

28 visitation in accordance with the provisions and requirements of this section. Grandparents may
29 also file a petition for visitation rights in a pending divorce proceeding or other proceeding
30 involving custody and visitation issues.

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

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

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

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

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

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

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

49 (2) There is a rebuttable presumption that a parent's decision with regard to grandparent
50 visitation is in the grandchild's best interests, and that decision must be given special weight.
51 However, the court may override the parent's decision and grant the petitioner reasonable rights
52 of visitation if the court finds that:

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

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

55 (c) visitation is in the best interests of the grandchild; and

56 (d) the petitioner has otherwise rebutted the presumption.

57 (3) In determining whether the petitioner has rebutted the presumption stated in Subsection
58 (2), the court may consider facts which the court considers to be relevant, such as whether:

59 (a) the parent is unfit or incompetent;

60 (b) the petitioner has acted as the grandchild's custodian or caregiver, or otherwise has had
61 a substantial relationship with the grandchild, and the loss or cessation of that relationship is likely
62 to cause harm to the grandchild;

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

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

67 (e) the court of another state has granted visitation to the petitioner.

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

75 (b) Nothing in this Subsection (4) affects visitation rights of a grandparent that have been
76 ordered by a court pursuant to this section, if the grandchild is adopted by the grandchild's
77 stepparent.

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

80 (6) On the motion of a grandparent or the legal custodian of a grandchild the court may,
81 after a hearing, modify an order that established grandparent visitation if:

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

85 (b) modification of the terms and conditions of the order would be in the best interests of
86 the grandchild.

87 [~~(5)~~] (7) Grandparents may petition the court as provided in Section 78-32-12.2 to remedy
88 a parent's wrongful noncompliance with a visitation order.

Legislative Review Note
as of 10-22-01 2:41 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel