National Shattering Silence Coalition

Speaking Out • Inspiring Change

NSSC is a nonpartisan alliance of family members, individuals suffering from serious brain disorders (SBD), professionals in the trenches, and people who care who are uniting to ensure that brain illness, health, and criminal justice systems count those with SBD, and their families in all federal, state, and local policy reforms. We are voices for the 13.1 million adults and 7 million children living with and dying too young from serious brain disorders.

Position Statement: Promote Use of Assisted Outpatient Treatment (AOT)

August 11, 2021

NSSC Point of Unity # 5a: End the incarceration of those suffering from serious brain disorders (SBD's) commonly referred to as serious mental illnesses (SMI's):

> a. *Promote, strengthen, and fund Assisted Outpatient Treatment (AOT), mental illness courts, Crisis Intervention Teams* (CIT)*, Forensic Assertive Community Treatment (FACT) and any other evidence-based pre-incarceration alternatives that permit treatment and care for people with SBD based on treatment standards that focus on the need for treatment and grave disability, not a danger to selves and others.*
>
> THE POSITION: NSSC supports and urges the universal use of these programs to eliminate preventable tragedies and as alternatives to incarceration of those with serious brain disorders. As yet, they are not well funded and not uniformly available in all states and counties. Worse, many organizations in the mental health industry actively oppose the use of AOT in particular.

CONTENTS:

****

I. INTRODUCTION:

It is the position of NSSC that people with serious brain disorders deserve treatment, not jail. They deserve effective treatment before delusions, hallucinations, or poor cognitive function or crisis cause them to inadvertently break a law, hurt themselves or others, or result in loss of life. Additionally, they deserve effective treatment early in the course of disease to prevent long-term cognitive declines.

What are AOT, ACT, and FACT?

Several programs have been developed to break this cycle of crisis, temporary stabilization, rapid discharge, and relapse. Those that have demonstrated the most evidence of effectiveness are Assisted Outpatient Treatment (AOT), Assertive Community Treatment (ACT) and Forensic Assertive Community Treatment (FACT).

AOT (Assisted Outpatient Treatment) is the focus of this position statement. Brian Stettin of TAC states, “Assisted outpatient treatment (AOT) is a practice designed to improve treatment outcomes for people with severe mental illness whose difficulties adhering to voluntary outpatient care have left them trapped in the revolving door of the mental health and criminal justice systems. Under AOT, an individual found to meet strict eligibility criteria is placed under court order to comply with an approved treatment plan as a condition of remaining in the community and receives intensive case management and monitoring. A patient’s substantial violation of the court order typically leads to short-term evaluative detention to determine whether hospital has become necessary."[1]

II. THE ISSUE:

Though these programs, AOT in particular, are proven to be successful in interrupting the cycle of repeated brain illness crises, they are not well funded and not uniformly available in all states and counties even in states that have authorizing legislation. Worse, many organizations in the mental health industry actively oppose the use of AOT under the misguided position that it is a form of involuntary treatment and that it violates people’s civil rights.

III. DISCUSSION:

A. Why implement AOT?

- The most important reason to implement AOT is that it saves lives! Listen to Consultant Eric Smith for the Treatment Advocacy Center share how AOT saved his life: https://www.youtube.com/watch?v=f3iO74ud7aM

1 http://dls.virginia.gov/groups/mhs/stettin%20on%20aot.pdf

- According to the Treatment Advocacy Center (TAC), people with mental illnesses are 10 times more likely to be in jail or prison instead of a treatment hospital bed. In 2014 TAC estimated that 383,200 inmates in jails and prisons had a serious mental illness. This compared to a mere 38,000 remaining in state mental hospitals. In addition, as many as 1.8 million people with serious mental illnesses are booked into jails every year.[2] Left untreated, those with SBD are at high risk for many other negative circumstances that profoundly impact them and those around them including homelessness, suicide, homicide, and police shootings.
    - Suicide is the most common form of violence associated with mental illness, taking more than 40,000 lives a year in the United States. The barely 3% of the population with the most severe psychiatric diseases are also estimated to account for approximately 10% of all homicides, 20% of law enforcement officer fatalities, 29% of family homicides and as many as 50% of mass killings.[3]
    - The failure of the U.S. mental health system has resulted in those abysmal statistics. It has been observed that jails and prisons have replaced the mental institutions that were closed in the second half of the twentieth century.
- Anosognosia:
    - If an adult recognizes their illness and the need for help, they can voluntarily seek out treatment for themselves. However, in the case of serious brain illnesses, the person often does not recognize their illness (anosognosia), does not seek treatment, and will actively resist any attempts to bring them to access treatment.
    - Anosognosia is the number one reason why up to 50 percent of those with schizophrenia and 40 percent with bipolar disorder refuse treatment.[4] AOT paves the way for them to receive that treatment. AOT is evidence-based, compassionate care, allowing those afflicted with serious brain disorders to live in the community with the best chance to recover from their illness, becoming productive members of society.
- Not infrequently, even helpful treatment ceases effectiveness or needs modification. When treatment fails, is interrupted, or never accessed, too often decompensation and a crisis occurs. Then, the only recourse available to those around them, usually a family member, is to call the police. Too often the call results in the death or injury of the person in crisis or others, again, often a family member. “The risk of being killed during a police incident is 16 times greater for individuals with untreated mental illness than for other civilians approached or stopped by officers.”[5] Should the person with the SBD survive the encounter, they

