

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.

State of Arkansas  
83rd General Assembly  
Regular Session, 2001

*As Engrossed: H3/29/01*

## A Bill

HOUSE BILL 2303

By: Representative Judy

### For An Act To Be Entitled

CONCERNING THE CREATION OF A MECHANISM FOR  
AUTHORIZING GRANDPARENT VISITATION TIME WITH  
GRANDCHILDREN IN CERTAIN LIMITED CIRCUMSTANCES,  
AND IN CONNECTION THEREWITH, ESTABLISHING  
STANDING REQUIREMENTS FOR GRANDPARENTS TO MEET  
PRIOR TO PETITIONING THE COURT FOR GRANDCHILD  
VISITATION TIME AND AUTHORIZING THE COURT TO  
GRANT GRANDCHILD VISITATION TO GRANDPARENTS WHO  
MEET CERTAIN STANDING REQUIREMENTS WHEN THERE IS  
A FINDING, BY CLEAR AND CONVINCING EVIDENCE, THAT  
THE VISITATION IS IN THE BEST INTERESTS OF THE  
CHILD, THAT IT IS NECESSARY TO PREVENT HARM OR  
POTENTIAL HARM TO THE CHILD, AND THAT SUCH  
VISITATION WILL NOT SIGNIFICANTLY INTERFERE WITH  
THE RELATIONSHIP BETWEEN THE CHILD AND THE PARTY  
WITH LEGAL CUSTODY OF, OR DECISION-MAKING  
RESPONSIBILITIES FOR THE CHILD.

### Subtitle

CONCERNING THE CREATION OF A MECHANISM  
FOR AUTHORIZING GRANDPARENT VISITATION  
TIME WITH GRANDCHILDREN IN CERTAIN  
LIMITED CIRCUMSTANCES.

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

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

9-13-103. Visitation rights time of grandparents.

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~adoptive parents; or~~

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

3 (a) Any grandparent of a child may seek a court order granting the  
4 grandparent reasonable grandchild visitation time when there is or has been a  
5 child custody case or a case concerning the allocation of parental  
6 responsibilities relating to that child, pursuant to the procedures of this  
7 section. Because cases arise that do not directly deal with child custody or  
8 the allocation of parental responsibilities, but nonetheless have an impact  
9 on the custody of or parental responsibilities with respect to a child, for  
10 the purposes of this section, a "case concerning the allocation of parental  
11 responsibilities with respect to a child" includes any of the following,  
12 whether or not child custody was, or parental responsibilities were,  
13 specifically an issue:

14 (1) If the marriage of the child's parents has been declared  
15 invalid or has been dissolved by a court, or if a court has entered a decree  
16 of legal separation with regard to the marriage;

17 (2) If legal custody of or parental responsibilities with  
18 respect to the child have been given or allocated to a party other than the  
19 child's parent, or if the child has been placed outside of, and does not  
20 reside in the home of the child's parent, excluding any child who has been  
21 placed for adoption or whose adoption has been legally finalized; or

22 (3) If the child's parent, who is the child of the grandparent,  
23 has died.

24 (b) Any grandparent who is not authorized to petition the court for  
25 grandchild visitation pursuant to subsection (a) of this section may seek a  
26 court order granting the grandparent reasonable grandchild visitation time  
27 if:

28 (1) There is or has been a significant beneficial relationship  
29 for the child between the grandparent and the child; and

30 (2) The party with legal custody of or decision-making  
31 responsibilities for the child has unreasonably denied the grandparent  
32 opportunity to visit the child.

33 (c)(1) When there is or has been a child custody case or a case  
34 concerning the allocation of parental responsibilities with respect to a  
35 child whose home state is Arkansas, a grandparent seeking a grandchild  
36 visitation order shall file a motion to intervene in the custody case or the

1 case concerning parental responsibility, together with a motion for  
2 grandchild visitation and an affidavit setting forth facts supporting the  
3 requested order, with the circuit court of the county in which the child  
4 resides.

5 (2) When a child's home state is Arkansas, but neither a child  
6 custody case nor a case concerning the allocation of parental  
7 responsibilities with respect to a child is or has been filed in Arkansas, a  
8 grandparent seeking a grandchild visitation order may file a petition for  
9 grandchild visitation and an affidavit setting forth facts supporting the  
10 requested order with the circuit court of the county in which the child  
11 resides.

