House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

CHAPTER 262

HOUSE BILL 2402

AN ACT

AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5304.01; AMENDING SECTIONS 14-5312.01, 36-509 AND 36-540, ARIZONA REVISED STATUTES; RELATING TO GUARDIANS OF INCAPACITATED PERSONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 14, chapter 5, article 3, Arizona Revised Statutes, is amended by adding section 14-5304.01, to read:

14-5304.01. Effect of appointment of guardian on privilege to operate a motor vehicle

A. ON THE APPOINTMENT OF A GUARDIAN, THE COURT MAY DETERMINE THAT THE WARD'S PRIVILEGE TO OBTAIN OR RETAIN A DRIVER LICENSE SHOULD BE SUSPENDED AND ISSUE AN ORDER SUSPENDING THE PRIVILEGE.

B. IF THE COURT IS PRESENTED WITH SUFFICIENT MEDICAL OR OTHER EVIDENCE TO ESTABLISH THAT THE WARD'S INCAPACITY DOES NOT PREVENT THE WARD FROM SAFELY OPERATING A MOTOR VEHICLE, IT MAY DECLINE TO SUSPEND THE WARD'S PRIVILEGE TO OBTAIN OR RETAIN A DRIVER LICENSE AND ISSUE AN ORDER ALLOWING THE WARD TO OBTAIN OR RETAIN A DRIVER LICENSE.

C. THE FINDING OF INTERIM INCAPACITY PURSUANT TO SECTION 14-5310 DOES NOT CAUSE THE SUSPENSION OF THE WARD'S PRIVILEGE TO OBTAIN OR RETAIN A DRIVER LICENSE OR TO OPERATE A MOTOR VEHICLE PURSUANT TO SECTION 28-3153 UNLESS THE COURT ALSO FINDS THAT THE INTERIM INCAPACITY AFFECTS THE WARD'S ABILITY TO SAFELY OPERATE A MOTOR VEHICLE AND THAT THE PRIVILEGE SHOULD BE IMMEDIATELY SUSPENDED. IN LIEU OF ORDERING THE WARD'S DRIVER LICENSE SUSPENDED, THE COURT MAY ORDER THE WARD NOT TO DRIVE A MOTOR VEHICLE UNTIL THE WARD PRESENTS SUFFICIENT MEDICAL OR OTHER EVIDENCE TO ESTABLISH THAT THE WARD'S INTERIM INCAPACITY DOES NOT AFFECT THE WARD'S ABILITY TO SAFELY OPERATE A MOTOR VEHICLE. THE WARD MAY PRESENT THE MEDICAL OR OTHER EVIDENCE BY MOTION TO THE COURT. THE COURT MAY RULE ON THE MOTION WITHOUT HEARING IF THERE ARE NO OBJECTIONS TO THE MOTION.

D. A WARD WHOSE PRIVILEGE TO OBTAIN OR RETAIN A DRIVER LICENSE HAS BEEN SUSPENDED OR REVOKED BY COURT ORDER MAY FILE A REQUEST TO TERMINATE THE SUSPENSION OR REVOCATION AND REINSTATE THE PRIVILEGE. IN REACHING ITS DECISION THE COURT SHALL CONSIDER MEDICAL EVIDENCE THAT THE WARD'S INCAPACITY DOES NOT PREVENT THE WARD FROM SAFELY OPERATING A MOTOR VEHICLE AND MAY CONSIDER OTHER EVIDENCE, INCLUDING A CERTIFICATE OF GRADUATION FROM AN ACCREDITED DRIVING SCHOOL WITH A RECOMMENDATION THAT THE WARD SHOULD BE EXTENDED DRIVING PRIVILEGES. IF THE COURT GRANTS THE ORDER TERMINATING THE SUSPENSION OR REVOCATION AND REINSTATING THE PRIVILEGE, THE WARD MAY APPLY TO THE DEPARTMENT OF TRANSPORTATION FOR THE ISSUANCE OR REINSTATEMENT OF A DRIVER LICENSE AND MUST COMPLY WITH ALL APPLICABLE DEPARTMENT RULES.

