

1 State of Arkansas  
2 95th General Assembly  
3 Regular Session, 2025  
4

# A Bill

HOUSE BILL 1838

5 By: Representative Dalby  
6 By: Senator A. Clark  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE LAW CONCERNING PROBATE ACTIONS;  
10 TO AMEND THE LAW CONCERNING ADOPTION AND  
11 GUARDIANSHIP; AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

14  
15 TO AMEND THE LAW CONCERNING PROBATE  
16 ACTIONS; AND TO AMEND THE LAW CONCERNING  
17 ADOPTION AND GUARDIANSHIP.  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 9-9-206 is amended to read as follows:

22 9-9-206. Persons required to consent to adoption – Consideration for  
23 relinquishing minor for adoption.

24 (a) Unless consent is not required under § 9-9-207, a petition to  
25 adopt a minor may be granted only if written consent to a particular adoption  
26 has been executed by:

27 (1) The mother of the minor;

28 (2) The father of the minor if:

29 (A) The father was married to the mother at the time the  
30 minor was conceived or at any time thereafter;

31 (B) The minor is his child by adoption;

32 (C) He has physical custody of the minor at the time the  
33 petition is filed;

34 (D) He has a written order granting him legal custody of  
35 the minor at the time the petition for adoption is filed;

36 (E) A court has adjudicated him to be the legal father



1 prior to the time the petition for adoption is filed;

2 (F) He proves a significant custodial, personal, or  
3 financial relationship existed with the minor before the petition for  
4 adoption is filed; or

5 (G) He has acknowledged paternity under § 9-10-120(a);

6 (3) Any person lawfully entitled to custody of the minor or  
7 empowered to consent;

8 (4) The court having jurisdiction to determine custody of the  
9 minor, if the legal guardian or custodian of the person of the minor is not  
10 empowered to consent to the adoption; and

11 ~~(5) The minor, if more than twelve (12) years of age, unless the~~  
12 ~~court in the best interest of the minor dispenses with the minor's consent;~~  
13 ~~and~~

14 ~~(6) The spouse of the minor to be adopted.~~

15 (b)(1) The consent of a minor who is twelve (12) years of age or older  
16 shall be given at the adoption hearing.

17 (2) The court may waive the requirement for the minor's consent  
18 under subdivision (b)(1) of this section upon a finding by clear and  
19 convincing evidence that the waiver is in the minor's best interest.

20 ~~(b)(c)(1) A petition to adopt an adult may be granted only if written~~  
21 ~~consent to adoption has been executed by the adult and the adult's spouse the~~  
22 ~~adult consents at the adoption hearing and written or testimonial consent is~~  
23 ~~given by the adult's spouse, if the adult is married.~~

24 (2) The court may waive the requirement for the spouse's consent  
25 under subdivision (c)(1) of this section upon a finding that the consent is  
26 not possible or is being unreasonably withheld.

27 ~~(e)(d)~~ Under no circumstances may a parent or guardian of a minor  
28 receive a fee, compensation, or any other thing of value as a consideration  
29 for the relinquishment of a minor for adoption. However, incidental costs for  
30 prenatal, delivery, and postnatal care may be assessed, including reasonable  
31 housing costs, food, clothing, general maintenance, and medical expenses, if  
32 they are reimbursements for expenses incurred or fees for services rendered.  
33 Any parent or guardian who unlawfully accepts compensation or any other thing  
34 of value as a consideration for the relinquishment of a minor shall be guilty  
35 of a Class C felony.

36

1 SECTION 2. Arkansas Code § 9-9-208(a), concerning the manner that  
2 consent to adoption shall be executed, is amended to read as follows:

3 (a) The required consent to adoption shall be executed at any time  
4 after the birth of the child and in the manner following:

5 (1) If by the individual to be adopted, ~~in the presence of the~~  
6 court consent must be given or affirmed to the court at the adoption hearing;

7 (2) If by an agency, by the executive head or other authorized  
8 representative, in the presence of a person authorized to take  
9 acknowledgments;

10 (3) If by any other person, in the presence of the court or in  
11 the presence of a person authorized to take acknowledgments; and

12 (4) If by a court, by appropriate order or certificate.

13  
14 SECTION 3. Arkansas Code § 9-9-208(d)(3), concerning when a parent  
15 whose consent is required for adoption is not required to have limited,  
16 independent legal representation, is amended to read as follows:

17 (3) This subsection shall not apply to an adoption if the  
18 petitioner is:

19 (A) A stepparent whose spouse is a natural or adoptive  
20 parent of the child to be adopted;

21 (B) Related to the child to be adopted within the ~~second~~  
22 third degree as defined in § 28-9-212; or

23 (C) Represented by an attorney pro bono in the adoption  
24 proceeding.

25  
26 SECTION 4. Arkansas Code § 28-65-101 is amended to read as follows:

27 28-65-101. Definitions.

28 As used in this chapter:

29 (1) "Emergency guardianship" means a short-term guardianship  
30 that is:

31 (A) Granted by the court when there is an imminent danger  
32 to the life, health, or property of an incapacitated person under § 28-65-  
33 218(a); and

34 (B) In effect for no more than fourteen (14) continuous  
35 calendar days;

36 ~~(1)(2)~~ "Essential requirements for health or safety" means the

1 health care, food, shelter, clothing, and protection without which serious  
2 illness or serious physical injury will occur;

3 ~~(2)~~(3) "Evaluation" means a professional assessment of the  
4 abilities of the respondent and the impact of any impairments on the  
5 individual's capability to meet the essential requirements for his or her  
6 health or safety or to manage his or her estate;

7 ~~(3)~~(4) "Guardian" means one appointed by a court to have the  
8 care and custody of the person or of the estate, or of both, of an  
9 incapacitated person;

10 ~~(4)~~(5) "Guardian ad litem" means one appointed by a court in  
11 which a particular proceeding is pending to represent a ward or an unborn  
12 person in that proceeding;

13 (6) "Guardianship" means a court-monitored case where a guardian  
14 has authority and responsibility to take care of another person, another  
15 person's property, or both another person and that person's property;

16 ~~(5)~~(7)(A) "Incapacitated person" means a person who is impaired  
17 by reason of a disability such as mental illness, mental deficiency, physical  
18 illness, chronic use of drugs, or chronic intoxication, to the extent of  
19 lacking sufficient understanding or capacity to make or communicate decisions  
20 to meet the essential requirements for his or her health or safety or to  
21 manage his or her estate.

