

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.

Act 56 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H1/18/07

A Bill

HOUSE BILL 1025

5 By: Representatives D. Creekmore, *Abernathy, Adcock, Anderson, T. Baker, Burris, Cash, Cornwell,*
6 *Dunn, George, Hardwick, House, D. Hutchinson, Key, Kidd, M. Martin, Maxwell, Norton, Overbey,*
7 *Pennartz, Pierce, S. Prater, Ragland, Rosenbaum, Stewart, Wagner, Walters, Wells*
8 By: Senators Salmon, *Broadway*
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11 **For An Act To Be Entitled**

12 AN ACT TO PROHIBIT AN AWARD OF CHILD CUSTODY OR
13 VISITATION TO A SEX OFFENDER EXCEPT UNDER LIMITED
14 CIRCUMSTANCES; AND FOR OTHER PURPOSES.
15

16 **Subtitle**

17 AN ACT TO PROHIBIT AN AWARD OF CHILD
18 CUSTODY OR VISITATION TO A SEX OFFENDER
19 EXCEPT UNDER LIMITED CIRCUMSTANCES.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 9-13-101 is amended to read as follows:
25 9-13-101. Award of custody.

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

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

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

35 (2)(A) Upon petition by a grandparent who meets the requirements



1 of subsection (b) of this section and subdivision (a)(1) of this section, a
2 circuit court shall grant the grandparent a right to intervene pursuant to
3 Rule 24(a) of the Arkansas Rules of Civil Procedure.

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

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

10 (b) The grandparent was the primary caregiver
11 for and financial supporter of the grandchild during the time the grandchild
12 resided with the grandparent; and

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

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

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

20 (b) The grandparent was the primary caregiver
21 for and financial supporter of the grandchild during the time the grandchild
22 resided with the grandparent; and

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

25 (iii) Notice to a grandparent shall be given by the
26 moving party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Arkansas Legislative Council.

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

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

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/s/ D. Creekmore, et al.

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