

REFERENCE TITLE: guardianship; proceedings; ward's relationships

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1296

Introduced by
Senator Driggs

AN ACT

AMENDING SECTIONS 14-5101, 14-5303, 14-5309 AND 14-5311, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-5316 AND 14-5317; RELATING TO GUARDIANSHIP.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 14-5101, Arizona Revised Statutes, is amended to
3 read:

4 14-5101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "CONTACT" INCLUDES IN-PERSON CONTACT, WRITTEN COMMUNICATION AND ALL
7 FORMS OF ELECTRONIC COMMUNICATIONS.

8 2. "CONTACT ORDER" MEANS AN ORDER ALLOWING CONTACT BETWEEN A WARD AND
9 A PERSON WITH A SIGNIFICANT RELATIONSHIP TO THE WARD.

10 ~~1.~~ 3. "Incapacitated person" means any person who is impaired by
11 reason of mental illness, mental deficiency, mental disorder, physical
12 illness or disability, chronic use of drugs, chronic intoxication or other
13 cause, except minority, to the extent that he lacks sufficient understanding
14 or capacity to make or communicate responsible decisions concerning his
15 person. In cases of limited guardianship only, a person is not deemed an
16 incapacitated person for purposes of voting if the person files a petition,
17 ~~AND~~ has a hearing and the judge determines by clear and convincing evidence
18 that the person retains sufficient understanding to exercise the right to
19 vote pursuant to section 14-5304.02.

20 ~~2.~~ 4. "Investigator" means a person who is appointed by the court
21 under section 14-5308.

22 5. "JOINT LEGAL DECISION-MAKING" HAS THE SAME MEANING PRESCRIBED IN
23 SECTION 25-401.

24 6. "LEGAL DECISION-MAKING" HAS THE SAME MEANING PRESCRIBED IN SECTION
25 25-401.

26 7. "PARENTING TIME" HAS THE SAME MEANING PRESCRIBED IN SECTION 25-401.

27 ~~3.~~ 8. "Physician" means a person licensed pursuant to title 32,
28 chapter 13 or 17.

29 ~~4.~~ 9. "Protected person" means a minor or any other person for whom a
30 conservator has been appointed or any other protective order has been made.

31 ~~5.~~ 10. "Protective proceeding" means a proceeding under ~~the~~
32 ~~provisions of~~ section 14-5401 to determine that a person cannot effectively
33 manage or apply his estate to necessary ends, either because he lacks the
34 ability or is otherwise inconvenienced, or because he is a minor, and to
35 secure administration of his estate by a conservator or other appropriate
36 relief.

37 ~~6.~~ 11. "Psychologist" means a person licensed pursuant to title 32,
38 chapter 19.1.

39 ~~7.~~ 12. "Registered nurse" has the same meaning as prescribed in
40 section 32-1601.

41 13. "SIGNIFICANT RELATIONSHIP" MEANS THE PERSON EITHER IS RELATED TO
42 THE WARD BY BLOOD OR MARRIAGE OR IS A CLOSE FRIEND OF THE WARD AS ESTABLISHED
43 BY A HISTORY OF PATTERN AND PRACTICE.

44 14. "VISITATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 25-401.

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

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

28 1. A specific description of the physical, psychiatric or
29 psychological diagnosis of the person.

30 2. A comprehensive assessment listing any functional impairments of
31 the alleged incapacitated person and an explanation of how and to what extent
32 these functional impairments may prevent that person from receiving or
33 evaluating information in making decisions or in communicating informed
34 decisions regarding that person.

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

37 4. A list of all medications the alleged incapacitated person is
38 receiving, the dosage of the medications and a description of the effects
39 each medication has on the person's behavior to the best of the declarant's
40 knowledge.

41 5. A prognosis for improvement in the alleged incapacitated person's
42 condition and a recommendation for the most appropriate rehabilitation plan
43 or care plan.

44 6. Other information the physician, psychologist or registered nurse
45 deems appropriate.

