

MAINE STATE LEGISLATURE

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**STATE OF MAINE
114TH LEGISLATURE
SECOND REGULAR SESSION**

**Final Report
Grandparents' Visitation Rights**

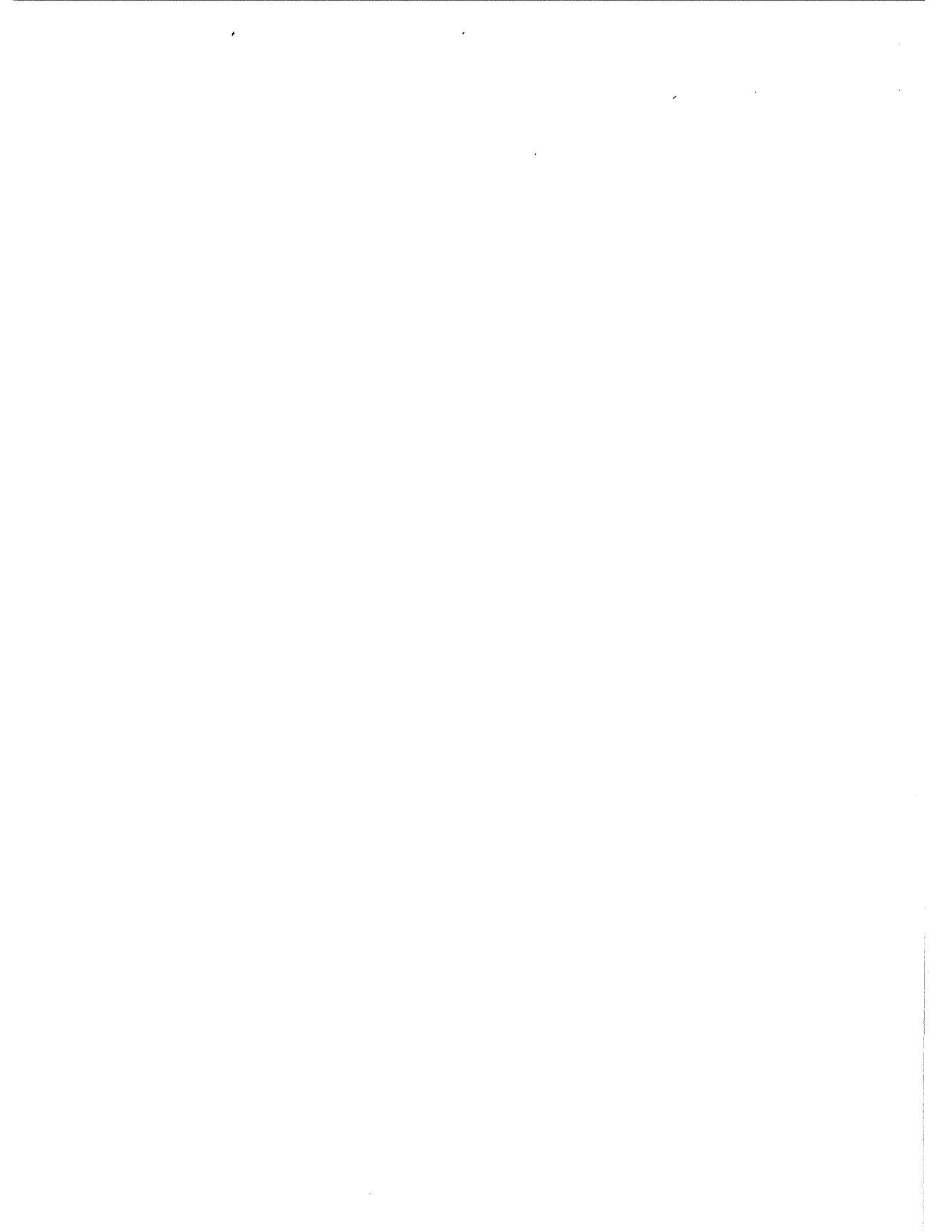
**Staff Report
to the
Joint Standing Committee
on Judiciary
January 1991**

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I. Introduction

At common law, a grandparent's ability to visit with his or her grandchild was dependent on the willingness of the child's parent or custodian to permit visitation; courts would not order grandparent visitation over the objections of the parent. Since the mid-1960's, however, all 50 states have enacted laws abrogating this common law rule, to some extent, and permitting courts to grant visitation rights to grandparents under certain circumstances.

Maine law was amended in 1983 to authorize a court to award a right of visitation* with a child to any third person. The visitation right may be awarded when the court makes an order of child custody as part of a judicial separation order, as part of a divorce decree or when the child's parents are living apart.

In five of the seven years since 1983, legislation has been proposed to change the law regarding third party visitation rights. Among the proposals were a bill to enable grandparents to petition a court to request visitation rights, rather than rely on discretionary intervention petitions; a bill to broaden the circumstances under which grandparents may receive visitation rights; and a bill to require courts to award visitation rights to grandparents, unless visitation is shown not to be in the best interest of the child. None of these proposals were enacted.

In 1990, the Judiciary Committee considered Legislative Document 2067, An Act to Allow Grandparents to Petition for Visitation Rights in Certain Limited Circumstances. The bill would have expanded the circumstances under which visitation rights could be granted; changed the standard for granting rights and the burden of proof; set forth specific procedures for filing for rights; and required mediation of contested petitions.

The Judiciary Committee held a public hearing on LD 2067 on January 23, 1990. Work sessions on the bill followed on January 29, February 7 and February 22. At the end of the third work session, the sponsor of LD 2067, Representative Cushman Anthony, requested leave to withdraw the legislation. The Committee granted the leave to withdraw and requested a staff study of grandparent visitation rights, specifically focussing on laws and experiences of other states.

The Legislative Council approved the Committee's request for legislative staff. This report is the result of the staff study, which was directed at providing resource materials for the Judiciary Committee to assist in consideration of any future proposals relating to grandparents' visitation rights.

* Maine law currently refers to "rights of access" to a minor child, rather than visitation rights. However, since the term "visitation rights" is used in most other state statutes as well as in most discussions of the issue, this report will refer to "visitation rights."

II. Maine Law

Current Maine law grants jurisdiction to the appropriate courts to grant visitation rights to third parties when making child custody orders pursuant to a divorce, legal separation or when parents are living apart. Since the law does not specify a procedural mechanism for the grandparent to request those rights, there has been some confusion over the ability of grandparents to bring the issue to the attention of the court. According to testimony at the Work Session on LD 2067, grandparents have been able to raise the issue of visitation rights by petitioning to intervene in existing court actions under Rule 24 of the Maine Rules of Civil Procedure. This permits the court discretion to grant intervenor status to the grandparent.

There have been several attempts to expand the law since its passage in 1983. Attached is a copy of Maine law regarding third party visitation rights (which includes grandparents) and a summary of proposals considered by the Maine Legislature.

Title 19
Chapter 5 -- Parents & Children
Subchapter I -- General Provisions

§ 214. Parenting and support decreed when parents live apart

1. Legislative findings and purpose. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Allocated parental rights and responsibilities" means that responsibilities for the various aspects of a child's welfare are divided between the parents, with the parent allocated a particular responsibility having the right to control that aspect of the child's welfare. Responsibilities may be divided exclusively or proportionately. Aspects of a child's welfare for which responsibility may be divided include primary physical residence, parent-child contact, support, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities. A parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that aspect.

B. Child support means money to be paid directly to a parent or to the Department of Human Services on behalf of a child receiving public assistance and any medical or dental insurance coverage provided on behalf of a child pursuant to court order.

C. "Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities and both parents must confer and make joint decisions regarding the child's welfare.

D. "Sole parental rights and responsibilities" means that one parent is granted exclusive parental rights and responsibilities with respect to all aspects of a child's welfare, with the possible exception of the right and responsibility for support.

3. Jurisdiction. If the father and mother of a minor child are living apart, the Probate Court, Superior Court or District Court in the county or division where either resides, on complaint of either and after such notice to the other as the court may order, may make an order awarding parental rights and responsibilities with respect to the child. The right to file a complaint shall not be denied any person for failure to meet any residency requirement if the person is a member of the Armed Forces of the United States on active duty stationed in this State or a parent of a child of such a member. Such a member shall be deemed to be a resident either of the county in which the military installation or installations, or other place at which he has been stationed, is located or of the county in which he has sojourned.

