



Friends OF THE COURT

PUBLISHED BY THE ADMINISTRATIVE OFFICE OF THE COURTS
Volume 22, Number 2 - September 2013

2013 Legislative Update for the Judiciary

District Courts

District Courts were at the forefront of legislative action aimed at stemming the decline in revenues to the State Administration of Justice Fund (AOJF). Act 282 amended various code sections concerning court funding and court-related services, and the assessment, collection and remittance of funding for the AOJF. The act amends A.C.A. § 16-10-209 to provide that installment payments must satisfy court costs first. Any remaining installment payments will go toward payment of restitution, then fines, then any remaining amounts due.

Language in this code section that authorized any ordinance allowing installment payments to be applied half to court costs and half to fines was deleted. Any such ordinances passed prior to July 1, 2012 are exempted, or "grandfathered in."

A.C.A. §§ 16-10-305, 27-22-11 and 27-37-706 now includes a \$25.00 court cost for a violation of the mandatory seat belt use law and for failure to present proof of insurance at the time of a traffic stop. The act also amends A.C.A. § 16-13-704 to provide that in district court only, an additional installment fee of five dollars shall be assessed on the first day of each month on each person ordered to pay on an

installment basis. This is a new fee and is in addition to the current \$5.00 fee.

Act 282 provides a new fee in district and circuit court by amending A.C.A. § 16-90-904 to enact a \$50.00 fee for filing a petition to seal records. Half of the fees are to be remitted to the Administration of Justice Funds Section for deposit into the AOJF. The remaining half is retained locally.

Finally, A.C.A. § 26-36-303 was amended to delete the language requiring that court fines be delinquent for more than six months before they are subject to the state income tax refund set-off. The amendment went into effect on March 6, 2103.

A.C.A. § 16-17-1112(b) now includes Grant and Hot Spring counties in the State District Court program. The 33d District will be served by one state district court judge effective January 1, 2017.

Regarding elections, Act 475 amends A.C.A. § 21-8-703 to require district judges to file statements of financial interest with the county clerk instead of the city clerk. Act 1286 amends A.C.A. § 7-10-103 to require the filing fee for the offices of district judge be paid to the Secretary of State at the same time the candidate files the political practices pledge. District judge candidates who file by petition

and write-in candidates are also now required to file their petitions with the Secretary of State.

Act 361 adds saliva testing to determine alcohol concentration or controlled substance content to DWI law, and implied consent provisions that apply to operating motor vehicles, aircraft, boats, etc., and to being involved in a shooting accident while hunting.

Act 175 amends A.C.A. § 27-13-102 to permit the electronic display of proof of motor vehicle liability insurance coverage for registration purposes. A.C.A. § 27-22-104 now allows the same at the time of a traffic stop or arrest. This does not authorize a search of other content on the electronic device without a search warrant or probable cause.

Criminal Law and Procedures

Act 507 creates the offense of unlawful procurement of a firearm or ammunition. A person commits the offense by either soliciting, persuading, encouraging, or enticing a licensed dealer or private seller to transfer a firearm or ammunition under unlawful circumstances or by providing false information to a licensed dealer or private seller with the purpose to

deceive the dealer or seller concerning the lawfulness of a transfer of a firearm or ammunition. The offense is a Class D felony. Act 1114 creates the offense of sexual grooming of a child. A person commits the offense if he knowingly disseminates visual or print medium depicting sexually explicit conduct to a child thirteen years of age or younger with the purpose to entice, induce, or groom the child to engage in certain sexual activity with the person providing the information.

Act 132, known as “The Human Trafficking Act of 2013,” now includes additional illegal activities and establishes a Class Y felony when the victim is a minor. The offense of patronizing a victim of human trafficking is created by the act, which also imposes liability on organizations involved in human trafficking. The act also offers individuals charged with prostitution and sexual solicitation a new defense based upon being the victim of human trafficking.

Act 1014 amends the stalking laws and establishes the “Stalker Liability Act,” which imposes civil liability for stalking.

Act 1044 amends sexual assault in the first degree to include sexual activities engaged in by a teacher, principal, athletic coach, or counselor in a public or private school with a victim who is a student at the school and who is younger than 21 years old. The actor must be in a position of trust or authority over the victim and use that position to engage in sexual intercourse or deviate sexual activity.

Finally, Act 1296 amends the offense of negligent homicide to include operation of a vehicle, aircraft, or watercraft “while fatigued.”

In criminal procedure, Act 144 removes the statute of limitations for certain sex crimes when the victim of the crime is a minor. The crimes include rape; sexual indecency with a child; first and second degree sexual assault;

incest; engaging children in sexually explicit conduct for use in visual or print medium; transportation of minors for prohibited sexual conduct; employing or consenting to the use of a child in a sexual performance; producing, directing, or promoting a sexual performance by a child; and computer exploitation of a child in the first degree.

