
SENATE BILL 5029

State of Washington

57th Legislature

2001 Regular Session

By Senators Franklin and Carlson

Read first time 01/08/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to nonparental visitation rights; amending RCW
2 26.09.240 and 26.10.160; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature affirms that parents have a
5 paramount right to raise their minor children. The legislature
6 acknowledges that grandparents may have an inherently special
7 relationship with their grandchildren, but that relationship remains
8 subordinate to that of the parent and child. The legislature, in
9 response to *In re Custody of Smith*, 137 Wn.2d 969 (1998), intends to
10 establish internally consistent and rigorous standards that must be met
11 for a nonparent to obtain visitation with a minor child.

12 **Sec. 2.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read
13 as follows:

14 (1) A person other than a parent (~~may petition the court for~~
15 ~~visitation with a child at any time or~~) may intervene in a pending
16 dissolution, legal separation, or modification of parenting plan
17 proceeding. (~~A person other than a parent may not petition for~~

1 ~~visitation under this section unless the child's parent or parents have~~
2 ~~commenced an action under this chapter.))~~

3 ~~(2) ((A petition for visitation with a child by a person other than~~
4 ~~a parent must be filed in the county in which the child resides.~~

5 ~~(3) A petition for visitation or)) (a) A motion to intervene~~
6 ~~pursuant to this section shall be dismissed unless the ((petitioner~~
7 ~~or)) intervenor can demonstrate by clear, cogent, and convincing~~
8 ~~evidence that a significant relationship exists with the child with~~
9 ~~whom visitation is sought. If the ((petition or)) motion is dismissed~~
10 ~~for failure to establish the existence of a significant relationship,~~
11 ~~the ((petitioner or)) intervenor shall be ordered to pay reasonable~~
12 ~~attorney's fees and costs to the parent, parents, other custodian, or~~
13 ~~representative of the child who responds to this ((petition or))~~
14 ~~motion.~~

15 ~~((4)) (b) When the intervenor is a grandparent of the child a~~
16 ~~significant relationship shall be presumed.~~

17 ~~(3) The court may order visitation between the ((petitioner or))~~
18 ~~intervenor and the child between whom a significant relationship exists~~
19 ~~upon a finding supported by ((the)) clear, cogent, and convincing~~
20 ~~evidence that the visitation is in the child's best interests and that~~
21 ~~denial of visitation would result in a likelihood of substantial harm~~
22 ~~to the child's physical, mental, or emotional well-being.~~

23 ~~((5)(a) Visitation with a grandparent shall be presumed to be in~~
24 ~~the child's best interests when a significant relationship has been~~
25 ~~shown to exist. This presumption may be rebutted by a preponderance of~~
26 ~~evidence showing that visitation would endanger the child's physical,~~
27 ~~mental, or emotional health.~~

28 ~~(b)) (4) If the court finds that reasonable visitation by a~~
29 ~~grandparent would be in the child's best interest except for~~
30 ~~hostilities that exist between the grandparent and one or both of the~~
31 ~~parents or person with whom the child lives, the court may set the~~
32 ~~matter for mediation under RCW 26.09.015.~~

33 ~~((6)) (5) The court may consider the following factors when~~
34 ~~making a determination of the child's best interests:~~

35 ~~(a) The strength of the relationship between the child and the~~
36 ~~petitioner;~~

37 ~~(b) The relationship between each of the child's parents or the~~
38 ~~person with whom the child is residing and the petitioner;~~

1 (c) The nature and reason for either parent's objection to granting
2 the petitioner visitation;

3 (d) The effect that granting visitation will have on the
4 relationship between the child and the child's parents or the person
5 with whom the child is residing;

6 (e) The residential time-sharing arrangements between the parents;

7 (f) The good faith of the petitioner;

8 (g) Any criminal history or history of physical, emotional, or
9 sexual abuse or neglect by the petitioner; and

10 (h) Any other factor relevant to the child's best interest.

11 ~~((+7))~~ (6) The restrictions of RCW 26.09.191 that apply to parents
12 shall be applied to ~~((a petitioner or))~~ an intervenor who is not a
13 parent. The nature and extent of visitation, subject to these
14 restrictions, is in the discretion of the court.

15 ~~((+8))~~ (7) The court may order an investigation and report
16 concerning the proposed visitation or may appoint a guardian ad litem
17 as provided in RCW 26.09.220.

18 ~~((+9))~~ (8) Visitation granted pursuant to this section shall be
19 incorporated into the parenting plan for the child.

20 ~~((+10))~~ (9) The court may modify or terminate visitation rights
21 granted pursuant to this section in any subsequent modification action
22 upon a showing that the visitation is no longer in the best interest of
23 the child.

