



# HOUSE OF REPRESENTATIVES

SB 1510

~~juveniles; life sentence; parole~~

now: incompetent persons; mental health evaluations

Prime Sponsor: Senator Driggs, LD 28

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**DPA**

**S/E** Committee on Judiciary

**DPA**

Caucus and COW

**X**

As Transmitted to the Governor

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## **OVERVIEW**

SB 1510 provides notice to the court and prosecutor for persons subject to civil commitment and court-ordered treatment as the result of a finding that the person is incompetent to stand trial and provides an option to screen persons who are believed to be sexually violent persons (SVP) during the competency process.

## **PROVISIONS**

### ***Incompetent Defendants***

1. Permits the use of any statement by a defendant during an examination or evidence resulting from a statement by any party in a hearing to determine if the defendant is eligible for court-ordered treatment or is an SVP.
2. Allows reports that are otherwise sealed at the conclusion of the case to be ordered open by the court for purposes of a hearing to determine if the defendant is eligible for court-ordered treatment or is an SVP.
3. Allows the court to order the prosecutor to file a petition for evaluation and provide criminal history for the defendant if the defendant is remanded to the custody of DHS for civil commitment proceedings.
4. Provides that if the court enters an order related to commitment or the appointment of a guardian, the court may also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the cost of the defendant's medically necessary care.
5. States that the court may retain jurisdiction over the defendant until the defendant is civilly committed or a guardian is appointed.
6. Provides that if the defendant is remanded for civil commitment proceedings and the court is notified that the evaluation is not completed, the court must order the sheriff to take the defendant into custody to determine if either a guardian should be appointed or the charges should be dismissed without prejudice. If the defendant is out of custody, the defendant may be taken into custody for disposition.
7. Expands A.R.S. Title 13, Chapter 41 (Incompetence to Stand Trial) definition of a *mental health expert* to include a licensed physician or psychologist who is familiar with criminal and involuntary commitment statutes.

***Sexually Violent Persons (SVP)***

8. Permits the court to order a screening of a defendant to determine if the defendant is a SVP if:
  - a. The defendant is charged with a sexually violent offense;
  - b. The county attorney requests a screening; and
  - c. The person is being evaluated in to determine if competency to stand trial.
9. Requires at least one of the mental health experts appointed to examine the defendant to be a *competent professional* as defined in the SVP statute (A.R.S. § 36-3701) if the court has ordered a screening to determine if the defendant is a SVP.
10. States that if the defendant is determined to be not restorable to competency within 21 months, the expert must determine if the defendant may be an SVP.
11. Requires the report to include the following information if the expert determines the defendant incompetent to stand trial:
  - a. The nature of the mental health disorder, disease or defect or of any personality or other disorder that makes the defendant likely to an SVP; and
  - b. Whether the defendant may be an SVP, if the prognosis includes a determination that there is no substantial probability that the defendant will regain competency within 21 months of the original finding of incompetency.
12. Requires a mental health expert who has determined that a defendant may be an SVP to provide the report to the prosecuting agency for purposes of filing a petition for commitment.
13. Expands the definition of an *agency* in A.R.S. Title 36, Chapter 37 relating to SVPs to include other mental health treatment agencies in addition to ASH.

***Court-Ordered Treatment/Civil Commitment***

**Evaluation of a Person Incompetent to Stand Trial**

14. States that a prescreening is not necessary if a petition for court-ordered evaluation is filed by a prosecutor on a finding that the defendant is incompetent to stand trial.
15. Requires a petition for evaluation filed by a prosecutor to include any known *criminal history*, including whether the proposed patient has ever been found incompetent to stand trial.
16. States that if the person is determined not to need an evaluation, the person must be remanded for disposition. If the person is out of custody, the court may order the person be taken into custody for disposition.
17. Requires the evaluation to be completed within 72 hours of the person being delivered to the evaluation agency.
18. Requires the court and prosecuting agency to receive notice of the expiration of an order for evaluation.
19. Permits the court to enter orders for further disposition, including orders that the person be taken into custody.
20. Provides that if the evaluation order expires, it does not prevent another person from initiating another evaluation of the person.

21. Requires the medical director of an evaluation agency to provide notice within 24 hours to the court and the prosecuting agency of the intent to release a person if further evaluation is not appropriate in the opinion of the medical director. The court:
  - a. May order that the person return to custody for disposition, upon release; and
  - b. Must order the medical director to provide patient records to the court and prosecuting agency.
22. Requires a petition for court-ordered treatment filed by a prosecutor to include known *criminal history*.

Court-Ordered Treatment

23. Provides that if a patient is admitted for voluntary treatment or before a patient is discharged, the medical director must notify the prosecuting agency.
  - a. The prosecutor may request a hearing to determine if the person should be returned to custody for a disposition.
  - b. The court must order the medical director to provide patient records to the court and the prosecuting agency.
24. Allows the court to order a medical director to provide notice to the court of any noncompliance with the terms of a treatment order, if the person is subject to court-ordered treatment.
25. Permits the court on its own motion to determine that a patient is not complying with the terms of an outpatient treatment order. Current law provides this option on motion by the medical director of the patient's outpatient treatment facility.
26. Permits the court on its own motion to authorize and direct a peace officer to take a patient into protective custody and transport the patient for inpatient treatment, if a patient refuses to comply with an amended order for inpatient treatment. An amended order arises from a situation where the court determines that the patient is not complying with the terms of the outpatient treatment order and may include ordering the patient to inpatient treatment.
27. States that an order, authorization or directive to a peace officer must include:
  - a. The patient's *criminal history*; and
  - b. The name and phone numbers of the patient's:
    - i. Case manager;
    - ii. Guardian;
    - iii. Spouse;
    - iv. Next of kin; or
    - v. Significant other, as applicable.
28. Provides that if the court does not find a person to be in need of court-ordered treatment, the court must notify the prosecuting agency. The court may remand the person to the sheriff's custody for disposition.
29. Provides that the written outpatient treatment plan included in an order for conditional outpatient treatment that is issued by a medical director must include any provisions that the medical director or court believe are necessary to protect the well-being of the patient and the public.
30. Allows the court to order that the medical director provide notice to the court of specific instances of noncompliance, as specified by the court.

