
SENATE BILL 5071

State of Washington 60th Legislature 2007 Regular Session

By Senators Fairley, Kohl-Welles, Shin and Rasmussen

Read first time 01/10/2007. Referred to Committee on Human Services & Corrections.

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 reaffirmed that Washington's grandparent visitation statutes are
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, then the court shall consider a fit
26 parent's reasons for denying visitation, determining whether they are
27 reasonable and in the best interest of the child in light of the
28 deference given to a fit parent's decisions.

29 (4) The court shall order visitation if it finds by clear and
30 convincing evidence that the child would suffer harm or the substantial
31 risk of harm if contact between the grandparent and the child is not
32 awarded and that denial of contact is unreasonable and not in the
33 child's best interest. In making this determination, the court shall
34 consider the following, nonexclusive factors:

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

37 (b) The length and quality of the prior relationship between the

1 child and the grandparent, including the role performed by the
2 grandparent and the emotional ties that existed between the child and
3 the grandparent;

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

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

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

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

12 (g) The good faith of the petitioner;

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

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

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

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

24 **Sec. 4.** RCW 26.10.160 and 2004 c 38 s 13 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;

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

3 (v) RCW 9A.44.083;

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

6 (vii) RCW 9A.44.100;

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

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

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

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

23 (ii) RCW 9A.44.073;

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

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

28 (v) RCW 9A.44.083;

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

31 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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

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

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

18 (i) 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 has been adjudicated as a
21 juvenile 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 person adjudicated as a juvenile, supervised by a neutral and
24 independent adult and pursuant to an adequate plan for supervision of
25 such visitation. The court shall not approve of a supervisor for
26 contact between the child and the parent unless the court finds, based
27 on the evidence, that the supervisor is willing and capable of
28 protecting the child from harm. The court shall revoke court approval
29 of the supervisor upon finding, based on the evidence, that the
30 supervisor has failed to protect the child or is no longer willing or
31 capable of protecting the child.

32 (j) If the court finds that the parent has met the burden of
33 rebutting the presumption under (g) of this subsection, the court may
34 allow a parent residing with a person who, as an adult, has been
35 convicted of a sex offense listed in (e)(i) through (ix) of this
36 subsection to have visitation with the child in the presence of the
37 convicted person supervised by a neutral and independent adult and
38 pursuant to an adequate plan for supervision of such visitation. The

1 court shall not approve of a supervisor for contact between the child
2 and the parent unless the court finds, based on the evidence, that the
3 supervisor is willing and capable of protecting the child from harm.
4 The court shall revoke court approval of the supervisor upon finding,
5 based on the evidence, that the supervisor has failed to protect the
6 child or is no longer willing or capable of protecting the child.

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

31 (l) A court may order unsupervised contact between the parent and
32 a child which may occur in the presence of a juvenile adjudicated of a
33 sex offense listed in (e)(i) through (ix) of this subsection who
34 resides with the parent after the presumption under (e) of this
35 subsection has been rebutted and supervised visitation has occurred for
36 at least two years during which time the adjudicated juvenile has had
37 no further arrests, adjudications, or convictions of sex offenses
38 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter

1 9.68A RCW, and (i) the court finds that unsupervised contact between
2 the child and the parent that may occur in the presence of the
3 adjudicated juvenile is appropriate and poses minimal risk to the
4 child, after consideration of the testimony of a state-certified
5 therapist, mental health counselor, or social worker with expertise in
6 treatment of child sexual abuse victims who has supervised at least one
7 period of visitation between the parent and the child in the presence
8 of the adjudicated juvenile, and after consideration of evidence of the
9 adjudicated juvenile's compliance with community supervision or parole
10 requirements, if any. If the adjudicated juvenile was not ordered by
11 a court to participate in treatment for sex offenders, then the
12 adjudicated juvenile shall obtain a psychosexual evaluation conducted
13 by a certified sex offender treatment provider or a certified affiliate
14 sex offender treatment provider indicating that the adjudicated
15 juvenile has the lowest likelihood of risk to reoffend before the court
16 grants unsupervised contact between the parent and a child which may
17 occur in the presence of the adjudicated juvenile who is residing with
18 the parent.

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

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

1 abused a child, unless the court finds that the parent accepts that the
2 person engaged in the harmful conduct and the parent is willing to and
3 capable of protecting the child from harm from the person.

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

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

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

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

37 ~~((5))~~ (4) For the purposes of this section, a parent's child
38 means that parent's natural child, adopted child, or stepchild.

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

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

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