
HOUSE BILL 2401

State of Washington

64th Legislature

2016 Regular Session

By Representatives Kochmar, Griffey, Wylie, Appleton, Walsh, and Ryu

1 AN ACT Relating to court orders for visitation with adults;
2 adding a new chapter to Title 11 RCW; creating a new section; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that every adult in
6 this state has the right to visit with, and receive mail, telephone,
7 and electronic communication from, whomever he or she so chooses,
8 unless a court has specifically ordered otherwise. The legislature
9 intends to establish a procedure to safeguard adults' rights to enjoy
10 visitation in situations in which visitation is desired by and in the
11 best interest of the adult, but is being prevented.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires
14 otherwise.

15 (1) "Proposed visitee" means an adult with whom visitation is
16 sought.

17 (2) "Relatives" include the proposed visitee's spouse or
18 registered domestic partner, parents, children, current or former
19 stepchildren, and siblings.

1 (3) "Visitation" means any in-person meeting, or any telephonic,
2 mail, or electronic communication between a proposed visitee and the
3 petitioner.

4 NEW SECTION. **Sec. 3.** (1) Any relative, neighbor, or close
5 friend of a proposed visitee may petition for visitation with the
6 proposed visitee.

7 (2) A petitioner may not file a petition for visitation with the
8 same proposed visitee more than once, unless:

9 (a) At least one year has elapsed since the previous petition was
10 filed; or

11 (b) The petitioner shows that there has been a substantial change
12 in circumstances since the previous petition or that other good cause
13 exists for allowing the petition.

14 (3) A petition for visitation under this chapter must be filed in
15 the superior court of either the county in which the proposed visitee
16 resides or the county in which the proposed visitee is temporarily
17 living.

18 (4)(a) The petition must describe:

19 (i) The nature of the relationship between the petitioner and the
20 proposed visitee;

21 (ii) The nature of the visitation that is being requested;

22 (iii) Facts supporting the petitioner's belief that the proposed
23 visitee would or does desire visitation with the petitioner; and

24 (iv) Facts supporting the necessity of a visitation order in
25 light of previous unsuccessful efforts to obtain visitation with the
26 proposed visitee or other indications that visitation will be
27 prevented in the future.

28 (b) The petition must additionally contain the following
29 information, to the extent known by the petitioner:

30 (i) The condition of the proposed visitee's health;

31 (ii) Any deficit in the proposed visitee's mental functioning and
32 that deficit's impact on the proposed visitee's ability to respond
33 knowingly and intelligently to queries about the requested
34 visitation;

35 (iii) The names and addresses of the proposed visitee's
36 relatives; and

37 (iv) The name and address of the proposed visitee's guardian or
38 limited guardian, if any.

1 (5) If, based on the petition, the court determines that there is
2 a reasonable basis to believe that the proposed visitee would or does
3 desire visitation, and that there is a risk that visitation between
4 the petitioner and the proposed visitee would be prevented absent a
5 court order, the court shall set a hearing no later than sixty days
6 from the filing of the petition and notify the petitioner.

7 NEW SECTION. **Sec. 4.** As soon as possible, but not more than
8 five days after the court sets a hearing under section 3 of this act,
9 the petitioner shall provide notice of the time and place of the
10 hearing and a copy of the petition to:

11 (1) The proposed visitee and the proposed visitee's attorney, if
12 any, by personal service; and

13 (2) The proposed visitee's guardian or limited guardian, if any,
14 and any relatives named in the petition, by mail at the addresses
15 stated in the petition.

16 NEW SECTION. **Sec. 5.** (1) Prior to the hearing, the court shall
17 assign a guardian ad litem from the registry described in RCW
18 11.88.090 to conduct an investigation.

19 (2) In conducting the investigation, the guardian ad litem must
20 complete the following steps:

21 (a) Conduct interviews of the following persons:

22 (i) The proposed visitee;

23 (ii) The petitioner;

24 (iii) The proposed visitee's relatives;

25 (iv) The proposed visitee's guardian or limited guardian, if any;

26 (v) To the extent practical, neighbors; and

27 (vi) If known, close friends of the proposed visitee;

28 (b) Inform the proposed visitee of the contents of the petition;

29 (c) Determine whether the proposed visitee has the capacity to
30 consent to the requested visitation;

31 (d) Determine whether the proposed visitee desires the proposed
32 visitation; and

33 (e) Determine whether the proposed visitee has retained an
34 attorney to represent him or her in the proceeding under this chapter
35 or if the proposed visitee plans to retain an attorney for that
36 purpose.

