



House of Representatives

General Assembly

File No. 560

February Session, 2018

House Bill No. 5212

House of Representatives, April 18, 2018

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING A GRANDPARENT'S RIGHT TO VISITATION WITH HIS OR HER GRANDCHILD.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-59 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2018*):

3 (a) As used in this section:

4 (1) "Grandparent" means a grandparent or great-grandparent
5 related to a minor child by (A) blood, (B) marriage, or (C) adoption of
6 the minor child by a child of the grandparent; and

7 (2) "Real and significant harm" means that the minor child is
8 neglected, as defined in section 46b-120, or uncared for, as defined in
9 said section.

10 (b) Any person may submit a verified petition to the Superior Court
11 for the right of visitation with any minor child, [. Such petition] except
12 that if a verified petition has been filed by a grandparent and (1) either

13 or both parents of the minor child are deceased, (2) the parents of the
14 minor child are divorced, or (3) the parents of the minor child are
15 living separate and apart in different locations, the verified petition for
16 the right of visitation shall be determined in accordance with the
17 provisions of section 2 of this act. A verified petition submitted under
18 this section shall include specific and good-faith allegations that [(1)]
19 (A) a parent-like relationship exists between the person and the minor
20 child, and [(2)] (B) denial of visitation would cause real and significant
21 harm. Subject to subsection (e) of this section, the court shall grant the
22 right of visitation with any minor child to any person if the court finds
23 after hearing and by clear and convincing evidence that a parent-like
24 relationship exists between the person and the minor child and denial
25 of visitation would cause real and significant harm.

26 (c) In determining whether a parent-like relationship exists between
27 the person and the minor child, the Superior Court may consider, but
28 shall not be limited to, the following factors:

29 (1) The existence and length of a relationship between the person
30 and the minor child prior to the submission of a petition pursuant to
31 this section;

32 (2) The length of time that the relationship between the person and
33 the minor child has been disrupted;

34 (3) The specific parent-like activities of the person seeking visitation
35 toward the minor child;

36 (4) Any evidence that the person seeking visitation has
37 unreasonably undermined the authority and discretion of the custodial
38 parent;

39 (5) The significant absence of a parent from the life of a minor child;

40 (6) The death of one of the minor child's parents;

41 (7) The physical separation of the parents of the minor child;

42 (8) The fitness of the person seeking visitation; and

43 (9) The fitness of the custodial parent.

44 (d) In determining whether a parent-like relationship exists between
45 a grandparent seeking visitation pursuant to this section and a minor
46 child, the Superior Court may consider, in addition to the factors
47 enumerated in subsection (c) of this section, the history of regular
48 contact and proof of a close and substantial relationship between the
49 grandparent and the minor child.

50 (e) If the Superior Court grants the right of visitation pursuant to
51 subsection (b) of this section, the court shall set forth the terms and
52 conditions of visitation including, but not limited to, the schedule of
53 visitation, including the dates or days, time and place or places in
54 which the visitation can occur, whether overnight visitation will be
55 allowed and any other terms and conditions that the court determines
56 are in the best interest of the minor child, provided such conditions
57 shall not be contingent upon any order of financial support by the
58 court. In determining the best interest of the minor child, the court
59 shall consider the wishes of the minor child if such minor child is of
60 sufficient age and capable of forming an intelligent opinion. In
61 determining the terms and conditions of visitation, the court may
62 consider (1) the effect that such visitation will have on the relationship
63 between the parents or guardians of the minor child and the minor
64 child, and (2) the effect on the minor child of any domestic violence
65 that has occurred between or among the parents, grandparents,
66 persons seeking visitation and the minor child.

67 (f) Visitation rights granted in accordance with this section shall not
68 be deemed to have created parental rights in the person or persons to
69 whom such visitation rights are granted, nor shall such visitation
70 rights be a ground for preventing the relocation of the custodial
71 parent. The grant of such visitation rights shall not prevent any court
72 of competent jurisdiction from thereafter acting upon the custody of
73 such child, the parental rights with respect to such child or the
74 adoption of such child and any such court may include in its decree an

75 order terminating such visitation rights.

76 (g) Upon motion, the court may order the payment of fees for
77 another party, the attorney for the minor child, the guardian ad litem,
78 or any expert by any party in accordance with such party's financial
79 ability.

80 Sec. 2. (NEW) (*Effective October 1, 2018*) (a) As used in this section,
81 (1) "grandparent" means a grandparent or great-grandparent related to
82 a minor child by blood, marriage or adoption of the minor child by a
83 child of the grandparent, and (2) "unreasonably depriving the
84 grandparent of the opportunity to visit with the minor child" includes,
85 but is not limited to, denying a grandparent the opportunity to visit
86 with the minor child for a period of time exceeding ninety days.

