

SB

21

SENATE COMMITTEE REPORT

DATE: 3/14/94

FURTHER: Judiciary

DATE TURNED INTO OFFICE: 4/11/94

HESS Committee considered SENATE BILL NO. 21

"An Act relating to child visitation rights of grandparents and other persons who are not the parents of the child."

and recommends:

- replace with _____ CS _____ (_____)
- or adopt previous _____ CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Alaska Court	3/10/94	<input checked="" type="checkbox"/>	

Appropriation No Fiscal Note

DO PASS:

Mike Miller
J. Ellis
Ron A. Lemay
Ben May

OTHER RECOMMENDATIONS:

J. E. Salo No Rec

Steve King No Recommendation
 Chair: Signature and Recommendation



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SB 21 GRANDPARENTS VISITATION RIGHTS SPONSOR STATEMENT (April 1994)

SB 21, referred to as the Grandparents Visitation Rights bill, is currently in the Senate Health, Education and Social Services Committee.

This is a very straight-forward and necessary bill. SB 21 would allow grandparents to petition Superior Court for an order establishing reasonable visitation rights with their grandchildren. Of course, visitation rights would only be granted if the Court deemed it was in the best interest of the child.

While we are in the throes of budget discussions and health care reform, I still think this bill deserves attention this session. It is a simple bill with no partisan undertones and I see no reason why it should not pass the Legislature this year. I have received many phone calls and letters of support from seniors and senior groups all over the state.

If you need additional information on SB 21 contact Alexis Miller in my office at 465-3892.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-5571

CO-CHAIR: Anchorage Caucus • MEMBER: Senate Judiciary Committee • Senate Resources Committee

Produced in House

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 21

Revision Date: March 9, 1994
Title: "...relating to child visitation rights of grandparents and other persons who are not parents of a child."
Sponsor: Senator Donley
Requestor: Senate State Affairs Committee

Department Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director

Phone: 465-3672

Division: Administrative Services Division

Date: March 9, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General

Agency: Department of Law

Date: March 9, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 21

ANALYSIS CONTINUATION:

This bill amends AS 25.20 to provide that in a child custody determination a court shall provide for visitation by a grandparent or other person if that is in the best interests of a child. This bill deals with the rights of private parties, and it therefore will not have a fiscal impact on the Department of Law.

PREFACE

A growing number of grandparents throughout the country have been denied access to their grandchildren by the children's parents or other custodians and have sought legal assistance in obtaining visitation. At least one hundred appellate court decisions involving grandparent visitation rights have been published to date. Yet grandparent visitation law remains a relatively new area of domestic relations law, and there is little literature on the handling of grandparent visitation cases for judges, domestic relations attorneys, mediators and other professionals working in the family law arena.

In the Fall of 1987, the Administration on Aging of the U.S. Department of Health and Human Services provided funds to the American Bar Association for a one-year project focusing on grandparent visitation rights. The project was jointly sponsored by three American Bar Association entities: the Commission on Legal Problems of the Elderly, the Family Law Section, and the National Legal Resource Center for Child Advocacy and Protection. One of the primary goals of the project was to publish this legal resource manual to provide up-to-date information on statutory and case law, existing legal literature, case representation, judicial practice, the role of experts and the use of mediation.

We have many acknowledgements to make. First, we thank the Administration on Aging for providing the grant which made this project possible. We appreciate the tremendous efforts of the authors who contributed to this book. The following authors took time off from their various fields of practice to draft and redraft chapters for the manual: Judge Ernest Rotenberg, Leonard L. Loeb, Marcia B. Gevers, Patricia Fernandez, Dr. Pamela Langelier, and Dr. John Haynes. We also appreciate the help of our Advisory Committee members, who volunteered their time and shared their knowledge: Edith Engel, Dr. Arthur Kornhaber, Dr. Doris Jonas Freed, Leonard Loeb, Bruce Kaufman, T.H. Guerin, Paula Monopoli, Professor Judith Areen, and Daniel Skoler. We thank Inga Van Eysden and Kimberly Shanks, law students who did extensive research and drafted portions of the manual. On the American Bar Association staff we have numerous individuals to thank. We appreciate the guidance and supervision of Nancy Coleman, Staff Director of the Commission on Legal Problems of the Elderly, and Howard Davidson and Bob Horowitz, Director and Associate Director of the National Legal Resource Center for Child Advocacy and Protection. We also would like to thank Beverly Y. Lyons for word processing and performing numerous other helpful tasks, and Norma Gregerman for publication production.

