

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

251

By: Senate Judiciary Committee

For An Act To Be Entitled

"AN ACT TO ESTABLISH THE FAMILY COURT OF EACH COUNTY; TO TRANSFER JURISDICTION OF ALL JUVENILE MATTERS NOW VESTED IN PROBATE AND CIRCUIT COURT TO FAMILY COURT; TO TRANSFER JURISDICTION OVER PATERNITY CASES FROM COUNTY COURT TO CHANCERY COURT; AND FOR OTHER PURPOSES."

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

SECTION 1. This act may be known and may be cited as the Family Court Act of 1989.

SECTION 2. There is established in each county in the State of Arkansas a court to be known as the family court.

SECTION 3. The family courts shall be styled and known as the family courts of the counties respectively.

SECTION 4. The family courts shall be courts of record.

SECTION 5. The family courts shall have original jurisdiction over the following causes of action as defined by the Arkansas Juvenile Code of 1975, Ark. Code §§9-27-301 et seq. and any amendments thereto or subsequent act superseding that act and Ark. Code §§9-9-301 et seq.

- (a) Delinquency.
- (b) Terminations of parental rights.
- (c) Family in need of services.
- (d) Dependent and neglected juvenile.

SECTION 6. The family courts shall be held in the same buildings in

which the chancery courts are held or at such other places as may be designated by the courts.

SECTION 7. The family courts shall have a seal. Until otherwise provided by the court, the seal of the probate court shall be the seal of the family court.

SECTION 8. (a) There shall be no stated terms of the family courts of this state.

(b) The family courts shall always be open for the transaction of business and all matters of which they have jurisdiction, except on those days now excluded by law, if any.

(c) There shall be no final adjournments, but the court may adjourn from day to day as business demands. These adjournments shall be considered recesses and shall not prohibit the court from sitting at any time.

SECTION 9. (a) (1) The chancellors and circuit-chancery judges of the respective chancery districts shall serve as the judge of the family court for each county within their judicial district beginning July 1, 1989.

(2) In judicial districts having more than one chancellor or having a chancellor and a circuit-chancery judge, a determination may be made by unanimous vote of the sitting chancellors and circuit-chancery judges of the judicial district that one or more judges shall have responsibility for the family court docket within that judicial district.

(3) In judicial districts containing eastern and western districts, a judge of the family court shall have responsibility for the eastern district family court docket and a judge of the family court shall have responsibility for the western district family court docket.

(b) The designation of a judge or judges of the family court in each judicial district shall be reported to the Chief Justice of the Arkansas Supreme Court by order signed by all chancery and circuit-chancery judges of the judicial district on or before April 30, 1989.

(c) In judicial districts not reporting by May 1, 1989, or where a unanimous decision was not reached by the sitting judges, the Chief Justice of the Arkansas Supreme Court shall designate one or more chancellors who shall have responsibility for the family court docket within that judicial district.

SECTION 10. (a) The court reporter, case coordinator, and such other staff as may be employed by the chancellor or circuit-chancery judge shall serve the judge of the family court.

(b) (1) The judge of the family court shall appoint an intake officer for each county within their judicial district.

(2) In addition to such other duties as required by law or designated by the judge of the family court, the intake officer shall be responsible for any reporting requirements of the Arkansas Judicial Department for the family court.

(c) The judge of the family court may assign probation duties to the intake officer or may appoint a person as probation officer for the family court.

SECTION 11. (a) In each county within the judicial district, the judge or judges of the family court may appoint a magistrate to preside over emergency proceedings, hearings involving temporary determinations and such other proceedings where it is determined by the court that it is in the best interests of the parties for a preliminary determination to be made.

(b) The magistrate appointed hereunder shall be a citizen of the United States, at least twenty-eight years of age, of good moral character, learned in the law, two years a resident of the State, and shall have practiced law six years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to six years.

(c) The magistrate shall serve at the pleasure of the judge of the family court and during the term of office of the judge of the family court who appoints him.

(d) The judge of the family court may authorize the magistrate to have the same powers to issue subpoenas, compel attendance of witnesses, administer oaths, and take testimony as the judge of the family court.

(e) Any magistrate appointed shall receive for his services compensation which shall be established in the same manner as the compensation of other personnel of the family court.

(f) Except for ex parte emergency proceedings, a full and complete record of all hearings before the magistrate shall be kept and all testimony shall be recorded, but it need not be transcribed except upon request by either party who shall bear the costs or at the direction of the judge.

(g) Any order entered by the magistrate shall be reviewed and approved, modified or set aside by the judge of the family court at the next time during which the judge of the family court is physically present in the county and engaged in family court business. Once approved or modified, such order shall become a final order from which an appeal may be taken.

SECTION 12. The clerks of the probate courts shall be clerks of the family courts.

SECTION 13. The family courts may, upon their own initiative or upon petition of the litigants, hear cases and matters in privacy where they deem it in the best interests of the parties and the best interest of society.

SECTION 14. (a) A special judge of the family court may be elected for the same causes and in the same manner as special circuit judges are elected.

(b) No judge of the family court shall sit on the determination of any cause or proceeding in which he is interested, or related to either party within the fourth degree of consanguinity or affinity, or shall have been of counsel, without the consent of the parties.

(c) Judges of the family court may transfer cases and exchange districts in the same manner as provided for circuit and chancery judges in Ark. Code §§16-13-401 et seq.

