Senate Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 138

SENATE BILL 1482

AN ACT

AMENDING SECTIONS 13-502 AND 13-3994, ARIZONA REVISED STATUTES; RELATING TO THE PSYCHIATRIC SECURITY REVIEW BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-502, Arizona Revised Statutes, is amended to read:

13-502. Insanity test; burden of proof; guilty except insane verdict

A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

B. In a case involving the death or serious physical injury of or the threat of death or serious physical injury to another person, if a plea of insanity is made and the court determines that a reasonable basis exists to support the plea, the court may commit the defendant to a secure state mental health facility under the department of health services, a secure county mental health evaluation and treatment facility or another secure licensed mental health facility for up to thirty days for mental health evaluation and treatment. Experts at the mental health facility who are licensed pursuant to title 32, who are familiar with this state's insanity statutes, who are specialists in mental diseases and defects and who are knowledgeable concerning insanity shall observe and evaluate the defendant. The expert or experts who examine the defendant shall submit a written report of the evaluation to the court, the defendant's attorney and the prosecutor. The court shall order the defendant to pay the costs of the mental health facility to the clerk of the court. The clerk of the court shall transmit the reimbursements to the mental health facility for all of its costs. If the court finds the defendant is indigent or otherwise is unable to pay all or any of the costs, the court shall order the county to reimburse the mental health facility for the remainder of the costs. Notwithstanding section 36-545.02, the mental health facility may maintain the reimbursements. If the court does not commit the defendant to a secure state mental health facility, a secure county mental health evaluation and treatment facility or another secure licensed mental health facility, the court shall appoint an independent expert who is licensed pursuant to title 32, who is familiar with this state's insanity statutes, who is a specialist in mental diseases and defects and who is knowledgeable concerning insanity to observe and evaluate the defendant. The expert who examines the defendant shall submit a written

report of the evaluation to the court, the defendant's attorney and the prosecutor. The court shall order the defendant to pay the costs of the services of the independent expert to the clerk of the court. The clerk of the court shall transmit the reimbursements to the expert. If the court finds the defendant is indigent or otherwise unable to pay all or any of the costs, the court shall order the county to reimburse the expert for the remainder of the costs. This subsection does not prohibit the defendant or this state from obtaining additional psychiatric examinations by other mental health experts who are licensed pursuant to title 32, who are familiar with this state's insanity statutes, who are specialists in mental diseases and defects and who are knowledgeable concerning insanity.

C. The defendant shall prove the defendant's legal insanity by clear and convincing evidence.

D. If the finder of fact finds the defendant guilty except insane, the court shall determine the sentence the defendant could have received pursuant to section 13-703, subsection A or section 13-707 or the presumptive sentence the defendant could have received pursuant to section 13-604, SECTION 13-604.01, SECTION 13-701, subsection C, section 13-710 or section 13-1406 if the defendant had not been found insane, and the judge shall ~~commit~~ SENTENCE the defendant TO A TERM OF INCARCERATION IN THE STATE DEPARTMENT OF CORRECTIONS AND SHALL ORDER THE DEFENDANT TO BE PLACED UNDER THE JURISDICTION OF THE PSYCHIATRIC SECURITY REVIEW BOARD AND COMMITTED TO A STATE MENTAL HEALTH FACILITY UNDER THE DEPARTMENT OF HEALTH SERVICES pursuant to section 13-3994 for that term. In making this determination the court shall not consider the sentence enhancements for prior convictions under section 13-604. The court shall expressly identify each act that the defendant committed and separately find whether each act involved the death or physical injury of or a substantial threat of death or physical injury to another person.

E. A guilty except insane verdict is not a criminal conviction for sentencing enhancement purposes under section 13-604.

Sec. 2. Section 13-3994, Arizona Revised Statutes, is amended to read:

13-3994. Commitment; hearing; jurisdiction; definition

A. A person who is found guilty except insane pursuant to section 13-502 shall be committed to a secure state mental health facility under the department of health services for a period of treatment.

B. If the criminal act of the person committed pursuant to subsection A of this section did not cause the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall set a hearing date within seventy-five days after the person's commitment to determine if the person is entitled to release from confinement or if the person meets the standards for civil commitment pursuant to title 36, chapter 5. The court shall notify the medical director of the mental health facility, the attorney general, the county attorney, the victim and the attorney representing the person, if any, of the date of the hearing.

Fourteen days before the hearing the director of the mental health facility shall submit to the court a report addressing the person's mental health and dangerousness.

