

REFERENCE TITLE: patient release; notice; disclosure

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# HB 2181

Introduced by  
Representative Farnsworth

AN ACT

AMENDING SECTIONS 36-509, 36-540.01, 36-541.01 AND 36-542, 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 36-509, Arizona Revised Statutes, is amended to  
3 read:

4 36-509. Confidential records

5 A. A health care entity must keep records and information contained in  
6 records confidential and not as public records, except as provided in this  
7 section. Records and information contained in records may only be disclosed  
8 to:

9 1. Physicians and providers of health, mental health or social and  
10 welfare services involved in caring for, treating or rehabilitating the  
11 patient.

12 2. Individuals to whom the patient or the patient's health care  
13 decision maker has given authorization to have information disclosed.

14 3. Persons authorized by a court order.

15 4. Persons doing research only if the activity is conducted pursuant  
16 to applicable federal or state laws and regulations governing research.

17 5. The state department of corrections in cases in which prisoners  
18 confined to the state prison are patients in the state hospital on authorized  
19 transfers either by voluntary admission or by order of the court.

20 6. Governmental or law enforcement agencies if necessary to:

21 (a) Secure the return of a patient who is on unauthorized absence from  
22 any agency where the patient was undergoing evaluation and treatment.

23 (b) Report a crime on the premises.

24 (c) Avert a serious and imminent threat to an individual or the  
25 public.

26 7. Persons, including family members, actively participating in the  
27 patient's care, treatment or supervision. A health care provider may only  
28 release information relating to the patient's diagnosis, prognosis, need for  
29 hospitalization, anticipated length of stay, discharge plan, medication,  
30 medication side effects and short-term and long-term treatment goals. A  
31 health care provider may make this release only after the treating  
32 professional or that person's designee interviews the patient or the  
33 patient's health care decision maker and the patient or the patient's health  
34 care decision maker does not object, unless federal or state law permits the  
35 disclosure. If the patient does not have the opportunity to object to the  
36 disclosure because of incapacity or an emergency circumstance and the  
37 patient's health care decision maker is not available to object to the  
38 release, the health care provider in the exercise of professional judgment  
39 may determine if the disclosure is in the best interests of the patient and,  
40 if so, may release the information authorized pursuant to this paragraph. A  
41 decision to release or withhold information is subject to review pursuant to  
42 section 36-517.01. The health care provider must record the name of any  
43 person to whom any information is given under this paragraph.

44 8. A state agency that licenses health professionals pursuant to title  
45 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the

1 course of investigating complaints of professional negligence, incompetence  
2 or lack of clinical judgment.

3 9. A state or federal agency that licenses health care providers.

4 10. A governmental agency or a competent professional, as defined in  
5 section 36-3701, in order to comply with chapter 37 of this title.

6 11. Human rights committees established pursuant to title 41, chapter  
7 35. Any information released pursuant to this paragraph shall comply with  
8 the requirements of section 41-3804 and applicable federal law and shall be  
9 released without personally identifiable information unless the personally  
10 identifiable information is required for the official purposes of the human  
11 rights committee. Case information received by a human rights committee  
12 shall be maintained as confidential. For the purposes of this paragraph,  
13 "personally identifiable information" includes a person's name, address, date  
14 of birth, social security number, tribal enrollment number, telephone or  
15 telefacsimile number, driver license number, places of employment, school  
16 identification number and military identification number or any other  
17 distinguishing characteristic that tends to identify a particular person.

18 12. A patient or the patient's health care decision maker pursuant to  
19 section 36-507.

20 13. The department of public safety by the court to comply with the  
21 requirements of section 36-540, subsection N.

22 14. A third party payor or the payor's contractor to obtain  
23 reimbursement for health care, mental health care or behavioral health care  
24 provided to the patient.

25 15. A private entity that accredits the health care provider and with  
26 whom the health care provider has an agreement requiring the agency to  
27 protect the confidentiality of patient information.

