

REFERENCE TITLE: guardianship; guardian obligations; wards' rights

State of Arizona
Senate
Fifty-seventh Legislature
First Regular Session
2025

SB 1516

Introduced by
Senator Payne

AN ACT

AMENDING SECTIONS 14-5306, 14-5312, 14-5312.01 AND 14-5316, ARIZONA
REVISED STATUTES; RELATING TO GUARDIANSHIP OF INCAPACITATED PERSONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 14-5306, Arizona Revised Statutes, is amended to
3 read:

4 14-5306. Termination of guardianship for incapacitated person

5 Except pursuant to section 14-5317, the authority and responsibility
6 of a guardian for an incapacitated person terminates on the death of the
7 guardian or ward, a determination of incapacity of the guardian,
8 TERMINATION AS PROVIDED IN SECTION 14-5312, SUBSECTION C or substitution
9 or resignation as provided in section 14-5307. Testamentary appointment
10 under an informally probated will terminates if the will is later denied
11 probate in a formal proceeding. Termination does not affect the
12 guardian's liability for prior acts or the guardian's obligation to
13 account for funds and assets of the guardian's ward.

14 Sec. 2. Section 14-5312, Arizona Revised Statutes, is amended to
15 read:

16 14-5312. General powers and duties of guardian

17 A. A guardian of an incapacitated person has the same powers,
18 rights and duties respecting the guardian's ward that a parent has
19 respecting the parent's unemancipated minor child, except that a guardian
20 is not liable to third persons for acts of the ward solely by reason of
21 the guardianship. In particular, and without qualifying the foregoing, a
22 guardian has the following powers and duties, except as modified by order
23 of the court:

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

28 2. If entitled to custody of the ward the guardian shall make
29 provision for the care, comfort and maintenance of the ward and, whenever
30 appropriate, arrange for the ward's training and education. Without
31 regard to custodial rights of the ward's person, the guardian shall take
32 reasonable care of the ward's clothing, furniture, vehicles and other
33 personal effects and commence protective proceedings if other property of
34 the ward is in need of protection.

35 3. ~~★~~ THE guardian may give any consents or approvals that may be
36 necessary to enable the ward to receive medical or other professional
37 care, counsel, treatment or service.

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

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

43 (b) Receive money and tangible property deliverable to the ward and
44 apply the money and property for support, care and education of the ward,
45 but the guardian may not use funds from ~~this~~ THE ward's estate for room and

board the guardian or the guardian's spouse, parent or child has furnished the ward unless a charge for the service is approved by order of the court made ~~upon~~ ON notice to at least one of the next of kin of the ward, if notice is possible. ~~He~~ THE GUARDIAN must exercise care to conserve any excess for the ward's needs.

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

6. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care and education of the ward shall be paid to the conservator for management as provided in this chapter and the guardian must account to the conservator for funds expended.

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

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

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

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

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

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

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

(a) The ward's age.

(b) The degree or type of developmental disability.

(c) The presence of other disabling conditions.

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

(e) The particular desires of the individual.

B. Any guardian of a ward for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and

board furnished to the ward as agreed ~~अपण~~ ON between the guardian and the conservator if the amounts agreed ~~अपण~~ ON are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

C. A GUARDIAN SHALL IMPLEMENT AND ADHERE TO ALL OF THE DUTIES AND OBLIGATIONS OF THE GUARDIAN PURSUANT TO THIS ARTICLE. IF A GUARDIAN DOES NOT ADHERE TO ALL OF THE DUTIES AND OBLIGATIONS OF THE GUARDIAN PURSUANT TO THIS ARTICLE, THE COURT SHALL TERMINATE THE GUARDIANSHIP AND THE GUARDIAN SHALL BE CHARGED WITH CRIMINAL CONTEMPT AS PRESCRIBED IN SECTION 12-861.

Sec. 3. Section 14-5312.01, Arizona Revised Statutes, is amended to read:

14-5312.01. Inpatient treatment: rights and duties of ward and guardian

A. Except as provided in subsection B of this section, a guardian of an incapacitated person may consent to psychiatric and psychological care and treatment, including the administration of psychotropic medications, if the care and treatment take place outside an inpatient psychiatric facility licensed by the department of health services.

B. On clear and convincing evidence that the ward is an incapacitated person and is likely to be in need of inpatient mental health care and treatment within the period of the authority granted pursuant to this section, the court may authorize a guardian appointed pursuant to this title to give consent for the ward to receive inpatient mental health care and treatment, including placement in an inpatient psychiatric facility licensed by the department of health services and medical, psychiatric and psychological treatment associated with that placement. The evidence shall be supported by the opinion of a mental health expert who is either a physician licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1.