The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction Act, sections 801 to 825, if another state may have jurisdiction as provided in that Act.

4. Mediation. Prior to a contested hearing under this section where there are minor children of the parties, the court shall refer the parties to mediation; except that, for good cause shown, the court, prior to referring the parties to mediation, may hear motions for temporary relief, pending final judgment on any issue or combination of issues for which good cause for temporary relief has been shown. Upon motion supported by affidavit, the court may, for extraordinary cause shown, waive the mediation requirement under this subsection. Any agreement reached by the parties through mediation on any issues shall be reduced to writing, signed by the parties and presented to the court for approval as a court order. When agreement through mediation is not reached on any issue, the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, may dismiss the action or any part of the action, may render a decision or judgment by default, may assess attorney's fees and costs or may impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

5. Best interest of the child. The court, in making an award of parental rights and responsibilities with respect to a minor child, shall apply the standard of the best interest of the child. In applying this standard, the court shall consider the following factors:

- A. The age of the child;
- B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;
- C. The preference of the child, if old enough to express a meaningful preference;
- D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
- E. The stability of any proposed living arrangements for the child;
- F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;
- G. The child's adjustment to the child's present home, school and community;
- H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;
- I. The capacity of each parent to cooperate or to learn to cooperate in child care;
- J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;
- K. The effect on the child if one parent has sole authority over the child's upbringing; and
- L. All other factors having a reasonable bearing on the physical and psychological well-being of the child.

6. Order. The order of the court shall award allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child. Where the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

The court may award reasonable rights of contact with a minor child to any 3rd persons. The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

Title 19
Chapter 11 – Judicial Separation

Every final order issued under this section shall contain:

- A. A provision for child support or a statement of the reasons for not ordering child support; and
- B. A statement that each parent shall have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access.

7. **Equal consideration of parents.** The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's sex or the child's age or sex.

8. **Abandonment of family residence.** The court shall not consider abandonment of the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the abandoning parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the abandonment, or when one parent has left the family residence at the request or insistence of the other parent.

9. **Support order.** The court may order either parent of a minor child to contribute reasonable and just sums as child support payable weekly, monthly or quarterly. Availability of public welfare benefits to the family must not affect the decision of the court as to the responsibility of a parent to provide child support. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 7, subchapter V.¹ If such an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section must comply with chapter 7, subchapter I-A.²

After January 1, 1990, the court may order either parent to provide child support beyond the child's 18th birthday if the child is attending secondary school as defined in Title 20-A, section 1, until the child graduates, withdraws or is expelled from secondary school or attains the age of 19, whichever first occurs.

The court's order may include a requirement for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring the obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if health insurance is available to the obligated parent at reasonable cost. The court order must also require the obligated parent to furnish proof of coverage to the obligee within 15 days of receipt of a copy of the court order. For the purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance. If health insurance is not available at reasonable cost at the time of the hearing, the court order must establish the obligation to provide health insurance on the part of the obligated parent effective immediately upon insurance being available at reasonable cost. The court may enforce a support order as provided in chapter 14-A.³

10. **Appeal.** An appeal shall lie from decrees awarding parental rights and responsibilities with respect to a minor child to the Supreme Judicial Court where originating in the Probate Court or the Superior Court, or to the Superior Court where originating in the District Court.

11. **Modification or termination.** Any order for parental rights and responsibilities with respect to a minor child may be modified or terminated as circumstances require upon the petition of one or both of the parents. Child support orders may be modified retroactively, but only from the date that notice of a petition for modification has been served upon the opposing party pursuant to the Maine Rules of Civil Procedure. The parties shall be referred to mediation as under subsection 4.

The relocation, or intended relocation, of a child resident in this State to another state by a parent, when the other parent is a resident in this State and there exists an award of shared or allocated parental rights and responsibilities concerning the child, is a substantial change in circumstances.

§ 581. Spouse deserted or living apart

1. **Legislative findings and purpose.** The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

2. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Allocated parental rights and responsibilities" means that responsibilities for the various aspects of a child's welfare are divided between the parents, with the parent allocated a particular responsibility having the right to control that aspect of the child's welfare. Responsibilities may be divided exclusively or proportionately. Aspects of a child's welfare for which responsibility may be divided include primary physical residence, parent-child contact, support, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities. A parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that aspect.

B. "Child support" means money to be paid directly to a parent or to the Department of Human Services on behalf of any child receiving public assistance and any medical or dental insurance coverage provided to a child pursuant to court order.

C. "Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities and both parents must confer and make joint decisions regarding the child's welfare.

D. "Sole parental rights and responsibilities" means that one parent is granted exclusive parental rights and responsibilities with respect to all aspects of a child's welfare, with the possible exception of the right and responsibility for support.

3. **Jurisdiction.** The court shall have the following jurisdiction.

A. If a married person, without just cause, deserts his spouse or if his spouse, for just cause, is actually living apart from him, and if that desertion or living apart has continued for a period of at least 60 days immediately prior to the filing of the petition, the court may, upon the spouse's petition, or if he is mentally ill, upon the petition of his guardian or next friend, enter a decree that the spouse is so deserted or is so living apart and may prohibit the other spouse from imposing any restraint on the petitioner's personal liberty during such time as the court shall by order direct.

B. Upon the petition of either spouse, or of the guardian or next friend of either who may be mentally ill, the court may make an order awarding parental rights and responsibilities with respect to a minor child of the parties.

4. **Mediation.** Prior to a contested hearing under this section where there are minor children of the parties, the court shall refer the parties to mediation; except that, for good cause shown, the court, prior to referring the parties to mediation, may hear motions for temporary relief, pending final judgment on any issue or combination of issues for which good cause for temporary relief has been shown. Upon motion supported by affidavit, the court may, for extraordinary cause shown, waive the mediation requirement under this subsection. Any agreement reached by the parties through mediation on any issues shall be reduced to writing, signed by the parties and presented to the court for approval as a court order. When agreement through mediation is not reached on any

issue, the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, may dismiss the action or any part of the action, may render a decision or judgment by default, may assess attorney's fees and costs or may impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

5. **Best interest of the child.** The court, in making an award of parental rights and responsibilities with respect to a minor child, shall apply the standard of the best interest of the child. In applying this standard, the court shall consider the following factors:

- A. The age of the child;
- B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;
- C. The preference of the child, if old enough to express a meaningful preference;
- D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
- E. The stability of any proposed living arrangements for the child;
- F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;
- G. The child's adjustment to the child's present home, school and community;
- H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;
- I. The capacity of each parent to cooperate or to learn to cooperate in child care;
- J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;
- K. The effect on the child if one parent has sole authority over the child's upbringing; and
- L. All other factors having a reasonable bearing on the physical and psychological well-being of the child.

6. **Order.** Upon petition under subsection 3, paragraph B, the order of the court shall award allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child. Where the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

The court may award reasonable rights of contact with a minor child to any 3rd persons. The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

Every final order issued under this section shall contain:

- A. A provision for child support or a statement of the reasons for not ordering child support; and
- B. A statement that each parent shall have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access.

7. **Equal consideration of parents.** The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's sex or the child's age or sex.

8. **Abandonment of family residence.** The court shall not consider abandonment of the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the abandoning parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the abandonment, or when one parent has left the family residence at the request or insistence of the other parent.

9. **Support order.** The court may order either parent of a minor child to contribute reasonable and just sums as child support payable weekly, monthly or quarterly. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 7, subchapter V.¹ If such an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section must comply with chapter 7, subchapter I-A.²

An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring an obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if health insurance is available to the obligated parent at reasonable cost. The court order must also require the obligated parent to furnish proof of such coverage to the obligee within 15 days of receipt of a copy of the court order. For the purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance. If health insurance is not available at reasonable cost at the time of the hearing, the court order must establish the obligation to provide health insurance on the part of the obligated parent effective immediately upon the insurance being available at reasonable cost.

10. **Modification or termination.** An order for parental rights and responsibilities with respect to a child may, upon petition of either spouse, be modified or terminated as circumstances require. The parties shall be referred to mediation as under subsection 4.

