

REFERENCE TITLE: incompetent and dangerous defendants; treatment

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2015

SB 1315

Introduced by
Senators Driggs, Kavanagh; Representative Steele; Senators Barto, Farley,
Worsley; Representatives Boyer, Fann

AN ACT

AMENDING SECTIONS 13-3994, 13-4501, 13-4505, 13-4507, 13-4509, 13-4515 AND 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4518; AMENDING SECTIONS 36-509, 36-520, 36-522, 36-523, 36-529, 36-531, 36-533, 36-534, 36-540 AND 36-540.01, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 5, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-540.03; AMENDING SECTIONS 36-541.01, 36-542, 36-543, 36-544, 36-546 AND 36-3701, ARIZONA REVISED STATUTES; RELATING TO INCOMPETENT AND DANGEROUS DEFENDANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3994, Arizona Revised Statutes, is amended to
3 read:

4 **13-3994. Commitment; hearing; jurisdiction; definition**

5 A. A person who is found guilty except insane pursuant to section
6 13-502 shall be committed to a secure state mental health facility under the
7 department of health services for a period of treatment.

8 B. ~~If the criminal act of the person committed pursuant to subsection~~
9 ~~A of this section did not cause the death or serious physical injury of or~~
10 ~~the threat of death or serious physical injury to another person~~ EXCEPT FOR
11 PERSONS WHO HAVE COMMITTED A SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED FELONY
12 AS DEFINED IN SECTION 13-706 OR AN OFFENSE UNDER CHAPTER 14 OR 35.1 OF THIS
13 TITLE, the court shall set a hearing date within seventy-five days after the
14 person's commitment to determine if the person is entitled to release from
15 confinement or if the person meets the standards for civil commitment
16 pursuant to title 36, chapter 5. The court shall notify the medical director
17 of the mental health facility, the attorney general, the county attorney, the
18 victim and the attorney representing the person, if any, of the date of the
19 hearing. Fourteen days before the hearing the director of the mental health
20 facility shall submit to the court a report addressing the person's mental
21 health and dangerousness.

22 C. At a hearing held pursuant to subsection B of this section:

23 1. If the person proves by clear and convincing evidence that the
24 person no longer suffers from a mental disease or defect and is not
25 dangerous, the court shall order the person's release and the person's
26 commitment ordered pursuant to section 13-502, subsection D shall terminate.
27 Before determining to release a person pursuant to this paragraph, the court
28 shall consider the entire criminal history of the person and shall not order
29 the person's release if the court determines that the person has a propensity
30 to reoffend.

31 2. If the court finds that the person still suffers from a mental
32 disease or defect, may present a threat of danger to self or others, has a
33 grave, persistent or acute disability or has a propensity to reoffend, it
34 shall order the county attorney to institute civil commitment proceedings
35 pursuant to title 36 OR REFER THE PERSON TO A BEHAVIORAL HEALTH ADVISORY
36 BOARD ESTABLISHED PURSUANT TO SECTION 13-4518 and the person's commitment
37 ordered pursuant to section 13-502, subsection D shall terminate.

38 D. ~~If the court finds that the criminal act of the person committed~~
39 ~~pursuant to subsection A of this section caused the death or serious physical~~
40 ~~injury of or the threat of death or serious physical injury to another person~~
41 HAS COMMITTED A SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED FELONY AS DEFINED IN
42 SECTION 13-706 OR AN OFFENSE UNDER CHAPTER 14 OR 35.1 OF THIS TITLE, the
43 court shall place the person under the jurisdiction of the psychiatric
44 security review board. The court shall state the beginning date, length and
45 ending date of the board's jurisdiction over the person. The length of the

1 board's jurisdiction over the person is equal to the sentence the person
2 could have received pursuant to section 13-707 or section 13-751, subsection
3 A or the presumptive sentence the defendant could have received pursuant to
4 section 13-702, subsection D, section 13-703, section 13-704, section 13-705,
5 section 13-706, subsection A, section 13-710 or section 13-1406. In making
6 this determination the court shall not consider the sentence enhancements for
7 prior convictions under section 13-703 or 13-704. The court shall retain
8 jurisdiction of all matters that are not specifically delegated to the
9 psychiatric security review board for the duration of the presumptive
10 sentence.

11 E. A person who is placed under the jurisdiction of the psychiatric
12 security review board pursuant to subsection D of this section is not
13 eligible for discharge from the board's jurisdiction until the board's
14 jurisdiction over the person expires.

15 F. A person who is placed under the jurisdiction of the psychiatric
16 security review board pursuant to subsection D of this section is not
17 entitled to a hearing before the board earlier than one hundred twenty days
18 after the person's initial commitment. A request for a subsequent release
19 hearing may be made pursuant to subsection H of this section. After the
20 hearing, the board may take one of the following actions:

21 1. If the psychiatric security review board finds that the person
22 still suffers from a mental disease or defect and is dangerous, the board
23 shall order that the person remain committed at the secure state mental
24 health facility.

25 2. If the person proves by clear and convincing evidence that the person
26 no longer suffers from a mental disease or defect and is not
27 dangerous, the psychiatric security review board shall order the person's
28 release. The person shall remain under the jurisdiction of the board.
29 Before determining to release a person pursuant to this paragraph, the board
30 shall consider the entire criminal history of the person and shall not order
31 the person's release if the board determines that the person has a propensity
32 to reoffend.

33 3. If the psychiatric security review board finds that the person
34 still suffers from a mental disease or defect or that the mental disease or
35 defect is in stable remission but the person is no longer dangerous, the
36 board shall order the person's conditional release. The person shall remain
37 under the board's jurisdiction. The board in conjunction with the state
38 mental health facility and behavioral health community providers shall
39 specify the conditions of the person's release. The board shall continue to
40 monitor and supervise a person who is released conditionally. Before the
41 conditional release of a person, a supervised treatment plan shall be in
42 place, including the necessary funding to implement the plan.

43 4. If the person is sentenced pursuant to section 13-704, section
44 13-710 or section 13-751, subsection A and the psychiatric security review
45 board finds that the person no longer needs ongoing treatment for a mental

1 disease and the person is dangerous or has a propensity to reoffend, the
2 board shall order the person to be transferred to the state department of
3 corrections for the remainder of the sentence imposed pursuant to section
4 13-502, subsection D. The board shall consider the safety and protection of
5 the public.

6 G. Within twenty days after the psychiatric security review board
7 orders a person to be transferred to the state department of corrections, the
8 person may file a petition for a judicial determination. The person shall
9 serve a copy of the request on the attorney general. If the person files a
10 petition for a judicial determination, the person shall remain in a state
11 mental health facility pending the result of the judicial determination. The
12 person requesting the judicial determination has the burden of proving the
13 issues by clear and convincing evidence. The judicial determination is
14 limited to the following issues:

15 1. Whether the person no longer needs ongoing treatment for a mental
16 disease.

17 2. Whether the person is dangerous or has a propensity to reoffend.

18 H. A person who is placed under the jurisdiction of the psychiatric
19 security review board pursuant to subsection D of this section may not seek a
20 new release hearing earlier than twenty months after a prior release hearing,
21 except that the medical director of the state mental health facility may
22 request a new release hearing for a person under the jurisdiction of the
23 psychiatric security review board at any time. The person shall not be held
24 in confinement for more than two years without a hearing before the board to
25 determine if the person should be released or conditionally released.

26 I. At any hearing for release or conditional release pursuant to this
27 section:

28 1. Public safety and protection are primary.

29 2. The applicant has the burden of proof by clear and convincing
30 evidence.

31 J. At least fifteen days before a hearing is scheduled to consider a
32 person's release, or before the expiration of the board's jurisdiction over
33 the person, the state mental health facility or supervising agency shall
34 submit to the psychiatric security review board a report on the person's
35 mental health. The psychiatric security review board shall determine whether
36 to release the person or to order the county attorney to institute civil
37 commitment proceedings pursuant to title 36.

38 K. The procedures for civil commitment govern the continued commitment
39 of the person after the expiration of the jurisdiction of the psychiatric
40 security review board.

41 L. Before a person is released or conditionally released, at least
42 three of the five psychiatric security review board members shall vote for
43 the release or conditional release.

44 M. If at any time while the person remains under the jurisdiction of
45 the psychiatric security review board it appears to the board, the chairman

1 or vice-chairman of the board or the medical director of the state mental
2 health facility that the person has failed to comply with the terms of the
3 person's conditional release or that the mental health of the person has
4 deteriorated, the board or the chairman or vice-chairman of the board for
5 good cause or the medical director of the state mental health facility may
6 order that the person be returned to a secure state mental health facility
7 for evaluation or treatment. A written order of the board, the chairman or
8 vice-chairman of the board or the medical director is sufficient warrant for
9 any law enforcement officer to take the person into custody and to transport
10 the person accordingly. Any sheriff or other peace officer shall execute the
11 order and shall immediately notify the board of the person's return to the
12 facility. Within twenty days after the person's return to a secure state
13 mental health facility the board shall conduct a hearing and shall give
14 notice within five days before the hearing of the time and place of the
15 hearing to the person, the victim, the attorney representing the person, the
16 county attorney and the attorney general.

17 N. The director of a facility that is providing treatment to a person
18 on conditional release or any other person who is responsible for the
19 supervision of the person may take the person or request that the person be
20 taken into custody if there is reasonable cause to believe that the person's
21 mental health has deteriorated to the point that the person's conditional
22 release should be revoked and that the person is in need of immediate care,
23 custody or treatment or that deterioration is likely because of noncompliance
24 with a treatment program. A person who is taken into custody pursuant to
25 this subsection shall be transported immediately to a secure state mental
26 health facility and shall have the same rights as any person appearing before
27 the psychiatric security review board.

28 0. Before the initial hearing or any other hearing before the
29 psychiatric security review board on the release or conditional release of
30 the person, the person, the attorney who is representing the person and the
31 attorney general or county attorney who is representing the state may choose
32 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a
33 psychologist licensed pursuant to title 32, chapter 19.1 to examine the
34 person. All costs in connection with the examination shall be approved and
35 paid by the county of the sentencing court. The written examination results
36 shall be filed with the board and shall include an opinion as to:

- 37 1. The mental condition of the person.
- 38 2. Whether the person is dangerous.

39 P. Notwithstanding subsection 0 of this section, the board or the
40 chairman of the board for good cause may order an independent mental health
41 evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17
42 or a psychologist licensed pursuant to title 32, chapter 19.1. The written
43 examination results shall be filed with the board pursuant to subsection 0 of
44 this section.

