
SUBSTITUTE SENATE BILL 5205

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Dhingra, Kuderer, and C. Wilson)

READ FIRST TIME 01/20/23.

1 AN ACT Relating to limitations in parenting plans related to
2 parental conduct; amending RCW 26.09.191; and adding a new section to
3 chapter 26.09 RCW.

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

5 **Sec. 1.** RCW 26.09.191 and 2021 c 215 s 134 are each amended to
6 read as follows:

7 (1) ~~((The permanent parenting plan shall not require mutual~~
8 ~~decision-making or designation of a dispute resolution process other~~
9 ~~than court action))~~ Parents are responsible for protecting and
10 preserving the health and well-being of their minor child. When a
11 parent acts contrary to the health and well-being of their child, the
12 court may, and in some situations must, impose limitations intended
13 to protect a child from harm as described in this section.

14 For the purposes of this section "child" shall also mean
15 "children."

16 For the purposes of this section "parenting functions" are as
17 defined in RCW 26.09.004.

18 (2) RESIDENTIAL TIME LIMITATIONS.

19 (a) Parental conduct requiring limits on a parent's residential
20 time.

1 A parent's residential time with their child shall be limited if
2 it is found that ~~((a))~~ the parent has engaged in any of the following
3 conduct:

4 ~~((a))~~ (i) Willful abandonment that continues for an extended
5 period of time or substantial refusal to perform parenting functions;

6 ~~((b) physical, sexual,))~~ (ii) Physical abuse or a pattern of
7 emotional abuse of a child;

8 ~~((or (c) a))~~ (iii) A history of acts of domestic violence as
9 defined in RCW 7.105.010 or an assault or sexual assault that causes
10 grievous bodily harm or the fear of such harm ~~((or that results in a~~
11 ~~pregnancy.~~

12 ~~(2) (a) The); or~~

13 (iv) Sexual abuse of a child. Required limitations and
14 considerations for a parent who has been convicted of a sexual
15 offense against a child or found to have sexually abused a child are
16 addressed in section 2 of this act.

17 (b) Parent residing with a person whose conduct requires limits.

18 A parent's residential time with the parent's child shall be
19 limited if it is found that the parent resides with a person who has
20 engaged in any of the following conduct: ~~((i) Willful abandonment~~
21 ~~that continues for an extended period of time or substantial refusal~~
22 ~~to perform parenting functions; (ii) physical, sexual,))~~

23 (i) Physical abuse or a pattern of emotional abuse of a child;

24 ~~((iii) a))~~ (ii) A history of acts of domestic violence as
25 defined in RCW 7.105.010 or an assault or sexual assault that causes
26 grievous bodily harm or the fear of such harm ~~((or that results in a~~
27 ~~pregnancy; or (iv) the parent has been convicted as an adult of a sex~~
28 ~~offense under:~~

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

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

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

38 ~~(D) RCW 9A.44.089;~~

39 ~~(E) RCW 9A.44.093;~~

40 ~~(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) (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) (A) through (H) of~~
9 ~~this subsection.~~

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

12 ~~(b) The parent's residential time with the child shall be limited~~
13 ~~if it is found that the parent resides with a person who has engaged~~
14 ~~in any of the following conduct: (i) Physical, sexual, or a pattern~~
15 ~~of emotional abuse of a child; (ii) a history of acts of domestic~~
16 ~~violence as defined in RCW 7.105.010 or an assault or sexual assault~~
17 ~~that causes grievous bodily harm or the fear of such harm or that~~
18 ~~results in a pregnancy; or (iii) the person has been convicted as an~~
19 ~~adult or as a juvenile has been adjudicated of a sex offense under:~~

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

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

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

29 ~~(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;~~

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

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

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

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

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

20 ~~(ii) RCW 9A.44.073;~~

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

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

25 ~~(v) RCW 9A.44.083;~~

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

28 ~~(vii) RCW 9A.44.100;~~

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

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

34 ~~(e) There is a rebuttable presumption that a parent who resides~~
35 ~~with a person who, as an adult, has been convicted, or as a juvenile~~
36 ~~has been adjudicated, of the sex offenses listed in (e) (i) through~~
37 ~~(ix) of this subsection places a child at risk of abuse or harm when~~
38 ~~that parent exercises residential time in the presence of the~~
39 ~~convicted or adjudicated person. Unless the parent rebuts the~~
40 ~~presumption, the court shall restrain the parent from contact with~~

