

Senate Engrossed House Bill

involuntary treatment; guardians; agents; rights

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2744

AN ACT

AMENDING TITLE 36, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 36-504.01; AMENDING SECTIONS 36-520, 36-523, 36-536 AND
36-540, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 36, chapter 5, article 2, Arizona Revised
3 Statutes, is amended by adding section 36-504.01, to read:

4 36-504.01. Guardians and agents; rights in proceedings

5 GUARDIANS AND AGENTS WHO HAVE DECISIONAL AUTHORITY TO MAKE PERSONAL,
6 MEDICAL AND TREATMENT DECISIONS FOR A PATIENT PURSUANT TO AN ORDER OF THE
7 COURT OR PURSUANT TO A VALIDLY EXECUTED MENTAL HEALTH POWER OF ATTORNEY IN
8 WHICH THE PRINCIPAL HAS BEEN FOUND INCAPABLE OF GIVING INFORMED CONSENT
9 HAVE THE FOLLOWING RIGHTS IN ANY PROCEEDINGS UNDER THIS ARTICLE REGARDING
10 INVOLUNTARY TREATMENT OF THE PATIENT:

11 1. TO BE NOTIFIED OF ANY PETITION FOR TREATMENT, MOTION FOR AMENDED
12 COURT ORDER, APPLICATION FOR CONTINUED COURT-ORDERED TREATMENT AND REQUEST
13 FOR JUDICIAL REVIEW.

14 2. IF ALLOWED BY THE COURT, TO PROVIDE THE COURT WITH THE
15 GUARDIAN'S OR AGENT'S POSITION REGARDING THE RELIEF BEING SOUGHT IN ANY OF
16 THE PROCEEDINGS SET FORTH IN PARAGRAPH 1 OF THIS SECTION AND TO PROVIDE
17 THE COURT WITH ANY RELEVANT INFORMATION TO HELP THE COURT MAKE A
18 DETERMINATION.

19 3. TO PROVIDE RELEVANT INFORMATION TO ANY AGENCY PROVIDING
20 INPATIENT OR OUTPATIENT SCREENING, EVALUATION OR TREATMENT TO THE PATIENT.

21 4. WHEN APPROPRIATE, TO PARTICIPATE IN TREATMENT AND DISCHARGE
22 PLANNING WITH THE INPATIENT OR OUTPATIENT TREATMENT PROVIDERS.

23 Sec. 2. Section 36-520, Arizona Revised Statutes, is amended to
24 read:

25 36-520. Application for evaluation; definition

26 A. Any responsible individual may apply for a court-ordered
27 evaluation of a person who is alleged to be, as a result of a mental
28 disorder, a danger to self or to others or a person with a persistent or
29 acute disability or a grave disability and who is unwilling or unable to
30 undergo a voluntary evaluation. The application shall be made in the
31 prescribed form and manner as adopted by the director.

32 B. The application for evaluation shall include the following data:

33 1. The name, and address if known, of the proposed patient for whom
34 evaluation is applied.

35 2. The age, date of birth, sex, race, marital status, occupation,
36 social security number, present location, dates and places of previous
37 hospitalizations, names and addresses of the guardian, spouse, next of kin
38 and significant other persons and other data that the director may require
39 on the form to whatever extent that this data is known and is applicable
40 to the proposed patient.

41 3. The name, address and relationship of the person who is applying
42 for the evaluation.

43 4. A statement that the proposed patient is believed to be, as a
44 result of a mental disorder, a danger to self or to others or a patient

1 with a persistent or acute disability or a grave disability and the facts
2 on which this statement is based.

3 5. A statement that the applicant believes the proposed patient is
4 in need of supervision, care and treatment and the facts on which this
5 statement is based.

6 C. The application shall be signed and notarized.

7 D. The screening agency shall offer assistance to the applicant in
8 preparation of the application. On receipt of the application, the
9 screening agency shall act as prescribed in section 36-521 within
10 forty-eight hours ~~of~~ AFTER the filing of the application, excluding
11 weekends and holidays. If the application is not acted ~~upon~~ ON within
12 forty-eight hours, the reasons for not acting promptly shall be reviewed
13 by the director of the screening agency or the director's designee.

