#### **2023 PROBATE & MENTAL HEALTH LEGISLATIVE UPDATE**

As of Close of Business June 23, 2023

Honorable Jay M. Polk Presiding Judge, Probate & Mental Health Dept. Superior Court of Arizona for Maricopa County

#### **Passed Bills**

HB2197 (Electronic Wills): 2023 Ariz. Sess. Laws Ch. 32

https://apps.azleg.gov/BillStatus/BillOverview/78285

Signed by Governor Hobbs on 4/11/23. Will become effective 91 days after the Legislature adjourns sine die.

This bill passed both chambers unanimously. A copy of the chaptered version of the bill can be found <u>here</u>.

HB2197 authorizes the witnesses to an electronic will to be "electronically present" when the testator electronically signs the will, acknowledged the testator's signature, or acknowledged the will but only if the witnesses are "physically located within the United States at the time of serving as a witness." "Electronically present" is defined as "two or more individuals who are in a different physical location and who are communicating by means of technology that enables all individuals to see and hear each other in real time to the same extent as if the individuals were physically present in the same location."

In addition, HB2197 creates a statutory form of an affidavit for an attested self-proving electronic will, which is slightly different than the statutory form of an affidavit for an affidavit for an attested self-proving paper will that is set forth in A.R.S. § 14-2504(B).

(The bill adds the definition of "electronically present" to A.R.S. § 14-1201 and amends A.R.S. § 14-2518, which sets forth the requirements for an electronic will. It also adds to A.R.S. § 14-2519 a new subsection B, which provides a statutory form for the affidavits for an attested self-proving electronic will. Last, it makes some technical changes to A.R.S. § 14-2521, which deals with qualified custodians of electronic wills.)

#### SB1077 (Jails; Mental Health; Evaluations; Treatment): 2023 Ariz. Sess. Laws Ch. 91

https://apps.azleg.gov/BillStatus/BillOverview/79378

Signed by Governor Hobbs on 4/18/23. Will become effective 91 days after the Legislature adjourns sine die.

This bill passed both chambers unanimously. A copy of the chaptered version of the bill can be found <u>here</u>.

SB1077 amends the definitions of "evaluation agency" and "treatment agency" in A.R.S. § 36-501 to include "a facility that is exempt from licensure pursuant to section 36-402, that possesses an accreditation from either a national commission on correctional health care or an American correctional association" and that provides the services that are required of the facility by Chapter 5, Title 36, A.R.S. In other words, it allows qualifying corrections facilities (e.g., jails) to serve as evaluation and treatment agencies for purposes of court-ordered mental health care and treatment under Chapter 5, Title 36, A.R.S.

HB2041 (Mental Health; Voluntary Evaluations; Payment): 2023 Ariz. Sess. Laws Ch. 103

https://apps.azleg.gov/BillStatus/BillOverview/78101

Signed by Governor Hobbs on 5/1/23. Will become effective 91 days after the Legislature adjourns sine die.

This bill passed the Senate with a vote of 29 ayes, 0 nays, and 1 not voting. It passed the House with a vote 58 ayes, 0 nays, 1 not voting, and 1 seat vacant. A copy of the chaptered version of the bill can be found <u>here</u>.

Among other things, this bill does the following:

- Adds a definition of "voluntary evaluation" to A.R.S. § 36-501. Under this definition, a voluntary evaluation would mean "the ongoing collection and analysis of a person's medical, psychological, psychiatric and social conditions in order to initially determine if a health disorder exists and if there is a need for behavioral health services and, on an ongoing basis, to ensure that the person's service plan is designed to meet the person's and the person's family's current needs and long-term goals."
- Amends A.R.S. § 36-522(A) to require that, after a voluntary inpatient evaluation has been completed, the evaluation be "immediately delivered to the evaluation agency provided for by the county." If the voluntary evaluation recommends that the patient receive a court-ordered evaluation, the recommendation must be accompanied with an application for court-ordered evaluation.
- Adds to A.R.S. § 36-522 a new subsection D, which would provide that if a person who requests a voluntary outpatient mental health evaluation does not complete the appointments schedule, "the evaluation agency provided for by the county [must] be immediately notified by the provider who was to conduct the evaluation." The evaluation

agency then must provide prepetition screening of the application for court-ordered evaluation.

- Adds to A.R.S. § 36-522 a new subsection E that provides definitions of "licensed behavioral health provider" and "practice of behavioral health" for purposes of that statute.
- Amends A.R.S. § 36-540(S) to include "health care institutions as defined in section 36-401 that provide services subject to the federal emergency medical treatment and active labor act" as those persons/entities entitled to determine the existence of an active court order for treatment and the history of court orders for treatment entered for a patient.
- Adds to A.R.S. § 36-545.05 a new subsection B, which would require a person who is given a voluntary evaluation to pay "all or such portion of the established charges as the person can afford." If the person is indigent, charges may not be made against the person.

#### SB1038 (Probate Advisory Panel): 2023 Ariz. Sess. Laws Ch. 123

https://apps.azleg.gov/BillStatus/BillOverview/79378

# Signed by Governor Hobbs on 5/8/23. Will become effective 91 days after the Legislature adjourns sine die.

This bill passed the House with a vote of 60 ayes, 8 nays, 1 not voting, and one seat vacant. I passed the Senate with a vote of 25 ayes, 4 nays, and 1 seat vacant. A copy of the chaptered version of the bill can be found <u>here</u>.

SB 1038 creates a new A.R.S. § 14-1110, which establishes in the office of the governor the "probate advisory panel," which is charged with holding public hearings at least quarterly "on how to improve the adult guardianship and conservatorship laws through statutory changes." The panel consists of the following members, who are appointed to staggered four-year terms:

- Two public members "who are guardians or conservators of an adult child or a sibling who is a ward."
- Two public members "who are guardians or conservators of a family member other than an adult child or sibling of the guardian or conservator."
- Two members who are "advocates for family members who have been parties to an adult guardianship or conservatorship matter in this state."
- One public fiduciary who is from a county with a population of less than 500,000 people.
- One licensed fiduciary, other than a public fiduciary, who is from a county with a population of more than 500,000 people.
- One attorney who has a minimum of four years experience in guardianship and conservatorship proceedings.

- One judicial officer who has a minimum of two years experience presiding over guardianship and conservatorship proceedings and who is from a county with a population of more than 500,000.
- One clerk of the superior court.

When the panel "finds it appropriate," the panel may consult with medical professionals including neuropsychologists, psychologists, or psychiatrists. The panel is required to submit a report of its findings and recommendations to the Governor, the Speaker of the House, the President of the Senate, and the Chief Justice by November 15 of each year. "Panel members are not eligible for compensation or reimbursement of expenses." The panel sunsets effective January 1, 2028.

#### SB1291 (Guardianships; Conservatorships): 2023 Ariz. Sess. Laws Ch. 195

#### https://apps.azleg.gov/BillStatus/BillOverview/78101

Signed by Governor Hobbs on 6/20/23. Will become effective 91 days after the Legislature adjourns sine die.

On 5/3/23, the House Committee of the Whole adopted the House Judiciary Committee strike-all amendment and a floor amendment. The video of the Judiciary Committee hearing can be found <u>here</u> and starts at approximately 1:23:55 into the hearing (the video provides insight as to what proponents and opponents of the bill were saying).

On 5/9/23, the bill failed to pass the House on a third read, with a vote of 26 ayes, 29 nays, 4 not voting, and 1 seat vacant. However, a subsequent motion for reconsideration passed on a voice vote. On 5/15/23, the House adopted an amendment to SB1291 with a vote of 57 ayes, 0 nays, 2 not voting, and 1 seat vacant. This amendment effectively (and only) added the contents of failed HB2174 (Supported Decision-Making) to SB1291. On 5/16/23, the amended SB1291 was transmitted to the Senate for a concurrence vote. On 6/13/23, the Senate passed the bill with a vote of 28 ayes, 0 nays, and 2 not voting.

A copy of the chaptered version of the bill can be found <u>here</u>.

SB1291 does the following:

- <u>Purposes and Policies of Title 14</u>: Adds to A.R.S. § 14-1102(B) two additional purposes and policies of title 14 as follows:
  - "4. To promote a speedy, efficient and inexpensive system for resolving disputes under chapter 5 of this title while ensuring that the due process and other constitutional rights of the persons subject to such proceedings are protected."
  - "5. To provide just and appropriate remedies for parties who incur damages as the result of vexatious conduct, as defined by court rule, or other unreasonable conduct, during proceedings brought pursuant to this title, without impinging on the rights of individuals who are the subject of proceedings under chapter 5 of this title."

- <u>Definitions</u>: Amends A.R.S. § 14-1201(28) to include in the definition of a governing instrument a "supported decision-making agreement." (*See* below for more regarding supported decision-making agreements.)
- <u>Methods for Giving Notice</u>: Amends A.R.S. § 14-1401(B)(1) to eliminate the ability to give notice by "ordinary first class mail" (however, notice still can be given by certified or registered mail). This applies to all notices required by Title 14.
- <u>Duties of Court-Appointed Attorney in Guardianship/Conservatorship Proceedings</u>: Creates new A.R.S. § 14-5111, which imposes certain duties on an attorney appointed to represent the subject person of a guardianship or conservatorship proceedings and which allows the court to find the attorney in contempt of court if the attorney fails to fulfill those duties. The duties are as follows:
  - No later than seven calendar days before the initial hearing on a petition for the appointment of a permanent guardian or permanent conservator, the attorney must do all the following:
    - Interview the client
    - Inform the client of all the following:
      - The right to a trial by jury pursuant to § 14-1306
      - The right to select an attorney of the client's choosing. If the attorney is appointed by the court, the attorney must explain to the client that the client may hire a different attorney at the client's own expense.
      - The client's right to appear in court and have any person the client wishes to be present with the client.
      - "A review of the court process, timelines and expected future proceedings."
    - Provide the client with a copy of the Order to Guardian, Order to Conservator, or Order to Guardian and Conservator that the court will enter if the relief requested in the petition is granted.
  - At the initial hearing on the petition, the attorney must attest to the court that the attorney has fulfilled those duties or must provide an explanation as to why the attorney has been unable to comply with those duties.
- <u>Requirements for Petition for Appointment of Guardian or Conservator</u>: Adds to A.R.S. §§ 14-5303(B) and -5404(B), which list the statements that must be made in a petition for the appointment of a guardian or conservator (respectively), the following:

- Whether the subject 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 (in this case of a petition for appointment of a conservator, this statement is required only if the health care power of attorney nominates a conservator);
- Whether the subject person is the principal under a durable power of attorney and, if so, a copy of that durable power of attorney must be attached to the petition (in the case of a petition for appointment of a guardian, this statement is required only if the durable power of attorney nominates a guardian); and
- Whether the subject person has a present vested interest in a trust, and, if so, the name of the trust and the current trustee of the trust.
- Notice of Right to Jury Trial:
  - Adds to A.R.S. §§ 14-5309 and -5405 a new subsection C that requires a notice of hearing on a petition in a guardianship or conservatorship proceeding to "provide notice of the right to a trial by jury under section 14-1306, subsection A."
    - This notice requirement applies to a proceeding for the appointment, or substitution, of a guardian or a conservator, as well as for a contact order or modification of a contact order brought under A.R.S. § 14-5316.
  - Adds to A.R.S. §§ 14-5303 and -5407 new subsections (D and E, respectively) that require the court, "at the initial hearing on the petition [for appointment of guardian or conservator]" to "read into the record the notice of right to trial by jury as stated in the notice of hearing."
- <u>Penalties Relating to Notices of Hearing</u>: Adds to A.R.S. §§ 14-5309 and -5405 a new subsection D that allows the court to order a person who intentionally fails to provide notice of hearing as required by those sections, or who knowingly makes a false claim that the person did not receive notice of a hearing, to pay damages (including reasonable attorney fees and costs) incurred as a result of such unreasonable conduct.
- <u>Contact with the Ward</u>: Makes the following changes to A.R.S. § 14-5316:
  - Amends subsection B to *prohibit* the guardian from limiting or prohibiting contact between the ward any person with whom the ward wishes to have contact unless the guardian reasonable believes that the contact will be detrimental to the ward's health, safety, or welfare. (Currently, subsection *permits* the guardian to limit or prohibit contact if the guardian reasonably believes that the contact will be detrimental to the ward's health, safety, or welfare.)
  - Amends subsections C and D to change the burden and quantum of proof in cases where the ward or another person has filed a petition for an order compelling contact. Currently, the *petitioner* has the burden of proving by a *preponderance* of the evidence that the *requested contact is in the ward's best interest*. As amended,

the *guardian* will have the burden of proving by *clear and convincing* evidence that the *requested contact will be detrimental* to the ward's health, safety, or welfare.

- Adds a new subsection F that requires the court to set an initial hearing on a petition for contact "as soon as possible but no later than fifteen judicial days after the court receives the petitioner's request" for the setting of an initial hearing. Exception is provided if the petitioner requests a later initial hearing.
- Adds a new subsection O that authorizes the court to do either or both of the following if the court finds that the guardian has unreasonably denied contact between the ward and a person who has a significant relationship with the ward:
  - Remove the guardian, and
  - Order the guardian personally to pay some or all of the reasonable attorney fees and expenses incurred by the ward, the person having a significant relationship with the ward, or both.
- <u>Quantum of Proof for Adult Conservatorships</u>: Amends A.R.S. § 14-5401(A)(2) to require **clear and convincing** evidence before the court may appoint a conservator, or make another protective order, for an adult. (Currently, the quantum of proof required is **preponderance** of the evidence.)
- <u>Subject Person's Appearance in Court Required Prior to Appointment of Conservator</u>: Adds to A.R.S. § 14-5401 a new subsection D that prohibits the court from appointing a conservator (or making another protective order) for an adult unless that adult has appeared before the court either in person or by virtual means. (Note: This prohibition does not apply if the alleged basis for the appointment of a conservator or entry of a protective order is that the adult is confined, detained by a foreign power, or missing.)
  - If the adult is unable or unwilling to appear in person or by virtual means, evidence of the adult's inability or unwillingness to attend must be presented to the court.
  - If the adult does not want to attend, a declaration signed by that person must be filed with the court to prove the person's inability or unwillingness to attend.
  - "The court shall weigh the evidence, request additional evidence if necessary and document all evidence in the court record."
- <u>Supported Decision-Making</u>: Adds a new article 9 to chapter 5, title 14, A.R.S., which consists of A.R.S. §§ 14-5721 and -5722. These new statutes authorize an adult with a disability (defined as a "physical or mental impairment that substantially limits one or more major life activities, as defined in section 41-1492") to enter into a "supported decision-making agreement" with another adult (called the "supporter").
  - "Supported decision-making" is defined as "a process of supporting and accommodating an adult to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, support and medical

care the adult wants to receive, whom the adult want to live with and where the adult wants to work, without impeding the adult's self-determination."

- In the agreement, the adult with a disability may authorize the supporter to do any or all of the following:
  - 1. Provide supported decision-making, including assisting the adult in understanding the options, responsibilities and consequences of the adult's life decision-s, without making those decisions on behalf of the adult;
  - 2. Assist the adult in accessing, collecting and obtaining from any person information that is relevant to a given life decision, including medical psychological, financial, education or treatment records;
  - 3. Assist the adult in understand the information described in #2;
  - 4. Assist the adult in communicating the adult's decisions to the appropriate persons.
- "A supporter is not a surrogate decision-maker for the adult and does not have the authority to sign legal documents on behalf of the adult or bind the adult to a legal agreement."
- "If the supporter intimidates or deceives the adult in procuring the supported decision-making agreement, the supporter may be subject to criminal prosecution and civil penalties as otherwise provided by law." [But does any existing law actually impose criminal or civil penalties for such conduct? Or, is this part of the bill just a paper tiger?]
- Except as noted below, the agreement must be signed by the adult and the supporter in the presence of two or more adult witnesses or a notary public:
  - Each witness (or the notary) must affirm that the witness (or notary) was present when the person dated and signed or marked the agreement (except below) and that the person appeared to be of sound mind and free from duress at the time of the execution of the agreement.
  - If the person is physically unable to sign or mark the agreement, the witness or notary must verify on the document that the person directly indicated to the witness or notary that the agreement expressed the person's wishes and that the person intended toa dopt the agreement at that time.
  - [NOTE: The bill does not provide any limitations on who can serve as a witness other than requiring the witness to be at least 18 years of age.]
- The supported decision-making agreement extends until any of the following occurs:

- The agreement is terminated in writing by either party,
- The agreement is terminated by the terms of the agreement,
- The adult becomes an incapacitated person as defined in A.R.S. § 14-5101, or
- A guardian is appointed for the adult.
- The supported decision-making agreement must be "in substantially" the form set forth in subsection H of A.R.S. § 14-5722.

#### Failed/Dead Bills

#### SB1411 (Developmental Disabilities; Parents; Guardianship)

#### https://apps.azleg.gov/BillStatus/BillOverview/78285

# Passed the Senate by a vote of 16 ayes, 13 nayes, and 1 not voting; however, it never received a first reading in the House.

The Senate Engrossed version of the bill, a copy of which can be found <u>here</u>, would have created a new A.R.S. § 14-5318, which seemingly would have allowed the Department of Economic Security to "determine" who becomes guardian for a minor child who is turning 18 years of age if the minor child is receiving services from the Developmental Disabilities Division of DES. The statute would have given priority to the child's preference if the child "is capable of expressing the child's preference as to who shall become the child's guardian on the child's eighteenth birthday." If the minor child is incapable of expressing a preference, the statute would allow "the child's parent [to] determine who shall become the child's guardian, including themselves, in a continual manner, without the use of an attorney and through developmental disability forms."

#### SB1699 (Probate; Mediation; Trials)

#### https://apps.azleg.gov/BillStatus/BillOverview/78285

# Passed the Senate by a vote of 16 ayes, 12 nayes, and 2 not voting; however, it never received a first reading in the House.

The Senate Engrossed version of the bill, a copy of which can be found <u>here</u>, would have completely repealed existing A.R.S. § 14-1306 and replaced it with a new section 14-1306 that would, among other things, provide the following:

• Under the Arizona Constitution, "the right to a jury cannot be violated" and that unless a party has previously been informed of that right and has affirmatively waive the right in writing, the right to a jury trial still exists.

- Litigants "are encouraged to engage in mediate as the initial method of dispute resolution."
- If mediation is unsuccessful or not pursued, "a bench trial shall proceed." However, if a litigant believes the litigant's rights have been "substantially violated by the order of a judge following a bench trial," the litigant would have the right to demand a jury trial, which would need to be held within 45 days after the litigant's request. The standard of evidence for the jury trial would be clear and convincing, and the verdict would need to be rendered by <sup>3</sup>/<sub>4</sub> vote of the hurry.
- "Previous matters adjudicated without a jury may be reexamined using the process prescribed in this section."
- The right to a jury trial is available only to "the people and not to any state agency or political subdivision of this state."

#### HB2174 (Supported Decision-Making)

#### https://apps.azleg.gov/BillStatus/BillOverview/79378

Although this bill was assigned to the House Health & Human Services Committee, it never received a hearing in that Committee and, thus, never made it to a vote on the House floor. However, on 5/15/23, the House adopted an amendment to SB1291 that effectively incorporated HB2174 into SB1291. In other words, the text of HB2174 was added to SB1291, which Governor Hobbs signed on 6/20/23.

A copy of HB2174 can be found <u>here</u>. As with similar bills introduced in previous legislative sessions, this bill would have authorized an adult with a disability (defined as a "physical or mental impairment that substantially limits one or more major life activities") to enter into a "supported decision-making agreement" with another adult. "Supported decision-making" is defined as "a process of supporting and accommodating an adult to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, support and medical care the adult wants to receive, whom the adult want to live with and where the adult wants to work, without impeding the adult's self-determination."

House Engrossed

wills; electronic signatures; requirements

State of Arizona House of Representatives Fifty-sixth Legislature First Regular Session 2023

### CHAPTER 32

## **HOUSE BILL 2197**

#### AN ACT

AMENDING SECTIONS 14-1201, 14-2518, 14-2519 AND 14-2521, ARIZONA REVISED STATUTES; RELATING TO WILLS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

- i -

1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Section 14-1201, Arizona Revised Statutes, is amended to 3 read: 4 14-1201. Definitions 5 In this title, unless the context otherwise requires: 6 1. "Agent" includes an attorney-in-fact under a durable or 7 nondurable power of attorney, a person who is authorized to make decisions 8 concerning another person's health care and a person who is authorized to 9 make decisions for another person under a natural death act. 2. "Application" means a written request to the registrar for an 10 11 order of informal probate or appointment under chapter 3, article 3 of 12 this title. 13 3. "Basis for compensation" means an hourly rate, a fixed fee or a contingency fee agreement and reimbursable costs. 14 4. "Beneficiary", as it relates to a trust beneficiary, includes a 15 16 person who has any present or future interest, vested or contingent, and 17 includes the owner of an interest by assignment or other transfer. As it 18 relates to a charitable trust, beneficiary includes any person entitled to 19 enforce the trust. As it relates to a beneficiary of a beneficiary 20 designation, beneficiary refers to a beneficiary of an insurance or 21 annuity policy, an account with pay on death designation, a security 22 registered in beneficiary form or a pension, profit sharing, retirement or 23 similar benefit plan, or any other nonprobate transfer at death. As it 24 relates to a beneficiary designated in a governing instrument, beneficiary 25 includes a grantee of a deed, a devisee, a trust beneficiary, a 26 beneficiary of a beneficiary designation, a donee, appointee or taker in 27 default of a power of appointment and a person in whose favor a power of 28 attorney or a power held in any person, fiduciary or representative 29 capacity is exercised. 30 5. "Beneficiary designation" refers to a governing instrument 31 naming a beneficiary of an insurance or annuity policy, of an account with pay on death designation, of a security registered in beneficiary form or 32 of a pension, profit sharing, retirement or similar benefit plan, or any 33

33 of a pension, profit sharing, retire 34 other nonprobate transfer at death.

6. "Certified paper original" means a tangible medium that contains both the text of an electronic will and any self-proving affidavit concerning the electronic will and that is accompanied by an affidavit that is executed pursuant to section 14-2523.

39 7. "Child" includes a person who is entitled to take as a child 40 under this title by intestate succession from the parent whose 41 relationship is involved. Child excludes a person who is only a 42 stepchild, a foster child, a grandchild or a more remote descendant.

8. "Claims", in respect to estates of decedents and protected
persons, includes liabilities of the decedent or the protected person,
whether arising in contract, in tort or otherwise, and liabilities of the

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1 estate that arise at or after the death of the decedent or after the 2 appointment of a conservator, including funeral expenses and expenses of 3 administration. Claims do not include estate or inheritance taxes or 4 demands or disputes regarding title of a decedent or a protected person to 5 specific assets alleged to be included in the estate.

6 9. "Community property" means that property of a husband and wife 7 that is acquired during the marriage and that is community property as 8 prescribed in section 25-211.

9 10. "Conservator" means a person who is appointed by a court to 10 manage the estate of a protected person.

11. "Court" means the superior court.

12 12. "Dependent child" means a minor child whom the decedent was 13 obligated to support or an adult child who was in fact being supported by 14 the decedent at the time of the decedent's death.

15 13. "Descendant" means all of the decedent's descendants of all 16 generations, with the relationship of parent and child at each generation.

17 14. "Devise", when used as a noun, means a testamentary disposition 18 of real or personal property and, when used as a verb, means to dispose of 19 real or personal property by will.

20 15. "Devisee" means a person designated in a will to receive a 21 devise. For the purposes of chapter 3 of this title, in the case of a 22 devise to an existing trust or trustee, or to a trustee on trust described 23 by will, the trust or trustee is the devisee and the beneficiaries are not 24 devisees.

25 16. "Disability" means cause for a protective order as described in 26 section 14-5401.