28 16. The legal representative of a health care entity in possession of  
29 the record for the purpose of securing legal advice.

30 17. A person or entity as otherwise required by state or federal law.

31 18. A person or entity as permitted by the federal regulations on  
32 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

33 19. A person or entity to conduct utilization review, peer review and  
34 quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

35 20. A person maintaining health statistics for public health purposes  
36 as authorized by law.

37 21. A grand jury as directed by subpoena.

38 22. A PROSECUTING AGENCY IF THE PROSECUTION FILED A PETITION FOR  
39 EVALUATION AFTER THE DISMISSAL OF THE CRIMINAL CHARGES.

40 B. Information and records obtained in the course of evaluation,  
41 examination or treatment and submitted in any court proceeding pursuant to  
42 this chapter or title 14, chapter 5 are confidential and are not public  
43 records unless the hearing requirements of this chapter or title 14, chapter  
44 5 require a different procedure. Information and records that are obtained  
45 pursuant to this section and submitted in a court proceeding pursuant to

1 title 14, chapter 5 and that are not clearly identified by the parties as  
2 confidential and segregated from nonconfidential information and records are  
3 considered public records.

4 C. Notwithstanding subsections A and B of this section, the legal  
5 representative of a patient who is the subject of a proceeding conducted  
6 pursuant to this chapter and title 14, chapter 5 has access to the patient's  
7 information and records in the possession of a health care entity or filed  
8 with the court.

9 Sec. 2. Section 36-540.01, Arizona Revised Statutes, is amended to  
10 read:

11 36-540.01. Conditional outpatient treatment

12 A. The medical director may issue an order for conditional outpatient  
13 treatment for a patient ordered to undergo treatment pursuant to section  
14 36-540 if, after consultation with staff familiar with the patient's case  
15 history, the medical director determines with a reasonable degree of medical  
16 probability that all of the following apply:

17 1. The patient no longer requires continuous inpatient  
18 hospitalization.

19 2. The patient will be more appropriately treated in an outpatient  
20 treatment program.

21 3. The patient will follow a prescribed outpatient treatment plan.

22 4. The patient will not likely become dangerous, suffer more serious  
23 physical harm or serious illness or further deteriorate if the patient  
24 follows a prescribed outpatient treatment plan.

25 B. The order for conditional outpatient treatment issued by the  
26 medical director shall include a written outpatient treatment plan prepared  
27 by staff familiar with the patient's case history and approved by the medical  
28 director. The plan shall include all of the following:

29 1. A statement of the patient's requirements, if any, for supervision,  
30 medication and assistance in obtaining basic needs such as employment, food,  
31 clothing or shelter.

32 2. The address of the residence where the patient is to live and the  
33 name of the person in charge of the residence, if any.

34 3. The name and address of any person, agency or organization assigned  
35 to supervise an outpatient treatment plan or care for the patient, and the  
36 extent of authority of the person, agency or organization in carrying out the  
37 terms of the plan.

38 4. The conditions for continued outpatient treatment, which may  
39 require periodic reporting, continuation of medication and submission to  
40 testing, and may restrict travel, consumption of spirituous liquor and drugs,  
41 associations with others and incurrence of debts and obligations or such  
42 other reasonable conditions as the medical director may specify.

43 C. Before release for conditional outpatient treatment, the patient  
44 shall be provided with copies and full explanations of the medical director's  
45 order and the treatment plan. If, after full explanation, the patient

1 objects to the plan or any part of it, the objection and reasons for the  
2 objection shall be noted in the patient's record. The medical director's  
3 order and treatment plan shall be filed in the patient's medical file and  
4 shall also be filed with the court.

5 D. The period for which conditional outpatient treatment may be  
6 ordered may not exceed the remainder of the period of court ordered  
7 treatment.

