
HOUSE BILL 2091

State of Washington 61st Legislature 2009 Regular Session

By Representatives Short and Warnick

Read first time 02/10/09. Referred to Committee on Judiciary.

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
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 2008 c 6 s 1003 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 or domestic partnership, declaration of invalidity, or legal
18 separation which is 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 or domestic partnership, declaration of
5 invalidity, or legal 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, a lawful marriage recognized in this state, or adoption by two
29 persons in a lawful marriage recognized in this state.

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

32 (1) A grandparent may petition the court for visitation with a
33 child one time regardless of whether there is a pending dissolution,
34 legal separation, or modification of a parenting plan proceeding if the
35 grandparent can prove that a substantial change in circumstances has
36 occurred involving one of the parents. A death, incapacitation, or

1 remarriage of or relocation of the child by a parent is a substantial
2 change in circumstances, which would permit a grandparent to file a
3 petition requesting visitation with the child.

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

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

10 (i) The grandparent's relationship with the child has been
11 significant in nature for a substantial period of time and either the
12 grandparent performed parenting functions as defined in RCW 26.09.004
13 for a substantial period of time in the child's life or the grandparent
14 served as the primary residential care provider to the child for a
15 substantial period of time in the child's life;

16 (ii) A parent or custodian of the child consented to or allowed the
17 formation and establishment of the relationship for a substantial
18 period of time in the child's life, or the relationship was formed as
19 a result of the unavailability or inability of any legal parent to
20 perform caretaking functions for a substantial period of time in the
21 child's life; and

22 (iii) Continuing the grandparent's relationship with the child is
23 in the best interest of the child;

24 (b) A parent or custodian has substantially interfered with the
25 grandparent's relationship with the child, and the grandparent has
26 unsuccessfully tried to resolve any disagreement with the parent or
27 custodian before going to court; and

28 (c) The child would more likely than not suffer harm if contact
29 between the grandparent and the child is not awarded.

30 (3) If the court finds that all of the conditions in subsection (2)
31 of this section are satisfied, then the court shall consider a fit
32 parent's reasons for denying visitation, determining whether they are
33 reasonable and in the best interest of the child in light of the
34 deference given to a fit parent's decisions.

35 (4) The court shall order visitation if it finds by clear and
36 convincing evidence that the child would more likely than not suffer
37 harm if contact between the grandparent and the child is not awarded

1 and that denial of contact is unreasonable and not in the child's best
2 interest. In making this determination, the court shall consider the
3 following, nonexclusive factors:

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

6 (b) The length and quality of the prior relationship between the
7 child and the grandparent, including the role performed by the
8 grandparent and the emotional ties that existed between the child and
9 the grandparent;

10 (c) The relationship between each of the child's parents or the
11 person with whom the child is residing and the grandparent;

12 (d) The nature and reason for either parent's objection to granting
13 the grandparent visitation;

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

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

18 (g) The good faith of the grandparent;

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

21 (i) The child's reasonable preference, if the court considers the
22 child to be of sufficient age or maturity to express a preference; and

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

24 (5) Any contact ordered by the court shall be subject to the
25 limitations set forth in RCW 26.10.160. Visitation shall be limited if
26 a parent or custodian presents evidence that could allow a reasonable
27 fact-finder to conclude that the grandparent or grandparents seeking
28 visitation have engaged in any of the conduct outlined in RCW
29 26.10.160(2)(a).

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

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

35 (2)(a) Visitation with the child shall be limited if it is found
36 that the parent seeking visitation has engaged in any of the following
37 conduct: (i) Willful abandonment that continues for an extended period

1 of time or substantial refusal to perform parenting functions; (ii)
2 physical, sexual, or a pattern of emotional abuse of a child; (iii) a
3 history of acts of domestic violence as defined in RCW 26.50.010(1) or
4 an assault or sexual assault which causes grievous bodily harm or the
5 fear of such harm; or (iv) the parent has been convicted as an adult of
6 a sex offense under:

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

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

16 (D) RCW 9A.44.089;

17 (E) RCW 9A.44.093;

18 (F) RCW 9A.44.096;

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

22 (H) Chapter 9.68A RCW;

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

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

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

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

16 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

4 (f) The presumption established in (d) 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 parent requesting visitation, (A) contact between the child and the
8 offending parent is appropriate and poses minimal risk to the child,
9 and (B) the offending parent has successfully engaged in treatment for
10 sex offenders or is engaged in and making progress in such treatment,
11 if any was ordered by a court, and the treatment provider believes such
12 contact is appropriate and poses minimal risk to the child; or

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

23 (g) The presumption established in (e) 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 person who is residing with the parent requesting visitation, (A)
27 contact between the child and the parent residing with the convicted or
28 adjudicated person is appropriate and that parent is able to protect
29 the child in the presence of the convicted or adjudicated person, and
30 (B) the convicted or adjudicated person has successfully engaged in
31 treatment for sex offenders or is engaged in and making progress in
32 such treatment, if any was ordered by a court, and the treatment
33 provider believes such contact is appropriate and poses minimal risk to
34 the child; or

35 (ii) If the child was the victim of the sex offense committed by
36 the person who is residing with the parent requesting visitation, (A)
37 contact between the child and the parent in the presence of the
38 convicted or adjudicated person is appropriate and poses minimal risk

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

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

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

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

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

36 (l) A court may order unsupervised contact between the parent and
37 a child which may occur in the presence of a juvenile adjudicated of a
38 sex offense listed in (e)(i) through (ix) of this subsection who

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

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

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

1 parent and will not be harmed by the contact. The court shall not
2 enter an order allowing a parent to have contact with the child in the
3 offender's presence if the parent resides with a person who has been
4 found by clear and convincing evidence in a civil action or by a
5 preponderance of the evidence in a dependency action to have sexually
6 abused a child, unless the court finds that the parent accepts that the
7 person engaged in the harmful conduct and the parent is willing to and
8 capable of protecting the child from harm from the person.

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

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

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

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

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

7 NEW SECTION. **Sec. 5.** RCW 26.09.240 (Visitation rights--Person
8 other than parent--Grandparents' visitation rights) and 1996 c 177 s 1,
9 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st
10 ex.s. c 157 s 24 are each repealed.

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

--- END ---