



THE UPDATED PATH OF KEVIN'S LAW

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PROGRESSION OF KEVIN'S LAW

- March 30, 2005: Kevin's Law initially enacted
- February 14, 2017: Amendments to Kevin's Law
- March 28, 2019: Additional amendments to Kevin's Law

Purpose: to authorize courts and community mental health agencies to develop and utilize AOT programs, generally used in lieu of hospitalization for people who fail to comply with prescribed treatments.



**REVIEW OF RECENT
LEGISLATIVE CHANGES**

CHAPTER 4 OF THE MENTAL HEALTH CODE

All references to “alternative treatment order” have been deleted and replaced with “assisted outpatient treatment”.

- Options for involuntary mental health treatment only include
 - Hospitalization;
 - Assisted outpatient treatment (AOT); or
 - A combination of hospitalization and AOT.
- Note: the term “alternative” no longer has significant meaning in the context of treatment orders.

Citations have been updated throughout the chapter.

MCL 330.1100A: DEFINITIONS

(8): Assisted outpatient treatment: includes the option to include a case management plan and case management services under the supervision of a psychiatrist and developed in accordance with person-centered planning in an assisted outpatient treatment order.

(19): Consent: includes a full or limited guardian under EPIC with the authority to consent.

(29)(c): Emergency situation: clarified to state “the individual has mental illness that has impaired his or her judgment so that the individual is unable to understand his or her need for treatment and presents a risk of harm.”

MCL 330.1400: DEFINITIONS

(f) Involuntary mental health treatment: adds assisted outpatient treatment, but clarifies that it does not include a full or limited guardian authorized under EPIC to consent to mental health treatment.

Note: Public Act 594 and 595 of 2018 provides the authority for a guardian appointed under EPIC for an individual found to be a legally incapacitated individual to consent to formal voluntary mental health treatment. All provisions within the Mental Health Code have been updated.

MCL 330.1401: “PERSON REQUIRING TREATMENT” DEFINED; EXCEPTION

OLD (c): “an individual who has mental illness, whose judgment is so impaired by that mental illness, that he or she is unable to understand his or her need for treatment, and whose impaired judgment, on the basis of competent clinical opinion, presents a substantial risk of significant physical or mental harm to the individual in the near future or presents a substantial risk of physical harm to others in the near future.”

STRICKEN (c): “an individual who has mental illness, whose judgment is so impaired by that mental illness, ~~that he or she is unable to understand his or her need for treatment, and whose impaired~~ judgment, **AND WHOSE LACK OF UNDERSTANDING OF THE NEED FOR TREATMENT HAS CAUSED HIM OR HER TO DEMONSTRATE AN UNWILLINGNESS TO VOLUNTARILY PARTICIPATE IN OR ADHERE TO TREATMENT THAT IS NECESSARY,** on the basis of competent clinical opinion, **TO PREVENT A RELAPSE OR HARMFUL DETERIORATION OF HIS OR HER CONDITION, AND** presents a substantial risk of significant physical or mental harm to the individual ~~in the near future or presents a substantial risk of physical harm to~~ **OR** others ~~in the near future.~~”

MCL 330.1401: “PERSON REQUIRING TREATMENT” DEFINED; EXCEPTION

NEW (c): “an individual who has mental illness, whose judgment is so impaired by that mental illness and whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition, and presents a substantial risk of significant physical or mental harm to the individual or others.”

(d): DELETED.

MCL 330.1434: PETITION; FILING; CONTENTS; CLINICAL CERTIFICATE; CONFIDENTIALITY; ASSISTED OUTPATIENT TREATMENT; PETITION NOT SEEKING HOSPITALIZATION

(3): An affidavit is no longer required when an examination cannot be secured when the initial petition is filed. Instead, “if a clinical certificate does not accompany the petition, the petitioner shall set forth the reasons an examination could not be secured within the petition.”

Note: PCM 209a was modified to delete the supplemental petition language and redesigned as an order for examination/transport. PCM 245 (notice of inability to secure evaluation/examination) was created to notify the court of the inability to secure the evaluation/examination if occurs after the initial petition was filed.

MCL 330.1436: NONCOMPLIANCE WITH ORDER OF EXAMINATION; PROTECTIVE CUSTODY

A court may order a peace officer to take an individual into protective custody and transport the individual to a hospital/prescreening unit within 10 days of the entry of the order.

- If law enforcement does not execute the order within 10 days, it must report to the court the reason the order was not executed (please see PCM 209a).

For an AOT only petition, if the individual will not make him or herself available for an evaluation, the court may order law enforcement to transport the individual to a preadmission screening unit or hospital for the mental health. The court must be satisfied that reasonable efforts were made to secure the examination before a transport order is entered.

- The examination must commence upon arrival and the individual must be released following the conclusion of the examination unless it is found that the individual needs immediate hospitalization. If immediate hospitalization is necessary, the director must file a petition with 2 clinical certificates requesting hospitalization or hospitalization and AOT with the court within 24 hours of the finding.

MCL 330.1455: RIGHT TO BE PRESENT AT ALL HEARINGS; WAIVER; EXCLUSION OF SUBJECT BY COURT; STIPULATION TO ENTRY OF TREATMENT ORDER; MEETING; REQUEST TO DEFER HEARING; CONTINUING JURISDICTION DURING DEFERRAL PERIOD; TREATMENT AS FORMAL VOLUNTARY PATIENT; EFFECT OF REFUSING TREATMENT OR REQUESTING HEARING; PARTICIPATION IN ALTERNATIVE TO HOSPITALIZATION; NOTICE TO CONVENE HEARING

(6) The subject of the petition may request to temporarily defer the hearing for not longer than:

- 60 days if the individual chooses to remain hospitalized; or
- 180 days if the individual chooses outpatient treatment or a combination of hospitalization and outpatient treatment.