E. AN ORDER TERMINATING A TEMPORARY OR PERMANENT GUARDIANSHIP IS AN ORDER TERMINATING ANY INCAPACITY PREVIOUSLY ADJUDICATED AND VACATES ANY PREVIOUS ORDERS SUSPENDING OR REVOKING THE PERSON'S PRIVILEGE TO OBTAIN OR RETAIN A DRIVER LICENSE. THE PERSON MAY APPLY TO THE DEPARTMENT OF TRANSPORTATION FOR THE ISSUANCE OR REINSTATEMENT OF A DRIVER LICENSE AND MUST COMPLY WITH ALL APPLICABLE DEPARTMENT RULES.

Sec. 2. Section 14-5312.01, Arizona Revised Statutes, is amended to read:

14-5312.01. Inpatient treatment; rights and duties of ward and guardian

A. Except as provided in subsection B of this section, a guardian of an incapacitated person may consent to psychiatric and psychological care and treatment, including the administration of psychotropic medications, if the care and treatment take place outside a level one behavioral health facility licensed by the department of health services.

B. On clear and convincing evidence that the ward is incapacitated as a result of a mental disorder as defined in section 36-501, and is ~~currently~~ LIKELY TO BE in need of inpatient mental health care and treatment WITHIN THE PERIOD OF THE AUTHORITY GRANTED PURSUANT TO THIS SECTION, the court may authorize a guardian appointed pursuant to this title to give consent for the ward to receive inpatient mental health care and treatment, including placement in a level one behavioral health facility licensed by the department of health services and medical, psychiatric and psychological treatment associated with that placement. The evidence shall be supported by the opinion of a mental health expert who is either a physician licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1.

C. In making its decision to grant authority to a guardian pursuant to subsection B of this section, the court shall consider the cause of the ward's disability and the ward's foreseeable clinical needs. The court shall limit the guardian's authority to what is reasonably necessary to obtain the care required for the ward in the least restrictive treatment alternative. The court may limit the duration of the guardian's authority to consent to inpatient mental health care and treatment and include other orders the court determines necessary to protect the ward's best interests.

D. Within forty-eight hours after placement of the ward pursuant to this section, the guardian shall give notice of this action to the ward's attorney. When the attorney receives this notice the attorney shall assess the appropriateness of the placement pursuant to section 36-537, subsection B and section 36-546, subsection H. If requested by the attorney, the court shall hold a hearing on the appropriateness of the placement within three days after receiving that request.

E. The behavioral health treatment facility shall assess the appropriateness of the ward's placement every thirty days and shall provide a copy of the assessment report to the ward's attorney. The ward's attorney may attend the ward's evaluation, staffing, treatment team and case management meetings.

F. When the ward is admitted to a level one behavioral health treatment facility pursuant to this section, the guardian shall provide the facility with the name, address and telephone number of the ward's attorney. The facility shall include this information in the ward's treatment record.

G. Within twenty-four hours after the facility receives any writing in which the ward requests release from the facility, any change in placement or a change in the type or duration of treatment, the facility shall forward this information to the ward's attorney.

H. All health care providers, treatment facilities and regional behavioral health authorities shall allow the ward's attorney access to all of the ward's medical, psychiatric, psychological and other treatment records.

I. The ward's guardian shall place the ward in a least restrictive treatment alternative within ten days after the guardian is notified by the medical director of the inpatient facility that the ward no longer needs inpatient care. The ward, a representative of the inpatient treatment facility, the ward's attorney, the ward's physician or any other interested person may petition the court to order the facility to discharge the ward to a least restrictive treatment alternative if the guardian does not act promptly to do so.

J. If the ward is in a behavioral health treatment facility at the time of the initial hearing on the petition for appointment of a guardian, the court investigator and the ward's attorney shall advise the court of the appropriateness of the placement.

