



Proposal to Clarify Ohio's Existing Court Ordered Outpatient Treatment Law

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"It must be remembered that for the person with severe mental illness who has no treatment, the most dreaded of confinements can be the imprisonment inflicted by his own mind, which shuts reality out and subjects him to the torment of voices and images beyond our powers to describe."

-- Supreme Court Justice Anthony Kennedy, 1999

Proposal to Clarify Ohio's Existing Court Ordered Outpatient Treatment Laws

Overview:

If we told you that there was a way to improve treatment for individuals with serious and persistent mental illness and save money at the same time, would you read further?

Apparently so! Such an opportunity exists in Ohio and only requires minor changes to the Ohio Revised Code to clarify what is already allowable under current law. With a few small changes, we can reduce the number of people who wind up in our emergency rooms, state hospitals, jails and prisons and most importantly, we can improve the quality of life for many Ohioans with serious mental illness and those who care about them.

Ohio's probate court judges in various counties, including Summit, Butler and Montgomery, use the civil commitment code, to find the "least restrictive alternative" for persons with severe mental illness who meet the criteria for court-ordered treatment. In so doing, community-based alternatives, including court ordered outpatient treatment, have been successfully adopted.

In 1994, Summit County adopted court ordered outpatient treatment guidelines that spell out under what circumstances it is appropriate to commit someone to outpatient treatment. According to the Ohio Department of Mental Health, Summit County's policy has resulted in a decrease in the utilization of

scarce hospital beds. To empower more probate court judges in our state to utilize outpatient treatment, NAMI Ohio is seeking to clarify the language in the existing statute. This will address the needs of many individuals who otherwise are left untreated until they become so ill that hospitalization or incarceration become the only avenues available to judges. For this reason, NAMI Ohio wants to make it abundantly clear in statute that court ordered outpatient treatment is allowable under Ohio law.

It is important to note that no new programs or services would be required under this proposal. It simply means that many individuals who are currently cycling in and out of emergency rooms, state hospitals, jails, and prisons would have access to existing community mental health treatment services that they now cannot access because the severity of their illness often precludes their awareness of and need for treatment. This proposal would put an end to the revolving door and put individuals with severe and persistent mental illness on a path to recovery.

Proposal:

NAMI Ohio, which is made up of individuals and families affected by serious mental illness, is seeking legislation to:

- Clarify that a county probate court may order someone who meets established criteria to outpatient treatment as a less restrictive alternative to hospitalization.
- Eliminate the ambiguity in existing law with regard to the conditions under which a person is considered a mentally ill person subject to court ordered treatment.
- Specify that court ordered outpatient treatment orders may include:
 - Case management;
 - Assertive community treatment;
 - Adherence with prescribed medications;
 - Individual or group therapy;
 - Day or partial day programs;
 - Educational and vocational training;
 - Supervised living;
 - Alcohol or substance abuse treatment;
 - Any other services prescribed to treat the person's mental illness and to either the assist the person in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.
- Provide families with the required affidavit form in the statute so that petitioning can occur in accordance with existing law.

Clarifying Ohio's Court Ordered Outpatient Treatment Law

Q&A

Q. Doesn't Ohio law already allow for Court Ordered Outpatient Treatment?

A. Yes, however, the existing law is confusing. Throughout the civil commitment code, the court is advised to determine the "least restrictive alternative available that is consistent with treatment goals" and to order inpatient hospitalization only if the court finds that to be the least restrictive alternative. Clearly, court ordered outpatient treatment is the lesser restrictive alternative and should be available and used as an option, where appropriate. The Ohio General Assembly should be applauded for making this option available in the civil commitment code. Unfortunately, the criteria for court-ordered treatment also states that a court order for treatment is issued when the person "would benefit from treatment in a hospital..." Though probate court judges in some counties understand that court-ordered outpatient treatment is within their purview, others are hesitant to use it because of the conflicting and confusing language.

Q. Won't there be an added expense to Ohio's mental health system if more people are committed to outpatient treatment?

A. Individuals who meet court ordered outpatient treatment criteria are already receiving costly and inefficient service. Not only are they cycling in and out of emergency rooms and state hospitals, they are often frequent users of Ohio's jails and prisons. Use of court ordered outpatient treatment means that existing mental health services would be made available to those who are the most ill.

Q. How is court ordered outpatient treatment different from Mental Health Court?

A. Individuals subject to court ordered outpatient treatment have not committed a crime. Rather, they would come to the attention of a civil (probate) court because they are too ill to recognize their need for treatment* or refuse treatment, and create a grave and imminent risk to the substantial rights of themselves or others.

Q. What has been the experience in other states that use court ordered outpatient treatment?

A. In Nevada County, the first county in California to use court ordered outpatient treatment, their program costs of \$80,000 were offset by savings estimated at \$203,000, based on decreased hospitalization costs and reduced incarcerations. In Seminole County, Florida, an 18-month court ordered outpatient treatment pilot

"This process [court ordered outpatient treatment] has reduced the need for action by law enforcement, medical emergency personnel and the courts, and lessens the trauma and anguish of family and friends."

--Thomas Anderson, presiding judge of the Superior Court of California in Nevada County

project resulted in the average number of hospital days per patient decreasing from 64 to 37, a reduction of 43%. The savings in hospital costs alone averaged \$14,463 per patient. In addition, the average number of days each patient spent incarcerated decreased 72%, with an estimated cost savings of \$14,455. A randomized control study in North Carolina showed that the length of hospital stays were reduced by 20 days compared with individuals without court-ordered treatment.

Q. How are the rights of individuals under review by a probate court for court ordered treatment protected?

Under current law, such individuals are afforded full due process rights, including having the right to legal counsel. If they cannot afford a lawyer, the court will appoint one. They also have the right to an independent expert mental evaluation, regardless of ability to pay.

