

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1710

(Reference to Senate engrossed bill)

1 Page 31, between lines 19 and 20, insert:

2 "Sec. 26. Section 36-407.03, Arizona Revised Statutes, is amended to
3 read:

4 36-407.03. Hospitals; visitation policy; exceptions

5 A. A hospital shall develop a visitation policy that allows a
6 patient to have daily in-person visitation by a designated visitor of the
7 patient's choice, which may include the patient's spouse or one parent or
8 child of the patient. A hospital's ~~policies~~ POLICY regarding visitation
9 shall ensure that the patient and the patient's visitors may have physical
10 contact, especially during end-of-life visitation, unless a physician
11 determines based on the patient's condition that the visitation does not
12 meet health and safety standards or is reasonably likely to harm the
13 patient. If a physician denies visitation with a patient pursuant to this
14 section, the patient or the patient's representative, which may include the
15 patient's spouse, parent or child, may request a meeting, as provided by
16 the visitation policy, with the physician and the hospital's chief medical
17 officer, chief of staff or chief executive officer to receive a review and
18 explanation within twenty-four hours ~~of~~ AFTER the physician's decision to
19 deny visitation. If the designated visitor's request to visit is denied or
20 not resolved at the meeting, the visitor may file a complaint with the
21 department. All visitors must comply with reasonable health and safety
22 precautions imposed by the hospital in connection with the visit.

1 B. This section does not apply to the Arizona state hospital, ~~OR~~
2 any other licensed facility under the jurisdiction of the ~~superintendent~~
3 **DIRECTOR** of the Arizona state hospital or chapter 5 of this title.

4 Sec. 27. Section 36-420.03, Arizona Revised Statutes, is amended to
5 read:

6 36-420.03. Health care employers; workplace violence
7 prevention plan; investigation; reporting;
8 nondiscrimination; definitions

9 A. Not later than July 1, 2023, **EACH** health care ~~employers~~ **EMPLOYER**
10 shall develop, implement and maintain a written workplace violence
11 prevention plan that does all of the following:

12 1. Includes components that are specifically tailored to the
13 conditions and hazards of the health care employer's sites and
14 patient-specific risk factors.

15 2. Identifies the individual who is responsible for implementing and
16 overseeing the plan.

17 3. Requires the conspicuous posting of signs in public areas
18 throughout the health care employer's sites, including all emergency
19 facilities, that are at least twelve inches by twelve inches in size and
20 that provide notice that assault on a health care worker may be prosecuted
21 as a felony.

22 4. Includes reporting, incident response and postincident
23 investigation procedures, including procedures:

24 (a) For health care workers to report workplace violence risks,
25 hazards and incidents.

26 (b) For health care employers to respond to reports of workplace
27 violence.

28 (c) For health care employers to perform a postincident
29 investigation and debriefing of all reported incidents of workplace
30 violence with the participation of health care workers.

1 5. Requires ~~THE~~ health care ~~employers~~ EMPLOYER to provide
2 information to health care workers about a HEALTH CARE worker's ability to
3 report any assault to law enforcement and, on request, to assist the HEALTH
4 CARE worker in reporting the assault.

5 B. Each health care employer shall make its workplace violence
6 prevention plan available at all times to all health care workers and
7 contractors who provide patient care.

8 C. As soon as practicable after a workplace violence incident is
9 reported to the health care employer, the health care employer shall
10 investigate the incident and shall do all of the following:

11 1. Review the circumstances of the incident.

12 2. Solicit input from involved health care workers and supervisors
13 about the cause of the incident and whether further corrective measures
14 could have prevented the incident.

15 3. Document the findings, recommendations and corrective measures
16 taken, if applicable, for each investigation conducted.

17 D. Each health care employer shall provide training and education to
18 its health care workers who may be exposed to workplace violence hazards
19 and risks.

20 E. Each health care employer shall maintain:

21 1. Records that relate to each of the HEALTH CARE employer's
22 workplace violence prevention plans, including identifying, evaluating and
23 correcting hazards and risks and training procedures.

24 2. An incident log for recording all reported workplace violence
25 incidents and records of all incident investigations. The log shall
26 include the date, time and location of the incident, the name of every
27 person who is involved in the incident, a description of the incident and
28 the nature and extent of injuries to health care workers.

29 F. The health care employer shall annually evaluate the
30 implementation and effectiveness of the workplace violence prevention plan,
31 including a review of the violent incident log and compliance with any
32 training. The annual evaluation shall be documented.

1 G. The health care employer shall adopt a policy that prohibits any
2 person from discriminating or retaliating against any health care worker
3 for either:

4 1. Reporting to or seeking assistance or intervention from the
5 HEALTH CARE employer, law enforcement, local emergency services or a
6 government agency or FOR participating in an incident investigation.

7 2. Reasonably acting in self defense or defense of others in
8 response to an imminent threat of physical harm.

9 H. A health care employer may not discriminate or retaliate against
10 a health care worker for either:

11 1. Reporting to or seeking assistance or intervention from the
12 HEALTH CARE employer, law enforcement, local emergency services or a
13 government agency or for exercising any other rights under this section.

14 2. Reasonably acting in self defense or defense of others in
15 response to an imminent threat of physical harm.

16 I. This section does not affect the legal obligations of a health
17 care employer and health care worker pursuant to the protection of
18 patients' rights.