MCL 330.1461: TESTIMONY OR DEPOSITION OF PHYSICIAN OR PSYCHOLOGIST REQUIRED; EXAMINATIONS; PRESENCE OF ATTORNEY DURING DEPOSITION; CROSS-EXAMINATION OF DEPONENT; WAIVER

Request for Hospitalization or Hospitalization and AOT:

- 2 clinical certificates with initial petition (PCM 201)
- 1 physician or licensed psychologist who has personally examined the individual testifies in person or by written deposition at the hearing.

Request for AOT only:

- No clinical certificate needed with initial petition (PCM 201)
- Psychiatrist who has personally examined the individual testifies unless psychiatrist signs the initial petition (PCM 201).
 - If psychiatrist signs petition, 1 physician or licensed psychologist who has personally examined the individual must testify.
- Testimony may be waived by respondent.
 - If waived, a clinical certificate completed by a physician, licensed psychologist, or psychiatrist must be presented to the court before or at the initial hearing.

330.1468: TREATMENT; DISPOSITION; ORDER OF ASSISTED OUTPATIENT TREATMENT

Alternative Treatment Order (ATO) deleted.

Changes to AOT Orders:

- The court may include a case management **plan and case management** services along with one or more of the orders listed in section 468(2)(D).
- Assisted community treatment team services changed to **assertive** community treatment team services.
- If substance use disorder testing is ordered, the order is subject to a review **hearing** once every 180 days.

Development of an AOT Plan:

- A psychiatrist must supervise the preparation and implementation of the AOT plan.
- It must be completed within 30 days of the entry of the court's order.
- A copy of the plan must be forwarded to the probate court for filing within 3 days after completion of the plan to be maintained in the court file.

MCL 330.1472A: INITIAL, SECOND, OR CONTINUING ORDER FOR INVOLUNTARY MENTAL HEALTH TREATMENT; DURATION OF ORDER

Initial Order:

- Hospitalization shall not exceed 60 days.
- AOT shall not exceed 180 days.
- Combined hospitalization and AOT shall not exceed 180 days; hospitalization shall not exceed 60 days.

Second Order:

- Shall not exceed 90 days total.

Continuing Order:

- Shall not exceed 1 year total.

MCL 330.1474: RELEASE OF INDIVIDUAL FROM HOSPITAL TO ALTERNATIVE TREATMENT PROGRAM OR ASSISTED OUTPATIENT TREATMENT; DECISION; NOTICE; APPEAL; COURT PETITION; INFORMATION TO BE CONSIDERED BY COURT.

The decision to release an individual from an AOT program must be a clinical decision made by a psychiatrist designated by the AOT program director.



**LET'S GO THROUGH THE
PROCESS**

THE PROCESS

Petition (PCM 201) filed with court (2 clinical certs required hospital/combination; 0 clinical certs required for AOT only)



Court shall fix a hearing date within 7 days (exception: hearing date within 28 days with AOT only requested and person not hospitalized)

Court Requirements:

- Provide notice at earliest practicable time in advance of hearing to permit preparation for hearing to:
 - Subject of petition
 - His/her attorney
 - Petitioner
 - Prosecuting attorney/other attorney
 - Hospital director if hospitalized
 - Spouse, if whereabouts known
 - Guardian, if any
 - Other relatives/persons as court determines
- Ensure following provided to subject of petition within 4 days of receipt of docs:
 - Copy of petition
 - Copy of each clinical certificate
 - Notice of right to full court hearing
 - Notice of right to be present at hearing
 - Notice of right to legal representation
 - Notice of right to demand jury trial
 - Notice of right to independent clinical evaluation



Court shall do the following:

- Appoint counsel (w/in 48 hours)
 - If hospitalized, appoint within 24 hours after hospitalization
 - Individual may waive (in writing to court) right to counsel after consultation with counsel
 - Preferred counsel must be appointed for initially appointed counsel
 - Must consult with individual at least 24 hours before hearing (if hospitalized, within 72 hours)
 - Must file certification with court
- Court compensate appointed counsel if individual indigent



Upon receipt of documents, court shall order report assessing current availability and appropriateness for individual of alternatives to hospitalization.
(PCM 216: Order and Report on Alternative Mental Health Treatment and Report)



The diagram consists of two main text blocks connected by arrows. A yellow arrow points down from the top center to the 'Rights of Subject' section. A yellow arrow points down from the top of the 'Rights of Subject' section to the bottom of the page. A yellow arrow points from the 'Request to temporarily defer hearing' bullet point to the 'Deferral Stipulation Received' section. A yellow arrow points down from the bottom of the 'Deferral Stipulation Received' section to the bottom of the page.

Rights of Subject:

- Present at all hearings
- Stipulate to entry of any order for treatment
- Meet with legal counsel, treatment team member, responsible CMH program designee, and subject of petition designee (if possible)
- Request to temporarily defer hearing for no more than 60 days (hospitalized) or 180 days outpatient or hospitalization and outpatient
 - Stipulation must be filed with court that individual agrees to remain hospitalized and to accept treatment for deferral period

Deferral Stipulation Received:

- Court must temporarily defer hearing
 - Petition and clinical certs remain valid
- Court retains continuing jurisdiction
- Individual treated as formal voluntary patient in hospital setting
 - If refuses treatment/requests hearing, treatment must cease and notify court to convene hearing
- If agreement to participate in an alternative to hospitalization, individual must be released to alternative treatment provider
 - If refuses treatment/requests hearing, treatment must cease and notify court to convene hearing

Court must receive all relevant, competent, and material evidence offered.