14 E. If the applicant for the court-ordered evaluation presents the
15 person to be evaluated at the screening agency, the agency shall conduct a
16 prepetition screening examination. Except in the case of an emergency
17 evaluation, the person to be evaluated shall not be detained or forced to
18 undergo prepetition screening against the person's will.

19 F. If the applicant for the court-ordered evaluation does not
20 present the person to be evaluated at the screening agency, the agency
21 shall conduct the prepetition screening at the home of the person to be
22 evaluated or any other place the person to be evaluated is found. If
23 prepetition screening is not possible, the screening agency shall proceed
24 as PRESCRIBED in section 36-521, subsection B.

25 G. If a person is being treated by prayer or spiritual means alone
26 in accordance with the tenets and practices of a recognized church or
27 religious denomination by a duly accredited practitioner of that church or
28 denomination, ~~such~~ THE person may not be ordered evaluated, detained or
29 involuntarily treated unless the court has determined that the person is,
30 as a result of mental disorder, a danger to others or to self.

31 H. Court-ordered evaluation or treatment pursuant to this chapter
32 does not operate to change the legal residence of a patient.

33 I. If the application is not acted on because it has been
34 determined that the proposed patient does not need an evaluation, the
35 agency after a period of six months shall destroy the application and any
36 other evidence of the application.

37 J. IF THE SCREENING AGENCY DETERMINES THAT THE APPLICATION SHOULD
38 BE DENIED OR IF THE APPLICATION IS ACCEPTED BUT THE SCREENING AGENCY
39 DECLINES TO FILE A PETITION FOR COURT-ORDERED EVALUATION, THE SCREENING
40 AGENCY SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 36-521,
41 SUBSECTION C. IF THE SCREENING OF THE PROPOSED PATIENT TOOK PLACE IN A
42 FACILITY OPERATED BY THE SCREENING AGENCY, THE SCREENING AGENCY SHALL
43 ATTEMPT TO NOTIFY THE APPLICANT THAT THE SCREENING AGENCY INTENDS TO
44 RELEASE THE PROPOSED PATIENT. THE SCREENING AGENCY SHALL DOCUMENT THE
45 TIME AND METHOD OF THE NOTIFICATION OR AN UNSUCCESSFUL ATTEMPT TO NOTIFY

1 THE APPLICANT. IF REQUESTED BY THE APPLICANT, THE MEDICAL DIRECTOR OF THE
2 SCREENING AGENCY OR THE MEDICAL DIRECTOR'S DESIGNEE SHALL PROVIDE THE
3 REASON FOR THE DENIAL OF THE APPLICATION OR THE DECISION NOT TO FILE A
4 PETITION FOR COURT-ORDERED EVALUATION IF EITHER:

- 5 1. THE DISCLOSURE IS NOT OPPOSED BY THE PERSON WHO WAS SCREENED.
- 6 2. THE PERSON WHO WAS SCREENED IS DEEMED TO LACK CAPACITY TO MAKE
7 THE DECISION TO ALLOW THE DISCLOSURE AND THE DISCLOSURE IS DEEMED TO BE IN
8 THE PERSON'S BEST INTEREST.

9 ~~+~~ K. For the purposes of this section, "person" includes a person
10 who:

- 11 1. Is under eighteen years of age.
- 12 2. Has been transferred to the criminal division of the superior
13 court pursuant to section 8-327 or who has been charged with an offense
14 pursuant to section 13-501.
- 15 3. Is under the supervision of an adult probation department.