19 J. This section does not apply to the Arizona state hospital or any
20 other licensed facility that is under the jurisdiction of the
21 ~~superintendent~~ DIRECTOR of the Arizona state hospital.

22 K. For the purposes of this section:

23 1. "Health care employer" means a health care institution that is
24 licensed pursuant to this title as a hospital, freestanding emergency
25 services facility or urgent care facility and that has more than fifty
26 employees.

27 2. "Health care worker" means an employee of a health care employer
28 or a person who has a contract with a health care employer to provide
29 health care or related services."

30 Renumber to conform

1 Page 37, between lines 12 and 13, insert:

2 "Sec. 30. Section 36-503.03, Arizona Revised Statutes, is amended to
3 read:

4 36-503.03. Civil commitment treatment population; cap

5 The Arizona state hospital shall collect census data for adult civil
6 commitment treatment programs to establish maximum capacity and the
7 allocation formula required by section 36-206, subsection D. The Arizona
8 state hospital ~~or the department of health services is~~ AND THE STATE
9 HOSPITAL GOVERNING BOARD ARE not required to provide civil commitment
10 treatment that exceeds the funded capacity. If the Arizona state hospital
11 reaches its funded capacity in civil commitment treatment programs, the
12 ~~superintendent~~ DIRECTOR of the state hospital shall establish a waiting
13 list for admission based on the date of the court order issued pursuant to
14 this section.

15 Sec. 31. Section 36-533, Arizona Revised Statutes, is amended to
16 read:

17 36-533. Petition for treatment

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

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

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

23 3. That the patient is unwilling to accept or incapable of accepting
24 treatment voluntarily.

25 B. The petition shall be accompanied by the affidavits of the two
26 physicians who participated in the evaluation and by the affidavit of the
27 applicant for the evaluation, if any. IN A COUNTY WITH A POPULATION OF
28 LESS THAN FIVE HUNDRED THOUSAND PERSONS, THE PETITION MAY BE ACCOMPANIED BY
29 THE AFFIDAVITS OF ONE PHYSICIAN AND EITHER ONE PHYSICIAN ASSISTANT OR ONE
30 NURSE PRACTITIONER WHO CONDUCTED AN INDEPENDENT EVALUATION AND BY THE
31 AFFIDAVIT OF THE APPLICANT FOR THE EVALUATION, IF ANY. The affidavits of
32 the physicians OR OTHER HEALTH PROFESSIONALS shall describe in detail the

1 behavior that indicates that the person, as a result of mental disorder, is
2 a danger to self or to others or has a persistent or acute disability or a
3 grave disability and shall be based on the physician's OR OTHER HEALTH
4 PROFESSIONAL'S observations of the patient and ~~the physician's~~ study of
5 information about the patient. A summary of the facts that support the
6 allegations of the petition shall be included. The affidavit shall also
7 include any of the results of the physical examination of the patient if
8 relevant to the patient's psychiatric condition.

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

14 D. The petition shall also include:

15 1. A statement that in the opinion of the petitioner the person does
16 or does not require guardianship or conservatorship, or both, under title
17 14 and the reasons on which the statement is based.

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

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

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

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

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

5 F. A copy of all petitions shall be mailed to the ~~superintendent~~
6 **DIRECTOR** of the Arizona state hospital.

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

14 Sec. 32. Section 36-539, Arizona Revised Statutes, is amended to
15 read:

16 36-539. Conduct of hearing; record; transcript

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

28 B. The patient and the patient's attorney shall be present at all
29 hearings, and the patient's attorney may subpoena and cross-examine
30 witnesses and present evidence. The patient may choose to not attend the
31 hearing or the patient's attorney may waive the patient's presence. The
32 evidence presented by the petitioner or the patient shall include the

1 testimony of two or more witnesses acquainted with the patient at the time
2 of the alleged mental disorder, which may be satisfied by a statement
3 agreed on by the parties, and testimony of the two physicians OR OTHER
4 HEALTH PROFESSIONALS who participated in the evaluation of the patient
5 PURSUANT TO SECTION 36-533, which may be satisfied by stipulating to the
6 admission of the ~~evaluating physicians~~ affidavits as required pursuant to
7 section 36-533, subsection B. The EVALUATING physicians OR OTHER HEALTH
8 PROFESSIONALS shall testify as to their personal observations of the
9 patient. They shall also testify as to their opinions concerning whether
10 the patient is, as a result of mental disorder, a danger to self or to
11 others or has a persistent or acute disability or a grave disability and as
12 to whether the patient requires treatment. Such testimony shall state
13 specifically the nature and extent of the danger to self or to others, the
14 persistent or acute disability or the grave disability. If the patient has
15 a grave disability, the EVALUATING physicians OR OTHER HEALTH PROFESSIONALS
16 shall testify concerning the need for guardianship or conservatorship, or
17 both, and whether or not the need is for immediate appointment. Other
18 persons who have participated in the evaluation of the patient or, if
19 further treatment was requested by a mental health treatment agency,
20 persons of that agency who are directly involved in the care of the patient
21 shall testify at the request of the court or of the patient's
22 attorney. Witnesses shall testify as to placement alternatives appropriate
23 and available for the care and treatment of the patient. The clinical
24 record of the patient for the current admission shall be available and may
25 be presented in full or in part as evidence at the request of the court,
26 the county attorney or the patient's attorney.

