
SUBSTITUTE HOUSE BILL 2711

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Kagi, Kessler, Moeller, Rodne, Lovick, McDonald, Morrell, Green, McCoy and Clibborn)

READ FIRST TIME 02/02/06.

1 AN ACT Relating to visitation rights for grandparents; amending RCW
2 26.09.004 and 26.10.160; adding a new section to chapter 26.09 RCW;
3 creating a new section; and repealing RCW 26.09.240.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that the recent
6 Washington State Supreme Court decision in *In re Parentage of C.A.M.A.*
7 found Washington's grandparent visitation statutes to be
8 unconstitutional. It is the intent of the legislature to bring the law
9 in line with the court's holding in that case, in order to ensure that
10 grandparents have a viable means of petitioning the court for
11 visitation with their grandchildren.

12 **Sec. 2.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read
13 as follows:

14 The definitions in this section apply throughout this chapter.

15 (1) "Temporary parenting plan" means a plan for parenting of the
16 child pending final resolution of any action for dissolution of
17 marriage, declaration of invalidity, or legal separation which is
18 incorporated in a temporary order.

1 (2) "Permanent parenting plan" means a plan for parenting the
2 child, including allocation of parenting functions, which plan is
3 incorporated in any final decree or decree of modification in an action
4 for dissolution of marriage, declaration of invalidity, or legal
5 separation.

6 (3) "Parenting functions" means those aspects of the parent-child
7 relationship in which the parent makes decisions and performs functions
8 necessary for the care and growth of the child. Parenting functions
9 include:

10 (a) Maintaining a loving, stable, consistent, and nurturing
11 relationship with the child;

12 (b) Attending to the daily needs of the child, such as feeding,
13 clothing, physical care and grooming, supervision, health care, and day
14 care, and engaging in other activities which are appropriate to the
15 developmental level of the child and that are within the social and
16 economic circumstances of the particular family;

17 (c) Attending to adequate education for the child, including
18 remedial or other education essential to the best interests of the
19 child;

20 (d) Assisting the child in developing and maintaining appropriate
21 interpersonal relationships;

22 (e) Exercising appropriate judgment regarding the child's welfare,
23 consistent with the child's developmental level and the family's social
24 and economic circumstances; and

25 (f) Providing for the financial support of the child.

26 (4) "Grandparent" means a person who is the parent of a child's
27 father or mother, who is related to the child by blood, in whole or by
28 half, adoption, or marriage.

29 NEW SECTION. Sec. 3. A new section is added to chapter 26.09 RCW
30 to read as follows:

31 (1)(a) A grandparent may petition the court for visitation with a
32 child one time regardless of whether there is a pending dissolution,
33 legal separation, or modification of a parenting plan proceeding.

34 (b) A grandparent may file a subsequent petition if the grandparent
35 can prove that a substantial change in circumstances has occurred. If
36 the court finds good cause to allow the grandparent to file more than
37 one time, the court shall allow the filing and consider the petition.

1 A death or incapacitation of a parent that occurs subsequent to any
2 petition is a substantial change in circumstances, which would permit
3 a grandparent to file an additional petition requesting visitation with
4 the child.

5 (2) In order to proceed, the court must find that the grandparent
6 has met its burden of proving standing. In order to have standing, a
7 grandparent must prove the following:

8 (a) The applicant is a grandparent who has a significant
9 relationship with the child. To satisfy this criterion, the applicant
10 must show that:

11 (i) His or her relationship with the child has been significant in
12 nature for a substantial period of time;

13 (ii) A parent or custodian of the child consented to or allowed the
14 formation and establishment of the relationship, or the relationship
15 was formed as a result of the unavailability or inability of any legal
16 parent to perform caretaking functions; and

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

18 (b) A parent or custodian has substantially interfered with the
19 grandparent's relationship with the child, and the grandparent has
20 unsuccessfully tried to resolve any disagreement with the parent or
21 custodian before going to court; and

22 (c) The child would likely suffer harm or the substantial risk of
23 harm if contact between the grandparent and the child is not awarded.

24 (3) If the court finds that all of the conditions in subsection (2)
25 of this section are satisfied, the burden shifts to the parent or
26 custodian to prove why their decision to deny visitation is reasonable
27 and in the best interests of the child.

