

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HOUSE BILL 2532

AN ACT

AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-924; AMENDING SECTIONS 13-3101, 32-2612 AND 36-540, ARIZONA REVISED STATUTES; RELATING TO PROHIBITED POSSESSORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 9, Arizona Revised Statutes, is amended
3 by adding section 13-924, to read:

4 13-924. Restoration of right to possess a firearm; mentally ill
5 persons; application

6 A. ON PROPER APPLICATION, A PERSON WHO WAS FOUND TO CONSTITUTE A
7 DANGER TO HIMSELF OR OTHERS OR TO BE PERSISTENTLY OR ACUTELY DISABLED AND WHO
8 WAS SUBJECT TO A TREATMENT ORDER PURSUANT TO SECTION 36-540 MAY REQUEST THE
9 COURT THAT ENTERED THE TREATMENT ORDER TO RESTORE THE PERSON'S RIGHT TO
10 POSSESS A FIREARM ON A SHOWING BY CLEAR AND CONVINCING EVIDENCE THAT THE
11 PERSON NO LONGER SUFFERS FROM THE MENTAL DISORDER THAT LED TO THE FINDING
12 THAT THE PERSON CONSTITUTED A DANGER TO HIMSELF OR OTHERS OR WAS PERSISTENTLY
13 OR ACUTELY DISABLED. THE PERSON OR THE PERSON'S GUARDIAN OR ATTORNEY MAY
14 FILE THE APPLICATION.

15 B. ON FILING OF THE APPLICATION THE COURT SHALL SET A HEARING AT WHICH
16 THE APPLICANT SHALL PRESENT PSYCHOLOGICAL OR PSYCHIATRIC EVIDENCE IN SUPPORT
17 OF THE APPLICATION. THE STATE MAY PRESENT EVIDENCE THAT THE PERSON REMAINS A
18 DANGER TO HIMSELF OR OTHERS OR REMAINS PERSISTENTLY OR ACUTELY DISABLED AND
19 SHOULD REMAIN A PROHIBITED POSSESSOR.

20 C. A FINDING THAT THE PERSON NO LONGER SUFFERS FROM THE MENTAL
21 DISORDER PURSUANT TO SUBSECTION A OF THIS SECTION ONLY RESTORES THE PERSON'S
22 RIGHT TO POSSESS A FIREARM AND DOES NOT APPLY TO AND HAS NO EFFECT ON ANY OF
23 THE OTHER RIGHTS OR BENEFITS THE PERSON RECEIVES.

24 Sec. 2. Section 13-3101, Arizona Revised Statutes, is amended to read:

25 13-3101. Definitions

26 A. In this chapter, unless the context otherwise requires:

27 1. "Deadly weapon" means anything that is designed for lethal use.
28 The term includes a firearm.

29 2. "Deface" means to remove, alter or destroy the manufacturer's
30 serial number.

31 3. "Explosive" means any dynamite, nitroglycerine, black powder, or
32 other similar explosive material, including plastic explosives. Explosive
33 does not include ammunition or ammunition components such as primers,
34 percussion caps, smokeless powder, black powder and black powder substitutes
35 used for hand loading purposes.

36 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,
37 rifle, shotgun or other weapon that will expel, is designed to expel or may
38 readily be converted to expel a projectile by the action of an explosive.
39 Firearm does not include a firearm in permanently inoperable condition.

40 5. "Improvised explosive device" means a device that incorporates
41 explosives or destructive, lethal, noxious, pyrotechnic or incendiary
42 chemicals and that is designed to destroy, disfigure, terrify or harass.

43 6. "Occupied structure" means any building, object, vehicle,
44 watercraft, aircraft or place with sides and a floor that is separately
45 securable from any other structure attached to it, that is used for lodging,

1 business, transportation, recreation or storage and in which one or more
2 human beings either are or are likely to be present or so near as to be in
3 equivalent danger at the time the discharge of a firearm occurs. Occupied
4 structure includes any dwelling house, whether occupied, unoccupied or
5 vacant.

