

# HOUSE BILL REPORT

## SB 5598

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to granting relatives, including but not limited to grandparents, the right to seek visitation with a child through the courts.

**Brief Description:** Granting relatives, including but not limited to grandparents, the right to seek visitation with a child through the courts.

**Sponsors:** Senators Pedersen, Angel, Rolfes, King, Darneille, Bailey, Brown, Mullet, Carlyle, Braun, Hobbs, Palumbo, Wellman, Keiser, Honeyford, Ranker, Nelson, Lias, 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.

#### Brief History:

##### Committee Activity:

Judiciary: 2/15/18, 2/22/18 [DPA].

#### Brief Summary of Bill (As Amended by Committee)

- Establishes new standards and procedures for a relative to petition for court-ordered visitation with a child, and eliminates existing statutes relating to third-party visitation actions.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Muri, Orwall and Valdez.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Kirby, Klippert and Shea.

**Staff:** Edie Adams (786-7180).

#### Background:

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Washington has two statutes allowing third parties to petition a court to seek visitation time with a minor child. A provision under the nonparent custody chapter allows any person to petition for visitation at any time. The court may order visitation if it is in the best interest of the child.

A second statute allows a nonparent to petition for visitation with a minor child if the parents have initiated a dissolution or legal separation action. The petitioner must show by clear and convincing evidence that a significant relationship exists with the child and that visitation would be in the best interests of the child. Visitation with a grandparent is presumed to be in the child's best interest when there is a significant relationship between the grandparent and the child. This presumption may be overcome if the court finds that visitation would endanger the child's physical, mental, or emotional health.

The constitutionality of Washington's third-party visitation statutes has been addressed by the Supreme Court of the United States (Supreme Court) and the Washington Supreme Court. In *Troxel v. Granville* (2000), the Supreme Court found that Washington's statute allowing any person to petition for visitation at any time was unconstitutional as applied in the case because it violated the fundamental liberty interest of parents to make decisions concerning the care and upbringing of their children. The Supreme Court stated that a fit parent is presumed to act in the child's best interest and that courts must give special deference to a fit parent's decision.

The Washington Supreme Court, in the cases *In re Custody of Smith* (1998) and *In the Matter of the Parentage of C.A.M.A.* (2005), held that parents have a fundamental right to raise their children without state interference. State interference with a parent's fundamental right is subject to strict scrutiny and therefore is justified only if it is narrowly drawn to meet a compelling state interest. The Washington Supreme Court recognized that the state may interfere with a parent's fundamental right in order to prevent harm to the child. Short of preventing harm to the child, the best interests of the child standard is insufficient to serve as a compelling state interest. The Washington Supreme Court criticized the lack of other safeguards in Washington's visitation statute, including that it does not require the petitioner to show a substantial relationship between the child and the petitioner, nor require the court to take into consideration the parent's reasons for denying visitation.

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### **Summary of Amended Bill:**

A new procedure and standards are established for a relative to petition the court for visitation with a child. Current statutes that allow a nonparent to petition for visitation with a child are eliminated.

### **Requirements for Filing a Petition.**

A person may petition for visitation if the person is a relative who has established an ongoing and substantial relationship with the child and the child is likely to suffer harm or a substantial risk of harm if visitation is denied. An ongoing and substantial relationship means 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 age two, 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.

"Relative" is defined to mean: blood relatives; stepparents or stepsiblings; a person who adopts a child or the child's parent and the biological and other legally adopted children of such persons as well as other relatives of the adoptive parents; spouses of any of the foregoing; relatives of any half sibling of the child; and extended family members as defined by the law or custom of an Indian child's tribe, or in the absence of such a law or custom, certain listed relatives who provide care in the family abode on a 24-hour basis. "Relative" does not include a person whose parental rights have been terminated, relinquished, or determined not to exist with respect to a child who is the subject of the proceeding.

A petitioner may not file a petition for visitation more than once. The petition must be filed in the county where the child primarily resides, unless a different court has jurisdiction over the child under the Uniform Child Custody Jurisdiction and Enforcement Act, or the juvenile court has jurisdiction over the child in a dependency or out-of-home placement proceeding. The granting of visitation does not entitle the petitioner to party status in a child custody proceeding under Title 13 RCW.

The petitioner must file an affidavit with supporting facts alleging that an ongoing and substantial relationship with the child exists, or existed before action by the respondent, and that the child would likely suffer harm or the substantial risk of harm if visitation is not granted. The petitioner must serve notice of the petition on each person having custody or court-ordered residential time with the child, and these parties may file affidavits opposing the petition.

#### Court Hearing on the Petition.

The court must hold a hearing on the petition if it finds, based on the petition and affidavits, that it is more likely than not that visitation will be granted. The court may not enter a temporary order establishing, enforcing, or modifying visitation.