16 Sec. 3. Section 36-523, Arizona Revised Statutes, is amended to
17 read:

18 36-523. Petition for evaluation

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

- 20 1. The name, address and interest in the case of the individual who
21 applied for the petition.
- 22 2. The name, and address if known, of the proposed patient for whom
23 evaluation is petitioned.
- 24 3. The present whereabouts of the proposed patient, if known.
- 25 4. A statement alleging that there is reasonable cause to believe
26 that the proposed patient has a mental disorder and is as a result a
27 danger to self or others, has a persistent or acute disability or a grave
28 disability and is unwilling or unable to undergo voluntary evaluation.
- 29 5. A summary of the facts that support the allegations that the
30 proposed patient is dangerous, has a persistent or acute disability or a
31 grave disability and is unwilling or unable to be voluntarily evaluated,
32 including the facts that brought the proposed patient to the screening
33 agency's attention.
- 34 6. If the petition is filed by a prosecutor pursuant to section
35 13-4517, any known criminal history of the proposed patient, including
36 whether the proposed patient has ever been found incompetent to stand
37 trial pursuant to section 13-4510.
- 38 7. A statement of any facts and circumstances that lead the
39 petitioner to believe that the proposed patient may be safely transported
40 to the evaluation agency by an authorized transporter, if available in the
41 jurisdiction, without the assistance of a peace officer.
- 42 8. Other information that the director by rule or the court by rule
43 or order may require.

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

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

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

13 C. **FOR A PETITION FILED PURSUANT TO SECTIONS 36-520 AND 36-521:**

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

21 ~~D.~~ 2. ~~A~~ THE petition and other forms required in a court may be
22 filed only by the screening agency that has prepared the petition.

23 ~~E.~~ 3. If the petition is not filed because it has been determined
24 that the person does not need an evaluation, the agency after a period of
25 six months shall destroy the petition and the various reports annexed to
26 the petition as required by this section.

27 ~~F.~~ 4. If the petition is not filed because it has been determined
28 that the person does not need an evaluation and a prosecutor filed a
29 petition pursuant to section 13-4517, the person shall be remanded for a
30 disposition pursuant to section 13-4517. If the person is out of custody,
31 the court may order that the person be taken into custody for a
32 disposition pursuant to this section.

33 Sec. 4. Section 36-536, Arizona Revised Statutes, is amended to
34 read:

35 36-536. Service of petition, affidavit and notice of hearing;
36 counsel for proposed patient; notice; personal
37 service; guardian

38 A. At least seventy-two hours before the court conducts the hearing
39 on the petition for court-ordered treatment, a copy of the petition,
40 affidavits in support of the petition and the notice of the hearing shall
41 be served on the patient, who shall be informed of the purpose of the
42 hearing and advised of the patient's right to consult counsel. If the
43 patient has not employed counsel, counsel shall be appointed by the court
44 at least three days before the hearing. If at the time of the petition
45 for evaluation the patient had counsel, the same attorney should, if

1 possible, be appointed to represent the patient at the hearing for
2 court-ordered treatment.

3 B. The notice provisions of this section cannot be waived.

4 C. The notice of the hearing shall fix the time and place for the
5 hearing, which shall be held in the courtroom or other place within the
6 county that the court designates to ensure humane treatment with due
7 regard to the comfort and safety of the patient and others.

8 D. A copy of the petition, affidavits in support of the petition
9 and notice of hearing shall be personally served on the proposed patient
10 as prescribed by law or court rule or as ordered by the court.

11 E. THE PETITIONER SHALL SERVE A COPY OF THE PETITION, AFFIDAVITS IN
12 SUPPORT OF THE PETITION AND THE NOTICE OF THE HEARING ON ANY GUARDIAN
13 IDENTIFIED IN THE PETITION. IN LIEU OF PERSONAL SERVICE, A GUARDIAN MAY
14 PROVIDE A WRITTEN ACKNOWLEDGMENT THAT THE GUARDIAN HAS RECEIVED THE
15 DOCUMENTS. THE PETITIONER SHALL COMPLETE SERVICE ON THE GUARDIAN AT LEAST
16 TWO CALENDAR DAYS BEFORE THE HEARING ON THE PETITION, BUT FAILURE TO SERVE
17 THE GUARDIAN IS NOT GROUNDS FOR DISMISSING THE PETITION.

