



**ARIZONA STATE SENATE**  
*Fifty-Sixth Legislature, First Regular Session*

**AMENDED**

FACT SHEET FOR S.B. 1038

probate advisory panel; establishment

Purpose

Establishes the Probate Advisory Panel (panel) and outlines membership and duties of the panel. Requires the panel to hold an annual public hearing on how to improve guardianship and conservatorship laws through statutory changes and requires the panel to submit a report of its findings on or before November 15 of each year.

Background

The purpose of the probate jurisdiction of the courts is: 1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons; 2) to discover and make effective the intent of a decedent in distribution of the decedent's property; 3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors; 4) to facilitate use and enforcement of certain trusts; and 5) to make uniform the law among the various jurisdictions ([A.R.S. § 14-1102](#)).

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. A person becomes a guardian of an incapacitated person by a parental or spousal appointment or on appointment by the court. The guardianship continues until it is terminated, without regard to the location of the guardian or the ward ([A.R.S. §§ 14-5201](#) and [14-5301.02](#)).

The court may appoint a conservator on petition and after notice and a hearing in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection that cannot otherwise be provided, or the minor has or may have affairs that may be jeopardized or prevented by minority or that funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide funds. The court may also appoint a conservator in relation to the estate and affairs of a person if the court finds that; 1) the person is unable to manage the person's estates and affairs due to mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance; and 2) that the person has property that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds. ([A.R.S. § 14-5401](#))

The court must appoint a public fiduciary for those persons or decedents' estates in need of guardianship, conservatorship or administration and for whom there is no person or corporation qualified and willing to act in that capacity ([A.R.S. § 14-5602](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Establishes the panel in the Office of the Governor.
2. Outlines that the panel is comprised of the following members:
  - a) two public members who are guardians of an adult child or a sibling who is a ward and who are not court appointed, one of which is to be appointed by the President of the Senate and the other to be appointed by the Speaker of the House of Representatives, after first consulting with the Minority Leaders of the Senate and the House of Representatives;
  - b) two public members who are conservators of a parent who is a protected person and who are not court appointed, one of which is to be appointed by the President of the Senate and the other to be appointed by the Speaker of the House of Representatives, after first consulting with the Minority Leaders of the Senate and the House of Representatives;
  - c) two public members who are advocates of probate abuse, one of which is to be appointed by the President of the Senate and the other to be appointed by the Speaker of the House of Representatives;
  - d) one public fiduciary who is licensed by the Arizona Supreme Court and who is from a county with a population of less than 500,000 persons to be appointed by the Governor;
  - e) one fiduciary, who is not a public fiduciary, licensed by the Arizona Supreme Court and who is from a county with a population of more than 500,000 persons, to be appointed by the Governor;
  - f) one attorney who has a minimum of four years experience in guardianship and conservatorship proceedings, to be appointed by the Governor;
  - g) one judicial officer who has a minimum of two years experience presiding over guardianship and conservatorship proceedings and who is from a county with a population of more than 500,000 persons, to be appointed by the Chief Justice of the Supreme Court; and
  - h) one clerk of the superior court, to be appointed by the Chief Justice of the Supreme Court.
3. Requires the panel to:
  - a) select a chairperson at its first annual meeting;
  - b) hold a public hearing at least once per year, or at the request of the chairperson, on how to improve the guardianship and conservatorship laws through statutory changes;
  - c) submit a report of its findings and recommendations on or before November 15 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate and the Chief Justice of the Supreme Court; and
  - d) provide a copy of each report to the Secretary of State.
4. Prohibits panel members from receiving compensation or reimbursement of expenses.
5. Limits the initial terms of the members of the panel to:
  - a) four terms ending January 1, 2024;
  - b) four terms ending January 1, 2025; and
  - c) three terms ending January 1, 2026.

6. Requires the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Chief Justice of the Supreme Court to make all subsequent appointments as prescribed.
7. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Specifies that the two public members of the panel who are guardians of an adult child or a sibling who is a ward are not court appointed.
2. Specifies that the two public members of the panel who are conservators of a parent who is a protected person are not court appointed.
3. Adds two additional members to the panel who are advocates for victims of probate abuse with one of each to be appointed by the President of the Senate and the Speaker of the House of Representatives.
4. Modifies the staggered panel terms to account for the additional two members.
5. Adds that, when selecting the two public members who are guardians of an adult child or a sibling who is a ward, that the President of the Senate and the Speaker of the House of Representatives must consult with the Minority Leaders of the Senate and House of Representatives.
6. Adds that, when selecting the two public members who are conservators of a parent who is a protected person, the President of the Senate and the Speaker of the House of Representatives must consult with the Minority Leaders of the Senate and the House of Representatives.

Senate Action

JUD            1/26/23    DPA    7-0-0

Prepared by Senate Research

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