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MICHELE REAGAN
SECRETARY OF STATE

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CHAPTER 59
HOUSE BILL 2239

AN ACT

AMENDING SECTIONS 13-4501, 13-4508 AND 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4518; AMENDING SECTIONS 36-501, 36-521, 36-523, 36-529, 36-531, 36-533, 36-534, 36-540, 36-540.01, 36-541.01, 36-542, 36-543, 36-544, 36-546, 36-3701 AND 36-3702, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICE EVALUATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-4501, Arizona Revised Statutes, is amended to
3 read:

4 13-4501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Clinical liaison" means a mental health expert or any other
7 individual who has experience and training in mental health or
8 developmental disabilities and who is qualified and appointed by the court
9 to aid in coordinating the treatment or training of individuals who are
10 found incompetent to stand trial. If intellectual disability is an issue,
11 the clinical liaison shall be an expert in intellectual disabilities.

12 2. "Incompetent to stand trial" means that as a result of a mental
13 illness, defect or disability a defendant is unable to understand the
14 nature and object of the proceeding or to assist in the defendant's
15 defense. In the case of a person under eighteen years of age when the
16 issue of competency is raised, incompetent to stand trial also means a
17 person who does not have sufficient present ability to consult with the
18 person's lawyer with a reasonable degree of rational understanding or who
19 does not have a rational and factual understanding of the proceedings
20 against the person. The presence of a mental illness, defect or
21 disability alone is not grounds for finding a defendant incompetent to
22 stand trial.

23 3. "Mental health expert" means a physician who is licensed
24 pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed
25 pursuant to title 32, chapter 19.1 and who is:

26 (a) Familiar with this state's competency standards and statutes
27 AND CRIMINAL AND INVOLUNTARY COMMITMENT STATUTES.

28 (b) Familiar with the treatment, training and restoration programs
29 that are available in this state.

30 (c) Certified by the court as meeting court developed guidelines
31 using recognized programs or standards.

32 4. "Mental illness, defect or disability" means a psychiatric or
33 neurological disorder that is evidenced by behavioral or emotional
34 symptoms, including congenital mental conditions, conditions resulting
35 from injury or disease and developmental disabilities as defined in
36 section 36-551.

37 5. "Threat to public safety" means charged with the commission of
38 any of the following:

39 (a) A crime involving the discharge, use or threatening exhibition
40 of a deadly weapon or dangerous instrument or the infliction of physical
41 injury on another person.

42 (b) A dangerous crime against children pursuant to section 13-705.

43 (c) Two or more nondangerous felonies within a period of
44 twenty-four months.

1 Sec. 2. Section 13-4508, Arizona Revised Statutes, is amended to
2 read:

3 13-4508. Privilege against self-incrimination; sealed reports

4 A. The privilege against self-incrimination applies to any
5 examination that is ordered by the court pursuant to this chapter.

6 B. Any evidence or statement that is obtained during an examination
7 is not admissible at any proceeding to determine a defendant's guilt or
8 innocence unless the defendant presents evidence that is intended to rebut
9 the presumption of sanity.

10 C. Any statement made by the defendant during an examination or any
11 evidence resulting from that statement concerning any other event or
12 transaction is not admissible at any proceeding to determine the
13 defendant's guilt or innocence of any other criminal charges that are
14 based on those events or transactions, EXCEPT THAT A STATEMENT OR EVIDENCE
15 MAY BE USED BY ANY PARTY IN A HEARING TO DETERMINE WHETHER THE DEFENDANT
16 IS ELIGIBLE FOR COURT-ORDERED TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 OR
17 IS A SEXUALLY VIOLENT PERSON.

18 D. Any statement made by the defendant or any part of the
19 evaluations that is obtained during an examination may not be used for any
20 purpose without the written consent of the defendant or the defendant's
21 guardian or a court order that is entered by the court that ordered the
22 examination or that is conducting a dependency or severance proceeding.

23 E. After a plea of guilty or guilty except insane or the trial or
24 after the defendant is found to be unable to be restored to competence,
25 the court shall order all the reports submitted pursuant to this section
26 sealed. The court may order that the reports be opened only as follows:

27 1. For use by the court or defendant, or by the prosecutor if
28 otherwise permitted by law, for further competency or sanity evaluations
29 OR IN A HEARING TO DETERMINE WHETHER THE DEFENDANT IS ELIGIBLE FOR
30 COURT-ORDERED TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 OR IS A SEXUALLY
31 VIOLENT PERSON.

32 2. For statistical analysis.

33 3. When the records are deemed necessary to assist in mental health
34 treatment pursuant to section 13-502 or 13-4517.

35 4. For use by the probation department or the state department of
36 corrections if the defendant is in the custody of or is scheduled to be
37 transferred into the custody of the state department of corrections for
38 the purposes of assessment and supervision or monitoring of the defendant
39 by that department.

40 5. For use by a mental health treatment provider that provides
41 treatment to the defendant or that assesses the defendant for treatment.

42 6. For data gathering.

43 7. For scientific study.

1 F. Any statement made by the defendant during an examination that
2 is conducted pursuant to this chapter or any evidence resulting from that
3 statement is not subject to disclosure pursuant to section 36-509.

4 Sec. 3. Section 13-4517, Arizona Revised Statutes, is amended to
5 read:

6 13-4517. Incompetent defendants; disposition

7 A. If the court finds that a defendant is incompetent to stand
8 trial and that there is no substantial probability that the defendant will
9 regain competency within twenty-one months after the date of the original
10 finding of incompetency, any party may request that the court:

11 1. Remand the defendant to ~~the custody of the department of health~~
12 ~~services~~ AN EVALUATING AGENCY for the institution of civil commitment
13 proceedings pursuant to title 36, chapter 5. IF THE DEFENDANT IS
14 REMANDED, THE PROSECUTOR SHALL FILE A PETITION FOR EVALUATION AND PROVIDE
15 ANY KNOWN CRIMINAL HISTORY FOR THE DEFENDANT.

16 2. Appoint a guardian pursuant to title 14, chapter 5.

17 3. Release the defendant from custody and dismiss the charges
18 against the defendant without prejudice.

19 B. IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH
20 1 OR 2 OF THIS SECTION, THE COURT MAY ALSO ORDER AN ASSESSMENT OF THE
21 DEFENDANT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY
22 BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S MEDICALLY NECESSARY
23 MAINTENANCE AND TREATMENT, INCLUDING SERVICES PURSUANT TO TITLE 36,
24 CHAPTER 29, STATE-ONLY BEHAVIORAL HEALTH SERVICES, TITLE XVIII SERVICES
25 AND MEDICARE PART D PRESCRIPTION DRUG BENEFITS, SUPPLEMENTAL SECURITY
26 INCOME AND SUPPLEMENTAL SECURITY DISABILITY INCOME.

27 C. THE COURT MAY RETAIN JURISDICTION OVER THE DEFENDANT UNTIL THE
28 DEFENDANT IS COMMITTED FOR TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 OR A
29 GUARDIAN IS APPOINTED PURSUANT TO TITLE 14, CHAPTER 5.

30 D. IF THE COURT REMANDS THE DEFENDANT FOR THE INSTITUTION OF CIVIL
31 COMMITMENT PROCEEDINGS PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT IS
32 NOTIFIED THAT THE DEFENDANT HAS NOT HAD A CIVIL COMMITMENT EVALUATION, THE
33 COURT, IF IT HAS RETAINED JURISDICTION, MAY ORDER THE SHERIFF TO TAKE THE
34 DEFENDANT INTO CUSTODY SO THAT THE COURT MAY EXPLORE OPTIONS PURSUANT TO
35 SUBSECTION A, PARAGRAPH 2 OR 3 OF THIS SECTION.

36 E. IF THE COURT IS NOTIFIED THAT THE DEFENDANT HAS NOT BEEN ORDERED
37 INTO TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT HAS RETAINED
38 JURISDICTION, THE COURT MAY ORDER THE SHERIFF TO TAKE THE DEFENDANT INTO
39 CUSTODY SO THAT THE COURT MAY EXPLORE OPTIONS PURSUANT TO SUBSECTION A,
40 PARAGRAPH 2 OR 3 OF THIS SECTION.

1 Sec. 4. Title 13, chapter 41, Arizona Revised Statutes, is amended
2 by adding section 13-4518, to read:

3 13-4518. Screening; sexually violent person; appointment of
4 competent professional

5 A. IF THE COUNTY ATTORNEY RECEIVES A REPORT THAT DETERMINES A
6 DEFENDANT IS INCOMPETENT TO STAND TRIAL, THE COUNTY ATTORNEY MAY REQUEST
7 THAT THE DEFENDANT BE SCREENED TO DETERMINE IF THE DEFENDANT MAY BE A
8 SEXUALLY VIOLENT PERSON, IF BOTH:

9 1. THE REPORT CONCLUDES THAT THERE IS NO SUBSTANTIAL PROBABILITY
10 THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN TWENTY-ONE MONTHS AFTER
11 THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY.

12 2. THE DEFENDANT IS CHARGED WITH A SEXUALLY VIOLENT OFFENSE AS
13 DEFINED IN SECTION 36-3701.

14 B. IF THE COURT ORDERS A SCREENING TO DETERMINE IF THE DEFENDANT
15 MAY BE A SEXUALLY VIOLENT PERSON, BOTH OF THE FOLLOWING APPLY:

16 1. THE COURT SHALL APPOINT A COMPETENT PROFESSIONAL AS DEFINED IN
17 SECTION 36-3701 TO CONDUCT THE SCREENING AND SUBMIT A REPORT TO THE COURT
18 AND THE PARTIES WITHIN THIRTY DAYS AFTER THE APPOINTMENT.

19 2. THE CRIMINAL CASE MAY NOT BE DISMISSED UNTIL THE COMPETENT
20 PROFESSIONAL'S REPORT IS PROVIDED TO THE COURT AND THE PARTIES AND A
21 HEARING IS HELD PURSUANT TO SUBSECTION C OF THIS SECTION OR THE COUNTY
22 ATTORNEY FILES A PETITION PURSUANT TO SECTION 36-3704.

23 C. IF THE COUNTY ATTORNEY HAS NOT FILED A PETITION PURSUANT TO
24 SECTION 36-3704, THE COURT MAY HOLD A HEARING TO DETERMINE IF THE COUNTY
25 ATTORNEY IS OR WILL BE FILING A PETITION. IF THE COUNTY ATTORNEY HAS
26 FILED A PETITION OR ADVISES THE COURT THAT IT IS OR WILL BE FILING A
27 PETITION, THE COURT SHALL SET A DATE ON WHICH THE PETITION IS DUE AND
28 FURTHER PROCEEDINGS WILL BE CONDUCTED PURSUANT TO TITLE 36, CHAPTER
29 37. IF A PETITION WILL NOT BE FILED, THE COURT SHALL PROCEED PURSUANT TO
30 SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2 OR 3.

31 Sec. 5. Section 36-501, Arizona Revised Statutes, is amended to
32 read:

33 36-501. Definitions

34 In this chapter, unless the context otherwise requires:

35 1. "Administration" means the Arizona health care cost containment
36 system administration.

37 2. "Admitting officer" means a psychiatrist or other physician or
38 psychiatric and mental health nurse practitioner with experience in
39 performing psychiatric examinations who has been designated as an
40 admitting officer of the evaluation agency by the person in charge of the
41 evaluation agency.

42 3. "Chief medical officer" means the chief medical officer under
43 the supervision of the superintendent of the state hospital.