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

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

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

11 F. A patient who has been ordered to undergo treatment may request a
12 certified transcript of the hearing. To obtain a copy, the patient shall
13 pay for a transcript or shall file an affidavit that the patient is without
14 means to pay for a transcript. If the affidavit is found true by the
15 court, the expense of the transcript is a charge on the county in which the
16 proceedings were held, or, if an intergovernmental agreement by the
17 counties has required evaluation in a county other than that of the
18 patient's residence, such expense may be charged to the county of the
19 patient's residence or in which the patient was found before evaluation."

20 Renumber to conform

21 Page 37, line 35, strike "superintendent" insert "DIRECTOR"

22 Page 38, line 10, strike "superintendent" insert "DIRECTOR"

23 Page 40, between lines 22 and 23, insert:

24 "Sec. 37. Section 36-3701, Arizona Revised Statutes, is amended to
25 read:

26 36-3701. Definitions

27 In this article, unless the context otherwise requires:

28 1. "Agency" means any agency that is authorized to direct the
29 release of a person who is serving a sentence or term of confinement or who
30 is receiving treatment, including a state or federal prison, a county jail
31 and the Arizona state hospital or other mental health treatment agency.

- 1 2. "Competent professional" means a person who is:
- 2 (a) Familiar with ~~the~~ THIS state's sexually violent persons statutes
- 3 and sexual offender treatment programs available in this state.
- 4 (b) Approved by the superior court as meeting ~~court-approved~~
- 5 COURT-APPROVED guidelines.
- 6 3. "Conviction" includes a finding of guilt at any time for a
- 7 sexually violent offense or an order of the juvenile court adjudicating the
- 8 person delinquent for any sexually violent offense.
- 9 4. "Less restrictive alternative" means ~~court-ordered~~ COURT-ORDERED
- 10 treatment in a setting that is less restrictive than total confinement and
- 11 that is conducted in a setting approved by the ~~superintendent~~ DIRECTOR of
- 12 the state hospital.
- 13 5. "Mental disorder" means a paraphilia, personality disorder or
- 14 conduct disorder or any combination of paraphilia, personality disorder and
- 15 conduct disorder that predisposes a person to commit sexual acts to such a
- 16 degree as to render the person a danger to the health and safety of others.
- 17 6. "Sexually violent offense" means any of the following:
- 18 (a) Indecent exposure to a person who is under fifteen years of age
- 19 pursuant to section 13-1402, public sexual indecency to a minor pursuant to
- 20 section 13-1403, sexual conduct with a minor pursuant to section 13-1405,
- 21 sexual assault pursuant to section 13-1406, molestation of a child pursuant
- 22 to section 13-1410, continuous sexual abuse of a child pursuant to section
- 23 13-1417 or sexual assault of a spouse if the offense was committed before
- 24 August 12, 2005.
- 25 (b) Second degree murder pursuant to section 13-1104, first degree
- 26 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
- 27 aggravated assault pursuant to section 13-1204, unlawful imprisonment
- 28 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
- 29 burglary in the first degree pursuant to section 13-1508 if the court at
- 30 the time of sentencing or civil commitment proceedings determines beyond a
- 31 reasonable doubt that the act was sexually motivated pursuant to section
- 32 13-118.

1 (c) An attempt, a solicitation, a facilitation or a conspiracy to
2 commit an offense listed in subdivision (a) or (b) of this paragraph.

3 (d) An act committed in another jurisdiction that if committed in
4 this state would be a sexually violent offense listed in subdivision (a),
5 (b) or (c) of this paragraph.

6 (e) A conviction for a felony offense that was in effect before
7 September 1, 1978 and that if committed on or after September 1, 1978 would
8 be comparable to a sexually violent offense listed in subdivision (a) or
9 (b) of this paragraph.

10 7. "Sexually violent person" means a person to whom both of the
11 following apply:

12 (a) Has ever been convicted of or found guilty but insane of a
13 sexually violent offense or was charged with a sexually violent offense and
14 was determined incompetent to stand trial.

15 (b) Has a mental disorder that makes the person likely to engage in
16 acts of sexual violence.

17 Sec. 38. Section 36-3702, Arizona Revised Statutes, is amended to
18 read:

19 36-3702. Notice of release; referral; immunity

20 A. If an agency that has jurisdiction over a person who is at least
21 eighteen years of age determines that the person may be a sexually violent
22 person, the agency shall submit a written request that a petition be filed
23 to the county attorney in the county in which the person was convicted, was
24 found incompetent or will be released or to the attorney general not more
25 than one hundred eighty days and not less than thirty days before the
26 person's anticipated release:

27 1. From confinement if the person was convicted at any time of a
28 sexually violent offense.

29 2. If the person was found guilty except insane at any time of
30 committing a sexually violent offense.

1 3. If the person was charged at any time with a sexually violent
2 offense and was determined to be incompetent to stand trial.

3 B. If the person has been found incompetent to stand trial pursuant
4 to title 13, chapter 41 and there is no substantial likelihood that the
5 person will be restored to competency within twenty-one months after the
6 date of the original finding of incompetency, the county attorney may
7 request the court to order a screening of the person pursuant to section
8 13-4518 to determine if the person may be a sexually violent person.