37 (3) At least fifteen days before the hearing, the guardian ad
38 litem must file a written report with the court detailing the

1 information gathered in subsection (2) of this section and must mail
2 a copy of the report to the following persons:

3 (a) The petitioner and the petitioner's attorney, if any;

4 (b) The proposed visitee and the proposed visitee's attorney, if
5 any;

6 (c) The proposed visitee's guardian or limited guardian, if any;

7 (d) All relatives of the proposed visitee, unless the court
8 determines that providing the report to any of these persons will
9 result in harm to the proposed visitee; and

10 (e) Any other person identified by the court.

11 (4) The guardian ad litem's report is a confidential document
12 that is disclosable only to the parties, attorneys for the parties,
13 and persons entitled to a copy of the report under subsection (3) of
14 this section, and is exempt from public disclosure under chapter
15 42.56 RCW.

16 (5) If a guardian ad litem has performed an investigation of the
17 proposed visitee within the preceding twelve months, the court may
18 order, upon good cause, that another investigation is not necessary
19 or that a more limited investigation may be performed.

20 (6) The entire or partial cost of the services of the guardian ad
21 litem must be assessed to the petitioner unless such assessment would
22 impose a substantial hardship on the petitioner.

23 NEW SECTION. **Sec. 6.** (1) Following the hearing:

24 (a) If the court determines that the proposed visitee possesses
25 sufficient capacity to make a knowing and intelligent visitation
26 decision and that the proposed visitee desires visitation with the
27 petitioner, the court must grant reasonable visitation.

28 (b) If the court determines that the proposed visitee does not
29 possess sufficient capacity to make a knowing and intelligent
30 visitation decision:

31 (i) The court must grant reasonable visitation if the court
32 determines that the proposed visitee would desire visitation and
33 visitation is in the best interest of the proposed visitee; and

34 (ii) The court must not enter a visitation order if the court
35 determines that the proposed visitee would not desire visitation or
36 that visitation is not in the best interest of the proposed visitee.

37 (2) In determining the proposed visitee's desire for visitation
38 with the petitioner under subsection (1)(b) of this section, the
39 court may consider:

- 1 (a) The history of the relationship between the proposed visitee
2 and the petitioner;
- 3 (b) Any statements made by the proposed visitee regarding his or
4 her desire to visit with the petitioner;
- 5 (c) Any power of attorney or advance planning document that
6 expresses an option regarding visitation with the petitioner; and
- 7 (d) The report of the guardian ad litem.
- 8 (3) If the court grants visitation, the court may include in the
9 order reasonable time, place, and manner requirements regarding
10 visitation.

11 NEW SECTION. **Sec. 7.** A petition for modification or termination
12 of the order may be filed in the court with jurisdiction over the
13 initial petition. Disposition of a petition for modification or
14 termination shall follow the same procedure as an initial petition
15 under this chapter.

16 NEW SECTION. **Sec. 8.** (1) A person who is not a party to a
17 visitation order entered under this chapter and who knowingly
18 interferes with the order must be assessed a civil penalty of:

19 (a) Not less than one hundred dollars and not more than three
20 hundred dollars, for a first violation;

21 (b) Not less than five hundred dollars and not more than eight
22 hundred dollars, for a second violation; and

23 (c) Not less than one thousand dollars and not more than one
24 thousand five hundred dollars, for a third or subsequent violation.

25 (2) The court may not waive, reduce, or suspend the minimum
26 monetary penalty imposed under subsection (1) of this section.

27 NEW SECTION. **Sec. 9.** A determination by a court regarding
28 capacity of a proposed visitee under this chapter shall not be cited
29 as evidence in any other legal proceeding.

30 NEW SECTION. **Sec. 10.** Sections 2 through 9 of this act
31 constitute a new chapter in Title 11 RCW.

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