K. An attorney appointed pursuant to section 14-5303, subsection C remains the attorney of record until the attorney is discharged by the court. The court shall ensure that a ward whose guardian has been granted mental health treatment authority is represented by an attorney at all times the guardian has that authority. Unless the court finds that the ward has insufficient assets to meet the ward's reasonable and necessary care and living expenses, the ward shall pay the attorney's reasonable fees.

L. If deemed necessary to adequately assess a request for mental health treatment authority or to review the ward's placement in a behavioral health treatment facility, the court may order an independent evaluation by either a physician who is licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1. If the ward has insufficient funds to pay the total cost of this evaluation, the court may deem all or any part of the evaluator's fee to be a county expense after determining the reasonableness of that fee.

M. Instead of ordering an independent evaluation pursuant to subsection L of this section, the court may accept a report conducted on behalf of the behavioral health treatment facility if the court finds that the report meets the requirements of an independent evaluation.

N. The court may decide that the ward's right to retain or obtain a driver license and any other civil right that may be suspended by operation of law is not affected by the appointment of a guardian.

O. If the court grants the guardian the authority to consent to inpatient mental health care and treatment pursuant to this section, the medical director of a level one behavioral health facility licensed by the department of health services may admit the ward at the guardian's request.

P. A guardian who is authorized by the court to consent to inpatient mental health care and treatment pursuant to this section shall file with the annual report of the guardian required pursuant to section 14-5315 an evaluation report by a physician or a psychologist who meets the requirements of subsection B of this section. The evaluation report shall indicate if the ward ~~currently needs~~ WILL LIKELY NEED inpatient mental health care and treatment WITHIN THE PERIOD OF THE AUTHORITY GRANTED PURSUANT TO THIS SECTION. If the guardian does not file the evaluation report or if the report indicates that the ward ~~does~~ WILL not LIKELY need inpatient mental health care and treatment, the guardian's authority to consent to this treatment ceases ON THE EXPIRATION OF THE PERIOD SPECIFIED IN THE PRIOR COURT ORDER. If the report ~~indicates that the ward currently needs this~~ SUPPORTS THE CONTINUATION OF THE GUARDIAN'S AUTHORITY TO CONSENT TO INPATIENT treatment, THE COURT MAY ORDER THAT the guardian's authority to consent to this treatment continues. If the report supports the continuation of the guardian's authority to consent to this treatment, the ward's attorney shall review the report with the ward. The ward may contest the continuation of the guardian's authority by filing a request for a court hearing within ten business days after the report is filed. The court shall hold this hearing within thirty calendar days after it receives the request. The guardian's authority continues pending the court's ruling on the issue. At the hearing the guardian has the burden of proving by clear and convincing evidence that the ward is ~~currently~~ LIKELY TO BE in need of inpatient mental health care and treatment WITHIN THE PERIOD OF THE AUTHORITY GRANTED PURSUANT TO THIS SECTION.

Q. The court may discharge an attorney who was appointed pursuant to section 14-5303, subsection C subsequent to the appointment of a guardian if it clearly appears from specific facts presented by affidavit or verified petition that continued representation of the ward is no longer necessary or desirable. The factual basis must include, at a minimum, consideration of the following:

1. The nature and history of the ward's illness.
2. The ward's history of hospitalization.
3. The ward's current and anticipated living arrangements.
4. Whether the ward's inpatient treatment is anticipated to be a one-time hospitalization for the purpose of stabilizing the ward's condition and further hospitalizations are not likely to be necessary.
5. Whether the ward's current and anticipated living arrangements are the least restrictive alternatives possible.

