

HOUSE BILL No. 2675

By Committee on Judiciary

Requested by Laura Nordgren on behalf of the Kansas Judicial Council

2-1

1 AN ACT concerning children and minors; enacting the uniform nonparent
2 visitation act; removing provisions related to grandparent and
3 stepparent visitation rights; repealing K.S.A. 23-3301, 23-3302, 23-
4 3303 and 23-3304.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. Sections 1 through 20, and amendments thereto, shall be
8 known and may be cited as the uniform nonparent visitation act.

9 Sec. 2. As used in this act:

10 (a) "Child" means an unemancipated individual who is less than 18
11 years of age.

12 (b) "Compensation" means wages or other remuneration paid in
13 exchange for care of a child. "Compensation" does not include
14 reimbursement of expenses for care of the child, including payment for
15 food, clothing and medical expenses.

16 (c) "Consistent caretaker" means a nonparent who meets the
17 requirements of section 4(b), and amendments thereto.

18 (d) "Custody" means physical custody, legal custody or both.

19 (e) "Harm to a child" means significant adverse effect on a child's
20 physical, emotional or psychological well-being.

21 (f) "Legal custody" means the right to make significant decisions
22 regarding a child, including decisions regarding a child's education,
23 healthcare and scheduled activity.

24 (g) "Nonparent" means an individual, other than a parent or person
25 acting as a parent of a child. "Nonparent" includes a grandparent, sibling
26 or stepparent of a child.

27 (h) "Parent" means an individual recognized as a parent under the
28 laws of Kansas.

29 (i) "Person" means an individual, estate, business or nonprofit entity,
30 public corporation, government or governmental subdivision, agency,
31 instrumentality or other legal entity.

32 (j) "Person acting as a parent" means a person, other than a parent,
33 who:

34 (1) Has physical custody of the child or has had physical custody for
35 a period of six consecutive months, including any temporary absence,

1 within one year immediately ~~proceeding~~ **preceding** the commencement of
2 a child custody proceeding; and

3 (2) has been awarded legal custody by a court or claims a right to
4 legal custody under the laws of Kansas.

5 (k) "Physical custody" means living with a child and exercising day-
6 to-day care of the child.

7 (l) "Record" means information that is inscribed on a tangible
8 medium or that is stored in an electronic or other medium and is
9 retrievable in perceivable form.

10 (m) "State" means a state of the United States, the District of
11 Columbia, Puerto Rico, the United States Virgin Islands or any territory or
12 insular possession subject to the jurisdiction of the United States. "State"
13 includes a federally recognized Indian tribe.

14 (n) "Substantial relationship with the child" means a relationship
15 between a nonparent and child that meets the requirements of section 4(c),
16 and amendments thereto.

17 (o) "Visitation" means the right to spend time with a child who is
18 living with another person and may include an overnight stay.

19 Sec. 3. (a) Except as provided in subsection (b), this act applies to a
20 proceeding in which a nonparent seeks visitation, including proceedings in
21 which the child has a guardian pursuant to article 30 of chapter 59 of the
22 Kansas Statutes Annotated, and amendments thereto, or a permanent
23 custodian pursuant to article 22 of chapter 38 of the Kansas Statutes
24 Annotated, and amendments thereto.

25 (b) This act does not apply to a proceeding:

26 (1) Between nonparents, unless a parent or person acting as a parent
27 is a party to the proceeding;

28 (2) pertaining to visitation with an Indian child as defined in the
29 Indian child welfare act of 1978, 25 U.S.C. § 1903(4), to the extent the
30 proceeding is governed by the Indian child welfare act of 1978, 25 U.S.C.
31 §§ 1901 through 1963; and

32 (3) pertaining to a child who is the subject of an ongoing proceeding
33 under article 22 of chapter 38 of the Kansas Statutes Annotated, and
34 amendments thereto, or a substantially similar proceeding in another state.

35 (c) A nonparent shall not maintain a proceeding under this act for
36 visitation with a child solely because the nonparent served as a foster
37 parent of the child.

38 (d) An individual whose parental rights concerning a child have been
39 terminated shall not maintain a proceeding under this act concerning such
40 child.

41 (e) Relief under this act is not available during the period of a
42 visitation order entered under K.S.A. 23-3217, and amendments thereto, or
43 other order related to visitation with a child of a deposed parent **or person**

1 ***acting as a parent***. A visitation order entered before a parent ***or person***
2 ***acting as a parent*** was deployed remains in effect unless modified by the
3 court.

