

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SENATE BILL 1412

AN ACT

AMENDING SECTIONS 13-4501, 13-4503, 13-4505, 13-4508, 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 36-501, 36-521, 36-523, 36-529, 36-531, 36-533, 36-534, 36-540, 36-540.01, 36-541.01, 36-542, 36-543, 36-544, 36-546 AND 36-3701, ARIZONA REVISED STATUTES; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 40; RELATING TO INCOMPETENCE TO STAND TRIAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 13-4501. Definitions

5 In this chapter, unless the context otherwise requires:

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

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

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

26 ~~3-~~ 4. "Mental health expert" means a physician who is licensed
27 pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed
28 pursuant to title 32, chapter 19.1 and who is:

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

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

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

35 ~~4-~~ 5. "Mental illness, defect or disability" means a psychiatric or
36 neurological disorder that is evidenced by behavioral or emotional symptoms,
37 including congenital mental conditions, conditions resulting from injury or
38 disease and developmental disabilities as defined in section 36-551.

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

41 ~~5-~~ 7. "Threat to public safety" means charged with the commission of
42 any of the following:

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

- 1 (b) A dangerous crime against children pursuant to section 13-705.
- 2 (c) Two or more nondangerous felonies within a period of twenty-four
- 3 months.

4 Sec. 2. Section 13-4503, Arizona Revised Statutes, is amended to read:
5 13-4503. Request for competency examination: request for
6 sexually violent person screening

7 A. At any time after the prosecutor charges a criminal offense by
8 complaint, information or indictment, any party or the court on its own
9 motion may request in writing that the defendant be examined to determine the
10 defendant's competency to stand trial, to enter a plea or to assist the
11 defendant's attorney. The motion shall state the facts on which the mental
12 examination is sought.

13 B. Within three working days after a motion is filed pursuant to this
14 section, the parties shall provide all available medical and criminal history
15 records to the court.

16 C. The court may request that a mental health expert assist the court
17 in determining if reasonable grounds exist for examining a defendant.

18 D. Once any court determines that reasonable grounds exist for further
19 competency proceedings, the superior court shall have exclusive jurisdiction
20 over all competency hearings.

21 E. IF THE DEFENDANT IS CHARGED WITH A SEXUALLY VIOLENT OFFENSE AS
22 DEFINED IN SECTION 36-3701 AND THE COUNTY ATTORNEY REQUESTS A SCREENING, THE
23 COURT MAY ORDER A SCREENING OF THE DEFENDANT TO DETERMINE IF THE DEFENDANT IS
24 A SEXUALLY VIOLENT PERSON.

25 Sec. 3. Section 13-4505, Arizona Revised Statutes, is amended to read:
26 13-4505. Appointment of experts: costs

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

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

39 C. IF THE COURT HAS ORDERED A SCREENING OF THE DEFENDANT TO DETERMINE
40 IF THE DEFENDANT IS A SEXUALLY VIOLENT PERSON, ONE OF THE MENTAL HEALTH
41 EXPERTS APPOINTED BY THE COURT SHALL BE A COMPETENT PROFESSIONAL AS DEFINED
42 IN SECTION 36-3701. IF THAT EXPERT DETERMINES THAT THE DEFENDANT IS
43 INCOMPETENT TO STAND TRIAL AND NOT RESTORABLE TO COMPETENCY WITHIN TWENTY-ONE
44 MONTHS, THE EXPERT SHALL DETERMINE WHETHER THE DEFENDANT MAY BE A SEXUALLY
45 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.~~ E. 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 13-4508, Arizona Revised Statutes, is amended to read:
15 13-4508. Privilege against self-incrimination; sealed reports

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

18 B. Any evidence or statement that is obtained during an examination is
19 not admissible at any proceeding to determine a defendant's guilt or
20 innocence unless the defendant presents evidence that is intended to rebut
21 the presumption of sanity.

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

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

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

38 1. For use by the court or defendant, or by the prosecutor if
39 otherwise permitted by law, for further competency or sanity evaluations **OR**
40 **IN A HEARING TO DETERMINE WHETHER THE DEFENDANT IS DANGEROUS AND ELIGIBLE FOR**
41 **COMMITMENT PURSUANT TO SECTION 13-4518 OR ELIGIBLE FOR COURT ORDERED**
42 **TREATMENT PURSUANT TO TITLE 36, CHAPTER 5.**

43 2. For statistical analysis.

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

1 4. For use by the probation department or the state department of
2 corrections if the defendant is in the custody of or is scheduled to be
3 transferred into the custody of the state department of corrections for the
4 purposes of assessment and supervision or monitoring of the defendant by that
5 department.

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

8 6. For data gathering.

9 7. For scientific study.

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

13 Sec. 5. Section 13-4509, Arizona Revised Statutes, is amended to read:

14 13-4509. Expert's report

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

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

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

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

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

25 B. If the mental health expert determines that the defendant is
26 incompetent to stand trial, the report shall also include the following
27 information:

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

30 2. The defendant's prognosis.

31 3. **THE NATURE OF THE MENTAL HEALTH DISORDER, DISEASE OR DEFECT OR OF**
32 **ANY PERSONALITY OR OTHER DISORDER THAT MAKES THE DEFENDANT LIKELY TO BE**
33 **DANGEROUS OR A SEXUALLY VIOLENT PERSON.**

34 ~~3.~~ 4. The most appropriate form and place of treatment in this state,
35 based on the defendant's therapeutic needs and potential threat to public
36 safety.

37 ~~4.~~ 5. Whether the defendant is incompetent to refuse treatment and
38 should be subject to involuntary treatment.

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

44 C. If the mental health examiner determines that the defendant is
45 currently competent by virtue of ongoing treatment with psychotropic

1 medication, the report shall address the necessity of continuing that
2 treatment and shall include a description of any limitations that the
3 medication may have on competency.

4 Sec. 6. Section 13-4515, Arizona Revised Statutes, is amended to read:
5 13-4515. Duration of order; excluded time calculation; notice
6 of dismissed charge or voided order; petitions

7 A. An order or combination of orders that is issued pursuant to
8 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
9 months or the maximum possible sentence the defendant could have received
10 pursuant to section 13-702, section 13-703, section 13-704, subsection A, B,
11 C, D or E, section 13-705, section 13-706, subsection A, section 13-708,
12 subsection D or section 13-751 or any section for which a specific sentence
13 is authorized, whichever is less. In making this determination the court
14 shall not consider the sentence enhancements under section 13-703 or 13-704
15 for prior convictions.

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

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

23 D. If a defendant is discharged or released on the expiration of an
24 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
25 supervisor may file a petition stating that the defendant requires further
26 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian
27 pursuant to title 14 OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4518
28 BECAUSE THE DEFENDANT IS DANGEROUS.

29 Sec. 7. Section 13-4517, Arizona Revised Statutes, is amended to read:
30 13-4517. Incompetent defendants; disposition

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

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

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

40 3. Release the defendant from custody and dismiss the charges against
41 the defendant without prejudice.

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

44 B. IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 1,
45 2 OR 4 OF THIS SECTION, THE COURT MAY ALSO ORDER AN ASSESSMENT OF THE

1 DEFENDANT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE
2 APPLIED TO THE EXPENSES OF THE DEFENDANT'S MEDICALLY NECESSARY MAINTENANCE
3 AND TREATMENT, INCLUDING SERVICES PURSUANT TO TITLE 36, CHAPTER 29,
4 STATE-ONLY BEHAVIORAL HEALTH SERVICES, TITLE XVIII SERVICES AND MEDICARE PART
5 D PRESCRIPTION DRUG BENEFITS, SUPPLEMENTAL SECURITY INCOME AND SUPPLEMENTAL
6 SECURITY DISABILITY INCOME.

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

10 D. IF THE COURT REMANDS THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT
11 OF HEALTH SERVICES FOR THE INSTITUTION OF CIVIL COMMITMENT PROCEEDINGS
12 PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT IS NOTIFIED THAT THE DEFENDANT
13 HAS NOT HAD A CIVIL COMMITMENT EVALUATION, THE COURT SHALL ORDER THE SHERIFF
14 TO TAKE THE DEFENDANT INTO CUSTODY SO THAT THE COURT MAY EXPLORE OPTIONS
15 PURSUANT TO SUBSECTION A, PARAGRAPH 2 OR 3 OF THIS SECTION. IF THE DEFENDANT
16 IS OUT OF CUSTODY, THE COURT MAY ORDER THAT THE DEFENDANT BE TAKEN INTO
17 CUSTODY FOR A DISPOSITION PURSUANT TO THIS SECTION.

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

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

24 13-4518. Dangerous and incompetent defendants; commitment
25 hearing; disposition

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

29 B. IF THERE HAS NOT BEEN A PREVIOUS EVALUATION TO DETERMINE WHETHER
30 THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL HEALTH
31 EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO DETERMINE IF THE
32 DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

33 C. AT A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS THE STATE
34 SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS
35 DANGEROUS AND THAT THE DEFENDANT COMMITTED THE ACTS THAT CONSTITUTE THE
36 CHARGED OFFENSE. IF THE COURT DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE
37 COURT SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2
38 OR 3.

39 D. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT SHALL
40 ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH FACILITY
41 LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT COMMISSION ON
42 ACCREDITATION OF HEALTH CARE ORGANIZATIONS. THE DEFENDANT SHALL RECEIVE
43 EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE DEFENDANT EITHER
44 COMPETENT OR NONDANGEROUS.

