

House Engrossed Senate Bill

~~guardianship; conservatorship; policies; procedures~~
(now: conservatorship; guardianship; policies; procedures)

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1291

AN ACT

AMENDING SECTION 14-1102, ARIZONA REVISED STATUTES; AMENDING SECTION 14-1201, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2023, CHAPTER 32, SECTION 1; AMENDING SECTIONS 14-1306 AND 14-1401, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5111; AMENDING SECTIONS 14-5303, 14-5309, 14-5316, 14-5401, 14-5404, 14-5405 AND 14-5407, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; RELATING TO PROTECTION OF PERSONS UNDER DISABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-1102, Arizona Revised Statutes, is amended to
3 read:

4 14-1102. Purposes; rule of construction

5 A. This title shall be liberally construed and applied to promote
6 its underlying purposes and policies.

7 B. The underlying purposes and policies of this title are:

8 1. To simplify and clarify the law concerning the affairs of
9 decedents, missing persons, protected persons, minors and incapacitated
10 persons.

11 2. To discover and make effective the intent of a decedent in
12 distribution of his property.

13 3. To promote a speedy and efficient system for liquidating the
14 estate of the decedent and making distribution to his successors.

15 4. TO PROMOTE A SPEEDY, EFFICIENT AND INEXPENSIVE SYSTEM FOR
16 RESOLVING DISPUTES UNDER CHAPTER 5 OF THIS TITLE WHILE ENSURING THAT THE
17 DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS OF THE PERSONS SUBJECT TO SUCH
18 PROCEEDINGS ARE PROTECTED.

19 5. TO PROVIDE JUST AND APPROPRIATE REMEDIES FOR PARTIES WHO INCUR
20 DAMAGES AS THE RESULT OF VEXATIOUS CONDUCT, AS DEFINED BY COURT RULE, OR
21 OTHER UNREASONABLE CONDUCT, DURING PROCEEDINGS BROUGHT PURSUANT TO THIS
22 TITLE, WITHOUT IMPINGING ON THE RIGHTS OF INDIVIDUALS WHO ARE THE SUBJECT
23 OF PROCEEDINGS UNDER CHAPTER 5 OF THIS TITLE.

24 ~~4.~~ 6. To facilitate use and enforcement of certain trusts.

25 ~~5.~~ 7. To make uniform the law among the various jurisdictions.

26 Sec. 2. Section 14-1201, Arizona Revised Statutes, as amended by
27 Laws 2023, chapter 32, section 1, is amended to read:

28 14-1201. Definitions

29 In this title, unless the context otherwise requires:

30 1. "Agent" includes an attorney-in-fact under a durable or
31 nondurable power of attorney, a person who is authorized to make decisions
32 concerning another person's health care and a person who is authorized to
33 make decisions for another person under a natural death act.

34 2. "Application" means a written request to the registrar for an
35 order of informal probate or appointment under chapter 3, article 3 of
36 this title.

37 3. "Basis for compensation" means an hourly rate, a fixed fee or a
38 contingency fee agreement and reimbursable costs.

39 4. "Beneficiary", as it relates to a trust beneficiary, includes a
40 person who has any present or future interest, vested or contingent, and
41 includes the owner of an interest by assignment or other transfer. As it
42 relates to a charitable trust, beneficiary includes any person entitled to
43 enforce the trust. As it relates to a beneficiary of a beneficiary
44 designation, beneficiary refers to a beneficiary of an insurance or
45 annuity policy, an account with pay on death designation, a security

1 registered in beneficiary form or a pension, profit sharing, retirement or
2 similar benefit plan, or any other nonprobate transfer at death. As it
3 relates to a beneficiary designated in a governing instrument, beneficiary
4 includes a grantee of a deed, a devisee, a trust beneficiary, a
5 beneficiary of a beneficiary designation, a donee, appointee or taker in
6 default of a power of appointment and a person in whose favor a power of
7 attorney or a power held in any person, fiduciary or representative
8 capacity is exercised.

9 5. "Beneficiary designation" refers to a governing instrument
10 naming a beneficiary of an insurance or annuity policy, of an account with
11 pay on death designation, of a security registered in beneficiary form or
12 of a pension, profit sharing, retirement or similar benefit plan, or any
13 other nonprobate transfer at death.

14 6. "Certified paper original" means a tangible medium that contains
15 both the text of an electronic will and any self-proving affidavit
16 concerning the electronic will and that is accompanied by an affidavit
17 that is executed pursuant to section 14-2523.

18 7. "Child" includes a person who is entitled to take as a child
19 under this title by intestate succession from the parent whose
20 relationship is involved. Child excludes a person who is only a
21 stepchild, a foster child, a grandchild or a more remote descendant.

22 8. "Claims", in respect to estates of decedents and protected
23 persons, includes liabilities of the decedent or the protected person,
24 whether arising in contract, in tort or otherwise, and liabilities of the
25 estate that arise at or after the death of the decedent or after the
26 appointment of a conservator, including funeral expenses and expenses of
27 administration. Claims do not include estate or inheritance taxes or
28 demands or disputes regarding title of a decedent or a protected person to
29 specific assets alleged to be included in the estate.

30 9. "Community property" means that property of a husband and wife
31 that is acquired during the marriage and that is community property as
32 prescribed in section 25-211.

33 10. "Conservator" means a person who is appointed by a court to
34 manage the estate of a protected person.

35 11. "Court" means the superior court.

36 12. "Dependent child" means a minor child whom the decedent was
37 obligated to support or an adult child who was in fact being supported by
38 the decedent at the time of the decedent's death.

39 13. "Descendant" means all of the decedent's descendants of all
40 generations, with the relationship of parent and child at each generation.

41 14. "Devise", when used as a noun, means a testamentary disposition
42 of real or personal property and, when used as a verb, means to dispose of
43 real or personal property by will.

1 15. "Devisee" means a person designated in a will to receive a
2 devise. For the purposes of chapter 3 of this title, in the case of a
3 devise to an existing trust or trustee, or to a trustee on trust described
4 by will, the trust or trustee is the devisee and the beneficiaries are not
5 devisees.

6 16. "Disability" means cause for a protective order as described in
7 section 14-5401.

8 17. "Distributee" means any person who has received property of a
9 decedent from that person's personal representative other than as a
10 creditor or purchaser. Distributee includes a testamentary trustee only
11 to the extent of distributed assets or increment that remains in that
12 person's hands. A beneficiary of a testamentary trust to whom the trustee
13 has distributed property received from a personal representative is a
14 distributee of the personal representative. For the purposes of this
15 paragraph, "testamentary trustee" includes a trustee to whom assets are
16 transferred by will, to the extent of the devised assets.

17 18. "Electronic" means having electrical, digital, magnetic,
18 optical, electromagnetic or similar capabilities.

19 19. "Electronic record" means a record that is created, generated,
20 sent, communicated, received or stored by electronic means.

21 20. "Electronic signature" means an electronic method or process
22 that does both of the following:

23 (a) Is attached to or logically associated with an electronic
24 record and that is executed or adopted by a person with the intent to sign
25 the electronic record.

26 (b) Uses a security procedure that allows a determination that the
27 electronic signature was all of the following:

28 (i) Unique to the person using it.

29 (ii) Capable of verification.

30 (iii) Under the sole control of the person making the electronic
31 signature.

32 (iv) Linked to the electronic record to which the electronic
33 signature relates in a manner so that if the electronic record is changed
34 the electronic signature is invalidated.

35 21. "Electronic will" means a testamentary instrument that is
36 executed and maintained on an electronic medium and that is executed in
37 compliance with section 14-2518.

38 22. "Electronically present" means two or more individuals who are
39 in a different physical location and who are communicating by means of
40 technology that enables all individuals to see and hear each other in real
41 time to the same extent as if the individuals were physically present in
42 the same location.

43 23. "Estate" includes the property of the decedent, trust or other
44 person whose affairs are subject to this title as originally constituted
45 and as it exists from time to time during administration. As it relates

1 to a spouse, the estate includes only the separate property and the share
2 of the community property belonging to the decedent or person whose
3 affairs are subject to this title.

4 24. "Exempt property" means that property of a decedent's estate
5 that is described in section 14-2403.

