

## 36-520. Application for evaluation; definition

A. Any responsible individual may apply for a court-ordered evaluation of a person who is alleged to be, as a result of a mental disorder, a danger to self or to others, a person with a persistent or acute disability or a grave disability and who is unwilling or unable to undergo a voluntary evaluation. The application shall be made in the prescribed form and manner as adopted by the deputy director.

B. The application for evaluation shall include the following data:

1. The name, and address if known, of the proposed patient for whom evaluation is applied.
2. The age, date of birth, sex, race, marital status, occupation, social security number, present location, dates and places of previous hospitalizations, names and addresses of the guardian, spouse, next of kin and significant other persons and other data that the deputy director may require on the form to whatever extent that this data is known and is applicable to the proposed patient.

**3. ANY CRIMINAL HISTORY INCLUDING WHETHER THE PERSON HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO 13-4517.**

- ~~3.~~ 4. The name, address and relationship of the person who is applying for the evaluation.
4. 5. A statement that the proposed patient is believed to be, as a result of a mental disorder, a danger to self or to others, a patient with a persistent or acute disability or a grave disability and the facts on which this statement is based.
5. 6. A statement that the applicant believes the proposed patient is in need of supervision, care and treatment and the facts on which this statement is based.

C. The application shall be signed and notarized.

D. The screening agency shall offer assistance to the applicant in preparation of the application. Upon receipt of the application, the screening agency shall act as prescribed in section 36-521 within forty-eight hours of the filing of the application excluding weekends and holidays. If the application is not acted upon within forty-eight hours, the reasons for not acting promptly shall be reviewed by the director of the screening agency or the director's designee.

E. If the applicant for the court-ordered evaluation presents the person to be evaluated at the screening agency, the agency shall conduct a prepetition screening examination. Except in the case of an emergency evaluation, the person to be evaluated shall not be detained or forced to undergo prepetition screening against the person's will.

F. If the applicant for the court-ordered evaluation does not present the person to be evaluated at the screening agency, the agency shall conduct the prepetition screening at the home of the person to be evaluated or any other place the person to be evaluated is found. If prepetition screening is not possible, the screening agency shall proceed as in section 36-521, subsection B.

G. If a person is being treated by prayer or spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner of that church or denomination, such person may not be ordered evaluated, detained or involuntarily treated unless the court has determined that the person is, as a result of mental disorder, a danger to others or to self.

H. Court-ordered evaluation or treatment pursuant to this chapter shall not operate to change the legal residence of a patient.

I. If the application is not acted upon because it has been determined that the proposed patient does not need an evaluation, the agency after a period of six months shall destroy the application and any other evidence of the application.

J. For the purposes of this section, "person" includes a person who:

1. Is under eighteen years of age.
2. Has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged with an offense pursuant to section 13-501.
3. Is under the supervision of an adult probation department.

#### 36-522 Voluntary Evaluation

A. **EXCEPT AS SET FORTH IN 36-534, IF** the petition for court-ordered evaluation is not filed because it has been determined that the proposed patient will voluntarily receive an evaluation and is unlikely to present a danger to self or others until the voluntary evaluation, the evaluation agency provided for by the county, or selected by the proposed patient, shall be immediately notified and shall provide evaluation of the proposed patient at a scheduled time and place within five days of the notice. The voluntary evaluation may be on an inpatient or outpatient basis.

B. Voluntary inpatient evaluation is subject to the provisions of article 3 of this chapter.

C. Voluntary outpatient evaluation shall conform to the requirements of section 36-530, subsection D and section 36-531, subsections B, C and D and shall proceed only after the person to be evaluated has given consent to be evaluated by signing a form prescribed by the deputy director which includes information to the proposed patient that the patient-physician privilege does not apply and that the evaluation may result in a petition for the person to undergo court-ordered treatment or for guardianship. Voluntary evaluation may be carried out only if chosen by the patient during the course of a prepetition screening after application for evaluation has been made.

### 36-523. Petition for evaluation

A. The petition for evaluation shall contain the following:

1. The name, address and interest in the case of the individual who applied for the petition.
2. The name, and address if known, of the proposed patient for whom evaluation is petitioned.
3. The present whereabouts of the proposed patient, if known.
4. A statement alleging that 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.
5. A summary of the facts which support the allegations that the proposed patient is dangerous, has a persistent or acute disability or a grave disability and is unwilling or unable to be voluntarily evaluated including the facts which brought the proposed patient to the screening agency's attention.

**6. ANY CRIMINAL HISTORY INCLUDING WHETHER THE PERSON HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO 13-4517.**

~~6-7.~~ Other information that the deputy director, with the approval of the director, by rule or the court by rule or order may require.

B. The petition shall request that the court issue an order requiring that the proposed patient be given an evaluation and shall advise the court of both of the following:

1. That the opinion of the petitioner is either that the proposed patient is or is not in such a condition that without immediate or continuing hospitalization he is likely to suffer serious physical harm or further deterioration or inflict serious physical harm upon another person.
2. If the opinion of the petitioner is that the proposed patient is not in the condition described in paragraph 1 of this subsection, that the opinion of the petitioner is either that the evaluation should or should not take place on an outpatient basis.

C. The petition for evaluation shall be accompanied by the application for evaluation, by the recommendation of the county attorney pursuant to section 36-521 and by a prepetition screening report, unless such documents have not been prepared under a provision of law or in accordance with an order of the court. The petition for evaluation shall also be accompanied by a copy of the application for emergency admission if one exists.

D. A petition and other forms required in a court may be filed only by the screening agency which has prepared the petition.

E. If the petition is not filed because it has been determined that the person does not need an evaluation, the agency after a period of six months shall destroy the petition and the various reports annexed to the petition as required by this section.

F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT THE PERSON DOES NOT NEED AN EVALUATION AND THE PERSON HAS BEEN FOUND BY A COURT TO BE INCOMPETENT PURSUANT TO 13-4517 THE PERSON SHALL BE REMANDED TO THE CRIMINAL COURT FOR DISPOSITION UNDER THAT SECTION.

36-529 Order for Evaluation; order for detention; hearing

A. If, from the review of the petition for evaluation, the court does not determine that the proposed patient is likely to present a danger to self or others or further deteriorate prior to his hearing on court-ordered treatment, but determines that there is reasonable cause to believe that the proposed patient is, as a result of a mental disorder, a danger to self or others, has a persistent or acute disability or a grave disability, the court shall issue an order directing the proposed patient to submit to an evaluation at a designated time and place, specifying that the evaluation will take place on an inpatient or an outpatient basis. The court may also order that if the person does not or cannot so submit, that he be taken into custody by a police PEACE officer and delivered to an evaluation agency. If the court makes such a conditional order, it shall also make a conditional appointment of counsel for the person to become effective when and if the person is taken into custody pursuant to this section.

