

VISITATION RIGHTS OF GRANDPARENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act amends the grandparents visitation rights statute. The act clarifies that grandparents may intervene in pending proceedings involving custody and visitation issues. The act applies to all grandparent visitation actions a presumption in favor of the parent's decision and describes how that presumption can be overcome. The act permits courts to take into account the grandchild's desires regarding visitation. The act establishes a standard for modification of an existing visitation order.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

30-5-1, as last amended by Chapter 265, Laws of Utah 2000

30-5-2, as last amended by Chapter 265, Laws of Utah 2000

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **30-5-1** is amended to read:

30-5-1. Definitions.

As used in this act:

(1) "District court" means the district court [~~within whose~~] with proper jurisdiction over the [~~grandchildren reside~~] grandchild.

(2) "[~~Grandchildren~~] Grandchild" means the child [~~or children that~~] with respect to whom a grandparent is seeking visitation rights [~~with~~] under this chapter.

(3) "Grandparent" means a person whose child, either by blood, marriage, or adoption, is the parent of the [~~grandchildren~~] grandchild.

Section 2. Section **30-5-2** is amended to read:

30-5-2. Visitation rights of grandparents.

(1) Grandparents have standing to bring an action in district court by petition, requesting visitation in accordance with the provisions and requirements of this section. Grandparents may also file a petition for visitation rights in a pending divorce proceeding or other proceeding

involving custody and visitation issues.

~~[(2) The district court may grant grandparents reasonable rights of visitation, if it is in the best interest of the grandchildren, in cases where a grandparent's child has died or has become a noncustodial parent through divorce or legal separation.]~~

~~[(3) In cases other than those described in Subsection (2), a grandparent may petition the court for reasonable rights of visitation with a grandchild. The court may enter an order granting the petitioner reasonable visitation rights in accordance with the provisions and requirements of this Subsection (3). There is a presumption that a parent's decision with regard to grandparent visitation is reasonable. The court may override the parent's decision and grant reasonable visitation rights to a grandparent if it finds that:]~~

~~[(a) it is in the best interest of the grandchild;]~~

~~[(b) the petitioner is a fit and proper person to have rights of visitation with the grandchild;]~~

~~[(c) the petitioner has repeatedly attempted to visit the grandchild and has not been allowed to visit the grandchild as a direct result of the actions of the parent or parents;]~~

~~[(d) there is no other way for the petitioner to visit the grandchild without court intervention; and]~~

~~[(e) the petitioner has rebutted the presumption that the parent's decision to refuse or limit visitation with the grandchild was reasonable.]~~

(2) There is a rebuttable presumption that a parent's decision with regard to grandparent visitation is in the grandchild's best interests. However, the court may override the parent's decision and grant the petitioner reasonable rights of visitation if the court finds that the petitioner has rebutted the presumption based upon factors which the court considers to be relevant, such as whether:

(a) the petitioner is a fit and proper person to have visitation with the grandchild;

(b) visitation with the grandchild has been denied or unreasonably limited;

(c) the parent is unfit or incompetent;

(d) the petitioner has acted as the grandchild's custodian or caregiver, or otherwise has had a substantial relationship with the grandchild, and the loss or cessation of that relationship is likely

to cause harm to the grandchild;

(e) the petitioner's child, who is a parent of the grandchild, has died, or has become a noncustodial parent through divorce or legal separation;

(f) the petitioner's child, who is a parent of the grandchild, has been missing for an extended period of time; or

(g) visitation is in the best interest of the grandchild.

~~[(4) (a) There is a presumption that adoption of a child, voluntary or involuntary termination of parental rights, or relinquishment to a licensed child placing agency terminates all rights of a grandparent to petition for visitation under this section. That presumption may be rebutted if the court finds that a child has established a relationship with the grandparent, and that the child's continued contact with the grandparent will be in the best interest of the child.]~~

~~[(b) Nothing in this Subsection (4) affects visitation rights of a grandparent that have been ordered by a court pursuant to this section, if the]~~

(3) The adoption of a grandchild [is adopted] by the grandchild's stepparent does not diminish or alter visitation rights previously ordered under this section.

(4) Subject to the provisions of Subsections (2) and (3), the court may inquire of the grandchild and take into account the grandchild's desires regarding visitation.

(5) On the petition of a grandparent or the legal custodian of a grandchild the court may, after a hearing, modify an order regarding grandparent visitation if:

(a) the circumstances of the grandchild, the grandparent, or the custodian have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and

(b) the court determines that a modification is appropriate based upon the factors set forth in Subsection (2).

~~[(5)] (6) Grandparents may petition the court as provided in Section 78-32-12.2 to remedy a parent's wrongful noncompliance with a visitation order.~~