



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1029

psychiatric security review board; hearing

Purpose

Makes various changes to the practices and the procedures of the Psychiatric Security Review Board (PSRB). Appropriates an unidentified amount from the state General Fund in FY 2022 to the PSRB for operating costs.

Background

The PSRB was established in 1994 to maintain jurisdiction over persons the superior courts of Arizona has found guilty except insane (GEI) who have caused or threatened to cause death or serious physical injury to another individual. Current law requires GEI individuals to be placed under the PSRB's jurisdiction for the length of their presumptive sentence and to be committed to the Arizona State Hospital (ASH), which is operated by the Department of Health Services (DHS). Statute authorizes the PSRB to release any GEI person under its jurisdiction from ASH to the community if the person meets statutory release criteria ([A.R.S. § 13-502](#)).

S.B. 1029 appropriates a blank amount from the state General Fund in FY 22 to the PSRB for operating costs.

Provisions

Placing Persons Under Jurisdiction of the PSRB

1. Requires a person found GEI to have the sentence the defendant could have received suspended, rather than sentenced to a term of incarceration in the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR), when ordered to be placed under the jurisdiction of the PSRB.
2. Requires a person who is found GEI to be committed to a secure mental health facility for a period of treatment.
3. Modifies the parties who are notified by the court regarding a hearing set 75 days after the person's commitment to a secure mental health facility.
4. Removes the requirement that the court retains jurisdiction of all matters that are not specifically delegated to the PSRB for the duration of the presumptive sentence.
5. Requires the parties to provide the PSRB and the secure mental health facility with a copy of the court's commitment order and all documents considered by the court or admitted into evidence, including all medical and mental health reports.

6. Requires the court to retain jurisdiction of all matters that are not specifically delegated to the PSRB for the duration of the PSRB's jurisdiction over the person, rather than for the duration of the presumptive sentence.
7. Requires the court, on request of the court or any party, with the consent of the defendant and after a determination that a reasonable basis exists to support the GEI defense, to appoint a qualified expert to evaluate the defendant and provide a written report.
8. Requires the report provided by the qualified expert to include the:
 - a) mental status of the defendant at the time of the alleged offense; and
 - b) relationship of the mental disorder to the alleged offense if the qualified expert determines that the defendant suffered from a mental disorder at the time of the alleged offense.
9. Requires the parties, within 10 days after appointment of the qualified expert, to provide all available medical records, mental health reports and criminal history records to the qualified expert.
10. Allows the qualified expert to request additional records from the parties, on notice to the court.
11. Requires a defense attorney, if the defendant provides a notice of a GEI defense, to nominate its own qualified expert to examine the defendant to determine the defendant's mental status at the time of the alleged offense.
12. Allows the state to call the same number of medical doctors and licensed psychologists who will testify on behalf of the defense.
13. Requires the court to order all of the reports submitted for the examination of the defendant by a qualified expert be sealed after a plea of guilt or after disposition of a matter where the defendant has pled GEI.
14. Allows the court to order the reports be opened only:
 - a) for use by the court or defendant, or by the prosecutor if otherwise allowed 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;
 - b) for statistical analyses;
 - c) when the records are deemed necessary to assist in mental health treatment;
 - d) for use by the probation department or ADCRR if the defendant is in the custody of or is scheduled to be transferred into the custody of ADCRR to assess and supervise or monitor the defendant by that department;
 - e) for use by a mental health treatment provider that provides treatment to the defendant or that assesses the defendant for treatment;
 - f) for data gathering; or
 - g) for scientific study.
15. Precludes a statement that is made by the defendant during an examination to determine GEI or any evidence resulting from the statement from being subject to disclosure in a mental health evaluation.

