

Conference Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 291

HOUSE BILL 2242

AN ACT

AMENDING SECTIONS 36-538, 36-543 AND 36-558, ARIZONA REVISED STATUTES;
RELATING TO PERSONS WITH DISABILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-538, Arizona Revised Statutes, is amended to
3 read:

4 36-538. Independent evaluator

5 At all hearings conducted pursuant to sections 36-539, 36-543 and
6 36-546, a person has the right to have an analysis of his mental condition by
7 an independent evaluator. If the person is unable to afford such evaluation,
8 the court shall appoint an independent evaluator acceptable to the patient
9 from a list of physicians and psychologists who are willing to accept court
10 appointed evaluations.

11 Sec. 2. Section 36-543, Arizona Revised Statutes, is amended to read:

12 36-543. Release from treatment of gravely disabled patient or
13 persistently or acutely disabled patient; annual
14 review and examination

15 A. A patient found to be gravely disabled OR PERSISTENTLY OR ACUTELY
16 DISABLED and ordered to undergo treatment may be released from inpatient
17 treatment when, in the opinion of the medical director of the mental health
18 treatment agency, the level of care offered by the agency is no longer
19 required. The patient may agree to continue treatment voluntarily. If the
20 patient is to be released, the medical director shall arrange for an
21 appropriate alternative placement.

22 B. If a patient to be released is under guardianship as a gravely
23 disabled person OR AS A PERSISTENTLY OR ACUTELY DISABLED PERSON, the medical
24 director of the mental health treatment agency shall notify the guardian AND
25 ANY RELEVANT REGIONAL BEHAVIORAL HEALTH AUTHORITY ten days before the
26 intended release date that the ward no longer requires the level of care
27 offered by the agency. The guardian AND, IF RELEVANT, THE REGIONAL
28 BEHAVIORAL HEALTH AUTHORITY shall arrange alternative placement with the
29 advice and recommendations of the medical director of the mental health
30 treatment agency.

31 C. The medical director of the mental health treatment agency is not
32 civilly liable for any acts committed by the released patient if the medical
33 director has in good faith complied with the requirements of this article.

34 D. A patient who has been found to be gravely disabled and is
35 undergoing court-ordered treatment shall have an annual examination and
36 review to determine whether the continuation of court-ordered treatment is
37 appropriate and to assess the needs of the patient for guardianship or
38 conservatorship, or both. The medical director of the mental health
39 treatment agency shall appoint one or more examiners qualified to carry out
40 the examination, at least one of whom shall be a psychiatrist licensed to
41 practice in this state, and may at the discretion of the medical director
42 appoint one or more additional examiners.

1 E. A PATIENT WHO HAS BEEN FOUND TO BE PERSISTENTLY OR ACUTELY DISABLED
2 AND WHO IS UNDERGOING COURT-ORDERED TREATMENT SHALL HAVE AN ANNUAL
3 EXAMINATION AND REVIEW TO DETERMINE WHETHER THE CONTINUATION OF COURT-ORDERED
4 TREATMENT IS APPROPRIATE IF THE MEDICAL DIRECTOR OF THE MENTAL HEALTH
5 TREATMENT AGENCY DETERMINES THAT THE PATIENT HAS BEEN SUBSTANTIALLY
6 NONCOMPLIANT WITH TREATMENT DURING THE PERIOD OF THE COURT ORDER. THE
7 MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY SHALL APPOINT ONE OR
8 MORE EXAMINERS QUALIFIED TO CARRY OUT THE EXAMINATION, AT LEAST ONE OF WHOM
9 SHALL BE A PSYCHIATRIST LICENSED TO PRACTICE IN THIS STATE.

10 ~~E.~~ F. Each examiner participating in the annual examination and
11 review of a gravely disabled person OR A PERSISTENTLY OR ACUTELY DISABLED
12 PERSON shall submit a report to the medical director of the mental health
13 treatment agency which includes the following:

14 1. The examiner's opinions as to whether the patient continues to be
15 gravely disabled OR PERSISTENTLY OR ACUTELY DISABLED and in need of
16 treatment.

17 2. A statement as to whether suitable alternatives to court-ordered
18 treatment are available.

19 3. A statement as to whether voluntary treatment would be appropriate.

20 4. A review of the patient's status as to guardianship or
21 conservatorship, or both, the adequacy of existing protections of the patient
22 and the continued need for guardianship or conservatorship, or both. If the
23 examiner concludes that the patient's needs in these areas are not being
24 adequately met, the examiner's report shall recommend that the court order an
25 investigation into the patient's needs.

