

REFERENCE TITLE: court-ordered treatment; enhanced services

State of Arizona
House of Representatives
Fifty-sixth Legislature
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2024

HB 2745

Introduced by

Representatives Hernandez C: Bliss, Carbone, Crews, Gress, Gutierrez,
Hernandez A, Hernandez L, Marshall, Mathis, Payne, Peña, Schwiebert,
Seaman, Terech, Tsosie, Willoughby; Senators Bennett, Bravo, Gowan,
Miranda, Shope, Wadsack

AN ACT

AMENDING SECTION 36-540, ARIZONA REVISED STATUTES; AMENDING TITLE 36,
CHAPTER 5, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION
36-540.03; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-540, Arizona Revised Statutes, is amended to
3 read:

4 36-540. Court options; immunity; rules

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

11 1. Treatment in a program of outpatient treatment.

12 2. Treatment in a program consisting of combined inpatient and
13 outpatient treatment.

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

20 B. The court shall consider all available and appropriate
21 alternatives for the treatment and care of the patient. The court shall
22 order the least restrictive treatment alternative available.

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

26 1. Determines that all of the following apply:

27 (a) The patient does not require continuous inpatient
28 hospitalization.

29 (b) The patient will be more appropriately treated in an outpatient
30 treatment program or in a combined inpatient and outpatient treatment
31 program.

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

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

36 2. Is presented with and approves a written treatment plan that
37 conforms with the requirements of section 36-540.01, subsection B. If the
38 court determines that the patient meets the requirements of section
39 36-550.09, the court may order the patient to be placed in a secure
40 behavioral health residential facility that is licensed by the department
41 pursuant to section 36-425.06. If the treatment plan presented to the
42 court pursuant to this subsection provides for supervision of the patient
43 under court order by a mental health agency that is other than the mental
44 health agency that petitioned or requested the county attorney to petition
45 the court for treatment pursuant to section 36-531, the treatment plan

1 must be approved by the medical director of the mental health agency that
2 will supervise the treatment pursuant to subsection E of this section.

3 D. An order to receive treatment pursuant to subsection A,
4 paragraph 1 or 2 of this section shall not exceed three hundred sixty-five
5 days. The period of inpatient treatment under a combined treatment order
6 pursuant to subsection A, paragraph 2 of this section shall not exceed the
7 maximum period allowed for an order for inpatient treatment pursuant to
8 subsection F of this section.

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

12 1. The court shall designate the medical director of the mental
13 health treatment agency that will supervise and administer the patient's
14 treatment program.

15 2. The medical director shall not use the services of any person,
16 agency or organization to supervise a patient's outpatient treatment
17 program unless the person, agency or organization has agreed to provide
18 these services in the individual patient's case and unless the department
19 has determined that the person, agency or organization is capable and
20 competent to do so.

21 3. The person, agency or organization assigned to supervise an
22 outpatient treatment program or the outpatient portion of a combined
23 treatment program shall be notified at least three days before a referral.
24 The medical director making the referral and the person, agency or
25 organization assigned to supervise the treatment program shall share
26 relevant information about the patient to provide continuity of treatment.

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

29 5. During any period of outpatient treatment under subsection A,
30 paragraph 2 of this section, if the court, on its own motion or on motion
31 by the medical director of the patient's outpatient mental health
32 treatment facility, determines that the patient is not complying with the
33 terms of the order or that the outpatient treatment plan is no longer
34 appropriate and the patient needs inpatient treatment, the court, without
35 a hearing and based on the court record, the patient's medical record, the
36 affidavits and recommendations of the medical director, and the advice of
37 staff and physicians or the psychiatric and mental health nurse
38 practitioner familiar with the treatment of the patient, may enter an
39 order amending its original order. The amended order may alter the
40 outpatient treatment plan or order the patient to inpatient treatment
41 pursuant to subsection A, paragraph 3 of this section. IF THE COURT
42 DETERMINES THAT THE PATIENT MEETS THE REQUIREMENTS OF SECTION 36-550.09,
43 THE COURT MAY ORDER THE PATIENT TO BE PLACED IN A SECURE BEHAVIORAL HEALTH
44 RESIDENTIAL FACILITY THAT IS LICENSED BY THE DEPARTMENT PURSUANT TO
45 SECTION 36-425.06. The amended order shall not increase the total period

