

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

HOUSE BILL 1628

5 By: Representative Leding  
6

## For An Act To Be Entitled

8 AN ACT TO CLARIFY THE LAW CONCERNING GUARDIANSHIPS;  
9 TO EXPAND THE RANGE OF PERSONS ELIGIBLE TO BE  
10 GUARDIANS; AND FOR OTHER PURPOSES.  
11

## Subtitle

12 AN ACT TO CLARIFY THE LAW CONCERNING  
13 GUARDIANSHIPS AND TO EXPAND THE RANGE OF  
14 PERSONS ELIGIBLE TO BE GUARDIANS.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code Title 9, Chapter 20, Subchapter 1 is amended  
22 to add an additional section to read as follows:

23 9-20-122. Evaluation of prospective guardians.

24 (a) Regarding an individual listed in subsection (b) of this section,  
25 the Department of Human Services may:

26 (1) Request a fingerprint-based criminal background check  
27 performed by the Federal Bureau of Investigation in compliance with federal  
28 law and regulations for convictions regarding violations under this  
29 subchapter;

30 (2) Perform a criminal records check with the Identification  
31 Bureau of the Department of Arkansas State Police for convictions regarding  
32 violations under this subchapter;

33 (3) Check the Adult and Long-term Care Facility Resident  
34 Maltreatment Central Registry for previous true findings of adult  
35 maltreatment;

36 (4) Request a check of the Adult and Long-term Care Facility



1 Resident Maltreatment Central Registry or its equivalent in the state of  
 2 residence; and

3 (5) Perform an evaluation of the home or proposed dwelling for  
 4 an adult in the Department of Human Services' custody.

5 (b) Subsection (a) of this section applies to an individual who has:

6 (1) Requested consideration to be appointed guardian under § 28-  
 7 65-101 et seq., of an adult in the custody of the Department of Human  
 8 Services;

9 (2) Requested custody of an adult in the custody of the  
 10 Department of Human Services; and

11 (3) Petitioned a court of competent jurisdiction:

12 (A) To be appointed guardian, under § 28-65-101 et seq.;  
 13 or

14 (B) For custody of an adult in the custody of the  
 15 Department of Human Services.

16  
 17 SECTION 2. Arkansas Code § 28-65-101 is amended to read as follows:

18 28-65-101. Definitions.

19 As used in this chapter:

20 (1) "Essential requirements for health or safety" means the  
 21 health care, food, shelter, clothing, and protection without which serious  
 22 illness or serious physical injury will occur;

23 (2) "Evaluation" means a professional assessment of the  
 24 abilities of the respondent and the impact of any impairments on the  
 25 individual's capability to meet the essential requirements for his or her  
 26 health or safety or to manage his or her estate;

27 (3) "Guardian" ~~is~~ means one appointed by a court to have the  
 28 care and custody of the person or of the estate, or of both, of an  
 29 incapacitated person;

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

33 (5)(A) "Incapacitated person" means a person who is impaired by  
 34 reason of a disability such as mental illness, mental deficiency, physical  
 35 illness, chronic use of drugs, or chronic intoxication, to the extent of  
 36 lacking sufficient understanding or capacity to make or communicate decisions

1 to meet the essential requirements for his or her health or safety or to  
 2 manage his or her estate.

3 (B) "Incapacitated person" includes an endangered or  
 4 impaired adult as defined in the Adult Maltreatment Custody Act, § 9-20-  
 5 103(8)(A) § 9-20-103, who is in the custody of the Department of Human  
 6 Services.

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

11 (6) "Least restrictive alternative" means the form of assistance  
 12 that least interferes with the legal capacity of the respondent to act in his  
 13 or her own behalf;

14 (7) "Limited guardian" ~~is~~ means one whose powers and authority  
 15 have been limited to the specific powers, authorities, and duties set forth  
 16 in the order of appointment;

17 (8) "Professional" means a physician, licensed psychologist, or  
 18 licensed certified social worker with training, experience, and knowledge of  
 19 the particular alleged disability of the respondent;

20 (9) "Temporary guardian" means a guardian appointed pursuant to  
 21 § 28-65-218; and

22 (10) "Ward" ~~is~~ means an incapacitated person for whom a guardian  
 23 has been appointed.

24  
 25 SECTION 3. Arkansas Code § 28-65-203 is amended to read as follows:  
 26 28-65-203. Qualifications of guardian.

27 (a) A natural person who is a resident of this state, eighteen (18) or  
 28 more years of age, of sound mind, not a convicted and unparoled felon, is  
 29 qualified to be appointed guardian of the person and of the estate of an  
 30 incapacitated person.

