

Grandparents' Legal Rights to Visitation in the Fifty States and the District of Columbia

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The parameters of legal visitation rights for grandparents in both biological and adoptive parenting situations are explored. Laws in each of the 50 states and the District of Columbia are summarized. Suggestions for improvement in the current system are included.

In recent years, there has been a significant change in policy toward grandparents' legal relationship with grandchildren. In the past, grandparents were seen as having no duties and no obligations in the eyes of the law with respect to their grandchildren; and, similarly, grandparents had no legal rights or privileges with these offspring.¹ On the basis of common law, the court was powerless to recommend, require, or enforce legal visitation for grandparents.²

A variety of reasons has been used to prohibit legislation to provide a "legal basis" for grandparents to seek legal visitation. In the case of adoption, biological parents' rights are legally severed, and this termination of relationship was

extended to include biological grandparents. Relationship of the grandparent with the grandchild is legally defined by the relationship between parent and grandparent.³ In the case of disintegrated grandparent-parent relationships, public opinion frequently suggested that visitation privileges should be privately resolved.⁴ In cases of divorce, no need for legislation on grandparents' visitation was foreseen as it was assumed that grandparents would have access to grandchildren through parents.⁵

Current trends indicate a change in public opinion about grandparents' legal rights. The court system has responded to a public belief that a social and moral obligation exists to allow grandparents legal visitation rights.² Psychological harm to the child as a result of severing previously close relationships has been suggested as a reason for establishing legal visitation.⁶ Because it is difficult to maintain visitation in cases which the relationship between parents and grand-

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parents sours, legal visitation for grandparents with grandchildren allows these ties to be maintained.⁷ Continued access to grandparents, regardless of other legal situations, is now considered the child's legal right.⁶

Psychological Role of Grandparents

With the increase in legislation governing grandparents' visitation rights, a corresponding increase in the number of grandparents petitioning for visitation has been noted over the past few years. Not only have the frequency of grandparents petitioning the court for visitation changed, but the circumstances surrounding this type of legal battle have also changed. It is not uncommon for grandparents to petition against their adult children for visitation with grandchildren in cases of divorce, separation or death of a custodial parent; even intact family units have been taken to court for regular visitation.⁸ Psychological and psychiatric evaluations completed for child custody cases need to include the influence of grandparents in the child's life in order to assist the court in determining the child's best interest.⁶ The child may be forced, in some instances, to suffer through court proceedings initiated by a grandparent with whom the child does not have a close relationship. It then becomes necessary for the court to determine whether the benefits of a relationship between the grandparents and grandchild outweigh the costs of the legal struggle.⁸

The potential damage incurred as a result of the legal proceedings must be

compared with the possible ill effects of the absence of the grandparent/grandchild relationship for the child. Grandparents provide nurturance, emotional security, and support for their grandchildren. Limiting a child's interaction with a grandparent deprives him or her of this emotional resource.⁹ Typical developmental conflicts appear to be resolved more successfully through experiences with grandparents.¹⁰ Children with a lack of intergenerational family relationships, like those provided by grandparents, tend to lack a sense of their cultural and historical background. The greater number of psychological difficulties experienced by school age children who have a deceased parent or divorced parents suggest that the potentially healthy relationship with grandparents should be encouraged rather than limited by the courts.¹¹

The relationship between grandparent and grandchild can be of great value to the child, even if the relationship is not an intense one.⁸ Grandparents who take an active role in a child's life provide consistency in caregiving and broaden the child's experiences with care providers. Grandparents can provide opportunities for socialization, as well as exploration of novel stimulation.¹² Grandparents tend to have a higher tolerance for irritation with their grandchildren. This tolerance allows them to accept the child and provide unconditional positive regard for the child a characteristic that enhances the child's emotional growth.¹⁰ The emotional relationship between grandparent and grandchild is unique because of the re-

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sponsibility inherent in the parent/child relationship while maintaining a family tone.⁹ This mix of a loving relationship with high tolerance for frustration and irritation appear to encourage risk taking by the child both within the confines of and outside of the grandparent/grandchild relationship.¹³