---

[2] Assisted Outpatient Treatment Laws, Treatment Advocacy Center https://www.treatmentadvocacycenter.org/component/content/article/39 accessed 20 November 2019

[3] https://www.treatmentadvocacycenter.org/key-issues/violence

[4] https://www.treatmentadvocacycenter.org/key-issues/anosognosia

[5] https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf

are too often then taken to jail rather than a psychiatric hospital; too often without appropriate treatment and instead left to suffer abuse, further exacerbation of their symptoms, or death.

        - If lucky enough to be taken to an emergency room where many are ill-equipped to handle someone with SBD, they may be given some sort of sedative or antipsychotic medication, and perhaps referred to inpatient treatment at a psychiatric hospital. However, the shortage of beds available in such hospitals results in either long waits in the emergency room or discharge without having achieved stability. Lack of adherence to the treatment plan upon release, whether from an ED, a psychiatric hospital, or a jail, results from many factors and inevitably leads to relapse and recidivism.
        - Many with SBD taken to an ED or even to a psychiatric hospital find themselves wrongfully jettisoned into the criminal justice system if the symptoms of their illness cause them to become assaultive towards another patient, hospital staff, or security.

- For those with SBD already involved in the justice system, programs that divert them from incarceration in favor of monitored mandatory treatment are needed to interrupt the cycle of crisis, relapse, and recidivism. AOT, FACT, and mental health court programs have grown as a result of this need. These programs provide the monitored treatment needed and have been shown to be effective.
- The proof is in the pudding. To quote the late D.J.Jaffe of Mental Illness Policy Org. (MIPO), “Extensive research shows that assisted outpatient treatment reduces homelessness, arrest, incarceration, and hospitalization by 70% or so and cuts costs to taxpayers by 50%.”[6]
- AOT is widely supported. AOT is permitted in 47 states. As of this writing, the three states who do not have authorizing legislation are Connecticut, Maryland, and Massachusetts. As of the writing of this position statement, Massachusetts, Bill H.2121, “An Act Relative to Assisted Outpatient Therapy” has been referred to their Joint Committee on Mental Health, Substance Use and Recovery where we hope it will pass. In some states, the programs go under other specific titles, for example in New York, it is known as Kendra’s Law.
    - The Substance Abuse and Mental Health Services Administration (SAMHSA) promotes the use of AOT by funding pilot programs. These grants assist the community with setting up the court processes and partnerships that will develop treatment plans and monitor participant achievement. SAMHSA also has several resources about the use and effectiveness of AOT on its website. TAC provides free model program-design information and forms to help with the implementation of an AOT program (See D. below).

[6] D.J. Jaffe, https://www.statnews.com/2019/09/13/assisted-outpatient-treatment-mental-illness/

- When Congress passed the 21st Century Cures Act of 2016, it increased funding for AOT program start-ups through 2022.[7] The Act also allows states to use Department of Justice grants to fund AOT.[8]

