

REFERENCE TITLE: incompetent, nonrestorable defendants; involuntary commitment

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HB 2239

Introduced by
Representative Farnsworth E

AN ACT

AMENDING SECTIONS 13-4501, 13-4503, 13-4505, 13-4508, 13-4509, 13-4517, 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 AND 36-3701, 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 13-4503, Arizona Revised Statutes, is amended to
2 read:

3 13-4503. Request for competency examination; request for
4 sexually violent person screening

5 A. At any time after the prosecutor charges a criminal offense by
6 complaint, information or indictment, any party or the court on its own
7 motion may request in writing that the defendant be examined to determine
8 the defendant's competency to stand trial, to enter a plea or to assist
9 the defendant's attorney. The motion shall state the facts on which the
10 mental examination is sought.

11 B. Within three working days after a motion is filed pursuant to
12 this section, the parties shall provide all available medical and criminal
13 history records to the court.

14 C. The court may request that a mental health expert assist the
15 court in determining if reasonable grounds exist for examining a
16 defendant.

17 D. Once any court determines that reasonable grounds exist for
18 further competency proceedings, the superior court shall have exclusive
19 jurisdiction over all competency hearings.

20 E. IF THE DEFENDANT IS CHARGED WITH A SEXUALLY VIOLENT OFFENSE AS
21 DEFINED IN SECTION 36-3701 AND THE COUNTY ATTORNEY REQUESTS A SCREENING,
22 THE COURT MAY ORDER A SCREENING OF THE DEFENDANT TO DETERMINE WHETHER THE
23 DEFENDANT IS A SEXUALLY VIOLENT PERSON.

24 Sec. 3. Section 13-4505, Arizona Revised Statutes, is amended to
25 read:

26 13-4505. Appointment of experts; costs; immunity

27 A. If the court determines pursuant to section 13-4503 that
28 reasonable grounds exist for a competency examination, the court shall
29 appoint two or more mental health experts to examine the defendant, issue
30 a report and, if necessary, testify regarding the defendant's competency.
31 The court, on its own motion or ~~upon~~ ON motion of any party, may order
32 that one of the mental health experts appointed ~~shall~~ be a physician
33 specializing in psychiatry and licensed pursuant to title 32, chapter 13
34 or 17. The state and the defendant, ~~upon~~ ON approval of the court, may
35 stipulate to the appointment of only one expert.

36 B. The court may order the defendant to submit to physical,
37 neurological or psychological examinations, if necessary, to adequately
38 determine the defendant's mental condition.

39 C. IF AN EXPERT DETERMINES THAT THE DEFENDANT IS INCOMPETENT TO
40 STAND TRIAL AND NOT RESTORABLE TO COMPETENCY WITHIN TWENTY-ONE MONTHS, THE
41 EXPERT SHALL DETERMINE WHETHER THE DEFENDANT MAY BE A SEXUALLY VIOLENT
42 PERSON.

43 ~~C.~~ D. The court shall order the defendant to pay the costs of the
44 court ordered examination, except that if the court finds the defendant is
45 indigent or otherwise unable to pay all or any part of the costs or if the

1 prosecution requested the examination, the court shall order the county to
2 pay the costs of the examination or, if the case is referred by a
3 municipal court judge, the court shall order the city to pay the costs of
4 the examination.

5 ~~D.~~ E. This section does not prohibit any party from retaining its
6 own expert to conduct any additional examinations at its own expense.

7 ~~E.~~ F. A person who is appointed as a mental health expert or
8 clinical liaison is entitled to immunity, except that the mental health
9 expert or clinical liaison may be liable for intentional, wanton or
10 grossly negligent acts that are done in the performance of the expert's or
11 liaison's duties.

12 Sec. 4. Section 13-4508, Arizona Revised Statutes, is amended to
13 read:

14 13-4508. Privilege against self-incrimination; sealed reports

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

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

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

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

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

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

43 2. For statistical analysis.

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

1 4. For use by the probation department or the state department of
2 corrections if the defendant is in the custody of or is scheduled to be
3 transferred into the custody of the state department of corrections for
4 the purposes of assessment and supervision or monitoring of the defendant
5 by that department.

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

8 6. For data gathering.

9 7. For scientific study.

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

13 Sec. 5. Section 13-4509, Arizona Revised Statutes, is amended to
14 read:

15 13-4509. Expert's report

16 A. An expert who is appointed pursuant to section 13-4505 shall
17 submit a written report of the examination to the court within ten working
18 days after the examination is completed. The report shall include at
19 least the following information:

20 1. The name of each mental health expert who examines the
21 defendant.

22 2. A description of the nature, content, extent and results of the
23 examination and any test conducted.

24 3. The facts on which the findings are based.

25 4. An opinion as to the competency of the defendant.

26 B. If the mental health expert determines that the defendant is
27 incompetent to stand trial, the report shall also include the following
28 information:

29 1. The nature of the mental disease, defect or disability that is
30 the cause of the incompetency.

31 2. The defendant's prognosis.

32 3. THE PERSONALITY OR OTHER DISORDER THAT MAKES THE DEFENDANT
33 LIKELY TO BE A SEXUALLY VIOLENT PERSON.

34 ~~4.~~ 4. The most appropriate form and place of treatment in this
35 state, based on the defendant's therapeutic needs and potential threat to
36 public safety.

37 ~~5.~~ 5. Whether the defendant is incompetent to refuse treatment and
38 should be subject to involuntary treatment.

39 6. IF THE PROGNOSIS INCLUDES A DETERMINATION AS TO WHETHER THERE IS
40 NO SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY
41 WITHIN TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF
42 INCOMPETENCY, WHETHER THE DEFENDANT MAY BE A SEXUALLY VIOLENT PERSON.

43 C. If the mental health examiner determines that the defendant is
44 currently competent by virtue of ongoing treatment with psychotropic
45 medication, the report shall address the necessity of continuing that

1 treatment and shall include a description of any limitations that the
2 medication may have on competency.

3 Sec. 6. Section 13-4517, Arizona Revised Statutes, is amended to
4 read:

5 13-4517. Incompetent defendants; disposition

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

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

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

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

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

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

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

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

40 F. IF A MENTAL HEALTH EXPERT HAS DETERMINED THAT THE DEFENDANT MAY
41 BE A SEXUALLY VIOLENT PERSON, THE MENTAL HEALTH EXPERT SHALL PROVIDE THE
42 REPORT TO THE PROSECUTING AGENCY SO THAT THE PROSECUTING AGENCY MAY FILE A
43 PETITION PURSUANT TO SECTION 36-3702.

1 Sec. 7. Section 36-501, Arizona Revised Statutes, is amended to
2 read:

3 36-501. Definitions

4 In this chapter, unless the context otherwise requires:

5 1. "Administration" means the Arizona health care cost containment
6 system administration.

7 2. "Admitting officer" means a psychiatrist or other physician or
8 psychiatric and mental health nurse practitioner with experience in
9 performing psychiatric examinations who has been designated as an
10 admitting officer of the evaluation agency by the person in charge of the
11 evaluation agency.

12 3. "Chief medical officer" means the chief medical officer under
13 the supervision of the superintendent of the state hospital.

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

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

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

23 ~~6.~~ 7. "Danger to others" means that the judgment of a person who
24 has a mental disorder is so impaired that the person is unable to
25 understand the person's need for treatment and as a result of the person's
26 mental disorder the person's continued behavior can reasonably be
27 expected, on the basis of competent medical opinion, to result in serious
28 physical harm.

29 ~~7.~~ 8. "Danger to self":

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

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

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

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

40 ~~8.~~ 9. "Department" means the department of health services.

41 ~~9.~~ 10. "Detention" means the taking into custody of a patient or
42 proposed patient.

43 ~~10.~~ 11. "Director" means the director of the administration.

44 ~~11.~~ 12. "Evaluation" means:

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

6 (i) Two licensed physicians, who shall be qualified psychiatrists,
7 if possible, or at least experienced in psychiatric matters, and who shall
8 examine and report their findings independently. The person against whom
9 a petition has been filed shall be notified that the person may select one
10 of the physicians. A psychiatric resident in a training program approved
11 by the American medical association or by the American osteopathic
12 association may examine the person in place of one of the psychiatrists if
13 the resident is supervised in the examination and preparation of the
14 affidavit and testimony in court by a qualified psychiatrist appointed to
15 assist in the resident's training, and if the supervising psychiatrist is
16 available for discussion with the attorneys for all parties and for court
17 appearance and testimony if requested by the court or any of the
18 attorneys.

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

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

32 ~~12.~~ 13. "Evaluation agency" means a health care agency that is
33 licensed by the department and that has been approved pursuant to this
34 title, providing those services required of such agency by this chapter.