26 ~~F.~~ G. The medical director of the mental health treatment agency
27 shall forward the results of the annual examination and review of a gravely
28 disabled person OR A PERSISTENTLY OR ACUTELY DISABLED PERSON to the court
29 including the medical director's recommendation based on the review which may
30 be release of the patient without delay, release with delay or no
31 release. If the patient does not have a guardian, the court shall, on
32 receipt of the medical director's report, SHALL appoint an attorney to
33 represent the patient. An attorney appointed under this subsection, within
34 three days after appointment, to the extent possible, shall fulfill the
35 duties imposed by section 36-537 and review the medical director's report,
36 AND the patient's medical records, interview the physician who prepared the
37 report and, if appropriate, request a hearing. AT ALL PROCEEDINGS CONDUCTED
38 PURSUANT TO THIS SECTION, A PATIENT HAS THE RIGHT TO HAVE AN ANALYSIS OF THE
39 PATIENT'S MENTAL CONDITION BY AN INDEPENDENT EVALUATOR PURSUANT TO SECTION
40 36-538. If the patient is under guardianship pursuant to section 14-5312.01,
41 a copy of the report shall be mailed to the patient's guardian. If the
42 medical director's recommendation is no release or release with delay, the
43 court may accept the report and recommendation of the medical director or
44 order a hearing. ~~The court shall order a hearing if requested to do so by~~
45 ~~the patient, the medical director or, if the patient has a guardian pursuant~~

1 ~~to section 14-5312.01, the guardian. If a hearing is ordered, the court may~~
2 ~~order additional examinations of the patient.~~ The hearing shall be held
3 within three weeks of the request. At the hearing the court may order the
4 patient released or may order that treatment be continued. The court may
5 also order an investigation into the need for guardianship OR
6 CONSERVATORSHIP, OR BOTH.

7 H. IF A HEARING IS HELD PURSUANT TO SUBSECTION G OF THIS SECTION THE
8 PARTY SEEKING THE RENEWAL OF THE COURT ORDER MUST PROVE ALL OF THE FOLLOWING
9 BY CLEAR AND CONVINCING EVIDENCE:

10 1. THE PATIENT IS ONE OF THE FOLLOWING:

- 11 (a) A DANGER TO SELF.
- 12 (b) A DANGER TO OTHERS.
- 13 (c) PERSISTENTLY OR ACUTELY DISABLED.
- 14 (d) GRAVELY DISABLED.

15 2. THE PATIENT IS IN NEED OF TREATMENT.

16 3. THE PATIENT IS EITHER UNWILLING OR UNABLE TO ACCEPT TREATMENT
17 VOLUNTARILY.

18 ~~G.~~ I. The deputy director shall create and operate a program to
19 assure that the examination and review of gravely disabled persons OR
20 PERSISTENTLY OR ACUTELY DISABLED PERSONS WHO HAVE BEEN SUBSTANTIALLY
21 NONCOMPLIANT WHILE UNDER COURT ORDER are carried out in an effective and
22 timely manner. The deputy director, with the approval of the director, shall
23 adopt rules needed to operate this program.

24 Sec. 3. Section 36-558, Arizona Revised Statutes, is amended to read:
25 36-558. Establishment and maintenance of programs and services;

26 definition

27 A. In addition to the Arizona training program facilities at Randolph
28 and Tucson, the director shall establish and maintain a state owned and
29 operated service center in Phoenix and other developmental disabilities
30 programs and services at other locations throughout the state, subject to the
31 availability of funds for such purpose and the approval of the legislature.

32 B. The director is responsible for the operation of each developmental
33 disabilities program and service, shall coordinate these services and shall
34 permit the transfer of residents between the various programs.

35 C. The department may provide, but not be limited to, the following
36 programs and services in addition to other services prescribed by the
37 director:

38 1. Child services, which may include:

- 39 (a) Infant stimulation.
- 40 (b) Developmental day training and related preschool programs.
- 41 (c) Special education at department facilities.

42 2. Adult services, which may include:

- 43 (a) Job training for specific jobs.
- 44 (b) Training and personal adjustment tools such as the teaching of
45 work skills.

