

REFERENCE TITLE: mental illness; prisoners; diagnosis; treatment.

State of Arizona
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HB 2673

Introduced by
Representatives Hernandez C: Aguilar, Biasiucci, Hernandez A, Hernandez L,
Luna-Nájera, Márquez, Volk

AN ACT

AMENDING SECTIONS 31-126 AND 31-226, ARIZONA REVISED STATUTES; AMENDING
TITLE 31, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING
SECTION 31-226.02; AMENDING SECTION 36-521, ARIZONA REVISED STATUTES;
RELATING TO INCARCERATED PERSONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 31-126, Arizona Revised Statutes, is amended to
3 read:

4 31-126. Examination; county prisoners; mental disorders;
5 definition

6 A. When a person WHO IS confined in the county jail ~~upon~~ ON THE
7 PERSON'S arrest for or conviction of a ~~misdemeanor~~ CRIME manifests
8 symptoms of a mental disorder, the sheriff shall ~~notify~~ CAUSE THE PERSON
9 TO BE EXAMINED WITHIN TWENTY-FOUR HOURS BY a licensed physician ~~who shall~~
10 ~~examine the person~~. If in the judgment of ~~a~~ THE licensed physician the
11 person is suffering from a mental disorder, ~~proceedings shall be taken~~ AND
12 AS A RESULT OF THE MENTAL DISORDER IS A DANGER TO SELF, A DANGER TO OTHERS
13 OR HAS A PERSISTENT OR ACUTE DISABILITY OR GRAVE DISABILITY, THE SHERIFF
14 SHALL FILE A PETITION FOR EVALUATION as prescribed by title 36, chapter 5.
15 IF THE PETITION FOR EVALUATION IS GRANTED, THE SHERIFF SHALL TRANSPORT THE
16 PRISONER TO THE APPROPRIATE EVALUATION AGENCY. The proceedings under
17 title 36, chapter 5, ~~shall~~ shall be separate from court proceedings relating to
18 the ~~misdemeanor charge~~ CRIMINAL CHARGE AGAINST THE PERSON.

19 B. ON ADMISSION TO THE COUNTY JAIL, A PERSON SHALL BE SCREENED TO
20 DETERMINE WHETHER THE PERSON HAS BEEN DIAGNOSED WITH A MENTAL ILLNESS AND
21 HAS BEEN RECEIVING TREATMENT FOR THE ILLNESS AND WHETHER THE PERSON HAS
22 BEEN DESIGNATED AS SERIOUSLY MENTALLY ILL. IF A PRIOR DIAGNOSIS OF MENTAL
23 ILLNESS HAS BEEN MADE, THE SHERIFF SHALL DETERMINE WHAT, IF ANY, TREATMENT
24 WAS BEING PROVIDED TO THE PRISONER BEFORE CONFINEMENT IN THE COUNTY JAIL,
25 INCLUDING SPECIFICALLY WHAT MEDICATIONS THE PRISONER WAS TAKING, AND SHALL
26 TAKE IMMEDIATE STEPS TO ENSURE THAT THE PRISONER CONTINUES TO RECEIVE
27 PRESCRIBED MEDICATIONS UNINTERRUPTED WITHIN TWENTY-FOUR HOURS AFTER
28 ARRIVING IN THE COUNTY JAIL AND, TO THE EXTENT PRACTICABLE, THAT OTHER
29 TREATMENTS CONTINUE UNINTERRUPTED WHILE THE PRISONER IS IN THE COUNTY
30 JAIL.

31 C. IF A PRISONER HAS PREVIOUSLY BEEN DIAGNOSED WITH A MENTAL
32 ILLNESS OR IS DISCOVERED TO HAVE A MENTAL ILLNESS ON EXAMINATION BY A
33 LICENSED PHYSICIAN BUT HAS NOT BEEN DESIGNATED AS SERIOUSLY MENTALLY ILL,
34 THE SHERIFF SHALL SUBMIT A REQUEST FOR A SERIOUS MENTAL ILLNESS
35 DETERMINATION FROM THE APPROPRIATE REGIONAL BEHAVIORAL HEALTH AUTHORITY OR
36 THE STATE DEPARTMENT OF CORRECTIONS, AS APPROPRIATE, WITHIN SEVEN DAYS
37 AFTER RECEIVING THE DIAGNOSIS. THE SHERIFF SHALL PROVIDE THE SERIOUS
38 MENTAL ILLNESS EVALUATION AGENCY WITH ALL AVAILABLE MEDICAL AND
39 PSYCHIATRIC EVALUATIONS AND REPORTS SO THAT AN ACCURATE SERIOUS MENTAL
40 ILLNESS DETERMINATION CAN BE MADE.

