



Friends OF THE COURT

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2009 Legislative Update for Judiciary

• **District Court**

The State District Judge Pilot Program, which began in 2008, was expanded with the passage of Act 345. Six additional State District Court Judgeships were added to the Pilot Program. The district judges in St. Francis County and Cleburne County will assume full-time status beginning July 1, 2009. Additionally, the district judge in Jacksonville, both district judges in North Little Rock and the judge of the Pulaski County District Court join the program on that date. This expansion gives the state a total of twenty-five full-time district court judges in fifteen counties. These judges are state employees and under Supreme Court Administrative Order Number 18, given increased civil jurisdictional limits and allowed to hear certain matters upon referral from the circuit court.

Though the next judicial general election is not until 2012, it is important to note Act 1407 which amends §7-10-103 to provide that candidates by petition for district judge shall file petitions signed by at least one percent (1%) of the qualified electors, defined as those electors voting in the immediately preceding gubernatorial election,

residing within the district for which the candidate seeks office. In no event shall more than two thousand (2,000) signatures be required. This changes the current requirement of thirty signatures for district judge candidates to access the ballot.

Two acts from the session increased the fine limits applicable to cases filed in district court. Act 209, effective July 1, 2009, increases the fine limits for misdemeanors; Class A to \$2500; Class B to \$1000; and Class C to \$500. Act 341, amends §14-55-504 to increase the maximum fine for violation of a municipal ordinance from \$500 to \$1000 and increases the fine for a continuing violation from \$250 to \$500 for each day that the offense is unlawfully continued.

The territorial jurisdiction of district court is altered by Act 398 which amends §16-88-101 to allow district court to hear city ordinance violations of any town, city, or county with the territorial jurisdiction of the district court. Current law provides that a district court may only hear city ordinance violations of the city in which the court is located. Also, Act 411 amends §16-17-707 to allow a city that has a police department and

does not operate a district or city court to receive a prorated sum of fines collected as provided in §16-17-1203.

Finally, two acts affect DWI cases in district court. Act 922 amends §5-65-104 to reduce the time for which no restricted license is available for 2d and 3d offense DWI from one year to 45 days after which time restricted driving privileges may be allowed with installation of an ignition interlock device. Act 1293 amends §5-65-104 to increase the period of license suspension for a first offense DWI from 120 days to six (6) months; provides that if Driver Services allows the issuance of an ignition interlock restricted license it shall be available immediately; also provides that this option is not available for DWI by use of a controlled substance.

• **Drug Courts**

Arkansas drug court programs benefited from two pieces of legislation: Act 490, concerning drug court costs and fees; and Act 1491, that amends current drug court law to allow a drug court judge, once certain conditions are met, to order expungement or dismissal of some offenses against the offender.

• Criminal Law and Procedures

During the 2009 legislative session, the General Assembly enacted several new criminal offenses. Act 33 creates the offense of “aggravated cruelty to a dog, cat, or horse.” A person commits the offense if he or she knowingly tortures a dog, cat, or horse. The new offense is a Class D felony. The Act also revises the offense of “cruelty to animals” and prohibits all animal fighting. Act 336, a judicial council legislative proposal, establishes the offense of “fraudulent filing of a Uniform Commercial Code Financing Statement.” A person commits the offense if with the purpose to defraud or harass an alleged debtor or any other person, the person knowingly presents or conspires with another person to present a financing statement under the Uniform Commercial Code for filing that the person knows is not based on a bona fide security agreement or was not authorized or authenticated by the alleged debtor identified in the financing statement or an authorized representative of the alleged debtor. A violation of this offense is a Class A misdemeanor. The offense of “interference with a code enforcement officer” is created by Act 343. A person commits the offense, which is a Class A misdemeanor, if he or she knowingly employs or threatens to employ physical force against a code-enforcement officer engaged in performing his or her official duties.

Act 390 establishes a criminal offense for damaging, destroying, or removing utility poles or lines. Engaging in such conduct is a Class D felony. Act 485 creates the offense of “defrauding a secured creditor in the second degree.”

A person commits the offense if he or she uses motor vehicle insurance policy proceeds in excess of one thousand dollars that were obtained from a settlement of a property damage claim on a motor vehicle subject to a security interest in contravention of the security agreement that creates or provides for the security interest in the motor vehicle. Defrauding a secured creditor in the second degree is a Class A misdemeanor.

