

PROPOSED
SENATE AMENDMENTS TO S.B. 1310
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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 FOR
13 ALL TIME THAT THE PERSON SPENT UNDER THE JURISDICTION OF THE SECURE STATE
14 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

1 term authorized by law if custody rested on an arrest or surrender for the
2 escape itself, or if the custody arose from an arrest on another charge
3 which culminated in a dismissal or an acquittal, and the person was denied
4 admission to bail pending disposition of that charge because of a warrant
5 lodged against such person arising from the escape.

6 E. The sentencing court shall include the time of commencement of
7 sentence under subsection A OF THIS SECTION and the computation of time
8 credited against sentence under subsection B, C or D, ~~OF THIS SECTION~~ in
9 the original or an amended commitment order, under procedures established
10 by rule of court.

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

13 13-4501. Definitions

14 In this chapter, unless the context otherwise requires:

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

21 2. "DANGEROUS" MEANS LIKELY, AS A RESULT OF A MENTAL ILLNESS, DEFECT
22 OR DISABILITY, TO COMMIT OR ATTEMPT TO COMMIT HOMICIDE OR A SEXUALLY
23 VIOLENT OFFENSE AS DEFINED IN SECTION 36-3701 OR TO CAUSE OR ATTEMPT TO
24 CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

25 ~~2.~~ 3. "Incompetent to stand trial" means that as a result of a
26 mental illness, defect or disability a defendant is unable to understand
27 the nature and object of the proceeding or to assist in the defendant's
28 defense. In the case of a person under eighteen years of age when the
29 issue of competency is raised, incompetent to stand trial also means a
30 person who does not have sufficient present ability to consult with the
31 person's lawyer with a reasonable degree of rational understanding or who
32 does not have a rational and factual understanding of the proceedings

1 against the person. The presence of a mental illness, defect or disability
2 alone is not grounds for finding a defendant incompetent to stand trial.

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

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

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

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

12 ~~4.~~ 5. "Mental illness, defect or disability" means a psychiatric or
13 neurological disorder that is evidenced by behavioral or emotional
14 symptoms, including congenital mental conditions, conditions resulting from
15 injury or disease and developmental disabilities as defined in section
16 36-551.

17 6. "SECURE STATE MENTAL HEALTH FACILITY" MEANS A LICENSED FACILITY
18 UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL.

19 ~~5.~~ 7. "Threat to public safety" means charged with the commission
20 of any of the following:

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

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

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

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

29 13-4508. Privilege against self-incrimination; sealed reports

30 A. The privilege against self-incrimination applies to any
31 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 based
9 on those events or transactions, except that a statement or evidence may be
10 used by any party in a hearing to determine whether the defendant is
11 eligible for court-ordered treatment pursuant to title 36, chapter 5 or is
12 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, the
20 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 eligible
25 for court-ordered treatment pursuant to title 36, chapter 5 or is a
26 sexually violent person OR IN A TRIAL TO DETERMINE WHETHER THE DEFENDANT IS
27 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

1 transferred into the custody of the state department of corrections for the
2 purposes of assessment and supervision or monitoring of the defendant by
3 that department.

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

6 6. For data gathering.

7 7. For scientific study.

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

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

13 13-4509. Expert's report

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

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

19 2. A description of the nature, content, extent and results of the
20 examination and any test conducted **AND OF ANY INSTRUMENT OR TOOL USED TO**
21 **ASSESS WHETHER THE DEFENDANT IS LIKELY TO BE DANGEROUS.**

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

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

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

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

29 2. The defendant's prognosis.

30 3. **THE NATURE OF THE MENTAL ILLNESS, DISEASE OR DEFECT THAT MAKES**
31 **THE DEFENDANT LIKELY TO BE DANGEROUS.**

1 ~~3.~~ 4. The most appropriate form and place of treatment in this
2 state, based on the defendant's therapeutic needs and potential threat to
3 public safety.

