

SB

27

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 27
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS DONLEY, Ellis, Lincoln

Introduced: 2/2/95
Referred: HES, JUD

A BILL

FOR AN ACT ENTITLED

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

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 25.20.060(a) is amended to read:

5 (a) If there is a dispute over child custody, either parent may petition the
6 superior court for resolution of the matter under AS 25.20.060 - 25.20.130. The court
7 shall award custody on the basis of the best interests of the child. In determining the
8 best interests of the child, the court shall consider all relevant factors including those
9 factors enumerated in AS 25.24.150(c). In a custody determination under this
10 section, the court shall provide for visitation by a grandparent or other person if
11 that is in the best interests of the child.

12 * Sec. 2. AS 25.20 is amended by adding a new section to read:

13 Sec. 25.20.065. VISITATION RIGHTS OF GRANDPARENT. (a) Except as
14 provided in (b) of this section, a child's grandparent may petition the superior court for

1 an order establishing reasonable rights of visitation between the grandparent and child
2 if

3 (1) the grandparent has established or attempted to establish ongoing
4 personal contact with the child; and

5 (2) visitation by the grandparent is in the child's best interest.

6 (b) After a decree or final order relating to child custody is entered under
7 AS 25.20.060 or AS 25.24.150 or relating to an adoption under AS 25.23, a
8 grandparent may petition under this section only if

9 (1) the grandparent did not request the court to grant visitation rights
10 during the pendency of proceedings under AS 25.20.060, AS 25.23, or AS 25.24; or

11 (2) there has been a change in circumstances relating to the custodial
12 parent or the minor child that justifies reconsideration of the grandparent's visitation
13 rights.

25.23.125
↓
Interests
of minor

14 * Sec. 3. AS 25.24.220(d) is amended to read:

15 (d) If the petition is filed by both spouses under AS 25.24.200(a), the court
16 shall examine the petitioners or petitioner present and consider whether

17 (1) the spouses fully understand the nature and consequences of their
18 action;

19 (2) the written agreements between the spouses concerning child
20 custody, child support, and visitation are just as between the spouses and in the best
21 interests of the children of the marriage; in determining whether the parents'
22 agreement on visitation is in the best interests of the children under this
23 paragraph, the court shall also consider whether the agreement should include
24 visitation by grandparents and other persons;

25 (3) the written agreements between the spouses relating to the division
26 of property, including retirement benefits, spousal maintenance, and the allocation of
27 obligations are just; the spousal maintenance and division of property must fairly
28 allocate the economic effect of dissolution and take into consideration the factors listed
29 in AS 25.24.160(a)(2) and (4);

30 (4) the written agreements constitute the entire agreement between the
31 parties; and

1

(5) the conditions in AS 25.24.200(a) have been met.

HOUSE COMMITTEE REPORT

(7)
 Date Referred: March 24, 1995 FURTHER REFERRALS: Judiciary

Date of Committee Action: 4/4/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: SSSB 27

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 27 MISC. GRANDPARENT VISITATION RIGHTS

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

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) Count System

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Carl Bunde</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *[Signature]*



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

SB 27
GRANDPARENT VISITATION RIGHTS
SPONSOR STATEMENT
(March 1, 1995)

SB 27 would allow grandparents to petition the court for an order establishing reasonable visitation rights with their grandchildren. The visitation rights would only be granted if the court deemed it was in the best interest of the child. Alaska is the only state that does not allow grandparents to make such petitions.

Currently AS 25.24.150 only allows the court to on its own grant grandparent visitation rights in cases where a parent has died and in divorce and separation proceedings. AS 25.24.150 does not give the grandparents "standing" to on their own petition the court. SB 27 would give grandparents the "standing" to petition the court for reasonable visitation rights. Additionally, SB 27 would not place specific limitations on when these petitions could be made.

SB 27 is pro-family legislation intended to strengthen Alaskan families through greater grandparent participation in child development when it is in the best interest of the child.

A similar version of this bill (SB 21) passed the Senate last year by a vote of 19-1 before it died in the House during the final days of session.

C A R T A
CENTRAL ALASKA RETIRED TEACHERS

PO Box 93610
Anchorage, Ak 99509-93610

FEBRUARY 23, 1995

The Honorable Dave Bonney
State Capitol Offices
Juneau, AK 99801-1111

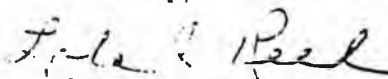
Dear Senator Bonney:

As in the past members of Central Alaska Retired Teachers' Association (CARTA) strongly support all efforts to assure that grandparents have reasonable visitation rights with their grandchildren. We believe SB17, "An act relating to child visitation rights of grandparents and other persons who are not parents of the child," is a bill which would assure these rights.

As former teachers and as parents and grandparents we have witnessed the pain a child suffers when parents separate and/or divorce. Even in stable homes and especially in homes torn by the dissension of divorce parents cannot provide all the support and nurturing needed for a child to develop into a mature and stable adult. Children need the support of the wider "community" which is provided by grandparents, other relatives and, in some cases, non-relatives.

At our February meeting the CARTA membership voted unanimously to give full support to SENATE Bill 17. We were sorry to see that last year's bill on this issue did not make it through the HOUSE. We urge immediate action on this one.

Sincerely,



Lola J. Reed
President

UONA L. HALL
3590 GLACIER HIGHWAY
JUNEAU, ALASKA 99801-9531

Testimony for Senate Bill #27: March 1, 1995

AARP is in favor of this bill for Grandparents visitation to their grandchildren. After reading the brochure from AARP headquarters, I am also enthusiastically supporting the bill. The brochure is well presented, citing other State's experiences in this area. It was researched by experts.

I am not an expert -- I am a grandmother, and I would like to shift the emphasis just a bit. ~~Can you change the title to:~~ "THE RIGHT OF GRANDCHILDREN TO HAVE GRANDPARENTS IN THEIR LIVES"?

Of my six grandchildren: 3 are here in Juneau, and 3 in Illinois. The thought of not seeing any of them would be devastating. When I say "I", you realize I'm part of a matched set known as "Gramma" and "Grampa".

