

---

SENATE BILL 5321

---

State of Washington

65th Legislature

2017 Regular Session

By Senators Rivers, Llias, Darneille, Miloscia, Becker, Warnick, Honeyford, Palumbo, Wellman, and Fortunato

Read first time 01/20/17. Referred to Committee on Law & Justice.

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; reenacting and amending RCW 26.26.011; and adding new  
4 sections to chapter 26.26 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (a) The court may not enter any temporary orders providing  
9 residential time or decision making to the alleged perpetrator prior  
10 to the fact-finding hearing on the sexual assault allegation.

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

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

28 (d) Every affidavit and document submitted for the fact-finding  
29 hearing must be filed under seal and must not be made public absent  
30 compelling circumstances as determined by a superior court of this  
31 state.

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:

18 (i) The alleged perpetrator was voluntarily intoxicated;

19 (ii) The alleged victim was voluntarily intoxicated;

20 (iii) The alleged victim engaged in limited consensual sexual  
21 touching; or

22 (iv) The alleged victim chose to give birth to and raise the  
23 child.

24 (6) If, after the fact-finding hearing or after a bench trial,  
25 the court finds by clear, cogent, and convincing evidence that the  
26 person seeking parental rights or presumed to be a legal parent  
27 committed sexual assault, as defined in this section, against the  
28 child's parent, and that the child was born within three hundred  
29 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) The court may order an award of attorneys' fees under this  
33 section on the same basis as attorneys' fees are awarded under RCW  
34 26.09.140.

35 (12) The fact-finding hearing and any related proceedings under  
36 this section must be closed to the public. The general public must be  
37 excluded and only those persons whom the court finds to have a direct  
38 interest in the case or in the work of the court may be admitted.  
39 Persons so admitted may not disclose any information obtained at the  
40 hearing which would identify the parties involved or the child. The

1 court may require the presence of witnesses deemed necessary to the  
2 disposition of the case.

3 **Sec. 3.** RCW 26.26.011 and 2011 c 283 s 1 are each reenacted and  
4 amended to read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Acknowledged father" means a man who has established a  
8 father-child relationship under RCW 26.26.300 through 26.26.375.

9 (2) "Adjudicated parent" means a person who has been adjudicated  
10 by a court of competent jurisdiction to be the parent of a child.

11 (3) "Alleged parent" means a person who alleges himself or  
12 herself to be, or is alleged to be, the genetic parent or a possible  
13 genetic parent of a child, but whose parentage has not been  
14 determined. The term does not include:

15 (a) A presumed parent;

16 (b) A person whose parental rights have been terminated or  
17 declared not to exist; or

18 (c) A donor.

19 (4) "Assisted reproduction" means a method of causing pregnancy  
20 other than sexual intercourse. The term includes:

21 (a) Artificial insemination;

22 (b) Donation of eggs;

23 (c) Donation of embryos;

24 (d) In vitro fertilization and transfer of embryos; and

25 (e) Intracytoplasmic sperm injection.

26 (5) "Child" means an individual of any age whose parentage may be  
27 determined under this chapter.

28 (6) "Commence" means to file the petition seeking an adjudication  
29 of parentage in a superior court of this state or to serve a summons  
30 and the petition.

31 (7) "Determination of parentage" means the establishment of the  
32 parent-child relationship by the signing of a valid acknowledgment of  
33 paternity under RCW 26.26.300 through 26.26.375 or adjudication by  
34 the court.

35 (8) "Domestic partner" means a state registered domestic partner  
36 as defined in chapter 26.60 RCW.

37 (9) "Donor" means an individual who contributes a gamete or  
38 gametes for assisted reproduction, whether or not for consideration.  
39 The term does not include:

1 (a) A person who provides a gamete or gametes to be used for  
2 assisted reproduction with his or her spouse or domestic partner; or

3 (b) A woman who gives birth to a child by means of assisted  
4 reproduction, except as otherwise provided in RCW 26.26.210 through  
5 26.26.260 or 26.26.735.

6 (10) "Ethnic or racial group" means, for purposes of genetic  
7 testing, a recognized group that an individual identifies as all or  
8 part of the individual's ancestry or that is so identified by other  
9 information.

10 (11) "Fertility clinic" means a facility that provides assisted  
11 reproduction services or gametes to be used in assisted reproduction.

12 (12) "Gamete" means either a sperm or an egg.

13 (13) "Genetic parent" means a person who is the source of the egg  
14 or sperm that produced the child. The term does not include a donor.

