

Arkansas Divorce Laws

Title 9. Family Law

Subtitle 2. Domestic Relations.

Subchapter 1. General Provisions.

9-11-101. Marriage a civil contract - Consent of parties.

Marriage is considered in law a civil contract to which the consent of the parties capable in law of contracting is necessary.

9-11-102. Minimum age - Parental consent.

(a) Every male who has arrived at the full age of seventeen (17) years and every female who has arrived at the full age of sixteen (16) years shall be capable in law of contracting marriage.

(b)(1) However, males and females under the age of eighteen (18) years shall furnish the clerk, before the marriage license can be issued, satisfactory evidence of the consent of the parent or parents or guardian to the marriage.

(2) The consent of both parents of each contracting party shall be necessary before the marriage license can be issued by the clerk unless the parents have been divorced and custody of the child has been awarded to one (1) of the parents exclusive of the other, or unless the custody of the child has been surrendered by one (1) of the parents through abandonment or desertion, in which cases the consent of the parent who has custody of the child shall be sufficient.

9-11-103. Minimum age - Exception.

(a)(1) If an application for a marriage license is made where one (1) or both parties are under the minimum age prescribed in § 9-11-102 and the female is pregnant, both parties may appear before a judge of the circuit court of the district where the application for a marriage license is being made.

(2) Evidence shall be submitted as to:

(A) The pregnancy of the female in the form of a certificate from a licensed and regularly practicing physician of the State of Arkansas;

(B) The birth certificates of both parties; and

(C) Parental consent of each party who may be under the minimum age.

(3) Thereupon, after consideration of the evidence and other facts and circumstances, if the judge finds that it is to the best interest of the parties, the judge may enter an order authorizing and directing the county clerk to issue a marriage license to the parties.

(4) The county clerk shall retain a copy of the order on file in the clerk's office with the other papers.

(b) However, if the female has given birth to the child, the court before whom the parties are to appear, if satisfied that it would be to the best interests of all the interested parties and if all the requirements of subsection (a) of this section are complied with, with the exception of the physician's certificate as to the pregnancy, may enter an order authorizing and directing the county clerk to issue a marriage license as provided in subsection (a) of this section.

9-11-104. Minimum age - Lack of parental consent or misrepresentation of age - Annulment.

In all cases where the consent of the parent or parents or guardian is not provided, or there has been a misrepresentation of age by a contracting party, the marriage contract may be set aside and annulled upon the application of the parent or parents or guardian to the circuit court having jurisdiction of the cause.

9-11-105. Marriage of underage parties voidable.

(a) The marriage of any male under the full age of seventeen (17) years and the marriage of any female under the full age of sixteen (16) years is voidable.

(b) All marriages contracted prior to March 26, 1964, where one (1) or both parties to the contract were under the minimum age prescribed by law for contracting marriage are declared to be voidable only and shall be valid for all intents and purposes unless voided by a court of competent jurisdiction

9-11-106. Incestuous marriages - Penalties for entering into or solemnizing.

(a) All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, and between aunts and nephews, and between first cousins are declared to be incestuous and absolutely void. This section shall extend to illegitimate children and relations.

(b) Whoever contracts marriage in fact, contrary to the prohibitions of subsection (a) of this section, and whoever knowingly solemnizes the marriage shall be deemed guilty of a misdemeanor and shall upon conviction be fined or imprisoned or both, at the discretion of the jury who shall pass on the case, or if the conviction shall be by confession, or on demurrer, then at the discretion of the court.

9-11-107. Validity of foreign marriages.

(a) All marriages contracted outside this state which would be valid by the laws of the state or country in which the marriages were consummated and in which the parties then actually resided shall be valid in all the courts in this state.

(b) This section shall not apply to a marriage between persons of the same sex.

9-11-108. Presumption of spouse's death - Validity of subsequent marriage.

In all cases where any husband abandons his wife, or a wife her husband, and resides beyond the limits of this state for the term of five (5) successive years, without being known to the other spouse to be living during that time, the abandoning party's death shall be presumed. Any subsequent marriage entered into after the end of the five (5) years shall be as valid as if the husband or wife were dead.

9-11-109. Validity of same-sex marriages.

Marriage shall be only between a man and a woman. A marriage between persons of the same sex is void.

Subchapter 4. Premarital Agreements.

9-11-401. Definitions.

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

9-11-401. Definitions.

(1) "Prenuptial agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

9-11-402. Formalities.

A prenuptial agreement must be in writing and signed and acknowledged by both parties. It is enforceable without consideration.

9-11-403. Content.

(a) Parties to a prenuptial agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the modification or elimination of spousal support;

(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) the ownership rights in and disposition of the death benefit from a life insurance policy;

(7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a prenuptial agreement.

9-11-404. Effect of marriage.

A prenuptial agreement becomes effective upon marriage.

9-11-405. Amendment or revocation.

After marriage, a prenuptial agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

9-11-406. Enforcement.

(a) A prenuptial agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive after consulting with legal counsel, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one (1) party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

9-11-407. Enforcement - Void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

9-11-408. Limitations of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

9-11-409. Application and construction.

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

9-11-410. Short title.

This subchapter may be cited as the Arkansas Premarital Agreement Act.

9-11-411. Severability.

If any provision of this subchapter or its application to any person or circumstance be held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

9-11-412. Time of taking effect.

This subchapter takes effect July 20, 1987, and applies to any premarital agreement executed on or after that date.

9-11-413. Repeal.

The following acts and parts of acts are repealed:
(a) Act 548 of 1981.

(b) All laws and parts of laws in conflict with this subchapter.

Chapter 12. Divorce and Annulment.

Subchapter 1. General Provisions.

9-12-101. Subsequent marriage before dissolution of prior marriage prohibited.

No subsequent or second marriage shall be contracted by any person during the lifetime of any former husband or wife of the person unless the marriage with the former husband or wife has been dissolved for some one (1) of the causes set forth in the law concerning divorces by a court of competent authority.

Subchapter 2. Annulment.

9-12-201. Grounds.

When either of the parties to a marriage is incapable from want of age or understanding of consenting to any marriage, or is incapable of entering into the marriage state due to physical causes, or where the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent jurisdiction.

9-12-202. Proceedings for annulment to be in equity - Venue.

(a) The action shall be by equitable proceedings in the county where the complainant or complainants reside.

(b) The process may be directed in the first instance to any county in the state where the defendant may then reside or be found.

Subchapter 3. Actions for Divorce or Alimony.

9-12-301. Grounds for divorce.

(a) A plaintiff who seeks to dissolve and set aside a covenant marriage shall state in his or her petition for divorce that he or she is seeking to dissolve a covenant marriage as authorized under the Covenant Marriage Act of 2001, § 9-11-801 et seq.

(b) The circuit court shall have power to dissolve and set aside a marriage contract, not only from bed and board, but from the bonds of matrimony, for the following causes:

(1) When either party, at the time of the contract, was and still is impotent;

(2) When either party shall be convicted of a felony or other infamous crime;

(3) When either party shall:

(A) Be addicted to habitual drunkenness for one (1) year;

(B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or

(C) Offer such indignities to the person of the other as shall render his or her condition intolerable;

(4) When either party shall have committed adultery subsequent to the marriage;

(5) When husband and wife have lived separate and apart from each other for eighteen (18) continuous months without cohabitation, the court shall grant an absolute decree of divorce at the suit of either party, whether the separation was the voluntary act of one (1) party or by the mutual consent of both parties or due to the fault of either party or both parties;

(6)(A) In all cases in which a husband and wife have lived separate and apart for three (3) consecutive years without cohabitation by reason of the incurable insanity of one (1) of them, the court shall grant a decree of absolute divorce upon the petition of the sane spouse if the proof shows that the insane spouse has been committed to an institution for the care and treatment of the insane for three (3) or more years prior to the filing of the suit, has been adjudged to be of unsound mind by a court of competent jurisdiction, and has not been discharged from such adjudication by the court and the proof of insanity is supported by the evidence of two (2) reputable physicians familiar with the mental condition of the spouse, one (1) of whom shall be a regularly practicing physician in the community wherein the spouse resided, and when the insane spouse has been confined in an institution for the care and treatment of the insane, that the proof in the case is supported by the evidence of the superintendent or one (1) of the physicians of the institution wherein the insane spouse has been confined.

(B)(i) In all decrees granted under this subdivision (b)(6), the court shall require the plaintiff to provide for the care and maintenance of the insane defendant so long as he or she may live.

(ii) The trial court will retain jurisdiction of the parties and the cause from term to term for the purpose of making such further orders as equity may require to enforce the provisions of the decree requiring the plaintiff to furnish funds for such care and maintenance;

(C)(i) Service of process upon an insane spouse shall be had by service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or upon a duly appointed guardian ad litem for the insane spouse, and when the insane spouse is confined in an institution for the care of the insane, upon the superintendent or physician in charge of the institution wherein the insane spouse is at the time confined.

(ii) However, when the insane spouse is not confined in an institution, service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or duly appointed guardian ad litem and thereafter personal service or constructive service on an insane defendant by publication of warning order for four (4) weeks shall be sufficient; and

(7) When either spouse legally obligated to support the other, and having the ability to provide the other with the common necessities of life, willfully fails to do so.

9-12-302. Equitable proceedings.

The action for alimony or divorce shall be by equitable proceedings.

9-12-303. Venue - Service of process.

(a) The proceedings shall be in the county where the complainant resides unless the complainant is a nonresident of the State of Arkansas and the defendant is a resident of the state, in which case the proceedings shall be in the county where the defendant resides, and, in any event, the process may be directed to any county in the state.

(b) In actions initiated by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or the Department of Human Services, proceedings may also be commenced in the county where the defendant resides.

(c) When a spouse initiates an action against the other spouse for an absolute divorce, divorce from bed and board, or separate maintenance, then the venue for the initial action shall also be the

venue for any of the three (3) named actions filed by the other spouse, regardless of the residency of the other spouse.

9-12-304. Pleadings - Interrogatories.

(a) The pleadings are not required to be verified by affidavit.

(b) However, either party may file interrogatories to the other in regard to any matter of property involved in the action which shall be answered on oath as interrogatories in other actions and have the same effect.

9-12-305. No judgment pro confesso.

The statements of the complaint for a divorce shall not be taken as true because of the defendant's failure to answer or admission of their truth on the part of the defendant.

9-12-306. Corroboration.

(a) In uncontested divorce suits, corroboration of plaintiff's grounds for divorce shall not be necessary or required.

(b) In contested suits, corroboration of the injured party's grounds may be expressly waived in writing by the other spouse.

(c)(1) This section does not apply to proof as to residence, which must be corroborated, and does not apply to proof of separation and continuity of separation without cohabitation, which must be corroborated.

(2) In uncontested cases, proof as to residence and proof of separation and continuity of separation without cohabitation may be corroborated by either oral testimony or verified affidavit of persons other than the parties.

9-12-307. Matters which must be proved.

(a) To obtain a divorce, the plaintiff must prove, but need not allege, in addition to a legal cause of divorce:

(1)(A) A residence in the state by either the plaintiff or defendant for sixty (60) days next before the commencement of the action and a residence in the state for three (3) full months before the final judgment granting the decree of divorce.

(B) No decree of divorce, however, shall be granted until at least thirty (30) days have elapsed from the date of the filing of the complaint.

(C) Where personal service cannot be had upon the defendant or where the defendant fails to enter his or her appearance in the action, no decree of divorce shall be granted the plaintiff until the plaintiff has maintained an actual residence in the State of Arkansas for a period of not less than three (3) full months;

(2) That the cause of action and cause of divorce occurred or existed in this state or, if out of the state, that it was a legal cause of divorce in this state, the laws of this state to govern exclusively and independently of the laws of any other state as to the cause of divorce; and

(3) That the cause of divorce occurred or existed within five (5) years next before the commencement of the suit.

(b) The word "residence" as used in subsection (a) of this section is defined to mean actual presence and upon proof of that the party alleging and offering the proof shall be considered

domiciled in the state, and this is declared to be the legislative intent and public policy of the State of Arkansas.

9-12-308. Effect of collusion, consent, or equal guilt of parties.

If it appears to the court that the adultery or other offense complained of has been occasioned by the collusion of the parties or done with an intent to procure a divorce, that the complainant was consenting thereto, or that both parties have been guilty of the adultery or other offense or injury complained of in the complaint, then no divorce shall be granted or decreed.

9-12-309. Maintenance and attorney's fees - Interest.

(a)(1) During the pendency of an action for divorce, whether absolute or from bed and board, separate maintenance, or alimony, the court may:

(A)(i) Allow to the wife or to the husband maintenance;

(ii) Allow a reasonable fee for her or his attorneys; and

(iii) Allow expert witness fees; and

(B) Enforce the payment of the allowance by orders and executions and proceedings as in cases of contempt.

(2) In the final decree of an action for absolute divorce, the court may award the wife or husband costs of court, a reasonable attorney's fee, and expert witness fees.

(3) The court may immediately reduce the sums so ordered to judgment and allow the party to execute upon the marital property for the payment of the allowance except that the homestead shall not be executed upon for the payment of the sums so ordered.

(b) The court may allow either party additional attorney's fees for the enforcement of alimony, maintenance, and support provided for in the decree.

(c) All child support which becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum.

(d) The court shall award a minimum of ten percent (10%) of the support amount due as attorney's fees in actions for the enforcement of payment of alimony, maintenance, and support provided for in the decree, judgment, or order.

(e) Collection of interest and attorney's fees may be by executions, proceedings of contempt, or other remedies as may be available to collect the original support award.

9-12-310. Waiting period before rendition of decree.

Unless the parties shall have lived separate and apart from each other for a period of twelve (12) months next before the filing of the complaint or unless the defendant is constructively summoned by publication of warning order, no decree of absolute divorce or of divorce from bed and board shall be rendered in any action brought on any grounds except bigamy before the thirtieth day following the day upon which the action for divorce is commenced. This prohibition is not subject to waiver by either or both parties to the action for divorce; however, the parties may agree that the case may be submitted in vacation.

9-12-311. Legitimacy of children not affected.

The injured party may apply for a decree of divorce, but no divorce shall affect the legitimacy of the children born previously to entering the decree in the case.

9-12-312. Alimony - Child support - Bond - Method of payment.

(a)(1) When a decree is entered, the court shall make orders concerning the alimony of the wife or the husband and the care of the children, if there are any, as are reasonable from the circumstances of the parties and the nature of the case. Unless otherwise ordered by the court or agreed to by the parties, the liability for alimony shall automatically cease upon the earlier of:

(A) The date of the remarriage of the person who was awarded the alimony; or

(B) The establishment of a relationship that produces a child or children and results in a court order directing another person to pay support to the recipient of alimony, which circumstances shall be considered the equivalent of remarriage; or

(C) The establishment of a relationship that produces a child or children and results in a court order directing the recipient of alimony to provide support of another person who is not a descendant by birth or adoption of the payer of the alimony, which circumstances shall be considered the equivalent of remarriage.

(2) In determining a reasonable amount of support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded. Only upon a written finding or specific finding on the record that the application of the support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

(3) The family support chart shall be revised at least once every four (4) years by a committee to be appointed by the Chief Justice of the Arkansas Supreme Court to ensure that the support amounts are appropriate for child support awards. The committee shall also establish the criteria for deviation from use of the chart amount.

(4) The Arkansas Supreme Court shall approve the family support chart and criteria upon revision by the committee for use in this state and shall publish it through per curiam order of the court.

(5)(A) The court may provide for the payment of support beyond the eighteenth birthday of the child to address the educational needs of a child whose eighteenth birthday falls prior to graduation from high school so long as such support is conditional on the child remaining in school.

(B) The court may also provide for the continuation of support for an individual with a disability which affects the ability of the individual to live independently from the custodial parent.

(b) In addition to any other remedies available, alimony may be awarded under proper circumstances to either party in fixed installments for a specified period of time subject to the contingencies of the death of either party, the remarriage of the receiving party, or such other contingencies as are set forth in the award, so that the payments qualify as periodic payments within the meaning of the Internal Revenue Code.

(c)(1) Where the order provides for payment of money for the support and care of any children, the court, in its discretion, may require the person ordered to make the payments to furnish and file with the clerk of the court a bond or post security or give some other guarantee in such amount and with such sureties as the court shall direct.