27 17. "Distributee" means any person who has received property of a 28 decedent from that person's personal representative other than as a creditor or purchaser. Distributee includes a testamentary trustee only 29 to the extent of distributed assets or increment that remains in that 30 31 person's hands. A beneficiary of a testamentary trust to whom the trustee 32 has distributed property received from a personal representative is a 33 distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are 34 transferred by will, to the extent of the devised assets. 35

36 18. "Electronic" means having electrical, digital, magnetic,
 37 optical, electromagnetic or similar capabilities.

38 19. "Electronic record" means a record that is created, generated,
 39 sent, communicated, received or stored by electronic means.

40 20. "Electronic signature" means an electronic method or process 41 that does both of the following:

42 (a) Is attached to or logically associated with an electronic
43 record and that is executed or adopted by a person with the intent to sign
44 the electronic record.

- 2 -

1 (b) Uses a security procedure that allows a determination that the 2 electronic signature was all of the following:

3

(i) Unique to the person using it.

4

(ii) Capable of verification.

5 (iii) Under the sole control of the person making the electronic 6 signature.

7 (iv) Linked to the electronic record to which the electronic 8 signature relates in a manner so that if the electronic record is changed 9 the electronic signature is invalidated.

10 21. "Electronic will" means a testamentary instrument that is 11 executed and maintained on an electronic medium and that is executed in 12 compliance with section 14-2518.

13 22. "ELECTRONICALLY PRESENT" MEANS TWO OR MORE INDIVIDUALS WHO ARE
14 IN A DIFFERENT PHYSICAL LOCATION AND WHO ARE COMMUNICATING BY MEANS OF
15 TECHNOLOGY THAT ENABLES ALL INDIVIDUALS TO SEE AND HEAR EACH OTHER IN REAL
16 TIME TO THE SAME EXTENT AS IF THE INDIVIDUALS WERE PHYSICALLY PRESENT IN
17 THE SAME LOCATION.

18 22. 23. "Estate" includes the property of the decedent, trust or 19 other person whose affairs are subject to this title as originally 20 constituted and as it exists from time to time during administration. As 21 it relates to a spouse, the estate includes only the separate property and 22 the share of the community property belonging to the decedent or person 23 whose affairs are subject to this title.

24 23. 24. "Exempt property" means that property of a decedent's 25 estate that is described in section 14-2403.

26 24. 25. "Fiduciary" includes a personal representative, guardian,
 27 conservator and trustee.

28 25. 26. "Foreign personal representative" means a personal
 29 representative who is appointed by another jurisdiction.

30 26. 27. "Formal proceedings" means proceedings that are conducted 31 before a judge with notice to interested persons.

32 27. 28. "Governing instrument" means deed, will. trust. а 33 insurance or annuity policy, account with pay on death designation, security registered in beneficiary form, pension, profit sharing, 34 retirement or similar benefit plan, instrument creating or exercising a 35 36 power of appointment or a power of attorney or a dispositive, appointive 37 or nominative instrument of any similar type.

38 28. 29. "Guardian" means a person who has qualified as a guardian
 39 of a minor or incapacitated person pursuant to testamentary or court
 40 appointment but excludes a person who is merely a guardian ad litem.

41 <del>29.</del> 30. "Guardian ad litem" includes a person who is appointed 42 pursuant to section 14-1408.

30. 31. "Heirs", except as controlled by section 14-2711, means
persons, including the surviving spouse and the state, who are entitled
under the statutes of intestate succession to the property of a decedent.

- 3 -

1 <del>31.</del> 32. "Incapacitated person" has the same meaning prescribed in section 14-5101.

3 32. 33. "Informal proceedings" means those proceedings conducted 4 without notice to interested persons by an officer of the court acting as 5 a registrar for probate of a will or appointment of a personal 6 representative.

7 33. 34. "Interested person" includes any trustee, heir, devisee, 8 spouse, creditor, beneficiary, person holding a power child. of 9 appointment and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. 10 11 Interested person also includes a person who has priority for appointment as personal representative and other fiduciaries representing interested 12 13 Interested person, as the term relates to particular persons, persons. may vary from time to time and must be determined according to the 14 particular purposes of, and matter involved in, any proceeding. 15

16 <del>34.</del> 35. "Issue" of a person means descendant as defined in this 17 section.

18 35. 36. "Joint tenants with the right of survivorship" and 19 "community property with the right of survivorship" includes co-owners of 20 property held under circumstances that entitle one or more to the whole of 21 the property on the death of the other or others but excludes forms of 22 co-ownership registration in which the underlying ownership of each party 23 is in proportion to that party's contribution.

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<del>36.</del> 37. "Lease" includes any oil, gas or other mineral lease.

25 37. 38. "Letters" includes letters testamentary, letters of
 26 guardianship, letters of administration and letters of conservatorship.

<del>38.</del> 39. "Minor" means a person who is under eighteen years of age.

28 39. 40. "Mortgage" means any conveyance, agreement or arrangement 29 in which property is encumbered or used as security. Mortgage does not 30 include leases or easements.

31 40. 41. "Nonresident decedent" means a decedent who was domiciled 32 in another jurisdiction at the time of the decedent's death.

41. 42. "Organization" means a corporation, limited liability
 company, business trust, estate, trust, partnership, joint venture,
 association, government or governmental subdivision or agency or any other
 legal or commercial entity.

37 42. 43. "Original will" means either an original paper will or a
 38 certified paper original of an electronic will.

39 43. 44. "Paper will" means a testamentary instrument that is 40 executed and maintained on a tangible medium and that is executed in 41 compliance with section 14-2502 or 14-2503.

42 45. "Parent" includes any person entitled to take, or who
43 would be entitled to take if the child died without a will, as a parent
44 under this title by intestate succession from the child whose relationship

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is in question and excludes any person who is only a stepparent, foster
parent or grandparent.

3 45. 46. "Payor" means a trustee, insurer, business entity, 4 employer, government, governmental agency or subdivision or any other 5 person who is authorized or obligated by law or a governing instrument to 6 make payments.

46. 47. "Person" means an individual or an organization.

8 representative" 47. 48. "Personal includes an executor, an 9 administrator, successor personal representative, а а special 10 administrator and persons who perform substantially the same function 11 under the law governing their status. A general personal representative 12 excludes a special administrator.

13 48. 49. "Petition" means a written request to the court for an 14 order after notice.

15 49. 50. "Proceeding" includes action at law and suit in equity.

16 50. 51. "Property" has the same meaning prescribed in section 17 14–10103.

18 51. 52. "Protected person" has the same meaning prescribed in 19 section 14-5101.

20 52. 53. "Protective proceeding" has the same meaning prescribed in 21 section 14-5101.

22 <del>53.</del> 54. "Qualified custodian" means a person who fulfills the 23 requirements of section 14-2520.

24 54. 55. "Registrar" means the official of the court who is 25 designated to perform the functions of registrar as provided in section 26 14-1307.

55. 56. "Security" includes any note, stock, treasury stock, bond, 27 28 debenture. evidence of indebtedness, certificate of interest or 29 participation in an oil, gas or mining title or lease or in payments out 30 of production under that title or lease, collateral trust certificate, 31 transferable share or voting trust certificate and, in general, includes 32 any interest or instrument commonly known as a security, or any 33 certificate of interest or participation, any temporary or interim 34 certificate, receipt or certificate of deposit for, or any warrant or 35 right to subscribe to or purchase, any of these securities.

36 56. 57. "Separate property" means that property of a husband or 37 wife that is the spouse's separate property as defined in section 25-213.

38 57. 58. "Settlement", in reference to a decedent's estate,
 39 includes the full process of administration, distribution and closing.

40 58. 59. "Special administrator" means a personal representative as 41 described by sections 14-3614 through 14-3618.

42 59. 60. "State" has the same meaning prescribed in section 43 14–10103.

- 5 -

1 60. 61. "Successor personal representative" means a personal 2 representative, other than a special administrator, who is appointed to 3 succeed a previously appointed personal representative.

4 <del>61.</del> 62. "Successors" means persons, other than creditors, who are 5 entitled to property of a decedent under a will or this title.

6 <del>62.</del> 63. "Supervised administration" refers to the proceedings 7 described in chapter 3, article 5 of this title.

8 63. 64. "Survive" means that a person has neither predeceased an 9 event, including the death of another person, nor is deemed to have 10 predeceased an event under section 14-2104 or 14-2702.

11 64. 65. "Tangible medium" means a medium on which information may 12 be inscribed by writing, typing, printing or similar means and that is 13 perceivable by reading directly from the medium on which the information 14 is inscribed.

15 <del>65.</del> 66. "Testacy proceeding" means a proceeding to establish a 16 will or determine intestacy.

66. 67. "Testator" includes a person of either sex.

18 <del>67.</del> 68. "Trust" includes an express trust, private or charitable, 19 with any additions, wherever and however created. Trust also includes a 20 trust created or determined by judgment or decree under which the trust is 21 to be administered in the manner of an express trust. Trust excludes 22 other constructive trusts and excludes resulting trusts, conservatorship, personal representatives, trust accounts, custodial arrangements pursuant 23 24 to chapter 7, article 7 of this title, business trusts providing for 25 certificates to be issued to beneficiaries, common trust funds, voting 26 trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, 27 profits, pensions or employee benefits of any kind, trusts created by a 28 29 city or town for the payment of medical insurance, health care benefits or expenses, long-term or short-term disability, self insurance reserves and 30 31 similar programs administered by a city or town, legal defense trusts and 32 any arrangement under which a person is nominee or escrowee for another.

33 68. 69. "Trustee" includes an original, additional or successor
 34 trustee, whether or not appointed or confirmed by the court.

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<del>69.</del> 70. "Ward" has the same meaning prescribed in section 14-5101.

36 70. 71. "Will" includes a codicil and any testamentary instrument 37 that merely appoints an executor, revokes or revises another will, 38 nominates a guardian or expressly excludes or limits the right of an 39 individual or class to succeed to property of the decedent passing by 40 intestate succession. A will may be a paper will or an electronic will.

- 6 -

1 Sec. 2. Section 14-2518, Arizona Revised Statutes, is amended to 2 read: 3 14-2518. Electronic will; requirements; interpretation 4 A. An electronic will must meet all of the following requirements: 5 1. Be created and maintained in an electronic record THAT IS 6 READABLE AS TEXT AT THE TIME OF SIGNING. 7 2. Contain the electronic signature of the testator or the 8 testator's electronic signature made by some other individual in the 9 testator's conscious presence and by the testator's direction. 3. Contain the electronic signatures of at least two persons, each 10 of whom met **both** ALL of the following requirements: 11 (a) Was physically present OR ELECTRONICALLY PRESENT with the 12 13 testator when the testator electronically signed the will, acknowledged the testator's signature or acknowledged the will. 14 15 (b) Electronically signed the will within a reasonable time after 16 the person witnessed the testator signing the will, acknowledging the 17 testator's signature or acknowledging the will as described in subdivision 18 (a) of this paragraph. 19 (c) IF ELECTRONICALLY PRESENT WITH THE TESTATOR WHEN THE TESTATOR 20 ELECTRONICALLY SIGNED THE WILL, ACKNOWLEDGED THE TESTATOR'S SIGNATURE OR 21 ACKNOWLEDGED THE WILL, WAS PHYSICALLY LOCATED WITHIN THE UNITED STATES AT 22 THE TIME OF SERVING AS A WITNESS. 23 4. State the date that the testator and each of the witnesses 24 electronically signed the will. 25 5. Contain a copy of a government-issued identification card of the 26 testator that was current at the time of execution of the will. 27 B. Except as provided in this section and sections 14-2519, 14-2520, 14-2521, 14-2522 and 14-2523, any question raised about the 28 29 force, effect, validity and interpretation of an electronic will shall be 30 determined in the same manner as a question regarding a paper will 31 executed pursuant to section 14-2502. 32 C. This section does not apply to a trust except a testamentary 33 trust created in an electronic will. 34 Sec. 3. Section 14-2519, Arizona Revised Statutes, is amended to 35 read: 36 14-2519. <u>Self-proved electronic will</u> 37 A. In addition to the requirements of section 14-2504, to be 38 self-proved. an electronic will must meet all of the following 39 requirements: 40 1. Contain the electronic signature and electronic seal of a notary 41 public placed on the will in accordance with applicable law. 42 2. Designate a qualified custodian to maintain custody of the 43 electronic will.

1 3. Before being offered for probate or being reduced to a certified 2 paper original, be under the exclusive control of a qualified custodian at 3 all times. B. NOTWITHSTANDING SECTION 14-2504, SUBSECTION B, THE AFFIDAVITS 4 5 FOR AN ATTESTED SELF-PROVING ELECTRONIC WILL SHALL BE IN SUBSTANTIALLY THE 6 FOLLOWING FORM: 7 \_\_\_\_\_ AND \_\_ WE. \_, \_ THE TESTATOR AND THE WITNESSES, RESPECTIVELY, WHOSE NAMES ARE 8 9 SIGNED TO THE ATTACHED OR FOREGOING INSTRUMENT, BEING FIRST DULY SWORN DO DECLARE TO THE UNDERSIGNED AUTHORITY THAT THE 10 11 TESTATOR SIGNED AND EXECUTED THE INSTRUMENT AS THE TESTATOR'S 12 WILL AND THAT HE/SHE SIGNED WILLINGLY, OR WILLINGLY DIRECTED 13 ANOTHER TO SIGN FOR HIM/HER, AND THAT HE/SHE EXECUTED IT AS 14 HIS/HER FREE AND VOLUNTARY ACT FOR THE PURPOSES EXPRESSED IN THIS DOCUMENT, AND THAT EACH OF THE WITNESSES, IN THE PHYSICAL 15 16 OR ELECTRONIC PRESENCE AND HEARING OF THE TESTATOR, SIGNED THE 17 WILL AS WITNESS AND THAT TO THE BEST OF HIS/HER KNOWLEDGE THE 18 TESTATOR WAS AT THE TIME OF SIGNING EIGHTEEN YEARS OF AGE OR 19 OLDER, OF SOUND MIND AND UNDER NO CONSTRAINT OR UNDUE 20 INFLUENCE. 21 22 TESTATOR 23 24 WITNESS 25 26 WITNESS THE STATE OF \_\_\_\_\_ 27 28 COUNTY OF 29 SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME BY 30 \_\_\_\_\_, THE TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY \_\_\_\_\_\_ AND \_\_\_\_\_, WITNESSES, THIS \_\_\_\_\_ DAY 31 32 0F \_\_\_ (SEAL) 33 (SIGNED)\_\_\_\_\_ 34 35 36 (OFFICIAL CAPACITY OF OFFICER) 37 Sec. 4. Section 14-2521, Arizona Revised Statutes, is amended to 38 read: 39 14-2521. Qualified custodian; agreement to serve; ceasing 40 service 41 A. A person shall execute a written statement affirmatively agreeing to serve as the qualified custodian of an electronic will before 42 43 the person may serve as a qualified custodian. THE WRITTEN STATEMENT MAY BE EXECUTED BY AN ELECTRONIC SIGNATURE AND MAINTAINED AS AN ELECTRONIC 44 45 RECORD.

- 8 -

1 B. Except for a person ceasing to serve as provided in subsection C, paragraph 1 of this section, a person may not cease serving as a 2 3 qualified custodian until a successor qualified custodian executes the 4 written statement prescribed by subsection A of this section.

5

C. A person serving as a qualified custodian may cease serving as a 6 qualified custodian: 7 1. If the person does not designate a successor gualified

8 custodian, by providing the testator with both of the following:

9 (a) A thirty-day written notice that the person will cease to serve 10 as a gualified custodian.

11 (b) The certified paper original of the electronic will and all 12 records concerning the electronic will.

13 2. If the person designates a successor qualified custodian, by 14 providing all of the following:

15 (a) A thirty-day written notice that the person will cease to serve as a qualified custodian to the testator and the successor qualified 16 17 custodian.

18 (b) To the successor qualified custodian, the electronic record of 19 the electronic will and an affidavit that states all of the following:

20 (i) That the person is eligible to act as a qualified custodian in 21 this state and is the qualified custodian designated by the testator in 22 the electronic will or was designated to act in that capacity by another 23 qualified custodian pursuant to this paragraph.

24 (ii) That an electronic record OF THE ELECTRONIC WILL was created 25 at the time the testator executed the electronic will.

26 (iii) That the electronic record OF THE ELECTRONIC WILL has been in 27 the custody of one or more qualified custodians since the execution of the 28 electronic will and has not been altered since the time it was created.

29 (iv) The identity of all qualified custodians who have had custody 30 of the electronic record OF THE ELECTRONIC WILL since the execution of the 31 electronic will.

32 D. For the purposes of making the affidavit prescribed by 33 subsection C, paragraph 2, subdivision (b) of this section, the person may rely conclusively on any affidavits provided by a predecessor qualified 34 35 custodian if all of these affidavits are provided to the successor 36 qualified custodian.

37 E. If a testator designates a successor qualified custodian in a writing executed with the same formalities required for the execution of 38 an electronic will and the successor qualified custodian executes the 39 written statement prescribed by subsection A of this section, the person 40 41 serving as qualified custodian shall cease serving in that capacity and 42 shall provide the successor qualified custodian with both of the 43 following:

The electronic record OF THE ELECTRONIC WILL. 1.

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<sup>44</sup> 

2. The affidavit prescribed by subsection C, paragraph 2,
 subdivision (b) of this section.

3 F. If a qualified custodian is an entity, an affidavit of a duly 4 authorized officer or agent of the entity constitutes the affidavit of the 5 qualified custodian.

6 G. A qualified custodian maintains an electronic will as a bailee, 7 and the electronic will is the property of the testator and not the 8 qualified custodian.

APPROVED BY THE GOVERNOR APRIL 11, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2023.

Senate Engrossed

jails; mental health; evaluations; treatment

State of Arizona Senate Fifty-sixth Legislature First Regular Session 2023

### **CHAPTER 91**

## **SENATE BILL 1077**

#### AN ACT

AMENDING SECTION 36-501, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

- i -

1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Section 36-501, Arizona Revised Statutes, is amended to 3 read: 4 36-501. Definitions 5 In this chapter, unless the context otherwise requires: 6 1. "Administration" means the Arizona health care cost containment 7 system administration. 8 2. "Admitting officer" means a psychiatrist or other physician or 9 psychiatric and mental health nurse practitioner with experience in performing psychiatric examinations who has been designated as 10 an 11 admitting officer of the evaluation agency by the person in charge of the 12 evaluation agency. 13 3. "Authorized transporter" means a transportation entity that is 14 contracted with a city, town or county to provide services pursuant to 15 this chapter and that is either: (a) An ambulance service that holds a valid certificate 16 of 17 necessity. 18 (b) A transportation provider authorized by this state to provide 19 behavioral health transportation for individuals safe requiring 20 transportation pursuant to this chapter. 21 4. "Chief medical officer" means the chief medical officer under 22 the supervision of the superintendent of the state hospital. 5. "Contraindicated" means that access is reasonably likely to 23 24 endanger the life or physical safety of the patient or another person. 25 6. "Court" means the superior court in the county in this state in 26 which the patient resides or was found before screening or emergency 27 admission under this title. 28 7. "Criminal history" means police reports, lists of prior arrests 29 and convictions, criminal case pleadings and court orders, including a determination that the person has been found incompetent to stand trial 30 pursuant to section 13-4510. 31 32 8. "Danger to others" means that the judgment of a person who has a 33 mental disorder is so impaired that the person is unable to understand the person's need for treatment and as a result of the person's mental 34 35 disorder the person's continued behavior can reasonably be expected, on 36 the basis of competent medical opinion, to result in serious physical 37 harm. 38 9. "Danger to self": (a) Means behavior that, as a result of a mental disorder: 39 (i) Constitutes a danger of inflicting serious physical harm on 40 41 oneself, including attempted suicide or the serious threat thereof, if the 42 threat is such that, when considered in the light of its context and in 43 light of the individual's previous acts, it is substantially supportive of 44 an expectation that the threat will be carried out.

- 1 -

1 (ii) Without hospitalization will result in serious physical harm 2 or serious illness to the person.

3 (b) Does not include behavior that establishes only the condition 4 of having a grave disability.

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"Department" means the department of health services. 10.

6 11. "Detention" means the taking into custody of a patient or 7 proposed patient.

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12. "Director" means the director of the administration.

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"Evaluation" means: 13.

(a) A professional multidisciplinary analysis that may include 10 11 firsthand observations or remote observations by interactive audiovisual media and that is based on data describing the person's identity, 12 13 biography and medical, psychological and social conditions carried out by a group of persons consisting of not less than AT LEAST the following: 14

(i) Two licensed physicians who are qualified psychiatrists, if 15 16 possible, or at least experienced in psychiatric matters, and who shall 17 examine and report their findings independently. The person against whom 18 a petition has been filed shall be notified that the person may select one of the physicians. A psychiatric resident in a training program approved 19 20 by the American medical association or by the American osteopathic 21 association may examine the person in place of one of the psychiatrists if 22 the resident is supervised in the examination and preparation of the 23 affidavit and testimony in court by a qualified psychiatrist appointed to 24 assist in the resident's training, and if the supervising psychiatrist is available for discussion with the attorneys for all parties and for court 25 26 appearance and testimony if requested by the court or any of the 27 attorneys.

Two other individuals, one of whom, if available, is a 28 (ii) 29 psychologist and in any event a social worker familiar with mental health 30 human services that may be available placement alternatives and 31 appropriate for treatment. An evaluation may be conducted on an inpatient basis, an outpatient basis or a combination of both, and every reasonable 32 33 attempt shall be made to conduct the evaluation in any language preferred 34 by the person.

35 (b) A physical examination that is consistent with the existing 36 standards of care and that is performed by one of the evaluating 37 physicians or by or under the supervision of a physician who is licensed pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner 38 who is licensed pursuant to title 32, chapter 15 if the results of that 39 40 examination are reviewed or augmented by one of the evaluating physicians.

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14. "Evaluation agency" means EITHER OF THE FOLLOWING:

42 (a) A health care agency that is licensed by the department AND 43 THAT HAS BEEN APPROVED PURSUANT TO THIS TITLE TO PROVIDE THE SERVICES REQUIRED OF THAT AGENCY BY THIS CHAPTER. 44

- 2 -

1 (b) A FACILITY THAT IS EXEMPT FROM LICENSURE PURSUANT TO SECTION 2 36-402. THAT POSSESSES AN ACCREDITATION FROM EITHER A NATIONAL COMMISSION 3 ON CORRECTIONAL HEALTH CARE OR AN AMERICAN CORRECTIONAL ASSOCIATION and 4 that has been approved pursuant to this title, providing those TO PROVIDE 5 THE services required of such agency THAT FACILITY by this chapter.

6 15. "Family member" means a spouse, parent, adult child, adult 7 sibling or other blood relative of a person undergoing treatment or 8 evaluation pursuant to this chapter.

9 16. "Grave disability" means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to 10 11 serious physical harm or serious illness because the person is unable to 12 provide for the person's own basic physical needs.

13 17. "Health care decision maker" has the same meaning prescribed in 14 section 12-2801.

18. "Health care entity" means a health care provider, the 15 16 department, the administration or a regional behavioral health authority 17 that is under contract with the administration.

18 19. "Health care provider" means a health care institution as 19 defined in section 36-401 that is licensed as a behavioral health provider 20 pursuant to department rules or a mental health provider.

21 20. "Independent evaluator" means a licensed physician, psychiatric 22 and mental health nurse practitioner or psychologist who is selected by 23 the person to be evaluated or by such person's attorney.

24 21. "Informed consent" means a voluntary decision following 25 presentation of all facts necessary to form the basis of an intelligent 26 consent by the patient or guardian with no minimizing of known dangers of 27 any procedures.

28 22. "Least restrictive treatment alternative" means the treatment 29 plan and setting that infringe in the least possible degree with the patient's right to liberty and that are consistent with providing needed 30 31 treatment in a safe and humane manner.

