

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S2/25/99

A Bill

SENATE BILL 221

5 By: Senator Mahony
6 By: Representative Madison
7
8

For An Act To Be Entitled

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10 "AN ACT TO AMEND ARKANSAS CODE 9-27-401 TO PROVIDE
11 COUNSEL FOR CHILDREN IN DEPENDENCY-NEGLECT CASES; TO
12 AMEND ARKANSAS CODE 9-13-101 TO PROVIDE COUNSEL FOR
13 CHILDREN IN CHANCERY CASES INVOLVING CUSTODY; TO
14 PROVIDE COUNSEL FOR CHILDREN IN PROBATE CASES
15 INVOLVING GUARDIANSHIP; TO DECLARE AN EMERGENCY; AND
16 FOR OTHER PURPOSES. "
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Subtitle

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19 "TO PROVIDE COUNSEL FOR CHILDREN IN
20 DEPENDENCY-NEGLECT CASES; TO PROVIDE
21 COUNSEL FOR CHILDREN IN CHANCERY CASES
22 INVOLVING CUSTODY; TO PROVIDE COUNSEL
23 FOR CHILDREN IN PROBATE CASES INVOLVING
24 GUARDIANSHIP. "
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code 9-27-401 is amended to read as follows:

30 "9-27-401. Creation - Representation for children and parents.

31 (a) There is hereby created a Division of Dependency-Neglect
32 Representation within the Administrative Office of the Courts which will be
33 staffed by a CASA coordinator and an attorney coordinator.

34 (b) Representation for Children. (1) The Director of the Administrative
35 Office of the Courts is authorized to enter into professional service
36 contracts with private individuals or businesses or public agencies to

1 represent all children in dependency-neglect proceedings.

2 (2) Prior to entering into a contract or contracts, the
3 Administrative Office of the Courts shall ~~consult with~~ obtain approval from
4 the juvenile division judge or judges in each judicial circuit, in accordance
5 with the provisions of Arkansas Code 19-4-1701 through 19-4-1713. Those
6 obtaining contracts through the Administrative Office of the Courts as
7 described in subdivision (b)(3) of this section will be designated as the
8 provider for representation of children in dependency-neglect cases in each
9 judicial circuit.

10 (3) The Administrative Office of the Courts shall publish
11 requests for proposals in each judicial district. The distribution of funds
12 among the judicial districts shall be based on a formula developed by the
13 Administrative Office of the Courts and approved by the Juvenile Judges
14 Committee of the Arkansas Judicial Council.

15 (4) The Arkansas Supreme Court shall adopt standards of practice and
16 qualifications for service for all attorneys who seek to receive contracts to
17 provide legal representation to children in dependency-neglect cases.

18 (5)(A) It is the intent of the General Assembly, in the transition to a
19 state-funded system of dependency-neglect representation, to provide an
20 appropriate and adequate level of representation to all children in
21 dependency-neglect proceedings, as required under federal and state law
22 pursuant to Arkansas Code 9-27-316. It is recognized by the General Assembly
23 that in many areas of the state resources have not been available to support
24 the requirement of representation for children at the necessary level. It is
25 also recognized, however, that in other areas, a system has been developed
26 which is appropriately and successfully serving children and the courts. With
27 the transition to state funding, it is not the intent of the General Assembly
28 to adversely affect these systems that are working well or to put into place a
29 system which is too inflexible to respond to local needs or restrictions.

30 (B) In its administration of the system, therefore, the
31 Administrative Office of the Courts is charged with the authority and
32 responsibility to establish and maintain a system which equitably serves all
33 areas of the state, provides quality representation, makes prudent use of
34 state resources, and works with those systems now in place to provide an
35 appropriate level of representation of children and courts in dependency-
36 neglect cases.

1 ~~(3) (c)~~ Creation of Statewide CASA Program. The Director of the
2 Administrative Office of the Courts is authorized to establish a statewide
3 Court-Appointed Special Advocate (CASA) program, to provide grants or
4 contracts to local CASA programs, and to work with judicial districts to
5 establish local programs, whereby the juvenile divisions of chancery court
6 appoint trained volunteers to provide valuable information to the courts
7 concerning the best interests of children in dependency-neglect proceedings.

8 ~~(c) Representation for Parents. (1) The Director of the Administrative~~
9 ~~Office of the Courts is authorized to award grants to legal service programs~~
10 ~~which currently receive funding through the federal Legal Services Corporation~~
11 ~~and which provide services to Arkansas clients including Ozark Legal Services,~~
12 ~~Legal Services of Northeast Arkansas, East Arkansas Legal Services, Western~~
13 ~~Arkansas Legal Services, Center for Arkansas Legal Services, and the Texarkana~~
14 ~~office of East Texas Legal Services, or their successor programs to represent~~
15 ~~indigent custodial parents involved in dependency-neglect proceedings.~~

16 ~~(2) The legal services programs listed in subdivision (c)(1) of~~
17 ~~this section will be the designated providers of legal representation for~~
18 ~~indigent custodial parents in dependency-neglect cases in the State of~~
19 ~~Arkansas.~~

20 ~~(3) The allocation of grant funds among the programs specified in~~
21 ~~subdivision (c)(1) of this section shall be based upon each program's~~
22 ~~percentage of the statewide poverty population based upon the most recent~~
23 ~~federal poverty level calculations.~~

24 ~~(4) A lump-sum monthly installment of at least one-twelfth (1/12)~~
25 ~~of the annual grant level provided for in subdivision (c)(3) of this section,~~
26 ~~or so much thereof as may be made available, shall be provided to each grantee~~
27 ~~to be used exclusively for the provision of legal representation of indigent~~
28 ~~custodial parents in dependency-neglect cases in each grantee's area of~~
29 ~~service.~~

30 ~~(5) The definition and the procedures for the establishment of~~
31 ~~indigency shall be consistent with § 16-87-213.~~

32 ~~(d) The Director of the Administrative Office of the Courts is~~
33 ~~authorized to establish attorney ad litem programs to represent children in~~
34 ~~chancery cases where custody is an issue, should funds become available."~~
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36 SECTION 2. Arkansas Code 9-13-101 is amended to read as follows:

1 "9-13-101. Award of custody.