(2) The bond, security, or guarantee is to be conditioned on compliance with that part of the order of the court concerning the support and care of the children.

(3) If such action is taken due to a delinquency under the order, proper advance notice to the noncustodial parent shall be given.

(d) All orders requiring payments of money for the support and care of any children shall direct the payments to be made through the registry of the court unless the court in its discretion determines that it would be in the best interest of the parties to direct otherwise. However, in all cases brought pursuant to Title IV-D of the Social Security Act, the court shall order that all payments be made through the Arkansas child support clearinghouse in accordance with § 9-14-801 et seq.

(e)(1)(A) Except as set forth in subdivision (e)(5) of this section, all orders directing payments through the registry of the court or through the Arkansas child support clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars (\$36.00) per year.

(B) The fee shall be collected from the noncustodial parent or obligated spouse at the time of the first support payment and during the anniversary month of the entry of the order each year thereafter, or nine dollars (\$9.00) per quarter at the option of the obligated parent, until no children remain minor and the support obligation is extinguished and any arrears are completely liquidated.

(2) The clerk, upon direction from the court and as an alternative to collecting the annual fee during the anniversary month each year after entry of the order, may prorate the first fee collected at the time of the first payment of support under the order to the number of months remaining in the calendar year and thereafter collect all fees as provided in this subsection during the month of January of each year.

(3) Payments made for this fee shall be made on an annual basis in the form of a check or money order payable to the clerk of the court or such other legal tender which the clerk may accept. This fee payment shall be separate and apart from the support payment and under no circumstances shall the support payment be reduced to fulfill the payment of this fee.

(4) Upon the nonpayment of the annual fee by the noncustodial parent within ninety (90) days, the clerk may notify the payor under the order of income withholding for child support who shall withhold the fee in addition to any support and remit it to the clerk.

(5) In counties where an annual fee is collected and the court grants at least two thousand five hundred (2,500) divorces each year, the court may require that the initial annual fee be paid by the noncustodial parent or obligated spouse prior to the filing of the order.

(6) All moneys collected by the clerk as a fee as provided in this subsection shall be used by the clerk's office to offset administrative costs as a result of this subchapter. At least twenty percent (20%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated data system for use in administering the requirements of this subchapter. The acquisition and update of software for the automated data system shall be a permitted use of these funds. All fees collected under this subsection shall be paid into the county treasury to the credit of the fund to be known as the "support collection costs fund". Moneys deposited in this fund shall be appropriated and expended for the uses designated in this subdivision (e)(6) by the quorum court at the direction of the clerk of the court.

(f) The clerk of the court shall maintain accurate records of all support orders and payments made under this section and shall post to individual child support account ledgers maintained in the clerk's office all payments received directly by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration and reported to the clerk by the

Office of Child Support Enforcement. The Office of Child Support Enforcement shall provide the clerk with sufficient information to identify the custodial and noncustodial parents, a docket number, and the amount and date of payment. The clerk shall keep on file the information provided by the Office of Child Support Enforcement for audit purposes.

(g) The clerk may accept the support payment in any form of cash or commercial paper, including personal check, and may require that the custodial parent or nonobligated spouse be named as payee thereon.

9-12-313. Enforcement of separation agreements and decrees of court.

Courts of equity may enforce the performance of written agreements between husband and wife made and entered into in contemplation of either separation or divorce and decrees or orders for alimony and maintenance by sequestration of the property of either party, or that of his or her sureties, or by such other lawful ways and means, including equitable garnishments or contempt proceedings, as are in conformity with rules and practices of courts of equity.

9-12-314. Modification of allowance for alimony and maintenance - Child support.

(a) The court, upon application of either party, may make such alterations from time to time, as to the allowance of alimony and maintenance as may be proper and may order any reasonable sum to be paid for the support of the wife or the husband during the pending of a complaint for a divorce.

(b) Any decree, judgment, or order which contains a provision for the payment of money for the support and care of any child or children through the registry of the court or through the Arkansas child support clearinghouse shall be final judgment as to any installment or payment of money which has accrued until the time either party moves through proper motion filed with the court and served on the other party to set aside, alter, or modify the decree, judgment, or order.

(c) The court may not set aside, alter, or modify any decree, judgment, or order which has accrued unpaid support prior to the filing of the motion. However, the court may offset against future support to be paid those amounts accruing during time periods other than reasonable visitation in which the noncustodial parent had physical custody of the child with the knowledge and consent of the custodial parent.

(d) Nothing in this section shall be construed to limit the jurisdiction of the court to proceed to enforce a decree, judgment, or order for the support of a minor child or children through contempt proceedings when the arrearage is reduced to judgment under subsection (b) of this section.

9-12-315. Division of property.

(a) At the time a divorce decree is entered:
(1)(A) All marital property shall be distributed one-half ($1/2$) to each party unless the court finds such a division to be inequitable. In that event the court shall make some other division that the court deems equitable taking into consideration:

- (i) The length of the marriage;
- (ii) Age, health, and station in life of the parties;
- (iii) Occupation of the parties;
- (iv) Amount and sources of income;
- (v) Vocational skills;

(vi) Employability;

(vii) Estate, liabilities, and needs of each party and opportunity of each for further acquisition of capital assets and income;

(viii) Contribution of each party in acquisition, preservation, or appreciation of marital property, including services as a homemaker; and

(ix) The federal income tax consequences of the court's division of property.

(B) When property is divided pursuant to the foregoing considerations the court must state its basis and reasons for not dividing the marital property equally between the parties, and the basis and reasons should be recited in the order entered in the matter.

(2) All other property shall be returned to the party who owned it prior to the marriage unless the court shall make some other division that the court deems equitable taking into consideration those factors enumerated in subdivision (a)(1) of this section, in which event the court must state in writing its basis and reasons for not returning the property to the party who owned it at the time of the marriage.

(3)(A) Every such final order or judgment shall designate the specific real and personal property to which each party is entitled.

(B) When it appears from the evidence in the case to the satisfaction of the court that the real estate is not susceptible of the division as provided for in this section without great prejudice to the parties interested, the court shall order a sale of the real estate. The sale shall be made by a commissioner to be appointed by the court for that purpose at public auction to the highest bidder upon the terms and conditions and at the time and place fixed by the court. The proceeds of every such sale, after deducting the cost and expenses of the sale, including the fee allowed the commissioner by the court for his or her services, shall be paid into the court and by the court divided among the parties in proportion to their respective rights in the premises.

(C) The proceedings for enforcing these orders may be by petition of either party specifying the property the other has failed to restore or deliver, upon which the court may proceed to hear and determine the same in a summary manner after ten (10) days' notice to the opposite party. Such order, judgment, or decree shall be a bar to all claims of dower or curtesy in and to any of the lands or personalty then owned or thereafter acquired by either party.

(4) When stocks, bonds, or other securities issued by a corporation, association, or government entity make up part of the marital property, the court shall designate in its final order or judgment the specific property in securities to which each party is entitled, or after determining the fair market value of the securities, may order and adjudge that the securities be distributed to one (1) party on condition that one-half (1/2) the fair market value of the securities in money or other property be set aside and distributed to the other party in lieu of division and distribution of the securities.

(b) For the purpose of this section, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) Property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement;

(2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(3) Property acquired by a spouse after a decree of divorce from bed and board;

(4) Property excluded by valid agreement of the parties;

(5) The increase in value of property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement, or in exchange therefor;

(6) Benefits received or to be received from a workers' compensation claim, personal injury claim, or social security claim when those benefits are for any degree of permanent disability or future medical expenses; and

(7) Income from property owned prior to the marriage or from property acquired by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement, or in exchange therefor.

(c) The court is not required to address the division of property at the time a divorce decree is entered if either party is involved in a bankruptcy proceeding.

9-12-316. Property settlements.

In any divorce suit in which a written property settlement involving real property is entered into by the parties and reference is made to the settlement in the divorce decree, a copy of that portion of the property settlement involving real property shall be filed and recorded with the divorce decree.

9-12-317. Dissolution of estates by the entirety or survivorship.

(a) Hereafter, when any circuit court in this state renders a final decree of divorce, any estate by the entirety or survivorship in real or personal property held by the parties to the divorce shall be automatically dissolved unless the court order specifically provides otherwise, and in the division and partition of the property, the parties shall be treated as tenants in common.

(b) Notwithstanding subsection (a) of this section or any other law to the contrary, when one (1) of the parties to the estate by the entirety has been found guilty or has pleaded guilty or nolo contendere to a felony during the marriage and within three (3) years of filing the complaint for divorce and the other party to the divorce did not benefit from the felony, the circuit judge may award the property to the spouse who did not commit the felony or to both parties in any proportion deemed equitable by the circuit judge.

(c) Provided, however, that when a circuit court in this state renders an absolute divorce from the bonds of matrimony or a divorce from bed and board, and the court dissolves estates by the entirety or survivorship in real or personal property under this section, the court may distribute the property as provided in § 9-12-315. The court shall set forth its reasons in writing in the decree for making an other than equal distribution to each party, when all the property is considered together, taking into account the factors enumerated in § 9-12-315(a)(1).

9-12-318. Restoration of name.

In all cases when the court finds that either party is entitled to a divorce, the court may restore the wife to the name which she bore previous to the marriage dissolved.

9-12-319. Nonresident defendants - Warning orders - Entry of decree.

In all divorce actions pending or filed in any of the circuit courts of this state where a warning order has been published against the defendant, who is a nonresident of this state, for the time and in the manner fixed by law and proof of publication has been filed with the clerk of the circuit court, and where the report or response of the attorney ad litem appointed for the nonresident has been filed with the clerk of the court, and no answer or other defense has been filed in the circuit court by the nonresident defendant, the judge of the circuit court upon submission of the cause to him or her in his or her chambers, or at any other place in his or her district by the attorney for the plaintiff, shall hear and enter a decree in the cause which shall have the same binding force and effect, both in law and equity, as if entered in term time in the county where the decree is filed.

9-12-320. Proceedings subsequent to decree - Change of venue.

(a)(1) The court where the final decree of divorce is rendered shall retain jurisdiction for all matters following the entry of the decree.

(2)(A)(i) Either party, or the court on its own motion, may petition the court that granted the final decree to request that the case be transferred to another county in which at least one (1) party resides if, more than six (6) months subsequent to the final decree:

(a) Both of the parties to the divorce proceedings have established a residence in a county of another judicial district within the state; or

(b) One (1) of the parties has moved to a county of another judicial district within the state and the other party has moved from the State of Arkansas.

(ii) The decision to transfer a case is within the discretion of the court where the final decree of divorce was rendered.

(B) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

(C) In cases where children are involved and a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the custodial parent.

(D) Justification for transfer of a case may be based on the establishment of residence by both parties in a county or state other than the county where the final decree of divorce was rendered.

(b) If the court which granted the final decree agrees to transfer the case to another judicial district, the court shall enter an order transferring the case and charging the circuit clerk of the court of original jurisdiction to transmit forthwith certified copies of all records pertaining to the case.

(c) Subsequent to the transfer to a county in another judicial district, if the party residing in the county to which the case has been transferred removes from that county or from the State of Arkansas, the case shall be transferred back to the county of original jurisdiction or the county of residence of the party still residing in the State of Arkansas.

(d) The provisions of this section shall not repeal any laws or parts of laws in effect on March 3, 1975, relating to venue for divorce actions, but shall be supplemental thereto.

9-12-321. Annulment of decree of divorce.

The proceedings for annulling a final judgment for a divorce from the bond of matrimony shall be a joint petition of the parties, verified by both parties in person, filed in the court rendering the judgment, upon which the court may forthwith annul the divorce.

9-12-322. Divorcing parents to attend parenting class.

(a) When the parties to a divorce action have minor children residing with one (1) or both parents, the court, prior to or after entering a decree of divorce, may require the parties to:

(1) Complete at least two (2) hours of classes concerning parenting issues faced by divorced parents; or

(2) Submit to mediation in regard to addressing parenting, custody, and visitation issues.

(b) Each party shall be responsible for his or her cost of attending classes or mediation.

(c) The parties may:

(1) Choose a mediator from a list provided by the judge of those mediators who have met the Arkansas Alternative Dispute Resolution Commission's requirement guidelines for inclusion on a court-connected mediation roster; or

(2) Select a mediator not on the roster, if approved by the judge.

(d) A party may move to dispense with the referral to mediation for good cause shown.

9-12-323. Joint credit card accounts.

(a)(1) After a court has determined or approved a property settlement agreement establishing the party responsible for any joint credit card account debt in a divorce action maintained or being maintained in the courts of this state, the nonresponsible party may notify the issuer of the credit card of the court order by sending a written notice containing the account name and account number of the joint credit card accompanied by a certified copy of the court order and property settlement agreement, if any, by certified mail, return receipt requested to:

(A) The address which the issuer has designated for making payments on the credit card account; or

(B) The customer service address provided by the issuer.

(2) On the date the notice is processed by the issuer of the credit card, not later than the fourth business day after receipt of the notice by the issuer, the nonresponsible party shall not be liable for any new charges on the credit card, other than charges made by the nonresponsible party, but shall remain liable for the balance due prior to the date the issuer processes the notice and all interest and late fees accrued or thereafter accruing on the balance.

(b)(1) The issuer of the credit card shall:

(A) Provide the nonresponsible party with written notification of the credit card account balance as of the date of processing the notice;

(B) Remove the nonresponsible party as an authorized user of the credit card account;

(C) Either cancel the credit card or suspend the effectiveness of the credit card for a period not exceeding thirty (30) days to allow the issuer to evaluate any request by the responsible party to continue the account as a separate credit card account of the responsible party; and

(D) Apply all payment made after the date of processing the notice:

(i) First to any fees assessed against the account;

(ii) Next to the accrued interest;

(iii) Next to the principal of the debt existing on the date of processing the notice; and

(iv) Finally to the principal of any debt incurred after the date of the processing of the notice.

(c)(1) This section does not prohibit the issuer of the credit card from issuing a new credit card to the responsible party.

(2) If as a result of receiving the notice under this section, a new credit card is issued in the name of the responsible party, the issuer may:

(A) Transfer the outstanding debt to the new credit card account for which the responsible party is solely responsible; or

(B) Issue the new credit card with a zero (\$0.00) balance and allow no new charges on the original credit card account, and both parties who are the obligors on the original credit card account will remain responsible for paying the debt from the original account in accordance with the terms and conditions of the original credit card account until the balance is paid in full.

(d) Proof that the nonresponsible party notified the issuer of the credit card in compliance with this section shall be an affirmative defense to any action to recover card debt resulting from any charge on the account after the date of processing of the notice.

9-12-324. Decree dissolving a covenant marriage.

In all divorce decrees that dissolve a covenant marriage created under the Covenant Marriage Act of 2001, § 9-11-801 et seq., the court shall enter a finding that the marriage being dissolved is a covenant marriage.

9-12-325. Condonation abolished.

(a) The defense of condonation to any action for absolute divorce or divorce from bed and board is abolished.

(b) The abolition of the defense of condonation under this section shall not affect the application of § 9-12-308.

Chapter 13. Child Custody and Visitation.

Subchapter 1. General Provisions.

9-13-101. Award of custody.

(a)(1)(A)(i) In an action for divorce, the award of custody of a child of the marriage shall be made without regard to the sex of a parent but solely in accordance with the welfare and best interest of the child.

(ii) In determining the best interest of the child, the court may consider the preferences of the child if the child is of a sufficient age and capacity to reason, regardless of chronological age.

(B) When a court order holds that it is in the best interest of a child to award custody to a grandparent, the award of custody shall be made without regard to the sex of the grandparent.

(2)(A) Upon petition by a grandparent who meets the requirements of subsection (b) of this section and subdivision (a)(1) of this section, a circuit court shall grant the grandparent a right to intervene pursuant to Rule 24(a) of the Arkansas Rules of Civil Procedure.

(B)(i) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or

younger

when:

(a) A grandchild resides with this grandparent for at least six (6) continuous months prior to the grandchild's first birthday;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(ii) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or older when:

(a) A grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(iii) Notice to a grandparent shall be given by the moving party.

(3) For purposes of this section, "grandparent" does not mean a parent of a putative father of a child.

