



Grandparents' Rights

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Background

Grandparents in every state in the United States have rights, in some circumstances, to be awarded [CUSTODY](#) of their grandchildren or to be awarded court-mandated visitation with their grandchildren. Grandparents' rights are not constitutional in nature, nor did they exist at [COMMON LAW](#). Recognition of grandparents' rights by state legislatures is a fairly recent trend, and most of the statutes have been in effect for less than 35 years.

Federal legislation may affect grandparents' rights, though these rights are based primarily on state law. Congress passed the Parental **KIDNAPPING** Prevention Act in 1980, which requires that each state give full faith and credit to [CHILD CUSTODY](#) decrees from other states. Federal legislation passed in 1998 also requires that courts in each state recognize and enforce grandparental visitation orders from courts in other states. All states have adopted a version of the Uniform Child Custody **JURISDICTION** and Enforcement Act ([UCCJEA] previously the Uniform Child Custody Jurisdiction Act), which requires courts in the state where a child resides to recognize and enforce valid child custody orders from another state. Though the UCCJEA is not a federal [STATUTE](#), the provisions of this uniform law as adopted in each state are similar.

A number of courts have recently determined that state statutes providing visitation to grandparents are unconstitutional. The United States Supreme Court in the 2000 case of *Troxel v. Granville* determined that the Washington visitation statute violated the due process rights of parents to raise their children. This case and similar decisions by state courts have caused several state legislatures to consider bills that would modify or completely revise the visitation rights in those states. Grandparents who seek to attain visitation rights should check the current status of state legislation in their respective states.

Factors Considered for Custody or Visitation

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

Best Interests of the Child

Courts in every jurisdiction must consider the "best interests of the child" when granting custody or visitation rights to a grandparent. In some states, the relevant statute provides a list of factors the court should consider when determining a child's best interests. Other states do not provide factors in the statute, but courts in those states have likely identified factors in custody and visitation cases interpreting the state statutes.

The following factors in determining the best interests of the child are among those included in state statutes and [CASE LAW](#):

- The needs of the child, including considerations of physical and emotional health of the child, the safety of the child, and the welfare of the child
- The capability of the parents and/or grandparents to meet the needs of the child
- The wishes of the parent(s) and the grand-parent(s)
- The wishes of the child, if the child is capable of making decisions for himself or herself
- The strength of the relationship between the grandparent(s) and grandchild
- The length of the relationship between the grandparent(s) and grandchild
- EVIDENCE of abuse or neglect by the parent(s) or grandparent(s)
- Evidence of substance abuse by the parent(s) or grandparent(s)
- The child's adjustment to the home, school, or community
- The ability of the parent(s) or grandparent(s) to provide love, affection, and contact with the child
- The distance between the child and the parent(s) or grandparent(s)

Requirements for Awarding Custody to Grandparents

STATUTORY provisions for child custody (termed "conservatorship" in a few states) are usually less specific than the statutes regarding grandparent visitation. Courts must first consider the relationship of the parent or parents with the child before considering whether granting custody to grandparent(s) is appropriate. Several states specifically include consideration of grandparents as custodians if both parents are deceased. If either or both parents are alive, courts in most states will presume that the parent of the child should retain custody. Grandparents must generally prove the parent(s) unfit in order to overcome the judicial presumption in favor of the parent. Even if the relationship between the grandparent and grandchild is strong, it is very difficult for a grandparent to attain custody of a grandchild against the wishes of the parent or parents.

Requirements for Awarding Visitation to Grandparents

State statutes providing visitation to grandparents generally require that a number of conditions occur before visitation rights can be granted. The marital status of the parents must be considered in a majority of states before a court will evaluate the relevant factors to determine if visitation is appropriate. In some of these states, the parents' marital status is considered only if the grandparent or grandparents have been denied visitation by the parents. In other states, marital status is considered only if the grandchild resided with the grandparents for a certain length of time.

A minority of states require that at least one parent is deceased before a court can award visitation to the parent of the deceased parent of the child. For example, a maternal grandparent in one of these states may be awarded visitation only if the mother of the child is deceased.

State statutes vary in their treatment of cases in which a grandchild has been adopted. In several states, [ADOPTION](#) by anyone, including a stepparent or another grandparent, terminates the visitation rights of the grandparent. In some states, adoption by a stepparent or another grandparent does not terminate visitation

rights, but adoption by anyone else does terminate these rights. In other states, adoption has no effect on the visitation rights of grandparents, so long as other statutory requirements are met.

Once the statutory conditions for visitation are met, grandparents must establish the factors that courts may or must consider to grant visitation rights. In every state, grandparents must prove that granting visitation to the grandchild is in the best interest of the child. Several states also require that the court consider the prior relationship between the grandparent and the grandchild, the effect grandparental visitation will have on the relationship between the parent and child, and/or a showing of harm to the grandchild if visitation is not allowed.