44 4. "Contraindicated" means that access is reasonably likely to
45 endanger the life or physical safety of the patient or another person.

1 5. "Court" means the superior court in the county in this state in
2 which the patient resides or was found before screening or emergency
3 admission under this title.

4 6. "CRIMINAL HISTORY" MEANS POLICE REPORTS, LISTS OF PRIOR ARRESTS
5 AND CONVICTIONS, CRIMINAL CASE PLEADINGS AND COURT ORDERS, INCLUDING A
6 DETERMINATION THAT THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL
7 PURSUANT TO SECTION 13-4510.

8 ~~6.~~ 7. "Danger to others" means that the judgment of a person who
9 has a mental disorder is so impaired that the person is unable to
10 understand the person's need for treatment and as a result of the person's
11 mental disorder the person's continued behavior can reasonably be
12 expected, on the basis of competent medical opinion, to result in serious
13 physical harm.

14 ~~7.~~ 8. "Danger to self":

15 (a) Means behavior that, as a result of a mental disorder:

16 (i) Constitutes a danger of inflicting serious physical harm on
17 oneself, including attempted suicide or the serious threat thereof, if the
18 threat is such that, when considered in the light of its context and in
19 light of the individual's previous acts, it is substantially supportive of
20 an expectation that the threat will be carried out.

21 (ii) Without hospitalization will result in serious physical harm
22 or serious illness to the person.

23 (b) Does not include behavior that establishes only the condition
24 of having a grave disability.

25 ~~8.~~ 9. "Department" means the department of health services.

26 ~~9.~~ 10. "Detention" means the taking into custody of a patient or
27 proposed patient.

28 ~~10.~~ 11. "Director" means the director of the administration.

29 ~~11.~~ 12. "Evaluation" means:

30 (a) A professional multidisciplinary analysis that may include
31 firsthand observations or remote observations by interactive audiovisual
32 media and that is based on data describing the person's identity,
33 biography and medical, psychological and social conditions carried out by
34 a group of persons consisting of not less than the following:

35 (i) Two licensed physicians, who shall be qualified psychiatrists,
36 if possible, or at least experienced in psychiatric matters, and who shall
37 examine and report their findings independently. The person against whom
38 a petition has been filed shall be notified that the person may select one
39 of the physicians. A psychiatric resident in a training program approved
40 by the American medical association or by the American osteopathic
41 association may examine the person in place of one of the psychiatrists if
42 the resident is supervised in the examination and preparation of the
43 affidavit and testimony in court by a qualified psychiatrist appointed to
44 assist in the resident's training, and if the supervising psychiatrist is
45 available for discussion with the attorneys for all parties and for court

1 appearance and testimony if requested by the court or any of the
2 attorneys.

3 (ii) Two other individuals, one of whom, if available, shall be a
4 psychologist and in any event a social worker familiar with mental health
5 and human services that may be available placement alternatives
6 appropriate for treatment. An evaluation may be conducted on an inpatient
7 basis, an outpatient basis or a combination of both, and every reasonable
8 attempt shall be made to conduct the evaluation in any language preferred
9 by the person.

10 (b) A physical examination that is consistent with the existing
11 standards of care and that is performed by one of the evaluating
12 physicians or by or under the supervision of a physician who is licensed
13 pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner
14 who is licensed pursuant to title 32, chapter 15 if the results of that
15 examination are reviewed or augmented by one of the evaluating physicians.

16 ~~12.~~ 13. "Evaluation agency" means a health care agency that is
17 licensed by the department and that has been approved pursuant to this
18 title, providing those services required of such agency by this chapter.

19 ~~13.~~ 14. "Family member" means a spouse, parent, adult child, adult
20 sibling or other blood relative of a person undergoing treatment or
21 evaluation pursuant to this chapter.

22 ~~14.~~ 15. "Grave disability" means a condition evidenced by behavior
23 in which a person, as a result of a mental disorder, is likely to come to
24 serious physical harm or serious illness because the person is unable to
25 provide for the person's own basic physical needs.

26 ~~15.~~ 16. "Health care decision maker" has the same meaning
27 prescribed in section 12-2801.

28 ~~16.~~ 17. "Health care entity" means a health care provider, the
29 department, the administration or a regional behavioral health authority
30 under contract with the administration.

31 ~~17.~~ 18. "Health care provider" means a health care institution as
32 defined in section 36-401 that is licensed as a behavioral health provider
33 pursuant to department rules or a mental health provider.

34 ~~18.~~ 19. "Independent evaluator" means a licensed physician,
35 psychiatric and mental health nurse practitioner or psychologist selected
36 by the person to be evaluated or by such person's attorney.

37 ~~19.~~ 20. "Informed consent" means a voluntary decision following
38 presentation of all facts necessary to form the basis of an intelligent
39 consent by the patient or guardian with no minimizing of known dangers of
40 any procedures.

41 ~~20.~~ 21. "Least restrictive treatment alternative" means the
42 treatment plan and setting that infringe in the least possible degree with
43 the patient's right to liberty and that are consistent with providing
44 needed treatment in a safe and humane manner.

1 ~~21.~~ 22. "Licensed physician" means any medical doctor or doctor of
2 osteopathy who is either:

3 (a) Licensed in this state.

4 (b) A full-time hospital physician licensed in another state and
5 serving on the staff of a hospital operated or licensed by the United
6 States government.

7 ~~22.~~ 23. "Medical director of an evaluation agency" means a
8 psychiatrist, or other licensed physician experienced in psychiatric
9 matters, who is designated in writing by the governing body of the agency
10 as the person in charge of the medical services of the agency for the
11 purposes of this chapter and may include the chief medical officer of the
12 state hospital.

13 ~~23.~~ 24. "Medical director of a mental health treatment agency"
14 means a psychiatrist, or other licensed physician experienced in
15 psychiatric matters, who is designated in writing by the governing body of
16 the agency as the person in charge of the medical services of the agency
17 for the purposes of this chapter and includes the chief medical officer of
18 the state hospital.

19 ~~24.~~ 25. "Mental disorder" means a substantial disorder of the
20 person's emotional processes, thought, cognition or memory. Mental
21 disorder is distinguished from:

22 (a) Conditions that are primarily those of drug abuse, alcoholism
23 or intellectual disability, unless, in addition to one or more of these
24 conditions, the person has a mental disorder.

25 (b) The declining mental abilities that directly accompany
26 impending death.

27 (c) Character and personality disorders characterized by lifelong
28 and deeply ingrained antisocial behavior patterns, including sexual
29 behaviors that are abnormal and prohibited by statute unless the behavior
30 results from a mental disorder.

31 ~~25.~~ 26. "Mental health provider" means any physician or provider
32 of mental health or behavioral health services involved in evaluating,
33 caring for, treating or rehabilitating a patient.

34 ~~26.~~ 27. "Mental health treatment agency" means the state hospital
35 or a health care agency that is licensed by the department and that
36 provides those services that are required of the agency by this chapter.

37 ~~27.~~ 28. "Outpatient treatment" or "combined inpatient and
38 outpatient treatment" means any treatment program not requiring continuous
39 inpatient hospitalization.

40 ~~28.~~ 29. "Outpatient treatment plan" means a treatment plan that
41 does not require continuous inpatient hospitalization.

42 ~~29.~~ 30. "Patient" means any person undergoing examination,
43 evaluation or behavioral or mental health treatment under this chapter.

44 ~~30.~~ 31. "Peace officers" means sheriffs of counties, constables,
45 marshals and policemen of cities and towns.

1 ~~31.~~ 32. "Persistent or acute disability" means a severe mental
2 disorder that meets all the following criteria:

3 (a) If not treated has a substantial probability of causing the
4 person to suffer or continue to suffer severe and abnormal mental,
5 emotional or physical harm that significantly impairs judgment, reason,
6 behavior or capacity to recognize reality.

7 (b) Substantially impairs the person's capacity to make an informed
8 decision regarding treatment, and this impairment causes the person to be
9 incapable of understanding and expressing an understanding of the
10 advantages and disadvantages of accepting treatment and understanding and
11 expressing an understanding of the alternatives to the particular
12 treatment offered after the advantages, disadvantages and alternatives are
13 explained to that person.

14 (c) Has a reasonable prospect of being treatable by outpatient,
15 inpatient or combined inpatient and outpatient treatment.

16 ~~32.~~ 33. "Prepetition screening" means the review of each
17 application requesting court-ordered evaluation, including an
18 investigation of facts alleged in such application, an interview with each
19 applicant and an interview, if possible, with the proposed patient. The
20 purpose of the interview with the proposed patient is to assess the
21 problem, explain the application and, when indicated, attempt to persuade
22 the proposed patient to receive, on a voluntary basis, evaluation or other
23 services.

24 ~~33.~~ 34. "Prescribed form" means a form established by a court or
25 the rules of the administration in accordance with the laws of this state.

26 ~~34.~~ 35. "Professional" means a physician who is licensed pursuant
27 to title 32, chapter 13 or 17, a psychologist who is licensed pursuant to
28 title 32, chapter 19.1 or a psychiatric and mental health nurse
29 practitioner who is certified pursuant to title 32, chapter 15.

30 ~~35.~~ 36. "Proposed patient" means a person for whom an application
31 for evaluation has been made or a petition for court-ordered evaluation
32 has been filed.

33 37. "PROSECUTING AGENCY" MEANS THE COUNTY ATTORNEY, ATTORNEY
34 GENERAL OR CITY ATTORNEY WHO APPLIED OR PETITIONED FOR AN EVALUATION OR
35 TREATMENT PURSUANT TO THIS CHAPTER.

36 ~~36.~~ 38. "Psychiatric and mental health nurse practitioner" means a
37 registered nurse practitioner as defined in section 32-1601 who has
38 completed an adult or family psychiatric and mental health nurse
39 practitioner program and who is certified as an adult or family
40 psychiatric and mental health nurse practitioner by the state board of
41 nursing.

42 ~~37.~~ 39. "Psychiatrist" means a licensed physician who has
43 completed three years of graduate training in psychiatry in a program
44 approved by the American medical association or the American osteopathic
45 association.

1 ~~38.~~ 40. "Psychologist" means a person who is licensed under title
2 32, chapter 19.1 and who is experienced in the practice of clinical
3 psychology.

4 ~~39.~~ 41. "Records" means all communications that are recorded in
5 any form or medium and that relate to patient examination, evaluation or
6 behavioral or mental health treatment. Records include medical records
7 that are prepared by a health care provider or other providers. Records
8 do not include:

9 (a) Materials that are prepared in connection with utilization
10 review, peer review or quality assurance activities, including records
11 that a health care provider prepares pursuant to section 36-441, 36-445,
12 36-2402 or 36-2917.

13 (b) Recorded telephone and radio calls to and from a publicly
14 operated emergency dispatch office relating to requests for emergency
15 services or reports of suspected criminal activity.

16 ~~40.~~ 42. "Regional behavioral health authority" has the same
17 meaning prescribed in section 36-3401.

18 ~~41.~~ 43. "Screening agency" means a health care agency that is
19 licensed by the department and that provides those services required of
20 such agency by this chapter.

21 ~~42.~~ 44. "Social worker" means a person who has completed two years
22 of graduate training in social work in a program approved by the council
23 of social work education and who has experience in mental health.

24 ~~43.~~ 45. "State hospital" means the Arizona state hospital.

25 ~~44.~~ 46. "Superintendent" means the superintendent of the state
26 hospital.

