

House Engrossed

dangerous; incompetent person; evaluation; commitment

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HOUSE BILL 2334

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~~ 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 TRIAL TO DETERMINE WHETHER THE DEFENDANT
27 IS DANGEROUS AND ELIGIBLE FOR COMMITMENT PURSUANT TO SECTION 13-4519.

28 2. For statistical analysis.

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

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

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

38 6. For data gathering.

39 7. For scientific study.

40 F. Any statement made by the defendant during an examination that
41 is conducted pursuant to this chapter or any evidence resulting from that
42 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, ORDER A TRIAL BY JURY TO DETERMINE IF THE DEFENDANT IS
34 DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION
35 13-4519.

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

1 C. The court may retain jurisdiction over the defendant until the
2 defendant is committed for treatment pursuant to SECTION 13-4519 OR title
3 36, chapter 5 or a guardian is appointed pursuant to title 14, chapter 5.

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

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

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

18 13-4519. Dangerous and incompetent defendants; commitment
19 trial; disposition; findings; annual report

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

27 B. IF THERE HAS NOT BEEN A PREVIOUS EVALUATION TO DETERMINE WHETHER
28 THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL
29 HEALTH EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO
30 DETERMINE IF THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS. THE DEFENDANT
31 MAY RETAIN THE DEFENDANT'S OWN MENTAL HEALTH EXPERT WHO MAY EXAMINE THE
32 DEFENDANT AND PRESENT THE DEFENDANT'S OWN MENTAL HEALTH EVALUATION AT THE
33 TRIAL.

34 C. AT A TRIAL TO DETERMINE IF THE DEFENDANT IS DANGEROUS, THE STATE
35 SHALL ESTABLISH BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS DANGEROUS
36 AND THAT THE DEFENDANT COMMITTED THE ACTS THAT CONSTITUTE THE CHARGED
37 OFFENSE. IF THE JURY DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE COURT
38 SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2
39 OR 3.

40 D. IF THE JURY FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT
41 SHALL ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH
42 FACILITY LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT
43 COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS. THE DEFENDANT
44 SHALL RECEIVE EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE
45 DEFENDANT EITHER 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
3 AND 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
6 THE CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE
7 FOLLOWING 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 F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS
11 COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE
12 DEFENDANT FROM TREATMENT OR THE TIME TO COMMENCE A CHARGE PURSUANT TO
13 SECTION 13-107 HAS EXPIRED, WHICHEVER OCCURS FIRST. FOR THE PURPOSE OF
14 CALCULATING THE TIME UNDER SECTION 13-107 NO TIME IS TOLLED. THE COURT
15 HAS CONTINUING JURISDICTION OVER THE PERSON PURSUANT TO TITLE 36,
16 CHAPTER 40.
17 G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS
18 SECTION, THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE
19 THE EXTENT TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE
20 PRIVATE OR PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE
21 DEFENDANT'S MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY,
22 INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT
23 SYSTEM MONIES AND REGIONAL BEHAVIORAL HEALTH CARE AUTHORITY MONIES. THE
24 DEPARTMENT MAY ACCEPT THESE MONIES WITHOUT A COURT ORDER. THE DEPARTMENT
25 IS RESPONSIBLE FOR ALL REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.
26 H. FINDINGS BY THE COURT MADE PURSUANT TO THIS SECTION ARE
27 INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER TITLE 36,
28 CHAPTER 40.
29 I. A PERSON WHO IS INVOLUNTARILY COMMITTED TO A SECURE STATE MENTAL
30 HEALTH FACILITY PURSUANT TO THIS SECTION SHALL RECEIVE CREDIT FOR ALL TIME
31 SPENT UNDER THE JURISDICTION OF THE SECURE STATE MENTAL HEALTH FACILITY IF
32 THE PERSON IS FOUND COMPETENT TO STAND TRIAL AND IS SUBSEQUENTLY SENTENCED
33 TO THE STATE DEPARTMENT OF CORRECTIONS FOR ANY OF THE CHARGES THAT WERE
34 THE BASIS FOR THE INVOLUNTARY COMMITMENT.
35 J. THE COURT SHALL ANNUALLY REPORT THE FOLLOWING INFORMATION FOR
36 THE PREVIOUS YEAR TO THE ARIZONA CRIMINAL JUSTICE COMMISSION:
37 1. THE NUMBER OF COURT ORDERS FOR A JURY TRIAL PURSUANT TO SECTION
38 13-4517, SUBSECTION A, PARAGRAPH 4.
39 2. THE NUMBER OF DEFENDANTS WHO ARE COMMITTED AFTER A JURY TRIAL
40 PURSUANT TO THIS SECTION.
41 3. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE CONDITIONALLY
42 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE.
43 4. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE DETERMINED TO NOT BE
44 DANGEROUS AND WHO ARE DISCHARGED.

