

REFERENCE TITLE: guilty except insane; applicability; hearing

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

## **SB 1340**

Introduced by  
Senator Paton

AN ACT

AMENDING SECTIONS 11-584, 12-820.02, 13-502, 13-3994 AND 31-502, ARIZONA  
REVISED STATUTES; RELATING TO INSANITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-584, Arizona Revised Statutes, is amended to  
3 read:

4 11-584. Public defender; duties; reimbursement

5 A. The public defender shall perform the following duties:

6 1. Upon order of the court, defend, advise and counsel without expense  
7 to the defendant, subject to subsection B of this section, any person who is  
8 not financially able to employ counsel in the following proceedings and  
9 circumstances:

10 (a) Offenses triable in the superior court or justice courts at all  
11 stages of the proceedings, including the preliminary examination, but only  
12 for those offenses which by law require that counsel be provided.

13 (b) Extradition hearings.

14 (c) Sanity hearings only when appointed by the court under title 36,  
15 chapter 5.

16 (d) Involuntary commitment hearings held pursuant to title 36, chapter  
17 18, only if appointed by the court.

18 (e) Involuntary commitment hearings held pursuant to title 36, chapter  
19 37, when appointed by the court as provided in section 36-3704, subsection C,  
20 if the court appoints the public defender and the board of supervisors has  
21 advised the presiding judge of the county that the public defender is  
22 authorized to accept the appointment.

23 (f) Juvenile delinquency and incorrigibility proceedings only when  
24 appointed by the court under section 8-221.

25 (g) Appeals to a higher court or courts.

26 (h) All juvenile proceedings other than delinquency and  
27 incorrigibility proceedings under subdivision (f), including serving as a  
28 guardian ad litem, when appointed by the court pursuant to section 8-221, if  
29 the court appoints the public defender and the board of supervisors has  
30 advised the presiding judge of the county that the public defender is  
31 authorized to accept the appointment.

32 (i) All mental health hearings regarding release recommendations held  
33 before the psychiatric security review board pursuant to section 13-3994,  
34 when appointed by the court as provided in section 31-502, subsection A,  
35 paragraph ~~8~~ 6, if the court appoints the public defender and the board of  
36 supervisors has advised the presiding judge of the superior court in the  
37 county that the public defender is authorized to accept the appointment.

38 (j) As attorneys pursuant to title 14, chapter 5, article 4 of adults  
39 who are allegedly unable to effectively manage their affairs or preserve  
40 their estates, if the court appoints the public defender and the board of  
41 supervisors has advised the presiding judge of the county that the public  
42 defender is authorized to accept the appointment.

43 2. Keep a record of all services rendered by the public defender in  
44 that capacity and file with the board of supervisors an annual report of  
45 those services.

1           3. By December 1 of each year, file with the presiding judge of the  
2 superior court, the chief probation officer and the board of supervisors an  
3 annual report on the average cost of defending a felony case.

4           B. Although the services of the public defender or court appointed  
5 counsel shall be without expense to the defendant, the court may make the  
6 following assessments:

7           1. Order an indigent administrative assessment of not more than  
8 twenty-five dollars.

9           2. Order an administrative assessment fee of not more than  
10 twenty-five dollars to be paid by the juvenile or the juvenile's parent or  
11 guardian.

12           3. Require that the defendant, including a defendant who is placed on  
13 probation, repay to the county a reasonable amount to reimburse the county  
14 for the cost of the defendant's legal defense. Reimbursement for legal  
15 services provided to a juvenile shall be ordered pursuant to section 8-221.

16           C. In determining the amount and method of payment the court shall  
17 take into account the financial resources of the defendant and the nature of  
18 the burden that the payment will impose.

19           D. Assessments collected pursuant to subsection B of this section  
20 shall be paid into the county general fund in the account designed for use  
21 solely by the public defender and court appointed counsel to defray the costs  
22 of public defenders and court appointed counsel. The assessments shall  
23 supplement, not supplant, funding provided by counties for public defense,  
24 legal defense and contract indigent defense counsel in each county.

