. This subsection shall
34 not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and
35 (m)(ii) of this subsection apply.

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

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

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

6 (c) A long-term impairment resulting from drug, alcohol, or other
7 substance abuse that interferes with the performance of parenting
8 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 cases involving allegations of limiting factors under
18 subsection (2)(a)(ii) and (iii) of this section, both parties shall
19 be screened to determine the appropriateness of a comprehensive
20 assessment regarding the impact of the limiting factor on the child
21 and the parties.

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

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

28 (7) For the purposes of this section:

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

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

34 **Sec. 4.** RCW 26.33.170 and 1999 c 173 s 1 are each amended to
35 read as follows:

36 (1) An agency's, the department's, or a legal guardian's consent
37 to adoption may be dispensed with if the court determines by clear,
38 cogent and convincing evidence that the proposed adoption is in the
39 best interests of the adoptee.

1 (2) An alleged father's, birth parent's, or parent's consent to
2 adoption (~~may~~) shall be dispensed with if the court finds that the
3 proposed adoption is in the best interests of the adoptee and:

4 (a) The alleged father, birth parent, or parent has been found
5 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,
6 where the adoptee was the victim of the rape or incest; or

7 (b) The alleged father, birth parent, or parent has been found
8 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,
9 or has been found by clear and convincing evidence to have committed
10 a sexual assault, where the other parent of the adoptee was the
11 victim of the rape (~~or~~), incest, or sexual assault and the adoptee
12 was conceived as a result of the rape (~~or~~), incest, or sexual
13 assault, unless the parent who is the victim indicates by affidavit
14 or sworn testimony that he or she does not want to dispense with
15 consent to adoption by the person who committed the rape, incest, or
16 sexual assault.

17 (3) Nothing in this section shall be construed to eliminate the
18 notice provisions of this chapter.

19 NEW SECTION. **Sec. 5.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

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