6 25. "Fiduciary" includes a personal representative, guardian,
7 conservator and trustee.

8 26. "Foreign personal representative" means a personal
9 representative who is appointed by another jurisdiction.

10 27. "Formal proceedings" means proceedings that are conducted
11 before a judge with notice to interested persons.

12 28. "Governing instrument" means a deed, will, trust, insurance or
13 annuity policy, account with pay on death designation, security registered
14 in beneficiary form, pension, profit sharing, retirement or similar
15 benefit plan, instrument creating or exercising a power of appointment or
16 ~~a~~ power of attorney OR SUPPORTED DECISION-MAKING AGREEMENT or a
17 dispositive, appointive or nominative instrument of any similar type.

18 29. "Guardian" means a person who has qualified as a guardian of a
19 minor or incapacitated person pursuant to testamentary or court
20 appointment but excludes a person who is merely a guardian ad litem.

21 30. "Guardian ad litem" includes a person who is appointed pursuant
22 to section 14-1408.

23 31. "Heirs", except as controlled by section 14-2711, means
24 persons, including the surviving spouse and the state, who are entitled
25 under the statutes of intestate succession to the property of a decedent.

26 32. "Incapacitated person" has the same meaning prescribed in
27 section 14-5101.

28 33. "Informal proceedings" means those proceedings conducted
29 without notice to interested persons by an officer of the court acting as
30 a registrar for probate of a will or appointment of a personal
31 representative.

32 34. "Interested person" includes any trustee, heir, devisee, child,
33 spouse, creditor, beneficiary, person holding a power of appointment and
34 other person who has a property right in or claim against a trust estate
35 or the estate of a decedent, ward or protected person. Interested person
36 also includes a person who has priority for appointment as personal
37 representative and other fiduciaries representing interested persons.
38 Interested person, as the term relates to particular persons, may vary
39 from time to time and must be determined according to the particular
40 purposes of, and matter involved in, any proceeding.

41 35. "Issue" of a person means descendant as defined in this
42 section.

43 36. "Joint tenants with the right of survivorship" and "community
44 property with the right of survivorship" includes co-owners of property
45 held under circumstances that entitle one or more to the whole of the

1 property on the death of the other or others but excludes forms of
2 co-ownership registration in which the underlying ownership of each party
3 is in proportion to that party's contribution.

4 37. "Lease" includes any oil, gas or other mineral lease.

5 38. "Letters" includes letters testamentary, letters of
6 guardianship, letters of administration and letters of conservatorship.

7 39. "Minor" means a person who is under eighteen years of age.

8 40. "Mortgage" means any conveyance, agreement or arrangement in
9 which property is encumbered or used as security. Mortgage does not
10 include leases or easements.

11 41. "Nonresident decedent" means a decedent who was domiciled in
12 another jurisdiction at the time of the decedent's death.

13 42. "Organization" means a corporation, limited liability company,
14 business trust, estate, trust, partnership, joint venture, association,
15 government or governmental subdivision or agency or any other legal or
16 commercial entity.

17 43. "Original will" means either an original paper will or a
18 certified paper original of an electronic will.

19 44. "Paper will" means a testamentary instrument that is executed
20 and maintained on a tangible medium and that is executed in compliance
21 with section 14-2502 or 14-2503.

22 45. "Parent" includes any person entitled to take, or who would be
23 entitled to take if the child died without a will, as a parent under this
24 title by intestate succession from the child whose relationship is in
25 question and excludes any person who is only a stepparent, foster parent
26 or grandparent.

27 46. "Payor" means a trustee, insurer, business entity, employer,
28 government, governmental agency or subdivision or any other person who is
29 authorized or obligated by law or a governing instrument to make payments.

30 47. "Person" means an individual or an organization.

31 48. "Personal representative" includes an executor, an
32 administrator, a successor personal representative, a special
33 administrator and persons who perform substantially the same function
34 under the law governing their status. A general personal representative
35 excludes a special administrator.

36 49. "Petition" means a written request to the court for an order
37 after notice.

38 50. "Proceeding" includes action at law and suit in equity.

39 51. "Property" has the same meaning prescribed in section 14-10103.

40 52. "Protected person" has the same meaning prescribed in section
41 14-5101.

42 53. "Protective proceeding" has the same meaning prescribed in
43 section 14-5101.

44 54. "Qualified custodian" means a person who fulfills the
45 requirements of section 14-2520.

1 55. "Registrar" means the official of the court who is designated
2 to perform the functions of registrar as provided in section 14-1307.

3 56. "Security" includes any note, stock, treasury stock, bond,
4 debenture, evidence of indebtedness, certificate of interest or
5 participation in an oil, gas or mining title or lease or in payments out
6 of production under that title or lease, collateral trust certificate,
7 transferable share or voting trust certificate and, in general, includes
8 any interest or instrument commonly known as a security, or any
9 certificate of interest or participation, any temporary or interim
10 certificate, receipt or certificate of deposit for, or any warrant or
11 right to subscribe to or purchase, any of these securities.

12 57. "Separate property" means that property of a husband or wife
13 that is the spouse's separate property as defined in section 25-213.

14 58. "Settlement", in reference to a decedent's estate, includes the
15 full process of administration, distribution and closing.

16 59. "Special administrator" means a personal representative as
17 described by sections 14-3614 through 14-3618.

18 60. "State" has the same meaning prescribed in section 14-10103.

19 61. "Successor personal representative" means a personal
20 representative, other than a special administrator, who is appointed to
21 succeed a previously appointed personal representative.

22 62. "Successors" means persons, other than creditors, who are
23 entitled to property of a decedent under a will or this title.

24 63. "Supervised administration" refers to the proceedings described
25 in chapter 3, article 5 of this title.

26 64. "Survive" means that a person has neither predeceased an event,
27 including the death of another person, nor is deemed to have predeceased
28 an event under section 14-2104 or 14-2702.

29 65. "Tangible medium" means a medium on which information may be
30 inscribed by writing, typing, printing or similar means and that is
31 perceivable by reading directly from the medium on which the information
32 is inscribed.

33 66. "Testacy proceeding" means a proceeding to establish a will or
34 determine intestacy.

35 67. "Testator" includes a person of either sex.

36 68. "Trust" includes an express trust, private or charitable, with
37 any additions, wherever and however created. Trust also includes a trust
38 created or determined by judgment or decree under which the trust is to be
39 administered in the manner of an express trust. Trust excludes other
40 constructive trusts and excludes resulting trusts, conservatorship,
41 personal representatives, trust accounts, custodial arrangements pursuant
42 to chapter 7, article 7 of this title, business trusts providing for
43 certificates to be issued to beneficiaries, common trust funds, voting
44 trusts, security arrangements, liquidation trusts and trusts for the
45 primary purpose of paying debts, dividends, interest, salaries, wages,

1 profits, pensions or employee benefits of any kind, trusts created by a
2 city or town for the payment of medical insurance, health care benefits or
3 expenses, long-term or short-term disability, self insurance reserves and
4 similar programs administered by a city or town, legal defense trusts and
5 any arrangement under which a person is nominee or escrowee for another.

6 69. "Trustee" includes an original, additional or successor
7 trustee, whether or not appointed or confirmed by the court.

8 70. "Ward" has the same meaning prescribed in section 14-5101.

9 71. "Will" includes a codicil and any testamentary instrument that
10 merely appoints an executor, revokes or revises another will, nominates a
11 guardian or expressly excludes or limits the right of an individual or
12 class to succeed to property of the decedent passing by intestate
13 succession. A will may be a paper will or an electronic will.

14 Sec. 3. Section 14-1306, Arizona Revised Statutes, is amended to
15 read:

16 14-1306. Jury trial

17 A. If duly demanded, a party is entitled to trial by jury in any
18 proceeding in which any controverted question of fact arises as to which
19 any party has a constitutional right to trial by jury.

20 B. If there is no right to trial by jury under subsection A **OF THIS**
21 **SECTION** or the right is waived, the court in its discretion may call a
22 jury to decide any issue of fact, in which case the verdict is advisory
23 only.