B. If, from review of the petition for evaluation, there is reasonable cause to believe that the proposed patient is, as a result of a mental disorder, a danger to self or others, has a persistent or acute disability or a grave disability and that the person requires immediate or continued hospitalization prior to his hearing on court-ordered treatment, the court shall order the proposed patient taken into custody and evaluated at an evaluation agency. The court shall promptly appoint counsel for the proposed patient. If an intercounty agreement authorizes the same, the court may order that the evaluation be conducted in another county, and the superior court in the county where the evaluation is conducted shall have concurrent jurisdiction to make appropriate orders concerning the proposed patient.

C. If the person is not taken into custody or if the evaluation pursuant to the order of the court under subsection A or B is not initiated within fourteen days from the date of the order, the order and petition for evaluation shall expire. IF THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO 13-4517 THE COURT WHICH HAD MADE THAT DETERMINATION, AND THE COUNTY ATTORNEY, MUST RECEIVE NOTICE OF THE EXPIRATION OF THE ORDER AND PETITION FOR EVALUATION. THE CRIMINAL COURT MAY ENTER ANY ORDERS NECESSARY FOR FURTHER DISPOSTION PURSUANT TO 13-4517.

D. If the person is involuntarily hospitalized, the person shall be informed by his appointed attorney of his rights to a hearing to determine whether he should be involuntarily hospitalized for evaluation and to be represented at the hearing by an attorney. If the patient requests a hearing to determine whether he should be involuntarily hospitalized during evaluation, the court shall schedule a hearing at its first opportunity.

36-531. Evaluation; possible dispositions; release

A. **UNLESS A PERSON HAS BEEN DETERMINED TO BE INCOMPETENT PURSUANT TO 13-4517, a** A person being evaluated on an inpatient basis in an evaluation agency shall be released if, in the opinion of the medical director of the agency, further evaluation is not appropriate unless the person makes application for further care and treatment on a voluntary basis.

B. If it is determined upon an evaluation of the patient's condition that he is, as a result of a mental disorder, a danger to self or to others, has a persistent or acute disability or a grave disability, the medical director in charge of the agency which provided the evaluation shall, unless the person makes application for further care and treatment on a voluntary basis, prepare, sign and file a petition for court-ordered treatment unless the county attorney performs the functions of preparing, signing or filing the petition as provided in subsection C of this section.

C. The agency may contact the county attorney to obtain his assistance in preparing the petition for court-ordered treatment, and the agency may request the advice and judgment of the county attorney in reaching a decision as to whether court-ordered treatment is justified.

D. **UNLESS A PERSON HAS BEEN DETERMINED TO BE INCOMPETENT AND DANGEROUS PURSUANT TO 13-4517, a** A-person being evaluated on an inpatient basis in an evaluation agency shall be released within seventy-two hours, excluding weekends and holidays, from the time that he is hospitalized pursuant to a court order for evaluation, unless the person makes application for further care and treatment on a voluntary basis or unless a petition for court-ordered treatment has been filed pursuant to subsection B of this section.

E. **IF THE PERSON HAS BEEN DETERMINED TO BE INCOMPETENT PURSUANT TO 13-4517 THE MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL GIVE IMMEDIATE NOTICE TO THE CRIMINAL COURT OF THE DIRECTOR'S INTENTION TO RELEASE THE PERSON UNDER THE PROVISIONS OF THIS SECTION. THE CRIMINAL COURT SHALL ORDER THE PERSON RETURNED TO CUSTODY PENDING THE COURT'S DISPOSITION OF THE PERSON PURSUANT TO 13-4517.**

EF. The department of health services may conduct jointly with a school district, directly or indirectly, an educational evaluation pursuant to sections 15-765 and 15-766 for nonadjudicated youth. The evaluation information may be shared by and among authorized personnel employed by the department of health services and the department of education, or authorized personnel from the local education agency, for purposes of ensuring the provision of special education and related services as required by the individuals with disabilities education act (20 United States Code sections 1400 through 1415).

### 36-533. Petition for treatment

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

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

2. The treatment alternatives that are appropriate or available.

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

B. The petition shall be accompanied by the affidavits of the two physicians who participated in the evaluation and by the affidavit of the applicant for the evaluation, if any. The affidavits of the physicians shall describe in detail the behavior that indicates that the person, as a result of mental disorder, is a danger to self or to others, has a persistent or acute disability or a grave disability and shall be based on the physician's observations of the patient and the physician's study of information about the patient. A summary of the facts that support the allegations of the petition shall be included. The affidavit shall also include any of the results of the physical examination of the patient if relevant to the patient's psychiatric condition.

C. The petition shall request the court to issue an order requiring the person to undergo a period of treatment.

**D. THE PETITION SHALL SET FORTH ANY CRIMINAL HISTORY OF THE PERSON INCLUDING WHETHER THE PERSON HAS BEEN DETERMINED TO BE INCOMPETENT PURSUANT TO 13-4517 AND IF THE CRIMINAL COURT HAS MADE A DETERMINATION THAT THE PERSON IS DANGEROUS AS DEFINED IN 13-4501.**

~~D-E~~ In cases of grave disability the petition shall also include:

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

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

3. A statement that in the opinion of the petitioner the person with a grave disability does or does not require temporary guardianship or conservatorship, or both, and the reasons on which the statement is based.

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

~~E~~ F. A copy of the petition in cases of grave disability shall be mailed to the public fiduciary in the county of the patient's residence or in which the patient was found before evaluation and to any person nominated as guardian or conservator.

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

### 36-534. Change to voluntary status; discharge

If, after a petition for court-ordered treatment has been filed and prior to the hearing, the medical director of the agency finds that it is more appropriate to discharge the patient or to admit the proposed patient on a voluntary basis, the medical director shall, after receiving approval from the court, either discharge the patient or admit the patient for further treatment on a voluntary basis. **THIS SECTION DOES NOT APPLY TO A PATIENT WHO HAS BEEN DETERMINED TO BE INCOMPETENT PURSUANT TO 13-4517.**

### 36-540. Court options

(L14, Ch. 215, sec. 109 & Ch. 261, sec. 9. Eff. 1/1/15)

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

1. Treatment in a program of outpatient treatment.
2. Treatment in a program consisting of combined inpatient and outpatient treatment.
3. Inpatient treatment in a mental health treatment agency, in a hospital operated by or under contract with the United States department of veterans affairs to provide treatment to eligible veterans pursuant to article 9 of this chapter, in the state hospital or in a private hospital, if the private hospital agrees, subject to the limitations of section 36-541.

