

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2675

As Recommended by House Committee on
Judiciary

Brief*

HB 2675 would enact the Uniform Nonparent Visitation Act (UNVA).

Definitions

The bill would define several terms used throughout UNVA:

- “Nonparent” would mean an individual, other than a parent or person acting as a parent of a child. The bill would specify the term includes a grandparent, sibling, or stepparent to a child;
- “Consistent caretaker” would mean a nonparent who, without expectation of compensation, meets the following requirements:
 - Lived with the child for no less than 12 months, unless the court finds good cause to accept a shorter period;
 - Regularly exercised care of the child;
 - Made day-to-day decisions regarding the child solely or in cooperation with an individual having physical custody of the child; and
 - Established a bonded and dependent relationship with the child with the express or implied consent of a child’s parent or without

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

the consent of a parent if no parent has been able or willing to perform parenting functions; and

- “Substantial relationship to the child” would mean a relationship between a nonparent and child that meets the following requirements:
 - The nonparent is an individual with a familiar relationship with the child by blood or law or formed a relationship with the child without expectation of compensation;
 - A significant emotional bond exists between the nonparent and the child from the child’s point of view; and
 - The nonparent regularly exercised care of the child and established a bonded and dependent relationship with the child with the express or implied consent of a child’s parent or without the consent of a parent if no parent has been able or willing to perform parenting functions.

Application of UNVA

The UNVA would apply to a proceeding commenced on or after July 1, 2024, in which a nonparent seeks visitation. The UNVA would also apply to proceedings commenced before July 1, 2024, where a final order has not been entered. The bill would specify UNVA applies when a child has been appointed a guardian or permanent custodian.

The UNVA would not apply to proceedings:

- Between nonparents, unless a parent or a person acting as a parent is a party to the proceeding;
- Pertaining to visitation with an Indian child as defined in the Indian Child Welfare Act of 1978; and

- Pertaining to a child who is subject of an ongoing proceeding under the Revised Kansas Code for Care of Children (CINC Code) or a substantially similar proceeding in another state.

Proceedings to seek visitation under UNVA would not be allowed for:

- A nonparent seeking visitation solely for serving as a foster parent of the child; or
- An individual whose parental rights concerning the child have been terminated. The bill would also bar proceedings under UNVA during the period of an order relating to visitation with a child of a deployed parent and would specify a visitation order entered before a parent was deployed remains in effect unless modified by the court.

Commencement of Proceeding Under UNVA – Jurisdiction and Notice

The bill would provide that a nonparent may commence a proceeding under UNVA by filing a petition in the court having jurisdiction to determining visitation under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Upon commencement of a proceeding under UNVA, the nonparent would give notice in the manner described by the Kansas Code of Civil Procedure to each:

- Parent of the child who is the subject of the proceeding;
- Person having custody of the child;
- Individual having court-ordered visitation with the child; and

- Attorney, guardian *ad litem* or similar representative appointed to the child.

Petition for Visitation

Under UNVA, a petition for visitation by a nonparent would be required to allege facts showing:

- The nonparent meets the requirements of a consistent caretaker of the child; or
- The nonparent has a substantial relationship with the child and denial of visitation would result in harm to the child.

The petition would state the relief sought and allege specific facts showing:

- The duration and nature of the relationship between the nonparent and the child, including the period, if any, the nonparent lived with the child and the care provided;
- The content of any agreement between the parties to the proceeding regarding care of the child and custody of or visitation or other contact with the child, and if there is such an agreement, it must be attached to the petition;
- A description of any previous attempt by the nonparent to obtain visitation or other contact with the child;
- The extent to which the parent is willing to permit the nonparent to have visitation or other contact with the child;
- Information about compensation or expectation of compensation provided to the nonparent in exchange for care of the child;

- Information required to establish jurisdiction of the court under the UCCJEA;
- The reason the requested visitation is in the best interest of the child, applying factors outlined in UNVA; and
- If the nonparent alleges a substantial relationship with the child, the reason denial of visitation to the nonparent would result in harm to the child.

Prima Facie Case for Visitation

If the court determines, based on the petition described above, a nonparent has not pleaded a *prima facie* case for visitation, the court would be required to dismiss the petition.

To plead a *prima facie* case, the bill would require the nonparent to show:

- A denial of visitation would harm the child;
- The nonparent has been a consistent caretaker during the year immediately preceding the filing of action or has a substantial relationship with the child; and
- An order of visitation to the nonparent is in the best interest of the child.

Presumptions

The bill would provide that in an initial proceeding under UNVA, there is a rebuttable presumption that a decision by a parent regarding the nonparent visitation request is in the best interest of the child. A nonparent has the burden to rebut the presumption by clear and convincing evidence of facts related to the request for visitation. The bill would specify that proof of a parent's unfitness is not required to rebut the presumption.

