Treatment Advocacy Center

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Arizona State Guidance

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Statutory basis and key terms

Arizona Revised Statutes Title 36, Chapter 5

Follow this link to read the Statutes in full here: Arizona Revised Statutes Title 36, Chapter 5

Key definitions

"Admitting officer" is a qualified mental health professional, such as a psychiatrist, medical doctor, or psychiatric nurse practitioner, who has experience doing psychiatric evaluations and has been officially chosen by the head of the evaluation agency to admit patients.

"Danger to others" means a person's mental illness impairs their judgment so much so that they cannot understand that they need treatment, and medical professionals reasonably believe that if their behavior continues, it is likely to lead to serious physical harm.

"Danger to self" means that because of a mental disorder, a person:

- Is at risk of inflicting serious physical harm on themselves. This includes attempting suicide or making a serious threat to do so, when their past behavior and the situation suggest they are likely to act on it; *or*
- Is likely to suffer serious physical harm or serious illness if they are not hospitalized.

"Evaluation" means a thorough mental health assessment done by a team of professionals. It looks at who the person is, their life history, and their medical, mental health, and social situation. The evaluation can be done in person or through secure video, and it may take place in a hospital, in an outpatient setting, or a mix of both. Whenever possible, it should be done in the person's preferred language. The evaluation includes:

- Two doctors — ideally psychiatrists or doctors experienced in mental health — who examine the person separately and write their own reports.
- The person being evaluated must be told that they can select one of the evaluating doctors.
    - In some cases, a psychiatric resident may take the place of one psychiatrist, as long as they are supervised by a qualified psychiatrist who can help attorneys, appear in court, and testify if needed.
- Two additional professionals, including:
    - A psychologist, if one is available; and
    - A social worker who understands mental health services and possible treatment or placement options.
- A physical exam, done according to standard medical practices. This exam is performed by

one of the evaluating doctors or by another doctor or nurse practitioner, as long as one of the evaluating doctors reviews the results.

"Evaluation agency" means a facility approved to provide involuntary services that is either a health care agency licensed by the Arizona Department of Health Services or a carceral facility accredited by the National Commission on Correctional Health Care or the American Correctional Association.

"Family member" means a spouse, parent, adult child, adult sibling or other blood relative of a person undergoing involuntary treatment or evaluation.

"Grave disability" means a condition, demonstrated by behavior caused by a mental disorder, where a person is likely to suffer serious physical harm or illness because they cannot provide for their own basic physical needs.

"Incapacitated person" means any person who is impaired by reason of mental disorder to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning themselves.

"Least restrictive treatment alternative" means the treatment plan and setting that limits a person's freedom as little as possible, while still giving them the treatment they need in a way that is safe and respectful.

"Medical director" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated as the person in charge of the medical services of the agency for the purposes of involuntary treatment.

"Mental disorder" means a substantial disorder of a person's emotional processes, thought, cognition, or memory. The term does not include:

- Problems caused mainly by alcohol or drug use, or by intellectual disability, unless the person also has a separate mental illness;
- Mental decline that happens naturally as someone is near death; or
- Personality or character traits involving long-term antisocial behavior (including illegal sexual behavior), unless those behaviors are caused by a mental disorder.

"Mental health treatment agency" means any of the following:

- The state hospital.
- A health care agency licensed by the Arizona Department of Health Services that provides involuntary treatment services.
- A carceral facility accredited by the National Commission on Correctional Health Care or the American Correctional Association that provides involuntary treatment services.

"Peace officers" means sheriffs of counties, constables, marshals and policemen of cities and towns.

"Persistent or acute disability" means a severe mental disorder that:

- Significantly impairs judgment, reason, behavior, or capacity to recognize reality;
- If not treated, has a substantial probability of causing severe and abnormal mental, emotional, or physical harm;
- Substantially impairs the capacity to make an informed decision about treatment, rendering the person incapable of understanding and expressing an understanding of the advantages, disadvantages, and alternatives to the proposed treatment after explanation; and
- Has a reasonable prospect of being treatable through outpatient, inpatient, or combined treatment.

"Person in need of protection" means someone who cannot properly manage their money or property because of a mental illness. As a result, their assets may be wasted or misused, or they may not have money available for their own care and support (or for people they are responsible for supporting). Protection is needed or helpful to make sure their finances are managed properly and used for necessary care and well-being.

"Prepetition screening" means the review of each application for court-ordered evaluation, including investigation of the alleged facts, an interview with each applicant, and, if possible, an interview with the person who may need treatment. The purpose of the interview with the person is to assess the problem, explain the application, and, when appropriate, attempt to persuade the person to accept evaluation or other services voluntarily.