4 Sec. 4. (a) A court may order visitation to a nonparent only if the
5 nonparent proves that:

6 (1) The denial of visitation would result in harm to the child;

7 (2) the nonparent:

8 (A) Is or has been a consistent caretaker as described in subsection

9 (b) within one year of the initiation of the action; or

10 (B) has a substantial relationship with the child as described in
11 subsection (c); and

12 (3) an order of visitation to the nonparent is in the best interest of the
13 child applying the factors in section 11, and amendments thereto.

14 (b) A nonparent is a consistent caretaker if the nonparent, without
15 expectation of compensation:

16 (1) Lived with the child for not less than 12 months, unless the court
17 finds good cause to accept a shorter period;

18 (2) regularly exercised care of the child;

19 (3) made day-to-day decisions regarding the child solely or in
20 cooperation with an individual having physical custody of the child; and

21 (4) established a bonded and dependent relationship with the child
22 with the express or implied consent of a parent ***or person acting as a***
23 ***parent*** of the child or without the consent of a parent ***or person acting as a***
24 ***parent*** if no parent ***or person acting as a parent*** has been able or willing
25 to perform parenting functions.

26 (c) A nonparent has a substantial relationship with the child if:

27 (1) The nonparent:

28 (A) Is an individual with a familiar relationship with the child by
29 blood or law; or

30 (B) formed a relationship with the child without expectation of
31 compensation;

32 (2) a significant emotional bond exists between the nonparent and the
33 child from the child's point of view; and

34 (3) the nonparent:

35 (A) Regularly exercised care of the child; and

36 (B) established a bonded and dependent relationship with the child
37 with the express or implied consent of a parent ***or person acting as a***
38 ***parent*** of the child or without the consent of a parent ***or person acting as a***
39 ***parent*** if no parent ***or person acting as a parent*** has been able or willing
40 to perform parenting functions.

41 Sec. 5. (a) In an initial proceeding under this act, there is a rebuttable
42 presumption that a decision by a parent ***or person acting as a parent***
43 regarding a request for visitation by a nonparent is in the best interest of

1 the child.

2 (b) Subject to section 13, and amendments thereto, a nonparent has
3 the burden to rebut the presumption described in subsection (a) by clear
4 and convincing evidence of the facts required by section 4(a), and
5 amendments thereto. Proof of unfitness of a parent ***or person acting as a***
6 ***parent*** is not required to rebut the presumption described in subsection (a).

7 Sec. 6. A nonparent may commence a proceeding by filing a petition
8 under section 7, and amendments thereto, in the court having jurisdiction
9 to determine visitation under the uniform child custody jurisdiction and
10 enforcement act, K.S.A. 23-37,101 through 23-37,405, and amendments
11 thereto.

12 Sec. 7. (a) A nonparent shall verify a petition for visitation under
13 penalty of perjury and allege facts showing that the nonparent:

14 (1) Meets the requirements of a consistent caretaker of the child as
15 described in section 4(b), and amendments thereto; or

16 (2) has a substantial relationship with the child as described in section
17 4(c), and amendments thereto, and denial of visitation would result in
18 harm to the child.

19 (b) A petition under subsection (a) shall state the relief sought and
20 allege specific facts showing:

21 (1) The duration and nature of the relationship between the nonparent
22 and the child, including the period, if any, the nonparent lived with the
23 child and the care provided;

24 (2) the content of any agreement between the parties to the
25 proceeding regarding care of the child and custody of or visitation or other
26 contact with the child;

27 (3) a description of any previous attempt by the nonparent to obtain
28 visitation or other contact with the child;

29 (4) the extent to which the parent ***or person acting as a parent*** is
30 willing to permit the nonparent to have visitation or other contact with the
31 child;

32 (5) information about compensation or expectation of compensation
33 provided to the nonparent in exchange for care of the child;

34 (6) information required to establish the jurisdiction of the court
35 under the uniform child custody jurisdiction and enforcement act, K.S.A.
36 23-37,101 through 23-37,405, and amendments thereto;

37 (7) the reason the requested visitation is in the best interest of the
38 child, applying the factors in section 11, and amendments thereto; and

39 (8) if the nonparent alleges a substantial relationship with the child,
40 the reason denial of visitation to the nonparent would result in harm to the
41 child.

