

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
First Regular Session  
2019

**CHAPTER 173**  
**HOUSE BILL 2059**

AN ACT

AMENDING SECTIONS 41-3803 AND 41-3804, ARIZONA REVISED STATUTES; RELATING  
TO INDEPENDENT OVERSIGHT COMMITTEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-3803, Arizona Revised Statutes, is amended to  
3 read:

4 41-3803. Independent oversight committee on the mentally ill;  
5 training plan; report posting

6 A. The independent oversight committee on the mentally ill is  
7 established in the department of administration to promote the rights of  
8 persons who receive behavioral health services pursuant to:

- 9 1. SECTION 13-3994.  
10 2. Title 36, chapters 5 and 34.

11 B. Each region of this state covered by a regional behavioral  
12 health authority shall have at least one independent oversight committee  
13 with the authority and responsibilities as prescribed by the department of  
14 administration pursuant to rules adopted by the department relating to  
15 behavioral health services.

16 C. The director of the department may establish additional  
17 committees to serve persons who receive behavioral health services or to  
18 oversee the activities of any service provider.

19 D. Each INDEPENDENT OVERSIGHT committee ~~established pursuant to~~  
20 ~~this section~~ shall consist of at least seven and not more than fifteen  
21 members appointed by the director of the department with expertise in at  
22 least one of the following areas:

- 23 1. Psychology.  
24 2. Law.  
25 3. Medicine.  
26 4. Education.  
27 5. Special education.  
28 6. Social work.  
29 7. Mental health.  
30 8. Housing for the mentally ill.  
31 9. Criminal justice.  
32 10. Public safety.

33 E. Each independent oversight committee, if appropriate, shall  
34 include at least two parents of children who receive behavioral health  
35 services pursuant to title 36, chapter 34.

36 F. Each independent oversight committee shall include at least one  
37 member who is a current or former client of the behavioral health system.

38 G. Current or former providers or employees of providers that have  
39 contracted with a regional behavioral health authority may serve on an  
40 independent oversight committee but may not hold more than two positions  
41 on the committee.

42 H. Each independent oversight committee may hold one or more  
43 community forums annually to receive comments regarding the experiences of  
44 individuals living with serious mental illness, and their family members  
45 and caregivers, across the care continuum.

1 I. The department shall ensure that each regional behavioral health  
2 authority and its providers develop and implement a human rights training  
3 plan to ensure that providers are trained regarding clients' human rights  
4 and the duties of the independent oversight committees.

5 J. THE INDEPENDENT OVERSIGHT COMMITTEE AT THE ARIZONA STATE  
6 HOSPITAL SHALL HAVE OVERSIGHT OF PATIENTS WHO HAVE BEEN DETERMINED TO HAVE  
7 A SERIOUS MENTAL ILLNESS AND WHO ARE HOSPITALIZED AND RECEIVING BEHAVIORAL  
8 HEALTH SERVICES AT THE CIVIL AND FORENSIC HOSPITAL PURSUANT TO SUBSECTION  
9 A OF THIS SECTION. THE ARIZONA STATE HOSPITAL SHALL PROVIDE TO THE  
10 COMMITTEE, SUBJECT TO STATE AND FEDERAL LAW, INFORMATION REGARDING THE  
11 FOLLOWING:

- 12 1. SECLUSION OF AND THE USE OF RESTRAINTS ON PATIENTS.
- 13 2. INCIDENT ACCIDENT REPORTS.
- 14 3. ALLEGATIONS OF ILLEGAL, DANGEROUS OR INHUMANE TREATMENT OF  
15 PATIENTS.
- 16 4. PROVISIONS OF SERVICES TO PATIENTS IN NEED OF SPECIAL  
17 ASSISTANCE.
- 18 5. ALLEGATIONS OF NEGLECT AND ABUSE.
- 19 6. ALLEGATIONS OF DENIAL OF RIGHTS AFFORDED TO PATIENTS WITH  
20 SERIOUS MENTAL ILLNESS EXCEPT WHERE A RIGHT MAY BE RESTRICTED FOR THE  
21 SAFETY OF A PATIENT, THE STATE HOSPITAL OR THE PUBLIC.