41 D. FOR THE PURPOSES OF THIS SECTION, "LICENSED PHYSICIAN" HAS THE
42 SAME MEANING PRESCRIBED IN SECTION 36-501.

1 Sec. 2. Section 31-226, Arizona Revised Statutes, is amended to
2 read:

3 31-226. Prisoners; mental disorders; procedure for voluntary
4 or involuntary hospitalization; notice; hearing;
5 transfer; reports; return to incarceration or
6 release; costs; definition

7 A. ~~if~~ WITHIN SEVENTY-TWO HOURS AFTER a prisoner WHO IS confined in
8 any facility operated by the state department of corrections displays
9 symptoms of mental disorder to such a degree that transfer to the state
10 hospital or a licensed behavioral health or mental health inpatient
11 treatment facility operated by the state department of corrections is
12 necessary to ensure adequate treatment, the psychiatrist of the facility,
13 or if no psychiatrist is available, the physician at the facility, shall
14 examine the prisoner and make a written report of the psychiatrist's or
15 physician's recommendations to the director of the state department of
16 corrections. On receipt of a report that states that the psychiatrist or
17 physician finds that the symptoms described in this subsection exist, the
18 director of the state department of corrections may allow the prisoner to
19 voluntarily transfer to a licensed behavioral health or mental health
20 inpatient treatment facility operated by the state department of
21 corrections if the prisoner is an adult male, to the state hospital or a
22 licensed behavioral health treatment facility operated by the state
23 department of corrections if the prisoner is a female or to the state
24 hospital if the prisoner is a minor. If the patient does not voluntarily
25 transfer, the director shall file a petition with the superior court in
26 the county in which the prisoner is incarcerated for transfer for
27 treatment of the prisoner to the state hospital or a licensed behavioral
28 health treatment facility operated by the state department of corrections
29 if the prisoner is a female, to a licensed behavioral health or mental
30 health inpatient treatment facility operated by the state department of
31 corrections if the prisoner is an adult male or to the state hospital if
32 the prisoner is a minor.

33 B. At least ten days before the court conducts the hearing on the
34 petition for transfer, the state department of corrections shall provide a
35 copy of the petition and written notice of the hearing to the prisoner and
36 written notice of the prisoner's rights at the hearing.

37 C. At least five days before the hearing, if the prisoner has not
38 employed counsel, the court shall appoint counsel or an independent
39 advisor to represent the prisoner at the hearing. On application by the
40 prisoner the court shall also determine the necessity for any expert
41 testimony by medical witnesses and authorize any necessary appointment and
42 compensation for these witnesses at the state's expense. Notice shall be
43 given to the state hospital if the prisoner is a female or a minor, and
44 the state hospital shall be provided with an opportunity to participate in
45 the hearing as an interested party, if it so desires.

1 D. At the hearing, the prisoner or the prisoner's representative
2 may call witnesses to testify and may confront and cross-examine witnesses
3 called by the state department of corrections except on a finding of good
4 cause for not ~~permitting~~ ALLOWING such presentation, confrontation or
5 cross-examination.

6 E. If the prisoner is determined to be suffering from a mental
7 disorder to such a degree that transfer to the state hospital or a
8 licensed behavioral health or mental health inpatient treatment facility
9 operated by the state department of corrections is necessary to ensure
10 adequate treatment, the court shall order and direct that the prisoner be
11 transferred for treatment to the state hospital in the legal custody of
12 the state department of corrections or a licensed behavioral health
13 treatment facility operated by the state department of corrections if the
14 prisoner is a female, to a licensed behavioral health or mental health
15 inpatient treatment facility operated by the state department of
16 corrections if the prisoner is an adult male or to the state hospital if
17 the prisoner is a minor. The transfer of the prisoner to the state
18 hospital shall be made by the state department of corrections. The court
19 order must be in writing and state the evidence relied on and the reasons
20 for transferring the prisoner.

