

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

SENATE BILL 1336

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.

43 E. If the afflicted person refuses to comply with an order issued
44 pursuant to this section or if the tuberculosis control officer or local
45 health officer knows that an afflicted person has previously failed or

1 refused to comply with an appropriate prescribed course of medication,
2 treatment or monitoring, and if the tuberculosis control officer or the local
3 health officer has reasonable grounds to believe that the afflicted person
4 poses a substantial danger to another person or the community and that
5 emergency custody is necessary to prevent a substantial danger to another
6 person or the community, the tuberculosis control officer or the local health
7 officer may issue an emergency custody order directing a sheriff or law
8 enforcement officer to take the afflicted person into custody, to take
9 precautions reasonable and necessary under the circumstances to protect the
10 health of law enforcement officers and to **OVERSEE AND ENSURE THE** transport **OF**
11 the afflicted person to an institution or facility specified in the
12 order. If the afflicted person's condition or the institution's **OR**
13 **FACILITY'S** location or hours make transportation ~~impractical~~ **IMPRACTICABLE**,
14 the afflicted person shall be transported to an institution **OR FACILITY**
15 designated by the department, the tuberculosis control officer or the local
16 health officer. The order may be an oral order followed by the issuance of a
17 written order by the end of the next business day. The receiving institution
18 **OR FACILITY** shall provide suitable housing and care of the afflicted person.
19 At the option of the tuberculosis control officer or the local health
20 officer, an afflicted person may be transported by ~~a sheriff or law~~
21 ~~enforcement agency,~~ a health care provider, ~~or~~ emergency medical services
22 personnel, **A PHYSICIAN, AMBULANCE PERSONNEL, AN AMBULANCE SERVICE, GUARDIAN,**
23 **CONSERVATOR, PARENT, CUSTODIAN, RELATIVE OR FRIEND TO A DESIGNATED**
24 **INSTITUTION OR FACILITY. A SHERIFF OR LAW ENFORCEMENT AGENCY SHALL MAINTAIN**
25 **CUSTODY OF THE AFFLICTED PERSON UNTIL THE AFFLICTED PERSON IS DELIVERED TO**
26 **THE INSTITUTION OR FACILITY SPECIFIED IN THE ORDER OR TO AN ALTERNATE**
27 **INSTITUTION OR FACILITY APPROVED BY THE DEPARTMENT, THE TUBERCULOSIS CONTROL**
28 **OFFICER OR THE LOCAL HEALTH OFFICER.**

29 F. The admitting officer of an institution **OR FACILITY** that receives
30 an afflicted person pursuant to subsection E of this section shall admit the
31 afflicted person as an emergency patient and shall perform an examination to
32 determine if the afflicted person must be isolated.

33 G. An afflicted person admitted pursuant to an emergency custody order
34 shall be released from custody if the medical director of the receiving
35 **INSTITUTION OR** facility, with the advice and consent of the tuberculosis
36 control officer or a local health officer, determines that the afflicted
37 person is any of the following:

- 38 1. Not afflicted with active tuberculosis.
- 39 2. Not a danger to another person or to the community and release is
40 appropriate.
- 41 3. Qualified for release as a voluntary patient.

42 H. If an afflicted person is admitted pursuant to an emergency custody
43 order, the tuberculosis control officer, the local health officer or a
44 designated legal representative shall file a petition for public health
45 protection within three business days after the detention unless the

1 afflicted person has been accepted as a voluntary patient. The petition
2 shall conform to the requirements of section 36-726.

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

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

24 K. In the event a parent or guardian of an afflicted person who is a
25 minor or an incapacitated person cannot be located or the parent or guardian
26 is unwilling to consent to a recommended intervention pursuant to this
27 article, the tuberculosis control officer or local health officer, for the
28 purpose of protecting the public health, may initiate any intervention that
29 does not prescribe medical treatment for the minor or the incapacitated
30 person unless medical treatment is otherwise authorized by section ~~44-132,~~
31 ~~44-133,~~ 14-5209, ~~or~~ 14-5312, 44-132 OR 44-133.

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

44 M. This section does not allow a private or public facility or agency
45 to forcibly or involuntarily administer medications to an afflicted person

1 unless authorized by the written order of the superior court pursuant to this
2 article or as otherwise permitted by law.

3 Sec. 2. Section 36-728, Arizona Revised Statutes, is amended to read:
4 36-728. Judicial action

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

11 1. Participate in a designated education program.

12 2. Participate in a designated counseling program.

13 3. Participate in a designated treatment program.

14 4. Undergo medically accepted tests to verify the status of the
15 afflicted person.

16 5. Undergo a program of directly observed therapy.

17 6. Participate in a program to notify or appear before designated
18 health officials for verification of status, testing or other purposes
19 consistent with monitoring.

20 7. Comply with an order that the afflicted person refrain from conduct
21 that is a health threat to others or to the community.

22 8. Comply with an order that the afflicted person undergo isolation or
23 quarantine at an approved facility, location or setting for the period and
24 under the conditions set by the court and as approved by the department, the
25 tuberculosis control officer or the local health officer.

26 9. Comply with an order that the afflicted person be committed to an
27 appropriate facility for the period and under the conditions set by the court
28 and as approved by the department, the tuberculosis control officer or the
29 local health officer.

30 10. Comply with any other order the court determines is necessary and
31 appropriate.

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

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

1 afflicted person's parent or guardian, if the afflicted person is a minor or
2 incapacitated person.

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

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

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

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

23 1. The afflicted person is not complying with the terms of its
24 original order.

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

26 3. Further observation, examination, treatment, isolation or
27 quarantine is required.