(4)(A) The party that initiates a child custody proceeding shall notify the circuit court of the name and address of any grandparent who is entitled to notice under the provisions of subdivision (a)(1) of this section.

(B) The notice shall be in accordance with § 16-55-114.

(b)(1)(A)(i) When in the best interests 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.

(ii) To this effect, the circuit court may consider awarding joint custody of a child to the parents in making an order for custody.

(B) If a grandparent meets the requirements of subdivisions (a)(1) and (2)(B) of this section and is a party to the proceedings, the circuit court may consider the continuing contact between the child and a grandparent who is a party, and the circuit court may consider orders to assure the continuing contact between the grandparent and the child.

(2) To this effect, in making an order for custody, the court may consider, among other facts, which party is more likely to allow the child or children frequent and continuing contact with the noncustodial parent and the noncustodial grandparent who meets the requirements of subdivisions (a)(1) and (2)(B) of this section.

(c)(1) Where a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a direction pursuant to this section.

(2) There shall be a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases where there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

(d)(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 where 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 (d)(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 Administrative Office of the Courts, 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 Administrative Office of the Courts shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case which 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 Administrative Office of the Courts and approved by the Arkansas Judicial Council and the Rules and Regulations Subcommittee of the Arkansas Legislative Council.

(8)(A) The Administrative Office of the Courts 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.

9-13-102. Visitation rights of brothers and sisters.

The circuit courts of this state, upon petition from any person who is a brother or sister, regardless of the degree of blood relationship, or, if the person is a minor, upon petition by a parent, guardian, or next friend in behalf of the minor, may grant reasonable visitation rights to the petitioner so as to allow the petitioner the right to visit any brother or sister, regardless of the degree of blood relationship, whose parents have denied such access. The circuit courts may issue any further order which may be necessary to enforce the visitation rights.

9-13-103. Visitation rights of grandparents when the child is in the custody of a parent.

(a) For purposes of this section:

(1) "Child" means a minor under the age of eighteen (18) of whom the custodian has control and who is:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner;

(2) "Counseling" means individual counseling, group counseling, or other intervention method;

(3) "Custodian" means the custodial parent of the child with the authority to grant or deny grandparental visitation;

(4) "Mediation service" means any formal or informal mediation; and

(5) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition a circuit court of this state for reasonable visitation rights with respect to his or her grandchild or grandchildren or great-grandchild or great-grandchildren under this section if:

(1) The marital relationship between the parents of the child has been severed by death, divorce, or legal separation;

(2) The child is illegitimate and the petitioner is a maternal grandparent of the illegitimate child; or

(3) The child is illegitimate, the petitioner is a paternal grandparent of the illegitimate child, and paternity has been established by a court of competent jurisdiction.

(c)(1) There is a rebuttable presumption that a custodian's decision denying or limiting visitation to the petitioner is in the best interest of the child.

(2) To rebut the presumption, the petitioner must prove by a preponderance of the evidence the following:

(A) The petitioner has established a significant and viable relationship with the child for whom he or she is requesting visitation; and

(B) Visitation with the petitioner is in the best interest of the child.

(d) To establish a significant and viable relationship with the child, the petitioner must prove by a preponderance of the evidence the following:

(1)(A) The child resided with the petitioner for at least six (6) consecutive months with or without the current custodian present;

(B) The petitioner was the caregiver to the child on a regular basis for at least six (6) consecutive months; or

(C) The petitioner had frequent or regular contact with the child for at least twelve (12) consecutive months; or

(2) Any other facts that establish that the loss of the relationship between the petitioner and the child is likely to harm the child.

(e) To establish that visitation with the petitioner is in the best interest of the child, the petitioner must prove by a preponderance of the evidence the following:

(1) The petitioner has the capacity to give the child love, affection, and guidance;

(2) The loss of the relationship between the petitioner and the child is likely to harm the child; and

(3) The petitioner is willing to cooperate with the custodian if visitation with the child is allowed.

(f)(1) An order granting or denying visitation rights to grandparents and great-grandparents shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation under this section.

(2)(A) If the court grants visitation to the petitioner under this section, then the visitation shall be exercised in a manner consistent with all orders regarding custody of or visitation with the child unless the court makes a specific finding otherwise.

(B) If the court finds that the petitioner's visitation should be restricted or limited in any way, then the court shall include the restrictions or limitations in the order granting visitation.

(3) An order granting or denying visitation rights under this section is a final order for purposes of appeal.

(4) After an order granting or denying visitation has been entered under this section, the custodian or petitioner may petition the court for the following:

(A) Contempt proceedings if one (1) party to the order fails to comply with the order;

(B) To address the issue of visitation based on a change in circumstances; or

(C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

(g)(1) A court may order mediation services to resolve a visitation issue under this section if:

(A) Mediation services are available;

(B) Both parties agree to participate in mediation services; and

(C) One (1) or both of the parties agree to pay for mediation services.

(2) Records, notes, reports, or discussions related to the mediation service shall not be used by the court to determine visitation under this section.

(h)(1) A court may order counseling to address underlying matters surrounding the visitation issue under this section if:

(A) Counseling is available;

(B) Both parties agree to participate in counseling; and

(C) One (1) or both of the parties agree to pay for counseling.

(2) Records, notes, reports, or discussions related to the counseling shall not be used by the court to determine visitation under this section.

9-13-104. Transfer of custody on school property.

(a) In order to avoid continuing child custody controversies from involving public school personnel and to avoid disruptions to the educational atmosphere in our public schools, the transfer of a child between the child's custodial parent and noncustodial parent, when both parents are present, is prohibited from taking place on the real property of a public elementary or secondary school on normal school days during normal hours of school operations.

(b) The provisions of this section shall not prohibit one (1) parent, custodial or noncustodial, from transporting the child to school and the other parent, custodial or noncustodial, from picking up the child from school at prearranged times on prearranged days if prior approval has been made with the school's principal.

9-13-105. Criminal record's check.

Any parent of a minor child in a circuit or probate court case may petition the court to order a criminal record's check of the other parent of a minor child. If the court determines there is reasonable cause to suspect that the other parent may have engaged in criminal conduct which would be relevant to the issue of custody of the minor child or visitation privileges, the court may order the sheriff of the county in which the petition was filed to conduct a criminal record's check through the Arkansas Crime Information Center. The court shall review the results of the criminal record's check, and if it deems appropriate, provide the results to the petitioning parent. Any costs associated with conducting a criminal record's check shall be borne by the petitioning party.

9-13-106. Attorney ad litem programs.

(a) The Director of the Administrative Office of the Courts is authorized to establish attorney ad litem programs to represent children in guardianship cases in probate court where custody is an issue.

(b) 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.

(c)(1) The Arkansas Supreme Court, with 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 guardianship cases.

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

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

(d) When attorneys are appointed pursuant to subsection (b) of this section, the fees for services and reimburseable expenses shall be paid from funds appropriated for that purpose to the Administrative Office of the Courts.

(e)(1) When a judge orders the payment of funds for the fees and expenses authorized by this section, the judge shall transmit a copy of the order to the Administrative Office of the Courts, which is authorized to pay the funds.

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

(f) The Administrative Office of the Courts shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case which will be paid pursuant to this section.

(g) In order to insure 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 Administrative Office of the Courts and approved by the Arkansas Judicial Council and the Rules and Regulations Subcommittee of the Arkansas Legislative Council.

(h)(1) The Administrative Office of the Courts shall develop a statistical survey that each attorney who serves as an ad litem shall complete upon the conclusion of the case.

(2) Statistics shall include:

(A) The ages of children served;

(B) Whether the custody issue arises at a divorce or post-divorce stage;

(C) Whether psychological services were ordered; and

(D) Any other relevant information.

9-13-107. Visitation rights of grandparents when the parent does not have custody of the child.

(a) For purposes of this section:

(1) "Child" means a minor under the age of eighteen (18) who is:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner; and

(2) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition the circuit court that granted the guardianship or custody of a child for reasonable visitation rights with respect to his or her grandchild or grandchildren or great-grandchild or great-grandchildren under this section if the child is in the custody or under the guardianship of a person other than one (1) or both of his or her natural or adoptive parents.

(c) Visitation with the child may be granted only if the court determines that visitation with the petitioner is in the best interest and welfare of the child.

(d)(1) An order granting or denying visitation rights to grandparents and great-grandparents under this section shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation.

(2)(A) If the court grants visitation to the petitioner under this section, then the visitation shall be exercised in a manner consistent with all orders regarding custody of or visitation with the child unless the court makes a specific finding otherwise.

(B) If the court finds that the petitioner's visitation should be restricted or limited in any way, then the court shall include the restrictions or limitations in the order granting visitation.

(3) An order granting or denying visitation rights under this section is a final order for purposes of appeal.

(4) After an order granting or denying visitation has been entered under this section, a party may petition the court for the following:

(A) Contempt proceedings if one (1) party to the order fails to comply with the order;

(B) To address the issue of visitation based on a change in circumstances; or

(C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

9-13-108. Visitation - Preference of child.

In an action under this subchapter concerning a person's right to visitation with a minor child, the circuit court may consider the preferences of the child if the child is of a sufficient age and capacity to reason, regardless of chronological age.

9-13-109. Drug testing - Proceedings concerning child custody, visitation, or the welfare of a child.

(a) For purposes of this section, "drug" means any controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq.

(b) In a proceeding concerning child custody, child visitation, or the welfare of a child, the court may order drug testing of a party upon application of a party or by its own motion.

(c) The court may assess the cost of the drug testing to a party or parties or otherwise order or arrange payment of the cost of drug testing.

Subchapter 3. Personal Records of Child.

9-13-301. Noncustodial parent's right to child's scholastic records.

(a) As used in this subchapter:

(1) "Child" means any person under the age of eighteen (18) years;

(2) "College" means any public institution of higher education.

(b) Any noncustodial parent who has been awarded visitation rights by the court with respect to a child shall, upon request, be provided a copy of the current scholastic records of such child by the school district or college attended by the child.

9-13-302. Penalty for noncompliance.

Refusal by any school district or college official or employee having custody or control of student scholastic records to provide such records to any person entitled to receive a copy under the provisions of this subchapter shall be an unclassified misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

Chapter 14. Spousal and Child Support.

Subchapter 1. General Provisions.

9-14-101. Implied consent to jurisdiction for child support and maintenance or to establish paternity - Service of process.

(a) Any person who establishes or acquires a marital domicile in this state, who contracts marriage in this state, or who becomes a resident of this state while legally married, and subsequently absents himself or herself from the state leaving a dependent natural or adopted child in this state and fails to support the child as required by the laws of this state, is deemed to have consented and submitted to the jurisdiction of the courts of this state as to any cause of action brought against that person for the support and maintenance of the child.

(b) In an action to establish paternity or to establish or enforce a child support obligation in regard to a child who is the subject of the action, a person is deemed to have consented and submitted to the jurisdiction of the courts of this state if any of the following circumstances exists:

(1) The person engaged in sexual intercourse with the child's mother in this state during the period of the child's conception or the affected child was conceived in this state;

(2) The person resides or has resided with the child in this state.

(c) Service of process upon any person who is deemed by this section to have consented and submitted to the jurisdiction of the courts of this state may be made pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

9-14-102. Wage assignment and deduction.

(a) As used in this section, unless the context otherwise requires:

(1) "State of Arkansas" means all agencies, boards, commissions, institutions, and other instrumentalities of the state;

(2) "Political subdivision thereof" means all cities of the first class, cities of the second class, incorporated towns and counties and their agencies, boards, commissions, institutions and other instrumentalities, and school districts;

(b)(1) When a person is ordered by a court of record to pay for the support of his or her children under the age of eighteen (18) years, the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, shall order his or her employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States to deduct from all moneys due or payable to the person, the entitlement to which is based upon remuneration for employment, past or present, such amounts as the court may find to be necessary to comply with its order for the support of the children under the age of eighteen (18) years.

(2) In determining good cause, the court may take into consideration evidence of the degree of the respondent's past financial responsibility, credit references, credit history, and any other matter the court considers relevant in determining the likelihood of payment in accordance with the support order.

(c)(1) Any order for support which orders that the payment be made to the support collection unit shall order the respondent's employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States to deduct from all moneys due or payable to the person, the entitlement to which is based upon remuneration for employment, past or present, such amounts as the court may find to be necessary to comply with its orders for the support of the children under the age of eighteen (18) years.

(2) However, any such support order shall provide that no such deduction shall be made unless and until the support collection unit established by the appropriate social services district has determined that the person is delinquent in making a specified number of payments determined by the court in the order and a copy of the order and determination has been served upon the person's employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States. Additionally, the person shall be given notice of the determination at least fifteen (15) days prior to service of the order and determination on the employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States. If the person pays all arrearages within the fifteen-day period, the order and determination shall not be served and no deduction shall be required by reason of the determination, but the payment shall not affect or otherwise limit any determination made as a result of any subsequent delinquencies.

(3) The employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States shall deduct the amount as ordered from the moneys due or payable and forward it monthly as directed in the order.

(d) The court shall require the person to provide the court with his or her full name, address, and social security number. However, a social security number may be required only where permitted under federal law.

9-14-103. Quarterly report of funds, moneys, etc., received for child support.

(a)(1) Upon application of any interested person to any judge of any court of record having jurisdiction of the cause of action, the court may require any person receiving as guardian of the person, either by adoption of law or order of any court, any funds, moneys, credits, goods, chattels, or anything of value for the support, maintenance, care, or custody of a minor child to file a verified quarterly report of all moneys or goods received therefor. The report shall state the items, goods, or services, the date purchased, and from whom purchased.

(2) The quarterly report shall be filed with the clerk of the court or other body rendering the original order or decree between the first and fifteenth day of the calendar month immediately following the end of each calendar quarter.

(b) This section shall apply to all awards, orders, or decrees made by any court or legally constituted body making such award. Any report required to be made under this section shall be a public record.

(c) It is the purpose of this section and the intention of the General Assembly that any funds, moneys, credits, chattels, goods, or anything of value which have been or are ordered, decreed, adjudged, adjudicated, or awarded for the use and benefit of any minor child shall be used and inure solely to the use and benefit of the minor child for which it is or was ordered paid.

9-14-104. Failure to support - Defense of insanity to contempt proceedings.

(a) Whenever a person pleads insanity in contempt proceedings before a circuit judge for failure to make family support payments as ordered by the circuit judge or whenever the circuit judge has reason to believe that the defense of insanity will be raised or become an issue in the case, the circuit judge shall postpone all proceedings in the cause. He or she shall forthwith commit the contemnor to the Arkansas State Hospital where the contemnor will remain under observation for such time as the court will direct, but not exceeding one (1) month.

(b) The circuit judge shall order the director or his or her designee of the State Hospital to direct some competent physician or physicians employed by the State Hospital to conduct observation and investigations of the mental conditions of the contemnor and to prepare a written report thereof. On issuing such order, the circuit judge shall direct the circuit clerk to notify the attorneys in the case of the issuance of the order.

(c) The action of the court in committing the contemnor for examination shall not preclude the plaintiff or contemnor from calling expert witnesses to testify at the trial. The expert witnesses shall have free access to the contemnor for the purposes of observation and examination during the period of his or her commitment to the State Hospital for examination.

(d) The State Hospital shall indicate separately the contemnor's mental condition at the time of the alleged act of contempt. This report shall be certified by the director or his or her designee of the State Hospital, under his or her seal, or by an affidavit duly subscribed and sworn to by him or her before a notary public who shall add his or her certificate and affix his or her seal thereto.

(e) It is the specific intent of this section only to affect those laws pertaining to mental health. Nothing in this section shall be deemed to repeal or modify the provisions of §§ 20-64-701 - 20-64-707. No other laws shall be affected in any manner, nor shall the inclusion of those laws within the mental health laws in any way repeal or affect those laws as they otherwise apply.

9-14-105. Petition for support.

(a) The circuit courts in the several counties in this state shall have exclusive jurisdiction in all civil cases and matters relating to the support of a minor child or support owed to a person eighteen (18) or older which accrued during that person's minority.

(b) The following may file a petition to require the noncustodial parent or parents of a minor child to provide support for the minor child:

(1) Any parent having physical custody of a minor child;

(2) Any other person or agency to whom physical custody of a minor child has been given or relinquished;

(3) A minor child by and through his guardian or next friend; or

(4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when the parent or person to whom physical custody has been relinquished or awarded is receiving assistance in the form of Aid to Families with Dependent Children, Medicaid, Title IV-E of the Social Security Act - Foster Care, or has contracted with the department for the collection of support.

