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SENATE BILL 5162

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State of Washington

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2013 Regular Session

By Senators Roach, Carrell, Rivers, Benton, Sheldon, Dammeier, Holmquist Newbry, Padden, Fraser, Frockt, and Chase

Read first time 01/22/13. Referred to Committee on Law & Justice.

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

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
7 Braden and Charlie Powell act of 2013.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Upon the request of the court or department of social and health  
6 services, any law enforcement agency conducting an active murder  
7 investigation for which a named suspect is involved in a child  
8 dependency proceeding pursuant to this chapter must provide to the  
9 court and the department, in writing, any and all details of the  
10 investigation that may be relevant to the child dependency proceeding.

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

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

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

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

35 (B) RCW 9A.44.079 if, because of the difference in age between the

1 offender and the victim, no rebuttable presumption exists under (d) of  
2 this subsection;

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

6 (D) RCW 9A.44.089;

7 (E) RCW 9A.44.093;

8 (F) RCW 9A.44.096;

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

12 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

37 (D) RCW 9A.44.089;

38 (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) of  
10 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) of  
24 this subsection poses a present danger to a child. Unless the parent  
25 rebuts this presumption, the court shall restrain the parent from  
26 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 least  
34 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 least  
37 eight years older than the victim;

38 (vii) RCW 9A.44.100;

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

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

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

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

17 (ii) RCW 9A.44.073;

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

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

22 (v) RCW 9A.44.083;

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

25 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3        Upon the request of a party or the court, any law enforcement  
4 agency conducting an active murder investigation for which a named  
5 suspect is involved in a child custody proceeding pursuant to this  
6 chapter or chapter 26.10 RCW must provide to the court, in writing, any  
7 and all details of the investigation that may be relevant to the child  
8 custody proceeding.

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

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

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

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

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

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

33        (D) RCW 9A.44.089;

34        (E) RCW 9A.44.093;

35        (F) RCW 9A.44.096;

36        (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age

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

3 (H) Chapter 9.68A RCW;

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

6 (J) Any statute from any other jurisdiction that describes an  
7 offense analogous to the offenses listed in (a)(~~(iv)~~) (v)(A) through  
8 (H) of this subsection.

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

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

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

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

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

28 (D) RCW 9A.44.089;

29 (E) RCW 9A.44.093;

30 (F) RCW 9A.44.096;

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

34 (H) Chapter 9.68A RCW;

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

37 (J) Any statute from any other jurisdiction that describes an

1 offense analogous to the offenses listed in (b)(iii)(A) through (H) of  
2 this subsection.

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

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

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

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

22 (ii) RCW 9A.44.073;

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

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

27 (v) RCW 9A.44.083;

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

30 (vii) RCW 9A.44.100;

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

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

36 (e) There is a rebuttable presumption that a parent who resides  
37 with a person who, as an adult, has been convicted, or as a juvenile  
38 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)

1 of this subsection places a child at risk of abuse or harm when that  
2 parent exercises visitation in the presence of the convicted or  
3 adjudicated person. Unless the parent rebuts the presumption, the  
4 court shall restrain the parent from contact with the parent's child  
5 except for contact that occurs outside of the convicted or adjudicated  
6 person's presence:

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

9 (ii) RCW 9A.44.073;

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

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

14 (v) RCW 9A.44.083;

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

17 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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

16 (ii) If the child was the victim of the sex offense committed by  
17 the person who is residing with the parent requesting visitation, (A)  
18 contact between the child and the parent in the presence of the  
19 convicted or adjudicated person is appropriate and poses minimal risk  
20 to the child, (B) if the child is in or has been in therapy for victims  
21 of sexual abuse, the child's counselor believes such contact between  
22 the child and the parent residing with the convicted or adjudicated  
23 person in the presence of the convicted or adjudicated person is in the  
24 child's best interest, and (C) the convicted or adjudicated person has  
25 successfully engaged in treatment for sex offenders or is engaged in  
26 and making progress in such treatment, if any was ordered by a court,  
27 and the treatment provider believes contact between the parent and  
28 child in the presence of the convicted or adjudicated person is  
29 appropriate and poses minimal risk to the 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 visitation  
34 with the child supervised by a neutral and independent adult and  
35 pursuant to an adequate plan for supervision of such visitation. The  
36 court shall not approve of a supervisor for contact between the child  
37 and the parent unless the court finds, based on the evidence, that the  
38 supervisor is willing and capable of protecting the child from harm.

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

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

18 (j) If the court finds that the parent has met the burden of  
19 rebutting the presumption under (g) of this subsection, the court may  
20 allow a parent residing with a person who, as an adult, has been  
21 convicted of a sex offense listed in (e)(i) through (ix) of this  
22 subsection to have visitation with the child in the presence of the  
23 convicted person supervised by a neutral and independent adult and  
24 pursuant to an adequate plan for supervision of such visitation. The  
25 court shall not approve of a supervisor for contact between the child  
26 and the parent unless the court finds, based on the evidence, that the  
27 supervisor is willing and capable of protecting the child from harm.  
28 The court shall revoke court approval of the supervisor upon finding,  
29 based on the evidence, that the supervisor has failed to protect the  
30 child or is no longer willing or capable of 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 visitation has occurred for at least two years  
37 with no further arrests or convictions of sex offenses involving  
38 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW

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

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

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

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

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

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

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

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

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

24 (5) For the purposes of this section:

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

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

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