

Senate Engrossed

FILED

KEN BENNETT

SECRETARY OF STATE

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 153

SENATE BILL 1152

AN ACT

AMENDING SECTIONS 12-2231, 12-2232, 13-4515, 36-535, 36-536, 36-537 AND
36-539, ARIZONA REVISED STATUTES; RELATING TO COURT-ORDERED TREATMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-2231, Arizona Revised Statutes, is amended to
3 read:

4 12-2231. Husband and wife; anti-marital fact

5 In a civil action a husband shall not be examined for or against his
6 wife without her consent, nor a wife for or against her husband without his
7 consent, except as provided in ~~paragraphs 1 through 4~~ of section 12-2232.

8 Sec. 2. Section 12-2232, Arizona Revised Statutes, is amended to read:

9 12-2232. Husband and wife; privileged communications

10 A husband or wife shall not, during the marriage or afterward, without
11 the consent of the other, be examined as to any communications made by one to
12 the other during the marriage, except:

13 1. In an action for divorce or a civil action by one against the
14 other.

15 2. In a criminal action or proceeding as provided in the criminal
16 code.

17 ~~3. In an action brought by the husband or wife against another person
18 for the alienation of the affections of either.~~

19 ~~4.~~ 3. In an action for damages against another person for adultery
20 committed by either husband or wife.

21 4. IN A HEARING CONDUCTED PURSUANT TO TITLE 36, CHAPTER 5. AT THAT
22 HEARING, A HUSBAND OR WIFE MAY ONLY BE EXAMINED RELATING TO COMMUNICATIONS
23 THAT RELATE TO THE MATTERS AT ISSUE IN THE HEARING.

24 Sec. 3. Section 13-4515, Arizona Revised Statutes, is amended to read:

25 13-4515. Duration of order; excluded time calculation; notice
26 of dismissed charge or voided order; petitions

27 A. An order or combination of orders that is issued pursuant to
28 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
29 months or the maximum possible sentence the defendant could have received
30 pursuant to section 13-702, section 13-703, section 13-704, SUBSECTION A, B,
31 C, D OR E, section 13-705, section 13-706, subsection A, section 13-708,
32 subsection D or section 13-751 or any section for which a specific sentence
33 is authorized, whichever is less. In making this determination the court
34 shall not consider the sentence enhancements under section 13-703 or 13-704
35 for prior convictions.

36 B. THE COURT SHALL ONLY CONSIDER THE TIME A DEFENDANT ACTUALLY SPENDS
37 IN A RESTORATION TO COMPETENCY PROGRAM WHEN CALCULATING THE TIME REQUIREMENTS
38 PURSUANT TO SUBSECTION A OF THIS SECTION.

39 ~~B.~~ C. The court shall notify the prosecutor, the defense attorney,
40 the medical supervisor and the treating facility if the charges against the
41 defendant are dismissed or if an order is voided by the court. No charges
42 shall be dismissed without a hearing prior to the dismissal.

43 ~~C.~~ D. If a defendant is discharged or released on the expiration of
44 an order or orders issued pursuant to section 13-4512 or 13-4514, the medical
45 supervisor may file a petition stating that the defendant requires further

1 treatment pursuant to title 36, chapter 5 or appointment of a guardian
2 pursuant to title 14.

3 Sec. 4. Section 36-535, Arizona Revised Statutes, is amended to read:

4 36-535. Detention of proposed patient; time of hearing;
5 released patient; intervention by division

6 A. If, ~~upon~~ ON the filing of a petition for court-ordered treatment,
7 the patient is not then detained in an agency, the court shall order the
8 detention of the patient in the agency ~~which~~ THAT conducted the evaluation if
9 the court determines that the patient is likely to present a danger to self
10 or others before the conclusion of the hearing or is not likely to appear at
11 the hearing on the petition if not detained. The court shall issue such
12 orders as are necessary to provide for the apprehension, transportation and
13 detention of the proposed patient. The court shall appoint counsel for the
14 proposed patient if one has not been previously appointed.

15 B. The court shall ~~either release the proposed patient or order the~~
16 ~~hearing to be held within six BUSINESS days after the petition is filed,~~
17 ~~unless the proposed patient, upon consultation with his attorney, determines~~
18 ~~that it would be in his best interest to request a continuance, which may be~~
19 ~~for a maximum of thirty days.~~ EXCEPT THAT, ON GOOD CAUSE SHOWN, THE COURT
20 MAY CONTINUE THE HEARING AT THE REQUEST OF EITHER PARTY. THE HEARING MAY BE
21 CONTINUED FOR A MAXIMUM OF THIRTY DAYS AT THE REQUEST OF THE PROPOSED
22 PATIENT. THE HEARING MAY BE CONTINUED FOR A MAXIMUM OF THREE BUSINESS DAYS
23 AT THE REQUEST OF THE PETITIONER. IF THE HEARING IS CONTINUED AT THE REQUEST
24 OF THE PETITIONER AND THE PROPOSED PATIENT IS INVOLUNTARILY HOSPITALIZED, THE
25 PROPOSED PATIENT MAY REQUEST A HEARING TO DETERMINE WHETHER THE PROPOSED
26 PATIENT SHOULD BE INVOLUNTARILY HOSPITALIZED DURING THE CONTINUATION PERIOD.

