

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2635

AN ACT

AMENDING SECTIONS 36-501, 36-533, 36-539 AND 36-543, ARIZONA REVISED
STATUTES; RELATING TO COURT-ORDERED EVALUATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-501, Arizona Revised Statutes, is amended to
3 read:

4 36-501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Admitting officer" means a psychiatrist or other physician or
7 psychiatric and mental health nurse practitioner with experience in
8 performing psychiatric examinations who has been designated as an admitting
9 officer of the evaluation agency by the person in charge of the evaluation
10 agency.

11 2. "Chief medical officer" means the chief medical officer under the
12 supervision of the superintendent of the state hospital.

13 3. "Contraindicated" means that access is reasonably likely to
14 endanger the life or physical safety of the patient or another person.

15 4. "Court" means the superior court in the county in this state in
16 which the patient resides or was found before screening or emergency
17 admission under this title.

18 5. "Danger to others" means that the judgment of a person who has a
19 mental disorder is so impaired that the person is unable to understand the
20 person's need for treatment and as a result of the person's mental disorder
21 the person's continued behavior can reasonably be expected, on the basis of
22 competent medical opinion, to result in serious physical harm.

23 6. "Danger to self":

24 (a) Means behavior that, as a result of a mental disorder:

25 (i) Constitutes a danger of inflicting serious physical harm on
26 oneself, including attempted suicide or the serious threat thereof, if the
27 threat is such that, when considered in the light of its context and in light
28 of the individual's previous acts, it is substantially supportive of an
29 expectation that the threat will be carried out.

30 (ii) Without hospitalization will result in serious physical harm or
31 serious illness to the person.

32 (b) Does not include behavior that establishes only the condition of
33 gravely disabled.

34 7. "Department" means the department of health services.

35 8. "Deputy director" means the deputy director of the division of
36 behavioral health in the department of health services.

37 9. "Detention" means the taking into custody of a patient or proposed
38 patient.

39 10. "Director" means the director of the department.

40 11. "Division" means the division of behavioral health in the
41 department.

42 12. "Evaluation" means a professional multidisciplinary analysis based
43 on data describing the person's identity, biography and medical,
44 psychological and social conditions carried out by a group of persons
45 consisting of not less than the following:

1 (a) Two licensed physicians, who shall be qualified psychiatrists, if
2 possible, or at least experienced in psychiatric matters, and who shall
3 examine and report their findings independently. The person against whom a
4 petition has been filed shall be notified that the person may select one of
5 the physicians. A psychiatric resident in a training program approved by the
6 American medical association or by the American osteopathic association may
7 examine the person in place of one of the psychiatrists if the resident is
8 supervised in the examination and preparation of the affidavit and testimony
9 in court by a qualified psychiatrist appointed to assist in the resident's
10 training, and if the supervising psychiatrist is available for discussion
11 with the attorneys for all parties and for court appearance and testimony if
12 requested by the court or any of the attorneys.

13 (b) Two other individuals, one of whom, if available, shall be a
14 psychologist and in any event a social worker familiar with mental health and
15 human services that may be available placement alternatives appropriate for
16 treatment. An evaluation may be conducted on an inpatient basis, an
17 outpatient basis or a combination of both, and every reasonable attempt shall
18 be made to conduct the evaluation in any language preferred by the person.

19 13. "Evaluation agency" means a health care agency that is licensed by
20 the department and that has been approved pursuant to this title, providing
21 those services required of such agency by this chapter.

22 14. "Examination" means ~~an~~ A PROFESSIONAL MULTIDISCIPLINARY exploration
23 of the person's past psychiatric history and of the circumstances leading up
24 to the person's presentation, a psychiatric exploration of the person's
25 present mental condition and a complete physical examination THAT IS
26 CONDUCTED PURSUANT TO SECTION 36-533, SUBSECTION B.

27 15. "Family member" means a spouse, parent, adult child, adult sibling
28 or other blood relative of a person undergoing treatment or evaluation
29 pursuant to this chapter.

