

REFERENCE TITLE: national instant criminal background checks

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2322

Introduced by
Representative Pierce J

AN ACT

AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-609; AMENDING SECTIONS 13-925, 13-3101, 14-5303, 14-5304, 14-5307, 32-2612, 36-509 AND 36-540, ARIZONA REVISED STATUTES; RELATING TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 6, Arizona Revised Statutes, is amended
3 by adding section 13-609, to read:

4 13-609. Transfer of criminal justice information; national
5 instant criminal background check system; centralized
6 case index; definitions

7 A. THE CLERK OF COURT SHALL TRANSMIT THE CASE INFORMATION OF EVERY
8 CASE THAT INVOLVES A COVERED OFFENSE TO THE SUPREME COURT. THE SUPREME COURT
9 SHALL TRANSMIT THE CASE INFORMATION TO THE DEPARTMENT OF PUBLIC SAFETY. THE
10 DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE CASE INFORMATION TO THE
11 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

12 B. IF THE COVERED OFFENSE IS SUBSEQUENTLY DISMISSED THE CLERK OF COURT
13 SHALL TRANSMIT THE DISMISSAL TO THE SUPREME COURT AND THE SUPREME COURT SHALL
14 TRANSMIT THE DISMISSAL TO THE DEPARTMENT OF PUBLIC SAFETY. ON RECEIPT OF THE
15 NOTICE OF DISMISSAL, THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE
16 DISMISSAL TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

17 C. THE DEPARTMENT OF PUBLIC SAFETY MAY PROVIDE A LAW ENFORCEMENT
18 AGENCY ACCESS TO THE CASE INFORMATION ONLY TO ENFORCE AN ORDER OR TO ASSIST
19 IN AN INVESTIGATION OR IN RETURNING PROPERTY. ON REQUEST, THE COURT THAT
20 ORIGINALLY FOUND THE DEFENDANT INCOMPETENT SHALL PROVIDE CERTIFIED COPIES OF
21 THE ORDER TO A LAW ENFORCEMENT OR PROSECUTING AGENCY THAT IS INVESTIGATING OR
22 PROSECUTING A PROHIBITED POSSESSOR AS DEFINED IN SECTION 13-3101.

23 D. IF A PERSON IS FOUND INCOMPETENT BY A COURT PURSUANT TO RULE 11,
24 ARIZONA RULES OF CRIMINAL PROCEDURE, THE CLERK OF COURT SHALL TRANSMIT THE
25 CASE INFORMATION AND THE DATE OF THE INCOMPETENCY FINDING TO THE SUPREME
26 COURT. THE SUPREME COURT SHALL ENTER THE CASE INFORMATION AND THE DATE OF
27 THE INCOMPETENCY FINDING IN THE CENTRALIZED CASE INDEX AND TRANSMIT THE CASE
28 INFORMATION AND THE DATE OF THE INCOMPETENCY FINDING TO THE DEPARTMENT OF
29 PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE CASE
30 INFORMATION AND THE DATE OF THE INCOMPETENCY FINDING TO THE NATIONAL INSTANT
31 CRIMINAL BACKGROUND CHECK SYSTEM.

32 E. IF A PERSON IS SUBSEQUENTLY FOUND COMPETENT, THE CLERK OF COURT
33 SHALL TRANSMIT THE CASE INFORMATION TO THE SUPREME COURT. THE SUPREME COURT
34 SHALL REMOVE THE CASE INFORMATION FROM THE CENTRALIZED CASE INDEX AND SHALL
35 TRANSMIT THE DISMISSAL TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF
36 PUBLIC SAFETY SHALL TRANSMIT THE DISMISSAL TO THE NATIONAL INSTANT CRIMINAL
37 BACKGROUND CHECK SYSTEM.

38 F. FOR THE PURPOSES OF THIS SECTION:

39 1. "CASE INFORMATION" MEANS THE PERSON'S NAME, SEX AND DATE OF BIRTH,
40 THE LAST FOUR DIGITS OF THE PERSON'S SOCIAL SECURITY NUMBER, IF AVAILABLE,
41 THE COURT CASE NUMBER AND THE COURT ORIGINATING AGENCY IDENTIFICATION NUMBER.

42 2. "COVERED OFFENSE" MEANS:

43 (a) AN INDICTMENT OR INFORMATION FOR AN OFFENSE IF EITHER THE JUDICIAL
44 OFFICER IMPOSES AS A CONDITION OF RELEASE THAT THE PERSON NOT POSSESS A
45 FIREARM OR THE OFFENSE CHARGED IS LISTED IN SECTION 13-706, SUBSECTION F.

