

Senate Engrossed

~~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 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 13-4519 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 LIKELY, AS A RESULT OF A MENTAL ILLNESS,  
2 DEFECT OR DISABILITY, TO COMMIT OR ATTEMPT TO COMMIT HOMICIDE OR A  
3 SEXUALLY VIOLENT OFFENSE AS DEFINED IN SECTION 36-3701 OR TO CAUSE OR  
4 ATTEMPT TO CAUSE SERIOUS PHYSICAL INJURY 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 LICENSED FACILITY  
31 UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL.

32           ~~5-~~ 7. "Threat to public safety" means charged with the commission  
33 of any of the following:

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

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

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

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

42           13-4508. Privilege against self-incrimination; sealed reports

43           A. The privilege against self-incrimination applies to any  
44 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 to determine whether the defendant  
11 is eligible for court-ordered treatment pursuant to title 36, chapter 5 or  
12 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 13-4519.

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 **AND OF ANY INSTRUMENT OR TOOL USED TO**  
12 **ASSESS WHETHER THE DEFENDANT IS LIKELY TO BE DANGEROUS.**

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

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

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

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

20           2. The defendant's prognosis.

21           3. **THE NATURE OF THE MENTAL ILLNESS, DISEASE OR DEFECT THAT MAKES**  
22 **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. **IF THE PROGNOSIS INCLUDES A DETERMINATION THAT THERE IS NO**  
29 **SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN**  
30 **TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,**  
31 **WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.**

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

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

39           13-4515. Duration of order; excluded time calculation; notice  
40 of dismissed charge or voided order; petitions

41           A. An order or combination of orders that is issued pursuant to  
42 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one  
43 months or the maximum possible sentence the defendant could have received  
44 pursuant to section 13-702, section 13-703, section 13-704, subsection A,  
45 B, C, D or E, section 13-705, section 13-706, subsection A, section

1 13-708, subsection D or section 13-751 or any section for which a specific  
2 sentence is authorized, whichever is less. In making this determination  
3 the court shall not consider the sentence enhancements under section  
4 13-703 or 13-704 for prior convictions.

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

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

12 D. If a defendant is discharged or released on the expiration of an  
13 order or orders issued pursuant to section 13-4512 or 13-4514, the medical  
14 supervisor may file a petition stating that the defendant requires further  
15 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian  
16 pursuant to title 14 **OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4519**  
17 **BECAUSE THE DEFENDANT IS DANGEROUS.**

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

20 **13-4517. Incompetent defendants; disposition**

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

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

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

30 3. Release the defendant from custody and dismiss the charges  
31 against the defendant without prejudice.

32 **4. IF THE DEFENDANT IS CHARGED WITH A SERIOUS OFFENSE AS DEFINED IN**  
33 **SECTION 13-706, ORDER A TRIAL BY JURY TO DETERMINE IF THE DEFENDANT IS**  
34 **DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION**  
35 **13-4519.**

36 B. If the court enters an order pursuant to subsection A, paragraph  
37 1, ~~or~~ 2 **OR 4** of this section, the court may also order an assessment of  
38 the defendant's eligibility for private insurance or public benefits that  
39 may be applied to the expenses of the defendant's medically necessary  
40 maintenance and treatment, including services pursuant to title 36,  
41 chapter 29, state-only behavioral health services, title xviii services  
42 and medicare part D prescription drug benefits, supplemental security  
43 income and supplemental security disability income.

1 C. The court may retain jurisdiction over the defendant until the  
2 defendant is committed for treatment pursuant to SECTION 13-4519 OR title  
3 36, chapter 5 or a guardian is appointed pursuant to title 14, chapter 5.

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

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

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

18 13-4521. Dangerous and incompetent defendants: commitment  
19 trial; disposition; findings; annual report

20 A. IF A COURT ENTERS AN ORDER PURSUANT TO SECTION 13-4517,  
21 SUBSECTION A, PARAGRAPH 4, THE COURT SHALL HOLD A TRIAL BY JURY TO  
22 DETERMINE IF THE DEFENDANT IS DANGEROUS AND SHOULD BE INVOLUNTARILY  
23 COMMITTED. IF THE DEFENDANT IS NOT REPRESENTED BY AN ATTORNEY AND IS  
24 INDIGENT, THE COURT SHALL APPOINT AN ATTORNEY, AS SOON AS POSSIBLE AND  
25 BEFORE SETTING THE TRIAL, TO REPRESENT THE DEFENDANT AT THE TRIAL AND ANY  
26 FURTHER PROCEEDINGS UNDER TITLE 36, CHAPTER 40.

