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INVOLUNTARY OUTPATIENT MENTAL HEALTH TREATMENT LAWS

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You asked if Connecticut or any other state has an involuntary outpatient treatment law for people with severe mental illness.

SUMMARY

Involuntary outpatient treatment (also called “assisted outpatient treatment” (AOT)) is court-ordered, community-based treatment for people with untreated severe mental illness, such as bipolar disorder or schizophrenia, who meet strict legal criteria. Generally, these individuals are too ill to recognize they need medical care and have a history of medication and treatment noncompliance. The goal of AOT is to provide treatment to these individuals before they require psychiatric hospitalization. Proponents of AOT laws believe they reduce psychiatric hospital admissions, homelessness, and violence and improve treatment compliance. Those opposed feel such laws remove an individual’s civil right to choose where and how to receive treatment.

According to the Treatment Advocacy Center, 44 states and the District of Columbia allow courts to order involuntary outpatient treatment for people with severe untreated mental illness. Connecticut is one of six states (also Maryland, Massachusetts, New Mexico, Nevada, and Tennessee) that do not have such a law. New Jersey enacted an AOT law that took effect in August of 2010, but its implementation was indefinitely delayed by Governor Christie due to inadequate funding for the treatment.

States vary somewhat in terms of eligibility requirements, processes, and who can apply to the court to admit an individual to AOT. For example, some states such as Florida, California, and New York limit AOT to adults, whereas other states such as Georgia, Maine, and North Carolina also allow minors to receive such treatment. Some states require an individual to be involuntarily hospitalized at the time of the court application for AOT, while others allow an application to be initiated when an individual still lives in the community.

We summarized four states' AOT laws: Maine, New Hampshire, New Jersey, and New York. A chart with all 50 states' involuntary inpatient hospitalization and outpatient treatment laws is attached.

MAINE

Maine law authorizes court-ordered outpatient treatment through a "progressive treatment program" (PTP). The superintendent or chief administrative officer of a psychiatric hospital, the commissioner of the Department of Health and Human Services (DHHS), or the director of an "Assertive Community Treatment" (ACT) team may apply to the District Court to commit an individual to the PTP. (An ACT team director may apply only if the team existed as of April 14, 2010 and complies with nationally recognized standards DHHS identifies.)

To be eligible for involuntary outpatient treatment in Maine, an individual must:

1. have a severe and persistent mental illness;
2. pose a likelihood of serious harm;
3. have an individualized treatment plan and community resources available to support the plan; and
4. be unlikely to voluntarily follow the treatment plan.

In addition, the court must find that court-ordered compliance will (1) help protect the individual from interruptions in treatment, relapses, or mental health deterioration and (2) enable him or her to survive more safely in a community setting without posing a likelihood of serious harm.

PTP services are provided based on an individualized treatment plan. The court commits the individual to the care and supervision of an ACT team or other outpatient facility. An ACT team is on duty 24 hours per day, seven days per week and includes at least a psychiatrist, registered nurse, rehabilitation counselor or employment specialist, peer recovery specialist, and substance abuse counselor.

The court commits an individual to the PTP for an initial 12 month period and may grant an unlimited number of 12 month extensions. If an individual fails to comply with the PTP, the court may order an emergency authorization to hospitalize the patient for evaluation and treatment ([34B MRSA § 3873-A et seq](#)).

NEW HAMPSHIRE

New Hampshire law allows any “responsible person” (the law does not define this term) to petition the court to commit an individual to involuntary outpatient treatment. An individual is eligible for such treatment if he or she has a mental illness that creates a potentially serious likelihood of danger to him- or herself or others as evidenced by either:

1. self-infliction of serious bodily injury, attempted suicide, or serious self-injury in the last 40 days which is likely to reoccur without treatment;
2. threatened self-infliction of serious bodily injury in the last 40 days and likely to attempt to inflict serious self-injury without treatment; or
3. lack of capacity to care for his or her own welfare and a likelihood of death, serious bodily injury, or serious debilitation.

In addition, an individual must have:

1. severe mental disability for at least one year and an involuntary hospital admission within the last two years;
2. refused necessary treatment and a psychiatrist has determined there is a substantial probability that this refusal will lead to death, serious bodily injury, or serious debilitation;

3. threatened, attempted, or committed violent acts in the last 40 days; and
4. no guardian.

If an individual meets these criteria, he or she is involuntarily admitted to the state's psychiatric hospital, New Hampshire Hospital (called an Involuntary Emergency Admission (IEA)). Within three days of admission, a district court judge must hold a probable cause hearing and can commit the individual to outpatient treatment at a local community mental health center (CMHC). The court sets the length of the commitment and treatment conditions as developed by the CMHC and the patient. The patient is then immediately discharged from the hospital and begins outpatient treatment.

If the individual complies with the treatment plan, he or she is released at the end of the outpatient commitment term. If the individual is noncompliant, the CMHC must schedule a probate court hearing to review the case and request the individual's rehospitalization. (New Hampshire Revised Statutes Annotated [§§ 135-C:27 to 135-C:61](#))

NEW JERSEY

New Jersey's involuntary outpatient commitment law took effect in August 2010 (P.L. 2009, Chapter 112). It allows a short- or long-term care psychiatric facility, psychiatric hospital, screening service, or outpatient treatment provider to apply to the court to commit an individual to involuntary outpatient treatment.

