

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2211

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 14-5312.01, Arizona Revised Statutes, is amended
3 to read:

4 14-5312.01. Inpatient treatment; rights and duties of ward and
5 guardian

6 A. Except as provided in subsection B of this section, a guardian of
7 an incapacitated person may consent to psychiatric and psychological care and
8 treatment, including the administration of psychotropic medications, if the
9 care and treatment take place outside a level one behavioral health facility
10 licensed by the department of health services.

11 B. On clear and convincing evidence that the ward is incapacitated as
12 a result of a mental disorder as defined in section 36-501, and is currently
13 in need of inpatient mental health care and treatment, the court may
14 authorize a guardian appointed pursuant to this title to give consent for the
15 ward to receive inpatient mental health care and treatment, including
16 placement in a level one behavioral health facility licensed by the
17 department of health services and medical, psychiatric and psychological
18 treatment associated with that placement. The evidence shall be supported by
19 the opinion of a mental health expert who is either a physician licensed
20 pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry
21 or a psychologist who is licensed pursuant to title 32, chapter 19.1.

22 C. In making its decision to grant authority to a guardian pursuant to
23 subsection B of this section, the court shall consider the cause of the
24 ward's disability and the ward's foreseeable clinical needs. The court shall
25 limit the guardian's authority to what is reasonably necessary to obtain the
26 care required for the ward in the least restrictive treatment alternative.
27 The court may limit the duration of the guardian's authority to consent to
28 inpatient mental health care and treatment and include other orders the court
29 determines necessary to protect the ward's best interests.

1 D. Within forty-eight hours after placement of the ward pursuant to
2 this section, the guardian shall give notice of this action to the ward's
3 attorney. When the attorney receives this notice the attorney shall assess
4 the appropriateness of the placement pursuant to section 36-537, subsection B
5 and section 36-546, subsection H. If requested by the attorney, the court
6 shall hold a hearing on the appropriateness of the placement within three
7 days after receiving that request.

8 E. The behavioral health treatment facility shall assess the
9 appropriateness of the ward's placement every thirty days and shall provide a
10 copy of the assessment report to the ward's attorney. The ward's attorney
11 may attend the ward's evaluation, staffing, treatment team and case
12 management meetings.

13 F. When the ward is admitted to a level one behavioral health
14 treatment facility pursuant to this section, the guardian shall provide the
15 facility with the name, address and telephone number of the ward's attorney.
16 The facility shall include this information in the ward's treatment record.

17 G. Within twenty-four hours after the facility receives any writing in
18 which the ward requests release from the facility, any change in placement or
19 a change in the type or duration of treatment, the facility shall forward
20 this information to the ward's attorney.

21 H. All health care providers, treatment facilities and regional
22 behavioral health authorities shall allow the ward's attorney access to all
23 of the ward's medical, psychiatric, psychological and other treatment
24 records.

25 I. The ward's guardian shall place the ward in a least restrictive
26 treatment alternative within ten days after the guardian is notified by the
27 medical director of the inpatient facility that the ward no longer needs
28 inpatient care. The ward, a representative of the inpatient treatment
29 facility, the ward's attorney, the ward's physician or any other interested
30 person may petition the court to order the facility to discharge the ward to
31 a least restrictive treatment alternative if the guardian does not act
32 promptly to do so.

33 J. If the ward is in a behavioral health treatment facility at the
34 time of the initial hearing on the petition for appointment of a guardian,
35 the court investigator and the ward's attorney shall advise the court of the
36 appropriateness of the placement.

1 K. An attorney appointed pursuant to section 14-5303, subsection C
2 remains the attorney of record until the attorney is discharged by the court.
3 The court shall ensure that a ward whose guardian has been granted mental
4 health treatment authority is represented by an attorney at all times the
5 guardian has that authority. Unless the court finds that the ward has
6 insufficient assets to meet the ward's reasonable and necessary care and
7 living expenses, the ward shall pay the attorney's reasonable fees.

8 L. If deemed necessary to adequately assess a request for mental
9 health treatment authority or to review the ward's placement in a behavioral
10 health treatment facility, the court may order an independent evaluation by
11 either a physician who is licensed pursuant to title 32, chapter 13 or 17 and
12 who is a specialist in psychiatry or a psychologist who is licensed pursuant
13 to title 32, chapter 19.1. If the ward has insufficient funds to pay the
14 total cost of this evaluation, the court may deem all or any part of the
15 evaluator's fee to be a county expense after determining the reasonableness
16 of that fee.