#### **4. PARTICIPATION IN A CONTINUUM OF CARE TREATMENT PROGRAM ADMINISTERED BY A COUNTY'S BEHAVIORAL HEALTH REVIEW BOARD.**

B. The court shall consider all available and appropriate alternatives for the treatment and care of the patient. The court shall order the least restrictive treatment alternative available **UNLESS THE PATIENT HAS BEEN DETERMINED BY THE CRIMINAL COURT TO BE DANGEROUS PURSUANT TO 13-4517.**

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

1. Determines that all of the following apply:
  - (a) The patient does not require continuous inpatient hospitalization.
  - (b) The patient will be more appropriately treated in an outpatient treatment program or in a combined inpatient and outpatient treatment program.
  - (c) The patient will follow a prescribed outpatient treatment plan.

(d) The patient **IS DANGEROUS PURSUANT TO 13-4517 OR** will not likely become dangerous or suffer more serious physical harm or serious illness or further deterioration if the patient follows a prescribed outpatient treatment plan.

2. Is presented with and approves a written treatment plan that conforms with the requirements of section 36-540.01, subsection B. If the treatment plan presented to the court pursuant to this subsection provides for supervision of the patient under court order by a mental health agency that is other than the mental health agency that petitioned or requested the county attorney to petition the court for treatment pursuant to section 36-531, the treatment plan must be approved by the medical director of the mental health agency that will supervise the treatment pursuant to subsection E of this section.

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

**E. IF THE PATIENT HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517 THE COURT MAY ORDER TREATMENT FOR UP TO SIX YEARS. AFTER THE FIRST TWO YEARS AND EVERY TWO YEARS THEREAFTER THE PATIENT MAY REQUEST RELEASE FROM TREATMENT. THE COURT SHALL NOTIFY THE COUNTY ATTORNEY AND SET A HEARING TO DETERMINE IF THE DEFENDANT IS NO LONGER DANGEROUS OR IS NO LONGER IN NEED OF TREATMENT. THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF 36-546.**

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

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

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

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

4. During any period of outpatient treatment under subsection A, paragraph 2 of this section **THE COURT ON ITS OWN MOTION OR** ~~if the court~~, on motion by the medical director of the patient's outpatient mental health treatment facility, determines that the patient is not complying with the terms of the order or that the outpatient treatment plan is no longer appropriate and the patient needs inpatient treatment, the court, without a hearing and based on the court record, the patient's medical record, the affidavits and recommendations of the medical director, and the advice of staff and physicians or the psychiatric and mental health nurse practitioner familiar with the treatment of the patient, may enter

an order amending its original order. The amended order may alter the outpatient treatment plan or order the patient to inpatient treatment pursuant to subsection A, paragraph 3 of this section. The amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F G of this section. If the patient refuses to comply with an amended order for inpatient treatment, the court **ON ITS OWN MOTION OR ON THE REQUEST OF THE MEDICAL DIRECTOR** may authorize and direct a peace officer, ~~on the request of the medical director,~~ to take the patient into protective custody and transport the patient to the agency for inpatient treatment. **ANY AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO PEACE OFFICERS TO TAKE CUSTODY OF A PATIENT SHALL INCLUDE THE CRIMINAL HISTORY OF THE PERSON, NAMES AND PHONE NUMBERS OF THE PERSONS CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER PERSONS.** When reporting to or being returned to a treatment agency for inpatient treatment pursuant to an amended order, the patient shall be informed of the patient's right to judicial review and the patient's right to consult with counsel pursuant to section 36-546.

5. During any period of outpatient treatment under subsection A, paragraph 2 of this section, if the medical director of the outpatient treatment facility in charge of the patient's care determines, in concert with the medical director of an inpatient mental health treatment facility who has agreed to accept the patient, that the patient is in need of immediate acute inpatient psychiatric care because of behavior that is dangerous to self or to others, the medical director of the outpatient treatment facility may order a peace officer to apprehend and transport the patient to the inpatient treatment facility pending a court determination on an amended order under paragraph 4 of this subsection. The patient may be detained and treated at the inpatient treatment facility for a period of no more than forty-eight hours, exclusive of weekends and holidays, from the time that the patient is taken to the inpatient treatment facility. The medical director of the outpatient treatment facility shall file the motion for an amended court order requesting inpatient treatment no later than the next working day following the patient being taken to the inpatient treatment facility. Any period of detention within the inpatient treatment facility pending issuance of an amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section. If a patient is ordered to undergo inpatient treatment pursuant to an amended order, the medical director of the outpatient treatment facility shall inform the patient of the patient's right to judicial review and to consult with an attorney pursuant to section 36-546.

~~F. G.~~ **UNLESS THE PATIENT HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517** ~~¶~~ the maximum periods of inpatient treatment that the court may order, subject to the limitations of section 36-541, are as follows:

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

H. THE COURT MAY ORDER AN ASSESSMENT BE CONDUCTED TO DETERMINE THE PATIENT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION MONIES, SUPPLEMENTAL SECURITY INCOME, DEVELOPMENTAL DISABILITY, SUPPLEMENTAL SECURITY DISABILITY INCOME, MEDICARE, AND REGIONAL BEHAVIORAL HEALTH ASSOCIATION MONIES.

~~G~~. I. If, on finding that the patient meets the criteria for court-ordered treatment pursuant to subsection A of this section, the court also finds that there is reasonable cause to believe that the patient is an incapacitated person as defined in section 14-5101 or is a person in need of protection pursuant to section 14-5401 and that the patient is or may be in need of guardianship or conservatorship, or both, the court 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. The appointee may include a court appointed guardian ad litem, an investigator appointed pursuant to section 14-5308 or the public fiduciary if there is no person willing and qualified to act in that capacity. The court shall give notice of the appointment to the appointee within three days of the appointment. The appointee shall submit the report of the investigation to the court within twenty-one days. The report shall include recommendations as to who should be guardian or who should be conservator, or both, and a report of the findings and reasons for the recommendation. If the investigation and report so indicate, the court shall order the appropriate person to submit a petition to become the guardian or conservator, or both, of the patient.