(c) Any person age eighteen (18) or above to whom support was owed during his or her minority may file a petition for a judgment against the nonsupporting parent or parents. Upon hearing, a judgment may be entered upon proof by a preponderance of the evidence for the amount of support owed and unpaid.

(d) As used in this subchapter, unless the context otherwise requires:

(1) "Minor child" means a child less than eighteen (18) years of age; and

(2) "Noncustodial parent" means a parent who resides outside the household or institution in which the minor child resides.

(e) Any action filed pursuant to this subchapter may be brought at any time up to and including five (5) years from the date the child reaches the age of eighteen (18) years of age.

(f) This section shall apply to all actions pending as of March 29, 1991, and filed thereafter and shall retroactively apply to all child support orders now existing.

9-14-106. Noncustodial parents - Amount of support.

(a)(1)(A) In determining a reasonable amount of support initially or upon review to be paid by the noncustodial parent or parents, the court shall refer to the most recent revision of the family support chart.

(B) It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded.

(C) Only upon a written finding that the application of the family support chart would be unjust or inappropriate as determined under established criteria set forth in the family support chart shall the presumption be rebutted.

(2)(A) The court may provide for a partial abatement or reduction of the stated child support amount for any period of extended visitation with the noncustodial parent.

(B) The court shall consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the custodial parent that are attributable to the child, to the increased costs of the noncustodial parent associated with the child's visit, and to the relative incomes of both parents.

(C) Abatement or reduction of the chart amount and justification of the same shall be clearly set forth in the written findings of the court.

(D)(i) The noncustodial parent shall provide written notification within ten (10) days when abatement or reduction of child support should occur due to extended visitation to the clerk of the court responsible for receipt of the child support payment, the noncustodial parent's employer, if income withholding is in effect, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when applicable.

(ii) It is the responsibility of the noncustodial parent to notify the clerk of the court responsible for receipt of the child support payment, the noncustodial parent's employer, if income withholding is in effect, and the Office of Child Support Enforcement, when applicable, when abatement or reduction should stop and payment of child support should resume.

(E) If the noncustodial parent fails to exercise extended visitation periods, the child support shall not be abated or reduced.

(b) Subsequent to the finding by the court that the defendant should be ordered to pay support for the minor child, the court shall follow the same procedure and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit courts in cases involving separation or divorce between the parents of the child.

9-14-107. Change in payor income warranting modification.

(a)(1) A change in gross income of the payor in an amount equal to or more than twenty percent (20%) or more than one hundred dollars (\$100) per month shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions.

(2)(A)(i) Any time a court orders child support, the court shall order the noncustodial parent to provide proof of income for the previous calendar year to:
The custodial parent.

(2) The court shall also order the noncustodial parent to provide proof of income for a previous calendar year whenever requested in writing by certified mail by the custodial parent, but not more than one (1) time a year; and

(b) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, when applicable.

(ii) Whenever a custodial parent requests in writing that the noncustodial parent provide proof of income, the noncustodial parent shall respond by certified mail within fifteen (15) days.

(B) If the noncustodial parent fails to provide proof of income as directed by the court or fails to respond to a written request for proof of income, the noncustodial parent may be subject to contempt of court.

(C) If a custodial parent or the office has to petition the court to obtain the information, the custodial parent or the office may be entitled to recover costs and a reasonable attorney's fee.

(D) Once notified of an increase, the office shall file a motion within thirty (30) days for modification of child support.

(E)(i) All income information received by the office shall be used only as permitted and required by law.

(ii) All income information received by the custodial parent shall be treated confidentially and used for child support purposes only.

(b)(1) A change in the noncustodial parent's health insurance status as defined in subdivision (b)(2) of this section shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the guidelines for child support and the family support chart.

(2)(A) For purposes of this section, "health insurance status" means that the noncustodial parent can obtain health insurance through his or her employer or other group health insurance.

(B) Health insurance shall be considered reasonable in cost if it is employment related or is other group health insurance, regardless of the service delivery mechanism.

(3) In no event shall eligibility for or receipt of medicaid be considered adequate provision for the child's health care needs in a child support award.

(c) An inconsistency between the existent child support award and the amount of child support that results from application of the family support chart shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions unless:

(1) The inconsistency does not meet a reasonable quantitative standard established by the State of Arkansas in accordance with subsection (a) of this section; or

(2) The inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change of circumstances that resulted in the rebuttal of the guideline amount.

(d) Any modification of a child support order that is based on a change in gross income of the noncustodial parent shall be effective as of the date of filing a motion for increase or decrease in child support unless otherwise ordered by the court.

(e) When a person is ordered by a court of record to pay for the support of his or her children, the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, may order periodic drafts of his or her accounts at a financial institution to deduct moneys due or payable for child support in amounts the court may find to be necessary to comply with its order for the support of the children.

9-14-108. Transfer between local jurisdictions.

(a)(1) The court where the final adjudication of child support is rendered shall retain jurisdiction of all matters following the entry of the decree.

(2)(A) If more than six (6) months subsequent to the final adjudication, however, each of the parties to the action has established a residence in a county of another judicial district within the state, one (1) or both of the parties may petition the court which entered the final adjudication to request that the case be transferred to another county.

(3)(A) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

(B) If a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the physical custodian of the child.

(b)(1) At the request of the person seeking to transfer the case to another judicial district, upon proper motion and affidavit, notice and payment of a refiling fee, the court shall enter an order transferring the case and the refiling fee and charging the clerk of the court to transmit forthwith certified copies of all records pertaining to the case to the clerk of court in the judicial district where the case is being transferred.

(2) An affidavit shall accompany the motion to transfer and recite that the parent or parents, the physical custodian, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as appropriate have been notified in writing that a request has been made to transfer the case to another chancery district.

(3) Notification pursuant to this section must inform each recipient that any objection must be filed within twenty (20) days from the date of receipt of the affidavit and motion for transfer.

(c) The circuit clerk receiving a transferred case shall within fourteen (14) days of receipt set up a case file, docket the case, and afford the case full faith and credit as if the case had originated in that judicial district.

9-14-109. Automatic assignment of rights.

(a) By accepting public assistance for or on behalf of a dependent child, which public assistance is provided by the Arkansas Department of Human Services under the Transitional Employment Assistance Program, i.e., Temporary Assistance for Needy Families, the recipient thereof shall be deemed to have assigned to the appropriate division of the Department of Human Services and the Arkansas Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration any rights to child support from any other person as the recipient may have:

(1) In his or her own behalf or on behalf of any other family member for whom the recipient is receiving such assistance; and

(2) Accrued at the time such assistance, or any portion thereof, is accepted, to the extent possible under federal law.

(b) The appropriate division of the Department of Human Services shall give notice in writing to each applicant for such assistance. The notice shall state that acceptance of the assistance will invoke the provisions of subsection (a) of this section and will result in an automatic assignment under subsection (a) of this section.

(c) When a child is placed in the custody of the department, any right to support from any person on behalf of the child shall be deemed to have been assigned to the appropriate division of

the department and the Office of Child Support Enforcement for the period of time that the child remains in the custody of the state.

9-14-110. Arkansas Registry of Child Support Orders.

(a) As used in this section, "child support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

(b)(1)(A) Not later than October 1, 1998, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration will establish and maintain an automated registry of child support orders, to be known as the Arkansas Registry of Child Support Orders.

(B) The registry will contain abstracts of child support orders and other information on each child support case in the state established or modified on or after October 1, 1998.

(C) The registry will further contain abstracts of all child support orders for cases in which services are being provided by the Office of Child Support Enforcement pursuant to Title IV-D of the Social Security Act.

(2) Abstracts of child support orders and other information on each child support case will include information as required by the United States Department of Health and Human Services, as specified in federal regulations, including, but not limited to, names, social security numbers, or other uniform identification numbers, and case identification numbers that will identify individuals who owe or are owed child support or on whose behalf the establishment of support obligations is sought and the name of the county in which the case is filed.

(3)(A) Each child support case in the registry for which services are being provided under Title IV-D of the Social Security Act will include the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, or late penalties and fees, which are due or overdue under the order; information on moneys collected and distributed on each case; the birthdate of any child for whom the order requires support; and the amount of any lien imposed with respect to the support order.

(B) Payment history information on Title IV-D child support cases maintained in the registry will be provided by the Office of Child Support Enforcement.

(c)(1) From time to time, as may be required, the Office of Child Support Enforcement will consult with the Administrative Office of the Courts to appropriately revise the statistical case data reporting system of the Administrative Office of the Courts in order to meet requirements of the registry.

(2) The Administrative Office of the Courts will advise all clerks of court or other court personnel responsible for completion of the case data reporting of any revised statistical reporting requirements.

(3) It is the specific intent of the General Assembly that the registry be established and maintained by modification to the case information reporting system currently administered through the Administrative Office of the Courts without imposing duplicate reporting requirements on the clerks of court.

(d)(1) The Office of Child Support Enforcement will have access to statistical case information compiled by the Administrative Office of the Courts for the purpose of administering the registry.

(2) The cost of development and maintenance of the registry will be the responsibility of the Office of Child Support Enforcement.

(3) The cost of collection, storing, and retrieval of data for the registry will be the responsibility of the Office of Child Support Enforcement.

Subchapter 2. Enforcement Generally.

9-14-201. Definitions.

As used in this Code:

(1)(A) "Accrued arrearage" means a delinquency which is past due and unpaid and owed under a court order or an order of an administrative process established under state law for support of any child or children.

(B) "Accrued arrearage" may include past due support which has been reduced to a judgment if the support obligation under the order has not been terminated;

(2) "Child support order" or "support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief;

(3) "Court or its representative" means the circuit court of this state or a similar district court of another state when the context so requires, a court official of the circuit court, or the state or local child support enforcement attorney operating pursuant to an agreement with the court in cases related to Title IV-D of the Social Security Act;

(4)(A) "Income" means any periodic form of payment due to an individual, regardless of the source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest.

(B) The definition of "income" may be expanded by the Arkansas Supreme Court from time to time in the Arkansas Child Support Guidelines, Arkansas Supreme Court Administrative Order Number 10.

(5) "Noncustodial parent" means a natural or adoptive parent who does not reside with his or her dependent child;

(6) "Notice" means any form of personal service authorized under Arkansas law;

(7) "Overdue support" means a delinquency pursuant to an obligation created under a court decree, order, or judgment or an order of an administrative process established under the laws of another state for the support and maintenance of a minor child;

(8) "Past due support" means the total amount of support determined under a court order established under state law, which remains unpaid; and

(9)(A) "Payor" means an employer, person, general contractor, independent contractor, subcontractor, or legal entity which has or may have in the future in its possession moneys, income, or periodic earnings due the noncustodial parent.

(B) "Payor" shall include all agencies, boards, commissions, institutions, and other instrumentalities of the United States Government and the State of Arkansas and all cities of the first class, cities of the second class, incorporated towns, and counties and their agencies, boards, commissions, institutions and other instrumentalities, and school districts.

9-14-202. Exclusivity of remedies.

The remedies provided in this subchapter shall not be exclusive of other remedies presently existing.

9-14-204. Hearings for enforcement of support orders.

(a)(1) Hearings in all child support cases and paternity cases brought pursuant to Title IV-D of the Social Security Act shall be heard within a reasonable period of time following service of process in each county in the state as defined in this section.

(2) In each of the seventy-five (75) counties of this state, the circuit judge or judges of the judicial district for the county may designate at least one (1) day per month, and shall designate additional days each month when expedited process is not met in the preceding quarter, in each county to docket and hear matters concerning the establishment and enforcement of support orders and paternity. These dates shall be publicized in the court calendar for the judicial district each calendar year, clearly noting the county and time of day the court shall commence to sit on these matters.

(3)(A) In addition, in all actions in which delinquency or other support-related noncompliance has been identified, cases brought pursuant to Title IV-D of the Social Security Act shall be completed from the time of delinquency or the location of the noncustodial parent by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, whichever is later, to the time of disposition within the following time periods within each judicial district:

(i) No more than thirty (30) calendar days, if service of process is not needed; or

(ii) In cases where service of process is required, the circuit judge or judges of a judicial district shall hear and dispose of seventy-five percent (75%) of all Title IV-D cases within forty-five (45) days after filing when service is obtained; however, when there is a need for relocation of the noncustodial party in order to achieve service, the forty-five-day time period shall not commence until the filing of the court's last order to appear and show cause or subsequent other pleading or order necessary to proceed with service.

(B) In addition, in all Title IV-D actions:

(i) The sheriff of the county in which the case is filed shall use diligent efforts to obtain service of process on the noncustodial parent within ten (10) days from the date of a service request, and, if service of process is not accomplished within ten (10) days, the sheriff shall return the service papers to the requesting party and note specifically the reasons for nonservice. The return shall be filed with the circuit clerk within eleven (11) days of the request for service whether the return is based on service or nonservice;

(ii) Pursuant to § 16-20-101, the clerk of the court shall file or docket all Title IV-D cases, pleadings, and orders on the date received, but no later than the close of business the following business day after the cases, pleadings, or orders are received in the clerk's office. Filed cases, pleadings, orders, or court documents in all Title IV-D cases shall be returned or made available to the filing party immediately thereafter.

(C)(i) All actions to establish paternity and support obligations in cases brought pursuant to Title IV-D of the Social Security Act shall be completed from the time of service to the time of disposition within the following time periods within each judicial district:

- (a) Seventy-five percent (75%) in six (6) months;
- (b) Ninety percent (90%) in twelve (12) months.

(ii) When calculating these rates of disposition:

(a) The percentages will be based upon a comparison of all disposed cases to the total of all filed cases for the preceding quarter within each judicial district which have been brought pursuant to Title IV-D of the Social Security Act; and

(b) In any jurisdiction in which twenty (20) or fewer Title IV-D cases have been filed during the preceding quarter, when applying the percentages set forth in subdivision (a)(3)(C)(i), the next lowest whole number will be utilized for purposes of the measurement of compliance.

(D) These calculations will be for the quarter ending April 1, 1995, and each three (3) months thereafter.

(b)(1)(A) The circuit judge or judges of a judicial district shall provide for expedited support and paternity hearings in each county of the district.

(B) The Chief Justice of the Arkansas Supreme Court shall direct the redistribution of caseload assignments or appoint an additional circuit judge or judges to hear Title IV-D cases and assist the county or judicial district and to serve in accordance with this section, if necessary, to meet the time requirements for processing Title IV-D cases.

(2)(A) Upon agreement of the circuit judges and clerks in the counties selected by the Office of Child Support Enforcement, the office shall designate up to ten (10) counties of various populations, geographic locations, and economic development for test purposes and to conduct demonstration projects for expedited process to determine the feasibility of implementing innovative policies, procedures, practices, and techniques, including, but not limited to, a quasijudicial process, in the establishment of paternity, child support, and enforcement of child support orders pursuant to Title IV-D.

(B) The Office of Child Support Enforcement shall notify and obtain the agreement of all affected judges and clerks in each of the designated counties of their selection thirty (30) days prior to implementation of the demonstration project.

(C) Such demonstration projects shall automatically terminate by operation of law on April 1, 2001, or may be extended upon application by the Office of Child Support Enforcement and the consent of the Governor.

(c) The compensation to be allowed a circuit judge appointed under this section shall be as prescribed by current law for appointed circuit judges.

(d)(1) The appointed circuit judge shall have the same authority and power as a circuit judge to issue any and all process in conducting hearings and other proceedings in accordance with this section.

(2) In addition, the appointed circuit judge shall have those powers as other judges under state and federal law and Title IV-D of the Social Security Act.

(e) The Chief Justice of the Arkansas Supreme Court may recall from retirement a circuit judge and appoint same pursuant to this section to assist the state in meeting the required time frames noted in this section.

(f) The Office of Child Support Enforcement shall furnish to the Administrative Office of the Courts caseload information and data regarding the Title IV-D cases filed by the attorneys for the State of Arkansas.

9-14-205. Information required in support cases.