C. In making its decision to grant authority to a guardian pursuant to subsection B of this section, the court shall consider the cause of the ward's disability and the ward's foreseeable clinical needs. The court shall limit the guardian's authority to what is reasonably necessary to obtain the care required for the ward in the least restrictive treatment alternative. The court may limit the duration of the guardian's authority to consent to inpatient mental health care and treatment and include other orders the court determines necessary to protect the ward's best interests.

D. Within forty-eight hours after placement of the ward pursuant to this section, the guardian shall give notice of this action to the ward's attorney. When the attorney receives this notice the attorney shall assess the appropriateness of the placement pursuant to section 36-537,

1 subsection B and section 36-546, subsection H. If requested by the
2 attorney, the court shall hold a hearing on the appropriateness of the
3 placement within three days after receiving that request.

4 E. The inpatient psychiatric facility shall assess the
5 appropriateness of the ward's placement every thirty days and shall
6 provide a copy of the assessment report to the ward's attorney on
7 request. The ward's attorney may attend the ward's evaluation, staffing,
8 treatment team and case management meetings.

9 F. When the ward is admitted to an inpatient psychiatric facility
10 pursuant to this section, the guardian shall provide the facility with the
11 name, address and telephone number of the ward's attorney. The facility
12 shall include this information in the ward's treatment record.

13 G. Within twenty-four hours after the facility receives any writing
14 in which the ward requests release from the facility, any change in
15 placement or a change in the type or duration of treatment, the facility
16 shall forward this information to the ward's attorney.

17 H. All health care providers, treatment facilities and regional
18 behavioral health authorities shall allow the ward's attorney access to
19 all of the ward's medical, psychiatric, psychological and other treatment
20 records.

21 I. The ward's guardian shall place the ward in a least restrictive
22 treatment alternative within five days after the guardian is notified by
23 the medical director of the inpatient facility that the ward no longer
24 needs inpatient care. The ward, a representative of the inpatient
25 treatment facility, the ward's attorney, the ward's physician or any other
26 interested person may petition the court to order the facility to
27 discharge the ward to a least restrictive treatment alternative if the
28 guardian does not act promptly to do so.

29 J. If the ward is in an inpatient psychiatric facility at the time
30 of the initial hearing on the petition for appointment of a guardian, the
31 court investigator and the ward's attorney shall advise the court of the
32 appropriateness of the placement.

33 K. An attorney appointed pursuant to section 14-5303, subsection C
34 remains the attorney of record until the attorney is discharged by the
35 court. The court shall ensure that a ward whose guardian has been granted
36 inpatient mental health treatment authority is represented by an attorney
37 at all times the guardian has that authority. Unless the court finds that
38 the ward has insufficient assets to meet the ward's reasonable and
39 necessary care and living expenses, the ward shall pay the attorney's
40 reasonable fees.

41 L. If deemed necessary to adequately assess a request for inpatient
42 mental health treatment authority or to review the ward's placement in an
43 inpatient psychiatric facility, the court may order an independent
44 evaluation by either a physician who is licensed pursuant to title 32,
45 chapter 13 or 17 and who is a specialist in psychiatry or a psychologist

1 who is licensed pursuant to title 32, chapter 19.1. If the ward has
2 insufficient funds to pay the total cost of this evaluation, the court may
3 deem all or any part of the evaluator's fee to be a county expense after
4 determining the reasonableness of that fee.

5 M. Instead of ordering an independent evaluation pursuant to
6 subsection L of this section, the court may accept a report conducted on
7 behalf of the inpatient psychiatric facility if the court finds that the
8 report meets the requirements of an independent evaluation.

9 N. The court may decide that the ward's right to retain or obtain a
10 driver license and any other civil right that may be suspended by
11 operation of law is not affected by the appointment of a guardian.

12 O. If the court grants the guardian the authority to consent to
13 inpatient mental health care and treatment pursuant to this section, the
14 medical director of an inpatient psychiatric facility licensed by the
15 department of health services may admit the ward at the guardian's
16 request.

