

House Engrossed Senate Bill

~~incompetent defendants; public safety guardianship~~
(now: dangerous; incompetent person; evaluation; commitment)

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

SENATE BILL 1310

AN ACT

AMENDING SECTIONS 13-712, 13-4501, 13-4508, 13-4509, 13-4515 AND 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4521; AMENDING SECTION 36-425.06, ARIZONA REVISED STATUTES; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 40; RELATING TO COMMITTED DEFENDANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-712, Arizona Revised Statutes, is amended to
3 read:

4 13-712. Calculation of terms of imprisonment

5 A. A sentence of imprisonment commences when sentence is imposed if
6 the defendant is in custody or surrenders into custody at that time.
7 Otherwise it commences when the defendant becomes actually in custody.

8 B. All time actually spent in custody pursuant to an offense until
9 the prisoner is sentenced to imprisonment for such offense shall be
10 credited against the term of imprisonment otherwise provided for by this
11 chapter. A PERSON WHO IS FOUND COMPETENT TO STAND TRIAL AFTER AN
12 INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4521 SHALL RECEIVE CREDIT
13 FOR ALL TIME THAT THE PERSON SPENT UNDER THE JURISDICTION OF THE SECURE
14 STATE MENTAL HEALTH FACILITY AGAINST A TERM OF IMPRISONMENT FOR ANY OF THE
15 CHARGES THAT WERE THE BASIS FOR THE INVOLUNTARY COMMITMENT.

16 C. If a sentence of imprisonment is vacated and a new sentence is
17 imposed on the defendant for the same offense, the new sentence is
18 calculated as if it had commenced at the time the vacated sentence was
19 imposed, and all time served under the vacated sentence shall be credited
20 against the new sentence.

21 D. If a person serving a sentence of imprisonment escapes from
22 custody, the escape interrupts the sentence. The interruption continues
23 until the person is apprehended and confined for the escape or is confined
24 and subject to a detainer for the escape. Time spent in actual custody
25 ~~prior to~~ BEFORE return under this subsection shall be credited against the
26 term authorized by law if custody rested on an arrest or surrender for the
27 escape itself, or if the custody arose from an arrest on another charge
28 which culminated in a dismissal or an acquittal, and the person was denied
29 admission to bail pending disposition of that charge because of a warrant
30 lodged against such person arising from the escape.

31 E. The sentencing court shall include the time of commencement of
32 sentence under subsection A OF THIS SECTION and the computation of time
33 credited against sentence under subsection B, C or D, ~~OF THIS SECTION~~ OF THIS SECTION in
34 the original or an amended commitment order, under procedures established
35 by rule of court.

36 Sec. 2. Section 13-4501, Arizona Revised Statutes, is amended to
37 read:

38 13-4501. Definitions

39 In this chapter, unless the context otherwise requires:

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

1 2. "DANGEROUS" MEANS THAT, AS A RESULT OF A MENTAL ILLNESS, DEFECT
2 OR DISABILITY, A PERSON'S CONTINUED BEHAVIOR CAN REASONABLY BE EXPECTED,
3 ON THE BASIS OF A MENTAL HEALTH EXPERT'S OPINION, TO RESULT IN SERIOUS
4 PHYSICAL HARM OR DEATH TO ANOTHER PERSON.

5 ~~2.~~ 3. "Incompetent to stand trial" means that as a result of a
6 mental illness, defect or disability a defendant is unable to understand
7 the nature and object of the proceeding or to assist in the defendant's
8 defense. In the case of a person under eighteen years of age when the
9 issue of competency is raised, incompetent to stand trial also means a
10 person who does not have sufficient present ability to consult with the
11 person's lawyer with a reasonable degree of rational understanding or who
12 does not have a rational and factual understanding of the proceedings
13 against the person. The presence of a mental illness, defect or
14 disability alone is not grounds for finding a defendant incompetent to
15 stand trial.

16 ~~3.~~ 4. "Mental health expert" means a physician who is licensed
17 pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed
18 pursuant to title 32, chapter 19.1 and who is:

19 (a) Familiar with this state's competency standards and statutes
20 and criminal and involuntary commitment statutes.

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

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

25 ~~4.~~ 5. "Mental illness, defect or disability" means a psychiatric
26 or neurological disorder that is evidenced by behavioral or emotional
27 symptoms, including congenital mental conditions, conditions resulting
28 from injury or disease and developmental disabilities as defined in
29 section 36-551.

30 6. "SECURE STATE MENTAL HEALTH FACILITY" MEANS A SECURE BEHAVIORAL
31 HEALTH RESIDENTIAL FACILITY THAT IS LICENSED PURSUANT TO SECTION
32 36-425.06.

33 ~~5.~~ 7. "Threat to public safety" means charged with the commission
34 of any of the following:

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

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

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

41 Sec. 3. Section 13-4508, Arizona Revised Statutes, is amended to
42 read:

43 13-4508. Privilege against self-incrimination; sealed reports

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

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

5 C. Any statement made by the defendant during an examination or any
6 evidence resulting from that statement concerning any other event or
7 transaction is not admissible at any proceeding to determine the
8 defendant's guilt or innocence of any other criminal charges that are
9 based on those events or transactions, except that a statement or evidence
10 may be used by any party in a ~~hearing~~ PROCEEDING to determine whether the
11 defendant is eligible for court-ordered treatment pursuant to title 36,
12 chapter 5 OR 40 or is a sexually violent person.

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

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

22 1. For use by the court or defendant, or by the prosecutor if
23 otherwise ~~permitted~~ ALLOWED by law, for further competency or sanity
24 evaluations, ~~or~~ in a hearing to determine whether the defendant is
25 eligible for court-ordered treatment pursuant to title 36, chapter 5 or is
26 a sexually violent person OR IN A TRIAL TO DETERMINE WHETHER THE DEFENDANT
27 IS DANGEROUS AND ELIGIBLE FOR COMMITMENT PURSUANT TO SECTION 13-4521.

28 2. For statistical analysis.

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

31 4. For use by the probation department or the state department of
32 corrections if the defendant is in the custody of or is scheduled to be
33 transferred into the custody of the state department of corrections for
34 the purposes of assessment and supervision or monitoring of the defendant
35 by that department.

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

38 6. For data gathering.

39 7. For scientific study.

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

1 Sec. 4. Section 13-4509, Arizona Revised Statutes, is amended to
2 read:

3 13-4509. Expert's report

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

8 1. The name of each mental health expert who examines the
9 defendant.

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

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

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

14 B. If the mental health expert determines that the defendant is
15 incompetent to stand trial, the report shall also include the following
16 information:

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

19 2. The defendant's prognosis.

20 3. IF REQUESTED BY THE STATE, WHETHER THE DEFENDANT SHOULD BE
21 CONSIDERED DANGEROUS AND THE NATURE OF THE MENTAL ILLNESS, DISEASE OR
22 DEFECT THAT MAKES THE DEFENDANT LIKELY TO BE DANGEROUS.

23 ~~3.~~ 4. The most appropriate form and place of treatment in this
24 state, based on the defendant's therapeutic needs and potential threat to
25 public safety.

26 ~~4.~~ 5. Whether the defendant is incompetent to refuse treatment and
27 should be subject to involuntary treatment.

28 6. WHETHER THE DEFENDANT HAS A HISTORY OF ANY DANGEROUS CONDUCT.