In spite of the difficulties encountered by the child during parental divorce, a small percentage of children receive help from outside sources, even when others are aware of the situation. In the California children of divorce study, fewer than 10 percent of the children reported having help from anyone.¹¹ It appears, from this information, that the utility of grandparents in the family system has not been realized, but grandparent/grandchild bonds can function as substantial resources.⁹ Grandparents seem to be an important therapeutic tool for the family in crisis.¹³ Grandparents were rated as highly effective interactive agents within the family unit.¹² Grandparents can take the role of ultimate support personnel for families, both in crisis situations and transition periods.¹³ Grandparents can act as negotiators between parents and children, helping each to understand the other.⁹ When crisis situations arise that cannot readily be resolved, grandparents possess the unique ability to act as distractor, taking children out for fun, while transmitting moral values, social expectations, and security to the distressed child.¹⁰

The role of grandparent is a vital and significant one to the emotional development of the grandchild.⁹ Research indicates that the relationship is specific to

the individual grandparent and grandchild and varies according to personality and availability. The grandparent has the potential to fill a number of roles in the grandchild's life, and may change roles over time.¹⁴ In order to gain any of the positive effects of a grandparent/grandchild relationship, the relationship must be direct rather than derived.⁹ On some level this requires contact between the grandparents and grandchild which can be achieved in certain circumstances solely through court-ordered visitation.

Current Laws

There are a variety of laws across the United States that govern grandparents' visitation rights. These laws typically consist of two parts; one dictating the procedure to be followed in order to gain visitation rights, and the other listing the merits of specifying grandparents' legitimate claim for visitation rights. Some states allow grandparents to request visitation rights only at the time of the initial divorce litigation.² Other states allow for grandparents' visitation rights only after the death of the parent to whom they are related.³ As there is no proposed model for structuring legislation for this area, state laws vary not only in content, but also differ in complexity. See Table 1 for a summary of the provisions of the laws for the 50 states and the District of Columbia.

Not only do the circumstances under which grandparents can seek visitation rights vary from state to state, but the issues considered when determining legal rights also vary greatly across the nation. In adoption cases, the "best in-

Table 1
Characteristics of Visitation Codes Specifications Mentioned in Each Code

	Grandparents Named	Divorce	Death	Adoption	Best Interests of the Child
Alabama	x*	x	x	o†	o
Alaska	x	o	x	o	x
Arizona	o	o	o	o	x
Arkansas	x	x	x	x	x
California	x	x	x	x	x
Colorado	o	o	o	o	x
Connecticut	x	o	o	o	x
Delaware	x	x	x	x	x
D. C.	o	o	o	o	x
Florida	x	x	x	x	x
Georgia	x	x	x	x	o
Hawaii	x	x	o	o	x
Idaho	x	o	o	o	o
Illinois	x	o	x	o	x
Indiana	x	x	x	o	x
Iowa	x	x	x	o	x
Kansas	x	o	x	x	x
Kentucky	x	o	o	o	x
Louisiana	x	x	x	x	x
Maine	o	o	o	o	o
Maryland	x	x	o	x	o
Massachusetts	x	x	x	o	x
Michigan	x	x	x	o	x
Minnesota	x	x	x	o	x
Mississippi	x	x	x	o	o
Missouri	x	x	x	x	x
Montana	x	x	o	o	x
Nebraska	o	o	o	o	x
Nevada	o	o	o	o	o
New Hamp- shire	x	o	o	o	x
New Jersey	x	x	x	x	x
New Mexico	x	x	x	x	x
New York	x	x	x	x	x
N. Carolina	x	x	x	x	x
North Dakota	x	o	o	o	x
Ohio	o	o	x	o	x
Oklahoma	x	x	x	x	x
Oregon	x	x	o	o	x
Pennsylvania	o	o	o	o	o
Rhode Island	x	o	x	o	o
S. Carolina	x	o	o	o	o
South Dakota	x	x	x	x	x
Tennessee	x	x	x	x	x
Texas	x	x	x	x	x
Utah	x	o	o	o	x
Vermont	x	o	x	o	x
Virginia	x	x	o	o	x
Washington	x	o	x	o	x
W. Virginia	o	o	o	o	o
Wisconsin	x	o	o	o	x
Wyoming	x	x	x	o	x

* x denotes the presence of the characteristics in the codes.

