WEST VIRGINIA CODE CHAPTER 48 ARTICLE 10

WV Legislature

§48-10-1.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-2.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-3.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-4.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-5.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-6.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-7.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-8.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-9.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-10.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-11.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-12.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-13.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-14.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-15.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-16.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-17.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-18.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-19.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-20.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-21.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-22.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-23.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-24.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-25.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-26.

Repealed.

Acts, 2000 Reg. Sess., Ch. 44.

WV Legislature

§48-10-101. Legislative findings.

The Legislature finds that circumstances arise where it is appropriate for circuit courts or family courts of this state to order that grandparents of minor children may exercise visitation with their grandchildren. The Legislature further finds that in such situations, as in all situations involving children, the best interests of the child or children are the paramount consideration.

WV Legislature

§48-10-102. Legislative intent.

It is the express intent of the Legislature that the provisions for grandparent visitation that are set forth in this article are exclusive.

WV Legislature

PART 2. DEFINITIONS.

§48-10-201. Applicability of definitions.

For the purposes of this article the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.

WV Legislature

§48-10-202. Child defined.

"Child" means a person under the age of eighteen years who has not been married or otherwise emancipated.

WV Legislature

§48-10-203. Grandparent defined.

"Grandparent" means a biological grandparent, a person married or previously married to a biological grandparent, or a person who has previously been granted custody of the parent of a minor child with whom visitation is sought.

WV Legislature

§48-10-301. Persons who may apply for grandparent visitation; venue.

A grandparent of a child residing in this state may, by motion or petition, make application to the circuit court or family court of the county in which that child resides for an order granting visitation with his or her grandchild.

WV Legislature

§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.

(a) The provisions of this section apply to any pending actions for divorce, custody, legal separation, annulment or establishment of paternity.

(b) After the commencement of the action, a grandparent seeking visitation with his or her grandchild may, by motion, apply to the family court for an order granting visitation. A grandparent moving for an order of visitation will not be afforded party status, but may be called as a witness by the court, and will be subject to cross-examination by the parties.

(c) Motions or petitions for grandparent visitation shall be filed and heard in the family court except when an abuse or neglect proceeding involving the child or children is pending before the circuit court, in which case the motion or petition shall be filed and heard in the circuit court.

WV Legislature

§48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

(a) The provisions of this section apply when no proceeding for divorce, custody, legal separation, annulment or establishment of paternity is pending.

(b) A grandparent may petition the family court for an order granting visitation with his or her grandchild, regardless of whether the parents of the child are married. If the grandparent filed a motion for visitation in a previous proceeding for divorce, custody, legal separation, annulment or establishment of paternity, and a decree or final order has issued in that earlier action, the grandparent may petition for visitation if the circumstances have materially changed since the entry of the earlier order or decree.

(c) When a petition under this section is filed, the matter shall be styled "In re grandparent visitation of [petitioner's(s') name(s)]".

(d) Motions or petitions for grandparent visitation shall be filed and heard in the family court except when an abuse or neglect proceeding involving the child or children is pending before the circuit court, in which case the motion or petition shall be filed and heard in the circuit court.

WV Legislature

§48-10-403. Appointment of guardian ad litem for the child.

When a motion or petition is filed seeking grandparent visitation, the court, on its own motion or upon the motion of a party or grandparent, may appoint a guardian ad litem for the child to assist the court in determining the best interests of the child regarding grandparent visitation.

WV Legislature

§48-10-501. Necessary findings for grant of reasonable visitation to a grandparent.

The circuit court or family court shall grant reasonable visitation to a grandparent upon a finding that visitation would be in the best interests of the child and would not substantially interfere with the parent-child relationship.

WV Legislature

§48-10-502. Factors to be considered in making a determination as to a grant of visitation to a grandparent.

In making a determination on a motion or petition the court shall consider the following factors:

(1) The age of the child;

(2) The relationship between the child and the grandparent;

(3) The relationship between each of the child's parents or the person with whom the child is residing and the grandparent;

(4) The time which has elapsed since the child last had contact with the grandparent;

(5) The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;

(6) If the parents are divorced or separated, the custody and visitation arrangement which exists between the parents with regard to the child;

(7) The time available to the child and his or her parents, giving consideration to such matters as each parent's employment schedule, the child's schedule for home, school and community activities, and the child's and parents' holiday and vacation schedule;

(8) The good faith of the grandparent in filing the motion or petition;

(9) Any history of physical, emotional or sexual abuse or neglect being performed, procured, assisted or condoned by the grandparent;

(10) Whether the child has, in the past, resided with the grandparent for a significant period or periods of time, with or without the child's parent or parents;

(11) Whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent's residence;

(12) The preference of the parents with regard to the requested visitation; and

(13) Any other factor relevant to the best interests of the child.

WV Legislature

PART 6. INTERVIEW OF CHILD BY JUDGE.

§48-10-601. Interview of child in chambers.

In considering the factors listed in section 10-502 for purposes of determining whether to grant visitation, establishing a specific visitation schedule, and resolving any issues related to the making of any determination with respect to visitation or the establishment of any specific visitation schedule, the court, in its discretion, may interview in chambers any or all involved children regarding their wishes and concerns. No person shall be present other than the court, the child, the child's attorney or guardian ad litem, if any, and any necessary court personnel.

