

REFERENCE TITLE: court-ordered evaluation

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

## **HB 2635**

Introduced by  
Representatives Court, Ash

AN ACT

AMENDING SECTIONS 36-501, 36-533 AND 36-539, ARIZONA REVISED STATUTES;  
RELATING TO COURT-ORDERED EVALUATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-501, Arizona Revised Statutes, is amended to  
3 read:

4 36-501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Admitting officer" means a psychiatrist or other physician or  
7 psychiatric and mental health nurse practitioner with experience in  
8 performing psychiatric examinations who has been designated as an admitting  
9 officer of the evaluation agency by the person in charge of the evaluation  
10 agency.

11 2. "Chief medical officer" means the chief medical officer under the  
12 supervision of the superintendent of the state hospital.

13 3. "Contraindicated" means that access is reasonably likely to  
14 endanger the life or physical safety of the patient or another person.

15 4. "Court" means the superior court in the county in this state in  
16 which the patient resides or was found before screening or emergency  
17 admission under this title.

18 5. "Danger to others" means that the judgment of a person who has a  
19 mental disorder is so impaired that the person is unable to understand the  
20 person's need for treatment and as a result of the person's mental disorder  
21 the person's continued behavior can reasonably be expected, on the basis of  
22 competent medical opinion, to result in serious physical harm.

23 6. "Danger to self":

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

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

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

32 (b) Does not include behavior that establishes only the condition of  
33 gravely disabled.

34 7. "Department" means the department of health services.

35 8. "Deputy director" means the deputy director of the division of  
36 behavioral health in the department of health services.

37 9. "Detention" means the taking into custody of a patient or proposed  
38 patient.

39 10. "Director" means the director of the department.

40 11. "Division" means the division of behavioral health in the  
41 department.

42 12. "Evaluation" means a professional multidisciplinary analysis based  
43 on data describing the person's identity, biography and medical,  
44 psychological and social conditions carried out by a group of persons  
45 consisting of not less than the following:

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

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

19 13. "Evaluation agency" means a health care agency that is licensed by  
20 the department and that has been approved pursuant to this title, providing  
21 those services required of such agency by this chapter.

22 14. "Examination" means ~~an~~ A PROFESSIONAL MULTIDISCIPLINARY exploration  
23 of the person's past psychiatric history and of the circumstances leading up  
24 to the person's presentation, a psychiatric exploration of the person's  
25 present mental condition and a complete physical examination.

26 15. "Family member" means a spouse, parent, adult child, adult sibling  
27 or other blood relative of a person undergoing treatment or evaluation  
28 pursuant to this chapter.

29 16. "Gravely disabled" means a condition evidenced by behavior in which  
30 a person, as a result of a mental disorder, is likely to come to serious  
31 physical harm or serious illness because the person is unable to provide for  
32 the person's own basic physical needs.

33 17. "Health care decision maker" has the same meaning prescribed in  
34 section 12-2801.

35 18. "Health care entity" means a health care provider, the department,  
36 the Arizona health care cost containment system administration or a regional  
37 behavioral health authority under contract with the department.

38 19. "Health care provider" means a health care institution as defined  
39 in section 36-401 that is licensed as a behavioral health provider pursuant  
40 to department rules or a mental health provider.

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

1           21. "Informed consent" means a voluntary decision following  
2 presentation of all facts necessary to form the basis of an intelligent  
3 consent by the patient or guardian with no minimizing of known dangers of any  
4 procedures.

5           22. "Least restrictive treatment alternative" means the treatment plan  
6 and setting that infringe in the least possible degree with the patient's  
7 right to liberty and that are consistent with providing needed treatment in a  
8 safe and humane manner.

9           23. "Licensed physician" means any medical doctor or doctor of  
10 osteopathy who is either:

11           (a) Licensed in this state.

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

15           24. "Medical director of an evaluation agency" means a psychiatrist, or  
16 other licensed physician experienced in psychiatric matters, who is  
17 designated in writing by the governing body of the agency as the person in  
18 charge of the medical services of the agency for the purposes of this chapter  
19 and may include the chief medical officer of the state hospital.

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

25           26. "Mental disorder" means a substantial disorder of the person's  
26 emotional processes, thought, cognition or memory. Mental disorder is  
27 distinguished from:

28           (a) Conditions that are primarily those of drug abuse, alcoholism or  
29 mental retardation, unless, in addition to one or more of these conditions,  
30 the person has a mental disorder.

31           (b) The declining mental abilities that directly accompany impending  
32 death.

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

37           27. "Mental health provider" means any physician or provider of mental  
38 health or behavioral health services involved in evaluating, caring for,  
39 treating or rehabilitating a patient.

40           28. "Mental health treatment agency" means the state hospital or a  
41 health care agency that is licensed by the department and that provides those  
42 services that are required of the agency by this chapter.

43           29. "Outpatient treatment" or "combined inpatient and outpatient  
44 treatment" means any treatment program not requiring continuous inpatient  
45 hospitalization.

