
SENATE BILL 6658

State of Washington

64th Legislature

2016 Regular Session

By Senators Pedersen, Litzow, Frockt, Angel, Nelson, King, Billig, Parlette, Keiser, Carlyle, Takko, Rolfes, Conway, Darneille, Mullet, Ranker, Cleveland, Lias, McCoy, Hobbs, McAuliffe, Hasegawa, Fraser, Habib, Jayapal, Hewitt, Chase, Braun, Honeyford, Roach, Bailey, Brown, and Benton

Read first time 02/12/16. 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.** (1) A person who is not the parent of the
7 child may petition for visitation with the child if:

8 (a) The petitioner has an ongoing and substantial relationship
9 with the child; and

10 (b) The petitioner is related to the child or a parent of the
11 child by blood or by law; and

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

14 (2) For the purposes of this chapter "parent" means a fit
15 biological, adoptive, or adjudicated parent.

16 (3) A person has established an ongoing and substantial
17 relationship with a child if the person and the child have had a
18 relationship formed and sustained through interaction, companionship,
19 and mutuality of interest and affection, without expectation of
20 financial compensation, with substantial continuity for at least two
21 years unless the child is under the age of two years, in which case

1 there must be substantial continuity for at least half of the child's
2 life, and with a shared expectation of and desire for an ongoing
3 relationship.

4 NEW SECTION. **Sec. 2.** (1) A petition for visitation under
5 section 1 of this act must be filed in the county where the child
6 primarily resides.

7 (2) The petitioner may not file a petition for visitation more
8 than once, unless:

9 (a) At least two years have passed since the final order issued
10 on the previous petition for visitation; and

11 (b) The petitioner shows there has been a substantial change in
12 circumstances of the nonmoving party or the child based on facts that
13 have arisen since, or facts that were unknown to the court at the
14 time of, the order issued on the previous petition for visitation.

15 (3) The petitioner must file with the petition an affidavit
16 alleging that:

17 (a) A relationship with the child that satisfies the requirements
18 of section 1 of this act exists or existed before interference by the
19 respondent; and

20 (b) The child would likely suffer harm or the substantial risk of
21 harm if visitation between the petitioner and child were not granted.

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

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

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

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

33 NEW SECTION. **Sec. 3.** (1)(a) At a hearing pursuant to section
34 2(6) of this act, the court shall enter an order granting visitation
35 if it finds that the child would likely suffer harm or the
36 substantial risk of harm if visitation between the petitioner and the
37 child is not granted and that granting visitation between the child
38 and petitioner is in the best interest of the child.

1 (b) An order granting visitation does not confer upon the person
2 the rights and duties of a parent.

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

8 (3) To rebut the presumption, the petitioner must prove by clear
9 and convincing evidence that the child would likely suffer harm or
10 the substantial risk of harm if visitation between the petitioner and
11 the child were not granted.

12 (4) If the court finds that the petitioner has met the standard
13 for rebutting the presumption, or if there is no presumption because
14 no parent has custody of the child, the court shall consider whether
15 it is in the best interest of the child to enter an order granting
16 visitation. The petitioner must prove by clear and convincing
17 evidence that visitation is in the child's best interest. In
18 determining whether it is in the best interest of the child, the
19 court shall consider the following, nonexclusive factors:

20 (a) The love, affection, and strength of the current relationship
21 between the child and the petitioner and how the relationship is
22 beneficial to the child;

23 (b) The length and quality of the prior relationship between the
24 child and the petitioner before the respondent denied visitation,
25 including the role performed by the petitioner and the emotional ties
26 that existed between the child and the petitioner;

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

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

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

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

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

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

37 (i) Any history of physical, emotional, or sexual abuse or
38 neglect by the petitioner, or any history of physical, emotional, or
39 sexual abuse or neglect by a person residing with the petitioner if

1 visitation would involve contact between the child and the person
2 with such history;

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

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

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

8 NEW SECTION. **Sec. 4.** (1)(a) For the purposes of sections 1
9 through 3 of this act, the court shall, on motion of the respondent,
10 order the petitioner to pay a reasonable amount for costs and
11 reasonable attorneys' fees to the respondent in advance and prior to
12 any hearing, unless the court finds, considering the financial
13 resources of all parties, that it would be unjust to do so.

14 (b) Regardless of the financial resources of the parties, if the
15 court finds that a petition for visitation was brought in bad faith
16 or without reasonable basis in light of the requirements of sections
17 1 through 3 of this act, the court shall order the petitioner to pay
18 a reasonable amount for costs and reasonable attorneys' fees to the
19 respondent.

20 (2) If visitation is granted, the court shall order the
21 petitioner to pay all transportation costs associated with
22 visitation.

23 NEW SECTION. **Sec. 5.** (1) A court may not modify or terminate an
24 order granting visitation under section 3 of this act unless it
25 finds, on the basis of facts that have arisen since the entry of the
26 order or were unknown to the court at the time it entered the order,
27 that a substantial change of circumstances has occurred in the
28 circumstances of the child or nonmoving party and that modification
29 or termination of the order is necessary for the best interest of the
30 child.

31 (2) The petitioner must file a petition for modification or
32 termination in the county where the child primarily resides.

33 (3) The petitioner must file with the petition an affidavit
34 alleging that, on the basis of facts that have arisen since the entry
35 of the order or were unknown to the court at the time it entered the
36 order, there is a substantial change of circumstances of the child or
37 nonmoving party and that modification or termination of the order is
38 necessary for the best interest of the child. The petitioner shall

1 set forth facts in the affidavit supporting the petitioner's
2 requested order.

3 (4) The petitioner shall serve notice of the petition to each
4 person having legal custody of, or court-ordered residential time or
5 court-ordered visitation with, the child. A person having legal
6 custody or residential or visitation time may file an opposing
7 affidavit.

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

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

13 NEW SECTION. **Sec. 6.** RCW 26.09.240 (Visitation rights—Person
14 other than parent—Grandparents' visitation rights) and 1996 c 177 s
15 1, 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st
16 ex.s. c 157 s 24 are each repealed.

17 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act
18 constitute a new chapter in Title 26 RCW.

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