18 Sec. 5. Section 36-540, Arizona Revised Statutes, is amended to
19 read:

20 36-540. Court options; immunity; rules

21 A. If the court finds by clear and convincing evidence that the
22 proposed patient, as a result of mental disorder, is a danger to self, is
23 a danger to others or has a persistent or acute disability or a grave
24 disability and is in need of treatment, and is either unwilling or unable
25 to accept voluntary treatment, the court shall order the patient to
26 undergo one of the following:

27 1. Treatment in a program of outpatient treatment.

28 2. Treatment in a program consisting of combined inpatient and
29 outpatient treatment.

30 3. Inpatient treatment in a mental health treatment agency, in a
31 hospital operated by or under contract with the United States department
32 of veterans affairs to provide treatment to eligible veterans pursuant to
33 article 9 of this chapter, in the state hospital or in a private hospital,
34 if the private hospital agrees, subject to the limitations of section
35 36-541.

36 B. The court shall consider all available and appropriate
37 alternatives for the treatment and care of the patient. The court shall
38 order the least restrictive treatment alternative available.

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

42 1. Determines that all of the following apply:

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

1 (b) The patient will be more appropriately treated in an outpatient
2 treatment program or in a combined inpatient and outpatient treatment
3 program.

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

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

8 2. Is presented with and approves a written treatment plan that
9 conforms with the requirements of section 36-540.01, subsection B. If the
10 court determines that the patient meets the requirements of section
11 36-550.09, the court may order the patient to be placed in a secure
12 behavioral health residential facility that is licensed by the department
13 pursuant to section 36-425.06. If the treatment plan presented to the
14 court pursuant to this subsection provides for supervision of the patient
15 under court order by a mental health agency that is other than the mental
16 health agency that petitioned or requested the county attorney to petition
17 the court for treatment pursuant to section 36-531, the treatment plan
18 must be approved by the medical director of the mental health agency that
19 will supervise the treatment pursuant to subsection E of this section.

20 D. An order to receive treatment pursuant to subsection A,
21 paragraph 1 or 2 of this section shall not exceed three hundred sixty-five
22 days. The period of inpatient treatment under a combined treatment order
23 pursuant to subsection A, paragraph 2 of this section shall not exceed the
24 maximum period allowed for an order for inpatient treatment pursuant to
25 subsection F of this section.

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

29 1. The court shall designate the medical director of the mental
30 health treatment agency that will supervise and administer the patient's
31 treatment program.

32 2. The medical director shall not use the services of any person,
33 agency or organization to supervise a patient's outpatient treatment
34 program unless the person, agency or organization has agreed to provide
35 these services in the individual patient's case and unless the department
36 has determined that the person, agency or organization is capable and
37 competent to do so.

38 3. The person, agency or organization assigned to supervise an
39 outpatient treatment program or the outpatient portion of a combined
40 treatment program shall be notified at least three days before a referral.
41 The medical director making the referral and the person, agency or
42 organization assigned to supervise the treatment program shall share
43 relevant information about the patient to provide continuity of treatment.

44 4. The court may order the medical director to provide notice to
45 the court of any noncompliance with the terms of a treatment order.

1 5. During any period of outpatient treatment under subsection A,
2 paragraph 2 of this section, if the court, on its own motion, **ON REQUEST**
3 **OF A GUARDIAN PURSUANT TO PARAGRAPH 7 OF THIS SUBSECTION** or on motion by
4 the medical director of the patient's outpatient mental health treatment
5 facility, determines that the patient is not complying with the terms of
6 the order or that the outpatient treatment plan is no longer appropriate
7 and the patient needs inpatient treatment, the court, without a hearing
8 and based on the court record, the patient's medical record, the
9 affidavits and recommendations of the medical director, and the advice of
10 staff and physicians or the psychiatric and mental health nurse
11 practitioner familiar with the treatment of the patient, may enter an
12 order amending its original order. The amended order may alter the
13 outpatient treatment plan or order the patient to inpatient treatment
14 pursuant to subsection A, paragraph 3 of this section. The amended order
15 shall not increase the total period of commitment originally ordered by
16 the court or, when added to the period of inpatient treatment provided by
17 the original order and any other amended orders, exceed the maximum period
18 allowed for an order for inpatient treatment pursuant to subsection F of
19 this section. If the patient refuses to comply with an amended order for
20 inpatient treatment, the court, on its own motion or on the request of the
21 medical director, may authorize and direct a peace officer to take the
22 patient into protective custody and transport the patient to the agency
23 for inpatient treatment. Any authorization, directive or order issued to
24 a peace officer to take the patient into protective custody shall include
25 the patient's criminal history and the name and telephone numbers of the
26 patient's case manager, guardian, spouse, next of kin or significant
27 other, as applicable. When reporting to or being returned to a treatment
28 agency for inpatient treatment pursuant to an amended order, the patient
29 shall be informed of the patient's right to judicial review and the
30 patient's right to consult with counsel pursuant to section 36-546.