30 16. "Gravely disabled" means a condition evidenced by behavior in which
31 a person, as a result of a mental disorder, is likely to come to serious
32 physical harm or serious illness because the person is unable to provide for
33 the person's own basic physical needs.

34 17. "Health care decision maker" has the same meaning prescribed in
35 section 12-2801.

36 18. "Health care entity" means a health care provider, the department,
37 the Arizona health care cost containment system administration or a regional
38 behavioral health authority under contract with the department.

39 19. "Health care provider" means a health care institution as defined
40 in section 36-401 that is licensed as a behavioral health provider pursuant
41 to department rules or a mental health provider.

42 20. "Independent evaluator" means a licensed physician, psychiatric and
43 mental health nurse practitioner or psychologist selected by the person to be
44 evaluated or by such person's attorney.

1 21. "Informed consent" means a voluntary decision following
2 presentation of all facts necessary to form the basis of an intelligent
3 consent by the patient or guardian with no minimizing of known dangers of any
4 procedures.

5 22. "Least restrictive treatment alternative" means the treatment plan
6 and setting that infringe in the least possible degree with the patient's
7 right to liberty and that are consistent with providing needed treatment in a
8 safe and humane manner.

9 23. "Licensed physician" means any medical doctor or doctor of
10 osteopathy who is either:

11 (a) Licensed in this state.

12 (b) A full-time hospital physician licensed in another state and
13 serving on the staff of a hospital operated or licensed by the United States
14 government.

15 24. "Medical director of an evaluation agency" means a psychiatrist, or
16 other licensed physician experienced in psychiatric matters, who is
17 designated in writing by the governing body of the agency as the person in
18 charge of the medical services of the agency for the purposes of this chapter
19 and may include the chief medical officer of the state hospital.

20 25. "Medical director of a mental health treatment agency" means a
21 psychiatrist, or other licensed physician experienced in psychiatric matters,
22 who is designated in writing by the governing body of the agency as the
23 person in charge of the medical services of the agency for the purposes of
24 this chapter and includes the chief medical officer of the state hospital.

25 26. "Mental disorder" means a substantial disorder of the person's
26 emotional processes, thought, cognition or memory. Mental disorder is
27 distinguished from:

28 (a) Conditions that are primarily those of drug abuse, alcoholism or
29 mental retardation, unless, in addition to one or more of these conditions,
30 the person has a mental disorder.

31 (b) The declining mental abilities that directly accompany impending
32 death.

33 (c) Character and personality disorders characterized by lifelong and
34 deeply ingrained antisocial behavior patterns, including sexual behaviors
35 that are abnormal and prohibited by statute unless the behavior results from
36 a mental disorder.

37 27. "Mental health provider" means any physician or provider of mental
38 health or behavioral health services involved in evaluating, caring for,
39 treating or rehabilitating a patient.

40 28. "Mental health treatment agency" means the state hospital or a
41 health care agency that is licensed by the department and that provides those
42 services that are required of the agency by this chapter.

43 29. "Outpatient treatment" or "combined inpatient and outpatient
44 treatment" means any treatment program not requiring continuous inpatient
45 hospitalization.

1 30. "Outpatient treatment plan" means a treatment plan that does not
2 require continuous inpatient hospitalization.

3 31. "Patient" means any person undergoing examination, evaluation or
4 behavioral or mental health treatment under this chapter.

5 32. "Peace officers" means sheriffs of counties, constables, marshals
6 and policemen of cities and towns.

7 33. "Persistently or acutely disabled" means a severe mental disorder
8 that meets all the following criteria:

9 (a) If not treated has a substantial probability of causing the person
10 to suffer or continue to suffer severe and abnormal mental, emotional or
11 physical harm that significantly impairs judgment, reason, behavior or
12 capacity to recognize reality.

13 (b) Substantially impairs the person's capacity to make an informed
14 decision regarding treatment, and this impairment causes the person to be
15 incapable of understanding and expressing an understanding of the advantages
16 and disadvantages of accepting treatment and understanding and expressing an
17 understanding of the alternatives to the particular treatment offered after
18 the advantages, disadvantages and alternatives are explained to that person.

