

REFERENCE TITLE: afflicted persons; orders for transportation

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

## **SB 1336**

Introduced by  
Senator Pearce: Representatives Crump, Seel, Stevens

AN ACT

AMENDING SECTIONS 36-725, 36-728, 36-729 AND 36-731, ARIZONA REVISED  
STATUTES; RELATING TO TUBERCULOSIS CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-725, Arizona Revised Statutes, is amended to  
3 read:

4 36-725. Orders to cooperate; emergency custody

5 A. If the tuberculosis control officer or the local health officer  
6 knows or has reasonable grounds to believe someone is an afflicted person who  
7 endangers another person or the community and the afflicted person fails or  
8 refuses to comply with voluntary examination, monitoring, treatment,  
9 isolation or quarantine, the tuberculosis control officer or the local health  
10 officer shall issue a written order to cooperate to the afflicted person or,  
11 if a minor or incapacitated person, the afflicted person's parent or guardian  
12 that requires the afflicted person to cooperate with all intervention efforts  
13 to prevent and control the transmission of the disease. The order may  
14 require the afflicted person to participate in education, counseling,  
15 examination, medical treatment and supervision programs and to undergo  
16 medical tests for monitoring and to verify the afflicted person's status.

17 B. In urgent circumstances an order to cooperate may be an oral  
18 statement followed by the issuance of a written order by the end of the next  
19 business day. For THE purposes of this subsection, "urgent circumstances"  
20 means those situations when the tuberculosis control officer or the local  
21 health officer determines the issuance of a written order to be reasonably  
22 impractical due to circumstances beyond the control of the officer, including  
23 inaccessibility, dangerous conditions or the threat of physical violence.

24 C. An order to cooperate shall be individual and specific and shall  
25 not be issued to a class of persons. The order shall be served on the  
26 afflicted person or, if a minor or incapacitated person, the afflicted  
27 person's parent or guardian by a person who is employed by or under contract  
28 to the department, the tuberculosis control officer or the local health  
29 officer or by any sheriff, peace officer or person authorized to serve  
30 process. If personal service cannot be performed despite the exercise of due  
31 diligence, the order may be served by certified mail, return receipt  
32 requested. An affidavit of service that details the procedures followed in  
33 serving the order shall be prepared and maintained in the case file of the  
34 tuberculosis control officer or the local health officer.

35 D. An order to cooperate issued pursuant to this section shall include  
36 a statement that, unless the afflicted person complies with the actions  
37 required in the order, the tuberculosis control officer or the local health  
38 officer may order the afflicted person to be taken into emergency custody and  
39 shall seek a court order for compulsory examination, monitoring, treatment,  
40 isolation or quarantine. The order to cooperate shall also state that if a  
41 court order is sought, the afflicted person to whom the order is issued has  
42 the right to notice and a hearing and other rights as provided by law.

1 E. If the afflicted person refuses to comply with an order issued  
2 pursuant to this section or if the tuberculosis control officer or local  
3 health officer knows that an afflicted person has previously failed or  
4 refused to comply with an appropriate prescribed course of medication,  
5 treatment or monitoring, and if the tuberculosis control officer or the local  
6 health officer has reasonable grounds to believe that the afflicted person  
7 poses a substantial danger to another person or the community and that  
8 emergency custody is necessary to prevent a substantial danger to another  
9 person or the community, the tuberculosis control officer or the local health  
10 officer may issue an emergency custody order directing a sheriff or law  
11 enforcement officer to take the afflicted person into custody, to take  
12 precautions reasonable and necessary under the circumstances to protect the  
13 health of law enforcement officers and to **OVERSEE THE** transport **OF** the  
14 afflicted person to an institution or facility specified in the order. If  
15 the afflicted person's condition or the institution's location or hours make  
16 transportation ~~impractical~~ **IMPRACTICABLE**, the afflicted person shall be  
17 transported to an institution designated by the department, the tuberculosis  
18 control officer or the local health officer. The order may be an oral order  
19 followed by the issuance of a written order by the end of the next business  
20 day. The receiving institution shall provide suitable housing and care of  
21 the afflicted person. At the option of the tuberculosis control officer or  
22 the local health officer, an afflicted person ~~may~~ **SHALL** be transported by  
23 ~~a sheriff or law enforcement agency~~, a health care provider or emergency  
24 medical services personnel.