(a)(1) In all cases in which the support and care of any child or children are involved, it shall be the duty of the plaintiff, defendant, custodial parent or physical custodian of the child, and the noncustodial parent to keep the clerk of the circuit court informed of his or her current address when a payment of support is directed to be paid through the registry of the court or keep the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration informed of his or her current address when a payment of support is directed to be paid through the Arkansas child support clearinghouse.

(b)(1) Each party to any case in which the support and care of any child or children are involved shall file with the clerk of the circuit court and the Office of Child Support Enforcement and update, as appropriate, his or her name, social security number, residential and mailing address, telephone number, driver's license number, and the employer's name and address.

(2)(A) Information required pursuant to subdivision (b)(1) of this section shall be filed on a form provided by the Administrative Office of the Courts for that purpose.

(B) Forms filed with the clerk pursuant to subdivision (b)(1) of this section shall be:

(i) Maintained separately from the file of the case in which the support and care of any child or children are involved; and

(ii) Considered confidential and shall be open to inspection only by the following persons or entities:

- (a) The Office of Child Support Enforcement;
- (b) Attorneys of record for any party to the case, including, but not limited to, parties appearing pro se; and
- (c) Any person or entity authorized by the circuit court in which the form is filed.

(c) In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the circuit court shall deem that state due process requirements for notice and service of process have been met with respect to the party upon delivery of written notice to the most recent residential address or employer address filed with the clerk of the circuit court pursuant to this subsection.

9-14-206. Office of Child Support Enforcement - Establishment - Plan - Program - Child support officers.

(a) There is established an organizational unit to be called the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration which shall administer the state plan for child support enforcement required under Title IV-D of the Social Security Act.

(b) The Office of Child Support Enforcement is designated as the single public entity for the administration of income withholding of support payments in accordance with federal law.

(c) The Office of Child Support Enforcement is hereby designated as a law enforcement agency and may employ a child support officer in counties where the court grants at least two thousand five hundred (2,500) divorces each year to assist in the service of civil and criminal process and to enforce child support orders in this state. The officers shall be duly certified law enforcement officers pursuant to § 12-9-101 et seq. and shall have the same power to execute, serve, and return all lawful warrants including warrants of arrest issued by the State of Arkansas or any political subdivision thereof.

(d) Notwithstanding the provisions of subsection (c) of this section, in all counties in cases where the sheriff has returned the service papers "non est", the Office of Child Support Enforcement may employ a child support officer or contract with a process server to assist in the service of civil and criminal process and to enforce child support orders in this state. A child support officer so employed shall be a duly certified law enforcement officer pursuant to § 12-9-101, et seq. Process servers contracting with the Office of Child Support Enforcement or its agent shall be appointed by the circuit court pursuant to Rule 4 of the Arkansas Rules of Civil Procedure or Rule 6.3 of the Arkansas Rules of Criminal Procedure. A child support officer or process server shall have authority to execute, serve, and return all lawful warrants of arrest issued by the State of Arkansas or any political subdivision thereof. In any county wherein the sheriff chooses to transfer the responsibility of service of process in Title IV-D child support cases to the Office of Child Support Enforcement, the office or its agent may employ a child support officer or contract with a process server as set forth in this subsection.

9-14-207. Office of Child Support Enforcement - Administrator - Child support officers.

(a) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to enter into cooperative agreements with county judges, court clerks, and prosecuting attorneys concerning the establishment, enforcement, collection, monitoring, and distribution of support obligations.

(b) The Administrator of the Office of Child Support Enforcement is further authorized to appoint child support officers, in counties where the court grants at least two thousand five hundred (2,500) divorces each year, as law enforcement officers in the duties and obligations as set forth in § 9-14-206(c).

(c) The administrator or his or her designee is authorized to issue an administrative subpoena for any financial or other information needed to establish, modify, or enforce a child support order to any individual or organization reasonably believed to have information on the financial resources of a parent or presumed or alleged father.

(1) A court may compel compliance with an administrative subpoena, impose penalties as authorized by § 9-14-208(c), and award attorney fees and costs to the Office of Child Support Enforcement upon proof that an individual or organization failed to comply with the subpoena without cause.

(2) Subpoenas issued pursuant to the authority of the Office of Child Support Enforcement shall be substantially in the following form:

"The State of Arkansas to the Sheriff of County: You are commanded to subpoena (name), regarding a proceeding before the Office of Child Support Enforcement to be held at (address) on the day of 20 , , and produce the following books, records, or other documents, to wit: , in the matter of (style of proceeding), being conducted under the authority of

WITNESS, my hand and seal this day of 20 ,
.....

Administrator, Office of Child Support Enforcement"

(d) Subpoenas provided for in this section shall be served in the manner as now provided by law and returned and a record made and kept by the Office of Child Support Enforcement. The fees and mileage of officers serving the subpoenas and witnesses in answer to subpoenas shall be the same as now provided by law.

9-14-208. Office of Child Support Enforcement - Powers to obtain information on noncustodial parent - Penalty - Immunity.

(a) As used in this section, unless the context otherwise requires:

(1) "Noncustodial parent" means a natural or adoptive parent, including a putative father, who does not reside with his or her dependent child and against whom the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is enforcing or seeking to enforce a support obligation pursuant to a plan described in Title IV-D of the Social Security Act;

(2) "Business" means any corporation, partnership, cable television company, association, individual, utility company that is organized privately, as a cooperative, or as a quasi-public entity, and labor or other organization maintaining an office, doing business, or having a registered agent in the State of Arkansas;

(3) "Office of Child Support Enforcement" means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or a local child support enforcement unit contracting under § 9-14-207 to establish and enforce support obligations;

(4) "Financial entity" means any bank, trust company, savings and loan association, credit union, insurance company, or any corporation, association, partnership, or individual receiving or accepting money or its equivalent on deposit as a business in the State of Arkansas;

(5) "Information" means, but is not necessarily limited to, the following:

(A) The full name of the noncustodial parent;

(B) The social security number of the noncustodial parent;

(C) The date of birth of the noncustodial parent;

(D) The last known mailing and residential address of the noncustodial parent;

(E) The amount of wages, salaries, earnings, or commissions earned by or paid to the noncustodial parent;

(F) The number of dependents declared by the noncustodial parent on state and federal tax information and reporting forms;

(G) The name of the company, policy numbers, and dependent coverage for any medical insurance carried by and on behalf of the noncustodial parent;

(H) The name of the company, policy numbers, and the cash values, if any, of any life insurance policies or annuity contracts which are carried by or on behalf of or owned by the noncustodial parent; and

(I) Any retirement benefits, pension plans, or stock purchase plans maintained on behalf of or owned by the noncustodial parent and the values thereof, employee contributions thereto, and the extent to which each benefit or plan is vested; and

(6) "State or local government agency" means any department, board, bureau, commission, office, or other agency of this state or any local unit of government of this state.

(b)(1) For the purpose of locating and determining resources of noncustodial parents, the Office of Child Support Enforcement may request and receive information from the Federal Parent

Locator Service, from available records in other states, territories, and the District of Columbia, from the records of all state agencies, and from businesses and financial entities.

(2) The Administrator of the Office of Child Support Enforcement may enter into cooperative agreements with other state agencies, businesses, or financial entities to provide direct on-line access to data information terminals, computers, or other electronic information systems.

(3) State and local government agencies, businesses, and financial entities shall provide information, if known or chronicled in their business records, notwithstanding any other provision of law making the information confidential.

(4) In addition, the Office of Child Support Enforcement may, pursuant to an agreement with the Secretary of the United States Department of Health and Human Services, or his or her designee, request and receive from the Federal Parent Locator Service information authorized under 42 U.S.C. § 653, for the purpose of determining the whereabouts of any parent or child. This information may be requested and received when it is to be used to locate the parent or child for the purpose of enforcing any state or federal law with respect to the unlawful taking or restraining of a child or for the purpose of making or enforcing a child custody determination.

(c) Any business or financial entity which has received a request from the Office of Child Support Enforcement as provided by subsection (b) of this section shall further cooperate with the Office of Child Support Enforcement in discovering, retrieving, and transmitting information contained in the business records that would be useful in locating absent parents or in establishing or enforcing child support orders on absent parents, and shall provide the requested information, or a statement that any or all of the requested information is not known or available to the business or financial entity. This shall be done within thirty (30) days of receipt of the request or the business or financial entity shall be liable for civil penalties of up to one hundred dollars (\$100) for each day after the thirty-day period in which it fails to provide the information so requested.

(d) Any business or financial entity, or any officer, agent, or employee of such entity, participating in good faith and providing information requested under this section, shall be immune from liability and suit for damages that might otherwise result from the release of the information to the Office of Child Support Enforcement.

(e) Each financial entity, as defined herein, shall cooperate with the Office of Child Support Enforcement to develop, implement, and operate an electronic automated data match system, using automated data exchanges to the maximum extent feasible, in which each financial entity shall provide to the Office of Child Support Enforcement per calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at the financial entity and who owes past-due child support, as identified by the Office of Child Support Enforcement by name and social security number or other taxpayer identification number. For purposes of this subsection, the term "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account. The Office of Child Support Enforcement is authorized to pay a reasonable fee to a financial entity for conducting an automated data match, not to exceed the actual costs incurred by the financial entity.

(f) Pursuant to subsection (e) of this section, each financial entity shall, in response to a notice of lien or levy, encumber or surrender assets held by such financial entity on behalf of any noncustodial parent who is subject to a child support lien pursuant to judgment or by operation of law.

(g) In cases in which there is overdue child support and in an effort to seize assets to satisfy any current support obligation and the arrearage, the Office of Child Support Enforcement is authorized to:

(1) Intercept or seize periodic or lump-sum payments from:

(A) A state or local agency, including unemployment compensation, workers' compensation, or other benefits; and

(B) Judgments, settlements, prizes, and lotteries;

(2) Attach and seize assets of the obligated parent held in financial institutions;

(3) Attach public and private retirement funds, including any union retirement fund and railroad retirement; and

(4) Impose liens in accordance with subsection (f) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(h)(1) Such withholdings, intercepts, and seizures as set out in subsection (g) of this section may be initiated by the Office of Child Support Enforcement without obtaining a prior order from any court but must be carried out in full compliance with published administrative procedures, including due process safeguards, promulgated by the Office of Child Support Enforcement.

(2)(A) The rules and regulations shall require written notice to each parent and noncustodial parent to whom this section applies:

(i) That the withholding, intercept, or seizure has commenced; and

(ii) Of the right to an administrative hearing and the procedures to follow if the parent or noncustodial parent desires to contest the withholding, intercept, or seizure on the grounds that the withholding, intercept, or seizure is improper due to a mistake of fact.

(B) The notice to the parent and noncustodial parent pursuant to subdivision (h)(2)(A) of this section shall include the information provided to the employer, agency, or financial institution under subsection (e) of this section.

(i) Any financial entity, or any officer, agent, or employee of such entity, participating in good faith and providing information requested pursuant to subsection (e) of this section or encumbering or surrendering assets pursuant to subsection (f) or (g) of this section, shall be immune from liability and suit for damages that might otherwise result from the release of the information or the encumbering or surrendering the assets to the Office of Child Support Enforcement.

(j) Any information obtained under the provisions of this section shall become a business record of the Office of Child Support Enforcement, subject to the privacy safeguards set out in § 9-14-210(g)-(l).

9-14-209. Office of Child Support Enforcement - Duty to provide information to consumer reporting agency.

(a)(1) As used in this section, unless the context otherwise requires, "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative, nonprofit basis regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(2) This term also includes any person who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) Upon written request by a consumer reporting agency, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall provide information to the agency regarding an amount of overdue support owed by a noncustodial parent in a case involving the Title IV-D agency.

(c) The Office of Child Support Enforcement shall report to a consumer reporting agency the name of any noncustodial parent who owes overdue support in a case involving the IV-D agency and the delinquent amount.

(d)(1) Prior to disclosure of the information to a consumer reporting agency, the Office of Child Support Enforcement shall send the noncustodial parent a notice by regular mail to his last known address.

(2) The notice shall inform the noncustodial parent of the name and address of the consumer reporting agency, the amount of overdue support to be released, the procedure available for the noncustodial parent to contest the accuracy of the information, and a statement that if the noncustodial parent fails to contest the disclosure within seven (7) days of the mailing date on the notice, the information will be released.

(e) Such information shall not be made available to:

(1) A consumer reporting agency that the Office of Child Support Enforcement determines does not have sufficient capability to systematically and timely make accurate use of such information; or

(2) An entity that has not furnished evidence satisfactory to the Office of Child Support Enforcement that the entity is a consumer reporting agency.

9-14-210. Office of Child Support Enforcement - Employment of attorneys - Real party in interest - Scope of representation.

(a) The Department of Human Services or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, or both, shall employ attorneys to assist in the establishment and enforcement of support orders in the State of Arkansas.

(b) An attorney employed by the Department of Human Services, the Office of Child Support Enforcement, or both, or employed by a county, prosecuting attorney, or local child support enforcement unit pursuant to a cooperative agreement with the Office of Child Support Enforcement shall undertake representation of the action instead of the prosecuting attorney in actions brought pursuant to Title IV-D of the Social Security Act, § 42 U.S.C. § 651 et seq., under the Uniform Interstate Family Support Act, § 9-17-101 et seq.

(c) An attorney employed under this subchapter, whether directly or by contract with the Office of Child Support Enforcement, may be designated a special deputy prosecutor by the prosecuting attorney of that judicial district, for the limited purposes of prosecuting in a court of competent jurisdiction actions brought under § 5-26-401 or § 5-54-102, in those cases proceeding under Title IV-D of the Social Security Act, § 42 U.S.C. § 651 et seq. However, nothing in this section shall be construed to entitle such attorneys to those rights, benefits, or privileges which accrue to a prosecuting attorney under any other provision of state law, except as set forth below:

(1)(A)(i) As a special deputy prosecutor, such attorney shall have the power to issue subpoenas in all matters being investigated by the Office of Child Support Enforcement under § 5-26-401 or § 5-54-102 and may administer oaths for taking the testimony of witnesses subpoenaed before him or her.

(ii) Such oaths shall have the same effect as if administered by the foreman of a grand jury.

(B) The subpoena shall be substantially in the form set forth in § 16-43-212;

(2)(A) Appointment as a special deputy prosecutor shall not entitle such attorney to receive any additional fees or salary from the state for services provided pursuant to the appointment.

(B) Expenses of the special deputy prosecutor and any fees and costs incurred thereby in the prosecution of cases under § 5-26-401 or § 5-54-102 shall be the responsibility of the Office of Child Support Enforcement under the Title IV-D program;

(3) A special deputy prosecutor appointed and functioning as authorized under this section shall be entitled to the same immunity granted by law to the prosecuting attorney;

(4) The prosecuting attorney may revoke the appointment of a special deputy prosecutor at any time.

(d) The State of Arkansas is the real party in interest for purposes of establishing paternity and securing repayment of benefits paid and assigned past due support, future support, and costs in actions brought to establish, modify, or enforce an order of support in any of the following circumstances:

(1) Whenever public assistance under the transitional employment assistance program, i.e., temporary assistance for needy families, or § 20-77-109 or § 20-77-307 is provided to a dependent child or when child support services continue to be provided under 45 C.F.R. 302.33 as it existed on January 1, 2001; or

(2) Whenever a contract and assignment for child support services have been entered into for the establishment or enforcement of a child support obligation for which an automatic assignment under § 9-14-109 is not in effect; or

(3) Whenever duties are imposed on the state in Title IV-D cases pursuant to the Uniform Interstate Family Support Act, § 9-17-101 et seq.; or

(4) When a child is placed in the custody of the Department of Human Services and rights have been assigned under § 9-14-109.

(e)(1) In any action brought to establish paternity, to secure repayment of government benefits paid or assigned child support arrearages, to secure current and future support of children, or to establish, enforce, or modify a child support obligation, the Department of Human Services, the Office of Child Support Enforcement, or both, or their contractors, may employ attorneys.

(2) An attorney so employed shall represent the interests of the Department of Human Services or the Office of Child Support Enforcement and does not represent the assignor of an interest set out in subsection (d) of this section.

(3) Representation by the employed attorney shall not be construed as creating an attorney-client relationship between the attorney and the assignor of an interest set forth in subsection (d) of this section, or with any party or witness to the action, other than the Department of Human Services or the Office of Child Support Enforcement, regardless of the name in which the action is brought.

