
Judiciary Committee

HB 1140

Title: An act relating to sibling visitation after a dependency has been dismissed or concluded.

Brief Description: Concerning sibling visitation after a dependency has been dismissed or concluded.

Sponsors: Representatives Roberts, Pedersen, Moscoso, Reykdal, Rodne, Appleton, Kagi, Walsh, Warnick, Ryu, Jinkins, Freeman and Fagan.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Creates a procedure for a sibling to petition a court for sibling visitation with a minor child after the dismissal of a dependency involving one of the siblings if there is a significant sibling relationship between the siblings and other requirements are met.

Hearing Date: 2/6/13

Staff: Edie Adams (786-7180).

Background:

Dependency proceedings.

State law provides procedures for the protection and placement of dependent children—children who have been abused or abandoned by their parents or legal guardians. A child who is alleged to be a dependent child may be taken into custody and placed in shelter care until a dependency hearing takes place to determine whether the child is a dependent child, and the services and interventions that are appropriate for the child.

In a dependency proceeding, the court may order that a child be temporarily placed outside the child's home. In this event, the agency that is charged with the child's care must present to the court a permanency plan identifying the long-term goals for permanent care of the child, such as return of the child to the parents, adoption, guardianship, permanent legal custody, long-term relative or foster care, or independent living.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Sibling visitation in the dependency process.

The statutory presumption for children in foster care is that placement with siblings or continuing contact and visits between siblings are in their best interests. The relevance of the child's relationship with siblings and the potential benefit of facilitating post-adoption contact must be considered during the permanency planning process for children who have been removed from their homes. In addition, a court in approving an adoption of a child from foster care must encourage the adoptive parents, birth parents, foster parents, caregivers, and the Department of Social and Health Services (DSHS) to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing and facilitating post-adoption contact between siblings. If feasible and in the best interests of the siblings, contact between the siblings should be frequent and of a similar nature as before the adoption.

Third-party visitation.

Washington has two statutes allowing third parties to petition a court to seek visitation time with a minor child under certain circumstances. Both statutes have been found unconstitutional in opinions from the Washington Supreme Court and the U.S. Supreme Court on the grounds that they interfere with a parent's fundamental right to raise a child without undue state interference. These decisions have held that fit parents are presumed to act in the best interests of their children, and their decisions must therefore be given special weight. The Washington Supreme Court has further held that in awarding visitation over the objections of a fit parent, there must be a showing that denial of visitation has the potential of harming the child.

Summary of Bill:

A process is created for allowing a sibling to petition for visitation with a minor child when either the petitioner or minor child is placed in a separate household as a result of a dismissed dependency proceeding, and the siblings have a significant sibling relationship. "Significant sibling relationship" means a beneficial relationship with substantial continuity while residing in the same household for a substantial period of time before being separated. "Sibling" means full and half siblings by blood or adoption, and current and former step siblings.

A sibling may petition the court for sibling visitation with the minor child if:

- either sibling was a dependent child and the dependency has been dismissed;
- the permanent placement of the dependent child resulted in placement in a separate household from his or her sibling;
- the permanent placement does not provide for visitation between the siblings; and
- the petitioning sibling and the minor child have a significant sibling relationship.

The petitioning sibling must submit an affidavit with the petition setting forth facts that show that the requirements for filing the petition have been met. In addition, the affidavit must show that the sibling relationship would be substantially reduced or terminated if visitation is not granted, and depending upon whom the minor child is residing with, either that the minor child would likely suffer harm without visitation or that visitation is in the best interests of the child.

The petition must be served on every person who has legal custody or court-ordered residential time with the minor child, and these parties may submit affidavits opposing the petition. The

court must hold a hearing on the petition if it finds, based on the petition and affidavits, that it is more likely than not that visitation will be granted.

The court must grant the petition for sibling visitation if it finds the petitioner proves by clear and convincing evidence that:

- the requirements for filing the petition were met;
- the sibling relationship would be substantially reduced or terminated if visitation is not granted; and
- if the minor child resides with a parent, that the minor child would likely suffer harm or the substantial risk of harm without visitation, or if the minor child resides with a custodian who is not a parent, that visitation is in the best interests of the child.

The court may award reasonable attorneys' fees and costs as it deems appropriate. If visitation is not granted to a petitioning sibling who is over the age of 18, the court must award reasonable attorneys' fees and costs to the prevailing party absent a compelling reason to do otherwise.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.