



# ARIZONA HOUSE OF REPRESENTATIVES

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Second Regular Session

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## **SB 1310: dangerous; incompetent person; evaluation; commitment**

**Sponsor: Senator Barto, LD 15**

**Committee on Judiciary**

### **Overview**

Establishes procedures regarding the commitment, detainment, conditional release and discharge of a defendant deemed incompetent, non-restorable and dangerous. Outlines requirements for the treatment of a committed defendant.

### **History**

Statute allows any party, if the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency within 21 months after the date of the original finding of incompetency, to request that the court: 1) remand the defendant to an evaluating agency for the institution of civil commitment proceedings; 2) appoint a guardian; or 3) release the defendant from custody and dismiss the charges against the defendant without prejudice. If the defendant is remanded, the prosecutor is required to file a petition for evaluation and provide any known criminal history of the defendant ([A.R.S. § 13-4517](#)).

Incompetent to stand trial means a defendant, as a result of a mental illness, defect or disability, is unable to understand the nature and object of the proceeding or to assist in the defendant's defense. Incompetent to stand trial also means, in the case of a person under 18 years old, a person who does not have sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person ([A.R.S. § 13-4501](#)).

### **Provisions**

1. States a person who is found competent to stand trial after an involuntary commitment must receive credit for all time that the person spent under the jurisdiction of the secure state mental health for any of the charges that were the basis for the involuntary commitment. (Sec. 1)
2. States specific sealed court reports may be opened in a trial to determine whether the defendant is dangerous and eligible for commitment. (Sec. 3)
3. Requires an expert who is appointed to determine the defendant's competency to submit a written report of the examination and describe any instrument used to assess whether the defendant is likely to be dangerous. (Sec. 4)
4. States if the mental health expert determines that the defendant is incompetent to stand trial, the report must also include the following information:
  - a) The nature of the mental illness, disease or defect that makes the defendant likely to be dangerous; and
  - b) If the prognosis includes a determination that the defendant is not likely to regain competency within 21 months, whether the defendant should be considered dangerous. (Sec. 4)

Prop 105 (45 votes)

Prop 108 (40 votes)

Emergency (40 votes)

Fiscal Note

5. States that if the court finds that a defendant is incompetent to stand trial and is charged with a serious offense, any party may request that the court order a jury trial to determine if the defendant is dangerous and should be involuntarily committed. (Sec. 6)
6. Allows the court to order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the expenses of the defendant's medically necessary maintenance and treatment. (Sec. 6)
7. Permits the court to retain jurisdiction over the defendant until the defendant is committed for treatment. (Sec. 6)
8. States if a defendant is incompetent to stand trial and is charged with a serious offense, the court must hold a jury trial to determine if the defendant is dangerous and should be involuntarily committed. (Sec. 7)
9. Requires the court to appoint an attorney if the defendant is not represented by an attorney and is indigent. (Sec. 7)
10. Requires the defendant to be examined by a mental health expert to determine if the defendant should be considered dangerous. (Sec. 7)
11. Mandates that the court must establish beyond a reasonable doubt that the defendant is dangerous and that the defendant committed the acts constituting the charged offense. (Sec. 7)
12. States if the jury finds that the defendant is dangerous, the court must order the defendant to be committed to a secure mental health facility. (Sec. 7)
13. States the defendant must remain committed until the court finds that the defendant is competent to stand trial or the court finds that the defendant is no longer dangerous. (Sec. 7)
14. Requires the court to retain jurisdiction over a committed defendant until the court discharges the defendant from treatment or the time to commence a charge has expired. (Sec. 7)
15. Specifies the findings by the court for the above are inadmissible in any proceeding other than a proceeding relating to dangerous and incompetent persons. (Sec. 7)
16. Requires the court to report annually regarding defendants who are committed and outlines reporting requirements. (Sec. 7)
17. Adds *Chapter 40: Dangerous and Incompetent Persons* and related statutes to [Title 36: Public Health and Safety](#). (Sec. 8)
18. Requires a specified medical professional to biannually examine each defendant determined to be incompetent and dangerous and outlines the examination and reporting requirements. (Sec. 8)
19. Stipulates if the specified medical professionals determine that the committed defendant is competent to stand trial or is no longer dangerous, the court must hold a hearing to determine whether the committed defendant is competent or is no longer dangerous. (Sec. 8)
20. Requires that if the committed defendant is determined to be no longer dangerous because of medication, the report must state whether the committed defendant will continue to take that medication if released to a less restrictive alternative. (Sec. 8)
21. Outlines the hearing procedure if the court receives a report that the committed defendant is competent or no longer dangerous. (Sec. 8)
22. Allows a committed defendant to petition for conditional release to a less restrictive alternative if the committed defendant is no longer dangerous. (Sec. 8)

