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## Judiciary Committee

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### HB 2421

**Title:** An act relating to third-party visitation.

**Brief Description:** Concerning third-party visitation.

**Sponsors:** Representatives Pedersen, Kagi, Chase, Roberts, Rolfes, Upthegrove, Carlyle, Green, Goodman, Kenney, Ormsby and Moeller.

#### Brief Summary of Bill

- Establishes procedures for a nonparent to petition the court for visitation with a child under certain circumstances.
- Creates a presumption that a fit parent acts in the child's best interests and requires the petitioner to rebut the presumption by showing by clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation were not granted.
- Requires the petitioner to show by clear and convincing evidence that visitation is in the child's best interests.

**Hearing Date:** 1/13/10

**Staff:** Trudes Tango (786-7384).

#### Background:

Washington has two statutes that allow a person who is not the parent of a child to petition for court-ordered visitation. Both statutes have been held unconstitutional.

The broader of the two statutes allows any person to petition the court for visitation at any time. The court may order visitation if it is the best interest of the child. The second statute allows any person to petition for visitation if the child's parents have commenced an action for dissolution or legal separation. The petitioner must establish by clear and convincing evidence that a significant relationship exists between the petitioner and the child. The court may order visitation

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if it is in the child's best interest. Under this second statute, visitation with a grandparent is presumed to be in the child's best interest when a significant relationship between the child and grandparent exists.

The U.S. Supreme Court (Supreme Court) and the Washington Supreme Court have held that parents have a fundamental right to raise their children without state interference. This right is a fundamental liberty interest protected by the due process clause of the 14th Amendment. The Supreme Court stated that there is a presumption that a fit parent acts in the best interests of the child and a third-party visitation statute must give some weight to that fit parent's decision to deny visitation. The Washington Supreme Court has stated that the state may interfere with a parent's fundamental right only where the state seeks to prevent harm or the risk of harm to the child.

### **Summary of Bill:**

Procedures are established for third parties to petition the court for visitation under certain circumstances.

A person who is not the parent of the child may petition the court for visitation if the person has established an ongoing and substantial relationship with the child. However, the person may not petition for visitation if the child's two parents are living together with the child and both parents agree that visitation should not be granted.

An ongoing and substantial relationship means that the person and the child have had a relationship with substantial continuity for at least one year through interaction, companionship, and mutuality, without expectation of financial compensation.

A person may not file a petition for visitation more than once, unless at least two years have passed since the final order was issued and the petitioner shows that there has been a substantial change in circumstances of the child or the other party.

The petitioner must file with the petition an affidavit alleging that: (1) a sufficient relationship with the child exists or existed before interference by the respondent and (2) the child would likely suffer harm or the substantial risk of harm if visitation were not granted. The respondent may file an opposing affidavit. If, based on the affidavits, the court finds that more likely than not visitation will be granted the court must hold a hearing.

The court must consider the reasons the respondent has denied visitation. If the respondent is the child's parent, there is a presumption that a fit parent's decision to deny visitation is in the child's best interests and does not create a likelihood of harm or the substantial risk of harm. To rebut that presumption, the petitioner must prove by clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation were not granted.

If the court finds that the petitioner has rebutted the presumption, or the presumption does not apply because no parent has custody of the child, the court must consider whether it is in the child's best interests to grant visitation. The petitioner must prove by clear and convincing evidence that visitation is in the child's best interests. In determining the child's best interests, the court must consider the following, nonexclusive factors:

- (1) the love, affection, and strength of the current relationship between the child and the petitioner and how the relationship is beneficial to the child;
- (2) the length and quality of the prior relationship before visitation was denied, including the role the petitioner performed and the emotional ties that existed between the child and petitioner;
- (3) the relationship between the petitioner and the respondent and the respondent's reasons for denying visitation;
- (4) the effect that granting visitation will have on the relationship between the child and the respondent;
- (5) the residential time-sharing arrangements between the parties who have residential time with the child;
- (6) the good faith of the petitioner and respondent;
- (7) any history of abuse or neglect by the petitioner, or any such history by a person residing with the petitioner if visitation would involve contact between the child and the person;
- (8) the child's reasonable preference, if the child is of sufficient age to express a preference; and
- (9) any other factor relevant to the child's best interests.

Upon the respondent's motion, the court must order the petitioner to pay reasonable attorneys' fees to the respondent in advance and prior to any hearing, unless the court finds that no financial hardship will be imposed upon the respondent. The court may, on its own motion, order the petitioner to pay reasonable attorneys' fees and costs to the respondent regardless of the outcome of the petition. If visitation is granted, the court must order the petitioner to pay all transportation costs associated with visitation.

Procedures are established for modifying or terminating a visitation order. A court may not modify or terminate a third-party visitation order unless it finds that a substantial change of circumstances has occurred in the circumstances of the nonmoving party or the child and that modification or termination is necessary for the child's best interests.

An order for visitation does not give the petitioner the rights and duties of a parent.

**Appropriation:** None.

**Fiscal Note:** Requested 1/7/10.

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