

# HOUSE BILL REPORT

## HB 2711

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**As Reported by House Committee On:**  
Juvenile Justice & Family Law

**Title:** An act relating to visitation rights for grandparents.

**Brief Description:** Concerning visitation rights for grandparents.

**Sponsors:** Representatives Kagi, Kessler, Moeller, Rodne, Lovick, McDonald, Morrell, Green, McCoy and Clibborn.

**Brief History:**

**Committee Activity:**

Juvenile Justice & Family Law: 1/27/06, 1/31/06 [DPS].

### Brief Summary of Substitute Bill

- Repeals RCW 26.09.240 and removes 26.10.160(3) from current law.
- Allows a grandparent to seek court-ordered visitation with a child if: (a) the grandparent has a significant relationship with the child; (b) the parent substantially interfered with that relationship; and (c) the grandparent tried to resolve any disagreement with the parent before going to the court.
- Requires the court to order contact with the child if the grandparent shows by clear and convincing evidence that: (a) the child would very likely suffer harm if contact is not awarded; and (b) the parent's denial of contact was unreasonable and not in the child's best interests.

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### HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Dickerson, Chair; Moeller, Vice Chair; McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Crouse, Lovick and Roberts.

**Staff:** Kara Durbin (786-7133).

**Background:**

Washington has two statutes allowing a non-parent to petition for court-ordered visitation with a child. Both have been held to be unconstitutional.

## **I. Washington's third-party visitation statutes**

The first visitation statute allows a non-parent to petition for visitation if the child's parents have brought an action for dissolution or legal separation. The petitioner must establish by clear and convincing evidence that a significant relationship exists with the child. The court may order visitation if it is in the child's best interest. Under this statute, visitation with a grandparent is presumed to be in the child's best interest when a significant relationship between the child and grandparent exists.

In April of 2005, the Washington Supreme Court decided *In re Parentage of C.A.M.A.* In *C.A.M.A.*, the Court found that the current RCW 26.09.240 unconstitutionally infringed on a fit parent's right to control visitation with his or her child. The Court reasoned that the presumption in favor of grandparent visitation contained in the statute did not give enough deference to a fit parent's fundamental right to make decisions regarding his or her child. Instead, the Court reasoned that visitation over the objections of a fit parent was only appropriate if a substantial relationship between the third party and the child exists and denial of visitation with the child would result in actual harm to the child.

The second visitation statute, located with the statutes governing third-party custody, allows "any person" to petition for visitation "at any time." It allows the court to order visitation if it is in the child's best interest. This statute was held to be unconstitutional in Smith, and the recent Washington Supreme Court case *In re L.B.* affirmed that holding.

## **II. Federal and state supreme courts' interpretation of third-party visitation statutes**

Washington's statute allowing any person to petition for visitation at any time was found unconstitutional. The Washington Supreme Court held that the statute violated parents' federal constitutional rights to raise their children without state interference. The Court found that the Constitution permits a state to interfere with a parent's right only to prevent harm or potential harm to the child. *In re the Custody of Smith*, 137 Wn.2d 1 (1998).

The case was appealed to the United States Supreme Court, which held that the statute was unconstitutional as applied to the facts in that particular case. In reaching its conclusion, the Court recognized that a fit parent is presumed to act in the child's best interest, and some weight should be given to that parent's decision. The Court declined to address the Washington Supreme Court's conclusion that the constitution requires a threshold showing of harm or potential harm to the child as a prerequisite to granting visitation. *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000).

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### **Summary of Substitute Bill:**

New provisions regarding grandparent visitation are established.

A grandparent may petition the court once for visitation with a child, regardless of whether there is a pending dissolution, legal separation, or modification of parenting plan proceeding.

A grandparent may file a second petition if the grandparent can prove that a substantial change in circumstances has occurred. A death or incapacitation of a parent is considered a substantial change in circumstances.

In order for a grandparent to have standing to bring a petition for visitation, the grandparent must show that he or she has a significant relationship with the child. To show that a significant relationship exists, a grandparent must prove all of the following factors:

- the relationship between the child and the grandparent has been significant in nature for a substantial period of time;
- a parent or custodian consented to the formation and establishment of the relationship between the grandparent and the child, or the relationship was formed as a result of the unavailability or inability of the parent to perform care-taking functions;
- the relationship between the child and the grandparent is beneficial;
- a parent or custodian has substantially interfered in the grandparent's relationship with the child, and the grandparent has unsuccessfully tried to resolve the disagreement with the parent before going to court; and
- the child would likely suffer harm if contact between the grandparent and the child is not awarded.

If the court finds the child would very likely suffer harm, the parent must then present evidence showing why their decision to refuse contact is reasonable and in the child's best interests. The court must give some deference to a fit parent's determinations regarding visitation.

The court must order contact if it finds by clear and convincing evidence that: (a) the child would likely suffer harm if contact between the grandparent and the child is awarded; and (b) the court finds that denial of contact by the parent is unreasonable and not in the child's best interest.

In making this determination, the court must consider the following, non-exclusive factors:

- the love, affection, and strength of the relationship between the child and the grandparent;
- the length and quality of the prior relationship between the grandparent and the child, including the role played by the grandparent and the emotional ties that existed between the child and the grandparent;
- the relationship between each of the child's parents and the petitioning grandparent;
- the nature and reason for either parent's objection to visitation;
- the effect that granting visitation will have on the relationship between the child and the child's parents;
- the residential time-sharing arrangements between the parents;
- the good faith of the petitioner;
- any history of physical, emotional, or sexual abuse or neglect of the child by the grandparent;

- the child's reasonable preference, if the court finds the child to be of sufficient age to express a preference; and
- any other factor relevant to the child's best interest.

The third-party visitation provision in RCW 26.10.160(3) is removed and RCW 26.09.240, the visitation statute in the dissolution chapter, is repealed.

**Substitute Bill Compared to Original Bill:**

The substitute bill reorganizes Section 3 of the bill to clarify what a petitioner needs to prove in order to have legal standing. The substitute also corrects a drafting error by replacing the term "parent" with "grandparent" in Section 3 of the bill.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) This issue has been before this committee before. Currently, there are no viable statutory provisions available for grandparents to seek visitation. Washington is the only state without a grandparent visitation statute. The legislation does meet the requirements that the court has set out. Courts have said that the Legislature can take things one step at a time. This bill could help thousands of children. We were heavily involved in our grandchildren's lives until one parent decided that she did not want us to have contact with them anymore. It feels like a death to be separated from them.

**Testimony Against:** (Original bill) Our concern is this bill is too restrictive. It focuses on the status of the applicant for visitation, not the status of the child. We would fully support this bill if it were broader and applied to all non-parents. We encourage grandparents to develop relationships with their grandchildren, but we think it needs to be more inclusive. This bill does follow the Due Process guidelines, but the Equal Protection clause is violated by a statute that discriminates against one group of people and does not allow the same rights to other people who have close relationships with children.

**Persons Testifying:** (In support) Representative Kagi, prime sponsor; Ken Masters, David McRae, and Rich Roitano, Grandparent's Rights of Washington; and Deb Naylor.

(Opposed) Rick Bartholomew, Family Law Section of the Washington State Bar Association; Kris Anderson, Northwest Women's Law Center; and Edith Owen, Pierce County Relatives Raising Children.

**Persons Signed In To Testify But Not Testifying:** None.