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**Jane Dee Hull
Secretary of State**

CHAPTER 173

SENATE BILL 1172

AN ACT

AMENDING SECTIONS 13-502, 13-3994 AND 13-4511, ARIZONA REVISED STATUTES;
RELATING TO MENTAL COMPETENCE IN CRIMINAL PROCEEDINGS.

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

2 Section 1. Section 13-502, Arizona Revised Statutes, is amended to
3 read:

4 13-502. Insanity test; burden of proof; guilty except insane
5 verdict

6 A. A person may be found guilty except insane if at the time of the
7 commission of the criminal act the person was afflicted with a mental disease
8 or defect of such severity that the person did not know the criminal act was
9 wrong. A mental disease or defect constituting legal insanity is an
10 affirmative defense. Mental disease or defect does not include disorders
11 that result from acute voluntary intoxication or withdrawal from alcohol or
12 drugs, character defects, psychosexual disorders or impulse control
13 disorders. Conditions that do not constitute legal insanity include but are
14 not limited to momentary, temporary conditions arising from the pressure of
15 the circumstances, moral decadence, depravity or passion growing out of
16 anger, jealousy, revenge, hatred or other motives in a person who does not
17 suffer from a mental disease or defect or an abnormality that is manifested
18 only by criminal conduct.

19 B. In a case involving the death or serious physical injury of or the
20 threat of death or serious physical injury to another person, if a plea of
21 insanity is made and the court determines that a reasonable basis exists to
22 support the plea, the court may commit the defendant to a secure state mental
23 health facility under the department of health services, a secure county

1 mental health evaluation and treatment facility or another secure licensed
2 mental health facility for up to thirty days for mental health evaluation and
3 treatment. Experts at the mental health facility who are licensed pursuant
4 to title 32, who are familiar with this state's insanity statutes, who are
5 specialists in mental diseases and defects and who are knowledgeable
6 concerning insanity shall observe and evaluate the defendant. The expert or
7 experts who examine the defendant shall submit a written report of the
8 evaluation to the court, the defendant's attorney and the prosecutor. The
9 court shall order the defendant to pay the costs of the mental health
10 facility to the clerk of the court. The clerk of the court shall transmit
11 the reimbursements to the mental health facility for all of its costs. If
12 the court finds the defendant is indigent or otherwise is unable to pay all
13 or any of the costs, the court shall order the county to reimburse the mental
14 health facility for the remainder of the costs. Notwithstanding section
15 36-545.02, the mental health facility may maintain the reimbursements. If
16 the court does not commit the defendant to a secure state mental health
17 facility, a secure county mental health evaluation and treatment facility or
18 another secure licensed mental health facility, the court shall appoint an
19 independent expert who is licensed pursuant to title 32, who is familiar with
20 this state's insanity statutes, who is a specialist in mental diseases and
21 defects and who is knowledgeable concerning insanity to observe and evaluate
22 the defendant. The expert who examines the defendant shall submit a written
23 report of the evaluation to the court, the defendant's attorney and the
24 prosecutor. The court shall order the defendant to pay the costs of the
25 services of the independent expert to the clerk of the court. The clerk of
26 the court shall transmit the reimbursements to the expert. If the court
27 finds the defendant is indigent or otherwise unable to pay all or any of the
28 costs, the court shall order the county to reimburse the expert for the
29 remainder of the costs. This subsection does not prohibit the defendant or
30 this state from obtaining additional psychiatric examinations by other mental
31 health experts who are licensed pursuant to title 32, who are familiar with
32 this state's insanity statutes, who are specialists in mental diseases and
33 defects and who are knowledgeable concerning insanity.

34 C. The defendant shall prove ~~his~~ THE DEFENDANT'S legal insanity by
35 clear and convincing evidence.

36 D. If the finder of fact finds the defendant guilty except insane, the
37 court shall determine the ~~presumptive~~ sentence the defendant could have
38 received pursuant to ~~section 13-701, subsection C,~~ section 13-703, subsection
39 A or section 13-707 OR THE PRESUMPTIVE SENTENCE THE DEFENDANT COULD HAVE
40 RECEIVED PURSUANT TO SECTION 13-604, 13-604.01, 13-701, SUBSECTION C, SECTION
41 13-710 OR SECTION 13-1406 if ~~he~~ THE DEFENDANT had not been found insane, and
42 the judge shall commit the defendant pursuant to section 13-3994 for that
43 term. IN MAKING THIS DETERMINATION THE COURT SHALL NOT CONSIDER THE SENTENCE
44 ENHANCEMENTS FOR PRIOR CONVICTIONS UNDER SECTION 13-604. The court shall

1 expressly identify each act that the defendant committed and separately find
2 whether each act involved the death or physical injury of or a substantial
3 threat of death or physical injury to another person.

