

REFERENCE TITLE: **psychiatric security review board**

State of Arizona  
Senate  
Forty-eighth Legislature  
First Regular Session  
2007

# **SB 1482**

Introduced by  
Senator Waring

**AN ACT**

**AMENDING SECTIONS 13-502 AND 13-3994, ARIZONA REVISED STATUTES; RELATING TO  
THE PSYCHIATRIC SECURITY REVIEW BOARD.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-502, Arizona Revised Statutes, is amended to  
3 read:

4 13-502. Insanity test; burden of proof; guilty except insane  
5 verdict

6 A. A person may be found guilty except insane if at the time of the  
7 commission of the criminal act the person was afflicted with a mental disease  
8 or defect of such severity that the person did not know the criminal act was  
9 wrong. A mental disease or defect constituting legal insanity is an  
10 affirmative defense. Mental disease or defect does not include disorders  
11 that result from acute voluntary intoxication or withdrawal from alcohol or  
12 drugs, character defects, psychosexual disorders or impulse control  
13 disorders. Conditions that do not constitute legal insanity include but are  
14 not limited to momentary, temporary conditions arising from the pressure of  
15 the circumstances, moral decadence, depravity or passion growing out of  
16 anger, jealousy, revenge, hatred or other motives in a person who does not  
17 suffer from a mental disease or defect or an abnormality that is manifested  
18 only by criminal conduct.

19 B. In a case involving the death or serious physical injury of or the  
20 threat of death or serious physical injury to another person, if a plea of  
21 insanity is made and the court determines that a reasonable basis exists to  
22 support the plea, the court may commit the defendant to a secure state mental  
23 health facility under the department of health services, a secure county  
24 mental health evaluation and treatment facility or another secure licensed  
25 mental health facility for up to thirty days for mental health evaluation and  
26 treatment. Experts at the mental health facility who are licensed pursuant  
27 to title 32, who are familiar with this state's insanity statutes, who are  
28 specialists in mental diseases and defects and who are knowledgeable  
29 concerning insanity shall observe and evaluate the defendant. The expert or  
30 experts who examine the defendant shall submit a written report of the  
31 evaluation to the court, the defendant's attorney and the prosecutor. The  
32 court shall order the defendant to pay the costs of the mental health  
33 facility to the clerk of the court. The clerk of the court shall transmit  
34 the reimbursements to the mental health facility for all of its costs. If  
35 the court finds the defendant is indigent or otherwise is unable to pay all  
36 or any of the costs, the court shall order the county to reimburse the mental  
37 health facility for the remainder of the costs. Notwithstanding section  
38 36-545.02, the mental health facility may maintain the reimbursements. If  
39 the court does not commit the defendant to a secure state mental health  
40 facility, a secure county mental health evaluation and treatment facility or  
41 another secure licensed mental health facility, the court shall appoint an  
42 independent expert who is licensed pursuant to title 32, who is familiar with  
43 this state's insanity statutes, who is a specialist in mental diseases and  
44 defects and who is knowledgeable concerning insanity to observe and evaluate  
45 the defendant. The expert who examines the defendant shall submit a written

1 report of the evaluation to the court, the defendant's attorney and the  
 2 prosecutor. The court shall order the defendant to pay the costs of the  
 3 services of the independent expert to the clerk of the court. The clerk of  
 4 the court shall transmit the reimbursements to the expert. If the court  
 5 finds the defendant is indigent or otherwise unable to pay all or any of the  
 6 costs, the court shall order the county to reimburse the expert for the  
 7 remainder of the costs. This subsection does not prohibit the defendant or  
 8 this state from obtaining additional psychiatric examinations by other mental  
 9 health experts who are licensed pursuant to title 32, who are familiar with  
 10 this state's insanity statutes, who are specialists in mental diseases and  
 11 defects and who are knowledgeable concerning insanity.

