

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

As Engrossed: H2/20/03

# 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

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

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

21  
22  
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 when the child is in the*  
27 *custody of a parent.*

28 *(a) For purposes of this section:*

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

31 *(A) The grandchild of the petitioner; or*

32 *(B) The great-grandchild of the petitioner;*

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

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



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

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

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

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

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

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

18                   ~~(D)(3) The child is illegitimate, and the person is a~~  
 19 ~~paternal grandparent of the illegitimate child, and paternity has been~~  
 20 ~~established by a court of competent jurisdiction.~~

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

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

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

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

36                   ~~(c) The provisions of subsections (a) and (b) of this section shall~~

1 ~~only be applicable in situations:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) The loss of the relationship between the petitioner  
36 and the child is likely to harm the child; and

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

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

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

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

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

14                               (A) Mediation services are available;

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

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

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

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

24                               (A) Counseling is available;

25                               (B) Both parties agree to participate in counseling; and

26                               (C) One or both of the parties agree to pay for  
27 counseling.

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

31  
32                   SECTION 2. Arkansas Code Title 9, Chapter 13, Subchapter 1 is amended  
33 to add an additional section to read as follows:

34                   9-13-107. Visitation rights of grandparents when the parent does not  
35 have custody of the child.

36                   (a) For purposes of this section:

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

3                   (A) The grandchild of the petitioner; or

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

5           (2) “Petitioner” means any individual who may petition for  
6 visitation rights under this section.

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

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

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

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

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

25  
26           SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
27 General Assembly of the State of Arkansas that our grandparents visitation  
28 law has been declared substantially unconstitutional by the Arkansas Supreme  
29 Court; that the Arkansas Supreme Court has asked the legislature to rewrite  
30 the law; that over 55,000 grandparents are raising their grandchildren in  
31 this state and they have no right to continue their relationship with their  
32 grandchildren if the parent limits or denies contact; that under current law,  
33 children are being denied visitation with grandparents with whom they have  
34 significant and viable relationships; that it is the public policy of this  
35 state to protect the best interest of the child; and that this act is

1 immediately necessary to protect the best interest of children in this state  
2 because the denial of visitation with grandparents with whom the children  
3 have significant and viable relationships is harming children. Therefore, an  
4 emergency is declared to exist and this act being immediately necessary for  
5 the preservation of the public peace, health, and safety shall become  
6 effective on:

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

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

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

13 /s/ Judy, et al

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