25 F. The admitting officer of an institution that receives an afflicted  
26 person pursuant to subsection E of this section shall admit the afflicted  
27 person as an emergency patient and shall perform an examination to determine  
28 if the afflicted person must be isolated.

29 G. An afflicted person admitted pursuant to an emergency custody order  
30 shall be released from custody if the medical director of the receiving  
31 facility, with the advice and consent of the tuberculosis control officer or  
32 a local health officer, determines that the afflicted person is any of the  
33 following:

34 1. Not afflicted with active tuberculosis.

35 2. Not a danger to another person or to the community and release is  
36 appropriate.

37 3. Qualified for release as a voluntary patient.

38 H. If an afflicted person is admitted pursuant to an emergency custody  
39 order, the tuberculosis control officer, the local health officer or a  
40 designated legal representative shall file a petition for public health  
41 protection within three business days after the detention unless the  
42 afflicted person has been accepted as a voluntary patient. The petition  
43 shall conform to the requirements of section 36-726.

44 I. At the time an afflicted person is taken into emergency custody  
45 pursuant to this section, the tuberculosis control officer or local health

1 officer, within the limits of due diligence, shall promptly notify the  
2 afflicted person's physician, parent or guardian or an adult member of the  
3 afflicted person's family of the detention. The notification shall include  
4 the location of the detention, the terms and conditions of custody and the  
5 authority that ordered the afflicted person's detention. An afflicted person  
6 detained under this section or, if a minor or incapacitated person, the  
7 afflicted person's parent or guardian shall be informed by the tuberculosis  
8 control officer or the local health officer of the afflicted person's rights  
9 under this article, including the right to consult with an attorney and the  
10 right to have an attorney appointed by the court if the afflicted person  
11 cannot afford to employ an attorney. The afflicted person or, if a minor or  
12 incapacitated person, the afflicted person's parent or guardian shall also be  
13 advised that if a petition for public health protection is filed the court  
14 shall appoint an attorney to consult with and to represent the afflicted  
15 person if the afflicted person cannot afford to employ an attorney.

16 J. If the afflicted person is a minor or incapacitated person, the  
17 tuberculosis control officer or local health officer shall use reasonable  
18 efforts to locate, contact and confer with a parent or guardian prior to  
19 initiating an intervention pursuant to this article.

20 K. In the event a parent or guardian of an afflicted person who is a  
21 minor or an incapacitated person cannot be located or the parent or guardian  
22 is unwilling to consent to a recommended intervention pursuant to this  
23 article, the tuberculosis control officer or local health officer, for the  
24 purpose of protecting the public health, may initiate any intervention that  
25 does not prescribe medical treatment for the minor or the incapacitated  
26 person unless medical treatment is otherwise authorized by section ~~44-132,~~  
27 ~~44-133,~~ 14-5209, ~~or~~ 14-5312, 44-132 OR 44-133.

28 L. A petition for public health protection shall be filed with the  
29 clerk of the superior court within three business days after the afflicted  
30 person's emergency detention authorized pursuant to an order of the  
31 tuberculosis control officer or the local health officer. A petition filed  
32 pursuant to this subsection shall conform to the requirements of section  
33 36-726. If a petition for public health protection is not filed within three  
34 business days after the detention, the afflicted person shall be immediately  
35 released from custody. An afflicted person who is released for this reason  
36 shall not be returned to emergency custody by a subsequent order unless the  
37 tuberculosis control officer or the local health officer first obtains an  
38 order from the superior court that permits detention pursuant to this  
39 article.

40 M. This section does not allow a private or public facility or agency  
41 to forcibly or involuntarily administer medications to an afflicted person  
42 unless authorized by the written order of the superior court pursuant to this  
43 article or as otherwise permitted by law.

