

House Engrossed

dangerous; incompetent person; evaluation; commitment

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HOUSE BILL 2581

AN ACT

AMENDING SECTIONS 13-712, 13-4501, 13-4508, 13-4509, 13-4515 AND 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4519; 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 13-712, Arizona Revised Statutes, is amended to
3 read:

4 13-712. Calculation of terms of imprisonment

5 A. A sentence of imprisonment commences when sentence is imposed if
6 the defendant is in custody or surrenders into custody at that time.
7 Otherwise it commences when the defendant becomes actually in custody.

8 B. All time actually spent in custody pursuant to an offense until
9 the prisoner is sentenced to imprisonment for such offense shall be
10 credited against the term of imprisonment otherwise provided for by this
11 chapter. A PERSON WHO IS FOUND COMPETENT TO STAND TRIAL AFTER AN
12 INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4519 SHALL RECEIVE CREDIT
13 FOR ALL TIME THAT THE PERSON SPENT UNDER THE JURISDICTION OF THE SECURE
14 STATE MENTAL HEALTH FACILITY AGAINST A TERM OF IMPRISONMENT FOR ANY OF THE
15 CHARGES THAT WERE THE BASIS FOR THE INVOLUNTARY COMMITMENT.

16 C. If a sentence of imprisonment is vacated and a new sentence is
17 imposed on the defendant for the same offense, the new sentence is
18 calculated as if it had commenced at the time the vacated sentence was
19 imposed, and all time served under the vacated sentence shall be credited
20 against the new sentence.

21 D. If a person serving a sentence of imprisonment escapes from
22 custody, the escape interrupts the sentence. The interruption continues
23 until the person is apprehended and confined for the escape or is confined
24 and subject to a detainer for the escape. Time spent in actual custody
25 ~~prior to~~ BEFORE return under this subsection shall be credited against the
26 term authorized by law if custody rested on an arrest or surrender for the
27 escape itself, or if the custody arose from an arrest on another charge
28 which culminated in a dismissal or an acquittal, and the person was denied
29 admission to bail pending disposition of that charge because of a warrant
30 lodged against such person arising from the escape.

31 E. The sentencing court shall include the time of commencement of
32 sentence under subsection A OF THIS SECTION and the computation of time
33 credited against sentence under subsection B, C or D, ~~OF THIS SECTION~~ in
34 the original or an amended commitment order, under procedures established
35 by rule of court.

36 Sec. 2. Section 13-4501, Arizona Revised Statutes, is amended to
37 read:

38 13-4501. Definitions

39 In this chapter, unless the context otherwise requires:

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

1 2. "DANGEROUS" MEANS LIKELY, AS A RESULT OF A MENTAL ILLNESS,
2 DEFECT OR DISABILITY, TO COMMIT OR ATTEMPT TO COMMIT HOMICIDE OR A
3 SEXUALLY VIOLENT OFFENSE AS DEFINED IN SECTION 36-3701 OR TO CAUSE OR
4 ATTEMPT TO CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

5 ~~2.~~ 3. "Incompetent to stand trial" means that as a result of a
6 mental illness, defect or disability a defendant is unable to understand
7 the nature and object of the proceeding or to assist in the defendant's
8 defense. In the case of a person under eighteen years of age when the
9 issue of competency is raised, incompetent to stand trial also means a
10 person who does not have sufficient present ability to consult with the
11 person's lawyer with a reasonable degree of rational understanding or who
12 does not have a rational and factual understanding of the proceedings
13 against the person. The presence of a mental illness, defect or
14 disability alone is not grounds for finding a defendant incompetent to
15 stand trial.

16 ~~3.~~ 4. "Mental health expert" means a physician who is licensed
17 pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed
18 pursuant to title 32, chapter 19.1 and who is:

19 (a) Familiar with this state's competency standards and statutes
20 and criminal and involuntary commitment statutes.

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

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

25 ~~4.~~ 5. "Mental illness, defect or disability" means a psychiatric
26 or neurological disorder that is evidenced by behavioral or emotional
27 symptoms, including congenital mental conditions, conditions resulting
28 from injury or disease and developmental disabilities as defined in
29 section 36-551.

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

32 ~~5.~~ 7. "Threat to public safety" means charged with the commission
33 of any of the following:

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

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

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

40 Sec. 3. Section 13-4508, Arizona Revised Statutes, is amended to
41 read:

42 13-4508. Privilege against self-incrimination; sealed reports

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

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

5 C. Any statement made by the defendant during an examination or any
6 evidence resulting from that statement concerning any other event or
7 transaction is not admissible at any proceeding to determine the
8 defendant's guilt or innocence of any other criminal charges that are
9 based on those events or transactions, except that a statement or evidence
10 may be used by any party in a hearing to determine whether the defendant
11 is eligible for court-ordered treatment pursuant to title 36, chapter 5 or
12 is a sexually violent person.

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

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

22 1. For use by the court or defendant, or by the prosecutor if
23 otherwise ~~permitted~~ ALLOWED by law, for further competency or sanity
24 evaluations, ~~or~~ in a hearing to determine whether the defendant is
25 eligible for court-ordered treatment pursuant to title 36, chapter 5 or is
26 a sexually violent person OR IN A HEARING TO DETERMINE WHETHER THE
27 DEFENDANT IS DANGEROUS AND ELIGIBLE FOR COMMITMENT PURSUANT TO SECTION
28 13-4519.

