

NICS – ACJC working draft

1 Section 1. Title 13, Chapter 6, Arizona Revised Statutes is
2 amended by adding section 13-611.

3 13-611. Transmission of court order; indictment, information,
4 complaint; incompetent to stand trial; NICS; Mental Health
5 Repository.

6 A. THE CLERK OF COURT SHALL TRANSMIT CASE INFORMATION IN A CASE
7 WHERE A COVERED OFFENSE IS FILED TO THE SUPREME COURT AND THE
8 SUPREME COURT SHALL TRANSMIT THE CASE INFORMATION TO THE
9 DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY
10 SHALL TRANSMIT THE CASE INFORMATION TO THE NATIONAL INSTANT
11 CRIMINAL BACKGROUND CHECK SYSTEM.

12 B. IF THE COVERED OFFENSE IS SUBSEQUENTLY DISMISSED THE CLERK OF
13 COURT SHALL TRANSMIT THAT INFORMATION TO THE SUPREME COURT AND
14 THE SUPREME COURT SHALL TRANSMIT THE INFORMATION TO THE
15 DEPARTMENT OF PUBLIC SAFETY. UPON RECEIPT OF THE INFORMATION THE
16 DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO
17 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

18 C. IF A COURT FINDS A PERSON IS INCOMPETENT TO STAND TRIAL
19 PURSUANT TO RULE 11, ARIZONA RULES OF CRIMINAL PROCEDURE, THE
20 CLERK OF COURT SHALL TRANSMIT THE CASE INFORMATION AND DATE OF
21 INCOMPETENCY FINDING TO THE MENTAL HEALTH REPOSITORY MAINTAINED
22 BY THE SUPREME COURT AND THE SUPREME COURT SHALL TRANSMIT THE
23 INFORMATION TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT
24 OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO THE NATIONAL
25 INSTANT CRIMINAL BACKGROUND CHECK SYSTEM. UPON REQUEST FROM A
26 LAW ENFORCEMENT OR PROSECUTING AGENCY THAT IS INVESTIGATING OR
27 PROSECUTING A PROHIBITED POSSESSOR AS DEFINED IN 13-3101, THE
28 COURT THAT ORIGINALLY FOUND THE DEFENDANT INCOMPETENT SHALL
29 PROVIDE CERTIFIED COPIES OF THE ORDER.

30 D. INFORMATION REGARDING PERSONS FOUND TO BE INCOMPETENT TO
31 STAND TRIAL SHALL BE MAINTAINED IN THE MENTAL HEALTH REPOSITORY
32 WITH ACCESS GRANTED TO A LAW ENFORCEMENT AGENCY THROUGH THE
33 DEPARTMENT OF PUBLIC SAFETY FOR PURPOSES OF ENFORCING AN ORDER,
34 ASSISTING IN AN INVESTIGATION OR FOR RETURNING PROPERTY.

35 E. IF THE PERSON IS SUBSEQUENTLY FOUND COMPETENT TO STAND TRIAL
36 THE CLERK OF COURT SHALL TRANSMIT THE CASE INFORMATION TO THE
37 SUPREME COURT. THE SUPREME COURT SHALL REMOVE THE CASE

NICS – ACJC working draft

1 INFORMATION FROM THE MENTAL HEALTH RESPOSITORY AND SHALL
2 TRANSMIT THE DISMISSAL TO THE DEPARTMENT OF PUBLIC SAFETY. THE
3 DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE DISMISSAL TO THE
4 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

5 F. FOR THE PURPOSES OF THIS SECTION:

6 1. "CASE INFORMATION" MEANS THE PERSON'S NAME, SEX, DATE OF
7 BIRTH, THE LAST FOUR DIGITS OF THE PERSON'S SOCIAL SECURITY
8 NUMBER IF AVAILABLE, COURT CASE NUMBER AND COURT ORIGINATING
9 AGENCY IDENTIFICATION NUMBER.

10 2. "COVERED OFFENSE" MEANS:

11 a. AN INDICTMENT OR INFORMATION FOR AN OFFENSE WHERE EITHER THE
12 JUDICIAL OFFICER IMPOSES AS A CONDITION OF RELEASE THAT THE
13 PERSON NOT POSSESS A FIREARM OR THE OFFENSE CHARGED IS ONE
14 LISTED IN SECTION 13-706, SUBSECTION F, OR

15 b. A MISDEMEANOR COMPLAINT FOR AN OFFENSE WHERE THE JUDICIAL
16 OFFICER IMPOSES AS A CONDITION OF RELEASE THAT THE PERSON NOT
17 POSSESS A FIREARM.

18 Section 2. 13-925. Restoration of right to possess a firearm;
19 mentally ill persons; petition

20 A. A person may petition the court that entered an order,
21 finding or adjudication that resulted in the person being a
22 prohibited possessor as defined in section 13-3101, subsection
23 A, paragraph 7, subdivision (a) or subject to 18 United States
24 Code section 922(d)(4) or (g)(4) to restore the person's right
25 to possess a firearm.

26 B. The person or the person's guardian or attorney may file the
27 petition. The petition shall be served on the attorney for the
28 state who appeared in the underlying case.

29 C. On filing of the petition the court shall set a hearing. At
30 the hearing, the person shall present psychological or
31 psychiatric evidence in support of the petition. The state shall
32 provide the court with the person's criminal history records, if
33 any. The court shall receive evidence on and consider the
34 following before granting or denying the petition:

35 1. The circumstances that resulted in the person being a
36 prohibited possessor as defined in section 13-3101, subsection

NICS – ACJC working draft

- 1 A, paragraph 7, subdivision (a) or subject to 18 United States
2 Code section 922(d)(4) or (g)(4).
- 3 2. The person's record, including the person's mental health
4 record and criminal history record, if any.
- 5 3. The person's reputation based on character witness
6 statements, testimony or other character evidence.
- 7 4. Whether the person is a danger to self or others, is
8 persistently, acutely or gravely disabled or whether the
9 circumstances that led to the original order, adjudication or
10 finding remain in effect.
- 11 5. Any change in the person's condition or circumstances that is
12 relevant to the relief sought.
- 13 6. Any other evidence deemed admissible by the court.
- 14 D. The petitioner shall prove by clear and convincing evidence
15 both of the following:
- 16 1. The petitioner is not likely to act in a manner that is
17 dangerous to public safety.
- 18 2. Granting the requested relief is not contrary to the public
19 interest.
- 20 E. At the conclusion of the hearing, the court shall issue
21 findings of fact and conclusions of law.
- 22 F. If the court grants the petition for relief, the original
23 order, finding or adjudication is deemed not to have occurred
24 for the purposes of applying section 13-3101, subsection A,
25 paragraph 7, subdivision (a), Public Law 110-180, section 105(a)
26 or 18 United States Code section 922(d)(4) or (g)(4) to that
27 person.
- 28 G. The granting of a petition under this section only restores
29 the person's right to possess a firearm and does not apply to
30 and has no affect on any other rights or benefits the person
31 receives.
- 32 H. The court shall promptly notify the **SUPREME COURT AND THE**
33 department of public safety of an order granting a petition
34 under this section. As soon thereafter as practicable the
35 **SUPREME COURT AND THE** department shall update, correct, modify
36 or remove the person's record in any database that the **SUPREME**
37 **COURT AND THE** department maintains and makes available to the

NICS – ACJC working draft

1 national instant criminal background check system consistent
2 with the rules pertaining to the database. Within ten business
3 days after receiving the notification from the court, the
4 department shall notify the United States attorney general that
5 the person no longer falls within the provisions of section 13-
6 3011, subsection A, paragraph 7, subdivision (a) or 18 United
7 States Code section 922(d)(4) or (g)(4).