24 **Sec. 3.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read
25 as follows:

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

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

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

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

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

10 (D) RCW 9A.44.089;

11 (E) RCW 9A.44.093;

12 (F) RCW 9A.44.096;

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

16 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

4 (D) RCW 9A.44.089;

5 (E) RCW 9A.44.093;

6 (F) RCW 9A.44.096;

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

10 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

35 (ii) RCW 9A.44.073;

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

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

1 (v) RCW 9A.44.083;

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

4 (vii) RCW 9A.44.100;

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

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

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

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

21 (ii) RCW 9A.44.073;

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

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

26 (v) RCW 9A.44.083;

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

29 (vii) RCW 9A.44.100;

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

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

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

37 (i) If the child was not the victim of the sex offense committed by
38 the parent requesting visitation, (A) contact between the child and the
39 offending parent is appropriate and poses minimal risk to the child,

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

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

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

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

27 (ii) If the child was the victim of the sex offense committed by
28 the person who is residing with the parent requesting visitation, (A)
29 contact between the child and the parent in the presence of the
30 convicted or adjudicated person is appropriate and poses minimal risk
31 to the child, (B) if the child is in or has been in therapy for victims
32 of sexual abuse, the child's counselor believes such contact between
33 the child and the parent residing with the convicted or adjudicated
34 person in the presence of the convicted or adjudicated person is in the
35 child's best interest, and (C) the convicted or adjudicated person has
36 successfully engaged in treatment for sex offenders or is engaged in
37 and making progress in such treatment, if any was ordered by a court,
38 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 visitation
7 with the child supervised by a neutral and independent adult and
8 pursuant to an adequate plan for supervision of such visitation. The
9 court shall not approve of a supervisor for contact between the child
10 and the parent unless the court finds, based on the evidence, that the
11 supervisor is willing and capable of protecting the child from harm.
12 The court shall revoke court approval of the supervisor upon finding,
13 based on the evidence, that the supervisor has failed to protect the
14 child or is no longer willing or capable of protecting the child.

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

29 (j) If the court finds that the parent has met the burden of
30 rebutting the presumption under (g) of this subsection, the court may
31 allow a parent residing with a person who, as an adult, has been
32 convicted of a sex offense listed in (e)(i) through (ix) of this
33 subsection to have visitation with the child in the presence of the
34 convicted person 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.
39 The court shall revoke court approval of the supervisor upon finding,

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

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

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

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

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

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

35 (iii) If the court limits visitation under (a) or (b) of this
36 subsection to require supervised contact between the child and the
37 parent, the court shall not approve of a supervisor for contact between
38 a child and a parent who has engaged in physical, sexual, or a pattern
39 of emotional abuse of the child unless the court finds based upon the

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

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

20 (3)(a) Any person may petition the court for visitation rights ((at
21 any time including, but not limited to, custody proceedings)) if there
22 has been a substantial change in circumstances relating to either
23 parent or the minor child that justifies consideration of the
24 petitioner's visitation rights. ((The court may order visitation
25 rights for any person when visitation may serve the best interest of
26 the child whether or not there has been any change of circumstances.))
27 A petition for visitation pursuant to this section shall be dismissed
28 unless the petitioner can demonstrate by clear, cogent, and convincing
29 evidence that a significant relationship exists with the child with
30 whom visitation is sought. When the petitioner or intervenor is a
31 grandparent of the child a significant relationship shall be presumed.

32 If the petitioner establishes that a significant relationship
33 exists, the court may order visitation between the petitioner and the
34 child upon a finding supported by clear, cogent, and convincing
35 evidence that visitation is in the child's best interests and that
36 denial of visitation would result in a likelihood of substantial harm
37 to the child's physical, mental, or emotional well-being.

38 (b) The court may consider the following factors when making a
39 determination of the child's best interests:

1 (i) The strength of the relationship between the child and the
2 petitioner;

3 (ii) The relationship between each of the child's parents or the
4 person with whom the child is residing and the petitioner;

5 (iii) The nature and reason for either parent's objection to
6 granting the petitioner visitation;

7 (iv) The effect that granting visitation will have on the
8 relationship between the child and the child's parents or the person
9 with whom the child is residing;

10 (v) The residential time-sharing arrangements between parents;

11 (vi) The good faith of the petitioner;

12 (vii) Any criminal history or history of physical, emotional, or
13 sexual abuse or neglect by the petitioner; and

14 (viii) Any other factor relevant to the child's best interest.

15 (c) The restrictions of RCW 26.09.191 that apply to parents shall
16 be applied to a petitioner or intervenor who is not a parent. The
17 nature and extent of visitation, subject to these restrictions, is in
18 the discretion of the court.

19 (d) If the petition is not granted, the petitioner shall be ordered
20 to pay reasonable attorneys' fees and costs to the parent, parents,
21 other custodian, or representative of the child who responds to the
22 petition.

23 (4) Visitation granted pursuant to this section shall be
24 incorporated into the parenting plan for the child.

25 (5) The court may modify an order granting or denying visitation
26 rights whenever modification would serve the best interests of the
27 child. Modification of a parent's visitation rights shall be subject
28 to the requirements of subsection (2) of this section.

29 ~~((+5))~~ (6) For the purposes of this section, a parent's child
30 means that parent's natural child, adopted child, or stepchild.

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