The ages of the children run from 10 to 18. For the last couple of years, the telephone calls from the Juneau contingent have been something like this: from the grandson whose parents live out on the Thane road; but whose girlfriend lives near me: "Gramma, can

you leave the back door open so I can sleep on the sofa after the prom and/or game?". And the granddaughter whose mother is working: "Grandma, my car won't start, and I have to be at work by four. Can you or Grampa pick me up?" The other granddaughter says: "Grandma, this week's basketball/soccer/volleyball games are Friday and Saturday at 7. Can you come?" The answer to the first two are "Yes"; and to the third, "'Probably."

To reach this kind of certainty between the generations takes a lot of individual actions over a long period of time. From buying Girl Scout Cookies; Xmas wrapping; pool laps; baseball laps; and a guaranteed audience to school programs from preschool to graduation.

When Rupe Andrews asked me to testify today, I was not keen. But he is a genius at timing. In that days mail we received a present from our daughter-in-law. A high school orchestra concert poster for March 4, in ^{McHenry County} ~~Crystal Lake~~, Illinois. The yellow postit note says: "Can you find your grandson? We thought this was a nice picture and wanted to share it with you. Wish you could be here for it! Love, Debbie" Picking him out was easy, didn't even take the trumpet. He's the tall handsome boy in the back row. We've had videos, and cassette tapes of both boys musical progress, and have always been

kept informed of their grades and hobbies. When we visit we stay several weeks to get into the rythm of their lives.

When an 8 year old daughter was adopted, she adopted us as happily as we also loved her -- sight unseen.

Since the boys left Alaska as small children, they have been showered with Alaska coloring books; Alaska children stories; Alaska rocks, etc.

They all know that we are close-- except for those many miles.

Senate Bill #27 kicks in when visitation is denied.

Can you pass a companion bill to ensure that for each case that comes up the judge has the wisdom of Soloman?

A judge that can discover the cause of the refusal, and can do something about it?

Tuesday afternoon once of year will never give the children what they need.

Thank you for listening.



September, 1994

Grandparents And Grandchildren Need Each Other

by Kathleen M. Tonn

I don't have a note, because they are too far away. I would enjoy them if I could," says a Florida grandmother of her four Alaskan grandchildren. Josephine Reinhold declares, "I try to communicate with the children through letters, but it's not the same as holding their hand and taking a walk along the beach. Maybe they'll remember me as the person who sent those sometimes-riveting, sometimes serious letters."

Grandparents across the United States strive to develop intimate relationships with their grandchildren, but many never do. Physical distance undermines the natural bond that unites grandparents and grandchildren together. Grandparents whose grandchildren live in Alaska experience perhaps a more detached relationship due to the state's geographical remoteness.

The sense of loss, on the part of the grandparent, can be profound when they are unable to grandparent. Studies demonstrate the birth of a grandchild represents immortality and the ability to continue the patrimony. To sustain the feelings generated by the birth of a grandchild, grandparents need to interact with the child regularly.

Philto Baker, an Anchorage psychologist, believes families are negatively affected when distance separates them. Baker comments, "Here in Anchorage, all of us suffer to some extent, but children probably suffer more. The impact on grandparents when they are unable to grandparent, they can feel deprived. This can lead them to feel disenchanting with their own offspring."

When grandparents are able to develop closeness with their grandchildren both generations thrive. Generally, the grandparent's overall health improves. The vitality of the young motivates seniors to stay physically and mentally active. As members they are contributing not only to the child's sense of well-being, but to society as well.

Anchorage's Foster Grandparent coordinator, Sharon Suassny, believes the interaction between senior citizens and children is important. Suassny observes, "Seniors that are contributing in the community while being paired with children live longer and are happier." Although Foster Grandparent seniors deal with children who are not related to them, the factors that contribute to emotional and physical health cross bloodlines.

Children benefit enormously from a loving relationship with a grandparent, foster or not. Grandparents have a positive influence on child development. They help to boost a child's self-esteem through constant kindness. Grandparents are mentors who don't have to deal with the same issues as parents. They are in a position to provide objectivity.

Children also gain a sense of family history from grandparents. The stories grandparents share about their own lives or their children's lives help children learn the interconnectedness of families. Similarly, a loving relationship with a grandparent allows children to develop positive feelings about the elderly in society.

Despite the great distance that separates Alaskan grandchildren from their grandparents, there are ways families can encourage close, long-distance relationships. Before taking steps to create a climate in which the grandparent/grandchild bond can be strengthened, both parents and grandparents must make a firm commitment to the relationship's development. Research indicates that a child's love for a grandparent is second only to the love of a parent.

The following activities nurture grandparent/grandchild love. They can be done by grandparents as well as children. And parents can help children wherever necessary. The sharing of oneself, through the following methods, will enhance the time spent together when visits occur between grandparent and grandchild.

• Scheduled telephone conversations



Eva Honea of Chugiak spends a sunny afternoon with her great-granddaughters, Amber McIntire (L) and Kimberly McIntire (R)

Sharon McBride Photo

- Sending videotapes of special family or school events.
- Writing letters.
- Making audiotapes of singing, reading, or reflections of an ordinary day.
- Sending photos with captions.
- Making stories that have been written by either grandparent or child.
- Sending children's art pieces or school work.
- Sending treasures like broken radios that can be taken apart or rocks that have been found on a day's outing.

MODERN CHILD CUSTODY PRACTICE

1994 Cumulative Supplement

JEFF ATKINSON

*Member of the Illinois and
United States Supreme Court Bars*

2

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Place in pocket of bound volume and
recycle previous supplement.

murder of the mother (apparently by the father), the court said the aunt and uncle could file an action for custody separate from the divorce action.

For description of a custody dispute between a grandfather and step-grandmother following the death of both parents, see *supra* § 8.07, note 62 in this supplement.

§ 8.09 Burden of proof in modification actions when a third party has custody

Page 426, n. 88. *Glover v. McRipley*, 159 Mich. App. 130, 406 N.W.2d 246, 251 (1987) (holding that the burden of proof was on the father by a preponderance of the evidence to show reasons why there should be a change in the established custodial environment with the grandparents, who had cared for the seven-year-old girl since birth, the mother had died when the child was two years old. The court, in denying the father's petition, commented: "[T]he importance of residence with a biological parent pales beside the importance of stability and continuity in the life of a child.")

Page 426, n. 90. *In re Marriage of Stewan*, 507 N.E.2d 585, 587 (Ind. Ct. App. 1986), in which the court held that the grandparents bore a "strenuous burden of proof" to show that the natural parent was unfit or had acquiesced in the custody arrangement, even though the grandparents had raised the girl for three of her four years. Custody to the grandparents was reversed and custody was given to the mother, who had recently completed parenting classes while on welfare, and who planned to become a beautician.