In determining whether to grant visitation, the court must consider the respondent's reasons for denying visitation to the petitioner. A presumption is created that a fit parent's decision to deny visitation is in the best interests of the child and does not create a likelihood of harm or a substantial risk of harm to the child. To rebut this presumption, the petitioner must show by clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation is not granted.

The petitioner must also prove by clear and convincing evidence that visitation is in the child's best interest. In determining the child's best interest, the court must consider the following nonexclusive factors:

- the love, affection, and strength of the current relationship between the child and the petitioner and how the relationship is beneficial to the child;
- the length and quality of the prior relationship between the child and petitioner before the respondent denied visitation;
- the relationship between the petitioner and the respondent;

- the love, affection, and strength of the current relationship between the child and respondent;
- the nature and reason for the respondent's objection to granting visitation;
- the effect visitation will have on the relationship between the child and respondent;
- the residential time-sharing arrangements between the parties who have residential time;
- the good faith of the petitioner and respondent;
- any history of physical, emotional, or sexual abuse or neglect by the petitioner or a person residing with the petitioner;
- the child's reasonable preference, if the child is of sufficient age to express a preference;
- the fact that the respondent has not lost parental rights by being adjudicated an unfit parent; and
- any other relevant factor.

The court must enter an order granting visitation if the court finds that the child would likely suffer harm or the substantial risk of harm if visitation is not granted and that visitation is in the best interest of the child. An order granting visitation does not confer the rights and duties of a parent on the person who is granted visitation.

#### Modifying or Terminating a Visitation Order.

A court may not modify or terminate a visitation order unless there has been a substantial change of circumstances of the child or nonmoving party based on facts that have arisen since, or that were unknown to the court at the time, the order was entered, and that a modification or termination is in the child's best interest. The court must hold a hearing if, based on the petition and affidavits submitted, it finds that it is more likely than not that a modification or termination will be granted.

#### Attorneys' Fees and Transportation Costs.

Upon a motion by the respondent, the court must require the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees to the respondent in advance of any hearing unless the court finds it would be unjust considering the financial resources of the parties. The court must order the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees if the court finds that the petition was brought in bad faith or without reasonable basis. In proceedings for a modification or termination of the visitation order, the court may award reasonable attorneys' fees and costs to either party.

If visitation is granted, the court must order the petitioner to pay all transportation costs associated with visitation.

#### **Amended Bill Compared to Original Bill:**

The amended bill provides that "relative" does not include a person whose parental rights have been terminated, relinquished, or determined not to exist with respect to a child who is the subject of the proceeding. The amended bill eliminates a provision in the nonparental child custody statute that allows any person to petition for visitation with a child at any time. The amended bill also specifies the circumstances under which a petition for visitation must

be filed with the juvenile court and provides that the granting of visitation does not entitle the petitioner to party status in a child custody proceeding under Title 13 RCW.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) There is currently no court process for seeking visitation with a child, and this has led to tragic circumstances. This bill is the result of many years of work. It focuses on the needs of children and people who have a significant relationship with a child that should be preserved.

The current law results in children losing the warmth and love that grandparents can provide. There are many examples of grandparents who are being denied the ability to see their grandkids. In cases where a parent dies and the other parent denies visitation, the child is losing not only a parent but their grandparents as well. This is harmful to the children who may feel abandoned because they do not understand why their grandparents are no longer in their lives. There are cases where the remaining parent does not provide a suitable and stable home environment, and this can have long-term psychological impacts on a child. There is nothing a grandparent can do to check on a grandchild's welfare because grandparents have no rights under the law. Grandparents do not want to infringe on parental rights. They just want to visit their grandchildren to let them know that they love them. Please provide a process for children and grandparents to have these loving and precious relationships.

(Opposed) The bill will allow any relative to petition for visitation over the objections of a fit parent. Parents have a fundamental liberty and privacy interest in raising their children, and the state can interfere only when there is danger to the physical or emotional welfare of a child. The bill allows a long list of relatives to sue even when a fit parent has not been accused of abuse or neglect, and there is no limit on the number of suits that can be brought against fit parents. The bill forces fit parents into court when they decide that a relationship is not in the best interest of their child. The state should not be able to reach into the lives of families when there is no physical or psychological danger to a child.

**Persons Testifying:** (In support) Senator Pedersen, prime sponsor; Craig Macadangdang, Julie Vankirk, Marcy Johnsen, Crystal Nebaker, and Elizabeth Dean, Grandparents Rights of Washington State; and Donna Helterbride-Baker.

(Opposed) Hilary Snodgrass, Parents' Rights of Washington.

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