

House Engrossed

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

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

CHAPTER 264

# **HOUSE BILL 2408**

AN ACT

AMENDING SECTIONS 36-540.01 AND 36-541.01, 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 36-540.01, Arizona Revised Statutes, is amended to  
3 read:

4 36-540.01. Conditional outpatient treatment

5 A. The medical director may issue an order for conditional outpatient  
6 treatment for a patient ordered to undergo treatment pursuant to section  
7 36-540 if, after consultation with staff familiar with the patient's case  
8 history, the medical director determines with a reasonable degree of medical  
9 probability that all of the following apply:

10 1. The patient no longer requires continuous inpatient  
11 hospitalization.

12 2. The patient will be more appropriately treated in an outpatient  
13 treatment program.

14 3. The patient will follow a prescribed outpatient treatment plan.

15 4. The patient will not likely become dangerous, suffer more serious  
16 physical harm or serious illness or further deteriorate if the patient  
17 follows a prescribed outpatient treatment plan.

18 B. The order for conditional outpatient treatment issued by the  
19 medical director shall include a written outpatient treatment plan prepared  
20 by staff familiar with the patient's case history and approved by the medical  
21 director. The plan shall include all of the following:

22 1. A statement of the patient's requirements, if any, for supervision,  
23 medication and assistance in obtaining basic needs such as employment, food,  
24 clothing or shelter.

25 2. The address of the residence where the patient is to live and the  
26 name of the person in charge of the residence, if any.

27 3. The name and address of any person, agency or organization assigned  
28 to supervise an outpatient treatment plan or care for the patient, and the  
29 extent of authority of the person, agency or organization in carrying out the  
30 terms of the plan.

31 4. The conditions for continued outpatient treatment, which may  
32 require periodic reporting, continuation of medication and submission to  
33 testing, and may restrict travel, consumption of spirituous liquor and drugs,  
34 associations with others and incurrence of debts and obligations or such  
35 other reasonable conditions as the medical director may specify.

36 C. Before release for conditional outpatient treatment, the patient  
37 shall be provided with copies and full explanations of the medical director's  
38 order and the treatment plan. If, after full explanation, the patient  
39 objects to the plan or any part of it, the objection and reasons for the  
40 objection shall be noted in the patient's record. The medical director's  
41 order and treatment plan shall be filed in the patient's medical file and  
42 shall also be filed with the court.

43 D. The period for which conditional outpatient treatment may be  
44 ordered may not exceed the remainder of the period of court ordered  
45 treatment.

1 E. Before the release of a patient ~~found to be a danger to others~~ for  
2 outpatient treatment, the medical director shall give notice pursuant to  
3 section 36-541.01, subsection B and a motion for a determination by the court  
4 as to whether the standard for conditional release of the patient has been  
5 met may be made by the persons and in the manner provided for in section  
6 36-541.01, subsection ~~G~~ H. Before the release of a person found to be a  
7 danger to self, to be persistently or acutely disabled or to be gravely  
8 disabled for outpatient treatment, the medical director shall give notice to  
9 the court that ordered the patient to undergo treatment. IF CRIMINAL CHARGES  
10 AGAINST A PATIENT INVOLVING DEATH OR SERIOUS PHYSICAL INJURY OR A VIOLATION  
11 OF TITLE 13, CHAPTER 14 ARE DISMISSED PURSUANT TO SECTION 13-4517, THE  
12 MEDICAL DIRECTOR SHALL NOTIFY THE PROSECUTING AGENCY IF A CIVIL COMMITMENT  
13 ORDER ISSUED PURSUANT TO THIS CHAPTER EXPIRES OR IS TERMINATED, OR IF THE  
14 PATIENT IS DISCHARGED TO OUTPATIENT TREATMENT. THE MEDICAL DIRECTOR SHALL  
15 PROVIDE THIS NOTICE BY MAIL AT LEAST FIVE DAYS BEFORE THE ANTICIPATED DATE OF  
16 THE EXPIRATION, TERMINATION OR DISCHARGE.

17 F. The medical director shall require periodic reports concerning the  
18 condition of patients on conditional outpatient treatment from any person,  
19 agency or organization assigned to supervise an outpatient treatment plan.  
20 ~~Such~~ THE MEDICAL DIRECTOR SHALL REQUIRE THESE reports ~~shall be required~~ at  
21 intervals not to exceed thirty days.

22 G. The medical director shall review the condition of a patient on  
23 conditional outpatient treatment at least once every thirty days and enter  
24 the findings in writing in the patient's file. In conducting the review, the  
25 medical director shall consider all reports and information received and may  
26 require the patient to report for further evaluation.

27 H. The medical director may amend any part of the outpatient treatment  
28 plan during the course of conditional outpatient treatment. If the plan is  
29 amended, the medical director shall issue a new order including the amended  
30 outpatient treatment plan. The new order and amended outpatient treatment  
31 plan shall be filed in the patient's medical file. Copies of the new order  
32 and outpatient treatment plan shall be immediately provided to the patient  
33 and to any person, agency or organization assigned to supervise an outpatient  
34 treatment plan. Copies of the new order and outpatient treatment plan shall  
35 be immediately filed with the court.