27 Sec. 6. Section 36-521, Arizona Revised Statutes, is amended to
28 read:

29 36-521. Preparation of petition for court-ordered evaluation;
30 procedures for prepetition screening

31 A. On receiving the application for evaluation, the screening
32 agency, before filing a petition for court-ordered evaluation, shall
33 provide prepetition screening within forty-eight hours excluding weekends
34 and holidays when possible to determine whether there is reasonable cause
35 to believe the allegations of the applicant for the court-ordered
36 evaluation, whether the person will voluntarily receive evaluation at a
37 scheduled time and place and whether the person has a persistent or acute
38 disability or a grave disability or is likely to present a danger to self
39 or others until the voluntary evaluation.

40 B. After prepetition screening has been completed, the screening
41 agency shall prepare a report of opinions and conclusions. If prepetition
42 screening is not possible, the screening agency shall prepare a report
43 giving reasons why the screening was not possible and including opinions
44 and conclusions of staff members who attempted to conduct prepetition
45 screening or otherwise investigated the matter.

1 C. If the prepetition screening report indicates that there exists
2 no reasonable cause to believe the allegations of the applicant for the
3 court-ordered evaluation, it shall be reviewed by the medical director of
4 the screening agency or the medical director's designee.

5 D. If, based on the allegations of the applicant for the
6 court-ordered evaluation and the prepetition screening report or other
7 information obtained while attempting to conduct a prepetition screening,
8 the agency determines that there is reasonable cause to believe that the
9 proposed patient is, as a result of mental disorder, a danger to self or
10 to others or has a persistent or acute disability or a grave disability
11 and that the proposed patient is unable or unwilling to voluntarily
12 receive evaluation or is likely to present a danger to self or to others,
13 has a grave disability or will further deteriorate before receiving a
14 voluntary evaluation, the agency shall prepare a petition for
15 court-ordered evaluation and shall file the petition, which shall be
16 signed by the person who prepared the petition unless the county attorney
17 performs these functions. If the agency determines that there is
18 reasonable cause to believe that the person is in such a condition that
19 without immediate hospitalization he is likely to harm himself or others,
20 the agency shall take all reasonable steps to procure such hospitalization
21 on an emergency basis.

22 E. The agency may contact the county attorney in order to obtain
23 assistance in preparing the petition for court-ordered evaluation, and the
24 agency may request the advice and judgment of the county attorney in
25 reaching a decision as to whether the court-ordered evaluation is
26 justified.

27 F. The county attorney may prepare or sign or file the petition if
28 a court has ordered the county attorney to prepare the petition.

29 G. If a petition for court-ordered evaluation alleges danger to
30 others as described in section 36-501, the screening agency, before filing
31 such a petition, shall contact the county attorney for a review of the
32 petition. The county attorney shall examine the petition and make one of
33 the following written recommendations:

- 34 1. That a criminal investigation is warranted.
- 35 2. That the screening agency shall file the petition.
- 36 3. That no further proceedings are warranted. The screening agency
37 shall consider the recommendation in determining whether a court-ordered
38 evaluation is justified and shall include the recommendation with the
39 petition if the agency decides to file the petition with the court.

40 H. The petition shall be made in the form and manner prescribed by
41 the director.

42 I. IF A PETITION FOR COURT-ORDERED EVALUATION IS FILED BY A
43 PROSECUTOR PURSUANT TO SECTION 13-4517, A PRIOR APPLICATION FOR
44 COURT-ORDERED EVALUATION OR PRESCREENING IS NOT NECESSARY.

1 Sec. 7. Section 36-523, Arizona Revised Statutes, is amended to
2 read:

3 36-523. Petition for evaluation

4 A. The petition for evaluation shall contain the following:

5 1. The name, address and interest in the case of the individual who
6 applied for the petition.

7 2. The name, and address if known, of the proposed patient for whom
8 evaluation is petitioned.

9 3. The present whereabouts of the proposed patient, if known.

10 4. A statement alleging that there is reasonable cause to believe
11 that the proposed patient has a mental disorder and is as a result a
12 danger to self or others, has a persistent or acute disability or a grave
13 disability and is unwilling or unable to undergo voluntary evaluation.

14 5. A summary of the facts that support the allegations that the
15 proposed patient is dangerous, has a persistent or acute disability or a
16 grave disability and is unwilling or unable to be voluntarily evaluated,
17 including the facts that brought the proposed patient to the screening
18 agency's attention.

19 6. IF THE PETITION IS FILED BY A PROSECUTOR PURSUANT TO SECTION
20 13-4517, THE PETITION SHALL INCLUDE ANY KNOWN CRIMINAL HISTORY OF THE
21 PROPOSED PATIENT, INCLUDING WHETHER THE PROPOSED PATIENT HAS EVER BEEN
22 FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510.

23 ~~6.~~ 7. Other information that the director by rule or the court by
24 rule or order may require.

25 B. The petition shall request that the court issue an order
26 requiring that the proposed patient be given an evaluation and shall
27 advise the court of both of the following:

28 1. That the opinion of the petitioner is either that the proposed
29 patient is or is not in such a condition that without immediate or
30 continuing hospitalization the patient is likely to suffer serious
31 physical harm or further deterioration or inflict serious physical harm on
32 another person.

33 2. If the opinion of the petitioner is that the proposed patient is
34 not in the condition described in paragraph 1 of this subsection, that the
35 opinion of the petitioner is either that the evaluation should or should
36 not take place on an outpatient basis.

37 C. The petition for evaluation shall be accompanied by the
38 application for evaluation, by the recommendation of the county attorney
39 pursuant to section 36-521 and by a prepetition screening report, unless
40 the documents have not been prepared under a provision of law or in
41 accordance with an order of the court. The petition for evaluation shall
42 also be accompanied by a copy of the application for emergency admission
43 if one exists.

44 D. A petition and other forms required in a court may be filed only
45 by the screening agency that has prepared the petition.

1 E. If the petition is not filed because it has been determined that
2 the person does not need an evaluation, the agency after a period of six
3 months shall destroy the petition and the various reports annexed to the
4 petition as required by this section.

5 F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT
6 THE PERSON DOES NOT NEED AN EVALUATION AND A PROSECUTOR FILED A PETITION
7 PURSUANT TO SECTION 13-4517, THE PERSON SHALL BE REMANDED FOR A
8 DISPOSITION PURSUANT TO SECTION 13-4517. IF THE PERSON IS OUT OF CUSTODY,
9 THE COURT MAY ORDER THAT THE PERSON BE TAKEN INTO CUSTODY FOR A
10 DISPOSITION PURSUANT TO THIS SECTION.

11 Sec. 8. Section 36-529, Arizona Revised Statutes, is amended to
12 read:

13 36-529. Order for evaluation; order for detention; hearing

14 A. If, from the review of the petition for evaluation, the court
15 does not determine that the proposed patient is likely to present a danger
16 to self or others or further deteriorate ~~prior to his~~ BEFORE THE PROPOSED
17 PATIENT'S hearing on court-ordered treatment, but determines that there is
18 reasonable cause to believe that the proposed patient is, as a result of a
19 mental disorder, a danger to self or others, OR has a persistent or acute
20 disability or a grave disability, the court shall issue an order directing
21 the proposed patient to submit to an evaluation at a designated time and
22 place, specifying that the evaluation will take place on an inpatient or
23 an outpatient basis. The court may also order that, if the person does
24 not or cannot so submit, ~~that he~~ THE PERSON be taken into custody by a
25 ~~police~~ PEACE officer and delivered to an evaluation agency. If the court
26 makes such a conditional order, it shall also make a conditional
27 appointment of counsel for the person to become effective when and if the
28 person is taken into custody pursuant to this section.

29 B. If, from review of the petition for evaluation, there is
30 reasonable cause to believe that the proposed patient is, as a result of a
31 mental disorder, a danger to self or others, OR has a persistent or acute
32 disability or a grave disability and that the person requires immediate or
33 continued hospitalization ~~prior to his~~ BEFORE THE PROPOSED PATIENT'S
34 hearing on court-ordered treatment, the court shall order the proposed
35 patient taken into custody and evaluated at an evaluation agency. The
36 court shall promptly appoint counsel for the proposed patient. If an
37 intercounty agreement authorizes the same, the court may order that the
38 evaluation be conducted in another county, and the superior court in the
39 county where the evaluation is conducted shall have concurrent
40 jurisdiction to make appropriate orders concerning the proposed patient.

41 C. If the person is not taken into custody or if the evaluation
42 pursuant to the order of the court under subsection A or B OF THIS SECTION
43 is not initiated within fourteen days from the date of the order, the
44 order and petition for evaluation shall expire. IF A PROSECUTOR FILED A
45 PETITION PURSUANT TO SECTION 13-4517, THE COURT AND THE PROSECUTING AGENCY

1 SHALL RECEIVE NOTICE OF THE EXPIRATION OF THE ORDER FOR EVALUATION. THE
2 COURT MAY ENTER ANY ORDERS NECESSARY FOR FURTHER DISPOSITION PURSUANT TO
3 SECTION 13-4517, INCLUDING A PICKUP ORDER DIRECTING THAT THE PERSON BE
4 TAKEN INTO CUSTODY. THIS SUBSECTION DOES NOT PREVENT ANY PERSON FROM
5 INITIATING ANOTHER COURT-ORDERED EVALUATION OF THE PERSON PURSUANT TO THIS
6 CHAPTER.

7 D. If the person is involuntarily hospitalized, the person shall be
8 informed by ~~his~~ THE PERSON'S appointed attorney of ~~his rights~~ THE RIGHT to
9 a hearing to determine whether ~~he~~ THE PERSON should be involuntarily
10 hospitalized for evaluation and to be represented at the hearing by an
11 attorney. If the ~~patient~~ PERSON requests a hearing to determine whether
12 ~~he~~ THE PERSON should be involuntarily hospitalized during evaluation, the
13 court shall schedule a hearing at its first opportunity.

14 Sec. 9. Section 36-531, Arizona Revised Statutes, is amended to
15 read:

16 36-531. Evaluation; possible dispositions; release

17 A. A person who is being evaluated on an inpatient basis in an
18 evaluation agency shall be released if, in the opinion of the medical
19 director of the agency, further evaluation is not appropriate unless the
20 person applies for further care and treatment on a voluntary basis.

21 B. If it is determined on an evaluation of the patient's condition
22 that the patient is, as a result of a mental disorder, a danger to self or
23 to others or has a persistent or acute disability or a grave disability,
24 the medical director in charge of the agency that provided the evaluation,
25 unless the person applies for further care and treatment on a voluntary
26 basis, shall prepare, sign and file a petition for court-ordered treatment
27 unless the county attorney performs the functions of preparing, signing or
28 filing the petition as provided in subsection C of this section.

29 C. The agency may contact the county attorney to obtain assistance
30 in preparing the petition for court-ordered treatment, and the agency may
31 request the advice and judgment of the county attorney in reaching a
32 decision as to whether court-ordered treatment is justified.

33 D. A person being evaluated on an inpatient basis in an evaluation
34 agency shall be released within seventy-two hours, excluding weekends and
35 holidays, from the time that the person is hospitalized pursuant to a
36 court order for evaluation, unless the person applies for further care and
37 treatment on a voluntary basis or unless a petition for court-ordered
38 treatment has been filed pursuant to subsection B of this section.