22 (B) "Incapacitated person" includes an endangered adult or  
23 impaired adult as defined in § 9-20-103, who is in the custody of the  
24 Department of Human Services.

25 (C) Nothing in this chapter shall be construed to mean a  
26 person is incapacitated for the sole reason he or she relies consistently on  
27 treatment by spiritual means through prayer alone for healing in accordance  
28 with his or her religious tradition and is being furnished such treatment;

29 ~~(6)~~(8) "Least restrictive alternative" means the form of  
30 assistance that least interferes with the legal capacity of the respondent to  
31 act in his or her own behalf;

32 ~~(7)~~(9) "Limited guardian" means one whose powers and authority  
33 have been limited to the specific powers, authorities, and duties set forth  
34 in the order of appointment;

35 ~~(8) "Professional" means a physician, licensed psychologist, or~~  
36 ~~licensed certified social worker with training, experience, and knowledge of~~

1 ~~the particular alleged disability of the respondent;~~

2 ~~(9)~~(10) "Relative" means the spouse, child, grandchild, parent,  
3 grandparent, or sibling of a ward;

4 ~~(10)~~(11) "Temporary guardian" means a guardian appointed pursuant  
5 ~~to~~ under § 28-65-218(b); and

6 ~~(11)~~(12) "Ward" means an incapacitated person for whom a guardian  
7 has been appointed.

8  
9 SECTION 5. Arkansas Code § 28-65-107(c), concerning jurisdiction in a  
10 guardianship case when the subject of the guardianship is also the subject of  
11 an open case under the Arkansas Juvenile Code of 1989, is amended to read as  
12 follows:

13 (c)(1)(A) If a juvenile is the subject matter of an open case filed  
14 under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the  
15 guardianship petition shall be filed in that case if the juvenile resides in  
16 Arkansas.

17 (B) If a guardianship is granted in a juvenile case under  
18 subdivision (c)(1)(A) of this section, the court shall order a court clerk to  
19 accept a guardianship order with a probate style and new case number as the  
20 initiating document for a probate guardianship case.

21 (2) If the juvenile resides out of state through the Interstate  
22 Compact on the Placement of Children, § 9-29-201 et seq., the guardianship  
23 petition may be filed in Arkansas or it may be filed in the state in which  
24 the juvenile resides, subject to approval by the receiving state.

25 (3) The Department of Human Services may intervene as a matter  
26 of right in a guardianship action at any time in an emergency or temporary  
27 guardianship case ~~before the entry of a permanent guardianship order~~ if:

28 (A) A guardianship action is initiated for a child or  
29 adult in the custody of the department, including a seventy-two-hour hold;  
30 and

31 (B) The custody of the child or adult is granted to a  
32 party seeking guardianship.

33  
34 SECTION 6. Arkansas Code § 28-65-109 is amended to read as follows:  
35 28-65-109. Actions by ward against guardian.

36 An action by a ward against his or her guardian for a settlement of his

1 or her accounts, for additional security, or for his or her removal, ~~must be~~  
 2 ~~brought in the county in which the guardian was qualified~~ shall be brought in  
 3 the court that has jurisdiction over the relevant guardianship case.  
 4

5 SECTION 7. Arkansas Code § 28-65-202(c)(1) and (2), concerning  
 6 improper venue in a guardianship case, are amended to read as follows:

7 (c)(1) If ~~it appears to~~ the court finds at any time before the  
 8 termination of the guardianship that the proceeding was commenced in a county  
 9 of improper venue, the court shall order the proceeding transferred to  
 10 ~~another~~ the circuit court with proper venue.

11 (2) If ~~it appears~~ the court finds that the residence of the ward  
 12 or of the guardian has been changed to another county ~~or, in case of~~  
 13 ~~guardianship of the estate, that a transfer would be for the best interest of~~  
 14 ~~the ward and his or her estate~~, then the court in its discretion may order  
 15 the proceedings transferred to ~~another~~ the proper circuit court.  
 16

17 SECTION 8. Arkansas Code § 28-65-203(a)(1), concerning qualifications  
 18 for a natural person to be appointed guardian of the person and of the estate  
 19 of an incapacitated person, is amended to read as follows:

20 (a)(1) A natural person is qualified to be appointed guardian of the  
 21 person and of the estate of an incapacitated person if he or she is:

- 22 (A) A resident of this state;  
 23 (B) At least eighteen (18) years of age;  
 24 (C) Of sound mind; and  
 25 (D) Subject to the limitations in subdivision (a)(2) of  
 26 this section, either:

- 27 (i) Not a convicted and unpardoned felon; or  
 28 (ii) A convicted and unpardoned felon who has  
 29 disclosed his or her prior felony conviction and for whom the court has  
 30 entered written findings stating that, notwithstanding the felony conviction,  
 31 he or she is otherwise qualified after reviewing a certified copy of the  
 32 sentencing order or may request that the court take judicial notice of the  
 33 official sentencing order through the official online court records system  
 34 administered by the Administrative Office of the Courts.  
 35

36 SECTION 9. Arkansas Code § 28-65-203(f), concerning requirements for a

1 nonresident natural person appointed as resident agent to accept service of  
2 process in a guardianship matter, is amended to read as follows:

3 (f)(1) A nonresident natural person possessing the qualifications  
4 enumerated in this section, except as to residence, who has appointed a  
5 resident agent to accept service of process in any action or suit with  
6 respect to the guardianship and has caused the appointment to be filed with  
7 the court, whether or not he or she has been nominated by the will of the  
8 last surviving parent of a minor resident of this state to be appointed as  
9 guardian of the minor, is qualified for the appointment.