8 Section 3. 13-3101. Definitions

9 A. In this chapter, unless the context otherwise requires:

10 1. "Deadly weapon" means anything that is designed for lethal
11 use. The term includes a firearm.

12 2. "Deface" means to remove, alter or destroy the manufacturer's
13 serial number.

14 3. "Explosive" means any dynamite, nitroglycerine, black powder,
15 or other similar explosive material, including plastic
16 explosives. Explosive does not include ammunition or ammunition
17 components such as primers, percussion caps, smokeless powder,
18 black powder and black powder substitutes used for hand loading
19 purposes.

20 4. "Firearm" means any loaded or unloaded handgun, pistol,
21 revolver, rifle, shotgun or other weapon that will expel, is
22 designed to expel or may readily be converted to expel a
23 projectile by the action of an explosive. Firearm does not
24 include a firearm in permanently inoperable condition.

25 5. "Improvised explosive device" means a device that
26 incorporates explosives or destructive, lethal, noxious,
27 pyrotechnic or incendiary chemicals and that is designed to
28 destroy, disfigure, terrify or harass.

29 6. "Occupied structure" means any building, object, vehicle,
30 watercraft, aircraft or place with sides and a floor that is
31 separately securable from any other structure attached to it,
32 that is used for lodging, business, transportation, recreation
33 or storage and in which one or more human beings either are or
34 are likely to be present or so near as to be in equivalent
35 danger at the time the discharge of a firearm occurs. Occupied
36 structure includes any dwelling house, whether occupied,
37 unoccupied or vacant.

NICS – ACJC working draft

- 1 7. "Prohibited possessor" means any person:
- 2 (a) Who has been found to constitute a danger to self or to
- 3 others or to be persistently or acutely disabled or gravely
- 4 disabled pursuant to court order PURSUANT TO section 36-540.
- 5 THIS SUBSECTION DOES NOT APPLY IF THE PERSON'S RIGHT TO POSSESS
- 6 A FIREARM HAS BEEN RESTORED PURSUANT TO SECTION 13-925.
- 7 (b) WHO HAS BEEN FOUND INCOMPETENT PURSUANT TO ARIZONA RULES OF
- 8 CRIMINAL PROCEDURE, RULE 11. THIS PARAGRAPH DOES NOT APPLY IF
- 9 THE PERSON HAS SUBSEQUENTLY BEEN FOUND COMPETENT.
- 10 (b c) Who has been convicted within or without this state of a
- 11 felony or who has been adjudicated delinquent for a felony and
- 12 whose civil right to possess or carry a gun or firearm has not
- 13 been restored.
- 14 (d) WHO IS CHARGED WITH A COVERED OFFENSE. FOR THE PURPOSES OF
- 15 THIS SUBPARAGRAPH "COVERED OFFENSE" HAS THE SAME MEANING AS IN
- 16 SECTION 13-611, SUBSECTION F.
- 17 (e e) Who is at the time of possession serving a term of
- 18 imprisonment in any correctional or detention facility.
- 19 (d g) Who is at the time of possession serving a term of
- 20 probation pursuant to a conviction for a domestic violence
- 21 offense as defined in section 13-3601 or a felony offense,
- 22 parole, community supervision, work furlough, home arrest or
- 23 release on any other basis or who is serving a term of probation
- 24 or parole pursuant to the interstate compact under title 31,
- 25 chapter 3, article 4.1.
- 26 (e h) Who is an undocumented alien or a nonimmigrant alien
- 27 traveling with or without documentation in this state for
- 28 business or pleasure or who is studying in this state and who
- 29 maintains a foreign residence abroad. This subdivision does not
- 30 apply to:
- 31 (i) Nonimmigrant aliens who possess a valid hunting license or
- 32 permit that is lawfully issued by a state in the United States.
- 33 (ii) Nonimmigrant aliens who enter the United States to
- 34 participate in a competitive target shooting event or to display
- 35 firearms at a sports or hunting trade show that is sponsored by
- 36 a national, state or local firearms trade organization devoted
- 37 to the competitive use or other sporting use of firearms.

NICS – ACJC working draft

- 1 (iii) Certain diplomats.
- 2 (iv) Officials of foreign governments or distinguished foreign
3 visitors who are designated by the United States department of
4 state.
- 5 (v) Persons who have received a waiver from the United States
6 attorney general.
- 7 8. "Prohibited weapon":
 - 8 (a) Includes the following:
 - 9 (i) An item that is a bomb, grenade, rocket having a propellant
10 charge of more than four ounces or mine and that is explosive,
11 incendiary or poison gas.
 - 12 (ii) A device that is designed, made or adapted to muffle the
13 report of a firearm.
 - 14 (iii) A firearm that is capable of shooting more than one shot
15 automatically, without manual reloading, by a single function of
16 the trigger.
 - 17 (iv) A rifle with a barrel length of less than sixteen inches,
18 or shotgun with a barrel length of less than eighteen inches, or
19 any firearm that is made from a rifle or shotgun and that, as
20 modified, has an overall length of less than twenty-six inches.
 - 21 (v) An instrument, including a nunchaku, that consists of two or
22 more sticks, clubs, bars or rods to be used as handles,
23 connected by a rope, cord, wire or chain, in the design of a
24 weapon used in connection with the practice of a system of self-
25 defense.
 - 26 (vi) A breakable container that contains a flammable liquid with
27 a flash point of one hundred fifty degrees Fahrenheit or less
28 and that has a wick or similar device capable of being ignited.
 - 29 (vii) A chemical or combination of chemicals, compounds or
30 materials, including dry ice, that is possessed or manufactured
31 for the purpose of generating a gas to cause a mechanical
32 failure, rupture or bursting or an explosion or detonation of
33 the chemical or combination of chemicals, compounds or
34 materials.
 - 35 (viii) An improvised explosive device.

NICS – ACJC working draft

1 (ix) Any combination of parts or materials that is designed and
2 intended for use in making or converting a device into an item
3 set forth in item (i), (vi) or (viii) of this subdivision.

4 (b) Does not include:

5 (i) Any fireworks that are imported, distributed or used in
6 compliance with state laws or local ordinances.

7 (ii) Any propellant, propellant actuated devices or propellant
8 actuated industrial tools that are manufactured, imported or
9 distributed for their intended purposes.

10 (iii) A device that is commercially manufactured primarily for
11 the purpose of illumination.

12 9. "Trafficking" means to sell, transfer, distribute, dispense
13 or otherwise dispose of a weapon or explosive to another person,
14 or to buy, receive, possess or obtain control of a weapon or
15 explosive, with the intent to sell, transfer, distribute,
16 dispense or otherwise dispose of the weapon or explosive to
17 another person.

18 B. The items set forth in subsection A, paragraph 8, subdivision
19 (a), items (i), (ii), (iii) and (iv) of this section do not
20 include any firearms or devices that are registered in the
21 national firearms registry and transfer records of the United
22 States treasury department or any firearm that has been
23 classified as a curio or relic by the United States treasury
24 department.

25 Section 4. 13-3112. Concealed weapons; qualification;
26 application; permit to carry; civil penalty; report;
27 applicability

28 A. The department of public safety shall issue a permit to carry
29 a concealed weapon to a person who is qualified under this
30 section. The person shall carry the permit at all times when the
31 person is in actual possession of the concealed weapon and is
32 required by § 4-229 or 4-244 to carry the permit. If the person
33 is in actual possession of the concealed weapon and is required
34 by § 4-229 or 4-244 to carry the permit, the person shall
35 present the permit for inspection to any law enforcement officer
36 on request.