C. At a hearing held pursuant to subsection B of this section:

1. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the court shall order the person's release and the person's commitment ordered pursuant to section 13-502, subsection D shall terminate. Before determining to release a person pursuant to this paragraph, the court shall consider the entire criminal history of the person and shall not order the person's release if the court determines that the person has a propensity to reoffend.

2. If the court finds that the person still suffers from a mental disease or defect, may present a threat of danger to self or others, is gravely disabled, is persistently or acutely disabled or has a propensity to reoffend, it shall order the county attorney to institute civil commitment proceedings pursuant to title 36 and the person's commitment ordered pursuant to section 13-502, subsection D shall terminate.

D. If the court finds that the criminal act of the person committed pursuant to subsection A of this section caused the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall place the person under the jurisdiction of the psychiatric security review board. The court shall state the beginning date, length and ending date of the board's jurisdiction over the person. The length of the board's jurisdiction over the person is equal to the sentence the person could have received pursuant to section 13-703, subsection A or section 13-707 or the presumptive sentence the defendant could have received pursuant to section 13-604, section 13-604.01, section 13-701, subsection C, section 13-710 or section 13-1406. In making this determination the court shall not consider the sentence enhancements for prior convictions under section 13-604. THE COURT SHALL RETAIN JURISDICTION OF ALL MATTERS THAT ARE NOT SPECIFICALLY DELEGATED TO THE PSYCHIATRIC SECURITY REVIEW BOARD FOR THE DURATION OF THE PRESUMPTIVE SENTENCE.

E. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not eligible for discharge from the board's jurisdiction until the board's jurisdiction over the person expires.

F. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not entitled to a hearing before the board earlier than one hundred twenty days after the person's initial commitment. A request for a subsequent release hearing may be made pursuant to subsection ~~G~~ H of this section. After the hearing, the board may take one of the following actions:

1. If the psychiatric security review board finds that the person still suffers from a mental disease or defect and is dangerous, THE BOARD

SHALL ORDER THAT the person ~~shall~~ remain committed at the secure state mental health facility.

2. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the psychiatric security review board shall order the person's release. The person shall remain under the jurisdiction of the board. Before determining to release a person pursuant to this paragraph, the board shall consider the entire criminal history of the person and shall not order the person's release if the board determines that the person has a propensity to reoffend.

3. If the psychiatric security review board finds that the person still suffers from a mental disease or defect or that the mental disease or defect is in stable remission but the person is no longer dangerous, the board shall order the person's conditional release. The person shall remain under the board's jurisdiction. The board in conjunction with the state mental health facility and behavioral health community providers shall specify the conditions of the person's release. The board shall continue to monitor and supervise a person who is released conditionally. Before the conditional release of a person, a supervised treatment plan shall be in place, including the necessary funding to implement the plan.

4. IF THE PERSON IS SENTENCED PURSUANT TO SECTION 13-604, SUBSECTION F, G, H, I, J OR K AND THE PSYCHIATRIC SECURITY REVIEW BOARD FINDS THAT THE PERSON NO LONGER NEEDS ONGOING TREATMENT FOR A MENTAL DISEASE AND THE PERSON IS DANGEROUS OR HAS A PROPENSITY TO REOFFEND, THE BOARD SHALL ORDER THE PERSON TO BE TRANSFERRED TO THE STATE DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF THE SENTENCE IMPOSED PURSUANT TO SECTION 13-502, SUBSECTION D. THE BOARD SHALL CONSIDER THE SAFETY AND PROTECTION OF THE PUBLIC.

G. WITHIN TWENTY DAYS AFTER THE PSYCHIATRIC SECURITY REVIEW BOARD ORDERS A PERSON TO BE TRANSFERRED TO THE STATE DEPARTMENT OF CORRECTIONS, THE PERSON MAY FILE A PETITION FOR A JUDICIAL DETERMINATION. THE PERSON SHALL SERVE A COPY OF THE REQUEST ON THE ATTORNEY GENERAL. IF THE PERSON FILES A PETITION FOR A JUDICIAL DETERMINATION, THE PERSON SHALL REMAIN IN A STATE MENTAL HEALTH FACILITY PENDING THE RESULT OF THE JUDICIAL DETERMINATION. THE PERSON REQUESTING THE JUDICIAL DETERMINATION HAS THE BURDEN OF PROVING THE ISSUES BY CLEAR AND CONVINCING EVIDENCE. THE JUDICIAL DETERMINATION IS LIMITED TO THE FOLLOWING ISSUES:

1. WHETHER THE PERSON NO LONGER NEEDS ONGOING TREATMENT FOR A MENTAL DISEASE.

2. WHETHER THE PERSON IS DANGEROUS OR HAS A PROPENSITY TO REOFFEND.

~~G.~~ H. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section may not seek a new release hearing earlier than twenty months after a prior release hearing, except that the medical director of the state mental health facility may request a new release hearing for a person under the jurisdiction of the psychiatric security review board at any time. The

person shall not be held in confinement for more than two years without a hearing before the board to determine if the person should be released or conditionally released.