10 (2) ~~However, unless nominated by will, bond may not be dispensed~~  
11 ~~with.~~

12  
13 SECTION 10. Arkansas Code § 28-65-203(k) and (1)(1), concerning  
14 circumstances in which a court may grant a guardianship of an adult in the  
15 custody of the Department of Human Services and when a court may appoint a  
16 guardian or permanent custodian of an adopted juvenile, are amended to read  
17 as follows:

18 (k) ~~A circuit court of this state shall not appoint a person or~~  
19 ~~institution as the permanent custodian or permanent guardian of the person or~~  
20 ~~estate of an adult in the custody of the department~~ When an adult is in the  
21 custody of the department, a circuit court shall not grant a full  
22 guardianship of the adult unless:

23 (1) The department has evaluated the prospective guardian under  
24 the department's authority under § 9-20-122 and promulgated department  
25 policy; or

26 (2) The department has evaluated the prospective custodian under  
27 the department's authority under § 9-20-122 and promulgated department  
28 policy.

29 (1)(1) A circuit court of this state shall not appoint an unrelated  
30 person, a related person that is not related within the fifth degree of  
31 consanguinity, ~~or~~ an institution as a permanent custodian, ~~or permanent~~  
32 ~~guardian~~ more than a temporary guardianship of the person or estate of an  
33 adopted juvenile unless at least twenty (20) days before the hearing the  
34 prospective guardian files a written home study that has been conducted by a  
35 licensed certified social worker.

36

1 SECTION 11. Arkansas Code § 28-65-204(a), concerning the preference  
2 for a parent of an unmarried minor to be appointed guardian of the person of  
3 the unmarried minor, is amended to read as follows:

4 (a) ~~The parents of an unmarried minor, or either of them, if qualified~~  
5 ~~and, in the opinion of the court, suitable, shall be preferred over all~~  
6 ~~others for appointment as guardian of the person~~ Except in the case of an  
7 emergency guardian or temporary guardianship, a guardianship of a minor child  
8 that removes custody from a parent or prevents a parent from having custody  
9 of the minor child shall not be granted over the objection of the parent  
10 unless there is clear and convincing evidence that the parent is unfit to  
11 care for the child given the circumstances.

12  
13 SECTION 12. Arkansas Code § 28-65-205(b), concerning what shall be  
14 included in a petition for a guardianship, is amended to read as follows:

15 (b) The petition shall state, insofar as can be ascertained:

16 (1) The name, age, residence, and ~~post office~~ address of the  
17 incapacitated person;

18 (2) The nature of incapacity and purpose of the guardianship  
19 sought in accordance with the classifications set forth in § 28-65-104;

20 (3) The approximate value and a description of the incapacitated  
21 person's property, including any compensation, pension, insurance, or  
22 allowance to which he or she may be entitled;

23 (4) Whether there is, in any state, a guardian of the person or  
24 of the estate of the ~~incompetent~~ proposed ward;

25 (5) The residence and post office address of the person whom the  
26 petitioner asks to be appointed guardian;

27 (6) The names and addresses, so far as known or can be  
28 reasonably ascertained, of the persons most closely related to the  
29 incapacitated person by blood or marriage;

30 (7) The name and address of the person or institution having the  
31 care and custody of the incapacitated person;

32 (8) The names and addresses of wards for whom any natural person  
33 whose appointment is sought is already guardian;

34 (9) The reasons why the appointment of a guardian is sought and  
35 the interest of the petitioner in the appointment;

36 (10) A statement of the respondent's alleged disability;



1 (11) A recommendation proposing the type, scope, and duration of  
2 guardianship;

3 (12) A statement that any facility or agency from which the  
4 respondent is receiving services ~~has been~~ will be properly notified of the  
5 proceedings; and

6 (13) The names and addresses of likely witnesses ~~others~~ having  
7 knowledge about the person's disability, property, or both.

8  
9 SECTION 13. Arkansas Code § 28-65-206 is amended to read as follows:

10 28-65-206. Single guardianship for two or more incapacitated persons.

11 When an application is made for the appointment of a guardian for two  
12 (2) or more incapacitated persons who are children of a common parent, or are  
13 parent and child or are husband and wife, ~~it shall not be necessary that a~~  
14 ~~separate petition, bond, or other paper be filed for each incompetent, and~~  
15 the guardianship of all may be considered as one (1) proceeding except that  
16 the guardian shall maintain and file separate accounts for the estates of  
17 each of ~~his or her wards~~ the proposed wards.

18  
19 SECTION 14. Arkansas Code § 28-65-207 is amended to read as follows:

20 28-65-207. Notice of hearing for appointment.

21 (a) Notice of the hearing for the appointment of a guardian need not  
22 be given to any person:

23 (1) Who has signed the petition;

24 (2) Who has in writing waived notice of the hearing, except the  
25 ~~alleged incapacitated person~~ proposed ward may not waive notice;

26 (3) Who actually appears at the hearing;

27 (4) Whose existence, relationship to the ~~alleged incapacitated~~  
28 ~~person~~ proposed ward, or whereabouts is unknown and cannot by the exercise of  
29 reasonable diligence be ascertained;

30 (5) Other than the ~~alleged incapacitated person~~ proposed ward,  
31 whom the court finds to be beyond the limits of the continental United States  
32 or himself or herself ~~incompetent~~ incapacitated; or

33 (6) The ~~alleged incapacitated person~~ proposed ward if the court  
34 finds that he or she is detained or confined by a foreign power or has  
35 disappeared.

