

House Engrossed

guardianship; court appointments; care placement

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HOUSE BILL 2492

AN ACT

AMENDING SECTIONS 14-5301.03, 14-5303 AND 14-5312, ARIZONA REVISED
STATUTES; 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 14-5301.03, Arizona Revised Statutes, is
3 amended to read:

4 14-5301.03. Judicial appointment of guardian; special
5 provision for incapacitated minors approaching
6 adulthood

7 A. A party that is interested in the welfare of a minor who is at
8 least seventeen years six months of age and who is alleged to be
9 incapacitated may initiate guardianship proceedings pursuant to this
10 article and request that any guardianship order take effect immediately on
11 the minor's eighteenth birthday.

12 B. The petitioner may provide with the petition a report of an
13 evaluation of the minor by a physician, psychologist or registered nurse
14 that meets the requirements of section 14-5303, subsection ~~B~~ G. If the
15 evaluation was conducted within six months after the date the petition is
16 filed with the court, the petitioner may ask in the petition that the
17 court accept this report in lieu of ordering any additional evaluation
18 pursuant to section 14-5303, subsection C, and the court may grant the
19 request.

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

22 14-5303. Procedure for court appointment of a guardian of an
23 alleged incapacitated person

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

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

31 1. The interest of the petitioner.

32 2. The name, age, residence and address of the alleged
33 incapacitated person.

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

36 4. The name and address of the conservator, if any, of the alleged
37 incapacitated person.

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

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

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

1 8. The type of guardianship requested. If a general guardianship
2 is requested, the petition must state that other alternatives have been
3 explored and why a limited guardianship is not appropriate. If a limited
4 guardianship is requested, the petition also must state what specific
5 powers are requested.

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

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

17 11. ~~Whether~~ IF the alleged incapacitated person is the principal
18 under a health care power of attorney, and, if so, a copy of that health
19 care power of attorney must be attached to the petition.

20 12. ~~Whether~~ IF the alleged incapacitated person is the principal
21 under a durable power of attorney in which the alleged incapacitated
22 person has nominated someone to serve as guardian, and, if so, a copy of
23 that durable power of attorney must be attached to the petition.

24 13. ~~Whether~~ IF the alleged incapacitated person has a present
25 vested interest in a trust, and, if so, the name of the trust and the
26 current trustee of the trust.

27 C. On the filing of a petition, the court shall set a hearing date
28 on the issues of incapacity. Unless the alleged incapacitated person is
29 represented by independent counsel, the court shall appoint an attorney to
30 represent that person in the proceeding. The alleged incapacitated person
31 shall be interviewed by an investigator appointed by the court and shall
32 be examined by a physician, psychologist or registered nurse appointed by
33 the court. If the alleged incapacitated person has an established
34 relationship with a physician, psychologist or registered nurse who is
35 determined by the court to be qualified to evaluate the capacity of the
36 alleged incapacitated person, the court may appoint the alleged
37 incapacitated person's physician, psychologist or registered nurse
38 pursuant to this subsection. The investigator and the person conducting
39 the examination shall submit their reports in writing to the court. In
40 addition to information required under subsection ~~D~~ G of this section,
41 the court may direct that either report include other information the
42 court deems appropriate. The investigator also shall interview the person
43 seeking appointment as guardian, visit the present place of abode of the
44 alleged incapacitated person and the place where it is proposed that the
45 person will be detained or reside if the requested appointment is made and

1 submit a report in writing to the court. The alleged incapacitated person
2 is entitled to be present at the hearing and to see or hear all evidence
3 bearing on that person's condition. The alleged incapacitated person is
4 entitled to be represented by counsel, to present evidence, to
5 cross-examine witnesses, including the court-appointed examiner and
6 investigator, and to trial by jury. The court may determine the issue at
7 a closed hearing if the alleged incapacitated person or that person's
8 counsel so requests.

9 D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, IF THE ALLEGED
10 INCAPACITATED PERSON DOES NOT HAVE AN ESTABLISHED RELATIONSHIP WITH A
11 PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE WHO IS QUALIFIED TO PERFORM AN
12 INDEPENDENT EVALUATION OF THE ALLEGED INCAPACITATED PERSON'S CAPACITY, ON
13 THE FILING OF A PETITION OR ON THE COURT'S OWN MOTION, THE COURT MAY
14 APPOINT A PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE TO PERFORM AN
15 INDEPENDENT EVALUATION OF THE ALLEGED INCAPACITATED PERSON'S CAPACITY.

16 E. IF THE PETITION IS DENIED, THE COURT MAY ORDER THE ALLEGED
17 INCAPACITATED PERSON OR THE PETITIONER TO PAY THE COSTS OF THE INDEPENDENT
18 EVALUATION ORDERED PURSUANT TO SUBSECTION C OR D OF THIS SECTION. IF THE
19 COURT DETERMINES THAT THE ALLEGED INCAPACITATED PERSON OR THE PETITIONER
20 IS NOT ABLE TO PAY THE COSTS OF THE INDEPENDENT EVALUATION, THE COURT MAY
21 ORDER THE COUNTY THAT HAS JURISDICTION OVER THE GUARDIANSHIP PETITION TO
22 PAY REASONABLE FEES AND COSTS PURSUANT TO SECTION 14-5314.

