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1996

**FILED**

**Jane Dee Hull  
Secretary of State**

CHAPTER 359

**SENATE BILL 1353**

AN ACT

AMENDING SECTION 8-201, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING SECTIONS 13-3993, 13-4505, 13-4508, 13-4509, 13-4510 AND 13-4514, ARIZONA REVISED STATUTES; AMENDING LAWS 1995, CHAPTER 250, SECTION 20; RELATING TO INCOMPETENCE TO STAND TRIAL.

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

2 Section 1. Section 8-201, Arizona Revised Statutes, is amended to  
3 read:

4 8-201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Abandoned" means the failure of the parent to provide reasonable  
7 support and to maintain regular contact with the child, including the  
8 providing of normal supervision. Failure to maintain a normal parental  
9 relationship with the child without just cause for a period of six months  
10 shall constitute prima facie evidence of abandonment.

11 2. "Abuse" means the infliction or allowing of physical injury,  
12 impairment of bodily function or disfigurement or the infliction of or  
13 allowing another person to cause serious emotional damage as evidenced by  
14 severe anxiety, depression, withdrawal or untoward aggressive behavior and  
15 which emotional damage is diagnosed by a medical doctor or psychologist  
16 pursuant to section 8-223 and which is caused by the acts or omissions of an  
17 individual having care, custody and control of a child. Abuse shall include  
18 inflicting or allowing sexual abuse pursuant to section 13-1404, sexual  
19 conduct with a minor pursuant to section 13-1405, sexual assault pursuant to

1 section 13-1406, molestation of a child pursuant to section 13-1410,  
2 commercial sexual exploitation of a minor pursuant to section 13-3552,  
3 sexual exploitation of a minor pursuant to section 13-3553, incest pursuant  
4 to section 13-3608 or child prostitution pursuant to section 13-3212.

5 3. "Adult" means a person eighteen years of age or older.

6 4. "Alcohol offense" means the purchase, possession or consumption by  
7 a juvenile of spirituous liquors in violation of section 4-244.

8 5. "Award" or "commit" means to assign legal custody.

9 6. "Child", "youth" or "juvenile" means an individual who is under the  
10 age of eighteen years.

11 7. "Custodian" means a person, other than a parent or legal guardian,  
12 who stands in loco parentis to the child or a person to whom legal custody  
13 of the child has been given by order of the juvenile court.

14 8. "Delinquency hearing" means a proceeding in the juvenile court to  
15 determine whether a child has committed a specific delinquent act as set  
16 forth in a petition.

17 9. "Delinquent act" includes an act by a child, which if committed  
18 by an adult would be a criminal offense including a violation of section  
19 4-244, paragraph 9, a violation of any law of this state, or of another state  
20 if the act occurred in that state, or a law of the United States, or a  
21 violation of any law which can only be violated by a minor and which has been  
22 designated as a delinquent offense, or any ordinance of a city, county or  
23 political subdivision of this state defining crime, except that any child  
24 remanded for prosecution as an adult shall not be adjudicated as a delinquent  
25 child for the same offense for which the child was remanded.

26 10. "Delinquent child" means a child who is adjudicated to have  
27 committed a delinquent act.

28 11. "Dependent child" means a child who is adjudicated to be:

29 (a) In need of proper and effective parental care and control and has  
30 no parent or guardian, or one who has no parent or guardian willing to  
31 exercise or capable of exercising such care and control.

32 (b) Destitute or who is not provided with the necessities of life,  
33 including adequate food, clothing, shelter or medical care, or whose home is  
34 unfit by reason of abuse, neglect, cruelty or depravity by a parent, A  
35 guardian, or any other person having custody or care of the child.

36 (c) Under the age of eight years AND who is found to have committed  
37 an act that would result in adjudication as a delinquent or incorrigible  
38 child if committed by an older child.

39 (d) INCOMPETENT OR NOT RESTORABLE TO COMPETENCY AND WHO IS ALLEGED TO  
40 HAVE COMMITTED A SERIOUS OFFENSE AS DEFINED IN SECTION 13-604.

41 12. "Detention" means the temporary care of a child who requires secure  
42 custody in physically restricting facilities for the protection of the child  
43 or the community pending court disposition.