9 C. If the state department of corrections or the Arizona state
10 hospital has jurisdiction over a person who is at least eighteen years of
11 age and who at any time was convicted of a sexually violent offense, was
12 found guilty except insane of committing a sexually violent offense or was
13 charged with a sexually violent offense and was determined to be
14 incompetent to stand trial, the state department of corrections or the
15 Arizona state hospital shall determine if the person may be a sexually
16 violent person. If the agency determines that the person may be a sexually
17 violent person, the agency shall submit a written request that a petition
18 be filed either to the county attorney in the county in which the person
19 was convicted, was found incompetent or will be released or to the attorney
20 general. The agency must submit the written request not more than one
21 hundred eighty days and not less than thirty days before the person's
22 anticipated release. If the person has a pending sentence of imprisonment
23 in another state or federal jurisdiction, in lieu of the written request
24 the director of the state department of corrections may instead enter into
25 a written agreement with the prosecuting authority by which the person was
26 prosecuted, was found incompetent or will be released to have the person
27 retrieved by the other state or federal jurisdiction.

28 D. The agency shall provide the county attorney or attorney general
29 with the following to support the written request that a petition be filed:

- 30 1. Certified copies of the following court documents:

1 (a) The complaint, information, judgment of conviction and
2 commitment order for the sexually violent offense that forms the basis for
3 the petition and detention orders.

4 (b) The complaint, information, judgment of conviction and
5 commitment order for any other conviction that the submitting agency
6 possesses.

7 2. All records of evaluation and treatment, including any of the
8 following:

9 (a) All psychological and psychiatric tests and assessment reports
10 and supporting information.

11 (b) Group notes, autobiographical notes, progress notes,
12 psychosocial reports or other materials that were prepared by or that
13 relate to the person while the person was in custody or receiving treatment
14 from the submitting agency or any other agency.

15 (c) Presentence investigation reports, whether prepared by the state
16 department of corrections, by a private agency or at the direction of the
17 superior court for sentencing on the sexually violent offense.

18 3. All records of the person's version of the offenses for which the
19 person has been convicted, including the notes and records of all
20 interviews and discussions with the person while the person was in the care
21 of the submitting agency or any other agency.

22 4. A record of all convictions and acquittals regardless of whether
23 those convictions were for sexually violent offenses.

24 5. Police reports that are in the possession of the referring agency
25 and that relate to any sexually violent offense that was committed by the
26 person.

27 6. Institutional records that relate to the person's behavior and
28 conduct while in custody and that are in the possession of the referring
29 agency.

30 7. Information indicating the dates of acceptance and rejection by
31 the person of any recommended or ~~court ordered~~ COURT-ORDERED psychotropic
32 medication to control the person's mental disorder.

1 8. Information indicating the dates of acceptance and rejection by
2 the person of any recommended or ~~court-ordered~~ COURT-ORDERED psychological
3 or psychiatric counseling for treatment of the person's mental disorder.

4 9. A final release or discharge report, together with any
5 information on which the report is based, that is prepared in anticipation
6 of either the person's release from incarceration or commitment. The
7 report shall include:

8 (a) A report of the person's condition that was completed within the
9 preceding one hundred twenty days and that includes an opinion expressing
10 to a reasonable degree of psychiatric, psychological or professional
11 certainty that the person has a mental disorder and that, as a result of
12 that mental disorder, the person is likely to engage in a sexually violent
13 offense.

14 (b) A list of the names of all treatment providers who have treated
15 or worked with the person.

16 (c) The curriculum vitae of each of the treating individuals that
17 details each individual's education, training and experience.

18 (d) The facility in which the person is located at the time of the
19 referral and in which the person will be residing pending the filing of a
20 petition.

21 E. The agency and the agency's officers and employees providing
22 mental health evaluations and reports are immune from liability for any
23 good faith acts under this article.

24 F. The ~~department of health services~~ STATE HOSPITAL GOVERNING BOARD
25 and the ~~department of health services'~~ STATE HOSPITAL GOVERNING BOARD'S
26 officers and employees providing mental health evaluations and reports are
27 immune from liability for any good faith acts under this article.

28 G. An agency's inability to comply with the time requirements under
29 subsection A or C of this section does not preclude the county attorney or
30 the attorney general from filing a petition alleging that a person is a
31 sexually violent person.

1 Sec. 39. Section 36-3704, Arizona Revised Statutes, is amended to
2 read:

3 36-3704. Sexually violent person petition; filing; procedures

4 A. Before a sexually violent person is released from confinement,
5 the following persons may file a petition in superior court alleging that
6 the person is a sexually violent person and stating sufficient facts to
7 support that allegation:

8 1. The county attorney in the county in which a person was found
9 incompetent to stand trial of, found guilty except insane of or convicted
10 of a sexually violent offense.

11 2. The county attorney in the county in which the person will be
12 released or the attorney general if the person was found incompetent to
13 stand trial of, found guilty except insane of or convicted of a sexually
14 violent offense in another jurisdiction outside the state.

15 B. The Arizona rules of evidence and the Arizona rules of civil
16 procedure apply to proceedings under this article. The court may admit
17 evidence of past acts that would constitute a sexual offense pursuant to
18 section 13-1420 and the Arizona rules of evidence.

