

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 1484

4  
5 By: Representatives Judy, Napper, Dees, Mathis, Borhauer, D. Evans, King, Martin, Oglesby, Ormond,  
6 Thyer, Walters

## For An Act To Be Entitled

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10 AN ACT TO AMEND THE ARKANSAS CODE TO CONFORM THE  
11 GRANDPARENTS' VISITATION STATUTE WITH RECENT  
12 ARKANSAS SUPREME COURT AND UNITED STATES SUPREME  
13 COURT DECISIONS; AND FOR OTHER PURPOSES.

## Subtitle

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17 TO CONFORM THE GRANDPARENTS' VISITATION  
18 STATUTE WITH RECENT ARKANSAS SUPREME  
19 COURT AND UNITED STATES SUPREME COURT  
20 DECISIONS.

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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24  
25 SECTION 1. Arkansas Code § 9-13-103 is amended to read as follows:  
26 9-13-103. Visitation rights of grandparents.

27 (a) For purposes of this section:

28 (1) "Child" means a minor for whom the custodian has control;

29 and:

30 (A) The grandchild of the petitioner; or

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

32 (2) "Custodian" means the natural parent, adoptive parent,  
33 guardian, or other legal custodian of a minor;

34 (3) "Mediation service" means any formal or informal mediation,  
35 arbitration, group counseling, or other intervention method with the goal of  
36 resolving the visitation issue by the agreement of the custodian and



1 petitioner without the necessity of a court decision; and

2 (4) "Petitioner" means any individual given the authority to  
3 petition for visitation rights under this subchapter.

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

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

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

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

15 (D) The child is illegitimate, and the person is a  
16 paternal grandparent of the illegitimate child, and paternity has been  
17 established by a court of competent jurisdiction.

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

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

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

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

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

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

1 ~~legal separation; or~~

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

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

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

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

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

14 (B) The custodian has unreasonably denied or limited the  
15 petitioner’s visitation with the child; and

16 (C) Visitation with the petitioner is in the best interest  
17 of the child.

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

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

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

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

26 (4) The petitioner had extended visitation with the child that  
27 exceeded four (4) weeks in the past twelve (12) months; or

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

31 (e) To establish that the custodian of the child has unreasonably  
32 denied or limited the petitioner’s visitation with the child, the petitioner  
33 must prove by a preponderance of the evidence:

34 (1) The petitioner has requested that the custodian allow the  
35 petitioner to see the child three (3) or more times and has been refused; and

36 (2) The petitioner’s denial was unreasonable based on the facts

1 of the case.

2 (f)(1) Except as provided in subdivision (2) of this subsection, to  
3 establish that visitation with the petitioner is in the best interest of the  
4 child, the petitioner must prove by a preponderance of the evidence the  
5 following:

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

8 (B) Visitation with the petitioner will improve the  
9 child’s physical or psychological well being; and

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

12 (2) If the petitioner is unable to establish by a preponderance  
13 of the evidence one (1) or more of the facts in this subdivision (f)(1), then  
14 the court may consider any other facts that establish that the loss of the  
15 relationship between the petitioner and the child is likely to harm the  
16 child, in order to decide whether visitation with the petitioner is in the  
17 best interest of the child, including, but not limited to, the following:

18 (A) The child is sufficiently mature to express a  
19 meaningful preference for visitation with the petitioner and has expressed a  
20 preference for visitation with the petitioner; or

21 (B) If the petitioner is the parent or grandparent of the  
22 noncustodial parent, the petitioner has little or no opportunity to see the  
23 child when the child is with the noncustodial parent.

24 (g)(1) An order granting or denying visitation rights to grandparents  
25 and great-grandparents shall be in writing and shall state the following:

26 (A) The reasons asserted by the custodian for not allowing  
27 the petitioner visitation;

28 (B) The reasons asserted by petitioner for seeking  
29 visitation; and

30 (C) Any and all factors considered by the court in its  
31 decision to grant or deny visitation under this section.

32 (2) If the court grants visitation to the petitioner under this  
33 section, then any limitations placed on the noncustodial parent in the child  
34 custody order must be restated in the petitioner’s visitation order and the  
35 petitioner shall be ordered to comply with the limitations placed on the  
36 noncustodial parent.

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

3           (h)(1) A court may order mediation services to resolve a visitation  
4 issue by the agreement of the parties under this section if:

5                   (A) The petitioner seeks and has agreed to pay for  
6 mediation services with the custodian; or

7                   (B) The court, based on its findings, has determined:

8                           (i) Mediation services are available;

9                           (ii) The visitation issue may be resolved by  
10 agreement of the parties with the assistance of mediation services; and

11                           (iii) One or both of the parties is willing to pay  
12 for mediation services.

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

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