25           Sec. 2. Section 12-820.02, Arizona Revised Statutes, is amended to  
26 read:

27           12-820.02. Qualified immunity

28           A. Unless a public employee acting within the scope of the public  
29 employee's employment intended to cause injury or was grossly negligent,  
30 neither a public entity nor a public employee is liable for:

31           1. The failure to make an arrest or the failure to retain an arrested  
32 person in custody.

33           2. An injury caused by an escaping or escaped prisoner or a youth  
34 committed to the department of juvenile corrections.

35           3. An injury resulting from the probation, community supervision or  
36 discharge of a prisoner or a youth committed to the department of juvenile  
37 corrections, from the terms and conditions of the prisoner's or youth's  
38 probation or community supervision or from the revocation of the prisoner's  
39 or youth's probation, ~~OR community supervision or conditional release under~~  
40 ~~the psychiatric security review board.~~

41           4. An injury caused by a prisoner to any other prisoner or an injury  
42 caused by a youth committed to the department of juvenile corrections to any  
43 other committed youth.



1 mental health facility for up to thirty days for mental health evaluation and  
2 treatment. Experts at the mental health facility who are licensed pursuant  
3 to title 32, who are familiar with this state's insanity statutes, who are  
4 specialists in mental diseases and defects and who are knowledgeable  
5 concerning insanity shall observe and evaluate the defendant. The expert or  
6 experts who examine the defendant shall submit a written report of the  
7 evaluation to the court, the defendant's attorney and the prosecutor. The  
8 court shall order the defendant to pay the costs of the mental health  
9 facility to the clerk of the court. The clerk of the court shall transmit  
10 the reimbursements to the mental health facility for all of its costs. If  
11 the court finds the defendant is indigent or otherwise is unable to pay all  
12 or any of the costs, the court shall order the county to reimburse the mental  
13 health facility for the remainder of the costs. Notwithstanding section  
14 36-545.02, the mental health facility may maintain the reimbursements. If  
15 the court does not commit the defendant to a secure state mental health  
16 facility, a secure county mental health evaluation and treatment facility or  
17 another secure licensed mental health facility, the court shall appoint an  
18 independent expert who is licensed pursuant to title 32, who is familiar with  
19 this state's insanity statutes, who is a specialist in mental diseases and  
20 defects and who is knowledgeable concerning insanity to observe and evaluate  
21 the defendant. The expert who examines the defendant shall submit a written  
22 report of the evaluation to the court, the defendant's attorney and the  
23 prosecutor. The court shall order the defendant to pay the costs of the  
24 services of the independent expert to the clerk of the court. The clerk of  
25 the court shall transmit the reimbursements to the expert. If the court  
26 finds the defendant is indigent or otherwise unable to pay all or any of the  
27 costs, the court shall order the county to reimburse the expert for the  
28 remainder of the costs. This subsection does not prohibit the defendant or  
29 this state from obtaining additional psychiatric examinations by other mental  
30 health experts who are licensed pursuant to title 32, who are familiar with  
31 this state's insanity statutes, who are specialists in mental diseases and  
32 defects and who are knowledgeable concerning insanity.

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

35 D. If the finder of fact finds the defendant guilty except insane, the  
36 court shall determine the sentence the defendant could have received pursuant  
37 to section 13-707 or section 13-751, subsection A or the presumptive sentence  
38 the defendant could have received pursuant to section 13-702, section 13-703,  
39 section 13-704, section 13-705, section 13-706, subsection A, section 13-710  
40 or section 13-1406 if the defendant had not been found insane, and the judge  
41 shall sentence the defendant to a term of incarceration in the state  
42 department of corrections and shall order the defendant to be placed under  
43 the jurisdiction of the psychiatric security review board and committed to a  
44 state mental health facility under the department of health services pursuant  
45 to section 13-3994 for that term. In making this determination the court

1 ~~shall not~~ MAY consider the sentence enhancements for prior convictions under  
2 section 13-703 or 13-704 AND THE DEFENDANT MAY PRESENT MITIGATION EVIDENCE AT  
3 THIS HEARING. The court shall expressly identify each act that the defendant  
4 committed and separately find whether each act involved the death or physical  
5 injury of or a substantial threat of death or physical injury to another  
6 person.