27 C. If after reviewing the petition with its attached material and
28 other evidence at hand the court finds that the patient is not, as a result
29 of mental disorder, a danger to self or others, persistently or acutely
30 disabled or gravely disabled, ~~he~~ THE PATIENT shall be released.

31 D. The division, acting on behalf of the state hospital, may intervene
32 as a party to the proceedings ~~upon~~ ON any petition for court-ordered
33 treatment and may appear as a party at the hearing on the petition by filing
34 a written notice of intervention with the clerk of the superior court in the
35 county in which the petition was filed, at any time before either the
36 original time set for THE hearing or the time to which the hearing is
37 continued. The intervenor at the hearing may cross-examine any witnesses
38 presented by other parties pursuant to section 36-539, may subpoena and
39 present witnesses of its own, including physicians, and may present other
40 evidence. The intervenor ~~may,~~ ~~upon~~ ON stipulation with all other parties or
41 ~~upon~~ ON order of the court, MAY cause physicians to personally conduct mental
42 status examinations of the proposed patient and to testify as to their
43 opinions concerning whether the proposed patient is, as a result of mental
44 disorder, a danger to self or to others, is persistently or acutely disabled
45 or is gravely disabled and as to whether the proposed patient requires

1 treatment. This subsection applies in addition to all rules of evidence, the
2 Arizona rules of civil procedure and ~~the provisions of section 36-539.~~

3 Sec. 5. Section 36-536, Arizona Revised Statutes, is amended to read:

4 36-536. Service of petition; counsel for proposed patient;
5 notice

6 A. At least seventy-two hours before the court conducts the hearing on
7 the petition for court-ordered treatment, a copy of the petition, and
8 affidavits in support thereof OF THE PETITION and the notice of the hearing
9 shall be served ~~upon~~ ON the patient, who shall be informed of the purpose of
10 the hearing and ~~shall be~~ advised of ~~his~~ THE PATIENT'S right to consult
11 counsel. If the patient has not employed counsel, counsel shall be appointed
12 by the court at least three days before the hearing. If at the time of the
13 petition for evaluation, ~~the patient had~~ counsel, the same attorney should,
14 if possible, be appointed to represent the patient at the hearing for
15 court-ordered treatment.

16 B. The notice provisions of this section cannot be waived.

17 C. The notice of the hearing shall fix the time and place for the
18 hearing, which shall be held in the courtroom or other place within the
19 county ~~which~~ THAT the court may designate to insure humane treatment with due
20 regard to the comfort and safety of the patient and others.

21 D. THE PERSON WHO SERVES THE NOTICE OF HEARING MUST FILE A PROOF OF
22 SERVICE WITH THE COURT THAT SPECIFIES THE DATE, TIME AND MANNER OF SERVICE.

23 Sec. 6. Section 36-537, Arizona Revised Statutes, is amended to read:

24 36-537. Powers and duties of counsel

25 A. The medical director of the agency ~~which~~ THAT conducted the
26 evaluation ~~shall~~, at least seventy-two hours ~~prior to~~ BEFORE the hearing,
27 SHALL make available to the patient's attorney copies of the petition for
28 evaluation, prepetition screening report, evaluation report, the patient's
29 medical records for the current admission and a list of alternatives to
30 court-ordered treatment ~~which~~ THAT are used in similar cases with an
31 explanation of why they are not appropriate or available.

32 B. The patient's attorney ~~shall~~, for all hearings, whether for
33 evaluation or treatment, SHALL fulfill the following minimal duties:

34 1. Within twenty-four hours of appointment, conduct an interview of
35 the patient. The attorney shall explain to the patient ~~his~~ THE PATIENT'S
36 rights pending court-ordered treatment, the procedures leading to
37 court-ordered treatment, the standards for court-ordered treatment, and the
38 alternative of becoming a voluntary patient AND WHETHER STIPULATIONS AT THE
39 HEARING ARE APPROPRIATE. If the attorney is appointed, ~~he~~ THE ATTORNEY ALSO
40 shall ~~also~~ explain that the patient can obtain ~~his~~ THE PATIENT'S own counsel
41 at ~~his~~ THE PATIENT'S own expense and that, if it is later determined that the
42 person is not indigent, the person will be responsible for the fees of the
43 appointed attorney for services rendered after the initial attorney-client
44 conference.

1 2. At least twenty-four hours ~~prior to~~ BEFORE the hearing, review the
2 petition for evaluation, prepetition screening report, evaluation report,
3 petition for treatment, the patient's medical records and the list of
4 alternatives to court-ordered treatment.

5 3. At least twenty-four hours ~~prior to~~ BEFORE the hearing, interview
6 the petitioner, if available, and ~~his~~ THE PETITIONER'S supporting witnesses,
7 if known and available.

8 4. At least twenty-four hours ~~prior to~~ BEFORE the hearing, interview
9 the physicians who will testify at the hearing, if available, and investigate
10 the possibility of alternatives to court-ordered treatment.

