

# STATE OF NEW YORK

6402

2017-2018 Regular Sessions

## IN SENATE

May 16, 2017

Introduced by Sen. MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law, in relation to the rights of grandparents with respect to visitation rights or custody of minor children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 72 of the domestic relations law, as amended by  
2 chapter 657 of the laws of 2003, is amended to read as follows:

3 § 72. Special proceeding or habeas corpus to obtain visitation rights  
4 or custody in respect to certain infant grandchildren. 1. (a) Where  
5 ~~[either or both of the parents of a minor child, residing within this~~  
6 ~~state, is or are deceased, or where]~~ circumstances show that conditions  
7 exist which equity would see fit to intervene, a grandparent or the  
8 grandparents of ~~[such child]~~ a minor child, residing within this state  
9 may apply to the supreme court by commencing a special proceeding or for  
10 a writ of habeas corpus to have such child brought before such court, or  
11 may apply to the family court pursuant to subdivision (b) of section six  
12 hundred fifty-one of the family court act~~[-and-on]~~.

13 (b) When determining whether such grandparent or grandparents shall  
14 have standing to commence such proceedings pursuant to paragraph (a) of  
15 this subdivision, a strong presumption exists in favor of parental deci-  
16 sions concerning visitation. Further, the court shall not appoint a  
17 guardian ad litem until such time as standing of such grandparent or  
18 grandparents has been determined. A petitioner seeking to overturn a  
19 parental decision must allege, with detail and specificity, that the  
20 child would experience significant harm to his or her health, safety, or  
21 welfare if visitation were denied. Prior to filing the petition, the  
22 petitioner must have made a good faith attempt at reconciliation with  
23 the respondent and the petition must allege so with specificity, and  
24 must be verified or accompanied by a verified affidavit. The petitioner

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 must demonstrate that he or she is a fit and proper person to have visi-  
2 tation rights with the child and that he or she has no reported history  
3 of domestic violence. The court shall also conduct its own search to  
4 determine whether the petitioner has ever had a domestic violence inci-  
5 dent report filed against him or her. The court shall further conduct a  
6 search to determine whether the petitioner is, or ever has been, subject  
7 to an order of protection or has any criminal history. The court may  
8 also consider whether or not either or both of the parents of such child  
9 is or are deceased, however, such factor shall not automatically grant a  
10 grandparent or the grandparents of such child standing to commence such  
11 proceedings pursuant to paragraph (a) of this subdivision.

12 (c) On the return thereof, the court, by order, after due notice to  
13 the parent or any other person or party having the care, custody, and  
14 control of such child, to be given in such manner as the court shall  
15 prescribe, may make such directions as the best interest of the child  
16 may require, for visitation rights for such grandparent or grandparents  
17 in respect to such child. Any finding concerning the best interests of  
18 the child shall be subject to the strong presumption that the parents'  
19 decision is in the child's best interest, and visitation may only be  
20 ordered in circumstances in which the child's health, safety or welfare  
21 would be adversely affected by the denial of visitation. The court's  
22 finding supporting an order of visitation shall be in writing.

23 2. (a) Where a grandparent or the grandparents of a minor child,  
24 residing within this state, can demonstrate to the satisfaction of the  
25 court the existence of extraordinary circumstances, such grandparent or  
26 grandparents of such child may apply to the supreme court by commencing  
27 a special proceeding or for a writ of habeas corpus to have such child  
28 brought before such court, or may apply to family court pursuant to  
29 subdivision (b) of section six hundred fifty-one of the family court  
30 act; and on the return thereof, the court, by order, after due notice to  
31 the parent or any other person or party having the care, custody, and  
32 control of such child, to be given in such manner as the court shall  
33 prescribe, may make such directions as the best interests of the child  
34 may require, for custody rights for such grandparent or grandparents in  
35 respect to such child. An extended disruption of custody, as such term  
36 is defined in this section, shall constitute an extraordinary circum-  
37 stance.

38 (b) For the purposes of this section "extended disruption of custody"  
39 shall include, but not be limited to, a prolonged separation of the  
40 respondent parent and the child for at least twenty-four continuous  
41 months during which the parent voluntarily relinquished care and control  
42 of the child and the child resided in the household of the petitioner  
43 grandparent or grandparents, provided, however, that the court may find  
44 that extraordinary circumstances exist should the prolonged separation  
45 have lasted for less than twenty-four months.

46 (c) Nothing in this section shall limit the ability of parties to  
47 enter into consensual custody agreements absent the existence of  
48 extraordinary circumstances.

49 3. The court may direct that costs and allowances in whole or in part,  
50 including attorney's fees, be payable by an unsuccessful petitioner  
51 where the court finds that the contest was brought in bad faith or was  
52 frivolous or non-meritorious.

53 § 2. This act shall take effect on the ninetieth day after it shall  
54 have become a law.