"Proposed patient" means a person who may need treatment, for whom an application for evaluation has been made or a petition for court-ordered evaluation has been filed.

"Screening agency" means a health care agency licensed by the department and that provides those services required of the agency by this chapter.

Step 1: Application for Involuntary Evaluation

Non-emergent involuntary evaluation

Criteria for emergency evaluation

As a result of a mental disorder, is a danger to self or others, *or* has a persistent or acute disability, *or* a grave disability, *and* is unwilling or unable to undergo a voluntary evaluation.

Who can initiate a non-emergent involuntary evaluation?

Any responsible person can initiate a non-emergent involuntary evaluation and the process does not

differ based on who initiates.

Any responsible person

How? Submit a signed and notarized written application for non-emergent evaluation to a screening agency. (*Note: The screening agency must offer assistance in the preparation of the application*.)

What do they initiate? The screening agency will conduct a prepetition screening (*see definition*).

Where does the proposed patient go? Nowhere before the prepetition screening, unless the applicant presents the proposed patient to the screening agency.

What's the time limit for the response? Within 48 hours of receiving the application for evaluation, excluding weekends and holidays.

What happens? The screening agency will conduct a prepetition screening (*see definition*) to determine whether there is reasonable cause to believe the proposed patient meets the criteria.

If the applicant presents the proposed patient to the screening agency, the agency must conduct a prepetition screening interview of them. However, unless it is an emergency, the proposed patient cannot be held or required to undergo the screening interview over their objection.

If applicant does not present the proposed patient to the screening agency, the agency must conduct the prepetition screening interview at the home of the proposed patient or any other place the proposed patient is found.

While conducting the prepetition screening, the screening agency must accept and consider relevant information from persons with a significant relationship with the proposed patient, including family members and guardians (*"John's Law" form is available here*).

After screening has been completed, the agency must prepare a report of opinions and conclusions. If screening is not possible, the agency shall prepare a report stating the reasons.

What's next? If the screening agency denies the application for evaluation, the denial must be stated in writing. The denial must be reviewed and confirmed by the medical director of the screening agency or their designee.

If the screening agency determines the proposed patient does not currently meet the criteria but there are reasonable grounds to believe the proposed patient has a mental disorder, is in need of further evaluation or treatment, and is able and willing to pursue private or public evaluation or treatment services, the screening agency shall assist them in locating specific evaluation or treatment services in the community, and, if requested, make a direct referral.

If the agency determines there is reasonable cause to believe that the proposed patient meets the

criteria and that they are likely to present a danger to self or to others, have a grave disability or will further deteriorate before receiving a voluntary evaluation, then the agency must prepare and file a petition for court-ordered evaluation, unless the county attorney performs these functions.

If the agency determines there is reasonable cause to believe the proposed patient requires immediate hospitalization to prevent harm to self or others, the agency must take all reasonable steps to secure emergency hospitalization.

Time duration of the hold? Proposed patients are not held under non-emergent applications.

Who decides whether to seek further evaluation? The screening agency.

Is there a form? Application for Involuntary Evaluation

Emergent involuntary evaluation

Criteria for emergent involuntary evaluation:

- As a result of a mental disorder, is a danger to self or others, *or* has a persistent or acute disability, *or* a grave disability, *and* is unwilling or unable to undergo a voluntary evaluation; *and*
- During the time necessary to complete a non-emergent application (*see page one*), is likely, without immediate hospitalization, to suffer serious physical harm or illness, or to inflict serious physical harm on others.

Who can initiate?

Two groups of people can initiate: Any responsible person with knowledge of the facts that show that a person requires emergency admission, or peace officers. The process differs based on who initiates.

Any responsible person with knowledge of the facts that show that a person requires emergency admission

How? Submit a signed written application for emergency admission to an evaluation agency. Peace officers and health care professionals may apply by telephone up to 24 hours before submitting a written application.

What do they initiate? The evaluation agency will review the application to determine if there is reasonable cause for an emergency evaluation.

Where does the proposed patient go? If the proposed patient is not already present at the evaluation agency and the admitting officer has reasonable cause to believe that an emergency evaluation is necessary, the admitting officer may advise a peace officer to take the person into civil

custody and transport the person to the evaluation agency.

What's the time limit for the response? There is no time limit prescribed for a response on the application; however, it is presumed that the response is upon application.

What happens? An admitting officer of an evaluation agency must examine the proposed patient's psychiatric and physical condition and may admit the proposed patient as an emergency patient if, based on the examination and investigation of the emergency admission application, there is reasonable cause to believe they meet the criteria.

