

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 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1025

5 By: Representative D. Creekmore
6 By: Senator Salmon
7

For An Act To Be Entitled

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9
10 AN ACT TO PROHIBIT AN AWARD OF CHILD CUSTODY OR
11 VISITATION TO A SEX OFFENDER EXCEPT UNDER LIMITED
12 CIRCUMSTANCES; AND FOR OTHER PURPOSES.
13

Subtitle

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15 AN ACT TO PROHIBIT AN AWARD OF CHILD
16 CUSTODY OR VISITATION TO A SEX OFFENDER
17 EXCEPT UNDER LIMITED CIRCUMSTANCES.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 9-13-101 is amended to read as follows:
23 9-13-101. Award of custody.

24 (a)(1)(A)(i) In an action for divorce, the award of custody of a child
25 of the marriage shall be made without regard to the sex of a parent but
26 solely in accordance with the welfare and best interest of the child.

27 (ii) In determining the best interest of the child,
28 the court may consider the preferences of the child if the child is of a
29 sufficient age and capacity to reason, regardless of chronological age.

30 (B) When a court order holds that it is in the best
31 interest of a child to award custody to a grandparent, the award of custody
32 shall be made without regard to the sex of the grandparent.

33 (2)(A) Upon petition by a grandparent who meets the requirements
34 of subsection (b) of this section and subdivision (a)(1) of this section, a
35 circuit court shall grant the grandparent a right to intervene pursuant to
36 Rule 24(a) of the Arkansas Rules of Civil Procedure.



1 (B)(i) A grandparent shall be entitled to notice and shall
2 be granted an opportunity to be heard in any child custody proceeding
3 involving a grandchild who is twelve (12) months of age or younger when:

4 (a) A grandchild resides with this grandparent
5 for at least six (6) continuous months prior to the grandchild's first
6 birthday;

7 (b) The grandparent was the primary caregiver
8 for and financial supporter of the grandchild during the time the grandchild
9 resided with the grandparent; and

10 (c) The continuous custody occurred within one
11 (1) year of the date the child custody proceeding was initiated.

12 (ii) A grandparent shall be entitled to notice and
13 shall be granted an opportunity to be heard in any child custody proceeding
14 involving a grandchild who is twelve (12) months of age or older when:

15 (a) A grandchild resides with this grandparent
16 for at least one (1) continuous year regardless of age;

17 (b) The grandparent was the primary caregiver
18 for and financial supporter of the grandchild during the time the grandchild
19 resided with the grandparent; and

20 (c) The continuous custody occurred within one
21 (1) year of the date the child custody proceeding was initiated.

22 (iii) Notice to a grandparent shall be given by the
23 moving party.

24 (3) For purposes of this section, "grandparent" does not mean a
25 parent of a putative father of a child.

26 (4)(A) The party that initiates a child custody proceeding shall
27 notify the circuit court of the name and address of any grandparent who is
28 entitled to notice under the provisions of subdivision (a)(1) of this
29 section.

30 (B) The notice shall be in accordance with § 16-55-114.

31 (b)(1)(A)(i) When in the best interests of a child, custody shall be
32 awarded in such a way so as to assure the frequent and continuing contact of
33 the child with both parents.

34 (ii) To this effect, the circuit court may consider
35 awarding joint custody of a child to the parents in making an order for
36 custody.

1 (B) If a grandparent meets the requirements of
 2 subdivisions (a)(1) and (2)(B) of this section and is a party to the
 3 proceedings, the circuit court may consider the continuing contact between
 4 the child and a grandparent who is a party, and the circuit court may
 5 consider orders to assure the continuing contact between the grandparent and
 6 the child.

7 (2) To this effect, in making an order for custody, the court
 8 may consider, among other facts, which party is more likely to allow the
 9 child or children frequent and continuing contact with the noncustodial
 10 parent and the noncustodial grandparent who meets the requirements of
 11 subdivisions (a)(1) and (2)(B) of this section.

12 (c)(1) ~~Where~~ If a party to an action concerning custody of or a right
 13 to visitation with a child has committed an act of domestic violence against
 14 the party making the allegation or a family or household member of either
 15 party and such allegations are proven by a preponderance of the evidence, the
 16 circuit court must consider the effect of such domestic violence upon the
 17 best interests of the child, whether or not the child was physically injured
 18 or personally witnessed the abuse, together with such facts and circumstances
 19 as the circuit court deems relevant in making a direction pursuant to this
 20 section.

21 (2) There ~~shall be~~ is a rebuttable presumption that it is not in
 22 the best interest of the child to be placed in the custody of an abusive
 23 parent in cases where there is a finding by a preponderance of the evidence
 24 that the parent has engaged in a pattern of domestic abuse.

25 (d)(1) If a party to an action concerning custody of or a right to
 26 visitation with a child is a sex offender who is required to register under
 27 the Sex Offender Registration Act of 1997, § 12-12-901 et seq., the circuit
 28 court may not award custody or unsupervised visitation of the child to the
 29 sex offender unless the circuit court makes a specific finding that the sex
 30 offender poses no danger to the child.

31 (2) There is a rebuttable presumption that it is not in the best
 32 interest of the child to be placed in the care or custody of a sex offender.

33 ~~(d)~~(e)(1) The Director of the Administrative Office of the Courts is
 34 authorized to establish an attorney ad litem program to represent children in
 35 circuit court cases where custody is an issue.

36 (2) When a circuit judge determines that the appointment of an

1 attorney ad litem would facilitate a case in which custody is an issue and
 2 further protect the rights of the child, the circuit judge may appoint a
 3 private attorney to represent the child.

4 (3)(A) The Supreme Court, with the advice of the circuit judges,
 5 shall adopt standards of practice and qualifications for service for
 6 attorneys who seek to be appointed to provide legal representation for
 7 children in custody cases.

8 (B)(i) In extraordinary cases, the circuit court may
 9 appoint an attorney ad litem who does not meet the required standards and
 10 qualifications.

11 (ii) The attorney may not be appointed in subsequent
 12 cases until he or she has made efforts to meet the standards and
 13 qualifications.

14 (4) When attorneys are appointed pursuant to subdivision ~~(d)(2)~~
 15 (e)(2) of this section, the fees for services and reimbursable expenses shall
 16 be paid from funds appropriated for that purpose to the Administrative Office
 17 of the Courts.

18 (5)(A) When a circuit judge orders the payment of funds for the
 19 fees and expenses authorized by this section, the circuit judge shall
 20 transmit a copy of the order to the Administrative Office of the Courts,
 21 which is authorized to pay the funds.

22 (B) The circuit court may also require the parties to pay
 23 all or a portion of the expenses, depending on the ability of the parties to
 24 pay.

25 (6) The Administrative Office of the Courts shall establish
 26 guidelines to provide a maximum amount of expenses and fees per hour and per
 27 case which will be paid pursuant to this section.

28 (7) In order to ensure that each judicial district will have an
 29 appropriate amount of funds to utilize for ad litem representation in custody
 30 cases, the funds appropriated shall be apportioned based upon a formula
 31 developed by the Administrative Office of the Courts and approved by the
 32 Arkansas Judicial Council and the Rules and Regulations Subcommittee of the
 33 Arkansas Legislative Council.

34 (8)(A) The Administrative Office of the Courts shall develop a
 35 statistical survey that each attorney who serves as an ad litem shall
 36 complete upon the conclusion of the case.

1 (B) Statistics shall include the ages of children served,
2 whether the custody issue arises at a divorce or post-divorce stage, whether
3 psychological services were ordered, and any other relevant information.

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