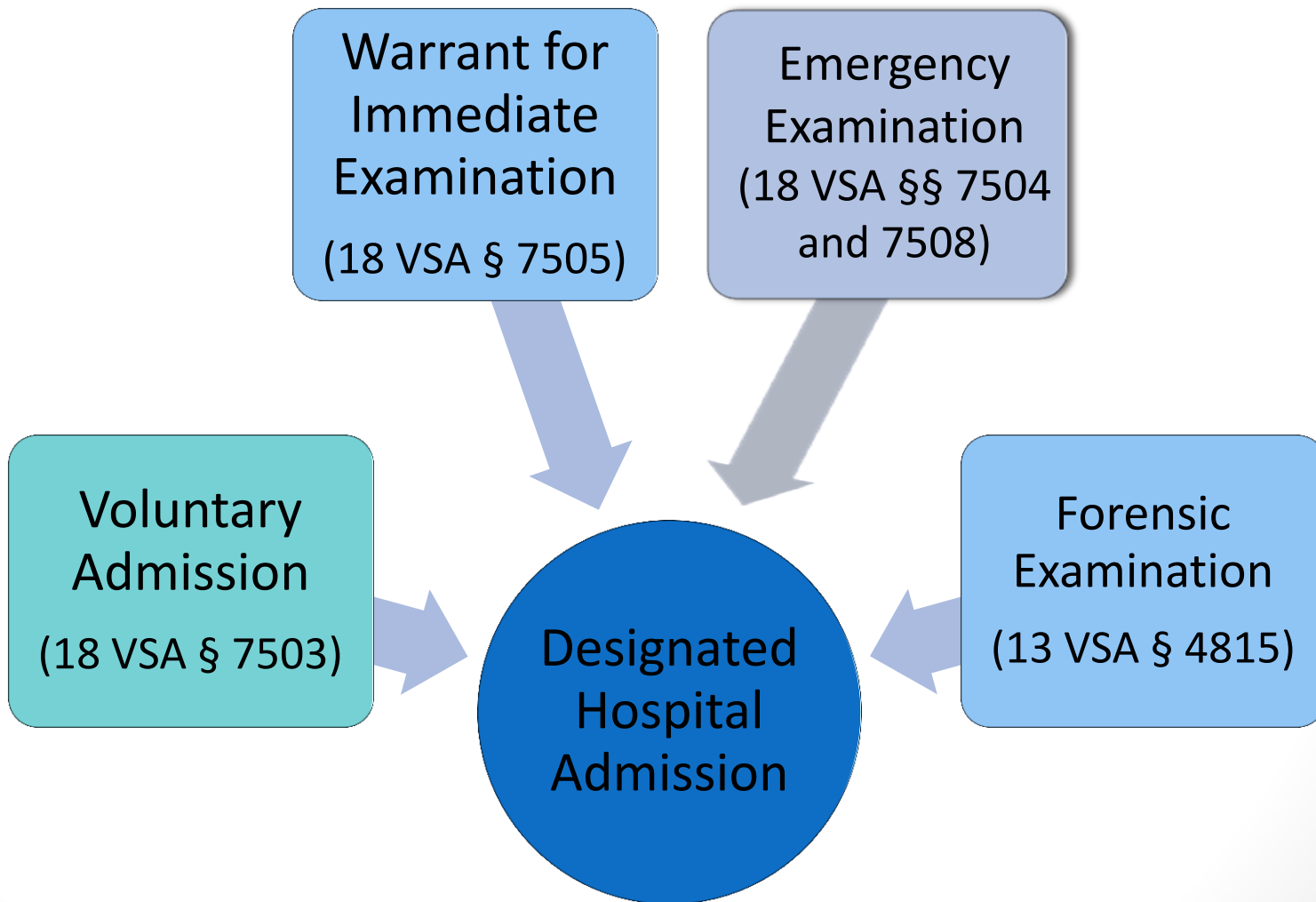


Mental Health: Admissions, Involuntary Treatment, and Medication

Hospital Admissions



Warrant for Immediate Examination

- Application for a warrant requires:
 - Emergency circumstances;
 - Physician's certificate unavailable without serious and unreasonable delay;
 - Personal observation that person's conduct constitutes reasonable grounds to believe that person is in need of treatment; AND
 - Person presents immediate risk of serious injury to self or others if not restrained.

