

SESSION OF 2024

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2675**

As Amended by Senate Committee on Judiciary

**Brief\***

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

***Definitions (Section 2)***

The bill would define several terms used throughout UNVA, including:

- “Nonparent” would mean an individual, other than a parent or person acting as a parent of a child. The bill would specify the term “nonparent” includes a grandparent, sibling, or stepparent to a child;
- “Person acting as parent” would mean a person, other than a parent, who:
  - Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately preceding the commencement of a child custody proceeding; and
  - Has been awarded legal custody by a court or claims a right to legal custody under the laws of Kansas;

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\*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>

- “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 person acting as a parent or without the consent of a parent or person acting as a parent if no parent or person acting as a 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 person acting as a parent or without the consent of a parent or person acting as a parent if no parent or person acting as a

parent has been able or willing to perform parenting functions.

***Application of UNVA (Sections 3 and 19)***

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 or person acting as a parent and would specify a visitation order entered before such parent or person acting as a parent was deployed remains in effect unless modified by the court.

***Commencement of Proceeding Under UNVA –  
Jurisdiction and Notice (Sections 6 and 9)***

The bill would provide that a nonparent could commence a proceeding under UNVA by filing a petition in the court having jurisdiction to determine 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 or person acting as a parent of the child who is the subject of the proceeding;
- Person having legal custody, residency, or parenting time with 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 (Section 7)***

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 or person acting as a 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 (Section 8)**

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 (Sections 5 and 12)***

The bill would provide that in an initial proceeding under UNVA, there is a rebuttable presumption that a decision by a parent or person acting as 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 or person acting as 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 through 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.

#### ***Order of Visitation (Sections 4, 11, and 14)***

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 or person acting as a 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 or person acting as a 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, when making an order of visitation.

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 (Section 13)***

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 (Section 10)***

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 the child is of sufficient age and maturity;
- Require the parties to participate in mediation or another form of alternative dispute resolution excluding parties that are victims 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 (Section 15)***

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

- Is subject to the registration requirements of 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 or person acting as a 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 or person acting as a 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 (Section 16)***

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 (Sections 17–18 and 20)***

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 Third-party Visitation Provisions in Kansas  
Family Law Code (Section 21)***

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.

***Senate Committee on Judiciary***

In the Senate Committee hearing, a representative of the Kansas Judicial Council Family Law Advisory Committee and a private citizen provided **proponent** testimony. The Judicial Council representative provided substantially similar testimony as in the House Committee. The private citizen explained how the provisions of the bill would have allowed

her more control over visitation ordered to her mother-in-law that was not in the best interest of her children.

Written-only proponent testimony was provided by a representative of the Kansas Bar Association.

No other testimony was provided.

The Senate Committee amended the bill to:

- Add the phrase “or person acting as a parent” in provisions that reference parents; and
- Clarify that persons having legal custody, residency, or parenting time with a child are entitled to be given notice by the nonparent seeking visitation.

### **Fiscal Information**

According to the fiscal note prepared by the Division of Budget on the bill, as introduced, 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 interests of the child