- 1 (c) Job development and placement.
- 2 (d) The provision of sheltered employment opportunities.
- 3 (e) Adult day activity services.
- 4 3. Residential services, which shall include:
- 5 (a) Arizona training program facilities.
- 6 (b) State owned and operated service centers.
- 7 (c) Community residential settings under varying degrees of
- 8 supervision or a semi-independent living arrangement, ~~including a secure~~
- 9 ~~facility.~~ Community residential settings include, subject to the
- 10 availability of funding, a secure facility.
- 11 (d) Respite care.
- 12 4. Resource services, which may include:
- 13 (a) Diagnosis and evaluation.
- 14 (b) Therapy services, including physical therapy, speech therapy,
- 15 occupational therapy and behavioral therapy.
- 16 (c) Health-related services, including dental services.
- 17 (d) Social development and adjustment services, including recreation
- 18 programs.
- 19 (e) Transportation.
- 20 (f) Information and referral.
- 21 (g) In-home services.
- 22 5. Public information resources on developmental disabilities.
- 23 6. Training and practicum programs in conjunction with other state
- 24 agencies and universities and colleges for teachers, psychologists, social
- 25 workers, medical personnel and others interested in the field of
- 26 developmental disabilities.
- 27 7. Research ~~laboratory~~ LABORATORIES in the fields of behavioral
- 28 services and abstract research.
- 29 8. GUARDIANSHIP SERVICES.
- 30 D. Services of a facility may not supplant existing community services
- 31 provided through other local, city or state resources.
- 32 E. The department shall stimulate, cooperate with and promote the
- 33 development of community programs through existing resources, ~~and~~ provide
- 34 consultation wherever needed.
- 35 F. A SERVICE PROVIDER WHO IS PROVIDING GUARDIANSHIP SERVICES MUST
- 36 COMPLY WITH THE DISCLOSURE REQUIREMENTS OF SECTION 14-5106 AND SHALL NOT
- 37 PROVIDE SERVICES TO A PERSON WITH DEVELOPMENTAL DISABILITIES THAT WOULD CAUSE
- 38 A CONFLICT OF INTEREST OR THAT WOULD JEOPARDIZE THE SERVICE PROVIDER'S
- 39 ABILITY TO REPRESENT THE PERSON WITH DEVELOPMENTAL DISABILITIES AS A
- 40 GUARDIAN.
- 41 G. FOR THE PURPOSES OF THIS SECTION, "GUARDIANSHIP SERVICES" MEANS
- 42 SERVICES OFFERED TO A PERSON WITH DEVELOPMENTAL DISABILITIES BY A SERVICE
- 43 PROVIDER WHO IS UNDER CONTRACT WITH THE DIVISION TO ACT AS A GUARDIAN TO A
- 44 PERSON WITH DEVELOPMENTAL DISABILITIES IF NO OTHER APPROPRIATE GUARDIAN IS
- 45 AVAILABLE.

Passed the House March 14, 2005,

by the following vote: 53 Ayes,

3 Nays, 4 Not Voting

[Signature]

Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 13, 2005,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

Marilyn Jaurett
President of the Senate
Pro Tempore

Charmine Bellington
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR~~

~~This Bill was received by the Governor this
_____ day of _____, 20____,
at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State
this _____ day of _____, 20____,~~

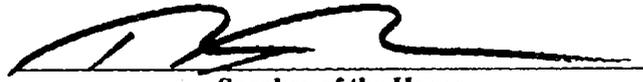
~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

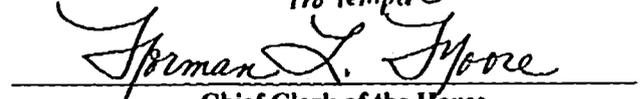
HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 10, 2005,
by the following vote: 46 Ayes,

5 Nays, 9 Not Voting



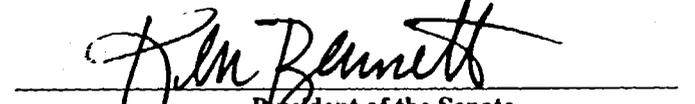
Speaker, of the House
Pro Tempore


Chief Clerk of the House

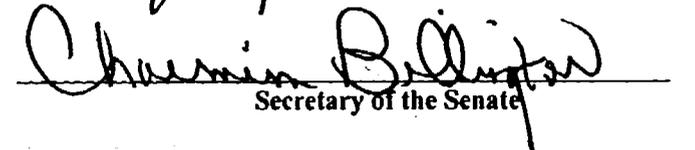
SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 11, 2005,
by the following vote: 29 Ayes,

0 Nays, 1 Not Voting



President of the Senate

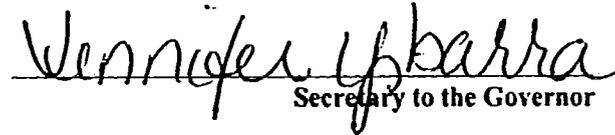

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 11th day of May, 2005

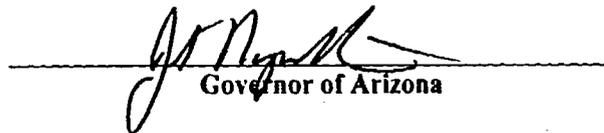
at 3:10 o'clock P M.


Secretary to the Governor

Approved this 20 day of

May, 2005,

at 9¹⁵ o'clock A M.

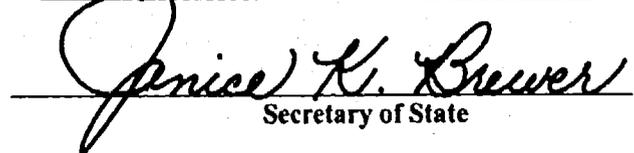

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2005,

at 3:03 o'clock P M.


Secretary of State

H.B. 2242