35 ~~13.~~ 14. "Family member" means a spouse, parent, adult child, adult
36 sibling or other blood relative of a person undergoing treatment or
37 evaluation pursuant to this chapter.

38 ~~14.~~ 15. "Grave disability" means a condition evidenced by behavior
39 in which a person, as a result of a mental disorder, is likely to come to
40 serious physical harm or serious illness because the person is unable to
41 provide for the person's own basic physical needs.

42 ~~15.~~ 16. "Health care decision maker" has the same meaning
43 prescribed in section 12-2801.

1 ~~16.~~ 17. "Health care entity" means a health care provider, the
2 department, the administration or a regional behavioral health authority
3 under contract with the administration.

4 ~~17.~~ 18. "Health care provider" means a health care institution as
5 defined in section 36-401 that is licensed as a behavioral health provider
6 pursuant to department rules or a mental health provider.

7 ~~18.~~ 19. "Independent evaluator" means a licensed physician,
8 psychiatric and mental health nurse practitioner or psychologist selected
9 by the person to be evaluated or by such person's attorney.

10 ~~19.~~ 20. "Informed consent" means a voluntary decision following
11 presentation of all facts necessary to form the basis of an intelligent
12 consent by the patient or guardian with no minimizing of known dangers of
13 any procedures.

14 ~~20.~~ 21. "Least restrictive treatment alternative" means the
15 treatment plan and setting that infringe in the least possible degree with
16 the patient's right to liberty and that are consistent with providing
17 needed treatment in a safe and humane manner.

18 ~~21.~~ 22. "Licensed physician" means any medical doctor or doctor of
19 osteopathy who is either:

20 (a) Licensed in this state.

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

24 ~~22.~~ 23. "Medical director of an evaluation agency" means a
25 psychiatrist, or other licensed physician experienced in psychiatric
26 matters, who is designated in writing by the governing body of the agency
27 as the person in charge of the medical services of the agency for the
28 purposes of this chapter and may include the chief medical officer of the
29 state hospital.

30 ~~23.~~ 24. "Medical director of a mental health treatment agency"
31 means a psychiatrist, or other licensed physician experienced in
32 psychiatric matters, who is designated in writing by the governing body of
33 the agency as the person in charge of the medical services of the agency
34 for the purposes of this chapter and includes the chief medical officer of
35 the state hospital.

36 ~~24.~~ 25. "Mental disorder" means a substantial disorder of the
37 person's emotional processes, thought, cognition or memory. Mental
38 disorder is distinguished from:

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

42 (b) The declining mental abilities that directly accompany
43 impending death.

44 (c) Character and personality disorders characterized by lifelong
45 and deeply ingrained antisocial behavior patterns, including sexual

1 behaviors that are abnormal and prohibited by statute unless the behavior
2 results from a mental disorder.

3 ~~25.~~ 26. "Mental health provider" means any physician or provider
4 of mental health or behavioral health services involved in evaluating,
5 caring for, treating or rehabilitating a patient.

6 ~~26.~~ 27. "Mental health treatment agency" means the state hospital
7 or a health care agency that is licensed by the department and that
8 provides those services that are required of the agency by this chapter.

9 ~~27.~~ 28. "Outpatient treatment" or "combined inpatient and
10 outpatient treatment" means any treatment program not requiring continuous
11 inpatient hospitalization.

12 ~~28.~~ 29. "Outpatient treatment plan" means a treatment plan that
13 does not require continuous inpatient hospitalization.

14 ~~29.~~ 30. "Patient" means any person undergoing examination,
15 evaluation or behavioral or mental health treatment under this chapter.

16 ~~30.~~ 31. "Peace officers" means sheriffs of counties, constables,
17 marshals and policemen of cities and towns.

18 ~~31.~~ 32. "Persistent or acute disability" means a severe mental
19 disorder that meets all the following criteria:

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

24 (b) Substantially impairs the person's capacity to make an informed
25 decision regarding treatment, and this impairment causes the person to be
26 incapable of understanding and expressing an understanding of the
27 advantages and disadvantages of accepting treatment and understanding and
28 expressing an understanding of the alternatives to the particular
29 treatment offered after the advantages, disadvantages and alternatives are
30 explained to that person.

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

33 ~~32.~~ 33. "Prepetition screening" means the review of each
34 application requesting court-ordered evaluation, including an
35 investigation of facts alleged in such application, an interview with each
36 applicant and an interview, if possible, with the proposed patient. The
37 purpose of the interview with the proposed patient is to assess the
38 problem, explain the application and, when indicated, attempt to persuade
39 the proposed patient to receive, on a voluntary basis, evaluation or other
40 services.

41 ~~33.~~ 34. "Prescribed form" means a form established by a court or
42 the rules of the administration in accordance with the laws of this state.

43 ~~34.~~ 35. "Professional" means a physician who is licensed pursuant
44 to title 32, chapter 13 or 17, a psychologist who is licensed pursuant to

1 title 32, chapter 19.1 or a psychiatric and mental health nurse
2 practitioner who is certified pursuant to title 32, chapter 15.

3 ~~35.~~ 36. "Proposed patient" means a person for whom an application
4 for evaluation has been made or a petition for court-ordered evaluation
5 has been filed.

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

9 ~~36.~~ 38. "Psychiatric and mental health nurse practitioner" means a
10 registered nurse practitioner as defined in section 32-1601 who has
11 completed an adult or family psychiatric and mental health nurse
12 practitioner program and who is certified as an adult or family
13 psychiatric and mental health nurse practitioner by the state board of
14 nursing.

15 ~~37.~~ 39. "Psychiatrist" means a licensed physician who has
16 completed three years of graduate training in psychiatry in a program
17 approved by the American medical association or the American osteopathic
18 association.

19 ~~38.~~ 40. "Psychologist" means a person who is licensed under title
20 32, chapter 19.1 and who is experienced in the practice of clinical
21 psychology.

22 ~~39.~~ 41. "Records" means all communications that are recorded in
23 any form or medium and that relate to patient examination, evaluation or
24 behavioral or mental health treatment. Records include medical records
25 that are prepared by a health care provider or other providers. Records
26 do not include:

27 (a) Materials that are prepared in connection with utilization
28 review, peer review or quality assurance activities, including records
29 that a health care provider prepares pursuant to section 36-441, 36-445,
30 36-2402 or 36-2917.

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

34 ~~40.~~ 42. "Regional behavioral health authority" has the same
35 meaning prescribed in section 36-3401.

36 ~~41.~~ 43. "Screening agency" means a health care agency that is
37 licensed by the department and that provides those services required of
38 such agency by this chapter.

39 ~~42.~~ 44. "Social worker" means a person who has completed two years
40 of graduate training in social work in a program approved by the council
41 of social work education and who has experience in mental health.

42 ~~43.~~ 45. "State hospital" means the Arizona state hospital.

43 ~~44.~~ 46. "Superintendent" means the superintendent of the state
44 hospital.

1 Sec. 8. Section 36-521, Arizona Revised Statutes, is amended to
2 read:

3 36-521. Preparation of petition for court-ordered evaluation;
4 procedures for prepetition screening

5 A. On receiving the application for evaluation, the screening
6 agency, before filing a petition for court-ordered evaluation, shall
7 provide prepetition screening within forty-eight hours excluding weekends
8 and holidays when possible to determine whether there is reasonable cause
9 to believe the allegations of the applicant for the court-ordered
10 evaluation, whether the person will voluntarily receive evaluation at a
11 scheduled time and place and whether the person has a persistent or acute
12 disability or a grave disability or is likely to present a danger to self
13 or others until the voluntary evaluation.

14 B. After prepetition screening has been completed, the screening
15 agency shall prepare a report of opinions and conclusions. If prepetition
16 screening is not possible, the screening agency shall prepare a report
17 giving reasons why the screening was not possible and including opinions
18 and conclusions of staff members who attempted to conduct prepetition
19 screening or otherwise investigated the matter.

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

24 D. If, based on the allegations of the applicant for the
25 court-ordered evaluation and the prepetition screening report or other
26 information obtained while attempting to conduct a prepetition screening,
27 the agency determines that there is reasonable cause to believe that the
28 proposed patient is, as a result of mental disorder, a danger to self or
29 to others or has a persistent or acute disability or a grave disability
30 and that the proposed patient is unable or unwilling to voluntarily
31 receive evaluation or is likely to present a danger to self or to others,
32 has a grave disability or will further deteriorate before receiving a
33 voluntary evaluation, the agency shall prepare a petition for
34 court-ordered evaluation and shall file the petition, which shall be
35 signed by the person who prepared the petition unless the county attorney
36 performs these functions. If the agency determines that there is
37 reasonable cause to believe that the person is in such a condition that
38 without immediate hospitalization he is likely to harm himself or others,
39 the agency shall take all reasonable steps to procure such hospitalization
40 on an emergency basis.