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

6 6. IF THE PROGNOSIS INCLUDES A DETERMINATION THAT THERE IS NO
7 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN
8 TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,
9 WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

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

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

17 13-4515. Duration of order; excluded time calculation; notice
18 of dismissed charge or voided order; petitions

19 A. An order or combination of orders that is issued pursuant to
20 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
21 months or the maximum possible sentence the defendant could have received
22 pursuant to section 13-702, section 13-703, section 13-704, subsection A,
23 B, C, D or E, section 13-705, section 13-706, subsection A, section 13-708,
24 subsection D or section 13-751 or any section for which a specific sentence
25 is authorized, whichever is less. In making this determination the court
26 shall not consider the sentence enhancements under section 13-703 or 13-704
27 for prior convictions.

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

31 C. The court shall notify the prosecutor, the defense attorney, the
32 medical supervisor and the treating facility if the charges against the

1 defendant are dismissed or if an order is voided by the court. No charges
2 shall be dismissed without a hearing ~~prior to~~ BEFORE the dismissal.

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

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

11 13-4517. Incompetent defendants; disposition

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

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

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

21 3. Release the defendant from custody and dismiss the charges
22 against the defendant without prejudice.

23 4. IF THE DEFENDANT IS CHARGED WITH A SERIOUS OFFENSE AS DEFINED IN
24 SECTION 13-706, ORDER A TRIAL BY JURY TO DETERMINE IF THE DEFENDANT IS
25 DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION
26 13-4519.

27 B. If the court enters an order pursuant to subsection A, paragraph
28 1, ~~or~~ 2 OR 4 of this section, the court may also order an assessment of the
29 defendant's eligibility for private insurance or public benefits that may
30 be applied to the expenses of the defendant's medically necessary
31 maintenance and treatment, including services pursuant to title 36, chapter
32 29, state-only behavioral health services, title xviii services and

1 medicare part D prescription drug benefits, supplemental security income
2 and supplemental security disability income.

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

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

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

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

20 13-4521. Dangerous and incompetent defendants; commitment
21 trial; disposition; findings; annual report

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

29 B. IF THERE HAS NOT BEEN A PREVIOUS EVALUATION TO DETERMINE WHETHER
30 THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL
31 HEALTH EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO
32 DETERMINE IF THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS. THE DEFENDANT

1 MAY RETAIN THE DEFENDANT'S OWN MENTAL HEALTH EXPERT WHO MAY EXAMINE THE
2 DEFENDANT AND PRESENT THE DEFENDANT'S OWN MENTAL HEALTH EVALUATION AT THE
3 TRIAL.

4 C. AT A TRIAL TO DETERMINE IF THE DEFENDANT IS DANGEROUS, THE STATE
5 SHALL ESTABLISH BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS DANGEROUS
6 AND THAT THE DEFENDANT COMMITTED THE ACTS THAT CONSTITUTE THE CHARGED
7 OFFENSE. IF THE JURY DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE COURT
8 SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2
9 OR 3.

10 D. IF THE JURY FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT
11 SHALL ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH
12 FACILITY LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT
13 COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS. THE DEFENDANT
14 SHALL RECEIVE EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE
15 DEFENDANT EITHER COMPETENT OR NONDANGEROUS.

16 E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:

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

20 2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO
21 THE CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE
22 FOLLOWING OCCURS:

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

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

25 F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS
26 COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE DEFENDANT
27 FROM TREATMENT OR THE TIME TO COMMENCE A CHARGE PURSUANT TO SECTION 13-107
28 HAS EXPIRED, WHICHEVER OCCURS FIRST. FOR THE PURPOSE OF CALCULATING THE
29 TIME UNDER SECTION 13-107 NO TIME IS TOLLED. THE COURT HAS CONTINUING
30 JURISDICTION OVER THE PERSON PURSUANT TO TITLE 36, CHAPTER 40.

