

PROPOSED
SENATE AMENDMENTS TO H.B. 2041
(Reference to House Engrossed bill)

1 Page 2, line 40, strike "~~and~~" insert "and"

2 Line 41, strike "~~, providing~~ AND THAT PROVIDES" insert ", providing"; strike
3 "~~such~~ THE" insert "such"

4 Page 7, between lines 16 and 17 insert:

5 "Sec. 3. Section 36-540, Arizona Revised Statutes, is amended to
6 read:

7 36-540. Court options; immunity; rules

8 A. If the court finds by clear and convincing evidence that the
9 proposed patient, as a result of mental disorder, is a danger to self, is a
10 danger to others or has a persistent or acute disability or a grave
11 disability and is in need of treatment, and is either unwilling or unable
12 to accept voluntary treatment, the court shall order the patient to undergo
13 one of the following:

14 1. Treatment in a program of outpatient treatment.

15 2. Treatment in a program consisting of combined inpatient and
16 outpatient treatment.

17 3. Inpatient treatment in a mental health treatment agency, in a
18 hospital operated by or under contract with the United States department of
19 veterans affairs to provide treatment to eligible veterans pursuant to
20 article 9 of this chapter, in the state hospital or in a private hospital,
21 if the private hospital agrees, subject to the limitations of section
22 36-541.

23 B. The court shall consider all available and appropriate
24 alternatives for the treatment and care of the patient. The court shall
25 order the least restrictive treatment alternative available.

1 C. The court may order the proposed patient to undergo outpatient or
2 combined inpatient and outpatient treatment pursuant to subsection A,
3 paragraph 1 or 2 of this section if the court:

4 1. Determines that all of the following apply:

5 (a) The patient does not require continuous inpatient
6 hospitalization.

7 (b) The patient will be more appropriately treated in an outpatient
8 treatment program or in a combined inpatient and outpatient treatment
9 program.

10 (c) The patient will follow a prescribed outpatient treatment plan.

11 (d) The patient will not likely become dangerous or suffer more
12 serious physical harm or serious illness or further deterioration if the
13 patient follows a prescribed outpatient treatment plan.

14 2. Is presented with and approves a written treatment plan that
15 conforms with the requirements of section 36-540.01, subsection B. If the
16 court determines that the patient meets the requirements of section
17 36-550.09, the court may order the patient to be placed in a secure
18 behavioral health residential facility that is licensed by the department
19 pursuant to section 36-425.06. If the treatment plan presented to the
20 court pursuant to this subsection provides for supervision of the patient
21 under court order by a mental health agency that is other than the mental
22 health agency that petitioned or requested the county attorney to petition
23 the court for treatment pursuant to section 36-531, the treatment plan must
24 be approved by the medical director of the mental health agency that will
25 supervise the treatment pursuant to subsection E of this section.

26 D. An order to receive treatment pursuant to subsection A, paragraph
27 1 or 2 of this section shall not exceed three hundred sixty-five days. The
28 period of inpatient treatment under a combined treatment order pursuant to
29 subsection A, paragraph 2 of this section shall not exceed the maximum
30 period allowed for an order for inpatient treatment pursuant to subsection
31 F of this section.

1 E. If the court enters an order for treatment pursuant to subsection
2 A, paragraph 1 or 2 of this section, all of the following apply:

3 1. The court shall designate the medical director of the mental
4 health treatment agency that will supervise and administer the patient's
5 treatment program.

6 2. The medical director shall not use the services of any person,
7 agency or organization to supervise a patient's outpatient treatment
8 program unless the person, agency or organization has agreed to provide
9 these services in the individual patient's case and unless the department
10 has determined that the person, agency or organization is capable and
11 competent to do so.

12 3. The person, agency or organization assigned to supervise an
13 outpatient treatment program or the outpatient portion of a combined
14 treatment program shall be notified at least three days before a referral.
15 The medical director making the referral and the person, agency or
16 organization assigned to supervise the treatment program shall share
17 relevant information about the patient to provide continuity of treatment.

18 4. The court may order the medical director to provide notice to the
19 court of any noncompliance with the terms of a treatment order.

