



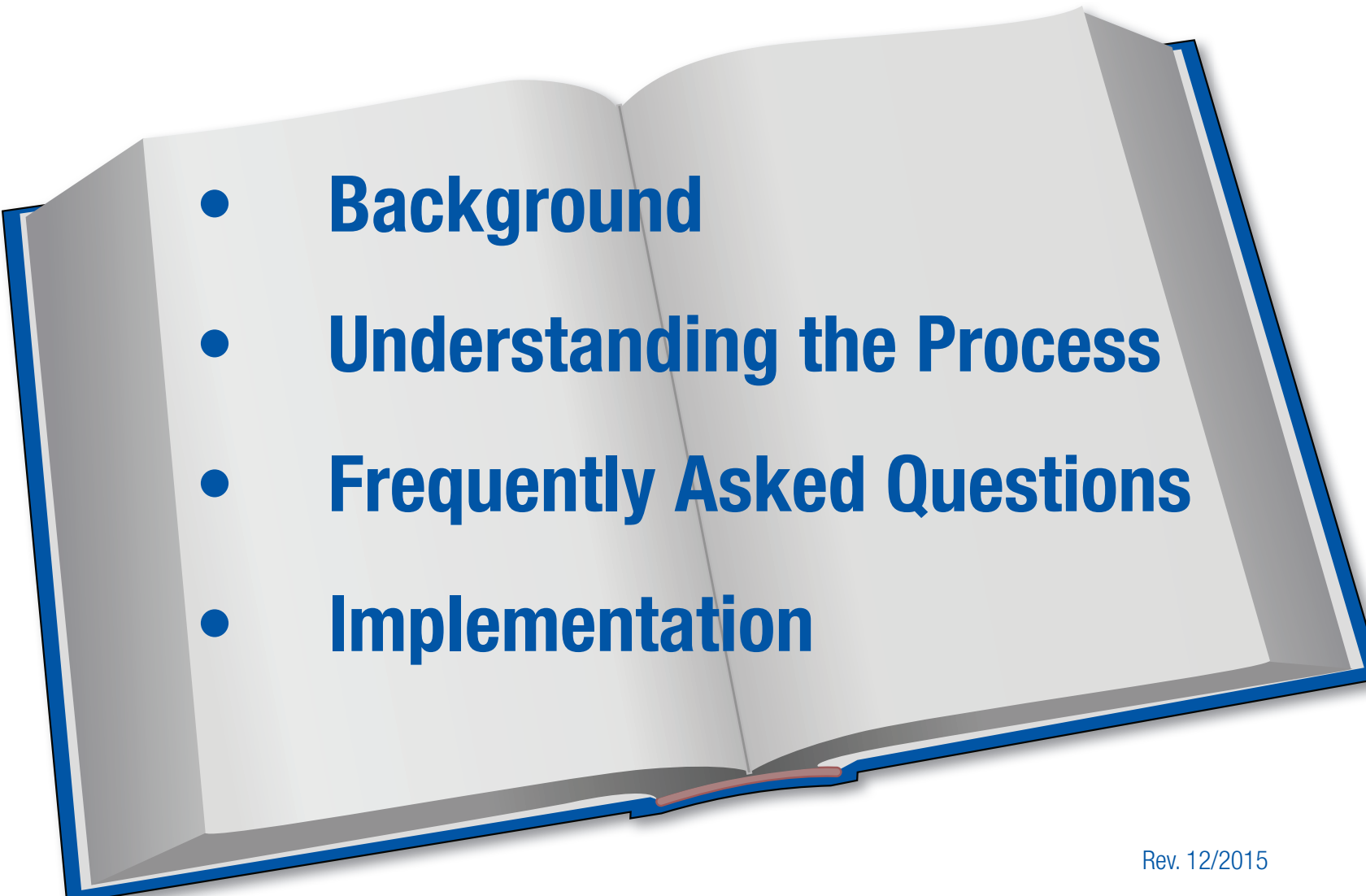
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Ohio

National Alliance on Mental Illness

The State's Voice on Mental Illness

Understanding Ohio's Court Ordered Outpatient Treatment Law

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 - **Understanding the Process**
 - **Frequently Asked Questions**
 - **Implementation**

Background

On September 17, 2014, a law went into effect that modifies and provides clarification regarding court ordered outpatient treatment. Prior to passage of the law, many probate court judges had differing interpretations regarding their ability to order certain individuals with mental illness into treatment in an outpatient setting. Family members with loved ones with untreated mental illness and a history of harm to self or others sought to have the law clarified. In the process, other changes were made that expanded the scope of the law.

Definition of “mentally ill person subject to court order”

The law added a fifth standard (highlighted in yellow) to the definition of “mentally ill person subject to court order.” Individuals who only meet the fifth standard cannot be placed into a hospital setting but can be ordered into outpatient treatment.

