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## Judiciary Committee

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### HB 1506

**Title:** An act relating to third-party visitation.

**Brief Description:** Concerning third-party visitation.

**Sponsors:** Representatives Pedersen, Nealey, Goodman, Fagan, Kagi, Jinkins, Hope, Walsh, Orwall, Green, Hansen, Ryu, Ormsby, Roberts, Johnson and Pollet.

#### Brief Summary of Bill

- Establishes new standards and procedures for a person who is not a parent to petition for visitation with a child, and repeals existing statutes relating to third-party visitation actions.

**Hearing Date:** 2/6/13

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

#### Background:

Washington has two statutes allowing third parties to petition a court to seek visitation time with a minor child. One statute 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.

The second statute allows a non-parent 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.

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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's third-party visitation statutes have been found unconstitutional by both the U.S. Supreme Court and the Washington Supreme Court. In *Troxel v. Granville* (2000), the U.S. Supreme Court (Supreme Court) found that Washington's statute allowing any person to petition for visitation at any time violated the fundamental liberty interest of parents to make decisions concerning the care and upbringing of their children. The Supreme 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 Washington Supreme Court (Court) in two cases, *In re Custody of Smith* (1998) and *In the Matter of the Parentage of C.A.M.A* (2005), has also 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 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 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.

### **Summary of Bill:**

Current statutes regarding third-party visitation actions are repealed, and new procedures and standards are established for a person who is not a parent to petition the court for visitation with a child.

#### Requirements for Filing a Petition.

A person may petition for visitation if the person has established an ongoing and substantial relationship with the child. An ongoing and substantial relationship means the person and the child have had a relationship with substantial continuity for at least one year through interaction, companionship, and mutuality, without expectation of financial compensation.

The petitioner must file an affidavit with the petition alleging that a sufficient relationship with the child exists, or existed before interference 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 serve affidavits opposing the petition.

A person may not petition for visitation more than once unless at least two years have passed since the final order issued in a previous visitation petition, and there has been a substantial change in circumstances of the child or the nonmoving party.

#### Court Hearing on the Petition.

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

If the petitioner has rebutted the presumption, or if there is no presumption because the child is not in the custody of a parent, the court must consider whether it is in the child's best interest to grant visitation. The petitioner must 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, including the role performed by the petitioner and the emotional ties between the child and petitioner;
- the relationship between the petitioner and the 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 with the child;
- 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 if visitation would involve contact with that person;
- the child's reasonable preference, if the court considers the child to be of sufficient age to express a preference; 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.

If visitation is granted, a court may not modify or terminate the order unless there has been a substantial change of circumstances of the child or nonmoving party based on facts that have arisen since the order was entered or that were unknown to the court at the time it entered the order, and 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 order the petitioner in a visitation proceeding to pay reasonable attorneys' fees to the respondent in advance and prior to any hearing, unless the court finds that no financial hardship will be imposed on the respondent. Upon a respondent's motion or on its own, the court may order the petitioner to pay reasonable attorneys' fees and costs to the respondent regardless of the outcome of the petition.

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

In proceedings for a modification or termination of the visitation order, the court may award reasonable attorneys' fees and costs to either party.

**Appropriation:** None.

**Fiscal Note:** Requested on February 1, 2013.

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