1 of commitment originally ordered by the court or, when added to the period
2 of inpatient treatment provided by the original order and any other
3 amended orders, exceed the maximum period allowed for an order for
4 inpatient treatment pursuant to subsection F of this section. If the
5 patient refuses to comply with an amended order for inpatient treatment,
6 the court, on its own motion or on the request of the medical director,
7 may authorize and direct a peace officer to take the patient into
8 protective custody and transport the patient to the agency for inpatient
9 treatment. Any authorization, directive or order issued to a peace
10 officer to take the patient into protective custody shall include the
11 patient's criminal history and the name and telephone numbers of the
12 patient's case manager, guardian, spouse, next of kin or significant
13 other, as applicable. When reporting to or being returned to a treatment
14 agency for inpatient treatment pursuant to an amended order, the patient
15 shall be informed of the patient's right to judicial review and the
16 patient's right to consult 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
25 the patient to the inpatient treatment facility pending a court
26 determination on an amended order under paragraph 5 of this subsection.
27 The patient may be detained and treated at the inpatient treatment
28 facility for a period of not more than forty-eight hours, exclusive of
29 weekends and holidays, from the time that the patient is taken to the
30 inpatient treatment facility. The medical director of the outpatient
31 treatment facility shall file the motion for an amended court order
32 requesting inpatient treatment not later than the next working day
33 following the patient being taken to the inpatient treatment facility.
34 Any period of detention within the inpatient treatment facility pending
35 issuance of an amended order shall not increase the total period of
36 commitment originally ordered by the court or, when added to the period of
37 inpatient treatment provided by the original order and any other amended
38 orders, exceed the maximum period allowed for an order for inpatient
39 treatment pursuant to subsection F of this section. If a patient is
40 ordered to undergo inpatient treatment pursuant to an amended order, the
41 medical director of the outpatient treatment facility shall inform the
42 patient of the patient's right to judicial review and to consult with an
43 attorney pursuant to section 36-546.

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

- 3 1. Ninety days for a person found to be a danger to self.
4 2. One hundred eighty days for a person found to be a danger to
5 others.
6 3. One hundred eighty days for a person found to have a persistent
7 or acute disability.
8 4. Three hundred sixty-five days for a person found to have a grave
9 disability.

10 G. If, on finding that the patient meets the criteria for
11 court-ordered treatment pursuant to subsection A of this section, the
12 court also finds that there is reasonable cause to believe that the
13 patient is an incapacitated person as defined in section 14-5101 or is a
14 person in need of protection pursuant to section 14-5401 and that the
15 patient is or may be in need of guardianship or conservatorship, or both,
16 the court may order an investigation concerning the need for a guardian or
17 conservator, or both, and may appoint a suitable person or agency to
18 conduct the investigation. The appointee may include a court-appointed
19 guardian ad litem, an investigator appointed pursuant to section 14-5308
20 or the public fiduciary if there is no person willing and qualified to act
21 in that capacity. The court shall give notice of the appointment to the
22 appointee within three days after the appointment. The appointee shall
23 submit the report of the investigation to the court within twenty-one
24 days. The report shall include recommendations as to who should be
25 guardian or who should be conservator, or both, and a report of the
26 findings and reasons for the recommendation. If the investigation and
27 report so indicate, the court shall order the appropriate person to submit
28 a petition to become the guardian or conservator, or both, of the patient.

29 H. In any proceeding for court-ordered treatment in which the
30 petition alleges that the patient is in need of a guardian or conservator
31 and states the grounds for that allegation, the court may appoint an
32 emergency temporary guardian or conservator, or both, for a specific
33 purpose or purposes identified in its order and for a specific period of
34 time not to exceed thirty days if the court finds that all of the
35 following are true:

- 36 1. The patient meets the criteria for court-ordered treatment
37 pursuant to subsection A of this section.
38 2. There is reasonable cause to believe that the patient is an
39 incapacitated person as defined in section 14-5101 or is in need of
40 protection pursuant to section 14-5401, paragraph 2.
41 3. The patient does not have a guardian or conservator and the
42 welfare of the patient requires immediate action to protect the patient or
43 the ward's property.
44 4. The conditions prescribed pursuant to section 14-5310,
45 subsection B or section 14-5401.01, subsection B have been met.

