

REFERENCE TITLE: incompetent defendants; public safety guardianship

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

SB 1310

Introduced by
Senator Barto

AN ACT

AMENDING SECTION 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 14, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 5.1; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3032.01; RELATING TO GUARDIANSHIP PROCEEDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-4517, Arizona Revised Statutes, is amended to
3 read:

4 13-4517. Incompetent defendants; disposition

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

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

13 2. ~~Appoint a guardian~~ INITIATE PROCEEDINGS pursuant to title 14,
14 chapter 5 OR 5.1.

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

17 B. If the court enters an order pursuant to subsection A, paragraph
18 1 or 2 of this section, the court may also order an assessment of the
19 defendant's eligibility for private insurance or public benefits that may
20 be applied to the expenses of the defendant's medically necessary
21 maintenance and treatment, including services pursuant to title 36,
22 chapter 29, state-only behavioral health services, title XVIII services
23 and medicare part D prescription drug benefits, supplemental security
24 income and supplemental security disability income.

25 C. The court may retain jurisdiction over the defendant until the
26 defendant is committed for treatment pursuant to title 36, chapter 5 or a
27 guardian is appointed pursuant to title 14, chapter 5 OR 5.1.

28 D. If the court remands the defendant for the institution of civil
29 commitment proceedings pursuant to title 36, chapter 5 and the court is
30 notified that the defendant has not had a civil commitment evaluation, the
31 court, if it has retained jurisdiction, may order the sheriff to take the
32 defendant into custody so that the court may explore options pursuant to
33 subsection A, paragraph 2 or 3 of this section.

34 E. If the court is notified that the defendant has not been ordered
35 into treatment pursuant to title 36, chapter 5 and the court has retained
36 jurisdiction, the court may order the sheriff to take the defendant into
37 custody so that the court may explore options pursuant to subsection A,
38 paragraph 2 or 3 of this section.

39 F. IF THE COURT INITIATES PROCEEDINGS PURSUANT TO TITLE 14, CHAPTER
40 5 OR 5.1, THE COURT MAY ORDER THE SHERIFF TO RETAIN CUSTODY OF THE
41 DEFENDANT DURING THAT PROCESS AND MAY EXTEND THAT ORDER DURING THE TIME
42 THAT IS REQUIRED FOR THE COURT TO EXPLORE OPTIONS PURSUANT TO SUBSECTION
43 A, PARAGRAPH 1 OR 3 OF THIS SECTION IF THE COURT DOES NOT ORDER
44 GUARDIANSHIP OR PUBLIC SAFETY GUARDIANSHIP.

1 C. IN ADDITION TO THE INFORMATION REQUIRED TO BE INCLUDED IN A
2 PETITION PURSUANT TO SECTION 14-5303, THE PETITION FOR A PUBLIC SAFETY
3 GUARDIANSHIP SHALL INCLUDE A SUMMARY OF THE INCAPACITATED INCOMPETENT
4 PERSON'S CURRENT CRIMINAL CASE AND RELEVANT PAST CRIMINAL HISTORY.

5 D. ON THE FILING OF A PETITION, A COURT-APPOINTED PSYCHIATRIST, AS
6 DEFINED IN SECTION 36-501, SHALL EXAMINE THE INCAPACITATED INCOMPETENT
7 PERSON. THE PSYCHIATRIST SHALL FILE A REPORT WITH THE COURT, INCLUDING
8 THE INFORMATION REQUIRED PURSUANT TO SECTION 14-5303, AND AN ASSESSMENT OF
9 WHETHER THE INCAPACITATED INCOMPETENT PERSON IS LIKELY TO COMMIT VIOLENT
10 ACTS OR CAUSE SERIOUS PHYSICAL HARM TO ANOTHER PERSON IN THE FUTURE.

11 E. THE OFFICE IS RESPONSIBLE FOR THE COSTS OF THE PSYCHIATRIST'S
12 EXAMINATION AND REPORT AND A COURT-APPOINTED INVESTIGATOR.

13 F. WHEN CONSIDERING WHETHER TO APPOINT THE OFFICE, THE COURT SHALL
14 CONSIDER THE INCAPACITATED INCOMPETENT PERSON'S WELFARE AND POTENTIAL TO
15 COMMIT VIOLENT ACTS OR CAUSE SERIOUS PHYSICAL HARM TO ANOTHER PERSON IN
16 THE FUTURE IF A PUBLIC SAFETY GUARDIANSHIP IS NOT ORDERED.

17 G. THE COURT MAY APPOINT THE OFFICE IF THE COURT FINDS, BY CLEAR
18 AND CONVINCING EVIDENCE, THAT ALL OF THE FOLLOWING APPLY:

19 1. THE INCOMPETENT PERSON IS INCAPACITATED.

20 2. THE APPOINTMENT IS NECESSARY TO PROVIDE FOR THE DEMONSTRATED
21 NEEDS OF THE INCAPACITATED INCOMPETENT PERSON.

22 3. THE INCAPACITATED INCOMPETENT PERSON'S NEEDS CANNOT BE MET BY
23 LESS RESTRICTIVE MEANS, INCLUDING THE USE OF APPROPRIATE TECHNOLOGICAL
24 ASSISTANCE.

25 4. THE INCAPACITATED INCOMPETENT PERSON IS LIKELY TO COMMIT VIOLENT
26 ACTS OR CAUSE SERIOUS PHYSICAL HARM TO ANOTHER PERSON IN THE FUTURE IF A
27 PUBLIC SAFETY GUARDIANSHIP IS NOT ORDERED.

28 5. THE INCAPACITATED INCOMPETENT PERSON IS LIKELY TO BE IN NEED OF
29 INPATIENT MENTAL HEALTH CARE AND TREATMENT WITHIN THE PERIOD OF THE PUBLIC
30 SAFETY GUARDIANSHIP.

31 H. THE INCAPACITATED INCOMPETENT PERSON IS ENTITLED TO ASSISTANCE
32 OF COUNSEL AT ANY PROCEEDING CONDUCTED PURSUANT TO THIS CHAPTER OR CHAPTER
33 5 OF THIS TITLE. IF THE INCAPACITATED INCOMPETENT PERSON IS INDIGENT, THE
34 COURT SHALL APPOINT COUNSEL.

35 14-5804. Public safety guardianship; placement; inpatient
36 psychiatric facility

37 A. A PUBLIC SAFETY GUARDIANSHIP INCLUDES ALL THE POWERS PRESCRIBED
38 IN A GUARDIANSHIP PURSUANT TO SECTION 14-5312 AND AS OTHERWISE PROVIDED BY
39 LAW. A PUBLIC SAFETY GUARDIANSHIP INCLUDES THE POWER TO PLACE THE
40 INCAPACITATED INCOMPETENT PERSON IN INPATIENT PSYCHIATRIC FACILITIES
41 LICENSED BY THE DEPARTMENT OF HEALTH SERVICES PURSUANT TO SECTION
42 14-5312.01 FOR THE DURATION OF THE PUBLIC SAFETY GUARDIANSHIP.

43 B. WHEN CONSIDERING PLACEMENT FOR AN INCAPACITATED INCOMPETENT
44 PERSON, THE OFFICE SHALL CONSIDER THE INCAPACITATED INCOMPETENT PERSON'S
45 BEST INTERESTS AS WELL AS PUBLIC SAFETY.