29 2. For statistical analysis.

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

32 4. For use by the probation department or the state department of
33 corrections if the defendant is in the custody of or is scheduled to be
34 transferred into the custody of the state department of corrections for
35 the purposes of assessment and supervision or monitoring of the defendant
36 by that department.

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

39 6. For data gathering.

40 7. For scientific study.

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

1 Sec. 4. Section 13-4509, Arizona Revised Statutes, is amended to
2 read:

3 13-4509. Expert's report

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

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

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

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

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

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

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

20 2. The defendant's prognosis.

21 3. **THE NATURE OF THE MENTAL ILLNESS, DISEASE OR DEFECT THAT MAKES**
22 **THE DEFENDANT LIKELY TO BE DANGEROUS.**

23 ~~3.~~ 4. The most appropriate form and place of treatment in this
24 state, based on the defendant's therapeutic needs and potential threat to
25 public safety.

26 ~~4.~~ 5. Whether the defendant is incompetent to refuse treatment and
27 should be subject to involuntary treatment.

28 6. **IF THE PROGNOSIS INCLUDES A DETERMINATION THAT THERE IS NO**
29 **SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN**
30 **TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,**
31 **WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.**

32 C. If the mental health examiner determines that the defendant is
33 currently competent by virtue of ongoing treatment with psychotropic
34 medication, the court, in its discretion, may appoint a mental health
35 expert who is a physician to address the necessity of continuing that
36 treatment and any limitations that the medication may have on competency.

37 Sec. 5. Section 13-4515, Arizona Revised Statutes, is amended to
38 read:

39 13-4515. Duration of order; excluded time calculation; notice
40 of dismissed charge or voided order; petitions

41 A. An order or combination of orders that is issued pursuant to
42 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
43 months or the maximum possible sentence the defendant could have received
44 pursuant to section 13-702, section 13-703, section 13-704, subsection A,
45 B, C, D or E, section 13-705, section 13-706, subsection A, section

1 13-708, subsection D or section 13-751 or any section for which a specific
2 sentence is authorized, whichever is less. In making this determination
3 the court shall not consider the sentence enhancements under section
4 13-703 or 13-704 for prior convictions.

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

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

12 D. If a defendant is discharged or released on the expiration of an
13 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
14 supervisor may file a petition stating that the defendant requires further
15 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian
16 pursuant to title 14 OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4519
17 BECAUSE THE DEFENDANT IS DANGEROUS.

18 Sec. 6. Section 13-4517, Arizona Revised Statutes, is amended to
19 read:

20 13-4517. Incompetent defendants; disposition

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

25 1. Remand the defendant to an evaluating agency for the institution
26 of civil commitment proceedings pursuant to title 36, chapter 5. If the
27 defendant is remanded, the prosecutor shall file a petition for evaluation
28 and provide any known criminal history for the defendant.

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

30 3. Release the defendant from custody and dismiss the charges
31 against the defendant without prejudice.

32 4. IF THE DEFENDANT IS CHARGED WITH A SERIOUS OFFENSE AS DEFINED IN
33 SECTION 13-706, HOLD A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS
34 AND SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION 13-4519.

35 B. If the court enters an order pursuant to subsection A, paragraph
36 1, ~~or~~ 2 OR 4 of this section, the court may also order an assessment of
37 the defendant's eligibility for private insurance or public benefits that
38 may be applied to the expenses of the defendant's medically necessary
39 maintenance and treatment, including services pursuant to title 36,
40 chapter 29, state-only behavioral health services, title xviii services
41 and medicare part D prescription drug benefits, supplemental security
42 income and supplemental security disability income.

43 C. The court may retain jurisdiction over the defendant until the
44 defendant is committed for treatment pursuant to SECTION 13-4519 OR title
45 36, chapter 5 or a guardian is appointed pursuant to title 14, chapter 5.

1 D. If the court remands the defendant for the institution of civil
2 commitment proceedings pursuant to title 36, chapter 5 and the court is
3 notified that the defendant has not had a civil commitment evaluation OR
4 IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A PARAGRAPH 4 OF THIS
5 SECTION, the court, if it has retained jurisdiction, may order the sheriff
6 to take the defendant into custody so that the court may explore options
7 pursuant to subsection A, paragraph 2, ~~OR~~ 3 OR 4 of this section.

8 E. If the court is notified that the defendant has not been ordered
9 into treatment pursuant to title 36, chapter 5 and the court has retained
10 jurisdiction, the court may order the sheriff to take the defendant into
11 custody so that the court may explore options pursuant to subsection A,
12 paragraph 2, ~~OR~~ 3 OR 4 of this section.

13 Sec. 7. Title 13, chapter 41, Arizona Revised Statutes, is amended
14 by adding section 13-4519, to read:

15 13-4519. Dangerous and incompetent defendants: commitment
16 hearing; disposition; findings

17 A. IF A COURT ENTERS AN ORDER PURSUANT TO SECTION 13-4517,
18 SUBSECTION A, PARAGRAPH 4, THE COURT SHALL HOLD A HEARING TO DETERMINE IF
19 THE DEFENDANT IS DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED. IF THE
20 DEFENDANT IS NOT REPRESENTED BY AN ATTORNEY AND IS INDIGENT, THE COURT
21 SHALL APPOINT AN ATTORNEY, AS SOON AS POSSIBLE AND BEFORE SETTING THE
22 HEARING, TO REPRESENT THE DEFENDANT AT THE HEARING AND ANY FURTHER
23 PROCEEDINGS UNDER TITLE 36, CHAPTER 40.