(f) In any action brought by the Department of Human Services, the Office of Child Support Enforcement, or both, or their contractors, to establish paternity, to secure repayment of government benefits paid or assigned child support arrearages, to secure current and future support of children, or to establish, enforce, or modify a child support obligation, if another party pleads a claim relating to child custody or visitation, property division, divorce, or other claims not directly related to support, the Office of Child Support Enforcement shall advise the assignee, as set forth in subsection (d) of this section, of the need for separate legal counsel; provided that, for the benefit of the court clerk, in any action brought by the Department of Human Services, the Office of Child Support Enforcement, or both, or their contractors, pursuant to subsection (d) of this section, the name of the physical custodian shall be set out in the body of any petition filed and order entered in the matter.

(g) It shall be unlawful for any person to use or disclose information concerning applicants for, or recipients of, child support enforcement services provided by the office under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., except for purposes in furtherance of child support activities, including the following:

(1) Administration of the state plan for child support enforcement required under Title IV-D or administration of the Title IV-D program;

(2) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program listed in subdivision (g)(1) of this section;

(3) Administration of any federal program that provides assistance, in cash or in kind, or services directly to individuals based on need;

(4) A report to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement service when circumstances indicate that the child's health or welfare is threatened; and

(5) When authorized in writing by the custodial or noncustodial parent, child support payment records for use by attorneys and abstractors to facilitate the release or satisfaction of child support liens on real property.

(h) The Office of Child Support Enforcement may release information on the whereabouts of a party under the following conditions:

(1) The party requesting the information is the noncustodial parent or the physical custodian who submits the request by affidavit which clearly states the reason the information is requested, and which sets out the unsuccessful attempts to acquire the information from other sources;

(2) The party requesting the information shall submit the affidavit requesting the release of information to the Office of Child Support Enforcement by first class mail;

(3) Within seven (7) days of receiving the request, the Office of Child Support Enforcement shall notify the party whose whereabouts are subject to disclosure that a request for location information has been made and that the requested information will be provided within twenty (20) days of the date of the notice unless the Office of Child Support Enforcement receives a copy of a court order which enjoins the disclosure or otherwise restricts the requesting party's rights to contact or visit the party or the children, or the party requests an administrative hearing to contest the disclosure.

(i) Whenever an administrative hearing is requested, the Office of Child Support Enforcement shall not disclose the whereabouts of a party until the administrative hearing is held or completed. If any reasonable evidence of domestic violence or child abuse is presented at the administrative hearing or by affidavit and the disclosure of the last known address or any identifying information could be harmful to a party or the child, the Office of Child Support Enforcement shall not release the information.

(j) It shall be unlawful to disclose to any committee or legislative body any information that identifies by name or address any applicant or recipient of Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., child support enforcement services.

(k) A release of information on the whereabouts of a party made in compliance with § 9-14-205 is a permissible release of information in connection with the administration of the Title IV-D program.

(l) A release of payment information made in compliance with § 9-14-807 is a permissible release of information in connection with the administration of the Title IV-D program.

(m) A violation of subsection (g), (h), (i), (j), (k), or (1) of this section shall constitute a Class B misdemeanor.

9-14-211. Assigned support rights generally.

(a) Support rights assigned to the Department of Human Services under § 9-14-109 shall constitute an obligation owed to the State of Arkansas by the person responsible for providing the support, and the obligation shall be collectible under all legal processes.

(b) The amount of obligation owed to the state shall be the amount specified in a court order which covers the assigned rights; or, where no court order exists, the amount of obligation owed to the state shall be the amount determined by a court based upon the noncustodial parent's income or ability to pay during the period of assignment as applied to the Arkansas child support guidelines and family support chart.

9-14-212. Assigned support rights - Non-Temporary Assistance to Needy Families application fee.

(a) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may charge a nonrefundable application fee of up to twenty-five dollars (\$25.00) to any person who contracts with the Office of Child Support Enforcement for any services under Title IV-D of the Social Security Act for whom an assignment under § 9-14-109 is not in effect.

(b) The fee shall be known as a non-Temporary Assistance to Needy Families application fee and shall be a flat fee in an amount to be determined by the manager which shall be paid by the applicant at the time the application for assistance is submitted.

(c)(1) Non-Temporary Assistance to Needy Families services shall be provided to an applicant on a cost recovery/fee for services basis as provided under Title IV-D program requirements.

(2)(A) The Administrator of the Office of Child Support Enforcement shall establish and publish a schedule of such fees which shall be administratively incorporated into child support enforcement policy.

(B) Copies of the fee schedule shall be provided to all applicants for child support services.

(d) Any fee or cost for services generated because of either a breach by the noncustodial parent of an agreement or of an order of the court shall be incorporated into the request for relief and reduced to a judgment in favor of and payable to the Office of Child Support Enforcement.

9-14-213. Assigned support rights - Notice - Termination of assignment.

(a)(1) When a court has ordered support payments to a person who has made an assignment of support rights under § 9-14-109 or who has executed a contract with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration for non-Aid to Families with Dependent Children assistance, the office shall notify the clerk of the court.

(2) Upon such notice, the clerk shall indicate in the registry of the court that the support is being collected under Title IV-D of the Social Security Act, and the clerk shall redirect all payments received to the Office of Child Support Enforcement at the Arkansas child support clearinghouse.

(3) Notification to the clerk by the Office of Child Support Enforcement shall be sufficient to authorize the clerk to redirect payments to the Arkansas child support clearinghouse. The court need not hold a hearing on the matter, and child support shall be paid through the Arkansas child support clearinghouse pursuant to § 9-14-801, et seq.

(b) Lump-sum payments toward arrearages received by the clerk subsequent to termination of the assignment which were collected by the Office of Child Support Enforcement through debt setoff or legal process shall be redirected to the Arkansas child support clearinghouse.

9-14-214. Assigned support rights - Award of fee in action.

(a) In any action brought on behalf of a person to whom a support obligation is owed under an assignment pursuant to § 9-14-109 or pursuant to a contract for services under Title IV-D of the Social Security Act, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall be awarded a fee in an amount equal to not less than three percent (3%) and not more than six percent (6%) of the overdue support.

(b) For purposes of this section, "overdue support" means a delinquency pursuant to an obligation created under a court order or an order of an administrative process established under state law for the support and maintenance of a minor child.

9-14-215. Fees in actions under § 9-17-101 et seq.

(a)(1) There shall be no filing fee, service fee, or other costs collected from the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or any attorney acting on its behalf for actions brought under the Uniform Interstate Family Support Act, § 9-17-101 et seq.

(2) The court may direct such fees and costs to be paid by the noncustodial parent to the clerk of the court and the sheriff upon adjudication of the case.

(b)(1) The clerk and the sheriff may collect fees in all other cases from the Office of Child Support Enforcement by submitting monthly or quarterly statements for their services.

(2) Each statement shall clearly note the full name of the noncustodial parent thereon.

(3) No clerk or sheriff may refuse service to the Office of Child Support Enforcement or its attorney for its failure to pay the fees in advance.

(c)(1) A circuit clerk may collect from the noncustodial parent a fee of ten dollars (\$10.00) for completion of income withholding forms for a custodial parent pursuant to this subchapter.

(2) A notice of this fee shall be sent to the noncustodial parent along with the notice pursuant to § 9-14-221.

(3) After thirty (30) days, upon nonpayment of the fee by the noncustodial parent, the clerk may notify the payor who shall withhold the fee and remit such to the clerk.

9-14-216. Income withholding - Establishment and maintenance of system.

(a) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall establish and maintain a system to promptly implement income withholding for support orders issued in other states. The Office of Child Support Enforcement shall also seek assistance from other states in implementing income withholding in other states for support orders issued in this state.

(b) The other state shall forward to the office three (3) certified copies of the support order issued by its court or administrative forum and a notice which contains the noncustodial parent's name, social security number, and current address, the name and address of the payor to the noncustodial parent, the amount to be withheld, and the name and address where payments are to be mailed by the Office of Child Support Enforcement.

(c) Upon receipt of the notice and certified copies of the order, the Office of Child Support Enforcement shall establish the case within its system and follow the procedures enumerated in §§ 9-14-221 - 9-14-223 and 9-14-229.

(d) Payors notified of income withholding orders arising from other states shall be bound by and under the same requirements as though the order were issued by a court of this state under this subchapter.

(e) The Office of Child Support Enforcement shall forward all payments received under this subchapter to the address provided by the other state.

(f) The Office of Child Support Enforcement shall notify the state where the support order was entered when the noncustodial parent terminates employment within this state and shall provide the new address and new employer to the state, if known.

9-14-217. Income withholding - Supersession of § 9-14-102.

The income withholding provisions of this subchapter shall supersede the provisions of § 9-14-102 where applicable.

9-14-218. Income withholding - Time of taking effect generally - Forms.

(a)(1)(A) In all decrees or orders which provide for the payment of money for the support and care of any children, the court shall include a provision directing a payor to deduct from money, income, or periodic earnings due the noncustodial parent an amount which is sufficient to meet the periodic child support payments imposed by the court plus an additional amount of not less than twenty percent (20%) of the periodic child support payment to be applied toward liquidation of any accrued arrearage due under the order.

(B) The use of income withholding does not constitute an election of remedies and does not preclude the use of other enforcement remedies.

(2) Beginning October 1, 1989, in all cases brought pursuant to Title IV-D, the order of income withholding issued or modified shall take effect immediately, absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative arrangement. Otherwise, it shall become effective as set forth in subsection (e) of this section or when the requirements set forth in § 9-14-221 have been satisfied.

(3)(A) Beginning January 1, 1994, all support orders issued shall include a provision for immediate implementation of income withholding, absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement.

(B) Beginning January 1, 1994, all modified support orders shall include a provision for immediate implementation of income withholding, absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement and upon proof of timely payments.

(4) In all non-Title IV-D cases brought prior to January 1, 1994, the support order may include a provision for immediate implementation of income withholding, absent a finding of good cause not to require immediate withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement. The judge of each division shall determine if all support orders shall be subject to the provisions of this section and shall enter a standing order setting forth the treatment of non-Title IV-D cases in that division prior to January 1, 1994.

(5) All child support payments paid by income withholding are subject to provisions set forth in § 9-14-801 et seq.

(b) Income withholding shall apply to current and subsequent periods of employment, if used in employment, or remuneration, once activated.

(c)(1) Any forms necessary to provide notice, affidavits, or any other matter which is required by this subchapter to enforce the payment of child support shall be devised by the State Commission on Child Support with advice from the Administrative Office of the Courts.

(2) Upon the approval of the forms by the Chief Justice of the Arkansas Supreme Court, the forms shall be used on a statewide basis in all cases requiring an order or notice of income withholding for child support.

(3) Any necessary changes in the forms shall be the responsibility of the Arkansas Supreme Court.

(4) Distribution of the forms shall be the responsibility of the Administrative Office of the Courts.

(d) All judgments for past due support shall include, in the same paragraph denoting the judgment amount, a statement that the amount is subject to reduction through income withholding to put third parties on notice that the amount currently owed may differ from that reflected in the judgment.

(e) In cases brought pursuant to Title IV-D with support orders effective prior to October 1, 1989, income withholding shall take effect immediately in any child support case at the request or upon the consent of the noncustodial parent or on the date the court grants an approved request of the custodial parent brought in accordance with procedures and standards as established by the Title IV-D agency.

(f) In those cases in which a support order has been issued or modified after August 2, 1985, without the inclusion of an income withholding provision, income withholding may be initiated in accord with procedures set forth in § 9-14-221 whenever child support arrearages owed by the noncustodial parent equal the total amount of court-ordered support payable for thirty (30) days.

9-14-219. Income withholding - Priority of order.

Orders of income withholding for support shall have priority over all other legal processes under state law against the money, income, or periodic earnings of the noncustodial parent.

9-14-220. Income withholding - Persons subject to order - Ground to contest order.

(a) All persons under court order to pay support on August 1, 1985, who become delinquent in an amount equal to the total court-ordered support payable for thirty (30) days shall be subject to the income withholding provisions of this subchapter. An order of income withholding shall become effective when the requirements set forth in § 9-14-221 have been satisfied.

(b) The only ground to contest an order of income withholding effective under § 9-14-221 shall be mistake of fact.

9-14-221. Income withholding - When orders take effect - Notice - Costs.

(a) Orders of income withholding which were not effective immediately by order of the court, upon the consent of the noncustodial parent, or at the request of the custodial parent, shall become effective when payment arrearages owed by the noncustodial parent equal the total court-ordered support payable for thirty (30) days.

(b)(1) Prior to notification to the payor, for orders to be effective under this section, the noncustodial parent shall be sent a notice by any form of mail addressed to the parent at his or her last known address as contained in the records of the court clerk.

(2) Actual costs of mailing the notice may be collected by the clerk from the custodial parent.

(3) The notice shall contain the following information:

(A) The amount to be withheld;

(B) The amount of arrearages alleged to have accrued under the support order and that an additional amount of not less than twenty percent (20%) of the support ordered will be withheld to liquidate the arrearages or such amount as set forth by an order if applicable;

(C) That the income withholding applies to current and subsequent periods of employment, if used in employment, or remuneration;

(D) The procedure available to contest the withholding on the ground that the withholding is not proper because of mistake of fact;

(E) That failure to contest the withholding within ten (10) days of the receipt or refusal of the notice will result in the payor's being notified to begin the withholding;

(F) That if the noncustodial parent contests the withholding, he or she will be afforded an opportunity to present his or her case to the court or its representative in that jurisdiction within thirty (30) days of receipt of the notice of contest; and

(G) That state law prohibits employers from retaliating against a noncustodial parent under an income withholding order and that the court or its representative should be contacted if the noncustodial parent has been retaliated against by his or her employer as a result of the income withholding order.

(c)(1) Should the noncustodial parent contest the withholding because of mistake of fact, then after providing the noncustodial parent an opportunity to present his or her case the court or its representative shall determine whether the withholding shall occur and shall notify the noncustodial parent of the determination and, if appropriate, the time period in which withholding will commence.

(2) The notice shall include the information to be provided to the payor as required in § 9-14-222.

9-14-222. Income withholding - Notice to payor - Costs.

(a) A payor shall be notified of an order of income withholding by a notice as set forth in this section.

(b)(1) The order and notice of income withholding may be served on the payor by first class mail.

(2) If the payor does not remit the wage withholding in accordance with subdivision (d)(11) of this section, a second notice shall be sent pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

(c) Costs for service of this notice may be collected from the custodial parent.

(d) The notice shall include the following information:

- (1) The noncustodial parent's name and social security number;
- (2) The amount to be withheld and that the total amount actually withheld cannot be in excess of the maximum amount allowed under Section 303(b) of the Consumer Credit Protection Act if the payor is the employer of the noncustodial parent;
- (3) To whom and in what manner the withholding is to be paid and that the payments are to occur at the same time the noncustodial parent is paid;
- (4) That the payor may deduct a fee not to exceed two dollars and fifty cents (\$2.50) in addition to the court-ordered amount for the administrative cost incurred in each withholding;
- (5) That withholding is binding on the payor until further notice by the court or its representative;
- (6) That the payor, if an employer, is subject to a fine of up to fifty dollars (\$50.00) a day for discharging a noncustodial parent from employment or for refusing to employ, or for taking disciplinary action against, any noncustodial parent because of the withholding;
- (7) That the payor is liable for any amount up to the accumulated amount which should have been withheld should he or she fail to withhold income in accordance with the notice;
- (8) That the withholding is for child support and, under § 9-14-219, takes priority over any other legal process against the same income;
- (9) That the payor may combine and remit from several noncustodial parents one (1) withholding payment so long as the payee for all payments is identical and the payment is accompanied by sufficient information to identify the portion of the payment which is attributable to each of the noncustodial parents;
- (10) That if the payor is already under an income withholding order under this subchapter, then the payor must make disbursements under each income withholding notice or order under the procedures for the payor provided under § 9-14-228;
- (11) That the payor must implement withholding no later than the first pay period that occurs after fourteen (14) days following the date the notice was mailed;
- (12) That the payor must notify the court or its representative immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source and shall provide the noncustodial parent's last known address and the name and address of any new employer, if known; and
- (13) The procedure available in that jurisdiction to the payor to object to the withholding on the ground of mistake of fact and that the objection must be made in writing and to whom it must be sent within seven (7) days following the date the notice was received or refused or the sanctions set forth in subdivisions (d)(6) and (7) of this section shall apply.