What's next? If a proposed patient is hospitalized under this section, the admitting officer may notify a screening agency and request assistance or guidance in developing alternatives to involuntary admission and in counseling the person and the person's family.

What' the duration of the hold? No longer than 24 hours, excluding weekends and holidays, unless a petition for court-ordered evaluation is filed.

Who decides whether to continue to a hearing? The medical director of the evaluation agency.

Is there a form? Application for Emergency Admission for Evaluation

Peace officer

How? Have probable cause to believe that the person meets the criteria and an application for emergency admission cannot be completed before action is needed.

What do they initiate? The peace officer may take the proposed patient into civil custody and transport them to a facility for emergency evaluation.

The proposed patient must be transported to a screening agency, unless the person's condition or the agency's location or hours make such transport impractical, in which case the proposed patient must be transported to an evaluation agency.

Where does the proposed patient go? If the proposed patient is not already present at the evaluation agency and the admitting officer has reasonable cause to believe that an emergency evaluation is necessary, the admitting officer may advise a peace officer to take the person into civil custody and transport the person to the evaluation agency.

What's the time limit for the response? There is no time limit prescribed for a response; however, it is presumed that the peace officer responds "immediately."

What happens? If a proposed patient is taken to a screening agency, the agency will determine whether there is reasonable cause to believe the proposed patient meets the criteria for court-ordered evaluation or immediate hospitalization to prevent harm to self or others. The screening

agency will follow the prepetition screening process provided for under "what happens" in the "non-emergent involuntary evaluation" procedures provided above.

What's next? If a proposed patient is hospitalized under this section, the admitting officer may notify a screening agency and request assistance or guidance in developing alternatives to involuntary admission and in counseling the person and the person's family.

What' the duration of the hold? No longer than 24 hours, excluding weekends and holidays, unless a petition for court-ordered evaluation is filed.

Who decides whether to continue to a hearing? The medical director of the evaluation agency.

Is there a form? Application for Emergency Admission for Evaluation

Step 2: Petition for Court-Ordered Evaluation

Criteria for court-ordered evaluation:

A screening agency has conducted a prescreen of the proposed patient or an evaluating agency has admitted them as an emergency patient (*see "Step 1: Application for involuntary evaluation" above*) and there is reasonable cause to believe that:

- The proposed patient has a mental disorder *and* is, as a result, a danger to self or others, has a persistent or acute disability, *or* a grave disability, *and* is unwilling or unable to undergo voluntary evaluation; *and*
- The proposed patient is in such a condition that without immediate or continuing hospitalization the patient is likely to suffer serious physical harm or further deterioration or inflict serious physical harm on another person.

Who can initiate?

A screening agency or the medical director of an evaluation agency

(*see "Step 1: Application for involuntary evaluation" above*).

How? File a petition for court-ordered evaluation in the superior court in the county in which the patient resides or was found before screening or emergency admission, unless the county attorney performs these functions, then by contacting the county attorney for them to file the petition.

What do they initiate? Court review of the petition to determine if there is reasonable cause to issue an order for evaluation.

Where does the proposed patient go? Nowhere before court review.

What's the time limit for the response? No time limit is indicated for the court's response.

What happens? If the court finds reasonable cause to believe the proposed patient, as a result of a mental disorder, is a danger to self or others, or has a persistent or acute disability, or a grave disability, but is not likely to present a danger to self or others or further deteriorate before the treatment hearing:

- The court must order the proposed patient to appear for an evaluation at a designated time and place.
- The court may also order that, if the proposed patient does not or cannot adhere to the evaluation order, they be taken into civil custody by a peace officer and transported to an evaluation agency. If the court makes such a conditional order, it must also conditionally appoint counsel for the proposed patient to become effective when and if the person is taken into civil custody.

If the court finds reasonable cause to believe the proposed patient meets the criteria:

- The court must order the proposed patient taken into civil custody and evaluated at an evaluation agency.
- The court must also promptly appoint counsel for the proposed patient.

If the person is not taken into civil custody or the evaluation is not initiated within 14 days of the order, the order and petition expire.

What's next? The evaluating agency will evaluate the proposed patient to determine whether they meet criteria.

A person being evaluated on an outpatient basis will not remain in the facility overnight but will be examined during the usual outpatient working hours of the facility on a schedule of appointments.

If the proposed patient is admitted for evaluation on an inpatient basis, the evaluation agency must evaluate them as soon as possible.

While conducting an evaluation, the evaluation agency must solicit, accept, and consider relevant information from persons known to the agency who have a significant relationship with the proposed patient, including family members and guardians (*"John's Law" form is available here*).