22 ~~J.~~ K. Each committee shall be organized pursuant to this section  
23 and the requirements of section 41-3804.

24 Sec. 2. Section 41-3804, Arizona Revised Statutes, is amended to  
25 read:

26 41-3804. Independent oversight committees; membership;  
27 duties; client information; immunity; violation;  
28 classification

29 A. TO FULFILL THE PURPOSES OF SECTION 41-3803, THE DIRECTOR OF THE  
30 DEPARTMENT OF ADMINISTRATION, IN CONJUNCTION WITH EACH INDEPENDENT  
31 OVERSIGHT COMMITTEE ESTABLISHED PURSUANT TO SECTION 41-3803, SHALL ADOPT  
32 POLICIES RELATING TO THE AUTHORITY AND RESPONSIBILITY OF THE INDEPENDENT  
33 OVERSIGHT COMMITTEES ESTABLISHED PURSUANT TO THIS ARTICLE THAT DEFINE THE  
34 PROCESSES AND PROCEDURES THAT EACH INDEPENDENT OVERSIGHT COMMITTEE AND  
35 EACH DEPARTMENT OR SERVICE PROVIDER THAT IS SUBJECT TO OVERSIGHT MUST  
36 FOLLOW. BEFORE ADOPTING THE POLICIES, THE DIRECTOR SHALL POST THE  
37 PROPOSED POLICIES ON THE DEPARTMENT'S PUBLIC WEBSITE FOR A PERIOD OF  
38 THIRTY DAYS AND PROVIDE FOR PUBLIC COMMENT. THE DIRECTOR SHALL CONSIDER  
39 THE PUBLIC COMMENTS WHEN ADOPTING THE PROPOSED POLICIES.

40 ~~A.~~ B. Subject to the approval of the director of the department of  
41 administration, each committee established pursuant to this article shall  
42 adopt guidelines that govern its operation, including terms of members,  
43 quorum and attendance requirements and removal of a committee member if  
44 necessary. Each committee shall adopt these guidelines by majority vote.  
45 EACH NEWLY FORMED COMMITTEE SHALL ADOPT THESE GUIDELINES within the first

1 three months of its formation. These guidelines shall not conflict with  
2 this article, TITLE 38, CHAPTER 3, ARTICLE 3.1 OR THE POLICIES ADOPTED BY  
3 THE DIRECTOR. The director ~~of the department~~ shall approve the guidelines  
4 unless they are inconsistent with the ~~department's~~ statutes, policies,  
5 procedures or rules, ~~THAT ARE APPLICABLE TO THE INDEPENDENT OVERSIGHT~~  
6 ~~COMMITTEES~~ or if the guidelines do not promote participation by all  
7 interested members of the community that the committee serves. In  
8 addition to the procedures in the guidelines, each independent oversight  
9 committee must approve the removal of any committee member on majority  
10 vote of the committee. The director shall provide committee members the  
11 opportunity to review potential changes to rules or policies that affect  
12 the committee.

13 ~~B.~~ C. Employees of the department of economic security, the  
14 department of child safety, the Arizona health care cost containment  
15 system, ~~and~~ the Arizona health care cost containment system  
16 administration, THE DEPARTMENT OF HEALTH SERVICES and subject-matter  
17 experts may serve on a committee only as nonvoting members whose presence  
18 is not counted for the purpose of determining a quorum.

19 ~~C.~~ D. Advocacy groups, local advisory councils, committee members  
20 and the director OF THE DEPARTMENT OF ADMINISTRATION may submit names of  
21 candidates to fill committee vacancies. The director OF THE DEPARTMENT OF  
22 ADMINISTRATION shall appoint a person to fill a vacancy subject to the  
23 approval of the committee.

