

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ACCESS TO CASE RECORDS FILED) Administrative Order
UNDER TITLE 36, CHAPTER 37 OF) No. 2022 - 142
THE ARIZONA REVISED STATUTES)
)
)
_____)

The Sexually Violent Persons Act establishes procedures for the State to petition a court to request that a person be further detained in a licensed facility under the supervision of the superintendent of the Arizona State Hospital if the person was previously found guilty of a violent sexual act, or charged with such a crime but was deemed incompetent to stand trial, and the person also suffers from a mental disorder that makes them likely to engage in future acts of sexual violence. These proceedings are governed by Arizona Revised Statutes (A.R.S.) Title 36, Chapter 37, the Arizona Rules of Civil Procedure, and the Arizona Rules of Evidence.

Under A.R.S. § 36-3702, if the agency that has jurisdiction over the person determines that the person may be a sexually violent person, the agency must make a written request to the county attorney or the attorney general to file a petition with the court to determine whether the person is a sexually violent person. The agency must include with its request several supporting documents, many of which are likely to contain sensitive information, such as all records of evaluation and treatment, institutional records, and police reports, which may include victim interviews, identifying victim information, and sensitive information about the details of the crime.

The Arizona legislature has enacted several statutes to protect the privacy of victims and to make mental health records closed to the public, such as A.R.S. § 36-509.01 which prohibits the release of certain mental health proceeding records; A.R.S. § 36-3712 which prohibits the superintendent of the state hospital from releasing any medical, expert and professional care and treatment reports to the public; and A.R.S. § 13-4434 which affords certain protections to crime victims related to their privacy interests.

Judicial records are presumed open to the public, but in view of the possible countervailing interests of confidentiality, privacy, or the best interests of the state, public access to some court records may be restricted in accordance with rule or other provisions of law. Although Supreme Court Rule 123(d)(2)(A) addresses the confidentiality of certain adult criminal records and is applicable to several of the supporting documents that may be filed under A.R.S. Title 36, Chapter 37, currently no rule or law exists that directly addresses the confidentiality of many of the other supporting documents that may be filed. It is therefore necessary to clarify which documents filed in an A.R.S. Title 36, Chapter 37 proceeding are closed to the public.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution, in cases filed under A.R.S. Title 36, Chapter 37,

IT IS ORDERED that any petition filed shall be open to the public.

IT IS FURTHER ORDERED that any document filed that is listed as confidential in Supreme Court Rule 123(d)(2)(A) shall be closed to the public.

IT IS FURTHER ORDERED that any document filed that is listed in A.R.S. § 36-3702(D)(2) through (9) shall be closed to the public.

IT IS FURTHER ORDERED that any document provided to or filed with the court under A.R.S. §§ 36-3708 or 36-3712 shall be closed to the public.

IT IS FURTHER ORDERED that a party filing a document that is closed to the public pursuant to this Order must separate and identify each document as “confidential,” place it an envelope labeled with the case name, the case number, the name of the document being filed, the name of the party filing the document, and the words “Confidential Document.” Each confidential document must be placed in a separate envelope.

IT IS FURTHER ORDERED that a confidential document referenced in a pleading or motion as an exhibit, attachment, or appendix must state on the envelope the title of that pleading or motion and identify the exhibit, attachment, or appendix number.

IT IS FURTHER ORDERED that the clerk is not required to review a document to determine whether it is a confidential document as provided by this Order.

IT IS FURTHER ORDERED that these procedures shall be effective until further order of this court.

Dated this 8th day of November, 2022.

ROBERT BRUTINEL
Chief Justice