

HOUSE BILL ANALYSIS

HB 1773

Title: An act relating to visitation rights in nonparental actions for child custody.

Brief Description: Changing visitation rights in nonparental actions for child custody.

Sponsors: Representatives Wolfe, Lambert, Schoesler, Ogden, Dickerson, Conway, Alexander, Cooper, Tokuda, Veloria, Radcliff, Stensen, D. Schmidt, Romero, Gombosky, Schindler, Keiser, Lantz, Rockefeller, Edmonds, Kenney, Scott and Lovick.

Brief Summary of Bill

- Requires that a court find, before ordering visitation with a person other than a parent, that denial of visitation would result in a substantial likelihood of harm to the child's well-being.

HOUSE COMMITTEE ON JUDICIARY

Staff: Trudes Hutcheson (786-7384).

Background:

Current statutes allow a nonparent to petition the court for visitation with a child when the parents have filed for dissolution (under RCW 26.09) or at anytime (under RCW 26.10). The court may order visitation with a nonparent if it is in the child's best interest.

Under RCW 26.09.240, the court must dismiss a petition for visitation by a nonparent if the petitioner fails to prove by clear and convincing evidence that the petitioner has a significant relationship with the child. If the court dismisses the petition, the court must order the petitioner to pay reasonable attorney fees and costs to the party who opposed the petition. Visitation with a grandparent is presumed to be in the child's best interest when a significant relationship exists between the grandparent and the child.

In December 1998, the state supreme court held that the visitation statutes were unconstitutional because they impermissibly interfere with a parent's fundamental interest in the care, custody and companionship of the child.— The court stated that the best interest of the child standard, without any threshold finding that the child would be harmed if visitation were discontinued, was insufficient to overrule a parent's fundamental right.

Summary of Bill:

The third-party visitation statutes are amended to reflect the recent state supreme court decision.

A person other than a parent may petition for visitation anytime when a significant relationship exists between the person and the child. The court may grant visitation if it finds, by a preponderance of the evidence, that: (a) visitation is within the child's best interest; and (b) denying visitation would result in a substantial likelihood of harm to the child's physical, mental, or emotional well-being.

When determining the child's best interest, the court may consider the following:

- the strength of the relationship between the child and the petitioner;
- the relationship between the petitioner and the parents;
- the nature and reason for the parent's objection to visitation;
- the effect visitation would have on the relationship between the child and the child's parents;
- the residential time-sharing arrangements;
- the good faith of the petitioner;
- any criminal history or history of abuse by the petitioner; and
- any other factor the court finds relevant.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.