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

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

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

40 E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:

41 1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT
42 AND THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE
43 CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.

2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO THE CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE FOLLOWING OCCURS:

(a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.

(b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.

(c) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO EITHER TWENTY-FIVE YEARS IF THE DEFENDANT HAD BEEN SENTENCED PURSUANT TO SECTION 13-751 OR FOR ALL OTHER OFFENSES, THE PRESUMPTIVE SENTENCE FOR THE ONE CHARGE THAT CARRIES THE MOST SEVERE PENALTY UP TO A MAXIMUM OF TEN YEARS.

F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE DEFENDANT FROM TREATMENT. THE COURT HAS CONTINUING JURISDICTION OVER THE PERSON PURSUANT TO TITLE 36, CHAPTER 40.

G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS SECTION, THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE EXTENT TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND REGIONAL BEHAVIORAL HEALTH CARE AUTHORITY MONIES. THE DEPARTMENT MAY ACCEPT THESE MONIES WITHOUT A COURT ORDER. THE DEPARTMENT IS RESPONSIBLE FOR ALL REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.

H. FINDINGS BY THE COURT MADE PURSUANT TO THIS SECTION ARE INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER TITLE 36, CHAPTER 40.

I. A PERSON WHO IS INVOLUNTARILY COMMITTED TO A SECURE STATE MENTAL HEALTH FACILITY PURSUANT TO THIS SECTION SHALL RECEIVE CREDIT FOR ALL TIME SPENT UNDER THE JURISDICTION OF THE SECURE STATE MENTAL HEALTH FACILITY IF THE PERSON IS FOUND COMPETENT TO STAND TRIAL AND IS SUBSEQUENTLY SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS FOR ANY OF THE CHARGES THAT WERE THE BASIS FOR THE INVOLUNTARY COMMITMENT.

Sec. 8. Title 36, Arizona Revised Statutes, is amended by adding chapter 40, to read:

CHAPTER 40

DANGEROUS AND INCOMPETENT PERSONS

ARTICLE 1. GENERAL PROVISIONS

36-4001. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMPETENT PROFESSIONAL" MEANS A PERSON WHO IS:

(a) FAMILIAR WITH THIS STATE'S CRIMINAL AND INVOLUNTARY COMMITMENT STATUTES AND STANDARDS THAT ARE AVAILABLE IN THIS STATE FOR PERSONS WITH A MENTAL ILLNESS, DEFECT OR DISABILITY.

(b) APPROVED BY THE SUPERIOR COURT AS MEETING COURT APPROVED GUIDELINES.

1 2. "COMMITTED INCOMPETENT" MEANS A PERSON WHO HAS BEEN DETERMINED
2 TO BE INCOMPETENT AND NONRESTORABLE AND DANGEROUS PURSUANT TO TITLE 13,
3 CHAPTER 41.

4 3. "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT-ORDERED TREATMENT IN
5 A SETTING THAT IS LESS RESTRICTIVE THAN TOTAL CONFINEMENT AND THAT IS
6 CONDUCTED IN A SETTING APPROVED BY THE SUPERINTENDENT OF THE STATE
7 HOSPITAL.

8 4. "MENTAL ILLNESS, DEFECT OR DISABILITY" MEANS A PSYCHIATRIC OR
9 NEUROLOGICAL DISORDER THAT IS EVIDENCED BY BEHAVIORAL OR EMOTIONAL
10 SYMPTOMS, INCLUDING A CONGENITAL MENTAL CONDITION, A CONDITION RESULTING
11 FROM INJURY OR DISEASE OR A DEVELOPMENTAL DISABILITY AS DEFINED IN SECTION
12 36-551.

13 5. "STATE HOSPITAL" MEANS THE ARIZONA STATE HOSPITAL.

14 6. "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF THE STATE
15 HOSPITAL.

16 36-4002. Biannual examination of committed persons; report;
17 records access; attorney withdrawal

18 A. THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL
19 OF THE STATE HOSPITAL OR A LICENSED FACILITY UNDER THE SUPERVISION OF THE
20 STATE HOSPITAL SHALL BIANNUALLY EXAMINE EACH PERSON WHO IS COMMITTED
21 PURSUANT TO SECTION 13-4519. THE PERSON WHO CONDUCTS THE BIANNUAL
22 EXAMINATION SHALL SUBMIT THE EXAMINATION REPORT TO THE COURT, THE
23 COMMITTED INCOMPETENT AND ANY ATTORNEY OF RECORD FOR THE COMMITTED
24 INCOMPETENT IN CONNECTION WITH THE COMMITTED INCOMPETENT'S COMMITMENT.
25 THE BIANNUAL REPORT SHALL STATE THE TREATMENT AND EDUCATION THAT THE
26 COMMITTED INCOMPETENT HAS RECEIVED, A PROGNOSIS FOR THE COMMITTED
27 INCOMPETENT'S RESTORATION TO COMPETENCY AND WHETHER THE COMMITTED
28 INCOMPETENT REMAINS DANGEROUS.