12 C. The defendant shall prove the defendant's legal insanity by clear  
 13 and convincing evidence.

14 D. If the finder of fact finds the defendant guilty except insane, the  
 15 court shall determine the sentence the defendant could have received pursuant  
 16 to section 13-703, subsection A or section 13-707 or the presumptive sentence  
 17 the defendant could have received pursuant to section 13-604, SECTION  
 18 13-604.01, SECTION 13-701, subsection C, section 13-710 or section 13-1406 if  
 19 the defendant had not been found insane, and the judge shall ~~commit~~ SENTENCE  
 20 the defendant TO A TERM OF INCARCERATION IN THE STATE DEPARTMENT OF  
 21 CORRECTIONS AND SHALL ORDER THE DEFENDANT TO BE PLACED UNDER THE JURISDICTION  
 22 OF THE PSYCHIATRIC SECURITY REVIEW BOARD AND COMMITTED TO A STATE MENTAL  
 23 HEALTH FACILITY UNDER THE DEPARTMENT OF HEALTH SERVICES pursuant to section  
 24 13-3994 for that term. In making this determination the court shall not  
 25 consider the sentence enhancements for prior convictions under section  
 26 13-604. The court shall expressly identify each act that the defendant  
 27 committed and separately find whether each act involved the death or physical  
 28 injury of or a substantial threat of death or physical injury to another  
 29 person.

30 E. A guilty except insane verdict is not a criminal conviction for  
 31 sentencing enhancement purposes under section 13-604.

32 Sec. 2. Section 13-3994, Arizona Revised Statutes, is amended to read:  
 33 13-3994. Commitment; hearing; jurisdiction; definition

34 A. A person who is found guilty except insane pursuant to section  
 35 13-502 shall be committed to a secure state mental health facility under the  
 36 department of health services for a period of treatment.

37 B. If the criminal act of the person committed pursuant to subsection  
 38 A of this section did not cause the death or serious physical injury of or  
 39 the threat of death or serious physical injury to another person, the court  
 40 shall set a hearing date within seventy-five days after the person's  
 41 commitment to determine if the person is entitled to release from confinement  
 42 or if the person meets the standards for civil commitment pursuant to title  
 43 36, chapter 5. The court shall notify the medical director of the mental  
 44 health facility, the attorney general, the county attorney, the victim and  
 45 the attorney representing the person, if any, of the date of the hearing.

1 Fourteen days before the hearing the director of the mental health facility  
2 shall submit to the court a report addressing the person's mental health and  
3 dangerousness.

4 C. At a hearing held pursuant to subsection B of this section:

5 1. If the person proves by clear and convincing evidence that the  
6 person no longer suffers from a mental disease or defect and is not  
7 dangerous, the court shall order the person's release and the person's  
8 commitment ordered pursuant to section 13-502, subsection D shall terminate.  
9 Before determining to release a person pursuant to this paragraph, the court  
10 shall consider the entire criminal history of the person and shall not order  
11 the person's release if the court determines that the person has a propensity  
12 to reoffend.

13 2. If the court finds that the person still suffers from a mental  
14 disease or defect, may present a threat of danger to self or others, is  
15 gravely disabled, is persistently or acutely disabled or has a propensity to  
16 reoffend, it shall order the county attorney to institute civil commitment  
17 proceedings pursuant to title 36 and the person's commitment ordered pursuant  
18 to section 13-502, subsection D shall terminate.

19 D. If the court finds that the criminal act of the person committed  
20 pursuant to subsection A of this section caused the death or serious physical  
21 injury of or the threat of death or serious physical injury to another  
22 person, the court shall place the person under the jurisdiction of the  
23 psychiatric security review board. The court shall state the beginning date,  
24 length and ending date of the board's jurisdiction over the person. The  
25 length of the board's jurisdiction over the person is equal to the sentence  
26 the person could have received pursuant to section 13-703, subsection A or  
27 section 13-707 or the presumptive sentence the defendant could have received  
28 pursuant to section 13-604, section 13-604.01, section 13-701, subsection C,  
29 section 13-710 or section 13-1406. In making this determination the court  
30 shall not consider the sentence enhancements for prior convictions under  
31 section 13-604. **THE COURT SHALL RETAIN JURISDICTION OF ALL MATTERS THAT ARE**  
32 **NOT SPECIFICALLY DELEGATED TO THE PSYCHIATRIC SECURITY REVIEW BOARD FOR THE**  
33 **DURATION OF THE PRESUMPTIVE SENTENCE.**

34 E. A person who is placed under the jurisdiction of the psychiatric  
35 security review board pursuant to subsection D of this section is not  
36 eligible for discharge from the board's jurisdiction until the board's  
37 jurisdiction over the person expires.