29 C. If the mental health examiner determines that the defendant is
30 currently competent by virtue of ongoing treatment with psychotropic
31 medication, the court, in its discretion, may appoint a mental health
32 expert who is a physician to address the necessity of continuing that
33 treatment and any limitations that the medication may have on competency.

34 D. A MENTAL HEALTH EXPERT WHO IS APPOINTED PURSUANT TO SECTION
35 13-4521 SHALL SUBMIT A WRITTEN REPORT OF THE EXAMINATION TO THE COURT
36 WITHIN TEN WORKING DAYS AFTER THE EXAMINATION IS COMPLETED. THE REPORT
37 SHALL INCLUDE AT LEAST THE FOLLOWING INFORMATION:

38 1. THE NAME OF EACH MENTAL HEALTH EXPERT WHO EXAMINED THE
39 DEFENDANT.

40 2. A DESCRIPTION OF THE NATURE, CONTENT, EXTENT AND RESULTS OF THE
41 EXAMINATION AND ANY TEST CONDUCTED.

42 3. THE FACTS ON WHICH THE FINDINGS ARE BASED.

43 4. AN OPINION AS TO WHETHER THE DEFENDANT SHOULD BE CONSIDERED
44 DANGEROUS, INCLUDING THE NATURE OF THE MENTAL ILLNESS, DISEASE OR DEFECT

1 THAT MAKES THE DEFENDANT LIKELY TO BE DANGEROUS AND THE DEFENDANT'S
2 PROGNOSIS.

3 5. THE MOST APPROPRIATE FORM AND PLACE OF TREATMENT IN THIS STATE,
4 BASED ON THE DEFENDANT'S THERAPEUTIC NEEDS AND POTENTIAL THREAT TO PUBLIC
5 SAFETY.

6 Sec. 5. Section 13-4515, Arizona Revised Statutes, is amended to
7 read:

8 13-4515. Duration of order; excluded time calculation; notice
9 of dismissed charge or voided order; petitions

10 A. An order or combination of orders that is issued pursuant to
11 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
12 months or the maximum possible sentence the defendant could have received
13 pursuant to section 13-702, section 13-703, section 13-704, subsection A,
14 B, C, D or E, section 13-705, section 13-706, subsection A, section
15 13-708, subsection D or section 13-751 or any section for which a specific
16 sentence is authorized, whichever is less. In making this determination
17 the court shall not consider the sentence enhancements under section
18 13-703 or 13-704 for prior convictions.

19 B. The court shall only consider the time a defendant actually
20 spends in a restoration to competency program when calculating the time
21 requirements pursuant to subsection A of this section.

22 C. The court shall notify the prosecutor, the defense attorney, the
23 medical supervisor and the treating facility if the charges against the
24 defendant are dismissed or if an order is voided by the court. No charges
25 shall be dismissed without a hearing ~~prior to~~ BEFORE the dismissal.

26 D. If a defendant is discharged or released on the expiration of an
27 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
28 supervisor may file a petition stating that the defendant requires further
29 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian
30 pursuant to title 14 OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4521
31 BECAUSE THE DEFENDANT IS CONSIDERED DANGEROUS.

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

34 13-4517. Incompetent defendants; disposition

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

39 1. Remand the defendant to an evaluating agency for the institution
40 of civil commitment proceedings pursuant to title 36, chapter 5. If the
41 defendant is remanded, the prosecutor shall file a petition for evaluation
42 and provide any known criminal history for the defendant.

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

44 3. Release the defendant from custody and dismiss the charges
45 against the defendant without prejudice.

1 4. IF THE DEFENDANT IS CHARGED WITH A SERIOUS OFFENSE AS DEFINED IN
2 SECTION 13-706, ORDER A TRIAL TO DETERMINE IF THE DEFENDANT IS DANGEROUS
3 AND SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION 13-4521. IF THE
4 DEFENDANT IS NOT REPRESENTED BY AN ATTORNEY AND IS INDIGENT, THE COURT
5 SHALL APPOINT AN ATTORNEY TO REPRESENT THE DEFENDANT IN ALL PROCEEDINGS
6 UNDER SECTION 13-4521 AND ANY FURTHER PROCEEDINGS UNDER TITLE 36,
7 CHAPTER 40.

8 B. If the court enters an order pursuant to subsection A, paragraph
9 1, ~~OR~~ 2 OR 4 of this section, the court may also order an assessment of
10 the defendant's eligibility for private insurance or public benefits that
11 may be applied to the expenses of the defendant's medically necessary
12 maintenance and treatment, including services pursuant to title 36,
13 chapter 29, state-only behavioral health services, title xviii services
14 and medicare part D prescription drug benefits, supplemental security
15 income and supplemental security disability income.

16 C. The court may retain jurisdiction over the defendant until the
17 defendant is committed for treatment pursuant to SECTION 13-4521 OR title
18 36, chapter 5 or a guardian is appointed pursuant to title 14, chapter 5.

19 D. If the court remands the defendant for the institution of civil
20 commitment proceedings pursuant to title 36, chapter 5 and the court is
21 notified that the defendant has not had a civil commitment evaluation OR
22 IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 4 OF THIS
23 SECTION, the court, if it has retained jurisdiction, may order the sheriff
24 to take the defendant into custody so that the court may explore options
25 pursuant to subsection A, paragraph 2, ~~OR~~ 3 OR 4 of this section.

26 E. If the court is notified that the defendant has not been ordered
27 into treatment pursuant to title 36, chapter 5 and the court has retained
28 jurisdiction, the court may order the sheriff to take the defendant into
29 custody so that the court may explore options pursuant to subsection A,
30 paragraph 2, ~~OR~~ 3 OR 4 of this section.

31 Sec. 7. Title 13, chapter 41, Arizona Revised Statutes, is amended
32 by adding section 13-4521, to read:

33 13-4521. Dangerous and incompetent defendants; proof evident
34 hearing; commitment trial; disposition; findings;
35 annual report

36 A. IF A COURT ENTERS AN ORDER PURSUANT TO SECTION 13-4517,
37 SUBSECTION A, PARAGRAPH 4, THE COURT SHALL HOLD A HEARING WITHIN TEN DAYS
38 AFTER THE ORDER IS ISSUED TO DETERMINE IF THE PROOF IS EVIDENT OR THE
39 PRESUMPTION GREAT THAT THE DEFENDANT COMMITTED THE ACT THAT CONSTITUTES A
40 SERIOUS OFFENSE AS DEFINED IN SECTION 13-706. IF THE COURT DOES NOT FIND
41 THE PROOF IS EVIDENT OR THE PRESUMPTION GREAT THAT THE DEFENDANT COMMITTED
42 THE ACT, THE COURT SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION
43 A, PARAGRAPH 1, 2 OR 3.

44 B. IF THE COURT DOES FIND THE PROOF IS EVIDENT OR THE PRESUMPTION
45 GREAT PURSUANT TO SUBSECTION A OF THIS SECTION, THE COURT SHALL HOLD A

1 TRIAL WITHIN ONE HUNDRED TWENTY DAYS AFTER THE COURT ISSUED THE ORDER
2 PURSUANT TO SECTION 13-4517, SUBSECTION A, PARAGRAPH 4 TO DETERMINE IF THE
3 DEFENDANT IS DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED. UNLESS THE
4 STATE OR DEFENDANT REQUESTS A JURY TRIAL, A TRIAL HELD PURSUANT TO THIS
5 SUBSECTION SHALL BE BEFORE THE COURT.