32 23. "Licensed physician" means any medical doctor or doctor of 33 osteopathy who is either:

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(a) Licensed in this state.

35 (b) A full-time hospital physician licensed in another state and 36 serving on the staff of a hospital operated or licensed by the United 37 States government.

38 24. "Medical director of an evaluation agency" means а psychiatrist, or other licensed physician experienced in psychiatric 39 matters, who is designated in writing by the governing body of the agency 40 41 as the person in charge of the medical services of the agency for the purposes of this chapter and may include the chief medical officer of the 42 43 state hospital.

25. "Medical director of a mental health treatment agency" means a 44 45 psychiatrist, or other licensed physician experienced in psychiatric

- 3 -

1 matters, who is designated in writing by the governing body of the agency 2 as the person in charge of the medical services of the agency for the 3 purposes of this chapter and includes the chief medical officer of the 4 state hospital.

5 26. "Mental disorder" means a substantial disorder of the person's 6 emotional processes, thought, cognition or memory. Mental disorder is 7 distinguished from:

8 (a) Conditions that are primarily those of drug abuse, alcoholism 9 or intellectual disability, unless, in addition to one or more of these 10 conditions, the person has a mental disorder.

11 (b) The declining mental abilities that directly accompany 12 impending death.

13 (c) Character and personality disorders characterized by lifelong 14 and deeply ingrained antisocial behavior patterns, including sexual 15 behaviors that are abnormal and prohibited by statute unless the behavior 16 results from a mental disorder.

17 27. "Mental health provider" means any physician or provider of 18 mental health or behavioral health services who is involved in evaluating, 19 caring for, treating or rehabilitating a patient.

20 21 28. "Mental health treatment agency" means ANY OF THE FOLLOWING:

(a) The state hospital. <del>or</del>

(b) A health care agency that is licensed by the department AND
 THAT PROVIDES THE SERVICES THAT ARE REQUIRED OF THE AGENCY BY THIS
 CHAPTER.

(c) A FACILITY THAT IS EXEMPT FROM LICENSURE PURSUANT TO SECTION
 36-402, THAT POSSESSES AN ACCREDITATION FROM EITHER A NATIONAL COMMISSION
 ON CORRECTIONAL HEALTH CARE OR AN AMERICAN CORRECTIONAL ASSOCIATION and
 that provides those THE services that are required of the agency FACILITY
 by this chapter.

30 29. "Outpatient treatment" or "combined inpatient and outpatient 31 treatment" means any treatment program not requiring continuous inpatient 32 hospitalization.

33 30. "Outpatient treatment plan" means a treatment plan that does 34 not require continuous inpatient hospitalization.

35 31. "Patient" means any person who is undergoing examination, 36 evaluation or behavioral or mental health treatment under this chapter.

37 32. "Peace officers" means sheriffs of counties, constables, 38 marshals and policemen of cities and towns.

39 33. "Persistent or acute disability" means a severe mental disorder 40 that meets all the following criteria:

41 (a) Significantly impairs judgment, reason, behavior or capacity to42 recognize reality.

(b) If not treated, has a substantial probability of causing the
person to suffer or continue to suffer severe and abnormal mental,
emotional or physical harm.

1 (c) Substantially impairs the person's capacity to make an informed 2 decision regarding treatment, and this impairment causes the person to be 3 incapable of understanding and expressing an understanding of the 4 advantages and disadvantages of accepting treatment and understanding and 5 expressing an understanding of the alternatives to the particular 6 treatment offered after the advantages, disadvantages and alternatives are 7 explained to that person.

8 (d) Has a reasonable prospect of being treatable by outpatient, 9 inpatient or combined inpatient and outpatient treatment.

10 34. "Prepetition screening" means the review of each application 11 requesting court-ordered evaluation, including an investigation of facts 12 alleged in the application, an interview with each applicant and an 13 interview, if possible, with the proposed patient. The purpose of the 14 interview with the proposed patient is to assess the problem, explain the 15 application and, when indicated, attempt to persuade the proposed patient 16 to receive, on a voluntary basis, evaluation or other services.

17 35. "Prescribed form" means a form established by a court or the 18 rules of the administration in accordance with the laws of this state.

19 36. "Professional" means a physician who is licensed pursuant to 20 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to 21 title 32, chapter 19.1 or a psychiatric and mental health nurse 22 practitioner who is certified pursuant to title 32, chapter 15.

37. "Proposed patient" means a person for whom an application for
 evaluation has been made or a petition for court-ordered evaluation has
 been filed.

26 38. "Prosecuting agency" means the county attorney, attorney 27 general or city attorney who applied or petitioned for an evaluation or 28 treatment pursuant to this chapter.

29 39. "Psychiatric and mental health nurse practitioner" means a 30 registered nurse practitioner as defined in section 32-1601 who has 31 completed an adult or family psychiatric and mental health nurse 32 practitioner program and who is certified as an adult or family 33 psychiatric and mental health nurse practitioner by the state board of 34 nursing.

40. "Psychiatrist" means a licensed physician who has completed
 three years of graduate training in psychiatry in a program approved by
 the American medical association or the American osteopathic association.

38 41. "Psychologist" means a person who is licensed under title 32,
 39 chapter 19.1 and who is experienced in the practice of clinical
 40 psychology.

41 42. "Records" means all communications that are recorded in any 42 form or medium and that relate to patient examination, evaluation or 43 behavioral or mental health treatment. Records include medical records 44 that are prepared by a health care provider or other providers. Records 45 do not include:

- 5 -

1 (a) Materials that are prepared in connection with utilization 2 review, peer review or quality assurance activities, including records 3 that a health care provider prepares pursuant to section 36-441, 36-445, 4 36-2402 or 36-2917.

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(b) Recorded telephone and radio calls to and from a publicly 6 operated emergency dispatch office relating to requests for emergency 7 services or reports of suspected criminal activity.

8 43. "Regional behavioral health authority" has the same meaning 9 prescribed in section 36-3401.

10 44. "Screening agency" means a health care agency that is licensed 11 by the department and that provides those services required of such agency 12 by this chapter.

13 45. "Social worker" means a person who has completed two years of 14 graduate training in social work in a program approved by the council of social work education and who has experience in mental health. 15

46. "State hospital" means the Arizona state hospital.

17 47. "Superintendent" means the superintendent of the state hospital. 18

APPROVED BY THE GOVERNOR APRIL 18, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2023.

- 6 -

House Engrossed Senate Bill

probate advisory panel; establishment

State of Arizona Senate Fifty-sixth Legislature First Regular Session 2023

### CHAPTER 123

## **SENATE BILL 1038**

#### AN ACT

AMENDING TITLE 14, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-1110; REPEALING SECTION 14-1110, ARIZONA REVISED STATUTES; RELATING TO PROBATE PROVISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

- i -

1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Title 14, chapter 1, article 1, Arizona Revised 3 Statutes, is amended by adding section 14-1110, to read: 4 14-1110. Probate advisory panel; membership; duties; annual 5 report 6 THE PROBATE ADVISORY PANEL IS ESTABLISHED IN THE OFFICE OF THE Α. 7 GOVERNOR. THE PANEL CONSISTS OF THE FOLLOWING MEMBERS WHO ARE APPOINTED 8 TO STAGGERED FOUR-YEAR TERMS: 9 1. TWO PUBLIC MEMBERS WHO ARE GUARDIANS OR CONSERVATORS OF AN ADULT CHILD OR A SIBLING WHO IS A WARD. THE PRESIDENT OF THE SENATE AND THE 10 11 SPEAKER OF THE HOUSE OF REPRESENTATIVES, IN CONSULTATION WITH THE MINORITY 12 LEADER OF THE SENATE AND THE MINORITY LEADER OF THE HOUSE OF 13 REPRESENTATIVES, SHALL EACH APPOINT ONE MEMBER. 14 2. TWO PUBLIC MEMBERS WHO ARE GUARDIANS OR CONSERVATORS OF A FAMILY MEMBER OTHER THAN AN ADULT CHILD OR SIBLING OF THE GUARDIAN OR 15 16 CONSERVATOR. THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF 17 REPRESENTATIVES. IN CONSULTATION WITH THE MINORITY LEADER OF THE SENATE 18 AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, SHALL EACH 19 APPOINT ONE MEMBER. 3. TWO MEMBERS WHO ARE ADVOCATES FOR FAMILY MEMBERS WHO HAVE BEEN 20 21 PARTIES TO AN ADULT GUARDIANSHIP OR CONSERVATORSHIP MATTER IN THIS STATE. 22 THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE 0F 23 REPRESENTATIVES, IN CONSULTATION WITH THE MINORITY LEADER OF THE SENATE 24 AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, SHALL EACH 25 APPOINT ONE MEMBER. 26 4. ONE PUBLIC FIDUCIARY WHO IS LICENSED PURSUANT TO SECTION 14-5651 27 AND WHO IS FROM A COUNTY WITH A POPULATION OF LESS THAN FIVE HUNDRED 28 THOUSAND PERSONS. THE GOVERNOR SHALL APPOINT THIS MEMBER. 5. ONE FIDUCIARY, OTHER THAN A PUBLIC FIDUCIARY, WHO IS LICENSED 29 PURSUANT TO SECTION 14-5651 AND WHO IS FROM A COUNTY WITH A POPULATION OF 30 31 MORE THAN FIVE HUNDRED THOUSAND PERSONS. THE GOVERNOR SHALL APPOINT THIS 32 MEMBER. 33 6. ONE ATTORNEY WHO HAS A MINIMUM OF FOUR YEARS EXPERIENCE IN 34 GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS. THE GOVERNOR SHALL APPOINT 35 THIS MEMBER. 36 7. ONE JUDICIAL OFFICER WHO HAS A MINIMUM OF TWO YEARS EXPERIENCE PRESIDING OVER GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS AND WHO IS 37 38 FROM A COUNTY WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND 39 PERSONS. THE CHIEF JUSTICE OF THE SUPREME COURT SHALL APPOINT THIS 40 MEMBER. 41 8. ONE CLERK OF THE SUPERIOR COURT. THE CHIEF JUSTICE OF THE SUPREME COURT SHALL APPOINT THIS MEMBER. 42 43 B. THE PANEL: SHALL SELECT A CHAIRPERSON AT ITS FIRST QUARTERLY MEETING. 44 1.

- 1 -

1 2. SHALL HOLD PUBLIC HEARINGS AT LEAST QUARTERLY, OR AT THE CALL OF CHAIRPERSON, ON HOW TO IMPROVE THE ADULT GUARDIANSHIP 2 THE AND 3 CONSERVATORSHIP LAWS THROUGH STATUTORY CHANGES. 3. WHEN THE PANEL FINDS IT APPROPRIATE, MAY CONSULT WITH MEDICAL 4 5 PROFESSIONALS INCLUDING NEUROPSYCHOLOGISTS, PSYCHOLOGISTS 0R 6 **PSYCHIATRISTS.** 7 4. ON OR BEFORE NOVEMBER 15 OF EACH YEAR, SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE GOVERNOR, THE SPEAKER OF THE HOUSE 8 9 OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE AND THE CHIEF JUSTICE OF THE SUPREME COURT. THE PANEL SHALL PROVIDE A COPY OF EACH REPORT TO THE 10 11 SECRETARY OF STATE. 12 C. PANEL MEMBERS ARE NOT ELIGIBLE FOR COMPENSATION OR REIMBURSEMENT 13 OF EXPENSES. 14 Sec. 2. Initial terms of members A. Notwithstanding section 14-1110, Arizona Revised Statutes, as 15 16 added by this act, the initial terms of the members of the probate 17 advisory panel are:

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1. Four terms ending January 1, 2025.

19 2. Four terms ending January 1, 2026.

20 3. Three terms ending January 1, 2027.

21 B. The governor, the speaker of the house of representatives, the 22 president of the senate and the chief justice of the supreme court shall 23 make all subsequent appointments as prescribed by statute.

24 Sec. 3. <u>Delayed repeal</u>

25

Section 14-1110, Arizona Revised Statutes, as added by this act, is repealed from and after December 31, 2027.

APPROVED BY THE GOVERNOR MAY 8, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2023.

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House Engrossed Senate Bill

guardianship; conservatorship; policies; procedures
(now: conservatorship; guardianship; policies; procedures)

State of Arizona Senate Fifty-sixth Legislature First Regular Session 2023

### **CHAPTER 195**

## **SENATE BILL 1291**

#### AN ACT

AMENDING SECTION 14-1102, ARIZONA REVISED STATUTES; AMENDING SECTION 14-1201, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2023, CHAPTER 32, SECTION 1; AMENDING SECTIONS 14-1306 AND 14-1401, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5111; AMENDING SECTIONS 14-5303, 14-5309, 14-5316, 14-5401, 14-5404, 14-5405 AND 14-5407, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARIZONA REVISED STATUTES; BY ADDING ARTICLE 9; RELATING TO PROTECTION OF PERSONS UNDER DISABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Section 14-1102, Arizona Revised Statutes, is amended to 3 read: 4 14-1102. Purposes; rule of construction 5 A. This title shall be liberally construed and applied to promote 6 its underlying purposes and policies. 7 B. The underlying purposes and policies of this title are: 8 1. To simplify and clarify the law concerning the affairs of 9 decedents, missing persons, protected persons, minors and incapacitated 10 persons. 11 2. To discover and make effective the intent of a decedent in 12 distribution of his property. 13 3. To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors. 14 4. TO PROMOTE A SPEEDY, EFFICIENT AND INEXPENSIVE SYSTEM FOR 15 16 RESOLVING DISPUTES UNDER CHAPTER 5 OF THIS TITLE WHILE ENSURING THAT THE 17 DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS OF THE PERSONS SUBJECT TO SUCH 18 PROCEEDINGS ARE PROTECTED. 19 5. TO PROVIDE JUST AND APPROPRIATE REMEDIES FOR PARTIES WHO INCUR 20 DAMAGES AS THE RESULT OF VEXATIOUS CONDUCT, AS DEFINED BY COURT RULE, OR 21 OTHER UNREASONABLE CONDUCT, DURING PROCEEDINGS BROUGHT PURSUANT TO THIS 22 TITLE, WITHOUT IMPINGING ON THE RIGHTS OF INDIVIDUALS WHO ARE THE SUBJECT 23 OF PROCEEDINGS UNDER CHAPTER 5 OF THIS TITLE. 24 4. 6. To facilitate use and enforcement of certain trusts. 5. 7. To make uniform the law among the various jurisdictions. 25 26 Sec. 2. Section 14-1201, Arizona Revised Statutes, as amended by 27 Laws 2023, chapter 32, section 1, is amended to read: 28 14-1201. Definitions 29 In this title, unless the context otherwise requires: "Agent" includes an attorney-in-fact under a durable 30 1. or 31 nondurable power of attorney, a person who is authorized to make decisions 32 concerning another person's health care and a person who is authorized to 33 make decisions for another person under a natural death act. 2. "Application" means a written request to the registrar for an 34 35 order of informal probate or appointment under chapter 3, article 3 of 36 this title. 3. "Basis for compensation" means an hourly rate, a fixed fee or a 37 contingency fee agreement and reimbursable costs. 38 39 4. "Beneficiary", as it relates to a trust beneficiary, includes a 40 person who has any present or future interest, vested or contingent, and 41 includes the owner of an interest by assignment or other transfer. As it 42 relates to a charitable trust, beneficiary includes any person entitled to 43 enforce the trust. As it relates to a beneficiary of a beneficiary designation, beneficiary refers to a beneficiary of an insurance or 44 45 annuity policy, an account with pay on death designation, a security

1 registered in beneficiary form or a pension, profit sharing, retirement or 2 similar benefit plan, or any other nonprobate transfer at death. As it 3 relates to a beneficiary designated in a governing instrument, beneficiary 4 includes a grantee of a deed, a devisee, a trust beneficiary, a 5 beneficiary of a beneficiary designation, a donee, appointee or taker in 6 default of a power of appointment and a person in whose favor a power of 7 attorney or a power held in any person, fiduciary or representative 8 capacity is exercised.

9 5. "Beneficiary designation" refers to a governing instrument 10 naming a beneficiary of an insurance or annuity policy, of an account with 11 pay on death designation, of a security registered in beneficiary form or 12 of a pension, profit sharing, retirement or similar benefit plan, or any 13 other nonprobate transfer at death.

6. "Certified paper original" means a tangible medium that contains both the text of an electronic will and any self-proving affidavit concerning the electronic will and that is accompanied by an affidavit that is executed pursuant to section 14-2523.

18 7. "Child" includes a person who is entitled to take as a child 19 under this title by intestate succession from the parent whose 20 relationship is involved. Child excludes a person who is only a 21 stepchild, a foster child, a grandchild or a more remote descendant.

22 8. "Claims", in respect to estates of decedents and protected 23 persons, includes liabilities of the decedent or the protected person, 24 whether arising in contract, in tort or otherwise, and liabilities of the 25 estate that arise at or after the death of the decedent or after the 26 appointment of a conservator, including funeral expenses and expenses of 27 administration. Claims do not include estate or inheritance taxes or 28 demands or disputes regarding title of a decedent or a protected person to 29 specific assets alleged to be included in the estate.

9. "Community property" means that property of a husband and wife
 that is acquired during the marriage and that is community property as
 prescribed in section 25-211.

33 10. "Conservator" means a person who is appointed by a court to 34 manage the estate of a protected person.

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11. "Court" means the superior court.

36 12. "Dependent child" means a minor child whom the decedent was 37 obligated to support or an adult child who was in fact being supported by 38 the decedent at the time of the decedent's death.

39 13. "Descendant" means all of the decedent's descendants of all
 40 generations, with the relationship of parent and child at each generation.

41 14. "Devise", when used as a noun, means a testamentary disposition 42 of real or personal property and, when used as a verb, means to dispose of 43 real or personal property by will.

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1 15. "Devisee" means a person designated in a will to receive a 2 devise. For the purposes of chapter 3 of this title, in the case of a 3 devise to an existing trust or trustee, or to a trustee on trust described 4 by will, the trust or trustee is the devisee and the beneficiaries are not 5 devisees.

6 16. "Disability" means cause for a protective order as described in 7 section 14-5401.

8 17. "Distributee" means any person who has received property of a 9 decedent from that person's personal representative other than as a creditor or purchaser. Distributee includes a testamentary trustee only 10 11 to the extent of distributed assets or increment that remains in that person's hands. A beneficiary of a testamentary trust to whom the trustee 12 13 has distributed property received from a personal representative is a 14 distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are 15 16 transferred by will, to the extent of the devised assets.

17 18. "Electronic" means having electrical, digital, magnetic,18 optical, electromagnetic or similar capabilities.

19 19. "Electronic record" means a record that is created, generated,20 sent, communicated, received or stored by electronic means.

20. "Electronic signature" means an electronic method or process 22 that does both of the following:

(a) Is attached to or logically associated with an electronic
 record and that is executed or adopted by a person with the intent to sign
 the electronic record.

26 (b) Uses a security procedure that allows a determination that the 27 electronic signature was all of the following:

28 29 (i) Unique to the person using it.

(ii) Capable of verification.

30 (iii) Under the sole control of the person making the electronic 31 signature.

(iv) Linked to the electronic record to which the electronic
 signature relates in a manner so that if the electronic record is changed
 the electronic signature is invalidated.

35 21. "Electronic will" means a testamentary instrument that is 36 executed and maintained on an electronic medium and that is executed in 37 compliance with section 14-2518.

22. "Electronically present" means two or more individuals who are in a different physical location and who are communicating by means of technology that enables all individuals to see and hear each other in real time to the same extent as if the individuals were physically present in the same location.

23. "Estate" includes the property of the decedent, trust or other
person whose affairs are subject to this title as originally constituted
and as it exists from time to time during administration. As it relates

1 to a spouse, the estate includes only the separate property and the share 2 of the community property belonging to the decedent or person whose 3 affairs are subject to this title.

4 24. "Exempt property" means that property of a decedent's estate 5 that is described in section 14-2403.

6 25. "Fiduciary" includes a personal representative, guardian, 7 conservator and trustee.

8 26. "Foreign personal representative" means a personal 9 representative who is appointed by another jurisdiction.

10 27. "Formal proceedings" means proceedings that are conducted 11 before a judge with notice to interested persons.

12 28. "Governing instrument" means a deed, will, trust, insurance or 13 annuity policy, account with pay on death designation, security registered 14 in beneficiary form, pension, profit sharing, retirement or similar 15 benefit plan, instrument creating or exercising a power of appointment or 16 a power of attorney OR SUPPORTED DECISION-MAKING AGREEMENT or a 17 dispositive, appointive or nominative instrument of any similar type.

18 29. "Guardian" means a person who has qualified as a guardian of a 19 minor or incapacitated person pursuant to testamentary or court 20 appointment but excludes a person who is merely a guardian ad litem.

30. "Guardian ad litem" includes a person who is appointed pursuant
 to section 14-1408.

31. "Heirs", except as controlled by section 14-2711, means
 persons, including the surviving spouse and the state, who are entitled
 under the statutes of intestate succession to the property of a decedent.

26 32. "Incapacitated person" has the same meaning prescribed in 27 section 14-5101.

28 33. "Informal proceedings" means those proceedings conducted 29 without notice to interested persons by an officer of the court acting as 30 a registrar for probate of a will or appointment of a personal 31 representative.

34. "Interested person" includes any trustee, heir, devisee, child, 32 33 spouse, creditor, beneficiary, person holding a power of appointment and other person who has a property right in or claim against a trust estate 34 or the estate of a decedent, ward or protected person. Interested person 35 36 also includes a person who has priority for appointment as personal 37 representative and other fiduciaries representing interested persons. 38 Interested person, as the term relates to particular persons, may vary 39 from time to time and must be determined according to the particular 40 purposes of, and matter involved in, any proceeding.

41 35. "Issue" of a person means descendant as defined in this 42 section.

43 36. "Joint tenants with the right of survivorship" and "community 44 property with the right of survivorship" includes co-owners of property 45 held under circumstances that entitle one or more to the whole of the

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1 property on the death of the other or others but excludes forms of 2 co-ownership registration in which the underlying ownership of each party 3 is in proportion to that party's contribution.

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"Lease" includes any oil, gas or other mineral lease. 37.

5 38. "Letters" includes letters testamentary. of letters 6 guardianship, letters of administration and letters of conservatorship.

7

39. "Minor" means a person who is under eighteen years of age.

8 "Mortgage" means any conveyance, agreement or arrangement in 40. 9 which property is encumbered or used as security. Mortgage does not include leases or easements. 10

11 41. "Nonresident decedent" means a decedent who was domiciled in 12 another jurisdiction at the time of the decedent's death.

13 42. "Organization" means a corporation, limited liability company, 14 business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or 15 16 commercial entity.

17 "Original will" means either an original paper will or a 43. 18 certified paper original of an electronic will.

19 44. "Paper will" means a testamentary instrument that is executed 20 and maintained on a tangible medium and that is executed in compliance 21 with section 14-2502 or 14-2503.

22 45. "Parent" includes any person entitled to take, or who would be 23 entitled to take if the child died without a will, as a parent under this 24 title by intestate succession from the child whose relationship is in 25 question and excludes any person who is only a stepparent, foster parent 26 or grandparent.

27 46. "Payor" means a trustee, insurer, business entity, employer, 28 government, governmental agency or subdivision or any other person who is 29 authorized or obligated by law or a governing instrument to make payments. 30

"Person" means an individual or an organization. 47.

"Personal 31 48. representative" includes an executor, an 32 representative. administrator. а successor personal а special administrator and persons who perform substantially the same function 33 34 under the law governing their status. A general personal representative 35 excludes a special administrator.

36 49. "Petition" means a written request to the court for an order 37 after notice.

38

"Proceeding" includes action at law and suit in equity. 50.

39 "Property" has the same meaning prescribed in section 14-10103. 51.

40 52. "Protected person" has the same meaning prescribed in section 41 14-5101.

42 53. "Protective proceeding" has the same meaning prescribed in 43 section 14-5101.