20 5. During any period of outpatient treatment under subsection A,
21 paragraph 2 of this section, if the court, on its own motion or on motion
22 by the medical director of the patient's outpatient mental health treatment
23 facility, determines that the patient is not complying with the terms of
24 the order or that the outpatient treatment plan is no longer appropriate
25 and the patient needs inpatient treatment, the court, without a hearing and
26 based on the court record, the patient's medical record, the affidavits and
27 recommendations of the medical director, and the advice of staff and
28 physicians or the psychiatric and mental health nurse practitioner familiar
29 with the treatment of the patient, may enter an order amending its original
30 order. The amended order may alter the outpatient treatment plan or order
31 the patient to inpatient treatment pursuant to subsection A, paragraph 3 of
32 this section. The amended order shall not increase the total period of

1 commitment originally ordered by the court or, when added to the period of
2 inpatient treatment provided by the original order and any other amended
3 orders, exceed the maximum period allowed for an order for inpatient
4 treatment pursuant to subsection F of this section. If the patient refuses
5 to comply with an amended order for inpatient treatment, the court, on its
6 own motion or on the request of the medical director, may authorize and
7 direct a peace officer to take the patient into protective custody and
8 transport the patient to the agency for inpatient treatment. Any
9 authorization, directive or order issued to a peace officer to take the
10 patient into protective custody shall include the patient's criminal
11 history and the name and telephone numbers of the patient's case manager,
12 guardian, spouse, next of kin or significant other, as applicable. When
13 reporting to or being returned to a treatment agency for inpatient
14 treatment pursuant to an amended order, the patient shall be informed of
15 the patient's right to judicial review and the patient's right to consult
16 with counsel pursuant to section 36-546.

17 6. During any period of outpatient treatment under subsection A,
18 paragraph 2 of this section, if the medical director of the outpatient
19 treatment facility in charge of the patient's care determines, in concert
20 with the medical director of an inpatient mental health treatment facility
21 who has agreed to accept the patient, that the patient is in need of
22 immediate acute inpatient psychiatric care because of behavior that is
23 dangerous to self or to others, the medical director of the outpatient
24 treatment facility may order a peace officer to apprehend and transport the
25 patient to the inpatient treatment facility pending a court determination
26 on an amended order under paragraph 5 of this subsection. The patient may
27 be detained and treated at the inpatient treatment facility for a period of
28 not more than forty-eight hours, exclusive of weekends and holidays, from
29 the time that the patient is taken to the inpatient treatment
30 facility. The medical director of the outpatient treatment facility shall
31 file the motion for an amended court order requesting inpatient treatment
32 not later than the next working day following the patient being taken to

1 the inpatient treatment facility. Any period of detention within the
2 inpatient treatment facility pending issuance of an amended order shall not
3 increase the total period of commitment originally ordered by the court or,
4 when added to the period of inpatient treatment provided by the original
5 order and any other amended orders, exceed the maximum period allowed for
6 an order for inpatient treatment pursuant to subsection F of this
7 section. If a patient is ordered to undergo inpatient treatment pursuant
8 to an amended order, the medical director of the outpatient treatment
9 facility shall inform the patient of the patient's right to judicial review
10 and to consult with an attorney pursuant to section 36-546.

11 F. The maximum periods of inpatient treatment that the court may
12 order, subject to the limitations of section 36-541, are as follows:

13 1. Ninety days for a person found to be a danger to self.

14 2. One hundred eighty days for a person found to be a danger to
15 others.

16 3. One hundred eighty days for a person found to have a persistent
17 or acute disability.

18 4. Three hundred sixty-five days for a person found to have a grave
19 disability.

20 G. If, on finding that the patient meets the criteria for
21 court-ordered treatment pursuant to subsection A of this section, the court
22 also finds that there is reasonable cause to believe that the patient is an
23 incapacitated person as defined in section 14-5101 or is a person in need
24 of protection pursuant to section 14-5401 and that the patient is or may be
25 in need of guardianship or conservatorship, or both, the court may order an
26 investigation concerning the need for a guardian or conservator, or both,
27 and may appoint a suitable person or agency to conduct the
28 investigation. The appointee may include a court-appointed guardian ad
29 litem, an investigator appointed pursuant to section 14-5308 or the public
30 fiduciary if there is no person willing and qualified to act in that
31 capacity. The court shall give notice of the appointment to the appointee
32 within three days after the appointment. The appointee shall submit the

1 report of the investigation to the court within twenty-one days. The
2 report shall include recommendations as to who should be guardian or who
3 should be conservator, or both, and a report of the findings and reasons
4 for the recommendation. If the investigation and report so indicate, the
5 court shall order the appropriate person to submit a petition to become the
6 guardian or conservator, or both, of the patient.

