

REFERENCE TITLE: **mental disorders; considerations; involuntary treatment**

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1059

Introduced by
Senator Barto

AN ACT

AMENDING SECTION 36-501, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-521.01; RELATING TO COURT-ORDERED EVALUATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 36-501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Administration" means the Arizona health care cost containment
7 system administration.

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

13 3. "Chief medical officer" means the chief medical officer under
14 the supervision of the superintendent of the state hospital.

15 4. "Contraindicated" means that access is reasonably likely to
16 endanger the life or physical safety of the patient or another person.

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

20 6. "Criminal history" means police reports, lists of prior arrests
21 and convictions, criminal case pleadings and court orders, including a
22 determination that the person has been found incompetent to stand trial
23 pursuant to section 13-4510.

24 7. "Danger to others" means that the judgment of a person who has a
25 mental disorder is so impaired that the person is unable to understand the
26 person's need for treatment and as a result of the person's mental
27 disorder the person's continued behavior can reasonably be expected, on
28 the basis of competent medical opinion, to result in serious physical
29 harm.

30 8. "Danger to self":

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

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

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

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

41 9. "Department" means the department of health services.

42 10. "Detention" means the taking into custody of a patient or
43 proposed patient.

44 11. "Director" means the director of the administration.

45 12. "Evaluation" means:

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

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

19 (ii) Two other individuals, one of whom, if available, ~~shall be~~ IS
20 a psychologist and in any event a social worker familiar with mental
21 health and human services that may be available placement alternatives
22 appropriate for treatment. An evaluation may be conducted on an inpatient
23 basis, an outpatient basis or a combination of both, and every reasonable
24 attempt shall be made to conduct the evaluation in any language preferred
25 by the person.

26 (b) A physical examination that is consistent with the existing
27 standards of care and that is performed by one of the evaluating
28 physicians or by or under the supervision of a physician who is licensed
29 pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner
30 who is licensed pursuant to title 32, chapter 15 if the results of that
31 examination are reviewed or augmented by one of the evaluating physicians.

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

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

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

42 16. "Health care decision maker" has the same meaning prescribed in
43 section 12-2801.

1 17. "Health care entity" means a health care provider, the
2 department, the administration or a regional behavioral health authority
3 THAT IS under contract with the administration.

4 18. "Health care provider" means a health care institution as
5 defined in section 36-401 that is licensed as a behavioral health provider
6 pursuant to department rules or a mental health provider.

7 19. "Independent evaluator" means a licensed physician, psychiatric
8 and mental health nurse practitioner or psychologist WHO IS selected by
9 the person to be evaluated or by ~~such~~ THAT person's attorney.

10 20. "Informed consent" means a voluntary decision following
11 presentation of all facts necessary to form the basis of an intelligent
12 consent by the patient or guardian with no minimizing of known dangers of
13 any procedures.

14 21. "Least restrictive treatment alternative" means the treatment
15 plan and setting that infringe in the least possible degree with the
16 patient's right to liberty and that are consistent with providing needed
17 treatment in a safe and humane manner.

18 22. "Licensed physician" means any medical doctor or doctor of
19 osteopathy who is either:

20 (a) Licensed in this state.

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

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

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

36 25. "Mental disorder" means a substantial disorder of ~~the~~ A
37 person's emotional processes, thought, cognition or memory. ~~Mental~~
38 ~~disorder is distinguished from:~~

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

42 ~~(b) The declining mental abilities that directly accompany~~
43 ~~impending death.~~

1 ~~(c) Character and personality disorders characterized by lifelong~~
2 ~~and deeply ingrained antisocial behavior patterns, including sexual~~
3 ~~behaviors that are abnormal and prohibited by statute unless the behavior~~
4 ~~results from a mental disorder.~~

5 26. "Mental health provider" means any physician or provider of
6 mental health or behavioral health services WHO IS involved in evaluating,
7 caring for, treating or rehabilitating a patient.

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

11 28. "Outpatient treatment" or "combined inpatient and outpatient
12 treatment" means any treatment program not requiring continuous inpatient
13 hospitalization.

14 29. "Outpatient treatment plan" means a treatment plan that does
15 not require continuous inpatient hospitalization.

16 30. "Patient" means any person WHO IS undergoing examination,
17 evaluation or behavioral or mental health treatment under this chapter.

18 31. "Peace officers" means sheriffs of counties, constables,
19 marshals and policemen of cities and towns.

20 32. "Persistent or acute disability" means a severe mental disorder
21 that meets all the following criteria:

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

26 (b) Substantially impairs the person's capacity to make an informed
27 decision regarding treatment, and this impairment causes the person to be
28 incapable of understanding and expressing an understanding of the
29 advantages and disadvantages of accepting treatment and understanding and
30 expressing an understanding of the alternatives to the particular
31 treatment offered after the advantages, disadvantages and alternatives are
32 explained to that person.