1 (b) A MISDEMEANOR COMPLAINT FOR AN OFFENSE IF THE JUDICIAL OFFICER
2 IMPOSES AS A CONDITION OF RELEASE THAT THE PERSON NOT POSSESS A FIREARM.

3 Sec. 2. Section 13-925, Arizona Revised Statutes, is amended to read:
4 13-925. Restoration of right to possess a firearm; mentally ill
5 persons; petition

6 A. A person may petition the court that entered an order, finding or
7 adjudication that resulted in the person being a prohibited possessor as
8 defined in section 13-3101, subsection A, paragraph 7, subdivision (a) or
9 subject to 18 United States Code section 922(d)(4) or (g)(4) to restore the
10 person's right to possess a firearm.

11 B. The person or the person's guardian or attorney may file the
12 petition. The petition shall be served on the attorney for the state who
13 appeared in the underlying case.

14 C. On ~~THE~~ filing of the petition the court shall set a hearing. At
15 the hearing, the person shall present psychological or psychiatric evidence
16 in support of the petition. The state shall provide the court with the
17 person's criminal history records, if any. The court shall receive evidence
18 on and consider the following before granting or denying the petition:

19 1. The circumstances that resulted in the person being a prohibited
20 possessor as defined in section 13-3101, subsection A, paragraph 7,
21 subdivision (a) or subject to 18 United States Code section 922(d)(4) or
22 (g)(4).

23 2. The person's record, including the person's mental health record
24 and criminal history record, if any.

25 3. The person's reputation based on character witness statements,
26 testimony or other character evidence.

27 4. Whether the person is a danger to self or others, ~~OR~~ OR is
28 persistently, acutely or gravely disabled or whether the circumstances that
29 led to the original order, adjudication or finding remain in effect.

30 5. Any change in the person's condition or circumstances that is
31 relevant to the relief sought.

32 6. Any other evidence deemed admissible by the court.

33 D. The petitioner shall prove by clear and convincing evidence both of
34 the following:

35 1. The petitioner is not likely to act in a manner that is dangerous
36 to public safety.

37 2. Granting the requested relief is not contrary to the public
38 interest.

39 E. At the conclusion of the hearing, the court shall issue findings of
40 fact and conclusions of law.

41 F. If the court grants the petition for relief, the original order,
42 finding or adjudication is deemed not to have occurred for the purposes of
43 applying section 13-3101, subsection A, paragraph 7, subdivision (a), Public
44 Law 110-180, section 105(a) or 18 United States Code section 922(d)(4) or
45 (g)(4) to that person.

1 G. The granting of a petition under this section only restores the
2 person's right to possess a firearm and does not apply to and has no ~~effect~~
3 ~~EFFECT~~ on any other rights or benefits the person receives.

4 H. The court shall promptly notify the SUPREME COURT AND THE
5 department of public safety of an order granting a petition under this
6 section. As soon thereafter as practicable the SUPREME COURT AND THE
7 department shall update, correct, modify or remove the person's record in any
8 database that the SUPREME COURT OR THE department maintains and makes
9 available to the national instant criminal background check system consistent
10 with the rules pertaining to the database. Within ten business days after
11 receiving the notification from the court, the department shall notify the
12 United States attorney general that the person no longer falls within the
13 provisions of section 13-3101, subsection A, paragraph 7, subdivision (a) or
14 18 United States Code section 922(d)(4) or (g)(4).

15 Sec. 3. Section 13-3101, Arizona Revised Statutes, is amended to read:
16 13-3101. Definitions

17 A. In this chapter, unless the context otherwise requires:

18 1. "Deadly weapon" means anything that is designed for lethal use.
19 The term includes a firearm.

20 2. "Deface" means to remove, alter or destroy the manufacturer's
21 serial number.

22 3. "Explosive" means any dynamite, nitroglycerine, black powder, or
23 other similar explosive material, including plastic explosives. Explosive
24 does not include ammunition or ammunition components such as primers,
25 percussion caps, smokeless powder, black powder and black powder substitutes
26 used for hand loading purposes.

27 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,
28 rifle, shotgun or other weapon that will expel, is designed to expel or may
29 readily be converted to expel a projectile by the action of an explosive.
30 Firearm does not include a firearm in permanently inoperable condition.

31 5. "Improvised explosive device" means a device that incorporates
32 explosives or destructive, lethal, noxious, pyrotechnic or incendiary
33 chemicals and that is designed to destroy, disfigure, terrify or harass.

34 6. "Occupied structure" means any building, object, vehicle,
35 watercraft, aircraft or place with sides and a floor that is separately
36 securable from any other structure attached to it, that is used for lodging,
37 business, transportation, recreation or storage and in which one or more
38 human beings either are or are likely to be present or so near as to be in
39 equivalent danger at the time the discharge of a firearm occurs. Occupied
40 structure includes any dwelling house, whether occupied, unoccupied or
41 vacant.