1 ~~the parent's child except for contact that occurs outside of the~~
2 ~~convicted or adjudicated person's presence:~~

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

5 ~~(ii) RCW 9A.44.073;~~

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

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

10 ~~(v) RCW 9A.44.083;~~

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

13 ~~(vii) RCW 9A.44.100;~~

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

16 ~~(ix) Any statute from any other jurisdiction that describes an~~
17 ~~offense analogous to the offenses listed in (e) (i) through (vii) of~~
18 ~~this subsection.~~

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

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

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

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

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

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

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

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

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

31 ~~(k) A court shall not order unsupervised contact between the~~
32 ~~offending parent and a child of the offending parent who was sexually~~
33 ~~abused by that parent. A court may order unsupervised contact between~~
34 ~~the offending parent and a child who was not sexually abused by the~~
35 ~~parent after the presumption under (d) of this subsection has been~~
36 ~~rebutted and supervised residential time has occurred for at least~~
37 ~~two years with no further arrests or convictions of sex offenses~~
38 ~~involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter~~
39 ~~9.68A RCW and (i) the sex offense of the offending parent was not~~
40 ~~committed against a child of the offending parent, and (ii) the court~~

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

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

1 in the presence of the adjudicated juvenile who is residing with the
2 parent.

3 ~~(m) (i) The limitations imposed by the court under (a) or (b) of~~
4 ~~this subsection shall be reasonably calculated to protect the child~~
5 ~~from the physical, sexual, or emotional abuse or harm that could~~
6 ~~result if the child has contact with the parent requesting~~
7 ~~residential time. The limitations shall also be reasonably calculated~~
8 ~~to provide for the safety of the parent who may be at risk of~~
9 ~~physical, sexual, or emotional abuse or harm that could result if the~~
10 ~~parent has contact with the parent requesting residential time. The~~
11 ~~limitations the court may impose include, but are not limited to:~~
12 ~~Supervised contact between the child and the parent or completion of~~
13 ~~relevant counseling or treatment. If the court expressly finds based~~
14 ~~on the evidence that limitations on the residential time with the~~
15 ~~child will not adequately protect the child from the harm or abuse~~
16 ~~that could result if the child has contact with the parent requesting~~
17 ~~residential time, the court shall restrain the parent requesting~~
18 ~~residential time from all contact with the child.~~

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

34 ~~(iii) The court shall not enter an order under (a) of this~~
35 ~~subsection allowing a parent to have contact with a child if the~~
36 ~~parent has been found by clear and convincing evidence pursuant to~~
37 ~~RCW 26.26A.465 to have committed sexual assault, as defined in RCW~~
38 ~~26.26A.465, against the child's parent, and that the child was born~~
39 ~~within three hundred twenty days of the sexual assault.~~

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

12 ~~(n) If the court expressly finds based on the evidence that~~
13 ~~contact between the parent and the child will not cause physical,~~
14 ~~sexual, or emotional abuse or harm to the child and that the~~
15 ~~probability that the parent's or other person's harmful or abusive~~
16 ~~conduct will recur is so remote that it would not be in the child's~~
17 ~~best interests to apply the limitations of (a), (b), and (m) (i) and~~
18 ~~(iv) of this subsection, or if the court expressly finds that the~~
19 ~~parent's conduct did not have an impact on the child, then the court~~
20 ~~need not apply the limitations of (a), (b), and (m) (i) and (iv) of~~
21 ~~this subsection. The weight given to the existence of a protection~~
22 ~~order issued under chapter 7.105 RCW or former chapter 26.50 RCW as~~
23 ~~to domestic violence is within the discretion of the court. This~~
24 ~~subsection shall not apply when (c), (d), (e), (f), (g), (h), (i),~~
25 ~~(j), (k), (l), and (m) (ii) of this subsection apply.~~

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

30 ~~(a) A parent's neglect or substantial nonperformance of parenting~~
31 ~~functions;~~