27 B. IF THERE HAS NOT BEEN A PREVIOUS EVALUATION TO DETERMINE WHETHER  
28 THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL  
29 HEALTH EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO  
30 DETERMINE IF THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS. THE DEFENDANT  
31 MAY RETAIN THE DEFENDANT'S OWN MENTAL HEALTH EXPERT WHO MAY EXAMINE THE  
32 DEFENDANT AND PRESENT THE DEFENDANT'S OWN MENTAL HEALTH EVALUATION AT THE  
33 TRIAL.

34 C. AT A TRIAL TO DETERMINE IF THE DEFENDANT IS DANGEROUS, THE STATE  
35 SHALL ESTABLISH BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS DANGEROUS  
36 AND THAT THE DEFENDANT COMMITTED THE ACTS THAT CONSTITUTE THE CHARGED  
37 OFFENSE. IF THE JURY DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE COURT  
38 SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2  
39 OR 3.

40 D. IF THE JURY FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT  
41 SHALL ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH  
42 FACILITY LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT  
43 COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS. THE DEFENDANT  
44 SHALL RECEIVE EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE  
45 DEFENDANT EITHER COMPETENT OR NONDANGEROUS.

1 E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:  
2 1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT  
3 AND THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE  
4 CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.  
5 2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO  
6 THE CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE  
7 FOLLOWING OCCURS:  
8 (a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.  
9 (b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.  
10 F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS  
11 COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE  
12 DEFENDANT FROM TREATMENT OR THE TIME TO COMMENCE A CHARGE PURSUANT TO  
13 SECTION 13-107 HAS EXPIRED, WHICHEVER OCCURS FIRST. FOR THE PURPOSE OF  
14 CALCULATING THE TIME UNDER SECTION 13-107 NO TIME IS TOLLED. THE COURT  
15 HAS CONTINUING JURISDICTION OVER THE PERSON PURSUANT TO TITLE 36,  
16 CHAPTER 40.  
17 G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS  
18 SECTION, THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
19 ADMINISTRATION SHALL DETERMINE THE EXTENT TO WHICH THE DEFENDANT IS  
20 RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR PUBLIC BENEFITS THAT MAY BE  
21 APPLIED TO THE EXPENSES OF THE DEFENDANT'S MAINTENANCE AND TREATMENT THAT  
22 ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA  
23 HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND REGIONAL BEHAVIORAL HEALTH  
24 CARE AUTHORITY MONIES. THE ADMINISTRATION MAY ACCEPT THESE MONIES WITHOUT  
25 A COURT ORDER. THE ADMINISTRATION IS RESPONSIBLE FOR ALL REMAINING COSTS  
26 ASSOCIATED WITH THE COMMITMENT.  
27 H. FINDINGS BY THE COURT MADE PURSUANT TO THIS SECTION ARE  
28 INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER TITLE 36,  
29 CHAPTER 40.  
30 I. A PERSON WHO IS INVOLUNTARILY COMMITTED TO A SECURE STATE MENTAL  
31 HEALTH FACILITY PURSUANT TO THIS SECTION SHALL RECEIVE CREDIT FOR ALL TIME  
32 SPENT UNDER THE JURISDICTION OF THE SECURE STATE MENTAL HEALTH FACILITY IF  
33 THE PERSON IS FOUND COMPETENT TO STAND TRIAL AND IS SUBSEQUENTLY SENTENCED  
34 TO THE STATE DEPARTMENT OF CORRECTIONS FOR ANY OF THE CHARGES THAT WERE  
35 THE BASIS FOR THE INVOLUNTARY COMMITMENT.  
36 J. THE COURT SHALL ANNUALLY REPORT THE FOLLOWING INFORMATION FOR  
37 THE PREVIOUS YEAR TO THE ARIZONA CRIMINAL JUSTICE COMMISSION:  
38 1. THE NUMBER OF COURT ORDERS FOR A JURY TRIAL PURSUANT TO SECTION  
39 13-4517, SUBSECTION A, PARAGRAPH 4.  
40 2. THE NUMBER OF DEFENDANTS WHO ARE COMMITTED AFTER A JURY TRIAL  
41 PURSUANT TO THIS SECTION.  
42 3. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE CONDITIONALLY  
43 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE.  
44 4. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE DETERMINED TO NOT BE  
45 DANGEROUS AND WHO ARE DISCHARGED.





1 HEARING TO DETERMINE WHETHER THE COMMITTED DEFENDANT IS COMPETENT OR IS NO  
2 LONGER DANGEROUS.

3 C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT  
4 PROFESSIONAL SUBMITS A REPORT THAT THE COMMITTED DEFENDANT IS NO LONGER  
5 DANGEROUS IN WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE COMMITTED  
6 DEFENDANT IS TAKING, THE REPORT SHALL STATE WHETHER THE COMMITTED  
7 DEFENDANT WILL CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS  
8 RESTRICTIVE ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A  
9 LESS RESTRICTIVE ALTERNATIVE.

