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House: CJR DP 6-3-0-0

## **SB 1030: guilty except insane; court jurisdiction**

**Sponsor: Senator Barto, LD 15**

**Caucus & COW**

### **Overview**

Places the powers and duties of the Psychiatric Security Review Board (PSRB) under the jurisdiction of the superior court (Court) beginning July 1, 2023.

### **History**

The [PSRB](#) was established in 1994 to maintain jurisdiction over persons the superior court 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 Arizona 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](#)).

### **Provisions**

1. Transfers and renumbers A.R.S. §§ 13-3991 and 13-3992 as sections 13-4519 and 13-4520, respectively. (Sec. 6)
2. Adds two sections to Title 13, Chapter 38, Article 14: A.R.S. § 13-991, Definitions, and A.R.S. § 13-3992, Commitment hearing in superior court; jurisdiction; census data collection; deferral. (Sec. 7)

### ***Commitment Hearing in Superior Court***

3. Requires a person who is found GEI to be committed to a secure mental health facility for a period of treatment. (Sec. 7)
4. States if the person's act did not cause or threaten the death or serious physical injury of another person, the court must set a hearing within 75 days after the person's commitment to determine if the person is entitled to release or meets the standards or civil commitment. (Sec. 7)
5. Requires the court to notify all specified parties of the hearing. (Sec. 7)
6. Mandates the medical director of the secure mental health facility (SMHF) to submit a mental health report to the court and other parties 14 days before the hearing. (Sec. 7)
7. Requires the court to take the following actions at the hearing:
  - a) The court must order the person's release if the person proves by clear and convincing evidence that the person no longer has a mental disease or defect, or is not dangerous if the person still does have the mental disease or defect; or

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input checked="" type="checkbox"/> Fiscal Note
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- b) If the court finds the person still has a mental disease or defect and may present a danger to others, the court must order the county attorney to institute civil commitment proceedings. (Sec. 7)
- 8. States if the court finds that the person's act caused or threatened the death or serious physical injury of another person, the court must place the person under the Court's jurisdiction. (Sec. 7)
- 9. Requires the court to state the beginning date, length and ending date of the Court's jurisdiction over the person, and the length of the Court's jurisdiction over the person must be equal to the presumptive sentence the person could have received for a criminal conviction. (Sec. 7)
- 10. Requires DHS to assume custody of a person found GEI within 10 days after receiving the order committing the person. (Sec. 7)
- 11. Requires the Arizona State Hospital (ASH) to collect specified census data for GEI treatment programs to determine maximum funded capacity levels. (Sec. 7)
- 12. Allows ASH to defer the admission of a person found GEI for an additional 20 days if ASH reaches its maximum funded capacity level and requires ASH to notify specified parties if ASH is still unable to admit the person after the 20 days. (Sec. 7)
- 13. Requires all parties to provide specified parties with a copy of the court's commitment order and all medical and mental health reports. (Sec. 7)

***Examination of the Defendant by Qualified Experts***

- 14. Requires the court, upon request by any party and with the defendant's consent, to appoint a qualified expert to evaluate the defendant and provide a written report that includes:
  - a) The mental status of the defendant at the time of the offense; and
  - b) The relationship of the mental disease or defect to the offense. (Sec. 8)
- 15. 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. (Sec. 8)
- 16. Allows the qualified expert to request additional record from the parties, on notice to the court. (Sec. 8)
- 17. Requires a defense attorney, of 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. (Sec. 8)
- 18. Allows the state to call the same number of medical doctors and licensed psychologists who will testify on behalf of the defense. (Sec. 8)
- 19. Requires the court to order all 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 pleaded GEI. (Sec. 8)
- 20. 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 analysis;
  - c) When the records are deemed necessary to assist in mental health treatment;
  - d) For use by the probation department or by ADC if the defendant is in ADC's custody;

- e) For use by a mental health treatment provider who provides treatment to or assesses the defendant;
  - f) For data gathering; or
  - g) For scientific study. (Sec. 8)
21. 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. (Sec. 8)

