

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1291

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 14-1306, Arizona Revised Statutes, is amended to
3 read:

4 14-1306. Jury trial

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

8 B. THE COURT SHALL PROVIDE NOTICE TO THE PARTIES OF THEIR
9 CONSTITUTIONAL RIGHT TO A TRIAL BY JURY. THE NOTICE SHALL ADVISE THE
10 PARTIES OF ANY LIMITATIONS AND REQUIREMENTS APPLICABLE TO THE RIGHT TO A
11 TRIAL BY JURY.

12 ~~B.~~ C. If there is no right to trial by jury under subsection A OF
13 THIS SECTION or the right is waived, the court in its discretion may call a
14 jury to decide any issue of fact, in which case the verdict is advisory
15 only.

16 Sec. 2. Section 14-1401, Arizona Revised Statutes, is amended to
17 read:

18 14-1401. Notice; method and time of giving; damage

19 A. If notice of a hearing on any petition is required and except for
20 specific notice requirements as otherwise provided, the petitioner shall
21 cause notice of the time and place of hearing of any petition to be given
22 to any interested person or his attorney if he has appeared by attorney or

1 requested that notice be sent to his attorney. Notice shall be given
2 either:

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

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

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

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

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

20 D. IF THE PETITIONER INTENTIONALLY FAILS TO PROVIDE NOTICE OF A
21 HEARING AS REQUIRED BY THIS TITLE TO ANY INTERESTED PERSON OR THE
22 INTERESTED PERSON'S ATTORNEY, THE COURT MAY ORDER THE PETITIONER TO PAY
23 DAMAGES INCURRED BY THE INTERESTED PERSON AS A RESULT OF THE FAILURE TO
24 PROVIDE NOTICE, INCLUDING REASONABLE ATTORNEY FEES AND COSTS.

25 Sec. 3. Section 14-5102, Arizona Revised Statutes, is amended to
26 read:

27 14-5102. Jurisdiction of subject matter; consolidation of
28 proceedings; alternative resolution

29 A. The court has jurisdiction over protective proceedings and
30 guardianship proceedings.

1 B. When both guardianship and protective proceedings as to the same
2 person are commenced or pending in the same court, the proceedings may be
3 consolidated.

4 C. THE COURT SHALL MAKE EFFORTS TO RESOLVE PROCEEDINGS BROUGHT
5 PURSUANT TO THIS CHAPTER IN AS EFFICIENT AND INEXPENSIVE MANNER AS
6 POSSIBLE, INCLUDING RESOLUTION BY ALTERNATIVE MEANS WHEN POSSIBLE.

7 Sec. 4. Title 14, chapter 5, article 1, Arizona Revised Statutes, is
8 amended by adding section 14-5111, to read:

9 14-5111. Duties of appointed counsel; contempt

10 A. AN ALLEGED INCAPACITATED PERSON'S ATTORNEY, WITHIN SEVEN CALENDAR
11 DAYS BEFORE THE INITIAL HEARING ON THE PETITION FOR THE APPOINTMENT OF A
12 PERMANENT GUARDIAN OR CONSERVATOR, SHALL FULFILL THE FOLLOWING MINIMAL
13 DUTIES:

14 1. INTERVIEW THE ALLEGED INCAPACITATED PERSON.

15 2. INFORM THE ALLEGED INCAPACITATED PERSON OF ALL OF THE FOLLOWING
16 INFORMATION:

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

18 (b) THE RIGHT TO SELECT AN ATTORNEY OF THE PERSON'S CHOOSING.

19 (c) THE RIGHT OF THE ALLEGED INCAPACITATED PERSON TO APPEAR IN COURT
20 AND HAVE ANY PERSON THE ALLEGED INCAPACITATED PERSON WISHES TO BE PRESENT
21 WITH THE ALLEGED INCAPACITATED PERSON.

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

24 (e) A DETAILED LIST AND EXPLANATION OF THE DUTIES THE GUARDIAN OR
25 CONSERVATOR WILL ASSUME FOR THE ALLEGED INCAPACITATED PERSON.

26 (f) IF A GUARDIANSHIP APPOINTMENT HAS BEEN REQUESTED, THE ALLEGED
27 INCAPACITATED PERSON'S RIGHT TO MAINTAIN RELATIONSHIPS PURSUANT TO SECTION
28 14-5316.

