Senate Engrossed House Bill

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 334

HOUSE BILL 2532

AN ACT

AMENDING SECTIONS 36-501, 36-526, 36-533, 36-540, 36-542, 36-543 AND 36-548, ARIZONA REVISED STATUTES; RELATING TO COURT-ORDERED TREATMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

36-501. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

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

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

6. "Danger to self":

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

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

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

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

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

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

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

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

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

12. "Evaluation" means:

(a) A professional multidisciplinary analysis THAT MAY INCLUDE FIRSTHAND OBSERVATIONS OR REMOTE OBSERVATIONS BY INTERACTIVE AUDIOVISUAL MEDIA AND THAT IS based on data describing the person's identity, biography

and medical, psychological and social conditions carried out by a group of persons consisting of not less than the following:

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

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

(b) A PHYSICAL EXAMINATION THAT IS CONSISTENT WITH THE EXISTING STANDARDS OF CARE AND THAT IS PERFORMED BY ONE OF THE EVALUATING PHYSICIANS OR BY OR UNDER THE SUPERVISION OF A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 OR A REGISTERED NURSE PRACTITIONER WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 15 IF THE RESULTS OF THAT EXAMINATION ARE REVIEWED OR AUGMENTED BY ONE OF THE EVALUATING PHYSICIANS.

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

~~14. "Examination" means a professional multidisciplinary exploration of the person's past psychiatric history and of the circumstances leading up to the person's presentation, a psychiatric exploration of the person's present mental condition and a complete physical examination that is conducted pursuant to section 36-533, subsection B.~~

~~15.~~ 14. "Family member" means a spouse, parent, adult child, adult sibling or other blood relative of a person undergoing treatment or evaluation pursuant to this chapter.

~~16.~~ 15. "Gravely disabled" means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because the person is unable to provide for the person's own basic physical needs.

~~17.~~ 16. "Health care decision maker" has the same meaning prescribed in section 12-2801.

~~18.~~ 17. "Health care entity" means a health care provider, the department, the Arizona health care cost containment system administration or a regional behavioral health authority under contract with the department.

~~19.~~ 18. "Health care provider" means a health care institution as defined in section 36-401 that is licensed as a behavioral health provider pursuant to department rules or a mental health provider.

~~20.~~ 19. "Independent evaluator" means a licensed physician, psychiatric and mental health nurse practitioner or psychologist selected by the person to be evaluated or by such person's attorney.

~~21.~~ 20. "Informed consent" means a voluntary decision following presentation of all facts necessary to form the basis of an intelligent consent by the patient or guardian with no minimizing of known dangers of any procedures.

~~22.~~ 21. "Least restrictive treatment alternative" means the treatment plan and setting that infringe in the least possible degree with the patient's right to liberty and that are consistent with providing needed treatment in a safe and humane manner.

~~23.~~ 22. "Licensed physician" means any medical doctor or doctor of osteopathy who is either:

(a) Licensed in this state.

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

~~24.~~ 23. "Medical director of an evaluation agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency for the purposes of this chapter and may include the chief medical officer of the state hospital.

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

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

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

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

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

~~27.~~ 26. "Mental health provider" means any physician or provider of mental health or behavioral health services involved in evaluating, caring for, treating or rehabilitating a patient.

~~28.~~ 27. "Mental health treatment agency" means the state hospital or a health care agency that is licensed by the department and that provides those services that are required of the agency by this chapter.

~~29.~~ 28. "Outpatient treatment" or "combined inpatient and outpatient treatment" means any treatment program not requiring continuous inpatient hospitalization.

~~30.~~ 29. "Outpatient treatment plan" means a treatment plan that does not require continuous inpatient hospitalization.

~~31.~~ 30. "Patient" means any person undergoing examination, evaluation or behavioral or mental health treatment under this chapter.

~~32.~~ 31. "Peace officers" means sheriffs of counties, constables, marshals and policemen of cities and towns.

~~33.~~ 32. "Persistently or acutely disabled" means a severe mental disorder that meets all the following criteria:

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

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

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

~~34.~~ 33. "Prepetition screening" means the review of each application requesting court-ordered evaluation, including an investigation of facts alleged in such application, an interview with each applicant and an interview, if possible, with the proposed patient. The purpose of the interview with the proposed patient is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services.

~~35.~~ 34. "Prescribed form" means a form established by a court or the rules of the division that have been approved by the director or in accordance with the laws of this state.

~~36.~~ 35. "Professional" means a physician who is licensed pursuant to title 32, chapter 13 or 17, a psychologist who is licensed pursuant to title 32, chapter 19.1 or a psychiatric and mental health nurse practitioner who is certified pursuant to title 32, chapter 15.

