



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1233

PRINTERS NO. 2083

PRIME SPONSOR: Murt

COST / (SAVINGS)

FUND	FY 2016/17	FY 2017/18
General Fund	\$0	See Fiscal Impact

SUMMARY: House Bill 1233, Printer's Number 2083, establishes a new standard for assisted outpatient treatment (AOT) for seriously mentally ill individuals. This legislation is effective in 90 days.

ANALYSIS: This legislation amends the Mental Health Procedures Act (MHPA) to establish a new standard for assisted outpatient treatment (AOT) for seriously mentally ill individuals. HB 1233 will help create a strictly civil, non-punitive process and a continuum of services for seriously mentally ill individuals who are unwilling or unable to voluntarily seek treatment.

"Assisted Outpatient Treatment" is defined as community-based outpatient social, medical and behavioral health treatment services ordered by a court for a severely mentally disabled person, which may include, but are not limited to:

- Community psychiatric supportive treatment
- Assertive community treatment
- Medications
- Individual or group therapy
- Peer support services
- Financial services
- Housing or supervised living services
- Alcohol or substance abuse treatment when the treatment is co-occurring for a person with a primary diagnosis of mental illness
- Any other service prescribed to treat a person's mental illness that either assists the person in living and functioning in the community or helps prevent a relapse or a deterioration of a person's condition that would be likely to result in a substantial risk of serious harm to the person or others.

Determination of Need for Assisted Outpatient Treatment:

The need for AOT shall be shown by establishing clear and convincing evidence that the person would benefit from AOT as manifested by evidence of behavior that indicates all of the following:

- The person is unlikely to survive safely in the community without supervision, based on a clinical determination.
- The person has a history of lack of voluntary adherence to treatment for mental illness and one of the following applies:
 - At least twice within the 36 months prior to the filing of a petition seeking AOT, the person's failure to adhere to treatment has been a significant factor in necessitating involuntary inpatient hospitalization or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the 36-month period shall be extended by the length of any hospitalization or incarceration of the person in a correctional institution that occurred within the 36-month period.
 - Within the 48 months prior to the filing of a petition seeking court-ordered AOT, the person's failure to adhere to treatment resulted in one or more acts of serious violent behavior toward others or himself or threats of, or attempts at, serious physical harm to others or himself, provided that the 48-month period shall be extended by the length of any hospitalization or incarceration of the person in a correctional institution that occurred within the 48-month period.
- The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.
- Based on 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 themselves or others.

A person who meets only the AOT criteria as outlined above shall not be subject to involuntary inpatient hospitalization. There is no change to the existing law criteria requiring a “clear and present danger” to determine need for involuntary inpatient commitment.

Procedures for Initiating AOT for Persons Already Subject to Involuntary Treatment:

For persons already subject to involuntary inpatient treatment in a hospital, forensic facility or a correctional institution who are ready for release, HB 1233 provides an option for continuing treatment for persons who are no longer a “clear and present danger”, but are not well enough to survive safely in the community without court-ordered treatment. As provided by the MHPA, a petition may be made by the county administrator or the director of the facility to the court of common pleas.

The petition must include a statement of the facts constituting reasonable grounds to believe that the person is:

- No longer determined to be in need of involuntary inpatient treatment, or no longer subject to treatment in a forensic facility or correctional institution.
- Determined to be in need of AOT by meeting the standards outlined in the bill.

A copy of the petition shall be provided to the person, their attorney and those designated to be kept informed, and shall include an explanation of the nature of the proceedings, the person's right to an attorney and the services of an expert in the field of mental health. A hearing shall then be held within five days of the petition’s filing.

Procedures for Initiating AOT for Persons Not in Involuntary Treatment:

Any responsible party may file a petition in the court of common pleas requesting AOT for any person determined to be in need, and who is not already in involuntary treatment or AOT.

The petition shall state the reasonable grounds to believe that the person is in need of AOT and shall include the name of any examining physician, accompanied by a statement from a psychiatrist or a statement signed by a clinical psychologist and a statement signed by a physician, stating that the person who issued the petition has examined the person and is of the opinion that the person is in need of AOT, or shall be accompanied by a written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist, or by a clinical psychologist and physician.

If the petition demonstrates reasonable cause, the person shall be appointed an attorney and a court date set. The person shall be summoned to court or a warrant may be issued if it is believed that the person will not appear voluntarily.

The court, petitioner or individual may order an outpatient examination conducted by a psychiatrist or other qualified professional. A report of the examination must be given to the court and counsel at least 48 hours prior to the hearing.

Hearing Procedure:

If a person is believed to be in need of AOT, a hearing shall be conducted in accordance with the following:

- A qualified professional shall provide a written proposed individualized AOT plan to the court, which shall state all treatment services and the treatment providers who agree to deliver the services.
- In developing a treatment plan, the qualified professional shall take into account any existing advance directive for mental health treatment and provide the following persons with an opportunity to participate:
 - The person believed to be in need of court-ordered AOT.
 - All current treating providers.
 - An individual significant to the person believed to be in need of treatment, including any relative, close friend or individual otherwise concerned with the welfare of the person.
 - Any authorized guardian or other surrogate decision maker.
- The written proposed individualized AOT plan shall include case management services or an assertive community treatment team to provide care coordination and AOT services recommended by the qualified professional. Any plan that includes medication shall state whether the medication should be self-administered or administered by a specified provider and shall specify type and dosage range of medication. Forced administration of medication is expressly prohibited under AOT by HB 1233.
- A qualified professional, who has personally examined the person within 10 days of the filing of the petition, shall provide testimony in support of the finding that the person meets all of the criteria for AOT and in support of a written proposed treatment plan.
- A decision shall be rendered within 48 hours after the presentation of evidence.

If the individual is found to be in need of AOT, the court shall order treatment for a period not to exceed 90 days.

If a person fails to comply with a court-ordered AOT plan, the provider or facility responsible for the treatment shall inform the court. If the court receives information that a patient is not complying with the court's order, the court may take any of the following actions:

- Set a modification hearing to assess the person's failure to adhere to the AOT plan.
- Amend the AOT plan to foster adherence to necessary treatment by the person.
- Issue an order for the individual to be examined in accordance with Section 302 and if appropriate, filing a petition that the person poses a clear and present danger under Section 301(b).

The court may not hold an individual in contempt or otherwise sanction the individual solely based on the failure to comply with the AOT plan.

The person subject to AOT may petition the court for enforcement of a service specifically contained in that person's individualized treatment plan, provided that the petition must include clear and convincing evidence demonstrating that the service is not being provided in accordance with that plan.

Subject to a court determination, a person may be ordered to AOT for an additional period of up to 180 days if the person continues to meet the standards for determining the need for AOT.

FISCAL IMPACT: Enactment of this legislation should have no adverse fiscal impact to the Commonwealth or counties. HB 1233 does not mandate a specific set of treatment services and requires that the services to be provided in an AOT plan as well as the specific providers of these services be identified and presented to the court. In addition, there should be savings from a reduction in costs related to involuntary inpatient hospitalization and incarceration that can be used to provide AOT to individuals and expand the continuum of services, if needed.

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House Appropriations Committee (R)

DATE: June 21, 2017

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.