The relocation, or intended relocation, of a child resident in this State to another state by a parent, when the other parent is a resident in this State and there exists an award of shared or allocated parental rights and responsibilities concerning the child, is a substantial change in circumstances.

11. **Enforcement.** The court may enforce obedience to its orders by appropriate process including remedies provided in chapter 14-A.³ Nothing in this section may preclude the court from incarcerating a spouse for nonpayment of child support, alimony or attorney's fees in violation of a court order to do so.

Title 19
Chapter 13 – Divorce & Annulment
Subchapter II -- Divorce

§ 752. Parenting of children; change of names; compulsory process; support and maintenance

1. Legislative findings and purpose. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Allocated parental rights and responsibilities" means that responsibilities for the various aspects of a child's welfare are divided between the parents, with the parent allocated a particular responsibility having the right to control that aspect of the child's welfare. Responsibilities may be divided exclusively or proportionately. Aspects of a child's welfare for which responsibility may be divided include primary physical residence, parent-child contact, support, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities. A parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that aspect.

B. "Child support" means money to be paid directly to a parent, to another person or agency awarded parental rights and responsibilities with respect to a child, or to the Department of Human Services on behalf of any child receiving public assistance and any medical or dental insurance coverage provided to a child pursuant to court order.

C. "Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities and both parents must confer and make joint decisions regarding the child's welfare.

D. "Sole parental rights and responsibilities" means that one parent is granted exclusive parental rights and responsibilities with respect to all aspects of a child's welfare, with the possible exception of the right and responsibility for support.

3. Jurisdiction. The court making an order of nullity or of divorce may make an order awarding parental rights and responsibilities with respect to a minor child of the parties.

4. Mediation. Prior to a contested hearing under this section where there are minor children of the parties, the court shall refer the parties to mediation; except that, for good cause shown, the court, prior to referring the parties to mediation, may hear motions for temporary relief, pending final judgment on any issue or combination of issues for which good cause for temporary relief has been shown. Upon motion supported by affidavit, the court may, for extraordinary cause shown, waive the mediation requirement under this subsection. Any agreement reached by the parties through mediation on any issues shall be reduced to writing, signed by the parties and presented to the court for approval as a court order. When agreement through mediation is not reached on any issue, the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, may dismiss the action or any part of the action, may render a decision or judgment by default, may assess attorney's fees and costs or may impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

5. Best interest of the child. The court, in making an award of parental rights and responsibilities with respect to a minor child, shall apply the standard of the best interest of the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;

B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;

C. The preference of the child, if old enough to express a meaningful preference;

D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;

E. The stability of any proposed living arrangements for the child;

F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;

G. The child's adjustment to the child's present home, school and community;

H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;

I. The capacity of each parent to cooperate or to learn to cooperate in child care;

J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;

K. The effect on the child if one parent has sole authority over the child's upbringing; and

L. All other factors having a reasonable bearing on the physical and psychological well-being of the child.

6. Order. The order of the court shall award allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child. Where the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

The court may award reasonable rights of contact with a minor child to any 3rd persons.

The court may award parental rights and responsibilities with respect to the child to a 3rd person, some suitable society or institution for the care and protection of children or the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

Every final order issued under this section shall contain:

- A. A provision for child support or a statement of the reasons for not ordering child support; and
 - B. A statement that each parent shall have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access.
7. Equal consideration of parents. The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's sex or the child's age or sex.
8. Abandonment of family residence. The court shall not consider abandonment of the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the abandoning parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the abandonment, or when one parent has left the family residence at the request or insistence of the other parent.
9. Department of Human Services. When the Department of Human Services has been granted parental rights and responsibilities for a child under this section, Title 22, chapter 1071,¹ shall apply regarding subsequent reviews and shall govern further rights and responsibilities of the department, the parents, the child and any other party.

10. Support order. An order of the court for child support may run against the father or the mother in whole or in part or against both, irrespective of the fault of the father or mother in the divorce action. For divorces ordered after January 1, 1990, the order for child support may run until the child graduates, withdraws or is expelled from secondary school as defined in Title 20-A, section 1, or attains the age of 19 years, whichever first occurs after the child attains the age of 18 years. When the order is to run against both, the court shall specify the amount each shall pay. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 7, subchapter V.² If such an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section must comply with chapter 7, subchapter I-A.³

An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring an obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if health insurance is available to the obligated parent at reasonable cost. The court order must also require the obligated parent to furnish proof of such coverage to the obligee within 15 days of receipt of a copy of the court order. For the purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance. If health insurance is not available at reasonable cost at the time of the hearing, the court order must establish the obligation to provide health insurance on the part of the obligated parent effective immediately upon the insurance being available at reasonable cost.

Availability of public welfare benefits to the family must not affect the decision of the court as to the responsibility of a parent to provide child support.

The court may enforce a support order as provided in chapter 14-A.⁴

11. Name change. Upon the request of the wife during the action for divorce or annulment or at any time thereafter, the court may change the name of the wife.

12. Modification of orders; compulsory process. Upon the motion of one or both of the parents, or any agency or person who has been granted parental rights and responsibilities or contact with respect to a child under this section, the court may alter its order concerning parental rights and responsibilities or contact with respect to a minor child as circumstances require. Child support orders may be modified retroactively, but only from the date that notice of a petition for modification has been served upon the opposing party pursuant to the Maine Rules of Civil Procedure. The parties shall be referred to mediation as under subsection 4.

The relocation, or intended relocation, of a child resident in this State to another state by a parent, when the other parent is a resident in this State and there exists an award of shared or allocated parental rights and responsibilities concerning the child, is a substantial change in circumstances.

In execution of the powers given it under this Title, the court may employ any compulsory process which it deems proper, by execution attachment or other effectual form, on which costs shall be taxed as in other actions.

13. Uniform Child Custody Jurisdiction Act. The jurisdiction granted by this section to make or alter an order concerning parental rights and responsibilities with respect to a minor child shall be limited by the Uniform Child Custody Jurisdiction Act, sections 801 to 825, if another state may have jurisdiction as provided in that Act.

RULE 24. INTERVENTION

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) **Intervention by the State.** When the constitutionality of an act of the legislature affecting the public interest is drawn in question in any action to which the State of Maine or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General, and shall permit the State of Maine to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.

**Proposals to Amend Maine Law Regarding
Grandparents' Visitation Rights**

111th Session: 1983 - 1984

LD 151

111th - First Session

Final Disposition: LV/WD

LD 151 would have permitted a grandparent to petition for reasonable visitation rights when the parent who was the child of the grandparent was deceased or the parents were divorced. Visitation rights could have been granted if they were in the best interest of the child and visitation would not interfere with the parent-child relationship. In making the decision, the court would have been required to consider the amount of personal contact between the grandparent and the child and the wishes of the child, if the child was capable of forming an intelligent opinion.

LD 205

111th - First Session

Final Disposition: LV/WD

LD 205 would have placed court authority to grant visitation rights to grandparents or any third party in Maine statute relating to custody and support of minor children in a divorce proceeding.

LD 292

111th - First Session

Final Disposition: OTP-ND (see LD 1433)

LD 292 is the same as LD 151, except that it deleted the requirement that visitation rights not interfere with the parent-child relationship.

LD 1307

111th - First Session

Final Disposition: LV/WD

LD 1307 would have permitted a grandparent to petition District Court for visitation rights when the parents were divorced; when a petition for marriage dissolution had been filed; when the child's parent, who was the child of the grandparent, was deceased; or when the child was placed in a foster home. Rights could have been granted when in the best interest of the child.

KEY: LV/WD: The committee granted the sponsor leave to withdraw the bill.
ONTP: The Legislature accepted the committee's recommendation that the bill ought not pass.
OTP-ND: The Legislature accepted the committee's recommendation that the bill ought to pass in new draft form.

12 Grandparents' Visitation Rights •

LD 1433 (New Draft of LD 292)

111th - First Session

Final Disposition: Enacted (PL 1983, c. 195)

LD 1433 authorizes a court to order reasonable visitation rights to a parent, third parties or both. The statement of fact on the bill provides that:

"The purpose of this new draft is to provide for possible court-ordered visitation rights for grandparents with their grandchildren, ... , who a court finds should have rights to visit with a child. The visitation rights could be granted in a case where the court is making or has made a child custody order in the context of the separation of the parents or their divorce or annulment."