24 ~~D.~~ E. Each committee shall meet at least quarterly each calendar  
25 year.

26 ~~E.~~ F. Each committee shall provide independent oversight to:  
27 1. Ensure that the rights of clients are protected.  
28 2. Review incidents of possible abuse, neglect or denial of a  
29 client's rights.

30 3. Make recommendations to the director OF ANY DEPARTMENT AND  
31 SERVICE PROVIDER SUBJECT TO OVERSIGHT UNDER THIS ARTICLE and TO the  
32 legislature regarding laws, rules, policies, procedures and practices to  
33 ensure the protection of the rights of clients receiving behavioral health  
34 and developmental disability services.

35 ~~F.~~ G. Each committee shall submit written objections to specific  
36 problems or violations of client rights by ~~department employees~~ THE  
37 DEPARTMENT or service ~~providers to~~ PROVIDER THROUGH the director OF THE  
38 DEPARTMENT OF ADMINISTRATION for review BY THE DIRECTOR OF THE DEPARTMENT  
39 THAT IS RESPONSIBLE FOR THE CLIENT. The director OF THE DEPARTMENT shall  
40 ~~respond, in writing,~~ DELIVER TO THE COMMITTEE A DETAILED WRITTEN RESPONSE  
41 to EACH written ~~objections~~ OBJECTION within twenty-one CALENDAR days after  
42 receiving the ~~objections~~ OBJECTION FROM THE DEPARTMENT OF ADMINISTRATION.

43 ~~G.~~ H. Each committee shall issue an annual report of its  
44 activities and recommendations ~~for changes,~~ IF ANY, to the director OF THE  
45 DEPARTMENT OF ADMINISTRATION, THE DIRECTOR OF THE DEPARTMENT OF ECONOMIC

1 SECURITY, THE DIRECTOR OF THE DEPARTMENT OF CHILD SAFETY, THE DIRECTOR OF  
2 THE DEPARTMENT OF HEALTH SERVICES, THE DIRECTOR OF THE ARIZONA HEALTH CARE  
3 COST CONTAINMENT SYSTEM, the president of the senate, the speaker of the  
4 house of representatives and the chairpersons of the senate health and  
5 human services committee and the house of representatives health AND HUMAN  
6 SERVICES committee, or their successor committees.

7 I. THE DEPARTMENT OF ADMINISTRATION SHALL POST ON THE DEPARTMENT'S  
8 WEBSITE A COPY OF THE AGENDA OF EACH COMMITTEE'S MEETINGS AND A COPY OF  
9 THE ANNUAL REPORT THAT IS REQUIRED BY THIS SECTION.

10 ~~H.~~ J. A committee may request from ~~the~~ A department the services  
11 of a consultant ~~or department employee~~ to advise ~~it~~ THE COMMITTEE on  
12 specific issues. The consultant may be a member of another independent  
13 oversight committee, ~~a department~~ AN employee OR CONSULTANT FROM A  
14 DEPARTMENT or a service provider. Subject to the availability of monies,  
15 the department shall assume the cost of the consultant. A consultant  
16 shall not participate in committee votes.