Courts' Jurisdiction over Custody and Visitation Cases

Parties Residing in the Same State

Each state provides the appropriate venue which can make custody and visitation determinations in a case where all of the parties reside in the same state. Where a [DIVORCE](#) is pending, the appropriate venue for making a custody or visitation decision involving the grandparents and grandchildren is almost always the court [HEARING](#) the divorce proceedings. Some states require visitation petitions to be filed with another domestic relations suit. Some states also permit visitation requests after a domestic relations order has been rendered or as an original proceeding.

Parties Residing in Different States

If a child's parents and/or grandparents live in different states, one of several laws will determine the appropriate court to hear a custody or visitation case. If a valid custody or visitation [DECREE](#) has been entered in one state, the Parental Kidnapping Prevention Act requires that another state must enforce and must not modify the decree. Another state may modify the decree only if the original state no longer has jurisdiction over the case or has declined jurisdiction to modify the custody or visitation decree. Congress amended this statute in 1998 to include a grandparent in the definition of "contestant."

If no state has made a valid custody determination, the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act, as adopted by each state, will apply. A court in a particular state has power to hear a custody case if that state is the child's "home state" or has been the home state of the child within six months of the date the legal action was brought and at least one parent continues to reside in the state. Other situations include those in which a state with jurisdiction over a custody case declines jurisdiction or no other state may assert jurisdiction over the child.

State Provisions for Custody and Visitation

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

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

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[APPELLATE COURT](#) in a particular state has ruled a visitation statute unconstitutional, it does not necessarily render the statute invalid. The provisions of these statutes are included below. However, if a state supreme court or the United States Supreme Court has determined that the visitation statute is unconstitutional, the provisions are not included below.

ALABAMA: The custody statute requires courts to consider the moral character of the parents and the age and sex of the child to determine the best interests of the child. Conditions for grandparent visitation rights include a determination of whether a parent is deceased, the child's parents are divorced, or the grandparent has been denied visitation. Adoption cuts off all visitation rights of grandparents. At least one Alabama Court of Appeals ruled the Alabama statute providing grandparental visitation unconstitutional.

ALASKA: Determination of grandparent visitation rights must be made in an action for divorce, legal separation, or child placement action, or when both parents have died. Adoption cuts off the visitation rights of grandparents unless the adoption decree provides for visitation between the child and the natural relatives.

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

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

CALIFORNIA: Conditions for grandparent visitation rights include a determination of whether a parent is deceased, the child's parents are divorced or separated, the whereabouts of one parent is unknown, or the child is not residing with either parent. In addition to determining that visitation is in the child's best interests, the court must find that the grandparents had a preexisting relationship with the grandchild. The court must also balance visitation with the parents' rights. If both parents agree that the court should not grant visitation to the grandchild, the court will presume that visitation is not in the child's best interests. Adoption does not automatically cut off the visitation rights of grandparents. Note that a California Court of Appeals in 2001 ruled the California statute providing grandparental visitation unconstitutional.

COLORADO: A court may award visitation rights if the child's parents' marriage has been terminated, legal custody of the child has been given to a third party, the child has been placed outside the home of either of the child's parents, or the grandparent is the parent of a deceased parent of the child. Adoption cuts off the visitation rights of the grandparents unless the adoption is granted to a stepparent.

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

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

FLORIDA: The Florida Supreme Court has ruled the Florida statute providing grandparental visitation unconstitutional, and the Florida Legislature has not adopted an alternative statute.

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

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visitation rights. Adoption cuts off the visitation rights of the grandparents unless the adoption is granted to a stepparent or a natural relative of the child.

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

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

ILLINOIS: A court may award visitation rights if the parents are not living with one another; one of the parent's is absent, one of the parents is deceased, or one of the parents joins the petition with the grandparent. A court may not allow visitation to a paternal grandparent if the grandchild was born out of wedlock and [PATERNITY](#) has not been established. Visitation will also not be allowed if the child is surrendered voluntarily by the parents to anyone besides the Illinois Department of Children and Family Services or a foster care service. Adoption cuts off the visitation rights of the grandparents unless the adoption is granted to a stepparent.

INDIANA: A court may award visitation rights if either of the child's parents is deceased, the child's parents' marriage has been terminated, or the child was born out of wedlock. In addition to considering whether visitation is in the child's best interest, a grandparent must show that he or she has had, or attempted to have, meaningful contact with the grandchild. Adoption cuts off the visitation rights of the grandparents unless the adoption is granted to a stepparent or a natural grandparent, sibling, aunt, uncle, niece, or nephew of the child.

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

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

KENTUCKY: A court may award visitation rights if visitation would be in the child's best interest. A court may award a grandparent the same visitation rights as a parent without custody if the grandparent's child is deceased and the grandparent has provided [CHILD SUPPORT](#) to the grandchild. Adoption cuts off the visitation rights of grandparents unless the adoption is granted to a stepparent, and the grandparent's child has not had his or her parental rights terminated.

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

MAINE: A court may award visitation right if at least one of the child's parents is deceased, visitation is in the child's best interest, and visitation will not interfere significantly with the relationship between the parent and the child. Adoption cuts off all visitation rights of grandparents.