41 E. The agency may contact the county attorney in order to obtain
42 assistance in preparing the petition for court-ordered evaluation, and the
43 agency may request the advice and judgment of the county attorney in
44 reaching a decision as to whether the court-ordered evaluation is
45 justified.

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

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

8 1. That a criminal investigation is warranted.

9 2. That the screening agency shall file the petition.

10 3. That no further proceedings are warranted. The screening agency
11 shall consider the recommendation in determining whether a court-ordered
12 evaluation is justified and shall include the recommendation with the
13 petition if the agency decides to file the petition with the court.

14 H. The petition shall be made in the form and manner prescribed by
15 the director.

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

19 Sec. 9. Section 36-523, Arizona Revised Statutes, is amended to
20 read:

21 36-523. Petition for evaluation

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

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

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

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

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

32 5. A summary of the facts that support the allegations that the
33 proposed patient is dangerous, has a persistent or acute disability or a
34 grave disability and is unwilling or unable to be voluntarily evaluated,
35 including the facts that brought the proposed patient to the screening
36 agency's attention.

37 6. IF THE PETITION IS FILED BY A PROSECUTOR PURSUANT TO SECTION
38 13-4517, THE PETITION SHALL INCLUDE ANY KNOWN CRIMINAL HISTORY OF THE
39 PROPOSED PATIENT, INCLUDING WHETHER THE PROPOSED PATIENT HAS EVER BEEN
40 FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510.

41 ~~6-~~ 7. Other information that the director by rule or the court by
42 rule or order may require.

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

1 1. That the opinion of the petitioner is either that the proposed
2 patient is or is not in such a condition that without immediate or
3 continuing hospitalization the patient is likely to suffer serious
4 physical harm or further deterioration or inflict serious physical harm on
5 another person.

6 2. If the opinion of the petitioner is that the proposed patient is
7 not in the condition described in paragraph 1 of this subsection, that the
8 opinion of the petitioner is either that the evaluation should or should
9 not take place on an outpatient basis.

10 C. The petition for evaluation shall be accompanied by the
11 application for evaluation, by the recommendation of the county attorney
12 pursuant to section 36-521 and by a prepetition screening report, unless
13 the documents have not been prepared under a provision of law or in
14 accordance with an order of the court. The petition for evaluation shall
15 also be accompanied by a copy of the application for emergency admission
16 if one exists.

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

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

23 F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT
24 THE PERSON DOES NOT NEED AN EVALUATION AND A PROSECUTOR FILED A PETITION
25 PURSUANT TO SECTION 13-4517, THE PERSON SHALL BE REMANDED FOR A
26 DISPOSITION PURSUANT TO SECTION 13-4517. IF THE PERSON IS OUT OF CUSTODY,
27 THE COURT MAY ORDER THAT THE PERSON BE TAKEN INTO CUSTODY FOR A
28 DISPOSITION PURSUANT TO THIS SECTION.

29 Sec. 10. Section 36-529, Arizona Revised Statutes, is amended to
30 read:

31 36-529. Order for evaluation; order for detention; hearing

32 A. If, from the review of the petition for evaluation, the court
33 does not determine that the proposed patient is likely to present a danger
34 to self or others or further deteriorate ~~prior to his~~ BEFORE THE PROPOSED
35 PATIENT'S hearing on court-ordered treatment, but determines that there is
36 reasonable cause to believe that the proposed patient is, as a result of a
37 mental disorder, a danger to self or others, ~~OR~~ OR has a persistent or acute
38 disability or a grave disability, the court shall issue an order directing
39 the proposed patient to submit to an evaluation at a designated time and
40 place, specifying that the evaluation will take place on an inpatient or
41 an outpatient basis. The court may also order that, if the person does
42 not or cannot so submit, ~~that he~~ THE PERSON be taken into custody by a
43 ~~police~~ PEACE officer and delivered to an evaluation agency. If the court
44 makes such a conditional order, it shall also make a conditional

1 appointment of counsel for the person to become effective when and if the
2 person is taken into custody pursuant to this section.

3 B. If, from review of the petition for evaluation, there is
4 reasonable cause to believe that the proposed patient is, as a result of a
5 mental disorder, a danger to self or others, ~~OR~~ has a persistent or acute
6 disability or a grave disability and that the person requires immediate or
7 continued hospitalization ~~prior to his~~ BEFORE THE PROPOSED PATIENT'S
8 hearing on court-ordered treatment, the court shall order the proposed
9 patient taken into custody and evaluated at an evaluation agency. The
10 court shall promptly appoint counsel for the proposed patient. If an
11 intercounty agreement authorizes the same, the court may order that the
12 evaluation be conducted in another county, and the superior court in the
13 county where the evaluation is conducted shall have concurrent
14 jurisdiction to make appropriate orders concerning the proposed patient.

15 C. If the person is not taken into custody or if the evaluation
16 pursuant to the order of the court under subsection A or B OF THIS SECTION
17 is not initiated within fourteen days from the date of the order, the
18 order and petition for evaluation shall expire. IF A PROSECUTOR FILED A
19 PETITION PURSUANT TO SECTION 13-4517, THE COURT AND THE PROSECUTING AGENCY
20 SHALL RECEIVE NOTICE OF THE EXPIRATION OF THE ORDER FOR EVALUATION. THE
21 COURT MAY ENTER ANY ORDERS NECESSARY FOR FURTHER DISPOSITION PURSUANT TO
22 SECTION 13-4517, INCLUDING A PICKUP ORDER DIRECTING THAT THE PERSON BE
23 TAKEN INTO CUSTODY. THIS SUBSECTION DOES NOT PREVENT ANY PERSON FROM
24 INITIATING ANOTHER COURT-ORDERED EVALUATION OF THE PERSON PURSUANT TO THIS
25 CHAPTER.

26 D. If the person is involuntarily hospitalized, the person shall be
27 informed by ~~his~~ THE PERSON'S appointed attorney of ~~his rights~~ THE RIGHT to
28 a hearing to determine whether ~~he~~ THE PERSON should be involuntarily
29 hospitalized for evaluation and to be represented at the hearing by an
30 attorney. If the ~~patient~~ PERSON requests a hearing to determine whether
31 ~~he~~ THE PERSON should be involuntarily hospitalized during evaluation, the
32 court shall schedule a hearing at its first opportunity.

33 Sec. 11. Section 36-531, Arizona Revised Statutes, is amended to
34 read:

35 36-531. Evaluation; possible dispositions; release

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

40 B. If it is determined on an evaluation of the patient's condition
41 that the patient is, as a result of a mental disorder, a danger to self or
42 to others or has a persistent or acute disability or a grave disability,
43 the medical director in charge of the agency that provided the evaluation,
44 unless the person applies for further care and treatment on a voluntary
45 basis, shall prepare, sign and file a petition for court-ordered treatment

1 unless the county attorney performs the functions of preparing, signing or
2 filing the petition as provided in subsection C of this section.

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

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

13 E. IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517,
14 THE MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL PROVIDE NOTICE WITHIN
15 TWENTY-FOUR HOURS TO THE COURT AND THE PROSECUTING AGENCY OF THE MEDICAL
16 DIRECTOR'S INTENTION TO RELEASE THE PERSON UNDER THIS SECTION. IF THE
17 PERSON HAS BEEN REMANDED PURSUANT TO SECTION 13-4517, THE EVALUATION
18 AGENCY SHALL DETAIN THE PERSON FOR AN ADDITIONAL TWENTY-FOUR HOURS TO
19 ALLOW FOR THE PROVISION OF ANY REQUIRED NOTICES. THE MEDICAL DIRECTOR
20 SHALL PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND TREATMENT
21 RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

22 ~~E.~~ F. The administration may conduct jointly with a school
23 district, directly or indirectly, an educational evaluation pursuant to
24 sections 15-765 and 15-766 for nonadjudicated youth. The evaluation
25 information may be shared by and among authorized personnel employed by
26 the administration and the department of education, or authorized
27 personnel from the local education agency, for purposes of ensuring the
28 provision of special education and related services as required by the
29 individuals with disabilities education act (20 United States Code
30 sections 1400 through 1415).

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

33 36-533. Petition for treatment

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

35 1. That the patient is in need of a period of treatment because the
36 patient, as a result of mental disorder, is a danger to self or to
37 others; ~~OR~~ OR has a persistent or acute disability or a grave disability.

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

39 3. That the patient is unwilling to accept or incapable of
40 accepting treatment voluntarily.

