

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
4

As Engrossed: H2/20/03 H2/27/03 S3/13/03

A Bill

Act 652 of 2003
HOUSE BILL 1484

5 By: Representatives Judy, Napper, Dees, Mathis, Borhauer, D. Evans, King, Martin, Oglesby, Ormond,
6 Thyer, Walters, *Thomason*
7 By: Senators *T. Smith, Altes*
8
9

For An Act To Be Entitled

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

Subtitle

18 TO CONFORM THE GRANDPARENTS' VISITATION
19 STATUTE WITH RECENT ARKANSAS SUPREME
20 COURT AND UNITED STATES SUPREME COURT
21 DECISIONS.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 *SECTION 1. Arkansas Code § 9-13-103 is amended to read as follows:*

27 *9-13-103. Visitation rights of grandparents when the child is in the*
28 *custody of a parent.*

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

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

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

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

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

36 *(3) "Custodian" means the custodial parent of the child with the*



1 authority to grant or deny grandparental visitation;

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

3 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (4) 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 visitation with the petitioner is in the best
32 interest of the child, the petitioner must prove by a preponderance of the
33 evidence the following:

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

36 (2) The loss of the relationship between the petitioner

1 and the child is likely to harm the child; and

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

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

8 (2)(A) If the court grants visitation to the petitioner under
9 this section, then the visitation shall be exercised in a manner consistent
10 with all orders regarding custody of or visitation with the child unless the
11 court makes a specific finding otherwise.

12 (B) If the court finds that the petitioner's visitation
13 should be restricted or limited in any way, then the court shall include the
14 restrictions or limitations in the order granting visitation.

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

17 (4) After an order granting or denying visitation has been
18 entered under this section, the custodian or petitioner may petition the
19 court for the following:

20 (A) Contempt proceedings if one (1) party to the order
21 fails to comply with the order;

22 (B) To address the issue of visitation based on a change
23 in circumstance; or

24 (C) To address the need to add or modify restrictions or
25 limitations to visitation previously awarded under this section.

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

28 (A) Mediation services are available;

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

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

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

36 (h)(1) A court may order counseling to address underlying matters

1 surrounding the visitation issue under this section if:

2 (A) Counseling is available;

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

4 (C) One or both of the parties agree to pay for
5 counseling.

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

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

12 9-13-107. Visitation rights of grandparents when the parent does not
13 have custody of the child.

14 (a) For purposes of this section:

15 (1) "Child" means a minor under the age of eighteen (18) who is:

16 (A) The grandchild of the petitioner; or

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

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

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

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

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

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

1 court makes a specific finding otherwise.

2 (B) If the court finds that the petitioner's visitation
3 should be restricted or limited in any way, then the court shall include the
4 restrictions or limitations in the order granting visitation.

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

7 (4) After an order granting or denying visitation has been
8 entered under this section, a party may petition the court for the following:

9 (A) Contempt proceedings if one party to the order fails
10 to comply with the order;

11 (B) To address the issue of visitation based on a change
12 in circumstance; or

13 (C) To address the need to add or modify restrictions or
14 limitations to visitation previously awarded under this section.

15
16 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that our grandparents visitation
18 law has been declared substantially unconstitutional by the Arkansas Supreme
19 Court; that the Arkansas Supreme Court has asked the legislature to rewrite
20 the law; that over fifty-five thousand (55,000) grandparents are raising
21 their grandchildren in this state and they have no right to continue their
22 relationship with their grandchildren if the parent limits or denies contact;
23 that under current law, children are being denied visitation with
24 grandparents with whom they have significant and viable relationships; that
25 it is the public policy of this state to protect the best interest of the
26 child; and that this act is immediately necessary to protect the best
27 interest of children in this state because the denial of visitation with
28 grandparents with whom the children have significant and viable relationships
29 is harming children. Therefore, an emergency is declared to exist and this
30 act being immediately necessary for the preservation of the public peace,
31 health, and safety shall become effective on:

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

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

