
SECOND SUBSTITUTE SENATE BILL 5708

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Children & Family Services & Corrections
(originally sponsored by Senators Franklin, Esser, Haugen,
Thibaudeau, Kline and Kohl-Welles)

READ FIRST TIME 02/09/04.

1 AN ACT Relating to visitation rights for grandparents; amending RCW
2 26.10.160; adding a new section to chapter 26.10 RCW; creating a new
3 section; repealing RCW 26.09.240; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature affirms that parents have a
6 paramount right to raise their minor children. The legislature also
7 recognizes that this paramount right must be considered in conjunction
8 with a minor child's interest in maintaining the strong emotional bonds
9 with grandparents that the child has developed and relies upon.
10 Therefore, the legislature intends to establish internally consistent
11 and rigorous standards that must be met for a grandparent to obtain
12 visitation with a minor child.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.10 RCW
14 to read as follows:

15 (1) For purposes of this section, the following definitions apply:
16 (a) "Applicant" means a grandparent who initiates a proceeding
17 under this statute.

1 (b) "Contact" includes all court-ordered arrangements by which a
2 grandparent is authorized to interact with a child other than custody,
3 conservatorship, guardianship, or joint or shared custody.

4 (c) "Harm" means that denial of contact results in substantial loss
5 and detriment to the child's physical, psychological, or emotional
6 well-being. The likelihood of harm must be beyond the normal short-
7 term distress a child suffers due to a change in circumstances.

8 (d) "Grandparent" means the parent of the child's parent.

9 (e) "Parent-like relationship" means a very significant
10 relationship between a grandparent and a child in which the grandparent
11 undertook responsibilities and tasks commonly performed by parents and
12 commonly recognized as actions by someone in a parent-like
13 relationship.

14 (f) "Substantially interfered" means to have unreasonably and
15 greatly diminished the amount and quality of contact a grandparent has
16 had with the child. A reasonable reduction in the frequency or length
17 of contact previously enjoyed with the child is not a substantial
18 interference.

19 (2)(a) A grandparent may petition the court for visitation one time
20 only, either:

21 (i) During a pending dissolution or pending legal separation;

22 (ii) Within one year of the death of a parent;

23 (iii) Within one year of the granting of a dissolution of marriage
24 or legal separation of the parents; or

25 (iv) Within one year of the effective date of this act if the death
26 of a parent or the granting of a dissolution or legal separation of the
27 parents has occurred at any time prior to the effective date of this
28 act.

29 (b) A grandparent may petition the court for visitation, one time
30 only, within one year of the death of a parent regardless of whether or
31 not the grandparent has previously petitioned for visitation under the
32 circumstances listed in (a) of this subsection.

33 (3) A grandparent may initiate a court proceeding for contact with
34 a child by filing a verified application to obtain court-ordered
35 contact when all of the following criteria are satisfied:

36 (a) The applicant is a grandparent with a parent-like relationship
37 with the child. To satisfy this criterion, the applicant must show
38 that:

1 (i) His or her relationship with the child has been parent-like in
2 nature for a substantial period of time;

3 (ii) A parent or custodian of the child consented to or allowed the
4 formation and establishment of the relationship or the relationship was
5 formed as a result of the unavailability or inability of any legal
6 parent to perform caretaking functions; and

7 (iii) His or her relationship with the child is beneficial; and

8 (b) A parent or custodian has substantially interfered with the
9 grandparent's relationship with the child and the grandparent has
10 unsuccessfully attempted to resolve any disagreement with the parent or
11 custodian before going to court.

12 (4)(a)(i) The court shall treat standing as a threshold issue. The
13 grandparent bears the burden of establishing standing. If the
14 grandparent does not satisfy this burden, the proceeding shall be
15 dismissed.

16 (ii) Upon a finding that the grandparent has standing, the
17 grandparent shall come forward with evidence to show that the child
18 would very likely suffer harm if contact were not awarded. If the
19 grandparent presents evidence that could allow a reasonable fact-finder
20 to conclude that the child would very likely suffer harm, the parent or
21 custodian must present evidence that the decision to refuse contact is
22 reasonable and in the best interests of the child.

23 (b) The court shall order contact if it finds that the grandparent
24 has satisfied the burden of showing by clear and convincing evidence
25 that:

26 (i) The child would very likely suffer harm if contact is not
27 awarded; and

28 (ii) The parent's or custodian's denial of contact was unreasonable
29 and not in the child's best interests.

30 (c) Any contact ordered by the court shall be subject to the
31 limitations set forth in RCW 26.10.160. Grandparents petitioning for
32 visitation are not presumptively entitled to reasonable visitation
33 under RCW 26.10.160. Visitation shall be limited if a parent or
34 custodian presents evidence that could allow a reasonable fact-finder
35 to conclude that the grandparent or grandparents seeking visitation
36 have engaged in any of the conduct under RCW 26.10.160(2)(a).

