UNIVERSITY OF MARYLAND
SCHOOL OF LAW

Balancing Public Health and Individual Liberties: Exploring New Options in Outpatient Treatment

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Overview of State Laws

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American Psychiatric Association’s Guidelines for Legislation on the Psychiatric Hospitalization of Adults (1982). Provides for inpatient commitment when an individual “will if not treated suffer or continue to suffer severe and abnormal mental, emotion, or physical distress, and this distress is associated with significant impairment of his judgment, reason, or behavior causing a substantial deterioration of his previous ability to function on his own.”
Three Models of Outpatient Commitment:

1. Conditional release, which permits outpatient commitment only after some form of inpatient commitment.

2. Front-end commitment of an individual to community-based outpatient treatment without any preliminary requirement of inpatient treatment, on the same criteria as those for inpatient commitment. (29 states)
   a) statute provides for either inpatient or outpatient commitment on the basis of identical eligibility criteria, but requires a finding of mental illness and dangerousness or grave disability (21 states)
   b) statute provides for either inpatient or outpatient commitment on the basis of identical eligibility criteria, but permits either form of commitment on grounds that go beyond the traditional libertarian standard to include a potential-for-deterioration alternative. (8 states)

3. Preventive commitment. This model, while also a front-end outpatient commitment approach, utilizes eligibility criteria that depart from the jurisdiction’s inpatient commitment provisions. The Assisted Outpatient Commitment statutes are included within this group. (14 states)
Dimensions for Comparing AOT Regimes

1. Enrollment criteria
2. Authorized petitioners
3. Standard for granting/enforcing order
4. Certification
5. Representation
6. Duration & renewal of AOT order
7. Enforcement - Transportation
8. Resource investment
Criteria for Outpatient Commitment (Beyond Those Traditionally Utilized for Inpatient Commitment):

A) The individual is unable to make a rational, informed decision about treatment.

B) The individual has a history of mental illness that has either: (1) at least twice within a specified period of time been a significant factor in necessitating hospitalization or receipt of mental health services in a correctional facility; or (2) resulted in one or more acts, attempts, or threats of serious violent behavior toward self or others within a specified period of time.

C) The individual, as a result of mental illness, is unlikely to voluntarily participate in treatment but would be likely to benefit from such treatment.

D) The individual, if he or she does not receive treatment, will continue to deteriorate and will either become impaired in his or her ability to function independently or will become imminently dangerous to himself or herself or others.

E) The individual is unlikely to survive safely in the community without support or supervision.
Other Issues:

1. Resources

2. Future Consent

3. Competency and Capacity

4. Constitutionality and Enforcement
§ 10-622. Petitions for emergency evaluations; in general

Mental disorder, danger to life or safety

(a) A petition for emergency evaluation of an individual may be made under this section only if the petitioner has reason to believe that the individual:

(1) Has a mental disorder; and

(2) The individual presents a danger to the life or safety of the individual or of others.

Petition for emergency evaluation

(b)(1) The petition for emergency evaluation of an individual may be made by:

(i) A physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, or health officer or designee of a health officer who has examined the individual;

(ii) A peace officer who personally has observed the individual or the individual's behavior; or

(iii) Any other interested person.
In general

(a)(1) A peace officer shall take an emergency evauluee to the nearest emergency facility if the peace officer has a petition under Part IV of this subtitle that:

(i) Has been endorsed by a court within the last 5 days; or

(ii) Is signed and submitted by a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, health officer or designee of a health officer, or peace officer.
Acceptance of emergency evaluatee by emergency facility

(b)(1) If the petition is executed properly, the emergency facility shall accept the emergency evaluatee.

(2) Within 6 hours after an emergency evaluatee is brought to an emergency facility, a physician shall examine the emergency evaluatee, to determine whether the emergency evaluatee meets the requirements for involuntary admission.

(3) Promptly after the examination, the emergency evaluatee shall be released unless the emergency evaluatee:

(i) Asks for voluntary admission; or

(ii) Meets the requirements for involuntary admission.

(4) An emergency evaluatee may not be kept at an emergency facility for more than 30 hours.
MD Code, Health - General, § 10-617

§ 10-617. Limitations on admissions

In general

(a) A facility or Veterans' Administration hospital may not admit the individual under Part III of this subtitle unless:

(1) The individual has a mental disorder;
(2) The individual needs inpatient care or treatment;
(3) The individual presents a danger to the life or safety of the individual or of others;
(4) The individual is unable or unwilling to be admitted voluntarily; and
(5) There is no available, less restrictive form of intervention that is consistent with the welfare and safety of the individual.
Enrollment criteria

New York and Florida

- Age 18 or older
- Must have MI diagnosis
- “Risk of significant harm” to self or other, including risk of self-neglect, in absence of treatment
- Likelihood of refusing voluntary treatment
Enrollment criteria - Differences

<table>
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<tr>
<th>New York</th>
<th>Florida</th>
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<td>• 2 or more: hospitalizations for SMI or prison or jail admissions related to SMI ≤ 36mos OR</td>
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<tr>
<td>• 1 or more acts, attempts or threats of “serious violent behavior” toward self or others ≤ 48 months</td>
<td>• 1 or more acts or attempts of “serious violent behavior” toward self or others ≤ 36 months</td>
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Authorized Petitioners:

New York and Florida

- Supervisor of residential program
- Director of hospital in which subject is in-patient
Authorized Petitioners - Differences

New York

• Immediate family member
• Any person 18 or over with whom subject resides
• Community or social services official
• Treating psychiatrist, psychologist or social worker
• Parole or probation officer

Florida
Standard for Granting Order

New York and Florida

- Risk of harm to self or other; risk of failing or refusing to care for self, resulting in serious neglect.

Note that:
Unlike the standard for in-patient commitment, this recognizes “negative” or passive danger, not just affirmative danger.
Standard for Enforcing Order

New York

• Same as standard for granting AOT order:
• High risk of negative or affirmative harm

Florida

• Same as standard for inpatient commitment:
• Affirmative harm only: “Substantial, imminent risk of serious bodily harm to self or other”
Enforcement of Order for Non-Compliance

New York and Florida

- No criminal sanctions
- No contempt sanctions
Enforcement of Order: Transportation

New York
• Provides for transport to hospital for evaluation of person subject to order

Florida
• No transportation provision
Resources

New York
- New funding provided
- Services expanded in response to AOT order
- AOT priority access to services
- Summary: If the state orders the treatment, the treatment must be provided

Florida
- No new funding
- No service expansion
- No AOT priority access
- Summary: If the treatment isn’t available, the state can’t order it