

Grandparent Visitation

Visitation

Most grandparents visit with their grandchildren whenever they want to. They plan fun activities for the children. They send cards and emails. They take the kids on trips. They may even spoil the grandchildren a little bit. Many provide day care. Others help raise their grandchildren. All this helps keep families strong.

Sadly, some grandparents don't ever see their grandchildren because the children's parents or legal guardians won't let them. This happens for many reasons. There might be bad feelings between the grandchildren's parents and grandparents. The children's parents could be divorced. Or maybe one parent has died. The parent who has custody may want to break ties with the grandparents.

State Laws

Are you having problems seeing your grandchild? The first thing you need to do is learn about the visitation law in the state where your grandchild lives. No state law is going to automatically give you the right to visit your grandchild, but in some states you can hire a family law attorney and go to court to ask for visitation. In those states, a judge will make the final decision after looking at your family situation.

All 50 states once had laws that gave grandparents the right to ask the court to consider their request to visit their grandchildren. This is not true anymore. In many states, courts have made grandparent visitation laws invalid, deciding that they go against the rights of the parents. In those states grandparents can't ask the court to consider their request to visit with their grandchildren.

In some states, the visitation laws have been upheld by the courts. In those states the grandparents have to prove in court that they should be able to visit their grandchildren. This is hard to do. In some of these states the laws say the court should decide based on what is in the best interest of the child. In other states the grandparents have to prove that the grandchild will be harmed if he or she does not visit with the grandparents.

A family law attorney can tell you whether the grandparent visitation law in the state where your grandchild lives has been upheld or made invalid by the courts.

Arkansas Law

To Whom Does the Law Apply?

- Any grandparent or great-grandparent of a child born during a marriage; or
- The maternal grandparent (mother's parent) of child born outside marriage; or
- The paternal grandparent (father's parent) of a child born outside marriage, if a court has ordered that he is the father.



When Does the Law Apply?

- When the marriage between the parents of the child has ended by death, divorce or legal separation.
- When custody or guardianship of a child has been granted to a person other than a parent by a court.
- The law **does not apply** when the parents are married to each other and refuse grandparent visitation.
- The law **does not apply** when parental rights of the parent(s) have been taken away by a court.

If the parent with custody refuses, grandparents no longer automatically get visitation. Under the new law, there is a "rebuttable presumption" that the parent's decision denying or limiting visitation to the grandparent is in the best interest of the child. "Rebuttable presumption" means that the judge will begin the hearing believing that the decision of the parent with custody is correct and it is up to the grandparent to prove that the parent's decision is wrong.

What Does a Grandparent Have to Do to Get Visitation?

To prove that the denial of visitation by the parent with custody is not in the best interest of the child, a

grandparent wanting visitation must prove in court the following:

- 1 That the grandparent wanting visitation has established a **significant and viable relationship** with the child for whom he or she is requesting visitation; **and**
2. **Visitation with the grandparent would be in the “best interest” of the child.**

How Are “Viable Relationship” and “Best Interest” Proven?

To establish Numbers 1 and 2 above, the grandparent wanting visitation must prove in court **at least one** (1) of the following:

- The child lived with the grandparent for at least six (6) months in a row, even if the parent with custody lived in the same home; or
- The grandparent was the caregiver to the child on a regular basis for at least six (6) months in a row; or
- The grandparent had frequent or regular contact with the child for at least twelve (12) months in a row; or
- Any other facts that prove that the loss of relationship between the grandparent and child is likely to harm the child.

To establish that visitation is in the best interest of the child, the grandparent must prove, in court, all three (3) of the following:

1. The grandparent is able to give the child love, affection, and guidance; and
2. The loss of the relationship between the grandparent and the child is likely to harm the child; and
3. The grandparent is willing to cooperate with the parent having custody if visitation with the child is ordered.

What Happens Once Visitation Rights Are Ordered?

The police have no authority to enforce a visitation order. If either the parent with custody or grandparent does not follow the visitation order, the parent with custody or grandparent must go back to court to make everyone follow the order.

References

AARP, www.aarp.org/families/grandparents

Center for Arkansas Legal Services, www.arlegalservices.org

Prepared by Dr. LaVona Traywick, Assistant Professor - Gerontology, University of Arkansas Division of Agriculture Cooperative Extension Service.

University of Arkansas, United States Department of Agriculture and County Governments Cooperating

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If visitation needs to be changed for any reason, the grandparent must go back to court to have the judge change the order.

Resolving Visitation Issues

Going to court costs money. It can also be very upsetting. Before deciding to go to court, a grandparent should consider other ways to resolve the problem. Here are some tips:

- Are the grandchild’s parents getting a divorce? Ask them to set up a visiting schedule for you as part of their divorce agreement. This could help you avoid problems in the future.
- Try mending your relationship with your grandchild’s parents. You may be able to work out a solution that fits both your needs.
- Think about using a trained mediator. Mediators help people come to an agreement. Each side gives a little. And each side wins something. This option doesn’t cost much. It could help you see your grandchild. It could also help keep you out of court. To find a trained mediator you can call the court house, look in the yellow pages, or search on the internet.
- Keep in touch with your grandchild. Send cards and gifts. Call on the telephone. Keep a record of all the times you try to contact the child. This will help you show a mediator or judge that you have a strong interest in your grandchild.
- While your grandchildren will in some ways automatically be in the middle of the visitation problem, never put them on the spot or talk badly about their parents to them. That will only hurt your grandchild (and your chances of getting visitation) in the long run.
- Do you have to go to court? Use an attorney who has experience with family law issues in the state where the grandchild lives.

