

Senate Engrossed

court-ordered treatment; case records; confidentiality

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SENATE BILL 1114

AN ACT

AMENDING SECTION 36-501, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-509.01; AMENDING SECTIONS 36-524, 36-526, 36-533 AND 36-540, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 36-501. Definitions

5 In this chapter, unless the context otherwise requires:

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

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

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

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

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

20 6. "Criminal history" means police reports, lists of prior arrests
21 and convictions, criminal case pleadings and court orders, including a
22 determination that the person has been found incompetent to stand trial
23 pursuant to section 13-4510.

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

30 8. "Danger to self":

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

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

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

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

41 9. "Department" means the department of health services.

42 10. "Detention" means the taking into custody of a patient or
43 proposed patient.

44 11. "Director" means the director of the administration.

1 12. "Evaluation" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 26. "Mental health provider" means any physician or provider of
6 mental health or behavioral health services WHO IS involved in evaluating,
7 caring for, treating or rehabilitating a patient.

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

11 28. "Outpatient treatment" or "combined inpatient and outpatient
12 treatment" means any treatment program not requiring continuous inpatient
13 hospitalization.

14 29. "Outpatient treatment plan" means a treatment plan that does
15 not require continuous inpatient hospitalization.

16 30. "Patient" means any person WHO IS undergoing examination,
17 evaluation or behavioral or mental health treatment under this chapter.

18 31. "Peace officers" means sheriffs of counties, constables,
19 marshals and policemen of cities and towns.

20 32. "Persistent or acute disability" means a severe mental disorder
21 that meets all the following criteria:

22 (a) SIGNIFICANTLY IMPAIRS JUDGMENT, REASON, BEHAVIOR OR CAPACITY TO
23 RECOGNIZE REALITY.

24 ~~(a)~~ (b) If not treated, has a substantial probability of causing
25 the person to suffer or continue to suffer severe and abnormal mental,
26 emotional or physical harm ~~that significantly impairs judgment, reason,~~
27 ~~behavior or capacity to recognize reality.~~

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

35 ~~(c)~~ (d) Has a reasonable prospect of being treatable by
36 outpatient, inpatient or combined inpatient and outpatient treatment.

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

44 34. "Prescribed form" means a form established by a court or the
45 rules of the administration in accordance with the laws of this state.

1 35. "Professional" means a physician who is licensed pursuant to
2 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to
3 title 32, chapter 19.1 or a psychiatric and mental health nurse
4 practitioner who is certified pursuant to title 32, chapter 15.

5 36. "Proposed patient" means a person for whom an application for
6 evaluation has been made or a petition for court-ordered evaluation has
7 been filed.

8 37. "Prosecuting agency" means the county attorney, attorney
9 general or city attorney who applied or petitioned for an evaluation or
10 treatment pursuant to this chapter.

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

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

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

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

28 (a) Materials that are prepared in connection with utilization
29 review, peer review or quality assurance activities, including records
30 that a health care provider prepares pursuant to section 36-441, 36-445,
31 36-2402 or 36-2917.

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

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

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

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

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

44 46. "Superintendent" means the superintendent of the state
45 hospital.

1 D. A telephonic application may be made ~~no~~ NOT more than
2 twenty-four hours ~~prior to~~ BEFORE a written application. A telephonic
3 application shall be made by or in the presence of a peace officer unless
4 the application is made by a health care ~~provider~~ PROFESSIONAL who is
5 licensed pursuant to title 32, chapter 13, 15, 17 or 19.1 and who is
6 directly involved with the care of a patient who is in a health care
7 facility licensed in this state. For an application made by a doctor or a
8 nurse, the original signature of the applicant on a facsimile copy of the
9 application is acceptable, does not have to be notarized and may be
10 submitted as the written application.

11 E. If the person to be admitted is not already present at the
12 evaluation agency and if the admitting officer, based ~~upon~~ ON A review of
13 the written or telephonic application and conversation with the applicant
14 and peace officer, has reasonable cause to believe that an emergency
15 examination is necessary, the admitting officer may advise the peace
16 officer, ~~that~~ sufficient grounds exist to take the person into custody
17 and to transport the person to the evaluation agency. The admitting
18 officer shall not be held civilly liable for any acts committed by a
19 person whom the admitting officer did not advise TO be taken into custody
20 if the admitting officer has in good faith followed the requirements of
21 this section.