6 C. THE ARIZONA RULES OF EVIDENCE AND THE ARIZONA RULES OF CIVIL
7 PROCEDURE APPLY TO PROCEEDINGS HELD PURSUANT TO THIS SECTION, EXCEPT THAT
8 THE COURT MAY CONSIDER EVIDENCE THAT IS NOT ADMISSIBLE UNDER THE ARIZONA
9 RULES OF EVIDENCE WHEN MAKING A DETERMINATION PURSUANT TO SUBSECTION A OF
10 THIS SECTION.

11 D. IF THERE HAS NOT BEEN A PREVIOUS EVALUATION TO DETERMINE WHETHER
12 THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL
13 HEALTH EXPERTS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 13-4509,
14 SUBSECTION D TO DETERMINE IF THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.
15 THE STATE AND THE DEFENDANT MAY EACH RETAIN A MENTAL HEALTH EXPERT TO
16 EXAMINE THE DEFENDANT AND PRESENT THE DEFENDANT'S MENTAL HEALTH EVALUATION
17 AT THE TRIAL.

18 E. AT A TRIAL TO DETERMINE IF THE DEFENDANT IS DANGEROUS, THE STATE
19 SHALL ESTABLISH BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS DANGEROUS
20 AND SHOULD BE INVOLUNTARILY COMMITTED. IF THE FACTFINDER DOES NOT FIND
21 THAT THE DEFENDANT IS DANGEROUS OR DOES NOT FIND THAT THE DEFENDANT SHOULD
22 BE INVOLUNTARILY COMMITTED, THE COURT SHALL PROCEED PURSUANT TO SECTION
23 13-4517, SUBSECTION A, PARAGRAPH 1, 2 OR 3.

24 F. IF THE FACTFINDER FINDS THAT THE DEFENDANT IS DANGEROUS AND
25 SHOULD BE INVOLUNTARILY COMMITTED, THE COURT SHALL DISMISS THE CHARGES
26 AGAINST THE DEFENDANT WITHOUT PREJUDICE AND ORDER THE DEFENDANT TO BE
27 COMMITTED TO A SECURE STATE MENTAL HEALTH FACILITY. THE DEFENDANT SHALL
28 RECEIVE EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE DEFENDANT
29 EITHER COMPETENT OR NONDANGEROUS.

30 G. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:

31 1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT
32 AND THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE
33 CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.

34 2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO A
35 SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE FOLLOWING OCCURS:

36 (a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.

37 (b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.

38 H. A COMMITMENT ORDER ISSUED PURSUANT TO THIS SECTION MAY NOT BE IN
39 EFFECT FOR MORE THAN THE PRESUMPTIVE SENTENCE THE DEFENDANT COULD HAVE
40 RECEIVED FOR THE HIGHEST CHARGED OFFENSE PURSUANT TO SECTION 13-702 OR
41 13-703, SECTION 13-704, SUBSECTION A, B, C, D OR E, SECTION 13-705,
42 SECTION 13-706, SUBSECTION A, SECTION 13-708, SUBSECTION D OR SECTION
43 13-751 OR ANY SECTION FOR WHICH A SPECIFIC SENTENCE IS AUTHORIZED. IN
44 MAKING THIS DETERMINATION, THE COURT MAY NOT CONSIDER THE SENTENCE
45 ENHANCEMENTS UNDER SECTION 13-703 OR 13-704 FOR PRIOR CONVICTIONS. THE

1 COURT SHALL CONSIDER ALL TIME A DEFENDANT HAS BEEN IN CUSTODY, INCLUDING
2 PRETRIAL DETENTION AND CUSTODY UNDER TITLE 36.

3 I. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS
4 COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE
5 DEFENDANT FROM TREATMENT. IF A DEFENDANT IS DISCHARGED OR RELEASED ON THE
6 EXPIRATION OF A COMMITMENT ORDER ISSUED PURSUANT TO THIS SECTION, THE
7 MEDICAL DIRECTOR OF THE SECURE STATE MENTAL HEALTH FACILITY FROM WHICH THE
8 DEFENDANT IS DISCHARGED OR RELEASED OR THE STATE MAY FILE A PETITION
9 STATING THAT THE DEFENDANT REQUIRES FURTHER TREATMENT PURSUANT TO TITLE
10 36, CHAPTER 5 OR THE APPOINTMENT OF A GUARDIAN PURSUANT TO TITLE 14.

11 J. FINDINGS BY THE COURT MADE PURSUANT TO THIS SECTION AND, EXCEPT
12 AS PROVIDED IN SECTION 13-4508, ANY STATEMENTS MADE BY THE DEFENDANT
13 DURING AN EXAMINATION BY A MENTAL HEALTH EXPERT PURSUANT TO SECTION
14 13-4509 ARE INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER
15 TITLE 36, CHAPTERS 5 AND 40.

16 K. A PERSON WHO IS INVOLUNTARILY COMMITTED TO A SECURE STATE MENTAL
17 HEALTH FACILITY PURSUANT TO THIS SECTION SHALL RECEIVE CREDIT FOR ALL TIME
18 SPENT UNDER THE JURISDICTION OF THE SECURE STATE MENTAL HEALTH FACILITY IF
19 THE PERSON IS FOUND COMPETENT TO STAND TRIAL AND IS SUBSEQUENTLY SENTENCED
20 TO THE STATE DEPARTMENT OF CORRECTIONS FOR ANY OF THE CHARGES THAT WERE
21 THE BASIS FOR THE INVOLUNTARY COMMITMENT.

22 L. THE COURT SHALL ANNUALLY REPORT THE FOLLOWING INFORMATION FOR
23 THE PREVIOUS YEAR TO THE ARIZONA CRIMINAL JUSTICE COMMISSION:

24 1. THE NUMBER OF COURT ORDERS FOR A TRIAL PURSUANT TO SECTION
25 13-4517, SUBSECTION A, PARAGRAPH 4, INCLUDING THE NUMBER OF JURY TRIALS
26 THAT WERE HELD.

27 2. THE NUMBER OF DEFENDANTS WHO ARE COMMITTED AFTER A TRIAL
28 PURSUANT TO THIS SECTION.

29 3. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE CONDITIONALLY
30 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE.

31 4. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE RESTORED TO
32 COMPETENCY OR DETERMINED TO NOT BE DANGEROUS AND WHO ARE DISCHARGED.

33 Sec. 8. Section 36-425.06, Arizona Revised Statutes, is amended to
34 read:

35 36-425.06. Secure behavioral health residential facilities;
36 license; annual report; definition

37 A. The department shall license secure behavioral health
38 residential facilities to provide secure twenty-four-hour on-site
39 supportive treatment and supervision by staff with behavioral health
40 training for persons who have been determined to be seriously mentally
41 ill, who are chronically resistant to treatment for a mental disorder and
42 who are placed in the facility pursuant to a court order issued pursuant
43 to section 36-550.09 OR WHO HAVE BEEN COMMITTED PURSUANT TO A COURT ORDER
44 ISSUED PURSUANT TO SECTION 13-4521. A secure behavioral health
45 residential facility may provide services only to persons placed in OR

1 COMMITTED TO the facility pursuant to a court order issued pursuant to
2 section 36-550.09 OR 13-4521 and may not provide services to any other
3 persons on that facility's premises. A secure behavioral health
4 residential facility may not have more than sixteen beds.

