



Proposal to  
Clarify Ohio's Existing  
Court Ordered Outpatient Treatment Law  
S.B. 43 and H.B. 104

*March 2013*

*"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

## Background:

Last year, NAMI Franklin County approached NAMI Ohio with a request for assistance in getting Ohio's law changed. The problem was this....several of their members were losing loved ones to untreated mental illness. When the families asked for help, they were told to go away and come back when their loved one was either suicidal or homicidal. Only then would help be available. Unfortunately, for several of these families, that turned out to be too late. Their loved ones either took their own lives or put themselves in a situation which resulted in their death or landed them in prison.

As we reviewed Ohio's law and spoke with several experts we discovered that when it comes to court ordered treatment, there are differing interpretations. And it doesn't take an expert to understand why. Even to a lay person, it is easy to see why judges may be confused. To lend clarity to the law, we identified six changes. We took these changes to Senator Dave Burke and he offered to introduce a bill on our behalf. Since that time, several other legislators have stepped forward to lend their name to this effort.

## S.B. 43 and H.B. 104 Provisions

- Clarifies that a county probate court may order someone who meets established criteria to outpatient treatment as a less restrictive alternative to hospitalization.
- Eliminates 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.
- Specifies the types of services that court ordered outpatient treatment plans may include.
- Places the affidavit form in the statute so families and others can find it when they believe there is probable cause that an individual meets the criteria for mentally ill person subject to court order.
- Clarifies that the affidavit should be filed with the Probate court.
- Specifies that a correctional facility or jail is not considered a suitable facility for someone who is mentally ill subject to a court order.

## 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 come to the attention of a civil (probate) court because they are too ill to recognize their need for treatment and there is probable cause to believe that their refusal of treatment will create a grave and imminent risk to themselves or others.

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

**A.** 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.

## **What Does the Data Tell Us About Court Ordered Outpatient Treatment?**

### **It Reduces Hospitalizations**

- Researchers in 2009 conducted an independent evaluation of New York's court-ordered outpatient treatment law and documented a striking decline in the rate of hospitalization among participants. During a six-month study period, court-ordered outpatient treatment recipients were hospitalized at less than half the rate they were hospitalized in the six months prior to receiving Court Ordered Outpatient Treatment. (Source: Swartz et al. 2009, 26-29)

### **It Reduces Arrests**

- A 2010 study found that the odds of arrest in any given month for participants who were currently receiving court-ordered outpatient treatment (COT) were significantly lower than the odds for participants in the non-COT group. The odds of arrest were nearly two thirds lower for participants currently receiving COT, compared with the odds of arrest for the control group. (Source: Gilbert, Allison R., et al, 2010. "Reductions in Arrest Under Assisted Outpatient Treatment in New York." *Psychiatric Services* 61(10):1–4.)

### **It Reduces Violence**

- A 2011 study found that the risk of arrest for a violent offense was 8.61 times greater before court-ordered outpatient treatment than it was while receiving COT. (Source: Link, Bruce G., et al., 2011. "Arrest Outcomes Associated With Outpatient Commitment in New York State." *Psychiatric Services* 62(5):504–08)

### **It Reduces Homelessness**

- In New York, when compared to three years prior to participation in the program, 74 percent fewer court-ordered outpatient treatment recipients experienced homelessness. (Source: New York State Office of Mental Health 2005).

### **It Saves Money**

- A recent study of court-ordered outpatient treatment implemented in the Nevada County, California looked at the cost savings that resulted from 17 individuals who were enrolled in outpatient treatment during the first 2½ years of program implementation (no comparison group was included). The results showed a total cost savings of over \$500,000, attributable to decreases in hospitalizations and in jail time of the 17 individuals. For every \$1.00 invested in court-ordered outpatient treatment in Nevada County, \$1.81 was saved. (Source: Heggarty, Michael 2011. *Assisted Outpatient Treatment: Outcomes Report*. Grass Valley, Calif.: Nevada County Behavioral Health Services)

## **What Other Organizations Support S.B. 43 and H.B. 104?**

- Ohio Association of Child Caring Agencies
- Ohio Psychiatric Physicians Association
- Ohio Psychological Association
- Ohio Center of Advocacy, Training and Support
- American Psychiatric Nurses Association – Ohio Chapter
- Buckeye State Sheriff's Association
- Ohio Association of Chiefs of Police
- Coalition on Homelessness and Housing in Ohio

## How Can I Help To Pass This Law?

Please write a letter to your Ohio Senator and House Representative. Below is a sample letter.

Date \_\_\_\_\_

The Honorable \_\_\_\_\_  
Ohio Senate  
Statehouse  
Columbus, Ohio 43215

The Honorable \_\_\_\_\_  
Ohio House of Representatives  
77 S. High Street  
Columbus, Ohio 43215

Dear Senator/Representative \_\_\_\_\_:

I am writing to urge you to support S.B. 43/H.B. 104, a bill to clarify Ohio's court ordered outpatient treatment law, thus eliminating any question about whether a probate court judge has the authority to order certain individuals with serious and persistent mental illness into outpatient treatment.

This bill would give judges clear authority to step in before someone with a serious mental illness who is unaware of his or her need for treatment becomes so ill that hospitalization or incarceration are the only options remaining. Lack of awareness of illness - a neurological syndrome called anosognosia - is believed to be the single largest reason why individuals with schizophrenia and bipolar disorder do not follow through with treatment. In many cases, such individuals can be persuaded with a court order to follow their treatment plan. This is commonly referred to as the "black robe effect."

Court ordered outpatient treatment is not the answer for everyone who meets the criteria, but for some it could mean the difference between life and death. This bill simply removes any question on the part of judges that they have a tool available to use when there is clear and convincing evidence that without treatment, the individual will likely become an imminent threat to themselves or others and end up in the hospital, jail, or worse...dead.

This issue is very important to me and my family because.... **[Please include a SHORT summary about how you and your family have been impacted by mental illness.]**

Thank you for taking the time to read my letter. I look forward to hearing your position on S.B. 43/H.B. 104.

Sincerely,

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State Zip \_\_\_\_\_

Telephone Number and E-mail address \_\_\_\_\_