



ACMI

On-Ramps to Involuntary Treatment Josh N Mozell Association for the Chronically Mentally Ill

April 22nd, 2020

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The information provided in this presentation is for general informational and educational purposes only and is not intended as legal advice or as a substitute for legal advice. You should not rely on information in this presentation as legal advice. You should, instead, consult with the appropriate professionals to advise you about a issue or problem.



Title 36- Civil Commitment from Start to Finish

Civil Commitment - Title 36

- What is it?
- Process
- Benefits
- Limitations



Association for the Chronically Mentally Ill

- Association for the Chronically Mentally Ill (ACMI) is a nonprofit organization was founded by a group of passionate parents whose adult children shared a similar experience with Arizona's behavioral health system. You see, while our behavioral health system adequately serves tens of thousands of adults with a serious mental illness (SMI) every year, there is a percentage of our SMI population for whom our behavioral health system is seriously and materially inadequate.
- The families of ACMI are working hard so that future families will not have to endure the multiple and unnecessary hospitalizations, incarcerations and homelessness that their sons and daughters have. Indeed, the purpose of ACMI is to not only shine a light on this reality, but to partner with our state's leaders in health care, public safety and government to engineer practical solutions that are both compassionate and effective for our chronically and seriously mentally ill population.

- Improve the well-being of Chronic Seriously Mentally Ill population by providing more “Lighthouse-like community living” * and more Contained Treatment Facilities. We will work with all persons and organizations who share our deep concern for the well-being of this population. We define “persons suffering with Chronic Mental Illness” as those persons who:
 - (a) tend to be refractory (i.e. whose illness interferes with their acceptance of treatment),
 - (b) tend to suffer anosognosia (i.e. inability to comprehend their clinically evident mental illness),
 - (c) usually are ejected from existing care programs for exhibiting symptoms of their illness and
 - (d) tend to recycle through residential treatment programs, scattered-site apartments, the streets, jails, emergency rooms, hospitals, back to residential treatment programs, and so on and so forth, for years and even decades as their psychosis and often their substance abuse worsens, their physical well-being declines and their misery and that of their families intensifies.
- * Lighthouse-like community living properties have 24-hours per day and 7-days per week supportive staff inside these properties, Person centered culture rather than Program centered culture.

- We work with stakeholders to improve care for persons suffering from chronic serious mental illness through cost-effective network enhancements:
 - (a) a person-centered culture (instead of program-centered),
 - (b) financial & other incentives, based on performance & outcomes, for providers to better-serve this population;
 - (c) more Beacon (Lighthouse-like) homes, i.e. community living properties with 24-hours per day and 7-days per week supportive staff inside these properties,
 - (d) humane, well-regulated facilities for secure residential treatment, involuntary as medically appropriate, for those who need more intensive care for a longer period of time to gain insight and continue their recovery in a less restrictive setting; and,
 - (e) other possible solutions.



Standards for Civil Commitment

STARTING POINT: we have a RIGHT TO BE LEFT ALONE

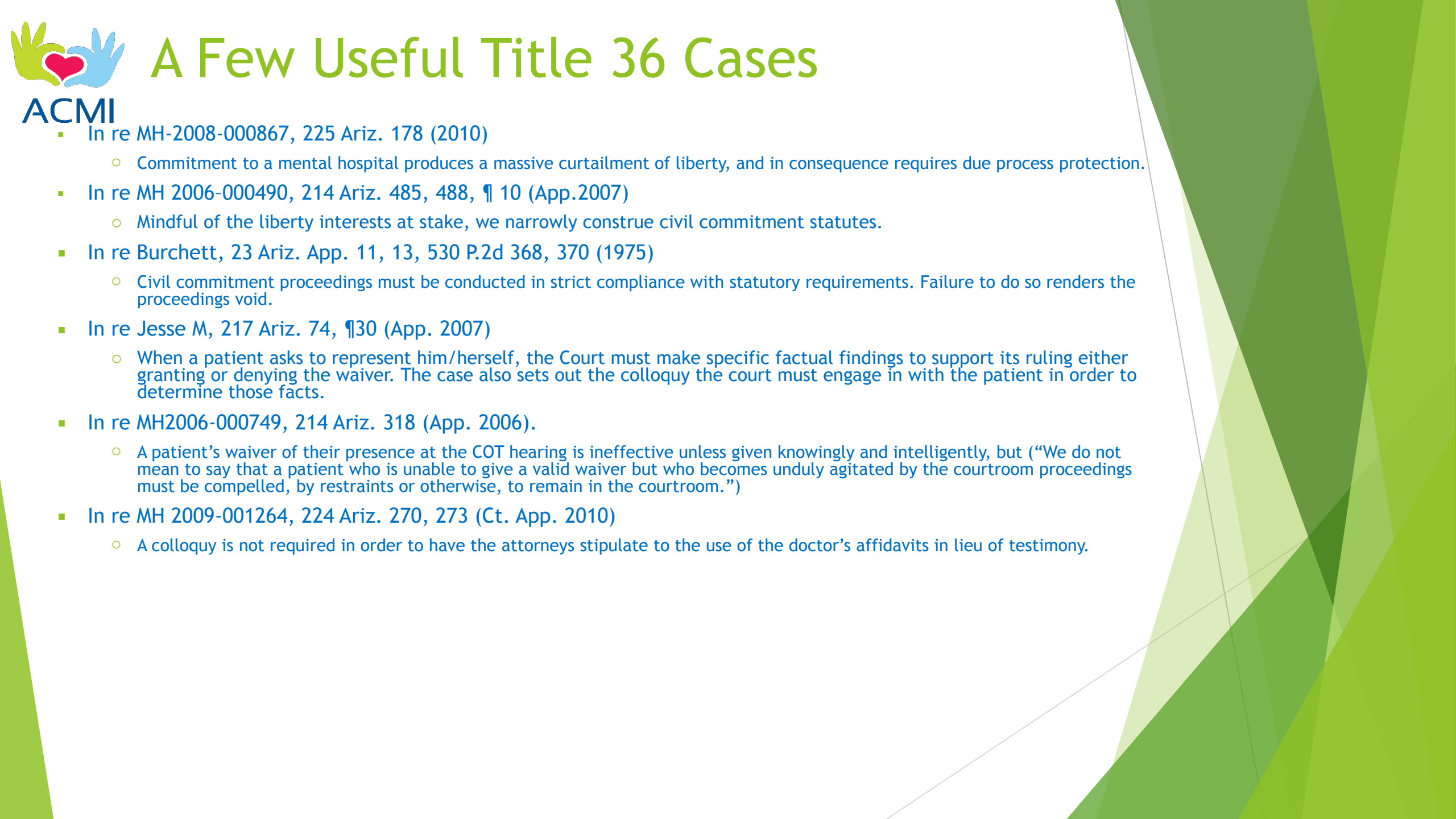
- “...no right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others.”