8 E. Before the release of a patient found to be a danger to others for  
9 outpatient treatment, the medical director shall give notice pursuant to  
10 section 36-541.01, subsection B and a motion for a determination by the court  
11 as to whether the standard for conditional release of the patient has been  
12 met may be made by the persons and in the manner provided for in section  
13 36-541.01, subsection G. Before the release of a person found to be a danger  
14 to self, to be persistently or acutely disabled or to be gravely disabled for  
15 outpatient treatment, the medical director shall give notice to the court  
16 that ordered the patient to undergo treatment. **IF THE PROSECUTION FILES A  
17 PETITION FOR EVALUATION AFTER DISMISSAL OF THE CRIMINAL CHARGES, THE MEDICAL  
18 DIRECTOR MUST NOTIFY THE ORIGINAL PROSECUTING AGENCY AT LEAST TEN DAYS BEFORE  
19 THE PATIENT IS RELEASED FOR OUTPATIENT TREATMENT.**

20 F. The medical director shall require periodic reports concerning the  
21 condition of patients on conditional outpatient treatment from any person,  
22 agency or organization assigned to supervise an outpatient treatment  
23 plan. Such reports shall be required at intervals not to exceed thirty days.

24 G. The medical director shall review the condition of a patient on  
25 conditional outpatient treatment at least once every thirty days and enter  
26 the findings in writing in the patient's file. In conducting the review, the  
27 medical director shall consider all reports and information received and may  
28 require the patient to report for further evaluation.

29 H. The medical director may amend any part of the outpatient treatment  
30 plan during the course of conditional outpatient treatment. If the plan is  
31 amended, the medical director shall issue a new order including the amended  
32 outpatient treatment plan. The new order and amended outpatient treatment  
33 plan shall be filed in the patient's medical file. Copies of the new order  
34 and outpatient treatment plan shall be immediately provided to the patient  
35 and to any person, agency or organization assigned to supervise an outpatient  
36 treatment plan. Copies of the new order and outpatient treatment plan shall  
37 be immediately filed with the court.

38 I. The medical director may rescind an order for conditional  
39 outpatient treatment and order the patient to return to a mental health  
40 treatment agency at any time during the period of court ordered treatment if,  
41 in the medical director's judgment, the patient has failed to comply with a  
42 term of the outpatient treatment plan or if, for any reason, the medical  
43 director determines that the patient needs inpatient treatment or that  
44 conditional outpatient treatment is no longer appropriate.

1 J. If the medical director rescinds an order for conditional  
2 outpatient treatment and the patient is returned to a mental health treatment  
3 agency for inpatient treatment, the patient shall be informed of the  
4 patient's right to judicial review and right to consult with counsel pursuant  
5 to section 36-546.

6 K. If the medical director rescinds an order for conditional  
7 outpatient treatment and orders the patient to return to a mental health  
8 treatment agency, the medical director may request a peace officer or a  
9 designated officer or employee of the treatment agency to take the patient  
10 into custody for immediate delivery to the agency pursuant to section 36-544.

11 L. The medical director is not civilly liable for any act committed by  
12 a patient while on conditional outpatient treatment if the medical director  
13 has in good faith followed the requirements of this section.

14 M. This section does not prevent the medical director from authorizing  
15 a patient ordered to undergo treatment pursuant to section 36-540 as a danger  
16 to self, a danger to others, persistently or acutely disabled or gravely  
17 disabled to leave the treatment agency for periods of no more than five days  
18 under the care, custody and control of a spouse, relative or other  
19 responsible person if the medical director determines that the patient will  
20 not become dangerous or suffer serious physical harm or illness during that  
21 time.

22 N. The medical director may authorize a patient who is civilly  
23 committed pursuant to section 36-540 to leave the state hospital grounds  
24 unaccompanied if the leave is part of an inpatient individualized treatment  
25 and discharge plan, ~~and~~ ~~if~~ the medical director determines that the patient  
26 will not become dangerous or suffer serious physical harm or illness during  
27 that time.