41 B. The petition shall be accompanied by the affidavits of the two
42 physicians who participated in the evaluation and by the affidavit of the
43 applicant for the evaluation, if any. The affidavits of the physicians
44 shall describe in detail the behavior that indicates that the person, as a
45 result of mental disorder, is a danger to self or to others; ~~OR~~ OR has a

1 persistent or acute disability or a grave disability and shall be based on
2 the physician's observations of the patient and the physician's study of
3 information about the patient. A summary of the facts that support the
4 allegations of the petition shall be included. The affidavit shall also
5 include any of the results of the physical examination of the patient if
6 relevant to the patient's psychiatric condition.

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

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

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

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

20 3. A statement that in the opinion of the petitioner the person
21 with a grave disability does or does not require temporary guardianship or
22 conservatorship, or both, and the reasons on which the statement is based.

23 4. A request that the court appoint a temporary guardian or
24 conservator, or both, if in the opinion of the petitioner the person does
25 require temporary guardianship or conservatorship, or both.

26 E. A copy of the petition in cases of grave disability shall be
27 mailed to the public fiduciary in the county of the patient's residence or
28 in which the patient was found before evaluation and to any person
29 nominated as guardian or conservator.

30 F. A copy of all petitions shall be mailed to the superintendent of
31 the Arizona state hospital.

32 Sec. 13. Section 36-534, Arizona Revised Statutes, is amended to
33 read:

34 36-534. Change to voluntary status; discharge; notice;
35 hearing

36 A. If, after a petition for court-ordered treatment has been filed
37 and prior to the hearing, the medical director of the EVALUATION agency
38 finds that it is more appropriate to discharge the patient or to admit the
39 proposed patient on a voluntary basis, the medical director ~~shall~~, after
40 receiving approval from the court, SHALL either discharge the patient or
41 admit the patient for further treatment on a voluntary basis.

42 B. IF THE COURT APPROVES ADMITTING A PATIENT FOR WHOM A PETITION
43 HAS BEEN FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517 TO VOLUNTARY
44 TREATMENT OR BEFORE A PATIENT IS DISCHARGED PURSUANT TO THIS SECTION, THE
45 MEDICAL DIRECTOR SHALL PROVIDE NOTICE TO THE PROSECUTING AGENCY AT LEAST

1 TWENTY-FOUR HOURS BEFORE RELEASING OR DISCHARGING THE PATIENT. THE
2 EVALUATION AGENCY SHALL DETAIN THE PERSON FOR AN ADDITIONAL TWENTY-FOUR
3 HOURS TO ALLOW FOR NOTIFICATION TO THE PROSECUTING AGENCY. THE
4 PROSECUTING AGENCY MAY REQUEST A HEARING TO DETERMINE WHETHER THE COURT
5 SHOULD ORDER THE DEFENDANT RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT
6 TO SECTION 13-4517. FOR ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE
7 COURT SHALL ORDER THE MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS,
8 INCLUDING MEDICAL AND TREATMENT RECORDS, TO THE COURT AND TO THE
9 PROSECUTING AGENCY.

10 Sec. 14. Section 36-540, Arizona Revised Statutes, is amended to
11 read:

12 36-540. Court options

13 A. If the court finds by clear and convincing evidence that the
14 proposed patient, as a result of mental disorder, is a danger to self, is
15 a danger to others, has a persistent or acute disability or a grave
16 disability and IS in need of treatment, and is either unwilling or unable
17 to accept voluntary treatment, the court shall order the patient to
18 undergo one of the following:

19 1. Treatment in a program of outpatient treatment.

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

22 3. Inpatient treatment in a mental health treatment agency, in a
23 hospital operated by or under contract with the United States department
24 of veterans affairs to provide treatment to eligible veterans pursuant to
25 article 9 of this chapter, in the state hospital or in a private hospital,
26 if the private hospital agrees, subject to the limitations of section
27 36-541.

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

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

34 1. Determines that all of the following apply:

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

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

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

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

44 2. Is presented with and approves a written treatment plan that
45 conforms with the requirements of section 36-540.01, subsection B. If the

1 treatment plan presented to the court pursuant to this subsection provides
2 for supervision of the patient under court order by a mental health agency
3 that is other than the mental health agency that petitioned or requested
4 the county attorney to petition the court for treatment pursuant to
5 section 36-531, the treatment plan must be approved by the medical
6 director of the mental health agency that will supervise the treatment
7 pursuant to subsection E of this section.

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

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

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

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

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

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

34 ~~4.~~ 5. During any period of outpatient treatment under subsection
35 A, paragraph 2 of this section, if the court, ON ITS OWN MOTION OR on
36 motion by the medical director of the patient's outpatient mental health
37 treatment facility, determines that the patient is not complying with the
38 terms of the order or that the outpatient treatment plan is no longer
39 appropriate and the patient needs inpatient treatment, the court, without
40 a hearing and based on the court record, the patient's medical record, the
41 affidavits and recommendations of the medical director, and the advice of
42 staff and physicians or the psychiatric and mental health nurse
43 practitioner familiar with the treatment of the patient, may enter an
44 order amending its original order. The amended order may alter the
45 outpatient treatment plan or order the patient to inpatient treatment

1 pursuant to subsection A, paragraph 3 of this section. The amended order
2 shall not increase the total period of commitment originally ordered by
3 the court or, when added to the period of inpatient treatment provided by
4 the original order and any other amended orders, exceed the maximum period
5 allowed for an order for inpatient treatment pursuant to subsection F of
6 this section. If the patient refuses to comply with an amended order for
7 inpatient treatment, the court, **ON ITS OWN MOTION OR ON THE REQUEST OF THE**
8 **MEDICAL DIRECTOR**, may authorize and direct a peace officer, ~~on the request~~
9 ~~of the medical director~~, to take the patient into protective custody and
10 transport the patient to the agency for inpatient treatment. **ANY**
11 **AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO A PEACE OFFICER TO TAKE THE**
12 **PATIENT INTO PROTECTIVE CUSTODY SHALL INCLUDE THE PATIENT'S CRIMINAL**
13 **HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE PATIENT'S CASE MANAGER,**
14 **GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER, AS APPLICABLE.** When
15 reporting to or being returned to a treatment agency for inpatient
16 treatment pursuant to an amended order, the patient shall be informed of
17 the patient's right to judicial review and the patient's right to consult
18 with counsel pursuant to section 36-546.

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

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

- 3 1. Ninety days for a person found to be a danger to self.
- 4 2. One hundred eighty days for a person found to be a danger to
5 others.
- 6 3. One hundred eighty days for a person found to have a persistent
7 or acute disability.
- 8 4. Three hundred sixty-five days for a person found to have a grave
9 disability.

10 G. If, on finding that the patient meets the criteria for
11 court-ordered treatment pursuant to subsection A of this section, the
12 court also finds that there is reasonable cause to believe that the
13 patient is an incapacitated person as defined in section 14-5101 or is a
14 person in need of protection pursuant to section 14-5401 and that the
15 patient is or may be in need of guardianship or conservatorship, or both,
16 the court may order an investigation concerning the need for a guardian or
17 conservator, or both, and may appoint a suitable person or agency to
18 conduct the investigation. The appointee may include a court appointed
19 guardian ad litem, an investigator appointed pursuant to section 14-5308
20 or the public fiduciary if there is no person willing and qualified to act
21 in that capacity. The court shall give notice of the appointment to the
22 appointee within three days of the appointment. The appointee shall
23 submit the report of the investigation to the court within twenty-one
24 days. The report shall include recommendations as to who should be
25 guardian or who should be conservator, or both, and a report of the
26 findings and reasons for the recommendation. If the investigation and
27 report so indicate, the court shall order the appropriate person to submit
28 a petition to become the guardian or conservator, or both, of the patient.

29 H. In any proceeding for court-ordered treatment in which the
30 petition alleges that the patient is in need of a guardian or conservator
31 and states the grounds for that allegation, the court may appoint an
32 emergency temporary guardian or conservator, or both, for a specific
33 purpose or purposes identified in its order and for a specific period of
34 time not to exceed thirty days if the court finds that all of the
35 following are true:

- 36 1. The patient meets the criteria for court-ordered treatment
37 pursuant to subsection A of this section.
- 38 2. There is reasonable cause to believe that the patient is an
39 incapacitated person as defined in section 14-5101 or is in need of
40 protection pursuant to section 14-5401, paragraph 2.
- 41 3. The patient does not have a guardian or conservator and the
42 welfare of the patient requires immediate action to protect the patient or
43 the ward's property.
- 44 4. The conditions prescribed pursuant to section 14-5310,
45 subsection B or section 14-5401.01, subsection B have been met.

