

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: H3/9/17

A Bill

HOUSE BILL 1678

5 By: Representative Beck
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For An Act To Be Entitled

8 *AN ACT CONCERNING VISITATION WITH AN ENDANGERED*
9 *ADULT, AN IMPAIRED ADULT, OR A WARD; AND FOR OTHER*
10 *PURPOSES.*

Subtitle

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14 *CONCERNING VISITATION WITH AN ENDANGERED*
15 *ADULT, AN IMPAIRED ADULT, OR A WARD.*
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 9-20-103, concerning the definition of
21 terms used under the Adult Maltreatment Custody Act, is amended to add
22 additional subdivisions to read as follows:

23 (25) "Relative" means the spouse, child, grandchild, parent, or
24 sibling of an endangered adult or an impaired adult.
25

26 SECTION 2. Arkansas Code Title 9, Chapter 20, is amended to add an
27 additional section to read as follows:

28 9-20-123. Rights of relatives.

29 (a)(1) If a relative has reason to believe coupled with facts to
30 substantiate his or her belief that the Department of Human Services is
31 unreasonably interfering with or denying visitation between the relative and
32 an endangered adult or an impaired adult as defined in § 9-20-103(6) and (10)
33 respectively, the relative may file a petition for reasonable visitation with
34 the endangered adult or the impaired adult in a court with jurisdiction over
35 proceedings under this chapter that concern the endangered adult or the
36 impaired adult.



1 (2) A petition for reasonable visitation filed under this
2 section shall be verified and state:

3 (A) Whether the petitioner is a relative as defined under
4 § 9-20-103;

5 (B) Whether the department is unreasonably interfering
6 with or denying visitation between the petitioner and the endangered adult or
7 the impaired adult;

8 (C) Whether the department is the custodian of the
9 endangered adult or the impaired adult; and

10 (D) The facts supporting the petitioner's allegation that
11 the department as custodian of the endangered or the impaired adult is
12 unreasonably interfering with or denying visitation between the petitioner
13 and the endangered adult or the impaired adult.

14 (3)(A) A petition for reasonable visitation filed under this
15 section shall be served on all parties to a custody proceeding that is
16 initiated under this chapter and concerns the endangered adult or the
17 impaired adult who is the subject of the petition for reasonable visitation.

18 (B) A relative who files a petition for reasonable
19 visitation under this section is not a party to a custody proceeding
20 described under subdivision (a)(3)(A) of this section.

21 (b)(1)(A) If an endangered adult or an impaired adult objects to
22 visitation with the petitioner, the petitioner shall prove by a preponderance
23 of the evidence that the endangered adult or the impaired adult was unduly
24 influenced by the department or another person.

25 (B) The court shall not find undue influence on the part
26 of the department or another person if the attorney for the endangered adult
27 or the impaired adult confirms that the endangered adult or the impaired
28 adult objects to visitation with the petitioner.

29 (2) If an endangered adult or an impaired adult consents to
30 visitation with the petitioner, does not object to visitation with the
31 petitioner, or is unable to express his or her consent or objection to
32 visitation with the petitioner, the department shall prove one (1) or more of
33 the following conditions by a preponderance of the evidence in order to
34 overcome the presumption that visitation between the petitioner and the
35 endangered adult or the impaired adult is in the best interest of the
36 endangered adult or the impaired adult:

1 (A) The petitioner physically abused, exploited,
2 neglected, sexually abused, or otherwise maltreated the endangered adult, the
3 impaired adult, or another adult; or

4 (B) Visitation between the petitioner and the endangered
5 adult or the impaired adult would be harmful to the mental health or physical
6 well-being of the endangered adult or the impaired adult.

7 (c)(1) An order issued by the court granting or denying a petition for
8 reasonable visitation filed under this section shall include statements of
9 fact and law supporting the court's order.

10 (2) If the court grants the petition for reasonable visitation,
11 then:

12 (A) The court may impose reasonable restrictions on
13 visitation between the petitioner and the endangered adult or the impaired
14 adult;

15 (B) The petitioner shall be responsible for paying costs
16 associated with the visitation, including but not limited to transportation
17 and supervision costs;

18 (C) Visitation shall not occur in a manner that negatively
19 impacts the medical or treatment needs of the endangered adult or the
20 impaired adult;

21 (D) Visitation shall occur at the placement location of
22 the endangered adult or the impaired adult;

23 (E) Visitation shall be subject to the rules of the
24 facility in which the endangered adult or the impaired adult is placed; and

25 (F) The court may impose on the department the cost of
26 filing the petition for reasonable visitation and reasonable attorney's fees
27 incurred by the petitioner as a result of the department opposing the
28 petition if the department:

29 (i) Is the custodian of the endangered adult or the
30 impaired adult;

31 (ii) Unreasonably interfered with or denied
32 visitation between the petitioner and the endangered adult or the impaired
33 adult; and

34 (iii) Opposed visitation between the petitioner and
35 the endangered adult or the impaired adult in bad faith.

36 (3) If the court denies the petition for reasonable visitation,

1 the:

2 (A) Petitioner may file another petition for reasonable
3 visitation no earlier than one (1) year after the date on which the court
4 enters the order denying visitation if there is a material change in
5 circumstances; and

6 (B) Court may impose on the petitioner the costs of
7 opposing the petition, including without limitation the costs for subpoenas,
8 witness fees, and reasonable attorney's fees incurred by the department.

