

Laura's Law

A Functional Outline*

Assisted Outpatient Treatment Investigations

Only the county mental health director, or his or her designee, may file a petition with the superior court in the county where the person is present or reasonably believed to be present. The following persons, however, may request that the county health department investigate whether to file a petition for the treatment of an individual:

- 1) Any adult with whom the person resides;
- 2) An adult parent, spouse, sibling, or adult child of the person;
- 3) If the person is an inpatient, the hospital director;
- 4) The director of a program providing mental health services to the person in whose institution the person resides;
- 5) A treating or supervising licensed mental health treatment provider; or
- 6) The person's parole or probation officer.

On receiving a request from a person in one of the classes above, the county mental health director is required to conduct an investigation. The director, however, shall only file a petition if he or she determines that it is likely that all the necessary elements for an AOT petition can be proven by clear and convincing evidence. The availability of assisted outpatient services for the anticipated length of the order (up to six months) must be established by the court before ordering assisted outpatient treatment. Thus a county mental health director who does not believe the requisite qualified services are available is precluded from filing a petition.

Assisted Outpatient Treatment Criteria

A person may be placed in assisted outpatient treatment only if, after a hearing, a court finds that all of the following have been met. The person must:

1. Be eighteen years of age or older;
2. Be suffering from a mental illness;
3. Be unlikely to survive safely in the community without supervision, based on a clinical determination;
4. Have a history of non-compliance with treatment that has either:
 - A. Been a significant factor in his or her being in a hospital, prison or jail at least twice within the last thirty-six months or;
 - B. Resulted in one or more acts, attempts or threats of serious violent behavior toward self or others within the last forty-eight months;
- 5) Have been offered an opportunity to voluntarily participate in a treatment plan by the local mental health department but continues to fail to engage in treatment;
- 6) Be substantially deteriorating;

* Does not include mental health treatment service requirements relating to use or county adoption

- 7) Be, in view of his or her treatment history and current behavior, in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would likely result in the person meeting California's inpatient commitment standard, which is being:
 - A. A serious risk of harm to himself or herself or others; or
 - B. Gravely disabled (in immediate physical danger because unable to meet basic needs for food, clothing, or shelter);
- 8) Be likely to benefit from assisted outpatient treatment; and
- 9) Participation in the assisted outpatient program is the least restrictive placement necessary to ensure the person's recovery and stability.

Any time spent in a hospital or jail immediately prior to the filing of the petition does not count towards either the 36 or 48-month time limits in criterion No. 4 above. In other words, if an individual spent the two months prior to the filing in a hospital, the court can then look back 38 months (36+2) to see if he or she meets criterion No. 4(A).

Petition for Assisted Outpatient Treatment

The petition must state: (1) that the person is present or believed to be present within the county where the petition is filed; (2) all the criteria necessary for placement in AOT; (3) the facts supporting the belief that the person meets all the criteria; and (4) that the subject of the petition has the right to be represented by counsel.

The petition must be accompanied by an affidavit of a licensed mental health treatment provider designated by the county mental health director stating that either:

- 1) The licensed mental health treatment provider examined the person no more than ten days prior to the submission of the petition, believes that the person meets the criteria for assisted outpatient treatment, recommends assisted outpatient treatment, and is willing to testify at the hearing; or
- 2) The licensed mental health treatment provider, or his or her designee, made appropriate attempts no more than ten days prior to the filing of the petition to examine the person and the person refused, has reason to suspect the person meets the criteria for assisted outpatient treatment, and is willing to examine the person and testify at the hearing.

The court must fix a date for a hearing on the petition that is no more than five days (excluding weekends and holidays) after the petition is filed.

Continuances will only be allowed for good cause. Before granting one, the court shall consider the need for an examination by a physician, or the need to provide assisted outpatient treatment expeditiously.

Notice of Hearing

The petitioner must cause a copy of the petition and notice of the hearing to be personally served on the person who is its subject. The petitioner also has to send notice of the hearing and a copy of the petition to:

- 1) The county office of patient rights; and
- 2) The current health care provider appointed for the person, if known.

Note: The person subject to a petition may also designate others to receive adequate notice of the hearings.

Right to Counsel

The person who is subject to the petition has the right to be represented by counsel at all stages of an AOT court proceeding. If the person elects, the court shall immediately appoint a public defender or other attorney to oppose the petition. If able to afford it, the person is responsible for the cost of the legal representation on his or her behalf.

Settlement Agreements

After an AOT petition is filed but before the conclusion of the hearing on it, the person who is the subject of the petition may waive the right to a hearing and enter into a settlement agreement. If the court approves it, a settlement agreement has the same force and effect as a court order for assisted outpatient treatment.

The settlement agreement must be in writing, agreed to by all parties and the court, and may not exceed 180 days (note – initial orders by a court after a hearing are for a period of up to six months, which will be a few days longer). The agreement is conditioned upon an examining licensed mental health treatment provider stating that the person can survive safely in the community. It also must include a treatment plan developed by the community-based program that will provide services to the person.

After entering a settlement agreement, a court designates the appropriate county department to monitor the person's treatment under, and compliance with, the settlement agreement. Only the court can modify settlement agreements, but either party may request a modification at any time during the 180-day period.