39 E. IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517,
40 THE MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL PROVIDE NOTICE WITHIN
41 TWENTY-FOUR HOURS TO THE COURT AND THE PROSECUTING AGENCY OF THE MEDICAL
42 DIRECTOR'S INTENTION TO RELEASE THE PERSON UNDER THIS SECTION. IF THE
43 PERSON HAS BEEN REMANDED TO AN EVALUATION AGENCY PURSUANT TO SECTION
44 13-4517, THE EVALUATION AGENCY SHALL DETAIN THE PERSON FOR AN ADDITIONAL
45 TWENTY-FOUR HOURS TO ALLOW FOR THE PROVISION OF ANY REQUIRED NOTICES. THE

1 MEDICAL DIRECTOR SHALL PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL
2 AND TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

3 F. The administration may conduct jointly with a school
4 district, directly or indirectly, an educational evaluation pursuant to
5 sections 15-765 and 15-766 for nonadjudicated youth. The evaluation
6 information may be shared by and among authorized personnel employed by
7 the administration and the department of education, or authorized
8 personnel from the local education agency, for purposes of ensuring the
9 provision of special education and related services as required by the
10 individuals with disabilities education act (20 United States Code
11 sections 1400 through 1415).

12 Sec. 10. Section 36-533, Arizona Revised Statutes, is amended to
13 read:

14 36-533. Petition for treatment

15 A. The petition for court-ordered treatment shall allege:

16 1. That the patient is in need of a period of treatment because the
17 patient, as a result of mental disorder, is a danger to self or to
18 others, OR has a persistent or acute disability or a grave disability.

19 2. The treatment alternatives that are appropriate or available.

20 3. That the patient is unwilling to accept or incapable of
21 accepting treatment voluntarily.

22 B. The petition shall be accompanied by the affidavits of the two
23 physicians who participated in the evaluation and by the affidavit of the
24 applicant for the evaluation, if any. The affidavits of the physicians
25 shall describe in detail the behavior that indicates that the person, as a
26 result of mental disorder, is a danger to self or to others, OR has a
27 persistent or acute disability or a grave disability and shall be based on
28 the physician's observations of the patient and the physician's study of
29 information about the patient. A summary of the facts that support the
30 allegations of the petition shall be included. The affidavit shall also
31 include any of the results of the physical examination of the patient if
32 relevant to the patient's psychiatric condition.

33 C. The petition shall request the court to issue an order requiring
34 the person to undergo a period of treatment. IF A PROSECUTOR FILED A
35 PETITION PURSUANT TO SECTION 13-4517, THE PETITION MUST BE ACCOMPANIED BY
36 ANY KNOWN CRIMINAL HISTORY OF THE PERSON AND ANY PREVIOUS FINDINGS OF
37 INCOMPETENCY.

38 D. In cases of grave disability, the petition shall also include:

39 1. A statement that in the opinion of the petitioner the person
40 with a grave disability does or does not require guardianship or
41 conservatorship, or both, under title 14 and the reasons on which the
42 statement is based.

43 2. A request that the court order an independent investigation and
44 report for the court if in the opinion of the petitioner the person does
45 require guardianship or conservatorship, or both.

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

3 3. Inpatient treatment in a mental health treatment agency, in a
4 hospital operated by or under contract with the United States department
5 of veterans affairs to provide treatment to eligible veterans pursuant to
6 article 9 of this chapter, in the state hospital or in a private hospital,
7 if the private hospital agrees, subject to the limitations of section
8 36-541.

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

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

15 1. Determines that all of the following apply:

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

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

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

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

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

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

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

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

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

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

13 4. THE COURT MAY ORDER THE MEDICAL DIRECTOR TO PROVIDE NOTICE TO
14 THE COURT OF ANY NONCOMPLIANCE WITH THE TERMS OF A TREATMENT ORDER.

15 ~~4.~~ 5. During any period of outpatient treatment under subsection
16 A, paragraph 2 of this section, if the court, ON ITS OWN MOTION OR on
17 motion by the medical director of the patient's outpatient mental health
18 treatment facility, determines that the patient is not complying with the
19 terms of the order or that the outpatient treatment plan is no longer
20 appropriate and the patient needs inpatient treatment, the court, without
21 a hearing and based on the court record, the patient's medical record, the
22 affidavits and recommendations of the medical director, and the advice of
23 staff and physicians or the psychiatric and mental health nurse
24 practitioner familiar with the treatment of the patient, may enter an
25 order amending its original order. The amended order may alter the
26 outpatient treatment plan or order the patient to inpatient treatment
27 pursuant to subsection A, paragraph 3 of this section. The amended order
28 shall not increase the total period of commitment originally ordered by
29 the court or, when added to the period of inpatient treatment provided by
30 the original order and any other amended orders, exceed the maximum period
31 allowed for an order for inpatient treatment pursuant to subsection F of
32 this section. If the patient refuses to comply with an amended order for
33 inpatient treatment, the court, ON ITS OWN MOTION OR ON THE REQUEST OF THE
34 MEDICAL DIRECTOR, may authorize and direct a peace officer, ~~on the request~~
35 ~~of the medical director,~~ to take the patient into protective custody and
36 transport the patient to the agency for inpatient treatment. ANY
37 AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO A PEACE OFFICER TO TAKE THE
38 PATIENT INTO PROTECTIVE CUSTODY SHALL INCLUDE THE PATIENT'S CRIMINAL
39 HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE PATIENT'S CASE MANAGER,
40 GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER, AS APPLICABLE. When
41 reporting to or being returned to a treatment agency for inpatient
42 treatment pursuant to an amended order, the patient shall be informed of
43 the patient's right to judicial review and the patient's right to consult
44 with counsel pursuant to section 36-546.

1 5. 6. During any period of outpatient treatment under subsection
2 A, paragraph 2 of this section, if the medical director of the outpatient
3 treatment facility in charge of the patient's care determines, in concert
4 with the medical director of an inpatient mental health treatment facility
5 who has agreed to accept the patient, that the patient is in need of
6 immediate acute inpatient psychiatric care because of behavior that is
7 dangerous to self or to others, the medical director of the outpatient
8 treatment facility may order a peace officer to apprehend and transport
9 the patient to the inpatient treatment facility pending a court
10 determination on an amended order under paragraph ~~4~~ 5 of this subsection.
11 The patient may be detained and treated at the inpatient treatment
12 facility for a period of no more than forty-eight hours, exclusive of
13 weekends and holidays, from the time that the patient is taken to the
14 inpatient treatment facility. The medical director of the outpatient
15 treatment facility shall file the motion for an amended court order
16 requesting inpatient treatment no later than the next working day
17 following the patient being taken to the inpatient treatment facility.
18 Any period of detention within the inpatient treatment facility pending
19 issuance of an amended order shall not increase the total period of
20 commitment originally ordered by the court or, when added to the period of
21 inpatient treatment provided by the original order and any other amended
22 orders, exceed the maximum period allowed for an order for inpatient
23 treatment pursuant to subsection F of this section. If a patient is
24 ordered to undergo inpatient treatment pursuant to an amended order, the
25 medical director of the outpatient treatment facility shall inform the
26 patient of the patient's right to judicial review and to consult with an
27 attorney pursuant to section 36-546.

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

- 30 1. Ninety days for a person found to be a danger to self.
- 31 2. One hundred eighty days for a person found to be a danger to
32 others.
- 33 3. One hundred eighty days for a person found to have a persistent
34 or acute disability.
- 35 4. Three hundred sixty-five days for a person found to have a grave
36 disability.

37 G. If, on finding that the patient meets the criteria for
38 court-ordered treatment pursuant to subsection A of this section, the
39 court also finds that there is reasonable cause to believe that the
40 patient is an incapacitated person as defined in section 14-5101 or is a
41 person in need of protection pursuant to section 14-5401 and that the
42 patient is or may be in need of guardianship or conservatorship, or both,
43 the court may order an investigation concerning the need for a guardian or
44 conservator, or both, and may appoint a suitable person or agency to
45 conduct the investigation. The appointee may include a court appointed

1 guardian ad litem, an investigator appointed pursuant to section 14-5308
2 or the public fiduciary if there is no person willing and qualified to act
3 in that capacity. The court shall give notice of the appointment to the
4 appointee within three days of the appointment. The appointee shall
5 submit the report of the investigation to the court within twenty-one
6 days. The report shall include recommendations as to who should be
7 guardian or who should be conservator, or both, and a report of the
8 findings and reasons for the recommendation. If the investigation and
9 report so indicate, the court shall order the appropriate person to submit
10 a petition to become the guardian or conservator, or both, of the patient.

11 H. In any proceeding for court-ordered treatment in which the
12 petition alleges that the patient is in need of a guardian or conservator
13 and states the grounds for that allegation, the court may appoint an
14 emergency temporary guardian or conservator, or both, for a specific
15 purpose or purposes identified in its order and for a specific period of
16 time not to exceed thirty days if the court finds that all of the
17 following are true:

18 1. The patient meets the criteria for court-ordered treatment
19 pursuant to subsection A of this section.

20 2. There is reasonable cause to believe that the patient is an
21 incapacitated person as defined in section 14-5101 or is in need of
22 protection pursuant to section 14-5401, paragraph 2.

23 3. The patient does not have a guardian or conservator and the
24 welfare of the patient requires immediate action to protect the patient or
25 the ward's property.

26 4. The conditions prescribed pursuant to section 14-5310,
27 subsection B or section 14-5401.01, subsection B have been met.

28 I. The court may appoint as a temporary guardian or conservator
29 pursuant to subsection H of this section a suitable person or the public
30 fiduciary if there is no person qualified and willing to act in that
31 capacity. The court shall issue an order for an investigation as
32 prescribed pursuant to subsection G of this section and, unless the
33 patient is represented by independent counsel, the court shall appoint an
34 attorney to represent the patient in further proceedings regarding the
35 appointment of a guardian or conservator. The court shall schedule a
36 further hearing within fourteen days on the appropriate court calendar of
37 a court that has authority over guardianship or conservatorship matters
38 pursuant to this title to consider the continued need for an emergency
39 temporary guardian or conservator and the appropriateness of the temporary
40 guardian or conservator appointed, and shall order the appointed guardian
41 or conservator to give notice to persons entitled to notice pursuant to
42 section 14-5309, subsection A or section 14-5405, subsection A. The court
43 shall authorize certified letters of temporary emergency guardianship or
44 conservatorship to be issued on presentation of a copy of the court's
45 order. If a temporary emergency conservator other than the public

1 fiduciary is appointed pursuant to this subsection, the court shall order
2 that the use of the money and property of the patient by the conservator
3 is restricted and not to be sold, used, transferred or encumbered, except
4 that the court may authorize the conservator to use money or property of
5 the patient specifically identified as needed to pay an expense to provide
6 for the care, treatment or welfare of the patient pending further
7 hearing. This subsection and subsection H of this section do not:

8 1. Prevent the evaluation or treatment agency from seeking
9 guardianship and conservatorship in any other manner allowed by law at any
10 time during the period of court-ordered evaluation and treatment.

11 2. Relieve the evaluation or treatment agency from its obligations
12 concerning the suspected abuse of a vulnerable adult pursuant to title 46,
13 chapter 4.