Act 156, “The Pregnant Woman’s Protection Act,” establishes a new affirmative defense. “A pregnant woman is justified in using physical force or deadly physical force against another person to protect her unborn child if, under the circumstances as the pregnant woman reasonably believes them to be, she would be justified under § 5-2-606 or § 5-2-607 in using physical force or deadly physical force to protect herself against the unlawful physical force or unlawful deadly physical force she reasonably believes to be threatening her unborn child.”

Act 1460, “The Comprehensive Criminal Record Sealing Act of 2013,” attempts to simplify the process of sealing a criminal record. The act expands the group of individuals who may petition to have their records sealed. It also imposes waiting periods upon individuals wishing to file petitions to seal.

Through passage of various acts, the General Assembly provided the circuit courts with several new resources. Act 1103 allows a court to enter an “extended post-conviction no contact order” in certain cases, following a show cause hearing, which is held when the defendant is sentenced. The order generally prohibits the defendant from contacting or otherwise interacting with the victim or the victim’s family. The court will establish the time period upon which the order is effective, which may include the defendant’s lifetime. A violation of the order is a Class A misdemeanor.

Act 1340 permits circuit courts to design and implement “pre-

adjudication probation programs.” The structure, method, and operation of the programs may differ and shall be based upon the specific needs and resources available in a particular judicial circuit. The programs may incorporate services from various state agencies such as DHS and DCC. The judge who presides over such a program may impose sanctions and order various fees and costs. Under certain circumstances, a state district court judge may administer the pre-adjudication probation program.

The 89th General Assembly also imposed additional regulations on registered sex offenders. Act 39 prohibits level 3 and level 4 registered sex offenders from entering a swimming area or children’s playground within an Arkansas state park. Act 508 expands the lists of individuals who are required to register to include people found guilty of a sexual offense in federal court, or in a court in Canada, the United Kingdom, Australia, New Zealand or any other foreign country where an independent judiciary enforces a right to a fair trial. The act requires sex offenders to submit palm prints to the Arkansas State Police and to provide local law enforcement copies of their passports, immigration documentation, and professional licenses and permits. Finally, the act places restrictions on the international travel of sex offenders.

Domestic Relations and Probate Law

The General Assembly enacted many changes that affect family, probate, and related laws. Act 1156 changes the child custody provisions to add that an award of joint custody is favored in Arkansas. It defines joint custody and provides that if one parent to a joint-custody arrangement demonstrates a pattern of willfully creating conflict to attempt to disrupt the custody arrangement, the court may find such behavior a material change in circumstances, providing a basis for a

change to primary custody to the non-disruptive parent. The act also provides that the award of child support under an order of joint custody is at the court's discretion, that it be consistent with Administrative Order No. 10, and that it is a deviation under Administrative Order No. 10.

Act 1487 amends the law concerning alimony. It adds three circumstances which shall be considered the equivalent of remarriage when one is receiving alimony: (1) the living full time with another in an intimate, cohabiting relationship; (2) the death of either party; or (3) other contingencies as set out in the alimony order. The act also provides that when a request is made for rehabilitative alimony, the payer may request, or the court may require, that the recipient provide a plan of rehabilitation. The court will determine whether or not the plan is feasible, and the amount and duration of the award. A person paying or receiving alimony may petition the court for a review, modification, or both at any time based upon a significant and material change of circumstances.

Act 1512 amends A.C.A. § 9-13-107, a provision that applies to grandparent visitation when a parent does not have custody of the child; rather, the custody is with a non-parent third party. The amendment provides that visitation in that circumstance shall be consistent with visitation awarded under A.C.A. § 9-13-103, which covers factors for a court to consider when a grandparent seeks visitation from a custodial parent. The amended language distinguishes this visitation from a custody and visitation awarded to a parent in a divorce case. If a court finds that visitation to a grandparent should be expanded, then the court shall include expansions in the order granting visitation.

A couple of changes were made to child support provisions. Act 317 amends A.C.A. § 9-14-235 to clarify that the payment of child support

arrearages continues as an obligation after the duty to support ceases until the child support arrearage or judgment has been satisfied. The substance of the provision was not changed. The amendment simply deleted a repetitious paragraph that was nearly identical to the remaining provision. Act 1119 repealed A.C.A. § 9-14-104, which required suspension of a court action for a failure to pay child support when a non-custodial parent pleads insanity.

Act 573 amends A.C.A. § 20-47-202 to create a mechanism for transferring back to Arkansas any Arkansas citizen who has been detained in a private hospital in another state for the treatment of mental illness. It adds definitions for "resides" and "State or local authority," and adds a section providing for reciprocal agreements between Arkansas and contiguous states for carrying out the purposes of the provision.

