

**ASSISTED  
OUTPATIENT  
TREATMENT**

**SUMMARY OF NEW MEXICO LAW**

# AGENDA

AOT

Criteria

Burden of Proof

Legal Procedure

Outcomes

# ASSISTED OUTPATIENT TREATMENT (“AOT”) MEANS...

Categories of outpatient services ordered by a district court, including case management, comprehensive community support, intensive outpatient, care coordination or assertive community treatment team services,

prescribed to treat a patient's mental disorder

*and* to assist a patient in living and functioning in the community

*or* to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in harm to the patient or another or the need for hospitalization.

## **ASSISTED OUTPATIENT TREATMENT MAY INCLUDE:**

- (1) medication;
- (2) periodic blood tests or urinalysis to determine compliance with prescribed medications;
- (3) individual or group therapy;
- (4) day or partial-day programming activities;
- (5) educational and vocational training or activities;
- (6) alcohol and substance abuse treatment and counseling;
- (7) periodic blood tests or urinalysis for the presence of alcohol or illegal drugs for a patient with a history of alcohol or substance abuse;
- (8) supervision of living arrangements; and
- (9) any other services prescribed to treat the patient's mental disorder and to assist the patient in living and functioning in the community, or to attempt to prevent a deterioration of the patient's mental or physical condition;

# AOT CRITERIA

A PERSON *MAY* BE ORDERED TO PARTICIPATE IN AOT IF THE COURT FINDS THAT THE PETITIONER ESTABLISHED FIVE ELEMENTS WITH CLEAR AND CONVINCING EVIDENCE.

N.M.S.A. 1978, § 43-1B-3

“The standard of clear and convincing evidence strikes a fair balance between the defendant's interest in avoiding an erroneous deprivation of liberty and the State's interest in treating the defendant, protecting the defendant from himself, and protecting society in general. Further, any risk of an erroneous decision from applying this standard is insufficient to warrant a higher standard.”

*State v. Rotherham*, 1996-NMSC-048, ¶ 56.

## AOT Criteria – Elements

To Order AOT, the court must find that the Respondent:

- a. is eighteen years of age or older *and* is a resident of a participating municipality or county;
- b. has a primary diagnosis of a mental disorder;
- c. has demonstrated a history of lack of compliance with treatment for a mental disorder that has:

(1) at least twice within the last 48 months, been a significant factor in necessitating hospitalization or necessitating receipt of services in a forensic or other mental health unit or a jail, prison or detention center; provided that the 48-month period shall be extended by the length of any hospitalization, incarceration or detention of the person that occurred within the 48-month period;

(2) resulted in 1+ acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last 48 months; provided that the 48-month period shall be extended by the length of any hospitalization, incarceration or detention of the person that occurred within the 48-month period; or

(3) resulted in the person being hospitalized, incarcerated or detained for 6 months or more and the person is to be discharged or released within the next 30 days or was discharged or released within the past 60 days;

d. is unwilling or unlikely, as a result of a mental disorder, to participate voluntarily in outpatient treatment that would enable the person to live safely in the community without court supervision;

e. is in need of assisted outpatient treatment as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to self or likely to result in serious harm to others; and

f. will likely benefit from, and the person's best interests will be served by, receiving assisted outpatient treatment.

# JURISDICTION & STANDING

A petition for AOT must be filed in the district court in the county where the respondent is present or reasonably believed to be present...*if* that district court has entered an MOU with a participating municipality or county.

Only the following people have standing to file an AOT petition:

- 18-year-old living with respondent
- Parent or spouse of respondent
- 18-year-old sibling or child of respondent
- director of a hospital where the respondent is hospitalized;
- director of a public/charitable organization/agency/home where the respondent resides and that provides mental health services to the respondent;
- qualified professional who either supervises or treats the respondent for a mental disorder or has supervised or treated within the past 48t months; or
- a surrogate decision-maker.

N.M.S.A. 1978, § 43-1B-4

**An AOT Petition must include an affidavit of a qualified professional stating that:**

1. The professional personally examined the respondent within 10 days of filing the petition;
2. AOT is recommended for the respondent, and
3. the qualified professional will testify at the hearing on the Petition.