87 (b) Any grandparent may submit a verified petition under this
88 section to the Superior Court for the right of visitation with a minor
89 child, as described in subdivision (1) of subsection (a) of this section,
90 when (1) either or both parents of the minor child are deceased, (2) the
91 parents of the minor child are divorced, or (3) the parents of the minor
92 child are living separate and apart in different locations. The court
93 shall grant the right of visitation with any minor child to any
94 grandparent if the court finds after hearing and by clear and
95 convincing evidence that: (A) The child's parents or guardians are
96 unreasonably depriving the grandparent of the opportunity to visit
97 with the minor child; (B) awarding the grandparent visitation will not
98 interfere with the relationship between the minor child and the parents
99 or guardians; and (C) (i) the minor child's parents or guardians are
100 unfit, or (ii) there are compelling circumstances to overcome the
101 presumption that the decision by the parents or guardians to deny the
102 grandparent visitation is in the best interest of the minor child,
103 provided any determination by the court as to the best interest of the
104 minor child shall be made utilizing Judicial Branch resources and at no
105 cost to the parties.

106 (c) The court may award the prevailing party necessary and
107 reasonable expenses incurred by or on behalf of the party, including

108 costs and attorneys' fees.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	46b-59
Sec. 2	<i>October 1, 2018</i>	New section

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill creates a different statutory standard for certain visitation hearings and does not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 5212*****AN ACT CONCERNING A GRANDPARENT'S RIGHT TO VISITATION WITH HIS OR HER GRANDCHILD.*****SUMMARY**

Existing law permits grandparents and other third parties to petition the court for the right to visit a minor child. This bill creates a new standard, separate from the existing third-party visitation standard (see below), for a court to grant a grandparent's petition seeking visitation of a minor grandchild when (1) at least one parent is deceased, (2) the parents are divorced, or (3) the parents do not live together. (By law, a "grandparent" is a grandparent or great-grandparent related to a minor child by blood, marriage, or adoption.)

Under the bill, the existing third-party visitation standards still apply to situations in which a grandparent is seeking visitation of a minor grandchild whose parents are alive, married, or living together.

Under the new standard, the court must grant visitation rights if, at a hearing on such a petition, it finds by clear and convincing evidence that:

1. the child's parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child,
2. awarding the grandparent visitation will not interfere with the relationship between the child and the parents or guardians, and
3. (a) the child's parents or guardians are unfit or (b) there are compelling circumstances to overcome the presumption that the parents' or guardians' decision to deny the grandparent visitation is in the child's best interest.

Under the bill, "unreasonably depriving the grandparent of the opportunity to visit with the minor child" includes denying a grandparent the opportunity to visit with the child for more than 90 days.

(It is unclear how the Connecticut Supreme Court would view the bill's language in light of its rulings on federal constitutional requirements regarding visitation and parental rights (see BACKGROUND).)

The bill also (1) requires the court, when determining the child's best interest for these purposes, to use the Judicial Branch's resources with no cost to the parties; and (2) allows the court to award the prevailing party necessary and reasonable expenses, including attorney's fees.

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2018

EXISTING THIRD-PARTY VISITATION STANDARD

Under current law, the court must grant a third party who submits a verified petition the right to visit a child if it finds by clear and convincing evidence that (1) a parent-like relationship (see BACKGROUND) exists between the person and the child and (2) denial of visitation would cause real and significant harm. The law establishes specific factors the court may consider in determining if a parent-like relationship exists.

Under the bill, the third-party standard does not apply to a grandparent seeking visitation of a child whose parents are apart.

BACKGROUND

Related Federal Case

In *Troxel v. Granville*, the U.S. Supreme Court held 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 (120 S.Ct. 2054 (2000)).

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.

Related Connecticut Case

In 2002, the Connecticut Supreme Court reviewed Connecticut's then-existing third party visitation statute in light of the federal constitutional requirements discussed in *Troxel*. The court imposed requirements on a third party, including a grandparent, seeking visitation under the statute. The court required the third party to make specific, 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. Once these jurisdictional hurdles are overcome, the court ruled that a petitioner must prove the allegations by clear and convincing evidence (*Roth v. Weston*, 259 Conn. 202 (2002), *DiGiovanna v. St. George*, 300 Conn. 59 (2011)). These requirements are currently codified in statute (CGS § 46b-59).

Parent-like Relationship

Under existing law, in determining whether a parent-like relationship exists between the person seeking visitation and the child, the court may consider the following:

1. existence and length of a relationship between the person and the child before the petition was submitted,
2. length of time that the relationship between the person and the child has been disrupted,
3. specific parent-like activities of the person seeking visitation,
4. any evidence that the person seeking visitation has unreasonably undermined the custodial parent's authority and

discretion,

5. significant absence of a parent from the child's life,
6. death of one of the child's parents,
7. physical separation of the child's parents,
8. fitness of the person seeking visitation, and
9. fitness of the custodial parent.

In determining whether a parent-like relationship exists between a grandparent and a grandchild, the court may also consider the history of regular contact and proof of a close and substantial relationship between the grandparent and the child.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 36 Nay 3 (04/02/2018)