

MAR 27 2018

FINAL BILL REPORT

SB 5598

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Synopsis as Enacted

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, Liias, 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.

Senate Committee on Law & Justice
House Committee on Judiciary
House Committee on Appropriations

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

- the relative and child have an ongoing and substantial relationship; and

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.

- 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. A person whose parental rights have been terminated, relinquished, or determined not to exist is not a relative with respect to a child who is the subject of a petition under the act.

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.

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. If not, the relative files 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. A person granted visitation is not entitled to party status in a child custody proceeding. 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.

A provision of the non-parent visitation law that allowed any person to seek court-ordered visitation at any time if visitation was in the child's best interest is removed. This provision was previously declared unconstitutional by the courts.

Votes on Final Passage:

Senate	44	5	
House	53	45	(House amended)
House	56	42	(House amended)
Senate	43	6	(Senate concurred)

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