

PROPOSED AMENDMENT
SENATE AMENDMENTS TO S.B. 1412
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 13-4501, Arizona Revised Statutes, is amended to
3 read:

4 13-4501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Clinical liaison" means a mental health expert or any other
7 individual who has experience and training in mental health or developmental
8 disabilities and who is qualified and appointed by the court to aid in
9 coordinating the treatment or training of individuals who are found
10 incompetent to stand trial. If intellectual disability is an issue, the
11 clinical liaison shall be an expert in intellectual disabilities.

12 2. "DANGEROUS" MEANS, EXCEPT AS USED IN PARAGRAPH 7 OF THIS SECTION, A
13 THREAT TO PUBLIC SAFETY AND IS LIKELY, AS A RESULT OF A MENTAL ILLNESS,
14 DEFECT OR DISABILITY, TO COMMIT AN ACT OF VIOLENCE OR CAUSE SERIOUS PHYSICAL
15 INJURY TO ANOTHER PERSON.

16 ~~2.~~ 3. "Incompetent to stand trial" means that as a result of a mental
17 illness, defect or disability a defendant is unable to understand the nature
18 and object of the proceeding or to assist in the defendant's defense. In the
19 case of a person under eighteen years of age when the issue of competency is
20 raised, incompetent to stand trial also means a person who does not have
21 sufficient present ability to consult with the person's lawyer with a
22 reasonable degree of rational understanding or who does not have a rational
23 and factual understanding of the proceedings against the person. The
24 presence of a mental illness, defect or disability alone is not grounds for
25 finding a defendant incompetent to stand trial.

1 ~~3.~~ 4. "Mental health expert" means a physician who is licensed
2 pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed
3 pursuant to title 32, chapter 19.1 and who is:

4 (a) Familiar with this state's competency standards and statutes AND
5 CRIMINAL AND INVOLUNTARY COMMITMENT STATUTES.

6 (b) Familiar with the treatment, training and restoration programs
7 that are available in this state.

8 (c) Certified by the court as meeting court developed guidelines using
9 recognized programs or standards.

10 ~~4.~~ 5. "Mental illness, defect or disability" means a psychiatric or
11 neurological disorder that is evidenced by behavioral or emotional symptoms,
12 including congenital mental conditions, conditions resulting from injury or
13 disease and developmental disabilities as defined in section 36-551.

14 6. "SECURE MENTAL HEALTH FACILITY" MEANS A LICENSED FACILITY UNDER THE
15 SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL.

16 ~~5.~~ 7. "Threat to public safety" means charged with the commission of
17 any of the following:

18 (a) A crime involving the discharge, use or threatening exhibition of
19 a deadly weapon or dangerous instrument or the infliction of physical injury
20 on another person.

21 (b) A dangerous crime against children pursuant to section 13-705.

22 (c) Two or more nondangerous felonies within a period of twenty-four
23 months.

24 Sec. 2. Section 13-4505, Arizona Revised Statutes, is amended to read:

25 13-4505. Appointment of experts; costs

26 A. If the court determines pursuant to section 13-4503 that reasonable
27 grounds exist for a competency examination, the court shall appoint two or
28 more mental health experts to examine the defendant, issue a report and, if
29 necessary, testify regarding the defendant's competency. The court, on its
30 own motion or ~~upon~~ ON motion of any party, may order that one of the mental
31 health experts appointed shall be a physician specializing in psychiatry and
32 licensed pursuant to title 32, chapter 13 or 17. The state and the

1 defendant, ~~upon~~ ON approval of the court, may stipulate to the appointment of
2 only one expert.

3 B. The court may order the defendant to submit to physical,
4 neurological or psychological examinations, if necessary, to adequately
5 determine the defendant's mental condition.

6 C. IF THE DEFENDANT IS CHARGED WITH A SEXUALLY VIOLENT OFFENSE AS
7 DEFINED IN SECTION 36-3701 AND THE COUNTY ATTORNEY REQUESTS, THE COURT MAY
8 ORDER A SCREENING OF THE DEFENDANT TO DETERMINE IF THE DEFENDANT IS A
9 SEXUALLY VIOLENT PERSON. ONE OF THE MENTAL HEALTH EXPERTS APPOINTED BY THE
10 COURT SHALL BE A COMPETENT PROFESSIONAL AS DEFINED IN SECTION 36-3701. IF
11 THAT EXPERT DETERMINES THAT THE DEFENDANT IS INCOMPETENT TO STAND TRIAL AND
12 NOT RESTORABLE TO COMPETENCY WITHIN TWENTY-ONE MONTHS, THE EXPERT SHALL
13 DETERMINE WHETHER THE DEFENDANT MAY BE A SEXUALLY VIOLENT PERSON.

14 ~~E.~~ D. The court shall order the defendant to pay the costs of the
15 court ordered examination, except that if the court finds the defendant is
16 indigent or otherwise unable to pay all or any part of the costs or if the
17 prosecution requested the examination, the court shall order the county to
18 pay the costs of the examination or, if the case is referred by a municipal
19 court judge, the court shall order the city to pay the costs of the
20 examination.

21 ~~D.~~ E. This section does not prohibit any party from retaining its own
22 expert to conduct any additional examinations at its own expense.

23 ~~E.~~ F. A person who is appointed as a mental health expert or clinical
24 liaison is entitled to immunity, except that the mental health expert or
25 clinical liaison may be liable for intentional, wanton or grossly negligent
26 acts that are done in the performance of the expert's or liaison's duties.

27 Sec. 3. Section 13-4508, Arizona Revised Statutes, is amended to read:

28 13-4508. Privilege against self-incrimination; sealed reports

29 A. The privilege against self-incrimination applies to any examination
30 that is ordered by the court pursuant to this chapter.

31 B. Any evidence or statement that is obtained during an examination is
32 not admissible at any proceeding to determine a defendant's guilt or

1 innocence unless the defendant presents evidence that is intended to rebut
2 the presumption of sanity.

3 C. Any statement made by the defendant during an examination or any
4 evidence resulting from that statement concerning any other event or
5 transaction is not admissible at any proceeding to determine the defendant's
6 guilt or innocence of any other criminal charges that are based on those
7 events or transactions, EXCEPT THAT A STATEMENT OR EVIDENCE MAY BE USED BY
8 ANY PARTY IN A HEARING TO DETERMINE IF THE DEFENDANT IS ELIGIBLE FOR
9 COMMITMENT PURSUANT TO SECTION 13-4518.

10 D. Any statement made by the defendant or any part of the evaluations
11 that is obtained during an examination may not be used for any purpose
12 without the written consent of the defendant or the defendant's guardian or a
13 court order that is entered by the court that ordered the examination or that
14 is conducting a dependency or severance proceeding.

15 E. After a plea of guilty or guilty except insane or the trial or
16 after the defendant is found to be unable to be restored to competence, the
17 court shall order all the reports submitted pursuant to this section sealed.
18 The court may order that the reports be opened only as follows:

19 1. For use by the court or defendant, or by the prosecutor if
20 otherwise permitted by law, for further competency or sanity evaluations OR
21 IN A HEARING TO DETERMINE WHETHER THE DEFENDANT IS DANGEROUS AND ELIGIBLE FOR
22 COMMITMENT PURSUANT TO SECTION 13-4518.

23 2. For statistical analysis.

24 3. When the records are deemed necessary to assist in mental health
25 treatment pursuant to section 13-502 or 13-4517.

26 4. For use by the probation department or the state department of
27 corrections if the defendant is in the custody of or is scheduled to be
28 transferred into the custody of the state department of corrections for the
29 purposes of assessment and supervision or monitoring of the defendant by that
30 department.

31 5. For use by a mental health treatment provider that provides
32 treatment to the defendant or that assesses the defendant for treatment.

1 6. For data gathering.

2 7. For scientific study.

3 F. Any statement made by the defendant during an examination that is
4 conducted pursuant to this chapter or any evidence resulting from that
5 statement is not subject to disclosure pursuant to section 36-509.

6 Sec. 4. Section 13-4509, Arizona Revised Statutes, is amended to read:
7 13-4509. Expert's report

8 A. An expert who is appointed pursuant to section 13-4505 shall submit
9 a written report of the examination to the court within ten working days
10 after the examination is completed. The report shall include at least the
11 following information:

12 1. The name of each mental health expert who examines the defendant.

13 2. A description of the nature, content, extent and results of the
14 examination and any test conducted **AND OF ANY INSTRUMENT OR TOOL USED TO**
15 **ASSESS WHETHER THE DEFENDANT IS LIKELY TO BE DANGEROUS.**

16 3. The facts on which the findings are based.

17 4. An opinion as to the competency of the defendant.

18 B. If the mental health expert determines that the defendant is
19 incompetent to stand trial, the report shall also include the following
20 information:

21 1. The nature of the mental disease, defect or disability that is the
22 cause of the incompetency.

23 2. The defendant's prognosis.

24 3. **THE NATURE OF THE MENTAL HEALTH DISORDER, DISEASE OR DEFECT OR OF**
25 **ANY PERSONALITY OR OTHER DISORDER THAT MAKES THE DEFENDANT LIKELY TO BE**
26 **DANGEROUS.**

27 ~~3.~~ 4. The most appropriate form and place of treatment in this state,
28 based on the defendant's therapeutic needs and potential threat to public
29 safety.

30 ~~4.~~ 5. Whether the defendant is incompetent to refuse treatment and
31 should be subject to involuntary treatment.

1 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian
2 pursuant to title 14 OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4518
3 BECAUSE THE DEFENDANT IS DANGEROUS.

4 Sec. 6. Section 13-4517, Arizona Revised Statutes, is amended to read:
5 13-4517. Incompetent defendants; disposition

6 A. If the court finds that a defendant is incompetent to stand trial
7 and that there is no substantial probability that the defendant will regain
8 competency within twenty-one months after the date of the original finding of
9 incompetency, any party may request that the court:

10 1. Remand the defendant to the custody of the department of health
11 services for the institution of civil commitment proceedings pursuant to
12 title 36, chapter 5 AND ORDER THE PROSECUTOR TO FILE A PETITION FOR
13 EVALUATION AND PROVIDE ANY KNOWN CRIMINAL HISTORY FOR THE DEFENDANT.

14 2. Appoint a guardian pursuant to title 14, chapter 5.

15 3. Release the defendant from custody and dismiss the charges against
16 the defendant without prejudice.

17 4. HOLD A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS AND
18 SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION 13-4518.

19 B. IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 1,
20 2 OR 4 OF THIS SECTION, THE COURT MAY ALSO ORDER AN ASSESSMENT OF THE
21 DEFENDANT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE
22 APPLIED TO THE EXPENSES OF THE DEFENDANT'S MEDICALLY NECESSARY MAINTENANCE
23 AND TREATMENT, INCLUDING SERVICES PURSUANT TO TITLE 36, CHAPTER 29,
24 STATE-ONLY BEHAVIORAL HEALTH SERVICES, TITLE XVIII SERVICES AND MEDICARE PART
25 D PRESCRIPTION DRUG BENEFITS, SUPPLEMENTAL SECURITY INCOME AND SUPPLEMENTAL
26 SECURITY DISABILITY INCOME.

27 C. THE COURT MAY RETAIN JURISDICTION OVER THE DEFENDANT UNTIL THE
28 DEFENDANT IS COMMITTED FOR TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 OR A
29 GUARDIAN IS APPOINTED PURSUANT TO TITLE 14, CHAPTER 5.

30 D. IF THE COURT REMANDS THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT
31 OF HEALTH SERVICES FOR THE INSTITUTION OF CIVIL COMMITMENT PROCEEDINGS
32 PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT IS NOTIFIED THAT THE DEFENDANT

1 HAS NOT HAD A CIVIL COMMITMENT EVALUATION, THE COURT SHALL ORDER THE SHERIFF
2 TO TAKE THE DEFENDANT INTO CUSTODY SO THAT THE COURT MAY EXPLORE OTHER
3 OPTIONS CONSISTENT WITH THIS SECTION. IF THE DEFENDANT IS OUT OF CUSTODY,
4 THE COURT MAY ORDER THAT THE DEFENDANT BE TAKEN INTO CUSTODY FOR A
5 DISPOSITION PURSUANT TO THIS SECTION.

6 E. IF A MENTAL HEALTH EXPERT HAS DETERMINED THAT THE DEFENDANT MAY BE
7 A SEXUALLY VIOLENT PERSON, THE MENTAL HEALTH EXPERT SHALL PROVIDE THE REPORT
8 TO THE PROSECUTING AGENCY SO THAT THE PROSECUTING AGENCY MAY FILE A PETITION
9 PURSUANT TO SECTION 36-3702.

10 Sec. 7. Title 13, chapter 41, Arizona Revised Statutes, is amended by
11 adding section 13-4518, to read:

12 13-4518. Dangerous and incompetent defendants; commitment
13 hearing; disposition

14 A. IF AN INCOMPETENT DEFENDANT IS FOUND TO BE NOT RESTORABLE TO
15 COMPETENCY, THE STATE MAY REQUEST A HEARING TO DETERMINE IF THE DEFENDANT IS
16 DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED.

17 B. IF THERE HAS NOT BEEN A PREVIOUS DETERMINATION ON WHETHER THE
18 DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL HEALTH
19 EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO DETERMINE IF THE
20 DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

21 C. AT A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS THE STATE
22 SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS
23 DANGEROUS AND THAT THE DEFENDANT COMMITTED THE CHARGED OFFENSE. IF THE COURT
24 DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE COURT SHALL PROCEED PURSUANT TO
25 SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2 OR 3.

26 D. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT SHALL
27 ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH FACILITY
28 LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT COMMISSION ON
29 ACCREDITATION OF HEALTH CARE ORGANIZATIONS. THE DEFENDANT SHALL RECEIVE
30 EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE DEFENDANT EITHER
31 COMPETENT OR NONDANGEROUS.

32 E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:

1 1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT AND
2 THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE
3 CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.

4 2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO THE
5 CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE FOLLOWING
6 OCCURS:

7 (a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.

8 (b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.

9 (c) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO EITHER THE SENTENCE
10 THE DEFENDANT WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN SENTENCED
11 PURSUANT TO SECTION 13-751 OR THE PRESUMPTIVE SENTENCE FOR ALL OTHER
12 OFFENSES.