21 F. The superintendent of the state hospital shall provide the state
22 department of corrections with a quarterly report of the condition of a
23 prisoner WHO IS transferred to the state hospital. The superintendent of
24 the state hospital and the director of the state department of corrections
25 shall also provide the superior court in the county ~~which~~ THAT has
26 jurisdiction over the transfer proceeding with a quarterly report of the
27 condition of the prisoner.

28 G. If, in the opinion of the superintendent of the state hospital
29 or the director of the state department of corrections, the prisoner no
30 longer suffers from a mental disorder such that placement in the state
31 hospital or the licensed behavioral health or mental health inpatient
32 treatment facility operated by the state department of corrections is
33 necessary to ensure adequate treatment, the superintendent of the state
34 hospital or the director of the state department of corrections shall
35 order the prisoner to a licensed behavioral health treatment facility
36 operated by the state department of corrections or returned to a prison
37 facility to serve the prisoner's unexpired term, and the period the
38 prisoner was confined in the state hospital or the behavioral health or
39 mental health treatment agency shall be considered as though incarcerated
40 in a state department of corrections facility. If the term of
41 imprisonment expires during the time the prisoner is confined in the state
42 hospital or the behavioral health or mental health inpatient treatment
43 facility, the director of the state department of corrections shall issue
44 to the prisoner an absolute discharge at that time, and the prisoner's

1 rights to release from the hospital are as provided in title 36,
2 chapter 5.

3 H. A PETITION FOR court-ordered evaluation ~~may~~ SHALL be ~~made~~ FILED
4 in accordance with title 36, chapter 5, article 4 if, within one hundred
5 twenty days of the prisoner's scheduled release from prison or during any
6 time that the prisoner is on release status, the prisoner appears to be,
7 as a result of a mental disorder, a danger to self or A DANGER to others,
8 ~~or is a prisoner with a grave disability~~ OR HAS A PERSISTENT OR ACUTE
9 DISABILITY OR GRAVE DISABILITY, and is EITHER UNABLE OR unwilling to
10 undergo a voluntary evaluation. For the purposes of this section, an
11 inpatient mental health treatment facility operated by the state
12 department of corrections is authorized to act as a screening agency. If
13 the court orders inpatient evaluation, ~~the order shall take effect on the~~
14 ~~day of the prisoner's scheduled release;~~ THE EVALUATION SHALL TAKE PLACE
15 WITHIN SEVENTY-TWO HOURS WITHIN THE STATE DEPARTMENT OF CORRECTIONS or, if
16 the prisoner is on release status, ~~on a date determined by the court,~~ and
17 the state department of corrections shall ~~deliver~~ TRANSPORT the prisoner
18 to the evaluation agency. THE EVALUATION MUST TAKE PLACE IN A LOCATION
19 THAT PROVIDES CONFIDENTIAL COMMUNICATION AND BE DONE BY A BEHAVIORAL
20 HEALTH PROFESSIONAL WHO IS QUALIFIED TO MAKE THE EVALUATION. Thereafter,
21 all further evaluation and treatment shall be in accordance with the
22 provisions of title 36, chapter 5, ~~as they~~ THAT pertain to civil patients.

23 I. The state department of corrections shall pay all costs incurred
24 for the prisoner during the term of the prisoner's sentence.

25 J. The county in which the court is located shall be reimbursed for
26 expenses of the proceedings incurred by the county in accordance with
27 section 31-227.

28 K. ~~As used in~~ FOR THE PURPOSES OF this section, "mental disorder"
29 has the same meaning prescribed in section 36-501.

30 Sec. 3. Title 31, chapter 2, article 2, Arizona Revised Statutes,
31 is amended by adding section 31-226.02, to read:

32 31-226.02. Prisoners; mental disorders; procedures for
33 custody transfer; treatment plan; definition

34 A. FOR ANY PRISONER WHO HAS BEEN DIAGNOSED WITH A MENTAL DISORDER
35 OR WHO IS MANIFESTING THE SYMPTOMS OF A MENTAL DISORDER, ON CONVICTION FOR
36 A CRIME THAT REQUIRES SERVING A SENTENCE IN A FACILITY UNDER THE
37 JURISDICTION OF THE DEPARTMENT, BEFORE THE PRISONER IS DELIVERED INTO THE
38 CUSTODY OF THE DEPARTMENT, THE MEDICAL DIRECTOR OF THE DEPARTMENT SHALL
39 ENSURE THAT ALL OF THE FOLLOWING OCCUR:

40 1. THE PRISONER IS EVALUATED BY A PSYCHIATRIST TO DETERMINE WHETHER
41 THE PRISONER SUFFERS OR CONTINUES TO SUFFER FROM A MENTAL DISORDER AND TO
42 DETERMINE A WRITTEN TREATMENT PLAN FOR THE PRISONER WHILE INCARCERATED
43 UNDER THE DEPARTMENT'S JURISDICTION. THE TREATMENT PLAN SHALL INCLUDE, AT
44 A MINIMUM:

1 (a) THE IDENTIFICATION OF ANY MEDICATIONS THE PRISONER IS CURRENTLY
2 PRESCRIBED OR SHOULD BE PRESCRIBED TO STABILIZE OR IMPROVE THE MENTAL
3 DISORDER AND WHETHER THE MEDICATIONS NEED TO BE ADMINISTERED UNDER CERTAIN
4 CONDITIONS OR REQUIREMENTS, SUCH AS A "WATCH SWALLOW" INSTRUCTION OR BY
5 INJECTION, TO ENSURE ADHERENCE TO THE TREATMENT REGIMEN.

6 (b) THE IDENTIFICATION OF ANY OTHER CHRONIC MEDICAL CONDITION,
7 INCLUDING DIABETES, EPILEPSY OR CARDIOVASCULAR DISORDER, AND ANY
8 MEDICATION NECESSARY TO ADDRESS ANY CHRONIC MEDICAL CONDITION.

9 (c) AN ASSESSMENT OF THE APPROPRIATE PLACEMENT FOR THE PRISONER IN
10 THE DEPARTMENT'S SYSTEM, INCLUDING THE NEED TO BE SEPARATED FROM THE
11 GENERAL PRISON POPULATION IN ORDER TO AVOID HARM TO THE PRISONER, OTHER
12 PRISONERS OR STAFF.

13 (d) ANY OTHER PROVISIONS THAT THE MEDICAL DIRECTOR OR THE COURT
14 BELIEVES ARE NECESSARY TO ADEQUATELY ADDRESS THE PRISONER'S MENTAL
15 DISORDER OR TO PROTECT THE WELL-BEING OF THE PRISONER AND OTHER PERSONS
16 WHILE THE PRISONER IS INCARCERATED.

17 2. THE PRISONER IS EVALUATED FOR A DETERMINATION OF A SERIOUS
18 MENTAL ILLNESS DESIGNATION AND ENTITLEMENT TO ADDITIONAL BENEFITS THAT
19 COME WITH THIS DESIGNATION.

20 3. THE WRITTEN TREATMENT PLAN IS APPROVED BY THE COURT AND
21 ACCOMPANIES THE PRISONER WHEN TRANSFERRED TO THE DEPARTMENT TO BEGIN
22 SERVING A SENTENCE PURSUANT TO AN ORDER OF THE COURT.

23 B. ON TRANSFER TO THE DEPARTMENT TO BEGIN SERVING A SENTENCE OF
24 INCARCERATION, THE MEDICAL DIRECTOR OF THE DEPARTMENT SHALL IDENTIFY THE
25 PRISONER IN SOME EASILY RECOGNIZABLE MANNER INDICATING THAT THE PRISONER
26 HAS BEEN IDENTIFIED AS A PRISONER NEEDING PARTICULAR ATTENTION BECAUSE OF
27 A MEDICAL, MENTAL HEALTH OR SUPERVISION NEED.

28 C. DURING THE PRISONER'S TERM OF INCARCERATION:

29 1. THE WRITTEN TREATMENT PLAN SHALL BE MANAGED AND AMENDED, WHEN
30 NECESSARY, IN ACCORDANCE WITH BEST EVIDENCE-BASED PRACTICES IN ORDER TO
31 STABILIZE OR IMPROVE THE PRISONER'S MEDICAL OR MENTAL HEALTH CONDITIONS.

32 2. THE DEPARTMENT SHALL GIVE THE PRISONER'S MEDICAL RECORDS,
33 INCLUDING MENTAL HEALTH RECORDS, TO THE PRISONER'S GUARDIAN OR DESIGNEE IF
34 THE PRISONER HAS A GUARDIAN OR DESIGNATES A PERSON TO ACCESS THE RECORDS.