NICS – ACJC working draft

1 B. The permit of a person who is arrested or indicted for an
2 offense that would make the person unqualified under section 13-
3 3101, subsection A, paragraph 7 or this section shall be
4 immediately suspended and seized. The permit of a person who
5 becomes unqualified on conviction of that offense shall be
6 revoked. The permit shall be restored on presentation of
7 documentation from the court if the permittee is found not
8 guilty or the charges are dismissed. The permit shall be
9 restored on presentation of documentation from the county
10 attorney that the charges against the permittee were dropped or
11 dismissed.

12 C. A permittee who carries a concealed weapon, who is required
13 by section 4-229 or 4-244 to carry a permit and who fails to
14 present the permit for inspection on the request of a law
15 enforcement officer commits a violation of this subsection and
16 is subject to a civil penalty of not more than three hundred
17 dollars. The department of public safety shall be notified of
18 all violations of this subsection and shall immediately suspend
19 the permit. A permittee shall not be convicted of a violation of
20 this subsection if the permittee produces to the court a legible
21 permit that is issued to the permittee and that was valid at the
22 time the permittee failed to present the permit for inspection.

23 D. A law enforcement officer shall not confiscate or forfeit a
24 weapon that is otherwise lawfully possessed by a permittee whose
25 permit is suspended pursuant to subsection C of this section,
26 except that a law enforcement officer may take temporary custody
27 of a firearm during an investigatory stop of the permittee.

28 E. The department of public safety shall issue a permit to an
29 applicant who meets all of the following conditions:

- 30 1. Is a resident of this state or a United States citizen.
- 31 2. Is twenty-one years of age or older.
- 32 3. Is not under indictment for and has not been convicted in any
33 jurisdiction of a felony unless that conviction has been
34 expunged, set aside or vacated or the applicant's rights have
35 been restored.
- 36 4. **THE APPLICANT IS NOT A PROHIBITED POSSESSOR UNDER STATE OR**
37 **FEDERAL LAW.**

NICS – ACJC working draft

1 5. Is not unlawfully present in the United States.

2 6. Has ever demonstrated competence with a firearm as prescribed
3 by subsection N of this section and provides adequate
4 documentation that the person has satisfactorily completed a
5 training program or demonstrated competence with a firearm in
6 any state or political subdivision in the United States. For the
7 purposes of this paragraph, "adequate documentation" means:

8 (a) A current or expired permit issued by the department of
9 public safety pursuant to this section.

10 (b) An original or copy of a certificate, card or document that
11 shows the applicant has ever completed any course or class
12 prescribed by subsection N of this section or an affidavit from
13 the instructor, school, club or organization that conducted or
14 taught the course or class attesting to the applicant's
15 completion of the course or class.

16 (c) An original or a copy of a United States department of
17 defense form 214 (DD-214) indicating an honorable discharge or
18 general discharge under honorable conditions, a certificate of
19 completion of basic training or any other document demonstrating
20 proof of the applicant's current or former service in the United
21 States armed forces as prescribed by subsection N, paragraph 5
22 of this section.

23 (d) An original or a copy of a concealed weapon, firearm or
24 handgun permit or a license as prescribed by subsection N,
25 paragraph 6 of this section.

26 F. The application shall be completed on a form prescribed by
27 the department of public safety. The form shall not require the
28 applicant to disclose the type of firearm for which a permit is
29 sought. The applicant shall attest under penalty of perjury that
30 all of the statements made by the applicant are true, that the
31 applicant has been furnished a copy of this chapter and chapter
32 4 of this title and that the applicant is knowledgeable about
33 the provisions contained in those chapters. The applicant shall
34 submit the application to the department with any documentation
35 prescribed by subsection E of this section, two sets of
36 fingerprints and a reasonable fee determined by the director of
37 the department.

NICS – ACJC working draft

1 G. On receipt of a concealed weapon permit application, the
2 department of public safety shall conduct a check of the
3 applicant's criminal history record pursuant to section 41-1750.
4 The department of public safety may exchange fingerprint card
5 information with the federal bureau of investigation for federal
6 criminal history record checks.

7 H. The department of public safety shall complete all of the
8 required qualification checks within sixty days after receipt of
9 the application and shall issue a permit within fifteen working
10 days after completing the qualification checks if the applicant
11 meets all of the conditions specified in subsection E of this
12 section. If a permit is denied, the department of public safety
13 shall notify the applicant in writing within fifteen working
14 days after the completion of all of the required qualification
15 checks and shall state the reasons why the application was
16 denied. On receipt of the notification of the denial, the
17 applicant has twenty days to submit any additional documentation
18 to the department. On receipt of the additional documentation,
19 the department shall reconsider its decision and inform the
20 applicant within twenty days of the result of the
21 reconsideration. If denied, the applicant shall be informed that
22 the applicant may request a hearing pursuant to title 41,
23 chapter 6, article 10. For the purposes of this subsection,
24 "receipt of the application" means the first day that the
25 department has physical control of the application and that is
26 presumed to be on the date of delivery as evidenced by proof of
27 delivery by the United States postal service or a written
28 receipt, which shall be provided by the department on request of
29 the applicant.

30 I. On issuance, a permit is valid for five years, except a
31 permit that is held by a member of the United States armed
32 forces, including a member of the Arizona national guard or a
33 member of the reserves of any military establishment of the
34 United States, who is on federal active duty and who is deployed
35 overseas shall be extended until ninety days after the end of
36 the member's overseas deployment.

NICS – ACJC working draft

1 J. The department of public safety shall maintain a computerized
2 permit record system that is accessible to criminal justice
3 agencies for the purpose of confirming the permit status of any
4 person who is contacted by a law enforcement officer and who
5 claims to hold a valid permit issued by this state. This
6 information and any other records that are maintained regarding
7 applicants, permit holders or instructors shall not be available
8 to any other person or entity except on an order from a state or
9 federal court. A criminal justice agency shall not use the
10 computerized permit record system to conduct inquiries on
11 whether a person is a concealed weapons permit holder unless the
12 criminal justice agency has reasonable suspicion to believe the
13 person is carrying a concealed weapon and the person is subject
14 to a lawful criminal investigation, arrest, detention or an
15 investigatory stop.

16 K. A permit issued pursuant to this section is renewable every
17 five years. Before a permit may be renewed, a criminal history
18 records check shall be conducted pursuant to section 41-1750
19 within sixty days after receipt of the application for renewal.
20 For the purposes of permit renewal, the permit holder is not
21 required to submit additional fingerprints.

22 L. Applications for renewal shall be accompanied by a fee
23 determined by the director of the department of public safety.

24 M. The department of public safety shall suspend or revoke a
25 permit issued under this section if the permit holder becomes
26 ineligible pursuant to subsection E of this section. The
27 department of public safety shall notify the permit holder in
28 writing within fifteen working days after the revocation or
29 suspension and shall state the reasons for the revocation or
30 suspension.