***People under the Jurisdiction of the Superior Court***

22. Allows the State Mental Health Facility (SMHF), outpatient treatment supervisor and person under the jurisdiction of the Court to request a hearing. (Sec. 9)
23. Stipulates that a person who is placed under the jurisdiction of the Court is not eligible for discharge from jurisdiction until the date set by the court. (Sec. 9)
24. Allows the person to attend any hearing by video teleconference from the SMHF. (Sec. 9)
25. Requires, if the Court finds that the person no longer needs ongoing treatment for a mental disease or defect, does not have a propensity to reoffend and is not dangerous, the Court 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. (Sec. 9)
26. Requires all time spent under the Court's jurisdiction and any time spent committed to be credited against any sentence imposed. (Sec. 9)
27. Mandates the Court must notify the person in writing at the time of sentencing or placement on probation of the person's appeal rights. (Sec. 9)
28. Subjects a person who is conditionally released by the PSRB to do the following:
- a) Requires the Court, in conjunction with the SMHF and supervisors from behavioral health community providers, to agree on and specify the conditions of the person's release and requires the SMHF 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 Court to implement the person's conditional release in incremental steps;
  - d) Allows pass supervisors, if approved by the Court, to include members of the treatment team, other mental health treatment providers or other responsible persons who are willing to ensure that the person abides by the conditional release terms; and
  - e) Requires the SMHF to implement the Court's conditional release order or immediately request a hearing to explain why the order has not been implemented and propose a revised order. (Sec. 9)
29. States that at any hearing release or conditional release the parties seeking a change in privileges or a change in hospitalization has the burden of proof by clear and convincing evidence. (Sec. 9)
30. Requires a party, unless otherwise required or on a showing of sufficient cause, to submit a request for a hearing and include the reasons for the request. (Sec. 9)
31. Requires, when a hearing is set, the Court to order the treatment provider to submit a mental health report. (Sec. 9)
32. Provides that the court's decision is effective upon oral pronouncement. (Sec. 9)
33. Requires any portion of the order containing personal identifying information about specified parties to be sealed by the court and not disclosed to the public or to a victim (Sec. 9)

### ***Hearing on Motion of the SMHF***

34. Allows the court to grant a hearing to monitor a person's progress on conditional release upon request of the SMHF. (Sec. 10)
35. Requires the SMHF to include in the request specific reasons for requesting a hearing, as well as any records, supporting the need for a hearing. (Sec. 10)
36. Requires the court, upon request of the SMHF or the person, to order the treatment supervisor to submit a mental health report to the Court and specified parties within 14 days of the hearing. (Sec. 10)
37. Permits the SMHF, if sufficient cause exists, to request an expedited hearing to monitor a person's progress or mental health and outlines the requirements for the expedited hearing. (Sec. 10)
38. Requires the Court to set an expedited hearing to monitor a person's progress or mental health, if requested, and allows the Court to order an expedited mental health report from the person's treatment supervisor. (Sec. 10)
39. Allows the chief medical officer (CMO), or their designee, a person's return to hospitalization if the person violated the conditional release order or if the person's mental health deteriorates while on conditional release. (Sec. 10)
40. Permits the CMO to waive the requirement to consult with the treatment supervisor and to issue the return order immediately if sufficient cause exists. (Sec. 10)
41. States if a return order is issued before consultation, the CMO must consult with the treatment supervisor as soon as possible after the order is issued. (Sec. 10)
42. Requires the Court to be notified immediately and to set a hearing for the return of the person after a return order is issued. (Sec. 10)
43. Requires all monthly monitoring reports regarding a person on conditional release to be submitted to the SMHF, and allows the SMHF to take any appropriate action. (Sec. 10)

### ***Hearing on Request of the Treatment Supervisor***

44. Requires the Court to grant a hearing requested by a treatment supervisor. (Sec. 10)
45. Requires the treatment supervisor to submit the hearing request to the Court and all other parties and include a mental health report, under seal, specifying the reasons for the hearing request. (Sec. 10)
46. Mandates that a proposed form of order to accompany the request for a hearing if the treatment supervisor's recommendation includes a request for the addition of or changes to conditional release status. (Sec. 10)
47. Allows a treatment supervisor to suspend the person's conditional release if the treatment supervisory believes any of the following:
  - a) The person has violated a term of conditional release; and
  - b) The person's mental health has deteriorated. (Sec. 10)
48. States if the treatment supervisor suspended the person's conditional release, and the court granted a return order, the treatment supervisor to submit, within three days after the request a mental health report and all information that was considered. (Sec. 10)

