HOUSE BILL REPORT
ESHB 1934

As Passed House:
March 7, 2013

Title: An act relating to granting all persons who have an ongoing and substantial relationship with a child, including but not limited to grandparents, the right to seek visitation with that child through the courts.

Brief Description: Concerning visitation rights for persons, including grandparents, with an ongoing and substantial relationship with a child.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Pedersen, Nealey, Hope, Kagi, Goodman, Hansen, Orwall, Pollet, Roberts, Appleton, Hunt, Maxwell, Ormsby, Jinkins, Green, Morrell, Carlyle, Seaquist, Haigh, Hudgins, Pettigrew, Tarleton, Sells, Smith, Reykdal, Sawyer, Morris, Dunshee, Magendanz, Hunter, Wylie, Liias, Fitzgibbon, Fagan, Upthegrove, Farrell, Takko, Ryu, Riccelli, Bergquist, Freeman, Habib, Van De Wege, Haler, Clibborn, Sullivan, Walsh, Tharinger, Moeller, Blake, Cody, Springer, Lytton, McCoy, Stanford, Moscoso, Fey and Santos).

Brief History:
Committee Activity:
Judiciary: 2/19/13 [DPS].
Floor Activity:
Passed House: 3/7/13, 56-40.

Brief Summary of Engrossed Substitute Bill

- Establishes new standards and procedures for a person who is not a parent to petition for visitation with a child, and repeals existing statutes relating to third-party visitation actions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Goodman, Hope, Jinkins, Nealey, Orwall and Roberts.

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.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Kirby, Klippert and Shea.

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. One statute 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.

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

Washington's third-party visitation statutes have been found unconstitutional by both the Supreme Court of the United States (Supreme Court) and the Washington Supreme Court (Court). In *Troxel v. Granville* (2000), the Supreme Court found that Washington's statute allowing any person to petition for visitation at any time violated the fundamental liberty interest of parents to make decisions concerning the care and upbringing of their children. The Supreme Court also 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 Court in two cases, *In re Custody of Smith* (1998) and *In the Matter of the Parentage of C.A.M.A* (2005), has also 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 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 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 Engrossed Substitute Bill:

Current statutes regarding third-party visitation actions are repealed, and new procedures and standards are established for a person who is not a parent to petition the court for visitation with a child.

<u>Requirements for Filing a Petition</u>.
A person may petition for visitation if the person has established an ongoing and substantial relationship with the child. 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. An ongoing and substantial relationship may not be established based solely on a relationship that results from the person's role as a paid or volunteer service provider, such as a teacher, counselor, coach, or child care provider.

The petitioner must file an affidavit with the petition alleging that an ongoing and substantial relationship with the child exists, or existed before interference 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 serve affidavits opposing the petition.

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

<u>Court Hearing on the Petition</u>.
The court must hold a hearing on the petition if it finds based on the petition and the affidavits that visitation will, more likely than not, be granted. The court may not enter a temporary order establishing, enforcing, or modifying 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 with the child;
- 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 court considers the child to be of sufficient age to express a preference;
- the fact that the respondent has not lost parental rights by being adjudicated as 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.
If visitation is granted, a court may not modify or terminate the order unless there has been a substantial change of circumstances of the child or nonmoving party based on facts that have arisen since the order was entered or that were unknown to the court at the time it entered the order, and 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 unless the court finds it would be unjust considering the financial resources of the parties. Regardless of 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.

Staff Summary of Public Testimony:

(In support-from testimony on HB 1506, which is identical to HB 1934 except for the title, on 2/6/2013) Washington is one of only a couple of states that does not have a mechanism for nonparents to seek visitation with a child. The bill provides a safety valve in cases where the court finds that there would be harm or the substantial risk of harm to a child. The bill provides a high bar that tilts heavily towards parents' rights. There are clear standards laid out by the courts as to what is constitutional and the bill incorporates those protections. It presumes that fit parents act in the best interest of their children and there is a strict standard for overcoming that presumption.

The intent is not to take away the rights of parents, which are sacrosanct. The primary interest is for the children who are missing the benefits of having grandparents and other family members in their lives. Grandparents and other family members who have had significant involvement in the care and upbringing of a child can be cut off through no fault of their own. The alienation of children from their families can be devastating. All children should have the love and support of as many people as possible. Sometimes parents do not act in the best interests of their children. Third-party visitation can help protect children by allowing for a second set of eyes looking at situations where children may be in danger.

(With concerns-from testimony on HB 1506, which is identical to HB 1934 except for the title, on 2/6/2013) There are limits to appropriate government involvement in families. The bill will force parents to go to court to justify their parenting decisions to a judge. Currently the state is allowed to interfere only in cases where the parent is unfit. That is a bright line that works well. The provision requiring advance attorneys' fees could bar low-income petitioners with meritorious claims from seeking redress.

(Opposed-from testimony on HB 1506, which is identical to HB 1934 except for the title, on 2/6/2013) This bill interferes with the fundamental rights of parents to make decisions for the care, custody, and control of their children. Families will be at risk of being brought to court when they have done nothing wrong. This bill allows any person to petition if there is a substantial relationship, including nonrelative third parties, such as a Sunday school teacher, boyfriend, or a babysitter. If the parent decides not to allow a relationship with a particular person, the parent can be taken to court every two years and have to defend that decision. The court can appoint a guardian ad litem, and order mediation and the psychological evaluation of the child.

This bill is unconstitutional. The state can interfere with parent's rights only if the parent is unfit, and there are already avenues in the law to seek custody when a parent is not fit. The bill directly interferes with the God-given duty of parents to raise their children. It is an illegitimate reach for power by the state that violates the sacred trust of parenting. Parents should be able to make decisions about raising their children, and work out disputes with family members, without the interference of the state. Family disputes should not be worked out in the court system. Relationships cannot be legislated.

Persons Testifying: (In support-from testimony on HB 1506, which is identical to HB 1934 except for the title, on 2/6/2013) Representative Pedersen, prime sponsor; Bob Rudolph; Cindy Jacobson; Geraldine Laemmle; Joni Lund, Michelle Hill, Sharon Dewees, and Dianna Bohart, Grandparent's Rights of Washington; Carolyn Burkhart; Vicki Morgan; and Ruth Wade.

(With concerns-from testimony on HB 1506, which is identical to HB 1934 except for the title, on 2/6/2013) David Ward, Legal Voice; and Joseph Backholm, Family Policy Institute of Washington.

(Opposed-from testimony on HB 1506, which is identical to HB 1934 except for the title, on 2/6/2013) Hilary Snodgrass, Parent's Rights of Washington; Dianna Branan, Christian

Homeschool Network; Jordan Pennington; Ben McGregor; William Zimmerman; Duane Kinney Sr.; Duane Kinney Jr.; Maychen Kinney; and Max Bruk.

Persons Signed In To Testify But Not Testifying: None.