5122.01(B) “**Mentally ill person subject to court order**” means a mentally ill person who, because of the person’s illness:

- (1) Represents a **substantial risk of physical harm to self** as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- (2) Represents a **substantial risk of physical harm to others** as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
- (3) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is **not providing for the person’s basic physical needs** because of the person’s mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
- (4) Would benefit from treatment for the person’s 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;

(5)(a) Would benefit from treatment as manifested by evidence of behavior that indicates all of the following:

(i) The person is **unlikely to survive safely in the community** without supervision, based on a clinical determination.

(ii) The person has a **history of lack of compliance** with treatment for mental illness **and one of the following applies:**

(I) **At least twice within the 36 months** prior to the filing of an affidavit seeking court-ordered treatment of the person, the lack of compliance has been a significant factor in necessitating **hospitalization** or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the 36-month period must be extended by the length of any hospitalization or incarceration of the person that occurred within the 36-month period.

(II) **Within the 48 months** prior to the filing of an affidavit seeking court-ordered treatment of the person, the lack of compliance resulted in **one or more acts of serious violent behavior** toward self or others or threats of, or attempts at, serious physical harm to self or others, provided that the 48-month period must be extended by the length of any hospitalization or incarceration of the person that occurred within the 48-month period.

(iii) The person, as a result of mental illness, is **unlikely to voluntarily participate in necessary treatment.**

(iv) In view of the person’s treatment history and current behavior, the person is **in need of treatment in order to prevent a relapse or deterioration** that would be likely to result in substantial risk of serious harm to the person or others.

How the Process Works

Process is Initiated

Ordering a person into outpatient treatment generally begins in one of two ways.

The first way is through an emergency hospitalization which is sometimes referred to as “pink slipping.” This involves a psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer or sheriff taking a person into custody if he or she has reason to believe that the person is a “mentally ill person subject to court order” (see definition on page 1) and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination.

The person must be examined within 24 hours. If it is determined that the person is a “mentally ill person subject to court order,” the person may be held for up to three days. During that period, the person can either voluntarily admit himself/herself as a patient, or the medical director can file an Affidavit of Mental Illness. In order for the person to be held longer, the court must order a temporary order of detention and schedule a hearing.

The second way to initiate a proceeding is through the direct filing of an Affidavit of Mental Illness. The law

does not specify which county probate court the affidavit should be filed. The affidavit may be filed by anyone with personal knowledge and it must specify why there is probable cause to believe that the person meets at least one of the five criteria in the definition of “mentally ill person subject to court order.”

The affidavit should be accompanied by a certificate signed by a licensed physician stating that the person who issued the certificate has examined the person and is of the opinion that the person is a “mentally ill person subject to court order,” or by a written statement by the applicant, under oath, that the person has refused to submit to an examination.

There is a \$25 fee to file the affidavit. The court may waive the fee if it finds that the person filing the affidavit cannot afford the fee or for good cause shown.

Court Determines if there is Probable Cause

Within two business days of receipt of the affidavit, the probate court must refer the affidavit to the ADAMH board (or its designated agency) to assist the court in determining whether the person is subject to court order and whether alternatives to hospitalization are available.

The person who conducts the investigation shall make a written report to the court. The court shall consider the report in determining the appropriate setting for any person found to be a “mentally ill person subject to court order.”

If the court finds there is probable cause, it may issue a temporary order of detention or order a hearing. The court that issues the detention order shall retain jurisdiction over the case as it relates to the person’s outpatient treatment even if he/she is being detained in a hospital outside of the court’s jurisdiction.

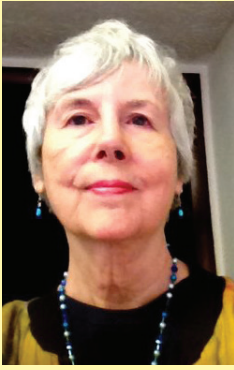
The court may also order a mental health examination, the results of which may be used as evidence during the hearing.



My mom was unable to get me treatment despite her best efforts. When I finally got treatment I was mortified at everything that had happened. If I ever find myself in that situation again, I want my loved ones to be able to get me treatment whether I think I need it or not. I know I may be angry at the time that it happens, but I will love them and thank them later.

- Amanda Baker
Dayton, Ohio

Postscript: Sadly, Amanda lost her battle with mental illness two years after she testified before the Ohio State Senate in support of court ordered outpatient treatment.



After much pain and struggle for all of us, my daughter lost her battle against mental illness and took her life. Had an effective court ordered treatment plan been in place at the time of her illness there would have been a very different outcome.

- **Beverly Bennett**
Columbus, Ohio

Hearing Notice is Sent

The court must send written notice of the hearing and a copy of the affidavit and temporary order of detention, if there is one, to the following: the person who is subject to the hearing, the person's legal guardian; spouse or parents if a minor; the person who filed the affidavit; adult next of kin or other designated person; counsel; hospital director; and ADAMH board director or designee.