- 1           30. "Outpatient treatment plan" means a treatment plan that does not  
2 require continuous inpatient hospitalization.
- 3           31. "Patient" means any person undergoing examination, evaluation or  
4 behavioral or mental health treatment under this chapter.
- 5           32. "Peace officers" means sheriffs of counties, constables, marshals  
6 and policemen of cities and towns.
- 7           33. "Persistently or acutely disabled" means a severe mental disorder  
8 that meets all the following criteria:  
9           (a) If not treated has a substantial probability of causing the person  
10 to suffer or continue to suffer severe and abnormal mental, emotional or  
11 physical harm that significantly impairs judgment, reason, behavior or  
12 capacity to recognize reality.  
13           (b) Substantially impairs the person's capacity to make an informed  
14 decision regarding treatment, and this impairment causes the person to be  
15 incapable of understanding and expressing an understanding of the advantages  
16 and disadvantages of accepting treatment and understanding and expressing an  
17 understanding of the alternatives to the particular treatment offered after  
18 the advantages, disadvantages and alternatives are explained to that person.  
19           (c) Has a reasonable prospect of being treatable by outpatient,  
20 inpatient or combined inpatient and outpatient treatment.
- 21           34. "Prepetition screening" means the review of each application  
22 requesting court-ordered evaluation, including an investigation of facts  
23 alleged in such application, an interview with each applicant and an  
24 interview, if possible, with the proposed patient. The purpose of the  
25 interview with the proposed patient is to assess the problem, explain the  
26 application and, when indicated, attempt to persuade the proposed patient to  
27 receive, on a voluntary basis, evaluation or other services.
- 28           35. "Prescribed form" means a form established by a court or the rules  
29 of the division that have been approved by the director or in accordance with  
30 the laws of this state.
- 31           36. "Professional" means a physician who is licensed pursuant to title  
32, chapter 13 or 17, a psychologist who is licensed pursuant to title 32,  
33 chapter 19.1 or a psychiatric and mental health nurse practitioner who is  
34 certified pursuant to title 32, chapter 15.
- 35           37. "Proposed patient" means a person for whom an application for  
36 evaluation has been made or a petition for court-ordered evaluation has been  
37 filed.
- 38           38. "Psychiatric and mental health nurse practitioner" means a  
39 registered nurse practitioner as defined in section 32-1601 who has completed  
40 an adult or family psychiatric and mental health nurse practitioner program  
41 and who is certified as an adult or family psychiatric and mental health  
42 nurse practitioner by the state board of nursing.
- 43           39. "Psychiatrist" means a licensed physician who has completed three  
44 years of graduate training in psychiatry in a program approved by the  
45 American medical association or the American osteopathic association.

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

3 41. "Records" means all communications that are recorded in any form or  
4 medium and that relate to patient examination, evaluation or behavioral or  
5 mental health treatment. Records include medical records that are prepared  
6 by a health care provider or other providers. Records do not include:

7 (a) Materials that are prepared in connection with utilization review,  
8 peer review or quality assurance activities, including records that a health  
9 care provider prepares pursuant to section 36-441, 36-445, 36-2402 or  
10 36-2917.

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

14 42. "Screening agency" means a health care agency that is licensed by  
15 the department and that provides those services required of such agency by  
16 this chapter.

17 43. "Social worker" means a person who has completed two years of  
18 graduate training in social work in a program approved by the council of  
19 social work education and who has experience in mental health.

20 44. "State hospital" means the Arizona state hospital.

21 45. "Superintendent" means the superintendent of the state hospital.

22 Sec. 2. Section 36-533, Arizona Revised Statutes, is amended to read:

23 36-533. [Petition for treatment](#)

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

25 1. That the patient is in need of a period of treatment because the  
26 patient, as a result of mental disorder, is a danger to self or to others, is  
27 persistently or acutely disabled or is gravely disabled.

28 2. The treatment alternatives which are appropriate or available.

29 3. That the patient is unwilling to accept or incapable of accepting  
30 treatment voluntarily.

31 B. The petition shall be accompanied by the affidavits of the two  
32 physicians who ~~conducted the examinations during the evaluation period~~  
33 PARTICIPATED IN THE EVALUATION and by the affidavit of the applicant for the  
34 evaluation, if any. The affidavits of the physicians shall describe in  
35 detail the behavior which indicates that the person, as a result of mental  
36 disorder, is a danger to self or to others, is persistently or acutely  
37 disabled or is gravely disabled and shall be based upon the physician's  
38 ~~examination~~ OBSERVATIONS of the patient and the physician's study of  
39 information about the patient. A summary of the facts which support the  
40 allegations of the petition shall be included. THE AFFIDAVIT SHALL ALSO  
41 INCLUDE THE RESULTS OF THE PHYSICAL EXAMINATION OF THE PATIENT IF THIS IS  
42 RELEVANT TO THE EVALUATION. THE COMPLETE PHYSICAL EXAMINATION MAY BE  
43 PERFORMED BY THE EVALUATING PHYSICIAN, BY OR UNDER THE SUPERVISION OF A  
44 PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 OR BY A  
45 REGISTERED NURSE PRACTITIONER WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER

1 15. THE EXAMINATION MUST BE CONSISTENT WITH EXISTING STANDARDS OF CARE AND  
2 THE EVALUATING PHYSICIAN MUST REVIEW OR AUGMENT THE RESULTS OF THE  
3 EXAMINATION. THE EXAMINATION MAY INCLUDE FIRSTHAND OBSERVATION OR REMOTE  
4 OBSERVATION BY INTERACTIVE AUDIOVISUAL MEDIA.

