

HOUSE BILL REPORT

EHB 1563

As Passed House:

March 6, 2003

Title: An act relating to visitation rights for nonparents.

Brief Description: Providing a procedure for court-ordered contact with a child for nonparents.

Sponsors: By Representatives Lantz, Delvin, Dickerson, Carrell, Upthegrove, Talcott, Kessler, Kagi, McDermott, Lovick, Moeller, Morrell, Murray, Pettigrew, Berkey, Kenney and Santos.

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/11/03, 2/18/03 [DP].

Floor Activity:

Passed House: 3/6/03, 91-0.

Brief Summary of Engrossed Bill

- Allows a nonparent to seek court-ordered visitation with a child if: (a) the nonparent has a parent-like relationship with the child; (b) the parent substantially interfered with that relationship; and (c) the nonparent attempted to resolve any disagreement with the parent before going to court.
- Requires the court to order contact with a child if the nonparent shows by clear and convincing evidence that: (a) the child would very likely suffer harm if contact is not awarded; and (b) the parent's denial of contact was unreasonable and not in the child's best interests.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: Do pass. Signed by 7 members: Representatives Dickerson, Chair; Pettigrew, Vice Chair; Delvin, Ranking Minority Member; Carrell, Eickmeyer, Hinkle and Upthegrove.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Whether a third party may seek 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 allowing a nonparent to petition for visitation. One statute was held unconstitutional, and the cases call into question the constitutionality of the other.

I. Washington's third-party visitation statutes

The first statute, in the dissolution chapter (RCW 26.09), 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 second visitation statute is located in the chapter governing third party custody actions (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.

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

Washington's statute allowing any person to petition for visitation at any time was found unconstitutional. 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 stated that short of preventing harm to the child, the "best interest of the child" standard is insufficient to overrule a parent's right. *In re the Custody of Smith*, 137 Wn.2d 1 (1998).

The case was appealed to the United States Supreme Court, and the Court held that the statute was unconstitutional 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 Supreme 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 prerequisite to granting visitation. *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000).

III. Contempt proceedings for failure to comply with a court order

If a parent fails to comply with a residential schedule in a parenting plan, the aggrieved party may initiate contempt proceedings to coerce the parent to comply. The court may order the noncomplying parent to provide the other party with additional residential time with the child, pay the other party's costs and fees, and pay a civil penalty. The court may also order the noncomplying parent to be imprisoned if the parent is able to comply but refuses. Generally, the court may not modify the residential schedule of a parenting

plan except under limited circumstances. The court may modify the residential schedule if the noncomplying parent has been in contempt of court at least twice within three years.

Summary of Engrossed Bill:

New provisions regarding third party visitation are established. A nonparent may petition the court to obtain contact with a child if the nonparent shows that: (a) the nonparent has a parent-like relationship with the child; (b) the parent has substantially interfered with that relationship; and (c) the nonparent has unsuccessfully attempted to resolve any disagreement with the parent before going to court.

To show a parent-like relationship, the nonparent must show that: (a) the relationship has been parental in nature for a substantial period of time; (b) the parent consented to or allowed the relationship or it was formed because of the unavailability of the parent; and (c) the relationship is beneficial. "Parent-like relationship" means a very significant relationship in which the nonparent undertook responsibilities and tasks commonly performed by parents and commonly recognized as actions by someone in a parent-like relationship. Baby-sitters and other employed caregivers are excluded.

If the petitioner does not satisfy this threshold showing, the court must dismiss the proceeding. The court must award costs and fees to the prevailing party unless there is a compelling reason not to.

If the action is not dismissed, the nonparent must present evidence showing that the child would very likely suffer harm if contact were not awarded. If a reasonable fact finder would conclude that the child would very likely suffer harm, the parent must then present evidence showing why the decision to refuse contact is reasonable and in the child's best interests.

The court must order contact if it finds that the nonparent has satisfied the burden of showing by clear and convincing evidence that: (a) the child would very likely suffer harm if contact is not awarded; and (b) the parent's denial of contact was unreasonable and not in the child's best interests.

If a parent fails to comply with a court order awarding contact between the nonparent and the child, the nonparent may initiate contempt proceedings under the existing contempt statute. A court may modify the residential provisions established in a parenting plan if the parent has been in contempt of court at least twice within three years for failing to comply with an order granting nonparent contact with the child.

The bill defines relevant terms, such as "substantially interfered" and "harm."

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The current law that was found unconstitutional allows any person to petition at any time. The courts didn't give clear guidance on how the state should narrow the statute. This bill recognizes that parents have a right, but also protects children from arbitrary decisions made by parents. The threshold determination is narrowed. It is limited to a few folks with a parent-like relationship with the child. The focus of the bill is on the child. It protects the parents' rights to raise their children by requiring that the nonparent show that without visitation there is "very likely harm" to the child. The bill is important for children because they are the ones suffering right now. Children have no voice in the matter and when they are cut off from their grandparents, their sense of security is affected. The bill has been worked out over a long time with many players involved. For several years now there has been no law for grandparents. The longer they go without a law, the harder it will be for them to eventually get visitation.

Testimony Against: None.

Testified: Representative Lantz, prime sponsor; Rick Bartholomew, Washington State Bar Association; Angela Olsen; Stacy Goddard; Adam Goddard; Lamar Hughes; Bob and Judy Freeze; and Pamela Crone, Northwest Women's Law Center.