

ASSISTED OUTPATIENT TREATMENT IN GEORGIA

Marc D'Antonio, Judge

Muscogee County Probate Court

with help from my friends like **Sarah S. Harris**, Judge, Bibb County Probate Court and **Rebecca Nix**, LPC, MAC Judicial Services Unit Program Manager DBHDD and others.



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Hello and Welcome

- Thank you, Wade Yoder and Kecia Cawthorne for bringing us here today.
- Brief around the room of introductions.
- Why am I wearing a hat. (It is not a fashion statement.)
- The Handouts
 - Sample Order for Involuntary Treatment
 - Application for Preliminary Investigation Pursuant to O.C.G.A. §§37-3-61 & 37-3-62
 - Treatment Advocacy Center (A great resource.)
 - Dismiss Upon Civil Commitment with AOT (Give a copy to your D.A. and P.D. friends)
 - Implementing Assisted Outpatient Treatment – Executive Summary

Disclaimers and Stuff

- At other trainings, I have been reprimanded for using “salty language.” However, I am not sure I have fully learned my lesson.
- What I say may not exactly be DBHDD policy.
- Feel free to interrupt.
- Don’t be afraid to call me out on things you disagree with or believe are wrong. I am a judge that likes to be told he is wrong!
- I am happy to discuss any questions or concerns about what we discuss today. In fact, I would like today to be more conversational than lecture.

INTRODUCTION AND AOT HISTORY

- **Assisted Outpatient Treatment** is the practice of providing court-ordered community-based mental health treatment under a civil involuntary commitment orders to individuals living with serious mental illness and who require **outpatient treatment** as defined by Georgia law.
- HB 1013, a comprehensive mental health reform measure, created the opportunity for AOT Pilot sites and changed the legal standard for involuntary outpatient treatment.
- With AOT funding from the State and SAMHSA grants five Pilot sites were selected-ish.
- **HOWEVER – You do not have to be a grant recipient to have an AOT project!**



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Outpatient as defined in O.C.G.A. § 37-3-1(12.1)

- ‘Outpatient’ means a person who is mentally ill and:
 - (A) Who is capable of surviving safely in the community with available resources or supervision from family, friends, or others;
 - (B) Who, based on their psychiatric condition or history, is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness to self or others; and
 - (C) Whose current mental status or the nature of their illness limits or negates their ability to make an informed decision to seek voluntarily or to comply with recommended treatment.

Involuntary Outpatient Commitment and AOT

Involuntary Outpatient Treatment

O.C.G.A. 37-3-1(12.2)

“Outpatient treatment” means a program of treatment for mental illness outside a hospital facility setting which includes, without being limited to, medication and prescription monitoring, individual or group therapy, day or partial programming activities, case management services, and other services to alleviate or treat the patient’s mental illness so as to maintain the patient’s semi-independent functioning and to prevent the patient’s becoming an inpatient.

Assisted Outpatient Treatment

O.C.G.A. 37-1-120(2)

“Assisted outpatient treatment” means involuntary outpatient care, pursuant to Article 3 of Chapter 3 of this title, provided in the context of **a formalized, systematic effort** led by a community service board or private provider in collaboration with other community partners...”

What Assisted Outpatient Treatment (AOT) is NOT

- NOT a panacea.
 - AOT is a tool to help people whose current mental status or the nature of their illness limits or negates their ability to make an informed decision to seek voluntarily or to comply with recommended treatment .
- NOT an **accountability court**.
 - AOT population may not have enough insight into their illness to be successful in a traditional mental health accountability court.
 - See next slide
- NOT **forensic evaluation and restoration**.
 - Can be used to avoid forensics (See TAC Handout)
 - The code allows for forensic outpatient restoration, but that discussion is beyond the scope of our meeting today.



AOT verses Mental Health/Drug Court

Mental Health Courts

Assisted Outpatient Treatment

- Post-adjudication **criminal legal proceeding** - Participant has entered plea of guilty, nolo contendere, or found guilty.

- Is a very serious **civil legal proceeding** that may interfere with an individual's liberty and autonomy

- Voluntary

- Involuntary

- Must have criminal charges

- Participant may, or may not, not have criminal charges (Goal to have charges resolved.)