1 Sec. 3. Section 14-5309, Arizona Revised Statutes, is amended to read:
2 14-5309. Notices in guardianship proceedings

3 A. In a proceeding for **A CONTACT ORDER OR MODIFICATION OF A CONTACT**
4 **ORDER PURSUANT TO SECTION 14-5316 OR FOR** the appointment or substitution of a
5 guardian of a ward or an alleged incapacitated person other than the
6 appointment of a temporary guardian or temporary suspension of a guardian,
7 notice of a hearing shall be given to each of the following:

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

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

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

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

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

24 Sec. 4. Section 14-5311, Arizona Revised Statutes, is amended to read:
25 14-5311. Who may be guardian; priorities

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

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

30 1. A guardian or conservator of the person or a fiduciary appointed or
31 recognized by the appropriate court of any jurisdiction in which the
32 incapacitated person resides.

33 2. An individual or corporation nominated by the incapacitated person
34 if the person has, in the opinion of the court, sufficient mental capacity to
35 make an intelligent choice.

36 3. The person nominated to serve as guardian in the incapacitated
37 person's most recent durable power of attorney or health care power of
38 attorney.

39 4. The spouse of the incapacitated person.

40 5. An adult child of the incapacitated person.

41 6. A parent of the incapacitated person, including a person nominated
42 by will or other writing signed by a deceased parent.

43 7. Any relative of the incapacitated person with whom the
44 incapacitated person has resided for more than six months before the filing
45 of the petition.

1 8. The nominee of a person who is caring for or paying benefits to the
2 incapacitated person.

3 9. If the incapacitated person is a veteran, the spouse of a veteran
4 or the minor child of a veteran, the department of veterans' services.

5 10. A fiduciary who is licensed pursuant to section 14-5651, other
6 than a public fiduciary.

7 11. A public fiduciary who is licensed pursuant to section 14-5651.

8 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 of this
9 section may nominate in writing a person to serve in that person's place.
10 With respect to persons who have equal priority, the court shall select the
11 one the court determines is best qualified to serve.

12 D. NOTWITHSTANDING THE PRIORITIES SET FORTH IN SUBSECTION B OF THIS
13 SECTION, IF THE PETITION FOR APPOINTMENT OF A GUARDIAN FOR THE INCAPACITATED
14 PERSON IS FILED WITHIN TWO YEARS AFTER THE INCAPACITATED PERSON'S EIGHTEENTH
15 BIRTHDAY, UNLESS THE COURT FINDS THE APPOINTMENT TO BE CONTRARY TO THE
16 INCAPACITATED PERSON'S BEST INTEREST:

17 1. THE COURT SHALL APPOINT AS THE INCAPACITATED PERSON'S GUARDIAN ANY
18 PERSON WHO, BY COURT ORDER, HAD SOLE LEGAL DECISION-MAKING OF THE
19 INCAPACITATED PERSON WHEN THE INCAPACITATED PERSON ATTAINED EIGHTEEN YEARS OF
20 AGE.

21 2. IF TWO PERSONS HAD JOINT LEGAL DECISION-MAKING OF THE INCAPACITATED
22 PERSON WHEN THE INCAPACITATED PERSON ATTAINED EIGHTEEN YEARS OF AGE, THE
23 COURT SHALL APPOINT BOTH PERSONS AS THE INCAPACITATED PERSON'S CO-GUARDIANS.

24 E. THE COURT MAY APPOINT MORE THAN ONE PERSON AS THE INCAPACITATED
25 PERSON'S CO-GUARDIANS IF THE APPOINTMENT IS REQUIRED BY SUBSECTION D OF THIS
26 SECTION OR THE COURT FINDS THAT THE APPOINTMENT IS IN THE INCAPACITATED
27 PERSON'S BEST INTEREST. IF THE COURT APPOINTS CO-GUARDIANS, THE CO-GUARDIANS
28 SHALL SHARE DECISION-MAKING FOR THE INCAPACITATED PERSON AND NEITHER
29 CO-GUARDIAN'S RIGHTS OR RESPONSIBILITIES ARE SUPERIOR EXCEPT AS OTHERWISE
30 ORDERED BY THE COURT.

31 ~~D.~~ F. For good cause the court may pass over a person who has
32 priority and appoint a person who has a lower priority or no priority. For
33 the purposes of this subsection, "good cause" includes a determination that:

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

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

39 3. The estimated cost of the fiduciary and associated professional
40 fees would adversely affect the ability of the incapacitated person's estate
41 to provide for the incapacitated person's reasonable and necessary living
42 expenses.

