

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1608

5 By: Representative Gazaway  
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## For An Act To Be Entitled

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

14 CONCERNING THE RIGHTS OF WARDS AND  
15 PROPOSED WARDS; AND TO AMEND THE LAW  
16 CONCERNING HEARINGS TO DETERMINE WHETHER  
17 A PERSON IS INCAPACITATED.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code § 28-65-213 is amended to read as follows:

24 28-65-213. ~~Hearing—Effect of determinations~~ Rights of wards and  
25 proposed wards.

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

- 28 (1) Be represented by counsel;
- 29 (2) Present evidence on his or her own behalf;
- 30 (3) Cross-examine adverse witnesses;
- 31 ~~(4) Remain silent;~~
- 32 ~~(5)~~(4)(A) Be present.

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



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

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

7                    (b) The burden of proof by clear and convincing evidence is upon the  
 8 petitioner, and a determination of incapacity shall be made before  
 9 consideration of a proper disposition.

10                   (c)(1) If the ~~respondent~~ ward or proposed ward is found to be  
 11 incapacitated, the court shall determine the extent of the incapacity and the  
 12 feasibility of less restrictive alternatives to guardianship to meet the  
 13 needs of the ~~respondent~~ ward or proposed ward.

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

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

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