1 E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:
2 1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT AND
3 THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE
4 CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.
5 2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO THE
6 CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE FOLLOWING
7 OCCURS:
8 (a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.
9 (b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.
10 (c) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO EITHER THE SENTENCE
11 THE DEFENDANT WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN SENTENCED
12 PURSUANT TO SECTION 13-751 OR THE PRESUMPTIVE SENTENCE FOR ALL OTHER
13 OFFENSES.
14 F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS
15 COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE DEFENDANT
16 FROM TREATMENT.
17 G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS SECTION,
18 THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE EXTENT
19 TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR
20 PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S
21 MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND
22 STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND
23 REGIONAL BEHAVIORAL HEALTH CARE AUTHORITY MONIES. THE DEPARTMENT MAY ACCEPT
24 THESE MONIES WITHOUT A COURT ORDER. THE DEPARTMENT IS RESPONSIBLE FOR ALL
25 REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.
26 Sec. 9. Section 36-501, Arizona Revised Statutes, is amended to read:
27 36-501. Definitions
28 In this chapter, unless the context otherwise requires:
29 1. "Administration" means the Arizona health care cost containment
30 system administration.
31 2. "Admitting officer" means a psychiatrist or other physician or
32 psychiatric and mental health nurse practitioner with experience in
33 performing psychiatric examinations who has been designated as an admitting
34 officer of the evaluation agency by the person in charge of the evaluation
35 agency.
36 3. "Chief medical officer" means the chief medical officer under the
37 supervision of the superintendent of the state hospital.
38 4. "Contraindicated" means that access is reasonably likely to
39 endanger the life or physical safety of the patient or another person.
40 5. "Court" means the superior court in the county in this state in
41 which the patient resides or was found before screening or emergency
42 admission under this title.
43 6. "CRIMINAL HISTORY" MEANS POLICE REPORTS, LISTS OF PRIOR ARRESTS AND
44 CONVICTIONS, CRIMINAL CASE PLEADINGS AND COURT ORDERS, INCLUDING A

1 DETERMINATION THAT THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL
2 PURSUANT TO SECTION 13-4510.

3 ~~6-~~ 7. "Danger to others" means that the judgment of a person who has
4 a mental disorder is so impaired that the person is unable to understand the
5 person's need for treatment and as a result of the person's mental disorder
6 the person's continued behavior can reasonably be expected, on the basis of
7 competent medical opinion, to result in serious physical harm.

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

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

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

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

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

19 ~~8-~~ 9. "Department" means the department of health services.

20 ~~9-~~ 10. "Detention" means the taking into custody of a patient or
21 proposed patient.

22 ~~10-~~ 11. "Director" means the director of the administration.

23 ~~11-~~ 12. "Evaluation" means:

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

29 (i) Two licensed physicians, who shall be qualified psychiatrists, if
30 possible, or at least experienced in psychiatric matters, and who shall
31 examine and report their findings independently. The person against whom a
32 petition has been filed shall be notified that the person may select one of
33 the physicians. A psychiatric resident in a training program approved by the
34 American medical association or by the American osteopathic association may
35 examine the person in place of one of the psychiatrists if the resident is
36 supervised in the examination and preparation of the affidavit and testimony
37 in court by a qualified psychiatrist appointed to assist in the resident's
38 training, and if the supervising psychiatrist is available for discussion
39 with the attorneys for all parties and for court appearance and testimony if
40 requested by the court or any of the attorneys.

41 (ii) Two other individuals, one of whom, if available, shall be a
42 psychologist and in any event a social worker familiar with mental health and
43 human services that may be available placement alternatives appropriate for
44 treatment. An evaluation may be conducted on an inpatient basis, an

1 outpatient basis or a combination of both, and every reasonable attempt shall
2 be made to conduct the evaluation in any language preferred by the person.

3 (b) A physical examination that is consistent with the existing
4 standards of care and that is performed by one of the evaluating physicians
5 or by or under the supervision of a physician who is licensed pursuant to
6 title 32, chapter 13 or 17 or a registered nurse practitioner who is licensed
7 pursuant to title 32, chapter 15 if the results of that examination are
8 reviewed or augmented by one of the evaluating physicians.

9 ~~12.~~ 13. "Evaluation agency" means a health care agency that is
10 licensed by the department and that has been approved pursuant to this title,
11 providing those services required of such agency by this chapter.

12 ~~13.~~ 14. "Family member" means a spouse, parent, adult child, adult
13 sibling or other blood relative of a person undergoing treatment or
14 evaluation pursuant to this chapter.

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

19 ~~15.~~ 16. "Health care decision maker" has the same meaning prescribed
20 in section 12-2801.

21 ~~16.~~ 17. "Health care entity" means a health care provider, the
22 department, the administration or a regional behavioral health authority
23 under contract with the administration.

24 ~~17.~~ 18. "Health care provider" means a health care institution as
25 defined in section 36-401 that is licensed as a behavioral health provider
26 pursuant to department rules or a mental health provider.

27 ~~18.~~ 19. "Independent evaluator" means a licensed physician,
28 psychiatric and mental health nurse practitioner or psychologist selected by
29 the person to be evaluated or by such person's attorney.

30 ~~19.~~ 20. "Informed consent" means a voluntary decision following
31 presentation of all facts necessary to form the basis of an intelligent
32 consent by the patient or guardian with no minimizing of known dangers of any
33 procedures.

34 ~~20.~~ 21. "Least restrictive treatment alternative" means the treatment
35 plan and setting that infringe in the least possible degree with the
36 patient's right to liberty and that are consistent with providing needed
37 treatment in a safe and humane manner.

38 ~~21.~~ 22. "Licensed physician" means any medical doctor or doctor of
39 osteopathy who is either:

40 (a) Licensed in this state.

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

44 ~~22.~~ 23. "Medical director of an evaluation agency" means a
45 psychiatrist, or other licensed physician experienced in psychiatric matters,

1 who is designated in writing by the governing body of the agency as the
2 person in charge of the medical services of the agency for the purposes of
3 this chapter and may include the chief medical officer of the state hospital.

4 ~~23.~~ 24. "Medical director of a mental health treatment agency" means
5 a psychiatrist, or other licensed physician experienced in psychiatric
6 matters, who is designated in writing by the governing body of the agency as
7 the person in charge of the medical services of the agency for the purposes
8 of this chapter and includes the chief medical officer of the state hospital.

9 ~~24.~~ 25. "Mental disorder" means a substantial disorder of the
10 person's emotional processes, thought, cognition or memory. Mental disorder
11 is distinguished from:

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

15 (b) The declining mental abilities that directly accompany impending
16 death.

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

21 ~~25.~~ 26. "Mental health provider" means any physician or provider of
22 mental health or behavioral health services involved in evaluating, caring
23 for, treating or rehabilitating a patient.

24 ~~26.~~ 27. "Mental health treatment agency" means the state hospital or
25 a health care agency that is licensed by the department and that provides
26 those services that are required of the agency by this chapter.

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

30 ~~28.~~ 29. "Outpatient treatment plan" means a treatment plan that does
31 not require continuous inpatient hospitalization.

32 ~~29.~~ 30. "Patient" means any person undergoing examination, evaluation
33 or behavioral or mental health treatment under this chapter.

34 ~~30.~~ 31. "Peace officers" means sheriffs of counties, constables,
35 marshals and policemen of cities and towns.

36 ~~31.~~ 32. "Persistent or acute disability" means a severe mental
37 disorder that meets all the following criteria:

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

42 (b) Substantially impairs the person's capacity to make an informed
43 decision regarding treatment, and this impairment causes the person to be
44 incapable of understanding and expressing an understanding of the advantages
45 and disadvantages of accepting treatment and understanding and expressing an

1 understanding of the alternatives to the particular treatment offered after
2 the advantages, disadvantages and alternatives are explained to that person.

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

5 ~~32-~~ 33. "Prepetition screening" means the review of each application
6 requesting court-ordered evaluation, including an investigation of facts
7 alleged in such application, an interview with each applicant and an
8 interview, if possible, with the proposed patient. The purpose of the
9 interview with the proposed patient is to assess the problem, explain the
10 application and, when indicated, attempt to persuade the proposed patient to
11 receive, on a voluntary basis, evaluation or other services.

12 ~~33-~~ 34. "Prescribed form" means a form established by a court or the
13 rules of the administration in accordance with the laws of this state.

14 ~~34-~~ 35. "Professional" means a physician who is licensed pursuant to
15 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to title
16 32, chapter 19.1 or a psychiatric and mental health nurse practitioner who is
17 certified pursuant to title 32, chapter 15.

18 ~~35-~~ 36. "Proposed patient" means a person for whom an application for
19 evaluation has been made or a petition for court-ordered evaluation has been
20 filed.

21 37. "PROSECUTING AGENCY" MEANS THE COUNTY ATTORNEY, ATTORNEY GENERAL
22 OR CITY ATTORNEY WHO APPLIED OR PETITIONED FOR AN EVALUATION OR TREATMENT
23 PURSUANT TO CHAPTER 5 OF THIS TITLE.

24 ~~36-~~ 38. "Psychiatric and mental health nurse practitioner" means a
25 registered nurse practitioner as defined in section 32-1601 who has completed
26 an adult or family psychiatric and mental health nurse practitioner program
27 and who is certified as an adult or family psychiatric and mental health
28 nurse practitioner by the state board of nursing.

29 ~~37-~~ 39. "Psychiatrist" means a licensed physician who has completed
30 three years of graduate training in psychiatry in a program approved by the
31 American medical association or the American osteopathic association.

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

34 ~~39-~~ 41. "Records" means all communications that are recorded in any
35 form or medium and that relate to patient examination, evaluation or
36 behavioral or mental health treatment. Records include medical records that
37 are prepared by a health care provider or other providers. Records do not
38 include:

39 (a) Materials that are prepared in connection with utilization review,
40 peer review or quality assurance activities, including records that a health
41 care provider prepares pursuant to section 36-441, 36-445, 36-2402 or
42 36-2917.

