
HOUSE BILL 2056

State of Washington 61st Legislature 2009 Regular Session

By Representatives Chase and Condotta

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

1 AN ACT Relating to visitation rights for grandparents; amending RCW
2 26.09.240 and 26.10.160; and adding new sections to chapter 26.10 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.10 RCW
5 to read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Applicant" means a grandparent who initiates a proceeding
9 under this statute.

10 (2) "Contact" includes all court-ordered arrangements by which a
11 grandparent is authorized to interact with a child other than custody,
12 conservatorship, guardianship, or joint or shared custody.

13 (3) "Grandparent" means a person who is the parent of a child's
14 mother or father, and who is related to the child by blood, in whole or
15 in half, adoption, or marriage.

16 (4) "Harm" means that the denial of contact results in substantial
17 loss and detriment to the child's physical, psychological, or emotional
18 well-being. The likelihood of harm must be beyond the normal short-
19 term distress a child suffers due to a change in circumstances.

1 (5) "Parent-like relationship" means a very significant
2 relationship, including significant financial support provided by the
3 grandparent for the child's basic needs during the relationship,
4 between a grandparent and a child in which the grandparent undertook
5 responsibilities and tasks commonly performed by parents and commonly
6 recognized as actions by someone in a parent-like relationship.

7 (6) "Substantially interfered" means to have unreasonably and
8 greatly diminished the amount and quality of contact a grandparent has
9 had with the child. A reasonable reduction in the frequency or length
10 of contact previously enjoyed with the child is not a substantial
11 interference.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.10 RCW
13 to read as follows:

14 (1) A grandparent may initiate a court proceeding one time for
15 contact with a child by filing a verified application to obtain court-
16 ordered contact if the applicant is an individual with a parent-like
17 relationship with the child. To satisfy this criterion and establish
18 standing, the applicant must prove that:

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

21 (b) A parent or custodian of the child consented to or allowed the
22 formation and establishment of the relationship or the relationship was
23 formed as a result of the unavailability of any legal parent or
24 inability of any legal parent to perform caretaking functions;

25 (c) His or her relationship with the child is beneficial to the
26 child; and

27 (d) A parent or custodian has substantially interfered with the
28 applicant's relationship with the child and the applicant has
29 unsuccessfully attempted to resolve any disagreement with the parent or
30 custodian before going to court.

31 (2) Upon a finding that the applicant has standing, the applicant
32 shall prove that the child would very likely suffer substantial harm if
33 the application for contact was not approved. If the applicant
34 presents evidence that could allow a reasonable fact finder to conclude
35 that the child would very likely suffer substantial harm, the burden
36 shifts to the parent or custodian to present evidence why the decision
37 to refuse contact is reasonable and in the best interests of the child.

1 (3) The court shall order contact if it finds that the applicant
2 has satisfied the burden of showing by clear and convincing evidence
3 that:

4 (a) The child would very likely suffer substantial harm if contact
5 is not awarded; and

6 (b) The parent's or custodian's denial of contact was unreasonable
7 and not in the child's best interests.

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

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

15 ~~((1) A person other than a parent))~~ A grandparent may petition the
16 court for visitation ~~((with a child at any time or may intervene in a
17 pending dissolution, legal separation, or modification of parenting
18 plan proceeding. A person other than a parent may not petition for
19 visitation under this section unless the child's parent or parents have
20 commenced an action under this chapter.~~

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

23 ~~(3) A petition for visitation or a motion to intervene pursuant to
24 this section shall be dismissed unless the petitioner or intervenor can
25 demonstrate by clear and convincing evidence that a significant
26 relationship exists with the child with whom visitation is sought. If
27 the petition or motion is dismissed for failure to establish the
28 existence of a significant relationship, the petitioner or intervenor
29 shall be ordered to pay reasonable attorney's fees and costs to the
30 parent, parents, other custodian, or representative of the child who
31 responds to this petition or motion.~~

32 ~~(4) The court may order visitation between the petitioner or
33 intervenor and the child between whom a significant relationship exists
34 upon a finding supported by the evidence that the visitation is in the
35 child's best interests.~~

36 ~~(5)(a) Visitation with a grandparent shall be presumed to be in the
37 child's best interests when a significant relationship has been shown~~

1 to exist. This presumption may be rebutted by a preponderance of
2 evidence showing that visitation would endanger the child's physical,
3 mental, or emotional health.

