

INTERIM STUDY PROPOSAL 2017-070

State of Arkansas

As Engrossed: S3/23/17

91st General Assembly

A Bill

Regular Session, 2017

HOUSE BILL 1773

By: Representative Rushing

By: Senator G. Stubblefield

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

For An Act To Be Entitled

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

Subtitle

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

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

SECTION 1. DO NOT CODIFY. Legislative intent.

The General Assembly recognizes:

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

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

(3) That a parent's interest in a child must be balanced against
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.

6
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.

16
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