5 B. ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE DIRECTOR OF THE
6 ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION SHALL SUBMIT A
7 REPORT TO THE GOVERNOR, THE LEGISLATURE AND THE SUPREME COURT THAT
8 INCLUDES ALL OF THE FOLLOWING INFORMATION:

9 1. AN ACCOUNTING OF WHERE THE MONIES APPROPRIATED TO THE ARIZONA
10 HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION FOR SECURE BEHAVIORAL
11 HEALTH RESIDENTIAL FACILITIES WERE USED DURING THE PREVIOUS YEAR.

12 2. THE NUMBER OF AVAILABLE BEDS IN EACH SECURE BEHAVIORAL HEALTH
13 RESIDENTIAL FACILITY.

14 ~~B.~~ C. For the purposes of this section, "secure" means premises
15 that limit a patient's egress in the least restrictive manner consistent
16 with the patient's court-ordered treatment plan.

17 Sec. 9. Title 36, Arizona Revised Statutes, is amended by adding
18 chapter 40, to read:

19 CHAPTER 40
20 DANGEROUS AND INCOMPETENT PERSONS
21 ARTICLE 1. GENERAL PROVISIONS

22 36-4001. Definitions

23 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

24 1. "ATTORNEY FOR THE STATE" MEANS THE COUNTY ATTORNEY IN THE COUNTY
25 WHERE THE COMMITTED DEFENDANT WAS FOUND TO BE A COMMITTED DEFENDANT, OR
26 THE ATTORNEY GENERAL, WHO REPRESENTS THIS STATE AT ANY PROCEEDINGS HELD
27 PURSUANT TO THIS CHAPTER.

28 2. "BIANNUALLY" MEANS TWICE PER YEAR.

29 3. "INCOMPETENT PROFESSIONAL" MEANS A PERSON WHO IS:

30 (a) FAMILIAR WITH THIS STATE'S CRIMINAL AND INVOLUNTARY COMMITMENT
31 STATUTES AND STANDARDS THAT ARE AVAILABLE IN THIS STATE FOR PERSONS WITH A
32 MENTAL ILLNESS, DEFECT OR DISABILITY.

33 (b) APPROVED BY THE SUPERIOR COURT AS MEETING COURT APPROVED
34 GUIDELINES.

35 4. "COMMITTED DEFENDANT":

36 (a) MEANS A PERSON WHO HAS BEEN DETERMINED TO BE INCOMPETENT AND
37 NONRESTORABLE AND DANGEROUS PURSUANT TO TITLE 13, CHAPTER 41.

38 (b) INCLUDES THE COMMITTED DEFENDANT'S ATTORNEY OR THE COMMITTED
39 DEFENDANT'S COURT-APPOINTED GUARDIAN, IF ANY.

40 5. "DANGEROUS" MEANS THAT, AS A RESULT OF A MENTAL ILLNESS, DEFECT
41 OR DISABILITY, A PERSON'S CONTINUED BEHAVIOR CAN REASONABLY BE EXPECTED,
42 ON THE BASIS OF A MENTAL HEALTH EXPERT'S OPINION, TO RESULT IN SERIOUS
43 PHYSICAL HARM OR DEATH TO ANOTHER PERSON.

44 6. "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT-ORDERED TREATMENT IN
45 A SETTING THAT IS LESS RESTRICTIVE THAN TOTAL CONFINEMENT.

1 7. "MEDICAL DIRECTOR" MEANS THE MEDICAL DIRECTOR OF THE SECURE
2 BEHAVIORAL HEALTH RESIDENTIAL FACILITY IN WHICH THE COMMITTED DEFENDANT
3 RESIDES.

4 8. "MENTAL ILLNESS, DEFECT OR DISABILITY" MEANS A PSYCHIATRIC OR
5 NEUROLOGICAL DISORDER THAT IS EVIDENCED BY BEHAVIORAL OR EMOTIONAL
6 SYMPTOMS, INCLUDING A CONGENITAL MENTAL CONDITION, A CONDITION RESULTING
7 FROM INJURY OR DISEASE OR A DEVELOPMENTAL DISABILITY AS DEFINED IN SECTION
8 36-551.

9 9. "SECURE STATE MENTAL HEALTH FACILITY" MEANS A SECURE BEHAVIORAL
10 HEALTH RESIDENTIAL FACILITY THAT IS LICENSED PURSUANT TO SECTION
11 36-425.06.

12 36-4002. Biannual examination of committed persons; report;
13 records access; attorney withdrawal

14 A. THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL
15 OF THE SECURE STATE MENTAL HEALTH FACILITY SHALL BIANNUALLY EXAMINE EACH
16 PERSON WHO IS COMMITTED PURSUANT TO SECTION 13-4521. THE PERSON WHO
17 CONDUCTS THE BIANNUAL EXAMINATION SHALL SUBMIT THE EXAMINATION REPORT TO
18 THE COURT, THE STATE AND THE COMMITTED DEFENDANT. THE BIANNUAL REPORT
19 SHALL STATE THE TREATMENT AND EDUCATION THAT THE COMMITTED DEFENDANT HAS
20 RECEIVED, A PROGNOSIS FOR THE COMMITTED DEFENDANT'S RESTORATION TO
21 COMPETENCY AND WHETHER THE COMMITTED DEFENDANT REMAINS DANGEROUS.

22 B. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT
23 PROFESSIONAL SUBMITS A REPORT INDICATING THAT THE COMMITTED DEFENDANT IS
24 COMPETENT TO STAND TRIAL OR IS NO LONGER DANGEROUS, THE COURT SHALL HOLD A
25 HEARING TO DETERMINE WHETHER THE COMMITTED DEFENDANT IS COMPETENT OR IS NO
26 LONGER DANGEROUS.

27 C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT
28 PROFESSIONAL SUBMITS A REPORT THAT THE COMMITTED DEFENDANT IS NO LONGER
29 DANGEROUS IN WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE COMMITTED
30 DEFENDANT IS TAKING, THE REPORT SHALL STATE WHETHER THE COMMITTED
31 DEFENDANT WILL CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS
32 RESTRICTIVE ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A
33 LESS RESTRICTIVE ALTERNATIVE.

34 D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER
35 RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST
36 OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE
37 COMMITTED DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. EITHER PARTY
38 MAY REQUEST THAT THE COMMITTED DEFENDANT BE EXAMINED BY THE PARTY'S OWN
39 COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF
40 PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S
41 MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE
42 COMMITTED DEFENDANT REMAINS DANGEROUS AND THAT THE COMMITTED DEFENDANT IS
43 INCOMPETENT TO STAND TRIAL.

44 E. A RETAINED OR APPOINTED COMPETENT PROFESSIONAL SHALL HAVE ACCESS
45 TO ALL RECORDS CONCERNING THE COMMITTED DEFENDANT. ALL COMPETENT

1 PROFESSIONALS SHALL HAVE EQUAL ACCESS TO THE COMMITTED DEFENDANT AS WELL
2 AS ALL RECORDS CONCERNING THE COMMITTED DEFENDANT.