[Note: rules of evidence in civil actions applicable except for exceptions within statute or court rule]

Counsel must be provided adequate time for investigation and be permitted to present evidence for proper disposition, including evidence as to alternatives to hospitalization.

Hearings must be convened as the court directs:

- Within/without the county in which the court has its principal office;
- In a hospital; or
- Other convenient place

When practicable, court must convene hearings in a hospital.

[Note: Prosecuting attorney must participate in all hearings except if petitioner retains private counsel to present case for requiring treatment.]

Trial may be by bench or jury (6 persons)



Certificates/Testimony Required:

If petition alleges 401(a), (b), and/or (c) and requests hospitalization or a combination of hospitalization and assisted outpatient treatment (AOT):

- Clinical certificate required by physician or psychologist
- Clinical certificate required by psychiatrist
- Testimony/written deposition by a physician or licensed psychologist who has personally examined the individual

If petition alleges 401(a), (b), and/or (c) and requests assisted outpatient treatment (AOT) only:

- Testimony of a psychiatrist who has personally examined the individual unless the psychiatrist has signed the initial petition (PCM 201).
 - Physician or licensed psychologist who has personally examined the individual must testify if psychiatrist signed petition.
 - Testimony may be waived by subject of petition; if waived a clinical certificate completed by a physician, licensed psychologist, or psychiatrist must be presented to the court before or at the initial hearing.





If an individual will not submit to an examination/evaluation, the filer may request a pick-up order in the initial petition (PCM 201):

8. An examination could not be secured because _____

I request:

a. the individual be examined at _____
the preadmission screening unit or hospital designated by the community mental health services program.

b. a peace officer take the individual into protective custody and transport the individual to _____

Following the filing of PCM 201, if an individual will not submit to an examination/evaluation, the filer may request a pick-up order using PCM 245 (Notice of Inability to Secure Evaluation/Examination) and the court must make findings and orders in PCM 209a. Law enforcement is required to report to the court if the pick-up order is not executed within 10 days (PCM 209a).

New Form		JIS CODE: NIE
Approved, SCAO	STATE OF MICHIGAN PROBATE COURT COUNTY OF	FILE NO.
	NOTICE OF INABILITY TO SECURE EVALUATION/EXAMINATION	
Completely Revised Form		PCS CODE: OET TCS CODE: OET
Approved, SCAO	STATE OF MICHIGAN PROBATE COURT COUNTY OF	FILE NO.
	ORDER FOR EXAMINATION/TRANSPORT	

REPORT OF NON-EXECUTION





A judge or jury must find that an individual requires treatment by clear and convincing evidence.




Following evidence and arguments made, the court must find one of the following:

- The individual does not require treatment.
- The individual does require treatment and meets the criteria under one or more of the following:
 - 401(a).
 - 401(b).
 - 401(c).





Orders of the court:

- No treatment required: dismiss petition + immediately release from hospital (if applicable).
[Note: petition and clinical certs shall be maintained as confidential]
 - Individual requires treatment, the court shall do 1 of the following:
 - Hospitalization
 - Hospitalization in a private/VA hospital at request of individual/family
 - Undergo combination of hospitalization and AOT
 - Undergo AOT program (AOT must be supervised by psychiatrist & completed within 30 days of order)
 - May include case management plan and case management services and 1 or more of the following:
 - Medication (must consider preference reported by individual)
 - Blood or urinalysis tests to determine compliance with or effectiveness of prescribed medication
 - Individual or group therapy, or both
 - Day or partial day programs
 - Educational or vocational training
 - Supervised living
 - Assertive community treatment team services
 - Substance use disorder treatment
 - Substance use disorder testing with history of alcohol/substance use subject to review hearing once every 180 days
 - Any other services prescribed
- 



Persons entitled to copies of court orders:

- Subject of the order
- Individual's guardian (if applicable)
- Individual's attorney
- Executive director of the CMH program
- Hospital director of any hospital in which the individual is or will be a patient



Upon entry of an order, the court must immediately order the department of state police to enter the court order into LEIN.

The order may only be removed from LEIN upon the individual motioning the court and a subsequent court order ordering removal.

Entry into LEIN is not permitted under current law for AOT only orders.





Duration of the Orders:

- Initial order of hospitalization: 60 days
- Initial order of AOT: 180 days
- Initial order of combined hospitalization and AOT: 180 days (hospital: 60 days)
- Second order of involuntary mental health treatment: 90 days
- Continuing order of involuntary mental health treatment: 1 year



Noncompliance:

- Modified order without a hearing
- Show cause individual (transport order available)
- Show cause agency



**ADDITIONAL INFORMATION
AND RESOURCES**

CASE MANAGEMENT SYSTEM (CMS) CHANGES

The recent form additions and changes have resulted in new and updated event code changes for the JIS applications:

PCM 201

- For PCS: PAS – *Petition for Mental Health Treatment* assisted outpatient treatment only petitions (item 9b on PCM 201), count on caseload Part 1, Section D., Line #8.
- For TCS: PAS, IPAS – *Petition for Mental Health Treatment* assisted outpatient treatment only petitions (item 9b on PCM 201), count on caseload Part 1, Section D., Line #8.

CASE MANAGEMENT SYSTEM (CMS) CHANGES

PCM209a

- OET – *Order for Examination/Transport* (NEW) will count on caseload report, Part 1, Section D., Line #7
- SPA – *Supplemental Petition to Application for Hospitalization and Order for Examination* and SPE – *Supplemental Petition for Examination/Hospitalization and Order* are obsolete and should no longer be used. Also, they will no longer count on caseload Part 1, Section D., Line #7

PCM201

- APM – *Amended Petition for Mental Health Treatment* (NEW) should be used when the 'Amended' checkbox is utilized.