36 (b) Except as provided in subsection (a) of this section, before the

1 court shall appoint ~~a~~ an emergency guardian, other than a temporary guardian,  
 2 notice of the hearing ~~of the application~~ for the appointment of the guardian  
 3 shall be served upon the following, if reasonably possible:

4 (1)(A) ~~The alleged incapacitated person proposed ward, if over~~  
 5 fourteen (14) years of age or older, ~~and the alleged incapacitated person~~  
 6 ~~shall be notified of his or her rights under § 28-65-213. This notice shall~~  
 7 ~~be served with the notice of hearing.~~

8 (B) The proposed ward shall be notified of his or her due  
 9 process rights under § 28-65-213.

10 (C)(i) If the purpose of the action is to establish an  
 11 adult guardianship, the proposed ward shall also be served with his or her  
 12 notice of the Ward's Bill of Rights in accordance with § 28-65-106(b).

13 (ii) The notices described under this subdivision  
 14 (b)(1) shall be served with the notice of hearing;

15 (2) The legal parents of the ~~alleged incapacitated person~~  
 16 proposed ward, if the alleged incapacitated person is a minor;

17 (3) The spouse, if any, of the ~~alleged incapacitated person~~  
 18 proposed ward;

19 (4) Any other person who is the guardian of the person or of the  
 20 estate of the ~~alleged incapacitated person proposed ward~~, or any other person  
 21 who has the care and custody of the ~~alleged incapacitated person proposed~~  
 22 ward, and the director of any agency from which the respondent is receiving  
 23 services;

24 (5) The Department of Human Services when the petition seeks  
 25 appointment of a guardian who, at the time the petition is filed, serves as  
 26 guardian of five (5) or more minor wards;

27 (6) If there is neither a known parent nor known spouse, at  
 28 least one (1) of the nearest competent relatives by blood or marriage of the  
 29 ~~alleged incapacitated person proposed ward~~; and

30 (7) If Any other person or entity directed by the court:

31 (A) ~~Any department, bureau, agency, or political~~  
 32 ~~subdivision of the United States or of this state which makes or awards~~  
 33 ~~compensation, pension, insurance, or other allowance for the benefit of the~~  
 34 ~~ward or his or her estate;~~

35 (B) ~~Any department, bureau, agency, or political~~  
 36 ~~subdivision of the United States or of this state or any charitable~~

~~organization, which may be charged with the supervision, control, or custody of the incompetent person; or~~

~~(C) Any other person designated by the court.~~

(c)(1)(A) If the ~~incapacitated person~~ proposed ward is ~~over~~ fourteen (14) years of age or older, there shall be personal service upon him or her if personal service ~~can be had~~ is reasonably possible.

(B) Service on others may be had in any manner provided by § 28-1-112(b) or § 28-1-112(e).

(2) The court, for good cause shown, may reduce the number of days of notice, ~~but in every case at least twenty (20) days' notice shall be given.~~

(3) It shall not be necessary that the ~~person for whom guardianship is sought~~ proposed ward be represented by a guardian ad litem in the proceedings.

SECTION 15. Arkansas Code § 28-65-208 is amended to read as follows:  
28-65-208. Notice of other hearings.

Whenever notice of a hearing in a guardianship proceeding is required, the notice shall be served upon the following who do not appear or in writing waive notice of hearing:

- (1) The guardian of the person;
- (2) The guardian of the estate; and
- (3) ~~If directed by the court:~~

~~(A) Any department, bureau, agency, or political subdivision of the United States or of this state which makes or awards compensation, pension, insurance, or other allowance for the benefit of the ward's estate;~~

~~(B) Any department, bureau, agency, or political subdivision of the United States or of this state or any charitable organization, which may be charged with the supervision, control, or custody of the incapacitated person; or~~

~~(C) Any other person~~ or entity whom the court may designate.

SECTION 16. Arkansas Code § 28-65-209 is amended to read as follows:  
28-65-209. Request for special notice of hearings.

1           ~~(a)(1) At any time after the issuance of letters of guardianship, any~~  
 2 ~~department, bureau, agency, or political subdivision of the United States or~~  
 3 ~~of this state which makes or awards compensation, pension, insurance, or~~  
 4 ~~other allowance for the benefit of the ward's estate; or any department,~~  
 5 ~~bureau, agency, or political subdivision of the United States or of this~~  
 6 ~~state, or any charitable organization, which may be charged with the~~  
 7 ~~supervision, control, or custody of the incapacitated person; or an~~  
 8 ~~interested person may serve, in person or by attorney, upon the guardian or~~  
 9 ~~upon his or her attorney and file with the clerk of the court where the~~  
 10 ~~proceedings are pending, with a written admission or proof of service, a~~  
 11 ~~written request stating that he or she desires written notice of all hearings~~  
 12 ~~on petitions for:~~ Any person or organization with an interest in a  
 13 guardianship proceeding may send a request to the guardian and file a copy of  
 14 the request with the county clerk under the proper case name and case number  
 15 to be notified of hearings in any guardianship matter.

16                           ~~(A) The settlements of accounts;~~  
 17                           ~~(B) The sale, mortgage, lease, or exchange of any property~~  
 18 ~~of the estate;~~  
 19                           ~~(C) An allowance of any nature payable from the ward's~~  
 20 ~~estate;~~  
 21                           ~~(D) The investment of funds of the estate;~~  
 22                           ~~(E) The removal, suspension, or discharge of the guardian~~  
 23 ~~or final termination of the guardianship; and~~  
 24                           ~~(F) Any other matter affecting the welfare or care of the~~  
 25 ~~incapacitated person and his or her property.~~

26           ~~(2) The applicant for such a notice must include in his or her~~  
 27 ~~written request his or her post office address or that of his or her attorney~~  
 28 The notice shall include an email address or a physical mailing address where  
 29 the notice may be delivered.

30           ~~(3) Timely delivery via email or regular mail under subdivision~~  
 31 (a)(2) of this section shall constitute proper notice by the person required  
 32 to provide notice.

