

A.R.S. Title 36

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Mental Disorder

A.R.S §36-501

- The affect the mental disorder has on a person's ability to function is controlling in COE/COT cases - Not the actual diagnosis.
- Legal Definition:
 - A substantial disorder of the person's emotional processes, thought, cognition or memory.

Mental disorder is distinguished from:

1. Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless in addition to one or more of these conditions, the person has a mental disorder.
2. The declining mental abilities that directly accompany impending death.
3. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including

- sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

Statute changed the language from mental retardation to intellectual disability.

Court Ordered Evaluation and Treatment

- The term “civil commitment” used in other jurisdictions was stricken from Arizona law over 30 years ago, the same time that words like “idiot”, “imbecile” and “lunatic” were removed.

When can legal involvement be sought?

- In Arizona, involuntary mental health treatment can be sought for four reasons:
 - Danger to self,
 - Danger to others,
 - Persistent or acute disability, and
 - Grave disability.
- Each have a specific legal definition.

Danger to Self:

- Behavior that, as a result of mental disorder:
 - Constitutes a danger of inflicting serious physical harm on oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of it's context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out.
 - Without hospitalization will result in serious physical harm or serious illness to the person.
 - Does not include behavior that establishes only the condition of persons with grave disabilities

Danger to Others

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

DTO Cases

- Requirement that danger to others be imminent is implicit in civil commitment law concepts of “danger” and reasonable expectation of harm and is expressly imposed as precondition to initial evaluation. Appeal in Pima County Mental Health Case No. MH 1717-1-87 (App. Div.2 1986) 149 Ariz. 594, 721 P.2d 142

Persistently or Acutely Disabled

- A severe mental disorder that meets all the following criteria:
 - If not treated has a substantial probability of causing the 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.

- Substantially impairs the person's capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.
- Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

Gravely Disabled

- Means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because the person is unable to provide for the person's own basic physical needs.

How does the process begin?

- Application for Involuntary Evaluation:
 - In AZ, anyone can complete an Application for Court Ordered Evaluation (COE).
 - Applications are generally received at psychiatric crisis centers and psychiatric emergency rooms.
 - Forms are not found on-line

– In Maricopa County,

- many hospitals have social workers who can file an application
- Crisis centers
- Connections AZ/Urgent Psychiatric Center (UPC)
- RII (Recovery Innovations International)/Previously RIAZ & PRC West
- CBI/CPEC

Prepetition Screening

- In a non-emergent situation, once the Application is prepared and filed with the mental health evaluating agency (UPC/PRC/CBI), personnel for the agency will investigate the situation to determine what should be done next.
- PAD and GD only
 - 14 days to pick up

- Prepetition screening is the review of each application, including an investigation into the facts contained in the Application, an interview with each Applicant and an interview, if possible, with the proposed patient.
- The purpose of the interview with the proposed patient is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services. A.R.S. §36-501(33)

- A prepetition screening is conducted by personnel with the evaluating agency after the Application for Court Ordered Evaluation has been filed. If the proposed patient is at the evaluating agency, an screening is conducted at that time.
- If the screeners are unable to locate the proposed patient, the agency must prepare a report giving the reasons why the screening was not possible and include opinions and conclusions of staff members who attempted to conduct the prepetition screening or otherwise investigate the matter.

Voluntary vs. Involuntary

- If the prepetition screening agency determines that the proposed patient needs and is willing to receive treatment on a voluntary basis, then services may be arranged and the involuntary process may not need to continue.
- If the proposed patient is not willing or able to be voluntary, the screening is summarized in a written form, a legal document in a form prescribed by the Arizona Department of Health Services. This and the Application for Court Ordered Evaluation are reviewed and discussed with other evaluation agency personnel, including a licensed prescriber, and the decision to petition the Court for evaluation may be made.

Emergency Situations

A.R.S §36-524

- The evaluating agency makes a decision to petition the Court for an evaluation by reviewing the Application for Court Ordered Evaluation, the Prepetition Screening Report or the Application for Emergency Admission for evaluation.
- If the case is based upon the Emergency Admission for Evaluation instead of the Prepetition Screening Report, the proposed patient is detained in an evaluation facility.

