



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2026-036

May 12, 2026

The Honorable Jim Wooten
State Representative
Post Office Box 280
Beebe, Arkansas 72012

Dear Representative Wooten:

I am writing in response to your request for an opinion regarding Arkansas's joint custody laws, specifically Act 1156 of 2013 and Act 604 of 2021. Act 1156 states that in an action for divorce, an award of joint custody of minor children is favored. Act 604 added a rebuttable presumption that joint custody is in the best interest of the child in actions concerning an original child custody determination in a divorce or paternity matter. Against this background, you ask the following questions, which I address together below:

1. Was joint custody the default arrangement in child custody prior to Act 604 from 2021?
2. How did Act 604 change child custody law from Act 1156 of 2013?

RESPONSE

Joint custody was not the default or presumed arrangement before Act 604 of 2021. The first notable shift toward favoring joint custody occurred in 2013. Before 2013, joint custody was permitted but not favored unless circumstances clearly warranted it.¹ With the adoption of Act 1156, the General Assembly changed that posture by declaring that joint custody was favored in divorce actions.²

While Act 1156 amended Arkansas law regarding joint custody in divorce actions, it did not impose a rebuttable presumption that joint custody was in the best interest of the child or require the circuit court to consider an award of joint custody. That changed with Act 604, which amended A.C.A. § 9-13-101 to impose a rebuttable presumption that joint custody was in the best interest of a child when the action concerned an original custody determination in a divorce or paternity

¹ *Dansby v. Dansby*, 87 Ark. App. 156, 165–66, 189 S.W.3d 473, 480 (2004); *Thompson v. Thompson*, 63 Ark. App. 89, 92, 974 S.W.2d 494, 496 (1998).

² A.C.A. § 9-13-101(a)(1)(A)(iii), as amended by Act 1156 of 2013.

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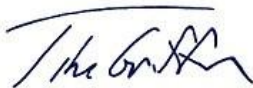
action.³ If the court finds the presumption has been rebutted, the court is required to enter written findings explaining the basis for rebutting the presumption and to establish a parenting-time schedule that maximizes each parent’s time with the child, consistent with the child’s best interest.⁴

Additionally, Act 604 amended the statute to state that “the circuit court *shall* [as opposed to *may*] consider awarding joint custody of a child to the parents in making an order for custody.”⁵ Furthermore, the Act provides that a parent who is not granted sole, primarily, or joint custody is entitled to “reasonable parenting time,” absent a finding that parenting time “would seriously endanger the physical, mental, or emotional health of the child.”⁶

This statutory preference does not override “the ultimate guiding principle that the best interest of the child is the polestar for a custody determination.”⁷ While joint custody is the favored outcome in original paternity and divorce actions, and while joint custody is presumed to be in the best interest of the child, it is not mandatory.⁸ The rebuttable presumption established by Act 604 of 2021 yields when the evidence demonstrates that joint custody would not serve the child’s welfare. The best interest of the child remains the paramount concern.

Assistant Attorney General Justin Hughes prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Griffin", with a horizontal line drawn above it.

TIM GRIFFIN
Attorney General

³ *Id.* § 9-13-101(a)(1)(A)(iv)(a), as amended by Act 604 of 2021.

⁴ *Id.* § 9-13-101(b)(3), as amended by Act 604 of 2021.

⁵ *Id.* § 9-13-101(b)(1)(A)(ii), as amended by Act 604 of 2021 (emphases added).

⁶ *Id.* § 9-13-101(b)(1)(A)(vii)(a), as amended by Act 604 of 2021.

⁷ *Saunders v. Saunders*, 2022 Ark. App. 428, 13–14, 653 S.W.3d 830, 838.

⁸ *Allen v. Allen*, 2021 Ark. App. 263, 13.