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

~~38.~~ 37. "Psychiatric and mental health nurse practitioner" means a registered nurse practitioner as defined in section 32-1601 who has completed an adult or family psychiatric and mental health nurse practitioner program

and who is certified as an adult or family psychiatric and mental health nurse practitioner by the state board of nursing.

~~39.~~ 38. "Psychiatrist" means a licensed physician who has completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association.

~~40.~~ 39. "Psychologist" means a person who is licensed under title 32, chapter 19.1 and who is experienced in the practice of clinical psychology.

~~41.~~ 40. "Records" means all communications that are recorded in any form or medium and that relate to patient examination, evaluation or behavioral or mental health treatment. Records include medical records that are prepared by a health care provider or other providers. Records do not include:

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

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

~~42.~~ 41. "Screening agency" means a health care agency that is licensed by the department and that provides those services required of such agency by this chapter.

~~43.~~ 42. "Social worker" means a person who has completed two years of graduate training in social work in a program approved by the council of social work education and who has experience in mental health.

~~44.~~ 43. "State hospital" means the Arizona state hospital.

~~45.~~ 44. "Superintendent" means the superintendent of the state hospital.

Sec. 2. Section 36-526, Arizona Revised Statutes, is amended to read:

36-526. Emergency admission; examination; petition for court-ordered evaluation

A. ~~Upon~~ ON presentation of the person for emergency admission, an admitting officer of an evaluation agency shall perform an examination of the ~~person~~ PERSON'S PSYCHIATRIC AND PHYSICAL CONDITION and may admit the person to the agency as an emergency patient if the admitting officer finds, as a result of ~~his~~ THE examination and investigation of the application for emergency admission, that there is reasonable cause to believe that the person, as a result of a mental disorder, is a danger to self or others, and that during the time necessary to complete the prepetition screening procedures set forth in sections 36-520 and 36-521 the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or to inflict serious physical harm on another person. ~~In the event~~ IF a person is hospitalized pursuant to this section, the admitting officer may notify a screening agency and seek its assistance or guidance in developing alternatives to involuntary confinement and in counseling the person and his family.

B. On the same or A succeeding court day, the medical director in charge of the agency shall file a petition for a court-ordered evaluation, unless the person has been discharged or has become a voluntary patient. The petition need not comply with the provisions of this chapter requiring preparation and filing of a prepetition screening report but shall meet all other requirements and shall seek an appropriate order pursuant to section 36-529.

Sec. 3. Section 36-533, Arizona Revised Statutes, is amended to read:

36-533. Petition for treatment

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

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

2. The treatment alternatives ~~which~~ THAT are appropriate or available.

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

B. The petition shall be accompanied by the affidavits of the two physicians who participated in the evaluation and by the affidavit of the applicant for the evaluation, if any. The affidavits of the physicians shall describe in detail the behavior ~~which~~ THAT indicates that the person, as a result of mental disorder, is a danger to self or to others, is persistently or acutely disabled or is gravely disabled and shall be based ~~upon~~ ON the physician's observations of the patient and the physician's study of information about the patient. A summary of the facts ~~which~~ THAT support the allegations of the petition shall be included. The affidavit shall also include ANY OF the results of the ~~complete~~ physical examination of the patient if ~~this is~~ relevant to the ~~evaluation~~ PATIENT'S PSYCHIATRIC CONDITION. ~~The complete physical examination may be performed by the evaluating physician, by or under the supervision of a physician who is licensed pursuant to title 32, chapter 13 or 17 or by a registered nurse practitioner who is licensed pursuant to title 32, chapter 15. The examination must be consistent with existing standards of care and the evaluating physician must review or augment the results of the examination. The examination may include firsthand observation or remote observation by interactive audiovisual media.~~

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

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

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

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

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

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

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

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

Sec. 4. Section 36-540, Arizona Revised Statutes, is amended to read:

36-540. Court options

A. If the court finds by clear and convincing evidence that the proposed patient, as a result of mental disorder, is a danger to self, is a danger to others, is persistently or acutely disabled or is gravely disabled and in need of treatment, and is either unwilling or unable to accept voluntary treatment, the court shall order the patient to undergo one of the following:

1. Treatment in a program of outpatient treatment.

2. Treatment in a program consisting of combined inpatient and outpatient treatment.

3. Inpatient treatment in a mental health treatment agency, in a ~~veterans administration~~ hospital OPERATED BY OR UNDER CONTRACT WITH THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS TO PROVIDE TREATMENT TO ELIGIBLE VETERANS pursuant to article 9 of this chapter, in the state hospital or in a private hospital, if the private hospital agrees, subject to the limitations of section 36-541.

B. The court shall consider all available and appropriate alternatives for the treatment and care of the patient. The court shall order the least restrictive treatment alternative available.