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

1 reasonable cause to believe that the person is in such a condition that
2 without immediate hospitalization he is likely to harm himself or others, the
3 agency shall take all reasonable steps to procure such hospitalization on an
4 emergency basis.

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

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

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

16 1. That a criminal investigation is warranted.

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

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

22 H. The petition shall be made in the form and manner prescribed by the
23 director.

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

27 Sec. 11. Section 36-523, Arizona Revised Statutes, is amended to read:

28 36-523. Petition for evaluation

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

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

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

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

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

39 5. A summary of the facts that support the allegations that the
40 proposed patient is dangerous, has a persistent or acute disability or a
41 grave disability and is unwilling or unable to be voluntarily evaluated,
42 including the facts that brought the proposed patient to the screening
43 agency's attention.

44 6. IF THE PETITION IS FILED BY A PROSECUTOR PURSUANT TO SECTION
45 13-4517, THE PETITION SHALL INCLUDE ANY KNOWN CRIMINAL HISTORY OF THE

1 PROPOSED PATIENT, INCLUDING WHETHER THE PROPOSED PATIENT HAS EVER BEEN FOUND
2 INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510.

3 ~~6-~~ 7. Other information that the director by rule or the court by
4 rule or order may require.

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

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

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

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

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

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

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

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

37 Sec. 12. Section 36-529, Arizona Revised Statutes, is amended to read:
38 ~~36-529.~~ Order for evaluation; order for detention; hearing

39 A. If, from the review of the petition for evaluation, the court does
40 not determine that the proposed patient is likely to present a danger to self
41 or others or further deteriorate prior to his hearing on court-ordered
42 treatment, but determines that there is reasonable cause to believe that the
43 proposed patient is, as a result of a mental disorder, a danger to self or
44 others, ~~OR~~ has a persistent or acute disability or a grave disability, the
45 court shall issue an order directing the proposed patient to submit to an

1 evaluation at a designated time and place, specifying that the evaluation
2 will take place on an inpatient or an outpatient basis. The court may also
3 order that if the person does not or cannot so submit, that he be taken into
4 custody by a ~~police~~ PEACE officer and delivered to an evaluation agency. If
5 the court makes such a conditional order, it shall also make a conditional
6 appointment of counsel for the person to become effective when and if the
7 person is taken into custody pursuant to this section.

8 B. If, from review of the petition for evaluation, there is reasonable
9 cause to believe that the proposed patient is, as a result of a mental
10 disorder, a danger to self or others, ~~OR~~ has a persistent or acute
11 disability or a grave disability and that the person requires immediate or
12 continued hospitalization prior to his hearing on court-ordered treatment,
13 the court shall order the proposed patient taken into custody and evaluated
14 at an evaluation agency. The court shall promptly appoint counsel for the
15 proposed patient. If an intercounty agreement authorizes the same, the court
16 may order that the evaluation be conducted in another county, and the
17 superior court in the county where the evaluation is conducted shall have
18 concurrent jurisdiction to make appropriate orders concerning the proposed
19 patient.

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

30 D. If the person is involuntarily hospitalized, the person shall be
31 informed by his appointed attorney of his rights to a hearing to determine
32 whether he should be involuntarily hospitalized for evaluation and to be
33 represented at the hearing by an attorney. If the patient requests a hearing
34 to determine whether he should be involuntarily hospitalized during
35 evaluation, the court shall schedule a hearing at its first opportunity.

36 Sec. 13. Section 36-531, Arizona Revised Statutes, is amended to read:
37 36-531. Evaluation; possible dispositions; release

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

42 B. If it is determined on an evaluation of the patient's condition
43 that the patient is, as a result of a mental disorder, a danger to self or to
44 others or has a persistent or acute disability or a grave disability, the
45 medical director in charge of the agency that provided the evaluation, unless

1 the person applies for further care and treatment on a voluntary basis, shall
2 prepare, sign and file a petition for court-ordered treatment unless the
3 county attorney performs the functions of preparing, signing or filing the
4 petition as provided in subsection C of this section.

5 C. The agency may contact the county attorney to obtain assistance in
6 preparing the petition for court-ordered treatment, and the agency may
7 request the advice and judgment of the county attorney in reaching a decision
8 as to whether court-ordered treatment is justified.

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

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

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

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

32 36-533. Petition for treatment

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

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

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

38 3. That the patient is unwilling to accept or incapable of accepting
39 treatment voluntarily.

40 B. The petition shall be accompanied by the affidavits of the two
41 physicians who participated in the evaluation and by the affidavit of the
42 applicant for the evaluation, if any. The affidavits of the physicians shall
43 describe in detail the behavior that indicates that the person, as a result
44 of mental disorder, is a danger to self or to others,
45 ~~OR~~ has a persistent or acute disability or a grave disability and shall be based on the physician's

1 observations of the patient and the physician's study of information about
2 the patient. A summary of the facts that support the allegations of the
3 petition shall be included. The affidavit shall also include any of the
4 results of the physical examination of the patient if relevant to the
5 patient's psychiatric condition.

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

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

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

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

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

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

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

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

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

30 **36-534. Change to voluntary status; discharge; notice; hearing**

31 A. If, after a petition for court-ordered treatment has been filed and
32 prior to the hearing, the medical director of the agency finds that it is
33 more appropriate to discharge the patient or to admit the proposed patient on
34 a voluntary basis, the medical director ~~shall~~, after receiving approval from
35 the court, **SHALL** either discharge the patient or admit the patient for
36 further treatment on a voluntary basis.

37 **B. IF THE COURT APPROVES ADMITTING A PATIENT FOR WHOM A PETITION HAS
38 BEEN FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517 TO VOLUNTARY TREATMENT
39 OR BEFORE A PATIENT IS DISCHARGED PURSUANT TO THIS SECTION, THE MEDICAL
40 DIRECTOR SHALL PROVIDE NOTICE TO THE PROSECUTING AGENCY. THE PROSECUTING
41 AGENCY MAY REQUEST A HEARING TO DETERMINE WHETHER THE COURT SHOULD ORDER THE
42 DEFENDANT RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517.
43 FOR ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE
44 MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND
45 TREATMENT RECORDS, TO THE COURT AND TO THE PROSECUTING AGENCY.**

1 Sec. 16. Section 36-540, Arizona Revised Statutes, is amended to read:
2 36-540. Court options

3 A. If the court finds by clear and convincing evidence that the
4 proposed patient, as a result of mental disorder, is a danger to self, is a
5 danger to others, has a persistent or acute disability or a grave disability
6 and IS in need of treatment, and is either unwilling or unable to accept
7 voluntary treatment, the court shall order the patient to undergo one of the
8 following:

9 1. Treatment in a program of outpatient treatment.

10 2. Treatment in a program consisting of combined inpatient and
11 outpatient treatment.

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

17 B. The court shall consider all available and appropriate alternatives
18 for the treatment and care of the patient. The court shall order the least
19 restrictive treatment alternative available.

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

23 1. Determines that all of the following apply:

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

25 (b) The patient will be more appropriately treated in an outpatient
26 treatment program or in a combined inpatient and outpatient treatment
27 program.

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

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

32 2. Is presented with and approves a written treatment plan that
33 conforms with the requirements of section 36-540.01, subsection B. If the
34 treatment plan presented to the court pursuant to this subsection provides
35 for supervision of the patient under court order by a mental health agency
36 that is other than the mental health agency that petitioned or requested the
37 county attorney to petition the court for treatment pursuant to section
38 36-531, the treatment plan must be approved by the medical director of the
39 mental health agency that will supervise the treatment pursuant to subsection
40 E of this section.

41 D. An order to receive treatment pursuant to subsection A, paragraph 1
42 or 2 of this section shall not exceed three hundred sixty-five days. The
43 period of inpatient treatment under a combined treatment order pursuant to
44 subsection A, paragraph 2 of this section shall not exceed the maximum period

1 allowed for an order for inpatient treatment pursuant to subsection F of this
2 section.

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

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

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

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

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

22 ~~4.~~ 5. During any period of outpatient treatment under subsection A,
23 paragraph 2 of this section, if the court, ON ITS OWN MOTION OR on motion by
24 the medical director of the patient's outpatient mental health treatment
25 facility, determines that the patient is not complying with the terms of the
26 order or that the outpatient treatment plan is no longer appropriate and the
27 patient needs inpatient treatment, the court, without a hearing and based on
28 the court record, the patient's medical record, the affidavits and
29 recommendations of the medical director, and the advice of staff and
30 physicians or the psychiatric and mental health nurse practitioner familiar
31 with the treatment of the patient, may enter an order amending its original
32 order. The amended order may alter the outpatient treatment plan or order
33 the patient to inpatient treatment pursuant to subsection A, paragraph 3 of
34 this section. The amended order shall not increase the total period of
35 commitment originally ordered by the court or, when added to the period of
36 inpatient treatment provided by the original order and any other amended
37 orders, exceed the maximum period allowed for an order for inpatient
38 treatment pursuant to subsection F of this section. If the patient refuses
39 to comply with an amended order for inpatient treatment, the court, ON ITS
40 OWN MOTION OR ON THE REQUEST OF THE MEDICAL DIRECTOR, may authorize and
41 direct a peace officer, ~~on the request of the medical director,~~ to take the
42 patient into protective custody and transport the patient to the agency for
43 inpatient treatment. ANY AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO A PEACE
44 OFFICER TO TAKE THE PATIENT INTO PROTECTIVE CUSTODY SHALL INCLUDE THE
45 PATIENT'S CRIMINAL HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE

1 PATIENT'S CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER,
2 AS APPLICABLE. When reporting to or being returned to a treatment agency for
3 inpatient treatment pursuant to an amended order, the patient shall be
4 informed of the patient's right to judicial review and the patient's right to
5 consult with counsel pursuant to section 36-546.