19 (c) Has a reasonable prospect of being treatable by outpatient,
20 inpatient or combined inpatient and outpatient treatment.

21 34. "Prepetition screening" means the review of each application
22 requesting court-ordered evaluation, including an investigation of facts
23 alleged in such application, an interview with each applicant and an
24 interview, if possible, with the proposed patient. The purpose of the
25 interview with the proposed patient is to assess the problem, explain the
26 application and, when indicated, attempt to persuade the proposed patient to
27 receive, on a voluntary basis, evaluation or other services.

28 35. "Prescribed form" means a form established by a court or the rules
29 of the division that have been approved by the director or in accordance with
30 the laws of this state.

31 36. "Professional" means a physician who is licensed pursuant to title
32, chapter 13 or 17, a psychologist who is licensed pursuant to title 32,
33 chapter 19.1 or a psychiatric and mental health nurse practitioner who is
34 certified pursuant to title 32, chapter 15.

35 37. "Proposed patient" means a person for whom an application for
36 evaluation has been made or a petition for court-ordered evaluation has been
37 filed.

38 38. "Psychiatric and mental health nurse practitioner" means a
39 registered nurse practitioner as defined in section 32-1601 who has completed
40 an adult or family psychiatric and mental health nurse practitioner program
41 and who is certified as an adult or family psychiatric and mental health
42 nurse practitioner by the state board of nursing.

43 39. "Psychiatrist" means a licensed physician who has completed three
44 years of graduate training in psychiatry in a program approved by the
45 American medical association or the American osteopathic association.

1 40. "Psychologist" means a person who is licensed under title 32,
2 chapter 19.1 and who is experienced in the practice of clinical psychology.

3 41. "Records" means all communications that are recorded in any form or
4 medium and that relate to patient examination, evaluation or behavioral or
5 mental health treatment. Records include medical records that are prepared
6 by a health care provider or other providers. Records do not include:

7 (a) Materials that are prepared in connection with utilization review,
8 peer review or quality assurance activities, including records that a health
9 care provider prepares pursuant to section 36-441, 36-445, 36-2402 or
10 36-2917.

11 (b) Recorded telephone and radio calls to and from a publicly operated
12 emergency dispatch office relating to requests for emergency services or
13 reports of suspected criminal activity.

14 42. "Screening agency" means a health care agency that is licensed by
15 the department and that provides those services required of such agency by
16 this chapter.

17 43. "Social worker" means a person who has completed two years of
18 graduate training in social work in a program approved by the council of
19 social work education and who has experience in mental health.

20 44. "State hospital" means the Arizona state hospital.

21 45. "Superintendent" means the superintendent of the state hospital.

22 Sec. 2. Section 36-533, Arizona Revised Statutes, is amended to read:
23 36-533. [Petition for treatment](#)

24 A. The petition for court-ordered treatment shall allege:

25 1. That the patient is in need of a period of treatment because the
26 patient, as a result of mental disorder, is a danger to self or to others, is
27 persistently or acutely disabled or is gravely disabled.

28 2. The treatment alternatives which are appropriate or available.

29 3. That the patient is unwilling to accept or incapable of accepting
30 treatment voluntarily.

31 B. The petition shall be accompanied by the affidavits of the two
32 physicians who ~~conducted the examinations during the evaluation period~~
33 **PARTICIPATED IN THE EVALUATION** and by the affidavit of the applicant for the
34 evaluation, if any. The affidavits of the physicians shall describe in
35 detail the behavior which indicates that the person, as a result of mental
36 disorder, is a danger to self or to others, is persistently or acutely
37 disabled or is gravely disabled and shall be based upon the physician's
38 ~~examination~~ **OBSERVATIONS** of the patient and the physician's study of
39 information about the patient. A summary of the facts which support the
40 allegations of the petition shall be included. **THE AFFIDAVIT SHALL ALSO**
41 **INCLUDE THE RESULTS OF THE COMPLETE PHYSICAL EXAMINATION OF THE PATIENT IF**
42 **THIS IS RELEVANT TO THE EVALUATION. THE COMPLETE PHYSICAL EXAMINATION MAY BE**
43 **PERFORMED BY THE EVALUATING PHYSICIAN, BY OR UNDER THE SUPERVISION OF A**
44 **PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 OR BY A**
45 **REGISTERED NURSE PRACTITIONER WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER**