C. The court may order the proposed patient to undergo outpatient or combined inpatient and outpatient treatment pursuant to subsection A, paragraph 1 or 2 of this section if the court:

1. Determines that all of the following apply:

(a) The patient does not require continuous inpatient hospitalization.

(b) The patient will be more appropriately treated in an outpatient treatment program or in a combined inpatient and outpatient treatment program.

(c) The patient will follow a prescribed outpatient treatment plan.

(d) The patient will not likely become dangerous or suffer more serious physical harm or serious illness or further deterioration if the patient follows a prescribed outpatient treatment plan.

2. Is presented with and approves a written treatment plan that conforms with the requirements of section 36-540.01, subsection B. If the treatment plan presented to the court pursuant to this subsection provides for supervision of the patient under court order by a mental health agency that is other than the mental health agency that petitioned or requested the county attorney to petition the court for treatment pursuant to section 36-531, the treatment plan must be approved by the medical director of the mental health agency that will supervise the treatment pursuant to subsection E of this section.

D. An order to receive treatment pursuant to subsection A, paragraph 1 or 2 of this section shall not exceed three hundred sixty-five days. The period of inpatient treatment under a combined treatment order pursuant to subsection A, paragraph 2 of this section shall not exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section.

E. If the court enters an order for treatment pursuant to subsection A, paragraph 1 or 2 of this section, all of the following apply:

1. The court shall designate the medical director of the mental health treatment agency that will supervise and administer the patient's treatment program.

2. The medical director shall not use the services of any person, agency or organization to supervise a patient's outpatient treatment program unless the person, agency or organization has agreed to provide these services in the individual patient's case and unless the department has determined that the person, agency or organization is capable and competent to do so.

3. The person, agency or organization assigned to supervise an outpatient treatment program or the outpatient portion of a combined treatment program shall be notified at least three days before a referral. The medical director making the referral and the person, agency or organization assigned to supervise the treatment program shall share relevant information about the patient to provide continuity of treatment.

4. During any period of outpatient treatment under subsection A, paragraph 2 of this section, if the court, on motion by the medical director of the patient's outpatient mental health treatment facility, determines that the patient is not complying with the terms of the order or that the outpatient treatment plan is no longer appropriate and the patient needs inpatient treatment, the court, without a hearing and based on the court record, the patient's medical record, the affidavits and recommendations of the medical director, and the advice of staff and physicians or the psychiatric and mental health nurse practitioner familiar with the treatment of the patient, may enter an order amending its original order. The amended order may alter the outpatient treatment plan or order the patient to inpatient treatment pursuant to subsection A, paragraph 3 of this section. The amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient

treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section. If the patient refuses to comply with an amended order for inpatient treatment, the court may authorize and direct a peace officer, on the request of the medical director, to take the patient into protective custody and transport the patient to the agency for inpatient treatment. When reporting to or being returned to a treatment agency for inpatient treatment pursuant to an amended order, the patient shall be informed of the patient's right to judicial review and the patient's right to consult with counsel pursuant to section 36-546.

5. During any period of outpatient treatment under subsection A, paragraph 2 of this section, if the medical director of the outpatient treatment facility in charge of the patient's care determines, in concert with the medical director of an inpatient mental health treatment facility who has agreed to accept the patient, that the patient is in need of immediate acute inpatient psychiatric care because of behavior that is dangerous to self or to others, the medical director of the outpatient treatment facility may order a peace officer to apprehend and transport the patient to the inpatient treatment facility pending a court determination on an amended order under paragraph 4 of this subsection. The patient may be detained and treated at the inpatient treatment facility for a period of no more than forty-eight hours, exclusive of weekends and holidays, from the time that the patient is taken to the inpatient treatment facility. The medical director of the outpatient treatment facility shall file the motion for an amended court order requesting inpatient treatment no later than the next working day following the patient being taken to the inpatient treatment facility. Any period of detention within the inpatient treatment facility pending issuance of an amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section. If a patient is ordered to undergo inpatient treatment pursuant to an amended order, the medical director of the outpatient treatment facility shall inform the patient of the patient's right to judicial review and to consult with an attorney pursuant to section 36-546.

F. The maximum periods of inpatient treatment that the court may order, subject to the limitations of section 36-541, are as follows:

1. Ninety days for a person found to be a danger to self.

2. One hundred eighty days for a person found to be a danger to others.

3. One hundred eighty days for a person found to be persistently or acutely disabled.

4. Three hundred sixty-five days for a person found to be gravely disabled.

G. If, on finding that the patient meets the criteria for court-ordered treatment pursuant to subsection A of this section, the court also finds that there is reasonable cause to believe that the patient is an incapacitated person as defined in section 14-5101 or is a person in need of protection pursuant to section 14-5401 and that the patient is or may be in need of guardianship or conservatorship, or both, the court may order an investigation concerning the need for a guardian or conservator, or both, and may appoint a suitable person or agency to conduct the investigation. The appointee may include a court appointed guardian ad litem, an investigator appointed pursuant to section 14-5308 or the public fiduciary if there is no person willing and qualified to act in that capacity. The court shall give notice of the appointment to the appointee within three days of the appointment. The appointee shall submit the report of the investigation to the court within twenty-one days. The report shall include recommendations as to who should be guardian or who should be conservator, or both, and a report of the findings and reasons for the recommendation. If the investigation and report so indicate, the court shall order the appropriate person to submit a petition to become the guardian or conservator, or both, of the patient.

