



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fifth Legislature
First Regular Session

Senate: JUD DPA 7-0-1-0 | 3rd Read 30-0-0-0

SB 1029: psychiatric security review board; hearings

Sponsor: Senator Barto, LD 15
Committee on Criminal Justice Reform

Overview

Makes various changes to Arizona Psychiatric Security Review Board (PSRB) and adds additional statutory framework for the PSRB. Sunsets the PSRB on July 1, 2023 and transfers the jurisdiction of people under the PSRB to the superior court. Appropriates an unspecified appropriation in FY 2022 from the state General Fund to the PSRB for operating costs.

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. Renames the heading of Title 13, Chapter 38, Article 14 from *procedures on issue of insanity of defendant* to *psychiatric security review board*. (Sec. 5)
2. Transfers and renumbers A.R.S. §§ 13-3991 and 13-3992 as sections 13-4519 and 13-4520, respectively. (Sec. 6)
3. 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

4. Requires a person who is found GEI to be committed to a secure mental health facility for a period of treatment. (Sec. 7)
5. 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)
6. Requires the court to notify all specified parties of the hearing. (Sec. 7)
7. 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)
8. Requires the court to take the following actions at the hearing:

<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
--	--	---	--------------------------------------

- 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
 - 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)
9. 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 jurisdiction of the PSRB. (Sec. 7)
 10. Requires the court to state the beginning date, length and ending date of the PSRB's jurisdiction over the person, and the length of the PSRB's jurisdiction over the person must be equal to the presumptive sentence the person could have received for a criminal conviction. (Sec. 7)
 11. Requires DHS to assume custody of a person found GEI within 10 days after receiving the order committing the person. (Sec. 7)
 12. Requires the Arizona State Hospital (ASH) to collect specified census data for GEI treatment programs to determine maximum funded capacity levels. (Sec. 7)
 13. 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)
 14. Requires all parties to provide the PSRB and SMHF with a copy of the court's commitment order and all medical and mental health reports. (Sec. 7)
 15. Specifies the court retains jurisdiction of all matters not specifically delegated to the PSRB for the duration of the PSRB's jurisdiction over the person. (Sec. 7)

Examination of the Defendant by Qualified Experts

16. 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)
17. 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)
18. Allows the qualified expert to request additional record from the parties, on notice to the court. (Sec. 8)
19. 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. (Sec. 8)
20. Allows the state to call the same number of medical doctors and licensed psychologists who will testify on behalf of the defense. (Sec. 8)
21. 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)
22. 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)
23. 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 PSRB

24. Requires, if the PSRB finds that the person no longer needs ongoing treatment for a mental disease or defect 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. (Sec. 9)
25. Terminates the PSRB's jurisdiction over the person when the person is transferred to the superior court. (Sec. 9)
26. 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 ADC, when the PSRB finds the person no longer has a mental disease or defect and the person is not dangerous. (Sec. 9)
27. Subjects a person who is conditionally released by the PSRB to do the following:
- a) Requires the PSRB, 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 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;
 - d) Allows pass supervisors, if approved by the PSRB, 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 PSRB'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)
28. Specifies at any PSRB hearing for release, the party or treatment supervisor who is seeking a change in privileges or a change in hospitalization has the burden of proof by clear and convincing evidence. (Sec. 9)
29. 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. (Sec. 9)
30. Requires the requesting party to provide the PSRB, the treatment supervisor and all other parties with a copy of the hearing request. (Sec. 9)

31. Requires the PSRB Chairperson or Vice Chairperson to provide written notice of the hearing or a denied request for a hearing to all parties and the person's treatment supervisor within three days after receiving a request for the hearing. (Sec. 9)
32. 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. (Sec. 9)
33. Clarifies that the requirements for the PSRB to request reports and records do not prohibit the PSRB from issuing a subpoena. (Sec. 9)
34. Permits the PSRB to only consider reports, documents, written statements and materials submitted to specified parties at least 45 days before the hearing date, as well as testimony, at any hearing. (Sec. 9)
35. Requires the PSRB to notify any witnesses 14 days before the hearing. (Sec. 9)
36. Requires the PSRB to issue a written decision to all parties within seven days after the hearing and outlines information required to be included in the decision. (Sec. 9)
37. Requires the PSRB to grant a reasonable request for a hearing or a continuance for a previously scheduled hearing, and if the request is denied, the moving party may request that the full board reconsider the request at the next scheduled board meeting. (Sec. 9)