In re Custody of Walters, 174 Ill. App. 3d 949, 529 N.E.2d 308 (1988) (applying a presumption of parental custody even though grandmother had custody by virtue of a prior uncontested petition; nonetheless, the presumption of parental custody was overcome when maternal grandmother had raised the child for 10 years and mother's life seemed unstable).

✓ § 8.10 Grandparent visitation

§ 8.11 —Statutory provisions

Page 427. Replace first paragraph with:

All fifty states now have statutes which allow grandparents to seek court-ordered visitation.⁹⁵ The District of Columbia does not have a grandparent visitation statute. As of 1994, twenty-seven states specifically provide visitation upon the death of a parent (usually upon the death of the parent related by blood to the grandparent seeking visitation). Twenty-nine states also provide for visitation upon the divorce of the parents; most of the states in this group also would allow grandparents to seek visitation upon the separation of the parents. In addition, six states also specifically provide that a grandparent may seek

visitation if the grandchild has lived with the grandparent for a certain period of time (between six and 12 months);⁹⁶ and another eight states (with some overlap) allow grandparent visitation if the child is in the custody of someone other than the parent or if parental rights have been terminated.⁹⁷

Twenty-two states have what might be called general visitation statutes which allow grandparents to seek visitation, but do not specifically limit the circumstances under which visitation may be sought (e.g., limiting visitation to cases in which a parent has died or the parents are divorced). Some of these statutes are written very broadly but with some detail, apparently allowing visitation even if the mother and father are alive and their marriage is intact.⁹⁸ Other statutes are brief and somewhat vague—for example, allowing grandparent visitation if it is in the best interest of the child. If such a statute is part of a state's divorce law, a court may construe this general visitation provision as limiting visitation to cases in which the parties are separated or divorced.⁹⁹ A court, however, is not required to do so and could interpret the general provision as allowing visitation in a variety of situations, including intact marriages. Legislative history, if it is available, may be an important part of construing vague statutes.

⁹⁵In 1986, Nebraska was the last state to adopt a grandparent visitation statute. For citation to the Nebraska statute and the other statutes, see *infra* the Appendix at § 8.19 in this supplement.

⁹⁶The states with statutes specifically providing for grandparent visitation after the child has lived with the grandparent for a certain period of time are: Minnesota (twelve months), New Mexico (six months), Pennsylvania (12 months), Texas (six months within the preceding twenty-four months), West Virginia (six months), and Wyoming (six months). The absence of such a provision in the statutes of other states would not necessarily prohibit granting visitation to grandparents with whom a child had lived for a substantial period of time.

⁹⁷The states with statutes specifically allowing a grandparent to seek visitation if the child is in the custody of a non-parent or if parental rights have been terminated are: Colorado, Georgia, Iowa, Michigan, Nevada, Oklahoma, Tennessee, and Texas.

⁹⁸The states with very broad visitation statutes, which apparently allow visitation of children in intact marriages include: Alabama, Mississippi, Maryland, New York, South Dakota. (Illinois formerly had such a statute, but now only allows grandparent visitation for children in an intact marriage if a parent joins in the petition—in which case one may assume the marriage

will not be intact for long.) Delaware has a general visitation statute, but prohibits grandparent visitation if husband and wife cohabit and object to visitation.

²⁹*See, e.g.,* White v. Jacobs, 198 Cal. App. 3d 122, 243 Cal. Rptr. 597 (1988); Van Cleve v. Hemminger, 141 Wis. 2d 543, 415 N.W.2d 571 (App. Ct. 1987).

Page 428, n. 100. In Farrell v. Denson, 821 S.W.2d 517 (Mo. Ct. App. 1991), the court held that paternal grandparents had a right to seek visitation of a child born out of wedlock, even though the statute did not specifically deal with this situation. The court said, "Such grandparents wanting visitation could have been anticipated and as the legislature did not deny them visitation rights or otherwise exclude them, it is reasonable to assume that they have the same rights as the parents of a married father . . . A child and his grandparents have the same relationship regardless of whether his parents are married." *Id.*, quoting *In re* C.E.R., 796 S.W.2d 423, 425 (Mo. Ct. App. 1990).

In Thompson v. Vanaman, 210 N.J. Super. 225, 509 A.2d 304, 305 (Ch. Div. 1986), the court held that it had "inherent equitable jurisdiction as well as jurisdiction pursuant to court rules" to hear a grandparent's request for visitation, even though the statute only provided for grandparent visitation upon the death or divorce of the parents and neither of those circumstances applied here. In *Thompson*, both parents were alive and still married. The grandmother had taken care of the children eight to ten hours per day, five days per week for four years. The grandmother and the children's parents had a dispute over an unpaid loan to the parents and the parents thereafter objected to visitation. The court granted the grandmother visitation on the third Saturday of each month from 10 a.m. to 6 p.m.

See also supra § 8.04, note 33.

But see In re R.A.N., 435 N.W.2d 71 (Minn. Ct. App. 1989), in which the court said that the legislature limited the court's power to allow grandparent visitation. The statute allows visitation upon death or divorce of the parents, or after the child resided with the grandparents for 12 months or more. Minn. Stat. § 257.022 (1976). In this case, the court did not allow the paternal grandparents to seek visitation after their son had murdered the mother, been sentenced to prison, and voluntarily relinquished his parental rights.

In an unusual fact situation, the court in Worley v. Worley, 534 So. 2d 862 (Fla. Dist. Ct. App. 1988) ruled that the adoption of the adult child of a grandparent did not preclude the grandparent from obtaining visitation with the grandchildren who were already in being. The court added that any children born to the adult child after the adult child's adoption would have no relationship with the grandparents, and thus the grandparents could not seek visitation with them.

Granting visitation to grandparents normally requires that the grandparents petition for visitation or that there be some extraordinary circumstance. *In re* Marriage of Balzell, 207 Ill. App. 3d 310, 566 N.E.2d 20, 23 (1991) (reversing an order of visitation to the maternal grandparents when the

grandparents had not petitioned for visitation and the custodial father said he would facilitate the child's strong relationship with the grandparents).