Individuals are eligible for outpatient commitment if they (1) have a mental illness that causes them to be a danger to self, others, or property and (2) are noncompliant with needed treatment. The law defines someone as being a danger to self if he or she is unable to satisfy the need for nourishment, essential medical care, or shelter without assistance and that substantial bodily injury, physical harm, or death is probable in the near future. This determination must also take into account the individual's history, recent behavior, and any recent act, threat, or serious psychiatric deterioration.

The law directed the commissioner of the Department of Human Services to phase in its implementation over a three-year period by selecting seven counties per year to implement the law. For each county selected, the department must contract with a community service provider as the designated "outpatient treatment provider" for that county. For FY 2011, the state did not appropriate funds to the

department to designate outpatient treatment providers, therefore Governor Christie indefinitely delayed its implementation (New Jersey Statutes Annotated [§§ 30:4-27.2](#))

NEW YORK

In 1999, the legislature enacted a law allowing courts to order involuntary outpatient treatment for certain individuals with mental illness who, when considering their treatment history and current circumstances, are unlikely to safely survive in the community without supervision. The law is commonly referred to as “Kendra’s Law,” after Kendra Webdale, a young woman who died in 1999 after being pushed in front of a New York City subway train by a person with untreated schizophrenia.

An individual can only be placed in AOT by an order of the supreme or county court where that individual lives. People who may apply to the court for such an order include:

1. the individual’s adult roommate, parent, spouse, adult child, or adult sibling;
2. the director of a psychiatric hospital where the individual is hospitalized;
3. the director of a nonprofit or public agency or home that provides mental health services to the individual;
4. a treating or supervising licensed psychiatrist, psychologist, or social worker;
5. the director of community or social services in the town or city where the person lives; or
6. a supervising parole or probation officer.

The law prohibits an individual from being placed in an AOT unless the court finds by clear and convincing evidence that the individual:

1. is at least 18 years old;
2. has a mental illness;
3. based on a clinical determination, is unlikely to safely survive in the community without supervision;

4. has a history of treatment noncompliance that has (a) at least twice in the last three years been a significant factor in his or her being hospitalized or receiving services in a correctional facility or (b) resulted in one or more acts of serious violence or threats or attempts of such acts in the last four years;
5. is unlikely to voluntarily participate in the outpatient treatment because of his or her mental illness;
6. is in need of AOT to prevent a relapse or deterioration that would likely result in serious harm to him- or herself or others; and
7. is likely to benefit from AOT.

A court cannot issue an AOT order unless it finds that AOT is the least restrictive alternative available to that person.

If the court determines an individual meets the criteria for AOT, it issues an order to the person who oversees the county or local mental health program. The order is based on a written treatment plan the examining physician submits. The order may involuntarily compel medication, therapy, rehabilitative services and blood and urine testing. An initial order is effective for up to six months and can be extended for periods of up to one year. The law also establishes a procedure for hospital evaluation in cases where the individual fails to comply with the ordered treatment and may pose a risk of harm.

The law requires the Office of Mental Health to designate “program coordinators” responsible for monitoring and overseeing AOT programs. County directors of community services must operate AOT programs, either individually or jointly with other counties. The mental health commissioner must approve all AOT programs.

An individual who is noncompliant with the AOT order may be held for up to 72 hours in a psychiatric hospital, during which he or she is evaluated to determine whether involuntary hospitalization is required (New York Mental Hygiene Law [§ 9.60](#)).

SOURCES

Maine Revised Statutes,
<http://www.mainelegislature.org/legis/statutes/34-B/title34-Bch3sec0.html>, website last visited December 19, 2011.

National Alliance of Mental Health, “Maine Legislature Amends Commitment Laws,”
http://www.nami.org/Content/Microsites186/NAMI_Maine/Home174/Welcome_to_NAMI_Maine1/MaineLegislatureAmendsCommitmentLaws.pdf, website last visited December 19, 2011.

New Hampshire Bar Association, “New Hampshire’s Commitment Law: Treatment Implications, Summer 2007,”
<http://www.nhbar.org/publications/display-journal-issue.asp?id=373>, website last visited on December 19, 2011.

New Hampshire Statutes,
<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-X-135-C.htm>, website last visited on December 19, 2011.

New Jersey Department of Human Services, Division of Mental Health Services, “Delay of Implementation of Involuntary Outpatient Civil Commitment Law,”
<http://www.nj.gov/humanservices/dmhs/home/ioc.html>, website last visited on December 19, 2011.

New Jersey Statutes Annotated, http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=200495027&Depth=2&depth=2&expandheadings=on&headingswithhits=on&hitsperheading=on&infobase=statutes.nfo&record={BAC2}&softpage=Doc_Frame_PG42, website last visited on December 19, 2011.

New York State Mental Hygiene Law,
<http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLMHY0TBA9+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=14806873+&TARGET=VIEW>, website last visited December 19, 2011.

New York State Office of Mental Health, “An Explanation of Kendra’s Law,” http://www.omh.ny.gov/omhweb/Kendra_web/Ksummary.htm, website last visited December 19, 2011.

Treatment Advocacy Center, “Assisted Outpatient Treatment Laws,”
<http://www.treatmentadvocacycenter.org/solution/assisted-outpatient-treatment-laws>, website last visited December 19, 2011.

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