42 (c) If an agreement described in subsection (b)(2) is in a record, the
43 nonparent shall attach a copy of the agreement to the petition.

1 Sec. 8. (a) Based on the petition described in section 7, and
2 amendments thereto, the court shall determine whether the nonparent has
3 pleaded a prima facie case that:

4 (1) A denial of visitation would result in harm to the child;

5 (2) the nonparent:

6 (A) Is or has been a consistent caretaker, as described in section 4(b),
7 and amendments thereto, during the year immediately preceding filing of
8 the action; or

9 (B) has a substantial relationship with the child, as described in
10 section 4(c), and amendments thereto; and

11 (3) an order of visitation to the nonparent is in the best interest of the
12 child applying the factors in section 11, and amendments thereto.

13 (b) If the court determines that the nonparent has not pleaded a prima
14 facie case, the court shall dismiss the petition.

15 Sec. 9. On commencement of a proceeding under the act, the
16 nonparent shall give notice as described in article 3 of chapter 60 of the
17 Kansas Statutes Annotated, and amendments thereto, to each:

18 (a) Parent *or person acting as a parent* of the child who is the subject
19 of the proceeding;

20 (b) person having ~~custody of~~ *legal custody, residency or parenting*
21 *time with* the child;

22 (c) individual having court-ordered visitation with the child; and

23 (d) attorney, guardian ad litem or similar representative appointed for
24 the child.

25 Sec. 10. In the manner and to the extent authorized by chapter 23 of
26 the Kansas Statutes Annotated, and amendments thereto, the court may do
27 one or more of the following:

28 (a) Appoint a guardian ad litem for the child;

29 (b) interview the child if such child is of sufficient age and maturity;

30 (c) require the parties to participate in mediation or another form of
31 alternative dispute resolution, except that a party who has been the victim
32 of a domestic violence offense, as defined in K.S.A. 21-5111, and
33 amendments thereto, a sex offense described in article 55 of chapter 21 of
34 the Kansas Statutes Annotated, and amendments thereto, stalking as
35 described in K.S.A. 21-5427, and amendments thereto, or other offense
36 committed by another party to the proceeding shall not be required to
37 participate unless reasonable procedures are in place to protect the party
38 from a risk of harm, harassment or intimidation; or

39 (d) order an evaluation, investigation or other assessment of the
40 child's circumstances and the effect on the child of ordering or denying the
41 requested visitation or modifying a visitation order.

42 Sec. 11. (a) When determining whether an order of visitation to a
43 nonparent is in the best interest of a child, the court shall consider:

- 1 (1) The nature and extent of the relationship between the child and
 2 the parent *or person acting as a parent*;
- 3 (2) the nature and extent of the relationship between the child and the
 4 nonparent;
- 5 (3) past or present conduct by a party or individual living with a party
 6 that poses a risk to the physical, emotional or psychological well-being of
 7 the child;
- 8 (4) the likely impact of the requested order on the relationship
 9 between the child and the parent *or person acting as a parent*;
- 10 (5) the applicable factors in K.S.A. 23-3203, and amendments
 11 thereto; and
- 12 (6) any other factor affecting the best interest of the child.
- 13 (b) The court may consider the views of the child, taking into account
 14 the age and maturity of the child.
- 15 Sec. 12. (a) The court shall presume that ordering visitation to a
 16 nonparent is not in the best interest of the child if the court finds that the
 17 nonparent or an individual living with the nonparent has:
- 18 (1) Committed abuse of a child as described in K.S.A. 21-5602, and
 19 amendments thereto;
- 20 (2) committed abandonment of a child or aggravated abandonment of
 21 a child as described in K.S.A. 21-5605, and amendments thereto;
- 22 (3) committed a domestic violence offense as defined in K.S.A. 21-
 23 5111, and amendments thereto;
- 24 (4) committed a sex offense described in article 55 of chapter 21 of
 25 the Kansas Statutes Annotated, and amendments thereto;
- 26 (5) committed stalking as described in K.S.A. 21-5427, and
 27 amendments thereto;
- 28 (6) been subject to registration requirements under the Kansas
 29 offender registration act, K.S.A. 22-4901 et seq., and amendments thereto;
 30 or
- 31 (7) committed an offense or been subjected to a registration
 32 requirement in another state that is comparable to those described in
 33 paragraphs (1) through (6).
- 34 (b) A finding that conduct described in subsection (a) occurred shall
 35 be based on:
- 36 (1) Evidence of a conviction in a criminal proceeding or final
 37 judgment in a civil proceeding; or
- 38 (2) proof by a preponderance of the evidence.
- 39 (c) A nonparent may rebut the presumption described in subsection
 40 (a) by proving by clear and convincing evidence that ordering visitation to
 41 the nonparent will not endanger the health, safety or welfare of the child
 42 and is in the best interest of the child.
- 43 Sec. 13. (a) On verified motion subject to subsection (c), the court

