

SB 5598 - H AMD TO JUDI COMM AMD (H-5007.1/18) **1348**
By Representative Shea

NOT ADOPTED 03/02/2018

1 On page 2, beginning on line 1 of the striking amendment, strike
2 all of sections 2 through 5 and insert the following:

3
4 "NEW SECTION. **Sec. 2.** (1) A person who is not the parent of
5 the child may file a motion to intervene in a pending child custody
6 proceeding under chapter 26.10 RCW to seek visitation with the child
7 if:

8 (a) The person has an ongoing and substantial relationship with
9 the child;

10 (b) The person is a relative of the child or a parent of the
11 child; and

12 (c) The child is likely to suffer harm or a substantial risk of
13 harm if visitation is denied.

14 (2) A person has established an ongoing and substantial
15 relationship with a child if the person and the child have had a
16 relationship formed and sustained through interaction,
17 companionship, and mutuality of interest and affection, without
18 expectation of financial compensation, with substantial continuity
19 for at least two years unless the child is under the age of two
20 years, in which case there must be substantial continuity for at
21 least half of the child's life, and with a shared expectation of and
22 desire for an ongoing relationship.

23

24 NEW SECTION. **Sec. 3.** (1) A person may not file a motion to
25 intervene in a pending child custody proceeding to seek visitation
26 with a child more than once.

27

1 (2) The person must file with the motion to intervene an
2 affidavit alleging that:

3 (a) A relationship with the child that satisfies the
4 requirements of section 2 of this act exists or existed before
5 action by the parent or parents or other person having legal custody
6 of the child; and

7 (b) The child would likely suffer harm or the substantial risk
8 of harm if visitation between the person and child was not granted.

9 (3) The person shall set forth facts in the affidavit supporting
10 the requested order for visitation.

11 (4) The person shall serve notice of the motion to intervene to
12 each person having legal custody of, or court-ordered residential
13 time with, the child. A person having legal custody or residential
14 time with the child may file an opposing affidavit.

15 (5) If, based on the motion and affidavits, the court finds that
16 it is more likely than not that visitation will be granted, the
17 court shall grant the motion to intervene.

18 (6) The court may not enter any temporary orders to establish,
19 enforce, or modify visitation under this section.

20

21 NEW SECTION. **Sec. 4.** (1)(a) The court shall enter an order
22 granting visitation if it finds that the child would likely suffer
23 harm or the substantial risk of harm if visitation between the
24 petitioner and the child is not granted and that granting visitation
25 between the child and the petitioner is in the best interest of the
26 child.

27 (b) An order granting visitation does not confer upon the
28 petitioner the rights and duties of a parent.

29 (2) In making its determination, the court shall consider the
30 reasons the parent or other person having legal custody denied
31 visitation to the petitioner. It is presumed that a fit parent's
32 decision to deny visitation is in the best interest of the child and
33 does not create a likelihood of harm or a substantial risk of harm
34 to the child.

1 (3) To rebut the presumption in subsection (2) of this section,
2 the petitioner must prove by clear and convincing evidence that the
3 child would likely suffer harm or the substantial risk of harm if
4 visitation between the petitioner and the child were not granted.

5 (4) If the court finds that the petitioner has met the standard
6 for rebutting the presumption in subsection (2) of this section, or
7 if there is no presumption because no parent has custody of the
8 child, the court shall consider whether it is in the best interest
9 of the child to enter an order granting visitation. The petitioner
10 must prove by clear and convincing evidence that visitation is in
11 the child's best interest. In determining whether it is in the best
12 interest of the child, the court shall consider the following,
13 nonexclusive factors:

14 (a) The love, affection, and strength of the current
15 relationship between the child and the petitioner and how the
16 relationship is beneficial to the child;

17 (b) The length and quality of the prior relationship between the
18 child and the petitioner before the parent or other person having
19 legal custody denied visitation, including the role performed by the
20 petitioner and the emotional ties that existed between the child and
21 the petitioner;

22 (c) The relationship between the petitioner and the child's
23 parent or other person having legal custody;

24 (d) The love, affection, and strength of the current
25 relationship between the child and the parent or other person having
26 legal custody;

27 (e) The nature and reason for the objection by the parent or
28 other person having legal custody to granting the petitioner
29 visitation;

30 (f) The effect that granting visitation will have on the
31 relationship between the child and the parent or other person having
32 legal custody;

33 (g) The residential time-sharing arrangements between the
34 parties having residential time with the child;

1 (h) The good faith of the petitioner and parent or other person
2 having legal custody;

3 (i) Any history of physical, emotional, or sexual abuse or
4 neglect by the petitioner, or any history of physical, emotional, or
5 sexual abuse or neglect by a person residing with the petitioner if
6 visitation would involve contact between the child and the person
7 with such history;

8 (j) The child's reasonable preference, if the court considers
9 the child to be of sufficient age to express a preference;

10 (k) Any other factor relevant to the child's best interest; and

11 (l) The fact that the parent has not lost his or her parental
12 rights by being adjudicated as an unfit parent.

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14 NEW SECTION. **Sec. 5.** (1)(a) For the purposes of sections 2
15 through 4 of this act, the court shall, on motion of a party to the
16 proceeding, order the petitioner to pay a reasonable amount for
17 costs and reasonable attorneys' fees to the party in advance and
18 prior to any hearing, unless the court finds, considering the
19 financial resources of all parties, that it would be unjust to do
20 so.

21 (b) Regardless of the financial resources of the parties, if the
22 court finds that a motion to intervene to seek visitation was
23 brought in bad faith or without reasonable basis in light of the
24 requirements of sections 2 through 4 of this act, the court shall
25 order the petitioner to pay a reasonable amount for costs and
26 reasonable attorneys' fees to the other party.

27 (2) If visitation is granted, the court shall order the petitioner
28 to pay all transportation costs associated with visitation."

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EFFECT: Removes provisions allowing a relative to commence a proceeding for visitation with a child and provides instead that a relative may file a motion to intervene in a pending child custody proceeding to seek visitation with a child. Provides that a person may file a motion to intervene in a proceeding to seek visitation no more than once.

Provides that the court may grant a motion to intervene if the court finds after reviewing the motion and affidavits submitted by parties that it is more likely than not visitation will be granted.

Retains all other provisions of the bill, including the standards regarding the presumption that a fit parent acts in the best interest of the child and that a court must grant visitation if there is a showing that: there is a likelihood of harm or a substantial risk of harm to the child if visitation is not granted; and that visitation is in the best interest of the child.

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