Page 428. *Add at end of section:*

If a grandparent seeks visitation, the burden of proof normally is on the grandparent to show that visitation is in the best interest of the child—the burden is not on the natural parent to show that visitation would be harmful to the child.¹⁰⁰¹

¹⁰⁰¹*Kerns v. Southern*, 100 N.C. App. 604, 397 S.E.2d 651, 652 (1990).

Santaniello v. Santaniello, 18 Kan. App. 2d 112, 850 P.2d 269, 271 (1992) (remanding the case and holding that the burden of proof was on the paternal grandparents to show that visitation was in the best interest of the child; the burden of proof was not on the mother of the deceased father to show that visitation was not in the children's best interest).

§ 8.12 —Underlying rationale

Page 429, n. 101. In *In re* Bongardenet, 711 P.2d 92, 97 (Okla. 1985), the court found the grandmother had standing to seek visitation and commented: "The grandparents here are the child's deceased mother's parents. The importance of a continued relationship with them is perhaps more significant now than while the mother was living . . . Equity recognizes—indeed preempts of statute—the grandparents claim to the companionship of their grandchild. Quite often it is an important source of stability and calm in the child's environment."

§ 8.13 —Determining factors

Page 429, n. 102. *Compare* Rose v. Commissioner of Social Services, 170 A.D.2d 339, 566 N.Y.S.2d 43 (1991), in which the court denied both custody and visitation to a grandmother with "psychological problems" who illegally removed the child from the county and "has acted in an inappropriate and insensitive fashion toward the child when allowed visitation".

Page 429, n. 103. *See supra* § 8.08, note 75 and § 8.11, note 100 in this supplement. *Cf. supra* § 8.04, note 33 in this supplement.

Page 430, n. 104. In *Brown v. Earnhardt*, 396 S.E.2d 358, 360 (S.C. 1990), the court reversed an order of visitation to paternal grandparents and held it would seldom if ever be in the best interest of the child to grant visitation to the grandparents when their child, the parent, has such rights. In this case the father regularly exercised visitation, often in the company of his parents.

Also see In re Adoption of a Child by M., 140 N.J. Super. 91, 355 A.2d 241, 243 (Ch. Div. 1976).

§ 8.14 --When court order is desirable

Page 430, n. 106. In *State ex rel. Foley v. Landberg*, 141 A.D.2d 439, 542 N.Y.S.2d 610 (1989), the court found grandparent visitation appropriate when the father did not regularly exercise visitation with his son, in part because the father was incarcerated for drug possession. The court commented, "[I]n view of the finding that the grandparents had, and in the future might resume, an important loving role in [the child's] life, we believe that visitation rights, independent of the exercise of such rights by [the father] are appropriate." 542 N.Y.S.2d at 642.

Page 431, n. 108. *Accord* DEL. CODE ANN. § 10-950(7) (Supp. 1986) (prohibiting grandparent visitation if the natural or adoptive parents are alive, living together, and object to visitation) *But cf.* the statutes of Minnesota, New Mexico, Pennsylvania, and Texas, which specifically allow grandparent visitation if the grandchild has lived with the grandparent for a significant period of time (six to twelve months, depending on the state). For citation to these statutes, *see infra* § 8.19. *Cf. also* *Thompson v. Vanaman*, *supra* § 8.11, note 100 of this supplement.

White v. Jacobs, 198 Cal. App. 3d 122, 243 Cal. Rptr. 597 (1988) (holding that, in the absence of an express statutory provision, grandparents did not have a right to visitation with grandchildren of an intact marriage; the state's general provision regarding grandparent visitation contained in the dissolution statute was construed to apply only to cases in which a dissolution or nullity action was pending).

Page 431. *Add new section*

§ 8.14A —Constitutionality of grandparent visitation statutes (New)

The constitutionality of grandparent visitation statutes has been attacked by both grandparents and parents: grandparents claiming the statutes are too narrow and parents claiming the statutes are too broad, and thus intruding on family privacy. In recent cases, both arguments have been rejected and the statutes have been upheld.

In a case before the Delaware Family Court, grandparents challenged a statute which did not allow grandparents to seek visitation of grandchildren in an intact marriage.¹⁰⁸¹ The grandparents argued that not allowing them to seek visitation, while grandparents whose adult children were divorced, separated or deceased could seek visitation, violated due process and equal protection. The court ruled against the grandparents, finding that grandparents who had not had a custodial relationship with their grandchildren did not have a fundamen-

tal liberty interest in visitation which had been recognized at common law or elsewhere.

Furthermore, in response to the grandparent's equal protection argument, the Delaware court held it was reasonable for the legislature to create different standards for grandparent visitation depending on whether or not the parents cohabitated as husband and wife. The court said, "Stated simply, parents, natural or adoptive, living together as husband and wife are more likely to make decisions regarding with whom their children associate in a manner that protects the children's best interests. Personal animosity towards the other parent and his or her family is less likely to color this visitation decision."¹⁰⁸²

Another constitutional argument was raised by a custodial parent in a Florida case.¹⁰⁸³ The mother challenged the constitutionality of the state's grandparent visitation statute, which allowed the paternal grandparents to seek visitation following the death of the mother's husband. The mother argued that the statute which allowed grandparents to seek court ordered visitation was an invasion of her right of privacy and right to raise her children "as she sees fit." The appellate court rejected the argument, saying "The state has a sufficiently compelling interest in the welfare of children that it can provide for the continuation of relations between children and their grandparents under reasonable terms and conditions so long as that is in the children's interest."¹⁰⁸⁴

¹⁰⁸¹ *Ward v. Ward*, 537 A.2d 1063 (Fam. Ct. 1987).

Compare In re D.S., 806 P.2d 1143, 1145 (Okla. Ct. App. 1991), in which the court held, "Grandparents have no constitutional right to visitation with their grandchildren. These rights come from statutory authority." Nonetheless, the court found that the grandparents had standing in juvenile court to contest reduction of visitation which earlier had been granted by a divorce court.

¹⁰⁸² *Ward v. Ward*, 537 A.2d at 1070. The court also found that the statute in question did not violate principles of separation of powers between the legislature and the judiciary—particularly since no fundamental rights are involved. In closing, the court commented, "This opinion is not to be taken as the Court's endorsement of the position taken by the natural parents in this matter; indeed, the Court would remind them of what other courts have stressed: that it is the moral duty of parents to promote and strengthen association between grandchildren and grandparents."

¹⁰⁸³ *Benjamin v. Giroud*, 559 So. 2d 380 (Fla. Dist. Ct. App. 1990).