1 Sec. 3. Section 36-509, Arizona Revised Statutes, is amended to read:
2 36-509. Confidential records
3 A. A health care entity must keep records and information contained in
4 records confidential and not as public records, except as provided in this
5 section. Records and information contained in records may only be disclosed
6 to:
7 1. Physicians and providers of health, mental health or social and
8 welfare services involved in caring for, treating or rehabilitating the
9 patient.
10 2. Individuals to whom the patient or the patient's health care
11 decision maker has given authorization to have information disclosed.
12 3. Persons authorized by a court order.
13 4. Persons doing research only if the activity is conducted pursuant
14 to applicable federal or state laws and regulations governing research.
15 5. The state department of corrections in cases in which prisoners
16 confined to the state prison are patients in the state hospital on authorized
17 transfers either by voluntary admission or by order of the court.
18 6. Governmental or law enforcement agencies if necessary to:
19 (a) Secure the return of a patient who is on unauthorized absence from
20 any agency where the patient was undergoing evaluation and treatment.
21 (b) Report a crime on the premises.
22 (c) Avert a serious and imminent threat to an individual or the
23 public.
24 7. Persons, including family members, actively participating in the
25 patient's care, treatment or supervision. A health care provider may only
26 release information relating to the patient's diagnosis, prognosis, need for
27 hospitalization, anticipated length of stay, discharge plan, medication,
28 medication side effects and short-term and long-term treatment goals. A
29 health care provider may make this release only after the treating
30 professional or that person's designee interviews the patient or the
31 patient's health care decision maker and the patient or the patient's health
32 care decision maker does not object, unless federal or state law permits the
33 disclosure. If the patient does not have the opportunity to object to the
34 disclosure because of incapacity or an emergency circumstance and the
35 patient's health care decision maker is not available to object to the
36 release, the health care provider in the exercise of professional judgment
37 may determine if the disclosure is in the best interests of the patient and,
38 if so, may release the information authorized pursuant to this paragraph. A
39 decision to release or withhold information is subject to review pursuant to
40 section 36-517.01. The health care provider must record the name of any
41 person to whom any information is given under this paragraph.
42 8. A state agency that licenses health professionals pursuant to title
43 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the
44 course of investigating complaints of professional negligence, incompetence
45 or lack of clinical judgment.

9. A state or federal agency that licenses health care providers.

10. A governmental agency or a competent professional, as defined in section 36-3701, in order to comply with chapter 37 of this title.

11. Human rights committees established pursuant to title 41, chapter 35. Any information released pursuant to this paragraph shall comply with the requirements of section 41-3804 and applicable federal law and shall be released without personally identifiable information unless the personally identifiable information is required for the official purposes of the human rights committee. Case information received by a human rights committee shall be maintained as confidential. For the purposes of this paragraph, "personally identifiable information" includes a person's name, address, date of birth, social security number, tribal enrollment number, telephone or telefacsimile number, driver license number, places of employment, school identification number and military identification number or any other distinguishing characteristic that tends to identify a particular person.

12. A patient or the patient's health care decision maker pursuant to section 36-507.

13. The department of public safety by the court to comply with the requirements of section 36-540, subsection ~~N~~ O.

14. A third party payor or the payor's contractor to obtain reimbursement for health care, mental health care or behavioral health care provided to the patient.

15. A private entity that accredits the health care provider and with whom the health care provider has an agreement requiring the agency to protect the confidentiality of patient information.

16. The legal representative of a health care entity in possession of the record for the purpose of securing legal advice.

17. A person or entity as otherwise required by state or federal law.

18. A person or entity as permitted by the federal regulations on alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

19. A person or entity to conduct utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

20. A person maintaining health statistics for public health purposes as authorized by law.

21. A grand jury as directed by subpoena.

B. Information and records obtained in the course of evaluation, examination or treatment and submitted in any court proceeding pursuant to this chapter or title 14, chapter 5 are confidential and are not public records unless the hearing requirements of this chapter or title 14, chapter 5 require a different procedure. Information and records that are obtained pursuant to this section and submitted in a court proceeding pursuant to title 14, chapter 5 and that are not clearly identified by the parties as confidential and segregated from nonconfidential information and records are considered public records.

C. Notwithstanding subsections A and B of this section, the legal representative of a patient who is the subject of a proceeding conducted pursuant to this chapter and title 14, chapter 5 has access to the patient's information and records in the possession of a health care entity or filed with the court.

