

HOUSE No. 1712

The Commonwealth of Massachusetts

PRESENTED BY:

Norman J. Orrall, (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to improve grandparent visitation rights.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

DATE ADDED:

Maureen Martowska

1/20/2023

HOUSE No. 1712

By Representative Orrall of Lakeville (by request), a petition (accompanied by bill, House, No. 1712) of Maureen Martowska for legislation to improve visitation rights for grandparents. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to improve grandparent visitation rights.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 119 of the General Laws, as appearing in the 2020 Official Edition, is hereby
2 amended by striking section 39D and inserting the following:-

3 Section 39D. Visitation rights of grandparents and relatives of unmarried minor children;
4 eligibility, grounds for filing, “harm,” petition, process:

5 The grandparents or relatives to an unmarried minor child may be granted reasonable
6 visitation rights during the child’s minority by the probate and family court department of the
7 trial court upon a written finding that such visitation rights would be in the best interest of the
8 minor child. No such rights shall be granted if said minor child has been adopted by a person
9 other than a stepparent of such child and any visitation rights granted pursuant to this section
10 prior to such adoption of the said minor child shall be terminated upon such adoption without
11 any further action of the court.

12 (a) Eligibility. Grandparents or other relatives may petition the court when: (i) one or
13 both of the minor child's parents are deceased; or (ii) the minor child's parents are divorced; or
14 (iii) the minor child's parents are married but living apart; or (iv) the minor child's parents are
15 under a temporary order or judgment of separate support; or (v) the minor child was born out of
16 wedlock, the child's parents never married and are living apart, and the petitioning
17 grandparent/relative can establish child's father has signed an acknowledgment of paternity or a
18 court of competent jurisdiction has adjudicated paternity. Such adjudication of paternity or
19 acknowledgment of paternity shall not be required under this section for maternal grandparents
20 seeking such visitation rights; or (vi) the minor child's parents are married but there is a
21 compelling state interest to protect against harm (or abuse) to the child's health, safety, or
22 welfare which shall include the child's physical, mental, spiritual, and moral development.

23 (b) Grounds to grant visitation. The court shall grant visitation upon an agreement of
24 the parties or if after a hearing on the merits, the court finds: (i) the child is dependent, neglected,
25 or abused in the parent's care; or (ii) there was a significant and positive relationship between the
26 grandparent/relative and minor child, and it is in the best interest of the child; or (iii) there is no
27 significant relationship, but it is in the child's best interest because curtailment or termination of
28 contact will result in significant harm to the child's health, safety and welfare. This shall include
29 protecting the welfare of a child who has experienced a disruption in the family unit from harm;
30 or (iv) the parent is deceased; or (v) the parent objects to the visitation, however, the petitioner
31 has demonstrated by clear and convincing evidence that the objection is unreasonable and serves
32 the child's best interest, and has demonstrated by a preponderance of the evidence that the
33 visitation will not substantially interfere with parent/child relationship; or (vi) the child resided
34 with the grandparent/relative who were primary caregivers for not less than 6 consecutive

35 months; or (vii) the minor child's parents are, or in the past have been, involved in dissolution,
36 child custody, legal separation, annulment or parentage proceedings involving said child. No
37 residency requirements shall be needed for the grandparents or relative.

38 A grandparent/relative shall not be required to present the testimony or affidavit of an
39 expert witness in order to establish a significant existing relationship with the minor child or that
40 the loss of the relationship is likely to cause significant emotional harm to the child. Instead, the
41 court shall consider whether the facts of the particular case would lead a reasonable person to
42 believe that there is a significant existing relationship between the grandparent and grandchild or
43 that the loss of the relationship is likely to occasion severe emotional harm to the child.

44 (c) Harm. The following factors shall be considered in determining the existence of harm
45 to the minor child: (i) the length and quality of the relationship, (ii) the grandparent's/relative's
46 role in the child's life, (iii) emotional ties between the grandparent/relative and minor child, (iv)
47 whether the filing party has had ongoing contact or has tried to have ongoing contact with the
48 child, (v) a child's preference (assuming the child is mature enough and holds reasonable and
49 legitimate reasons when rejecting a parent), (vi) the parent's relationship with the child's
50 grandparent/relative, (vii) whether the grandparent/relative visitation interferes substantially with
51 the parent/child relationship, (viii) whether there was a preexisting significant existing
52 relationship, (ix) whether one parent is deceased or missing, and (x) whether a parent is unfit.

53 There shall be a presumption of emotional harm when: (i) the child has had such a
54 significant existing relationship with the grandparent/relative that breaking it off is likely to
55 inflict significant emotional harm on the child or cause other direct and substantial harm to the
56 child; or (ii) the grandparent/relative functioned as the child's primary caregiver such that ending

57 the relationship could result in the child's daily needs not being met which could cause physical
58 and emotional harm to the child, or (iii) there is the death of a parent.

59 (d) Petition. A Petition for Grandparent/Relative Visitation authorized under this section
60 shall, where applicable, be filed in the county within the commonwealth in which the divorce or
61 separate support complaint or the complaint to establish paternity was filed. If the divorce,
62 separate support, or paternity judgment was entered without the commonwealth but the child
63 presently resides within the commonwealth, said petition may be filed in the county where the
64 child resides.

65 (e) Process. After a petition is filed in Family Court, the respondents in the petition must
66 be personally served with a summons including a copy of the petition. When return of service
67 has been returned to the court, the case shall be referred to mediation. If there has been a finding
68 of domestic violence or a no contact order is pending concerning the parties, there will not be a
69 mediation unless the victim's attorney requests a mediation and is present. If mediation is
70 bypassed, the petition shall be docketed by the court for a timely hearing.

71 At the mediation, the mediator will assist the parties in coming to an agreement or
72 defining the issues which the parties cannot agree upon. If the parties are able to come to an
73 agreement, a stipulated agreement will be written, signed by the parties, and timely provided to
74 the court for approval and issuance of an order of visitation. If mediation is unsuccessful, the
75 petitioner shall have the court docket the petition for a full hearing at a later date.

76 If either party files a Motion to Modify Visitation, the case will be referred to mediation
77 (unless bypassed because of a finding of domestic violence or there is a pending no contact
78 order). If mediation is bypassed, the petition shall be docketed by the court for a timely hearing.

79 If the parties are able to come to an agreement, a stipulated agreement will be written, signed by
80 the parties, and timely provided to the court for approval and issuance of a modified order of
81 visitation. If the mediation is unsuccessful, the petitioner shall have the court docket the motion
82 for a full hearing at a later date.