1           13. "Incorrigible child" means a child WHO:

2           (a) IS adjudicated as ~~one~~ A CHILD who refuses to obey the reasonable  
3 and proper orders or directions of a parent, guardian or custodian, ~~and who~~  
4 is beyond the control of such person, ~~or any child who.~~

5           (b) Is habitually truant from school as ~~provided~~ DEFINED in section  
6 15-803, subsection C, ~~or who.~~

7           (c) Is a runaway from THE CHILD'S home or parent, guardian or  
8 custodian, ~~or who.~~

9           (d) Habitually behaves in such a manner as to injure or endanger the  
10 morals or health of self or others, ~~or who.~~

11           (e) Commits any act constituting an offense which can only be  
12 committed by a minor and which is not designated as a delinquent offense, ~~or~~  
13 ~~who.~~

14           (f) Fails to obey any lawful order of a court of competent  
15 jurisdiction given in a noncriminal action.

16           14. "Juvenile court" means the juvenile division of the superior court  
17 when exercising its jurisdiction over children in any proceeding relating to  
18 delinquency, dependency or incorrigibility.

19           15. "Law enforcement officer" means a peace officer, sheriff, deputy  
20 sheriff, municipal police officer or constable.

21           16. "Medical director of a mental health agency" means a psychiatrist,  
22 or licensed physician experienced in psychiatric matters, who is designated  
23 in writing by the governing body of the agency as the person in charge of the  
24 medical services of the agency, or a psychiatrist designated by such  
25 governing body to act for the director. The term includes the superintendent  
26 of the state hospital.

27           17. "Mental health agency" means any private or public facility WHICH  
28 IS licensed by this state as a mental health treatment agency, a psychiatric  
29 hospital, a psychiatric unit of a general hospital or a residential treatment  
30 center for emotionally disturbed children AND which utilizes secure settings  
31 or mechanical restraints.

32           18. "Protective supervision" means supervision ordered by the juvenile  
33 court of children found to be dependent or incorrigible.

34           19. "Shelter care" means the temporary care of a child in any public  
35 or private facility or home licensed by this state offering a physically  
36 nonsecure environment, which is characterized by the absence of physically  
37 restricting construction or hardware and provides the child access to the  
38 surrounding community.

39           Sec. 2. Title 8, chapter 2, Arizona Revised Statutes, is amended by  
40 adding article 8, to read:

ARTICLE 8. JUVENILE COMPETENCY

8-291. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "INCOMPETENT" MEANS A JUVENILE WHO DOES NOT HAVE SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE JUVENILE'S LAWYER WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING OR WHO DOES NOT HAVE A RATIONAL AND FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST THE JUVENILE.

2. "JUVENILE" MEANS A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE AT THE TIME THE ISSUE OF COMPETENCY IS RAISED.

3. "MENTAL HEALTH EXPERT" MEANS A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 OR A PSYCHOLOGIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 19.1 AND WHO IS:

(a) FAMILIAR WITH THIS STATE'S COMPETENCY STANDARDS AND STATUTES.

(b) FAMILIAR WITH THE TREATMENT, TRAINING AND RESTORATION PROGRAMS THAT ARE AVAILABLE IN THIS STATE.

(c) CERTIFIED BY THE COURT AS MEETING COURT DEVELOPED GUIDELINES.

8-291.01. Effect of incompetency

A. A JUVENILE SHALL NOT PARTICIPATE IN A DELINQUENCY, INCORRIGIBILITY OR CRIMINAL PROCEEDING IF THE COURT DETERMINES THAT THE JUVENILE IS INCOMPETENT TO PROCEED.

B. AT ANY TIME AFTER THE FILING OF A PETITION FOR DELINQUENCY OR INCORRIGIBILITY OR A PETITION THAT SEEKS TO TRANSFER A JUVENILE TO ADULT COURT, A CRIMINAL COMPLAINT, INFORMATION OR INDICTMENT, A PARTY MAY REQUEST IN WRITING OR THE COURT ON ITS OWN MOTION MAY ORDER THAT THE JUVENILE BE EXAMINED TO DETERMINE IF THE JUVENILE IS COMPETENT. THE PRESENCE OF A MENTAL ILLNESS, DEFECT OR DISABILITY ALONE IS NOT GROUNDS FOR FINDING A JUVENILE INCOMPETENT. THE COURT SHALL NOT ORDER A JUVENILE WHO IS UNDER THE JURISDICTION OF THE JUVENILE COURT TO PARTICIPATE IN A TREATMENT PROGRAM FOR THE RESTORATION OF COMPETENCY UNLESS THE COURT MADE A PRIOR FINDING OF PROBABLE CAUSE PURSUANT TO RULE 3(f), RULES OF PROCEDURE FOR THE JUVENILE COURT.