6 7. "Prohibited possessor" means any person:

7 (a) Who has been found to constitute a danger to himself or to others
8 **OR TO BE PERSISTENTLY OR ACUTELY DISABLED** pursuant to court order under
9 section 36-540, and whose ~~court ordered treatment has not been terminated by~~
10 ~~court order~~ **RIGHT TO POSSESS A FIREARM HAS NOT BEEN RESTORED PURSUANT TO**
11 **SECTION 13-924.**

12 (b) Who has been convicted within or without this state of a felony or
13 who has been adjudicated delinquent for a felony and whose civil right to
14 possess or carry a gun or firearm has not been restored.

15 (c) Who is at the time of possession serving a term of imprisonment in
16 any correctional or detention facility.

17 (d) Who is at the time of possession serving a term of probation
18 pursuant to a conviction for a domestic violence offense as defined in
19 section 13-3601 or a felony offense, parole, community supervision, work
20 furlough, home arrest or release on any other basis or who is serving a term
21 of probation or parole pursuant to the interstate compact under title 31,
22 chapter 3, article 4.

23 (e) Who is an undocumented alien or a nonimmigrant alien traveling
24 with or without documentation in this state for business or pleasure or who
25 is studying in this state and who maintains a foreign residence abroad. This
26 subdivision does not apply to:

27 (i) Nonimmigrant aliens who possess a valid hunting license or permit
28 that is lawfully issued by a state in the United States.

29 (ii) Nonimmigrant aliens who enter the United States to participate in
30 a competitive target shooting event or to display firearms at a sports or
31 hunting trade show that is sponsored by a national, state or local firearms
32 trade organization devoted to the competitive use or other sporting use of
33 firearms.

34 (iii) Certain diplomats.

35 (iv) Officials of foreign governments or distinguished foreign
36 visitors who are designated by the United States department of state.

37 (v) Persons who have received a waiver from the United States attorney
38 general.

39 8. "Prohibited weapon":

40 (a) Includes the following:

41 (i) An item that is a bomb, grenade, rocket having a propellant charge
42 of more than four ounces or mine and that is explosive, incendiary or poison
43 gas.

44 (ii) A device that is designed, made or adapted to muffle the report
45 of a firearm.

1 (iii) A firearm that is capable of shooting more than one shot
2 automatically, without manual reloading, by a single function of the trigger.

3 (iv) A rifle with a barrel length of less than sixteen inches, or
4 shotgun with a barrel length of less than eighteen inches, or any firearm
5 that is made from a rifle or shotgun and that, as modified, has an overall
6 length of less than twenty-six inches.

7 (v) An instrument, including a nunchaku, that consists of two or more
8 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,
9 wire or chain, in the design of a weapon used in connection with the practice
10 of a system of self-defense.

11 (vi) A breakable container that contains a flammable liquid with a
12 flash point of one hundred fifty degrees Fahrenheit or less and that has a
13 wick or similar device capable of being ignited.

14 (vii) A chemical or combination of chemicals, compounds or materials,
15 including dry ice, that is possessed or manufactured for the purpose of
16 generating a gas to cause a mechanical failure, rupture or bursting or an
17 explosion or detonation of the chemical or combination of chemicals,
18 compounds or materials.

19 (viii) An improvised explosive device.

20 (ix) Any combination of parts or materials that is designed and
21 intended for use in making or converting a device into an item set forth in
22 item (i), (vi) or (viii) of this subdivision.

23 (b) Does not include:

24 (i) Any fireworks that are imported, distributed or used in compliance
25 with state laws or local ordinances.

26 (ii) Any propellant, propellant actuated devices or propellant
27 actuated industrial tools that are manufactured, imported or distributed for
28 their intended purposes.

29 (iii) A device that is commercially manufactured primarily for the
30 purpose of illumination.