14 J. If, on finding that a patient meets the criteria for court-
15 ordered treatment pursuant to subsection A of this section, the court also
16 learns that the patient has a guardian appointed under title 14, the court
17 with notice may impose on the existing guardian additional duties pursuant
18 to section 14-5312.01. If the court imposes additional duties on an
19 existing guardian as prescribed in this subsection, the court may
20 determine that the patient needs to continue treatment under a court order
21 for treatment and may issue the order or determine that the patient's
22 needs can be adequately met by the guardian with the additional duties
23 pursuant to section 14-5312.01 and decline to issue the court order for
24 treatment. If at any time after the issuance of a court order for
25 treatment the court finds that the patient's needs can be adequately met
26 by the guardian with the additional duties pursuant to section 14-5312.01
27 and that a court order for treatment is no longer necessary to assure
28 compliance with necessary treatment, the court may terminate the court
29 order for treatment. If there is a court order for treatment and a
30 guardianship with additional mental health authority pursuant to section
31 14-5312.01 existing at the same time, the treatment and placement
32 decisions made by the treatment agency assigned by the court to supervise
33 and administer the patient's treatment program pursuant to the court order
34 for treatment are controlling unless the court orders otherwise.

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

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

42 M. The medical director or any person, agency or organization used
43 by the medical director to supervise the terms of an outpatient treatment
44 plan is not civilly liable for any acts committed by a patient while on

1 outpatient treatment if the medical director, person, agency or
2 organization has in good faith followed the requirements of this section.

3 N. A peace officer who in good faith apprehends and transports a
4 patient to an inpatient treatment facility on the order of the medical
5 director of the outpatient treatment facility pursuant to subsection E,
6 paragraph ~~5~~ 6 of this section is not subject to civil liability.

7 O. If a person has been found, as a result of a mental disorder, to
8 constitute a danger to self or others or to have a persistent or acute
9 disability or a grave disability and the court enters an order for
10 treatment pursuant to subsection A of this section, the court shall
11 transmit the person's name, sex, date of birth, social security number, if
12 available, and date of the order for treatment to the supreme court. The
13 supreme court shall transmit the information to the department of public
14 safety to comply with the requirements of title 13, chapter 31 and title
15 32, chapter 26. The department of public safety shall transmit the
16 information to the national instant criminal background check system. The
17 superior court may access the information of a person who is ordered into
18 treatment to enforce or facilitate a treatment order.

19 P. On request, the clerk of the court shall provide certified
20 copies of the commitment order to a law enforcement or prosecuting agency
21 that is investigating or prosecuting a prohibited possessor as defined in
22 section 13-3101.

23 Q. IF THE COURT DOES NOT FIND A PERSON TO BE IN NEED OF TREATMENT
24 AND A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE
25 EVALUATION AGENCY, WITHIN TWENTY-FOUR HOURS, SHALL NOTIFY THE PROSECUTING
26 AGENCY OF ITS FINDING. THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO
27 DETAIN THE PERSON FOR AN ADDITIONAL TWENTY-FOUR HOURS TO ALLOW THE
28 PROSECUTING AGENCY TO BE NOTIFIED. IF THE COURT HAS RETAINED JURISDICTION
29 PURSUANT TO SECTION 13-4517, SUBSECTION C, THE COURT MAY REMAND THE PERSON
30 TO THE CUSTODY OF THE SHERIFF FOR FURTHER DISPOSITION PURSUANT TO SECTION
31 13-4517, SUBSECTION A, PARAGRAPH 2 OR 3.

32 Sec. 13. Section 36-540.01, Arizona Revised Statutes, is amended to
33 read:

34 36-540.01. Conditional outpatient treatment

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

40 1. The patient no longer requires continuous inpatient
41 hospitalization.

42 2. The patient will be more appropriately treated in an outpatient
43 treatment program.

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

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

4 B. The order for conditional outpatient treatment issued by the
5 medical director shall include a written outpatient treatment plan
6 prepared by staff familiar with the patient's case history and approved by
7 the medical director. IF A PETITION HAS BEEN FILED PURSUANT TO SECTION
8 13-4517 THE PROSECUTING AGENCY MAY PROVIDE THE COURT WITH INFORMATION THAT
9 IS CONTAINED IN THE PATIENT'S CRIMINAL HISTORY AND THAT MAY BE RELEVANT TO
10 PROTECTING THE WELL-BEING OF THE PATIENT AND THE PUBLIC. The plan shall
11 include all of the following:

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

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

17 3. The name and address of any person, agency or organization
18 assigned to supervise an outpatient treatment plan or care for the
19 patient, and the extent of authority of the person, agency or organization
20 in carrying out the terms of the plan.

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

26 5. ANY OTHER PROVISIONS THAT THE MEDICAL DIRECTOR OR THE COURT
27 BELIEVES ARE NECESSARY TO PROTECT THE WELL-BEING OF THE PATIENT AND THE
28 PUBLIC.

29 C. THE COURT MAY ORDER THAT THE MEDICAL DIRECTOR PROVIDE NOTICE TO
30 THE COURT OF SPECIFIC INSTANCES OF NONCOMPLIANCE AS SPECIFIED BY THE
31 COURT.

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

39 ~~D.~~ E. The period for which conditional outpatient treatment may be
40 ordered may not exceed the remainder of the period of ~~court ordered~~
41 COURT-ORDERED treatment.

42 ~~E.~~ F. Before the release of a patient for outpatient treatment,
43 the medical director shall give notice pursuant to section 36-541.01,
44 subsection ~~B~~ C and a motion for a determination by the court as to
45 whether the standard for conditional release of the patient has been met

1 may be made by the persons and in the manner provided for in section
2 36-541.01, subsection ~~H~~ I. Before the release of a person found to be a
3 danger to self, ~~OR OTHERS OR FOUND to be a person with~~ HAVE a persistent
4 or acute disability or a grave disability for outpatient treatment, the
5 medical director shall give notice to the court that ordered the patient
6 to undergo treatment. If criminal charges against a patient involving
7 death or serious physical injury or a violation of title 13, chapter 14
8 are dismissed pursuant to section 13-4517, the medical director shall
9 notify the prosecuting agency if a civil commitment order issued pursuant
10 to this chapter expires or is terminated, or if the patient is discharged
11 to outpatient treatment. The medical director shall provide this notice
12 by mail at least five days before the anticipated date of the expiration,
13 termination or discharge.

14 ~~F~~. G. The medical director shall require periodic reports
15 concerning the condition of patients on conditional outpatient treatment
16 from any person, agency or organization assigned to supervise an
17 outpatient treatment plan. The medical director shall require these
18 reports at intervals not to exceed thirty days.

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

24 ~~H~~. I. The medical director may amend any part of the outpatient
25 treatment plan during the course of conditional outpatient treatment. If
26 the plan is amended, the medical director shall issue a new order
27 including the amended outpatient treatment plan. The new order and
28 amended outpatient treatment plan shall be filed in the patient's medical
29 file. Copies of the new order and outpatient treatment plan shall be
30 immediately provided to the patient and to any person, agency or
31 organization assigned to supervise an outpatient treatment plan. Copies
32 of the new order and outpatient treatment plan shall be immediately filed
33 with the court AND, IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION
34 13-4517, WITH THE PROSECUTING AGENCY.

35 ~~I~~. J. The medical director may rescind an order for conditional
36 outpatient treatment and order the patient to return to a mental health
37 treatment agency at any time during the period of court ordered treatment
38 if, in the medical director's judgment, the patient has failed to comply
39 with a term of the outpatient treatment plan or if, for any reason, the
40 medical director determines that the patient needs inpatient treatment or
41 that conditional outpatient treatment is no longer appropriate. THE
42 MEDICAL DIRECTOR SHALL GIVE NOTICE TO THE COURT THAT ISSUED THE TREATMENT
43 ORDER AND THE PROSECUTING AGENCY IF A PROSECUTOR FILED A PETITION PURSUANT
44 TO SECTION 13-4517.

1 ~~J.~~ K. If the medical director rescinds an order for conditional
2 outpatient treatment and the patient is returned to a mental health
3 treatment agency for inpatient treatment, the patient shall be informed of
4 the patient's right to judicial review and right to consult with counsel
5 pursuant to section 36-546.

6 ~~K.~~ L. If the medical director rescinds an order for conditional
7 outpatient treatment and orders the patient to return to a mental health
8 treatment agency, the medical director may request, OR A COURT MAY ORDER,
9 a peace officer or a designated officer or employee of the treatment
10 agency to take the patient into custody for immediate delivery to the
11 agency pursuant to section 36-544.

12 ~~L.~~ M. The medical director is not civilly liable for any act
13 committed by a patient while on conditional outpatient treatment if the
14 medical director has in good faith followed the requirements of this
15 section.

16 ~~M.~~ N. This section does not prevent the medical director from
17 authorizing a patient ordered to undergo treatment pursuant to section
18 36-540 as a danger to self, ~~OR a danger to others,~~ OR a patient with a
19 persistent or acute disability or a grave disability to leave the
20 treatment agency for periods of no more than five days under the care,
21 custody and control of a spouse, relative or other responsible person if
22 the medical director determines that the patient will not become dangerous
23 or suffer serious physical harm or illness during that time.

24 ~~N.~~ O. The medical director may authorize a patient who is civilly
25 committed pursuant to section 36-540 to leave the state hospital grounds
26 unaccompanied if the leave is part of an inpatient individualized
27 treatment and discharge plan and the medical director determines that the
28 patient will not become dangerous or suffer serious physical harm or
29 illness during that time.

30 Sec. 14. Section 36-541.01, Arizona Revised Statutes, is amended to
31 read:

32 36-541.01. Release or discharge from treatment before
33 expiration of period ordered by court;
34 notification of intent to release or discharge;
35 hearing; immunity

36 A. A PATIENT WHO IS FOUND TO HAVE A GRAVE DISABILITY OR A
37 PERSISTENT OR ACUTE DISABILITY AND WHO IS ORDERED TO UNDERGO TREATMENT
38 PURSUANT TO THIS ARTICLE MAY BE RELEASED FROM INPATIENT TREATMENT WHEN, IN
39 THE OPINION OF THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY,
40 THE LEVEL OF CARE OFFERED BY THE AGENCY IS NO LONGER REQUIRED. THE
41 PATIENT MAY AGREE TO CONTINUE TREATMENT VOLUNTARILY. IF THE PATIENT IS TO
42 BE RELEASED, THE MEDICAL DIRECTOR SHALL ARRANGE FOR AN APPROPRIATE
43 ALTERNATIVE PLACEMENT. IF THE PATIENT WHO IS TO BE RELEASED FROM
44 INPATIENT TREATMENT IS UNDER A GUARDIANSHIP, THE MEDICAL DIRECTOR OF THE
45 MENTAL HEALTH TREATMENT AGENCY SHALL NOTIFY THE GUARDIAN AND ANY RELEVANT

1 REGIONAL BEHAVIORAL HEALTH AUTHORITY TEN DAYS BEFORE THE INTENDED RELEASE
2 DATE THAT THE PATIENT NO LONGER REQUIRES THE LEVEL OF CARE THAT IS OFFERED
3 BY THE AGENCY. THE GUARDIAN AND, IF RELEVANT, THE REGIONAL BEHAVIORAL
4 HEALTH AUTHORITY SHALL ARRANGE ALTERNATIVE PLACEMENT WITH THE ADVICE AND
5 RECOMMENDATIONS OF THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT
6 AGENCY.

7 ~~A.~~ B. A patient who is ordered to undergo treatment pursuant to
8 this article may be released from treatment before the expiration of the
9 period ordered by the court if, in the opinion of the medical director of
10 the mental health treatment agency, the patient no longer is, as a result
11 of a mental disorder, a danger to others or a danger to self or no longer
12 has a persistent or acute disability or a grave disability. A person who
13 is ordered to undergo treatment as a danger to others OR WHO HAS HAD A
14 PETITION FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517 may not be
15 released or discharged from treatment before the expiration of the period
16 for treatment ordered by the court unless the medical director first gives
17 notice of intention to do so as provided by this section.