C. THE FOLLOWING APPLY TO JUVENILE COMPETENCY EXAMINATIONS THAT ARE CONDUCTED PURSUANT TO THIS ARTICLE:

1. SECTION 13-4503, SUBSECTIONS B, C AND D.

2. SECTION 13-4505.

3. SECTION 13-4506.

4. SECTION 13-4507, SUBSECTIONS A, B, C AND D, SUBSECTION E, PARAGRAPHS 1, 2 AND 3 AND SUBSECTION F.

5. SECTION 13-4508.

6. SECTION 13-4509.

7. SECTION 3-4510, SUBSECTIONS A, B AND D.

8. SECTION 13-4516.

1 D. IF THE COURT FINDS THAT THE JUVENILE IS INCOMPETENT BUT IS  
2 RESTORABLE TO COMPETENCY, THE COURT SHALL ORDER THE JUVENILE TO UNDERGO AN  
3 ATTEMPT AT RESTORATION TO COMPETENCY WITHIN SIX MONTHS AFTER THE INITIAL  
4 DETERMINATION. IF THE JUVENILE COURT DETERMINES THAT THE JUVENILE HAS NOT  
5 BEEN RESTORED TO COMPETENCY WITHIN SIX MONTHS AND THAT THE JUVENILE HAS MADE  
6 PROGRESS TOWARD RESTORATION OF COMPETENCY, THE COURT AFTER A HEARING MAY DO  
7 EITHER OF THE FOLLOWING:

8 1. EXTEND THE TREATMENT PERIOD FOR AN ADDITIONAL SIXTY DAYS FOR GOOD  
9 CAUSE IF THE COURT DETERMINES BY CLEAR AND CONVINCING EVIDENCE THAT FURTHER  
10 TREATMENT WILL LEAD TO A RESTORATION OF COMPETENCY.

11 2. DISMISS THE MATTER WITH OR WITHOUT PREJUDICE.

12 8-291.02. Treatment order; commitment

13 A. THE COURT MAY ORDER A JUVENILE TO UNDERGO OUTPATIENT COMPETENCY  
14 RESTORATION TREATMENT OR MAY COMMIT THE JUVENILE FOR COMPETENCY RESTORATION  
15 TREATMENT TO THE STATE HOSPITAL OR ANOTHER FACILITY THAT IS APPROVED BY THE  
16 JUVENILE COURT. IN DETERMINING THE TYPE AND LOCATION OF THE TREATMENT, THE  
17 COURT SHALL SELECT THE LEAST RESTRICTIVE ALTERNATIVE AFTER CONSIDERING THE  
18 FOLLOWING:

19 1. IF CONFINEMENT IS NECESSARY FOR TREATMENT.

20 2. IF THE JUVENILE MEETS THE CIVIL COMMITMENT CRITERIA UNDER TITLE 36,  
21 CHAPTER 5.

22 3. A PROBABLE CAUSE FINDING HAS BEEN MADE PURSUANT TO RULE 3(f), RULES  
23 OF PROCEDURE FOR THE JUVENILE COURT.

24 B. THE COURT SHALL APPOINT A GUARDIAN AD LITEM FOR A JUVENILE WHO IS  
25 ORDERED TO UNDERGO INPATIENT OR OUTPATIENT TREATMENT PURSUANT TO THIS  
26 SECTION.

27 C. AN ORDER ENTERED PURSUANT TO THIS SECTION SHALL STATE IF THE  
28 JUVENILE IS INCOMPETENT TO REFUSE TREATMENT PURSUANT TO SECTION 13-4511,  
29 INCLUDING MEDICATION.

30 D. THE STATE SHALL PAY THE COSTS OF INPATIENT COMPETENCY RESTORATION  
31 TREATMENT AT THE STATE HOSPITAL UNTIL EITHER:

32 1. TEN DAYS, EXCLUDING SATURDAYS, SUNDAYS OR OTHER LEGAL HOLIDAYS,  
33 AFTER THE HOSPITAL SUBMITS A REPORT TO THE COURT STATING THAT THE JUVENILE  
34 HAS REGAINED COMPETENCE OR THAT THERE IS NO SUBSTANTIAL PROBABILITY THAT THE  
35 JUVENILE WILL REGAIN COMPETENCY WITHIN SIX MONTHS AFTER THE DATE OF THE  
36 ORIGINAL FINDING OF INCOMPETENCY.

