

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1608

By: Representative Gazaway

## For An Act To Be Entitled

AN ACT CONCERNING THE RIGHTS OF WARDS AND PROPOSED WARDS; TO AMEND THE LAW CONCERNING HEARINGS TO DETERMINE WHETHER A PERSON IS INCAPACITATED; AND FOR OTHER PURPOSES.

## Subtitle

CONCERNING THE RIGHTS OF WARDS AND PROPOSED WARDS; AND TO AMEND THE LAW CONCERNING HEARINGS TO DETERMINE WHETHER A PERSON IS INCAPACITATED.

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

SECTION 1. Arkansas Code § 28-65-213 is amended to read as follows:

28-65-213. ~~Hearing—Effect of determinations~~ Rights of wards and proposed wards.

(a) At the hearing, the ~~respondent~~ ward or proposed ward shall have the right to:

- (1) Be represented by counsel;
- (2) Present evidence on his or her own behalf;
- (3) Cross-examine adverse witnesses;
- ~~(4) Remain silent;~~
- ~~(5)~~ (4)(A) Be present.

(B) The petitioner or a person with physical custody of the ward or proposed ward shall make reasonable efforts to ensure that the ward or proposed ward is present or otherwise able to participate electronically in all hearings.



(C) If the ward or proposed ward is not present during a hearing, the court shall inquire as to the reasons for the absence and shall proceed with the hearing only after finding that it is not safe, appropriate, or possible for the ward or proposed ward to be present at the hearing; and

~~(6)~~(5) Require the attendance by subpoena of one (1) or more of the professionals who prepared the evaluation.

(b) 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.

(c)(1) If the ~~respondent~~ ward or proposed ward 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~~ ward or proposed ward.

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

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