WV Legislature

§48-10-602. Prohibitions on use of child's written or recorded statement or affidavit; child not to be called as a witness.

(a) No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding grandparent visitation matters, and the court, in considering the factors listed in section 10-502 of this article for purposes of determining whether to grant any visitation, establishing a visitation schedule, or resolving any issues related to the making of any determination with respect to visitation or the establishment of any specific visitation schedule, shall not accept or consider such a written or recorded statement or affidavit.

(b) A child shall not be called as a witness in any proceeding to determine whether grandparent visitation should be awarded.

WV Legislature

PART 7. PROOF REQUIRED FOR GRANT

OF GRANDPARENT VISITATION.

§48-10-701. Proof required when action is pending for divorce, custody, legal separation, annulment or establishment of paternity.

If a motion for grandparent visitation is filed in a pending action for divorce, custody, legal separation, annulment or establishment of paternity pursuant to section 21-401, the grandparent shall be granted visitation if a preponderance of the evidence shows that visitation is in the best interest of the child and that:

(1) The party to the divorce through which the grandparent is related to the minor child has failed to answer or otherwise appear and defend the cause of action; or

(2) The whereabouts of the party through which the grandparent is related to the minor child are unknown to the party bringing the action and to the grandparent who filed the motion for visitation.

WV Legislature

§48-10-702. Proof required when action is not pending for divorce, custody, legal separation, annulment or establishment of paternity.

(a) If a petition is filed pursuant to section 10-402 when the parent through whom the grandparent is related to the grandchild does not: (1) Have custody of the child; (2) share custody of the child; or (3) exercise visitation privileges with the child that would allow participation in the visitation by the grandparent if the parent so chose, the grandparent shall be granted visitation if a preponderance of the evidence shows that visitation is in the best interest of the child.

(b) If a petition is filed pursuant to section 10-402, there is a presumption that visitation privileges need not be extended to the grandparent if the parent through whom the grandparent is related to the grandchild has custody of the child, shares custody of the child, or exercises visitation privileges with the child that would allow participation in the visitation by the grandparent if the parent so chose. This presumption may be rebutted by clear and convincing evidence that an award of grandparent visitation is in the best interest of the child.

WV Legislature

PART 8. ORDERS GRANTING OR REFUSING

GRANDPARENT VISITATION.

§48-10-801. Order granting or refusing grandparent visitation must state findings of fact and conclusions of law.

An order granting or refusing the grandparent's motion or petition for visitation must state in writing the court's findings of fact and conclusions of law.

WV Legislature

§48-10-802. Grandparent visitation orders.

In the court's discretion, an order granting visitation privileges to a grandparent may provide for daytime visits, overnight visits and electronic communications. For the purposes of this section, the term "electronic communications" includes, but is not limited to, communications by telephone, email, Skype, Facetime, text messaging and instant messaging.

WV Legislature

§48-10-803. Supervised visitation; conditions on visitation.

In the court's discretion, an order granting visitation privileges to a grandparent may require supervised visitation or may place such conditions on visitation that it finds are in the best interests of the child, including, but not limited to, the following:

(1) That the grandparent not attempt to influence any religious beliefs or practices of the children in a manner contrary to the preferences of the child's parents;

(2) That the grandparent not engage in, permit or encourage activities, or expose the grandchild to conditions or circumstances that are contrary to the preferences of the child's parents; or

(3) That the grandparent not otherwise act in a manner to contradict or interfere with child-rearing decisions made by the child's parents.

WV Legislature

§48-10-901. Effect of remarriage of the custodial parent.

The remarriage of the custodial parent of a child does not affect the authority of a circuit court or family court to grant reasonable visitation to any grandparent.

WV Legislature

§48-10-902. Effect of adoption of the child.

If a child who is subject to a grandparent visitation order under this article is later adopted, the order for grandparent visitation is automatically vacated when the order for adoption is entered, unless the adopting parent is a stepparent, grandparent or other relative of the child.

WV Legislature

§48-10-1001. Continuing jurisdiction of circuit court or family court.

Any circuit court or family court that grants visitation rights to a grandparent shall retain jurisdiction throughout the minority of the minor child with whom visitation is granted to modify or terminate such rights as dictated by the best interests of the minor child.

WV Legislature

§48-10-1002. Termination of grandparent visitation.

A circuit court or family court shall, based upon a petition brought by an interested person, terminate any grant of the right of grandparent visitation upon presentation of a preponderance of the evidence that a grandparent granted visitation has materially violated the terms and conditions of the order of visitation.

WV Legislature

§48-10-1101. Attorney's fees; reasonable costs.

In an action brought under the provisions of this article, a circuit court or family court may order payment of reasonable attorney's fees and costs based upon the equities of the positions asserted by the parties to pay such fees and costs.

WV Legislature

PART 12. OFFENSES.

§48-10-1201. Misdemeanor offense for allowing contact between child and person who has been precluded visitation rights; penalties.

Any grandparent who knowingly allows contact between a minor grandchild and a parent or other person who has been precluded visitation rights with the child by court order is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not more than thirty days or fined not less than $100 nor more than $1,000.

WV Legislature