11 C. Failure of the attorney to fulfill at least the duties prescribed
12 by ~~paragraphs 1 through 4 of this~~ subsection B may be punished as contempt of
13 court.

14 D. AT A HEARING HELD PURSUANT TO THIS ARTICLE, THE PATIENT'S ATTORNEY
15 MAY ENTER STIPULATIONS ON BEHALF OF THE PATIENT.

16 Sec. 7. Section 36-539, Arizona Revised Statutes, is amended to read:
17 36-539. Conduct of hearing; record; transcript

18 A. The medical director of the agency shall issue instructions to the
19 physicians treating the proposed patient to take all reasonable precautions
20 to insure that at the time of the hearing the proposed patient shall not be
21 so under the influence of or so suffer the effects of drugs, medication or
22 other treatment as to be hampered in preparing for or participating in the
23 hearing. The court at the time of the hearing shall be presented a record of
24 all drugs, medication or other treatment ~~which~~ THAT the person has received
25 during the seventy-two hours immediately ~~prior to~~ BEFORE the hearing.

26 B. The patient and ~~his~~ THE PATIENT'S attorney shall be present at all
27 hearings and the patient's attorney may subpoena and cross-examine witnesses
28 and present evidence. THE PATIENT MAY CHOOSE TO NOT ATTEND THE HEARING OR
29 THE PATIENT'S ATTORNEY MAY WAIVE THE PATIENT'S PRESENCE. The evidence
30 presented by the petitioner or the patient shall include the testimony of two
31 or more witnesses acquainted with the patient at the time of the alleged
32 mental disorder, WHICH MAY BE SATISFIED BY A STATEMENT AGREED ON BY THE
33 PARTIES, and testimony of the two physicians who performed examinations in
34 the evaluation of the patient, WHICH MAY BE SATISFIED BY STIPULATING TO THE
35 ADMISSION OF THE EVALUATING PHYSICIANS' AFFIDAVITS AS REQUIRED PURSUANT TO
36 SECTION 36-533, SUBSECTION B. The physicians shall testify as to their
37 personal examination of the patient. They shall also testify as to their
38 opinions concerning whether the patient is, as a result of mental disorder, a
39 danger to self or to others, is persistently or acutely disabled or is
40 gravely disabled and as to whether the patient requires treatment. Such
41 testimony shall state specifically the nature and extent of the danger to
42 self or to others, the persistent or acute disability or the grave
43 disability. If the patient is gravely disabled the physicians shall testify
44 concerning the need for guardianship or conservatorship, or both, and whether
45 or not the need is for immediate appointment. Other persons who have

1 participated in the evaluation of the patient or, if further treatment was
2 requested by a mental health treatment agency, persons of that agency who are
3 directly involved in the care of the patient shall testify at the request of
4 the court or of the patient's attorney. Witnesses shall testify as to
5 placement alternatives appropriate and available for the care and treatment
6 of the patient. The clinical record of the patient for the current admission
7 shall be available and may be presented in full or in part as evidence at the
8 request of the court, the county attorney or the patient's attorney.

9 C. If the patient, for medical reasons, is unable to be present at the
10 hearing and the hearing cannot be conducted where the patient is being
11 treated or confined, the court shall require clear and convincing evidence
12 that the patient is unable to be present at the hearing and ~~upon~~ ON such a
13 finding may proceed with the hearing in the patient's absence.

14 D. The requirements of subsection B are in addition to all rules of
15 evidence and the Arizona rules of civil procedure, not inconsistent with
16 subsection B.

17 E. A verbatim record of all proceedings under this section shall be
18 made by stenographic means by a court reporter if a written request for a
19 court reporter is made by any party to the proceedings at least twenty-four
20 hours in advance of such proceedings. If stenographic means are not
21 requested in the manner provided by this subsection, electronic means shall
22 be directed by the presiding judge. The stenographic notes or electronic
23 tape shall be retained as provided by statute.

24 F. A patient who has been ordered to undergo treatment may request a
25 certified transcript of the hearing. To obtain a copy, the patient shall pay
26 for a transcript or shall file an affidavit that ~~he~~ THE PATIENT is without
27 means to pay for a transcript. If the affidavit is found true by the court,
28 the expense of the transcript is to be a charge ~~upon~~ ON the county in which
29 the proceedings were held, or, if an intergovernmental agreement by the
30 counties has required evaluation in a county other than that of the patient's
31 residence, such expense may be charged to the county of the patient's
32 residence or in which the patient was found ~~prior to~~ BEFORE evaluation.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House June 29, 20 09,

by the following vote: 51 Ayes,

3 Nays, 6 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate June 22, 20 09,

by the following vote: 25 Ayes,

4 Nays, 1 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
15th day of July, 20 09,

at 8:53 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 13th day of

July, 20 09,

at 10:03 o'clock A M.

[Signature]
Governor of Arizona

S.B. 1152

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 13 day of July, 20 09,

at 3:20 o'clock P. M.

[Signature]
Secretary of State