

REFERENCE TITLE: court-ordered treatment; evaluations; physicians

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1177

Introduced by
Senator Gowan

AN ACT

AMENDING SECTIONS 36-533 AND 36-539, ARIZONA REVISED STATUTES; 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 36-533, Arizona Revised Statutes, is amended to
3 read:

4 36-533. Petition for treatment

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

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

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

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

12 B. The petition shall be accompanied by the affidavits of the two
13 physicians who participated in the evaluation and by the affidavit of the
14 applicant for the evaluation, if any. ~~In a county with a population of~~
15 ~~less than five hundred thousand persons, the petition may be accompanied~~
16 ~~by the affidavits of one physician and either one physician assistant who~~
17 ~~is experienced in psychiatric matters or one psychiatric and mental health~~
18 ~~nurse practitioner who conducted an independent evaluation and by the~~
19 ~~affidavit of the applicant for the evaluation, if any.~~ The affidavits of
20 the physicians ~~or other health professionals~~ shall describe in detail the
21 behavior that indicates that the person, as a result of mental disorder,
22 is a danger to self or to others or has a persistent or acute disability
23 or a grave disability and shall be based on ~~the~~ EACH physician's ~~or other~~
24 ~~health professional's~~ observations of the patient and EACH PHYSICIAN'S
25 study of information about the patient. A summary of the facts that
26 support the allegations of the petition shall be included. The affidavit
27 shall also include any of the results of the physical examination of the
28 patient if relevant to the patient's psychiatric condition.

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

34 D. The petition shall also include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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