10 D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER  
11 RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST  
12 OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE  
13 COMMITTED DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING  
14 AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE  
15 COMMITTED DEFENDANT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY  
16 THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF  
17 PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S  
18 MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE  
19 COMMITTED DEFENDANT REMAINS DANGEROUS OR THAT THE COMMITTED DEFENDANT IS  
20 COMPETENT TO STAND TRIAL.

21 E. A RETAINED OR APPOINTED COMPETENT PROFESSIONAL SHALL HAVE ACCESS  
22 TO ALL RECORDS CONCERNING THE COMMITTED DEFENDANT. ALL COMPETENT  
23 PROFESSIONALS SHALL HAVE EQUAL ACCESS TO THE COMMITTED DEFENDANT AS WELL  
24 AS ALL RECORDS CONCERNING THE COMMITTED DEFENDANT.

25 F. THIS SECTION DOES NOT PRECLUDE THE COMMITTED DEFENDANT FROM  
26 PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE  
27 ALTERNATIVE OR DISCHARGE FROM TREATMENT PURSUANT TO SECTION 36-4004.

28 G. IF THE COMMITTED DEFENDANT'S ATTORNEY WITHDRAWS FROM REPRESENTING  
29 THE COMMITTED DEFENDANT AT ANY TIME DURING THE COMMITTED DEFENDANT'S  
30 COMMITMENT, THE COURT SHALL NOTIFY THE ATTORNEY FOR THE STATE AND THE  
31 COMMITTED DEFENDANT AND EITHER ALLOW THE COMMITTED DEFENDANT SUFFICIENT  
32 TIME TO EMPLOY ANOTHER ATTORNEY OR, IF THE COMMITTED DEFENDANT IS  
33 INDIGENT, APPOINT AN ATTORNEY TO REPRESENT THE COMMITTED DEFENDANT IN  
34 CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.

35 36-4003. Disposition

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

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

40 2. THE COMMITTED DEFENDANT HAS NOT BEEN RESTORED TO COMPETENCY AND:  
41 (a) THE COMMITTED DEFENDANT IS NOT DANGEROUS, THE COURT SHALL  
42 RELEASE THE COMMITTED DEFENDANT FROM TREATMENT AND PROCEED PURSUANT TO  
43 SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

44 (b) THE COMMITTED DEFENDANT IS NOT DANGEROUS IN WHOLE OR IN PART  
45 BECAUSE OF THE HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING,

1 INCLUDING TAKING MEDICATION, THE COURT MAY RELEASE THE COMMITTED DEFENDANT  
2 TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTIONS 36-4005 AND  
3 36-4006.

4 (c) THE COMMITTED DEFENDANT IS DANGEROUS, THE COMMITTED DEFENDANT  
5 SHALL REMAIN COMMITTED FOR EDUCATION, CARE, SUPERVISION AND TREATMENT TO  
6 RENDER THE COMMITTED DEFENDANT COMPETENT OR NONDANGEROUS.

7 36-4004. Petition for conditional release; procedures

8 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF  
9 THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION DETERMINES  
10 THAT THE COMMITTED DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO  
11 CHANGED THAT THE COMMITTED DEFENDANT IS NO LONGER DANGEROUS IF  
12 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE  
13 SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED DEFENDANT TO PETITION  
14 THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE. THE  
15 COMMITTED DEFENDANT SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY  
16 FOR THE STATE. THE COURT SHALL HOLD A HEARING ON THE PETITION FOR  
17 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHIN FORTY-FIVE  
18 DAYS AFTER RECEIVING THE PETITION. THE COURT MAY CONTINUE THE HEARING ON  
19 THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN  
20 MOTION IF THE COMMITTED DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED.  
21 THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY  
22 REQUEST THAT THE COMMITTED DEFENDANT BE EXAMINED BY A COMPETENT  
23 PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY.

24 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR  
25 AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S MENTAL ILLNESS,  
26 DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED DEFENDANT  
27 REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE  
28 ALTERNATIVE OR CONDITIONALLY DISCHARGED.