- A physician or licensed nurse practitioner completes the Petition for Court Ordered Evaluation. This is a legal document the form of which is approved by the Arizona Department of Health Services.
- The Petition for Court Ordered Evaluation (COE), Application for Evaluation, Prepetition Screening Report and/or Application for Emergency Evaluation will be filed with the Court.
- The Petition for COE indicates whether or not the evaluation should be done on an inpatient or outpatient basis.

Outpatient COE

- §36-530(C) Evaluation will be completed no later than the 4th day after the 1st appointment excluding Saturday, Sundays and holidays.
- If the proposed patient does not appear, the evaluating agency may request for the Court that the proposed patient be detained in an evaluation facility.

- In an inpatient evaluation is sought and the patient is already detained, through an appropriate use of the Application for Emergency Admission for Evaluation, the patient will be served at the evaluation agency a copy of the Petition for Court Ordered Evaluation and the supporting documents.
- If an inpatient evaluation is sought and the patient is NOT detained, law enforcement will locate, serve him and bring him into an evaluating agency.

- If the proposed patient is not located within 14 days, after the order to detain him has been entered, the detention order expires.
- A new Application may be filed if the circumstances are appropriate.

Evaluation

- An evaluation means:
 - A professional multidisciplinary analysis based on data describing the person's identity, biography and medical, psychological and social conditions.
 - The evaluation must be conducted by two licensed physicians who, if possibly, shall be qualified psychiatrist or at least experienced in psychiatric matters. A psychiatric resident in training may conduct an evaluation if supervised by a qualified psychiatrist.
 - The person shall be notified that he may select one of the physicians.

- Two other individuals, a social worker and preferably a psychologist are also involved in the evaluation process. The social worker's expertise in placement alternatives appropriate for treatment is critical.
- The evaluation should be conducted in the language the person speaks and feels comfortable. The evaluation team shall arrange for translation and interpretation services.

- A physical examination that is consistent with the existing standards of care and that is performed by one of the evaluating physicians or by or under the supervision of a physician who is licensed a registered nurse practitioner who is licensed if the results of that examination are reviewed or augmented by one of the evaluating physicians.
- Outpatient evaluations are conducted over a four day period.
- **Inpatient evaluations must be concluded within seventy-two hours. This excludes weekends and holidays. A person can be detained up to 144 hours.**

Attorney Appointment

- The proposed patient is entitled to counsel.
- Appointment of counsel is mandated for inpatient proposed patients.
- Although the law is silent on the appointment of counsel in outpatient evaluation setting, constitutional due process rights demand representation.

Petition for COT

- If the patient remains inpatient, the hearings must take place within 4 to 6 days, excluding weekends and holidays.
- The Petition for Court Ordered Treatment **must** be delivered to the proposed patient and the patient's lawyer at least 72 hours before the hearing. The petition and the attached paperwork states the results of the evaluation and the reasons why the doctors think he needs to be ordered to received mental health treatment.

- The patient and the patient’s lawyer must also receive notice of the hearing date and time. Notice must also be provided to the witnesses the mental health evaluation agency is calling.
- These witnesses must include the two evaluating physicians, and two other “lay” or “acquaintance” witnesses.
 - The acquaintance witness may have only spoken to the patient once.

A.R.S. §36-538

- The patient has the right to have an independent evaluation of his condition prior to the hearing.

Right to be Present

- The proposed patient has the right to be present at his hearing. The patient has the right to listen to what the witnesses testify to. The patient also has the right to testify.
- The proposed patient has the right to call defense witnesses.

The Court's Decision

- The court will order treatment if the court finds by **clear and convincing** evidence that the patient has a
 1. Mental disorder, and
 2. Is danger to self, danger to other, persistently or acutely disabled and/or gravely disabled, and
 3. Is unwilling or unable to follow through with treatment on a voluntary basis.

Case law

- In re Jesse M. (App.Div. 1 2007) 217 Ariz. 74, 170 P.3d 683
 - Patient can waive right to counsel
 - Waiver must be knowingly & intelligently made
 - Court should:
 - Advise patient of right to counsel
 - Advise patient of consequences of waiving counsel
 - Seek to discover why patient wants to represent himself
 - Learn whether patient has any education, skill or training that may be important
 - Determine whether the patient has some understanding of proceedings & procedures to show that he understands the right he is waiving, and
 - Consider whether there are any other relevant facts.