3 F. THIS SECTION DOES NOT PRECLUDE THE COMMITTED DEFENDANT FROM
4 PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE
5 ALTERNATIVE OR DISCHARGE FROM TREATMENT PURSUANT TO SECTION 36-4004,
6 SUBSECTION C.

7 G. IF THE COMMITTED DEFENDANT'S ATTORNEY WITHDRAWS FROM REPRESENTING
8 THE COMMITTED DEFENDANT AT ANY TIME DURING THE COMMITTED DEFENDANT'S
9 COMMITMENT, THE COURT SHALL NOTIFY THE ATTORNEY FOR THE STATE AND THE
10 COMMITTED DEFENDANT AND EITHER ALLOW THE COMMITTED DEFENDANT SUFFICIENT
11 TIME TO EMPLOY ANOTHER ATTORNEY OR, IF THE COMMITTED DEFENDANT IS
12 INDIGENT, APPOINT AN ATTORNEY TO REPRESENT THE COMMITTED DEFENDANT IN
13 CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.

14 36-4003. Disposition

15 AFTER A HEARING PURSUANT TO SECTION 36-4002 OR 36-4004, IF THE COURT
16 FINDS THAT:

17 1. THE COMMITTED DEFENDANT HAS BEEN RESTORED TO COMPETENCY, THE
18 COURT SHALL ORDER THE CRIMINAL PROCEEDINGS TO RESUME.

19 2. THE COMMITTED DEFENDANT HAS NOT BEEN RESTORED TO COMPETENCY AND:

20 (a) THE COMMITTED DEFENDANT IS NOT DANGEROUS, THE COURT SHALL
21 RELEASE THE COMMITTED DEFENDANT FROM TREATMENT AND PROCEED PURSUANT TO
22 SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

23 (b) THE COMMITTED DEFENDANT IS NOT DANGEROUS IN WHOLE OR IN PART
24 BECAUSE OF THE HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING,
25 INCLUDING TAKING MEDICATION, THE COURT MAY RELEASE THE COMMITTED DEFENDANT
26 TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTIONS 36-4005 AND
27 36-4006.

28 (c) THE COMMITTED DEFENDANT IS DANGEROUS, THE COMMITTED DEFENDANT,
29 SUBJECT TO SECTION 13-4521, SUBSECTION H, SHALL REMAIN COMMITTED FOR
30 EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE COMMITTED
31 DEFENDANT COMPETENT OR NONDANGEROUS.

32 36-4004. Petition for conditional release: procedures

33 A. IF THE MEDICAL DIRECTOR DETERMINES THAT THE COMMITTED
34 DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE
35 COMMITTED DEFENDANT IS NO LONGER DANGEROUS IF CONDITIONALLY RELEASED TO A
36 LESS RESTRICTIVE ALTERNATIVE, THE MEDICAL DIRECTOR SHALL ALLOW THE
37 COMMITTED DEFENDANT TO PETITION THE COURT FOR CONDITIONAL RELEASE TO A
38 LESS RESTRICTIVE ALTERNATIVE. THE COMMITTED DEFENDANT SHALL SERVE THE
39 PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL
40 HOLD A HEARING ON THE PETITION FOR CONDITIONAL RELEASE TO A LESS
41 RESTRICTIVE ALTERNATIVE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE
42 PETITION. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER
43 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED
44 DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. EITHER PARTY MAY REQUEST

1 THAT THE COMMITTED DEFENDANT BE EXAMINED BY THE PARTY'S OWN COMPETENT
2 PROFESSIONAL.

3 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR
4 AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S MENTAL ILLNESS,
5 DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED DEFENDANT
6 REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
7 ALTERNATIVE OR CONDITIONALLY RELEASED.

8 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED DEFENDANT FROM
9 ANNUALLY PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS
10 RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF MEDICAL DIRECTOR. THE
11 MEDICAL DIRECTOR SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE COMMITTED
12 DEFENDANT OF THE COMMITTED DEFENDANT'S RIGHT TO PETITION THE COURT FOR
13 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL
14 OF THE MEDICAL DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF RIGHTS. THE
15 MEDICAL DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE
16 ANNUAL EXAMINATION REPORT.

17 D. THE COMMITTED DEFENDANT MAY BE PRESENT AT THE HEARING. EITHER
18 PARTY MAY REQUEST THAT THE COMMITTED DEFENDANT BE EXAMINED BY THE PARTY'S
19 OWN COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF
20 PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S
21 MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE
22 COMMITTED DEFENDANT REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS
23 RESTRICTIVE ALTERNATIVE. IF THE STATE DOES NOT MEET ITS BURDEN OF PROOF,
24 THE COMMITTED DEFENDANT SHALL BE DISCHARGED FROM TREATMENT.

25 E. AT THE CONCLUSION OF A HEARING, IF THE COURT FINDS THAT THERE IS
26 NO LEGALLY SUFFICIENT EVIDENTIARY BASIS TO CONCLUDE THAT THE CONDITIONS
27 PRESCRIBED IN SECTION 36-4006 HAVE BEEN MET, THE COURT SHALL DENY
28 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

29 36-4005. Conditional release to a less restrictive
30 alternative; conditions; reports; review

31 A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS
32 RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE COMMITTED DEFENDANT
33 AND WILL ADEQUATELY PROTECT THE COMMUNITY AND THE COURT DETERMINES THAT
34 THE MINIMUM CONDITIONS UNDER SECTION 36-4006 ARE MET, THE COURT SHALL
35 ENTER JUDGMENT AND ORDER THE COMMITTED DEFENDANT'S CONDITIONAL RELEASE TO
36 A LESS RESTRICTIVE ALTERNATIVE.

37 B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE COMMITTED
38 DEFENDANT DOES NOT MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE
39 EFFECT OF TREATMENT OR HABILITATION BEING RECEIVED, THE COURT MAY DENY THE
40 REQUEST FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS
41 THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED
42 DEFENDANT WILL CONTINUE TO RECEIVE TREATMENT AND HABILITATION FOLLOWING
43 RELEASE FOR AS LONG AS THE TREATMENT AND HABILITATION IS REQUIRED. IF THE
44 COURT FINDS THAT THE COMMITTED DEFENDANT WILL CONTINUE TO RECEIVE THE
45 NEEDED TREATMENT OR HABILITATION, THE COURT MAY ORDER THE COMMITTED

1 DEFENDANT TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE
2 ON THE CONDITION THAT THE COMMITTED DEFENDANT CONTINUE TO RECEIVE
3 TREATMENT OR HABILITATION. IF THE COMMITTED DEFENDANT FAILS TO RECEIVE
4 THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY REVOKE THE
5 CONDITIONAL RELEASE.

6 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE COMMITTED
7 DEFENDANT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE COMMITTED
8 DEFENDANT'S COMPLIANCE WITH TREATMENT AND TO PROTECT THE COMMUNITY. IF
9 THE COURT FINDS THAT CONDITIONS DO NOT EXIST THAT WILL BOTH ENSURE THE
10 COMMITTED DEFENDANT'S COMPLIANCE WITH TREATMENT AND PROTECT THE COMMUNITY,
11 THE COURT SHALL REMAND THE COMMITTED DEFENDANT TO THE CUSTODY OF THE
12 MEDICAL DIRECTOR FOR CARE, SUPERVISION OR TREATMENT IN A SECURE STATE
13 MENTAL HEALTH FACILITY.

