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Domestic Relations HB 1198

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DOMESTIC RELATIONS

Parent and Child Relationship Generally: Amend Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, Relating to General Provisions for Parent and Child Relationships Generally, so as to Modify Provision Relating to Grandparent Visitation Rights; Provide for an Opportunity to Seek Grandparents Visitation in Cases Where the Parent is Deceased, Incapacitated, or Incarcerated or Otherwise Unable to Exercise His or Her Discretion Regarding a Decision to Permit Grandparent Visitation; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. § 19-7-3 (amended)
BILL NUMBER:	HB 1198
ACT NUMBER:	702
GEORGIA LAWS:	2012 Ga. Laws 860
SUMMARY:	The Act provides courts the authority to award grandparents reasonable visitation rights to their grandchildren when the child's parent is unable to exercise his or her own discretion regarding visitation because of death, incarceration, or incapacitation.
EFFECTIVE DATE:	May 1, 2012

History

Over the past century, demographic changes have impacted the composition of the American family. Divorce rates have increased, senior citizens live longer, society has become more mobile, and extended families are increasingly estranged.[1] While many children have two parents married to each other, other children are raised in single-parent households or by extended relatives.[2] With this change

1. Am. Bar Ass'n, Facts About Law and the Elderly 13 (1998); Anne Marie Jackson, *The Coming of Age of Grandparent Visitation Rights*, 43 Am. U. L. Rev. 563, 563–64 (1994); Herbert S. Klein, *The Changing American Family*, Hoover Digest No. 3 (2004), *available at* http://www.hoover.org/publications/hoover-digest/article/6798.

2. In 1995, 69% of children under the age of eighteen lived with two parents, 27% lived with one

in family composition, caretakers outside the nuclear family take on increased responsibilities to raise children who are not their own.[3] Family law recognizes that biological parents are not the only people who contribute to a child's welfare. Siblings, extended relatives, and nonparent caretakers can also serve the child's best interest.[4] In many cases, grandparents take an active role in their grandchildren's lives.[5] Yet in some of those families, parents prevent the grandparents from contacting their grandchildren after the adults experience some sort of falling out. In turn, states recognized the importance of vesting legally enforceable visitation rights in people other than biological parents. All fifty states have statutes providing for grandparent visitation rights.[6] While these laws do not automatically grant grandparent visitation, they give grandparents the opportunity to seek visitation rights from a court.[7]

At common law, Georgia courts decided all child custody issues by considering one of two interests: (1) parents' rights to control and maintain custody of the child; or (2) the child's best interest and welfare.[8] In early disputes, courts used both standards, sometimes even in the same case, to answer questions of grandparent visitation.[9] In 1976, the Georgia General Assembly provided legislative guidance by enacting the Grandparent Visitation Statute, Code section 19-7-3.[10] The statute stated: "[w]henever any court in this State shall have before it any question concerning the custody of or guardianship of any minor child, the court may, in its discretion, grant reasonable visitation rights to the maternal and paternal

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parent, and 4% lived with neither parent. U.S. Dep't of Commerce, Bureau of Census, Census Brief: Children with Single Parents—How They Fare 2 (1997), *available at* http://www.census.gov/prod/3/97pubs/cb-9701.pdf.

3. Troxel v. Granville, 530 U.S. 57, 64 (2000).

4. Alessia Bell, *Public and Private Child*: Troxel v. Granville *and the Constitutional Rights of Family Members*, 36 Harv. C.R.-C.L. L. Rev. 225, 226 (2001).

5. *Troxel*, 530 U.S. at 64 (citing U.S. Dep't of Commerce, Bureau of Census, Current Population Reports, Marital Status and Living Arrangements: March 1998 (1998), showing "approximately 4 million children—or 5.6 percent of all children under age 18—lived in the household of their grandparents" in 1998).