1 Q. If a person is found guilty except insane pursuant to section
2 13-502, the department of health services shall assume custody of the person
3 within ten days after receiving the order committing the person pursuant to
4 subsection A of this section. The Arizona state hospital shall collect
5 census data for guilty except insane treatment programs to establish maximum
6 capacity and the allocation formula required pursuant to section 36-206,
7 subsection D. If the Arizona state hospital reaches its funded capacity for
8 forensic programs, the department of health services may defer the admission
9 of the person found guilty except insane for up to an additional twenty days.
10 The department of health services shall reimburse the county for the actual
11 costs of each day the admission is deferred. If the department of health
12 services is not able to admit the person found guilty except insane at the
13 conclusion of the twenty day deferral period, the department of health
14 services shall notify the sentencing court, the prosecutor and the defense
15 counsel of this fact. On receipt of this notification, the prosecutor or the
16 person's defense counsel may request a hearing to determine the likely length
17 of time admission will continue to be deferred and whether any other action
18 should be taken. On receipt of the request for hearing, the court shall set
19 a hearing within ten days.

20 R. For the purposes of this section, "state mental health facility"
21 means a secure state mental health facility under the department of health
22 services.

23 Sec. 2. Section 13-4501, Arizona Revised Statutes, is amended to read:
24 13-4501. Definitions

25 In this chapter, unless the context otherwise requires:

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

32 2. "DANGEROUS" MEANS, EXCEPT AS USED IN PARAGRAPH 6 OF THIS SECTION,
33 CHARGED WITH A SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED FELONY AS DEFINED IN
34 SECTION 13-706 AND, AS A RESULT OF A MENTAL ILLNESS, DEFECT OR DISABILITY,
35 LIKELY TO COMMIT ANOTHER SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED FELONY OR
36 CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

37 2. 3. "Incompetent to stand trial" means that as a result of a mental
38 illness, defect or disability a defendant is unable to understand the nature
39 and object of the proceeding or to assist in the defendant's defense. In the
40 case of a person under eighteen years of age when the issue of competency is
41 raised, incompetent to stand trial also means a person who does not have
42 sufficient present ability to consult with the person's lawyer with a
43 reasonable degree of rational understanding or who does not have a rational
44 and factual understanding of the proceedings against the person. The

1 presence of a mental illness, defect or disability alone is not grounds for
2 finding a defendant incompetent to stand trial.

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

6 (a) Familiar with this state's competency standards and statutes.
7 (b) Familiar with the treatment, training and restoration programs
8 that are available in this state.

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

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

15 ~~5.~~ 6. "Threat to public safety" means charged with the commission of
16 any of the following:

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

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

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

23 Sec. 3. Section 13-4505, Arizona Revised Statutes, is amended to read:

24 13-4505. **Appointment of experts: examinations: evaluation;**
25 **costs: immunity**

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 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
33 defendant, upon approval of the court, may stipulate to the appointment of
34 only one expert.

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

38 C. IF THE DEFENDANT IS CHARGED WITH A SEXUALLY VIOLENT OFFENSE AS
39 DEFINED IN SECTION 36-3701 AND THE COUNTY ATTORNEY REQUESTS, THE COURT MAY
40 ORDER THE DEFENDANT TO BE EVALUATED AS A SEXUALLY VIOLENT PERSON AS DEFINED
41 IN SECTION 36-3701. ONE OF THE MENTAL HEALTH EXPERTS APPOINTED BY THE COURT
42 SHALL BE A COMPETENT PROFESSIONAL AS DEFINED IN SECTION 36-3701. IF THAT
43 EXPERT DETERMINES THAT THE DEFENDANT IS INCOMPETENT TO STAND TRIAL AND NOT
44 RESTORABLE TO COMPETENCY WITHIN TWENTY-ONE MONTHS, THE EXPERT SHALL DETERMINE
45 WHETHER THE DEFENDANT MAY BE A SEXUALLY VIOLENT PERSON.

1 ~~C.~~ **D.** The court shall order the defendant to pay the costs of the
2 court ordered examination, except that if the court finds the defendant is
3 indigent or otherwise unable to pay all or any part of the costs or if the
4 prosecution requested the examination, the court shall order the county to
5 pay the costs of the examination or, if the case is referred by a municipal
6 court judge, the court shall order the city to pay the costs of the
7 examination.

8 **D.** This section does not prohibit any party from retaining its own
9 expert to conduct any additional examinations at its own expense.

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

14 Sec. 4. Section 13-4507, Arizona Revised Statutes, is amended to read:

15 **13-4507. Examination of competency to stand trial**

16 A. The court shall set and may change the conditions under which the
17 examination is conducted.

18 B. The defense attorney shall be available to the mental health expert
19 conducting the examination.

20 C. A proceeding to determine if a defendant is competent to stand
21 trial shall not delay a judicial determination of the defendant's eligibility
22 for pretrial release. A defendant who is otherwise entitled to pretrial
23 release shall not be involuntarily confined or taken into custody solely
24 because the issue of the defendant's competence to stand trial is raised and
25 an examination is ordered unless the court determines that the defendant's
26 confinement is necessary for the evaluation process.

27 D. If a defendant is released from custody under any pretrial release
28 provision, the court may order the defendant to appear at a designated time
29 and place for an outpatient examination. The court may make the appearance a
30 condition of the defendant's pretrial release.

31 E. The court may order that the defendant be involuntarily confined
32 until the examination is completed if the court determines that any of the
33 following applies:

34 1. The defendant will not submit to an outpatient examination as a
35 condition of pretrial release.

36 2. The defendant refuses to appear for an examination.

37 3. An adequate examination is impossible without the confinement of
38 the defendant.

39 4. The defendant is a threat to public safety **OR IS CHARGED WITH A**
40 **SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706.**

41 F. If a defendant is committed for an inpatient examination, the
42 length of the commitment shall not exceed the period of time that is
43 necessary for the examination. The commitment for examination shall not
44 exceed thirty days, except that the commitment may be extended by fifteen
45 days if the court finds that extraordinary circumstances exist. The county

1 shall pay the costs of any inpatient examination ordered by the court, except
2 that the city shall pay the costs of any inpatient examination that is
3 ordered by a municipal court judge.

4 Sec. 5. Section 13-4509, Arizona Revised Statutes, is amended to read:
5 13-4509. Expert's report

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

10 1. The name of each mental health expert who examines the defendant.
11 2. A description of the nature, content, extent and results of the
12 examination and any test conducted **AND ANY INSTRUMENT OR TOOL USED TO ASSESS
13 THE DEFENDANT'S PROPENSITY TO REOFFEND.**

14 3. The facts on which the findings are based.
15 4. An opinion as to the competency of the defendant.

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

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

21 2. The defendant's prognosis.
22 3. **THE NATURE OF THE MENTAL DISORDER, DISEASE OR DEFECT OR OF ANY
23 PERSONALITY OR OTHER DISORDER THAT MAY AFFECT THE DEFENDANT'S PROPENSITY TO
24 REOFFEND.**

25 **3.** 4. The most appropriate form and place of treatment in this state,
26 based on the defendant's therapeutic needs and potential threat to public
27 safety.

28 **4.** 5. Whether the defendant is incompetent to refuse treatment and
29 should be subject to involuntary treatment.

30 6. **IF THE PROGNOSIS INCLUDES A DETERMINATION AS TO WHETHER THERE IS NO
31 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN
32 TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,
33 WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS OR MAY BE A SEXUALLY
34 VIOLENT PERSON.**

35 C. If the mental health examiner determines that the defendant is
36 currently competent by virtue of ongoing treatment with psychotropic
37 medication, the report shall address the necessity of continuing that
38 treatment and shall include a description of any limitations that the
39 medication may have on competency.

40 Sec. 6. Section 13-4515, Arizona Revised Statutes, is amended to read:
41 13-4515. Duration of order; excluded time calculation; notice
42 of dismissed charge or voided order; petitions

43 A. An order or combination of orders that is issued pursuant to
44 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
45 months or the maximum possible sentence the defendant could have received

1 pursuant to section 13-702, section 13-703, section 13-704, subsection A, B,
2 C, D or E, section 13-705, section 13-706, subsection A, section 13-708,
3 subsection D or section 13-751 or any section for which a specific sentence
4 is authorized, whichever is less. In making this determination the court
5 shall not consider the sentence enhancements under section 13-703 or 13-704
6 for prior convictions.

7 B. The court shall only consider the time a defendant actually spends
8 in a restoration to competency program when calculating the time requirements
9 pursuant to subsection A of this section.

10 C. The court shall notify the prosecutor, the defense attorney, the
11 medical supervisor and the treating facility if the charges against the
12 defendant are dismissed or if an order is voided by the court. No charges
13 shall be dismissed without a hearing ~~prior to~~ BEFORE the dismissal.

14 D. If a defendant is discharged or released on the expiration of an
15 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
16 supervisor may file a petition stating that the defendant requires further
17 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian
18 pursuant to title 14 **OR REFERRAL TO A BEHAVIORAL HEALTH ADVISORY BOARD**
19 **PURSUANT TO SECTION 13-4518.**

20 Sec. 7. Section 13-4517, Arizona Revised Statutes, is amended to read:
21 **13-4517. Incompetent defendants; disposition**

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

26 **1. HOLD A HEARING TO DETERMINE WHETHER THE DEFENDANT IS DANGEROUS.**
27 **1. 2. Remand DIRECT THE INSTITUTION OF CIVIL COMMITMENT PROCEEDINGS**
28 **PURSUANT TO TITLE 36, CHAPTER 5, WHICH MAY INCLUDE REMANDING** the defendant to
29 the custody of the department of health services for the institution of civil
30 commitment proceedings ~~pursuant to title 36, chapter 5.~~

31 **2. 3. Appoint a guardian pursuant to title 14, chapter 5.**
32 **4. REFER THE DEFENDANT TO THE BEHAVIORAL HEALTH ADVISORY BOARD**
33 **PURSUANT TO SECTION 13-4518.**

34 **3. 5. Release the defendant from custody and dismiss the charges**
35 **against the defendant without prejudice.**

36 B. **IF THE COURT HOLDS A HEARING PURSUANT TO SUBSECTION A, PARAGRAPH 1**
37 **OF THIS SECTION, THE STATE SHALL PROVE BY CLEAR AND CONVINCING EVIDENCE THAT**
38 **THE DEFENDANT IS DANGEROUS AND COMMITTED THE CHARGED OFFENSE. THE COURT MAY**
39 **ADMIT HEARSAY EVIDENCE, INCLUDING CHAIN OF CUSTODY DOCUMENTS, LABORATORY**
40 **REPORTS, AUTHENTICATION RECORDS, COURT DOCUMENTS OR OTHER PUBLIC OR BUSINESS**
41 **RECORDS. THE COURT MAY HOLD A HEARING PURSUANT TO THIS SECTION CONCURRENTLY**
42 **WITH A HEARING PURSUANT TO TITLE 36, CHAPTER 5.**

43 C. **IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 2,**
44 **3 OR 4 OF THIS SECTION, IT MAY ALSO ORDER AN ASSESSMENT OF THE DEFENDANT'S**
45 **ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE APPLIED TO**

1 THE EXPENSES OF THE DEFENDANT'S MEDICALLY NECESSARY MAINTENANCE AND
2 TREATMENT, INCLUDING SERVICES PURSUANT TO TITLE 36, CHAPTER 29, STATE-ONLY
3 BEHAVIORAL HEALTH SERVICES, TITLE XVIII AND THE MEDICARE PART D PRESCRIPTION
4 DRUG BENEFIT, SUPPLEMENTAL SECURITY INCOME AND SUPPLEMENTAL SECURITY
5 DISABILITY INCOME.