13 F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS
14 COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE DEFENDANT
15 FROM TREATMENT.

16 G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS SECTION,
17 THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE EXTENT
18 TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR
19 PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S
20 MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND
21 STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND
22 REGIONAL BEHAVIORAL HEALTH CARE AUTHORITY MONIES. THE DEPARTMENT MAY ACCEPT
23 THESE MONIES WITHOUT A COURT ORDER. THE DEPARTMENT IS RESPONSIBLE FOR ALL
24 REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.

25 Sec. 8. Section 36-501, Arizona Revised Statutes, is amended to read:

26 36-501. Definitions

27 In this chapter, unless the context otherwise requires:

28 1. "Administration" means the Arizona health care cost containment
29 system administration.

30 2. "Admitting officer" means a psychiatrist or other physician or
31 psychiatric and mental health nurse practitioner with experience in
32 performing psychiatric examinations who has been designated as an admitting

1 officer of the evaluation agency by the person in charge of the evaluation
2 agency.

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

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

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

10 6. "CRIMINAL HISTORY" MEANS POLICE REPORTS, LISTS OF PRIOR ARRESTS AND
11 CONVICTIONS, CRIMINAL CASE PLEADINGS AND COURT ORDERS, INCLUDING A
12 DETERMINATION THAT THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL
13 PURSUANT TO SECTION 13-4510.

14 ~~6.~~ 7. "Danger to others" means that the judgment of a person who has
15 a mental disorder is so impaired that the person is unable to understand the
16 person's need for treatment and as a result of the person's mental disorder
17 the person's continued behavior can reasonably be expected, on the basis of
18 competent medical opinion, to result in serious physical harm.

19 ~~7.~~ 8. "Danger to self":

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

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

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

28 (b) Does not include behavior that establishes only the condition of
29 having a grave disability.

30 ~~8.~~ 9. "Department" means the department of health services.

31 ~~9.~~ 10. "Detention" means the taking into custody of a patient or
32 proposed patient.

1 ~~10.~~ 11. "Director" means the director of the administration.

2 ~~11.~~ 12. "Evaluation" means:

3 (a) A professional multidisciplinary analysis that may include
4 firsthand observations or remote observations by interactive audiovisual
5 media and that is based on data describing the person's identity, biography
6 and medical, psychological and social conditions carried out by a group of
7 persons consisting of not less than the following:

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

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

26 (b) A physical examination that is consistent with the existing
27 standards of care and that is performed by one of the evaluating physicians
28 or by or under the supervision of a physician who is licensed pursuant to
29 title 32, chapter 13 or 17 or a registered nurse practitioner who is licensed
30 pursuant to title 32, chapter 15 if the results of that examination are
31 reviewed or augmented by one of the evaluating physicians.

1 ~~12.~~ 13. "Evaluation agency" means a health care agency that is
2 licensed by the department and that has been approved pursuant to this title,
3 providing those services required of such agency by this chapter.

4 ~~13.~~ 14. "Family member" means a spouse, parent, adult child, adult
5 sibling or other blood relative of a person undergoing treatment or
6 evaluation pursuant to this chapter.

7 ~~14.~~ 15. "Grave disability" means a condition evidenced by behavior in
8 which a person, as a result of a mental disorder, is likely to come to
9 serious physical harm or serious illness because the person is unable to
10 provide for the person's own basic physical needs.

11 ~~15.~~ 16. "Health care decision maker" has the same meaning prescribed
12 in section 12-2801.

13 ~~16.~~ 17. "Health care entity" means a health care provider, the
14 department, the administration or a regional behavioral health authority
15 under contract with the administration.

16 ~~17.~~ 18. "Health care provider" means a health care institution as
17 defined in section 36-401 that is licensed as a behavioral health provider
18 pursuant to department rules or a mental health provider.

19 ~~18.~~ 19. "Independent evaluator" means a licensed physician,
20 psychiatric and mental health nurse practitioner or psychologist selected by
21 the person to be evaluated or by such person's attorney.

22 ~~19.~~ 20. "Informed consent" means a voluntary decision following
23 presentation of all facts necessary to form the basis of an intelligent
24 consent by the patient or guardian with no minimizing of known dangers of any
25 procedures.

26 ~~20.~~ 21. "Least restrictive treatment alternative" means the treatment
27 plan and setting that infringe in the least possible degree with the
28 patient's right to liberty and that are consistent with providing needed
29 treatment in a safe and humane manner.

30 ~~21.~~ 22. "Licensed physician" means any medical doctor or doctor of
31 osteopathy who is either:

- 32 (a) Licensed in this state.

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

4 ~~22.~~ 23. "Medical director of an evaluation agency" means a
5 psychiatrist, or other licensed physician experienced in psychiatric matters,
6 who is designated in writing by the governing body of the agency as the
7 person in charge of the medical services of the agency for the purposes of
8 this chapter and may include the chief medical officer of the state hospital.

9 ~~23.~~ 24. "Medical director of a mental health treatment agency" means
10 a psychiatrist, or other licensed physician experienced in psychiatric
11 matters, who is designated in writing by the governing body of the agency as
12 the person in charge of the medical services of the agency for the purposes
13 of this chapter and includes the chief medical officer of the state hospital.

14 ~~24.~~ 25. "Mental disorder" means a substantial disorder of the
15 person's emotional processes, thought, cognition or memory. Mental disorder
16 is distinguished from:

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

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

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

26 ~~25.~~ 26. "Mental health provider" means any physician or provider of
27 mental health or behavioral health services involved in evaluating, caring
28 for, treating or rehabilitating a patient.

29 ~~26.~~ 27. "Mental health treatment agency" means the state hospital or
30 a health care agency that is licensed by the department and that provides
31 those services that are required of the agency by this chapter.

1 ~~27.~~ 28. "Outpatient treatment" or "combined inpatient and outpatient
2 treatment" means any treatment program not requiring continuous inpatient
3 hospitalization.

4 ~~28.~~ 29. "Outpatient treatment plan" means a treatment plan that does
5 not require continuous inpatient hospitalization.

6 ~~29.~~ 30. "Patient" means any person undergoing examination, evaluation
7 or behavioral or mental health treatment under this chapter.

8 ~~30.~~ 31. "Peace officers" means sheriffs of counties, constables,
9 marshals and policemen of cities and towns.

10 ~~31.~~ 32. "Persistent or acute disability" means a severe mental
11 disorder that meets all the following criteria:

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

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

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

24 ~~32.~~ 33. "Prepetition screening" means the review of each application
25 requesting court-ordered evaluation, including an investigation of facts
26 alleged in such application, an interview with each applicant and an
27 interview, if possible, with the proposed patient. The purpose of the
28 interview with the proposed patient is to assess the problem, explain the
29 application and, when indicated, attempt to persuade the proposed patient to
30 receive, on a voluntary basis, evaluation or other services.

31 ~~33.~~ 34. "Prescribed form" means a form established by a court or the
32 rules of the administration in accordance with the laws of this state.

1 ~~34.~~ 35. "Professional" means a physician who is licensed pursuant to
2 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to title
3 32, chapter 19.1 or a psychiatric and mental health nurse practitioner who is
4 certified pursuant to title 32, chapter 15.

5 ~~35.~~ 36. "Proposed patient" means a person for whom an application for
6 evaluation has been made or a petition for court-ordered evaluation has been
7 filed.

8 37. "PROSECUTING AGENCY" MEANS THE ELECTED COUNTY ATTORNEY, ATTORNEY
9 GENERAL OR THE APPOINTED CITY ATTORNEY WHO APPLIED OR PETITIONED FOR AN
10 EVALUATION OR TREATMENT PURSUANT TO CHAPTER 5 OF THIS TITLE.

11 ~~36.~~ 38. "Psychiatric and mental health nurse practitioner" means a
12 registered nurse practitioner as defined in section 32-1601 who has completed
13 an adult or family psychiatric and mental health nurse practitioner program
14 and who is certified as an adult or family psychiatric and mental health
15 nurse practitioner by the state board of nursing.

16 ~~37.~~ 39. "Psychiatrist" means a licensed physician who has completed
17 three years of graduate training in psychiatry in a program approved by the
18 American medical association or the American osteopathic association.

19 ~~38.~~ 40. "Psychologist" means a person who is licensed under title 32,
20 chapter 19.1 and who is experienced in the practice of clinical psychology.

21 ~~39.~~ 41. "Records" means all communications that are recorded in any
22 form or medium and that relate to patient examination, evaluation or
23 behavioral or mental health treatment. Records include medical records that
24 are prepared by a health care provider or other providers. Records do not
25 include:

26 (a) Materials that are prepared in connection with utilization review,
27 peer review or quality assurance activities, including records that a health
28 care provider prepares pursuant to section 36-441, 36-445, 36-2402 or
29 36-2917.

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

1 ~~40.~~ 42. "Regional behavioral health authority" has the same meaning
2 prescribed in section 36-3401.

3 ~~41.~~ 43. "Screening agency" means a health care agency that is
4 licensed by the department and that provides those services required of such
5 agency by this chapter.

6 ~~42.~~ 44. "Social worker" means a person who has completed two years of
7 graduate training in social work in a program approved by the council of
8 social work education and who has experience in mental health.

9 ~~43.~~ 45. "State hospital" means the Arizona state hospital.

10 ~~44.~~ 46. "Superintendent" means the superintendent of the state
11 hospital.

12 Sec. 9. Section 36-520, Arizona Revised Statutes, is amended to read:

13 36-520. Application for evaluation; definition

14 A. Any responsible individual may apply for a court-ordered evaluation
15 of a person who is alleged to be, as a result of a mental disorder, a danger
16 to self or to others or a person with a persistent or acute disability or a
17 grave disability and who is unwilling or unable to undergo a voluntary
18 evaluation. The application shall be made in the prescribed form and manner
19 as adopted by the director.

20 B. The application for evaluation shall include the following data:

21 1. The name, and address if known, of the proposed patient for whom
22 evaluation is applied.

23 2. The age, date of birth, sex, race, marital status, occupation,
24 social security number, present location, dates and places of previous
25 hospitalizations, names and addresses of the guardian, spouse, next of kin
26 and significant other persons and other data that the director may require on
27 the form to whatever extent that this data is known and is applicable to the
28 proposed patient.

29 3. IF THE PETITION IS FILED BY A PRESECUTOR PURSUANT TO SECTION
30 13-4517, THE PETITION SHALL INCLUDE ANY KNOWN CRIMINAL HISTORY OF THE
31 PROPOSED PATIENT, INCLUDING WHETHER THE PROPOSED PATIENT HAS EVER BEEN FOUND
32 INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510.

1 ~~3.~~ 4. The name, address and relationship of the person who is
2 applying for the evaluation.

3 ~~4.~~ 5. A statement that the proposed patient is believed to be, as a
4 result of a mental disorder, a danger to self or to others or a patient with
5 a persistent or acute disability or a grave disability and the facts on which
6 this statement is based.

7 ~~5.~~ 6. A statement that the applicant believes the proposed patient is
8 in need of supervision, care and treatment and the facts on which this
9 statement is based.

10 C. The application shall be signed and notarized.

11 D. The screening agency shall offer assistance to the applicant in
12 preparation of the application. On receipt of the application, the screening
13 agency shall act as prescribed in section 36-521 within forty-eight hours of
14 the filing of the application excluding weekends and holidays. If the
15 application is not acted upon within forty-eight hours, the reasons for not
16 acting promptly shall be reviewed by the director of the screening agency or
17 the director's designee.

18 E. If the applicant for the court-ordered evaluation presents the
19 person to be evaluated at the screening agency, the agency shall conduct a
20 prepetition screening examination. Except in the case of an emergency
21 evaluation, the person to be evaluated shall not be detained or forced to
22 undergo prepetition screening against the person's will.

23 F. If the applicant for the court-ordered evaluation does not present
24 the person to be evaluated at the screening agency, the agency shall conduct
25 the prepetition screening at the home of the person to be evaluated or any
26 other place the person to be evaluated is found. If prepetition screening is
27 not possible, the screening agency shall proceed as in section 36-521,
28 subsection B.

29 G. If a person is being treated by prayer or spiritual means alone in
30 accordance with the tenets and practices of a recognized church or religious
31 denomination by a duly accredited practitioner of that church or
32 denomination, such person may not be ordered evaluated, detained or

1 involuntarily treated unless the court has determined that the person is, as
2 a result of mental disorder, a danger to others or to self.

3 H. Court-ordered evaluation or treatment pursuant to this chapter does
4 not operate to change the legal residence of a patient.

5 I. If the application is not acted on because it has been determined
6 that the proposed patient does not need an evaluation, the agency after a
7 period of six months shall destroy the application and any other evidence of
8 the application.

9 J. For the purposes of this section, "person" includes a person who:

10 1. Is under eighteen years of age.

11 2. Has been transferred to the criminal division of the superior court
12 pursuant to section 8-327 or who has been charged with an offense pursuant to
13 section 13-501.

14 3. Is under the supervision of an adult probation department.

15 Sec. 10. Section 36-521, Arizona Revised Statutes, is amended to read:

16 36-521. Preparation of petition for court-ordered evaluation:
17 procedures for prepetition screening

18 A. On receiving the application for evaluation, the screening agency,
19 before filing a petition for court-ordered evaluation, shall provide
20 prepetition screening within forty-eight hours excluding weekends and
21 holidays when possible to determine whether there is reasonable cause to
22 believe the allegations of the applicant for the court-ordered evaluation,
23 whether the person will voluntarily receive evaluation at a scheduled time
24 and place and whether the person has a persistent or acute disability or a
25 grave disability or is likely to present a danger to self or others until the
26 voluntary evaluation.

27 B. After prepetition screening has been completed, the screening
28 agency shall prepare a report of opinions and conclusions. If prepetition
29 screening is not possible, the screening agency shall prepare a report giving
30 reasons why the screening was not possible and including opinions and
31 conclusions of staff members who attempted to conduct prepetition screening
32 or otherwise investigated the matter.

1 C. If the prepetition screening report indicates that there exists no
2 reasonable cause to believe the allegations of the applicant for the
3 court-ordered evaluation, it shall be reviewed by the medical director of the
4 screening agency or the medical director's designee.

