

REVISED LEGISLATIVE DIGEST

(6/23/2014, Amended in Committee)

[Health Code - Assisted Outpatient Treatment (“Laura’s Law”)]

Ordinance amending the Health Code to authorize the implementation of court-ordered Assisted Outpatient Treatment (AOT) for individuals with mental illness who meet the criteria established by California Welfare and Institutions Code, Sections 5345-5349.5 (“Laura’s Law”), to require the County Mental Health Officer to create a Care Team to try to engage individuals referred for AOT in voluntary treatment prior to the imposition of court-ordered treatment; and making a finding that this authorization will not result in a reduction of current adult and juvenile mental health programs.

Existing Law

This article is new.

Amendments to Current Law

State law authorizes counties to implement Assisted Outpatient Treatment (“AOT”) also known as “Laura’s Law,” in order to provide court ordered mental health treatment for individuals with mental illness for whom other methods of entering and maintaining treatment have been unsuccessful.

AOT provides treatment through community-based, mobile, recovery-oriented, multidisciplinary, highly trained mental health teams with a staff-to-client ratio of no more than 10 clients per team member. These services include, but are not limited to, community-based comprehensive individual service and delivery plans, which plans shall be gender, age, disability, linguistically and culturally appropriate. The plans shall provide access to housing, and be designed to allow the individual referred to AOT (“Referred Individual”) to live in the most independent, least restrictive setting possible.

The following persons may request the County Mental Health Director (“Director”) or the Director’s designee to file a petition with the Superior Court for AOT:

- Any person 18 years or older with whom the Referred Individual resides;
- Any person who is the parent, spouse, adult sibling, or adult child of the Referred Individual;
- The director of a facility providing mental health services where the Referred Individual resides, the director of a hospital where the Referred Individual is hospitalized, or a licensed mental health treatment provider who treats the Referred Individual or supervises the treatment of the Referred Individual; or,

- A peace, probation or parole officer assigned to supervise the Referred Individual.

If the Director finds that good cause supports the request, he or she may file a verified petition with the Superior Court that sets forth all of the following:

- That the Referred Individual is at least 18 years old and is present in the City;
- That the Referred Individual is suffering from a mental illness as defined in California Welfare and Institutions Code §§ 5600.3(b)(2) and (3), or any successor provisions;
- That there has been a clinical determination that the Referred Individual is unlikely to survive safely in the community without supervision;
- That there is a history of the Referred Individual's lack of compliance with treatment, based on at least one of the following: (1) twice within the last 36 months, mental illness was a substantial factor in the Referred Individual's hospitalization or receipt of mental health services in jail, or (2) within the last 48 months, the Referred Individual's mental illness resulted in one or more acts of serious violent behavior toward himself or herself or others, or the Referred Individual threatened or attempted to cause serious physical harm to himself or herself or others;
- That the Referred Individual has been offered the opportunity to participate in a treatment plan, but continues to fail to engage in treatment;
- That the Referred Individual's condition is substantially deteriorating;
- That participation in AOT would be the least restrictive placement necessary to ensure the Referred Individual's recovery and stability;
- That the Referred Individual's treatment history and current behavior indicate that the Referred Individual needs AOT to prevent relapse or deterioration that would likely result in grave disability or serious harm to himself or herself, or in a civil commitment under California Welfare and Institutions Code §§ 5150, et seq.; and,
- That it is likely that the Referred Individual would benefit from AOT.

The petition must be accompanied by the supporting affidavit of a licensed mental health treatment provider who must be willing and able to testify at the hearing and must base the affidavit on his or her personal examination of the Referred Individual occurring no more than 10 days prior to the filing of the petition, unless the provider attempted to examine the Referred Individual during that time, but the Referred Individual refused to be examined.

After the petition is filed, but before the conclusion of the court hearing, the Referred Individual or with the Referred Individual's consent, the Referred Individual's legal counsel, may waive the Referred Individual's right to the hearing, and agree to obtain treatment under a written settlement agreement, provided an examining licensed mental health treatment provider states that the Referred Individual could survive safely in the community. The term of the settlement agreement may not exceed 180 days.

The Superior Court may order AOT if the court finds that all of the elements of the petition, have been established by clear and convincing evidence.

The Referred Individual of the petition has the following rights:

- To receive personal service of all notices of hearings, as well as notice to parties designated by the Referred Individual;
- To receive a copy of the court ordered evaluation;
- To be represented by counsel, and if the Referred Individual cannot afford counsel, to be represented by the Public Defender;
- To be present at all hearings, unless the Referred Individual knowingly waives such right;
- To be informed of the right to judicial review by habeas corpus;
- To present evidence, call and examine witnesses, and cross-examine witnesses, at the AOT hearing; and
- To be informed of the right to appeal the court's decisions.

If Referred Individual is not present at the AOT hearing, and the court orders AOT, the Referred Individual may file a habeas corpus petition challenging the court's imposition of AOT on the Referred Individual, and AOT may not commence until that petition is resolved.

