

HOUSE BILL REPORT

ESHB 1556

As Amended by the Senate

Title: An act relating to visitation.

Brief Description: Creating a presumption that visitation by relatives such as grandparents is in a child's best interests.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Wolfe, Boldt, Scott, Romero, B. Thomas, Johnson, Talcott, Delvin, Carrell, Campbell, Van Luven, Cooke, Dickerson, Kessler, Basich, Conway, Smith and Costa).

Brief History:

Committee Activity:

Law & Justice: 2/15/95, 2/28/95 [DPS].

Floor Activity:

Passed House: 3/9/95, 97-0;

Passed House: 1/10/96, 93-0.

Senate Amended.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; Morris; Robertson; Sheahan; Smith; Thibaudeau and Veloria.

Minority Report: Do not pass. Signed by 1 member: Representative McMahan.

Staff: Pat Shelledy (786-7149).

Background: When a married couple with children obtain a divorce, the court may order visitation rights for a person other than a parent when visitation may be in the child's best interest. The third party may petition the court for visitation rights at any time. The court may modify an order granting or denying visitation rights whenever modification would be in the child's best interest.

Grandparents or other relatives are not granted special rights or consideration under the statute.

Summary of Bill: A person other than a parent may petition the court for visitation. The petition must be dismissed if the petitioner fails to prove by clear and convincing evidence that the petitioner has a significant relationship with the child. If the court dismisses the petition, the court must order the petitioner to pay reasonable attorneys' fees and costs to the parent, parents, or other custodian who contests the petition. Visitation may be granted if the court finds that visitation is in the child's best interests. The court may consider a variety of factors when determining whether a petitioner's visitation is in the child's best interest.

Visitation with a grandparent is presumed to be in the child's best interests when a significant relationship exists between the child and the grandparent. This presumption may be rebutted by the evidence. If the court finds that reasonable visitation would be in the child's best interests except for hostilities that exist between the parent and the grandparent, the court may refer the parties to mediation.

Any visitation granted must be incorporated into the parenting plan.

EFFECT OF SENATE AMENDMENT(S): The underlying House bill is an "act relating to visitation" and sets guidelines for allowing grandparents and other persons to obtain visitation with a child when the child's parents are obtaining a divorce or legal separation. The Senate amendment does not relate to visitation and consequently is outside the scope of the title. Instead, the amendment relates to dependency actions and whether or not an order in a separate guardianship action under chapter 11.88 RCW or a third-party custody action under chapter 26.10 RCW may be entered while the dependency action is pending.

The intended effect of the Senate amendment is not entirely clear. It appears that the intent is to prevent a court in a dependency action from appointing a non-relative as the child's guardian or custodian. However the amendment does not expressly state that goal and appears to create some internal inconsistencies.

For example, one section of the amendment adds a new provision to chapter 11.88 RCW (the guardianship statutes). That section provides that a court may enter a guardianship order when a dependency action is pending if the court in the dependency action approves the guardian and guardianship. This provision and the provision defining what constitutes a guardianship does not require the guardian to be a relative of the child in question. However, another section of the Senate amendment that amends the dependency statutes provides that an order for guardianship may not be entered under chapter 11.88 RCW when a dependency action is pending unless the person applying to be the guardian is a relative. Consequently, even if the court in the dependency action approves a non-relative as a guardian in the

permanent care plan, the court in the guardianship action may not enter an order granting the guardianship. However, the court in the dependency action can approve of a non-relative guardianship through the dependency action.

A similar question arises regarding third-party actions for custody. A new section added to chapter 26.10 RCW (the statutes governing non-parental actions for child custody) provides that the court may not grant a non-parent custody under chapter 26.10 RCW if a dependency action is pending, unless the court in the dependency action also approves of that decision in the permanency plan. This provision is not limited to non-parent actions for child custody by persons who are not related to the child. However, in the amendments to the dependency sections, a goal of a permanency plan is limited to actions by relatives for non-parental custody.

It appears that if a dependency action is not pending, then a non-relative may be appointed a guardian or custodian of a minor through a guardianship action or a non-parental custody action. However, if a dependency is pending, then, at least regarding non-parental actions for child custody, only relatives may be appointed as custodians.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Many grandparents have essentially raised their grandchildren because the parents are too young, are drug addicted, or otherwise incapable of raising their children. When those parents get divorced, the grandparents may be completely cut off from the grandchildren because of hostilities of one or both of the parents towards the grandparents. This bill will make it a little easier for grandparents to obtain court approval to continue to have contact or visitation with their grandchildren. The bill will not create an automatic right of grandparents to continue to have contact with their grandchildren.

Testimony Against: None.

Testified: Representative Wolfe, prime sponsor (pro); Gay Leeberg, citizen (pro); Muriel Campos, citizen (pro); Catherine Morgan, citizen (pro); Elizabeth Chambers, citizen (pro); and Gary Marsell, Washington Families for Noncustodial Rights (pro).