Immediate Examination Continued

- Judge may order person to submit to immediate examination at a DH if s/he is satisfied:
 - Physician's certificate is not available without serious and unreasonable delay; AND
 - Probable cause exists to believe person is in need of immediate examination.
- Upon admission to DH, exam is immediately conducted by a physician. There are 2 possible outcomes of exam:

Physician certifies that person = "person in need of treatment"

- Person is held at DH for an emergency examination

Physician *does not* certify that person = "person in need of treatment"

- Person is immediately discharged

Application for Emergency Exam

- Person is admitted to DH for emergency exam to determine if s/he is “person in need of treatment”
- Authority to transport & admit person to DH for an emergency exam:
 - 1) Application by interested party; AND
 - 2) Certificate by a physician who ≠ applicant
- Application and certificate must state the facts and circumstances constituting need for emergency exam

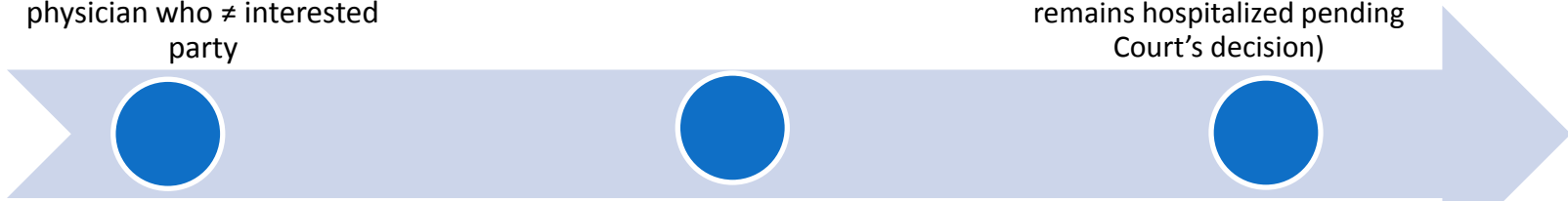
Emergency Examination

Authority to transport & admit person to DH for an emergency exam:

- 1) Application by interested party; AND
- 2) Certificate by a physician who \neq interested party

72 hours after emergency exam certification, hospitalization is terminated unless:

- 1) Person is accepted for voluntary admission; OR
- 2) Application for involuntary treatment is filed (person remains hospitalized pending Court's decision)



Emergency exam conducted by a psychiatrist as soon as practicable, but no later than 1 working day after admission



Psychiatrist *does not* certify that person is in need of treatment = person is discharged



Psychiatrist *does* certify that person is in need of treatment = hospitalization continues for 72 hours

Preliminary Hearing

- Within 5 days after admission for an emergency exam, a patient MAY request a preliminary hearing
- Hearing must be held within 3 working days of request
- Hearing determines if there is probable cause to believe the patient was a person in need of treatment at the time of his or her admission

Probable cause is established

- Person held for further proceedings

Probable cause is *not* established

- Person is discharged

Application for Involuntary Treatment

Application

- Application must contain:
 - Written application filed by interested party; AND
 - One of the following:
 - Physician's certification that s/he examined person within 5 days of date AIT is filed and believes person is in need of treatment; OR
 - Applicant's written statement that person refused physician's exam

Counsel; Notice; Exam

- Once AIT is filed, the Court is responsible for:
 - Appointing counsel to the person;
 - Transmitting copies of the application, physician's certification (if any), and notice of hearing to the person, counsel, guardian, State's attorney, etc.
- As soon as practicable after notice, Court may authorize exam of patient by a psychiatrist other than certifying physician (§7614)