29 B. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT
30 PROFESSIONAL SUBMITS A REPORT INDICATING THAT THE COMMITTED INCOMPETENT IS
31 COMPETENT TO STAND TRIAL OR IS NO LONGER DANGEROUS, THE COURT SHALL HOLD A
32 HEARING TO DETERMINE WHETHER THE COMMITTED INCOMPETENT IS COMPETENT OR IS
33 NO LONGER DANGEROUS.

34 C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT
35 PROFESSIONAL SUBMITS A REPORT THAT THE COMMITTED INCOMPETENT IS NO LONGER
36 DANGEROUS IN WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE COMMITTED
37 INCOMPETENT IS TAKING, THE REPORT SHALL STATE WHETHER THE COMMITTED
38 INCOMPETENT WILL CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS
39 RESTRICTIVE ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A
40 LESS RESTRICTIVE ALTERNATIVE.

41 D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER
42 RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST
43 OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE
44 COMMITTED INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE
45 PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY

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

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

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

14 G. IF THE COMMITTED INCOMPETENT'S ATTORNEY WITHDRAWS FROM
15 REPRESENTING THE COMMITTED INCOMPETENT AT ANY TIME DURING THE COMMITTED
16 INCOMPETENT'S COMMITMENT, THE COURT SHALL NOTIFY THE ATTORNEY FOR THE
17 STATE AND THE COMMITTED INCOMPETENT AND EITHER ALLOW THE COMMITTED
18 INCOMPETENT SUFFICIENT TIME TO EMPLOY ANOTHER ATTORNEY OR, IF THE
19 COMMITTED INCOMPETENT IS INDIGENT, APPOINT AN ATTORNEY TO REPRESENT THE
20 COMMITTED INCOMPETENT IN CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.

21 36-4003. Disposition

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

24 1. THE COMMITTED INCOMPETENT HAS BEEN RESTORED TO COMPETENCY, THE
25 COURT SHALL ORDER THE CRIMINAL PROCEEDINGS TO RESUME.

26 2. THE COMMITTED INCOMPETENT HAS NOT BEEN RESTORED TO COMPETENCY
27 AND:

28 (a) THE COMMITTED INCOMPETENT IS NOT DANGEROUS, THE COURT SHALL
29 RELEASE THE COMMITTED INCOMPETENT FROM TREATMENT AND PROCEED PURSUANT TO
30 SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

31 (b) THE COMMITTED INCOMPETENT IS NOT DANGEROUS IN WHOLE OR IN PART
32 BECAUSE OF THE HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING,
33 INCLUDING TAKING MEDICATION, THE COURT MAY RELEASE THE COMMITTED
34 INCOMPETENT TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTIONS 36-4005
35 AND 36-4006.

36 (c) THE COMMITTED INCOMPETENT IS DANGEROUS, THE COMMITTED
37 INCOMPETENT SHALL REMAIN COMMITTED FOR EDUCATION, CARE, SUPERVISION AND
38 TREATMENT TO RENDER THE COMMITTED INCOMPETENT COMPETENT OR NONDANGEROUS.

39 36-4004. Petition for conditional release; procedures

40 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF
41 THE DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE COMMITTED
42 INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE
43 COMMITTED INCOMPETENT IS NO LONGER DANGEROUS IF CONDITIONALLY RELEASED TO
44 A LESS RESTRICTIVE ALTERNATIVE, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW
45 THE COMMITTED INCOMPETENT TO PETITION THE COURT FOR CONDITIONAL RELEASE TO

1 A LESS RESTRICTIVE ALTERNATIVE. THE COMMITTED INCOMPETENT SHALL SERVE THE
2 PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL
3 HOLD A HEARING ON THE PETITION FOR CONDITIONAL RELEASE TO A LESS
4 RESTRICTIVE ALTERNATIVE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE
5 PETITION. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER
6 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED
7 INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY
8 SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE
9 COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY
10 THE PROSECUTING AGENCY.

11 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR
12 AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT'S MENTAL ILLNESS,
13 DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT
14 REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
15 ALTERNATIVE OR CONDITIONALLY DISCHARGED.

16 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED INCOMPETENT FROM
17 ANNUALLY PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS
18 RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE
19 STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE
20 DIRECTOR SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE COMMITTED
21 INCOMPETENT OF THE COMMITTED INCOMPETENT'S RIGHT TO PETITION THE COURT FOR
22 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL
23 OF THE SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF
24 RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH
25 THE ANNUAL EXAMINATION REPORT.

26 D. THE COMMITTED INCOMPETENT MAY BE PRESENT AT THE HEARING. THE
27 PROSECUTING AGENCY MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED
28 BY A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE
29 COMMITTED INCOMPETENT MAY RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT
30 COMMITTED INCOMPETENT, MAY APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY
31 FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE
32 THAT THE COMMITTED INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS
33 NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS IF
34 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE
35 DOES NOT MEET ITS BURDEN OF PROOF, THE COMMITTED INCOMPETENT SHALL BE
36 DISCHARGED FROM TREATMENT.