LD 2466

111th - Second Session

Final Disposition: Enacted (PL 1983, c. 813)

As part of a major revision of child custody terminology, LD 2466 rewrote Maine's third party visitation rights provision to provide for reasonable "rights of access" to minor children rather than visitation rights.

112th Session: 1985 - 1986

LD 135

112th - First Session

Final Disposition: ONTP

LD 135 would have permitted any interested third person to file a complaint with a court when parents were living apart, to ask the court to make an order awarding parental rights and responsibilities. The statement of fact provides that the purpose of the bill was to permit persons to appeal to the court to obtain visitation rights.

LD 204

112th - First Session

Final Disposition: ONTP

LD 204 would have permitted a grandparent to petition a court for visitation rights when the grandparent's child, who was the parent of the child, was deceased. The standard for granting the rights would have been the best interest of the child.

LD 859

112th - First Session

Final Disposition: LV/WD

LD 859 would have permitted any third person to petition the court for an order granting contact; the language would have been added to the current provision authorizing a court to award rights of contact.

112th - Second Session: No Bills submitted

113th Session: 1987 - 1988

LD 149

113th - First Session

Final Disposition: LV/WD

LD 149 would have permitted a grandparent to petition Superior Court for visitation rights when parents were separated or divorced, or when the parent who was the child of the grandparent was deceased.

113th - Second Session: No bills submitted

114th Session: 1989 - 1990

LD 425

114th - First Session

Final Disposition: LV/WD

LD 425 would have required the court to order visitation rights for a grandparent upon divorce or separation of the parents, unless the court found that visitation was not in the best interest of the child. If it denied visitation, the court would have been required to state the reasons for denial.

LD No. 2067

114th - Second Session

Final Disposition: LV/WD

LD 2067 would have permitted grandparents to petition the court for visitation rights when:

- either parent was deceased;
- the parents were divorced or legally separated, or custody and support had been decreed when parents were living apart;
- an action was pending for divorce or legal separation, or for an order of custody and support when parents were living apart; or
- parents were never married, but paternity was legally established and the parents were not cohabiting.

Rights could have been granted only when there was clear and convincing evidence that:

- there was or had been, or there was a reasonable likelihood that there could be, a significant beneficial relationship between the child and grandparent;
- it was in the best interest of the child that a relationship exist or continue to exist; and
- the relationship would not adversely interfere with the parent-child relationship (if both parents protested, it would have been prima facie evidence that visitation would interfere with the parent-child relationship).

Before a contested hearing, the court would have been required to refer parties to mediation, except for extraordinary cause shown. The court would have been able to impose sanctions for a party's failure to mediate in good faith.

III. Survey of Other States

The attached chart is a survey of 50 state laws regarding grandparents' visitation rights. The statutes vary widely, have been amended frequently, and are often understandable only through court interpretation. Attempts have been made to verify the information on the charts by reading available case law and law review articles, but it is not possible to claim total accuracy.

A. Notes on the Chart

The first column of the chart, below the statutory cite, includes abbreviations for any persons other than parents and grandparents who may receive visitation rights under that state's law.

In the column listing circumstances, "DV" indicates that the statute permits a person to petition for visitation rights after the parents file for dissolution of their marriage, either in the divorce proceeding or in a separate proceeding. Where the statute does not expressly list circumstances that trigger the opportunity for visitation rights to be granted, the chart provides "No circ. listed." This may indicate either that no triggering event is required, or that the circumstances are implied by placement of the statute, or determined through case law or legislative history.

In the process column, "P" indicates that the statute gives the grandparent the right to raise the issue in court, either by giving the grandparents a right to intervene, or a right to petition in an ongoing action or a separate proceeding. "P" may also indicate that the statute implies a right to petition. "C" indicates that the statute refers to the court's right to grant visitation rights, but does not indicate whether or how the grandparent may bring the issue to the attention of the court.

The last column lists provisions relating to the effect of adoption on visitation rights; provisions for the payment of attorney fees and costs, when those provisions are included in the grandparent visitation right statutes; provisions for modification of orders; and other process issues, such as appointment of guardians ad litem. The last entry in that column lists the enactment date of each statute, and as much legislative history as was collectable from the statute books and law review articles.

GRANDPARENTS' VISITATION CHART

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Alabama</u> Ala. Code §30-3-4 (1975 & Supp. 1990)	DV; D and surviving parent denies reasonable visitation rights; G is unreasonably denied visitation rights for more than 90 days	P	At the discretion of the court	Enacted: 1980 or before; Amended: 1989 (permitted filing of petition in separate post-dissolution petition, and expanded to the event of death of a parent).
<u>Alaska</u> Alaska Statute §25.24.150 (1983) Other person	DV; D (action for placement of child after parent's death)	C (during the action or at any time after)	BIOTC	
<u>Arizona</u> Ariz. Rev. Ann. §25-337.01 (Supp. 1989) GGP	At least 3 months after DV, D	P	BIOTC	Adoption: Adoption terminates visitation rights (case law: <u>including</u> adoption by stepparent). Enacted: 1983; Amended: 1988 (deleted the requirement that G be the parent of the deceased or noncustodial parent to petition for visitation rights).

KEY:

General: G: Grandparent; GGP: Great-Grandparent; GVR: Grandparents' visitation rights; Sb: Sibling; SP: Stepparent; VR: Visitation Rights
Circumstances: D: Death; DV: Divorce, generally including legal separation; * : G may petition for VR only if G's child is the deceased (D*) or noncustodial parent (DV*);
Process: C: Court has authority to grant; P: Grandparent has right to intervene, right to petition in a separate action, or right to file a motion to modify a divorce decree
Standard: BIOTC: Best interest of the child; BIWOTC: Best interest and welfare of the child

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Arkansas</u> Ark. Stat. Ann. §9-13-103 (Supp. 1987) Sb, GGP	Following DV, D	P	BIWOTC	Attorney Fees: Court may order petitioner to pay respondent's reasonable attorney fees & costs, upon motion of respondent, if the court has denied petition <u>and</u> determines that: (1) the petition was not well-founded; (2) the petition was filed with malicious intent or purpose; or (3) the petition is not in the best interest and welfare of the child. The court must consider the financial ability of the petitioner and the circumstances of the case. Enacted: pre-1979; Amended 1985, 1987
<u>California</u> Cal. Civ. Code §§197.5, 4601 (West 1984 & Supp. 1987) Sb, GGP (D) Any person having interest in child's welfare (DV)	D DV	C C	BIOTC: for persons other than G, court must consider the person's prior contact with child Discretion of the Court	Adoption: Adoption terminates VR, except adoption by G or SP. Mediation: California requires mediation for all custody and visitation disputes. §197.5 (Death): Enacted: 1967; Amended: 1970 (provided for termination of VR on adoption), 1973, (extended rights to siblings and GGP) §4601 (Divorce): Enacted 1969.
<u>Colorado</u> Colo. Rev. Stat. §19-1-117 (1986 & 1990 Supp.)	When there is or has been a child custody case, including: DV, custody granted to party other than parents, or child resides outside parental home (excluding adoption placement), or D*	P Not more than once in 2 years absent a showing of good cause	BIOTC	Adoption: (Case Law): Adoption by SP does not terminate VR. Attorney fees: Court may order reasonable attorney fees to the prevailing party. Modification: Court may modify or terminate VR when in BIOTC. Other process: Statute addresses other process such as provision for hearings. Court may not restrict movement of child solely to protect VR. Enacted: 1980; Amended: 1987

