



*Legal Hotline for Michigan Seniors
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A program of Elder Law of Michigan, Inc.*

GRANDPARENT VISITATION RIGHTS

A new law allows grandparents to petition for visitation with the grandchild. This law amends the current act (MCL 722.22 and 722.27b) and took effect as of January 2005. Under this new law a grandparent may petition for visitation with their grandchildren but only in the following limited circumstances:

- When the grandchild's parents are divorced already or in the process of a legal divorce or separation or annulment, or
- When the grandchild's parent is deceased and the deceased parent is the child of the requesting grandparent, or
- When the grandchild's parents have never been married, they are not residing in the same household, but some paternity has been established (through acknowledgement of parentage, an order of filiation under the paternity act, or by a court determination), or
- When the grandchild is placed outside the home or custody of the child has been given to a non parent (not counting actual adoptions), or
- When the grandparent has taken care of a grandchild during the year before the requested visitation so much so that courts would likely view the grandchild's stay with the grandparents as an established custodial environment.

The grandparent(s) making the request must file their complaint or motion along with an affidavit setting out facts supporting their request, and the other party or parties have a chance to submit facts and affidavits of their own. The grandparents go before the court that already has jurisdiction for some reason, like a pending divorce or by filing in the circuit court in the county where the grandchild resides, and give notice to appropriate parties interested in the request (typically the parents of the child but sometimes others).

While it is permitted to file a petition and argue it at a court hearing yourself, in a matter such as this, it is highly recommended that you use a lawyer with experience in child custody and visitation (parenting time). To meet requirements laid out by recent court decisions, the judge will first determine if the person or persons making the request have overcome the presumption built into the new law. The presumption is a court device really, like a threshold or barrier.

The effect of the presumption is that the judge must give great deference, or respect, to parents' decisions, even when the parents want to deny grandparenting time or visitation. To overcome this presumption in favor of a parents' decision and to win in court, the grandparent must prove that the parent's decision to deny grandparenting time visitation creates "a substantial risk of harm to the child's mental, physical or emotional health." In addition, a judge must find that the visitation is in the best interests of the grandchild, which requires him or her to consider many factors. Proving these things may require professional expert witnesses such as psychologists or the like.

Often grandparents are unable to see their grandchildren because of the parents' legal disputes regarding custody and/or support. It may be easier, faster and less costly to help your child enforce his/her parental rights regarding custody and visitation rather than to start a separate grandparent visitation proceeding. Then you could see the grandchildren when they visit your child.

This brochure is based on Michigan law and only applies to grandchildren who are residents of Michigan.

Other Possible Resources:

Grandparent's Rights Organization (248) 646-7177

AARP Grandparent Information Center (888) 687-2277

If you are a senior, you can get specific questions answered at the Legal Hotline for Michigan Seniors. Call 1-800-347-5297 (372-5959 for the Lansing area).

The Legal Hotline is a program of Elder Law of Michigan, Inc., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph, Suite C-200, Lansing, MI 48917. Thank you.