The proposed patient must be released if, at any time during an inpatient admission for evaluation, the medical director of the agency determines further evaluation is not appropriate (unless the individual applies for voluntary admission). The medical director must make a written statement of why further evaluation was not appropriate and why release was appropriate. A copy of this written statement must be filed with the court that entered the order for evaluation and must be included in the patient's medical record.

If the agency determines the individual meets criteria, the medical director of the agency must prepare and file a petition for court-ordered treatment on the same or next business day, unless the county attorney performs these functions.

What's the duration of the hold? 72 hours, excluding weekends and holidays, if receiving an evaluation on an inpatient basis. The proposed patient may continue to be held if a petition for court-ordered treatment is filed within 72 hours.

Who decides whether to continue to a hearing? The medical director of the agency that provided the evaluation.

Is there a form? It is unclear if the petition form is publicly available.

Step 3: Petition for Court-Ordered Treatment (Inpatient and Outpatient Commitment)

Criteria for court-ordered treatment:

The proposed patient, as a result of mental disorder:

- Is a danger to self or others,
- Has a persistent or acute disability, *or*
- Has a grave disability, *and*
- Is in need of treatment, *and*
- Is either unwilling or unable to accept voluntary treatment.

When can outpatient be court-ordered?

Following court-ordered evaluation or upon discharge from the hospital.

Who can initiate?

Medical director in charge of the agency that provided the court-ordered evaluation.

(*See "Step 2: Petition for court-ordered evaluation" above*.)

How? File petition to the superior court for court-ordered treatment on the same or succeeding court day as the evaluation.

Required documentation?

- Affidavits of the two physicians who participated in the evaluation.

- The affidavit of the applicant for the evaluation, if any.
- A summary of the facts that support the petition.

What's next? If the proposed patient is not held in an agency at the time of the filing of the petition, the court will determine if the patient is likely to likely to present a danger to self or others before the conclusion of the hearing or is not likely to appear at the hearing on the petition, if not held. If the court makes such determination, it must order the proposed patient to be held at the agency that conducted the evaluation. The court must appoint counsel, if one has not previously been appointed.

If, after reviewing the petition with its attached material and other evidence at hand, the court finds that the proposed patient does not meet the criteria, it will stop proceedings. If the proposed patient is being held at an evaluating agency, they must be released.

Otherwise, the court must hold the hearing within six business days after the petition is filed. However, if there is a good reason, the court can delay the hearing if either side asks.

If the person being evaluated asks for a delay, the hearing can be postponed for up to 30 days.

If the person who filed the petition asks for a delay, the hearing can be postponed for up to three business days.

If the hearing is delayed at the request of the person who filed it and the person being evaluated is being held in the hospital against their will, that person can ask for a separate hearing to decide whether they should stay hospitalized during the delay.

If, after the hearing, the court finds by clear and convincing evidence that the proposed patient meets the criteria, then the court must order treatment. The court may order the proposed patient to undergo outpatient or combined inpatient and outpatient treatment, whichever the court determines to be the least restrictive treatment alternative available.

A written treatment plan must be submitted and approved by the court.

If the court also finds that there is reasonable cause to believe that the patient is an incapacitated person or a person in need of protection, it may order an investigation concerning the need for a guardian or conservator, or both, and may appoint a suitable person or agency to conduct the investigation and submit a report within 21 days.

Who issues the treatment order? The superior court.

Who supervises the treatment plan? The court-designated medical director of the mental health treatment agency providing the patient's treatment.

How long can the first treatment order last? A treatment order for outpatient treatment or an order

for combined inpatient and outpatient treatment shall not exceed 365 days.

An order for inpatient treatment or a period of inpatient treatment under a combined order, shall not exceed:

- 90 days for a person found to be a danger to self.
- 180 days for a person found to be a danger to others.
- 180 days for a person found to have a persistent or acute disability.
- 365 days for a person found to have a grave disability.

If the patient is not hospitalized at the state hospital at the time of the order for treatment, they must undergo treatment for at least 25 days in a mental health treatment agency that is local to the patient. Unless the court finds that the patient's present condition and history demonstrate that the patient will not benefit from the required period of treatment in a mental health treatment agency, or that the state hospital provides a program that is specific to the needs of the patient and is unavailable in the mental health treatment agency, or when there is no local mental health treatment agency readily available to the patient.

During any period of court-ordered treatment, the medical director of the mental health treatment agency assigned to supervise and provide the patient's treatment program may file a motion requesting the court to amend the treatment order to place the patient for treatment at the state hospital. After a hearing, if the court finds that the patient's present condition and history demonstrate that the least restrictive placement to meet the needs of the patient for the foreseeable future is placement in the state hospital and there is a legally available funded bed in the state hospital, the court may amend the original treatment order authorizing the placement of the patient at the state hospital.