16. Requires, if the PSRB finds that the person no longer needs ongoing treatment for a mental disorder and is not dangerous, the PSRB to order the person's transfer to the superior court for either a judicial review or placement on supervised probation for the remainder of the commitment term, or both.
17. Terminates the PSRB's jurisdiction over the person when the person is transferred to the superior court.
18. Requires the PSRB to order a person transferred to the superior court for imposition of a sentence or a judicial review, or both, rather than to ADCRR, when the PSRB finds the person no longer has a mental disorder and the person is dangerous.
19. Subjects a person who is conditionally released by the PSRB to the following:
 - a) requires the PSRB, in conjunction with the secure mental health facility and supervisors from behavioral health community providers, to agree on and specify the conditions of the person's release and requires the PSRB to monitor the person on conditional release;
 - b) requires a supervised treatment plan to be in place before the person's conditional release;
 - c) allows the PSRB to implement the person's conditional release in incremental steps beginning with supervised passes into the community for increasing lengths of time, continuing through independent passes and ending with release to live in the community;
 - d) requires the PSRB, before implementing each stage of conditional release, to find by clear and convincing evidence that the community will be protected, and the person will be safe under the proposed supervised treatment plan;
 - e) allows pass supervisors, if approved by the PSRB, to include members of the inpatient or outpatient treatment team, other mental health treatment provider or other responsible persons who are willing to ensure that the person abides by the conditional release terms; and
 - f) requires the secure mental health facility to implement the PSRB's conditional release order or immediately request a hearing to explain why the order has not been implemented and propose a revised order.
20. Requires all hearings conducted by the PSRB to be subject to the Administrative Procedures Act, unless otherwise provided in statute.
21. Requires a party or treatment supervisor, unless otherwise provided in statute or on a showing of sufficient cause, to submit a request for a hearing to the PSRB at least 45 days before the requested hearing date and to include the reasons for the request.
22. Requires the requesting party to provide the PSRB the treatment supervisor, and all other parties, with a copy of the hearing request.
23. Requires the PSRB to provide written notice of the hearing or a denied request for a hearing to all parties and the person's treatment supervisor within seven days after receiving a request for the hearing.
24. Allows the PSRB to include with the notice of a hearing request for a mental health report, an updated risk assessment report and specific records from the person's medical record or testimony from a specific member of the person's treatment team.

25. Specifies that the requirements for the PSRB to request reports and records do not prohibit the PSRB from issuing a subpoena as statutorily authorized.
26. Allows the PSRB to only consider, in addition to testimony at any hearing, reports, documents, written statements and materials that are submitted to the PSRB, the treatment supervisor and the parties at least 14 days before the hearing date.
27. Requires a witness to be notified at least 14 days before the hearing date.
28. Allows the PSRB to grant a request to continue a hearing in order to comply.
29. Provides that the PSRB's decision is effective on oral pronouncement.
30. Requires the PSRB to issue a written decision to all parties, any victim and the committing court within seven days after the conclusion of the hearing.
31. Requires the written decision to contain a summary of the evidence that the PSRB found to be credible and any evidence that the PSRB found unpersuasive, specific separately stated findings of fact and conclusions of law, and information on the person's right to appeal.
32. Requires the findings of fact to include a concise and explicit statement of the underlying facts that support the findings.
33. Requires any portion of the PSRB's order that contains private identifying information about the patient, treatment supervisor or pass supervisor to be maintained in a separate confidential section that may not be disclosed to the public or to a victim.
34. Requires, on request of any party, the PSRB to grant a reasonable request for a hearing or a continuance for a previously scheduled hearing.
35. Allows a request for a hearing or a continuance for a previously scheduled hearing to be ruled on by the PSRB Chairperson (Chairperson) or PSRB Vice Chairperson (Vice Chairperson).
36. Allows the moving party, if the hearing or continuance is denied, to request that the full board reconsider the request at the next scheduled PSRB meeting.
37. Defines *private identifying information*.

PSRB Composition

38. Deems the PSRB as an independent state agency.
39. Prohibits a member of the PSRB from being employed by any public defense agency rather than by a public defender.
40. Adds a former judge as a nonvoting member, unless there is a tie, to the PSRB.
41. Requires the former judge member of the PSRB to serve as Chairperson.
42. Requires the PSRB to meet at least once, rather than at least twice, each month.