B. How are AOT, ACT, and FACT Different?

- AOT programs are administered by the courts, frequently with a judge dedicated to the program. With the support of case managers, psychotherapists, medication management, peer support, and, often, regular progress visits to a court, a person can be diverted from incarceration, homelessness, suicide, or death by other means.
  - AOT also allows those who cycle in and out of short-term hospital stays to receive long-term treatment while remaining in the community. Under an AOT order, if the patient's medication fails to remain effective or the patient stops abiding by the conditions of the program, they can be brought back to the hospital for a brief stay to get them back on track without having to wait for them to become a danger to themselves or others before intervention and treatment can occur.
  - For those diverted from incarceration to the care of an AOT program, failure to comply with the conditions of the treatment plan results in reincarceration.
  - Failure to get treatment when a person does not seek out or believe they need treatment and does not meet the state's standard of "dangerousness" and does not itself trigger the use of AOT. Criteria involving multiple inpatient commitments or crimes are set by each state to assure that AOT does not amount to an infringement on an individual's civil rights.
- Assertive Community Treatment (ACT) is a program that provides services 24 hours a day/7 days a week to individuals in the community either in their own home or at a place of their choosing. For ACT to be effective, the person must be willing to engage with their treatment providers and follow their treatment plan. ACT does not work for those with anosognosia.
- Forensic Assertive Community Treatment (FACT) is a program modeled after ACT adapted to address criminal justice issues. From SAMHSA; "FACT is designed to do the following: improve clients' mental health outcomes and daily functioning; reduce recidivism by addressing criminogenic risks and needs;[9] divert individuals in need of

---

[7] Treatment Advocacy Center, https://www.treatmentadvocacycenter.org/fixing-the-system/promoting-assisted-outpatient-treatment

[8] *Breakdown, A Clinician's Experience In A Broken System of Emergency Psychiatry*; Lynn Nanos, L.I.C.S.W. 2018, page 228.

9 Eight factors have been shown to have strong associations with crime and criminal behavior—specifically, history of antisocial behavior, antisocial personality pattern, antisocial cognition, antisocial associates, family and/or marital strain, problems at school and/or work, problems with leisure and/or recreational time, and substance abuse. For more information on criminogenic risk and needs, see: National Institute of Corrections, Council of States Governments Justice Center, & Bureau of Justice Assistance. (2012). *Adults with behavioral health needs under correctional supervision: A shared framework for reducing recidivism and promoting recovery*. Retrieved from https://csgjusticecenter.org/wp-content/ uploads/2013/05/9-24-12_Behavioral-Health-Framework-final.pdf

treatment away from the criminal justice system; manage costs by reducing reoccurring arrest, incarceration, and hospitalization; and increase public safety. A FACT team should also have two important members not present on an ACT team: a criminal justice partner and a forensic peer specialist. **Criminal justice partners** typically come from local law enforcement, pretrial services, or probation and parole agencies. FACT teams maintain close coordination with their criminal justice partners and may involve them in case decision-making. **Forensic peer specialists** are individuals living with SMI or co-occurring disorders who have personal experience with criminal justice system involvement. Peers can increase client buy-in, sustain client engagement, create effective and relevant treatment plans to address clinical and non-clinical needs, and improve outcomes."[10]

. C. What are the barriers to the use of AOT programs?

- Cost concerns. States are often afraid to pass legislation that would strengthen their AOT programs because of the fiscal note that must be added to the bill. They, unfortunately, make the shortsighted decision not to pass the bill, not comprehending that, though they will be spending money initially, in the end, they will be saving money. Pennsylvania is one example of this barrier. In April of 2019, Pennsylvania - one of the last states to make this change - modified eligibility for AOT to include those for whom there is "clear and convincing evidence that the person would benefit" from it. However, so far, no county in Pennsylvania is implementing this expanded qualification because of cost concerns, confusion about how it would work, and further debate about whether this amounts to coercion and involuntary treatment.[11] As many as 15 states that legally authorize AOT rarely, if ever, use the tool.
    - Though the use of AOT has been demonstrated to result in cost savings for both the criminal justice and mental health systems, there are costs associated with setting up and operating AOT; case managers, treatment providers, housing providers, and others are required to maintain a successful program. And although there are net cost savings to the public, the costs and savings are distributed to different administrative budget categories, creating friction in budgeting processes. Demonstration grants and limited time funding to establish AOT programs have been used by SAMHSA to get the programs up and running, but continuing funding locally is a challenge.

