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

CHAPTER 261

HOUSE BILL 2322

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)

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

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

13-609. Transfer of criminal justice information; definition

A. IF A PERSON IS FOUND INCOMPETENT BY A COURT PURSUANT TO RULE 11, ARIZONA RULES OF CRIMINAL PROCEDURE, THE COURT SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE INCOMPETENCY FINDING TO THE SUPREME COURT. THE SUPREME COURT SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE INCOMPETENCY FINDING TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE INCOMPETENCY FINDING TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

B. IF A PERSON IS SUBSEQUENTLY FOUND COMPETENT, THE COURT SHALL TRANSMIT THE CASE INFORMATION TO THE SUPREME COURT. THE SUPREME COURT SHALL TRANSMIT THE FINDING OF COMPETENCY TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE FINDING OF COMPETENCY TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

C. IF A PERSON IS FOUND GUILTY EXCEPT INSANE, THE COURT SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE VERDICT TO THE SUPREME COURT. THE SUPREME COURT SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE VERDICT TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE VERDICT TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

D. ON REQUEST, THE CLERK OF THE COURT THAT ORIGINALLY FOUND THE DEFENDANT INCOMPETENT OR IN WHICH THE DEFENDANT WAS FOUND GUILTY EXCEPT INSANE SHALL PROVIDE CERTIFIED COPIES OF THE ORDER TO A LAW ENFORCEMENT OR PROSECUTING AGENCY THAT IS INVESTIGATING OR PROSECUTING A PROHIBITED POSSESSOR AS DEFINED IN SECTION 13-3101.

E. FOR THE PURPOSES OF THIS SECTION, "CASE INFORMATION" MEANS THE PERSON'S NAME, SEX AND DATE OF BIRTH, THE LAST FOUR DIGITS OF THE PERSON'S SOCIAL SECURITY NUMBER, IF AVAILABLE, THE COURT CASE NUMBER AND THE COURT ORIGINATING AGENCY IDENTIFICATION NUMBER.

Sec. 2. Section 13-925, Arizona Revised Statutes, is amended to read:

13-925. Restoration of right to possess a firearm; mentally ill persons; petition

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

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

C. On THE filing of the petition the court shall set a hearing. At the hearing, the person shall present psychological or psychiatric evidence in support of the petition. The state shall provide the court with the

person's criminal history records, if any. The court shall receive evidence on and consider the following before granting or denying the petition:

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

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

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

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

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

6. Any other evidence deemed admissible by the court.

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

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

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

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

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

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

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

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

13-3101. Definitions

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

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

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

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

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

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

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

7. "Prohibited possessor" means any person:

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

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

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

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

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

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

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

(iii) Certain diplomats.

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

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

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

(g) WHO IS FOUND GUILTY EXCEPT INSANE.

8. "Prohibited weapon":

(a) Includes the following:

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

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

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

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

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

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

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

(viii) An improvised explosive device.

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

(b) Does not include:

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

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

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

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

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

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

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

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

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

1. The interest of the petitioner.

2. The name, age, residence and address of the alleged incapacitated person.

3. The name, address and priority for appointment of the person whose appointment is sought.

4. The name and address of the conservator, if any, of the alleged incapacitated person.

5. The name and address of the nearest relative of the alleged incapacitated person known to the petitioner.

6. A general statement of the property of the alleged incapacitated person, with an estimate of its value and including any compensation, insurance, pension or allowance to which the person is entitled.

7. The reason why appointment of a guardian or any other protective order is necessary.

8. The type of guardianship requested. If a general guardianship is requested, the petition must state that other alternatives have been explored and why a limited guardianship is not appropriate. If a limited guardianship is requested, the petition also must state what specific powers are requested.

9. If a custodial order was previously entered regarding an alleged incapacitated person in a child custody action or similar proceeding in this

state or another jurisdiction and the petitioner or proposed guardian is a parent or nonparent custodian of the alleged incapacitated person, the court and case number for that action or proceeding.

10. IF THE APPOINTMENT OF A GUARDIAN IS NECESSARY DUE SOLELY TO THE PHYSICAL INCAPACITY OF THE ALLEGED INCAPACITATED PERSON.

C. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding. The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. If the alleged incapacitated person has an established relationship with a physician, psychologist or registered nurse who is determined by the court to be qualified to evaluate the capacity of the alleged incapacitated person, the court may appoint the alleged incapacitated person's physician, psychologist or registered nurse pursuant to this subsection. The investigator and the person conducting the examination shall submit their reports in writing to the court. In addition to information required under subsection D, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the person will be detained or reside if the requested appointment is made and submit a report in writing to the court. The alleged incapacitated person is entitled to be present at the hearing and to see or hear all evidence bearing on that person's condition. The alleged incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed examiner and investigator, and to trial by jury. The court may determine the issue at a closed hearing if the alleged incapacitated person or that person's counsel so requests.

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

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

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

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

4. A list of all medications the alleged incapacitated person is receiving, the dosage of the medications and a description of the effects

each medication has on the person's behavior to the best of the declarant's knowledge.

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

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

Sec. 5. Section 14-5304, Arizona Revised Statutes, is amended to read:

14-5304. Findings; limitations; filing; fingerprinting

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

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

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

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

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

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

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

E. The court may require each person who seeks appointment as a guardian to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. The court shall submit the person's completed fingerprint card to the department of public safety. The person shall bear the cost of obtaining the person's criminal history record information. The cost shall not exceed the actual cost of obtaining the person's criminal history record information. Criminal history records checks shall be conducted pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. This subsection does not apply to a fiduciary who is licensed pursuant to section 14-5651 or an employee of a financial institution.

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

G. UNLESS THE COURT MAKES A SPECIFIC FINDING THAT THE APPOINTMENT OF A GUARDIAN IS DUE SOLELY TO THE WARD'S PHYSICAL INCAPACITY UNDER SUBSECTION F OF THIS SECTION, AT THE TIME OF APPOINTING A GUARDIAN, THE COURT SHALL TRANSMIT THE WARD'S NAME, SEX AND DATE OF BIRTH, THE LAST FOUR DIGITS OF THE WARD'S SOCIAL SECURITY NUMBER, IF AVAILABLE, THE COURT CASE NUMBER, THE COURT ORIGINATING AGENCY IDENTIFICATION NUMBER AND THE DATE OF THE GUARDIAN'S APPOINTMENT TO THE SUPREME COURT. THE SUPREME COURT SHALL TRANSMIT THE INFORMATION TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC

SAFETY SHALL TRANSMIT THE INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

Sec. 6. Section 14-5307, Arizona Revised Statutes, is amended to read:

14-5307. Substitution or resignation of guardian; termination of incapacity

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

B. The ward may petition the court for an order that the ward is no longer incapacitated or petition for substitution of the guardian at any time. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this request may be found in contempt of court.

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

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

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

F. ON TERMINATION OF THE INCAPACITY, THE SUPREME COURT SHALL TRANSMIT THE ORDER TERMINATING THE INCAPACITY TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

Sec. 7. Section 32-2612, Arizona Revised Statutes, is amended to read:

32-2612. Qualifications of applicant for agency license; substantiation of work experience

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

1. Be at least twenty-one years of age.

2. Be a citizen or a legal resident of the United States who is authorized to seek employment in the United States.

3. Not have been convicted of any felony or currently be under indictment for a felony.

4. Within the five years immediately preceding the application for an agency license, not have been convicted of any misdemeanor act involving:

(a) Personal violence or force against another person or threatening to commit any act of personal violence or force against another person.

(b) Misconduct involving a deadly weapon as provided in section 13-3102.

(c) Dishonesty or fraud.

(d) Arson.

(e) Theft.

(f) Domestic violence.

(g) A violation of title 13, chapter 34 or 34.1 or an offense that has the same elements as an offense listed in title 13, chapter 34 or 34.1.

(h) Sexual misconduct.

5. Not be on parole, on community supervision, on work furlough, on home arrest, on release on any other basis or named in an outstanding arrest warrant.

6. Not be serving a term of probation pursuant to a conviction for any act of personal violence or domestic violence, as defined in section 13-3601, or an offense that has the same elements as an offense listed in section 13-3601.

