

REFERENCE TITLE: guardianship; conservatorship; policies; procedures

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

SB 1291

Introduced by
Senator Kavanagh: Representative Nguyen

AN ACT

AMENDING SECTIONS 14-5309, 14-5311, 14-5316, 14-5401, 14-5405 AND 14-5410,
ARIZONA REVISED STATUTES; 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 14-5309, Arizona Revised Statutes, is amended to
3 read:

4 14-5309. Notices in guardianship proceedings

5 A. In a proceeding for a contact order or modification of a contact
6 order pursuant to section 14-5316 or for the appointment or substitution
7 of a guardian of a ward or an alleged incapacitated person other than the
8 appointment of a temporary guardian or temporary suspension of a guardian,
9 notice of a hearing shall be given to each of the following:

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

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

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

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

18 B. At least fourteen days before the hearing notice shall be served
19 personally on ~~the ward or the alleged incapacitated person and that~~
20 ~~person's spouse and parents if they can be found within the state. Notice~~
21 ~~to the spouse and parents, if they cannot be found within the state, and~~
22 ~~to all other persons except the ward or the alleged incapacitated person~~
23 ~~shall be given as provided in section 14-1401~~ ALL PERSONS LISTED IN
24 SUBSECTION A OF THIS SECTION. Waiver of notice by the ward or the alleged
25 incapacitated person is not effective unless that person attends the
26 hearing.

27 Sec. 2. Section 14-5311, Arizona Revised Statutes, is amended to
28 read:

29 14-5311. Who may be guardian; priorities

30 A. Any qualified person may be appointed guardian of an
31 incapacitated person, subject to the requirements of section 14-5106.

32 B. The court may consider the following persons for appointment as
33 guardian in the following order:

34 1. THE PERSON NOMINATED TO SERVE AS GUARDIAN IN THE INCAPACITATED
35 PERSON'S MOST RECENT DURABLE POWER OF ATTORNEY OR HEALTH CARE POWER OF
36 ATTORNEY.

37 ~~1.~~ 2. A guardian or conservator of the person or a fiduciary
38 appointed or recognized by the appropriate court of any jurisdiction in
39 which the incapacitated person resides.

40 ~~2.~~ 3. An individual or corporation nominated by the incapacitated
41 person if the person has, in the opinion of the court, sufficient mental
42 capacity to make an intelligent choice.

43 ~~3. The person nominated to serve as guardian in the incapacitated~~
44 ~~person's most recent durable power of attorney or health care power of~~
45 ~~attorney.~~

- 1 4. The spouse of the incapacitated person.
- 2 5. An adult child of the incapacitated person.
- 3 6. A parent of the incapacitated person, including a person
- 4 nominated by will or other writing signed by a deceased parent.
- 5 7. Any relative of the incapacitated person with whom the
- 6 incapacitated person has resided for more than six months before the
- 7 filing of the petition.
- 8 8. The nominee of a person who is caring for or paying benefits to
- 9 the incapacitated person.
- 10 9. If the incapacitated person is a veteran, the spouse of a
- 11 veteran or the minor child of a veteran, the department of veterans'
- 12 services.
- 13 10. A fiduciary who is licensed pursuant to section 14-5651, other
- 14 than a public fiduciary.
- 15 11. A public fiduciary who is licensed pursuant to section 14-5651.
- 16 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 of
- 17 this section may nominate in writing a person to serve in that person's
- 18 place. With respect to persons who have equal priority, the court shall
- 19 select the ~~one~~ PERSON the court determines is best qualified to serve.
- 20 D. Notwithstanding the priorities set forth in subsection B of this
- 21 section, if the petition for appointment of a guardian for the
- 22 incapacitated person is filed pursuant to section 14-5301.03 or within two
- 23 years after the incapacitated person's eighteenth birthday, unless the
- 24 court finds the appointment to be contrary to the incapacitated person's
- 25 best interest:
- 26 1. The court shall appoint as the incapacitated person's guardian
- 27 any person who, by court order, had sole legal decision-making of the
- 28 incapacitated person when the incapacitated person attained eighteen years
- 29 of age.
- 30 2. If two persons had joint legal decision-making of the
- 31 incapacitated person when the incapacitated person attained eighteen years
- 32 of age, the court shall appoint both persons as the incapacitated person's
- 33 ~~co-guardians~~ COGUARDIANS.
- 34 E. The court may appoint more than one person as the incapacitated
- 35 person's ~~co-guardians~~ COGUARDIANS if the appointment is required by
- 36 subsection D of this section or the court finds that the appointment is in
- 37 the incapacitated person's best interest. If the court appoints
- 38 ~~co-guardians~~ COGUARDIANS, the ~~co-guardians~~ COGUARDIANS shall share
- 39 decision-making for the incapacitated person and neither ~~co-guardian's~~
- 40 COGUARDIAN'S rights or responsibilities are superior except as otherwise
- 41 ordered by the court.
- 42 F. For good cause the court may pass over a person who has priority
- 43 and appoint a person who has a lower priority or no priority. For the
- 44 purposes of this subsection, "good cause" includes a determination that:

1 1. The incapacitated person's durable power of attorney or health
2 care power of attorney is invalid.