6 ~~5-~~ 6. During any period of outpatient treatment under subsection A,
7 paragraph 2 of this section, if the medical director of the outpatient
8 treatment facility in charge of the patient's care determines, in concert
9 with the medical director of an inpatient mental health treatment facility
10 who has agreed to accept the patient, that the patient is in need of
11 immediate acute inpatient psychiatric care because of behavior that is
12 dangerous to self or to others, the medical director of the outpatient
13 treatment facility may order a peace officer to apprehend and transport the
14 patient to the inpatient treatment facility pending a court determination on
15 an amended order under paragraph ~~4-~~ 5 of this subsection. The patient may be
16 detained and treated at the inpatient treatment facility for a period of no
17 more than forty-eight hours, exclusive of weekends and holidays, from the
18 time that the patient is taken to the inpatient treatment facility. The
19 medical director of the outpatient treatment facility shall file the motion
20 for an amended court order requesting inpatient treatment no later than the
21 next working day following the patient being taken to the inpatient treatment
22 facility. Any period of detention within the inpatient treatment facility
23 pending issuance of an amended order shall not increase the total period of
24 commitment originally ordered by the court or, when added to the period of
25 inpatient treatment provided by the original order and any other amended
26 orders, exceed the maximum period allowed for an order for inpatient
27 treatment pursuant to subsection F of this section. If a patient is ordered
28 to undergo inpatient treatment pursuant to an amended order, the medical
29 director of the outpatient treatment facility shall inform the patient of the
30 patient's right to judicial review and to consult with an attorney pursuant
31 to section 36-546.

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

- 34 1. Ninety days for a person found to be a danger to self.
- 35 2. One hundred eighty days for a person found to be a danger to
36 others.
- 37 3. One hundred eighty days for a person found to have a persistent or
38 acute disability.
- 39 4. Three hundred sixty-five days for a person found to have a grave
40 disability.

41 G. If, on finding that the patient meets the criteria for
42 court-ordered treatment pursuant to subsection A of this section, the court
43 also finds that there is reasonable cause to believe that the patient is an
44 incapacitated person as defined in section 14-5101 or is a person in need of
45 protection pursuant to section 14-5401 and that the patient is or may be in

1 need of guardianship or conservatorship, or both, the court may order an
2 investigation concerning the need for a guardian or conservator, or both, and
3 may appoint a suitable person or agency to conduct the investigation. The
4 appointee may include a court appointed guardian ad litem, an investigator
5 appointed pursuant to section 14-5308 or the public fiduciary if there is no
6 person willing and qualified to act in that capacity. The court shall give
7 notice of the appointment to the appointee within three days of the
8 appointment. The appointee shall submit the report of the investigation to
9 the court within twenty-one days. The report shall include recommendations
10 as to who should be guardian or who should be conservator, or both, and a
11 report of the findings and reasons for the recommendation. If the
12 investigation and report so indicate, the court shall order the appropriate
13 person to submit a petition to become the guardian or conservator, or both,
14 of the patient.

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

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

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

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

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

31 I. The court may appoint as a temporary guardian or conservator
32 pursuant to subsection H of this section a suitable person or the public
33 fiduciary if there is no person qualified and willing to act in that
34 capacity. The court shall issue an order for an investigation as prescribed
35 pursuant to subsection G of this section and, unless the patient is
36 represented by independent counsel, the court shall appoint an attorney to
37 represent the patient in further proceedings regarding the appointment of a
38 guardian or conservator. The court shall schedule a further hearing within
39 fourteen days on the appropriate court calendar of a court that has authority
40 over guardianship or conservatorship matters pursuant to this title to
41 consider the continued need for an emergency temporary guardian or
42 conservator and the appropriateness of the temporary guardian or conservator
43 appointed, and shall order the appointed guardian or conservator to give
44 notice to persons entitled to notice pursuant to section 14-5309, subsection
45 A or section 14-5405, subsection A. The court shall authorize certified

1 letters of temporary emergency guardianship or conservatorship to be issued
2 on presentation of a copy of the court's order. If a temporary emergency
3 conservator other than the public fiduciary is appointed pursuant to this
4 subsection, the court shall order that the use of the money and property of
5 the patient by the conservator is restricted and not to be sold, used,
6 transferred or encumbered, except that the court may authorize the
7 conservator to use money or property of the patient specifically identified
8 as needed to pay an expense to provide for the care, treatment or welfare of
9 the patient pending further hearing. This subsection and subsection H of
10 this section do not:

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

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

17 J. If, on finding that a patient meets the criteria for court-ordered
18 treatment pursuant to subsection A of this section, the court also learns
19 that the patient has a guardian appointed under title 14, the court with
20 notice may impose on the existing guardian additional duties pursuant to
21 section 14-5312.01. If the court imposes additional duties on an existing
22 guardian as prescribed in this subsection, the court may determine that the
23 patient needs to continue treatment under a court order for treatment and may
24 issue the order or determine that the patient's needs can be adequately met
25 by the guardian with the additional duties pursuant to section 14-5312.01 and
26 decline to issue the court order for treatment. If at any time after the
27 issuance of a court order for treatment the court finds that the patient's
28 needs can be adequately met by the guardian with the additional duties
29 pursuant to section 14-5312.01 and that a court order for treatment is no
30 longer necessary to assure compliance with necessary treatment, the court may
31 terminate the court order for treatment. If there is a court order for
32 treatment and a guardianship with additional mental health authority pursuant
33 to section 14-5312.01 existing at the same time, the treatment and placement
34 decisions made by the treatment agency assigned by the court to supervise and
35 administer the patient's treatment program pursuant to the court order for
36 treatment are controlling unless the court orders otherwise.

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

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

44 M. The medical director or any person, agency or organization used by
45 the medical director to supervise the terms of an outpatient treatment plan

1 is not civilly liable for any acts committed by a patient while on outpatient
2 treatment if the medical director, person, agency or organization has in good
3 faith followed the requirements of this section.

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

8 O. If a person has been found, as a result of a mental disorder, to
9 constitute a danger to self or others or to have a persistent or acute
10 disability or a grave disability and the court enters an order for treatment
11 pursuant to subsection A of this section, the court shall transmit the
12 person's name, sex, date of birth, social security number, if available, and
13 date of the order for treatment to the supreme court. The supreme court
14 shall transmit the information to the department of public safety to comply
15 with the requirements of title 13, chapter 31 and title 32, chapter 26. The
16 department of public safety shall transmit the information to the national
17 instant criminal background check system. The superior court may access the
18 information of a person who is ordered into treatment to enforce or
19 facilitate a treatment order.

20 P. On request, the clerk of the court shall provide certified copies
21 of the commitment order to a law enforcement or prosecuting agency that is
22 investigating or prosecuting a prohibited possessor as defined in section
23 13-3101.

24 Q. IF THE COURT DOES NOT FIND A PERSON TO BE IN NEED OF TREATMENT AND
25 A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE COURT SHALL
26 NOTIFY THE PROSECUTING AGENCY OF ITS FINDING. THE PERSON SHALL BE REMANDED
27 TO THE CUSTODY OF THE SHERIFF FOR FURTHER DISPOSITION PURSUANT TO SECTION
28 13-4517.

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

31 36-540.01. Conditional outpatient treatment

32 A. The medical director may issue an order for conditional outpatient
33 treatment for a patient ordered to undergo treatment pursuant to section
34 36-540 if, after consultation with staff familiar with the patient's case
35 history, the medical director determines with a reasonable degree of medical
36 probability that all of the following apply:

37 1. The patient no longer requires continuous inpatient
38 hospitalization.

39 2. The patient will be more appropriately treated in an outpatient
40 treatment program.

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

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

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

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

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

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

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

19 5. ANY OTHER PROVISIONS THAT THE MEDICAL DIRECTOR OR THE COURT
20 BELIEVES ARE NECESSARY TO PROTECT THE WELL-BEING OF THE PATIENT AND THE
21 PUBLIC.

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

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

31 ~~D.~~ E. The period for which conditional outpatient treatment may be
32 ordered may not exceed the remainder of the period of court ordered
33 treatment.

34 ~~E.~~ F. Before the release of a patient for outpatient treatment, the
35 medical director shall give notice pursuant to section 36-541.01, subsection
36 ~~B- C~~ and a motion for a determination by the court as to whether the standard
37 for conditional release of the patient has been met may be made by the
38 persons and in the manner provided for in section 36-541.01, subsection ~~H- I~~.
39 Before the release of a person found to be a danger to self, ~~OR OTHERS OR~~
40 ~~FOUND to be a person with~~ HAVE a persistent or acute disability or a grave
41 disability for outpatient treatment, the medical director shall give notice
42 to the court that ordered the patient to undergo treatment. If criminal
43 charges against a patient involving death or serious physical injury or a
44 violation of title 13, chapter 14 are dismissed pursuant to section 13-4517,
45 the medical director shall notify the prosecuting agency if a civil

1 commitment order issued pursuant to this chapter expires or is terminated, or
2 if the patient is discharged to outpatient treatment. The medical director
3 shall provide this notice by mail at least five days before the anticipated
4 date of the expiration, termination or discharge.

5 ~~F.~~ G. The medical director shall require periodic reports concerning
6 the condition of patients on conditional outpatient treatment from any
7 person, agency or organization assigned to supervise an outpatient treatment
8 plan. The medical director shall require these reports at intervals not to
9 exceed thirty days.

