



HOUSE OF REPRESENTATIVES

SB 1296

guardianship; proceedings; ward's relationships

Prime Sponsor: Senator Driggs, LD 28

DPA Committee on Children and Family Affairs

DPA Caucus and COW

X As Transmitted to the Governor

OVERVIEW

SB 1296 requires a guardian of a ward to permit contact between the ward and persons who have a significant relationship with the ward, unless there is reason to believe that the contact would be detrimental to the ward. Establishes criteria for persons to petition to modify or suspend a contact order.

PROVISIONS

1. Stipulates that a petition for the appointment of a guardian must include:
 - a. The court and case number for any legal decision-making, parenting time or visitation order that was previously entered regarding an alleged incapacitated person in a marriage dissolution, legal separation or paternity actions in which the petitioner or proposed guardian is a parent of an alleged incapacitated person or a nonparent who has been awarded legal decision-making for an alleged incapacitated person; and
 - b. A copy of the most recent court order regarding legal decision making, parenting time and visitation.
2. Requires notice criteria for proceedings regarding the appointment or substitution of a guardian to a ward to also apply to proceedings for a contact order or modification of a contact order.
3. Stipulates that if a petitioner for appointment of a guardian for an incapacitated person is filed for a child that is at least 17 ½ years old or within 2 years after the child's 18th birthday, and the court does not find the appointment to be contrary to the incapacitated person's best interest, then the court must appoint:
 - a. Any person who, by court order, had sole legal decision-making of the incapacitated person when such person attained the age of 18 as the incapacitated person's guardian; or
 - b. Two persons who had joint legal decision-making of the incapacitated person when such person attained the age of 18 as co-guardians.
4. Permits the court to appoint more than one person as the incapacitated person's co-guardians, if the court determines that the appointment is in the incapacitated person's best interest.
5. Requires court-appointed co-guardians to share decision-making for the incapacitated person and maintains that neither of the co-guardian's rights nor responsibilities are superior to the other, unless otherwise ordered by the court.
6. Requires a guardian to encourage and allow contact between the ward and other persons who have a significant relationship with the ward.

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7. Permits the guardian to limit, restrict or prohibit contact between the ward and any person, if the guardian believes that the contact will be detrimental to the ward's health, safety or welfare.
8. Stipulates that the guardian must consider the wishes of the ward, if the ward has sufficient mental capacity to make an intelligent choice, in determining contact between the ward and other persons.
9. Allows a ward or a person who has a significant relationship with the ward to petition the court for an order compelling the guardian to allow the person to have contact with the ward; and
 - a. Requires the petition to describe the nature of the relationship between the person and the ward and the type and frequency of contact being requested;
 - b. Stipulates that the ward or person petitioning the court has the burden of proving that the person has a significant relationship with the ward and that the requested contact is in the ward's best interest.
10. Requires the court, in determining what contact between the person and the ward is in the ward's best interest, to consider all factors that are relevant to the ward's emotional and physical well-being, including:
 - a. The past and present relationship between the ward and the person whom the contact is requested;
 - b. The wishes of the ward, if the ward has sufficient mental capacity to make an intelligent choice;
 - c. The mental and physical health of the ward and the person with whom the contact is requested;
 - d. Whether the person with whom the contact is requested has:
 - i. Committed any act involving domestic violence, child abuse or abuse, neglect or exploitation of a vulnerable adult;
 - ii. Abused drugs or alcohol or has been convicted of any drug offense or driving under the influence;
 - iii. Been listed in the elder abuse central registry or is a registered sex offender; and
 - iv. Been convicted of false reporting of child abuse or neglect or vulnerable adult abuse.
11. Stipulates that if a petition for appointment of a guardian for an incapacitated person is filed for a child that is at least 17 ½ years old or within 2 years after the child's 18th birthday, any contact with the ward authorized in the most recent parenting time or visitation order must be presumed to be in the ward's best interest.
 - a. Permits this presumption to be rebutted by evidence showing that the contact is no longer in the ward's best interest.
12. Permits a court-appointed fiduciary for the ward or a person who has a significant relationship to the ward to:
 - a. Petition the court to modify a contact order, if a material change in circumstances affecting the ward's health, safety or welfare has occurred; and
 - i. Requires this petition to be supported by an affidavit alleging the change of circumstances that has occurred since the entry of the last contact order;
 - ii. Stipulates that the court must deny the petition unless the court finds that it establishes good cause for hearing, in which case the court shall set a hearing on the petition; and

- iii. Requires the petition and notice of the hearing to be served on any court-appointed fiduciary for the ward and to any person to whom notice is required by statute.
 - b. File a motion asking the court to temporarily modify or suspend a contact order, if any material change in circumstances affecting the ward's health, safety or welfare has occurred since the last contact order was made, and
 - i. Stipulates that the motion must be supported by an affidavit alleging the change of circumstances that has occurred since the entry of the last contact order; and
 - ii. Requires the motion to be filed contemporaneously with or after the filing of a petition to modify the prior contact order and state whether the petitioner requests that the prior contact order be modified or suspended with or without notice to any affected persons.
13. Permits the court to temporarily modify or suspend a contact order without notice if:
- a. It clearly appears that immediate and irreparable injury, loss or damage likely will result if the order is not issued before the affected persons can be heard in opposition; and
 - b. The moving party or party's attorney certifies to the court, in writing, of any efforts that the moving party or the party's attorney has made to give the notice or the reasons supporting the claim that notice shouldn't be required.
14. Requires the court to set a hearing if the court grants a motion to temporarily modify or suspend a contact order without notice.
15. Requires an order temporarily modifying or suspending a contact order that is granted without notice to state the injury, loss or damage that would have been likely to occur if the order were not issued before giving the affected persons the opportunity to be heard in opposition and requires the temporary order to expire at the date and time set for the hearing on the motion unless extended by the court for good cause.
16. Stipulates that the moving party must personally serve the person whose contact with the ward has been modified or suspended with a copy of the order and notice of the hearing and serve a copy of the order on any court-appointed fiduciary for the ward and all persons affected by the order.
17. Requires a guardian to notify the family members of an adult ward if the adult is admitted to a hospital for more than three days or the adult ward dies and stipulates that this notification must include information regarding any known funeral arrangements and the place of burial.
18. Contains a delayed effective date of January 1, 2017.
19. Defines *abuse, child abuse, contact, contact order, exploitation, family members, joint legal decision-making, legal decision-making, neglect, parenting time, significant relationship, visitation* and *vulnerable adult*.
20. Makes technical, conforming and clarifying changes.

CURRENT LAW

Statute stipulates that any qualified person may be appointed guardian of an incapacitated person ([A.R.S. § 14-5311](#)). A person becomes a guardian of an incapacitated person by a parental or spousal appointment or on appointment by the court and continues to act as guardian until the guardianship is terminated, without regard to the location of the guardian or the ward ([A.R.S. § 14-5301-02](#)). [A.R.S. § 14-5312](#) stipulates that a guardian of an incapacitated person has the same powers, rights and duties respecting the guardian's ward that a parent has respecting the parent's emancipated child.

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Incapacitated Person is defined as a person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

Ward is defined as a person for whom a guardian has been appointed ([A.R.S. § 14-5101](#)).