
SENATE BILL 5598

State of Washington

65th Legislature

2017 Regular Session

By Senators Pedersen, Angel, Rolfes, King, Darneille, Bailey, Brown, Mullet, Carlyle, Braun, Hobbs, Palumbo, Wellman, Keiser, Honeyford, Ranker, Nelson, Liiias, McCoy, Billig, Cleveland, Hasegawa, Frockt, Conway, Rivers, Saldaña, Kuderer, Chase, Hunt, Fain, Walsh, Van De Wege, Rossi, Zeiger, Warnick, Becker, Takko, Wilson, Schoesler, and Hawkins

Read first time 01/31/17. Referred to Committee on Law & Justice.

1 AN ACT Relating to granting relatives, including but not limited
2 to grandparents, the right to seek visitation with a child through
3 the courts; adding a new chapter to Title 26 RCW; and repealing RCW
4 26.09.240.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Parent" means a legal parent whose rights have not been
10 terminated, relinquished, or declared not to exist.

11 (2) "Relative" means:

12 (a) Any blood relative, including those of half-blood, and
13 including first cousins, second cousins, nephews or nieces, and
14 persons of preceding generations as denoted by prefixes of grand,
15 great, or great-great;

16 (b) Stepfather, stepmother, stepbrother, and stepsister;

17 (c) A person who legally adopts a child or the child's parent as
18 well as the biological and other legally adopted children of such
19 persons, and other relatives of the adoptive parents in accordance
20 with state law;

1 (d) Spouses of any persons named in (a), (b), or (c) of this
2 subsection, even after the marriage is terminated;

3 (e) Relatives, as named in (a), (b), or (c) of this subsection,
4 of any half sibling of the child; or

5 (f) Extended family members, as defined by the law or custom of
6 an Indian child's tribe or, in the absence of such law or custom, a
7 person who has reached the age of eighteen and who is the Indian
8 child's grandparent, aunt or uncle, brother or sister, brother-in-law
9 or sister-in-law, niece or nephew, first or second cousin, or
10 stepparent who provides care in the family abode on a twenty-four
11 hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4).

12 NEW SECTION. **Sec. 2.** (1) A person who is not the parent of the
13 child may petition for visitation with the child if:

14 (a) The petitioner has an ongoing and substantial relationship
15 with the child;

16 (b) The petitioner is a relative of the child or a parent of the
17 child; and

18 (c) The child is likely to suffer harm or a substantial risk of
19 harm if visitation is denied.

20 (2) A person has established an ongoing and substantial
21 relationship with a child if the person and the child have had a
22 relationship formed and sustained through interaction, companionship,
23 and mutuality of interest and affection, without expectation of
24 financial compensation, with substantial continuity for at least two
25 years unless the child is under the age of two years, in which case
26 there must be substantial continuity for at least half of the child's
27 life, and with a shared expectation of and desire for an ongoing
28 relationship.

29 NEW SECTION. **Sec. 3.** (1) If a court has jurisdiction over the
30 child pursuant to chapter 26.27 RCW, a petition for visitation under
31 section 2 of this act must be filed with that court. In all other
32 cases, a petition for visitation under section 2 of this act must be
33 filed in the county where the child primarily resides.

34 (2) The petitioner may not file a petition for visitation more
35 than once.

36 (3) The petitioner must file with the petition an affidavit
37 alleging that:

1 (a) A relationship with the child that satisfies the requirements
2 of section 2 of this act exists or existed before action by the
3 respondent; and

4 (b) The child would likely suffer harm or the substantial risk of
5 harm if visitation between the petitioner and child was not granted.

6 (4) The petitioner shall set forth facts in the affidavit
7 supporting the petitioner's requested order for visitation.

8 (5) The petitioner shall serve notice of the filing to each
9 person having legal custody of, or court-ordered residential time
10 with, the child. A person having legal custody or residential time
11 with the child may file an opposing affidavit.

12 (6) If, based on the petition and affidavits, the court finds
13 that it is more likely than not that visitation will be granted, the
14 court shall hold a hearing.

15 (7) The court may not enter any temporary orders to establish,
16 enforce, or modify visitation under this section.

17 NEW SECTION. **Sec. 4.** (1)(a) At a hearing pursuant to section
18 3(6) of this act, the court shall enter an order granting visitation
19 if it finds that the child would likely suffer harm or the
20 substantial risk of harm if visitation between the petitioner and the
21 child is not granted and that granting visitation between the child
22 and the petitioner is in the best interest of the child.

23 (b) An order granting visitation does not confer upon the
24 petitioner the rights and duties of a parent.

25 (2) In making its determination, the court shall consider the
26 respondent's reasons for denying visitation. It is presumed that a
27 fit parent's decision to deny visitation is in the best interest of
28 the child and does not create a likelihood of harm or a substantial
29 risk of harm to the child.