Hearing Date

- Hearing must be held:
 - 10 days from date of AIT's receipt by Court; OR
 - 20 days from date of AIT's receipt by Court if psychiatric exam is ordered under §7614
- Court can grant either party a 7 day extension for good cause

AIT Hearing & Outcomes

- At AIT hearing, the State has the burden of proving case by clear & convincing evidence
- Initial court orders of hospitalization & nonhospitalization last 90 days

Court finds person = person in need of treatment at time of admission or application

AND

Court finds person = patient in need of further treatment at time of hearing

- Court may order:
 - Hospitalization at a DH;
 - Hospitalization at any other public or private hospital if the person and hospital agree; OR
 - Program of treatment other than hospitalization (i.e. ONH).

Court finds the person \neq person in need of treatment at time of admission and application

OR

Court finds person \neq patient in need of further treatment at time of hearing

- AIT is dismissed

Application for Continued Treatment

- If prior to expiration of initial OH or ONH, the Commissioner of Mental Health (CMH) believes the person requires continued treatment, CMH applies to Court for determination that person is need of further treatment and for order of continued treatment.
- Application for continued treatment must contain:
 - Reasons for CMH's belief;
 - Statement describing person's current treatment program; AND
 - Results of current course of treatment.
- If CMH seeks to have person receive continued treatment in a secure residential recovery facility, application must expressly state this placement is being sought.

Application for Continued Treatment: Possible Outcomes



If the Court finds that the person \neq patient in need of further treatment, the person is discharged.

If the Court finds that the person = patient in need of further treatment AND requires hospitalization, hospitalization is ordered for up to 1 year.

If the Court finds that the person = patient in need of further treatment AND does *not* require hospitalization, nonhospitalization is ordered up to 1 year.

ONH: Noncompliance or Inadequacy

- If a person is not complying with an existing ONH or an existing ONH is inadequate to meet the person's treatment needs, the Court may (after a hearing) do the following:
 - Order hospitalization, up to expiration date of original ONH; OR
 - Modify original ONH by directing the person to undergo an alternative treatment for an indeterminate period, up to expiration date of original ONH.

Forensic Admission & Commitment

- If a party or the Court makes a motion for examination:
 - A mental health screening is completed while the defendant is still at the Court
 - Court may order inpatient examination in light of screener's recommendation and other facts/circumstances
- A Court before which defendant is tried (or to be tried) for a criminal offense must hold a hearing to determine if defendant should be committed to CMH, if the defendant is:
 - Found by the examining psychiatrist to be insane at the time of the alleged offense;
 - Found incompetent to stand trial due to mental disease or defect;
 - Not indicted by grand jury by reason of insanity at the time of alleged offense; OR
 - Acquitted at trial by reason of insanity at the time of the alleged offense.

Petition for Involuntary Medication

CMH may file a petition for involuntary medication of a person refusing to accept psychiatric medication, IF one of the following conditions is met:

Person is in the care and custody of CMH pursuant to an OH or order for continued treatment in a hospital

Person previously received treatment under an OH and is currently receiving treatment under an ONH

Person is in the custody of the Commissioner of Corrections as a convicted felon;

Person is held in a designated correctional facility; AND

Departments of Corrections and Mental Health have jointly determined that involuntary medication is appropriate

- Hearings on involuntary medication must be held within 7 days of filing the petition
- Either party may be granted an extension of up to 7 days for good cause

Petition for IM continued

- Petition on Involuntary Medication must contain certification from the treating physician with the following information:
 - Nature of person's mental illness;
 - Necessity of IM, including person's competency to decide to accept or refuse medication;
 - Proposed medication;
 - Risks and benefits of proposed medications;
 - Person's prognosis with and without proposed medications;
 - Person's health and safety;
 - Current relevant facts & circumstances, including history of treatment and medication;
 - Proposed alternative treatments, and reasons for ruling them out;
AND
 - Whether person has executed a durable power of attorney (DPOA).
- *DPOA for health care no longer exists; statute should be updated to instead refer to advance directive.

