
SENATE BILL 5708

State of Washington 58th Legislature 2003 Regular Session

By Senators Franklin, Esser, Haugen, Thibaudeau, Kline and Kohl-Welles

Read first time 02/07/2003. Referred to Committee on Children & Family Services & Corrections.

1 AN ACT Relating to visitation rights for nonparents; amending RCW
2 26.09.240 and 26.10.160; adding a new section to chapter 26.10 RCW;
3 creating a new section; 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 others that the child has developed and relies upon. Therefore,
10 the legislature intends to establish internally consistent and rigorous
11 standards that must be met for a nonparent to obtain visitation with a
12 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 nonparent who initiates a proceeding under
17 this statute.

1 (b) "Contact" includes all court-ordered arrangements by which a
2 nonparent 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) "Nonparent" includes any person not legally recognized as a
9 parent whether or not related by blood or marriage.

10 (e) "Parent-like relationship" means a very significant
11 relationship between a nonparent and a child in which the nonparent
12 undertook responsibilities and tasks commonly performed by parents and
13 commonly recognized as actions by someone in a parent-like
14 relationship. Excluded from this category are baby-sitters or other
15 employed caregivers.

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

21 (2) A nonparent may initiate a court proceeding for contact with a
22 child by filing a verified application to obtain court-ordered contact
23 when all of the following criteria are satisfied:

24 (a) The applicant is an individual with a parent-like relationship
25 with the child. To satisfy this criterion, the applicant must show
26 that:

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

29 (ii) A parent or custodian of the child consented to or allowed the
30 formation and establishment of the relationship or the relationship was
31 formed as a result of the unavailability or inability of any legal
32 parent to perform caretaking functions; and

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

34 (b) A parent or custodian has substantially interfered with the
35 applicant's relationship with the child and the applicant has
36 unsuccessfully attempted to resolve any disagreement with the parent or
37 custodian before going to court.

1 (3)(a)(i) The court shall treat standing as a threshold issue. The
2 applicant bears the burden of establishing standing. If the applicant
3 does not satisfy this burden, the proceeding shall be dismissed.

4 (ii) Upon a finding that the applicant has standing, the applicant
5 shall come forward with evidence to show that the child would very
6 likely suffer harm if contact were not awarded. If the applicant
7 presents evidence that could allow a reasonable factfinder to conclude
8 that the child would very likely suffer harm, the burden shifts to the
9 parent or custodian to present evidence why the decision to refuse
10 contact is reasonable and in the best interests of the child.

11 (b) The court shall order contact if it finds that the applicant
12 has satisfied the burden of showing by clear and convincing evidence
13 that:

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

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

18 (4) If the court dismisses the proceeding for lack of standing, the
19 court shall award reasonable and necessary costs and fees to the
20 prevailing party unless there is a compelling reason to do otherwise.
21 In all other cases, the court may award such costs and fees as it deems
22 appropriate.

23 **Sec. 3.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read
24 as follows:

25 ~~((1))~~ Under section 2 of this act, a person other than a parent
26 may petition the court for visitation with a child ((at any time)) or
27 may intervene in a pending dissolution, legal separation, or
28 modification of parenting plan proceeding. ((A person other than a
29 parent may not petition for visitation under this section unless the
30 child's parent or parents have commenced an action under this chapter.

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

33 ~~(3) A petition for visitation or a motion to intervene pursuant to~~
34 ~~this section shall be dismissed unless the petitioner or intervenor can~~
35 ~~demonstrate by clear and convincing evidence that a significant~~
36 ~~relationship exists with the child with whom visitation is sought. If~~
37 ~~the petition or motion is dismissed for failure to establish the~~

1 existence of a significant relationship, the petitioner or intervenor
2 shall be ordered to pay reasonable attorney's fees and costs to the
3 parent, parents, other custodian, or representative of the child who
4 responds to this petition or motion.

5 (4) The court may order visitation between the petitioner or
6 intervenor and the child between whom a significant relationship exists
7 upon a finding supported by the evidence that the visitation is in the
8 child's best interests.

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

14 (b) If the court finds that reasonable visitation by a grandparent
15 would be in the child's best interest except for hostilities that exist
16 between the grandparent and one or both of the parents or person with
17 whom the child lives, the court may set the matter for mediation under
18 RCW 26.09.015.

19 (6) The court may consider the following factors when making a
20 determination of the child's best interests:

21 (a) The strength of the relationship between the child and the
22 petitioner;

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

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

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

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

31 (f) The good faith of the petitioner;

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

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

35 (7) The restrictions of RCW 26.09.191 that apply to parents shall
36 be applied to a petitioner or intervenor who is not a parent. The
37 nature and extent of visitation, subject to these restrictions, is in
38 the discretion of the court.

1 ~~(8) The court may order an investigation and report concerning the~~
2 ~~proposed visitation or may appoint a guardian ad litem as provided in~~
3 ~~RCW 26.09.220.~~

4 ~~(9) Visitation granted pursuant to this section shall be~~
5 ~~incorporated into the parenting plan for the child.~~

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

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

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

15 (2)(a) Visitation with the child shall be limited if it is found
16 that the parent seeking visitation has engaged in any of the following
17 conduct: (i) Willful abandonment that continues for an extended period
18 of time or substantial refusal to perform parenting functions; (ii)
19 physical, sexual, or a pattern of emotional abuse of a child; (iii) a
20 history of acts of domestic violence as defined in RCW 26.50.010(1) or
21 an assault or sexual assault which causes grievous bodily harm or the
22 fear of such harm; or (iv) the parent has been convicted as an adult of
23 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)(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)(A) through (H) of
8 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 state-certified sex offender
13 treatment provider indicating that the offender has the lowest
14 likelihood of risk to reoffend before the court grants unsupervised
15 contact between the parent and a child.

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

1 before the court grants unsupervised contact between the parent and a
2 child which may occur in the presence of the adjudicated juvenile who
3 is residing with the parent.

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

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

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

37 (n) If the court expressly finds based on the evidence that
38 contact between the parent and the child will not cause physical,

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

13 ~~(3) ((Any person may petition the court for visitation rights at~~
14 ~~any time including, but not limited to, custody proceedings. The court~~
15 ~~may order visitation rights for any person when visitation may serve~~
16 ~~the best interest of the child whether or not there has been any change~~
17 ~~of circumstances.)) A person other than a parent may petition the court
18 for visitation with a child under section 2 of this act.~~

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

23 (5) For the purposes of this section, a parent's child means that
24 parent's natural child, adopted child, or stepchild.

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

--- END ---