28 H. If an afflicted person refuses to comply with any order or amended
29 order issued pursuant to this section, the court may issue additional orders
30 necessary to address and correct the afflicted person's noncompliance and may
31 direct a sheriff or law enforcement officer, on the request of the
32 tuberculosis control officer or local health officer, to take the afflicted
33 person into custody and to **OVERSEE AND ENSURE THE** transport **OF** the person to
34 a designated institution or program. **AT THE OPTION OF THE TUBERCULOSIS**
35 **CONTROL OFFICER OR THE LOCAL HEALTH OFFICER, AN AFFLICTED PERSON MAY BE**
36 **TRANSPORTED BY A HEALTH CARE PROVIDER, EMERGENCY MEDICAL SERVICES PERSONNEL,**
37 **A PHYSICIAN, AMBULANCE PERSONNEL, AN AMBULANCE SERVICE, GUARDIAN,**
38 **CONSERVATOR, PARENT, CUSTODIAN, RELATIVE OR FRIEND TO A DESIGNATED**
39 **INSTITUTION OR FACILITY. A SHERIFF OR LAW ENFORCEMENT AGENCY SHALL MAINTAIN**
40 **CUSTODY OF THE AFFLICTED PERSON UNTIL THE AFFLICTED PERSON IS DELIVERED TO**
41 **THE INSTITUTION OR FACILITY SPECIFIED IN THE ORDER OR TO AN ALTERNATE**
42 **INSTITUTION OR FACILITY APPROVED BY THE DEPARTMENT, THE TUBERCULOSIS CONTROL**
43 **OFFICER OR THE LOCAL HEALTH OFFICER.**

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

4 J. If any afflicted person who is under court ordered examination,
5 monitoring, treatment, isolation or quarantine issued pursuant to this
6 article is absent without proper authorization from a designated facility or
7 program or if a court order is amended, rescinded or modified, a sheriff or
8 law enforcement officer may be directed by the tuberculosis control officer
9 or the local health officer to take the ~~person~~ AFFLICTED PERSON INTO CUSTODY
10 AND TO OVERSEE AND ENSURE THE TRANSPORT OF THE AFFLICTED PERSON to a
11 designated and approved institution or program.

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

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

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

21 36-729. Amended orders for intervention and transport of
22 afflicted persons

23 A. If the tuberculosis control officer or the local health officer
24 determines that an afflicted person who is not currently detained is in need
25 of immediate and acute intervention or care because the afflicted person's
26 behavior is dangerous to another person or to the community, the tuberculosis
27 control officer or the local health officer may issue a written or oral order
28 to a sheriff or law enforcement officer THAT REQUIRES A HEALTH CARE PROVIDER,
29 EMERGENCY MEDICAL SERVICES PERSONNEL, A PHYSICIAN, AMBULANCE PERSONNEL, AN
30 AMBULANCE SERVICE, GUARDIAN, CONSERVATOR, PARENT, CUSTODIAN, RELATIVE OR
31 FRIEND to take the afflicted person to a location designated by the
32 tuberculosis control officer or the local health officer. A SHERIFF OR LAW
33 ENFORCEMENT AGENCY SHALL MAINTAIN CUSTODY OF THE AFFLICTED PERSON UNTIL THE
34 AFFLICTED PERSON IS DELIVERED TO THE INSTITUTION OR FACILITY SPECIFIED IN THE
35 ORDER OR TO AN ALTERNATE INSTITUTION OR FACILITY APPROVED BY THE DEPARTMENT,
36 THE TUBERCULOSIS CONTROL OFFICER OR THE LOCAL HEALTH OFFICER.

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

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

1 Sec. 4. Section 36-731, Arizona Revised Statutes, is amended to read:
2 36-731. Confinement; selection; jails; prohibition

3 A. After an afflicted person has been taken into custody pursuant to
4 this article, the tuberculosis control officer or local health officer is
5 responsible for selecting a facility or quarters suitable for the
6 comfortable, safe and humane confinement of the afflicted person, if the
7 person is not otherwise admitted or confined in a health care
8 institution. The tuberculosis control officer or local health officer may
9 authorize a ~~sheriff, law enforcement agency,~~ physician, health care provider,
10 EMERGENCY MEDICAL SERVICES PERSONNEL, ambulance or ambulance service,
11 guardian, conservator, parent, custodian, relative or friend to transport an
12 afflicted person to a designated institution or ~~location~~ FACILITY if the
13 tuberculosis control officer or local health officer determines that the
14 means of transportation are reliable and would not be detrimental to any
15 person's health, safety or welfare. A SHERIFF OR LAW ENFORCEMENT AGENCY
16 SHALL MAINTAIN CUSTODY OF THE AFFLICTED PERSON UNTIL THE AFFLICTED PERSON IS
17 DELIVERED TO THE INSTITUTION OR FACILITY SPECIFIED IN THE ORDER OR TO AN
18 ALTERNATE INSTITUTION OR FACILITY APPROVED BY THE DEPARTMENT, THE
19 TUBERCULOSIS CONTROL OFFICER OR THE LOCAL HEALTH OFFICER.

20 B. An afflicted person who is not incarcerated on a criminal charge
21 and who is the subject of an order or petition under this article shall not
22 be confined in any prison or jail where those charged with crimes are
23 incarcerated unless the afflicted person represents an immediate and serious
24 danger to the staff or physical facilities of a hospital or any institution
25 to which committed, or unless the afflicted person has failed to obey a court
26 order or has failed to obey a lawful order of the tuberculosis control
27 officer or local health officer issued pursuant to this article and the
28 medical director of the receiving facility or designee has determined that no
29 less restrictive confinement measures are appropriate. The court shall
30 subsequently determine the appropriate level of confinement necessary during
31 this initial consideration of the petition and the request for compulsory
32 detention pursuant to section 36-726, subsection F.