

# SENATE BILL REPORT

## EHB 1773

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As Reported By Senate Committee On:  
Judiciary, April 2, 1999

**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 History:** Passed House 3/15/99, 97-0.

**Committee Activity:** Judiciary: 3/31/99, 4/2/99 [DP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators Heavey, Chair; Costa, Goings, Haugen, Johnson, Roach, Thibaudeau and Zarelli.

**Staff:** Lidia Mori (786-7755)

**Background:** Current statutes allow a nonparent to petition the court for visitation with a child when the parents have filed for dissolution or at any time. The court may order visitation with a nonparent if it is in the child's best interest.

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.

A nonparent who is related to the child through blood, marriage, or adoption may petition for visitation with the child at anytime when a dissolution, legal separation or modification of parenting plan proceeding has been commenced by the child's parent or parents or may

intervene in a pending dissolution, legal separation or modification of parent plan proceeding. The nonparent must demonstrate by clear, cogent, and convincing evidence that:

- (a) a significant relationship exists between the nonparent and the child;
- (b) denial of visitation would result in a substantial likelihood of harm to the child's well-being; and
- (c) visitation is in the child's best interest.

If the court grants visitation to the nonparent, the time awarded must be divided between the primary residential parent and the nonprimary residential parent in an amount proportionate to the time awarded them in the parenting plan, unless the court finds that it would not be in the best interest of the child in maintaining contact with both parents.

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 timesharing 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The Washington Supreme Court recently struck down all nonparental actions for visitation. Without this bill, nonparents such as grandparents cannot obtain visitation with their grandchildren. The bill sets forth a three prong test in keeping with the Supreme Court case and will allow grandparents a chance to obtain court ordered visitation with their grandchildren. Children feel cut off from their family when they are not allowed to see their grandparents. Following a divorce, a grandchild's relationship with his or her grandparents may become even more important in the child's life.

**Testimony Against:** None.

**Testified:** Representative Cathy Wolfe; Representative Kathy Lambert; Rick Bartholomew, WSBA Family Law Section; Joe Kearney; Joe Parr; Grace Huang, NW Women's Law Center (with concerns); Lisa Scott, private attorney; Vivian Weers; Mary Weers; John Weers; Wesley Weers; Shirley Nielsen; Erika Mahaney; Tash Mahaney; Jess Mahaney.