



House of Representatives

General Assembly

File No. 107

January Session, 2011

Substitute House Bill No. 6453

House of Representatives, March 21, 2011

The Committee on Aging reported through REP. SERRA of the 33rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING GRANDPARENTS' VISITATION RIGHTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-59 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 The Superior Court may grant the right of visitation with respect to
4 any minor child or children to any person, upon an application of such
5 person. [Such order shall be according to the court's best judgment
6 upon the facts of the case and] The court shall grant the right of
7 visitation, subject to such conditions and limitations as [it deems
8 equitable,] are in the best interest of the child, if the applicant
9 demonstrates by a preponderance of the evidence that (1) the applicant
10 has a parent-like relationship with the child; and (2) the child will
11 suffer real and substantial harm as a result of the denial of visitation,
12 provided the grant of such right of visitation [rights] shall not be
13 contingent upon any order of financial support by the court. [In
14 making, modifying or terminating such an order, the court shall be
15 guided by the best interest of the child, giving consideration to the

16 wishes of such child if he is of sufficient age and capable of forming an
 17 intelligent opinion. Visitation rights] The right of visitation granted in
 18 accordance with this section shall not be deemed to have created
 19 parental rights in the person or persons to whom such right of
 20 visitation [rights are] is granted. The grant of [such] the right of
 21 visitation [rights] shall not prevent any court of competent jurisdiction
 22 from thereafter acting upon the custody of such child, the parental
 23 rights with respect to such child or the adoption of such child and any
 24 such court may include in its decree an order terminating such right of
 25 visitation. [rights.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	46b-59

AGE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

Few additional hearings associated with grandparents' visitation rights would be anticipated, which would not result in additional costs to the Judicial Department.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6453*****AN ACT CONCERNING GRANDPARENTS' VISITATION RIGHTS.*****SUMMARY:**

Current law allows grandparents and other third parties to petition for the right to visit a minor, and the court may grant the request, subject to conditions and limitations it deems equitable. This bill requires, instead, that the court consider whether the applicant demonstrates, by a preponderance of the evidence, that (1) he or she has a parent-like relationship with the child and (2) the child will suffer real and substantial harm if visitation is denied. By establishing the “preponderance of evidence” standard, the bill sets a lower standard for granting visitation requests than the “clear and convincing evidence” standard stated in a recent Connecticut Supreme Court decision.

The bill eliminates a provision specifying that in making, modifying, or terminating a visitation order, the court must be guided by the child’s best interest, taking into consideration the child’s wishes if he or she is old enough and capable of forming an intelligent opinion.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2011

BACKGROUND***Supreme Court Case on Visitation***

In *Roth v. Weston*, a maternal grandmother and aunt petitioned under CGS § 46b-59 for visitation with children whose father had terminated it after the children’s mother committed suicide (*Roth v. Weston*, 259 Conn. 202 (2002)). The relatives claimed that visitation was

in the children's best interest, although they did not contend that the father was not a fit parent. In his response, the father presented reasons why he believed visitation was not in the children's best interest.

The trial court granted the petition but the Connecticut Supreme Court reversed. It ruled that CGS § 46b-59 would be unconstitutional unless it required any third party, including a grandparent or a great-grandparent, seeking visitation to make specific and good faith allegations that (1) a parent-like relationship exists between the child and the person seeking visitation and (2) denial of the visitation will cause real and significant harm to the child. That degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to a claim that the child is neglected, uncared-for or dependent within the meaning of Connecticut's child abuse statutes.

Once these high jurisdictional hurdles are overcome, the petitioner must prove the allegations by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation. These requirements serve as constitutionally mandated safeguards against unwarranted intrusions into a parent's authority (*Roth v. Weston*, 259 Conn. 202, 234-235 (2001)).

Standards of Proof

A "preponderance of the evidence" means that it is more likely than not that the facts asserted are true. "Clear and convincing" means that it is highly probably or reasonably certain. Clear and convincing is a greater burden of proof than preponderance of the evidence, but less than evidence beyond a reasonable doubt (*Black's Law Dictionary*, 7th ed.).

Related Bill

On February 15, the Children's Committee reported HB 6281, An Act Concerning Visitation Rights for Grandparents When a Parent is Deceased, to the Judiciary Committee. HB 6281 requires the court to

grant a right of visitation based on clear and convincing evidence when the child's parent is deceased. HB 6281's other conditions for an order are the same as those in this bill: the existence of a parent-like relationship and real and substantial harm to the child if visitation is denied.

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute

Yea 11 Nay 0 (03/10/2011)