PCM 245

- NIE – *Notice of Inability to Secure Evaluation/Examination* (NEW)

COMMUNICATIONS

Summary of legislative changes from 2018 that affect the Mental Health Code and the Estates and Protected Individuals Code may be found at:

Kevin's Law:

<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/TCS/Documents/TCS%20Memoranda/2019-06.pdf>

MHC and EPIC Revisions Regarding Legally Incapacitated Individuals:

<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/TCS/Documents/TCS%20Memoranda/2019-07.pdf>

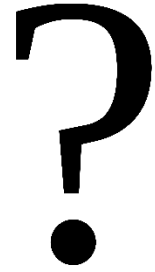
Judicial Admissions:

<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/TCS/Documents/TCS%20Memoranda/2019-08.pdf>

ADDITIONAL RESOURCES

Additional resources and materials may be found attached to this recording. This recording and all attachments may be found on the Michigan Judicial Institute (MJl) website found at <https://mjieducation.mi.gov/>.

QUESTIONS



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5 Key Highlights of the Revised Mental Health Code

1. All references to alternative treatment order have been deleted.
Options include:
 - a. Hospitalization;
 - b. Assisted outpatient treatment; or
 - c. Combination of hospitalization and assisted outpatient treatment.
2. Continues to focus on capacity and not conduct.
 - a. Expanded criteria for a person requiring treatment in section 401(c).
 - b. Section 401(d) is deleted.
3. Requires a transport order for hospitalization or AOT to be executed by law enforcement within 10 days.
4. Testimony and requirements for clinical certificates for petitions requesting AOT only clarified.
5. Duration of orders revised.

Petition filed (2 clinical certs required except AOT only requests)

Court hearing date within 7 days; 28 days if AOT only requested + no hospitalization

Provide notice at earliest practicable time. Provide petition, clinical certs, and rights notice to subject within 4 days of receipt

Appoint counsel within 48 hours (24 if hospital)

Order report assessing current availability and appropriateness for individual of alternatives to hospitalization (PCM 216)

Hold deferral conference if requested and hospitalized

Stipulation must be received once agreement reached

Hearing convened as court directs [Prosecuting attorney (or private retained attorney) must be present at all hearings.]

Trial: Bench or Jury (6 persons)
Court must receive all relevant, competent, and material evidence offered.

If petition alleges 401(a), (b), and/or (c):

- Clinical cert: physician/psychologist
- Clinical cert: psychiatrist
- Testimony by only one physician

If petition alleges 401(a), (b), and/or (c)-AOT only:

- Testimony of psychiatrist
- If psychiatrist signs petition, testimony of physician/licensed psychologist.
- If testimony waived by respondent, clinical certificate by physician/psychologist/psychiatrist

Judge/Jury must find individual requires treatment by clear and convincing evidence

Findings:

- Individual does not require treatment
- Individual requires treatment pursuant to 401(a), 401(b), and/or 401(c).

Orders:

- No treatment required: dismiss petition + immediately release from hospital (if applicable).
- Treatment required, court order 1 of the following:
 - Hospitalization
 - Hospitalization in private/VA hospital as requested
 - Combination of hospitalization and AOT
 - AOT program: may include case management plan & services and 1 or more:
 - Medication (consider preference)
 - Blood/urinalysis tests
 - Individual/group therapy, or both
 - Day/partial day programs
 - Educational/vocational training
 - Supervised living
 - Assertive community treatment team services
 - Substance use disorder treatment
 - Substance use disorder testing with history of alcohol/substance use (subject to hearing every 180 days)
 - Any other services prescribed

With the exception of AOT only, if ordered for involuntary treatment, order must be sent to LEIN (may only be removed by subsequent order).

Initial duration:

- Hospital: 60 days
- AOT: 180 days
- Hospital (60 days) + AOT: 180 days

Second duration: 90 days total
Continuing duration: 1 year total

Court continues to issue consecutive 1 year continuing order until order expires without a petition having been filed.

Noncompliance:

- Modify order without hearing
- Show cause

Court Process: Probate MI Filings (2019)

Court may order peace officer to take individual into protective custody and transport to preadmission screening unit or hospital for ordered examination/evaluation if found that subject of petition will not comply with an order of examination/evaluation (436). Applies to hospitalization or AOT. Must be executed within 10 days of entry of order.

Filing with the court (434):

- Petition for Treatment (PCM 201)
- 2 Clinical Certificates (PCM 208) – must be completed within 24 hours.
 - 1 from physician/psychologist
 - 1 from psychiatrist
- Exception: AOT only petitions do not require a clinical certificate to be attached.

Court Requirements:

- Hearing scheduling (452)
 - If hospitalized, court must schedule hearing w/ in 7 days.
 - If not hospitalized and requesting AOT only, court must schedule hearing within 28 days.
- Attorney Appointments (454)
- Receive PCM 216 CMH completion (453a)
- Deferral conference (455)

Court Hearing Notice (453):

- Notice to be provided ASAP
- Subject of petition must be provided initial petition, clinical cert (if applicable), and notice of rights within 4 days of receipt. Notice must be provided to:
 - Subject of petition and his/her attorney
 - Petitioner
 - Hospital director where subject hospitalized
 - Spouse of the subject (if applicable)
 - Guardian of subject (if applicable)
 - Other relatives/persons as the court determines

Rights of Subject (455):

- Right to participate
- Right to legal counsel
- Right to stipulate to entry of order
- Right to jury
- Prepare and present evidence
- Right to a continuance for a reasonable time for good cause
- Copies of court orders to statutorily required individuals

Court Hearings governed by sections 452-465 (AOT (and not hospitalized) only petitions are not governed by sections 453(2), 453a, and 455(3)-(11)):

- Fix a date for every hearing
- Deferral allowed
- Testimony (461):
 - Request hospitalization and/or AOT: Requires testimony from one physician or licensed psychologist.
 - Request AOT only: Testimony of a psychiatrist who has personally examined the individual unless the psychiatrist has signed the initial petition (PCM 201). Physician or licensed psychologist who has personally examined the individual must testify if psychiatrist signed petition. Testimony may be waived by subject of petition; if waived a clinical certificate completed by a physician, licensed psychologist, or psychiatrist must be presented to the court before or at the initial hearing.

