

# SENATE BILL REPORT

## SB 6303

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As of February 1, 2002

**Title:** An act relating to nonparental visitation rights.

**Brief Description:** Regarding nonparental visitation rights.

**Sponsors:** Senators Franklin and Long.

**Brief History:**

**Committee Activity:** Judiciary: 2/4/02.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Lisa Ellis (786-7421)

**Background:** Third-party visitation statutes provide that (1) a nonparent can petition for visitation if the child's parents have brought an action for dissolution or legal separation and (2) "any person" can petition for visitation at "any time." In 2000, the United States Supreme Court held that the Washington's statute allowing "any person" to petition for visitation at "any time" is unconstitutional, as applied to the facts of that case, for violating the parent's fundamental right to make decisions concerning the care, custody and control of his or her children.

**Summary of Bill:** The first third party visitation statute allows a person other than a parent to intervene in a pending dissolution, legal separation, or modification of parenting plan proceeding if the person demonstrates by clear, cogent, and convincing evidence that a beneficial significant relationship exists with the child. A court may order visitation between the nonparent and the child if it finds by clear, cogent and convincing evidence that the visitation is in the child's best interests and that denial of visitation would result in a likelihood of substantial harm to the child's physical, mental, or emotional well-being.

A court may order mediation if it finds that reasonable visitation by the nonparent would be in the child's best interests except for hostilities between the nonparent and child's parent(s) or guardian(s).

Under the second visitation statute in the chapter governing nonparental actions for child custody, a court may order visitation if there is clear, cogent, and convincing evidence that visitation is in the child's best interests and that denial of visitation would likely result in substantial harm to the child's physical, mental or emotional well-being. If a petitioner fails to demonstrate by clear, cogent, and convincing evidence that he or she has a beneficial significant relationship with the child, a court must dismiss the petition and order the petitioner to pay reasonable attorneys' fees and costs. After a beneficial and significant relationship has been shown, a court may use its discretion in ordering reasonable costs.

In determining the child's best interests, the court may consider the following: the strength of the relationship between the child and the petitioner; the relationship between each of the child's parents or guardians and the petitioner; the nature and reason for either parent's objection; the effect that granting visitation will have on the relationship between the child and the child's parents or guardian; the residential time-sharing arrangements between parents; the good faith of the petitioner; any criminal history or abuse or neglect by the petitioner; and any other relevant factor.

Parties may mediate contested issues before or during the hearing.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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