Id. at 382. Although finding the statute to be constitutional, the court held that the amount of visitation granted was excessive. The trial court gave the paternal grandparents visitation: one full day every other weekend, every other Wednesday evening for two hours, certain holidays, plus one week in the summer. The court held the record did not support such "extensive visitation rights." *Id.* at 383. The case was remanded for a new visitation schedule and findings in support.

§ 8.15 —When stepparent adopts child

Page 431, n. 109. Other states that have statutes allowing grandparent visitation following adoption by a stepparent include: North Carolina, Ohio, Pennsylvania, Virginia, and many others. For citation to these statutes, see *infra* § 8.19.

Id. *v. Smith*, 590 So. 2d 323 (Ala. Civ. App. 1991) (following Louisiana's statute and allowing visitation by paternal grandparents after adoption of children by stepfather).

Cf. Bosh v. Squellati, 154 Ill. App. 3d 727, 506 N.E.2d 972, 974-75 (1987) (holding that a grandparent visitation statute that allows grandparents to visit a child after adoption by a stepparent would not be construed to allow grandparent visitation after adoption of a child by an aunt and uncle (even though the aunt and uncle were related to the grandparents seeking visitation)).

Page 431, n. 111. In *Echols v. Smith*, 427 S.E.2d 820 (Ga. Ct. App. 1993), the court held that the paternal grandparents could not obtain visitation with their grandchildren after the father voluntarily terminated his parental rights and the children were adopted by their stepfather. The state's grandparent visitation statute allowed grandparent visitation after adoption only if the adoption was by a "blood" relative. A concurring judge said the legislature's limitation on grandparent visitation was "unfortunate" and did not allow full consideration of what may be best for the child. *Id.* at 821 (Blackburn, J., concurring).

Page 432, n. 113. *McVey v. Frederickson*, 226 Ill. App. 3d 1082, 1084, — N.E.2d — (1992) (in a case in which the grandparents cared for the child frequently after the father's death, the appellate court stated, "we find that while a different trial court may have granted more visitation, the instant trial court's grandparent visitation order of one Saturday per month [8 a.m. to 8 p.m.] was not an abuse of discretion").

Thompson v. Vanaman, 210 N.J. Super. 225, 509 A.2d 304 (Ch. Div. 1986) (granting visitation to grandmother on the third Saturday of each month from 10 a.m. to 6 p.m.). For a further description of this case, see *supra* § 8.11, note 100. See also *Sketo v. Brown*, discussed in note 108-1 *supra* in this supplement.

§ 8.16 —Procedure

Page 433, n. 114. *Quintella v. Rameri*, 117 A.D.2d 1019, 499 N.Y.S.2d 562 (1986) (reversing an order of grandparent visitation that was entered without

an evidentiary hearing and remanding the case so that a hearing could be held).

§ 8.17 Antagonism between the parties: effect on visitation

Page 434, n. 122. In *Strouse v. Olson*, 397 N.W.2d 651, 655 (S.D. 1986), the court affirmed termination of the paternal grandmother's visitation with her two granddaughters, ages ten and eight, who were in the custody of the father (the grandmother's son). The court found termination of visitation to be in the best interest of the children because of the "severe ill feelings, bitterness, and animosity" between the grandmother and the father. The grandmother had threatened the father's life, demeaned his new wife, and threatened to sue them over personal property matters. In addition, the children testified that they did not wish to visit with their grandmother any more. Aside from visitation no longer being in the children's best interest, the Iowa statutory law on which the visitation originally was based was interpreted as not permitting grandparent visitation when the child of the grandparent objected to visitation.

For discussion of the effect of antagonism between the parties when a stepparent seeks visitation, see *infra* § 8.18 in this supplement.

Page 435, n. 125. Compare *Truitt v. Truitt*, 65 Ohio App. 3d 126, 583 N.E.2d 331, 334-35 (1989), in which the court held that a mother's contempt of court and lack of cooperation in providing visitation to the paternal grandparents could not serve as a basis for placing custody of the children with the department of children's services. The court adopted the language of another court for the proposition that:

Too long have courts labored under the notion that divorced parents must somehow be perfect in every respect. The law should recognize that parents, married or not, are individual human beings each with his or her own peculiar virtues and vices. The children of married parents are expected to take their parents as they find them—as Oliver Cromwell said to his portraitist, "with warts and all." Whatever their faults, unless the married parent's conduct is harming the child, the courts will not intervene in the parent-child relationship.

583 A.2d at 334-35, quoting *Conkel v. Conkel*, 31 Ohio App. 3d 169, 171-72, 509 N.E.2d 983, 985-86 (1987). The court said other penalties for contempt could have been imposed and "We find it was unconscionable to award custody of the children to the county as punishment for contempt." 583 N.E.2d at 335.

Page 435. Change title of § 8.18 to:

§ 8.18 Visitation for stepparents and other third parties

Page 435, n. 127. States which specifically provide for stepparent visitation by statute include Oregon, Virginia, and Wisconsin. For citations to statutes see appendix at *infra* § 8.19. The Wisconsin Supreme Court, with three ju-

ices dissenting, held that the state's stepparent visitation statute applied only to actions for divorce between the stepparent and natural parent, and did not apply to a stepparent seeking visitation after death of the natural parent to whom the stepparent was married. *In re Marriage of Cox*, 177 Wis. 2nd 433, 502 N.W.2d 128 (Wis. 1993). The Chief Justice Heffernan commented in his dissent: "If the law is construed as the majority has construed it, the words of Charles Dickens in *Oliver Twist* are pertinent, 'If the law supposes that the law is a ass, a idiot'" 502 N.W.2d at 131.

Page 435, n. 128. *Cf. In re Marriage of Goetz*, 203 Cal. App. 514, 250 Cal. Rptr. 30 (1988) (holding that under California statutes, a stepparent may obtain visitation, but not joint custody).

Page 435, n. 129. *But see In re Boland*, 186 A.D.2d 1065, 588 N.Y.S.2d 485 (1992) (holding that a former stepmother lacked standing to seek visitation with her former stepdaughter). Compare this case with *In re Ronald FF, infra* n. 130, in which another New York court allowed a man who was led to believe he was the father to obtain visitation with a child even though he was not the father.

