

## **USLegal Pamphlet to Grandparent Visitation**



### **INTRODUCTION**

The right of the grandparent to visit the grandchild is not a constitutional right. Traditionally, the common law denied grandparents visitation with a child over a parent's objections. However, since 1965, all 50 states and the District of Columbia have enacted legislation enabling grandparents to petition the courts for visitation rights with grandchildren. The laws do not make granting of visitation rights automatic — they merely give grandparents the right to ask for a visitation order. Therefore grandparent visitation rights are merely statutory rights, given by state legislatures. All states have some form of grandparent visitation laws. Among those laws that permit grandparents to file for visitation rights, there are two primary types –

restrictive and permissive.

The law relating to visitation rights of grandparents varies from state to state. Local laws should be consulted for requirements in your area. Courts grant visitation or custody to grandparents only when certain conditions provided in state statutes are met. Conditions for a grandparent to attain custody differ from those conditions required for visitation rights. A grandparent should be familiar with the conditions for either custody or visitation before determining whether to file a petition to request either from a court of law.

### **JURISDICTION**

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to request either from a court of law.

### **State Provisions for Custody and Visitation**

Grandparents should check a number of provisions in the statutes in their respective states to determine the conditions for visitation, the factors a court must consider to order visitation, and the proper venue to file a request for visitation. Though many state statutes are similar, state courts may apply statutory provisions differently. Every statute requires courts to consider the best interest of the child before awarding custody or visitation to grandparents.

### **STATE PROVISIONS FOR CUSTODY AND VISITATION**

As noted above, courts in a few states have ruled that statutes providing for grandparent visitation violate either the federal or the respective state constitutions. Several states have revised the statutory visitation provisions, but the constitutionality of these statutes may still be in question.

**ALABAMA:** Alabama courts struck down portions of the grandparent visitation statute as unconstitutional. The Alabama Legislature in 2003 amended the statute to comport with constitutional requirements. Under the revised statute, a court may grant visitation to a grandparent if visitation is in the child's best interest and one of five events has occurred: (1) one or both parents of the child are deceased; (2) the marriage of the parents of the child has been dissolved; (3) a parent of the child has abandoned the child; (4) the child was born out of wedlock; or (5) the child lives with both biological parents, but one or both of the parents has prevented a grandparent from visiting the child. The state's custody statute requires courts to consider the moral character of the parents and the age and sex of the child to determine the best interests of the child.

**ALASKA:** Determination of grandparent visitation rights must be made in an action for divorce,

legal separation, or child placement action, or when both parents have died. Adoption cuts off the visitation rights of grandparents unless the adoption decree provides for visitation between the child and the natural relatives.

**ARIZONA:** A court may award visitation rights if the child's parents' marriage has been dissolved for at least three months, or the child is born out of wedlock. Adoption cuts off the visitation rights of the grandparents unless the adoption is granted to a stepparent.

**ARKANSAS:** The custody statute requires that court grant custody "without regard to the sex of the parent but solely in accordance with the welfare and best interest of the children." Conditions for grandparent visitation rights include several circumstances where the grandchild has resided with the grandparent, the child's parents are divorced, the child is in the custody of someone other than a parent, or the child has been born out of wedlock. Adoption cuts off all

visitation rights of the natural grandparents.

**CALIFORNIA:** Conditions for grandparent visitation rights include a determination of whether a parent is deceased, the child's parents are divorced or separated, the whereabouts of one parent is unknown, or the child is not residing with either parent. In addition to determining that visitation is in the child's best interests, the court must find that the grandparents had a preexisting relationship with the grandchild. The court must also balance visitation with the parents' rights. If both parents agree that the court should not grant visitation to the grandchild, the court will presume that visitation is not in the child's best interests. Adoption does not automatically cut off the visitation rights of grandparents.

**COLORADO:** A court may award visitation rights if the child's parents' marriage has been terminated, legal custody of the child has been given to a third party, the child has been

placed outside the home of either of the child's parents, or the grandparent is the parent of a deceased parent of the child. Adoption cuts off the visitation rights of the grandparents unless the adoption is granted to a stepparent.

**CONNECTICUT:** A court may award visitation rights if visitation is in the child's best interest. Adoption does not automatically cut off the visitation rights of grandparents.

**DELAWARE:** A court may award visitation rights if visitation is in the child's best interest. Adoption cuts off all visitation rights of grandparents.