43 ~~E.~~ G. On a request by a person who was passed over by the court
44 pursuant to subsection ~~D.~~ F of this section, the court shall make a specific
45 finding regarding the court's determination of good cause and why the person

1 was not appointed. The request must be made within ten days after the entry
2 of the order.

3 Sec. 5. Title 14, chapter 5, article 3, Arizona Revised Statutes, is
4 amended by adding sections 14-5316 and 14-5317, to read:

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

7 A. A GUARDIAN SHALL ENCOURAGE AND ALLOW CONTACT BETWEEN THE WARD AND
8 OTHER PERSONS WHO HAVE A SIGNIFICANT RELATIONSHIP WITH THE WARD.

9 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A GUARDIAN MAY LIMIT,
10 RESTRICT OR PROHIBIT CONTACT BETWEEN THE WARD AND ANY PERSON IF THE GUARDIAN
11 REASONABLY BELIEVES THAT THE CONTACT WILL BE DETRIMENTAL TO THE WARD'S
12 HEALTH, SAFETY OR WELFARE.

13 C. IN EXERCISING THE GUARDIAN'S POWERS PURSUANT TO SUBSECTIONS A AND B
14 OF THIS SECTION, THE GUARDIAN SHALL CONSIDER THE WISHES OF THE WARD, IF THE
15 WARD HAS SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE.

16 D. A PERSON WHO HAS A SIGNIFICANT RELATIONSHIP TO THE WARD MAY
17 PETITION THE COURT FOR AN ORDER COMPELLING THE GUARDIAN TO ALLOW THE PERSON
18 TO HAVE CONTACT WITH THE WARD. THE PETITION SHALL DESCRIBE THE NATURE OF THE
19 RELATIONSHIP BETWEEN THE PERSON AND THE WARD AND THE TYPE AND FREQUENCY OF
20 CONTACT BEING REQUESTED. THE PERSON HAS THE BURDEN OF PROVING THAT THE
21 PERSON HAS A SIGNIFICANT RELATIONSHIP WITH THE WARD AND THAT THE REQUESTED
22 CONTACT IS IN THE WARD'S BEST INTEREST.

23 E. A WARD MAY PETITION THE COURT FOR AN ORDER COMPELLING THE GUARDIAN
24 TO ALLOW THE WARD TO HAVE CONTACT WITH A PERSON WHO HAS A SIGNIFICANT
25 RELATIONSHIP TO THE WARD. THE PETITION SHALL DESCRIBE THE NATURE OF THE
26 RELATIONSHIP BETWEEN THE PERSON AND THE WARD AND THE TYPE AND FREQUENCY OF
27 CONTACT BEING REQUESTED. THE WARD HAS THE BURDEN OF PROVING THAT THE PERSON
28 HAS A SIGNIFICANT RELATIONSHIP WITH THE WARD AND THAT THE REQUESTED CONTACT
29 IS IN THE WARD'S BEST INTEREST.

30 F. IN DETERMINING WHAT, IF ANY, CONTACT BETWEEN THE PERSON AND THE
31 WARD IS IN THE WARD'S BEST INTEREST, THE COURT SHALL CONSIDER ALL FACTORS
32 THAT ARE RELEVANT TO THE WARD'S PHYSICAL AND EMOTIONAL WELL-BEING, INCLUDING
33 THE FOLLOWING:

34 1. THE PAST AND PRESENT RELATIONSHIP BETWEEN THE WARD AND THE PERSON
35 WITH WHOM THE CONTACT IS REQUESTED.

36 2. THE WISHES OF THE WARD IF THE WARD HAS SUFFICIENT MENTAL CAPACITY
37 TO MAKE AN INTELLIGENT CHOICE.

38 3. THE MENTAL AND PHYSICAL HEALTH OF THE WARD AND THE PERSON WITH WHOM
39 THE CONTACT IS REQUESTED.

40 4. WHETHER THE PERSON WITH WHOM THE CONTACT IS REQUESTED HAS COMMITTED
41 ANY ACT INVOLVING DOMESTIC VIOLENCE AS DEFINED IN SECTION 13-3601, CHILD
42 ABUSE OR ABUSE, NEGLECT OR EXPLOITATION OF A VULNERABLE ADULT.