6 D. ON ITS OWN MOTION OR THAT OF ANY PARTY, THE COURT MAY RETAIN
7 JURISDICTION OVER THE DEFENDANT THROUGHOUT THE TIME NECESSARY TO DETERMINE
8 THE DEFENDANT'S APPROPRIATE TREATMENT OPTIONS AND THE IMPLEMENTATION OF THE
9 COURT'S TREATMENT ORDERS. THE COURT, ON ITS OWN MOTION OR THAT OF ANY PARTY,
10 MAY RETAIN JURISDICTION OVER THE DEFENDANT UNTIL THE TREATMENT ORDERS EXPIRE
11 OR THE DEFENDANT IS OTHERWISE DISCHARGED FROM TREATMENT BY COURT ORDER.

12 E. IF THE COURT REMANDS THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT
13 OF HEALTH SERVICES FOR THE INSTITUTION OF CIVIL COMMITMENT PROCEEDINGS
14 PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT IS NOTIFIED THAT THE DEFENDANT
15 WAS NOT EVALUATED, THE DEFENDANT SHALL BE TRANSPORTED BACK TO THE JAIL AND
16 THE COURT MAY EXPLORE OTHER TREATMENT OPTIONS CONSISTENT WITH THIS SECTION.

17 F. IF A MENTAL HEALTH EXPERT HAS DETERMINED THAT THE DEFENDANT MAY BE
18 A SEXUALLY VIOLENT PERSON, THE MENTAL HEALTH EXPERT SHALL PROVIDE THE REPORT
19 TO THE COUNTY ATTORNEY SO THAT THE COUNTY ATTORNEY MAY FILE A PETITION FOR
20 DETENTION PURSUANT TO SECTION 36-3702.

21 Sec. 8. Title 13, chapter 41, Arizona Revised Statutes, is amended by
22 adding section 13-4518, to read:

23 13-4518. Behavioral health advisory board; members; continuum
24 of care plans; requirements; definition

25 A. A COUNTY MAY ESTABLISH A BEHAVIORAL HEALTH ADVISORY BOARD TO
26 RECOMMEND TO THE COURT A CONTINUUM OF CARE PLAN FOR A DEFENDANT AND SUPERVISE
27 THE DELIVERY OF SERVICES TO THE DEFENDANT.

28 B. A BEHAVIORAL HEALTH ADVISORY BOARD MAY CONSIST OF THE PRESIDING
29 JUDGE OF THE SUPERIOR COURT OR THE JUDGE'S DESIGNEE, A COUNTY CLINICAL COURT
30 LIAISON, THE COUNTY ATTORNEY AND THE PUBLIC DEFENDER, OR THEIR DESIGNEES, A
31 REPRESENTATIVE OF A REGIONAL BEHAVIORAL HEALTH AUTHORITY, A COUNTY BEHAVIORAL
32 HEALTH ADMINISTRATOR OR THE ADMINISTRATOR'S DESIGNEE, A PERSON LICENSED
33 PURSUANT TO TITLE 32, CHAPTER 33, ARTICLE 3 AND ANY OTHER PERSON APPOINTED BY
34 THE COUNTY ADMINISTRATOR.

35 C. AT THE DIRECTION OF THE COURT, THE BOARD SHALL DEVELOP A CONTINUUM
36 OF CARE PLAN FOR A DEFENDANT WITH THE GOAL OF MAXIMIZING COMMUNITY RESOURCES
37 TO BEST PROTECT AND CARE FOR THE DEFENDANT'S NEEDS WHILE PROTECTING THE
38 PUBLIC. THE COURT SHALL APPROVE THE PLAN AND REQUIRE THE BOARD TO REPORT THE
39 DEFENDANT'S PROGRESS AT WHATEVER FREQUENCY THE COURT DETERMINES BUT AT LEAST
40 EVERY ONE HUNDRED EIGHTY DAYS DURING THE FIRST YEAR OF TREATMENT AND EVERY
41 THREE HUNDRED SIXTY DAYS THEREAFTER. THE COURT MAY SET ADDITIONAL REVIEW
42 HEARINGS AT ITS DISCRETION. A CONTINUUM OF CARE PLAN REMAINS IN EFFECT UNTIL
43 TERMINATED BY THE COURT OR THE EXPIRATION OF THE PRESUMPTIVE SENTENCE THE
44 DEFENDANT COULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN CONVICTED AS CHARGED.

1 D. AT ANY HEARING HELD PURSUANT TO SUBSECTION C OF THIS SECTION, THE
2 DEFENDANT MAY SEEK TO ALTER THE DEFENDANT'S CONTINUUM OF CARE PLAN OR TO BE
3 DISCHARGED FROM THE PLAN. THE DEFENDANT SHALL PROVIDE NOTICE TO THE COURT
4 AND THE COUNTY ATTORNEY OF THE DEFENDANT'S INTENTION TO BE DISCHARGED FROM OR
5 TO ALTER THE PLAN.

6 E. THE BOARD MAY ALTER A DEFENDANT'S CONTINUUM OF CARE PLAN TO MEET
7 ANY ACUTE TREATMENT OR OTHER NEEDS, WITHOUT COURT ORDER, BUT SHALL PROVIDE
8 NOTICE TO THE COURT OF ANY ALTERATION LASTING LONGER THAN THIRTY DAYS. THE
9 COURT SHALL SET A HEARING AND GIVE NOTICE OF THE HEARING TO THE COUNTY
10 ATTORNEY. THE DEFENDANT SHALL BE PROVIDED WITH COUNSEL. THE BOARD OR THE
11 PARTIES SHALL PROVIDE THE COURT WITH ANY RELEVANT INFORMATION NECESSARY TO
12 REVISE OR MAINTAIN THE DEFENDANT'S CONTINUUM OF CARE PLAN.

13 F. A DEFENDANT MAY NOT BE DISCHARGED FROM THE DEFENDANT'S CONTINUUM OF
14 CARE PLAN WITHOUT AN ORDER OF THE COURT AFTER A HEARING. THE BOARD MAY
15 REQUEST A HEARING AT ANY TIME AND SHALL PROVIDE NOTICE TO THE COUNTY ATTORNEY
16 SETTING FORTH THE REASON FOR THE REQUEST. THE COUNTY ATTORNEY MAY ATTEND AND
17 PRESENT EVIDENCE OR ARGUMENT.

18 G. A COUNTY MAY CONTRACT WITH A BEHAVIORAL HEALTH ADVISORY BOARD IN
19 ANOTHER COUNTY TO PROVIDE CONTINUUM OF CARE SERVICES TO PERSONS FOR WHOM THE
20 SUPERIOR COURT HAS RETAINED JURISDICTION PURSUANT TO SECTION 13-4517.

21 H. FOR THE PURPOSES OF THIS SECTION, "CONTINUUM OF CARE" MEANS AN
22 INDIVIDUALIZED RANGE OF PROGRAMS AND SERVICES THAT MAY ENCOMPASS ANY
23 COMBINATION OF RESIDENTIAL AND ACUTE CARE PLACEMENT, PROGRAMS AND SERVICES,
24 INCLUDING DAY PROGRAMS, SUPERVISED GROUP HOMES, DRUG OR ALCOHOL TREATMENT OR
25 SERVICES AVAILABLE THROUGH THE DIVISION OF DEVELOPMENTAL DISABILITIES IN THE
26 DEPARTMENT OF ECONOMIC SECURITY.

27 Sec. 9. Section 36-509, Arizona Revised Statutes, is amended to read:
28 36-509. Confidential records: immunity

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

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

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

38 3. Persons authorized by a court order.

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

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

1 6. Governmental or law enforcement agencies if necessary to:
2 (a) Secure the return of a patient who is on unauthorized absence from
3 any agency where the patient was undergoing evaluation and treatment.

4 (b) Report a crime on the premises.
5 (c) Avert a serious and imminent threat to an individual or the
6 public.

7 7. Persons, including family members, actively participating in the
8 patient's care, treatment or supervision. A health care provider may only
9 release information relating to the patient's diagnosis, prognosis, need for
10 hospitalization, anticipated length of stay, discharge plan, medication,
11 medication side effects and short-term and long-term treatment goals. A
12 health care provider may make this release only after the treating
13 professional or that person's designee interviews the patient or the
14 patient's health care decision maker and the patient or the patient's health
15 care decision maker does not object, unless federal or state law permits the
16 disclosure. If the patient does not have the opportunity to object to the
17 disclosure because of incapacity or an emergency circumstance and the
18 patient's health care decision maker is not available to object to the
19 release, the health care provider in the exercise of professional judgment
20 may determine if the disclosure is in the best interests of the patient and,
21 if so, may release the information authorized pursuant to this paragraph. A
22 decision to release or withhold information is subject to review pursuant to
23 section 36-517.01. The health care provider must record the name of any
24 person to whom any information is given under this paragraph.

25 8. A state agency that licenses health professionals pursuant to title
26 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the
27 course of investigating complaints of professional negligence, incompetence
28 or lack of clinical judgment.

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

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

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

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

1 13. The department of public safety or another law enforcement agency
2 by the court to comply with the requirements of section 36-540, subsections
3 ~~O~~ Q and ~~P~~ R.

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

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

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

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

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

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

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

19 21. A grand jury as directed by subpoena.

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

26 B. Information and records obtained in the course of evaluation,
27 examination or treatment and submitted in any court proceeding pursuant to
28 this chapter or title 14, chapter 5 are confidential and are not public
29 records unless the hearing requirements of this chapter or title 14, chapter
30 5 require a different procedure. Information and records that are obtained
31 pursuant to this section and submitted in a court proceeding pursuant to
32 title 14, chapter 5 and that are not clearly identified by the parties as
33 confidential and segregated from nonconfidential information and records are
34 considered public records.

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

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

1 Sec. 10. Section 36-520, Arizona Revised Statutes, is amended to read:

2 **36-520. Application for evaluation; definition**

3 A. Any responsible individual may apply for a court-ordered evaluation
4 of a person who is alleged to be, as a result of a mental disorder, a danger
5 to self or to others, ~~— OR~~ a person with a persistent or acute disability or a
6 grave disability and who is unwilling or unable to undergo a voluntary
7 evaluation. The application shall be made in the prescribed form and manner
8 as adopted by the deputy director.