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

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

11 (a) The strength of the relationship between the child and the
12 petitioner;

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

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

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

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

21 (f) The good faith of the petitioner;

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

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

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

29 (8) The court may order an investigation and report concerning the
30 proposed visitation or may appoint a guardian ad litem as provided in
31 RCW 26.09.220.

32 (9) Visitation granted pursuant to this section shall be
33 incorporated into the parenting plan for the child.

34 (10) The court may modify or terminate visitation rights granted
35 pursuant to this section in any subsequent modification action upon a
36 showing that the visitation is no longer in the best interest of the
37 child)) only during a pending dissolution or legal separation, and
38 prior to the entry of the order establishing the initial permanent

1 parenting plan under this chapter. The requirements of section 2 of
2 this act must be met before a court can order visitation with a
3 grandparent under this chapter.

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

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

9 (2)(a) Visitation with the child shall be limited if it is found
10 that the parent seeking visitation has engaged in any of the following
11 conduct: (i) Willful abandonment that continues for an extended period
12 of time or substantial refusal to perform parenting functions; (ii)
13 physical, sexual, or a pattern of emotional abuse of a child; (iii) a
14 history of acts of domestic violence as defined in RCW 26.50.010(1) or
15 an assault or sexual assault which causes grievous bodily harm or the
16 fear of such harm; or (iv) the parent has been convicted as an adult of
17 a sex offense under:

18 (A) RCW 9A.44.076 if, because of the difference in age between the
19 offender and the victim, no rebuttable presumption exists under (d) of
20 this subsection;

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

24 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

28 (E) RCW 9A.44.093;

29 (F) RCW 9A.44.096;

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

33 (H) Chapter 9.68A RCW;

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

36 (J) Any statute from any other jurisdiction that describes an

1 offense analogous to the offenses listed in (a)(iv)(A) through (H) of
2 this subsection.

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

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

13 (A) RCW 9A.44.076 if, because of the difference in age between the
14 offender and the victim, no rebuttable presumption exists under (e) of
15 this subsection;

16 (B) RCW 9A.44.079 if, because of the difference in age between the
17 offender and the victim, no rebuttable presumption exists under (e) of
18 this subsection;

19 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

23 (E) RCW 9A.44.093;

24 (F) RCW 9A.44.096;

25 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
26 between the offender and the victim, no rebuttable presumption exists
27 under (e) of this subsection;

28 (H) Chapter 9.68A RCW;

29 (I) Any predecessor or antecedent statute for the offenses listed
30 in (b)(iii)(A) through (H) of this subsection;

31 (J) Any statute from any other jurisdiction that describes an
32 offense analogous to the offenses listed in (b)(iii)(A) through (H) of
33 this subsection.

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

36 (c) If a parent has been found to be a sexual predator under
37 chapter 71.09 RCW or under an analogous statute of any other
38 jurisdiction, the court shall restrain the parent from contact with a

1 child that would otherwise be allowed under this chapter. If a parent
2 resides with an adult or a juvenile who has been found to be a sexual
3 predator under chapter 71.09 RCW or under an analogous statute of any
4 other jurisdiction, the court shall restrain the parent from contact
5 with the parent's child except contact that occurs outside that
6 person's presence.