UNION PACIFIC RAILWAY COMPANY v. BOTSFORD, 141 U.S. 250 (1891)



Federal Case Law

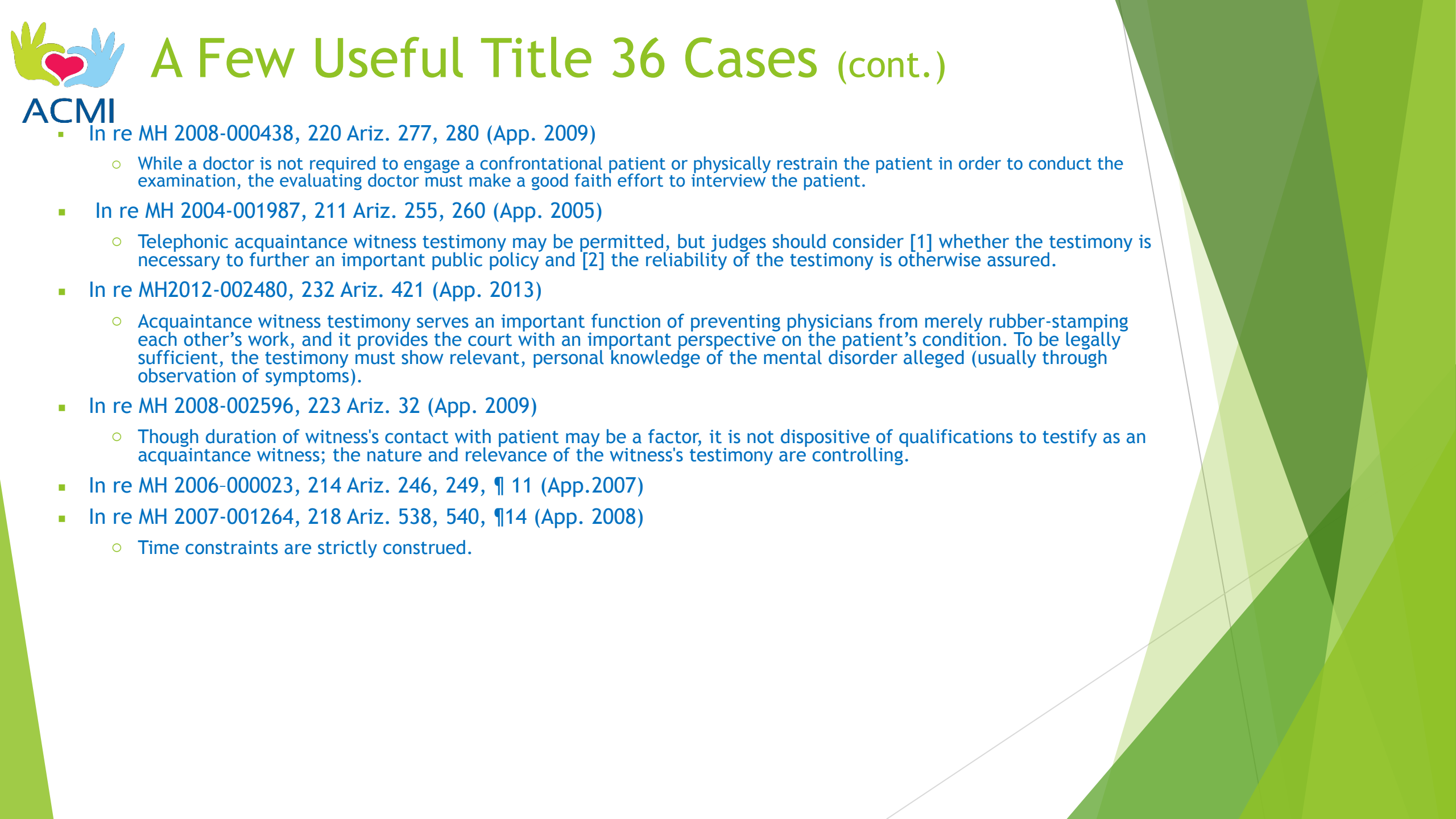
- O'Connor v. Donaldson, 422 U.S. 563 (1975)
 - The individual must present a known risk of harm to him- or herself or others
 - The individual must be in a state that he or she would be “hopeless to avoid the hazards of freedom” or...
 - In need of psychiatric treatment
- Addington v. Texas, 441 U.S. 418 (1979)
 - Set “clear and convincing evidence” as the standard for proof for indefinite involuntary civil commitment.



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A Few Useful Title 36 Cases

- In re MH-2008-000867, 225 Ariz. 178 (2010)
 - Commitment to a mental hospital produces a massive curtailment of liberty, and in consequence requires due process protection.
- In re MH 2006-000490, 214 Ariz. 485, 488, ¶ 10 (App.2007)
 - Mindful of the liberty interests at stake, we narrowly construe civil commitment statutes.
- In re Burchett, 23 Ariz. App. 11, 13, 530 P.2d 368, 370 (1975)
 - Civil commitment proceedings must be conducted in strict compliance with statutory requirements. Failure to do so renders the proceedings void.
- In re Jesse M, 217 Ariz. 74, ¶30 (App. 2007)
 - When a patient asks to represent him/herself, the Court must make specific factual findings to support its ruling either granting or denying the waiver. The case also sets out the colloquy the court must engage in with the patient in order to determine those facts.
- In re MH2006-000749, 214 Ariz. 318 (App. 2006).
 - A patient's waiver of their presence at the COT hearing is ineffective unless given knowingly and intelligently, but ("We do not mean to say that a patient who is unable to give a valid waiver but who becomes unduly agitated by the courtroom proceedings must be compelled, by restraints or otherwise, to remain in the courtroom.")
- In re MH 2009-001264, 224 Ariz. 270, 273 (Ct. App. 2010)
 - A colloquy is not required in order to have the attorneys stipulate to the use of the doctor's affidavits in lieu of testimony.



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A Few Useful Title 36 Cases (cont.)

- In re MH 2008-000438, 220 Ariz. 277, 280 (App. 2009)
 - While a doctor is not required to engage a confrontational patient or physically restrain the patient in order to conduct the examination, the evaluating doctor must make a good faith effort to interview the patient.
- In re MH 2004-001987, 211 Ariz. 255, 260 (App. 2005)
 - Telephonic acquaintance witness testimony may be permitted, but judges should consider [1] whether the testimony is necessary to further an important public policy and [2] the reliability of the testimony is otherwise assured.
- In re MH2012-002480, 232 Ariz. 421 (App. 2013)
 - Acquaintance witness testimony serves an important function of preventing physicians from merely rubber-stamping each other's work, and it provides the court with an important perspective on the patient's condition. To be legally sufficient, the testimony must show relevant, personal knowledge of the mental disorder alleged (usually through observation of symptoms).
- In re MH 2008-002596, 223 Ariz. 32 (App. 2009)
 - Though duration of witness's contact with patient may be a factor, it is not dispositive of qualifications to testify as an acquaintance witness; the nature and relevance of the witness's testimony are controlling.
- In re MH 2006-000023, 214 Ariz. 246, 249, ¶ 11 (App.2007)
- In re MH 2007-001264, 218 Ariz. 538, 540, ¶14 (App. 2008)
 - Time constraints are strictly construed.



Federal Case Law

- From Need for Treatment to Dangerousness
 - Need for Treatment
 - Parens Patriae
 - Lack of procedural barriers
 - Presence of mental illness and recommendation for treatment
 - Dangerousness
 - Criteria for Involuntary Hospitalization
 - Procedural Standards for Civil Commitment
 - Burden of Proof



ARIZONA: Sources of Civil Commitment Laws

- ▶ The laws which govern Court Ordered Treatment are found in the Arizona Revised Statutes, Title 36, Chapter 5, Articles 1 - 7
 - ▶ The statutes which are most applicable to our discussion today are A.R.S. §§501, 520-531.
- ▶ The Arizona Administrative Code also contains provisions which must be followed when Title 36 is utilized
 - ▶ A.A.C. Title 9, Chapter 21



Standards for Civil Commitment

Dangerousness Standard: DTO/DTS (+GD)

1) **Danger to others** means that judgment of a person who has a mental disorder is so impaired that the person is unable to understand person's need for treatment and as a result of person's mental disorder the person's continued behavior can reasonably be expected, on basis of competent medical opinion, to result in serious physical harm.

2) **Danger to self**

(a) Means behavior that, as a result of a mental disorder:

- (i) Constitutes a danger of inflicting serious physical harm on oneself, including attempted suicide or serious threat thereof, if threat is such that, when considered in the light of its context and in light of individual's previous acts, it is substantially supportive of an expectation that threat will be carried out.
- (ii) Without hospitalization will result in serious physical harm or serious illness to the person.

(b) Does not include behavior that establishes only the condition of persons with grave disabilities.