1 HEARING TO DETERMINE WHETHER THE COMMITTED DEFENDANT IS COMPETENT OR IS NO
2 LONGER DANGEROUS.

3 C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT
4 PROFESSIONAL SUBMITS A REPORT THAT THE COMMITTED DEFENDANT IS NO LONGER
5 DANGEROUS IN WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE COMMITTED
6 DEFENDANT IS TAKING, THE REPORT SHALL STATE WHETHER THE COMMITTED
7 DEFENDANT WILL CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS
8 RESTRICTIVE ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A
9 LESS RESTRICTIVE ALTERNATIVE.

10 D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER
11 RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST
12 OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE
13 COMMITTED DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING
14 AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE
15 COMMITTED DEFENDANT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY
16 THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF
17 PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S
18 MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE
19 COMMITTED DEFENDANT REMAINS DANGEROUS OR THAT THE COMMITTED DEFENDANT IS
20 COMPETENT TO STAND TRIAL.

21 E. A RETAINED OR APPOINTED COMPETENT PROFESSIONAL SHALL HAVE ACCESS
22 TO ALL RECORDS CONCERNING THE COMMITTED DEFENDANT. ALL COMPETENT
23 PROFESSIONALS SHALL HAVE EQUAL ACCESS TO THE COMMITTED DEFENDANT AS WELL
24 AS ALL RECORDS CONCERNING THE COMMITTED DEFENDANT.

25 F. THIS SECTION DOES NOT PRECLUDE THE COMMITTED DEFENDANT FROM
26 PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE
27 ALTERNATIVE OR DISCHARGE FROM TREATMENT PURSUANT TO SECTION 36-4004.

28 G. IF THE COMMITTED DEFENDANT'S ATTORNEY WITHDRAWS FROM REPRESENTING
29 THE COMMITTED DEFENDANT AT ANY TIME DURING THE COMMITTED DEFENDANT'S
30 COMMITMENT, THE COURT SHALL NOTIFY THE ATTORNEY FOR THE STATE AND THE
31 COMMITTED DEFENDANT AND EITHER ALLOW THE COMMITTED DEFENDANT SUFFICIENT
32 TIME TO EMPLOY ANOTHER ATTORNEY OR, IF THE COMMITTED DEFENDANT IS
33 INDIGENT, APPOINT AN ATTORNEY TO REPRESENT THE COMMITTED DEFENDANT IN
34 CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.

35 36-4003. Disposition

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

38 1. THE COMMITTED DEFENDANT HAS BEEN RESTORED TO COMPETENCY, THE
39 COURT SHALL ORDER THE CRIMINAL PROCEEDINGS TO RESUME.

40 2. THE COMMITTED DEFENDANT HAS NOT BEEN RESTORED TO COMPETENCY AND:
41 (a) THE COMMITTED DEFENDANT IS NOT DANGEROUS, THE COURT SHALL
42 RELEASE THE COMMITTED DEFENDANT FROM TREATMENT AND PROCEED PURSUANT TO
43 SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

44 (b) THE COMMITTED DEFENDANT IS NOT DANGEROUS IN WHOLE OR IN PART
45 BECAUSE OF THE HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING,

1 INCLUDING TAKING MEDICATION, THE COURT MAY RELEASE THE COMMITTED DEFENDANT
2 TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTIONS 36-4005 AND
3 36-4006.

