

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2401

By: Rousselot and Condit of the  
House

and

David of the Senate

11                                   COMMITTEE SUBSTITUTE

12                   An Act relating to children; amending 43 O.S. 2011,  
13                   Section 109.4, which relates to grandparental  
14                   visitation rights; authorizing court to order  
                  mediation upon the filing of petition; and providing  
                  an effective date.

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

19                   SECTION 1.           AMENDATORY           43 O.S. 2011, Section 109.4, is  
20 amended to read as follows:

21                   Section 109.4 A. 1. Pursuant to the provisions of this  
22 section, any grandparent of an unmarried minor child may seek and be  
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UNDERLINED language denotes Amendments to present Statutes.  
BOLD FACE CAPITALIZED language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 granted reasonable visitation rights to the child which visitation  
2 rights may be independent of either parent of the child if:

3 a. the district court deems it to be in the best interest  
4 of the child pursuant to subsection E of this section,  
5 and

6 b. there is a showing of parental unfitness, or the  
7 grandparent has rebutted, by clear and convincing  
8 evidence, the presumption that the fit parent is  
9 acting in the best interests of the child by showing  
10 that the child would suffer harm or potential harm  
11 without the granting of visitation rights to the  
12 grandparent of the child, and

13 c. the intact nuclear family has been disrupted in that  
14 one or more of the following conditions has occurred:

15 (1) an action for divorce, separate maintenance or  
16 annulment involving the grandchild's parents is  
17 pending before the court, and the grandparent had  
18 a preexisting relationship with the child that  
19 predates the filing of the action for divorce,  
20 separate maintenance or annulment,

21 (2) the grandchild's parents are divorced, separated  
22 under a judgment of separate maintenance, or have  
23 had their marriage annulled,

1 (3) the grandchild's parent who is a child of the  
2 grandparent is deceased, and the grandparent had  
3 a preexisting relationship with the child that  
4 predates the death of the deceased parent unless  
5 the death of the mother was due to complications  
6 related to the birth of the child,

7 (4) except as otherwise provided in subsection C or D  
8 of this section, legal custody of the grandchild  
9 has been given to a person other than the  
10 grandchild's parent, or the grandchild does not  
11 reside in the home of a parent of the child,

12 (5) one of the grandchild's parents has had a felony  
13 conviction and been incarcerated in the  
14 Department of Corrections and the grandparent had  
15 a preexisting relationship with the child that  
16 predates the incarceration,

17 (6) grandparent had custody of the grandchild  
18 ~~pursuant to Section 21.3 of this title~~, whether  
19 or not the grandparent had custody under a court  
20 order, and there exists a strong, continuous  
21 grandparental relationship between the  
22 grandparent and the child,

1 (7) the grandchild's parent has deserted the other  
2 parent for more than one (1) year and there  
3 exists a strong, continuous grandparental  
4 relationship between the grandparent and the  
5 child,

6 (8) except as otherwise provided in subsection D of  
7 this section, the grandchild's parents have never  
8 been married, are not residing in the same  
9 household and there exists a strong, continuous  
10 grandparental relationship between the  
11 grandparent and the child, or

12 (9) except as otherwise provided by subsection D of  
13 this section, the parental rights of one or both  
14 parents of the child have been terminated, and  
15 the court determines that there is a strong,  
16 continuous relationship between the child and the  
17 parent of the person whose parental rights have  
18 been terminated.

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

22 B. Under no circumstances shall any judge grant the right of  
23 visitation to any grandparent if the child is a member of an intact

1 nuclear family and both parents of the child object to the granting  
2 of visitation.

3 C. If one natural parent is deceased and the surviving natural  
4 parent remarries, any subsequent adoption proceedings shall not  
5 terminate any preexisting court-granted grandparental rights  
6 belonging to the parents of the deceased natural parent unless the  
7 termination of visitation rights is ordered by the court having  
8 jurisdiction over the adoption after opportunity to be heard, and  
9 the court determines it to be in the best interest of the child.

10 D. 1. If the child has been born out of wedlock and the  
11 parental rights of the father of the child have been terminated, the  
12 parents of the father of the child shall not have a right of  
13 visitation authorized by this section to the child unless:

- 14 a. the father of the child has been judicially determined  
15 to be the father of the child, and
- 16 b. the court determines that a previous grandparental  
17 relationship existed between the grandparent and the  
18 child.

19 2. If the child is born out of wedlock and the parental rights  
20 of the mother of the child have been terminated, the parents of the  
21 mother of the child shall not have a right of visitation authorized  
22 by this section to the child unless the court determines that a  
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1 previous grandparental relationship existed between the grandparent  
2 and the child.