43. Requires a PSRB member to receive \$250 for attending a PSRB meeting and \$250 for PSRB meeting preparation.
44. Requires the Chairperson and Cochairperson of the PSRB (Cochairperson) to receive \$50 for each day that the Chairperson or Cochairperson is engaged in an activity that is substantially related to PSRB duties and that is outside of a PSRB meeting and preparing for a PSRB meeting.
45. Requires the PSRB to employ an Executive Director, who:
 - a) serves at the pleasure of the PSRB;
 - b) performs all administrative, operational and financial functions for the PSRB;
 - c) may not offer legal advice, question a witness or participate in PSRB deliberations;
 - d) is eligible to receive compensation pursuant to statute; and
 - e) may employ additional administrative personnel.
46. Specifies that the presence of three members of the PSRB constitutes a quorum for the transaction of business.
47. Requires, beginning January 1, 2022, each PSRB member to complete 12 hours of training within one year after the member's initial appointment to the PSRB.
48. Requires any member of the PSRB who was appointed prior to January 1, 2022, to complete the training by January 1, 2023.
49. Requires the training to include the subjects of:
 - a) governance and administrative management;
 - b) conduct of quasi-judicial proceedings; and
 - c) administrative procedure and rule adoption.
50. Allows the Arizona Attorney General's (AG's) Office, the Arizona Department of Administration or an outside educational institution to provide the training for PSRB members.
51. Specifies that a PSRB action is not subject to challenge or invalidation because a PSRB member did not complete the required training.

PSRB Powers and Duties

52. Specifies that the PSRB's authority to hold hearings also applies to the ability to transfer a committed person back to the superior court.
53. Provides that a conditional release, in addition to being continued, modified or terminated, can be granted or suspended.
54. Removes the requirement that each application for a hearing must be accompanied by a report setting forth the facts supporting the application.
55. Removes the stipulation that termination of conditional release requires a vote of three of the four PSRB members.

56. Removes the exemption of PSRB deliberations from the requirement that the PSRB keep a record of all hearings before the PSRB.
57. Requires specified notices given by the PSRB to be provided to *all* parties rather than to the attorney representing the person, the AG or other attorney representing the state.
58. Requires the PSRB, within 7 days rather than 15 days, to provide a written decision and, if conditional release was granted or modified, the terms of conditional release to the treatment supervisor.
59. Requires, before a person's conditional release, the terms of conditional release to be signed by the Chairperson or Vice Chairperson and the person who is under the PSRB's jurisdiction.
60. Requires the terms of the conditional release to contain a notice that the PSRB or the outpatient treatment supervisor may order the person's return to hospitalization if the PSRB or outpatient treatment supervisor has a reasonable belief that the person has violated the terms of conditional release, that the person is in need of immediate care, custody or treatment at a secure mental health facility or that the person's mental health creates a risk to the safety of the public or any person.
61. Requires the PSRB to require at least three members voting in the affirmative to deny, grant, modify, continue, suspend or terminate a person's conditional release based on clear and convincing evidence.
62. Requires the PSRB, by June 1, 2022, and each year after, to prepare and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chairperson of the Senate Health and Human Services Committee, the Chairperson of the House of Representatives Health and Human Services Committee, or their successor committees, and provide a copy to the Secretary of State.
63. Requires the annual report submitted by the PSRB to include:
 - a) the number of cases heard by the PSRB, the county of origin for each case, the nature of each case, the disposition of each case and whether any of the PSRB's decisions were appealed;
 - b) whether the PSRB has implemented all of the recommendations that were made in the most recent Auditor General's report on the PSRB and the reason for a recommendation not being implemented;
 - c) whether training has been provided to PSRB members on understanding and complying with statutory requirements;
 - d) whether ASH has completed a mental health report on each person whose case was heard by the PSRB and whether the report was provided within the required time frames;
 - e) whether ASH completed a risk assessment on each person when requested by the PSRB; and
 - f) the number of times the PSRB denied a request to continue a hearing made by ASH or a person's attorney and the reason for each denial.
64. Allows the PSRB to:
 - a) request in the notice of hearing that a specific witness who is from the person's treatment team attend a hearing and require the treatment supervisor to be responsible for notifying the witness;

- b) continue a hearing if the PSRB determines that the standard of clear and convincing evidence has not been met; and
- c) receive witness testimony and deliberate in a hearing that is closed to the public.