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Connecticut</u> Conn. Gen. Stat. Anno. §§46b-59, 46b-59a (West 1989) Any person	No circ. listed	P	BIOTC; Court must consider the wishes of the child, if of sufficient age and capable of forming an intelligent opinion	Adoption: Court <u>may</u> terminate GVR upon child's adoption. Mediation: Office of Chief Court Administration may establish mediation for visitation disputes. Enacted: 1978; Amended: 1979, 1983 (expanded from G to any person)
<u>Delaware</u> Del. Code Ann. Title 10 §950(7) (Supp. 1988)	In any civil action within jurisdiction of the Family Court (regardless of parties' marital status)	P	(Case law) BIOTC	When parents are cohabiting as husband and wife, visitation rights not granted over objection of both parents. Enacted: 1976; Amended: 1986 (added provision described above)
<u>Florida</u> Fla. Stat. Ann. §61.13(b)2c, §752.01, .02, .07 (1985 & Supp. 1990)	DV; D; parent deserted child		BIOTC	Adoption: Statute does not permit GVR for adopted child, except for SP adoption; court may terminate VR after SP adoption if in BIOTC, after hearing. Other Process: Statute addressed other process issues. Enacted: Prior to 1975
<u>Georgia</u> Ga. Code Ann. §19-7-3 (1982 & Supp. 1990)	DV D* Termination of parental rights of G's child; Adoption by child's blood relative; other cases involving custody	P (not more often than 1 time in 2 yrs; not in year in which custody action was filed)	Proof of special circumstances making VR "necessary to the BIOTC"	Modification: Parent, custodian or guardian of child may petition for revocation or modification of VR not more than once in 2 years except for good cause shown. Enacted 1976; Amended 1980, 1981, 1988 (amended to cover adoption by blood relative), 1990

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Hawaii</u> Ha. Rev. Stat. §571-46(7) 1985 & Supp. 1989	DV, any action involving custody issue	C, during action or after	VR shall be granted in the discretion of the court, unless shown to be detrimental to BIOTC	Court may order party and child to attend counseling or other educational program, as appropriate. Enacted: Before 1981
Any person interested in the welfare of the child				
<u>Idaho</u> Idaho Code §32-1008 (1983)	Anytime, provided G has established a substantial relationship with the child	C	"Upon a proper showing"	 Enacted: 1972
<u>Illinois</u> Ill. Ann. Stat. Ch. 40, para. 607(b) (c), Ch. 110-1/2 ¶11-7.1 (Smith-Hurd) Supp. 1990 GGP, Sb	Anytime? except when paternity is not established or child was adopted (other than by SP) or surrendered (other than to a foster care facility or Child & Family Services Department)	P	BIWOTC	Adoption: Adoption terminates VR, except adoption by SP. Termination of parental rights: Adoption following termination of parental rights does not preclude GVR. Modification: Court may modify GVR when in BIOTC. Enacted: 1981; Amended: 1982 (added provision for death), 1985 (adoption, termination of parental rights)
	D of <u>both</u> parents		VR <u>shall</u> be granted unless <u>not</u> in BIWOTC	
<u>Indiana</u> Ind. Code Ann. §§31-1-11.7-1 to 11.7-8 (Burns 1987 & Supp. 1988)	After DV*, D* Child born out of wedlock (paternal G only if paternity is established)	P	BIOTC -Court may consider whether G has had, or attempted to have meaningful contact with the child	Adoption: VR survives adoption by SP, biological relative such as G, SP, Aunt, Uncle, Niece, Nephew. Modification: Whenever in the BIOTC. Other process: statute addresses other process issues, including interstate jurisdiction. Enacted: 1981; Amended: 1983, 1985, 1988, 1989 (consideration of past contact, prohibits parent of custodial parent from being granted VR)

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Iowa</u> Iowa Code §§598.35-36 (West 1989)	DV, D* Child placed in foster home or adopted by stepparent who is married to parent <u>not</u> related to G; Child born out of wedlock, paternity established, (if paternal G) and G's child is the non-custodial parent		BIOTC <u>and</u> G established sub- stantial relation- ship prior to filing of petition	Adoption (Case Law): Adoption by SP does not terminate VR. Enacted: 1975; Amended: 1977, 1979, 1981, 1987 (adds substantial relationship as part of standard, and specifies VR in event of child born out of wedlock)
<u>Kansas</u> Kan. Stat. Ann. §60-1616(b), 38-129 (1983 & Supp. 1989)	No circ. listed	C	BIOTC <u>and</u> substantial relationship exists	Adoption: SP adoption does not terminate GVR, when child of G is deceased, and G may be granted VR after adoption by SP. Attorney fees: Attorney fees shall be awarded to respondent, unless court finds that justice and equity require otherwise. Enacted: 1971; Amended: 1982, 1984
<u>Kentucky</u> Ky. Rev. Stat. Ann. §405.021 (Michie 1984)	No circ. listed	P	BIOTC	Adoption: (Case Law) Adoption cuts off VR except SP adoption. Enacted: 1976; Amended: 1984 (expanded from D only)
<u>Louisiana</u> La. Rev. Stat. Ann. §9:572 (West Supp. 1990) Sb	DV*, D* (including unmarried parents)	C	BIOTC	Adoption: When a child is adopted after the death of the parent who is the G's child, or the G's child forfeited the right to object to the adop- tion, G may petition for VR; the court shall consider all relevant factors, including psycho- logical evaluation and investigation by the Human Services Department. Enacted: 1972; Amended: 1978 (adoption provision), 1981 (unmarried parents & death), 1982 (added Sbs), 1986, 1989.

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Maine</u> Me. Rev. Stat. Ann. Title 19, §§214, 581 752 (1990 Supp.)	No circ. listed (placed in DV statute)	C		Enacted: 1983
<u>Maryland</u> Md. Fam. Law Code Ann. §9-102 (1984)	After DV; (Case Law): Other circumstances at Court discretion	P	BIOTC	Enacted: 1981
<u>Massachusetts</u> Annot. Laws of Mass. Ch. 119, §390 (Lawyers Co-op (1975 & Supp. 1990)	After DV, D	C	BIOTC	Adoption: VR are terminated by adoption other than SP adoption. Enacted: 1972; Amended: 1982 (expanded from death to divorce cases, and deleted the requirement that G be the parent of deceased parent)
<u>Michigan</u> Mich. Comp. Laws Ann. §722.27b (West Supp. 1990)	D*; Any case involving custody, including DV, grant of custody to nonparents, except adoption by person other than SP	P May not file more than once in 2 years absent good cause	BIOTC	Adoption: Adoption by SP does not terminate right to petition for VR. Attorney fees: Court may award reasonable attorney fees to prevailing party. Parent of putative father may not be granted VR unless father acknowledged paternity, is adjud- icated as father or contributed regularly to support of child. Other process: Statute addresses process issues. Enacted: 1971 (D); 1980 (DV); 1982

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
Minnesota Minn. Stat. §257.022 (1988 & Supp. 1989) GGP	D*, DV Child resided with G or GGP for 12 months or more and removed by parent	P	BIOTC <u>and</u> VR will not interfere with the parent- child relationship; Court shall consider prior personal contact between petitioner and child	Adoption: No right to petition if child has been adopted by person other than SP or G; VR auto- matically terminated by adoption other than SP or G.
	Child has resided with person other than foster parent for 2 years or more	P	BIOTC; emotional ties equivalent to parent-child relationship <u>and</u> not interfere with parent-child relationship Court consider reasonable pre- ference of child if of sufficient age to express preference	Enacted: 1976; Amended: 1977, 1986, 1988, 1989 (added provision for persons residing with child for at least 2 years)
Mississippi Miss. Code Ann. §§93-16-1,-3,-5 (Supp. 1990)	DV*, D* Termination of parental rights of parent who is child of G	P	BIOTC	Adoption: VR not permitted except for stepparent adoption.
	Whenever parent or guardian unreas- onably denies visitation	P	BIOTC and G established "viable relationship" with child (financial support for 6 months for 1 year or more)	Attorney fees: On motion of parents, court shall direct G to pay reasonable attorney fees to parents, regardless of outcome of case (only in "viable relationship" cases?). Provision relating to viable relationship is repealed July 1, 1992. Enacted: 1983; Amended: 1986, 1990 (added viable relationship provision)