31 B. The items set forth in subsection A, paragraph 8, subdivision (a),
32 items (i), (ii), (iii) and (iv) of this section do not include any firearms
33 or devices that are registered in the national firearms registry and transfer
34 records of the United States treasury department or any firearm that has been
35 classified as a curio or relic by the United States treasury department.

36 Sec. 3. Section 32-2612, Arizona Revised Statutes, is amended to read:

37 32-2612. Qualifications of applicant for agency license;
38 substantiation of work experience

39 A. Each applicant, if an individual, or each associate, director or
40 manager, if the applicant is other than an individual, for an agency license
41 to be issued pursuant to this chapter shall:

42 1. Be at least twenty-one years of age.

43 2. Be a citizen or a legal resident of the United States who is
44 authorized to seek employment in the United States.

- 1 3. Not have been convicted of any felony or currently be under
2 indictment for a felony.
- 3 4. Within the five years immediately preceding the application for an
4 agency license, not have been convicted of any misdemeanor act involving:
5 (a) Personal violence or force against another person or threatening
6 to commit any act of personal violence or force against another person.
7 (b) Misconduct involving a deadly weapon as provided in section
8 13-3102.
9 (c) Dishonesty or fraud.
10 (d) Arson.
11 (e) Theft.
12 (f) Domestic violence.
13 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has
14 the same elements as an offense listed in title 13, chapter 34 or 34.1.
15 (h) Sexual misconduct.
- 16 5. Not be on parole, on community supervision, on work furlough, on
17 home arrest, on release on any other basis or named in an outstanding arrest
18 warrant.
- 19 6. Not be serving a term of probation pursuant to a conviction for any
20 act of personal violence or domestic violence, as defined in section 13-3601,
21 or an offense that has the same elements as an offense listed in section
22 13-3601.
- 23 7. Not be either of the following:
24 (a) Adjudicated mentally incompetent.
25 (b) Found to constitute a danger to self or others **OR TO BE**
26 **PERSISTENTLY OR ACUTELY DISABLED** pursuant to section 36-540.
- 27 8. Not have a disability as defined in section 41-1461, unless that
28 person is a qualified individual with a disability as defined in section
29 41-1461.
- 30 9. Not have been convicted of acting or attempting to act as a
31 security guard or a security guard agency without a license if a license was
32 required.
- 33 B. The qualifying party for an agency license and the resident
34 manager, if a resident manager is required **PURSUANT TO SECTION 32-2616**, shall
35 have at least three years of full-time experience as a manager, supervisor or
36 administrator of a security guard agency or three years of full-time
37 supervisory experience with any federal, United States military, state,
38 county or municipal law enforcement agency. The qualifying party for an
39 agency license and the resident manager, if a resident manager is required
40 **PURSUANT TO SECTION 32-2616**, must substantiate managerial work experience
41 claimed as years of qualifying experience and provide the exact details as to
42 the character and nature of the experience on a form prescribed by the
43 department and certified by the employer. On written request, an employer
44 shall submit to the employee a written certification of prior work experience
45 within thirty calendar days. The written certification is subject to

1 independent verification by the department. If an employer goes out of
2 business, the employer shall provide registered employees with a complete and
3 accurate record of their work history. If an applicant is unable to supply
4 written certification from an employer in whole or in part, the applicant may
5 offer written certification from persons other than an employer covering the
6 same subject matter for consideration by the department. The burden of
7 proving the minimum years of experience is on the applicant.

8 C. The department may deny an agency license if the department
9 determines that the applicant is unfit based on a conviction, citation or
10 encounter with law enforcement for a statutory violation.

11 Sec. 4. Section 36-540, Arizona Revised Statutes, is amended to read:
12 36-540. Court options

13 A. If the court finds by clear and convincing evidence that the
14 proposed patient, as a result of mental disorder, is a danger to self, is a
15 danger to others, is persistently or acutely disabled or is gravely disabled
16 and in need of treatment, and is either unwilling or unable to accept
17 voluntary treatment, the court shall order the patient to undergo one of the
18 following:

19 1. Treatment in a program of outpatient treatment.

