

REFERENCE TITLE: mental health services; court-ordered treatment

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1152

Introduced by
Senator Paton

AN ACT

AMENDING SECTIONS 12-2231, 12-2232, 36-535, 36-536, 36-537 AND 36-539,
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 12-2231, Arizona Revised Statutes, is amended to
3 read:

4 12-2231. Husband and wife; anti-marital fact

5 In a civil action a husband shall not be examined for or against his
6 wife without her consent, nor a wife for or against her husband without his
7 consent, except as provided in ~~paragraphs 1 through 4 of~~ section 12-2232.

8 Sec. 2. Section 12-2232, Arizona Revised Statutes, is amended to read:

9 12-2232. Husband and wife; privileged communications

10 A husband or wife shall not, during the marriage or afterward, without
11 the consent of the other, be examined as to any communications made by one to
12 the other during the marriage, except:

13 1. In an action for divorce or a civil action by one against the
14 other.

15 2. In a criminal action or proceeding as provided in the criminal
16 code.

17 ~~3. In an action brought by the husband or wife against another person
18 for the alienation of the affections of either.~~

19 ~~4.~~ 3. In an action for damages against another person for adultery
20 committed by either husband or wife.

21 4. IN A HEARING CONDUCTED PURSUANT TO TITLE 36, CHAPTER 5.

22 Sec. 3. Section 36-535, Arizona Revised Statutes, is amended to read:

23 36-535. Detention of proposed patient; time of hearing;
24 released patient; intervention by division

25 A. If, ~~upon~~ ON the filing of a petition for court-ordered treatment,
26 the patient is not then detained in an agency, the court shall order the
27 detention of the patient in the agency ~~which~~ THAT conducted the evaluation if
28 the court determines that the patient is likely to present a danger to self
29 or others before the conclusion of the hearing or is not likely to appear at
30 the hearing on the petition if not detained. The court shall issue such
31 orders as are necessary to provide for the apprehension, transportation and
32 detention of the proposed patient. The court shall appoint counsel for the
33 proposed patient if one has not been previously appointed.

34 B. The court shall ~~either release the proposed patient or~~ order the
35 hearing to be held within six days after the petition is filed, unless the
36 ~~proposed patient, upon consultation with his attorney, determines that it~~
37 ~~would be in his best interest to request~~ COURT, FOR GOOD CAUSE SHOWN, ORDERS
38 a continuance, which may be for a maximum of thirty days.

39 C. If after reviewing the petition with its attached material and
40 other evidence at hand the court finds that the patient is not, as a result
41 of mental disorder, a danger to self or others, persistently or acutely
42 disabled or gravely disabled, ~~he~~ THE PATIENT shall be released.

43 D. The division, acting on behalf of the state hospital, may intervene
44 as a party to the proceedings ~~upon~~ ON any petition for court-ordered
45 treatment and may appear as a party at the hearing on the petition by filing

1 a written notice of intervention with the clerk of the superior court in the
 2 county in which the petition was filed, at any time before either the
 3 original time set for THE hearing or the time to which the hearing is
 4 continued. The intervenor at the hearing may cross-examine any witnesses
 5 presented by other parties pursuant to section 36-539, may subpoena and
 6 present witnesses of its own, including physicians, and may present other
 7 evidence. The intervenor ~~may, upon~~ ON stipulation with all other parties or
 8 ~~upon~~ ON order of the court, MAY cause physicians to personally conduct mental
 9 status examinations of the proposed patient and to testify as to their
 10 opinions concerning whether the proposed patient is, as a result of mental
 11 disorder, a danger to self or to others, is persistently or acutely disabled
 12 or is gravely disabled and as to whether the proposed patient requires
 13 treatment. This subsection applies in addition to all rules of evidence, the
 14 Arizona rules of civil procedure and ~~the provisions of~~ section 36-539.