***OR***

1. No more than 10 days prior to filing the petition, the qualified professional or designee has unsuccessfully attempted to persuade the respondent to submit to an examination;
2. that the qualified professional has reason to believe that the respondent meets the criteria for AOT; and
3. the qualified professional is able and willing to examine the respondent and testify at the hearing on the petition.

## HEARING ON THE PETITION

- The Hearing shall be held within 3 – 7 days of serving the petition and may be continued for up to 30 days for good cause.
- If the respondent is hospitalized, the hearing should be held to allow for continuous care.
- The respondent shall be represented by counsel.
- If the respondent fails to appear for the hearing, the court may proceed so long as respondent's counsel is present.
- The court may order the respondent to comply with an evaluation.
- The court may order the respondent detained to conduct the evaluation, but only for 24 hours.

## HEARING ON THE PETITION

- The qualified professional who conducted the evaluation shall testify to:
  - their rationale and recommendation for AOT;
  - facts that establish that AOT is the least restrictive appropriate alternative;
  - Access/availability of AOT in the community or elsewhere; and
  - if the recommended AOT includes medication, the types of medication that should be authorized, the beneficial/detrimental physical/mental effects of such medication, and whether such medication should be self-administered.
- The qualified professional shall produce a written treatment plan on the day of the hearing.

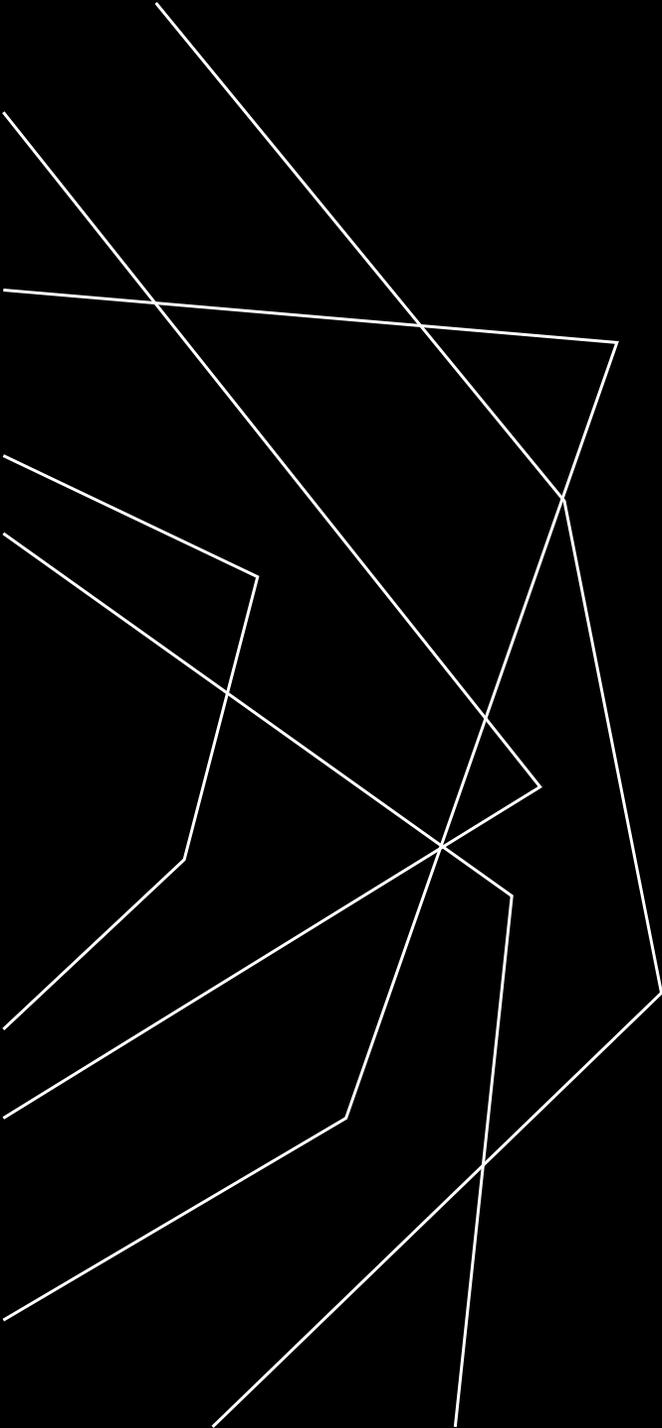


# IMPORTANT DEFINITIONS FOR THE COURT TO CONSIDER

“least restrictive appropriate alternative” means treatment & conditions that:

- (1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives; and
- (2) do not restrict physical movement or require residential care, except as reasonably necessary for the administration of treatment or the protection of the patient.