Sec. 4. Section 36-540, Arizona Revised Statutes, is amended to read:

36-540. Court options

A. If the court finds by clear and convincing evidence that the proposed patient, as a result of mental disorder, is a danger to self, is a danger to others, is persistently or acutely disabled or is gravely disabled and in need of treatment, and is either unwilling or unable to accept voluntary treatment, the court shall order the patient to undergo one of the following:

1. Treatment in a program of outpatient treatment.

2. Treatment in a program consisting of combined inpatient and outpatient treatment.

3. Inpatient treatment in a mental health treatment agency, in a veterans administration hospital pursuant to article 9 of this chapter, in the state hospital or in a private hospital, if the private hospital agrees, subject to the limitations of section 36-541.

B. The court shall consider all available and appropriate alternatives for the treatment and care of the patient. The court shall order the least restrictive treatment alternative available.

C. The court may order the proposed patient to undergo outpatient or combined inpatient and outpatient treatment pursuant to subsection A, paragraph 1 or 2 of this section if the court:

1. Determines that all of the following apply:

(a) The patient does not require continuous inpatient hospitalization.

(b) The patient will be more appropriately treated in an outpatient treatment program or in a combined inpatient and outpatient treatment program.

(c) The patient will follow a prescribed outpatient treatment plan.

(d) The patient will not likely become dangerous or suffer more serious physical harm or serious illness or further deterioration if the patient follows a prescribed outpatient treatment plan.

2. Is presented with and approves a written treatment plan that conforms with the requirements of section 36-540.01, subsection B. If the treatment plan presented to the court pursuant to this subsection provides for supervision of the patient under court order by a mental health agency that is other than the mental health agency that petitioned or requested the county attorney to petition the court for treatment pursuant to section 36-531, the treatment plan must be approved by the medical director of the mental health agency that will supervise the treatment pursuant to subsection E of this section.

D. An order to receive treatment pursuant to subsection A, paragraph 1 or 2 of this section shall not exceed three hundred sixty-five days. The period of inpatient treatment under a combined treatment order pursuant to subsection A, paragraph 2 of this section shall not exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section.

E. If the court enters an order for treatment pursuant to subsection A, paragraph 1 or 2 of this section, all of the following apply:

1. The court shall designate the medical director of the mental health treatment agency that will supervise and administer the patient's treatment program.

2. The medical director shall not use the services of any person, agency or organization to supervise a patient's outpatient treatment program unless the person, agency or organization has agreed to provide these services in the individual patient's case and unless the department has determined that the person, agency or organization is capable and competent to do so.

3. The person, agency or organization assigned to supervise an outpatient treatment program or the outpatient portion of a combined treatment program shall be notified at least three days before a referral. The medical director making the referral and the person, agency or organization assigned to supervise the treatment program shall share relevant information about the patient to provide continuity of treatment.

4. During any period of outpatient treatment under subsection A, paragraph 2 of this section, if the court, on motion by the medical director of the patient's outpatient mental health treatment facility, determines that the patient is not complying with the terms of the order or that the outpatient treatment plan is no longer appropriate and the patient needs inpatient treatment, the court, without a hearing and based on the court record, the patient's medical record, the affidavits and recommendations of the medical director, and the advice of staff and physicians or the psychiatric and mental health nurse practitioner familiar with the treatment of the patient, may enter an order amending its original order. The amended order may alter the outpatient treatment plan or order the patient to inpatient treatment pursuant to subsection A, paragraph 3 of this section. The amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section. If the patient refuses to comply with an amended order for inpatient treatment, the court may authorize and direct a peace officer, on the request of the medical director, to take the patient into protective custody and transport the patient to the agency for inpatient treatment. When reporting to or being returned to a treatment agency for inpatient treatment pursuant to an amended order, the patient shall be

informed of the patient's right to judicial review and the patient's right to consult with counsel pursuant to section 36-546.