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

35 ~~(c) A long-term impairment resulting from drug, alcohol, or other~~
36 ~~substance abuse that interferes with the performance of parenting~~
37 ~~functions;~~

38 ~~(d) The absence or substantial impairment of emotional ties~~
39 ~~between the parent and the child;~~

1 ~~(e) The abusive use of conflict by the parent which creates the~~
2 ~~danger of serious damage to the child's psychological development.~~
3 ~~Abusive use of conflict includes, but is not limited to, abusive~~
4 ~~litigation as defined in RCW 26.51.020. If the court finds a parent~~
5 ~~has engaged in abusive litigation, the court may impose any~~
6 ~~restrictions or remedies set forth in chapter 26.51 RCW in addition~~
7 ~~to including a finding in the parenting plan. Litigation that is~~
8 ~~aggressive or improper but that does not meet the definition of~~
9 ~~abusive litigation shall not constitute a basis for a finding under~~
10 ~~this section. A report made in good faith to law enforcement, a~~
11 ~~medical professional, or child protective services of sexual,~~
12 ~~physical, or mental abuse of a child shall not constitute a basis for~~
13 ~~a finding of abusive use of conflict;~~

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

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

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

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

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

29 ~~(7) For the purposes of this section:~~

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

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

35 (iii) Sexual abuse of a child. Required limitations and
36 considerations on a parent who resides with someone who has been
37 convicted of a sexual offense against a child or found to have
38 sexually abused a child are addressed in section 2 of this act.

39 (c) Parental conduct that may result in limits on a parent's
40 residential time.

1 A parent's involvement or conduct may have an adverse effect on a
2 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 (i) A parent's neglect or substantial nonperformance of parenting
6 functions;

7 (ii) A long-term emotional or physical impairment that interferes
8 with the parent's performance of parenting functions;

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

12 (iv) The absence or substantial impairment of emotional ties
13 between the parent and the parent's child;

14 (v) A parent has engaged in the abusive use of conflict, which
15 creates the danger of serious damage to the child's psychological
16 development. Abusive use of conflict includes, but is not limited to,
17 abusive litigation as defined in RCW 26.51.020. If the court finds a
18 parent has engaged in abusive litigation, the court may impose any
19 restrictions or remedies set forth in chapter 26.51 RCW in addition
20 to including a finding in the parenting plan. Litigation that is
21 aggressive or improper but does not meet the definition of abusive
22 litigation shall not constitute a basis for a finding under this
23 section. A report made in good faith to law enforcement, a medical
24 professional, or child protective services of sexual, physical, or
25 mental abuse of a child shall not constitute a basis for a finding of
26 abusive use of conflict;

27 (vi) A parent has withheld from the other parent access to their
28 child for a protracted period without good cause; or

29 (vii) Such other factors or conduct as the court expressly finds
30 adverse to the best interests of their child.

31 (d) Limitations a court may impose on a parent's residential
32 time.

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

1 requesting residential time. The limitations the court may impose
2 include, but are not limited to:

3 (i) Supervised visitation. A court may, in its discretion, order
4 supervised contact between a child and the parent.

5 If the court requires supervised visitation, there is a
6 presumption that the supervision will be provided by a professional
7 supervisor. The court shall not approve of a nonprofessional
8 supervisor for contact between a child and a parent who has engaged
9 in physical, sexual, or a pattern of emotional abuse of a child
10 unless the court finds, based upon the evidence, that the supervisor
11 acknowledges that the harmful conduct occurred and is willing and
12 capable of protecting a child from harm. This may be accomplished by
13 requiring an oath of supervisor attesting to the supervisor's
14 acknowledgment of the harmful conduct, willingness to protect a
15 child, and willingness to enforce any limitations contained in the
16 parenting plan;

17 (ii) Evaluation or treatment. The court may order a parent to
18 undergo evaluations for such issues as substance abuse, mental
19 health, anger management, or domestic violence perpetration, with
20 collateral input provided from the other parent.

21 The court may also order that a parent complete treatment for
22 those issues if the need for treatment is supported by the evidence
23 and the evidence supports a finding that the issue interferes with
24 parenting functions.