4 (c) THE COMMITTED DEFENDANT IS DANGEROUS, THE COMMITTED DEFENDANT
5 SHALL REMAIN COMMITTED FOR EDUCATION, CARE, SUPERVISION AND TREATMENT TO
6 RENDER THE COMMITTED DEFENDANT COMPETENT OR NONDANGEROUS.

7 36-4004. Petition for conditional release; procedures

8 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF
9 THE DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE COMMITTED
10 DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE
11 COMMITTED DEFENDANT IS NO LONGER DANGEROUS IF CONDITIONALLY RELEASED TO A
12 LESS RESTRICTIVE ALTERNATIVE, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW
13 THE COMMITTED DEFENDANT TO PETITION THE COURT FOR CONDITIONAL RELEASE TO A
14 LESS RESTRICTIVE ALTERNATIVE. THE COMMITTED DEFENDANT SHALL SERVE THE
15 PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL
16 HOLD A HEARING ON THE PETITION FOR CONDITIONAL RELEASE TO A LESS
17 RESTRICTIVE ALTERNATIVE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE
18 PETITION. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER
19 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED
20 DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY
21 SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE
22 COMMITTED DEFENDANT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY
23 THE PROSECUTING AGENCY.

24 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR
25 AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S MENTAL ILLNESS,
26 DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED DEFENDANT
27 REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
28 ALTERNATIVE OR CONDITIONALLY DISCHARGED.

29 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED DEFENDANT FROM
30 ANNUALLY PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS
31 RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE
32 STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE
33 DIRECTOR SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE COMMITTED DEFENDANT
34 OF THE COMMITTED DEFENDANT'S RIGHT TO PETITION THE COURT FOR CONDITIONAL
35 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE
36 SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF RIGHTS.
37 THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE
38 ANNUAL EXAMINATION REPORT.

39 D. THE COMMITTED DEFENDANT MAY BE PRESENT AT THE HEARING. THE
40 PROSECUTING AGENCY MAY REQUEST THAT THE COMMITTED DEFENDANT BE EXAMINED BY
41 A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE
42 COMMITTED DEFENDANT MAY RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT
43 COMMITTED DEFENDANT, MAY APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY
44 FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE
45 THAT THE COMMITTED DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS

1 NOT CHANGED AND THAT THE COMMITTED DEFENDANT REMAINS DANGEROUS IF
2 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE
3 DOES NOT MEET ITS BURDEN OF PROOF, THE COMMITTED DEFENDANT SHALL BE
4 DISCHARGED FROM TREATMENT.

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

9 36-4005. Conditional release to a less restrictive
10 alternative; conditions; reports; review

11 A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS
12 RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE COMMITTED DEFENDANT
13 AND WILL ADEQUATELY PROTECT THE COMMUNITY AND THE COURT DETERMINES THAT
14 THE MINIMUM CONDITIONS UNDER SECTION 36-4006 ARE MET, THE COURT SHALL
15 ENTER JUDGMENT AND ORDER THE COMMITTED DEFENDANT'S CONDITIONAL RELEASE TO
16 A LESS RESTRICTIVE ALTERNATIVE.

17 B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE COMMITTED
18 DEFENDANT DOES NOT MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE
19 EFFECT OF TREATMENT OR HABILITATION BEING RECEIVED, THE COURT MAY DENY THE
20 REQUEST FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS
21 THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED
22 DEFENDANT WILL CONTINUE TO RECEIVE TREATMENT AND HABILITATION FOLLOWING
23 RELEASE FOR AS LONG AS THE TREATMENT AND HABILITATION IS REQUIRED. IF THE
24 COURT FINDS THAT THE COMMITTED DEFENDANT WILL CONTINUE TO RECEIVE THE
25 NEEDED TREATMENT OR HABILITATION, THE COURT MAY ORDER THE COMMITTED
26 DEFENDANT TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE
27 ON THE CONDITION THAT THE COMMITTED DEFENDANT CONTINUE TO RECEIVE
28 TREATMENT OR HABILITATION. IF THE COMMITTED DEFENDANT FAILS TO RECEIVE
29 THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY REVOKE THE
30 CONDITIONAL RELEASE.

