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SENATE BILL 6526

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State of Washington

55th Legislature

1998 Regular Session

By Senator Hargrove

Read first time 01/21/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to visitation rights for persons other than  
2 parents; amending RCW 26.09.240 and 26.10.160; and creating a new  
3 section.

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

5 NEW SECTION. **Sec. 1.** Family relationships are valuable and must  
6 be preserved whenever possible. With that principle in mind, the  
7 legislature intends to facilitate the ability of grandparents and great  
8 grandparents to obtain visitation with their grandchildren. The intent  
9 of this legislation is to revise the statutes regarding when  
10 grandparents and great grandparents have standing to petition for  
11 visitation so that they can bring independent actions for visitation,  
12 and to revise the holdings of *In re Troxel*, 87 Wn.App. 131 (1997); and  
13 *In re Custody of B.S.Z.-S.*, 74 Wn.App. 727 (1994).

14 **Sec. 2.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read  
15 as follows:

16 (1) A person other than a parent may:

1        (a) Petition the court for visitation with a child at any time  
2 including prior or subsequent to a dissolution, legal separation, or  
3 modification of a parenting plan; or ((may))

4        (b) Intervene in a pending dissolution, legal separation, or  
5 modification of parenting plan proceeding((. — A person other than a  
6 parent may not petition for visitation under this section unless the  
7 child's parent or parents have commenced an action under this chapter))  
8 at any time subsequent to commencement of such an action.

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

11        (3) A petition for visitation or a motion to intervene pursuant to  
12 this section shall be dismissed unless the petitioner or intervenor can  
13 demonstrate by clear and convincing evidence that a significant  
14 relationship exists with the child with whom visitation is sought. If  
15 the petition or motion is dismissed for failure to establish the  
16 existence of a significant relationship, the petitioner or intervenor  
17 shall be ordered to pay reasonable attorney's fees and costs to the  
18 parent, parents, other custodian, or representative of the child who  
19 responds to this petition or motion.

20        (4) The court may order visitation between the petitioner or  
21 intervenor and the child between whom a significant relationship exists  
22 upon a finding supported by the evidence that the visitation is in the  
23 child's best interests.

24        (5)(a) Visitation with a grandparent or great grandparent shall be  
25 presumed to be in the child's best interests when a significant  
26 relationship has been shown to exist. This presumption may be rebutted  
27 by a preponderance of evidence showing that visitation would endanger  
28 the child's physical, mental, or emotional health.

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

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

36        (a) The strength of the relationship between the child and the  
37 petitioner or intervenor;

1 (b) The relationship between each of the child's parents or the  
2 person with whom the child is residing and the petitioner or  
3 intervenor;

4 (c) The nature and reason for either parent's objection to granting  
5 the petitioner or intervenor visitation;

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

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

10 (f) The good faith of the petitioner or intervenor;

11 (g) Any criminal history or history of physical, emotional, or  
12 sexual abuse or neglect by the petitioner or intervenor; and

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

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

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

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

23 (10) The court may modify or terminate visitation rights granted  
24 pursuant to this section in any subsequent modification action upon a  
25 showing that the visitation is no longer in the best interest of the  
26 child.

27 **Sec. 3.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read  
28 as follows:

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

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

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

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

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

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

12 (D) RCW 9A.44.089;

13 (E) RCW 9A.44.093;

14 (F) RCW 9A.44.096;

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

18 (H) Chapter 9.68A RCW;

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

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

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

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

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

37 (B) RCW 9A.44.079 if, because of the difference in age between the  
38 offender and the victim, no rebuttable presumption exists under (e) of  
39 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;

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

1 (v) RCW 9A.44.083;  
2 (vi) RCW 9A.44.086, provided that the person convicted was at least  
3 eight years older than the victim;  
4 (vii) RCW 9A.44.100;  
5 (viii) Any predecessor or antecedent statute for the offenses  
6 listed in (d)(i) through (vii) of this subsection;  
7 (ix) Any statute from any other jurisdiction that describes an  
8 offense analogous to the offenses listed in (d)(i) through (vii) of  
9 this subsection.

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

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

21 (ii) RCW 9A.44.073;

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

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

26 (v) RCW 9A.44.083;

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

29 (vii) RCW 9A.44.100;

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

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

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

37 (i) If the child was not the victim of the sex offense committed by  
38 the parent requesting visitation, (A) contact between the child and the  
39 offending parent is appropriate and poses minimal risk to the child,

1 and (B) the offending parent has successfully engaged in treatment for  
2 sex offenders or is engaged in and making progress in such treatment,  
3 if any was ordered by a court, and the treatment provider believes such  
4 contact is appropriate and poses minimal risk to the child; or

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

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

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

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

1 child in the presence of the convicted or adjudicated person is  
2 appropriate and poses minimal risk to the child.

