



Friends OF THE COURT

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2011 Legislative Update for Judiciary

• District Court

The State District Judge Pilot Program, which began in 2008, was revised with the passage of Act 1219. The act creates “State District Courts” and designates geographic districts for these courts. Also, dates are set for the election of judges in the various districts, territorial jurisdiction is established, geographic areas from which the judge is elected are prescribed and the departments of the courts are stated. The current ‘pilot district courts’ consisting of twenty-five judgeships in fifteen counties are redefined as ‘state district courts’ comprising fifteen numerical districts effective July 27, 2011. Effective January 1, 2013, an additional nine districts with thirteen state district court judgeships in thirteen counties are created. Effective January 1, 2017, an additional six districts with ten state district court judgeships in nine counties are created. The grand total, effective in 2017, is fifty-three state district court judges in forty-three counties. The act creates one final judgeship in 2021.

A companion to the creation of state district courts was Act 1137. Arkansas Code Title 16 is amended to add a new section providing that if authorized by the administrative plan for a judicial circuit, a state district court judge may preside over

1) a drug court program; 2) a probation supervision program; and 3) a parole supervision program. Act 1137 also amends 16-98-303 to provide that if a county is in a judicial district that does not have a circuit judge who is able to administer the drug court program on a consistent basis the administrative plan for the circuit may designate a district court judge to administer the program.

The “District Court Accounting Law” was first enacted in the 1970’s. Though some amendments have occurred over the years, the law remains focused on manual or paper book keeping requirements. Effective January 1, 2012, Act 1174 contains amendments which will modernize audit requirements for district courts by incorporating and recognizing the use of electronic methods of case management and financial accounting. The amendment also provides for electronic citations issued by law enforcement in the district courts.

Finally, one act affects the conditions of release in criminal cases in district court. Act 589 mirrors certain portions of the rules of criminal procedure which allow the court to issue an order at or after arraignment which prohibit the defendant from contacting directly or indirectly a person or from being

a certain distance from a person’s home or place of employment if it appears there is a danger the defendant will commit a serious crime, seek to intimidate a witness, or otherwise interfere with the orderly administration of justice. The act defines this ‘no contact order’ and prescribes that violation of the order is a Class A misdemeanor.

• Criminal Law and Procedures

During the 2011 legislative session, the General Assembly enacted several new criminal offenses. Act 204, known as “The Athlete Agent Reform Act of 2011,” establishes a Class D felony offense applicable to “athlete agents.” The offense prohibits the agents from inducing student athletes into entering into contracts with athlete agents by furnishing or arranging for goods or services. Act 205 creates a Class B misdemeanor offense for knowingly using a false academic credential for various purposes. Pursuant to the Act, it is unlawful to knowingly use a false academic credential for the purpose of obtaining employment, a license or certificate to practice a trade, profession, or occupation, a promotion, compensation, or other benefit from an employer, admis-

(See Criminal Law and Procedures on page 2)

Criminal Law and Procedures (continued)

sion to an institution of higher education, or a position in government with authority over another person. The Act also prohibits a person from knowingly using a false academic credential for the purpose of promoting or introducing oneself to others in any oral or written communication, as having attained an academic title or a level of academic achievement. Act 207 creates the offense of “lottery fraud.” A person commits the offense of lottery fraud if he or she falsely makes, alters, utters, passes, or counterfeits a ticket or share in a lottery with the purpose to defraud the Arkansas Lottery Commission. The offense may also be established if an individual purposely influences the winning of a lottery prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials. Lottery fraud is a Class D felony. Act 697 establishes the offense of “defrauding a prospective adoptive parent.” A person commits the offense if he or she knowingly obtains a financial benefit from a prospective adoptive parent or from an agent of a prospective adoptive parent with a purpose to defraud the prospective adoptive parent or the agent of the prospective adoptive parent of the financial benefit and does not consent to the adoption or complete the adoption process. Act 905 creates the offense of “cyberbullying.” A person is guilty of cyberbullying if he or she transmits, sends, or posts a communication by electronic means with the purpose to frighten, coerce, intimidate, threaten, abuse, harass, or alarm another person and the transmission was in furtherance of severe, repeated, or hostile behavior toward the other

person. The new offense is a Class B misdemeanor.