23 ~~D.~~ F. At the initial hearing on the petition, the court shall read
24 into the record the notice of right to trial by jury as stated in the
25 notice of hearing.

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

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

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

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

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

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

1 6. Other information the physician, psychologist or registered
2 nurse deems appropriate.

3 Sec. 3. Section 14-5312, Arizona Revised Statutes, is amended to
4 read:

5 14-5312. General powers and duties of guardian

6 A. A guardian of an incapacitated person has the same powers,
7 rights and duties respecting the guardian's ward that a parent has
8 respecting the parent's unemancipated minor child, except that a guardian
9 is not liable to third persons for acts of the ward solely by reason of
10 the guardianship. In particular, and without qualifying the foregoing, a
11 guardian has the following powers and duties, except as modified by order
12 of the court:

13 1. To the extent that it is consistent with the terms of any order
14 by a court of competent jurisdiction relating to detention or commitment
15 of the ward, the guardian is entitled to custody of the person of the ward
16 and may establish the ward's place of abode within or without this state.

17 2. If entitled to custody of the ward the guardian shall make
18 provision for the care, comfort and maintenance of the ward and, whenever
19 appropriate, arrange for the ward's training and education. Without
20 regard to custodial rights of the ward's person, the guardian shall take
21 reasonable care of the ward's clothing, furniture, vehicles and other
22 personal effects and commence protective proceedings if other property of
23 the ward is in need of protection.

24 3. ~~A~~ THE guardian may give any consents or approvals that may be
25 necessary to enable the ward to receive medical or other professional
26 care, counsel, treatment or service.

27 4. If no conservator for the estate of the ward has been appointed,
28 the guardian may:

29 (a) Institute proceedings to compel any person under a duty to
30 support the ward or to pay sums for the welfare of the ward to perform
31 such person's duty.

32 (b) Receive money and tangible property deliverable to the ward and
33 apply the money and property for support, care and education of the ward,
34 but the guardian may not use funds from ~~his~~ THE ward's estate for room and
35 board the guardian or the guardian's spouse, parent or child has furnished
36 the ward unless a charge for the service is approved by order of the court
37 made ~~upon~~ ON notice to at least one of the next of kin of the ward, if
38 notice is possible. ~~He~~ THE GUARDIAN must exercise care to conserve any
39 excess for the ward's needs.

40 5. ~~A~~ THE guardian is required to report the condition of the ward
41 and of the estate that has been subject to the guardian's possession or
42 control, as required by the court or court rule.

43 6. If a conservator has been appointed, all of the ward's estate
44 received by the guardian in excess of those funds expended to meet current
45 expenses for support, care and education of the ward shall be paid to the

1 conservator for management as provided in this chapter and the guardian
2 must account to the conservator for funds expended.

3 7. If appropriate, a guardian shall encourage the ward to develop
4 maximum self-reliance and independence and shall actively work toward
5 limiting or terminating the guardianship and seeking alternatives to
6 guardianship.

7 8. ~~A~~ THE guardian shall find the most appropriate and least
8 restrictive setting for the ward consistent with the ward's needs,
9 capabilities and financial ability.

10 9. ~~A~~ THE guardian shall make reasonable efforts to secure
11 appropriate medical and psychological care and social services for the
12 ward.

13 10. ~~A~~ THE guardian shall make reasonable efforts to secure
14 appropriate training, education and social and vocational opportunities
15 for ~~his~~ THE ward in order to maximize the ward's potential for
16 independence.

17 11. In making decisions concerning ~~his~~ THE ward, ~~a~~ THE guardian
18 shall take into consideration the ward's values and wishes.

19 12. The guardian is authorized to act pursuant to title 36,
20 chapter 32.

21 13. The guardian of an incapacitated adult who has a developmental
22 disability as defined in section 36-551 shall seek services that are in
23 the best interest of the ward, taking into consideration:

24 (a) The ward's age.

25 (b) The degree or type of developmental disability.

26 (c) The presence of other disabling conditions.

27 (d) The guardian's ability to provide the maximum opportunity to
28 develop the ward's maximum potential, to provide a minimally structured
29 residential program and environment for the ward and to provide a safe,
30 secure, and dependable residential and program environment.

31 (e) The particular desires of the individual.

32 14. THE GUARDIAN MAY GIVE ANY CONSENTS OR APPROVALS THAT MAY BE
33 NECESSARY FOR THE WARD TO RECEIVE TREATMENT IN A COMMUNITY RESIDENTIAL
34 TREATMENT PROGRAM AS PRESCRIBED IN SECTION 36-550.05, SUBSECTION B,
35 IN-HOME INDIVIDUAL AND FAMILY SUPPORT PREVENTION SERVICES AS PRESCRIBED IN
36 SECTION 36-550.05, SUBSECTION C OR MEDICATION MANAGEMENT AND OBSERVATION
37 SERVICES.

38 B. Any guardian of a ward for whom a conservator also has been
39 appointed shall control the custody and care of the ward and is entitled
40 to receive reasonable sums for the guardian's services and for room and
41 board furnished to the ward as agreed ~~upon~~ ON between the guardian and the
42 conservator if the amounts agreed ~~upon~~ ON are reasonable under the
43 circumstances. The guardian may request the conservator to expend the
44 ward's estate by payment to third persons or institutions for the ward's
45 care and maintenance.