43 5. WHETHER THE PERSON WITH WHOM THE CONTACT IS REQUESTED HAS ABUSED
44 DRUGS OR ALCOHOL OR HAS BEEN CONVICTED OF ANY DRUG OFFENSE LISTED IN TITLE
45 13, CHAPTER 34 OR A VIOLATION OF TITLE 28, CHAPTER 4, ARTICLE 3.

1 6. WHETHER THE PERSON WITH WHOM THE CONTACT IS REQUESTED IS LISTED IN
2 THE ELDER ABUSE CENTRAL REGISTRY PURSUANT TO SECTION 46-457 OR IS REQUIRED TO
3 REGISTER PURSUANT TO SECTION 13-3821.

4 7. WHETHER THE PERSON WITH WHOM THE CONTACT IS REQUESTED HAS BEEN
5 CONVICTED OF A VIOLATION OF SECTION 13-2907.02 OR 13-2907.04.

6 G. IF THE PETITION FOR CONTACT IS FILED WITHIN TWO YEARS AFTER THE
7 WARD'S EIGHTEENTH BIRTHDAY, ANY CONTACT WITH THE WARD AUTHORIZED IN THE MOST
8 RECENT PARENTING TIME OR VISITATION ORDER SHALL BE PRESUMED TO BE IN THE
9 WARD'S BEST INTERESTS, BUT THE PRESUMPTION MAY BE REBUTTED BY EVIDENCE
10 SHOWING THAT THE CONTACT AUTHORIZED IN THE MOST RECENT PARENTING TIME OR
11 VISITATION ORDER IS NO LONGER IN THE WARD'S BEST INTERESTS.

12 H. A FIDUCIARY TO THE WARD OR A PERSON WHO HAS A SIGNIFICANT
13 RELATIONSHIP TO THE WARD MAY PETITION THE COURT TO MODIFY A CONTACT ORDER, IF
14 A MATERIAL CHANGE IN CIRCUMSTANCES AFFECTING THE WARD'S HEALTH, SAFETY OR
15 WELFARE HAS OCCURRED SINCE THE LAST CONTACT ORDER WAS MADE. THE PETITION
16 SHALL BE SUPPORTED BY AN AFFIDAVIT ALLEGING THE CHANGE OF CIRCUMSTANCES THAT
17 HAS OCCURRED SINCE THE ENTRY OF THE LAST CONTACT ORDER. THE COURT SHALL DENY
18 THE PETITION UNLESS THE COURT FINDS THAT THE PETITION ESTABLISHES GOOD CAUSE
19 FOR HEARING, IN WHICH CASE THE COURT SHALL SET A HEARING ON THE PETITION.
20 THE PETITION AND NOTICE OF THE HEARING ON THE PETITION SHALL BE SERVED ON ALL
21 PERSONS TO WHOM NOTICE IS REQUIRED PURSUANT TO SECTION 14-5309 AND ON ANY
22 FIDUCIARY TO THE WARD.

23 I. A FIDUCIARY TO THE WARD OR A PERSON WHO HAS A SIGNIFICANT
24 RELATIONSHIP TO THE WARD MAY FILE A MOTION ASKING THE COURT TO TEMPORARILY
25 MODIFY OR SUSPEND A CONTACT ORDER, IF A MATERIAL CHANGE IN CIRCUMSTANCES
26 AFFECTING THE WARD'S HEALTH, SAFETY OR WELFARE HAS OCCURRED SINCE THE LAST
27 CONTRACT ORDER WAS MADE. THE MOTION SHALL BE SUPPORTED BY AN AFFIDAVIT
28 ALLEGING THE CHANGE OF CIRCUMSTANCES THAT HAS OCCURRED SINCE THE ENTRY OF THE
29 LAST CONTACT ORDER. THE MOTION SHALL BE FILED CONTEMPORANEOUSLY WITH OR
30 AFTER THE FILING OF A PETITION TO MODIFY THE PRIOR CONTACT ORDER. THE MOTION
31 SHALL STATE WHETHER THE PETITIONER REQUESTS THAT THE PRIOR CONTACT ORDER BE
32 MODIFIED OR SUSPENDED WITH OR WITHOUT NOTICE TO AFFECTED PERSONS.