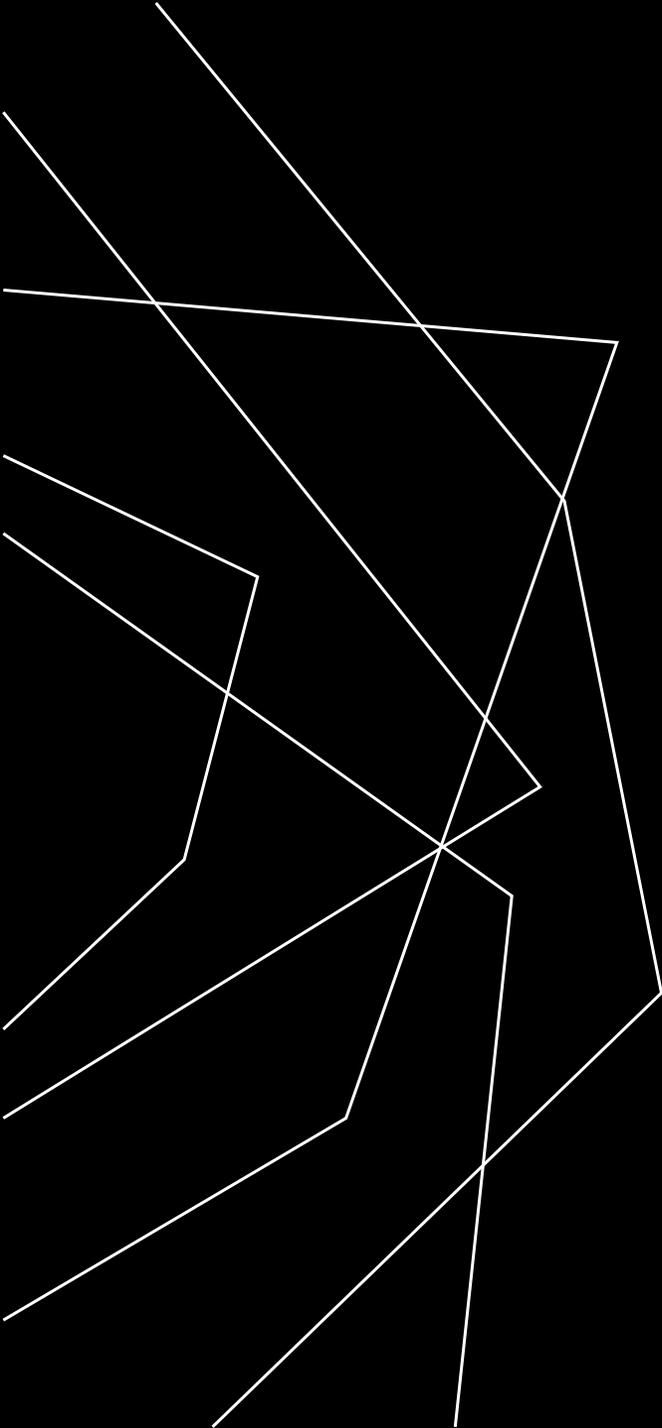
N.M.S.A. 1978, § 43-1B-2(G).



# IMPORTANT DEFINITIONS FOR THE COURT TO CONSIDER

“likely to result in serious harm to others” means that: it is more likely than not that in the near future a person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person.