Initial Hearing is Held

An initial hearing must be conducted within five days from the day on which the person is detained or an affidavit is filed, whichever occurs first. The hearing may be postponed or continued by the court for an additional five days. A person may waive the initial hearing.

If the court does not hold a hearing within the required period or the court holds a hearing and determines that the person is not a "mentally ill person subject to court order," the person must be immediately discharged and the record must be expunged (wiped clean).

If the court finds the person to be a "mentally ill person subject to court order," the court may issue an interim order of detention and a full hearing must be held within 30 days.

Full Hearing is Held

At the full hearing, the board's attorney and the person's attorney will present evidence. The court must decide if there is clear and convincing evidence that the person is a "mentally ill person subject to court order," and, if so, which of the five standards the person meets. The person

has certain rights at the hearing that are stated in more detail on page 5.

If the court finds by clear and convincing evidence that the person is a "mentally ill person subject to court order," the court must order the person for a period not to exceed 90 days to any of the following:

- (1) A state mental health hospital;
- (2) A nonpublic hospital;
- (3) The Veterans' Administration or other agency of the United States government;
- (4) An ADAMH board or agency the board designates;
- (5) Receive private psychiatric or psychological care and treatment;
- (6) Any other suitable facility or person consistent with the diagnosis, prognosis, and treatment needs of the person.

If the person only meets the 5th standard in the definition of "mentally ill person subject to court order," that person cannot be ordered to a hospital. (See definition on page 1.)

The person is to be committed to the least restrictive setting available that meets the person's treatment goals. A jail or other "local correctional facility" is not considered a suitable facility.

If it is determined that the person's treatment needs could be equally well met in a less restrictive, available setting, the court must dismiss the case or order placement in the least restrictive setting.

Treatment Plan is Developed

If the person receives treatment in an outpatient setting, the treatment provider shall determine the appropriate outpatient treatment.

The "treatment plan" means a written statement of reasonable objectives and goals for an individual established by the treatment team, with specific criteria to evaluate progress towards achieving those objectives.

The active participation of the person in establishing the objectives and goals must be documented. The treatment plan must be based on the person's needs and include services to be provided to the person while hospitalized, after discharge, or in an outpatient setting.

The treatment plan must address services to be provided. In the establishment of the treatment plan, consideration should be given to the availability of services, which may include, but are not limited to, all of the following:

- (1) community psychiatric supportive treatment,
- (2) assertive community treatment,
- (3) medications,
- (4) individual or group therapy,
- (5) peer support services,
- (6) financial services,
- (7) housing or supervised living services,
- (8) alcohol or substance abuse treatment, and
- (9) any other services prescribed to treat the patient's mental illness and to either assist the patient in living and functioning in the community or to help prevent a relapse or a deterioration of the patient's current condition.

If the person subject to the treatment plan has executed an advance directive for mental health treatment, the treatment team must consider any directions included in the advance directive in developing the treatment plan.

Non-Compliance with Treatment

If the person receiving court ordered outpatient treatment fails to comply with the treatment plan or begins showing signs of decompensation that may be grounds for hospitalization, the treatment provider may submit a report to the court. The court shall promptly schedule a hearing to review the case. The board must receive notice of the hearing and the ADAMH board and treatment provider must submit a report to the court with a plan for appropriate alternative treatment, if any, or recommend that the court discontinue the court-ordered treatment.

The court must consider available and appropriate alternative placements but cannot impose criminal sanctions that result in confinement in a jail or other local correctional facility based solely on the person's failure to comply with the treatment plan.

The court may not order the person to an inpatient setting unless the court determines by clear and convincing evidence that the person meets one of the standards specified in paragraphs 1-4 (see definition on page 1.) of the definition of "mentally ill person subject to court order."

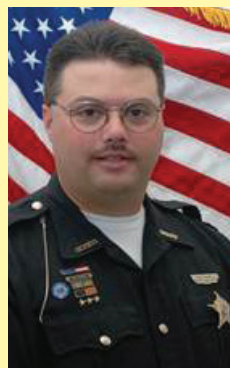
Continued Commitment

As mentioned, an initial order of court ordered treatment may not exceed 90 days. However, when the expiration date of the court order draws near, an application for continued treatment may be filed if there is reason to believe that the person still meets criteria for court ordered treatment.

If the court, after a hearing for continued commitment, finds by clear and convincing evidence that the person is a "mentally ill person subject to court order," the court may order continued commitment. If continued commitment is ordered, a full hearing must be held at least every two years after the expiration of the first 90 day period.

Voluntary Consent

If, at any time after the first 90 day period, it is determined that the person has demonstrated voluntary consent for treatment, the treatment provider shall notify all parties and submit a report to the court of the findings and recommendations. The court may dismiss the case.