**FLORIDA:** The Florida Supreme Court has on more than one occasions ruled that the application some provisions of the Florida statute providing grandparental visitation is unconstitutional. Under the current statute, Florida courts may award visitation to a grandparent when visitation is in the child's best interest and (1) the marriage of the child's parents has been dissolved; (2) a parent

has deserted a child; or (3) the child was born out of wedlock.

**GEORGIA:** The custody statute does not list specific factors for the court to consider for determining the best interest of the child. A court may award visitation rights if an action is pending where there is an issue involving the custody of a minor child, divorce of the child's parents, termination of a parent's rights, or visitation rights. Adoption cuts off the visitation rights of the grandparents unless the adoption is granted to a stepparent or a natural relative of the child.

**HAWAII:** The custody statute requires courts to consider the child's wishes, if the child is old enough and has the capacity to reason, and evidence of any domestic violence, when determining the best interest of the child. A court may award visitation rights if Hawaii is the home state of the child at the time visitation is requested, and visitation is in the best interest of the child. Adoption cuts off all

visitation rights of grandparents.

**IDAHO:** A court may award visitation rights if visitation is in the child's best interest. Adoption cuts off all visitation rights of grandparents.

**ILLINOIS:** In 2002, the Illinois Supreme Court determined that the Illinois Grandparent Visitation Act violated the Illinois Constitution. A new visitation statute became effective on January 1, 2005. Under the new statute, a court can grant visitation to a grandparent if visitation is in the best interest of the child and the grandparent has been unreasonably denied visitation to the child. A court may not grant visitation to a grandparent where both parents object to such visitation.

**INDIANA:** A court may award visitation rights if either of the child's parents is deceased, the child's parents' marriage has been terminated, or the child was born out of wedlock. In addition to considering whether visitation is in the child's best interest, a grandparent must show

that he or she has had, or attempted to have, meaningful contact with the grandchild. Adoption cuts off the visitation rights of the grandparents unless the adoption is granted to a stepparent or a natural grandparent, sibling, aunt, uncle, niece, or nephew of the child.

**IOWA:** The custody statute requires courts to consider the best interest of the child that will provide the “maximum continuing physical and emotional contact with both parents.” The Iowa Supreme Court has ruled on more than one occasion that the Iowa statute providing grandparental visitation is unconstitutional, and the Iowa Legislature has not adopted an alternative statute.

**KANSAS:** A court may award visitation rights in a custody order. Adoption cuts off the visitation rights of the grandparents unless the grandparent is the parent of a deceased parent and the surviving parent’s spouse adopts the child.

**KENTUCKY:** A court may award visitation rights if visitation would be in the child’s best

interest. A court may award a grandparent the same visitation rights as a parent without custody if the grandparent’s child is deceased and the grandparent has provided child support to the grandchild. Adoption cuts off the visitation rights of grandparents unless the adoption is granted to a stepparent, and the grandparent’s child has not had his or her parental rights terminated.

**LOUISIANA:** A court may award visitation rights if the child’s parent is deceased or declared legally incompetent, a grandparent is the parent of the deceased or incompetent parent to the grandchild, and visitation is in the child’s best interest. Adoption cuts off the visitation rights of grandparents except in circumstances where the grandparents are the parents of a deceased party to the marriage or the parents of a party who has forfeited his or her rights to object to the child’s adoption.

**MAINE:** A court may award visitation right if at least one of the child’s

parents is deceased, visitation is in the child’s best interest, and visitation will not interfere significantly with the relationship between the parent and the child. Adoption cuts off all visitation rights of grandparents.

**MARYLAND:** The custody statute does not provide a list of factors for determining the best interest of the child. A court may award visitation rights if visitation is in the child’s best interest. The factors for determining the child’s best interest have been set forth in case law. Adoption cuts off all visitation rights of grandparents.

**MASSACHUSETTS:** The custody statute does not provide a list of factors for determining the best interest of the child. A court may award visitation rights if the child’s parents’ marriage is terminated, the parents are separated, one of the parents is deceased, or the child was born out of wedlock and paternity has been established. Adoption cuts off the visitation rights of grandparents unless the

adoption is granted to a stepparent.

**MICHIGAN:** A court may award visitation rights if the child's parents' marriage is terminated, the parents separate, or custody of the child is given to a third party other than the child's parents. Adoption cuts off the visitation rights of grandparents unless the adoption is granted to a stepparent.

