

SENATE BILL REPORT

SB 5708

As Reported By Senate Committee On:
Children & Family Services & Corrections, March 5, 2003

Title: An act relating to visitation rights for nonparents.

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

Sponsors: Senators Franklin, Esser, Haugen, Thibaudeau, Kline and Kohl-Welles.

Brief History:

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

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

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

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

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 Substitute Bill: A nonparent may petition the court to obtain contact with a child only during a pending dissolution or legal separation if the nonparent shows that: (a) the nonparent has a parent-like relationship with the child; (b) the parent has substantially interfered with that relationship; and (c) the nonparent has unsuccessfully attempted to resolve any disagreement with the parent before going to court.

The definition of a "parent-like relationship" includes providing significant financial support for the child's basic needs.

To show a parent-like relationship, the nonparent must show that: (a) the relationship has been parental in nature for a substantial period of time; (b) the parent consented to or allowed the relationship or it was formed because of the unavailability of the parent; and (c) the relationship is beneficial. Baby-sitters and other employed caregivers are excluded.

If the petitioner does not satisfy this threshold showing, the court must dismiss the proceeding. The court must award costs and fees to the prevailing party unless there is a compelling reason not to.

If the action is not dismissed, the nonparent must present evidence showing that the child would very likely suffer harm if contact were not awarded. If a reasonable fact finder would conclude that the child would very likely suffer harm, the parent must then present evidence showing why the decision to refuse contact is reasonable and in the child's best interests.

The court must order contact if it finds that the nonparent has satisfied the burden of showing by clear and convincing evidence that: (a) the child would very likely suffer harm if contact is not awarded; and (b) the parent's denial of contact was unreasonable and not in the child's best interests.

Relevant terms, such as "parent-like relationship," "substantially interfered" and "harm" are defined.

Substitute Bill Compared to Original Bill: An action for court-ordered contact with a child may only be brought during a pending dissolution or separation. Provision of significant financial support for the child's basic needs is an additional element of a parent-like relationship.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: 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: None.

Testified: 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).