7 E. A guilty except insane verdict is not a criminal conviction for  
8 sentencing enhancement purposes under section 13-703 or 13-704 EXCEPT THAT IT  
9 MAY BE CONSIDERED AS AN AGGRAVATING FACTOR PURSUANT TO SECTION 13-701 FOR THE  
10 PURPOSES OF A SUBSEQUENT CONVICTION.

11 Sec. 4. Section 13-3994, Arizona Revised Statutes, is amended to read:  
12 13-3994. Commitment; hearing; jurisdiction; notice; definition

13 A. A person who is found guilty except insane pursuant to section  
14 13-502 shall be committed to a secure state mental health facility under the  
15 department of health services for a period of treatment.

16 B. If the criminal act of the person committed pursuant to subsection  
17 A of this section did not cause the death or serious physical injury of or  
18 the threat of death or serious physical injury to another person, the court  
19 shall set a hearing date within seventy-five days after the person's  
20 commitment to determine if the person is entitled to release from confinement  
21 or if the person meets the standards for civil commitment pursuant to title  
22 36, chapter 5. The ~~court~~ CUSTODIAL AGENCY shall notify ~~the medical director~~  
23 ~~of the mental health facility, the attorney general, the county attorney~~ THE  
24 PROSECUTING ATTORNEY, the victim and the VICTIM'S attorney ~~representing the~~  
25 ~~person~~, if any, of ~~the date of the~~ THIS hearing. Fourteen days before the  
26 hearing the director of the mental health facility shall submit to the court  
27 a report addressing the person's mental health and dangerousness.

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

29 1. If the person proves by clear and convincing evidence that the  
30 person no longer suffers from a mental disease or defect and is not  
31 dangerous, the court shall order the person's release and the person's  
32 commitment ordered pursuant to section 13-502, subsection D shall terminate.  
33 Before ~~determining to~~ CONSIDERING THE release OF a person pursuant to this  
34 paragraph, the court shall consider the entire criminal history of the person  
35 and shall not order the person's release if the court determines that the  
36 person has a propensity to reoffend.

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

43 D. If the court finds that the criminal act of the person committed  
44 pursuant to subsection A of this section caused the death or serious physical  
45 injury of or the threat of death or serious physical injury to another

1 person, the court shall place the person under the jurisdiction of the  
2 psychiatric security review board. The court shall state the beginning date,  
3 length and ending date of the board's jurisdiction over the person. The  
4 length of the board's jurisdiction over the person is equal to the sentence  
5 the person could have received pursuant to section 13-707 or section 13-751,  
6 subsection A or the ~~presumptive~~ RANGE OF sentence the defendant could have  
7 received pursuant to section 13-702, subsection D, section 13-703, section  
8 13-704, section 13-705, section 13-706, subsection A, section 13-710 or  
9 section 13-1406. In making this determination the court ~~shall not~~ MAY  
10 consider the sentence enhancements for prior convictions under section 13-703  
11 or 13-704. The court shall retain jurisdiction of all matters that are not  
12 specifically delegated to the psychiatric security review board for the  
13 duration of the ~~presumptive~~ sentence.

14 E. A person who is placed under the jurisdiction of the psychiatric  
15 security review board pursuant to subsection D of this section is not  
16 eligible for discharge from the board's jurisdiction until the board's  
17 jurisdiction over the person expires.

18 F. A person who is placed under the jurisdiction of the psychiatric  
19 security review board pursuant to subsection D of this section ~~is not~~  
20 ~~entitled to~~ SHALL NOT HAVE a hearing before the board earlier than one  
21 hundred twenty days after the person's initial commitment. A request for a  
22 subsequent ~~release hearing~~ JUDICIAL DETERMINATION OF MENTAL STATUS may be  
23 made pursuant to subsection H of this section. After the hearing, the board  
24 may take one of the following actions:

25 1. If the psychiatric security review board finds that the person  
26 still suffers from a mental disease or defect and is dangerous, the board  
27 shall order that the person remain committed at the secure state mental  
28 health facility.