20 2. Treatment in a program consisting of combined inpatient and
21 outpatient treatment.

22 3. Inpatient treatment in a mental health treatment agency, in a
23 veterans administration hospital pursuant to article 9 of this chapter, in
24 the state hospital or in a private hospital, if the private hospital agrees,
25 subject to the limitations of section 36-541.

26 B. The court shall consider all available and appropriate alternatives
27 for the treatment and care of the patient. The court shall order the least
28 restrictive treatment alternative available.

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

32 1. Determines that all of the following apply:

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

34 (b) The patient will be more appropriately treated in an outpatient
35 treatment program or in a combined inpatient and outpatient treatment
36 program.

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

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

41 2. Is presented with and approves a written treatment plan that
42 conforms with the requirements of section 36-540.01, subsection B. If the
43 treatment plan presented to the court pursuant to this subsection provides
44 for supervision of the patient under court order by a mental health agency
45 that is other than the mental health agency that petitioned or requested the

1 county attorney to petition the court for treatment pursuant to section
2 36-531, the treatment plan must be approved by the medical director of the
3 mental health agency that will supervise the treatment pursuant to subsection
4 E of this section.

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

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

13 1. The court shall designate the medical director of the mental health
14 treatment agency that will supervise and administer the patient's treatment
15 program.

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

22 3. The person, agency or organization assigned to supervise an
23 outpatient treatment program or the outpatient portion of a combined
24 treatment program shall be notified at least three days before a referral.
25 The medical director making the referral and the person, agency or
26 organization assigned to supervise the treatment program shall share relevant
27 information about the patient to provide continuity of treatment.

28 4. During any period of outpatient treatment under subsection A,
29 paragraph 2 of this section, if the court, on motion by the medical director
30 of the patient's outpatient mental health treatment facility, determines that
31 the patient is not complying with the terms of the order or that the
32 outpatient treatment plan is no longer appropriate and the patient needs
33 inpatient treatment, the court, without a hearing and based on the court
34 record, the patient's medical record, the affidavits and recommendations of
35 the medical director, and the advice of staff and physicians familiar with
36 the treatment of the patient, may enter an order amending its original order.
37 The amended order may alter the outpatient treatment plan or order the
38 patient to inpatient treatment pursuant to subsection A, paragraph 3 of this
39 section. The amended order shall not increase the total period of commitment
40 originally ordered by the court or, when added to the period of inpatient
41 treatment provided by the original order and any other amended orders, exceed
42 the maximum period allowed for an order for inpatient treatment pursuant to
43 subsection F of this section. If the patient refuses to comply with an
44 amended order for inpatient treatment, the court may authorize and direct a
45 peace officer, on the request of the medical director, to take the patient

1 into protective custody and transport the patient to the agency for inpatient
2 treatment. When reporting to or being returned to a treatment agency for
3 inpatient treatment pursuant to an amended order, the patient shall be
4 informed of the patient's right to judicial review and the patient's right to
5 consult with counsel pursuant to section 36-546.

6 5. During any period of outpatient treatment under subsection A,
7 paragraph 2 of this section, if the medical director of the outpatient
8 treatment facility in charge of the patient's care determines, in concert
9 with the medical director of an inpatient mental health treatment facility
10 who has agreed to accept the patient, that the patient is in need of
11 immediate acute inpatient psychiatric care because of behavior that is
12 dangerous to self or to others, the medical director of the outpatient
13 treatment facility may order a peace officer to apprehend and transport the
14 patient to the inpatient treatment facility pending a court determination on
15 an amended order under paragraph 4 of this subsection. The patient may be
16 detained and treated at the inpatient treatment facility for a period of no
17 more than forty-eight hours, exclusive of weekends and holidays, from the
18 time that the patient is taken to the inpatient treatment facility. The
19 medical director of the outpatient treatment facility shall file the motion
20 for an amended court order requesting inpatient treatment no later than the
21 next working day following the patient being taken to the inpatient treatment
22 facility. Any period of detention within the inpatient treatment facility
23 pending issuance of an amended order shall not increase the total period of
24 commitment originally ordered by the court or, when added to the period of
25 inpatient treatment provided by the original order and any other amended
26 orders, exceed the maximum period allowed for an order for inpatient
27 treatment pursuant to subsection F of this section. If a patient is ordered
28 to undergo inpatient treatment pursuant to an amended order, the medical
29 director of the outpatient treatment facility shall inform the patient of the
30 patient's right to judicial review and to consult with an attorney pursuant
31 to section 36-546.