† o denotes the absence of the characteristics in the codes.

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terests of the child" is frequently the basis for decisions about natural grandparents' visitation rights.³ When grandparents sue their own children to establish visitation with their grandchildren, grandparents are usually required to demonstrate a "compelling need" to maintain visitation through court action. In similar cases when nonblood relatives seek visitation rights, only "best interests of the child" must be demonstrated to mandate court action.⁷ The laws of each of the 50 states and the District of Columbia are summarized in the appendix at the end of the article.

As Table 1 demonstrates, several major differences exist across the nation in laws on grandparents' visitation rights. Of the 51 statutes reviewed, only 42 specifically mentioned grandparents in legislation. Many states, 17 to date, deal with situations of adoption. A number of statutes, 30, include provisions for the death of a parent. Surprisingly, only 28 states specifically mention situations concerning the divorce of parents as a precursor to the petitioning for legal grandparents' visitation rights. Nearly all states, 40 in all, require that the best interests of the child be examined in determining reasonable visitation.

Discussion

Logically, grandparents have a distinctive and valuable role in children's lives. Grandparents are assumed to play a different role than parents in the development of the child. It is also assumed that the role of 'grandparent' does not interfere with the role of the

parent or undermine parental authority.¹ By virtue of its unique place in child development, the relationship of the grandparent with the grandchild is viewed as an important one by society.²

The current approach to the grandparents' rights issue has been criticized for a number of reasons. Some say that this type of legislation creates a cause for action where one does not exist. It has been suggested that grandchildren may suffer from competition to spend their spare time with a large number of people. The strongest complaint leveled about current legislation is that the laws are vague, they are very inconsistent across the nation, and they offer a great deal of verbiage without granting much to grandparents.⁴

Research has yet to provide strong supporting evidence to demonstrate the need for continued relationships between children and their grandparents.⁸ Further research on the psychological effects of grandparents' relationships with grandchildren is important.

It is our opinion that a model for structuring laws on grandparents' visitation rights is warranted in order to provide a more uniform approach to this issue across the country. Such a model should probably couch the rationale in terms of the "best interests of the child." It should cover situations where the parent has had his or her parental rights terminated, where the relationship between the grandparents and the parent has disintegrated, and where the grandparent's ex-son-in-law or daughter-in-law has sole custody of the child or children.

Appendix

Summary of Laws Across the Country

Alabama 30-3-4. At the courts' discretion, grandparents may be granted visitation rights to grandchildren when parents of the child divorce, or at the death of the parent who is related by blood to the grandparent.

Alaska 25.24.150. The court may make, modify, or vacate an order for visitation by grandparents if it is determined to be in the best interest of the child when one or both parents have died.

Arizona 25-337. The court may modify an order granting or denying visitation rights whenever it would serve the best interest of the child. This code does not specifically include or exclude grandparents.

Arkansas 9-13-103. The court may grant visitation rights at any time, regardless of parents' marital status or the grandparents' relationship with the person having custody of the child. These rights may only be granted when the court deems visitation to be in the best interest of the child. Orders denying grandparents' visitation rights must list reasons for denial in written form.

California 4601, and 197.5. At the discretion of the court, visitation may be awarded to any individual having an interest in the child's welfare. Where grandparents' visitation was established at the time of marriage dissolution, subsequent adoption does not preclude continuance of visitation when adoption is by a family member. In cases where

death of one or both parents occurs, grandparents shall be granted visitation based on the best interest of the child.

Colorado 14-10-129. The court may make or modify an order granting or denying visitation when this is deemed to serve the best interest of the child. This code does not specifically include or exclude grandparents.

Connecticut 46b-59. The superior court may grant the right of visitation to any grandparent when it is deemed to be in the best interest of the child. The court maintains the right to rescind its decisions if adoption or other court action occurs which seems contradictory in nature to continued contact.