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

15 ~~H.~~ I. The medical director may amend any part of the outpatient
16 treatment plan during the course of conditional outpatient treatment. If the
17 plan is amended, the medical director shall issue a new order including the
18 amended outpatient treatment plan. The new order and amended outpatient
19 treatment plan shall be filed in the patient's medical file. Copies of the
20 new order and outpatient treatment plan shall be immediately provided to the
21 patient and to any person, agency or organization assigned to supervise an
22 outpatient treatment plan. Copies of the new order and outpatient treatment
23 plan shall be immediately filed with the court **AND, IF A PROSECUTOR FILED A
24 PETITION PURSUANT TO SECTION 13-4517, WITH THE PROSECUTING AGENCY.**

25 ~~I.~~ J. The medical director may rescind an order for conditional
26 outpatient treatment and order the patient to return to a mental health
27 treatment agency at any time during the period of court ordered treatment if,
28 in the medical director's judgment, the patient has failed to comply with a
29 term of the outpatient treatment plan or if, for any reason, the medical
30 director determines that the patient needs inpatient treatment or that
31 conditional outpatient treatment is no longer appropriate. **THE MEDICAL
32 DIRECTOR SHALL GIVE NOTICE TO THE COURT THAT ISSUED THE TREATMENT ORDER AND
33 THE PROSECUTING AGENCY IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION
34 13-4517.**

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

40 ~~K.~~ L. If the medical director rescinds an order for conditional
41 outpatient treatment and orders the patient to return to a mental health
42 treatment agency, the medical director may request, **OR A COURT MAY ORDER,** a
43 peace officer or a designated officer or employee of the treatment agency to
44 take the patient into custody for immediate delivery to the agency pursuant
45 to section 36-544.

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

4 ~~M.~~ N. This section does not prevent the medical director from
5 authorizing a patient ordered to undergo treatment pursuant to section 36-540
6 as a danger to self, ~~OR~~ a danger to others, ~~OR~~ a patient with a persistent
7 or acute disability or a grave disability to leave the treatment agency for
8 periods of no more than five days under the care, custody and control of a
9 spouse, relative or other responsible person if the medical director
10 determines that the patient will not become dangerous or suffer serious
11 physical harm or illness during that time.

12 ~~N.~~ O. The medical director may authorize a patient who is civilly
13 committed pursuant to section 36-540 to leave the state hospital grounds
14 unaccompanied if the leave is part of an inpatient individualized treatment
15 and discharge plan and the medical director determines that the patient will
16 not become dangerous or suffer serious physical harm or illness during that
17 time.

18 Sec. 18. Section 36-541.01, Arizona Revised Statutes, is amended to
19 read:

20 36-541.01. Release or discharge from treatment before
21 expiration of period ordered by court;
22 notification of intent to release or discharge;
23 hearing

24 A. A PATIENT WHO IS FOUND TO HAVE A GRAVE DISABILITY OR A PERSISTENT
25 OR ACUTE DISABILITY AND ORDERED TO UNDERGO TREATMENT PURSUANT TO THIS ARTICLE
26 MAY BE RELEASED FROM INPATIENT TREATMENT WHEN, IN THE OPINION OF THE MEDICAL
27 DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY, THE LEVEL OF CARE OFFERED BY
28 THE AGENCY IS NO LONGER REQUIRED. THE PATIENT MAY AGREE TO CONTINUE
29 TREATMENT VOLUNTARILY. IF THE PATIENT IS TO BE RELEASED, THE MEDICAL
30 DIRECTOR SHALL ARRANGE FOR AN APPROPRIATE ALTERNATIVE PLACEMENT. IF THE
31 PATIENT WHO IS TO BE RELEASED FROM INPATIENT TREATMENT IS UNDER A
32 GUARDIANSHIP, THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY
33 SHALL NOTIFY THE GUARDIAN AND ANY RELEVANT REGIONAL BEHAVIORAL HEALTH
34 AUTHORITY TEN DAYS BEFORE THE INTENDED RELEASE DATE THAT THE PATIENT NO
35 LONGER REQUIRES THE LEVEL OF CARE THAT IS OFFERED BY THE AGENCY. THE
36 GUARDIAN AND, IF RELEVANT, THE REGIONAL BEHAVIORAL HEALTH AUTHORITY SHALL
37 ARRANGE ALTERNATIVE PLACEMENT WITH THE ADVICE AND RECOMMENDATIONS OF THE
38 MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY.

39 ~~A.~~ B. A patient who is ordered to undergo treatment pursuant to this
40 article may be released from treatment before the expiration of the period
41 ordered by the court if, in the opinion of the medical director of the mental
42 health treatment agency, the patient no longer is, as a result of a mental
43 disorder, a danger to others or a danger to self or no longer has a
44 persistent or acute disability or a grave disability. A person who is
45 ordered to undergo treatment as a danger to others **OR WHO HAS HAD A PETITION**

1 FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517 may not be released or
2 discharged from treatment before the expiration of the period for treatment
3 ordered by the court unless the medical director first gives notice of
4 intention to do so as provided by this section.

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

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

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

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

15 ~~C.~~ D. If ~~criminal charges against a patient involving death or~~
16 ~~serious physical injury or a violation of title 13, chapter 14 are dismissed~~
17 THE PATIENT IS UNDERGOING COURT ORDERED TREATMENT AS THE RESULT OF A PETITION
18 FILED BY A PROSECUTING AGENCY pursuant to section 13-4517, the medical
19 director shall notify the COURT AND THE prosecuting agency if a civil
20 commitment order issued pursuant to this chapter expires or is terminated, or
21 if the patient is discharged to outpatient treatment. The medical director
22 shall provide this notice by mail at least five days before the anticipated
23 date of the expiration, termination or discharge.

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

30 ~~E.~~ F. A demand for notice by a relative or victim, and a petition for
31 notice by other persons, shall be on a form prescribed by the administration
32 and shall include the following information:

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

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

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

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

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

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

44 7. The mental health number assigned to the case by the superior
45 court.

1 ~~F.~~ G. If the court receives a demand for notice by a relative or
2 victim, the court shall order the medical director of the mental health
3 treatment agency not to release or discharge the patient before the
4 expiration of the period of court-ordered treatment without first giving
5 notice to the relative or victim as provided in subsection ~~G-~~ H of this
6 section. After considering a petition for notice, if the court finds that
7 the petitioner has a legitimate reason for receiving prior notice, the court
8 may order the medical director of the mental health treatment agency not to
9 release or discharge the patient from inpatient treatment before the
10 expiration of the period of court-ordered treatment without first giving
11 notice to the petitioner as provided in subsection ~~G-~~ H of this section. Any
12 order for notice shall be delivered to the mental health treatment agency and
13 shall be filed with the patient's clinical record. If the patient is
14 transferred to another agency or institution, any orders for notice shall be
15 transferred with the patient.

16 ~~G-~~ H. A notice of intention to release or discharge shall include the
17 following information:

- 18 1. The name of the patient to be released or discharged.
- 19 2. The type of release or discharge.
- 20 3. The date of anticipated release or discharge. Notices shall be
21 placed in the mail, postage prepaid and addressed to the court and to each
22 person for whom notice has been ordered, at least ten days before the date of
23 intended release or discharge, except that notice shall be sent to the
24 prosecuting agency at least five days before the date of intended release or
25 discharge. For purposes of computing the notice requirement, the day of
26 mailing shall not be counted.

27 ~~H-~~ I. Any person for whom prior notice is required pursuant to this
28 section, or the court, may make a motion within the notification period that
29 requires the court to determine whether the standard for release of the
30 patient before the expiration of the period for court-ordered treatment has
31 been met. A determination that the standard for release has been met may be
32 made by the court based on a review of the record and any affidavits
33 submitted without further hearing. For good cause, the court may order an
34 evidentiary hearing. Whether or not a hearing is held, the court shall make
35 a determination at the earliest possible time but no longer than three weeks
36 after the anticipated date of release pursuant to subsection ~~G-~~ H of this
37 section, and the patient shall be retained for the additional time required
38 for the court's determination. In making its determination the court may
39 order an independent examination of the patient. If a motion is not made,
40 the patient may be released in accordance with the terms set forth in the
41 notice without further court order. IF A HEARING IS HELD PURSUANT TO THIS
42 SUBSECTION, THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO PROVIDE THE
43 PATIENT'S RECORDS, INCLUDING MEDICAL AND TREATMENT RECORDS, TO THE COURT AND
44 THE PROSECUTING AGENCY.

1 ~~I~~ J. If a motion has not been made pursuant to subsection ~~H~~ I of
2 this section, the patient may be released or discharged and the medical
3 director of the mental health treatment agency shall send to the court a
4 certificate that the patient is no longer a danger to others or a danger to
5 self or no longer has a persistent or acute disability or a grave disability
6 as the result of a mental disorder and therefore is released before the
7 expiration of the period ordered for treatment. The court shall enter an
8 order terminating the patient's court-ordered treatment.

9 ~~J~~ K. The medical director of the mental health treatment agency
10 shall not be held civilly liable for any acts committed by a patient who is
11 released before the expiration of the period of court-ordered treatment if
12 the medical director has in good faith followed the requirements of this
13 section.

14 Sec. 19. Section 36-542, Arizona Revised Statutes, is amended to read:

15 36-542. Discharge of patient at expiration of period ordered by
16 court; change to voluntary status; relief from civil
17 liability

18 A. A patient ordered by a court to undergo treatment pursuant to this
19 article shall be discharged from treatment at the expiration of the period of
20 treatment ordered unless one of the following occurs:

21 1. The person accepts voluntary treatment at the mental health
22 treatment agency.

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

27 3. AN APPLICATION FOR CONTINUED COURT ORDERED TREATMENT IS GRANTED
28 PURSUANT TO SECTION 36-543.

