5598 AMH SHEA ADAM 288

**SB 5598** - H AMD TO JUDI COMM AMD (H-5007.1/18) **1348**

By Representative Shea

**NOT ADOPTED 03/02/2018**

 On page 2, beginning on line 1 of the striking amendment, strike all of sections 2 through 5 and insert the following:

 "NEW SECTION. **Sec. 2.** (1) A person who is not the parent of the child may file a motion to intervene in a pending child custody proceeding under chapter 26.10 RCW to seek visitation with the child if:

(a) The person has an ongoing and substantial relationship with the child;

(b) The person is a relative of the child or a parent of the child; and

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

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

NEW SECTION. **Sec. 3.** (1) A person may not file a motion to intervene in a pending child custody proceeding to seek visitation with a child more than once.

(2) The person must file with the motion to intervene an affidavit alleging that:

(a) A relationship with the child that satisfies the requirements of section 2 of this act exists or existed before action by the parent or parents or other person having legal custody of the child; and

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

(3) The person shall set forth facts in the affidavit supporting the requested order for visitation.

(4) The person shall serve notice of the motion to intervene to each person having legal custody of, or court-ordered residential time with, the child. A person having legal custody or residential time with the child may file an opposing affidavit.

(5) If, based on the motion and affidavits, the court finds that it is more likely than not that visitation will be granted, the court shall grant the motion to intervene.

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

NEW SECTION. **Sec. 4.** (1)(a) The court shall enter an order granting visitation if it finds that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child is not granted and that granting visitation between the child and the petitioner is in the best interest of the child.

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

(2) In making its determination, the court shall consider the reasons the parent or other person having legal custody denied visitation to the petitioner.  It is presumed that a fit parent's decision to deny visitation is in the best interest of the child and does not create a likelihood of harm or a substantial risk of harm to the child.

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

(4) If the court finds that the petitioner has met the standard for rebutting the presumption in subsection (2) of this section, or if there is no presumption because no parent has custody of the child, the court shall consider whether it is in the best interest of the child to enter an order granting visitation. The petitioner must prove by clear and convincing evidence that visitation is in the child's best interest. In determining whether it is in the best interest of the child, the court shall consider the following, nonexclusive factors:

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

(b) The length and quality of the prior relationship between the child and the petitioner before the parent or other person having legal custody denied visitation, including the role performed by the petitioner and the emotional ties that existed between the child and the petitioner;

(c) The relationship between the petitioner and the child's parent or other person having legal custody;

(d) The love, affection, and strength of the current relationship between the child and the parent or other person having legal custody;

(e) The nature and reason for the objection by the parent or other person having legal custody to granting the petitioner visitation;

(f) The effect that granting visitation will have on the relationship between the child and the parent or other person having legal custody;

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

(h) The good faith of the petitioner and parent or other person having legal custody;

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

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

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

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

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

(b) Regardless of the financial resources of the parties, if the court finds that a motion to intervene to seek visitation was brought in bad faith or without reasonable basis in light of the requirements of sections 2 through 4 of this act, the court shall order the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees to the other party.

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

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|  |  EFFECT:   Removes provisions allowing a relative to commence a proceeding for visitation with a child and provides instead that a relative may file a motion to intervene in a pending child custody proceeding to seek visitation with a child. Provides that a person may file a motion to intervene in a proceeding to seek visitation no more than once. Provides that the court may grant a motion to intervene if the court finds after reviewing the motion and affidavits submitted by parties that it is more likely than not visitation will be granted. Retains all other provisions of the bill, including the standards regarding the presumption that a fit parent acts in the best interest of the child and that a court must grant visitation if there is a showing that: there is a likelihood of harm or a substantial risk of harm to the child if visitation is not granted; and that visitation is in the best interest of the child. |

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