



ARIZONA STATE SENATE
Fifty-Second Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1315

incompetent and dangerous defendants; treatment

Purpose

Establishes procedures for determining if a defendant is dangerous and subject to involuntary commitment, allows a county to establish a behavioral health advisory board and modifies procedures related to civil commitment of persons incompetent to stand trial.

Background

Statute dictates that a person may not be tried, convicted, sentenced or punished for an offense if the court determines that the person is incompetent to stand trial (*incompetent*). A defendant is incompetent if, as a result of a mental illness, defect or disability, a defendant is unable to understand the nature and object of proceedings or to assist in the defendant's defense. Any party or the court may request that a defendant be examined to determine the defendant's competency at any time after being charged with a criminal offense. The court may order a defendant to be involuntarily confined until the examination is completed only if the court determines that certain conditions are present. The court must hold a hearing to determine if the defendant is competent to stand trial within 30 days after the examination report is submitted (A.R.S. §§ 13-4501 through 13-4510).

Statute provides requirements and procedures for civil commitment. If a court finds by clear and convincing evidence that a proposed patient, as a result of mental disorder, is a danger to self, is a danger to others, has a persistent or acute disability or a grave disability and in need of treatment, and is either unwilling or unable to accept voluntary treatment, the court must order the patient to undergo treatment in a program of outpatient treatment, treatment in a program consisting of combined inpatient and outpatient treatment or inpatient treatment. The inpatient treatment may be in a mental health treatment agency, a hospital operated by or under contract with the United States Department of Veterans, the state hospital or in a private hospital (A.R.S. § 36-501 et seq.).

A person may be found guilty except insane (GEI) if, at the time of the commission of the criminal act, the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. If a defendant is found GEI, the court must determine the sentence the defendant could have received if the defendant had not been found insane and the judge must sentence the defendant to a term of incarceration in the Department of Corrections and order the defendant to be placed under the jurisdiction of the Psychiatric Security Review Board (PSRB) and committed to a state mental health facility under the Department of Health Services (DHS) for that term (A.R.S. § 13-502).

The fiscal impact to the state General Fund associated with this legislation is undetermined.

Provisions

Guilty Except Insane

1. Modifies release eligibility for persons found GEI to exclude offenders who have committed a serious offense, violent or aggravated felony, sexual offense or sexual exploitation of a minor, instead of a criminal act that caused or threatened to cause death or serious physical injury.
2. Allows a court, at a hearing held to determine release from confinement or civil commitment of a person found GEI, to refer the person to a behavioral health advisory board (Board).
3. Requires the court to place a person under the jurisdiction of the PSRB if the person is found GEI and has committed a serious offense, violent or aggravated felony, sexual offense or sexual exploitation of a minor, instead of a criminal act that caused or threatened to cause death or serious physical injury.

Competency to Stand Trial

4. Allows a court, upon request of the county attorney, to order the defendant to be evaluated as a sexually violent person if charged with a sexually violent offense, as part of the competency examination.
5. Allows the court to order a defendant involuntarily confined until the competency examination is completed if the defendant is charged with a serious offense or violent or aggravated felony.
6. Requires the expert's report of the competency examination (report) to include any instrument or tool used to assess the defendant's propensity to reoffend.
7. Requires, if the defendant is determined to be incompetent, that the report include:
 - a) the nature of the mental disorder, disease or defect or of any personality or other disorder that may affect the defendant's propensity to reoffend; and
 - b) whether the prognosis includes a determination that there is no substantial probability that the defendant will regain competency within 21 months, the defendant should be considered dangerous or may be a sexually violent person.
8. Allows a medical supervisor to file a petition to refer a discharged or released defendant pursuant to a restoration to competency order to a Board.

