



A REFRESHER: MICHIGAN'S CIVIL COMMITMENT LAWS AND THE AOTS

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ATOS, AOTS, DD & LIP GUARDIANSHIP AND 5150 HOLDS

ATOs – GONE

AOTs - CURRENT and has been place since 2005

DD Guardianship – Guardianship for someone who has a developmental disability

LIP Guardianship – Guardianship for someone who is has limited incapacities (Limited Incapacitated Person)

5150 Hold - is the number of the section of the Welfare and Institutions Code, which allows a person with a mental illness to be involuntarily detained for a 72-hour psychiatric hospitalization.

AOTS, DD & LIP GUARDIANSHIPS

Mental Health Code – Jurisdiction over AOTs

Estates and Protected Individuals Code (EPIC) – Jurisdiction over both Guardianship for an Individual with a Developmental Disability and Guardianship over an Individual with Limited Incapacity.

MICHIGAN'S CIVIL COMMITMENT LAW

Mental Health Code was amended in 2005 to introduce the use of **Assisted Outpatient Treatment**, replacing **Alternative Treatment Orders**. This amendment came after key findings from the **Mental Health Commission in 2004**:

- Michigan's Mental Health Code was an inpatient model in an outpatient world
- The system waits for crisis to act and delays treatment
- Treatment is harmful
 - Permanent incapacity
 - Incarceration
 - Poverty, homelessness, isolation, poor health
 - Increased risk of dementia, drug abuse and suicide

As a result of these findings, statutory criteria was established for **an Assisted Outpatient Treatment (AOT)** and the law was passed into law in 2005, commonly known as **Kevin's Law**.

KEVIN'S LAW

Kevin's law

- Established criteria for Assisted Outpatient Treatment (AOT) under court order.
 - gives **Probate court judges** power to order individuals into assisted outpatient treatment.
 - Amended most recently in 2019 to clarify procedure and expand criteria for ordering an individual to receive assisted outpatient treatment.
- AOT is a comprehensive array of mental health services and supports tailored to the needs of the individual and provided through the individual's local Community Mental Health Services Program (CMHSP) and to create a System of Care that includes the courts, hospitals, law enforcement, families and advocates.

MENTAL HEALTH CODE

The definitions of a “person requiring treatment” (including the criteria for someone to receive “assisted outpatient treatment” [AOT]) and “mental illness” under the Mental Health Code are found at MCL 330.1401(1) and MCL 330.1400(g):

NOTE: The standard for determining someone to be a “person requiring treatment” under the Mental Health Code is different from a “legally incapacitated individual” for whom a guardian is appointed under the Estates and Protected Individuals Code (EPIC). The standard for a LIP Guardianship is:

Clear and convincing evidence two things: (1) the individual lacks the understanding or capacity to make or communicate informed decisions, and (2) the appointment of a guardian is necessary to provide for the individual's continuing care and supervision.

DEFINITION OF MENTAL ILLNESS

The Mental Health Code defines Mental Illness at MCL 330.1400(g)

"**Mental illness**" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

PERSONS REQUIRING TREATMENT (a)

(1) "**person requiring treatment**" means (a), (b), or (c):

(a) An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.

PERSON REQUIRING TREATMENT

(B) & (C)

(b) An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.

(c) An individual who has mental illness, whose judgment is so impaired by that mental illness, and whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition, and presents a substantial risk of significant physical or mental harm to the individual or others.

PERSON REQUIRING TREATMENT EXCEPTION

(2) An individual whose mental processes have been weakened or impaired by a dementia, an individual with a primary diagnosis of epilepsy, or an individual with alcoholism or other drug dependence is not a person requiring treatment under this chapter unless the individual also meets the criteria specified in subsection

(1). An individual described in this subsection may be hospitalized under the informal or formal voluntary hospitalization provisions of this chapter if he or she is considered clinically suitable for hospitalization by the hospital director.

MICHIGAN'S GUARDIANSHIPS & AOTS

Michigan has two types of Guardianships:

Guardianship for Individual with a Developmental Disability

Guardianship for Limited Incapacitated Person (LIP).

- Partial (Limited) or Plenary (Unlimited)

Interplay with Mental Health Code and AOTs:

Consent: a written agreement executed by “a full or limited guardian authorized under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, with the authority to consent.”

Involuntary mental health treatment: involuntary mental health treatment does not include when a full or limited guardian consents to mental health treatment for his or her ward.

KEVIN'S LAW AOT VS. TRADITIONAL ATO

Kevin's Law AOT is more flexible than the traditional ATO (Alternative Treatment Order) in terms of procedure for reporting and bringing an individual into compliance.