- In re MH 2010-002637 (App.Div 1 2011) 228 Ariz. 74 263 P.3d 82
 - Effective assistance of counsel
 - Client to present at COT hearing
 - Trial court had an independent duty to inquire into alternative means of appearance before proceeding
 - Person are entitled to effect assistance of counsel and, at a minimum, counsel must meet the statutory duties outlined in A.R.S. §36-537(B)
 - Remanded to see if Appellant could have been present by other means and/or counsel did not meet statutory duties

If the patient is not ordered to treatment

- Voluntary
- Repetition
- Discharge

What is Court Ordered Treatment

- COT can be:
 - Inpatient only
 - Outpatient only
 - Combined Inpatient/Outpatient
- A treatment order is the legal authority to psychiatrically treat a patient even if it's against the patient's will.

- The patient can be forcibly medicated after a special treatment plan (STP) is prepared & reviewed with the patient.
- The patient will be discharged once his attending inpatient psychiatrist believes that the patient is stable enough for discharge. If the order for treatment includes outpatient treatment, there must be a discharge plan in place.

- If the court order is inpatient only, the treatment order is limited to:
 - 90 days if the order is based on danger to self,
 - 180 days if the order is based on a finding of danger to other and/or persistently or acutely disabled,
 - 365 days for the finding of gravely disabled.
- The court order expires when the patient is discharged from the inpatient facility or at the end of the specified time period, whichever occurs first.

- If the time runs out while the patient is still inpatient & the patient requires additional inpatient treatment, patient can be signed in as voluntary or new petition may be filed.

- If the patient is ordered to combined inpatient and outpatient treatment, the outpatient order is 365 days and the inpatient time limits listed above apply.
- Before the court can order to outpatient only or combined inpatient and outpatient treatment, the court must have the outpatient treatment provider's consent ("letter of intent to provide treatment.")

Where does inpatient occur?

- The law expresses a clear preference for short term inpatient treatment. In a facility close to the person's home. This is called "mandatory local treatment." A.R.S.§ 36-541
- A patient ordered to treatment is expected to receive inpatient treatment in a local facility for at least 25 days before any decisions to transfer him to a long-term facility like the Arizona State Hospital.

- Unless the patient is already at the Arizona State Hospital or unless the patient cannot benefit from treatment in a local facility.
- Jail vs. True Outpatient

Amendment vs. Voluntary

- Amendment
 - UPC/CBI/PRC
 - St. Luke's
 - CRU
- Voluntary
 - SAA
 - Scottsdale Banner
 - Aurora
 - Good Sam
 - Others?

Who Qualifies for Services

- Services are currently available for patients enrolled in the Arizona Health Care Cost Containment System (AHCCCS), and to patients designated by the Division of Behavioral Health Services as Seriously Mentally Ill (SMI). But for persons with private insurance, non-residents or those whose illnesses are not severe enough to be designated SMI, public services are very limited or non-existent. COT is unavailable for these individuals.

- Those individuals who qualify for services will receive psychiatric medications and appointments, although the medication formulary may be more restricted.
- Case management, residential treatment, medication monitoring and additional services have been limited.

SMI

- What is it?
- SMI evaluations?
 - Crisis Response Network/SMI Determination
 - Main Number (602) 845-3594
- What does it mean?
- SMI denial can be appealed

What legal rights are available to court ordered patients?

- Appeal
- Judicial Review

Judicial Review

- Client has a right to request a JR 60 days after their initial hearing and every 60 days thereafter. The treatment provider is required to tell the patient of their right to judicial review.
- A person does not have to exercise this right if they choose not to.

- To make a judicial review request, a person or someone entitled to act on his behalf makes a written request of the treatment agency supervising his treatment, either inpatient or outpatient.

- After client requests a JR, his doctor or psychiatric nurse practitioner is to conduct an evaluation, write a report and to conclude whether or not the person should be:
 - released from court ordered treatment without delay,
 - release with delay or
 - not be released at all.