---

[10] Substance Abuse and Mental Health Services Administration. (2017). *Value of Peers* [PowerPoint slides]. Retrieved from https://www.samhsa.gov/sites/default/files/programs_campaigns/brss_tacs/value-of-peers-2017.pdf

[11] Juliette Rihl, *PA changed its standard for involuntary mental health treatment earlier this year. So why aren't counties using it?*, Public Source, Stories for a Better Pittsburg , October 24, 2019, https://www.publicsource.org/pas-recently-changed-its-standard-for- https involuntary-outpatient-treatment-so-why-aren't-counties-using-it/

    - As noted above, the 21st Century Cures Act of 2016 increased funding for AOT program start-ups only through 2022.[12] It is important to urge our senators and congressional members to support legislation that supports the universal use of AOT and related programs.
    - Public Law 116-281 was passed on December 31, 2020. The Crisis Stabilization and Community Reentry Act of 2020 was sponsored by Senator John Cornyn, Texas. The final law incorporates some of the principles of the 2019 SB 2690. It authorizes the Justice Department to provide grant funding for continuity of treatment actions that support treatment of serious brain illness (and substance abuse) from pre-, during, and post-incarceration requirements. These are supports that would be used in an AOT program, but the law does not explicitly mention the use of AOT as a condition of receiving these supports. As of this writing, more study of the implementation of these new grant opportunities will be required.
    - While startup grant funding is helpful, to achieve the maximum benefit of the AOT approach, it is necessary to provide the ongoing funds that will be needed to keep the programs operational, as well as expanded to serve all eligible persons.
- The debate about whether this amounts to coercion and involuntary treatment.
    - Protecting patient's rights/ Due process protections. The truth is that, although sometimes referred to as an involuntary commitment, AOT laws do not allow the forced administration of medications. The participant must agree to the treatment plan as a condition of being able to reside in the community, i.e. outside an institutional setting, similar to how parole from jail works. In the best programs, the individual participates in creating the treatment plan, providing a level of buy-in and control that helps to enhance successful compliance.
    - As for due process, the late DJ Jaffee argued in this brilliant position statement that "Constitutional Challenges to Kendra's Law show it is constitutional." "The state has two responsibilities. The first is to help those who can't help themselves. This power is often used to help abused children, people in a coma, those with Alzheimer's and results in getting treatment and care. The second state responsibility is to prevent people from harming others (police powers). This is used to prevent crime. It often results in people going to jail. In reviewing these two state responsibilities courts have determined that AOT is an appropriate exercise of the state's responsibilities and AOT is constitutional."
- The refusal of our legal system, both at the federal and state level, civil rights organizations, and even some "mental health/illness organizations" to allow those with serious brain illnesses access to treatment unless or until they become a danger to themselves or others.
    - Most states provide for voluntary court-ordered treatment, emergency evaluation, voluntary inpatient treatment, and outpatient treatment so long as the participant complies with the terms of the court order. However, even though many states

[12] D.J.Jaffe, *Insane Consequences: How the Mental Health Industry Fails the Mentally Ill* page 204, (New York, Prometheus Books 2017)

allow for "gravely disabled" and/or "need for treatment standards", *involuntary* inpatient commitment is too often only initiated when a person has demonstrated that they are "a danger to themselves or others," at which time they can be taken to a hospital for evaluation and emergency treatment. In most cases, the bar for the standard of "danger" is interpreted in the most extreme: the person is actively brandishing a weapon and threatening someone. Too often, this delay results in tragedy, bodily harm, or death of someone, before the "dangerousness" has been demonstrated.

D. Implementation models; Where is AOT being used successfully?

There are several notable examples of AOT communities.[13] For those interested in developing AOT in their community, the TAC website has links to a number of studies where the process has been implemented, as well as sample documents and procedures to assist local communities in setting up the program.

- In Miami, in the late 1990s, Judge Steven Leifman created a new coalition of the courts, police, jails, hospitals, social services, and the business community. It became the *Eleventh Judicial Circuit Court Criminal Mental Health Project* and began, perhaps, the first misdemeanor diversion program and the model for AOT.[14]
- Ohio, in particular Summit County, is recognized as a leader in the use of AOT.
- A New York Post OpEd of May 11, 2019, observed, *"Kendra's Law in New York is an AOT model in effect since November of 1999. It has been shown to be an effective program for the subset of seriously mentally ill who become homeless, arrested, incarcerated or hospitalized when not in treatment. It allows judges to order them to accept treatment while they continue to live in the community. It reduces homelessness, arrest, incarceration and hospitalization of the seriously mentally ill in the 70 percent range, is more humane than the alternatives (incarceration or hospitalization) and saves taxpayers 50 percent of the cost of care by reducing the use of both. There are at least 4,000 city residents who could benefit from Kendra's Law, but the city has less than half that number in it."*[15]

[13] Treatment Advocacy Center:
https://www.treatmentadvocacycenter.org/fixing-the-system/promoting-assisted-outpatient-treatment

[14] Pete Early, *Crazy, A Father's Search Through America's Mental Health Madness, page 60, April 2007 edition*, The Berkley Publishing Group, NY, NY