24 Sec. 4. Section 14-1401, Arizona Revised Statutes, is amended to
25 read:

26 14-1401. Notice; method and time of giving; damage

27 A. If notice of a hearing on any petition is required and except
28 for specific notice requirements as otherwise provided, the petitioner
29 shall cause notice of the time and place of hearing of any petition to be
30 given to any interested person or his attorney if he has appeared by
31 attorney or requested that notice be sent to his attorney. Notice shall
32 be given either:

33 1. By mailing a copy thereof at least fourteen days before the time
34 set for the hearing by certified, ~~OR~~ registered ~~or ordinary first class~~
35 mail addressed to the person being notified at the post office address
36 given in his demand for notice, if any, or at his office or place of
37 residence, if known.

38 2. By delivering a copy thereof to the person being notified
39 personally at least fourteen days before the time set for the hearing.

40 3. If the address or identity of any person is not known and cannot
41 be ascertained with reasonable diligence, or when otherwise required under
42 this title, by publishing at least three times ~~prior to~~ **BEFORE** the date
43 set for the hearing a copy thereof in a newspaper having general
44 circulation in the county where the hearing is to be held, the first
45 publication of which is to be at least fourteen days before the hearing.

1 B. The court for good cause shown may provide for a different
2 method or time of giving notice for any hearing.

3 C. Proof of the giving of notice shall be made at or before the
4 hearing and filed in the proceeding.

5 Sec. 5. Title 14, chapter 5, article 1, Arizona Revised Statutes,
6 is amended by adding section 14-5111, to read:

7 14-5111. Duties of appointed attorney; contempt

8 A. NO LATER THAN SEVEN CALENDAR DAYS BEFORE THE INITIAL HEARING ON
9 A PETITION FOR THE APPOINTMENT OF A PERMANENT GUARDIAN OR PERMANENT
10 CONSERVATOR, THE ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON OR THE
11 PERSON ALLEGEDLY IN NEED OF PROTECTION SHALL FULFILL THE FOLLOWING MINIMAL
12 DUTIES:

13 1. INTERVIEW THE ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY
14 IN NEED OF PROTECTION.

15 2. INFORM THE ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY IN
16 NEED OF PROTECTION OF ALL THE FOLLOWING:

17 (a) THE RIGHT TO A TRIAL BY JURY PURSUANT TO SECTION 14-1306.

18 (b) THE RIGHT TO SELECT AN ATTORNEY OF THE PERSON'S CHOOSING. IF
19 THE ATTORNEY IS APPOINTED BY THE COURT, THE ATTORNEY SHALL EXPLAIN TO THE
20 ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY IN NEED OF PROTECTION
21 THAT THE PERSON MAY HIRE A DIFFERENT ATTORNEY AT THE PERSON'S OWN EXPENSE.

22 (c) THE RIGHT OF THE ALLEGED INCAPACITATED PERSON OR PERSON
23 ALLEGEDLY IN NEED OF PROTECTION TO APPEAR IN COURT AND HAVE ANY PERSON THE
24 ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY IN NEED OF PROTECTION
25 WISHES TO BE PRESENT WITH THE ALLEGED INCAPACITATED PERSON OR PERSON
26 ALLEGEDLY IN NEED OF PROTECTION.

27 (d) A REVIEW OF THE COURT PROCESS, TIMELINES AND EXPECTED FUTURE
28 PROCEEDINGS.

29 3. PROVIDE THE INCAPACITATED PERSON OR PERSON ALLEGEDLY IN NEED OF
30 PROTECTION WITH A COPY OF THE SUPREME COURT PROMULGATED ORDER TO A
31 GUARDIAN, ORDER TO CONSERVATOR OR ORDER TO GUARDIAN AND CONSERVATOR THAT
32 THE COURT WILL ENTER IF THE RELIEF REQUESTED IN THE PETITION IS GRANTED.

33 B. AT THE INITIAL HEARING ON THE PETITION FOR APPOINTMENT, THE
34 ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON OR THE PERSON ALLEGEDLY IN
35 NEED OF PROTECTION SHALL ATTEST TO THE COURT THAT THE ATTORNEY HAS
36 FULFILLED THE REQUIREMENTS PRESCRIBED IN THIS SECTION OR SHALL PROVIDE AN
37 EXPLANATION AS TO WHY THE ATTORNEY HAS BEEN UNABLE TO COMPLY WITH THE
38 REQUIREMENTS PRESCRIBED IN THIS SECTION.

39 C. THE COURT MAY FIND AN ATTORNEY WHO FAILS TO FULFILL THE DUTIES
40 PRESCRIBED IN THIS SECTION IN CONTEMPT OF COURT.

1 Sec. 6. Section 14-5303, Arizona Revised Statutes, is amended to
2 read:

3 14-5303. Procedure for court appointment of a guardian of an
4 alleged incapacitated person

5 A. The alleged incapacitated person or any person interested in
6 that person's affairs or welfare may petition for the appointment of a
7 guardian or for any other appropriate protective order.

8 B. The petition shall contain a statement that the authority
9 granted to the guardian may include the authority to withhold or withdraw
10 life sustaining treatment, including artificial food and fluid, and shall
11 state, at a minimum and to the extent known, all of the following:

12 1. The interest of the petitioner.

13 2. The name, age, residence and address of the alleged
14 incapacitated person.

15 3. The name, address and priority for appointment of the person
16 whose appointment is sought.

17 4. The name and address of the conservator, if any, of the alleged
18 incapacitated person.

19 5. The name and address of the nearest relative of the alleged
20 incapacitated person known to the petitioner.

21 6. A general statement of the property of the alleged incapacitated
22 person, with an estimate of its value and including any compensation,
23 insurance, pension or allowance to which the person is entitled.

24 7. The reason why appointment of a guardian or any other protective
25 order is necessary.

26 8. The type of guardianship requested. If a general guardianship
27 is requested, the petition must state that other alternatives have been
28 explored and why a limited guardianship is not appropriate. If a limited
29 guardianship is requested, the petition also must state what specific
30 powers are requested.

31 9. If a legal decision-making, parenting time or visitation order
32 was previously entered regarding an alleged incapacitated person in a
33 marriage dissolution, legal separation or paternity action in this state
34 or another jurisdiction and the petitioner or proposed guardian is a
35 parent of the alleged incapacitated person or a nonparent who has been
36 awarded legal decision-making as to the alleged incapacitated person, the
37 court and case number for that action or proceeding and include a copy of
38 the most recent court order regarding legal decision-making, parenting
39 time and visitation.

40 10. If the appointment of a guardian is necessary due solely to the
41 physical incapacity of the alleged incapacitated person.

42 11. **WHETHER THE ALLEGED INCAPACITATED PERSON IS THE PRINCIPAL UNDER**
43 **A HEALTH CARE POWER OF ATTORNEY, AND, IF SO, A COPY OF THAT HEALTH CARE**
44 **POWER OF ATTORNEY MUST BE ATTACHED TO THE PETITION.**

1 12. WHETHER THE ALLEGED INCAPACITATED PERSON IS THE PRINCIPAL UNDER
2 A DURABLE POWER OF ATTORNEY IN WHICH THE ALLEGED INCAPACITATED PERSON HAS
3 NOMINATED SOMEONE TO SERVE AS GUARDIAN, AND, IF SO, A COPY OF THAT DURABLE
4 POWER OF ATTORNEY MUST BE ATTACHED TO THE PETITION.

5 13. WHETHER THE ALLEGED INCAPACITATED PERSON HAS A PRESENT VESTED
6 INTEREST IN A TRUST, AND, IF SO, THE NAME OF THE TRUST AND THE CURRENT
7 TRUSTEE OF THE TRUST.