- If Found to Require Treatment the Order will require the individual to receive AOT for **up to 180 days** through a community mental health services provider or other entity designated by MDHHS.
 - If ordering AOT only:
 - Must consider preferences and experiences
 - If conflicts with advance directive, an independent psychiatrist must review

An individual was eligible under the traditional ATO only if

- Non-compliant and not likely to become so
- Has been hospitalized at least twice or had an act or threat of serious violent behavior in last 48 months.
- Length of order was capped at 90 days.

AOT GOALS & OBJECTIVES

This new amendment with its flexibility and comprehensiveness was intended to create systems of care which will:

- Protect public safety
- Improve outpatient mental health care
- Improve consumer compliance
- Improve outcomes
- Reduce psychiatric hospitalizations
- Reduce recidivism - arrests/incarceration

SYSTEM OF CARE

The Community Mental Health Service Provider along with Courts, Law Enforcement, Hospitals, Families and Advocates were to create a system of care in which:

- individuals receive high-quality services in the community; and
- work toward transitioning back to voluntary care.

ROLE OF THE COMMUNITY MENTAL HEALTH SYSTEM

Statutorily, the responsibility for implementing and monitoring AOT belongs to the community Mental Health (CMH) authority and their contracted service providers.

Specifically, to:

- train staff on changes to the mental health code and AOT, including eligibility and best candidates.
- Develop internal process for identifying and screening patients for appropriateness of AOT.
- Train staff on filing petitions and all court forms.
- **Educate** staff on court processes, requirements to testify and court etiquette.
- Train staff on **monitoring AOTs** and providing services to consumers on AOTs.
- Have **procedures** in place with **probate court, hospitals, emergency rooms, prosecutor's office, and law enforcement** regarding various aspects of the AOT processes.

HOSPITAL'S ROLE

Emergency rooms:

- **Educate** staff on patients eligible for AOT.
- **Adopt a process** based on existing evidence to **screen** patients eligible for AOT.
- Work with county Probate Court(s) to **create a system to easily file petitions.**
- Identify a contact person within the community mental health authority(s) to assist in the tracking and monitoring of the AOT process.
- Psychiatric Units: Deferments
 - Develop Plan of Treatment in Community and ensure implementation at discharge.

COURT'S ROLE

Assisted outpatient treatment (AOT) is a legal mechanism for providing outpatient treatment to individuals living with Serious Mental Illness and whose non-adherence places them at risk for negative outcomes.

AOT orders work by compelling the individual to receive specific treatment that will prevent their condition from worsening and by committing the mental health system to provide treatment.

LEGAL PROCEDURE OF AN AOT

- **The AOT case comes before a judge after a Petition for Mental Health Treatment for outpatient commitment is filed with the court.**

The petition will specify whether the to request assisted outpatient treatment is without hospitalization, hospitalization only, or a combination of both. It also includes the transport order request.

- **The petitioner for the commitment order and the respondent typically are represented by counsel.**

- The judge makes a finding whether the respondent meets statutory criteria for court-ordered civil commitment in the community.

- **Respondents found to meet criteria for court-ordered community treatment are committed to the care of a local mental health service providers.**

- By requirement of state statute, a treatment plan containing specific clinical directives may be incorporated into the court order. The plan typically includes provision for a case manager and for the patient to take prescribed medications.

COURT ORDERS

The court has the authority to order hospitalization, assisted outpatient treatment, or a combination of hospitalization and assisted outpatient treatment and now has:

- Authority to order a case management plan and case management services.

ORDER FOR TRANSPORT

The revisions in 2019 to section 410 eliminated the requirement of a supplemental petition to request a transport and instead requires the filer to set forth the reasons an examination could not be secured within the initial petition (PCM 201) or following the filing of an initial petition, on newly created form PCM 245 (Notice of Inability to Secure Evaluation/Examination).

SPECIFICITY OF AN AOT

- Case management services
- Medication
- Blood/urinalysis tests to determine compliance with or effectiveness of prescribed medications
- Individual/group therapy
- Educational/vocational training
- Assertive community treatment team services
- Alcohol/substance use disorder treatment, or both **subject to review every 6 months**
- Any other services prescribed

LENGTH OF ORDERS

Initial Order: The length of the initial order allows for hospitalization and/or assisted outpatient treatment for the following lengths:

Hospitalization shall not exceed **60 days**.

Assisted outpatient treatment shall not exceed **180 days**.

Combination of hospitalization and assisted outpatient treatment shall not exceed 180 days (hospitalization limited to 60 days).

Second Order: The court has the authority to order an individual to a second order for involuntary mental health treatment for no more than **90 days total**.

Continuing Order: The court the authority to order an individual to a continuing order for involuntary mental health treatment shall not exceed **1 year total**.

LAW ENFORCEMENT'S ROLE

Law Enforcement may not always be involved in originating the order, but may they play an important role in the process by executing Orders for

- Transport issued by the court,
- Taking an individual into protective custody for transport to a local ER or crisis center for a mental health assessment.