Hearing on Involuntary Medication

- CMH has the burden of proof by clear & convincing evidence
- Competency:

In determining whether the person is competent make a decision on the proposed medication, the Court shall consider:

Whether the person is able to make a decision; AND

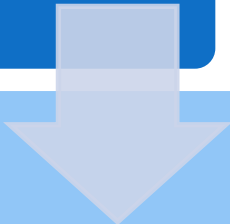
Whether the person is able to appreciate the consequences of that decision

Involuntary Medication & DPOAs

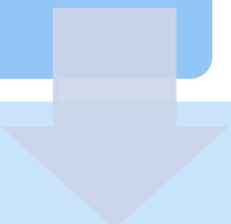
- Court must suspend hearing on IM and enter order authorizing CMH to provide treatment to person as allowed under DPOA, if it determines that:
 - Person is refusing to accept psychiatric medication;
 - Person is not competent to make a decision regarding the proposed treatment; AND
 - Decision regarding proposed treatment is within the scope of a valid DPOA for health care.
- If hospitalization is necessary to effectuate proposed treatment, Court may order hospitalization

Hierarchy of IM Decisions

If person subject to a petition for IM has a DPOA and certain criteria (described on last slide) are met, DPOA governs treatment.



If person has no DPOA, the Court shall follow person's competently expressed written or oral preferences regarding medication.



If person has no DPOA or medical preferences, the Court shall consider the following factors:

- Person's religious convictions as pertains to person's refusal of medication;
- Impact of receiving (or not receiving) medication on person's relationship with family or household members;
- Likelihood and severity of medication's proposed adverse side effects;
- Risks and benefits of proposed medication on person's prognosis, health, and safety; AND
- Various alternative treatments available.

IM Findings and Outcomes

- A hearing on a petition for involuntary medication has 2 possible outcomes:

Court finds person is incompetent to make decision on proposed treatment

AND

that involuntary medication is supported by factors

- Petition granted in whole or part with reference to supporting factors
- Order specifies medication type, dosage, length and method of administration
- Order requires provider to review use of IM monthly

Court finds person is competent to make decision on proposed treatment

OR

that involuntary medication is *not* supported by factors

- Petition for IM is denied

Length of IM Order & Hospitalization

- If person receiving IM is **hospitalized**, the order shall authorize the administration of IM for 90 days, unless the Court finds a longer time period is necessary.
 - If a longer order is necessary it cannot exceed underlying OH
- If person receiving IM is under **ONH** and the Court finds that without order for IM there is a substantial probability that person would continue to refuse medication and consequently pose danger of harm to self or others, Court may order up to 72 hour hospitalization to administer IM
 - Not known to happen in practice

Future Court Authorization of Hospitalization for Administration of IM

- If Court has authorized 72 hour hospitalization to administer IM to person on ONH, it may authorize future 72 hour hospitalizations for the same purpose
 - Future authorization is valid for 90 days following initial OH for the administration of IM, unless the Court finds more time is necessary
 - If a longer order is necessary it cannot exceed underlying ONH

