

SB

226



SB 276 \* An Act providing for the <sup>15. HESS 79-80</sup> ~~rights~~ of visitation rights to grandparent  
By HESS Comm.  
P. B. Bennett



Introduced 4-23-79

Logged 4-23-79

Referred Judiciary

Comm. Meeting 3-17-80 passed

" Action passed - 3-18-80 taken to Senate Sec'y's

## AFTER DIVORCE

# Grandparents Have Rights, Too

By Dr. Melvyn A. Berke and  
Joanne Grant

**Question:** Since our son's divorce we don't feel welcome in our grandchildren's home. The children live with their mother and we would like to visit them more often. We're still grandparents. What can we do?

**Answer:** You bet you're still grandparents! Enjoy and fulfill your wishes by clearly stating your position along with the "how and when" you can be with them. Do this in writing or by visiting

your former daughter-in-law. If she agrees, be sure to hold up your end of the bargain. If your plans change, give her plenty of notice.

Remember, she's their mother, so don't criticize her. If she refuses to let you see the children, you now have recourse through the courts.

Growing numbers of grandparents are beginning to press for visitation rights. Did you know that grandparents have organized into self-help groups like Grandparents Anonymous?

The leadership typically comes from paternal grandparents as

they are the ones most likely to lose contact with the children as a result of the divorce.

According to family counseling agencies, generally it is the ex-daughter-in-law who severs ties with the grandparents. She may be punishing them for the "sins" of their son or believe they have contributed to the breakup of the marriage.

She may also have found a new life with a new husband and doesn't want to deal with old and awkward relationships.

Less frequently the divorced son breaks off contact with his

children and hence, his parents' link to them.

Dr. Doris Freed, chairman of the committee on research of the Family Law section of the American Bar Association, reported that as little as 18 months ago grandparents did not have the right to seek visitation unless their own children had died. Recently the law has been amended to allow grandparents whose children are living to seek visitation.

Noting the increase in the number of grandparents fighting for visitation and even custody, Dr. Freed stated, "It's not always their right that they are seeking to perpetuate. ... It's more or less the rights of the children to love and affection."

The tendency in today's courts is to protect the rights of the child independently of the rights of the parents. As a result, the courts seem to be looking more favorably on grandparents' petitions for visitation.

The love of a grandparent can have a very special place in the lives of their grandchildren.

Your divorce crisis may last one to two years. The booklet, "Color Me Happy," provides a realistic and practical road map for the way back and beyond. For your copy, send \$1 and a long, stamped, self-addressed envelope with your request to "After Divorce," Box 4994, Des Moines, Iowa 50306.

GRAND PARENT RIGHTS

# Rights Of Grandparents

NEW YORK — (AP) — Grandparents have a right to visit their grandchildren, in spite of disagreements between the child's parents and grandparents, a state court has ruled.

"Visits with a grandparent," the court said, "are often a precious part of a child's experience, and there are benefits which devolve upon the grandchild from the relationship with his grandparents which he cannot derive from any other relationship."

"Neither the legislature nor this court is blind to human truths which grandparents and grandchildren have always known."

The five-member Appellate Division of state Supreme Court in Brooklyn unanimously reversed a lower court decision that kept Gabriel Vacula and his wife Julia, of the Bronx, from visiting their granddaughter, Amy Vacula, 7.

The grandparents had tried on numerous occasions to visit Amy, who remained in the custody of her mother, Carolyn, following the mother's divorce in 1971 from Robert Vacula. The split between the grandparents and Amy was widened by the death of the father in an auto accident in 1974.

Bitter feelings between Amy's parents were carried over to the grandparents, resulting in the mother's rebuffal of the grandparents' attempts to see Amy. The mother subsequently was remarried.

The court ruled that "animosity between the mother of children and their grandparents is not a proper basis for the denial of visitation privileges to the grandparents; nor is it a proper yardstick by which to measure the best interests of children."

The case was sent back to the lower court to set terms of visiting privileges.

SCAILE F.I. JUN 23, 1976

*Vernon's*  
TEXAS CODES  
ANNOTATED

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FAMILY CODE  
Sections 11.01 to End

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certain exceptions, from removing minor child from Hill County, was not an abuse of discretion. *Wilkerson v. Wilkerson* (Civ. App.1972) 483 S.W.2d 690, ref. n. r e.

Trial court's control over a minor child of a divorced couple extends to determination of the place where the child may reside, and in awarding custody the court may restrict the residence of the child. *Minjarez v. Minjarez* (Civ.App.1973) 495 S.W.2d 630.

Where trial court in divorce action granted custody of minor children to their natural father, it had discretion to restrict their residence to the home of father's parents, with whom the father also lived, despite contention that the practical effect of such judgment was to award custody to the father's parents and that there were no pleadings to support an award. *Id.*

### § 14.03. Possession of and Access to Child

(a) If a managing conservator is appointed, the court may appoint one or more possessory conservators and set the time and conditions for possession of or access to the child by the possessory conservators and others.