37 (5) If the court dismisses the proceeding for lack of standing, the
38 court shall award reasonable and necessary costs and fees to the

1 prevailing party unless there is a compelling reason to do otherwise.
2 In all other cases, the court may award such costs and fees as it deems
3 appropriate.

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

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

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

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

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

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

28 (E) RCW 9A.44.093;

29 (F) RCW 9A.44.096;

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

33 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

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

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

23 (E) RCW 9A.44.093;

24 (F) RCW 9A.44.096;

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

28 (H) Chapter 9.68A RCW;

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

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

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

36 (c) If a parent has been found to be a sexual predator under
37 chapter 71.09 RCW or under an analogous statute of any other
38 jurisdiction, the court shall restrain the parent from contact with a

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

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

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

15 (ii) RCW 9A.44.073;

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

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

20 (v) RCW 9A.44.083;

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

23 (vii) RCW 9A.44.100;

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

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

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

1 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
2 was at least five years older than the other person;
3 (ii) RCW 9A.44.073;
4 (iii) RCW 9A.44.076, provided that the person convicted was at
5 least eight years older than the victim;
6 (iv) RCW 9A.44.079, provided that the person convicted was at least
7 eight years older than the victim;
8 (v) RCW 9A.44.083;
9 (vi) RCW 9A.44.086, provided that the person convicted was at least
10 eight years older than the victim;
11 (vii) RCW 9A.44.100;
12 (viii) Any predecessor or antecedent statute for the offenses
13 listed in (e)(i) through (vii) of this subsection;
14 (ix) Any statute from any other jurisdiction that describes an
15 offense analogous to the offenses listed in (e)(i) through (vii) of
16 this subsection.
17 (f) The presumption established in (d) of this subsection may be
18 rebutted only after a written finding that:
19 (i) If the child was not the victim of the sex offense committed by
20 the parent requesting visitation, (A) contact between the child and the
21 offending parent is appropriate and poses minimal risk to the child,
22 and (B) the offending parent has successfully engaged in treatment for
23 sex offenders or is engaged in and making progress in such treatment,
24 if any was ordered by a court, and the treatment provider believes such
25 contact is appropriate and poses minimal risk to the child; or
26 (ii) If the child was the victim of the sex offense committed by
27 the parent requesting visitation, (A) contact between the child and the
28 offending parent is appropriate and poses minimal risk to the child,
29 (B) if the child is in or has been in therapy for victims of sexual
30 abuse, the child's counselor believes such contact between the child
31 and the offending parent is in the child's best interest, and (C) the
32 offending parent has successfully engaged in treatment for sex
33 offenders or is engaged in and making progress in such treatment, if
34 any was ordered by a court, and the treatment provider believes such
35 contact is appropriate and poses minimal risk to the child.
36 (g) The presumption established in (e) of this subsection may be
37 rebutted only after a written finding that:

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

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

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

37 (i) If the court finds that the parent has met the burden of
38 rebutting the presumption under (g) of this subsection, the court may

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

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

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

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

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

36 (m)(i) The limitations imposed by the court under (a) or (b) of
37 this subsection shall be reasonably calculated to protect the child
38 from the physical, sexual, or emotional abuse or harm that could result

1 if the child has contact with the parent requesting visitation. If the
2 court expressly finds based on the evidence that limitations on
3 visitation with the child will not adequately protect the child from
4 the harm or abuse that could result if the child has contact with the
5 parent requesting visitation, the court shall restrain the person
6 seeking visitation from all contact with the child.

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

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

31 (n) If the court expressly finds based on the evidence that
32 contact between the parent and the child will not cause physical,
33 sexual, or emotional abuse or harm to the child and that the
34 probability that the parent's or other person's harmful or abusive
35 conduct will recur is so remote that it would not be in the child's
36 best interests to apply the limitations of (a), (b), and (m)(i) and
37 (iii) of this subsection, or if the court expressly finds that the
38 parent's conduct did not have an impact on the child, then the court

1 need not apply the limitations of (a), (b), and (m)(i) and (iii) of
2 this subsection. The weight given to the existence of a protection
3 order issued under chapter 26.50 RCW as to domestic violence is within
4 the discretion of the court. This subsection shall not apply when (c),
5 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this
6 subsection apply.

7 ~~(3) ((Any person may petition the court for visitation rights at~~
8 ~~any time including, but not limited to, custody proceedings. The court~~
9 ~~may order visitation rights for any person when visitation may serve~~
10 ~~the best interest of the child whether or not there has been any change~~
11 ~~of circumstances.~~

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

16 ((+5)) (4) For the purposes of this section, a parent's child
17 means that parent's natural child, adopted child, or stepchild.

18 NEW SECTION. **Sec. 4.** RCW 26.09.240 (Visitation rights--Person
19 other than parent--Grandparents' visitation rights) and 1996 c 177 s 1,
20 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st
21 ex.s. c 157 s 24 are each repealed.

22 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 immediately.

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