

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 127

BY SENATORS LAIRD, WILLIAMS, STOLLINGS, MILLER,

BEACH AND BLAIR

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That §48-9-103 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §48-10-403 and §48-10-502 of said code be amended and reenacted, all to
 3 read as follows:

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

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

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

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

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

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

8 or

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

11 (b) In exceptional cases the court may, in its discretion, grant permission to intervene to

12 other persons or public agencies whose participation in the proceedings under this article it
13 determines is likely to serve the child's best interests. The court may place limitations on
14 participation by the intervening party as the court determines to be appropriate. Such persons or
15 public agencies do not have standing to initiate an action under this article.

ARTICLE 10. GRANDPARENT VISITATION.

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

1 When a motion or petition is filed seeking grandparent visitation, the court, on its own
2 motion or upon the motion of a party or grandparent, may appoint a guardian ad litem for the child
3 to assist the court in determining the best interests of the child regarding grandparent visitation.
4 A guardian ad litem may recommend psychological evaluations.

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

1 In making a determination on a motion or petition the court shall consider the following
2 factors:

- 3 (1) The age of the child;
- 4 (2) The relationship between the child and the grandparent;
- 5 (3) The relationship between each of the child's parents or the person with whom the child
6 is residing and the grandparent;
- 7 (4) The time which has elapsed since the child last had contact with the grandparent;
- 8 (5) The effect that such visitation will have on the relationship between the child and the
9 child's parents or the person with whom the child is residing;
- 10 (6) If the parents are divorced or separated, the custody and visitation arrangement which
11 exists between the parents with regard to the child;
- 12 (7) The time available to the child and his or her parents, giving consideration to such

13 matters as each parent's employment schedule, the child's schedule for home, school and
14 community activities, and the child's and parents' holiday and vacation schedule;

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

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

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

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

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

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

NOTE: The purpose of this bill is to increase grandparents' rights in matters of custodial or decision-making authority and visitation. The bill allows a guardian ad litem to recommend a psychological evaluation. The bill increases the importance of the factor considering the grandparent's significant caretaking of the child. The bill minimizes a parent's bias toward a grandparent as a factor in visitation

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