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

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

12 2. The age, date of birth, sex, race, marital status, occupation,
13 social security number, present location, dates and places of previous
14 hospitalizations, names and addresses of the guardian, spouse, next of kin
15 and significant other persons and other data that the deputy director may
16 require on the form to whatever extent that this data is known and is
17 applicable to the proposed patient.

18 **3. ANY CRIMINAL HISTORY OF THE PROPOSED PATIENT, INCLUDING WHETHER THE**
19 **PERSON HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION**
20 **13-4510.**

21 ~~3.~~ 4. The name, address and relationship of the person who is
22 applying for the evaluation.

23 ~~4.~~ 5. A statement that the proposed patient is believed to be, as a
24 result of a mental disorder, a danger to self or to others, ~~— OR~~ a patient
25 with a persistent or acute disability or a grave disability and the facts on
26 which this statement is based.

27 ~~5.~~ 6. A statement that the applicant believes the proposed patient is
28 in need of supervision, care and treatment and the facts on which this
29 statement is based.

30 C. The application shall be signed and notarized.

31 D. The screening agency shall offer assistance to the applicant in
32 preparation of the application. Upon receipt of the application, the
33 screening agency shall act as prescribed in section 36-521 within forty-eight
34 hours of the filing of the application excluding weekends and holidays. If
35 the application is not acted upon within forty-eight hours, the reasons for
36 not acting promptly shall be reviewed by the director of the screening agency
37 or the director's designee.

38 E. If the applicant for the court-ordered evaluation presents the
39 person to be evaluated at the screening agency, the agency shall conduct a
40 prepetition screening examination. Except in the case of an emergency
41 evaluation, the person to be evaluated shall not be detained or forced to
42 undergo prepetition screening against the person's will.

43 F. If the applicant for the court-ordered evaluation does not present
44 the person to be evaluated at the screening agency, the agency shall conduct
45 the prepetition screening at the home of the person to be evaluated or any

1 other place the person to be evaluated is found. If prepetition screening is
2 not possible, the screening agency shall proceed as in section 36-521,
3 subsection B.

4 G. If a person is being treated by prayer or spiritual means alone in
5 accordance with the tenets and practices of a recognized church or religious
6 denomination by a duly accredited practitioner of that church or
7 denomination, such person may not be ordered evaluated, detained or
8 involuntarily treated unless the court has determined that the person is, as
9 a result of mental disorder, a danger to others or to self.

10 H. Court-ordered evaluation or treatment pursuant to this chapter
11 shall not operate to change the legal residence of a patient.

12 I. If the application is not acted upon because it has been determined
13 that the proposed patient does not need an evaluation, the agency after a
14 period of six months shall destroy the application and any other evidence of
15 the application.

16 J. For the purposes of this section, "person" includes a person who:
17

1. Is under eighteen years of age.

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

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

22 Sec. 11. Section 36-522, Arizona Revised Statutes, is amended to read:

23 **36-522. Voluntary evaluation**

24 A. EXCEPT AS PROVIDED IN SECTION 36-534, if the petition for
25 court-ordered evaluation is not filed because it has been determined that the
26 proposed patient will voluntarily receive an evaluation and is unlikely to
27 present a danger to self or others until the voluntary evaluation, the
28 evaluation agency provided for by the county, or selected by the proposed
29 patient, shall be immediately notified and shall provide evaluation of the
30 proposed patient at a scheduled time and place within five days of the
31 notice. The voluntary evaluation may be on an inpatient or outpatient basis.

32 B. Voluntary inpatient evaluation is subject to ~~the provisions of~~
33 article 3 of this chapter.

34 C. Voluntary outpatient evaluation shall conform to the requirements
35 of section 36-530, subsection D and section 36-531, subsections B, C and D
36 and shall proceed only after the person to be evaluated has given consent to
37 be evaluated by signing a form prescribed by the deputy director ~~which~~ THAT
38 includes information to the proposed patient that the patient-physician
39 privilege does not apply and that the evaluation may result in a petition for
40 the person to undergo court-ordered treatment or for guardianship. Voluntary
41 evaluation may be carried out only if chosen by the patient during the course
42 of a prepetition screening after application for evaluation has been made.

43 Sec. 12. Section 36-523, Arizona Revised Statutes, is amended to read:

44 **36-523. Petition for evaluation**

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

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

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

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

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

10 5. A summary of the facts ~~which~~ THAT support the allegations that the
11 proposed patient is dangerous, has a persistent or acute disability or a
12 grave disability and is unwilling or unable to be voluntarily evaluated,
13 including the facts ~~which~~ THAT brought the proposed patient to the screening
14 agency's attention.

15 6. ANY CRIMINAL HISTORY OF THE PROPOSED PATIENT, INCLUDING WHETHER THE
16 PERSON HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION
17 13-4510.

18 6. 7. Other information that the deputy director, with the approval
19 of the director, by rule or the court by rule or order may require.

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

23 1. That the opinion of the petitioner is either that the proposed
24 patient is or is not in such a condition that without immediate or continuing
25 hospitalization he is likely to suffer serious physical harm or further
26 deterioration or inflict serious physical harm ~~upon~~ ON another person.

27 2. If the opinion of the petitioner is that the proposed patient is
28 not in the condition described in paragraph 1 of this subsection, that the
29 opinion of the petitioner is either that the evaluation should or should not
30 take place on an outpatient basis.

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

37 D. A petition and other forms required in a court may be filed only by
38 the screening agency which has prepared the petition.

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

43 F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT
44 THE PERSON DOES NOT NEED AN EVALUATION AND THE PERSON HAS BEEN FOUND BY A
45 COURT TO BE INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510, THE

1 PERSON SHALL BE REMANDED TO THE CRIMINAL COURT FOR DISPOSITION UNDER SECTION
2 13-4517.

3 Sec. 13. Section 36-529, Arizona Revised Statutes, is amended to read:
4 36-529. Order for evaluation; order for detention; hearing

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

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

31 C. If the person is not taken into custody or if the evaluation
32 pursuant to the order of the court under subsection A or B is not initiated
33 within fourteen days from the date of the order, the order and petition for
34 evaluation shall expire. **IF THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND
35 TRIAL PURSUANT TO SECTION 13-4510, THE COURT THAT MADE THAT DETERMINATION AND
36 THE COUNTY ATTORNEY SHALL RECEIVE NOTICE OF THE EXPIRATION OF THE ORDER AND
37 PETITION FOR EVALUATION. THE CRIMINAL COURT MAY ENTER ANY ORDERS NECESSARY
38 FOR FURTHER DISPOSITION PURSUANT TO SECTION 13-4517.**

39 D. If the person is involuntarily hospitalized, the person shall be
40 informed by his appointed attorney of his rights to a hearing to determine
41 whether he should be involuntarily hospitalized for evaluation and to be
42 represented at the hearing by an attorney. If the patient requests a hearing
43 to determine whether he should be involuntarily hospitalized during
44 evaluation, the court shall schedule a hearing at its first opportunity.

1 Sec. 14. Section 36-531, Arizona Revised Statutes, is amended to read:
2 36-531. Evaluation: possible dispositions; release

3 A. UNLESS FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION
4 13-4510, a person being evaluated on an inpatient basis in an evaluation
5 agency shall be released if, in the opinion of the medical director of the
6 agency, further evaluation is not appropriate unless the person makes
7 application for further care and treatment on a voluntary basis.

8 B. If it is determined upon an evaluation of the patient's condition
9 that ~~he~~ THE PATIENT is, as a result of a mental disorder, a danger to self or
10 to others, ~~—~~ OR has a persistent or acute disability or a grave disability,
11 the medical director in charge of the agency ~~which~~ THAT provided the
12 evaluation shall, unless the person makes application for further care and
13 treatment on a voluntary basis, prepare, sign and file a petition for
14 court-ordered treatment unless the county attorney performs the functions of
15 preparing, signing or filing the petition as provided in subsection C of this
16 section.

17 C. The agency may contact the county attorney to obtain ~~his~~ assistance
18 in preparing the petition for court-ordered treatment, and the agency may
19 request the advice and judgment of the county attorney in reaching a decision
20 as to whether court-ordered treatment is justified.

21 D. UNLESS FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510
22 AND TO BE DANGEROUS PURSUANT TO SECTION 13-4517, a person being evaluated on
23 an inpatient basis in an evaluation agency shall be released within
24 seventy-two hours, excluding weekends and holidays, from the time that he is
25 hospitalized pursuant to a court order for evaluation, unless the person
26 makes application for further care and treatment on a voluntary basis or
27 unless a petition for court-ordered treatment has been filed pursuant to
28 subsection B of this section.

29 E. IF A PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO
30 SECTION 13-4510, THE MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL GIVE
31 IMMEDIATE NOTICE TO THE CRIMINAL COURT OF THE DIRECTOR'S INTENTION TO RELEASE
32 THE PERSON UNDER THIS SECTION. THE CRIMINAL COURT SHALL ORDER THE PERSON
33 RETURNED TO CUSTODY PENDING THE COURT'S DISPOSITION OF THE PERSON PURSUANT TO
34 SECTION 13-4517.

35 F. ~~E.~~ The department of health services may conduct jointly with a
36 school district, directly or indirectly, an educational evaluation pursuant
37 to sections 15-765 and 15-766 for nonadjudicated youth. The evaluation
38 information may be shared by and among authorized personnel employed by the
39 department of health services and the department of education, or authorized
40 personnel from the local education agency, for purposes of ensuring the
41 provision of special education and related services as required by the
42 individuals with disabilities education act (20 United States Code sections
43 1400 through 1415).

1 Sec. 15. Section 36-533, Arizona Revised Statutes, is amended to read:

2 **36-533. Petition for treatment**

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

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

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

8 3. That the patient is unwilling to accept or incapable of accepting
9 treatment voluntarily.

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

21 C. The petition shall request the court to issue an order requiring
22 the person to undergo a period of treatment. **THE PETITION SHALL SET FORTH
23 ANY CRIMINAL HISTORY OF THE PERSON, INCLUDING WHETHER THE PERSON HAS BEEN
24 FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510 AND WHETHER THE
25 CRIMINAL COURT HAS MADE A DETERMINATION THAT THE PERSON IS DANGEROUS PURSUANT
26 TO SECTION 13-4517.**

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

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

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

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

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

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

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

1 Sec. 16. Section 36-534, Arizona Revised Statutes, is amended to read:
2 36-534. Change to voluntary status; discharge

3 If, after a petition for court-ordered treatment has been filed and
4 prior to the hearing, the medical director of the agency finds that it is
5 more appropriate to discharge the patient or to admit the proposed patient on
6 a voluntary basis, the medical director ~~shall~~, after receiving approval from
7 the court, SHALL either discharge the patient or admit the patient for
8 further treatment on a voluntary basis. THIS SECTION DOES NOT APPLY TO A
9 PATIENT WHO HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION
10 13-4510.

