

SENATE BILL REPORT

SHB 1140

As of March 21, 2013

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: House Committee on Judiciary (originally sponsored by Representatives Roberts, Pedersen, Moscoso, Reykdal, Rodne, Appleton, Kagi, Walsh, Warnick, Ryu, Jinkins, Freeman and Fagan).

Brief History: Passed House: 3/06/13, 64-33.

Committee Activity: Human Services & Corrections: 3/21/13.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Kevin Black (786-7747)

Background: Dependency proceedings provide procedures for the protection and placement of children who were 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. For children placed temporarily outside the child's home, a permanency plan must be developed identifying the long-term goals for permanent care of the child, such as reunification with parents, adoption, guardianship, permanent legal custody, long-term relative or foster care, or independent living.

A statutory presumption is provided for children in foster care favoring placement with siblings or continuing contact and visits between siblings. 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. In addition, a court 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 to seriously consider the long-term benefits to the child adoptee and the child's siblings in 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.

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.

Washington has two statutes allowing third parties to petition a court to seek visitation with a minor child. Both statutes were found unconstitutional on the grounds that they interfere with a parent's fundamental right to raise a child without undue state interference. These decisions 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 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 sibling of a minor child may petition superior court for an order for sibling visitation after dismissal of a dependency proceeding if one of the siblings was found to be a dependent child, the permanent placement of the dependent child causes a separation between the siblings, the placement does not provide for visitation, the parent, guardian, or caregiver of the formerly dependent child is preventing visitation, there is no other avenue for visitation, and there exists a significant sibling relationship between the siblings. A guardian ad litem may bring this petition on behalf of a petitioning sibling who is a minor.

If the minor child is in the legal custody of a parent, the court may order visitation if the petitioner shows that the child would likely suffer harm or the substantial risk of harm if visitation were denied. If the minor child is in the legal custody of another person, the court may grant visitation if visitation is in the child's best interest. A presumption is provided that a fit parent's decision to deny visitation is in the best interests of the child and does not create the likelihood of harm or the substantial risk of harm. The burden of proof is by clear and convincing evidence. The court may award reasonable attorney's fees and costs to the prevailing party after considering the financial resources of all parties.

Definitions are provided for the terms sibling and significant sibling relationship.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill relates to a post-dependency situation. The bill includes an assumption that parents are fit and make the best decision. However, a sibling who is denied contact with a sibling is granted standing to challenge this in court. The burden of proof is high. This is not likely to happen frequently, but situations do occur where this is needed.

Persons Testifying: PRO: Representative Roberts, prime sponsor.