

The Arizona State Hospital

The Arizona State Hospital is the only long-term inpatient psychiatric facility in Arizona. Before ordering that you receive treatment at the Arizona State Hospital, the court must order that you receive at least 25 days of treatment at a local facility. The only exceptions to this rule are if you would not benefit from local treatment, or the State Hospital has a special treatment program for you that is not available locally, or there is no local treatment available. If you are found to be persistently and acutely disabled, the court cannot ignore or waive the local treatment rule, unless the State Hospital accepts you for treatment.

Your rights as an individual with serious mental illness

A court order for mental health treatment does not limit your right to make choices about your mental health care. Even when you are under court order you can work with your clinical team to develop an Individual Service Plan (ISP) which identifies all the services you need.

For further information see the self advocacy guides at the Arizona Center for Disability Law website at

www.azdisabilitylaw.org



Court-Ordered Mental Health Evaluation and Treatment in Arizona: Rights and Procedures

Arizona Center for Disability Law

5025 E. Washington St,
Suite 202
Phoenix, Arizona 85034

100 North Stone Avenue
Suite 305
Tucson, Arizona 85701

(602) 274-6287 (Voice/TTY)
1-800-927-2260 (toll free)
(602) 274-6779 (Fax)

(520) 327-9547 (Voice/TTY)
1-800-922-1447 (toll free)
(520) 884-0992 (Fax)

**www.azdisabilitylaw.org
center@azdisabilitylaw.org**

Arizona law allows a person to be held against his or her will for mental health evaluation and treatment in certain instances. This process is called “court-ordered evaluation and treatment.” The purpose of this guide is to describe the court-ordered evaluation and treatment process. This guide will also explain the legal rights people have who are going through that process. This guide gives general information but it is not intended as a substitute for legal advice. If you are in need of legal advice, contact an attorney.

In Arizona, you can be ordered by the court to undergo mental health treatment if you are found to fit one of the following categories due to a mental disorder:

- ◆ A Danger to Self;
- ◆ A Danger to Others;
- ◆ Gravely Disabled, which means that you are unable to take care of your basic physical needs; or
- ◆ Persistently or Acutely Disabled, which means that you are likely to suffer severe mental or physical harm that impairs your judgment such that you are not able to make treatment decisions for yourself.

Before the court orders you to undergo involuntary evaluation or treatment for any reason, you must first be offered voluntary evaluation or treatment.

clinical team to discuss your reasons. You may bring a family member or advocate to help you at the meeting.

Since the court order lasts for a maximum of one year, you will be released from treatment at the end of your court order unless:

- ◆ You agree to voluntary treatment; or
- ◆ A new petition for court-ordered treatment is started before the discharge date. All of the steps and rights are the same; or
- ◆ You are court-ordered as gravely disabled or persistently and acutely disabled. In these cases, the agency providing treatment must arrange for an examination (a psychiatrist must be involved) to examine the need for continued court-ordered treatment.

member of your treatment staff. Within three (3) days of your request, the mental health agency must provide a copy of your request along with a current psychiatric report to the Clerk of the Court.

If you ask for judicial review, the court may affirm your court-ordered treatment or the court may schedule a hearing on the need for your continued involuntary treatment and appoint you a lawyer.

The mental health agency treating you must inform you of your right to judicial review every 60 days.

Right to independent evaluation. During a judicial review hearing, you have the right to pick an independent expert to examine your mental condition. If you cannot afford one, you may pick one from a list provided by the state and the court will appoint that doctor.

7) Release from the Court Order

You may be released from your court order before it expires if your clinical team believes that you no longer meet the standard for court-ordered treatment and you or your clinical team bring a motion to the court. If you believe that you no longer meet the standard for being court-ordered, you can ask to schedule a meeting with your

Where to find the law: Title 36

The law on “court-ordered evaluation and treatment” is found in the Arizona Revised Statutes, Title 36, Sections 504-544. More detailed rules are also in the Arizona Administrative Code, Title 9, Chapter 21, Article 5. You can find these laws and rules at law libraries or on the internet:

Arizona Revised Statutes on the internet:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>

Arizona Administrative Code, Mental Health Rules:

http://www.azsos.gov/public_services/Title_09/9-21.htm

Free internet access is available at public libraries, consumer centers, and some social service agencies.

Summary of Rights

Your basic rights in the court-ordered evaluation and treatment process include:

- ♦ The right to stop the legal process by agreeing to and being accepted for voluntary evaluation or treatment.
- ♦ The right to effective legal counsel. If you cannot afford an attorney, the court will appoint an attorney to represent you.
- ♦ The right to go to your hearing and speak at the hearing.
- ♦ The right to an evaluation by an independent physician.

Many basic civil rights are kept even under court-ordered evaluation and treatment.