Court must find one of the following to require treatment:

- 401(a): An individual with mental illness + due to the mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another + has engaged in an act(s) or has made significant threats that are substantially supportive of the expectation.
- 401(b): An individual with mental illness + due to the mental illness is unable to attend to his/her basic physical needs (food, clothing, or shelter) in order to avoid serious harm in the near future + has demonstrated that inability by failing to attend to those basic needs.
- 401(c): An individual who has mental illness + whose judgment is so impaired by that mental illness + whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition + presents a substantial risk of significant physical or mental harm to the individual or others.

Orders (469a):

- Hospitalization
- Hospitalization in a private/VA hospital at request of individual/family
- Undergo combination of hospitalization and AOT
- Undergo AOT program (AOT must be supervised by psychiatrist & completed within 30 days of order)
 - May include case management plan and case management services and 1 or more of the following:
 - Medication (must consider preference reported by individual)
 - Blood or urinalysis tests to determine compliance with or effectiveness of prescribed medication
 - Individual or group therapy, or both
 - Day or partial day programs
 - Educational or vocational training
 - Supervised living
 - Assisted community treatment team services
 - Substance use disorder treatment
 - Substance use disorder testing with history of alcohol/substance use subject to review hearing once every 180 days
 - Any other services prescribed

Duration of Orders (472a):

- Initial Order:
 - Hospitalization shall not exceed 60 days
 - AOT shall not exceed 180 days
 - Combination of hospitalization and AOT shall not exceed 180 days (hospital: 60 days)
 - Second Order shall not exceed 90 days total.
 - Continuing Order shall not exceed 1 year total.
- The court must continue to issue consecutive 1 year continuing orders until a continuing order expires without a petition having been filed.

Noncompliance (475):

- If individual not in compliance with court order, the supervising agency/mental health professional must notify the court immediately. Once notified, the court may require 1 or more of the following without a hearing:
 - Individual be taken to preadmission screening unit
 - Individual hospitalized for no more than 10 days
 - Individual hospitalized for 10 days but no longer than AOT duration, whichever is less.
- Individual may also report noncompliance of agency to the court.

Dispositions (468):

- An individual may not be found to require treatment unless at least 1 physician/psychologist who has personally examined the individual testifies in person/by written deposition at the hearing.
 - Testimony/deposition may be waived by the subject of petition.
- Clear and convincing evidence must be found.
- If found that individual does not require treatment, court must enter order and if individual is hospitalized, individual must be discharged immediately.
- If found that individual requires treatment, court must do 1 or more of the following:
 - Order hospitalization per CMH/other entity recommendation.
 - Order hospitalization in private/VA hospital.
 - Order to undergo combined hospitalization and AOT as recommended.
 - Order to undergo AOT.
- Must consider preferences, medication experiences, existing IPOS, and any advance directive. CMH was assist in creating one prior to expiration of AOT order.
- If AOT order conflicts with existing advance directive or existing IPOS, AOT order must be reviewed for possible adjustment by psychiatrist not previously involved with developing AOT order. The court must state the court's findings on the record or in writing if the court takes the matter under advisement, including the reason for the conflict.

Before issuing orders, the court must (461, 465, and 468):

- Review a report on alternatives to hospitalization not more than 15 days before the court issues the order (exception: AOT only petitions).
- Following review of the report, the court must do all of the following:
 - Determine whether the treatment program is adequate to meet the individual's treatment needs and is sufficient enough to prevent harm that the individual may inflict upon self or others within the near future.
 - Determine whether there is an available agency/mental health professional available to supervise the treatment program.
 - Inquire as to the individual's desires regarding alternatives to hospitalization.
- If the court finds a treatment program alternate to hospitalization that would meet the individual's needs and there is no harm to self or others, the court must order the alternate treatment or a combination of hospitalization and the alternate treatment.
- If the court orders AOT as the alternative to hospitalization, the order must be consistent with the statutory provisions.
- Prior to ordering hospitalization of an individual, the court must inquire into the adequacy of the treatment.

Chapter 4 of the Mental Health Code: Legislative Revisions from 2017-2019

100a:

(8) includes the option to include a case management plan and case management services under the supervision of a psychiatrist and developed in accordance with person-centered planning in an assisted outpatient treatment order.

(19): includes a full or limited guardian under EPIC with the authority to consent.

(29)(c): The definition of “emergency situation” has been revised to state “[t]he individual has mental illness that has impaired his or her judgment so that the individual is unable to understand his or her need for treatment and presents a risk of harm.”

202(2):

CMH must determine an individual’s eligibility for a private health insurer, Medicaid, or Medicare and must bill them first before expending money from the state general fund to provide treatment and services to the individual.

400(f):

Involuntary mental health treatment adds assisted outpatient treatment, but clarifies that it does not include a full or limited guardian authorized under EPIC to consent to mental health treatment.

400b:

Clarifies that time frames as listed in code excludes Sundays and legal holidays.