"Qualified custodian" 44 54. means a person who fulfills the 45 requirements of section 14-2520.

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1 55. "Registrar" means the official of the court who is designated 2 to perform the functions of registrar as provided in section 14-1307.

3 56. "Security" includes any note, stock, treasury stock, bond, 4 evidence of indebtedness, certificate of interest debenture, or 5 participation in an oil, gas or mining title or lease or in payments out 6 of production under that title or lease, collateral trust certificate, 7 transferable share or voting trust certificate and, in general, includes 8 any interest or instrument commonly known as a security, or any 9 certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or 10 11 right to subscribe to or purchase, any of these securities.

12 57. "Separate property" means that property of a husband or wife 13 that is the spouse's separate property as defined in section 25-213.

14 58. "Settlement", in reference to a decedent's estate, includes the 15 full process of administration, distribution and closing.

16 59. "Special administrator" means a personal representative as 17 described by sections 14-3614 through 14-3618.

18

60. "State" has the same meaning prescribed in section 14-10103.

19 61. "Successor personal representative" means a personal 20 representative, other than a special administrator, who is appointed to 21 succeed a previously appointed personal representative.

62. "Successors" means persons, other than creditors, who are entitled to property of a decedent under a will or this title.

63. "Supervised administration" refers to the proceedings described in chapter 3, article 5 of this title.

64. "Survive" means that a person has neither predeceased an event,
including the death of another person, nor is deemed to have predeceased
an event under section 14-2104 or 14-2702.

65. "Tangible medium" means a medium on which information may be inscribed by writing, typing, printing or similar means and that is perceivable by reading directly from the medium on which the information is inscribed.

33 66. "Testacy proceeding" means a proceeding to establish a will or 34 determine intestacy.

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67. "Testator" includes a person of either sex.

36 68. "Trust" includes an express trust, private or charitable, with 37 any additions, wherever and however created. Trust also includes a trust created or determined by judgment or decree under which the trust is to be 38 39 administered in the manner of an express trust. Trust excludes other 40 constructive trusts and excludes resulting trusts, conservatorship, 41 personal representatives, trust accounts, custodial arrangements pursuant 42 to chapter 7, article 7 of this title, business trusts providing for 43 certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the 44 45 primary purpose of paying debts, dividends, interest, salaries, wages,

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profits, pensions or employee benefits of any kind, trusts created by a city or town for the payment of medical insurance, health care benefits or expenses, long-term or short-term disability, self insurance reserves and similar programs administered by a city or town, legal defense trusts and any arrangement under which a person is nominee or escrowee for another.

6 69. "Trustee" includes an original, additional or successor 7 trustee, whether or not appointed or confirmed by the court.

8

70. "Ward" has the same meaning prescribed in section 14-5101.

9 71. "Will" includes a codicil and any testamentary instrument that 10 merely appoints an executor, revokes or revises another will, nominates a 11 guardian or expressly excludes or limits the right of an individual or 12 class to succeed to property of the decedent passing by intestate 13 succession. A will may be a paper will or an electronic will.

14 Sec. 3. Section 14–1306, Arizona Revised Statutes, is amended to 15 read:

16

14-1306. <u>Jury trial</u>

17 A. If duly demanded, a party is entitled to trial by jury in any 18 proceeding in which any controverted question of fact arises as to which 19 any party has a constitutional right to trial by jury.

B. If there is no right to trial by jury under subsection A OF THIS SECTION or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

24 Sec. 4. Section 14–1401, Arizona Revised Statutes, is amended to 25 read:

26

14-1401. Notice; method and time of giving; damage

A. If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given either:

1. By mailing a copy thereof at least fourteen days before the time set for the hearing by certified, OR registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known.

By delivering a copy thereof to the person being notified
 personally at least fourteen days before the time set for the hearing.

40 3. If the address or identity of any person is not known and cannot 41 be ascertained with reasonable diligence, or when otherwise required under 42 this title, by publishing at least three times prior to BEFORE the date 43 set for the hearing a copy thereof in a newspaper having general 44 circulation in the county where the hearing is to be held, the first 45 publication of which is to be at least fourteen days before the hearing.

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1 B. The court for good cause shown may provide for a different 2 method or time of giving notice for any hearing. 3 C. Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding. 4 5 Sec. 5. Title 14, chapter 5, article 1, Arizona Revised Statutes, 6 is amended by adding section 14-5111, to read: 7 14-5111. Duties of appointed attorney; contempt 8 A. NO LATER THAN SEVEN CALENDAR DAYS BEFORE THE INITIAL HEARING ON 9 A PETITION FOR THE APPOINTMENT OF A PERMANENT GUARDIAN OR PERMANENT CONSERVATOR, THE ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON OR THE 10 11 PERSON ALLEGEDLY IN NEED OF PROTECTION SHALL FULFILL THE FOLLOWING MINIMAL 12 DUTIES: 13 1. INTERVIEW THE ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY 14 IN NEED OF PROTECTION. 15 2. INFORM THE ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY IN 16 NEED OF PROTECTION OF ALL THE FOLLOWING: 17 (a) THE RIGHT TO A TRIAL BY JURY PURSUANT TO SECTION 14-1306. 18 (b) THE RIGHT TO SELECT AN ATTORNEY OF THE PERSON'S CHOOSING. IF 19 THE ATTORNEY IS APPOINTED BY THE COURT, THE ATTORNEY SHALL EXPLAIN TO THE 20 ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY IN NEED OF PROTECTION 21 THAT THE PERSON MAY HIRE A DIFFERENT ATTORNEY AT THE PERSON'S OWN EXPENSE. 22 (c) THE RIGHT OF THE ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY IN NEED OF PROTECTION TO APPEAR IN COURT AND HAVE ANY PERSON THE 23 24 ALLEGED INCAPACITATED PERSON OR PERSON ALLEGEDLY IN NEED OF PROTECTION 25 WISHES TO BE PRESENT WITH THE ALLEGED INCAPACITATED PERSON OR PERSON 26 ALLEGEDLY IN NEED OF PROTECTION. 27 (d) A REVIEW OF THE COURT PROCESS, TIMELINES AND EXPECTED FUTURE **PROCEEDINGS.** 28 29 3. PROVIDE THE INCAPACITATED PERSON OR PERSON ALLEGEDLY IN NEED OF PROTECTION WITH A COPY OF THE SUPREME COURT PROMULGATED ORDER TO A 30 31 GUARDIAN, ORDER TO CONSERVATOR OR ORDER TO GUARDIAN AND CONSERVATOR THAT 32 THE COURT WILL ENTER IF THE RELIEF REQUESTED IN THE PETITION IS GRANTED. 33 B. AT THE INITIAL HEARING ON THE PETITION FOR APPOINTMENT, THE ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON OR THE PERSON ALLEGEDLY IN 34 NEED OF PROTECTION SHALL ATTEST TO THE COURT THAT THE ATTORNEY HAS 35 36 FULFILLED THE REQUIREMENTS PRESCRIBED IN THIS SECTION OR SHALL PROVIDE AN 37 EXPLANATION AS TO WHY THE ATTORNEY HAS BEEN UNABLE TO COMPLY WITH THE REQUIREMENTS PRESCRIBED IN THIS SECTION. 38 39 C. THE COURT MAY FIND AN ATTORNEY WHO FAILS TO FULFILL THE DUTIES 40 PRESCRIBED IN THIS SECTION IN CONTEMPT OF COURT.

1 Sec. 6. Section 14-5303, Arizona Revised Statutes, is amended to 2 read: 3 14-5303. Procedure for court appointment of a guardian of an 4 alleged incapacitated person 5 A. The alleged incapacitated person or any person interested in 6 that person's affairs or welfare may petition for the appointment of a 7 guardian or for any other appropriate protective order. 8 B. The petition shall contain a statement that the authority 9 granted to the guardian may include the authority to withhold or withdraw life sustaining treatment, including artificial food and fluid, and shall 10 11 state, at a minimum and to the extent known, all of the following: 1. The interest of the petitioner. 12 13 2. The name, age, residence and address of the alleged 14 incapacitated person. 3. The name, address and priority for appointment of the person 15 16 whose appointment is sought. 17 4. The name and address of the conservator, if any, of the alleged 18 incapacitated person. 19 5. The name and address of the nearest relative of the alleged 20 incapacitated person known to the petitioner. 21 6. A general statement of the property of the alleged incapacitated 22 person, with an estimate of its value and including any compensation, 23 insurance, pension or allowance to which the person is entitled. 24 7. The reason why appointment of a guardian or any other protective 25 order is necessary. 26 8. The type of guardianship requested. If a general guardianship is requested, the petition must state that other alternatives have been 27 28 explored and why a limited guardianship is not appropriate. If a limited 29 guardianship is requested, the petition also must state what specific 30 powers are requested. 9. 31 If a legal decision-making, parenting time or visitation order 32 was previously entered regarding an alleged incapacitated person in a 33 marriage dissolution, legal separation or paternity action in this state or another jurisdiction and the petitioner or proposed guardian is a 34 35 parent of the alleged incapacitated person or a nonparent who has been 36 awarded legal decision-making as to the alleged incapacitated person, the 37 court and case number for that action or proceeding and include a copy of 38 the most recent court order regarding legal decision-making, parenting 39 time and visitation. 40 10. If the appointment of a guardian is necessary due solely to the 41 physical incapacity of the alleged incapacitated person. 11. WHETHER THE ALLEGED INCAPACITATED PERSON IS THE PRINCIPAL UNDER 42 43 A HEALTH CARE POWER OF ATTORNEY, AND, IF SO, A COPY OF THAT HEALTH CARE POWER OF ATTORNEY MUST BE ATTACHED TO THE PETITION. 44

1 12. WHETHER THE ALLEGED INCAPACITATED PERSON IS THE PRINCIPAL UNDER 2 A DURABLE POWER OF ATTORNEY IN WHICH THE ALLEGED INCAPACITATED PERSON HAS 3 NOMINATED SOMEONE TO SERVE AS GUARDIAN, AND, IF SO, A COPY OF THAT DURABLE 4 POWER OF ATTORNEY MUST BE ATTACHED TO THE PETITION.

5 13. WHETHER THE ALLEGED INCAPACITATED PERSON HAS A PRESENT VESTED 6 INTEREST IN A TRUST, AND, IF SO, THE NAME OF THE TRUST AND THE CURRENT 7 TRUSTEE OF THE TRUST.

8 C. On the filing of a petition, the court shall set a hearing date 9 on the issues of incapacity. Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to 10 11 represent that person in the proceeding. The alleged incapacitated person 12 shall be interviewed by an investigator appointed by the court and shall 13 be examined by a physician, psychologist or registered nurse appointed by 14 the court. If the alleged incapacitated person has an established 15 relationship with a physician, psychologist or registered nurse who is 16 determined by the court to be qualified to evaluate the capacity of the 17 alleged incapacitated person, the court may appoint the alleged 18 incapacitated person's physician, psychologist or registered nurse 19 pursuant to this subsection. The investigator and the person conducting 20 the examination shall submit their reports in writing to the court. In 21 addition to information required under subsection D OF THIS SECTION, the 22 court may direct that either report include other information the court 23 deems appropriate. The investigator also shall interview the person 24 seeking appointment as guardian, visit the present place of abode of the 25 alleged incapacitated person and the place where it is proposed that the 26 person will be detained or reside if the requested appointment is made and 27 submit a report in writing to the court. The alleged incapacitated person 28 is entitled to be present at the hearing and to see or hear all evidence 29 bearing on that person's condition. The alleged incapacitated person is 30 be represented by counsel, to present entitled to evidence. to 31 cross-examine witnesses, including the court-appointed examiner and 32 investigator, and to trial by jury. The court may determine the issue at 33 a closed hearing if the alleged incapacitated person or that person's 34 counsel so requests.

35D. AT THE INITIAL HEARING ON THE PETITION, THE COURT SHALL READ36INTO THE RECORD THE NOTICE OF RIGHT TO TRIAL BY JURY AS STATED IN THE37NOTICE OF HEARING.

38 D. E. A report filed pursuant to this section by a physician, 39 psychologist or registered nurse acting within that person's scope of 40 practice shall include the following information:

41 1. A specific description of the physical, psychiatric or 42 psychological diagnosis of the person.

A comprehensive assessment listing any functional impairments of
 the alleged incapacitated person and an explanation of how and to what
 extent these functional impairments may prevent that person from receiving

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1 or evaluating information in making decisions or in communicating informed 2 decisions regarding that person.

3 3. An analysis of the tasks of daily living the alleged 4 incapacitated person is capable of performing without direction or with 5 minimal direction.

6 4. A list of all medications the alleged incapacitated person is 7 receiving, the dosage of the medications and a description of the effects 8 each medication has on the person's behavior to the best of the 9 declarant's knowledge.

10 5. A prognosis for improvement in the alleged incapacitated 11 person's condition and a recommendation for the most appropriate 12 rehabilitation plan or care plan.

13 6. Other information the physician, psychologist or registered14 nurse deems appropriate.

15 Sec. 7. Section 14-5309, Arizona Revised Statutes, is amended to 16 read:

17

14-5309. Notices in guardianship proceedings

A. In a proceeding for a contact order or modification of a contact order pursuant to section 14-5316 or for the appointment or substitution of a guardian of a ward or an alleged incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of a hearing shall be given to each of the following:

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

25 2. Any person who is serving as guardian or conservator or who has 26 the care and custody of the ward or the alleged incapacitated person.

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

30

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

31 B. At least fourteen days before the hearing notice shall be served 32 personally on the ward or the alleged incapacitated person and that 33 person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and 34 35 to all other persons except the ward or the alleged incapacitated person 36 shall be given as provided in section 14-1401. Waiver of notice by the 37 ward or the alleged incapacitated person is not effective unless that 38 person attends the hearing.

C. IN ADDITION TO STATING THE TIME AND PLACE OF THE HEARING, A
NOTICE GIVEN PURSUANT TO THIS SECTION SHALL PROVIDE NOTICE OF THE RIGHT TO
A TRIAL BY JURY UNDER SECTION 14-1306, SUBSECTION A.

42 D. THE COURT MAY ORDER A PERSON WHO INTENTIONALLY FAILS TO PROVIDE 43 NOTICE OF A HEARING AS REQUIRED BY THIS SECTION, OR WHO KNOWINGLY MAKES A 44 FALSE CLAIM THAT THE PERSON DID NOT RECEIVE NOTICE OF A HEARING, TO PAY

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1 DAMAGES, INCLUDING REASONABLE ATTORNEY FEES AND COSTS, INCURRED AS A 2 RESULT OF SUCH UNREASONABLE CONDUCT. 3 Sec. 8. Section 14-5316, Arizona Revised Statutes, is amended to 4 read: 5 14-5316. Maintaining ward's relationships; contact orders; 6 definitions 7 A. A guardian shall encourage and allow contact between the ward 8 and other persons who have a significant relationship with the ward. 9 B. Notwithstanding subsection A of this section, a guardian may SHALL NOT limit, restrict or prohibit contact between the ward and any 10 11 person if WITH WHOM THE WARD WISHES TO HAVE CONTACT UNLESS the guardian reasonably believes that the contact will be detrimental to the ward's 12 13 health, safety or welfare. 14 C. In exercising the guardian's powers pursuant to subsections A 15 and B of this section, the guardian shall consider the wishes of the ward, 16 if the ward has sufficient mental capacity to make an intelligent choice. 17 D. A person who has a significant relationship to the ward may 18 petition the court for an order compelling the guardian to allow the 19 person to have contact with the ward. The petition shall describe the 20 nature of the relationship between the person and the ward and the type 21 and frequency of contact being requested. The person has the burden of 22 proving that the person has a significant relationship with the ward and 23 that the requested contact is in the ward's best interest. THE GUARDIAN 24 HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE 25 REQUESTED CONTACT WILL BE DETRIMENTAL TO THE WARD'S HEALTH, SAFETY OR 26 WELFARE. 27 E. A ward may petition the court for an order compelling the 28 guardian to allow the ward to have contact with a person who has a 29 significant relationship to the ward. The petition shall describe the nature of the relationship between the person and the ward and the type 30 31 and frequency of contact being requested. The ward has the burden of 32 proving that the person has a significant relationship with the ward and 33 that the requested contact is in the ward's best interest. THE GUARDIAN HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE 34 35 REQUESTED CONTACT WILL BE DETRIMENTAL TO THE WARD'S HEALTH, SAFETY OR 36 WELFARE. F. AFTER FILING A PETITION PURSUANT TO SUBSECTION D OR E OF THIS 37 38 SECTION, THE PETITIONER SHALL REQUEST THAT THE COURT SET AN INITIAL 39 HEARING ON THE PETITION. UNLESS THE PETITIONER REQUESTS A LATER INITIAL 40 HEARING, THE INITIAL HEARING SHALL OCCUR AS SOON AS POSSIBLE BUT NO LATER 41 THAN FIFTEEN JUDICIAL DAYS AFTER THE COURT RECEIVES THE PETITIONER'S 42 **REQUEST.** 43 G. In determining what, if any, contact between the person and F.

the ward is in the ward's best interest, the court shall consider all

1 factors that are relevant to the ward's physical and emotional well-being, 2 including the following:

3 1. The past and present relationship between the ward and the 4 person with whom the contact is requested.

5 2. The wishes of the ward if the ward has sufficient mental 6 capacity to make an intelligent choice.

7 3. The mental and physical health of the ward and the person with 8 whom the contact is requested.

9 4. Whether the person with whom the contact is requested has 10 committed any act involving domestic violence as defined in section 11 13-3601, child abuse or abuse, neglect or exploitation of a vulnerable 12 adult.

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

16 6. Whether the person with whom the contact is requested is listed 17 in the elder abuse central registry pursuant to section 46-457 or is 18 required to register pursuant to section 13-3821.

19 7. Whether the person with whom the contact is requested has been 20 convicted of a violation of section 13-2907.02 or 13-2907.04.

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

H. I. A court-appointed fiduciary for the ward or a person who has 28 29 a significant relationship to the ward may petition the court to modify a contact order, if a material change in circumstances affecting the ward's 30 31 health, safety or welfare has occurred since the last contact order was 32 made. The petition shall be supported by an affidavit alleging the change of circumstances that has occurred since the entry of the last contact 33 order. The court shall deny the petition unless the court finds that the 34 35 petition establishes good cause for hearing, in which case the court shall 36 set a hearing on the petition. The petition and notice of the hearing on the petition shall be served on all persons to whom notice is required 37 38 pursuant to section 14-5309 and on any court-appointed fiduciary for the 39 ward.

40 I. J. A court-appointed fiduciary for the ward or a person who has 41 a significant relationship to the ward may file a motion asking the court 42 to temporarily modify or suspend a contact order, if a material change in 43 circumstances affecting the ward's health, safety or welfare has occurred 44 since the last contact order was made. The motion shall be supported by 45 an affidavit alleging the change of circumstances that has occurred since 1 the entry of the last contact order. The motion shall be filed 2 contemporaneously with or after the filing of a petition to modify the 3 prior contact order. The motion shall state whether the petitioner 4 requests that the prior contact order be modified or suspended with or 5 without notice to affected persons.

6 <del>J.</del> K. The court may temporarily modify or suspend a contact order 7 without notice only if both of the following conditions are met:

8 1. It clearly appears from specific facts shown in the motion or 9 affidavit that immediate and irreparable injury, loss or damage likely 10 will result if the order is not issued before the affected persons can be 11 heard in opposition.

12 2. The moving party or the party's attorney certifies to the court 13 in writing the efforts, if any, that the moving party or the party's 14 attorney has made to give the notice or the reasons supporting the claim 15 that notice should not be required.

16 K. L. If the court grants a motion to temporarily modify or 17 suspend a contact order without notice, the court shall set a hearing on 18 the motion.

19 **L.** M. An order temporarily modifying or suspending a contact order 20 that is granted without notice shall state the injury, loss or damage that 21 would have been likely to occur if the order were not issued before giving 22 the affected persons the opportunity to be heard in opposition. The 23 temporary order shall expire at the date and time set for the hearing on 24 the motion unless the temporary order is extended by the court for good 25 cause.

M. N. The moving party shall 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. The moving party shall have served a copy of the order on any court-appointed fiduciary for the ward and all persons affected by the order as soon as practicable after issuance of the order in the manner prescribed in section 14-5309 or as otherwise ordered by the court.

0. IF, IN A PROCEEDING BROUGHT UNDER THIS SECTION, THE COURT FINDS
THAT THE GUARDIAN HAS UNREASONABLY DENIED CONTACT BETWEEN A WARD AND A
PERSON WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE WARD, THE COURT MAY DO
EITHER, OR BOTH, OF THE FOLLOWING:

37

### 1. REMOVE THE GUARDIAN.

38 2. ORDER THE GUARDIAN TO PERSONALLY PAY SOME OR ALL OF THE
 39 REASONABLE ATTORNEY FEES AND EXPENSES INCURRED BY THE PERSON OR THE WARD,
 40 OR BOTH.

41

N. P. For the purposes of this section:

42 1. "Abuse" in relation to a vulnerable adult has the same meaning43 prescribed in section 46-451.

44 2. "Child abuse" means abuse as defined in section 8-201 of an 45 individual who is under eighteen years of age.

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1 3. "Exploitation" has the same meaning prescribed in section 2 46-451.

3

4. "Neglect" has the same meaning prescribed in section 46-451.

4 5. "Vulnerable adult" has the same meaning prescribed in section 5 46-451.

6 Sec. 9. Section 14-5401, Arizona Revised Statutes, is amended to 7 read:

8

14-5401. Protective proceedings; fingerprinting

9 A. On petition and after notice and a hearing pursuant to this 10 article, the court may appoint a conservator or make another protective 11 order for cause as follows:

12 1. Appointment of a conservator or other protective order may be 13 made in relation to the estate and affairs of a minor if the court 14 determines that a minor owns money or property that requires management or 15 protection that cannot otherwise be provided or has or may have affairs 16 that may be jeopardized or prevented by minority or that funds are needed 17 for the minor's support and education and that protection is necessary or 18 desirable to obtain or provide funds.

19 2. Appointment of a conservator or other protective order may be 20 made in relation to the estate and affairs of a person if the court 21 specifically finds BY CLEAR AND CONVINCING EVIDENCE on the record both of 22 the following:

(a) The person is unable to manage the person's estate and affairs
effectively for reasons such as mental illness, mental deficiency, mental
disorder, physical illness or disability, chronic use of drugs, chronic
intoxication, confinement, detention by a foreign power or disappearance.

(b) The person has property that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

32 B. On petition and after notice and a hearing pursuant to this article, the court may continue a conservatorship or other protective 33 order entered pursuant to subsection A, paragraph 1 of this section beyond 34 35 the minor's eighteenth birthday if the court determines that the order is 36 appropriate pursuant to subsection A, paragraph 2 of this section. The 37 petition shall comply with the requirements of section 14-5404, subsection B and must be filed after the minor's seventeenth birthday and before 38 39 termination of the conservatorship by court order.

C. The court may require each person who seeks appointment as a conservator to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. The court shall submit the person's completed fingerprint card to the department of public safety. The person shall bear the cost of obtaining the person's criminal history record information. The cost shall not exceed the actual cost of 1 obtaining the person's criminal history record information. Criminal 2 history records checks shall be conducted pursuant to section 41-1750 and 3 Public Law 92-544. The department of public safety may exchange this 4 the federal fingerprint data with bureau of investigation. This 5 subsection does not apply to a fiduciary who is licensed pursuant to 6 section 14-5651 or an employee of a financial institution.