37 2. THE TREATMENT ORDER EXPIRES.

38 3. SEVEN DAYS, EXCLUDING SATURDAYS, SUNDAYS OR OTHER LEGAL HOLIDAYS,  
39 AFTER THE CHARGES ARE DISMISSED.

40 E. THE STATE SHALL PAY THE COSTS OF RESTORATION TREATMENT FOR A  
41 JUVENILE WHO IS A WARD OF THE COURT UNLESS THE COURT ORDERS OTHERWISE. IF  
42 THE COURT ORDERS OTHERWISE, THE COUNTY SHALL PAY THE COSTS OF RESTORATION  
43 TREATMENT, OR IF THE PROCEEDING ARISES OUT OF MUNICIPAL COURT, THE CITY SHALL

1 PAY THE COSTS OF RESTORATION TREATMENT, FOR A JUVENILE WHO IS A WARD OF THE  
2 COURT.

3 F. A TREATMENT ORDER THAT IS ISSUED PURSUANT TO THIS SECTION IS VALID  
4 FOR ONE HUNDRED EIGHTY DAYS OR UNTIL ONE OF THE FOLLOWING OCCURS, WHICHEVER  
5 OCCURS FIRST:

6 1. THE TREATMENT ORDER IS EXTENDED FOR AN ADDITIONAL SIXTY DAYS  
7 PURSUANT TO SECTION 8-291.01.

8 2. THE TREATMENT FACILITY SUBMITS A REPORT THAT THE JUVENILE HAS  
9 REGAINED COMPETENCY OR THAT THERE IS NO SUBSTANTIAL PROBABILITY THAT THE  
10 JUVENILE WILL REGAIN COMPETENCY WITHIN TWO HUNDRED FORTY DAYS.

11 3. THE CHARGES ARE DISMISSED.

12 4. EXCEPT PURSUANT TO SECTION 8-291.03, THE JUVENILE REACHES EIGHTEEN  
13 YEARS OF AGE.

14 5. THE MAXIMUM SENTENCE FOR THE OFFENSE CHARGED HAS EXPIRED.

15 8-291.03. Restoration for dangerous juveniles

16 A. NOTWITHSTANDING SECTION 8-291.02, SUBSECTION F, THE COURT SHALL  
17 ORDER THAT AN INCOMPETENT JUVENILE RECEIVE RESTORATION TREATMENT FOR A  
18 MAXIMUM OF FIFTEEN MONTHS IF ALL OF THE FOLLOWING APPLY:

19 1. THE INCOMPETENT JUVENILE IS SIXTEEN YEARS OF AGE OR OLDER BUT IS  
20 LESS THAN EIGHTEEN YEARS OF AGE ON THE DATE OF THE ALLEGED OFFENSE.

21 2. THE INCOMPETENT JUVENILE IS ALLEGED TO HAVE COMMITTED A SERIOUS  
22 OFFENSE AS DEFINED IN SECTION 13-604.

23 3. THE JUVENILE IS DIRECTLY PROSECUTED IN ADULT COURT OR A TRANSFER  
24 HAS BEEN REQUESTED.

25 B. THE COURT MAY EXTEND THE PERIOD OF RESTORATION TREATMENT ORDERED  
26 PURSUANT TO THIS SECTION BY SIX MONTHS IF THE COURT DETERMINES THAT THE  
27 JUVENILE IS MAKING PROGRESS TOWARD THE GOAL OF RESTORATION. THE PERIOD OF  
28 RESTORATION UNDER THIS SECTION SHALL NOT EXCEED TWENTY-ONE MONTHS OR THE  
29 MAXIMUM SENTENCE THE JUVENILE COULD HAVE RECEIVED, WHICHEVER IS LESS.

30 8-291.04. Hearings: reports

31 A. THE COURT MAY HOLD A HEARING REGARDING A JUVENILE'S PROGRESS TOWARD  
32 COMPETENCY ON THE REQUEST OF THE PROSECUTOR, THE DEFENSE ATTORNEY OR THE  
33 GUARDIAN AD LITEM.