19 C. The person who is named in the petition is entitled to assistance
20 of counsel at any proceeding that is conducted pursuant to this
21 article. If the person is indigent, the court shall appoint counsel to
22 assist the person. The county board of supervisors may fix a reasonable
23 amount to be paid by the county for the services of an appointed attorney.

24 D. The court's jurisdiction over a person who is civilly committed
25 pursuant to this article continues until the person is discharged by the
26 court.

27 E. At any hearing concerning conditions of detention, commitment or
28 treatment at a licensed facility under the supervision of the
29 ~~superintendent~~ DIRECTOR of the Arizona state hospital, a person who is
30 detained or CIVILLY committed pursuant to this article shall show that the
31 procedures or actions of the licensed facility have no reasonable basis in
32 fact or law.

1 Sec. 40. Section 36-3705, Arizona Revised Statutes, is amended to
2 read:

3 36-3705. Judicial determination of sexually violent person;
4 transfer for evaluation

5 A. On the filing of a petition pursuant to section 36-3704, the
6 judge shall determine if probable cause exists to believe that the person
7 named in the petition is a sexually violent person.

8 B. If the judge determines that probable cause exists to believe
9 that the person named in the petition is a sexually violent person, the
10 judge shall order that the person be detained in a licensed facility under
11 the supervision of the ~~superintendent~~ DIRECTOR of the Arizona state
12 hospital.

13 C. On motion of the respondent filed within ten days after service
14 of the petition, the court shall hold a probable cause hearing.

15 D. Within seventy-two hours after a person is detained pursuant to
16 subsection B of this section, the court shall provide the person with
17 notice of and an opportunity to appear at a probable cause hearing to
18 contest the probable cause finding made by the court pursuant to subsection
19 A of this section. At the hearing, the court shall verify the person's
20 identity and shall determine if probable cause exists to believe that the
21 person is a sexually violent person. At the hearing, the state may rely on
22 the petition that alleges that the person is a sexually violent person and
23 that is filed pursuant to section 36-3704. The state may supplement the
24 information in the petition with additional documentary evidence or live
25 testimony.

26 E. At the probable cause hearing, the person has the following
27 rights:

- 28 1. To present evidence on the person's behalf.
- 29 2. To cross-examine witnesses who testify against the person.
- 30 3. To view and copy all documents and reports in the court file.

1 F. After the hearing, if the court determines probable cause does
2 not exist to believe that the person is a sexually violent person, the
3 court shall dismiss the petition.

4 G. If at the hearing the court reaffirms that probable cause exists
5 to believe that the person is a sexually violent person, the judge shall
6 order an evaluation as to whether the person is a sexually violent
7 person. A person whom the court selects from a list of competent
8 professionals shall conduct the evaluation.

9 H. If the respondent has not requested a probable cause hearing
10 within ten days after service of the petition, the court shall order an
11 evaluation as to whether the respondent is a sexually violent person. A
12 person whom the court selects from a list of competent professionals shall
13 conduct the evaluation.

14 I. The county shall pay the costs of an evaluation conducted
15 pursuant to subsection G or H of this section.

16 J. The referring agency shall make available to the ~~department of~~
17 ~~health services~~ STATE HOSPITAL GOVERNING BOARD all records concerning the
18 person detained pursuant to this section.

19 Sec. 41. Section 36-3707, Arizona Revised Statutes, is amended to
20 read:

21 36-3707. Determining sexually violent person status;
22 commitment procedures

23 A. The court or jury shall determine beyond a reasonable doubt if
24 the person named in the petition is a sexually violent person. If the
25 state alleges that the sexually violent offense on which the petition for
26 commitment is based was sexually motivated, the state shall prove beyond a
27 reasonable doubt that the alleged sexually violent act was sexually
28 motivated.

29 B. If the court or jury determines that the person is a sexually
30 violent person, the court shall either:

31 1. Commit the SEXUALLY VIOLENT person to the custody of the
32 ~~department of health services~~ STATE HOSPITAL GOVERNING BOARD for placement

1 in a licensed facility under the supervision of the ~~superintendent~~ DIRECTOR
2 of the Arizona state hospital ~~and~~ WHERE THE SEXUALLY VIOLENT PERSON shall
3 receive care, supervision or treatment until the SEXUALLY VIOLENT person's
4 mental disorder has so changed that the SEXUALLY VIOLENT person would not
5 be a threat to public safety if the SEXUALLY VIOLENT person was
6 conditionally released to a less restrictive alternative or was
7 unconditionally discharged.

8 2. Order that the SEXUALLY VIOLENT person be released to a less
9 restrictive alternative if the conditions under sections 36-3710 and
10 36-3711 are met.

11 C. If the court or jury does not determine beyond a reasonable doubt
12 that the person is a sexually violent person, the court shall order the
13 person's release.

14 D. If the person named in the petition was found incompetent to
15 stand trial, the court first shall hear evidence and determine if the
16 person committed the act or acts charged if the court did not enter a
17 finding before the charges were dismissed. The court shall enter specific
18 findings on whether the person committed the act or acts charged, the
19 extent to which the person's incompetence to stand trial affected the
20 outcome of the hearing, including its effect on the person's ability to
21 consult with and assist counsel and to testify on the person's own behalf,
22 the extent to which the evidence could be reconstructed without the
23 assistance of the person and the strength of the prosecution's case. If
24 the court finds beyond a reasonable doubt that the person committed the act
25 or acts charged, the court shall enter a final order to that effect and may
26 then consider whether the person should be committed pursuant to this
27 section.

