

**EHB 1259**

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**THE STATE SENATE**  
**Thursday, March 20, 2003**

**ENGROSSED**  
**House Bill No. 1259**  
**As Amended**

ENGROSSED HOUSE BILL NO. 1259 - By: WELLS of the House and  
WILLIAMSON of the Senate.

**[ grandparent visitation rights - conditions - situations -  
terms - effective date ]**

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 2001, Section 5, is  
amended to read as follows:

Section 5. A. 1. Pursuant to the provisions of this section,  
the grandparent of an unmarried minor child may seek and be granted  
reasonable visitation rights to the child which visitation rights  
may be independent of either parent if the district court deems it  
to be in the best interest of the child and:

- a. an action for divorce, separate maintenance or  
annulment involving the grandchild's parents is  
pending before the court,
- b. the grandchild's parents are divorced, separated under  
a judgment of separate maintenance, or have had their  
marriage annulled,

- 1 c. the grandchild's parent who is a child of the  
2 grandparent is deceased,
- 3 d. except as otherwise provided in subsection B or C of  
4 this section, legal custody of the grandchild has been  
5 given to a person other than the grandchild's parent,  
6 or the grandchild does not reside in the home of a  
7 parent of the child,
- 8 e. the grandparent had custody of the grandchild pursuant  
9 to Section 21.3 of this title, whether or not the  
10 grandparent had custody under a court order, and there  
11 exists a strong, continuous grandparental relationship  
12 between the grandparent and the child,
- 13 f. the grandchild's parent has deserted the other parent  
14 for more than one (1) year and there exists a strong,  
15 continuous grandparental relationship between the  
16 grandparent and the child,
- 17 g. except as otherwise provided in subsection C of this  
18 section, the grandchild's parents have never been  
19 married, are not residing in the same household and  
20 there exists a strong, continuous grandparental  
21 relationship between the grandparent and the child,
- 22 h. except as otherwise provided by subsection C of this  
23 section, the parental rights of one or both parents of

1 the child have been terminated, and the court  
2 determines that there is a strong, continuous  
3 relationship between the child and the parent of the  
4 person whose parental rights have been terminated, or  
5 i. at any other time and for such other reason the court  
6 deems it to be in the best interests of the child  
7 pursuant to subsection D of this section and after a  
8 showing that the parent is unfit or that the child  
9 would suffer harm or potential harm without the  
10 granting of visitation rights to the grandparent of  
11 the child.

12 2. The right of visitation to any grandparent of an unmarried  
13 minor child shall be granted only so far as that right is authorized  
14 and provided by order of the district court.

15 B. If one natural parent is deceased and the surviving natural  
16 parent remarries, any subsequent adoption proceedings shall not  
17 terminate any court-granted grandparental rights belonging to the  
18 parents of the deceased natural parent unless the termination of  
19 visitation rights is ordered by the court having jurisdiction over  
20 the adoption after opportunity to be heard, and the court determines  
21 it to be in the best interest of the child.

22 C. 1. If the child has been born out of wedlock and the  
23 parental rights of the father of the child have been terminated, the

1 parents of the father of such child shall not have a right of  
2 visitation authorized by this section to such child unless:

- 3 a. the father of such child has been judicially  
4 determined to be the father of the child,
- 5 b. the court determines that a previous grandparental  
6 relationship existed between the grandparents and the  
7 child, and
- 8 c. the court determines such visitation rights to be in  
9 the best interest of the child.

10 2. If the child is born out of wedlock and the parental rights  
11 of the mother of the child have been terminated, the parents of the  
12 mother of such child shall not have a right of visitation authorized  
13 by this section to such child unless:

- 14 a. the court determines that a previous grandparental  
15 relationship existed between the grandparents and the  
16 child, and
- 17 b. the court determines such visitation rights to be in  
18 the best interest of the child.

19 3. Except as otherwise provided by this section, the district  
20 court shall not grant to the grandparents of an unmarried minor  
21 child, visitation rights to that child:

- 22 a. subsequent to the final order of adoption of the  
23 child, provided however, any subsequent adoption

1 proceedings shall not terminate any prior court-  
2 granted grandparental visitation rights unless said  
3 termination of visitation rights is ordered by the  
4 court after opportunity to be heard and the district  
5 court determines it to be in the best interest of the  
6 child, or

7 b. if the child had been placed for adoption prior to  
8 attaining six (6) months of age.

9 D. 1. In determining the best interest of the minor child, the  
10 court shall consider and, if requested, make specific findings of  
11 fact supporting such action:

12 ~~1.—The~~

13 a. the willingness of the grandparent or grandparents to  
14 encourage a close relationship between the child and  
15 the parent or parents~~;~~;

16 ~~2.—The~~

17 b. the length and quality of the prior relationship  
18 between the child and the grandparent or  
19 grandparents~~;~~;

20 ~~3.—The preference of the child if the child is determined to be~~  
21 ~~of sufficient maturity to express a preference;~~

22 c. evidence of domestic abuse or child abuse by the  
23 grandparent. If a grandparent has been convicted of

1 or has had a substantiated report of domestic abuse or  
2 child abuse issued by a peace officer or child welfare  
3 agency, such grandparent shall not be granted the  
4 right of visitation to a grandchild,

5 4.—The

6 d. the mental and physical health of the child,

7 5.—The

8 e. the mental and physical health of the grandparent or  
9 grandparents,

10 f. the love, affection and emotional ties existing  
11 between the parent and child,

12 g. the importance of continuity of the grandparent in the  
13 child's life,

14 h. the mental and physical health of the parent,

15 i. the reasonable preference of the child if twelve (12)  
16 years of age or older. The court may hear the

17 preference of a younger child upon request. The  
18 preferences of older children should normally be given  
19 greater weight than those of younger children,

20 j. evidence of physical or emotional abuse to the child,  
21 of one parent to the other parent or to any other  
22 person,

1            k. the character and behavior of any other person who  
2            resides in or frequents the home of a parent and such  
3            person's interactions with the child, and

4        ~~6. Such~~

5            1. such other factors as are necessary in the particular  
6            circumstances.