17 P. A guardian who is authorized by the court to consent to
18 inpatient mental health care and treatment pursuant to this section shall
19 file with the annual report of the guardian required pursuant to section
20 14-5315 an evaluation report by a physician or a psychologist who meets
21 the requirements of subsection B of this section. The evaluation report
22 shall indicate if the ward will likely need inpatient mental health care
23 and treatment within the period of the authority granted pursuant to this
24 section. If the guardian does not file the evaluation report or if the
25 report indicates that the ward will not likely need inpatient mental
26 health care and treatment, the guardian's authority to consent to this
27 treatment ceases on the expiration of the period specified in the prior
28 court order. If the report supports the continuation of the guardian's
29 authority to consent to inpatient treatment, the court may order that the
30 guardian's authority to consent to this treatment continues. If the
31 report supports the continuation of the guardian's authority to consent to
32 this treatment, the ward's attorney shall review the report with the
33 ward. The ward may contest the continuation of the guardian's authority
34 by filing a request for a court hearing within ten business days after the
35 report is filed. The court shall hold this hearing within thirty calendar
36 days after it receives the request. The guardian's authority continues
37 pending the court's ruling on the issue. At the hearing the guardian has
38 the burden of proving by clear and convincing evidence that the ward is
39 likely to be in need of inpatient mental health care and treatment within
40 the period of the authority granted pursuant to this section.

41 Q. IF A GUARDIAN'S WARD IS LIVING IN AN ASSISTED LIVING CENTER, AN
42 ASSISTED LIVING FACILITY OR AN ASSISTED LIVING HOME, THE GUARDIAN SHALL
43 VISIT THE WARD EACH WEEK, SHALL DOCUMENT THE WEEKLY VISIT BY VIDEO
44 RECORDING AND SHALL PROVIDE A COPY OF EACH VIDEO RECORDING OF EACH OF THE
45 GUARDIAN'S WEEKLY VISITS TO ALL OF THE WARD'S ADULT CHILDREN. A GUARDIAN

MAY NOT DELEGATE THE WEEKLY VISIT REQUIREMENT PRESCRIBED IN THIS SUBSECTION TO ANOTHER PERSON OTHER THAN AN ADULT CHILD OF THE WARD. FOR THE PURPOSES OF THIS SUBSECTION, "ASSISTED LIVING CENTER", "ASSISTED LIVING FACILITY" AND "ASSISTED LIVING HOME" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-401.

~~R.~~ R. The court may discharge an attorney who was appointed pursuant to section 14-5303, subsection C subsequent to the appointment of a guardian if it clearly appears from specific facts presented by affidavit or verified petition that continued representation of the ward is no longer necessary or desirable. The factual basis must include, at a minimum, consideration of the following:

1. The nature and history of the ward's illness.
2. The ward's history of hospitalization.
3. The ward's current and anticipated living arrangements.
4. Whether the ward's inpatient treatment is anticipated to be a ~~one-time~~ ONETIME hospitalization for the purpose of stabilizing the ward's condition and further hospitalizations are not likely to be necessary.
5. Whether the ward's current and anticipated living arrangements are the least restrictive alternatives possible.

Sec. 4. Section 14-5316, Arizona Revised Statutes, is amended to read:

14-5316. Maintaining ward's relationships; contact orders; definitions

A. A guardian shall encourage and allow contact between the ward and other persons who have a significant relationship with the ward.

B. Notwithstanding subsection A of this section, a guardian shall not limit, restrict or prohibit contact between the ward and any person with whom the ward wishes to have contact unless the guardian reasonably believes that the contact will be detrimental to the ward's health, safety or welfare.

C. In exercising the guardian's powers pursuant to subsections A and B of this section, the guardian shall consider the wishes of the ward, if the ward has sufficient mental capacity to make an intelligent choice.

D. A person who has a significant relationship to the ward may petition the court for an order compelling the guardian to allow the person to have contact with the ward. The petition shall describe the nature of the relationship between the person and the ward and the type and frequency of contact being requested. The person has the burden of proving that the person has a significant relationship with the ward. The guardian has the burden of proving by clear and convincing evidence that the requested contact will be detrimental to the ward's health, safety or welfare.

E. A ward may petition the court for an order compelling the guardian to allow the ward to have contact with a person who has a significant relationship to the ward. The petition shall describe the

1 nature of the relationship between the person and the ward and the type
2 and frequency of contact being requested. The ward has the burden of
3 proving that the person has a significant relationship with the ward. The
4 guardian has the burden of proving by clear and convincing evidence that
5 the requested contact will be detrimental to the ward's health, safety or
6 welfare.

7 F. After filing a petition pursuant to subsection D or E of this
8 section, the petitioner shall request that the court set an initial
9 hearing on the petition. Unless the petitioner requests a later initial
10 hearing, the initial hearing shall occur as soon as possible but ~~no~~ NOT
11 later than fifteen judicial days after the court receives the petitioner's
12 request.

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

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

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

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

23 4. Whether the person with whom the contact is requested has
24 committed any act involving domestic violence as defined in section
25 13-3601, child abuse or abuse, neglect or exploitation of a vulnerable
26 adult.