Assisted Outpatient Treatment Hearing

The court will hear testimony and, if advisable, examine the person (in or out of court). The testimony need not be limited to the facts included in the petition.

If the person fails to appear at the hearing and appropriate attempts to elicit attendance have failed, the court may conduct the hearing in the person's absence. However, the court is prohibited from ordering AOT unless a physician who has reviewed the available treatment history of the person and personally examined him or her no more than ten days before the filing of the petition testifies in person at the hearing.

If the person is present at the hearing but has refused and continues to refuse to be examined and the court finds reasonable cause to believe the allegations in the petition to be true, it may order the person be taken into custody and transported to a hospital for examination by a licensed mental health treatment provider. Absent the use of the inpatient hospitalization provisions of California law, the person may be kept at the hospital for no more than 72 hours.

Any person ordered to undergo assisted outpatient treatment who was not present at the hearing at which the order was issued may immediately petition the court for a writ of habeas corpus, which is a judicial challenge asserting that, under these circumstances, the

person does not meet the eligibility criteria for AOT. Treatment under the order may not commence until that petition is resolved in another hearing.

If after hearing all relevant evidence, the court finds that the person does not meet the criteria for assisted outpatient treatment, the court will dismiss the petition.

If the court finds, by clear and convincing evidence, that the person meets the criteria for assisted outpatient treatment and there is no appropriate and feasible less restrictive alternative, the court may order the person to receive assisted outpatient treatment for up to six months.

The Treatment Plan

In the assisted outpatient treatment order, the court shall specify the services that the person is to receive. The court may not require any treatment that is not included in the proposed treatment plan submitted by the examining licensed mental health treatment provider. The court, in consultation with the county mental health director, must also find the following:

- 1) That the ordered services are available from the county or a provider approved by the county for the duration of the court order;
- 2) That the ordered services have been offered on a voluntary basis to the person by the local director of mental health, or his or her designee, and the person has refused or failed to engage in treatment;
- 3) That all of the elements of the petition have been met; and
- 4) That the treatment plan incorporated in the order will be delivered to the county director of mental health, or his or her appropriate designee.

Renewals

If the condition of the person requires an additional period of AOT, the director of the assisted outpatient treatment program may apply to the court prior to the initial order's expiration for an additional period of AOT of no more than 180 days (initial orders are for a period of up to six months, which can be a few days longer). The procedures and requirements for obtaining a renewal order are the same as for obtaining an initial order.

Early Release from Assisted Outpatient Treatment

There are two methods by which someone under an order can establish that he or she no longer meets the eligibility criteria and should be released from an AOT order:

- 1) No less than every 60 days the director of the assisted outpatient treatment program is required to file an affidavit with the court stating that the person still meets the criteria for placement in the program. Although not explicitly stated in the statute, this presumably means that anyone who does not meet the criteria must be released from AOT. The person has the right to a hearing to challenge the assessment. If the court finds that the person does not meet the criteria, it will void the AOT order.
- 2) Also, an assisted outpatient may at any time file a petition for a writ of habeas corpus. At the hearing on this petition the court will determine whether or not the

person still meets the initial AOT eligibility requirements. If not, the person shall be released from the AOT order.

In either type of hearing the burden of proving that the AOT criteria are still met is on the director.

Remedy for Non-Compliance with Assisted Outpatient Treatment

A licensed mental health treatment provider can request that one of certain designated classes of persons (peace officers, evaluation facility attending staff, members of mobile crisis teams, and other professional persons designated by the county) take a person under an AOT order to a hospital to be held for an up to 72-hour examination to determine if he or she meets the criteria for inpatient hospitalization (*i.e.*, that the person is a danger to self/others or gravely disabled because of a mental illness).

The treatment provider may only make such a request on determining that:

- 1) The person has failed or refused to comply with the court-ordered treatment,
- 2) Efforts were made to solicit compliance, and
- 3) The person may need involuntary admission to a hospital for evaluation.

Any continued involuntary retention in the evaluating facility beyond the initial 72 hours must be pursuant to the California Code's provisions for inpatient hospitalization. A person found not to meet the standard for involuntary inpatient hospitalization during the evaluation period and who does not agree to stay in the hospital voluntarily must be released.

Failure to comply with an order of assisted outpatient treatment alone is not sufficient grounds for involuntary civil commitment. Neither may such non-compliance result in a finding of contempt of court.

Rights of Persons Subject to Petitions and Orders for Assisted Outpatient Treatment

A person subject to a petition for assisted outpatient treatment has the right to:

- 1) Retain counsel or utilize the services of a court-appointed public defender;
- 2) Adequate notice of the hearings;
- 3) Have notice of hearings sent to parties designated by the person;
- 4) Receive a copy of the court-ordered evaluation;
- 5) Present evidence, call witnesses, and cross-examine adverse witnesses;
- 6) Be informed of his or her right to judicial review by habeas corpus;
- 7) Not be involuntarily committed or held in contempt of court solely for failure to comply with a treatment order;
- 8) Be present at the hearing, unless he or she waives this right;
- 9) Appeal decisions, and to be informed of his or her right to appeal; and
- 10) Receive the least restrictive treatment deemed appropriate and feasible.

**AB 1421 Process Schematic
by CA Psychiatric Assoc.**