31 6. During any period of outpatient treatment under subsection A,
32 paragraph 2 of this section, if the medical director of the outpatient
33 treatment facility in charge of the patient's care determines, in concert
34 with the medical director of an inpatient mental health treatment facility
35 who has agreed to accept the patient, that the patient is in need of
36 immediate acute inpatient psychiatric care because of behavior that is
37 dangerous to self or to others, the medical director of the outpatient
38 treatment facility may order a peace officer to apprehend and transport
39 the patient to the inpatient treatment facility pending a court
40 determination on an amended order under paragraph 5 of this subsection.
41 The patient may be detained and treated at the inpatient treatment
42 facility for a period of not more than forty-eight hours, exclusive of
43 weekends and holidays, from the time that the patient is taken to the
44 inpatient treatment facility. The medical director of the outpatient
45 treatment facility shall file the motion for an amended court order

1 requesting inpatient treatment not later than the next working day
2 following the patient being taken to the inpatient treatment facility.
3 Any period of detention within the inpatient treatment facility pending
4 issuance of an amended order shall not increase the total period of
5 commitment originally ordered by the court or, when added to the period of
6 inpatient treatment provided by the original order and any other amended
7 orders, exceed the maximum period allowed for an order for inpatient
8 treatment pursuant to subsection F of this section. If a patient is
9 ordered to undergo inpatient treatment pursuant to an amended order, the
10 medical director of the outpatient treatment facility shall inform the
11 patient of the patient's right to judicial review and to consult with an
12 attorney pursuant to section 36-546.

13 7. IF THERE IS A COURT ORDER FOR TREATMENT AND A GUARDIANSHIP WITH
14 ADDITIONAL MENTAL HEALTH AUTHORITY PURSUANT TO SECTION 14-5312.01 EXISTING
15 AT THE SAME TIME, THE TREATMENT AND PLACEMENT DECISIONS MADE BY THE
16 TREATMENT AGENCY ASSIGNED BY THE COURT TO SUPERVISE AND ADMINISTER THE
17 PATIENT'S TREATMENT PROGRAM PURSUANT TO THE COURT ORDER FOR TREATMENT ARE
18 CONTROLLING UNLESS THE COURT ORDERS OTHERWISE. DURING ANY PERIOD OF
19 OUTPATIENT TREATMENT, THE GUARDIAN OF A PATIENT MAY FILE A REPORT WITH THE
20 COURT THAT ADDRESSES WHETHER THE PATIENT IS COMPLYING WITH THE TERMS OF
21 THE ORDER, WHETHER THE OUTPATIENT TREATMENT PLAN IS STILL APPROPRIATE AND
22 WHETHER THE PATIENT NEEDS INPATIENT TREATMENT. THE REPORT SHALL STATE IN
23 DETAIL THE FACTS ON WHICH THE GUARDIAN RELIES AND MAY INCLUDE OTHER
24 SUPPORTING DOCUMENTS. A COPY OF THE REPORT AND OTHER SUPPORTING DOCUMENTS
25 SHALL BE GIVEN TO THE PATIENT'S ATTORNEY AND THE OUTPATIENT TREATMENT
26 AGENCY. AFTER REVIEWING THE REPORT AND ANY SUPPORTING DOCUMENTS FILED
27 WITH THE REPORT, IF THE COURT DETERMINES THAT THERE IS REASONABLE CAUSE TO
28 BELIEVE THAT THE PATIENT IS NOT COMPLYING WITH THE TERMS OF THE ORDER,
29 THAT THE OUTPATIENT TREATMENT PLAN IS NO LONGER APPROPRIATE OR THAT THE
30 PATIENT NEEDS INPATIENT TREATMENT, THE COURT MUST SET A CONFERENCE OR A
31 HEARING OR TAKE OTHER ACTION DESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION.