36 I. The medical director may rescind an order for conditional  
37 outpatient treatment and order the patient to return to a mental health  
38 treatment agency at any time during the period of court ordered treatment if,  
39 in the medical director's judgment, the patient has failed to comply with a  
40 term of the outpatient treatment plan or if, for any reason, the medical  
41 director determines that the patient needs inpatient treatment or that  
42 conditional outpatient treatment is no longer appropriate.

43 J. If the medical director rescinds an order for conditional  
44 outpatient treatment and the patient is returned to a mental health treatment  
45 agency for inpatient treatment, the patient shall be informed of the

1 patient's right to judicial review and right to consult with counsel pursuant  
2 to section 36-546.

3 K. If the medical director rescinds an order for conditional  
4 outpatient treatment and orders the patient to return to a mental health  
5 treatment agency, the medical director may request a peace officer or a  
6 designated officer or employee of the treatment agency to take the patient  
7 into custody for immediate delivery to the agency pursuant to section 36-544.

8 L. The medical director is not civilly liable for any act committed by  
9 a patient while on conditional outpatient treatment if the medical director  
10 has in good faith followed the requirements of this section.

11 M. This section does not prevent the medical director from authorizing  
12 a patient ordered to undergo treatment pursuant to section 36-540 as a danger  
13 to self, a danger to others, persistently or acutely disabled or gravely  
14 disabled to leave the treatment agency for periods of no more than five days  
15 under the care, custody and control of a spouse, relative or other  
16 responsible person if the medical director determines that the patient will  
17 not become dangerous or suffer serious physical harm or illness during that  
18 time.

19 N. The medical director may authorize a patient who is civilly  
20 committed pursuant to section 36-540 to leave the state hospital grounds  
21 unaccompanied if the leave is part of an inpatient individualized treatment  
22 and discharge plan, and if the medical director determines that the patient  
23 will not become dangerous or suffer serious physical harm or illness during  
24 that time.

25 Sec. 2. Section 36-541.01, Arizona Revised Statutes, is amended to  
26 read:

27 36-541.01. Release or discharge from treatment before  
28 expiration of period ordered by court;  
29 notification of intent to release or discharge;  
30 hearing

31 A. A patient ordered to undergo treatment pursuant to this article may  
32 be released from treatment ~~prior to~~ BEFORE the expiration of the period  
33 ordered by the court if, in the opinion of the medical director of the mental  
34 health treatment agency, the patient no longer is, as a result of a mental  
35 disorder, a danger to others, a danger to self, persistently or acutely  
36 disabled or gravely disabled. ~~No~~ A person ordered to undergo treatment as a  
37 danger to others may NOT be released or discharged from treatment ~~prior to~~  
38 BEFORE the expiration of the period for treatment ordered by the court unless  
39 the medical director first gives notice of intention to do so as provided by  
40 this section.

41 B. ~~Prior to~~ BEFORE the release or discharge of a patient ordered to  
42 undergo treatment ~~as a danger to others~~, the medical director of the mental  
43 health treatment agency shall ~~give notice of his~~ NOTIFY THE FOLLOWING OF THE  
44 MEDICAL DIRECTOR'S intention to release or discharge the patient: ~~Notice~~  
45 ~~shall be given to~~

1           1. The presiding judge of the court ~~which~~ THAT entered the order for  
2 treatment. ~~—~~

3           2. Any relative or victim of the patient who has filed a demand for  
4 notice with the treatment agency. ~~and~~

5           3. Any person found by the court to have a legitimate reason for  
6 receiving ~~such~~ notice.

7           C. IF CRIMINAL CHARGES AGAINST A PATIENT INVOLVING DEATH OR SERIOUS  
8 PHYSICAL INJURY OR A VIOLATION OF TITLE 13, CHAPTER 14 ARE DISMISSED PURSUANT  
9 TO SECTION 13-4517, THE MEDICAL DIRECTOR SHALL NOTIFY THE PROSECUTING AGENCY  
10 IF A CIVIL COMMITMENT ORDER ISSUED PURSUANT TO THIS CHAPTER EXPIRES OR IS  
11 TERMINATED, OR IF THE PATIENT IS DISCHARGED TO OUTPATIENT TREATMENT. THE  
12 MEDICAL DIRECTOR SHALL PROVIDE THIS NOTICE BY MAIL AT LEAST FIVE DAYS BEFORE  
13 THE ANTICIPATED DATE OF THE EXPIRATION, TERMINATION OR DISCHARGE.

14           ~~E.~~ D. If the director of the mental health treatment agency is unable  
15 to determine, based ~~upon~~ ON the information submitted pursuant to subsection  
16 ~~D.~~ E, that a person who has filed a demand for notice is a victim ~~he~~ THE  
17 DIRECTOR shall inform that person that ~~his~~ THAT PERSON'S demand for notice is  
18 denied and that notice will not be given unless ordered by the court pursuant  
19 to subsection ~~E.~~ F.