What's the renewal process? For patients who were found to be a danger to self or others: Before the discharge date, a new petition for court-ordered treatment may be filed following the same process as the original petition.

For patients who were found to have a grave disability or a persistent or acute disability:

- The medical director must conduct an annual review of the patient within 90 days before the expiration of the court order to determine whether continued court-ordered treatment is appropriate and to assess the need for guardianship or conservatorship, or both.
- If the medical director believes that a continuation of court-ordered treatment is appropriate, they must appoint one or more psychiatrists to conduct a psychiatric examination of the patient.

Each examiner must submit a report to the medical director that includes the following:

- Their opinion as to whether the patient continues to have a grave disability or a persistent or acute disability as a result of a mental disorder and requires continued court-ordered treatment;
- Whether suitable alternatives to court-ordered treatment are available; and
- Whether voluntary treatment would be appropriate.
- A review of the patient's status as to guardianship or conservatorship, or both. The adequacy of existing protections of the patient and the continued need for guardianship or conservatorship, or both. If the examiner concludes that the patient's needs in these areas are not being adequately met, the examiner's report must recommend that the court order an investigation into the patient's needs.
- If the patient has an existing guardian who does not have mental health powers authorized, a recommendation as to whether such authorization should be provided.
- The results of any physical examination if relevant to the psychiatric condition of the patient.

If, after conducting this annual review, the medical director believes continued treatment is necessary, they must file an application for continued court-ordered treatment with the court at least thirty days before the current order expires. Any psychiatric examination completed as part of the annual review must be attached to the application.

If the patient does not have an attorney, the court shall appoint an attorney to represent the patient. Within 10 days after appointment, the attorney must file a response requesting a hearing or submitting the matter to the court for a ruling based on the application without a hearing.

If a hearing is not requested, the court will either rule based on the application or set the matter for a hearing. If a hearing is requested, the court must set a date within three weeks of the request.

At the hearing, the court, with notice, may grant an existing guardian mental health powers. The court may also order an investigation into the need for guardianship or conservatorship, or both, and may appoint a suitable person or agency to conduct the investigation and submit a report to the court within 21 days. If the investigation and report so indicate, the court may authorize an appropriate person to file a petition for appointment of a guardian or conservator for the patient.

The party seeking renewal must prove by clear and convincing evidence that:

1. The patient continues to have a mental disorder resulting in a grave or persistent disability or acute disability;
2. The patient needs continued court-ordered treatment; and
3. The patient is unwilling or unable to accept treatment voluntarily.

After the hearing, the court may either release the patient or order continued court-ordered treatment for a period not to exceed the same limits prescribed for the first treatment order.

What's the discharge process? When the medical director of the treating facility determines the patient no longer meets the criteria, the medical director may discharge the patient from treatment before the expiration of the court-ordered period.

The medical director may issue an order for conditional outpatient treatment of a patient, when, after consultation with staff familiar with the patient's case history, the medical director determines with a reasonable degree of medical probability that all the following apply:

- The patient no longer requires continuous inpatient hospitalization;
- The patient will be more appropriately treated in an outpatient treatment program;
- The patient will follow a prescribed outpatient treatment plan; and
- The patient will not likely become dangerous, suffer more serious physical harm or serious illness, or further deteriorate if the patient follows a prescribed outpatient treatment plan.

The order for conditional outpatient treatment must include a written outpatient treatment plan and may be for a period of treatment up to the remainder of the court-order. The medical director's order and treatment plan must be filed in the patient's medical file and must also be filed with the court.

Before discharge or conditional release, the medical director of the treating agency must notify the following of their intention to discharge or release the patient, at least 10 days before the date of intended discharge:

- The presiding judge of the court that entered the order for treatment.
- Any relative or victim of the patient who has filed a demand for notice with the treatment agency.
- Any person found by the court to have a legitimate reason for receiving notice.

Any of these persons, or the court, may request that the court determine whether the standard for discharge or conditional release has been met. The court may make this determination on the basis of the record or may order a hearing. The court must make this determination as soon as possible, but no longer than three weeks after the anticipated discharge or release date. The patient must remain in care until the court makes it determination.

If a request for review is not made, the patient may be discharged or conditionally released. If the patient is discharged, the medical directory must send a certificate to the court that the person no longer meets criteria and is therefore discharged before the expiration of the court order. The court must enter an order ending the patient's court-ordered treatment.

Is there a form? It is unclear if the petition form is publicly available.