37 E. AT THE CONCLUSION OF A HEARING, IF THE COURT FINDS THAT THERE IS
38 NO LEGALLY SUFFICIENT EVIDENTIARY BASIS TO CONCLUDE THAT THE CONDITIONS
39 PRESCRIBED IN SECTION 36-4006 HAVE BEEN MET, THE COURT SHALL DENY
40 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

41 36-4005. Conditional release to a less restrictive
42 alternative; conditions; reports; review

43 A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS
44 RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE COMMITTED
45 INCOMPETENT AND WILL ADEQUATELY PROTECT THE COMMUNITY AND THE COURT

1 DETERMINES THAT THE MINIMUM CONDITIONS UNDER SECTION 36-4006 ARE MET, THE
2 COURT SHALL ENTER JUDGMENT AND ORDER THE COMMITTED INCOMPETENT'S
3 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

4 B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE COMMITTED
5 INCOMPETENT DOES NOT MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE
6 EFFECT OF TREATMENT OR HABILITATION BEING RECEIVED, THE COURT MAY DENY THE
7 REQUEST FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS
8 THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED
9 INCOMPETENT WILL CONTINUE TO RECEIVE TREATMENT AND HABILITATION FOLLOWING
10 RELEASE FOR AS LONG AS THE TREATMENT AND HABILITATION IS REQUIRED. IF THE
11 COURT FINDS THAT THE COMMITTED INCOMPETENT WILL CONTINUE TO RECEIVE THE
12 NEEDED TREATMENT OR HABILITATION, THE COURT MAY ORDER THE COMMITTED
13 INCOMPETENT TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE
14 ON THE CONDITION THAT THE COMMITTED INCOMPETENT CONTINUE TO RECEIVE
15 TREATMENT OR HABILITATION. IF THE COMMITTED INCOMPETENT FAILS TO RECEIVE
16 THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY REVOKE THE
17 CONDITIONAL RELEASE.

18 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE COMMITTED
19 INCOMPETENT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE
20 COMMITTED INCOMPETENT'S COMPLIANCE WITH TREATMENT AND TO PROTECT THE
21 COMMUNITY. IF THE COURT FINDS THAT CONDITIONS DO NOT EXIST THAT WILL BOTH
22 ENSURE THE COMMITTED INCOMPETENT'S COMPLIANCE WITH TREATMENT AND PROTECT
23 THE COMMUNITY, THE COURT SHALL REMAND THE COMMITTED INCOMPETENT TO THE
24 CUSTODY OF THE SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION
25 OR TREATMENT IN A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE
26 SUPERINTENDENT.

27 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR
28 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND
29 CONDITIONS OF A COMMITTED INCOMPETENT'S PLACEMENT IN A LESS RESTRICTIVE
30 ALTERNATIVE IS NOT THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING
31 TO PROVIDE THE TREATMENT.

32 E. BEFORE THE COURT AUTHORIZES A COMMITTED INCOMPETENT'S
33 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL
34 IMPOSE ANY CONDITIONS ON THE COMMITTED INCOMPETENT THAT THE COURT
35 DETERMINES ARE NECESSARY TO ENSURE THE SAFETY OF THE COMMUNITY. THE
36 CONDITIONS SHALL INCLUDE THAT BEFORE BEING RELEASED TO A LESS RESTRICTIVE
37 ALTERNATIVE, A COMMITTED INCOMPETENT MUST SUBMIT TO NINETY DAYS OF
38 INPATIENT EVALUATION AT THE STATE HOSPITAL, EXCEPT THAT IN THE
39 SUPERINTENDENT'S DISCRETION, THE DURATION OF THE EVALUATION PERIOD MAY BE
40 LESS THAN NINETY DAYS. THE COURT SHALL ORDER THE SUPERINTENDENT TO
41 INVESTIGATE THE LESS RESTRICTIVE ALTERNATIVE AND TO SUBMIT ADDITIONAL
42 CONDITIONS TO THE COURT. THE COURT SHALL GIVE A COPY OF THE CONDITIONS OF
43 RELEASE TO THE COMMITTED INCOMPETENT AND TO ANY DESIGNATED SERVICE
44 PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY OF THE FOLLOWING:

- 45 1. SPECIFYING A RESIDENCE.