31 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE COMMITTED
32 DEFENDANT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE COMMITTED
33 DEFENDANT'S COMPLIANCE WITH TREATMENT AND TO PROTECT THE COMMUNITY. IF
34 THE COURT FINDS THAT CONDITIONS DO NOT EXIST THAT WILL BOTH ENSURE THE
35 COMMITTED DEFENDANT'S COMPLIANCE WITH TREATMENT AND PROTECT THE COMMUNITY,
36 THE COURT SHALL REMAND THE COMMITTED DEFENDANT TO THE CUSTODY OF THE
37 SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION OR TREATMENT IN
38 A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE SUPERINTENDENT.

39 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR
40 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND
41 CONDITIONS OF A COMMITTED DEFENDANT'S PLACEMENT IN A LESS RESTRICTIVE
42 ALTERNATIVE IS NOT THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING
43 TO PROVIDE THE TREATMENT.

44 E. BEFORE THE COURT AUTHORIZES A COMMITTED DEFENDANT'S CONDITIONAL
45 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL IMPOSE ANY

1 CONDITIONS ON THE COMMITTED DEFENDANT THAT THE COURT DETERMINES ARE
2 NECESSARY TO ENSURE THE SAFETY OF THE COMMUNITY. THE CONDITIONS SHALL
3 INCLUDE THAT BEFORE BEING RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, A
4 COMMITTED DEFENDANT MUST SUBMIT TO NINETY DAYS OF INPATIENT EVALUATION AT
5 THE STATE HOSPITAL, EXCEPT THAT IN THE SUPERINTENDENT'S DISCRETION, THE
6 DURATION OF THE EVALUATION PERIOD MAY BE LESS THAN NINETY DAYS. THE COURT
7 SHALL ORDER THE SUPERINTENDENT TO INVESTIGATE THE LESS RESTRICTIVE
8 ALTERNATIVE AND TO SUBMIT ADDITIONAL CONDITIONS TO THE COURT. THE COURT
9 SHALL GIVE A COPY OF THE CONDITIONS OF RELEASE TO THE COMMITTED DEFENDANT
10 AND TO ANY DESIGNATED SERVICE PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY
11 OF THE FOLLOWING:

- 12 1. SPECIFYING A RESIDENCE.
- 13 2. REQUIRING COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY
14 TESTING OR MONITORING REQUIRED.
- 15 3. PROHIBITING ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER
16 PERSONS AND PROHIBITING ASSOCIATING WITH OTHER PERSONS OR TYPES OF
17 PERSONS.
- 18 4. PROHIBITING THE USE OF ALCOHOL AND OTHER DRUGS.
- 19 5. REQUIRING SUPERVISION BY THE DEPARTMENT OF HEALTH SERVICES.
- 20 6. REQUIRING THAT THE COMMITTED DEFENDANT REMAIN IN THIS STATE
21 UNLESS THE COMMITTED DEFENDANT RECEIVES PRIOR AUTHORIZATION TO LEAVE THIS
22 STATE FROM THE COURT.
- 23 7. REQUIRING COMPLIANCE WITH REQUIRED SUPERVISION, MONITORING OR
24 REPORTING.
- 25 8. COMPLYING WITH OTHER CONDITIONS THAT THE COURT OR THE
26 SUPERINTENDENT DETERMINES ARE IN THE BEST INTEREST OF THE COMMITTED
27 DEFENDANT OR OTHERS.

28 F. FOLLOWING A DETERMINATION THAT A COMMITTED DEFENDANT'S RELEASE
29 TO A LESS RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE
30 RECOMMENDATION REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE
31 SUPERINTENDENT, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A
32 LESS RESTRICTIVE ALTERNATIVE THAT THE COMMITTED DEFENDANT PARTICIPATE IN
33 OUTPATIENT TREATMENT. THE OUTPATIENT SUPERVISION AND TREATMENT MAY
34 INCLUDE MONITORING A COMMITTED DEFENDANT BY USE OF AN ELECTRONIC
35 BRACELET. THE TREATMENT SHALL CONTINUE UNTIL THE COURT ORDERS A CHANGE IN
36 THE COMMITTED DEFENDANT'S TREATMENT REQUIREMENTS OR THE COMMITTED
37 DEFENDANT IS DISCHARGED PURSUANT TO SECTION 36-4009.