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Missouri</u> Mo. Rev. Stat. §§452.402 (1986 & Supp. 1990)	DV; D and other parent denies access; unreasonable denial of access for more than 90 days	P	BIOTC The Court shall consider whether visitation would endanger the child's physical health or impair emotional development	Adoption - Court may terminate VR upon adoption <u>except</u> adoption by SP, G or other blood relative. Attorney fees: Court may award reasonable attorney fees to prevailing party. Court may appoint guardian ad litem, order home study to determine BIOTC, consult with child on child's wishes. Enacted: 1977; Amended: 1984, 1988 (expanded from DV to D)
<u>Montana</u> §§40-4-217 40-9-101, -102 (1989)	No circ. listed	P; not more than once in 2 years, unless significant change in circumstances	BIOTC	Adoption - No right to petition if child adopted by person other than SP or G; VR terminates automatically on adoption. Court may appoint attorney to represent interest of child. Enacted: 1979; Amended: 1983 to expand from death situations to anytime, limit to once in 2 years, and allow appointment of attorney.
<u>Nebraska</u> Neb. Rev. Stat. §§43-1801 to -1803 (1988)	DV, D Parents not married but paternity is established	P	Clear and convincing evidence of a current or past significant beneficial relationship, BIOTC that relationship continue, and VR will not adversely interfere with parent-child relationship.	Modification: Court may modify order on showing of material change in circumstances and modification in the BIOTC Enacted: 1986

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Nevada</u> Nev. Rev. Stat. §§125A.330 (2), .340	DV, D parental rights terminated	C	BIOTC	Termination of parental rights terminates VR, unless court finds continued V is in BIOTC.
GGP, Sb (parental rights terminated)	Parental rights terminated and child placed in adoption agency or state agency	P before term- ination of parental rights	BIOTC; statute lists 8 factors to consider	Enacted: 1979 (termination of parental rights); Amended: 1985, 1987 (added DV, D)
<u>New Hampshire</u> N.H. Rev. Stat. Anno. §458:17, 458:17-D (Supp. 1989)	No circ. listed; May not have VR if G access to child has been restricted previously	P	Court must consider: BIOTC, interference with parent-child, relationship, nature of G-child relation- ship, grandparent- parent relationship, family circumstances, recommendation of guardian ad litem, preference of the child.	Adoption: GVR do not affect the rights of an adoptive parent under RSA 170-B:20; VR not terminated by stepparent adoption? Attorney fees: All costs shall be paid by the petitioner. Modification: Upon motion of any original party, Court may modify or terminate order to reflect changed circumstances. Enacted: 1979; Amended: 1989 (extended circum- stances, clarified standards and procedure, permitted G to petition)
<u>New Jersey</u> N.J. Stat. Ann. §9:2-7.1 (West 1986 & Supp. 1990) Sb	DV, D*	P	BIOTC	Enacted: 1971; Amended: 1973 (included DV), 1987 (included Sb)

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>New Mexico</u> N.M. Stat. Ann. §§40-9-1 to -4 (1989)	DV, parentage determination D, child resided with G for 6 months or more and was removed by parent	P, not more than once a year absent good cause	BIWOTC, provided not in conflict with child's education or prior established VR	Adoption: Adoption by SP does not prohibit court from granting VR. Attorney fees: If petition is denied, Court may award costs and fees against the petitioning party. Modification: Court may modify order on showing of good cause by any interested party. Enacted: 1979; Amended: 1987 (included death and included G who lived with child for 6 months; and addressed adoption by SP)
<u>New York</u> N.Y. Dom. Re. Law §§72, 240 (McKinney 1986 & Supp. 1990) Sb (§71)	D or where "equity would see fit to intervene" ----- DV	P C	BIOTC (Case Law): BIOTC	Adoption: (Case Law) VR of maternal G continue after termination of mother's parental rights and adoption of child. Commentary following §240 discusses right to continue visitation after foster home placement. §72 (D, equity) Enacted: 1966; Amended: 1975, 1988 (expanded to permit Family Court proceedings to determine VR); 1989 (permits VR ofr Sb). §240 (DV) Enacted: 1976?
<u>North Carolina</u> N.C. Gen. Stat. §§50-13.2(b1), 13.2A, 13.5 (1987 & Supp. 1989)	In a custody order, except adoption by person not related to child where parental rights of both parents have been terminated	C	As the Court deems appropriate	Adoption: G may petition for VR if adopted by stepparent or relative of the child, where a substantial relationship exists between the G and child. Enacted: 1979?

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>North Dakota</u> N.D. Cert. Code §14-09-05.1 (Supp. 1989) GGP	No circ. listed	C	BIOTC and not interfere with parent-child relationship. Court shall consider the amount of personal contact between G, parent and child	Adoption: No petition for VR after adoption by person other than SP or G; rights automatically terminated upon adoption other than SP or G. Enacted: 1983
<u>Ohio</u> Ohio Rev. Code Ann. §3109.05(b), 3109.11 (Baldwin Supp. 1987) Any person interested in welfare of the child (DV); any relative of the deceased person (D)	DV, D	C	Discretion of the Court	Adoption (Case Law): Adoption by S does not terminate GVR. Enacted: 1971 (D)
<u>Oklahoma</u> Okla. Stat. Title 10 §5 (1981 & Supp. 1989)	No circ. listed	C	BIOTC	Adoption: Does not automatically terminate visitation rights; Court, after hearing, may terminate VR if termination is in BIOTC. Costs: G must pay transportation costs and other costs arising from visitation. If child is born out of wedlock, paternal G not entitled to VR unless paternity established. If parental rights are terminated, parent of that parent may have VR if prior relationship existed; if born out of wedlock, paternity must be established for paternal G to have VR. Enacted: 1971 (one or both parents deceased); Amended: 1975 (added DV); 1978 (both parents must be deceased); 1981 (one or both parents deceased); 1984 (parental rights terminated); 1989 (paternity provision).

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Oregon</u> Or. Rev. Stat. §§109.121, 109.123 (1989)	DV, custody or child support action, paternity action G has established or attempted to establish relationship and custodian has denied access	P (not after DV is final, unless not filed during DV proceeding or change in circumstances)	BIWOTC	Extensive discussion of process. Enacted: 1979; Amended: 1983, 1987
<u>Pennsylvania</u> 23 Pa. Cons. Stat. Ann. §§5311-5314 (Purdon Supp. 1990) GGP	DV, D* Child resided with G for at least 12 months and removed by parent	P	BIOTC and not interfere with parent-child relationship Court shall consider personal contact between G and child before application	Adoption: No right to apply for VR after adoption by person other than SP or G; VR automatically terminate upon adoption by others. Enacted: 1985
<u>Rhode Island</u> R.I. Gen. Laws §§15-5-24.1 to .2 (1981 & Supp. 1989) §15-5-24.3	D, DV ----- Anytime petitioner has repeatedly been denied visits during previous 12 months	P P	BIOTC; petitioner is a fit and proper person to have VR; there is no other way to obtain VR; and petitioner rebuts presumption that denial of visitation is reasonable, by clear and convincing evidence	Once G receives VR in divorce, G is entitled to notice of petitions seeking change in custody or visitation. Enacted: 1980 (D); Amended: 1981 (added DV), 1985, 1988 (anytime provision)

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>South Carolina</u> S.C. Code Ann. §20-7-420(33) (Law. Co-op 1976, Supp. 1989)	No circ. listed (Case Law): Pending DV or child custody case is <u>not</u> necessary	C (Case Law implies right to petition)	BIOTC	Adoption (Case Law): Adoption by SP does not terminate GVR, when G's child loses parental rights as a result of death. Enacted: 1983?
<u>South Dakota</u> S.D. Codified Law Ann. §§25-4-52 to -54 (1984 & Supp. 1990)	No circ. listed	P or C	BIOTC	Adoption: No right to petition for VR if adopted by person other than SP or G; VR automatically terminated upon adoption by other than SP or G. Enacted 1982; Amended: 1990 (repealed section specifying circumstances for petition)
<u>Tennessee</u> Tenn. Code Ann. §36-6-301 (Supp. 1990)	No circ. listed	(Case law): P	BIOTC	Adoption: No VR if adoption other than SP or relative of child; VR automatically terminates on adoption by others. Special provision for child removed from home and placed in foster home, child welfare agency or other facility. Enacted: 1971; Amended: 1975, 1985
<u>Texas</u> Tex. Fam. Code. Ann. §14.03(e)-(g) (Vernon 1986 & Supp. 1990)	D*, incarceration or incompetence of G's child; DV; child abused or neglected; child adjudicated to be in need of super- vision or a delinquent; G's child's parental rights terminated; child resided with G at least 6 of last 24 months	P, including motion to modify prior order of the Court	BIOTC	Adoption: No VR if adoption by person other than stepparent, following death or termination of parental rights of parent who is the child of the G petitioning for VR. Decree terminating parent-child relationship does not preclude or affect GVR (§15.07, 16.09). ?