7 D. UNLESS THE ALLEGED BASIS FOR THE APPOINTMENT OF A CONSERVATOR OR 8 ENTRY OF A PROTECTIVE ORDER IS THAT THE PERSON ALLEGEDLY IN NEED OF 9 PROTECTION IS CONFINED, DETAINED BY A FOREIGN POWER OR MISSING, THE COURT SHALL NOT APPOINT A CONSERVATOR OR ENTER A PROTECTIVE ORDER FOR A PERSON 10 11 UNDER SUBSECTION A, PARAGRAPH 2 OF THIS SECTION UNLESS THE PERSON ALLEGEDLY IN NEED OF PROTECTION HAS APPEARED BEFORE THE COURT EITHER IN 12 13 PERSON OR BY VIRTUAL MEANS. IF THAT PERSON IS UNABLE OR UNWILLING TO 14 APPEAR IN PERSON OR BY VIRTUAL MEANS, EVIDENCE OF THE PERSON'S INABILITY OR UNWILLINGNESS TO ATTEND SHALL BE PRESENTED TO THE COURT. IF THE PERSON 15 16 DOES NOT WISH TO ATTEND IN PERSON OR BY VIRTUAL MEANS, A DECLARATION 17 SIGNED BY THAT PERSON SHALL BE FILED WITH THE COURT TO PROVE THE PERSON'S 18 INABILITY OR UNWILLINGNESS TO ATTEND. THE COURT SHALL WEIGH THE EVIDENCE. 19 REQUEST ADDITIONAL EVIDENCE IF NECESSARY AND DOCUMENT ALL EVIDENCE IN THE 20 COURT RECORD.

21 22

23

24

Sec. 10. Section 14-5404, Arizona Revised Statutes, is amended to read: 14-5404. Original petition for appointment or protective

A. The person allegedly in need of protection, any person who is interested in that person's estate or affairs, including that person's parent, guardian or custodian, or any person who would be adversely affected by lack of effective management of that person's estate and affairs may petition for the appointment of a conservator or for any other appropriate protective order.

B. The petition shall set forth, at a minimum and to the extent known, all of the following:

33

1. The interest of the petitioner.

order

2. The name, age, residence and address of the person allegedly in need of protection.

36 3. The name, address and priority for appointment of the person 37 whose appointment is sought.

38 4. The name and address of the guardian, if any, of the person39 allegedly in need of protection.

40 5. The name and address of the nearest relative of the person 41 allegedly in need of protection known to the petitioner.

6. A general statement of the estate of the person allegedly in need of protection with an estimate of its value, including any compensation, insurance, pension or allowance to which the person is entitled.

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1 7. The reason why appointment of a conservator or any other 2 protective order is necessary.

3 4 5 8. WHETHER THE PERSON ALLEGEDLY IN NEED OF PROTECTION IS THE PRINCIPAL UNDER A DURABLE POWER OF ATTORNEY, AND, IF SO, A COPY OF THAT DURABLE POWER OF ATTORNEY MUST BE ATTACHED TO THE PETITION.

6

9. WHETHER THE PERSON ALLEGEDLY IN NEED OF PROTECTION IS THE
7 PRINCIPAL UNDER A HEALTH CARE POWER OF ATTORNEY IN WHICH THE PERSON
8 NOMINATES A CONSERVATOR, AND, IF SO, A COPY OF THAT HEALTH CARE POWER OF
9 ATTORNEY MUST BE ATTACHED TO THE PETITION.

10 10. WHETHER THE PERSON ALLEGEDLY IN NEED OF PROTECTION HAS A 11 PRESENT VESTED INTEREST IN A TRUST, AND, IF SO, THE NAME OF THE TRUST AND 12 THE CURRENT TRUSTEE OF THE TRUST.

13 Sec. 11. Section 14–5405, Arizona Revised Statutes, is amended to 14 read:

15

14-5405. Notice in conservatorship proceedings

A. In a proceeding for the appointment or substitution of a conservator of a protected person or person allegedly in need of protection, other than the appointment of a temporary conservator or temporary suspension of a conservator, and in a proceeding to continue a conservatorship or other protective order pursuant to section 14-5401, subsection B, notice of the hearing shall be given to each of the following:

The protected person or the person allegedly in need of
 protection if that person is fourteen years of age or older.

25 2. The spouse, parents and adult children of the protected person 26 or person allegedly in need of protection, or if no spouse, parents or 27 adult children can be located, at least one adult relative of the 28 protected person or the person allegedly in need of protection, if such a 29 relative can be found.

30 3. Any person who is serving as guardian or conservator or who has 31 the care and custody of the protected person or person allegedly in need 32 of protection.

33

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

34 B. At least fourteen days before the hearing notice shall be served personally on the protected person or the person allegedly in need of 35 36 protection and that person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be 37 found within the state, and to all other persons except the protected 38 person or the person allegedly in need of protection shall be given in 39 40 accordance with section 14-1401. Waiver of notice by the protected person 41 or the person allegedly in need of protection is not effective unless the 42 protected person or the person allegedly in need of protection attends the 43 hearing.

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1 C. IN ADDITION TO STATING THE TIME AND PLACE OF THE HEARING, A 2 NOTICE GIVEN PURSUANT TO THIS SECTION SHALL PROVIDE NOTICE OF THE RIGHT TO 3 A TRIAL BY JURY UNDER SECTION 14-1306, SUBSECTION A.

D. THE COURT MAY ORDER A PERSON WHO INTENTIONALLY FAILS TO PROVIDE NOTICE OF A HEARING AS REQUIRED BY THIS SECTION, OR WHO KNOWINGLY MAKES A FALSE CLAIM THAT THE PERSON DID NOT RECEIVE NOTICE OF A HEARING, TO PAY DAMAGES, INCLUDING REASONABLE ATTORNEY FEES AND COSTS, INCURRED AS A RESULT OF SUCH UNREASONABLE CONDUCT.

9 Sec. 12. Section 14-5407, Arizona Revised Statutes, is amended to 10 read:

11 12

# 14-5407. <u>Procedure concerning hearing and order on original</u> <u>petition</u>

A. On the filing of a petition for appointment of a conservator or any other protective order because of minority, the court shall set a hearing date on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it shall appoint an attorney to represent the minor. If the minor is at least fourteen years of age the court shall consider the choice of the minor.

20 B. On the filing of a petition for appointment of a conservator or 21 any other protective order for reasons other than minority, or on the 22 filing of a petition for continuation of a conservatorship or other 23 protective order pursuant to section 14-5401, subsection B, the court 24 shall set a hearing date. Unless the person to be protected has counsel 25 of that person's own choice, the court shall appoint an attorney to 26 represent that person. If the alleged disability is mental illness, 27 mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, or chronic intoxication, the court shall appoint an 28 29 investigator to interview the person to be protected. On petition by an 30 interested person or on the court's own motion, the court may direct that 31 an appropriate medical or psychological evaluation of the person be 32 conducted. The investigator and the person conducting the medical or 33 psychological evaluation shall submit written reports to the court before 34 the hearing date.

35 C. In any case where the veterans administration UNITED STATES 36 DEPARTMENT OF VETERANS AFFAIRS is or may be an interested party, a 37 certificate of an authorized official of the veterans administration 38 UNITED STATES DEPARTMENT OF VETERANS AFFAIRS that the person allegedly in 39 need of protection has been found incapable of handling the benefits 40 payable, on examination in accordance with the laws and regulations 41 governing the veterans administration UNITED STATES DEPARTMENT OF VETERANS 42 AFFAIRS, is prima facie evidence of the necessity for appointment of a 43 conservator.

1 D. The person allegedly in need of protection is entitled to be present at the hearing, to be represented by counsel, to present evidence 2 and to cross-examine witnesses, including any court appointed examiner and 3 4 investigator. The issue may be determined at a closed hearing if the 5 person allegedly in need of protection or that person's counsel so 6 requests. 7 E. AT THE INITIAL HEARING ON THE PETITION. THE COURT SHALL READ 8 INTO THE RECORD THE NOTICE OF RIGHT TO A TRIAL BY JURY AS STATED IN THE 9 NOTICE OF HEARING.  $\overline{\mathbf{E}}$ . F. After the hearing, and after making specific findings on the 10 11 record that a basis for the appointment of a conservator or any other protective order has been established, the court shall make an appointment 12 13 or other appropriate protective order. 14 Sec. 13. Title 14, chapter 5, Arizona Revised Statutes, is amended 15 by adding article 9, to read: 16 ARTICLE 9. SUPPORTED DECISION-MAKING AGREEMENTS 17 14-5721. Definitions 18 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES: 19 "ADULT" MEANS AN INDIVIDUAL WITH A DISABILITY WHO IS AT LEAST 1. 20 EIGHTEEN YEARS OF AGE. 21 2. "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT THAT 22 SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES, AS DEFINED IN 23 SECTION 41-1492. 24 3. "INTERESTED PERSON" MEANS ANY PERSON WHO IS INTERESTED IN THE 25 AFFAIRS OR WELFARE OF AN ADULT WHO HAS ENTERED INTO A SUPPORTED 26 DECISION-MAKING AGREEMENT. 27 4. "INTIMIDATE" INCLUDES THREATENING TO DEPRIVE AN ADULT OF FOOD, 28 NUTRITION, SHELTER OR NECESSARY MEDICATION OR MEDICAL TREATMENT. 29 "SUPPORTED DECISION-MAKING" MEANS A PROCESS OF SUPPORTING AND 5. ACCOMMODATING AN ADULT TO ENABLE THE ADULT TO MAKE LIFE DECISIONS, 30 31 INCLUDING DECISIONS RELATED TO WHERE THE ADULT WANTS TO LIVE, THE SERVICES, SUPPORT AND MEDICAL CARE THE ADULT WANTS TO RECEIVE, WHOM THE 32 33 ADULT WANTS TO LIVE WITH AND WHERE THE ADULT WANTS TO WORK, WITHOUT IMPEDING THE ADULT'S SELF-DETERMINATION. 34 35 "SUPPORTED DECISION-MAKING AGREEMENT" MEANS AN AGREEMENT BETWEEN 6. 36 AN ADULT AND A SUPPORTER THAT IS ENTERED INTO PURSUANT TO THIS ARTICLE. 37 7. "SUPPORTER" MEANS A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE 38 AND WHO ENTERS INTO A SUPPORTED DECISION-MAKING AGREEMENT WITH AN ADULT. 39 14-5722. <u>Supported decision-making agreements; scope; rights</u> 40 and obligations; intimidation; deception: 41 petition: termination: form A. AN ADULT, WITHOUT UNDUE INFLUENCE OR COERCION, MAY VOLUNTARILY 42 43 ENTER INTO A SUPPORTED DECISION-MAKING AGREEMENT WITH A SUPPORTER UNDER WHICH THE ADULT AUTHORIZES THE SUPPORTER TO DO ANY OR ALL OF THE 44 45 FOLLOWING:

1 1. PROVIDE SUPPORTED DECISION-MAKING, INCLUDING ASSISTING THE ADULT 2 IN UNDERSTANDING THE OPTIONS, RESPONSIBILITIES AND CONSEQUENCES OF THE 3 ADULT'S LIFE DECISIONS, WITHOUT MAKING THOSE DECISIONS ON BEHALF OF THE 4 ADULT. 5 2. ASSIST THE ADULT IN ACCESSING, COLLECTING AND OBTAINING FROM ANY 6 PERSON INFORMATION THAT IS RELEVANT TO A GIVEN LIFE DECISION, INCLUDING 7 MEDICAL, PSYCHOLOGICAL, FINANCIAL, EDUCATION OR TREATMENT RECORDS. 8 3. ASSIST THE ADULT IN UNDERSTANDING THE INFORMATION DESCRIBED IN 9 PARAGRAPH 2 OF THIS SUBSECTION. 10 4. ASSIST THE ADULT IN COMMUNICATING THE ADULT'S DECISIONS TO 11 **APPROPRIATE PERSONS.** B. A SUPPORTER IS NOT A SURROGATE DECISION-MAKER FOR THE ADULT AND 12 13 DOES NOT HAVE THE AUTHORITY TO SIGN LEGAL DOCUMENTS ON BEHALF OF THE ADULT 14 OR BIND THE ADULT TO A LEGAL AGREEMENT. 15 C. THE SUPPORTED DECISION-MAKING AGREEMENT SHALL SET FORTH THE 16 RIGHTS, ROLES, DUTIES, LIMITATIONS AND OBLIGATIONS OF BOTH THE ADULT AND 17 THE SUPPORTER WHO ARE ENTERING INTO THE AGREEMENT. 18 D. IF THE SUPPORTER INTIMIDATES OR DECEIVES THE ADULT IN PROCURING THE SUPPORTED DECISION-MAKING AGREEMENT OR ANY AUTHORITY PROVIDED IN THE 19 20 SUPPORTED DECISION-MAKING AGREEMENT, THE SUPPORTER MAY BE SUBJECT TO 21 CRIMINAL PROSECUTION AND CIVIL PENALTIES AS OTHERWISE PROVIDED BY LAW. 22 E. THE SUPPORTER MAY NOT RECEIVE COMPENSATION AS A RESULT OF THE 23 SUPPORTER'S DUTIES UNDER A SUPPORTED DECISION-MAKING AGREEMENT. THE 24 SUPPORTER SHALL ACT WITHOUT SELF-INTEREST AND SHALL AVOID CONFLICTS OF 25 INTEREST. 26 F. A SUPPORTED DECISION-MAKING AGREEMENT MUST BE SIGNED BY THE 27 ADULT AND THE SUPPORTER IN THE PRESENCE OF TWO OR MORE SUBSCRIBING 28 WITNESSES, WHO MUST BE AT LEAST EIGHTEEN YEARS OF AGE, OR A NOTARY PUBLIC. 29 AND THE SIGNATURE PROCESS IS SUBJECT TO THE FOLLOWING REQUIREMENTS: 1. BY WITNESSING THE AGREEMENT, EACH WITNESS OR NOTARY AFFIRMS THAT 30 31 THE WITNESS OR NOTARY WAS PRESENT WHEN THE PERSON DATED AND SIGNED OR MARKED THE AGREEMENT, EXCEPT AS PROVIDED UNDER PARAGRAPH 2 OF THIS 32 SUBSECTION, AND THAT THE PERSON APPEARED TO BE OF SOUND MIND AND FREE FROM 33 DURESS AT THE TIME OF EXECUTION OF THE AGREEMENT. 34 2. IF A PERSON IS PHYSICALLY UNABLE TO SIGN OR MARK THE AGREEMENT, 35 36 THE WITNESS OR NOTARY SHALL VERIFY ON THE DOCUMENT THAT THE PERSON DIRECTLY INDICATED TO THE NOTARY OR WITNESS THAT THE AGREEMENT EXPRESSED 37 38 THE PERSON'S WISHES AND THAT THE PERSON INTENDED TO ADOPT THE AGREEMENT AT 39 THAT TIME. 40 G. A SUPPORTED DECISION-MAKING AGREEMENT EXTENDS UNTIL: 41 1. TERMINATED IN WRITING BY EITHER PARTY OR BY THE TERMS OF THE 42 SUPPORTED DECISION-MAKING AGREEMENT. 43 2. AT ANY TIME THE ADULT BECOMES AN INCAPACITATED PERSON AS DEFINED 44 IN SECTION 14-5101.

1					
1 2	3. ON THE APPOINTMENT OF A GUARDIAN PURSUANT TO ARTICLE 3 OF THIS CHAPTER.				
3	H. THE SUPPORTED DECISION-MAKING AGREEMENT SHALL BE IN				
4	SUBSTANTIALLY THE FOLLOWING FORM:				
5	SUPPORTED DECISION-MAKING AGREEMENT				
6	THIS AGREEMENT IS GOVERNED BY THE ARIZONA SUPPORTED				
7	DECISION-MAKING AGREEMENT STATUTE SECTION 14-5722, ARIZONA				
8	REVISED STATUTES. FOR THE PURPOSES OF THIS AGREEMENT,				
9	"DECISION-MAKER" MEANS AN ADULT WITH A DISABILITY WHO EXECUTES				
10	AN AGREEMENT FOR THE PURPOSE OF DESIGNATING AN INDIVIDUAL TO				
11	SERVE AS THE DECISION-MAKER'S SUPPORTER WHEN THE				
12	DECISION-MAKER MAKES CERTAIN DECISIONS THAT ARE LISTED IN THE				
13	AGREEMENT.				
14	<u>PURPOSE OF AGREEMENT</u>				
15	THE PURPOSE OF THE SUPPORTED DECISION-MAKING AGREEMENT				
16	IS TO SUPPORT AND ACCOMMODATE A DECISION-MAKER TO MAKE				
17	INFORMED DECISIONS AND CHOICES ABOUT CERTAIN ASPECTS OF THE				
18	ADULT'S DAILY LIFE.				
19	<u>ROLE OF SUPPORTER</u>				
20	TO ASSIST A DECISION-MAKER, A SUPPORTER MAY:				
21	1. ASSIST THE DECISION-MAKER WITH GETTING INFORMATION				
22	TO BE ABLE TO UNDERSTAND AVAILABLE CHOICES.				
23	2. ASSIST THE DECISION-MAKER IN UNDERSTANDING CHOICES				
24	SO THE DECISION-MAKER CAN MAKE THE BEST PERSONAL DECISIONS.				
25	3. ASSIST THE DECISION-MAKER IN COMMUNICATING DECISIONS				
26	TO THE RIGHT PEOPLE AND ORGANIZATIONS.				
27 28	REVOCATION OR TERMINATION OF AGREEMENT A. THE DECISION-MAKER OR THE SUPPORTER MAY REVOKE THIS				
20 29	A. THE DECISION-MAKER OR THE SUPPORTER MAY REVOKE THIS AGREEMENT AT ANY TIME.				
30	B. THIS AGREEMENT TERMINATES AS A MATTER OF LAW AT ANY				
31	TIME THE DECISION-MAKER BECOMES AN INCAPACITATED PERSON AS				
32	DEFINED IN SECTION 14-5101, ARIZONA REVISED STATUTES.				
33	C. THIS AGREEMENT TERMINATES AS A MATTER OF LAW ON THE				
34	APPOINTMENT OF A GUARDIAN FOR ANY REASON OR PURPOSE PURSUANT				
35	TO TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES.				
36	D. IF EITHER THE DECISION-MAKER OR SUPPORTER HAS				
37	QUESTIONS ABOUT THE AGREEMENT, THE DECISION-MAKER OR SUPPORTER				
38	SHOULD SPEAK WITH A LAWYER BEFORE SIGNING THIS SUPPORTED				
39	DECISION-MAKING AGREEMENT.				
40	IMPORTANT INFORMATION FOR SUPPORTERS ABOUT				
41	THE LIMITS TO THIS AGREEMENT				
42	A. YOU MAY NOT MAKE A DECISION FOR OR ON BEHALF OF THE				
43	DECISION-MAKER.				

1 B. NEITHER YOU NOR ANY ORGANIZATION FOR WHOM YOU ARE 2 EMPLOYED OR SERVE AS A VOLUNTEER MAY RECEIVE ANY FINANCIAL 3 SUPPORT, REMUNERATION OR COMPENSATION, EITHER DIRECTLY OR 4 INDIRECTLY, FOR OR RELATED TO YOUR SERVICES AND ROLE AS A 5 SUPPORTER TO THE DECISION-MAKER. 6 C. WHEN YOU AGREE TO PROVIDE SUPPORT TO AN ADULT UNDER 7 THIS SUPPORTED DECISION-MAKING AGREEMENT. YOU HAVE A DUTY TO 8 AND YOU SHALL: 9 1. ACT IN GOOD FAITH. 10 2. ACT WITH LOYALTY TO THE DECISION-MAKER. 11 3. ACT WITHOUT SELF-INTEREST. 12 4. AVOID CONFLICTS OF INTEREST. 13 5. STOP SERVING AS A SUPPORTER AT ANY TIME THAT YOU 14 QUESTION THE CAPACITY OF THE DECISION-MAKER TO CONTINUE MAKING DECISIONS EVEN WITH YOUR SUPPORT. 15 16 D. STOP SERVING AS A SUPPORTER AT ANY TIME THAT THE 17 SUPPORTED DECISION-MAKING AGREEMENT IS REVOKED BY THE 18 DECISION-MAKER OR YOU, OR THE AGREEMENT ENDS AS A MATTER OF 19 LAW. 20 E. RESPECT THE DECISION-MAKER'S RELATIONSHIPS WITH 21 FRIENDS AND FAMILY MEMBERS AND NOT ATTEMPT TO ISOLATE OR 22 ALIENATE THE DECISION-MAKER FROM THOSE FRIENDS AND FAMILY 23 MEMBERS. APPOINTMENT OF SUPPORTER
I \_\_\_\_\_\_, (NAME OF ADULT, (THE 24 25 26 "DECISION-MAKER")), AM OF SOUND MIND AND ENTER INTO THIS 27 AGREEMENT VOLUNTARILY. MY DISABILITIES ARE: (DESCRIBE BRIEFLY) 28 29 30 31 I CHOOSE 32 33 TO BE MY SUPPORTER. SUPPORTER'S ADDRESS:\_\_ 34 SUPPORTER'S TELEPHONE NUMBER:\_\_\_\_\_ 35 36 SUPPORTER'S EMAIL ADDRESS: SUPPORTER'S ROLE AND LIMITATIONS ON THAT ROLE 37 MY SUPPORTER MAY HELP ME WITH LIFE DECISIONS ABOUT EACH OF THE 38 39 FOLLOWING WHICH I HAVE MARKED WITH AN "X" (CHECK THOSE THAT 40 APPLY): 41 YES \_\_\_\_ NO \_\_\_\_ OBTAINING FOOD, CLOTHING AND A PLACE TO LIVE. YES \_\_\_\_ NO \_\_\_\_ MY PHYSICAL HEALTH AND HEALTH SERVICES. 42 43 YES \_\_\_\_ NO \_\_\_\_ MY MENTAL HEALTH AND MENTAL HEALTH SERVICES. YES \_\_\_\_ NO \_\_\_\_ MANAGING MY MONEY OR PROPERTY. 44 45 YES NO GETTING AN EDUCATION OR OTHER TRAINING.

1 YES \_\_\_\_ NO \_\_\_\_ CHOOSING AND MAINTAINING MY SERVICES AND 2 SUPPORTS. 3 YES \_\_\_\_ NO \_\_\_\_ FINDING A JOB. YES \_\_\_\_ NO \_\_\_\_ OTHER: \_\_\_\_\_ 4 (SPECIFY) YES NO MY SUPPORTERS MAY SEE MY PRIVATE HEALTH 5 INFORMATION UNDER THE HEALTH INSURANCE PORTABILITY AND 6 7 ACCOUNTABILITY ACT OF 1996 (P.L. 104-191) IF I FIRST CHOOSE TO 8 PROVIDE A SIGNED RELEASE. 9 YES \_\_\_\_ NO \_\_\_\_ MY SUPPORTERS MAY SEE MY EDUCATIONAL RECORDS UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 10 11 (20 UNITED STATES CODE SECTION 1232g) IF I FIRST CHOOSE TO 12 PROVIDE A SIGNED RELEASE. 13 THIS AGREEMENT IS EFFECTIVE WHEN SIGNED AND WILL CONTINUE UNTIL \_\_\_\_\_ (DATE) OR UNTIL MY SUPPORTER OR I 14 END THE AGREEMENT OR THE AGREEMENT ENDS BY OPERATION OF LAW. 15 16 INCLUDING THE APPOINTMENT OF A GUARDIAN FOR ME. 17 DECISION-MAKER'S SIGNATURE \_\_\_\_\_ (DAY) OF \_\_\_\_\_ 18 SIGNED THIS (MONTH). 19 \_\_\_\_\_(YEAR) 20 21 (SIGNATURE OF DECISION-MAKER) (PRINTED NAME OF DECISION-MAKER) 22 CONSENT OF SUPPORTER 23 I (NAME OF SUPPORTER), \_ 24 CONSENT TO ACT AS A SUPPORTER UNDER THIS AGREEMENT. 25 (SIGNATURE OF SUPPORTER) (PRINTED NAME OF SUPPORTER) 26 27 THIS AGREEMENT MUST BE SIGNED IN FRONT OF TWO WITNESSES OR A NOTARY PUBLIC 28 29 (WITNESS 1 SIGNATURE) (PRINTED NAME OF WITNESS 1) 30 31 (WITNESS 2 SIGNATURE) (PRINTED NAME OF WITNESS 2) 32 33 OR NOTARY PUBLIC 34 35 STATE OF COUNTY OF \_\_\_ 36 THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME ON (DATE) 37 38 BY 39 (NAME OF DECISION-MAKER) (NAME OF SUPPORTER) 40 41 (SIGNATURE OF NOTARY) (PRINTED NAME OF NOTARY) 42 43 (SEAL, IF ANY, OF NOTARY) MY COMMISSION EXPIRES: 44

- 23 -

1 WARNING: PROTECTION FOR THE DECISION-MAKER WITH A DISABILITY IF A PERSON WHO RECEIVES A COPY OF THIS SUPPORTED 2 3 DECISION-MAKING AGREEMENT OR WHO IS AWARE OF THE EXISTENCE OF 4 THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE DECISION-MAKER IS 5 BEING ABUSED, NEGLECTED OR EXPLOITED BY THE SUPPORTER, THE 6 PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION 7 TO THE DEPARTMENT OF ECONOMIC SECURITY'S ONLINE REPORTING 8 SYSTEM BY CALLING THE ADULT PROTECTIVE SERVICES, ADULT ABUSE 9 HOTLINE OR BY CALLING THE LOCAL POLICE DEPARTMENT.

