
**Juvenile Justice & Family Law
Committee**

HB 2314

Brief Description: Concerning nonparent visitation rights.

Sponsors: Representatives Carrell, Boldt, Mielke, Pearson, Priest, McMahan and Hinkle.

Brief Summary of Bill

- Establishes the circumstances for when a nonparent may seek court-ordered contact with a child, depending on whether the nonparent is the child's grandparent, other relative, or a non-related third party.

Hearing Date: 1/15/04

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Washington has two statutes allowing a nonparent to petition for court-ordered visitation with a child. One statute was held unconstitutional, and Washington Supreme Court and United States Supreme Court cases call into question the constitutionality of the other.

I. Washington's third-party visitation statutes

The first visitation statute 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, located with the statutes governing third party custody, 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 Washington 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 a parent's right only to prevent harm or potential harm to the child. *In re the Custody of Smith*, 137 Wn.2d 1 (1998).

The case was appealed to the United States Supreme Court (Court), which held that the statute was unconstitutional 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 declined to address the Washington Supreme 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. 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 Bill:

The circumstances under which a nonparent may seek court-ordered visitation with a child varies depending on whether the nonparent is the child's grandparent, other relative, or a non-related third party.

I. When a nonparent may petition

A. Grandparents: A grandparent may initiate a court proceeding for contact with the child under any of the following three circumstances: (a) during a pending dissolution, legal separation, or modification of a parenting plan; (b) within 12 months from the entry of a final order for dissolution, legal separation, or modification; or within 12 months of the death of one of the parents; or (c) within 12 months of the effective date of the act.

If the grandparent petitions during a pending dissolution, legal separation, or modification of a parenting plan, or within 12 months of the effective date of the bill, the grandparent must show: (a) the parent consented to the grandparent's relationship or it was a result of the parent's inability to perform caretaking functions; and (b) the relationship between the grandparent and the child is beneficial to both.

If the grandparent petitions the court within 12 months from the entry of a final dissolution, legal separation, or modification order, or within 12 months of the death of the parent, the grandparent must show: (a) the parent consented to the grandparent's relationship or it was a result of the parent's inability to perform caretaking functions; (b) the relationship between the grandparent and the child is beneficial to both; (c) the parent has substantially interfered with the relationship; and (d) the grandparent unsuccessfully attempted to resolve any disagreement with the parent before going to court.

B. Relatives: A relative who is not a grandparent may initiate a court proceeding under any of the following two circumstances: (a) during a pending dissolution, legal separation, or modification of a parenting plan; or (b) within 12 months of the effective date of the act.

In both circumstances, the relative must show: (a) the parent consented to the relative's relationship or it was a result of the parent's inability to perform caretaking functions; (b) the relationship between the relative and child is beneficial to both; and (c) the parent has substantially interfered with that relationship.

C. Non-related third parties: A nonparent who is not related to the child by blood, marriage, or adoption may initiate a court proceeding for contact with the child only during a pending dissolution, legal separation, or modification of a parenting plan.

The non-related third party must show: (a) the parent consented to the relative's relationship or it was a result of the parent's inability to perform caretaking functions; (b) the third party has had a parent-like relationship with the child for a substantial period of time; (c) the relationship is beneficial to both; and (d) the parent has substantially interfered with that relationship.

"Parent-like" relationship means a very significant relationship where the third party undertook responsibilities commonly performed by parents and includes significant financial support for the child's basic needs during the relationship.

II. Court procedures for nonparent visitation

Regardless of whether the petitioner is a grandparent, relative, or not related, if the petitioner does not meet the specified criteria, the court must dismiss the petition. 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 petitioner 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, the nonparent may initiate contempt proceedings under the existing contempt statute.

Appropriation: None.

Fiscal Note: Not requested.

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