

Initiative Measure No. 1431

filed January 20, 2016

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BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: I-3140.1/16

ATTY/TYPIST: AR:akl

BRIEF DESCRIPTION:

# Initiative Measure No. 1431

filed January 20, 2016

AN ACT Relating to granting relatives, who have an ongoing substantial relationship with a child, including but not limited to grandparents, the right to seek visitation with a child through the courts; adding a new chapter to Title 26 RCW; and repealing RCW 26.09.240.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) A person who is not the parent of the child may petition for visitation with the child if:

(a) The petitioner has an ongoing and substantial relationship with the child;

(b) The petitioner is related to the child or a parent of the child by blood or law; and

(c) The child is likely to suffer harm or substantial risk of harm if visitation is denied.

(2) For the purposes of this chapter, "parent" means a fit, biological, adoptive, or adjudicated parent.

(3) A person has established an ongoing and substantial relationship with a child if:

(a) The person and the child have had a relationship formed and sustained through interaction, companionship, and mutuality of interest and affection, without expectation of financial compensation, with substantial continuity for at least two years, unless the child is under the age of two years, in which case there must be substantial continuity for at least half of the child's life; and

(b) With a shared expectation of and desire for an ongoing relationship.

NEW SECTION. **Sec. 2.** (1) A petition for visitation under section 1 of this act must be filed in the county where the child primarily resides.

(2) The petitioner may not file a petition for visitation more than once, unless:

(a) At least two years have passed since the final order was issued on the previous petition for visitation; and

(b) The petitioner shows there has been a substantial change in circumstances of the nonmoving party or the child based on facts that have arisen since, or facts that were unknown to the court at the time of, the order issued on the previous petition for visitation.

(3) The petitioner must file with the petition an affidavit alleging that:

(a) A relationship with the child that satisfies the requirements of section 1 of this act exists or existed before interference by the respondent; and

(b) The child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and child were not granted.

(4) The petitioner shall set forth facts in the affidavit supporting the petitioner's requested order for visitation.

(5) The petitioner shall serve notice of the filing to each person having legal custody of, or court ordered residential time with, the child. A person having legal custody or residential time may file an opposing affidavit.

(6) If, based on the petition and affidavits, the court finds that it is more likely than not that visitation will be granted, the court shall hold a hearing.

(7) The court may not enter any temporary orders to establish, enforce, or modify visitation under this section.

NEW SECTION. **Sec. 3.** (1)(a) At a hearing pursuant to section 2(6) of this act, the court shall enter an order granting visitation if it finds that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and

the child is not granted and that granting visitation between the child and petitioner is in the best interest of the child.

(b) An order granting visitation does not confer upon the person the rights and duties of a parent.

(2) In making its determination, the court shall consider the respondent's reasons for denying visitation. It is presumed that a fit parent's decision to deny visitation is in the best interest of the child and does not create a likelihood of harm or a substantial risk of harm to the child.

(3) To rebut the presumption, the petitioner must prove clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child were not granted.

(4) If the court finds that the petitioner has met the standard for rebutting the presumption, or if there is no presumption because no parent has custody of the child, the court shall consider whether it is in the best interest of the child to enter an order granting visitation. The petitioner must prove by clear and convincing evidence that visitation is in the child's best interest. In determining whether it is in the best interest of the child, the court shall consider the following, nonexclusive factors:

(a) The love, affection, and strength of the current relationship between the child and the petitioner and how the relationship is beneficial to the child;

(b) The length and quality of the prior relationship between the child and the petitioner before the respondent denied visitation, including the role performed by the petitioner and the emotional ties that existed between the child and the petitioner;

(c) The relationship between the petitioner and the respondent;

(d) The love, affection, and strength of the current relationship between the child and the respondent;

(e) The nature and reason for the respondent's objection to granting the petitioner visitation;

(f) The effect that granting visitation will have on the relationship between the child and the respondent;

(g) The residential time-sharing arrangements between the parties having residential time with the child;

(h) The good faith of the petitioner and the respondent;

(i) Any history of physical, emotional, or sexual abuse or neglect by the petitioner, or any history of physical, emotional, or sexual abuse or neglect by a person residing with the petitioner if visitation would involve contact between the child and the person with such history;

(j) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference;

(k) Any other factor relevant to the child's best interest; and

(l) The fact that the respondent has not lost his or her parental rights by being adjudicated as an unfit parent.

NEW SECTION. **Sec. 4.** (1)(a) For the purposes of sections 1 through 3 of this act, the court shall, on motion of the respondent, order the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees to the respondent in advance and prior to any hearing, unless the court finds, considering the financial resources of all parties, that it would be unjust to do so.

(b) Regardless of the financial resources of the parties, if the court finds that a petition for visitation was brought in bad faith or without reasonable basis in light of the requirements of section 1 through 3 of this act, the court shall order the petitioner to pay a reasonable amount for costs and reasonable attorneys' fees to the respondent.

(2) If visitation is granted, the court shall order the petitioner to pay all transportation costs associated with visitation.

NEW SECTION. **Sec. 5.** (1) A court may not modify or terminate an order granting visitation under section 3 of this act unless it

finds, on the basis of facts that have arisen since the entry of the order or were unknown to the court at the time it entered the order, that a substantial change of circumstance has occurred in the circumstances of the child or nonmoving party and that modification or termination of the order is necessary for the best interest of the child.

(2) The petitioner must file a petition for modification or termination in the county where the child primarily resides.

(3) The petitioner must file with the petition an affidavit alleging that, on the basis of facts that have arisen since the entry of the order or were unknown to the court at the time it entered the order, there is a substantial change of circumstances of the child or nonmoving party and that modification or termination of the order is necessary for the best interest of the child. The petitioner shall set forth facts in the affidavit supporting the petitioner's requested order.

(4) The petitioner shall serve notice of the petition to each person having legal custody of, or court-ordered residential time or court-ordered visitation with, the child. A person having legal custody or residential or visitation time may file an opposing affidavit.

(5) If, based on the petition and affidavits, the court finds that it is more likely than not that a modification or termination will be granted, the court shall hold a hearing.

(6) The court may award reasonable attorneys' fees and costs to either party.

NEW SECTION. **Sec. 6.** RCW 26.09.240 (Visitation rights—Person other than parent—Grandparents' visitation rights) and 1996 c 177 s 1, 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st ex.s. c 157 s 24 are each repealed.

NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute a new chapter in Title 26 RCW.

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