

1 **H. B. 4519**

2
3 (By Delegate Manypenny)

4 [Introduced February 13, 2014; referred to the
5 Committee on the Judiciary.]

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10 A BILL to amend and reenact §48-9-103 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §48-10-403 and §48-
12 10-502 of said code, all relating to grandparent's rights;
13 permitting the grandparent or psychological parent to
14 institute an action for custodial or decision-making
15 responsibility of a child; allowing a guardian ad litem to
16 recommend a psychological evaluation; increasing the
17 importance of the factor considering the grandparent's
18 significant caretaking of the child; and minimizing a parent's
19 bias toward a grandparent as a factor.

20 *Be it enacted by the Legislature of West Virginia:*

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

24 **ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-**

1 **MAKING RESPONSIBILITY OF CHILDREN.**

2 **§48-9-103. Parties to an action under this article.**

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

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

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

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

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

17 (b) In exceptional cases the court may, in its discretion,
18 grant permission to intervene to other persons or public agencies
19 whose participation in the proceedings under this article it
20 determines is likely to serve the child's best interests. The
21 court may place limitations on participation by the intervening
22 party as the court determines to be appropriate. Such persons or
23 public agencies do not have standing to initiate an action under
24 this article.

1 **ARTICLE 10. GRANDPARENT VISITATION.**

2 **§48-10-403. Appointment of guardian ad litem for the child.**

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

9 **§48-10-502. Factors to be considered in making a determination as**
10 **to a grant of visitation to a grandparent.**

11 In making a determination on a motion or petition the court
12 shall consider the following factors:

13 (1) The age of the child;

14 (2) The relationship between the child and the grandparent;

15 (3) The relationship between each of the child's parents or
16 the person with whom the child is residing and the grandparent;

17 (4) The time which has elapsed since the child last had
18 contact with the grandparent;

19 (5) The effect that such visitation will have on the
20 relationship between the child and the child's parents or the
21 person with whom the child is residing;

22 (6) If the parents are divorced or separated, the custody and
23 visitation arrangement which exists between the parents with regard

1 to the child;

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

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

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

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

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

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

24 (13) Any other factor relevant to the best interests of the

1 child.

NOTE: The purpose of this bill is to increase grandparents' rights in matters of custodial or decision-making authority and visitation, particularly if the grandparent has been a significant or primary caretaker of the child for over one year.

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