- All participants attend scheduled status hearings before judge.

- Participants may see judge:
 - only initial petition hearing, or
 - informally – check-ins ... maybe even lunch
 - if nonadherent, or
 - at scheduled status hearings (set by program).

- All participants adhere to the same program

- Participants adhere to an individualized treatment plan presented that is part of the petition.

- Enters program through plea in Superior Court

- Enters program through petition in Probate Court

- Minimum 2-year commitment (most courts)

- Duration determined by court (initial petition usually 12 months but can be shortened)

Assisted Outpatient Treatment How it works?

The Provider for AOT is a community service board or private provider who work in collaboration with other community partners.

Who are community partners?

- Mental health providers
- DBHDD
- Judiciary
- Law enforcement (Jails, mental health jail service providers)
- Attorneys for legal representation
- Community services, nonprofits, shelters, transit authority
- See Handout – TAC Executive Summary

Assisted Outpatient Treatment

Provide evidence-based treatment, rehabilitation, and case management services under an individualized service plan to each patient, focused on helping the patient maintain stability and safety in the community;

Identify residents of the service area who qualify as outpatients

- Persons currently part of the provider service area and known to provider
- Jail/law enforcement referrals
- Homeless shelter/nonprofit referral
- Court referrals
- See Handout - Application for Preliminary Investigation

AOT Population Criteria

The person is 18 years of age or older;

The person is suffering from a mental health (~~or substance use disorder~~) which has been clinically documented by a health care provider licensed to practice in Georgia;

There has been a clinical determination by a physician or psychologist that the person is unlikely to survive safely in the community without supervision;

AOT Population Criteria

The person has been offered an opportunity to participate in a treatment plan by the department, a state mental health facility, a community service board, or a private provider under contract with the department and such person continues to fail to engage in treatment;

The person's condition is substantially deteriorating;

Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure such person's recovery and stability;

AOT Population Criteria

In view of the person's treatment history and current behavior, such person needs assisted outpatient treatment to prevent a relapse or deterioration that would likely result in grave disability or serious harm to himself or herself or others; and

It is likely that the person may benefit from assisted outpatient treatment.

Who is **not** a good candidate for AOT

- People with primary substance use disorders
- People with personality disorders
 - Borderline Personality Disorder, etc.
 - People that engage in attention seeking behaviors
- Some individuals whose baseline is active psychosis
 - Might still be under an involuntary treatment order and may be given forced medication.
- Individuals with moderate to severer intellectual disabilities.
 - Always exceptions -- **we do have** AOT participants with intellectual disabilities.

Lack of compliance

- The person has a history of lack of compliance with treatment for his or her mental health or substance use disorder, in that at least one of the following is true:
 - (i) The person's mental health or substance use disorder has, at least twice within the previous 36 months, been a substantial factor in necessitating hospitalization or the receipt of services in a forensic or other mental health unit of a correctional facility, not including any period during which such person was hospitalized or incarcerated immediately preceding the filing of the petition; or
 - (ii) The person's mental health or substance use disorder has resulted in one or more acts of serious and violent behavior toward himself or herself or others or threatens or attempts to cause serious physical injury to himself or herself or others within the preceding 48 months, not including any period in which such person was hospitalized or incarcerated immediately preceding the filing of the petition;

Petition for Involuntary Outpatient Treatment

(Technically can't use DBHDD forms. I can email forms I created to folks that need them.)

The provider must establish a procedure to initiate a Petition for Involuntary outpatient treatment and the provider must understand the responsibility to:

Safeguard, at all stages of proceedings, the due process rights of persons alleged to require involuntary outpatient care

The Provider will need representation by an attorney (SAAG or private attorney)

Individual has a right to his/her own counsel. Court can/will appoint a lawyer paid by the County the individual is from.

Notification of rights to the individual
Notification to Personal Reps or Guardian ad Litem.