11 Sec. 17. Section 36-540, Arizona Revised Statutes, is amended to read:
12 36-540. Court options

13 A. If the court finds by clear and convincing evidence that the
14 proposed patient, as a result of mental disorder, is a danger to self, is a
15 danger to others, has a persistent or acute disability or a grave disability
16 and IS in need of treatment, and is either unwilling or unable to accept
17 voluntary treatment, the court shall order the patient to undergo one of the
18 following:

19 1. Treatment in a program of outpatient treatment.

20 2. Treatment in a program consisting of combined inpatient and
21 outpatient treatment.

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

27 B. The court shall consider all available and appropriate alternatives
28 for the treatment and care of the patient. The court shall order the least
29 restrictive treatment alternative available UNLESS THE PATIENT HAS BEEN FOUND
30 BY THE CRIMINAL COURT TO BE DANGEROUS PURSUANT TO SECTION 13-4517.

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

34 1. Determines that all of the following apply:

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

36 (b) The patient will be more appropriately treated in an outpatient
37 treatment program or in a combined inpatient and outpatient treatment
38 program.

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

40 (d) The patient IS DANGEROUS PURSUANT TO SECTION 13-4517 OR will not
41 likely become dangerous or suffer more serious physical harm or serious
42 illness or further deterioration if the patient follows a prescribed
43 outpatient treatment plan.

44 2. Is presented with and approves a written treatment plan that
45 conforms with the requirements of section 36-540.01, subsection B. If the

1 treatment plan presented to the court pursuant to this subsection provides
2 for supervision of the patient under court order by a mental health agency
3 that is other than the mental health agency that petitioned or requested the
4 county attorney to petition the court for treatment pursuant to section
5 36-531, the treatment plan must be approved by the medical director of the
6 mental health agency that will supervise the treatment pursuant to subsection
7 ~~E~~ F of this section.

8 D. An order to receive treatment pursuant to subsection A, paragraph 1
9 or 2 of this section shall not exceed three hundred sixty-five days. The
10 period of inpatient treatment under a combined treatment order pursuant to
11 subsection A, paragraph 2 of this section shall not exceed the maximum period
12 allowed for an order for inpatient treatment pursuant to subsection ~~F~~ G of
13 this section.

14 E. IF THE PATIENT HAS BEEN FOUND TO BE DANGEROUS PURSUANT TO SECTION
15 13-4517, THE COURT MAY ORDER TREATMENT FOR UP TO SIX YEARS. AFTER THE FIRST
16 TWO YEARS AND EVERY TWO YEARS THEREAFTER, THE PATIENT MAY REQUEST RELEASE
17 FROM TREATMENT. THE COURT SHALL NOTIFY THE COUNTY ATTORNEY AND SET A HEARING
18 TO DETERMINE WHETHER THE DEFENDANT IS NO LONGER DANGEROUS OR IS NO LONGER IN
19 NEED OF TREATMENT. THE HEARING SHALL BE CONDUCTED PURSUANT TO SECTION
20 36-546.

21 ~~E~~ F. If the court enters an order for treatment pursuant to
22 subsection A, paragraph 1 or 2 of this section, all of the following apply:
23 1. The court shall designate the medical director of the mental health
24 treatment agency that will supervise and administer the patient's treatment
25 program.

26 2. The medical director shall not use the services of any person,
27 agency or organization to supervise a patient's outpatient treatment program
28 unless the person, agency or organization has agreed to provide these
29 services in the individual patient's case and unless the department has
30 determined that the person, agency or organization is capable and competent
31 to do so.

32 3. The person, agency or organization assigned to supervise an
33 outpatient treatment program or the outpatient portion of a combined
34 treatment program shall be notified at least three days before a referral.
35 The medical director making the referral and the person, agency or
36 organization assigned to supervise the treatment program shall share relevant
37 information about the patient to provide continuity of treatment.

38 4. During any period of outpatient treatment under subsection A,
39 paragraph 2 of this section, if the court, **ON ITS OWN MOTION OR** on motion by
40 the medical director of the patient's outpatient mental health treatment
41 facility, determines that the patient is not complying with the terms of the
42 order or that the outpatient treatment plan is no longer appropriate and the
43 patient needs inpatient treatment, the court, without a hearing and based on
44 the court record, the patient's medical record, the affidavits and
45 recommendations of the medical director, and the advice of staff and

1 physicians or the psychiatric and mental health nurse practitioner familiar
2 with the treatment of the patient, may enter an order amending its original
3 order. The amended order may alter the outpatient treatment plan or order
4 the patient to inpatient treatment pursuant to subsection A, paragraph 3 of
5 this section. The 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~~ G of this section. If the patient
10 refuses to comply with an amended order for inpatient treatment, the court **ON**
11 **ITS OWN MOTION OR ON THE REQUEST OF THE MEDICAL DIRECTOR** may authorize and
12 direct a peace officer, ~~on the request of the medical director~~, to take the
13 patient into protective custody and transport the patient to the agency for
14 inpatient treatment. **ANY AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO A PEACE**
15 **OFFICER TO TAKE CUSTODY OF THE PATIENT SHALL INCLUDE THE PATIENT'S CRIMINAL**
16 **HISTORY AND THE NAMES AND TELEPHONE NUMBERS OF THE PATIENT'S CASE MANAGER,**
17 **GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER PERSONS, AS APPLICABLE.**
18 When reporting to or being returned to a treatment agency for inpatient
19 treatment pursuant to an amended order, the patient shall be informed of the
20 patient's right to judicial review and the patient's right to consult with
21 counsel pursuant to section 36-546.

22 5. During any period of outpatient treatment under subsection A,
23 paragraph 2 of this section, if the medical director of the outpatient
24 treatment facility in charge of the patient's care determines, in concert
25 with the medical director of an inpatient mental health treatment facility
26 who has agreed to accept the patient, that the patient is in need of
27 immediate acute inpatient psychiatric care because of behavior that is
28 dangerous to self or to others, the medical director of the outpatient
29 treatment facility may order a peace officer to apprehend and transport the
30 patient to the inpatient treatment facility pending a court determination on
31 an amended order under paragraph 4 of this subsection. The patient may be
32 detained and treated at the inpatient treatment facility for a period of no
33 more than forty-eight hours, exclusive of weekends and holidays, from the
34 time that the patient is taken to the inpatient treatment facility. The
35 medical director of the outpatient treatment facility shall file the motion
36 for an amended court order requesting inpatient treatment no later than the
37 next working day following the patient being taken to the inpatient treatment
38 facility. Any period of detention within the inpatient treatment facility
39 pending issuance of an amended order shall not increase the total period of
40 commitment originally ordered by the court or, when added to the period of
41 inpatient treatment provided by the original order and any other amended
42 orders, exceed the maximum period allowed for an order for inpatient
43 treatment pursuant to subsection ~~F~~ G of this section. If a patient is
44 ordered to undergo inpatient treatment pursuant to an amended order, the
45 medical director of the outpatient treatment facility shall inform the

1 patient of the patient's right to judicial review and to consult with an
2 attorney pursuant to section 36-546.

3 **F. UNLESS THE PATIENT HAS BEEN FOUND TO BE DANGEROUS PURSUANT TO
4 SECTION 13-4517**, the maximum periods of inpatient treatment that the court
5 may order, subject to the limitations of section 36-541, are as follows:

- 6 1. Ninety days for a person found to be a danger to self.
- 7 2. One hundred eighty days for a person found to be a danger to
8 others.
- 9 3. One hundred eighty days for a person found to have a persistent or
10 acute disability.

11 4. Three hundred sixty-five days for a person found to have a grave
12 disability.

13 **H. THE COURT MAY ORDER AN ASSESSMENT TO BE CONDUCTED TO DETERMINE THE
14 PATIENT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE
15 APPLIED TO THE EXPENSES OF THE DEFENDANT'S MEDICALLY NECESSARY MAINTENANCE
16 AND TREATMENT, INCLUDING SERVICES PURSUANT TO CHAPTER 29 OF THIS TITLE,
17 STATE-ONLY BEHAVIORAL HEALTH SERVICES, TITLE XVIII AND THE MEDICARE PART D
18 PRESCRIPTION DRUG BENEFIT, SUPPLEMENTAL SECURITY INCOME AND SUPPLEMENTAL
19 SECURITY DISABILITY INCOME.**

20 **G. I.** If, on finding that the patient meets the criteria for
21 court-ordered treatment pursuant to subsection A of this section, the court
22 also finds that there is reasonable cause to believe that the patient is an
23 incapacitated person as defined in section 14-5101 or is a person in need of
24 protection pursuant to section 14-5401 and that the patient is or may be in
25 need of guardianship or conservatorship, or both, the court may order an
26 investigation concerning the need for a guardian or conservator, or both, and
27 may appoint a suitable person or agency to conduct the investigation. The
28 appointee may include a court appointed guardian ad litem, an investigator
29 appointed pursuant to section 14-5308 or the public fiduciary if there is no
30 person willing and qualified to act in that capacity. The court shall give
31 notice of the appointment to the appointee within three days of the
32 appointment. The appointee shall submit the report of the investigation to
33 the court within twenty-one days. The report shall include recommendations
34 as to who should be guardian or who should be conservator, or both, and a
35 report of the findings and reasons for the recommendation. If the
36 investigation and report so indicate, the court shall order the appropriate
37 person to submit a petition to become the guardian or conservator, or both,
38 of the patient.

