

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4
5 By: Senator Collins-Smith
6

A Bill

DRAFT JNL/JNL
SENATE BILL

For An Act To Be Entitled

8 AN ACT CONCERNING THE DETERMINATION OF CUSTODY OF A
9 CHILD IN A DIVORCE PROCEEDING; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12
13 CONCERNING THE DETERMINATION OF CUSTODY
14 OF A CHILD IN A DIVORCE PROCEEDING.
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17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 9-13-101 is amended to read as follows:
21 9-13-101. Award of custody – Definition.

22 (a)(1)(A)(i) In an action for divorce, the award of custody of a child
23 of the marriage shall be made without regard to the sex of a parent but
24 solely in accordance with the welfare and best interest of the child.
25

26 (ii) In determining the best interest of the child,
27 the court may consider the preferences of the child if the child is of a
28 sufficient age and mental capacity to reason, regardless of chronological
29 age.

30 ~~(iii) In an action for divorce, an award of joint
custody is favored in Arkansas.~~

31 (B) When a court order holds that it is in the best
32 interest of a child to award custody to a grandparent, the award of custody
33 shall be made without regard to the sex of the grandparent.
34

35 (2)(A) Upon petition by a grandparent who meets the requirements
36 of subsection ~~(b)~~(c) of this section and subdivision (a)(1) of this section,
a circuit court shall grant the grandparent a right to intervene pursuant to

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1 under Rule 24(a) of the Arkansas Rules of Civil Procedure.

2 (B)(i) A grandparent ~~shall be~~ is entitled to notice and
3 shall be granted an opportunity to be heard in any child custody proceeding
4 involving a grandchild who is twelve (12) months of age or younger when:

5 (a) ~~A grandchild resides~~ The grandchild has
6 resided with the grandparent for at least six (6) continuous months ~~prior to~~
7 before the grandchild's first birthday;

8 (b) The grandparent was the primary caregiver
9 for and financial supporter of the grandchild during the time the grandchild
10 resided with the grandparent; and

11 (c) The continuous ~~eustody~~ residency with and
12 care of the grandchild by the grandparent occurred within one (1) year of the
13 date the child custody proceeding was initiated.

14 (ii) A grandparent ~~shall be~~ is entitled to notice
15 and shall be granted an opportunity to be heard in any child custody
16 proceeding involving a grandchild who is twelve (12) months of age or older
17 when:

18 (a) ~~A grandchild resides~~ The grandchild has
19 resided with ~~this~~ the grandparent for at least one (1) continuous year
20 regardless of age;

21 (b) The grandparent was the primary caregiver
22 for and financial supporter of the grandchild during the time the grandchild
23 resided with the grandparent; and

24 (c) The continuous ~~eustody~~ residency with and
25 care of the grandchild by the grandparent occurred within one (1) year of the
26 date the child custody proceeding was initiated.

27 (iii) Notice to a the grandparent shall be given by
28 the moving party.

29 (3) For purposes of this section, "grandparent" does not mean a
30 parent of a putative father of a the child.

31 (4)(A) The party that initiates a child custody proceeding shall
32 notify the circuit court of the name and address of any grandparent who is
33 entitled to notice under the provisions of subdivision ~~(a)(1)~~ (a)(2) of this
34 section.

35 (B) The notice shall be in accordance with § 16-55-114.

36 ~~(5)(b)~~ As used in this section, "joint custody" means the approximate

1 and reasonable equal division of time with the child by both parents
 2 individually as agreed to by the parents or as ordered by the court.

3 ~~(b)(1)(A)(i)(c)(1)(A)(i)~~ When in the best interest of a child, custody
 4 shall be awarded in such a way so as to assure the frequent and continuing
 5 contact of the child with both parents ~~consistent with subdivision (a)(1)(A)~~
 6 ~~of this section.~~

7 ~~(ii)~~ ~~To this effect, the circuit court may consider~~
 8 ~~awarding joint custody of a child to the parents in making an order for~~
 9 ~~custody.~~

10 ~~(iii)(ii)~~ If, at any time, the circuit court finds
 11 by a preponderance of the evidence that one (1) parent demonstrates a pattern
 12 of willfully creating conflict in an attempt to disrupt a current or pending
 13 ~~joint custody~~ custody arrangement, the circuit court may deem such behavior
 14 as a material change of circumstances and may change a ~~joint~~ custody order to
 15 an order of primary custody to the nondisruptive parent.

16 ~~(iv)(iii)~~ Child support under a ~~joint~~ custody order
 17 is issued at the discretion of the court and shall:

18 (a) Be consistent with Administrative Order
 19 No. 10 – Arkansas Child Support Guidelines; or

20 (b) Deviate from Administrative Order No. 10 –
 21 Arkansas Child Support Guidelines as permitted by the rule.