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

35 33. "Prepetition screening" means the review of each application
36 requesting court-ordered evaluation, including an investigation of facts
37 alleged in ~~such~~ THE application, an interview with each applicant and an
38 interview, if possible, with the proposed patient. The purpose of the
39 interview with the proposed patient is to assess the problem, explain the
40 application and, when indicated, attempt to persuade the proposed patient
41 to receive, on a voluntary basis, evaluation or other services.

42 34. "Prescribed form" means a form established by a court or the
43 rules of the administration in accordance with the laws of this state.

1 35. "Professional" means a physician who is licensed pursuant to
2 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to
3 title 32, chapter 19.1 or a psychiatric and mental health nurse
4 practitioner who is certified pursuant to title 32, chapter 15.

5 36. "Proposed patient" means a person for whom an application for
6 evaluation has been made or a petition for court-ordered evaluation has
7 been filed.

8 37. "Prosecuting agency" means the county attorney, attorney
9 general or city attorney who applied or petitioned for an evaluation or
10 treatment pursuant to this chapter.

11 38. "Psychiatric and mental health nurse practitioner" means a
12 registered nurse practitioner as defined in section 32-1601 who has
13 completed an adult or family psychiatric and mental health nurse
14 practitioner program and who is certified as an adult or family
15 psychiatric and mental health nurse practitioner by the state board of
16 nursing.

17 39. "Psychiatrist" means a licensed physician who has completed
18 three years of graduate training in psychiatry in a program approved by
19 the American medical association or the American osteopathic association.

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

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

28 (a) Materials that are prepared in connection with utilization
29 review, peer review or quality assurance activities, including records
30 that a health care provider prepares pursuant to section 36-441, 36-445,
31 36-2402 or 36-2917.

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

35 42. "Regional behavioral health authority" has the same meaning
36 prescribed in section 36-3401.

37 43. "Screening agency" means a health care agency that is licensed
38 by the department and that provides those services required of such agency
39 by this chapter.

40 44. "Social worker" means a person who has completed two years of
41 graduate training in social work in a program approved by the council of
42 social work education and who has experience in mental health.

43 45. "State hospital" means the Arizona state hospital.

44 46. "Superintendent" means the superintendent of the state
45 hospital.

1 Sec. 2. Title 36, chapter 5, article 4, Arizona Revised Statutes,
2 is amended by adding section 36-521.01, to read:

3 36-521.01. Considerations for screening, evaluation and
4 involuntary treatment

5 A. A PERSON WHO HAS A SUBSTANCE USE DISORDER WITHOUT ANY
6 CO-OCCURRING MENTAL DISORDER MAY NOT BE CONSIDERED FOR INVOLUNTARY
7 TREATMENT PURSUANT TO ARTICLE 5 OF THIS CHAPTER. A PERSON WHO INITIALLY
8 PRESENTS WITH IMPAIRMENTS CONSISTENT WITH BOTH A MENTAL DISORDER AND A
9 SUBSTANCE USE DISORDER IS ELIGIBLE FOR SCREENING AND EVALUATION PURSUANT
10 TO THIS ARTICLE, AND THAT PERSON MAY BE ELIGIBLE FOR INVOLUNTARY TREATMENT
11 PURSUANT TO ARTICLE 5 OF THIS CHAPTER IF, AFTER CONSIDERING THE PERSON'S
12 HISTORY, AN APPROPRIATE EXAMINATION AND A REASONABLE PERIOD OF
13 DETOXIFICATION, THE IMPAIRMENTS OF A MENTAL DISORDER PERSIST OR RECUR.

14 B. A PERSON WHO HAS AN INTELLECTUAL DISABILITY MAY NOT BE
15 CONSIDERED FOR INVOLUNTARY TREATMENT PURSUANT TO ARTICLE 5 OF THIS CHAPTER
16 UNLESS, IN ADDITION TO THE INTELLECTUAL DISABILITY, THE PERSON HAS A
17 MENTAL DISORDER THAT WOULD BENEFIT FROM TREATMENT.

18 C. A PERSON WHO PRESENTS WITH DECLINING MENTAL ABILITIES THAT
19 DIRECTLY ACCOMPANY IMPENDING DEATH MAY NOT BE CONSIDERED FOR INVOLUNTARY
20 TREATMENT PURSUANT TO ARTICLE 5 OF THIS CHAPTER.

21 D. A PERSON WITH A CHARACTER OR PERSONALITY DISORDER CHARACTERIZED
22 BY LIFELONG AND DEEPLY INGRAINED ANTISOCIAL BEHAVIOR PATTERNS, INCLUDING
23 SEXUAL BEHAVIORS THAT ARE ABNORMAL AND PROHIBITED BY STATUTE, MAY NOT BE
24 CONSIDERED FOR INVOLUNTARY TREATMENT PURSUANT TO ARTICLE 5 OF THIS CHAPTER
25 UNLESS THE PERSON ALSO HAS A MENTAL DISORDER THAT WOULD BENEFIT FROM
26 TREATMENT.