5 D. If, based on the allegations of the applicant for the court-ordered
6 evaluation and the prepetition screening report or other information obtained
7 while attempting to conduct a prepetition screening, the agency determines
8 that there is reasonable cause to believe that the proposed patient is, as a
9 result of mental disorder, a danger to self or to others or has a persistent
10 or acute disability or a grave disability and that the proposed patient is
11 unable or unwilling to voluntarily receive evaluation or is likely to present
12 a danger to self or to others, has a grave disability or will further
13 deteriorate before receiving a voluntary evaluation, the agency shall prepare
14 a petition for court-ordered evaluation and shall file the petition, which
15 shall be signed by the person who prepared the petition unless the county
16 attorney performs these functions. If the agency determines that there is
17 reasonable cause to believe that the person is in such a condition that
18 without immediate hospitalization he is likely to harm himself or others, the
19 agency shall take all reasonable steps to procure such hospitalization on an
20 emergency basis.

21 E. The agency may contact the county attorney in order to obtain
22 assistance in preparing the petition for court-ordered evaluation, and the
23 agency may request the advice and judgment of the county attorney in reaching
24 a decision as to whether the court-ordered evaluation is justified.

25 F. The county attorney may prepare or sign or file the petition if a
26 court has ordered the county attorney to prepare the petition.

27 G. If a petition for court-ordered evaluation alleges danger to others
28 as described in section 36-501, the screening agency, before filing such a
29 petition, shall contact the county attorney for a review of the
30 petition. The county attorney shall examine the petition and make one of the
31 following written recommendations:

- 32 1. That a criminal investigation is warranted.

1 2. That the screening agency shall file the petition.

2 3. That no further proceedings are warranted. The screening agency
3 shall consider the recommendation in determining whether a court-ordered
4 evaluation is justified and shall include the recommendation with the
5 petition if the agency decides to file the petition with the court.

6 H. The petition shall be made in the form and manner prescribed by the
7 director.

8 I. IF A PETITION FOR COURT-ORDERED EVALUATION IS FILED BY A PROSECUTOR
9 PURSUANT TO SECTION 13-4517, A PRIOR APPLICATION FOR COURT-ORDERED EVALUATION
10 OR PRESCREENING IS NOT NECESSARY.

11 Sec. 11. Section 36-523, Arizona Revised Statutes, is amended to read:
12 36-523. Petition for evaluation

13 A. The petition for evaluation shall contain the following:

14 1. The name, address and interest in the case of the individual who
15 applied for the petition.

16 2. The name, and address if known, of the proposed patient for whom
17 evaluation is petitioned.

18 3. The present whereabouts of the proposed patient, if known.

19 4. A statement alleging that there is reasonable cause to believe that
20 the proposed patient has a mental disorder and is as a result a danger to
21 self or others, has a persistent or acute disability or a grave disability
22 and is unwilling or unable to undergo voluntary evaluation.

23 5. A summary of the facts that support the allegations that the
24 proposed patient is dangerous, has a persistent or acute disability or a
25 grave disability and is unwilling or unable to be voluntarily evaluated,
26 including the facts that brought the proposed patient to the screening
27 agency's attention.

28 6. IF THE PETITION IS FILED BY A PROSECUTOR PURSUANT TO SECTION
29 13-4517 AND THE PROSECUTOR PROVIDES THE CRIMINAL HISTORY, THE PETITION SHALL
30 INCLUDE ANY KNOWN CRIMINAL HISTORY OF THE PROPOSED PATIENT, INCLUDING WHETHER
31 THE PROPOSED PATIENT HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT
32 TO SECTION 13-4510.

1 ~~6.~~ 7. Other information that the director by rule or the court by
2 rule or order may require.

3 B. The petition shall request that the court issue an order requiring
4 that the proposed patient be given an evaluation and shall advise the court
5 of both of the following:

6 1. That the opinion of the petitioner is either that the proposed
7 patient is or is not in such a condition that without immediate or continuing
8 hospitalization the patient is likely to suffer serious physical harm or
9 further deterioration or inflict serious physical harm on another person.

10 2. If the opinion of the petitioner is that the proposed patient is
11 not in the condition described in paragraph 1 of this subsection, that the
12 opinion of the petitioner is either that the evaluation should or should not
13 take place on an outpatient basis.

14 C. The petition for evaluation shall be accompanied by the application
15 for evaluation, by the recommendation of the county attorney pursuant to
16 section 36-521 and by a prepetition screening report, unless the documents
17 have not been prepared under a provision of law or in accordance with an
18 order of the court. The petition for evaluation shall also be accompanied by
19 a copy of the application for emergency admission if one exists.

20 D. A petition and other forms required in a court may be filed only by
21 the screening agency that has prepared the petition.

22 E. If the petition is not filed because it has been determined that
23 the person does not need an evaluation, the agency after a period of six
24 months shall destroy the petition and the various reports annexed to the
25 petition as required by this section.

26 F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT
27 THE PERSON DOES NOT NEED AN EVALUATION AND A PROSECUTOR FILED A PETITION
28 PURSUANT TO SECTION 13-4517, THE PERSON SHALL BE REMANDED FOR A DISPOSITION
29 PURSUANT TO SECTION 13-4517. IF THE PERSON IS OUT OF CUSTODY, THE COURT MAY
30 ORDER THAT THE PERSON BE TAKEN INTO CUSTODY FOR A DISPOSITION PURSUANT TO
31 THIS SECTION.

1 G. IF THE PERSON IS THE SUBJECT OF A PETITION FILED BY A PROSECUTOR
2 PURSUANT TO SECTION 13-4517, AN EVALUATION SHALL BE COMPLETED WITHIN
3 SEVENTY-TWO HOURS AFTER THE PERSON IS DELIVERED.

4 Sec. 12. Section 36-529, Arizona Revised Statutes, is amended to read:

5 36-529. Order for evaluation; order for detention; hearing

6 A. If, from the review of the petition for evaluation, the court does
7 not determine that the proposed patient is likely to present a danger to self
8 or others or further deteriorate prior to his hearing on court-ordered
9 treatment, but determines that there is reasonable cause to believe that the
10 proposed patient is, as a result of a mental disorder, a danger to self or
11 others, ~~OR~~ OR has a persistent or acute disability or a grave disability, the
12 court shall issue an order directing the proposed patient to submit to an
13 evaluation at a designated time and place, specifying that the evaluation
14 will take place on an inpatient or an outpatient basis. The court may also
15 order that if the person does not or cannot so submit, that he be taken into
16 custody by a ~~police~~ PEACE officer and delivered to an evaluation agency. If
17 the court makes such a conditional order, it shall also make a conditional
18 appointment of counsel for the person to become effective when and if the
19 person is taken into custody pursuant to this section.

20 B. If, from review of the petition for evaluation, there is reasonable
21 cause to believe that the proposed patient is, as a result of a mental
22 disorder, a danger to self or others, ~~OR~~ OR has a persistent or acute
23 disability or a grave disability and that the person requires immediate or
24 continued hospitalization prior to his hearing on court-ordered treatment,
25 the court shall order the proposed patient taken into custody and evaluated
26 at an evaluation agency. The court shall promptly appoint counsel for the
27 proposed patient. If an intercounty agreement authorizes the same, the court
28 may order that the evaluation be conducted in another county, and the
29 superior court in the county where the evaluation is conducted shall have
30 concurrent jurisdiction to make appropriate orders concerning the proposed
31 patient.

1 C. If the person is not taken into custody or if the evaluation
2 pursuant to the order of the court under subsection A or B is not initiated
3 within fourteen days from the date of the order, the order and petition for
4 evaluation shall expire. IF A PROSECUTOR FILED A PETITION PURSUANT TO
5 SECTION 13-4517, THE COURT AND THE PROSECUTING AGENCY SHALL RECEIVE NOTICE OF
6 THE EXPIRATION OF THE ORDER FOR EVALUATION. THE COURT MAY ENTER ANY ORDERS
7 NECESSARY FOR FURTHER DISPOSITION PURSUANT TO SECTION 13-4517, INCLUDING A
8 PICKUP ORDER DIRECTING THAT THE PERSON BE TAKEN INTO CUSTODY. THIS
9 SUBSECTION DOES NOT PREVENT ANY PERSON FROM INITIATING ANOTHER COURT ORDERED
10 EVALUATION OF THE PERSON PURSUANT TO TITLE 36, CHAPTER 5.

11 D. If the person is involuntarily hospitalized, the person shall be
12 informed by his appointed attorney of his rights to a hearing to determine
13 whether he should be involuntarily hospitalized for evaluation and to be
14 represented at the hearing by an attorney. If the patient requests a hearing
15 to determine whether he should be involuntarily hospitalized during
16 evaluation, the court shall schedule a hearing at its first opportunity.

17 Sec. 13. Section 36-531, Arizona Revised Statutes, is amended to read:

18 36-531. Evaluation; possible dispositions; release

19 A. A person who is being evaluated on an inpatient basis in an
20 evaluation agency shall be released if, in the opinion of the medical
21 director of the agency, further evaluation is not appropriate unless the
22 person applies for further care and treatment on a voluntary basis.

23 B. If it is determined on an evaluation of the patient's condition
24 that the patient is, as a result of a mental disorder, a danger to self or to
25 others or has a persistent or acute disability or a grave disability, the
26 medical director in charge of the agency that provided the evaluation, unless
27 the person applies for further care and treatment on a voluntary basis, shall
28 prepare, sign and file a petition for court-ordered treatment unless the
29 county attorney performs the functions of preparing, signing or filing the
30 petition as provided in subsection C of this section.

31 C. The agency may contact the county attorney to obtain assistance in
32 preparing the petition for court-ordered treatment, and the agency may

1 request the advice and judgment of the county attorney in reaching a decision
2 as to whether court-ordered treatment is justified.

3 D. A person being evaluated on an inpatient basis in an evaluation
4 agency shall be released within seventy-two hours, excluding weekends and
5 holidays, from the time that the person is hospitalized pursuant to a court
6 order for evaluation, unless the person applies for further care and
7 treatment on a voluntary basis or unless a petition for court-ordered
8 treatment has been filed pursuant to subsection B of this section.

9 E. IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE
10 MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL PROVIDE NOTICE WITHIN
11 TWENTY-FOUR HOURS TO THE COURT AND THE PROSECUTING AGENCY OF THE DIRECTOR'S
12 INTENTION TO RELEASE THE PERSON UNDER THIS SECTION. THE COURT MAY ORDER THE
13 PERSON RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517. AT
14 ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE
15 MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND
16 TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

17 ~~E.~~ F. The administration may conduct jointly with a school district,
18 directly or indirectly, an educational evaluation pursuant to sections 15-765
19 and 15-766 for nonadjudicated youth. The evaluation information may be
20 shared by and among authorized personnel employed by the administration and
21 the department of education, or authorized personnel from the local education
22 agency, for purposes of ensuring the provision of special education and
23 related services as required by the individuals with disabilities education
24 act (20 United States Code sections 1400 through 1415).

25 Sec. 14. Section 36-533, Arizona Revised Statutes, is amended to read:

26 36-533. Petition for treatment

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

28 1. That the patient is in need of a period of treatment because the
29 patient, as a result of mental disorder, is a danger to self or to others,~~—~~
30 OR has a persistent or acute disability or a grave disability.

31 2. The treatment alternatives that are appropriate or available.

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

3 B. The petition shall be accompanied by the affidavits of the two
4 physicians who participated in the evaluation and by the affidavit of the
5 applicant for the evaluation, if any. The affidavits of the physicians shall
6 describe in detail the behavior that indicates that the person, as a result
7 of mental disorder, is a danger to self or to others, ~~OR~~ OR has a persistent or
8 acute disability or a grave disability and shall be based on the physician's
9 observations of the patient and the physician's study of information about
10 the patient. A summary of the facts that support the allegations of the
11 petition shall be included. The affidavit shall also include any of the
12 results of the physical examination of the patient if relevant to the
13 patient's psychiatric condition.

14 C. The petition shall request the court to issue an order requiring
15 the person to undergo a period of treatment. **IF PROVIDED BY THE PROSECUTOR**
16 **PURSUANT TO SECTION 13-4517 THE PETITION SHALL SET FORTH ANY KNOWN CRIMINAL**
17 **HISTORY OF THE PERSON.**

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

19 1. A statement that in the opinion of the petitioner the person with a
20 grave disability does or does not require guardianship or conservatorship, or
21 both, under title 14 and the reasons on which the statement is based.

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

25 3. A statement that in the opinion of the petitioner the person with a
26 grave disability does or does not require temporary guardianship or
27 conservatorship, or both, and the reasons on which the statement is based.

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

31 E. A copy of the petition in cases of grave disability shall be mailed
32 to the public fiduciary in the county of the patient's residence or in which

1 the patient was found before evaluation and to any person nominated as
2 guardian or conservator.

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

5 Sec. 15. Section 36-534, Arizona Revised Statutes, is amended to read:

6 36-534. Change to voluntary status; discharge; notice; hearing

7 A. If, after a petition for court-ordered treatment has been filed and
8 prior to the hearing, the medical director of the agency finds that it is
9 more appropriate to discharge the patient or to admit the proposed patient on
10 a voluntary basis, the medical director ~~shall~~, after receiving approval from
11 the court, **SHALL** either discharge the patient or admit the patient for
12 further treatment on a voluntary basis.

13 B. **IF THE COURT APPROVES ADMITTING A PATIENT FOR WHOM A PETITION HAS**
14 **BEEN FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517 TO VOLUNTARY TREATMENT**
15 **OR BEFORE A PATIENT IS DISCHARGED PURSUANT TO THIS SECTION, THE MEDICAL**
16 **DIRECTOR SHALL PROVIDE NOTICE TO THE PROSECUTING AGENCY. THE PROSECUTING**
17 **AGENCY MAY REQUEST A HEARING TO DETERMINE WHETHER THE COURT SHOULD ORDER THE**
18 **DEFENDANT RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517.**
19 **FOR ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE**
20 **MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND**
21 **TREATMENT RECORDS, TO THE COURT AND TO THE PROSECUTING AGENCY.**

22 Sec. 16. Section 36-540, Arizona Revised Statutes, is amended to read:

23 36-540. Court options

24 A. If the court finds by clear and convincing evidence that the
25 proposed patient, as a result of mental disorder, is a danger to self, is a
26 danger to others, has a persistent or acute disability or a grave disability
27 and **IS** in need of treatment, and is either unwilling or unable to accept
28 voluntary treatment, the court shall order the patient to undergo one of the
29 following:

30 1. Treatment in a program of outpatient treatment.