1 2. REQUIRING COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY
2 TESTING OR MONITORING REQUIRED.
3 3. PROHIBITING ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER
4 PERSONS AND PROHIBITING ASSOCIATING WITH OTHER PERSONS OR TYPES OF
5 PERSONS.
6 4. PROHIBITING THE USE OF ALCOHOL AND OTHER DRUGS.
7 5. REQUIRING SUPERVISION BY THE DEPARTMENT OF HEALTH SERVICES.
8 6. REQUIRING THAT THE COMMITTED INCOMPETENT REMAIN IN THIS STATE
9 UNLESS THE COMMITTED INCOMPETENT RECEIVES PRIOR AUTHORIZATION TO LEAVE
10 THIS STATE FROM THE COURT.
11 7. REQUIRING COMPLIANCE WITH REQUIRED SUPERVISION, MONITORING OR
12 REPORTING.
13 8. COMPLYING WITH OTHER CONDITIONS THAT THE COURT OR THE
14 SUPERINTENDENT DETERMINES ARE IN THE BEST INTEREST OF THE COMMITTED
15 INCOMPETENT OR OTHERS.
16 F. FOLLOWING A DETERMINATION THAT A COMMITTED INCOMPETENT'S RELEASE
17 TO A LESS RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE
18 RECOMMENDATION REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE
19 SUPERINTENDENT, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A
20 LESS RESTRICTIVE ALTERNATIVE THAT THE COMMITTED INCOMPETENT PARTICIPATE IN
21 OUTPATIENT TREATMENT. THE OUTPATIENT SUPERVISION AND TREATMENT MAY INCLUDE
22 MONITORING A COMMITTED INCOMPETENT BY USE OF AN ELECTRONIC BRACELET. THE
23 TREATMENT SHALL CONTINUE UNTIL THE COURT ORDERS A CHANGE IN THE COMMITTED
24 INCOMPETENT'S TREATMENT REQUIREMENTS OR THE COMMITTED INCOMPETENT IS
25 DISCHARGED PURSUANT TO SECTION 36-4009.
26 G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH
27 DESIGNATED SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE
28 COMMITTED INCOMPETENT IS COMPLYING WITH THE TERMS AND CONDITIONS OF
29 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE TO:
30 1. THE COURT.
31 2. THE FACILITY FROM WHICH THE COMMITTED INCOMPETENT WAS RELEASED.
32 3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE COMMITTED
33 INCOMPETENT WAS FOUND TO BE A COMMITTED INCOMPETENT OR TO THE ATTORNEY
34 GENERAL.
35 H. THE COURT SHALL REVIEW THE CASE OF EACH COMMITTED INCOMPETENT
36 WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE
37 YEAR AFTER THE COMMITTED INCOMPETENT'S RELEASE AND THEREAFTER ON MOTION OF
38 EITHER PARTY OR THE SUPERINTENDENT OR ON THE COURT'S OWN MOTION UNTIL THE
39 COMMITTED INCOMPETENT IS DISCHARGED. AT A CASE REVIEW, THE COURT SHALL
40 DETERMINE ONLY IF THE COMMITTED INCOMPETENT SHALL CONTINUE TO BE
41 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING ITS
42 DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE
43 SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE
44 OPINIONS OF THE SUPERINTENDENT AND ANY OTHER COMPETENT PROFESSIONAL.

1 I. IF A COMMITTED INCOMPETENT IS CONDITIONALLY RELEASED TO A LESS
2 RESTRICTIVE ALTERNATIVE, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY
3 THE DEPARTMENT OF PUBLIC SAFETY OF THE COMMITTED INCOMPETENT'S RELEASE SO
4 THAT THE DEPARTMENT OF PUBLIC SAFETY MAY COMMENCE ANY APPLICABLE
5 NOTIFICATION PROCESS UNDER SECTION 13-3825.

6 36-4006. Conditional release to a less restrictive
7 alternative; findings

8 BEFORE THE COURT ORDERS THAT A COMMITTED INCOMPETENT BE
9 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL
10 FIND THAT ALL OF THE FOLLOWING APPLY:

11 1. THE COMMITTED INCOMPETENT WILL BE TREATED BY A PROVIDER WHO IS
12 QUALIFIED TO PROVIDE THE NECESSARY TREATMENT IN THIS STATE.

13 2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE
14 COMMITTED INCOMPETENT, AGREES TO ASSUME RESPONSIBILITY FOR THE COMMITTED
15 INCOMPETENT'S TREATMENT, WILL REPORT ON THE COMMITTED INCOMPETENT'S
16 PROGRESS TO THE COURT ON A REGULAR BASIS AND WILL REPORT ANY VIOLATIONS AS
17 PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SECTION IMMEDIATELY TO THE COURT,
18 THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT.

19 3. THE COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A
20 LESS RESTRICTIVE ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE
21 SUFFICIENTLY SECURE TO PROTECT THE COMMUNITY AND THE PERSON OR AGENCY THAT
22 IS PROVIDING THE HOUSING TO THE CONDITIONALLY RELEASED COMMITTED
23 INCOMPETENT AGREES IN WRITING TO THE FOLLOWING CONDITIONS:

24 (a) TO ACCEPT THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT.

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

26 (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE
27 CONDITIONALLY RELEASED COMMITTED INCOMPETENT FROM THE HOUSING ARRANGEMENT
28 TO WHICH THE COMMITTED INCOMPETENT HAS BEEN ASSIGNED.

29 4. THE COMMITTED INCOMPETENT WILL COMPLY WITH THE PROVIDER AND ALL
30 OF THE REQUIREMENTS THAT ARE IMPOSED BY THE PROVIDER AND THE COURT.

31 5. THE COMMITTED INCOMPETENT WILL COMPLY WITH THE SUPERVISION
32 REQUIREMENTS THAT ARE IMPOSED BY THE DEPARTMENT OF HEALTH SERVICES.

33 36-4007. Detention and commitment requirements; definition

34 A. A COMMITTED INCOMPETENT DOES NOT FORFEIT ANY LEGAL RIGHT AND MAY
35 NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR
36 ORDERS MADE PURSUANT TO THIS ARTICLE EXCEPT AS SPECIFICALLY PROVIDED IN
37 THIS ARTICLE.

38 B. A COMMITTED INCOMPETENT SHALL RECEIVE CARE, SUPERVISION OR
39 TREATMENT. THE SUPERINTENDENT SHALL KEEP RECORDS DETAILING ALL MEDICAL,
40 EXPERT AND PROFESSIONAL CARE AND TREATMENT THAT A COMMITTED INCOMPETENT
41 RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS
42 THAT ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS AND REPORTS SHALL
43 BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

44 1. THE COMMITTED INCOMPETENT.