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

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

I. K. The court may appoint as a temporary guardian or conservator pursuant to subsection H of this section a suitable person or the public fiduciary if there is no person qualified and willing to act in that capacity. The court shall issue an order for an investigation as prescribed pursuant to subsection G of this section and, unless the patient is represented by independent counsel, the court shall appoint an attorney to represent the patient in further proceedings regarding the appointment of a guardian or conservator. The court shall schedule a further hearing within fourteen days on the appropriate court calendar of a court that has authority over guardianship or conservatorship matters pursuant to this title to consider the continued need for an emergency temporary guardian or conservator and the

appropriateness of the temporary guardian or conservator appointed, and shall order the appointed guardian or conservator to give notice to persons entitled to notice pursuant to section 14-5309, subsection A or section 14-5405, subsection A. The court shall authorize certified letters of temporary emergency guardianship or conservatorship to be issued on presentation of a copy of the court's order. If a temporary emergency conservator other than the public fiduciary is appointed pursuant to this subsection, the court shall order that the use of the money and property of the patient by the conservator is restricted and not to be sold, used, transferred or encumbered, except that the court may authorize the conservator to use money or property of the patient specifically identified as needed to pay an expense to provide for the care, treatment or welfare of the patient pending further hearing. This subsection and subsection H of this section do not:

1. Prevent the evaluation or treatment agency from seeking guardianship and conservatorship in any other manner allowed by law at any time during the period of court-ordered evaluation and treatment.
2. Relieve the evaluation or treatment agency from its obligations concerning the suspected abuse of a vulnerable adult pursuant to title 46, chapter 4.

~~J.L.~~ If, on finding that a patient meets the criteria for court-ordered treatment pursuant to subsection A of this section, the court also learns that the patient has a guardian appointed under title 14, the court with notice may impose on the existing guardian additional duties pursuant to section 14-5312.01. If the court imposes additional duties on an existing guardian as prescribed in this subsection, the court may determine that the patient needs to continue treatment under a court order for treatment and may issue the order or determine that the patient's needs can be adequately met by the guardian with the additional duties pursuant to section 14-5312.01 and decline to issue the court order for treatment. If at any time after the issuance of a court order for treatment the court finds that the patient's needs can be adequately met by the guardian with the additional duties pursuant to section 14-5312.01 and that a court order for treatment is no longer necessary to assure compliance with necessary treatment, the court may terminate the court order for treatment. If there is a court order for treatment and a guardianship with additional mental health authority pursuant to section 14-5312.01 existing at the same time, the treatment and placement decisions made by the treatment agency assigned by the court to supervise and administer the patient's treatment program pursuant to the court order for treatment are controlling unless the court orders otherwise.

~~K.~~ **M.** The court shall file a report as part of the court record on its findings of alternatives for treatment.

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

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

~~N.P.~~ A peace officer who in good faith apprehends and transports a patient to an inpatient treatment facility on the order of the medical director of the outpatient treatment facility pursuant to subsection E, paragraph 5 of this section is not subject to civil liability.

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

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

#### 36-540.01. Conditional outpatient treatment

A. The medical director may issue an order for conditional outpatient treatment for a patient ordered to undergo treatment pursuant to section 36-540 if, after consultation with staff familiar with the patient's case history, the medical director determines with a reasonable degree of medical probability that all of the following apply:

1. The patient no longer requires continuous inpatient hospitalization.
2. The patient will be more appropriately treated in an outpatient treatment program.
3. The patient will follow a prescribed outpatient treatment plan.
4. 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.

B. The order for conditional outpatient treatment issued by the medical director shall include a written outpatient treatment plan prepared by staff familiar with the patient's case history and approved by the medical director. The plan shall include all of the following:

1. A statement of the patient's requirements, if any, for supervision, medication and assistance in obtaining basic needs such as employment, food, clothing or shelter.
2. The address of the residence where the patient is to live and the name of the person in charge of the residence, if any.
3. The name and address of any person, agency or organization assigned to supervise an outpatient treatment plan or care for the patient, and the extent of authority of the person, agency or organization in carrying out the terms of the plan.

4. The conditions for continued outpatient treatment, which may require periodic reporting, continuation of medication and submission to testing, and may restrict travel, consumption of spirituous liquor and drugs, associations with others and incurrence of debts and obligations or such other reasonable conditions as the medical director may specify.

C. Before release for conditional outpatient treatment, the patient shall be provided with copies and full explanations of the medical director's order and the treatment plan. If, after full explanation, the patient objects to the plan or any part of it, the objection and reasons for the objection shall be noted in the patient's record. The medical director's order and treatment plan shall be filed in the patient's medical file and shall also be filed with the court.

D. The period for which conditional outpatient treatment may be ordered may not exceed the remainder of the period of court ordered treatment.

E. Before the release of a patient for outpatient treatment, the medical director shall give notice pursuant to section 36-541.01, subsection B and a motion for a determination by the court as to whether the standard for conditional release of the patient has been met may be made by the persons and in the manner provided for in section 36-541.01, subsection H. Before the release of a person found to be a danger to self **OR OTHERS**, to be a person with a persistent or acute disability or a grave disability for outpatient treatment, the medical director shall give notice to the court that ordered the patient to undergo treatment. If criminal charges against a patient ~~involving death or serious physical injury or~~ **PURSUANT to 13-706, title 13, chapter 14 or 35.1** ~~a violation of title 13, chapter 14~~ are dismissed pursuant to section 13-4517, the medical director shall notify the prosecuting agency if a civil commitment order issued pursuant to this chapter expires or is terminated, or if the patient is discharged to outpatient treatment. The medical director shall provide this notice by mail at least five days before the anticipated date of the expiration, termination or discharge.

F. The medical director shall require periodic reports concerning the condition of patients on conditional outpatient treatment from any person, agency or organization assigned to supervise an outpatient treatment plan. The medical director shall require these reports at intervals not to exceed thirty days.

G. The medical director shall review the condition of a patient on conditional outpatient treatment at least once every thirty days and enter the findings in writing in the patient's file. In conducting the review, the medical director shall consider all reports and information received and may require the patient to report for further evaluation.

H. The medical director may amend any part of the outpatient treatment plan during the course of conditional outpatient treatment. If the plan is amended, the medical director shall issue a new order including the amended outpatient treatment plan. The new order and amended outpatient treatment plan shall be filed in the patient's medical file. Copies of the new order and outpatient treatment plan shall be immediately provided to the patient and to any person, agency or organization assigned to supervise an outpatient treatment plan. Copies of the new order and outpatient treatment plan shall be immediately filed with the court **WHO ISSUED THE TREATMENT ORDER AS WELL AS THE CRIMINAL COURT AND THE COUNTY ATTORNEY IF THE PATIENT HAD BEEN DETERMINED TO BE INCOMPETENT PURSUANT TO 13-4517.**

I. The medical director may rescind an order for conditional outpatient treatment and order the patient to return to a mental health treatment agency at any time during the period of court ordered treatment if, in the medical director's judgment, the patient has failed to comply with a term of the outpatient treatment plan or if, for any reason, the medical director determines that the patient needs inpatient treatment or that conditional outpatient treatment is no longer appropriate. **THE MEDICAL DIRECTOR SHALL GIVE NOTICE TO THE COURT WHO ISSUED THE TREATMENT ORDER AS WELL AS THE CRIMINAL COURT AND THE COUNTY ATTORNEY IF THE PATIENT HAD BEEN DETERMINED TO BE INCOMPETENT PURSUANT TO 13-4517.**

J. If the medical director rescinds an order for conditional outpatient treatment and the patient is returned to a mental health treatment agency for inpatient treatment, the patient shall be informed of the patient's right to judicial review and right to consult with counsel pursuant to section 36-546.