Ellen C. Segal
Naomi Karp

February, 1989

. . . About the American Bar Association Commission on Legal Problems of the Elderly

In 1978, the American Bar Association established the Commission on Legal Problems of the Elderly to examine law-related concerns of older persons. The Commission has encouraged legal services for the elderly, particularly through involvement of the private bar; and has explored legal issues surrounding long term care, home care, guardianship, home equity conversion, surrogate decision-making, and Social Security due process.

. . . About the American Bar Association National Legal Resource Center for Child Advocacy and Protection

Since 1978 the Resource Center has worked to improve laws and professional practices in the child welfare arena. It routinely offers educational opportunities to lawyers and other professionals involved in child abuse, foster care, child support, and other substantive areas of law. One of its principal goals is to improve the way courts and public agencies handle their child welfare caseloads, particularly with an eye towards protecting the rights of children and families. Towards this end, the Center works with legislators, judges and agency administrators in the development and implementation of new laws and policies.

. . . About the American Bar Association Family Law Section

The Family Law Section was established in 1958 to promote the objectives of the ABA by improving the administration of justice in the field of family law, by study, conferences, and publication of reports and articles with respect to providing assistance and guidance to the practice of family law, and to provide assistance with the teaching, promulgation of, and improvement of the welfare and strength of the family unit and its members in all related matters.

Chapter I

INTRODUCTION

American grandparents are becoming increasingly vocal about being denied access to their grandchildren. It appears that more and more grandparents are being deprived of the opportunity to see their grandchildren. These visitation problems seem to reflect broad changes in American society: the divorce rate is growing, family members no longer live in close proximity to one another, and the traditional family unit is becoming diffused. The visibility of the grandparent visitation issue also seems to reflect demographic and political changes: as our population ages, older persons are becoming more verbal about issues affecting them, and legislators, policy makers and service providers are giving those issues more attention.

In the last two decades, grandparents have gained ground in their efforts to obtain court-ordered visitation. Under the common law parental rights doctrine, courts generally refused to order visitation rights for grandparents over the objections of the child's parents. Since 1965, every state (excluding the District of Columbia) has enacted a statute enabling grandparents to petition for visitation rights with grandchildren.

These state statutes vary a great deal. They differ on who is authorized to petition for visitation, when a grandparent may petition, and what standard a court should apply in deciding whether to grant visitation privileges. The volume of litigation in the grandparent visitation area is growing rapidly. As many as one hundred or more cases may have reached the state appellate court level since 1980; many more have been filed at the trial court level.

Although domestic relations is traditionally governed by state law, there has been considerable activity on the federal level concerning grandparent visitation. In 1982 and 1983, the House of Representatives' Select Committee on Aging Subcommittee on Human Services held hearings on the issue. House Concurrent Resolution 67 was adopted on April 24, 1985 expressing the sense of the Congress that a uniform State act should be developed and adopted which provides grandparents adequate rights to petition State courts for privileges to visit their grandchildren.