15 Sec. 4. Section 36-536, Arizona Revised Statutes, is amended to read:

16 36-536. Service of petition; counsel for proposed patient;
 17 notice

18 A. At least seventy-two hours before the court conducts the hearing on
 19 the petition for court-ordered treatment, a copy of the petition, ~~and~~
 20 affidavits in support ~~thereof~~ OF THE PETITION and the notice of the hearing
 21 shall be served ~~upon~~ ON the patient, who shall be informed of the purpose of
 22 the hearing and ~~shall be~~ advised of ~~his~~ THE PATIENT'S right to consult
 23 counsel. If the patient has not employed counsel, counsel shall be appointed
 24 by the court at least three days before the hearing. If at the time of the
 25 petition for evaluation, ~~the~~ patient had counsel, the same attorney should,
 26 if possible, be appointed to represent the patient at the hearing for
 27 court-ordered treatment.

28 B. The notice provisions of this section cannot be waived.

29 C. The notice of the hearing shall fix the time and place for the
 30 hearing, which shall be held in the courtroom or other place within the
 31 county ~~which~~ THAT the court may designate to insure humane treatment with due
 32 regard to the comfort and safety of the patient and others.

33 D. THE PERSON WHO SERVES THE NOTICE OF HEARING MUST FILE A PROOF OF
 34 SERVICE WITH THE COURT THAT SPECIFIES THE DATE, TIME AND MANNER OF SERVICE.

35 Sec. 5. Section 36-537, Arizona Revised Statutes, is amended to read:

36 36-537. Powers and duties of counsel

37 A. The medical director of the agency ~~which~~ THAT conducted the
 38 evaluation ~~shall~~, at least seventy-two hours ~~prior to~~ BEFORE the hearing,
 39 SHALL make available to the patient's attorney copies of the petition for
 40 evaluation, prepetition screening report, evaluation report, the patient's
 41 medical records for the current admission and a list of alternatives to
 42 court-ordered treatment ~~which~~ THAT are used in similar cases with an
 43 explanation of why they are not appropriate or available.

44 B. The patient's attorney ~~shall~~, for all hearings, whether for
 45 evaluation or treatment, SHALL fulfill the following minimal duties:

1 1. Within twenty-four hours of appointment, conduct an interview of
2 the patient. The attorney shall explain to the patient ~~his~~ THE PATIENT'S
3 rights pending court-ordered treatment, the procedures leading to
4 court-ordered treatment, the standards for court-ordered treatment, ~~and~~ the
5 alternative of becoming a voluntary patient AND WHETHER STIPULATIONS AT THE
6 HEARING ARE APPROPRIATE. If the attorney is appointed, ~~he~~ THE ATTORNEY ALSO
7 shall ~~also~~ explain that the patient can obtain ~~his~~ THE PATIENT'S own counsel
8 at ~~his~~ THE PATIENT'S own expense and that, if it is later determined that the
9 person is not indigent, the person will be responsible for the fees of the
10 appointed attorney for services rendered after the initial attorney-client
11 conference.

12 2. At least twenty-four hours ~~prior to~~ BEFORE the hearing, review the
13 petition for evaluation, prepetition screening report, evaluation report,
14 petition for treatment, the patient's medical records and the list of
15 alternatives to court-ordered treatment.

16 3. At least twenty-four hours ~~prior to~~ BEFORE the hearing, interview
17 the petitioner, if available, and ~~his~~ THE PETITIONER'S supporting witnesses,
18 if known and available.

19 4. At least twenty-four hours ~~prior to~~ BEFORE the hearing, interview
20 the physicians who will testify at the hearing, if available, and investigate
21 the possibility of alternatives to court-ordered treatment.

22 C. Failure of the attorney to fulfill at least the duties prescribed
23 by ~~paragraphs 1 through 4 of this~~ subsection B may be punished as contempt of
24 court.

25 D. AT A HEARING HELD PURSUANT TO THIS ARTICLE, THE PATIENT'S ATTORNEY
26 MAY ENTER STIPULATIONS ON BEHALF OF THE PATIENT.