1 G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS
2 SECTION, THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
3 ADMINISTRATION SHALL DETERMINE THE EXTENT TO WHICH THE DEFENDANT IS
4 RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR PUBLIC BENEFITS THAT MAY BE
5 APPLIED TO THE EXPENSES OF THE DEFENDANT'S MAINTENANCE AND TREATMENT THAT
6 ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA
7 HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND REGIONAL BEHAVIORAL HEALTH
8 CARE AUTHORITY MONIES. THE ADMINISTRATION MAY ACCEPT THESE MONIES WITHOUT
9 A COURT ORDER. THE ADMINISTRATION IS RESPONSIBLE FOR ALL REMAINING COSTS
10 ASSOCIATED WITH THE COMMITMENT.

11 H. FINDINGS BY THE COURT MADE PURSUANT TO THIS SECTION ARE
12 INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER TITLE 36,
13 CHAPTER 40.

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

20 J. THE COURT SHALL ANNUALLY REPORT THE FOLLOWING INFORMATION FOR THE
21 PREVIOUS YEAR TO THE ARIZONA CRIMINAL JUSTICE COMMISSION:

22 1. THE NUMBER OF COURT ORDERS FOR A JURY TRIAL PURSUANT TO SECTION
23 13-4517, SUBSECTION A, PARAGRAPH 4.

24 2. THE NUMBER OF DEFENDANTS WHO ARE COMMITTED AFTER A JURY TRIAL
25 PURSUANT TO THIS SECTION.

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

28 4. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE DETERMINED TO NOT BE
29 DANGEROUS AND WHO ARE DISCHARGED.

1 Sec. 8. Title 36, Arizona Revised Statutes, is amended by adding
2 chapter 40, to read:

3 CHAPTER 40

4 DANGEROUS AND INCOMPETENT PERSONS

5 ARTICLE 1. GENERAL PROVISIONS

6 36-4001. Definitions

7 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 1. "COMPETENT PROFESSIONAL" MEANS A PERSON WHO IS:

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

12 (b) APPROVED BY THE SUPERIOR COURT AS MEETING COURT APPROVED
13 GUIDELINES.

14 2. "COMMITTED DEFENDANT" MEANS A PERSON WHO HAS BEEN DETERMINED TO
15 BE INCOMPETENT AND NONRESTORABLE AND DANGEROUS PURSUANT TO TITLE 13,
16 CHAPTER 41.

17 3. "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT-ORDERED TREATMENT IN A
18 SETTING THAT IS LESS RESTRICTIVE THAN TOTAL CONFINEMENT AND THAT IS
19 CONDUCTED IN A SETTING APPROVED BY THE SUPERINTENDENT OF THE STATE
20 HOSPITAL.

21 4. "MENTAL ILLNESS, DEFECT OR DISABILITY" MEANS A PSYCHIATRIC OR
22 NEUROLOGICAL DISORDER THAT IS EVIDENCED BY BEHAVIORAL OR EMOTIONAL
23 SYMPTOMS, INCLUDING A CONGENITAL MENTAL CONDITION, A CONDITION RESULTING
24 FROM INJURY OR DISEASE OR A DEVELOPMENTAL DISABILITY AS DEFINED IN SECTION
25 36-551.

26 5. "STATE HOSPITAL" MEANS THE ARIZONA STATE HOSPITAL.

27 6. "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF THE STATE HOSPITAL.

28 36-4002. Biannual examination of committed persons; report;
29 records access; attorney withdrawal

30 A. THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL OF
31 THE STATE HOSPITAL OR A LICENSED FACILITY UNDER THE SUPERVISION OF THE
32 STATE HOSPITAL SHALL BIANNUALLY EXAMINE EACH PERSON WHO IS COMMITTED

1 PURSUANT TO SECTION 13-4519. THE PERSON WHO CONDUCTS THE BIENNIAL
2 EXAMINATION SHALL SUBMIT THE EXAMINATION REPORT TO THE COURT, THE COMMITTED
3 DEFENDANT AND ANY ATTORNEY OF RECORD FOR THE COMMITTED DEFENDANT IN
4 CONNECTION WITH THE COMMITTED DEFENDANT'S COMMITMENT. THE BIENNIAL REPORT
5 SHALL STATE THE TREATMENT AND EDUCATION THAT THE COMMITTED DEFENDANT HAS
6 RECEIVED, A PROGNOSIS FOR THE COMMITTED DEFENDANT'S RESTORATION TO
7 COMPETENCY AND WHETHER THE COMMITTED DEFENDANT REMAINS DANGEROUS.