APPENDIX A

GRANDPARENT VISITATION STATUTES*

State	Citation to Statute	On Death ¹ of Parent	On Divorce ² of Parents	After Living with ³ Grandparent	General ⁴ Provision
1. Alabama	Ala. Code §30-3-3 (1983)	X	X		
2. Alaska	Alaska Stat. §25.24.150 (1983)	X	X		
3. Arizona	Ariz. Rev. Ann. §25-337.01 (Supp. 1987)	X	X		
4. Arkansas	Ar. Stat. Ann. §9-13-103 (Supp. 1987)	X	X		
5. California	Cal. Civ. Code §§197.5, 4601 (West 1984 & Supp. 1987)	X			X
6. Colorado	Colo. Rev. Stat. §19-1-116 (1986)	X	X		
7. Connecticut	Conn. Gen. Stat. Ann. §§46b-59, -59a (West 1986 & Supp. 1988)				X
8. Delaware	Del. Code Ann. tit. 10, §950(7) (Supp. 1986)		X		
9. Florida	Fla. Stat. §61.13(2) (b)2c (Supp. 1987)		X		
10. Georgia	Ga. Code Ann. §19-7-3 (Supp. 1988)	X			
11. Hawaii	Haw. Rev. Stat. §571.46(7) (1985)		X		
12. Idaho	Idaho Code §32-1008 (1983)				X
13. Illinois	Ill. Ann. Stat. ch.40, para. 607(b) (c) (Smith-Hurd Supp. 1988)	X	X		
14. Indiana	Ind. Code Ann. §§31-1-11.7-1 to .7-8 (Burns 1987 & Supp. 1988)	X	X		

*Reprinted, with minor editorial and substantive changes, from J. Atkinson 2 Modern Child Custody Practice §8.19 (1986 & Supp. 1987)

FOOTNOTES

- 1 Under this type of provision, visitation could be granted to a grandparent whose son or daughter (the parent of the child) died.
2 Several statutes also specifically provided for grandparent visitation while the parents are separated, where the marriage was annulled, or where there are or have been child custody proceedings.

- 3 The length of the time in which the child lived with the grandparent triggered the right of the grandparent to seek visitation: twelve months (Minnesota and Pennsylvania) and six months (Texas and New Mexico).
4 "General provision" refers to visitation statutes which did not specify or restrict the circumstances under which a grandparent could obtain visitation.

State	Citation to Statute	of Parent	of Parents	Grandparent	Provision
15. Iowa	Iowa Code Ann. §§598.35-.36 (West 1987 & Supp. 1988)	X	X		
16. Kansas	Kan. Stat. Ann. §60-1616(b) (Supp. 1987)				X
17. Kentucky	Ky. Rev. Stat. Ann. §405.021 (Baldwin 1984)				X
18. Louisiana	La. Rev. Stat. Ann. §9:572 (West Supp. 1988)	X	X		
19. Maine	Me. Rev. Stat. Ann. tit. 19, §752 (Supp. 1988)				X
20. Maryland	Md. Fam. Law Code Ann. §9-102 (1984)			X	
21. Massachusetts	Mass. Gen. Laws Ann. ch.119, §39D (West Supp. 1988)	X	X		
22. Michigan	Mich. Comp. Laws Ann. §§722.72(b), 722.72b (West Supp. 1988)	X	X		
23. Minnesota	Minn. Stat. Ann. §257.022 (West 1982 & Supp. 1988)	X	X	X	
24. Mississippi	Miss. Code Ann. §§93-16-1, -3, -5, -7 (Supp. 1988)	X	X		
25. Missouri	Mo. Ann. Stat. §§452.400, .402 (Vernon 1986)	X	X		
26. Montana	Mont. Code Ann. §§40-9-101 to -102 (1987)				X
27. Nebraska	Neb. Rev. Stat. §§43-1801 to -1803 (Supp. 1986)	X	X		
28. Nevada	Nev. Rev. Stat. §§125A.330, .340 (1987)	X	X		
29. New Hampshire	N.H. Rev. Stat. Ann. §458:17 VI (1983)			X	
30. New Jersey	N.J. Stat. Ann. §9:2-7.1 (West Supp. 1988)	X	X		
31. New Mexico	N.M. Stat. Ann. §§40-9-1 to -4 (1986 & Supp. 1988)	X	X	X	
32. New York	N.Y. Dom. Re. Law §§72, 240(1) (McKinney 1986 & 1988)	X	X		X
33. North Carolina	N.C. Gen. Stat. §§50-13.2(b1), .2A, .5(j) (1987)			X	
34. North Dakota	N.D. Cent. Code §14-09-05.1 (Supp. 1987)				X
35. Ohio	Ohio Rev. Code Ann. §3109.05(B) (Anderson Supp. 1987)			X	
36. Oklahoma	Okla. Stat. Ann. tit. 10, §5 (West 1987)	X	X	X	
37. Oregon	Or. Rev. Stat. §§109.121, .123 (1987)	X	X		