401(a):

An individual with mental illness + due to the mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another + has engaged in an act(s) or has made significant threats that are substantially supportive of the expectation.

401(b):

An individual with mental illness + due to the mental illness is unable to attend to his/her basic physical needs (food, clothing, or shelter) in order to avoid serious harm in the near future + has demonstrated that inability by failing to attend to those basic needs.

Modified 401(c):

An individual who has mental illness + whose judgment is so impaired by that mental illness + whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of

competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition,
+ presents a substantial risk of significant physical or mental harm to the individual or others.

401(d):

Deleted.

Forms (404):

The department of community health will create forms to be used by all hospitals. The SCAO will create forms to be used in all court proceedings.

Petition Requirements (434):

Who May File? Any individual age 18 or over.

Content Requirements:

- Facts as basis for assertion
- Names and addresses (if known)
- Witnesses to the facts
- Name and addresses of nearest relative or guardian (if known) OR if none, a friend of the individual (if known)

Petitioner may assert the subject of the petition should receive AOT.

Clinical certificate not required if only AOT since the person is not hospitalized prior to the hearing.

Note: If a petition is filed as the result of an act or omission amounting to gross negligence or willful and wanton misconduct, a cause of action may be initiated (439). If the petition is filed in good faith, then there is no cause of action.

Prescreening Unit (409 and 410) – only applies to 401(a), (b), or (c):

A preadmission screening unit must assess an individual being considered for admission into a hospital. If the individual is assessed and found not to be suitable for hospitalization, the preadmission screening unit must provide information regarding alternative services and the availability of those services, and make the appropriate referrals.

A preadmission screening unit must assess and examine, or refer to a hospital for examination, an individual who is brought to the unit by a peace officer ordered by a court to be examined. The preadmission screening unit must designate the hospital to which the individual must be admitted if the individual meets the requirements for hospitalization. The unit must consult with the individual as to the preferred hospital for admission of the individual (409).

An individual may be considered for admission to a hospital only after authorization by a community mental health services preadmission screening unit (410).

434:

Deletes the requirement of an affidavit when an examination cannot be secured when the initial petition is filed. Instead, requires the petitioner to set forth the reasons an examination could not be secured in the initial petition.

Order for Evaluation and Transportation to Hospital (436 through 438):

If it appears that the subject of the petition will not comply with an order of examination, the court may order a peace officer to take the individual into protective custody and transport him/her to a preadmission screening unit or hospital for the ordered examination. The order must be executed by law enforcement within 10 days of entry of the order; otherwise, the court must report to the court the reasons it was not executed. The court may also issue an order if an individual will not make him or herself available for an examination for an AOT only request only if the court is satisfied that reasonable efforts were made to secure the examination prior to the request for a transport order. The examination must begin upon arrival and the individual must be released following the conclusion of the examination. However, if it is found by the examiner that the individual needs immediate hospitalization, the director must file a petition with 2 clinical certificates requesting hospitalization or a combination of hospitalization and AOT with the probate court within 24 hours of this finding by the examiner. (436)

If it appears that the individual requires immediate involuntary mental health treatment, it may order the individual be hospitalized to prevent harm to self or others. This transport may be done by a peace officer if ordered by the court. The examination must be completed within 24 hours after hospitalization or the individual must be released (438). If the court does not see an immediate need for hospitalization, the individual may remain in home pending the examination (437).

Hospitalization (447, 449):

Once an individual is hospitalized for examination (also applies to a case of a combination of hospitalization and AOT), the individual must be allowed to complete a reasonable number of telephone calls (at minimum 2) to persons of his/her choice and at least 2 calls must be at the expense of the hospital if the individual has insufficient funds.

Within 12 hours of hospitalization, the hospital director must ensure that the individual receives the following:

- A copy of the petition explaining that the individual will be examined by a psychiatrist within 24 hours.
- A written statement explaining that the individual will be examined by a psychiatrist within 24 hours.
- A written statement in simple terms explaining the rights of the individual to a full court hearing, representation by legal counsel, to a jury trial, and to an independent clinical evaluation.

If the individual is unable to read or understand the written materials, every effort must be made to explain them to him/her in a language that he/she understands. The explanation and by whom must be noted in the patient record.

The hospital director must ensure that the individual receives a copy of each clinical certificate executed in connection with the individual's hospitalization within 24 hours of completion/receipt of the certificate (also applies to a case of a combination of hospitalization and AOT).

Court Hearing Notice (453):

- Notice must be given at the earliest practicable time and sufficiently in advance of the hearing date to prepare for the hearing.
- Within 4 days of the court's receipt of an initial petition and clinical certificate, the court must have the subject of the petition be provided a copy of the petition, a copy of the clinical certificate, notice of rights to a full court hearing, to be present in the hearing, to be represented by legal counsel, to demand a jury trial, and to an independent clinical evaluation.
 - The notice provision does not apply if only AOT is requested as a clinical certificate is not required.

Notice must be provided to the following:

- Subject of the petition
- Subject of the petition's attorney
- Petitioner
- Prosecuting attorney or other attorney pursuant to section 457 (retained by petitioner)
- Hospital director of any hospital where the subject has been hospitalized
- Spouse of the subject (if whereabouts known)
- Guardian of subject (if any)
- Other relatives or persons as the court determines

Right to Participate (455):

- Right to be present at all hearings unless waived
- Subject of petition may stipulate to the entry of any order for treatment following consultation with legal counsel.
- The subject of the petition may request to temporarily defer the hearing for not longer than 60 days if chooses hospitalization or 180 days if chooses outpatient treatment or a combination of hospitalization and outpatient treatment.