6. Jackson, *supra* note 1, at 564.

7. Am. Bar Ass'n, *supra* note 1.

8. Cynthia F. Zebrowitz, Brooks v. Parkerson*: To Grandmother's House We Go—The Visitation Rights of Grandparents in Georgia*, 11 Ga. St. U. L. Rev. 779, 780 (1995).

9. *Id.*; *see also* Scott v. Scott, 154 Ga. 659, 659, 115 S.E. 2, 3 (1922) (applying both the best interests standard and the parents' rights standard).

10. 1976 Ga. Laws 274.

grandparents of the child."[11] Though this Act contemplated visitation rights previously unavailable to grandparents, the statute's brief text left courts with little guidance on how to apply the law.[12]

The Georgia General Assembly subsequently amended Code section 19-7-3 in 1980, 1981, and 1986, and it completely rewrote the statute in 1988.[13] The 1988 version defined "grandparent," and more significantly, granted any grandparent the right to seek visitation of a minor grandchild in three ways: (1) by filing an original action for visitation rights; (2) by intervening in certain existing actions, including those where the custody of a minor child is at issue; or (3) by proceeding when the child has been adopted by the child's blood relative.[14] In a 1993 amendment, the General Assembly added adoption by a step-parent to the list of actions where grandparents had the right to intervene for visitation.[15]

In 1995, however, the Supreme Court of Georgia struck down Code section 19-7-3 as "unconstitutional under both the state and federal constitutions because it [did] not clearly promote the health or welfare of the child and [did] not require a showing of harm before state interference [was] authorized."[16] In rendering its decision, the majority emphasized that government interference with the parental right to custody and control of one's child is only permissible under the most compelling of circumstances, when the child's health or welfare is threatened.[17]

The Georgia General Assembly responded to the court's decision by amending the Grandparents Visitation Statute in 1996,[18] aiming to provide a constitutionally viable statute that recognized the child's best interest.[19] The amended Code section 19-7-3 embodied

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11. *Id.*

12. Zebrowitz, *supra* note 8, at 783–84. Because the Grandparent Visitation Statute did not specify which standard—best interests or parents' rights—should apply in determining grandparents' visitation, the statute simply left the determination to the discretion of the court. *Id.*; *Spitz v. Holland* and *George v. Sizemore* are two cases that demonstrate how discretion can lead to the use of inconsistent standards even by the same court. Spitz v. Holland, 243 Ga. 9, 10, 252 S.E.2d 406, 407–08 (1979); George v. Sizemore, 238 Ga. 525, 233 S.E.2d 779, 781–82 (1977).

13. 1980 Ga. Laws 936; 1981 Ga. Laws 1318; 1986 Ga. Laws 10; 1988 Ga. Laws 864.

14. 1988 Ga. Laws 864.

15. 1993 Ga. Laws 456.

16. Brooks v. Parkerson, 265 Ga. 189, 194, 454 S.E.2d 769, 774 (1995).

17. *Id.* at 191–94, 454 S.E.2d at 772–73.

18. 1996 Ga. Laws 1089 (codified at O.C.G.A. § 19-7-3 (1996)).

19. Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial*

Georgia's recognition of the changing realities of the American family and acknowledged the importance of children having access to multiple generations of family members.[20] Courts must balance the extension of statutory rights to persons other than a child's parent against the significant liberty interest at stake: a parent's right to rear a child without state interference.[21]

Even after the amendment of the Grandparents Visitation Statute, Georgians continued to express dissatisfaction with the State's treatment of grandparent visitation rights.[22] Georgia General Assembly members received continuous feedback from their constituents who felt parents continued to deny grandparents the right to see their grandchildren.[23] Many legislators understood the importance of the grandparent-grandchild relationship and felt compelled by this issue as grandparents themselves.[24] Influenced by these forces, and a personal grandparent visitation dispute within his own family, Representative John Meadows (R-5th) introduced HB 1198 during the 2012 Georgia General Assembly Session.[25]

Bill Tracking of HB 1198

Consideration and Passage by House

Representatives John Meadows (R-5th), Penny Houston (R-170th), Richard Smith (R-131st), Bill Hembree (R-67th), Brooks Coleman (R-97th), and Ann Purcell (R-159th) sponsored HB 1198.[26] The House read the bill for the first time on February 28, 2012, and for

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Standards for Original Actions for Visitation Rights or Intervention; Provide for Revocation or Amendment of Visitation Rights, 13 Ga. St. U. L. Rev. 148, 150–51 (1996).

