



## GRANDPARENTS' VISITATION RIGHTS IN CONNECTICUT AND SELECT STATES

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### U.S. SUPREME COURT DECISION

- The seminal case on grandparents' visitation rights is *Troxel v. Granville* (120 S.Ct. 2054 (2000)).
- In *Troxel*, the U.S. Supreme Court ruled that the State of Washington's grandparent visitation statute violated the U.S. Constitution's Due Process Clause because it interfered with a parent's right to make decisions about the care, custody, and control of his or her children.
- Under *Troxel*, state laws must (1) give deference to a fit parent's decision to deny visitation, (2) put the burden of proof on the grandparent, and (3) afford due process to a fit parent's decision.

### ISSUE

This report summarizes (1) Connecticut's and other New England states' laws on grandparents' visitation rights and (2) recent legislation on this issue.

### SUMMARY

Connecticut and all the other New England states have enacted laws that specify the standards under which grandparents have standing to petition for court-ordered visitation of their grandchildren.

The states' laws reflect a variety of definitions, standards, and thresholds that state courts apply to grandparent visitation cases, such as the (1) best interest of the child, (2) existence of a substantial grandparent-child relationship, and (3) parent's and grandparent's fitness.

State third-party visitation laws must address the U.S. Supreme Court's constitutional concerns that they afford due process to a fit parent's decision to deny visitation.

In 2014, at least five states (California, Colorado, Louisiana, South Carolina, and Virginia) enacted grandparents' visitation rights laws, which, among other things, (1) established the conditions under which courts may grant visitation and (2) extended such rights to great- and step-grandparents. So far in 2015, at least six states (Florida, Massachusetts, New Jersey, New York, Texas, and Washington) have proposed legislation on grandparents' visitation rights.

## **CONNECTICUT**

Connecticut law provides standing for grandparents to ask the Superior Court to grant them visitation. Under the law, "grandparent" means a grandparent or great-grandparent related to the child by blood, marriage, or adoption.

The court must grant visitation rights if it finds, after a hearing and by clear and convincing evidence, that (1) a parent-like relationship exists between the grandparent and the child and (2) denial of visitation would cause real and significant harm. The law specifies the factors a court may consider in determining whether a parent-like relationship exists, such as the length of the relationship, any evidence of the grandparent undermining the custodial parent's authority, and significant absence of a parent from the child's life.

The law requires the court to make its decision based on the child's best interests, giving consideration to the child's wishes if he or she is old enough and capable of forming an intelligent opinion.

In determining the terms and conditions of visitation, the court may consider (1) the effect that such visitation will have on the relationship between the child and his or her parents or guardians and (2) the effect on the child of any domestic violence that has occurred between or among parents, grandparents, and the child ([CGS §§ 46b-59](#), et. seq.).

## **OTHER NEW ENGLAND STATES**

### ***Maine***

Maine's Grandparents Visitation Act gives a grandparent (biological or adoptive) standing to petition the court for reasonable visitation rights if (1) at least one of the child's parents or legal guardians has died or (2) a relationship exists between the child and grandparent or, if not, a sufficient effort to establish one has been made.

The court may grant a grandparent reasonable visitation rights if it finds that to do so would be in the child's best interest and would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child. The court must consider any factor having a reasonable bearing on the physical and psychological well-being of the child, such as the:

1. child's age;
2. grandparent-child relationship, including the amount of previous contact;

3. child's preference, if he or she is old enough to express a meaningful preference;
4. duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
5. stability of any proposed living arrangements for the child;
6. motivation of the parties involved and their capacities to give the child love, affection and guidance;
7. child's adjustment to his or her present home, school, and community;
8. capacity of the parent and grandparent to cooperate or to learn to cooperate in child care;
9. methods of assisting cooperation and resolving disputes and each person's willingness to use those methods; and
10. existence of a grandparent's conviction for a sex offense or a sexually violent offense (Me Rev. Stat tit. 19-a §§ 1801, et. seq.).

### ***Massachusetts***

Grandparents in Massachusetts may petition for reasonable visitation rights if the unmarried minor child's parents are divorced or separated, if a parent is deceased, or if, for paternal grandparents, the child was born out of wedlock and paternity has been established. The statute allows the court to grant visitation if doing so is in the child's best interest (MASS. GEN. LAWS Ch.119, § 39D).

The Massachusetts Supreme Court has recognized that the use of the "best interest of the child" standard in the context of grandparent visitation, left unspecified, cannot survive a due process challenge. The court found that a parent's decision must be given "presumptive validity."

The court further stated that:

to succeed, the grandparents must allege and prove that the failure to grant visitation will cause the child significant harm by adversely affecting the child's health, safety, or welfare. The requirement of significant harm presupposes proof of a showing of a significant preexisting relationship between the grandparent and the child. In the absence of such a relationship, the grandparent must prove that visitation between grandparent and child is nevertheless necessary to protect the child from significant harm (*Blixt v. Blixt*, 437 Mass. 649 (2002)).