29 2. If the ~~person proves by clear and convincing evidence~~ PSYCHIATRIC  
30 SECURITY REVIEW BOARD FINDS that the person no longer suffers from a mental  
31 disease or defect and is not dangerous, ~~the psychiatric security review board~~  
32 ~~shall order the person's release. The person shall remain under the~~  
33 ~~jurisdiction of the board. Before determining to release a person pursuant~~  
34 ~~to this paragraph, the board shall consider the entire criminal history of~~  
35 ~~the person and shall not order the person's release if the board determines~~  
36 ~~that the person has a propensity to reoffend~~ THE PERSON SHALL BE TRANSFERRED  
37 TO THE STATE DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF THE SENTENCE  
38 IMPOSED PURSUANT TO SECTION 13-502, SUBSECTION D.

39 3. If the psychiatric security review board finds that the person  
40 still suffers from a mental disease or defect or that the mental disease or  
41 defect is in stable remission but the person is no longer dangerous, ~~the~~  
42 ~~board shall order the person's conditional release. The person shall remain~~  
43 ~~under the board's jurisdiction. The board in conjunction with the state~~  
44 ~~mental health facility and behavioral health community providers shall~~  
45 ~~specify the conditions of the person's release. The board shall continue to~~

1 ~~monitor and supervise a person who is released conditionally. Before the~~  
2 ~~conditional release of a person, a supervised treatment plan shall be in~~  
3 ~~place, including the necessary funding to implement the plan~~ THE PERSON SHALL  
4 BE TRANSFERRED TO THE STATE DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF  
5 THE SENTENCE IMPOSED PURSUANT TO SECTION 13-502, SUBSECTION D.

6 4. If the person is sentenced pursuant to section 13-704, subsection  
7 A, B, C, D or E, SECTION 13-710 OR SECTION 13-751, SUBSECTION A and the  
8 psychiatric security review board finds that the person no longer needs  
9 ongoing treatment for a mental disease and the person is dangerous or has a  
10 propensity to reoffend, the board shall order the person to be transferred to  
11 the state department of corrections for the remainder of the sentence imposed  
12 pursuant to section 13-502, subsection D. The board shall consider the  
13 safety and protection of the public.

14 G. Within twenty days after the psychiatric security review board  
15 orders a person to be transferred to the state department of corrections, the  
16 person may file a petition for a judicial determination. The person shall  
17 serve a copy of the request on the attorney general. If the person files a  
18 petition for a judicial determination, the person shall remain in a state  
19 mental health facility pending the result of the judicial determination. The  
20 person requesting the judicial determination has the burden of proving the  
21 issues by clear and convincing evidence. The judicial determination is  
22 limited to the following issues:

23 1. Whether the person no longer needs ongoing treatment for a mental  
24 disease.

25 2. Whether the person is dangerous or has a propensity to reoffend.

26 H. ~~A person who is placed under the jurisdiction of the psychiatric~~  
27 ~~security review board pursuant to subsection D of this section may not seek a~~  
28 ~~new release hearing~~ A JUDICIAL DETERMINATION OF MENTAL STATUS HEARING MAY NOT  
29 OCCUR earlier than twenty months after a prior ~~release~~ hearing, except that  
30 the medical director of the state mental health facility may request a new  
31 ~~release~~ hearing for a person under the jurisdiction of the psychiatric  
32 security review board at any time. The person shall not be held in  
33 confinement for more than two years without a hearing before the board to  
34 determine ~~if the person should be released or conditionally released~~ PERSON'S  
35 MENTAL STATUS.

36 I. At any hearing for ~~release or conditional release~~ A JUDICIAL  
37 DETERMINATION OF THE PERSON'S MENTAL STATUS pursuant to this section:

38 1. Public safety and protection are primary.

39 2. The ~~applicant has the burden of proof~~ STANDARD FOR FINDING A CHANGE  
40 IN THE PERSON'S MENTAL STATUS IS by clear and convincing evidence.

