

HOUSE BILL REPORT

HB 1140

As Reported by House Committee On: Judiciary

Title: An act relating to sibling visitation after a dependency has been dismissed or concluded.

Brief Description: Concerning sibling visitation after a dependency has been dismissed or concluded.

Sponsors: Representatives Roberts, Pedersen, Moscoso, Reykdal, Rodne, Appleton, Kagi, Walsh, Warnick, Ryu, Jinkins, Freeman and Fagan.

Brief History:

Committee Activity:

Judiciary: 2/6/13, 2/12/13 [DPS].

Brief Summary of Substitute Bill

- Creates a procedure for a sibling to petition a court for sibling visitation with a minor child, after the dismissal of any dependency proceedings involving the siblings, if there is a significant sibling relationship and other requirements are met.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Goodman, Hope, Jinkins, Kirby, Orwall and Roberts.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Klippert, Nealey and Shea.

Staff: Edie Adams (786-7180).

Background:

Dependency Proceedings.

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.

State law provides procedures for the protection and placement of dependent children: children who have been abused or abandoned by their parents or legal guardians. A child who is alleged to be a dependent child may be taken into custody and placed in shelter care until a dependency hearing takes place to determine whether the child is a dependent child, and the services and interventions that are appropriate for the child.

In a dependency proceeding, the court may order that a child be temporarily placed outside the child's home. In this event, the agency that is charged with the child's care must present to the court a permanency plan identifying the long-term goals for permanent care of the child, such as return of the child to the parents, adoption, guardianship, permanent legal custody, long-term relative or foster care, or independent living.

Sibling Visitation in the Dependency Process.

The statutory presumption for children in foster care is that placement with siblings or continuing contact and visits between siblings are in their best interests. The relevance of the child's relationship with siblings and the potential benefit of facilitating post-adoption contact must be considered during the permanency planning process for children who have been removed from their homes. In addition, a court in approving an adoption of a child from foster care must encourage the adoptive parents, birth parents, foster parents, caregivers, and the Department of Social and Health Services (DSHS) to seriously consider the long-term benefits to the child adoptee and his or her siblings in providing and facilitating post-adoption contact between siblings. If feasible and in the best interests of the siblings, contact between the siblings should be frequent and of a similar nature as before the adoption.

Third-Party Visitation.

Washington has two statutes allowing third parties to petition a court to seek visitation time with a minor child under certain circumstances. Both statutes have been found unconstitutional in opinions from the Washington Supreme Court and the Supreme Court of the United States on the grounds that they interfere with a parent's fundamental right to raise a child without undue state interference. These decisions have held that fit parents are presumed to act in the best interests of their children, and their decisions must therefore be given special weight. The Washington Supreme Court has further held that in awarding visitation over the objections of a fit parent, there must be a showing that denial of visitation has the potential of harming the child.

Summary of Substitute Bill:

A process is created for allowing a sibling to petition for visitation with a minor child when a dependency proceeding has resulted in either the petitioner or minor child being placed in a separate household, and the siblings have a significant sibling relationship. "Significant sibling relationship" means a beneficial relationship with substantial continuity while residing in the same household for a substantial period of time before being separated. "Sibling" means full and half siblings by blood or adoption, and current and former step siblings.

A sibling may petition the court for sibling visitation with the minor child if:

- either sibling was a dependent child and any dependency proceeding concerning either sibling has been dismissed;
- the permanent placement of the dependent child resulted in placement in a separate household from his or her sibling;
- the placement does not provide for visitation between the siblings, the person with whom the minor child was placed has prevented visitation, and there is no other avenue to obtain visitation; and
- the petitioning sibling and the minor child have a significant sibling relationship.

The petitioning sibling must submit an affidavit setting forth facts supporting the petition. The petition must be served on every person who has legal custody or court-ordered residential time with the minor child, and these parties may submit affidavits opposing the petition. The court must hold a hearing on the petition if it finds, based on the petition and affidavits, that it is more likely than not that visitation will be granted.

The court must grant the petition for sibling visitation if it finds the petitioner proves by clear and convincing evidence that:

- the requirements for filing the petition were met;
- the sibling relationship would be substantially reduced or terminated if visitation is not granted; and
- if the minor child is in the custody of a parent, that the minor child would likely suffer harm or the substantial risk of harm without visitation, or if the minor child is in the custody of a person who is not a parent, that visitation is in the best interests of the child.

The court may award reasonable attorneys' fees and costs as it deems appropriate after considering the financial resources of all parties.

Substitute Bill Compared to Original Bill:

The substitute bill:

- adds intent language recognizing that fit parents are presumed to act in their child's best interests;
- clarifies that dependency proceedings initiated for either sibling must have been dismissed;
- requires the petition for sibling visitation to be filed in the county where the minor child primarily resides;
- adds that the petitioning sibling must show that the person with whom the minor child resides has prevented visitation and there is no other avenue to seek visitation; and
- removes the provision that requires the court to order a petitioning sibling over age 18 to pay reasonable attorneys' fees and costs to the prevailing party if the petition is dismissed or visitation is denied.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill addresses the need to maintain as much stability as possible for children who have been in our foster care system. Our dependency laws recognize the importance of continued sibling contact. However, at the end of the dependency proceeding, siblings may end up in different homes, and sometimes the person with whom a child is placed does not allow visitation with a sibling. This bill creates a mechanism for siblings to maintain contact. It applies only after any dependency proceedings have been dismissed. The bill is narrowly drafted, and sets a high standard for allowing visitation, so that rights of fit parents are protected.

(Opposed) None.

Persons Testifying: Representative Roberts, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.