

# SENATE BILL REPORT

## SB 6683

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As Reported By Senate Committee On:  
Judiciary, February 2, 2006

**Title:** An act relating to visitation rights for grandparents.

**Brief Description:** Concerning visitation rights for grandparents.

**Sponsors:** Senators Fairley, Pridemore, Thibaudeau and Rasmussen.

**Brief History:**

**Committee Activity:** Judiciary: 1/31/06, 2/2/06 [DP, w/oRec].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Carrell, Hargrove, Rasmussen and Thibaudeau.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Johnson, Ranking Minority Member; Esser and McCaslin.

**Staff:** Aldo Melchiori (786-7439)

**Background:** A person, other than a parent, may initiate a child custody proceeding if the child is not in the physical custody of either parent or if the petitioner alleges that neither parent is a suitable custodian under Chapter 26.10 RCW. This is distinct from the grandparent's visitation rights statute in chapter 26.09 RCW in that the parent(s) in Chapter 26.10 RCW must initially either not be present or found not suitable at the commencement of the action.

*In re Parentage of C.A.M.A.* involved a facial challenge to the grandparent's visitation rights statute (RCW 26.09.240), a challenge stemming from the language of the statute itself without looking to the facts of the particular case. In a unanimous decision, the court concluded that the presumption in favor of grandparent visitation and the application of the "best interests of the child" standard, rather than a "harm to the child" standard, rendered the entire statute unconstitutional. The court deferred, to the Legislature, the undertaking of rewriting the statute.

**Summary of Bill:** The statute found unconstitutional is repealed. "Grandparent" is defined as the parent of a child's father or mother, who is related to the child by blood, adoption, or marriage. A grandparent may petition the court one time for visitation with a child regardless of whether there is a pending dissolution or parenting plan action. A grandparent may file a subsequent petition only after an initial showing that there has been a substantial change in circumstances. Subsequent death or incapacitation of the parent constitute a substantial change in circumstances.

To have standing, a grandparent must prove four things: (1) that the grandparent has a significant relationship with the child; (2) that the child's parent or custodian has substantially interfered with that relationship; (3) that the grandparent has unsuccessfully tried to resolve the disagreement before going to court; and (4) that the child would suffer harm or the substantial risk of harm if contact between the grandparent and the child is not awarded. The proceeding is dismissed if the grandparent fails to establish this standing issue.

If the court finds that the grandparent has standing, the parent or custodian then must prove why his or her decision to deny visitation is reasonable and in the best interests of the child. The court must give some deference to the determinations of a fit parent regarding visitation between a grandparent and the child. The court shall order visitation if it finds by clear and convincing evidence that the child would suffer harm or the substantial risk of harm if visitation was denied and that denial of contact would not be in the child's best interest. Some of the factors the court must consider are: (1) the love, affection, and strength of the relationship between the child and grandparent; (2) the length and quality of the prior relationship; (3) the relationship between each of the child's parents; (4) the nature and reason for either parent's objection; (5) the effect of granting visitation on the relationship between the parents and the child; (6) the residential time-sharing arrangements between the parents; (7) any history of abuse or neglect of the child by the grandparent; and (8) the child's reasonable preference.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This is a modest step to re-establish grandparent visitation law, and attempts to track Washington case law and codify it. Denying grandparent visitation causes psychological harm to children. The standard of proof is high because it affects a parents fundamental right to raise their children.

**Testimony Against:** The bill focuses too much on the status of the petitioner rather than on the child. The *Troxel* case requires greater deference to the parents' decisions. Parents are not unfit to make decisions simply because they deny visitation. The bill fails to adequately presume that a fit parents' decisions are in the best interests of the child.

**Who Testified:** PRO: Ruth Shearer, Senior Lobby; Lauren Moughon, AARP Washington; Ken Masters, GROW.

CON: Rick Batholomew, WASB Family Law Section; Max Bruk; Gwen Mathewson, NW Women's Law Center.

Signed in, Unable to Testify & Submitted Written Testimony: Michelle Hill, citizen.