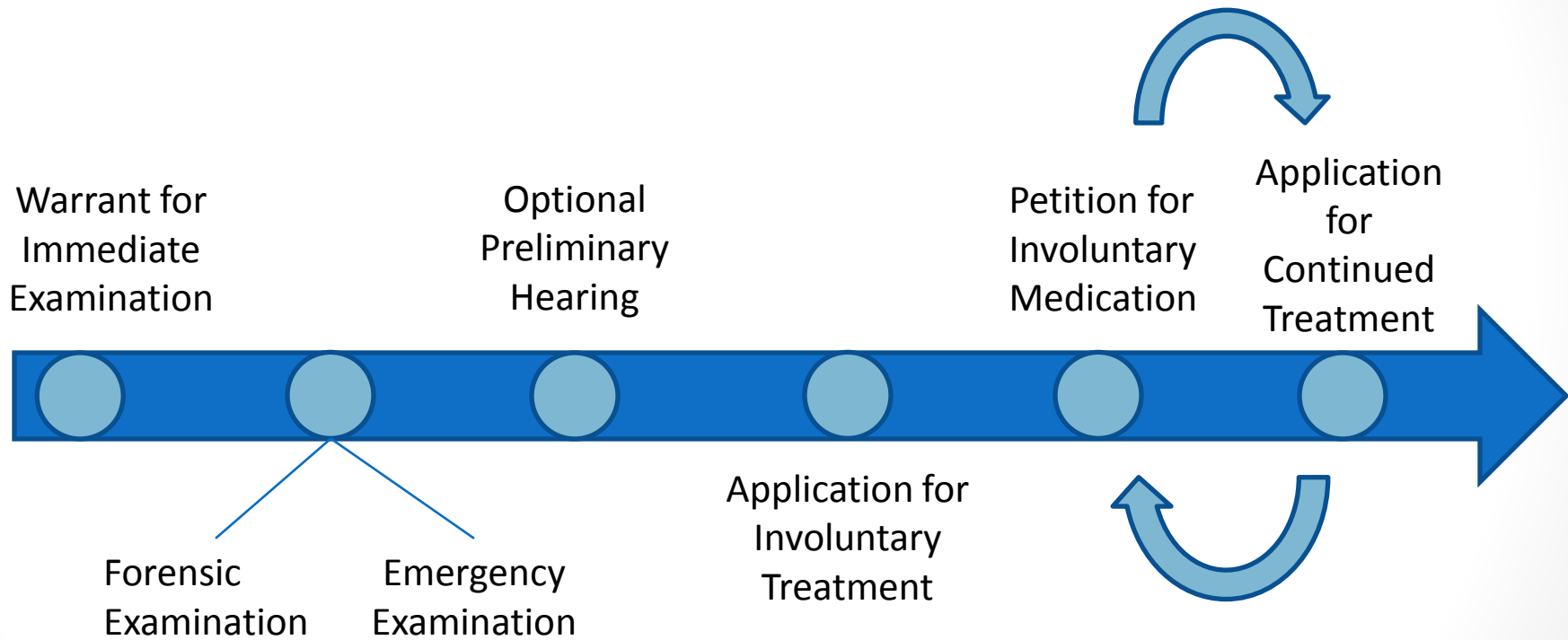
Authorization of future 72 hour hospitalization requires:

Certification of treating physician filed with CMH stating:

- Person refused medication;
 - Person \neq competent;
- Proposed medications; AND
- Substantial probability person will pose danger to self or others if not hospitalized and receiving IM.

Provision of 2-14 days notice by CMH to Court, person, and person's attorney; notice with statement that person may contest order must be given within 24 hours of receipt of physician's certificate by CMH

Involuntary Treatment Timeline



Changes proposed by S.287

An act relating to
involuntary treatment and
medication

Changes to the Preliminary Hearing

| Existing Law | Proposed Amendment |
|--|---|
| Preliminary hearing is <i>optional</i> ; must be requested within 5 days of admission for emergency exam | Preliminary hearing is <i>mandatory</i> |
| Any evidence authorized by Rules of Evidence is admissible | Only the following evidence is permissible: <ul style="list-style-type: none">• Application for emergency exam (and accompanying physician's certificate)• Application for involuntary treatment (if available at time of hearing) |
| Hearsay inadmissible | Hearsay admissible, where it is deemed relevant by the Court |
| Hearing is conducted within 3 days of the filing of the request | Hearing is conducted within 5 days of admission for emergency exam |
| Burden of proof = none specified in statute | Burden of proof = substantial evidence |