31 N. An applicant shall demonstrate competence with a firearm
32 through any of the following:

33 1. Completion of any firearms safety or training course or class
34 that is available to the general public, that is offered by a
35 law enforcement agency, a junior college, a college or a private
36 or public institution, academy, organization or firearms
37 training school and that is approved by the department of public

NICS – ACJC working draft

- 1 safety or that uses instructors who are certified by the
2 national rifle association.
- 3 2. Completion of any hunter education or hunter safety course
4 approved by the Arizona game and fish department or a similar
5 agency of another state.
- 6 3. Completion of any national rifle association firearms safety
7 or training course.
- 8 4. Completion of any law enforcement firearms safety or training
9 course or class that is offered for security guards,
10 investigators, special deputies or other divisions or
11 subdivisions of law enforcement or security enforcement and that
12 is approved by the department of public safety.
- 13 5. Evidence of current military service or proof of honorable
14 discharge or general discharge under honorable conditions from
15 the United States armed forces.
- 16 6. A valid current or expired concealed weapon, firearm or
17 handgun permit or license that is issued by another state or a
18 political subdivision of another state and that has a training
19 or testing requirement for initial issuance.
- 20 7. Completion of any governmental police agency firearms
21 training course and qualification to carry a firearm in the
22 course of normal police duties.
- 23 8. Completion of any other firearms safety or training course or
24 class that is conducted by a department of public safety
25 approved or national rifle association certified firearms
26 instructor.
- 27 O. The department of public safety shall maintain information
28 comparing the number of permits requested, the number of permits
29 issued and the number of permits denied. The department shall
30 annually report this information to the governor and the
31 legislature.
- 32 P. The director of the department of public safety shall adopt
33 rules for the purpose of implementing and administering this
34 section including fees relating to permits that are issued
35 pursuant to this section.
- 36 Q. This state and any political subdivision of this state shall
37 recognize a concealed weapon, firearm or handgun permit or

NICS – ACJC working draft

1 license that is issued by another state or a political
2 subdivision of another state if both:

3 1. The permit or license is recognized as valid in the issuing
4 state.

5 2. The permit or license holder is all of the following:

6 (a) Legally present in this state.

7 (b) Not legally prohibited from possessing a firearm in this
8 state.

9 R. For the purpose of establishing mutual permit or license
10 recognition with other states, the department of public safety
11 shall enter into a written agreement if another state requires a
12 written agreement.

13 S. Notwithstanding the provisions of this section, a person with
14 a concealed weapons permit from another state may not carry a
15 concealed weapon in this state if the person is under twenty-one
16 years of age or is under indictment for, or has been convicted
17 of, a felony offense in any jurisdiction, unless that conviction
18 is expunged, set aside or vacated or the person's rights have
19 been restored and the person is currently not a prohibited
20 possessor under state or federal law.

21 T. The department of public safety may issue certificates of
22 firearms proficiency according to the Arizona peace officer
23 standards and training board firearms qualification for the
24 purposes of implementing the law enforcement officers safety act
25 of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States Code
26 sections 926B and 926C). A law enforcement agency shall issue to
27 a law enforcement officer who has honorably retired a
28 photographic identification that states that the officer has
29 honorably retired from the agency. The chief law enforcement
30 officer shall determine whether an officer has honorably retired
31 and the determination is not subject to review. A law
32 enforcement agency has no obligation to revoke, alter or modify
33 the honorable discharge photographic identification based on
34 conduct that the agency becomes aware of or that occurs after
35 the officer has separated from the agency.

36 Section 5. 14-5303. Procedure for court appointment of a
37 guardian of an alleged incapacitated person

NICS – ACJC working draft

- 1 A. The alleged incapacitated person or any person interested in
2 that person's affairs or welfare may petition for the
3 appointment of a guardian or for any other appropriate
4 protective order.
- 5 B. The petition shall contain a statement that the authority
6 granted to the guardian may include the authority to withhold or
7 withdraw life sustaining treatment, including artificial food
8 and fluid, and shall state, at a minimum and to the extent
9 known, all of the following:
- 10 1. The interest of the petitioner.
 - 11 2. The name, age, residence and address of the alleged
12 incapacitated person.
 - 13 3. The name, address and priority for appointment of the person
14 whose appointment is sought.
 - 15 4. The name and address of the conservator, if any, of the
16 alleged incapacitated person.
 - 17 5. The name and address of the nearest relative of the alleged
18 incapacitated person known to the petitioner.
 - 19 6. A general statement of the property of the alleged
20 incapacitated person, with an estimate of its value and
21 including any compensation, insurance, pension or allowance to
22 which the person is entitled.
 - 23 7. The reason why appointment of a guardian or any other
24 protective order is necessary.
 - 25 **8. WHETHER THE APPOINTMENT OF A GUARDIAN IS NECESSARY DUE SOLELY**
26 **TO THE PHYSICAL INCAPACITY OF THE ALLEGED INCAPACITATED PERSON.**
 - 27 **8** 9. The type of guardianship requested. If a general
28 guardianship is requested, the petition must state that other
29 alternatives have been explored and why a limited guardianship
30 is not appropriate. If a limited guardianship is requested, the
31 petition also must state what specific powers are requested.
 - 32 **9** 10. If a custodial order was previously entered regarding an
33 alleged incapacitated person in a child custody action or
34 similar proceeding in this state or another jurisdiction and the
35 petitioner or proposed guardian is a parent or nonparent
36 custodian of the alleged incapacitated person, the court and
37 case number for that action or proceeding.

NICS – ACJC working draft

1 C. On the filing of a petition, the court shall set a hearing
2 date on the issues of incapacity. Unless the alleged
3 incapacitated person is represented by independent counsel, the
4 court shall appoint an attorney to represent that person in the
5 proceeding. The alleged incapacitated person shall be
6 interviewed by an investigator appointed by the court and shall
7 be examined by a physician, psychologist or registered nurse
8 appointed by the court. If the alleged incapacitated person has
9 an established relationship with a physician, psychologist or
10 registered nurse who is determined by the court to be qualified
11 to evaluate the capacity of the alleged incapacitated person,
12 the court may appoint the alleged incapacitated person's
13 physician, psychologist or registered nurse pursuant to this
14 subsection. The investigator and the person conducting the
15 examination shall submit their reports in writing to the court.
16 In addition to information required under subsection D, the
17 court may direct that either report include other information
18 the court deems appropriate. The investigator also shall
19 interview the person seeking appointment as guardian, visit the
20 present place of abode of the alleged incapacitated person and
21 the place where it is proposed that the person will be detained
22 or reside if the requested appointment is made and submit a
23 report in writing to the court. The alleged incapacitated person
24 is entitled to be present at the hearing and to see or hear all
25 evidence bearing on that person's condition. The alleged
26 incapacitated person is entitled to be represented by counsel,
27 to present evidence, to cross-examine witnesses, including the
28 court-appointed examiner and investigator, and to trial by jury.
29 The court may determine the issue at a closed hearing if the
30 alleged incapacitated person or that person's counsel so
31 requests.

32 D. A report filed pursuant to this section by a physician,
33 psychologist or registered nurse acting within that person's
34 scope of practice shall include the following information:

35 1. A specific description of the physical, psychiatric or
36 psychological diagnosis of the person.

NICS – ACJC working draft

1 2. A comprehensive assessment listing any functional impairments
2 of the alleged incapacitated person and an explanation of how
3 and to what extent these functional impairments may prevent that
4 person from receiving or evaluating information in making
5 decisions or in communicating informed decisions regarding that
6 person.

7 3. An analysis of the tasks of daily living the alleged
8 incapacitated person is capable of performing without direction
9 or with minimal direction.

10 4. A list of all medications the alleged incapacitated person is
11 receiving, the dosage of the medications and a description of
12 the effects each medication has on the person's behavior to the
13 best of the declarant's knowledge.

14 5. A prognosis for improvement in the alleged incapacitated
15 person's condition and a recommendation for the most appropriate
16 rehabilitation plan or care plan.

