

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
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**MEMORANDUM**

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 6, 2024

Subject: Bill Brief on HB 2675

HB 2675 enacts the uniform nonparent visitation act.

Section 1 names the act and section 2 provides definitions to be used throughout the act.

Section 3 makes the act apply to any proceeding in which a nonparent seeks visitation, including proceedings where the child has a guardian or permanent custodian. The act does not apply to a proceeding between nonparents unless a parent or person acting as a parent is a party to the proceeding, a proceeding pertaining to visitation with an Indian child to the extent the proceeding is governed by the Indian child welfare act and a proceeding pertaining to a child who is the subject of an ongoing child in need of care proceeding. A nonparent shall not maintain a proceeding under the act solely because the nonparent served as a foster parent of the child, and a person whose parental rights concerning the child have been terminated shall not maintain a proceeding under the act. Relief under the act is not available during the period of a visitation order or other related visitation with a child of a deployed parent.

Section 4 provides that a court may order visitation to a nonparent only if the nonparent proves that (1) denial of visitation would result in harm to the child, (2) the nonparent is or has been a consistent caretaker or has a substantial relationship with the child; and (3) an order of visitation is in the best interest of the child. The bill provides a list of factors to be considered when determining whether a person was a consistent caretaker of or had a substantial relationship with the child.

Section 5 creates a rebuttable presumption that a decision by a parent regarding a request for visitation by a nonparent is in the best interest of the child. A nonparent has the burden to rebut that presumption by clear and convincing evidence.

Section 6 authorizes a nonparent to commence a proceeding under the act by filing a petition in the court having jurisdiction to determine visitation under the uniform child custody jurisdiction and enforcement act.

Section 7 provides that a petition for visitation must allege that the nonparent meets the requirements of a consistent caretaker or has a substantial relationship with the child and denial of visitation would result in harm to the child. The petition shall state the relief sought and allege facts pertaining to the nonparent's relationship and previous visitation with the child. If the parties have an agreement related to custody or visitation, the agreement must be attached to the petition.

Section 8 requires the court to determine whether the nonparent has pleaded a prima facie case that denial of visitation would result in harm to the child, the nonparent is or has been a consistent caretaker of or has a substantial relationship with the child and an order of visitation is in the best interest of the child. If the court determines that the nonparent has not pleaded a prima facie case, the court shall dismiss the petition.

Section 9 requires notice of commencement of a proceeding to be provided as described in the code of civil procedure to each parent who is the subject of the proceeding, person having custody of the child, individual having court-ordered visitation of the child and any attorney, guardian ad litem or similar representatives appointed for the child.

Section 10 authorizes the court to appoint a guardian ad litem for the child, interview a child of sufficient age and maturity, require parties to participate in mediation or other form of alternative dispute resolution unless a party is a victim of certain offenses committed by another party or order an evaluation, investigation or other assessment of the child's circumstances in the same manner and to the extent authorized in the Kansas family law code.

Section 11 requires the court, when making a determination whether an order of visitation is in the best interest of the child, to consider (1) the nature and extent of the relationship between the child and the parent; (2) the nature and extent of the relationship between the child and the nonparent; (3) past or present conduct by a party or individual living with a party that poses a risk to the child; (4) the likely impact of the requested order on the relationship between the child and the parent; (5) the factors in the Kansas family law code the court uses when determining legal custody, residency and parenting time of a child; and (7) and other factor affecting the best interest of the child. The court may also consider the views of the child, taking into account the age and maturity of the child.

Section 12 requires the court to presume that ordering visitation to a nonparent is not in the best interest of the child if the court finds the nonparent or an individual who lives with the nonparent committed abuse of a child, abandonment of a child, a domestic violence offense, a sex offense or stalking, has been subject to registration requirements of the Kansas offender registration act or committed a similar offense or has been subjected to similar registration requirements in another state. Such a finding shall be based on evidence of a conviction, final judgment in a civil proceeding or proof by a preponderance of the evidence. A nonparent may rebut this presumption by clear and convincing evidence that ordering visitation to the nonparent will not endanger the health, safety or welfare of the child and is in the best interest of the child.

Section 13 allows the court to modify a final visitation order on a showing by a preponderance of the evidence that a material change in circumstance has occurred relevant to the visitation and modification is in the best interest of the child. If a nonparent has rebutted a presumption that a decision by a parent regarding visitation is in the best interest of the child, the presumption remains rebutted. The court may modify a visitation order on agreement of the parties unless the court finds that the agreement is not in the best interest of the child.

Section 14 requires the court, when issuing a final order of visitation, to make findings of fact and conclusions of law in support of the decision as required in the code of civil procedure. If the petition is dismissed or a motion for modification is denied, the court shall state the reasons for dismissal or denial.

Section 15 requires a nonparent who is entitled to visitation to give written notice to a parent if the nonparent (1) is subject to registration requirements under the Kansas offender registration act; (2) has been convicted of abuse of a child; or (3) is residing with an individual who is subject to registration or has been convicted as described above. This notice must be sent by restricted mail to the last known address of the parent within 14 days following knowledge of the event. Failure to give notice is an indirect civil contempt, and the court may order the nonparent to pay reasonable attorney fees and other expenses incurred by the parent as a result of the failure to give notice. An event described in subsection (a)(1) may be considered a material change that justifies modification of a prior visitation order.

Section 16 provides that the expense of facilitating visitation shall be paid by the nonparent, the nonparent shall pay for the services described in section 10 and costs and reasonable attorney fees shall be awarded to a parent or person acting as a parent unless the court determines that justice and equity require otherwise.

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Section 17 requires consideration to be given to uniformity when applying and construing the act, Section 18 provides the extent to which this act modifies, limits or supersedes other acts, Section 19 applies the act to proceedings commenced before July 1, 2024 in which a final order has not been entered and proceedings commenced after July 1, 2024, and Section 20 provides for severability of the act if a portion is held invalid.