34 B. IF THE JUVENILE IS UNDER THE JURISDICTION OF THE JUVENILE COURT,  
35 THE COURT SHALL HOLD A HEARING PURSUANT TO THIS SECTION WITHIN NOT LESS THAN  
36 THREE MONTHS BEFORE THE JUVENILE'S EIGHTEENTH BIRTHDAY.

37 C. IF AT THE HEARING THE COURT DETERMINES THAT THE JUVENILE HAS  
38 REGAINED COMPETENCY, THE JUVENILE SHALL BE RETURNED TO THE COURT AND THE  
39 PROCEEDINGS AGAINST THE JUVENILE SHALL CONTINUE AND BE CONCLUDED IN THE  
40 COURT.

41 D. IF AT THE HEARING THE COURT DETERMINES THAT THE JUVENILE IS NOT  
42 RESTORED TO COMPETENCY AND IS NOT RESTORABLE WITHIN THE TIME LEFT BEFORE THE  
43 JUVENILE'S EIGHTEENTH BIRTHDAY, THE COURT SHALL DISMISS THE CHARGES WITH  
44 PREJUDICE IF THE OFFENSE IS A MISDEMEANOR, MAY DISMISS THE CHARGES WITH

1 PREJUDICE IF THE OFFENSE WAS NOT A SERIOUS OFFENSE AS DEFINED IN SECTION  
2 13-604 OR MAY DISMISS THE CHARGES WITHOUT PREJUDICE IF THE OFFENSE WAS A  
3 SERIOUS OFFENSE AS DEFINED IN SECTION 13-604.

4 E. EXCEPT FOR JUVENILES WHO ARE ORDERED TO RECEIVE RESTORATION  
5 TREATMENT PURSUANT TO SECTION 8-291.03, IF AT THE HEARING THE COURT  
6 DETERMINES THAT THE JUVENILE IS INCOMPETENT TO PROCEED AND THAT THERE IS NOT  
7 A SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL REGAIN COMPETENCY WITHIN TWO  
8 HUNDRED FORTY DAYS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,  
9 THE COURT SHALL DISMISS THE CHARGES WITH PREJUDICE AND SHALL INITIATE CIVIL  
10 COMMITMENT PROCEEDINGS IF APPROPRIATE. THE GUARDIAN SHALL BE ORDERED TO  
11 PROCEED WITH A DEPENDENCY INVESTIGATION.

12 F. IF AT THE HEARING THE COURT DETERMINES THAT A JUVENILE WHO WAS  
13 ORDERED TO RECEIVE RESTORATION TREATMENT PURSUANT TO SECTION 8-291.03 IS NOT  
14 RESTORED TO COMPETENCY AND THAT THE JUVENILE MAY BE RESTORED TO COMPETENCY  
15 AFTER THE JUVENILE'S EIGHTEENTH BIRTHDAY AND WITHIN THE ORIGINAL PERIOD OF  
16 TIME ORDERED PURSUANT TO SECTION 8-291.03, THE COURT MAY ORDER THAT THE  
17 JUVENILE REMAIN IN COMPETENCY RESTORATION TREATMENT UNTIL A MAXIMUM OF  
18 TWENTY-ONE MONTHS AFTER THE INITIAL FINDING OF INCOMPETENCY. SECTION  
19 8-291.01 APPLIES TO THE PAYMENT OF THE ADDITIONAL COSTS OF TREATMENT. IF THE  
20 JUVENILE IS SUBSEQUENTLY RESTORED TO COMPETENCY, THE JUVENILE SHALL BE  
21 RETURNED TO THE COURT AND THE PROCEEDINGS AGAINST THE JUVENILE SHALL  
22 CONTINUE. IF THE COURT DETERMINES THAT THE JUVENILE IS INCOMPETENT,  
23 DANGEROUS AND NOT RESTORABLE, THE COURT SHALL ORDER THE GUARDIAN AD LITEM TO  
24 FILE A PETITION FOR CIVIL COMMITMENT OR DEPENDENCY, IF APPROPRIATE, OR FOR  
25 GUARDIANSHIP PURSUANT TO SECTION 13-4518.