42 7. "Prohibited possessor" means any person:

43 (a) Who has been found to constitute a danger to self or to others or
44 to be persistently or acutely disabled or gravely disabled pursuant to court
45 order ~~under~~ PURSUANT TO section 36-540, and whose right to possess a firearm
46 has not been restored pursuant to section 13-925.

1 (b) Who has been convicted within or without this state of a felony or
2 who has been adjudicated delinquent for a felony and whose civil right to
3 possess or carry a gun or firearm has not been restored.

4 (c) Who is at the time of possession serving a term of imprisonment in
5 any correctional or detention facility.

6 (d) Who is at the time of possession serving a term of probation
7 pursuant to a conviction for a domestic violence offense as defined in
8 section 13-3601 or a felony offense, parole, community supervision, work
9 furlough, home arrest or release on any other basis or who is serving a term
10 of probation or parole pursuant to the interstate compact under title 31,
11 chapter 3, article 4.1.

12 (e) Who is an undocumented alien or a nonimmigrant alien traveling
13 with or without documentation in this state for business or pleasure or who
14 is studying in this state and who maintains a foreign residence abroad. This
15 subdivision does not apply to:

16 (i) Nonimmigrant aliens who possess a valid hunting license or permit
17 that is lawfully issued by a state in the United States.

18 (ii) Nonimmigrant aliens who enter the United States to participate in
19 a competitive target shooting event or to display firearms at a sports or
20 hunting trade show that is sponsored by a national, state or local firearms
21 trade organization devoted to the competitive use or other sporting use of
22 firearms.

23 (iii) Certain diplomats.

24 (iv) Officials of foreign governments or distinguished foreign
25 visitors who are designated by the United States department of state.

26 (v) Persons who have received a waiver from the United States attorney
27 general.

28 (f) WHO HAS BEEN FOUND INCOMPETENT PURSUANT TO RULE 11, ARIZONA RULES
29 OF CRIMINAL PROCEDURE, AND WHO SUBSEQUENTLY HAS NOT BEEN FOUND COMPETENT.

30 (g) WHO IS CHARGED WITH A COVERED OFFENSE. FOR THE PURPOSES OF THIS
31 SUBDIVISION, "COVERED OFFENSE" HAS THE SAME MEANING PRESCRIBED IN SECTION
32 13-609.

33 8. "Prohibited weapon":

34 (a) Includes the following:

35 (i) An item that is a bomb, grenade, rocket having a propellant charge
36 of more than four ounces or mine and that is explosive, incendiary or poison
37 gas.

38 (ii) A device that is designed, made or adapted to muffle the report
39 of a firearm.

40 (iii) A firearm that is capable of shooting more than one shot
41 automatically, without manual reloading, by a single function of the trigger.

42 (iv) A rifle with a barrel length of less than sixteen inches, or
43 shotgun with a barrel length of less than eighteen inches, or any firearm
44 that is made from a rifle or shotgun and that, as modified, has an overall
45 length of less than twenty-six inches.

1 (v) An instrument, including a nunchaku, that consists of two or more
2 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,
3 wire or chain, in the design of a weapon used in connection with the practice
4 of a system of self-defense.

5 (vi) A breakable container that contains a flammable liquid with a
6 flash point of one hundred fifty degrees Fahrenheit or less and that has a
7 wick or similar device capable of being ignited.

8 (vii) A chemical or combination of chemicals, compounds or materials,
9 including dry ice, that is possessed or manufactured for the purpose of
10 generating a gas to cause a mechanical failure, rupture or bursting or an
11 explosion or detonation of the chemical or combination of chemicals,
12 compounds or materials.

13 (viii) An improvised explosive device.

14 (ix) Any combination of parts or materials that is designed and
15 intended for use in making or converting a device into an item set forth in
16 item (i), (vi) or (viii) of this subdivision.

17 (b) Does not include:

18 (i) Any fireworks that are imported, distributed or used in compliance
19 with state laws or local ordinances.

20 (ii) Any propellant, propellant actuated devices or propellant
21 actuated industrial tools that are manufactured, imported or distributed for
22 their intended purposes.

23 (iii) A device that is commercially manufactured primarily for the
24 purpose of illumination.

25 9. "Trafficking" means to sell, transfer, distribute, dispense or
26 otherwise dispose of a weapon or explosive to another person, or to buy,
27 receive, possess or obtain control of a weapon or explosive, with the intent
28 to sell, transfer, distribute, dispense or otherwise dispose of the weapon or
29 explosive to another person.