During each 60-day period of AOT, the Referred Individual may file a habeas corpus petition to require the Director to prove that the Referred Individual still meets all the criteria for AOT.

If the Referred Individual refuses to participate in AOT, the court may order the Referred Individual to meet with the AOT Team who shall work with the Referred Individual's to try to gain his or her cooperation with the treatment plan. If the Referred Individual is still not cooperative, he or she may be subject to a 72- hour hold under California Welfare and Institutions Code §5346(f).

Failure by the Referred Individual to comply with AOT is not a basis for involuntary civil commitment, or contempt of court.

Involuntary medication is not authorized under AOT without a separate and specific court order.

The court may order no more than six months of AOT. If the Director determines that further AOT for the Referred Individual is appropriate, the Director must, prior to the expiration of the initial period, apply for court authorization to extend the time for an additional 180 days.

Every 60 days, the Director must file an affidavit with the court affirming that the Referred Individual continues to meet the criteria for AOT. If the Referred Individual disagrees with this affidavit, he or she has the right to a hearing, at which the Director has the burden of proving that the Referred Individual continues to meet the criteria for AOT.

The Director of Public Health shall develop a training and education program, and is authorized to promulgate regulations to implement AOT.

The Department of Public Health shall comply with the reporting requirements under California Welfare & Institutions Code § 5348(d), and shall provide an annual report to the Board of Supervisors on the number of participants in AOT, the length of their treatment, the outcome of their treatment, and other matters the Departments deems relevant.

Committee Amendments

The County Mental Health Director (“Director”) shall create a Care Team consisting of:

- (1) A forensic psychiatrist, who will be the designated licensed mental health treatment provider responsible for clinical evaluation of the Referred Individual;
- (2) A peer specialist, who will be a person with mental illness, who can provide lived experience to help the Referred Individual engage into treatment; and
- (3) A family liaison, who will be a person who has had a family member with mental illness, who can provide lived experience to educate the. The Care Team shall work closely with the Referred Individual and the individual requesting the AOT petition to maximize all opportunities within AOT to engage individuals who meet AOT criteria into voluntary treatment.

Referral to AOT provides two key opportunities for voluntary engagement of individuals meeting AOT criteria prior to a court hearing:

- (1) Immediately after the request for petition and before the filing of a petition with the court; and
- (2) After the filing of a petition and before the conclusion of the court hearing on the petition.

At each of these opportunities, the Care Team shall make every attempt to engage the Referred Individual into voluntary treatment.

The Referred Individual shall at all times have the opportunity to voluntarily participate in a “Full Service Partnership (“FSP”)” which is the collaborative relationship between the City and the Referred Individual and, when appropriate, the Referred Individual’s family, through which the City plans for, and provides, the full spectrum of community services so that the client can achieve the identified goals. The City shall provide FSP services that conform to the requirements of California Code of Regulations Title 9, Section 3200.13c, defining FSP, or any successor provisions.

The Care Team shall work closely with the Referred Individual and the individual initiating the petition in an effort to engage the Referred Individual into a FSP as a preferred alternative to court-ordered treatment.

All evaluations of the Referred Individual shall be conducted in the least restrictive setting.

The Referred Individual may not be transported for evaluation by a peace, probation or parole officer, unless there is probable cause to believe that the individual meets the criteria required by California Welfare and Institutions Code § 5150, or there is no other means to safely transport the Referred Individual.

The AOT Team shall also ensure that individuals referred for AOT who do not meet AOT criteria are evaluated for, and connected to, the appropriate level of mental health treatment.

Background Information

Several independent studies of AOT programs in other states cited in a background paper prepared by the Treatment Advocacy Center (see, www.TreatmentAdvocacyCenter.org, Backgrounder: Assisted outpatient treatment (AOT) (updated 1/21/20) for the citations to the studies referenced) show that AOT promotes long-term treatment compliance, and reduces the incidence and duration of hospitalizations, homelessness, arrests, incarcerations, violent episodes, and the victimization of individuals with mental illness by others, while also relieving caregiver stress. These same studies show that states and municipalities that have successfully implemented AOT realized cost savings in their respective mental health, criminal justice, and emergency care systems.

According to research cited in “Assisted Outpatient Treatment: Preventive, Recovery-Based Care for the Most Seriously Mentally Ill,” by Gary Tsai, M.D., *The Resident’s Journal*, a publication of The American Journal of Psychiatry, Volume 7, June 2012 , almost half of the individuals with a severe mental illness in the United States are untreated, and almost half of those individuals suffer from anosognosia (the inability to recognize one’s own mental illness) and possess significant deficits in self-awareness.) This same research also finds a clear link between lack of insight regarding one’s own mental illness and the inability to adhere to treatment, which results in poorer clinical outcomes, illness relapse, hospitalization, and suicide attempts.

For severely mentally ill individuals who are unable to maintain a consistent voluntary treatment regime, AOT provides a means to assist and support them through a structured treatment program.

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