

HOUSE BILL ANALYSIS

HB 2750

Title: An act relating to visitation.

Brief Description: Providing a procedure for persons other than parents to intervene in custody proceedings in order to obtain visitation.

Sponsors: Representatives Wolfe, Kessler, Dickerson, Anderson, Gardner and Lambert.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Trudes Hutcheson (786-7384).

Background: Under certain circumstances, a person other than a parent may bring an action to obtain custody of a child. There is a specific chapter in the code, 26.10 RCW, governing nonparental actions for child custody. Within that chapter, there is a statute addressing visitation and explicitly providing that: Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings.– RCW 26.10.160(3).

The court of appeals recently interpreted that provision to mean that a person other than a parent may petition for visitation only when a custody proceeding is pending, as opposed to any time.– In the Matter of Visitation of Wolcott, 85 Wn. App. 468, 473 (1997); In re the Visitation of Troxel, 87 Wn. App. 131, 137 (1997). The court based its interpretation on the parallel histories of the visitation statute in the third-party custody chapter (26.10 RCW) and the visitation statute in the dissolution of marriages chapter (26.09 RCW).

In the chapter governing dissolutions, a person other than a parent may petition for visitation when the parents have commenced a dissolution, legal separation, or modification of a parenting plan proceeding. A petition will be dismissed unless the petitioner can demonstrate by clear and convincing evidence that a significant relationship exists with the child. If the court dismisses a petition because the petitioner has failed to show such a relationship, the petitioner must pay reasonable costs and attorney fees to the respondent.

The court may order visitation if the evidence supports a finding that visitation would be in the child's best interests. Visitation with a grandparent is presumed to be in the child's best interests. This presumption may be rebutted by a preponderance of the evidence showing that visitation would endanger the child's physical, mental, or

emotional health. If visitation would be in the child's interests, but for hostilities between the parents and grandparent, the court may order mediation.

The statute lists factors that the court may consider in determining whether to award visitation to a person other than a parent. The visitation may be modified or terminated in any subsequent modification action if the court finds that the visitation is no longer in the child's best interest.

Summary of Bill: The visitation statutes are clarified as to when a person other than a parent may petition or intervene in a pending proceeding to obtain visitation with a child.

A person other than a parent may intervene in a pending dissolution, legal separation, declaration concerning the validity of marriage, or modification of a parenting plan proceeding for the purposes of seeking visitation with a child. A person other than a parent may petition for visitation only if a final order has been entered in a proceeding for dissolution, legal separation, or declaration concerning the validity of marriage.

The visitation provision in the third-party custody chapter is amended to be substantially identical to the visitation provision in the dissolution statutes. It includes the requirement that the petitioner demonstrate by clear and convincing evidence that a significant relationship exists with the child and includes the grandparent presumption.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research