Dangerousness Hearing

9. Allows a party to request the court do the following, in addition to appointing a guardian, if the defendant is incompetent and there is no substantial probability of regaining competency within 21 months:

- a) hold a hearing to determine whether the defendant is dangerous;
 - b) direct the institution of a civil commitment proceeding; or
 - c) refer the defendant to the Board.
10. Requires the state to prove by clear and convincing evidence, at a dangerousness hearing, that the defendant is dangerous and committed the charged offense.
 11. Allows a court to hold a dangerousness hearing concurrently with a civil commitment hearing.
 12. Allows the court, if it does not hold a dangerousness hearing, to also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the defendant's medical expenses.
 13. Allows the court, on its own or in response to a party's motion, to retain jurisdiction over the defendant:
 - a) throughout the time necessary to determine the defendant's appropriate treatment options and the implementation of the court's treatment orders; and
 - b) until the treatment orders expire or the defendant is otherwise discharged from treatment by court order.
 14. Requires the defendant to be returned to the custody of the sheriff and the court may explore other treatment options if the court is notified that a defendant was not evaluated after being remanded to the DHS for the institution of civil commitment proceedings.
 15. Allows the court to enter an order directing that the person be taken into custody for purposes of disposition if the defendant is out of custody.
 16. Requires the mental health expert to provide the report to the prosecuting agency in order to file a petition for detention if a mental health expert has determined that the defendant may be a sexually violent person.
 17. Defines *dangerous* as a person charged with a serious offense or violent or aggravated felony, and as a result of a mental illness, defect or disability, is likely to commit an act of violence or cause serious physical injury to another person.

Behavioral Health Advisory Board

18. Allows a county to establish a Board to recommend to the court a continuum of care plan for a defendant and supervise the delivery of services to the defendant.
19. Permits a Board to consist of:
 - a) a county clinical court liaison;
 - b) the county attorney or its designee;
 - c) the county public defender or its designee;
 - d) a representative of a regional behavioral health authority;
 - e) a county behavioral health administrator or its designee; and

- f) a licensed behavioral health examiner, a county administrator appointee.
- 20. Requires the Board, at the court's direction, to develop a continuum of care plan (plan) for a defendant with the goal of maximizing community resources to best protect and care for the defendant's needs while protecting the public.
- 21. Requires the court to approve the plan and to require the Board to report the defendant's progress at a frequency determined by the court, but that is at least every 180 days during the first year of treatment and every 365 days thereafter.
- 22. Allows the court to set additional review hearings at its discretion.
- 23. Requires the plan to remain in effect until terminated by the court or the expiration of the presumptive sentence the defendant could have received if the defendant had been convicted as charged.
- 24. Permits a defendant to seek to alter the plan or to be discharged from the plan at the hearing held to approve the defendant's plan and requires the defendant to be provided counsel.
- 25. Requires the defendant to provide notice to the court and the prosecuting agency if the defendant intends to be discharged from or alter the plan.
- 26. Allows the Board, without court order, to alter a defendant's plan to meet any acute treatment or other needs, as long as the Board provides notice to the court of any alteration lasting longer than 30 days.
- 27. Requires the court to set a hearing and give notice of the hearing to the prosecuting agency.
- 28. Requires the defendant to be provided counsel.
- 29. Requires the Board or the parties to provide the court with any relevant information necessary to revise or maintain the defendant's plan.
- 30. Prohibits a defendant from being discharged from the defendant's plan without an order of the court after a hearing.
- 31. Permits the Board to request a hearing at any time and requires notice to be provided to the prosecuting agency with reasons for the request.
- 32. Permits the prosecuting agency to attend and present evidence or argument at a hearing.
- 33. Allows a county to contract with a Board in another county to provide continuum of care services to persons for whom the superior court has retained jurisdiction over the incompetent defendant.
- 34. Defines *continuum of care*.