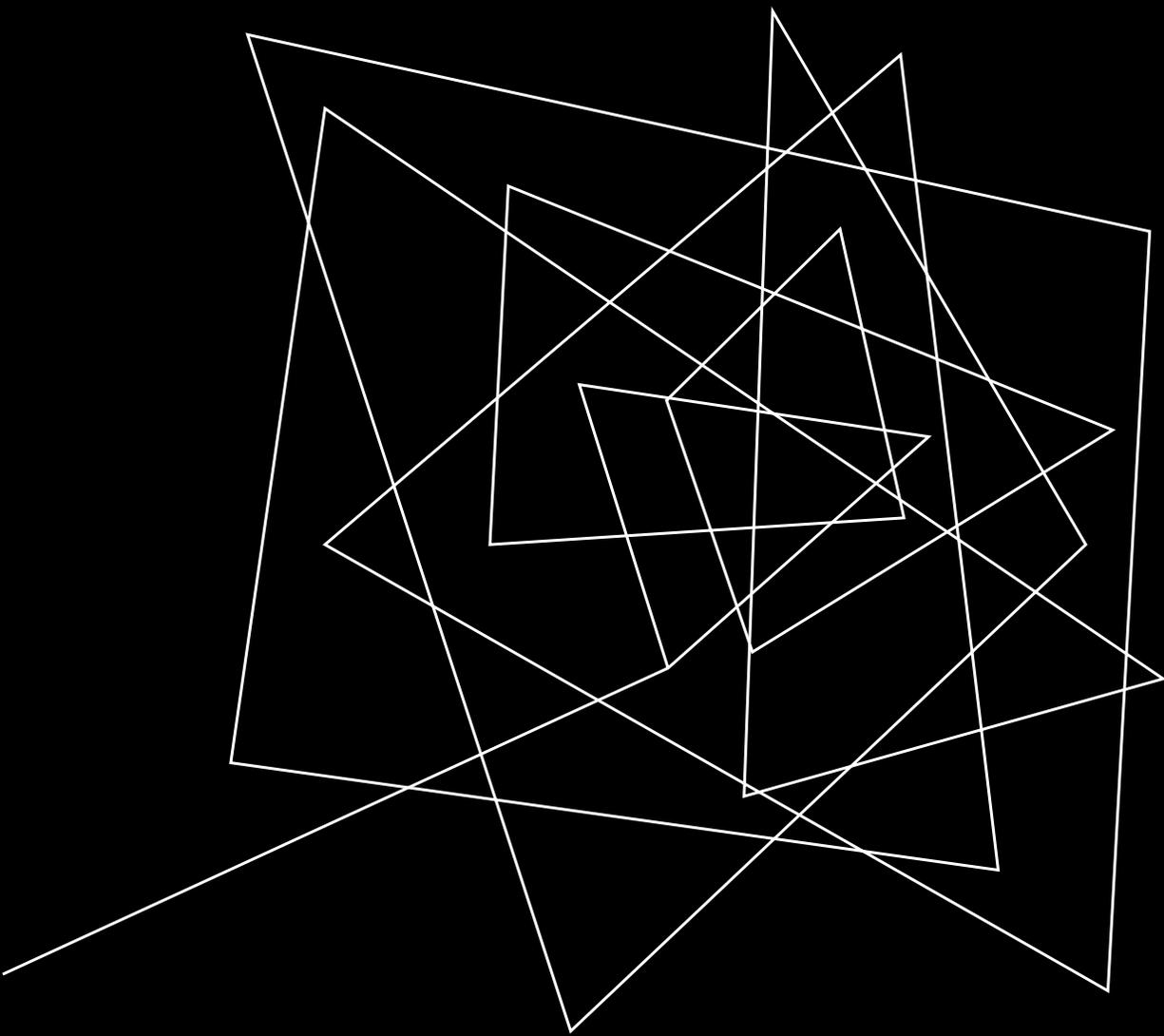
N.M.S.A. 1978, § 43-1B-2(H).



# IMPORTANT DEFINITIONS FOR THE COURT TO CONSIDER

“likely to result in serious harm to self” means that: it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to the person's self by violent or other self-destructive means, including grave passive neglect.

N.M.S.A. 1978, § 43-1B-2(I).



