

House Engrossed Senate Bill  
state hospital; governing board; governance

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

# SENATE BILL 1710

AN ACT

AMENDING SECTIONS 36-533 AND 36-539, ARIZONA REVISED STATUTES; RELATING TO  
THE ARIZONA STATE HOSPITAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-533, Arizona Revised Statutes, is amended to  
3 read:

4 36-533. Petition for treatment

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

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

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

10 3. That the patient is unwilling to accept or incapable of  
11 accepting treatment voluntarily.

12 B. The petition shall be accompanied by the affidavits of the two  
13 physicians who participated in the evaluation and by the affidavit of the  
14 applicant for the evaluation, if any. IN A COUNTY WITH A POPULATION OF  
15 LESS THAN FIVE HUNDRED THOUSAND PERSONS, THE PETITION MAY BE ACCOMPANIED  
16 BY THE AFFIDAVITS OF ONE PHYSICIAN AND EITHER ONE PHYSICIAN ASSISTANT WHO  
17 IS EXPERIENCED IN PSYCHIATRIC MATTERS OR ONE PSYCHIATRIC AND MENTAL HEALTH  
18 NURSE PRACTITIONER WHO CONDUCTED AN INDEPENDENT EVALUATION AND BY THE  
19 AFFIDAVIT OF THE APPLICANT FOR THE EVALUATION, IF ANY. The affidavits of  
20 the physicians OR OTHER HEALTH PROFESSIONALS shall describe in detail the  
21 behavior that indicates that the person, as a result of mental disorder,  
22 is a danger to self or to others or has a persistent or acute disability  
23 or a grave disability and shall be based on the physician's OR OTHER  
24 HEALTH PROFESSIONAL'S observations of the patient and ~~the physician's~~  
25 study of information about the patient. A summary of the facts that  
26 support the allegations of the petition shall be included. The affidavit  
27 shall also include any of the results of the physical examination of the  
28 patient if relevant to the patient's psychiatric condition.

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

34 D. The petition shall also include:

35 1. A statement that in the opinion of the petitioner the person  
36 does or does not require guardianship or conservatorship, or both, under  
37 title 14 and the reasons on which the statement is based.

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

41 3. A statement that in the opinion of the petitioner the person  
42 does or does not require temporary guardianship or conservatorship, or  
43 both, and the reasons on which the statement is based.

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

4 5. If the person has an existing guardian, a statement identifying  
5 the existing guardian and a request that the court consider imposing  
6 additional duties on the existing guardian pursuant to section 14-5312.01.

7 E. If the petition contains a request for court action pursuant to  
8 subsection D of this section, a copy of the petition shall be mailed to  
9 any person or agency that is nominated as guardian or conservator or the  
10 person who is identified as an existing guardian.

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

13 G. On the filing of a petition for court-ordered treatment, if the  
14 patient is not detained in an evaluation agency when the petition is  
15 filed, the petition shall contain a statement of any facts and  
16 circumstances that lead the petitioner to believe that the proposed  
17 patient may be safely transported to the evaluation agency pursuant to  
18 section 36-535 by an authorized transporter, if available in the  
19 jurisdiction, without the assistance of a peace officer.

20 Sec. 2. Section 36-539, Arizona Revised Statutes, is amended to  
21 read:

22 36-539. Conduct of hearing; record; transcript

23 A. The medical director of the evaluation agency shall issue  
24 instructions to the physicians or the psychiatric and mental health nurse  
25 practitioner of the evaluation agency who is treating the proposed patient  
26 to take all reasonable precautions to ensure that at the time of the  
27 hearing the proposed patient ~~shall~~ IS not ~~be~~ so under the influence of or  
28 DOES NOT so suffer the effects of drugs, medication or other treatment as  
29 to be hampered in preparing for or participating in the hearing. If the  
30 proposed patient is being treated as an inpatient by the evaluation  
31 agency, the court at the time of the hearing shall be presented a record  
32 of all drugs, medication or other treatment that the person has received  
33 during the seventy-two hours immediately before the hearing.

34 B. The patient and the patient's attorney shall be present at all  
35 hearings, and the patient's attorney may subpoena and cross-examine  
36 witnesses and present evidence. The patient may choose to not attend the  
37 hearing or the patient's attorney may waive the patient's presence. The  
38 evidence presented by the petitioner or the patient shall include the  
39 testimony of two or more witnesses acquainted with the patient at the time  
40 of the alleged mental disorder, which may be satisfied by a statement  
41 agreed on by the parties, and testimony of the two physicians OR OTHER  
42 HEALTH PROFESSIONALS who participated in the evaluation of the patient  
43 PURSUANT TO SECTION 36-533, which may be satisfied by stipulating to the  
44 admission of the ~~evaluating physicians'~~ affidavits as required pursuant to  
45 section 36-533, subsection B. The EVALUATING physicians OR OTHER HEALTH

1 PROFESSIONALS shall testify as to their personal observations of the  
2 patient. They shall also testify as to their opinions concerning whether  
3 the patient is, as a result of mental disorder, a danger to self or to  
4 others or has a persistent or acute disability or a grave disability and  
5 as to whether the patient requires treatment. Such testimony shall state  
6 specifically the nature and extent of the danger to self or to others, the  
7 persistent or acute disability or the grave disability. If the patient  
8 has a grave disability, the EVALUATING physicians OR OTHER HEALTH  
9 PROFESSIONALS shall testify concerning the need for guardianship or  
10 conservatorship, or both, and whether or not the need is for immediate  
11 appointment. Other persons who have participated in the evaluation of the  
12 patient or, if further treatment was requested by a mental health  
13 treatment agency, persons of that agency who are directly involved in the  
14 care of the patient shall testify at the request of the court or of the  
15 patient's attorney. Witnesses shall testify as to placement alternatives  
16 appropriate and available for the care and treatment of the patient. The  
17 clinical record of the patient for the current admission shall be  
18 available and may be presented in full or in part as evidence at the  
19 request of the court, the county attorney or the patient's attorney.

20 C. If the patient, for medical or psychiatric reasons, is unable to  
21 be present at the hearing and cannot appear by other reasonably feasible  
22 means, the court shall require clear and convincing evidence that the  
23 patient is unable to be present at the hearing and on such a finding may  
24 proceed with the hearing in the patient's absence.

25 D. The requirements of subsection B of this section are in addition  
26 to all rules of evidence and the Arizona rules of civil procedure, not  
27 inconsistent with subsection B of this section.

28 E. A verbatim record of all proceedings under this section shall be  
29 made by stenographic means by a court reporter if a written request for a  
30 court reporter is made by any party to the proceedings at least  
31 twenty-four hours in advance of such proceedings. If stenographic means  
32 are not requested in the manner provided by this subsection, electronic  
33 means shall be directed by the presiding judge. The stenographic notes or  
34 electronic tape shall be retained as provided by statute.

35 F. A patient who has been ordered to undergo treatment may request  
36 a certified transcript of the hearing. To obtain a copy, the patient  
37 shall pay for a transcript or shall file an affidavit that the patient is  
38 without means to pay for a transcript. If the affidavit is found true by  
39 the court, the expense of the transcript is a charge on the county in  
40 which the proceedings were held, or, if an intergovernmental agreement by  
41 the counties has required evaluation in a county other than that of the  
42 patient's residence, such expense may be charged to the county of the  
43 patient's residence or in which the patient was found before evaluation.