33 J. THE COURT MAY TEMPORARILY MODIFY OR SUSPEND A CONTACT ORDER WITHOUT
34 NOTICE ONLY IF BOTH OF THE FOLLOWING CONDITIONS ARE MET:

35 1. IT CLEARLY APPEARS FROM SPECIFIC FACTS SHOWN IN THE MOTION OR
36 AFFIDAVIT THAT IMMEDIATE AND IRREPARABLE INJURY, LOSS OR DAMAGE LIKELY WILL
37 RESULT IF THE ORDER IS NOT ISSUED BEFORE THE AFFECTED PERSONS CAN BE HEARD IN
38 OPPOSITION.

39 2. THE MOVING PARTY OR THE PARTY'S ATTORNEY CERTIFIES TO THE COURT IN
40 WRITING THE EFFORTS, IF ANY, THAT THE MOVING PARTY OR THE PARTY'S ATTORNEY
41 HAS MADE TO GIVE THE NOTICE OR THE REASONS SUPPORTING THE CLAIM THAT NOTICE
42 SHOULD NOT BE REQUIRED.

43 K. IF THE COURT GRANTS A MOTION TO TEMPORARILY MODIFY OR SUSPEND A
44 CONTACT ORDER WITHOUT NOTICE, THE COURT SHALL SET A HEARING ON THE MOTION.

1 L. AN ORDER TEMPORARILY MODIFYING OR SUSPENDING A CONTACT ORDER THAT
2 IS GRANTED WITHOUT NOTICE SHALL STATE THE INJURY, LOSS OR DAMAGE THAT WOULD
3 HAVE BEEN LIKELY TO OCCUR IF THE ORDER WERE NOT ISSUED BEFORE GIVING THE
4 AFFECTED PERSONS THE OPPORTUNITY TO BE HEARD IN OPPOSITION. THE TEMPORARY
5 ORDER SHALL EXPIRE AT THE DATE AND TIME SET FOR THE HEARING ON THE MOTION
6 UNLESS THE TEMPORARY ORDER IS EXTENDED BY THE COURT FOR GOOD CAUSE.

7 M. THE MOVING PARTY SHALL PERSONALLY SERVE THE PERSON WHOSE CONTACT
8 WITH THE WARD HAS BEEN MODIFIED OR SUSPENDED WITH A COPY OF THE ORDER AND
9 NOTICE OF THE HEARING. THE MOVING PARTY SHALL HAVE SERVED A COPY OF THE
10 ORDER ON ANY FIDUCIARY TO THE WARD AND ALL PERSONS AFFECTED BY THE ORDER AS
11 SOON AS PRACTICABLE AFTER ISSUANCE OF THE ORDER IN THE MANNER PRESCRIBED IN
12 SECTION 14-5309 OR AS OTHERWISE ORDERED BY THE COURT.

13 N. FOR THE PURPOSES OF THIS SECTION:

14 1. "ABUSE" IN RELATION TO A VULNERABLE ADULT HAS THE SAME MEANING
15 PRESCRIBED IN SECTION 46-451.

16 2. "CHILD ABUSE" MEANS ABUSE AS DEFINED IN SECTION 8-201 OF AN
17 INDIVIDUAL WHO IS UNDER EIGHTEEN YEARS OF AGE.

18 3. "EXPLOITATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 46-451.

19 4. "NEGLECT" HAS THE SAME MEANING PRESCRIBED IN SECTION 46-451.

20 5. "VULNERABLE ADULT" HAS THE SAME MEANING PRESCRIBED IN SECTION
21 46-451.

22 14-5317. Notice of ward's hospitalization or death; definition

23 A. UNLESS OTHERWISE ORDERED BY THE COURT, IF THE WARD DIES OR IS
24 ADMITTED TO A HOSPITAL, THE GUARDIAN, WITHIN TWENTY-FOUR HOURS OF LEARNING OF
25 THE WARD'S DEATH OR HOSPITALIZATION, SHALL NOTIFY ALL FAMILY MEMBERS OF THE
26 DEATH OR HOSPITALIZATION.

27 B. FOR THE PURPOSES OF THIS SECTION, "FAMILY MEMBERS" MEANS THE WARD'S
28 SPOUSE, PARENTS, ADULT SIBLINGS AND ADULT CHILDREN.

29 Sec. 6. Effective date

30 This act is effective from and after December 31, 2016.