Right to Legal Counsel (454):

- Every individual that is the subject of a petition is entitled to be represented by legal counsel.
- Absent an appearance filed, the court must appoint legal counsel within 48 hours following receipt of the petition.
 - If hospitalized, the court must appoint legal counsel within 24 hours.
- May waive right to legal counsel in writing to the court following consultation with the appointed attorney.

- If the subject of the petition prefers another counsel, preferred counsel agrees to the appointment, and the court is notified of the preference by the subject of the petition, the court must replace the initial appointed attorney with the preferred one.
- If the subject of the petition is indigent, the court must compensate legal counsel.
- Legal counsel must consult with the subject of the petition in person at least 24 hours before the hearing.
 - If hospitalized, legal counsel must consult not more than 72 hours following the filing of the petition.

Participation of a Prosecuting Attorney (457):

- The prosecuting attorney from the county or the prosecuting attorney from another county with the permission of the county prosecuting attorney must participate in all hearings convened by the court.
- The prosecuting attorney is not required to participate when the petitioner or some other appropriate person has retained private counsel who will be present in court and will present the case for requiring treatment or for a finding of incompetence.

Right to a Jury, Evidence, Adjournments, and Copies of Orders (458-460, 462, 464):

- Subject of a petition may demand a jury trial consisting of six jurors (458).
- 459:
 - The parties have the right to present documents and witnesses and to cross-examine witnesses.
 - The court must receive all relevant, competent, and material evidence which may be offered. The rules of evidence apply except when exceptions have been provided by court rule and statutes.
- The subject of the petition's attorney must have adequate time to prepare and present necessary evidence at the hearing (460).
- Granting of requests for continuances for a reasonable time for good cause. Failure to notify a spouse, guardian, relative, or other person determined by the court must not be the reason to adjourn or continue a hearing unless the subject of the petition or his or her attorney objects (462).
- Copies of court orders must be given to the subject of the order, the individual's guardian (if any), the individual's attorney, the executive director of the CMH program, and the hospital director of any hospital in which the individual is or will be a patient (464).
- Upon entry of an order, the court must immediately order the department of state police to enter the court order into LEIN. The order must be immediately removed only upon receipt of a subsequent court order for that removal (464a).
 - Entry into LEIN is not required under current law for AOT only orders.

Court Hearings:

Court hearings are governed by sections 452 through 465. AOT only petitions are not governed by sections 453(2) 453a, and 455(3)-(11).

- Fix a date for every hearing.

- A hearing must be convened promptly but no more than 7 days from receipt of the following:
 - A petition for hospitalization.
 - A petition for determination that an individual is a person requiring treatment.
 - A petition for determination that an individual continues to be a person requiring treatment.
 - A petition for discharge under section 484.
 - A petition for discharge under section 485.
 - A demand/notification that a hearing has been temporarily deferred under section 455(2) or (5).
 - AOT cannot be deferred.
- A hearing must be set for petition under 434(6) [AOT only petition and individual not patient in a psychiatric facility] within 28 days for AOT only petition.

Disposition (461, 465, and 468):

The requirements for clinical certificates and testimony for hospitalization or a combination of hospitalization and AOT:

- 2 clinical certificates attached to the initial petition (one from a physician or licensed psychologist and one from a psychiatrist).
- 1 physician or licensed psychologist who has personally examined the individual testifies in person or by written deposition at the hearing.

The requirements for clinical certificates and testimony for request for AOT only:

- A clinical certificate is not required to be attached to the initial petition.
- A psychiatrist who has personally examined the individual must testify at the initial hearing unless psychiatrist signs the initial petition (PCM 201).
- If the psychiatrist who examined the respondent signed the petition, the psychiatrist does not need to testify, but 1 physician or licensed psychologist who has personally examined the individual must testify.
- The testimony of the psychiatrist, physician, or licensed psychologist may only be waived by the respondent. If the respondent waives the testimony, a clinical certificate completed by a physician, licensed psychologist, or psychiatrist who personally examined the individual must be presented to the court before or at the initial hearing.

(461).

Requires the court find that a person requiring treatment must be made by clear and convincing evidence (465).

For any petition filed under 434, if the court finds that an individual is not a person requiring treatment, the court must enter an order to that effect. If the individual is hospitalized, the individual must be discharged immediately (468).

For petition filed under 434, if the individual is found to be a person requiring treatment, the court must do 1 of the following:

- Order individual hospitalized as recommended by CMH or other entity.

- Order individual hospitalized in a private or VA hospital at the request of the individual or family if private or family funds are to be used.
- Order individual to undergo combined hospitalization and AOT as recommended.
- Order individual to undergo AOT through CMH program or other entity.
 - In developing an AOT order, the court must consider preferences and medication experiences reported by the subject of the petition or the subject's representative, and any directions in a durable POA or a current advance directive. An advance directive must be established with the assistance of CMH prior to the expiration of the AOT order if one does not exist and if the individual wants one.
 - If an AOT order conflicts with the existing advance directive, durable POA, or individual plan of services under section 712, the AOT order must be reviewed for possible adjustment by a psychiatrist not previously involved with developing the AOT order. The court must state the court's findings on the record or in writing if the court takes the matter under advisement, including the reason for the conflict.