31 (b) However, notwithstanding the provisions in subdivision (a), a  
 32 natural person who is a resident of this state, eighteen (18) years of age or  
 33 older, of sound mind, and a convicted and unparoled felon is qualified to be  
 34 a guardian of the person or estate of a minor in the custody of the  
 35 Department of Human Services if under § 9-28-409 the person:

36 (1) That person's home has been opened as a foster home; or

1           (2) That person' home has been opened as an adoptive home.

2           ~~(b)~~(c) Any charitable organization or humane society incorporated  
 3 under the laws of this state is qualified for appointment as guardian of the  
 4 person and estate of a minor:

5                   (1) When the major portion of the support of the minor is being  
 6 supplied or administered by the organization;

7                   (2) When the court finds that:

8                           (A) The minor has been abandoned by his or her parents; or

9                           (B) The minor's parents are incapacitated or unfit for the  
 10 duties of guardianship; or

11                   (3) If no other suitable person can be found who is able and  
 12 willing to assume the duties of guardianship.

13           ~~(e)~~~~(1)~~(d)(1) A parent under eighteen (18) years of age is qualified  
 14 for appointment as guardian of the person of his or her child.

15                   (2) If the Department of Human Services consents, the department  
 16 is qualified for appointment as guardian of the estate of a minor when the  
 17 minor is in the custody of the department.

18           ~~(d)~~~~(1)~~(e)(1) A corporation authorized to do business in this state and  
 19 properly empowered by its charter to become guardian is qualified to serve as  
 20 guardian of the estate of an incapacitated person.

21                   (2) A bank or similar institution with trust powers may be  
 22 appointed guardian of the estate of an incapacitated person.

23           ~~(e)~~(f)(1) A nonresident natural person possessing the qualifications  
 24 enumerated in this section, except as to residence, who has appointed a  
 25 resident agent to accept service of process in any action or suit with  
 26 respect to the guardianship and has caused the appointment to be filed with  
 27 the court, whether or not he or she has been nominated by the will of the  
 28 last surviving parent of a minor resident of this state to be appointed as  
 29 guardian of the minor, is qualified for the appointment.

30                   (2) However, unless nominated by will, bond may not be dispensed  
 31 with.

32           ~~(f)~~(g) ~~No~~ A person whom the court finds to be unsuitable to perform  
 33 the duties incident to the appointment shall not be appointed guardian of the  
 34 person or estate of an incapacitated person.

35           ~~(g)~~(h) ~~No~~ A sheriff, probate clerk of a circuit court, or deputy of  
 36 either, ~~nor~~ or a circuit judge, shall not be appointed guardian of the person

1 or estate of an incapacitated person unless the incapacitated person ~~shall be~~  
2 is related to him or her within the third degree of consanguinity.

3 ~~(h)(1)(i)(1)~~ Except as provided in subdivision (h)(4) of this section,  
4 ~~ne~~ a public agency or employee of any public agency acting in his or her  
5 official capacity shall not be appointed as guardian for any incapacitated  
6 person.

7 (2) ~~Ne~~ An employee of a public agency that provides direct  
8 services to the incapacitated person shall not be appointed guardian of the  
9 person or estate of the incapacitated person.

10 (3) ~~Ne~~ An employee of a public agency that provides direct  
11 services to the incapacitated person shall not be appointed as a temporary  
12 guardian.

13 (4) [Effective if contingency in Acts 2007, No. 862, § 5 is  
14 met.] Notwithstanding any other provision of law, the Public Guardian for  
15 Adults may serve as guardian of the person or the estate, or both, of an  
16 incapacitated person receiving services from any public agency.

17 (5) [Effective until contingency in Acts 2007, No. 862, § 5 is  
18 met.] The department shall issue regulations to implement this provision.

19 (5) [Effective if contingency in Acts 2007, No. 862, § 5 is  
20 met.] The department shall promulgate rules to implement this provision.

21 ~~(i)(j)~~ A person may be appointed temporary guardian of an  
22 incapacitated person notwithstanding the provisions of subsection (h) of this  
23 section if he or she is related to the incapacitated person within the third  
24 degree of consanguinity and the court determines that any potential conflict  
25 of interest is unsubstantial and that the appointment is in the best interest  
26 of the ward.

27 (k) A circuit court of this state shall not approve a person or  
28 institution as the custodian or guardian of the person or estate of an adult  
29 in the custody of the department unless:

30 (1) The department has evaluated and approved the prospective  
31 guardian under the department's authority under § 9-20-122 and promulgated  
32 department policy; or

33 (2) The department has evaluated and approved the prospective  
34 custodian under the department's authority under § 9-20-122 and promulgated  
35 department policy.

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