H. In any proceeding for court-ordered treatment in which the petition alleges that the patient is in need of a guardian or conservator and states the grounds for that allegation, the court may appoint an emergency temporary guardian or conservator, or both, for a specific purpose or purposes identified in its order and for a specific period of time not to exceed thirty days if the court finds that all of the following are true:

1. The patient meets the criteria for court-ordered treatment pursuant to subsection A of this section.

2. There is reasonable cause to believe that the patient is an incapacitated person as defined in section 14-5101 or is in need of protection pursuant to section 14-5401, paragraph 2.

3. The patient does not have a guardian or conservator and the welfare of the patient requires immediate action to protect the patient or the ward's property.

4. The conditions prescribed pursuant to section 14-5310, subsection B or section 14-5401.01, subsection B have been met.

I. The court may appoint as a temporary guardian or conservator pursuant to subsection H of this section a suitable person or the public fiduciary if there is no person qualified and willing to act in that capacity. The court shall issue an order for an investigation as prescribed pursuant to subsection G of this section and, unless the patient is represented by independent counsel, the court shall appoint an attorney to represent the patient in further proceedings regarding the appointment of a guardian or conservator. The court shall schedule a further hearing within fourteen days on the appropriate court calendar of a court that has authority over guardianship or conservatorship matters pursuant to this title to consider the continued need for an emergency temporary guardian or

conservator and the appropriateness of the temporary guardian or conservator appointed, and shall order the appointed guardian or conservator to give notice to persons entitled to notice pursuant to section 14-5309, subsection A or section 14-5405, subsection A. The court shall authorize certified letters of temporary emergency guardianship or conservatorship to be issued on presentation of a copy of the court's order. If a temporary emergency conservator other than the public fiduciary is appointed pursuant to this subsection, the court shall order that the use of the money and property of the patient by the conservator is restricted and not to be sold, used, transferred or encumbered, except that the court may authorize the conservator to use money or property of the patient specifically identified as needed to pay an expense to provide for the care, treatment or welfare of the patient pending further hearing. This subsection and subsection H of this section do not:

1. Prevent the evaluation or treatment agency from seeking guardianship and conservatorship in any other manner allowed by law at any time during the period of court-ordered evaluation and treatment.

2. Relieve the evaluation or treatment agency from its obligations concerning the suspected abuse of a vulnerable adult pursuant to title 46, chapter 4.

J. If, on finding that a patient meets the criteria for court-ordered treatment pursuant to subsection A of this section, the court also learns that the patient has a guardian appointed under title 14, the court with notice may impose on the existing guardian additional duties pursuant to section 14-5312.01. If the court imposes additional duties on an existing guardian as prescribed in this subsection, the court may determine that the patient needs to continue treatment under a court order for treatment and may issue the order or determine that the patient's needs can be adequately met by the guardian with the additional duties pursuant to section 14-5312.01 and decline to issue the court order for treatment. If at any time after the issuance of a court order for treatment the court finds that the patient's needs can be adequately met by the guardian with the additional duties pursuant to section 14-5312.01 and that a court order for treatment is no longer necessary to assure compliance with necessary treatment, the court may terminate the court order for treatment. If there is a court order for treatment and a guardianship with additional mental health authority pursuant to section 14-5312.01 existing at the same time, the treatment and placement decisions made by the treatment agency assigned by the court to supervise and administer the patient's treatment program pursuant to the court order for treatment are controlling unless the court orders otherwise.

K. The court shall file a report as part of the court record on its findings of alternatives for treatment.

L. Treatment shall not include psychosurgery, lobotomy or any other brain surgery without specific informed consent of the patient or the patient's legal guardian and an order of the superior court in the county in

which the treatment is proposed, approving with specificity the use of the treatment.

M. The medical director or any person, agency or organization used by the medical director to supervise the terms of an outpatient treatment plan shall not be held civilly liable for any acts committed by a patient while on outpatient treatment if the medical director, person, agency or organization has in good faith followed the requirements of this section.

N. A peace officer who in good faith apprehends and transports a patient to an inpatient treatment facility on the order of the medical director of the outpatient treatment facility pursuant to subsection E, paragraph 5 of this section is not subject to civil liability.