22 Sec. 4. Section 36-526, Arizona Revised Statutes, is amended to
23 read:

24 36-526. Emergency admission; examination; petition for
25 court-ordered evaluation

26 A. On presentation of the person for emergency admission, an
27 admitting officer of an evaluation agency shall perform an examination of
28 the person's psychiatric and physical condition and may admit the person
29 to the agency as an emergency patient if the admitting officer finds, as a
30 result of the examination and investigation of the application for
31 emergency admission, that there is reasonable cause to believe that the
32 person, as a result of a mental disorder, is a danger to self or others,
33 HAS A PERSISTENT OR ACUTE DISABILITY OR A GRAVE DISABILITY AND IS UNABLE
34 OR UNWILLING TO UNDERGO VOLUNTARY EVALUATION and that during the time
35 necessary to complete the prepetition screening procedures set forth in
36 sections 36-520 and 36-521 the person is likely without immediate
37 hospitalization to suffer serious physical harm or serious illness or to
38 inflict serious physical harm on another person. If a person is
39 hospitalized pursuant to this section, the admitting officer may notify a
40 screening agency and seek its assistance or guidance in developing
41 alternatives to involuntary confinement and in counseling the person and
42 ~~his~~ THE PERSON'S family.

43 B. On the same or a succeeding court day, the medical director in
44 charge of the agency shall file a petition for a court-ordered evaluation,
45 unless the person has been discharged or has become a voluntary patient.

1 The petition need not comply with the provisions of this chapter requiring
2 preparation and filing of a prepetition screening report but shall meet
3 all other requirements and shall seek an appropriate order pursuant to
4 section 36-529.

5 Sec. 5. Section 36-533, Arizona Revised Statutes, is amended to
6 read:

7 36-533. Petition for treatment

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

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

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

13 3. That the patient is unwilling to accept or incapable of
14 accepting treatment voluntarily.

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

26 C. The petition shall request the court to issue an order requiring
27 the person to undergo a period of treatment. If a prosecutor filed a
28 petition pursuant to section 13-4517, the petition must be accompanied by
29 any known criminal history of the person and any previous findings of
30 incompetency.

31 D. ~~In cases of grave disability,~~ The petition shall also include:

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

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

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

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

1 5. IF THE PERSON HAS AN EXISTING GUARDIAN, A STATEMENT IDENTIFYING
2 THE EXISTING GUARDIAN AND A REQUEST THAT THE COURT CONSIDER IMPOSING
3 ADDITIONAL DUTIES ON THE EXISTING GUARDIAN PURSUANT TO SECTION 14-5312.01.

4 E. IF THE PETITION CONTAINS A REQUEST FOR COURT ACTION PURSUANT TO
5 SUBSECTION D OF THIS SECTION, a copy of the petition ~~in cases of grave~~
6 ~~disability~~ shall be mailed ~~to the public fiduciary in the county of the~~
7 ~~patient's residence or in which the patient was found before evaluation~~
8 ~~and~~ to any person OR AGENCY THAT IS nominated as guardian or conservator
9 OR THE PERSON WHO IS IDENTIFIED AS AN EXISTING GUARDIAN.

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

12 Sec. 6. Section 36-540, Arizona Revised Statutes, is amended to
13 read:

14 36-540. Court options; immunity; rules

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

21 1. Treatment in a program of outpatient treatment.

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

24 3. Inpatient treatment in a mental health treatment agency, in a
25 hospital operated by or under contract with the United States department
26 of veterans affairs to provide treatment to eligible veterans pursuant to
27 article 9 of this chapter, in the state hospital or in a private hospital,
28 if the private hospital agrees, subject to the limitations of section
29 36-541.

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

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

36 1. Determines that all of the following apply:

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

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

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

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

1 2. Is presented with and approves a written treatment plan that
2 conforms with the requirements of section 36-540.01, subsection B. If the
3 court determines that the patient meets the requirements of section
4 36-550.09, the court may order the patient to be placed in a secure
5 behavioral health residential facility that is licensed by the department
6 pursuant to section 36-425.06. If the treatment plan presented to the
7 court pursuant to this subsection provides for supervision of the patient
8 under court order by a mental health agency that is other than the mental
9 health agency that petitioned or requested the county attorney to petition
10 the court for treatment pursuant to section 36-531, the treatment plan
11 must be approved by the medical director of the mental health agency that
12 will supervise the treatment pursuant to subsection E of this section.