Delaware 950. The court may grant grandparents reasonable visitation rights regardless of the marital status of the parents or the relationship of the grandparents with the person having custody of the child; provided that the natural parents or adoptive parents are not living as husband and wife, and they both object to such visitation.

District of Columbia 16-911. No code directly deals with visitation issues but this code specifically states that adoption terminates all legal rights and relationships of family members after adoption has occurred.

Florida 752.01 to 752.07. The court may grant visitation rights to a grandparent when one or both parents are deceased, if the parent's marriage is dissolved, and if it is deemed to be in the best interest of the child. In cases of adoption by a stepparent, the court may grant visitation rights.

Georgia 19-7-3. The court may grant

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visitation rights to grandparents in cases when one parent dies, when the child is adopted by a stepparent, or when the parents are divorced.

Hawaii 571-46. In cases of divorce, the court may grant grandparents' visitation rights, if it is not deemed to be detrimental to the best interest of the child.

Idaho 32-1008. Grandparents may obtain visitation rights if the court determines that this is appropriate.

Illinois 110 1/2 11-7.1. When natural or adoptive parents are deceased, and the child has not been subsequently adopted, the parent's of the legal parents to the child may be granted visitation rights if the court determines that this would not be detrimental to the best interest of the child. Any denial must be outlined in written form.

Indiana 31-1-11.7. Grandparents may be granted visitation rights when the court deems this to be in the best interest of the child, in cases where the parents' marriage is dissolved, or one or both parents is deceased.

Iowa 598.35. Grandparents may be granted visitation rights when the parents of the child are divorced or in the process of divorcing, at the death of the parent which is the child of the grandparents, and when it is deemed to be in the best interests of the child.

Kansas 38-129. Grandparents may be granted visitation rights when it is deemed that it is in the best interests of the child, when the parent of the child is deceased and is the child of the grandparent seeking visitation, even if the surviving parent is remarried and the step-

parent has subsequently adopted the child.

Kentucky 405.021. The court may grant visitation rights to grandparents when it is deemed to be in the best interest of the child.

Louisiana 9:572. The court may grant visitation rights to grandparents, if it is deemed to be the best interests of the child, if one or both parents are deceased, if the child is adopted by a different family, or when the marriage of the parents is dissolved.

Maine 22 4041. No code specifically addresses family member visitation other than parents. This code states that reasonable visitation should be granted in the best interest of the child.

Maryland 9-102. The court may grant visitation rights to grandparents in cases of the termination of parent's marriage, in cases of adoption, and under other circumstances.

Massachusetts 119 39D. The court may grant visitation rights to grandparents in cases where one or both of the parents are deceased, the parents are divorced, or when it is deemed to be in the best interest of the child. These rights are terminated if the child is adopted by someone other than a stepparent.

Michigan 722.27. The court may grant visitation rights to grandparents if it is deemed to be in the best interest of the child, where the parents are divorced, or where either parent is deceased.

Minnesota 257.022. Grandparents' visitation rights may be granted by the court when the parent is deceased or when the parent's marriage is dissolved

if it is deemed to be in the best interest of the child. This action will be automatically terminated if the child is adopted by someone other than a stepparent or family member.

Mississippi 93-16. The court may grant grandparent's visitation rights when one parent is deceased or at the dissolution of the marriage of the parents.

Missouri 452.400.3 and 452.402. The court may grant visitation rights to grandparents in the case of dissolution of parents and if it is deemed to be in the best interest of the child. The court may grant visitation rights to grandparents in the case where one of the parents is deceased or the child has been adopted, if it is deemed to be in the best interest of the child.

Montana 40-4-217 and 90-9-101. The court may grant visitation rights to grandparents when parents take action for the dissolution of marriage if it is determined to be in the best interest of the child. Grandparents' rights may not be granted, and any prior visitation action will be terminated if the child is adopted by a person other than a stepparent or a grandparent.

Nebraska 42-364. No legislation currently exists concerning grandparent's visitation rights, but this law allows for visitation if it is in the best interest of the child.