O. If a person has been found, as a result of a mental disorder, to constitute a danger to self or others or to be persistently or acutely disabled or gravely disabled and the court enters an order for treatment pursuant to subsection A of this section, the court shall grant access to the person's name, date of birth, social security number and date of commitment to the department of public safety to comply with the requirements of title 13, chapter 31 and title 32, chapter 26.

Sec. 5. Section 36-542, Arizona Revised Statutes, is amended to read:

36-542. Discharge of patient at expiration of period ordered by court; change to voluntary status; relief from civil liability

A. A patient ordered by a court to undergo treatment ~~as a danger to others, a danger to self or persistently or acutely disabled~~ PURSUANT TO THIS ARTICLE shall be discharged from treatment at the expiration of the period of treatment ordered unless one of the following occurs:

1. The person accepts voluntary treatment at the mental health treatment agency.

2. ~~Prior to~~ BEFORE the discharge date, a new petition is filed in the county in which the patient is being treated. The proceedings shall then be governed by this article. The costs of the proceedings shall be a charge against the county in which the patient resided or was found prior to hospitalization.

B. If a patient to be discharged is under guardianship, the medical director of the mental health treatment agency shall notify the guardian ten days ~~prior to~~ BEFORE discharge.

C. The medical director ~~shall~~ IS not ~~be held~~ civilly liable for any acts committed by a discharged patient if the medical director has in good faith followed the requirements of this article.

Sec. 6. Section 36-543, Arizona Revised Statutes, is amended to read:

36-543. Release from treatment of gravely disabled patient or persistently or acutely disabled patient; annual review; court order for continued treatment

A. A patient found to be gravely disabled or persistently or acutely disabled and ordered to undergo treatment may be released from inpatient treatment when, in the opinion of the medical director of the mental health

treatment agency, the level of care offered by the agency is no longer required. The patient may agree to continue treatment voluntarily. If the patient is to be released, the medical director shall arrange for an appropriate alternative placement.

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

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

D. WITHIN NINETY DAYS BEFORE THE EXPIRATION OF A COURT ORDER FOR TREATMENT, THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY SHALL CONDUCT AN ANNUAL REVIEW OF a patient who has been found to be gravely disabled OR PERSISTENTLY OR ACUTELY DISABLED and is undergoing court-ordered treatment ~~shall have an annual review~~ to determine whether the continuation of court-ordered treatment is appropriate and to assess the needs of the patient for guardianship or conservatorship, or both. THE ANNUAL REVIEW SHALL CONSIST OF THE MENTAL HEALTH TREATMENT AND CLINICAL RECORDS CONTAINED IN THE PATIENT'S TREATMENT FILE. THE MENTAL HEALTH TREATMENT AGENCY SHALL KEEP A RECORD OF THE ANNUAL REVIEW. IF THE MEDICAL DIRECTOR BELIEVES THAT A CONTINUATION OF COURT-ORDERED TREATMENT IS APPROPRIATE, the medical director of the mental health treatment agency shall appoint one or more ~~examiners qualified~~ PSYCHIATRISTS to carry out ~~the review, at least one of whom shall be a psychiatrist licensed to practice in this state, and may at the discretion of the medical director appoint one or more additional examiners~~ A PSYCHIATRIC EXAMINATION OF THE PATIENT. IN ANY PROCEEDING CONDUCTED PURSUANT TO THIS SECTION, A PATIENT HAS THE RIGHT TO HAVE AN ANALYSIS OF THE PATIENT'S MENTAL CONDITION BY AN INDEPENDENT EVALUATION PURSUANT TO SECTION 36-538.

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

~~F.~~ E. Each examiner participating in the ~~annual review of a gravely disabled person or a persistently or acutely disabled person~~ PSYCHIATRIC

EXAMINATION OF THE PATIENT shall submit a report to the medical director of the mental health treatment agency ~~which~~ THAT includes the following:

1. The examiner's opinions as to whether the patient continues to be gravely disabled or persistently or acutely disabled AS THE RESULT OF A MENTAL DISORDER and in need of CONTINUED COURT-ORDERED treatment. IN EVALUATING THE PATIENT'S NEED FOR CONTINUED COURT-ORDERED TREATMENT, THE EXAMINER MUST CONSIDER, ALONG WITH ALL OTHER EVIDENCE, THE PATIENT'S HISTORY BEFORE AND DURING THE CURRENT PERIOD OF COURT-ORDERED TREATMENT, THE PATIENT'S COMPLIANCE WITH RECOMMENDED TREATMENT AND ANY OTHER EVIDENCE RELEVANT TO THE PATIENT'S ABILITY AND WILLINGNESS TO FOLLOW RECOMMENDED TREATMENT WITH OR WITHOUT A COURT ORDER.