17 M. Instead of ordering an independent evaluation pursuant to
18 subsection L of this section, the court may accept a report conducted on
19 behalf of the behavioral health treatment facility if the court finds that
20 the report meets the requirements of an independent evaluation.

21 N. The court may decide that the ward's right to retain or obtain a
22 driver license and any other civil right that may be suspended by operation
23 of law is not affected by the appointment of a guardian.

24 O. If the court grants the guardian the authority to consent to
25 inpatient mental health care and treatment pursuant to this section, the
26 medical director of a level one behavioral health facility licensed by the
27 department of health services may admit the ward at the guardian's request
28 AND A PEACE OFFICER MAY DETAIN AND TRANSPORT THE WARD TO A LEVEL ONE
29 BEHAVIORAL HEALTH FACILITY FOR EVALUATION OR TREATMENT ON RECEIPT OF A
30 WRITTEN REQUEST FOR TRANSPORTATION ISSUED BY THE MEDICAL DIRECTOR OR
31 ADMITTING OFFICER OF THE LEVEL ONE BEHAVIORAL HEALTH FACILITY PURSUANT TO
32 SECTION 14-5312.02.

33 P. A guardian who is authorized by the court to consent to inpatient
34 mental health care and treatment pursuant to this section shall file with the
35 annual report of the guardian required pursuant to section 14-5315 an
36 evaluation report by a physician or a psychologist who meets the requirements
37 of subsection B of this section. The evaluation report shall indicate if the

1 ward currently needs inpatient mental health care and treatment. If the
2 guardian does not file the evaluation report or if the report indicates that
3 the ward does not need inpatient mental health care and treatment, the
4 guardian's authority to consent to this treatment ceases. If the report
5 indicates that the ward currently needs this treatment, the guardian's
6 authority to consent to this treatment continues. If the report supports the
7 continuation of the guardian's authority to consent to this treatment, the
8 ward's attorney shall review the report with the ward. The ward may contest
9 the continuation of the guardian's authority by filing a request for a court
10 hearing within ten business days after the report is filed. The court shall
11 hold this hearing within thirty calendar days after it receives the request.
12 The guardian's authority continues pending the court's ruling on the issue.
13 At the hearing the guardian has the burden of proving by clear and convincing
14 evidence that the ward is currently in need of inpatient mental health care
15 and treatment.

16 Q. The court may discharge an attorney who was appointed pursuant to
17 section 14-5303, subsection C subsequent to the appointment of a guardian if
18 it clearly appears from specific facts presented by affidavit or verified
19 petition that continued representation of the ward is no longer necessary or
20 desirable. The factual basis must include, at a minimum, consideration of
21 the following:

- 22 1. The nature and history of the ward's illness.
- 23 2. The ward's history of hospitalization.
- 24 3. The ward's current and anticipated living arrangements.
- 25 4. Whether the ward's inpatient treatment is anticipated to be a
26 one-time hospitalization for the purpose of stabilizing the ward's condition
27 and further hospitalizations are not likely to be necessary.
- 28 5. Whether the ward's current and anticipated living arrangements are
29 the least restrictive alternatives possible.

30 Sec. 2. Repeal

31 Section 14-5312.02, Arizona Revised Statutes, is repealed.

32 Sec. 3. Title 14, chapter 5, article 3, Arizona Revised Statutes, is
33 amended by adding a new section 14-5312.02, to read:

34 14-5312.02. Admission for inpatient evaluation or treatment;
35 apprehension and transportation by peace
36 officers; immunity