Hearing on Motion of the PSRB

- 65. Allows the PSRB, on its own motion, to set a hearing to monitor a person's progress after giving at least 60 days' notice to the parties and the treatment supervisor.
- 66. Allows the PSRB to order the person's treatment supervisor to provide a mental health report to the PSRB and the parties within 30 days after providing the notice of the hearing.
- 67. Allows the PSRB, if sufficient cause exists, to set an expedited hearing to monitor a person's progress or mental health.
- 68. Requires the PSRB to include in the notice of hearing the specific reasons for the expedited hearing and attach all documents and evidence that support the need for the hearing, including any of the PSRB's concerns that need to be addressed by the parties or the treatment supervisor and allows an expedited mental health report from the treatment supervisor.
- 69. Allows the Chairperson or Vice Chairperson to order a person's return to hospitalization if a person is conditionally released to the community and the PSRB receives a reliable report that the person has violated the PSRB's conditional release order or that the person's mental health has deteriorated.
- 70. Requires, before ordering a person's return to hospitalization, the Chairperson or Vice Chairperson to consult with the treatment supervisor or the supervisor's designee to determine if rehospitalization is necessary to protect the safety of the public or the person.
- 71. Allows the Chairperson or Vice Chairperson, with sufficient cause, to waive the requirement to consult with the treatment supervisor or supervisor's designee and issue the return order immediately.
- 72. Requires, if the return order is issued before a consultation occurs, the Chairperson or Vice Chairperson to consult with the treatment supervisor or the treatment supervisor's designee as soon as possible after the order is issued.
- 73. Requires the PSRB to set a hearing to return the person to the secure mental health facility.
- 74. Requires the PSRB to hold a hearing for each person under the PSRB's jurisdiction at least once every 24 months.

Hearing on Request of the Treatment Supervisor

- 75. Requires the PSRB to grant a hearing that is requested by a treatment supervisor.
- 76. Requires the treatment supervisor to submit the request for a hearing to the PSRB and the parties simultaneously and include a mental health report that specifies the reasons for the request.

77. Requires a proposed form of order to accompany a recommendation of a treatment supervisor to request the addition of or changes to conditional release status.
78. Requires the PSRB, if a treatment supervisor believes that the person has violated a conditional release term or that the person's mental health has deteriorated, to grant the treatment supervisor's request for a hearing and:
 - a) if the person is residing in a secure mental health facility, allows the treatment supervisor to suspend the person's conditional release pending the hearing and a determination by the PSRB;
 - b) if the person is conditionally released to the community, allows the Chairperson or Vice Chairperson to order the person's return to hospitalization and set a hearing, as outlined; or
 - c) if the safety of the community or the person is not at risk, allows the Chairperson or Vice Chairperson, pending the hearing and the PSRB's determination, to allow the person to remain in the community subject to the person's conditional release terms.
79. Allows the outpatient treatment supervisor to order that the person be taken into custody and transported to a secure mental health facility if the person is conditionally released to the community and the outpatient treatment supervisor has reasonable cause to believe that:
 - a) the person has violated a term of conditional release;
 - b) the person needs immediate care, custody or treatment at a secure mental health facility; or
 - c) the person's mental health creates a risk to the safety of the public or any person.
80. Requires the person to be immediately admitted to the secure mental health facility.
81. Requires the outpatient treatment supervisor to immediately provide written notice to the PSRB, the parties and the chief medical officer of the secure mental health facility that confirms that the person has been admitted.
82. Requires the PSRB to set a hearing upon receiving notice and requires the hearing to occur within seven days after the person's admission to the secure mental health facility, unless the PSRB continues the hearing for good cause or an agreement of the parties.
83. Requires the outpatient treatment supervisor to submit a written mental health report to the PSRB and the parties within three days after the person's return and to include all of the information that was considered before ordering the person's return.