41 J. At least fifteen days before a JUDICIAL DETERMINATION OF MENTAL  
42 STATUS hearing is scheduled ~~to consider a person's release~~, or before the  
43 expiration of the board's jurisdiction over the person, the state mental  
44 health facility or supervising agency shall submit to the psychiatric  
45 security review board a report on the person's mental health. The

1 psychiatric security review board shall ~~determine whether to release the~~  
2 ~~person~~ MAKE A JUDICIAL DETERMINATION OF THE PERSON'S MENTAL STATUS or to  
3 SHALL order the county attorney to institute civil commitment proceedings  
4 pursuant to title 36.

5 K. The procedures for civil commitment govern the continued commitment  
6 of the person after the expiration of the jurisdiction of the psychiatric  
7 security review board.

8 L. Before a person is released ~~or conditionally released~~, at least  
9 three of the five psychiatric security review board members shall vote for  
10 the release ~~or conditional release~~.

11 ~~M. If at any time while the person remains under the jurisdiction of~~  
12 ~~the psychiatric security review board it appears to the board, the chairman~~  
13 ~~or vice chairman of the board or the medical director of the state mental~~  
14 ~~health facility that the person has failed to comply with the terms of the~~  
15 ~~person's conditional release or that the mental health of the person has~~  
16 ~~deteriorated, the board or the chairman or vice chairman of the board for~~  
17 ~~good cause or the medical director of the state mental health facility may~~  
18 ~~order that the person be returned to a secure state mental health facility~~  
19 ~~for evaluation or treatment. A written order of the board, the chairman or~~  
20 ~~vice chairman of the board or the medical director is sufficient warrant for~~  
21 ~~any law enforcement officer to take the person into custody and to transport~~  
22 ~~the person accordingly. Any sheriff or other peace officer shall execute the~~  
23 ~~order and shall immediately notify the board of the person's return to the~~  
24 ~~facility. Within twenty days after the person's return to a secure state~~  
25 ~~mental health facility the board shall conduct a hearing and shall give~~  
26 ~~notice within five days before the hearing of the time and place of the~~  
27 ~~hearing to the person, the victim, the attorney representing the person, the~~  
28 ~~county attorney and the attorney general.~~

29 ~~N. The director of a facility that is providing treatment to a person~~  
30 ~~on conditional release or any other person who is responsible for the~~  
31 ~~supervision of the person may take the person or request that the person be~~  
32 ~~taken into custody if there is reasonable cause to believe that the person's~~  
33 ~~mental health has deteriorated to the point that the person's conditional~~  
34 ~~release should be revoked and that the person is in need of immediate care,~~  
35 ~~custody or treatment or that deterioration is likely because of noncompliance~~  
36 ~~with a treatment program. A person who is taken into custody pursuant to~~  
37 ~~this subsection shall be transported immediately to a secure state mental~~  
38 ~~health facility and shall have the same rights as any person appearing before~~  
39 ~~the psychiatric security review board.~~

40 ~~O. Before the initial hearing or any other hearing before the~~  
41 ~~psychiatric security review board on the release or conditional release of~~  
42 ~~the person, the person, the attorney who is representing the person and the~~  
43 ~~attorney general or county attorney who is representing the state may choose~~  
44 ~~a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a~~  
45 ~~psychologist licensed pursuant to title 32, chapter 19.1 to examine the~~

1 ~~person. All costs in connection with the examination shall be approved and~~  
2 ~~paid by the county of the sentencing court. The written examination results~~  
3 ~~shall be filed with the board and shall include an opinion as to:~~

4 ~~1. The mental condition of the person.~~

5 ~~2. Whether the person is dangerous.~~

6 ~~P. Notwithstanding subsection O of this section, the board or the~~  
7 ~~chairman of the board for good cause may order an independent mental health~~  
8 ~~evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17~~  
9 ~~or a psychologist licensed pursuant to title 32, chapter 19.1. The written~~  
10 ~~examination results shall be filed with the board pursuant to subsection O of~~  
11 ~~this section.~~

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

31 N. THE CUSTODIAL AGENCY SHALL PROVIDE NOTICE BY MAIL, POSTAGE PREPAID,  
32 TO THE PROSECUTOR, THE VICTIM AND THE VICTIM'S ATTORNEY AT LEAST TEN DAYS  
33 BEFORE THE INTENDED DATE OF THE PERSON'S EXPIRATION, TERMINATION OR DISCHARGE  
34 AND AS SOON AS REASONABLY POSSIBLE AFTER A PETITION UNDER THIS SECTION IS  
35 DENIED. FOR THE PURPOSES OF COMPUTING THE TEN-DAY NOTICE REQUIREMENT, THE  
36 DAY OF MAILING SHALL NOT BE COUNTED.