1 I. The court may appoint as a temporary guardian or conservator
 2 pursuant to subsection H of this section a suitable person or the public
 3 fiduciary if there is no person qualified and willing to act in that
 4 capacity. The court shall issue an order for an investigation as
 5 prescribed pursuant to subsection G of this section and, unless the
 6 patient is represented by independent counsel, the court shall appoint an
 7 attorney to represent the patient in further proceedings regarding the
 8 appointment of a guardian or conservator. The court shall schedule a
 9 further hearing within fourteen days on the appropriate court calendar of
 10 a court that has authority over guardianship or conservatorship matters
 11 pursuant to this title to consider the continued need for an emergency
 12 temporary guardian or conservator and the appropriateness of the temporary
 13 guardian or conservator appointed, and shall order the appointed guardian
 14 or conservator to give notice to persons entitled to notice pursuant to
 15 section 14-5309, subsection A or section 14-5405, subsection A. The court
 16 shall authorize certified letters of temporary emergency guardianship or
 17 conservatorship to be issued on presentation of a copy of the court's
 18 order. If a temporary emergency conservator other than the public
 19 fiduciary is appointed pursuant to this subsection, the court shall order
 20 that the use of the monies and property of the patient by the conservator
 21 be restricted and not be sold, used, transferred or encumbered, except
 22 that the court may authorize the conservator to use monies or property of
 23 the patient specifically identified as needed to pay an expense to provide
 24 for the care, treatment or welfare of the patient pending further hearing.
 25 This subsection and subsection H of this section do not:

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

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

32 J. If, on finding that a patient meets the criteria for
 33 court-ordered treatment pursuant to subsection A of this section, the
 34 court also learns that the patient has a guardian appointed under title
 35 14, the court with notice may impose on the existing guardian additional
 36 duties pursuant to section 14-5312.01. If the court imposes additional
 37 duties on an existing guardian as prescribed in this subsection, the court
 38 may determine that the patient needs to continue treatment under a court
 39 order for treatment and may issue the order or determine that the
 40 patient's needs can be adequately met by the guardian with the additional
 41 duties pursuant to section 14-5312.01 and decline to issue the court order
 42 for treatment. If at any time after the issuance of a court order for
 43 treatment the court finds that the patient's needs can be adequately met
 44 by the guardian with the additional duties pursuant to section 14-5312.01
 45 and that a court order for treatment is no longer necessary to ensure

1 compliance with necessary treatment, the court may terminate the court
2 order for treatment. If there is a court order for treatment and a
3 guardianship with additional mental health authority pursuant to section
4 14-5312.01 existing at the same time, the treatment and placement
5 decisions made by the treatment agency assigned by the court to supervise
6 and administer the patient's treatment program pursuant to the court order
7 for treatment are controlling unless the court orders otherwise.

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

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

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

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

24 O. If a person has been found, as a result of a mental disorder, to
25 constitute a danger to self or others or to have a persistent or acute
26 disability or a grave disability and the court enters an order for
27 treatment pursuant to subsection A of this section, the court shall
28 transmit the person's name, sex, date of birth, social security number, if
29 available, and date of the order for treatment to the supreme court. The
30 supreme court shall transmit the information to the department of public
31 safety to comply with the requirements of title 13, chapter 31 and title
32 32, chapter 26. The department of public safety shall transmit the
33 information to the national instant criminal background check system. The
34 superior court may access the information of a person who is ordered into
35 treatment to enforce or facilitate a treatment order.

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

40 Q. If the court does not find a person to be in need of treatment
41 and a prosecutor filed a petition pursuant to section 13-4517, the
42 evaluation agency, within twenty-four hours, shall notify the prosecuting
43 agency of its finding. The court shall order the medical director to
44 detain the person for an additional twenty-four hours to allow the
45 prosecuting agency to be notified. If the court has retained jurisdiction

1 pursuant to section 13-4517, subsection C, the court may remand the person
2 to the custody of the sheriff for further disposition pursuant to section
3 13-4517, subsection A, paragraph 2 or 3.