17 ~~I.~~ K. Subject to federal AND STATE law, ATTORNEY CLIENT PRIVILEGE  
18 AND ATTORNEY WORK PRODUCT DOCTRINE AND TO THE EXTENT NECESSARY TO CONDUCT  
19 COMMITTEE DUTIES, committee members and consultants SHALL have access to  
20 client information and records, including quality of care reports,  
21 INCIDENT REPORTS AND INVESTIGATION REPORTS and, on request, case  
22 presentations, adult protective services investigation case status and  
23 outcomes, substantiations, recommendations and other quality of care  
24 findings from peer reviews or any successor report or process, maintained  
25 by ~~the~~ A department, SERVICE provider or regional behavioral health  
26 authorities ~~to the extent necessary to conduct committee duties~~. THE  
27 DEPARTMENT OR SERVICE PROVIDER SHALL REDACT PROTECTED INFORMATION IN  
28 DOCUMENTS IF THE DEPARTMENT OR SERVICE PROVIDER DETERMINES IN GOOD FAITH  
29 THAT THE INFORMATION IS PROTECTED UNDER THIS SECTION. IF THE DEPARTMENT  
30 OR SERVICE PROVIDER IN GOOD FAITH DETERMINES THAT THE INFORMATION OR  
31 RECORDS REQUESTED BY A COMMITTEE CANNOT BE PROVIDED EVEN IN A REDACTED  
32 FORM PURSUANT TO FEDERAL LAW, ATTORNEY CLIENT PRIVILEGE OR ATTORNEY WORK  
33 PRODUCT DOCTRINE, THE DEPARTMENT OR SERVICE PROVIDER SHALL OBJECT IN  
34 WRITING TO THE REQUEST WITHIN THE TIME FRAME SET FORTH UNDER SUBSECTION G  
35 OF THIS SECTION IN A MANNER THAT, WITHOUT REVEALING THE INFORMATION THAT  
36 IS BELIEVED TO BE PROTECTED, ENABLES THE REQUESTING COMMITTEE TO  
37 UNDERSTAND THE BASIS ON WHICH THE DEPARTMENT OR SERVICE PROVIDER  
38 DETERMINED THE INFORMATION OR RECORDS ARE PROTECTED. Each person who  
39 receives information or records pursuant to this subsection shall maintain  
40 the information or records as STRICTLY confidential and sign an agreement  
41 to comply with all confidentiality requirements. Any client information  
42 or records shall be released to the committee without the designation of  
43 personally identifiable information unless the personally identifiable  
44 information is required for the official purposes of the committee. A  
45 violation of this subsection is a class 2 misdemeanor. For the purposes

1 of this subsection, "personally identifiable information" includes a  
2 person's name, address, date of birth, social security number, tribal  
3 enrollment number, telephone or fax number, e-mail address, social media  
4 identifier, driver license number, places of employment, school  
5 identification or military identification number or any other  
6 distinguishing characteristic that tends to identify a particular person.

7 L. FOR INFORMATION AND RECORDS REQUESTED AND PROVIDED PURSUANT TO  
8 THIS SECTION REGARDING PERSONS WITH DEVELOPMENTAL DISABILITIES FOR THE  
9 WORK OF THE INDEPENDENT OVERSIGHT COMMITTEE ON PERSONS WITH DEVELOPMENTAL  
10 DISABILITIES ESTABLISHED BY SECTION 41-3801, THE DEPARTMENT OF ECONOMIC  
11 SECURITY AND NOT THE SERVICE PROVIDER SHALL PROVIDE THE INFORMATION AND  
12 RECORDS AND REDACT ANY NECESSARY INFORMATION.

13 M. WITHIN ITS JURISDICTION, EACH COMMITTEE THAT HAS OVERSIGHT  
14 RESPONSIBILITIES FOR CLIENTS WHO ARE SERIOUSLY MENTALLY ILL SHALL, FOR A  
15 CLIENT WHO NEEDS SPECIAL ASSISTANCE, AND MAY, FOR ANY OTHER CLIENT WHO IS  
16 SERIOUSLY MENTALLY ILL MAKE REGULAR SITE VISITS TO A RESIDENTIAL  
17 ENVIRONMENT AND MEET WITH THE CLIENT IN A RESIDENTIAL ENVIRONMENT TO  
18 DETERMINE THE CLIENT'S SATISFACTION WITH THE RESIDENTIAL ENVIRONMENT, IF  
19 EACH CLIENT OR THE CLIENT'S GUARDIAN IS GIVEN THE RIGHT TO DECLINE FOR ANY  
20 REASON AND WITHOUT EXPLANATION TO PARTICIPATE IN ANY PART OF A SITE VISIT  
21 CONDUCTED BY ANY INDEPENDENT OVERSIGHT COMMITTEE.

