

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

A Bill

SENATE BILL 76

4
5 By: Senator Mahony
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For An Act To Be Entitled

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

Subtitle

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18 "TO PROVIDE COUNSEL FOR CHILDREN IN
19 DEPENDENCY-NEGLECT CASES; TO PROVIDE
20 COUNSEL FOR CHILDREN IN CHANCERY CASES
21 INVOLVING CUSTODY; TO PROVIDE COUNSEL
22 FOR CHILDREN IN PROBATE CASES INVOLVING
23 GUARDIANSHIP. "

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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code 9-27-401 is amended to read as follows:

29 "9-27-401. Creation - Representation for children and parents.

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

33 (b) Representation for Children. (1) The Director of the Administrative
34 Office of the Courts is authorized to enter into professional service
35 contracts with private individuals or businesses or public agencies to
36 represent all children in dependency-neglect proceedings.

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

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

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

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

32 ~~(3)~~ (c) Creation of Statewide CASA Program. The Director of the
 33 Administrative Office of the Courts is authorized to establish a statewide
 34 Court-Appointed Special Advocate (CASA) program, to provide grants or
 35 contracts to local CASA programs, and to work with judicial districts to
 36 establish local programs, whereby the juvenile divisions of chancery court

1 appoint trained volunteers to provide valuable information to the courts
2 concerning the best interests of children in dependency-neglect proceedings.

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

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

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

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

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

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

32 "9-13-101. Award of custody.

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

36 (b) [As enacted by Acts 1997, No. 905.] When in the best interests of a

1 child, custody shall be awarded in such a way so as to assure the frequent and
2 continuing contact of the child with both parents. To this effect, in making
3 an order for custody to either parent, the court may consider, among other
4 facts, which parent is more likely to allow the child or children frequent and
5 continuing contact with the noncustodial parent.

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

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

19 (2) When a chancellor determines that the appointment of an
20 attorney ad litem would facilitate a case in which custody is at issue and
21 further protect the rights of the child, the chancellor may appoint a private
22 attorney to represent the child.

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

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

31 (5) The Administrative Office of the Courts may establish
32 guidelines to provide a maximum amount of expenses and fees per hour and per
33 case which will be paid pursuant to this section.

34 (6) In order to insure that each judicial district will have an
35 appropriate amount of funds to utilize for ad litem representation in custody
36 cases, the funds appropriated shall be apportioned based upon a formula

1 developed by the Administrative Office of the Courts and approved by the
2 Arkansas Judicial Council.

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

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

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

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

21 (4) When a judge orders the payment of funds for the fees and
22 expenses authorized by this section, the judge shall transmit a copy of the
23 order to the Administrative Office of the Courts which is authorized to pay
24 the funds. The court may also require the parties to pay all or a portion of
25 the expenses, depending on the ability of the parties to pay.

26 (5) The Administrative Office of the Courts may establish
27 guidelines to provide a maximum amount of expenses and fees per hour and per
28 case which will be paid pursuant to this section.

29 (6) In order to insure that each judicial district will have an
30 appropriate amount of funds to utilize for ad litem representation in custody
31 cases, the funds appropriated shall be apportioned based upon a formula
32 developed by the Administrative Office of the Courts and approved by the
33 Arkansas Judicial Council.

34 (7) The Administrative Office of the Courts shall develop a
35 statistical survey that each attorney who serves as an ad litem shall complete
36 upon the conclusion of the case. Statistics shall include the ages of

1 children served, whether the custody issue arises at a divorce or post divorce
2 stage, whether psychological services were ordered and any other relevant
3 information."

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5 SECTION 4. All provisions of this act of a general and permanent nature
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
7 Revision Commission shall incorporate the same in the Code.

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9 SECTION 5. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.

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15 SECTION 6. All laws and parts of laws in conflict with this act are
16 hereby repealed.

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18 SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the
19 Eighty-second General Assembly that the effectiveness of this act on July 1,
20 1999 is essential to the operation of the state court system, and that in the
21 event of an extension of the Regular Session, the delay in the effective date
22 of this act beyond July 1, 1999 could work irreparable harm upon the proper
23 administration and provision of essential governmental progress. Therefore,
24 an emergency is declared to exist and this act being immediately necessary for
25 the preservation of the public peace, health and safety shall become effective
26 on July 1, 1999.