

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4
5 By: Representative Petty
6 By: Senator B. Ballinger
7

A Bill

HOUSE BILL 1237

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING CUSTODY OF A
10 CHILD; AND FOR OTHER PURPOSES.

Subtitle

14 TO AMEND THE LAW CONCERNING CUSTODY OF A
15 CHILD.

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

20 SECTION 1. Arkansas Code § 9-13-101(a)(1)(A)(iii), concerning an award
21 of child custody, is amended to read as follows:

22 (iii)(a) In an action for divorce, an award of joint
23 custody is favored in Arkansas unless custody with one (1) of the parents is
24 presumed to not be in the best interest of the child as provided under
25 subsections (c), (d), (e), or (f) of this section.

26 (b) A court shall not award joint custody if
27 custody with one (1) of the parents is presumed to not be in the best
28 interest of the child as provided under subsections (c), (d), (e), or (f) of
29 this section.

31 SECTION 2. Arkansas Code § 9-13-101(b)(1)(A)(i) and (ii), concerning
32 an award of child custody, are amended to read as follows:

33 (b)(1)(A)(i) When in the best interest of a child, custody shall be
34 awarded in such a way so as to assure the frequent and continuing contact of
35 the child with both parents consistent with subdivision (a)(1)(A) of this
36 section unless contact with one (1) of the parents is presumed to not be in



1 the best interest of the child as provided under subsections (c), (d), (e),
2 or (f) of this section.

3 (ii) To this effect, the circuit court may consider
4 awarding joint custody of a child to the parents in making an order for
5 custody unless custody with one (1) of the parents is presumed not be in the
6 best interest of the child as provided under subsection (c), (d), (e), or (f)
7 of this section.

8
9 SECTION 3. Arkansas Code § 9-13-101(d) and (e), concerning an award of
10 child custody, are amended to read as follows:

11 (d)(1) If a party to an action concerning custody of or a right to
12 visitation with a child is a sex offender who is required to register under
13 the Sex Offender Registration Act of 1997, § 12-12-901 et seq., or if the
14 circuit court finds by clear and convincing evidence that a party has
15 committed a sexual offense that would require the party to register as a sex
16 offender under the Sex Offender Registration Act of 1997, § 12-12-901 et
17 seq., the circuit court ~~may~~ shall not award custody or unsupervised
18 visitation of the child to the sex offender unless the circuit court makes a
19 specific finding that the sex offender poses no danger to the child.

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

23 (B) The burden of proof to rebut the presumption in
24 subdivision (d)(2)(A) of this section is clear and convincing evidence.

25 (3)(A) There is a rebuttable presumption that it is not in the
26 best interest of the child to be placed in the home of a sex offender or to
27 have unsupervised visitation in a home in which a sex offender resides.

28 (B) The burden of proof to rebut the presumption in
29 subdivision (d)(3)(A) of this section is clear and convincing evidence.

30 (e)(1) There is a rebuttable presumption that it is not in the best
31 interest of the child to be placed in the custody of or have visitation with
32 a parent who has physically, mentally, or sexually abused the child.

33 (2) The burden of proof to rebut the presumption in subdivision
34 (e)(1) of this section is clear and convincing evidence.

35 (f)(1) As used in this subsection, "domestic support obligation"
36 includes:

1 (A) Child support arrears from a final order of child
 2 support; or

3 (B) An order or judgment awarding attorney's fees or costs
 4 that:

5 (i) Is from a case involving child custody,
 6 visitation, child support, or contempt in a domestic relations matter
 7 involving the parties to the child custody case before the court; and

8 (ii) Has remained unpaid for more than one (1) year
 9 from the date of the final order.

10 (2)(A) There is a rebuttable presumption that it is not in the
 11 best interest of a child to be placed in the custody of a parent with a
 12 domestic support obligation in excess of ten thousand dollars (\$10,000) that
 13 the parent has not paid in full and kept current for twenty-four (24) months.

14 (B) The burden of proof to rebut the presumption in
 15 subdivision (f)(2)(A) of this section is clear and convincing evidence.

16 (3) If a parent is ordered to pay a domestic support obligation
 17 in excess of ten thousand dollars (\$10,000) and the obligation is not paid in
 18 full, the circuit court shall:

19 (A) Consider the effect of the domestic support obligation
 20 or the unpaid status of the domestic support obligation on the best interest
 21 of the child; and

22 (B) Not award sole custody or joint custody of the child
 23 to the parent who owes the domestic support obligation unless the parent
 24 proves by clear and convincing evidence that the child is in imminent danger
 25 of irreparable physical harm.

26 (4) If a court awards sole custody or joint custody to a parent
 27 who owes a domestic support obligation as described under subdivision (f)(3)
 28 of this section, the court shall make specific findings of fact to support a
 29 finding of:

30 (A) Imminent danger to the child that is posed by the
 31 other parent; and

32 (B) Irreparable physical harm to the child that is posed
 33 by the other parent.

34 (5) Nonpayment of a child support obligation as described under
 35 § 5-26-401(b)(2)(B) is prima facie evidence that a parent who owes a domestic
 36 support obligation is not acting in the best interest of the child.

1 ~~(e)(1)~~(g)(1) The Director of the Administrative Office of the Courts
2 is authorized to establish an attorney ad litem program to represent children
3 in circuit court cases in which 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 ~~(e)(2)~~
19 (g)(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 office, which is authorized to pay the
25 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 office shall establish guidelines to provide a maximum
30 amount of expenses and fees per hour and per case that will be paid pursuant
31 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 office and approved by the Arkansas Judicial Council, Inc.
36 and the Administrative Rules and Regulations Subcommittee of the Legislative

1 Council.

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

8
9 SECTION 4. DO NOT CODIFY. Effect of act – Material change of
10 circumstances.

11 This act is a material change of circumstances that is sufficient to
12 warrant a modification of a custody or visitation order issued by a court.

13
14 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
15 General Assembly of the State of Arkansas that children in Arkansas are at
16 risk when they are placed in the custody of a physically or mentally abusive
17 parent, a parent who has committed a sexual offense for which the parent
18 would be required to register as a sex offender under the Sex Offender
19 Registration Act of 1997, § 12-12-901 et seq., or a parent who does not pay
20 his or her child support obligations; that this act provides a tool to
21 protect children in Arkansas who are at risk of being placed in the custody
22 of a physically or mentally abusive parent, a parent who has committed a
23 sexual offense for which he or she would be required to register as a sex
24 offender under the Sex Offender Registration Act of 1997, § 12-12-901 et
25 seq., or a parent who fails to meet his or her child support obligations; and
26 that this act is immediately necessary because children in Arkansas are
27 currently at risk of being placed in the custody of a physically or mentally
28 abusive parent, a parent who has committed a sexual offense for which he or
29 she would be required to register as a sex offender under the Sex Offender
30 Registration Act of 1997, § 12-12-901 et seq., or a parent who fails to meet
31 his or her child support obligations. Therefore, an emergency is declared to
32 exist, and this act being immediately necessary for the preservation of the
33 public peace, health, and safety shall become effective on:

34 (1) The date of its approval by the Governor;

35 (2) If the bill is neither approved nor vetoed by the Governor,
36 the expiration of the period of time during which the Governor may veto the

1 bill; or

2 (3) If the bill is vetoed by the Governor and the veto is
3 overridden, the date the last house overrides the veto.

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