Civil Commitment Application and Petition

35. Requires an application and petition for evaluation to include any known criminal history of the proposed patient, including whether the person has ever been found incompetent.
36. Requires a person to be remanded to the court if the petition for evaluation is not filed because it has been determined that the person does not need an evaluation because the person is incompetent.
37. Allows the court to enter an order directing that the person be taken into custody for if the person is out of custody.
38. Requires the court that determined incompetency and the prosecuting agency to be notified if the order for evaluation of an incompetent person expires, which may include a pickup order directing that the person be taken into custody for further proceedings.
39. Requires the medical director of an evaluation agency to immediately notify the court of the director's intention to release an incompetent and dangerous person being evaluated on an inpatient basis, and requires the court to order the incompetent person returned to custody.
40. Exempts a defendant who is incompetent or dangerous and who is being evaluated on an inpatient basis from the requirement of release after 72 hours.
41. Requires a petition for treatment and an application for emergency admission to set forth any known criminal history of the person, including whether the person has been found incompetent or dangerous.

Change to Voluntary Status

42. Requires the court to immediately notify the prosecuting agency of its intention to approve the admission or discharge of an incompetent and dangerous defendant when the court approves admitting a patient to voluntary treatment.
43. Allows the court to direct that the patient be returned to custody for disposition of proceedings for incompetent defendants.
44. Allows the court to enter an order directing that a patient out of custody be taken into custody.

Court Treatment Options

45. Requires, before placing a patient in the least restrictive alternative treatment, that the court consider whether the patient has been found incompetent and dangerous.
46. Allows the court to order treatment up to six years if the patient has been found to be incompetent and dangerous.

47. Allows the patient to request release from treatment every two years after the court orders treatment.
48. Requires the court to notify the prosecuting agency and set a hearing to determine whether the defendant is no longer dangerous or is no longer in need of treatment.
49. Allows a court, on its own motion, to authorize and direct a peace officer to take a patient who refuses to comply with an order for inpatient treatment into protective custody and transport the patient to inpatient treatment.
50. Requires an authorization, directive or order issued to a peace officer to take custody of the patient to include the names and telephone numbers of the patient's case manager, guardian, spouse, next of kin or significant other persons as applicable (identifying information).
51. Exempts patients found incompetent and dangerous from the maximum periods of inpatient treatment that a court may order.
52. Permits a court to order an assessment to be conducted to determine the patient's eligibility for private insurance or public benefits that may be applied to the expenses of the defendant's medically necessary maintenance and treatment.
53. Requires a court, if it determines that an incompetent and dangerous person is not in need of treatment, to immediately notify the court that made the incompetency and dangerous determinations and the prosecuting agency.
54. Allows the court to enter an order directing the person to be taken into custody if the person is out of custody for purposes of making a proper disposition.

Conditional Outpatient Treatment

55. Changes the offenses committed by a patient that require the medical director to notify the prosecuting agency of:
 - a) a civil commitment order expiring or terminating; and
 - b) whether the patient is discharged to outpatient treatment.
56. Requires the medical director to provide this notice at least 10 days, instead of 5 days, before the anticipated date of the expiration, termination or discharge.
57. Requires copies of an amended outpatient treatment plan, including an order to rescind an order, to be filed with the court that issued the treatment order and if the patient is incompetent, to the court as well as the prosecuting agency.
58. Requires the medical director to obtain approval of the court before authorizing the patient to leave the treatment agency if the patient has been found to be dangerous.

59. Requires the court to approve, and the prosecuting agency to be notified, of any individualized treatment plan that includes unaccompanied leave for a patient who has been found to be dangerous.

Non-compliance with outpatient treatment

60. Requires immediate notice to be provided to the court, and if the patient is also dangerous, to the prosecuting agency, at any time a patient is noncompliant with a condition of outpatient treatment.
61. Specifies that outpatient noncompliance refers to conditions that include periodic reporting, continuation of medication, submission to testing, travel restrictions, residency requirements, consumption of spirituous liquor or drugs or any other condition imposed by court order or the medical director.
62. Allows the court to enter any order necessary to maintain the patient's health, safety and treatment and to protect the public, including rescinding the outpatient treatment order.
63. Allows a court to enter an order directing a peace officer to take the person into custody and return the patient to the inpatient treatment facility.
64. Requires the order to indicate whether the patient should be considered dangerous and include the patient's identifying information.
65. Requires the patient to be informed of the patient's right to judicial review and right to consult with counsel if the court rescinds an order for outpatient treatment for noncompliance with a condition of outpatient treatment.