8 B. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL
9 SUBMITS A REPORT INDICATING THAT THE COMMITTED DEFENDANT IS COMPETENT TO
10 STAND TRIAL OR IS NO LONGER DANGEROUS, THE COURT SHALL HOLD A HEARING TO
11 DETERMINE WHETHER THE COMMITTED DEFENDANT IS COMPETENT OR IS NO LONGER
12 DANGEROUS.

13 C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL
14 SUBMITS A REPORT THAT THE COMMITTED DEFENDANT IS NO LONGER DANGEROUS IN
15 WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE COMMITTED DEFENDANT IS
16 TAKING, THE REPORT SHALL STATE WHETHER THE COMMITTED DEFENDANT WILL
17 CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS RESTRICTIVE
18 ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A LESS
19 RESTRICTIVE ALTERNATIVE.

20 D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER
21 RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF
22 EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE
23 COMMITTED DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING
24 AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE
25 COMMITTED DEFENDANT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY THE
26 PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING
27 BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S MENTAL
28 ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED
29 DEFENDANT REMAINS DANGEROUS OR THAT THE COMMITTED DEFENDANT IS COMPETENT TO
30 STAND TRIAL.

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

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

13 36-4003. Disposition

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

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

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

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

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

26 (c) THE COMMITTED DEFENDANT IS DANGEROUS, THE COMMITTED DEFENDANT
27 SHALL REMAIN COMMITTED FOR EDUCATION, CARE, SUPERVISION AND TREATMENT TO
28 RENDER THE COMMITTED DEFENDANT COMPETENT OR NONDANGEROUS.

29 36-4004. Petition for conditional release; procedures

30 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF
31 THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION DETERMINES
32 THAT THE COMMITTED DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO

1 CHANGED THAT THE COMMITTED DEFENDANT IS NO LONGER DANGEROUS IF
2 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE
3 SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED DEFENDANT TO PETITION
4 THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE. THE
5 COMMITTED DEFENDANT SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY
6 FOR THE STATE. THE COURT SHALL HOLD A HEARING ON THE PETITION FOR
7 CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHIN FORTY-FIVE
8 DAYS AFTER RECEIVING THE PETITION. THE COURT MAY CONTINUE THE HEARING ON
9 THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN
10 MOTION IF THE COMMITTED DEFENDANT WILL NOT BE SUBSTANTIALLY PREJUDICED.
11 THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY
12 REQUEST THAT THE COMMITTED DEFENDANT BE EXAMINED BY A COMPETENT
13 PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY.

14 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND
15 CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S MENTAL ILLNESS, DEFECT
16 OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED DEFENDANT REMAINS
17 DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR
18 CONDITIONALLY DISCHARGED.

19 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED DEFENDANT FROM
20 ANNUALLY PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS
21 RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE
22 STATE HOSPITAL OR THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT
23 SYSTEM ADMINISTRATION. THE DIRECTOR SHALL PROVIDE AN ANNUAL WRITTEN NOTICE
24 TO THE COMMITTED DEFENDANT OF THE COMMITTED DEFENDANT'S RIGHT TO PETITION
25 THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT
26 THE APPROVAL OF THE SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A
27 WAIVER OF RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE
28 COURT WITH THE ANNUAL EXAMINATION REPORT.

29 D. THE COMMITTED DEFENDANT MAY BE PRESENT AT THE HEARING. THE
30 PROSECUTING AGENCY MAY REQUEST THAT THE COMMITTED DEFENDANT BE EXAMINED BY
31 A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE COMMITTED
32 DEFENDANT MAY RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT COMMITTED

1 DEFENDANT, MAY APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE
2 STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
3 COMMITTED DEFENDANT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED
4 AND THAT THE COMMITTED DEFENDANT REMAINS DANGEROUS IF CONDITIONALLY
5 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE DOES NOT MEET ITS
6 BURDEN OF PROOF, THE COMMITTED DEFENDANT SHALL BE DISCHARGED FROM
7 TREATMENT.