29 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED DEFENDANT FROM  
30 ANNUALLY PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS  
31 RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE  
32 STATE HOSPITAL OR THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT  
33 SYSTEM ADMINISTRATION. THE DIRECTOR SHALL PROVIDE AN ANNUAL WRITTEN  
34 NOTICE TO THE COMMITTED DEFENDANT OF THE COMMITTED DEFENDANT'S RIGHT TO  
35 PETITION THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE  
36 ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OR DIRECTOR. THE  
37 NOTICE MUST CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR SHALL SUBMIT THE  
38 NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

39 D. THE COMMITTED DEFENDANT MAY BE PRESENT AT THE HEARING. THE  
40 PROSECUTING AGENCY MAY REQUEST THAT THE COMMITTED DEFENDANT BE EXAMINED BY  
41 A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE  
42 COMMITTED DEFENDANT MAY RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT  
43 COMMITTED DEFENDANT, MAY APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY  
44 FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE  
45 THAT THE COMMITTED DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS

1 NOT CHANGED AND THAT THE COMMITTED DEFENDANT REMAINS DANGEROUS IF  
2 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE  
3 DOES NOT MEET ITS BURDEN OF PROOF, THE COMMITTED DEFENDANT SHALL BE  
4 DISCHARGED FROM TREATMENT.

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

9 36-4005. Conditional release to a less restrictive  
10 alternative; conditions; reports; review

11 A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS  
12 RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE COMMITTED DEFENDANT  
13 AND WILL ADEQUATELY PROTECT THE COMMUNITY AND THE COURT DETERMINES THAT  
14 THE MINIMUM CONDITIONS UNDER SECTION 36-4006 ARE MET, THE COURT SHALL  
15 ENTER JUDGMENT AND ORDER THE COMMITTED DEFENDANT'S CONDITIONAL RELEASE TO  
16 A LESS RESTRICTIVE ALTERNATIVE.

17 B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE COMMITTED  
18 DEFENDANT DOES NOT MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE  
19 EFFECT OF TREATMENT OR HABILITATION BEING RECEIVED, THE COURT MAY DENY THE  
20 REQUEST FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS  
21 THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED  
22 DEFENDANT WILL CONTINUE TO RECEIVE TREATMENT AND HABILITATION FOLLOWING  
23 RELEASE FOR AS LONG AS THE TREATMENT AND HABILITATION IS REQUIRED. IF THE  
24 COURT FINDS THAT THE COMMITTED DEFENDANT WILL CONTINUE TO RECEIVE THE  
25 NEEDED TREATMENT OR HABILITATION, THE COURT MAY ORDER THE COMMITTED  
26 DEFENDANT TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE  
27 ON THE CONDITION THAT THE COMMITTED DEFENDANT CONTINUE TO RECEIVE  
28 TREATMENT OR HABILITATION. IF THE COMMITTED DEFENDANT FAILS TO RECEIVE  
29 THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY REVOKE THE  
30 CONDITIONAL RELEASE.

31 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE COMMITTED  
32 DEFENDANT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE COMMITTED  
33 DEFENDANT'S COMPLIANCE WITH TREATMENT AND TO PROTECT THE COMMUNITY. IF  
34 THE COURT FINDS THAT CONDITIONS DO NOT EXIST THAT WILL BOTH ENSURE THE  
35 COMMITTED DEFENDANT'S COMPLIANCE WITH TREATMENT AND PROTECT THE COMMUNITY,  
36 THE COURT SHALL REMAND THE COMMITTED DEFENDANT TO THE CUSTODY OF THE  
37 SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION OR TREATMENT IN  
38 A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE SUPERINTENDENT.

39 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR  
40 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND  
41 CONDITIONS OF A COMMITTED DEFENDANT'S PLACEMENT IN A LESS RESTRICTIVE  
42 ALTERNATIVE IS NOT THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING  
43 TO PROVIDE THE TREATMENT.

44 E. BEFORE THE COURT AUTHORIZES A COMMITTED DEFENDANT'S CONDITIONAL  
45 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL IMPOSE ANY

1 CONDITIONS ON THE COMMITTED DEFENDANT THAT THE COURT DETERMINES ARE  
2 NECESSARY TO ENSURE THE SAFETY OF THE COMMUNITY. THE CONDITIONS SHALL  
3 INCLUDE THAT BEFORE BEING RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, A  
4 COMMITTED DEFENDANT MUST SUBMIT TO NINETY DAYS OF INPATIENT EVALUATION AT  
5 THE STATE HOSPITAL, EXCEPT THAT IN THE SUPERINTENDENT'S DISCRETION, THE  
6 DURATION OF THE EVALUATION PERIOD MAY BE LESS THAN NINETY DAYS. THE COURT  
7 SHALL ORDER THE SUPERINTENDENT TO INVESTIGATE THE LESS RESTRICTIVE  
8 ALTERNATIVE AND TO SUBMIT ADDITIONAL CONDITIONS TO THE COURT. THE COURT  
9 SHALL GIVE A COPY OF THE CONDITIONS OF RELEASE TO THE COMMITTED DEFENDANT  
10 AND TO ANY DESIGNATED SERVICE PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY  
11 OF THE FOLLOWING:

- 12 1. SPECIFYING A RESIDENCE.
- 13 2. REQUIRING COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY  
14 TESTING OR MONITORING REQUIRED.
- 15 3. PROHIBITING ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER  
16 PERSONS AND PROHIBITING ASSOCIATING WITH OTHER PERSONS OR TYPES OF  
17 PERSONS.
- 18 4. PROHIBITING THE USE OF ALCOHOL AND OTHER DRUGS.
- 19 5. REQUIRING SUPERVISION BY THE ARIZONA HEALTH CARE COST  
20 CONTAINMENT SYSTEM ADMINISTRATION.
- 21 6. REQUIRING THAT THE COMMITTED DEFENDANT REMAIN IN THIS STATE  
22 UNLESS THE COMMITTED DEFENDANT RECEIVES PRIOR AUTHORIZATION TO LEAVE THIS  
23 STATE FROM THE COURT.
- 24 7. REQUIRING COMPLIANCE WITH REQUIRED SUPERVISION, MONITORING OR  
25 REPORTING.
- 26 8. COMPLYING WITH OTHER CONDITIONS THAT THE COURT OR THE  
27 SUPERINTENDENT DETERMINES ARE IN THE BEST INTEREST OF THE COMMITTED  
28 DEFENDANT OR OTHERS.

29 F. FOLLOWING A DETERMINATION THAT A COMMITTED DEFENDANT'S RELEASE  
30 TO A LESS RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE  
31 RECOMMENDATION REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE  
32 SUPERINTENDENT, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A  
33 LESS RESTRICTIVE ALTERNATIVE THAT THE COMMITTED DEFENDANT PARTICIPATE IN  
34 OUTPATIENT TREATMENT. THE OUTPATIENT SUPERVISION AND TREATMENT MAY  
35 INCLUDE MONITORING A COMMITTED DEFENDANT BY USE OF AN ELECTRONIC  
36 BRACELET. THE TREATMENT SHALL CONTINUE UNTIL THE COURT ORDERS A CHANGE IN  
37 THE COMMITTED DEFENDANT'S TREATMENT REQUIREMENTS OR THE COMMITTED  
38 DEFENDANT IS DISCHARGED PURSUANT TO SECTION 36-4009.

39 G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH  
40 DESIGNATED SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE  
41 COMMITTED DEFENDANT IS COMPLYING WITH THE TERMS AND CONDITIONS OF  
42 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE TO:

- 43 1. THE COURT.
- 44 2. THE FACILITY FROM WHICH THE COMMITTED INCOMPETENT WAS RELEASED.

1           3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE COMMITTED DEFENDANT  
2 WAS FOUND TO BE A COMMITTED DEFENDANT OR TO THE ATTORNEY GENERAL.

3           H. THE COURT SHALL REVIEW THE CASE OF EACH COMMITTED DEFENDANT WHO  
4 IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE  
5 YEAR AFTER THE COMMITTED DEFENDANT'S RELEASE AND THEREAFTER ON MOTION OF  
6 EITHER PARTY OR THE SUPERINTENDENT OR ON THE COURT'S OWN MOTION UNTIL THE  
7 COMMITTED DEFENDANT IS DISCHARGED. AT A CASE REVIEW, THE COURT SHALL  
8 DETERMINE ONLY IF THE COMMITTED DEFENDANT SHALL CONTINUE TO BE  
9 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING ITS  
10 DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE  
11 SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE  
12 OPINIONS OF THE SUPERINTENDENT AND ANY OTHER COMPETENT PROFESSIONAL.

13           I. IF A COMMITTED DEFENDANT IS CONDITIONALLY RELEASED TO A LESS  
14 RESTRICTIVE ALTERNATIVE, THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
15 ADMINISTRATION SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE  
16 COMMITTED DEFENDANT'S RELEASE SO THAT THE DEPARTMENT OF PUBLIC SAFETY MAY  
17 COMMENCE ANY APPLICABLE NOTIFICATION PROCESS UNDER SECTION 13-3825.

18           36-4006. Conditional release to a less restrictive  
19   alternative; findings

20           BEFORE THE COURT ORDERS THAT A COMMITTED DEFENDANT BE CONDITIONALLY  
21 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL  
22 OF THE FOLLOWING APPLY:

23           1. THE COMMITTED DEFENDANT WILL BE TREATED BY A PROVIDER WHO IS  
24 QUALIFIED TO PROVIDE THE NECESSARY TREATMENT IN THIS STATE.