Nevada 123.123. The court may grant visitation rights to certain relatives. Grandparents are not expressly mentioned in this code.

New Hampshire 458:17. The court

may grant visitation to grandparents if it is deemed to be in the best interest of the child.

New Jersey 9:2-7.1. The court may grant visitation to grandparents when either or both parents are deceased, parents are divorced, or when the child has been adopted, when it is determined to be in the best interest of the child.

New Mexico 40-9. The court may grant visitation to grandparents in cases of the dissolution of marriage of parents, if one or both parents are divorced, or if the child is adopted by a stepparent or family member, when it is determined that such action is in the best interest of the child.

New York C72. The court may grant visitation to grandparents when either or both parents are deceased, or where circumstances indicate that such action would be in the best interest of the child.

North Carolina 50-13.2. The court may grant visitation to grandparents, including biological grandparents of an adopted child, if it is deemed to be in the best interest of the child.

North Dakota 14-09-05.1 and 50-13.5. The court may grant visitation rights to grandparents when the court deems it to be in the best interest of a child. Visitation may not be granted and any prior visitation action will be terminated if the child is adopted by a person other than a stepparent or other relative.

Ohio 3109.11. The court may grant visitation to any relative if either parent is deceased if it is determined to be in the best interest of the child. Grandpar-

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ents are not specifically mentioned in this legislation, however, appellate decisions support grandparent visitation.

Oklahoma 10.60.16 and 10.5. The court may grant visitation to grandparents if one or both parents are deceased, if the parents are divorced, or if the child is adopted and a relationship exists between the grandparent and child. This must be demonstrated to be an action in the best interest of the child.

Oregon 109.121. The court may grant visitation to grandparents in cases where the grandparent has an established relationship with the child, or where the parents' marriage is dissolved. The court should be guided by the best interest of the child.

Pennsylvania 23 1101 to 1015. Grandparents' visitation legislation in this state has been repealed and no alternative has been enacted to date.

Rhode Island 15-5-24.1. The court may grant visitation to grandparents if the parent to whom they are related is deceased regardless of the marital status of the parents prior to the death.

South Carolina 20-7-420. The court may order periods of visitation for grandparents.

South Dakota 25-4-52 to 25-4-54. The court may grant visitation to grandparents if it is in the best interest of the child. Action may be taken if the parents are divorced, if the parent to whom they are related is deceased, and if the child is adopted by a stepparent or relative. Any visitation agreement shall be terminated upon adoption by a person other than those mentioned in this law.

Tennessee 36-6-301. The court may grant visitation to grandparents in cases where the parents are divorced, or the parent to whom they are related is deceased. This action will only occur if it is determined to be in the best interest of the child. This law shall not apply if the child is adopted by other than a stepparent.

Texas 14.03. The court may grant visitation to grandparents if the parent to whom they are related is incarcerated or deceased, if the parents are divorced, if the child has been abused, if the child has been adopted, or if the child has lived with the grandparent within the last 24 months for a period of at least six months. This should occur if it is determined to be in the best interest of the child.

Utah 30-5-2. The court may grant visitation to grandparents if it is in the best interest of the child.

Vermont 1011 to 1016. The court may grant visitation to grandparents if the parent is deceased or incapable of making a decision as to visitation and this is determined to be in the best interest of the child. This action will be automatically terminated if the child is adopted.

Virginia 20-107.2. The court may grant visitation to grandparents in cases where the parents are divorced, and it is deemed to be in the best interest of the child.

Washington 26.09.240. The court may grant visitation rights to any person when it is deemed to be in the best interest of the child. These rights may be

petitioned for at any time. Grandparents are not specifically mentioned in this code.

West Virginia 48-2B-1. The court may grant visitation to grandparents in cases where the parent to whom they are related is deceased if it is deemed to be in the best interest of the child.

Wisconsin 767.245. The court may grant visitation to grandparents if it is determined to be in the best interest of the child.

Wyoming 20-2-113. The court may grant visitation to grandparents subsequent to the death or remarriage of one or both parents if the court determines that this would be in the best interest of the child.

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