

Senate Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 138

SENATE BILL 1482

AN ACT

AMENDING SECTIONS 13-502 AND 13-3994, ARIZONA REVISED STATUTES; RELATING TO
THE PSYCHIATRIC SECURITY REVIEW BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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
24 mental health evaluation and treatment facility or another secure licensed
25 mental health facility for up to thirty days for mental health evaluation and
26 treatment. Experts at the mental health facility who are licensed pursuant
27 to title 32, who are familiar with this state's insanity statutes, who are
28 specialists in mental diseases and defects and who are knowledgeable
29 concerning insanity shall observe and evaluate the defendant. The expert or
30 experts who examine the defendant shall submit a written report of the
31 evaluation to the court, the defendant's attorney and the prosecutor. The
32 court shall order the defendant to pay the costs of the mental health
33 facility to the clerk of the court. The clerk of the court shall transmit
34 the reimbursements to the mental health facility for all of its costs. If
35 the court finds the defendant is indigent or otherwise is unable to pay all
36 or any of the costs, the court shall order the county to reimburse the mental
37 health facility for the remainder of the costs. Notwithstanding section
38 36-545.02, the mental health facility may maintain the reimbursements. If
39 the court does not commit the defendant to a secure state mental health
40 facility, a secure county mental health evaluation and treatment facility or
41 another secure licensed mental health facility, the court shall appoint an
42 independent expert who is licensed pursuant to title 32, who is familiar with
43 this state's insanity statutes, who is a specialist in mental diseases and
44 defects and who is knowledgeable concerning insanity to observe and evaluate
45 the defendant. The expert who examines the defendant shall submit a written

1 report of the evaluation to the court, the defendant's attorney and the
2 prosecutor. The court shall order the defendant to pay the costs of the
3 services of the independent expert to the clerk of the court. The clerk of
4 the court shall transmit the reimbursements to the expert. If the court
5 finds the defendant is indigent or otherwise unable to pay all or any of the
6 costs, the court shall order the county to reimburse the expert for the
7 remainder of the costs. This subsection does not prohibit the defendant or
8 this state from obtaining additional psychiatric examinations by other mental
9 health experts who are licensed pursuant to title 32, who are familiar with
10 this state's insanity statutes, who are specialists in mental diseases and
11 defects and who are knowledgeable concerning insanity.

12 C. The defendant shall prove the defendant's legal insanity by clear
13 and convincing evidence.

14 D. If the finder of fact finds the defendant guilty except insane, the
15 court shall determine the sentence the defendant could have received pursuant
16 to section 13-703, subsection A or section 13-707 or the presumptive sentence
17 the defendant could have received pursuant to section 13-604, SECTION
18 13-604.01, SECTION 13-701, subsection C, section 13-710 or section 13-1406 if
19 the defendant had not been found insane, and the judge shall ~~commit~~ SENTENCE
20 the defendant TO A TERM OF INCARCERATION IN THE STATE DEPARTMENT OF
21 CORRECTIONS AND SHALL ORDER THE DEFENDANT TO BE PLACED UNDER THE JURISDICTION
22 OF THE PSYCHIATRIC SECURITY REVIEW BOARD AND COMMITTED TO A STATE MENTAL
23 HEALTH FACILITY UNDER THE DEPARTMENT OF HEALTH SERVICES pursuant to section
24 13-3994 for that term. In making this determination the court shall not
25 consider the sentence enhancements for prior convictions under section
26 13-604. The court shall expressly identify each act that the defendant
27 committed and separately find whether each act involved the death or physical
28 injury of or a substantial threat of death or physical injury to another
29 person.

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

32 Sec. 2. Section 13-3994, Arizona Revised Statutes, is amended to read:
33 13-3994. Commitment; hearing; jurisdiction; definition

34 A. A person who is found guilty except insane pursuant to section
35 13-502 shall be committed to a secure state mental health facility under the
36 department of health services for a period of treatment.

37 B. If the criminal act of the person committed pursuant to subsection
38 A of this section did not cause the death or serious physical injury of or
39 the threat of death or serious physical injury to another person, the court
40 shall set a hearing date within seventy-five days after the person's
41 commitment to determine if the person is entitled to release from confinement
42 or if the person meets the standards for civil commitment pursuant to title
43 36, chapter 5. The court shall notify the medical director of the mental
44 health facility, the attorney general, the county attorney, the victim and
45 the attorney representing the person, if any, of the date of the hearing.