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

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

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

5. IF THE PATIENT HAS AN EXISTING GUARDIAN WHO DOES NOT HAVE THE MENTAL HEALTH POWERS AUTHORIZED PURSUANT TO SECTION 14-5312.01, A RECOMMENDATION AS TO WHETHER THE ADDITIONAL MENTAL HEALTH POWERS AUTHORIZED BY SECTION 14-5312.01 SHOULD BE IMPOSED ON THE EXISTING GUARDIAN AND WHETHER THE PATIENT'S NEEDS CAN BE ADEQUATELY ADDRESSED BY A GUARDIAN WITH MENTAL HEALTH POWERS WITHOUT THE NEED FOR A COURT ORDER FOR TREATMENT OR WHETHER THE COURT ORDER FOR TREATMENT SHOULD CONTINUE REGARDLESS OF THE ADDITIONAL MENTAL HEALTH POWERS IMPOSED ON THE GUARDIAN.

6. THE RESULTS OF ANY PHYSICAL EXAMINATION CONDUCTED DURING THE PERIOD OF COURT-ORDERED TREATMENT IF RELEVANT TO THE PSYCHIATRIC CONDITION OF THE PATIENT.

~~G. The medical director of the mental health treatment agency shall forward the results of the annual review of a gravely disabled person or a persistently or acutely disabled person to the court including the medical director's recommendation based on the review which may be release of the patient without delay, release with delay or no release. If the patient does not have a guardian, the court, on receipt of the medical director's report, shall appoint an attorney to represent the patient. An attorney appointed under this subsection, within three days after appointment, to the extent possible, shall fulfill the duties imposed by section 36-537 and review the medical director's report and the patient's medical records, interview the physician who prepared the report and, if appropriate, request a hearing. At all proceedings conducted pursuant to this section, a patient has the right to have an analysis of the patient's mental condition by an independent evaluator pursuant to section 36-538. If the patient is under guardianship pursuant to section 14-5312.01, a copy of the report shall be mailed to the~~

~~patient's guardian. If the medical director's recommendation is no release or release with delay, the court may accept the report and recommendation of the medical director or order a hearing. The hearing shall be held within three weeks of the request. At the hearing the court may order the patient released or may order that treatment be continued. The court may also order an investigation into the need for guardianship or conservatorship, or both.~~

F. AFTER CONDUCTING THE ANNUAL REVIEW AS PRESCRIBED IN THIS SECTION, IF THE MEDICAL DIRECTOR BELIEVES THAT CONTINUED COURT-ORDERED TREATMENT IS NECESSARY OR APPROPRIATE, NOT LATER THAN THIRTY DAYS BEFORE THE EXPIRATION OF THE COURT ORDER FOR TREATMENT, THE MEDICAL DIRECTOR SHALL FILE WITH THE COURT AN APPLICATION FOR CONTINUED COURT-ORDERED TREATMENT ALLEGING THE BASIS FOR THE APPLICATION AND SHALL FILE SIMULTANEOUSLY WITH THE APPLICATION ANY PSYCHIATRIC EXAMINATION CONDUCTED AS PART OF THE ANNUAL REVIEW. IF THE PATIENT IS UNDER GUARDIANSHIP, THE MEDICAL DIRECTOR SHALL MAIL A COPY OF THE APPLICATION TO THE PATIENT'S GUARDIAN.

G. IF AN APPLICATION FOR CONTINUED COURT-ORDERED TREATMENT IS FILED, ALL OF THE FOLLOWING APPLY:

1. IF THE PATIENT DOES NOT HAVE AN ATTORNEY, THE COURT SHALL APPOINT AN ATTORNEY TO REPRESENT THE PATIENT.

2. WITHIN TEN DAYS AFTER APPOINTMENT, AN ATTORNEY APPOINTED PURSUANT TO THIS SUBSECTION, TO THE EXTENT POSSIBLE, SHALL FULFILL THE DUTIES IMPOSED PURSUANT TO SECTION 36-537, REVIEW THE MEDICAL DIRECTOR'S REPORT AND THE PATIENT'S MEDICAL RECORDS, INTERVIEW ANY PHYSICIAN WHO PREPARED A REPORT ON THE ANNUAL REVIEW AND FILE A RESPONSE REQUESTING A HEARING OR SUBMITTING THE MATTER TO THE COURT FOR A RULING BASED ON THE RECORD WITHOUT A HEARING.

3. IF A HEARING IS NOT REQUESTED, THE COURT SHALL RULE ON THE APPLICATION OR SET THE MATTER FOR HEARING. IF A HEARING IS REQUESTED, THE HEARING SHALL BE HELD WITHIN THREE WEEKS AFTER THE REQUEST FOR HEARING IS FILED. THE HEARING MAY BE CONTINUED FOR GOOD CAUSE ON MOTION OF A PARTY OR ON THE COURT'S OWN MOTION, AND THE EXPIRATION OF THE CURRENT COURT ORDER FOR TREATMENT MAY BE EXTENDED UNTIL A RULING BY THE COURT ON AN APPLICATION FILED PURSUANT TO THIS SUBSECTION.