### ***Hearing on Motion of a Person under the Jurisdiction of the Court***

49. Permits a person under the Court's jurisdiction to request, and the Court to grant, a hearing no sooner than 120 days after the person is committed and placed under the Court's jurisdiction. (Sec. 10)

50. Limits the hearings a person may request to no sooner than 20 months after the previous hearing. (Sec. 10)
51. Allows the Court, with sufficient cause, to grant a motion for a hearing by the person who is under the Court's jurisdiction at any time. (Sec. 10)
52. States if a person under the Court's jurisdiction requests a change in conditional release status, the request must include a proposed form of order and may include a mental health report. (Sec. 10)
53. Allows a person conditionally released to the community to petition for readmission to the SMHF. (Sec. 10)
54. States if a person voluntarily petitions for readmission to the SMHF, the treatment supervisor must submit a mental health report to the Court within seven days. (Sec. 10)

#### ***Return of Person under Jurisdiction to the SMHF***

55. Allows a law enforcement officer, upon written order, to take a person into custody and transport the person to a SMHF. (Sec. 10)
56. Requires the law enforcement officer to notify the Court of the person's return to the SMHF. (Sec. 10)
57. Requires the entity ordering the return, within 24 hours of the issued order, to provide to all parties the information and evidence considered when ordering the person's return. (Sec. 10)
58. Requires the Court to hold a hearing to determine if the return was supported by sufficient cause within seven days. (Sec. 10)
59. Requires the Court to order the person's immediate release if the return was not supported by sufficient cause. (Sec. 10)
60. Permits the Court, if the return was supported by sufficient cause, to amend the conditional release terms and release the Court 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. (Sec. 10)
61. Allows the Court, if the person's return was supported by sufficient cause and the Court determines that the person is in need of further evaluation or treatment, to suspend the terms of conditional release and set another hearing within 90 days and directs the treatment supervisors to submit a mental health report to the Court with a recommendation to terminate, amend or reinstate the person's conditional release. (Sec. 10)

#### ***Hearing on Expiration of Jurisdiction***

62. Requires the Court, at least 30 days before the expiration of the Court's jurisdiction, to set an expiration hearing and order the treatment supervisor to provide a mental health report. (Sec. 10)
63. Permits the Court to allow jurisdiction to expire without further action or to order the county attorney of the committing county to begin proceedings for a court-ordered evaluation. (Sec. 10)

#### ***Independent Expert Witness***

64. Permits either party, before any hearing, to retain an independent qualified expert to evaluate the person and make recommendations to the Court. (Sec. 10)
65. Requires the county of the committing court to pay all evaluation costs. (Sec. 10)

66. Requires the qualified expert to provide to the state's expert, upon request, all records considered or generated by the qualified expert. (Sec. 10)
67. Requires a person retaining a qualified expert to submitted to the state's evaluation, upon request, or the person is precluded from presenting evidence from the person's own qualified expert. (Sec. 10)
68. Requires the qualified expert to be available for interview or deposition and to provide a written report to all parties at least 14 days before a hearing. (Sec. 10)
69. Allows either party to request and the Court, with sufficient evidence, to grant a continuance for a hearing to accommodate a reasonable request to obtain a qualified expert evaluation. (Sec. 10)
70. Prohibits a return hearing that is requested, in specified circumstances, to be continued at the state's request. (Sec. 10)
71. Allows the Court, at the county's own expense, to order a mental health evaluation by an independent qualified expert. (Sec 10)
72. States except on agreement of the parties, the court is prohibited from ordering a victim or witness in a prosecution for any offense relating to specified sex crimes or dangerous crimes against children from submitting to a psychological or psychiatric examination for the purpose of assessing the witness' or victim's credibility. (Sec. 11)

***Miscellaneous***

73. Grants the superior court exclusive supervisory jurisdiction over all people under the supervision of the PSRB upon the effective date. (Sec. 19)
74. Contains a delayed effective date of July 1, 2023. (Sec. 20)
75. Defines relevant terms. (Sec. 7, 8, 9)
76. Makes technical and conforming changes. (Sec. 1, 2, 3,4, 5, 12, 13, 14, 15, 16, 17)