30 B. The items set forth in subsection A, paragraph 8, subdivision (a),
31 items (i), (ii), (iii) and (iv) of this section do not include any firearms
32 or devices that are registered in the national firearms registry and transfer
33 records of the United States treasury department or any firearm that has been
34 classified as a curio or relic by the United States treasury department.

35 Sec. 4. Section 14-5303, Arizona Revised Statutes, is amended to read:

36 14-5303. Procedure for court appointment of a guardian of an
37 alleged incapacitated person

38 A. The alleged incapacitated person or any person interested in that
39 person's affairs or welfare may petition for the appointment of a guardian or
40 for any other appropriate protective order.

41 B. The petition shall contain a statement that the authority granted
42 to the guardian may include the authority to withhold or withdraw life
43 sustaining treatment, including artificial food and fluid, and shall state,
44 at a minimum and to the extent known, all of the following:

45 1. The interest of the petitioner.

- 1 2. The name, age, residence and address of the alleged incapacitated
2 person.
- 3 3. The name, address and priority for appointment of the person whose
4 appointment is sought.
- 5 4. The name and address of the conservator, if any, of the alleged
6 incapacitated person.
- 7 5. The name and address of the nearest relative of the alleged
8 incapacitated person known to the petitioner.
- 9 6. A general statement of the property of the alleged incapacitated
10 person, with an estimate of its value and including any compensation,
11 insurance, pension or allowance to which the person is entitled.
- 12 7. The reason why appointment of a guardian or any other protective
13 order is necessary.
- 14 8. The type of guardianship requested. If a general guardianship is
15 requested, the petition must state that other alternatives have been explored
16 and why a limited guardianship is not appropriate. If a limited guardianship
17 is requested, the petition also must state what specific powers are
18 requested.
- 19 9. If a custodial order was previously entered regarding an alleged
20 incapacitated person in a child custody action or similar proceeding in this
21 state or another jurisdiction and the petitioner or proposed guardian is a
22 parent or nonparent custodian of the alleged incapacitated person, the court
23 and case number for that action or proceeding.
- 24 10. IF THE APPOINTMENT OF A GUARDIAN IS NECESSARY DUE SOLELY TO THE
25 PHYSICAL INCAPACITY OF THE ALLEGED INCAPACITATED PERSON.
- 26 C. On the filing of a petition, the court shall set a hearing date on
27 the issues of incapacity. Unless the alleged incapacitated person is
28 represented by independent counsel, the court shall appoint an attorney to
29 represent that person in the proceeding. The alleged incapacitated person
30 shall be interviewed by an investigator appointed by the court and shall be
31 examined by a physician, psychologist or registered nurse appointed by the
32 court. If the alleged incapacitated person has an established relationship
33 with a physician, psychologist or registered nurse who is determined by the
34 court to be qualified to evaluate the capacity of the alleged incapacitated
35 person, the court may appoint the alleged incapacitated person's physician,
36 psychologist or registered nurse pursuant to this subsection. The
37 investigator and the person conducting the examination shall submit their
38 reports in writing to the court. In addition to information required under
39 subsection D, the court may direct that either report include other
40 information the court deems appropriate. The investigator also shall
41 interview the person seeking appointment as guardian, visit the present place
42 of abode of the alleged incapacitated person and the place where it is
43 proposed that the person will be detained or reside if the requested
44 appointment is made and submit a report in writing to the court. The alleged
45 incapacitated person is entitled to be present at the hearing and to see or
46 hear all evidence bearing on that person's condition. The alleged

1 incapacitated person is entitled to be represented by counsel, to present
2 evidence, to cross-examine witnesses, including the court-appointed examiner
3 and investigator, and to trial by jury. The court may determine the issue at
4 a closed hearing if the alleged incapacitated person or that person's counsel
5 so requests.

6 D. A report filed pursuant to this section by a physician,
7 psychologist or registered nurse acting within that person's scope of
8 practice shall include the following information:

9 1. A specific description of the physical, psychiatric or
10 psychological diagnosis of the person.

11 2. A comprehensive assessment listing any functional impairments of
12 the alleged incapacitated person and an explanation of how and to what extent
13 these functional impairments may prevent that person from receiving or
14 evaluating information in making decisions or in communicating informed
15 decisions regarding that person.

16 3. An analysis of the tasks of daily living the alleged incapacitated
17 person is capable of performing without direction or with minimal direction.

18 4. A list of all medications the alleged incapacitated person is
19 receiving, the dosage of the medications and a description of the effects
20 each medication has on the person's behavior to the best of the declarant's
21 knowledge.