29 B. AT THE INITIAL HEARING ON THE PETITION FOR APPOINTMENT, THE
30 ALLEGED INCAPACITATED PERSON'S ATTORNEY SHALL ATTEST TO THE COURT THAT THE
31 ATTORNEY HAS FULFILLED THE REQUIREMENTS PRESCRIBED IN THIS SECTION OR SHALL

1 PROVIDE AN EXPLANATION AS TO WHY THE ATTORNEY HAS BEEN UNABLE TO COMPLY
2 WITH THE REQUIREMENTS PRESCRIBED IN THIS SECTION.

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

5 Sec. 5. Section 14-5303, Arizona Revised Statutes, is amended to
6 read:

7 14-5303. Procedure for court appointment of a guardian of an
8 alleged incapacitated person

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

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

16 1. The interest of the petitioner.

17 2. The name, age, residence and address of the alleged incapacitated
18 person.

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

21 4. The name and address of the conservator, if any, of the alleged
22 incapacitated person.

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

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

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

30 8. The type of guardianship requested. If a general guardianship is
31 requested, the petition must state that other alternatives have been
32 explored and why a limited guardianship is not appropriate. If a limited

1 guardianship is requested, the petition also must state what specific
2 powers are requested.

3 9. If a legal decision-making, parenting time or visitation order
4 was previously entered regarding an alleged incapacitated person in a
5 marriage dissolution, legal separation or paternity action in this state or
6 another jurisdiction and the petitioner or proposed guardian is a parent of
7 the alleged incapacitated person or a nonparent who has been awarded legal
8 decision-making as to the alleged incapacitated person, the court and case
9 number for that action or proceeding and include a copy of the most recent
10 court order regarding legal decision-making, parenting time and visitation.

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

13 11. WHETHER THE ALLEGED INCAPACITATED PERSON IS THE PRINCIPAL UNDER
14 A HEALTH CARE POWER OF ATTORNEY, AND, IF SO, A COPY OF THAT HEALTH CARE
15 POWER OF ATTORNEY MUST BE ATTACHED TO THE PETITION.

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

20 C. On the filing of a petition, the court shall set a hearing date
21 on the issues of incapacity. Unless the alleged incapacitated person is
22 represented by independent counsel, the court shall appoint an attorney to
23 represent that person in the proceeding. The alleged incapacitated person
24 shall be interviewed by an investigator appointed by the court and shall be
25 examined by a physician, psychologist or registered nurse appointed by the
26 court. If the alleged incapacitated person has an established relationship
27 with a physician, psychologist or registered nurse who is determined by the
28 court to be qualified to evaluate the capacity of the alleged incapacitated
29 person, the court may appoint the alleged incapacitated person's physician,
30 psychologist or registered nurse pursuant to this subsection. The
31 investigator and the person conducting the examination shall submit their
32 reports in writing to the court. In addition to information required under

1 subsection D **OF THIS SECTION**, the court may direct that either report
2 include other information the court deems appropriate. The investigator
3 also shall interview the person seeking appointment as guardian, visit the
4 present place of abode of the alleged incapacitated person and the place
5 where it is proposed that the person will be detained or reside if the
6 requested appointment is made and submit a report in writing to the court.
7 The alleged incapacitated person is entitled to be present at the hearing
8 and to see or hear all evidence bearing on that person's condition. The
9 alleged incapacitated person is entitled to be represented by counsel, to
10 present evidence, to cross-examine witnesses, including the court-appointed
11 examiner and investigator, and to trial by jury. The court may determine
12 the issue at a closed hearing if the alleged incapacitated person or that
13 person's counsel so requests.

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

17 1. A specific description of the physical, psychiatric or
18 psychological diagnosis of the person.

19 2. A comprehensive assessment listing any functional impairments of
20 the alleged incapacitated person and an explanation of how and to what
21 extent these functional impairments may prevent that person from receiving
22 or evaluating information in making decisions or in communicating informed
23 decisions regarding that person.

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

27 4. A list of all medications the alleged incapacitated person is
28 receiving, the dosage of the medications and a description of the effects
29 each medication has on the person's behavior to the best of the declarant's
30 knowledge.