S.287 Proposal: Expedited AIT Hearing

- S.287 creates new layer of process: an expedited AIT hearing as an alternative to the existing AIT hearing
- Court may grant order for expedited AIT from either party if:
 - The person was found to be a “person in need of treatment” after his/her emergency exam; AND
 - There is a showing of good cause (includes a showing that the person presents a significant risk of harm to self or others even while hospitalized).
- Expedited timeline:
 - Within 5 days from the date of AIT’s receipt by the Court; OR
 - Within 10 days from date of AIT’s receipt by the Court if psychiatric exam is ordered under §7614.
- Court cannot grant either party an extension under an expedited AIT

AIT versus Expedited AIT

| AIT | Expedited AIT |
|--|---|
| All AITs are considered by Court | Court only considers expedited AITs if the following are met: <ul style="list-style-type: none"><li data-bbox="853 525 1624 668">• The person was found to be a “person in need of treatment” after his/her emergency exam; AND<li data-bbox="853 679 1657 868">• There is a showing of good cause (includes a showing that the person presents a significant risk of harm to self or others even while hospitalized). |
| Hearing within 10 days from the date of AIT’s receipt by the Court; OR within 20 days from date of AIT’s receipt by the Court if psychiatric exam is ordered under §7614 | Hearing within 5 days from the date of expedited AIT’s receipt by the Court; OR within 10 days from date of expedited AIT’s receipt by the Court if psychiatric exam is ordered under §7614 |
| S.287 proposes narrowing unlimited extensions of up to 7 days for good cause to a onetime extension | No extensions |

Joint Filing of AIT and Petition for IM

| Existing Law | Proposed Change |
|---|--|
| <p>A petition for IM must be filed AFTER someone has:</p> <ul style="list-style-type: none">• received an OH or order for continued treatment in a hospital;• received an ONH after OH; or• is in Corrections as a convicted felon and it is determined that IM is appropriate | <p>A petition for IM may also be filed JOINTLY with an AIT or expedited AIT for persons found in need of treatment after an emergency examination</p> |

Petition for IM: Eligibility

CMH may file a petition for involuntary medication of a person refusing to accept psychiatric medication, IF one of the following conditions is met:

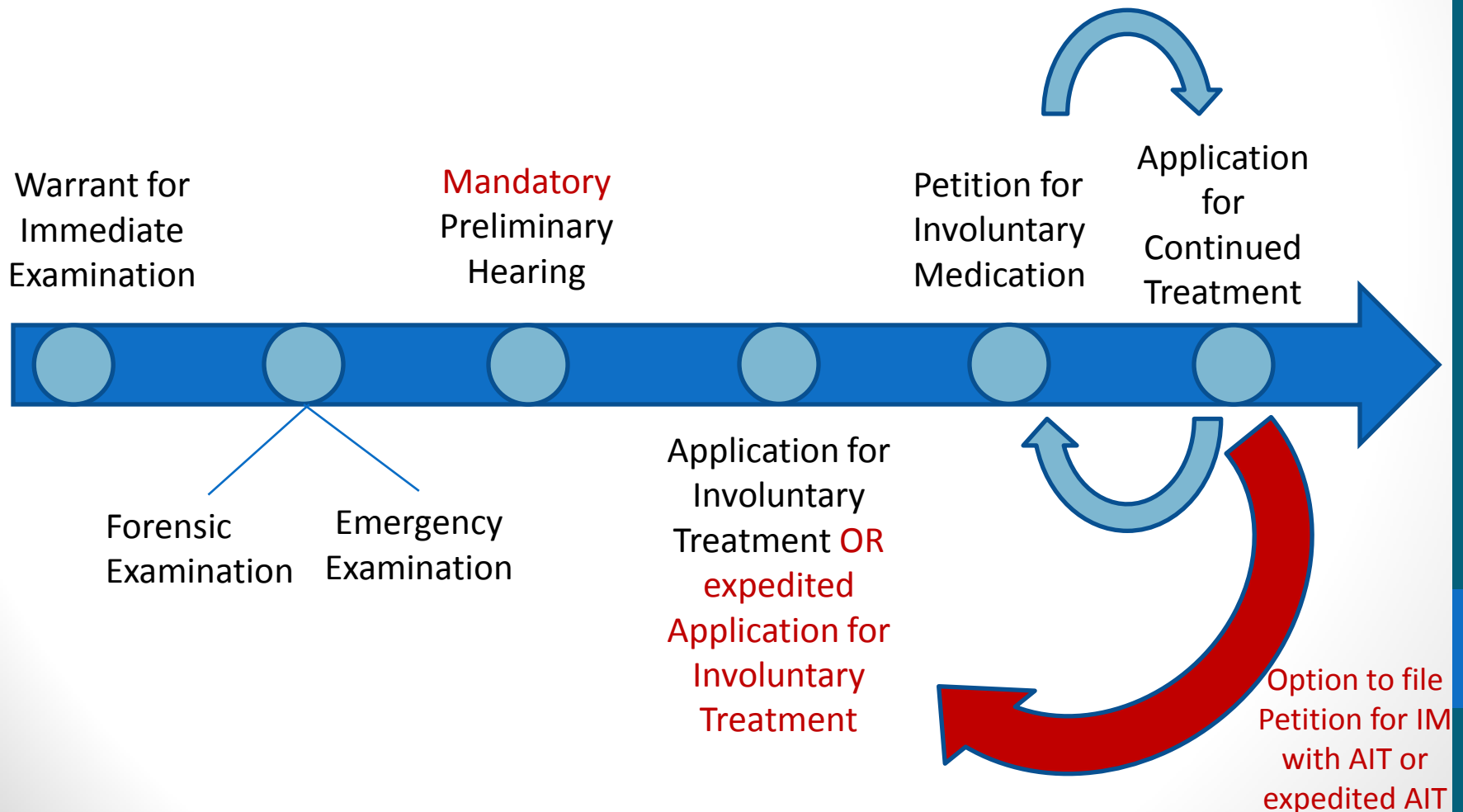
Person is in the care and custody of CMH pursuant to an OH or order for continued treatment in a hospital

Person previously received treatment under an OH and is currently receiving treatment under an ONH

Person is in the custody of the Commissioner of Corrections as a convicted felon; Person is held in a designated correctional facility;
AND
Departments of Corrections and Mental Health have jointly determined that involuntary medication is appropriate

Person is certified as in need of treatment at an emergency examination
AND
the petition for IM is filed jointly with the AIT or expedited AIT

Proposed Amendments to Involuntary Treatment Timeline



IM: Stays of Proceedings

S.287 seeks to make 2 changes to the Vermont Rules of Family Proceedings regarding stays of proceedings:

1. Automatic Stay Prior to Appeal:

| Existing law | Proposed amendment |
|---|---|
| Order for IM is automatically stayed for 30 days after its entry or until the time for appeal has expired | Order for IM may be enforced upon entry |

2. Stay Pending Appeal:

| Existing law | Proposed amendment |
|--|--|
| During appeal on OH, ONH, and involuntary treatment, Court (in its discretion) may grant/deny applications for continued treatment, modify order, or discharge patient | During appeal on OH, ONH, involuntary treatment, and IM, Court (in its discretion) may grant/deny applications for continued treatment or IM, modify order, or discharge patient |

Housekeeping and other provisions

- S.287 replaces DPOA for health care with advance directive; and
- Replaces Criminal Division of the Superior Court with the Family Division of the Superior Court (if not already updated)
- AHS required to examine contract with Legal Aid's Mental Health Project to determine if funding may be made contingent upon Legal Aid contracting with sufficient psychiatrists to conduct § 7614 exams in required time frame