1 Fourteen days before the hearing the director of the mental health facility
2 shall submit to the court a report addressing the person's mental health and
3 dangerousness.

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

5 1. If the person proves by clear and convincing evidence that the
6 person no longer suffers from a mental disease or defect and is not
7 dangerous, the court shall order the person's release and the person's
8 commitment ordered pursuant to section 13-502, subsection D shall terminate.
9 Before determining to release a person pursuant to this paragraph, the court
10 shall consider the entire criminal history of the person and shall not order
11 the person's release if the court determines that the person has a propensity
12 to reoffend.

13 2. If the court finds that the person still suffers from a mental
14 disease or defect, may present a threat of danger to self or others, is
15 gravely disabled, is persistently or acutely disabled or has a propensity to
16 reoffend, it shall order the county attorney to institute civil commitment
17 proceedings pursuant to title 36 and the person's commitment ordered pursuant
18 to section 13-502, subsection D shall terminate.

19 D. If the court finds that the criminal act of the person committed
20 pursuant to subsection A of this section caused the death or serious physical
21 injury of or the threat of death or serious physical injury to another
22 person, the court shall place the person under the jurisdiction of the
23 psychiatric security review board. The court shall state the beginning date,
24 length and ending date of the board's jurisdiction over the person. The
25 length of the board's jurisdiction over the person is equal to the sentence
26 the person could have received pursuant to section 13-703, subsection A or
27 section 13-707 or the presumptive sentence the defendant could have received
28 pursuant to section 13-604, section 13-604.01, section 13-701, subsection C,
29 section 13-710 or section 13-1406. In making this determination the court
30 shall not consider the sentence enhancements for prior convictions under
31 section 13-604. THE COURT SHALL RETAIN JURISDICTION OF ALL MATTERS THAT ARE
32 NOT SPECIFICALLY DELEGATED TO THE PSYCHIATRIC SECURITY REVIEW BOARD FOR THE
33 DURATION OF THE PRESUMPTIVE SENTENCE.

34 E. A person who is placed under the jurisdiction of the psychiatric
35 security review board pursuant to subsection D of this section is not
36 eligible for discharge from the board's jurisdiction until the board's
37 jurisdiction over the person expires.

38 F. A person who is placed under the jurisdiction of the psychiatric
39 security review board pursuant to subsection D of this section is not
40 entitled to a hearing before the board earlier than one hundred twenty days
41 after the person's initial commitment. A request for a subsequent release
42 hearing may be made pursuant to subsection G—H of this section. After the
43 hearing, the board may take one of the following actions:

44 1. If the psychiatric security review board finds that the person
45 still suffers from a mental disease or defect and is dangerous, THE BOARD

1 SHALL ORDER THAT the person shall remain committed at the secure state mental
2 health facility.

3 2. If the person proves by clear and convincing evidence that the
4 person no longer suffers from a mental disease or defect and is not
5 dangerous, the psychiatric security review board shall order the person's
6 release. The person shall remain under the jurisdiction of the board.
7 Before determining to release a person pursuant to this paragraph, the board
8 shall consider the entire criminal history of the person and shall not order
9 the person's release if the board determines that the person has a propensity
10 to reoffend.

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

21 4. IF THE PERSON IS SENTENCED PURSUANT TO SECTION 13-604, SUBSECTION
22 F, G, H, I, J OR K AND THE PSYCHIATRIC SECURITY REVIEW BOARD FINDS THAT THE
23 PERSON NO LONGER NEEDS ONGOING TREATMENT FOR A MENTAL DISEASE AND THE PERSON
24 IS DANGEROUS OR HAS A PROPENSITY TO REOFFEND, THE BOARD SHALL ORDER THE
25 PERSON TO BE TRANSFERRED TO THE STATE DEPARTMENT OF CORRECTIONS FOR THE
26 REMAINDER OF THE SENTENCE IMPOSED PURSUANT TO SECTION 13-502, SUBSECTION D.
27 THE BOARD SHALL CONSIDER THE SAFETY AND PROTECTION OF THE PUBLIC.