K. If the medical director rescinds an order for conditional outpatient treatment and orders the patient to return to a mental health treatment agency, the medical director may request, **OR A COURT MAY ORDER**, a peace officer or a designated officer or employee of the treatment agency to take the patient into custody for immediate delivery to the agency pursuant to section 36-544.

L. The medical director is not civilly liable for any act committed by a patient while on conditional outpatient treatment if the medical director has in good faith followed the requirements of this section.

M. **UNLESS THE PATIENT HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517** This section does not prevent the medical director from authorizing a patient ordered to undergo treatment pursuant to section 36-540 as a danger to self, a danger to others, a patient with a persistent or acute disability or a grave disability to leave the treatment agency for periods of no more than five days under the care, custody and control of a spouse, relative or other responsible person if the medical director determines that the patient will not become dangerous or suffer serious physical harm or illness during that time. **IF THE PATIENT HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517 THE MEDICAL DIRECTOR SHALL OBTAIN APPROVAL OF THE CRIMINAL COURT PRIOR TO AUTHORIZING THE PATIENT TO LEAVE THE TREATMENT AGENCY.**

N. **UNLESS THE PATIENT HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517** The medical director may authorize a patient who is civilly committed pursuant to section 36-540 to leave the state hospital grounds unaccompanied if the leave is part of an inpatient individualized treatment and discharge plan and the medical director determines that the patient will not become dangerous or suffer serious physical harm or illness during that time. **IF THE PATIENT HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517 AN INDIVIDUALIZED TREATMENT PLAN WHICH INCLUDES UNACCOMPANIED LEAVE MUST BE APPROVED BY THE CRIMINAL COURT AND NOTICE SHALL BE GIVEN TO THE COUNTY ATTORNEY OF SUCH A PLAN.**

#### **36-540.03 NON-COMPLIANCE WITH OUTPATIENT TREATMENT**

**A. AT ANY TIME A PATIENT IS NON-COMPLIANT WITH ANY CONDITION OF OUTPATIENT TREATMENT, INCLUDING PERIODIC REPORTING, CONTINUATION OF MEDICATION, SUBMISSION TO TESTING, TRAVEL RESTRICTIONS, RESIDENCY REQUIREMENTS, CONSUMPTION OF SPIRITOUS LIQUOR OR DRUGS, OR ANY OTHER CONDITION IMPOSED BY COURT ORDER OR THE MEDICAL DIRECTOR, IMMEDIATE NOTICE SHALL**

BE PROVIDED TO THE COURT WHO ENTERED THE TREATMENT ORDER. IF THE PATIENT HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517 IMMEDIATE NOTICE SHALL BE PROVIDED TO THE CRIMINAL COURT AND THE COUNTY ATTORNEY.

B. THE COURT, INCLUDING THE CRIMINAL COURT, MAY ENTER ANY ORDER SUFFICIENT TO MAINTAIN THE HEALTH, SAFETY AND TREATMENT OF THE PATIENT AND TO PROTECT THE PUBLIC INCLUDING RESCINDING THE OUTPATIENT TREATMENT ORDER. THE COURT MAY ENTER AN ORDER DIRECTING A PEACE OFFICER TO TAKE THE PERSON INTO CUSTODY AND RETURN THE PATIENT TO THE INPATIENT TREATMENT FACILITY. SUCH AN ORDER SHALL INCLUDE THE PERSON'S CRIMINAL HISTORY, WHETHER THE PERSON SHOULD BE CONSIDERED DANGEROUS, AND NAMES AND TELEPHONE NUMBERS OF THE PERSON'S CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN, OR SIGNIFICANT OTHER PERSONS.

C. IF THE COURT RESCINDS AN ORDER FOR OUTPATIENT TREATMENT UNDER THIS SECTION THE PATIENT SHALL BE INFORMED OF THE PATIENT'S RIGHT TO JUDICIAL REVIEW AND RIGHT TO CONSULT WITH COUNSEL PURSUANT TO 36-546.

36-541.01. Release or discharge from treatment before expiration of period ordered by court; notification of intent to release or discharge; hearing

A. A patient ordered to undergo treatment pursuant to this article may be released from treatment before the expiration of the period ordered by the court if, in the opinion of the medical director of the mental health treatment agency, the patient no longer is, as a result of a mental disorder, a danger to others, a danger to self, has a persistent or acute disability or a grave disability. A person ordered to undergo treatment as a danger to others **OR WHO HAS BEEN DETERMINED TO BE INCOMPETENT PURSUANT TO 13-4517** may not be released or discharged from treatment before the expiration of the period for treatment ordered by the court unless the medical director first gives notice of intention to do so as provided by this section.

B. Before the release or discharge of a patient ordered to undergo treatment, the medical director of the mental health treatment agency shall notify the following of the medical director's intention to release or discharge the patient:

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

C. If criminal charges against a patient involving ~~criminal charges against a patient involving death or serious physical injury or a violation of~~ **OFFENSES UNDER 13-706**, title 13, chapter 14 **OR 35.1** are dismissed pursuant to section 13-4517, the medical director shall notify the **CRIMINAL COURT AND THE** prosecuting agency if a civil commitment order issued pursuant to this chapter expires or is terminated, or if the patient is discharged to outpatient treatment. The medical director shall provide this notice by mail at least ~~five~~ **SEVEN** days before the anticipated date of the expiration, termination or discharge.

D. If the director of the mental health treatment agency is unable to determine, based on the information submitted pursuant to subsection E, that a person who has filed a demand for notice is a

victim the director shall inform that person that that person's demand for notice is denied and that notice will not be given unless ordered by the court pursuant to subsection F.

E. A demand for notice by a relative or victim, and a petition for notice by other persons, shall be on a form prescribed by the department and shall include the following information:

1. The full name of the person to receive notice.
2. The address to which notice is to be mailed.
3. The telephone number of the person to receive notice.
4. The relationship to the patient, if any, or the reasons why the person believes the person has a legitimate reason to receive notice.
5. A statement that the person will advise the treatment agency in writing by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.
6. The full name of the patient ordered to undergo treatment as a danger to others **OR WHO HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517**.
7. The mental health number assigned to the case by the superior court.