Hearing on Motion of a Person Under the Jurisdiction of the PSRB

84. Allows a person under the PSRB's jurisdiction to request and the PSRB to grant a hearing at least 120 days after the person is committed and placed under the PSRB's jurisdiction.
85. Allows a person, after the initial hearing or any subsequent hearing, to request and directs the PSRB to grant a hearing at least 20 months after the previous hearing.
86. Allows the PSRB, with sufficient cause, to grant a motion for a hearing by the person who is under jurisdiction of the PSRB at any time.

87. Requires, if the person is requesting a change in conditional release status, to include a proposed form of order and allows the person to accompany the form with a mental health report.
88. Allows a person to present himself to the outpatient treatment supervisor and request that the outpatient treatment supervisor sign an order for immediate readmission to the secure mental health facility if the person under the PSRB's jurisdiction is conditionally released to the community and believes that rehospitalization is necessary to protect the person's safety or the safety of the public.
89. Requires the PSRB to set a hearing to return the person to the secure mental health facility following a person's self-presentation and request for immediate readmission to the secure mental health facility.
90. Requires the inpatient and outpatient treatment supervisor to submit a mental health report to the PSRB within seven days after the person is readmitted.

Return of Person Under the PSRB's Jurisdiction to Secure Mental Health Facility

91. Allows a law enforcement officer to take a person into custody and to transport the person to a secure mental health facility based on a written order of the Chairperson, Vice Chairperson or treatment supervisor.
92. Requires a copy of the return order to be immediately provided to the parties, the PSRB and the treatment supervisor.
93. Requires the sheriff or other peace officer to execute the order and immediately notify the PSRB of the person's return to the secure mental health facility.
94. Requires the entity that ordered the return, within 24 hours after a return order is issued, to provide to the parties, the PSRB and the treatment supervisor all information and evidence that was considered when ordering the person's return.
95. Requires the PSRB to hold a hearing to determine if the return was supported by sufficient cause within seven days of returning the person to the secure mental health facility.
96. Requires the PSRB, if the return was not supported by sufficient cause, to order the person's immediate release under the previously imposed conditional terms, subject to PSRB amendment with sufficient cause.
97. Allows the PSRB, if the return was supported by sufficient cause, to amend the conditional release terms and release the person if the PSRB finds by clear and convincing evidence that the safety of the community and the person is protected by the original or the amended conditional release terms.
98. Allows the PSRB, if the release is supported by sufficient cause and the PSRB determines the person is in need of further evaluation or treatment, to suspend the terms of the conditional release and set another hearing within 90 days and specifies that the inpatient treatment supervisor must consult with the outpatient treatment supervisor and submit a mental health report to the PSRB by a date set by the PSRB.

99. Requires the mental health report submitted for a determination that the person is in need of further evaluation or treatment to contain a:
- a) recommendation to either terminate, amend or reinstate the person's conditional release; and
 - b) proposed form of order.

Hearing on Expiration of PSRB Jurisdiction

100. Requires the PSRB, at least 30 days before the expiration of the PSRB's jurisdiction over a person, to set an expiration hearing and order the treatment supervisor to provide a mental health report to the PSRB and the parties.
101. Requires the mental health report to include an evaluation of whether the person may be a danger to self or others or has a persistent and acute or grave disability and whether the person meets the statutory criteria for involuntary hospitalization.
102. Allows the PSRB, at an expiration hearing, to let its jurisdiction expire without further action or offer the county attorney of the committing county to begin proceedings for involuntary civil evaluation.
103. Requires, if the PSRB orders an involuntary civil evaluation for a person who resides in the community, the order to require the person's appearance at a specified time and location and participation in the evaluation before the expiration of the PSRB's jurisdiction.
104. Requires the treatment supervisor to assist the person with securing transportation to the location of the evaluation.
105. Requires the PSRB to order the sheriff of the committing county to transport the person at a specified time and location if the PSRB orders involuntary civil evaluation for a person who resides in a secure mental health facility.