The Legislature also amended various existing criminal statutes. Act 142 revised Ark. Code Ann. § 5-71-230 by amending the distance from which a person can picket at a funeral from 150 feet to 300 feet of any ingress or egress of the funeral. Act 172 modified Ark. Code Ann. § 5-37-226 to establish felony offenses for the filing of false liens on real property that belongs to various public officials and state employees. Act 270 amended Ark. Code Ann. § 12-12-602 to require that law enforcement be notified when a health-care provider treats a burn wound that reasonably could be connected to criminal activity. Act 699 amended Ark. Code Ann. § 12-12-1006, Juli’s Law, to require that a DNA sample be collected at the time a person is arrested for rape. Act 1003 and Act 1158 amended Ark. Code 5-60-101. The statute was revised by adding the act of “concealing a corpse” to the offense of abuse of a corpse and by increasing the penalty classification for the offense of “abuse of a corpse” to a Class C felony. Act 1129 amended Ark. Code Ann. § 5-14-125 (a)(6) to include principals, athletic coaches, and counselors to the group of individuals who may be charged with sexual assault in the second degree if they engage in sexual contact with a student who is less than 21 years of age.

Several legislative enactments established new criminal procedure practices. Act 39 prohibits the Arkansas Public Defender Commission from paying attorney’s fees for an indigent defendant’s privately-retained counsel. Act 1127 extends the statute of limitations on various sexual offenses under certain circumstances. Specifically, the statute of limitations will be extend-

ed if at the time the alleged violation occurred, the offense was committed against a minor, the violation has not been previously reported to a law enforcement agency or prosecuting attorney, and the victim has not reached the age of twenty eight.

Act 570, The Public Safety Improvement Act, touches on many aspects of criminal law. The Act significantly amends the theft statutes by increasing the dollar amounts associated with the value of the property involved in the crime. The value of the property involved in the crime is used to determine the classification of the offense. The Act also substantially changes the controlled-substances statutes. The legislation equalizes penalties for cocaine and methamphetamine offenses and adjusts the weights associated with the various drug crimes. The new offense of “trafficking of controlled substances” is also created by the Act. Act 570 modifies probation and parole by requiring risk assessments of probationers, granting DCC authority to use administrative sanctions, permitting certain individuals to be paroled onto electronic monitoring after serving 120 days in ADC, and requiring additional accountability from the Parole Board. Additionally, the Act revises the duties and responsibilities of the Sentencing Commission. Finally, the Act amends the Drug Court Act to require the collection of specific data and the development of criteria for the establishment of new drug courts by the Administrative Office of the Courts.



• Property

With regard to foreclosures, Act 885 amends the statutory foreclosure laws (18-50-101) to require before the initiation of foreclosure, mortgagee must provide specified information to the mortgagor, including the availability of loan modification assistance or forbearance assistance options. The act also requires prior to a foreclosure sale that the mortgagee file of record a notice of sale and 60 days has elapsed between the filing of the notice and any sale.

Act 1198 creates a non-legislative commission to study landlord-tenant laws and report its findings and recommendations by December 31, 2012.

• Domestic Relations and Probate Law Changes

The 2011 General Assembly made relatively few changes in family law. Act 1183, codified at Ark. Code Ann. §9-11-516, abolishes the common law doctrine of necessities. It provides that “absent express authority,” neither spouse is liable for the debts or obligations of the other, including necessities. “Necessaries” is defined in the Act as all things needed for sustenance, including food, clothing, medicine, and habitation.

Act 344 provides that, for child custody and visitation purposes, any parent may request the court to order a criminal records check, not only of the other parent, which is current law, but of any other members of the other parent’s household who are eighteen years or older. The records check may include a check of the Sex Offender Registry. Ark. Code Ann. §9-13-105. The Act also includes a rebuttable presumption that it is not in the best interest of a child to be placed in

the home of a sex offender or to have unsupervised visitation with a sex offender. Ark. Code Ann. §9-13-101(d).

Two changes were made to laws regarding domestic violence. Act 1049 provides that after a hearing and a finding of domestic abuse, a court may order the care, custody, or control of any pet of either party who resides in the household. Ark. Code Ann. §9-15-205(a)(7). Act 810 adds a new affirmative defense to a prosecution for violating an order of protection: that a petitioner invited the defendant to come to the home or work address, knowing that the defendant’s presence would violate an order of protection. Ark. Code Ann. §5-53-134(d)(2).

A few changes were made to adoption laws. Act 1235 adds to those who must have notice of the filing of an adoption petition and an adoption hearing. Any putative father who has signed an acknowledgment of paternity or who has registered with the state’s Putative Father Registry is entitled to notice. Ark. Code Ann. §9-9-212(a)(4)(C). In a separate section, Act 1235 provides that employers that permit maternity or paternity leave for biological parents after the birth of a child must permit the same leave for adoptive parents after the adoption of a child, if the adoptive parents request it. In addition, if other job or pay guarantees are given to biological parents in connection with the birth of a child, the same guarantees must be given an adoptive parent. Ark. Code Ann. §9-9-105.