28 Sec. 42. Section 36-3708, Arizona Revised Statutes, is amended to
29 read:

30 36-3708. Annual examination of committed persons; report

31 A. The psychiatrist, psychologist or other competent professional of
32 the state hospital or a licensed facility under the supervision of the

1 ~~superintendent~~ DIRECTOR of the Arizona state hospital shall annually
2 examine each person who is committed pursuant to this article. The person
3 who conducts the annual examination shall submit the examination report to
4 the court. The annual report shall state if conditional release to a less
5 restrictive alternative is in the best interest of the person and will
6 adequately protect the community.

7 B. The person may retain, or on the request of an indigent person
8 the court may appoint, a competent professional to conduct the
9 examination. A retained or appointed competent professional shall have
10 access to all records concerning the person. If the person retains or is
11 appointed a competent professional, the state has the right to have the
12 committed person evaluated by a competent professional of the state's own
13 choice. All competent professionals shall have equal access to the person
14 as well as all records concerning the person.

15 C. The court shall hold a hearing pursuant to section 36-3709 if any
16 change of release conditions is recommended.

17 Sec. 43. Section 36-3709, Arizona Revised Statutes, is amended to
18 read:

19 36-3709. Petition for change of status; procedures

20 A. If the ~~superintendent~~ DIRECTOR of the ARIZONA state hospital ~~or~~
21 ~~the director of the department of health services~~ determines that the
22 person's mental disorder has so changed that the person is not likely to
23 engage in acts of sexual violence if conditionally released to a less
24 restrictive alternative, the ~~superintendent or~~ director shall allow the
25 person to petition the court for conditional release to a less restrictive
26 alternative. The person shall serve the petition on the court and the
27 attorney for the state. The court shall hold a hearing on the petition for
28 conditional release to a less restrictive alternative within forty-five
29 days after receiving the petition. The court may continue the hearing on
30 the request of either party and a showing of good cause or on its own
31 motion if the respondent will not be substantially prejudiced. The county
32 attorney or the attorney general shall represent the state at the hearing

1 and may request that the petitioner be examined by a competent professional
2 selected by the county attorney or the attorney general. The attorney for
3 the state has the burden of proving beyond a reasonable doubt that the
4 petitioner's mental disorder has not changed and that the petitioner
5 remains a danger to others and is likely to engage in acts of sexual
6 violence if conditionally released to a less restrictive alternative or
7 unconditionally discharged.

8 B. This section does not prohibit the committed person from annually
9 petitioning the court for conditional release to a less restrictive
10 alternative without the approval of the ~~superintendent~~ DIRECTOR of the
11 ARIZONA state hospital ~~or the director of the department of health~~
12 ~~services~~. The director ~~of the department of health services~~ shall give
13 annual written notice to the committed person of the person's right to
14 petition the court for conditional release to a less restrictive
15 alternative without the approval of the ~~superintendent~~ or director. The
16 notice shall contain a waiver of rights. The director shall submit the
17 notice and waiver to the court with the annual examination report.

18 C. The committed person may be present at the hearing. The county
19 attorney or the attorney general may request that the person be examined by
20 a competent professional selected by the attorney for the state. The
21 committed person may retain and the court on request of an indigent person
22 may appoint a competent professional. The attorney for the state has the
23 burden of proving beyond a reasonable doubt that the person's mental
24 disorder has not changed and that the person remains a danger to others and
25 is likely to engage in acts of sexual violence if conditionally released to
26 a less restrictive alternative. If the state does not meet its burden of
27 proof, the person shall be discharged from treatment.

28 D. If at the conclusion of a hearing the court finds that there is
29 no legally sufficient evidentiary basis to conclude that the conditions
30 prescribed in section 36-3711 have been met, the court shall grant the
31 state's motion for a judgment on the issue of conditional release to a less
32 restrictive alternative.

1 Sec. 44. Section 36-3710, Arizona Revised Statutes, is amended to
2 read:

3 36-3710. Conditional release to a less restrictive
4 alternative; conditions; reports; review

5 A. If the court determines that conditional release to a less
6 restrictive alternative is in the best interest of the person and will
7 adequately protect the community and the court determines that the minimum
8 conditions under section 36-3711 are met, the court shall enter judgment
9 and order the person's conditional release to a less restrictive
10 alternative.

11 B. The court may impose any additional conditions on the person that
12 the court determines are necessary to ensure the person's compliance with
13 treatment and to protect the community. If the court finds that conditions
14 do not exist that will both ensure the person's compliance with treatment
15 and protect the community, the court shall remand the person to the custody
16 of the ~~superintendent~~ DIRECTOR of the ARIZONA state hospital for care,
17 supervision or treatment in a licensed facility that is under the
18 supervision of the ~~superintendent~~ DIRECTOR.

19 C. If the provider that is designated to provide inpatient or
20 outpatient treatment or to monitor or supervise any other terms and
21 conditions of a person's placement in a less restrictive alternative is not
22 the state hospital, the provider shall agree in writing to provide the
23 treatment.