3) **Gravely Disabled**: so disabled by illness that he or she cannot take care of basic physical needs



Standards for Civil Commitment: Persistently or Acutely Disabled

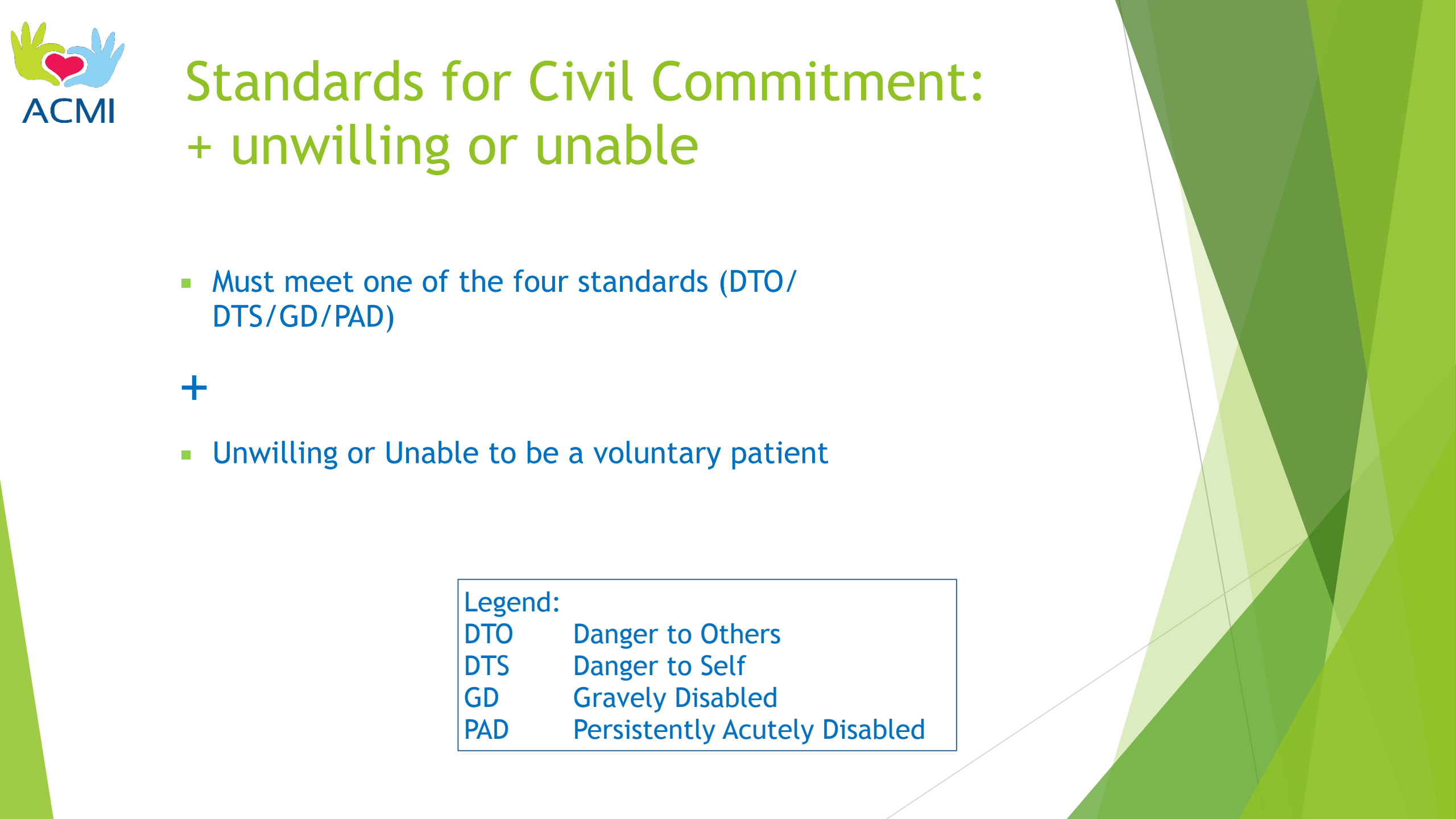


“Persistent or acute disability” means a severe mental disorder that meets all following criteria:

- (a) If not treated has a substantial probability of causing person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.
- (b) Substantially impairs person’s capacity to make an informed decision regarding treatment, and this impairment causes person to be incapable of understanding and expressing an understanding of advantages and disadvantages of accepting treatment and understanding and expressing an understanding of alternatives to the particular treatment offered after advantages, disadvantages and alternatives are explained to that person.
- (c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

POLL





Standards for Civil Commitment: + unwilling or unable

- Must meet one of the four standards (DTO/
DTS/GD/PAD)

+

- Unwilling or Unable to be a voluntary patient

Legend:

DTO	Danger to Others
DTS	Danger to Self
GD	Gravely Disabled
PAD	Persistently Acutely Disabled



Civil Commitment - Common Scenarios

I. Client's daughter, Jenny, having thoughts of death/death wish

- John Doe (client), calls lawyer & explains his 22-year-old daughter, Jenny, has been saying she does not want to live any longer; wishes to just get run over & die. She does not have suicide plan or means & has never taken any suicidal action. What are options?

II. Jenny is actively suicidal

- John Doe (client), calls lawyer & explains that his 22-year-old daughter, Jenny, called home/her & said she is going to kill herself. She has a plan to take pills & has access to many. What are options?

III. Client's son addicted to illicit substances

- Client calls to tell you his son finished at top of his class at ASU but is now living on streets and is addicted to meth. Son is delusional and when using is aggressive and threatening.

POLL





Civil Commitment - Common Scenarios

IV. Client's son is actively psychotic

- John Doe (client), calls lawyer & explains that his 33-year-old son, Tim, is married, has two children, & is an executive at large company.
- Tim started to believe his company was involved with FBI & had implanted monitoring devices in his computer, iPhone, home, & inside his brain. Tim began to confront his superiors about situation. He was fired from job.
- Because wife was also involved in conspiracy, he is filing for divorce.
- He refused to live at home because of monitoring devices & decided to live in his car which he did during month of July & August, but then car became infected with FBI's technology, so he decided to live under bridge.
- He made no threats to harm himself or anyone else. His family has offered him treatment on many occasions; he refuses each time because "there is nothing wrong with him."

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The background of the slide is a solid lime green. On the right side, there is a complex geometric design consisting of several overlapping triangles and polygons in various shades of green, ranging from light lime to dark forest green. Some of these shapes are semi-transparent, creating a layered effect. A thin, dark green line also runs diagonally across the right side of the slide.

▸ Questions?



How to Start Civil Commitment Process

Helpful Definitions:

- DTO = Danger to Other
- DTS = Danger to Self
- PAD = Persistently or Acutely Disabled
- GD - Gravely Disabled
- COE - Court-ordered Evaluation
- COT - Court-ordered Treatment
- Evaluation Agency
 - Only Desert Vista Hospital (and Annex, and Maryvale)
- Screening Agency - (ConnectionsAZ/UPC), (Downtown Phoenix)Community Bridges CPEC (Mesa), RI International (Peoria)
- ACOT - Amended Court-ordered Treatment
- AZDHS - Arizona Department of Health Services
- BHMP - Behavioral Health Medical Professional
- ER/ED - Emergency Room/Emergency Department
- LE - Law Enforcement
- PNP - Psychiatric Nurse Practitioner
- PSA - Pre-screening agency



How to Start Civil Commitment Process

Two paths for involuntary evaluation:

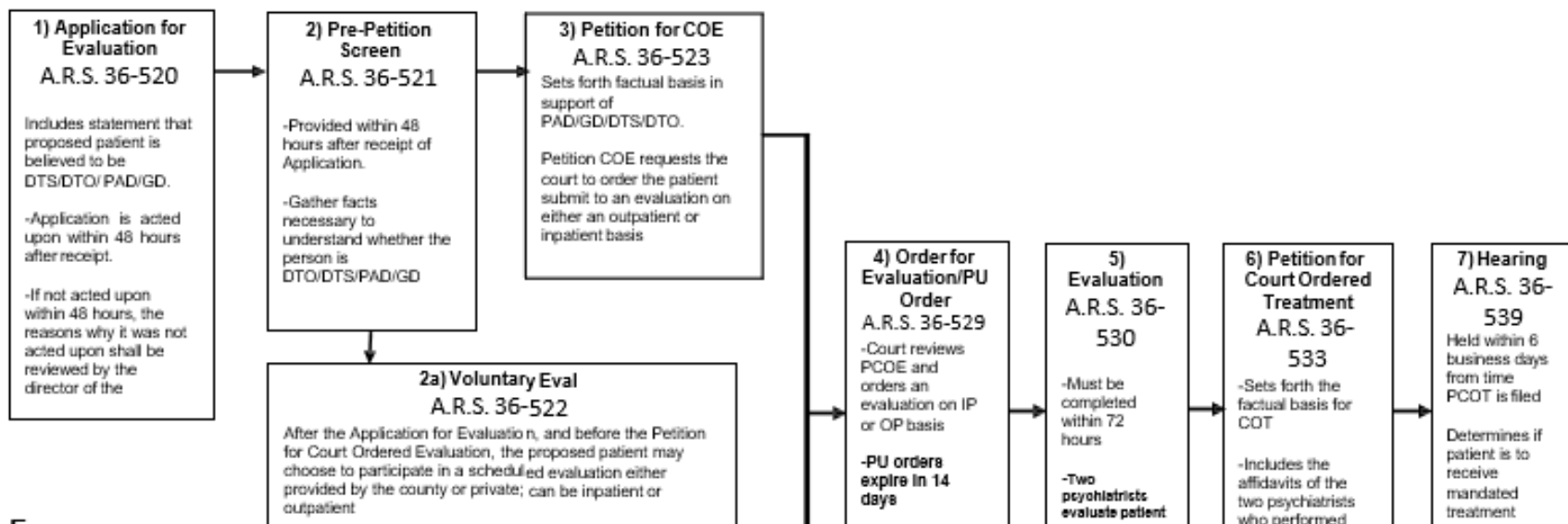
- DTO Application for Evaluation - A.R.S. §36-520
 - “Non-Emergent” - Almost always a “PAD” application
- Application for Emergency Admission A.R.S. §36-524
 - “Emergent” - Always a danger to self or others application
- DIVIDING LINE: “. . . during the time necessary to complete the prepetition screening procedures set forth in § 36-520 and 36-521 the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or is likely to inflict serious harm upon another person.”

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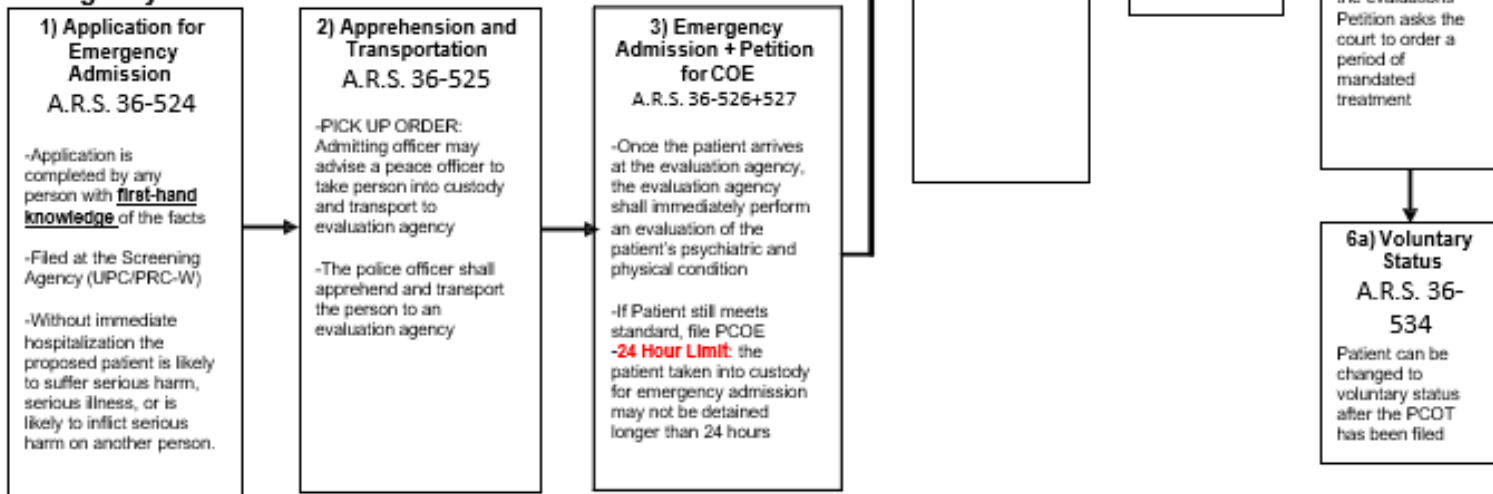


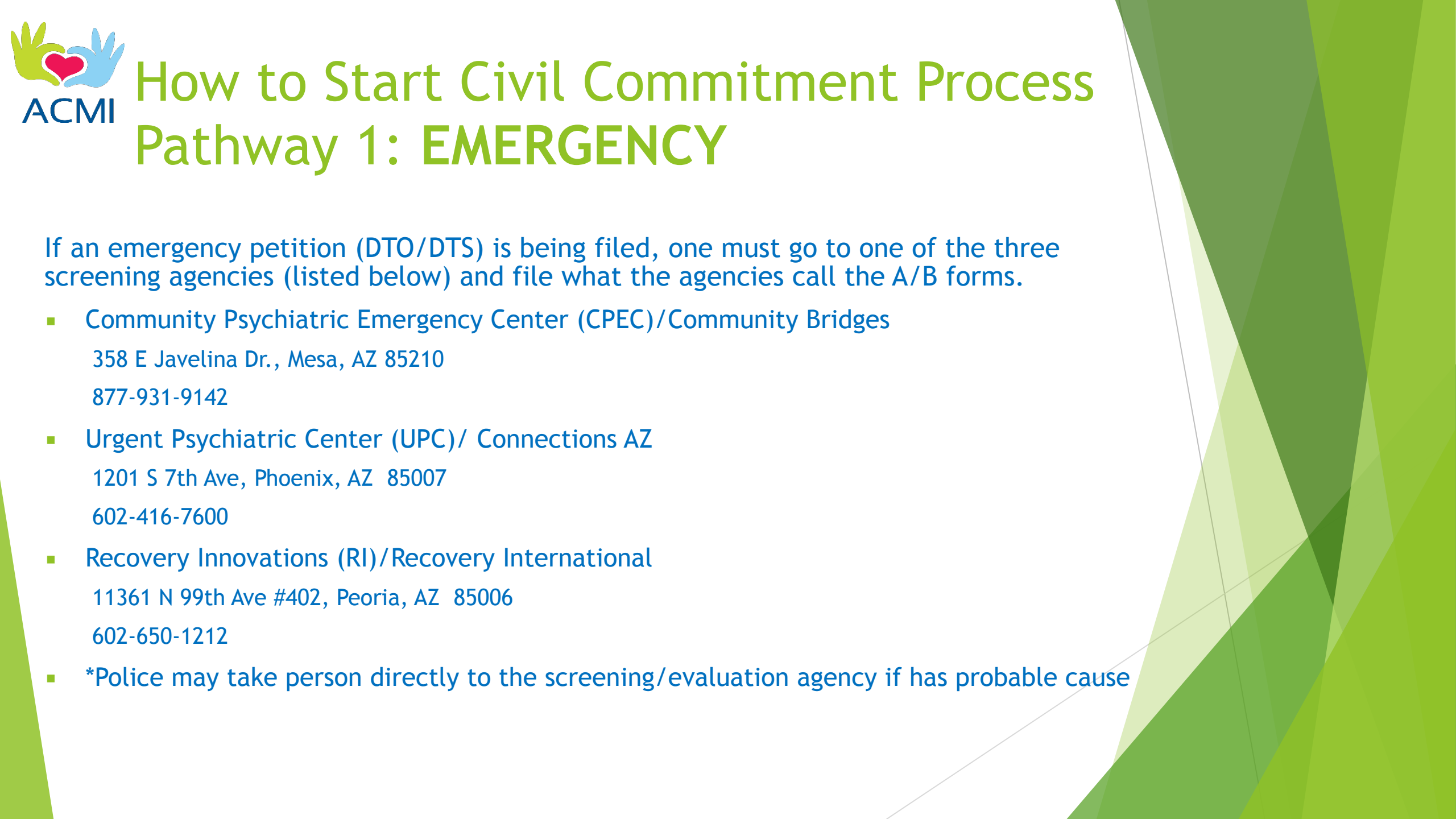
COE + COT PROCESS FLOWCHART

Non-Emergency:



