

HOUSE BILL REPORT

HB 2253

As Reported by House Committee On: Judiciary

Title: An act relating to the right to control disposition of the remains of a deceased minor child.

Brief Description: Concerning the right to control disposition of the remains of a deceased minor child.

Sponsors: Representatives Graves, Dye, Kilduff, Jinkins and Young.

Brief History:

Committee Activity:

Judiciary: 1/10/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Establishes a process and standards that apply when the parents of a deceased minor child do not agree on the disposition of the child's remains.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Jinkins, Chair; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Orwall and Valdez.

Minority Report: Do not pass. Signed by 3 members: Representatives Klippert, Muri and Shea.

Staff: Edie Adams (786-7180).

Background:

Disposition of Remains.

A person has the right to control the disposition of his or her own remains. This can be accomplished by making a pre-arrangement with a licensed funeral establishment or cemetery authority or by executing a written document signed by the decedent in the

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presence of a witness that expresses the decedent's wishes regarding the place or method of disposition of his or her remains.

If the decedent has not made a pre-arrangement or given directions for the disposition of his or her remains, then the right to control the disposition of the remains vests in the following people in the order named:

- the person designated by the decedent on the decedent's United States Department of Defense record of emergency data if the decedent died while serving in the military service;
- the designated agent of the decedent indicated in a written document signed and dated by the decedent in the presence of a witness;
- the surviving spouse or state-registered domestic partner;
- the majority of the surviving adult children;
- the surviving parents;
- the majority of the surviving siblings; and
- a court-appointed guardian for the person at the time of the person's death.

The responsibility for the reasonable costs of the preparation, care, and disposition of remains devolves jointly and severally upon all kin of the same degree of kindred in the order listed, and on the decedent's estate. If a funeral establishment or cemetery authority is unable to locate the next of kin or the legal representative of the decedent's estate after a good-faith effort, the most responsible person available may authorize the disposition of the decedent's remains.

Parenting Plans.

In any proceeding for dissolution of marriage or legal separation where there are minor children, the court must enter a parenting plan. A parenting plan may also be entered in proceedings to adjudicate parentage under the Uniform Parentage Act. The parenting plan must allocate decisionmaking authority and include residential provisions for the children.

Decisionmaking authority covers the right of each parent to make decisions regarding the child's care and growth, including decisions regarding education, health care, and religious upbringing. The court may order mutual decisionmaking authority or sole decisionmaking authority. The residential provisions of a parenting plan designate in which parent's home each minor child resides on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions. The residential schedule may provide a majority of time to one parent or may provide shared residential time, allowing the child to frequently alternate between the two residences.

Summary of Substitute Bill:

Procedures and standards are established to address circumstances where surviving parents are unable to agree on the disposition of a deceased minor child's remains. In this circumstance, the parents must promptly and in good faith attempt to reach agreement through mediation. If the parents are unable to reach agreement through mediation, either parent may file an action in superior court for a determination of the matter. The action must

be filed in the superior court of a county where a parent maintained a residence with the decedent at the time of the death.

The petition must specifically state the areas of disagreement, and both the petitioner and respondent must provide affidavits setting forth the facts and their proposed resolution of the issue. The court must hold a hearing within 10 days after proof of service is filed. Discovery is not allowed except as specifically ordered by the court. The court must issue a decision within three judicial days of the hearing. In making its determination, the court must consider the following factors:

- reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
- expressed wishes of the decedent, if the decedent was sufficiently mature to express reasoned and independent preferences as to disposition of his or her remains; and
- degree to which the arrangements and final disposition will accommodate the reasonable wishes of all surviving parents and allow for participation by all who wish to pay respect to the decedent.

The court may order a party to pay the reasonable attorneys' fees and costs of the other party or parties, including those incurred in mediation, if the court finds that party frustrated the mediation process without good reason.

A cemetery authority or funeral establishment is not criminally or civilly liable for burying or cremating remains pursuant to a parent's representation about an agreement concerning disposition of the remains, or a court order relating to disposition of the remains, under these procedures.

Substitute Bill Compared to Original Bill:

The original bill provided that if the parents of a deceased minor child are unmarried or separated and there is not agreement between the parents, the right to control disposition vests in the parent with whom the minor child resided a majority of the time. If the parents shared equal residential time with the child, the right vests in the parent with whom the minor child maintained a primary residence in terms of locale for receipt of mail or attending school.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This legislation arose out of a tragedy. The law provides that if a child dies, the parents have the right to decide on the arrangements for the child, but if they do not agree,

the only remedy is to go to court. Criteria should be established for this situation. It is true that the criteria may be arbitrary, and potentially unfair in some circumstances, but that is better than having a hazy rule.

This bill will prevent other families from having to go through additional pain and suffering after losing a child. In a time of grief, a family should not have the added trauma of a trying legal battle. A case involving a disagreement between the parents resulted in a toxic and costly legal fight that was settled after a month of agony, with the parents ultimately agreeing to the original proposal to share the remains.

The parents would not have had to endure this agony if the statute provided some guidance. The statute was drafted decades ago when society was different and marriage was different. The bill provides a solution that is patterned after a statute in Missouri and case law in California. If a parent has to hire an attorney, they can work out an agreement pretty quickly given more direction in the statute. Including a provision allowing attorneys' fees will also help ensure a more timely resolution in these cases.

(Opposed) There is great sympathy for the family that had to deal with this issue. In the end, the disagreement was resolved through a court process. The need for court action is a rare outcome. Please keep in mind that there are often strong religious or cultural convictions regarding disposition of remains. A parent's right to have a say in this important decision should not be removed based upon time spent with the child. Funeral homes will be put in the difficult position of having to make a decision or determination based on residential status. The bill is incomplete because it does not address the parenting plan or cases where there are no parenting plans.

(Other) The situation that led to this legislation was an enormously painful case. The father would say he was a very involved father until the mother moved away. There should be more clarity in the law on how these decisions are made, but using residential time is not the appropriate measure. It will disadvantage someone who is making an accommodation or who is deployed on military duty. One parent should not feel they are left out of the process just because they have less residential time. Parenting plans also address decisionmaking authority and dispute resolution procedures. Under state law the allocation of decisionmaking authority is not tied to residential time. Decisionmaking authority over non-emergency medical decisions or the dispute resolution process would be a more appropriate standard to use.

Persons Testifying: (In support) Representative Graves, prime sponsor; Dawn Krivanek; and Mike McKay.

(Opposed) John Barr, Washington Cremation Cemetery and Funeral Association.

(Other) Colleen LaMotte; and David Ward, Legal Voice

Persons Signed In To Testify But Not Testifying: None.