F. If the court receives a demand for notice by a relative or victim, the court shall order the medical director of the mental health treatment agency not to release or discharge the patient before the expiration of the period of court-ordered treatment without first giving notice to the relative or victim as provided in subsection G. After considering a petition for notice, if the court finds that the petitioner has a legitimate reason for receiving prior notice, the court may order the medical director of the mental health treatment agency not to release or discharge the patient from inpatient treatment before the expiration of the period of court-ordered treatment without first giving notice to the petitioner as provided in subsection G. Any order for notice shall be delivered to the mental health treatment agency and shall be filed with the patient's clinical record. If the patient is transferred to another agency or institution, any orders for notice shall be transferred with the patient.

G. A notice of intention to release or discharge shall include the following information:

1. The name of the patient to be released or discharged.
2. The type of release or discharge.
3. The date of anticipated release or discharge. Notices shall be placed in the mail, postage prepaid and addressed to the court and to each person for whom notice has been ordered, at least ten days before the date of intended release or discharge except notice shall be sent to the prosecuting agency at least ~~five~~ **SEVEN** days before the date of intended release or discharge. For purposes of computing the notice requirement, the day of mailing shall not be counted.

H. Any person for whom prior notice is required pursuant to this section, or the court, may make a motion within the notification period that requires the court to determine whether the standard for release of the patient before the expiration of the period for court-ordered treatment has been met. A determination that the standard for release has been met may be made by the court based on a review of the record and any affidavits submitted without further hearing. For good cause, the court may order

an evidentiary hearing. Whether or not a hearing is held, the court shall make a determination at the earliest possible time but no longer than three weeks after the anticipated date of release pursuant to subsection G, and the patient shall be retained for the additional time required for the court's determination. In making its determination the court may order an independent examination of the patient. If a motion is not made, the patient may be released in accordance with the terms set forth in the notice without further court order.

I. If a motion has not been made pursuant to subsection H, the patient may be released or discharged and the medical director of the mental health treatment agency shall send to the court a certificate that the patient is no longer a danger to others, a danger to self, has a persistent or acute disability or a grave disability as the result of a mental disorder and therefore is released before the expiration of the period ordered for treatment. The court shall enter an order terminating the patient's court-ordered treatment.

J. The medical director of the mental health treatment agency shall not be held civilly liable for any acts committed by a patient released before the expiration of the period of court-ordered treatment if the medical director has in good faith followed the requirements of this section.

36-542. Discharge of patient at expiration of period ordered by court; change to voluntary status; relief from civil liability

A. [SUBJECT TO THE PROVISIONS OF 36-540, SUBSECTION E](#), A patient ordered by a court to undergo treatment pursuant to this article shall be discharged from treatment at the expiration of the period of treatment ordered unless one of the following occurs:

1. The person accepts voluntary treatment at the mental health treatment agency.
2. Before the discharge date, a new petition is filed in the county in which the patient is being treated. The proceedings shall then be governed by this article. The costs of the proceedings shall be a charge against the county in which the patient resided or was found prior to hospitalization.

B. If a patient to be discharged is under guardianship, the medical director of the mental health treatment agency shall notify the guardian ten days before discharge.

C. The medical director is not civilly liable for any acts committed by a discharged patient if the medical director has in good faith followed the requirements of this article.

36-543. Release from treatment of a patient with a grave disability or a patient with a persistent or acute disability; annual review; court order for continued treatment

A. A patient found to have a grave disability or a persistent or acute disability and ordered to undergo treatment may be released from inpatient treatment when, in the opinion of the medical director of the mental health treatment agency, the level of care offered by the agency is no longer required. The patient may agree to continue treatment voluntarily. If the patient is to be released, the medical director shall arrange for an appropriate alternative placement. [IF THE PATIENT HAS BEEN DETERMINED TO BE DANGEROUS PURSUANT TO 13-4517 THE MEDICAL DIRECTOR SHALL IMMEDIATELY PROVIDE](#)

NOTICE OF THE INTENT TO RELEASE THE PATIENT TO THE CRIMINAL COURT. THE COURT MAY ENTER ANY ORDERS TO SUFFICIENT TO MAINTAIN THE HEALTH, SAFETY AND TREATMENT OF THE PATIENT AND TO PROTECT THE PUBLIC. THE MEDICAL DIRECTOR SHALL ALSO PROVIDE NOTICE TO THE PROSECUTING AGENCY AT LEAST SEVEN DAYS BEFORE THE ANTICIPATED DATE OF THE PATIENT'S RELEASE.

B. If a patient to be released from inpatient treatment is under guardianship, the medical director of the mental health treatment agency shall notify the guardian and any relevant regional behavioral health authority ten days before the intended release date that the ward no longer requires the level of care offered by the agency. The guardian and, if relevant, the regional behavioral health authority shall arrange alternative placement with the advice and recommendations of the medical director of the mental health treatment agency.

C. The medical director of the mental health treatment agency is not civilly liable for any acts committed by the released patient if the medical director has in good faith complied with the requirements of this article.

D. Within ninety days before the expiration of a court order for treatment, the medical director of the mental health treatment agency shall conduct an annual review of a patient who has been found to have a grave disability or a persistent or acute disability and is undergoing court-ordered treatment to determine whether the continuation of court-ordered treatment is appropriate and to assess the needs of the patient for guardianship or conservatorship, or both. The annual review shall consist of the mental health treatment and clinical records contained in the patient's treatment file. The mental health treatment agency shall keep a record of the annual review. If the medical director believes that a continuation of court-ordered treatment is appropriate, the medical director of the mental health treatment agency shall appoint one or more psychiatrists to carry out a psychiatric examination of the patient. In any proceeding conducted pursuant to this section, a patient has the right to have an analysis of the patient's mental condition by an independent evaluation pursuant to section 36-538.

E. Each examiner participating in the psychiatric examination of the patient shall submit a report to the medical director of the mental health treatment agency that includes the following:

1. The examiner's opinions as to whether the patient continues to have a grave disability or a persistent or acute disability as the result of a mental disorder and in need of continued court-ordered treatment. In evaluating the patient's need for continued court-ordered treatment, the examiner must consider, along with all other evidence, the patient's history before and during the current period of court-ordered treatment, the patient's compliance with recommended treatment and any other evidence relevant to the patient's ability and willingness to follow recommended treatment with or without a court order.

2. A statement as to whether suitable alternatives to court-ordered treatment are available.

3. A statement as to whether voluntary treatment would be appropriate.

4. 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 shall recommend that the court order an investigation into the patient's needs.

5. If the patient has an existing guardian who does not have the mental health powers authorized pursuant to section 14-5312.01, a recommendation as to whether the additional mental health powers authorized by section 14-5312.01 should be imposed on the existing guardian and whether the patient's needs can be adequately addressed by a guardian with mental health powers without the need for a court order for treatment or whether the court order for treatment should continue regardless of the additional mental health powers imposed on the guardian.