Orders (468, 469a, 470):

The court may order that the subject receive AOT through CMH or another entity, which may include case management plan and case management services and may include 1 or more of the following:

- Medication
- Blood/urinalysis tests to determine compliance with or effectiveness of prescribed medications
- Individual/Group Therapy
- Day/partial day programs
- Educational and Vocational Training
- Supervised living
- Assertive community treatment team services
- Alcohol/substance use disorder treatment, or both
- Alcohol/substance use disorder testing, or both, for individuals with history and testing necessary to prevent deterioration of condition
 - Court order subject to review hearing every 6 months
- Any other services prescribed to treat the mental illness and to assist in living and functioning in the community OR to help prevent relapse or deterioration that may reasonably be predicted to result in suicide or need for hospitalization

Before ordering a course of treatment, the court must review a report on alternatives to hospitalization not more than 15 days before the court issues the order except for AOT only petitions (469a). Following review of the report, the court must do all of the following:

- Determine whether the treatment program is adequate to meet the individual's treatment needs and is sufficient enough to prevent harm that the individual may inflict upon self or others within the near future.
- Determine whether there is an available agency or mental health professional available to supervise the treatment program.

- Inquire as to the individual's desires regarding alternatives to hospitalization.

If the court finds there is a treatment program alternate to hospitalization that would meet the individual's needs and there is no harm to self or others, the court must order the alternate treatment or a combination of hospitalization and the assisted outpatient treatment.

Prior to ordering hospitalization of an individual, the court must inquire into the adequacy of the treatment (470).

Duration and Continuing Orders (472a):

- An initial order of hospitalization must not exceed 60 days.
- An initial order of AOT must not exceed 180 days.
- An initial order of combined hospitalization and AOT must not exceed 180 days. The hospitalization portion of the initial order must not exceed 60 days.
- A second order must not exceed 1 year.
- A continuing order must not exceed 1 year.
- The court must continue to issue consecutive 1 year continuing orders until a continuing order expires without a petition having been filed.

Responsibilities of hospital/CMH following court Order:

Section 473: A hospital director or an agency or mental health professional supervising an individual's AOT shall file a petition for a second or continuing order if he/she/it believes the individual continues to be a person requiring treatment and that the individual is likely to refuse treatment on a voluntary basis when the order expires.

Section 474: The decision to release an individual from an AOT program must be a clinical decision made by a psychiatrist designated by the AOT program director.

Section 475: If the individual who is subject to an AOT order is found to be not complying with the court order, the supervising agency or mental health professional must notify the court immediately. If the court is notified of the noncompliance, the court may require 1 or more of the following without a hearing:

- Individual be taken to the preadmission screening unit established by the CMH program where the individual resides.
- The individual be hospitalized for no more than 10 days.
- Upon recommendation by the CMH program where the individual resides, the individual be hospitalized for a period of more than 10 days, but not longer than the duration of the order for AOT or not longer than 90 days, whichever is less.

The court may direct peace officers to transport the individual to a designated facility or a preadmission screening unit and may specify the conditions under which the individual may return to the AOT before the order expires.

An individual hospitalized may object to the hospitalization according to provisions of section 475a.

STATE OF MICHIGAN PROBATE COURT COUNTY OF	SUPPLEMENTAL TO INITIAL ORDER AFTER HEARING ON PETITION FOR MENTAL HEALTH TREATMENT	FILE NO.
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In the matter of _____
 First, middle, and last name

The following assisted outpatient treatment services are ordered (addendum to item 14):

- Case management plan and services. _____
- Medication. _____
- Blood or urinalysis tests to determine compliance with or effectiveness of prescribed medication. _____
- Individual and/or group therapy. _____
- Day or partial day programs. _____
- Educational or vocational training. _____
- Supervised living. _____
- Assertive community treatment team services. _____
- Substance use disorder treatment. _____
- Substance use disorder testing (for individuals with a history of alcohol or substance use and for whom that testing is necessary to assist the court in ordering treatment designed to prevent deterioration). _____
- Substance use testing order shall be reviewed by the court at a hearing once every 180 days. _____
- Any other services prescribed to treat the individual's mental illness and either to assist the individual in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization. _____

STATE OF MICHIGAN PROBATE COURT	SUPPLEMENTAL TO <input type="checkbox"/> SECOND <input type="checkbox"/> CONTINUING	FILE NO.
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COUNTY OF	ORDER FOR MENTAL HEALTH TREATMENT	
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In the matter of _____
 First, middle, and last name

The following assisted outpatient treatment services are ordered (addendum to item 14):

- Case management plan and services. _____
- Medication. _____
- Blood or urinalysis tests to determine compliance with or effectiveness of prescribed medication. _____
- Individual and/or group therapy. _____
- Day or partial day programs. _____
- Educational or vocational training. _____
- Supervised living. _____
- Assertive community treatment team services. _____
- Substance use disorder treatment. _____
- Substance use disorder testing (for individuals with a history of alcohol or substance use and for whom that testing is necessary to assist the court in ordering treatment designed to prevent deterioration). _____
- Substance use testing order shall be reviewed by the court at a hearing once every 180 days. _____
- Any other services prescribed to treat the individual's mental illness and either to assist the individual in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization. _____

CMH AOT PLAN REPORT

Name of Recipient: _____
First, middle, and last name

Recipient DOB: _____

Plan recommended by: _____
Name

Entity: _____

The following assisted outpatient treatment services are ordered (addendum to item 14):

- Case management plan and services. _____
- Medication. _____
- Blood or urinalysis tests to determine compliance with or effectiveness of prescribed medication. _____
- Individual and/or group therapy. _____
- Day or partial day programs. _____
- Educational or vocational training. _____
- Supervised living. _____
- Assertive community treatment team services. _____
- Substance use disorder treatment. _____
- Substance use disorder testing (for individuals with a history of alcohol or substance use and for whom that testing is necessary to assist the court in ordering treatment designed to prevent deterioration). _____
 - Substance use testing order shall be reviewed by the court at a hearing once every 180 days. _____
- Any other services prescribed to treat the individual's mental illness and either to assist the individual in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization. _____