1           Sec. 2. Section 36-728, Arizona Revised Statutes, is amended to read:  
2           36-728. Judicial action

3           A. If the court finds by clear and convincing evidence that a person  
4 is an afflicted person and presents a substantial danger to another person or  
5 to the community, the court shall order the afflicted person to do any one or  
6 more of the following pursuant to a written treatment plan developed or  
7 submitted by the tuberculosis control officer or the local health officer and  
8 approved by the court:

- 9           1. Participate in a designated education program.
- 10           2. Participate in a designated counseling program.
- 11           3. Participate in a designated treatment program.
- 12           4. Undergo medically accepted tests to verify the status of the  
13 afflicted person.
- 14           5. Undergo a program of directly observed therapy.
- 15           6. Participate in a program to notify or appear before designated  
16 health officials for verification of status, testing or other purposes  
17 consistent with monitoring.
- 18           7. Comply with an order that the afflicted person refrain from conduct  
19 that is a health threat to others or to the community.
- 20           8. Comply with an order that the afflicted person undergo isolation or  
21 quarantine at an approved facility, location or setting for the period and  
22 under the conditions set by the court and as approved by the department, the  
23 tuberculosis control officer or the local health officer.
- 24           9. Comply with an order that the afflicted person be committed to an  
25 appropriate facility for the period and under the conditions set by the court  
26 and as approved by the department, the tuberculosis control officer or the  
27 local health officer.
- 28           10. Comply with any other order the court determines is necessary and  
29 appropriate.

30           B. The court may approve the afflicted person's participation in a  
31 voluntary treatment program and may approve and order participation in a  
32 voluntary program under the terms prescribed by the court pursuant to this  
33 section. A person who accepts a voluntary treatment plan remains under the  
34 jurisdiction of the court for the purposes of court ordered examination,  
35 treatment, monitoring, isolation or quarantine. The terms prescribed by the  
36 court may incorporate the terms of a voluntary treatment plan that shall  
37 include provisions for the medically successful complete course of  
38 antituberculosis treatment.

39           C. The court shall order the least restrictive measures **THAT ARE**  
40 necessary for the examination, treatment, monitoring, isolation or quarantine  
41 of the afflicted person **AND** that will effectively protect the public health  
42 and provide appropriate care for the afflicted person. In ordering the least  
43 restrictive measures necessary, the court shall also consider input from an  
44 afflicted person's parent or guardian, if the afflicted person is a minor or  
45 incapacitated person.

1 D. If the court enters an order pursuant to this section it shall  
2 designate a facility or program to supervise the afflicted person and  
3 administer the court's order.

4 E. The director of a facility or program assigned by the court shall  
5 only use the services of any person, institution or program that has agreed  
6 to provide these services in the afflicted person's case and only if the  
7 local health agency or department determines that the person, institution or  
8 program is competent to do so.

9 F. The person, facility or program assigned to supervise the afflicted  
10 person pursuant to the court's order issued pursuant to this section shall be  
11 notified at least three days before a referral. The petitioner, the  
12 tuberculosis control officer or the local health officer recommending the  
13 referral and the person, institution or program shall share relevant  
14 information about the afflicted person to promote the health and safety of  
15 the public and to provide effective intervention and continuity of treatment.

16 G. On a motion by the director of the afflicted person's assigned  
17 institution or program or on a motion by the petitioner, the tuberculosis  
18 control officer or the local health officer, the court after a hearing may  
19 amend or alter its original order if it determines that any of the following  
20 is true:

21 1. The afflicted person is not complying with the terms of its  
22 original order.

23 2. The designated treatment plan is no longer appropriate.

24 3. Further observation, examination, treatment, isolation or  
25 quarantine is required.