18 ~~B.~~ C. Before the release or discharge of a patient who is ordered
19 to undergo treatment, the medical director of the mental health treatment
20 agency shall notify the following of the medical director's intention to
21 release or discharge the patient:

22 1. The presiding judge of the court that entered the order for
23 treatment.

24 2. Any relative or victim of the patient who has filed a demand for
25 notice with the treatment agency.

26 3. Any person found by the court to have a legitimate reason for
27 receiving notice.

28 ~~C.~~ D. If ~~criminal charges against a patient involving death or~~
29 ~~serious physical injury or a violation of title 13, chapter 14 are~~
30 ~~dismissed~~ THE PATIENT IS UNDERGOING COURT-ORDERED TREATMENT AS THE RESULT
31 OF A PETITION FILED BY A PROSECUTING AGENCY pursuant to section 13-4517,
32 the medical director OF THE MENTAL HEALTH TREATMENT AGENCY shall notify
33 the COURT AND THE prosecuting agency if a civil commitment order issued
34 pursuant to this chapter expires or is terminated, or if the patient is
35 discharged to outpatient treatment. The medical director shall provide
36 this notice by mail at least five days before the anticipated date of the
37 expiration, termination or discharge. THIS SUBSECTION DOES NOT APPLY TO
38 AMENDED ORDERS THAT ARE A RESULT OF THE PATIENT'S NEED FOR ACUTE OR
39 EMERGENCY CARE DURING THE PERIOD OF COURT-ORDERED TREATMENT.

40 ~~D.~~ E. If the MEDICAL director of the mental health treatment
41 agency is unable to determine, based on the information submitted pursuant
42 to subsection ~~E~~ F of this section, that a person who has filed a demand
43 for notice is a victim, the MEDICAL director shall inform that person that
44 that person's demand for notice is denied and that notice will not be

1 given unless ordered by the court pursuant to subsection ~~F~~ G of this
2 section.

3 ~~E~~. F. A demand for notice by a relative or victim, and a petition
4 for notice by other persons, shall be on a form prescribed by the
5 administration and shall include the following information:

- 6 1. The full name of the person to receive notice.
- 7 2. The address to which notice is to be mailed.
- 8 3. The telephone number of the person to receive notice.
- 9 4. The relationship to the patient, if any, or the reasons why the
10 person believes the person has a legitimate reason to receive notice.
- 11 5. A statement that the person will advise the treatment agency in
12 writing by certified mail, return receipt requested, of any change in the
13 address to which notice is to be mailed.
- 14 6. The full name of the patient WHO IS ordered to undergo treatment
15 as a danger to others OR WHO HAS HAD A PETITION FILED BY A PROSECUTOR
16 PURSUANT TO SECTION 13-4517.
- 17 7. The mental health number assigned to the case by the superior
18 court.

19 ~~F~~. G. If the court receives a demand for notice by a relative or
20 victim, the court shall order the medical director of the mental health
21 treatment agency not to release or discharge the patient before the
22 expiration of the period of court-ordered treatment without first giving
23 notice to the relative or victim as provided in subsection ~~G~~ H of this
24 section. After considering a petition for notice, if the court finds that
25 the petitioner has a legitimate reason for receiving prior notice, the
26 court may order the medical director of the mental health treatment agency
27 not to release or discharge the patient from inpatient treatment before
28 the expiration of the period of court-ordered treatment without first
29 giving notice to the petitioner as provided in subsection ~~G~~ H of this
30 section. Any order for notice shall be delivered to the mental health
31 treatment agency and shall be filed with the patient's clinical record.
32 If the patient is transferred to another agency or institution, any orders
33 for notice shall be transferred with the patient.

34 ~~G~~. H. A notice of intention to release or discharge shall include
35 the following information:

- 36 1. The name of the patient to be released or discharged.
- 37 2. The type of release or discharge.
- 38 3. The date of anticipated release or discharge. Notices shall be
39 placed in the mail, postage prepaid and addressed to the court and to each
40 person for whom notice has been ordered, at least ten days before the date
41 of intended release or discharge, except that notice shall be sent to the
42 prosecuting agency at least five days before the date of intended release
43 or discharge. For purposes of computing the notice requirement, the day
44 of mailing shall not be counted.

1 against the county in which the patient resided or was found prior to
2 hospitalization.

3 3. AN APPLICATION FOR CONTINUED COURT-ORDERED TREATMENT IS GRANTED
4 PURSUANT TO SECTION 36-543.

5 B. If a patient to be discharged is under guardianship, the medical
6 director of the mental health treatment agency shall notify the guardian
7 ten days before discharge.

8 C. IF A PATIENT TO BE DISCHARGED IS UNDERGOING COURT-ORDERED
9 TREATMENT AS A RESULT OF A PETITION FILED BY A PROSECUTOR PURSUANT TO
10 SECTION 13-4517 AND THE PATIENT IS BEING DISCHARGED BECAUSE THE MEDICAL
11 DIRECTOR HAS DECIDED NOT TO FILE A NEW PETITION FOR COURT-ORDERED
12 EVALUATION OR TREATMENT OR HAS DECIDED NOT TO REQUEST THE COURT TO ORDER
13 THAT THE PREVIOUS ORDER FOR TREATMENT BE CONTINUED, THE PATIENT MAY NOT BE
14 DISCHARGED OR RELEASED FROM TREATMENT BEFORE COMPLIANCE WITH SECTION
15 36-541.01.

16 ~~C.~~ D. The medical director is not civilly liable for any acts
17 committed by a RELEASED OR discharged patient if the medical director has
18 in good faith followed the requirements of this article.

19 Sec. 16. Section 36-543, Arizona Revised Statutes, is amended to
20 read:

21 36-543. Annual review of a patient with a grave disability or
22 a persistent or acute disability; notice; court
23 order for continued treatment; rules; immunity

24 ~~A. A patient who is found to have a grave disability or a~~
25 ~~persistent or acute disability and ordered to undergo treatment may be~~
26 ~~released from inpatient treatment when, in the opinion of the medical~~
27 ~~director of the mental health treatment agency, the level of care offered~~
28 ~~by the agency is no longer required. The patient may agree to continue~~
29 ~~treatment voluntarily. If the patient is to be released, the medical~~
30 ~~director shall arrange for an appropriate alternative placement.~~

31 ~~B. If a patient who is to be released from inpatient treatment is~~
32 ~~under guardianship, the medical director of the mental health treatment~~
33 ~~agency shall notify the guardian and any relevant regional behavioral~~
34 ~~health authority ten days before the intended release date that the ward~~
35 ~~no longer requires the level of care offered by the agency. The guardian~~
36 ~~and, if relevant, the regional behavioral health authority shall arrange~~
37 ~~alternative placement with the advice and recommendations of the medical~~
38 ~~director of the mental health treatment agency.~~

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

43 ~~D.~~ A. Within ninety days before the expiration of a court order
44 for treatment, the medical director of the mental health treatment agency
45 shall conduct an annual review of a patient who has been found to have a

1 grave disability or a persistent or acute disability and WHO is undergoing
2 court-ordered treatment to determine whether the continuation of
3 court-ordered treatment is appropriate and to assess the needs of the
4 patient for guardianship or conservatorship, or both. The annual review
5 shall consist of the mental health treatment and clinical records
6 contained in the patient's treatment file. The mental health treatment
7 agency shall keep a record of the annual review. If the medical director
8 believes that a continuation of court-ordered treatment is appropriate,
9 the medical director of the mental health treatment agency shall appoint
10 one or more psychiatrists to carry out a psychiatric examination of the
11 patient. In any proceeding conducted pursuant to this section, a patient
12 has the right to have an analysis of the patient's mental condition by an
13 independent evaluation pursuant to section 36-538.

14 ~~E.~~ B. Each examiner participating in the psychiatric examination
15 of the patient shall submit a report to the medical director of the mental
16 health treatment agency that includes the following:

17 1. The examiner's opinions as to whether the patient continues to
18 have a grave disability or a persistent or acute disability as the result
19 of a mental disorder and be in need of continued court-ordered
20 treatment. In evaluating the patient's need for continued court-ordered
21 treatment, the examiner must consider, along with all other evidence, the
22 patient's history before and during the current period of court-ordered
23 treatment, the patient's compliance with recommended treatment and any
24 other evidence relevant to the patient's ability and willingness to follow
25 recommended treatment with or without a court order.

26 2. A statement as to whether suitable alternatives to court-ordered
27 treatment are available.

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

30 4. A review of the patient's status as to guardianship or
31 conservatorship, or both, the adequacy of existing protections of the
32 patient and the continued need for guardianship or conservatorship, or
33 both. If the examiner concludes that the patient's needs in these areas
34 are not being adequately met, the examiner's report shall recommend that
35 the court order an investigation into the patient's needs.

36 5. If the patient has an existing guardian who does not have the
37 mental health powers authorized pursuant to section 14-5312.01, a
38 recommendation as to whether the additional mental health powers
39 authorized by section 14-5312.01 should be imposed on the existing
40 guardian and whether the patient's needs can be adequately addressed by a
41 guardian with mental health powers without the need for a court order for
42 treatment or whether the court order for treatment should continue
43 regardless of the additional mental health powers imposed on the guardian.

1 6. The results of any physical examination conducted during the
2 period of court-ordered treatment if relevant to the psychiatric condition
3 of the patient.

4 F. C. After conducting the annual review as prescribed in this
5 section, if the medical director believes that continued court-ordered
6 treatment is necessary or appropriate, not later than thirty days before
7 the expiration of the court order for treatment, the medical director
8 shall file with the court an application for continued court-ordered
9 treatment alleging the basis for the application and shall file
10 simultaneously with the application any psychiatric examination conducted
11 as part of the annual review. If the patient is under guardianship, the
12 medical director shall mail a copy of the application to the patient's
13 guardian.

14 G. D. If an application for continued court-ordered treatment is
15 filed, all of the following apply:

16 1. If the patient does not have an attorney, the court shall
17 appoint an attorney to represent the patient.

18 2. Within ten days after appointment, an attorney appointed
19 pursuant to this subsection, to the extent possible, shall fulfill the
20 duties imposed pursuant to section 36-537, review the medical director's
21 report and the patient's medical records, interview any physician who
22 prepared a report on the annual review and file a response requesting a
23 hearing or submitting the matter to the court for a ruling based on the
24 record without a hearing.

25 3. If a hearing is not requested, the court shall rule on the
26 application or set the matter for hearing. If a hearing is requested, the
27 hearing shall be held within three weeks after the request for hearing is
28 filed. The hearing may be continued for good cause on motion of a party
29 or on the court's own motion, and the expiration of the current court
30 order for treatment may be extended until a ruling by the court on an
31 application filed pursuant to this subsection.

32 4. The patient's attorney must be present at all hearings and may
33 subpoena and cross-examine witnesses and present evidence. The patient
34 has the right to attend all hearings, but may choose not to attend a
35 hearing. The patient's attorney may waive the patient's presence after
36 speaking with the patient and confirming that the patient understands the
37 right to be present and does not desire to attend. If the patient is
38 unable to be present at the hearing for medical or psychiatric reasons and
39 the hearing cannot be conducted where the patient is being treated or
40 confined, or the patient cannot appear by another reasonably feasible
41 means, the court shall require clear and convincing evidence that the
42 patient is unable to be present at the hearing and on such a finding may
43 proceed with the hearing in the patient's absence.