4 R. After an order for treatment has been issued pursuant to this
5 section, the superior court in a county where a patient under a court
6 order for treatment is found or resides has concurrent jurisdiction with
7 the court in the county that issued the court order for treatment for the
8 purposes of enforcing the court order for treatment, ordering changes to
9 the treatment plan or amending the order to require the patient to undergo
10 further inpatient treatment. If the court in which proceedings are
11 commenced to enforce or administer the order for treatment is not the
12 court that originally entered the order for treatment, unless prevented by
13 an emergency, the court in which the proceedings are pending shall consult
14 with the court of original entry and determine whether to hold hearings
15 and enter orders to facilitate enforcement or administration of the court
16 order, whether to refer the case back to the court of original entry for
17 further proceedings or whether to transfer the entire case to the court of
18 original entry in that county for all further proceedings. The supreme
19 court may adopt rules to govern the procedures to be used in enforcing and
20 administering court orders for treatment in the various counties of this
21 state and the transfer of cases between counties involving court orders
22 for treatment.

23 S. Pursuant to the authority granted in subsection R of this
24 section, for the purpose of enforcing or facilitating treatment of a
25 patient under an active order for treatment, the supreme court shall adopt
26 a rule to establish a program to enable the judges of the superior court,
27 county attorneys, patients' attorneys, health care institutions as defined
28 in section 36-401 that provide services subject to the ~~federal~~ emergency
29 medical treatment and ~~active~~ labor act (42 UNITED STATES CODE SECTION
30 1395dd), the regional behavioral health authority and behavioral health
31 service providers in any county to determine the existence of an active
32 court order for treatment and the history of court orders for treatment
33 entered for a patient by a superior court in any county in this
34 state. The program shall ensure that the information shared with other
35 persons or entities is necessary only for the purposes stated in this
36 subsection and shall require that the information shared be maintained as
37 confidential by the receiving person or entity.

38 Sec. 2. Title 36, chapter 5, article 5, Arizona Revised Statutes,
39 is amended by adding section 36-540.03, to read:

40 36-540.03. Enhanced treatment services; plan; determination
41 of need; order; definition

42 A. THE COURT MAY ENTER AN ORDER FOR ENHANCED TREATMENT SERVICES AS
43 PRESCRIBED IN THIS SECTION. THE ORDER FOR ENHANCED TREATMENT SERVICES MAY
44 BE ENTERED BY THE COURT AS AN INITIAL ORDER FOR TREATMENT OR ON ENTERING
45 AN AMENDED OR RENEWED ORDER FOR TREATMENT. AN ORDER FOR ENHANCED

1 TREATMENT SERVICES SHALL INCORPORATE A WRITTEN ENHANCED TREATMENT SERVICES
2 PLAN THAT IS APPROVED BY THE COURT, PREPARED BY STAFF WHO ARE FAMILIAR
3 WITH THE PATIENT'S CASE HISTORY AND APPROVED BY THE MEDICAL DIRECTOR OF
4 THE PERSON, AGENCY OR ORGANIZATION DESIGNATED TO ADMINISTER AND SUPERVISE
5 THE PATIENT'S TREATMENT PROGRAM. THE ENHANCED TREATMENT SERVICES PLAN
6 SHALL CONFORM WITH THE REQUIREMENTS OF SECTION 36-540.01, SUBSECTION B AND
7 SHALL CONTAIN OTHER SPECIFIC ORDERS FOR ENHANCED TREATMENT SERVICES.

8 B. THE COURT MAY ENTER AN ORDER FOR ENHANCED TREATMENT SERVICES IF
9 THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THE PATIENT IS
10 CHRONICALLY RESISTANT TO TREATMENT PURSUANT TO SECTION 36-550.09,
11 SUBSECTION B.

12 C. IF THE COURT ENTERS AN ORDER FOR ENHANCED TREATMENT SERVICES,
13 THE COURT SHALL ADVISE THE PATIENT ORALLY AND IN WRITING THAT THE ENHANCED
14 TREATMENT SERVICES PLAN APPROVED BY THE COURT IS PART OF THE COURT ORDER
15 ENFORCEABLE BY THE COURT AND THAT NONCOMPLIANCE WITH THE COURT'S ORDER OR
16 THE TERMS AND CONDITIONS OF THE ENHANCED TREATMENT SERVICES PLAN MAY
17 RESULT IN THE ISSUANCE OF AN ORDER FOR THE PATIENT TO BE PLACED IN OR
18 RETURNED TO INPATIENT TREATMENT AND AN ORDER FOR A PEACE OFFICER TO DETAIN
19 THE PATIENT FOR THAT PURPOSE.