Emergency:





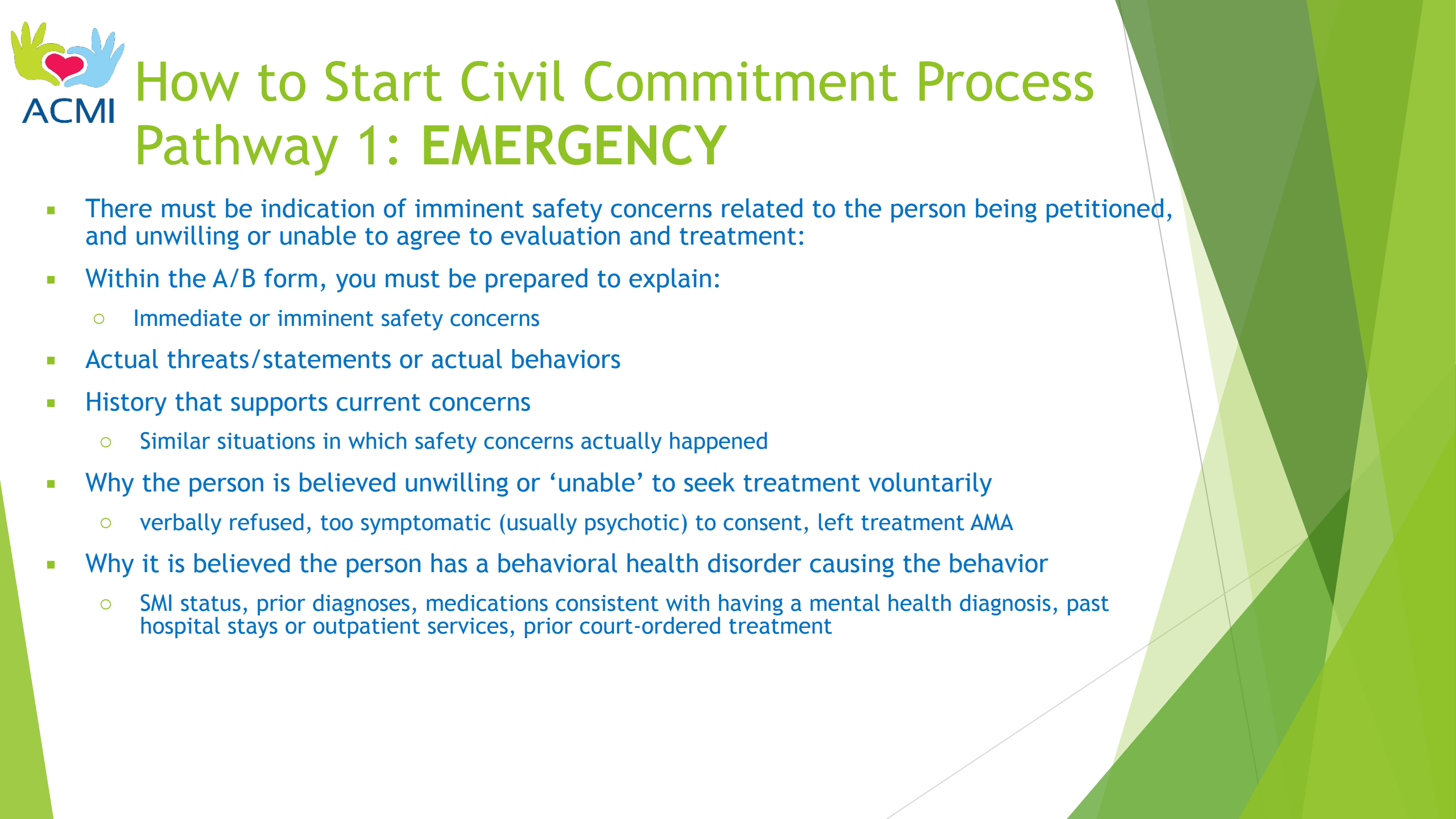
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How to Start Civil Commitment Process

Pathway 1: **EMERGENCY**

If an emergency petition (DTO/DTS) is being filed, one must go to one of the three screening agencies (listed below) and file what the agencies call the A/B forms.

- Community Psychiatric Emergency Center (CPEC)/Community Bridges
358 E Javelina Dr., Mesa, AZ 85210
877-931-9142
- Urgent Psychiatric Center (UPC)/ Connections AZ
1201 S 7th Ave, Phoenix, AZ 85007
602-416-7600
- Recovery Innovations (RI)/Recovery International
11361 N 99th Ave #402, Peoria, AZ 85006
602-650-1212
- *Police may take person directly to the screening/evaluation agency if has probable cause



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How to Start Civil Commitment Process

Pathway 1: **EMERGENCY**

- There must be indication of imminent safety concerns related to the person being petitioned, and unwilling or unable to agree to evaluation and treatment:
- Within the A/B form, you must be prepared to explain:
 - Immediate or imminent safety concerns
- Actual threats/statements or actual behaviors
- History that supports current concerns
 - Similar situations in which safety concerns actually happened
- Why the person is believed unwilling or 'unable' to seek treatment voluntarily
 - verbally refused, too symptomatic (usually psychotic) to consent, left treatment AMA
- Why it is believed the person has a behavioral health disorder causing the behavior
 - SMI status, prior diagnoses, medications consistent with having a mental health diagnosis, past hospital stays or outpatient services, prior court-ordered treatment