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

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

15 (ii) RCW 9A.44.073;

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

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

20 (v) RCW 9A.44.083;

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

23 (vii) RCW 9A.44.100;

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

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

29 (e) There is a rebuttable presumption that a parent who resides
30 with a person who, as an adult, has been convicted, or as a juvenile
31 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)
32 of this subsection places a child at risk of abuse or harm when that
33 parent exercises visitation in the presence of the convicted or
34 adjudicated person. Unless the parent rebuts the presumption, the
35 court shall restrain the parent from contact with the parent's child
36 except for contact that occurs outside of the convicted or adjudicated
37 person's presence:

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 (e)(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 (e)(i) through (vii) of
16 this subsection.
17 (f) The presumption established in (d) of this subsection may be
18 rebutted only after a written finding that:
19 (i) If the child was not the victim of the sex offense committed by
20 the parent requesting visitation, (A) contact between the child and the
21 offending parent is appropriate and poses minimal risk to the child,
22 and (B) the offending parent has successfully engaged in treatment for
23 sex offenders or is engaged in and making progress in such treatment,
24 if any was ordered by a court, and the treatment provider believes such
25 contact is appropriate and poses minimal risk to the child; or
26 (ii) If the child was the victim of the sex offense committed by
27 the parent requesting visitation, (A) contact between the child and the
28 offending parent is appropriate and poses minimal risk to the child,
29 (B) if the child is in or has been in therapy for victims of sexual
30 abuse, the child's counselor believes such contact between the child
31 and the offending parent is in the child's best interest, and (C) the
32 offending parent has successfully engaged in treatment for sex
33 offenders or is engaged in and making progress in such treatment, if
34 any was ordered by a court, and the treatment provider believes such
35 contact is appropriate and poses minimal risk to the child.
36 (g) The presumption established in (e) of this subsection may be
37 rebutted only after a written finding that:

1 (i) If the child was not the victim of the sex offense committed by
2 the person who is residing with the parent requesting visitation, (A)
3 contact between the child and the parent residing with the convicted or
4 adjudicated person is appropriate and that parent is able to protect
5 the child in the presence of the convicted or adjudicated person, and
6 (B) the convicted or adjudicated person has successfully engaged in
7 treatment for sex offenders or is engaged in and making progress in
8 such treatment, if any was ordered by a court, and the treatment
9 provider believes such contact is appropriate and poses minimal risk to
10 the child; or

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

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

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

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

26 (k) A court shall not order unsupervised contact between the
27 offending parent and a child of the offending parent who was sexually
28 abused by that parent. A court may order unsupervised contact between
29 the offending parent and a child who was not sexually abused by the
30 parent after the presumption under (d) of this subsection has been
31 rebutted and supervised visitation has occurred for at least two years
32 with no further arrests or convictions of sex offenses involving
33 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW
34 and (i) the sex offense of the offending parent was not committed
35 against a child of the offending parent, and (ii) the court finds that
36 unsupervised contact between the child and the offending parent is
37 appropriate and poses minimal risk to the child, after consideration of
38 the testimony of a state-certified therapist, mental health counselor,

1 or social worker with expertise in treating child sexual abuse victims
2 who has supervised at least one period of visitation between the parent
3 and the child, and after consideration of evidence of the offending
4 parent's compliance with community supervision requirements, if any.
5 If the offending parent was not ordered by a court to participate in
6 treatment for sex offenders, then the parent shall obtain a
7 psychosexual evaluation conducted by a certified sex offender treatment
8 provider or a certified affiliate sex offender treatment provider
9 indicating that the offender has the lowest likelihood of risk to
10 reoffend before the court grants unsupervised contact between the
11 parent and a child.

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

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

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

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

34 (n) If the court expressly finds based on the evidence that
35 contact between the parent and the child will not cause physical,
36 sexual, or emotional abuse or harm to the child and that the
37 probability that the parent's or other person's harmful or abusive
38 conduct will recur is so remote that it would not be in the child's

1 best interests to apply the limitations of (a), (b), and (m)(i) and
2 (iii) of this subsection, or if the court expressly finds that the
3 parent's conduct did not have an impact on the child, then the court
4 need not apply the limitations of (a), (b), and (m)(i) and (iii) of
5 this subsection. The weight given to the existence of a protection
6 order issued under chapter 26.50 RCW as to domestic violence is within
7 the discretion of the court. This subsection shall not apply when (c),
8 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this
9 subsection apply.

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

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

19 ~~((5))~~ (4) For the purposes of this section, a parent's child
20 means that parent's natural child, adopted child, or stepchild.

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