2 (a) In an action for divorce, the award of custody of the children of
3 the marriage shall be made without regard to the sex of the parent, but solely
4 in accordance with the welfare and best interests of the children.

5 (b) [As enacted by Acts 1997, No. 905.] When in the best interests of a
6 child, custody shall be awarded in such a way so as to assure the frequent and
7 continuing contact of the child with both parents. To this effect, in making
8 an order for custody to either parent, the court may consider, among other
9 facts, which parent is more likely to allow the child or children frequent and
10 continuing contact with the noncustodial parent.

11 (b) [As enacted by Acts 1997, No. 1328.] Where a party to an action
12 concerning custody of or a right to visitation with a child has committed an
13 act of domestic violence against the party making the allegation or a family
14 or household member of either party, and such allegations are proven by a
15 preponderance of the evidence, the court must consider the effect of such
16 domestic violence upon the best interests of the child, whether or not the
17 child was physically injured or personally witnessed the abuse, together with
18 such other facts and circumstances as the court deems relevant in making a
19 direction pursuant to this section.

20 (c) Child Custody Representation. (1) The Director of the
21 Administrative Office of the Courts is authorized to establish an attorney ad
22 litem program to represent children in chancery court cases where custody is
23 an issue.

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

28 (3) The Arkansas Supreme Court, with advice of the chancellors,
29 shall adopt standards of practice and qualifications for service for attorneys
30 who seek to be appointed to provide legal representation for children in
31 custody cases. In extraordinary cases, the chancery court may appoint an
32 attorney ad litem who does not meet the required standards and qualifications.
33 The attorney may not be appointed in subsequent cases until he has made
34 efforts to meet the standards and qualifications.

35 (4) When attorneys are appointed pursuant to subsection (c)(2),
36 the fees for services and reimbursable expenses shall be paid from funds

1 appropriated for that purpose to the Administrative Office of the Courts.

2 (5) When a chancellor orders the payment of funds for the fees
3 and expenses authorized by this section, the chancellor shall transmit a copy
4 of the order to the Administrative Office of the Courts which is authorized to
5 pay the funds. The court may also require the parties to pay all or a portion
6 of the expenses, depending on the ability of the parties to pay.

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

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

16 (8) The Administrative Office of the Courts shall develop a
17 statistical survey that each attorney who serves as an ad litem shall complete
18 upon the conclusion of the case. Statistics shall include the ages of
19 children served, whether the custody issue arises at a divorce or post divorce
20 stage, whether psychological services were ordered and any other relevant
21 information."

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23 SECTION 3. CHILD REPRESENTATION. (1) The Director of the
24 Administrative Office of the Courts is authorized to establish attorney ad
25 litem programs to represent children in guardianship cases in probate court
26 where custody is an issue.

27 (2) When a probate judge determines that the appointment of an
28 attorney ad litem would facilitate a case in which custody is an issue and
29 further protect the rights of the child, the probate judge may appoint a
30 private attorney to represent the child.

31 (3) The Arkansas Supreme Court, with advice of the probate
32 judges, shall adopt standards of practice and qualifications for service for
33 attorneys who seek to be appointed to provide legal representation for
34 children in guardianship cases. In extraordinary cases, the probate court may
35 appoint an attorney ad litem who does not meet the required standards and
36 qualifications. The attorney may not be appointed in subsequent cases until he

1 has made efforts to meet the standards and qualifications.

2 (4) When attorneys are appointed pursuant to subsection (2), the
3 fees for services and reimbursable expenses shall be paid from funds
4 appropriated for that purpose to the Administrative Office of the Courts.

5 (5) When a judge orders the payment of funds for the fees and
6 expenses authorized by this section, the judge shall transmit a copy of the
7 order to the Administrative Office of the Courts which is authorized to pay
8 the funds. The court may also require the parties to pay all or a portion of
9 the expenses, depending on the ability of the parties to pay.

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

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

19 (8) The Administrative Office of the Courts shall develop a
20 statistical survey that each attorney who serves as an ad litem shall complete
21 upon the conclusion of the case. Statistics shall include the ages of
22 children served, whether the custody issue arises at a divorce or post divorce
23 stage, whether psychological services were ordered and any other relevant
24 information."

25
26 SECTION 4. All provisions of this act of a general and permanent nature
27 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
28 Revision Commission shall incorporate the same in the Code.

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30 SECTION 5. If any provision of this act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 act are declared to be severable.

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36 SECTION 6. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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3 SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the
4 Eighty-second General Assembly that the effectiveness of this act on July 1,
5 1999 is essential to the operation of the state court system, and that in the
6 event of an extension of the Regular Session, the delay in the effective date
7 of this act beyond July 1, 1999 could work irreparable harm upon the proper
8 administration and provision of essential governmental progress. Therefore,
9 an emergency is declared to exist and this act being immediately necessary for
10 the preservation of the public peace, health and safety shall become effective
11 on July 1, 1999.

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/s/ Mahony

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