35 D. FOR THE PURPOSES OF THIS SECTION, "MENTAL DISORDER" HAS THE SAME
36 MEANING PRESCRIBED IN SECTION 36-501.

37 Sec. 4. Section 36-521, Arizona Revised Statutes, is amended to
38 read:

39 36-521. Petition for court-ordered evaluation; preparation
40 procedures for prepetition screening

41 A. On receiving the application for evaluation, the screening
42 agency, before filing a petition for court-ordered evaluation, shall
43 provide prepetition screening within forty-eight hours excluding weekends
44 and holidays when possible to determine whether there is reasonable cause
45 to believe the person has a persistent or acute disability or a grave

1 disability or is a danger to self or others as a result of a mental
2 disorder, and whether the person will voluntarily receive evaluation at a
3 scheduled time and place.

4 B. After prepetition screening has been completed, the screening
5 agency shall prepare a report of opinions and conclusions. If prepetition
6 screening is not possible, the screening agency shall prepare a report
7 giving reasons why the PREPETITION screening was not possible and
8 including opinions and conclusions of staff members who attempted to
9 conduct prepetition screening or otherwise investigated the matter.

10 C. If the prepetition screening agency determines that the
11 application for evaluation is to be denied, the denial shall be stated in
12 writing on the application form and shall be reviewed and confirmed by the
13 medical director of the screening agency or the medical director's
14 designee. If the screening agency determines that although the person
15 does not currently meet the criteria for court-ordered evaluation, there
16 are reasonable grounds to believe that the person has a mental disorder,
17 is in need of further evaluation or treatment and is able and willing to
18 pursue private or public evaluation or treatment services available to the
19 person in the community, the screening agency shall assist the proposed
20 patient in finding specific evaluation or treatment services in the
21 proposed patient's area and, if requested, make a direct referral to a
22 person, agency or organization providing behavioral health services for
23 the purpose of evaluation and treatment.

24 D. If, based on the allegations of the applicant for the
25 court-ordered evaluation and the prepetition screening report or other
26 information obtained while attempting to conduct a prepetition screening,
27 the SCREENING agency determines that there is reasonable cause to believe
28 that the proposed patient is, as a result of mental disorder, a danger to
29 self or to others or has a persistent or acute disability or a grave
30 disability and that the proposed patient is unable or unwilling to
31 voluntarily receive evaluation or is likely to present a danger to self or
32 to others, has a grave disability or will further deteriorate before
33 receiving a voluntary evaluation, the SCREENING agency shall prepare a
34 petition for court-ordered evaluation and shall file the petition, which
35 shall be signed by the person who prepared the petition unless the county
36 attorney performs these functions. If the SCREENING agency determines
37 that there is reasonable cause to believe that the person is in such a
38 condition that without immediate hospitalization he is likely to harm
39 himself or others, the SCREENING agency shall take all reasonable steps to
40 procure such hospitalization on an emergency basis.

41 E. The agency may contact the county attorney in order to obtain
42 assistance in preparing the petition for court-ordered evaluation, and the
43 SCREENING agency may request the advice and judgment of the county
44 attorney in reaching a decision as to whether the court-ordered evaluation
45 is justified.

1 F. The county attorney may prepare or sign or file the petition if
2 a court has ordered the county attorney to prepare the petition, OR A
3 SHERIFF MAY FILE THE PETITION PURSUANT TO SECTION 31-126, SUBSECTION A.

4 G. If a petition for court-ordered evaluation alleges danger to
5 others as described in section 36-501, the screening agency, before filing
6 such a petition, shall contact the county attorney for a review of the
7 petition. The county attorney shall examine the petition and make one of
8 the following written recommendations:

- 9 1. That a criminal investigation is warranted.
- 10 2. That the screening agency shall file the petition.
- 11 3. That no further proceedings are warranted. The screening agency
12 shall consider the recommendation in determining whether a court-ordered
13 evaluation is justified and shall include the recommendation with the
14 petition if the SCREENING agency decides to file the petition with the
15 court.

16 H. The petition shall be made in the form and manner prescribed by
17 the director.

18 I. If a petition for court-ordered evaluation is filed by a
19 prosecutor pursuant to section 13-4517, a prior application for
20 court-ordered evaluation or prescreening is not necessary.