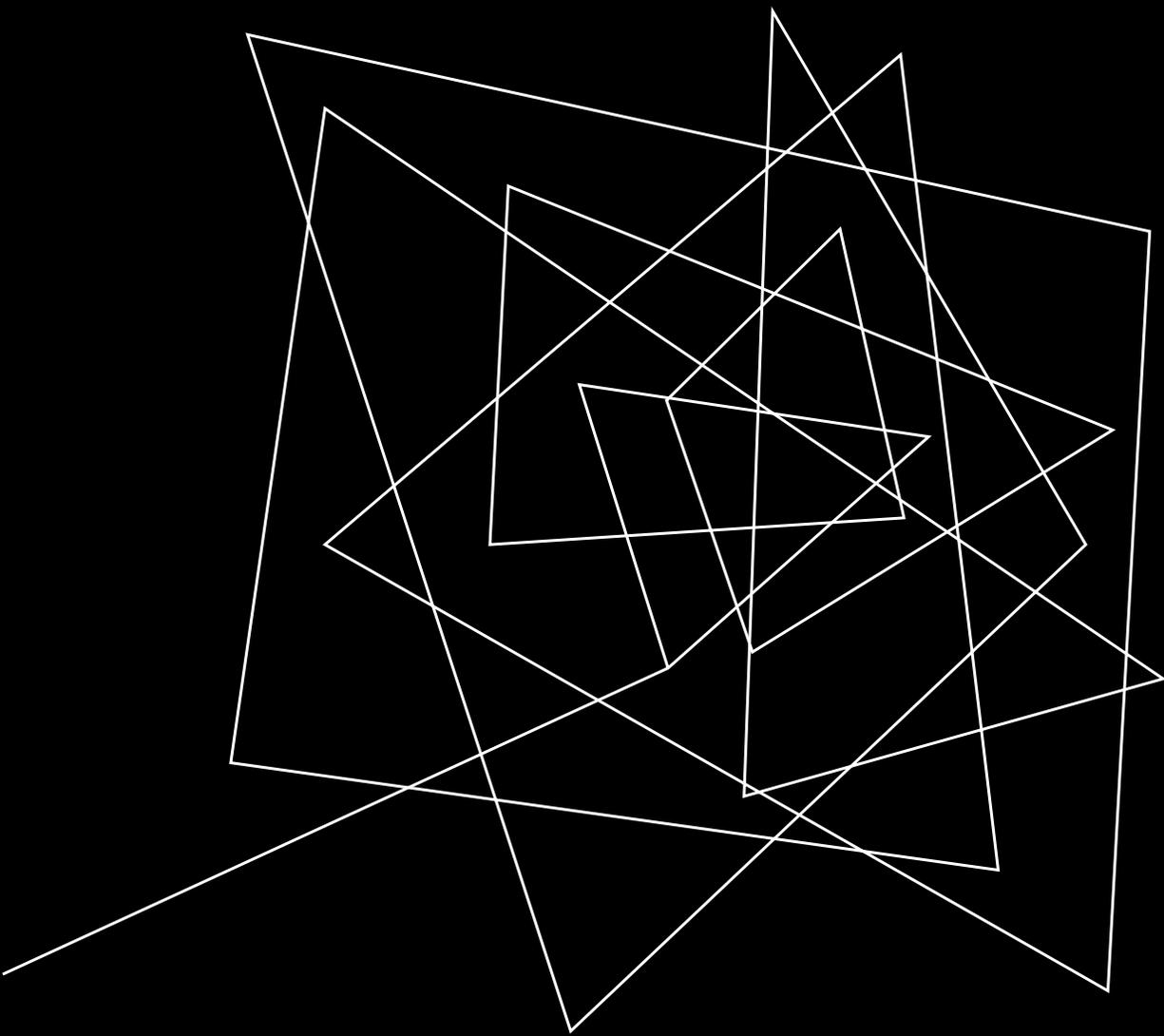
AFTER A HEARING  
& CONSIDERATION  
OF ALL RELEVANT  
EVIDENCE, THE  
COURT MAY ORDER  
AOT IF IT FINDS  
THE CRITERIA HAS  
BEEN MET BY  
CLEAR &  
CONVINCING  
EVIDENCE.

# DISPOSITION

## THE COURT MAY ORDER...

- AOT for not more than one year with specified services by identified providers;
- Require self or professional administration of medication, but *may not* require or authorize restraints or physical force to ensure compliance;
- All orders must be based upon recommendations from the qualified professional expert;
- The court cannot require private or Medicaid providers to cover treatment; and
- The order shall not conflict with an advanced directive or surrogate decision maker's testimony.

N.M.S.A. 1978, § 43-1B-8.



THE PARTIES ENJOY A  
RIGHT TO AN  
EXPEDITIOUS APPEAL  
ON A FINAL ORDER.

BUT AN AOT ORDER IS  
NOT EQUIVALENT TO A  
FINDING THAT THE  
RESPONDENT IS NOT  
COMPETENT.