4 E. A guilty except insane verdict is not a criminal conviction for
5 sentencing enhancement purposes under section 13-604.

6 Sec. 2. Section 13-3994, Arizona Revised Statutes, is amended to read:
7 13-3994. Commitment; hearing; jurisdiction; definition

8 A. A person who is found guilty except insane pursuant to section
9 13-502 shall be committed to a secure state mental health facility under the
10 department of health services for a period of treatment.

11 B. If the criminal act of the person committed pursuant to subsection
12 A of this section did not cause the death or physical injury of or the threat
13 of death or physical injury to another person, the court shall set a hearing
14 date within seventy-five days after the person's commitment to determine if
15 he is entitled to release from confinement, or if he meets the standards for
16 civil commitment pursuant to title 36, chapter 5. The court shall notify the
17 medical director of the mental health facility, the attorney general, the
18 county attorney, the victim and the attorney representing the person, if any,
19 of the date of the hearing. Fourteen days before the hearing the director
20 of the mental health facility shall submit to the court a report addressing
21 the person's mental health and dangerousness.

22 C. At a hearing held pursuant to subsection B of this section:

23 1. If the person proves by clear and convincing evidence that the
24 person no longer suffers from a mental disease or defect the court shall
25 order the person's release and the person's commitment ordered pursuant to
26 section 13-502, subsection D shall terminate.

27 2. If the court finds that the person still suffers from a mental
28 disease or defect, and may present a threat of danger to self or others, is
29 gravely disabled, or is persistently or acutely disabled, it shall order the
30 county attorney to institute civil commitment proceedings pursuant to title
31 36 and the person's commitment ordered pursuant to section 13-502, subsection
32 D shall terminate.

33 D. If the court finds that the criminal act of the person committed
34 pursuant to subsection A of this section caused the death or physical injury
35 of or the threat of death or physical injury to another person, the court
36 shall place the person under the jurisdiction of the psychiatric security
37 review board. The length of the board's jurisdiction over the person is
38 equal to the sentence the person could have received pursuant to section
39 ~~13-701, subsection C or section 13-703, subsection A OR SECTION 13-707 OR THE~~
40 ~~PRESUMPTIVE SENTENCE THE DEFENDANT COULD HAVE RECEIVED PURSUANT TO SECTION~~
41 ~~13-604, 13-604.01, 13-701, SUBSECTION C, SECTION 13-710 OR SECTION 13-1406.~~
42 IN MAKING THIS DETERMINATION THE COURT SHALL NOT CONSIDER THE SENTENCE
43 ENHANCEMENTS FOR PRIOR CONVICTIONS UNDER SECTION 13-604.

1 E. A person who is placed under the jurisdiction of the psychiatric
2 security review board pursuant to subsection D of this section is not
3 eligible for discharge from the board's jurisdiction until the board's
4 jurisdiction over the person expires.

5 F. A person who is placed under the jurisdiction of the psychiatric
6 security review board pursuant to subsection D of this section is not
7 entitled to a hearing before the board earlier than one hundred twenty days
8 after the person's initial commitment. After the hearing, the board may take
9 one of the following actions:

10 1. If the psychiatric security review board finds that the person
11 still suffers from a mental disease or defect and is dangerous, the person
12 shall remain committed at the secure state mental health facility.

13 2. If the person proves by clear and convincing evidence that he no
14 longer suffers from a mental disease or defect, the psychiatric security
15 review board shall order the person's release. The person shall remain under
16 the jurisdiction of the board.