28 Sec. 3. Section 36-541.01, Arizona Revised Statutes, is amended to  
29 read:

30 36-541.01. Release or discharge from treatment before  
31 expiration of period ordered by court;  
32 notification of intent to release or discharge;  
33 hearing

34 A. A patient ordered to undergo treatment pursuant to this article may  
35 be released from treatment ~~prior to~~ BEFORE the expiration of the period  
36 ordered by the court if, in the opinion of the medical director of the mental  
37 health treatment agency, the patient no longer is, as a result of a mental  
38 disorder, a danger to others, a danger to self, persistently or acutely  
39 disabled or gravely disabled. No person ordered to undergo treatment as a  
40 danger to others may be released or discharged from treatment ~~prior to~~ BEFORE  
41 the expiration of the period for treatment ordered by the court unless the  
42 medical director first gives notice of intention to do so as provided by this  
43 section.

44 B. ~~Prior to~~ BEFORE the release or discharge of a patient ordered to  
45 undergo treatment as a danger to SELF OR TO others, OR BECAUSE THE PATIENT IS

1 PERSISTENTLY OR ACUTELY DISABLED OR GRAVELY DISABLED, the medical director of  
2 the mental health treatment agency shall give notice of ~~his~~ THE MEDICAL  
3 DIRECTOR'S intention to release or discharge the patient. Notice shall be  
4 given to the presiding judge of the court ~~which~~ THAT entered the order for  
5 treatment, any relative or victim of the patient who has filed a demand for  
6 notice with the treatment agency and any person found by the court to have a  
7 legitimate reason for receiving ~~such~~ notice. IF THE PROSECUTION FILES A  
8 PETITION FOR EVALUATION AFTER THE DISMISSAL OF THE CRIMINAL CHARGES, THE  
9 MEDICAL DIRECTOR MUST NOTIFY THE ORIGINAL PROSECUTING AGENCY AT LEAST TEN  
10 DAYS BEFORE THE PATIENT IS RELEASED OR DISCHARGED.

11 C. If the director of the mental health treatment agency is unable to  
12 determine, based ~~upon~~ ON the information submitted pursuant to subsection D,  
13 that a person who has filed a demand for notice is a victim ~~he~~ THE MEDICAL  
14 DIRECTOR shall inform that person that ~~his~~ THE PERSON'S demand for notice is  
15 denied and that notice will not be given unless ordered by the court pursuant  
16 to subsection E.

17 D. A demand for notice by a relative or victim, and a petition for  
18 notice by other persons, shall be on a form prescribed by the department and  
19 shall include the following information:

- 20 1. The full name of the person to receive notice.
- 21 2. The address to which notice is to be mailed.
- 22 3. The telephone number of the person to receive notice.
- 23 4. The relationship to the patient, if any, or the reasons why the  
24 person believes ~~he~~ THE PERSON has a legitimate reason to receive notice.
- 25 5. A statement that the person will advise the treatment agency in  
26 writing by certified mail, return receipt requested, of any change in the  
27 address to which notice is to be mailed.
- 28 6. The full name of the patient ordered to undergo treatment as a  
29 danger to others.
- 30 7. The mental health number assigned to the case by the superior  
31 court.

32 E. If the court receives a demand for notice by a relative or victim,  
33 the court shall order the medical director of the mental health treatment  
34 agency not to release or discharge the patient before the expiration of the  
35 period of court-ordered treatment without first giving notice to the relative  
36 or victim as provided in subsection F. After considering a petition for  
37 notice, if the court finds that the petitioner has a legitimate reason for  
38 receiving prior notice, the court may order the medical director of the  
39 mental health treatment agency not to release or discharge the patient from  
40 inpatient treatment before the expiration of the period of court-ordered  
41 treatment without first giving notice to the petitioner as provided in  
42 subsection F. Any order for notice shall be delivered to the mental health  
43 treatment agency and shall be filed with the patient's clinical record. If  
44 the patient is transferred to another agency or institution, any orders for  
45 notice shall be transferred with the patient.

1 F. A notice of intention to release or discharge shall include the  
2 following information:

3 1. The name of the patient to be released or discharged.