22 5. A prognosis for improvement in the alleged incapacitated person's
23 condition and a recommendation for the most appropriate rehabilitation plan
24 or care plan.

25 6. Other information the physician, psychologist or registered nurse
26 deems appropriate.

27 Sec. 5. Section 14-5304, Arizona Revised Statutes, is amended to read:
28 14-5304. Findings; limitations; filing; fingerprinting

29 A. In exercising its appointment authority pursuant to this chapter,
30 the court shall encourage the development of maximum self-reliance and
31 independence of the incapacitated person.

32 B. The court may appoint a general or limited guardian as requested if
33 the court finds by clear and convincing evidence that:

34 1. The person for whom a guardian is sought is incapacitated.

35 2. The appointment is necessary to provide for the demonstrated needs
36 of the incapacitated person.

37 3. The person's needs cannot be met by less restrictive means,
38 including the use of appropriate technological assistance.

39 C. In conformity with the evidence regarding the extent of the ward's
40 incapacity, the court may appoint a limited guardian and specify time limits
41 on the guardianship and limitations on the guardian's powers.

42 D. The guardian shall file an acceptance of appointment with the
43 appointing court.

44 E. The court may require each person who seeks appointment as a
45 guardian to furnish a full set of fingerprints to enable the court to conduct
46 a criminal background investigation. The court shall submit the person's

1 completed fingerprint card to the department of public safety. The person
2 shall bear the cost of obtaining the person's criminal history record
3 information. The cost shall not exceed the actual cost of obtaining the
4 person's criminal history record information. Criminal history records
5 checks shall be conducted pursuant to section 41-1750 and Public Law 92-544.
6 The department of public safety may exchange this fingerprint data with the
7 federal bureau of investigation. This subsection does not apply to a
8 fiduciary who is licensed pursuant to section 14-5651 or an employee of a
9 financial institution.

10 F. THE COURT SHALL MAKE A SPECIFIC FINDING AS TO WHETHER THE
11 APPOINTMENT OF A GUARDIAN IS DUE SOLELY TO THE WARD'S PHYSICAL INCAPACITY.

12 G. UNLESS THE COURT MAKES A SPECIFIC FINDING THAT THE APPOINTMENT OF A
13 GUARDIAN IS DUE SOLELY TO THE WARD'S PHYSICAL INCAPACITY UNDER SUBSECTION F
14 OF THIS SECTION, AT THE TIME OF APPOINTING A GUARDIAN, THE COURT SHALL
15 TRANSMIT THE WARD'S NAME, SEX AND DATE OF BIRTH, THE LAST FOUR DIGITS OF THE
16 WARD'S SOCIAL SECURITY NUMBER, IF AVAILABLE, THE COURT CASE NUMBER, THE COURT
17 ORIGINATING AGENCY IDENTIFICATION NUMBER AND THE DATE OF THE GUARDIAN'S
18 APPOINTMENT TO THE CENTRALIZED CASE INDEX MAINTAINED BY THE SUPREME COURT.
19 THE SUPREME COURT SHALL TRANSMIT THE INFORMATION TO THE DEPARTMENT OF PUBLIC
20 SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO
21 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

22 H. THE WARD'S CASE INFORMATION SHALL BE RETAINED IN THE CENTRALIZED
23 CASE INDEX UNTIL THE WARD'S INCAPACITY IS TERMINATED. THE DEPARTMENT OF
24 PUBLIC SAFETY MAY PROVIDE A LAW ENFORCEMENT AGENCY ACCESS TO THE CASE
25 INFORMATION ONLY TO ENFORCE AN ORDER OR TO ASSIST IN AN INVESTIGATION OR IN
26 RETURNING PROPERTY.

27 Sec. 6. Section 14-5307, Arizona Revised Statutes, is amended to read:
28 14-5307. Substitution or resignation of guardian; termination
29 of incapacity

30 A. On petition of the ward or any person interested in the ward's
31 welfare, or on the court's own initiative, the court shall substitute a
32 guardian and appoint a successor if it is in the best interest of the ward.
33 The court does not need to find that the guardian acted inappropriately to
34 find that the substitution is in the ward's best interest. The guardian and
35 the guardian's attorney may be compensated from the ward's estate for
36 defending against a petition for substitution only for the amount ordered by
37 the court and on petition by the guardian or the guardian's attorney. When
38 substituting a guardian and appointing a successor, the court may appoint an
39 individual nominated by the ward if the ward is at least fourteen years of
40 age and has, in the opinion of the court, sufficient mental capacity to make
41 an intelligent choice. On petition of the guardian, the court may accept a
42 resignation and make any other order that may be appropriate.