20. *See* Interview with Kathryn Fowler, Executive Director of the Georgia Council on Aging, in Atlanta, Ga. (Mar. 29, 2012) [hereinafter Fowler Interview].

21. *See* Troxel v. Granville, 530 U.S. 57, 64 (2000).

22. *See* Telephone Interview with Rep. John Meadows (R-5th) (Apr. 4, 2012) [hereinafter Meadows Interview].

23. *See* Fowler Interview, *supra* note 20.

24. *See* Interview with Rep. Penny Houston (R-170th), in Atlanta, Ga. (Mar. 29, 2012) [hereinafter Houston Interview].

25. *See* Meadows Interview, *supra* note 22; *see also* Video Recording of House Judiciary Committee Meeting, Mar. 5, 2012 at 9 min., 32 sec. (remarks by Rep. John Meadows (R-5th)), http://www.gpb.org/lawmakers/2012/day-29 [hereinafter Judiciary Committee Meeting Video].

26. HB 1198, as introduced, 2012 Ga. Gen Assem.

the second time on February 29, 2012.[27] Speaker of the House David Ralston (R-7th) assigned the bill to the House Judiciary Committee, which favorably reported a Committee substitute on March 5, 2012.[28] Differing only slightly from the bill as introduced, the Committee substitute renumbered the Act's subsections[29] and provided one substantive revision: subsection (c)(4)'s "ceiling" on grandparent visitation, a maximum of twenty-four hours in one month, was replaced with a "floor," providing a minimum of twenty-four hours of grandparent visitation in a one-month period.[30] On March 7, 2012, the House read the bill for the third time and adopted it by a vote of 154 to 0.[31]

Consideration and Passage by Senate

Senator Charlie Bethel (R-54th) sponsored HB 1198 in the Senate.[32] The bill was first read on March 7, 2012.[33] The Senate Judiciary Committee reviewed the bill and made one revision: providing the effective date for the Act.[34] The Committee then favorably reported HB 1198 on March 22, 2012, and the bill was read for the second time.[35] On March 26, 2012, the Senate read the bill for the third time and adopted the substitute by a vote of 39 to 1.[36] On March 29, 2012, the House agreed to the Senate substitute, which included the effective date, by a vote of 163 to 0.[37] The House then sent the bill to Governor Nathan Deal on April 5, 2012, and the Governor signed HB 1198 into law on May 1, 2012.[38]

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27. State of Georgia Final Composite Status Sheet, HB 1198, May 10, 2012.
28. *See id.*
29. *Compare* HB 1198, as introduced, § 1(b)–(i), 2012 Ga. Gen. Assem., *with* HB 1198 (HCS), § 1(b)–(g), 2012 Ga. Gen. Assem.
30. *Compare* HB 1198, as introduced, § 1(d), 2012 Ga. Gen. Assem., *with* HB 1198 (HCS), § 1(c)(4), 2012 Ga. Gen. Assem.
31. Georgia House or Representatives Voting Record, HB 1198 (Mar. 7, 2012).
32. *2011-2012 Regular Session—HB 1198 Parent and child; grandparent visitation rights; modify provisions*, Georgia General Assembly Legislation, http://www.legis.ga.gov/legislation/en-US/Display/20112012/HB/1198 (last visited May 12, 2012).
33. State of Georgia Final Composite Status Sheet, HB 1198, May 10, 2012.
34. *Compare* HB 1198 (HCS), § 2, 2012 Ga. Gen. Assem., with HB 1198 (SCS), § 2, 2012 Ga. Gen. Assem.
35. State of Georgia Final Composite Status Sheet, HB 1198, May 10, 2012.
36. Georgia Senate Voting Record, HB 1198 (Mar. 26, 2012).
37. Georgia House of Representatives Voting Record, HB 1198 (Mar. 29, 2012).
38. State of Georgia Final Composite Status Sheet, HB 1198, May 10, 2012.