5. During any period of outpatient treatment under subsection A, paragraph 2 of this section, if the medical director of the outpatient treatment facility in charge of the patient's care determines, in concert with the medical director of an inpatient mental health treatment facility who has agreed to accept the patient, that the patient is in need of immediate acute inpatient psychiatric care because of behavior that is dangerous to self or to others, the medical director of the outpatient treatment facility may order a peace officer to apprehend and transport the patient to the inpatient treatment facility pending a court determination on an amended order under paragraph 4 of this subsection. The patient may be detained and treated at the inpatient treatment facility for a period of no more than forty-eight hours, exclusive of weekends and holidays, from the time that the patient is taken to the inpatient treatment facility. The medical director of the outpatient treatment facility shall file the motion for an amended court order requesting inpatient treatment no later than the next working day following the patient being taken to the inpatient treatment facility. Any period of detention within the inpatient treatment facility pending issuance of an amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section. If a patient is ordered to undergo inpatient treatment pursuant to an amended order, the medical director of the outpatient treatment facility shall inform the patient of the patient's right to judicial review and to consult with an attorney pursuant to section 36-546.

F. The maximum periods of inpatient treatment that the court may order, subject to the limitations of section 36-541, are as follows:

1. Ninety days for a person found to be a danger to self.

2. One hundred eighty days for a person found to be a danger to others.

3. One hundred eighty days for a person found to be persistently or acutely disabled.

4. Three hundred sixty-five days for a person found to be gravely disabled.

G. If, on finding that the patient ~~is gravely disabled~~ MEETS THE CRITERIA FOR COURT-ORDERED TREATMENT PURSUANT TO SUBSECTION A OF THIS SECTION, the court also finds that ~~the evidence indicates~~ THERE IS REASONABLE CAUSE TO BELIEVE THAT THE PATIENT IS AN INCAPACITATED PERSON AS DEFINED IN SECTION 14-5101 OR IS A PERSON IN NEED OF PROTECTION PURSUANT TO SECTION 14-5401 AND that the patient is or may be in need of guardianship or conservatorship, or both, the court ~~shall~~ MAY order an investigation concerning the need for a guardian or conservator, or both, and ~~shall~~ MAY

appoint a suitable person or agency to conduct the investigation. The appointee may include ~~the mental health treatment agency that is providing inpatient or outpatient treatment, a court-appointed visitor~~ A COURT APPOINTED GUARDIAN AD LITEM, AN INVESTIGATOR APPOINTED PURSUANT TO SECTION 14-5308 or the public fiduciary if there is no person willing and qualified to act in that capacity. The court shall give notice of the appointment to the appointee within three days of the appointment. The appointee shall submit the report of the investigation to the court within twenty-one days. The report shall include recommendations as to who should be guardian or who should be conservator, or both, and a report of the findings and reasons for the recommendation. If the investigation and report so indicate, the court shall order the appropriate person to submit a petition to become the guardian or conservator, or both, of the patient.

~~H. If, on finding that a patient is gravely disabled, the court also finds that the patient is in need of immediate guardianship for the purpose of protection of the patient or for the purpose of carrying out alternatives to court-ordered treatment, the court may appoint as a temporary guardian a suitable person or the public fiduciary, if there is no person qualified and willing to act in that capacity.~~

H. IN ANY PROCEEDING FOR COURT-ORDERED TREATMENT IN WHICH THE PETITION ALLEGES THAT THE PATIENT IS IN NEED OF A GUARDIAN OR CONSERVATOR AND STATES THE GROUNDS FOR THAT ALLEGATION, THE COURT MAY APPOINT AN EMERGENCY TEMPORARY GUARDIAN OR CONSERVATOR, OR BOTH, FOR A SPECIFIC PURPOSE OR PURPOSES IDENTIFIED IN ITS ORDER AND FOR A SPECIFIC PERIOD OF TIME NOT TO EXCEED THIRTY DAYS IF THE COURT FINDS THAT ALL OF THE FOLLOWING ARE TRUE:

1. THE PATIENT MEETS THE CRITERIA FOR COURT-ORDERED TREATMENT PURSUANT TO SUBSECTION A OF THIS SECTION.

2. THERE IS REASONABLE CAUSE TO BELIEVE THAT THE PATIENT IS AN INCAPACITATED PERSON AS DEFINED IN SECTION 14-5101 OR IS IN NEED OF PROTECTION PURSUANT TO SECTION 14-5401, PARAGRAPH 2.