Act 561 prohibits a person who has pleaded guilty or nolo contendere to or has been found guilty of a felony, domestic battering in the third degree, or a crime that requires registry as a sex offender from purchasing, possessing, or installing an emergency vehicle light or siren on a vehicle that reasonably appears to be or mimics a law-enforcement vehicle. The Act also prohibits these individuals from operating a vehicle that mimics a law-enforcement vehicle when the vehicle has emergency lights or sirens installed.

Participating in the foregoing activities is a Class A misdemeanor.

Act 976 provides that a person who exercises control over private property shall not knowingly allow an individual, who is less than twenty-one years of age and not a family member, to consume alcohol on his or her private property. The Act requires that the property owner be present and in control of the property at the time the consumption occurs. The offense is a Class C misdemeanor.

Act 1212 creates a Class D felony offense for performing body art in an unlicensed facility on a person who is less than eighteen years of age.

The General Assembly also made changes to various statutes that relate to sentencing in a crimi-

nal case. The penalty classification for negligent homicide was increased to a Class B felony in Act 650. The Act also provides that a prior conviction of negligent homicide constitutes a previous offense for the purposes of DWI sentencing enhancements.

Act 936 adds homicide to the offenses that are subject to an enhanced penalty of one to ten years when the offense is committed in the presence of a child. Pursuant to Act 1395, aggravated residential burglary has been added as an underlying felony in the capital-murder statute.

Act 1295 enhances the penalties for theft of property when the offense occurs in an area that is declared to be under a state of emergency pursuant to a proclamation by the President, the Governor, or the executive officer of a city or county. The offense will be a Class B felony if the value of the property is \$500 or more. The offense will be a Class C felony if the property value is at least \$100 but less than \$500.

Act 615 requires transitional-housing facilities for criminal offenders to be licensed through the Department of Community Correction. The Act also requires the transitional-housing facility to provide a copy of its current license to the circuit court before the court may release an individual to the facility.

Act 1296 establishes that a sentence of death is to be carried out by intravenous lethal injection of various chemicals. The Act also permits the Director of the Department of Correction to determine all policies and procedures to be applied in connection with carrying out the sentence of death and excludes those policies



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and procedures from the Arkansas Administrative Procedure Act and the Freedom of Information Act of 1967.

Several legislative enactments establish new criminal procedural practices. Act 974 requires the collection of a DNA sample following an arrest on a charge of capital murder, murder in the first degree, kidnapping, sexual assault in the first degree, and sexual assault in the second degree.

Act 1406 requires that a registered sex offender, who is charged with violating Ark. Code Ann. § 5-14-128, which restricts such individuals from living within two thousand feet of a school, public park, youth center, or daycare, be ordered not to return to the location where he was residing until the pending charge is adjudicated.

The statute of limitations for the offense of rape was eliminated in Act 1444 if biological evidence of the alleged perpetrator is identified that is capable of producing a DNA profile.

Finally, Act 1456 authorizes a law-enforcement officer to arrest a person without a warrant if the officer has probable cause to believe that the person has interfered with emergency communications.

• Domestic Relations and Probate Law Changes

The 2009 General Assembly made a few changes in family law. Act 956 changed the law regarding marriages of those under age eighteen, which require parental consent. A small part of a lengthy act, Section 4 provides that parental consent to a child's marriage may be voided by a circuit

court upon a showing by clear and convincing evidence that (1) the parent is not fit to make decisions concerning the child, and (2) the marriage is not in the child's best interest. The act also mandates a five-day waiting period for a marriage license issued with parental consent to one under the age of eighteen. (Emergency clause; effective April 6, 2009).

Act 271 provides that court-ordered visitation for a grandparent or great-grandparent may be exercised no matter who has physical custody of a child. Visits with a paternal grandparent or great-grandparent may occur even when the child's mother has physical custody. Visits with a maternal grandparent or great-grandparent may occur even when the father has physical custody.

Act 1312 addresses who may file petitions for paternity, adding to the existing list a parent or grandparent of a deceased putative father.

Three acts changed child support laws. Act 551 made several changes, including, among others, to direct the Office of Child Support Enforcement (OCSE), at least every three years, without regard to a material change in circumstances, to review its cases assigned under Title IV-A of the Social Security Act, or upon the request of either parent, and to petition for adjustment if appropriate. Act 635 provides that an obligation to pay child support ends for a parent upon the entry of a final decree of adoption or an interlocutory decree of adoption that has become final. Act 1292 directs OCSE to provide individual, monthly reports to circuit clerks showing money received by OCSE for arrearages owed by persons convicted of nonsupport

under the criminal statute. When a clerk receives a report, he or she shall deduct the amounts in the report from the outstanding balance in the clerk's file.