3 3. Except as otherwise provided by this section, the district  
4 court shall not grant to any grandparent of an unmarried minor  
5 child, visitation rights to that child:

6 a. subsequent to the final order of adoption of the  
7 child; provided however, any subsequent adoption  
8 proceedings shall not terminate any prior court-  
9 granted grandparental visitation rights unless the  
10 termination of visitation rights is ordered by the  
11 court after opportunity to be heard and the district  
12 court determines it to be in the best interest of the  
13 child, or

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

16 E. 1. In determining the best interest of the minor child, the  
17 court shall consider and, if requested, shall make specific findings  
18 of fact related to the following factors:

19 a. the needs of and importance to the child for a  
20 continuing preexisting relationship with the  
21 grandparent and the age and reasonable preference of  
22 the child pursuant to Section 113 of ~~Title 43 of the~~  
23 ~~Oklahoma Statutes~~ this title,

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- 1           b.    the willingness of the grandparent or grandparents to  
2           encourage a close relationship between the child and  
3           the parent or parents,  
4           c.    the length, quality and intimacy of the preexisting  
5           relationship between the child and the grandparent,  
6           d.    the love, affection and emotional ties existing  
7           between the parent and child,  
8           e.    the motivation and efforts of the grandparent to  
9           continue the preexisting relationship with the  
10          grandchild,  
11          f.    the motivation of parent or parents denying  
12          visitation,  
13          g.    the mental and physical health of the grandparent or  
14          grandparents,  
15          h.    the mental and physical health of the child,  
16          i.    the mental and physical health of the parent or  
17          parents,  
18          j.    whether the child is in a permanent, stable,  
19          satisfactory family unit and environment,  
20          k.    the moral fitness of the parties,  
21          l.    the character and behavior of any other person who  
22          resides in or frequents the homes of the parties and  
23          such person's interactions with the child,

- 1 m. the quantity of visitation time requested and the  
2 potential adverse impact the visitation will have on  
3 the customary activities of the child, and  
4 n. if both parents are dead, the benefit in maintaining  
5 the preexisting relationship.

6 2. For purposes of this subsection:

- 7 a. "harm or potential harm" means a showing that without  
8 court-ordered visitation by the grandparent, the  
9 child's emotional, mental or physical well-being could  
10 reasonably or would be jeopardized,  
11 b. "intact nuclear family" means a family consisting of  
12 the married father and mother of the child,  
13 c. "parental unfitness" includes, but is not limited to,  
14 a showing that a parent of the child or a person  
15 residing with the parent:  
16 (1) has a chemical or alcohol dependency, for which  
17 treatment has not been sought or for which  
18 treatment has been unsuccessful,  
19 (2) has a history of violent behavior or domestic  
20 abuse,  
21 (3) has an emotional or mental illness that  
22 demonstrably impairs judgment or capacity to  
23 recognize reality or to control behavior,

1 (4) has been shown to have failed to provide the  
2 child with proper care, guidance and support to  
3 the actual detriment of the child. The  
4 provisions of this division include, but are not  
5 limited to, parental indifference and parental  
6 influence on his or her child or lack thereof  
7 that exposes such child to unreasonable risk, or  
8 (5) demonstrates conduct or condition which renders  
9 him or her unable or unwilling to give a child  
10 reasonable parental care. Reasonable parental  
11 care requires, at a minimum, that the parent  
12 provides nurturing and protection adequate to  
13 meet the child's physical, emotional and mental  
14 health.

15 The determination of parental unfitness pursuant to  
16 this subparagraph shall not be that which is  
17 equivalent for the termination of parental rights, and

18 d. "preexisting relationship" means occurring or existing  
19 prior to the filing of the petition for grandparental  
20 visitation.

21 F. 1. The district courts are vested with jurisdiction to  
22 issue orders granting grandparental visitation rights and to enforce  
23 visitation rights, upon the filing of a verified petition for

1 visitation rights or enforcement thereof. Notice as ordered by the  
2 court shall be given to the person or parent having custody of the  
3 child. The venue of such action shall be in the court where there  
4 is an ongoing proceeding that involves the child, or if there is no  
5 ongoing proceeding, in the county of the residence of the child or  
6 parent.

7 2. Upon the filing of a verified petition for visitation rights  
8 the court may order an initial mediation.

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

17 ~~3.~~ 4. After completion of any mediation pursuant to paragraph 2  
18 3 of this subsection, the mediator shall submit the record of  
19 mediation termination and a summary of the parties' agreement, if  
20 any, to the court. Upon receipt of the record of mediation  
21 termination, the court shall enter an order in accordance with the  
22 parties' agreement, if any.

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1       ~~4.~~ 5. Notice of a hearing pursuant to paragraph ~~2~~ 3 or ~~3~~ 4 of  
2 this subsection shall be given to the parties at their last-known  
3 address or as otherwise ordered by the court, at least ten (10) days  
4 prior to the date set by the court for hearing on the motion.  
5 Provided, the court may direct a shorter notice period if the court  
6 deems such shorter notice period to be appropriate under the  
7 circumstances.

8       ~~5.~~ 6. Appearance at any court hearing pursuant to this  
9 subsection shall be a waiver of the notice requirements prior to  
10 such hearing.

11       ~~6.~~ 7. If the court finds that visitation rights of the  
12 grandparent have been unreasonably denied or otherwise unreasonably  
13 interfered with by the parent, the court shall enter an order  
14 providing for one or more of the following:

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

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1 c. posting of a bond, either cash or with sufficient  
2 sureties, conditioned upon compliance with the order  
3 granting visitation rights, or

4 d. assessment of reasonable attorney fees, mediation  
5 costs, and court costs to enforce visitation rights  
6 against the parent.

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

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

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

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

21 J. For the purposes of this section, the term "grandparent"  
22 shall include "great-grandparent".  
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1 SECTION 2. This act shall become effective November 1, 2012.

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3 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02/14/2012 -  
4 DO PASS, As Amended and Coauthored.  
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