Act 607 makes various amendments to the Adoption Code. It increases the age from 10 to 12 at which a child must consent to his/her adoption. Ark. Code Ann. §9-9-206(a)(5). The court may still

dispense with the consent of the child if in the child’s best interest. The Act provides that if a child is in DHS custody, residence in the adoptive home is not required for the minor to be adopted. Residence outside the adoptive home is necessary for the minor to receive medically necessary health care. Ark. Code Ann. §9-9-213(b). Act 607 also makes some changes to existing law on subsidized adoptions. Ark. Code Ann. §9-9-407 & -408.

Act 697 is a criminal law that deals with adoptions, creating a new crime, “defrauding a prospective adoptive parent.” It occurs when one knowingly obtains financial benefit from prospective adoptive parents with the purpose to defraud, and then fails to consent to the adoption or fails to complete the adoption process. The crime may be a Class B felony, a Class C felony, or a Class A misdemeanor, depending on the aggregate financial benefit to the person committing the crime (\$2,500 or more, \$500 or more but less than \$2,500, or less than \$500, respectively). Ark. Code Ann. §5-26-204.

Probate Code amendments included the following: Act 9 provides that a temporary guardianship of a minor, currently limited to 90 days, may be extended for an additional period up to 90 days. Ark. Code Ann. §28-65-218(a). The extension must be given on or before the expiration period ends, if the court finds after a hearing on the merits that there remains imminent danger to the life or health of the minor if the temporary guardianship is not extended. Notice of the hearing is required, but not for one whose whereabouts are unknown or cannot be ascer-

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Domestic Relations & Probate (continued)

tained by exercise of reasonable diligence.

Act 159 is a lengthy act that adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act for Arkansas. Ark. Code Ann. §28-74-101, et seq.; 28-65-103 & -107. It provides policies for jurisdiction, registration, and recognition of adult guardianships across state lines.

Act 1027 was a DHS bill concerning guardianships. It adds to the qualifications of those who can be appointed guardians of the person or estate of minors in DHS custody: convicted and unpardoned felons if the person's home is an approved foster home or an adoptive home. Ark. Code Ann. §28-65-203(b). The Act also provides that a permanent guardian or custodian of the person or estate of an adult in DHS custody shall not be appointed by the Court unless that person has been evaluated by DHS under ACA 9-20-122. Ark. Code Ann. §28-65-203(k). However, temporary guardianship or custody may be appointed without evaluation.

Act 761 deals with collection of small estates by a distributee, a process for collecting an estate of \$100,000 or less by the filing of an affidavit with the circuit (probate) clerk rather than filing a probate action and going before the court. Act 761 amends the law to require that if a small estate includes real property, the distributee shall cause publication of a notice within 30 days after the affidavit is filed. Ark. Code Ann. §28-41-101(b)(2)(A). In addition, the distributee of the real estate shall file a deed in the county where the real property is located.

Ark. Code Ann. §28-41-102(d).

Act 805 is a lengthy act that creates the Uniform Power of Attorney Act in Arkansas. Ark. Code Ann. §28-65-101, et seq.

A couple of acts deal with involuntary commitments. Act 823 adds a definition for "involuntary admission," and provides that additional periods of involuntary treatment may be requested by "a member of the treatment staff." Ark. Code Ann. §20-47-1202(19); §20-47-215. (Current law says the request may be made by the psychiatrist of the hospital or receiving facility or program.) Act 1140 provides for a drug and alcohol screening within 24 hours for one involuntarily committed and immediately detained, to be conducted by a contractor of the Office of Alcohol and Drug Abuse Prevention (OADAP). The Act provides that the detained person may be assessed by a professional of his or her choice within 24 hours, but at his or her own expense. The person conducting the screening and assessment shall provide a copy of the results to the person named in the petition and to the prosecutor, who may provide it to the court. The court may consider it as part of its determination of whether the standards for involuntary commitment apply to the person. The Act also provides that every person remanded for treatment shall have a treatment plan within 24 hours of detention. Ark. Code Ann. §20-64-821.

Act 206 amends various provisions regarding the authority of DHS to protect maltreated adults. It establishes a procedure for DHS to request or perform an evaluation of prospective guardians for adults, when an individual requests to be appointed guardian of an adult in the custody of DHS. Ark. Code Ann. §9-20-122. The Act establish-

es a new section concerning services available on an investigative finding of true or unsubstantiated in an adult protective services case. Ark. Code Ann. §12-12-1722.

• Child Welfare and Juvenile Justice

Act 1175, Judicial Council legislation, amended various code changes related to child welfare and juvenile justice. Notable provisions include but are not limited to: clarification of the role of who is entitled to appointment of counsel in dependency-neglect proceedings and the process for appointment if indigent.

It allows the judge to order a child to remain in a placement, if the court finds that the placement is in the best interest of the child after hearing evidence from all parties. It also allows the court to order a child to be placed in a licensed or approved placement, after a hearing and the court makes such a finding based on consideration of all the evidence and recommendations from all the parties.