8 C. On the filing of a petition, the court shall set a hearing date
9 on the issues of incapacity. Unless the alleged incapacitated person is
10 represented by independent counsel, the court shall appoint an attorney to
11 represent that person in the proceeding. The alleged incapacitated person
12 shall be interviewed by an investigator appointed by the court and shall
13 be examined by a physician, psychologist or registered nurse appointed by
14 the court. If the alleged incapacitated person has an established
15 relationship with a physician, psychologist or registered nurse who is
16 determined by the court to be qualified to evaluate the capacity of the
17 alleged incapacitated person, the court may appoint the alleged
18 incapacitated person's physician, psychologist or registered nurse
19 pursuant to this subsection. The investigator and the person conducting
20 the examination shall submit their reports in writing to the court. In
21 addition to information required under subsection D OF THIS SECTION, the
22 court may direct that either report include other information the court
23 deems appropriate. The investigator also shall interview the person
24 seeking appointment as guardian, visit the present place of abode of the
25 alleged incapacitated person and the place where it is proposed that the
26 person will be detained or reside if the requested appointment is made and
27 submit a report in writing to the court. The alleged incapacitated person
28 is entitled to be present at the hearing and to see or hear all evidence
29 bearing on that person's condition. The alleged incapacitated person is
30 entitled to be represented by counsel, to present evidence, to
31 cross-examine witnesses, including the court-appointed examiner and
32 investigator, and to trial by jury. The court may determine the issue at
33 a closed hearing if the alleged incapacitated person or that person's
34 counsel so requests.

35 D. AT THE INITIAL HEARING ON THE PETITION, THE COURT SHALL READ
36 INTO THE RECORD THE NOTICE OF RIGHT TO TRIAL BY JURY AS STATED IN THE
37 NOTICE OF HEARING.

38 ~~D.~~ E. A report filed pursuant to this section by a physician,
39 psychologist or registered nurse acting within that person's scope of
40 practice shall include the following information:

41 1. A specific description of the physical, psychiatric or
42 psychological diagnosis of the person.

43 2. A comprehensive assessment listing any functional impairments of
44 the alleged incapacitated person and an explanation of how and to what
45 extent these functional impairments may prevent that person from receiving

1 or evaluating information in making decisions or in communicating informed
2 decisions regarding that person.

3 3. An analysis of the tasks of daily living the alleged
4 incapacitated person is capable of performing without direction or with
5 minimal direction.

6 4. A list of all medications the alleged incapacitated person is
7 receiving, the dosage of the medications and a description of the effects
8 each medication has on the person's behavior to the best of the
9 declarant's knowledge.

10 5. A prognosis for improvement in the alleged incapacitated
11 person's condition and a recommendation for the most appropriate
12 rehabilitation plan or care plan.

13 6. Other information the physician, psychologist or registered
14 nurse deems appropriate.

15 Sec. 7. Section 14-5309, Arizona Revised Statutes, is amended to
16 read:

17 14-5309. Notices in guardianship proceedings

18 A. In a proceeding for a contact order or modification of a contact
19 order pursuant to section 14-5316 or for the appointment or substitution
20 of a guardian of a ward or an alleged incapacitated person other than the
21 appointment of a temporary guardian or temporary suspension of a guardian,
22 notice of a hearing shall be given to each of the following:

23 1. The ward or the alleged incapacitated person and that person's
24 spouse, parents and adult children.

25 2. Any person who is serving as guardian or conservator or who has
26 the care and custody of the ward or the alleged incapacitated person.

27 3. In case no other person is notified under paragraph 1 of this
28 subsection, at least one of that person's closest adult relatives, if any
29 can be found.

30 4. Any person who has filed a demand for notice.

31 B. At least fourteen days before the hearing notice shall be served
32 personally on the ward or the alleged incapacitated person and that
33 person's spouse and parents if they can be found within the state. Notice
34 to the spouse and parents, if they cannot be found within the state, and
35 to all other persons except the ward or the alleged incapacitated person
36 shall be given as provided in section 14-1401. Waiver of notice by the
37 ward or the alleged incapacitated person is not effective unless that
38 person attends the hearing.

39 C. IN ADDITION TO STATING THE TIME AND PLACE OF THE HEARING, A
40 NOTICE GIVEN PURSUANT TO THIS SECTION SHALL PROVIDE NOTICE OF THE RIGHT TO
41 A TRIAL BY JURY UNDER SECTION 14-1306, SUBSECTION A.

42 D. THE COURT MAY ORDER A PERSON WHO INTENTIONALLY FAILS TO PROVIDE
43 NOTICE OF A HEARING AS REQUIRED BY THIS SECTION, OR WHO KNOWINGLY MAKES A
44 FALSE CLAIM THAT THE PERSON DID NOT RECEIVE NOTICE OF A HEARING, TO PAY

1 DAMAGES, INCLUDING REASONABLE ATTORNEY FEES AND COSTS, INCURRED AS A
2 RESULT OF SUCH UNREASONABLE CONDUCT.

3 Sec. 8. Section 14-5316, Arizona Revised Statutes, is amended to
4 read:

5 14-5316. Maintaining ward's relationships; contact orders;
6 definitions

7 A. A guardian shall encourage and allow contact between the ward
8 and other persons who have a significant relationship with the ward.

9 B. Notwithstanding subsection A of this section, a guardian ~~may~~
10 SHALL NOT limit, restrict or prohibit contact between the ward and any
11 person ~~if~~ WITH WHOM THE WARD WISHES TO HAVE CONTACT UNLESS the guardian
12 reasonably believes that the contact will be detrimental to the ward's
13 health, safety or welfare.

14 C. In exercising the guardian's powers pursuant to subsections A
15 and B of this section, the guardian shall consider the wishes of the ward,
16 if the ward has sufficient mental capacity to make an intelligent choice.

17 D. A person who has a significant relationship to the ward may
18 petition the court for an order compelling the guardian to allow the
19 person to have contact with the ward. The petition shall describe the
20 nature of the relationship between the person and the ward and the type
21 and frequency of contact being requested. The person has the burden of
22 proving that the person has a significant relationship with the ward ~~and~~
23 ~~that the requested contact is in the ward's best interest.~~ THE GUARDIAN
24 HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
25 REQUESTED CONTACT WILL BE DETRIMENTAL TO THE WARD'S HEALTH, SAFETY OR
26 WELFARE.

27 E. A ward may petition the court for an order compelling the
28 guardian to allow the ward to have contact with a person who has a
29 significant relationship to the ward. The petition shall describe the
30 nature of the relationship between the person and the ward and the type
31 and frequency of contact being requested. The ward has the burden of
32 proving that the person has a significant relationship with the ward ~~and~~
33 ~~that the requested contact is in the ward's best interest.~~ THE GUARDIAN
34 HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
35 REQUESTED CONTACT WILL BE DETRIMENTAL TO THE WARD'S HEALTH, SAFETY OR
36 WELFARE.

37 F. AFTER FILING A PETITION PURSUANT TO SUBSECTION D OR E OF THIS
38 SECTION, THE PETITIONER SHALL REQUEST THAT THE COURT SET AN INITIAL
39 HEARING ON THE PETITION. UNLESS THE PETITIONER REQUESTS A LATER INITIAL
40 HEARING, THE INITIAL HEARING SHALL OCCUR AS SOON AS POSSIBLE BUT NO LATER
41 THAN FIFTEEN JUDICIAL DAYS AFTER THE COURT RECEIVES THE PETITIONER'S
42 REQUEST.

43 ~~F.~~ G. In determining what, if any, contact between the person and
44 the ward is in the ward's best interest, the court shall consider all

1 factors that are relevant to the ward's physical and emotional well-being,
2 including the following:

3 1. The past and present relationship between the ward and the
4 person with whom the contact is requested.

5 2. The wishes of the ward if the ward has sufficient mental
6 capacity to make an intelligent choice.

7 3. The mental and physical health of the ward and the person with
8 whom the contact is requested.

9 4. Whether the person with whom the contact is requested has
10 committed any act involving domestic violence as defined in section
11 13-3601, child abuse or abuse, neglect or exploitation of a vulnerable
12 adult.

13 5. Whether the person with whom the contact is requested has abused
14 drugs or alcohol or has been convicted of any drug offense listed in title
15 13, chapter 34 or a violation of title 28, chapter 4, article 3.

16 6. Whether the person with whom the contact is requested is listed
17 in the elder abuse central registry pursuant to section 46-457 or is
18 required to register pursuant to section 13-3821.

19 7. Whether the person with whom the contact is requested has been
20 convicted of a violation of section 13-2907.02 or 13-2907.04.