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

12 36-4005. Conditional release to a less restrictive
13 alternative; conditions; reports; review

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

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

1 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE COMMITTED
2 DEFENDANT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE COMMITTED
3 DEFENDANT'S COMPLIANCE WITH TREATMENT AND TO PROTECT THE COMMUNITY. IF THE
4 COURT FINDS THAT CONDITIONS DO NOT EXIST THAT WILL BOTH ENSURE THE
5 COMMITTED DEFENDANT'S COMPLIANCE WITH TREATMENT AND PROTECT THE COMMUNITY,
6 THE COURT SHALL REMAND THE COMMITTED DEFENDANT TO THE CUSTODY OF THE
7 SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION OR TREATMENT IN
8 A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE SUPERINTENDENT.

9 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR
10 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND
11 CONDITIONS OF A COMMITTED DEFENDANT'S PLACEMENT IN A LESS RESTRICTIVE
12 ALTERNATIVE IS NOT THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING
13 TO PROVIDE THE TREATMENT.

14 E. BEFORE THE COURT AUTHORIZES A COMMITTED DEFENDANT'S CONDITIONAL
15 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL IMPOSE ANY
16 CONDITIONS ON THE COMMITTED DEFENDANT THAT THE COURT DETERMINES ARE
17 NECESSARY TO ENSURE THE SAFETY OF THE COMMUNITY. THE CONDITIONS SHALL
18 INCLUDE THAT BEFORE BEING RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, A
19 COMMITTED DEFENDANT MUST SUBMIT TO NINETY DAYS OF INPATIENT EVALUATION AT
20 THE STATE HOSPITAL, EXCEPT THAT IN THE SUPERINTENDENT'S DISCRETION, THE
21 DURATION OF THE EVALUATION PERIOD MAY BE LESS THAN NINETY DAYS. THE COURT
22 SHALL ORDER THE SUPERINTENDENT TO INVESTIGATE THE LESS RESTRICTIVE
23 ALTERNATIVE AND TO SUBMIT ADDITIONAL CONDITIONS TO THE COURT. THE COURT
24 SHALL GIVE A COPY OF THE CONDITIONS OF RELEASE TO THE COMMITTED DEFENDANT
25 AND TO ANY DESIGNATED SERVICE PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY
26 OF THE FOLLOWING:

- 27 1. SPECIFYING A RESIDENCE.
- 28 2. REQUIRING COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY
29 TESTING OR MONITORING REQUIRED.
- 30 3. PROHIBITING ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER
31 PERSONS AND PROHIBITING ASSOCIATING WITH OTHER PERSONS OR TYPES OF PERSONS.
- 32 4. PROHIBITING THE USE OF ALCOHOL AND OTHER DRUGS.

1 5. REQUIRING SUPERVISION BY THE ARIZONA HEALTH CARE COST CONTAINMENT
2 SYSTEM ADMINISTRATION.

3 6. REQUIRING THAT THE COMMITTED DEFENDANT REMAIN IN THIS STATE
4 UNLESS THE COMMITTED DEFENDANT RECEIVES PRIOR AUTHORIZATION TO LEAVE THIS
5 STATE FROM THE COURT.

6 7. REQUIRING COMPLIANCE WITH REQUIRED SUPERVISION, MONITORING OR
7 REPORTING.

8 8. COMPLYING WITH OTHER CONDITIONS THAT THE COURT OR THE
9 SUPERINTENDENT DETERMINES ARE IN THE BEST INTEREST OF THE COMMITTED
10 DEFENDANT OR OTHERS.