It added a new section that provided that juvenile court cost, fines, and fees shall be collected, maintained, and accounted for in Circuit Court Division Fund.

Act 1073 appropriated funding for three new juvenile drug court officers for the Second, Fifth, and Eight North Judicial Districts.

Act 792, DHS Legislation, made several changes to the juvenile code including but not limited to: broadening the standard for when an emergency order can be entered, extending the time frame for court ordered continuances in dependency-neglect adjudication hearings, and changing service in termination of parental rights petitions.

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Child Welfare and Juvenile Justice (continued)

Act 1143, DHS Legislation, made various changes to Child Maltreatment Act including but not limited to definitions, reports, notification, investigations, defenses, records, and confidentiality. It also added a new category of investigations, "true but exempted," where the offender was older than 13 but less than 16 and the offender has not been adjudicated delinquent or found guilty to a criminal offense based on the same facts. It broadened the standard for when protective custody of a juvenile can be taken from "immediate danger of severe maltreatment" to "immediate danger to the health or physical well-being of the child."

• Funding

A very difficult economic environment combined with multiple proposals for elimination and/or decrease in taxes produced little state funding available for court personnel or programs. The initial cost of living increases proposed during the early weeks of the legislative session for both judges and court employees were eliminated and funding levels for all trial and appellate court programs were maintained at current levels. The only items of additional funding included three new juvenile drug court program officers and new and additional targeted funding through the Department of Community Corrections for the creation of up to five HOPE courts, known as the "Swift and Certain Accountability on Probation Pilot Program".

Justice Building Visitors

The Arkansas Supreme Court received over 1,500 students and adult visitors for the 2010 - 2011 term. The students ranged in age from the 3rd grade to law school students and numerous adult leadership groups from around the state attended as well.

The majority of visitors were present to observe an oral argument before the Supreme Court which are held on Thursday mornings. Other

groups came on different days of the week to visit the Justice Building and learn more about their court system in Arkansas.

Any groups or school classes that would like more information about scheduling a visit for the 2011 - 2012 court term, can contact Karolyn Bond, Public Information Officer, Administrative Office of the Courts, (501) 682-9400 or karolyn.bond@arkansas.gov.



Associate Justice Paul Danielson poses with Booneville students who visited this year.

District Judges Council Officers Elected

District Court Judges met in Rogers in April for their annual spring meeting. New officers were elected and they are: President - Wayne Gruber/Pulaski County, Vice President - Alice Lightle/Little Rock, Secretary/Treasurer - Dan Stidham/Greene County, First District Representative - Van Gearhart/Baxter County, Second District Representative - Mark Pate/White County, Third District Representative - Steven Peer/Crawford County, Fourth District Representative - Reid Harrod/Ashley County, Immediate Past President - Milas "Butch" Hale III/ Sherwood.



Wayne Gruber, President

In Memory

The Arkansas Judiciary lost two jurists in May. **Circuit Judge Melinda Gilbert** and former **Chief Justice Richard Adkisson** passed away. Judge Gilbert was serving in her first term as a juvenile judge in the 6th Circuit. Former Chief Justice Richard Adkisson was elected as Chief Justice in 1980 and served until 1984.

Heartfelt condolences to the families and friends of Judge Gilbert and Chief Justice Adkisson.

New faces in the Judiciary

District Court Clerks

Newton County — **Kortnie D. House** replaces Mona Ray.

City Court Clerks

Grady — **Heather Allen** replaces Cyntia Pevey.

Trial Court Assistants

8th S. Cir. (Haltom) — **Karen Goodrum** replaces Kathy Webb.

Cir. (Simes) — **Tiffany Davis** replaces Nicole Cross.

Official Court Reporter

6th Cir. (Kilgore) — **Mary Lou “MiMi” Ambrose** replaces Lana Carter

8th S. Cir. (Haltom) — **Frances Haynes.**

19th W (Duncan) — **Cathy Gardisser** replaces Barbara Hedstrom.

23rd Cir. (Whiteaker) — **Donna Wood** replaces Alice Cook.

CALENDAR

June

CMP, Class 2013 1-3
“CourTools” (Little Rock)

Spring Judicial 8-10
College/Judicial Council meeting
(Hot Springs)

CMP, Class 2012 15-17
“Purposes & Responsibilities of
the Courts” (Little Rock)

CMP, Class 2011 22-24
“Managing Human Resources”
(Little Rock)

August

District Court Clerks 19
Certification Chief Clerks
(Little Rock)

CMP, Class 2013 3-5
“Fundamental Issues in Caseflow
Management” (Little Rock)

CMP, Class 2012 17-19
“Managing Technology Projects”
(Little Rock)

CMP, Class 2011 24-26
“Managing Court Financial
Resources” (Little Rock)



Fun in the Sun

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