3 2. Honoring the incapacitated person's durable power of attorney or
4 health care power of attorney would not be in the physical, emotional or
5 financial best interest of the incapacitated person.

6 3. The estimated cost of the fiduciary and associated professional
7 fees would adversely affect the ability of the incapacitated person's
8 estate to provide for the incapacitated person's reasonable and necessary
9 living expenses.

10 G. On a request by a person who was passed over by the court
11 pursuant to subsection F of this section, the court shall make a specific
12 finding regarding the court's determination of good cause and why the
13 person was not appointed. The request must be made within ten days after
14 the entry of the order.

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

17 14-5316. Maintaining ward's relationships; contact orders;
18 definitions

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

21 B. Notwithstanding subsection A of this section, a guardian may
22 limit, restrict or prohibit contact between the ward and any person if the
23 guardian ~~reasonably believes~~ CAN DEMONSTRATE THROUGH CLEAR AND CONVINCING
24 EVIDENCE that the contact will be detrimental to the ward's health, safety
25 or welfare.

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

29 D. A person who has a significant relationship to the ward may
30 petition the court for an order compelling the guardian to allow the
31 person to have contact with the ward. The petition shall describe the
32 nature of the relationship between the person and the ward and the type
33 and frequency of contact being requested. The person has the burden of
34 proving that the person has a significant relationship with the ward and
35 that the requested contact is in the ward's best interest.

36 E. A ward may petition the court for an order compelling the
37 guardian to allow the ward to have contact with a person who has a
38 significant relationship to the ward. The petition shall describe the
39 nature of the relationship between the person and the ward and the type
40 and frequency of contact being requested. The ward has the burden of
41 proving that the person has a significant relationship with the ward and
42 that the requested contact is in the ward's best interest.

1 F. In determining what, if any, contact between the person and the
2 ward is in the ward's best interest, the court shall consider all factors
3 that are relevant to the ward's physical and emotional well-being,
4 including the following:

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

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

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

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

15 5. Whether the person with whom the contact is requested has abused
16 drugs or alcohol or has been convicted of any drug offense listed in title
17 13, chapter 34 or a violation of title 28, chapter 4, article 3.

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

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

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

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

42 I. A court-appointed fiduciary for the ward or a person who has a
43 significant relationship to the ward may file a motion asking the court to
44 temporarily modify or suspend a contact order, if a material change in
45 circumstances affecting the ward's health, safety or welfare has occurred

1 since the last contact order was made. The motion shall be supported by
2 an affidavit alleging the change of circumstances that has occurred since
3 the entry of the last contact order. The motion shall be filed
4 contemporaneously with or after the filing of a petition to modify the
5 prior contact order. The motion shall state whether the petitioner
6 requests that the prior contact order be modified or suspended with or
7 without notice to affected persons.

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

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

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

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

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

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

34 N. For the purposes of this section:

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

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

39 3. "Exploitation" has the same meaning prescribed in section
40 46-451.

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

42 5. "Vulnerable adult" has the same meaning prescribed in section
43 46-451.

1 Sec. 4. Section 14-5401, Arizona Revised Statutes, is amended to
2 read:

3 14-5401. Protective proceedings; fingerprinting

4 A. On petition and after notice and a hearing pursuant to this
5 article, the court may appoint a conservator or make another protective
6 order ~~for cause~~ IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE as
7 follows:

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

15 2. Appointment of a conservator or other protective order may be
16 made in relation to the estate and affairs of a person if the court
17 specifically finds on the record both of the following:

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

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

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

35 C. The court may require each person who seeks appointment as a
36 conservator to furnish a full set of fingerprints to enable the court to
37 conduct a criminal background investigation. The court shall submit the
38 person's completed fingerprint card to the department of public safety.
39 The person shall bear the cost of obtaining the person's criminal history
40 record information. The cost shall not exceed the actual cost of
41 obtaining the person's criminal history record information. Criminal
42 history records checks shall be conducted pursuant to section 41-1750 and
43 Public Law 92-544. The department of public safety may exchange this
44 fingerprint data with the federal bureau of investigation. This

1 subsection does not apply to a fiduciary who is licensed pursuant to
2 section 14-5651 or an employee of a financial institution.