33           (b) Unless the court otherwise directs, upon filing the request, the  
 34 person shall be entitled to notice of all such hearings or ~~of such of them as~~  
 35 ~~he or she designates in his or her request~~ the specific types of hearings  
 36 requested.

1  
2 SECTION 17. Arkansas Code § 28-65-210 is amended to read as follows:  
3 28-65-210. Proof required for appointment of guardian.

4 Before appointing a guardian, the court ~~must be satisfied~~ shall find by  
5 clear and convincing evidence that:

6 (1) The ~~person proposed ward for whom a guardian is prayed~~ is  
7 either a minor or otherwise incapacitated;

8 (2) A guardianship is ~~desirable~~ necessary to protect the  
9 interests of the ~~incapacitated person proposed ward~~; and

10 (3) The person to be appointed guardian is qualified and  
11 suitable to act as such.

12  
13 SECTION 18. Arkansas Code § 28-65-211 is amended to read as follows:  
14 28-65-211. Determination of incapacity – Evidence required.

15 (a) The fact of minority, disappearance, ~~or~~ detention, or confinement  
16 by a foreign power shall be established by ~~satisfactory~~ clear and convincing  
17 evidence.

18 (b)(1) In determining the incapacity of a person for whom a guardian  
19 is sought to be appointed for cause other than ~~minority~~, disappearance, ~~or~~  
20 detention, or confinement by a foreign power, the court shall require that  
21 the evidence of incapacity include the oral testimony or sworn written  
22 statement of one (1) or more qualified professionals, whose qualifications  
23 shall be set forth in their testimony or written statements.

24 (2) If the ~~alleged incapacitated person proposed ward~~ is  
25 confined or undergoing treatment in ~~an institution for the treatment of~~  
26 ~~mental or nervous diseases~~ a mental health facility or in a hospital ~~or penal~~  
27 ~~institution~~, one (1) of the professionals shall be a member of the ~~medical~~  
28 staff of that ~~hospital or institution~~ facility.

29 (3) The court, in its discretion, may require the presence  
30 before it of the person of the alleged incapacitated person.

31 (4) The court shall fix the fees to be paid to such examiners,  
32 which shall be charged as part of the costs of the proceeding.

33 (c) The costs of the proceeding shall be paid by the petitioner, who  
34 ~~shall~~ may be reimbursed therefor out of the estate of the ~~incapacitated~~  
35 ~~person proposed ward~~, if a guardian is appointed.

36

1 SECTION 19. Arkansas Code § 28-65-212 is amended to read as follows:  
2 28-65-212. Evaluations.

3 (a)(1) A professional evaluation shall be performed prior to the court  
4 hearing on any petition for an adult guardianship except when appointment is  
5 being made: ~~because~~

6 (A) Because of minority, disappearance, detention, or  
7 confinement by a foreign power ~~or pursuant to § 28-65-218; or~~

8 (B)(i) In a temporary guardianship hearing when the  
9 proposed temporary guardian has been unable to obtain the necessary  
10 evaluation despite reasonable efforts.

11 (ii) If a temporary guardianship must be granted in  
12 the absence of an evaluation to protect the proposed ward or the ward's  
13 property, the court shall immediately order an evaluation and set a second  
14 temporary hearing with the benefit of the evaluation as soon as is practical,  
15 but no later than thirty (30) days from the date of the first temporary  
16 hearing.

17 (2) The evaluation shall be performed by a ~~professional or~~  
18 ~~professionals with expertise appropriate for the respondent's alleged~~  
19 ~~incapacity~~ physician, licensed psychologist, or licensed certified social  
20 worker with training, experience, and knowledge of the particular alleged  
21 disability of the respondent.

22 (b) The evaluation shall include the following:

23 (1) The respondent's medical and physical condition;

24 (2) His or her adaptive behavior;

25 (3) His or her intellectual functioning; and

26 (4) Recommendation as to the specific areas for which assistance  
27 is needed and the least restrictive alternatives available.

28 (c)(1) If no professional evaluations performed within the last six  
29 (6) months are available, the court will order an independent evaluation.

30 (2)(A) If the petition is granted, the cost of the independent  
31 evaluation will be borne by the estate of the incapacitated person.

32 (B) In the event the petition is denied, the costs will be  
33 borne by the petitioner unless otherwise ordered by the court for good cause  
34 shown.

35 (d)(1) The Department of Human Services shall not be ordered by any  
36 court, except the juvenile division of the circuit court, to gather records,

1 investigate the ~~respondent's~~ proposed ward's condition, or help arrange for  
2 appropriate professional evaluations, unless the court has first determined  
3 all parties to the proceeding to be indigent and assistance provided by the  
4 department is limited to actions within the State of Arkansas.

5 (2) The department shall issue rules to implement this  
6 provision.

7 (e) Any existing evaluations made by the department of which the court  
8 has notice must be considered by the court.

9  
10 SECTION 20. Arkansas Code § 28-65-213 is amended to read as follows:

11 28-65-213. ~~Rights~~ Due process rights of wards and proposed wards.

12 (a) At ~~the~~ any hearing, the respondent ward or proposed ward shall  
13 have the right to:

- 14 (1) Be represented by counsel;
- 15 (2) Present evidence on his or her own behalf;
- 16 (3) Cross-examine adverse witnesses;
- 17 (4)(A) Be present.

18 (B)(i) The petitioner or person with physical custody of  
19 the respondent ward or proposed ward shall make reasonable efforts to ensure  
20 that the respondent ward or proposed ward is present or otherwise able to  
21 participate electronically for all hearings.