Page 436, n. 130. In *In re Custody of Banning*, 541 N.E.2d 283 (Ind. Ct. App. 1989), the court affirmed visitation for the stepmother following death of the father. The court noted that the stepmother had helped care for the child on a daily basis. The criteria in Indiana is: "To establish visitation, a third person must first show that a custodial and parental relationship exists and then, that visitation would be in the best interest of the child." *Id.* at 284.

In *Honaker v. Burnside*, 388 S.E.2d 322 (W. Va. 1989), the stepfather was able to obtain "liberal" visitation following the death of the custodial mother. The court noted that after the death of the mother, the two people closest to the six-year-old girl were her stepfather and her half brother. The natural father (who had kept contact with the child) was given custody as a natural right, but the court ordered a six-month transition period in which the stepfather would have custody and the father would have ever-increasing amounts of visitation until a transfer of custody after six months with visitation for the stepfather.

In *In re Ronald FF*, 117 A.D.2d 332, 502 N.Y.S.2d 823 (1986), a man who lived with the mother and child during much of the child's first two years of life and was listed on the child's birth certificate as father (although he was not the father) was found to be entitled to visitation under New York's "extraordinary circumstance" test for giving rights to third parties.

Similarly, in *In re Marriage of Dureno*, 854 P.2d 1352 (Col. Ct. App. 1983), a man who first learned at the time of the divorce that he was not the biological father of the child was able to obtain visitation. The court said, "Therefore, we hold that the trial court in a dissolution of marriage proceeding may grant visitation privileges to a stepparent or surrogate parent under the following conditions: (1) the nonparent is jurisdictionally capable of litigating custody; (2) the nonparent has acted in a custodial and parental capacity toward the minor child; and (3) visitation would be in the minor child's best interest." *Id.* at 1357.

But see In re Maricopa County Juvenile Action, 134 Ariz. 407, 650 P.2d 1208 (1982), in which the court provided the following dictum in a case involving termination of parental rights: "A stepfather has no legal right to custody or control of a minor child nor even a right of visitation. To give such rights to stepfathers would invade the rights of natural parents and would further endanger the welfare of children by pitting the rights of stepparents against those of the natural parents."

Compare *In re Marriage of Gayden*, 229 Cal. App. 3d 1510, 280 Cal. Rptr. 802 (1991), in which the court rejected a visitation request by a woman who moved in with the custodial father and later sought visitation with the child when the relationship terminated. In *Gayden*, the woman said she lived with the custodial father and the child from the time the child was seven months old until the child was about 1 1/2 years old. She then moved out, but continued to see the child until the child was 3 1/2 years old. (The father disputed the length of the time periods.) At the time the woman sought visitation, the father and his former wife were attempting to reconcile, and they both opposed visitation by the woman. The appellate court denied visitation, stating "Where the parents are united in opposition, visitation must not be allowed unless it is clearly and convincingly shown that denial of visitation would be detrimental to the child." 280 Cal. Rptr. at 867.

In a case somewhat similar to *Gayden*, the court in *Cooper v. Merkel*, 470 N.W.2d 253 (S.D. 1991), held that a man who had lived with a woman and her son for seven years did not state a cause of action for visitation with the boy in the absence of an allegation that the mother was unfit or had engaged in misconduct. Under the court's ruling, the man's assistance in raising the boy was not a sufficient basis for seeking visitation. For commentary applicable to this case, see the "Comment" in *infra* § 8.18A.

Page 437, n. 134. *Cf. Klipstem v. Klipstem*, 230 N.J. 567, 553 A.2d 1384 (Ch. Div. 1988) (holding that a stepfather was not entitled to visitation when his marriage to the child's mother lasted less than one year; the stepfather had not paid support; and the child had a natural father with whom the child apparently had a good relationship).

Page 437. *Add at end of section:*

As with grandparent visitation,¹³⁴¹ the existence of a high degree of animosity between the divorcing stepparent and natural parent can result in a finding that visitation with the party seeking visitation will not be in the child's best interest. In one case in which a stepmother sought visitation upon divorce from the natural father (who had custody of the children), the court commented:

Ideally, had the parties been capable of controlling their animosity and hostility toward one another, we would agree that the trial court may well have found that continuing stepmother's visitation would have been in the child

legislature could expand "parental" rights to cover situations, but the courts would not do so.

In the California case, the court said that expanding the definition of "parent" to cover this case "could expose other natural parents to litigation brought by child-care providers of long standing, relatives, successive sets of step-parents or other close friends of the family.... By deferring to the Legislature in matters involving complex social and policy ramifications far beyond the facts of a particular case, we are not telling the parties that the issues they raise are unworthy of legal recognition. To the contrary, we intended only to illustrate the limitations of the courts in fashioning a comprehensive solution to such a complex and socially significant issue."^{134.10}

COMMENT: Just as a child can have a very significant relationship with a stepparent which could justify visitation, and even custody,^{134.11} so too can a child have such a relationship with a person who has lived with the parent and child and served as a parent to the child. The fact that both "parents" are of the same sex does not diminish the child's potential attachment to both parties as well as both parties' attachments to the child. Granting custody or visitation to a party who is not related by blood or adoption to a child is an extraordinary circumstance which should be done with caution, but it nonetheless should be done if it will serve the best interest of the child.

^{134.10} *Alison D. v. Virginia M.*, 77 N.Y.2d 651, 569 N.Y.S.2d 586, 572 N.E.2d 27 (1991); *Nancy S. v. Michele G.*, 228 Cal. App. 3d 831, 279 Cal. Rptr. 212 (1991).

^{134.11} *But compare In re Adoption of Evan*, 153 Misc. 2d 844, 583 N.Y.S.2d 997 (Sup. Ct. 1992) in which the court approved adoption of a six-year-old boy by the lesbian life-partner of the biological mother. The biological mother and her partner decided to have a child together and obtained sperm from a friend who relinquished any claims to the child. The adoption was recommended by a guardian ad litem and two licensed social workers. The court

stated, "Here this Court finds a child who has all of the above benefits and *two* adults dedicated to his welfare, secure in their loving partnership, and determined to raise him to the very best of their considerable abilities. There is no reason in law, logic, or social philosophy to obstruct such a favorable situation." 583 N.Y.S.2d at 1002 (court's emphasis). The court also cited several trial court opinions from other states approving adoptions by lesbian partners. *Id.* The court also noted that in the event the couple separated, the lesbian partner would be entitled to seek visitation.

^{134.12} *In re Interest of Z.J.H.*, 157 Wis. 2d 431, 459 N.W.2d 602 (Ct. App. 1990).