3. THE PATIENT DOES NOT HAVE A GUARDIAN OR CONSERVATOR AND THE WELFARE OF THE PATIENT REQUIRES IMMEDIATE ACTION TO PROTECT THE PATIENT OR THE WARD'S PROPERTY.

4. THE CONDITIONS PRESCRIBED PURSUANT TO SECTION 14-5310, SUBSECTION B OR SECTION 14-5401.01, SUBSECTION B HAVE BEEN MET.

I. THE COURT MAY APPOINT AS A TEMPORARY GUARDIAN OR CONSERVATOR PURSUANT TO SUBSECTION H OF THIS SECTION A SUITABLE PERSON OR THE PUBLIC FIDUCIARY IF THERE IS NO PERSON QUALIFIED AND WILLING TO ACT IN THAT CAPACITY. THE COURT SHALL ISSUE AN ORDER FOR AN INVESTIGATION AS PRESCRIBED PURSUANT TO SUBSECTION G OF THIS SECTION AND, UNLESS THE PATIENT IS REPRESENTED BY INDEPENDENT COUNSEL, THE COURT SHALL APPOINT AN ATTORNEY TO REPRESENT THE PATIENT IN FURTHER PROCEEDINGS REGARDING THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR. THE COURT SHALL SCHEDULE A FURTHER HEARING WITHIN FOURTEEN DAYS ON THE APPROPRIATE COURT CALENDAR OF A COURT THAT HAS AUTHORITY OVER GUARDIANSHIP OR CONSERVATORSHIP MATTERS PURSUANT TO THIS TITLE TO

CONSIDER THE CONTINUED NEED FOR AN EMERGENCY TEMPORARY GUARDIAN OR CONSERVATOR AND THE APPROPRIATENESS OF THE TEMPORARY GUARDIAN OR CONSERVATOR APPOINTED, AND SHALL ORDER THE APPOINTED GUARDIAN OR CONSERVATOR TO GIVE NOTICE TO PERSONS ENTITLED TO NOTICE PURSUANT TO SECTION 14-5309, SUBSECTION A OR SECTION 14-5405, SUBSECTION A. THE COURT SHALL AUTHORIZE CERTIFIED LETTERS OF TEMPORARY EMERGENCY GUARDIANSHIP OR CONSERVATORSHIP TO BE ISSUED ON PRESENTATION OF A COPY OF THE COURT'S ORDER. IF A TEMPORARY EMERGENCY CONSERVATOR OTHER THAN THE PUBLIC FIDUCIARY IS APPOINTED PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THAT THE USE OF THE MONEY AND PROPERTY OF THE PATIENT BY THE CONSERVATOR IS RESTRICTED AND NOT TO BE SOLD, USED, TRANSFERRED OR ENCUMBERED, EXCEPT THAT THE COURT MAY AUTHORIZE THE CONSERVATOR TO USE MONEY OR PROPERTY OF THE PATIENT SPECIFICALLY IDENTIFIED AS NEEDED TO PAY AN EXPENSE TO PROVIDE FOR THE CARE, TREATMENT OR WELFARE OF THE PATIENT PENDING FURTHER HEARING. THIS SUBSECTION AND SUBSECTION H OF THIS SECTION DO NOT:

1. PREVENT THE EVALUATION OR TREATMENT AGENCY FROM SEEKING GUARDIANSHIP AND CONSERVATORSHIP IN ANY OTHER MANNER ALLOWED BY LAW AT ANY TIME DURING THE PERIOD OF COURT-ORDERED EVALUATION AND TREATMENT.

2. RELIEVE THE EVALUATION OR TREATMENT AGENCY FROM ITS OBLIGATIONS CONCERNING THE SUSPECTED ABUSE OF A VULNERABLE ADULT PURSUANT TO TITLE 46, CHAPTER 4.