14 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR
15 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND
16 CONDITIONS OF A COMMITTED DEFENDANT'S PLACEMENT IN A LESS RESTRICTIVE
17 ALTERNATIVE IS NOT THE SECURE STATE MENTAL HEALTH FACILITY, THE PROVIDER
18 SHALL AGREE IN WRITING TO PROVIDE THE TREATMENT.

19 E. BEFORE THE COURT AUTHORIZES A COMMITTED DEFENDANT'S CONDITIONAL
20 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL IMPOSE ANY
21 CONDITIONS ON THE COMMITTED DEFENDANT THAT THE COURT DETERMINES ARE
22 NECESSARY TO ENSURE THE SAFETY OF THE COMMUNITY. THE CONDITIONS SHALL
23 INCLUDE THAT BEFORE BEING RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, A
24 COMMITTED DEFENDANT MUST SUBMIT TO NINETY DAYS OF INPATIENT EVALUATION AT
25 THE SECURE STATE MENTAL HEALTH FACILITY, EXCEPT THAT IN THE MEDICAL
26 DIRECTOR'S DISCRETION, THE DURATION OF THE EVALUATION PERIOD MAY BE LESS
27 THAN NINETY DAYS. THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO
28 INVESTIGATE THE LESS RESTRICTIVE ALTERNATIVE AND TO SUBMIT ADDITIONAL
29 CONDITIONS TO THE COURT. THE COURT SHALL GIVE A COPY OF THE CONDITIONS OF
30 RELEASE TO THE COMMITTED DEFENDANT AND TO ANY DESIGNATED SERVICE
31 PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY OF THE FOLLOWING:

- 32 1. SPECIFYING A RESIDENCE.
- 33 2. REQUIRING COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY
34 TESTING OR MONITORING REQUIRED.
- 35 3. PROHIBITING ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER
36 PERSONS AND PROHIBITING ASSOCIATING WITH OTHER PERSONS OR TYPES OF
37 PERSONS.
- 38 4. PROHIBITING THE USE OF ALCOHOL AND OTHER DRUGS.
- 39 5. REQUIRING THAT THE COMMITTED DEFENDANT REMAIN IN THIS STATE
40 UNLESS THE COMMITTED DEFENDANT RECEIVES PRIOR AUTHORIZATION TO LEAVE THIS
41 STATE FROM THE COURT.
- 42 6. REQUIRING COMPLIANCE WITH REQUIRED SUPERVISION, MONITORING OR
43 REPORTING.

1 7. COMPLYING WITH OTHER CONDITIONS THAT THE COURT OR THE MEDICAL
2 DIRECTOR DETERMINES ARE IN THE BEST INTEREST OF THE COMMITTED DEFENDANT OR
3 OTHERS.

4 F. FOLLOWING A DETERMINATION THAT A COMMITTED DEFENDANT'S RELEASE
5 TO A LESS RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE
6 RECOMMENDATION REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE
7 MEDICAL DIRECTOR, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A
8 LESS RESTRICTIVE ALTERNATIVE THAT THE COMMITTED DEFENDANT PARTICIPATE IN
9 OUTPATIENT TREATMENT. THE OUTPATIENT SUPERVISION AND TREATMENT MAY
10 INCLUDE MONITORING A COMMITTED DEFENDANT BY USE OF AN ELECTRONIC
11 BRACELET. THE TREATMENT SHALL CONTINUE UNTIL THE COURT ORDERS A CHANGE IN
12 THE COMMITTED DEFENDANT'S TREATMENT REQUIREMENTS OR THE COMMITTED
13 DEFENDANT IS DISCHARGED PURSUANT TO SECTION 36-4009.

14 G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH
15 DESIGNATED SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE
16 COMMITTED DEFENDANT IS COMPLYING WITH THE TERMS AND CONDITIONS OF
17 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE TO EACH OF THE
18 FOLLOWING:

19 1. THE COURT.

20 2. THE SECURE STATE MENTAL HEALTH FACILITY FROM WHICH THE COMMITTED
21 DEFENDANT WAS RELEASED.

22 3. THE ATTORNEY FOR THE STATE.

23 H. THE COURT SHALL REVIEW THE CASE OF EACH COMMITTED DEFENDANT WHO
24 IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE
25 YEAR AFTER THE COMMITTED DEFENDANT'S RELEASE AND ANNUALLY THEREAFTER ON
26 MOTION OF EITHER PARTY OR THE MEDICAL DIRECTOR OR ON THE COURT'S OWN
27 MOTION UNTIL THE COMMITTED DEFENDANT IS DISCHARGED. AT A CASE REVIEW, THE
28 COURT SHALL DETERMINE ONLY IF THE COMMITTED DEFENDANT SHALL CONTINUE TO BE
29 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING ITS
30 DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE
31 SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE
32 OPINIONS OF THE MEDICAL DIRECTOR AND ANY OTHER COMPETENT PROFESSIONAL.

33 36-4006. Conditional release to a less restrictive
34 alternative; findings

35 BEFORE THE COURT ORDERS THAT A COMMITTED DEFENDANT BE CONDITIONALLY
36 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL
37 OF THE FOLLOWING APPLY:

38 1. THE COMMITTED DEFENDANT WILL BE TREATED BY A COMPETENT
39 PROFESSIONAL.

40 2. THE COMPETENT PROFESSIONAL PRESENTS A SPECIFIC COURSE OF
41 TREATMENT FOR THE COMMITTED DEFENDANT, AGREES TO ASSUME RESPONSIBILITY FOR
42 THE COMMITTED DEFENDANT'S TREATMENT, WILL REPORT ON THE COMMITTED
43 DEFENDANT'S PROGRESS TO THE COURT ON A REGULAR BASIS AND WILL REPORT ANY
44 VIOLATIONS AS PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SECTION IMMEDIATELY
45 TO THE COURT, THE ATTORNEY FOR THE STATE AND THE MEDICAL DIRECTOR.

1 3. THE COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A LESS
2 RESTRICTIVE ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE SUFFICIENTLY
3 SECURE TO PROTECT THE COMMUNITY AND THE PERSON OR AGENCY THAT IS PROVIDING
4 THE HOUSING TO THE CONDITIONALLY RELEASED COMMITTED DEFENDANT AGREES IN
5 WRITING TO THE FOLLOWING CONDITIONS:

6 (a) TO ACCEPT THE CONDITIONALLY RELEASED COMMITTED DEFENDANT.

7 (b) TO PROVIDE THE LEVEL OF SECURITY THAT THE COURT REQUIRES.

8 (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE
9 CONDITIONALLY RELEASED COMMITTED DEFENDANT FROM THE HOUSING ARRANGEMENT TO
10 WHICH THE COMMITTED DEFENDANT HAS BEEN ASSIGNED.

11 4. THE COMMITTED DEFENDANT WILL COMPLY WITH THE COMPETENT
12 PROFESSIONAL AND ALL OF THE REQUIREMENTS THAT ARE IMPOSED BY THE COMPETENT
13 PROFESSIONAL AND THE COURT.

14 5. THE COMMITTED DEFENDANT WILL COMPLY WITH THE SUPERVISION
15 REQUIREMENTS THAT ARE IMPOSED BY THE COURT OR THE MEDICAL DIRECTOR.