**MINNESOTA:** A court may award visitation rights if a child's parent is deceased and the grandparents are the parents of the deceased parent. Visitation may also be granted during or after divorce, custody, separation, annulment, or paternity proceedings. Adoption cuts off the visitation rights of grandparents unless the adoption is granted to a stepparent or another grandparent.

**MISSISSIPPI:** The custody statute does not provide a list of factors for determining the best interest of the child. If the child is at least 12 years old, he or she may choose who takes custody. Conditions for grandparent visitation

rights include determination of whether one of the child's parents is deceased, or a parent has had his or her parental rights terminated. The court must also consider the relationship between the grandparent and grandchild. Adoption cuts off the visitation rights of grandparents unless the adoption is granted to a stepparent or a blood relative.

**MISSOURI:** A court may award visitation rights if the child's parents have filed for divorce, one parent is deceased and the other parent has unreasonably denied visitation to the grandparent, or when a parent or parents unreasonably deny visitation to a grandparent for more than 90 days. Adoption cuts off the visitation rights of grandparents unless adoption is granted to a stepparent, another grandparent, or a blood relative.

**MONTANA:** A court may award visitation rights if the court finds that visitation is in the child's best interest. Adoption cuts off the visitation rights of grandparents unless

adoption is granted to a step-parent or another grandparent.

**NEBRASKA:** A court may award visitation rights if at least one parent is deceased, the parents' marriage has been dissolved or a petition for dissolution has been filed, or the child is born out of wedlock and paternity has been established. Grandparents must demonstrate that a beneficial relationship exists between themselves and the grandchild and that visitation is in the child's best interest. Visitation cannot interfere with the parent-child relationship. Adoption cuts off all visitation rights of grandparents.

**NEVADA:** A court may award visitation rights if the child's parents are deceased, the child's parents are divorced or separated, or one of the child's parents have had his or her parental rights terminated. The child's parent or parents must have unreasonably restricted visitation between the grandparent and grandchild before a court may award visitation to a

grandparent. If a child's parent or parents has denied or unreasonably restricted access to a grandparent, a court will presume that visitation is not in the child's best interest. Adoption cuts off all rights of grandparents unless grandparents request visitation before the termination of the parental rights of the child's parent or parents.

**NEW HAMPSHIRE:** A court may award visitation rights if the child's parents are divorced or have filed for divorce, one of the parents is deceased, one of the parents has had his or her parental rights terminated, or the child has been born out of wedlock, if the child has been legitimated. Adoption cuts off all rights of grandparents.

**NEW JERSEY:** A court may grant visitation rights if visitation is in the child's best interest. Adoption cuts off the rights of grandparents, unless adoption is granted to a stepparent.

**NEW MEXICO:** A court may grant visitation rights if the child's parents are divorced, separated, or deceased.

Visitation rights may also be granted if the child is over six years old, lived with the grandparent for more than six months, and was subsequently removed from the grandparent's home (if the child is under six, the residence requirement is reduced to three months). Adoption cuts off the rights of grandparents unless adoption is granted to a stepparent, a relative of the child, a caretaker designated in a deceased parent's will, or a person who sponsored the child at a baptism or confirmation.

**NEW YORK:** The custody statute does not provide statutory factors for determining the best interest of the child. A court may grant visitation rights if at least one of the child's parents is deceased or if the court finds that equity demands intervention based on the circumstances of the case. Adoption does not automatically cut off the visitation rights of grandparents.

**NORTH CAROLINA:** The custody statute does not provide statutory factors for determining

the best interest of the child. A court may grant visitation rights as part of an order determining custody of the child. Adoption cuts off the visitation rights of grandparents unless adoption is granted to a stepparent or a relative of the child, where the grandparent proves that a substantial relationship exists between the grandparent and grandchild.

**NORTH DAKOTA:** A court must grant visitation rights unless the court determines that visitation would not be in the child's best interest. The amount of contact between the child, the grandparent, and the parent are factors to be considered when determining the child's best interest. Adoption cuts off the rights of grandparents, unless visitation was granted prior to the adoption.

**OHIO:** A court may grant visitation rights if the child's parents are deceased, divorced, separated, were parties to a suit for annulment or child support, or were never married to one another. Grandparents must show they have an

interest in the child's welfare. Adoption cuts off the visitation rights of grandparents unless adoption is granted to a stepparent.

**OKLAHOMA:** A court may grant visitation rights if visitation is in the child's best interest. The statute provides special rules when the child is born out of wedlock. Adoption cuts off the visitation rights of grandparents unless the grandparents can show a previous relationship existed between them and the grandchild, and visitation is in the child's best interest.