39 **H. J.** In any proceeding for court-ordered treatment in which the
40 petition alleges that the patient is in need of a guardian or conservator and
41 states the grounds for that allegation, the court may appoint an emergency
42 temporary guardian or conservator, or both, for a specific purpose or
43 purposes identified in its order and for a specific period of time not to
44 exceed thirty days if the court finds that all of the following are true:

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

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

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

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

11 ~~I.~~ K. The court may appoint as a temporary guardian or conservator
12 pursuant to subsection ~~H~~ J of this section a suitable person or the public
13 fiduciary if there is no person qualified and willing to act in that
14 capacity. The court shall issue an order for an investigation as prescribed
15 pursuant to subsection ~~G~~ I of this section and, unless the patient is
16 represented by independent counsel, the court shall appoint an attorney to
17 represent the patient in further proceedings regarding the appointment of a
18 guardian or conservator. The court shall schedule a further hearing within
19 fourteen days on the appropriate court calendar of a court that has authority
20 over guardianship or conservatorship matters pursuant to this title to
21 consider the continued need for an emergency temporary guardian or
22 conservator and the appropriateness of the temporary guardian or conservator
23 appointed, and shall order the appointed guardian or conservator to give
24 notice to persons entitled to notice pursuant to section 14-5309, subsection
25 A or section 14-5405, subsection A. The court shall authorize certified
26 letters of temporary emergency guardianship or conservatorship to be issued
27 on presentation of a copy of the court's order. If a temporary emergency
28 conservator other than the public fiduciary is appointed pursuant to this
29 subsection, the court shall order that the use of the money and property of
30 the patient by the conservator is restricted and not to be sold, used,
31 transferred or encumbered, except that the court may authorize the
32 conservator to use money or property of the patient specifically identified
33 as needed to pay an expense to provide for the care, treatment or welfare of
34 the patient pending further hearing. This subsection and subsection ~~H~~ J of
35 this section do not:

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

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

42 ~~J.~~ L. If, on finding that a patient meets the criteria for
43 court-ordered treatment pursuant to subsection A of this section, the court
44 also learns that the patient has a guardian appointed under title 14, the
45 court with notice may impose on the existing guardian additional duties

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

18 ~~K.~~ **M.** The court shall file a report as part of the court record on
19 its findings of alternatives for treatment.

20 ~~L.~~ **N.** Treatment shall not include psychosurgery, lobotomy or any
21 other brain surgery without specific informed consent of the patient or the
22 patient's legal guardian and an order of the superior court in the county in
23 which the treatment is proposed, approving with specificity the use of the
24 treatment.

25 ~~M.~~ **O.** The medical director or any person, agency or organization used
26 by the medical director to supervise the terms of an outpatient treatment
27 plan is not civilly liable for any acts committed by a patient while on
28 outpatient treatment if the medical director, person, agency or organization
29 has in good faith followed the requirements of this section.

30 ~~N.~~ **P.** A peace officer who in good faith apprehends and transports a
31 patient to an inpatient treatment facility on the order of the medical
32 director of the outpatient treatment facility pursuant to subsection ~~E~~ **F**,
33 paragraph 5 of this section is not subject to civil liability.

34 ~~O.~~ **Q.** If a person has been found, as a result of a mental disorder,
35 to constitute a danger to self or others or to have a persistent or acute
36 disability or a grave disability and the court enters an order for treatment
37 pursuant to subsection A of this section, the court shall transmit the
38 person's name, sex, date of birth, social security number, if available, and
39 date of the order for treatment to the supreme court. The supreme court
40 shall transmit the information to the department of public safety to comply
41 with the requirements of title 13, chapter 31 and title 32, chapter 26. The
42 department of public safety shall transmit the information to the national
43 instant criminal background check system. The superior court may access the
44 information of a person who is ordered into treatment to enforce or
45 facilitate a treatment order.

1 ~~P.~~ R. On request, the clerk of the court shall provide certified
2 copies of the commitment order to a law enforcement or prosecuting agency
3 that is investigating or prosecuting a prohibited possessor as defined in
4 section 13-3101.

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

7 **36-540.01. Conditional outpatient treatment**

8 A. The medical director may issue an order for conditional outpatient
9 treatment for a patient ordered to undergo treatment pursuant to section
10 36-540 if, after consultation with staff familiar with the patient's case
11 history, the medical director determines with a reasonable degree of medical
12 probability that all of the following apply:

13 1. The patient no longer requires continuous inpatient
14 hospitalization.

15 2. The patient will be more appropriately treated in an outpatient
16 treatment program.

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

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

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

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

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

30 3. The name and address of any person, agency or organization assigned
31 to supervise an outpatient treatment plan or care for the patient, and the
32 extent of authority of the person, agency or organization in carrying out the
33 terms of the plan.

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

39 C. Before release for conditional outpatient treatment, the patient
40 shall be provided with copies and full explanations of the medical director's
41 order and the treatment plan. If, after full explanation, the patient
42 objects to the plan or any part of it, the objection and reasons for the
43 objection shall be noted in the patient's record. The medical director's
44 order and treatment plan shall be filed in the patient's medical file and
45 shall also be filed with the court.

1 D. The period for which conditional outpatient treatment may be
2 ordered may not exceed the remainder of the period of court-ordered
3 treatment.

4 E. Before the release of a patient for outpatient treatment, the
5 medical director shall give notice pursuant to section 36-541.01, subsection
6 B and a motion for a determination by the court as to whether the standard
7 for conditional release of the patient has been met may be made by the
8 persons and in the manner provided for in section 36-541.01, subsection H.
9 Before the release of a person found to be a danger to self, ~~— OR OTHERS OR~~
10 ~~FOUND to be a person with~~ HAVE a persistent or acute disability or a grave
11 disability for outpatient treatment, the medical director shall give notice
12 to the court that ordered the patient to undergo treatment. If criminal
13 charges against a patient involving ~~death or serious physical injury or a~~
14 ~~violation of title 13, chapter 14~~ A SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED
15 FELONY AS DEFINED IN SECTION 13-706 OR AN OFFENSE UNDER TITLE 13, CHAPTER 14
16 OR 35.1 are dismissed pursuant to section 13-4517, the medical director shall
17 notify the prosecuting agency if a civil commitment order issued pursuant to
18 this chapter expires or is terminated, or if the patient is discharged to
19 outpatient treatment. The medical director shall provide this notice by mail
20 at least five days before the anticipated date of the expiration, termination
21 or discharge.

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

27 G. 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.

32 H. The medical director may amend any part of the outpatient treatment
33 plan during the course of conditional outpatient treatment. If the plan is
34 amended, the medical director shall issue a new order including the amended
35 outpatient treatment plan. The new order and amended outpatient treatment
36 plan shall be filed in the patient's medical file. Copies of the new order
37 and outpatient treatment plan shall be immediately provided to the patient
38 and to any person, agency or organization assigned to supervise an outpatient
39 treatment plan. Copies of the new order and outpatient treatment plan shall
40 be immediately filed with the court THAT ISSUED THE TREATMENT ORDER AS WELL
41 AS THE CRIMINAL COURT AND THE COUNTY ATTORNEY IF THE PATIENT HAS BEEN FOUND
42 INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510.

43 I. The medical director may rescind an order for conditional
44 outpatient treatment and order the patient to return to a mental health
45 treatment agency at any time during the period of court ordered treatment if,

1 in the medical director's judgment, the patient has failed to comply with a
2 term of the outpatient treatment plan or if, for any reason, the medical
3 director determines that the patient needs inpatient treatment or that
4 conditional outpatient treatment is no longer appropriate. **THE MEDICAL
5 DIRECTOR SHALL GIVE NOTICE TO THE COURT THAT ISSUED THE TREATMENT ORDER AS
6 WELL AS THE CRIMINAL COURT AND THE COUNTY ATTORNEY IF THE PATIENT HAS BEEN
7 FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510.**

8 J. If the medical director rescinds an order for conditional
9 outpatient treatment and the patient is returned to a mental health treatment
10 agency for inpatient treatment, the patient shall be informed of the
11 patient's right to judicial review and right to consult with counsel pursuant
12 to section 36-546.

13 K. If the medical director rescinds an order for conditional
14 outpatient treatment and orders the patient to return to a mental health
15 treatment agency, the medical director may request, **OR A COURT MAY ORDER**, a
16 peace officer or a designated officer or employee of the treatment agency to
17 take the patient into custody for immediate delivery to the agency pursuant
18 to section 36-544.

19 L. The medical director is not civilly liable for any act committed by
20 a patient while on conditional outpatient treatment if the medical director
21 has in good faith followed the requirements of this section.

22 **M. UNLESS THE PATIENT HAS BEEN FOUND TO BE DANGEROUS PURSUANT TO
23 SECTION 13-4517**, this section does not prevent the medical director from
24 authorizing a patient ordered to undergo treatment pursuant to section 36-540
25 as a danger to self, **OR** a danger to others, **OR** a patient with a persistent
26 or acute disability or a grave disability to leave the treatment agency for
27 periods of no more than five days under the care, custody and control of a
28 spouse, relative or other responsible person if the medical director
29 determines that the patient will not become dangerous or suffer serious
30 physical harm or illness during that time. **IF THE PATIENT HAS BEEN FOUND TO
31 BE DANGEROUS PURSUANT TO SECTION 13-4517, THE MEDICAL DIRECTOR SHALL OBTAIN
32 APPROVAL OF THE CRIMINAL COURT BEFORE AUTHORIZING THE PATIENT TO LEAVE THE
33 TREATMENT AGENCY.**

34 **N. UNLESS THE PATIENT HAS BEEN FOUND TO BE DANGEROUS PURSUANT TO
35 SECTION 13-4517**, the medical director may authorize a patient who is civilly
36 committed pursuant to section 36-540 to leave the state hospital grounds
37 unaccompanied if the leave is part of an inpatient individualized treatment
38 and discharge plan and the medical director determines that the patient will
39 not become dangerous or suffer serious physical harm or illness during that
40 time. **IF THE PATIENT HAS BEEN FOUND TO BE DANGEROUS PURSUANT TO SECTION
41 13-4517, ANY INDIVIDUALIZED TREATMENT PLAN THAT INCLUDES UNACCOMPANIED LEAVE
42 SHALL BE APPROVED BY THE CRIMINAL COURT AND NOTICE OF THE PLAN SHALL BE GIVEN
43 TO THE COUNTY ATTORNEY BEFORE THE TREATMENT PLAN BECOMES EFFECTIVE.**

1 Sec. 19. Title 36, chapter 5, article 5, Arizona Revised Statutes, is
2 amended by adding section 36-540.03, to read:

3 36-540.03. Outpatient treatment: noncompliance: rescission

4 A. AT ANY TIME A PATIENT IS NONCOMPLIANT WITH ANY CONDITION OF
5 OUTPATIENT TREATMENT, INCLUDING PERIODIC REPORTING, CONTINUATION OF
6 MEDICATION, SUBMISSION TO TESTING, TRAVEL RESTRICTIONS, RESIDENCY
7 REQUIREMENTS, CONSUMPTION OF SPIRITUOUS LIQUOR OR DRUGS OR ANY OTHER
8 CONDITION IMPOSED BY COURT ORDER OR THE MEDICAL DIRECTOR, IMMEDIATE NOTICE
9 SHALL BE PROVIDED TO THE COURT THAT ENTERED THE TREATMENT ORDER. IF THE
10 PATIENT HAS BEEN FOUND TO BE DANGEROUS PURSUANT TO SECTION 13-4517, IMMEDIATE
11 NOTICE SHALL BE PROVIDED TO THE CRIMINAL COURT AND THE COUNTY ATTORNEY.