5 C. The petition shall request the court to issue an order requiring  
6 the person to undergo a period of treatment.

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

8 1. A statement that in the opinion of the petitioner the gravely  
9 disabled person does or does not require guardianship or conservatorship, or  
10 both, under the provisions of title 14 and the reasons on which the statement  
11 is based.

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

15 3. A statement that in the opinion of the petitioner the gravely  
16 disabled person does or does not require temporary guardianship or  
17 conservatorship, or both, and the reasons on which the statement is based.

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

21 E. A copy of the petition in cases of grave disability shall be mailed  
22 to the public fiduciary in the county of the patient's residence or in which  
23 the patient was found before evaluation and to any person nominated as  
24 guardian or conservator.

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

27 Sec. 3. Section 36-539, Arizona Revised Statutes, is amended to read:

28 36-539. Conduct of hearing; record; transcript

29 A. The medical director of the agency shall issue instructions to the  
30 physicians or the psychiatric and mental health nurse practitioner treating  
31 the proposed patient to take all reasonable precautions to ensure that at the  
32 time of the hearing the proposed patient shall not be so under the influence  
33 of or so suffer the effects of drugs, medication or other treatment as to be  
34 hampered in preparing for or participating in the hearing. The court at the  
35 time of the hearing shall be presented a record of all drugs, medication or  
36 other treatment that the person has received during the seventy-two hours  
37 immediately before the hearing.

38 B. The patient and the patient's attorney shall be present at all  
39 hearings, and the patient's attorney may subpoena and cross-examine witnesses  
40 and present evidence. The patient may choose to not attend the hearing or  
41 the patient's attorney may waive the patient's presence. The evidence  
42 presented by the petitioner or the patient shall include the testimony of two  
43 or more witnesses acquainted with the patient at the time of the alleged  
44 mental disorder, which may be satisfied by a statement agreed on by the  
45 parties, and testimony of the two physicians who ~~performed examinations~~

1 PARTICIPATED in the evaluation of the patient, which may be satisfied by  
2 stipulating to the admission of the evaluating physicians' affidavits as  
3 required pursuant to section 36-533, subsection B. The physicians shall  
4 testify as to their personal ~~examination~~ OBSERVATIONS of the patient. They  
5 shall also testify as to their opinions concerning whether the patient is, as  
6 a result of mental disorder, a danger to self or to others, is persistently  
7 or acutely disabled or is gravely disabled and as to whether the patient  
8 requires treatment. Such testimony shall state specifically the nature and  
9 extent of the danger to self or to others, the persistent or acute disability  
10 or the grave disability. If the patient is gravely disabled, the physicians  
11 shall testify concerning the need for guardianship or conservatorship, or  
12 both, and whether or not the need is for immediate appointment. Other  
13 persons who have participated in the evaluation of the patient or, if further  
14 treatment was requested by a mental health treatment agency, persons of that  
15 agency who are directly involved in the care of the patient shall testify at  
16 the request of the court or of the patient's attorney. Witnesses shall  
17 testify as to placement alternatives appropriate and available for the care  
18 and treatment of the patient. The clinical record of the patient for the  
19 current admission shall be available and may be presented in full or in part  
20 as evidence at the request of the court, the county attorney or the patient's  
21 attorney.

22 C. If the patient, for medical reasons, is unable to be present at the  
23 hearing and the hearing cannot be conducted where the patient is being  
24 treated or confined, the court shall require clear and convincing evidence  
25 that the patient is unable to be present at the hearing and on such a finding  
26 may proceed with the hearing in the patient's absence.

27 D. The requirements of subsection B of this section are in addition to  
28 all rules of evidence and the Arizona rules of civil procedure, not  
29 inconsistent with subsection B of this section.

30 E. A verbatim record of all proceedings under this section shall be  
31 made by stenographic means by a court reporter if a written request for a  
32 court reporter is made by any party to the proceedings at least twenty-four  
33 hours in advance of such proceedings. If stenographic means are not  
34 requested in the manner provided by this subsection, electronic means shall  
35 be directed by the presiding judge. The stenographic notes or electronic  
36 tape shall be retained as provided by statute.

37 F. A patient who has been ordered to undergo treatment may request a  
38 certified transcript of the hearing. To obtain a copy, the patient shall pay  
39 for a transcript or shall file an affidavit that the patient is without means  
40 to pay for a transcript. If the affidavit is found true by the court, the  
41 expense of the transcript is a charge on the county in which the proceedings  
42 were held, or, if an intergovernmental agreement by the counties has required  
43 evaluation in a county other than that of the patient's residence, such  
44 expense may be charged to the county of the patient's residence or in which  
45 the patient was found before evaluation.