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

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

29 (j) If the court finds that the parent has met the burden of  
30 rebutting the presumption under (g) of this subsection, the court may  
31 allow a parent residing with a person who, as an adult, has been  
32 convicted of a sex offense listed in (e)(i) through (ix) of this  
33 subsection to have visitation with the child in the presence of the  
34 convicted person supervised by a neutral and independent adult and  
35 pursuant to an adequate plan for supervision of such visitation. The  
36 court shall not approve of a supervisor for contact between the child  
37 and the parent unless the court finds, based on the evidence, that the  
38 supervisor is willing and capable of protecting the child from harm.  
39 The court shall revoke court approval of the supervisor upon finding,



1 based on the evidence, that the supervisor has failed to protect the  
2 child or is no longer willing or capable of protecting the child.

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

26 (l) A court may order unsupervised contact between the parent and  
27 a child which may occur in the presence of a juvenile adjudicated of a  
28 sex offense listed in (e)(i) through (ix) of this subsection who  
29 resides with the parent after the presumption under (e) of this  
30 subsection has been rebutted and supervised visitation has occurred for  
31 at least two years during which time the adjudicated juvenile has had  
32 no further arrests, adjudications, or convictions of sex offenses  
33 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter  
34 9.68A RCW, and (i) the court finds that unsupervised contact between  
35 the child and the parent that may occur in the presence of the  
36 adjudicated juvenile is appropriate and poses minimal risk to the  
37 child, after consideration of the testimony of a state-certified  
38 therapist, mental health counselor, or social worker with expertise in  
39 treatment of child sexual abuse victims who has supervised at least one

1 period of visitation between the parent and the child in the presence  
2 of the adjudicated juvenile, and after consideration of evidence of the  
3 adjudicated juvenile's compliance with community supervision or parole  
4 requirements, if any. If the adjudicated juvenile was not ordered by  
5 a court to participate in treatment for sex offenders, then the  
6 adjudicated juvenile shall obtain a psychosexual evaluation conducted  
7 by a state-certified sex offender treatment provider indicating that  
8 the adjudicated juvenile has the lowest likelihood of risk to reoffend  
9 before the court grants unsupervised contact between the parent and a  
10 child which may occur in the presence of the adjudicated juvenile who  
11 is residing with the parent.

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

21 (ii) The court shall not enter an order under (a) of this  
22 subsection allowing a parent to have contact with a child if the parent  
23 has been found by clear and convincing evidence in a civil action or by  
24 a preponderance of the evidence in a dependency action to have sexually  
25 abused the child, except upon recommendation by an evaluator or  
26 therapist for the child that the child is ready for contact with the  
27 parent and will not be harmed by the contact. The court shall not  
28 enter an order allowing a parent to have contact with the child in the  
29 offender's presence if the parent resides with a person who has been  
30 found by clear and convincing evidence in a civil action or by a  
31 preponderance of the evidence in a dependency action to have sexually  
32 abused a child, unless the court finds that the parent accepts that the  
33 person engaged in the harmful conduct and the parent is willing to and  
34 capable of protecting the child from harm from the person.

35 (iii) If the court limits visitation under (a) or (b) of this  
36 subsection to require supervised contact between the child and the  
37 parent, the court shall not approve of a supervisor for contact between  
38 a child and a parent who has engaged in physical, sexual, or a pattern  
39 of emotional abuse of the child unless the court finds based upon the

1 evidence that the supervisor accepts that the harmful conduct occurred  
2 and is willing to and capable of protecting the child from harm. The  
3 court shall revoke court approval of the supervisor upon finding, based  
4 on the evidence, that the supervisor has failed to protect the child or  
5 is no longer willing to or capable of protecting the child.

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

20 (3) (~~Any person~~) At any time, a grandparent or great grandparent  
21 may:

22 (a) Petition the court for visitation (~~rights at any time~~  
23 ~~including, but not limited to, custody proceedings. The court may~~  
24 ~~order visitation rights for any person when visitation may serve the~~  
25 ~~best interest of the child whether or not there has been any change of~~  
26 ~~circumstances~~) with a child; or

27 (b) Intervene in a pending nonparental action for child custody  
28 regardless of whether a child custody proceeding is pending.

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

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

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