25 A parent's residential time and decision-making authority may be
26 conditioned on the parent's completion of an evaluation or treatment
27 ordered by the court; or

28 (iii) No contact. If, based on the evidence, the court expressly
29 finds that limitations on the residential time with a child will not
30 adequately protect a child from the harm or abuse that could result
31 if a child has contact with the parent requesting residential time,
32 the court shall restrain the parent requesting residential time from
33 all contact with a child.

34 (3) LIMITATIONS ON DECISION MAKING AND DISPUTE RESOLUTION.

35 A court shall limit joint decision making and dispute resolution
36 if it is found that a parent has engaged in any of the following
37 conduct:

38 (a) Willful abandonment that continues for an extended period of
39 time or substantial refusal to perform parenting functions;

40 (b) Physical abuse or a pattern of emotional abuse of a child;

1 (c) A history of acts of domestic violence as defined in RCW
2 7.105.010; or

3 (d) An assault or sexual assault that causes grievous bodily harm
4 or the fear of such harm.

5 (4) DETERMINATION NOT TO IMPOSE LIMITATIONS.

6 (a) If the court makes express written findings based on the
7 evidence that contact between the parent and the child will not cause
8 physical, sexual, or emotional abuse or harm to the child and that
9 the probability that the parent's or other person's harmful or
10 abusive conduct will recur is so remote that it would not be in the
11 child's best interests to apply limitations to residential time
12 pursuant to subsection (2) of this section or if the court makes
13 express written findings that the parent's conduct did not have an
14 impact on the child, then the court need not apply the limitations of
15 subsection (2) of this section. This subsection shall not apply to
16 findings of sexual abuse which are governed by section 2 of this act.

17 (b) If the court makes express written findings that it would be
18 contrary to the child's best interests to limit decision making or
19 dispute resolution pursuant to subsection (3) of this section, the
20 court need not apply those limitations. Where there has been a
21 finding of domestic violence, there is a rebuttable presumption that
22 there will be sole decision making. The court may not require face-
23 to-face mediation or counseling where both parties are required to be
24 in the same room or virtual room.

25 (5) EXISTENCE OF A PROTECTION ORDER.

26 The weight given to the existence of a protection order issued
27 under chapter 7.105 RCW or former chapter 26.50 RCW as to domestic
28 violence is within the discretion of the court.

29 (6) WHEN LIMITATIONS APPLY TO BOTH PARENTS.

30 When mandatory limitations in subsection (2)(a) or (b) of this
31 section apply to both parents, or when a mandatory limitation applies
32 to one parent and the court finds, based on a discretionary factor in
33 subsection (2)(c) of this section, that the other parent's time must
34 also be limited in order to protect the child from physical or
35 emotional abuse or harm, the court shall make findings regarding the
36 comparative risk of harm to the child posed by each parent, and shall
37 explain the limitations imposed on each parent, including any
38 decision not to impose restrictions on a parent or to award decision
39 making to a parent subject to limitations in subsections (2) and (3)
40 of this section. In making these determinations, the court shall

1 consider whether one parent caused or contributed to the basis for
2 the other parent's conduct that is a basis for restrictions.

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

5 (1) SEXUALLY VIOLENT PREDATORS.

6 If a parent has been found to be a sexually violent predator
7 under 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
11 sexually violent predator under chapter 71.09 RCW or under an
12 analogous statute of any other jurisdiction, the court shall restrain
13 the parent from contact with the parent's child except contact that
14 occurs outside that person's presence.

15 (2) CHILD SEXUAL ABUSE BY PARENT.

16 (a) There is a rebuttable presumption that a parent who has been
17 convicted as an adult of a sex offense against any child in this or
18 another jurisdiction poses a present danger to a child. Unless the
19 parent rebuts this presumption, the court shall restrain the parent
20 from all contact with the parent's child that would otherwise be
21 allowed under this chapter.

22 (b) The court shall not enter an order allowing a parent to have
23 contact with the parent's child if the parent has been found by clear
24 and convincing evidence in a civil action or by a preponderance of
25 the evidence in a dependency action to have sexually abused the
26 child, except upon recommendation by an evaluator or therapist for
27 the child that the child is ready for contact with the parent and
28 will not be harmed by the contact.

