

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1607

By: Representative Gazaway

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING TEMPORARY
GUARDIANS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING TEMPORARY
GUARDIANS.

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

SECTION 1. Arkansas Code § 28-65-218 is amended to read as follows:
28-65-218. ~~Temporary guardian~~ Emergency temporary guardianship.

(a)(1)(A) ~~Except as provided under subdivision (a)(2) of this section, if the court finds that~~ Upon presentation of an emergency ex parte motion accompanied by an affidavit or verified petition that includes appropriately detailed specific facts, a court shall issue an order appointing an emergency temporary guardian for an incapacitated person if the court finds that:

(i) there ~~There~~ is imminent danger;

(a) to ~~To~~ the life or health of the
incapacitated person; or

(b) of ~~Of~~ loss, damage, or waste to the
property of ~~an~~ the incapacitated person; and

(ii) that this requires the ~~There is a need for the~~ immediate appointment of a guardian of his or her person or estate, or both, the court may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period, which period, including all extensions, shall not exceed ninety (90) days, and the court may remove or discharge him or her or terminate the guardianship.



(B) An ex parte emergency guardianship order shall include a date and time, not exceeding fourteen (14) consecutive days from the date the order is entered, for a hearing on the emergency ex parte motion.

(2) If the court finds by a preponderance of the evidence after a hearing on an emergency ex parte motion or after an agreement of the parties in writing or orally before the court that an emergency temporary guardian should be appointed to protect the ward or the estate of the ward, the court may appoint an emergency temporary guardian for the ward or the estate of the ward for no longer than ninety (90) days from the date of the hearing on the emergency ex parte motion.

~~(2)(A) If the incapacitated person is a minor, the initial period for the appointment of a temporary guardian shall be for a period not to exceed ninety (90) days.~~

~~(B)(i) However, on or before the expiration of the ninety-day period, the court may extend the temporary guardianship for an additional period not to exceed ninety (90) days if the court finds after a hearing on the merits that there remains imminent danger to the life or health of the minor if the temporary guardianship is not extended.~~

(3) If the incapacitated person is a minor, after a hearing on the merits of an extension or upon the agreement of the parties, an emergency temporary guardianship may be extended by the court on or before the expiration of the ninety-day period for up to an additional one hundred eighty (180) days.

~~(ii)(b)(1)~~ Notice of the hearing on the emergency ex parte motion shall be given before the hearing as required by subsections (b)-(d) of this section subsections (c)-(f) of this section.

(2) However, notice is not required with respect to a person whose whereabouts are unknown or cannot by the exercise of reasonable diligence be ascertained.

~~(b)(c)~~ Immediate notice of the emergency temporary guardianship order shall be served by the petitioner upon the following:

- (1) The ward, if ~~over fourteen (14)~~ the ward is at least fifteen (15) years of age;
- (2) The parents of the ward, if the ward is a minor;
- (3) The spouse, if any, of the ward;
- (4) Any other person who is the guardian of the person or of the

estate of the ward, or any other person who has been significantly involved in the care and custody of the ward, ~~and the director of any agency from which the respondent is receiving services;~~

(5) The Department of Human Services when the emergency temporary guardian appointed serves as guardian of five (5) or more wards;

(6) If there is neither a known parent nor known spouse, at least one (1) of the nearest competent relatives by blood or marriage of the ward if known; and

(7) If directed by the court:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state which makes or awards compensation, pension, insurance, or other allowance for the benefit of the ward or his or her estate;

(B) Any department, bureau, agency, or political subdivision of the United States or of this state or any charitable organization, which may be charged with the supervision, control, or custody of the ~~incompetent~~ incapacitated person; or

(C) Any other person designated by the court.

~~(e)~~(d) The notice shall include:

(1) A copy of the petition;

(2) A copy of the emergency temporary order and order of appointment;

(3) Notice of a hearing date; and

(4) A statement of ~~rights as provided in § 28-65-207(b)(1)~~ the proposed rights of the ward described in § 28-65-207(b) and § 28-65-213.

~~(d)~~(e) If the proposed ward is ~~over fourteen (14) years of age~~ fifteen (15) years of age or older, there shall be personal service upon him or her if personal service can be had. Service on others shall be according to the Arkansas Rules of Civil Procedure or as otherwise provided by the court.

~~(e)~~(f) Notice need not be given to any person listed in § 28-65-207(a)(1)-(6).

~~(f)~~ ~~Within three (3) working days of the entry of the temporary guardianship order, a full hearing on the merits shall be held.~~

~~(g)~~(1) ~~The appointment may be to perform duties respecting specific property or to perform particular acts, as stated in the order of appointment~~
If a petitioner is unable to serve a person entitled to notice under the

provisions of this subchapter despite reasonable efforts, the petitioner shall make further reasonable efforts after the hearing on the emergency ex parte order to serve the person entitled to notice with a copy of the original pleadings and emergency temporary guardianship order.

(2) The respondent may request a hearing to review the emergency ex parte order.

(3) A hearing to review an emergency ex parte order shall be scheduled as soon as reasonably possible if a respondent requests a hearing to review the emergency ex parte order.

(h) The emergency temporary guardian shall make such reports as the court shall direct ~~and shall account to the court upon termination of his or her authority.~~

(i) In all other respects, the provisions of this chapter concerning guardians shall apply to emergency temporary guardians, and an appeal may be taken from the order of appointment of ~~a~~ an emergency temporary guardian.

(j) The letters issued to ~~a~~ an emergency temporary guardian shall state the date of expiration of the authority of the emergency temporary guardian.