28 G. WITHIN TWENTY DAYS AFTER THE PSYCHIATRIC SECURITY REVIEW BOARD
29 ORDERS A PERSON TO BE TRANSFERRED TO THE STATE DEPARTMENT OF CORRECTIONS, THE
30 PERSON MAY FILE A PETITION FOR A JUDICIAL DETERMINATION. THE PERSON SHALL
31 SERVE A COPY OF THE REQUEST ON THE ATTORNEY GENERAL. IF THE PERSON FILES A
32 PETITION FOR A JUDICIAL DETERMINATION, THE PERSON SHALL REMAIN IN A STATE
33 MENTAL HEALTH FACILITY PENDING THE RESULT OF THE JUDICIAL DETERMINATION. THE
34 PERSON REQUESTING THE JUDICIAL DETERMINATION HAS THE BURDEN OF PROVING THE
35 ISSUES BY CLEAR AND CONVINCING EVIDENCE. THE JUDICIAL DETERMINATION IS
36 LIMITED TO THE FOLLOWING ISSUES:

37 1. WHETHER THE PERSON NO LONGER NEEDS ONGOING TREATMENT FOR A MENTAL
38 DISEASE.

39 2. WHETHER THE PERSON IS DANGEROUS OR HAS A PROPENSITY TO REOFFEND.

40 ~~G.~~ H. A person who is placed under the jurisdiction of the
41 psychiatric security review board pursuant to subsection D of this section
42 may not seek a new release hearing earlier than twenty months after a prior
43 release hearing, except that the medical director of the state mental health
44 facility may request a new release hearing for a person under the
45 jurisdiction of the psychiatric security review board at any time. The

1 person shall not be held in confinement for more than two years without a
2 hearing before the board to determine if the person should be released or
3 conditionally released.

4 ~~H.~~ I. At any hearing for release or conditional release pursuant to
5 this section:

6 1. Public safety and protection are primary.

7 2. The applicant has the burden of proof by clear and convincing
8 evidence.

9 ~~I.~~ J. At least fifteen days before a hearing is scheduled to consider
10 a person's release, or before the expiration of the board's jurisdiction over
11 the person, the state mental health facility or supervising agency shall
12 submit to the psychiatric security review board a report on the person's
13 mental health. The psychiatric security review board shall determine whether
14 to release the person or to order the county attorney to institute civil
15 commitment proceedings pursuant to title 36.

16 ~~J.~~ K. The procedures for civil commitment govern the continued
17 commitment of the person after the expiration of the jurisdiction of the
18 psychiatric security review board.

19 ~~K.~~ L. Before a person is released or conditionally released, at least
20 three of the five psychiatric security review board members shall vote for
21 the release or conditional release.

22 ~~L.~~ M. If at any time while the person remains under the jurisdiction
23 of the psychiatric security review board it appears to the board, the
24 chairman or vice-chairman of the board or the medical director of the state
25 mental health facility that the person has failed to comply with the terms of
26 the person's conditional release or that the mental health of the person has
27 deteriorated, the board or the chairman or vice-chairman of the board for
28 good cause or the medical director of the state mental health facility may
29 order that the person be returned to a secure state mental health facility
30 for evaluation or treatment. A written order of the board, the chairman or
31 vice-chairman of the board or the medical director is sufficient warrant for
32 any law enforcement officer to take the person into custody and to transport
33 the person accordingly. Any sheriff or other peace officer shall execute the
34 order and shall immediately notify the board of the person's return to the
35 facility. Within twenty days after the person's return to a secure state
36 mental health facility the board shall conduct a hearing and shall give
37 notice within five days before the hearing of the time and place of the
38 hearing to the person, the victim, the attorney representing the person, the
39 county attorney and the attorney general.

40 ~~M.~~ N. The director of a facility that is providing treatment to a
41 person on conditional release or any other person who is responsible for the
42 supervision of the person may take the person or request that the person be
43 taken into custody if there is reasonable cause to believe that the person's
44 mental health has deteriorated to the point that the person's conditional
45 release should be revoked and that the person is in need of immediate care,

1 custody or treatment or that deterioration is likely because of noncompliance
2 with a treatment program. A person who is taken into custody pursuant to
3 this subsection shall be transported immediately to a secure state mental
4 health facility and shall have the same rights as any person appearing before
5 the psychiatric security review board.