22 (ii) If the respondent ward or proposed ward is not  
23 present at a hearing, the court shall:

24 (a) Inquire first as to the reasons for the  
25 absence of the respondent ward or proposed ward; and

26 (b) Proceed ~~after being satisfied in the~~  
27 respondent ward's or proposed ward's absence only if presented with clear and  
28 convincing evidence that it is not safe, appropriate, or possible for the  
29 respondent ward or proposed ward to be present or otherwise participate  
30 electronically; and

31 (5) Require the attendance by subpoena of one (1) or more of the  
32 professionals who prepared the evaluation.

33 (b) The burden of proof by clear and convincing evidence is upon the  
34 petitioner, and a determination of incapacity shall be made before  
35 consideration of a proper disposition.

36 (c)(1) If the ~~respondent ward or~~ proposed ward is found to be

1 incapacitated, the court shall determine the extent of the incapacity and the  
2 feasibility of less restrictive alternatives to guardianship to meet the  
3 needs of the respondent.

4 (2) If it is found that alternatives to guardianship are  
5 feasible and adequate to meet the needs of the respondent ward or proposed  
6 ward, the court may dismiss the action.

7 (3) If it is found that the respondent ward or proposed ward is  
8 substantially without capacity to care for himself or herself or his or her  
9 estate, a guardian for the person or estate, or both, shall be appointed.

10  
11 SECTION 21. Arkansas Code § 28-65-214(c), concerning what an order  
12 granting a guardianship shall specify, is amended to read as follows:

13 (c) The order shall specify the nature of the guardianship and the  
14 amount of the bond to be given, if any.

15  
16 SECTION 22. Arkansas Code § 28-65-215 is amended to read as follows:  
17 28-65-215. Bond of guardian.

18 ~~(a) If the guardianship is to be of the person only, the amount of the~~  
19 ~~bond shall not exceed one thousand dollars (\$1,000), or the court may~~  
20 ~~dispense with the bond.~~

21 ~~(b) At every accounting, the court shall inquire into the sufficiency~~  
22 ~~of the bond and of the sureties, and, if either or both are found~~  
23 ~~insufficient, the guardian shall be ordered to file a new or additional bond.~~

24 ~~(c) If, by the terms of a will, the testator expresses the wish that~~  
25 ~~no bond be required of the person whom he or she requests to be appointed~~  
26 ~~guardian, that person may be relieved of giving a bond with respect to~~  
27 ~~property given by the will to the incapacitated person.~~

28 ~~(d) Section The procedures described in § 28-48-201 et seq., with~~  
29 ~~respect to the bonds of personal representatives, shall be applicable to the~~  
30 ~~bonds of guardians, except that in fixing the amount of the guardian's bond,~~  
31 ~~the value of the real property, as distinguished from the income arising~~  
32 ~~therefrom, unless it is sold, shall not be taken into consideration and shall~~  
33 ~~not constitute property which may reasonably be expected to pass through the~~  
34 ~~hands of the guardian.~~

35 ~~(e) Further, when the ward's estate is all in cash, the court may~~  
36 ~~dispense with the bond if the guardian deposits the entire estate on interest~~



~~1 in a bank in Arkansas insured by the Federal Deposit Insurance Corporation or  
2 in a savings and loan association in Arkansas insured by the Federal Savings  
3 and Loan Insurance Corporation or in a credit union in Arkansas insured by  
4 the National Credit Union Administration and the value of the estate is not  
5 greater than the amount of the maximum insurance provided by law for a single  
6 depositor, and the bank or savings and loan association shall file with the  
7 probate clerk of the circuit court an agreement not to permit any withdrawal  
8 from the deposit except on authority of a circuit court order.~~

9  
10 SECTION 23. Arkansas Code § 28-65-218 is amended to read as follows:

11 28-65-218. Emergency and temporary guardianships.

12 (a)(1)(A) If upon presentation of an emergency ex parte motion  
13 accompanied by an affidavit or verified petition giving rise to specific  
14 facts in appropriate detail the court finds that there is imminent danger to  
15 the life or health of an incapacitated person or of loss, damage, or waste to  
16 the property of an incapacitated person and that this requires the immediate  
17 appointment of a guardian of his or her person or estate, or both, the court  
18 shall issue an order appointing an emergency temporary guardian.

19 (B)(i) An ex parte emergency guardianship order shall  
20 include a date and time certain, not to exceed fourteen (14) days from the  
21 date on which the order is entered, for a hearing reviewing the allegations  
22 in the emergency ex parte motion and consideration on whether a temporary  
23 guardianship shall be granted.

24 (ii) Notice of the emergency order shall consist of  
25 a copy of the petition for emergency guardianship, any accompanying documents  
26 to the petition for emergency guardianship, and a copy of the emergency  
27 guardianship order.

28 (iii) The notice under subdivision (a)(1)(B)(ii) of  
29 this section shall be served immediately upon the necessary parties under §  
30 28-65-207 with notice of the emergency review hearing or temporary hearing.

31 ~~(C)(b)(1)~~ The court may consider a petition for a temporary  
32 guardianship at a hearing that was conducted following proper notice under §  
33 28-65-207 regardless of whether an emergency guardianship has been requested.

34 (2) If the court finds clear and convincing evidence that a  
35 temporary guardianship is necessary and appropriate to protect the ward or  
36 the property of the ward after the hearing required under subdivision

1 (a)(1)(B) or subdivision (b)(1) of this section or after a written agreement  
 2 or agreement in court by the necessary parties, the court may enter an order  
 3 granting temporary guardianship for a period of up to ninety (90) days from  
 4 the date of the emergency hearing.

5 ~~(2)(3)(A)~~ If the incapacitated person is an adult, the period  
 6 for the appointment of a temporary guardian shall not exceed ninety (90)  
 7 days.

8 (B) If the incapacitated person is a minor, on or before  
 9 the expiration of the ninety-day period and after a hearing on the merits or  
 10 an agreement by the necessary parties, the court may extend the temporary  
 11 guardianship for up to an additional one hundred eighty (180) days.