1 significant relationship to the ward. The petition shall describe the
2 nature of the relationship between the person and the ward and the type and
3 frequency of contact being requested. The ward has the burden of proving
4 that the person has a significant relationship with the ward ~~and that the~~
5 ~~requested contact is in the ward's best interest.~~ THE GUARDIAN HAS THE
6 BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE REQUESTED
7 CONTACT WILL BE DETRIMENTAL TO THE WARD'S HEALTH, SAFETY OR WELFARE. A
8 HEARING ON A PETITION BY THE WARD SHALL BE HEARD WITHIN TEN DAYS OF THE
9 PETITION BEING RECEIVED BY THE COURT.

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

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

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

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

20 4. Whether the person with whom the contact is requested has
21 committed any act involving domestic violence as defined in section
22 13-3601, child abuse or abuse, neglect or exploitation of a vulnerable
23 adult.

24 5. Whether the person with whom the contact is requested has abused
25 drugs or alcohol or has been convicted of any drug offense listed in title
26 13, chapter 34 or a violation of title 28, chapter 4, article 3.

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

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

1 G. If the petition for contact is filed pursuant to section
2 14-5301.03 or within two years after the ward's eighteenth birthday, any
3 contact with the ward authorized in the most recent parenting time or
4 visitation order shall be presumed to be in the ward's best interests, but
5 the presumption may be rebutted by evidence showing that the contact
6 authorized in the most recent parenting time or visitation order is no
7 longer in the ward's best interests.

8 H. A court-appointed fiduciary for the ward or a person who has a
9 significant relationship to the ward may petition the court to modify a
10 contact order, if a material change in circumstances affecting the ward's
11 health, safety or welfare has occurred since the last contact order was
12 made. The petition shall be supported by an affidavit alleging the change
13 of circumstances that has occurred since the entry of the last contact
14 order. The court shall deny the petition unless the court finds that the
15 petition establishes good cause for hearing, in which case the court shall
16 set a hearing on the petition. The petition and notice of the hearing on
17 the petition shall be served on all persons to whom notice is required
18 pursuant to section 14-5309 and on any court-appointed fiduciary for the
19 ward.

20 I. A court-appointed fiduciary for the ward or a person who has a
21 significant relationship to the ward may file a motion asking the court to
22 temporarily modify or suspend a contact order, if a material change in
23 circumstances affecting the ward's health, safety or welfare has occurred
24 since the last contact order was made. The motion shall be supported by an
25 affidavit alleging the change of circumstances that has occurred since the
26 entry of the last contact order. The motion shall be filed
27 contemporaneously with or after the filing of a petition to modify the
28 prior contact order. The motion shall state whether the petitioner
29 requests that the prior contact order be modified or suspended with or
30 without notice to affected persons.

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

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

5 2. The moving party or the party's attorney certifies to the court
6 in writing the efforts, if any, that the moving party or the party's
7 attorney has made to give the notice or the reasons supporting the claim
8 that notice should not be required.

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

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

17 M. The moving party shall personally serve the person whose contact
18 with the ward has been modified or suspended with a copy of the order and
19 notice of the hearing. The moving party shall have served a copy of the
20 order on any court-appointed fiduciary for the ward and all persons
21 affected by the order as soon as practicable after issuance of the order in
22 the manner prescribed in section 14-5309 or as otherwise ordered by the
23 court.

24 N. IF, IN A PROCEEDING BROUGHT UNDER THIS SECTION, THE COURT FINDS
25 THAT THE GUARDIAN HAS UNREASONABLY DENIED CONTACT BETWEEN A WARD AND A
26 PERSON WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE WARD, THE COURT MAY DO
27 EITHER, OR BOTH, OF THE FOLLOWING:

- 28 1. REMOVE THE GUARDIAN.
29 2. ORDER THE GUARDIAN TO PERSONALLY PAY SOME OR ALL OF THE
30 REASONABLE ATTORNEY FEES AND EXPENSES INCURRED BY THE PERSON OR THE WARD,
31 OR BOTH.

