

HOUSE BILL ANALYSIS

HB 2992

Title: An act relating to nonparental visitation rights.

Brief Description: Clarifying legislative intent that a nonparent may appeal for visitation rights with a child.

Sponsors: Representative Boldt.

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. The statutes governing third-party child custody proceedings also provide: Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings.— The court may order visitation when it is in the best interests of the child.

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 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 best 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 interests.

Summary of Bill: The Legislature finds that courts have denied nonparents the right to seek visitation even when the nonparents are related to the children.

A person other than a parent may petition for visitation with a child whether or not there has been a child custody proceeding or any other proceeding filed. A petitioner may not be denied visitation rights merely because no other proceeding regarding the child or the child's family has been filed. A list of factors are included that the court may consider when determining the best interests of the child.

The bill contains a severance clause.

Fiscal Note: Not requested.

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

Office of Program Research