38 F. A person who is placed under the jurisdiction of the psychiatric  
39 security review board pursuant to subsection D of this section is not  
40 entitled to a hearing before the board earlier than one hundred twenty days  
41 after the person's initial commitment. A request for a subsequent release  
42 hearing may be made pursuant to subsection ~~G~~ H of this section. After the  
43 hearing, the board may take one of the following actions:

44 1. If the psychiatric security review board finds that the person  
45 still suffers from a mental disease or defect and is dangerous, **THE BOARD**

1 SHALL ORDER THAT the person ~~shall~~ remain committed at the secure state mental  
2 health facility.

3 2. If the person proves by clear and convincing evidence that the  
4 person no longer suffers from a mental disease or defect and is not  
5 dangerous, the psychiatric security review board shall order the person's  
6 release. The person shall remain under the jurisdiction of the board.  
7 Before determining to release a person pursuant to this paragraph, the board  
8 shall consider the entire criminal history of the person and shall not order  
9 the person's release if the board determines that the person has a propensity  
10 to reoffend.

11 3. If the psychiatric security review board finds that the person  
12 still suffers from a mental disease or defect or that the mental disease or  
13 defect is in stable remission but the person is no longer dangerous, the  
14 board shall order the person's conditional release. The person shall remain  
15 under the board's jurisdiction. The board in conjunction with the state  
16 mental health facility and behavioral health community providers shall  
17 specify the conditions of the person's release. The board shall continue to  
18 monitor and supervise a person who is released conditionally. Before the  
19 conditional release of a person, a supervised treatment plan shall be in  
20 place, including the necessary funding to implement the plan.

21 4. IF THE PERSON IS SENTENCED PURSUANT TO SECTION 13-604, SUBSECTION  
22 F, G, H, I, J OR K AND THE PSYCHIATRIC SECURITY REVIEW BOARD FINDS THAT THE  
23 PERSON NO LONGER SUFFERS FROM A MENTAL DISEASE OR DEFECT OR THAT THE MENTAL  
24 DISEASE OR DEFECT IS IN STABLE REMISSION AND THE PERSON IS DANGEROUS OR HAS A  
25 PROPENSITY TO REOFFEND, THE BOARD SHALL ORDER THE PERSON TO BE TRANSFERRED TO  
26 THE STATE DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF THE SENTENCE IMPOSED  
27 PURSUANT TO SECTION 13-502, SUBSECTION D. THE BOARD SHALL CONSIDER THE  
28 SAFETY AND PROTECTION OF THE PUBLIC.

29 G. WITHIN TWENTY DAYS AFTER THE PSYCHIATRIC SECURITY REVIEW BOARD  
30 ORDERS A PERSON TO BE TRANSFERRED TO THE STATE DEPARTMENT OF CORRECTIONS, THE  
31 PERSON MAY FILE A PETITION FOR A JUDICIAL DETERMINATION. THE PERSON SHALL  
32 SERVE A COPY OF THE REQUEST ON THE ATTORNEY GENERAL. IF THE PERSON FILES A  
33 PETITION FOR A JUDICIAL DETERMINATION, THE PERSON SHALL REMAIN IN A STATE  
34 MENTAL HEALTH FACILITY PENDING THE RESULT OF THE JUDICIAL DETERMINATION. THE  
35 PERSON REQUESTING THE JUDICIAL DETERMINATION HAS THE BURDEN OF PROVING THE  
36 ISSUES BY CLEAR AND CONVINCING EVIDENCE. THE JUDICIAL DETERMINATION IS  
37 LIMITED TO THE FOLLOWING ISSUES:

38 1. WHETHER THE PERSON SUFFERS FROM A MENTAL DISEASE OR DEFECT OR  
39 WHETHER THE MENTAL DISEASE OR DEFECT IS NOT IN STABLE REMISSION.

40 2. WHETHER THE PERSON IS DANGEROUS OR HAS A PROPENSITY TO REOFFEND.

41 ~~G.~~ H. A person who is placed under the jurisdiction of the  
42 psychiatric security review board pursuant to subsection D of this section  
43 may not seek a new release hearing earlier than twenty months after a prior  
44 release hearing, except that the medical director of the state mental health  
45 facility may request a new release hearing for a person under the

1 jurisdiction of the psychiatric security review board at any time. The  
2 person shall not be held in confinement for more than two years without a  
3 hearing before the board to determine if the person should be released or  
4 conditionally released.

5 ~~H.~~ I. At any hearing for release or conditional release pursuant to  
6 this section:

7 1. Public safety and protection are primary.

8 2. The applicant has the burden of proof by clear and convincing  
9 evidence.