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

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

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

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

12 1. Determines that all of the following apply:

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

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

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

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

21 2. Is presented with and approves a written treatment plan that
22 conforms with the requirements of section 36-540.01, subsection B. If the
23 treatment plan presented to the court pursuant to this subsection provides
24 for supervision of the patient under court order by a mental health agency
25 that is other than the mental health agency that petitioned or requested the
26 county attorney to petition the court for treatment pursuant to section
27 36-531, the treatment plan must be approved by the medical director of the
28 mental health agency that will supervise the treatment pursuant to subsection
29 E of this section.

30 D. An order to receive treatment pursuant to subsection A, paragraph 1
31 or 2 of this section shall not exceed three hundred sixty-five days. The
32 period of inpatient treatment under a combined treatment order pursuant to

1 subsection A, paragraph 2 of this section shall not exceed the maximum period
2 allowed for an order for inpatient treatment pursuant to subsection F of this
3 section.

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

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

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

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

21 4. THE COURT SHALL ORDER THAT THE MEDICAL DIRECTOR PROVIDE NOTICE TO
22 THE COURT OF ANY NONCOMPLIANCE WITH THE TERMS OF A TREATMENT ORDER.

23 ~~4.~~ 5. During any period of outpatient treatment under subsection A,
24 paragraph 2 of this section, if the court, ON ITS OWN MOTION OR on motion by
25 the medical director of the patient's outpatient mental health treatment
26 facility, determines that the patient is not complying with the terms of the
27 order or that the outpatient treatment plan is no longer appropriate and the
28 patient needs inpatient treatment, the court, without a hearing and based on
29 the court record, the patient's medical record, the affidavits and
30 recommendations of the medical director, and the advice of staff and
31 physicians or the psychiatric and mental health nurse practitioner familiar
32 with the treatment of the patient, may enter an order amending its original

1 order. The amended order may alter the outpatient treatment plan or order
2 the patient to inpatient treatment pursuant to subsection A, paragraph 3 of
3 this section. The amended order shall not increase the total period of
4 commitment originally ordered by the court or, when added to the period of
5 inpatient treatment provided by the original order and any other amended
6 orders, exceed the maximum period allowed for an order for inpatient
7 treatment pursuant to subsection F of this section. If the patient refuses
8 to comply with an amended order for inpatient treatment, the court, **ON ITS**
9 **OWN MOTION OR ON THE REQUEST OF THE MEDICAL DIRECTOR**, may authorize and
10 direct a peace officer, ~~on the request of the medical director~~, to take the
11 patient into protective custody and transport the patient to the agency for
12 inpatient treatment. **ANY AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO A PEACE**
13 **OFFICER TO TAKE THE PATIENT INTO PROTECTIVE CUSTODY SHALL INCLUDE THE**
14 **PATIENT'S CRIMINAL HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE**
15 **PATIENT'S CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER,**
16 **AS APPLICABLE.** When reporting to or being returned to a treatment agency for
17 inpatient treatment pursuant to an amended order, the patient shall be
18 informed of the patient's right to judicial review and the patient's right to
19 consult with counsel pursuant to section 36-546.

20 ~~5.~~ 6. During any period of outpatient treatment under subsection A,
21 paragraph 2 of this section, if the medical director of the outpatient
22 treatment facility in charge of the patient's care determines, in concert
23 with the medical director of an inpatient mental health treatment facility
24 who has agreed to accept the patient, that the patient is in need of
25 immediate acute inpatient psychiatric care because of behavior that is
26 dangerous to self or to others, the medical director of the outpatient
27 treatment facility may order a peace officer to apprehend and transport the
28 patient to the inpatient treatment facility pending a court determination on
29 an amended order under paragraph ~~4~~ 5 of this subsection. The patient may be
30 detained and treated at the inpatient treatment facility for a period of no
31 more than forty-eight hours, exclusive of weekends and holidays, from the
32 time that the patient is taken to the inpatient treatment facility. The

1 medical director of the outpatient treatment facility shall file the motion
2 for an amended court order requesting inpatient treatment no later than the
3 next working day following the patient being taken to the inpatient treatment
4 facility. Any period of detention within the inpatient treatment facility
5 pending issuance of an amended order shall not increase the total period of
6 commitment originally ordered by the court or, when added to the period of
7 inpatient treatment provided by the original order and any other amended
8 orders, exceed the maximum period allowed for an order for inpatient
9 treatment pursuant to subsection F of this section. If a patient is ordered
10 to undergo inpatient treatment pursuant to an amended order, the medical
11 director of the outpatient treatment facility shall inform the patient of the
12 patient's right to judicial review and to consult with an attorney pursuant
13 to section 36-546.

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

- 16 1. Ninety days for a person found to be a danger to self.
- 17 2. One hundred eighty days for a person found to be a danger to
18 others.
- 19 3. One hundred eighty days for a person found to have a persistent or
20 acute disability.
- 21 4. Three hundred sixty-five days for a person found to have a grave
22 disability.

23 G. If, on finding that the patient meets the criteria for
24 court-ordered treatment pursuant to subsection A of this section, the court
25 also finds that there is reasonable cause to believe that the patient is an
26 incapacitated person as defined in section 14-5101 or is a person in need of
27 protection pursuant to section 14-5401 and that the patient is or may be in
28 need of guardianship or conservatorship, or both, the court may order an
29 investigation concerning the need for a guardian or conservator, or both, and
30 may appoint a suitable person or agency to conduct the investigation. The
31 appointee may include a court appointed guardian ad litem, an investigator
32 appointed pursuant to section 14-5308 or the public fiduciary if there is no

1 person willing and qualified to act in that capacity. The court shall give
2 notice of the appointment to the appointee within three days of the
3 appointment. The appointee shall submit the report of the investigation to
4 the court within twenty-one days. The report shall include recommendations
5 as to who should be guardian or who should be conservator, or both, and a
6 report of the findings and reasons for the recommendation. If the
7 investigation and report so indicate, the court shall order the appropriate
8 person to submit a petition to become the guardian or conservator, or both,
9 of the patient.

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

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

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

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

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

26 I. The court may appoint as a temporary guardian or conservator
27 pursuant to subsection H of this section a suitable person or the public
28 fiduciary if there is no person qualified and willing to act in that
29 capacity. The court shall issue an order for an investigation as prescribed
30 pursuant to subsection G of this section and, unless the patient is
31 represented by independent counsel, the court shall appoint an attorney to
32 represent the patient in further proceedings regarding the appointment of a

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

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

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

25 J. If, on finding that a patient meets the criteria for court-ordered
26 treatment pursuant to subsection A of this section, the court also learns
27 that the patient has a guardian appointed under title 14, the court with
28 notice may impose on the existing guardian additional duties pursuant to
29 section 14-5312.01. If the court imposes additional duties on an existing
30 guardian as prescribed in this subsection, the court may determine that the
31 patient needs to continue treatment under a court order for treatment and may
32 issue the order or determine that the patient's needs can be adequately met

1 by the guardian with the additional duties pursuant to section 14-5312.01 and
2 decline to issue the court order for treatment. If at any time after the
3 issuance of a court order for treatment the court finds that the patient's
4 needs can be adequately met by the guardian with the additional duties
5 pursuant to section 14-5312.01 and that a court order for treatment is no
6 longer necessary to assure compliance with necessary treatment, the court may
7 terminate the court order for treatment. If there is a court order for
8 treatment and a guardianship with additional mental health authority pursuant
9 to section 14-5312.01 existing at the same time, the treatment and placement
10 decisions made by the treatment agency assigned by the court to supervise and
11 administer the patient's treatment program pursuant to the court order for
12 treatment are controlling unless the court orders otherwise.

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

15 L. Treatment shall not include psychosurgery, lobotomy or any other
16 brain surgery without specific informed consent of the patient or the
17 patient's legal guardian and an order of the superior court in the county in
18 which the treatment is proposed, approving with specificity the use of the
19 treatment.

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

25 N. A peace officer who in good faith apprehends and transports a
26 patient to an inpatient treatment facility on the order of the medical
27 director of the outpatient treatment facility pursuant to subsection E,
28 paragraph ~~5~~ 6 of this section is not subject to civil liability.

29 O. If a person has been found, as a result of a mental disorder, to
30 constitute a danger to self or others or to have a persistent or acute
31 disability or a grave disability and the court enters an order for treatment
32 pursuant to subsection A of this section, the court shall transmit the

1 person's name, sex, date of birth, social security number, if available, and
2 date of the order for treatment to the supreme court. The supreme court
3 shall transmit the information to the department of public safety to comply
4 with the requirements of title 13, chapter 31 and title 32, chapter 26. The
5 department of public safety shall transmit the information to the national
6 instant criminal background check system. The superior court may access the
7 information of a person who is ordered into treatment to enforce or
8 facilitate a treatment order.

9 P. On request, the clerk of the court shall provide certified copies
10 of the commitment order to a law enforcement or prosecuting agency that is
11 investigating or prosecuting a prohibited possessor as defined in section
12 13-3101.

13 Q. IF THE COURT DOES NOT FIND A PERSON TO BE IN NEED OF TREATMENT AND
14 A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE COURT SHALL
15 NOTIFY THE PROSECUTING AGENCY OF ITS FINDING. THE PERSON SHALL BE REMANDED
16 TO THE CUSTODY OF THE SHERIFF FOR FURTHER DISPOSITION PURSUANT TO SECTION
17 13-4517.

18 Sec. 17. Section 36-540.01, Arizona Revised Statutes, is amended to
19 read:

20 36-540.01. Conditional outpatient treatment

21 A. The medical director may issue an order for conditional outpatient
22 treatment for a patient ordered to undergo treatment pursuant to section
23 36-540 if, after consultation with staff familiar with the patient's case
24 history, the medical director determines with a reasonable degree of medical
25 probability that all of the following apply:

26 1. The patient no longer requires continuous inpatient
27 hospitalization.

28 2. The patient will be more appropriately treated in an outpatient
29 treatment program.

30 3. The patient will follow a prescribed outpatient treatment plan.

1 4. The patient will not likely become dangerous, suffer more serious
2 physical harm or serious illness or further deteriorate if the patient
3 follows a prescribed outpatient treatment plan.

4 B. The order for conditional outpatient treatment issued by the
5 medical director shall include a written outpatient treatment plan prepared
6 by staff familiar with the patient's case history and approved by the medical
7 director. The plan shall include all of the following:

8 1. A statement of the patient's requirements, if any, for supervision,
9 medication and assistance in obtaining basic needs such as employment, food,
10 clothing or shelter.

11 2. The address of the residence where the patient is to live and the
12 name of the person in charge of the residence, if any.

13 3. The name and address of any person, agency or organization assigned
14 to supervise an outpatient treatment plan or care for the patient, and the
15 extent of authority of the person, agency or organization in carrying out the
16 terms of the plan.

17 4. The conditions for continued outpatient treatment, which may
18 require periodic reporting, continuation of medication and submission to
19 testing, and may restrict travel, consumption of spirituous liquor and drugs,
20 associations with others and incurrence of debts and obligations or such
21 other reasonable conditions as the medical director may specify.

22 5. ANY OTHER PROVISIONS THAT THE MEDICAL DIRECTOR OR THE COURT
23 BELIEVES ARE NECESSARY TO PROTECT THE WELL-BEING OF THE PATIENT AND THE
24 PUBLIC.

25 C. THE COURT MAY ORDER THAT THE MEDICAL DIRECTOR PROVIDE NOTICE TO THE
26 COURT OF SPECIFIC INSTANCES OF NONCOMPLIANCE AS SPECIFIED BY THE COURT.

27 ~~E.~~ D. Before release for conditional outpatient treatment, the
28 patient shall be provided with copies and full explanations of the medical
29 director's order and the treatment plan. If, after full explanation, the
30 patient objects to the plan or any part of it, the objection and reasons for
31 the objection shall be noted in the patient's record. The medical director's

1 order and treatment plan shall be filed in the patient's medical file and
2 shall also be filed with the court.

3 ~~D.~~ E. The period for which conditional outpatient treatment may be
4 ordered may not exceed the remainder of the period of court ordered
5 treatment.

6 ~~E.~~ F. Before the release of a patient for outpatient treatment, the
7 medical director shall give notice pursuant to section 36-541.01, subsection
8 B and a motion for a determination by the court as to whether the standard
9 for conditional release of the patient has been met may be made by the
10 persons and in the manner provided for in section 36-541.01, subsection
11 H. Before the release of a person found to be a danger to self, ~~OR OTHERS~~
12 ~~OR FOUND~~ to ~~be a person with~~ HAVE a persistent or acute disability or a grave
13 disability for outpatient treatment, the medical director shall give notice
14 to the court that ordered the patient to undergo treatment. If criminal
15 charges against a patient involving death or serious physical injury or a
16 violation of title 13, chapter 14 are dismissed pursuant to section 13-4517,
17 the medical director shall notify the prosecuting agency if a civil
18 commitment order issued pursuant to this chapter expires or is terminated, or
19 if the patient is discharged to outpatient treatment. The medical director
20 shall provide this notice by mail at least ~~five~~ TEN days before the
21 anticipated date of the expiration, termination or discharge.

22 ~~F.~~ G. The medical director shall require periodic reports concerning
23 the condition of patients on conditional outpatient treatment from any
24 person, agency or organization assigned to supervise an outpatient treatment
25 plan. The medical director shall require these reports at intervals not to
26 exceed thirty days.

27 ~~G.~~ H. The medical director shall review the condition of a patient on
28 conditional outpatient treatment at least once every thirty days and enter
29 the findings in writing in the patient's file. In conducting the review, the
30 medical director shall consider all reports and information received and may
31 require the patient to report for further evaluation.