27 5. Whether the person with whom the contact is requested has abused
28 drugs or alcohol or has been convicted of any drug offense listed in title
29 13, chapter 34 or a violation of title 28, chapter 4, article 3.

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

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

35 H. If the petition for contact is filed pursuant to section
36 14-5301.03 or within two years after the ward's eighteenth birthday, any
37 contact with the ward authorized in the most recent parenting time or
38 visitation order shall be presumed to be in the ward's best interests, but
39 the presumption may be rebutted by evidence showing that the contact
40 authorized in the most recent parenting time or visitation order is no
41 longer in the ward's best interests.

42 I. A court-appointed fiduciary for the ward or a person who has a
43 significant relationship to the ward may petition the court to modify a
44 contact order, if a material change in circumstances affecting the ward's
45 health, safety or welfare has occurred since the last contact order was

1 made. The petition shall be supported by an affidavit alleging the change
2 of circumstances that has occurred since the entry of the last contact
3 order. The court shall deny the petition unless the court finds that the
4 petition establishes good cause for hearing, in which case the court shall
5 set a hearing on the petition. The petition and notice of the hearing on
6 the petition shall be served on all persons to whom notice is required
7 pursuant to section 14-5309 and on any court-appointed fiduciary for the
8 ward.

9 J. A court-appointed fiduciary for the ward or a person who has a
10 significant relationship to the ward may file a motion asking the court to
11 temporarily modify or suspend a contact order, if a material change in
12 circumstances affecting the ward's health, safety or welfare has occurred
13 since the last contact order was made. The motion shall be supported by
14 an affidavit alleging the change of circumstances that has occurred since
15 the entry of the last contact order. The motion shall be filed
16 contemporaneously with or after the filing of a petition to modify the
17 prior contact order. The motion shall state whether the petitioner
18 requests that the prior contact order be modified or suspended with or
19 without notice to affected persons.

20 K. The court may temporarily modify or suspend a contact order
21 without notice only if both of the following conditions are met:

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

26 2. The moving party or the party's attorney certifies to the court
27 in writing the efforts, if any, that the moving party or the party's
28 attorney has made to give the notice or the reasons supporting the claim
29 that notice should not be required.

30 L. If the court grants a motion to temporarily modify or suspend a
31 contact order without notice, the court shall set a hearing on the motion.

32 M. An order temporarily modifying or suspending a contact order
33 that is granted without notice shall state the injury, loss or damage that
34 would have been likely to occur if the order were not issued before giving
35 the affected persons the opportunity to be heard in opposition. The
36 temporary order shall expire at the date and time set for the hearing on
37 the motion unless the temporary order is extended by the court for good
38 cause.

39 N. The moving party shall personally serve the person whose contact
40 with the ward has been modified or suspended with a copy of the order and
41 notice of the hearing. The moving party shall have served a copy of the
42 order on any court-appointed fiduciary for the ward and all persons
43 affected by the order as soon as practicable after issuance of the order
44 in the manner prescribed in section 14-5309 or as otherwise ordered by the
45 court.

1 O. NOTWITHSTANDING ANY OTHER LAW, A GUARDIAN MAY NOT RESTRICT THE
2 WARD'S SIBLINGS FROM VISITING OR CONTACTING THE WARD, INCLUDING OVERNIGHT
3 VISITATION IN A SIBLING'S HOME, UNLESS A COURT ISSUES AN ORDER FINDING
4 THAT THE WARD'S CONTACT WITH THE WARD'S SIBLINGS IS NOT IN THE BEST
5 INTEREST OF THE WARD AND THE COURT RESTRICTS THE WARD'S CONTACT WITH THE
6 WARD'S SIBLINGS.

7 ~~P.~~ P. If, in a proceeding brought under this section, the court
8 finds that the guardian has unreasonably denied contact between a ward and
9 a person who has a significant relationship with the ward, the court may
10 do either, or both, of the following:

- 11 1. Remove the guardian.
- 12 2. Order the guardian to personally pay some or all of the
13 reasonable attorney fees and expenses incurred by the person or the ward,
14 or both.

15 ~~P.~~ Q. For the purposes of this section:

- 16 1. "Abuse" in relation to a vulnerable adult has the same meaning
17 prescribed in section 46-451.
- 18 2. "Child abuse" means abuse as defined in section 8-201 of an
19 individual who is under eighteen years of age.
- 20 3. "Exploitation" has the same meaning prescribed in section
21 46-451.
- 22 4. "Neglect" has the same meaning prescribed in section 46-451.
- 23 5. "Vulnerable adult" has the same meaning prescribed in section
24 46-451.