43-1B-9 & 10.

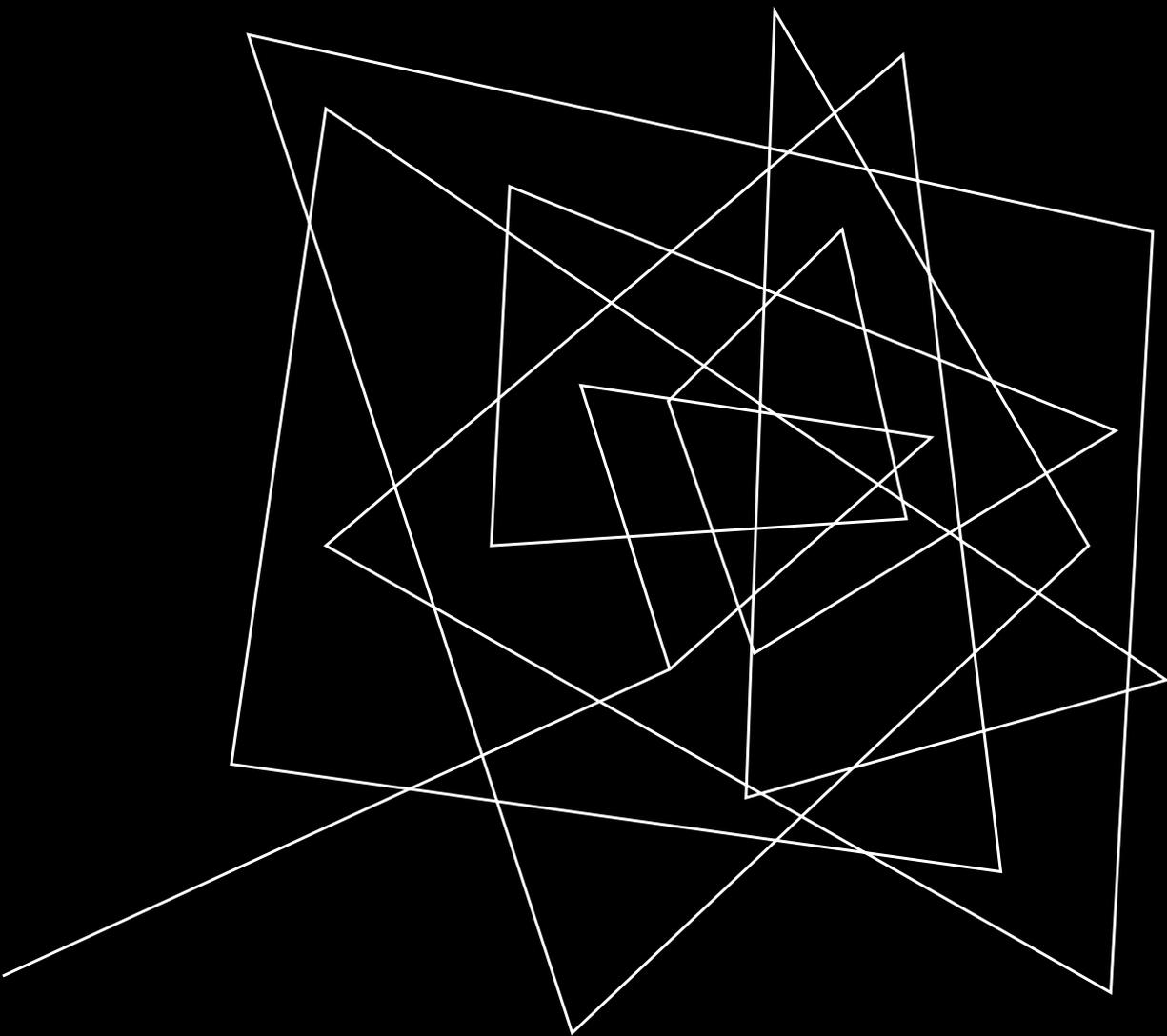
# APPLICATION FOR CONTINUED PERIODS OF TREATMENT

Before an AOT order expires, a party may apply to extend the order for an additional year.