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Utah</u> Utah Code Ann. §30-3-5(4), 5(7), 30-5-1 & 2 (1989 & Supp. 1990)	D*, DV	C	BIOTC (D); welfare of the child (DV)	Attorney fees - When petition for modification is made and denied, Court may order petitioner to pay attorney fees of prevailing party if court finds petition was without merit and not asserted in good faith. Enacted: 1977
<u>Virginia</u> Va. Code Ann. §20-107.2 (1990) SP, other family members	DV	C	Statute lists factors to consider in custody and visitation decisions	Court shall render such decree as it deems expedient with respect to visitation "privileges" of grandparents. Enacted: 1980
<u>Vermont</u> Vt. Stat. Ann. Title 15 §1011-1016 (1989)	Any court proceeding relating to custody or visitation; D; parent physically or mentally incapable of making decision or abandoned child	P (may not refile sooner than 1 year after denial of VR, absent real, substantial and unanticipated change in circumstances.)	BIOTC; consider 8 standards set forth in statute	Attorney fees: Court may award costs for defending or prosecuting actions to modify award Adoption: VR order expires on adoption of child, unless adopted by SP, G or other relative. Modification: Court may modify or terminate VR. Other process: statute addresses process issues. Enacted: 1983
<u>Washington</u> Wash. Rev. Code §26.09.240 (1989) Any person	May petition at any time	P	BIOTC	Modification: VR may be modified whenever modification serves BIOTC. Enacted: 1973; Amended 1977, 1987, 1989
<u>West Virginia</u> W. Va. Code §§48-2-1, 48-2-15 (1989 Supp)	D*, DV (only if the whereabouts of G's child are unknown or G's child does not appear and defend action)	C (DV); P (D)	BIOTC	Adoption (Case Law): Adoption by S does not terminate GVR. Enacted: 1980 (D)

State/Statutory Cite Other Persons	Circumstances	Process	Standard	Comments
<u>Wisconsin</u> Wis. Stat. Ann. §767.245, 767.11(5)(c) 880.155 (West. 1990 Spec. Supp. and PP) GGP, SP, person who has maintained a relationship similar to a parent-child relationship (not for D)	D ----- Any time	P P	BIWOTC BIOTC — when possible, court must consider wishes of child	Mediation: Family Court is authorized to refer persons with visitation problems to mediation or other family court counseling services. Enacted: 1980; Amended: 1983, 1987 (expanded petition rights from G & GGP to SP, and others)
<u>Wyoming</u> Wyo. Stat. §20-2-113 (1987 & 1990 Supp.)	Following DV, D, Remarriage	P	BIOTC	Enacted: 1984

IV. Issues to Consider

It is clear from reviewing the chart that state legislatures vary widely in their opinions on the appropriate scope of grandparent visitation rights and the most effective mechanism for pursuing those rights. Rather than serving as a model for Maine law, the statutes of other states may be most helpful in setting out issues to consider and suggested alternatives. In reviewing Maine's grandparent visitation law, the following issues should be considered:

1. *Should grandparents ever have a right to visit their grandchildren over the objections of their parents?*

All 50 states have answered this question in the affirmative, finding that the best interest of the child justifies interference with parents' rights to bring up their children, at least in some instances.

2. *Should grandparents be permitted to bring the issue to court, or should the court only be authorized to grant visitation rights when an existing party raises the issue?*

Relying on parents to raise the issue in court may result in few cases of courts considering the issue of grandparent visitation. Presumably, the grandparent would be seeking a court order only when the parents are unwilling to grant access voluntarily; those parents would not be likely to raise the issue in court. It may, however, permit a noncustodial parent to raise the issue so that his or her parent may have visitation rights as against the custodial parent.

Permitting the grandparent to bring the issue to court may, on the other hand, result in more litigation, or may prolong or complicate an existing action.

3. *If a grandparent is allowed to initiate a request for visitation rights, when should they be allowed to do so?*

When the court is already considering the best interest of the child, i.e., in custody determinations following divorce or legal separation?

When one parent is absent due to death or incarceration, and the grandparent steps into the shoes of the parent?

When the grandparent has established a parent-like relationship with the child, such as instances where the child lived with the grandparent, or enjoyed other lengthy contacts?

Anytime?

4. *Once the issue is brought to the attention of the court, when should the court grant the visitation rights?*

Most states grant visitation rights when it is in the best interest of the child. Some require satisfaction of additional criteria, such as a pre-existing substantial relationship with the child .

Some states have standards that differ from the best interest of the child in different circumstances. For example, Mississippi law permits a grant of visitation in death or divorce or termination of parental rights when it is in the best interest of the child. But when the grandparent has been denied visitation under other circumstances, the grandparent may be granted rights only when the grandparent and grandchild have a "viable" relationship, evidenced by a history of frequent visitation or financial support of the child. In Illinois, when both parents are deceased, the court is required to grant visitation unless visitation is known not to be in the best interest of the child.

Some states diverge from the general rules in all cases. See, e.g., Alabama (discretion of the court); Georgia (proof of special circumstances making visitation necessary to the best interest of the child); Hawaii (visitation shall be granted unless shown to not be in the best interest of the child); Idaho (upon a proper showing, but a substantial relationship must exist before application); North Carolina (as the court deems appropriate).

5. *How can the child's interest be protected during the proceeding?*

One of the major concerns in granting wide access to court for grandparents is the concern for the trauma caused by children going to court, and becoming involved in a battle among family members. Some believe that mediating visitation disputes, as well as custody disputes, alleviates some of the anguish of the process.

There is also a concern that the child's interest be adequately represented to the court. Relying on the parents or the grandparents to represent the child's interest to the court may not in all cases result in an accurate representation. Some states require or permit the court to appoint attorneys or guardians ad litem for children.

6. *How can parents be protected from a heavy financial burden in representing their interests in visitation cases?*

Some are concerned that grandparents with greater financial resources may overcome parents' ability to defend against visitation actions. Several states have provisions requiring grandparents to pay the fees and costs incurred by the parents, or permit the court to award attorney costs and fees to the parents, depending on the outcome of the case or the circumstances. Another rationale for such provisions may be to discourage suits that are not brought in good faith.

While provisions requiring grandparents to pay fees and costs may protect parents in cases where the grandparents' resources are greater, they may limit access to court for grandparents with legitimate concerns whose resources are not great.

7. *How does the grandparent visitation law relate to the state adoption law?*

This issue was a common source of litigation in many states, until states enacted laws to address the relationship between the two laws. Most adoption laws provide that adoption cuts off the child's ties with his or her biological family. Some courts ruled that this also cut off grandparents' rights of visitation. Others, at least in the case of adoption by a stepparent, ruled that visitation rights survive adoption. At stake are the interests of the grandparents in continuing family ties and the interests of the adoptive family in maintaining the identity of the new family, and the interest of the child in continuing a potentially beneficial relationship.

8. *Should visitation be granted when custody is awarded to the Department of Human Services in a child protective proceeding?*

Custody is granted to the Department of Human Services when an award to either or both of the parents would place the child in jeopardy. The Department is concerned that grandparent visitation may burden caseworkers, interfere with placements of children in foster homes, and, in some cases, interfere with the Department's duty to reunite the family.