45 2. THE COMMITTED INCOMPETENT'S ATTORNEY.

1 3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.

2 4. THE COURT.

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

5 6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR
6 ASSOCIATED WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE
7 FOR THE CARE, CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED
8 INCOMPETENT.

9 C. AT THE TIME A COMMITTED INCOMPETENT IS DETAINED OR TRANSFERRED
10 INTO A LICENSED FACILITY, THE PERSON IN CHARGE OF THE FACILITY OR THE
11 PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND
12 SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED COMMITTED
13 INCOMPETENT. THE STAFF MEMBER WHO MAKES AN INVENTORY OF THE COMMITTED
14 INCOMPETENT'S PERSONAL PROPERTY SHALL GIVE A SIGNED COPY OF THAT INVENTORY
15 TO THE COMMITTED INCOMPETENT. THE FACILITY SHALL ALLOW A RESPONSIBLE
16 RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITS THAT THE COMMITTED
17 INCOMPETENT SPECIFICALLY IMPOSES. THE FACILITY MAY NOT DISCLOSE THE
18 CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE
19 COMMITTED INCOMPETENT OR A COURT ORDER.

20 D. THIS ARTICLE DOES NOT PROHIBIT A COMMITTED INCOMPETENT FROM
21 EXERCISING ANY RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING
22 RELEASE FROM CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF
23 HABEAS CORPUS. THE COMMITTED INCOMPETENT MUST EXHAUST ALL DIRECT APPEAL
24 AND POSTCOMMITMENT PROCEDURES BEFORE EXERCISING THE COMMITTED
25 INCOMPETENT'S RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.

26 E. A COMMITTED INCOMPETENT WHO IS INDIGENT MAY NOT BE CONDITIONALLY
27 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE
28 CLOTHING. WHEN A COMMITTED INCOMPETENT IS CONDITIONALLY RELEASED TO A
29 LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED, THE SUPERINTENDENT SHALL
30 FURNISH THE COMMITTED INCOMPETENT WITH AN AMOUNT OF MONEY IN CONFORMANCE
31 WITH SECTION 31-228.

32 F. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS
33 THE SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE COMMITTED
34 INCOMPETENT AND INCLUDES THE GUARDIAN, CONSERVATOR OR ATTORNEY OF THE
35 COMMITTED INCOMPETENT.

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

38 A. IF THE ATTORNEY FOR THE STATE OR THE COURT BELIEVES THAT A
39 COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
40 ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF RELEASE OR
41 IS IN NEED OF ADDITIONAL CARE AND TREATMENT, THE DESIGNATED SERVICE
42 PROVIDER OR THE ATTORNEY FOR THE STATE MAY PETITION THE COURT FOR, OR THE
43 COURT ON ITS OWN MOTION MAY SCHEDULE, A HEARING FOR THE PURPOSE OF
44 REVOKING OR MODIFYING THE TERMS AND CONDITIONS OF THE COMMITTED

1 INCOMPETENT'S CONDITIONAL RELEASE. THE HEARING SHALL BE HELD WITHIN TEN
2 DAYS AFTER THE PETITION IS FILED.

3 B. IF THE ATTORNEY FOR THE STATE OR THE COURT REASONABLY BELIEVES
4 THAT A COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS
5 RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF
6 THE COMMITTED INCOMPETENT'S CONDITIONAL RELEASE OR IS IN NEED OF
7 ADDITIONAL CARE OR TREATMENT OR THAT THE CIRCUMSTANCES OF THE RELEASE HAVE
8 CHANGED SO THAT THE COMMUNITY IS NO LONGER SAFE, THE COURT OR THE
9 DEPARTMENT OF HEALTH SERVICES MAY ORDER THAT THE CONDITIONALLY RELEASED
10 COMMITTED INCOMPETENT BE DETAINED AND TAKEN INTO CUSTODY UNTIL A HEARING
11 CAN BE SCHEDULED TO DETERMINE IF THE COMMITTED INCOMPETENT'S CONDITIONAL
12 RELEASE SHOULD BE REVOKED OR MODIFIED. THE COURT AND ANY ATTORNEY OF
13 RECORD REPRESENTING THE COMMITTED INCOMPETENT SHALL BE NOTIFIED BEFORE THE
14 CLOSE OF THE NEXT JUDICIAL DAY OF THE COMMITTED INCOMPETENT'S DETENTION.
15 THE ATTORNEY FOR THE STATE AND THE CONDITIONALLY RELEASED COMMITTED
16 INCOMPETENT MAY REQUEST AN IMMEDIATE MENTAL EXAMINATION OF THE COMMITTED
17 INCOMPETENT. IF THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT IS
18 INDIGENT, THE COURT, ON REQUEST, SHALL ASSIST THE COMMITTED INCOMPETENT IN
19 OBTAINING A COMPETENT PROFESSIONAL TO CONDUCT THE EXAMINATION.