Much legislative activity occurred this session to domestic violence laws, both to the Domestic Abuse Act and to related criminal laws. Act 194 amends domestic battery to add "knowingly causing serious physical injury" (first degree) and "knowingly causing physical injury" (second degree) to a family or household member 60 years or older or 12 years or younger.

Act 331 enhances the penalty for a second violation of a final order of protection within five years of a previous conviction of violating an order of protection, making the subsequent violation a Class D felony. The act also prohibits the arrest of a petitioner for the violation of an order of protection issued against a respondent.

Act 332 amends the crimes of aggravated assault and assault in the first degree to include strangulation ("impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the throat or neck or by blocking the nose or mouth of the other person").

Act 333 adds "aggravated assault on a family or household member" to the list of offenses that will increase domestic battering from a Class A misdemeanor to a Class D felony for a prior conviction occurring within the past five years.

Act 698 amends various sections of the Domestic Abuse Act of 1991. The act provides that a petition for an order of protection may

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be filed in a pilot district court if jurisdiction is established in that court by the Supreme Court and if cases are assigned to that court through the Circuit's Administrative Plan under Administrative Order No. 14. The act adds that a denial of ex parte, temporary relief does not deny a petitioner the right to a full hearing on the merits. It sets out what must be served in a domestic abuse case, that service must be at least five days before a hearing and in accordance with the Rules of Civil Procedure. The act provides that if a previous child custody or visitation order has been entered by another court with continuing jurisdiction, a temporary order of custody or visitation may be made (by the domestic abuse court), to remain in effect until the court with original jurisdiction enters a subsequent order regarding the children. It provides that an ex parte temporary order remains in effect until the date of a hearing on the petition for a final order.

Act 1447 requires people charged with violating orders of protection to pay for and to wear electronic surveillance devices as a condition of release from custody until the charge is adjudicated. One found guilty of violating an order of protection may be placed under electronic surveillance as a part of his or her sentence from four months to one year.

Probate amendments included the following: Act 217 increases from 3 months to 6 months, from the date of the first publication of notice of appointment of a personal representative, for claims to be filed against an estate (making the time the same as for filing claims

for injury or death caused by a decedent's negligence).

Two acts involved adoptions. Act 230 allows a parent to waive the 10-day period to withdraw consent to an adoption or a relinquishment of parental rights and to elect instead a 5-day period. (Emergency clause; effective February 25, 2009).

Act 1399 requires the Office of Chief Counsel (OCC) of DHS to prepare and distribute to all circuit clerks an adoption information sheet. Clerks must give the form to each petitioner in adoption cases to complete and return to the clerk. Clerks must mail completed forms to OCC. The act sets out the specific information that must be collected. Personally identifiable information cannot be requested or gathered.

Act 680 provides that a petition for involuntary admission may be filed in the county in which a person alleged to have a mental illness resides or is detained (current law says "initially detained" and "initially" was deleted by this act).

• Child Welfare and Juvenile Justice

The Arkansas Judicial Council's proposed juvenile and child welfare legislation resulted in the passage of the three major legislative initiatives. Act 391 created a new act requiring foster youth transition plans to ensure that juveniles know their rights and opportunities. It requires DHS to assist youth with applying for health insurance, finding housing, obtaining employment, applying for college, and developing relationships with individuals who may serve as continued resources for youth who transition to adulthood. It requires DHS to provide youth with finan-

cial information and case documentation when they leave care and it provides for court jurisdiction to continue until compliance.

Act 946 amended various code sections relating to juvenile justice and child welfare. Notable provisions, include but are not limited to: providing a statutory basis for the circuit court to void a parent's consent for their minor child to marry; adding new grounds to extend foster care until the age of 21, creating new statutes for No Reunification Hearings and DYS Aftercare; and making significant changes concerning Permanency Planning Hearings and DYS commitments.

Act 800 also provided state funding for ten juvenile drug court officers. Treatment funding was appropriated to the DHS, Office of Alcohol and Drug Abuse and Prevention. These measures will allow the expansion of current Juvenile Drug Court Programs and the addition of five new programs, totaling ten across the state.