12 ~~(3)(c)(1)~~ ~~Notice of the emergency hearing shall be given before the~~  
 13 ~~hearing as required by subsections (b)-(d) of this section. However, notice~~  
 14 ~~is not required with respect to a person whose whereabouts are unknown or~~  
 15 ~~cannot by the exercise of reasonable diligence be ascertained~~ If the  
 16 petitioner is unable to serve a necessary party who is entitled to notice of  
 17 an emergency hearing under subdivision (a)(1)(B) of this section, a hearing  
 18 regarding a petition for temporary guardianship under subdivision (b)(1) of  
 19 this section, or both, despite reasonable efforts, and a temporary  
 20 guardianship is granted, the petitioner shall make further reasonable efforts  
 21 to serve the necessary party with a copy of the pleadings and a copy of the  
 22 temporary guardianship order that includes notice of the right to request a  
 23 review hearing described in subdivision (c)(2) of this section.

24 (2)(A) A necessary party who was not timely served before the  
 25 temporary hearing may request a review hearing of the temporary order.

26 (B) If a review hearing is requested under subdivision  
 27 (c)(2)(A) of this section, the court shall schedule the review hearing as  
 28 soon as is reasonably possible for consideration on whether the temporary  
 29 order should be amended, ended, or continued in the same form.

30 ~~(b) Immediate notice of the temporary guardianship order shall be~~  
 31 ~~served by the petitioner upon the following:~~

- 32 ~~(1) The ward, if the ward is at least fifteen (15) years of age;~~  
 33 ~~(2) The parents of the ward, if the ward is a minor;~~  
 34 ~~(3) The spouse, if any, of the ward;~~  
 35 ~~(4) Any other person who is the guardian of the person or of the~~  
 36 ~~estate of the ward, or any other person who has been the primary caregiver of~~

1 ~~the ward;~~

2 ~~(5) The Department of Human Services when the temporary guardian~~  
 3 ~~appointed serves as guardian of five (5) or more wards;~~

4 ~~(6) If there is neither a known parent nor known spouse, at~~  
 5 ~~least one (1) of the nearest competent relatives by blood or marriage of the~~  
 6 ~~ward, if known; and~~

7 ~~(7) If directed by the court:~~

8 ~~(A) Any department, bureau, agency, or political~~  
 9 ~~subdivision of the United States or of this state which makes or awards~~  
 10 ~~compensation, pension, insurance, or other allowance for the benefit of the~~  
 11 ~~ward or his or her estate;~~

12 ~~(B) Any department, bureau, agency, or political~~  
 13 ~~subdivision of the United States or of this state or any charitable~~  
 14 ~~organization, which may be charged with the supervision, control, or custody~~  
 15 ~~of the incompetent; or~~

16 ~~(C) Any other person designated by the court.~~

17 ~~(e) The notice shall include:~~

18 ~~(1) A copy of the petition;~~

19 ~~(2) A copy of the temporary order and order of appointment;~~

20 ~~(3) Notice of a hearing date; and~~

21 ~~(4) A statement of rights of the proposed ward as provided in §~~  
 22 ~~28-65-207(b) and § 28-65-213.~~

23 ~~(d) If the proposed ward is at least fifteen (15) years of age, there~~  
 24 ~~shall be personal service upon him or her if personal service can be had.~~  
 25 ~~Service on others shall be according to the Arkansas Rules of Civil Procedure~~  
 26 ~~or as otherwise provided by the court.~~

27 ~~(e) Notice need not be given to any person listed in § 28-65-~~  
 28 ~~207(a)(1)-(6).~~

29 ~~(f) Within fourteen (14) days of the entry of the temporary~~  
 30 ~~guardianship order, a full hearing on the merits shall be held.~~

31 ~~(g)(1) If the petitioner is unable to serve a person entitled to~~  
 32 ~~notice under this section despite reasonable efforts, the petitioner shall~~  
 33 ~~make further reasonable efforts after the full hearing on the merits to serve~~  
 34 ~~the person with a copy of the original pleadings and a copy of the temporary~~  
 35 ~~guardianship order.~~

36 ~~(2) The respondent may request a subsequent review hearing~~

1 ~~before the court that shall be scheduled as soon as reasonably possible.~~

2 ~~(h)(d)~~ The temporary guardian shall make such reports as the court  
3 shall direct.

4 ~~(i)(e)~~ In all other respects, the provisions of this chapter  
5 concerning guardians shall apply to temporary guardians, and an appeal may be  
6 taken from the order of appointment of a temporary guardian.

7 ~~(j)(f)~~ The letters issued to a temporary guardian shall state the date  
8 of expiration of the authority of the temporary guardian.

9  
10 SECTION 24. Arkansas Code § 28-65-221 is repealed.

11 ~~28-65-221. Standby guardians.~~

12 ~~(a) Without surrendering parental rights, any parent who is~~  
13 ~~chronically ill or near death may have a standby guardian appointed by the~~  
14 ~~court for the parent's minor children using the same procedures outlined in~~  
15 ~~this subchapter to establish a guardianship. The standby guardian's authority~~  
16 ~~would take effect as outlined in an order of standby guardianship, upon:~~

17 ~~(1) The death of the parent;~~

18 ~~(2) The mental incapacity of the parent; or~~

19 ~~(3) The physical debilitation and consent of the parent.~~

20 ~~(b)(1) The standby guardian shall immediately notify the court upon~~  
21 ~~the death, incapacity, or debilitation of the parent and shall immediately~~  
22 ~~assume the role of guardian of the minor children.~~

23 ~~(2) The court shall enter an order of guardianship in~~  
24 ~~conformance with this section.~~

25  
26 SECTION 25. Arkansas Code § 28-65-222 is amended to read as follows:

27 28-65-222. Parental ~~appointment~~ nomination of temporary guardian in  
28 event of his or her death.