17 6. Other information the physician, psychologist or registered
18 nurse deems appropriate.

19 Section 6. 14-5304. Findings; order of appointment; limitations;
20 filing

21 A. In exercising its appointment authority pursuant to this
22 chapter, the court shall encourage the development of maximum
23 self-reliance and independence of the incapacitated person.

24 B. The court may appoint a general or limited guardian as
25 requested if the court finds by clear and convincing evidence
26 that:

27 1. The person for whom a guardian is sought is incapacitated.

28 2. The appointment is necessary to provide for the demonstrated
29 needs of the incapacitated person.

30 3. The person's needs cannot be met by less restrictive means,
31 including the use of appropriate technological assistance.

32 C. THE COURT SHALL MAKE A SPECIFIC FINDING AS TO WHETHER THE
33 APPOINTMENT OF A GUARDIAN IS SOLEY DUE TO A PHYSICAL INCAPACITY.

34 ~~E~~ D. In conformity with the evidence regarding the extent of the
35 ward's incapacity, the court may appoint a limited guardian and
36 specify time limits on the guardianship and limitations on the
37 guardian's powers.

NICS – ACJC working draft

1 **D E.** The guardian shall file an acceptance of appointment with
2 the appointing court.

3 **F.** EXCEPT IF THE COURT MAKES A SPECIFIC FINDING THAT THE
4 APPOINTMENT OF A GUARDIAN IS SOLEY DUE TO A PHYSICAL INCAPACITY
5 PURSUANT TO SUBSECTION C OF THIS SECTION, WHEN THE COURT
6 APPOINTS A GUARDIAN THE COURT SHALL TRANSMIT THE PERSON'S NAME,
7 SEX, DATE OF BIRTH, THE LAST FOUR DIGITS OF THE PERSON'S SOCIAL
8 SECURITY NUMBER IF AVAILABLE, COURT CASE NUMBER, COURT
9 ORIGINATING AGENCY IDENTIFICATION NUMBER AND THE DATE THE
10 GUARDIAN WAS APPOINTED TO THE MENTAL HEALTH REPOSITORY
11 MAINTAINED BY THE SUPREME COURT AND THE SUPREME COURT SHALL
12 TRANSMIT THE INFORMATION TO THE DEPARTMENT OF PUBLIC SAFETY. THE
13 DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO
14 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

15 **G.** INFORMATION REGARDING PERSONS FOUND TO BE INCAPACITATED SHALL
16 BE RETAINED IN THE MENTAL HEALTH REPOSITORY UNTIL THE WARD'S
17 INCAPACITY IS TERMINATED. ACCESS TO INFROMATION IN THE MENTAL
18 HEALTH REPOSITORY SHALL BE GRANTED TO A LAW ENFORCEMENT AGENCY
19 THROUGH THE DEPARTMENT OF PUBLIC SAFETY FOR PURPOSES OF
20 ENFORCING A COURT ORDER, ASSISTING IN AN INVESTIGATION OR
21 RETURNING PROPERTY.

22 Section 7. 14-5306. Substitution or resignation of guardian;
23 termination of incapacity

24 A. On petition of the ward or any person interested in the
25 ward's welfare, or on the court's own initiative, the court
26 shall substitute a guardian and appoint a successor if it is in
27 the best interest of the ward. The court does not need to find
28 that the guardian acted inappropriately to find that the
29 substitution is in the ward's best interest. The guardian and
30 the guardian's attorney may be compensated from the ward's
31 estate for defending against a petition for substitution only
32 for the amount ordered by the court and on petition by the
33 guardian or the guardian's attorney. When substituting a
34 guardian and appointing a successor, the court may appoint an
35 individual nominated by the ward if the ward is at least
36 fourteen years of age and has, in the opinion of the court,
37 sufficient mental capacity to make an intelligent choice. On

NICS – ACJC working draft

1 petition of the guardian, the court may accept a resignation and
2 make any other order that may be appropriate.

3 B. The ward may petition the court for an order that the ward is
4 no longer incapacitated or petition for substitution of the
5 guardian at any time. A request for this order may be made by
6 informal letter to the court or judge. A person who knowingly
7 interferes with the transmission of this request may be found in
8 contempt of court.

9 C. An interested person, other than the guardian or ward, shall
10 not file a petition for adjudication that the ward is no longer
11 incapacitated earlier than one year after the order adjudicating
12 incapacity was entered unless the court permits it to be made on
13 the basis of affidavits that there is reason to believe that the
14 ward is no longer incapacitated.

15 D. An interested person, other than the guardian or ward, shall
16 not file a petition to substitute a guardian earlier than one
17 year after the order adjudicating incapacity was entered unless
18 the court permits it to be made on the basis of affidavits that
19 there is reason to believe that the current guardian will
20 endanger the ward's physical, mental or emotional health if not
21 substituted.

22 E. Before substituting a guardian, accepting the resignation of
23 a guardian or ordering that a ward's incapacity has terminated,
24 the court, following the same procedures to safeguard the rights
25 of the ward as apply to a petition for appointment of a
26 guardian, may send an investigator to the residence of the
27 present guardian and to the place where the ward resides or is
28 detained to observe conditions and report in writing to the
29 court.

30 F. UPON TERMINATION OF THE WARD'S INCAPACITY THAT RESULTED IN
31 THE WARD BEING ENTERED INTO THE MENTAL HEALTH REPOSITORY THE
32 SUPREME COURT SHALL REMOVE THE WARD FROM THE MENTAL HEALTH
33 REPOSITORY AND TRANSMIT THE ORDER TERMINATING THE INCAPACITY TO
34 THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY
35 SHALL TRANSMIT THE INFORMATION TO THE NATIONAL INSTANT CRIMINAL
36 BACKGROUND CHECK SYSTEM.

NICS – ACJC working draft

- 1 Section 8. 32-2612. Qualifications of applicant for agency
2 license; substantiation of work experience
- 3 A. Each applicant, if an individual, or each associate, director
4 or manager, if the applicant is other than an individual, for an
5 agency license to be issued pursuant to this chapter shall:
- 6 1. Be at least twenty-one years of age.
- 7 2. Be a citizen or a legal resident of the United States who is
8 authorized to seek employment in the United States.
- 9 3. Not have been convicted of any felony or currently be under
10 indictment for a felony.
- 11 4. Within the five years immediately preceding the application
12 for an agency license, not have been convicted of any
13 misdemeanor act involving:
- 14 (a) Personal violence or force against another person or
15 threatening to commit any act of personal violence or force
16 against another person.
- 17 (b) Misconduct involving a deadly weapon as provided in section
18 13-3102.
- 19 (c) Dishonesty or fraud.
- 20 (d) Arson.
- 21 (e) Theft.
- 22 (f) Domestic violence.
- 23 (g) A violation of title 13, chapter 34 or 34.1 or an offense
24 that has the same elements as an offense listed in title 13,
25 chapter 34 or 34.1.
- 26 (h) Sexual misconduct.
- 27 5. Not be on parole, on community supervision, on work furlough,
28 on home arrest, on release on any other basis or named in an
29 outstanding arrest warrant.
- 30 6. Not be serving a term of probation pursuant to a conviction
31 for any act of personal violence or domestic violence, as
32 defined in section 13-3601, or an offense that has the same
33 elements as an offense listed in section 13-3601.
- 34 7. Not be **ANY either** of the following:
- 35 (a) Adjudicated mentally incompetent.

NICS – ACJC working draft

1 (b) Found to constitute a danger to self or others or to be
2 persistently or acutely disabled or gravely disabled pursuant to
3 section 36-540.