An application must be resolved within 10 days of filing, and may be granted if the courts finds by clear and convincing evidence that the respondent:

- (1) continues to have a primary diagnosis of a mental disorder;
- (2) is unwilling or unlikely, as a result of a mental disorder, to participate voluntarily in outpatient treatment that would enable the respondent to live safely in the community without court supervision;
- (3) is in need of continued assisted outpatient treatment as the least restrictive appropriate alternative in order to prevent a relapse or deterioration likely to result in serious harm to self or likely to result in serious harm to others; and
- (4) will likely benefit from, and the respondent's best interests will be served by, receiving continued assisted outpatient treatment.

N.M.S.A. 1978, § 43-1B-11.



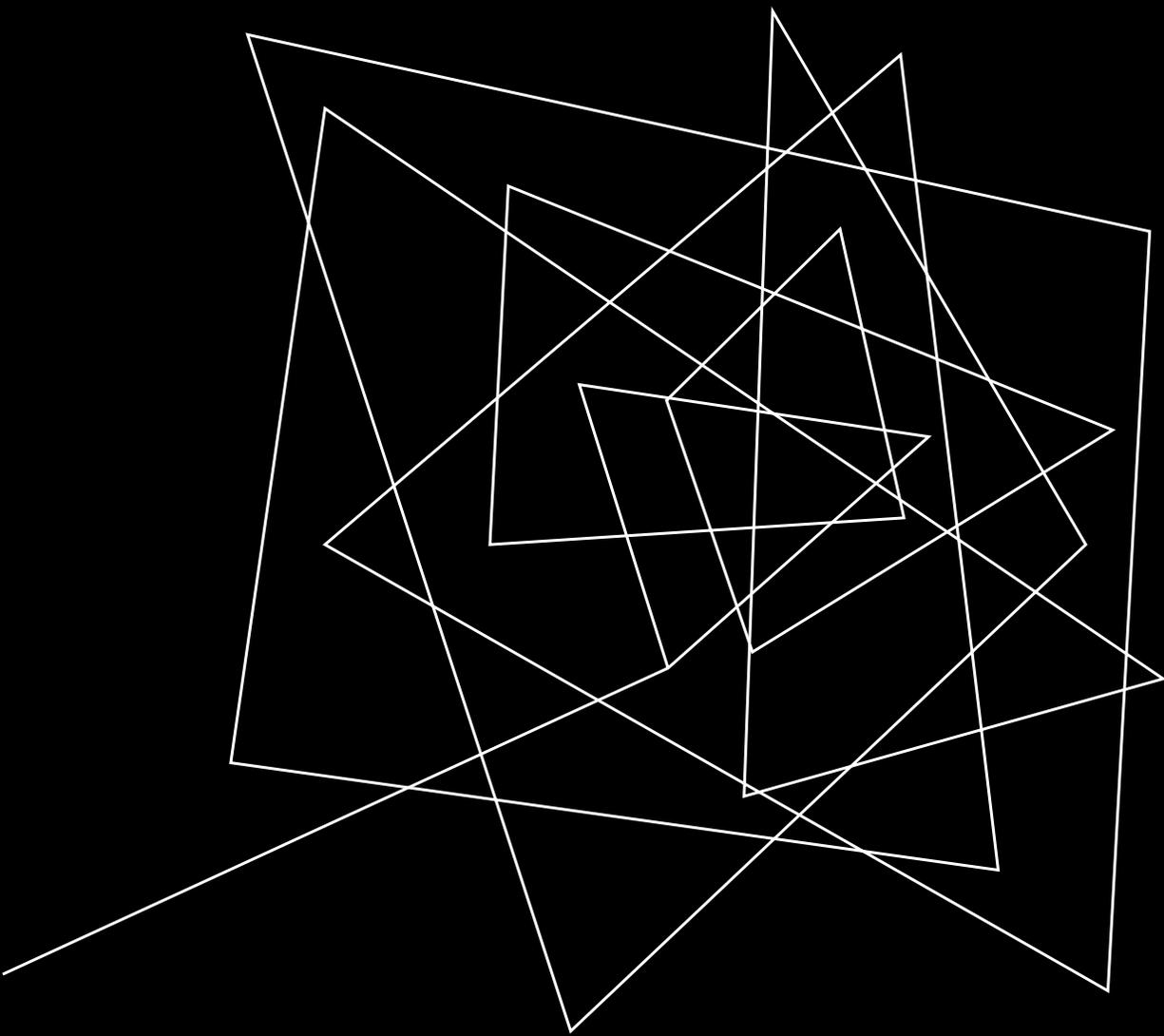
OTHER ORDER  
MODIFICATIONS  
ARE PERMISSIBLE  
AND FOLLOW THE  
SAME LEGAL  
PROCEDURE.