## SB 1510

31. Requires copies of any subsequent order and amended outpatient treatment plan to be provided to the prosecutor.
32. States that if the medical director rescinds an order for conditional outpatient treatment and orders the patient to return to a mental health treatment agency, the medical director must provide notice to the court and the prosecuting agency.
33. Requires the medical director to provide notice to the court before releasing a person who was found to be a danger to others for outpatient treatment.
34. Allows a person subject to court-ordered treatment who has a grave disability or a persistent or acute disability to be released from inpatient treatment when, in the opinion of the medical director, the level of care offered by the agency is no longer required.
35. Permits the patient to agree to continue treatment voluntarily.
36. Requires the medical director to arrange for an appropriate alternative placement prior to release.
37. Requires the medical director to notify the guardian of the person, if applicable, and the regional behavioral health authority (RHBA) 10 days prior to the intended release date. The guardian (if applicable) and the RHBA must arrange alternative placement with advice and recommendations of the medical director.
38. Prohibits the release of a person subject to court-ordered treatment who was found incompetent to stand trial prior to the expiration of the treatment period ordered by the court, unless notice is provided by the medical director.
39. Extends pre-release and pre-discharge notice provisions for victims, relatives and other persons to patients who are subject to court-ordered treatment and who have been found incompetent to stand trial.
40. Requires the court to order the medical director to provide patient records to the court and prosecuting agency if a hearing is held to determine if the standard for release of the patient has been met.
41. States that a patient subject to court-ordered treatment is not discharged at the end of the treatment period if an application for continued court-ordered treatment is granted.
42. Requires a patient to comply with the discharge statute requirements prior to discharge, if the discharge is the result of the medical director deciding not to file a new petition for court-ordered evaluation, court-ordered treatment or a continuation of the previous court-ordered treatment.
43. Relieves the treatment agency from civil liability for any acts committed by a released patient if the treatment agency followed the requirements and process outlined in law in good faith.
44. States that the evaluation or treatment agency may apply to the court for a warrant or court order to take a patient who is absent from evaluation or treatment into custody to bring the patient back to the agency.
45. Defines *criminal history* and *prosecuting agency*.

### Absence from Court-Ordered Treatment

46. Tolls the period of court-ordered treatment during the unauthorized absence of a patient
47. Requires the court to confirm the period that is tolled when the patient returns to treatment.

## SB 1510

48. Permits a patient whose treatment is tolled for at least 60 days to request judicial review on return to treatment.
49. Requires the treatment agency to make active and diligent efforts to find and return the patient to treatment during the tolled period. The agency must file a report of its efforts at least once every 60 days or as often as ordered by the court.
50. Permits the court to terminate the treatment order after 180 days of tolling, if specific conditions are met and notice is provided to the prosecuting agency.
51. Prohibits tolling court-ordered treatment for more than 365 days.
52. Relieves the treatment agency from liability for any damages that result from the action of a patient during a court-ordered tolling period if the treatment agency followed the requirements and process outlined in law in good faith.
53. Defines *absent without proper authorization* and *unauthorized absence*.

### *Miscellaneous*

54. Contains a delayed effective date of January 1, 2017.

### **CURRENT LAW**

A.R.S. Title 13, Chapter 41 outlines the process for determining that a defendant is incompetent to stand trial. A.R.S. 13-4501 states that *incompetent to stand trial* means that, as a result of a mental illness, defect or disability, a defendant is unable to understand the nature and object of the proceeding or to assist the defendant's defense. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial. This determination is different from finding a defendant *guilty except insane*.

If the court finds a defendant incompetent to stand trial and finds that there is no substantial probability that the defendant will regain competency within 21 months of the finding, a party may request that the court:

- Remand the defendant to the custody of DHS for civil commitment proceedings under A.R.S. Title 36, Chapter 5;
- Appoint a guardian; or
- Release the defendant from custody and dismiss the charges without prejudice.

A.R.S. Title 36, Chapter 5, Articles 4 and 5 outline the process for evaluating a person and seeking civil commitment for purposes of court-ordered mental health treatment. Under A.R.S. 36-250, any responsible person can apply for a court-ordered evaluation of a person who is alleged to be:

- A danger to self or to others; or
- A person with a persistent or acute disability or grave disability; and who
- Is unwilling or unable to undergo a voluntary evaluation.

The application is provided to a screening agency, which must provide a pre-petition screening within 48 hours. From the pre-petition screening, the agency completes a report of opinions and conclusions. If the report indicates that there is reasonable cause to believe the patient meets the criteria above, the agency is required to file a petition for a court-ordered evaluation of the person. If after evaluation, the court finds by clear and convincing evidence that the patient meets the criteria above, the court must order the patient in to one of the following:

## **SB 1510**

- Outpatient treatment;
- Combined inpatient and outpatient treatment; or
- Inpatient treatment in a mental health treatment agency or in a hospital.

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

More information about the civil commitment process can be found [here](#).