

State of Arkansas
87th General Assembly
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A Bill

HOUSE BILL 1440

By: Representative Glidewell

For An Act To Be Entitled

AN ACT CONCERNING AN AWARD OF CHILD CUSTODY OR
VISITATION IN CASES IN WHICH A PARENT OR
GRANDPARENT HAS REGULAR SOCIAL CONTACT WITH A
PERSON WHO HAS COMMITTED AN ACT OF DOMESTIC
ABUSE; AND FOR OTHER PURPOSES.

Subtitle

AN ACT CONCERNING AN AWARD OF CHILD
CUSTODY OR VISITATION IN CASES IN WHICH
A PARENT OR GRANDPARENT HAS REGULAR
SOCIAL CONTACT WITH A PERSON WHO HAS
COMMITTED AN ACT OF DOMESTIC ABUSE.

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

SECTION 1. NOT TO BE CODIFIED. This act shall be known and may be
cited as "Sydney and Garrett's Law".

SECTION 2. Arkansas Code § 9-13-101 is amended to read as follows:
9-13-101. Award of custody.

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

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

(B) When a court order holds that it is in the best



1 interest of a child to award custody to a grandparent, the award of custody
2 shall be made without regard to the sex of the grandparent.

3 (2)(A) Upon petition by a grandparent who meets the requirements
4 of subsection (b) of this section and subdivision (a)(1) of this section, a
5 circuit court shall grant the grandparent a right to intervene ~~pursuant to~~
6 under Rule 24(a) of the Arkansas Rules of Civil Procedure.

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

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

13 (b) The grandparent was the primary caregiver
14 for and financial supporter of the grandchild during the time the grandchild
15 resided with the grandparent; and

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

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

21 (a) A grandchild resides with ~~this~~ the
22 grandparent for at least one (1) continuous year regardless of age;

23 (b) The grandparent was the primary caregiver
24 for and financial supporter of the grandchild during the time the grandchild
25 resided with the grandparent; and

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

28 (iii) Notice to a grandparent shall be given by the
29 moving party.

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

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

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

1 (b)(1)(A)(i) When in the best ~~interests~~ interest of a child, custody
 2 shall be awarded in such a way ~~so as to~~ that will assure the frequent and
 3 continuing contact of the child with both parents.

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

7 (B) If a grandparent meets the requirements of
 8 subdivisions (a)(1) and (a)(2)(B) of this section and is a party to the
 9 proceedings, the circuit court may consider the continuing contact between
 10 the child and a grandparent who is a party, and the circuit court may
 11 consider orders to assure the continuing contact between the grandparent and
 12 the child.

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

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

28 (2) There is a rebuttable presumption that it is not in the best
 29 interest of the child to be placed in the custody of an abusive parent in
 30 cases ~~where~~ when there is a finding by a preponderance of the evidence that
 31 the parent has engaged in a pattern of domestic abuse.

32 (d)(1) If a party to an action concerning custody of or a right to
 33 visitation with a child has regular social contact with a person who has
 34 committed an act of domestic violence or sexual abuse and the allegations of
 35 domestic violence or sexual abuse are proven by a preponderance of the
 36 evidence, the circuit court shall consider the potential threat of harm to

1 the child upon the best interest of the child, together with the facts and
 2 circumstances as the circuit court deems relevant in making a decision under
 3 this section.

4 (2) There is a rebuttable presumption that it is not in the best
 5 interest of the child to be placed in the custody of or to have unsupervised
 6 visitation with a parent or a grandparent when there is a finding by a
 7 preponderance of the evidence that the parent or grandparent has regular
 8 social contact with a person who has committed an act of domestic violence or
 9 sexual abuse.

10 ~~(d)-(1)~~(e)(1) If a party to an action concerning custody of or a right
 11 to visitation with a child is a sex offender who is required to register
 12 under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., the
 13 circuit court ~~may~~ shall not award custody or unsupervised visitation of the
 14 child to the sex offender unless the circuit court makes a specific finding
 15 that the sex offender poses no danger to the child.

16 (2) There is a rebuttable presumption that it is not in the best
 17 interest of the child to be placed in the care or custody of a sex offender
 18 or to have unsupervised visitation with a sex offender.

19 ~~(e)-(1)~~(f)(1) The Director of the Administrative Office of the Courts
 20 is authorized to establish an attorney ad litem program to represent children
 21 in circuit court cases where custody is an issue.

22 (2) When a circuit judge determines that the appointment of an
 23 attorney ad litem would facilitate a case in which custody is an issue and
 24 further protect the rights of the child, the circuit judge may appoint a
 25 private attorney to represent the child.

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

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

33 (ii) The attorney ~~may~~ shall not be appointed in
 34 subsequent cases until he or she has made efforts to meet the standards and
 35 qualifications.

36 (4) When attorneys are appointed ~~pursuant to~~ under subdivision

1 ~~(e)-(2)~~ (f)(2) of this section, the fees for services and reimbursable
2 expenses shall be paid from funds appropriated for that purpose to the
3 Administrative Office of the Courts.

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

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

11 (6) The Administrative Office of the Courts shall establish
12 guidelines to provide a maximum amount of expenses and fees per hour and per
13 case which will be paid ~~pursuant to~~ under this section.

14 (7) In order to ensure that each judicial district will have an
15 appropriate amount of funds to utilize for ad litem representation in custody
16 cases, the funds appropriated shall be apportioned based upon a formula
17 developed by the Administrative Office of the Courts and approved by the
18 Arkansas Judicial Council and the ~~Subcommittee on~~ Administrative Rules and
19 Regulations Committee of the Legislative Council.

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

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