11 F. FOLLOWING A DETERMINATION THAT A COMMITTED DEFENDANT'S RELEASE TO
12 A LESS RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE
13 RECOMMENDATION REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE
14 SUPERINTENDENT, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A LESS
15 RESTRICTIVE ALTERNATIVE THAT THE COMMITTED DEFENDANT PARTICIPATE IN
16 OUTPATIENT TREATMENT. THE OUTPATIENT SUPERVISION AND TREATMENT MAY INCLUDE
17 MONITORING A COMMITTED DEFENDANT BY USE OF AN ELECTRONIC BRACELET. THE
18 TREATMENT SHALL CONTINUE UNTIL THE COURT ORDERS A CHANGE IN THE COMMITTED
19 DEFENDANT'S TREATMENT REQUIREMENTS OR THE COMMITTED DEFENDANT IS DISCHARGED
20 PURSUANT TO SECTION 36-4009.

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

- 25 1. THE COURT.
- 26 2. THE FACILITY FROM WHICH THE COMMITTED INCOMPETENT WAS RELEASED.
- 27 3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE COMMITTED DEFENDANT
28 WAS FOUND TO BE A COMMITTED DEFENDANT OR TO THE ATTORNEY GENERAL.

29 H. THE COURT SHALL REVIEW THE CASE OF EACH COMMITTED DEFENDANT WHO
30 IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE YEAR
31 AFTER THE COMMITTED DEFENDANT'S RELEASE AND THEREAFTER ON MOTION OF EITHER
32 PARTY OR THE SUPERINTENDENT OR ON THE COURT'S OWN MOTION UNTIL THE

1 COMMITTED DEFENDANT IS DISCHARGED. AT A CASE REVIEW, THE COURT SHALL
2 DETERMINE ONLY IF THE COMMITTED DEFENDANT SHALL CONTINUE TO BE
3 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING ITS
4 DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE
5 SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE
6 OPINIONS OF THE SUPERINTENDENT AND ANY OTHER COMPETENT PROFESSIONAL.

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

12 36-4006. Conditional release to a less restrictive
13 alternative; findings

14 BEFORE THE COURT ORDERS THAT A COMMITTED DEFENDANT BE CONDITIONALLY
15 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL
16 OF THE FOLLOWING APPLY:

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

19 2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE
20 COMMITTED DEFENDANT, AGREES TO ASSUME RESPONSIBILITY FOR THE COMMITTED
21 DEFENDANT'S TREATMENT, WILL REPORT ON THE COMMITTED DEFENDANT'S PROGRESS TO
22 THE COURT ON A REGULAR BASIS AND WILL REPORT ANY VIOLATIONS AS PRESCRIBED
23 IN PARAGRAPHS 4 AND 5 OF THIS SECTION IMMEDIATELY TO THE COURT, THE
24 ATTORNEY FOR THE STATE AND THE SUPERINTENDENT.

25 3. THE COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A LESS
26 RESTRICTIVE ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE SUFFICIENTLY
27 SECURE TO PROTECT THE COMMUNITY AND THE PERSON OR AGENCY THAT IS PROVIDING
28 THE HOUSING TO THE CONDITIONALLY RELEASED COMMITTED DEFENDANT AGREES IN
29 WRITING TO THE FOLLOWING CONDITIONS:

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

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

1 (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE
2 CONDITIONALLY RELEASED COMMITTED DEFENDANT FROM THE HOUSING ARRANGEMENT TO
3 WHICH THE COMMITTED DEFENDANT HAS BEEN ASSIGNED.

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

6 5. THE COMMITTED DEFENDANT WILL COMPLY WITH THE SUPERVISION
7 REQUIREMENTS THAT ARE IMPOSED BY THE ARIZONA HEALTH CARE COST CONTAINMENT
8 SYSTEM ADMINISTRATION.

9 36-4007. Detention and commitment requirements; definition

10 A. A COMMITTED DEFENDANT DOES NOT FORFEIT ANY LEGAL RIGHT AND MAY
11 NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR
12 ORDERS MADE PURSUANT TO THIS ARTICLE EXCEPT AS SPECIFICALLY PROVIDED IN
13 THIS ARTICLE.