15 (14) "Genetic testing" means an analysis of genetic markers to  
16 exclude or identify a man as the father or a woman as the mother of a  
17 child. The term includes an analysis of one or a combination of the  
18 following:

19 (a) Deoxyribonucleic acid; and

20 (b) Blood-group antigens, red-cell antigens, human-leukocyte  
21 antigens, serum enzymes, serum proteins, or red-cell enzymes.

22 (15) "Identifying information" includes, but is not limited to,  
23 the following information of the gamete donor:

24 (a) The first and last name of the person; and

25 (b) The age of the person at the time of the donation.

26 (16) "Man" means a male individual of any age.

27 (17) "Parent" means an individual who has established a parent-  
28 child relationship under RCW 26.26.101.

29 (18) "Parent-child relationship" means the legal relationship  
30 between a child and a parent of the child. The term includes the  
31 mother-child relationship and the father-child relationship.

32 (19) "Parentage index" means the likelihood of parentage  
33 calculated by computing the ratio between:

34 (a) The likelihood that the tested person is the parent, based on  
35 the genetic markers of the tested person, genetic parent, and child,  
36 conditioned on the hypothesis that the tested person is the parent of  
37 the child; and

38 (b) The likelihood that the tested person is not the parent,  
39 based on the genetic markers of the tested person, genetic parent,  
40 and child, conditioned on the hypothesis that the tested person is

1 not the parent of the child and that the parent is of the same ethnic  
2 or racial group as the tested person.

3 (20) "Physician" means a person licensed to practice medicine in  
4 a state.

5 (21) "Presumed parent" means a person who, by operation of law  
6 under RCW 26.26.116, is recognized as the parent of a child until  
7 that status is rebutted or confirmed in a judicial proceeding.

8 (22) "Probability of parentage" means the measure, for the ethnic  
9 or racial group to which the alleged parent belongs, of the  
10 probability that the individual in question is the parent of the  
11 child, compared with a random, unrelated person of the same ethnic or  
12 racial group, expressed as a percentage incorporating the parentage  
13 index and a prior probability.

14 (23) "Record" means information that is inscribed on a tangible  
15 medium or that is stored in an electronic or other medium and is  
16 retrievable in perceivable form.

17 (24) "Sexual assault" means nonconsensual sexual penetration.

18 (25) "Signatory" means an individual who authenticates a record  
19 and is bound by its terms.

20 ~~((+25+))~~ (26) "State" means a state of the United States, the  
21 District of Columbia, Puerto Rico, the United States Virgin Islands,  
22 any territory or insular possession subject to the jurisdiction of  
23 the United States, or an Indian tribe or band, or Alaskan native  
24 village, that is recognized by federal law or formally acknowledged  
25 by state law.

26 ~~((+26+))~~ (27) "Support enforcement agency" means a public  
27 official or agency authorized to seek:

28 (a) Enforcement of support orders or laws relating to the duty of  
29 support;

30 (b) Establishment or modification of child support;

31 (c) Determination of parentage; or

32 (d) Location of child support obligors and their income and  
33 assets.

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

36 (1) The permanent parenting plan shall not require mutual  
37 decision-making or designation of a dispute resolution process other  
38 than court action if it is found that a parent has engaged in any of  
39 the following conduct: (a) Willful abandonment that continues for an



1 extended period of time or substantial refusal to perform parenting  
2 functions; (b) physical, sexual, or a pattern of emotional abuse of a  
3 child; or (c) a history of acts of domestic violence as defined in  
4 RCW 26.50.010(~~((1))~~) (3) or an assault or sexual assault (~~((which))~~)  
5 that causes grievous bodily harm or the fear of such harm or that  
6 results in a pregnancy.

7 (2)(a) The parent's residential time with the child shall be  
8 limited if it is found that the parent has engaged in any of the  
9 following conduct: (i) Willful abandonment that continues for an  
10 extended period of time or substantial refusal to perform parenting  
11 functions; (ii) physical, sexual, or a pattern of emotional abuse of  
12 a child; (iii) a history of acts of domestic violence as defined in  
13 RCW 26.50.010(~~((1))~~) (3) or an assault or sexual assault (~~((which))~~)  
14 that causes grievous bodily harm or the fear of such harm or that  
15 results in a pregnancy; or (iv) the parent has been convicted as an  
16 adult of a sex offense under:

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

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

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

27 (E) RCW 9A.44.093;

28 (F) RCW 9A.44.096;

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

32 (H) Chapter 9.68A RCW;