1 ~~H.~~ I. The medical director may amend any part of the outpatient
2 treatment plan during the course of conditional outpatient treatment. If the
3 plan is amended, the medical director shall issue a new order including the
4 amended outpatient treatment plan. The new order and amended outpatient
5 treatment plan shall be filed in the patient's medical file. Copies of the
6 new order and outpatient treatment plan shall be immediately provided to the
7 patient and to any person, agency or organization assigned to supervise an
8 outpatient treatment plan. Copies of the new order and outpatient treatment
9 plan shall be immediately filed with the court **AND, IF A PROSECUTOR FILED A**
10 **PETITION PURSUANT TO SECTION 13-4517, WITH THE PROSECUTING AGENCY.**

11 ~~J.~~ J. The medical director may rescind an order for conditional
12 outpatient treatment and order the patient to return to a mental health
13 treatment agency at any time during the period of court ordered treatment if,
14 in the medical director's judgment, the patient has failed to comply with a
15 term of the outpatient treatment plan or if, for any reason, the medical
16 director determines that the patient needs inpatient treatment or that
17 conditional outpatient treatment is no longer appropriate. **THE MEDICAL**
18 **DIRECTOR SHALL GIVE NOTICE TO THE COURT THAT ISSUED THE TREATMENT ORDER AND**
19 **THE PROSECUTING AGENCY IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION**
20 **13-4517.**

21 ~~K.~~ K. If the medical director rescinds an order for conditional
22 outpatient treatment and the patient is returned to a mental health treatment
23 agency for inpatient treatment, the patient shall be informed of the
24 patient's right to judicial review and right to consult with counsel pursuant
25 to section 36-546.

26 ~~L.~~ L. If the medical director rescinds an order for conditional
27 outpatient treatment and orders the patient to return to a mental health
28 treatment agency, the medical director may request, **OR A COURT MAY ORDER,** a
29 peace officer or a designated officer or employee of the treatment agency to
30 take the patient into custody for immediate delivery to the agency pursuant
31 to section 36-544.

1 ordered by the court unless the medical director first gives notice of
2 intention to do so as provided by this section.

3 B. Before the release or discharge of a patient who is ordered to
4 undergo treatment, the medical director of the mental health treatment agency
5 shall notify the following of the medical director's intention to release or
6 discharge the patient:

7 1. The presiding judge of the court that entered the order for
8 treatment.

9 2. Any relative or victim of the patient who has filed a demand for
10 notice with the treatment agency.

11 3. Any person found by the court to have a legitimate reason for
12 receiving notice.

13 C. If criminal charges against a patient involving death or serious
14 physical injury or a violation of title 13, chapter 14 are dismissed pursuant
15 to section 13-4517, the medical director shall notify the COURT AND THE
16 prosecuting agency if a civil commitment order issued pursuant to this
17 chapter expires or is terminated, or if the patient is discharged to
18 outpatient treatment. The medical director shall provide this notice by mail
19 at least five days before the anticipated date of the expiration, termination
20 or discharge.

21 D. If the director of the mental health treatment agency is unable to
22 determine, based on the information submitted pursuant to subsection E of
23 this section, that a person who has filed a demand for notice is a victim,
24 the director shall inform that person that that person's demand for notice is
25 denied and that notice will not be given unless ordered by the court pursuant
26 to subsection F of this section.

27 E. A demand for notice by a relative or victim, and a petition for
28 notice by other persons, shall be on a form prescribed by the administration
29 and shall include the following information:

30 1. The full name of the person to receive notice.

31 2. The address to which notice is to be mailed.

32 3. The telephone number of the person to receive notice.

1 4. The relationship to the patient, if any, or the reasons why the
2 person believes the person has a legitimate reason to receive notice.

3 5. A statement that the person will advise the treatment agency in
4 writing by certified mail, return receipt requested, of any change in the
5 address to which notice is to be mailed.

6 6. The full name of the patient ordered to undergo treatment as a
7 danger to others OR WHO HAS HAD A PETITION FILED BY A PROSECUTOR PURSUANT TO
8 SECTION 13-4517.

9 7. The mental health number assigned to the case by the superior
10 court.

11 F. If the court receives a demand for notice by a relative or victim,
12 the court shall order the medical director of the mental health treatment
13 agency not to release or discharge the patient before the expiration of the
14 period of court-ordered treatment without first giving notice to the relative
15 or victim as provided in subsection G of this section. After considering a
16 petition for notice, if the court finds that the petitioner has a legitimate
17 reason for receiving prior notice, the court may order the medical director
18 of the mental health treatment agency not to release or discharge the patient
19 from inpatient treatment before the expiration of the period of court-ordered
20 treatment without first giving notice to the petitioner as provided in
21 subsection G of this section. Any order for notice shall be delivered to the
22 mental health treatment agency and shall be filed with the patient's clinical
23 record. If the patient is transferred to another agency or institution, any
24 orders for notice shall be transferred with the patient.

25 G. A notice of intention to release or discharge shall include the
26 following information:

- 27 1. The name of the patient to be released or discharged.
28 2. The type of release or discharge.
29 3. The date of anticipated release or discharge. Notices shall be
30 placed in the mail, postage prepaid and addressed to the court and to each
31 person for whom notice has been ordered, at least ten days before the date of
32 intended release or discharge, except that notice shall be sent to the

1 prosecuting agency at least five days before the date of intended release or
2 discharge. For purposes of computing the notice requirement, the day of
3 mailing shall not be counted.

4 H. Any person for whom prior notice is required pursuant to this
5 section, or the court, may make a motion within the notification period that
6 requires the court to determine whether the standard for release of the
7 patient before the expiration of the period for court-ordered treatment has
8 been met. A determination that the standard for release has been met may be
9 made by the court based on a review of the record and any affidavits
10 submitted without further hearing. For good cause, the court may order an
11 evidentiary hearing. Whether or not a hearing is held, the court shall make
12 a determination at the earliest possible time but no longer than three weeks
13 after the anticipated date of release pursuant to subsection G of this
14 section, and the patient shall be retained for the additional time required
15 for the court's determination. In making its determination the court may
16 order an independent examination of the patient. If a motion is not made,
17 the patient may be released in accordance with the terms set forth in the
18 notice without further court order. IF A HEARING IS HELD PURSUANT TO THIS
19 SUBSECTION, THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO PROVIDE THE
20 PATIENT'S RECORDS, INCLUDING MEDICAL AND TREATMENT RECORDS, TO THE COURT AND
21 THE PROSECUTING AGENCY.

22 I. If a motion has not been made pursuant to subsection H of this
23 section, the patient may be released or discharged and the medical director
24 of the mental health treatment agency shall send to the court a certificate
25 that the patient is no longer a danger to others or a danger to self or no
26 longer has a persistent or acute disability or a grave disability as the
27 result of a mental disorder and therefore is released before the expiration
28 of the period ordered for treatment. The court shall enter an order
29 terminating the patient's court-ordered treatment.

30 J. The medical director of the mental health treatment agency shall
31 not be held civilly liable for any acts committed by a patient who is
32 released before the expiration of the period of court-ordered treatment if

1 the medical director has in good faith followed the requirements of this
2 section.

3 Sec. 19. Section 36-543, Arizona Revised Statutes, is amended to read:

4 36-543. Release from treatment of a patient with a grave
5 disability or a persistent or acute disability;
6 notice; annual review; court order for continued
7 treatment; rules

8 A. A patient who is found to have a grave disability or a persistent
9 or acute disability and ordered to undergo treatment may be released from
10 inpatient treatment when, in the opinion of the medical director of the
11 mental health treatment agency, the level of care offered by the agency is no
12 longer required. The patient may agree to continue treatment voluntarily.
13 If the patient is to be released, the medical director shall arrange for an
14 appropriate alternative placement. **IF A PROSECUTOR FILED A PETITION PURSUANT**
15 **TO SECTION 13-4517, THE MEDICAL DIRECTOR SHALL PROVIDE NOTICE OF THE INTENT**
16 **TO RELEASE THE PATIENT TO THE COURT AND THE PROSECUTING AGENCY AT LEAST FIVE**
17 **DAYS BEFORE THE ANTICIPATED DATE OF THE PATIENT'S RELEASE. THE COURT MAY**
18 **ENTER ANY ORDERS NECESSARY TO MAINTAIN THE PATIENT'S HEALTH, SAFETY AND**
19 **TREATMENT AND TO PROTECT THE PUBLIC. IF A HEARING IS HELD PURSUANT TO THIS**
20 **SUBSECTION, THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO PROVIDE THE**
21 **PATIENT'S RECORDS, INCLUDING MEDICAL AND TREATMENT RECORDS, TO THE COURT AND**
22 **THE PROSECUTING AGENCY.**

23 B. If a patient who is to be released from inpatient treatment is
24 under guardianship, the medical director of the mental health treatment
25 agency shall notify the guardian and any relevant regional behavioral health
26 authority ten days before the intended release date that the ward no longer
27 requires the level of care offered by the agency. The guardian and, if
28 relevant, the regional behavioral health authority shall arrange alternative
29 placement with the advice and recommendations of the medical director of the
30 mental health treatment agency.

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

4 D. Within ninety days before the expiration of a court order for
5 treatment, the medical director of the mental health treatment agency shall
6 conduct an annual review of a patient who has been found to have a grave
7 disability or a persistent or acute disability and is undergoing
8 court-ordered treatment to determine whether the continuation of
9 court-ordered treatment is appropriate and to assess the needs of the patient
10 for guardianship or conservatorship, or both. The annual review shall
11 consist of the mental health treatment and clinical records contained in the
12 patient's treatment file. The mental health treatment agency shall keep a
13 record of the annual review. If the medical director believes that a
14 continuation of court-ordered treatment is appropriate, the medical director
15 of the mental health treatment agency shall appoint one or more psychiatrists
16 to carry out a psychiatric examination of the patient. In any proceeding
17 conducted pursuant to this section, a patient has the right to have an
18 analysis of the patient's mental condition by an independent evaluation
19 pursuant to section 36-538.

20 E. Each examiner participating in the psychiatric examination of the
21 patient shall submit a report to the medical director of the mental health
22 treatment agency that includes the following:

23 1. The examiner's opinions as to whether the patient continues to have
24 a grave disability or a persistent or acute disability as the result of a
25 mental disorder and be in need of continued court-ordered treatment. In
26 evaluating the patient's need for continued court-ordered treatment, the
27 examiner must consider, along with all other evidence, the patient's history
28 before and during the current period of court-ordered treatment, the
29 patient's compliance with recommended treatment and any other evidence
30 relevant to the patient's ability and willingness to follow recommended
31 treatment with or without a court order.

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

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

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

10 5. If the patient has an existing guardian who does not have the
11 mental health powers authorized pursuant to section 14-5312.01, a
12 recommendation as to whether the additional mental health powers authorized
13 by section 14-5312.01 should be imposed on the existing guardian and whether
14 the patient's needs can be adequately addressed by a guardian with mental
15 health powers without the need for a court order for treatment or whether the
16 court order for treatment should continue regardless of the additional mental
17 health powers imposed on the guardian.

18 6. The results of any physical examination conducted during the period
19 of court-ordered treatment if relevant to the psychiatric condition of the
20 patient.

21 F. After conducting the annual review as prescribed in this section,
22 if the medical director believes that continued court-ordered treatment is
23 necessary or appropriate, not later than thirty days before the expiration of
24 the court order for treatment, the medical director shall file with the court
25 an application for continued court-ordered treatment alleging the basis for
26 the application and shall file simultaneously with the application any
27 psychiatric examination conducted as part of the annual review. If the
28 patient is under guardianship, the medical director shall mail a copy of the
29 application to the patient's guardian.

30 G. If an application for continued court-ordered treatment is filed,
31 all of the following apply:

1 1. If the patient does not have an attorney, the court shall appoint
2 an attorney to represent the patient.

3 2. Within ten days after appointment, an attorney appointed pursuant
4 to this subsection, to the extent possible, shall fulfill the duties imposed
5 pursuant to section 36-537, review the medical director's report and the
6 patient's medical records, interview any physician who prepared a report on
7 the annual review and file a response requesting a hearing or submitting the
8 matter to the court for a ruling based on the record without a hearing.

9 3. If a hearing is not requested, the court shall rule on the
10 application or set the matter for hearing. If a hearing is requested, the
11 hearing shall be held within three weeks after the request for hearing is
12 filed. The hearing may be continued for good cause on motion of a party or
13 on the court's own motion, and the expiration of the current court order for
14 treatment may be extended until a ruling by the court on an application filed
15 pursuant to this subsection.

16 4. The patient's attorney must be present at all hearings and may
17 subpoena and cross-examine witnesses and present evidence. The patient has
18 the right to attend all hearings, but may choose not to attend a hearing.
19 The patient's attorney may waive the patient's presence after speaking with
20 the patient and confirming that the patient understands the right to be
21 present and does not desire to attend. If the patient is unable to be
22 present at the hearing for medical or psychiatric reasons and the hearing
23 cannot be conducted where the patient is being treated or confined, or the
24 patient cannot appear by another reasonably feasible means, the court shall
25 require clear and convincing evidence that the patient is unable to be
26 present at the hearing and on such a finding may proceed with the hearing in
27 the patient's absence.

28 5. The evidence presented by the applicant includes the testimony of
29 one or more witnesses acquainted with the patient during the period of
30 court-ordered treatment, which may be satisfied by a statement agreed on by
31 the parties, and the testimony of any physician who performed an annual
32 review of the patient, which may be satisfied by stipulating to the admission

1 of the examining physicians' written report prepared pursuant subsection E of
2 this section. The court may waive the need for the applicant to present the
3 testimony of witnesses acquainted with the patient as required by this
4 subsection, if it finds that the need for a continued court order for
5 treatment has been established by clear and convincing evidence from the
6 other testimony and evidence presented at the hearing.

7 6. At a hearing held pursuant to this subsection, the court, with
8 notice, may impose on an existing guardian additional powers pursuant to
9 section 14-5312.01. If the court finds that the patient's needs can be
10 adequately met by an existing guardian with the additional powers pursuant to
11 section 14-5312.01 and that a court order for treatment is not necessary to
12 ensure compliance with necessary treatment, the court may terminate the court
13 order for treatment or decline to issue an order continuing court-ordered
14 treatment. The court may also order an investigation into the need for
15 guardianship or conservatorship, or both, and may appoint a suitable person
16 or agency to conduct the investigation. The appointee may include a
17 court-appointed guardian ad litem, a court-appointed investigator pursuant to
18 section 14-5308 or the public fiduciary if there is no person willing and
19 qualified to act in that capacity. The court shall give notice of the
20 appointment to the appointee within three days after the appointment. The
21 appointee shall submit the report of the investigation to the court within
22 twenty-one days. The report shall include recommendations as to who should
23 be guardian or conservator, or both, and the findings and reasons for the
24 recommendation. If the investigation and report so indicate, the court may
25 authorize an appropriate person to file a petition for appointment of a
26 guardian or conservator for the patient.