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

- 34 1. Ninety days for a person found to be a danger to self.
- 35 2. One hundred eighty days for a person found to be a danger to
36 others.
- 37 3. One hundred eighty days for a person found to be persistently or
38 acutely disabled.
- 39 4. Three hundred sixty-five days for a person found to be gravely
40 disabled.

41 G. If, on finding that the patient is gravely disabled, the court also
42 finds that the evidence indicates that the patient is or may be in need of
43 guardianship or conservatorship, or both, the court shall order an
44 investigation concerning the need for a guardian or conservator, or both, and
45 shall appoint a suitable person or agency to conduct the investigation. The

1 appointee may include the mental health treatment agency that is providing
2 inpatient or outpatient treatment, a court appointed visitor or the public
3 fiduciary if there is no person willing and qualified to act in that
4 capacity. The court shall give notice of the appointment to the appointee
5 within three days of the appointment. The appointee shall submit the report
6 of the investigation to the court within twenty-one days. The report shall
7 include recommendations as to who should be guardian or who should be
8 conservator, or both, and a report of the findings and reasons for the
9 recommendation. If the investigation and report so indicate, the court shall
10 order the appropriate person to submit a petition to become the guardian or
11 conservator, or both, of the patient.

12 H. If, on finding that a patient is gravely disabled, the court also
13 finds that the patient is in need of immediate guardianship for the purpose
14 of protection of the patient or for the purpose of carrying out alternatives
15 to court-ordered treatment, the court may appoint as a temporary guardian a
16 suitable person or the public fiduciary, if there is no person qualified and
17 willing to act in that capacity.

18 I. If, on finding that a patient is gravely disabled, the court also
19 learns that the patient has a guardian appointed under title 14, the court
20 may with notice impose on the existing guardian additional duties pursuant to
21 section 14-5312.01.

22 J. The court shall file a report as part of the court record on its
23 findings of alternatives for treatment.

24 K. Treatment shall not include psychosurgery, lobotomy or any other
25 brain surgery without specific informed consent of the patient or the
26 patient's legal guardian and an order of the superior court in the county in
27 which the treatment is proposed, approving with specificity the use of the
28 treatment.

29 L. The medical director or any person, agency or organization used by
30 the medical director to supervise the terms of an outpatient treatment plan
31 shall not be held civilly liable for any acts committed by a patient while on
32 outpatient treatment if the medical director, person, agency or organization
33 has in good faith followed the requirements of this section.

34 M. A peace officer who in good faith apprehends and transports a
35 patient to an inpatient treatment facility on the order of the medical
36 director of the outpatient treatment facility pursuant to subsection E,
37 paragraph 5 of this section shall not be subject to civil liability.

38 N. If a person has been found, as a result of a mental disorder, to
39 constitute a danger to self or others **OR TO BE PERSISTENTLY OR ACUTELY**
40 **DISABLED** and the court enters an order for treatment pursuant to subsection A
41 of this section, the court shall grant access to the person's name, date of
42 birth, social security number, ~~AND date of commitment and, on termination of~~
43 ~~treatment by court order, date of termination~~ to the department of public
44 safety to comply with the requirements of title 13, chapter 31 and title 32,
45 chapter 26.