21 ~~G.~~ H. If the petition for contact is filed pursuant to section
22 14-5301.03 or within two years after the ward's eighteenth birthday, any
23 contact with the ward authorized in the most recent parenting time or
24 visitation order shall be presumed to be in the ward's best interests, but
25 the presumption may be rebutted by evidence showing that the contact
26 authorized in the most recent parenting time or visitation order is no
27 longer in the ward's best interests.

28 ~~H.~~ I. A court-appointed fiduciary for the ward or a person who has
29 a significant relationship to the ward may petition the court to modify a
30 contact order, if a material change in circumstances affecting the ward's
31 health, safety or welfare has occurred since the last contact order was
32 made. The petition shall be supported by an affidavit alleging the change
33 of circumstances that has occurred since the entry of the last contact
34 order. The court shall deny the petition unless the court finds that the
35 petition establishes good cause for hearing, in which case the court shall
36 set a hearing on the petition. The petition and notice of the hearing on
37 the petition shall be served on all persons to whom notice is required
38 pursuant to section 14-5309 and on any court-appointed fiduciary for the
39 ward.

40 ~~I.~~ J. A court-appointed fiduciary for the ward or a person who has
41 a significant relationship to the ward may file a motion asking the court
42 to temporarily modify or suspend a contact order, if a material change in
43 circumstances affecting the ward's health, safety or welfare has occurred
44 since the last contact order was made. The motion shall be supported by
45 an affidavit alleging the change of circumstances that has occurred since

1 the entry of the last contact order. The motion shall be filed
2 contemporaneously with or after the filing of a petition to modify the
3 prior contact order. The motion shall state whether the petitioner
4 requests that the prior contact order be modified or suspended with or
5 without notice to affected persons.

6 ~~J.~~ K. The court may temporarily modify or suspend a contact order
7 without notice only if both of the following conditions are met:

8 1. It clearly appears from specific facts shown in the motion or
9 affidavit that immediate and irreparable injury, loss or damage likely
10 will result if the order is not issued before the affected persons can be
11 heard in opposition.

12 2. The moving party or the party's attorney certifies to the court
13 in writing the efforts, if any, that the moving party or the party's
14 attorney has made to give the notice or the reasons supporting the claim
15 that notice should not be required.

16 ~~K.~~ L. If the court grants a motion to temporarily modify or
17 suspend a contact order without notice, the court shall set a hearing on
18 the motion.

19 ~~L.~~ M. An order temporarily modifying or suspending a contact order
20 that is granted without notice shall state the injury, loss or damage that
21 would have been likely to occur if the order were not issued before giving
22 the affected persons the opportunity to be heard in opposition. The
23 temporary order shall expire at the date and time set for the hearing on
24 the motion unless the temporary order is extended by the court for good
25 cause.

26 ~~M.~~ N. The moving party shall personally serve the person whose
27 contact with the ward has been modified or suspended with a copy of the
28 order and notice of the hearing. The moving party shall have served a
29 copy of the order on any court-appointed fiduciary for the ward and all
30 persons affected by the order as soon as practicable after issuance of the
31 order in the manner prescribed in section 14-5309 or as otherwise ordered
32 by the court.

33 O. IF, IN A PROCEEDING BROUGHT UNDER THIS SECTION, THE COURT FINDS
34 THAT THE GUARDIAN HAS UNREASONABLY DENIED CONTACT BETWEEN A WARD AND A
35 PERSON WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE WARD, THE COURT MAY DO
36 EITHER, OR BOTH, OF THE FOLLOWING:

37 1. REMOVE THE GUARDIAN.

38 2. ORDER THE GUARDIAN TO PERSONALLY PAY SOME OR ALL OF THE
39 REASONABLE ATTORNEY FEES AND EXPENSES INCURRED BY THE PERSON OR THE WARD,
40 OR BOTH.

41 ~~N.~~ P. For the purposes of this section:

42 1. "Abuse" in relation to a vulnerable adult has the same meaning
43 prescribed in section 46-451.

44 2. "Child abuse" means abuse as defined in section 8-201 of an
45 individual who is under eighteen years of age.

1 3. "Exploitation" has the same meaning prescribed in section
2 46-451.

3 4. "Neglect" has the same meaning prescribed in section 46-451.

4 5. "Vulnerable adult" has the same meaning prescribed in section
5 46-451.

6 Sec. 9. Section 14-5401, Arizona Revised Statutes, is amended to
7 read:

8 14-5401. Protective proceedings; fingerprinting

9 A. On petition and after notice and a hearing pursuant to this
10 article, the court may appoint a conservator or make another protective
11 order for cause as follows:

12 1. Appointment of a conservator or other protective order may be
13 made in relation to the estate and affairs of a minor if the court
14 determines that a minor owns money or property that requires management or
15 protection that cannot otherwise be provided or has or may have affairs
16 that may be jeopardized or prevented by minority or that funds are needed
17 for the minor's support and education and that protection is necessary or
18 desirable to obtain or provide funds.

19 2. Appointment of a conservator or other protective order may be
20 made in relation to the estate and affairs of a person if the court
21 specifically finds **BY CLEAR AND CONVINCING EVIDENCE** on the record both of
22 the following:

23 (a) The person is unable to manage the person's estate and affairs
24 effectively for reasons such as mental illness, mental deficiency, mental
25 disorder, physical illness or disability, chronic use of drugs, chronic
26 intoxication, confinement, detention by a foreign power or disappearance.

27 (b) The person has property that will be wasted or dissipated
28 unless proper management is provided, or that funds are needed for the
29 support, care and welfare of the person or those entitled to be supported
30 by the person and that protection is necessary or desirable to obtain or
31 provide funds.

32 B. On petition and after notice and a hearing pursuant to this
33 article, the court may continue a conservatorship or other protective
34 order entered pursuant to subsection A, paragraph 1 of this section beyond
35 the minor's eighteenth birthday if the court determines that the order is
36 appropriate pursuant to subsection A, paragraph 2 of this section. The
37 petition shall comply with the requirements of section 14-5404, subsection
38 B and must be filed after the minor's seventeenth birthday and before
39 termination of the conservatorship by court order.

40 C. The court may require each person who seeks appointment as a
41 conservator to furnish a full set of fingerprints to enable the court to
42 conduct a criminal background investigation. The court shall submit the
43 person's completed fingerprint card to the department of public safety.
44 The person shall bear the cost of obtaining the person's criminal history
45 record information. The cost shall not exceed the actual cost of

1 obtaining the person's criminal history record information. Criminal
2 history records checks shall be conducted pursuant to section 41-1750 and
3 Public Law 92-544. The department of public safety may exchange this
4 fingerprint data with the federal bureau of investigation. This
5 subsection does not apply to a fiduciary who is licensed pursuant to
6 section 14-5651 or an employee of a financial institution.

7 D. UNLESS THE ALLEGED BASIS FOR THE APPOINTMENT OF A CONSERVATOR OR
8 ENTRY OF A PROTECTIVE ORDER IS THAT THE PERSON ALLEGEDLY IN NEED OF
9 PROTECTION IS CONFINED, DETAINED BY A FOREIGN POWER OR MISSING, THE COURT
10 SHALL NOT APPOINT A CONSERVATOR OR ENTER A PROTECTIVE ORDER FOR A PERSON
11 UNDER SUBSECTION A, PARAGRAPH 2 OF THIS SECTION UNLESS THE PERSON
12 ALLEGEDLY IN NEED OF PROTECTION HAS APPEARED BEFORE THE COURT EITHER IN
13 PERSON OR BY VIRTUAL MEANS. IF THAT PERSON IS UNABLE OR UNWILLING TO
14 APPEAR IN PERSON OR BY VIRTUAL MEANS, EVIDENCE OF THE PERSON'S INABILITY
15 OR UNWILLINGNESS TO ATTEND SHALL BE PRESENTED TO THE COURT. IF THE PERSON
16 DOES NOT WISH TO ATTEND IN PERSON OR BY VIRTUAL MEANS, A DECLARATION
17 SIGNED BY THAT PERSON SHALL BE FILED WITH THE COURT TO PROVE THE PERSON'S
18 INABILITY OR UNWILLINGNESS TO ATTEND. THE COURT SHALL WEIGH THE EVIDENCE,
19 REQUEST ADDITIONAL EVIDENCE IF NECESSARY AND DOCUMENT ALL EVIDENCE IN THE
20 COURT RECORD.

