

IN THE SENATE

SENATE BILL NO. 1105

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO VISITATION RIGHTS OF GRANDPARENTS; REPEALING SECTION 32-719, IDAHO CODE, RELATING TO VISITATION RIGHTS OF GRANDPARENTS AND GREAT-GRANDPARENTS; AMENDING CHAPTER 7, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-719, IDAHO CODE, TO PROVIDE FOR VISITATION RIGHTS OF GRANDPARENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section [32-719](#), Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 7, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 32-719, Idaho Code, and to read as follows:

32-719. VISITATION RIGHTS OF GRANDPARENTS. (1) A grandparent may petition the district court for reasonable visitation rights with respect to his grandchild under this section if:

- (a) The marital relationship between the parents of the grandchild has been severed by death, divorce or legal separation;
- (b) The grandchild is illegitimate and the petitioner is a maternal grandparent of the illegitimate child;
- (c) The grandchild is illegitimate, the petitioner is a paternal grandparent of the illegitimate grandchild and paternity has been established by a court of competent jurisdiction; or
- (d) A court in another state has ordered grandparent visitation.

(2) There is a rebuttable presumption that a parent’s decision with regard to visitation with the petitioner is in the grandchild’s best interests.

(a) The court may grant the petitioner reasonable rights of visitation if the court finds that the petitioner has rebutted the presumption by clear and convincing evidence based upon the following:

- (i) There is a preexisting relationship between the petitioner and the grandchild that has engendered a bond such that the grandchild will suffer emotional or psychological harm if visitation is not permitted;
- (ii) The petitioner is a fit and proper person to have visitation with the grandchild; and
- (iii) Visitation by the petitioner with the grandchild has been denied or unreasonably limited.

(b) The court may also consider as elements of rebutting the presumption, if applicable, that:

- (i) The petitioner’s child who is the parent of the grandchild has died or has become a noncustodial parent through divorce or legal separation;

1 (ii) Visitation arrangements between the petitioner and grandchild were in place
2 prior to filing of the petition;

3 (iii) The petitioner has acted as the grandchild's custodian or caregiver, or
4 otherwise has had a substantial relationship with the grandchild;

5 (iv) The petitioner had frequent or regular contact with the grandchild for at least
6 twelve (12) consecutive months; or

7 (v) Any other facts that establish that the loss of the relationship between the
8 petitioner and the grandchild is likely to harm the grandchild.

9 (3) If the court finds that the petitioner has met the standards for rebutting the
10 presumption, then the court shall consider whether it is in the best interests of the grandchild
11 to enter an order for reasonable grandparent visitation with the petitioner. In determining the
12 best interests of the grandchild, the court shall consider all relevant factors, including, but not
13 limited to, the following:

14 (a) The love, affection and other emotional ties existing between the petitioner and the
15 grandchild.

16 (b) The length and quality of the prior relationship between the grandchild and the
17 petitioner, the role performed by the petitioner in such relationship and the existing
18 emotional ties of the grandchild to the petitioner.

19 (c) The mental and physical health of all parties.

20 (d) The wishes and concerns of the grandchild, if age twelve (12) years or older.

21 (e) The effect on the grandchild of hostility between the petitioner and the parent or
22 parents of the grandchild.

23 (f) The willingness of the petitioner, except in the case of abuse or neglect of the
24 grandchild by the parent or parents of the grandchild, to encourage a close relationship
25 between the grandchild and the parent or parents of the grandchild.

26 (g) Any history of physical, emotional or sexual abuse or neglect of any child or
27 grandchild by the parent or parents or petitioner.

28 (h) Whether the parent's decision to deny, or fail to offer, visitation to the petitioner, is
29 related to the grandchild's well-being or is for some other unrelated reason.

30 (i) Any other factor relevant to the physical and psychological well-being of the
31 grandchild.

32 (4) The adoption of a grandchild by the grandchild's stepparent shall not diminish or
33 alter visitation rights previously ordered under this section.