APPROVED BY THE GOVERNOR JUNE 20, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 20, 2023.

Senate Engrossed

developmental disabilities; parents; guardianship

State of Arizona Senate Fifty-sixth Legislature First Regular Session 2023

## **SENATE BILL 1411**

#### AN ACT

AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5318; RELATING TO GUARDIANSHIP.

(TEXT OF BILL BEGINS ON NEXT PAGE)

- i -

1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Title 14, chapter 5, article 3, Arizona Revised 3 Statutes, is amended by adding section 14-5318, to read: 4 14-5318. <u>Developmental disabilities; child preference;</u> 5 guardianship; appointment 6 A. NOTWITHSTANDING SECTIONS 14-5301.03 AND 14-5305, IF A MINOR 7 CHILD WHO IS RECEIVING SERVICES PURSUANT TO TITLE 36, CHAPTER 5.1 IS 8 CAPABLE OF EXPRESSING THE CHILD'S PREFERENCE AS TO WHO SHALL BECOME THE 9 CHILD'S GUARDIAN ON THE CHILD'S EIGHTEENTH BIRTHDAY, THE CHILD'S PREFERENCE SHALL TAKE PRIORITY. IF THE CHILD AND THE CHILD'S PARENT AGREE 10 11 THAT THE CHILD'S PARENT SHALL BECOME THE CHILD'S GUARDIAN, THE CHILD AND 12 THE CHILD'S PARENT SHALL DECIDE TO WHAT EXTENT THE PARENT WILL BE INVOLVED 13 AS GUARDIAN. IF THE CHILD AND THE CHILD'S PARENT DISAGREE AS TO WHO SHALL BECOME THE CHILD'S GUARDIAN, THE CHILD AND THE CHILD'S PARENT SHALL RETAIN 14 LEGAL COUNSEL TO ASSIST IN DETERMINING WHO SHALL BECOME THE CHILD'S 15 16 GUARDIAN. 17 B. IF THE MINOR CHILD IS INCAPABLE OF EXPRESSING THE CHILD'S 18 PREFERENCE AS TO WHO SHALL BECOME THE CHILD'S GUARDIAN ON THE CHILD'S 19 EIGHTEENTH BIRTHDAY, THE CHILD'S PARENT SHALL DETERMINE WHO SHALL BECOME 20 THE CHILD'S GUARDIAN, INCLUDING THEMSELVES, IN A CONTINUAL MANNER, WITHOUT 21 THE USE OF AN ATTORNEY AND THROUGH DEVELOPMENTAL DISABILITY FORMS. 22 C. AT THE LAST SCHEDULED DEVELOPMENTAL DISABILITY MEETING BETWEEN 23 THE DEPARTMENT OF ECONOMIC SECURITY, THE CHILD AND THE CHILD'S PARENT 24 BEFORE THE CHILD'S SEVENTEENTH BIRTHDAY, THE DEPARTMENT OF ECONOMIC SECURITY SHALL INITIATE THE PROCESS OF DETERMINING WHO SHALL BECOME THE 25 26 CHILD'S GUARDIAN ON THE CHILD'S EIGHTEENTH BIRTHDAY. 27 D. THE DEPARTMENT OF ECONOMIC SECURITY SHALL PRESCRIBE FORMS FOR 28 DETERMINING GUARDIANSHIP ON THE CHILD'S EIGHTEENTH BIRTHDAY AND SHALL

29 PROVIDE THE FORMS TO THE CHILD AND THE CHILD'S PARENTS.

Senate Engrossed

probate; mediation; trials

State of Arizona Senate Fifty-sixth Legislature First Regular Session 2023

### **SENATE BILL 1699**

#### AN ACT

REPEALING SECTION 14-1306, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-1306; RELATING TO THE PROBATE JURISDICTION OF COURTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Repeal 3 Section 14-1306, Arizona Revised Statutes, is repealed. 4 Sec. 2. Title 14, chapter 1, article 3, Arizona Revised Statutes, 5 is amended by adding a new section 14-1306, to read: 6 14-1306. Mediation; bench trial; jury trial; civil penalties 7 A. PURSUANT TO ARTICLE II, SECTION 23, CONSTITUTION OF ARIZONA, THE 8 RIGHT TO A JURY CANNOT BE VIOLATED. UNLESS A PARTY HAS PREVIOUSLY BEEN 9 INFORMED OF THE RIGHT TO A JURY AND HAS WAIVED THAT RIGHT PURSUANT TO A WRITTEN AFFIRMATION, THE RIGHT TO A JURY STILL EXISTS. LITIGANTS ARE 10 ENCOURAGED TO ENGAGE IN MEDIATION AS THE INITIAL METHOD OF DISPUTE 11 RESOLUTION. EVIDENCE OF MEDIATION, INCLUDING REASONS WHY MEDIATION WAS 12 13 NOT PURSUED OR ACCOMPLISHED, SHALL BE PLACED IN THE COURT RECORD. 14 B. IF MEDIATION IS UNSUCCESSFUL OR NOT PURSUED, A BENCH TRIAL SHALL 15 PROCEED AND A JUDGE MAY ISSUE AN ORDER OR ORDERS ON THE MATTERS LITIGATED. 16 C. IF A LITIGANT BELIEVES THE LITIGANT'S RIGHTS HAVE BEEN 17 SUBSTANTIALLY VIOLATED BY THE ORDER OF A JUDGE FOLLOWING A BENCH TRIAL, 18 WITHIN THIRTY DAYS AFTER THE ORDER IS ISSUED, THE LITIGANT MAY DEMAND A 19 JURY TRIAL. A JURY TRIAL SHALL BE SCHEDULED WITHIN FORTY-FIVE DAYS AFTER 20 THE LITIGANT'S REQUEST. 21 D. THE STANDARD OF EVIDENCE FOR A JURY TRIAL UNDER THIS SECTION 22 SHALL BE CLEAR AND CONVINCING. A VERDICT MAY BE RENDERED BY A 23 THREE-FOURTHS VOTE OF THE JURY. 24 E. A LITIGANT MAY REQUEST THAT A JURY REEXAMINE PORTIONS OF THE 25 VERDICT FOLLOWING A BENCH TRIAL. IT IS NOT NECESSARY TO RELITIGATE THE 26 ENTIRE MATTER. 27 F. IF REQUESTED BY A LITIGANT, THE JURY MAY IMPOSE CIVIL PENALTIES 28 OF UP TO \$2,500 IF THE JURY DEEMS A LITIGANT HAS ABUSED THIS SECTION. 29 AWARDS MAY BE DIRECTED TO BE PAID BY ONE PARTY TO ANY OTHER SPECIFIED 30 PARTY. 31 G. FALSE OR WITHHELD EXCULPATORY EVIDENCE MAY BE CONSIDERED PERJURY 32 AND SHALL BE ENFORCED AS PRESCRIBED IN TITLE 13, CHAPTER 27. 33 H. THE COURT SHALL DISCLOSE THE PROVISIONS OF THIS SECTION TO ALL LITIGANTS AT THE COMMENCEMENT OF LITIGATION. IF THE COURT FAILS TO MAKE 34 35 THE DISCLOSURE, ALL ORDERS OF THE COURT ARE VOID AND UNENFORCEABLE. 36 COPIES OF THIS STATUTE SHALL BE SIGNED BY THE PARTIES AND PLACED IN THE 37 COURT RECORD. 38 I. PREVIOUS MATTERS ADJUDICATED WITHOUT A JURY MAY BE REEXAMINED 39 USING THE PROCESS PRESCRIBED IN THIS SECTION. J. A RIGHT TO A JURY CANNOT BE VIOLATED. UNLESS A PARTY HAS 40 41 PREVIOUSLY BEEN INFORMED OF THIS RIGHT TO A JURY AND WAIVED THAT RIGHT VIA 42 WRITTEN AFFIRMATION, THAT RIGHT STILL EXISTS. 43 K. THE RIGHT TO A JURY TRIAL PURSUANT TO THIS SECTION IS AVAILABLE ONLY TO THE PEOPLE AND NOT TO ANY STATE AGENCY OR POLITICAL SUBDIVISION OF 44 45 THIS STATE.

REFERENCE TITLE: supported decision-making; supporter obligations

State of Arizona House of Representatives Fifty-sixth Legislature First Regular Session 2023

## HB 2174

Introduced by Representatives Longdon: Dunn

#### AN ACT

AMENDING SECTION 14-1201, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; RELATING TO INDIVIDUALS WITH DISABILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

- i -

1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Section 14-1201, Arizona Revised Statutes, is amended to 3 read: 4 14-1201. Definitions 5 In this title, unless the context otherwise requires: 6 1. "Agent" includes an attorney-in-fact under a durable or 7 nondurable power of attorney, a person who is authorized to make decisions 8 concerning another person's health care and a person who is authorized to 9 make decisions for another person under a natural death act. 2. "Application" means a written request to the registrar for an 10 11 order of informal probate or appointment under chapter 3, article 3 of 12 this title. 13 3. "Basis for compensation" means an hourly rate, a fixed fee or a contingency fee agreement and reimbursable costs. 14 4. "Beneficiary", as it relates to a trust beneficiary, includes a 15 16 person who has any present or future interest, vested or contingent, and includes the owner of an interest by assignment or other transfer. As it 17 18 relates to a charitable trust, beneficiary includes any person entitled to 19 enforce the trust. As it relates to a beneficiary of a beneficiary 20 designation, beneficiary refers to a beneficiary of an insurance or 21 annuity policy, an account with pay on death designation, a security 22 registered in beneficiary form or a pension, profit sharing, retirement or 23 similar benefit plan, or any other nonprobate transfer at death. As it 24 relates to a beneficiary designated in a governing instrument, beneficiary 25 includes a grantee of a deed, a devisee, a trust beneficiary, a 26 beneficiary of a beneficiary designation, a donee, appointee or taker in 27 default of a power of appointment and a person in whose favor a power of 28 attorney or a power held in any person, fiduciary or representative 29 capacity is exercised. 30 5. "Beneficiary designation" refers to a governing instrument 31 naming a beneficiary of an insurance or annuity policy, of an account with pay on death designation, of a security registered in beneficiary form or 32

of a pension, profit sharing, retirement or similar benefit plan, or any
other nonprobate transfer at death.
6. "Certified paper original" means a tangible medium that contains
both the text of an electronic will and any self-proving affidavit
concerning the electronic will and that is accompanied by an affidavit
that is executed pursuant to section 14-2523.

39 7. "Child" includes a person who is entitled to take as a child 40 under this title by intestate succession from the parent whose 41 relationship is involved. Child excludes a person who is only a 42 stepchild, a foster child, a grandchild or a more remote descendant.

8. "Claims", in respect to estates of decedents and protected
persons, includes liabilities of the decedent or the protected person,
whether arising in contract, in tort or otherwise, and liabilities of the

11

1 estate that arise at or after the death of the decedent or after the 2 appointment of a conservator, including funeral expenses and expenses of 3 administration. Claims do not include estate or inheritance taxes or 4 demands or disputes regarding title of a decedent or a protected person to 5 specific assets alleged to be included in the estate.

6 9. "Community property" means that property of a husband and wife 7 that is acquired during the marriage and that is community property as 8 prescribed in section 25-211.

9 10. "Conservator" means a person who is appointed by a court to 10 manage the estate of a protected person.

11. "Court" means the superior court.

12 12. "Dependent child" means a minor child whom the decedent was 13 obligated to support or an adult child who was in fact being supported by 14 the decedent at the time of the decedent's death.

15 13. "Descendant" means all of the decedent's descendants of all 16 generations, with the relationship of parent and child at each generation.

17 14. "Devise", when used as a noun, means a testamentary disposition 18 of real or personal property and, when used as a verb, means to dispose of 19 real or personal property by will.

20 15. "Devisee" means a person designated in a will to receive a 21 devise. For the purposes of chapter 3 of this title, in the case of a 22 devise to an existing trust or trustee, or to a trustee on trust described 23 by will, the trust or trustee is the devisee and the beneficiaries are not 24 devisees.

25 16. "Disability" means cause for a protective order as described in 26 section 14-5401.

27 17. "Distributee" means any person who has received property of a 28 decedent from that person's personal representative other than as a creditor or purchaser. Distributee includes a testamentary trustee only 29 to the extent of distributed assets or increment that remains in that 30 31 person's hands. A beneficiary of a testamentary trust to whom the trustee 32 has distributed property received from a personal representative is a 33 distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are 34 transferred by will, to the extent of the devised assets. 35

36 18. "Electronic" means having electrical, digital, magnetic,
 37 optical, electromagnetic or similar capabilities.

38 19. "Electronic record" means a record that is created, generated,
 39 sent, communicated, received or stored by electronic means.

40 20. "Electronic signature" means an electronic method or process 41 that does both of the following:

42 (a) Is attached to or logically associated with an electronic
43 record and that is executed or adopted by a person with the intent to sign
44 the electronic record.

- 2 -

1 (b) Uses a security procedure that allows a determination that the 2 electronic signature was all of the following:

3

(i) Unique to the person using it.

4

(ii) Capable of verification.

5 (iii) Under the sole control of the person making the electronic 6 signature.

7 (iv) Linked to the electronic record to which the electronic 8 signature relates in a manner so that if the electronic record is changed 9 the electronic signature is invalidated.

10 21. "Electronic will" means a testamentary instrument that is 11 executed and maintained on an electronic medium and that is executed in 12 compliance with section 14-2518.

13 22. "Estate" includes the property of the decedent, trust or other 14 person whose affairs are subject to this title as originally constituted 15 and as it exists from time to time during administration. As it relates 16 to a spouse, the estate includes only the separate property and the share 17 of the community property belonging to the decedent or person whose 18 affairs are subject to this title.

19 23. "Exempt property" means that property of a decedent's estate 20 that is described in section 14-2403.

24. "Fiduciary" includes a personal representative, guardian,
 conservator and trustee.

23 25. "Foreign personal representative" means a personal
 24 representative who is appointed by another jurisdiction.

26. "Formal proceedings" means proceedings that are conductedbefore a judge with notice to interested persons.

27 27. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, security registered in beneficiary form, pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney OR A SUPPORTED DECISION-MAKING AGREEMENT or a dispositive, appointive or nominative instrument of any similar type.

28. "Guardian" means a person who has qualified as a guardian of a
 minor or incapacitated person pursuant to testamentary or court
 appointment but excludes a person who is merely a guardian ad litem.

36 29. "Guardian ad litem" includes a person who is appointed pursuant37 to section 14-1408.

38 30. "Heirs", except as controlled by section 14-2711, means 39 persons, including the surviving spouse and the state, who are entitled 40 under the statutes of intestate succession to the property of a decedent.

41 31. "Incapacitated person" has the same meaning prescribed in 42 section 14-5101.

- 3 -

1 32. "Informal proceedings" means those proceedings conducted 2 without notice to interested persons by an officer of the court acting as 3 a registrar for probate of a will or appointment of a personal 4 representative.

5 33. "Interested person" includes any trustee, heir, devisee, child, 6 spouse, creditor, beneficiary, person holding a power of appointment and 7 other person who has a property right in or claim against a trust estate 8 or the estate of a decedent, ward or protected person. Interested person 9 also includes a person who has priority for appointment as personal representative and other fiduciaries representing interested persons. 10 11 Interested person, as the term relates to particular persons, may vary from time to time and must be determined according to the particular 12 13 purposes of, and matter involved in, any proceeding.

14 34. "Issue" of a person means descendant as defined in this 15 section.

16 35. "Joint tenants with the right of survivorship" and "community 17 property with the right of survivorship" includes co-owners of property 18 held under circumstances that entitle one or more to the whole of the 19 property on the death of the other or others but excludes forms of 20 co-ownership registration in which the underlying ownership of each party 21 is in proportion to that party's contribution.

22

36. "Lease" includes any oil, gas or other mineral lease.

37. "Letters" includes letters testamentary, letters of
guardianship, letters of administration and letters of conservatorship.

25

38. "Minor" means a person who is under eighteen years of age.

26 39. "Mortgage" means any conveyance, agreement or arrangement in 27 which property is encumbered or used as security. Mortgage does not 28 include leases or easements.

40. "Nonresident decedent" means a decedent who was domiciled in
another jurisdiction at the time of the decedent's death.

41. "Organization" means a corporation, limited liability company,
 business trust, estate, trust, partnership, joint venture, association,
 government or governmental subdivision or agency or any other legal or
 commercial entity.

35 42. "Original will" means either an original paper will or a 36 certified paper original of an electronic will.

43. "Paper will" means a testamentary instrument that is executed
and maintained on a tangible medium and that is executed in compliance
with section 14-2502 or 14-2503.

40 44. "Parent" includes any person entitled to take, or who would be 41 entitled to take if the child died without a will, as a parent under this 42 title by intestate succession from the child whose relationship is in 43 question and excludes any person who is only a stepparent, foster parent 44 or grandparent.

- 4 -

45. "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person who is authorized or obligated by law or a governing instrument to make payments.

4

46. "Person" means an individual or an organization.

5 47. representative" "Personal includes an executor. an 6 administrator, successor personal representative, а special а 7 administrator and persons who perform substantially the same function 8 under the law governing their status. A general personal representative 9 excludes a special administrator.

10 48. "Petition" means a written request to the court for an order 11 after notice.

12 13

37

49. "Proceeding" includes action at law and suit in equity.

50. "Property" has the same meaning prescribed in section 14-10103.

14 51. "Protected person" has the same meaning prescribed in section 15 14-5101.

16 52. "Protective proceeding" has the same meaning prescribed in 17 section 14-5101.

18 53. "Qualified custodian" means a person who fulfills the 19 requirements of section 14-2520.

20 54. "Registrar" means the official of the court who is designated 21 to perform the functions of registrar as provided in section 14-1307.

22 55. "Security" includes any note, stock, treasury stock, bond, 23 debenture, evidence of indebtedness, certificate of interest or 24 participation in an oil, gas or mining title or lease or in payments out of production under that title or lease, collateral trust certificate, 25 26 transferable share or voting trust certificate and, in general, includes 27 any interest or instrument commonly known as a security, or any 28 certificate of interest or participation, any temporary or interim 29 certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of these securities. 30

31 56. "Separate property" means that property of a husband or wife 32 that is the spouse's separate property as defined in section 25-213.

57. "Settlement", in reference to a decedent's estate, includes the
 full process of administration, distribution and closing.

3558. "Special administrator" means a personal representative as36described by sections 14-3614 through 14-3618.

59. "State" has the same meaning prescribed in section 14–10103.

38 60. "Successor personal representative" means a personal 39 representative, other than a special administrator, who is appointed to 40 succeed a previously appointed personal representative.

41 61. "Successors" means persons, other than creditors, who are 42 entitled to property of a decedent under a will or this title.

62. "Supervised administration" refers to the proceedings describedin chapter 3, article 5 of this title.

- 5 -

1 63. "Survive" means that a person has neither predeceased an event, 2 including the death of another person, nor is deemed to have predeceased 3 an event under section 14-2104 or 14-2702.

64. "Tangible medium" means a medium on which information may be inscribed by writing, typing, printing or similar means and that is perceivable by reading directly from the medium on which the information is inscribed.

8 65. "Testacy proceeding" means a proceeding to establish a will or 9 determine intestacy.

10

66. "Testator" includes a person of either sex.

11 67. "Trust" includes an express trust, private or charitable, with 12 any additions, wherever and however created. Trust also includes a trust 13 created or determined by judgment or decree under which the trust is to be 14 administered in the manner of an express trust. Trust excludes other 15 constructive trusts and excludes resulting trusts, conservatorship, 16 personal representatives, trust accounts, custodial arrangements pursuant 17 to chapter 7, article 7 of this title, business trusts providing for 18 certificates to be issued to beneficiaries, common trust funds, voting 19 trusts, security arrangements, liquidation trusts and trusts for the 20 primary purpose of paying debts, dividends, interest, salaries, wages, 21 profits, pensions or employee benefits of any kind, trusts created by a 22 city or town for the payment of medical insurance, health care benefits or 23 expenses, long-term or short-term disability, self insurance reserves and 24 similar programs administered by a city or town, legal defense trusts and any arrangement under which a person is nominee or escrowee for another. 25

68. "Trustee" includes an original, additional or successor
trustee, whether or not appointed or confirmed by the court.

28

69. "Ward" has the same meaning prescribed in section 14-5101.

70. "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. A will may be a paper will or an electronic will.

34 Sec. 2. Title 14, chapter 5, Arizona Revised Statutes, is amended 35 by adding article 9, to read:

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ARTICLE 9. SUPPORTED DECISION-MAKING AGREEMENTS

14-5721. <u>Definitions</u>

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

39 1. "ADULT" MEANS AN INDIVIDUAL WITH A DISABILITY WHO IS AT LEAST40 EIGHTEEN YEARS OF AGE.

41 2. "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT THAT 42 SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES.

433. "INTERESTED PERSON" MEANS ANY PERSON WHO IS INTERESTED IN THE44AFFAIRS OR WELFARE OF AN ADULT WHO HAS ENTERED INTO A SUPPORTED45DECISION-MAKING AGREEMENT.