4 2. The type of release or discharge.

5 3. The date of anticipated release or discharge. Notices shall be  
6 placed in the mail, postage prepaid and addressed to the court and to each  
7 person for whom notice has been ordered, at least ten days before the date of  
8 intended release or discharge. For THE purposes of computing the ten-day  
9 notice requirement, the day of mailing shall not be counted.

10 G. Any person for whom prior notice is required pursuant to this  
11 section, or the court, may make a motion within the ten-day notification  
12 period ~~which~~ THAT requires the court to determine whether the standard for  
13 release of the patient ~~prior to~~ BEFORE the expiration of the period for  
14 court-ordered treatment has been met. A determination that the standard for  
15 release has been met may be made by the court based on a review of the record  
16 and any affidavits submitted without further hearing. For good cause, the  
17 court may order an evidentiary hearing. Whether or not a hearing is held,  
18 the court shall make a determination at the earliest possible time but no  
19 longer than three weeks after the anticipated date of release pursuant to  
20 subsection F, and the patient shall be retained for the additional time  
21 required for the court's determination. In making its determination the  
22 court may order an independent examination of the patient. IF THE  
23 PROSECUTION HAS FILED A PETITION FOR EVALUATION AFTER DISMISSAL OF THE  
24 CRIMINAL CHARGES, THE COURT SHALL ORDER AN INDEPENDENT EXAMINATION OF THE  
25 PATIENT ON THE REQUEST OF THE ORIGINAL PROSECUTING AGENCY. If no motion is  
26 made, the patient may be released in accordance with the terms set forth in  
27 the notice without further court order.

28 H. If no motion has been made pursuant to subsection G, the patient  
29 may be released or discharged and the medical director of the mental health  
30 treatment agency shall send to the court a certificate that the patient is no  
31 longer a danger to others, a danger to self, persistently or acutely disabled  
32 or gravely disabled as the result of a mental disorder and therefore is  
33 released ~~prior to~~ BEFORE the expiration of the period ordered for  
34 treatment. The court shall enter an order terminating the patient's  
35 court-ordered treatment.

36 I. The medical director of the mental health treatment agency shall  
37 not be held civilly liable for any acts committed by a patient released ~~prior~~  
38 ~~to~~ BEFORE the expiration of the period of court-ordered treatment if the  
39 medical director has in good faith followed the requirements of this section.

40 Sec. 4. Section 36-542, Arizona Revised Statutes, is amended to read:

41 36-542. Discharge of patient at expiration of period ordered by  
42 court; change to voluntary status; relief from civil  
43 liability

44 A. A patient ordered by a court to undergo treatment as a danger to  
45 others, a danger to self or persistently or acutely disabled shall be

1 discharged from treatment at the expiration of the period of treatment  
2 ordered unless one of the following occurs:  
3 1. The person accepts voluntary treatment at the mental health  
4 treatment agency.  
5 2. ~~Prior to~~ BEFORE the discharge date, a new petition is filed in the  
6 county in which the patient is being treated. The proceedings shall then be  
7 governed by this article. The costs of the proceedings shall be a charge  
8 against the county in which the patient resided or was found ~~prior to~~ BEFORE  
9 hospitalization.  
10 B. If a patient to be discharged is under guardianship, the medical  
11 director of the mental health treatment agency shall notify the guardian ten  
12 days ~~prior to~~ BEFORE discharge. IF THE PROSECUTION HAS FILED A PETITION FOR  
13 EVALUATION AFTER THE DISMISSAL OF THE CRIMINAL CHARGES, THE MEDICAL DIRECTOR  
14 MUST NOTIFY THE ORIGINAL PROSECUTING AGENCY AT LEAST TEN DAYS BEFORE THE  
15 DISCHARGE.  
16 C. The medical director shall not be held civilly liable for any acts  
17 committed by a discharged patient if the medical director has in good faith  
18 followed the requirements of this article.