37 ~~R.~~ O. For the purposes of this section, "state mental health  
38 facility" means a secure state mental health facility under the department of  
39 health services.

40 Sec. 5. Section 31-502, Arizona Revised Statutes, is amended to read:

41 31-502. Psychiatric security review board; powers and duties;  
42 definition

43 A. The psychiatric security review board shall:

44 1. Maintain jurisdiction over persons who are committed to a secure  
45 state mental health facility pursuant to section 13-3994.

1           2. Hold hearings pursuant to section 13-3994 to determine if a person  
2 committed to a secure state mental health facility is eligible for release ~~or~~  
3 ~~conditional release.~~

4           ~~3. In conjunction with the secure state mental health facility and~~  
5 ~~other appropriate community agencies or persons, devise a plan for the~~  
6 ~~conditional release of a person pursuant to section 13-3994.~~

7           ~~4.~~ 3. Unless otherwise provided by law, confidentially maintain all  
8 medical, social and criminal history records of persons who are committed to  
9 its jurisdiction.

10           ~~5. On application by a person or agency that is responsible pursuant~~  
11 ~~to an order for the supervision or treatment of a person on conditional~~  
12 ~~release, hold a hearing to determine if the conditions of release should be~~  
13 ~~continued, modified or terminated. Each application for a hearing shall be~~  
14 ~~accompanied by a report setting forth the facts supporting the~~  
15 ~~application. Termination of conditional release requires a vote of three of~~  
16 ~~the four board members.~~

17           ~~6.~~ 4. Keep a record of all hearings before the board except board  
18 deliberations.

19           ~~7.~~ 5. Give written notice of any hearing before the board to the  
20 attorney representing the person, the attorney general or other attorney  
21 representing the state, the victim and the court that committed the person to  
22 the board's jurisdiction.

23           ~~8.~~ 6. Determine if the person about whom the hearing is being held is  
24 indigent and, if so, request the committing court to appoint an attorney to  
25 represent the person. The court of the county of prosecution shall bear the  
26 cost of the court appointed attorney.

27           ~~9.~~ 7. Before a hearing, disclose to the person about whom the hearing  
28 is being held, the person's attorney, the attorney general and any attorney  
29 representing the state any information, documents or reports that the board  
30 will be considering.

31           ~~10.~~ 8. Within fifteen days after the conclusion of a hearing, give to  
32 the person, the attorney representing the person, the victim, the attorney  
33 general and any attorney representing the state and the court that committed  
34 the person to the board's jurisdiction notice of the board's decision.

35           B. The psychiatric security review board may:

36           1. Adopt rules to carry out the purposes of this chapter and title 13,  
37 chapter 38, article 14.

38           2. Monitor all persons under its jurisdiction.

39           ~~3. As a condition of release, require a person to receive treatment~~  
40 ~~from a board designated licensed or certified state or local mental health~~  
41 ~~facility or agency or person.~~

42           ~~4. Modify or terminate the terms of a person's conditional release.~~

1           ~~5.~~ 3. Issue subpoenas requiring the attendance and testimony of  
2 witnesses at any hearing before the board. Subpoenaed witnesses shall be  
3 paid the same fees and mileage allowance paid witnesses in civil actions. If  
4 a person fails to comply with a subpoena that is issued pursuant to this  
5 paragraph, the board may request a superior court judge to issue a contempt  
6 order.

7           C. For the purposes of this section, "secure state mental health  
8 facility" means a secure state mental health facility under the department of  
9 health services.