1 O. WITHIN TEN COURT DAYS AFTER ENTRY OF AN ORDER APPOINTING A
2 GUARDIAN FOR AN ADULT, THE GUARDIAN SHALL PROVIDE ALL PARTIES TO THE MATTER
3 WITH WRITTEN NOTICE OF THE GUARDIAN'S POWERS AND DUTIES UNDER THIS SECTION.

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

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

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

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

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

11 5. "Vulnerable adult" has the same meaning prescribed in section
12 46-451.

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

15 14-5401. Protective proceedings: fingerprinting

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

19 1. Appointment of a conservator or other protective order may be
20 made in relation to the estate and affairs of a minor if the court
21 determines that a minor owns money or property that requires management or
22 protection that cannot otherwise be provided or has or may have affairs
23 that may be jeopardized or prevented by minority or that funds are needed
24 for the minor's support and education and that protection is necessary or
25 desirable to obtain or provide funds.

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

30 (a) The person is unable to manage the person's estate and affairs
31 effectively for reasons such as mental illness, mental deficiency, mental

1 disorder, physical illness or disability, chronic use of drugs, chronic
2 intoxication, confinement, detention by a foreign power or disappearance.

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

8 B. On petition and after notice and a hearing pursuant to this
9 article, the court may continue a conservatorship or other protective order
10 entered pursuant to subsection A, paragraph 1 of this section beyond the
11 minor's eighteenth birthday if the court determines that the order is
12 appropriate pursuant to subsection A, paragraph 2 of this section. The
13 petition shall comply with the requirements of section 14-5404, subsection
14 B and must be filed after the minor's seventeenth birthday and before
15 termination of the conservatorship by court order.

16 C. The court may require each person who seeks appointment as a
17 conservator to furnish a full set of fingerprints to enable the court to
18 conduct a criminal background investigation. The court shall submit the
19 person's completed fingerprint card to the department of public safety.
20 The person shall bear the cost of obtaining the person's criminal history
21 record information. The cost shall not exceed the actual cost of obtaining
22 the person's criminal history record information. Criminal history records
23 checks shall be conducted pursuant to section 41-1750 and Public Law
24 92-544. The department of public safety may exchange this fingerprint data
25 with the federal bureau of investigation. This subsection does not apply
26 to a fiduciary who is licensed pursuant to section 14-5651 or an employee
27 of a financial institution.

28 D. THE COURT SHALL NOT APPOINT A CONSERVATOR OR ENTER A PROTECTIVE
29 ORDER FOR A PERSON UNDER SUBSECTION A, PARAGRAPH 2 OF THIS SECTION UNLESS
30 THE SUBJECT OF THE PROTECTIVE ORDER HAS APPEARED BEFORE THE COURT EITHER IN
31 PERSON OR BY VIRTUAL OR REMOTE MEANS. IF THE SUBJECT PERSON IS UNABLE TO
32 APPEAR IN PERSON OR BY VIRTUAL OR REMOTE MEANS, THE PETITIONER MUST PROVIDE

1 EVIDENCE TO THE COURT OF THE SUBJECT PERSON'S INCAPACITY. THE COURT SHALL
2 WEIGH THE EVIDENCE, REQUEST ADDITIONAL EVIDENCE IF NECESSARY AND DOCUMENT
3 ALL EVIDENCE IN THE COURT RECORD.

4 E. THE COURT SHALL TAKE ALL NECESSARY ACTIONS TO ENSURE THAT THE
5 CONSTITUTIONAL RIGHTS OF A PERSON SUBJECT TO A PROTECTIVE ORDER ARE
6 PROTECTED.

7 Sec. 8. Section 14-5404, Arizona Revised Statutes, is amended to
8 read:

9 14-5404. Original petition for appointment or protective order

10 A. The person allegedly in need of protection, any person who is
11 interested in that person's estate or affairs, including that person's
12 parent, guardian or custodian, or any person who would be adversely
13 affected by lack of effective management of that person's estate and
14 affairs may petition for the appointment of a conservator or for any other
15 appropriate protective order.

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

18 1. The interest of the petitioner.

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

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

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

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

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

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

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

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

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

11 Amend title to conform

ALEXANDER KOLODIN

1291KOLODIN.docx
03/27/2023
10:46 AM
C: LAT