



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fifth Legislature
First Regular Session

HB 2334: dangerous; incompetent person; evaluation; commitment

Sponsor: Representative Pratt, LD 8

Committee on Judiciary

Overview

Creates guidelines for courts to determine if a person is dangerous or incompetent and if the defendant should be committed to the state hospital. Allows the courts to use defendant competency evaluation reports to determine whether the defendant is dangerous and eligible for commitment.

History

A person may not be tried, convicted, sentenced or punished for an offense if the court determines the person is incompetent to stand trial. The prosecutor or defense attorney may file any pretrial motion at any time while the defendant is incompetent to stand trial. The court must hear and decide any issue presented by the motion to see if the defendant's presence is essential for a fair hearing as determined by the court ([A.R.S. § 13-4502](#)).

If the defendant is found to be unable to be restored to competence, the court must order all the reports submitted to be sealed. The court may order that the reports be opened as follows:

- 1) For use by the court, defendant or by the prosecutor if otherwise permitted by law, for further competency or sanity evaluations or in a hearing to determine whether the defendant is eligible for court-ordered treatment or is a sexually violent person;
- 2) For statistical analysis;
- 3) When the records are deemed necessary to assist in mental health treatment;
- 4) For use by the probation department or the state department of corrections if the defendant is in the custody of or is scheduled to be transferred into the custody of the state department of corrections, for assessment, and supervision or monitoring of the defendant by that department;
- 5) For use by a mental health treatment provider providing treatment to the defendant or that assesses the defendant for treatment;
- 6) For data gathering; and
- 7) For scientific study. ([A.R.S. § 13-4508](#))

The court must only consider the time a defendant spends in restoration to competency program when calculating the sentencing requirements. The court must notify the prosecutor, defense attorney, medical supervisor and the treating facility if the charges against the defendant are dismissed or if the court voids an order. No charges must be dismissed without a hearing before the dismissal. If a defendant is discharged or released on the expiration of an order, the medical supervisor may file a petition stating that the defendant requires further treatment or appointment of a guardian. ([A.R.S. § 13-4515](#))

If the court finds that a defendant is incompetent to stand trial and there is no substantial probability the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, any party may request the court:

- 1) Remand the defendant to an evaluating agency for the institution of civil commitment proceedings. If the defendant is remanded, the prosecutor must file a petition for evaluation and provide any known criminal history for the defendant;
- 2) Appoint a guardian;
- 3) Release the defendant from custody and dismiss the charges against the defendant without prejudice;
- 4) The court may also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the expenses of the defendant's medically necessary maintenance and treatment, state-only behavioral health services, title xviii services, Medicare part D prescription drug benefits, supplemental security income and supplemental security disability income;
- 5) The court may retain jurisdiction over the defendant until the defendant is committed for treatment or a guardian is appointed; and
- 6) If the court remands the defendant for the institution of civil commitment proceedings and the court is notified that the defendant has not had a civil commitment evaluation, the court, if it has retained jurisdiction, may order the sheriff to take the defendant into custody so that the court may explore options. ([A.R.S. § 13-4517](#))

Provisions

1. States a person who is found competent to stand trial after an involuntary commitment must receive credit for all time the person spent under the jurisdiction of the secure state mental health facility against a term of imprisonment for any of the charges that were the basis for the involuntary commitment. (Sec. 1)
2. Requires the defendant's records be sealed after a guilty plea or guilty except insane or if it's determined the defendant is not able to be restored to competency. (Sec. 3)
3. States the reports be opened only for:
 - a) The use by the court or the defendant;
 - b) Use by the prosecutor, if allowed by law;
 - c) Further competency or sanity evaluations;
 - d) Determining if the defendant is eligible for court-ordered treatment;
 - e) If the defendant is a sexually violent person;
 - f) A hearing to determine whether the defendant is dangerous and eligible for commitment;
 - g) Statistical analysis;
 - h) To assist in mental health treatment;
 - i) Use by the probation department or the state Department of Corrections if the defendant is in their custody;
 - j) Use by the mental health provider that provides treatment to the defendant;
 - k) Data gathering; or
 - l) Scientific study. (Sec. 3)
4. Mandates information about any instrument or tool used to assess whether the defendant is likely to be dangerous be included in the written report submitted by the mental health expert. (Sec. 4)
5. Specifies the mental health expert must determine the nature of the mental illness, disease or defect that makes the defendant likely to be dangerous. (Sec. 4)
6. Asserts if the prognosis includes a determination that there is no substantial probability the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, it must be determined whether the defendant should be considered dangerous. (Sec. 4)