^{134.13} 9228 Cal. App. 3d at ___, 279 Cal. Rptr. at 219.

^{134.14} For discussion of visitation and custody for stepparents and other third parties, see *supra* §§ 8.06, 8.07 and 8.18.

§ 8.19 Appendix: Grandparent visitation statutes

Pages 438-447. Add new text:

The grandparent visitation statutes cited in this section are part of the divorce statutes of the respective states unless otherwise indicated. For discussion of the significance of including a general grandparent visitation provision as part of a divorce statute, see *supra* § 8.11 and the cases cited under California and Wisconsin, in this supplement.

- | | |
|-------------------|--|
| <i>Alabama</i> | Ala. Code § 30-3-4 (1989), allowing visitation on death or divorce of parents, and under general provision if grandparent has been unreasonably denied visitation with the child for a period exceeding 90 days. |
| <i>Alaska</i> | Alaska Stat. § 25.24.150 (Supp. 1991), allowing visitation on death, divorce, or separation of parents. |
| <i>Arizona</i> | Ariz. Rev. Stat. Ann. § 25-337.01 (West 1991), allowing visitation on death or divorce of parent, or if parent has been missing three months. |
| <i>Arkansas</i> | Ark. Code Ann. § 9-13-103 (1991), allowing visitation on death, divorce, or separation of parents. |
| <i>California</i> | Cal. Fam. Code §§ 3102-3104 (West 1994), allowing visitation on death, divorce, or separa- |

ration of parents, but not if parents live together in an intact marriage, unless one of the parents joins in a petition of the grandparent who seeks visitation

Colorado:

Colo. Rev. Stat. § 19-1-117 (West 1990), recodifying statute allowing grandparent visitation on death or divorce of parents, or upon child being placed with party other than parent.

Connecticut:

Conn. Gen. Stat. Ann. §§ 46b-57, 46b-59 (1986), allowing visitation to "any person" according to the best interest of the child.

Delaware:

Del. Code Ann. § 10-950(7) (Supp. 1988), containing a general provision for grandparent visitation, but prohibiting an order of visitation if both parents object and they cohabit and live as husband and wife.

Georgia:

The parallel provision to the Official Code is Ga. Code Ann. § 74-112 (Harrison Supp. 1989), allowing visitation on death or divorce of the parents, or upon termination of parental rights.

Illinois:

750 Ill. Comp. Stat. § 5/607(b) (West 1993), allowing grandparent or sibling visitation on separation, divorce, or death of parent, or if a parent joins in the petition for visitation. The statute, as amended in 1991, does away with a former provision which allowed a court to give grandparents or siblings visitation for children in intact marriages even if both parents opposed visitation.

Indiana:

Ind. Code Ann. § 31-1-11.7-2 (Burns Supp. 1993), allowing visitation on death or divorce of parents or if child is born out of wedlock.

Iowa:

Iowa Code Ann. § 598.35 (West Supp. 1990), allowing visitation on death or divorce of

parents, or upon foster placement of the child.

Kentucky:

Ky. Rev. Stat. Ann. § 405.021 (1984), general visitation provision.

Louisiana:

La. Rev. Stat. Civ. Code Ancillaries § 9:572 (West 1991), allowing visitation on death or divorce of the parents; however, a grandparent may seek visitation only if the parent to whom the grandparent is related does not have custody.

Maine:

Me. Rev. Stat. Ann. tit. 19, § 752(6) (West Supp. 1989), providing "[t]he court may award reasonable rights of contact with a minor child to any 3rd persons."

Maryland:

Md. Fam. Law Code § 9-102 (Michie Supp. 1993), allowing grandparent visitation if it is in the best interest of the child (and deleting former requirement that visitation was granted only on death or divorce of parent).

Massachusetts:

Mass. Gen. Laws Ann. § 119-39D (West Supp. 1992), allowing grandparent visitation in several circumstances, including death, divorce, or separation of parents, and as part of paternity proceedings.

Michigan:

Mich. Comp. Laws Ann. §§ 722.27(b) & 722.27b (Supp. 1990), allowing grandparent visitation on death or divorce of parents, or upon placement of custody of the child with a person other than a parent.

Minnesota:

Minn. Stat. Ann. § 257.022 (West Supp. 1991), providing grandparents may seek visitation on death or divorce of parents, or if child has lived with grandparent 12 months or more; a non-grandparent may seek visitation if the child has lived with that person more than two years.

- Mississippi*: Miss. Code Ann. §§ 93-16-1 & 93-16-3 (West Supp. 1990), allowing visitation on death or divorce of the parents, or upon termination of parental rights. The statute also provides a general grandparent visitation provision (§§ 93-16-3(2)–93-16-3(4)) under which any grandparent may petition for visitation and obtain visitation rights if the grandparent "had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child, and . . . visitation rights of the grandparent with the child would be in the best interests of the child." "Viable relationship" requires financial support of the grandchild for six months and frequent visitation, including occasional overnight visitation, for not less than one year. This general grandparent provision will be repealed automatically on July 1, 1992, unless there is further action by the legislature.
- Missouri*: Mo. Rev. Stat. § 452.402 (Vernon Supp. 1990), recodifying statute allowing grandparent visitation on death or divorce of parents. The statute also allows visitation when "[a] grandparent is unreasonably denied visitation with the child for a period exceeding 90 days."
- Montana*: Mont. Code Ann. § 40-9-102 (1989), containing general provision for grandparent visitation.
- Nebraska*: Neb. Rev. Stat. §§ 43-1801–43-1803 (1986), allowing visitation on death or divorce of the parents.
- Nevada*: Nev. Rev. Stat. Ann. §§ 125A.330 & 125A.340 (Supp. 1989), recodifying statute allowing grandparent and sibling visitation on death, divorce, or separation of parents, or upon termination of parental rights.
- New Hampshire*: N.H. Rev. Stat. Ann. §§ 458:17(VI), 458:17-d (Supp. 1990), general grandparent visitation provision enumerating eight factors for consideration relating to quality of grandparent-grandchild relationship and degree of conflict between grandparent and parent.
- New Jersey*: N.J. Stat. Ann. § 9:2-7.1 (West Supp. 1990), allowing grandparent or sibling visitation on death, divorce, or separation of parents. See also *Thompson v. Vanaman*, 210 N.J. Super. 225, 509 A.2d 304 (Ch. Div. 1986) (holding that the court had "inherent equitable jurisdiction as well as jurisdiction pursuant to court rules" to grant visitation in circumstances other than death and divorce of the parents). *Thompson* is described further in § 8.11, note 100 *supra* of this supplement.
- New Mexico*: N.M. Stat. Ann. §§ 40-9-1–40-9-4 (1989), allowing visitation on death or divorce of parents, or if child has lived with grandparents six months or more.
- New York*: N.Y. Dom. Rel. Law §§ 72 & 240(1) (McKinney Supp. 1990), allowing visitation on death, divorce, or separation of parents. The statute (§ 72) also contains a general visitation provision: "Where either or both of the parents of a minor child, residing within this state, is or are deceased, or where circumstances show that conditions may exist which equity would see fit to intervene," the grandparent may seek visitation.
- Ohio*: Ohio Rev. Code Ann. § 3109.051 (Page's Supp. 1990), allowing visitation to grandparent, relative, or any other person if action relates to divorce or support; the statute lists

