

MEMORANDUM

TO: Nonparental Child Custody and Visitation Act Drafting Committee
FROM: Jeff Atkinson, Reporter
DATE: February 1, 2018
RE: Use of “harm,” “detriment,” and similar terms in state statutes and case law

I have updated my review of the statutes in the 50 states and D.C. with a focus on the degree to which a showing of harm is required before a nonparent can be granted visitation – using the term “harm,” “detriment,” or a similar term in the statutes. The statutes were in effect in early 2017. I also reviewed my research materials on state supreme court decisions. (The focus of that research was rulings by supreme courts on the constitutionality of state statutes.)

15 states require a showing of harm (or something similar) by statute or by case law (from the highest court in the state).

More specifically:

- 7 states require “harm” by statute -- See Ala. Code § 30-3-4.2 (2017); Ark. Code § 9-13-103(e) (2017); Conn. Gen. Stat. § 46b-59(b) (2017); Ga. Code § 19-7-3(c)(1); 750 Ill. Comp. Stat.5/602.9(b)(3) (2017); Mich. Stat. § 722.27b(4)(b) (2017); Tenn. Stat. § 36-3-306(b)(1) (2017).
- 1 state requires “detriment” by statute -- Utah Code § 30-5a-103(2)(f) (2017).
- 1 state statute requires that denial of access to the child “would significantly impair the child’s physical health or emotional well-being” -- Tex. Fam. Code § 153.432(c) (2017).
- 6 state supreme courts have held, as a matter of state or federal constitutional law, that harm to the child without granting visitation must be shown before visitation is granted to a grandparent. *Crockett v. Pastore*, 259 Conn. 240, 789 A.2d 453 (2002); *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004); *Doe v. Doe*, 116 Haw. 323, 172 P.3d 1067 (Haw. 2007); *Blixt v. Blixt*, 437 Mass. 649, 774 N.E.2d 1052 (2002); *Moriarty v. Bradt*, 177 N.J. 84, 827 A.2d 203 (2003), *cert. denied*, 540 U.S. 1177 (2004); *In re Parentage of C.A.M.A.*, 154 Wash. 2d 52, 109 P.3d 405 (2005). These cases did not involve grandparents who had acted as consistent caretakers. Connecticut has both case law and a statute on the subject.