44 5. The evidence presented by the applicant includes the testimony
45 of one or more witnesses acquainted with the patient during the period of

1 court-ordered treatment, which may be satisfied by a statement agreed on
2 by the parties, and the testimony of any physician who performed an annual
3 review of the patient, which may be satisfied by stipulating to the
4 admission of the examining physicians' written report prepared pursuant TO
5 subsection ~~E~~ B of this section. The court may waive the need for the
6 applicant to present the testimony of witnesses acquainted with the
7 patient as required by this subsection, if it finds that the need for a
8 continued court order for treatment has been established by clear and
9 convincing evidence from the other testimony and evidence presented at the
10 hearing.

11 6. At a hearing held pursuant to this subsection, the court, with
12 notice, may impose on an existing guardian additional powers pursuant to
13 section 14-5312.01. If the court finds that the patient's needs can be
14 adequately met by an existing guardian with the additional powers pursuant
15 to section 14-5312.01 and that a court order for treatment is not
16 necessary to ensure compliance with necessary treatment, the court may
17 terminate the court order for treatment or decline to issue an order
18 continuing court-ordered treatment. The court may also order an
19 investigation into the need for guardianship or conservatorship, or both,
20 and may appoint a suitable person or agency to conduct the investigation.
21 The appointee may include a court-appointed guardian ad litem, a
22 court-appointed investigator pursuant to section 14-5308 or the public
23 fiduciary if there is no person willing and qualified to act in that
24 capacity. The court shall give notice of the appointment to the appointee
25 within three days after the appointment. The appointee shall submit the
26 report of the investigation to the court within twenty-one days. The
27 report shall include recommendations as to who should be guardian or
28 conservator, or both, and the findings and reasons for the recommendation.
29 If the investigation and report so indicate, the court may authorize an
30 appropriate person to file a petition for appointment of a guardian or
31 conservator for the patient.

32 ~~H~~. E. If a hearing is held pursuant to subsection ~~G~~ D of this
33 section, the party seeking the renewal of the court order must prove all
34 of the following by clear and convincing evidence:

35 1. The patient continues to have a mental disorder and, as a result
36 of that disorder, has either a persistent or acute disability or a grave
37 disability.

38 2. The patient is in need of continued court-ordered treatment.

39 3. The patient is either unwilling or unable to accept treatment
40 voluntarily.

41 ~~I~~. F. After a hearing held pursuant to subsection ~~G~~ D of this
42 section, the court may order the patient to be released from court-ordered
43 treatment or to undergo continued court-ordered treatment for a period not
44 to exceed the time periods prescribed in section 36-540, subsection D.

1 G. The director shall create and operate a program to ensure
2 that the examination and review of persons with grave disabilities or
3 persistent or acute disabilities under court order are carried out in an
4 effective and timely manner. The director shall adopt rules needed to
5 operate this program.

6 H. THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY IS
7 NOT CIVILLY LIABLE FOR ANY ACTS COMMITTED BY THE RELEASED PATIENT IF THE
8 MEDICAL DIRECTOR HAS IN GOOD FAITH COMPLIED WITH THE REQUIREMENTS OF THIS
9 ARTICLE.

10 Sec. 17. Section 36-544, Arizona Revised Statutes, is amended to
11 read:

12 36-544. Unauthorized absences; violation; classification;
13 tolling period; hearing; civil liability;
14 definition

15 A. When any patient who is being evaluated or treated is absent
16 without proper authorization from an evaluation agency or a mental health
17 treatment agency, or when an order for outpatient treatment is rescinded,
18 any peace officer shall, upon oral or written request of the medical
19 director of the agency and without the necessity of a warrant or court
20 order, or any officer or employee of the agency who has been previously
21 designated in writing by the medical director of the agency to perform
22 such duties may, take into custody and deliver such patient to the
23 agency. Such officers and employees of the agency have the powers and
24 duties of peace officers so far as is necessary to carry out the
25 provisions of this section. IF NECESSARY, THE EVALUATION OR TREATMENT
26 AGENCY MAY APPLY TO THE COURT FOR A WARRANT OR COURT ORDER DIRECTING ANY
27 PEACE OFFICER TO TAKE A PATIENT WHO IS ABSENT WITHOUT PROPER AUTHORIZATION
28 INTO CUSTODY AND DELIVER THE PATIENT TO THE AGENCY.

29 B. Any person who intentionally assists any patient being evaluated
30 or treated in an agency to be absent from the agency without proper
31 authorization, or who intentionally assists a patient whom he knows to be
32 absent without proper authorization or whom he knows to be a patient whose
33 order for outpatient treatment has been rescinded and who has been ordered
34 to return to the agency, or to resist being returned to the agency after
35 such absence is guilty of a class 2 misdemeanor.

36 C. The period of court-ordered treatment ~~ceases to run~~ IS TOLLED
37 during the unauthorized absence of the patient ~~from the jurisdiction or~~
38 ~~from any required supervision and resumes running only on the patient's~~
39 ~~voluntary or involuntary return to the treatment agency.~~ WITHIN FIVE DAYS
40 AFTER A PATIENT'S UNAUTHORIZED ABSENCE, THE TREATMENT AGENCY SHALL FILE A
41 NOTICE WITH THE COURT AND PROVIDE THE DATE THAT ABSENCE BEGAN AND REQUEST
42 THAT THE TREATMENT ORDER BE TOLLED. IF THE COURT TOLLS THE PERIOD OF
43 COURT-ORDERED TREATMENT, NOTICE OF THE ORDER MUST BE PROVIDED TO THE
44 PATIENT BY REGULAR MAIL AT THE PATIENT'S LAST KNOWN ADDRESS. IF THE
45 PATIENT IS UNDERGOING TREATMENT AS A RESULT OF A REMAND PURSUANT TO

1 SECTION 13-4517, NOTICE MUST ALSO BE PROVIDED TO THE PROSECUTING ATTORNEY.
2 THE TREATMENT AGENCY SHALL NOTIFY THE COURT OF THE DATE OF THE PATIENT'S
3 RETURN. ON NOTICE OF THE PATIENT'S RETURN, THE COURT SHALL ISSUE AN ORDER
4 THAT PROVIDES THE TIME PERIOD THAT WAS TOLLED.

5 ~~D. A patient who remains on unauthorized absence status~~
6 ~~continuously for at least ninety days may petition the court on his return~~
7 ~~to the treatment agency for a hearing to determine his current mental~~
8 ~~status and his present need for treatment. The court shall order a~~
9 ~~hearing if requested by the patient, his legal guardian or an interested~~
10 ~~party. The hearing shall be held within seventy-two hours after the~~
11 ~~request.~~

12 ~~E. Subsections C and D of this section shall apply only to~~
13 ~~inpatient treatment pursuant to section 36-540, subsection A, paragraphs 2~~
14 ~~and 3.~~

15 D. A PATIENT WHOSE PERIOD OF COURT-ORDERED TREATMENT IS TOLLED FOR
16 A PERIOD OF AT LEAST SIXTY CONTINUOUS DAYS MAY REQUEST A JUDICIAL REVIEW
17 PURSUANT TO SECTION 36-546 ON THE PATIENT'S VOLUNTARY OR INVOLUNTARY
18 RETURN TO TREATMENT. DURING THE PERIOD TOLLED BY A COURT ORDER ISSUED
19 PURSUANT TO THIS SECTION, THE TREATMENT AGENCY SHALL USE INFORMATION AND
20 OTHER RESOURCES THAT ARE AVAILABLE TO THE AGENCY TO FACILITATE EFFORTS TO
21 LOCATE AND RETURN THE PATIENT TO APPROPRIATE TREATMENT. AT LEAST ONCE
22 EVERY SIXTY DAYS, OR AS OFTEN AS OTHERWISE ORDERED BY THE COURT, THE
23 TREATMENT AGENCY SHALL FILE A REPORT THAT SPECIFIES THE INFORMATION AND
24 RESOURCES THAT WERE USED BY THE AGENCY TO FACILITATE THE AGENCY'S EFFORTS
25 WITH THE COURT. AFTER THE PERIOD OF TREATMENT IS TOLLED FOR A PERIOD OF
26 ONE HUNDRED EIGHTY DAYS, IF THE COURT IS SATISFIED THAT THE AGENCY HAS
27 MADE THE EFFORTS THAT ARE REQUIRED BY THIS SUBSECTION, ON PETITION OF THE
28 TREATMENT AGENCY, THE COURT MAY TERMINATE THE ORDER FOR TREATMENT OR MAY
29 ORDER THE TREATMENT AGENCY TO MAKE FURTHER SPECIFIC EFFORTS TO LOCATE AND
30 RETURN THE PATIENT TO APPROPRIATE TREATMENT. FOR A PATIENT WHO HAS HAD A
31 PETITION FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517, THE TREATMENT
32 AGENCY SHALL PROVIDE NOTICE TO THE PROSECUTING AGENCY OF THE PETITION TO
33 TERMINATE TREATMENT.

34 E. THE PERIOD OF TREATMENT UNDER A COURT ORDER MAY NOT BE TOLLED
35 FOR MORE THAN THREE HUNDRED SIXTY-FIVE DAYS.

36 F. IF THE TREATMENT AGENCY HAS IN GOOD FAITH FOLLOWED THE
37 REQUIREMENTS OF THIS SECTION, THE TREATMENT AGENCY IS NOT LIABLE IN A
38 CIVIL ACTION FOR DAMAGES THAT RESULT FROM THE ACTIONS OF A PATIENT DURING
39 ANY PERIOD OF TREATMENT TOLLED BY AN ORDER ISSUED PURSUANT TO THIS
40 SECTION.

41 G. FOR THE PURPOSES OF THIS SECTION, "ABSENT WITHOUT PROPER
42 AUTHORIZATION" OR "UNAUTHORIZED ABSENCE" INCLUDES BEING ABSENT FROM AN
43 INPATIENT TREATMENT FACILITY WITHOUT AUTHORIZATION, NO LONGER LIVING IN A
44 PLACEMENT OR RESIDENCE SPECIFIED BY THE TREATMENT PLAN WITHOUT

1 AUTHORIZATION AND LEAVING OR FAILING TO RETURN TO THE COUNTY OR STATE
2 WITHOUT AUTHORIZATION.

3 Sec. 18. Section 36-546, Arizona Revised Statutes, is amended to
4 read:

5 36-546. Judicial review; right to be informed; request;
6 jurisdiction

7 A. In addition to the procedure for applying for a writ of habeas
8 corpus, as provided in title 13, chapter 38, article 26, a patient
9 receiving court-ordered treatment or any person acting on the patient's
10 behalf may request the patient's release pursuant to the following:

11 1. A request in writing may be presented to any member of the
12 treatment staff of the agency providing the patient's treatment. The
13 request may be made on a prescribed form that shall be prepared by the
14 facility and made available for use by any person. The completed form
15 shall identify:

16 (a) The patient being treated and the agency at which the patient
17 is being treated.

18 (b) The person to whom the request for release was made.

19 (c) The person making the request for release, indicating whether
20 the person is the patient being treated or someone acting on the person's
21 behalf.

22 2. The request, when signed and dated by the person making the
23 request for release, shall be delivered to the medical director of the
24 agency. Within three days of receipt of the request, the medical director
25 shall deliver the form, along with a current psychiatric report of the
26 patient's condition, to the clerk of the court. If the person presenting
27 the request refuses to sign the form, the medical director of the agency
28 shall proceed as if the form had been signed and shall note on the form
29 the circumstances as to why the form was not signed.