Law Enforcement staff may also be the first responder to an individual in mental health crisis and must:

- Train staff on who is eligible for AOT, how to file, and transport orders.
- Identify people with frequent law enforcement contacts who may be eligible for AOT.
- Designate Crisis Intervention Team trained staff or officers with additional mental health training to conduct transport orders.
- Work with the community mental health authority to follow-up on people with AOTs in the community.

LAW ENFORCEMENT CONT'D

Michigan passed a law which went into effect in January 2021 which provided for

- "communication impediment" designation to go on vehicle registrations, drivers licenses and state identification cards.

People with autism, deafness or hearing loss voluntarily can sign up for the designation.

Designations won't be visible on licenses or ID cards, but police will be able to see them when they run plate numbers through the law enforcement information network.

AOTS ACROSS MICHIGAN

- **In 2020, 18,000 petitions for mental health treatment filed in Michigan.**
 - These persons were screened, had 2 certifications, hospitalized and petition filed for hearing in 7 days.
- **10,500, or 58% of these petitions were dismissed, withdrawn or deferred before the hearing date.**

CIVIL SYSTEM DEFERMENTS

AOT created the greatest opportunity for diversion in the civil system! AOTs are a civil matter and not criminal.

- One third of all petitions filed in Michigan were resolved by deferment.

STATUTORY REQUIREMENT OF DEFERMENTS

If the individual has **agreed to treatment in the community**, the hospital is required to release the individual from the hospital to the outpatient treatment provider. MCL 330.1455(9)

- The hospital is **required to notify the individual, legal counsel for the individual, a treatment team member from the hospital and a person from the community mental health services program**. MCL 330.1455(5)
- At the meeting the proposed plan of treatment in the hospital is to be presented as well as the proposed plan of treatment in the community of either assisted outpatient treatment or a combination of **hospitalization and assisted outpatient treatment**. MCL 330.1455(3)

During the **deferral period**, if the individual **refuses the prescribed treatment**, the court is to be notified to convene a hearing, and, if necessary, order a peace officer to transport the individual to the hospital where the individual is to remain until the hearing is convened. MCL 330.1455(8)

AOTS IN MICHIGAN

Is it's System of Care working?

- MDHHS reports that for at least the last 3 years, the number one reason for Emergency Room visits in Michigan was **psychiatric care**.
 - 165,712 visits in 2020
 - Over 200,000 in 2018 and in 2019.
- Repeated, short hospital stays, without effective follow up, creates a revolving door and produces the risks AOTs were meant to reduce.

AOT ENFORCEMENT

The court order is typically enforced through a clinical response focused on restoring the participant to treatment adherence.

A CLINICAL PROVIDER'S PERSPECTIVE

How do we interacting with the legal procedures?

How do we stay focused on Recovery?

Your questions

GOAL OF RECOVERY

Recovery Focused Lens:

- Individualized
- Focused on resilience
- Maintaining one's control of life
- Meaningful life, despite symptoms
- New baseline of functioning

Holistic approach vs. only physical health

Established protocols to support the journey to Recovery

RECOVERY MEETS LAW AWARENESS

Awareness of AOT's for clients

- Understanding expectations of AOT
- Identifying who is monitoring AOT
- Reporting engagement in services to monitor, if required
- Knowing what supports are necessary for success
- Being an advocate

RECOVERY MEETS LAW

FOLLOW UP CARE & ENGAGEMENT

Follow up Care after ER visits/inpatient placement for psychiatric reasons

- Highest risk for 48 hours after released
- Risk still present 10 days after release

Engagement in Services

- Follow through with established service providers
- No show follow up's
- Assessing barriers to engagement
- “Buy in” to services- Stage of Change

RECOVER MEETS LAW RELATIONSHIPS

Relationships, Relationships, Relationships

- Number 1 factor of resiliency
- Resiliency and Recovery go hand in hand
- AOT and Compliance
- Ensuring safety for all
- Regaining control of life

QUESTIONS:

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WAYNE COUNTY PROBATE COURT'S BEHAVIORAL HEALTH UNIT (BHU)

Purpose:

- (1) increase the use of Assisted Outpatient Treatment (AOT) orders for individuals who would benefit from community support and resources, with the intention of diverting those individuals from hospitalization and contact with law enforcement and the criminal justice system;
- (2) to collaborate with key stakeholders through training on the behavioral health processes and protocols pursuant to the Michigan Mental Health Code; and
- (3) to promote community awareness of behavioral health issues and resources across the County.

SPECIFIC FUNCTIONS A BHU

Can include:

- Processing MI/DD Petitions & Transport Orders (both emergency and nonemergency)
- Act as a liaison between the Court and Mental Health Providers, Hospitals, & Law Enforcement
- Ensure that the Court has a record of a Treatment Plan for individuals on combined orders or AOT only orders
- Create processes for information flow between stakeholders
- Ensure compliance w/AOT orders