

HOUSE BILL REPORT

EHB 1773

As Amended by the Senate

Title: An act relating to visitation rights in nonparental actions for child custody.

Brief Description: Changing visitation rights in nonparental actions for child custody.

Sponsors: Representatives Wolfe, Lambert, Schoesler, Ogden, Dickerson, Conway, Alexander, Cooper, Tokuda, Veloria, Radcliff, Stensen, D. Schmidt, Romero, Gombosky, Schindler, Keiser, Lantz, Rockefeller, Edmonds, Kenney, Scott and Lovick.

Brief History:

Committee Activity:

Judiciary: 2/25/99, 3/2/99 [DP].

Floor Activity:

Passed House: 3/15/99, 97-0.

Senate Amended.

Passed Senate: 4/16/99, 40-5.

Brief Summary of Bill

- Allows a person other than a parent to petition for visitation with a child if the person is related to the child by blood, marriage, or adoption.
- Requires the nonparent to show by clear, cogent, and convincing evidence that: (a) a significant relationship exists between the nonparent and the child; (b) denial of visitation would result in a substantial likelihood of harm to the child's well-being; and (c) it is in the child's best interest.
- Requires the court to divide, on a proportionate basis between the parents, any residential time that is granted to a third party.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Kastama; Lantz; Lovick; McDonald and Schindler.

Minority Report: Without recommendation. Signed by 2 members: Representatives Carrell, Republican Co-Chair and Esser.

Staff: Trudes Hutcheson (786-7384).

Background:

Current statutes allow a nonparent to petition the court for visitation with a child when the parents have filed for dissolution or at anytime. The court may order visitation with a nonparent if it is in the child's best interest.

The court must dismiss a petition for visitation by a nonparent 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 attorney fees and costs to the party who opposed the petition. Visitation with a grandparent is presumed to be in the child's best interest when a significant relationship exists between the grandparent and the child.

In December 1998, the state supreme court held that the visitation statutes were unconstitutional because they "impermissibly interfere with a parent's fundamental interest in the care, custody and companionship of the child." The court stated that the best interest of the child standard, without any threshold finding that the child would be harmed if visitation were discontinued, was insufficient to overrule a parent's fundamental right.

Summary of Bill:

The third-party visitation statutes are amended.

A nonparent who is related to the child through blood, marriage, or adoption may petition for visitation with the child at anytime. The nonparent must demonstrate by clear, cogent, and convincing evidence that:

- (a) a significant relationship exists between the nonparent and the child;
- (b) denial of visitation would result in a substantial likelihood of harm to the child's well-being; and
- (c) visitation is in the child's best interest.

If the court grants visitation to the nonparent, the time awarded must be divided between the primary residential parent and the nonprimary residential parent in an amount proportionate to the time awarded them in the parenting plan, unless the court finds that it would not be in the best interest of the child in maintaining contact with both parents.

When determining the child's best interest, the court may consider the following:

- the strength of the relationship between the child and the petitioner;
- the relationship between the petitioner and the parents;
- the nature and reason for the parent's objection to visitation;
- the effect visitation would have on the relationship between the child and the child's parents;
- the residential time-sharing arrangements;
- the good faith of the petitioner;
- any criminal history or history of abuse by the petitioner; and
- any other factor the court finds relevant.

EFFECT OF SENATE AMENDMENT(S): The senate amendment allows only grandparents, as opposed to third parties related to the child through consanguinity, marriage, or adoption, to petition for visitation with a child. Under the senate amendment, the grandparent may petition for visitation only if there has been a dissolution, custody proceeding, or determination of paternity, as opposed to "any time." The senate amendment also removed the provision requiring the court to divide, on a proportionate basis between the parents, any residential time that is granted to the grandparent, and removed the emergency clause.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: Denying visitation hurts the children involved. When children are born between parents who are not married, the grandparents of those kids cannot currently seek visitation because no dissolution has been filed. Grandparents offer a great deal to the grandchildren. The grandchildren are the ones who suffer under the laws that prohibit third-party visitation.

Testimony Against: This bill needs to be narrowed. The best way to change what is going on in family law is to educate the courts. This bill may not pass the court's scrutiny.

Testified: (In support) Representative Wolfe, prime sponsor; Ann McBride, citizen; Elmira Amescun, citizen; Victoria Garcia, citizen; Viv and John Weers, citizens; and Patty Sears, citizen.

(Opposed) Bill Harrington, American Fathers Alliance.