1 A. NOTWITHSTANDING THE PROCEDURES AND REQUIREMENTS PRESCRIBED IN TITLE
2 36, CHAPTER 5, ARTICLES 4 AND 5 RELATING TO INVOLUNTARY COURT-ORDERED
3 EVALUATION OR TREATMENT, IF THE GUARDIAN WHO IS GRANTED THE AUTHORITY TO
4 CONSENT TO INPATIENT MENTAL HEALTH CARE OR TREATMENT PURSUANT TO SECTION
5 14-5312.01 HAS REASONABLE CAUSE TO BELIEVE THAT THE WARD IS IN NEED OF
6 INPATIENT EVALUATION OR TREATMENT, THE GUARDIAN MAY APPLY FOR ADMISSION OF
7 THE WARD FOR EVALUATION OR TREATMENT AT ANY LEVEL ONE BEHAVIORAL HEALTH
8 FACILITY. THE GUARDIAN MUST PRESENT THE FACILITY WITH A CERTIFIED COPY, OR A
9 PHOTOCOPY OF THE CERTIFIED COPY, OF THE GUARDIAN'S LETTERS OF GUARDIANSHIP
10 AND WITH A SWORN STATEMENT UNDER PENALTY OF PERJURY THAT THE GUARDIAN HAS
11 PRESENTED TO THE FACILITY A CERTIFIED COPY, OR A TRUE AND CORRECT COPY OF A
12 CERTIFIED COPY, OF LETTERS OF GUARDIANSHIP WITH MENTAL HEALTH AUTHORITY THAT
13 AUTHORIZE THE GUARDIAN TO ADMIT THE WARD TO A LEVEL ONE BEHAVIORAL HEALTH
14 FACILITY ISSUED PURSUANT TO 14-5312.01, SUBSECTION B AND THAT THE LETTERS OF
15 GUARDIANSHIP ARE CURRENTLY EFFECTIVE AND HAVE NOT BEEN REVOKED, TERMINATED OR
16 RESCINDED.

17 B. IF THE GUARDIAN REQUESTS ADMISSION, THE FACILITY TO WHICH THE
18 GUARDIAN APPLIES MAY ADMIT THE PERSON IF A PHYSICIAN WHO IS LICENSED PURSUANT
19 TO TITLE 32, CHAPTER 13 OR 17 DOES ALL OF THE FOLLOWING:

20 1. CONDUCTS AN INVESTIGATION THAT CAREFULLY PROBES THE WARD'S
21 PSYCHIATRIC AND PSYCHOLOGICAL HISTORY, DIAGNOSIS AND TREATMENT NEEDS.

22 2. CONDUCTS A THOROUGH INTERVIEW WITH THE WARD AND THE GUARDIAN.

23 3. OBTAINS THE GUARDIAN'S INFORMED CONSENT. FOR THE PURPOSES OF THIS
24 PARAGRAPH, "INFORMED CONSENT" HAS THE SAME MEANING PRESCRIBED IN SECTION
25 36-501.

26 4. MAKES A WRITTEN DETERMINATION THAT THE WARD NEEDS AN INPATIENT
27 EVALUATION OR WILL BENEFIT FROM CARE AND TREATMENT OF A MENTAL DISORDER OR
28 OTHER PERSONALITY DISORDER OR EMOTIONAL CONDITION AND THAT THE EVALUATION OR
29 TREATMENT CANNOT BE ACCOMPLISHED IN A LESS RESTRICTIVE SETTING.

30 5. DOCUMENTS IN THE WARD'S MEDICAL CHART A SUMMARY OF THE DOCTOR'S
31 FINDINGS AND RECOMMENDATIONS FOR TREATMENT.

32 C. AFTER ADMISSION, IF THE WARD REFUSES TREATMENT OR REQUESTS
33 DISCHARGE AND THE TREATING PHYSICIAN BELIEVES THAT FURTHER INPATIENT
34 TREATMENT IS NECESSARY OR ADVISABLE, THE FACILITY MAY RELY ON THE CONSENT OF
35 THE GUARDIAN FOR TREATMENT, RELEASE AND DISCHARGE DECISIONS PURSUANT TO THE
36 GUARDIAN'S AUTHORITY UNDER THE GUARDIANSHIP.

1 D. THE LETTERS OF GUARDIANSHIP GRANTED BY THE COURT PURSUANT TO
2 14-5312.01 MAY SPECIFICALLY AUTHORIZE A PEACE OFFICER TO DETAIN AND TRANSPORT
3 THE WARD TO A LEVEL ONE BEHAVIORAL HEALTH FACILITY ON RECEIPT OF A WRITTEN
4 REQUEST FOR TRANSPORTATION ISSUED BY THE MEDICAL DIRECTOR OR ADMITTING
5 OFFICER OF THE LEVEL ONE BEHAVIORAL HEALTH FACILITY PURSUANT TO THIS SECTION.