21 Sec. 10. Section 14-5404, Arizona Revised Statutes, is amended to
22 read:

23 14-5404. Original petition for appointment or protective
24 order

25 A. The person allegedly in need of protection, any person who is
26 interested in that person's estate or affairs, including that person's
27 parent, guardian or custodian, or any person who would be adversely
28 affected by lack of effective management of that person's estate and
29 affairs may petition for the appointment of a conservator or for any other
30 appropriate protective order.

31 B. The petition shall set forth, at a minimum and to the extent
32 known, all of the following:

33 1. The interest of the petitioner.

34 2. The name, age, residence and address of the person allegedly in
35 need of protection.

36 3. The name, address and priority for appointment of the person
37 whose appointment is sought.

38 4. The name and address of the guardian, if any, of the person
39 allegedly in need of protection.

40 5. The name and address of the nearest relative of the person
41 allegedly in need of protection known to the petitioner.

42 6. A general statement of the estate of the person allegedly in
43 need of protection with an estimate of its value, including any
44 compensation, insurance, pension or allowance to which the person is
45 entitled.

1 7. The reason why appointment of a conservator or any other
2 protective order is necessary.

3 8. WHETHER THE PERSON ALLEGEDLY IN NEED OF PROTECTION IS THE
4 PRINCIPAL UNDER A DURABLE POWER OF ATTORNEY, AND, IF SO, A COPY OF THAT
5 DURABLE POWER OF ATTORNEY MUST BE ATTACHED TO THE PETITION.

6 9. WHETHER THE PERSON ALLEGEDLY IN NEED OF PROTECTION IS THE
7 PRINCIPAL UNDER A HEALTH CARE POWER OF ATTORNEY IN WHICH THE PERSON
8 NOMINATES A CONSERVATOR, AND, IF SO, A COPY OF THAT HEALTH CARE POWER OF
9 ATTORNEY MUST BE ATTACHED TO THE PETITION.

10 10. WHETHER THE PERSON ALLEGEDLY IN NEED OF PROTECTION HAS A
11 PRESENT VESTED INTEREST IN A TRUST, AND, IF SO, THE NAME OF THE TRUST AND
12 THE CURRENT TRUSTEE OF THE TRUST.

13 Sec. 11. Section 14-5405, Arizona Revised Statutes, is amended to
14 read:

15 14-5405. Notice in conservatorship proceedings

16 A. In a proceeding for the appointment or substitution of a
17 conservator of a protected person or person allegedly in need of
18 protection, other than the appointment of a temporary conservator or
19 temporary suspension of a conservator, and in a proceeding to continue a
20 conservatorship or other protective order pursuant to section 14-5401,
21 subsection B, notice of the hearing shall be given to each of the
22 following:

23 1. The protected person or the person allegedly in need of
24 protection if that person is fourteen years of age or older.

25 2. The spouse, parents and adult children of the protected person
26 or person allegedly in need of protection, or if no spouse, parents or
27 adult children can be located, at least one adult relative of the
28 protected person or the person allegedly in need of protection, if such a
29 relative can be found.

30 3. Any person who is serving as guardian or conservator or who has
31 the care and custody of the protected person or person allegedly in need
32 of protection.

33 4. Any person who has filed a demand for notice.

34 B. At least fourteen days before the hearing notice shall be served
35 personally on the protected person or the person allegedly in need of
36 protection and that person's spouse and parents if they can be found
37 within the state. Notice to the spouse and parents, if they cannot be
38 found within the state, and to all other persons except the protected
39 person or the person allegedly in need of protection shall be given in
40 accordance with section 14-1401. Waiver of notice by the protected person
41 or the person allegedly in need of protection is not effective unless the
42 protected person or the person allegedly in need of protection attends the
43 hearing.

1 C. IN ADDITION TO STATING THE TIME AND PLACE OF THE HEARING, A
2 NOTICE GIVEN PURSUANT TO THIS SECTION SHALL PROVIDE NOTICE OF THE RIGHT TO
3 A TRIAL BY JURY UNDER SECTION 14-1306, SUBSECTION A.

4 D. THE COURT MAY ORDER A PERSON WHO INTENTIONALLY FAILS TO PROVIDE
5 NOTICE OF A HEARING AS REQUIRED BY THIS SECTION, OR WHO KNOWINGLY MAKES A
6 FALSE CLAIM THAT THE PERSON DID NOT RECEIVE NOTICE OF A HEARING, TO PAY
7 DAMAGES, INCLUDING REASONABLE ATTORNEY FEES AND COSTS, INCURRED AS A
8 RESULT OF SUCH UNREASONABLE CONDUCT.

9 Sec. 12. Section 14-5407, Arizona Revised Statutes, is amended to
10 read:

11 14-5407. Procedure concerning hearing and order on original
12 petition

13 A. On the filing of a petition for appointment of a conservator or
14 any other protective order because of minority, the court shall set a
15 hearing date on the matters alleged in the petition. If, at any time in
16 the proceeding, the court determines that the interests of the minor are
17 or may be inadequately represented, it shall appoint an attorney to
18 represent the minor. If the minor is at least fourteen years of age the
19 court shall consider the choice of the minor.

20 B. On the filing of a petition for appointment of a conservator or
21 any other protective order for reasons other than minority, or on the
22 filing of a petition for continuation of a conservatorship or other
23 protective order pursuant to section 14-5401, subsection B, the court
24 shall set a hearing date. Unless the person to be protected has counsel
25 of that person's own choice, the court shall appoint an attorney to
26 represent that person. If the alleged disability is mental illness,
27 mental deficiency, mental disorder, physical illness or disability,
28 chronic use of drugs, or chronic intoxication, the court shall appoint an
29 investigator to interview the person to be protected. On petition by an
30 interested person or on the court's own motion, the court may direct that
31 an appropriate medical or psychological evaluation of the person be
32 conducted. The investigator and the person conducting the medical or
33 psychological evaluation shall submit written reports to the court before
34 the hearing date.

35 C. In any case where the ~~veterans administration~~ UNITED STATES
36 DEPARTMENT OF VETERANS AFFAIRS is or may be an interested party, a
37 certificate of an authorized official of the ~~veterans administration~~
38 UNITED STATES DEPARTMENT OF VETERANS AFFAIRS that the person allegedly in
39 need of protection has been found incapable of handling the benefits
40 payable, on examination in accordance with the laws and regulations
41 governing the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS
42 AFFAIRS, is prima facie evidence of the necessity for appointment of a
43 conservator.

1 D. The person allegedly in need of protection is entitled to be
2 present at the hearing, to be represented by counsel, to present evidence
3 and to cross-examine witnesses, including any court appointed examiner and
4 investigator. The issue may be determined at a closed hearing if the
5 person allegedly in need of protection or that person's counsel so
6 requests.

7 E. AT THE INITIAL HEARING ON THE PETITION, THE COURT SHALL READ
8 INTO THE RECORD THE NOTICE OF RIGHT TO A TRIAL BY JURY AS STATED IN THE
9 NOTICE OF HEARING.

10 ~~E.~~ F. After the hearing, and after making specific findings on the
11 record that a basis for the appointment of a conservator or any other
12 protective order has been established, the court shall make an appointment
13 or other appropriate protective order.

14 Sec. 13. Title 14, chapter 5, Arizona Revised Statutes, is amended
15 by adding article 9, to read:

16 ARTICLE 9. SUPPORTED DECISION-MAKING AGREEMENTS

17 14-5721. Definitions

18 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

19 1. "ADULT" MEANS AN INDIVIDUAL WITH A DISABILITY WHO IS AT LEAST
20 EIGHTEEN YEARS OF AGE.

21 2. "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT THAT
22 SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES, AS DEFINED IN
23 SECTION 41-1492.

24 3. "INTERESTED PERSON" MEANS ANY PERSON WHO IS INTERESTED IN THE
25 AFFAIRS OR WELFARE OF AN ADULT WHO HAS ENTERED INTO A SUPPORTED
26 DECISION-MAKING AGREEMENT.