25           2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE  
26 COMMITTED DEFENDANT, AGREES TO ASSUME RESPONSIBILITY FOR THE COMMITTED  
27 DEFENDANT'S TREATMENT, WILL REPORT ON THE COMMITTED DEFENDANT'S PROGRESS  
28 TO THE COURT ON A REGULAR BASIS AND WILL REPORT ANY VIOLATIONS AS  
29 PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SECTION IMMEDIATELY TO THE COURT,  
30 THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT.

31           3. THE COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A LESS  
32 RESTRICTIVE ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE SUFFICIENTLY  
33 SECURE TO PROTECT THE COMMUNITY AND THE PERSON OR AGENCY THAT IS PROVIDING  
34 THE HOUSING TO THE CONDITIONALLY RELEASED COMMITTED DEFENDANT AGREES IN  
35 WRITING TO THE FOLLOWING CONDITIONS:

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

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

38           (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE  
39 CONDITIONALLY RELEASED COMMITTED DEFENDANT FROM THE HOUSING ARRANGEMENT TO  
40 WHICH THE COMMITTED DEFENDANT HAS BEEN ASSIGNED.

41           4. THE COMMITTED DEFENDANT WILL COMPLY WITH THE PROVIDER AND ALL OF  
42 THE REQUIREMENTS THAT ARE IMPOSED BY THE PROVIDER AND THE COURT.

43           5. THE COMMITTED DEFENDANT WILL COMPLY WITH THE SUPERVISION  
44 REQUIREMENTS THAT ARE IMPOSED BY THE ARIZONA HEALTH CARE COST CONTAINMENT  
45 SYSTEM ADMINISTRATION.

1           36-4007. Detention and commitment requirements; definition

2           A. A COMMITTED DEFENDANT DOES NOT FORFEIT ANY LEGAL RIGHT AND MAY  
3 NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR  
4 ORDERS MADE PURSUANT TO THIS ARTICLE EXCEPT AS SPECIFICALLY PROVIDED IN  
5 THIS ARTICLE.

6           B. A COMMITTED DEFENDANT SHALL RECEIVE CARE, SUPERVISION OR  
7 TREATMENT. THE SUPERINTENDENT SHALL KEEP RECORDS DETAILING ALL MEDICAL,  
8 EXPERT AND PROFESSIONAL CARE AND TREATMENT THAT A COMMITTED DEFENDANT  
9 RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS  
10 THAT ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS AND REPORTS SHALL  
11 BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

- 12           1. THE COMMITTED DEFENDANT.
- 13           2. THE COMMITTED DEFENDANT'S ATTORNEY.
- 14           3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.
- 15           4. THE COURT.
- 16           5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL WHO DEMONSTRATES A  
17 NEED FOR ACCESS TO THE RECORDS OR REPORTS.

18           6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR  
19 ASSOCIATED WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE  
20 FOR THE CARE, CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED DEFENDANT.

21           C. AT THE TIME A COMMITTED DEFENDANT IS DETAINED OR TRANSFERRED  
22 INTO A LICENSED FACILITY, THE PERSON IN CHARGE OF THE FACILITY OR THE  
23 PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND  
24 SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED COMMITTED  
25 DEFENDANT. THE STAFF MEMBER WHO MAKES AN INVENTORY OF THE COMMITTED  
26 DEFENDANT'S PERSONAL PROPERTY SHALL GIVE A SIGNED COPY OF THAT INVENTORY  
27 TO THE COMMITTED DEFENDANT. THE FACILITY SHALL ALLOW A RESPONSIBLE  
28 RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITS THAT THE COMMITTED  
29 DEFENDANT SPECIFICALLY IMPOSES. THE FACILITY MAY NOT DISCLOSE THE  
30 CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE  
31 COMMITTED DEFENDANT OR A COURT ORDER.

32           D. THIS ARTICLE DOES NOT PROHIBIT A COMMITTED DEFENDANT FROM  
33 EXERCISING ANY RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING  
34 RELEASE FROM CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF  
35 HABEAS CORPUS. THE COMMITTED DEFENDANT MUST EXHAUST ALL DIRECT APPEAL AND  
36 POSTCOMMITMENT PROCEDURES BEFORE EXERCISING THE COMMITTED DEFENDANT'S  
37 RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.

38           E. A COMMITTED DEFENDANT WHO IS INDIGENT MAY NOT BE CONDITIONALLY  
39 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE  
40 CLOTHING. WHEN A COMMITTED DEFENDANT IS CONDITIONALLY RELEASED TO A LESS  
41 RESTRICTIVE ALTERNATIVE OR DISCHARGED, THE SUPERINTENDENT SHALL FURNISH  
42 THE COMMITTED DEFENDANT WITH AN AMOUNT OF MONEY IN CONFORMANCE WITH  
43 SECTION 31-228.