(b) On the appointment of a possessory conservator, the court shall prescribe the rights, privileges, duties, and powers of the possessory conservator.

(c) The court may not deny possession of or access to a child to either or both parents unless it finds that parental possession or access is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.

(d) The court may grant reasonable visitation rights to either the maternal or paternal grandparents of the child and issue any necessary orders to enforce said decree.

#### Historical Note

##### Prior Law:

Acts 1935, 44th Leg., p. 111, ch. 39, § 1.  
Acts 1953, 53rd Leg., p. 439, ch. 127, § 1.

Acts 1961, 57th Leg., p. 663, ch. 305, § 1.  
Vernon's Ann.Civ.St. art. 4639a, § 1.

#### Library References

Guardian and Ward  $\Leftrightarrow$  29.

C.J.S. Guardian and Ward § 66 et seq.

#### Notes of Decisions

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##### 1. In general

Where husband defaulted in wife's divorce action and the court awarded the property of the parties to the wife and all the evidence as to fraud was that wife agreed that if the husband would not fight the divorce the wife would let him see the

*(ERA continued)*

Economic pressure is being exerted on the 15 states which have failed to ratify the amendment (Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia).

Some 40 national organizations, which hold some of the largest conventions in the United States, have agreed not to meet in states where ERA has

not been ratified. Some major cities report feeling the impact of loss of business. Many conventions, however, are booked far in advance and organizations may be locked into contracts they cannot break in non-ERA states.

The political battle between pro and anti-ERA forces is likely to be intense in 1978 legislative sessions. For example, pro-ERA forces claim responsibility for the election defeat of Virginia House Majority Leader James M.

Thomson, who had opposed ERA.

Pro-ERA forces, spearheaded by ERAmerica, view the last few states as the toughest to corral. But they claim momentum is building, and the amendment will pass. Just as confident are anti-ERA forces, who point to defeats in state legislatures in 1977 as evidence that the ERA will not be adopted.

*(By Elaine S. Knapp, CSG, Lexington.)*

## Divorce blocks road to grandma's house

"Why don't we go to see Grandma and Grandpa anymore?" is the question often asked by children of divorced parents. To a young child, divorce not only means absence of one parent, but, all too often, absence of his grandparents as well.

States have begun to legislate in this area with laws passed in 1976 and 1977 giving visiting privileges to grandparents in Delaware (HB 1196), New York (SB 314), and Utah (HB 142). Arkansas and Wisconsin (S 11) passed similar laws in 1975.

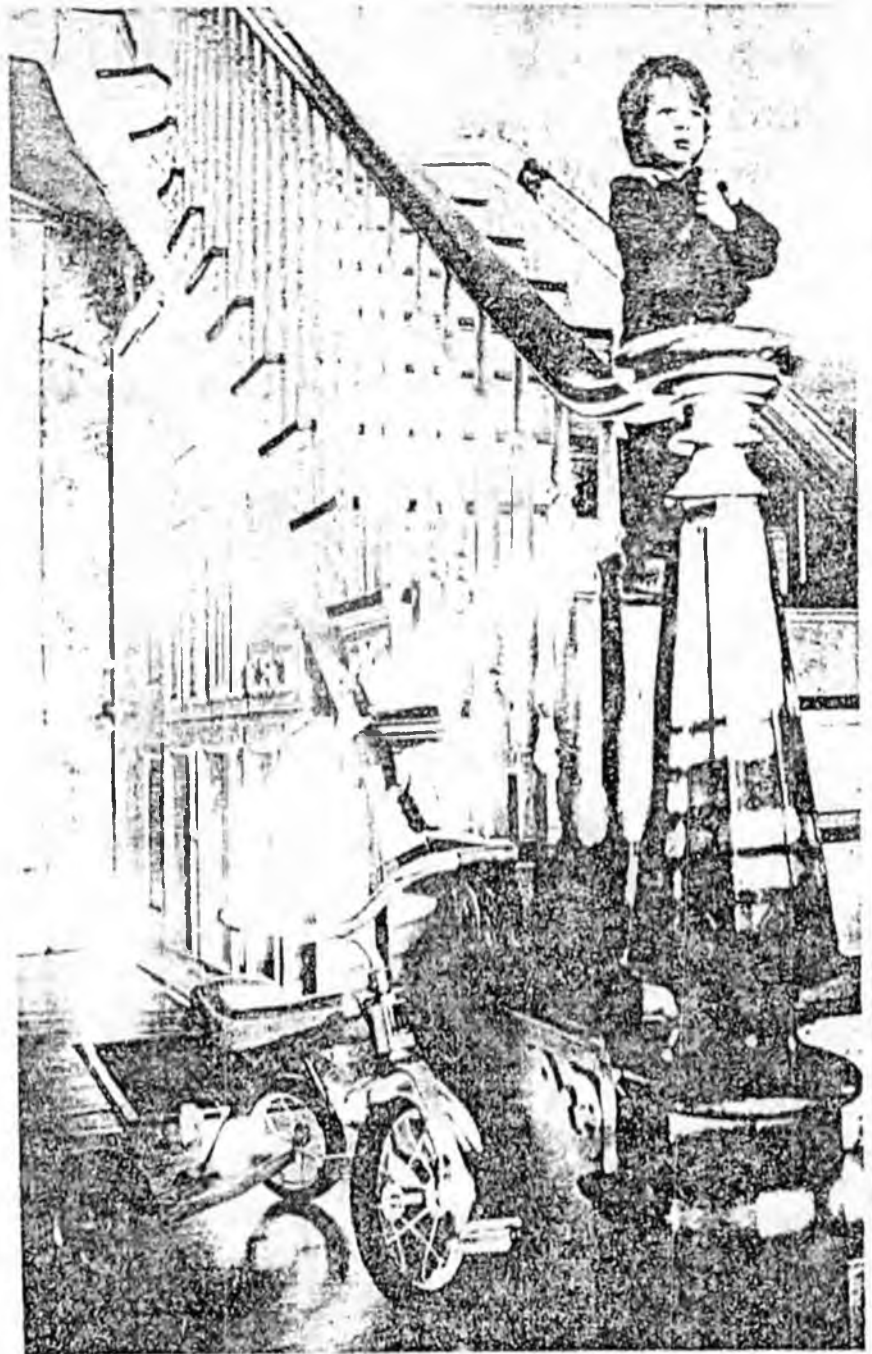
A bill which would have given visiting rights to grandparents in Pennsylvania (HB 2265) was vetoed in 1976 by the governor, who said he feared it would bring about lawsuits by one family member against another, and that the question of visiting rights is a moral issue—not a legal one.