12 B. THE COURT, INCLUDING THE CRIMINAL COURT, MAY ENTER ANY ORDER
13 SUFFICIENT TO MAINTAIN THE PATIENT'S HEALTH, SAFETY AND TREATMENT AND TO
14 PROTECT THE PUBLIC, INCLUDING RESCINDING THE OUTPATIENT TREATMENT ORDER. THE
15 COURT MAY ENTER AN ORDER DIRECTING A PEACE OFFICER TO TAKE THE PERSON INTO
16 CUSTODY AND RETURN THE PATIENT TO THE INPATIENT TREATMENT FACILITY. THE
17 ORDER SHALL INCLUDE THE PATIENT'S CRIMINAL HISTORY, WHETHER THE PATIENT
18 SHOULD BE CONSIDERED DANGEROUS AND THE NAMES AND TELEPHONE NUMBERS OF THE
19 PATIENT'S CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER
20 PERSONS, AS APPLICABLE.

21 C. IF THE COURT RESCINDS AN ORDER FOR OUTPATIENT TREATMENT PURSUANT TO
22 THIS SECTION, THE PATIENT SHALL BE INFORMED OF THE PATIENT'S RIGHT TO
23 JUDICIAL REVIEW AND RIGHT TO CONSULT WITH COUNSEL PURSUANT TO SECTION 36-546.

24 Sec. 20. Section 36-541.01, Arizona Revised Statutes, is amended to
25 read:

26 36-541.01. Release or discharge from treatment before
27 expiration of period ordered by court;
28 notification of intent to release or discharge;
29 hearing

30 A. A patient WHO IS ordered to undergo treatment pursuant to this
31 article may be released from treatment before the expiration of the period
32 ordered by the court if, in the opinion of the medical director of the mental
33 health treatment agency, the patient no longer is, as a result of a mental
34 disorder, a danger to others, ~~— OR~~ a danger to self, ~~— OR NO LONGER~~ has a
35 persistent or acute disability or a grave disability. A person WHO IS
36 ordered to undergo treatment as a danger to others ~~OR WHO HAS BEEN FOUND TO~~
37 ~~BE INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510~~ may not be released
38 or discharged from treatment before the expiration of the period for
39 treatment ordered by the court unless the medical director first gives notice
40 of intention to do so as provided by this section.

41 B. Before the release or discharge of a patient ordered to undergo
42 treatment, the medical director of the mental health treatment agency shall
43 notify the following of the medical director's intention to release or
44 discharge the patient:

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

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

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

7 C. If criminal charges against a patient involving ~~death or serious~~
8 ~~physical injury or a violation of~~ A SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED
9 FELONY AS DEFINED IN SECTION 13-706 OR AN OFFENSE UNDER TITLE 13, CHAPTER 14
10 OR 35.1 are dismissed pursuant to section 13-4517, the medical director shall
11 notify THE CRIMINAL COURT AND the prosecuting agency if a civil commitment
12 order issued pursuant to this chapter expires or is terminated, or if the
13 patient is discharged to outpatient treatment. The medical director shall
14 provide this notice by mail at least ~~five~~ SEVEN days before the anticipated
15 date of the expiration, termination or discharge.

16 D. If the director of the mental health treatment agency is unable to
17 determine, based on the information submitted pursuant to subsection E OF
18 THIS SECTION, that a person who has filed a demand for notice is a victim the
19 director shall inform that person that that person's demand for notice is
20 denied and that notice will not be given unless ordered by the court pursuant
21 to subsection F OF THIS SECTION.

22 E. A demand for notice by a relative or victim, and a petition for
23 notice by other persons, shall be on a form prescribed by the department and
24 shall include the following information:

- 25 1. The full name of the person to receive notice.
- 26 2. The address to which notice is to be mailed.
- 27 3. The telephone number of the person to receive notice.
- 28 4. The relationship to the patient, if any, or the reasons why the
29 person believes the person has a legitimate reason to receive notice.

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

33 6. The full name of the patient WHO IS ordered to undergo treatment as
34 a danger to others OR WHO HAS BEEN FOUND TO BE DANGEROUS PURSUANT TO SECTION
35 13-4517.

36 7. The mental health number assigned to the case by the superior
37 court.

38 F. If the court receives a demand for notice by a relative or victim,
39 the court shall order the medical director of the mental health treatment
40 agency not to release or discharge the patient before the expiration of the
41 period of court-ordered treatment without first giving notice to the relative
42 or victim as provided in subsection G OF THIS SECTION. After considering a
43 petition for notice, if the court finds that the petitioner has a legitimate
44 reason for receiving prior notice, the court may order the medical director
45 of the mental health treatment agency not to release or discharge the patient

1 from inpatient treatment before the expiration of the period of court-ordered
2 treatment without first giving notice to the petitioner as provided in
3 subsection G OF THIS SECTION. Any order for notice shall be delivered to the
4 mental health treatment agency and shall be filed with the patient's clinical
5 record. If the patient is transferred to another agency or institution, any
6 orders for notice shall be transferred with the patient.

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

- 9 1. The name of the patient to be released or discharged.
- 10 2. The type of release or discharge.

11 3. The date of anticipated release or discharge. Notices shall be
12 placed in the mail, postage prepaid and addressed to the court and to each
13 person for whom notice has been ordered, at least ten days before the date of
14 intended release or discharge except notice shall be sent to the prosecuting
15 agency at least **five** **SEVEN** days before the date of intended release or
16 discharge. For purposes of computing the notice requirement, the day of
17 mailing shall not be counted.

18 H. Any person for whom prior notice is required pursuant to this
19 section, or the court, may make a motion within the notification period that
20 requires the court to determine whether the standard for release of the
21 patient before the expiration of the period for court-ordered treatment has
22 been met. A determination that the standard for release has been met may be
23 made by the court based on a review of the record and any affidavits
24 submitted without further hearing. For good cause, the court may order an
25 evidentiary hearing. Whether or not a hearing is held, the court shall make
26 a determination at the earliest possible time but no longer than three weeks
27 after the anticipated date of release pursuant to subsection G OF THIS
28 SECTION, and the patient shall be retained for the additional time required
29 for the court's determination. In making its determination the court may
30 order an independent examination of the patient. If a motion is not made,
31 the patient may be released in accordance with the terms set forth in the
32 notice without further court order.

33 I. If a motion has not been made pursuant to subsection H OF THIS
34 SECTION, the patient may be released or discharged and the medical director
35 of the mental health treatment agency shall send to the court a certificate
36 that the patient is no longer a danger to others, **— OR** a danger to self, **— OR**
37 **NO LONGER** has a persistent or acute disability or a grave disability as the
38 result of a mental disorder and therefore is released before the expiration
39 of the period ordered for treatment. The court shall enter an order
40 terminating the patient's court-ordered treatment.

41 J. The medical director of the mental health treatment agency shall
42 not be held civilly liable for any acts committed by a patient released
43 before the expiration of the period of court-ordered treatment if the medical
44 director has in good faith followed the requirements of this section.

1 Sec. 21. Section 36-542, Arizona Revised Statutes, is amended to read:

2 36-542. Discharge of patient at expiration of period ordered by
3 court: change to voluntary status: relief from civil
4 liability

5 A. SUBJECT TO SECTION 36-540, SUBSECTION E, a patient ordered by a
6 court to undergo treatment pursuant to this article shall be discharged from
7 treatment at the expiration of the period of treatment ordered unless one of
8 the following occurs:

9 1. The person accepts voluntary treatment at the mental health
10 treatment agency.

11 2. Before the discharge date, a new petition is filed in the county in
12 which the patient is being treated. The proceedings shall then be governed
13 by this article. The costs of the proceedings shall be a charge against the
14 county in which the patient resided or was found prior to hospitalization.

15 B. If a patient to be discharged is under guardianship, the medical
16 director of the mental health treatment agency shall notify the guardian ten
17 days before discharge.

18 C. The medical director is not civilly liable for any acts committed
19 by a discharged patient if the medical director has in good faith followed
20 the requirements of this article.

21 Sec. 22. Section 36-543, Arizona Revised Statutes, is amended to read:

22 36-543. Release from treatment of a patient with a grave
23 disability or a patient with a persistent or acute
24 disability; notice: annual review; court order for
25 continued treatment

26 A. A patient found to have a grave disability or a persistent or acute
27 disability and ordered to undergo treatment may be released from inpatient
28 treatment when, in the opinion of the medical director of the mental health
29 treatment agency, the level of care offered by the agency is no longer
30 required. The patient may agree to continue treatment voluntarily. If the
31 patient is to be released, the medical director shall arrange for an
32 appropriate alternative placement. IF THE PATIENT HAS BEEN FOUND TO BE
DANGEROUS PURSUANT TO SECTION 13-4517, THE MEDICAL DIRECTOR SHALL IMMEDIATELY
PROVIDE NOTICE OF THE INTENT TO RELEASE THE PATIENT TO THE CRIMINAL COURT.
THE COURT MAY ENTER ANY ORDERS TO SUFFICIENTLY MAINTAIN THE PATIENT'S HEALTH,
SAFETY AND TREATMENT AND TO PROTECT THE PUBLIC. THE MEDICAL DIRECTOR SHALL
ALSO PROVIDE NOTICE TO THE PROSECUTING AGENCY AT LEAST SEVEN DAYS BEFORE THE
ANTICIPATED DATE OF THE PATIENT'S RELEASE.

33 B. If a patient to be released from inpatient treatment is under
34 guardianship, the medical director of the mental health treatment agency
35 shall notify the guardian and any relevant regional behavioral health
36 authority ten days before the intended release date that the ward no longer
37 requires the level of care offered by the agency. The guardian and, if
38 relevant, the regional behavioral health authority shall arrange alternative

1 placement with the advice and recommendations of the medical director of the
2 mental health treatment agency.

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

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

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

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

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

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

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

43 5. If the patient has an existing guardian who does not have the
44 mental health powers authorized pursuant to section 14-5312.01, a
45 recommendation as to whether the additional mental health powers authorized

1 by section 14-5312.01 should be imposed on the existing guardian and whether
2 the patient's needs can be adequately addressed by a guardian with mental
3 health powers without the need for a court order for treatment or whether the
4 court order for treatment should continue regardless of the additional mental
5 health powers imposed on the guardian.

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

9 F. After conducting the annual review as prescribed in this section,
10 if the medical director believes that continued court-ordered treatment is
11 necessary or appropriate, not later than thirty days before the expiration of
12 the court order for treatment, the medical director shall file with the court
13 an application for continued court-ordered treatment alleging the basis for
14 the application and shall file simultaneously with the application any
15 psychiatric examination conducted as part of the annual review. If the
16 patient is under guardianship, the medical director shall mail a copy of the
17 application to the patient's guardian.