7 H. In any proceeding for court-ordered treatment in which the
8 petition alleges that the patient is in need of a guardian or conservator
9 and states the grounds for that allegation, the court may appoint an
10 emergency temporary guardian or conservator, or both, for a specific
11 purpose or purposes identified in its order and for a specific period of
12 time not to exceed thirty days if the court finds that all of the following
13 are true:

14 1. The patient meets the criteria for court-ordered treatment
15 pursuant to subsection A of this section.

16 2. There is reasonable cause to believe that the patient is an
17 incapacitated person as defined in section 14-5101 or is in need of
18 protection pursuant to section 14-5401, paragraph 2.

19 3. The patient does not have a guardian or conservator and the
20 welfare of the patient requires immediate action to protect the patient or
21 the ward's property.

22 4. The conditions prescribed pursuant to section 14-5310, subsection
23 B or section 14-5401.01, subsection B have been met.

24 I. The court may appoint as a temporary guardian or conservator
25 pursuant to subsection H of this section a suitable person or the public
26 fiduciary if there is no person qualified and willing to act in that
27 capacity. The court shall issue an order for an investigation as
28 prescribed pursuant to subsection G of this section and, unless the patient
29 is represented by independent counsel, the court shall appoint an attorney
30 to represent the patient in further proceedings regarding the appointment
31 of a guardian or conservator. The court shall schedule a further hearing
32 within fourteen days on the appropriate court calendar of a court that has

1 authority over guardianship or conservatorship matters pursuant to this
2 title to consider the continued need for an emergency temporary guardian or
3 conservator and the appropriateness of the temporary guardian or
4 conservator appointed, and shall order the appointed guardian or
5 conservator to give notice to persons entitled to notice pursuant to
6 section 14-5309, subsection A or section 14-5405, subsection A. The court
7 shall authorize certified letters of temporary emergency guardianship or
8 conservatorship to be issued on presentation of a copy of the court's
9 order. If a temporary emergency conservator other than the public
10 fiduciary is appointed pursuant to this subsection, the court shall order
11 that the use of the monies and property of the patient by the conservator
12 be restricted and not be sold, used, transferred or encumbered, except that
13 the court may authorize the conservator to use monies or property of the
14 patient specifically identified as needed to pay an expense to provide for
15 the care, treatment or welfare of the patient pending further hearing.
16 This subsection and subsection H of this section do not:

17 1. Prevent the evaluation or treatment agency from seeking
18 guardianship and conservatorship in any other manner allowed by law at any
19 time during the period of court-ordered evaluation and treatment.

20 2. Relieve the evaluation or treatment agency from its obligations
21 concerning the suspected abuse of a vulnerable adult pursuant to title 46,
22 chapter 4.

23 J. If, on finding that a patient meets the criteria for
24 court-ordered treatment pursuant to subsection A of this section, the court
25 also learns that the patient has a guardian appointed under title 14, the
26 court with notice may impose on the existing guardian additional duties
27 pursuant to section 14-5312.01. If the court imposes additional duties on
28 an existing guardian as prescribed in this subsection, the court may
29 determine that the patient needs to continue treatment under a court order
30 for treatment and may issue the order or determine that the patient's needs
31 can be adequately met by the guardian with the additional duties pursuant
32 to section 14-5312.01 and decline to issue the court order for

1 treatment. If at any time after the issuance of a court order for
2 treatment the court finds that the patient's needs can be adequately met by
3 the guardian with the additional duties pursuant to section 14-5312.01 and
4 that a court order for treatment is no longer necessary to ensure
5 compliance with necessary treatment, the court may terminate the court
6 order for treatment. If there is a court order for treatment and a
7 guardianship with additional mental health authority pursuant to section
8 14-5312.01 existing at the same time, the treatment and placement decisions
9 made by the treatment agency assigned by the court to supervise and
10 administer the patient's treatment program pursuant to the court order for
11 treatment are controlling unless the court orders otherwise.