24 D. Before the court authorizes a person's conditional release to a
25 less restrictive alternative, the court shall impose any conditions on the
26 person that the court determines are necessary to ensure the safety of the
27 community. The conditions shall include that ~~prior to~~ BEFORE release to a
28 less restrictive alternative, a person shall be required to submit to
29 ninety days of inpatient evaluation at the Arizona state hospital. At the
30 discretion of the ~~superintendent~~ DIRECTOR of the ARIZONA state hospital,
31 the duration of the evaluation period may be less than ninety days. The
32 court shall order the ~~superintendent of the state hospital~~ DIRECTOR to

1 investigate the less restrictive alternative and to submit additional
2 conditions to the court. The court shall give a copy of the conditions of
3 release to the person and to any designated service provider. Other
4 conditions may include any of the following:

5 1. Specification of a residence.

6 2. Prohibition on any contact with potential or past victims.

7 3. Prohibition on the use of alcohol and other drugs.

8 4. Supervision by the ~~department of health services~~ STATE HOSPITAL
9 GOVERNING BOARD or the county probation department if the person is serving
10 a term of probation.

11 5. A requirement that the person remain in this state unless the
12 person receives prior authorization from the court.

13 6. Other conditions that the court or the ~~superintendent~~ DIRECTOR of
14 the ARIZONA state hospital determines are in the best interest of the
15 person or others.

16 E. Following a determination that a person's release to a less
17 restrictive alternative is warranted and after considering the
18 recommendation regarding the duration and amount of treatment by the
19 ~~superintendent~~ DIRECTOR of the ARIZONA state hospital, the court shall
20 require as a condition of release to a less restrictive alternative, that
21 the person participate in outpatient treatment. The outpatient supervision
22 and treatment may include monitoring a person by use of a polygraph or
23 plethysmograph, or both. The treatment shall continue until the court
24 orders a change in the person's treatment requirements or the person is
25 discharged pursuant to section 36-3714.

26 F. Each month or as otherwise directed by the court, each designated
27 service provider shall submit a report that states if the person is
28 complying with the terms and conditions of the conditional release to a
29 less restrictive alternative to:

30 1. The court.

1 immediately to the court, the attorney for the state and the ~~superintendent~~
2 **DIRECTOR** of the **ARIZONA** state hospital.

3 3. The person who is conditionally released to a less restrictive
4 alternative has housing arrangements that are sufficiently secure to
5 protect the community and the person or agency that is providing the
6 housing to the conditionally released person agrees in writing to the
7 following conditions:

8 (a) To accept the conditionally released person.

9 (b) To provide the level of security that the court requires.

10 (c) To immediately report the unauthorized absence of the
11 conditionally released person from the housing arrangement to which the
12 person has been assigned.

13 4. The person will comply with the provider and all of the
14 requirements that are imposed by the provider and the court.

15 5. The person will comply with the supervision requirements that are
16 imposed by the ~~department of health services~~ **STATE HOSPITAL GOVERNING BOARD**
17 or the county probation department if the person is serving a term of
18 probation.

19 Sec. 46. Section 36-3712, Arizona Revised Statutes, is amended to
20 read:

21 36-3712. Detention and commitment requirements; definition

22 A. A person who is committed or conditionally released to a less
23 restrictive alternative pursuant to this article does not forfeit any legal
24 right and shall not suffer any legal disability as a consequence of any
25 actions taken or orders made except as specifically provided in this
26 article.

27 B. A person who is committed or conditionally released to a less
28 restrictive alternative pursuant to this article shall receive care,
29 supervision or treatment. The ~~superintendent~~ **DIRECTOR** of the **ARIZONA** state
30 hospital shall keep records detailing all medical, expert and professional
31 care and treatment that a committed person receives and shall keep copies
32 of all reports of periodic examinations that are made pursuant to this

1 article. These records and reports shall be made available on request only
2 to any of the following:

- 3 1. The committed person.
- 4 2. The committed person's attorney.
- 5 3. The county attorney or the attorney general.
- 6 4. The court.
- 7 5. On proper showing, an expert or professional person who
8 demonstrates a need for access to the records or reports.
- 9 6. Any mental health professional directly responsible FOR or
10 associated with the mental health professional who is directly responsible
11 for the care, control, assessment or treatment of the committed person.

12 C. At the time a person is detained or transferred into a licensed
13 facility pursuant to this article, the person in charge of the facility or
14 the person's designee shall take reasonable precautions to inventory and
15 safeguard the personal property of the detained or transferred person. The
16 staff member who makes an inventory of the person's personal property shall
17 give a signed copy of that inventory to the person. The facility shall
18 allow a responsible relative to inspect the property, subject to any
19 limitations that the person specifically imposes. The facility shall not
20 disclose the contents of the inventory to any other person without the
21 consent of the person or a court order.

22 D. This article does not prohibit a person who is committed or
23 conditionally released to a less restrictive alternative from exercising
24 any right that is available for the purpose of obtaining release from
25 confinement, including the right to petition for a writ of habeas
26 corpus. The committed person must exhaust all direct appeal and
27 postcommitment procedures before exercising the committed person's right to
28 petition for a writ of habeas corpus.

1 E. A person who is indigent may not be conditionally released to a
2 less restrictive alternative or discharged without suitable clothing. When
3 a person is conditionally released to a less restrictive alternative or
4 discharged, the ~~superintendent~~ DIRECTOR of the ARIZONA state hospital shall
5 furnish the person with an amount of money pursuant to section 31-228.