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

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

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

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

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

37 4. The court may order the medical director to provide notice to
38 the court of any noncompliance with the terms of a treatment order.

39 5. During any period of outpatient treatment under subsection A,
40 paragraph 2 of this section, if the court, on its own motion or on motion
41 by the medical director of the patient's outpatient mental health
42 treatment facility, determines that the patient is not complying with the
43 terms of the order or that the outpatient treatment plan is no longer
44 appropriate and the patient needs inpatient treatment, the court, without
45 a hearing and based on the court record, the patient's medical record, the

1 affidavits and recommendations of the medical director, and the advice of
2 staff and physicians or the psychiatric and mental health nurse
3 practitioner familiar with the treatment of the patient, may enter an
4 order amending its original order. The amended order may alter the
5 outpatient treatment plan or order the patient to inpatient treatment
6 pursuant to subsection A, paragraph 3 of this section. The amended order
7 shall not increase the total period of commitment originally ordered by
8 the court or, when added to the period of inpatient treatment provided by
9 the original order and any other amended orders, exceed the maximum period
10 allowed for an order for inpatient treatment pursuant to subsection F of
11 this section. If the patient refuses to comply with an amended order for
12 inpatient treatment, the court, on its own motion or on the request of the
13 medical director, may authorize and direct a peace officer to take the
14 patient into protective custody and transport the patient to the agency
15 for inpatient treatment. Any authorization, directive or order issued to
16 a peace officer to take the patient into protective custody shall include
17 the patient's criminal history and the name and telephone numbers of the
18 patient's case manager, guardian, spouse, next of kin or significant
19 other, as applicable. When reporting to or being returned to a treatment
20 agency for inpatient treatment pursuant to an amended order, the patient
21 shall be informed of the patient's right to judicial review and the
22 patient's right to consult with counsel pursuant to section 36-546.

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

1 ordered to undergo inpatient treatment pursuant to an amended order, the
2 medical director of the outpatient treatment facility shall inform the
3 patient of the patient's right to judicial review and to consult with an
4 attorney pursuant to section 36-546.

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

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

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

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

- 40 1. The patient meets the criteria for court-ordered treatment
41 pursuant to subsection A of this section.
- 42 2. There is reasonable cause to believe that the patient is an
43 incapacitated person as defined in section 14-5101 or is in need of
44 protection pursuant to section 14-5401, paragraph 2.

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

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

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

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

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

38 J. If, on finding that a patient meets the criteria for
39 court-ordered treatment pursuant to subsection A of this section, the
40 court also learns that the patient has a guardian appointed under title
41 14, the court with notice may impose on the existing guardian additional
42 duties pursuant to section 14-5312.01. If the court imposes additional
43 duties on an existing guardian as prescribed in this subsection, the court
44 may determine that the patient needs to continue treatment under a court
45 order for treatment and may issue the order or determine that the

1 patient's needs can be adequately met by the guardian with the additional
2 duties pursuant to section 14-5312.01 and decline to issue the court order
3 for treatment. If at any time after the issuance of a court order for
4 treatment the court finds that the patient's needs can be adequately met
5 by the guardian with the additional duties pursuant to section 14-5312.01
6 and that a court order for treatment is no longer necessary to ensure
7 compliance with necessary treatment, the court may terminate the court
8 order for treatment. If there is a court order for treatment and a
9 guardianship with additional mental health authority pursuant to section
10 14-5312.01 existing at the same time, the treatment and placement
11 decisions made by the treatment agency assigned by the court to supervise
12 and administer the patient's treatment program pursuant to the court order
13 for treatment are controlling unless the court orders otherwise.

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

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

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

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

30 O. If a person has been found, as a result of a mental disorder, to
31 constitute a danger to self or others or to have a persistent or acute
32 disability or a grave disability and the court enters an order for
33 treatment pursuant to subsection A of this section, the court shall
34 transmit the person's name, sex, date of birth, social security number, if
35 available, and date of the order for treatment to the supreme court. The
36 supreme court shall transmit the information to the department of public
37 safety to comply with the requirements of title 13, chapter 31 and title
38 32, chapter 26. The department of public safety shall transmit the
39 information to the national instant criminal background check system. The
40 superior court may access the information of a person who is ordered into
41 treatment to enforce or facilitate a treatment order.