7. Not be ~~either~~ ANY of the following:

(a) Adjudicated mentally incompetent.

(b) Found to constitute a danger to self or others or to be persistently or acutely disabled or gravely disabled pursuant to section 36-540.

(c) FOUND INCOMPETENT PURSUANT TO RULE 11, ARIZONA RULES OF CRIMINAL PROCEDURE.

(d) FOUND GUILTY EXCEPT INSANE.

8. Not have a disability as defined in section 41-1461, unless that person is a qualified individual as defined in section 41-1461.

9. Not have been convicted of acting or attempting to act as a security guard or a security guard agency without a license if a license was required.

10. Not be a registered sex offender.

B. The qualifying party for an agency license and the resident manager, if a resident manager is required pursuant to section 32-2616, shall

have at least three years of full-time experience as a manager, supervisor or administrator of a security guard agency or three years of full-time supervisory experience with any federal, United States military, state, county or municipal law enforcement agency. The qualifying party for an agency license and the resident manager, if a resident manager is required pursuant to section 32-2616, must substantiate managerial work experience claimed as years of qualifying experience and provide the exact details as to the character and nature of the experience on a form prescribed by the department and certified by the employer. On written request, an employer shall submit to the employee a written certification of prior work experience within thirty calendar days. The written certification is subject to independent verification by the department. If an employer goes out of business, the employer shall provide registered employees with a complete and accurate record of their work history. If an applicant is unable to supply written certification from an employer in whole or in part, the applicant may offer written certification from persons other than an employer covering the same subject matter for consideration by the department. The burden of proving the minimum years of experience is on the applicant.

C. The department may deny an agency license if the department determines that the applicant is unfit based on a conviction, citation or encounter with law enforcement for a statutory violation.

Sec. 8. Section 36-509, Arizona Revised Statutes, is amended to read:

36-509. Confidential records; immunity

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

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

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

3. Persons authorized by a court order.

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

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

6. Governmental or law enforcement agencies if necessary to:

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

(b) Report a crime on the premises.

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

7. Persons, including family members, actively participating in the patient's care, treatment or supervision. A health care provider may only

release information relating to the patient's diagnosis, prognosis, need for hospitalization, anticipated length of stay, discharge plan, medication, medication side effects and short-term and long-term treatment goals. A health care provider may make this release only after the treating professional or that person's designee interviews the patient or the patient's health care decision maker and the patient or the patient's health care decision maker does not object, unless federal or state law permits the disclosure. If the patient does not have the opportunity to object to the disclosure because of incapacity or an emergency circumstance and the patient's health care decision maker is not available to object to the release, the health care provider in the exercise of professional judgment may determine if the disclosure is in the best interests of the patient and, if so, may release the information authorized pursuant to this paragraph. A decision to release or withhold information is subject to review pursuant to section 36-517.01. The health care provider must record the name of any person to whom any information is given under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

21. A grand jury as directed by subpoena.

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

B. Information and records obtained in the course of evaluation, examination or treatment and submitted in any court proceeding pursuant to this chapter or title 14, chapter 5 are confidential and are not public records unless the hearing requirements of this chapter or title 14, chapter 5 require a different procedure. Information and records that are obtained pursuant to this section and submitted in a court proceeding pursuant to title 14, chapter 5 and that are not clearly identified by the parties as confidential and segregated from nonconfidential information and records are considered public records.

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

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

Sec. 9. 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 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~~ IS 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~~ TRANSMIT the person's name, SEX, date of birth, social security number, IF AVAILABLE, and date of ~~commitment~~ THE ORDER FOR TREATMENT to the SUPREME COURT. THE SUPREME COURT SHALL TRANSMIT THE INFORMATION TO THE department of public safety to comply with the requirements of title 13, chapter 31 and title 32, chapter 26. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM. THE SUPERIOR COURT MAY ACCESS THE INFORMATION OF A PERSON WHO IS ORDERED INTO TREATMENT TO ENFORCE OR FACILITATE A TREATMENT ORDER.

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

Sec. 10. Effective date

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

APPROVED BY THE GOVERNOR APRIL 30, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2014.