

1 INTERIM STUDY PROPOSAL 2017-070

2 State of Arkansas  
3 91st General Assembly  
4 Regular Session, 2017

*As Engrossed: S3/23/17*

# A Bill

HOUSE BILL 1773

5  
6 By: Representative Rushing

7 By: Senator G. Stubblefield

8 Filed with: House Committee on Aging, Children and Youth, Legislative and Military Affairs  
9 pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

10  
11 AN ACT TO AMEND GRANDPARENTS' RIGHTS IN CUSTODY AND  
12 VISITATION MATTERS; TO GRANT VISITATION RIGHTS TO  
13 GRANDPARENTS WHEN A PARENT OF A CHILD IS DECEASED;  
14 AND FOR OTHER PURPOSES.

## Subtitle

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18 TO AMEND GRANDPARENTS' RIGHTS IN CUSTODY  
19 AND VISITATION MATTERS; AND TO GRANT  
20 VISITATION RIGHTS TO GRANDPARENTS WHEN A  
21 PARENT OF A CHILD IS DECEASED.

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

25  
26 SECTION 1. DO NOT CODIFY. Legislative intent.

27 The General Assembly recognizes:

28 (1) The importance of family and the fundamental rights of  
29 parents and children;

30 (2) That a fit parent's decision regarding whether or not to  
31 permit grandparent visitation is entitled to special weight due to a parent's  
32 fundamental right to make decisions concerning the rearing of his or her  
33 child;

34 (3) That a parent's interest in a child must be balanced against  
35 the long-recognized interests of the state as parens patriae; and

1           (4) That grandparent visitation balances the constitutional  
2 rights of parents and children by imposing an enhanced standard of review and  
3 consideration of the harm, emotional neglect, and emotional abuse to a child  
4 caused by the parent's limitation or termination of a prior relationship of  
5 the child to his or her grandparent.

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7           SECTION 2. Arkansas Code § 9-13-103(a)-(e), concerning visitation  
8 rights of grandparents when the child is in the custody of the parent, are  
9 amended to read as follows:

10           (a) For purposes of this section:

11                   (1) "Child" means a minor under eighteen (18) years of age of  
12 whom the custodian has control and who is:

13                           (A) The grandchild of the petitioner; or

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

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

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

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

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

23                   (6) "Reasonable visitation" means a period of time that is  
24 comfortable or agreeable to all parties involved in the proceeding and that  
25 is no less than one (1) week during a year and no more than four (4) weeks  
26 during a year; and

27                   (7) "Unreasonable alienation" means that a parent or parents of  
28 a child have refused or obstructed access to or communication with a  
29 grandparent or great-grandparent of the child without a justifiable purpose.

30           (b) A grandparent or great-grandparent may petition a circuit court of  
31 this state for reasonable visitation rights with respect to his or her  
32 grandchild or grandchildren or great-grandchild or great-grandchildren under  
33 this section if:

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

1 (2) The child is illegitimate and the petitioner is a maternal  
2 grandparent of the illegitimate child; ~~or~~

3 (3) The child is illegitimate, the petitioner is a paternal  
4 grandparent of the illegitimate child, and paternity has been established by  
5 a court of competent jurisdiction;

6 (4)(A) The marital relationship between the parents of the child  
7 is intact, but there has been an unreasonable alienation of a grandparent or  
8 great-grandparent with respect to his or her grandchild or great-grandchild.

9 (B) The grandparent or great-grandparent under subdivision  
10 (b)(4)(A) of this section shall demonstrate to the court that an unreasonable  
11 alienation has occurred.

12 (C) Upon a finding of unreasonable alienation, the court  
13 shall allow the grandparent or great-grandparent to be heard; or

14 (5) A new spouse of either parent of the child adopts the child.

15 ~~(c)(1) There is a rebuttable presumption that~~ A court will defer to a  
16 custodian's decision denying or limiting visitation to the petitioner if the  
17 decision is in the best interest of the child.

18 ~~(2) To rebut the presumption, the petitioner~~ If the custodian in  
19 subdivision (c)(1) of this section decides to limit or deny visitation to the  
20 petitioner, he or she must prove to the court by a preponderance of the  
21 evidence the following:

22 (A) The petitioner has not established a significant and  
23 viable relationship with the child for whom he or she is requesting  
24 visitation; and

25 (B) Visitation with the petitioner is not in the best  
26 interest of the child.

27 ~~(d) To establish a significant and viable relationship with the child,~~  
28 ~~the petitioner must prove by a preponderance of the evidence the following~~  
29 For purposes of this section, "significant and viable relationship" means  
30 that:

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

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

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

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

4 (e) To establish that visitation with the petitioner is not in the  
5 best interest of the child, the ~~petitioner~~ custodian in subsection (c) of  
6 this section must prove by a preponderance of the evidence the following:

7 (1) The petitioner ~~has~~ does not have the capacity to give the  
8 child love, affection, and guidance;

9 (2) The loss of the relationship between the petitioner and the  
10 child is not likely to harm, emotionally distress, emotionally abuse, or  
11 emotionally neglect the child; and

12 (3) The petitioner is not willing to cooperate with the  
13 *custodian if visitation with the child is allowed.*

14 "(f) This section does not apply to dependency-neglect proceedings  
15 conducted under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

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17 SECTION 3. Arkansas Code Title 9, Chapter 13, Subchapter 1, is amended  
18 to add an additional section to read as follows:

19 9-13-111. Visitation rights of grandparents when a parent of the child  
20 is deceased, missing, or in a permanent vegetative state – Definitions.

21 (a) For purposes of this section:

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

24 (A) Grandchild of the petitioner; or

25 (B) Great-grandchild of the petitioner;

26 (2)(A) "Emotional abuse" means subjecting or exposing a child to  
27 behavior that may result in psychological trauma, including anxiety, chronic  
28 depression, or post-traumatic stress disorder.

29 (B) "Emotional abuse" includes confinement, isolation,  
30 verbal assault , humiliation, or intimidation that may diminish the sense of  
31 a child's identity;

32 (3) "Emotional neglect" means the failure to provide adequate  
33 nurturing and affection to a child or the exposure of the child to chronic or  
34 extreme domestic violence;

35 (4) "Petitioner" means the parent or grandparent of a deceased  
36 parent of a child; and