22 ~~J.~~ N. If a committee's request for information or records from ~~the~~  
23 A department OR SERVICE PROVIDER is denied, INCLUDING AN OBJECTION  
24 PURSUANT TO SUBSECTION G OF THIS SECTION, AND IF REQUESTED BY THE  
25 COMMITTEE, AT LEAST ONE REPRESENTATIVE OF THE DEPARTMENT OR SERVICE  
26 PROVIDER AND AT LEAST ONE COMMITTEE MEMBER SHALL MEET AND CONFER WITHIN  
27 FIVE BUSINESS DAYS AFTER THE DATE OF THE REQUEST OR ON A LATER DATE THAT  
28 IS AGREED TO BY BOTH PARTIES AND SHALL IN GOOD FAITH ATTEMPT TO RESOLVE  
29 THE OBJECTION INFORMALLY AND COOPERATIVELY. AFTER MEETING AND CONFERRING,  
30 the committee may request in writing that the director OF A DEPARTMENT  
31 review this decision. The director ~~or designee~~ shall TIMELY conduct the  
32 review ~~within five business days~~ AND, NOT LATER THAN TWENTY-ONE CALENDAR  
33 DAYS, after receiving the request for review, THE DIRECTOR SHALL DELIVER  
34 TO THE COMMITTEE A WRITTEN DECISION EXPLAINING IN DETAIL THE FACTUAL AND  
35 LEGAL BASIS AND REASONING FOR THE DEPARTMENT'S DECISION. The department  
36 shall bear the costs of conducting the review. A final agency decision  
37 made pursuant to this subsection is subject to judicial review pursuant to  
38 title 12, chapter 7, article 6. The department shall not release any  
39 information or records during the period an appeal may be filed or is  
40 pending.

41 ~~K.~~ O. Confidential records and information received by the  
42 committee or its consultant are subject to the same provisions concerning  
43 subpoenas, discovery and use in legal actions as are the original records  
44 and information.

1 ~~P.~~ P. The independent oversight committees may exchange  
2 information and engage in planning and coordination activities between  
3 committee members in the performance of committee duties pursuant to this  
4 section.

5 ~~M.~~ Q. The independent oversight committees may encourage public  
6 awareness and involvement in their activities by supporting committee  
7 members with affiliation agreements with postsecondary education-sponsored  
8 internship placements pursuant to the department's approved operating  
9 procedures.

10 ~~N.~~ R. The department shall coordinate education and training  
11 programs for committee members to facilitate their role as independent  
12 oversight committee members. The department shall coordinate statewide  
13 meetings of committees at least every two years and provide staff for the  
14 committees.

15 ~~O.~~ S. Any person who, in good faith and without malice and in  
16 connection with duties or functions of a committee established pursuant to  
17 this article, takes an action or makes a decision or recommendation as a  
18 member or agent of a committee or who furnishes records, information or  
19 assistance that is related to the duties of a committee is not subject to  
20 liability for civil damages in consequence of that action. The court  
21 shall determine the presence of malice by clear and convincing evidence.

22 ~~P.~~ T. Title 38, chapter 3, article 8, relating to conflict of  
23 interest, applies to all committee members.

24 U. EACH INDEPENDENT OVERSIGHT COMMITTEE AND EACH APPROPRIATE  
25 DEPARTMENT AND SERVICE PROVIDER SHALL AT ALL TIMES CONDUCT ACTIVITIES  
26 PROVIDED IN THIS SECTION IN GOOD FAITH TO PROMOTE AND PROTECT THE RIGHTS  
27 OF PERSONS WHO RECEIVE BEHAVIORAL HEALTH SERVICES PURSUANT TO TITLE 36,  
28 CHAPTERS 5 AND 34.

APPROVED BY THE GOVERNOR MAY 7, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2019.