43 B. The ward may petition the court for an order that the ward is no
44 longer incapacitated or petition for substitution of the guardian at any
45 time. A request for this order may be made by informal letter to the court

1 or judge. A person who knowingly interferes with the transmission of this
2 request may be found in contempt of court.

3 C. An interested person, other than the guardian or ward, shall not
4 file a petition for adjudication that the ward is no longer incapacitated
5 earlier than one year after the order adjudicating incapacity was entered
6 unless the court permits it to be made on the basis of affidavits that there
7 is reason to believe that the ward is no longer incapacitated.

8 D. An interested person, other than the guardian or ward, shall not
9 file a petition to substitute a guardian earlier than one year after the
10 order adjudicating incapacity was entered unless the court permits it to be
11 made on the basis of affidavits that there is reason to believe that the
12 current guardian will endanger the ward's physical, mental or emotional
13 health if not substituted.

14 E. Before substituting a guardian, accepting the resignation of a
15 guardian or ordering that a ward's incapacity has terminated, the court,
16 following the same procedures to safeguard the rights of the ward as apply to
17 a petition for appointment of a guardian, may send an investigator to the
18 residence of the present guardian and to the place where the ward resides or
19 is detained to observe conditions and report in writing to the court.

20 F. ON TERMINATION OF THE INCAPACITY THAT RESULTED IN THE WARD'S
21 INFORMATION BEING ENTERED INTO THE CENTRALIZED CASE INDEX, THE SUPREME COURT
22 SHALL REMOVE THE WARD'S INFORMATION FROM THE CENTRALIZED CASE INDEX AND
23 TRANSMIT THE ORDER TERMINATING THE INCAPACITY TO THE DEPARTMENT OF PUBLIC
24 SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO
25 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

26 Sec. 7. Section 32-2612, Arizona Revised Statutes, is amended to read:
27 32-2612. Qualifications of applicant for agency license:
28 substantiation of work experience

29 A. Each applicant, if an individual, or each associate, director or
30 manager, if the applicant is other than an individual, for an agency license
31 to be issued pursuant to this chapter shall:

- 32 1. Be at least twenty-one years of age.
- 33 2. Be a citizen or a legal resident of the United States who is
34 authorized to seek employment in the United States.
- 35 3. Not have been convicted of any felony or currently be under
36 indictment for a felony.
- 37 4. Within the five years immediately preceding the application for an
38 agency license, not have been convicted of any misdemeanor act involving:
 - 39 (a) Personal violence or force against another person or threatening
40 to commit any act of personal violence or force against another person.
 - 41 (b) Misconduct involving a deadly weapon as provided in section
42 13-3102.
 - 43 (c) Dishonesty or fraud.
 - 44 (d) Arson.
 - 45 (e) Theft.
 - 46 (f) Domestic violence.

- 1 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has
2 the same elements as an offense listed in title 13, chapter 34 or 34.1.
- 3 (h) Sexual misconduct.
- 4 5. Not be on parole, on community supervision, on work furlough, on
5 home arrest, on release on any other basis or named in an outstanding arrest
6 warrant.
- 7 6. Not be serving a term of probation pursuant to a conviction for any
8 act of personal violence or domestic violence, as defined in section 13-3601,
9 or an offense that has the same elements as an offense listed in section
10 13-3601.
- 11 7. Not be ~~either~~ ANY of the following:
- 12 (a) Adjudicated mentally incompetent.
- 13 (b) Found to constitute a danger to self or others or to be
14 persistently or acutely disabled or gravely disabled pursuant to section
15 36-540.
- 16 (c) FOUND INCOMPETENT PURSUANT TO RULE 11, ARIZONA RULES OF CRIMINAL
17 PROCEDURE.
- 18 8. Not have a disability as defined in section 41-1461, unless that
19 person is a qualified individual as defined in section 41-1461.
- 20 9. Not have been convicted of acting or attempting to act as a
21 security guard or a security guard agency without a license if a license was
22 required.
- 23 10. Not be a registered sex offender.
- 24 B. The qualifying party for an agency license and the resident
25 manager, if a resident manager is required pursuant to section 32-2616, shall
26 have at least three years of full-time experience as a manager, supervisor or
27 administrator of a security guard agency or three years of full-time
28 supervisory experience with any federal, United States military, state,
29 county or municipal law enforcement agency. The qualifying party for an
30 agency license and the resident manager, if a resident manager is required
31 pursuant to section 32-2616, must substantiate managerial work experience
32 claimed as years of qualifying experience and provide the exact details as to
33 the character and nature of the experience on a form prescribed by the
34 department and certified by the employer. On written request, an employer
35 shall submit to the employee a written certification of prior work experience
36 within thirty calendar days. The written certification is subject to
37 independent verification by the department. If an employer goes out of
38 business, the employer shall provide registered employees with a complete and
39 accurate record of their work history. If an applicant is unable to supply
40 written certification from an employer in whole or in part, the applicant may
41 offer written certification from persons other than an employer covering the
42 same subject matter for consideration by the department. The burden of
43 proving the minimum years of experience is on the applicant.
- 44 C. The department may deny an agency license if the department
45 determines that the applicant is unfit based on a conviction, citation or
46 encounter with law enforcement for a statutory violation.

