

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

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1237

By: Representative Petty
By: Senator B. Ballinger

For An Act To Be Entitled

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

Subtitle

TO AMEND THE LAW CONCERNING CUSTODY OF A
CHILD.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(e)(1)~~(g)(1) The Director of the Administrative Office of the Courts is authorized to establish an attorney ad litem program to represent children in circuit court cases in which custody is an issue.

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

(3)(A) The Supreme Court, with the advice of the circuit judges, shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for children in custody cases.

(B)(i) In extraordinary cases, the circuit court may appoint an attorney ad litem who does not meet the required standards and qualifications.

(ii) The attorney may not be appointed in subsequent cases until he or she has made efforts to meet the standards and qualifications.

(4) When attorneys are appointed pursuant to subdivision ~~(e)(2)~~ (g)(2) of this section, the fees for services and reimbursable expenses shall be paid from funds appropriated for that purpose to the Administrative Office of the Courts.

(5)(A) When a circuit judge orders the payment of funds for the fees and expenses authorized by this section, the circuit judge shall transmit a copy of the order to the office, which is authorized to pay the funds.

(B) The circuit court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(6) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid pursuant to this section.

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

Council.

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

(B) Statistics shall include the ages of children served, whether the custody issue arises at a divorce or post-divorce stage, whether psychological services were ordered, and any other relevant information.

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

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

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

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

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

bill; or

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