

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-137—HB 5440

Aging Committee

Judiciary Committee

**AN ACT CONCERNING VISITATION RIGHTS FOR GRANDPARENTS
AND OTHER PERSONS**

SUMMARY: Prior law allowed grandparents and other third parties to petition for the right to visit a minor; and the court could grant the request, subject to conditions and limitations it deemed equitable. State case law requires a petitioner to show (1) a parent-like relationship with the minor exists and (2) the minor will suffer real and substantial harm if the visitation is denied. (This means a degree of harm analogous to a claim that the minor is neglected or uncared-for as defined under state child abuse statutes.) The act requires the petitioner to include in his or her visitation request, specific and good-faith allegations of those two conditions and, unlike with most petitions, to swear that its allegations are true.

The court must hold a hearing and grant the request if it finds, by clear and convincing evidence, that these conditions have been met. Establishing the conditions by “clear and convincing evidence” complies with the standard required by a recent Connecticut Supreme Court decision (see **BACKGROUND**).

The act also:

1. establishes factors the court may consider when determining whether a parent-like relationship exists between the petitioner and the minor;
2. specifies visitation terms and conditions the court may set;
3. specifies that any visitation rights granted to a third party do not prevent a custodial parent from relocating; and
4. allows the court to order one party to pay the other’s fees, including those charged by the minor’s attorney, guardian ad litem, or expert, based on the individual’s ability to pay.

EFFECTIVE DATE: October 1, 2012

PARENT-LIKE RELATIONSHIP DETERMINATIONS

Under the act, when determining the existence of a parent-like relationship between the petitioner and minor, the court may consider:

1. the existence and length of the relationship before the court petition was filed,
2. the length of time that relationship has been disrupted,
3. the petitioner’s specific parent-like activities toward the minor,
4. any evidence that the petitioner unreasonably undermined the custodial parent’s authority and discretion,
5. the significant absence of a parent from the minor’s life,

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6. the death or physical separation of the minor's parents, and
7. the petitioner's and the custodial parent's fitness.

If the petitioner is a grandparent, the court may also consider the history of regular contact and proof of a substantial relationship between the grandparent and minor. The act defines "grandparent" as a grandparent or great-grandparent related to a minor child by blood, marriage, or adoption.

VISITATION

By law, the court may set the terms and conditions of any visitation it grants, provided they are not contingent on any court order of financial support. The act specifies that such terms and conditions may include (1) the visitation's dates, days, time, and location; (2) whether overnight visits are allowed; and (3) any other conditions it determines are in the minor's best interest. The law requires the court to consider the minor's wishes if he or she is old enough and capable of forming an intelligent opinion.

When determining the visitation terms and conditions, the act allows the court to consider the effect of (1) the visitation on the minor's relationship with his or her parents or guardians and (2) any domestic violence that has occurred between or among parents, grandparents, petitioners, and the minor.

BACKGROUND

State Supreme Court Case on Visitation

In *Roth v. Weston*, a maternal grandmother and aunt petitioned for visitation with children whose father had terminated it after the children's mother committed suicide (*Roth v. Weston*, 259 Conn. 202 (2002)). The relatives claimed that visitation was in the children's best interest, although they did not contend that the father was an unfit parent. In his response, the father presented reasons why he believed visitation was not in the children's best interest.

The trial court granted the petition. But the Connecticut Supreme Court reversed, ruling that the constitution requires a third party, including a grandparent or a great-grandparent, seeking visitation to make specific and good-faith allegations that (1) a parent-like relationship exists between the child and the person seeking visitation and (2) denial of the visitation will cause real and significant harm to the child as defined under Connecticut's child abuse statutes.

Once these high jurisdictional hurdles are overcome, the petitioner must prove the allegations by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation.

OLR Tracking: ND:KM:CR:eh