26 G. THE MENTAL HEALTH EXPERT WHO SUPERVISES THE TREATMENT OF A JUVENILE  
27 WHO HAS BEEN ORDERED TO UNDERGO TREATMENT PURSUANT TO SECTION 8-291.02 SHALL  
28 SUBMIT A WRITTEN REPORT TO THE COURT WHICH SHALL MAKE THE REPORT AVAILABLE  
29 TO THE PROSECUTOR, THE DEFENSE ATTORNEY AND THE GUARDIAN AD LITEM AS FOLLOWS:

- 30 1. FOR INPATIENT OR OUTPATIENT TREATMENT, EVERY SIXTY DAYS.
- 31 2. WHENEVER THE PERSON BELIEVES THE JUVENILE IS COMPETENT TO PROCEED.
- 32 3. EXCEPT FOR JUVENILES WHO ARE ORDERED TO RECEIVE TREATMENT PURSUANT  
33 TO SECTION 8-291.03, WHENEVER THE PERSON BELIEVES THAT THERE IS NO  
34 SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL REGAIN COMPETENCY BEFORE THE  
35 JUVENILE'S EIGHTEENTH BIRTHDAY.

36 4. FOURTEEN DAYS BEFORE THE EXPIRATION OF THE MAXIMUM TERM OF THE  
37 RESTORATION ORDER.

38 H. THE REPORT SHALL INCLUDE THE EXPERT'S FINDINGS AND THE INFORMATION  
39 REQUIRED UNDER SECTION 13-4509. IF THE REPORT STATES THAT THE JUVENILE  
40 REMAINS INCOMPETENT, THE REPORT SHALL STATE THE LIKELIHOOD THAT THE JUVENILE  
41 WILL REGAIN COMPETENCY, AN ESTIMATED TIME PERIOD FOR THE RESTORATION OF  
42 COMPETENCY AND RECOMMENDATIONS FOR TREATMENT MODIFICATION, IF NECESSARY. IF  
43 THE REPORT STATES THAT THE JUVENILE HAS REGAINED COMPETENCY, THE REPORT SHALL

1 STATE THE EFFECT, IF ANY, OF ANY LIMITATIONS THAT ARE IMPOSED BY ANY  
2 MEDICATIONS USED IN THE EFFORT TO RESTORE THE JUVENILE'S COMPETENCY.

3 I. EXCEPT AS PROVIDED IN SUBSECTION A OF THIS SECTION, THE COURT SHALL  
4 HOLD A HEARING TO DETERMINE THE JUVENILE'S PROGRESS TOWARDS REGAINING  
5 COMPETENCY AS FOLLOWS:

6 1. ON THE COURT'S OWN MOTION.

7 2. ON RECEIPT OF A REPORT THAT IS SUBMITTED BY THE TREATING FACILITY  
8 PURSUANT TO SUBSECTION G, PARAGRAPHS 2, 3 AND 4 OF THIS SECTION.

9 3. AT LEAST EVERY SIX MONTHS.

10 J. IF AT THE HEARING CONDUCTED PURSUANT TO SUBSECTION I OF THIS  
11 SECTION THE COURT FINDS THAT THE JUVENILE HAS REGAINED COMPETENCY, THE  
12 JUVENILE SHALL BE RETURNED TO THE COURT AND THE PROCEEDINGS AGAINST THE  
13 JUVENILE SHALL CONTINUE WITHOUT DELAY.

14 Sec. 3. Section 13-3993, Arizona Revised Statutes, is amended to read:

15 13-3993. Examination of defendant pleading not guilty by reason  
16 of insanity; privilege inapplicability; reports

17 A. In any criminal prosecution in which the defendant has declared ~~his~~  
18 THE DEFENDANT'S intent to invoke an insanity defense, ON A SHOWING OF UNEQUAL  
19 RESOURCES the state shall have the right to nominate and have appointed for  
20 examination of the defendant to determine the defendant's mental state the  
21 same number of medical doctors and licensed psychologists that will testify  
22 on behalf of the defense.

23 B. If a defendant in a criminal prosecution refuses to be examined by  
24 THE STATE'S mental health experts ~~nominated by the state~~, the court shall  
25 preclude the defendant from offering expert evidence of the defendant's  
26 mental state at the time of the alleged crime.

27 C. The privilege of confidential communications between a medical  
28 doctor or licensed psychologist and the defendant as it relates to the  
29 defendant's mental state at the time of the alleged crime does not apply if  
30 any mental disability defense is raised.

31 D. If any mental disability defense is raised, both the state and the  
32 defendant shall receive prior to the trial complete copies of any report by  
33 a medical doctor or licensed psychologist who examines the defendant to  
34 determine ~~his~~ THE DEFENDANT'S mental state at the time of the ~~offense~~ ALLEGED  
35 CRIME or ~~his~~ THE DEFENDANT'S competency.