20 D. THE COURT SHALL ORDER THE MEDICAL DIRECTOR OF THE MENTAL HEALTH
21 TREATMENT AGENCY DESIGNATED TO ADMINISTER AND SUPERVISE THE PATIENT'S
22 ENHANCED TREATMENT SERVICES PLAN TO PROVIDE NOTICE TO THE COURT OF
23 SPECIFIC INSTANCES OF NONCOMPLIANCE WITH THE ENHANCED TREATMENT SERVICES
24 PLAN AND ORDER THE MEDICAL DIRECTOR TO FILE WRITTEN PROGRESS REPORTS WITH
25 THE COURT AT LEAST EVERY SIXTY DAYS. THE COURT MAY REQUIRE THE PATIENT
26 AND A REPRESENTATIVE OF THE TREATMENT TEAM TO APPEAR IN COURT, IN PERSON
27 OR VIRTUALLY, AT TIMES DESIGNATED BY THE COURT, TO ADDRESS THE PATIENT'S
28 COMPLIANCE AND THE SERVICES PROVIDED. THE COURT MAY CHANGE OR MODIFY THE
29 PATIENT'S ENHANCED TREATMENT SERVICES PLAN AT ANY SUCH APPEARANCE ON
30 MOTION OF ANY PARTY OR ON THE COURT'S OWN MOTION.

31 E. IN ORDER TO RECEIVE ANY ENHANCED TREATMENT SERVICES ORDERED BY
32 THE COURT, THE PATIENT MAY NOT BE REQUIRED BY ANY AGENCY OR PROVIDER TO
33 AGREE OR CONSENT TO THE ENHANCED TREATMENT SERVICES IF THE COURT
34 SPECIFICALLY FINDS THAT THE PATIENT'S MENTAL DISORDER SIGNIFICANTLY
35 IMPAIRS THE PATIENT'S CAPACITY TO MAKE AN INFORMED DECISION REGARDING
36 TREATMENT.

37 F. FOR THE PURPOSES OF THIS SECTION, "ENHANCED TREATMENT SERVICES"
38 MEANS SERVICES IDENTIFIED IN A WRITTEN ENHANCED TREATMENT SERVICES PLAN
39 THAT IS APPROVED BY THE COURT AND THAT INCLUDES INFORMATION REGARDING ALL
40 OF THE FOLLOWING:

41 1. ASSIGNMENT OF THE PATIENT TO A TREATMENT TEAM WITH AN INTENSIVE
42 CASE MANAGER FOR ANY OUTPATIENT SERVICES WHO IS REQUIRED, AMONG OTHER
43 DUTIES, TO HAVE IN-PERSON CONTACT WITH THE PATIENT AT SUCH FREQUENCY THAT
44 WILL FACILITATE THE PATIENT'S ADHERENCE TO AND COMPLIANCE WITH THE

1 TREATMENT PLAN AND WILL ALLOW FOR REGULAR FIRSTHAND ASSESSMENT OF THE
2 PATIENT'S PROGRESS AND CONDITION.
3 2. HOUSING OR RESIDENTIAL PLACEMENT THAT PROVIDES THE PATIENT WITH
4 A STABLE, SAFE AND, IF NECESSARY, SECURE RESIDENCE TO ENHANCE COMPLIANCE
5 WITH THE TREATMENT PLAN AND PROTECT THE SAFETY OF THE PATIENT AND THE
6 PUBLIC.
7 3. SAFE, RELIABLE AND ADEQUATE TRANSPORTATION FOR THE PATIENT TO
8 SUCCESSFULLY COMPLY WITH THE TREATMENT PLAN.
9 4. ANY OTHER SERVICES THE PATIENT IS ELIGIBLE TO RECEIVE THAT THE
10 MEDICAL DIRECTOR BELIEVES ARE NECESSARY TO IMPROVE AND PREVENT
11 DETERIORATION OF THE PATIENT'S CONDITION AND TO PROTECT THE PATIENT AND
12 THE PUBLIC.