

Judiciary Committee

HB 2065

Title: *An act relating to petitions for visitation for persons related to the child or acting in a parental role.*

Brief Description: *Revising standards for petitions for visitation for persons related to the child or acting in a parental role.*

Sponsors: *Representatives Edmonds, Carrell, Lambert, Lantz, Kessler, Rockefeller and Kenney.*

Brief Summary of Bill

- *Allows a petition for court-ordered visitation for a person, other than a parent, who is related to the child by blood or marriage or who lived with the child in a parental or quasi-parental relationship and when certain criteria are met.*
- *Requires mediation before trial for petitions meeting the initial criteria.*
- *Establishes a standard the court must use to determine whether the court may order visitation.*

Hearing Date: *2/20/01*

Staff: *Trudes Hutcheson (786-7384).*

Background:

Whether a person other than a parent may petition for court-ordered visitation with a child has been an issue recently before the state supreme court and the United States Supreme Court. Washington has two statutes that allow a third party to petition for visitation.

I. Third-party visitation statutes.

A. The parenting act allows third-party visitations when there has been a dissolution, and it creates a presumption in favor of grandparent visitation.

The first statute is contained in the dissolution chapter and allows a person other than a parent to petition for visitation if the child's parents have brought an action for dissolution or legal separation. The petitioner must establish by clear and convincing evidence that a significant relationship exists with the child. The court may order visitation if it is in the child's best interest.

Under this statute, visitation with a grandparent is presumed to be in the child's best interest when a significant relationship exists. The presumption may be rebutted by a preponderance of the evidence showing that visitation would endanger the child's physical, mental, or emotional health. The statute lists factors the court may consider when determining the child's best interest.

B. The custody statutes allow any person to petition for visitation at any time.

The second visitation statute is located in the third-party custody chapter. It allows any person— to petition for visitation at any time.— The court may order visitation if it is in the child's best interest whether or not there has been a change in circumstances.

II. Federal and state supreme courts' interpretation of third-party visitation statutes.

Recently, the statute allowing any person to petition for visitation at any time has been litigated in both the Washington Supreme Court and the United States Supreme Court.

The state supreme court held that the statute violated parents' federal constitutional rights to raise their children without state interference. The court found that the constitution permits a state to interfere with the right of parents to raise their children only to prevent harm or potential harm to the child. The court noted that short of preventing harm to the child, the best interest of the child— standard is insufficient to overrule a parent's right.

The case was appealed to the United States Supreme Court. In June 2000, the Court found that Washington's statute was unconstitutional only as applied to the facts in that particular case. In reaching its conclusion, the Court recognized that a fit parent is presumed to act in the child's best interest, and some weight should be given to that parent's decision. The Court also noted that some state statutes take into consideration whether a parent has denied visitation to the third party.

The Court declined to address the state supreme court's conclusion that the constitution requires a threshold showing of harm or potential harm to the child as a condition precedent to granting visitation.

Summary of Bill:

The Legislature recognizes that a third party may develop a substantial relationship with a child by acting in a care giver role or other significant emotional role over a period of time. The Legislature also recognizes that arbitrarily depriving a child of that bond can sometimes cause psychological or emotional harm to the child. The Legislature intends to prevent the harm to children caused by the disruption of those significant bonds.

A person who is not a parent may petition the court for visitation if the person demonstrates that:

- (a) there is a substantial relationship between the petitioner and the child;*
- (b) the person has been unreasonably denied visitation with the child by a parent, custodian, or other person with primary decision-making authority; and*
- (c) there has been a significant change in circumstances that threatens the substantial relationship.*

Person who is not a parent– means a person, other than the parent, who:

- (a) is related to the child by blood or would be but for the fact the child is adopted; or*
- (b) is related to the parent or child by marriage, or would be related by marriage but for the fact the parents are not or have never been married; or*
- (c) lived with the child in a parental or quasi-parental relationship.*

Unreasonably denied– means a denial of visitation with the child for irrational or unsubstantiated reasons.

The change in circumstances could include, but is not limited to, a dissolution, legal or physical separation, or death of a parent.

Petitions that meet these criteria must be submitted to mandatory mediation before proceeding to trial, unless the court or mediator determines that mediation would not be appropriate. Mediation will be pursuant to procedures established by court rules.

The court may order visitation between the petitioner and the child if the petitioner shows and the court finds that:

- (a) denial of court-ordered visitation would result in a likelihood of harm to the child's physical, psychological, or emotional well-being;*
- (b) the likelihood of harm is beyond the normal short-term distress a child suffers due to a change in circumstances;*
- (c) continuation of the substantial relationship between the child and the petitioner would likely have long-term benefits to the child; and*
- (d) visitation would not substantially interfere with the relationship between the child and the parent, custodian, or other person with primary decision-making authority over the child.*

The court may consider the wishes of a child who is sufficiently mature to express

reasoned and independent preferences as to visitation issues.

If the court dismisses the petition because the petitioner failed to show the initial requirements, the court must order the petitioner to pay reasonable attorney fees and costs to the responding party.

Appropriation: *None.*

Fiscal Note: *Not Requested.*

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