

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1799

5 By: Representatives Rushing, Christiansen, Evans
6 By: Senator A. Clark
7

For An Act To Be Entitled

9 AN ACT TO CREATE "TARA'S LAW"; TO AMEND GRANDPARENTS'
10 RIGHTS IN CUSTODY AND VISITATION MATTERS; AND FOR
11 OTHER PURPOSES.
12
13

Subtitle

15 TO CREATE "TARA'S LAW"; AND TO AMEND
16 GRANDPARENTS' RIGHTS IN CUSTODY AND
17 VISITATION MATTERS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. DO NOT CODIFY. Title.

23 This act shall be known and may be cited as "Tara's Law".
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25 SECTION 2. DO NOT CODIFY. Legislative intent.

26 The General Assembly recognizes:

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

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

33 (3) That grandparental relationship should be supported
34 following a consideration of the potential harm, emotional neglect, and
35 emotional abuse of a child caused by the parent's limitation or termination
36 of the child's prior relationship with his or her grandparent while



1 recognizing the parent's fundamental right.

2
 3 SECTION 3. Arkansas Code § 9-13-103(b)-(e), concerning visitation
 4 rights of grandparents when the child is in the custody of the parent, are
 5 amended to read as follows:

6 (b) A grandparent or great-grandparent may petition a circuit court of
 7 this state for reasonable visitation rights with respect to his or her
 8 grandchild or grandchildren or great-grandchild or great-grandchildren under
 9 this section if:

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

12 (2) The child is illegitimate and the petitioner is a maternal
 13 grandparent or great-grandparent of the illegitimate child; ~~or~~

14 (3) The child is illegitimate, the petitioner is a paternal
 15 grandparent or great-grandparent of the illegitimate child, and paternity has
 16 been established by a court of competent jurisdiction;

17 (4) The court finds by clear and convincing evidence that the
 18 primary custodian of the child is unfit;

19 (5)(A) The court finds by clear and convincing evidence that
 20 there are compelling circumstances to overcome the presumption that the
 21 parental decision is in the best interest of the child.

22 (B) In determining the best interest of the child, the
 23 court may consider one (1) or more of the following factors:

24 (i) The love, affection, and other emotional ties
 25 that exist between the petitioner and the child;

26 (ii) The length and quality of the relationship
 27 between the petitioner and the child;

28 (iii) The mental and physical health of the
 29 petitioner, the parent, and the child;

30 (iv) The potential detriments and benefits to the
 31 child if visitation is granted or denied;

32 (v) The wishes and preferences of the child as to
 33 visitation;

34 (vi) The motivation of the parent in denying or
 35 prohibiting visitation between the petitioner and the child;

36 (vii) The motivation of the grandparent or great-

1 grandparent in petitioning for visitation with child;

2 (viii) Any history of abuse or neglect of the child;

3 (ix) Any history of domestic violence in the home of
 4 the child;

5 (x) Whether there has been a court-ordered
 6 termination of the parental rights of a parent to whom the petitioner is
 7 related; and

8 (xi) Any other factor that impacts the best interest
 9 of the child; or

10 (7) A stepparent of either biological parent of the child adopts
 11 the child due to the death of the biological parent of the child.

12 (c)(1) There is a rebuttable presumption that a custodian's decision
 13 denying or limiting visitation to the petitioner is in the best interest of
 14 the child.

15 (2) To rebut the presumption, the petitioner ~~must~~ shall prove by
 16 a preponderance of the evidence the following:

17 (A) The petitioner has established a significant and
 18 viable relationship with the child for whom he or she is requesting
 19 visitation; and

20 (B) Visitation with the petitioner is in the best interest
 21 of the child.

22 (d) To establish a significant and viable relationship with the child,
 23 the petitioner must prove by a preponderance of the evidence the following:

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

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

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

30 (4) Any other facts that establish that the loss of the
 31 relationship between the petitioner and the child is likely to harm the
 32 child.

33 (e) To establish that visitation with the petitioner is in the best
 34 interest of the child, the petitioner ~~must~~ shall prove by a preponderance of
 35 the evidence the following:

36 (1) The petitioner has the capacity to give the child love,

1 affection, emotional support, and guidance;

2 (2) The loss of the relationship between the petitioner and the
3 child is likely to:

4 (A) ~~harm~~ Harm the child;

5 (B) Cause emotional distress to the child;

6 (C) Result in the emotional abuse of the child; or

7 (D) Result in the emotional neglect of the child; and

8 (3) The petitioner is willing to cooperate with the custodian if
9 visitation with the child is allowed; and

10 (4) Awarding grandparent visitation would not interfere with the
11 parent-child relationship.

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13 SECTION 4. Arkansas Code § 9-13-103, concerning the visitation rights
14 of grandparents when the child is in the custody of a parent, is amended to
15 add an additional subsection to read as follows:

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

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