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

32 C. IF A PATIENT TO BE DISCHARGED IS UNDERGOING COURT ORDERED TREATMENT
33 AS A RESULT OF A PETITION FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517
34 AND THE PATIENT IS BEING DISCHARGED BECAUSE THE MEDICAL DIRECTOR HAS DECIDED
35 NOT TO FILE A NEW PETITION FOR COURT ORDERED EVALUATION OR TREATMENT OR HAS
36 DECIDED NOT TO REQUEST THE COURT TO ORDER THAT THE PREVIOUS ORDER FOR
37 TREATMENT BE CONTINUED, THE PATIENT MAY NOT BE DISCHARGED OR RELEASED FROM
38 TREATMENT BEFORE THE PATIENT COMPLIES WITH THE PROVISIONS OF SECTION
39 36-541.01.

40 ~~C~~ D. The medical director is not civilly liable for any acts
41 committed by a RELEASED OR discharged patient if the medical director has in
42 good faith followed the requirements of this article.

1 Sec. 20. Section 36-543, Arizona Revised Statutes, is amended to read:
2 36-543. Annual review of a patient with a grave disability or a
3 persistent or acute disability; notice; court order
4 for continued treatment; rules

5 ~~A. A patient who is found to have a grave disability or a persistent~~
6 ~~or acute disability and ordered to undergo treatment may be released from~~
7 ~~inpatient treatment when, in the opinion of the medical director of the~~
8 ~~mental health treatment agency, the level of care offered by the agency is no~~
9 ~~longer required. The patient may agree to continue treatment voluntarily.~~
10 ~~If the patient is to be released, the medical director shall arrange for an~~
11 ~~appropriate alternative placement.~~

12 ~~B. If a patient who is to be released from inpatient treatment is~~
13 ~~under guardianship, the medical director of the mental health treatment~~
14 ~~agency shall notify the guardian and any relevant regional behavioral health~~
15 ~~authority ten days before the intended release date that the ward no longer~~
16 ~~requires the level of care offered by the agency. The guardian and, if~~
17 ~~relevant, the regional behavioral health authority shall arrange alternative~~
18 ~~placement with the advice and recommendations of the medical director of the~~
19 ~~mental health treatment agency.~~

20 ~~C. The medical director of the mental health treatment agency is not~~
21 ~~civily liable for any acts committed by the released patient if the medical~~
22 ~~director has in good faith complied with the requirements of this article.~~

23 ~~D.~~ A. Within ninety days before the expiration of a court order for
24 treatment, the medical director of the mental health treatment agency shall
25 conduct an annual review of a patient who has been found to have a grave
26 disability or a persistent or acute disability and is undergoing
27 court-ordered treatment to determine whether the continuation of
28 court-ordered treatment is appropriate and to assess the needs of the patient
29 for guardianship or conservatorship, or both. The annual review shall
30 consist of the mental health treatment and clinical records contained in the
31 patient's treatment file. The mental health treatment agency shall keep a
32 record of the annual review. If the medical director believes that a
33 continuation of court-ordered treatment is appropriate, the medical director
34 of the mental health treatment agency shall appoint one or more psychiatrists
35 to carry out a psychiatric examination of the patient. In any proceeding
36 conducted pursuant to this section, a patient has the right to have an
37 analysis of the patient's mental condition by an independent evaluation
38 pursuant to section 36-538.

39 ~~E.~~ B. Each examiner participating in the psychiatric examination of
40 the patient shall submit a report to the medical director of the mental
41 health treatment agency that includes the following:

42 1. The examiner's opinions as to whether the patient continues to have
43 a grave disability or a persistent or acute disability as the result of a
44 mental disorder and be in need of continued court-ordered treatment. In
45 evaluating the patient's need for continued court-ordered treatment, the

1 examiner must consider, along with all other evidence, the patient's history
2 before and during the current period of court-ordered treatment, the
3 patient's compliance with recommended treatment and any other evidence
4 relevant to the patient's ability and willingness to follow recommended
5 treatment with or without a court order.

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

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

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

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

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

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

35 ~~G.~~ D. If an application for continued court-ordered treatment is
36 filed, all of the following apply:

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

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

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

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

20 5. The evidence presented by the applicant includes the testimony of
21 one or more witnesses acquainted with the patient during the period of
22 court-ordered treatment, which may be satisfied by a statement agreed on by
23 the parties, and the testimony of any physician who performed an annual
24 review of the patient, which may be satisfied by stipulating to the admission
25 of the examining physicians' written report prepared pursuant ~~T0~~
26 ~~E- B~~ of this section. The court may waive the need for the applicant to
27 present the testimony of witnesses acquainted with the patient as required by
28 this subsection, if it finds that the need for a continued court order for
29 treatment has been established by clear and convincing evidence from the
30 other testimony and evidence presented at the hearing.

31 6. At a hearing held pursuant to this subsection, the court, with
32 notice, may impose on an existing guardian additional powers pursuant to
33 section 14-5312.01. If the court finds that the patient's needs can be
34 adequately met by an existing guardian with the additional powers pursuant to
35 section 14-5312.01 and that a court order for treatment is not necessary to
36 ensure compliance with necessary treatment, the court may terminate the court
37 order for treatment or decline to issue an order continuing court-ordered
38 treatment. The court may also order an investigation into the need for
39 guardianship or conservatorship, or both, and may appoint a suitable person
40 or agency to conduct the investigation. The appointee may include a
41 court-appointed guardian ad litem, a court-appointed investigator pursuant to
42 section 14-5308 or the public fiduciary if there is no person willing and
43 qualified to act in that capacity. The court shall give notice of the
44 appointment to the appointee within three days after the appointment. The
45 appointee shall submit the report of the investigation to the court within

1 twenty-one days. The report shall include recommendations as to who should
2 be guardian or conservator, or both, and the findings and reasons for the
3 recommendation. If the investigation and report so indicate, the court may
4 authorize an appropriate person to file a petition for appointment of a
5 guardian or conservator for the patient.

6 ~~H.~~ E. If a hearing is held pursuant to subsection ~~G~~ D of this
7 section, the party seeking the renewal of the court order must prove all of
8 the following by clear and convincing evidence:

9 1. The patient continues to have a mental disorder and, as a result of
10 that disorder, has either a persistent or acute disability or a grave
11 disability.

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

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

15 ~~I.~~ F. After a hearing held pursuant to subsection ~~G~~ D of this
16 section, the court may order the patient to be released from court-ordered
17 treatment or to undergo continued court-ordered treatment for a period not to
18 exceed the time periods prescribed in section 36-540, subsection D.

19 ~~J.~~ G. The director shall create and operate a program to ensure that
20 the examination and review of persons with grave disabilities or persistent
21 or acute disabilities under court order are carried out in an effective and
22 timely manner. The director shall adopt rules needed to operate this
23 program.

24 H. THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY IS NOT
25 CIVILLY LIABLE FOR ANY ACTS COMMITTED BY THE RELEASED PATIENT IF THE MEDICAL
26 DIRECTOR HAS IN GOOD FAITH COMPLIED WITH THE REQUIREMENTS OF THIS ARTICLE.

27 Sec. 21. Section 36-544, Arizona Revised Statutes, is amended to read:

28 36-544. Unauthorized absences; violation; classification;
29 tolling period; hearing; civil liability; definition

30 A. When any patient who is being evaluated or treated is absent
31 without proper authorization from an evaluation agency or a mental health
32 treatment agency, or when an order for outpatient treatment is rescinded, any
33 peace officer shall, upon oral or written request of the medical director of
34 the agency and without the necessity of a warrant or court order, or any
35 officer or employee of the agency who has been previously designated in
36 writing by the medical director of the agency to perform such duties may,
37 take into custody and deliver such patient to the agency. Such officers and
38 employees of the agency have the powers and duties of peace officers so far
39 as is necessary to carry out the provisions of this section. **IF NECESSARY,**
40 **THE EVALUATION OR TREATMENT AGENCY MAY APPLY TO THE COURT FOR A WARRANT OR**
41 **COURT ORDER DIRECTING ANY PEACE OFFICER TO TAKE A PATIENT WHO IS ABSENT**
42 **WITHOUT PROPER AUTHORIZATION INTO CUSTODY AND DELIVER THE PATIENT TO THE**
43 **AGENCY.**

44 B. Any person who intentionally assists any patient being evaluated or
45 treated in an agency to be absent from the agency without proper

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

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

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

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

26 D. A PATIENT WHOSE PERIOD OF COURT ORDERED TREATMENT IS TOLLED FOR A
27 PERIOD OF AT LEAST SIXTY CONTINUOUS DAYS MAY REQUEST A JUDICIAL REVIEW
28 PURSUANT TO SECTION 36-546 ON THE PATIENT'S VOLUNTARY OR INVOLUNTARY RETURN
29 TO TREATMENT. DURING THE PERIOD TOLLED BY A COURT ORDER ISSUED PURSUANT TO
30 THIS SECTION, THE TREATMENT AGENCY SHALL MAKE ACTIVE AND DILIGENT EFFORTS TO
31 FIND AND RETURN THE PATIENT TO APPROPRIATE TREATMENT AND AT LEAST ONCE EVERY
32 SIXTY DAYS, OR AS OFTEN AS OTHERWISE ORDERED BY THE COURT, SHALL FILE A
33 REPORT OF THE AGENCY'S EFFORTS WITH THE COURT. AFTER THE PERIOD OF TREATMENT
34 IS TOLLED FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS, IF THE COURT IS SATISFIED
35 THAT THE AGENCY HAS MADE ACTIVE AND DILIGENT EFFORTS TO FIND AND RETURN THE
36 PATIENT TO APPROPRIATE TREATMENT, ON PETITION OF THE TREATMENT AGENCY, THE
37 COURT MAY TERMINATE THE ORDER FOR TREATMENT OR MAY ORDER THE TREATMENT AGENCY
38 TO MAKE FURTHER SPECIFIC EFFORTS TO FIND AND RETURN THE PATIENT TO
39 APPROPRIATE TREATMENT. THE TREATMENT AGENCY SHALL PROVIDE NOTICE TO THE
40 PROSECUTING AGENCY OF THE PETITION TO TERMINATE TREATMENT.