44           F. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS  
45 THE SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE COMMITTED

1 DEFENDANT AND INCLUDES THE GUARDIAN, CONSERVATOR OR ATTORNEY OF THE  
2 COMMITTED DEFENDANT.

3 36-4008. Revocation of conditional release to a less  
4 restrictive alternative; hearing

5 A. IF THE ATTORNEY FOR THE STATE OR THE COURT BELIEVES THAT A  
6 COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE  
7 ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF RELEASE OR  
8 IS IN NEED OF ADDITIONAL CARE AND TREATMENT, THE DESIGNATED SERVICE  
9 PROVIDER OR THE ATTORNEY FOR THE STATE MAY PETITION THE COURT FOR, OR THE  
10 COURT ON ITS OWN MOTION MAY SCHEDULE, A HEARING FOR THE PURPOSE OF  
11 REVOKING OR MODIFYING THE TERMS AND CONDITIONS OF THE COMMITTED  
12 DEFENDANT'S CONDITIONAL RELEASE. THE HEARING SHALL BE HELD WITHIN TEN  
13 DAYS AFTER THE PETITION IS FILED.

14 B. IF THE ATTORNEY FOR THE STATE OR THE COURT REASONABLY BELIEVES  
15 THAT A COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A LESS  
16 RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF  
17 THE COMMITTED DEFENDANT'S CONDITIONAL RELEASE OR IS IN NEED OF ADDITIONAL  
18 CARE OR TREATMENT OR THAT THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO  
19 THAT THE COMMUNITY IS NO LONGER SAFE, THE COURT OR THE ARIZONA HEALTH CARE  
20 COST CONTAINMENT SYSTEM ADMINISTRATION MAY ORDER THAT THE CONDITIONALLY  
21 RELEASED COMMITTED DEFENDANT BE DETAINED AND TAKEN INTO CUSTODY UNTIL A  
22 HEARING CAN BE SCHEDULED TO DETERMINE IF THE COMMITTED DEFENDANT'S  
23 CONDITIONAL RELEASE SHOULD BE REVOKED OR MODIFIED. THE COURT AND ANY  
24 ATTORNEY OF RECORD REPRESENTING THE COMMITTED DEFENDANT SHALL BE NOTIFIED  
25 BEFORE THE CLOSE OF THE NEXT JUDICIAL DAY OF THE COMMITTED DEFENDANT'S  
26 DETENTION. THE ATTORNEY FOR THE STATE AND THE CONDITIONALLY RELEASED  
27 COMMITTED DEFENDANT MAY REQUEST AN IMMEDIATE MENTAL EXAMINATION OF THE  
28 COMMITTED DEFENDANT. IF THE CONDITIONALLY RELEASED COMMITTED DEFENDANT IS  
29 INDIGENT, THE COURT, ON REQUEST, SHALL ASSIST THE COMMITTED DEFENDANT IN  
30 OBTAINING A COMPETENT PROFESSIONAL TO CONDUCT THE EXAMINATION.

31 C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE COMMITTED  
32 DEFENDANT'S DETENTION, THE COURT SHALL SCHEDULE A HEARING. AT THE  
33 HEARING, THE COURT SHALL DETERMINE IF THE STATE HAS PROVED BY A  
34 PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED DEFENDANT WHO IS  
35 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID NOT COMPLY  
36 WITH THE TERMS AND CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE  
37 OR TREATMENT, IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE  
38 COMMUNITY IS NO LONGER SAFE, IF THE COMMITTED DEFENDANT SHOULD CONTINUE ON  
39 CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE  
40 CONDITIONAL RELEASE SHOULD BE REVOKED AND THE COMMITTED DEFENDANT SHOULD  
41 BE COMMITTED TO TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE  
42 PROVISIONS OF THIS ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE  
43 COURT FINDS THAT THE HEARSAY EVIDENCE IS OTHERWISE RELIABLE.



1           36-4009. Petition for discharge; procedures; annual report

2           A. IF THE SUPERINTENDENT OR THE DIRECTOR OF THE ARIZONA HEALTH CARE  
3 COST CONTAINMENT SYSTEM ADMINISTRATION DETERMINES THAT THE COMMITTED  
4 DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE  
5 COMMITTED DEFENDANT IS NO LONGER DANGEROUS IF DISCHARGED BUT REMAINS  
6 INCOMPETENT TO STAND TRIAL, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE  
7 COMMITTED DEFENDANT TO PETITION THE COURT FOR DISCHARGE. THE COMMITTED  
8 DEFENDANT SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY FOR THE  
9 STATE. THE COURT SHALL HOLD A HEARING ON THE PETITION FOR DISCHARGE  
10 WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION.