1 I. The court may appoint as a temporary guardian or conservator
 2 pursuant to subsection H of this section a suitable person or the public
 3 fiduciary if there is no person qualified and willing to act in that
 4 capacity. The court shall issue an order for an investigation as
 5 prescribed pursuant to subsection G of this section and, unless the
 6 patient is represented by independent counsel, the court shall appoint an
 7 attorney to represent the patient in further proceedings regarding the
 8 appointment of a guardian or conservator. The court shall schedule a
 9 further hearing within fourteen days on the appropriate court calendar of
 10 a court that has authority over guardianship or conservatorship matters
 11 pursuant to this title to consider the continued need for an emergency
 12 temporary guardian or conservator and the appropriateness of the temporary
 13 guardian or conservator appointed, and shall order the appointed guardian
 14 or conservator to give notice to persons entitled to notice pursuant to
 15 section 14-5309, subsection A or section 14-5405, subsection A. The court
 16 shall authorize certified letters of temporary emergency guardianship or
 17 conservatorship to be issued on presentation of a copy of the court's
 18 order. If a temporary emergency conservator other than the public
 19 fiduciary is appointed pursuant to this subsection, the court shall order
 20 that the use of the money and property of the patient by the conservator
 21 is restricted and not to be sold, used, transferred or encumbered, except
 22 that the court may authorize the conservator to use money or property of
 23 the patient specifically identified as needed to pay an expense to provide
 24 for the care, treatment or welfare of the patient pending further
 25 hearing. This subsection and subsection H of this section do not:

- 26 1. Prevent the evaluation or treatment agency from seeking
- 27 guardianship and conservatorship in any other manner allowed by law at any
- 28 time during the period of court-ordered evaluation and treatment.
- 29 2. Relieve the evaluation or treatment agency from its obligations
- 30 concerning the suspected abuse of a vulnerable adult pursuant to title 46,
- 31 chapter 4.

32 J. If, on finding that a patient meets the criteria for court-
 33 ordered treatment pursuant to subsection A of this section, the court also
 34 learns that the patient has a guardian appointed under title 14, the court
 35 with notice may impose on the existing guardian additional duties pursuant
 36 to section 14-5312.01. If the court imposes additional duties on an
 37 existing guardian as prescribed in this subsection, the court may
 38 determine that the patient needs to continue treatment under a court order
 39 for treatment and may issue the order or determine that the patient's
 40 needs can be adequately met by the guardian with the additional duties
 41 pursuant to section 14-5312.01 and decline to issue the court order for
 42 treatment. If at any time after the issuance of a court order for
 43 treatment the court finds that the patient's needs can be adequately met
 44 by the guardian with the additional duties pursuant to section 14-5312.01
 45 and that a court order for treatment is no longer necessary to assure

1 compliance with necessary treatment, the court may terminate the court
2 order for treatment. If there is a court order for treatment and a
3 guardianship with additional mental health authority pursuant to section
4 14-5312.01 existing at the same time, the treatment and placement
5 decisions made by the treatment agency assigned by the court to supervise
6 and administer the patient's treatment program pursuant to the court order
7 for treatment are controlling unless the court orders otherwise.

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

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

15 M. The medical director or any person, agency or organization used
16 by the medical director to supervise the terms of an outpatient treatment
17 plan is not civilly liable for any acts committed by a patient while on
18 outpatient treatment if the medical director, person, agency or
19 organization has in good faith followed the requirements of this section.

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

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

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

40 Q. IF THE COURT DOES NOT FIND A PERSON TO BE IN NEED OF TREATMENT
41 AND A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE COURT,
42 WITHIN TWENTY-FOUR HOURS, SHALL NOTIFY THE PROSECUTING AGENCY OF ITS
43 FINDING. THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO DETAIN THE PERSON
44 FOR AN ADDITIONAL TWENTY-FOUR HOURS TO ALLOW THE PROSECUTING AGENCY TO BE
45 NOTIFIED. IF THE COURT HAS RETAINED JURISDICTION PURSUANT TO SECTION

1 13-4517, SUBSECTION C, THE COURT MAY REMAND THE PERSON TO THE CUSTODY OF
2 THE SHERIFF FOR FURTHER DISPOSITION PURSUANT TO SECTION 13-4517,
3 SUBSECTION A, PARAGRAPH 2 OR 3.

4 Sec. 15. Section 36-540.01, Arizona Revised Statutes, is amended to
5 read:

6 36-540.01. Conditional outpatient treatment

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

12 1. The patient no longer requires continuous inpatient
13 hospitalization.

14 2. The patient will be more appropriately treated in an outpatient
15 treatment program.

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

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

20 B. The order for conditional outpatient treatment issued by the
21 medical director shall include a written outpatient treatment plan
22 prepared by staff familiar with the patient's case history and approved by
23 the medical director. IF A PETITION HAS BEEN FILED PURSUANT TO SECTION
24 13-4517 THE PROSECUTING AGENCY MAY PROVIDE THE COURT WITH INFORMATION THAT
25 IS CONTAINED IN THE PATIENT'S CRIMINAL HISTORY AND THAT MAY BE RELEVANT TO
26 PROTECTING THE WELL-BEING OF THE PATIENT AND THE PUBLIC. The plan shall
27 include all of the following:

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

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

33 3. The name and address of any person, agency or organization
34 assigned to supervise an outpatient treatment plan or care for the
35 patient, and the extent of authority of the person, agency or organization
36 in carrying out the terms of the plan.

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

42 5. ANY OTHER PROVISIONS THAT THE MEDICAL DIRECTOR OR THE COURT
43 BELIEVES ARE NECESSARY TO PROTECT THE WELL-BEING OF THE PATIENT AND THE
44 PUBLIC.

1 C. THE COURT MAY ORDER THAT THE MEDICAL DIRECTOR PROVIDE NOTICE TO
2 THE COURT OF SPECIFIC INSTANCES OF NONCOMPLIANCE AS SPECIFIED BY THE
3 COURT.

4 ~~E.~~ D. Before release for conditional outpatient treatment, the
5 patient shall be provided with copies and full explanations of the medical
6 director's order and the treatment plan. If, after full explanation, the
7 patient objects to the plan or any part of it, the objection and reasons
8 for the objection shall be noted in the patient's record. The medical
9 director's order and treatment plan shall be filed in the patient's
10 medical file and shall also be filed with the court.

11 ~~D.~~ E. The period for which conditional outpatient treatment may be
12 ordered may not exceed the remainder of the period of ~~court-ordered~~
13 COURT-ORDERED treatment.

14 ~~E.~~ F. Before the release of a patient for outpatient treatment,
15 the medical director shall give notice pursuant to section 36-541.01,
16 subsection ~~B~~ C and a motion for a determination by the court as to
17 whether the standard for conditional release of the patient has been met
18 may be made by the persons and in the manner provided for in section
19 36-541.01, subsection ~~H~~ I. Before the release of a person found to be a
20 danger to self, ~~OR OTHERS OR FOUND to be a person with~~ HAVE a persistent
21 or acute disability or a grave disability for outpatient treatment, the
22 medical director shall give notice to the court that ordered the patient
23 to undergo treatment. If criminal charges against a patient involving
24 death or serious physical injury or a violation of title 13, chapter 14
25 are dismissed pursuant to section 13-4517, the medical director shall
26 notify the prosecuting agency if a civil commitment order issued pursuant
27 to this chapter expires or is terminated, or if the patient is discharged
28 to outpatient treatment. The medical director shall provide this notice
29 by mail at least five days before the anticipated date of the expiration,
30 termination or discharge.

31 ~~F.~~ G. The medical director shall require periodic reports
32 concerning the condition of patients on conditional outpatient treatment
33 from any person, agency or organization assigned to supervise an
34 outpatient treatment plan. The medical director shall require these
35 reports at intervals not to exceed thirty days.

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

41 ~~H.~~ I. The medical director may amend any part of the outpatient
42 treatment plan during the course of conditional outpatient treatment. If
43 the plan is amended, the medical director shall issue a new order
44 including the amended outpatient treatment plan. The new order and
45 amended outpatient treatment plan shall be filed in the patient's medical

1 file. Copies of the new order and outpatient treatment plan shall be
2 immediately provided to the patient and to any person, agency or
3 organization assigned to supervise an outpatient treatment plan. Copies
4 of the new order and outpatient treatment plan shall be immediately filed
5 with the court AND, IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION
6 13-4517, WITH THE PROSECUTING AGENCY.

7 ~~J.~~ J. The medical director may rescind an order for conditional
8 outpatient treatment and order the patient to return to a mental health
9 treatment agency at any time during the period of court ordered treatment
10 if, in the medical director's judgment, the patient has failed to comply
11 with a term of the outpatient treatment plan or if, for any reason, the
12 medical director determines that the patient needs inpatient treatment or
13 that conditional outpatient treatment is no longer appropriate. THE
14 MEDICAL DIRECTOR SHALL GIVE NOTICE TO THE COURT THAT ISSUED THE TREATMENT
15 ORDER AND THE PROSECUTING AGENCY IF A PROSECUTOR FILED A PETITION PURSUANT
16 TO SECTION 13-4517.