1 15. THE EXAMINATION MUST BE CONSISTENT WITH EXISTING STANDARDS OF CARE AND
2 THE EVALUATING PHYSICIAN MUST REVIEW OR AUGMENT THE RESULTS OF THE
3 EXAMINATION. THE EXAMINATION MAY INCLUDE FIRSTHAND OBSERVATION OR REMOTE
4 OBSERVATION BY INTERACTIVE AUDIOVISUAL MEDIA.

5 C. The petition shall request the court to issue an order requiring
6 the person to undergo a period of treatment.

7 D. In cases of grave disability the petition shall also include:

8 1. A statement that in the opinion of the petitioner the gravely
9 disabled person does or does not require guardianship or conservatorship, or
10 both, under the provisions of title 14 and the reasons on which the statement
11 is based.

12 2. A request that the court order an independent investigation and
13 report for the court if in the opinion of the petitioner the person does
14 require guardianship or conservatorship, or both.

15 3. A statement that in the opinion of the petitioner the gravely
16 disabled person does or does not require temporary guardianship or
17 conservatorship, or both, and the reasons on which the statement is based.

18 4. A request that the court appoint a temporary guardian or
19 conservator, or both, if in the opinion of the petitioner the person does
20 require temporary guardianship or conservatorship, or both.

21 E. A copy of the petition in cases of grave disability shall be mailed
22 to the public fiduciary in the county of the patient's residence or in which
23 the patient was found before evaluation and to any person nominated as
24 guardian or conservator.

25 F. A copy of all petitions shall be mailed to the superintendent of
26 the Arizona state hospital.

27 Sec. 3. 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 or the psychiatric and mental health nurse practitioner treating
31 the proposed patient to take all reasonable precautions to ensure that at the
32 time of the hearing the proposed patient shall not be so under the influence
33 of or so suffer the effects of drugs, medication or other treatment as to be
34 hampered in preparing for or participating in the hearing. The court at the
35 time of the hearing shall be presented a record of all drugs, medication or
36 other treatment that the person has received during the seventy-two hours
37 immediately before the hearing.

38 B. The patient and the patient's attorney shall be present at all
39 hearings, and the patient's attorney may subpoena and cross-examine witnesses
40 and present evidence. The patient may choose to not attend the hearing or
41 the patient's attorney may waive the patient's presence. The evidence
42 presented by the petitioner or the patient shall include the testimony of two
43 or more witnesses acquainted with the patient at the time of the alleged
44 mental disorder, which may be satisfied by a statement agreed on by the
45 parties, and testimony of the two physicians who ~~performed examinations~~

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

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

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

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

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

1 Sec. 4. Section 36-543, Arizona Revised Statutes, is amended to read:
2 36-543. Release from treatment of gravely disabled patient or
3 persistently or acutely disabled patient; annual
4 review

5 A. A patient found to be gravely disabled or persistently or acutely
6 disabled and ordered to undergo treatment may be released from inpatient
7 treatment when, in the opinion of the medical director of the mental health
8 treatment agency, the level of care offered by the agency is no longer
9 required. The patient may agree to continue treatment voluntarily. If the
10 patient is to be released, the medical director shall arrange for an
11 appropriate alternative placement.

12 B. If a patient to be released is under guardianship as a gravely
13 disabled person or as a persistently or acutely disabled person, the medical
14 director of the mental health treatment agency shall notify the guardian and
15 any relevant regional behavioral health authority ten days before the
16 intended release date that the ward no longer requires the level of care
17 offered by the agency. The guardian and, if relevant, the regional
18 behavioral health authority shall arrange alternative placement with the
19 advice and recommendations of the medical director of the mental health
20 treatment agency.

21 C. The medical director of the mental health treatment agency is not
22 civilly liable for any acts committed by the released patient if the medical
23 director has in good faith complied with the requirements of this article.