[15] DJ Jaffe and Stephen Eide, *How to fix New York's mental health crisis without spending more money,* May 11, 2019,
https://nypost.com/2019/05/11/how-to-fix-new-yorks-mental-health-crisis-without-spending-more-money

IV. CONCLUSION: Increase the use of AOT

Our federal, state, and local governments and advocates for the treatment of these illnesses must all recognize and embrace AOT as the life-saving treatment program it is. AOT is already on the books in 47 states throughout the US. Those states must work harder to make AOT available to their citizens. Maryland, Connecticut, and Massachusetts must pass AOT legislation. Assistance for communities wishing to establish AOT programs and mentorship for those already implementing the programs is readily available through the Treatment Advocacy Center.

Ultimately, early diagnosis and treatment for all experiencing serious brain disorders is the best path towards hope for recovery, preventing crises that end in incarceration or tragedy of those with SBD. NSSC is laser-focused on the need for expanded research and treatment options for our affected loved ones. Still, until a robust and comprehensive treatment system is actualized, where these illnesses will be recognized as the medical illnesses they are, interim measures to minimize the damage of untreated SBD - measures such as AOT - are critical and must be demanded as soon as possible.

TREATMENT ADVOCACY CENTER

What is AOT?

Assisted outpatient treatment (AOT) is the practice of delivering outpatient treatment under court order to adults with severe mental illness who meet specific criteria, such as a prior history of repeated hospitalizations or arrest. It is a tool for assisting those individuals most at risk for the negative consequences of not receiving treatment.

THOSE MOST IN NEED: AOT laws have been shown to reduce hospitalization, arrest and incarceration, homelessness and violent acts associated with mental illness. Due to strict legal criteria, AOT participants typically represent far less than .05% of a state's population. Yet, on any given day, they are the people most at risk to be in a hospital, ER, on the streets or behind bars.

AOT RECIPIENT CHARACTERISTICS:[1]

- Majority have schizophrenia or severe bipolar disorder
- 97% percent had been hospitalized previously
- 47% had co-occurring substance abuse disorder
- 47% did not adhere to needed medication regiment before AOT

THE REVOLVING DOOR'S COSTS: Each psychiatric readmission costs on average $7,500[2], and non-adherence is the number one risk factor for it.[3] Mental illnesses account for nearly 20% of all Medicaid readmissions.[4] Medicaid patients had more than 75,000 mental health re-admissions within 30 days in one year.[5] Nearly 25% of Medicare patients with psychoses were readmitted within one month of discharge.[6]

SAVING LIVES AND COSTS: By creating a partnership between the individual and the mental health system, AOT greatly increases medication adherence, reduces costs from hospial readmission[7] and other revolving-door circumstances and promotes mental health recovery in qualifying individuals.

AOT WORKS: Of participants in New York's AOT program, called Kendra's Law:

AOT REDUCES ARRESTS & VIOLENCE

- 44% decrease in harmful behaviors
- 2/3 reduction in risk of arrest in any given month
- 4x less likely to perpetrate serious violence
- 1/2 as likely to be victimized

AOT SAVES MONEY

- 50% cost savings in New York
- 40% cost savings in North Carolina
- 40% cost savings in Summit County, Ohio
- $1.81 saved for ever dollar spent in Nevada County, California

BROAD SUPPORT FOR AOT

- International Association of Chiefs of Police
- National Sheriffs' Association
- Department of Justice
- American Psychiatric Association

RESOURCES:

Implementing Assisted Outpatient Treatment: Essential Elements, Building Blocks, and Tips For Maximizing Results, October 2019, https://www.treatmentadvocacycenter.org/storage/documents/White_Paper_FINAL_1.pdf

Eric Smith shares how AOT saved his life. https://www.youtube.com/watch?v=f3iO74ud7aM

Implementing AOT Laws, with links to FAQs, Sample forms and documents and conversations with AOT practitioners, Treatment Advocacy Center; https://www.treatmentadvocacycenter.org/aot

The Stepping Up Initiative; https://stepuptogether.org/toolkit

Mental Illness Policy Org.; AOT (Assisted Outpatient Treatment) Guide

The Consensus Workgroup on Behavioral Health Issues in the Criminal Justice System ,116th Congress and the Trump Administration on Behavioral Health Issues In The Criminal Justice System; Next Steps accessed 02/25/2020 at https://www.treatmentadvocacycenter.org/fixing-the-system/features-and-news/4230-new-recs