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

1 Q. If the court does not find a person to be in need of treatment
2 and a prosecutor filed a petition pursuant to section 13-4517, the
3 evaluation agency, within twenty-four hours, shall notify the prosecuting
4 agency of its finding. The court shall order the medical director to
5 detain the person for an additional twenty-four hours to allow the
6 prosecuting agency to be notified. If the court has retained jurisdiction
7 pursuant to section 13-4517, subsection C, the court may remand the person
8 to the custody of the sheriff for further disposition pursuant to section
9 13-4517, subsection A, paragraph 2 or 3.

10 R. AFTER AN ORDER FOR TREATMENT HAS BEEN ISSUED PURSUANT TO THIS
11 SECTION, THE SUPERIOR COURT IN A COUNTY WHERE A PATIENT UNDER A COURT
12 ORDER FOR TREATMENT IS FOUND OR RESIDES HAS CONCURRENT JURISDICTION WITH
13 THE COURT IN THE COUNTY THAT ISSUED THE COURT ORDER FOR TREATMENT FOR THE
14 PURPOSES OF ENFORCING THE COURT ORDER FOR TREATMENT, ORDERING CHANGES TO
15 THE TREATMENT PLAN OR AMENDING THE ORDER TO REQUIRE THE PATIENT TO UNDERGO
16 FURTHER INPATIENT TREATMENT. IF THE COURT IN WHICH PROCEEDINGS ARE
17 COMMENCED TO ENFORCE OR ADMINISTER THE ORDER FOR TREATMENT IS NOT THE
18 COURT THAT ORIGINALLY ENTERED THE ORDER FOR TREATMENT, UNLESS PREVENTED BY
19 AN EMERGENCY, THE COURT IN WHICH THE PROCEEDINGS ARE PENDING SHALL CONSULT
20 WITH THE COURT OF ORIGINAL ENTRY AND DETERMINE WHETHER TO HOLD HEARINGS
21 AND ENTER ORDERS TO FACILITATE ENFORCEMENT OR ADMINISTRATION OF THE COURT
22 ORDER, WHETHER TO REFER THE CASE BACK TO THE COURT OF ORIGINAL ENTRY FOR
23 FURTHER PROCEEDINGS OR WHETHER TO TRANSFER THE ENTIRE CASE TO THE COURT OF
24 ORIGINAL ENTRY IN THAT COUNTY FOR ALL FURTHER PROCEEDINGS. THE SUPREME
25 COURT MAY ADOPT RULES TO GOVERN THE PROCEDURES TO BE USED IN ENFORCING AND
26 ADMINISTERING COURT ORDERS FOR TREATMENT IN THE VARIOUS COUNTIES OF THIS
27 STATE AND THE TRANSFER OF CASES BETWEEN COUNTIES INVOLVING COURT ORDERS
28 FOR TREATMENT.

29 S. PURSUANT TO THE AUTHORITY GRANTED IN SUBSECTION R OF THIS
30 SECTION, FOR THE PURPOSE OF ENFORCING OR FACILITATING TREATMENT OF A
31 PATIENT UNDER AN ACTIVE ORDER FOR TREATMENT, THE SUPREME COURT SHALL ADOPT
32 A RULE TO ESTABLISH A PROGRAM TO ENABLE THE JUDGES OF THE SUPERIOR COURT,
33 COUNTY ATTORNEYS, PATIENTS' ATTORNEYS, THE REGIONAL BEHAVIORAL HEALTH
34 AUTHORITY AND BEHAVIORAL HEALTH SERVICE PROVIDERS IN ANY COUNTY TO
35 DETERMINE THE EXISTENCE OF AN ACTIVE COURT ORDER FOR TREATMENT AND THE
36 HISTORY OF COURT ORDERS FOR TREATMENT ENTERED FOR A PATIENT BY A SUPERIOR
37 COURT IN ANY COUNTY IN THIS STATE. THE PROGRAM SHALL ENSURE THAT THE
38 INFORMATION SHARED WITH OTHER PERSONS OR ENTITIES IS NECESSARY ONLY FOR
39 THE PURPOSES STATED IN THIS SUBSECTION AND SHALL REQUIRE THAT THE
40 INFORMATION SHARED BE MAINTAINED AS CONFIDENTIAL BY THE RECEIVING PERSON
41 OR ENTITY.