~~I.~~ J. If, on finding that a patient ~~is gravely disabled~~ MEETS THE CRITERIA FOR COURT-ORDERED TREATMENT PURSUANT TO SUBSECTION A OF THIS SECTION, the court also learns that the patient has a guardian appointed under title 14, the court with notice may impose on the existing guardian additional duties pursuant to section 14-5312.01. IF THE COURT IMPOSES ADDITIONAL DUTIES ON AN EXISTING GUARDIAN AS PRESCRIBED IN THIS SUBSECTION, THE COURT MAY DETERMINE THAT THE PATIENT NEEDS TO CONTINUE TREATMENT UNDER A COURT ORDER FOR TREATMENT AND MAY ISSUE THE ORDER OR DETERMINE THAT THE PATIENT'S NEEDS CAN BE ADEQUATELY MET BY THE GUARDIAN WITH THE ADDITIONAL DUTIES PURSUANT TO SECTION 14-5312.01 AND DECLINE TO ISSUE THE COURT ORDER FOR TREATMENT. IF AT ANY TIME AFTER THE ISSUANCE OF A COURT ORDER FOR TREATMENT THE COURT FINDS THAT THE PATIENT'S NEEDS CAN BE ADEQUATELY MET BY THE GUARDIAN WITH THE ADDITIONAL DUTIES PURSUANT TO SECTION 14-5312.01 AND THAT A COURT ORDER FOR TREATMENT IS NO LONGER NECESSARY TO ASSURE COMPLIANCE WITH NECESSARY TREATMENT, THE COURT MAY TERMINATE THE COURT ORDER FOR TREATMENT. IF THERE IS A COURT ORDER FOR TREATMENT AND A GUARDIANSHIP WITH ADDITIONAL MENTAL HEALTH AUTHORITY PURSUANT TO SECTION 14-5312.01 EXISTING AT THE SAME TIME, THE TREATMENT AND PLACEMENT DECISIONS MADE BY THE TREATMENT AGENCY ASSIGNED BY THE COURT TO SUPERVISE AND ADMINISTER THE PATIENT'S TREATMENT PROGRAM PURSUANT TO THE COURT ORDER FOR TREATMENT ARE CONTROLLING UNLESS THE COURT ORDERS OTHERWISE.

~~J.~~ K. The court shall file a report as part of the court record on its findings of alternatives for treatment.

~~K.~~ L. Treatment shall not include psychosurgery, lobotomy or any other brain surgery without specific informed consent of the patient or the patient's legal guardian and an order of the superior court in the county in which the treatment is proposed, approving with specificity the use of the treatment.

~~L.~~ M. The medical director or any person, agency or organization used by the medical director to supervise the terms of an outpatient treatment plan shall not be held civilly liable for any acts committed by a patient while on outpatient treatment if the medical director, person, agency or organization has in good faith followed the requirements of this section.

~~M.~~ N. A peace officer who in good faith apprehends and transports a patient to an inpatient treatment facility on the order of the medical director of the outpatient treatment facility pursuant to subsection E, paragraph 5 of this section ~~shall~~ IS not ~~be~~ subject to civil liability.

~~N.~~ O. If a person has been found, as a result of a mental disorder, to constitute a danger to self or others or to be persistently or acutely disabled or gravely disabled and the court enters an order for treatment pursuant to subsection A of this section, the court shall grant access to the person's name, date of birth, social security number and date of commitment to the department of public safety to comply with the requirements of title 13, chapter 31 and title 32, chapter 26.

APPROVED BY THE GOVERNOR APRIL 26, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2011.

Passed the House March 9, 2011

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 13, 2011

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

14 day of April, 2011

at 8:32 o'clock A. M.

Nicole Bendle

Secretary to the Governor

Approved this 26th day of

April

at 3:12 o'clock P. M.

Jan K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 26th day of April, 2011

at 4:57 o'clock P M.

Ken Bennett

Secretary of State

H.B. 2402