

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1466

By: Representative Burch
By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING ISSUES REQUIRING
COURT APPROVAL UNDER THE ADULT MALTREATMENT CUSTODY
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING ISSUES
REQUIRING COURT APPROVAL UNDER THE ADULT
MALTREATMENT CUSTODY ACT.

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

SECTION 1. Arkansas Code § 9-20-108(f)(2)(B), concerning when a hearing is unnecessary, is repealed.

~~(B) A hearing is not required if counsel for both parties agree to waive the hearing or if an emergency exists for entry of an order.~~

SECTION 2. Arkansas Code § 9-20-120(b)(9), concerning when the Department of Human Services may consent to the performance of an amputation on the body of a maltreated adult in the custody of the department without the express approval of a court, is amended to read as follows:

(9) Consent to amputation of any part of the body unless a procedure is necessary in a situation threatening the life of the maltreated adult; or

SECTION 3. Arkansas Code Title 9, Chapter 20, is amended to add an additional section to read as follows:



9-20-124. Consideration of issues requiring court approval.

(a) The Department of Human Services shall:

(1) Request court approval in accordance with § 9-20-120(b) by filing a written motion requesting court approval by the court;

(2)(A) Include an affidavit from the attending physician of the respondent when the request for court approval relates to a decision described in §§ 9-20-120(b)(1), (b)(2), (b)(3), (b)(9), and (b)(10).

(B) The affidavit shall:

(i) Describe the medical need or appropriateness for the action requested;

(ii) Include information on the diagnosis, prognosis, and treatment of the respondent;

(iii) Include information on any possible consequences that may occur if treatment is withheld from the respondent;

(iv) Include information on whether treatment of the respondent only prolongs the respondent's health; and

(v) Include the name and contact information of the attending physician of the respondent; and

(3) Serve a copy of the motion and affidavit on the attorney for the respondent within twenty-four (24) hours from the time of filing.

(b)(1) The court shall:

(A)(i) Conduct a hearing within three (3) business days from the date on which a motion requesting court approval is filed.

(ii) A hearing is not required if counsel for both of the parties agree to waive the hearing or if an emergency exists for entry of an order.

(iii) The court shall allow a motion filed under this section to be heard on transfer by another division of the circuit court in order to ensure that a hearing conducted under subdivision (b)(1)(A)(i) of this section is heard within the required time frame;

(B)(i) Enter a decision on the motion requesting court approval within three (3) business days from the date of the hearing.

(ii) If a hearing is not conducted, the court shall enter a decision on the motion requesting court approval within three (3) business days from the date on which a motion requesting court approval is filed;

(C) Grant a motion requesting court approval that does not include an affidavit from the attending physician of the respondent if the court finds by clear and convincing evidence that granting the request is in the best interest of the respondent;

(D) Grant a motion requesting court approval that includes an affidavit from the attending physician of the respondent if the court finds by clear and convincing evidence that:

(i) Granting the request is in the best interest of the respondent;

(ii) The attending physician of the respondent is requesting the medical action or inaction;

(iii) The evidence supports the need for the requested medical action or inaction; and

(iv) The respondent did not express an intent to oppose the medical action or inaction before losing the capacity to make his or her own medical decisions.

(2) The court may allow the attending physician of the respondent or another witness to testify by telephone or another medium as permitted by the Arkansas Rules of Evidence or the Arkansas Rules of Civil Procedure.

APPROVED: 3/6/19