14 B. A COMMITTED DEFENDANT SHALL RECEIVE CARE, SUPERVISION OR
15 TREATMENT. THE SUPERINTENDENT SHALL KEEP RECORDS DETAILING ALL MEDICAL,
16 EXPERT AND PROFESSIONAL CARE AND TREATMENT THAT A COMMITTED DEFENDANT
17 RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS THAT
18 ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS AND REPORTS SHALL BE MADE
19 AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

- 20 1. THE COMMITTED DEFENDANT.
- 21 2. THE COMMITTED DEFENDANT'S ATTORNEY.
- 22 3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.
- 23 4. THE COURT.
- 24 5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL WHO DEMONSTRATES A
25 NEED FOR ACCESS TO THE RECORDS OR REPORTS.
- 26 6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR ASSOCIATED
27 WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE FOR THE
28 CARE, CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED DEFENDANT.

29 C. AT THE TIME A COMMITTED DEFENDANT IS DETAINED OR TRANSFERRED INTO
30 A LICENSED FACILITY, THE PERSON IN CHARGE OF THE FACILITY OR THE PERSON'S
31 DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND SAFEGUARD THE
32 PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED COMMITTED DEFENDANT. THE

1 STAFF MEMBER WHO MAKES AN INVENTORY OF THE COMMITTED DEFENDANT'S PERSONAL
2 PROPERTY SHALL GIVE A SIGNED COPY OF THAT INVENTORY TO THE COMMITTED
3 DEFENDANT. THE FACILITY SHALL ALLOW A RESPONSIBLE RELATIVE TO INSPECT THE
4 PROPERTY, SUBJECT TO ANY LIMITS THAT THE COMMITTED DEFENDANT SPECIFICALLY
5 IMPOSES. THE FACILITY MAY NOT DISCLOSE THE CONTENTS OF THE INVENTORY TO
6 ANY OTHER PERSON WITHOUT THE CONSENT OF THE COMMITTED DEFENDANT OR A COURT
7 ORDER.

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

14 E. A COMMITTED DEFENDANT WHO IS INDIGENT MAY NOT BE CONDITIONALLY
15 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE
16 CLOTHING. WHEN A COMMITTED DEFENDANT IS CONDITIONALLY RELEASED TO A LESS
17 RESTRICTIVE ALTERNATIVE OR DISCHARGED, THE SUPERINTENDENT SHALL FURNISH THE
18 COMMITTED DEFENDANT WITH AN AMOUNT OF MONEY IN CONFORMANCE WITH SECTION
19 31-228.

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

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

26 A. IF THE ATTORNEY FOR THE STATE OR THE COURT BELIEVES THAT A
27 COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
28 ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF RELEASE OR IS
29 IN NEED OF ADDITIONAL CARE AND TREATMENT, THE DESIGNATED SERVICE PROVIDER
30 OR THE ATTORNEY FOR THE STATE MAY PETITION THE COURT FOR, OR THE COURT ON
31 ITS OWN MOTION MAY SCHEDULE, A HEARING FOR THE PURPOSE OF REVOKING OR
32 MODIFYING THE TERMS AND CONDITIONS OF THE COMMITTED DEFENDANT'S CONDITIONAL