A bill in the Maine Legislature (LD 885) would have allowed judges to award visitation rights to grandparents on a case-by-case basis. The measure failed in the 1977 legislature.

Its sponsor, Representative Gail Tarr, described the divorce rate in Maine as "astronomical" and said visitation rights for grandparents is an important issue.

"When the parents of a child get divorced, the experience can be traumatic enough," she said. "And when Grandma and Grandpa suddenly don't show up anymore, the effect that it would have on a young child just adds to the trauma that the child is already going through."

*(By Karen McElroy, CSG, Lexington.)*



# AFTER DIVORCE—

By Dr. Melvyn A. Berke and Joanne Grant

**COMMENT:** Many grandparents whose children are divorced are cut off from contact with their grandchildren. In a previous column we dealt with the psychological and legal aspects of this issue. Your calls and letters,

particularly in regard to the legal aspects, prompt us to give you an update.

We had reported that Dr. Doris Freed, co-chairman of the Custody section of the Family Law section of the American Bar Association, saw a trend in the expansion of legal rights of grandparents. Freed recently reported the following states now have a law which provides grandparents an opportunity to obtain visitation: Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Iowa, Louisiana, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Texas, Wisconsin and Vermont.

In the past, a stepmother or ex-wife whose spouse had died could prevent grandparents from seeing their grandchildren. Now it is the court's decision whether visitation should be granted. The decision is more likely to be favorable if there was frequent contact between the grandparents and grandchildren prior to the death or divorce of the custodial parent's spouse.

For further information you can contact Freed at 425 Park Ave., New York, N.Y. 10022.

Dear Ann Landers: A while back you printed a heartbreaking letter from grandparents who were cut off completely from their only grandchild because the boy's mother (their son's ex-wife) wanted to be punitive. I hope they live in Texas. The law is now on their side. The new Family Code, Senate Bill 168, Section 14.03, Clause D, provides grandparents with legal visiting rights.—Good For Us

Dear Good: Thank you for letting me know. I happily pass the word and hope that the example of the Texas legislature will be followed by all the other 49.


POSITION PAPER  
ON  
SENATE BILL 276

"An Act providing for the award of visitation rights to grandparents."

Senate Bill 276 adds to the section on visitation rights in judgements for custody during divorce or legal separation actions. It provides that grandparents be allowed visitation rights. The fact that parents choose to divorce each other should not automatically preclude the child from visiting grandparents who love a child and can give him emotional support. Sometimes the conflict between parents serves to cutoff a child from his grandparents. This may not be in the best interests of the child.

The Department of Health and Social Services is therefore supportive of Senate Bill 276.

RECOMMENDED BY:  DATE: 3/17/80  
John Pugh, Acting Director  
Division of Social Services

APPROVED BY:  DATE: 3/17/80  
Helen D. Beirne, Commissioner  
Department of Health and Social Services

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL No. 276  
 Title "An Act providing for the award of visitation rights to grandparents."  
 Requested by \_\_\_\_\_ Date March 17, 1980

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
 Program Category Affected Social Services  
 BRU, Program, or Subprogram(s) Affected Social Services  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This Bill has no fiscal impact on the Department of Health and Social Services.

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named) Department of Health & Social Services

Prepared by: John Payne Date: 3/17/80  
 Division/OFFICE: Social Services PH: 465-3170