

New Mexico

Chapter 40 Article 9 "Grandparent's Visitation Privileges Act".

40-9-1.1. Definitions.

As used in the Grandparent's Visitation Privileges Act [this article], "grandparent" means:

- A. the biological grandparent or great-grandparent of a minor child; or
- B. a person who becomes a grandparent or great-grandparent due to the adoption of a minor child by a member of that person's family.

40-9-2. Children; visitation by grandparent; petition; mediation.

- A. In rendering a judgment of dissolution of marriage, legal separation or the existence of the parent and child relationship pursuant to the provisions of the Uniform Parentage Act [[40-11-1](#) NMSA 1978], or at any time after the entry of the judgment, the district court may grant reasonable visitation privileges to a grandparent of a minor child, not in conflict with the child's education or prior established visitation or time-sharing privileges.
- B. If one or both parents of a minor child are deceased, any grandparent of the minor child may petition the district court for visitation privileges with respect to the minor. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.
- C. If a minor child resided with a grandparent for a period of at least three months and the child was less than six years of age at the beginning of the three-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act [[40-10-1](#) NMSA 1978].
- D. If a minor child resided with a grandparent for a period of at least six months and the child was six years of age or older at the beginning of the six-month period and the child was subsequently removed from the grandparent's

home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act.

E. A biological grandparent may petition the district court for visitation privileges with respect to a grandchild when the grandchild has been adopted or adoption is sought, pursuant to the provisions of the Adoption Act [32A-5-1 NMSA 1978], by:

- (1) a stepparent;
- (2) a relative of the grandchild;
- (3) a person designated to care for the grandchild in the provisions of a deceased parent's will; or
- (4) a person who sponsored the grandchild at a baptism or confirmation conducted by a recognized religious organization.

F. When a minor child is adopted by a stepparent and the parental rights of the natural parent terminate or are relinquished, the biological grandparents are not precluded from attempting to establish visitation privileges. When a petition filed pursuant to the provisions of the Grandparent's Visitation Privileges Act [40-9-1 NMSA 1978] is filed during the pendency of an adoption proceeding, the petition shall be filed as part of the adoption proceedings. The provisions of the Grandparent's Visitation Privileges Act shall have no application in the event of a relinquishment or termination of parental rights in cases of other statutory adoption proceedings.

G. When considering a grandparent's petition for visitation privileges with a child, the district court shall assess:

- (1) any factors relevant to the best interests of the child;
- (2) the prior interaction between the grandparent and the child;
- (3) the prior interaction between the grandparent and each parent of the child;
- (4) the present relationship between the grandparent and each parent of the

child;

(5) time-sharing or visitation arrangements that were in place prior to filing of the petition;

(6) the effect the visitation with the grandparent will have on the child;

(7) if the grandparent has any prior convictions for physical, emotional or sexual abuse or neglect; and

(8) if the grandparent has previously been a full-time caretaker for the child for a significant period.

H. The district court may order mediation and evaluation in any matter when a grandparent's visitation privileges with respect to a minor child are at issue. When a judicial district has established a domestic relations mediation program pursuant to the provisions of the Domestic Relations Mediation Act [[40-12-1](#) NMSA 1978], the mediation shall conform with the provisions of that act. Upon motion and hearing, the district court shall act promptly on the recommendations set forth in a mediation report and consider assessment of mediation and evaluation to the parties. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

I. When the district court decides that visitation is not in the best interest of the child, the court may issue an order requiring other reasonable contact between the grandparent and the child, including regular communication by telephone, mail or any other reasonable means.

J. The provisions of the Child Custody Jurisdiction Act and [Section 30-4-4](#) NMSA 1978, regarding custodial interference, are applicable to the provisions of the Grandparent's Visitation Privileges Act.

40-9-3. Visitation; modification; restrictions.

A. When the district court grants reasonable visitation privileges to a grandparent pursuant to the provisions of the Grandparent's Visitation Privileges Act [[40-9-1](#) NMSA 1978], the court shall issue any necessary order to enforce the visitation privileges and may modify the privileges or order upon a showing of good cause by any interested person.

B. Absent a showing of good cause, no grandparent or parent shall file a petition pursuant to the provisions of the Grandparent's Visitation Privileges Act more often than once a year.

C. When an action for enforcement of a court order allowing visitation privileges is brought pursuant to the Grandparent's Visitation Privileges Act by a grandparent, the court may award court costs and reasonable attorneys' fees to the prevailing party when a court order is violated.

40-9-4. Change of child's domicile; notice to grandparent.

A. When a grandparent is granted visitation privileges with respect to a minor child pursuant to the provisions of the Grandparent's Visitation Privileges Act [40-9-1 NMSA 1978] and the child's custodian intends to depart the state or to relocate within the state with the intention of changing that child's domicile, the custodian shall:

- (1) notify the grandparents of the minor child of the custodian's intent to change the child's domicile at least five days prior to the child's change of domicile;
- (2) provide the grandparent with an address and telephone number for the minor child; and
- (3) afford the grandparent of the minor child the opportunity to communicate with the child.

B. This state will recognize an order or act regarding grandparent visitation privileges issued by any state, district, Indian tribe or territory of the United States of America.