

HOUSE BILL REPORT

HB 2322

As Reported by House Committee On:
Judiciary

Title: An act relating to nonparent visitation.

Brief Description: Revising provisions relating to nonparent visitation.

Sponsors: Representatives Lantz, Kagi, Dickerson, Cox, Quall, Kessler, Kenney, Edwards, Fromhold and Conway.

Brief History:

Committee Activity:

Judiciary: 1/22/02, 1/25/02 [DPS].

Brief Summary of Substitute Bill

- Allows a nonparent to petition the court for visitation with a child if: (a) There is a substantial and beneficial relationship; (b) the petitioner has been unreasonably denied visitation; and (c) there has been a significant change of circumstances.
- Requires mediation or alternative dispute resolution before trial unless it is inappropriate or unavailable.
- Allows the court to order visitation if it is in the best interest of the child and other criteria are met.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Lantz, Chair; Hurst, Vice Chair; Dickerson, Esser, Jarrett, Lovick and Lysen.

Minority Report: Do not pass. Signed by 2 members: Representatives Carrell, Ranking Minority Member; and Boldt.

Staff: Trudes Hutcheson (786-7384).

Background:

Whether a person other than a parent may petition for court-ordered visitation with a child has been recently litigated in both the state Supreme Court and the United States Supreme Court. Washington has two statutes that allow a nonparent 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 (RCW 26.09) and allows a nonparent 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 between the child and grandparent 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 court may consider the following factors when determining the child's best interest:

- (1) The strength of the relationship between the child and petitioner;
- (2) the relationship between each of the child's parents;
- (3) the nature and reason for the parent's objection to visitation;
- (4) the effect that granting visitation will have on the relationship between the child and the child's parents;
- (5) the residential time sharing arrangements between the parents;
- (6) the good faith of the petitioner;
- (7) any criminal history or history of abuse or neglect; and
- (8) any other factor relevant to the child's best interest.

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

The second visitation statute is located in the chapter governing nonparental actions for child custody (RCW 26.10). 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 was challenged in court.

The Washington 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 Supreme Court held that Washington's statute was unconstitutional only as applied to the facts in that particular case. In reaching its conclusion, the Supreme 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 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 Substitute Bill:

The Legislature affirms that parents have a paramount right to raise their children and that right must be considered in conjunction with a minor child's interest in maintaining significant relationships with nonparents.

A nonparent may petition the court for visitation if the person demonstrates by preponderance of the evidence that:

- (a) There is a substantial and beneficial relationship between the petitioner and the child;
- (b) the petitioner has been unreasonably denied visitation with the child; and
- (c) there has been a significant change in circumstances that substantially threatens the relationship. The change in circumstances could include, but is not limited to, a dissolution, legal or physical separation, or death of a parent.

If a court dismisses a petition for failing to meet the threshold showing, the court may order the petitioner to pay reasonable attorneys' fees and costs to the responding party.

Petitions that the court does not dismiss must be submitted to mediation or alternative dispute resolution (ADR) before proceeding to trial, unless mediation or ADR is inappropriate or unavailable. Mediation will be pursuant to local or state court rules.

The court may order visitation between the petitioner and the child if the petitioner shows and the court finds by a preponderance of the evidence that visitation is in the child's best

interest and:

- (a) Denial of court-ordered visitation would result in a likelihood of substantial 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 relationship would likely have substantial benefits to the child;
- (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; and
- (e) if there is a residential schedule, visitation is reasonable based on the residential time-sharing arrangements between the parents, custodian, or other person with primary decision-making authority over the child.

The court must consider the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to visitation issues.

The existing nonparent visitation statutes in the dissolution act and the nonparent custody act are removed, including the list of factors the court may consider when determining the child's best interest. The grandparent presumption is also removed. The new statute is codified in the nonparental actions for child custody statutes (RCW 26.10).

Substitute Bill Compared to Original Bill:

The substitute bill allows a court to order other ADR, besides just mediation. Mediation or ADR would be pursuant to local or state court rules. The substitute bill also allows a court to find that mediation or ADR is not appropriate if mediation or ADR is not available.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: (In support) This bill protects the rights of parents and balances the needs of children. It is important for children to have relationships with nonparents. The bill's stringent criteria will weed out frivolous petitions but not make it impossible for others to petition. The bill takes the essential elements from both the state Supreme Court and the United States Supreme Court case. Nonparents, such as grandparents, are essential in children's lives. The focus is on the child and that child's relationships. After the court cases, nonparents and the courts need some guidance.

(With concerns) It is important that parents not lose their rights. When a child's time is divided between the parents, it is important not to take away time the child gets with the parents. Time with the parents is how the grandparents and other relatives are able to have access to the child.

Testimony Against: None.

Testified: (In support) Pamela Crone, Northwest Women's Law Center; Rick Bartholomew, Washington State Bar Association, Family Law; Edith Owen; Janet Helson, Columbia Legal Services; Vivian Weers; John Weers; and Jerry Harrowicz.

(With concerns) Lisa Scott, Taking Action Against Bias in the System.