- 15 factors for consideration. § 3109.11 provides for visitation upon death of parent.
- Oklahoma:* Okla. Stat. Ann. tit. 10, § 5 (West Supp. 1990), allowing visitation upon termination of parental rights; plus a general visitation provision not in the divorce statute—providing: "any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the district court deems it to be in the best interest of the child."
- Oregon:* Or. Rev. Stat. Ann. §§ 109.119, 109.121 & 109.123 (Butterworth 1990), general visitation and custody provision, allowing "any person" including, but not limited to, a grandparent, stepparent, relative by blood or marriage, and foster parent who has "established emotional ties creating a parent-child relationship" to seek visitation or custody regardless of whether other proceedings are pending (a "parent-child relationship" includes providing day-to-day care for the child); the statute also provides that third parties with an "ongoing personal relationship with substantial community for at least one year with the child" (or three years for foster parents) may seek visitation; another provision of the statute applying specifically to grandparents allows grandparents to seek visitation if: "(A) The grandparent has established or has attempted to establish ongoing personal contact with the child; (B) The custodian has denied the grandparent reasonable opportunity to visit the child."
- Pennsylvania:* Pa. Cons. Stat. Ann. tit. 23, §§ 5311-5314 (Purdon Supp. 1990), allowing visitation on death or divorce of the parents or after the child had lived with the grandparent for one year.
- Rhode Island:* R.I. Gen. Laws §§ 15-5-24.1—15-5-24.3 (Supp. 1988), allowing visitation on death or divorce of parents; the grandparents must present "clear and convincing evidence" to rebut a presumption that the parents' refusal of visitation was reasonable.
- South Dakota:* S.D. Codified Laws Ann. §§ 25-4-52, 25-4-56 (Smith 1984 & Smith Supp. 1990), general grandparent visitation provision. "The circuit court may grant grandparents reasonable rights of visitation with their grandchild, with or without petition by the grandparents, if it is in the best interest of the grandchild." The statute is part of South Dakota's divorce laws, but the general nature of the visitation provision is reflected by the legislature's repeal of a section of the law which limited visitation to cases involving the death or divorce of the parents.
- Tennessee:* Tenn. Code Ann. § 36-6-301 (Michie Supp. 1990), general "best interests" visitation provision, including for children in the custody of non-parents.
- Texas:* Tex. Fam. Code Ann. § 14.03(c) (Vernon Supp. 1990), allowing visitation in a variety of circumstances, including: the death, divorce, separation, or incarceration of the parents; abuse or neglect of the child; termination of parental rights; and cases in which the child resided with the grandparent for at least six months.
- Utah:* Utah Code Ann. § 30-3-5(4) (Michie Supp. 1993), providing: In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child." (The phrase "other members of the immedi-

cluding death, divorce, or separation of parents, or if child had lived with grandparents for six consecutive months, or in connection with juvenile proceedings.

- ate family" was substituted for the phrase "other relatives.")
- Vermont:* Vt. Stat. Ann. tit. 15, §§ 1011-1016 (1989), allowing visitation on death or divorce of the parents.
- Virginia:* Va. Code § 20-107.2 (1990), allowing visitation upon divorce of the parents; visitation can be for grandparents, stepparents, or other family members.
- Washington:* Wash. Code Ann. 26.09.210 (West Supp. 1990), providing, "The court may order visitation rights for a person other than the parent when visitation may serve the best interest of the child whether or not there has been any change of circumstances."
- West Virginia:* W. Va. Code §§ 48-2-15(b)(1) & 48-2B-1 - 48-2B-9 (Michie Supp. 1993), allowing grandparent visitation in several circumstances, including death, divorce, or separation of parents, or if child had resided with grandparent for six consecutive months during the preceding two years, or when child was born out of wedlock.
- Wisconsin:* Wis. Stat. Ann. § 767.245 (West 1993), allowing visitation to grandparents, stepparents, and other persons who have maintained a relationship with the child similar to a parent-child relationship. *Van Cleeve v. Hemminger*, 111 Wis. 2d 513, 115 N.W.2d 571 (App. Ct. 1987), holding that Wisconsin's former general visitation statute which allowed visitation if "it is in the best interest and welfare of the child" did not include a right to seek visitation of grandchildren in an intact marriage.
- Wyoming:* Wyo. Stat. Ann. §§ 20-2-113(c) & 20-7-101 (Michie Supp. 1993), allowing visitation of grandparent in several circumstances, in-

1989



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		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		X
9. Florida	Fla. Stat. §61.13(2) (b)2c (Supp. 1987)		X		
10. Georgia	Ca. 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		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		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		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		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(33) (Law. Co-op. 1976)				X
41.	South Dakota	S.D. Codified Laws Ann. §§25-4-52 to -54 (1984)	X	X		X
42.	Tennessee	Tenn. Code Ann. §36-6-301 (Supp. 1988)				X
43.	Texas	Tex. Fam. Code Ann. §14.03(u)-(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		

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No 1
Bill Version: SSSB 27
(S) Publish Date: 3/1/95

Revision Date: _____ Dept. Affected: Alaska Court System
Title: An Act relating to child visitation rights BRU: Trial Courts
of grandparents and other persons Components: _____
Sponsor: Sens. Donley, Ellis, Lincoln
Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
Agency: Alaska Court System Date: 02/21/95

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC* Date: 02/21/95
Agency: Alaska Court System

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