4. THE PATIENT'S ATTORNEY MUST BE PRESENT AT ALL HEARINGS AND MAY SUBPOENA AND CROSS-EXAMINE WITNESSES AND PRESENT EVIDENCE. THE PATIENT HAS THE RIGHT TO ATTEND ALL HEARINGS, BUT MAY CHOOSE NOT TO ATTEND A HEARING. THE PATIENT'S ATTORNEY MAY WAIVE THE PATIENT'S PRESENCE AFTER SPEAKING WITH THE PATIENT AND CONFIRMING THAT THE PATIENT UNDERSTANDS THE RIGHT TO BE PRESENT AND DOES NOT DESIRE TO ATTEND. IF THE PATIENT IS UNABLE TO BE PRESENT AT THE HEARING FOR MEDICAL OR PSYCHIATRIC REASONS AND THE HEARING CANNOT BE CONDUCTED WHERE THE PATIENT IS BEING TREATED OR CONFINED, OR THE PATIENT CANNOT APPEAR BY ANOTHER REASONABLY FEASIBLE MEANS, THE COURT SHALL REQUIRE CLEAR AND CONVINCING EVIDENCE THAT THE PATIENT IS UNABLE TO BE PRESENT AT THE HEARING AND ON SUCH A FINDING MAY PROCEED WITH THE HEARING IN THE PATIENT'S ABSENCE.

5. THE EVIDENCE PRESENTED BY THE APPLICANT INCLUDES THE TESTIMONY OF ONE OR MORE WITNESSES ACQUAINTED WITH THE PATIENT DURING THE PERIOD OF COURT-ORDERED TREATMENT, WHICH MAY BE SATISFIED BY A STATEMENT AGREED ON BY THE PARTIES, AND THE TESTIMONY OF ANY PHYSICIAN WHO PERFORMED AN ANNUAL REVIEW OF THE PATIENT, WHICH MAY BE SATISFIED BY STIPULATING TO THE ADMISSION OF THE EXAMINING PHYSICIANS' WRITTEN REPORT PREPARED PURSUANT SUBSECTION E OF THIS SECTION. THE COURT MAY WAIVE THE NEED FOR THE APPLICANT TO PRESENT THE TESTIMONY OF WITNESSES ACQUAINTED WITH THE PATIENT AS REQUIRED BY THIS SUBSECTION, IF IT FINDS THAT THE NEED FOR A CONTINUED COURT ORDER FOR TREATMENT HAS BEEN ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE FROM THE OTHER TESTIMONY AND EVIDENCE PRESENTED AT THE HEARING.

6. AT A HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT, WITH NOTICE, MAY IMPOSE ON AN EXISTING GUARDIAN ADDITIONAL POWERS PURSUANT TO SECTION 14-5312.01. IF THE COURT FINDS THAT THE PATIENT'S NEEDS CAN BE ADEQUATELY MET BY AN EXISTING GUARDIAN WITH THE ADDITIONAL POWERS PURSUANT TO SECTION 14-5312.01 AND THAT A COURT ORDER FOR TREATMENT IS NOT NECESSARY TO ENSURE COMPLIANCE WITH NECESSARY TREATMENT, THE COURT MAY TERMINATE THE COURT ORDER FOR TREATMENT OR DECLINE TO ISSUE AN ORDER CONTINUING COURT-ORDERED TREATMENT. THE COURT MAY ALSO ORDER AN INVESTIGATION INTO THE NEED FOR GUARDIANSHIP OR CONSERVATORSHIP, OR BOTH, AND MAY APPOINT A SUITABLE PERSON OR AGENCY TO CONDUCT THE INVESTIGATION. THE APPOINTEE MAY INCLUDE A COURT-APPOINTED GUARDIAN AD LITEM, A COURT-APPOINTED INVESTIGATOR PURSUANT TO SECTION 14-5308 OR THE PUBLIC FIDUCIARY IF THERE IS NO PERSON WILLING AND QUALIFIED TO ACT IN THAT CAPACITY. THE COURT SHALL GIVE NOTICE OF THE APPOINTMENT TO THE APPOINTEE WITHIN THREE DAYS AFTER THE APPOINTMENT. THE APPOINTEE SHALL SUBMIT THE REPORT OF THE INVESTIGATION TO THE COURT WITHIN TWENTY-ONE DAYS. THE REPORT SHALL INCLUDE RECOMMENDATIONS AS TO WHO SHOULD BE GUARDIAN OR CONSERVATOR, OR BOTH, AND THE FINDINGS AND REASONS FOR THE RECOMMENDATION. IF THE INVESTIGATION AND REPORT SO INDICATE, THE COURT MAY AUTHORIZE AN APPROPRIATE PERSON TO FILE A PETITION FOR APPOINTMENT OF A GUARDIAN OR CONSERVATOR FOR THE PATIENT.