12 (d)(1) When a grandparent petitions the court pursuant to subsection  
13 (a) of this section, the petitioning grandparent shall give notice, together  
14 with a copy of his or her motions and affidavit, to the party who has legal  
15 custody of the child or to the party with decision-making responsibilities as  
16 determined by a court. The party with legal custody or decision-making  
17 responsibilities as determined by a court may file opposing affidavits. If  
18 neither party requests a hearing, the court shall enter an order granting  
19 grandchild visitation time to the petitioning grandparent only upon a finding  
20 that the visitation is in the best interests of the child. A hearing shall be  
21 held if either party so requests, or if it appears to the court that it is in  
22 the best interests of the child that a hearing be held. At the hearing,  
23 parties submitting affidavits shall be allowed an opportunity to be heard.  
24 If, at the conclusion of the hearing, the court finds it is in the best  
25 interests of the child to grant grandchild visitation time to the petitioning  
26 grandparent, the court shall enter an order granting such time.

27 (2) When a grandparent petitions the court pursuant to  
28 subsection (b) of this section, the petitioning grandparent shall give  
29 notice, together with a copy of his or her motions and affidavit, to the  
30 party who has legal custody of the child or to the party with decision-making  
31 responsibilities as determined by a court. The party with legal custody or  
32 decision-making responsibilities as determined by a court may file opposing  
33 affidavits. If neither party requests a hearing, the court may, based upon  
34 the pleadings and affidavits, enter an order granting grandchild visitation  
35 time to the petitioning grandparent only upon a finding, by clear and  
36 convincing evidence, that the visitation is in the best interests of the

1 child, that it is necessary to prevent harm or potential harm to the child,  
2 and that such visitation will not significantly interfere with the  
3 relationship between the child and the party with legal custody of or  
4 decision-making responsibilities for the child. However, a hearing shall be  
5 held, when the court is unable to determine whether a grandparent has  
6 standing pursuant to subsection (b) of this section without a hearing, if  
7 either party so requests, or if it appears to the court that a hearing would  
8 be in the best interests of the child. At the hearing, parties submitting  
9 affidavits shall be allowed an opportunity to be heard. If, at the  
10 conclusion of the hearing, the court finds, by clear and convincing evidence,  
11 that it is in the best interests of the child to grant grandchild visitation  
12 time to the petitioning grandparent, that it is necessary to prevent harm or  
13 potential harm to the child, and that such visitation will not significantly  
14 interfere with the relationship between the child and the party with legal  
15 custody of or decision-making responsibilities for the child, the court may  
16 enter an order granting such time.

17 (3) When a grandparent petitions the court pursuant to subsections (a)  
18 or (b) of this section, either party may request a closed hearing for good  
19 cause.

20 (e) No grandparent may file an affidavit seeking an order granting  
21 grandchild visitation time with the same child more than once every two years  
22 absent a showing of good cause. If the court finds there is good cause to  
23 file more than one (1) such affidavit, it shall allow such additional  
24 affidavit to be filed and shall consider it. The court may order reasonable  
25 attorney fees to the prevailing party. The court may not make any order  
26 restricting the movement of the child if such restriction is solely for the  
27 purpose of allowing the grandparent the opportunity to exercise his or her  
28 grandchild visitation time.

29 (f) The court shall have authority to enter an order modifying or  
30 terminating grandchild visitation time consistent with the appropriate  
31 standard in subsection (d) of this section.

32 (g) Any order modifying, terminating, granting, or denying parenting  
33 time rights to the parent of a child shall not affect visitation time granted  
34 to a grandparent pursuant to this section.

35 (h) A circuit court judge or magistrate may preside over a grandchild  
36 visitation proceeding; except that, if any party objects to a magistrate

1 presiding over such proceeding, such case shall be heard by a circuit court  
2 judge.

3 (i) Notwithstanding the procedures outlined in this section, a  
4 petition or a motion filed pursuant to this section shall be filed  
5 consistently with the provisions of the "Uniform Child Custody Jurisdiction  
6 and Enforcement Act".

7 (j) "Home state" means the state in which a child lived with a parent  
8 or a person acting as a parent for at least six (6) consecutive months  
9 immediately before the commencement of a child custody proceeding. In the  
10 case of a child less than six (6) months of age, the term means the state in  
11 which the child lived from birth with any of the persons mentioned. A period  
12 of temporary absence of any of the mentioned persons is part of the period.

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14 */s/ Judy*  
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