4 (c) FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO ARIZONA RULES
5 OF CRIMINAL PROCEDURE, RULE 11.

6 8. Not have a disability as defined in section 41-1461, unless
7 that person is a qualified individual as defined in section 41-
8 1461.

9 9. Not have been convicted of acting or attempting to act as a
10 security guard or a security guard agency without a license if a
11 license was required.

12 10. Not be a registered sex offender.

13 B. The qualifying party for an agency license and the resident
14 manager, if a resident manager is required pursuant to section
15 32-2616, shall have at least three years of full-time experience
16 as a manager, supervisor or administrator of a security guard
17 agency or three years of full-time supervisory experience with
18 any federal, United States military, state, county or municipal
19 law enforcement agency. The qualifying party for an agency
20 license and the resident manager, if a resident manager is
21 required pursuant to section 32-2616, must substantiate
22 managerial work experience claimed as years of qualifying
23 experience and provide the exact details as to the character and
24 nature of the experience on a form prescribed by the department
25 and certified by the employer. On written request, an employer
26 shall submit to the employee a written certification of prior
27 work experience within thirty calendar days. The written
28 certification is subject to independent verification by the
29 department. If an employer goes out of business, the employer
30 shall provide registered employees with a complete and accurate
31 record of their work history. If an applicant is unable to
32 supply written certification from an employer in whole or in
33 part, the applicant may offer written certification from persons
34 other than an employer covering the same subject matter for
35 consideration by the department. The burden of proving the
36 minimum years of experience is on the applicant.

NICS – ACJC working draft

1 C. The department may deny an agency license if the department
2 determines that the applicant is unfit based on a conviction,
3 citation or encounter with law enforcement for a statutory
4 violation.

5 Section 9. 36-509. Confidential records; immunity

6 A. A health care entity must keep records and information
7 contained in records confidential and not as public records,
8 except as provided in this section. Records and information
9 contained in records may only be disclosed to:

10 1. Physicians and providers of health, mental health or social
11 and welfare services involved in caring for, treating or
12 rehabilitating the patient.

13 2. Individuals to whom the patient or the patient's health care
14 decision maker has given authorization to have information
15 disclosed.

16 3. Persons authorized by a court order.

17 4. Persons doing research only if the activity is conducted
18 pursuant to applicable federal or state laws and regulations
19 governing research.

20 5. The state department of corrections in cases in which
21 prisoners confined to the state prison are patients in the state
22 hospital on authorized transfers either by voluntary admission
23 or by order of the court.

24 6. Governmental or law enforcement agencies if necessary to:

25 (a) Secure the return of a patient who is on unauthorized
26 absence from any agency where the patient was undergoing
27 evaluation and treatment.

28 (b) Report a crime on the premises.

29 (c) Avert a serious and imminent threat to an individual or the
30 public.

31 7. Persons, including family members, actively participating in
32 the patient's care, treatment or supervision. A health care
33 provider may only release information relating to the patient's
34 diagnosis, prognosis, need for hospitalization, anticipated
35 length of stay, discharge plan, medication, medication side
36 effects and short-term and long-term treatment goals. A health
37 care provider may make this release only after the treating

NICS – ACJC working draft

1 professional or that person's designee interviews the patient or
2 the patient's health care decision maker and the patient or the
3 patient's health care decision maker does not object, unless
4 federal or state law permits the disclosure. If the patient does
5 not have the opportunity to object to the disclosure because of
6 incapacity or an emergency circumstance and the patient's health
7 care decision maker is not available to object to the release,
8 the health care provider in the exercise of professional
9 judgment may determine if the disclosure is in the best
10 interests of the patient and, if so, may release the information
11 authorized pursuant to this paragraph. A decision to release or
12 withhold information is subject to review pursuant to section
13 36-517.01. The health care provider must record the name of any
14 person to whom any information is given under this paragraph.

15 8. A state agency that licenses health professionals pursuant to
16 title 32, chapter 13, 15, 17, 19.1 or 33 and that requires these
17 records in the course of investigating complaints of
18 professional negligence, incompetence or lack of clinical
19 judgment.

20 9. A state or federal agency that licenses health care
21 providers.

22 10. A governmental agency or a competent professional, as
23 defined in section 36-3701, in order to comply with chapter 37
24 of this title.

25 11. Human rights committees established pursuant to title 41,
26 chapter 35. Any information released pursuant to this paragraph
27 shall comply with the requirements of section 41-3804 and
28 applicable federal law and shall be released without personally
29 identifiable information unless the personally identifiable
30 information is required for the official purposes of the human
31 rights committee. Case information received by a human rights
32 committee shall be maintained as confidential. For the purposes
33 of this paragraph, "personally identifiable information"
34 includes a person's name, address, date of birth, social
35 security number, tribal enrollment number, telephone or
36 telefacsimile number, driver license number, places of
37 employment, school identification number and military

NICS – ACJC working draft

- 1 identification number or any other distinguishing characteristic
- 2 that tends to identify a particular person.
- 3 12. A patient or the patient's health care decision maker
- 4 pursuant to section 36-507.
- 5 13. The department of public safety **OR ANOTHER LAW ENFORCEMENT**
- 6 **AGENCY** by the court to comply with the requirements of section
- 7 36-540, subsection O - Q.
- 8 14. A third party payor or the payor's contractor as permitted
- 9 by the health insurance portability and accountability act
- 10 privacy standards, 45 code of federal regulations part 160 and
- 11 part 164, subpart E.
- 12 15. A private entity that accredits the health care provider and
- 13 with whom the health care provider has an agreement requiring
- 14 the agency to protect the confidentiality of patient
- 15 information.
- 16 16. The legal representative of a health care entity in
- 17 possession of the record for the purpose of securing legal
- 18 advice.
- 19 17. A person or entity as otherwise required by state or federal
- 20 law.
- 21 18. A person or entity as permitted by the federal regulations
- 22 on alcohol and drug abuse treatment (42 Code of Federal
- 23 Regulations part 2).
- 24 19. A person or entity to conduct utilization review, peer
- 25 review and quality assurance pursuant to section 36-441, 36-445,
- 26 36-2402 or 36-2917.
- 27 20. A person maintaining health statistics for public health
- 28 purposes as authorized by law.
- 29 21. A grand jury as directed by subpoena.
- 30 22. A person or entity that provides services to the patient's
- 31 health care provider, as defined in section 12-2291, and with
- 32 whom the health care provider has a business associate agreement
- 33 that requires the person or entity to protect the
- 34 confidentiality of patient information as required by the health
- 35 insurance portability and accountability act privacy standards,
- 36 45 Code of Federal Regulations part 164, subpart E.

NICS – ACJC working draft

1 B. Information and records obtained in the course of evaluation,
2 examination or treatment and submitted in any court proceeding
3 pursuant to this chapter or title 14, chapter 5 are confidential
4 and are not public records unless the hearing requirements of
5 this chapter or title 14, chapter 5 require a different
6 procedure. Information and records that are obtained pursuant to
7 this section and submitted in a court proceeding pursuant to
8 title 14, chapter 5 and that are not clearly identified by the
9 parties as confidential and segregated from nonconfidential
10 information and records are considered public records.

11 C. Notwithstanding subsections A and B of this section, the
12 legal representative of a patient who is the subject of a
13 proceeding conducted pursuant to this chapter and title 14,
14 chapter 5 has access to the patient's information and records in
15 the possession of a health care entity or filed with the court.