22 (B) If a grandparent meets the requirements of subdivision
 23 (a)(1) and is entitled to notice of a child custody proceeding under
 24 subdivision (a)(2)(B) of this section and is a party to the proceedings, the
 25 circuit court may consider the continuing contact between the child and a the
 26 grandparent who is a party, and the circuit court may consider ~~orders~~ an
 27 order to assure the continuing contact between the grandparent and the child.

28 (2) ~~To this effect, in making an order for custody~~ To the
 29 purpose stated in subdivision (c)(1)(A)(i) of this section, the court may
 30 consider, among other facts, which party is more likely, in accordance with
 31 the purpose stated in subdivision (c)(1)(A)(i) of this section, to allow the
 32 child or children frequent and continuing contact with the noncustodial
 33 parent and a noncustodial grandparent who meets the requirements of
 34 subdivision (a)(1) and is entitled to notice of a child custody proceeding
 35 under subdivision (a)(2)(B) of this section.

36 ~~(e)(1)(d)(1)~~ If a party to an action concerning custody of or a right

1 to visitation with a child has committed an act of domestic violence against
2 the party making the allegation or a family or household member of either
3 party and such allegations are proven by a preponderance of the evidence, the
4 circuit court ~~must~~ shall consider the effect of such domestic violence upon
5 the best interests of the child, whether or not the child was physically
6 injured or personally witnessed the abuse, together with such facts and
7 circumstances as the circuit court deems relevant in making a ~~direction~~
8 ~~pursuant to~~ ruling under this section.

9 (2) There is a rebuttable presumption that it is not in the best
10 interest of the child to be placed in the custody of an abusive parent ~~in~~
11 ~~eases in which~~ when there is a finding by a preponderance of the evidence
12 that the parent has engaged in a pattern of domestic abuse.

13 ~~(d)(1)(e)(1)~~ If a party to an action concerning custody of or a right
14 to visitation with a child is a sex offender who is required to register
15 under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., the
16 circuit court ~~may~~ shall not award custody or unsupervised visitation of the
17 child to the sex offender unless the circuit court makes a specific finding
18 that the sex offender ~~poses no~~ is not a danger to the child.

19 (2) There is a rebuttable presumption that it is not in the best
20 interest of the child to be placed in the care or custody of a sex offender
21 or to have unsupervised visitation with a sex offender.

22 (3) There is a rebuttable presumption that it is not in the best
23 interest of the child to be placed in the home of a sex offender or to have
24 unsupervised visitation in a home in which a sex offender resides.

25 ~~(e)(1)(f)(1)~~ The Director of the Administrative Office of the Courts
26 is authorized to establish an attorney ad litem program to represent children
27 in circuit court cases in which custody is an issue.

28 (2) When a circuit judge determines that the appointment of an
29 attorney ad litem would facilitate a case in which custody is an issue and
30 further protect the rights of the child, the circuit judge may appoint a
31 private attorney to represent the child.

32 (3)(A) The Supreme Court, with the advice of the circuit judges,
33 shall adopt standards of practice and qualifications for service for
34 attorneys who seek to be appointed to provide legal representation for
35 children in custody cases.

36 (B)(i) In extraordinary cases, the circuit court may

1 appoint an attorney ad litem who does not meet the required standards and
2 qualifications.

3 (ii) The attorney ~~may~~ shall not be appointed in
4 subsequent cases until he or she has made efforts to meet the standards and
5 qualifications.

6 (4) When ~~attorneys are~~ an attorney is appointed ~~pursuant to~~
7 under subdivision ~~(e)-(2)-(f)(2)~~ of this section, the fees for services and
8 reimbursable expenses shall be paid from funds appropriated for that purpose
9 to the Administrative Office of the Courts.

10 (5)(A) When a circuit judge orders the payment of funds for the
11 fees and expenses authorized by this section, the circuit judge shall
12 transmit a copy of the order to the office, which is authorized to pay the
13 funds.

14 (B) The circuit court may also require the parties to pay
15 all or a portion of the expenses, depending on the ability of the parties to
16 pay.

17 (6) The office shall establish guidelines to provide a maximum
18 amount of expenses and fees per hour and per case that will be paid ~~pursuant~~
19 ~~to~~ under this section.

20 (7) In order to ensure that each judicial district ~~will have~~ has
21 an appropriate amount of funds to utilize for ad litem representation in
22 custody cases, the funds appropriated shall be apportioned based upon a
23 formula developed by the office and approved by the Arkansas Judicial
24 Council, Inc. and the Administrative Rules and Regulations Subcommittee of
25 the Legislative Council.

26 (8)(A) The office shall develop a statistical survey that each
27 attorney who serves as an ad litem shall complete upon the conclusion of the
28 case.

29 (B) Statistics shall include the ages of children served,
30 whether the custody issue arises at a divorce or post-divorce stage, whether
31 psychological services were ordered, and any other relevant information.
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