20           ~~D.~~ E. A demand for notice by a relative or victim, and a petition for  
21 notice by other persons, shall be on a form prescribed by the department and  
22 shall include the following information:

23           1. The full name of the person to receive notice.

24           2. The address to which notice is to be mailed.

25           3. The telephone number of the person to receive notice.

26           4. The relationship to the patient, if any, or the reasons why the  
27 person believes ~~he~~ THE PERSON has a legitimate reason to receive notice.

28           5. A statement that the person will advise the treatment agency in  
29 writing by certified mail, return receipt requested, of any change in the  
30 address to which notice is to be mailed.

31           6. The full name of the patient ordered to undergo treatment as a  
32 danger to others.

33           7. The mental health number assigned to the case by the superior  
34 court.

35           ~~E.~~ F. If the court receives a demand for notice by a relative or  
36 victim, the court shall order the medical director of the mental health  
37 treatment agency not to release or discharge the patient before the  
38 expiration of the period of court-ordered treatment without first giving  
39 notice to the relative or victim as provided in subsection ~~F.~~ G. After  
40 considering a petition for notice, if the court finds that the petitioner has  
41 a legitimate reason for receiving prior notice, the court may order the  
42 medical director of the mental health treatment agency not to release or  
43 discharge the patient from inpatient treatment before the expiration of the  
44 period of court-ordered treatment without first giving notice to the  
45 petitioner as provided in subsection ~~F.~~ G. Any order for notice shall be

1 delivered to the mental health treatment agency and shall be filed with the  
2 patient's clinical record. If the patient is transferred to another agency  
3 or institution, any orders for notice shall be transferred with the patient.

4 ~~F.~~ G. A notice of intention to release or discharge shall include the  
5 following information:

6 1. The name of the patient to be released or discharged.

7 2. The type of release or discharge.

8 3. The date of anticipated release or discharge. Notices shall be  
9 placed in the mail, postage prepaid and addressed to the court and to each  
10 person for whom notice has been ordered, at least ten days before the date of  
11 intended release or discharge EXCEPT NOTICE SHALL BE SENT TO THE PROSECUTING  
12 AGENCY AT LEAST FIVE DAYS BEFORE THE DATE OF INTENDED RELEASE OR DISCHARGE.  
13 For purposes of computing the ~~ten-day~~ notice requirement, the day of mailing  
14 shall not be counted.

15 ~~G.~~ H. Any person for whom prior notice is required pursuant to this  
16 section, or the court, may make a motion within the ~~ten-day~~ notification  
17 period ~~which~~ THAT requires the court to determine whether the standard for  
18 release of the patient ~~prior to~~ BEFORE the expiration of the period for  
19 court-ordered treatment has been met. A determination that the standard for  
20 release has been met may be made by the court based on a review of the record  
21 and any affidavits submitted without further hearing. For good cause, the  
22 court may order an evidentiary hearing. Whether or not a hearing is held,  
23 the court shall make a determination at the earliest possible time but no  
24 longer than three weeks after the anticipated date of release pursuant to  
25 subsection ~~F.~~ G, and the patient shall be retained for the additional time  
26 required for the court's determination. In making its determination the  
27 court may order an independent examination of the patient. If ~~no~~ A motion is  
28 NOT made, the patient may be released in accordance with the terms set forth  
29 in the notice without further court order.

30 ~~H.~~ I. If ~~no~~ A motion has NOT been made pursuant to subsection ~~G.~~ H,  
31 the patient may be released or discharged and the medical director of the  
32 mental health treatment agency shall send to the court a certificate that the  
33 patient is no longer a danger to others, a danger to self, persistently or  
34 acutely disabled or gravely disabled as the result of a mental disorder and  
35 therefore is released ~~prior to~~ BEFORE the expiration of the period ordered  
36 for treatment. The court shall enter an order terminating the patient's  
37 court-ordered treatment.

38 ~~I.~~ J. The medical director of the mental health treatment agency  
39 shall not be held civilly liable for any acts committed by a patient released  
40 ~~prior to~~ BEFORE the expiration of the period of court-ordered treatment if  
41 the medical director has in good faith followed the requirements of this  
42 section.

APPROVED BY THE GOVERNOR APRIL 26, 2011.

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

Passed the House March 3, 2011

Passed the Senate April 19, 2011

by the following vote: 56 Ayes,

by the following vote: 30 Ayes,

0 Nays, 4 Not Voting

0 Nays, 0 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

Cheryl Laube  
Chief Clerk of the House

Charmain Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 20 11

at 8:30 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 26<sup>th</sup> day of

April

at 2:47 o'clock P. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 26<sup>th</sup> day of April, 20 11

at 4:57 o'clock P. M.

[Signature]  
Secretary of State

H.B. 2408