

REFERENCE TITLE: guardianship; court appointments; care placement

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

## **HB 2492**

Introduced by  
Representatives Hernandez C: Hernandez A

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.

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

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

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

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

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

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

C. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding. The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. If the alleged incapacitated person has an established relationship with a physician, psychologist or registered nurse who is determined by the court to be qualified to evaluate the capacity of the alleged incapacitated person, the court may appoint the alleged incapacitated person's physician, psychologist or registered nurse pursuant to this subsection. The investigator and the person conducting the examination shall submit their reports in writing to the court. In addition to information required under subsection ~~D~~ G of this section, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the 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. ~~THE~~ 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. ~~THE~~ 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.