Act 948, DHS legislation, created a new Child Maltreatment Act and added new sections on due process and notice provisions. The act specifies who receives notice when there is a child maltreatment report, during the investigation, upon a finding, and upon completion of due process. It also increases criminal penalties for failing to report abuse and neglect and for disclosing confidential information.

Act 759, spearheaded by Arkansas Advocates for Children and Families, created a new code section that outlines factors, including whether the interrogation was electronically recorded, for courts to determine whether juvenile confessions are voluntarily, knowingly, and intelligently given.

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It also added to a juvenile's waiver of counsel, the factor of whether the waiver of counsel was recorded and the circumstances surrounding the availability of the recorded waiver.

• Funding Issues

In light of the catastrophic state of the national economy, Arkansas court programs and employees were extremely lucky to receive no cuts and moderate increases in several programs during the 2009 session. For state employees, the legislature adopted a new employee pay plan which established a new system of grades for all positions which targets pay increases in the lowest graded positions to bring them up to private sector standards. "Tenure" raises of 1% to 5% were provided based upon the employee's years of service and the state merit pay plan was continued. Judicial raises were adopted at a 3.85% increase.

The legislature provided additional funding for adult and juvenile drug court treatment and created several new state positions of court managers for juvenile drug courts. One new circuit court judgeship was funded for the 4th judicial circuit and six additional pilot district judgeships were funded. For trial court programs the legislature provided moderate increases in funding for court security programs and for the cost of paying jurors. None of the additional funding which was requested for foreign language interpreters was approved.

• Court Technology

The most dramatic changes for Arkansas courts resulting from the

2009 legislative session were in the area of court technology. Act 328 adopted the Court Technology Improvement Act which, among other things, creates a permanent stream of special revenue funding to support the state-wide implementation of the Arkansas Court Automation System to all circuit and district courts. New funding and an additional twenty technology positions for the CIS division of the Administrative Office of the Courts will allow for a quicker implementation of the

case management system and the addition of electronic filing.

At the request of the Supreme Court, the legislature also eliminated the statutory requirement that the Court publish its opinions in the Arkansas Reports. As a result, the Court has taken steps to become the first appellate court in the nation which will produce an electronic opinion designated as the official opinion of the Court. Implementation of the electronic publication will begin in the Court's 2009-10 term.



The Arkansas Judiciary lost two of its very respected, long serving circuit judges recently.

The Honorable James Hudson of Texarkana had served as a circuit judge in the 8th South Judicial Circuit since 1991 and at the time of his death was serving as Chair of the Supreme Court Committee on Security and Emergency Preparedness and the Chair of the Supreme Court Committee on Criminal Practice.

The Honorable Tom Digby was a circuit judge for the 6th Judicial Circuit for 24 years until his retirement in 1991. He served as President of the Arkansas Judicial Council in 1978.

We extend our heartfelt condolences to the Hudson and Digby families during this time of loss.



A reception was held in May for the winners of the Supreme Court 2009 Art Competition involving over 300 middle school participants in Pulaski County. Pictured: Justice Jim Gunter poses with a few of the winners after the medal presentations.

New faces in the Judiciary

AOC

Beatrice Nelson — Contract Business Analyst.

City Court Clerks

Pangburn — **Shirley Ramsey** replaces Melanie Murphy.

Coal Hill — **Doris Davis** replaces Melissa Doss

Donaldson & Friendship — **Cheryl Whitley** replaces Katie Wilson.

Gurdon — **Staci Huber** replaces Elizabeth Garner.

Magazine — **Vickie Smith** replaces Marie Hill.

Palestine — **Christie Gustavus** replaces Darlene Walker.

Sparkman — **Rita Fite** replaces Barbara Launius.

District Court Clerks

Trumann — **Pam Daniel** replaces Tammy Terry.

Official Court Reporter

16th (Harrod) — **Megan Smith** replaces Janis Landers.

City Judges

Altheimer — **Paul Gant**

Joiner — **Bill Bracey**

CALENDAR

August

District Court Clerks **14**
Certification-Chief Clerks
(Little Rock)

September

District Judges Fall College **24-26**
(Eureka Springs)

October

Fall Judicial College/ **14-16**
Judicial Council Mtg.
(Rogers)

Court Reporter's
Annual Conference **16-17**
(Rogers)

November

District Court Clerks **20**
Certification
1st and 3rd Districts
(Springdale)



Summer Fun on the Buffalo River

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