28 (4) In considering a petition by a grandparent for visitation, a
29 court must give some deference to the determinations of a fit parent,
30 including determinations regarding visitation between a grandparent and
31 his or her child. The court shall order visitation if it finds by
32 clear and convincing evidence that the child would suffer harm or the
33 substantial risk of harm if contact between the grandparent and the
34 child is not awarded and that denial of contact is unreasonable and not
35 in the child's best interest. In making this determination, the court
36 shall consider the following, nonexclusive factors:

37 (a) The love, affection, and strength of the relationship between
38 the child and the grandparent;

1 (b) The length and quality of the prior relationship between the
2 child and the grandparent, including the role performed by the
3 grandparent and the emotional ties that existed between the child and
4 the grandparent;

5 (c) The relationship between each of the child's parents or the
6 person with whom the child is residing and the petitioner;

7 (d) The nature and reason for either parent's objection to granting
8 the petitioner visitation;

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

12 (f) The residential time-sharing arrangements between the parents;

13 (g) The good faith of the petitioner;

14 (h) Any history of physical, emotional, or sexual abuse or neglect
15 of the child by the grandparent;

16 (i) The child's reasonable preference, if the court considers the
17 child to be of sufficient age to express a preference; and

18 (j) Any other factor relevant to the child's best interest.

19 (5) Any contact ordered by the court shall be subject to the
20 limitations set forth in RCW 26.10.160. Visitation shall be limited if
21 a parent or custodian presents evidence that could allow a reasonable
22 fact-finder to conclude that the grandparent or grandparents seeking
23 visitation have engaged in any of the conduct outlined in RCW
24 26.10.160(2)(a).

25 **Sec. 4.** RCW 26.10.160 and 2004 c 38 s 13 are each amended to read
26 as follows:

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

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

1 fear of such harm; or (iv) the parent has been convicted as an adult of
2 a sex offense under:

3 (A) RCW 9A.44.076 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 (B) RCW 9A.44.079 if, because of the difference in age between the
7 offender and the victim, no rebuttable presumption exists under (d) of
8 this subsection;

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

12 (D) RCW 9A.44.089;

13 (E) RCW 9A.44.093;

14 (F) RCW 9A.44.096;

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

18 (H) Chapter 9.68A RCW;

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

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

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

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

34 (A) RCW 9A.44.076 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 (B) RCW 9A.44.079 if, because of the difference in age between the

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

12 (H) Chapter 9.68A RCW;

13 (I) Any predecessor or antecedent statute for the offenses listed
14 in (b)(iii)(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 (b)(iii)(A) through (H) of
17 this subsection.

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

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

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

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

37 (ii) RCW 9A.44.073;

1 (iii) RCW 9A.44.076, provided that the person convicted was at
2 least eight years older than the victim;
3 (iv) RCW 9A.44.079, provided that the person convicted was at least
4 eight years older than the victim;
5 (v) RCW 9A.44.083;
6 (vi) RCW 9A.44.086, provided that the person convicted was at least
7 eight years older than the victim;
8 (vii) RCW 9A.44.100;
9 (viii) Any predecessor or antecedent statute for the offenses
10 listed in (d)(i) through (vii) of this subsection;
11 (ix) Any statute from any other jurisdiction that describes an
12 offense analogous to the offenses listed in (d)(i) through (vii) of
13 this subsection.
14 (e) There is a rebuttable presumption that a parent who resides
15 with a person who, as an adult, has been convicted, or as a juvenile
16 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)
17 of this subsection places a child at risk of abuse or harm when that
18 parent exercises visitation in the presence of the convicted or
19 adjudicated person. Unless the parent rebuts the presumption, the
20 court shall restrain the parent from contact with the parent's child
21 except for contact that occurs outside of the convicted or adjudicated
22 person's presence:
23 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
24 was at least five years older than the other person;
25 (ii) RCW 9A.44.073;
26 (iii) RCW 9A.44.076, provided that the person convicted was at
27 least eight years older than the victim;
28 (iv) RCW 9A.44.079, provided that the person convicted was at least
29 eight years older than the victim;
30 (v) RCW 9A.44.083;
31 (vi) RCW 9A.44.086, provided that the person convicted was at least
32 eight years older than the victim;
33 (vii) RCW 9A.44.100;
34 (viii) Any predecessor or antecedent statute for the offenses
35 listed in (e)(i) through (vii) of this subsection;
36 (ix) Any statute from any other jurisdiction that describes an
37 offense analogous to the offenses listed in (e)(i) through (vii) of
38 this subsection.