How to Start Civil Commitment Process

Pathway 1: **EMERGENCY**

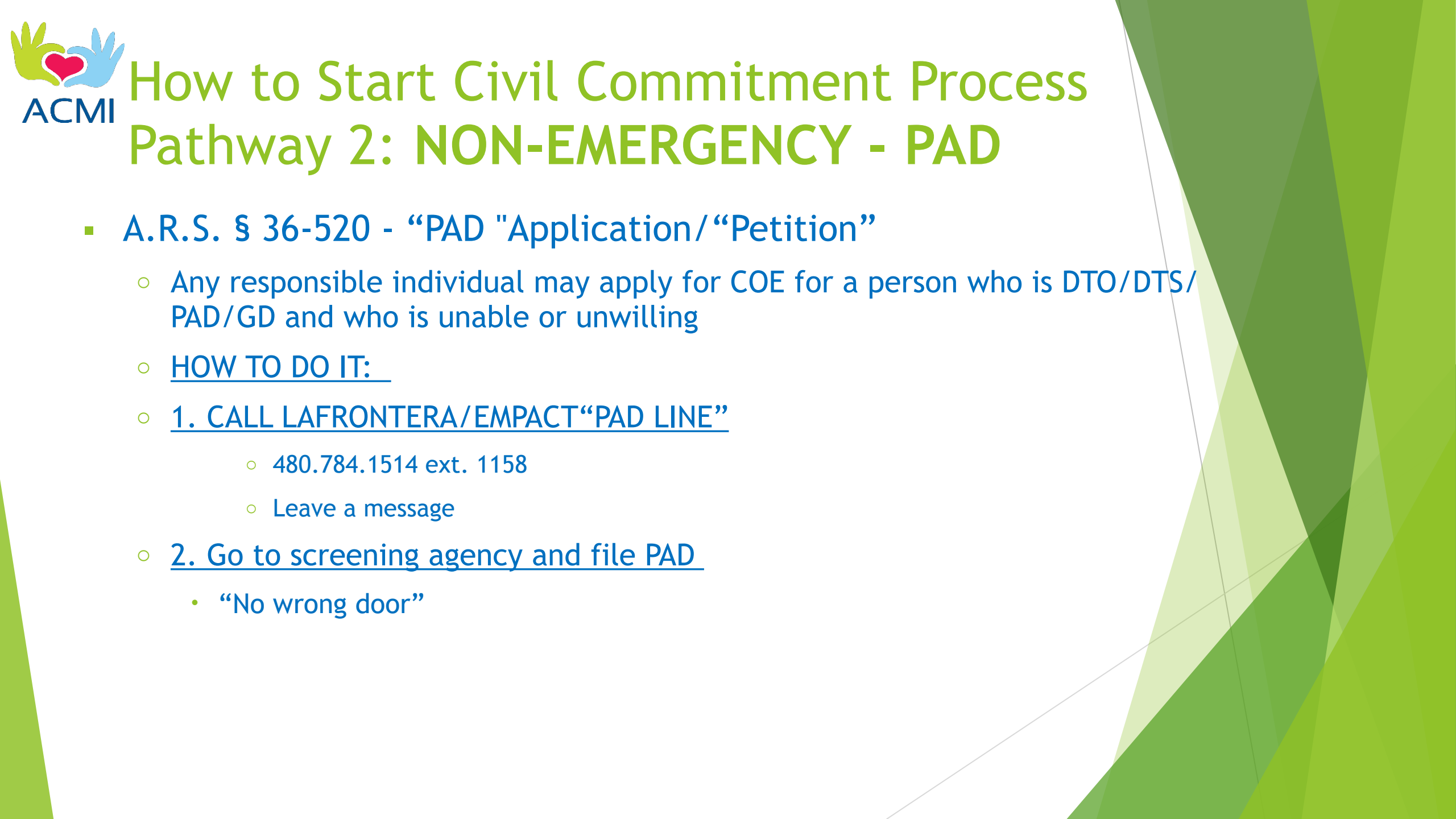
- Nuts and bolts:
 - The applicant must be over 18
 - The applicant must have firsthand knowledge of the emergency behavior
 - There must be a second witness to testify, this person must be listed on the form
 - You must also include personal information like name, address, DOB, height, weight, hair and eye color, education level, tattoos, known relatives or significant others.

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§ 36-524 Emergency Timelines

§ 524 App Filed - Patient detained	PCOE Filed - Starts Eval Period	PCOT Filed	Court Rules on PCOT
24 Hours	72 Hours	Six Days	
<p><u>A.R.S. § 36-525</u> <u>Apprehension and Transport of Patient</u> - If admitting officer has reasonable cause to believe the proposed patient meets the standard, the admitting officer may advise a peace officer to detain and transport - Cop can apprehend and transport on her own if probable cause exists</p> <p><u>A.R.S. § 36-526 Emergency Admission</u> - Immediate examination must take place - If patient meets standard and harm likely, then admitted - On same or succeeding day, medical director must file PCOE, unless D/C or volunt.</p> <p><u>A.R.S. § 36-527 Discharge and Release</u> - Patient taken into custody for emergency admit may not be detained for more than 24</p>	<p><u>A.R.S. § 36-530 Evaluation</u> - Patient receives an evaluation by two psychiatrists as soon as possible - Must be completed in 72 hours - Outpatient evaluation must be completed by 4th day</p> <p><u>A.R.S. § 36-531 Evaluation and Treatment</u> - Patient should be released if medical director believes if patient not appropriate - Patient shall be released within 72 hours if PCOT has not been filed, or does not become voluntary - If standards for COT are still met, file Petition for Court Ordered Treatment</p> <p><u>A.R.S. § 36-533 Petition for Court Ordered Treatment</u> - Alleges patient still meets the standard - Along with the Petition, the affidavits of the two evaluating psychiatrists are required</p>	<p><u>A.R.S. § 36-534 Change to Voluntary Status</u> - After PCOT has been filed, but before the hearing, medical director may discharge or admit the patient on a voluntary basis</p> <p><u>A.R.S. § 36-535 Detention</u> - If the patient is likely to propose a danger, or not likely to show, then held inpatient until hearing - If not a danger and likely to show, then not detained before hearing - Hearing held within six days of the PCOT being filed - Hearing can be extended three days by petitioner or 30 days by patient - If, after reviewing the paperwork, the court does not feel the patient meets the standard, the patient will be discharged</p> <p><u>A.R.S. § 36-538 Independent Evaluator</u> - Patient has right to have an independent evaluation - Patient can hire an evaluator, or can pick from a list</p> <p><u>A.R.S. § 36-539 Conduct of Hearing</u> - Patient's attorney is present - Petitioner presents two doctors and two witnesses</p>	



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How to Start Civil Commitment Process

Pathway 2: **NON-EMERGENCY - PAD**

- A.R.S. § 36-520 - “PAD “Application/“Petition”
 - Any responsible individual may apply for COE for a person who is DTO/DTS/PAD/GD and who is unable or unwilling
 - HOW TO DO IT:
 - 1. CALL LAFRONTERA/EMPACT“PAD LINE”
 - 480.784.1514 ext. 1158
 - Leave a message
 - 2. Go to screening agency and file PAD
 - “No wrong door”



How to Start Civil Commitment Process

Pathway 2: NON-EMERGENCY - PAD

- Fill out the “B Form”
 - The B Form is confusing because it does not follow the standards
 - PAD boils down to four main pieces:
 - Severe mental disorder;
 - Severe harm mental, emotional or physical harm;
 - Cannot provide informed consent;
 - Can be made better by treatment.
 - **However, the form does not ask you for that information (see next slide)**
 - **Most importantly, it does not ask for the harm description**

APPLICATION FOR INVOLUNTARY EVALUATION
(Pursuant to A.R.S. § 36-520)

STATE OF ARIZONA)
) ss.
 COUNTY OF MARICOPA)

To the

ConnectionsAZ, Inc. - UPC
 (Regional or Screening Authority)

1. The undersigned applicant requests that the above agency conduct a pre-petition screening of the person named herein.
2. The undersigned applicant alleges that there is now in the County a person whose name and address are:

 (Name)

 (Address)

and that he/she believes that the person has a mental disorder and as a result of said mental disorder, is:

- ☐ a danger to self; ☐ a danger to others;
☐ gravely disabled; ☐ persistently or acutely disabled

and is:

- ☐ unwilling to undergo voluntary evaluation, as evidenced by the following facts:

- ☐ unable to undergo voluntary evaluation, as demonstrated by the following facts:

☐ gravely disabled; ☐ persistently or acutely disabled

and is:

- ☐ unwilling to undergo voluntary evaluation, as evidenced by the following facts:

- ☐ unable to undergo voluntary evaluation, as demonstrated by the following facts:

 and who is believed to be in need of supervision, care and treatment because of the following facts:_____

- 3.. The conclusion that the person has a mental disorder is based on the following facts:

4. The conclusion that the person is dangerous or disabled is based on the following facts:

PERSONAL DATA OF PROPOSED PATIENT:

Age_____ Date of Birth_____ Sex_____ Race_____

Weight_____ Height_____ Hair Color_____ Eye Color_____



How to Start Civil Commitment Process

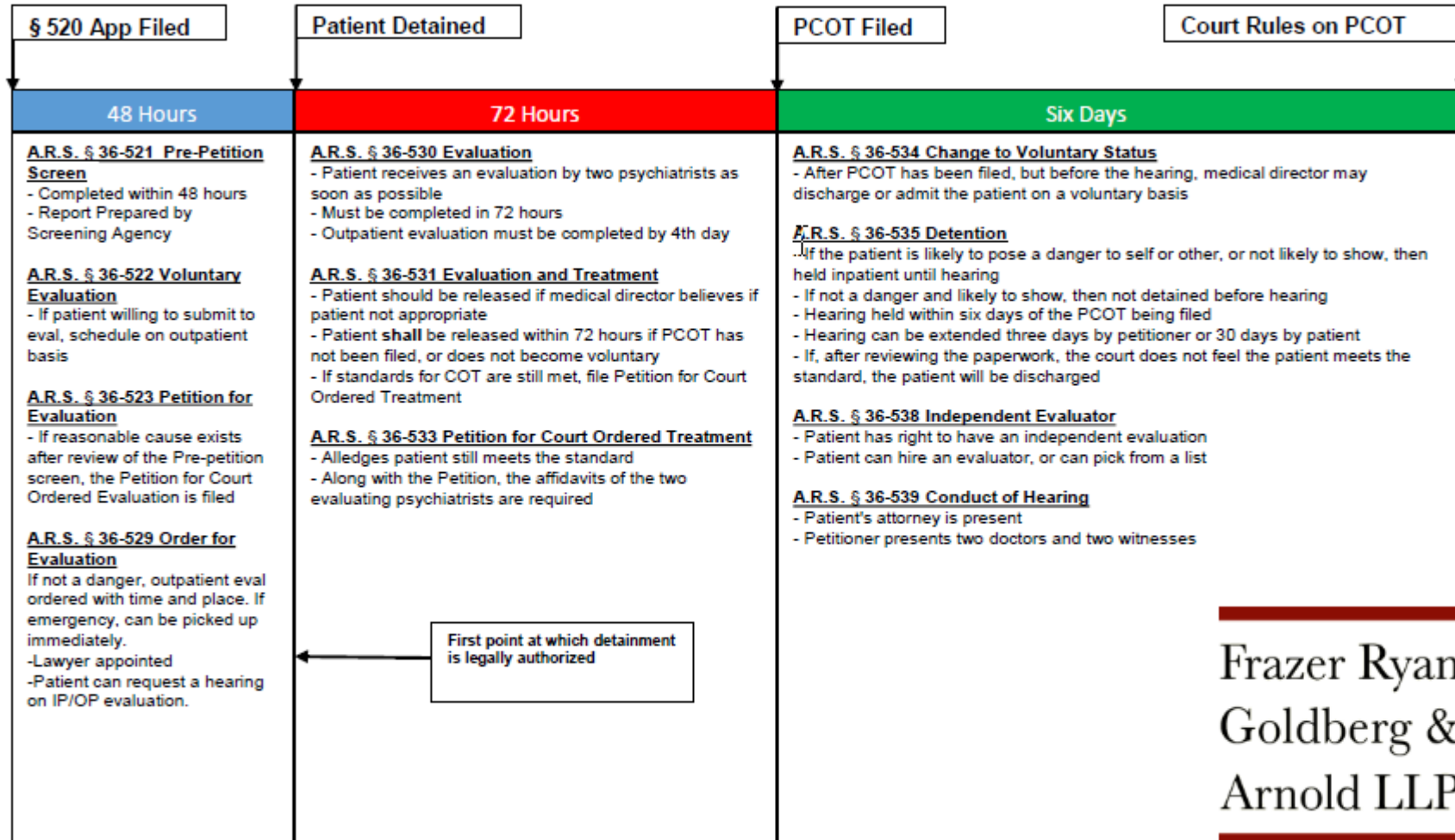
Pathway 2: “Severe Harm”

- A description of the severe harm is the most important part of the PAD application
- The harm under this standard is not the harm contemplated in DTO/DTO
 - Not imminent self harm
 - Not imminent harm to others
 - Examples:
 - As the result of a mental disorder
 - Not taking care medical needs
 - Committing crimes
 - Spending outrageous amounts of money
 - Losing employment
 - Filing for divorce



NEED MY 520 TIMELINE HERE - SENT TO

§ 36-520 Non-Emergency Timelines



Frazer Ryan
Goldberg &
Arnold LLP



Tracking Your Petition

Date	Action	Days since contact with PAD team:
Friday March 30, 2020	Rob calls PAD line - leaves voicemail	N/A
Monday April 2, 2020	Rob receives a call back from Empact, sets appointment	3
Wednesday April 4, 2020	Rob meets with Empact, fills out Form A	5
Tuesday April 10, 2020	Hearing nothing from LF, Rob provides me with notarized Form A. I forward Form A to Laura Jones.	11
Wednesday April 11, 2020	Rob is yet to hear from Empact about any status. Her delusions about getting raped everyday by her neighbor persist.	12
Tuesday April 22, 2020	Kelly picked up.	23



SUBSTANCE ABUSE

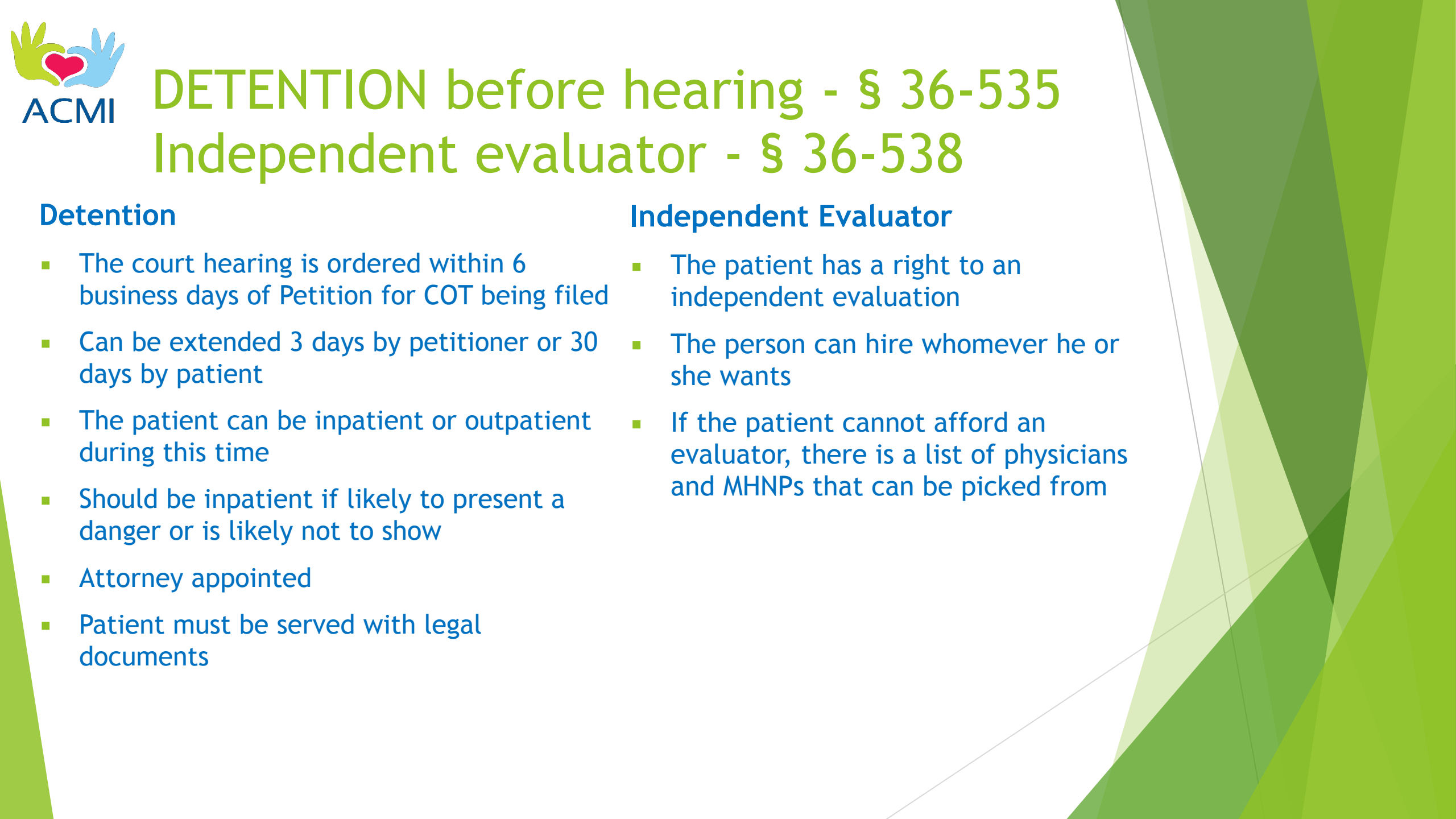
- Applications are commonly rejected due to a positive drug screen
- Law states: behavior described in DTO/DTS/PAD must be “the result of a mental disorder”
 - Therefore, if substance abuse is the cause, T36 is not available
 - If dementia causes the behavior, T36 is not available
 - If lack of sleep is the cause of the behavior, T36 is not available
- Applicant must be prepared to address this
 - Describe periods where MH symptoms remained, despite no drug use