10 ~~I.~~ J. At least fifteen days before a hearing is scheduled to consider  
11 a person's release, or before the expiration of the board's jurisdiction over  
12 the person, the state mental health facility or supervising agency shall  
13 submit to the psychiatric security review board a report on the person's  
14 mental health. The psychiatric security review board shall determine whether  
15 to release the person or to order the county attorney to institute civil  
16 commitment proceedings pursuant to title 36.

17 ~~J.~~ K. The procedures for civil commitment govern the continued  
18 commitment of the person after the expiration of the jurisdiction of the  
19 psychiatric security review board.

20 ~~K.~~ L. Before a person is released or conditionally released, at least  
21 three of the five psychiatric security review board members shall vote for  
22 the release or conditional release.

23 ~~L.~~ M. If at any time while the person remains under the jurisdiction  
24 of the psychiatric security review board it appears to the board, the  
25 chairman or vice-chairman of the board or the medical director of the state  
26 mental health facility that the person has failed to comply with the terms of  
27 the person's conditional release or that the mental health of the person has  
28 deteriorated, the board or the chairman or vice-chairman of the board for  
29 good cause or the medical director of the state mental health facility may  
30 order that the person be returned to a secure state mental health facility  
31 for evaluation or treatment. A written order of the board, the chairman or  
32 vice-chairman of the board or the medical director is sufficient warrant for  
33 any law enforcement officer to take the person into custody and to transport  
34 the person accordingly. Any sheriff or other peace officer shall execute the  
35 order and shall immediately notify the board of the person's return to the  
36 facility. Within twenty days after the person's return to a secure state  
37 mental health facility the board shall conduct a hearing and shall give  
38 notice within five days before the hearing of the time and place of the  
39 hearing to the person, the victim, the attorney representing the person, the  
40 county attorney and the attorney general.

41 ~~M.~~ N. The director of a facility that is providing treatment to a  
42 person on conditional release or any other person who is responsible for the  
43 supervision of the person may take the person or request that the person be  
44 taken into custody if there is reasonable cause to believe that the person's  
45 mental health has deteriorated to the point that the person's conditional

1 release should be revoked and that the person is in need of immediate care,  
2 custody or treatment or that deterioration is likely because of noncompliance  
3 with a treatment program. A person who is taken into custody pursuant to  
4 this subsection shall be transported immediately to a secure state mental  
5 health facility and shall have the same rights as any person appearing before  
6 the psychiatric security review board.

7 ~~N.~~ O. Before the initial hearing or any other hearing before the  
8 psychiatric security review board on the release or conditional release of  
9 the person, the person, the attorney who is representing the person and the  
10 attorney general or county attorney who is representing the state may choose  
11 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a  
12 psychologist licensed pursuant to title 32, chapter 19.1 to examine the  
13 person. All costs in connection with the examination shall be approved and  
14 paid by the county of the sentencing court. The written examination results  
15 shall be filed with the board and shall include an opinion as to:

- 16 1. The mental condition of the person.
- 17 2. Whether the person is dangerous.

18 ~~O.~~ P. Notwithstanding subsection ~~N.~~ O of this section, the board or  
19 the chairman of the board for good cause may order an independent mental  
20 health evaluation by a psychiatrist licensed pursuant to title 32, chapter 13  
21 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1. The  
22 written examination results shall be filed with the board pursuant to  
23 subsection ~~N.~~ O of this section.

24 ~~P.~~ Q. If a person is found guilty except insane pursuant to section  
25 13-502, the department of health services shall assume custody of the person  
26 within ten days after receiving the order committing the person pursuant to  
27 subsection A of this section. The Arizona state hospital shall collect  
28 census data for guilty except insane treatment programs to establish maximum  
29 capacity and the allocation formula required pursuant to section 36-206,  
30 subsection D. If the Arizona state hospital reaches its funded capacity for  
31 forensic programs, the department of health services may defer the admission  
32 of the person found guilty except insane for up to an additional twenty days.  
33 The department of health services shall reimburse the county for the actual  
34 costs of each day the admission is deferred. If the department of health  
35 services is not able to admit the person found guilty except insane at the  
36 conclusion of the twenty day deferral period, the department of health  
37 services shall notify the sentencing court, the prosecutor and the defense  
38 counsel of this fact. On receipt of this notification, the prosecutor or the  
39 person's defense counsel may request a hearing to determine the likely length  
40 of time admission will continue to be deferred and whether any other action  
41 should be taken. On receipt of the request for hearing, the court shall set  
42 a hearing within ten days.

43 ~~O.~~ R. For the purposes of this section, "state mental health  
44 facility" means a secure state mental health facility under the department of  
45 health services.