

"AN ACT TO AMEND SECTION 16 OF ACT 940 OF 1985 [ARK. STAT. 57-835], TO REMOVE THE REQUIREMENT FOR A PROFESSIONAL EVALUATION IN CASES OF MINORITY, DISAPPEARANCE OR DETENTION OR CONFINEMENT BY A FOREIGN POWER; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 16 of Act 940 of 1985, the same being Arkansas Statute 57-835, is hereby amended to read as follows:

"Section 16. (a) A professional evaluation shall be performed prior to the court hearing on any petition for guardianship except when appointment is being made because of minority, disappearance, detention or confinement by a foreign power, or pursuant to Section 21 of Act 940 of 1985. The evaluation shall be performed by a professional or professionals with expertise appropriate for the respondent's alleged incapacity. The evaluation shall include the following:

- (1) The respondent's medical and physical condition;
- (2) Adaptive behavior;
- (3) Intellectual functioning;
- (4) Recommendation on the specific areas for which assistance is needed and the least restrictive alternatives available.

(b) If no professional evaluations performed within the last six (6) months are available, the court will order an independent evaluation. If the petition is granted, the cost of the independent evaluation will be borne by the estate of the incapacitated person. In the event the petition is denied, the costs will be borne by the petitioner.

(c) The court may request the assistance of a Department of Human Services resource person to gather records, investigate the respondent's condition and help arrange for appropriate professional evaluations. The Department of Human Services shall issue regulations to implement this provision.

(d) Any existing evaluations made by the Department of Human Services of which the court has notice must be considered by the court.

(e) (1) At the hearing, the respondent shall have the right to:

- (i) be represented by counsel;
- (ii) present evidence on his own behalf;
- (iii) cross-examine adverse witnesses;
- (iv) remain silent;
- (v) be present;
- (vi) require the attendance by subpoena of one or more of the professionals who prepared the evaluation.

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

(3) If the respondent is found to be incapacitated, the court shall determine the extent of the incapacity and the feasibility of less restrictive alternatives to guardianship to meet the needs of the respondent.

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

(5) If it is found that the respondent is substantially without capacity to care for himself or his estate, a guardian for the person, estate or both shall be appointed.

(f) A court order establishing a guardianship shall contain findings of fact that the respondent is an incapacitated person and is in need of a guardian for the person or estate or both; and may limit the power and duties of the guardian and define legal and civil rights retained by the incapacitated person.

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: April 8, 1987

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