1 Sec. 8. Section 36-509, Arizona Revised Statutes, is amended to read:
2 36-509. Confidential records; immunity

3 A. A health care entity must keep records and information contained in
4 records confidential and not as public records, except as provided in this
5 section. Records and information contained in records may only be disclosed
6 to:

7 1. Physicians and providers of health, mental health or social and
8 welfare services involved in caring for, treating or rehabilitating the
9 patient.

10 2. Individuals to whom the patient or the patient's health care
11 decision maker has given authorization to have information disclosed.

12 3. Persons authorized by a court order.

13 4. Persons doing research only if the activity is conducted pursuant
14 to applicable federal or state laws and regulations governing research.

15 5. The state department of corrections in cases in which prisoners
16 confined to the state prison are patients in the state hospital on authorized
17 transfers either by voluntary admission or by order of the court.

18 6. Governmental or law enforcement agencies if necessary to:

19 (a) Secure the return of a patient who is on unauthorized absence from
20 any agency where the patient was undergoing evaluation and treatment.

21 (b) Report a crime on the premises.

22 (c) Avert a serious and imminent threat to an individual or the
23 public.

24 7. Persons, including family members, actively participating in the
25 patient's care, treatment or supervision. A health care provider may only
26 release information relating to the patient's diagnosis, prognosis, need for
27 hospitalization, anticipated length of stay, discharge plan, medication,
28 medication side effects and short-term and long-term treatment goals. A
29 health care provider may make this release only after the treating
30 professional or that person's designee interviews the patient or the
31 patient's health care decision maker and the patient or the patient's health
32 care decision maker does not object, unless federal or state law permits the
33 disclosure. If the patient does not have the opportunity to object to the
34 disclosure because of incapacity or an emergency circumstance and the
35 patient's health care decision maker is not available to object to the
36 release, the health care provider in the exercise of professional judgment
37 may determine if the disclosure is in the best interests of the patient and,
38 if so, may release the information authorized pursuant to this paragraph. A
39 decision to release or withhold information is subject to review pursuant to
40 section 36-517.01. The health care provider must record the name of any
41 person to whom any information is given under this paragraph.

42 8. A state agency that licenses health professionals pursuant to title
43 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the
44 course of investigating complaints of professional negligence, incompetence
45 or lack of clinical judgment.

46 9. A state or federal agency that licenses health care providers.

1 10. A governmental agency or a competent professional, as defined in
2 section 36-3701, in order to comply with chapter 37 of this title.

3 11. Human rights committees established pursuant to title 41,
4 chapter 35. Any information released pursuant to this paragraph shall comply
5 with the requirements of section 41-3804 and applicable federal law and shall
6 be released without personally identifiable information unless the personally
7 identifiable information is required for the official purposes of the human
8 rights committee. Case information received by a human rights committee
9 shall be maintained as confidential. For the purposes of this paragraph,
10 "personally identifiable information" includes a person's name, address, date
11 of birth, social security number, tribal enrollment number, telephone or
12 telefacsimile number, driver license number, places of employment, school
13 identification number and military identification number or any other
14 distinguishing characteristic that tends to identify a particular person.

15 12. A patient or the patient's health care decision maker pursuant to
16 section 36-507.

17 13. The department of public safety OR ANOTHER LAW ENFORCEMENT AGENCY
18 by the court to comply with the requirements of section 36-540, ~~subsection~~
19 ~~SUBSECTIONS O, P AND Q.~~

20 14. A third party payor or the payor's contractor as permitted by the
21 health insurance portability and accountability act privacy standards, 45
22 Code of Federal Regulations part 160 and part 164, subpart E.

23 15. A private entity that accredits the health care provider and with
24 whom the health care provider has an agreement requiring the agency to
25 protect the confidentiality of patient information.

26 16. The legal representative of a health care entity in possession of
27 the record for the purpose of securing legal advice.

28 17. A person or entity as otherwise required by state or federal law.

29 18. A person or entity as permitted by the federal regulations on
30 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

31 19. A person or entity to conduct utilization review, peer review and
32 quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

33 20. A person maintaining health statistics for public health purposes
34 as authorized by law.

35 21. A grand jury as directed by subpoena.