16 36-4007. Detention and commitment requirements; definition

17 A. A COMMITTED DEFENDANT DOES NOT FORFEIT ANY LEGAL RIGHT AND MAY
18 NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR
19 ORDERS MADE PURSUANT TO THIS ARTICLE EXCEPT AS SPECIFICALLY PROVIDED IN
20 THIS ARTICLE.

21 B. A COMMITTED DEFENDANT SHALL RECEIVE CARE, SUPERVISION OR
22 TREATMENT. THE MEDICAL DIRECTOR SHALL KEEP RECORDS DETAILING ALL MEDICAL,
23 EXPERT AND PROFESSIONAL CARE AND TREATMENT THAT A COMMITTED DEFENDANT
24 RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS
25 THAT ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS AND REPORTS SHALL
26 BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

27 1. THE COMMITTED DEFENDANT.

28 2. THE COMMITTED DEFENDANT'S ATTORNEY.

29 3. THE ATTORNEY FOR THE STATE.

30 4. THE COURT.

31 5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL WHO DEMONSTRATES A
32 NEED FOR ACCESS TO THE RECORDS OR REPORTS.

33 6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR
34 ASSOCIATED WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE
35 FOR THE CARE, CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED DEFENDANT.

36 C. AT THE TIME A COMMITTED DEFENDANT IS DETAINED OR TRANSFERRED
37 INTO A LICENSED FACILITY, THE PERSON IN CHARGE OF THE FACILITY OR THE
38 PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND
39 SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED COMMITTED
40 DEFENDANT. THE STAFF MEMBER WHO MAKES AN INVENTORY OF THE COMMITTED
41 DEFENDANT'S PERSONAL PROPERTY SHALL GIVE A SIGNED COPY OF THAT INVENTORY
42 TO THE COMMITTED DEFENDANT. THE FACILITY SHALL ALLOW A RESPONSIBLE
43 RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITS THAT THE COMMITTED
44 DEFENDANT SPECIFICALLY IMPOSES. THE FACILITY MAY NOT DISCLOSE THE

1 CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE
2 COMMITTED DEFENDANT OR A COURT ORDER.

3 D. EXCEPT AS PROVIDED IN SECTION 13-4517, SUBSECTION B, THE MEDICAL
4 DIRECTOR IS RESPONSIBLE FOR ALL EXPENSES ASSOCIATED WITH THE EDUCATION,
5 CARE, SUPERVISION AND TREATMENT TO RENDER THE COMMITTED DEFENDANT EITHER
6 COMPETENT OR NONDANGEROUS.

7 E. THIS ARTICLE DOES NOT PROHIBIT A COMMITTED DEFENDANT FROM
8 EXERCISING ANY RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING
9 RELEASE FROM CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF
10 HABEAS CORPUS. THE COMMITTED DEFENDANT MUST EXHAUST ALL DIRECT APPEAL AND
11 POSTCOMMITMENT PROCEDURES BEFORE EXERCISING THE COMMITTED DEFENDANT'S
12 RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.

13 F. A COMMITTED DEFENDANT WHO IS INDIGENT MAY NOT BE CONDITIONALLY
14 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE
15 CLOTHING. WHEN A COMMITTED DEFENDANT IS CONDITIONALLY RELEASED TO A LESS
16 RESTRICTIVE ALTERNATIVE OR DISCHARGED, THE MEDICAL DIRECTOR SHALL FURNISH
17 THE COMMITTED DEFENDANT WITH AN AMOUNT OF MONEY IN CONFORMANCE WITH
18 SECTION 31-228.

19 G. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS
20 THE SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE COMMITTED
21 DEFENDANT AND INCLUDES THE GUARDIAN, CONSERVATOR OR ATTORNEY OF THE
22 COMMITTED DEFENDANT.

23 36-4008. Revocation of conditional release to a less
24 restrictive alternative; hearing

25 A. IF THE ATTORNEY FOR THE STATE, THE MEDICAL DIRECTOR OR THE COURT
26 BELIEVES THAT A COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A
27 LESS RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND
28 CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE AND TREATMENT, THE
29 MEDICAL DIRECTOR OR THE ATTORNEY FOR THE STATE MAY PETITION THE COURT FOR,
30 OR THE COURT ON ITS OWN MOTION MAY SCHEDULE, A HEARING FOR THE PURPOSE OF
31 REVOKING OR MODIFYING THE TERMS AND CONDITIONS OF THE COMMITTED
32 DEFENDANT'S CONDITIONAL RELEASE. THE HEARING SHALL BE HELD WITHIN TEN
33 DAYS AFTER THE PETITION IS FILED.

34 B. IF THE ATTORNEY FOR THE STATE OR THE COURT REASONABLY BELIEVES
35 THAT A COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A LESS
36 RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF
37 THE COMMITTED DEFENDANT'S CONDITIONAL RELEASE OR IS IN NEED OF ADDITIONAL
38 CARE OR TREATMENT OR THAT THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO
39 THAT THE COMMUNITY IS NO LONGER SAFE, THE COURT MAY ORDER THAT THE
40 CONDITIONALLY RELEASED COMMITTED DEFENDANT BE DETAINED AND TAKEN INTO
41 CUSTODY UNTIL A HEARING CAN BE SCHEDULED TO DETERMINE IF THE COMMITTED
42 DEFENDANT'S CONDITIONAL RELEASE SHOULD BE REVOKED OR MODIFIED. THE COURT
43 AND THE COMMITTED DEFENDANT SHALL BE NOTIFIED BEFORE THE CLOSE OF THE NEXT
44 JUDICIAL DAY OF THE COMMITTED DEFENDANT'S DETENTION. THE ATTORNEY FOR THE
45 STATE AND THE COMMITTED DEFENDANT MAY REQUEST AN IMMEDIATE MENTAL

1 EXAMINATION OF THE COMMITTED DEFENDANT. IF THE CONDITIONALLY RELEASED
2 COMMITTED DEFENDANT IS INDIGENT, THE COURT, ON REQUEST, SHALL ASSIST THE
3 COMMITTED DEFENDANT IN OBTAINING A COMPETENT PROFESSIONAL TO CONDUCT THE
4 EXAMINATION.

5 C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE COMMITTED
6 DEFENDANT'S DETENTION, THE COURT SHALL SCHEDULE A HEARING. AT THE
7 HEARING, THE COURT SHALL DETERMINE IF THE STATE HAS PROVED BY A
8 PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED DEFENDANT WHO IS
9 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID NOT COMPLY
10 WITH THE TERMS AND CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE
11 OR TREATMENT, IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE
12 COMMUNITY IS NO LONGER SAFE, IF THE COMMITTED DEFENDANT SHOULD CONTINUE ON
13 CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE
14 CONDITIONAL RELEASE SHOULD BE REVOKED AND THE COMMITTED DEFENDANT SHOULD
15 BE COMMITTED TO TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE
16 PROVISIONS OF THIS ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE
17 COURT FINDS THAT THE HEARSAY EVIDENCE IS OTHERWISE RELIABLE.