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

30 1. The patient continues to have a mental disorder and, as a result of
31 that disorder, has either a persistent or acute disability or a grave
32 disability.

1 2. The patient is in need of continued court-ordered treatment.

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

4 I. After a hearing held pursuant to subsection G of this section, the
5 court may order the patient to be released from court-ordered treatment or to
6 undergo continued court-ordered treatment for a period not to exceed the time
7 periods prescribed in section 36-540, subsection D.

8 J. The director shall create and operate a program to ensure that the
9 examination and review of persons with grave disabilities or persistent or
10 acute disabilities under court order are carried out in an effective and
11 timely manner. The director shall adopt rules needed to operate this
12 program.

13 Sec. 20. Section 36-544, Arizona Revised Statutes, is amended to read:

14 36-544. Unauthorized absences; violation; classification;
15 tolling period; hearing; civil liability; definition

16 A. When any patient who is being evaluated or treated is absent
17 without proper authorization from an evaluation agency or a mental health
18 treatment agency, or when an order for outpatient treatment is rescinded, any
19 peace officer shall, upon oral or written request of the medical director of
20 the agency and without the necessity of a warrant or court order, or any
21 officer or employee of the agency who has been previously designated in
22 writing by the medical director of the agency to perform such duties may,
23 take into custody and deliver such patient to the agency. Such officers and
24 employees of the agency have the powers and duties of peace officers so far
25 as is necessary to carry out the provisions of this section. **IF NECESSARY,**
26 **THE EVALUATION OR TREATMENT AGENCY MAY APPLY TO THE COURT FOR A WARRANT OR**
27 **COURT ORDER DIRECTING ANY PEACE OFFICER TO TAKE A PATIENT WHO IS ABSENT**
28 **WITHOUT PROPER AUTHORIZATION INTO CUSTODY AND DELIVER THE PATIENT TO THE**
29 **AGENCY.**

30 B. Any person who intentionally assists any patient being evaluated or
31 treated in an agency to be absent from the agency without proper
32 authorization, or who intentionally assists a patient whom he knows to be

1 absent without proper authorization or whom he knows to be a patient whose
2 order for outpatient treatment has been rescinded and who has been ordered to
3 return to the agency, or to resist being returned to the agency after such
4 absence is guilty of a class 2 misdemeanor.

5 C. IF CONFIRMED IN A COURT ORDER THAT IS ISSUED PURSUANT TO THIS
6 SECTION, the period of court-ordered treatment ceases to run during the
7 unauthorized absence of the patient ~~from the jurisdiction or from any~~
8 ~~required supervision~~ and resumes running only on the patient's voluntary or
9 involuntary return to ~~the~~ treatment ~~agency~~. THE COURT SHALL CONFIRM THE
10 TOLLING AND THE RESUMPTION OF THE RUNNING OF THE PERIOD OF COURT-ORDERED
11 TREATMENT IN AN ORDER ISSUED BY THE COURT AFTER A PETITION IS FILED BY THE
12 TREATMENT AGENCY. NOTICE OF THE PETITION AND THE OPPORTUNITY TO APPEAR SHALL
13 BE PROVIDED TO THE PATIENT BY REGULAR MAIL AT THE PATIENT'S LAST KNOWN
14 ADDRESS. IF THE PATIENT IS UNDERGOING TREATMENT AS A RESULT OF A REMAND
15 PURSUANT TO SECTION 13-4517, NOTICE OF THE PETITION SHALL BE PROVIDED TO THE
16 PROSECUTING AGENCY.

17 ~~D. A patient who remains on unauthorized absence status continuously~~
18 ~~for at least ninety days may petition the court on his return to the~~
19 ~~treatment agency for a hearing to determine his current mental status and his~~
20 ~~present need for treatment. The court shall order a hearing if requested by~~
21 ~~the patient, his legal guardian or an interested party. The hearing shall be~~
22 ~~held within seventy two hours after the request.~~

23 ~~E. Subsections C and D of this section shall apply only to inpatient~~
24 ~~treatment pursuant to section 36-540, subsection A, paragraphs 2 and 3.~~

25 D. A PATIENT WHOSE PERIOD OF COURT ORDERED TREATMENT IS TOLLED FOR A
26 PERIOD OF AT LEAST SIXTY CONTINUOUS DAYS MAY REQUEST A JUDICIAL REVIEW
27 PURSUANT TO SECTION 36-546 ON THE PATIENT'S VOLUNTARY OR INVOLUNTARY RETURN
28 TO TREATMENT. DURING THE PERIOD TOLLED BY A COURT ORDER ISSUED PURSUANT TO
29 THIS SECTION, THE TREATMENT AGENCY SHALL MAKE ACTIVE AND DILIGENT EFFORTS TO
30 FIND AND RETURN THE PATIENT TO APPROPRIATE TREATMENT AND AT LEAST ONCE EVERY
31 SIXTY DAYS, OR AS OFTEN AS OTHERWISE ORDERED BY THE COURT, SHALL FILE A
32 REPORT OF THE AGENCY'S EFFORTS WITH THE COURT. AFTER THE PERIOD OF TREATMENT

1 IS TOLLED FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS, IF THE COURT IS SATISFIED
2 THAT THE AGENCY HAS MADE ACTIVE AND DILIGENT EFFORTS TO FIND AND RETURN THE
3 PATIENT TO APPROPRIATE TREATMENT, ON PETITION OF THE TREATMENT AGENCY, THE
4 COURT MAY TERMINATE THE ORDER FOR TREATMENT OR MAY ORDER THE TREATMENT AGENCY
5 TO MAKE FURTHER SPECIFIC EFFORTS TO FIND AND RETURN THE PATIENT TO
6 APPROPRIATE TREATMENT. THE TREATMENT AGENCY SHALL PROVIDE NOTICE TO THE
7 PROSECUTING AGENCY OF THE PETITION TO TERMINATE TREATMENT.

8 E. THE PERIOD OF TREATMENT UNDER A COURT ORDER MAY NOT BE TOLLED FOR
9 MORE THAN THREE HUNDRED SIXTY-FIVE DAYS.

10 F. IF THE TREATMENT AGENCY HAS IN GOOD FAITH FOLLOWED THE REQUIREMENTS
11 OF THIS SECTION, THE TREATMENT AGENCY IS NOT LIABLE IN A CIVIL ACTION FOR
12 DAMAGES THAT RESULT FROM THE ACTIONS OF A PATIENT DURING ANY PERIOD OF
13 TREATMENT TOLLED BY AN ORDER ISSUED PURSUANT TO THIS SECTION.

14 G. FOR THE PURPOSE OF THIS SECTION, "ABSENT WITHOUT PROPER
15 AUTHORIZATION" OR "UNAUTHORIZED ABSENCE" INCLUDES BEING ABSENT FROM AN
16 INPATIENT TREATMENT FACILITY WITHOUT AUTHORIZATION, NO LONGER LIVING IN A
17 PLACEMENT SPECIFIED BY THE TREATMENT PLAN WITHOUT AUTHORIZATION AND LEAVING
18 OR FAILING TO RETURN TO THE COUNTY OR STATE WITHOUT AUTHORIZATION.

19 Sec. 21. Section 36-546, Arizona Revised Statutes, is amended to read:

20 36-546. Judicial review; right to be informed; request;
21 jurisdiction

22 A. In addition to the procedure for applying for a writ of habeas
23 corpus, as provided in title 13, chapter 38, article 26, a patient receiving
24 court-ordered treatment or any person acting on the patient's behalf may
25 request the patient's release pursuant to the following:

26 1. A request in writing may be presented to any member of the
27 treatment staff of the agency providing the patient's treatment. The request
28 may be made on a prescribed form that shall be prepared by the facility and
29 made available for use by any person. The completed form shall identify:

30 (a) The patient being treated and the agency at which the patient is
31 being treated.

32 (b) The person to whom the request for release was made.

1 (c) The person making the request for release, indicating whether the
2 person is the patient being treated or someone acting on the person's behalf.

3 2. The request, when signed and dated by the person making the request
4 for release, shall be delivered to the medical director of the agency.
5 Within three days of receipt of the request, the medical director shall
6 deliver the form, along with a current psychiatric report of the patient's
7 condition, to the clerk of the court. If the person presenting the request
8 refuses to sign the form, the medical director of the agency shall proceed as
9 if the form had been signed and shall note on the form the circumstances as
10 to why the form was not signed.

11 B. The patient shall be informed of the patient's right to judicial
12 review by the medical director of the agency and the patient's right to
13 consult with counsel at least once each sixty days while the patient is
14 undergoing court-ordered treatment. The notification required by this
15 subsection shall be recorded in the clinical record of the patient by the
16 individual who gave the notice.

17 C. With the exception of requests made pursuant to section 36-540,
18 subsection E, paragraphs ~~4- 6~~ and ~~5- 7~~ and section 36-540.01, subsection ~~J- K~~
19 for judicial review, a request for judicial review may not be made sooner
20 than sixty days after the issuance of the order for treatment or a hearing on
21 a previous petition for habeas corpus or the issuance of the court order or
22 other final resolution determining a previous request for judicial review by
23 the patient.

24 D. Judicial review shall be in the superior court in the county in
25 which the patient is being treated. That court may review the additional
26 material presented and enter its order without necessity of further hearing.

27 E. The reviewing court may order a further hearing on the affidavit of
28 the attorney for the patient setting forth the need for further evidentiary
29 hearing and the reasons why the hearing is necessary before the time set for
30 the release of the patient.

31 F. The patient shall be informed of the patient's right to consult an
32 attorney by the person or court to whom the patient makes the request for

1 release at the time the patient makes the request and, in the case of
2 confinement in an agency, by the reviewing court within one day of its
3 receipt of notice from the medical director of the agency where the patient
4 is being treated. The patient shall be permitted to consult an attorney to
5 assist in preparation of a petition for the writ of habeas corpus and to
6 represent the patient in the hearing. If the patient is not represented by
7 an attorney, the reviewing court, within two days of its notice to the
8 patient of the patient's right to counsel, shall appoint an attorney to
9 assist the patient in the preparation of a petition and to represent the
10 patient in the hearing.

11 G. The medical director of the mental health treatment agency, at
12 least twenty-four hours before the hearing, shall provide the patient's
13 attorney with a copy of the patient's medical records.

14 H. The patient's attorney shall fulfill all of the following minimal
15 duties:

16 1. Within twenty-four hours of appointment, conduct an interview with
17 the patient.

18 2. At least twenty-four hours before the hearing, interview the
19 patient's treatment physician or psychiatric and mental health nurse
20 practitioner if available.

21 3. Before the hearing, examine the clinical record of the patient.

22 4. Before the hearing, examine the patient's court records as to the
23 patient's involuntary treatment.

24 I. An attorney who does not fulfill the duties prescribed by
25 subsection H of this section is subject to contempt of court.

26 Sec. 22. Section 36-3701, Arizona Revised Statutes, is amended to
27 read:

28 **36-3701. Definitions**

29 In this article, unless the context otherwise requires:

30 1. "Agency" means any agency that is authorized to direct the release
31 of a person who is serving a sentence or term of confinement or who is

1 receiving treatment, including a state or federal prison, a county jail and
2 the Arizona state hospital OR OTHER MENTAL HEALTH TREATMENT AGENCY.

3 2. "Competent professional" means a person who is:

4 (a) Familiar with the state's sexually violent persons statutes and
5 sexual offender treatment programs available in this state.

6 (b) Approved by the superior court as meeting court approved
7 guidelines.

8 3. "Conviction" includes a finding of guilt at any time for a sexually
9 violent offense or an order of the juvenile court adjudicating the person
10 delinquent for any sexually violent offense.

11 4. "Less restrictive alternative" means court ordered treatment in a
12 setting that is less restrictive than total confinement and that is conducted
13 in a setting approved by the superintendent of the state hospital.

14 5. "Mental disorder" means a paraphilia, personality disorder or
15 conduct disorder or any combination of paraphilia, personality disorder and
16 conduct disorder that predisposes a person to commit sexual acts to such a
17 degree as to render the person a danger to the health and safety of others.

18 6. "Sexually violent offense" means any of the following:

19 (a) Indecent exposure to a person who is under fifteen years of age
20 pursuant to section 13-1402, public sexual indecency to a minor pursuant to
21 section 13-1403, sexual conduct with a minor pursuant to section 13-1405,
22 sexual assault pursuant to section 13-1406, molestation of a child pursuant
23 to section 13-1410, continuous sexual abuse of a child pursuant to section
24 13-1417 or sexual assault of a spouse if the offense was committed before
25 August 12, 2005.

26 (b) Second degree murder pursuant to section 13-1104, first degree
27 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
28 aggravated assault pursuant to section 13-1204, unlawful imprisonment
29 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
30 burglary in the first degree pursuant to section 13-1508 if the court at the
31 time of sentencing or civil commitment proceedings determines beyond a

1 reasonable doubt that the act was sexually motivated pursuant to section
2 13-118.

3 (c) An attempt, a solicitation, a facilitation or a conspiracy to
4 commit an offense listed in subdivision (a) or (b) of this paragraph.

5 (d) An act committed in another jurisdiction that if committed in this
6 state would be a sexually violent offense listed in subdivision (a), (b) or
7 (c) of this paragraph.

8 (e) A conviction for a felony offense that was in effect before
9 September 1, 1978 and that if committed on or after September 1, 1978 would
10 be comparable to a sexually violent offense listed in subdivision (a) or (b)
11 of this paragraph.

12 7. "Sexually violent person" means a person to whom both of the
13 following apply:

14 (a) Has ever been convicted of or found guilty but insane of a
15 sexually violent offense or was charged with a sexually violent offense and
16 was determined incompetent to stand trial.

17 (b) Has a mental disorder that makes the person likely to engage in
18 acts of sexual violence.

