



Grandparent Rights

Do grandparents have a right to see their grandchildren?

Grandparents and other relatives have no automatic right to see their grandchildren or other minor relatives. In New Mexico, however, grandparents and great-grandparents can ask a district court for “reasonable” time with grandchildren and great-grandchildren in some situations.

When would a court give grandparents the right to see a grandchild?

In response to a grandparent visitation petition, a court could order visiting time if:

- one or both of the parents of the child have died;
- the parents have started a court case for a divorce, paternity, or legal separation;
- a court has already made a judgment about custody of the child;
- a step-parent or other relative is legally adopting the child or the child is going to be adopted after the parents’ deaths by someone they named in their wills;
- the child is going to be adopted after the parents’ deaths by someone who was the child’s sponsor at a religious baptism or confirmation
- the parents forbid the grandparents to spend any time with the child after the grandparents have taken care of the child full-time for at least three months if the child was under six years old at the start, or for at least six months if the child was six or older at the start. This rule applies only if someone then took the child away from the grandparents, not if the grandparents offered to give the child back.

In a situation in which someone reasonably believes that he or she is the grandparent of a minor child and neither of the parents starts a paternity case, the probable grandparent can begin a paternity suit.

The situations laid out above are the only situations in which a grandparent has the right to ask for time with the child. Even if one of these situations exists, the grandparent must then be able to convince the court that visits would be in the child's best interests. The grandparent has no legal right to force visits with the child.

How does a court decide what is in the child's best interests?

Every case is different. Certainly, the court will look at the emotional ties between grandparent and child. If the parents are living apart, however, the court will want to know if the couple separated because one parent was violent or abusive. Sometimes an abusive parent will convince the grandparent to ask for visits so that the abuser can use that time as a way to continue to control the child and the former partner. This kind of visit would not be in the child's best interests. Or a child may live so far away that travel to be with the grandparent would interfere with school or important family activities.

In some cases, a child may have to travel to spend time with a parent who lives elsewhere. If a court orders time for the far-away parent and additional time for the grandparents, it can be difficult for a child to have any time for normal activities or interactions with other children. This result would likely not be in the child's best interests.

The court must consider these factors when making a decision about whether grandparents can visit with a grandchild:

- the best interests described above
- whether the grandparents and the child interacted in the past
- how often and in what ways
- how the grandparents and the parents interacted in the past
- the current interaction and relationship between the grandparents and the parents
- past visiting arrangements between grandparents and the child
- how the child was affected by past visits with grandparents
- whether grandparents have been convicted of abuse or neglect
- whether the grandparents have been full-time caregivers for the child over a significant period of time

Is there any alternative to going to court to get the right to visit with the child?

Getting a court order for visits is the only enforceable solution to this problem. Fortunately, most courts refer the parents and the grandparents to a professional, court-sponsored mediator after the grandparents start their case. The mediator works with everyone to try to find a sensible

solution to the dispute. Working out a schedule for visits with a mediator's help can save time, money, and stress.

Can a grandparent petition in New Mexico for visits with a grandchild in another state?

The answer depends on whether a New Mexico court already has jurisdiction over the child—such as through an order determining paternity or custody or visitation between the parents. If the child has never lived in this state, a New Mexico court would not have the authority to hear a grandparent's case.

If a court in this state has made a decision about the child, it does have that authority. However, if the child has lived in another state for six months or more, that state's court and New Mexico's court will decide together which place is better to hear the grandparents' petition.

A grandparent in this state with a grandchild in another state may want to file a visitation case in the other state, anyway, as some states give relatives greater rights than New Mexico does.

Does a grandparent lose the right to see a grandchild if the parent loses his or her parental rights?

Not necessarily. If the other parent still has parental rights, the grandparent keeps whatever right to see the grandchild that the grandparent had before. Also, even if the state terminates the parental rights of both parents, the grandparent retains that right if the child is later adopted by a step-parent of the child, another relative of the child, a caretaker designated in a late parent's will, or a person who sponsored the child at a religious baptism or confirmation. If the child is adopted by someone else, however, the grandparent's rights are cut off.

What can a grandparent do if, after getting a court to order visits, the parents do not follow the court's order?

The grandparent must return to court to get the order enforced.

After grandparents have been granted visitation rights, what happens if the parents intend to relocate with the children out-of-state or elsewhere in the state?

The parents are required to notify the grandparents at least five days before there is a change in the children's domicile, provide the grandparents with contact information, and afford the grandparents the opportunity to communicate with the children.

Will a court order from another state granting grandparents visitation rights be recognized in New Mexico?

New Mexico district courts will enforce an order granting grandparents visitation issued by a court in another state.

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