6 F. For the purposes of this section, "responsible relative":

7 1. Means the spouse, parent, adult child or adult sibling of the
8 person. ~~And~~

9 2. Includes the guardian, conservator or attorney of the person.

10 Sec. 47. Section 36-3714, Arizona Revised Statutes, is amended to
11 read:

12 36-3714. Petition for discharge; procedures

13 A. If the ~~superintendent~~ DIRECTOR of the ARIZONA state hospital ~~or~~
14 ~~the director of the department of health services~~ determines that the
15 person's mental disorder has so changed that the person is not likely to
16 engage in acts of sexual violence if discharged, the ~~superintendent or~~
17 director shall allow the person to petition the court for discharge. The
18 person shall serve the petition on the court and the attorney for the
19 state. The court shall hold a hearing on the petition for discharge within
20 forty-five days after receiving the petition. The court may continue the
21 hearing on the request of either party and a showing of good cause or on
22 its own motion if the respondent will not be substantially prejudiced. The
23 county attorney or the attorney general shall represent the state at the
24 hearing and may request that the petitioner be examined by a competent
25 professional who is selected by the county attorney or the attorney
26 general. The attorney for the state has the burden of proving beyond a
27 reasonable doubt that the petitioner's mental disorder has not changed and
28 that the petitioner remains a danger to others and is likely to engage in
29 acts of sexual violence if discharged.

1 B. This section does not prohibit the committed person from annually
2 petitioning the court for discharge without the approval of the
3 ~~superintendent~~ DIRECTOR of the ARIZONA state hospital ~~or the director of~~
4 ~~the department of health services~~. The ~~director of the department of~~
5 ~~health services~~ STATE HOSPITAL GOVERNING BOARD shall give annual written
6 notice to the committed person of the person's right to petition the court
7 for discharge without the approval of the ~~superintendent or~~ director. The
8 notice shall contain a waiver of rights. The director shall submit the
9 notice and waiver to the court with the annual examination report.

10 C. The committed person may be present at the discharge
11 hearing. The county attorney or the attorney general may request that the
12 person be examined by a competent professional who is selected by the
13 attorney for the state. The committed person may retain and the court on
14 the request of an indigent person may appoint a competent
15 professional. The attorney for the state has the burden of proving beyond
16 a reasonable doubt that the person's mental disorder has not changed and
17 that the person remains a danger to others and is likely to engage in acts
18 of sexual violence if discharged. If the state does not meet its burden of
19 proof, the person shall be discharged from treatment.

20 D. If a person is discharged, the ~~department of health services~~
21 STATE HOSPITAL GOVERNING BOARD shall notify the department of public safety
22 of the person's discharge so that the department of public safety can
23 commence any notification process as provided in section 13-3825.

24 Sec. 48. Section 36-3717, Arizona Revised Statutes, is amended to
25 read:

26 36-3717. Place of proceedings; transportation; immunity

27 A. Except as provided in subsection B of this section, a person who
28 is detained or civilly committed pursuant to this article shall not be
29 transported from a licensed facility under the supervision of the
30 ~~superintendent~~ DIRECTOR of the Arizona state hospital, except that a person
31 may be transported to court for any of the following reasons:

- 32 1. A probable cause hearing pursuant to section 36-3705.

- 1 2. A trial pursuant to section 36-3706.
- 2 3. A hearing on a petition for conditional release to a less
3 restrictive alternative pursuant to section 36-3709.
- 4 4. A hearing on a petition for discharge pursuant to section
5 36-3714.
- 6 5. Any evidentiary hearing in which the presence of a person who is
7 detained or civilly committed pursuant to this article is necessary.
- 8 6. Any court proceeding **THAT IS** not otherwise specified in this
9 article where the presence of the detainee or **CIVILLY** committed person is
10 required.
- 11 B. Subsection A of this section does not apply to any person whom
12 the court has determined is subject to conditional release pursuant to
13 section 36-3710 or to any necessary medical transports.
- 14 C. Subsection A of this section does not preclude any proceeding
15 from being held on the grounds of the Arizona state hospital or from using
16 a telephonic conference or an interactive audiovisual device. The court
17 shall adopt rules concerning the conduct of proceedings pursuant to this
18 article. The rules shall ensure the safety of all persons. The rules may
19 include provisions that allow for proceedings to be held on the grounds of
20 the Arizona state hospital or for the use of a telephonic conference or an
21 interactive audiovisual device.
- 22 D. The ~~department of health services~~ **STATE HOSPITAL GOVERNING BOARD**
23 is responsible for the transportation to and from a medical facility of a
24 person who is detained or **CIVILLY** committed pursuant to this article. The
25 ~~department of health services~~ **STATE HOSPITAL GOVERNING BOARD** shall
26 determine the appropriate mode of transportation and level of security and
27 restraint for the transportation needs of the person. In determining the
28 appropriate mode of transportation and level of security and restraint, the
29 ~~department~~ **STATE HOSPITAL GOVERNING BOARD** shall consider the safety of the
30 public, the transporting personnel and the detained or **CIVILLY** committed
31 person.

1 E. The ~~department of health services~~ STATE HOSPITAL GOVERNING BOARD
2 and any county sheriff are immune from liability for any good faith acts
3 under this section."

4 Renumber to conform

5 Amend title to conform

STEVE MONTENEGRO

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