16 D. A health care entity that acts in good faith under this
17 article is not liable for damages in any civil action for the
18 disclosure of records or payment records that is made pursuant
19 to this article or as otherwise provided by law. The health care
20 entity is presumed to have acted in good faith. This presumption
21 may be rebutted by clear and convincing evidence.

22 Section 10. 36-540. Court options

23 A. If the court finds by clear and convincing evidence that the
24 proposed patient, as a result of mental disorder, is a danger to
25 self, is a danger to others, is persistently or acutely disabled
26 or is gravely disabled and in need of treatment, and is either
27 unwilling or unable to accept voluntary treatment, the court
28 shall order the patient to undergo one of the following:

- 29 1. Treatment in a program of outpatient treatment.
- 30 2. Treatment in a program consisting of combined inpatient and
31 outpatient treatment.
- 32 3. Inpatient treatment in a mental health treatment agency, in a
33 hospital operated by or under contract with the United States
34 department of veterans affairs to provide treatment to eligible
35 veterans pursuant to article 9 of this chapter, in the state
36 hospital or in a private hospital, if the private hospital
37 agrees, subject to the limitations of section 36-541.

NICS – ACJC working draft

1 B. The court shall consider all available and appropriate
2 alternatives for the treatment and care of the patient. The
3 court shall order the least restrictive treatment alternative
4 available.

5 C. The court may order the proposed patient to undergo
6 outpatient or combined inpatient and outpatient treatment
7 pursuant to subsection A, paragraph 1 or 2 of this section if
8 the court:

9 1. Determines that all of the following apply:

10 (a) The patient does not require continuous inpatient
11 hospitalization.

12 (b) The patient will be more appropriately treated in an
13 outpatient treatment program or in a combined inpatient and
14 outpatient treatment program.

15 (c) The patient will follow a prescribed outpatient treatment
16 plan.

17 (d) The patient will not likely become dangerous or suffer more
18 serious physical harm or serious illness or further
19 deterioration if the patient follows a prescribed outpatient
20 treatment plan.

21 2. Is presented with and approves a written treatment plan that
22 conforms with the requirements of section 36-540.01, subsection
23 E of this section.

24 D. An order to receive treatment pursuant to subsection A,
25 paragraph 1 or 2 of this section shall not exceed three hundred
26 sixty-five days. The period of inpatient treatment under a
27 combined treatment order pursuant to subsection A, paragraph 2
28 of this section shall not exceed the maximum period allowed for
29 an order for inpatient treatment pursuant to subsection F of
30 this section.

31 E. If the court enters an order for treatment pursuant to
32 subsection A, paragraph 1 or 2 of this section, all of the
33 following apply:

34 1. The court shall designate the medical director of the mental
35 health treatment agency that will supervise and administer the
36 patient's treatment program.

NICS – ACJC working draft

1 2. The medical director shall not use the services of any
2 person, agency or organization to supervise a patient's
3 outpatient treatment program unless the person, agency or
4 organization has agreed to provide these services in the
5 individual patient's case and unless the department has
6 determined that the person, agency or organization is capable
7 and competent to do so.

8 3. The person, agency or organization assigned to supervise an
9 outpatient treatment program or the outpatient portion of a
10 combined treatment program shall be notified at least three days
11 before a referral. The medical director making the referral and
12 the person, agency or organization assigned to supervise the
13 treatment program shall share relevant information about the
14 patient to provide continuity of treatment.

15 4. During any period of outpatient treatment under subsection A,
16 paragraph 2 of this section, if the court, on motion by the
17 medical director of the patient's outpatient mental health
18 treatment facility, determines that the patient is not complying
19 with the terms of the order or that the outpatient treatment
20 plan is no longer appropriate and the patient needs inpatient
21 treatment, the court, without a hearing and based on the court
22 record, the patient's medical record, the affidavits and
23 recommendations of the medical director, and the advice of staff
24 and physicians or the psychiatric and mental health nurse
25 practitioner familiar with the treatment of the patient, may
26 enter an order amending its original order. The amended order
27 may alter the outpatient treatment plan or order the patient to
28 inpatient treatment pursuant to subsection A, paragraph 3 of
29 this section. The amended order shall not increase the total
30 period of commitment originally ordered by the court or, when
31 added to the period of inpatient treatment provided by the
32 original order and any other amended orders, exceed the maximum
33 period allowed for an order for inpatient treatment pursuant to
34 subsection F of this section. If the patient refuses to comply
35 with an amended order for inpatient treatment, the court may
36 authorize and direct a peace officer, on the request of the
37 medical director, to take the patient into protective custody

NICS – ACJC working draft

1 and transport the patient to the agency for inpatient treatment.
2 When reporting to or being returned to a treatment agency for
3 inpatient treatment pursuant to an amended order, the patient
4 shall be informed of the patient's right to judicial review and
5 the patient's right to consult with counsel pursuant to section
6 36-546.

7 5. During any period of outpatient treatment under subsection A,
8 paragraph 2 of this section, if the medical director of the
9 outpatient treatment facility in charge of the patient's care
10 determines, in concert with the medical director of an inpatient
11 mental health treatment facility who has agreed to accept the
12 patient, that the patient is in need of immediate acute
13 inpatient psychiatric care because of behavior that is dangerous
14 to self or to others, the medical director of the outpatient
15 treatment facility may order a peace officer to apprehend and
16 transport the patient to the inpatient treatment facility
17 pending a court determination on an amended order under
18 paragraph 4 of this subsection. The patient may be detained and
19 treated at the inpatient treatment facility for a period of no
20 more than forty-eight hours, exclusive of weekends and holidays,
21 from the time that the patient is taken to the inpatient
22 treatment facility. The medical director of the outpatient
23 treatment facility shall file the motion for an amended court
24 order requesting inpatient treatment no later than the next
25 working day following the patient being taken to the inpatient
26 treatment facility. Any period of detention within the inpatient
27 treatment facility pending issuance of an amended order shall
28 not increase the total period of commitment originally ordered
29 by the court or, when added to the period of inpatient treatment
30 provided by the original order and any other amended orders,
31 exceed the maximum period allowed for an order for inpatient
32 treatment pursuant to subsection F of this section. If a patient
33 is ordered to undergo inpatient treatment pursuant to an amended
34 order, the medical director of the outpatient treatment facility
35 shall inform the patient of the patient's right to judicial
36 review and to consult with an attorney pursuant to section 36-
37 546.

NICS – ACJC working draft

- 1 F. The maximum periods of inpatient treatment that the court may
2 order, subject to the limitations of section 36-541, are as
3 follows:
- 4 1. Ninety days for a person found to be a danger to self.
 - 5 2. One hundred eighty days for a person found to be a danger to
6 others.
 - 7 3. One hundred eighty days for a person found to be persistently
8 or acutely disabled.
 - 9 4. Three hundred sixty-five days for a person found to be
10 gravely disabled.
- 11 G. If, on finding that the patient meets the criteria for court-
12 ordered treatment pursuant to subsection A of this section, the
13 court also finds that there is reasonable cause to believe that
14 the patient is an incapacitated person as defined in section 14-
15 5101 or is a person in need of protection pursuant to section
16 14-5401 and that the patient is or may be in need of
17 guardianship or conservatorship, or both, the court may order an
18 investigation concerning the need for a guardian or conservator,
19 or both, and may appoint a suitable person or agency to conduct
20 the investigation. The appointee may include a court appointed
21 guardian ad litem, an investigator appointed pursuant to section
22 14-5308 or the public fiduciary if there is no person willing
23 and qualified to act in that capacity. The court shall give
24 notice of the appointment to the appointee within three days of
25 the appointment. The appointee shall submit the report of the
26 investigation to the court within twenty-one days. The report
27 shall include recommendations as to who should be guardian or
28 who should be conservator, or both, and a report of the findings
29 and reasons for the recommendation. If the investigation and
30 report so indicate, the court shall order the appropriate person
31 to submit a petition to become the guardian or conservator, or
32 both, of the patient.
- 33 H. In any proceeding for court-ordered treatment in which the
34 petition alleges that the patient is in need of a guardian or
35 conservator and states the grounds for that allegation, the
36 court may appoint an emergency temporary guardian or
37 conservator, or both, for a specific purpose or purposes

NICS – ACJC working draft

1 identified in its order and for a specific period of time not to
2 exceed thirty days if the court finds that all of the following
3 are true:

4 1. The patient meets the criteria for court-ordered treatment
5 pursuant to subsection A of this section.