## ***New Hampshire***

New Hampshire law gives grandparents (adoptive or natural) the right to petition for reasonable visitation rights unless access to the child has been restricted for any reason before or at the time of divorce, death, relinquishment, termination of parental rights, or other reason for the absence of a nuclear family. The court must consider the following in making its order:

1. the best interest of the child,
2. whether the visitation would interfere with any parent-child relationship or a parent's authority over the child,
3. the nature of the grandparent-child relationship,
4. the nature of the relationship between the grandparent and the child's parent and its effect on the child,
5. any circumstances that resulted in the absence of a nuclear family,
6. any guardian ad litem's recommendation regarding visitation,
7. the child's expressed preferences or wishes, and
8. any other factors the court finds appropriate or relevant to the visitation petition (N.H. Rev. Stat. § 461-A:13).

## ***Rhode Island***

Grandparents may petition for visitation in Rhode Island Family Court. In order to grant reasonable visitation rights, the court must find that:

1. it is in the child's best interest;
2. the grandparent is a fit and proper person to have such rights;
3. the grandparent has repeatedly attempted to visit the child during the 30 days immediately before the date the petition was filed and was not allowed to do so as a direct result of the actions of either or both parents;
4. court intervention is the only way the grandparent is able to visit the child;  
and
5. the grandparent, by clear and convincing evidence, has successfully rebutted the presumption that the parent's decision to refuse the visitation was reasonable.

In addition to this general provision, the law also specifically allows grandparents to petition for visitation if the parent is deceased or divorced (R.I. GEN. LAWS §§ 15-5-24.1, et. seq.).

### **Vermont**

Under Vermont law, a grandparent has standing to petition the court for visitation, and a court must grant the petition if it finds that to do so would be in the child's best interest (VT. STAT. ANN. tit. 15 §§ 1011 & 1013).

In determining the child's best interest, the court must consider the:

1. love, affection, and other emotional ties between the grandparent and the child;
2. capacity and disposition of the grandparent to give the child love, affection, and guidance;
3. nature of the relationship between the grandparent and the child, and the desirability of maintaining that relationship;
4. grandparent's moral fitness;
5. grandparent's mental and physical health;
6. reasonable preference of the child, if the court deems him or her to be old enough to express a preference; and
7. grandparent's willingness and ability to facilitate and encourage a close and continuing relationship between the child and other parties.

The court must also consider any other factor that it finds necessary to make a just decision (VT. STAT. ANN. tit. 15 § 1013).

Under Vermont law, a grandparent's visitation order automatically expires if the child is later adopted by someone other than the child's stepparent, grandparent, or other relative (VT. STAT. ANN. tit. 15 § 1016).

### **RECENTLY ENACTED LAWS**

As shown in Table 1, in 2014, at least five states enacted grandparents' visitation rights laws, including provisions related to the conditions under which visitation may be granted and extending such rights to great- and step-grandparents.

**Table 1: Laws Enacted in 2014 on Grandparents' Visitation**

<b>State (Bill)</b>	<b>Provisions</b>
California (AB 1628)	Allows grandparents visitation when one parent is incarcerated or institutionalized even if the parents (natural or adoptive) are married.
Colorado (HB 1362)	Extends visitation rights to great-grandparents.
Louisiana (SB 578)	Allows a court, regardless of custody outcome, to grant a grandparent or step-grandparent visitation rights if it finds that doing so is in the child's best interest.
South Carolina (HB 4348)	Allows a court to order visitation for a grandparent if the parents are divorced, live in separate homes, or a parent has died. A court may do so if it finds that: <ol style="list-style-type: none"> <li>1. the child's parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child; and</li> <li>2. awarding visitation would not interfere with the parent-child relationship, and it finds by clear and convincing evidence that:               <ul style="list-style-type: none"> <li>• the child's parents or guardians are unfit or</li> <li>• there are compelling circumstances to overcome the presumption that the parental decision is in the child's best interest.</li> </ul> </li> </ol>
Virginia (HB 359)	Extends visitation rights to step-grandparents.

## RECENTLY PROPOSED LAWS

So far in 2015, at least six states have proposed legislation on grandparent's visitation rights (see Table 2).

**Table 2: 2015 Proposed Legislation on Grandparents' Visitation**

<b>State (Bill)</b>	<b>Bill Status</b>	<b>Provisions</b>
Florida (HB 149)	Pending in the House	<ul style="list-style-type: none"> <li>• Gives grandparents and great-grandparents standing to file for visitation</li> <li>• Establishes conditions under which a court may terminate grandparent's visitation</li> <li>• Gives great-grandparents right to notice of adoption</li> </ul>
Massachusetts (HB 1546 & HB 1564)	Both pending in the House	<ul style="list-style-type: none"> <li>• Establishes a task force to study grandparents' visitation rights</li> <li>• Extends visitation rights to great-grandparents</li> </ul>
New Jersey (SB 1205)	Pending in the Senate Judiciary Committee	Codifies in statute legal standards, developed in case law, for establishing grandparent visitation when the child's parent, guardian, or legal custodian objects

**Table 2 (continued)**

New York (SB 2881)	Pending in the Senate Children and Families Committee	Gives a great-grandparent standing to apply to the state supreme court for visitation rights when either or both parents of the child is or are deceased
Texas (HB 524)	Pending in the House	Among other things, changes the standards by which a grandparent may be granted access to a grandchild. Such grandparent must prove by clear and convincing evidence, rather than by a preponderance of the evidence, that denial would significantly impair the child's physical health or emotional well-being.
Washington (SB 5005)	Pending in the Senate	Gives a natural grandparent standing to seek visitation.

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