38 G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH
39 DESIGNATED SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE
40 COMMITTED DEFENDANT IS COMPLYING WITH THE TERMS AND CONDITIONS OF
41 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE TO:

- 42 1. THE COURT.
- 43 2. THE FACILITY FROM WHICH THE COMMITTED INCOMPETENT WAS RELEASED.
- 44 3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE COMMITTED DEFENDANT
45 WAS FOUND TO BE A COMMITTED DEFENDANT OR TO THE ATTORNEY GENERAL.

1 H. THE COURT SHALL REVIEW THE CASE OF EACH COMMITTED DEFENDANT WHO
2 IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE
3 YEAR AFTER THE COMMITTED DEFENDANT'S RELEASE AND THEREAFTER ON MOTION OF
4 EITHER PARTY OR THE SUPERINTENDENT OR ON THE COURT'S OWN MOTION UNTIL THE
5 COMMITTED DEFENDANT IS DISCHARGED. AT A CASE REVIEW, THE COURT SHALL
6 DETERMINE ONLY IF THE COMMITTED DEFENDANT SHALL CONTINUE TO BE
7 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING ITS
8 DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE
9 SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE
10 OPINIONS OF THE SUPERINTENDENT AND ANY OTHER COMPETENT PROFESSIONAL.

11 I. IF A COMMITTED DEFENDANT IS CONDITIONALLY RELEASED TO A LESS
12 RESTRICTIVE ALTERNATIVE, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY
13 THE DEPARTMENT OF PUBLIC SAFETY OF THE COMMITTED DEFENDANT'S RELEASE SO
14 THAT THE DEPARTMENT OF PUBLIC SAFETY MAY COMMENCE ANY APPLICABLE
15 NOTIFICATION PROCESS UNDER SECTION 13-3825.

16 36-4006. Conditional release to a less restrictive
17 alternative; findings

18 BEFORE THE COURT ORDERS THAT A COMMITTED DEFENDANT BE CONDITIONALLY
19 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL
20 OF THE FOLLOWING APPLY:

21 1. THE COMMITTED DEFENDANT WILL BE TREATED BY A PROVIDER WHO IS
22 QUALIFIED TO PROVIDE THE NECESSARY TREATMENT IN THIS STATE.

23 2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE
24 COMMITTED DEFENDANT, AGREES TO ASSUME RESPONSIBILITY FOR THE COMMITTED
25 DEFENDANT'S TREATMENT, WILL REPORT ON THE COMMITTED DEFENDANT'S PROGRESS
26 TO THE COURT ON A REGULAR BASIS AND WILL REPORT ANY VIOLATIONS AS
27 PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SECTION IMMEDIATELY TO THE COURT,
28 THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT.

29 3. THE COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A LESS
30 RESTRICTIVE ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE SUFFICIENTLY
31 SECURE TO PROTECT THE COMMUNITY AND THE PERSON OR AGENCY THAT IS PROVIDING
32 THE HOUSING TO THE CONDITIONALLY RELEASED COMMITTED DEFENDANT AGREES IN
33 WRITING TO THE FOLLOWING CONDITIONS:

34 (a) TO ACCEPT THE CONDITIONALLY RELEASED COMMITTED DEFENDANT.

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

36 (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE
37 CONDITIONALLY RELEASED COMMITTED DEFENDANT FROM THE HOUSING ARRANGEMENT TO
38 WHICH THE COMMITTED DEFENDANT HAS BEEN ASSIGNED.

39 4. THE COMMITTED DEFENDANT WILL COMPLY WITH THE PROVIDER AND ALL OF
40 THE REQUIREMENTS THAT ARE IMPOSED BY THE PROVIDER AND THE COURT.

