

## Behavioral Health: Developing A Better Understanding

### SENATE BILL 43 OUTPATIENT COMMITMENT OVERVIEW

Imagine watching someone that you care about suffering with a mental illness deteriorate day by day. They refuse to take their medications and reject all attempts to help them seek the necessary mental health treatment that they desperately need. They continue to make choices that put themselves in harm's way and yet they refuse to see that they need help. To sit back and watch is heart-wrenching and makes all parties involved feel powerless. The Ohio General Assembly, following in the steps of 45 other states, passed Senate Bill 43, to clarify the use of assisted outpatient treatment (AOT), also called outpatient commitment, for individuals with severe mental illness who meet detailed legal criteria.

#### Legislative Intent

The main goal behind this legislative proposal was to clarify existing law to eliminate any question that Ohio probate judges had regarding their ability to order certain individuals with severe and persistent mental illness into court ordered outpatient treatment. The legislation also inserts a copy of the state's existing affidavit into the Ohio Revised Code, making it easier for all citizens to access this document. In sponsor testimony to the Ohio Senate Civil Justice committee, the bill's sponsors Senators Dave Burke and Charleta Tavares said "the bill would fix a conflict in current law about whether probate judges are permitted to order those found to be mentally ill to outpatient treatment instead of hospitalization."

#### SB 43 Revised Code Changes

- Allows family members to file an affidavit, for a \$25 filing fee with the probate court in which the individual subject to the court order resides, asking a judge to order their family member to receive outpatient treatment.
- The court may waive the fee if it finds that the affiant is indigent or for good cause shown.
- Changes the terminology in current law from "mentally ill person subject to hospitalization by court order" to "mentally ill person subject to court order." This change could clarify that persons could be served in a community setting rather than only in a hospital.
- Grants persons including, but not limited to, local boards of alcohol, drug addiction, and mental health services and community mental health services providers, immunity from any liability while providing court-ordered treatment from the person receiving court-ordered treatment, provided the person is acting in good faith.
- Modifies the four criteria that a mentally ill person must meet to be subject to court order to include persons who would benefit from the treatment as manifested by evidence of behavior that indicates all of the following: (1) the person is unlikely to survive safely in the community without supervision, based on a clinical determination, (2) the person has a history of lack of compliance with treatment for mental illness and certain conditions apply, (3) the person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment, and (4) 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; the bill states that an individual who meets only these new criteria is not subject to hospitalization.



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### **For those who comply with court-ordered treatment**

If at any time after the first 90-day period the respondent has demonstrated voluntary consent for treatment, the entity overseeing treatment must submit to the probate court a report of the findings and recommendations and after receiving the report, the probate court may dismiss the case upon review of the facts.

### **For those who do not comply with court-ordered treatment**

Senate Bill 43 specifies that the entity to whom the respondent was ordered for treatment must submit a report to the local probate court if the respondent fails to comply with their treatment. Upon receipt of the report, the court must promptly schedule a hearing to review the case. The entity treating the respondent 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. It goes on to require that the court consider available and appropriate alternative placements but cannot consider confinement in a jail or other local correctional facility based on the respondent's failure to comply with the treatment plan.

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## **New Ohio Revised Code 5122.01**

Senate Bill 43 adds the following criteria to O.R.C. 5122.01 to be utilized by Ohio's courts in determining whether an individual can be ordered involuntarily to be hospitalized or into assisted outpatient treatment:

(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; or

(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 thirty-six months prior to the filing of an affidavit seeking court-ordered treatment of the person under section 5122.111 of the Revised Code, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the thirty-six-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the thirty-six-month period.**

**(II) Within the forty-eight months prior to the filing of an affidavit seeking court-ordered treatment of the person under section 5122.111 of the Revised Code, 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 forty-eight-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the forty-eight-month period.**

**(iii) The person, as a result of the person's 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.**

**(b) An individual who meets only the criteria described in division (B)(5)(a) of this section is not subject to hospitalization.**