36 22. A person or entity that provides services to the patient's health
37 care provider, as defined in section 12-2291, and with whom the health care
38 provider has a business associate agreement that requires the person or
39 entity to protect the confidentiality of patient information as required by
40 the health insurance portability and accountability act privacy standards, 45
41 Code of Federal Regulations part 164, subpart E.

42 B. Information and records obtained in the course of evaluation,
43 examination or treatment and submitted in any court proceeding pursuant to
44 this chapter or title 14, chapter 5 are confidential and are not public
45 records unless the hearing requirements of this chapter or title 14, chapter
46 5 require a different procedure. Information and records that are obtained

1 pursuant to this section and submitted in a court proceeding pursuant to
2 title 14, chapter 5 and that are not clearly identified by the parties as
3 confidential and segregated from nonconfidential information and records are
4 considered public records.

5 C. Notwithstanding subsections A and B of this section, the legal
6 representative of a patient who is the subject of a proceeding conducted
7 pursuant to this chapter and title 14, chapter 5 has access to the patient's
8 information and records in the possession of a health care entity or filed
9 with the court.

10 D. A health care entity that acts in good faith under this article is
11 not liable for damages in any civil action for the disclosure of records or
12 payment records that is made pursuant to this article or as otherwise
13 provided by law. The health care entity is presumed to have acted in good
14 faith. This presumption may be rebutted by clear and convincing evidence.

15 Sec. 9. Section 36-540, Arizona Revised Statutes, is amended to read:
16 36-540. Court options

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

23 1. Treatment in a program of outpatient treatment.

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

26 3. Inpatient treatment in a mental health treatment agency, in a
27 hospital operated by or under contract with the United States department of
28 veterans affairs to provide treatment to eligible veterans pursuant to
29 article 9 of this chapter, in the state hospital or in a private hospital, if
30 the private hospital agrees, subject to the limitations of section 36-541.

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

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

37 1. Determines that all of the following apply:

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

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

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

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

1 2. Is presented with and approves a written treatment plan that
2 conforms with the requirements of section 36-540.01, subsection B. If the
3 treatment plan presented to the court pursuant to this subsection provides
4 for supervision of the patient under court order by a mental health agency
5 that is other than the mental health agency that petitioned or requested the
6 county attorney to petition the court for treatment pursuant to section
7 36-531, the treatment plan must be approved by the medical director of the
8 mental health agency that will supervise the treatment pursuant to subsection
9 E of this section.

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

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

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

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

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

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

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

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

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

- 39 1. Ninety days for a person found to be a danger to self.
- 40 2. One hundred eighty days for a person found to be a danger to
41 others.
- 42 3. One hundred eighty days for a person found to be persistently or
43 acutely disabled.
- 44 4. Three hundred sixty-five days for a person found to be gravely
45 disabled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 O. If a person has been found, as a result of a mental disorder, to
13 constitute a danger to self or others or to be persistently or acutely
14 disabled or gravely disabled and the court enters an order for treatment
15 pursuant to subsection A of this section, the court shall ~~grant access to~~
16 TRANSMIT the person's name, SEX, date of birth, social security number, IF
17 AVAILABLE, and date of ~~commitment~~ THE ORDER FOR TREATMENT to the CENTRALIZED
18 CASE INDEX MAINTAINED BY THE SUPREME COURT. THE SUPREME COURT SHALL TRANSMIT
19 THE INFORMATION TO THE department of public safety to comply with the
20 requirements of title 13, chapter 31 and title 32, chapter 26. THE
21 DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO THE NATIONAL
22 INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

23 P. THE INFORMATION OF A PERSON WHO IS ORDERED INTO TREATMENT SHALL BE
24 MAINTAINED IN THE CENTRALIZED CASE INDEX. THE SUPERIOR COURT MAY ACCESS THE
25 INFORMATION TO ENFORCE OR FACILITATE A TREATMENT ORDER. THE DEPARTMENT OF
26 PUBLIC SAFETY MAY PROVIDE A LAW ENFORCEMENT AGENCY ACCESS TO THE INFORMATION
27 ONLY TO ENFORCE AN ORDER OR TO ASSIST IN AN INVESTIGATION OR IN RETURNING
28 PROPERTY.

29 Q. ON REQUEST, THE COURT SHALL PROVIDE CERTIFIED COPIES OF THE
30 COMMITMENT ORDER TO A LAW ENFORCEMENT OR PROSECUTING AGENCY THAT IS
31 INVESTIGATING OR PROSECUTING A PROHIBITED POSSESSOR AS DEFINED IN SECTION
32 13-3101.

33 Sec. 10. Effective date

34 This act is effective from and after December 31, 2014.