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HOUSE BILL 1165

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State of Washington

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By Representatives Barlean, Reardon and Talcott

Read first time 01/18/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to grandparent visitation rights; amending RCW  
2 26.09.240 and 26.10.160; and adding a new section 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 (1) A grandparent of a child may petition the court for visitation  
7 with the child if:

8 (a) There exists a substantial relationship between the grandparent  
9 and the grandchild;

10 (b) The parent or person with whom the child resides had in the  
11 past encouraged or approved of contact between the grandparent and the  
12 child;

13 (c) The grandparent has in the past been entrusted with the care of  
14 the child for a substantial time; or

15 (d) The parent or person with whom the child resides has accepted  
16 substantial financial support from the grandparent for the child.

17 (2)(a) The grandparent must file with the petition for visitation  
18 an affidavit alleging specific facts in support of the petition. The

1 party responding to the petition for visitation may file an affidavit  
2 in response to the petition and accompanying affidavit.

3 (b) If, on the basis of the petition and affidavits, the court  
4 determines that it is more likely than not that the grandparent  
5 satisfies the requirement in subsection (1) of this section, the court  
6 shall hold a hearing on the matter.

7 (3)(a) If after a hearing the court finds that the petitioner  
8 satisfies the requirement in subsection (1) of this section, the court  
9 shall presume that denying visitation between the child and grandparent  
10 will likely cause harm to the child.

11 (b) The party responding to the petition for visitation may rebut  
12 the presumption by a preponderance of the evidence showing that the  
13 likelihood of harm to the child caused by denying visitation is  
14 outweighed by the likelihood of harm to the child caused by granting  
15 visitation. In determining whether the likelihood of harm caused by  
16 granting visitation outweighs the likelihood of harm caused by denying  
17 visitation, the court may consider the following factors:

18 (i) The strength of the relationship between the child and the  
19 grandparent;

20 (ii) The nature and reason for the parent's objection to granting  
21 visitation;

22 (iii) The relationship between the grandparent and the child's  
23 parent or person with whom the child resides, whether there has been a  
24 history of cooperation or hostility, and whether such relationship is  
25 likely to change;

26 (iv) The effect granting visitation will have on the relationship  
27 between the child and the child's parents or the person with whom the  
28 child is residing;

29 (v) The residential time-sharing arrangements, if any, between the  
30 parents;

31 (vi) The good faith of the parties;

32 (vii) Any criminal history or history of physical, emotional, or  
33 sexual abuse or neglect by the parties; and

34 (viii) Any other relevant factor.

35 (4) If the court finds that a party has filed or responded to a  
36 petition for visitation in bad faith, or has acted in bad faith during  
37 the proceedings, the court may award reasonable attorneys' fees and  
38 costs to the opposing party.

1 (5) For purposes of this section, "grandparent" means a biological  
2 or adoptive parent of a child's biological or adoptive parent.

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

5 (1) ~~((A person other than a parent))~~ Pursuant to section 1 of this  
6 act, a grandparent of the child may petition the court for visitation  
7 with a child ~~((at any time or may intervene in))~~ during a pending  
8 dissolution, legal separation, or modification of parenting plan  
9 proceeding. ~~((A person other than a parent may not petition for~~  
10 ~~visitation under this section unless the child's parent or parents have~~  
11 ~~commenced an action under this chapter.~~

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

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

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

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

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

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

1       ~~(a) The strength of the relationship between the child and the~~  
2 ~~petitioner;~~

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

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

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

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

11       ~~(f) The good faith of the petitioner;~~

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

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

15       ~~(7))~~ (2) The restrictions of RCW 26.09.191 that apply to parents  
16 shall be applied to a petitioner or intervenor who is not a parent.  
17 The nature and extent of visitation, subject to these restrictions, is  
18 in the discretion of the court.

19       ~~((8))~~ (3) The court may order an investigation and report  
20 concerning the proposed visitation or may appoint a guardian ad litem  
21 as provided in RCW 26.09.220.

22       ~~((9))~~ (4) Visitation granted pursuant to this section shall be  
23 incorporated into the parenting plan for the child.

24       ~~((10))~~ (5) The court may modify or terminate visitation rights  
25 granted pursuant to this section in any subsequent modification action  
26 upon a showing that the visitation is no longer in the best interest of  
27 the child.

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

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

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

1 an assault or sexual assault which causes grievous bodily harm or the  
2 fear of such harm; or (iv) the parent has been convicted as an adult of  
3 a sex offense under:

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

7 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

14 (E) RCW 9A.44.093;

15 (F) RCW 9A.44.096;

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

19 (H) Chapter 9.68A RCW;

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

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

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

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

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

1 (B) RCW 9A.44.079 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 (C) RCW 9A.44.086 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 (D) RCW 9A.44.089;

8 (E) RCW 9A.44.093;

9 (F) RCW 9A.44.096;

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

13 (H) Chapter 9.68A RCW;

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

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

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

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

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

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

38 (ii) RCW 9A.44.073;

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

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

5 (v) RCW 9A.44.083;

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

8 (vii) RCW 9A.44.100;

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

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

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

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

25 (ii) RCW 9A.44.073;

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

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

30 (v) RCW 9A.44.083;

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

33 (vii) RCW 9A.44.100;

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

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

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

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

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

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

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

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



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

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

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

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

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

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

30 (l) A court may order unsupervised contact between the parent and  
31 a child which may occur in the presence of a juvenile adjudicated of a  
32 sex offense listed in (e)(i) through (ix) of this subsection who  
33 resides with the parent after the presumption under (e) of this  
34 subsection has been rebutted and supervised visitation has occurred for  
35 at least two years during which time the adjudicated juvenile has had  
36 no further arrests, adjudications, or convictions of sex offenses  
37 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter  
38 9.68A RCW, and (i) the court finds that unsupervised contact between  
39 the child and the parent that may occur in the presence of the

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

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

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

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

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

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

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

34 ~~((5))~~ (4) For the purposes of this section, a parent's child  
35 means that parent's natural child, adopted child, or stepchild.

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