27 Sec. 6. Section 36-539, Arizona Revised Statutes, is amended to read:
28 36-539. Conduct of hearing; record; transcript

29 A. The medical director of the agency shall issue instructions to the
30 physicians treating the proposed patient to take all reasonable precautions
31 to insure that at the time of the hearing the proposed patient shall not be
32 so under the influence of or so suffer the effects of drugs, medication or
33 other treatment as to be hampered in preparing for or participating in the
34 hearing. The court at the time of the hearing shall be presented a record of
35 all drugs, medication or other treatment ~~which~~ THAT the person has received
36 during the seventy-two hours immediately ~~prior to~~ BEFORE the hearing.

37 B. The patient and ~~his~~ THE PATIENT'S attorney shall be present at all
38 hearings and the patient's attorney may subpoena and cross-examine witnesses
39 and present evidence. THE PATIENT MAY CHOOSE TO NOT ATTEND THE HEARING OR
40 THE PATIENT'S ATTORNEY MAY WAIVE THE PATIENT'S PRESENCE. The evidence
41 presented by the petitioner or the patient shall include the testimony of two
42 or more witnesses acquainted with the patient at the time of the alleged
43 mental disorder, WHICH MAY BE SATISFIED BY A STATEMENT AGREED ON BY THE
44 PARTIES, and testimony of the two physicians who performed examinations in
45 the evaluation of the patient, WHICH MAY BE SATISFIED BY STIPULATING TO THE

1 ADMISSION OF THE EVALUATING PHYSICIANS' AFFIDAVITS AS REQUIRED PURSUANT TO
2 SECTION 36-533, SUBSECTION B. The physicians shall testify as to their
3 personal examination of the patient. They shall also testify as to their
4 opinions concerning whether the patient is, as a result of mental disorder, a
5 danger to self or to others, is persistently or acutely disabled or is
6 gravely disabled and as to whether the patient requires treatment. Such
7 testimony shall state specifically the nature and extent of the danger to
8 self or to others, the persistent or acute disability or the grave
9 disability. If the patient is gravely disabled the physicians shall testify
10 concerning the need for guardianship or conservatorship, or both, and whether
11 or not the need is for immediate appointment. Other persons who have
12 participated in the evaluation of the patient or, if further treatment was
13 requested by a mental health treatment agency, persons of that agency who are
14 directly involved in the care of the patient shall testify at the request of
15 the court or of the patient's attorney. Witnesses shall testify as to
16 placement alternatives appropriate and available for the care and treatment
17 of the patient. The clinical record of the patient for the current admission
18 shall be available and may be presented in full or in part as evidence at the
19 request of the court, the county attorney or the patient's attorney.

20 C. If the patient, for medical reasons, is unable to be present at the
21 hearing and the hearing cannot be conducted where the patient is being
22 treated or confined, the court shall require clear and convincing evidence
23 that the patient is unable to be present at the hearing and ~~upon~~ ON such a
24 finding may proceed with the hearing in the patient's absence.

25 D. The requirements of subsection B are in addition to all rules of
26 evidence and the Arizona rules of civil procedure, not inconsistent with
27 subsection B.

28 E. A verbatim record of all proceedings under this section shall be
29 made by stenographic means by a court reporter if a written request for a
30 court reporter is made by any party to the proceedings at least twenty-four
31 hours in advance of such proceedings. If stenographic means are not
32 requested in the manner provided by this subsection, electronic means shall
33 be directed by the presiding judge. The stenographic notes or electronic
34 tape shall be retained as provided by statute.

35 F. A patient who has been ordered to undergo treatment may request a
36 certified transcript of the hearing. To obtain a copy, the patient shall pay
37 for a transcript or shall file an affidavit that ~~he~~ THE PATIENT is without
38 means to pay for a transcript. If the affidavit is found true by the court,
39 the expense of the transcript is to be a charge ~~upon~~ ON the county in which
40 the proceedings were held, or, if an intergovernmental agreement by the
41 counties has required evaluation in a county other than that of the patient's
42 residence, such expense may be charged to the county of the patient's
43 residence or in which the patient was found ~~prior to~~ BEFORE evaluation.