While being subjected to court-ordered evaluation and treatment, whether inpatient or outpatient, you still have many rights that all citizens enjoy such as the right to vote (unless taken away by guardianship or a felony conviction), freedom of religion, the right to increase your employment skills or get a job, and the right to be free from discrimination based on disability, race, or gender. While you are a patient at an inpatient facility for evaluation or for treatment, you have:

- ◆ the right to be treated in the least restrictive environment. This means that you must be treated in the community unless that cannot be done safely;
- ◆ the right to be free from abuse, neglect, exploitation, and mistreatment from those providing services;
- ◆ the right to be free from restraint or seclusion (except in an emergency and staff must follow a specific process);
- ◆ the right to receive all the information you need to give informed consent to treatment and medication and the right to refuse treatment and medication prior to an order for commitment, even if you are detained for a court-ordered evaluation, (However, forced medications may be used *in an emergency.*); and

- ◆ You can be released from the order if, in the opinion of the medical director of the agency providing the treatment, you are no longer a danger to others, a danger to self, gravely disabled, or persistently and acutely disabled.
- ◆ If you are ordered to outpatient treatment, the medical director of the agency that supervises the outpatient treatment can (under certain extreme situations) take steps to have the court order changed and/or the individual returned to an inpatient setting. The court can make this decision without a hearing. If this happens, you have the right to a lawyer.

6) Appeal and Judicial Review

If you are ordered to treatment by a court, you have the right to appeal that order. The appeal must be filed within 30 days and your appointed attorney would file the appeal for you. The appellate court must decide your appeal on an expedited basis.

After the first 60 days of your court-ordered treatment, you have the right to consult an attorney and ask for judicial review of your case. A judicial review means a judge will review your case to determine whether the court order is still appropriate. Your request for judicial review must be made in writing and given to any

- ⇒ At least 24 hours before the hearing, interview the physicians who will testify and investigate alternatives to court-ordered treatment.
- ◆ At the hearing, your lawyer can call witnesses on your behalf and cross-examine the other side's witnesses, as well as, introduce evidence on your behalf.
 - ◆ You may have a transcript/tape recording of the hearing. If you cannot afford to pay the fee, and the court approves, the transcript/tape recording will be free.

5) Court-Ordered Treatment

To be able to order involuntary mental health treatment, the court must find by clear and convincing evidence that—because of a mental disorder—you are a danger to self, a danger to others, persistently or acutely disabled, or gravely disabled. Additionally, treatment can only be court-ordered if the court believes you are unable or unwilling to accept voluntary treatment. The court must order that treatment be provided in the least restrictive setting possible. This means time in the hospital (inpatient) must be avoided or kept to a minimum. The court can order inpatient treatment, outpatient treatment, or both. The total length of ordered treatment cannot be more than one year.

- ◆ the right to file appeals and grievances about the mental health treatment you receive;
- ◆ the right to look at your treatment program and medical records, unless a doctor decides that this may be harmful to you;
- ◆ the right to individual storage space;
- ◆ the right to wear your own clothing and use your own personal possessions;
- ◆ the right to have your personal property protected and stored while you are an inpatient;
- ◆ the right to receive certain visitors;
- ◆ the right to reasonable access to telephones between 9:00 a.m. and 9:00 p.m. to make and receive confidential calls; and
- ◆ the right to quality physical and psychiatric care and treatment.

Important: This is not a criminal matter.

“Court-ordered evaluation and treatment” is not a criminal matter. The goal of the process is solely to protect individuals from hurting themselves or others, not for punishment. This guide does not address persons who are accused of a crime. Different laws govern their treatment.

COURT-ORDERED EVALUATION AND TREATMENT PROCESS

1) Application for Court-Ordered Evaluation

Any responsible person can file an application for a court-ordered evaluation. Usually the person filing is a social worker, family member, or friend. The application asks a mental health agency to evaluate you to determine whether you should be ordered to treatment. The person making the application must believe that due to a mental disorder you are: 1) a danger to self, 2) a danger to others, 3) gravely disabled, or 4) persistently and acutely disabled. The application can be filed in two different ways:

A) With a Pre-Petition Screening

The purpose of the pre-petition screening is to decide whether a more extensive psychiatric evaluation is needed. This screening includes finding out whether the facts alleged are true, interviewing the person who filed the application, and interviewing the person who is the subject of the application. The mental health agency has 48 hours (not including weekends and holidays) to complete the screening. Someone at the agency will prepare a pre-petition screening report about its findings. If an evaluation is needed, the agency must file a petition with the court.

filing of the petition for treatment (unless you ask for more time). The law gives you the following rights and protections to ensure the hearing is fair:

- ◆ At least 3 days before the hearing, you must receive a copy of the petition and reports from both doctors who evaluated you.
- ◆ At least 3 days before the hearing, you should be provided a lawyer if you do not have one.
- ◆ Your Lawyer's Obligations. The law requires your appointed lawyer to:
 - ⇒ Meet with you within 24 hours of being given the case.
 - ⇒ Attend the hearing. You also have a right to be at the hearing, unless the court is convinced that medical reasons prevent it.
 - ⇒ At least 24 hours before the hearing, review records, including: the petition for evaluation, pre-petition screening report, evaluation reports, petition for treatment, the patient's medical records, and a list of options to avoid court-ordered treatment provided by the evaluation agency.
 - ⇒ At least 24 hours before the hearing, interview the petitioner and witnesses if available.

Should I consider voluntary evaluation or treatment?

It is important to know that you may apply at any time during the process to be evaluated or treated voluntarily. However, your psychiatric records do not have to be kept confidential and may be used in court later if you decide to stop voluntary treatment and the mental health agency wants you to be court-ordered to treatment. If you agree to voluntary treatment, the mental health agency is not required to accept you and may pursue a court order for treatment anyway. If you are interested in applying for voluntary evaluation or treatment, you should consult your appointed attorney about the advantages and disadvantages of this option.

4) Petition and Hearing for Court-Ordered Treatment

After the evaluation process is complete, a decision must be made whether mental health treatment is needed. Based on the evaluation, the mental health agency may file a petition for court-ordered treatment. The petition can be filed only if you are unwilling or unable to accept voluntary treatment. Upon receiving the petition, the court can order that you be held inpatient until a hearing or be released. The court hearing must be held within six (6) days of the

At this stage, it is important that you know:

- ◆ You must be given the option to get a voluntary evaluation. If you agree to an evaluation, the evaluation must take place within five (5) days. Be aware that if you agree to a voluntary evaluation, normal patient-doctor confidentiality does not apply. This means the evaluation can be used in court later if you decide to stop voluntary treatment.

B) With an Application for Emergency Admission

Any person with personal observations of dangerous behaviors can make an application for emergency admission. The law allows you to be admitted and detained involuntarily in a hospital for 24 hours in an emergency without an order from a court, if as a result of a mental disorder, you are likely to harm yourself or someone else. The agency can ask the police to take you involuntarily to the mental health agency.

You should know that:

- ◆ If you are held, the mental health agency must file a petition with the court by the end of the next day court is in session, transfer you to voluntary status, or let you go.
- ◆ You have the right to refuse treatment during this period.
- ◆ You have the right to talk to a lawyer and the court can appoint one if you cannot hire one.
- ◆ Even though you are involuntarily admitted, you have the right to be free from seclusion, restraint, or forced medication except in an emergency.

2) Petition for Court-Ordered Evaluation

The next step in the process is the filing of a petition for a court-ordered evaluation. The petition is filed if the mental health agency thinks there is a good reason for you to be ordered to undergo mental health treatment. They must assert you are unable or unwilling to undergo voluntary evaluation and give facts in support of that assertion. The petition must include facts to show that you have a mental disorder, are dangerous, disabled, and in need of supervision, care, and treatment. The court will accept or deny the petition for court-ordered evaluation without a hearing. The court will look at the information provided by the agency.

- ◆ If the court orders you to be held, you have the **right to a lawyer**.

3) Court-Ordered Evaluation

A court-ordered evaluation may take place in an inpatient facility (such as a hospital) or an outpatient facility (such as a mental health agency). When the mental health agency files a petition for court-ordered evaluation, it must ask the court to order you to be evaluated on an outpatient basis whenever possible and when it is consistent with your mental health needs. However, the mental health agency may ask that the evaluation take place in an inpatient facility and that you be kept involuntarily prior to the

evaluation, if it is believed that you need to be hospitalized. Two doctors must meet with and evaluate you if the mental health agency is going to ask the court to order mental health treatment. You have the right to choose one of these doctors. If you are kept in the hospital, you must be evaluated within 72 hours (not counting weekends and holidays) from the time that you are ordered held by the court. After 72 hours, the mental health agency must either:

- ◆ Release you;
- ◆ Transfer you to voluntary status; or
- ◆ File a Petition for Court-Ordered Treatment (you may be kept in the facility until the hearing).

At this stage in the process, it is important to know that:

- ◆ You have the right to agree to a voluntary evaluation.
- ◆ You have the right to a lawyer, and the court will provide one if you cannot afford one.
- ◆ You still have the right to refuse mental health treatment (except that medications can be administered involuntarily *in an emergency*).
- ◆ You have the right to an independent psychiatric evaluation. Your lawyer must request one for you, and you only need to submit to one other evaluation by a doctor.