- A person is entitled to an independent evaluation if requested.
- The court may set a hearing if one is warranted. At the hearing, the court will take into account any additional evidence and render a decision.
- A person who requests a judicial review is not entitled to a hearing its up to the court's discretion!!!

Additional Information

- A person under COT is also entitled to administrative rights including grievance and appellate rights.
- Patients are not entitled to a lawyer in administrative hearings but may hire an attorney if they have the ability to do so.
- Example, if unhappy with their treatment team, patient can
 - File a grievance
 - Request a change of treatment team, clinic or provider

When is Court Ordered Treatment over?

- Court ordered treatment can be terminated early.
 - Judicial Review,
 - Loss of AHCCCS,
 - Change in residency status.
- Inpatient treatment orders expire:
 - 90 day (DTS),
 - 180 (DTO or PAD),
 - 365 day (GD) time period, or
 - upon release from the inpatient facility if outpatient order only
 - No one to file amendment

- Outpatient treatment only or combined inpatient and outpatient treatment orders expire 365 days after the court order was entered.
- If the person on combined inpatient and outpatient treatment order runs out of inpatient days before they discharge ready, the evaluation and treatment agency may file an Application for Court Ordered Evaluation – restarting the process – if additional days are needed.

Renewal of Court Ordered Treatment

- If the person is placed on court ordered treatment based upon the finding of Persistently or Acutely Disabled (PAD) or Gravely Disabled (GD), the court order can be renewed for an additional 365 days based upon the renewal process.
- The person's treatment provider can file a Motion to Renew the Court Ordered Treatment.

- AR Applications

- Only 1 evaluating doctor

- Only 1 witness needed

- However, usually the attorney for the provider calls 2 witnesses

- The patient has the right to:
- be present, to hear the evidence against him and hear the witnesses' testimony,
- he has the right to testify,
- have his witnesses testify and
- independent evaluation.
- If the patient is placed on a subsequent year of COT, he has the same rights to appeal and judicial review.

Rights Lost

- Prior to September 30, 2009, any person determined danger to self and/or danger to others lost their rights to possess, purchase or carry firearms, ammunition and other deadly weapons. Once the court order for treatment terminated, this right was automatically reinstated.
- After September, 2009, anyone placed on court ordered treatment loses this right.

- The right is no longer automatically returned to the individual once the order expires. The individual continues to be a “prohibited possessor”, unless the individual petitions the court to restore their rights.
- This is very serious because a prohibited possessor can be charged criminally for misconduct with a weapon.
- To have one’s rights restored, the person must petition the court after the court order for treatment has been terminated. At the hearing, the person must present psychological or psychiatric evidence to prove by clear and convincing evidence that he no longer suffers from the mental disorder that led to the finding of danger to self, danger to other, persistently or acutely disabled, or gravely disabled.

Guardianship and Court Ordered Treatment

- Legal guardianship & COT hearings are two separate proceedings.
- Legal guardians may be involved in the COE/COT process.
- Guardian CANNOT agree to COT on behalf of the patient
- If a patient's legal guardian has mental health powers COT may not be necessary.
 - Not all guardian do
 - May not be honored
 - Easier to get someone inpatient under an amendment

- GD:
 - the court may direct an investigation into the patient's need for guardianship.
 - The court may appoint a person or agency as a temporary emergency guardian.
 - Usually the public fiduciary not family
 - Permanent guardian can be family
- Because of the liberty interest at stake, a legal guardian cannot sign his ward into an inpatient mental health facility without additional mental health powers.

- During the guardianship proceedings, a ward must be represented by counsel.
- Mental health authority lasts for one year unless renewed
- It may be renewed by following the prescribed legal process. If it is not renewed, the guardian loses the ability to admit the ward into an inpatient psychiatric facility if have mental health powers.

- A legal guardian does not need mental health powers to consent to outpatient psychiatric treatment including forced medication administration for his ward.
 - Ex: no renewal sought because client in placement w/guardian (usually Mercy Care cases)
- A ward cannot legally sign himself into an inpatient treatment facility on a voluntary basis, only his legal guardian with mental health authority may do so.
- If a patient is subject to a COT & he also has a legal guardian, the two authorities have co-existing authority concerning mental health care.