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

1. The patient CONTINUES TO HAVE A MENTAL DISORDER AND, AS A RESULT OF THAT DISORDER, is ~~one of the following:~~ EITHER PERSISTENTLY OR ACUTELY DISABLED OR IS GRAVELY DISABLED.

~~(a) A danger to self.~~

~~(b) A danger to others.~~

~~(c) Persistently or acutely disabled.~~

~~(d) Gravely disabled.~~

2. The patient is in need of CONTINUED COURT-ORDERED treatment.

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

I. AFTER A HEARING HELD PURSUANT TO SUBSECTION G OF THIS SECTION, THE COURT MAY ORDER THE PATIENT TO BE RELEASED FROM COURT-ORDERED TREATMENT OR TO

UNDERGO CONTINUED COURT-ORDERED TREATMENT FOR A PERIOD NOT TO EXCEED THE TIME PERIODS PRESCRIBED IN SECTION 36-540, SUBSECTION D.

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

Sec. 7. Section 36-548, Arizona Revised Statutes, is amended to read:

36-548. Court-ordered treatment by the United States department of veterans affairs or other agency of the United States

A. Whenever, in any proceeding under the laws of this state for the court-ordered treatment of a person alleged to be, as a result of a mental disorder, a danger to self or to others, PERSISTENTLY OR ACUTELY DISABLED or gravely disabled~~,~~ it is determined after such adjudication of the status of such person as may be required by law that hospitalization in a mental health treatment agency is necessary for treatment, and it appears that the person is eligible for care or treatment by the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or other agency of the United States, the court, ~~upon~~ ON receipt of a certificate from the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or other agency showing that facilities are available and that the person is eligible for care or treatment, may order the person to undergo treatment by the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or other agency of the United States. A person hospitalized in a ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS facility or institution operated by another agency of the United States in accordance with the court's order for treatment shall be subject to the rules and regulations of the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or other agency whether the facility is located within or without the state. The chief officer of the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS facility or other institution by another agency of the United States in which the person is hospitalized shall with respect to the person be vested with the same powers as the medical director of a mental health treatment agency with respect to the continuation of hospitalization or release. Jurisdiction is retained by the court ~~which~~ THAT ordered the treatment of the patient or other superior court of the state at any time to inquire into the mental condition of the person and to determine the necessity for continuance of ~~his~~ THE PERSON'S hospitalization.

B. The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia~~,~~ committing a person to the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or other agency of the United States for care or treatment~~,~~ shall have the same force and effect as to the committed person while in this state as in the jurisdiction where the court ~~which~~ THAT entered the judgment or

made the order is located, and the courts of the committing state~~,~~ or of the District of Columbia~~,~~ shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of the person, and of determining the necessity for continuance of ~~his~~ THE PERSON'S hospitalization as provided by subsection A OF THIS SECTION with respect to persons ordered to undergo treatment by the courts of this state. Consent is given to the application of the law of the committing state or District of Columbia with respect to the authority of the chief officer of any facility of the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or any institution operated in this state by any other agency of the United States to retain custody~~,~~ OF or transfer, parole, or discharge the committed person.

C. ~~Upon~~ ON receipt of a certificate of the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or other agency of the United States that facilities are available for the care or treatment of any person ~~heretofore~~ ordered to undergo treatment in a mental health treatment agency and that the person is eligible for care or treatment, the medical director of the mental health treatment agency may cause the transfer of the person to a ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS facility or institution operated by another agency of the United States for care or treatment. ~~Upon~~ ON effecting any such transfer, the superior court ~~which~~ THAT ordered treatment for the patient shall be notified ~~thereof~~ by the transferring agency. ~~No~~ A person shall NOT be transferred to a ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS facility or institution operated by another agency of the United States if ~~he~~ THE PERSON is confined pursuant to an order of a superior court under rules of criminal procedure, unless ~~prior to~~ BEFORE THAT transfer the superior court enters an order for the transfer.

D. A person transferred as provided in this section is deemed to have been ordered to undergo treatment by the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or other agency of the United States pursuant to the original court order for treatment. ~~No~~ A person ordered to undergo treatment by the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS or transferred to the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS as provided in this section shall NOT be removed from the state for evaluation or treatment without specific informed consent of the patient or ~~his~~ THE PERSON'S legal guardian.

APPROVED BY THE GOVERNOR MAY 11, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2012.