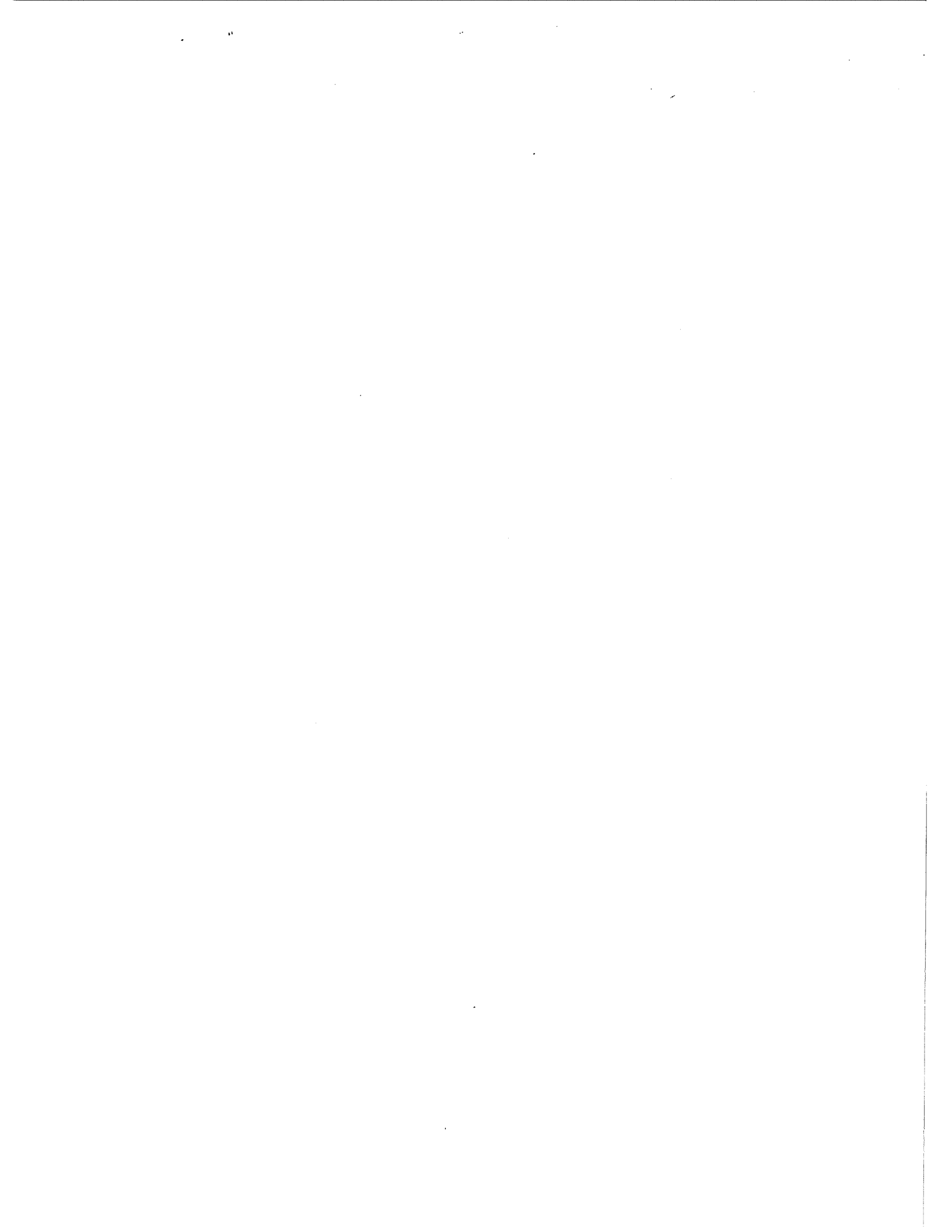
V. Summary

There are many policy questions to be addressed in considering proposals to expand or amend Maine law on grandparent visitation rights. The laws of other states suggest alternative methods of providing for grandparent visitation rights. Those laws range from ones giving grandparents -- or any interested persons -- the right to bring their requests for visitation rights to court at any time and providing courts wide discretion in deciding whether to grant the request, to state laws permitting an award of visitation rights only when the request arises in an existing court action following a triggering event like death or divorce, and limiting the court's discretion in decision-making.

Maine's law currently permits the issue of grandparent visitation rights to be raised only in an existing action relating to child custody; the court grants visitation rights to a grandparent if visitation is in the best interest of the child. There have been many attempts to expand Maine's law since its enactment in 1983, but the Judiciary Committee has not recommended enactment of those proposals. It is difficult to provide information on the need for expansion or the likely result of expanding those rights, since it is impossible to know how many grandparents who wish to have visitation rights have been denied access to courts as a result of the difficulty of the process or the limit on the circumstances under which the issue may be brought to court.

This report does not contain information on how people in other states think their laws are working or how they need to be changed. By reviewing the legislative history of the laws, however, it appears that the trend in other states has been toward expanding access to court, rather than limiting access, with some exceptions, such as limiting the rights of parents of putative fathers.

Regardless of what is done in other states, policy makers in Maine must make their own decisions on what is appropriate here in Maine; there does not appear to be a right or wrong answer to these policy questions. Hopefully, this report will provide some guidance by providing a list of the issues to consider, and summaries of how other states have answered various policy questions.



VI. Materials

Many fine articles have been written on the subject of grandparents' visitation rights. Below are listed articles, grouped by the aspect of the issue they emphasize. Many of the articles, however, provide good background on all aspects of the issue.

General Discussions:

Grandparent Visitation Disputes: A Legal Resource Manual. Edited by Ellen C. Segal and Naomi Karp. American Bar Association. 1989. Prepared as part of a project sponsored by the following organizations of the American Bar Association: The Commission on Legal Needs of the Elderly; the National Legal Resource Center for Child Advocacy and Protection; and the Family Law Section. Funding provided by the Administration on Aging of the U.S. Department of Health and Human Services.

Grandparents: The Other Victims of Divorce and Custody Disputes. Hearing before the Subcommittee on Human Services, Select Committee on Aging, U.S. House of Representatives. 98th Cong. 1st Session. April 8, 1983. Committee Pub. No. 98-387. U.S. Govt Printing Office. Washington. 1983. Govt / Y4 / .Ag 4/2 / G76.

Grandparent Visitation Rights. Hearing before the Subcommittee on the Separation of Powers, Committee on the Judiciary. U.S. Senate. 98th Cong. 1st Sess. on S.Con Res. 40. November 15, 1983. Serial # J-98-81. U.S. Govt Printing Office. Washington. 1984. Govt / Y4 / .J 89/2 / S.hrg. / 98-620.

Annotation, Grandparents Visitation Rights, 90 ALR 3d 222, Lawyers Co-op. Pub. Co., 1979. (describes cases around the country).

Adoption

Foster & Freed, Grandparent Visitation: Vagaries and Vicissitudes, 23 St. Louis U.L.J. 643 (1979).

Nathan, Visitation after Adoption: In the Best Interests of the Child, 59 N.Y.U. L. Rev. 633 (1984).

Zablotsky, To Grandmother's House We Go: Grandparent Visitation After Stepparent Adoption, 32 Wayne L. Rev. 1 (1985).

Note, Adoption: Visitation Rights of Natural Grandparents, 32 Okla. L. Rev. 645 (1979).

Note, Divesting Grandparents of Statutory Grandchild Visitation Rights by Stepparent Adoption, 50 U.M.K.C. L. Rev. 231 (1982).

Note, Grandparents' Statutory Visitation Rights and the Rights of Adoptive Parents, 49 Brooklyn L. Rev. 149 (1982).

Note, What are the Child's Best Interests? A Logical Extension of Natural Grandparents' Rights to Visit Adopted Grandchildren, 12 W. St. U. L. Rev. 205 (1984).

Constitutional Issues

Bean, Grandparent Visitation: Can the Parent Refuse?, 24 J. Fam. L. 3 (1985-86).

Note, The Constitutional Constraints on Grandparents' Visitation Statutes, 86 Colum. L. Rev. 118 (1986).

Calls for & against Uniformity, Proposed Models

Fernandez, Grandparent Access: A Model Statute, 6 Yale L. Pol'y. Rev. 109 (1988).

Inguilli, Grandparent Visitation Rights: Social Policies and Legal Rights, 87 W. Va. L. Rev. 295 (1985).

Zaharoff, Access to Children: Towards a Model Statute for Third Parties, 15 Fam. L.Q. 165 (1981).

Comment, Grandparent Visitation Statutes: Remaining Problems and the Need for Uniformity, 67 Marq. L. Rev. 730 (1984).

Note, Grandparent Visitation Statutes: A Proposal for Uniformity, 19 J. Mar. 703 (1986).

Research on Psychological Benefits

Inguilli, Grandparent Visitation Rights: Social Policies and Legal Rights, 87 W. Va. L. Rev. 295 (1985).

McCrimmon & Howell, Grandparents' Legal Rights to Visitation in the Fifty States and the District of Columbia, Bull. Am. Acad. Psych. Law, Vol. 17, No. 4, 1989, pp. 355-366.