Release or discharge from treatment

66. Prohibits a person who is ordered to undergo treatment and who is incompetent from being released or discharged from treatment, before the expiration of the period for treatment ordered by the court, unless the medical director first gives notice.
67. Requires the medical director to notify criminal court and the prosecuting agency at least 10 days, instead of at least 5 days, before the anticipated date of the expiration, termination or discharge of a civil commitment order of an incompetent defendant who was charged with a serious offense, violent or aggravated felony, sexual offense or sexual exploitation of a minor.
68. Stipulates that procedures for discharging a patient by the medical director are subject to the requirement that the court must notify the county attorney and set a hearing to determine whether the defendant is no longer dangerous or is no longer in need of treatment.
69. Requires the medical director to immediately provide notice to a criminal court of the intent to release a patient who is dangerous and found to have a grave disability or a persistent or

acute disability. The medical director must also provide notice to the prosecuting agency at least 10 days before the patient's anticipated release.

Unauthorized Patient Absences

70. Requires the medical director to request a peace officer to take the patient into custody and deliver the patient to the agency within seven days after the beginning of an unauthorized absence from treatment.
71. Requires the medical director to notify the court, if the absent patient is also incompetent and dangerous, as soon as the agency knows or should have reasonably known of the patient's unauthorized absence.
72. Permits the court to enter any order necessary to take the patient into custody, return the patient to the agency and protect the public.
73. Requires any order directing a peace officer to take the patient into custody to include the patient's identifying information.
74. Specifies that the period of court-ordered treatment is tolled during the time the patient is noncompliant with treatment orders until the compliance.
75. Requires the patient to remain enrolled with the mental health treatment agency during the patient's unauthorized absence until the expiration of the treatment order or unless otherwise ordered by the court.
76. Requires the court and the prosecuting agency to be notified of a patient's request for a hearing to determine mental status and need for treatment after a 90-day unauthorized absence. The criminal court may elect to conduct the hearing and the county attorney may present evidence and argument.

Miscellaneous

77. Modifies the definition of *agency*, as it pertains to treatment of sexually violent persons, to include any mental health treatment.
78. Requires the court to order the medical director to provide the patient's records, including medical and treatment records, to the court and the prosecuting agency at various hearings within the civil commitment process where an incompetent defendant's status may change.
79. Makes technical and conforming changes.
80. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Changes the definition of *dangerous* to state that the person must be likely to commit an act of violence instead of specifically another serious offense or violent or aggravated felony.
2. Removes references to communications being made to a criminal court and instead refers to court more broadly.
3. Removes the ability for the court to consider hearsay evidence in dangerousness hearings.
4. Changes references of county attorney to prosecuting agency.
5. Provides that a defendant is to be provided with counsel if he initiates an action to be discharged from a continuum of care plan.
6. Allows the court to order a patient who should be in custody to be taken into custody in certain dispositions during a civil commitment proceeding.
7. Removes language that prohibits an incompetent patient from being treated on a voluntary basis based on the medical director's decision and instead requires the court to notify a prosecuting agency of its intention to approve the admission or discharge.
8. Increases the time in which a medical director is required to notify the court and the prosecuting agency if a civil commitment order expires or is terminated, or if the patient is discharged to outpatient treatment from 7 days to 10 days.
9. Removes language from the definition of *agency* in the sexually violent persons statute that would require the superior court to have jurisdiction over a defendant being evaluated or who has been found to be incompetent.

Senate Action

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Prepared by Senate Research

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