State	Citation to Statute	On Death ¹ of Parent	On Divorce ² of Parents	After Living with ³ Grandparent	General ⁴ Provision
38. Pennsylvania	23 Pa. Cons. Stat. Ann. §§5311-5314 (Purdon Supp. 1988)	X		X	
39. Rhode Island	R.I. Gen. Laws §§15-5-24.1 to .2 (1981 & Supp. 1987)	X	X		
40. South Carolina	S.C. Code Ann. §20-7-420(3) (Law. Co-op. 1976)				X
41. South Dakota	S.D. Codified Laws Ann. §§25-4-52 to -54 (1984)	X	X		
42. Tennessee	Tenn. Code Ann. §36-6-301 (Supp. 1988)				X
43. Texas	Tex. Fam. Code Ann. §14.03(e)-(g) (Vernon Supp. 1988)	X	X	X	
44. Utah	Utah Code Ann. §30-3-5(4),(7) (Supp. 1988)				X
45. Vermont	Vt. Stat. Ann. tit. 15, 1011-1016 (Supp. 1988)	X	X		
46. Virginia	Va. Code Ann. §20-107.2 (Supp. 1988)		X		
47. Washington	Wash. Rev. Code Ann. §26.09.240. (Supp. 1988)				X
48. West Virginia	W. Va. Code §§48-2-15(b)(1), 48-2B-1 (1986)	X	X		
49. Wisconsin	Wis. Stat. Ann. §767.245 (West Supp. 1988)				X
50. Wyoming	Wyo. Stat. §20-2-113(c) (Supp. 1988)	X	X		

ALASKA WOMEN'S LOBBY

P.O. BOX 22156, JUNEAU, ALASKA 99802

To: Senator Dave Donley
From: The Alaska Women's Lobby
Date: March 10, 1994

The Alaska Women's Lobby requests your consideration of an amendment to SB 21, regarding visitation rights of grandparents and other persons.

SB 21 requires that when custody is disputed in a divorce the court shall provide for visitation by a grandparent or other person with whom the court determines visitation is in the best interests of the child. The bill also allows a child's grandparents to petition the Superior Court for visitation after a divorce.

Sections 3 & 4 of the bill deal with dissolutions or divorces in which the parents are not in dispute but in agreement. The Alaska Women's Lobby supported changes in the dissolution statute several years ago which clarified that the agreements between spouses be in writing, that the written agreements constitute the entire agreement between the parties and that the court may amend the written agreements between the parties *only* if both petitioners concur in the amendment in writing or on the record. (A.S. 25.24.220 (g))

We continue to support this concept and so object to section 4 of SB 21 which specifically sets aside A.S. 25.24.220 (g) to allow the court to amend the dissolution agreement by inserting visitation rights for a grandparent or other person without the express consent of the parties to the agreement.

Section 3 of the bill requires the court when considering if the parents agreement on visitation is in the child's best interests to also consider whether the agreement should include visitation by a grandparent or other person. If the parents agree on all other aspects of the dissolution but cannot agree in writing to the insertion of an other person's right to visitation with their child the court has the option of not granting the dissolution.

A.S. 25.24.230 (a) (4) currently requires that in dissolutions " each spouse entered into the agreement voluntarily and free from coercion of another person".

We request that Section 4 be stricken from the bill. Thank you for your consideration of our concern.