- 6 -

1	4. "INTIMIDATE" INCLUDES THREATENING TO DEPRIVE AN ADULT OF FOOD,
2	NUTRITION, SHELTER OR NECESSARY MEDICATION OR MEDICAL TREATMENT.
3	5. "SUPPORTED DECISION-MAKING" MEANS A PROCESS OF SUPPORTING AND
4	ACCOMMODATING AN ADULT TO ENABLE THE ADULT TO MAKE LIFE DECISIONS,
5	INCLUDING DECISIONS RELATED TO WHERE THE ADULT WANTS TO LIVE, THE
6	SERVICES, SUPPORT AND MEDICAL CARE THE ADULT WANTS TO RECEIVE, WHOM THE
7	ADULT WANTS TO LIVE WITH AND WHERE THE ADULT WANTS TO WORK, WITHOUT
8	IMPEDING THE ADULT'S SELF-DETERMINATION.
9	6. "SUPPORTED DECISION-MAKING AGREEMENT" MEANS AN AGREEMENT BETWEEN
10	AN ADULT AND A SUPPORTER THAT IS ENTERED INTO PURSUANT TO THIS ARTICLE.
11	7. "SUPPORTER" MEANS A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE
12	AND WHO ENTERS INTO A SUPPORTED DECISION-MAKING AGREEMENT WITH AN ADULT.
13	14-5722. <u>Supported decision-making agreements; scope; rights</u>
14	and obligations: intimidation: deception:
14	petition; termination; form
16	A. AN ADULT, WITHOUT UNDUE INFLUENCE OR COERCION, MAY VOLUNTARILY
17	ENTER INTO A SUPPORTED DECISION-MAKING AGREEMENT WITH A SUPPORTER UNDER
18	WHICH THE ADULT AUTHORIZES THE SUPPORTER TO DO ANY OR ALL OF THE
10 19	FOLLOWING:
20	1. PROVIDE SUPPORTED DECISION-MAKING, INCLUDING ASSISTING THE ADULT
20 21	IN UNDERSTANDING THE OPTIONS, RESPONSIBILITIES AND CONSEQUENCES OF THE
22	
22 23	ADULT'S LIFE DECISIONS, WITHOUT MAKING THOSE DECISIONS ON BEHALF OF THE
	ADULT.
24	2. ASSIST THE ADULT IN ACCESSING, COLLECTING AND OBTAINING FROM ANY
25	PERSON INFORMATION THAT IS RELEVANT TO A GIVEN LIFE DECISION, INCLUDING
26	MEDICAL, PSYCHOLOGICAL, FINANCIAL, EDUCATION OR TREATMENT RECORDS.
27	3. ASSIST THE ADULT IN UNDERSTANDING THE INFORMATION DESCRIBED IN
28	PARAGRAPH 2 OF THIS SUBSECTION.
29	4. ASSIST THE ADULT IN COMMUNICATING THE ADULT'S DECISIONS TO
30	APPROPRIATE PERSONS.
31	B. A SUPPORTER IS NOT A SURROGATE DECISION-MAKER FOR THE ADULT AND
32	DOES NOT HAVE THE AUTHORITY TO SIGN LEGAL DOCUMENTS ON BEHALF OF THE ADULT
33	OR BIND THE ADULT TO A LEGAL AGREEMENT.
34	C. THE SUPPORTED DECISION-MAKING AGREEMENT SHALL SET FORTH THE
35	RIGHTS, ROLES, DUTIES, LIMITATIONS AND OBLIGATIONS OF BOTH THE ADULT AND
36	THE SUPPORTER WHO ARE ENTERING INTO THE SUPPORTED DECISION-MAKING
37	AGREEMENT.
38	D. IF THE SUPPORTER INTIMIDATES OR DECEIVES THE ADULT IN PROCURING
39	THE SUPPORTED DECISION-MAKING AGREEMENT OR ANY AUTHORITY PROVIDED IN THE
40	SUPPORTED DECISION-MAKING AGREEMENT, THE SUPPORTER IS SUBJECT TO CRIMINAL
41	PROSECUTION AND CIVIL PENALTIES.
42	E. THE SUPPORTER MAY NOT RECEIVE COMPENSATION AS A RESULT OF THE
43	SUPPORTER'S DUTIES UNDER A SUPPORTED DECISION-MAKING AGREEMENT. THE
44	SUPPORTER SHALL ACT WITHOUT SELF-INTEREST AND SHALL AVOID CONFLICTS OF
45	INTEREST.
	- 7 -
	- 1 -

- 7 -

1 F. AN INTERESTED PERSON MAY FILE A VERIFIED PETITION WITH THE 2 SUPERIOR COURT TO DETERMINE THE VALIDITY OF THE SUPPORTED DECISION-MAKING 3 AGREEMENT. G. A SUPPORTED DECISION-MAKING AGREEMENT MUST BE SIGNED BY THE 4 5 ADULT AND THE SUPPORTER IN THE PRESENCE OF TWO OR MORE SUBSCRIBING 6 WITNESSES, WHO MUST BE AT LEAST EIGHTEEN YEARS OF AGE, OR A NOTARY PUBLIC. 7 H. A SUPPORTED DECISION-MAKING AGREEMENT EXTENDS UNTIL: 8 1. TERMINATED IN WRITING BY EITHER PARTY OR BY THE TERMS OF THE 9 SUPPORTED DECISION-MAKING AGREEMENT. 10 2. THE ADULT BECOMES AN INCAPACITATED PERSON AS DEFINED IN SECTION 11 14-5101. 12 3. A GUARDIAN IS APPOINTED PURSUANT TO ARTICLE 3 OF THIS CHAPTER. 13 UNLESS THE GUARDIAN EXPRESSLY CONSENTS TO THE CONTINUATION OF THE 14 SUPPORTED DECISION-MAKING AGREEMENT. I. AN ADULT WHO IS SUBJECT TO A GUARDIANSHIP PURSUANT TO ARTICLE 3 15 16 OF THIS CHAPTER MAY NOT ENTER INTO A SUPPORTED DECISION-MAKING AGREEMENT. 17 SUPPORTED DECISION-MAKING AGREEMENT J. THE SHALL BE ΙN 18 SUBSTANTIALLY THE FOLLOWING FORM: 19 SUPPORTED DECISION-MAKING AGREEMENT 20 THIS AGREEMENT IS GOVERNED BY THE ARIZONA SUPPORTED 21 DECISION-MAKING AGREEMENT STATUTE SECTION 14-5722, ARIZONA REVISED STATUTES. FOR THE PURPOSES OF THIS AGREEMENT. 22 23 "DECISION-MAKER" MEANS AN ADULT WITH A DISABILITY WHO EXECUTES 24 AN AGREEMENT FOR THE PURPOSE OF DESIGNATING AN INDIVIDUAL TO 25 DECISION-MAKER'S SERVE AS THE SUPPORTER WHEN THF 26 DECISION-MAKER MAKES CERTAIN DECISIONS THAT ARE LISTED IN THE 27 AGREEMENT. 28 PURPOSE OF AGREEMENT 29 THE PURPOSE OF THE SUPPORTED DECISION-MAKING AGREEMENT IS TO SUPPORT AND ACCOMMODATE A DECISION-MAKER TO MAKE 30 31 INFORMED DECISIONS AND CHOICES ABOUT CERTAIN ASPECTS OF THE 32 ADULT'S DAILY LIFE. 33 ROLE OF SUPPORTER 34 TO ASSIST A DECISION-MAKER, A SUPPORTER MAY: 35 1. ASSIST THE DECISION-MAKER WITH GETTING INFORMATION 36 TO BE ABLE TO UNDERSTAND AVAILABLE CHOICES. 2. ASSIST THE DECISION-MAKER IN UNDERSTANDING CHOICES 37 SO THE DECISION-MAKER CAN MAKE THE BEST PERSONAL DECISIONS. 38 39 3. ASSIST THE DECISION-MAKER IN COMMUNICATING DECISIONS 40 TO THE RIGHT PEOPLE AND ORGANIZATIONS. 41 REVOCATION OR TERMINATION OF AGREEMENT A. THE DECISION-MAKER OR THE SUPPORTER MAY REVOKE THIS 42 43 AGREEMENT AT ANY TIME.

1	B. THIS AGREEMENT TERMINATES AS A MATTER OF LAW AT ANY			
2	TIME THE DECISION-MAKER BECOMES AN INCAPACITATED PERSON AS			
3	DEFINED IN SECTION 14-5101, ARIZONA REVISED STATUTES.			
4	C. THIS AGREEMENT TERMINATES AS A MATTER OF LAW ON THE			
5	APPOINTMENT OF A GUARDIAN FOR ANY REASON OR PURPOSE PURSUANT			
6	TO TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES.			
7	D. IF EITHER THE DECISION-MAKER OR SUPPORTER HAS			
8	QUESTIONS ABOUT THE AGREEMENT, THE DECISION-MAKER OR SUPPORTER			
9	SHOULD SPEAK WITH A LAWYER BEFORE SIGNING THIS SUPPORTED			
10	DECISION-MAKING AGREEMENT.			
11	IMPORTANT INFORMATION FOR SUPPORTERS ABOUT			
12	THE LIMITS TO THIS AGREEMENT			
13	A. YOU MAY NOT MAKE A DECISION FOR OR ON BEHALF OF THE			
14	DECISION-MAKER.			
15	B. NEITHER YOU NOR ANY ORGANIZATION FOR WHOM YOU ARE			
16	EMPLOYED OR SERVE AS A VOLUNTEER MAY RECEIVE ANY FINANCIAL			
17	SUPPORT, REMUNERATION OR COMPENSATION, EITHER DIRECTLY OR			
18	INDIRECTLY, FOR OR RELATED TO YOUR SERVICES AND ROLE AS A			
19	SUPPORTER TO THE DECISION-MAKER.			
20	C. WHEN YOU AGREE TO PROVIDE SUPPORT TO AN ADULT UNDER			
21	THIS SUPPORTED DECISION-MAKING AGREEMENT, YOU HAVE A DUTY TO			
22	AND YOU SHALL:			
23	1. ACT IN GOOD FAITH.			
24	2. ACT WITH LOYALTY TO THE DECISION-MAKER.			
25	3. ACT WITHOUT SELF-INTEREST.			
26	4. AVOID CONFLICTS OF INTEREST.			
27	5. STOP SERVING AS A SUPPORTER AT ANY TIME THAT YOU			
28	QUESTION THE CAPACITY OF THE DECISION-MAKER TO CONTINUE MAKING			
29	DECISIONS EVEN WITH YOUR SUPPORT.			
30	6. STOP SERVING AS A SUPPORTER AT ANY TIME THAT THE			
31	SUPPORTED DECISION-MAKING AGREEMENT IS REVOKED BY THE			
32	DECISION-MAKER OR YOU, OR THE AGREEMENT ENDS AS A MATTER OF			
33	LAW.			
34	7. RESPECT THE DECISION-MAKER'S RELATIONSHIPS WITH			
35	FRIENDS AND FAMILY MEMBERS AND NOT ATTEMPT TO ISOLATE OR			
36	ALIENATE THE DECISION-MAKER FROM THOSE FRIENDS AND FAMILY			
37	MEMBERS.			
38	APPOINTMENT OF SUPPORTER			
39	I,, (NAME OF ADULT,			
40	(THE "DECISION-MAKER")), AM OF SOUND MIND AND ENTER INTO THIS			
41	AGREEMENT VOLUNTARILY.			
42	MY DISABILITIES ARE: (DESCRIBE BRIEFLY)			
43				
44 4 E				
45	·			

- 9 -

1	I CHOOSE		
2	TO BE MY SUPPORTER.		
3	SUPPORTER'S ADDRESS:		
4	SUPPORTER'S TELEPHONE NUMBER:		
5	SUPPORTER'S EMAIL ADDRESS:		
6	SUPPORTER'S ROLE AND LIMITATIONS ON THAT ROLE		
7	MY SUPPORTER MAY HELP ME WITH LIFE DECISIONS ABOUT EACH OF THE		
8	FOLLOWING WHICH I HAVE MARKED WITH AN "X" (CHECK THOSE THAT		
9	APPLY):		
10	YES NO OBTAINING FOOD, CLOTHING AND A PLACE TO LIVE.		
11	YES NO MY PHYSICAL HEALTH AND HEALTH SERVICES.		
12	YES NO MY MENTAL HEALTH AND MENTAL HEALTH SERVICES.		
13	YES NO MANAGING MY MONEY OR PROPERTY.		
14	YES NO GETTING AN EDUCATION OR OTHER TRAINING.		
15	YES NO CHOOSING AND MAINTAINING MY SERVICES AND		
16	SUPPORTS.		
17	YES NO FINDING A JOB.		
18	YES NO OTHER: (SPECIFY)		
19	YES NO MY SUPPORTERS MAY SEE MY PRIVATE HEALTH		
20	INFORMATION UNDER THE HEALTH INSURANCE PORTABILITY AND		
21	ACCOUNTABILITY ACT OF 1996 (P.L. 104-191) IF I FIRST CHOOSE TO		
22	PROVIDE A SIGNED RELEASE.		
23	YES NO MY SUPPORTERS MAY SEE MY EDUCATIONAL RECORDS		
24	UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974		
25	(20 UNITED STATES CODE SECTION 1232g) IF I FIRST CHOOSE TO		
26	PROVIDE A SIGNED RELEASE.		
27	THIS AGREEMENT IS EFFECTIVE WHEN SIGNED AND WILL		
28	CONTINUE UNTIL (DATE) OR UNTIL MY SUPPORTER OR I		
29	END THE AGREEMENT OR THE AGREEMENT ENDS BY OPERATION OF LAW,		
30	INCLUDING THE APPOINTMENT OF A GUARDIAN FOR ME.		
31	DECISION-MAKER'S SIGNATURE		
32	SIGNED THIS (DAY) OF (MONTH),		
33	(YEAR)		
34			
35	(SIGNATURE OF DECISION-MAKER) (PRINTED NAME OF DECISION-MAKER)		
36	CONSENT OF SUPPORTER		
37	I (NAME OF SUPPORTER),		
38	CONSENT TO ACT AS A SUPPORTER UNDER THIS AGREEMENT.		
39			
40	(SIGNATURE OF SUPPORTER) (PRINTED NAME OF SUPPORTER)		

1	THIS AGREEMENT MUST BE SIGNED IN FRONT OF TWO		
2	<u>WITNESSES OR A</u>	<u>NOTARY PUBLIC</u>	
3 4 5	(WITNESS 1 SIGNATURE)	(PRINTED NAME OF WITNESS 1)	
6	(WITNESS 2 SIGNATURE)	(PRINTED NAME OF WITNESS 2)	
7	OR		
8	NOTARY PUBLIC		
9	STATE OF		
10			
11	THIS DOCUMENT WAS ACKNOWLEDGED	BEFORE ME UN(DATE)	
12 13	BY		
13 14	(NAME OF DECISION-MAKER)	(NAME OF SUDDODTED)	
14 15	(NAME OF DECISION-MAKER)	(NAME OF SUPPORTER)	
16	(SIGNATURE OF NOTARY)	(PRINTED NAME OF NOTARY)	
17	(SEAL, IF ANY, OF NOTARY)		
18	MY COMMISSION EXPIRES:		
19	WARNING: PROTECTION FOR THE DE	CISION-MAKER WITH A DISABILITY	
20	IF A PERSON WHO RECEIV	ES A COPY OF THIS SUPPORTED	
21	DECISION-MAKING AGREEMENT OR WH	O IS AWARE OF THE EXISTENCE OF	
22	THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE DECISION-MAKER IS		
23	BEING ABUSED, NEGLECTED OR EX	PLOITED BY THE SUPPORTER, THE	
24	PERSON SHALL REPORT THE ALLEGED	ABUSE, NEGLECT OR EXPLOITATION	
25	TO THE DEPARTMENT OF ECONOMIC		
26	SYSTEM BY CALLING THE ADULT PR		
27	HOTLINE OR BY CALLING THE LOCAL	POLICE DEPARTMENT.	
28	Sec. 3. <u>Effective date</u>		
29	This act is effective from and a	after December 31, 2023.	
Senate Engrossed House Bill

mental health; voluntary evaluations; payment

State of Arizona House of Representatives Fifty-sixth Legislature First Regular Session 2023

## CHAPTER 103

## **HOUSE BILL 2041**

## AN ACT

AMENDING SECTIONS 36-501, 36-522, 36-540 AND 36-545.05, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

- i -

1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Section 36-501, Arizona Revised Statutes, is amended to 3 read: 4 36-501. Definitions 5 In this chapter, unless the context otherwise requires: 6 1. "Administration" means the Arizona health care cost containment 7 system administration. 8 2. "Admitting officer" means a psychiatrist or other physician or 9 psychiatric and mental health nurse practitioner with experience in performing psychiatric examinations who has been designated as 10 an 11 admitting officer of the evaluation agency by the person in charge of the 12 evaluation agency. 13 3. "Authorized transporter" means a transportation entity that is 14 contracted with a city, town or county to provide services pursuant to 15 this chapter and that is either: (a) An ambulance service that holds a valid certificate 16 of 17 necessity. 18 (b) A transportation provider authorized by this state to provide 19 behavioral health transportation for individuals safe requiring 20 transportation pursuant to this chapter. 21 4. "Chief medical officer" means the chief medical officer under 22 the supervision of the superintendent of the state hospital. 5. "Contraindicated" means that access is reasonably likely to 23 24 endanger the life or physical safety of the patient or another person. 25 6. "Court" means the superior court in the county in this state in 26 which the patient resides or was found before screening or emergency 27 admission under this title. 28 7. "Criminal history" means police reports, lists of prior arrests 29 and convictions, criminal case pleadings and court orders, including a determination that the person has been found incompetent to stand trial 30 pursuant to section 13-4510. 31 32 8. "Danger to others" means that the judgment of a person who has a 33 mental disorder is so impaired that the person is unable to understand the person's need for treatment and as a result of the person's mental 34 35 disorder the person's continued behavior can reasonably be expected, on 36 the basis of competent medical opinion, to result in serious physical 37 harm. 38 9. "Danger to self": (a) Means behavior that, as a result of a mental disorder: 39 40 (i) Constitutes a danger of inflicting serious physical harm on 41 oneself, including attempted suicide or the serious threat thereof, if the 42 threat is such that, when considered in the light of its context and in 43 light of the individual's previous acts, it is substantially supportive of 44 an expectation that the threat will be carried out.

- 1 -

1 (ii) Without hospitalization will result in serious physical harm 2 or serious illness to the person.

3 (b) Does not include behavior that establishes only the condition 4 of having a grave disability.

5

"Department" means the department of health services. 10.

6 11. "Detention" means the taking into custody of a patient or 7 proposed patient.

8

12. "Director" means the director of the administration.

9

"Evaluation" means: 13.

(a) A professional multidisciplinary analysis that may include 10 11 firsthand observations or remote observations by interactive audiovisual media and that is based on data describing the person's identity, 12 13 biography and medical, psychological and social conditions carried out by 14 a group of persons consisting of not less than the following:

(i) Two licensed physicians who are qualified psychiatrists, if 15 16 possible, or at least experienced in psychiatric matters, and who shall 17 examine and report their findings independently. The person against whom 18 a petition has been filed shall be notified that the person may select one 19 of the physicians. A psychiatric resident in a training program approved 20 by the American medical association or by the American osteopathic 21 association may examine the person in place of one of the psychiatrists if 22 the resident is supervised in the examination and preparation of the 23 affidavit and testimony in court by a qualified psychiatrist appointed to 24 assist in the resident's training, and if the supervising psychiatrist is 25 available for discussion with the attorneys for all parties and for court 26 appearance and testimony if requested by the court or any of the 27 attorneys.

28 Two other individuals, one of whom, if available, is a (ii) 29 psychologist and in any event a social worker familiar with mental health services that may be available placement 30 human alternatives and 31 appropriate for treatment. An evaluation may be conducted on an inpatient 32 basis, an outpatient basis or a combination of both, and every reasonable 33 attempt shall be made to conduct the evaluation in any language preferred 34 by the person.

35 (b) A physical examination that is consistent with the existing 36 standards of care and that is performed by one of the evaluating 37 physicians or by or under the supervision of a physician who is licensed pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner 38 who is licensed pursuant to title 32, chapter 15 if the results of that 39 40 examination are reviewed or augmented by one of the evaluating physicians.

41 14. "Evaluation agency" means a health care agency that is licensed 42 by the department and that has been approved pursuant to this title, 43 providing those services required of such agency by this chapter.

1 15. "Family member" means a spouse, parent, adult child, adult 2 sibling or other blood relative of a person undergoing treatment or 3 evaluation pursuant to this chapter.

4 16. "Grave disability" means a condition evidenced by behavior in 5 which a person, as a result of a mental disorder, is likely to come to 6 serious physical harm or serious illness because the person is unable to 7 provide for the person's own basic physical needs.

8 17. "Health care decision maker" has the same meaning prescribed in 9 section 12-2801.

10 18. "Health care entity" means a health care provider, the 11 department, the administration or a regional behavioral health authority 12 that is under contract with the administration.

13 19. "Health care provider" means a health care institution as 14 defined in section 36-401 that is licensed as a behavioral health provider 15 pursuant to department rules or a mental health provider.

16 20. "Independent evaluator" means a licensed physician, psychiatric 17 and mental health nurse practitioner or psychologist who is selected by 18 the person to be evaluated or by such THE person's attorney.

19 21. "Informed consent" means a voluntary decision following 20 presentation of all facts necessary to form the basis of an intelligent 21 consent by the patient or guardian with no minimizing of known dangers of 22 any procedures.

23 22. "Least restrictive treatment alternative" means the treatment 24 plan and setting that infringe in the least possible degree with the 25 patient's right to liberty and that are consistent with providing needed 26 treatment in a safe and humane manner.

27 23. "Licensed physician" means any medical doctor or doctor of 28 osteopathy who is either:

29

(a) Licensed in this state.

30 (b) A full-time hospital physician licensed in another state and 31 serving on the staff of a hospital operated or licensed by the United 32 States government.

33 24. "Medical director of an evaluation agency" means а psychiatrist, or other licensed physician experienced in psychiatric 34 matters, who is designated in writing by the governing body of the agency 35 36 as the person in charge of the medical services of the agency for the 37 purposes of this chapter and may include the chief medical officer of the 38 state hospital.

39 25. "Medical director of a mental health treatment agency" means a 40 psychiatrist, or other licensed physician experienced in psychiatric 41 matters, who is designated in writing by the governing body of the agency 42 as the person in charge of the medical services of the agency for the 43 purposes of this chapter and includes the chief medical officer of the 44 state hospital.

- 3 -

1 26. "Mental disorder" means a substantial disorder of the person's 2 emotional processes, thought, cognition or memory. Mental disorder is 3 distinguished from:

4 (a) Conditions that are primarily those of drug abuse, alcoholism 5 or intellectual disability, unless, in addition to one or more of these 6 conditions, the person has a mental disorder.

7 (b) The declining mental abilities that directly accompany 8 impending death.

9 (c) Character and personality disorders characterized by lifelong 10 and deeply ingrained antisocial behavior patterns, including sexual 11 behaviors that are abnormal and prohibited by statute unless the behavior 12 results from a mental disorder.

13 27. "Mental health provider" means any physician or provider of
 14 mental health or behavioral health services who is involved in evaluating,
 15 caring for, treating or rehabilitating a patient.

16 28. "Mental health treatment agency" means the state hospital or a 17 health care agency that is licensed by the department and that provides 18 those services that are required of the agency by this chapter.

19 29. "Outpatient treatment" or "combined inpatient and outpatient 20 treatment" means any treatment program not requiring continuous inpatient 21 hospitalization.

30. "Outpatient treatment plan" means a treatment plan that doesnot require continuous inpatient hospitalization.

24 31. "Patient" means any person who is undergoing examination, 25 evaluation or behavioral or mental health treatment under this chapter.

26 32. "Peace officers" means sheriffs of counties, constables, 27 marshals and policemen of cities and towns.

33. "Persistent or acute disability" means a severe mental disorderthat meets all the following criteria:

30 (a) Significantly impairs judgment, reason, behavior or capacity to 31 recognize reality.

32 (b) If not treated, has a substantial probability of causing the 33 person to suffer or continue to suffer severe and abnormal mental, 34 emotional or physical harm.

35 (c) Substantially impairs the person's capacity to make an informed 36 decision regarding treatment, and this impairment causes the person to be 37 incapable of understanding and expressing an understanding of the 38 advantages and disadvantages of accepting treatment and understanding and 39 expressing an understanding of the alternatives to the particular 40 treatment offered after the advantages, disadvantages and alternatives are 41 explained to that person.

42 (d) Has a reasonable prospect of being treatable by outpatient,43 inpatient or combined inpatient and outpatient treatment.

- 4 -

1 34. "Prepetition screening" means the review of each application 2 requesting court-ordered evaluation, including an investigation of facts 3 alleged in the application, an interview with each applicant and an 4 interview, if possible, with the proposed patient. The purpose of the 5 interview with the proposed patient is to assess the problem, explain the 6 application and, when indicated, attempt to persuade the proposed patient 7 to receive, on a voluntary basis, evaluation or other services.

8 35. "Prescribed form" means a form established by a court or the 9 rules of the administration in accordance with the laws of this state.

