
Juvenile Justice & Family Law
Committee

SSB 5708

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

Sponsors: Senate Committee on Children & Family Services & Corrections (originally sponsored by Senators Franklin, Esser, Haugen, Thibaudeau, Kline and Kohl-Welles).

Brief Summary of Substitute Bill

- Allows a nonparent to petition for visitation with a child only during a pending dissolution or legal separation and prior to the entry of the order establishing the initial permanent parenting plan.
- Requires the nonparent to show, for the purposes of standing, that: (a) there has been a parent-like relationship (which includes providing significant financial support for the child's basic needs); (b) the parent substantially interfered with that relationship; and (c) the nonparent attempted to resolve any disagreement with the parent before going to court.

Hearing Date: 3/27/03

Staff: Trudes Tango Hutcheson (786-7384).

Background:

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).

Summary of Bill:

New provisions regarding third party visitation are established. A nonparent may petition the court for visitation with a child only during a pending dissolution or legal separation and prior to the entry of the order establishing the initial permanent parenting plan.

For the purposes of standing, the nonparent must show that: (a) there has been a parent-like relationship with the child; (b) the parent substantially interfered with that relationship; and (c) the nonparent 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. The definition of "parent-like relationship" includes providing significant financial support for the child's basic needs and taking on responsibilities and tasks commonly performed by parents. 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.

Relevant terms, such as "substantially interfered" and "harm" are defined.

Appropriation: None.

Fiscal Note: Not Requested.

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