1 RELEASE. THE HEARING SHALL BE HELD WITHIN TEN DAYS AFTER THE PETITION IS
2 FILED.

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

20 C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE COMMITTED
21 DEFENDANT'S DETENTION, THE COURT SHALL SCHEDULE A HEARING. AT THE HEARING,
22 THE COURT SHALL DETERMINE IF THE STATE HAS PROVED BY A PREPONDERANCE OF THE
23 EVIDENCE THAT THE COMMITTED DEFENDANT WHO IS CONDITIONALLY RELEASED TO A
24 LESS RESTRICTIVE ALTERNATIVE DID NOT COMPLY WITH THE TERMS AND CONDITIONS
25 OF RELEASE OR IS IN NEED OF ADDITIONAL CARE OR TREATMENT, IF THE
26 CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE COMMUNITY IS NO
27 LONGER SAFE, IF THE COMMITTED DEFENDANT SHOULD CONTINUE ON CONDITIONAL
28 RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE CONDITIONAL RELEASE
29 SHOULD BE REVOKED AND THE COMMITTED DEFENDANT SHOULD BE COMMITTED TO TOTAL
30 CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE PROVISIONS OF THIS
31 ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE COURT FINDS THAT THE
32 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 WITHIN
10 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 PARTY
13 AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED DEFENDANT
14 WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL
15 REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE COMMITTED
16 DEFENDANT BE EXAMINED BY A COMPETENT PROFESSIONAL WHO IS SELECTED BY THE
17 PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING
18 BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED DEFENDANT'S MENTAL
19 ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED
20 DEFENDANT REMAINS DANGEROUS. IF THE STATE DOES NOT MEET ITS BURDEN OF
21 PROOF, THE COMMITTED DEFENDANT SHALL BE DISCHARGED FROM TREATMENT.

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

27 D. THIS SECTION DOES NOT PROHIBIT THE COMMITTED DEFENDANT FROM
28 ANNUALLY PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
29 SUPERINTENDENT OR THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT
30 SYSTEM ADMINISTRATION. THE DIRECTOR OF THE ARIZONA HEALTH CARE COST
31 CONTAINMENT SYSTEM ADMINISTRATION SHALL GIVE ANNUAL WRITTEN NOTICE TO THE
32 COMMITTED DEFENDANT OF THE COMMITTED DEFENDANT'S RIGHT TO PETITION THE

1 COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OR DIRECTOR
2 AND PROVIDE A COPY OF THAT WRITTEN NOTICE TO ANY ATTORNEY WHO REPRESENTS
3 THE COMMITTED DEFENDANT IN CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.
4 THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR SHALL SUBMIT THE
5 NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

6 E. THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL SHALL ANNUALLY
7 REPORT THE FOLLOWING INFORMATION FOR THE PREVIOUS YEAR TO THE ARIZONA
8 CRIMINAL JUSTICE COMMISSION:

9 1. THE NUMBER OF COMMITTED DEFENDANTS WHO ARE UNDER THE JURISDICTION
10 OF THE ARIZONA STATE HOSPITAL BECAUSE THE INDIVIDUAL IS DANGEROUS,
11 INCOMPETENT AND NONRESTORABLE.

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

14 36-4010. Place for proceedings; transportation; immunity

15 A. A COMMITTED DEFENDANT MAY NOT BE TRANSPORTED FROM A LICENSED
16 FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT, EXCEPT THAT A
17 COMMITTED DEFENDANT MAY BE TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING
18 REASONS:

19 1. A HEARING ON A BIENNIAL EXAMINATION.

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

22 3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION
23 36-4009.

24 4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A COMMITTED
25 DEFENDANT IS NECESSARY.

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

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

31 C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING
32 FROM BEING HELD ON THE GROUNDS OF THE STATE HOSPITAL OR FROM USING A

1 TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT
2 SHALL ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS
3 ARTICLE. THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY
4 INCLUDE PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF
5 THE ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN
6 INTERACTIVE AUDIOVISUAL DEVICE.

7 D. THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION IS
8 RESPONSIBLE FOR TRANSPORTING A COMMITTED DEFENDANT TO AND FROM A MEDICAL
9 FACILITY. THE ADMINISTRATION SHALL DETERMINE THE APPROPRIATE MODE OF
10 TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT FOR THE TRANSPORTATION
11 NEEDS OF THE COMMITTED DEFENDANT. IN DETERMINING THE APPROPRIATE MODE OF
12 TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE ADMINISTRATION
13 SHALL CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING PERSONNEL AND THE
14 DETAINED OR COMMITTED DEFENDANT.

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

18 36-4011. Findings

19 A FINDING MADE BY THE COURT PURSUANT TO THIS ARTICLE IS INADMISSIBLE
20 IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER THIS ARTICLE OR UNDER TITLE
21 13, CHAPTER 41.

22 Sec. 9. Retroactivity

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

24 Amend title to conform

NANCY BARTO

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