18 36-4009. Petition for discharge; procedures; annual report

19 A. IF THE MEDICAL DIRECTOR DETERMINES THAT THE COMMITTED
20 DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE
21 COMMITTED DEFENDANT IS NO LONGER DANGEROUS IF DISCHARGED BUT REMAINS
22 INCOMPETENT TO STAND TRIAL, THE MEDICAL DIRECTOR SHALL ALLOW THE COMMITTED
23 DEFENDANT TO PETITION THE COURT FOR DISCHARGE. THE COMMITTED DEFENDANT
24 SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE
25 COURT SHALL HOLD A HEARING ON THE PETITION FOR DISCHARGE WITHIN FORTY-FIVE
26 DAYS AFTER RECEIVING THE PETITION.

27 B. THE COMMITTED DEFENDANT MAY BE PRESENT AT THE DISCHARGE
28 HEARING. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER
29 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED
30 DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. EITHER PARTY MAY REQUEST
31 THAT THE COMMITTED DEFENDANT BE EXAMINED BY THE PARTY'S OWN COMPETENT
32 PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY
33 CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S MENTAL
34 ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED
35 DEFENDANT REMAINS DANGEROUS. IF THE STATE DOES NOT MEET ITS BURDEN OF
36 PROOF, THE COMMITTED DEFENDANT SHALL BE DISCHARGED FROM TREATMENT.

37 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED DEFENDANT FROM
38 ANNUALLY PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
39 MEDICAL DIRECTOR. THE MEDICAL DIRECTOR SHALL GIVE ANNUAL WRITTEN NOTICE
40 TO THE COMMITTED DEFENDANT OF THE COMMITTED DEFENDANT'S RIGHT TO PETITION
41 THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE MEDICAL DIRECTOR AND
42 PROVIDE A COPY OF THAT WRITTEN NOTICE TO THE COMMITTED DEFENDANT IN
43 CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE. THE NOTICE SHALL CONTAIN
44 A WAIVER OF RIGHTS. THE MEDICAL DIRECTOR SHALL SUBMIT THE NOTICE AND
45 WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

1 D. THE MEDICAL DIRECTOR OF EACH SECURE STATE MENTAL HEALTH FACILITY
2 SHALL ANNUALLY REPORT THE FOLLOWING INFORMATION FOR THE PREVIOUS YEAR TO
3 THE ARIZONA CRIMINAL JUSTICE COMMISSION:

4 1. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE UNDER THE
5 JURISDICTION OF THE MEDICAL DIRECTOR BECAUSE THE INDIVIDUAL IS DANGEROUS,
6 INCOMPETENT AND NONRESTORABLE.

7 2. THE NUMBER OF INDIVIDUALS WHO ARE COMMITTED DEFENDANTS AND
8 DANGEROUS AND WHO ARE RELEASED.

9 36-4010. Place for proceedings; transportation; immunity

10 A. A COMMITTED DEFENDANT MAY NOT BE TRANSPORTED FROM A SECURE STATE
11 MENTAL HEALTH FACILITY, EXCEPT THAT A COMMITTED DEFENDANT MAY BE
12 TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING REASONS:

13 1. A HEARING ON A BIENNIAL EXAMINATION.

14 2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS
15 RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.

16 3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION
17 36-4009.

18 4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A COMMITTED
19 DEFENDANT IS NECESSARY.

20 5. ANY COURT PROCEEDING NOT OTHERWISE SPECIFIED IN THIS ARTICLE
21 WHERE THE PRESENCE OF THE COMMITTED DEFENDANT IS REQUIRED.

22 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY COMMITTED
23 DEFENDANT WHO THE COURT HAS DETERMINED IS SUBJECT TO DISCHARGE PURSUANT TO
24 SECTION 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

25 C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING
26 FROM BEING HELD ON THE GROUNDS OF THE A SECURE STATE MENTAL HEALTH
27 FACILITY OR FROM USING A TELEPHONIC CONFERENCE OR AN INTERACTIVE
28 AUDIOVISUAL DEVICE. THE COURT SHALL ADOPT RULES CONCERNING THE CONDUCT OF
29 PROCEEDINGS PURSUANT TO THIS ARTICLE. THE RULES SHALL ENSURE THE SAFETY
30 OF ALL PERSONS. THE RULES MAY INCLUDE PROVISIONS THAT ALLOW FOR
31 PROCEEDINGS TO BE HELD ON THE GROUNDS OF A SECURE STATE MENTAL HEALTH
32 FACILITY OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN INTERACTIVE
33 AUDIOVISUAL DEVICE.

34 D. THE MEDICAL DIRECTOR IS RESPONSIBLE FOR TRANSPORTING A COMMITTED
35 DEFENDANT TO AND FROM A MEDICAL FACILITY. THE MEDICAL DIRECTOR SHALL
36 DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND
37 RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE COMMITTED DEFENDANT. IN
38 DETERMINING THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY
39 AND RESTRAINT, THE MEDICAL DIRECTOR SHALL CONSIDER THE SAFETY OF THE
40 PUBLIC, THE TRANSPORTING PERSONNEL AND THE DETAINED OR COMMITTED
41 DEFENDANT.

42 E. THE MEDICAL DIRECTOR AND ANY COUNTY SHERIFF ARE IMMUNE FROM
43 LIABILITY FOR ANY GOOD FAITH ACTS UNDER THIS SECTION.

1 36-4011. Findings

2 A FINDING MADE BY THE COURT PURSUANT TO THIS ARTICLE IS INADMISSIBLE
3 IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER THIS ARTICLE, UNDER TITLE
4 13, CHAPTER 41 OR UNDER CHAPTER 5 OF THIS TITLE.

5 Sec. 10.. Fingerprint or biometric identification authority;
6 criminal justice agencies; delayed repeal

7 A. Notwithstanding any other law, if requested by a hospital that
8 is licensed pursuant to title 36, chapter 4, Arizona Revised Statutes, a
9 criminal justice agency, as defined in section 41-1750, Arizona Revised
10 Statutes, shall assist the hospital in determining the identity of an
11 unidentified patient who is either incapacitated or deceased through an
12 analysis of the patient's fingerprints or biometric identification
13 techniques. The hospital or another person may fingerprint or obtain the
14 biometric information from the unidentified patient and provide the
15 fingerprints or biometric information to the criminal justice agency
16 without the patient's consent or authorization. The criminal justice
17 agency shall provide the name of the unidentified patient to the hospital
18 but may not provide any of the patient's criminal history record. The
19 requesting hospital is responsible for the cost of fingerprinting or
20 obtaining the biometric information from the patient and shall pay the fee
21 that is established pursuant to section 41-1750, subsection J, Arizona
22 Revised Statutes.

23 B. This section is repealed from and after December 31, 2023.

24 Sec. 11. Effective date

25 The following are effective from and after December 31, 2023:

- 26 1. Section 13-712, Arizona Revised Statutes, as amended by this
27 act.
- 28 2. Section 13-4501, Arizona Revised Statutes, as amended by this
29 act.
- 30 3. Section 13-4508, Arizona Revised Statutes, as amended by this
31 act.
- 32 4. Section 13-4509, Arizona Revised Statutes, as amended by this
33 act.
- 34 5. Section 13-4515, Arizona Revised Statutes, as amended by this
35 act.
- 36 6. Section 13-4517, Arizona Revised Statutes, as amended by this
37 act.
- 38 7. Section 13-4521, Arizona Revised Statutes, as added by this act.
- 39 8. Section 36-425.06, Arizona Revised Statutes, as amended by this
40 act.
- 41 9. Title 36, chapter 40, Arizona Revised Statutes, as added by this
42 act.