

### **AOT Overreach – Civil Rights and Other Concerns**

Assisted Outpatient Treatment (AOT) is a model of court-ordered, involuntary treatment of mental illness. The model already exists under New Mexico law but is only in practice in the [Third Judicial District](#). Reforms drafted for the 2024 special legislative session aim to greatly expand the use of AOT. The revisions proposed raise substantive due process and equal protection rights concerns.

State AOT programs violate the substantive due process and equal protection rights of those with mental illness where they are overinclusive and not related closely enough to the State's legitimate objectives. Involuntary, court-ordered treatment violates an individual's constitutionally recognized liberty interest in making decisions about one's own health, including the right to refuse treatment. Because they impede this right, programs such as AOT must be narrowly tailored to target the appropriate population to achieve the State's goals of protecting the community. Under AOT programs, narrow tailoring has come to mean that in order to be permissible, AOT must be conducted under the "least restrictive means" necessary to achieving the State's goals.

Under existing law, to be eligible for AOT, someone must have "demonstrated a history of lack of compliance with treatment for a mental disorder" *and* that behavior must have caused tangible consequences (such as repeat hospitalizations, incarcerations, or acts of violence). The proposed expansion, however, is much broader. It ties eligibility to simply being mentally ill (having an enumerated diagnosis), not currently being stabilized in treatment, and an indication that "deterioration" or "relapse" could occur without intervention. The expansion far beyond those who present a risk of violence to themselves or others will render the program overly broad, beyond what is necessary to achieve the State goal of protecting the public. Furthermore, by reorienting commitment criteria from behavior and dangerousness to the mental health diagnosis itself, proposed legislation also threatens to violate the equal protection rights of those with mental illness by singling them out purely based on that protected status. If adopted, the revisions would invite costly and resource-intensive litigation across the state.

Even if constitutional deficits were addressed, these downstream policy responses cannot compensate for a lack of appropriate and effective community services to treat mental illness. New Mexicans need and deserve strong investments in a robust and voluntary behavioral health system, including housing, substance use disorder treatment, job training, peer support services, child and family support services, and community-based crisis response systems. These community-level investments are essential for a creating safe and healthy New Mexico.