Court ordered outpatient treatment helps individuals who are too ill to recognize their need for treatment or refuse treatment and create imminent risk to themselves or others. It lessens the probability of a law enforcement encounter.

- Lt. Ryan C. Kidwell
Hancock County Sheriff's Department

Frequently Asked Questions

What is Court Ordered Outpatient Treatment?

Court Ordered Outpatient Treatment is a civil – not a criminal – procedure in which a probate court judge orders an individual who meets the definition of “mentally ill person subject to court order” to participate in a treatment plan that is developed for that individual and which takes place in the community.

After receiving an affidavit, a probate judge must refer the matter to the ADAMH board upon finding “probable cause” to believe that the person described in the affidavit meets the definition. What is “probable cause”?

A common definition is a reasonable amount of suspicion, supported by circumstances sufficiently strong to justify a prudent and cautious person’s belief that certain facts are probably true.

Where can I find an Affidavit of Mental Illness form?

The form can be found in the Ohio Revised Code Section 5122.111 or on line at www.namiohio.org.

What is the penalty for filing a false affidavit?

In Ohio, knowingly filing a false affidavit is considered perjury and is a felony in the third-degree.

What are the rights of a person who is the subject of a hearing?

The person has a right to:

- access to all relevant documents, information and evidence in the custody of the prosecutor, hospital or other facility;
- attend all hearings;
- be represented by counsel of his or her choice, to waive counsel; or to have counsel appointed if unable to pay;
- an independent expert evaluation at the courts expense if the person is unable to afford one;
- subpoena witnesses and documents and cross examine witnesses;
- testify if he or she so chooses;
- a copy of the court transcript; and
- a closed hearing.

After the hearing, the probate judge may not order treatment unless he or she finds that the need for treatment has been proven by “clear and convincing evidence.” What does “clear and convincing” mean?

It is a higher standard of proof than ordinarily applies in civil cases, and generally requires proof which leaves no reasonable doubt concerning the truth of the matters at issue.

What is an “advance directive”?

An advance directive is a legal document that allows a person to make decisions in advance about mental health care if at some time in the future it is determined that he/she is unable to make reasoned decisions.

Can a person be “forced” to follow the court ordered treatment plan?

A person who is ordered to receive treatment in an outpatient setting cannot be physically restrained or forcibly required to take medication or participate in treatment. However, failure to follow the treatment plan may lead to evaluation of the need to place the person in the hospital.

What if a person wants to voluntarily admit themselves to treatment?

Any person who has been ordered into treatment may apply at any time for voluntary admission to the hospital or treatment in the community to the treatment provider. If accepted, the court must be notified in writing and shall dismiss the case.



In appropriate situations, for someone incapable of making informed medical decisions, an authorized placement in a court ordered outpatient treatment program could mean a safety net of intensive and caring treatment rather than a spiral into psychosis and the intense restriction of an involuntary hospitalization.

- **Probate Court Judge Randy Rogers**
Butler County

Implementation of Court Ordered Outpatient Treatment

If properly implemented and applied appropriately, court ordered outpatient treatment can spare many individuals and their families the anguish of untreated mental illness. At the same time, Ohio's emergency rooms, hospitals, jails and prisons should see a reduction in the number of people with untreated psychosis if these individuals can be successfully treated in less expensive and more efficient outpatient settings. Most importantly, court ordered outpatient treatment has the potential to save lives. However, to realize these outcomes, successful implementation is essential. Below is a checklist of steps that can be taken to ensure that the law is effectively carried out in your community.

- ☐ Educate yourself and other key stakeholders about the new law
- ☐ Anticipate common questions and be prepared with responses
- ☐ Identify others who share your interest
- ☐ Collect information on how it is done elsewhere (Butler and Summit Counties have long standing programs and processes in place)
- ☐ Get buy-in from key community leaders, including the county probate court judge(s), and the Director of the local Alcohol, Drug Addiction and Mental Health (ADAMH) Board
- ☐ Assemble a team and identify a leader
- ☐ Establish a process that will work in your community
- ☐ Start small -- select the first court ordered outpatient treatment candidate wisely
- ☐ Develop tracking tools to measure outcomes such as the number and length of hospital stays, number of arrests, self-injuries, acts of violence, etc.
- ☐ Evaluate outcomes and make improvements based on findings
- ☐ Seek ongoing input from all parties for quality improvement purposes – treat persons impacted by the new law as partners.
- ☐ Highlight successes for policymakers and the public at large
- ☐ Contact the Treatment Advocacy Center and/or NAMI Ohio for assistance

For more information, see
“A Guide for Implementing Assisted Outpatient Treatment”
<http://www.treatmentadvocacycenter.org/solution/implement-aot>

For more information, contact:



nami Ohio

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