6. The results of any physical examination conducted during the period of court-ordered treatment if relevant to the psychiatric condition of the patient.

F. After conducting the annual review as prescribed in this section, if the medical director believes that continued court-ordered treatment is necessary or appropriate, not later than thirty days before the expiration of the court order for treatment, the medical director shall file with the court an application for continued court-ordered treatment alleging the basis for the application and shall file simultaneously with the application any psychiatric examination conducted as part of the annual review. If the patient is under guardianship, the medical director shall mail a copy of the application to the patient's guardian.

G. If an application for continued court-ordered treatment is filed, all of the following apply:

1. If the patient does not have an attorney, the court shall appoint an attorney to represent the patient.

2. Within ten days after appointment, an attorney appointed pursuant to this subsection, to the extent possible, shall fulfill the duties imposed pursuant to section 36-537, review the medical director's report and the patient's medical records, interview any physician who prepared a report on the annual review and file a response requesting a hearing or submitting the matter to the court for a ruling based on the record without a hearing.

3. If a hearing is not requested, the court shall rule on the application or set the matter for hearing. If a hearing is requested, the hearing shall be held within three weeks after the request for hearing is filed. The hearing may be continued for good cause on motion of a party or on the court's own motion, and the expiration of the current court order for treatment may be extended until a ruling by the court on an application filed pursuant to this subsection.

4. The patient's attorney must be present at all hearings and may subpoena and cross-examine witnesses and present evidence. The patient has the right to attend all hearings, but may choose not to attend a hearing. The patient's attorney may waive the patient's presence after speaking with the patient and confirming that the patient understands the right to be present and does not desire to attend. If the patient is unable to be present at the hearing for medical or psychiatric reasons and the hearing cannot be conducted where the patient is being treated or confined, or the patient cannot appear by another reasonably feasible means, the court shall require clear and convincing evidence that the patient is unable to be present at the hearing and on such a finding may proceed with the hearing in the patient's absence.

5. The evidence presented by the applicant includes the testimony of one or more witnesses acquainted with the patient during the period of court-ordered treatment, which may be satisfied by a statement agreed on by the parties, and the testimony of any physician who performed an annual review of the patient, which may be satisfied by stipulating to the admission of the examining physicians' written report prepared pursuant subsection E of this section. The court may waive the need for the applicant to

present the testimony of witnesses acquainted with the patient as required by this subsection, if it finds that the need for a continued court order for treatment has been established by clear and convincing evidence from the other testimony and evidence presented at the hearing.

6. At a hearing held pursuant to this subsection, the court, with notice, may impose on an existing guardian additional powers pursuant to section 14-5312.01. If the court finds that the patient's needs can be adequately met by an existing guardian with the additional powers pursuant to section 14-5312.01 and that a court order for treatment is not necessary to ensure compliance with necessary treatment, the court may terminate the court order for treatment or decline to issue an order continuing court-ordered treatment. 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. The appointee may include a court-appointed guardian ad litem, a court-appointed investigator pursuant to section 14-5308 or the public fiduciary if there is no person willing and qualified to act in that capacity. The court shall give notice of the appointment to the appointee within three days after the appointment. The appointee shall submit the report of the investigation to the court within twenty-one days. The report shall include recommendations as to who should be guardian or conservator, or both, and the findings and reasons for the recommendation. 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.

H. If a hearing is held pursuant to subsection G of this section, the party seeking the renewal of the court order must prove all of the following by clear and convincing evidence:

1. The patient continues to have a mental disorder and, as a result of that disorder, has either a persistent or acute disability or a grave disability.
2. The patient is in need of continued court-ordered treatment.
3. The patient is either unwilling or unable to accept treatment voluntarily.

I. After a hearing held pursuant to subsection G of this section, the court may order the patient to be released from court-ordered treatment or to undergo continued court-ordered treatment for a period not to exceed the time periods prescribed in section 36-540, subsection D.

J. The deputy director shall create and operate a program to ensure that the examination and review of persons with grave disabilities or persistent or acute disabilities under court order are carried out in an effective and timely manner. The deputy director, with the approval of the director, shall adopt rules needed to operate this program.

#### 36-544. Unauthorized absences; violation; classification; tolling period; hearing

A. When any patient who is being evaluated or treated is absent without proper authorization from an evaluation agency or a mental health treatment agency, or when an order for outpatient treatment is rescinded, any peace officer shall, upon oral or written request of the medical director of the agency and without the necessity of a warrant or court order, or any officer or employee of the agency who has been previously designated in writing by the medical director of the agency to perform such duties may, take into custody and deliver such patient to the agency. Such officers and employees of the agency

have the powers and duties of peace officers so far as is necessary to carry out the provisions of this section. IF THE PATIENT HAS NOT RETURNED VOLUNTARILY OR INVOLUNTARILY WITHIN SEVEN DAYS OF THE BEGINNING OF THE UNAUTHORIZED ABSENCE, THE MEDICAL DIRECTOR SHALL REQUEST A PEACE OFFICER TO TAKE THE PATIENT INTO CUSTODY AND DELIVER THE PATIENT TO THE AGENCY. IF THE PATIENT HAS BEEN FOUND INCOMPETENT PURSUANT TO 13-4517, THE MEDICAL DIRECTOR SHALL NOTIFY THE CRIMINAL COURT OF THE PATIENT'S ABSENCE AS SOON AS THE AGENCY KNOWS OR SHOULD HAVE REASONABLY KNOWN OF THE PATIENT'S UNAUTHORIZED ABSENCE. THE CRIMINAL COURT MAY ENTER ANY ORDER NECESSARY TO TAKE THE PATIENT INTO CUSTODY, RETURN THE PATIENT TO THE AGENCY AND TO PROTECT THE PUBLIC. ANY ORDER DIRECTING A PEACE OFFICER TO TAKE THE PERSON INTO CUSTODY SHALL INCLUDE THE PERSON'S CRIMINAL HISTORY AND NAMES AND TELEPHONE NUMBERS OF THE PERSON'S CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN, OR SIGNIFICANT OTHER PERSONS.

B. Any person who intentionally assists any patient being evaluated or treated in an agency to be absent from the agency without proper authorization, or who intentionally assists a patient whom he knows to be absent without proper authorization or whom he knows to be a patient whose order for outpatient treatment has been rescinded and who has been ordered to return to the agency, or to resist being returned to the agency after such absence is guilty of a class 2 misdemeanor.

