

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

As Engrossed: H3/14/19  
**A Bill**

HOUSE BILL 1799

By: Representatives Rushing, Christiansen, Evans  
By: Senator A. Clark

### **For An Act To Be Entitled**

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

### **Subtitle**

TO CREATE "TARA'S LAW"; AND TO AMEND GRANDPARENTS' RIGHTS IN CUSTODY AND VISITATION MATTERS.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as "Tara's Law".

SECTION 2. DO NOT CODIFY. Legislative intent.

The General Assembly recognizes:

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

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

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



recognizing the parent's fundamental right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) The motivation of the grandparent or great-

grandparent in petitioning for visitation with child;

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

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

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

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

(6) A stepparent of either biological parent of the child adopts the child due to the death of the biological parent of the child.

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

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

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

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

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

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

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

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

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

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

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

affection, emotional support, and guidance;

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

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

(B) Cause emotional distress to the child;

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

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

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

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

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

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

*/s/Rushing*