Q. Will the role of families be altered under the proposed changes?

A. No; however, under this proposal, it will be easier for families to locate the affidavit form that already exists and is necessary to file with the probate court when they believe there is probable cause to believe their loved one needs court ordered treatment.

Q. What happens if Ohio does not clarify its court ordered outpatient treatment law?

A. Many individuals and their loved ones will continue to suffer the anguish of untreated mental illness. At the same time, Ohio's emergency rooms, state hospitals, jails and prisons will continue to provide expensive care to many individuals who otherwise could have been successfully treated in a less expensive and more efficient outpatient setting.

* This is often referred to as *anosognosia*, a neurological syndrome present in 40 - 60% of persons with schizophrenia and/or bipolar disorder.

Court Ordered Outpatient Treatment Legislative Changes

Recommendation One:

Background:

Section 5122.01(F) defines "hospital" as a hospital or inpatient unit licensed by the department of mental health under section 5119.20 of the Revised Code, and any institution, hospital *or other place* (italics added) established, controlled or supervised by the department under Chapter 5119 of the Revised Code.

Chapter 5122 is entitled *Hospitalization of Mentally Ill*. Based on the broad construction of the term "hospital", a literal reading would lead to civil commitment being used (at least, primarily) for the purposes of hospitalization. In fact, the code section repeatedly refers to and requires the use of less restrictive options. Below are two examples:

1. Section 5122.15(10): The attorney *shall* offer evidence of the diagnosis, prognosis, record of treatment, if any, and *less restrictive treatment plans*, if any
2. Section 5122.15(E): In determining the place to which, or the person with whom, the respondent is to be committed, the court shall consider the diagnosis, prognosis, preferences of the respondent and the projected treatment plan for the respondent and shall order the implementation of the *least restrictive alternative available* and consistent with treatment goals.

Proposed Change:

Replace all references to *Mentally Ill Persons Subject to Hospitalization by Court Order* **to** *Mentally Ill Persons Subject to Court Ordered Treatment*.

Comment:

Changing "hospitalization" to "court ordered treatment," clarifies existing legislative intent, namely, to ensure that judges make use of all treatment modalities, inpatient and outpatient, whichever is the least restrictive option that best serves the need(s) of the person. Additionally, it helps to ensure more consistent use of court-ordered outpatient treatment.

Recommendation Two

Background:

Section 5122.01(B) defines a mentally ill person requiring court intervention as someone who (B1) is a danger to self; (B2) a danger to others; (B3) gravely disabled, “unable to provide for basic physical needs”; or (B4) would benefit from treatment in a hospital for his mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person. Presumably because of the lack of clarity of the fourth standard, it is rarely used. According to the Ohio Legal Rights Services, in its document entitled, *Civil Commitment: Information about the Process for People Alleged to be Mentally Ill*, “... the fourth standard does not provide much guidance to the court and may be unconstitutional.”

Proposed Change:

Replace the fourth standard, with the following:

4) *Would benefit from court-ordered treatment due to a) inability to understand need for treatment; b) demonstrated difficulty to adhere to prescribed treatment and c) if not treated, will continue to deteriorate to the point that they will meet the standards of 1, 2 or 3.*

Comment:

This language borrows from the “totality of the circumstances” test used repeatedly by the Ohio courts, most recently in *State of Ohio v. Santana* (7/28/11). It reads, in part:
In determining whether an individual is mentally ill subject to hospitalization, the trial court considers the totality of the circumstances related to the alleged illness.....Factors to be considered include: (1) whether, in the court’s view, the individual currently represents a substantial risk of physical harm to himself or other members of society (these are the first 2 standards of the current law).....(3) whether the person has insight into his condition so that he will continue treatment as prescribed or seek professional assistance if needed.

Recommendation Three

Background:

Chapter 5122 authorizes the probate court judge to order inpatient or outpatient treatment for persons with severe mental illness who meet specified criteria and that the “least restrictive alternative available [that is] consistent with treatment goals” shall be ordered. The chapter does not, however, provide guidance as to the nature of the outpatient order. The following proposed change clarifies the existing law to ensure consistency in its application throughout the state.

Proposed Change:

5122.15 (E) In determining the place to which, or the person with whom, the respondent is to be committed, the court shall consider the diagnosis, prognosis, preferences of the respondent and the projected treatment plan for the respondent and shall order the implementation of the least restrictive alternative available and consistent with treatment goals. Outpatient treatment orders may include:

1. Case management;
2. Assertive community treatment;
3. Adherence with prescribed medications;
4. Individual or group therapy;
5. Day or partial day programs;

6. Educational and vocational training;
7. Supervised living;
8. Alcohol or substance abuse treatment;
9. Any other services prescribed to treat the person's mental illness and to either assist the person in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.

If the court determines that the least restrictive alternative available that is consistent with treatment goals is inpatient hospitalization, the court's order shall so state.

Comment:

Clarifying the services to be included in the outpatient treatment plan greatly enhances the likelihood of its success to ensure a seamless transition to living in the community, instead of repeated hospitalizations.

Recommendation Four

Background:

Section 5122.11 provides that *any person may seek a temporary order of detention by alleging facts sufficient to indicate probable cause to believe that the person is a mentally ill person subject to hospitalization by court order within the definition set forth in section 5122.01.*

Proposed Change:

Codify the state approved affidavit form so that any person, including family members, can easily access it and directly petition the probate court for treatment.

Comment:

Without an attorney, it is very difficult to locate an affidavit form and know where to file it. Placing the form in statute and specifying that it should be filed with the probate court would simplify this process considerably.