

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/9/17
A Bill

HOUSE BILL 1678

By: Representative Beck

For An Act To Be Entitled

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

Subtitle

*CONCERNING VISITATION WITH AN ENDANGERED
ADULT, AN IMPAIRED ADULT, OR A WARD.*

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

SECTION 1. Arkansas Code § 9-20-103, concerning the definition of terms used under the Adult Maltreatment Custody Act, is amended to add additional subdivisions to read as follows:

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

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

9-20-123. Rights of relatives.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the:

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

(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 department.

(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 department; and

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

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

28-65-106. Rights of incapacitated persons.

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

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

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

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

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

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

28-65-110. Rights of relatives.

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

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

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

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

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

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

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

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

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

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

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

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

adult; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(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