17 ~~K.~~ K. If the medical director rescinds an order for conditional
18 outpatient treatment and the patient is returned to a mental health
19 treatment agency for inpatient treatment, the patient shall be informed of
20 the patient's right to judicial review and right to consult with counsel
21 pursuant to section 36-546.

22 ~~L.~~ L. If the medical director rescinds an order for conditional
23 outpatient treatment and orders the patient to return to a mental health
24 treatment agency, the medical director may request, OR A COURT MAY ORDER,
25 a peace officer or a designated officer or employee of the treatment
26 agency to take the patient into custody for immediate delivery to the
27 agency pursuant to section 36-544.

28 ~~M.~~ M. The medical director is not civilly liable for any act
29 committed by a patient while on conditional outpatient treatment if the
30 medical director has in good faith followed the requirements of this
31 section.

32 ~~N.~~ N. This section does not prevent the medical director from
33 authorizing a patient ordered to undergo treatment pursuant to section
34 36-540 as a danger to self, OR a danger to others, OR a patient with a
35 persistent or acute disability or a grave disability to leave the
36 treatment agency for periods of no more than five days under the care,
37 custody and control of a spouse, relative or other responsible person if
38 the medical director determines that the patient will not become dangerous
39 or suffer serious physical harm or illness during that time.

40 ~~O.~~ O. The medical director may authorize a patient who is civilly
41 committed pursuant to section 36-540 to leave the state hospital grounds
42 unaccompanied if the leave is part of an inpatient individualized
43 treatment and discharge plan and the medical director determines that the
44 patient will not become dangerous or suffer serious physical harm or
45 illness during that time.

1 Sec. 16. Section 36-541.01, Arizona Revised Statutes, is amended to
2 read:

3 36-541.01. Release or discharge from treatment before
4 expiration of period ordered by court;
5 notification of intent to release or discharge;
6 hearing; immunity

7 A. A PATIENT WHO IS FOUND TO HAVE A GRAVE DISABILITY OR A
8 PERSISTENT OR ACUTE DISABILITY AND WHO IS ORDERED TO UNDERGO TREATMENT
9 PURSUANT TO THIS ARTICLE MAY BE RELEASED FROM INPATIENT TREATMENT WHEN, IN
10 THE OPINION OF THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY,
11 THE LEVEL OF CARE OFFERED BY THE AGENCY IS NO LONGER REQUIRED. THE
12 PATIENT MAY AGREE TO CONTINUE TREATMENT VOLUNTARILY. IF THE PATIENT IS TO
13 BE RELEASED, THE MEDICAL DIRECTOR SHALL ARRANGE FOR AN APPROPRIATE
14 ALTERNATIVE PLACEMENT. IF THE PATIENT WHO IS TO BE RELEASED FROM
15 INPATIENT TREATMENT IS UNDER A GUARDIANSHIP, THE MEDICAL DIRECTOR OF THE
16 MENTAL HEALTH TREATMENT AGENCY SHALL NOTIFY THE GUARDIAN AND ANY RELEVANT
17 REGIONAL BEHAVIORAL HEALTH AUTHORITY TEN DAYS BEFORE THE INTENDED RELEASE
18 DATE THAT THE PATIENT NO LONGER REQUIRES THE LEVEL OF CARE THAT IS OFFERED
19 BY THE AGENCY. THE GUARDIAN AND, IF RELEVANT, THE REGIONAL BEHAVIORAL
20 HEALTH AUTHORITY SHALL ARRANGE ALTERNATIVE PLACEMENT WITH THE ADVICE AND
21 RECOMMENDATIONS OF THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT
22 AGENCY.

23 ~~A.~~ B. A patient who is ordered to undergo treatment pursuant to
24 this article may be released from treatment before the expiration of the
25 period ordered by the court if, in the opinion of the medical director of
26 the mental health treatment agency, the patient no longer is, as a result
27 of a mental disorder, a danger to others or a danger to self or no longer
28 has a persistent or acute disability or a grave disability. A person who
29 is ordered to undergo treatment as a danger to others **OR WHO HAS HAD A**
30 **PETITION FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517** may not be
31 released or discharged from treatment before the expiration of the period
32 for treatment ordered by the court unless the medical director first gives
33 notice of intention to do so as provided by this section.

34 ~~B.~~ C. Before the release or discharge of a patient who is ordered
35 to undergo treatment, the medical director of the mental health treatment
36 agency shall notify the following of the medical director's intention to
37 release or discharge the patient:

38 1. The presiding judge of the court that entered the order for
39 treatment.

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

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

44 ~~C.~~ D. If ~~criminal charges against a patient involving death or~~
45 ~~serious physical injury or a violation of title 13, chapter 14 are~~

1 ~~dismissed~~ THE PATIENT IS UNDERGOING COURT-ORDERED TREATMENT AS THE RESULT
 2 OF A PETITION FILED BY A PROSECUTING AGENCY pursuant to section 13-4517,
 3 the medical director OF THE MENTAL HEALTH TREATMENT AGENCY shall notify
 4 the COURT AND THE prosecuting agency if a civil commitment order issued
 5 pursuant to this chapter expires or is terminated, or if the patient is
 6 discharged to outpatient treatment. The medical director shall provide
 7 this notice by mail at least five days before the anticipated date of the
 8 expiration, termination or discharge. THIS SUBSECTION DOES NOT APPLY TO
 9 AMENDED ORDERS THAT ARE A RESULT OF THE PATIENT'S NEED FOR ACUTE OR
 10 EMERGENCY CARE DURING THE PERIOD OF COURT-ORDERED TREATMENT.

11 ~~D.~~ E. If the MEDICAL director of the mental health treatment
 12 agency is unable to determine, based on the information submitted pursuant
 13 to subsection ~~F~~ F of this section, that a person who has filed a demand
 14 for notice is a victim, the MEDICAL director shall inform that person that
 15 that person's demand for notice is denied and that notice will not be
 16 given unless ordered by the court pursuant to subsection ~~F~~ G of this
 17 section.

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

- 21 1. The full name of the person to receive notice.
- 22 2. The address to which notice is to be mailed.
- 23 3. The telephone number of the person to receive notice.
- 24 4. The relationship to the patient, if any, or the reasons why the
 25 person believes the person has a legitimate reason to receive notice.
- 26 5. A statement that the person will advise the treatment agency in
 27 writing by certified mail, return receipt requested, of any change in the
 28 address to which notice is to be mailed.
- 29 6. The full name of the patient WHO IS ordered to undergo treatment
 30 as a danger to others OR WHO HAS HAD A PETITION FILED BY A PROSECUTOR
 31 PURSUANT TO SECTION 13-4517.

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

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

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

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

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

7 2. The type of release or discharge.

8 3. The date of anticipated release or discharge. Notices shall be
9 placed in the mail, postage prepaid and addressed to the court and to each
10 person for whom notice has been ordered, at least ten days before the date
11 of intended release or discharge, except that notice shall be sent to the
12 prosecuting agency at least five days before the date of intended release
13 or discharge. For purposes of computing the notice requirement, the day
14 of mailing shall not be counted.

15 ~~H.~~ I. Any person for whom prior notice is required pursuant to
16 this section, or the court, may make a motion within the notification
17 period that requires the court to determine whether the standard for
18 release of the patient before the expiration of the period for
19 court-ordered treatment has been met. A determination that the standard
20 for release has been met may be made by the court based on a review of the
21 record and any affidavits submitted without further hearing. For good
22 cause, the court may order an evidentiary hearing. Whether or not a
23 hearing is held, the court shall make a determination at the earliest
24 possible time but no longer than three weeks after the anticipated date of
25 release pursuant to subsection ~~H.~~ H of this section, and the patient shall
26 be retained for the additional time required for the court's
27 determination. In making its determination the court may order an
28 independent examination of the patient. If a motion is not made, the
29 patient may be released in accordance with the terms set forth in the
30 notice without further court order. IF A HEARING IS HELD PURSUANT TO THIS
31 SUBSECTION, THE COURT SHALL ORDER THE MEDICAL DIRECTOR OF THE MENTAL
32 HEALTH TREATMENT AGENCY TO PROVIDE THE PATIENT'S RECORDS, INCLUDING
33 MEDICAL AND TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

34 ~~H.~~ J. If a motion has not been made pursuant to subsection ~~H.~~ I of
35 this section, the patient may be released or discharged and the medical
36 director of the mental health treatment agency shall send to the court a
37 certificate that the patient is no longer a danger to others or a danger
38 to self or no longer has a persistent or acute disability or a grave
39 disability as the result of a mental disorder and therefore is released
40 before the expiration of the period ordered for treatment. The court
41 shall enter an order terminating the patient's court-ordered treatment.

