
Judiciary Committee

HB 1108

Title: An act relating to visitation rights for grandparents.

Brief Description: Concerning visitation rights for grandparents.

Sponsors: Representatives Kagi, Haler, Kessler, McDonald, Moeller, Morrell, Hankins, Dunshee, McCoy, Ormsby, Hudgins, Sells, Haigh, Kenney, Springer and Wallace.

Brief Summary of Bill

- Allows a grandparent to petition for court-ordered visitation with a child if: (a) the grandparent has a significant relationship with the child; (b) the parent substantially interfered with that relationship and the grandparent tried to resolve the disagreement before going to court; and (c) the child would likely suffer harm or the substantial risk of harm if contact is not awarded.
- Requires the court to order visitation with the child if the grandparent shows by clear and convincing evidence that: (a) the child would suffer harm or the substantial risk of harm if contact is not awarded; and (b) the parent's denial of contact was unreasonable and not in the child's best interests.

Hearing Date: 1/24/07

Staff: Trudes Tango (786-7384).

Background:

Washington has two statutes allowing a non-parent to petition for court-ordered visitation with a child. Both have been held to be unconstitutional.

Third party visitation statutes

The broader of the two statutes allows any person to petition the court for visitation at any time, whether or not there is a pending dissolution, separation, or third party custody proceeding. The court may order visitation if it is the best interest of the child.

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.

The second statute allows any person to petition for visitation if the child's parents have commenced an action for dissolution or legal separation. The petitioner must establish by clear and convincing evidence that a significant relationship exists between the petitioner and 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.

Both statutes require the court to use the best interest of the child standard when making its decision.

Cases interpreting the third party visitation statutes

There are three cases that are significant in addressing Washington's third party visitation statutes.

In *In re Custody of Smith*, the Washington Supreme Court held that parents have a fundamental right to raise their children without state interference. This liberty interest is protected as a matter of substantive due process under the Fourteenth Amendment. State interference with a parent's fundamental right is subject to strict scrutiny and therefore is justified only if there is a compelling state interest and the interference is narrowly drawn to meet only compelling state interest. The 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 court also criticized the broader visitation statute because it fails to require the petitioner to show a substantial relationship existed between the child and the petitioner and because it does not require the court to take into consideration the parent's reasons for denying visitation. *In re Custody of Smith*, 137 Wn.2d 1, 13 (1998).

Smith was a consolidated group of cases that included the *Troxel* case. *Troxel* was appealed to the United States Supreme Court. *Troxel v Granville* 530 U.S. 57 (2000). The Supreme Court affirmed that parents have a fundamental right to raise their children. The Court also 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 Court did not address the *Smith* court's ruling that harm to the child is a necessary factor before the court can award third party visitation.

In 2005, the Washington Supreme Court decided *In the Matter of the Parentage of C.A.M.A.*, 154 Wn.2d 52 (2005). The *C.A.M.A.* court affirmed that a court may not award third party visitation with a child of a fit parent unless denial of visitation would result in harm to the child.

Summary of Bill:

A grandparent may petition the court for visitation with a child one time, regardless of whether there is a pending dissolution, legal separation, or modification of a parenting plan. A grandparent may file a subsequent petition if the grandparent can prove that a substantial change in circumstances has occurred. A death or incapacitation of a parent is a substantial change in circumstances.

A grandparent has standing to petition for visitation if the grandparent shows that he or she has a significant relationship with the child. To show a significant relationship exists, a grandparent must prove all of the following factors:

- the grandparent's relationship with the child has been significant in nature for a substantial period of time;
- a parent consented to or allowed the formation and establishment of the relationship, or the relationship was formed as a result of the unavailability or inability of any parent to perform care-taking functions; and
- the grandparent's relationship with the child is beneficial.

In addition to the above factors, the grandparent must show that the parent has substantially interfered with the relationship between the grandparent and the child, the grandparent tried unsuccessfully to resolve any disagreement with the parent before going to court, and the child would likely suffer harm or the substantial risk of harm if contact is not awarded.

If the court finds that the grandparent has standing to petition, the court must consider the fit parent's reasons for denying visitation and determine whether those reasons are reasonable and in the best interest of the child in light of the deference given to a fit parent's decisions.

The court must order visitation if it finds by clear and convincing evidence that: (a) the child would suffer harm or the substantial risk of harm if contact between the grandparent and the child is not awarded; and (b) denial of contact is unreasonable and not in the child's best interest.

In making this determination, the court must consider the following, nonexclusive factors:

- the love, affection, and strength of the relationship between the child and the grandparent;
- the length and quality of the prior relationship, including the role played by the grandparent and the emotional ties that existed between the child and the grandparent;
- the relationship between each of the child's parents, or the person with whom the child is residing, and the grandparent;
- the nature and reason for either parent's objection to visitation;
- the effect that granting visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
- the residential time-sharing arrangements between the parents;
- the good faith of the petitioner;
- any history of physical, emotional, or sexual abuse or neglect of the child by the grandparent;
- the child's reasonable preference if the court finds the child to be of sufficient age to express a preference; and
- any other factor relevant to the child's best interest.

Appropriation: None.

Fiscal Note: Not requested.

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