The Act

The Act amends Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, which provides generally for parent and child relationships.[39] The Act attempts to modify provisions of Code section 19-7-1 as it relates to grandparent visitation rights; particularly, to allow grandparents the opportunity to seek visitation rights under certain circumstances—where the child or children's parent is deceased, incapacitated, incarcerated or otherwise unable to exercise his or her discretion regarding a decision to permit grandparent visitation.[40]

The Act's first section revises Code section 19-7-3 by adding a provision that proffers a laundry list of circumstances that a court must consider in determining whether or not the absence of grandparent visitation is reasonably likely to cause harm to a child's health or welfare.[41] Under Code section 19-7-3(c)(1), a court may find that harm to a child is reasonably likely to occur where the child has lived with his or her grandparent for six months or more, where the grandparent has "provided financial support for the basic needs of the child for at least one year", where "there was an established pattern of regular visitation or child care by the grandparent with the child", or where "any other circumstance exists" indicating that it would be reasonably likely that the child would suffer from emotion or physical harm if visitation is not granted.[42]

In subsection (c), the Act eliminates the prior statute's provision that there shall be no presumption in favor of visitation by any grandparent.[43]

Subsection (c)(3) mandates that a court give deference to the parent's decision regarding a determination of grandparent visitation.[44] Subsection (c)(3) provides that a "parent's decision shall not be conclusive when failure to provide grandparent contact would result in emotional harm to the child."[45] Subsection (c)(3) also

39. O.C.G.A. § 19-7-3 (1996).
40. O.C.G.A. § 19-7-3 (Supp. 2012).
41. *Id.* § 19-7-3(c)(1)(A)–(D).
42. *Id.*
43. *Id.* § 19-7-3(c)(1).
44. *Id.* § 19-7-3(c)(3).
45. *Id.*

affords a court the discretion to "presume that a child who is denied . . . contact with his or her grandparent" or who is not provided an "opportunity for contact with his or her grandparent may suffer emotional injury that is harmful" to the child's health or welfare.[46] The Act explicitly provides, however, that the presumption is a rebuttable one.[47]

Subsection (c)(4) places limitations on grandparents' visitation rights such that visitation may not "interfere with a child's school or regularly scheduled extracurricular activities."[48] Despite these limitations, the Act includes a threshold for the amount of visitation time awarded to a grandparent—a minimum of "24 hours in any one-month period."[49]

Subsection (d) gives a court the discretion to award reasonable visitation rights to a parent of a deceased, incapacitated, or incarcerated parent of a minor child if the court finds such a ruling to be within the child's best interests.[50] Although the court must give deference to the custodial parent's judgment as to whether or not such visitation would be in the child's best interests, the custodial parent's judgment is not dispositive.[51]

Subsection (g) provides the opportunity for the grandparent to take part in at least some aspect of the minor child's life even where visitation rights are not awarded to the grandparent.[52] The court has the power to order the custodial parent to notify the grandparent of any public performance in which a child partakes, "including, but not limited to, musical concerts, graduations, recitals, and sporting events or games."[53]

Analysis

This Act may face constitutional difficulty based on concerns that grandparent visitation rights may impinge on parents'