10 36. "Professional" means a physician who is licensed pursuant to 11 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to 12 title 32, chapter 19.1 or a psychiatric and mental health nurse 13 practitioner who is certified pursuant to title 32, chapter 15.

14 37. "Proposed patient" means a person for whom an application for 15 evaluation has been made or a petition for court-ordered evaluation has 16 been filed.

17 38. "Prosecuting agency" means the county attorney, attorney 18 general or city attorney who applied or petitioned for an evaluation or 19 treatment pursuant to this chapter.

20 39. "Psychiatric and mental health nurse practitioner" means a 21 registered nurse practitioner as defined in section 32-1601 who has 22 completed an adult or family psychiatric and mental health nurse 23 practitioner program and who is certified as an adult or family 24 psychiatric and mental health nurse practitioner by the state board of 25 nursing.

26 40. "Psychiatrist" means a licensed physician who has completed 27 three years of graduate training in psychiatry in a program approved by 28 the American medical association or the American osteopathic association.

41. "Psychologist" means a person who is licensed under title 32,
chapter 19.1 and who is experienced in the practice of clinical
psychology.

42. "Records" means all communications that are recorded in any form or medium and that relate to patient examination, evaluation or behavioral or mental health treatment. Records include medical records that are prepared by a health care provider or other providers. Records do not include:

(a) Materials that are prepared in connection with utilization
review, peer review or quality assurance activities, including records
that a health care provider prepares pursuant to section 36-441, 36-445,
36-2402 or 36-2917.

(b) Recorded telephone and radio calls to and from a publicly
operated emergency dispatch office relating to requests for emergency
services or reports of suspected criminal activity.

44 43. "Regional behavioral health authority" has the same meaning 45 prescribed in section 36-3401.

- 5 -

1 44. "Screening agency" means a health care agency that is licensed 2 by the department and that provides those services required of such THE 3 agency by this chapter.

4 45. "Social worker" means a person who has completed two years of 5 graduate training in social work in a program approved by the council of 6 social work education and who has experience in mental health.

7

46. "State hospital" means the Arizona state hospital.

8 47. "Superintendent" means the superintendent of the state 9 hospital.

48. 10 "VOLUNTARY EVALUATION" MEANS THE ONGOING COLLECTION AND 11 ANALYSIS OF A PERSON'S MEDICAL, PSYCHOLOGICAL, PSYCHIATRIC AND SOCIAL CONDITIONS IN ORDER TO INITIALLY DETERMINE IF A HEALTH DISORDER EXISTS AND 12 13 IF THERE IS A NEED FOR BEHAVIORAL HEALTH SERVICES AND, ON AN ONGOING 14 BASIS, TO ENSURE THAT THE PERSON'S SERVICE PLAN IS DESIGNED TO MEET THE 15 PERSON'S AND THE PERSON'S FAMILY'S CURRENT NEEDS AND LONG-TERM GOALS.

16 Sec. 2. Section 36-522, Arizona Revised Statutes, is amended to 17 read:

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- 19

36-522. <u>Voluntary evaluations; consent; failure to complete;</u> <u>definitions</u>

20 Α. ON RECEIPT OF AN APPLICATION FOR COURT-ORDERED EVALUATION, if 21 the petition for court-ordered evaluation is not filed because it has been 22 determined that the proposed patient will voluntarily receive an 23 evaluation and is unlikely to present a danger to self or others until the 24 voluntary evaluation, the evaluation agency provided for by the county, or 25 A LICENSED BEHAVIORAL HEALTH PROVIDER selected by the proposed patient, 26 shall be immediately notified BY THE EVALUATION AGENCY and shall provide A 27 VOLUNTARY evaluation of the proposed patient at a scheduled time and place within five TEN days of AFTER the notice. The voluntary evaluation may be 28 29 on an inpatient or outpatient basis AND ON COMPLETION SHALL BE IMMEDIATELY DELIVERED TO THE EVALUATION AGENCY PROVIDED FOR BY THE COUNTY. THE 30 31 EVALUATION AGENCY PROVIDED FOR BY THE COUNTY SHALL CONFIRM RECEIPT OF THE VOLUNTARY EVALUATION. IF THE VOLUNTARY EVALUATION RECOMMENDS THAT THE 32 33 PATIENT RECEIVE A COURT-ORDERED EVALUATION, THE RECOMMENDATION MUST BE 34 ACCOMPANIED WITH AN APPLICATION FOR COURT-ORDERED EVALUATION.

35 B. Voluntary inpatient evaluation is subject to article 3 of this 36 chapter.

37 С. Voluntary outpatient evaluation shall conform to the 38 requirements of section 36-530, subsection D and section 36-531, 39 subsections B, C and D and shall proceed only after the person to be 40 evaluated has given consent to be evaluated by signing a form prescribed 41 by the director that includes information to the proposed patient that the 42 patient-physician privilege does not apply and that the evaluation may 43 result in a petition for the person to undergo court-ordered treatment or 44 for guardianship. Voluntary evaluation may be carried out only if chosen

1 by the patient during the course of a prepetition screening after an 2 application for evaluation has been made. 3 D. IF THE PERSON WHO REQUESTED A VOLUNTARY EVALUATION DOES NOT 4 APPEAR OR DOES NOT COMPLETE THE APPOINTMENTS SCHEDULED, THE EVALUATION 5 AGENCY PROVIDED FOR BY THE COUNTY SHALL BE IMMEDIATELY NOTIFIED BY THE 6 PROVIDER WHO WAS TO CONDUCT THE EVALUATION. THE EVALUATION AGENCY SHALL 7 THEN PROVIDE PREPETITION SCREENING OF THE APPLICATION FOR COURT-ORDERED 8 EVALUATION IN ACCORDANCE WITH SECTIONS 36-521 AND 36-521.01. 9 E. FOR THE PURPOSES OF THIS SECTION: 10 1. "LICENSED BEHAVIORAL HEALTH PROVIDER" MEANS ANY OF THE 11 FOLLOWING: (a) A PERSON WHO IS LICENSED PURSUANT TO TITLE 32. CHAPTER 33 AND 12 13 WHOSE SCOPE OF PRACTICE ALLOWS THE PERSON TO EITHER: 14 (i) INDEPENDENTLY ENGAGE IN THE PRACTICE OF BEHAVIORAL HEALTH. 15 (ii) EXCEPT FOR A LICENSED SUBSTANCE ABUSE TECHNICIAN, ENGAGE IN 16 THE PRACTICE OF BEHAVIORAL HEALTH UNDER DIRECT SUPERVISION. 17 (b) A PSYCHIATRIST. 18 (c) A PSYCHOLOGIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 19 19.1. (d) A REGISTERED NURSE PRACTITIONER WHO IS LICENSED PURSUANT TO 20 21 TITLE 32, CHAPTER 15 AND WHO IS CERTIFIED AS AN ADULT PSYCHIATRIC AND 22 MENTAL HEALTH NURSE. 23 2. "PRACTICE OF BEHAVIORAL HEALTH" HAS THE SAME MEANING PRESCRIBED 24 IN SECTION 32-3251. 25 Sec. 3. Section 36-540, Arizona Revised Statutes, is amended to 26 read: 27 36-540. <u>Court options; immunity; rules</u> 28 A. If the court finds by clear and convincing evidence that the 29 proposed patient, as a result of mental disorder, is a danger to self, is 30 a danger to others or has a persistent or acute disability or a grave 31 disability and is in need of treatment, and is either unwilling or unable 32 to accept voluntary treatment, the court shall order the patient to 33 undergo one of the following: 34 1. Treatment in a program of outpatient treatment. 35 2. Treatment in a program consisting of combined inpatient and 36 outpatient treatment. 37 3. Inpatient treatment in a mental health treatment agency, in a 38 hospital operated by or under contract with the United States department 39 of veterans affairs to provide treatment to eligible veterans pursuant to 40 article 9 of this chapter, in the state hospital or in a private hospital, 41 if the private hospital agrees, subject to the limitations of section 42 36-541. 43 B. The court shall consider all available and appropriate 44 alternatives for the treatment and care of the patient. The court shall 45 order the least restrictive treatment alternative available.

1 C. The court may order the proposed patient to undergo outpatient 2 or combined inpatient and outpatient treatment pursuant to subsection A, 3 paragraph 1 or 2 of this section if the court:

4

1. Determines that all of the following apply:

5 (a) The patient does not require continuous inpatient 6 hospitalization.

7 (b) The patient will be more appropriately treated in an outpatient 8 treatment program or in a combined inpatient and outpatient treatment 9 program.

10

(c) The patient will follow a prescribed outpatient treatment plan.

(d) The patient will not likely become dangerous or suffer more serious physical harm or serious illness or further deterioration if the patient follows a prescribed outpatient treatment plan.

14 2. Is presented with and approves a written treatment plan that conforms with the requirements of section 36-540.01, subsection B. If the 15 16 court determines that the patient meets the requirements of section 17 36-550.09, the court may order the patient to be placed in a secure 18 behavioral health residential facility that is licensed by the department 19 pursuant to section 36-425.06. If the treatment plan presented to the 20 court pursuant to this subsection provides for supervision of the patient 21 under court order by a mental health agency that is other than the mental 22 health agency that petitioned or requested the county attorney to petition 23 the court for treatment pursuant to section 36-531, the treatment plan 24 must be approved by the medical director of the mental health agency that 25 will supervise the treatment pursuant to subsection E of this section.

D. An order to receive treatment pursuant to subsection A, paragraph 1 or 2 of this section shall not exceed three hundred sixty-five days. The period of inpatient treatment under a combined treatment order pursuant to subsection A, paragraph 2 of this section shall not exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section.

32 E. If the court enters an order for treatment pursuant to 33 subsection A, paragraph 1 or 2 of this section, all of the following 34 apply:

35 1. The court shall designate the medical director of the mental 36 health treatment agency that will supervise and administer the patient's 37 treatment program.

2. The medical director shall not use the services of any person, agency or organization to supervise a patient's outpatient treatment program unless the person, agency or organization has agreed to provide these services in the individual patient's case and unless the department has determined that the person, agency or organization is capable and competent to do so.

3. The person, agency or organization assigned to supervise an 1 2 outpatient treatment program or the outpatient portion of a combined 3 treatment program shall be notified at least three days before a referral. 4 The medical director making the referral and the person, agency or 5 organization assigned to supervise the treatment program shall share 6 relevant information about the patient to provide continuity of treatment.

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4. The court may order the medical director to provide notice to the court of any noncompliance with the terms of a treatment order.

9 During any period of outpatient treatment under subsection A, 5. 10 paragraph 2 of this section, if the court, on its own motion or on motion 11 by the medical director of the patient's outpatient mental health 12 treatment facility, determines that the patient is not complying with the 13 terms of the order or that the outpatient treatment plan is no longer 14 appropriate and the patient needs inpatient treatment, the court, without 15 a hearing and based on the court record, the patient's medical record, the 16 affidavits and recommendations of the medical director, and the advice of 17 physicians or the psychiatric and mental staff and health nurse 18 practitioner familiar with the treatment of the patient, may enter an 19 order amending its original order. The amended order may alter the 20 outpatient treatment plan or order the patient to inpatient treatment 21 pursuant to subsection A, paragraph 3 of this section. The amended order 22 shall not increase the total period of commitment originally ordered by 23 the court or, when added to the period of inpatient treatment provided by 24 the original order and any other amended orders, exceed the maximum period 25 allowed for an order for inpatient treatment pursuant to subsection F of 26 this section. If the patient refuses to comply with an amended order for 27 inpatient treatment, the court, on its own motion or on the request of the 28 medical director, may authorize and direct a peace officer to take the 29 patient into protective custody and transport the patient to the agency 30 for inpatient treatment. Any authorization, directive or order issued to 31 a peace officer to take the patient into protective custody shall include 32 the patient's criminal history and the name and telephone numbers of the 33 patient's case manager, guardian, spouse, next of kin or significant 34 other, as applicable. When reporting to or being returned to a treatment 35 agency for inpatient treatment pursuant to an amended order, the patient 36 shall be informed of the patient's right to judicial review and the 37 patient's right to consult with counsel pursuant to section 36-546.

38 6. During any period of outpatient treatment under subsection A, 39 paragraph 2 of this section, if the medical director of the outpatient 40 treatment facility in charge of the patient's care determines, in concert 41 with the medical director of an inpatient mental health treatment facility 42 who has agreed to accept the patient, that the patient is in need of 43 immediate acute inpatient psychiatric care because of behavior that is 44 dangerous to self or to others, the medical director of the outpatient 45 treatment facility may order a peace officer to apprehend and transport 22

1 the patient to the inpatient treatment facility pending a court 2 determination on an amended order under paragraph 5 of this subsection. 3 The patient may be detained and treated at the inpatient treatment 4 facility for a period of not more than forty-eight hours, exclusive of 5 weekends and holidays, from the time that the patient is taken to the 6 inpatient treatment facility. The medical director of the outpatient 7 treatment facility shall file the motion for an amended court order 8 requesting inpatient treatment not later than the next working day 9 following the patient being taken to the inpatient treatment facility. 10 Any period of detention within the inpatient treatment facility pending issuance of an amended order shall not increase the total period of 11 12 commitment originally ordered by the court or, when added to the period of 13 inpatient treatment provided by the original order and any other amended 14 orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section. If a patient is 15 16 ordered to undergo inpatient treatment pursuant to an amended order, the 17 medical director of the outpatient treatment facility shall inform the 18 patient of the patient's right to judicial review and to consult with an 19 attorney pursuant to section 36-546.

F. The maximum periods of inpatient treatment that the court may order, subject to the limitations of section 36-541, are as follows:

1. Ninety days for a person found to be a danger to self.

23 2. One hundred eighty days for a person found to be a danger to 24 others.

25 3. One hundred eighty days for a person found to have a persistent 26 or acute disability.

4. Three hundred sixty-five days for a person found to have a gravedisability.

29 G. If, on finding that the patient meets the criteria for 30 court-ordered treatment pursuant to subsection A of this section, the 31 court also finds that there is reasonable cause to believe that the 32 patient is an incapacitated person as defined in section 14-5101 or is a 33 person in need of protection pursuant to section 14-5401 and that the 34 patient is or may be in need of guardianship or conservatorship, or both, 35 the court may order an investigation concerning the need for a guardian or 36 conservator, or both, and may appoint a suitable person or agency to 37 conduct the investigation. The appointee may include a court-appointed guardian ad litem, an investigator appointed pursuant to section 14-5308 38 39 or the public fiduciary if there is no person willing and qualified to act 40 in that capacity. The court shall give notice of the appointment to the 41 appointee within three days after the appointment. The appointee shall 42 submit the report of the investigation to the court within twenty-one 43 days. The report shall include recommendations as to who should be guardian or who should be conservator, or both, and a report of the 44 45 findings and reasons for the recommendation. If the investigation and

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1 report so indicate, the court shall order the appropriate person to submit 2 a petition to become the guardian or conservator, or both, of the patient.

3 H. In any proceeding for court-ordered treatment in which the 4 petition alleges that the patient is in need of a guardian or conservator 5 and states the grounds for that allegation, the court may appoint an 6 emergency temporary guardian or conservator, or both, for a specific 7 purpose or purposes identified in its order and for a specific period of 8 time not to exceed thirty days if the court finds that all of the 9 following are true:

10 1. The patient meets the criteria for court-ordered treatment 11 pursuant to subsection A of this section.

12 2. There is reasonable cause to believe that the patient is an 13 incapacitated person as defined in section 14-5101 or is in need of 14 protection pursuant to section 14-5401, paragraph 2.

15 3. The patient does not have a guardian or conservator and the 16 welfare of the patient requires immediate action to protect the patient or 17 the ward's property.

4. The conditions prescribed pursuant to section 14-5310,
subsection B or section 14-5401.01, subsection B have been met.

20 The court may appoint as a temporary guardian or conservator Ι. 21 pursuant to subsection H of this section a suitable person or the public 22 fiduciary if there is no person qualified and willing to act in that capacity. The court shall issue an order for an investigation as 23 24 prescribed pursuant to subsection G of this section and, unless the 25 patient is represented by independent counsel, the court shall appoint an 26 attorney to represent the patient in further proceedings regarding the 27 appointment of a guardian or conservator. The court shall schedule a 28 further hearing within fourteen days on the appropriate court calendar of 29 a court that has authority over guardianship or conservatorship matters 30 pursuant to this title to consider the continued need for an emergency 31 temporary guardian or conservator and the appropriateness of the temporary 32 guardian or conservator appointed, and shall order the appointed guardian 33 or conservator to give notice to persons entitled to notice pursuant to 34 section 14-5309, subsection A or section 14-5405, subsection A. The court 35 shall authorize certified letters of temporary emergency guardianship or 36 conservatorship to be issued on presentation of a copy of the court's 37 order. If a temporary emergency conservator other than the public fiduciary is appointed pursuant to this subsection, the court shall order 38 39 that the use of the monies and property of the patient by the conservator 40 be restricted and not be sold, used, transferred or encumbered, except 41 that the court may authorize the conservator to use monies or property of the patient specifically identified as needed to pay an expense to provide 42 43 for the care, treatment or welfare of the patient pending further hearing. 44 This subsection and subsection H of this section do not:

1 1. Prevent the evaluation or treatment agency from seeking 2 quardianship and conservatorship in any other manner allowed by law at any 3 time during the period of court-ordered evaluation and treatment.

4 Relieve the evaluation or treatment agency from its obligations 2. 5 concerning the suspected abuse of a vulnerable adult pursuant to title 46, 6 chapter 4.

7 finding that a patient meets the criteria J. If. on for 8 court-ordered treatment pursuant to subsection A of this section, the 9 court also learns that the patient has a guardian appointed under title 14, the court with notice may impose on the existing guardian additional 10 11 duties pursuant to section 14-5312.01. If the court imposes additional 12 duties on an existing guardian as prescribed in this subsection, the court 13 may determine that the patient needs to continue treatment under a court 14 order for treatment and may issue the order or determine that the patient's needs can be adequately met by the guardian with the additional 15 16 duties pursuant to section 14-5312.01 and decline to issue the court order 17 for treatment. If at any time after the issuance of a court order for 18 treatment the court finds that the patient's needs can be adequately met 19 by the guardian with the additional duties pursuant to section 14-5312.01 20 and that a court order for treatment is no longer necessary to ensure 21 compliance with necessary treatment, the court may terminate the court 22 order for treatment. If there is a court order for treatment and a 23 guardianship with additional mental health authority pursuant to section 24 14-5312.01 existing at the same time, the treatment and placement 25 decisions made by the treatment agency assigned by the court to supervise 26 and administer the patient's treatment program pursuant to the court order 27 for treatment are controlling unless the court orders otherwise.

28 The court shall file a report as part of the court record on its Κ. 29 findings of alternatives for treatment.

30 Treatment shall not include psychosurgery, lobotomy or any other L. 31 brain surgery without specific informed consent of the patient or the 32 patient's legal guardian and an order of the superior court in the county 33 in which the treatment is proposed, approving with specificity the use of 34 the treatment.

M. The medical director or any person, agency or organization used 35 36 by the medical director to supervise the terms of an outpatient treatment 37 plan is not civilly liable for any acts committed by a patient while on 38 outpatient treatment if the medical director, person, agency or 39 organization has in good faith followed the requirements of this section.

40 N. A peace officer who in good faith apprehends and transports a 41 patient to an inpatient treatment facility on the order of the medical 42 director of the outpatient treatment facility pursuant to subsection E, 43 paragraph 6 of this section is not subject to civil liability.

1 0. If a person has been found, as a result of a mental disorder, to 2 constitute a danger to self or others or to have a persistent or acute 3 disability or a grave disability and the court enters an order for 4 treatment pursuant to subsection A of this section, the court shall 5 transmit the person's name, sex, date of birth, social security number, if 6 available, and date of the order for treatment to the supreme court. The 7 supreme court shall transmit the information to the department of public 8 safety to comply with the requirements of title 13, chapter 31 and title 9 32, chapter 26. The department of public safety shall transmit the 10 information to the national instant criminal background check system. The 11 superior court may access the information of a person who is ordered into 12 treatment to enforce or facilitate a treatment order.

P. On request, the clerk of the court shall provide certified copies of the commitment order to a law enforcement or prosecuting agency that is investigating or prosecuting a prohibited possessor as defined in section 13-3101.

17 Q. If the court does not find a person to be in need of treatment 18 and a prosecutor filed a petition pursuant to section 13-4517, the 19 evaluation agency, within twenty-four hours, shall notify the prosecuting 20 agency of its finding. The court shall order the medical director to 21 detain the person for an additional twenty-four hours to allow the 22 prosecuting agency to be notified. If the court has retained jurisdiction 23 pursuant to section 13-4517, subsection C, the court may remand the person 24 to the custody of the sheriff for further disposition pursuant to section 25 13-4517, subsection A, paragraph 2 or 3.

26 R. After an order for treatment has been issued pursuant to this 27 section, the superior court in a county where a patient under a court 28 order for treatment is found or resides has concurrent jurisdiction with the court in the county that issued the court order for treatment for the 29 30 purposes of enforcing the court order for treatment, ordering changes to 31 the treatment plan or amending the order to require the patient to undergo 32 further inpatient treatment. If the court in which proceedings are 33 commenced to enforce or administer the order for treatment is not the 34 court that originally entered the order for treatment, unless prevented by 35 an emergency, the court in which the proceedings are pending shall consult 36 with the court of original entry and determine whether to hold hearings 37 and enter orders to facilitate enforcement or administration of the court order, whether to refer the case back to the court of original entry for 38 39 further proceedings or whether to transfer the entire case to the court of 40 original entry in that county for all further proceedings. The supreme 41 court may adopt rules to govern the procedures to be used in enforcing and administering court orders for treatment in the various counties of this 42 43 state and the transfer of cases between counties involving court orders 44 for treatment.

1 S. Pursuant to the authority granted in subsection R of this 2 section, for the purpose of enforcing or facilitating treatment of a 3 patient under an active order for treatment, the supreme court shall adopt 4 a rule to establish a program to enable the judges of the superior court, 5 county attorneys, patients' attorneys, HEALTH CARE INSTITUTIONS AS DEFINED 6 IN SECTION 36-401 THAT PROVIDE SERVICES SUBJECT TO THE FEDERAL EMERGENCY 7 MEDICAL TREATMENT AND ACTIVE LABOR ACT, the regional behavioral health authority and behavioral health service providers in any county to 8 9 determine the existence of an active court order for treatment and the 10 history of court orders for treatment entered for a patient by a superior 11 court in any county in this state. The program shall ensure that the 12 information shared with other persons or entities is necessary only for 13 the purposes stated in this subsection and shall require that the 14 information shared be maintained as confidential by the receiving person 15 or entity.

16 Sec. 4. Section 36-545.05, Arizona Revised Statutes, is amended to 17 read:

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36-545.05. <u>Treatment by agencies under administration</u> <u>contract: charges: voluntary evaluations:</u> <u>prepetition screenings; court-ordered</u> <u>evaluations: prohibitions</u>

A. When a person is given a prepetition screening, or a court-ordered evaluation by a screening agency or evaluation agency pursuant to article 4 of this chapter, the person shall not be charged.

B. WHEN A PERSON IS GIVEN A VOLUNTARY EVALUATION PURSUANT TO
SECTION 36-522, THE PERSON SHALL PAY ALL OR SUCH PORTION OF THE
ESTABLISHED CHARGES AS THE PERSON CAN AFFORD. IF THE PERSON IS INDIGENT,
CHARGES MAY NOT BE MADE AGAINST THE PERSON.

29 B. C. When a patient is given voluntary treatment pursuant to 30 article 3 of this chapter or court-ordered treatment pursuant to article 5 31 of this chapter, the patient or proposed patient shall pay all or such 32 portion of the established charges as the patient can afford. If the 33 patient is indigent, no charges shall be made against the patient.

APPROVED BY THE GOVERNOR MAY 1, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2023.

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