29 ~~(a)(1) Except as provided in § 28-65-218 and in subdivision (a)(2) of~~  
30 ~~this section, a parent of a minor child may appoint one (1) or more persons~~  
31 ~~to act as a temporary guardian of his or her minor child in the event of the~~  
32 ~~death of the parent if the:~~

33 ~~(A) Parent signs a notarized writing that includes the:~~

34 ~~(i) Name and date of birth of the minor child for~~  
35 ~~whom the person is being appointed as guardian;~~

36 ~~(ii) Name of each person being appointed as a~~

1 ~~guardian of the minor child; and~~

2 ~~(iii) Sworn attestation of two (2) witnesses that~~  
 3 ~~states and affirms that each witness witnessed the parent sign the notarized~~  
 4 ~~writing;~~

5 ~~(B) Notarized writing signed by the parent as required~~  
 6 ~~under subdivision (a)(1)(A) of this section is no more than five (5) years~~  
 7 ~~old; and~~

8 ~~(C) Each person appointed by the parent as a guardian of~~  
 9 ~~the minor child consents to the appointment in a signed and notarized~~  
 10 ~~writing.~~

11 ~~(2) An appointing parent may appoint two (2) people as co-~~  
 12 ~~guardians of the minor child if the two (2) people are married to each other.~~

13 ~~(3) Both parents of the minor child shall sign the notarized~~  
 14 ~~writing required under subdivision (a)(1)(A) of this section if both parents~~  
 15 ~~are alive.~~

16 ~~(4) A parent may revoke or amend his or her appointment of a~~  
 17 ~~guardian under this section at any time before his or her death.~~

18 ~~(b)(1) An appointment of a guardian for a minor child under this~~  
 19 ~~section is immediately effective upon the death of:~~

20 ~~(A) The appointing parent if the other parent is deceased;~~  
 21 ~~or~~

22 ~~(B) Both appointing parents.~~

23 ~~(2)(A) Upon the death of both appointing parents or an~~  
 24 ~~appointing parent if the other parent is deceased, the guardian shall have~~  
 25 ~~temporary guardianship of the minor child for no longer than forty five (45)~~  
 26 ~~days.~~

27 ~~(B) A court may extend the time period of the initial~~  
 28 ~~temporary guardianship for an additional ninety (90) days or terminate the~~  
 29 ~~temporary guardianship for good cause.~~

30 ~~(c) A person who is appointed by an appointing parent as a temporary~~  
 31 ~~guardian of a minor child under this section and who is willing to become the~~  
 32 ~~permanent guardian of the minor child shall follow the procedures required~~  
 33 ~~under this chapter to obtain permanent guardianship of the minor child.~~

34 ~~(d) Unless otherwise provided by law, a court shall comply with the~~  
 35 ~~wishes of an appointing parent and appoint each person appointed by the~~  
 36 ~~appointing parent as temporary guardian of the appointing parent's minor~~

1 ~~child as a permanent guardian of the minor child unless the person appointed~~  
 2 ~~as guardian is determined to be unfit by the court.~~

3 ~~(e) A notarized writing required under subdivision (a)(1)(A) of this~~  
 4 ~~section does not supersede a court order concerning child custody that exists~~  
 5 ~~at the time of the death of one (1) or both parents.~~

6 (a) A parent of a minor child may nominate a person to be the guardian  
 7 of the minor child in the event of the death of the parent during the child's  
 8 minority.

9 (b)(1) If a parent of a minor child has nominated a person to be the  
 10 guardian of the minor child under subsection (a) of this section but another  
 11 legal parent is alive and fit, the court shall give the living legal parent  
 12 first consideration.

13 (2) If subdivision (b)(1) of this section does not apply and the  
 14 court finds the proof of nomination under subsection (a) of this section to  
 15 be clear and convincing, the court shall give first consideration of the  
 16 deceased parent's nomination under subsection (a) of this section.

17  
 18 SECTION 26. Arkansas Code § 28-65-401(b), concerning when a  
 19 guardianship may be terminated by the court, is amended to read as follows:

20 (b) A guardianship may be terminated by court order after such notice  
 21 as the court may require:

22 (1)(A) If the guardianship was solely because of the ward's  
 23 minority, and either the ward attains his or her majority or the disability  
 24 of minority of the ward is removed for all purposes by a court of competent  
 25 jurisdiction.

26 (B)(i) However, if the court finds ~~upon a proper showing~~  
 27 by ~~substantial competent~~ clear and convincing evidence after a hearing that  
 28 it is in the best interest of the ward that the guardianship be continued  
 29 after the ward reaches majority, the court may order the guardianship to  
 30 continue until such time as it may be terminated by order of the court.

31 (ii) The provisions of the Ward's Bill of Rights  
 32 described in § 28-65-106 shall apply to the hearing under subdivision  
 33 (b)(1)(B)(i) of this section; or

34 (2) ~~If the ward becomes a nonresident of this state; or~~

35 ~~(3) If, for any other reason, the guardianship is:~~

36 (A) No longer necessary; and

(B) No longer in the best interest of the ward.

SECTION 27. Arkansas Code § 28-65-402 is amended to read as follows:

28-65-402. Restoration of capacity of ward.

~~(a) If any person alleges in writing, verified by oath, that any person declared to be incapacitated, or addicted to habitual drunkenness, is no longer incapacitated, or is no longer so addicted, the court in which the proceedings were held shall cause the facts to be inquired into in such manner as it may direct~~ Upon the petition of the ward or an interested party alleging that the ward is no longer incapacitated or is less incapacitated than would require a full guardianship, the court shall:

(1) Conduct a hearing after the petitioner provides proper notice under this chapter to all relevant parties to determine whether the guardianship should be terminated or amended; and

(2) Make orders as necessary after the hearing under subdivision (1) is held.

~~(b) If it is found that the person has been restored to capacity or has reformed, he or she shall be discharged from care and custody, and the guardian shall immediately settle his or her accounts and shall restore to the person all things remaining in the guardian's hands belonging or appertaining to him or her.~~