

SENATE BILL REPORT

SB 5598

As Amended by House, March 2, 2018

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: Law & Justice: 1/09/18, 1/18/18 [DP, DNP].

Floor Activity:

Passed Senate: 1/25/18, 44-5.

Passed House: 3/02/18, 53-45; 3/02/18, 56-42.

Brief Summary of Bill

- Permits a non-parent relative who has an ongoing and substantial relationship with a child to request court-ordered visitation if the child risks substantial harm if visitation is denied.
- Requires a court hearing to consider the child's best interests, the risks, and benefits of visitation for the child, and reasons opposing visitation.
- Presumes a fit parent's decision denying visitation is in the child's best interests and does not risk substantial harm to the child, but permits a contrary ruling if evidence is clear and convincing.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

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.

Minority Report: Do not pass.

Signed by Senator Padden, Ranking Member.

Staff: Melissa Burke-Cain (786-7755)

Background: Non-parent visitation in Washington. The Legislature first enacted the non-parent visitation law in 1973. Under the law, a non-parent could file a request for visitation with a child within a dissolution or legal separation case. A separate law authorized a non-parent to request visitation within a non-parental custody case. A non-parent's visitation request must show evidence of an existing significant relationship with the child and prove that visitation is in the child's best interests.

In 1996, the Legislature amended the non-parent visitation law by adding a presumption that visitation with a grandparent would be in the child's best interests unless the opposing parent could prove grandparent visitation would, more likely than not, endanger the child's physical, mental, or emotional health.

Legal challenges to non-parent visitation. After 1996, court cases challenged the non-parent custody and visitation laws. In 2005, the Washington State Supreme Court ruled that the non-party visitation law infringed on a fit parent's due process right to control their child's visitation. The decision invalidated the presumption favoring visitation with a grandparent as in a child's best interests unless the parent proves visitation would be harmful.

Current status of the non-parent visitation laws. In 2005, the court found the non-parent visitation law invalid in its entirety, but did not redefine the scope of a parent's due process right to control non-parent visitation. Instead, the court deferred to the Legislature's power to revise the law. The law remains inoperative unless the Legislature enacts a new law.

Summary of Bill: A non-parent relative may request court-ordered visitation with a child if:

- the relative and child have an ongoing and substantial relationship; and
- denying visitation risks harm to the child.

Relatives include persons related to the child by blood, legal adoption, step and half siblings, and the spouses and relatives of the relatives. Relatives also include extended family members recognized by an Indian child's tribal law and customs.

The child and relative's interaction, companionship, mutual interests, and affection forms and sustains an ongoing and substantial relationship. The relative and child must share the expectation and desire for an ongoing relationship. The relationship must have substantial continuity for at least two years or, if the child is under age two, for at least half of the child's life.

The relative must file the visitation request with a court having jurisdiction under the Uniform Child Custody Jurisdiction Act. Otherwise, filing is in the county of the child's primary residence. The relative's one-time filing must include an affidavit establishing the relationship and facts supporting the claim of likely harm to the child if the court denies visitation. If the filing meets the threshold of likely success on its merits, the court must hold a hearing.

At hearing, the court must grant visitation if the relative proves both likely harm to the child without visitation, and visitation is in the child's best interests. In making its decision, the court:

- presumes a fit parent's decision to deny visitation is in the child's best interests;
- considers the reasons the parent opposes visitation with the non-parent relative;
- allows rebuttal evidence from the non-parent relative showing the risk of harm to the child if visitation is denied;
- may grant visitation if the relative rebuts the parent's objections with clear and convincing evidence of harm to the child if visitation is denied;
- considers non-exclusive best interests factors including (1) love, affection, and strength of the relative's relationship with the child; (2) how the relationship benefits the child; (3) good faith of the parties; (4) physical, emotional, or mental abuse by the relative or anyone residing with the relative; and (5) the child's preference if the court finds the child old enough to express a preference.

The court filing is not a basis for a temporary visitation order. The court's ruling does not confer any parental rights or duties on the non-parent relative. The court must grant advance payment of reasonable fees and costs for the parent unless it is unjust given the parties' finances. Regardless of financial resources, the court must order the non-parent relative to pay the parent's reasonable fees and costs if the relative filed the visitation request in bad faith or without a reasonable basis.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is a very difficult issue that has been unresolved for many years. Many grandparents and other family members have lost the close relationships with children when they had previously spent many happy holidays and special times together. These children are missing the love that grandparents offer and risk losing the treasured sense of family. This bill doesn't dilute the parent's rights. Science supports the value of unconditional love that grandparents can give. We don't want to get entangled with the parent's relationships. However, the positive relationships with non-parent relatives can be an anchor for children in an uncertain world and a stabilizing force in their lives. Grandparents can enrich the child's environment and give unconditional love. We often worry that our young grandchildren do not understand why their grandparents are no longer in their lives and may feel abandoned. We want to see our grandchildren so we know they are all right. Currently, Washington is the only state that does not have a valid law on visitation for non-parent relatives.

CON: The bill would allow the state to reach into the family when there is no risk to the child. Fit parents have a fundamental right to raise their children and a fit parent should not have to hire counsel and go to court to defend their decisions when they are fit parents.

Children should maintain bonds with their families, but there are weaknesses elsewhere in RCW 26.09. that should be fixed first before non-parent visitation is addressed. The clear and convincing evidence standard should be used in all cases where the fundamental rights of parents are at issue. There may be unintended consequences to this bill such as misuse of third-party relative visitation to circumvent the residential time in the parenting plan. This isn't about grandparents versus parents; it is about the family courts having too much authority, a swamped court system, creating hoops for people to go through who can't afford to hire an attorney to fight back. Instead of court hearings, alternative dispute resolution should be the starting point for these situations.

OTHER: The law should reflect how families are formed and raised today. There are positive aspects to the bill and it closely tracks the case law. The bill protects parents with legal representation if there is a financial disparity between parents and petitioning relatives. The bill does not address important relationships that may be formed between third parties and children when they may not be related by blood or be legally-recognized relatives. Another concern is about limiting relatives to only one filing. The bill should have some latitude built in for cases where there is a petition resolved by agreement but it is not honored or fails, or there is a significant change in circumstances, but the third party-relative cannot bring a new action. Rather than focusing on the whether there is a blood or legal relationship, the bill should focus on the relationship and its importance to the child's well being.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Craig Macadangdang, Grandparents Rights of Washington State; Yashodhan Naravane, Grandparents Rights of Washington State; Crystal Nebeker, GROWS; Nick Bond; Julie Vankirk.

CON: Hillary Snodgrass, Parents Rights of Washington; Kyle Paskewitz, Family Court Reform USA; Lynn Hatfield Wingender.

OTHER: David Ward, Legal Voice.

Persons Signed In To Testify But Not Testifying: PRO: Marcy Johnsen, Grandparents Rights of WA State.

EFFECT OF HOUSE AMENDMENT(S):

- Provides that if a juvenile court has exclusive original jurisdiction over the child in proceedings relating to dependency, termination of parental rights, or out-of-home placement, a petition for visitation or a petition for modification of a visitation order must be filed with that court. A person granted visitation is not entitled to party status in a child custody proceeding.
- Strikes a provision in the non-parental child custody statute that allows any person to petition for visitation with a child at any time and that allows a court to grant visitation if it is in the best interest of the child.
- Provides that the term "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 a petition under the act.