46. O.C.G.A. § 19-7-3(c)(3) (Supp. 2012).
47. *Id.*
48. *Id.* § 19-7-3(c)(4).
49. *Id.*
50. *Id.* § 19-7-3(d).
51. *Id.*
52. O.C.G.A. § 19-7-3(1)(g) (Supp. 2012).
53. *Id.*

constitutionally protected right to raise their children as they see fit.[54] When grandparent visitation rights are at issue, several parties can be adversely affected—the child's parent, the child's grandparents, and most importantly, the child. Traditionally, however, Georgia law always recognized the relationship between parents and their children as the "most mutually beneficial relationship possible."[55] Parents are presumed to be interested in promoting their child's interests and in knowing those interests better than anyone outside the nuclear family.[56] By introducing grandparents into the equation, grandparent visitation statutes run the risk of interfering with this fundamental right of parents and placing an emotional barrier between parents and their children.[57] A proper balance must be struck between parents' constitutional rights to raise their children without interference and grandparents' desire to be involved in those children's lives.[58]

As families become more mobile and family relationships become strained, grandparents are being denied the opportunity to see their grandchildren.[59] This is a growing concern nationally, especially for those grandparents whose children are not the custodial parents.[60] Underlying the enactment of grandparent visitation statutes is the assumption that the grandparent-grandchild relationship is precious and unique for both grandparents and their grandchildren.[61] Chairman John Meadows explained that the original House Bill 1198 arose from several requests to the Chairman from grandparents and constituents wishing to see their grandchildren.[62] In addition, the

54. *See* Judith L. Shandling, *The Constitutional Constraints on Grandparents' Visitation Statutes*, 86 COLUM. L. REV. 118, 125–26 (1986).

55. Brooks v. Parkerson, 265 Ga, 189, 196, 454 S.E.2d 769, 775 (1995). "[A]s important as grandparents can be in the lives of their grandchildren, the relationship between parent and child is paramount." *Id.* at 195, 454 S.E.2d at 774.

56. Shandling, *supra* note 54, at 127.

57. *Brooks*, 265 Ga. at 191, 196, 454 S.E.2d at 771, 775.

58. Stephanie Reitz, *States' Grandparent Visitation Laws Raise Concern*, USA Today (Nov. 7, 2011, 9:35 AM), http://www.usatoday.com/news/health/wellness/story/2011-11-07/States-grandparent-visitation-laws-raise-concern/51104940/1.

59. *See* Fowler Interview, *supra* note 20.

60. Reitz, *supra* note 58 ("[A] growing number of grandparents are pushing lawmakers around the country to change state standards they say are too restrictive and ignore the unique bonds many grandparents have with their grandchildren."); *see also* Shandling *supra* note 54, at 119.

61. "Grandparents have a lot invested in their grandchildren—both in time and money—and grandchildren are often attached to their grandparents as well." Houston Interview, *supra* note 24; *see also* Shandling *supra* note 54, at 121.

62. "This is a real problem. Like I said, I've been down there at the Capitol for 8 years and I get

Chairman's own familial experience influenced him to sponsor a bill that would protect against the occurrence of similar situations.[63] In the Chairman's particular situation, a cousin of the Chairman was shot and killed by his wife. After conclusion of the court proceedings, wherein the court did not impose a jail sentence, the wife prohibited her in-laws from seeing their grandchildren. The Act seeks to ensure that grandparents such as the Chairman's aunt and uncle are allowed some contact with their grandchildren even where the grandparent's own child is deceased.[64]

In addition to the death of a minor child's parent, the Act also provides that a court may grant grandparent visitation where the minor child's parent is incapacitated or incarcerated.[65] In doing so, the Act places limitations on grandparent visitation by establishing a more narrow set of circumstances under which a court may award visitation rights.[66] This provision of the Act is further safeguarded from a constitutional challenge because it also requires a showing that such visitation is in the best interests of the child.[67]

Grandparent visitation has been addressed in the laws of all the states, but the laws vary from state to state.[68] The possibility of courts opening the door too far to grandparent visitation "alarms many parents, . . . particularly those who say they want to shield their own young children from grandparents who have broken boundaries and trust."[69] Due to the high risk of interfering with parents' constitutional rights, grandparent visitation statutes must be limited such that "grandparents who sue their own children to obtain visitation must demonstrate a 'compelling need'" before a court will

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approached every year by a grandparent who has been prevented from seeing their grandchildren. And my other colleagues down there [in the Legislature] see it too. Everyone wanted to join and support the bill." Meadows Interview, *supra* note 22. "Feedback from the legislators is that they have all had constituents report problems with this." Fowler Interview, *supra* note 20.