9 (d) The court shall not impose costs on:

10 (1) A person or entity that in good faith interfered with or
11 denied visitation at the direction of the department; and

12 (2) The endangered adult or the impaired adult."

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14 SECTION 3. Arkansas Code § 28-65-106 is amended to read as follows:

15 28-65-106. Rights of incapacitated persons.

16 (a) An incapacitated person for whom a guardian has been appointed A
17 ward is not presumed to be incompetent and retains all legal and civil rights
18 except those which have been expressly limited by court order or have been
19 specifically granted by order to the guardian by the court.

20 (b)(1) A ward retains the right to communicate, visit, or interact
21 with any person of the ward's choice.

22 (2) If a ward is unable to give express consent to
23 communication, visitation, or interaction with a person due to a physical or
24 mental condition, then the consent of the ward may be presumed by a guardian
25 or a court based on the ward's prior relationship with the person seeking
26 communication, visitation, or interaction with the ward.

27
28 SECTION 4. Arkansas Code § 28-65-101, concerning definitions, is
29 amended to add additional subdivisions to read as follows:

30 (11) "Relative" means the spouse, child, grandchild, parent,
31 grandparent, or sibling of a ward.

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33 SECTION 5. Arkansas Code Title 28, Chapter 65, Subchapter 1, is
34 amended to add an additional section to read as follows:

35 28-65-110. Rights of relatives.

36 (a)(1) If a relative has reason to believe coupled with facts to

1 substantiate his or her belief that the guardian of a ward or another person
2 is unreasonably interfering with or denying visitation between the relative
3 and the ward, the relative may file a petition for reasonable visitation with
4 the ward in a court with jurisdiction over proceedings under this chapter
5 that concern the ward.

6 (2) A petition for reasonable visitation filed under this
7 section shall be verified and shall state:

8 (A) Whether the petitioner is a relative as defined under
9 § 28-65-101;

10 (B) Whether the guardian or other person is unreasonably
11 interfering with or denying visitation between the petitioner and the ward;

12 (C) The identity of the guardian or other person alleged
13 to be unreasonably interfering with or denying visitation between the
14 petitioner and the ward; and

15 (D) The facts supporting the petitioner's allegation that
16 the guardian or other person is unreasonably interfering with or denying
17 visitation between the petitioner and the ward.

18 (3)(A) A petition for reasonable visitation filed under this
19 section shall be served on all parties to a guardianship proceeding that is
20 initiated under this chapter and concerns the ward who is the subject of the
21 petition for reasonable visitation.

22 (B) A relative who files a petition for reasonable
23 visitation under this section is not a party to a guardianship proceeding
24 described under subdivision (a)(3)(A) of this section.

25 (b)(1) If a ward objects to visitation with the petitioner, the
26 petitioner shall prove by a preponderance of the evidence that the ward was
27 unduly influenced by the guardian or another person.

28 (2) If the ward consents to visitation with the petitioner, does
29 not object to visitation with the petitioner, or is unable to express his or
30 her consent or objection to visitation with the petitioner, the guardian or
31 other person shall prove one (1) or more of the following conditions by a
32 preponderance of the evidence in order to overcome the presumption that
33 visitation between the petitioner and the ward is in the best interest of the
34 ward:

35 (A) The petitioner physically abused, exploited,
36 neglected, sexually abused, or otherwise maltreated the ward or another

1 adult; or

2 (B) Visitation between the petitioner and the ward would
3 be harmful to the mental health or physical well-being of the ward.

4 (c)(1) An order issued by the court granting or denying a petition for
5 reasonable visitation filed under this section shall include statements of
6 fact and law supporting the court's order.

7 (2) If the court grants the petition for reasonable visitation,
8 then:

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10 (A) The court may impose reasonable restrictions on
11 visitation between the petitioner and the ward;

12 (B) The petitioner shall be responsible for paying costs
13 associated with the visitation, including but not limited to transportation
14 and supervision costs;

15 (C) Visitation shall not occur in a manner that negatively
16 impacts the ward's medical or treatment needs;

17 (D) If the ward is placed in a facility, visitation shall
18 occur at the facility;

19 (E) Visitation shall be subject to the rules of the
20 facility in which the ward is placed; and

21 (F) The court may impose on the guardian or other person
22 alleged to have unreasonably interfered with or denied visitation between the
23 petitioner and the ward the cost of filing a petition for reasonable
24 visitation under this section and reasonable attorney's fees incurred by the
25 petitioner as a result of the guardian or other person opposing the petition
26 if the guardian or other person:

27 (i) Unreasonably interfered with or denied
28 visitation between the petitioner and the ward; and

29 (ii) Opposed visitation between the petitioner and
30 the ward in bad faith.

31 (3) If the court denies the petition for reasonable visitation,
32 the:

33 (A) Petitioner may file another petition for reasonable
34 visitation no earlier than one (1) year after the date on which the court
35 enters the order denying visitation if there is a material change in
36 circumstances; and

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(B) Court may impose on the petitioner the costs of opposing the petition, including without limitation the costs for subpoenas, witness fees, and reasonable attorney's fees incurred by the guardian or other person alleged to have unreasonably interfered with or denied visitation between the petitioner and the ward.

(d) The court shall not impose costs on:

(1) A person or entity that in good faith interfered with or denied visitation at the direction of the guardian or other person; and

(2) The ward.

/s/Beck