30 (3) To rebut the presumption in subsection (2) of this section,
31 the petitioner must prove by clear and convincing evidence that the
32 child would likely suffer harm or the substantial risk of harm if
33 visitation between the petitioner and the child were not granted.

34 (4) If the court finds that the petitioner has met the standard
35 for rebutting the presumption in subsection (2) of this section, or
36 if there is no presumption because no parent has custody of the
37 child, the court shall consider whether it is in the best interest of
38 the child to enter an order granting visitation. The petitioner must
39 prove by clear and convincing evidence that visitation is in the

1 child's best interest. In determining whether it is in the best
2 interest of the child, the court shall consider the following,
3 nonexclusive factors:

4 (a) The love, affection, and strength of the current relationship
5 between the child and the petitioner and how the relationship is
6 beneficial to the child;

7 (b) The length and quality of the prior relationship between the
8 child and the petitioner before the respondent denied visitation,
9 including the role performed by the petitioner and the emotional ties
10 that existed between the child and the petitioner;

11 (c) The relationship between the petitioner and the respondent;

12 (d) The love, affection, and strength of the current relationship
13 between the child and the respondent;

14 (e) The nature and reason for the respondent's objection to
15 granting the petitioner visitation;

16 (f) The effect that granting visitation will have on the
17 relationship between the child and the respondent;

18 (g) The residential time-sharing arrangements between the parties
19 having residential time with the child;

20 (h) The good faith of the petitioner and respondent;

21 (i) Any history of physical, emotional, or sexual abuse or
22 neglect by the petitioner, or any history of physical, emotional, or
23 sexual abuse or neglect by a person residing with the petitioner if
24 visitation would involve contact between the child and the person
25 with such history;

26 (j) The child's reasonable preference, if the court considers the
27 child to be of sufficient age to express a preference;

28 (k) Any other factor relevant to the child's best interest; and

29 (l) The fact that the respondent has not lost his or her parental
30 rights by being adjudicated as an unfit parent.

31 NEW SECTION. **Sec. 5.** (1)(a) For the purposes of sections 2
32 through 4 of this act, the court shall, on motion of the respondent,
33 order the petitioner to pay a reasonable amount for costs and
34 reasonable attorneys' fees to the respondent in advance and prior to
35 any hearing, unless the court finds, considering the financial
36 resources of all parties, that it would be unjust to do so.

37 (b) Regardless of the financial resources of the parties, if the
38 court finds that a petition for visitation was brought in bad faith
39 or without reasonable basis in light of the requirements of sections

1 2 through 4 of this act, the court shall order the petitioner to pay
2 a reasonable amount for costs and reasonable attorneys' fees to the
3 respondent.

4 (2) If visitation is granted, the court shall order the
5 petitioner to pay all transportation costs associated with
6 visitation.

7 NEW SECTION. **Sec. 6.** (1) A court may not modify or terminate an
8 order granting visitation under section 4 of this act unless it
9 finds, on the basis of facts that have arisen since the entry of the
10 order or were unknown to the court at the time it entered the order,
11 that a substantial change of circumstances has occurred in the
12 circumstances of the child or nonmoving party and that modification
13 or termination of the order is necessary for the best interest of the
14 child.

15 (2) If a court has jurisdiction over the child pursuant to
16 chapter 26.27 RCW, a petition for modification or termination under
17 this section must be filed with that court. In all other cases, a
18 petition for modification or termination under this section must be
19 filed in the county where the child primarily resides.

20 (3) The petitioner must file with the petition an affidavit
21 alleging that, on the basis of facts that have arisen since the entry
22 of the order or were unknown to the court at the time it entered the
23 order, there is a substantial change of circumstances of the child or
24 nonmoving party and that modification or termination of the order is
25 necessary for the best interest of the child. The petitioner shall
26 set forth facts in the affidavit supporting the petitioner's
27 requested order.

28 (4) The petitioner shall serve notice of the petition to each
29 person having legal custody of, or court-ordered residential time or
30 court-ordered visitation with, the child. A person having legal
31 custody or residential or visitation time with the child may file an
32 opposing affidavit.

33 (5) If, based on the petition and affidavits, the court finds
34 that it is more likely than not that a modification or termination
35 will be granted, the court shall hold a hearing.

36 (6) The court may award reasonable attorneys' fees and costs to
37 either party.

1 NEW SECTION. **Sec. 7.** RCW 26.09.240 (Visitation rights—Person
2 other than parent—Grandparents' visitation rights) and 1996 c 177 s
3 1, 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st
4 ex.s. c 157 s 24 are each repealed.

5 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act
6 constitute a new chapter in Title 26 RCW.

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