

Senate Bill No. 329

(By Senators Laird, Miller, Unger, Snyder, Fitzsimmons, Beach,
Barnes, Stollings and Nohe)

[Introduced February 20, 2013; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §48-9-103 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-10-403 and §48-10-502 of said code, all relating to grandparent's rights; permitting the grandparent or psychological parent to institute an action for custodial or decision-making responsibility of a child; allowing a guardian ad litem to recommend a psychological evaluation; increasing the importance of the factor considering the grandparent's significant caretaking of the child; and minimizing a parent's bias toward a grandparent as a factor.

Be it enacted by the Legislature of West Virginia:

That §48-9-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §48-10-403 and §48-10-502 of

1 said code be amended and reenacted, all to read as follows:

2 **ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-**
3 **MAKING RESPONSIBILITY OF CHILDREN.**

4 **§48-9-103. Parties to an action under this article.**

5 (a) Persons who have a right to be notified of and participate
6 as a party in an action filed by another are:

7 (1) A legal parent of the child, as defined in section 1-232
8 of this chapter;

9 (2) An adult or guardian allocated custodial responsibility or
10 decision-making responsibility under a parenting plan regarding the
11 child that is then in effect; ~~or~~

12 (3) Persons who were parties to a prior order establishing
13 custody and visitation, or who, under a parenting plan, were
14 allocated custodial responsibility or decision-making
15 responsibility; or

16 (4) In exceptional cases, a grandparent or psychological
17 parent seeking an allocation of custodial responsibility or
18 decision-making authority.

19 (b) In exceptional cases the court may, in its discretion,
20 grant permission to intervene to other persons or public agencies
21 whose participation in the proceedings under this article it
22 determines is likely to serve the child's best interests. The
23 court may place limitations on participation by the intervening

1 party as the court determines to be appropriate. Such persons or
2 public agencies do not have standing to initiate an action under
3 this article.

4 **ARTICLE 10. GRANDPARENT VISITATION.**

5 **§48-10-403. Appointment of guardian ad litem for the child.**

6 When a motion or petition is filed seeking grandparent
7 visitation, the court, on its own motion or upon the motion of a
8 party or grandparent, may appoint a guardian ad litem for the child
9 to assist the court in determining the best interests of the child
10 regarding grandparent visitation. A guardian ad litem may recommend
11 psychological evaluations.

12 **§48-10-502. Factors to be considered in making a determination as**
13 **to a grant of visitation to a grandparent.**

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

- 16 (1) The age of the child;
- 17 (2) The relationship between the child and the grandparent;
- 18 (3) The relationship between each of the child's parents or
19 the person with whom the child is residing and the grandparent;
- 20 (4) The time which has elapsed since the child last had
21 contact with the grandparent;
- 22 (5) The effect that such visitation will have on the
23 relationship between the child and the child's parents or the

1 person with whom the child is residing;

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

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

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

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

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

18 (11) Whether the grandparent has, in the past, been a
19 significant caretaker for the child, regardless of whether the
20 child resided inside or outside of the grandparent's residence._
21 When the grandparent has been a significant or primary caretaker of
22 the child for over one year, greater importance shall be placed on
23 this factor in the determination of the court;

1 (12) The preference of the parents with regard to the
2 requested visitation, unless it is clear that the parent is biased
3 against the grandparent having visits with the child; and

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

NOTE: The purpose of this bill is to increase grandparents' rights in matters of custodial or decision-making authority and visitation.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.