30 B. The patient shall be informed of the patient's right to judicial
31 review by the medical director of the agency and the patient's right to
32 consult with counsel at least once each sixty days while the patient is
33 undergoing court-ordered treatment. The notification required by this
34 subsection shall be recorded in the clinical record of the patient by the
35 individual who gave the notice.

36 C. With the exception of requests made pursuant to section 36-540,
37 subsection E, paragraphs ~~4~~ 5 and ~~5~~ 6 and section 36-540.01,
38 subsection ~~J~~ K for judicial review, a request for judicial review may not
39 be made sooner than sixty days after the issuance of the order for
40 treatment or a hearing on a previous petition for habeas corpus or the
41 issuance of the court order or other final resolution determining a
42 previous request for judicial review by the patient.

43 D. Judicial review shall be in the superior court in the county in
44 which the patient is being treated. That court may review the additional

1 material presented and enter its order without necessity of further
2 hearing.

3 E. The reviewing court may order a further hearing on the affidavit
4 of the attorney for the patient setting forth the need for further
5 evidentiary hearing and the reasons why the hearing is necessary before
6 the time set for the release of the patient.

7 F. The patient shall be informed of the patient's right to consult
8 an attorney by the person or court to whom the patient makes the request
9 for release at the time the patient makes the request and, in the case of
10 confinement in an agency, by the reviewing court within one day of its
11 receipt of notice from the medical director of the agency where the
12 patient is being treated. The patient shall be permitted to consult an
13 attorney to assist in preparation of a petition for the writ of habeas
14 corpus and to represent the patient in the hearing. If the patient is not
15 represented by an attorney, the reviewing court, within two days of its
16 notice to the patient of the patient's right to counsel, shall appoint an
17 attorney to assist the patient in the preparation of a petition and to
18 represent the patient in the hearing.

19 G. The medical director of the mental health treatment agency, at
20 least twenty-four hours before the hearing, shall provide the patient's
21 attorney with a copy of the patient's medical records.

22 H. The patient's attorney shall fulfill all of the following
23 minimal duties:

24 1. Within twenty-four hours of appointment, conduct an interview
25 with the patient.

26 2. At least twenty-four hours before the hearing, interview the
27 patient's treatment physician or psychiatric and mental health nurse
28 practitioner if available.

29 3. Before the hearing, examine the clinical record of the patient.

30 4. Before the hearing, examine the patient's court records as to
31 the patient's involuntary treatment.

32 I. An attorney who does not fulfill the duties prescribed by
33 subsection H of this section is subject to contempt of court.

34 Sec. 19. Section 36-3701, Arizona Revised Statutes, is amended to
35 read:

36 36-3701. Definitions

37 In this article, unless the context otherwise requires:

38 1. "Agency" means any agency that is authorized to direct the
39 release of a person who is serving a sentence or term of confinement or
40 who is receiving treatment, including a state or federal prison, a county
41 jail and the Arizona state hospital OR OTHER MENTAL HEALTH TREATMENT
42 AGENCY.

43 2. "Competent professional" means a person who is:

44 (a) Familiar with the state's sexually violent persons statutes and
45 sexual offender treatment programs available in this state.

1 (b) Approved by the superior court as meeting court approved
2 guidelines.

3 3. "Conviction" includes a finding of guilt at any time for a
4 sexually violent offense or an order of the juvenile court adjudicating
5 the person delinquent for any sexually violent offense.

6 4. "Less restrictive alternative" means court ordered treatment in
7 a setting that is less restrictive than total confinement and that is
8 conducted in a setting approved by the superintendent of the state
9 hospital.

10 5. "Mental disorder" means a paraphilia, personality disorder or
11 conduct disorder or any combination of paraphilia, personality disorder
12 and conduct disorder that predisposes a person to commit sexual acts to
13 such a degree as to render the person a danger to the health and safety of
14 others.

15 6. "Sexually violent offense" means any of the following:

16 (a) Indecent exposure to a person who is under fifteen years of age
17 pursuant to section 13-1402, public sexual indecency to a minor pursuant
18 to section 13-1403, sexual conduct with a minor pursuant to section
19 13-1405, sexual assault pursuant to section 13-1406, molestation of a
20 child pursuant to section 13-1410, continuous sexual abuse of a child
21 pursuant to section 13-1417 or sexual assault of a spouse if the offense
22 was committed before August 12, 2005.

23 (b) Second degree murder pursuant to section 13-1104, first degree
24 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
25 aggravated assault pursuant to section 13-1204, unlawful imprisonment
26 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
27 burglary in the first degree pursuant to section 13-1508 if the court at
28 the time of sentencing or civil commitment proceedings determines beyond a
29 reasonable doubt that the act was sexually motivated pursuant to section
30 13-118.

31 (c) An attempt, a solicitation, a facilitation or a conspiracy to
32 commit an offense listed in subdivision (a) or (b) of this paragraph.

33 (d) An act committed in another jurisdiction that if committed in
34 this state would be a sexually violent offense listed in subdivision (a),
35 (b) or (c) of this paragraph.

36 (e) A conviction for a felony offense that was in effect before
37 September 1, 1978 and that if committed on or after September 1, 1978
38 would be comparable to a sexually violent offense listed in subdivision
39 (a) or (b) of this paragraph.

40 7. "Sexually violent person" means a person to whom both of the
41 following apply:

42 (a) Has ever been convicted of or found guilty but insane of a
43 sexually violent offense or was charged with a sexually violent offense
44 and was determined incompetent to stand trial.

1 (b) Has a mental disorder that makes the person likely to engage in
2 acts of sexual violence.

3 Sec. 20. Section 36-3702, Arizona Revised Statutes, is amended to
4 read:

5 36-3702. Notice of release; referral; immunity

6 A. If an agency that has jurisdiction over a person who is at least
7 eighteen years of age determines that the person may be a sexually violent
8 person, the agency shall submit a written request that a petition be filed
9 to the county attorney in the county in which the person was convicted,
10 was found incompetent or will be released or to the attorney general not
11 more than one hundred eighty days and not less than thirty days before the
12 person's anticipated release:

13 1. From confinement if the person was convicted at any time of a
14 sexually violent offense.

15 2. If the person was found guilty except insane at any time of
16 committing a sexually violent offense.

17 3. If the person was charged at any time with a sexually violent
18 offense and was determined to be incompetent to stand trial.

19 B. IF THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT
20 TO TITLE 13, CHAPTER 41 AND THERE IS NO SUBSTANTIAL LIKELIHOOD THAT THE
21 PERSON WILL BE RESTORED TO COMPETENCY WITHIN TWENTY-ONE MONTHS AFTER THE
22 DATE OF THE ORIGINAL FINDING OF INCOMPETENCY, THE COUNTY ATTORNEY MAY
23 REQUEST THE COURT TO ORDER A SCREENING OF THE PERSON PURSUANT TO SECTION
24 13-4518 TO DETERMINE IF THE PERSON MAY BE A SEXUALLY VIOLENT PERSON.

25 ~~B.~~ C. If the state department of corrections or the Arizona state
26 hospital has jurisdiction over a person who is at least eighteen years of
27 age and who at any time was convicted of a sexually violent offense, was
28 found guilty except insane of committing a sexually violent offense or was
29 charged with a sexually violent offense and was determined to be
30 incompetent to stand trial, the state department of corrections or the
31 Arizona state hospital shall determine if the person may be a sexually
32 violent person. If the agency determines that the person may be a
33 sexually violent person, the agency shall submit a written request that a
34 petition be filed either to the county attorney in the county in which the
35 person was convicted, was found incompetent or will be released or to the
36 attorney general. The agency must submit the written request not more
37 than one hundred eighty days and not less than thirty days before the
38 person's anticipated release. If the person has a pending sentence of
39 imprisonment in another state or federal jurisdiction, in lieu of the
40 written request the director of the state department of corrections may
41 instead enter into a written agreement with the prosecuting authority by
42 which the person was prosecuted, was found incompetent or will be released
43 to have the person retrieved by the other state or federal jurisdiction.

1 C. D. The agency shall provide the county attorney or attorney
2 general with the following to support the written request that a petition
3 be filed:

4 1. Certified copies of the following court documents:

5 (a) The complaint, information, judgment of conviction and
6 commitment order for the sexually violent offense that forms the basis for
7 the petition and detention orders.

8 (b) The complaint, information, judgment of conviction and
9 commitment order for any other conviction that the submitting agency
10 possesses.

11 2. All records of evaluation and treatment, including any of the
12 following:

13 (a) All psychological and psychiatric tests and assessment reports
14 and supporting information.

15 (b) Group notes, autobiographical notes, progress notes,
16 psychosocial reports or other materials that were prepared by or that
17 relate to the person while the person was in custody or receiving
18 treatment from the submitting agency or any other agency.

19 (c) Presentence investigation reports, whether prepared by the
20 state department of corrections, by a private agency or at the direction
21 of the superior court for sentencing on the sexually violent offense.

22 3. All records of the person's version of the offenses for which
23 the person has been convicted, including the notes and records of all
24 interviews and discussions with the person while the person was in the
25 care of the submitting agency or any other agency.

26 4. A record of all convictions and acquittals regardless of whether
27 those convictions were for sexually violent offenses.

28 5. Police reports that are in the possession of the referring
29 agency and that relate to any sexually violent offense that was committed
30 by the person.

31 6. Institutional records that relate to the person's behavior and
32 conduct while in custody and that are in the possession of the referring
33 agency.

34 7. Information indicating the dates of acceptance and rejection by
35 the person of any recommended or court ordered psychotropic medication to
36 control the person's mental disorder.

37 8. Information indicating the dates of acceptance and rejection by
38 the person of any recommended or court ordered psychological or
39 psychiatric counseling for treatment of the person's mental disorder.

40 9. A final release or discharge report, together with any
41 information on which the report is based, that is prepared in anticipation
42 of either the person's release from incarceration or commitment. The
43 report shall include:

44 (a) A report of the person's condition that was completed within
45 the preceding one hundred twenty days and that includes an opinion

1 expressing to a reasonable degree of psychiatric, psychological or
2 professional certainty that the person has a mental disorder and that, as
3 a result of that mental disorder, the person is likely to engage in a
4 sexually violent offense.

5 (b) A list of the names of all treatment providers who have treated
6 or worked with the person.

7 (c) The curriculum vitae of each of the treating individuals that
8 details each individual's education, training and experience.

9 (d) The facility in which the person is located at the time of the
10 referral and in which the person will be residing pending the filing of a
11 petition.

12 ~~D.~~ E. The agency and the agency's officers and employees providing
13 mental health evaluations and reports are immune from liability for any
14 good faith acts under this article.

15 ~~E.~~ F. The department of health services and the department of
16 health services' officers and employees providing mental health
17 evaluations and reports are immune from liability for any good faith acts
18 under this article.

19 ~~F.~~ G. An agency's inability to comply with the time requirements
20 under subsection A or ~~B~~ C OF THIS SECTION does not preclude the county
21 attorney or the attorney general from filing a petition alleging that a
22 person is a sexually violent person.

APPROVED BY THE GOVERNOR MARCH 24, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 24, 2017.

Passed the House February 9, 20 17

Passed the Senate March 20, 20 17

by the following vote: 58 Ayes,

by the following vote: 29 Ayes,

0 Nays, 2 Not Voting

0 Nays, 1 Not Voting

[Signature]
Speaker of the House
 Pro Tempore

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this
21 day of March, 20 17

at 2:30 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 24th day of

March, 2017

at 3:01 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 24 day of March, 20 17

at 5:05 o'clock P. M.

[Signature]
Secretary of State

H.B. 2239