26 H. If an afflicted person refuses to comply with any order or amended  
27 order issued pursuant to this section, the court may issue additional orders  
28 necessary to address and correct the afflicted person's noncompliance and may  
29 direct a sheriff or law enforcement officer, on the request of the  
30 tuberculosis control officer or local health officer, to take the afflicted  
31 person into custody and to **OVERSEE THE** transport **OF** the person to a  
32 designated institution or program. **AT THE OPTION OF THE TUBERCULOSIS CONTROL**  
33 **OFFICER OR THE LOCAL HEALTH OFFICER, AN AFFLICTED PERSON SHALL BE TRANSPORTED**  
34 **BY A HEALTH CARE PROVIDER OR EMERGENCY MEDICAL SERVICES PERSONNEL.**

35 I. On issuance of an order or an amended order issued pursuant to this  
36 section, the afflicted person shall be informed of the right to appeal and  
37 the right to consult with an attorney.

38 J. If any afflicted person who is under court ordered examination,  
39 monitoring, treatment, isolation or quarantine issued pursuant to this  
40 article is absent without proper authorization from a designated facility or  
41 program or if a court order is amended, rescinded or modified, a sheriff or  
42 law enforcement officer may be directed by the tuberculosis control officer  
43 or the local health officer to take the person to a designated and approved  
44 institution or program.

1 K. The period of court ordered examination, monitoring, treatment,  
2 isolation or quarantine does not run during any unauthorized absence from the  
3 jurisdiction or from any required monitoring or supervision. The period  
4 resumes only on the afflicted person's voluntary or involuntary return to the  
5 designated facility or program.

6 L. Except as provided in this section, court ordered examination,  
7 treatment, monitoring, isolation or quarantine shall not exceed three hundred  
8 sixty-five days.

9 Sec. 3. Section 36-729, Arizona Revised Statutes, is amended to read:

10 36-729. Amended orders for intervention and transport of  
11 afflicted persons

12 A. If the tuberculosis control officer or the local health officer  
13 determines that an afflicted person who is not currently detained is in need  
14 of immediate and acute intervention or care because the afflicted person's  
15 behavior is dangerous to another person or to the community, the tuberculosis  
16 control officer or the local health officer may issue a written or oral order  
17 to a sheriff or law enforcement officer **THAT REQUIRES A HEALTH CARE PROVIDER**  
18 **OR EMERGENCY MEDICAL SERVICES PERSONNEL** to take the afflicted person to a  
19 location designated by the tuberculosis control officer or the local health  
20 officer.

21 B. The afflicted person may be confined for not more than three  
22 business days after the afflicted person is taken to the institution, pending  
23 consideration by the court of an amended order sought under section 36-728,  
24 subsection G.

25 C. The tuberculosis control officer, local health officer or  
26 designated legal representative shall file a motion for an amended court  
27 order not later than three business days after confinement.

28 Sec. 4. Section 36-731, Arizona Revised Statutes, is amended to read:

29 36-731. Confinement; selection; jails; prohibition

30 A. After an afflicted person has been taken into custody pursuant to  
31 this article, the tuberculosis control officer or local health officer is  
32 responsible for selecting a facility or quarters suitable for the  
33 comfortable, safe and humane confinement of the afflicted person, if the  
34 person is not otherwise admitted or confined in a health care  
35 institution. The tuberculosis control officer or local health officer may  
36 authorize a ~~sheriff, law enforcement agency,~~ physician, health care provider,  
37 ambulance or ambulance service, guardian, conservator, parent, custodian,  
38 relative or friend to transport an afflicted person to a designated  
39 institution or location if the tuberculosis control officer or local health  
40 officer determines that the means of transportation are reliable and would  
41 not be detrimental to any person's health, safety or welfare.

42 B. An afflicted person who is not incarcerated on a criminal charge  
43 and who is the subject of an order or petition under this article shall not  
44 be confined in any prison or jail where those charged with crimes are  
45 incarcerated unless the afflicted person represents an immediate and serious

1 danger to the staff or physical facilities of a hospital or any institution  
2 to which committed, or unless the afflicted person has failed to obey a court  
3 order or has failed to obey a lawful order of the tuberculosis control  
4 officer or local health officer issued pursuant to this article and the  
5 medical director of the receiving facility or designee has determined that no  
6 less restrictive confinement measures are appropriate. The court shall  
7 subsequently determine the appropriate level of confinement necessary during  
8 this initial consideration of the petition and the request for compulsory  
9 detention pursuant to section 36-726, subsection F.