Act 483 amends the Adult Maltreatment Custody Act, adding definitions and describing the process for "less-than-custody" orders. Concerning emergency orders, it authorizes the probate division of circuit court to issue an ex parte less-than-custody order to protect an endangered or impaired adult in lieu of an ex parte order for emergency custody.

Act 584 amends various provisions of the Adult and Long-Term Care Facility Resident Maltreatment Act to add definitions and to describe the procedures of DHS.

Act 1152 repeals various provisions of the Arkansas Code in the area of family law that were outdated or impermissibly gender-based, for example.

Act 44 amends A.C.A. § 9-18-103(b) to allow state-supported retirement systems to require qualified domestic relations orders that reach public employees' retirement benefits to comply substantially with a uniform

legal form. The boards of the state-supported retirement systems shall (1) establish rules and regulations to implement, and (2) adopt a uniform legal form for preparing a qualified domestic relations order. The uniform legal form shall be approved by Legislative Council. A state-supported retirement system is not required to comply with a qualified domestic relations order that does not substantially follow the uniform legal form.

Act 1054 amends the Adoption Code, A.C.A. § 9-9-206(a)(2), to add to the list of fathers or putative fathers required to consent to an adoption the father of a child if he has acknowledged paternity under A.C.A. § 9-10-120(a).

Act 582 amends A.C.A. § 28-65-703(a) - (c), to authorize the Public Guardian for Adults to employ Deputy Public Guardians for Adults, and to require that the Public Guardian for Adults petition for the guardianship and consent to the appointment before a court may appoint.

Act 230 amends the notice form in A.C.A. § 28-41-101(b), required for the distribution of small estates without administration when the estates include real property.

Two acts deal with the passing of estates when a person unlawfully kills another. Act 1019 amends A.C.A. § 28-11-204, which concerns the distribution of an estate when one murders his or her spouse. If the decedent spouse dies without a will, the descendants of the one convicted shall not benefit from the estate of the deceased spouse, unless the descendants of the spouse who committed the murder are also descendants of the deceased spouse. Act 1351 adds a new chapter and subchapters to the Arkansas Code to prohibit property rights from being acquired through the unlawful killing of another person. Property rights which are barred include the passing of property by testate or intestate succession, or the receipt of insurance

or annuity benefits.

Act 291 amends A.C.A. § 21-6-412, concerning circuit clerks and the sale of property under judicial decrees. If the circuit court clerk's office is appointed the commissioner for a sale of real or personal property under judicial decree, the fee awarded to the circuit clerk's office shall be (1) collected by the circuit clerk and paid into the county treasury into a designated fund; and (2) used exclusively by the circuit clerk's office to offset administrative costs in connection with the performance of the commissioner's duties; and (3) used for general operational expenses of the circuit clerk's office. The quorum court has the authority to appropriate and expend the funds at the direction of the circuit clerk.

New Faces in the Judiciary

AOC

Ryan Lowery - Software Engineer
April Davis - Website Developer
Lisa Wadley - Functional Specialist
Terri Takei - Functional Specialist

District Court Clerks

Madison County/Huntsville Dept. - **Carmen Watkins** replaces Michelle Bohannon.
Pulaski County/Jacksonville Dept. - **Shelly Keefe** replaces Donna Brimmage.
Saline County/Alexander Dept. - **April Cotton** replaces Katrina Wilcox.

Trial Court Assistants

1st Cir. (Story) - **Mayla Hicks** replaces Yvonne Amos.

Public Defenders

13th District - **Robert N. Jeffrey** replaces Caren Harp.
14th District - **Tom Bunch** replaces Bruce Buck.
16th District - **Tammy L. Harris** replaces Beverly Claunch.

CALENDAR

October

Court Interpreter Oral Exam for Certification (Little Rock) **5**

Dependency Neglect Attorney Ad Litem and Parent Counsel Fall Conference (Little Rock) **16-17**

Dependency Neglect Trial Court Assistant Conference (Hot Springs) **16-17**

Fall Judicial College/Judicial Council Meeting (Jonesboro) **16-18**

Court Reporters Annual Conference (Jonesboro) **18-19**

November

Circuit Judge Juvenile Division Conference (Heber Springs) **13-15**

District Court Clerk Certification (1st & 3rd Districts) (Springdale) **15**



Friends of the Court is a bi-monthly publication by the Arkansas Administrative Office of the Courts. Contributions, comments, and inquiries are welcome. Please submit to Friends of the Court, A.O.C., Justice Building, 625 Marshall, Little Rock, AR 72201. Tel. (501) 682-9400. Meghan Sever, Editor.



Friends of the Court
625 Marshall
Little Rock, AR 72201