24 D. A patient who has been found to be gravely disabled and is
25 undergoing court-ordered treatment shall have an annual ~~examination and~~
26 review to determine whether the continuation of court-ordered treatment is
27 appropriate and to assess the needs of the patient for guardianship or
28 conservatorship, or both. The medical director of the mental health
29 treatment agency shall appoint one or more examiners qualified to carry out
30 the ~~examination~~ REVIEW, at least one of whom shall be a psychiatrist licensed
31 to practice in this state, and may at the discretion of the medical director
32 appoint one or more additional examiners.

33 E. A patient who has been found to be persistently or acutely disabled
34 and who is undergoing court-ordered treatment shall have an annual
35 ~~examination and~~ review to determine whether the continuation of court-ordered
36 treatment is appropriate if the medical director of the mental health
37 treatment agency determines that the patient has been substantially
38 noncompliant with treatment during the period of the court order. The
39 medical director of the mental health treatment agency shall appoint one or
40 more examiners qualified to carry out the ~~examination~~ REVIEW, at least one of
41 whom shall be a psychiatrist licensed to practice in this state.

1 F. Each examiner participating in the annual ~~examination and~~ review of
2 a gravely disabled person or a persistently or acutely disabled person shall
3 submit a report to the medical director of the mental health treatment agency
4 which includes the following:

5 1. The examiner's opinions as to whether the patient continues to be
6 gravely disabled or persistently or acutely disabled and in need of
7 treatment.

8 2. A statement as to whether suitable alternatives to court-ordered
9 treatment are available.

10 3. A statement as to whether voluntary treatment would be appropriate.

11 4. A review of the patient's status as to guardianship or
12 conservatorship, or both, the adequacy of existing protections of the patient
13 and the continued need for guardianship or conservatorship, or both. If the
14 examiner concludes that the patient's needs in these areas are not being
15 adequately met, the examiner's report shall recommend that the court order an
16 investigation into the patient's needs.

17 G. The medical director of the mental health treatment agency shall
18 forward the results of the annual ~~examination and~~ review of a gravely
19 disabled person or a persistently or acutely disabled person to the court
20 including the medical director's recommendation based on the review which may
21 be release of the patient without delay, release with delay or no
22 release. If the patient does not have a guardian, the court, on receipt of
23 the medical director's report, shall appoint an attorney to represent the
24 patient. An attorney appointed under this subsection, within three days
25 after appointment, to the extent possible, shall fulfill the duties imposed
26 by section 36-537 and review the medical director's report and the patient's
27 medical records, interview the physician who prepared the report and, if
28 appropriate, request a hearing. At all proceedings conducted pursuant to
29 this section, a patient has the right to have an analysis of the patient's
30 mental condition by an independent evaluator pursuant to section 36-538. If
31 the patient is under guardianship pursuant to section 14-5312.01, a copy of
32 the report shall be mailed to the patient's guardian. If the medical
33 director's recommendation is no release or release with delay, the court may
34 accept the report and recommendation of the medical director or order a
35 hearing. The hearing shall be held within three weeks of the request. At
36 the hearing the court may order the patient released or may order that
37 treatment be continued. The court may also order an investigation into the
38 need for guardianship or conservatorship, or both.

39 H. If a hearing is held pursuant to subsection G of this section the
40 party seeking the renewal of the court order must prove all of the following
41 by clear and convincing evidence:

42 1. The patient is one of the following:

43 (a) A danger to self.

44 (b) A danger to others.

45 (c) Persistently or acutely disabled.

1 (d) Gravely disabled.

2 2. The patient is in need of treatment.

3 3. The patient is either unwilling or unable to accept treatment
4 voluntarily.

5 I. The deputy director shall create and operate a program to assure
6 that the examination and review of gravely disabled persons or persistently
7 or acutely disabled persons who have been substantially noncompliant while
8 under court order are carried out in an effective and timely manner. The
9 deputy director, with the approval of the director, shall adopt rules needed
10 to operate this program.

11 Sec. 5. Emergency

12 This act is an emergency measure that is necessary to preserve the
13 public peace, health or safety and is operative immediately as provided by
14 law.