S-0645.2			
0 0070.4			

SENATE BILL 5643

State of Washington 61st Legislature 2009 Regular Session

By Senators Franklin, Carrell, and Marr

10

11

12 13

1415

Read first time 01/28/09. Referred to Committee on Human Services & Corrections.

- 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 <u>NEW SECTION.</u> **Sec. 1.** A new section is added to chapter 26.10 RCW to read as follows:
- The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.
- 8 (1) "Applicant" means a grandparent who initiates a proceeding under this statute.
 - (2) "Contact" includes all court-ordered arrangements by which a grandparent is authorized to interact with a child other than custody, conservatorship, guardianship, or joint or shared custody.
 - (3) "Grandparent" means a person who is the parent of a child's mother or father, and who is related to the child by blood, in whole or 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.

p. 1 SB 5643

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

- (6) "Substantially interfered" means to have unreasonably and greatly diminished the amount and quality of contact a grandparent has had with the child. A reasonable reduction in the frequency or length of contact previously enjoyed with the child is not a substantial interference.
- NEW SECTION. Sec. 2. A new section is added to chapter 26.10 RCW to read as follows:
 - (1) A grandparent may initiate a court proceeding one time for contact with a child by filing a verified application to obtain court-ordered contact if the applicant is an individual with a parent-like relationship with the child. To satisfy this criterion and establish standing, the applicant must prove that:
 - (a) His or her relationship with the child has been parent-like in nature for a substantial period of time;
 - (b) A parent or custodian of the child consented to or allowed the formation and establishment of the relationship or the relationship was formed as a result of the unavailability of any legal parent or inability of any legal parent to perform caretaking functions;
 - (c) His or her relationship with the child is beneficial to the ${\it child}$; and
 - (d) A parent or custodian has substantially interfered with the applicant's relationship with the child and the applicant has unsuccessfully attempted to resolve any disagreement with the parent or custodian before going to court.
 - (2) Upon a finding that the applicant has standing, the applicant shall prove that the child would very likely suffer substantial harm if the application for contact was not approved. If the applicant presents evidence that could allow a reasonable fact finder to conclude that the child would very likely suffer substantial harm, the burden shifts to the parent or custodian to present evidence why the decision 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:

- (a) The child would very likely suffer substantial harm if contact is not awarded; and
- (b) The parent's or custodian's denial of contact was unreasonable and not in the child's best interests.
- (4) If the court dismisses the proceeding for lack of standing, the court shall award reasonable and necessary costs and fees to the prevailing party unless there is a compelling reason to do otherwise. In all other cases, the court may award such costs and fees as it deems appropriate.
- **Sec. 3.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read 14 as follows:
 - (((1) A person other than a parent)) A grandparent may petition the court for visitation ((with a child at any time or may intervene in a pending dissolution, legal separation, or modification of parenting plan proceeding. A person other than a parent may not petition for visitation under this section unless the child's parent or parents have commenced an action under this chapter.
 - (2) A petition for visitation with a child by a person other than a parent must be filed in the county in which the child resides.
 - (3) A petition for visitation or a motion to intervene pursuant to this section shall be dismissed unless the petitioner or intervenor can demonstrate by clear and convincing evidence that a significant relationship exists with the child with whom visitation is sought. If the petition or motion is dismissed for failure to establish the existence of a significant relationship, the petitioner or intervenor shall be ordered to pay reasonable attorney's fees and costs to the parent, parents, other custodian, or representative of the child who responds to this petition or motion.
 - (4) The court may order visitation between the petitioner or intervenor and the child between whom a significant relationship exists upon a finding supported by the evidence that the visitation is in the child's best interests.
 - (5)(a) Visitation with a grandparent shall be presumed to be in the child's best interests when a significant relationship has been shown

p. 3 SB 5643

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

- (b) If the court finds that reasonable visitation by a grandparent would be in the child's best interest except for hostilities that exist between the grandparent and one or both of the parents or person with whom the child lives, the court may set the matter for mediation under RCW 26.09.015.
- (6) The court may consider the following factors when making a determination of the child's best interests:
- (a) The strength of the relationship between the child and the petitioner;
- (b) The relationship between each of the child's parents or the person with whom the child is residing and the petitioner;
- (c) The nature and reason for either parent's objection to granting the petitioner visitation;
- (d) The effect that granting visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
 - (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
 - (h) Any other factor relevant to the child's best interest.
 - (7) The restrictions of RCW 26.09.191 that apply to parents shall be applied to a petitioner or intervenor who is not a parent. The nature and extent of visitation, subject to these restrictions, is in the discretion of the court.
 - (8) The court may order an investigation and report concerning the proposed visitation or may appoint a guardian ad litem as provided in RCW 26.09.220.
 - (9) Visitation granted pursuant to this section shall be incorporated into the parenting plan for the child.
 - (10) The court may modify or terminate visitation rights granted pursuant to this section in any subsequent modification action upon a showing that the visitation is no longer in the best interest of the child)) only during a pending dissolution or legal separation, and 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.

6

7

8

27

29

33

- 4 **Sec. 4.** RCW 26.10.160 and 2004 c 38 s 13 are each amended to read 5 as follows:
 - (1) A parent not granted custody of the child is entitled to reasonable visitation rights except as provided in subsection (2) of this section.
- 9 (2)(a) Visitation with the child shall be limited if it is found that the parent seeking visitation has engaged in any of the following 10 11 conduct: (i) Willful abandonment that continues for an extended period 12 of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a 13 history of acts of domestic violence as defined in RCW 26.50.010(1) or 14 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 offender and the victim, no rebuttable presumption exists under (d) of 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;
- (C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;
 - (D) RCW 9A.44.089;
- 28 (E) RCW 9A.44.093;
 - (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;
 - (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

p. 5 SB 5643

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

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

- (b) The parent's visitation with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:
- 13 (A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;
- 16 (B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;
- 19 (C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;
 - (D) RCW 9A.44.089;
- 23 (E) RCW 9A.44.093;

3

4

5

6 7

8

9 10

1112

22

24

28

- (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;
 - (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 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

- child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.
- (d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:
- 13 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
 - (ii) RCW 9A.44.073;

1 2

3

5

6 7

8

9 10

1112

15

26

2728

29

30

3132

33

3435

36

37

- 16 (iii) RCW 9A.44.076, provided that the person convicted was at 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;
- (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
- 23 (vii) RCW 9A.44.100;
- (viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;
 - (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.
 - (e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises visitation in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

p. 7 SB 5643

- 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;
 - (ii) RCW 9A.44.073;
 - (iii) RCW 9A.44.076, provided that the person convicted was at 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;
 - (v) RCW 9A.44.083;

3

4

5

8

17

18

19

2021

22

23

24

25

26

27

2829

30

3132

33

3435

- 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.
 - (f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:
 - (i) If the child was not the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or
 - (ii) If the child was the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such 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:

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

- (ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.
- (h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have visitation with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.
- (i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may

p. 9 SB 5643

allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

- (j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.
- (k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised visitation has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor,

or social worker with expertise in treating child sexual abuse victims 1 2 who has supervised at least one period of visitation between the parent and the child, and after consideration of evidence of the offending 3 4 parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in 5 for sex offenders, then the parent shall 6 psychosexual evaluation conducted by a certified sex offender treatment 7 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

13

1415

16

17

18 19

2021

22

23

24

2526

27

28

29

30

3132

33

3435

36

37

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

p. 11 SB 5643

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

- (ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.
- (iii) If the court limits visitation under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.
- (n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's

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

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

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

 $((\frac{5}{}))$ $\underline{(4)}$ For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.

--- END ---

p. 13 SB 5643