19 Sec. 23. Title 36, Arizona Revised Statutes, is amended by adding
20 chapter 40, to read:

21 CHAPTER 40

22 DANGEROUS AND INCOMPETENT PERSONS

23 ARTICLE 1. GENERAL PROVISIONS

24 36-4001. Definitions

25 IN THIS ARTICLE UNLESS THE CONTEXT OTHERWISE REQUIRES:

26 1. "COMPETENT PROFESSIONAL" MEANS A PERSON WHO IS:

27 (a) FAMILIAR WITH THIS STATE'S CRIMINAL AND INVOLUNTARY COMMITMENT
28 STANDARDS AND STATUTES FOR PERSONS WITH A MENTAL ILLNESS, DEFECT OR
29 DISABILITY THAT ARE AVAILABLE IN THIS STATE.

30 (b) APPROVED BY THE SUPERIOR COURT AS MEETING COURT APPROVED
31 GUIDELINES.

1 2. "DANGEROUS INCOMPETENT" MEANS A PERSON WHO HAS BEEN DETERMINED TO
2 BE INCOMPETENT AND NONRESTORABLE AND DANGEROUS PURSUANT TO TITLE 13, CHAPTER
3 41.

4 3. "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT ORDERED TREATMENT IN A
5 SETTING THAT IS LESS RESTRICTIVE THAN TOTAL CONFINEMENT AND THAT IS CONDUCTED
6 IN A SETTING APPROVED BY THE SUPERINTENDENT OF THE STATE HOSPITAL.

7 4. "MENTAL ILLNESS, DEFECT OR DISABILITY" MEANS A PSYCHIATRIC OR
8 NEUROLOGICAL DISORDER THAT IS EVIDENCED BY BEHAVIORAL OR EMOTIONAL SYMPTOMS,
9 INCLUDING CONGENITAL MENTAL CONDITIONS, CONDITIONS RESULTING FROM INJURY OR
10 DISEASE AND DEVELOPMENTAL DISABILITIES AS DEFINED IN SECTION 36-551.

11 36-4002. Annual examination of committed persons: report

12 A. THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL OF
13 THE STATE HOSPITAL OR A LICENSED FACILITY UNDER THE SUPERVISION OF THE
14 ARIZONA STATE HOSPITAL SHALL ANNUALLY EXAMINE EACH PERSON WHO IS COMMITTED
15 PURSUANT TO 13-4518. THE PERSON WHO CONDUCTS THE ANNUAL EXAMINATION SHALL
16 SUBMIT THE EXAMINATION REPORT TO THE COURT. THE ANNUAL REPORT SHALL STATE THE
17 TREATMENT AND EDUCATION THAT THE PERSON HAS RECEIVED, A PROGNOSIS FOR THE
18 PERSON'S RESTORATION TO COMPETENCY AND WHETHER THE PERSON REMAINS DANGEROUS.

19 B. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL
20 SUBMITS A REPORT INDICATING THAT THE PERSON IS COMPETENT TO STAND TRIAL OR IS
21 NO LONGER DANGEROUS THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE
22 PERSON IS COMPETENT OR IS NO LONGER DANGEROUS.

23 C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL
24 SUBMITS A REPORT THAT THE PERSON IS NO LONGER DANGEROUS IN WHOLE OR IN PART
25 BECAUSE OF MEDICATION THAT THE PERSON IS TAKING, THAT THE DEFENDANT WILL
26 CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS RESTRICTIVE
27 ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A LESS RESTRICTIVE
28 ALTERNATIVE.

29 D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER
30 RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF
31 EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE PERSON
32 WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT

1 THE STATE AT THE HEARING AND MAY REQUEST THAT THE PERSON BE EXAMINED BY A
2 COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR
3 THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
4 PERSON'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE
5 PERSON REMAINS DANGEROUS OR THAT THE PERSON IS COMPETENT TO STAND TRIAL.

6 E. A RETAINED OR APPOINTED COMPETENT PROFESSIONAL SHALL HAVE ACCESS TO
7 ALL RECORDS CONCERNING THE PERSON. ALL COMPETENT PROFESSIONALS SHALL HAVE
8 EQUAL ACCESS TO THE PERSON AS WELL AS ALL RECORDS CONCERNING THE PERSON.

9 F. THIS SECTION DOES NOT PRECLUDE THE PERSON FROM PETITIONING THE
10 COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE OR
11 UNCONDITIONAL DISCHARGE FROM TREATMENT PURSUANT TO SECTION 36-4004.

12 36-4003. Disposition

13 AFTER A HEARING PURSUANT TO SECTION 36-4002 OR 36-4004, IF THE COURT
14 FINDS THAT:

15 1. THE PERSON HAS BEEN RESTORED TO COMPETENCY, THE COURT SHALL ORDER
16 THAT THE CRIMINAL PROCEEDINGS RESUME.

17 2. THE PERSON HAS NOT BEEN RESTORED TO COMPETENCY AND:

18 (a) THE PERSON IS NOT DANGEROUS, THE COURT SHALL RELEASE THE PERSON
19 FROM TREATMENT AND PROCEED PURSUANT TO SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

20 (b) THE PERSON IS NOT DANGEROUS IN WHOLE OR IN PART BECAUSE THE
21 DEFENDANT IS TAKING MEDICATION, THE COURT MAY RELEASE TO THE PERSON TO A LESS
22 RESTRICTIVE ALTERNATIVE.

23 (c) THE PERSON IS DANGEROUS, THE PERSON SHALL REMAIN COMMITTED FOR
24 EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE PERSON COMPETENT OR
25 NONDANGEROUS.

26 36-4004. Petition for change of status; procedures

27 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE
28 DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE PERSON'S MENTAL ILLNESS,
29 DEFECT OR DISABILITY HAS SO CHANGED THAT THE PERSON IS NO LONGER DANGEROUS IF
30 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE SUPERINTENDENT
31 OR DIRECTOR SHALL ALLOW THE PERSON TO PETITION THE COURT FOR CONDITIONAL
32 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE. THE PERSON SHALL SERVE THE

1 PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A
2 HEARING ON THE PETITION FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE
3 ALTERNATIVE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION. THE COURT
4 MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD
5 CAUSE OR ON ITS OWN MOTION IF THE PERSON WILL NOT BE SUBSTANTIALLY
6 PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING
7 AND MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT PROFESSIONAL
8 SELECTED BY THE PROSECUTING AGENCY.

9 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND
10 CONVINCING EVIDENCE THAT THE PERSON'S MENTAL ILLNESS, DEFECT OR DISABILITY
11 HAS NOT CHANGED AND THAT THE PERSON REMAINS DANGEROUS IF CONDITIONALLY
12 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED.

13 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED PERSON FROM ANNUALLY
14 PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE
15 ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE STATE HOSPITAL
16 OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE DIRECTOR OF THE
17 DEPARTMENT OF HEALTH SERVICES SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE
18 COMMITTED PERSON OF THE PERSON'S RIGHT TO PETITION THE COURT FOR CONDITIONAL
19 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE
20 SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF RIGHTS. THE
21 DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL
22 EXAMINATION REPORT.

23 D. THE COMMITTED PERSON MAY BE PRESENT AT THE HEARING. THE PROSECUTING
24 AGENCY MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT PROFESSIONAL
25 SELECTED BY THE PROSECUTING AGENCY. THE COMMITTED PERSON MAY RETAIN AND THE
26 COURT, ON REQUEST OF AN INDIGENT PERSON, MAY APPOINT A COMPETENT
27 PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR
28 AND CONVINCING EVIDENCE THAT THE PERSON'S MENTAL ILLNESS, DEFECT OR
29 DISABILITY HAS NOT CHANGED AND THAT THE PERSON REMAINS DANGEROUS IF
30 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE DOES
31 NOT MEET ITS BURDEN OF PROOF, THE PERSON SHALL BE DISCHARGED FROM TREATMENT.

1 E. AT THE CONCLUSION OF A HEARING, IF THE COURT FINDS THAT THERE IS NO
2 LEGALLY SUFFICIENT EVIDENTIARY BASIS TO CONCLUDE THAT THE CONDITIONS
3 PRESCRIBED IN SECTION 36-4006 HAVE BEEN MET, THE COURT SHALL GRANT THE
4 STATE'S MOTION FOR A JUDGMENT ON THE ISSUE OF CONDITIONAL RELEASE TO A LESS
5 RESTRICTIVE ALTERNATIVE.

6 36-4005. Conditional release to a less restrictive alternative;
7 conditions; reports; review

8 A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS
9 RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE PERSON AND WILL
10 ADEQUATELY PROTECT THE COMMUNITY AND THE COURT DETERMINES THAT THE MINIMUM
11 CONDITIONS UNDER SECTION 36-4006 ARE MET, THE COURT SHALL ENTER JUDGMENT AND
12 ORDER THE PERSON'S CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

13 B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE PERSON DOES NOT
14 MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE EFFECT OF TREATMENT OR
15 HABILITATION BEING RECEIVED, THE COURT MAY DENY THE REQUEST FOR CONDITIONAL
16 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS THE COURT IS PERSUADED BY A
17 PREPONDERANCE OF THE EVIDENCE THAT THE PERSON WILL CONTINUE TO RECEIVE SUCH
18 TREATMENT AND HABILITATION FOLLOWING RELEASE FOR AS LONG AS THE TREATMENT AND
19 HABILITATION IS REQUIRED. IF THE COURT IS PERSUADED THAT THE PERSON WILL
20 CONTINUE TO RECEIVE THE NEEDED TREATMENT OR HABILITATION, IT MAY ORDER THE
21 PERSON TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE ON THE
22 CONDITION THAT THE PERSON CONTINUE TO RECEIVE SUCH TREATMENT OR HABILITATION.
23 IF THE PERSON FAILS TO RECEIVE THE TREATMENT OR HABILITATION ORDERED, THE
24 COURT MAY REVOKE THE CONDITIONAL RELEASE.

25 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE PERSON THAT
26 THE COURT DETERMINES ARE NECESSARY TO ENSURE THE PERSON'S COMPLIANCE WITH
27 TREATMENT AND TO PROTECT THE COMMUNITY. IF THE COURT FINDS THAT CONDITIONS
28 DO NOT EXIST THAT WILL BOTH ENSURE THE PERSON'S COMPLIANCE WITH TREATMENT AND
29 PROTECT THE COMMUNITY, THE COURT SHALL REMAND THE PERSON TO THE CUSTODY OF
30 THE SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION OR TREATMENT
31 IN A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE SUPERINTENDENT.

1 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR
2 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND
3 CONDITIONS OF A PERSON'S PLACEMENT IN A LESS RESTRICTIVE ALTERNATIVE IS NOT
4 THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING TO PROVIDE THE
5 TREATMENT.

6 E. BEFORE THE COURT AUTHORIZES A PERSON'S CONDITIONAL RELEASE TO A
7 LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL IMPOSE ANY CONDITIONS ON THE
8 PERSON THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE SAFETY OF THE
9 COMMUNITY. THE CONDITIONS SHALL INCLUDE THAT BEFORE A RELEASE TO A LESS
10 RESTRICTIVE ALTERNATIVE, A PERSON SHALL BE REQUIRED TO SUBMIT TO NINETY DAYS
11 OF INPATIENT EVALUATION AT THE ARIZONA STATE HOSPITAL. AT THE DISCRETION OF
12 THE SUPERINTENDENT OF THE STATE HOSPITAL, THE DURATION OF THE EVALUATION
13 PERIOD MAY BE LESS THAN NINETY DAYS. THE COURT SHALL ORDER THE
14 SUPERINTENDENT OF THE STATE HOSPITAL TO INVESTIGATE THE LESS RESTRICTIVE
15 ALTERNATIVE AND TO SUBMIT ADDITIONAL CONDITIONS TO THE COURT. THE COURT
16 SHALL GIVE A COPY OF THE CONDITIONS OF RELEASE TO THE PERSON AND TO ANY
17 DESIGNATED SERVICE PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY OF THE
18 FOLLOWING:

19 1. SPECIFICATION OF A RESIDENCE.

20 2. COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY TESTING OR
21 MONITORING REQUIRED.

22 3. PROHIBITION ON ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER
23 PERSONS AND PROHIBITION ON ASSOCIATING WITH OTHER PERSONS OR TYPES OF
24 PERSONS.

25 4. PROHIBITION ON THE USE OF ALCOHOL AND OTHER DRUGS.

26 5. SUPERVISION BY THE DEPARTMENT OF HEALTH SERVICES

27 6. A REQUIREMENT THAT THE PERSON REMAIN IN THIS STATE UNLESS THE
28 PERSON RECEIVES PRIOR AUTHORIZATION FROM THE COURT.

29 7. COMPLIANCE WITH ANY SUPERVISION OR MONITORING OR REPORTING
30 REQUIRED.

31 8. OTHER CONDITIONS THAT THE COURT OR THE SUPERINTENDENT OF THE STATE
32 HOSPITAL DETERMINES ARE IN THE BEST INTEREST OF THE PERSON OR OTHERS.

1 F. FOLLOWING A DETERMINATION THAT A PERSON'S RELEASE TO A LESS
2 RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE RECOMMENDATION
3 REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE SUPERINTENDENT OF THE
4 STATE HOSPITAL, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A LESS
5 RESTRICTIVE ALTERNATIVE THAT THE PERSON PARTICIPATE IN OUTPATIENT TREATMENT.
6 THE OUTPATIENT SUPERVISION AND TREATMENT MAY INCLUDE MONITORING A PERSON BY
7 USE OF AN ELECTRONIC BRACELET. THE TREATMENT SHALL CONTINUE UNTIL THE COURT
8 ORDERS A CHANGE IN THE PERSON'S TREATMENT REQUIREMENTS OR THE PERSON IS
9 DISCHARGED PURSUANT TO SECTION 36-4009.

10 G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH DESIGNATED
11 SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE PERSON IS
12 COMPLYING WITH THE TERMS AND CONDITIONS OF THE CONDITIONAL RELEASE TO A LESS
13 RESTRICTIVE ALTERNATIVE TO:

- 14 1. THE COURT.
- 15 2. THE FACILITY FROM WHICH THE PERSON WAS RELEASED.
- 16 3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE PERSON WAS FOUND TO BE
17 A DANGEROUS INCOMPETENT OR TO THE ATTORNEY GENERAL.