12 K. The court shall file a report as part of the court record on its
13 findings of alternatives for treatment.

14 L. Treatment shall not include psychosurgery, lobotomy or any other
15 brain surgery without specific informed consent of the patient or the
16 patient's legal guardian and an order of the superior court in the county
17 in which the treatment is proposed, approving with specificity the use of
18 the treatment.

19 M. The medical director or any person, agency or organization used
20 by the medical director to supervise the terms of an outpatient treatment
21 plan is not civilly liable for any acts committed by a patient while on
22 outpatient treatment if the medical director, person, agency or
23 organization has in good faith followed the requirements of this section.

24 N. A peace officer who in good faith apprehends and transports a
25 patient to an inpatient treatment facility on the order of the medical
26 director of the outpatient treatment facility pursuant to subsection E,
27 paragraph 6 of this section is not subject to civil liability.

28 O. If a person has been found, as a result of a mental disorder, to
29 constitute a danger to self or others or to have a persistent or acute
30 disability or a grave disability and the court enters an order for
31 treatment pursuant to subsection A of this section, the court shall
32 transmit the person's name, sex, date of birth, social security number, if

1 available, and date of the order for treatment to the supreme court. The
2 supreme court shall transmit the information to the department of public
3 safety to comply with the requirements of title 13, chapter 31 and title
4 32, chapter 26. The department of public safety shall transmit the
5 information to the national instant criminal background check system. The
6 superior court may access the information of a person who is ordered into
7 treatment to enforce or facilitate a treatment order.

8 P. On request, the clerk of the court shall provide certified copies
9 of the commitment order to a law enforcement or prosecuting agency that is
10 investigating or prosecuting a prohibited possessor as defined in section
11 13-3101.

12 Q. If the court does not find a person to be in need of treatment
13 and a prosecutor filed a petition pursuant to section 13-4517, the
14 evaluation agency, within twenty-four hours, shall notify the prosecuting
15 agency of its finding. The court shall order the medical director to
16 detain the person for an additional twenty-four hours to allow the
17 prosecuting agency to be notified. If the court has retained jurisdiction
18 pursuant to section 13-4517, subsection C, the court may remand the person
19 to the custody of the sheriff for further disposition pursuant to section
20 13-4517, subsection A, paragraph 2 or 3.

21 R. After an order for treatment has been issued pursuant to this
22 section, the superior court in a county where a patient under a court order
23 for treatment is found or resides has concurrent jurisdiction with the
24 court in the county that issued the court order for treatment for the
25 purposes of enforcing the court order for treatment, ordering changes to
26 the treatment plan or amending the order to require the patient to undergo
27 further inpatient treatment. If the court in which proceedings are
28 commenced to enforce or administer the order for treatment is not the court
29 that originally entered the order for treatment, unless prevented by an
30 emergency, the court in which the proceedings are pending shall consult
31 with the court of original entry and determine whether to hold hearings and
32 enter orders to facilitate enforcement or administration of the court

1 order, whether to refer the case back to the court of original entry for
2 further proceedings or whether to transfer the entire case to the court of
3 original entry in that county for all further proceedings. The supreme
4 court may adopt rules to govern the procedures to be used in enforcing and
5 administering court orders for treatment in the various counties of this
6 state and the transfer of cases between counties involving court orders for
7 treatment.

8 S. Pursuant to the authority granted in subsection R of this
9 section, for the purpose of enforcing or facilitating treatment of a
10 patient under an active order for treatment, the supreme court shall adopt
11 a rule to establish a program to enable the judges of the superior court,
12 county attorneys, patients' attorneys, **HEALTH CARE INSTITUTIONS AS DEFINED
13 IN SECTION 36-401 THAT PROVIDE SERVICES SUBJECT TO THE FEDERAL EMERGENCY
14 MEDICAL TREATMENT AND ACTIVE LABOR ACT**, the regional behavioral health
15 authority and behavioral health service providers in any county to
16 determine the existence of an active court order for treatment and the
17 history of court orders for treatment entered for a patient by a superior
18 court in any county in this state. The program shall ensure that the
19 information shared with other persons or entities is necessary only for the
20 purposes stated in this subsection and shall require that the information
21 shared be maintained as confidential by the receiving person or entity."

22 Renumber to conform

23 Amend title to conform

THOMAS "T.J." SHOPE

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