7        2. a. In addition to determining the best interest of the  
8            child, in granting visitation rights to grandparents,  
9            pursuant to this section, over the objection of both  
10           parents, the court shall find that:

11           (1) the child would suffer harm or potential harm  
12           without the granting of visitation rights to the  
13           grandparents of the child,

14           (2) the grandparent had custody of the grandchild  
15           pursuant to Section 21.3 of this title, whether  
16           or not the grandparent had custody under a court  
17           order, and there exists a strong, continuous  
18           grandparental relationship between the  
19           grandparent and the child, or

20           (3) the parents of the child are unfit.

21        b. For purposes of this paragraph:

22           (1) "harm or potential harm" means a showing that  
23           without court-ordered visitation by the

1 grandparents, the child's emotional or physical  
2 well-being would be jeopardized, and

3 (2) "unfit" includes, but is not limited to, a  
4 showing that a parent has:

5 (a) a chemical or alcohol dependency, for which  
6 treatment has not been sought or for which  
7 treatment has been unsuccessful,

8 (b) a habitual and/or excessive use of alcohol  
9 or drugs, for which treatment has not been  
10 sought or for which treatment has been  
11 unsuccessful,

12 (c) a history of violent behavior,

13 (d) committed domestic abuse,

14 (e) an emotional or mental illness, or

15 (f) failed to provide the child with proper  
16 care, guidance and support to the actual

17 detriment of the child. The provisions of

18 this subdivision include, but are not

19 limited to, parental indifference and

20 parental influence on his or her child or

21 lack thereof that exposes such child to

22 unreasonable risk.

1                   The determination of "unfitness" pursuant to this  
2                   division shall not be that which is equivalent  
3                   for the termination of parental rights.

4           E. 1. The district courts are vested with jurisdiction to  
5 issue orders granting grandparental visitation rights and enforce  
6 such visitation rights, upon the filing of a verified application  
7 for such visitation rights or enforcement thereof. Notice as  
8 ordered by the court shall be given to the person or parent having  
9 custody of the child and the venue of such action shall be in the  
10 county of the residence of such person or parent.

11           2. When a grandparent of a child has been granted visitation  
12 rights pursuant to this section and those rights are unreasonably  
13 denied or otherwise unreasonably interfered with by any parent of  
14 the child, the grandparent may file with the court a motion for  
15 enforcement of visitation rights. Upon filing of the motion, the  
16 court shall set an initial hearing on the motion. At the initial  
17 hearing, the court shall direct mediation and set a hearing on the  
18 merits of the motion.

19           3. After completion of any mediation pursuant to paragraph 2 of  
20 this subsection, the mediator shall submit the record of mediation  
21 termination and a summary of the parties' agreement, if any, to the  
22 court. Upon receipt of the record of mediation termination, the

1 court shall enter an order in accordance with the parties'  
2 agreement, if any.

3 4. Notice of a hearing pursuant to ~~paragraphs~~ paragraph 2 or 3  
4 of this subsection shall be given to the parties at their last-known  
5 address or as otherwise ordered by the court, at least ten (10) days  
6 prior to the date set by the court for hearing on the motion.  
7 Provided, the court may direct a shorter notice period if the court  
8 deems such shorter notice period to be appropriate under the  
9 circumstances.

10 5. Appearance at any court hearing pursuant to this subsection  
11 shall be a waiver of the notice requirements prior to such hearing.

12 6. If the court finds that visitation rights of the grandparent  
13 have been unreasonably denied or otherwise unreasonably interfered  
14 with by the parent, the court shall enter an order providing for one  
15 or more of the following:

- 16 a. a specific visitation schedule,  
17 b. compensating visitation time for the visitation denied  
18 or otherwise interfered with, which time may be of the  
19 same type as the visitation denied or otherwise  
20 interfered with, including but not limited to holiday,  
21 weekday, weekend, summer, and may be at the  
22 convenience of the grandparent,

- 1           c.   posting of a bond, either cash or with sufficient  
2                   sureties, conditioned upon compliance with the order  
3                   granting visitation rights,  
4           d.   assessment of reasonable attorney fees, mediation  
5                   costs, and court costs to enforce visitation rights  
6                   against the parent, or  
7           e.   any other remedy the court considers appropriate.

8           7.   If the court finds that the motion for enforcement of  
9   visitation rights has been unreasonably filed or pursued by the  
10 grandparent, the court may assess reasonable attorney fees,  
11 mediation costs, and court costs against the grandparent.

12          F.   In addition to any other remedy authorized by this section  
13 or otherwise provided by law, any party violating an order of the  
14 court made pursuant to this section, upon conviction thereof, shall  
15 be guilty of contempt of court.

16          G.   Any transportation costs or other costs arising from any  
17 visitation ordered pursuant to this section shall be paid by the  
18 grandparent or grandparents requesting such visitation.

19          H.   In any action for grandparental visitation pursuant to this  
20 section, the court may award attorney fees and costs, as the court  
21 deems equitable.

22          I.   For the purposes of this section, the term "grandparent"  
23 shall include "great-grandparent".

1           SECTION 2. This act shall become effective November 1, 2003.  
2   COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-18-03 - DO  
3   PASS, As Amended.