6 2. There is reasonable cause to believe that the patient is an
7 incapacitated person as defined in section 14-5101 or is in need
8 of protection pursuant to section 14-5401, paragraph 2.

9 3. The patient does not have a guardian or conservator and the
10 welfare of the patient requires immediate action to protect the
11 patient or the ward's property.

12 4. The conditions prescribed pursuant to section 14-5310,
13 subsection B or section 14-5401.01, subsection B have been met.

14 I. The court may appoint as a temporary guardian or conservator
15 pursuant to subsection H of this section a suitable person or
16 the public fiduciary if there is no person qualified and willing
17 to act in that capacity. The court shall issue an order for an
18 investigation as prescribed pursuant to subsection G of this
19 section and, unless the patient is represented by independent
20 counsel, the court shall appoint an attorney to represent the
21 patient in further proceedings regarding the appointment of a
22 guardian or conservator. The court shall schedule a further
23 hearing within fourteen days on the appropriate court calendar
24 of a court that has authority over guardianship or
25 conservatorship matters pursuant to this title to consider the
26 continued need for an emergency temporary guardian or
27 conservator and the appropriateness of the temporary guardian or
28 conservator appointed, and shall order the appointed guardian or
29 conservator to give notice to persons entitled to notice
30 pursuant to section 14-5309, subsection A or section 14-5405,
31 subsection A. The court shall authorize certified letters of
32 temporary emergency guardianship or conservatorship to be issued
33 on presentation of a copy of the court's order. If a temporary
34 emergency conservator other than the public fiduciary is
35 appointed pursuant to this subsection, the court shall order
36 that the use of the money and property of the patient by the
37 conservator is restricted and not to be sold, used, transferred

NICS – ACJC working draft

1 or encumbered, except that the court may authorize the
2 conservator to use money or property of the patient specifically
3 identified as needed to pay an expense to provide for the care,
4 treatment or welfare of the patient pending further hearing.
5 This subsection and subsection H of this section do not:
6 1. Prevent the evaluation or treatment agency from seeking
7 guardianship and conservatorship in any other manner allowed by
8 law at any time during the period of court-ordered evaluation
9 and treatment.
10 2. Relieve the evaluation or treatment agency from its
11 obligations concerning the suspected abuse of a vulnerable adult
12 pursuant to title 46, chapter 4.
13 J. If, on finding that a patient meets the criteria for court-
14 ordered treatment pursuant to subsection A of this section, the
15 court also learns that the patient has a guardian appointed
16 under title 14, the court with notice may impose on the existing
17 guardian additional duties pursuant to section 14-5312.01. If
18 the court imposes additional duties on an existing guardian as
19 prescribed in this subsection, the court may determine that the
20 patient needs to continue treatment under a court order for
21 treatment and may issue the order or determine that the
22 patient's needs can be adequately met by the guardian with the
23 additional duties pursuant to section 14-5312.01 and decline to
24 issue the court order for treatment. If at any time after the
25 issuance of a court order for treatment the court finds that the
26 patient's needs can be adequately met by the guardian with the
27 additional duties pursuant to section 14-5312.01 and that a
28 court order for treatment is no longer necessary to assure
29 compliance with necessary treatment, the court may terminate the
30 court order for treatment. If there is a court order for
31 treatment and a guardianship with additional mental health
32 authority pursuant to section 14-5312.01 existing at the same
33 time, the treatment and placement decisions made by the
34 treatment agency assigned by the court to supervise and
35 administer the patient's treatment program pursuant to the court
36 order for treatment are controlling unless the court orders
37 otherwise.

NICS – ACJC working draft

- 1 K. The court shall file a report as part of the court record on
2 its findings of alternatives for treatment.
- 3 L. Treatment shall not include psychosurgery, lobotomy or any
4 other brain surgery without specific informed consent of the
5 patient or the patient's legal guardian and an order of the
6 superior court in the county in which the treatment is proposed,
7 approving with specificity the use of the treatment.
- 8 M. The medical director or any person, agency or organization
9 used by the medical director to supervise the terms of an
10 outpatient treatment plan shall not be held civilly liable for
11 any acts committed by a patient while on outpatient treatment if
12 the medical director, person, agency or organization has in good
13 faith followed the requirements of this section.
- 14 N. A peace officer who in good faith apprehends and transports a
15 patient to an inpatient treatment facility on the order of the
16 medical director of the outpatient treatment facility pursuant
17 to subsection E, paragraph 5 of this section is not subject to
18 civil liability.
- 19 O. If a person has been found, as a result of a mental disorder,
20 to constitute a danger to self or others or to be persistently
21 or acutely disabled or gravely disabled and the court enters an
22 order for treatment pursuant to subsection A of this section,
23 the court shall TRANSMIT the person's name, SEX, date of birth,
24 THE LAST FOUR DIGITS OF THE PERSON'S social security number IF
25 AVAILABLE, COURT CASE NUMBER, COURT ORIGINATING AGENCY
26 IDENTIFICATION NUMBER and date of ~~commitment~~ ORDER OF TREATMENT
27 to THE MENTAL HEALTH REPOSITORY MAINTAINED BY THE SUPREME COURT.
28 THE SUPREME COURT SHALL TRANSMIT THE INFORMATION TO the
29 department of public safety to comply with the requirements of
30 title 13, chapter 31 and title 32, chapter 26. THE DEPARTMENT OF
31 PUBLIC SAFETY SHALL TRANSMIT THE REQUIRED INFORMATION INTO THE
32 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.
- 33 P. INFORMATION REGARDING PERSONS ORDERED INTO TREATMENT SHALL BE
34 MAINTAINED IN THE MENTAL HEALTH REPOSITORY WITH ACCESS GRANTED
35 TO THE SUPERIOR COURT FOR THE PURPOSE OF ENFORCING OR
36 FACILITATING A TREATMENT ORDER AND TO A LAW ENFORCEMENT OR
37 PROSECUTORIAL AGENCY THROUGH THE DEPARTMENT OF PUBLIC SAFETY FOR

NICS – ACJC working draft

1 PURPOSES OF ENFORCING AN ORDER, ASSISTING IN AN INVESTIGATION OR
2 FOR RETURNING OF PROPERTY.

3 Q. UPON REQUEST FROM A LAW ENFORCEMENT OR PROSECUTING AGENCY THAT
4 IS INVESTIGATING OR PROSECUTING A PROHIBITED POSSESSOR AS
5 DEFINED IN 13-3101, THE COURT SHALL PROVIDE CERTIFIED COPIES OF
6 THE COMMITMENT ORDER.

7 Section 11. Delayed effective date

8 This act is effective from and after December 31, 2014

11/08/13@3:22pm