63. *See* Judiciary Committee Meeting Video at 9 min., 32 sec.; *see also* Meadows Interview, *supra* note 22.

64. O.C.G.A. § 19-7-3(d) (Supp. 2012).

65. *Id.*

66. *See id.*

67. *Id.*

68. Susan Adcox, *Grandparent Visitation Rights State by State*, ABOUT.COM, http://grandparents.about.com/od/grandparentsrights/a/VisitationRightsByState.htm (last visited June 18, 2012).

69. Reitz, *supra* note 58.

grant visitation.[70] While some states grant visitation based on the "best interests of the child" regardless of an intact parental marriage or the occurrence of family disruption, a majority of states utilize the "best interests of the child" standard solely for "guiding judges' discretion in awarding grandparent visitation rights . . . in specific family situations."[71] Georgia's grandparent visitation statute takes the latter stance, incorporating a provision that allows a court to consider both the "best interests of the child"[72] *and* whether the absence of grandparent visitation would be detrimental to the health and welfare of the child.[73] However, the prior version of the statute did not explicitly delineate what would constitute harm to the health or welfare of a child.[74] Other grandparent visitation statutes have faced the same problem concerning a lack of clear indication as to what constitutes a child's "best interests." As a result of this ambiguity, courts tend to rely on their own intuitive sense that the relationship between a grandparent and a grandchild is a special one.[75] This reliance on intuition increases the degree to which a judge imposes his value judgments onto his decisions.[76] The Act resolves this ambiguity by setting forth specific guidelines to determine whether harm to the health or welfare of a child is reasonably likely to occur in the absence of grandparent visitation.[77] The court must consider: (1) whether the child lived with his or her grandparent for six months or more; (2) whether the grandparent provided financial support for the basic needs of the child for at least one year; (3) whether there was an established pattern of regular visitation or child care by the

70. *See* Shandling *supra* note 54, at 130.

71. *Id.* at 119. Such specific family situations include "cases in which the parents' marriage has been dissolved, or where one has died, as well as a variety of other situations ranging from incarceration of a parent or termination of her parental rights, to situations in which the child has resided with the grandparent for an extended period." *Id.*; *see also Factors Considered for Grandparent Custody and Visitation*, Georgia Family Law Blog, (Oct. 27, 2007), http://www.gafamilylawblog.com/grandparents_visitation/#.

72. In Georgia, three presumptions underlie the "best interests of the child" standard: "(1) the parent is a fit person entitled to custody, (2) a fit parent acts in the best interest of his or her child, and (3) the child's best interest is to be in the custody of a parent." Clark v. Wade, 273 Ga. 587, 593, 544 S.E.2d 99, 104 (2001).

73. O.C.G.A. § 19-7-3 (1996).

74. *Id.*

75. *See* Shandling *supra* note 54, at 119, 124.

76. *Id.*, at 124–25. "Without guidance from the statutes, most courts embrace the notion that grandparents' visitation with grandchildren is beneficial." Jackson, *supra* note 1, at 567.

77. O.C.G.A. § 19-7-3(c)(1)(A)–(D) (Supp. 2012).

grandparent with the child; or (4) whether any other circumstance exists indicating that it would be reasonably likely that the child would suffer from emotional or physical harm if visitation is not granted.[78] In setting forth these guidelines, the Act places limitations on judicial discretion and eliminates ambiguity in order to curtail concerns that the State is unreasonably interfering with fundamental rights of parents.