**OREGON:** Determination of grandparent visitation rights include consideration of the relationship between the grandparent and grandchild, as well as the relationship between the parent and child. Adoption cuts off all visitation rights of grandparents.

**PENNSYLVANIA:** A court may grant visitation if at least one of the child's parents is deceased, the parents are divorced or separated for more than six months, or

the child has lived with the grandparent for more than 12 months. Determination of grandparent visitation must include consideration of the best interest of the child, potential interference with the parent-child relationship, and the contact between the grandparent and grandchild. Adoption cuts off visitation rights of grandparents unless adoption is granted to a stepparent or grandparent.

**RHODE ISLAND:** The custody statute does not provide statutory factors for determining the best interest of the child. Determination of grandparent visitation must include consideration of the relationship of the grandparent and grandchild, including the best interest of the child. Courts may also grant visitation if the child's parents are divorced or the parent who is the child of the grandparent is deceased. Adoption cuts off all visitation rights.

**SOUTH CAROLINA:** A court may grant visitation if one parent is deceased, or the parents

are divorced or separated. The court must consider the relationship between the grandparent and the child, as well as the parent and the child. Adoption cuts off all visitation rights of grandparents.

**SOUTH DAKOTA:** The custody statute does not provide statutory factors for a court to determine proper custody. A court may grant visitation if one parent is deceased, or the parents are divorced or separated. Adoption cuts off the visitation rights of grandparents unless adoption is granted to a step-parent or grandparent of the child.

**TENNESSEE:** Tennessee courts held that the previous version of the grandparent visitation statute was unconstitutional. The Tennessee Legislature amended the statute to comport with the state constitution. Under the revised statute, a court may grant visitation rights to a grandparent only in one of the following situations: (1) the mother or father of the child is deceased; (2) the child's parents are divorced or were never

married to one another; (3) the child's mother or father has been missing for the preceding six months; (4) a court in another state has ordered grandparent visitation; (5) the child previously lived with the grandparent for 12 months or more; (6) the child and grandparent(s) maintained a significant relationship for 12 months. If one of these events occurs, the court may award visitation right if the child is in danger of substantial harm should the court deny visitation and visitation is in the best interests of the child.

TEXAS: The custody statute does not provide statutory factors for a court to determine proper custody. Conditions for grandparent visitation rights include a determination that one of the child's parents is deceased, incompetent, incarcerated, or has had his or her parental rights terminated. Visitation may also be awarded if the parents are divorced, the child has been abused or neglected, the child has been adjudicated a delinquent or in need of supervision, or the child

has lived with the grandparent for at least six months within 24 months of the filing of the petition for visitation. Adoption cuts off the visitation rights of the grandparent unless the adoption is granted to a stepparent.

UTAH: Conditions for grandparent visitation rights include whether a parent is deceased, or whether the parents are divorced or separated. Adoption cuts off all visitation rights of grandparents.

VERMONT: Conditions for grandparent visitation rights include consideration of whether a parent is deceased, incompetent, or whether the child has been abandoned. Adoption cuts off all visitation rights of grandparents unless the adoption is granted to a stepparent or a relative of the child.

VIRGINIA: Determination of grandparent visitation is made during a suit for dissolution of the marriage of the child's parents. Adoption cuts off all visitation rights of grandparents.

WASHINGTON: The United States Supreme Court case of Troxel v. Granville ruled the Washington grandparent visitation statute was unconstitutional. Although the Washington legislature subsequently amended the statute, the Washington Supreme Court in 2005 struck down

WEST VIRGINIA: The custody statute does not provide statutory factors for a court to determine proper custody. Conditions for grandparent visitation rights include consideration of whether a parent is deceased, the child has resided with the grandparent and subsequently was removed by a parent, or the grandparent in several circumstances has been denied visitation by a parent. Adoption cuts off all visitation rights of grandparents.

WISCONSIN: Conditions for grandparent visitation rights include consideration of the relationship between the grandparent and grandchild. Visitation may also be permitted if one of the child's



parents is deceased.  
Adoption cuts off the  
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grandparents unless  
adoption is granted to a  
step-parent.

WYOMING: The  
custody statute does not  
provide statutory factors  
for a court to determine  
proper custody.  
Conditions for  
grandparent visitation  
rights include  
consideration of the  
child's best interest and  
the impairment of the  
rights of the parents.