7. Allows the medical supervisor to file a petition stating the defendant requires further treatment, appointment of a guardian or involuntary commitment, if a defendant is discharged or released on the expiration of orders. (Sec. 5)
8. States if the defendant is charged with a serious offense, a hearing must be held to determine if the defendant is dangerous and should be involuntarily committed. (Sec. 6)
9. Outlines the procedures to be followed if a commitment order is issued. (Sec. 6)
10. Includes a new section on dangerous and incompetent defendants, commitment hearings and dispositions. (Sec. 7)
11. Includes a new section on biannual examinations of committed persons, reports, record access and attorney withdrawal, which includes the following:
 - a) The psychiatrist, psychologist or other competent professional of the state hospital or a licensed facility under the supervision of the state hospital must biannually examine each person who is committed;
 - b) The person who conducts the biannual evaluation must submit the examination report to the court, the committed incompetent and any attorney of record for the committed incompetent in connection with the committed incompetent's commitment;
 - c) The biannual report must state the following, the treatment, the education that the committed incompetent has received, a prognosis for the committed incompetent's restoration to competency, and whether the committed incompetent remains dangerous;
 - d) If the psychiatrist, psychologist or other professional submits a report indicating the committed incompetent is competent to stand trial and is no longer dangerous, the court must hold a hearing to determine whether the committed incompetent is competent or is no longer dangerous;
 - e) If the psychiatrist, psychologist or other professional submits a report stating the committed incompetent is no longer dangerous because of medication, the report must state whether the committed incompetent will continue to take the medication if released to a less restrictive alternative and would comply with all other conditions of a less restrictive alternative;
 - f) The court must hold a hearing within forty-five days after receiving the report;
 - g) The court may continue the hearing on the request of either party if the committed incompetent will not be substantially prejudiced;
 - h) The prosecuting agency must represent the state at the hearing and may request the committed incompetent be examined by a competent professional selected by the prosecuting agency;
 - i) The attorney for the state has the burden of proving by clear and convincing evidence the committed incompetent's mental illness, defect or disability has not changed and the committed incompetent remains dangerous or is competent to stand trial;
 - j) A retained or appointed professional must have access to all records concerning the committed incompetent;
 - k) All competent professionals must have equal access to the committed incompetent as well as all records concerning the committed incompetent;
 - l) The committed incompetent may petition the court for conditional release to a less restrictive alternative or discharge from treatment; and
 - m) If the committed incompetent's attorney withdraws at any time during the committed incompetent's commitment, the court must notify the prosecuting attorney and the committed incompetent. The court must allow the committed incompetent enough time to employ another attorney or appoint a new attorney if the committed incompetent is indigent. (Sec. 8)

12. Mandates that if the court finds the committed incompetent has been restored to competency, the court must order the criminal proceedings resume. (Sec. 8)
13. Requires that if the committed incompetent has not been restored to competency then the following must occur:
 - a) If the committed incompetent is not dangerous, the court must release the committed incompetent from treatment and proceed;
 - b) If the committed incompetent is not dangerous because of habilitation or treatment the patient is receiving, including medication, the court may release the committed incompetent to a less restrictive alternative; or
 - c) If the committed incompetent is dangerous, the committed incompetent must remain committed for education, care, supervision and treatment to render the committed incompetent or non-dangerous. (Sec. 8)
14. Outlines the procedures for petitioning for conditional release. (Sec. 8)
15. Describes the conditional release to a less restrictive alternative, conditions, reports, findings and review. (Sec. 8)
16. Outlines conditional release to a less restrictive alternative. (Sec. 8)
17. Adds the detention and commitment requirements. (Sec. 8)
18. Outlines revocation of conditional release to a less restrictive alternative and hearings. (Sec. 8)
19. Provides information about petitioning for discharge. (Sec. 8)
20. Outlines information about where proceedings must be held, transportation for the committed and immunity. (Sec. 8)
21. Defines relevant terms. (Sec. 2, 8)
22. Asserts that findings made by the court are inadmissible in any proceeding other than competency hearings. (Sec. 8)
23. Contains technical changes. (Sec. 1, 3, 5, 6)
24. Contains conforming changes. (Sec. 2, 4, 6)
25. Contains a retroactive date of January 1, 2021. (Sec. 9)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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