

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 • FAX (785) 296-3824

kslegres@klrd.ks.gov

<http://www.kslegislature.org/klrd>

November 9, 2016

To: Special Committee on Foster Care Adequacy

From: Robert Gallimore, Principal Research Analyst

Re: Grandparents' Rights in Kansas Statutes

The following is a summary of grandparents' rights provisions in Kansas statutes.

Substantial Consideration of a Grandparent for Custody

KSA 2015 Supp. 38-2286 (in the Revised Kansas Code for Care of Children) requires substantial consideration of a grandparent who requests custody when a court evaluates what custody, visitation, or residency arrangements are in the best interest of a child who has been removed from custody of a parent and not placed with the child's other parent. The court must consider the wishes of the parents, child, and grandparent; the extent that the grandparent has cared for the child; the intent and circumstances under which the child is placed with the grandparent; and the physical and mental health of all involved individuals. The court is required to state this evaluation on the record.

If the court does not give custody to a grandparent, but places the child in the custody of the Secretary for Children and Families (Secretary) for placement, then a grandparent who requests placement shall receive substantial consideration in the evaluation for placement, using the factors listed in the bill. If the grandparent is not selected for placement, the Secretary shall prepare and maintain a written report with specific reasons for the finding.

These provisions do not apply to actions filed under the Kansas Adoption and Relinquishment Act.

These provisions were passed in 2012 SB 262.

Grandparents as an Automatic Interested Party

Under KSA 2015 Supp. 38-2241 (in the Revised Kansas Code for Care of Children), grandparents are automatically an interested party in a child in need of care proceeding. They shall have the participatory rights of parties (including notice, presentation of evidence and argument, calling and cross-examination of witnesses, and representation by an attorney), unless the court restricts those rights in the best interests of the child. In any event, a grandparent may not be prevented from attending the proceedings, having access to the child's official file in the court records, or making a statement to the court.

2011 House Sub. for SB 23 amended this statute to make grandparents an automatic interested party, by removing a requirement that grandparents notify the court to become an interested party.

Grandparents as Caregivers Act

Established by the Legislature through 2006 SB 62, this Act (found at KSA 2015 Supp. 38-142, *et seq.*) provides monetary assistance to certain grandparents who have custody of their grandchildren. In 2013 testimony to the Kansas House Children and Seniors Committee, the Director of Prevention and Protection Services for the Kansas Department for Children and Families indicated the state funded Grandparents as Caregivers program had been rolled into the federally funded TANF/Grandparents as Caregivers Program effective July 1, 2009.

Visitation Rights in Divorce Proceedings and Paternity Actions

KSA 2015 Supp. 23-3301 provides that grandparents and stepparents may be granted visitation rights in divorce proceedings. A 2015 Kansas Court of Appeals decision held that a 2012 amendment to this statute eliminating its applicability in paternity actions violated the equal protection rights of children whose parents never married and thus was invalid. As a result, the statute remains applicable in both divorce proceedings and paternity actions. See *T.N.Y. ex rel. Z.H. v. E. Y.*, 51 Kan. App. 2D 956 (2015).

RLG/rc