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

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

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

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

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

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

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

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

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

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

1 section 14-5309, subsection A or section 14-5405, subsection A. The court
2 shall authorize certified letters of temporary emergency guardianship or
3 conservatorship to be issued on presentation of a copy of the court's
4 order. If a temporary emergency conservator other than the public
5 fiduciary is appointed pursuant to this subsection, the court shall order
6 that the use of the monies and property of the patient by the conservator
7 be restricted and not be sold, used, transferred or encumbered, except
8 that the court may authorize the conservator to use monies or property of
9 the patient specifically identified as needed to pay an expense to provide
10 for the care, treatment or welfare of the patient pending further hearing.
11 This subsection and subsection H of this section do not:

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

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

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

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

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

1 M. The medical director or any person, agency or organization used
2 by the medical director to supervise the terms of an outpatient treatment
3 plan is not civilly liable for any acts committed by a patient while on
4 outpatient treatment if the medical director, person, agency or
5 organization has in good faith followed the requirements of this section.

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

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

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

26 Q. If the court does not find a person to be in need of treatment
27 and a prosecutor filed a petition pursuant to section 13-4517, the
28 evaluation agency, within twenty-four hours, shall notify the prosecuting
29 agency of its finding. The court shall order the medical director to
30 detain the person for an additional twenty-four hours to allow the
31 prosecuting agency to be notified. If the court has retained jurisdiction
32 pursuant to section 13-4517, subsection C, the court may remand the person
33 to the custody of the sheriff for further disposition pursuant to section
34 13-4517, subsection A, paragraph 2 or 3.

35 R. After an order for treatment has been issued pursuant to this
36 section, the superior court in a county where a patient under a court
37 order for treatment is found or resides has concurrent jurisdiction with
38 the court in the county that issued the court order for treatment for the
39 purposes of enforcing the court order for treatment, ordering changes to
40 the treatment plan or amending the order to require the patient to undergo
41 further inpatient treatment. If the court in which proceedings are
42 commenced to enforce or administer the order for treatment is not the
43 court that originally entered the order for treatment, unless prevented by
44 an emergency, the court in which the proceedings are pending shall consult
45 with the court of original entry and determine whether to hold hearings

1 and enter orders to facilitate enforcement or administration of the court
2 order, whether to refer the case back to the court of original entry for
3 further proceedings or whether to transfer the entire case to the court of
4 original entry in that county for all further proceedings. The supreme
5 court may adopt rules to govern the procedures to be used in enforcing and
6 administering court orders for treatment in the various counties of this
7 state and the transfer of cases between counties involving court orders
8 for treatment.

9 S. Pursuant to the authority granted in subsection R of this
10 section, for the purpose of enforcing or facilitating treatment of a
11 patient under an active order for treatment, the supreme court shall adopt
12 a rule to establish a program to enable the judges of the superior court,
13 county attorneys, patients' attorneys, health care institutions as defined
14 in section 36-401 that provide services subject to the ~~federal~~ emergency
15 medical treatment and ~~active~~ labor act (42 UNITED STATES CODE SECTION
16 1395dd), the regional behavioral health authority and behavioral health
17 service providers in any county to determine the existence of an active
18 court order for treatment and the history of court orders for treatment
19 entered for a patient by a superior court in any county in this state.
20 The program shall ensure that the information shared with other persons or
21 entities is necessary only for the purposes stated in this subsection and
22 shall require that the information shared be maintained as confidential by
23 the receiving person or entity.