A major concern that the Supreme Court of Georgia addressed in its decision in *Brooks v. Patterson* was the vague and overly inclusive language of Code section 19-7-3(c) granting grandparent visitation under "special circumstances which make such visitation rights necessary to the best interest of the child."[79] Although the General Assembly previously eliminated that language from the statute, the Act permits a court to find that harm to a child's health or welfare is reasonably likely to occur where "[a]ny other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted"—language equally broad and ambiguous as the language in the prior statute.[80] In addition, the Act uses discretionary language including "may."[81] Even if leaving the court with too much discretion increases the chance that the court will substitute its own value judgments for that of a child's parent or grandparent,[82] the Act limits the court's discretion with guidelines to assist the court in determining whether a child is likely to suffer emotional or physical harm without contact with his or her grandparent.[83] While too much judicial discretion may be cause for concern, some discretion may be necessary to avoid a constitutional challenge. Chairman John Meadows, the primary sponsor of the bill emphasized the importance of the inclusion of discretionary language within the Act to indicate that the Act does not create absolute visitation rights for grandparents, but rather leaves

78. *Id.*

79. Justice Sears criticized the "special circumstances" language in the prior version of the grandparent visitation statute as conferring overly-broad discretion on courts to determine exactly what "special circumstances" are. Brooks v. Parkerson, 265 Ga. 189, 195, 454 S.E.2d 769, 774 (1995) (Sears, J., concurring).

80. O.C.G.A. § 19-7-3(c)(1)(D) (Supp. 2012).

81. *Id.* § 19-7-3.

82. *See* Shandling *supra* note 54, at 125.

83. O.C.G.A. § 19-7-3(c)(1)(A)–(D) (Supp. 2012).

it to the court's discretion to weigh several factors before making a determination.[84] Thus, the Act seeks to place limits on blanket grants of grandparent visitation without giving judges unbridled discretion.

Most importantly, to sidestep any concern that the Act may infringe on the constitutional rights of parents, a parent's decision regarding grandparent visitation will be given deference.[85] While a court may presume that the denial of contact between a child and his or her grandparent will cause emotional harm to the child,[86] the Act does not require a judge to presume that grandparents should be involved in their grandchildren's lives.[87] Instead, the Act seeks to promote awareness of the importance in allowing grandparents to remain active in their grandchildren's lives. Even where grandparent visitation is not awarded, courts may direct a custodial parent to notify grandparents of their grandchildren's public performances including recitals, sporting events, and graduations.[88] But again, this provision is discretionary.[89] The Act does not make grandparent involvement in a child's life a requirement.

Aside from constitutional concerns, another concern with the Act is the potential harm that a parent-child relationship may suffer, as well as the psychological harm the child may suffer through the award of grandparent visitation rights.[90] Upon a court's award of grandparent visitation, parent-child relationships may be "stripped of privacy" and deemed "less binding," thus "creating another wedge between parent and child and another excuse for parents to shirk their

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84. Chairman Meadows emphasized the importance of some discretionary language within the Act: "If the parents [have] passed away or [are] in jail, the grandparent *may* have reasonable visitation. There are no demands in the bill. . . . I don't want to make a law that restricts the judge's ability to make [his or her] own judgment call based on their [his or her] review of the facts. But we just wanted to give judges a few more factors to consider, not take their power away or step on anybody's toes." Meadows Interview, *supra* note 22.

85. O.C.G.A. § 19-7-3(d) (Supp. 2012). Although parents' decisions are given deference, the court would have the ultimate say. Video Recording of House Proceedings, Mar. 7, 2012 at 1 hr., 5 min., 10 sec. (remarks by Rep. John Meadows (R-5th)), http://bcove.me/qmxlp100 [hereinafter House Debate Video].

86. O.C.G.A. § 19-7-3(c)(3) (Supp. 2012).

87. *See* Meadows Interview, *supra* note 22.