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

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

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

1 (b) The parent's residential time with the child shall be limited  
2 if it is found that the parent resides with a person who has engaged  
3 in any of the following conduct: (i) Physical, sexual, or a pattern  
4 of emotional abuse of a child; (ii) a history of acts of domestic  
5 violence as defined in RCW 26.50.010(~~(1)~~) (3) or an assault or  
6 sexual assault that causes grievous bodily harm or the fear of such  
7 harm or that results in a pregnancy; or (iii) the person has been  
8 convicted as an adult or as a juvenile has been adjudicated of a sex  
9 offense under:

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

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

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

19 (D) RCW 9A.44.089;

20 (E) RCW 9A.44.093;

21 (F) RCW 9A.44.096;

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

25 (H) Chapter 9.68A RCW;

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

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

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

33 (c) If a parent has been found to be a sexual predator under  
34 chapter 71.09 RCW or under an analogous statute of any other  
35 jurisdiction, the court shall restrain the parent from contact with a  
36 child that would otherwise be allowed under this chapter. If a parent  
37 resides with an adult or a juvenile who has been found to be a sexual  
38 predator under chapter 71.09 RCW or under an analogous statute of any  
39 other jurisdiction, the court shall restrain the parent from contact

1 with the parent's child except contact that occurs outside that  
2 person's presence.

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

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

11 (ii) RCW 9A.44.073;

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

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

16 (v) RCW 9A.44.083;

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

19 (vii) RCW 9A.44.100;

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

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

25 (e) There is a rebuttable presumption that a parent who resides  
26 with a person who, as an adult, has been convicted, or as a juvenile  
27 has been adjudicated, of the sex offenses listed in (e)(i) through  
28 (ix) of this subsection places a child at risk of abuse or harm when  
29 that parent exercises residential time in the presence of the  
30 convicted or adjudicated person. Unless the parent rebuts the  
31 presumption, the court shall restrain the parent from contact with  
32 the parent's child except for contact that occurs outside of the  
33 convicted or adjudicated person's presence:

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

36 (ii) RCW 9A.44.073;

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

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

1 (v) RCW 9A.44.083;

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

4 (vii) RCW 9A.44.100;

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

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

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

12 (i) If the child was not the victim of the sex offense committed  
13 by the parent requesting residential time, (A) contact between the  
14 child and the offending parent is appropriate and poses minimal risk  
15 to the child, and (B) the offending parent has successfully engaged  
16 in treatment for sex offenders or is engaged in and making progress  
17 in such treatment, if any was ordered by a court, and the treatment  
18 provider believes such contact is appropriate and poses minimal risk  
19 to the child; ~~((e))~~

20 (ii) If the child was the victim of the sex offense committed by  
21 the parent requesting residential time, (A) contact between the child  
22 and the offending parent is appropriate and poses minimal risk to the  
23 child, (B) if the child is in or has been in therapy for victims of  
24 sexual abuse, the child's counselor believes such contact between the  
25 child and the offending parent is in the child's best interest, and  
26 (C) the offending parent has successfully engaged in treatment for  
27 sex offenders or is engaged in and making progress in such treatment,  
28 if any was ordered by a court, and the treatment provider believes  
29 such contact is appropriate and poses minimal risk to the child; and

30 (iii) The child was not conceived and subsequently born as a  
31 result of a sexual assault committed by the parent requesting  
32 residential time.

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

35 (i) If the child was not the victim of the sex offense committed  
36 by the person who is residing with the parent requesting residential  
37 time, (A) contact between the child and the parent residing with the  
38 convicted or adjudicated person is appropriate and that parent is  
39 able to protect the child in the presence of the convicted or  
40 adjudicated person, and (B) the convicted or adjudicated person has

1 successfully engaged in treatment for sex offenders or is engaged in  
2 and making progress in such treatment, if any was ordered by a court,  
3 and the treatment provider believes such contact is appropriate and  
4 poses minimal risk to the child; ~~((e))~~

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

20 (iii) The child was not conceived and subsequently born as a  
21 result of a sexual assault committed by the parent requesting  
22 residential time.