The bill would require the court to presume that ordering visitation for a nonparent is not in the best interest of the child if the court finds the nonparent or an individual living with the nonparent has:

- Committed the crime of abuse of a child or abandonment or aggravated abandonment of a child;
- Committed a domestic violence offense;
- Committed a sex offense;
- Committed stalking;
- Been subject to registration requirements under the Kansas Offender Registration Act (KORA); or
- Committed a comparable offense or has been subjected to a registration requirement in another state.

The bill would require the finding to be based on evidence of a conviction in a criminal proceeding or final judgment in a civil proceeding or proof by a preponderance of the evidence.

A nonparent could rebut the presumption by proving 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 child's best interest.

Final Order of Visitation

A court could order visitation to a nonparent only if the nonparent proves:

- The denial of visitation would result in harm to the child;
- The nonparent is or has been a consistent caretaker within one year of the action's initiation or has a substantial relationship with the child; and
- An order of visitation to the nonparent is in the best interest of the child as determined by the court considering the following factors:
 - Nature and extent of the relationship between the child and the parent;
 - Nature and extent of the relationship between the child and the nonparent;
 - Past or present conduct by a party or individual living with a party that poses a risk to the physical, emotional, or psychological well-being of the child;
 - Likely impact of the requested order on the relationship between the child and the parent;
 - Applicable factors considered in the determination of legal custody, residency, and parenting time of the child; and
 - Any other factor affecting the best interest of the child.

The bill would also allow the court to consider the views of the child, taking into account the age and maturity of the child.

The court would be required to make findings of fact and conclusions of law when issuing a final order and state the reasons for dismissal or denial.

Modification of Orders

The court could 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 with the child and modifying the order would be in the best interest of the child. On agreement of the parties, the court could modify a visitation order unless the court finds the agreement is not in the best interest of the child.

Other Court Actions Authorized Under UNVA

To the extent authorized by the Kansas Family Law Code, the bill would allow the court to:

- Appoint a guardian *ad litem* for the child;
- Interview the child if such child is of sufficient age and maturity;
- Require the parties participate in mediation or another form of alternative dispute resolution excluding parties victim of a domestic violence offense, sex offense, stalking, or other offense committed by the other party unless reasonable procedures are in place to protect the party from a risk of harm, harassment, or intimidation; or
- Order an evaluation, investigation, or other assessment of the child's circumstances and the

effect on the child of ordering or denying the requested visitation or modifying a visitation order.

Notice of Nonparent Visitation Order to Parent

A nonparent entitled to visitation with a child under UNVA would be required to give written notice to the parent if the nonparent:

- Is subject to the registration requirements of the KORA or any comparable registration requirements of another jurisdiction;
- Has been convicted of child abuse under the Kansas Criminal Code; or
- Is residing with an individual who is known by the nonparent to be subject to registration requirements or convicted as described in the bill.

The bill would require notice to be sent by restricted mail, return receipt requested, to the last known address of the parent within 14 days following knowledge of an event described above.

Failure to give required notice would be an indirect civil contempt of court punishable as provided by law. The court could order the nonparent required to give notice to pay reasonable attorney fees and any other expenses incurred by the parent as a result of failing to give notice.

The events described above could also be considered a material change of circumstances that justify modification of a prior visitation order.

Expenses of Visitation

Unless the court determines that justice and equity require otherwise, the nonparent would be required to pay for the expense of facilitating visitation, including the cost of transportation, court-ordered services for the child, and costs and reasonable attorney fees to the parent or person acting as parent.

Uniformity; Electronic Signatures in Global and National Commerce Act; Severability

In applying and construing UNVA, the bill would require consideration to be given to promoting uniformity of the law among states that enact UNVA.

The bill would also specify how UNVA interacts with the Electronic Signatures in Global and National Commerce Act.

The bill would include a severability clause stating if any provision of UNVA is held invalid, the invalidity would not effect other provisions of UNVA.

Repeal of Provisions in Kansas Family Law Code

The bill would repeal four statutes concerning grandparent and stepparent visitation rights in the Kansas Family Law Code, as UNVA would apply to these types of visitation proceedings, if enacted.

Background

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Kansas Judicial Council.

House Committee on Judiciary

In the House Committee hearing, **proponent** testimony was provided by a representative of the Kansas Judicial Council Family Law Advisory Committee. The proponent generally stated the bill would expand the pool of visitation applicants to include parties that may be in the best interest of the child but are not stepparents or grandparents, as currently allowed by Kansas law.

Written-only proponent testimony was provided by a private citizen.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of Budget on the bill, the Office of Judicial Administration indicates enactment of the bill could increase the time spent by the Judicial Branch in processing and hearing cases.

Additionally, the bill could also result in collection of additional docket fees which would be deposited in the State General Fund; however, a precise fiscal effect cannot be determined because the number of additional cases cannot be estimated.

Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Uniform law; Uniform Nonparent Visitation Act; visitation rights; civil procedure; best interest of the child