18 H. THE COURT SHALL REVIEW THE CASE OF EACH PERSON WHO IS CONDITIONALLY
19 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE YEAR AFTER THE PERSON'S
20 RELEASE AND THEREAFTER ON MOTION OF EITHER PARTY OR THE SUPERINTENDENT OF THE
21 STATE HOSPITAL OR ON THE COURT'S OWN MOTION UNTIL THE PERSON IS DISCHARGED.
22 AT A CASE REVIEW, THE COURT SHALL DETERMINE ONLY IF THE PERSON SHALL CONTINUE
23 TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING
24 ITS DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE
25 SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE
26 OPINIONS OF THE SUPERINTENDENT OF THE STATE HOSPITAL AND ANY OTHER COMPETENT
27 PROFESSIONAL.

28 I. IF A PERSON IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
29 ALTERNATIVE, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF
30 PUBLIC SAFETY OF THE PERSON'S RELEASE SO THAT THE DEPARTMENT OF PUBLIC SAFETY
31 CAN COMMENCE ANY APPLICABLE NOTIFICATION PROCESS AS PROVIDED IN SECTION
32 13-3825.

1 36-4006. Conditional release to a less restrictive alternative;
2 findings

3 BEFORE THE COURT ORDERS THAT A PERSON BE CONDITIONALLY RELEASED TO A
4 LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL OF THE FOLLOWING
5 APPLY:

6 1. THE PERSON WILL BE TREATED BY A PROVIDER WHO IS QUALIFIED TO
7 PROVIDE THE NECESSARY TREATMENT IN THIS STATE.

8 2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE
9 PERSON, AGREES TO ASSUME RESPONSIBILITY FOR THE PERSON'S TREATMENT, WILL
10 REPORT ON THE PERSON'S PROGRESS TO THE COURT ON A REGULAR BASIS AND WILL
11 REPORT ANY VIOLATIONS AS PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SUBSECTION
12 IMMEDIATELY TO THE COURT, THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT
13 OF THE STATE HOSPITAL.

14 3. THE PERSON WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
15 ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE SUFFICIENTLY SECURE TO PROTECT
16 THE COMMUNITY AND THE PERSON OR AGENCY THAT IS PROVIDING THE HOUSING TO THE
17 CONDITIONALLY RELEASED PERSON AGREES IN WRITING TO THE FOLLOWING CONDITIONS:

18 (a) TO ACCEPT THE CONDITIONALLY RELEASED PERSON.

19 (b) TO PROVIDE THE LEVEL OF SECURITY THAT THE COURT REQUIRES.

20 (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE
21 CONDITIONALLY RELEASED PERSON FROM THE HOUSING ARRANGEMENT TO WHICH THE
22 PERSON HAS BEEN ASSIGNED.

23 4. THE PERSON WILL COMPLY WITH THE PROVIDER AND ALL OF THE
24 REQUIREMENTS THAT ARE IMPOSED BY THE PROVIDER AND THE COURT.

25 5. THE PERSON WILL COMPLY WITH THE SUPERVISION REQUIREMENTS THAT ARE
26 IMPOSED BY THE DEPARTMENT OF HEALTH SERVICES.

27 36-4007. Detention and commitment requirements: definition

28 A. A PERSON WHO IS COMMITTED OR CONDITIONALLY RELEASED TO A LESS
29 RESTRICTIVE ALTERNATIVE PURSUANT TO THIS ARTICLE DOES NOT FORFEIT ANY LEGAL
30 RIGHT AND SHALL NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY
31 ACTIONS TAKEN OR ORDERS MADE EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE.

1 B. A PERSON WHO IS COMMITTED OR CONDITIONALLY RELEASED TO A LESS
2 RESTRICTIVE ALTERNATIVE PURSUANT TO THIS ARTICLE SHALL RECEIVE CARE,
3 SUPERVISION OR TREATMENT. THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL KEEP
4 RECORDS DETAILING ALL MEDICAL, EXPERT AND PROFESSIONAL CARE AND TREATMENT
5 THAT A COMMITTED PERSON RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF
6 PERIODIC EXAMINATIONS THAT ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS
7 AND REPORTS SHALL BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

- 8 1. HE COMMITTED PERSON.
- 9 2. THE COMMITTED PERSON'S ATTORNEY.
- 10 3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.
- 11 4. THE COURT.
- 12 5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL PERSON WHO
13 DEMONSTRATES A NEED FOR ACCESS TO THE RECORDS OR REPORTS.
- 14 6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR ASSOCIATED
15 WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE FOR THE CARE,
16 CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED PERSON.

17 C. AT THE TIME A PERSON IS DETAINED OR TRANSFERRED INTO A LICENSED
18 FACILITY PURSUANT TO THIS ARTICLE, THE PERSON IN CHARGE OF THE FACILITY OR
19 THE PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND
20 SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED PERSON. THE
21 STAFF MEMBER WHO MAKES AN INVENTORY OF THE PERSON'S PERSONAL PROPERTY SHALL
22 GIVE A SIGNED COPY OF THAT INVENTORY TO THE PERSON. THE FACILITY SHALL ALLOW
23 A RESPONSIBLE RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITATIONS
24 THAT THE PERSON SPECIFICALLY IMPOSES. THE FACILITY SHALL NOT DISCLOSE THE
25 CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE
26 PERSON OR A COURT ORDER.

27 D. THIS ARTICLE DOES NOT PROHIBIT A PERSON WHO IS COMMITTED OR
28 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE FROM EXERCISING ANY
29 RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING RELEASE FROM
30 CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.
31 THE COMMITTED PERSON MUST EXHAUST ALL DIRECT APPEAL AND POSTCOMMITMENT

1 PROCEDURES BEFORE EXERCISING THE COMMITTED PERSON'S RIGHT TO PETITION FOR A
2 WRIT OF HABEAS CORPUS.

3 E. A PERSON WHO IS INDIGENT MAY NOT BE CONDITIONALLY RELEASED TO A
4 LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE CLOTHING. WHEN A
5 PERSON IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR
6 DISCHARGED, THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL FURNISH THE PERSON
7 WITH AN AMOUNT OF MONEY PURSUANT TO SECTION 31-228.

8 F. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS THE
9 SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE PERSON AND INCLUDES THE
10 GUARDIAN, CONSERVATOR OR ATTORNEY OF THE PERSON.

11 36-4008. Revocation of conditional release to a less
12 restrictive alternative; hearing

13 A. IF THE PETITIONER OR THE COURT BELIEVES THAT THE PERSON WHO IS
14 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE IS NOT COMPLYING
15 WITH THE TERMS AND CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE AND
16 TREATMENT, THE DESIGNATED SERVICE PROVIDER OR THE ATTORNEY FOR THE STATE MAY
17 PETITION THE COURT FOR, OR THE COURT ON ITS OWN MOTION MAY SCHEDULE, A
18 HEARING FOR THE PURPOSE OF REVOKING OR MODIFYING THE TERMS AND CONDITIONS OF
19 THE PERSON'S CONDITIONAL RELEASE. THE HEARING SHALL BE HELD WITHIN TEN DAYS
20 AFTER THE PETITION IS FILED.

21 B. IF THE ATTORNEY FOR THE STATE OR THE COURT REASONABLY BELIEVES THAT
22 A PERSON WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE IS
23 NOT COMPLYING WITH THE TERMS AND CONDITIONS OF THE PERSON'S CONDITIONAL
24 RELEASE, IS IN NEED OF ADDITIONAL CARE OR TREATMENT OR IF THE CIRCUMSTANCES
25 OF THE RELEASE HAVE CHANGED SO THAT THE COMMUNITY IS NO LONGER SAFE, THE
26 COURT OR THE DEPARTMENT OF HEALTH SERVICES MAY ORDER THAT THE CONDITIONALLY
27 RELEASED PERSON BE DETAINED AND TAKEN INTO CUSTODY UNTIL A HEARING CAN BE
28 SCHEDULED TO DETERMINE IF THE PERSON'S CONDITIONAL RELEASE SHOULD BE REVOKED
29 OR MODIFIED. THE COURT SHALL BE NOTIFIED BEFORE THE CLOSE OF THE NEXT
30 JUDICIAL DAY OF THE PERSON'S DETENTION. THE ATTORNEY FOR THE STATE AND THE
31 CONDITIONALLY RELEASED PERSON MAY REQUEST AN IMMEDIATE MENTAL EXAMINATION OF
32 THE PERSON. IF THE CONDITIONALLY RELEASED PERSON IS INDIGENT, THE COURT, ON

1 REQUEST, SHALL ASSIST THE PERSON IN OBTAINING A COMPETENT PROFESSIONAL TO
2 CONDUCT THE EXAMINATION.

3 C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE PERSON'S DETENTION,
4 THE COURT SHALL SCHEDULE A HEARING. AT THE HEARING, THE COURT SHALL
5 DETERMINE IF THE STATE HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE
6 PERSON WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID
7 NOT COMPLY WITH THE TERMS AND CONDITIONS OF RELEASE, IS IN NEED OF ADDITIONAL
8 CARE OR TREATMENT OR IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT
9 THE COMMUNITY IS NO LONGER SAFE AND IF THE PERSON SHOULD CONTINUE ON
10 CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE
11 CONDITIONAL RELEASE SHOULD BE REVOKED AND THE PERSON SHOULD BE COMMITTED TO
12 TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE PROVISIONS OF THIS
13 ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE COURT FINDS THAT THE
14 HEARSAY EVIDENCE IS OTHERWISE RELIABLE.

15 36-4009. Petition for discharge; procedures

16 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE
17 DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE PERSON'S MENTAL ILLNESS,
18 DEFECT OR DISABILITY HAS SO CHANGED THAT THE PERSON IS NO LONGER DANGEROUS IF
19 DISCHARGED, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE PERSON TO PETITION
20 THE COURT FOR DISCHARGE. THE PERSON SHALL SERVE THE PETITION ON THE COURT
21 AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A HEARING ON THE
22 PETITION FOR DISCHARGE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION.
23 THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A
24 SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE RESPONDENT WILL NOT BE
25 SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE
26 AT THE HEARING AND MAY REQUEST THAT THE PETITIONER BE EXAMINED BY A COMPETENT
27 PROFESSIONAL WHO IS SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE
28 STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
29 PETITIONER'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT
30 THE PETITIONER REMAINS DANGEROUS.

31 B. THIS SECTION DOES NOT PROHIBIT THE COMMITTED PERSON FROM ANNUALLY
32 PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE

1 SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF
2 HEALTH SERVICES. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL
3 GIVE ANNUAL WRITTEN NOTICE TO THE COMMITTED PERSON OF THE PERSON'S RIGHT TO
4 PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT
5 OR DIRECTOR. THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR SHALL
6 SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

7 C. THE COMMITTED PERSON MAY BE PRESENT AT THE DISCHARGE HEARING. THE
8 PROSECUTING AGENCY MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT
9 PROFESSIONAL WHO IS SELECTED BY THE ATTORNEY FOR THE STATE. THE COMMITTED
10 PERSON MAY RETAIN AND THE COURT ON THE REQUEST OF AN INDIGENT PERSON MAY
11 APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN
12 OF PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON'S MENTAL ILLNESS, DEFECT
13 OR DISABILITY HAS NOT CHANGED AND THAT THE PERSON REMAINS A DANGER TO OTHERS
14 AND IS LIKELY TO ENGAGE IN ACTS THAT ARE A DANGER TO PUBLIC SAFETY IF
15 DISCHARGED. IF THE STATE DOES NOT MEET ITS BURDEN OF PROOF, THE PERSON SHALL
16 BE DISCHARGED FROM TREATMENT.

17 D. IF A PERSON IS DISCHARGED, THE DEPARTMENT OF HEALTH SERVICES SHALL
18 NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE PERSON'S DISCHARGE SO THAT THE
19 DEPARTMENT OF PUBLIC SAFETY CAN COMMENCE ANY NOTIFICATION PROCESS AS PROVIDED
20 IN SECTION 13-3825.

21 36-4010. Place for proceedings; transportation; immunity

22 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON WHO IS
23 DETAINED OR CIVILLY COMMITTED PURSUANT TO THIS ARTICLE SHALL NOT BE
24 TRANSPORTED FROM A LICENSED FACILITY UNDER THE SUPERVISION OF THE
25 SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL, EXCEPT THAT A PERSON MAY BE
26 TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING REASONS:

- 27 1. A HEARING ON AN ANNUAL EXAMINATION.
- 28 2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS
29 RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.
- 30 3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION 36-4009.
- 31 4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A PERSON WHO IS
32 DETAINED OR CIVILLY COMMITTED PURSUANT TO THIS ARTICLE IS NECESSARY.

1 5. ANY COURT PROCEEDING NOT OTHERWISE SPECIFIED IN THIS ARTICLE WHERE
2 THE PRESENCE OF THE COMMITTED PERSON IS REQUIRED.

3 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY PERSON WHOM THE
4 COURT HAS DETERMINED IS SUBJECT TO CONDITIONAL RELEASE PURSUANT TO SECTION
5 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

6 C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING FROM
7 BEING HELD ON THE GROUNDS OF THE ARIZONA STATE HOSPITAL OR FROM USING A
8 TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT SHALL
9 ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS ARTICLE.
10 THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY INCLUDE
11 PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF THE
12 ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN
13 INTERACTIVE AUDIOVISUAL DEVICE.

14 D. THE DEPARTMENT OF HEALTH SERVICES IS RESPONSIBLE FOR THE
15 TRANSPORTATION TO AND FROM A MEDICAL FACILITY OF A PERSON WHO IS DETAINED OR
16 COMMITTED PURSUANT TO THIS ARTICLE. THE DEPARTMENT OF HEALTH SERVICES SHALL
17 DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND
18 RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE PERSON. IN DETERMINING THE
19 APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE
20 DEPARTMENT SHALL CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING
21 PERSONNEL AND THE DETAINED OR COMMITTED PERSON.

22 E. THE DEPARTMENT OF HEALTH SERVICES AND ANY COUNTY SHERIFF ARE IMMUNE
23 FROM LIABILITY FOR ANY GOOD FAITH ACTS UNDER THIS SECTION.

24 Sec. 24. Effective date

25 This act is effective from and after December 31, 2016."

26 Amend title to conform

ADAM DRIGGS

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