3 Sec. 5. Section 14-5405, Arizona Revised Statutes, is amended to
4 read:

5 14-5405. Notice in conservatorship proceedings

6 A. In a proceeding for the appointment or substitution of a
7 conservator of a protected person or person allegedly in need of
8 protection, other than the appointment of a temporary conservator or
9 temporary suspension of a conservator, and in a proceeding to continue a
10 conservatorship or other protective order pursuant to section 14-5401,
11 subsection B, notice of the hearing shall be given to each of the
12 following:

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

15 2. The spouse, parents and adult children of the protected person
16 or person allegedly in need of protection, or if no spouse, parents or
17 adult children can be located, at least one adult relative of the
18 protected person or the person allegedly in need of protection, if such a
19 relative can be found.

20 3. Any person who is serving as guardian or conservator or who has
21 the care and custody of the protected person or person allegedly in need
22 of protection.

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

24 B. At least fourteen days before the hearing notice shall be served
25 personally on ~~the protected person or the person allegedly in need of~~
26 ~~protection and that person's spouse and parents if they can be found~~
27 ~~within the state. Notice to the spouse and parents, if they cannot be~~
28 ~~found within the state, and to all other persons except the protected~~
29 ~~person or the person allegedly in need of protection shall be given in~~
30 ~~accordance with section 14-1401~~ ALL PERSONS LISTED IN SUBSECTION A OF THIS
31 SECTION. Waiver of notice by the protected person or the person allegedly
32 in need of protection is not effective unless the protected person or the
33 person allegedly in need of protection attends the hearing.

34 Sec. 6. Section 14-5410, Arizona Revised Statutes, is amended to
35 read:

36 14-5410. Who may be appointed conservator; priorities

37 A. The court may appoint an individual or a corporation, with
38 general power to serve as trustee, as conservator of the estate of a
39 protected person subject to the requirements of section 14-5106. The
40 following are entitled to consideration for appointment in the order
41 listed:

42 1. THE PERSON NOMINATED TO SERVE AS CONSERVATOR IN THE PROTECTED
43 PERSON'S MOST RECENT DURABLE POWER OF ATTORNEY.

- 1 ~~1.~~ 2. A conservator, guardian of property or other like fiduciary
2 appointed or recognized by the appropriate court of any other jurisdiction
3 in which the protected person resides.
- 4 ~~2.~~ 3. An individual or corporation nominated by the protected
5 person if the protected person is at least fourteen years of age and has,
6 in the opinion of the court, sufficient mental capacity to make an
7 intelligent choice.
- 8 ~~3. The person nominated to serve as conservator in the protected
9 person's most recent durable power of attorney.~~
- 10 4. The spouse of the protected person.
11 5. An adult child of the protected person.
12 6. A parent of the protected person, or a person nominated by the
13 will of a deceased parent.
14 7. Any relative of the protected person with whom the protected
15 person has resided for more than six months before the filing of the
16 petition.
17 8. The nominee of a person who is caring for or paying benefits to
18 the protected person.
19 9. If the protected person is a veteran, the spouse of a veteran or
20 the minor child of a veteran, the department of veterans' services.
21 10. A fiduciary who is licensed pursuant to section 14-5651, other
22 than a public fiduciary.
23 11. A public fiduciary who is licensed pursuant to section 14-5651.
- 24 B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of
25 this section may nominate in writing a person to serve in that person's
26 place. With respect to persons having equal priority, the court shall
27 select the one it determines is best qualified to serve. The court, for
28 good cause, may pass over a person having priority and appoint a person
29 having a lower priority or no priority. For the purposes of this
30 subsection, "good cause" includes a determination that:
31 1. The protected person's durable power of attorney is invalid.
32 2. Honoring the protected person's durable power of attorney would
33 not be in the physical, emotional or financial best interest of the
34 protected person.
35 3. The estimated cost of the fiduciary and associated professional
36 fees would adversely affect the ability of the person's estate to provide
37 for the protected person's reasonable and necessary living expenses.
- 38 C. On the request of a person who was passed over by the court
39 pursuant to subsection B of this section, the court shall make a specific
40 finding regarding the court's determination of good cause and why the
41 person was not appointed. The request must be made within ten days after
42 the entry of the order.