42 ~~H.~~ K. The medical director of the mental health treatment agency
43 shall not be held civilly liable for any acts committed by a patient who
44 is released before the expiration of the period of court-ordered treatment

1 if the medical director has in good faith followed the requirements of
2 this section.

3 Sec. 17. Section 36-542, Arizona Revised Statutes, is amended to
4 read:

5 36-542. Discharge of patient at expiration of period ordered
6 by court; change to voluntary status; immunity

7 A. A patient ordered by a court to undergo treatment pursuant to
8 this article shall be discharged from treatment at the expiration of the
9 period of treatment ordered unless one of the following occurs:

10 1. The person accepts voluntary treatment at the mental health
11 treatment agency.

12 2. Before the discharge date, a new petition is filed in the county
13 in which the patient is being treated. The proceedings shall then be
14 governed by this article. The costs of the proceedings shall be a charge
15 against the county in which the patient resided or was found prior to
16 hospitalization.

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

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

22 C. IF A PATIENT TO BE DISCHARGED IS UNDERGOING COURT-ORDERED
23 TREATMENT AS A RESULT OF A PETITION FILED BY A PROSECUTOR PURSUANT TO
24 SECTION 13-4517 AND THE PATIENT IS BEING DISCHARGED BECAUSE THE MEDICAL
25 DIRECTOR HAS DECIDED NOT TO FILE A NEW PETITION FOR COURT-ORDERED
26 EVALUATION OR TREATMENT OR HAS DECIDED NOT TO REQUEST THE COURT TO ORDER
27 THAT THE PREVIOUS ORDER FOR TREATMENT BE CONTINUED, THE PATIENT MAY NOT BE
28 DISCHARGED OR RELEASED FROM TREATMENT BEFORE COMPLIANCE WITH SECTION
29 36-541.01.

30 ~~E.~~ D. The medical director is not civilly liable for any acts
31 committed by a ~~RELEASED OR~~ discharged patient if the medical director has
32 in good faith followed the requirements of this article.

33 Sec. 18. Section 36-543, Arizona Revised Statutes, is amended to
34 read:

35 36-543. Annual review of a patient with a grave disability or
36 a persistent or acute disability; notice; court
37 order for continued treatment; rules; immunity

38 ~~A. A patient who is found to have a grave disability or a~~
39 ~~persistent or acute disability and ordered to undergo treatment may be~~
40 ~~released from inpatient treatment when, in the opinion of the medical~~
41 ~~director of the mental health treatment agency, the level of care offered~~
42 ~~by the agency is no longer required. The patient may agree to continue~~
43 ~~treatment voluntarily. If the patient is to be released, the medical~~
44 ~~director shall arrange for an appropriate alternative placement.~~

1 ~~B. If a patient who is to be released from inpatient treatment is~~
2 ~~under guardianship, the medical director of the mental health treatment~~
3 ~~agency shall notify the guardian and any relevant regional behavioral~~
4 ~~health authority ten days before the intended release date that the ward~~
5 ~~no longer requires the level of care offered by the agency. The guardian~~
6 ~~and, if relevant, the regional behavioral health authority shall arrange~~
7 ~~alternative placement with the advice and recommendations of the medical~~
8 ~~director of the mental health treatment agency.~~

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

13 ~~D.~~ A. Within ninety days before the expiration of a court order
14 for treatment, the medical director of the mental health treatment agency
15 shall conduct an annual review of a patient who has been found to have a
16 grave disability or a persistent or acute disability and WHO is undergoing
17 court-ordered treatment to determine whether the continuation of
18 court-ordered treatment is appropriate and to assess the needs of the
19 patient for guardianship or conservatorship, or both. The annual review
20 shall consist of the mental health treatment and clinical records
21 contained in the patient's treatment file. The mental health treatment
22 agency shall keep a record of the annual review. If the medical director
23 believes that a continuation of court-ordered treatment is appropriate,
24 the medical director of the mental health treatment agency shall appoint
25 one or more psychiatrists to carry out a psychiatric examination of the
26 patient. In any proceeding conducted pursuant to this section, a patient
27 has the right to have an analysis of the patient's mental condition by an
28 independent evaluation pursuant to section 36-538.

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

32 1. The examiner's opinions as to whether the patient continues to
33 have a grave disability or a persistent or acute disability as the result
34 of a mental disorder and be in need of continued court-ordered
35 treatment. In evaluating the patient's need for continued court-ordered
36 treatment, the examiner must consider, along with all other evidence, the
37 patient's history before and during the current period of court-ordered
38 treatment, the patient's compliance with recommended treatment and any
39 other evidence relevant to the patient's ability and willingness to follow
40 recommended treatment with or without a court order.

41 2. A statement as to whether suitable alternatives to court-ordered
42 treatment are available.

43 3. A statement as to whether voluntary treatment would be
44 appropriate.

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

7 5. If the patient has an existing guardian who does not have the
8 mental health powers authorized pursuant to section 14-5312.01, a
9 recommendation as to whether the additional mental health powers
10 authorized by section 14-5312.01 should be imposed on the existing
11 guardian and whether the patient's needs can be adequately addressed by a
12 guardian with mental health powers without the need for a court order for
13 treatment or whether the court order for treatment should continue
14 regardless of the additional mental health powers imposed on the guardian.

15 6. The results of any physical examination conducted during the
16 period of court-ordered treatment if relevant to the psychiatric condition
17 of the patient.

18 ~~F.~~ C. After conducting the annual review as prescribed in this
19 section, if the medical director believes that continued court-ordered
20 treatment is necessary or appropriate, not later than thirty days before
21 the expiration of the court order for treatment, the medical director
22 shall file with the court an application for continued court-ordered
23 treatment alleging the basis for the application and shall file
24 simultaneously with the application any psychiatric examination conducted
25 as part of the annual review. If the patient is under guardianship, the
26 medical director shall mail a copy of the application to the patient's
27 guardian.

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

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

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

39 3. If a hearing is not requested, the court shall rule on the
40 application or set the matter for hearing. If a hearing is requested, the
41 hearing shall be held within three weeks after the request for hearing is
42 filed. The hearing may be continued for good cause on motion of a party
43 or on the court's own motion, and the expiration of the current court
44 order for treatment may be extended until a ruling by the court on an
45 application filed pursuant to this subsection.

1 4. The patient's attorney must be present at all hearings and may
 2 subpoena and cross-examine witnesses and present evidence. The patient
 3 has the right to attend all hearings, but may choose not to attend a
 4 hearing. The patient's attorney may waive the patient's presence after
 5 speaking with the patient and confirming that the patient understands the
 6 right to be present and does not desire to attend. If the patient is
 7 unable to be present at the hearing for medical or psychiatric reasons and
 8 the hearing cannot be conducted where the patient is being treated or
 9 confined, or the patient cannot appear by another reasonably feasible
 10 means, the court shall require clear and convincing evidence that the
 11 patient is unable to be present at the hearing and on such a finding may
 12 proceed with the hearing in the patient's absence.

13 5. The evidence presented by the applicant includes the testimony
 14 of one or more witnesses acquainted with the patient during the period of
 15 court-ordered treatment, which may be satisfied by a statement agreed on
 16 by the parties, and the testimony of any physician who performed an annual
 17 review of the patient, which may be satisfied by stipulating to the
 18 admission of the examining physicians' written report prepared pursuant TO
 19 subsection ~~E~~ B of this section. The court may waive the need for the
 20 applicant to present the testimony of witnesses acquainted with the
 21 patient as required by this subsection, if it finds that the need for a
 22 continued court order for treatment has been established by clear and
 23 convincing evidence from the other testimony and evidence presented at the
 24 hearing.

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

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

4 1. The patient continues to have a mental disorder and, as a result
5 of that disorder, has either a persistent or acute disability or a grave
6 disability.

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

8 3. The patient is either unwilling or unable to accept treatment
9 voluntarily.

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

14 ~~J.~~ G. The director shall create and operate a program to ensure
15 that the examination and review of persons with grave disabilities or
16 persistent or acute disabilities under court order are carried out in an
17 effective and timely manner. The director shall adopt rules needed to
18 operate this program.

19 H. THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY IS
20 NOT CIVILLY LIABLE FOR ANY ACTS COMMITTED BY THE RELEASED PATIENT IF THE
21 MEDICAL DIRECTOR HAS IN GOOD FAITH COMPLIED WITH THE REQUIREMENTS OF THIS
22 ARTICLE.

23 Sec. 19. Section 36-544, Arizona Revised Statutes, is amended to
24 read:

25 36-544. Unauthorized absences; violation; classification;
26 tolling period; hearing; civil liability;
27 definition

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

42 B. Any person who intentionally assists any patient being evaluated
43 or treated in an agency to be absent from the agency without proper
44 authorization, or who intentionally assists a patient whom he knows to be
45 absent without proper authorization or whom he knows to be a patient whose

1 order for outpatient treatment has been rescinded and who has been ordered
2 to return to the agency, or to resist being returned to the agency after
3 such absence is guilty of a class 2 misdemeanor.