PSRB Composition

38. Establishes the PSRB as an independent state agency. (Sec. 10)
39. Prohibits a member of the PSRB from being employed by any *public defense agency*. (Sec. 10)
40. Adds a former judge as the Chairperson and as a nonvoting member to the PSRB and states the former judge may only vote in the event of a tie. (Sec. 10)
41. Reduces required monthly meetings from twice per month to once per month. (Sec. 10)
42. Compensates PSRB members \$250 for attending a PSRB meeting and \$250 for PSRB meeting preparation. (Sec. 10)
43. Compensates the Chairperson and Vice Chairperson \$50 for each day that they are engaged in an activity substantially related to PSRB duties outside of meeting preparation and attendance. (Sec. 10)
44. Requires the PSRB to employ an executive director and delegate specified duties and tasks to the executive director. (Sec. 10)
45. Establishes the presence of three members as a quorum. (Sec. 10)
46. 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. (Sec. 10)
47. States the training must include:
 - a) Governance and administrative management;
 - b) Conduct of quasi-judicial proceedings; and
 - c) Administrative procedure and rule adoption. (Sec. 10)
48. Specifies that a PSRB action is not subject to challenge or invalidation because a PSRB member did not complete the required training. (Sec. 10)

PSRB Powers and Duties

49. Specifies that the PSRB's authority to hold hearings also applies to the ability to transfer a committed person back to the superior court. (Sec. 11)
50. Allows a conditional release, in addition to being continued, modified or terminated, to be granted or suspended. (Sec. 11)
51. Removes the requirement that each application for a hearing must be accompanied by a report setting for the facts supporting the application and that each termination of conditional release requires a vote of three PSRB members. (Sec. 11)
52. Removes the exemption of PSRB deliberations from the requirement that the PSRB keep a record of all hearings before the PSRB. (Sec. 11)
53. Requires specified notices given by the PSRB to be provided to *all* parties. (Sec. 11)
54. Requires the PSRB to require at least two members voting in the affirmative to deny, grant, modify, suspend or terminate a person's conditional release based on clear and convincing evidence. (Sec. 11)
55. Requires the PSRB, beginning on June 1, 2022, to submit an annual report to the Governor, Legislature and Secretary of State. (Sec. 11)
56. Outlines the report's requirements. (Sec. 11)
57. Allows the PSRB to request in the notice of hearing that a specific witness who is from the person's treatment team attend a hearing. (Sec. 11)
58. Allows the PSRB to continue a hearing if the PSRB determines that the standard of clear and convincing evidence has not been met, the patient requests a continuance and the opportunity to supplement the information available and the PSRB finds there is sufficient cause to grant the continuance. (Sec. 11)
59. Permits the PSRB to receive witness testimony in a hearing that is closed to the public. (Sec. 11)

Hearing on Motion of the PSRB

60. Permits 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. (Sec. 12)
61. Permits the PSRB to order the person's treatment supervisor to provide a mental health report to the PSRB and all other parties within 30 days after providing notice of the hearing. (Sec. 12)
62. Permits the PSRB, if sufficient cause exists, to set an expedited hearing to monitor a person's progress or mental health and outlines the requirements for the expedited hearing. (Sec. 12)
63. Allows the Chairperson or Vice Chairperson to order a person's return to hospitalization if the person violated the PSRB's conditional release order or if the person's mental health deteriorates while on conditional release. (Sec. 12)
64. Outlines the requirements to be fulfilled by the Chairperson or Vice Chairperson before ordering a person's return to hospitalization. (Sec. 12)
65. Requires the PSRB to hold a hearing for each person under the PSRB's jurisdiction at least once every 24 months. (Sec. 12)

Hearing on the Request of the Treatment Supervisor

66. Requires the PSRB to grant a hearing requested by a treatment supervisor. (Sec. 12)

67. Requires the treatment supervisor to submit the hearing request to the PSRB and all other parties and include a mental health report specifying the reasons for the hearing request. (Sec. 12)
68. Requires the PSRB, if the person has violated the terms of conditional release or if the person's mental health is deteriorating, to grant the treatment supervisor's request for a hearing and the following:
 - a) Allows the treatment supervisor to suspend a person's condition release, if the person resides in a SMHF, 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; and
 - c) If the safety of the community or others are not at risk, allows the Chairperson or Vice Chairperson, pending the hearing and PSRB determination, to allow the person to remain in the community. (Sec. 12)
69. Allows the treatment supervisor to order that the person be taken into custody and transported to a SMHF if the person is conditionally released to the community and there is reason to believe that:
 - a) The person violated a term of the conditional release
 - b) The person needs immediate care, custody or treatment at a SMHF; or
 - c) The person's mental health is a risk to the safety of the public. (Sec. 12)
70. Requires the person to be immediately admitted to the SMHF. (Sec. 12)
71. Requires the treatment supervisor to immediately provide written notice to specified parties that the person has been admitted to a SMHF. (Sec. 12)
72. Requires the PSRB to set a hearing upon receiving the notice and the hearing to occur within seven days of the person's admission to the SMHF, unless the hearing is continued by the PSRB. (Sec. 12)
73. Mandates the treatment supervisor must submit a written mental health report to the PSRB and specified parties within three days of the person's return and include all required information in the report. (Sec. 12)