PETITION FOR COURT ORDERED TREATMENT

§ 36-533

- Sets forth the factual basis for COT
- Includes affidavits of the two psychiatrists who performed evaluations
- Also includes the psychiatrists' summary of facts to support Petition
- Petition asks the court to order a period of mandated treatment



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DETENTION before hearing - § 36-535

Independent evaluator - § 36-538

Detention

- The court hearing is ordered within 6 business days of Petition for COT being filed
- Can be extended 3 days by petitioner or 30 days by patient
- The patient can be inpatient or outpatient during this time
- Should be inpatient if likely to present a danger or is likely not to show
- Attorney appointed
- Patient must be served with legal documents

Independent Evaluator

- The patient has a right to an independent evaluation
- The person can hire whomever he or she wants
- If the patient cannot afford an evaluator, there is a list of physicians and MHNPs that can be picked from



The hearing - § 36-539 + Court options - § 36-540

The Hearing

- Two lay witnesses must testify (unless stipulation)
- The two evaluating doctors must testify (unless stipulation)
- Doctors are instructed to take precautions so the patient is not so medicated he cannot participate in hearing
- Court gets record of all medication taken in last 72 hours

Court Options

- If court finds by clear and convincing evidence that person meets the standard (DTO/DTS/PAD/GD), the court shall order:
 - Inpatient treatment
 - Outpatient treatment
 - Combination of both
- Non/Non-Loophole - § 36-540(E)(2)
- See flowchart for wrap up



After the Court Order:

§ 36-540 - Amendment

- If patient fails to comply with treatment plan or needs to be hospitalized, medical director can amend outpatient treatment.
 - Request can be emergent, or non emergent:
 - Emergent - telephonic:
 - Agreement must be obtained from inpatient facility psychiatrist by outpatient psychiatrist. Outpatient psychiatrist provides verbal authorization to law officer allowing transport of client/member to inpatient facility.
 - Following admission, revocation paperwork must be submitted no later than the next working day following the admission.
 - The hospital may detain the individual for a period of no more than 48 hrs (until amended order is filed)
 - Non-Emergent
 - Medical director of outpatient treatment agency may file and order amending its original order
 - If patient does not comply with the order, the court can direct a police officer to pick the patient up

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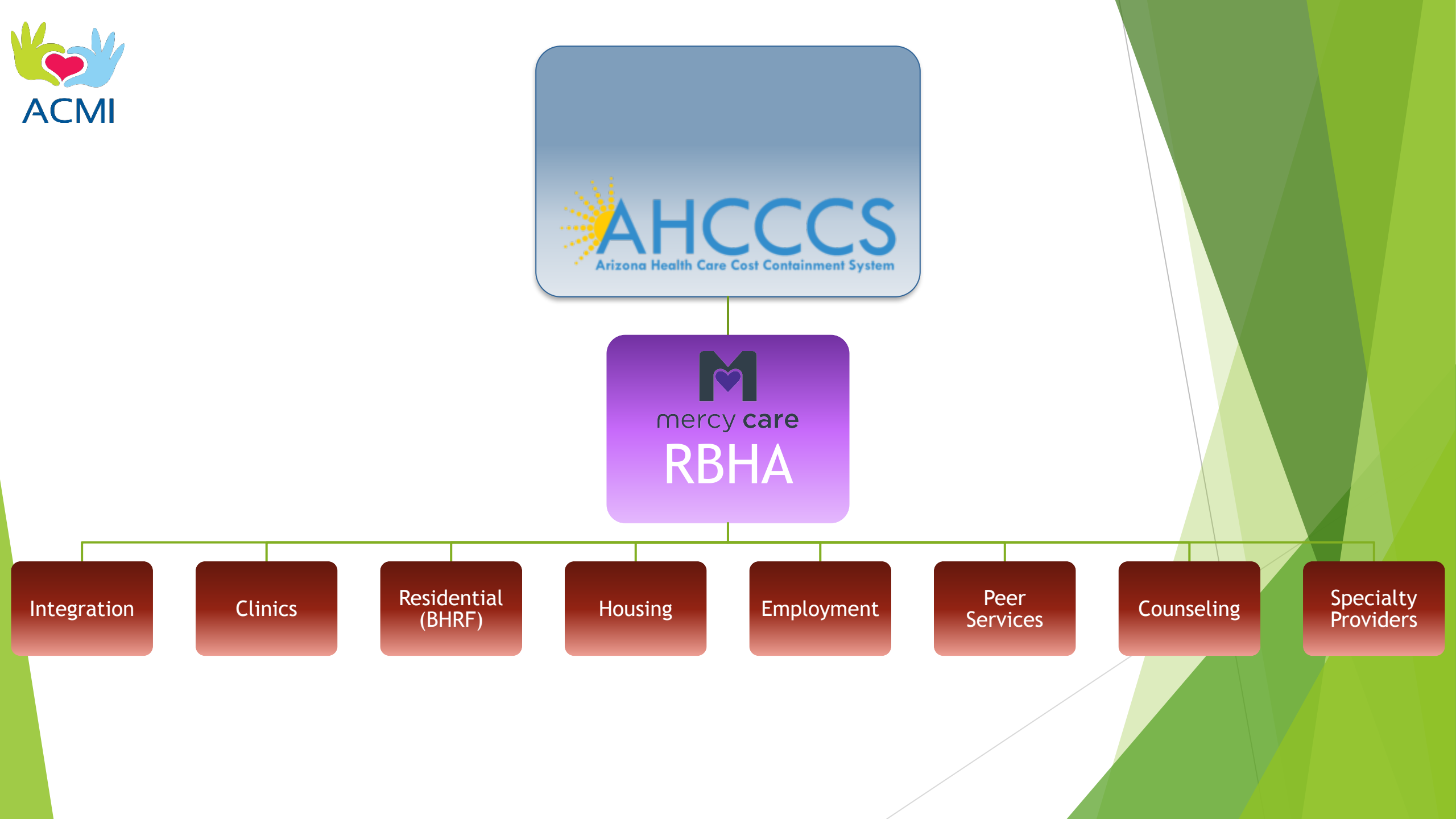


Civil Commitment In Place, Now What?

- 365 Days of mandatory treatment - combination inpatient and outpatient in public behavioral health system
 - Most of it will be outpatient, but up to 180 days can be inpatient (90 for DTS, 365 for GD)
 - Must comply with the treatment order, if not, picked up and brought back into hospital
 - Limitations
 - Mental Health America report
 - Involuntary patient in largely voluntary system
 - No communication with family

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Integration

Clinics

Residential
(BHRF)

Housing

Employment

Peer
Services

Counseling

Specialty
Providers

► Questions?

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Upcoming Educational Meetings

- My adult child just got arrested, what do I do next?
- Guardianship, Power of Attorney, or Health Directive, which is right for you?
- HIPAA- Why is it so complication, what are the rules?
- Other topics of interest?

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