9-14-223. Income withholding - Objection of payor.

Upon receipt of an objection from a payor under an order of income withholding, the court or its representative shall expeditiously determine whether the payor shall be relieved under the order and shall so inform the payor within ten (10) days of receipt of the objection by a notice of its determination sent to the payor by regular mail.

9-14-224. Income withholding - Duties of payor.

(a) A payor who has been notified of an order of income withholding shall be bound by the order until further notice by the court or its representative.

(b)(1) A payor who is an employer that withholds support payments from more than one (1) employee shall have the option to periodically remit to the clerk funds withheld from all such employees in a single check rather than remitting the funds withheld from each employee separately.

(2) If the payor elects to remit all such funds in a single check, each such remittance shall be accompanied by a list showing the portion of the funds withheld from each employee.

(c) A payor shall notify the court or its representative immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source and shall provide the noncustodial parent's last known address and the name and address of any new employer, if known.

9-14-225. Income withholding - Liability of payor - Distribution of moneys.

(a) A payor who has been notified of an order of income withholding shall be liable for any amount up to the accumulated amount which should have been withheld should he or she fail or refuse to withhold the income in accordance with the notice.

(b) Once money has been withheld, except as provided in subsection (c) of this section, it shall be considered the property of the custodial parent. The custodial parent to whom the money is owed may seek any and all available redress against any employer who fails to transmit money pursuant to an order of income withholding.

(c) Moneys withheld in cases brought under Title IV-D of the Social Security Act shall become the property of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration to be distributed in accordance with child support policy.

9-14-226. Income withholding - Prohibition of disciplinary action against employee - Penalty.

(a) A payor who is an employer is prohibited from discharging, refusing to employ, or taking other disciplinary action against a noncustodial parent under an income withholding order.

(b) Any employer violating this subchapter shall be subject to the contempt powers of the court issuing the order and may be fined up to fifty dollars (\$50.00) per day.

(c) The noncustodial parent shall have the burden to prove that income withholding was the sole reason for the employer's action.

9-14-227. Income withholding - Administrative costs - Applicability to unemployment compensation and workers' compensation.

(a) A payor may withhold up to two dollars and fifty cents (\$2.50) per pay period in addition to the court-ordered income withholding amount for the administrative cost incurred in each withholding.

(b) The income withholding provisions of this subchapter shall apply to unemployment compensation benefits to the extent allowed by §§ 11-10-109 and 11-10-110.

(c) The income withholding provisions of this subchapter shall apply to workers' compensation benefits to the extent allowed by § 11-9-110.

9-14-228. Income withholding - Procedures for payor.

(a)(1) A payor shall withhold the amount indicated in the notice from money, income, or periodic earnings due the noncustodial parent and remit the amount in the manner set forth in the notice.

(2) Payments are to be made at the same time the noncustodial parent is paid. The payor shall identify the date of income withholding on each payment.

(3) The amount withheld, when added to the administrative fee charged by the payor, shall not exceed the maximum limit under Section 303(b) of the Consumer Credit Protection Act if the payor is an employer of the noncustodial parent.

(b) A payor may combine and remit one (1) single withholding payment from several noncustodial parents so long as the payee for all payments is identical and the payment is accompanied by sufficient information to identify that portion of the payment which is attributable to each of the noncustodial parents and the date of income withholding for each payment.

(c)(1) If there is more than one (1) notice or order for income withholding for current child support against a noncustodial parent and the total amount requested exceeds the limits imposed under the Consumer Credit Protection Act, the payor shall make pro rata disbursements, "pro rata" being the proportionate amount each notice or order bears to the total amount due for current support under all notices and orders.

(2) If the total to be withheld for current and past due support exceeds the Consumer Credit Protection Act's limits and if all notices and orders for current support have been satisfied, the payor shall make pro rata disbursements of the remaining amount available for disbursement for each notice or order involving past due support, "pro rata" being the proportionate amount each notice or order for past due support bears to the total amount due for past due support under all notices and orders.

(3)(A) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall notify employers of this change from first come, first served to pro rata in the treatment of multiple income withholding notices and orders for child support.

(B) Further, the Office of Child Support Enforcement shall take steps through public information activities to inform the public of this change.

(C) As far as practicable, the Office of Child Support Enforcement shall consolidate multiple income withholding notices and orders involving the same payor and noncustodial parent through issuance of a single notice to the payor under the notification procedures set out under § 9-14-222, delineating the amounts of pro rata disbursements to be made by the payor in Title IV-D cases.

(d) The payor shall implement withholding no later than the first pay period that occurs after fourteen (14) days following the date the notice was mailed.

9-14-229. Income withholding - Termination of order - Notice to payor.

(a) The circuit court may terminate an income withholding order upon proof that the court or its representative has been unable to deliver payments to the custodial parent for a period of six (6) months.

(b) An income withholding order shall terminate when there is no further support obligation owed.

(c) The circuit court or its representative shall notify the payor to cease withholding and shall refund support payments to the noncustodial parent in those cases where no state debt as defined in § 9-14-211 remains unpaid.

9-14-230. Decree as lien on real property.

(a)(1) Any decree, judgment, or order which contains a provision for payment of money for the support and care of any child or children through the registry of the court or through the Arkansas child support clearinghouse shall become a lien upon all real property, not otherwise exempt by the Arkansas Constitution, owned by the noncustodial parent or which the noncustodial parent may afterwards, or before the lien expires, acquire. Such lien originating in another state shall be accorded full faith and credit as if such lien originated in the State of Arkansas.

(2) The decree, judgment, or order shall become a lien as each support installment becomes due and remains unpaid.

(3) The decree, judgment, or order shall not become a lien for any sum or sums prior to the date they severally become due or payable.

(b)(1) The decree, judgment, or order shall be recorded in the judgment records of the county of the circuit court issuing the order in the same manner as other judgments as provided by law.

(2) Upon receipt of a certified copy of the decree, order, or judgment, the circuit clerk of any other county within the State of Arkansas shall record the certified copy, which shall become a lien against real estate located in that county owned or thereafter acquired by the noncustodial parent.

(3) When recording the decree, judgment, or order in a county other than the county of the circuit court issuing the order, a certified copy of the support payment record from the registry of the court noting all payments made since August 1, 1985, or from the date of the entry of the support order to the present, shall accompany the decree, judgment, or order.

(4) If a certified copy of the payment record does not accompany the decree, order, or judgment, the lien shall be for only the amount of payments which become due and remain unpaid subsequent to the date of recording in the county other than the county of the circuit court issuing the order.

(c)(1) The lien against real property created in this section shall be prioritized by the date it is created as set forth in subsection (b) of this section as would any other encumbrance under state law.

(2) It is the intent of the General Assembly that the lien created under this section does not relate back in time to the filing date of the decree, judgment, or order from which it arose but shall become viable only at such time as a support payment becomes due and remains unpaid.

(3) A lien created under this section may be satisfied through foreclosure and execution under the same procedure as otherwise provided by state law.

(d)(1) A certificate of the noncustodial parent sworn under penalty of perjury that all amounts and installments owed have been fully paid prior to the date of the certificate, when acknowledged before a notary public and accompanied by a certified copy of the support record since August 1, 1985, or the date of entry of the order, whichever is most recent in time, shall be prima facie proof of full payment of support owed and conclusive in favor of any person dealing in good faith and for a valuable consideration with the noncustodial parent. In the event of a legal disability of a noncustodial parent, the certificate of the personal representative of the noncustodial parent shall have the same effect. The certificate shall be sufficient to clear the lien against real property created under this section.

(2) A noncustodial parent who makes a false material statement, knowing it to be false, in executing the certificate as provided in this section shall be subject to the criminal penalty for perjury. The certificate as provided in this section shall be considered a statement under oath in an official proceeding for purposes of criminal prosecutions.

(3) The criminal prosecution provided for in this subsection shall not be exclusive and shall not supersede the rights which the custodial parent may have to pursue civil remedies against the noncustodial parent.

(e)(1) The lien created under this section may be cancelled or discharged upon full satisfaction.

(2) The lien is satisfied in full when the decree or order so finds or directs or, in the absence of such a decree or order, when all children covered under the order reach majority or are otherwise emancipated or die and all arrearages accruing under the decree, order, or judgment are paid in full according to the payment records of the court or by sworn affidavit of the person to whom support was paid.

(f) Notwithstanding other statutes in conflict with this section, the liens authorized by this subchapter shall continue in full force for three (3) years from the date when all children covered under the order reach majority or are emancipated or die without necessity or limitation of revivor under § 16-65-117 or § 16-65-501.

9-14-231. Overdue support as lien on personal property.

(a)(1)(A) Support which has been ordered paid through the registry of the court or through the Arkansas child support clearinghouse and which has become overdue shall become a lien on all personal property owned by the noncustodial parent wherever it may be found and need not be limited to the confines of the county where the circuit court is sitting.

(B) A lien originating in another state shall be accorded full faith and credit as if the lien originated in the State of Arkansas.

(2) Upon proof that the noncustodial parent has refused or failed to support his or her child or children pursuant to the order, the court may cause the property to be immediately surrendered to the sheriff of the county where the property is located and may direct the sheriff to take action as necessary to have it sold and apply the proceeds from any sale thereof toward the costs of the sale, any superior liens, the support obligation, including court costs and any attorney's fees awarded pursuant thereto, and any inferior liens.

(3) Any amounts in excess of the overdue support, costs, fees, and other liens shall be paid to the noncustodial parent.

(4) Any person who may purchase any personal property owned by the noncustodial parent for value and without notice of the lien for support shall take the property free of the lien.

(b) The lien against personal property created in this section shall bear the same priority as set forth in § 4-9-322.

9-14-232. Health care coverage.

(a) In all cases where the support and care of any children are involved, the court may order either parent to secure and maintain health care coverage for the benefit of the children when health care coverage is available or becomes available to the parent at a reasonable cost.

(b)(1) When the noncustodial parent has secured such coverage, the signature of the custodial parent, indicated as such, shall be a valid authorization to the coverage provider or insurer for the purposes of processing a payment to the children's health services provider.

(2) An order for health care coverage shall operate as an assignment of all benefit rights to require the insurer or coverage provider of the health care coverage to pay benefits for services rendered to the children to the custodial parent or to the children's health services provider.

9-14-233. Arrearages - Interest and attorney's fees - Work activities and incarceration.

(a) All child support that becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum unless the owner of the judgment or the owner's counsel of record requests prior to the accrual of the interest that the judgment shall not accrue interest.

(b) The circuit court shall award a minimum of ten percent (10%) of the support amount due or any reasonable fee, including a contingency fee approved by the circuit court, as attorney's fees in actions for the enforcement of payment of support provided for in the order.

(c) Collection of interest and attorney's fees may be by executions, proceedings of contempt, or other remedies as may be available to collect the original support award.

(d)(1) In all cases brought pursuant to Title IV-D of the Social Security Act wherein the custodial parent or children receive temporary assistance for needy families or benefits under the food stamp program, the Supplemental Security Income Program, Medicaid, and the Children's Health Insurance Program and the obligated parent owes overdue child support, the court shall order the obligated parent to pay the overdue amount according to a plan approved by the court and in compliance with this Code.

(2) If the obligated parent subject to such a plan is not incapacitated, the circuit court may order the obligated parent to participate in work activities including, but not limited to, unsubsidized employment, subsidized private sector employment, subsidized public sector employment, work experience including work associated with the refurbishing of publicly assisted housing in the event that sufficient private sector employment is not available. The number of hours that the obligated parent must participate in work activities per week shall be set by the court in an appropriate order. Additionally, the circuit court may order the obligated parent to spend a minimum number of hours engaged in applying for available positions that the obligor is qualified to fill and keep records of such activities as directed by the court.

(3) If the obligated parent can demonstrate enrollment and full participation in job-related training, which may include on-the-job-training, job search and job readiness assistance, community service programs, vocational education training not to exceed twelve (12) months' duration, job skills training directly related to employment, education directly related to employment if the obligated parent has not received a high school diploma or general education development certificate, the circuit court may substitute such participation in lieu of work activities as set out in subsection (e) of this section.

(e) If the obligated parent who is not incapacitated refuses to pay past-due support or refuses to engage in work activities or seek work activities as ordered by the court, the court may order the obligated parent to be incarcerated.

(f) In any action brought for the enforcement of a child support obligation, whenever the court orders an obligated parent to be incarcerated for failure to obey a previous order, the court may further direct that the obligated parent be temporarily released from confinement to engage in work activity upon such terms and conditions as the court deems just.

9-14-234. Arrearages - Finality of judgment.

(a) As used in this section, unless the context otherwise requires, "physical custodian" means a natural or adoptive parent, a guardian, or a person or agency who has custody of a child or children for more than eight (8) consecutive weeks, other than court-ordered visitation, during which there is an obligation to pay support for the child or children.

(b) Any decree, judgment, or order which contains a provision for the payment of money for the support and care of any child or children through the registry of the court or the Arkansas child support clearinghouse shall be final judgment subject to writ of garnishment or execution as to any installment or payment of money which has accrued until the time either party moves through

proper motion filed with the court and served on the other party to set aside, alter, or modify the decree, judgment, or order.

(c) The court may not set aside, alter, or modify any decree, judgment, or order which has accrued unpaid support prior to the filing of the motion. However, the court may offset against future support to be paid those amounts accruing during time periods other than reasonable visitation in which the noncustodial parent had physical custody of the child with the knowledge and consent of the custodial parent.

(d)(1) In cases brought pursuant to Title IV-D of the Social Security Act, a change in the physical custodian of a child or children, other than a party to the child support order, shall require written notice to the clerk of the court to redirect the child support to the present physical custodian when that physical custodian has had custody of the child or children for more than eight (8) consecutive weeks, other than court-ordered visitation, during which there is an obligation to pay child support.

(2) Any custodial parent who leaves a child in the physical custody of a third party for more than eight (8) consecutive weeks shall be presumed to have notice of the redirection of child support payments.

(e)(1) The physical custodian shall be responsible for giving notice to the clerk of the court.

(2)(A) Such notice shall be in writing and shall contain the following:

(i) The style of the case and the court docket number;

(ii) The names and addresses of any parents, guardians, or other caretakers;

(iii) The names of the child or children for whom child support is owed;

(iv) The name and address of the present physical custodian, along with a statement from the physical custodian that the child or children have resided with the physical custodian for more than eight (8) consecutive weeks other than court-ordered visitation;

(v) A statement that any parent, guardian, or other caretaker shall have ten (10) days after receipt of notice to file written objections; and

(vi) An affidavit from the physical custodian that the physical custodian has provided a copy of the notice required under subdivision (d)(1) of this section by personal service or by certified mail, restricted delivery, return receipt requested, to any parent, guardian, or other caretaker, and to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(B) Notification shall be sufficient under this section if mailed to the parent, guardian, or other caretaker at either the last known address provided to a court by the parent, guardian, or other caretaker, or to an address verified by the physical custodian.

(f) If no objection to the redirection of child support is filed with the clerk of the court within ten (10) days, the clerk shall redirect current child support payments to the physical custodian and so note the redirection on the payment records of the case.

(g) If an objection to redirection of child support is filed with the clerk of the court, the physical custodian or the Office of Child Support Enforcement may petition the court for an order to redirect child support payments to the physical custodian.

(h) All current child support payments shall follow the child or children and shall be payable to the physical custodian as support for the child or children.

(i)(1) The amount of accrued arrearages or overdue support to which a physical custodian is entitled shall be prorated and payable to the physical custodian for the period of actual custody of any child or children for whom support is owed.

(2) If there has been more than one (1) physical custodian, each shall be entitled to receive accrued arrearages or overdue support for the period of their custody of any child or children for whom support is owed, unless the court, for good cause shown and in the best interests of the child or children, shall find otherwise.

(j) Nothing in this section shall be construed to limit the jurisdiction of the court to proceed to enforce a decree, judgment, or order for the support of a minor child or children through contempt proceedings when the arrearage is reduced to judgment under subsection (b) of this section.

9-14-235. Arrearages - Payment after duty to support ceases.