17 3. If the psychiatric security review board finds that the person
18 still suffers from a mental disease or defect or that the mental disease or
19 defect is in stable remission but the person is no longer dangerous, the
20 board shall order the person's conditional release. The person shall remain
21 under the board's jurisdiction. The board in conjunction with the state
22 mental health facility and behavioral health community providers shall
23 specify the conditions of the person's release. The board shall continue to
24 monitor and supervise a person who is released conditionally. Before the
25 conditional release of a person, a supervised treatment plan shall be in
26 place, including the necessary funding to implement the plan.

27 G. A person who is placed under the jurisdiction of the psychiatric
28 security review board pursuant to subsection D of this section may not seek
29 a new release hearing earlier than six months after a prior release hearing.
30 The person shall not be held in confinement for more than two years without
31 a hearing before the board to determine if the person should be released or
32 conditionally released.

33 H. At any hearing for release or conditional release pursuant to this
34 section:

35 1. Public safety and protection are primary.
36 2. The applicant has the burden of proof by clear and convincing
37 evidence.

38 I. At least thirty days before a person is released, the state mental
39 health facility or supervising agency shall submit to the psychiatric
40 security review board a report on the person's mental health. The
41 psychiatric security review board shall determine whether to release the
42 person or to order the county attorney to institute civil commitment
43 proceedings pursuant to title 36.

1 J. The procedures for civil commitment govern the continued commitment
2 of the person after the expiration of the jurisdiction of the psychiatric
3 security review board.

4 K. Before a person is released or conditionally released, at least
5 three of the four psychiatric security review board members shall vote for
6 the release or conditional release.

7 L. If at any time while the person remains under the jurisdiction of
8 the psychiatric security review board it appears to the board or the medical
9 director of the state mental health facility that the person has failed to
10 comply with the terms of his conditional release or that the mental health
11 of the person has deteriorated, the board or the medical director of the
12 state mental health facility may order that the person be returned to a
13 secure state mental health facility for evaluation or treatment. A written
14 order of the board or the medical director is sufficient warrant for any law
15 enforcement officer to take the person into custody and to transport the
16 person accordingly. Any sheriff or other peace officer shall execute the
17 order and shall immediately notify the board of the person's return to the
18 facility. Within twenty days after the person's return to a secure state
19 mental health facility the board shall conduct a hearing and shall give
20 notice within five days before the hearing of the time and place of the
21 hearing to the person, the victim, the attorney representing the person, the
22 county attorney and the attorney general.

23 M. The director of a facility that is providing treatment to a person
24 on conditional release or any other person who is responsible for the
25 supervision of the person may take the person or request that the person be
26 taken into custody if there is reasonable cause to believe that the person's
27 mental health has deteriorated to the point that the person's conditional
28 release should be revoked and that the person is in need of immediate care,
29 custody or treatment or that deterioration is likely because of noncompliance
30 with a treatment program. A person who is taken into custody pursuant to
31 this subsection shall be transported immediately to a secure state mental
32 health facility and shall have the same rights as any person appearing before
33 the psychiatric security review board.

34 N. Before the initial hearing or any other hearing before the
35 psychiatric security review board on the release or conditional release of
36 the person, the person, the attorney who is representing the person and the
37 attorney general or county attorney who is representing the state may choose
38 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a
39 psychologist licensed pursuant to title 32, chapter 19.1 to examine the
40 person. The written examination results shall be filed with the board and
41 shall include an opinion as to:

- 42 1. The mental condition of the person.
- 43 2. Whether the person is dangerous.

1 0. For the purposes of this section, "state mental health facility"
2 means a secure state mental health facility under the department of health
3 services.

4 Sec. 3. Section 13-4511, Arizona Revised Statutes, is amended to read:
5 13-4511. Competency to refuse treatment; length of sentence

6 If the court finds that a defendant is incompetent to stand trial, the
7 court shall determine:

8 1. If the defendant is incompetent to refuse treatment, including
9 medication, and should be subject to involuntary treatment.

10 2. The maximum sentence the defendant could have received pursuant to
11 section 13-604, 13-604.01, 13-702, 13-707, 13-710 OR 13-1406 OR THE SENTENCE
12 THE DEFENDANT COULD HAVE RECEIVED PURSUANT TO SECTION 13-703, SUBSECTION A
13 or any section for which a specific sentence is authorized. In making this
14 determination the court shall not consider the sentence enhancements for
15 prior convictions under section 13-604.

APPROVED BY THE GOVERNOR APRIL 12, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 1996