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

74. Permits a person under the PSRB's jurisdiction to request, and the PSRB to grant, a hearing no sooner than 120 days after the person is committed and placed under the PSRB's jurisdiction. (Sec. 12)
75. Limits the hearings a person may request to no sooner than 20 months after the previous hearing. (Sec. 12)
76. States if a person under the PSRB'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. 12)
77. Allows a person conditionally released to the community to petition for readmission to the SMHF. (Sec. 12)
78. States if a person voluntarily petitions for readmission to the SMHF, the treatment supervisor must submit a mental health report to the PSRB within seven days. (Sec. 12)

Return of Person under the PSRB's Jurisdiction to the SMHF

79. Allows a law enforcement officer, upon written order of the Chairperson or Vice Chairperson, to take a person into custody and transport the person to a SMHF. (Sec. 12)

80. Requires the law enforcement officer to notify the PSRB of the person's return to the SMHF. (Sec. 12)
81. 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. 12)
82. Requires the PSRB to hold a hearing to determine if the return was supported by sufficient cause within seven days. (Sec. 12)
83. Requires the PSRB to order the person's immediate release if the return was not supported by sufficient cause. (Sec. 12)
84. Permits the PSRB, if the return was supported by sufficient cause, to amend the conditional release terms and release 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. (Sec. 12)

Hearing on Expiration of PSRB Jurisdiction

85. Requires the PSRB, at least 30 days before the expiration of the PSRB's jurisdiction, to set an expiration hearing and order the treatment supervisor to provide a mental health report. (Sec. 12)
86. Permits the PSRB to allow jurisdiction to expire without further action or to order the county attorney of the committing county to begin proceedings for involuntary civil evaluation. (Sec. 12)
87. States if the PSRB orders an involuntary civil evaluation, the order must require the person's appearance, provide time and location details, and the person's participation before the expiration of the PSRB's jurisdiction. (Sec. 12)

Transferring Jurisdiction of a Person from the PSRB to Superior Court

88. 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. (Sec. 12)
89. Permits the person, within 20 days of the PSRB ordering the person's transfer, to request a judicial review and outlines the requirements for the petition. (Sec. 12)
90. States at the judicial review hearing, the treatment supervisor has the burden to prove by clear and convincing evidence that the transfer is appropriate. (Sec. 12)
91. Requires the court to suspend the person's sentence and place the person on supervised probation or impose the sentence if the court finds the transfer is appropriate. (Sec. 12)
92. States all time spent under the PSRB's jurisdiction and any time spent incarcerated must be credited against any sentence imposed. (Sec. 12)
93. States if the court finds the transfer is not supported by the evidence, the court must transfer jurisdiction of the person back to the PSRB. (Sec. 12)
94. Requires the Court to notify the person of the person's appeal rights at the time of sentencing or placement on probation. (Sec. 12)

Independent Expert Witness

95. Permits either party to retain an independent qualified expert to evaluate the person and make recommendations to the PSRB before any hearing before the PSRB. (Sec. 12)
96. Requires the county of the committing court to pay all evaluation costs. (Sec. 12)

97. Requires the qualified expert to provide to the state's expert, upon request, all records considered or generated by the qualified expert. (Sec. 12)
98. 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. 12)
99. 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.
100. Allows the PSRB, at its own expense, to order a mental health evaluation by an independent qualified expert. (Sec 12)
101. 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. 13)

Miscellaneous

102. Sunsets the PSRB on July 1, 2023. (Sec. 19)
103. Directs the Legislative Council to prepare proposed conforming legislation for the 56th Legislature, First Regular Session. (Sec. 21)
104. Requires, beginning July 1, 2023, the superior court to have exclusive supervisory jurisdiction over all persons under PSRB's jurisdiction on that date. (Sec. 22)
105. Vests powers and duties of the PSRB as they existed before July 1, 2023, to carry out statutory duties with the superior court. (Sec. 22)
106. Appropriates an unspecified amount from the state General Fund in FY 2022 to the PSRB for operating costs. (Sec. 23)
107. Defines relevant terms. (Sec. 7, 9)
108. Makes technical and conforming changes. (Sec. 1, 2, 3, 4, 14, 15, 16, 17, 18, 20)