(a) If a child support arrearage or judgment exists at the time when all children entitled to support reach majority, are emancipated, or die, or when the obligor's current duty to pay child support otherwise ceases, the obligor shall continue to pay an amount equal to the court-ordered child support, or an amount to be determined by a court based on the application of guidelines for child support under the family support chart, until such time as the child support arrearage or judgment has been satisfied.

(b) When the order of support directs an amount of support per child, as each child reaches majority, is emancipated, or dies, or the obligor's current duty to pay support otherwise ceases, the obligor shall continue to pay the amount set as child support, or an amount set by a court based on the application of the guidelines for child support under the family support chart, for that child if a judgment or child support arrearage exists until such time as the judgment or arrearage has been satisfied.

(c) Enforcement through income withholding, intercept of unemployment benefits or workers' compensation benefits, income tax intercept, additional payments ordered to be paid on the child support arrearage or judgment, contempt proceedings, or any other means of collection shall be available for the collection of a child support arrearage or judgment until such is satisfied.

(d) Income withholding under § 9-14-221 may be used to satisfy a child support arrearage or judgment.

(e) As used in this section, "judgment" means unpaid child support and medical bills, interest, attorney's fees, or costs associated with a child support case when such has been reduced to judgment by the court or become a judgment by operation of law.

(f) The purpose of this section is to allow the enforcement and collection of child support arrearages and judgments after the obligor's duty to pay support ceases.

9-14-236. Arrearages - Child support limited - Limitations period.

(a) As used in this section:

(1) "Action" means any complaint, petition, motion, or other pleading seeking recovery of accrued child support arrearages;

(2) "Moving party" means any of the following:

(A) The custodial parent;

(B) Any person or agency to whom custody of a minor child has been given or relinquished;

(C) The minor child through his or her guardian or next friend;

(D) A person for whose benefit the support was ordered, within five (5) years of obtaining his or her majority; or

(E) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when the custodial parent or person to whom custody has been relinquished or awarded is or has been receiving assistance in the form of Aid to Families with Dependent Children or has contracted with the Office of Child Support Enforcement for the collection of support;

(3) "Accrued child support arrearages" means a delinquency owed under a court order or an order of an administrative process established under state law for support of any child or children which is past due and unpaid; and

(4) "Initial support order" means the earliest order, judgment, or decree entered in the case by the court or by administrative process which contains a provision for the payment of money for the support and care of any child or children.

(b) In any action involving the support of any minor child or children, the moving party shall be entitled to recover the full amount of accrued child support arrearages from the date of the initial support order until the filing of the action.

(c) Any action filed pursuant to subsection (b) of this section may be brought at any time up to and including five (5) years beyond the date the child for whose benefit the initial support order was entered reaches the age of eighteen (18) years.

(d) No statute of limitation shall apply to an action brought for the collection of a child support obligation or arrearage against any party who leaves or remains outside the State of Arkansas with the purpose to avoid the payment of child support.

(e) This section shall apply to all actions pending as of March 29, 1991, and filed thereafter, and shall retroactively apply to all child support orders now existing.

9-14-237. Expiration of child support obligation.

(a)(1) Unless a court order for child support specifically extends child support after these circumstances, an obligor's duty to pay child support for a child shall automatically terminate by operation of law:

(A) When the child reaches eighteen (18) years of age or should have graduated from high school, whichever is later;

(B) When the child:

(i) Is emancipated by a court of competent jurisdiction;

(ii) Marries; or

(iii) Dies; or

(C) Upon the marriage of the parents of the child to each other.

(2) Provided, however, that any unpaid child support obligations owed under a judgment or in arrearage pursuant to a child support order shall be satisfied pursuant to § 9-14-235.

(b)(1) If the obligor has additional child support obligations after the duty to pay support for a child terminates, then either the obligor, custodial parent, physical custodian, or the Office of Child Support Enforcement of the Revenue Division of Department of Finance and Administration may, within thirty (30) days subsequent to the expiration of the ten-day period allowed for the notification, as provided in subdivision (b)(5) of this section, file a motion with a court of competent jurisdiction requesting that the court determine the amount of the child support obligation for the remaining children.

(2) The remaining obligations, subsequent to the expiration of the thirty-day period contained in subdivision (b)(1) of this section, shall be adjusted by operation of law to an amount to be determined by using the most recent version of the family support chart pursuant to § 9-12-312(a)(2) for any remaining children for whom an obligation for child support exists.

(3) If the most recent child support order either was entered prior to the adoption of the family support chart by the Arkansas Supreme Court or the support amount, as indicated by the order, deviated from the family support chart, then the issue of the amount of the obligor's child support obligation shall be decided by a court of competent jurisdiction.

(4)(A) In the event a review is requested, the court shall apply the family support chart for the remaining number of children from the date of the termination of the duty, subject to any changed circumstances, which shall be noted in writing by the court.

(B) Deviation from the family support chart shall be noted in the court order or on the record, as appropriate.

(5)(A) The obligor shall provide written notification of the termination of the duty of support to the custodial parent, the physical custodian, the clerk of the court responsible for receipt of the child support payments, the obligor's employer, if income withholding is in effect, and the Office of Child Support Enforcement, if applicable, within ten (10) days of the termination of the duty of support.

(B) The obligor shall enclose with the written notification of termination a copy of the most recent child support order.

(C) The notification shall state the name and age of each child for whom the obligation to pay child support has ceased and the name and age of children set out in prior terminations of child support made pursuant to this subsection.

(c) No statute of limitations shall apply to an action brought for the collection of a child support obligation of arrearage against any party who leaves or remains outside the State of Arkansas with the purpose to avoid the payment of child support.

9-14-238. Collection of support obligations.

(a) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to enter into professional service contracts with private individuals or businesses and public agencies concerning the establishment, and enforcement through court-ordered proceedings, of the collection, monitoring, and distribution of support obligations, including service of process as defined by § 9-14-206(d).

(b)(1) The Arkansas Title IV-D child support enforcement agency may collect unreimbursed public or medical assistance under a cooperative agreement with the state's Title IV-A or medicaid agencies for any unreimbursed public or medical assistance owed the state.

(2) Under any cooperative agreement which disallows the expenditure of federal Title IV-D funds, Title IV-D expenditures for activities associated with the recovery of state medicaid or unreimbursed public assistance funds shall be paid to the Title IV-D agency by the state agency for which the funds are recovered.

9-14-239. Suspension of license for failure to pay child support.

(a) As used in this section:

(1) "Department" means the Department of Finance and Administration or its duly authorized agents;

(2) "License" means an Arkansas driver's license issued pursuant to § 27-16-101 et seq., and § 27-20-101 et seq., or an occupational, professional, or business license regulated under Title 17 and all other licenses regulated under Titles 2-6, 8, 9, 14, 15, 20, 22, 23, and 27;

(3) "Office" means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration;

(4) "Other licensing entity" means any other state agency, department, board, commission, municipality, or any entity within the State of Arkansas or the United States that issues or renews an occupational, professional, or business license regulated under Title 17 and all other licenses regulated under Titles 2-6, 8, 9, 14, 15, 20, 22, 23, and 27; and

(5) "Permanent license plate" means the license plate, issued by the department, which by law must be affixed to every vehicle as defined by § 27-14-1002 and every motorized cycle as defined by § 27-20-101.

(b)(1)(A) Unless an obligor executes an installment agreement or makes other necessary and proper arrangements with the office, the office shall notify the department or other licensing entity to suspend the license or permanent license plate of the obligor whenever the office determines that one (1) of the following conditions exists:

(i) The obligor is delinquent on a court-ordered child support payment or an adjudicated arrearage in an amount equal to three (3) months' obligation or more; or

(ii) The obligor is the subject of an outstanding failure to appear warrant, a body attachment, or a bench warrant related to a child support proceeding.

(B) Prior to the notification to suspend the license of the obligor, the office shall determine whether the obligor holds a license or permanent license plate with the department or other licensing entity.

(2)(A) The office shall notify the obligor that a request will be made to the department to suspend the license or permanent license plate sixty (60) days after the notification unless a hearing with the office is requested in writing within thirty (30) days to determine whether one (1) of the conditions of suspension does not exist.

(B) Notification shall be sufficient under this subdivision (b)(2) if mailed to the obligor at either the last known address provided to the court by the obligor pursuant to § 9-14-205 or to the address used by the obligor on the license or the application for a permanent license plate.

(c) Following a determination by the office under subdivision (b)(1) of this section, the office shall notify the department or other licensing entity to suspend the license or permanent license plate of the obligor.

(d)(1) The department or other licensing entity, upon receipt of the notification, shall immediately suspend the license or permanent license plate of the obligor.

(2) This suspension shall remain in effect until the department or other licensing entity is notified by the office to release the suspension.

(e)(1) If the obligor enters into an installment agreement or makes other necessary and proper arrangements with the office to pay child support, the office shall immediately notify the department or other licensing entity to restore the license or permanent license plate of the obligor.

(2) In the case of fraud or mistake, the office shall immediately notify the department or other licensing entity to restore the license or permanent license plate of the obligor, as appropriate.

(f) The office and the department are authorized to promulgate rules and regulations necessary to carry out this section in the interests of justice and equity.

(g) The office is authorized to seek an injunction in the circuit court of the county in which the child support order was entered, restraining the obligor from driving or from any licensed or permitted activity during the time the obligor's license or permanent license plate is suspended.

(h)(1)(A) Any obligor whose license or permanent license plate has been suspended may appeal to the circuit court of the county in which the child support order was entered or transferred, within thirty (30) days after the effective date of the suspension, by filing a petition with a copy of the notice of the suspension attached, or with a copy of the final administrative hearing decision of the office, with the clerk of the circuit court and causing a summons to be served on the administrator of the office.

(B) For persons paying child support pursuant to § 9-17-501 or § 9-17-507, the foreign order shall be registered by the office pursuant to § 9-17-601 et seq.

(2) The case shall be tried de novo.

(3) The circuit judges are vested with jurisdiction to determine whether the petitioner is entitled to a license or permanent license plate or whether the decision of the hearing officer should be affirmed, modified, or reversed.

(i) Nothing provided in this section shall be interpreted to prohibit the circuit court from suspending a permanent license plate or a license through contempt proceedings resulting from the nonpayment of child support.

9-14-240. Expiration of income withholding.

(a)(1) Income withholding for child support shall terminate by operation of law when one (1) of the conditions set out in § 9-14-237(a) is met.

(2) However, in no event shall income withholding for child support terminate:

(A) When a current child support obligation exists; or

(B) When a child support arrearage exists, until such time as the arrearage has been satisfied.

(b)(1) If there are no child support arrearages, the obligor may terminate income withholding for child support without petitioning the court by giving written notice, in person or by certified mail, to the obligor's employer, the custodial parent or physical custodian, the Office of Child

Support Enforcement of the Revenue Division of the Department of Finance and Administration, the child support clearinghouse, and the clerk of the court.

(2) The notice shall be given no earlier than thirty (30) days before the termination of the duty to pay support, and shall state:

- (A) The name and address of the obligor;
- (B) The name and address of the obligor's employer;
- (C)(i) That income withholding for child support will be terminated;
- (ii) The date of intended termination; and
- (iii) The basis for termination of income withholding; and

(D) That the custodial parent or physical custodian, the Office of Child Support Enforcement, or the clerk of the court has the right to file written objection to the termination.

(3) The written objection to the termination shall:

(A) Be made by certified mail to the obligor and the obligor's employer within ten (10) days after receipt of the notice of intent to terminate income withholding for child support;

(B) State that the obligor's duty to pay child support has not been fulfilled as required by court order; and

(C) Set forth the reasons for nonfulfillment.

(4) If a written objection is filed as provided in this section, then income withholding for child support shall continue until such time as an order is entered which terminates, alters, or amends income withholding for child support.

(c)(1) Income withholding for child support may be terminated without petitioning the court by filing with the clerk of the court and submitting to the obligor's employer an affidavit attested to by the obligor, the custodial parent or physical custodian, and the Office of Child Support Enforcement.

(2) The affidavit shall state:

- (A) The name and address of the obligor and the custodial parent or physical custodian;
- (B) The name and address of the obligor's employer;
- (C) The style of the court case and number;
- (D) That one (1) of the conditions set forth in § 9-14-237(a) has been met;
- (E) The date that income withholding for child support shall terminate;
- (F) That there are no child support arrearages; and

(G) That the Office of Child Support Enforcement by its agent, designee, or contractor, whose name and address is provided, has determined that no debt to the state is owing in the cause based on an assignment of rights under §§ 9-14-109 and 20-77-109.

(d)(1) In any action to reinstate income withholding for child support, and where the court determines that income withholding for child support was wrongly terminated pursuant to subsections (b) or (c) of this section, the court shall award costs and a minimum of ten percent (10%) of the support amount due as attorney's fees to the prevailing party.

(2)(A) If the custodial parent or physical custodian, the Office of Child Support Enforcement, or the clerk of the court objects to the termination of income withholding for child support and a petition is filed for an order terminating income withholding for child support and the obligor prevails, the court may award attorney's fees and costs to the obligor.

(B) Provided, however, there shall be no award for attorney's fees and costs against the Office of Child Support Enforcement or the clerk of the court.

(f) Notices of intent to terminate income withholding for child support filed by the obligor, and any written objection filed by the custodial parent or physical custodian, the Office of Child Support Enforcement, or the clerk of the court, shall be executed under penalty for false swearing.

(g)(1) If a court determines that the amount withheld for child support exceeded the obligor's child support obligation, the obligor shall be entitled to reimbursement.

(2) The court may order the custodial parent or physical custodian to repay the excess amounts withheld and may refer to the family support chart to fix a schedule of repayments.

Chapter 18. Qualified Domestic Relations Orders.

9-18-101. Definitions.

As used in this section, unless the context otherwise requires:

(1) "Circuit court" means the equity court of each county in the State of Arkansas created under § 16-13-301 et seq.;

(2) "Domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provisions for child support, alimony payment, or marital property rights to a spouse, former spouse, child, or other dependents of a participant under Arkansas law;

(3) "Qualified domestic relations order" means a domestic relations order:

(A) Which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant's retirement plan; and

(B) Which clearly specifies the name and last known mailing address, if any, of the participant and the name and mailing address of each alternate payee covered by the order, the amount or percentage of the participant's benefits to be paid by the plan to each alternate payee or the manner in which the amount or percentage is determined, the number of payments or period of time to which the order applies, and each retirement plan to which the order applies; and

(C) Which does not require the retirement plan to provide any type or form of benefit, or pay options not otherwise available under the plan, does not require the plan to provide increased benefits, and does not require the payment of benefits to an alternate payee which are required to

be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

- (4) "Participant" means any person or member of a retirement plan; and
- (5) "Retirement plan" means any retirement plan, private or public, including, but not limited to:
 - (A) The Arkansas Teacher Retirement System;
 - (B) The Arkansas State Police Retirement System;
 - (C) The Arkansas State Highway Employees' Retirement System;
 - (D) The Arkansas Public Employees' Retirement System;
 - (E) The Judicial Retirement System; and
 - (F) Other state-supported alternate retirement systems.

9-18-102. Orders to reach retirement benefits.

(a) Notwithstanding §§ 24-3-212 and 24-7-715 or any other laws of Arkansas limiting the application of legal process to any retirement plans, the circuit courts of Arkansas are empowered to enter qualified domestic relations orders to reach any and all retirement annuities and benefits of any retirement plan.

(b) The qualified domestic relations order of the circuit court is authorized to specify that a designated percent of a fractional interest on any retirement benefit payment may be paid to an alternate payee.

9-18-103. Orders to reach public employees' retirement benefits.

(a) Notwithstanding §§ 24-3-212 and 24-7-715 or any other laws of Arkansas limiting the application of legal process to any retirement plans, the Arkansas Teacher Retirement System, the Arkansas State Police Retirement System, the Arkansas State Highway Employees' Retirement System, the Arkansas Public Employees' Retirement System, the Judicial Retirement System, and any other state-supported retirement system shall comply with any qualified domestic relations order as defined in this section.

(b) The boards of trustees of the retirement systems shall promulgate rules and regulations to implement this section and shall adopt a uniform legal form, as approved by the Legislative Council, for use in preparing qualified domestic relations orders for each retirement plan.