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

36 (i) If the court finds that the parent has met the burden of  
37 rebutting the presumption under (g) of this subsection, the court may  
38 allow a parent residing with a person who has been adjudicated as a  
39 juvenile of a sex offense listed in (e)(i) through (ix) of this  
40 subsection to have residential time with the child in the presence of

1 the person adjudicated as a juvenile, supervised by a neutral and  
2 independent adult and pursuant to an adequate plan for supervision of  
3 such residential time. The court shall not approve of a supervisor  
4 for contact between the child and the parent unless the court finds,  
5 based on the evidence, that the supervisor is willing and capable of  
6 protecting the child from harm. The court shall revoke court approval  
7 of the supervisor upon finding, based on the evidence, that the  
8 supervisor has failed to protect the child or is no longer willing or  
9 capable of protecting the child.

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

24 (k) A court shall not order unsupervised contact between the  
25 offending parent and a child of the offending parent who was sexually  
26 abused by that parent. A court may order unsupervised contact between  
27 the offending parent and a child who was not sexually abused by the  
28 parent after the presumption under (d) of this subsection has been  
29 rebutted and supervised residential time has occurred for at least  
30 two years with no further arrests or convictions of sex offenses  
31 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter  
32 9.68A RCW and (i) the sex offense of the offending parent was not  
33 committed against a child of the offending parent, and (ii) the court  
34 finds that unsupervised contact between the child and the offending  
35 parent is appropriate and poses minimal risk to the child, after  
36 consideration of the testimony of a state-certified therapist, mental  
37 health counselor, or social worker with expertise in treating child  
38 sexual abuse victims who has supervised at least one period of  
39 residential time between the parent and the child, and after  
40 consideration of evidence of the offending parent's compliance with

1 community supervision requirements, if any. If the offending parent  
2 was not ordered by a court to participate in treatment for sex  
3 offenders, then the parent shall obtain a psychosexual evaluation  
4 conducted by a certified sex offender treatment provider or a  
5 certified affiliate sex offender treatment provider indicating that  
6 the offender has the lowest likelihood of risk to reoffend before the  
7 court grants unsupervised contact between the parent and a child.

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

35 (m)(i) The limitations imposed by the court under (a) or (b) of  
36 this subsection shall be reasonably calculated to protect the child  
37 from the physical, sexual, or emotional abuse or harm that could  
38 result if the child has contact with the parent requesting  
39 residential time. The limitations shall also be reasonably calculated  
40 to provide for the safety of the parent who may be at risk of

1 physical, sexual, or emotional abuse or harm that could result if the  
2 parent has contact with the parent requesting residential time. The  
3 limitations the court may impose include, but are not limited to:  
4 Supervised contact between the child and the parent or completion of  
5 relevant counseling or treatment. If the court expressly finds based  
6 on the evidence that limitations on the residential time with the  
7 child will not adequately protect the child from the harm or abuse  
8 that could result if the child has contact with the parent requesting  
9 residential time, the court shall restrain the parent requesting  
10 residential time from all contact with the child.

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

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

32 (iv) If the court limits residential time under (a) or (b) of  
33 this subsection to require supervised contact between the child and  
34 the parent, the court shall not approve of a supervisor for contact  
35 between a child and a parent who has engaged in physical, sexual, or  
36 a pattern of emotional abuse of the child unless the court finds  
37 based upon the evidence that the supervisor accepts that the harmful  
38 conduct occurred and is willing to and capable of protecting the  
39 child from harm. The court shall revoke court approval of the  
40 supervisor upon finding, based on the evidence, that the supervisor



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

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

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

21 (a) A parent's neglect or substantial nonperformance of parenting  
22 functions;

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

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

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

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

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

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

37 (4) In cases involving allegations of limiting factors under  
38 subsection (2)(a)(ii) and (iii) of this section, both parties shall  
39 be screened to determine the appropriateness of a comprehensive

1 assessment regarding the impact of the limiting factor on the child  
2 and the parties.

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

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

9 (7) For the purposes of this section:

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

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

15 **Sec. 5.** RCW 26.33.170 and 1999 c 173 s 1 are each amended to  
16 read as follows:

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

21 (2) Unless the victim by affidavit or sworn testimony indicates  
22 that she is amenable to adoption, an alleged father's, birth  
23 parent's, or parent's consent to adoption ((may)) shall be dispensed  
24 with if the court finds that the proposed adoption is in the best  
25 interests of the adoptee and:

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

29 (b) The alleged father, birth parent, or parent has been found  
30 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,  
31 or has been found by clear and convincing evidence to have committed  
32 a sexual assault, where the other parent of the adoptee was the  
33 victim of the ((rape or incest)) sexual assault and the adoptee was  
34 conceived as a result of the ((rape or incest)) sexual assault.

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

37 NEW SECTION. **Sec. 6.** If any provision of this act or its  
38 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

--- END ---