43-1B-12.

## FAILURE TO COMPLY WITH AOT

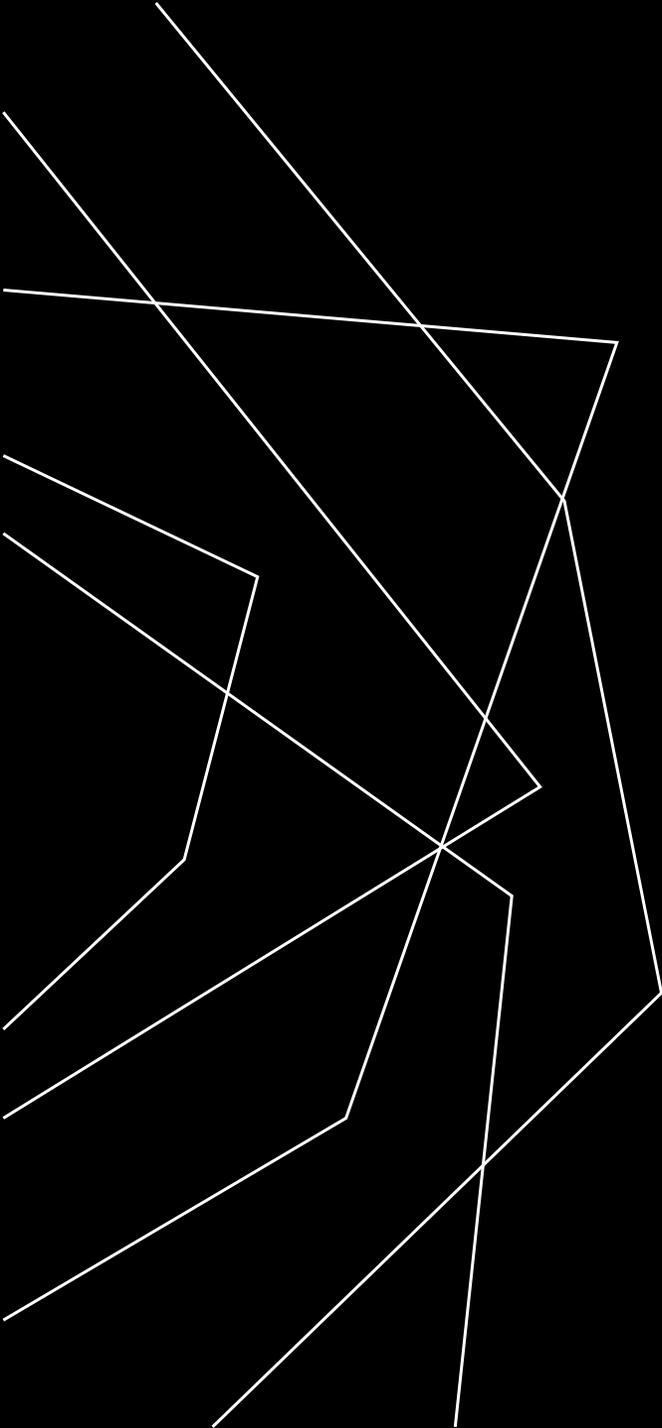
If a qualified professional determines that a respondent has *materially* failed to comply with the AOT, such that the qualified professional believes that the respondent's condition is *likely to result in serious harm to self or likely to result in serious harm to others* **and** *that immediate detention is necessary to prevent such harm*, the qualified professional shall certify the need for detention and transport of the respondent for emergency mental health evaluation and care.

A respondent's failure to comply with an order of AOT is **not grounds** for involuntary civil commitment or a finding of contempt of court, or for the use of physical force or restraints to administer medication to the respondent.



THE PLEADINGS AND  
RECORDS IN AN AOT  
PROCEEDING ARE  
SUBJECT TO  
CONFIDENTIALITY AND  
A PROTECTIVE ORDER.

43-1B-5 & 14.



# THANK YOU

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