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

3 (i) If the child was not the victim of the sex offense committed by
4 the parent requesting visitation, (A) contact between the child and the
5 offending parent is appropriate and poses minimal risk to the child,
6 and (B) the offending parent has successfully engaged in treatment for
7 sex offenders or is engaged in and making progress in such treatment,
8 if any was ordered by a court, and the treatment provider believes such
9 contact is appropriate and poses minimal risk to the child; or

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

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

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

32 (ii) If the child was the victim of the sex offense committed by
33 the person who is residing with the parent requesting visitation, (A)
34 contact between the child and the parent in the presence of the
35 convicted or adjudicated person is appropriate and poses minimal risk
36 to the child, (B) if the child is in or has been in therapy for victims
37 of sexual abuse, the child's counselor believes such contact between
38 the child and the parent residing with the convicted or adjudicated

1 person in the presence of the convicted or adjudicated person is in the
2 child's best interest, and (C) the convicted or adjudicated person has
3 successfully engaged in treatment for sex offenders or is engaged in
4 and making progress in such treatment, if any was ordered by a court,
5 and the treatment provider believes contact between the parent and
6 child in the presence of the convicted or adjudicated person is
7 appropriate and poses minimal risk to the child.

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

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

34 (j) If the court finds that the parent has met the burden of
35 rebutting the presumption under (g) of this subsection, the court may
36 allow a parent residing with a person who, as an adult, has been
37 convicted of a sex offense listed in (e)(i) through (ix) of this
38 subsection to have visitation with the child in the presence of the

1 convicted person supervised by a neutral and independent adult and
2 pursuant to an adequate plan for supervision of such visitation. The
3 court shall not approve of a supervisor for contact between the child
4 and the parent unless the court finds, based on the evidence, that the
5 supervisor is willing and capable of protecting the child from harm.
6 The court shall revoke court approval of the supervisor upon finding,
7 based on the evidence, that the supervisor has failed to protect the
8 child or is no longer willing or capable of protecting the child.

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

33 (l) A court may order unsupervised contact between the parent and
34 a child which may occur in the presence of a juvenile adjudicated of a
35 sex offense listed in (e)(i) through (ix) of this subsection who
36 resides with the parent after the presumption under (e) of this
37 subsection has been rebutted and supervised visitation has occurred for
38 at least two years during which time the adjudicated juvenile has had

1 no further arrests, adjudications, or convictions of sex offenses
2 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter
3 9.68A RCW, and (i) the court finds that unsupervised contact between
4 the child and the parent that may occur in the presence of the
5 adjudicated juvenile is appropriate and poses minimal risk to the
6 child, after consideration of the testimony of a state-certified
7 therapist, mental health counselor, or social worker with expertise in
8 treatment of child sexual abuse victims who has supervised at least one
9 period of visitation between the parent and the child in the presence
10 of the adjudicated juvenile, and after consideration of evidence of the
11 adjudicated juvenile's compliance with community supervision or parole
12 requirements, if any. If the adjudicated juvenile was not ordered by
13 a court to participate in treatment for sex offenders, then the
14 adjudicated juvenile shall obtain a psychosexual evaluation conducted
15 by a certified sex offender treatment provider or a certified affiliate
16 sex offender treatment provider indicating that the adjudicated
17 juvenile has the lowest likelihood of risk to reoffend before the court
18 grants unsupervised contact between the parent and a child which may
19 occur in the presence of the adjudicated juvenile who is residing with
20 the parent.

21 (m)(i) The limitations imposed by the court under (a) or (b) of
22 this subsection shall be reasonably calculated to protect the child
23 from the physical, sexual, or emotional abuse or harm that could result
24 if the child has contact with the parent requesting visitation. If the
25 court expressly finds based on the evidence that limitations on
26 visitation with the child will not adequately protect the child from
27 the harm or abuse that could result if the child has contact with the
28 parent requesting visitation, the court shall restrain the person
29 seeking visitation from all contact with the child.

30 (ii) The court shall not enter an order under (a) of this
31 subsection allowing a parent to have contact with a child if the parent
32 has been found by clear and convincing evidence in a civil action or by
33 a preponderance of the evidence in a dependency action to have sexually
34 abused the child, except upon recommendation by an evaluator or
35 therapist for the child that the child is ready for contact with the
36 parent and will not be harmed by the contact. The court shall not
37 enter an order allowing a parent to have contact with the child in the
38 offender's presence if the parent resides with a person who has been

1 found by clear and convincing evidence in a civil action or by a
2 preponderance of the evidence in a dependency action to have sexually
3 abused a child, unless the court finds that the parent accepts that the
4 person engaged in the harmful conduct and the parent is willing to and
5 capable of protecting the child from harm from the person.

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

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

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

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

1 (~~(5)~~) (4) For the purposes of this section, a parent's child
2 means that parent's natural child, adopted child, or stepchild.

3 NEW SECTION. **Sec. 5.** RCW 26.09.240 (Visitation rights--Person
4 other than parent--Grandparents' visitation rights) and 1996 c 177 s 1,
5 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st
6 ex.s. c 157 s 24 are each repealed.

7 NEW SECTION. **Sec. 6.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

--- END ---