29 (3) PARENT RESIDING WITH A PERSON FOUND TO HAVE SEXUALLY ABUSED A
30 CHILD.

31 (a) There is a rebuttable presumption that a parent who resides
32 with a person who, as an adult, has been convicted of a sex offense
33 against a child, or as a juvenile has been adjudicated of a sex
34 offense against a child at least eight years younger, in this or
35 another jurisdiction, places a child at risk of abuse or harm when
36 that parent exercises residential time in the presence of the
37 convicted or adjudicated person. Unless the parent rebuts the
38 presumption, the court shall restrain the parent from contact with

1 the parent's child except for contact that occurs outside of the
2 convicted or adjudicated person's presence.

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

11 (4) REBUTTING THE PRESUMPTION OF NO CONTACT.

12 (a) Offending Parent. The presumption established in subsection
13 (2)(a) of this section may be rebutted only after a written finding
14 that:

15 (i) If the child was not the victim of the sex offense committed
16 by the parent requesting residential time, (A) contact between the
17 child and the offending parent is appropriate and poses minimal risk
18 to the child, and (B) the offending parent has provided documentation
19 that they have successfully completed treatment for sex offenders or
20 are engaged in and making progress in such treatment, if any was
21 ordered by a court; or

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

31 (b) Parent Resides with Offending Person. The presumption
32 established in subsection (3)(a) of this section may be rebutted only
33 after a written finding that:

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

1 treatment for sex offenders or are engaged in and making progress in
2 such treatment, if any was ordered by a court; or

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

15 (c) Contact if Presumption Rebutted. If the court finds that the
16 parent has met the burden of rebutting the presumption under
17 subsection (4)(a) of this section, the court may allow a parent who
18 has been convicted as an adult of a sex offense against a child to
19 have residential time with the child supervised by a neutral and
20 independent adult and pursuant to an adequate plan for supervision of
21 such residential time.

22 (i) The court shall not approve of a supervisor for contact
23 between the child and the parent unless the court finds, based on the
24 evidence, that the supervisor is willing and capable of protecting
25 the child from harm. The court shall revoke court approval of the
26 supervisor upon finding, based on the evidence, that the supervisor
27 has failed to protect the child or is no longer willing or capable of
28 protecting the child;

29 (ii) If the court finds that the parent has met the burden of
30 rebutting the presumption under subsection (4)(b) of this section,
31 the court may allow a parent residing with a person who has been
32 convicted of a sex offense against a child or adjudicated of a
33 juvenile sex offense with a child at least eight years younger to
34 have residential time with the child in the presence of that person
35 supervised by a neutral and independent adult and pursuant to an
36 adequate plan for supervision of such residential time. The
37 supervisor may be the parent if the court finds, based on the
38 evidence, that the parent is willing and capable of protecting the
39 child from harm. The court shall revoke court approval of the
40 supervisor, including the parent, upon finding, based on the

1 evidence, that the supervisor has failed to protect the child or is
2 no longer willing or capable of protecting the child;

3 (iii) 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;

6 (iv) A court may order unsupervised contact between the offending
7 parent and a child who was not sexually abused by the parent after
8 the presumption under subsection (2) of this section has been
9 rebutted pursuant to subsection (4)(a) of this section and supervised
10 residential time has occurred for at least two years with no further
11 arrests or convictions of sex offenses involving children and (A) the
12 sex offense of the offending parent was not committed against a child
13 of the offending parent and (B) the court finds that unsupervised
14 contact between the child and the offending parent is appropriate and
15 poses minimal risk to the child, after consideration of the testimony
16 of a state-certified therapist, mental health counselor, or social
17 worker with expertise in treating child sexual abuse victims who has
18 supervised at least one period of residential time between the parent
19 and the child, and after consideration of evidence of the offending
20 parent's compliance with community supervision requirements, if any.
21 If the offending parent was not ordered by a court to participate in
22 treatment for sex offenders, then the parent shall obtain a
23 psychosexual evaluation conducted by a certified sex offender
24 treatment provider or a certified affiliate sex offender treatment
25 provider indicating that the offender has the lowest likelihood of
26 risk to reoffend before the court grants unsupervised contact between
27 the parent and a child.

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