11           B. THE COMMITTED DEFENDANT MAY BE PRESENT AT THE DISCHARGE  
12 HEARING. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER  
13 PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED  
14 DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY  
15 SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE  
16 COMMITTED DEFENDANT BE EXAMINED BY A COMPETENT PROFESSIONAL WHO IS  
17 SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE  
18 BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED  
19 DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT  
20 THE COMMITTED DEFENDANT REMAINS DANGEROUS. IF THE STATE DOES NOT MEET ITS  
21 BURDEN OF PROOF, THE COMMITTED DEFENDANT SHALL BE DISCHARGED FROM  
22 TREATMENT.

23           C. IF A COMMITTED DEFENDANT IS DISCHARGED, THE ARIZONA HEALTH CARE  
24 COST CONTAINMENT SYSTEM ADMINISTRATION SHALL NOTIFY THE DEPARTMENT OF  
25 PUBLIC SAFETY OF THE COMMITTED DEFENDANT'S DISCHARGE SO THAT THE  
26 DEPARTMENT OF PUBLIC SAFETY MAY COMMENCE ANY NOTIFICATION PROCESS UNDER  
27 SECTION 13-3825.

28           D. THIS SECTION DOES NOT PROHIBIT THE COMMITTED DEFENDANT FROM  
29 ANNUALLY PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE  
30 SUPERINTENDENT OR THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT  
31 SYSTEM ADMINISTRATION. THE DIRECTOR OF THE ARIZONA HEALTH CARE COST  
32 CONTAINMENT SYSTEM ADMINISTRATION SHALL GIVE ANNUAL WRITTEN NOTICE TO THE  
33 COMMITTED DEFENDANT OF THE COMMITTED DEFENDANT'S RIGHT TO PETITION THE  
34 COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OR DIRECTOR  
35 AND PROVIDE A COPY OF THAT WRITTEN NOTICE TO ANY ATTORNEY WHO REPRESENTS  
36 THE COMMITTED DEFENDANT IN CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.  
37 THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR SHALL SUBMIT  
38 THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

39           E. THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL SHALL ANNUALLY  
40 REPORT THE FOLLOWING INFORMATION FOR THE PREVIOUS YEAR TO THE ARIZONA  
41 CRIMINAL JUSTICE COMMISSION:

42           1. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE UNDER THE  
43 JURISDICTION OF THE ARIZONA STATE HOSPITAL BECAUSE THE INDIVIDUAL IS  
44 DANGEROUS, INCOMPETENT AND NONRESTORABLE.

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

3           36-4010. Place for proceedings; transportation; immunity

4           A. A COMMITTED DEFENDANT MAY NOT BE TRANSPORTED FROM A LICENSED  
5 FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT, EXCEPT THAT A  
6 COMMITTED DEFENDANT MAY BE TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING  
7 REASONS:

8           1. A HEARING ON A BIENNIAL EXAMINATION.

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

11           3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION  
12 36-4009.

13           4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A COMMITTED  
14 DEFENDANT IS NECESSARY.

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

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

20           C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING  
21 FROM BEING HELD ON THE GROUNDS OF THE STATE HOSPITAL OR FROM USING A  
22 TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT  
23 SHALL ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS  
24 ARTICLE. THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY  
25 INCLUDE PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF  
26 THE ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN  
27 INTERACTIVE AUDIOVISUAL DEVICE.

28           D. THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION  
29 IS RESPONSIBLE FOR TRANSPORTING A COMMITTED DEFENDANT TO AND FROM A  
30 MEDICAL FACILITY. THE ADMINISTRATION SHALL DETERMINE THE APPROPRIATE MODE  
31 OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT FOR THE  
32 TRANSPORTATION NEEDS OF THE COMMITTED DEFENDANT. IN DETERMINING THE  
33 APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT,  
34 THE ADMINISTRATION SHALL CONSIDER THE SAFETY OF THE PUBLIC, THE  
35 TRANSPORTING PERSONNEL AND THE DETAINED OR COMMITTED DEFENDANT.

36           E. THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION  
37 AND ANY COUNTY SHERIFF ARE IMMUNE FROM LIABILITY FOR ANY GOOD FAITH ACTS  
38 UNDER THIS SECTION.

39           36-4011. Findings

40           A FINDING MADE BY THE COURT PURSUANT TO THIS ARTICLE IS INADMISSIBLE  
41 IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER THIS ARTICLE OR UNDER  
42 TITLE 13, CHAPTER 41.

43           Sec. 9. Retroactivity

44           This act applies retroactively to from and after December 31, 2021.