

# Hall of the House of Representatives

84th General Assembly - Regular Session, 2003

## Amendment Form

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### Subtitle of House Bill No. 1484

"TO CONFORM THE GRANDPARENTS' VISITATION STATUTE WITH RECENT  
ARKANSAS SUPREME COURT AND UNITED STATES SUPREME COURT DECISIONS."

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### Amendment No. 1 to House Bill No. 1484.

Amend House Bill No. 1484 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 9-13-103 is amended to read as follows:  
9-13-103. Visitation rights of grandparents when the child is in the  
custody of a parent.

(a) For purposes of this section:

(1) "Child" means a minor under the age of eighteen (18) for  
whom the custodian has control; and:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner;

(2) "Counseling" means individual counseling, group counseling,  
or other intervention method;

(3) "Custodian" means the custodial parent of the child with the  
authority to grant or deny grandparental visitation;

(4) "Mediation service" means any formal or informal mediation;  
and

(5) "Petitioner" means any individual who may petition for  
visitation rights under this section.

~~(a)(1)(b) Upon petition by a person properly before it, a circuit  
court of this state may grant grandparents and great-grandparents A  
grandparent or great-grandparent may petition a circuit court of this state  
for reasonable visitation rights with respect to their grandchild or  
grandchildren or great-grandchild or great-grandchildren under this section  
at any time if:~~

~~(A)(1) The marital relationship between the parents of the  
child has been severed by death, divorce, or legal separation; or~~

~~(B) The child is in the custody or under the guardianship  
of a person other than one (1) or both of his or her natural or adoptive  
parents; or~~

~~(C)(2) The child is illegitimate, and the person is a  
maternal grandparent of the illegitimate child; or~~

~~(D)(3) The child is illegitimate, and the person is a  
paternal grandparent of the illegitimate child, and paternity has been~~



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established by a court of competent jurisdiction.

~~(2) The visitation rights may only be granted when the court determines that such an order would be in the best interest and welfare of the minor.~~

~~(3)(A) An order denying visitation rights to grandparents and great-grandparents shall be in writing and shall state the reasons for denial.~~

~~(B) An order denying visitation rights is a final order for purposes of appeal.~~

~~(b) If the court denies the petition requesting grandparent visitation rights and determines that the petition for grandparent visitation rights is not well founded, was filed with malicious intent or purpose, or is not in the best interest and welfare of the child, the court may, upon motion of the respondent, order the petitioner to pay reasonable attorney's fees and court costs to the attorney of the respondent, after taking into consideration the financial ability of the petitioner and the circumstances involved.~~

~~(c) The provisions of subsections (a) and (b) of this section shall only be applicable in situations:~~

~~(1) In which there is a severed marital relationship between the parents of the natural or adoptive children by either death, divorce, or legal separation; or~~

~~(2) In which the child is in the custody or under the guardianship of a person other than one (1) or both of his or her natural or adoptive parents; or~~

~~(3) If the child is illegitimate.~~

(c)(1) There is a rebuttable presumption that a custodian's decision denying or limiting visitation to the petitioner is in the best interest of the child.

(2) To rebut the presumption, the petitioner must prove by a preponderance of the evidence the following:

(A) The petitioner has established a significant and viable relationship with the child for whom he or she is requesting visitation; and

(B) Visitation with the petitioner is in the best interest of the child.

(d) To establish a significant and viable relationship with the child, the petitioner must prove by a preponderance of the evidence the following:

(1) The child resided with the petitioner for at least six (6) consecutive months with or without the current custodian present;

(2) The petitioner was the caregiver to the child on a regular basis for at least six (6) consecutive months;

(3) The petitioner had frequent or regular contact with the child for at least twelve (12) consecutive months; or

(4) Any other facts that establish that the loss of the relationship between the petitioner and the child is likely to harm the child.

(e) To establish that visitation with the petitioner is in the best interest of the child, the petitioner must prove by a preponderance of the evidence the following:

(1) The petitioner has the capacity to give the child love, affection, and guidance;

(2) The loss of the relationship between the petitioner

and the child is likely to harm the child; and

(3) The petitioner is willing to cooperate with the custodian if visitation with the child is allowed.

(f)(1) An order granting or denying visitation rights to grandparents and great-grandparents shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation under this section.

(2) If the court grants visitation to the petitioner under this section, then the visitation shall be exercised in a manner consistent with all orders regarding custody of or visitation with the child.

(3) An order granting or denying visitation rights under this section is a final order for purposes of appeal.

(g)(1) A court may order mediation services to resolve a visitation issue under this section if:

(A) Mediation services are available;

(B) Both parties agree to participate in mediation services; and

(C) One or both of the parties agree to pay for mediation services.

(2) Records, notes, reports, or discussions related to the mediation service shall not be used by the court to determine visitation under this section.

(h)(1) A court may order counseling to address underlying matters surrounding the visitation issue under this section if:

(A) Counseling is available;

(B) Both parties agree to participate in counseling; and  
(C) One or both of the parties agree to pay for counseling.

(2) Records, notes, reports, or discussions related to the counseling shall not be used by the court to determine visitation under this section.

SECTION 2. Arkansas Code Title 9, Chapter 13, Subchapter 1 is amended to add an additional section to read as follows:

9-13-107. Visitation rights of grandparents when the parent does not have custody of the child.

(a) For purposes of this section:

(1) "Child" means a minor under the age of eighteen (18) for whom the guardian has control; and:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner; and

(2) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition the circuit court that granted the guardianship or custody for reasonable visitation rights with respect to their grandchild or grandchildren or great-grandchild or great-grandchildren under this section if the child is in the custody or under the guardianship of a person other than one (1) or both of his or her natural or adoptive parents.

(c) Visitation with the child may only be granted if the court determines that visitation with the petitioner is in the best interest and welfare of the child.

(d)(1) An order granting or denying visitation rights to grandparents and great-grandparents under this section shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation.

(2) If the court grants visitation to the petitioner under this section, then the visitation shall be exercised in a manner consistent with all orders regarding custody of or visitation with the child.

(3) An order granting or denying visitation rights under this section is a final order for purposes of appeal.”

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that our grandparents visitation law has been declared substantially unconstitutional by the Arkansas Supreme Court; that the Arkansas Supreme Court has asked the legislature to rewrite the law; that over 55,000 grandparents are raising their grandchildren in this state and they have no right to continue their relationship with their grandchildren if the parent limits or denies contact; that under current law, children are being denied visitation with grandparents with whom they have significant and viable relationships; that it is the public policy of this state to protect the best interest of the child; and that this act is immediately necessary to protect the best interest of children in this state because the denial of visitation with grandparents with whom the children have significant and viable relationships is harming children. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

The Amendment was read \_\_\_\_\_  
By: Representative Judy  
JSE/RCK - 021920031614  
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Chief Clerk