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House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HOUSE BILL 2242

AN ACT

AMENDING SECTIONS 36-538 AND 36-543, ARIZONA REVISED STATUTES; RELATING TO COURT-ORDERED TREATMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-538, Arizona Revised Statutes, is amended to
3 read:

4 36-538. Independent evaluator

5 At all hearings conducted pursuant to sections 36-539, 36-543 and
6 36-546, a person has the right to have an analysis of his mental condition by
7 an independent evaluator. If the person is unable to afford such evaluation,
8 the court shall appoint an independent evaluator acceptable to the patient
9 from a list of physicians and psychologists who are willing to accept court
10 appointed evaluations.

11 Sec. 2. Section 36-543, Arizona Revised Statutes, is amended to read:

12 36-543. Release from treatment of gravely disabled patient or
13 persistently or acutely disabled patient; annual
14 review and examination

15 A. A patient found to be gravely disabled **OR PERSISTENTLY OR ACUTELY**
16 **DISABLED** and ordered to undergo treatment may be released from inpatient
17 treatment when, in the opinion of the medical director of the mental health
18 treatment agency, the level of care offered by the agency is no longer
19 required. The patient may agree to continue treatment voluntarily. If the
20 patient is to be released, the medical director shall arrange for an
21 appropriate alternative placement.

22 B. If a patient to be released is under guardianship as a gravely
23 disabled person **OR AS A PERSISTENTLY OR ACUTELY DISABLED PERSON**, the medical
24 director of the mental health treatment agency shall notify the guardian **AND**
25 **ANY RELEVANT REGIONAL BEHAVIORAL HEALTH AUTHORITY** ten days before the
26 intended release date that the ward no longer requires the level of care
27 offered by the agency. The guardian **AND, IF RELEVANT, THE REGIONAL**
28 **BEHAVIORAL HEALTH AUTHORITY** shall arrange alternative placement with the
29 advice and recommendations of the medical director of the mental health
30 treatment agency.

31 C. The medical director of the mental health treatment agency is not
32 civilly liable for any acts committed by the released patient if the medical
33 director has in good faith complied with the requirements of this article.

34 D. A patient who has been found to be gravely disabled and is
35 undergoing court-ordered treatment shall have an annual examination and
36 review to determine whether the continuation of court-ordered treatment is
37 appropriate and to assess the needs of the patient for guardianship or
38 conservatorship, or both. The medical director of the mental health
39 treatment agency shall appoint one or more examiners qualified to carry out
40 the examination, at least one of whom shall be a psychiatrist licensed to
41 practice in this state, and may at the discretion of the medical director
42 appoint one or more additional examiners.

1 E. A PATIENT WHO HAS BEEN FOUND TO BE PERSISTENTLY OR ACUTELY DISABLED
2 AND WHO IS UNDERGOING COURT-ORDERED TREATMENT SHALL HAVE AN ANNUAL
3 EXAMINATION AND REVIEW TO DETERMINE WHETHER THE CONTINUATION OF COURT-ORDERED
4 TREATMENT IS APPROPRIATE IF THE MEDICAL DIRECTOR OF THE MENTAL HEALTH
5 TREATMENT AGENCY DETERMINES THAT THE PATIENT HAS BEEN SUBSTANTIALLY
6 NONCOMPLIANT WITH TREATMENT DURING THE PERIOD OF THE COURT ORDER. THE
7 MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY SHALL APPOINT ONE OR
8 MORE ADDITIONAL EXAMINERS QUALIFIED TO CARRY OUT THE EXAMINATION, AT LEAST
9 ONE OF WHOM SHALL BE A PSYCHIATRIST LICENSED TO PRACTICE IN THIS STATE.

10 ~~E.~~ F. Each examiner participating in the annual examination and
11 review of a gravely disabled person OR A PERSISTENTLY OR ACUTELY DISABLED
12 PERSON shall submit a report to the medical director of the mental health
13 treatment agency which includes the following:

14 1. The examiner's opinions as to whether the patient continues to be
15 gravely disabled OR PERSISTENTLY OR ACUTELY DISABLED and in need of
16 treatment.

17 2. A statement as to whether suitable alternatives to court-ordered
18 treatment are available.

19 3. A statement as to whether voluntary treatment would be appropriate.

20 4. A review of the patient's status as to guardianship or
21 conservatorship, or both, the adequacy of existing protections of the patient
22 and the continued need for guardianship or conservatorship, or both. If the
23 examiner concludes that the patient's needs in these areas are not being
24 adequately met, the examiner's report shall recommend that the court order an
25 investigation into the patient's needs.

26 ~~F.~~ G. The medical director of the mental health treatment agency
27 shall forward the results of the annual examination and review of a gravely
28 disabled person OR A PERSISTENTLY OR ACUTELY DISABLED PERSON to the court
29 including the medical director's recommendation based on the review which may
30 be release of the patient without delay, release with delay or no
31 release. If the patient does not have a guardian, the court ~~shall~~, on
32 receipt of the medical director's report, SHALL appoint an attorney to
33 represent the patient. An attorney appointed under this subsection, within
34 three days after appointment, to the extent possible, shall fulfill the
35 duties imposed by section 36-537 and review the medical director's report,
36 AND the patient's medical records, interview the physician who prepared the
37 report and, if appropriate, request a hearing. AT ALL PROCEEDINGS CONDUCTED
38 PURSUANT TO THIS SECTION, A PATIENT HAS THE RIGHT TO HAVE AN ANALYSIS OF HIS
39 MENTAL CONDITION BY AN INDEPENDENT EVALUATOR PURSUANT TO SECTION 36-538. If
40 the patient is under guardianship pursuant to section 14-5312.01, a copy of
41 the report shall be mailed to the patient's guardian. If the medical
42 director's recommendation is no release or release with delay, the court may
43 accept the report and recommendation of the medical director or order a
44 hearing. ~~The court shall order a hearing if requested to do so by the~~
45 ~~patient, the medical director or, if the patient has a guardian pursuant to~~
46 ~~section 14-5312.01, the guardian. If a hearing is ordered, the court may~~

1 ~~order additional examinations of the patient~~ IF A HEARING IS ORDERED, THE
2 BURDEN OF PROOF IS ON THE PARTY SEEKING THE RENEWAL OF THE COURT ORDER TO
3 PROVE, BY CLEAR AND CONVINCING EVIDENCE, THAT THE PATIENT CONTINUES TO BE A
4 DANGER TO SELF, DANGER TO OTHERS, PERSISTENTLY OR ACUTELY DISABLED OR GRAVELY
5 DISABLED AND IS IN NEED OF TREATMENT AND IS EITHER UNWILLING OR UNABLE TO
6 ACCEPT TREATMENT VOLUNTARILY. The hearing shall be held within three weeks
7 of the request. At the hearing the court may order the patient released or
8 may order that treatment be continued. The court may also order an
9 investigation into the need for guardianship OR CONSERVATORSHIP, OR BOTH.

10 G. The deputy director shall create and operate a program to assure
11 that the examination and review of gravely disabled persons OR PERSISTENTLY
12 OR ACUTELY DISABLED PERSONS WHO HAVE BEEN SUBSTANTIALLY NONCOMPLIANT WHILE
13 UNDER COURT ORDER are carried out in an effective and timely manner. The
14 deputy director, with the approval of the director, shall adopt rules needed
15 to operate this program.