Individual must be personally served with the Petition
However, be trauma informed

Hearing

AOT Petition Timeline Overview



“The first thing we do is, let’s kill all the lawyers.”

said by Dick the Butcher in Act IV, Scene II of William Shakespeare’s Henry VI, Part II,

- Why kill the lawyers?
 - Supreme Court Justice John Paul Stevens shared this reading of the line, even analyzing it in a 1985 decision: “As a careful reading of that text will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.”
- AOT interferes with people’s agency, autonomy, and liberty interests.
 - Therefore, lawyers must be involved in ALL aspects of involuntary civil commitments to protect the basic civil rights individual subject to AOT.
- You can’t have an AOT program without lawyers on both side to ensure due process and access to justice.



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The Judge's Role in a Hearing

- **Be Trauma Informed. Make the Respondent feel like part of the process.**
 - Court is Traumatic.
 - Active Listening and LEAP (Listen - Empathize - Agree - Partner)
 - This is not the type of case where one side wins.
 - The Respondent has a SMI and we are all trying to help.
- **Protect the individual's U.S. Constitutional Rights**
 - 14th Amendment – due process and liberty interest
- **Help the parties understand the civil legal process**
- **Conduct a hearing that allows everyone to speak at the appropriate time.**
- **Decide whether Respondent meets the legal standard to be subject to an involuntary outpatient treatment order.**
- **Decide whether the Respondent's discharge and individualized service plan is realistic and in his/her best interest.**
- **Schedule follow up status hearings when appropriate to hold the providers and the individual subject to the involuntary treatment order accountable.**

The “Black Robe” effect can

- Can help to maintain engagement
- Facilitate communication among all the stakeholders. Communication is key to success!
- Keeps treatment team on top of treatment plan and ensures they are working with the individual to create and modify the plan to the best interest and input of individual



The Respondent's Attorney's Role in a Hearing

- Protect the individuals U.S. Constitutional Rights
 - 14th Amendment – due process and liberty interest
- Help the individual understand the civil legal process
- Help the individual express his/her wishes in court.
- Advocate for those wishes
- Advocate for an individualized service plan that is realistic and is in his/her best interest ... to the extent his/her client agrees.
- Request the appointment of Guardian ad Litem if there is a need for a “best interest” advocate.
- Help the individual's other attorneys (criminal charges) and providers understand the benefits of AOT

The Behavioral Health Provider's Attorney's Role in a Hearing

- As an officer of the court, promote due process and fairness for all.
- Make sure client proves all aspects of their case by clear and convincing evidence.
- Prepare Witnesses for their court appearances
 - Qualify experts (to give opinion testimony)
 - Discuss individual service plan with social workers etc.
- Help the client's representatives understand the civil legal process.
- Help the client's representatives advocate their position.
- Help other attorneys (criminal charges) and others understand the benefits of AOT.

AOT Compliance and Enforcement

- See Handout – Sample Order
- Treatment Advocacy Center – AOT best practices
 - Jail is not the purpose of AOT – the point is to keep people out of jail.
 - LEAP (Listen - Empathize - Agree - Partner)
- Status Reviews
 - Every individual is different and needs to be addressed accordingly.
 - We can try to be creative.
- Orders to Apprehend Non-Compliant Individuals
 - For some, just a ride to the doctor by the sheriff.
 - Rarely, can be used to force medication if the individual is so psychotic that they lack capacity to make informed consent. Many more steps required.
- If AOT really is not working – dismiss the case and relieve obligations under the order.

A success story

- M.D. – Is a person with schizophrenia with very fixed delusions.
- She spent five years in Milledgeville on a forensic restoration based on stalking charges originating in a metro Atlanta county. The charges were directly related to her fixed delusions. (Kinda like the person that stalked David Letterman.)
- She was homeless when charges were dropped, and she given a ride back to Columbus.
- Through Columbus AOT – she has housing, is medication compliant, and hasn't been arrested over the past two years.
- She is still a challenging case for everyone that works with her.

Moving Forward

- Collaboration and Communication are the key to success!
- See Handout - Treatment Advocacy Center White Paper Executive Summary
 - This meeting is a great first step.
- AOT referrals to Middle Flint Health & Wellness
 - See Handout - Application for Preliminary Determination under O.C.G.A. §§ 37-3-61 & 37-3-62
 - **Application does not guarantee the individual will end up in AOT but is a way for stakeholders to identify folks that may be appropriate for AOT.**
 - **Jails and criminal courts can use this Application for those that meet criteria for AOT but are not in crisis.**



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QUESTIONS

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