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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 6, 2024
Subject: Bill Brief for HB 2675

House Bill 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 provides that the act applies to any proceeding in which a nonparent seeks visitation, including proceedings in which the child has a guardian or a 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 order related to 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) The 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 nonparent is a consistent caretaker or has 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: (1) Meets the requirements of a consistent caretaker of the child; or (2) 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 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, each person having custody of the child, each 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 do one or more of the following in the manner and to the extent authorized in the Kansas family law code: (1) Appoint a guardian ad litem for the child; (2) interview the child if such child is of sufficient age and maturity; (3) require parties to participate in mediation or another form of alternative dispute resolution, except that a party who has been the victim of a domestic violence offense, a sex offense, stalking, or other offense committed by another party to the proceeding shall not be required to participate unless reasonable procedures are in place to protect the party from a risk of harm, harassment or intimidation; or (4) 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.

Section 11 requires the court, when determining 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 applicable factors in the Kansas family law code the court uses when determining legal custody, residency, and parenting time of a child; and (6) any 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 that the nonparent or an individual living 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 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 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 the presumption described in Section 5 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 pursuant to Section 8 or a motion for modification is denied pursuant to Section 13, 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 or any comparable registration requirements of another jurisdiction; (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 above may be considered a material change that justifies modification of a prior visitation order.

Section 16 provides that the expense of facilitating visitation, including the expense of transportation, shall be paid by the nonparent, the nonparent shall pay for the services ordered under 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.

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. Section 20 provides for severability of the act if a portion is held invalid.

The bill would take effect from and after publication in the statute book, July 1, 2024.