SECTION 15. (a) The General Assembly recognizes that matters involving children and families lack jurisdictional boundaries. It is the intent by the creation of the family court that matters involving children which may initially arise under a juvenile proceeding be retained by the same judge in later proceedings which may be brought in probate or chancery.

(b) Judges of family court, chancellors and probate judges are hereby authorized to transfer and consolidate pending cases involving the same or similar parties when such does not jeopardize the parties' due process rights or rights to a fair hearing and it is in the interest of judicial expediency.

SECTION 16. Appeals to the Arkansas Court of Appeals may be taken from the orders, judgments and decisions of the family courts in the same manner as now provided by law for appeals from the chancery courts in equity cases.

SECTION 17. (a) The expenses accruing in the family court shall be paid out of the treasury of the county in which the court is held in the same manner as other demands.

(b) The expenses shall include reasonable sums for the employment of family court personnel, reasonable office expenses, and office supplies of the judge of the family courts.

SECTION 18. Arkansas Code 5-1-116 is hereby amended to read as follows:

"5-1-116. (a) A person shall not be tried for or convicted of an offense if he was fourteen (14) years of age or less at the time of the conduct alleged to constitute the offense. In such case, the family court shall have jurisdiction.

(b) If a person was at least fifteen (15) years of age but less than eighteen (18) years of age at the time of the conduct alleged to constitute the offense of murder, rape, arson, robbery or burglary he shall be brought before family court which shall hold a preliminary hearing to determine if proceedings are to be instituted against the person in family court as a delinquent or if the matter should be transferred for prosecution in circuit court.

(c) In any case where the age of a person charged with the commission of an offense becomes an issue, the court before which the proceeding is pending shall hold a hearing, and the burden shall be on the person charged to establish age to the satisfaction of the court. If the court determines that because of age the proceeding is barred or referral to the family court is appropriate, custody of the person charged shall be surrendered to the family court, and the case, including all papers and processes relating thereto, shall be transferred.

(d) This section shall not apply to persons charged with traffic offenses."

SECTION 19. Arkansas Code 9-10-101 is hereby amended to read as follows:

"9-10-101. The chancery courts in the several counties in this state shall have exclusive original jurisdiction in all cases and matters relating to paternity."

SECTION 20. Arkansas Code 9-10-104 is hereby amended to read as follows:

"9-10-104. Suit by father to determine paternity of illegitimate child.

(a) Any man alleging to be the father of an illegitimate child may petition the chancery court wherein the mother resides or wherein the child resides for a determination of the paternity of the illegitimate child.

(b) The court may determine the paternity of the child and may order the father to make periodic payments for support of the child.

(c) It is found and determined by the General Assembly that prior to June 17, 1981, a putative father did not have any cause of action to establish the paternity of his illegitimate child and that this was a violation of equal protection of the law."

SECTION 21. Appeals from chancery decisions in paternity cases shall be in the same manner as now provided by law for appeals from the chancery courts in equity cases.

SECTION 22. It is the intent of this act that jurisdiction of paternity cases shall be transferred from county court to chancery court. All provisions of Arkansas Code 9-10-101 et seq. referring to the "county court" shall hereafter mean the "chancery court"; all references to "county judge or referee" shall hereafter refer to the "chancellor"; and all references to "county clerk" shall hereafter refer to the "chancery clerk." The Arkansas Code Revision Commission shall make these changes in the Arkansas Code of 1987 Annotated to comply with this intent.

SECTION 23. (a) All paternity cases pending in the county courts of the various counties in this state on July 1, 1989, shall be transferred and docketed in the chancery court of the county in which they are pending on that date.

(b) All cases involving the alleged delinquency of a juvenile pending in the circuit courts of the various counties in this state on July 1, 1989, shall be transferred and docketed in the family court of the county in which they are pending on that date.

(c) All cases involving juveniles in need of supervision or dependent-neglected juveniles pending in the probate court of the various counties in this state on July 1, 1989, shall be transferred and docketed in

the family court of the county in which they are pending on that date.

SECTION 24. Section 14 of Act 14 of 1987 is hereby repealed and the remaining provisions of that act shall remain in full force and effect until July 1, 1989.

SECTION 25. The quorum court of each county is hereby authorized to appropriate funds to be used by the judge or judges of the family court of the county, for the employment of magistrates, intake officers, probation officers, and other support personnel necessary to assist in the performance of their duties under this act. It shall be the duty of the county judge of each county in this State and of the quorum court of each county in this State, to appropriate and make available to the family court of their respective counties an amount of financial support for the 1989 county fiscal year and for each county fiscal year hereafter, which shall not be less than the amount appropriated for the support of the juvenile court of such county for the 1987 county fiscal year.

SECTION 26. Arkansas Code §§9-10-106, 9-10-116, 9-10-117, and 9-10-118 are hereby repealed.

SECTION 27. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revisions Commission shall incorporate the same in the Code.

SECTION 28. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 29. Emergency. It is hereby found and determined by the General Assembly that the orderly transition from the Act 14 juvenile justice system to the system created in this act requires that certain provisions become effective immediately upon enactment; that the judges, clerks and court personnel should have sufficient time to implement this act through advance planning; and that a smooth transition is in the best interests of all citizens of the state. Therefore, an emergency is hereby declared to exist and Section 9 and Section 24 of this Act, being immediately necessary for the

preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval. All remaining sections shall become effective July 1, 1989.