1 may modify a final visitation order on a showing by a preponderance of
2 the evidence that:

3 (1) A material change in circumstance has occurred relevant to the
4 visitation with the child; and

5 (2) modification is in the best interest of the child.

6 (b) Except as provided in subsection (c), if a nonparent has rebutted
7 the presumption described in section 5, and amendments thereto, in an
8 initial proceeding, the presumption remains rebutted.

9 (c) On agreement of the parties, the court may modify a visitation
10 order unless the court finds that the agreement is not in the best interest of
11 the child.

12 Sec. 14. When issuing a final order of visitation, the court shall make
13 findings of fact and conclusions of law as required by K.S.A. 60-252, and
14 amendments thereto, in support of its decision or, if the petition is
15 dismissed pursuant to section 8, and amendments thereto, or a motion for
16 modification is denied pursuant to section 13, and amendments thereto,
17 state the reasons for the dismissal or denial.

18 Sec. 15. (a) (1) A nonparent who is entitled to visitation with a child
19 under this act shall give written notice to the parent *or person acting as a*
20 *parent* if the nonparent:

21 (A) Is subject to the registration requirements of the Kansas offender
22 registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any
23 comparable registration requirements of another jurisdiction;

24 (B) has been convicted of abuse of a child as described in K.S.A. 21-
25 5602, and amendments thereto; or

26 (C) is residing with an individual who is known by the nonparent to
27 be subject to the registration requirements or convicted as described in
28 subparagraphs (A) or (B).

29 (2) The notice described in this subsection shall be sent by restricted
30 mail, return receipt requested, to the last known address of the parent *or*
31 *person acting as a parent* within 14 days following knowledge of an event
32 described in paragraph (1).

33 (b) Failure to give notice as required in this section is an indirect civil
34 contempt punishable as provided by law. The court may order the
35 nonparent required to give notice to pay reasonable attorney fees and any
36 other expenses incurred by the parent *or person acting as a parent* as a
37 result of the failure to give notice.

38 (c) An event described in subsection (a)(1) may be considered a
39 material change of circumstances that justifies modification of a prior
40 order of visitation.

41 Sec. 16. (a) The expense of facilitating visitation, including the
42 expense of transportation, shall be paid by the nonparent unless the court
43 determines justice and equity require otherwise.

1 (b) The nonparent shall pay for services ordered under section 10,
2 and amendments thereto, unless the court determines that justice and
3 equity require otherwise.

4 (c) Costs and reasonable attorney fees shall be awarded to the parent
5 or person acting as a parent unless the court determines that justice and
6 equity require otherwise.

7 Sec. 17. In applying and construing this uniform act, consideration
8 shall be given to the need to promote uniformity of the law with respect to
9 its subject matter among states that enact it.

10 Sec. 18. This act modifies, limits or supersedes the electronic
11 signatures in global and national commerce act, 15 U.S.C. § 7001 et seq.,
12 but does not modify, limit or supersede section 101(c) of that act, 15
13 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices
14 described in section 103(b) of that act, 15 U.S.C. § 7003(b).

15 Sec. 19. This act applies to a proceeding:

16 (a) Commenced before July 1, 2024, in which a final order has not
17 been entered; and

18 (b) commenced on or after July 1, 2024.

19 Sec. 20. If any provision of this act or its application to any person or
20 circumstance is held invalid, the invalidity does not affect other provisions
21 of applications of this act that can be given effect without the invalid
22 provisions or application, and to this end the provisions of this act are
23 severable.

24 Sec. 21. K.S.A. 23-3301, 23-3302, 23-3303 and 23-3304 are hereby
25 repealed.

26 Sec. 22. This act shall take effect and be in force from and after its
27 publication in the statute book.