



# ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature  
First Regular Session

Senate: JUD DPA 5-2-0-0 | 3<sup>rd</sup> Read DPA 21-7-2-0  
House: JUD DPA/SE 8-0-0-0 | 3<sup>rd</sup> Read DPA 57-0-2-0-1

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**SB 1291: guardianship; conservatorship; policies; procedures**

**S/E: conservatorship; guardianship; policies; procedures**

**Sponsor: Senator Kavanagh, LD 3**

**Transmitted to the Governor**

## **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. Adds the following to statute delineating the purpose and policies of Title 14:
  - a) To promote a speedy, efficient, and inexpensive system for resolving disputes under Chapter 5 of Title 14 while ensuring that the due process and other constitutional rights of the persons subject to such proceedings are protected; and
  - b) To provide just and appropriate remedies for parties who incur damages as the result of vexatious conduct, as defined by court rule, or other unreasonable conduct, during proceedings brought pursuant to Title 14, without impinging on the rights of individuals who are the subject of proceedings under Chapter 5 of Title 14. (Sec. 1)
2. Enumerates several minimal duties that an attorney for an alleged incapacitated person or person in need of protection must fulfill no later than 7 calendar days before the initial hearing on the petition for the appointment of a permanent guardian or conservator, including:
  - a) Interviewing the alleged incapacitated person or person in need of protection.
  - b) Informing the alleged incapacitated person or person allegedly in need of protection of all of the following:
    - i) The right to a trial by jury pursuant to [A.R.S. § 14-1306](#);
    - ii) The right to select an attorney of the person's choosing and, if the attorney is appointed by the court, the attorney must explain to the alleged incapacitated person or person allegedly in need of protection that the person may hire a different attorney at the person's own expense;
    - iii) The right of the alleged incapacitated person or person in need of protection to appear in court and have any person the alleged incapacitated person wishes to be present with them; and
    - iv) A review of the court process, timelines and expected future proceedings.
  - c) Providing the incapacitated person or person allegedly in need of protection with a copy of the Supreme Court promulgated order to a guardian, order to conservator or order to guardian and conservator that the court will enter if the relief requested in the petition is granted. (Sec. 5)
3. Requires the attorney for the alleged incapacitated person or person allegedly in need of protection to attest, at the initial hearing on a petition for appointment, to the court that the attorney has fulfilled the above requirements or to provide an explanation as to why the

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attorney has been unable to comply with those requirements at the initial hearing on the petition for appointment. (Sec. 5)

4. Authorizes a court to find an attorney who fails to fulfill the duties outlined above in contempt of court. (Sec. 5)
5. 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:
  - 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;
  - 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; and
  - c) Whether the alleged incapacitated person has a present vested interest in a trust, and, if so, the name of the trust and the current trustee of the trust. (Sec. 6)
6. 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. (Sec. 8)
7. Requires 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, must request that the court set an initial hearing on the petition and, unless the petitioner requests a later initial hearing, stipulates that the hearing must occur as soon as possible but no later than 15 judicial days after the court receives the petitioner's request. (Sec. 8)
8. 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, or both. (Sec. 8)
9. 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. 9)
10. Specifies that, unless the alleged basis for the appointment of a conservator or entry of a protective order is that the person allegedly in need of protection is confined, detained by a foreign power or missing, the court is prohibited from appointing a conservator or entering a protective order for a person, as outlined in statute, unless the person allegedly in need of protection has appeared before the court either in person or by virtual means. (Sec. 9)
11. 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. 10)
- 12. Requires the notice of hearing on a petition for appointment of a guardian, appointment of a conservator or other related proceedings requiring a notice of hearing to also provide notice of the right to a trial by jury under [A.R.S. § 14-1306](#), in addition to stating the time and place of the hearing, and requires a court, on the initial hearing on such a petition, to read into the record the notice of right to trial by jury as stated in the notice of hearing. (Sec. 6, 7, 11, 12)
- 13. Allows a court in proceedings for the appointment of a guardian, appointment of a conservator or other related proceedings to order a person who intentionally fails to provide notice of a hearing as required in statute, or who knowingly makes a false claim that the person did not receive notice of such a hearing, to pay damages, including reasonable attorney fees and costs, incurred as a result of such unreasonable conduct. (Sec. 7, 11)
- 14. Allows an adult with a disability who is 18 years or older to enter into a supported decision-making agreement with an adult supporter who is 18 years or older in which the adult authorizes the supporter to do any of the following:
  - a) Provide supported decision-making, including assisting the adult in understanding the options, responsibilities and consequences of the adult's life decisions, without making those decisions on behalf of the adult;
  - b) Assist the adult in accessing, collecting and obtaining any information that is relevant to a life decision, including medical, psychological, financial, educational or treatment records;
  - c) Assist the adult in understanding the information listed above; and
  - d) Assist the adult in communicating the adult's decisions to appropriate persons. (Sec. 13)
- 15. States that a supporter is not a surrogate decision-maker for the adult and does not have the authority to sign legal documents on behalf of the adult or bind the adult in a legal agreement. (Sec. 13)
- 16. Requires a supported decision-making agreement to explain the rights, roles, duties and limitations and obligations of both the adult and the supporter who are entering into the agreement. (Sec. 13)
- 17. Subjects a supporter who intimidates or deceives the adult to gain the supported decision-making agreement or any authority provided in the supported decision-making agreement to criminal prosecution and civil penalties as otherwise provided by law. (Sec. 13)
- 18. Prohibits a supporter from receiving compensation as a result of the supporter's duties under a supported-decision making agreement. (Sec. 13)
- 19. Requires a supported-decision making agreement to be signed by the adult and the supporter in the presence of two or more subscribing witnesses who are 18 years or older or a notary public. (Sec. 13)
- 20. States that a supported decision-making agreement extends until:
  - a) Terminated in writing by either party;
  - b) The adult becomes incapacitated; or
  - c) A guardian is appointed. (Sec. 13)
- 21. Establishes a supported decision-making agreement form. (Sec. 13)
- 22. Defines relevant terms. (Sec. 13)
- 23. Adds a supported decision-making agreement to the existing definition of a governing instrument for purposes of Title 14. (Sec. 2)
- 24. Makes technical and conforming changes. (Sec. 1, 2, 3, 4, 6, 8, 12)