

SENATE BILL REPORT

SSB 5708

As Reported By Senate Committee On:
Children & Family Services & Corrections, February 4, 2004

Title: An act relating to visitation rights for nonparents.

Brief Description: Providing a procedure for court-ordered contact with a child for nonparents.

Sponsors: Senate Committee on Children & Family Services & Corrections (originally sponsored by Senators Franklin, Esser, Haugen, Thibaudeau, Kline and Kohl-Welles).

Brief History:

Committee Activity: Children & Family Services & Corrections: 2/25/03, 3/5/03 [DPS];
2/4/04 [DP2S].

Passed Senate: 3/16/03, 42-6.

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

Majority Report: That Second Substitute Senate Bill No. 5708 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Stevens, Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

Staff: Edith Rice (786-7444)

Background: Whether a third party may seek court-ordered visitation with a child has been recently litigated in both the State Supreme Court and the United States Supreme Court. Washington has two statutes allowing a nonparent to petition for visitation. One statute was held unconstitutional, and the cases call into question the constitutionality of the other.

I. Washington's third-party visitation statutes. The first statute, in the dissolution chapter (RCW 26.09), allows a nonparent 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. The presumption may be rebutted by a preponderance of the evidence showing that visitation would endanger the child's physical, mental, or emotional health.

The second visitation statute is located in the chapter governing third party custody actions (RCW 26.10). It allows "any person" to petition for visitation "at any time." The court may order visitation if it is in the child's best interest.

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 State 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 the right of parents to raise their children *only to prevent harm or potential harm to the child*. The court stated that short of preventing harm to the child, the "best interest of the child" standard is insufficient to overrule a parent's right. *In re the Custody of Smith*, 137 Wn.2d 1 (1998).

The case was appealed to the United States Supreme Court. The Supreme Court called Washington's statute "breathtakingly broad" and held that it was unconstitutional as applied to the facts in that particular case. In reaching its conclusion, the Supreme 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 Supreme Court declined to address the state 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).

Summary of Second Substitute Bill: A grandparent may petition the court for visitation under limited circumstances, one time only, or within one year of the death of a parent. Grandparents must establish standing and show that the child would suffer harm if contact was denied. The parent must show that their denial of contact is reasonable and in the best interests of the child. If contact is ordered by the court, the grandparents' visitation is subject to the same limitations that apply to noncustodial parents. Costs and fees are awarded if the petition is dismissed for lack of standing. Sections of the law found to be unconstitutional are removed.

Second Substitute Bill Compared to Substitute Bill: Grandparents are permitted to petition a court for visitation under limited circumstances once. Visitation is subject to the same limitations as those which apply to noncustodial parents.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: (From 2003) This bill gives children a voice in the legal process, especially when they have a significant relationship with someone not their parent and their parent objects without justification. It balances the rights of the parents and the non-parent and gives some recognition to family members who may step in to take care of a child when the parent is unable to. Many stakeholders participated in reviewing the language of the bill.

Testimony Against: (From 2003) None.

Testified: (From 2003) Bob Freeze (pro); Judy Freeze (pro); Rick Bartholomew, Washington State Bar Association, Family Law Section (pro); Janet Helson, Columbia Legal Services (pro); Stacy Goddard (pro); Adam Goddard (pro); Ben Erickson (pro); Pam Crone, Northwest Women's Law Center (pro); Edith Owen, Pierce County Relatives Raising Children (pro).