C. The period of court-ordered treatment ceases to run during the unauthorized absence of the patient from the jurisdiction or from any required supervision, OR IS OTHERWISE NON-COMPLIANT WITH TREATMENT ORDERS, and resumes running only on the patient's voluntary or involuntary return to the treatment agency. A PATIENT SHALL REMAIN ENROLLED WITH THE MENTAL HEALTH TREATMENT AGENCY, NOTWITHSTANDING THE PATIENT'S INVOLUNTARY ABSENCE, UNTIL THE EXPIRATION OF THE TREATMENT ORDER OR UNLESS OTHERWISE ORDERED BY THE COURT.

D. A patient who remains on unauthorized absence status continuously for at least ninety days may petition the court on his return to the treatment agency for a hearing to determine his current mental status and his present need for treatment. The court WHO ENTERED THE TREATMENT ORDERS shall order a hearing if requested by the patient, his legal guardian or an interested party. The hearing shall be held within seventy-two hours after the request. IF THE PATIENT HAS BEEN FOUND INCOMPETENT PURSUANT TO 13-4517 THE CRIMINAL COURT AND THE COUNTY ATTORNEY MUST ALSO RECEIVE NOTICE. THE CRIMINAL COURT MAY ELECT TO CONDUCT THE HEARING AND THE COUNTY ATTORNEY MAY PRESENT EVIDENCE AND ARGUMENT.

E. Subsections C and D of this section shall apply only to inpatient treatment pursuant to section 36-540, subsection A, paragraphs 2 and 3.

#### 36-546. Judicial review; right to be informed; request; jurisdiction

A. In addition to the procedure for applying for a writ of habeas corpus, as provided in title 13, chapter 38, article 26, AND EXCEPT FOR PATIENTS SUBJECT TO TREATMENT ORDERS PURSUANT TO 36-540, SUBSECTION E, a patient receiving court-ordered treatment or any person acting on the patient's behalf may request the patient's release pursuant to the following:

1. A request in writing may be presented to any member of the treatment staff of the agency providing the patient's treatment. The request may be made on a prescribed form that shall be prepared by the facility and made available for use by any person. The completed form shall identify:

(a) The patient being treated and the agency at which the patient is being treated.

(b) The person to whom the request for release was made.

(c) The person making the request for release, indicating whether the person is the patient being treated or someone acting on the person's behalf.

2. The request, when signed and dated by the person making the request for release, shall be delivered to the medical director of the agency. Within three days of receipt of the request, the medical director shall deliver the form, along with a current psychiatric report of the patient's condition, to the clerk of the court. If the person presenting the request refuses to sign the form, the medical director of the agency shall proceed as if the form had been signed and shall note on the form the circumstances as to why the form was not signed.

**B. WITH THE EXCEPTION OF PATIENTS WITH TREATMENT ORDERS PURSUANT TO 36-540, SUBSECTION E,** The patient shall be informed of the patient's right to judicial review by the medical director of the agency and the patient's right to consult with counsel at least once each sixty days while the patient is undergoing court-ordered treatment. The notification required by this subsection shall be recorded in the clinical record of the patient by the individual who gave the notice.

C. With the exception of requests made pursuant to section 36-540, subsection E, F, paragraphs 4 and 5 and section 36-540.01, subsection J for judicial review, a request for judicial review may not be made sooner than sixty days after the issuance of the order for treatment or a hearing on a previous petition for habeas corpus or the issuance of the court order or other final resolution determining a previous request for judicial review by the patient.

D. Judicial review shall be in the superior court in the county in which the patient is being treated. That court may review the additional material presented and enter its order without necessity of further hearing.

E. The reviewing court may order a further hearing on the affidavit of the attorney for the patient setting forth the need for further evidentiary hearing and the reasons why the hearing is necessary before the time set for the release of the patient.

F. The patient shall be informed of the patient's right to consult an attorney by the person or court to whom the patient makes the request for release at the time the patient makes the request and, in the case of confinement in an agency, by the reviewing court within one day of its receipt of notice from the medical director of the agency where the patient is being treated. The patient shall be permitted to consult an attorney to assist in preparation of a petition for the writ of habeas corpus and to represent the patient in the hearing. If the patient is not represented by an attorney, the reviewing court, within two days of its notice to the patient of the patient's right to counsel, shall appoint an attorney to assist the patient in the preparation of a petition and to represent the patient in the hearing.

G. The medical director of the mental health treatment agency, at least twenty-four hours before the hearing, shall provide the patient's attorney with a copy of the patient's medical records.

H. The patient's attorney shall fulfill all of the following minimal duties:

1. Within twenty-four hours of appointment, conduct an interview with the patient.
  2. At least twenty-four hours before the hearing, interview the patient's treatment physician or psychiatric and mental health nurse practitioner if available.
  3. Before the hearing, examine the clinical record of the patient.
  4. Before the hearing, examine the patient's court records as to the patient's involuntary treatment.
- I. An attorney who does not fulfill the duties prescribed by subsection H of this section is subject to contempt of court.

### 36-3701. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means any agency that is authorized to direct the release of a person who is serving a sentence or term of confinement or who is receiving treatment, including a state or federal prison, a county jail and the Arizona state hospital [OR OTHER MENTAL HEALTH TREATMENT AGENCY, AND THE SUPERIOR COURT HAVING JURISDICTION OVER A DEFENDANT WHO IS BEING EVALUATED FOR, OR HAS BEEN FOUND TO BE INCOMPETENT TO STAND TRIAL PURSUANT TO 13-4517.](#)
2. "Competent professional" means a person who is:
  - (a) Familiar with the state's sexually violent persons statutes and sexual offender treatment programs available in this state.
  - (b) Approved by the superior court as meeting court approved guidelines.
3. "Conviction" includes a finding of guilt at any time for a sexually violent offense or an order of the juvenile court adjudicating the person delinquent for any sexually violent offense.
4. "Less restrictive alternative" means court ordered treatment in a setting that is less restrictive than total confinement and that is conducted in a setting approved by the superintendent of the state hospital.
5. "Mental disorder" means a paraphilia, personality disorder or conduct disorder or any combination of paraphilia, personality disorder and conduct disorder that predisposes a person to commit sexual acts to such a degree as to render the person a danger to the health and safety of others.
6. "Sexually violent offense" means any of the following:
  - (a) Indecent exposure to a person who is under fifteen years of age pursuant to section 13-1402, public sexual indecency to a minor pursuant to section 13-1403, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section

13-1410, continuous sexual abuse of a child pursuant to section 13-1417 or sexual assault of a spouse if the offense was committed before August 12, 2005.

(b) Second degree murder pursuant to section 13-1104, first degree murder pursuant to section 13-1105, assault pursuant to section 13-1203, aggravated assault pursuant to section 13-1204, unlawful imprisonment pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or burglary in the first degree pursuant to section 13-1508 if the court at the time of sentencing or civil commitment proceedings determines beyond a reasonable doubt that the act was sexually motivated pursuant to section 13-118.

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

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

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

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

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

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





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