



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
First Regular Session

Senate: JUD DPA 5-2-0-0 | 3rd Read DPA 21-7-2-0-0

House: JUD DPA/SE 8-0-0-0-0

SB 1291: guardianship; conservatorship; policies; procedures

S/E: conservatorship; guardianship; policies; procedures

Sponsor: Senator Kavanagh, LD 3

Caucus & COW

Overview

Makes various changes and additions to statute relating the policies and procedures applicable to judicial proceedings under A.R.S. Title 14, including those for the appointment of guardians and conservators or the entering of protective orders.

History

A person can become a guardian of a minor by acceptance of a testamentary appointment or upon appointment by a court. A person can become a guardian of an incapacitated person by a parental or spousal appointment or on appointment by a court. In either case, 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](#)). An *incapacitated person* is a person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person ([A.R.S. § 14-5101](#)).

An alleged incapacitated person or any person interested in that person's affairs or welfare may petition a court for the appointment of a guardian or for any other appropriate protective order. The petition must include a number of items enumerated in statute, and the court must follow various procedures in considering the petition ([A.R.S. § 14-5303](#)).

A guardian must encourage and allow contact between the ward and other persons who have a significant relationship with the ward. A guardian may limit, restrict or prohibit contact between the ward and any person if the guardian reasonably believes that the contact will be detrimental to the ward's health, safety or welfare ([A.R.S. § 14-5316](#)).

The court may appoint a conservator or make another protective order on petition and after notice and a hearing for cause as follows:

- 1) 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; or
- 2) In relation to the estate and affairs of a person if the court finds that:
 - a) 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
 - b) 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](#)).

Like for guardianships, statute outlines various items that must be included in a petition for the appointment of a conservator or for any other appropriate protective order, which may be filed by a person allegedly in need of protection; any person who is interested in that person's estate or affairs, including that person's parent, guardian or custodian; or any person who would be adversely affected by lack of effective management of that person's estate and affairs ([A.R.S. § 14-5404](#)).

If duly demanded, a party is entitled to a jury trial in any proceeding under A.R.S. Title 14 in which any controverted question of fact arises as to which any party has a constitutional right to a jury trial. If there is no right to a jury trial, or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only ([A.R.S. § 14-1306](#)). General notice requirements also apply to proceedings under Title 14 where other more specific notice requirements are not otherwise provided ([A.R.S. § 14-1401](#)).

Provisions

1. Requires a court to provide notice to the parties in proceedings under A.R.S. Title 14 of their constitutional right to a trial by jury that also advises them of any limitations and requirements applicable to the right. (Sec. 1)
2. Authorizes a court to order a petitioner who intentionally fails to provide notice of a hearing as required by A.R.S. Title 14 to any interested person or that person's attorney to pay damages, including reasonable attorney fees and costs, incurred by the interested person as a result of the failure to provide notice. (Sec. 2)
3. Mandates that a court make efforts to resolve proceedings brought under A.R.S. Title 14, Chapter 5 (regulating the protection of persons under disability and their property) in as efficient and inexpensive manner as possible, including resolution by alternative means when possible. (Sec. 3)
4. Enumerates several minimal duties that an alleged incapacitated person's attorney must fulfill within 7 days before the initial hearing on the petition for the appointment of a permanent guardian or conservator, including:
 - a) Interviewing the alleged incapacitated person;
 - b) Informing the alleged incapacitated person of various pieces of information, including:
 - i) The right to a jury trial pursuant to [A.R.S. § 14-1306](#);
 - ii) The right to select an attorney of the person's choosing;
 - iii) The right of the alleged incapacitated person to appear in court and have any person the alleged incapacitated person wishes to be present with them;
 - iv) A review of the court process, timelines and expected future proceedings;
 - v) A detailed list and explanation of the duties the guardian or conservator will assume for the alleged incapacitated person;
 - vi) If a guardianship has been requested, the alleged incapacitated person's right to maintain relationships pursuant to [A.R.S. § 14-5316](#). (Sec. 4)
5. Requires the attorney, at the initial hearing on the petition for appointment, to either attest to the court that the attorney has fulfilled the above requirements or to provide an explanation as to why the attorney has been unable to comply with those requirements. (Sec. 4)
6. Adds the following to the list of items that must be included in a petition for the appointment of a guardian or for any other appropriate protective order:

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
--	--	---	--------------------------------------

- a) Whether the alleged incapacitated person is the principal under a health care power of attorney, and, if so, a copy of that document must be attached to the petition; and
 - b) Whether the alleged incapacitated person is the principal under a durable power of attorney in which the alleged incapacitated person has nominated someone to serve as guardian, and, if so, a copy of that document must be attached to the petition. (Sec. 5)
7. Prohibits a guardian from limiting, restricting or prohibiting contact between the ward and any person the ward wishes to see unless the guardian reasonably believes that the contact will be detrimental to the ward's health, safety or welfare. (Sec. 6)
 8. Stipulates that a guardian, in a proceeding regarding a petition by either a ward or a person who has a significant relationship with a ward for an order compelling the guardian to allow the person to have contact with a ward, has the burden of proving by clear and convincing evidence that the requested contact will be detrimental to the ward's health, safety or welfare, and requires a hearing on the petition to be heard within 10 days of the petition being received by the court. (Sec. 6)
 9. Allows a court that finds that a guardian has unreasonably denied contact between a ward and a person who has a significant relationship with the ward to do either, or both, of the following:
 - a) Remove the guardian; and/or
 - b) Order the guardian to personally pay some or all of the reasonable attorney fees and expenses incurred by the person or the ward. (Sec. 6)
 10. Requires a guardian, within 10 court days after entry of an order appointing a guardian for an adult, to provide all parties to the matter with written notice of the guardian's powers and duties under [A.R.S. § 14-5316](#). (Sec. 6)
 11. Mandates that a court make certain findings in existing statute for the appointment of a conservator or other protective order in relation to the estate and affairs of a person by clear and convincing evidence. (Sec. 7)
 12. Prohibits a court from appointing a conservator or enter a protective order in relation to the estate and affairs of a person unless the subject of the protective order has appeared before the court either in person or by virtual or remote means. (Sec. 7)
 13. If the subject person is unable to appear as prescribed above, requires the petitioner to provide evidence to the court of the person's incapacity. (Sec. 7)
 14. Requires a court to weigh the evidence, request additional evidence if necessary and document all evidence in the court record in a proceeding regarding appointment of a conservator or other protective order in relation to the estate and affairs of a person. (Sec. 7)
 15. Mandates that a court take all necessary actions to ensure that the constitutional rights of a person subject to a protective order are protected. (Sec. 7)
 16. Adds the following items that must be including in petition by a person for the appointment of a conservator or other protective order:
 - a) Whether the person allegedly in need of protection is the principal under a durable power of attorney, and, if so, a copy of that durable power attorney must be attached to the petition;
 - b) Whether the person allegedly in need of protection is the principal under a health care power of attorney in which the person nominates a conservator, and, if so, a copy of that health care power of attorney must be attached to the petition; and
 - c) Whether the person allegedly in need of protection has a present vested interest in a trust, and, if so, the name of the trust and the current trustee of the trust. (Sec. 8)