27 4. "INTIMIDATE" INCLUDES THREATENING TO DEPRIVE AN ADULT OF FOOD,
28 NUTRITION, SHELTER OR NECESSARY MEDICATION OR MEDICAL TREATMENT.

29 5. "SUPPORTED DECISION-MAKING" MEANS A PROCESS OF SUPPORTING AND
30 ACCOMMODATING AN ADULT TO ENABLE THE ADULT TO MAKE LIFE DECISIONS,
31 INCLUDING DECISIONS RELATED TO WHERE THE ADULT WANTS TO LIVE, THE
32 SERVICES, SUPPORT AND MEDICAL CARE THE ADULT WANTS TO RECEIVE, WHOM THE
33 ADULT WANTS TO LIVE WITH AND WHERE THE ADULT WANTS TO WORK, WITHOUT
34 IMPEDING THE ADULT'S SELF-DETERMINATION.

35 6. "SUPPORTED DECISION-MAKING AGREEMENT" MEANS AN AGREEMENT BETWEEN
36 AN ADULT AND A SUPPORTER THAT IS ENTERED INTO PURSUANT TO THIS ARTICLE.

37 7. "SUPPORTER" MEANS A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE
38 AND WHO ENTERS INTO A SUPPORTED DECISION-MAKING AGREEMENT WITH AN ADULT.

39 14-5722. Supported decision-making agreements; scope; rights
40 and obligations; intimidation; deception;
41 petition; termination; form

42 A. AN ADULT, WITHOUT UNDUE INFLUENCE OR COERCION, MAY VOLUNTARILY
43 ENTER INTO A SUPPORTED DECISION-MAKING AGREEMENT WITH A SUPPORTER UNDER
44 WHICH THE ADULT AUTHORIZES THE SUPPORTER TO DO ANY OR ALL OF THE
45 FOLLOWING:

1 1. PROVIDE SUPPORTED DECISION-MAKING, INCLUDING ASSISTING THE ADULT
2 IN UNDERSTANDING THE OPTIONS, RESPONSIBILITIES AND CONSEQUENCES OF THE
3 ADULT'S LIFE DECISIONS, WITHOUT MAKING THOSE DECISIONS ON BEHALF OF THE
4 ADULT.

5 2. ASSIST THE ADULT IN ACCESSING, COLLECTING AND OBTAINING FROM ANY
6 PERSON INFORMATION THAT IS RELEVANT TO A GIVEN LIFE DECISION, INCLUDING
7 MEDICAL, PSYCHOLOGICAL, FINANCIAL, EDUCATION OR TREATMENT RECORDS.

8 3. ASSIST THE ADULT IN UNDERSTANDING THE INFORMATION DESCRIBED IN
9 PARAGRAPH 2 OF THIS SUBSECTION.

10 4. ASSIST THE ADULT IN COMMUNICATING THE ADULT'S DECISIONS TO
11 APPROPRIATE PERSONS.

12 B. A SUPPORTER IS NOT A SURROGATE DECISION-MAKER FOR THE ADULT AND
13 DOES NOT HAVE THE AUTHORITY TO SIGN LEGAL DOCUMENTS ON BEHALF OF THE ADULT
14 OR BIND THE ADULT TO A LEGAL AGREEMENT.

15 C. THE SUPPORTED DECISION-MAKING AGREEMENT SHALL SET FORTH THE
16 RIGHTS, ROLES, DUTIES, LIMITATIONS AND OBLIGATIONS OF BOTH THE ADULT AND
17 THE SUPPORTER WHO ARE ENTERING INTO THE AGREEMENT.

18 D. IF THE SUPPORTER INTIMIDATES OR DECEIVES THE ADULT IN PROCURING
19 THE SUPPORTED DECISION-MAKING AGREEMENT OR ANY AUTHORITY PROVIDED IN THE
20 SUPPORTED DECISION-MAKING AGREEMENT, THE SUPPORTER MAY BE SUBJECT TO
21 CRIMINAL PROSECUTION AND CIVIL PENALTIES AS OTHERWISE PROVIDED BY LAW.

22 E. THE SUPPORTER MAY NOT RECEIVE COMPENSATION AS A RESULT OF THE
23 SUPPORTER'S DUTIES UNDER A SUPPORTED DECISION-MAKING AGREEMENT. THE
24 SUPPORTER SHALL ACT WITHOUT SELF-INTEREST AND SHALL AVOID CONFLICTS OF
25 INTEREST.

26 F. A SUPPORTED DECISION-MAKING AGREEMENT MUST BE SIGNED BY THE
27 ADULT AND THE SUPPORTER IN THE PRESENCE OF TWO OR MORE SUBSCRIBING
28 WITNESSES, WHO MUST BE AT LEAST EIGHTEEN YEARS OF AGE, OR A NOTARY PUBLIC,
29 AND THE SIGNATURE PROCESS IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

30 1. BY WITNESSING THE AGREEMENT, EACH WITNESS OR NOTARY AFFIRMS THAT
31 THE WITNESS OR NOTARY WAS PRESENT WHEN THE PERSON DATED AND SIGNED OR
32 MARKED THE AGREEMENT, EXCEPT AS PROVIDED UNDER PARAGRAPH 2 OF THIS
33 SUBSECTION, AND THAT THE PERSON APPEARED TO BE OF SOUND MIND AND FREE FROM
34 DURESS AT THE TIME OF EXECUTION OF THE AGREEMENT.

35 2. IF A PERSON IS PHYSICALLY UNABLE TO SIGN OR MARK THE AGREEMENT,
36 THE WITNESS OR NOTARY SHALL VERIFY ON THE DOCUMENT THAT THE PERSON
37 DIRECTLY INDICATED TO THE NOTARY OR WITNESS THAT THE AGREEMENT EXPRESSED
38 THE PERSON'S WISHES AND THAT THE PERSON INTENDED TO ADOPT THE AGREEMENT AT
39 THAT TIME.

40 G. A SUPPORTED DECISION-MAKING AGREEMENT EXTENDS UNTIL:

41 1. TERMINATED IN WRITING BY EITHER PARTY OR BY THE TERMS OF THE
42 SUPPORTED DECISION-MAKING AGREEMENT.

43 2. AT ANY TIME THE ADULT BECOMES AN INCAPACITATED PERSON AS DEFINED
44 IN SECTION 14-5101.

1 3. ON THE APPOINTMENT OF A GUARDIAN PURSUANT TO ARTICLE 3 OF THIS
2 CHAPTER.

3 H. THE SUPPORTED DECISION-MAKING AGREEMENT SHALL BE IN
4 SUBSTANTIALLY THE FOLLOWING FORM:

5 SUPPORTED DECISION-MAKING AGREEMENT

6 THIS AGREEMENT IS GOVERNED BY THE ARIZONA SUPPORTED
7 DECISION-MAKING AGREEMENT STATUTE SECTION 14-5722, ARIZONA
8 REVISED STATUTES. FOR THE PURPOSES OF THIS AGREEMENT,
9 "DECISION-MAKER" MEANS AN ADULT WITH A DISABILITY WHO EXECUTES
10 AN AGREEMENT FOR THE PURPOSE OF DESIGNATING AN INDIVIDUAL TO
11 SERVE AS THE DECISION-MAKER'S SUPPORTER WHEN THE
12 DECISION-MAKER MAKES CERTAIN DECISIONS THAT ARE LISTED IN THE
13 AGREEMENT.

14 PURPOSE OF AGREEMENT

15 THE PURPOSE OF THE SUPPORTED DECISION-MAKING AGREEMENT
16 IS TO SUPPORT AND ACCOMMODATE A DECISION-MAKER TO MAKE
17 INFORMED DECISIONS AND CHOICES ABOUT CERTAIN ASPECTS OF THE
18 ADULT'S DAILY LIFE.