6 ~~N~~ O. Before the initial hearing or any other hearing before the
7 psychiatric security review board on the release or conditional release of
8 the person, the person, the attorney who is representing the person and the
9 attorney general or county attorney who is representing the state may choose
10 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a
11 psychologist licensed pursuant to title 32, chapter 19.1 to examine the
12 person. All costs in connection with the examination shall be approved and
13 paid by the county of the sentencing court. The written examination results
14 shall be filed with the board and shall include an opinion as to:

15 1. The mental condition of the person.

16 2. Whether the person is dangerous.

17 ~~Q~~ P. Notwithstanding subsection ~~N~~ O of this section, the board or
18 the chairman of the board for good cause may order an independent mental
19 health evaluation by a psychiatrist licensed pursuant to title 32, chapter 13
20 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1. The
21 written examination results shall be filed with the board pursuant to
22 subsection ~~N~~ O of this section.

23 ~~P~~ Q. If a person is found guilty except insane pursuant to section
24 13-502, the department of health services shall assume custody of the person
25 within ten days after receiving the order committing the person pursuant to
26 subsection A of this section. The Arizona state hospital shall collect
27 census data for guilty except insane treatment programs to establish maximum
28 capacity and the allocation formula required pursuant to section 36-206,
29 subsection D. If the Arizona state hospital reaches its funded capacity for
30 forensic programs, the department of health services may defer the admission
31 of the person found guilty except insane for up to an additional twenty days.
32 The department of health services shall reimburse the county for the actual
33 costs of each day the admission is deferred. If the department of health
34 services is not able to admit the person found guilty except insane at the
35 conclusion of the twenty day deferral period, the department of health
36 services shall notify the sentencing court, the prosecutor and the defense
37 counsel of this fact. On receipt of this notification, the prosecutor or the
38 person's defense counsel may request a hearing to determine the likely length
39 of time admission will continue to be deferred and whether any other action
40 should be taken. On receipt of the request for hearing, the court shall set
41 a hearing within ten days.

42 ~~R~~ R. For the purposes of this section, "state mental health
43 facility" means a secure state mental health facility under the department of
44 health services.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.

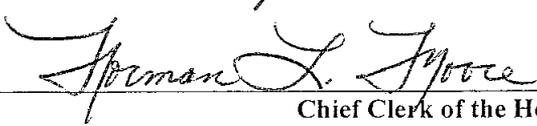
Passed the House April 17, 20 07,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting



Speaker of the House

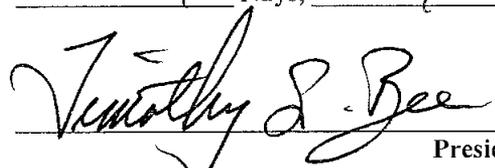


Chief Clerk of the House

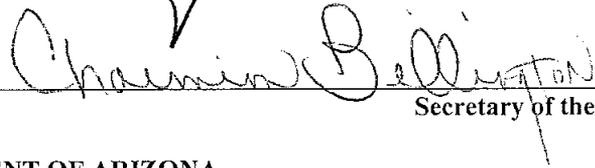
Passed the Senate February 22, 20 07,

by the following vote: 25 Ayes,

4 Nays, 1 Not Voting



President of the Senate



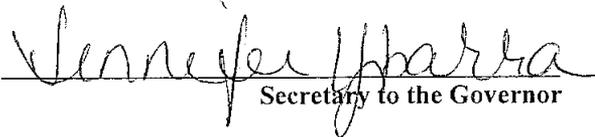
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

18th day of April, 2007

at 12:24 o'clock P. M.



Secretary to the Governor

Approved this 24 day of

April, 2007,

at 9:30 o'clock A. M.



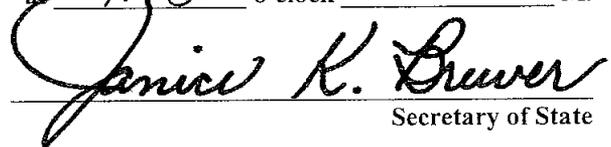
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 24 day of April, 2007,

at 11:30 o'clock A. M.



Secretary of State

S.B. 1482