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

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

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

28 3. If a hearing is not requested, the court shall rule on the
29 application or set the matter for hearing. If a hearing is requested, the
30 hearing shall be held within three weeks after the request for hearing is
31 filed. The hearing may be continued for good cause on motion of a party or
32 on the court's own motion, and the expiration of the current court order for
33 treatment may be extended until a ruling by the court on an application filed
34 pursuant to this subsection.

35 4. The patient's attorney must be present at all hearings and may
36 subpoena and cross-examine witnesses and present evidence. The patient has
37 the right to attend all hearings, but may choose not to attend a hearing.
38 The patient's attorney may waive the patient's presence after speaking with
39 the patient and confirming that the patient understands the right to be
40 present and does not desire to attend. If the patient is unable to be
41 present at the hearing for medical or psychiatric reasons and the hearing
42 cannot be conducted where the patient is being treated or confined, or the
43 patient cannot appear by another reasonably feasible means, the court shall
44 require clear and convincing evidence that the patient is unable to be

1 present at the hearing and on such a finding may proceed with the hearing in
2 the patient's absence.

3 5. The evidence presented by the applicant includes the testimony of
4 one or more witnesses acquainted with the patient during the period of
5 court-ordered treatment, which may be satisfied by a statement agreed on by
6 the parties, and the testimony of any physician who performed an annual
7 review of the patient, which may be satisfied by stipulating to the admission
8 of the examining physicians' written report prepared pursuant subsection E of
9 this section. The court may waive the need for the applicant to present the
10 testimony of witnesses acquainted with the patient as required by this
11 subsection, if it finds that the need for a continued court order for
12 treatment has been established by clear and convincing evidence from the
13 other testimony and evidence presented at the hearing.

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

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

37 1. The patient continues to have a mental disorder and, as a result of
38 that disorder, has either a persistent or acute disability or a grave
39 disability.

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

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

43 I. After a hearing held pursuant to subsection G of this section, the
44 court may order the patient to be released from court-ordered treatment or to

1 undergo continued court-ordered treatment for a period not to exceed the time
2 periods prescribed in section 36-540, subsection D.

3 J. The deputy director shall create and operate a program to ensure
4 that the examination and review of persons with grave disabilities or
5 persistent or acute disabilities under court order are carried out in an
6 effective and timely manner. The deputy director, with the approval of the
7 director, shall adopt rules needed to operate this program.

8 Sec. 23. Section 36-544, Arizona Revised Statutes, is amended to read:

9 **36-544. Unauthorized absences; violation; classification;**
10 **tolling period; hearing**

11 A. When any patient who is being evaluated or treated is absent
12 without proper authorization from an evaluation agency or a mental health
13 treatment agency, or when an order for outpatient treatment is rescinded, any
14 peace officer shall, upon oral or written request of the medical director of
15 the agency and without the necessity of a warrant or court order, or any
16 officer or employee of the agency who has been previously designated in
17 writing by the medical director of the agency to perform such duties may,
18 take into custody and deliver such patient to the agency. Such officers and
19 employees of the agency have the powers and duties of peace officers so far
20 as is necessary to carry out **the provisions** of this section. **IF THE PATIENT**
21 **HAS NOT RETURNED VOLUNTARILY OR INVOLUNTARILY WITHIN SEVEN DAYS AFTER THE**
22 **BEGINNING OF THE UNAUTHORIZED ABSENCE, THE MEDICAL DIRECTOR SHALL REQUEST A**
23 **PEACE OFFICER TO TAKE THE PATIENT INTO CUSTODY AND DELIVER THE PATIENT TO THE**
24 **AGENCY. IF THE PATIENT HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO**
25 **SECTION 13-4510, THE MEDICAL DIRECTOR SHALL NOTIFY THE CRIMINAL COURT OF THE**
26 **PATIENT'S ABSENCE AS SOON AS THE AGENCY KNOWS OR SHOULD HAVE REASONABLY KNOWN**
27 **OF THE PATIENT'S UNAUTHORIZED ABSENCE. THE CRIMINAL COURT MAY ENTER ANY**
28 **ORDER NECESSARY TO TAKE THE PATIENT INTO CUSTODY, RETURN THE PATIENT TO THE**
29 **AGENCY AND PROTECT THE PUBLIC. ANY ORDER DIRECTING A PEACE OFFICER TO TAKE**
30 **THE PATIENT INTO CUSTODY SHALL INCLUDE THE PATIENT'S CRIMINAL HISTORY AND THE**
31 **NAMES AND TELEPHONE NUMBERS OF THE PATIENT'S CASE MANAGER, GUARDIAN, SPOUSE,**
32 **NEXT OF KIN OR SIGNIFICANT OTHER PERSONS, AS APPLICABLE.**

33 B. Any person who intentionally assists any patient being evaluated or
34 treated in an agency to be absent from the agency without proper
35 authorization, or who intentionally assists a patient whom he knows to be
36 absent without proper authorization or whom he knows to be a patient whose
37 order for outpatient treatment has been rescinded and who has been ordered to
38 return to the agency, or to resist being returned to the agency after such
39 absence is guilty of a class 2 misdemeanor.

40 C. The period of court-ordered treatment ceases to run during the
41 **unauthorized absence of** TIME the patient **IS ABSENT WITHOUT AUTHORIZATION** from
42 the **jurisdiction** TREATMENT AGENCY or from any required supervision **OR IS**
43 **OTHERWISE NONCOMPLIANT WITH TREATMENT ORDERS** and resumes running only on the
44 patient's voluntary or involuntary return to the treatment agency **OR**
45 **COMPLIANCE WITH TREATMENT ORDERS. THE PATIENT SHALL REMAIN ENROLLED WITH THE**

1 MENTAL HEALTH TREATMENT AGENCY, NOTWITHSTANDING THE PATIENT'S UNAUTHORIZED
2 ABSENCE, UNTIL THE EXPIRATION OF THE TREATMENT ORDER OR UNLESS OTHERWISE
3 ORDERED BY THE COURT.

4 D. A patient who remains on unauthorized absence status continuously
5 for at least ninety days may petition the court on his return to the
6 treatment agency for a hearing to determine his current mental status and his
7 present need for treatment. The court shall order a hearing if requested by
8 the patient, his legal guardian or an interested party. The hearing shall be
9 held within seventy-two hours after the request. IF THE PATIENT HAS BEEN
10 FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510, THE CRIMINAL
11 COURT AND THE COUNTY ATTORNEY SHALL ALSO RECEIVE NOTICE. THE CRIMINAL COURT
12 MAY ELECT TO CONDUCT THE HEARING, AND THE COUNTY ATTORNEY MAY PRESENT
13 EVIDENCE AND ARGUMENT.

14 E. ~~Subsections C and~~ SUBSECTION D of this section ~~shall apply~~ APPLIES
15 only to inpatient treatment pursuant to section 36-540, subsection A,
16 paragraphs 2 and 3.

17 Sec. 24. Section 36-546, Arizona Revised Statutes, is amended to read:
18 36-546. Judicial review; right to be informed; request;
19 jurisdiction

20 A. In addition to the procedure for applying for a writ of habeas
21 corpus, as provided in title 13, chapter 38, article 26, AND EXCEPT FOR
22 PATIENTS WHO ARE SUBJECT TO A TREATMENT ORDER PURSUANT TO SECTION 36-540,
23 SUBSECTION E, a patient receiving court-ordered treatment or any person
24 acting on the patient's behalf may request the patient's release pursuant to
25 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.

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

35 2. The request, when signed and dated by the person making the request
36 for release, shall be delivered to the medical director of the agency.
37 Within three days of receipt of the request, the medical director shall
38 deliver the form, along with a current psychiatric report of the patient's
39 condition, to the clerk of the court. If the person presenting the request
40 refuses to sign the form, the medical director of the agency shall proceed as
41 if the form had been signed and shall note on the form the circumstances as
42 to why the form was not signed.

43 B. EXCEPT FOR A PATIENT WHO IS SUBJECT TO A TREATMENT ORDER PURSUANT
44 TO SECTION 36-540, SUBSECTION E, the patient shall be informed of the
45 patient's right to judicial review by the medical director of the agency and

1 the patient's right to consult with counsel at least once each sixty days
2 while the patient is undergoing court-ordered treatment. The notification
3 required by this subsection shall be recorded in the clinical record of the
4 patient by the individual who gave the notice.

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

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

15 E. The reviewing court may order a further hearing on the affidavit of
16 the attorney for the patient setting forth the need for further evidentiary
17 hearing and the reasons why the hearing is necessary before the time set for
18 the release of the patient.

19 F. The patient shall be informed of the patient's right to consult an
20 attorney by the person or court to whom the patient makes the request for
21 release at the time the patient makes the request and, in the case of
22 confinement in an agency, by the reviewing court within one day of its
23 receipt of notice from the medical director of the agency where the patient
24 is being treated. The patient shall be permitted to consult an attorney to
25 assist in preparation of a petition for the writ of habeas corpus and to
26 represent the patient in the hearing. If the patient is not represented by
27 an attorney, the reviewing court, within two days of its notice to the
28 patient of the patient's right to counsel, shall appoint an attorney to
29 assist the patient in the preparation of a petition and to represent the
30 patient in the hearing.

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

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

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

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

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

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

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

1 Sec. 25. Section 36-3701, Arizona Revised Statutes, is amended to
2 read:

3 **36-3701. Definitions**

4 In this article, unless the context otherwise requires:

5 1. "Agency" means any agency that is authorized to direct the release
6 of a person who is serving a sentence or term of confinement or who is
7 receiving treatment, including a state or federal prison, a county jail and
8 the Arizona state hospital **OR OTHER MENTAL HEALTH TREATMENT AGENCY, AND THE**
9 **SUPERIOR COURT HAVING JURISDICTION OVER A DEFENDANT WHO IS BEING EVALUATED OR**
10 **WHO HAS BEEN FOUND TO BE INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION**
11 **13-4510.**

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

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

15 (b) Approved by the superior court as meeting court approved
16 guidelines.

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

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

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

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

28 (a) Indecent exposure to a person who is under fifteen years of age
29 pursuant to section 13-1402, public sexual indecency to a minor pursuant to
30 section 13-1403, sexual conduct with a minor pursuant to section 13-1405,
31 sexual assault pursuant to section 13-1406, molestation of a child pursuant
32 to section 13-1410, continuous sexual abuse of a child pursuant to section
33 13-1417 or sexual assault of a spouse if the offense was committed before
34 August 12, 2005.

35 (b) Second degree murder pursuant to section 13-1104, first degree
36 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
37 aggravated assault pursuant to section 13-1204, unlawful imprisonment
38 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
39 burglary in the first degree pursuant to section 13-1508 if the court at the
40 time of sentencing or civil commitment proceedings determines beyond a
41 reasonable doubt that the act was sexually motivated pursuant to section
42 13-118.

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

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

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

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

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

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