36 Sec. 4. Section 13-4505, Arizona Revised Statutes, is amended to read:

37 13-4505. Appointment of experts; costs

38 A. If the court determines pursuant to section 13-4503 that reasonable  
39 grounds exist for a competency examination, the court shall appoint two or  
40 more mental health experts, at least one of whom shall be a physician  
41 specializing in psychiatry licensed pursuant to title 32, chapter 13 or 17,  
42 to examine the defendant, issue a report and, if necessary, testify regarding  
43 the defendant's competency. The state and the defendant may stipulate to the  
44 appointment of only one expert.

1           B. The court may order the defendant to submit to physical,  
2 neurological or psychological examinations, if necessary, to adequately  
3 determine the defendant's mental condition.

4           C. The county shall pay the costs of any court ordered examination,  
5 except that if a case is referred by a municipal court judge, the city shall  
6 pay the costs of the examination.

7           D. This section does not prohibit any party from retaining its own  
8 expert to conduct any additional examinations at its own expense.

9           E. A PERSON WHO IS APPOINTED AS A MENTAL HEALTH EXPERT OR CLINICAL  
10 LIAISON IS ENTITLED TO IMMUNITY, EXCEPT THAT THE MENTAL HEALTH EXPERT OR  
11 CLINICAL LIAISON MAY BE LIABLE FOR INTENTIONAL, WANTON OR GROSSLY NEGLIGENT  
12 ACTS THAT ARE DONE IN THE PERFORMANCE OF THE EXPERT'S OR LIAISON'S DUTIES.

13           Sec. 5. Section 13-4508, Arizona Revised Statutes, is amended to read:  
14 13-4508. Privilege against self-incrimination; records

15           A. The privilege against self-incrimination applies to any examination  
16 that is ordered by the court pursuant to this chapter.

17           B. Any evidence or statement that is obtained during an examination  
18 is not admissible at any proceeding to determine a defendant's guilt or  
19 innocence unless the defendant presents evidence that is intended to rebut  
20 the presumption of sanity.

21           C. Any statement made by the defendant during an examination or any  
22 evidence resulting from that statement concerning any other event or  
23 transaction is not admissible at any proceeding to determine the defendant's  
24 guilt or innocence of any other criminal charges that are based on those  
25 events or transactions.

26           D. Any statement made by the defendant or any part of the evaluations  
27 that are obtained during an examination may not be used for any purpose  
28 without the written consent of the defendant or the defendant's guardian or  
29 a court order that is entered by the court that ordered the examination or  
30 that is conducting a dependency or severance proceeding.

31           E. After the case proceeds to trial or the defendant is found to be  
32 unable to regain competence, the court shall order ALL the reports SUBMITTED  
33 PURSUANT TO THIS SECTION sealed. The court may order that the reports be  
34 opened only for further competency or sanity evaluations, for statistical or  
35 data gathering for the purpose of scientific study or when the records are  
36 deemed necessary to assist in mental health treatment pursuant to this  
37 chapter or section 13-502.

38           F. Any statement made by the defendant during an examination that is  
39 conducted pursuant to this chapter or any evidence resulting from that  
40 statement is not subject to disclosure pursuant to section 36-509.

1           Sec. 6. Section 13-4509, Arizona Revised Statutes, is amended to read:  
2           13-4509. Expert's report

3           A. An expert who is appointed pursuant to section 13-4505 shall submit  
4 a written report of the examination to the court within ~~five~~ TEN working days  
5 after the examination is completed. The report shall include at least the  
6 following information:

7           1. The name of each mental health expert who examines the defendant.

8           2. A description of the nature, content, extent and results of the  
9 examination and any test conducted.

10          3. The facts on which the findings are based.

11          4. An opinion as to the competency of the defendant.

12          B. If the mental health expert determines that the defendant is  
13 incompetent to stand trial, the report shall also include the following  
14 information:

15          1. The nature of the mental disease, defect or disability that is the  
16 cause of the incompetency.

17          2. The defendant's prognosis.

18          3. The most appropriate form and place of treatment in this state,  
19 based on the defendant's therapeutic needs and potential threat to public  
20 safety.

21          4. Whether the defendant is incompetent to refuse treatment and should  
22 be subject to involuntary treatment.

23          C. If the mental health examiner determines that the defendant is  
24 currently competent by virtue of ongoing treatment with psychotropic  
25 medication, the report shall address the necessity of continuing that  
26 treatment and shall include a description of any limitations that the  
27 medication may have on competency.