~~H.~~ I. At any hearing for release or conditional release pursuant to this section:

1. Public safety and protection are primary.

2. The applicant has the burden of proof by clear and convincing evidence.

~~I.~~ J. At least fifteen days before a hearing is scheduled to consider a person's release, or before the expiration of the board's jurisdiction over the person, the state mental health facility or supervising agency shall submit to the psychiatric security review board a report on the person's mental health. The psychiatric security review board shall determine whether to release the person or to order the county attorney to institute civil commitment proceedings pursuant to title 36.

~~J.~~ K. The procedures for civil commitment govern the continued commitment of the person after the expiration of the jurisdiction of the psychiatric security review board.

~~K.~~ L. Before a person is released or conditionally released, at least three of the five psychiatric security review board members shall vote for the release or conditional release.

~~L.~~ M. If at any time while the person remains under the jurisdiction of the psychiatric security review board it appears to the board, the chairman or vice-chairman of the board or the medical director of the state mental health facility that the person has failed to comply with the terms of the person's conditional release or that the mental health of the person has deteriorated, the board or the chairman or vice-chairman of the board for good cause or the medical director of the state mental health facility may order that the person be returned to a secure state mental health facility for evaluation or treatment. A written order of the board, the chairman or vice-chairman of the board or the medical director is sufficient warrant for any law enforcement officer to take the person into custody and to transport the person accordingly. Any sheriff or other peace officer shall execute the order and shall immediately notify the board of the person's return to the facility. Within twenty days after the person's return to a secure state mental health facility the board shall conduct a hearing and shall give notice within five days before the hearing of the time and place of the hearing to the person, the victim, the attorney representing the person, the county attorney and the attorney general.

~~M.~~ N. The director of a facility that is providing treatment to a person on conditional release or any other person who is responsible for the supervision of the person may take the person or request that the person be taken into custody if there is reasonable cause to believe that the person's mental health has deteriorated to the point that the person's conditional release should be revoked and that the person is in need of immediate care,

custody or treatment or that deterioration is likely because of noncompliance with a treatment program. A person who is taken into custody pursuant to this subsection shall be transported immediately to a secure state mental health facility and shall have the same rights as any person appearing before the psychiatric security review board.

~~N.~~ O. Before the initial hearing or any other hearing before the psychiatric security review board on the release or conditional release of the person, the person, the attorney who is representing the person and the attorney general or county attorney who is representing the state may choose a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1 to examine the person. All costs in connection with the examination shall be approved and paid by the county of the sentencing court. The written examination results shall be filed with the board and shall include an opinion as to:

1. The mental condition of the person.
2. Whether the person is dangerous.

~~O.~~ P. Notwithstanding subsection ~~N.~~ O of this section, the board or the chairman of the board for good cause may order an independent mental health evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1. The written examination results shall be filed with the board pursuant to subsection ~~N.~~ O of this section.

~~P.~~ Q. If a person is found guilty except insane pursuant to section 13-502, the department of health services shall assume custody of the person within ten days after receiving the order committing the person pursuant to subsection A of this section. The Arizona state hospital shall collect census data for guilty except insane treatment programs to establish maximum capacity and the allocation formula required pursuant to section 36-206, subsection D. If the Arizona state hospital reaches its funded capacity for forensic programs, the department of health services may defer the admission of the person found guilty except insane for up to an additional twenty days. The department of health services shall reimburse the county for the actual costs of each day the admission is deferred. If the department of health services is not able to admit the person found guilty except insane at the conclusion of the twenty day deferral period, the department of health services shall notify the sentencing court, the prosecutor and the defense counsel of this fact. On receipt of this notification, the prosecutor or the person's defense counsel may request a hearing to determine the likely length of time admission will continue to be deferred and whether any other action should be taken. On receipt of the request for hearing, the court shall set a hearing within ten days.

~~Q.~~ R. For the purposes of this section, "state mental health facility" means a secure state mental health facility under the department of health services.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.