41 5. THE COMMITTED DEFENDANT WILL COMPLY WITH THE SUPERVISION
42 REQUIREMENTS THAT ARE IMPOSED BY THE DEPARTMENT OF HEALTH SERVICES.

43 36-4007. Detention and commitment requirements; definition

44 A. A COMMITTED DEFENDANT DOES NOT FORFEIT ANY LEGAL RIGHT AND MAY
45 NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR

1 ORDERS MADE PURSUANT TO THIS ARTICLE EXCEPT AS SPECIFICALLY PROVIDED IN
2 THIS ARTICLE.

3 B. A COMMITTED DEFENDANT SHALL RECEIVE CARE, SUPERVISION OR
4 TREATMENT. THE SUPERINTENDENT SHALL KEEP RECORDS DETAILING ALL MEDICAL,
5 EXPERT AND PROFESSIONAL CARE AND TREATMENT THAT A COMMITTED DEFENDANT
6 RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS
7 THAT ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS AND REPORTS SHALL
8 BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

9 1. THE COMMITTED DEFENDANT.

10 2. THE COMMITTED DEFENDANT'S ATTORNEY.

11 3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.

12 4. THE COURT.

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

15 6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR
16 ASSOCIATED WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE
17 FOR THE CARE, CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED DEFENDANT.

18 C. AT THE TIME A COMMITTED DEFENDANT IS DETAINED OR TRANSFERRED
19 INTO A LICENSED FACILITY, THE PERSON IN CHARGE OF THE FACILITY OR THE
20 PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND
21 SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED COMMITTED
22 DEFENDANT. THE STAFF MEMBER WHO MAKES AN INVENTORY OF THE COMMITTED
23 DEFENDANT'S PERSONAL PROPERTY SHALL GIVE A SIGNED COPY OF THAT INVENTORY
24 TO THE COMMITTED DEFENDANT. THE FACILITY SHALL ALLOW A RESPONSIBLE
25 RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITS THAT THE COMMITTED
26 DEFENDANT SPECIFICALLY IMPOSES. THE FACILITY MAY NOT DISCLOSE THE
27 CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE
28 COMMITTED DEFENDANT OR A COURT ORDER.

29 D. THIS ARTICLE DOES NOT PROHIBIT A COMMITTED DEFENDANT FROM
30 EXERCISING ANY RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING
31 RELEASE FROM CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF
32 HABEAS CORPUS. THE COMMITTED DEFENDANT MUST EXHAUST ALL DIRECT APPEAL AND
33 POSTCOMMITMENT PROCEDURES BEFORE EXERCISING THE COMMITTED DEFENDANT'S
34 RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.

35 E. A COMMITTED DEFENDANT WHO IS INDIGENT MAY NOT BE CONDITIONALLY
36 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE
37 CLOTHING. WHEN A COMMITTED DEFENDANT IS CONDITIONALLY RELEASED TO A LESS
38 RESTRICTIVE ALTERNATIVE OR DISCHARGED, THE SUPERINTENDENT SHALL FURNISH
39 THE COMMITTED DEFENDANT WITH AN AMOUNT OF MONEY IN CONFORMANCE WITH
40 SECTION 31-228.

41 F. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS
42 THE SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE COMMITTED
43 DEFENDANT AND INCLUDES THE GUARDIAN, CONSERVATOR OR ATTORNEY OF THE
44 COMMITTED DEFENDANT.

1 LONGER DANGEROUS IF DISCHARGED BUT REMAINS INCOMPETENT TO STAND TRIAL, THE
2 SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED DEFENDANT TO PETITION
3 THE COURT FOR DISCHARGE. THE COMMITTED DEFENDANT SHALL SERVE THE PETITION
4 ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A
5 HEARING ON THE PETITION FOR DISCHARGE WITHIN FORTY-FIVE DAYS AFTER
6 RECEIVING THE PETITION.