19 ROLE OF SUPPORTER

20 TO ASSIST A DECISION-MAKER, A SUPPORTER MAY:

- 21 1. ASSIST THE DECISION-MAKER WITH GETTING INFORMATION
22 TO BE ABLE TO UNDERSTAND AVAILABLE CHOICES.
23 2. ASSIST THE DECISION-MAKER IN UNDERSTANDING CHOICES
24 SO THE DECISION-MAKER CAN MAKE THE BEST PERSONAL DECISIONS.
25 3. ASSIST THE DECISION-MAKER IN COMMUNICATING DECISIONS
26 TO THE RIGHT PEOPLE AND ORGANIZATIONS.

27 REVOCAION OR TERMINATION OF AGREEMENT

28 A. THE DECISION-MAKER OR THE SUPPORTER MAY REVOKE THIS
29 AGREEMENT AT ANY TIME.

30 B. THIS AGREEMENT TERMINATES AS A MATTER OF LAW AT ANY
31 TIME THE DECISION-MAKER BECOMES AN INCAPACITATED PERSON AS
32 DEFINED IN SECTION 14-5101, ARIZONA REVISED STATUTES.

33 C. THIS AGREEMENT TERMINATES AS A MATTER OF LAW ON THE
34 APPOINTMENT OF A GUARDIAN FOR ANY REASON OR PURPOSE PURSUANT
35 TO TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES.

36 D. IF EITHER THE DECISION-MAKER OR SUPPORTER HAS
37 QUESTIONS ABOUT THE AGREEMENT, THE DECISION-MAKER OR SUPPORTER
38 SHOULD SPEAK WITH A LAWYER BEFORE SIGNING THIS SUPPORTED
39 DECISION-MAKING AGREEMENT.

40 IMPORTANT INFORMATION FOR SUPPORTERS ABOUT

41 THE LIMITS TO THIS AGREEMENT

42 A. YOU MAY NOT MAKE A DECISION FOR OR ON BEHALF OF THE
43 DECISION-MAKER.

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B. NEITHER YOU NOR ANY ORGANIZATION FOR WHOM YOU ARE EMPLOYED OR SERVE AS A VOLUNTEER MAY RECEIVE ANY FINANCIAL SUPPORT, REMUNERATION OR COMPENSATION, EITHER DIRECTLY OR INDIRECTLY, FOR OR RELATED TO YOUR SERVICES AND ROLE AS A SUPPORTER TO THE DECISION-MAKER.

C. WHEN YOU AGREE TO PROVIDE SUPPORT TO AN ADULT UNDER THIS SUPPORTED DECISION-MAKING AGREEMENT, YOU HAVE A DUTY TO AND YOU SHALL:

- 1. ACT IN GOOD FAITH.
- 2. ACT WITH LOYALTY TO THE DECISION-MAKER.
- 3. ACT WITHOUT SELF-INTEREST.
- 4. AVOID CONFLICTS OF INTEREST.
- 5. STOP SERVING AS A SUPPORTER AT ANY TIME THAT YOU QUESTION THE CAPACITY OF THE DECISION-MAKER TO CONTINUE MAKING DECISIONS EVEN WITH YOUR SUPPORT.

D. STOP SERVING AS A SUPPORTER AT ANY TIME THAT THE SUPPORTED DECISION-MAKING AGREEMENT IS REVOKED BY THE DECISION-MAKER OR YOU, OR THE AGREEMENT ENDS AS A MATTER OF LAW.

E. RESPECT THE DECISION-MAKER'S RELATIONSHIPS WITH FRIENDS AND FAMILY MEMBERS AND NOT ATTEMPT TO ISOLATE OR ALIENATE THE DECISION-MAKER FROM THOSE FRIENDS AND FAMILY MEMBERS.

APPOINTMENT OF SUPPORTER

I _____, (NAME OF ADULT, (THE "DECISION-MAKER")), AM OF SOUND MIND AND ENTER INTO THIS AGREEMENT VOLUNTARILY.

MY DISABILITIES ARE: (DESCRIBE BRIEFLY)

_____.

I CHOOSE _____ TO BE MY SUPPORTER.

SUPPORTER'S ADDRESS: _____

SUPPORTER'S TELEPHONE NUMBER: _____

SUPPORTER'S EMAIL ADDRESS: _____

SUPPORTER'S ROLE AND LIMITATIONS ON THAT ROLE

MY SUPPORTER MAY HELP ME WITH LIFE DECISIONS ABOUT EACH OF THE FOLLOWING WHICH I HAVE MARKED WITH AN "X" (CHECK THOSE THAT APPLY):

- YES ___ NO ___ OBTAINING FOOD, CLOTHING AND A PLACE TO LIVE.
- YES ___ NO ___ MY PHYSICAL HEALTH AND HEALTH SERVICES.
- YES ___ NO ___ MY MENTAL HEALTH AND MENTAL HEALTH SERVICES.
- YES ___ NO ___ MANAGING MY MONEY OR PROPERTY.
- YES ___ NO ___ GETTING AN EDUCATION OR OTHER TRAINING.

1 YES ___ NO ___ CHOOSING AND MAINTAINING MY SERVICES AND
2 SUPPORTS.

3 YES ___ NO ___ FINDING A JOB.

4 YES ___ NO ___ OTHER: _____ (SPECIFY)

5 YES ___ NO ___ MY SUPPORTERS MAY SEE MY PRIVATE HEALTH
6 INFORMATION UNDER THE HEALTH INSURANCE PORTABILITY AND
7 ACCOUNTABILITY ACT OF 1996 (P.L. 104-191) IF I FIRST CHOOSE TO
8 PROVIDE A SIGNED RELEASE.

9 YES ___ NO ___ MY SUPPORTERS MAY SEE MY EDUCATIONAL RECORDS
10 UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974
11 (20 UNITED STATES CODE SECTION 1232g) IF I FIRST CHOOSE TO
12 PROVIDE A SIGNED RELEASE.

13 THIS AGREEMENT IS EFFECTIVE WHEN SIGNED AND WILL
14 CONTINUE UNTIL _____ (DATE) OR UNTIL MY SUPPORTER OR I
15 END THE AGREEMENT OR THE AGREEMENT ENDS BY OPERATION OF LAW,
16 INCLUDING THE APPOINTMENT OF A GUARDIAN FOR ME.

17 DECISION-MAKER'S SIGNATURE

18 SIGNED THIS _____ (DAY) OF _____ (MONTH),
19 _____ (YEAR)

20 _____
21 (SIGNATURE OF DECISION-MAKER) (PRINTED NAME OF DECISION-MAKER)

22 CONSENT OF SUPPORTER

23 I (NAME OF SUPPORTER), _____
24 CONSENT TO ACT AS A SUPPORTER UNDER THIS AGREEMENT.

25 _____
26 (SIGNATURE OF SUPPORTER) (PRINTED NAME OF SUPPORTER)

27 THIS AGREEMENT MUST BE SIGNED IN FRONT OF TWO
28 WITNESSES OR A NOTARY PUBLIC

29 _____
30 (WITNESS 1 SIGNATURE) (PRINTED NAME OF WITNESS 1)

31 _____
32 (WITNESS 2 SIGNATURE) (PRINTED NAME OF WITNESS 2)

33 OR
34 NOTARY PUBLIC

35 STATE OF _____

36 COUNTY OF _____

37 THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME ON _____ (DATE)
38 BY

39 _____
40 (NAME OF DECISION-MAKER) (NAME OF SUPPORTER)

41 _____
42 (SIGNATURE OF NOTARY) (PRINTED NAME OF NOTARY)

43 (SEAL, IF ANY, OF NOTARY)

44 MY COMMISSION EXPIRES: _____

1 WARNING: PROTECTION FOR THE DECISION-MAKER WITH A DISABILITY
2 IF A PERSON WHO RECEIVES A COPY OF THIS SUPPORTED
3 DECISION-MAKING AGREEMENT OR WHO IS AWARE OF THE EXISTENCE OF
4 THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE DECISION-MAKER IS
5 BEING ABUSED, NEGLECTED OR EXPLOITED BY THE SUPPORTER, THE
6 PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION
7 TO THE DEPARTMENT OF ECONOMIC SECURITY'S ONLINE REPORTING
8 SYSTEM BY CALLING THE ADULT PROTECTIVE SERVICES, ADULT ABUSE
9 HOTLINE OR BY CALLING THE LOCAL POLICE DEPARTMENT.