88. O.C.G.A. § 19-7-3(g) (Supp. 2012).

89. *Id.*; *see also* Meadows Interview, *supra* note 22.

90. Brooks v. Parkerson, 265 Ga. 189, 195, 454 S.E.2d 769, 774 (1995) (Sears, J., concurring). "I cannot believe in either the constitutionality or the political correctness of any law that allows a court . . . to pierce the delicate, complex and sacred unity of parent and child against the wishes of fit parents and without a showing of absolute necessity." *Id.*

responsibilities."[91] Furthermore, "over time some parents could come to feel less committed to their young in a time where more commitment is needed, and less inclined to ensure that their children got the essentials: authority, responsibility, attention and love."[92] Psychological studies demonstrate the importance of stability and continuity in a child's personal relationships and also show the negative effect of severing the custodian-child relationship.[93] However, the Act addresses these concerns in the provision, which ensures that a grant of grandparent visitation rights does not interfere with a child's school or regularly scheduled extracurricular activities.[94]

Georgia's grandparent visitation statute faced strict judicial review in the past leading to a declaration of its unconstitutionality.[95] This Act, however, takes into consideration the statute's failures in the past, and the General Assembly drafted it more carefully to ensure that the Act provides the same benefits that initially warranted the passing of a grandparent visitation statute[96] while, most importantly, protecting the fundamental interests of parents to raise their children as they see fit.[97] While the Act may run into some setbacks as

91. *Id.* at 197, 454 S.E.2d at 775.

92. *Id.*

93. *See* Shandling *supra* note 54, at 123–24.

94. O.C.G.A. § 19-7-3(c)(4) (Supp. 2012).

95. The Georgia grandparents visitation statutes as codified in OCGA § 19-7-3 was declared unconstitutional by the Georgia Supreme Court in *Brooks v. Parkerson* in 1995. Brooks, 265 Ga. at 189, 454 S.E.2d at 769. Although the court noted that a special bond between a grandparent and his or her grandchild would benefit the grandchild if maintained, "the impact of a lawsuit to enforce maintenance of the bond over the parents' objection can only have a deleterious effect on the child." *Id.* at 194, 454 S.E.2d at 773. Most importantly, the Court noted that a "state may only impose that visitation over the parents' objections on a showing that failing to do so would be harmful to the child." *Id.* The statute as it existed during the time of *Brooks*, was deemed unconstitutional since it did not clearly promote the health or welfare of children and did not require a showing of harm before state interference was authorized. *Id.* at 194, 454 S.E.2d at 774.

96. The Act seeks to ensure that grandparents remain active participants in their grandchildren's lives. Fowler Interview, *supra* note 20. "This bill guarantees those rights and notice for the grandchildren's extra-curricular events, making grandparents active participants in their grandchildren's lives. We think it is important to guarantee children access to multiple generations of adults. That really is important for raising children." *Id.*; *see also* O.C.G.A. § 19-7-3(c)(4) (Supp. 2012) (providing at least some minimal contact—24 hours in a one-month period—where grandparents visitation rights are granted).

97. While the Chairman predicted "there may be some more action taken in the next few years," he stated that careful consideration was made to ensure the constitutionality of the bill. Meadows Interview, *supra* note 22. During the legislative session, the bill was revised several times to make it constitutional. *Id.*

grandparents attempt to gain visitation rights, legislators emphasize that the Act does not establish absolute rights—courts are given leeway as fact finders, deference is given to custodial parents, and the presumption that a child may suffer emotional harm without contact with his or her grandparent is a rebuttable one.[98] State legislators and grandparents' rights advocates are hopeful that the Act will bring grandparents one step closer to maintaining an active role in their grandchildren's lives while continuing to protect the constitutional rights of parents.

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98. *See* O.C.G.A. §§ 19-7-3(c)(1)(D), -3(d), -3(c)(3) (Supp. 2012); *see also* Fowler Interview, *supra* note 20; Meadows Interview, *supra* note 22.