28          Sec. 7. Section 13-4510, Arizona Revised Statutes, is amended to read:  
29          13-4510. Competency hearing and orders

30          A. Within thirty days after the report is ~~filed~~ SUBMITTED, the court  
31 shall hold a hearing to determine a defendant's competency to stand trial.  
32 The parties may introduce other evidence regarding the defendant's mental  
33 condition or may submit the matter by written stipulation on the expert's  
34 report.

35          B. If the court finds that the defendant is competent to stand trial,  
36 the proceedings shall continue without delay.

37          C. If the court initially finds that the defendant is incompetent to  
38 stand trial, the court shall order treatment for the restoration of  
39 competency unless there is clear and convincing evidence that the defendant  
40 will not be restored to competency within fifteen months. The court may  
41 extend the restoration treatment by six months if the court determines that  
42 the defendant is making progress toward the goal of restoration.

1 D. All treatment orders issued by the court shall specify the  
2 following:

- 3 1. The place where the defendant will receive treatment.
- 4 2. Transportation to the treatment site.
- 5 3. The length of the treatment.
- 6 4. Transportation after treatment.
- 7 5. The frequency of reports.

8 Sec. 8. Section 13-4514, Arizona Revised Statutes, is amended to read:  
9 13-4514. Progress reports; rehearings

10 A. The person who supervises the treatment of a defendant who has been  
11 ordered to undergo treatment pursuant to section 13-4512 shall ~~file~~ SUBMIT  
12 a written report ~~with~~ TO the court, WHICH SHALL MAKE THE REPORT AVAILABLE  
13 TO the prosecutor, the defense attorney and the clinical liaison as follows:

14 1. For inpatient treatment, after the first ~~ninety~~ ONE HUNDRED TWENTY  
15 days of the original treatment order and after each one hundred eighty days  
16 of treatment thereafter.

17 2. For outpatient treatment, every ~~thirty~~ SIXTY days.

18 3. Whenever the person believes the defendant is competent to stand  
19 trial.

20 4. Whenever the person believes that there is no substantial  
21 probability that the defendant will regain competency within twenty-one  
22 months after the date of the original finding of incompetency.

23 5. Fourteen days before the expiration of the maximum time that an  
24 order issued pursuant to section 13-4512 or this section is in effect.

25 B. The report shall include the examiner's findings and the  
26 information required under section 13-4509. If the report states that the  
27 defendant remains incompetent, the report shall state the likelihood that the  
28 defendant will regain competency, an estimated time period for the  
29 restoration of competency and recommendations for treatment modification, if  
30 necessary. If the report states that the defendant has regained competency,  
31 the report shall state the effect, if any, of any limitations that are  
32 imposed by any medications used in the effort to restore the defendant's  
33 competency.

34 C. The court shall hold a hearing to determine the defendant's  
35 progress towards regaining competency as follows:

36 1. On the court's own motion.

37 2. On receipt of a report that is submitted by the treating facility  
38 pursuant to subsection A, PARAGRAPH 3, 4 OR 5 of this section.

39 D. If at the hearing the court finds that the defendant has regained  
40 competency, the defendant shall be returned to the court and the proceedings  
41 against the defendant shall continue without delay.

42 E. If at the hearing the court finds that the defendant is incompetent  
43 to stand trial but that there is a substantial probability that the defendant  
44 will regain competency within the foreseeable future, the court shall renew

1 and, if appropriate, modify the treatment order for not more than an  
2 additional one hundred eighty days. The court may make this determination  
3 without a formal hearing if all of the parties agree.

4 F. If at the hearing the court finds that the defendant is incompetent  
5 to stand trial and that there is not a substantial probability that the  
6 defendant will regain competency within twenty-one months after the date of  
7 the original finding of incompetency, the court shall proceed pursuant to  
8 section 13-4517.

9 Sec. 9. Laws 1995, chapter 250, section 20, is amended to read:

10 Sec. 20. Delayed effective dates

11 A. Section 3 of this act is effective on October 1, 1995.

12 B. Sections 9 through 13, 15, and 16 of this act are effective on  
13 March 1, 1996.

14 C. Sections 1, 4, 5, 8 and 14 are effective on October 1, ~~1996~~ 1997.

APPROVED BY THE GOVERNOR MAY 1, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 1996