20 C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE COMMITTED
21 INCOMPETENT'S DETENTION, THE COURT SHALL SCHEDULE A HEARING. AT THE
22 HEARING, THE COURT SHALL DETERMINE IF THE STATE HAS PROVED BY A
23 PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED INCOMPETENT WHO IS
24 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID NOT COMPLY
25 WITH THE TERMS AND CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE
26 OR TREATMENT, IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE
27 COMMUNITY IS NO LONGER SAFE, IF THE COMMITTED INCOMPETENT SHOULD CONTINUE
28 ON CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE
29 CONDITIONAL RELEASE SHOULD BE REVOKED AND THE COMMITTED INCOMPETENT SHOULD
30 BE COMMITTED TO TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE
31 PROVISIONS OF THIS ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE
32 COURT FINDS THAT THE HEARSAY EVIDENCE IS OTHERWISE RELIABLE.

33 36-4009. Petition for discharge; procedures

34 A. IF THE SUPERINTENDENT OR THE DIRECTOR OF THE DEPARTMENT OF
35 HEALTH SERVICES DETERMINES THAT THE COMMITTED INCOMPETENT'S MENTAL
36 ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE COMMITTED
37 INCOMPETENT IS NO LONGER DANGEROUS IF DISCHARGED BUT REMAINS INCOMPETENT
38 TO STAND TRIAL, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED
39 INCOMPETENT TO PETITION THE COURT FOR DISCHARGE. THE COMMITTED
40 INCOMPETENT SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY FOR THE
41 STATE. THE COURT SHALL HOLD A HEARING ON THE PETITION FOR DISCHARGE
42 WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION.

43 B. THE COMMITTED INCOMPETENT MAY BE PRESENT AT THE DISCHARGE
44 HEARING. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER
45 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED

1 INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY
2 SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE
3 COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL WHO IS
4 SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE
5 BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED
6 INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND
7 THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS. IF THE STATE DOES NOT
8 MEET ITS BURDEN OF PROOF, THE COMMITTED INCOMPETENT SHALL BE DISCHARGED
9 FROM TREATMENT.

10 C. IF A COMMITTED INCOMPETENT IS DISCHARGED, THE DEPARTMENT OF
11 HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE
12 COMMITTED INCOMPETENT'S DISCHARGE SO THAT THE DEPARTMENT OF PUBLIC SAFETY
13 MAY COMMENCE ANY NOTIFICATION PROCESS UNDER SECTION 13-3825.

14 D. THIS SECTION DOES NOT PROHIBIT THE COMMITTED INCOMPETENT FROM
15 ANNUALLY PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
16 SUPERINTENDENT OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE
17 DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL GIVE ANNUAL WRITTEN
18 NOTICE TO THE COMMITTED INCOMPETENT OF THE COMMITTED INCOMPETENT'S RIGHT
19 TO PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
20 SUPERINTENDENT OR DIRECTOR AND PROVIDE A COPY OF THAT WRITTEN NOTICE TO
21 ANY ATTORNEY WHO REPRESENTS THE COMMITTED INCOMPETENT IN CONNECTION WITH
22 PROCEEDINGS UNDER THIS ARTICLE. THE NOTICE SHALL CONTAIN A WAIVER OF
23 RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH
24 THE ANNUAL EXAMINATION REPORT.

25 36-4010. Place for proceedings; transportation; immunity

26 A. A COMMITTED INCOMPETENT MAY NOT BE TRANSPORTED FROM A LICENSED
27 FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT, EXCEPT THAT A
28 COMMITTED INCOMPETENT MAY BE TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING
29 REASONS:

- 30 1. A HEARING ON A BIENNIAL EXAMINATION.
- 31 2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS
32 RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.
- 33 3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION
34 36-4009.
- 35 4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A COMMITTED
36 INCOMPETENT IS NECESSARY.
- 37 5. ANY COURT PROCEEDING NOT OTHERWISE SPECIFIED IN THIS ARTICLE
38 WHERE THE PRESENCE OF THE COMMITTED INCOMPETENT IS REQUIRED.

39 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY COMMITTED
40 INCOMPETENT WHO THE COURT HAS DETERMINED IS SUBJECT TO DISCHARGE PURSUANT
41 TO SECTION 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

42 C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING
43 FROM BEING HELD ON THE GROUNDS OF THE STATE HOSPITAL OR FROM USING A
44 TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT
45 SHALL ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS

1 ARTICLE. THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY
2 INCLUDE PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF
3 THE ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN
4 INTERACTIVE AUDIOVISUAL DEVICE.

5 D. THE DEPARTMENT OF HEALTH SERVICES IS RESPONSIBLE FOR
6 TRANSPORTING A COMMITTED INCOMPETENT TO AND FROM A MEDICAL FACILITY. THE
7 DEPARTMENT SHALL DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND
8 LEVEL OF SECURITY AND RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE
9 COMMITTED INCOMPETENT. IN DETERMINING THE APPROPRIATE MODE OF
10 TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE DEPARTMENT SHALL
11 CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING PERSONNEL AND THE
12 DETAINED OR COMMITTED INCOMPETENT.

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

15 36-4011. Findings

16 A FINDING MADE BY THE COURT PURSUANT TO THIS ARTICLE IS INADMISSIBLE
17 IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER THIS ARTICLE OR UNDER
18 TITLE 13, CHAPTER 41.

19 Sec. 9. Retroactivity

20 This act applies retroactively to from and after December 31, 2019.