

Judiciary Committee

SB 5598

Title: An act relating to granting relatives, including but not limited to grandparents, the right to seek visitation with a child through the courts.

Brief Description: Granting relatives, including but not limited to grandparents, the right to seek visitation with a child through the courts.

Sponsors: Senators Pedersen, Angel, Rolfes, King, Darneille, Bailey, Brown, Mullet, Carlyle, Braun, Hobbs, Palumbo, Wellman, Keiser, Honeyford, Ranker, Nelson, Lias, McCoy, Billig, Cleveland, Hasegawa, Frockt, Conway, Rivers, Saldaña, Kuderer, Chase, Hunt, Fain, Walsh, Van De Wege, Rossi, Zeiger, Warnick, Becker, Takko, Wilson, Schoesler and Hawkins.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none"> • Establishes new standards and procedures for a relative to petition for court-ordered visitation with a child, and repeals an existing statute relating to third-party visitation actions.
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Hearing Date:

Staff: Edie Adams (786-7180).

Background:

Washington has two statutes allowing third parties to petition a court to seek visitation time with a minor child. A provision under the nonparent custody chapter allows any person to petition for visitation at any time. The court may order visitation if it is in the best interest of the child.

A second statute allows a nonparent to petition for visitation with a minor child if the parents have initiated a dissolution or legal separation action. The petitioner must show by clear and convincing evidence that a significant relationship exists with the child and that visitation would be in the best interests of the child. Visitation with a grandparent is presumed to be in the child's best interest when there is a significant relationship between the grandparent and the child. This

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presumption may be overcome if the court finds that visitation would endanger the child's physical, mental, or emotional health.

The constitutionality of Washington's third-party visitation statutes has been addressed by the Supreme Court of the United States (Supreme Court) and the Washington Supreme Court. In *Troxel v. Granville* (2000), the Supreme Court found that Washington's statute allowing any person to petition for visitation at any time was unconstitutional as applied in the case because it violated the fundamental liberty interest of parents to make decisions concerning the care and upbringing of their children. The Supreme Court stated that a fit parent is presumed to act in the child's best interest and that courts must give special deference to a fit parent's decision.

The Washington Supreme Court, in the cases *In re Custody of Smith* (1998) and *In the Matter of the Parentage of C.A.M.A.* (2005), held that parents have a fundamental right to raise their children without state interference. State interference with a parent's fundamental right is subject to strict scrutiny and therefore is justified only if it is narrowly drawn to meet a compelling state interest. The Washington Supreme Court recognized that the state may interfere with a parent's fundamental right in order to prevent harm to the child. Short of preventing harm to the child, the best interests of the child standard is insufficient to serve as a compelling state interest. The Washington Supreme Court criticized the lack of other safeguards in Washington's visitation statute, including that it does not require the petitioner to show a substantial relationship between the child and the petitioner, nor require the court to take into consideration the parent's reasons for denying visitation.

Summary of Bill:

A new procedure and standards are established for a relative to petition the court for visitation with a child. The current statute allowing a nonparent to petition for visitation in the context of a dissolution or legal separation action is repealed.

Requirements for Filing a Petition.

A person may petition for visitation if the person is a relative who has established an ongoing and substantial relationship with the child and the child is likely to suffer harm or a substantial risk of harm if visitation is denied. An ongoing and substantial relationship means the person and the child have had a relationship formed and sustained through interaction, companionship, and mutuality of interest and affection, without expectation of financial compensation, with substantial continuity for at least two years unless the child is under age two, in which case there must be substantial continuity for at least half of the child's life, and with a shared expectation of and desire for an ongoing relationship.

Relative is defined to mean: blood relatives; stepparents or stepsiblings; a person who adopts a child or the child's parent and the biological and other legally adopted children of such persons as well as other relatives of the adoptive parents; spouses of any of the foregoing; relatives of any half sibling of the child; and extended family members as defined by the law or custom of an Indian child's tribe, or in the absence of such a law or custom, certain listed relatives who provide care in the family abode on a 24-hour basis.

The petition must be filed in the county where the child primarily resides, unless a different court has jurisdiction over the child under the Uniform Child Custody Jurisdiction and Enforcement Act. A petitioner may not file a petition for visitation more than once.

The petitioner must file an affidavit with supporting facts alleging that an ongoing and substantial relationship with the child exists, or existed before action by the respondent, and that the child would likely suffer harm or the substantial risk of harm if visitation is not granted. The petitioner must serve notice of the petition on each person having custody or court-ordered residential time with the child, and these parties may file affidavits opposing the petition.

Court Hearing on the Petition.

The court must hold a hearing on the petition if it finds based on the petition and affidavits that that it is more likely than not that visitation will be granted. The court may not enter a temporary order establishing, enforcing, or modifying visitation.

In determining whether to grant visitation, the court must consider the respondent's reasons for denying visitation to the petitioner. A presumption is created that a fit parent's decision to deny visitation is in the best interests of the child and does not create a likelihood of harm or a substantial risk of harm to the child. To rebut this presumption, the petitioner must show by clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation is not granted.

The petitioner must also prove by clear and convincing evidence that visitation is in the child's best interest. In determining the child's best interest, the court must consider the following nonexclusive factors:

- the love, affection, and strength of the current relationship between the child and the petitioner and how the relationship is beneficial to the child;
- the length and quality of the prior relationship between the child and petitioner before the respondent denied visitation;
- the relationship between the petitioner and the respondent;
- the love, affection, and strength of the current relationship between the child and respondent;
- the nature and reason for the respondent's objection to granting visitation;
- the effect visitation will have on the relationship between the child and respondent;
- the residential time-sharing arrangements between the parties who have residential time;
- the good faith of the petitioner and respondent;
- any history of physical, emotional, or sexual abuse or neglect by the petitioner or a person residing with the petitioner;
- the child's reasonable preference, if the child is of sufficient age to express a preference;
- the fact that the respondent has not lost parental rights by being adjudicated an unfit parent; and
- any other relevant factor.

The court must enter an order granting visitation if the court finds that the child would likely suffer harm or the substantial risk of harm if visitation is not granted and that visitation is in the best interest of the child. An order granting visitation does not confer the rights and duties of a parent on the person who is granted visitation.

Modifying or Terminating a Visitation Order.

A court may not modify or terminate a visitation order unless there has been a substantial change of circumstances of the child or nonmoving party based on facts that have arisen since, or that were unknown to the court at the time, the order was entered, and that a modification or termination is in the child's best interest. The court must hold a hearing if, based on the petition and affidavits submitted, it finds that it is more likely than not that a modification or termination will be granted.

Attorneys' Fees and Transportation Costs.

Upon a motion by the respondent, the court must require the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees to the respondent in advance of any hearing unless the court finds it would be unjust considering the financial resources of the parties. The court must order the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees if the court finds that the petition was brought in bad faith or without reasonable basis. In proceedings for a modification or termination of the visitation order, the court may award reasonable attorneys' fees and costs to either party.

If visitation is granted, the court must order the petitioner to pay all transportation costs associated with visitation.

Appropriation: None.

Fiscal Note: Available.

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