23. Requires the court to hold a hearing within 45 days after receiving the petition. (Sec. 8)
24. Specifies the State has the burden of proving by clear and convincing evidence that the committed defendant's mental illness, defect or disability has not changed and the committed defendant remains dangerous. (Sec. 8)
25. Allows a committed defendant to annually petition the court for conditional release to a less restrictive alternative. (Sec. 8)
26. Permits the committed defendant to be present at the hearing. (Sec. 8)
27. Allows the court to order the committed defendant's conditional release to a less restrictive alternative if the court determines it is in the best interest of the committed defendant and the community is adequately protected. (Sec. 8)
28. Outlines procedure if the court does not order the conditional release of a committed defendant to a less restrictive alternative. (Sec. 8)
29. Permits the court to impose any additional conditions on the committed defendant that the court determined is necessary to ensure the committed defendant's compliance with treatment and to protect the community. (Sec. 8)
30. Outlines procedure if the court does conditionally release a committed defendant to a less restrictive alternative. (Sec. 8)
31. Allows for the committed defendant who was conditionally released to a less restrictive alternative to be monitored using an electronic bracelet. (Sec. 8)
32. Requires the designated service provider to report monthly specific information about the committed defendant who was released to a less restrictive alternative. (Sec. 8)
33. Requires the court to review the case of each committed defendant who is conditionally released to a less restrictive alternative within one year after the committed defendant's release and thereafter on motion of either party, the superintendent or on the court's own motion until the committed defendant is discharged. (Sec. 8)
34. Requires the Department of Public Safety be notified if a committed defendant is conditionally released to a less restrictive alternative. (Sec. 8)
35. Mandates that before the court orders that a committed defendant be conditionally released to a less restrictive alternative, all of the following must apply:
  - a) The committed defendant will be treated by a qualified provider;
  - b) The provider presents a specific treatment course, agrees to assume responsibility for the committed defendant's treatment, will report on the committed defendant's progress and will report any violations immediately to the court, the attorney for the state and the superintendent;
  - c) Ensure the committed defendant has housing arrangements sufficiently secure to protect the community;
  - d) The committed defendant will comply with the provider and all of the court's and provider's requirements; and
  - e) The committed defendant will comply with the supervision requirements imposed by the Arizona Health Care Cost Containment System Administration. (Sec. 8)
36. Specifies a committed defendant does not forfeit any legal right and may not suffer any legal disability as a consequence of specified actions unless specified otherwise. (Sec. 8)
37. Requires that a committed defendant receive care, supervision or treatment and that the superintendent must keep records detailing all medical care and treatment. (Sec. 8)

38. Outlines who may receive copies of the above medical records. (Sec. 8)
39. Outlines the process and requirements for revoking conditional release to a less restrictive alternative. (Sec. 8)
40. Outlines the process for a committed defendant to petition for discharge. (Sec. 8)
41. Outlines the reasons that a committed defendant may be transported from the secure mental health facility to court. (Sec. 8)
42. Defines relevant terms. (Sec. 2, 8)
43. Contains a legislative findings clause. (Sec. 8)
44. Contains a retroactivity clause of January 1, 2022. (Sec. 9)
45. Makes technical and conforming changes. (Sec. 1, 2, 3, 4, 5, 6)