4 C. The period of court-ordered treatment ~~ceases to run~~ IS TOLLED
5 during the unauthorized absence of the patient ~~from the jurisdiction or~~
6 ~~from any required supervision and resumes running only on the patient's~~
7 ~~voluntary or involuntary return to the treatment agency.~~ WITHIN FIVE DAYS
8 AFTER A PATIENT'S UNAUTHORIZED ABSENCE, THE TREATMENT AGENCY SHALL FILE A
9 NOTICE WITH THE COURT AND PROVIDE THE DATE THAT ABSENCE BEGAN AND REQUEST
10 THAT THE TREATMENT ORDER BE TOLLED. IF THE COURT TOLLS THE PERIOD OF
11 COURT-ORDERED TREATMENT, NOTICE OF THE ORDER MUST BE PROVIDED TO THE
12 PATIENT BY REGULAR MAIL AT THE PATIENT'S LAST KNOWN ADDRESS. IF THE
13 PATIENT IS UNDERGOING TREATMENT AS A RESULT OF A REMAND PURSUANT TO
14 SECTION 13-4517, NOTICE MUST ALSO BE PROVIDED TO THE PROSECUTING ATTORNEY.
15 THE TREATMENT AGENCY SHALL NOTIFY THE COURT OF THE DATE OF THE PATIENT'S
16 RETURN. ON NOTICE OF THE PATIENT'S RETURN, THE COURT SHALL ISSUE AN ORDER
17 THAT PROVIDES THE TIME PERIOD THAT WAS TOLLED.

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

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

28 D. A PATIENT WHOSE PERIOD OF COURT-ORDERED TREATMENT IS TOLLED FOR
29 A PERIOD OF AT LEAST SIXTY CONTINUOUS DAYS MAY REQUEST A JUDICIAL REVIEW
30 PURSUANT TO SECTION 36-546 ON THE PATIENT'S VOLUNTARY OR INVOLUNTARY
31 RETURN TO TREATMENT. DURING THE PERIOD TOLLED BY A COURT ORDER ISSUED
32 PURSUANT TO THIS SECTION, THE TREATMENT AGENCY SHALL USE INFORMATION AND
33 OTHER RESOURCES THAT ARE AVAILABLE TO THE AGENCY TO FACILITATE EFFORTS TO
34 LOCATE AND RETURN THE PATIENT TO APPROPRIATE TREATMENT AND AT LEAST ONCE
35 EVERY SIXTY DAYS, OR AS OFTEN AS OTHERWISE ORDERED BY THE COURT, SHALL
36 FILE A REPORT OF THE AGENCY'S EFFORTS WITH THE COURT. AFTER THE PERIOD OF
37 TREATMENT IS TOLLED FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS, IF THE COURT
38 IS SATISFIED THAT THE AGENCY HAS MADE THE EFFORTS THAT ARE REQUIRED BY
39 THIS SUBSECTION, ON PETITION OF THE TREATMENT AGENCY, THE COURT MAY
40 TERMINATE THE ORDER FOR TREATMENT OR MAY ORDER THE TREATMENT AGENCY TO
41 MAKE FURTHER SPECIFIC EFFORTS TO LOCATE AND RETURN THE PATIENT TO
42 APPROPRIATE TREATMENT. FOR A PATIENT WHO HAS HAD A PETITION FILED BY A
43 PROSECUTOR PURSUANT TO SECTION 13-4517, THE TREATMENT AGENCY SHALL PROVIDE
44 NOTICE TO THE PROSECUTING AGENCY OF THE PETITION TO TERMINATE TREATMENT.

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

3 F. IF THE TREATMENT AGENCY HAS IN GOOD FAITH FOLLOWED THE
4 REQUIREMENTS OF THIS SECTION, THE TREATMENT AGENCY IS NOT LIABLE IN A
5 CIVIL ACTION FOR DAMAGES THAT RESULT FROM THE ACTIONS OF A PATIENT DURING
6 ANY PERIOD OF TREATMENT TOLLED BY AN ORDER ISSUED PURSUANT TO THIS
7 SECTION.

8 G. FOR THE PURPOSES OF THIS SECTION, "ABSENT WITHOUT PROPER
9 AUTHORIZATION" OR "UNAUTHORIZED ABSENCE" INCLUDES BEING ABSENT FROM AN
10 INPATIENT TREATMENT FACILITY WITHOUT AUTHORIZATION, NO LONGER LIVING IN A
11 PLACEMENT OR RESIDENCE SPECIFIED BY THE TREATMENT PLAN WITHOUT
12 AUTHORIZATION AND LEAVING OR FAILING TO RETURN TO THE COUNTY OR STATE
13 WITHOUT AUTHORIZATION.

14 Sec. 20. Section 36-546, Arizona Revised Statutes, is amended to
15 read:

16 36-546. Judicial review; right to be informed; request;
17 jurisdiction

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

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

27 (a) The patient being treated and the agency at which the patient
28 is being treated.

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

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

33 2. The request, when signed and dated by the person making the
34 request for release, shall be delivered to the medical director of the
35 agency. Within three days of receipt of the request, the medical director
36 shall deliver the form, along with a current psychiatric report of the
37 patient's condition, to the clerk of the court. If the person presenting
38 the request refuses to sign the form, the medical director of the agency
39 shall proceed as if the form had been signed and shall note on the form
40 the circumstances as to why the form was not signed.

41 B. The patient shall be informed of the patient's right to judicial
42 review by the medical director of the agency and the patient's right to
43 consult with counsel at least once each sixty days while the patient is
44 undergoing court-ordered treatment. The notification required by this

1 subsection shall be recorded in the clinical record of the patient by the
2 individual who gave the notice.

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

10 D. Judicial review shall be in the superior court in the county in
11 which the patient is being treated. That court may review the additional
12 material presented and enter its order without necessity of further
13 hearing.

14 E. The reviewing court may order a further hearing on the affidavit
15 of the attorney for the patient setting forth the need for further
16 evidentiary hearing and the reasons why the hearing is necessary before
17 the time set for the release of the patient.

18 F. The patient shall be informed of the patient's right to consult
19 an attorney by the person or court to whom the patient makes the request
20 for release at the time the patient makes the request and, in the case of
21 confinement in an agency, by the reviewing court within one day of its
22 receipt of notice from the medical director of the agency where the
23 patient is being treated. The patient shall be permitted to consult an
24 attorney to assist in preparation of a petition for the writ of habeas
25 corpus and to represent the patient in the hearing. If the patient is not
26 represented by an attorney, the reviewing court, within two days of its
27 notice to the patient of the patient's right to counsel, shall appoint an
28 attorney to assist the patient in the preparation of a petition and to
29 represent the patient in the hearing.

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

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

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

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

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

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

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

1 Sec. 21. Section 36-3701, Arizona Revised Statutes, is amended to
2 read:

3 36-3701. Definitions

4 In this article, unless the context otherwise requires:

5 1. "Agency" means any agency that is authorized to direct the
6 release of a person who is serving a sentence or term of confinement or
7 who is receiving treatment, including a state or federal prison, a county
8 jail and the Arizona state hospital **OR OTHER MENTAL HEALTH TREATMENT**
9 **AGENCY**.

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

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

13 (b) Approved by the superior court as meeting court approved
14 guidelines.

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

18 4. "Less restrictive alternative" means court ordered treatment in
19 a setting that is less restrictive than total confinement and that is
20 conducted in a setting approved by the superintendent of the state
21 hospital.

22 5. "Mental disorder" means a paraphilia, personality disorder or
23 conduct disorder or any combination of paraphilia, personality disorder
24 and conduct disorder that predisposes a person to commit sexual acts to
25 such a degree as to render the person a danger to the health and safety of
26 others.

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

28 (a) Indecent exposure to a person who is under fifteen years of age
29 pursuant to section 13-1402, public sexual indecency to a minor pursuant
30 to section 13-1403, sexual conduct with a minor pursuant to section
31 13-1405, sexual assault pursuant to section 13-1406, molestation of a
32 child pursuant to section 13-1410, continuous sexual abuse of a child
33 pursuant to section 13-1417 or sexual assault of a spouse if the offense
34 was committed before August 12, 2005.

35 (b) Second degree murder pursuant to section 13-1104, first degree
36 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
37 aggravated assault pursuant to section 13-1204, unlawful imprisonment
38 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
39 burglary in the first degree pursuant to section 13-1508 if the court at
40 the time of sentencing or civil commitment proceedings determines beyond a
41 reasonable doubt that the act was sexually motivated pursuant to section
42 13-118.

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

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

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

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

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

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