6 E. IF THE WARD IS NOT ALREADY PRESENT AT THE LEVEL ONE BEHAVIORAL
7 HEALTH FACILITY, AND IF THE ADMITTING OFFICER OR MEDICAL DIRECTOR, BASED ON
8 REVIEW OF THE WRITTEN APPLICATION AND A CONVERSATION WITH THE GUARDIAN, HAS
9 REASONABLE CAUSE TO BELIEVE THAT AN INPATIENT EXAMINATION IS NECESSARY, THE
10 ADMITTING OFFICER OR MEDICAL DIRECTOR MAY ISSUE A WRITTEN REQUEST FOR
11 TRANSPORTATION STATING THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT AN
12 INPATIENT EXAMINATION IS NECESSARY AND REQUESTING THAT A PEACE OFFICER DETAIN
13 AND TRANSPORT THE WARD TO THE LEVEL ONE BEHAVIORAL HEALTH FACILITY. THE
14 FACILITY SHALL GIVE THE WRITTEN REQUEST FOR TRANSPORTATION TO THE PEACE
15 OFFICER WITH A COPY OF THE LETTERS OF GUARDIANSHIP.

16 F. THE ADMITTING OFFICER OR MEDICAL DIRECTOR IS NOT SUBJECT TO CIVIL
17 LIABILITY FOR ANY ACTS COMMITTED BY A PERSON FOR WHOM THE ADMITTING OFFICER
18 OR MEDICAL DIRECTOR DID NOT ISSUE A REQUEST FOR TRANSPORTATION. A PEACE
19 OFFICER IS NOT SUBJECT TO CIVIL LIABILITY FOR ANY ACTS COMMITTED BY A PERSON
20 WHOM THE PEACE OFFICER HAS NOT DETAINED OR TRANSPORTED PURSUANT TO THIS
21 SECTION IF THE ADMITTING OFFICER, MEDICAL DIRECTOR OR PEACE OFFICER HAS IN
22 GOOD FAITH FOLLOWED THE REQUIREMENTS OF THIS SECTION. THE ADMITTING OFFICER,
23 MEDICAL DIRECTOR OR PEACE OFFICER IS NOT SUBJECT TO CIVIL LIABILITY FOR THE
24 DETENTION OR TRANSPORTATION OF THE WARD PURSUANT TO THIS SECTION.

25 Sec. 4. Section 36-3284, Arizona Revised Statutes, is amended to read:

26 36-3284. Operation of mental health care power of attorney; duties of
27 physician or mental health care provider

28 A. A mental health care power of attorney is effective when it is
29 executed and remains in effect until it is revoked by the principal pursuant
30 to section 36-3285 or by court order.

31 B. NOTWITHSTANDING THE PROCEDURES AND REQUIREMENTS PRESCRIBED IN
32 CHAPTER 5, ARTICLES 4 AND 5 OF THIS TITLE RELATING TO INVOLUNTARY COURT-
33 ORDERED EVALUATION OR TREATMENT, if the mental health care power of attorney
34 specifically authorizes the agent to admit the principal to a level one
35 behavioral health facility, ~~a principal shall not be admitted to a level one~~
36 ~~behavioral health facility licensed by the department of health services~~
37 ~~unless~~ AND THE AGENT HAS REASONABLE CAUSE TO BELIEVE THAT THE PRINCIPAL IS IN

1 NEED OF INPATIENT EVALUATION OR TREATMENT, THE AGENT MAY APPLY FOR ADMISSION
2 OF THE PRINCIPAL FOR EVALUATION OR TREATMENT AT A LEVEL ONE BEHAVIORAL HEALTH
3 FACILITY. THE AGENT MUST PRESENT THE FACILITY WITH A COPY OF THE POWER OF
4 ATTORNEY THAT SPECIFICALLY AUTHORIZES THE AGENT TO ADMIT THE PRINCIPAL TO A
5 LEVEL ONE BEHAVIORAL HEALTH FACILITY AND EXECUTE A SWORN STATEMENT UNDER
6 PENALTY OF PERJURY THAT THE AGENT HAS PRESENTED TO THE FACILITY A TRUE AND
7 CORRECT COPY OF A CURRENT POWER OF ATTORNEY THAT SPECIFICALLY AUTHORIZES THE
8 AGENT TO ADMIT THE PRINCIPAL TO A LEVEL ONE BEHAVIORAL HEALTH FACILITY
9 PURSUANT TO THIS SECTION AND THAT THE POWER OF ATTORNEY IS CURRENTLY
10 EFFECTIVE AND HAS NOT BEEN REVOKED, TERMINATED OR RESCINDED. IF ADMISSION IS
11 REQUESTED BY THE AGENT, THE FACILITY TO WHICH THE GUARDIAN APPLIES MAY ADMIT
12 THE PERSON IF a physician who is licensed pursuant to title 32, chapter 13 or
13 ~~17 and who is a specialist in psychiatry or a psychologist who is licensed~~
14 ~~pursuant to title 32, chapter 19.1~~ does all of the following:

- 15 1. Conducts an investigation that carefully probes the principal's
16 psychiatric and psychological history, diagnosis and treatment needs.
- 17 2. Conducts a thorough interview with the principal and the agent.
- 18 3. Obtains the agent's informed consent, as defined in section 36-501.
- 19 4. Makes a written determination that the principal needs an inpatient
20 evaluation or will benefit from care and treatment of a mental disorder or
21 other personality disorder or emotional condition ~~in the program~~ and that the
22 evaluation or treatment cannot be accomplished in a less restrictive setting.
- 23 5. Documents in the principal's medical chart a summary of the
24 doctor's findings and recommendations for treatment.

25 C. AFTER ADMISSION, IF THE PATIENT REFUSES TREATMENT OR REQUESTS
26 DISCHARGE AND THE TREATING PHYSICIAN BELIEVES THAT FURTHER INPATIENT
27 TREATMENT IS NECESSARY OR ADVISABLE, THE FACILITY MAY RELY ON THE CONSENT OF
28 THE AGENT FOR TREATMENT, RELEASE AND DISCHARGE DECISIONS PURSUANT TO THE
29 AGENT'S AUTHORITY UNDER THE POWER OF ATTORNEY.

30 D. IF THE PRINCIPAL IS NOT ALREADY PRESENT AT THE LEVEL ONE BEHAVIORAL
31 HEALTH FACILITY AND IF THE ADMITTING OFFICER OR MEDICAL DIRECTOR, BASED ON
32 REVIEW OF THE WRITTEN APPLICATION AND A CONVERSATION WITH THE AGENT, HAS
33 REASONABLE CAUSE TO BELIEVE THAT AN INPATIENT EXAMINATION IS NECESSARY, THE
34 ADMITTING OFFICER OR MEDICAL DIRECTOR MAY ISSUE A WRITTEN REQUEST FOR
35 TRANSPORTATION THAT STATES THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT AN
36 INPATIENT EXAMINATION IS NECESSARY AND REQUESTS THAT A PEACE OFFICER DETAIN
37 AND TRANSPORT THE PRINCIPAL TO THE LEVEL ONE BEHAVIORAL HEALTH FACILITY. THE

1 FACILITY SHALL GIVE THE PEACE OFFICER THE WRITTEN REQUEST FOR TRANSPORTATION
2 WITH A COPY OF THE POWER OF ATTORNEY.

3 E. THE ADMITTING OFFICER OR MEDICAL DIRECTOR IS NOT SUBJECT TO CIVIL
4 LIABILITY FOR ANY ACTS COMMITTED BY A PERSON FOR WHOM THE ADMITTING OFFICER
5 OR MEDICAL DIRECTOR DID NOT ISSUE A REQUEST FOR TRANSPORTATION. A PEACE
6 OFFICER IS NOT SUBJECT TO CIVIL LIABILITY FOR ANY ACTS COMMITTED BY A PERSON
7 WHOM THE PEACE OFFICER HAS NOT DETAINED OR TRANSPORTED PURSUANT TO THIS
8 SECTION IF THE ADMITTING OFFICER, MEDICAL DIRECTOR OR PEACE OFFICER HAS IN
9 GOOD FAITH FOLLOWED THE REQUIREMENTS OF THIS SECTION. THE ADMITTING OFFICER,
10 MEDICAL DIRECTOR OR PEACE OFFICER IS NOT SUBJECT TO CIVIL LIABILITY FOR THE
11 DETENTION OR TRANSPORTATION OF THE PRINCIPAL PURSUANT TO THIS SECTION.

12 ~~E.~~ F. The level one behavioral health facility licensed by the
13 department of health services shall conduct a review of the principal's
14 condition and need for admission into the facility and assess the
15 appropriateness of the principal's placement at least once every thirty days.
16 The agent may participate in each review. If possible the agent shall
17 participate in person."

18 Amend title to conform

CECIL P. ASH

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