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

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

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

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

MISSISSIPPI: The custody statute does not provide a list of factors for determining the best interest of the child. If the child is at least 12 years old, he or she may choose who takes custody. Conditions for grandparent visitation rights include determination of whether one of the child's parents is deceased, or a parent has had his or her parental rights terminated. The court must also consider the relationship between the grandparent and grandchild. Adoption cuts off the visitation rights of grandparents unless the adoption is granted to a stepparent or a blood relative.

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

MONTANA: A court may award visitation rights if the court finds that visitation is in the child's best interest. Adoption cuts off the visitation rights of grandparents unless adoption is granted to a stepparent or another grandparent.

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

NEVADA: A court may award visitation rights if the child's parents are deceased, the child's parents are divorced or separated, or one of the child's parents have had his or her parental rights terminated. The child's parent or parents must have unreasonably restricted visitation between the grandparent and grandchild before a court may award visitation to a grandparent. If a child's parent or parents has denied or unreasonably restricted access to a grandparent, a court will presume that visitation is not in the child's best interest. Adoption cuts off all rights of grandparents unless grandparents request visitation before the termination of the parental rights of the child's parent or parents.

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

NEW JERSEY: A court may grant visitation rights if visitation is in the child's best interest. Adoption cuts off the rights of grandparents, unless adoption is granted to a stepparent. Note that a New Jersey Court of Appeals in 2001 ruled the New Jersey statute providing grandparental visitation unconstitutional.

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

NEW YORK: The custody statute does not provide statutory factors for determining the best interest of the child. A court may grant visitation rights if at least one of the child's parents is deceased or if the court finds that equity demands intervention based on the circumstances of the case. Adoption does not automatically cut off the visitation rights of grandparents. Note that a New York [APPELLATE](#) court in 2001 ruled the New York statute providing grandparental visitation unconstitutional.

NORTH CAROLINA: The custody statute does not provide statutory factors for determining the best interest of the child. A court may grant visitation rights as part of an order determining custody of the child. Adoption cuts off the visitation rights of grandparents unless adoption is granted to a stepparent or a relative of the child, where the grandparent proves that a substantial relationship exists between the grandparent and grandchild.

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

OHIO: A court may grant visitation rights if the child's parents are deceased, divorced, separated, were parties to a suit for annulment or child support, or were never married to one another. Grandparents must show they have an interest in the child's welfare. Adoption cuts off the visitation rights of grandparents unless adoption is granted to a stepparent.

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

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

PENNSYLVANIA: A court may grant visitation if at least one of the child's parents is deceased, the parents are divorced or separated for more than six months, or the child has lived with the grandparent for more than 12 months. Determination of grandparent visitation must include consideration of the best interest of the child, potential interference with the parent-child relationship, and the contact between the grandparent and

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grandchild. Adoption cuts off visitation rights of grandparents unless adoption is granted to a stepparent or grandparent.

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

SOUTH CAROLINA: A court may grant visitation if one parent is deceased, or the parents are divorced or separated. The court must consider the relationship between the grandparent and the child, as well as the parent and the child. Adoption cuts off all visitation rights of grandparents.

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

TENNESSEE: The Tennessee Supreme Court ruled a previous version of the Tennessee grandparent visitation statute unconstitutional.

TEXAS: The custody statute does not provide statutory factors for a court to determine proper custody. Conditions for grandparent visitation rights include a determination that one of the child's parents is deceased, incompetent, incarcerated, or has had his or her parental rights terminated. Visitation may also be awarded if the parents are divorced, the child has been abused or neglected, the child has been adjudicated a delinquent or in need of supervision, or the child has lived with the grandparent for at least six months within 24 months of the filing of the petition for visitation. Adoption cuts off the visitation rights of the grandparent unless the adoption is granted to a stepparent.

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

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

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

WASHINGTON: The United States Supreme Court case of *Troxel v. Granville* ruled the Washington grandparent visitation statute is unconstitutional.

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

WISCONSIN: Conditions for grandparent visitation rights include consideration of the relationship between the grandparent and grandchild. Visitation may also be permitted if one of the child's parents is deceased. Adoption cuts off the visitation rights of grandparents unless adoption is granted to a stepparent.

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

Additional Resources

Grandparents: An Annotated Bibliography on Roles, Rights, and Relationships. Carol Ann Strauss, Scarecrow Press, 1996.

Grandparents' Rights. Tracy Truly, Sphinx Publishing, 1999.

Grandparents' Visitation Rights: A Legal Research Guide. M. Kristine Taylor Warren, W. S. Hein, 2001.

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U. S. Code, Title 28: Judiciary and Judicial Procedure, Part V: Procedure, Chapter 115: Evidence; Documentary. U. S. House of Representatives, 2000. Available at http://uscode.house.gov/title_28.htm.

Organizations

American Association of Retired Persons (AARP)

601 E. St., NW
Washington, DC 20049 USA
Toll-Free: 800-424-3410
URL: <http://www.aarp.org>

Association for Conflict Resolution (ACR)

1527 New Hampshire Avenue NW

Washington, DC 20036 USA
Phone: (202) 667-9700
Fax: (202) 265-1968
URL: <http://acresolution.org>

Grandparent Rights Organization (GRO)

100 West Long Lake Rd., Ste. 250
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URL: <http://www.grandparentsrights.org>
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