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

43 F. IF THE TREATMENT AGENCY HAS IN GOOD FAITH FOLLOWED THE REQUIREMENTS
44 OF THIS SECTION, THE TREATMENT AGENCY IS NOT LIABLE IN A CIVIL ACTION FOR

1 DAMAGES THAT RESULT FROM THE ACTIONS OF A PATIENT DURING ANY PERIOD OF
2 TREATMENT TOLLED BY AN ORDER ISSUED PURSUANT TO THIS SECTION.

3 G. FOR THE PURPOSE OF THIS SECTION, "ABSENT WITHOUT PROPER
4 AUTHORIZATION" OR "UNAUTHORIZED ABSENCE" INCLUDES BEING ABSENT FROM AN
5 INPATIENT TREATMENT FACILITY WITHOUT AUTHORIZATION, NO LONGER LIVING IN A
6 PLACEMENT OR RESIDENCE SPECIFIED BY THE TREATMENT PLAN WITHOUT AUTHORIZATION
7 AND LEAVING OR FAILING TO RETURN TO THE COUNTY OR STATE WITHOUT
8 AUTHORIZATION.

9 Sec. 22. Section 36-546, Arizona Revised Statutes, is amended to read:

10 36-546. Judicial review; right to be informed; request;
11 jurisdiction

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

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

20 (a) The patient being treated and the agency at which the patient is
21 being treated.

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

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

25 2. The request, when signed and dated by the person making the request
26 for release, shall be delivered to the medical director of the agency.
27 Within three days of receipt of the request, the medical director shall
28 deliver the form, along with a current psychiatric report of the patient's
29 condition, to the clerk of the court. If the person presenting the request
30 refuses to sign the form, the medical director of the agency shall proceed as
31 if the form had been signed and shall note on the form the circumstances as
32 to why the form was not signed.

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

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

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

4 E. The reviewing court may order a further hearing on the affidavit of
5 the attorney for the patient setting forth the need for further evidentiary
6 hearing and the reasons why the hearing is necessary before the time set for
7 the release of the patient.

8 F. The patient shall be informed of the patient's right to consult an
9 attorney by the person or court to whom the patient makes the request for
10 release at the time the patient makes the request and, in the case of
11 confinement in an agency, by the reviewing court within one day of its
12 receipt of notice from the medical director of the agency where the patient
13 is being treated. The patient shall be permitted to consult an attorney to
14 assist in preparation of a petition for the writ of habeas corpus and to
15 represent the patient in the hearing. If the patient is not represented by
16 an attorney, the reviewing court, within two days of its notice to the
17 patient of the patient's right to counsel, shall appoint an attorney to
18 assist the patient in the preparation of a petition and to represent the
19 patient in the hearing.

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

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

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

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

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

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

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

35 Sec. 23. Section 36-3701, Arizona Revised Statutes, is amended to
36 read:

37 **36-3701. Definitions**

38 In this article, unless the context otherwise requires:

39 1. "Agency" means any agency that is authorized to direct the release
40 of a person who is serving a sentence or term of confinement or who is
41 receiving treatment, including a state or federal prison, a county jail and
42 the Arizona state hospital **OR OTHER MENTAL HEALTH TREATMENT AGENCY**.

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

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

1 (b) Approved by the superior court as meeting court approved
2 guidelines.

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

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

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

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

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

21 (b) Second degree murder pursuant to section 13-1104, first degree
22 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
23 aggravated assault pursuant to section 13-1204, unlawful imprisonment
24 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
25 burglary in the first degree pursuant to section 13-1508 if the court at the
26 time of sentencing or civil commitment proceedings determines beyond a
27 reasonable doubt that the act was sexually motivated pursuant to section
28 13-118.

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

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

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

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

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

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

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

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

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

13 36-4003. Disposition

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

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

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

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

21 (b) THE PERSON IS NOT DANGEROUS IN WHOLE OR IN PART BECAUSE OF THE
22 HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING, INCLUDING THE TAKING
23 OF MEDICATION, THE COURT MAY RELEASE THE PERSON TO A LESS RESTRICTIVE
24 ALTERNATIVE PURSUANT TO SECTIONS 36-4005 AND 36-4006.

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

28 36-4004. Petition for change of status; procedures

29 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE
30 DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE PERSON'S MENTAL ILLNESS,
31 DEFECT OR DISABILITY HAS SO CHANGED THAT THE PERSON IS NO LONGER DANGEROUS IF
32 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE SUPERINTENDENT
33 OR DIRECTOR SHALL ALLOW THE PERSON TO PETITION THE COURT FOR CONDITIONAL
34 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE. THE PERSON SHALL SERVE THE
35 PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A
36 HEARING ON THE PETITION FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE
37 ALTERNATIVE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION. THE COURT
38 MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD
39 CAUSE OR ON ITS OWN MOTION IF THE PERSON WILL NOT BE SUBSTANTIALLY
40 PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING
41 AND MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT PROFESSIONAL
42 SELECTED BY THE PROSECUTING AGENCY.

43 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND
44 CONVINCING EVIDENCE THAT THE PERSON'S MENTAL ILLNESS, DEFECT OR DISABILITY

1 HAS NOT CHANGED AND THAT THE PERSON REMAINS DANGEROUS IF CONDITIONALLY
2 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED.

3 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED PERSON FROM ANNUALLY
4 PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE
5 ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE STATE HOSPITAL
6 OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE DIRECTOR OF THE
7 DEPARTMENT OF HEALTH SERVICES SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE
8 COMMITTED PERSON OF THE PERSON'S RIGHT TO PETITION THE COURT FOR CONDITIONAL
9 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE
10 SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF RIGHTS. THE
11 DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL
12 EXAMINATION REPORT.

13 D. THE COMMITTED PERSON MAY BE PRESENT AT THE HEARING. THE
14 PROSECUTING AGENCY MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT
15 PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE COMMITTED PERSON MAY
16 RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT PERSON, MAY APPOINT A
17 COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING
18 BY CLEAR AND CONVINCING EVIDENCE THAT THE PERSON'S MENTAL ILLNESS, DEFECT OR
19 DISABILITY HAS NOT CHANGED AND THAT THE PERSON REMAINS DANGEROUS IF
20 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE DOES
21 NOT MEET ITS BURDEN OF PROOF, THE PERSON SHALL BE DISCHARGED FROM TREATMENT.

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

27 36-4005. Conditional release to a less restrictive alternative:
28 conditions; reports; review

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

34 B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE PERSON DOES NOT
35 MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE EFFECT OF TREATMENT OR
36 HABILITATION BEING RECEIVED, THE COURT MAY DENY THE REQUEST FOR CONDITIONAL
37 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS THE COURT FINDS BY A
38 PREPONDERANCE OF THE EVIDENCE THAT THE PERSON WILL CONTINUE TO RECEIVE SUCH
39 TREATMENT AND HABILITATION FOLLOWING RELEASE FOR AS LONG AS THE TREATMENT AND
40 HABILITATION IS REQUIRED. IF THE COURT FINDS THAT THE PERSON WILL CONTINUE
41 TO RECEIVE THE NEEDED TREATMENT OR HABILITATION, IT MAY ORDER THE PERSON TO
42 BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE ON THE CONDITION
43 THAT THE PERSON CONTINUE TO RECEIVE SUCH TREATMENT OR HABILITATION. IF THE
44 PERSON FAILS TO RECEIVE THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY
45 REVOKE THE CONDITIONAL RELEASE.

1 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE PERSON THAT
2 THE COURT DETERMINES ARE NECESSARY TO ENSURE THE PERSON'S COMPLIANCE WITH
3 TREATMENT AND TO PROTECT THE COMMUNITY. IF THE COURT FINDS THAT CONDITIONS
4 DO NOT EXIST THAT WILL BOTH ENSURE THE PERSON'S COMPLIANCE WITH TREATMENT AND
5 PROTECT THE COMMUNITY, THE COURT SHALL REMAND THE PERSON TO THE CUSTODY OF
6 THE SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION OR TREATMENT
7 IN A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE SUPERINTENDENT.

8 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR
9 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND
10 CONDITIONS OF A PERSON'S PLACEMENT IN A LESS RESTRICTIVE ALTERNATIVE IS NOT
11 THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING TO PROVIDE THE
12 TREATMENT.

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

- 26 1. SPECIFICATION OF A RESIDENCE.
- 27 2. COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY TESTING OR
28 MONITORING REQUIRED.
- 29 3. PROHIBITION ON ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER
30 PERSONS AND PROHIBITION ON ASSOCIATING WITH OTHER PERSONS OR TYPES OF
31 PERSONS.
- 32 4. PROHIBITION ON THE USE OF ALCOHOL AND OTHER DRUGS.
- 33 5. SUPERVISION BY THE DEPARTMENT OF HEALTH SERVICES.
- 34 6. A REQUIREMENT THAT THE PERSON REMAIN IN THIS STATE UNLESS THE
35 PERSON RECEIVES PRIOR AUTHORIZATION FROM THE COURT.
- 36 7. COMPLIANCE WITH ANY SUPERVISION OR MONITORING OR REPORTING
37 REQUIRED.
- 38 8. OTHER CONDITIONS THAT THE COURT OR THE SUPERINTENDENT OF THE STATE
39 HOSPITAL DETERMINES ARE IN THE BEST INTEREST OF THE PERSON OR OTHERS.