7 B. THE COMMITTED DEFENDANT MAY BE PRESENT AT THE DISCHARGE
8 HEARING. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER
9 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED
10 DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY
11 SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE
12 COMMITTED DEFENDANT BE EXAMINED BY A COMPETENT PROFESSIONAL WHO IS
13 SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE
14 BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED
15 DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT
16 THE COMMITTED DEFENDANT REMAINS DANGEROUS. IF THE STATE DOES NOT MEET ITS
17 BURDEN OF PROOF, THE COMMITTED DEFENDANT SHALL BE DISCHARGED FROM
18 TREATMENT.

19 C. IF A COMMITTED DEFENDANT IS DISCHARGED, THE DEPARTMENT OF HEALTH
20 SERVICES SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE COMMITTED
21 DEFENDANT'S DISCHARGE SO THAT THE DEPARTMENT OF PUBLIC SAFETY MAY COMMENCE
22 ANY NOTIFICATION PROCESS UNDER SECTION 13-3825.

23 D. THIS SECTION DOES NOT PROHIBIT THE COMMITTED DEFENDANT FROM
24 ANNUALLY PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
25 SUPERINTENDENT OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE
26 DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL GIVE ANNUAL WRITTEN
27 NOTICE TO THE COMMITTED DEFENDANT OF THE COMMITTED DEFENDANT'S RIGHT TO
28 PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
29 SUPERINTENDENT OR DIRECTOR AND PROVIDE A COPY OF THAT WRITTEN NOTICE TO
30 ANY ATTORNEY WHO REPRESENTS THE COMMITTED DEFENDANT IN CONNECTION WITH
31 PROCEEDINGS UNDER THIS ARTICLE. THE NOTICE SHALL CONTAIN A WAIVER OF
32 RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH
33 THE ANNUAL EXAMINATION REPORT.

34 E. THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL SHALL ANNUALLY
35 REPORT THE FOLLOWING INFORMATION FOR THE PREVIOUS YEAR TO THE ARIZONA
36 CRIMINAL JUSTICE COMMISSION:

37 1. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE UNDER THE
38 JURISDICTION OF THE ARIZONA STATE HOSPITAL BECAUSE THE INDIVIDUAL IS
39 DANGEROUS, INCOMPETENT AND NONRESTORABLE.

40 2. THE NUMBER OF INDIVIDUALS WHO ARE COMMITTED DEFENDANTS AND
41 DANGEROUS AND WHO ARE RELEASED.

42 36-4010. Place for proceedings; transportation; immunity

43 A. A COMMITTED DEFENDANT MAY NOT BE TRANSPORTED FROM A LICENSED
44 FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT, EXCEPT THAT A

1 COMMITTED DEFENDANT MAY BE TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING
2 REASONS:

- 3 1. A HEARING ON A BIENNIAL EXAMINATION.
- 4 2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS
5 RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.
- 6 3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION
7 36-4009.
- 8 4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A COMMITTED
9 DEFENDANT IS NECESSARY.
- 10 5. ANY COURT PROCEEDING NOT OTHERWISE SPECIFIED IN THIS ARTICLE
11 WHERE THE PRESENCE OF THE COMMITTED DEFENDANT IS REQUIRED.

12 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY COMMITTED
13 DEFENDANT WHO THE COURT HAS DETERMINED IS SUBJECT TO DISCHARGE PURSUANT TO
14 SECTION 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

15 C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING
16 FROM BEING HELD ON THE GROUNDS OF THE STATE HOSPITAL OR FROM USING A
17 TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT
18 SHALL ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS
19 ARTICLE. THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY
20 INCLUDE PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF
21 THE 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
24 TRANSPORTING A COMMITTED DEFENDANT TO AND FROM A MEDICAL FACILITY. THE
25 DEPARTMENT SHALL DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND
26 LEVEL OF SECURITY AND RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE
27 COMMITTED DEFENDANT. IN DETERMINING THE APPROPRIATE MODE OF
28 TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE DEPARTMENT SHALL
29 CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING PERSONNEL AND THE
30 DETAINED OR COMMITTED DEFENDANT.

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

33 36-4011. Findings

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

37 Sec. 9. Retroactivity

38 This act applies retroactively to from and after December 31, 2020.