Transferring Jurisdiction of a Person from the PSRB to Superior Court

106. Requires, if the PSRB orders a person to be transferred to the superior court, the person's case to be transferred to the committing court for suspension or imposition of sentence and a judicial review of the transfer, or both.
107. Allows the person, within 20 days after transfer to the superior court, to request a judicial review and requires a petition for judicial review to be filed with the committing court and served on the PSRB, the secure mental health facility and the state.
108. Provides, at the review hearing, that the treatment supervisor has the burden to prove by clear and convincing evidence that the transfer is appropriate and limits the issues of review to whether the person:
- a) needs ongoing treatment for a mental disorder;
 - b) is dangerous to self or others; and
 - c) committed an offense that is eligible for commitment to ADCRR.

109. Requires the court, if it finds the transfer is appropriate, to suspend the person's sentence and place the person on supervised probation for the remainder of the commitment term or impose the sentence and order the person to be imprisoned in ADCRR for the remainder of the commitment term.
110. Requires all time spent under the PSRB's jurisdiction and any time spent incarcerated to be credited against any sentence imposed.
111. Requires the court, if it finds the transfer is not supported by the evidence, to transfer jurisdiction over the person back to the PSRB.
112. Requires the court, at the time of sentencing or placement on probation, to notify the person in writing of the person's appeal rights under Rule 31 of the Arizona Rules of Criminal Procedure.

Independent Expert Witnesses

113. Allows either party, before any hearing before the PSRB, to retain an independent qualified expert to evaluate the person and make recommendations to the PSRB.
114. Requires the county of the committing court to pay all costs associated with the evaluation if the person is indigent.
115. Requires, if the person retains a qualified expert, for the qualified expert to provide the state's expert, on request, all records considered or generated.
116. Requires, if the person retains a qualified expert, the person submit to the state's evaluation, if requested, or be precluded from presenting the person's own qualified expert opinion.
117. Requires, if an independent qualified expert is providing testimony, a written report to be provided to the opposing party, the PSRB and the treatment supervisor at least 14 days before a hearing.
118. Requires the qualified expert to be available for an interview or deposition by the opposing party upon request.
119. Allows either party to request and the PSRB, with sufficient cause, to grant a continuance for a hearing to accommodate a reasonable request to obtain a qualified expert evaluation.
120. Prohibits a return hearing that is requested in specified circumstances to be continued at the state's request.
121. Prohibits a hearing that is held at the expiration of the PSRB's jurisdiction from being continued.
122. Allows the PSRB, with sufficient cause, to order a mental health evaluation by an independent qualified expert and specifies that the evaluation is conducted at the PSRB's expense.

123. Requires a qualified expert appointed by the PSRB to provide a written report to the parties and the treatment supervisor at least 14 days before a hearing.

124. Requires the qualified expert to be available to testify and, if requested, be interviewed or deposed by either party.

Miscellaneous

125. Appropriates a blank amount from the state General Fund in FY 2022 to the PSRB for operating costs.

126. Directs the Legislative Council to prepare proposed conforming legislation for the 55th Legislature, Second Regular Session.

127. Defines key terms.

128. Makes technical and conforming changes.

129. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Adds a risk assessment to the definition of a *mental health report*, if the risk assessment is clinically indicated.
2. Removes the definition of *propensity to reoffend* and removes the requirement that the court find that a person has a propensity to reoffend when ordering a civil commitment proceeding.
3. Reinserts the requirement for the PSRB to consider the entire criminal history of the person before determining a transfer.

Senate Action

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Prepared by Senate Research

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