40 F. FOLLOWING A DETERMINATION THAT A PERSON'S RELEASE TO A LESS
41 RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE RECOMMENDATION
42 REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE SUPERINTENDENT OF THE
43 STATE HOSPITAL, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A LESS
44 RESTRICTIVE ALTERNATIVE THAT THE PERSON PARTICIPATE IN OUTPATIENT TREATMENT.
45 THE OUTPATIENT SUPERVISION AND TREATMENT MAY INCLUDE MONITORING A PERSON BY

1 USE OF AN ELECTRONIC BRACELET. THE TREATMENT SHALL CONTINUE UNTIL THE COURT
2 ORDERS A CHANGE IN THE PERSON'S TREATMENT REQUIREMENTS OR THE PERSON IS
3 DISCHARGED PURSUANT TO SECTION 36-4009.

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

8 1. THE COURT.

9 2. THE FACILITY FROM WHICH THE PERSON WAS RELEASED.

10 3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE PERSON WAS FOUND TO BE
11 A DANGEROUS INCOMPETENT OR TO THE ATTORNEY GENERAL.

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

22 I. IF A PERSON IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
23 ALTERNATIVE, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF
24 PUBLIC SAFETY OF THE PERSON'S RELEASE SO THAT THE DEPARTMENT OF PUBLIC SAFETY
25 CAN COMMENCE ANY APPLICABLE NOTIFICATION PROCESS AS PROVIDED IN SECTION
26 13-3825.

27 36-4006. Conditional release to a less restrictive alternative:
28 findings

29 BEFORE THE COURT ORDERS THAT A PERSON BE CONDITIONALLY RELEASED TO A
30 LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL OF THE FOLLOWING
31 APPLY:

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

34 2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE
35 PERSON, AGREES TO ASSUME RESPONSIBILITY FOR THE PERSON'S TREATMENT, WILL
36 REPORT ON THE PERSON'S PROGRESS TO THE COURT ON A REGULAR BASIS AND WILL
37 REPORT ANY VIOLATIONS AS PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SUBSECTION
38 IMMEDIATELY TO THE COURT, THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT
39 OF THE STATE HOSPITAL.

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

44 (a) TO ACCEPT THE CONDITIONALLY RELEASED PERSON.

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

1 (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE
2 CONDITIONALLY RELEASED PERSON FROM THE HOUSING ARRANGEMENT TO WHICH THE
3 PERSON HAS BEEN ASSIGNED.

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

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

8 36-4007. Detention and commitment requirements; definition

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

13 B. A PERSON WHO IS COMMITTED OR CONDITIONALLY RELEASED TO A LESS
14 RESTRICTIVE ALTERNATIVE PURSUANT TO THIS ARTICLE SHALL RECEIVE CARE,
15 SUPERVISION OR TREATMENT. THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL
16 KEEP RECORDS DETAILING ALL MEDICAL, EXPERT AND PROFESSIONAL CARE AND
17 TREATMENT THAT A COMMITTED PERSON RECEIVES AND SHALL KEEP COPIES OF ALL
18 REPORTS OF PERIODIC EXAMINATIONS THAT ARE MADE PURSUANT TO THIS ARTICLE.
19 THESE RECORDS AND REPORTS SHALL BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF
20 THE FOLLOWING:

- 21 1. THE COMMITTED PERSON.
- 22 2. THE COMMITTED PERSON'S ATTORNEY.
- 23 3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.
- 24 4. THE COURT.

25 5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL PERSON WHO
26 DEMONSTRATES A NEED FOR ACCESS TO THE RECORDS OR REPORTS.

27 6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR ASSOCIATED
28 WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE FOR THE CARE,
29 CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED PERSON.

30 C. AT THE TIME A PERSON IS DETAINED OR TRANSFERRED INTO A LICENSED
31 FACILITY PURSUANT TO THIS ARTICLE, THE PERSON IN CHARGE OF THE FACILITY OR
32 THE PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND
33 SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED PERSON. THE
34 STAFF MEMBER WHO MAKES AN INVENTORY OF THE PERSON'S PERSONAL PROPERTY SHALL
35 GIVE A SIGNED COPY OF THAT INVENTORY TO THE PERSON. THE FACILITY SHALL ALLOW
36 A RESPONSIBLE RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITATIONS
37 THAT THE PERSON SPECIFICALLY IMPOSES. THE FACILITY SHALL NOT DISCLOSE THE
38 CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE
39 PERSON OR A COURT ORDER.

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

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

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

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

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

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

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

35 C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE PERSON'S DETENTION,
36 THE COURT SHALL SCHEDULE A HEARING. AT THE HEARING, THE COURT SHALL
37 DETERMINE IF THE STATE HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE
38 PERSON WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID
39 NOT COMPLY WITH THE TERMS AND CONDITIONS OF RELEASE, IS IN NEED OF ADDITIONAL
40 CARE OR TREATMENT OR IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT
41 THE COMMUNITY IS NO LONGER SAFE AND IF THE PERSON SHOULD CONTINUE ON
42 CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE
43 CONDITIONAL RELEASE SHOULD BE REVOKED AND THE PERSON SHOULD BE COMMITTED TO
44 TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE PROVISIONS OF THIS

1 ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE COURT FINDS THAT THE
2 HEARSAY EVIDENCE IS OTHERWISE RELIABLE.

3 36-4009. Petition for discharge; procedures

4 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE
5 DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE PERSON'S MENTAL ILLNESS,
6 DEFECT OR DISABILITY HAS SO CHANGED THAT THE PERSON IS NO LONGER DANGEROUS IF
7 DISCHARGED, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE PERSON TO PETITION
8 THE COURT FOR DISCHARGE. THE PERSON SHALL SERVE THE PETITION ON THE COURT
9 AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A HEARING ON THE
10 PETITION FOR DISCHARGE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION.
11 THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A
12 SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE RESPONDENT WILL NOT BE
13 SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE
14 AT THE HEARING AND MAY REQUEST THAT THE PETITIONER BE EXAMINED BY A COMPETENT
15 PROFESSIONAL WHO IS SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE
16 STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
17 PETITIONER'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT
18 THE PETITIONER REMAINS DANGEROUS OR THAT THE DEFENDANT IS CURRENTLY COMPETENT
19 TO STAND TRIAL.

20 B. THIS SECTION DOES NOT PROHIBIT THE COMMITTED PERSON FROM ANNUALLY
21 PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
22 SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF
23 HEALTH SERVICES. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL
24 GIVE ANNUAL WRITTEN NOTICE TO THE COMMITTED PERSON OF THE PERSON'S RIGHT TO
25 PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT
26 OR DIRECTOR. THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR
27 SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION
28 REPORT.

29 C. THE COMMITTED PERSON MAY BE PRESENT AT THE DISCHARGE HEARING. THE
30 PROSECUTING AGENCY MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT
31 PROFESSIONAL WHO IS SELECTED BY THE ATTORNEY FOR THE STATE. THE COMMITTED
32 PERSON MAY RETAIN AND THE COURT ON THE REQUEST OF AN INDIGENT PERSON MAY
33 APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN
34 OF PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON'S MENTAL ILLNESS, DEFECT
35 OR DISABILITY HAS NOT CHANGED AND THAT THE PERSON REMAINS A DANGER TO OTHERS
36 AND IS LIKELY TO ENGAGE IN ACTS THAT ARE A DANGER TO PUBLIC SAFETY IF
37 DISCHARGED. IF THE STATE DOES NOT MEET ITS BURDEN OF PROOF, THE PERSON SHALL
38 BE DISCHARGED FROM TREATMENT.

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

43 36-4010. Place for proceedings; transportation; immunity

44 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON WHO IS
45 DETAINED OR CIVILLY COMMITTED PURSUANT TO THIS ARTICLE SHALL NOT BE

1 TRANSPORTED FROM A LICENSED FACILITY UNDER THE SUPERVISION OF THE
2 SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL, EXCEPT THAT A PERSON MAY BE
3 TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING REASONS:

4 1. A HEARING ON AN ANNUAL EXAMINATION.

5 2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS
6 RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.

7 3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION 36-4009.

8 4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A PERSON WHO IS
9 DETAINED OR CIVILLY COMMITTED PURSUANT TO THIS ARTICLE IS NECESSARY.

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

12 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY PERSON WHOM THE
13 COURT HAS DETERMINED IS SUBJECT TO CONDITIONAL RELEASE PURSUANT TO SECTION
14 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

15 C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING FROM
16 BEING HELD ON THE GROUNDS OF THE ARIZONA STATE HOSPITAL OR FROM USING A
17 TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT SHALL
18 ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS ARTICLE.
19 THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY INCLUDE
20 PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF THE
21 ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN
22 INTERACTIVE AUDIOVISUAL DEVICE.

23 D. THE DEPARTMENT OF HEALTH SERVICES IS RESPONSIBLE FOR THE
24 TRANSPORTATION TO AND FROM A MEDICAL FACILITY OF A PERSON WHO IS DETAINED OR
25 COMMITTED PURSUANT TO THIS ARTICLE. THE DEPARTMENT OF HEALTH SERVICES SHALL
26 DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND
27 RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE PERSON. IN DETERMINING THE
28 APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE
29 DEPARTMENT SHALL CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING
30 PERSONNEL AND THE DETAINED OR COMMITTED PERSON.

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

33 Sec. 25. Effective date

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