Implementing Tim's Law in Kentucky

JUDGE STEPHANIE PEARCE BURKE

Jefferson District Court

October 19, 2021

What is AOT?

The practice of delivering outpatient treatment pursuant to a court order to adults with severe mental illness (SMI) who meet specific criteria

How?

- Civil NOT Criminal
- Team Approach
- Black Robe Effect

Who needs AOT?

History of repeat hospitalizations or arrest

History of non-compliance with outpatient treatment

History of non-compliance with medication

Usually less than .05% of a state's population

SOURCE:
TREATMENT ADVOCACY CENTER, TREATMENTADVOCACYCENTER.ORG

Why AOT?

- AOT addresses the issue that patients are released once stabilized, often too soon, and that repeat relapse decreases the ability for a patient to recover as the brain deteriorates.

Harm Reduction

- 44% Decrease In Harmful Or Dangerous Behaviors
- 2/3 Reduction In Risk Of Arrest In Any Given Month
- 4x Less Likely To Perpetrate Violence
- ½ As Likely To Be Victimized

Does AOT Work?

77% fewer experienced psychiatric hospitalization	74% fewer experienced homelessness
83% fewer experienced arrest	87% fewer experienced incarceration

New York's AOT Program, Kendra's Law (2005 Report)

SOURCE: TREATMENT ADVOCACY CENTER, TREATMENTADVOCACYCENTER.ORG

Kentucky Phase 1- Jefferson

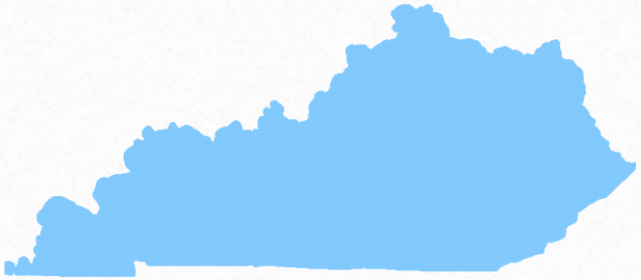
Patient 1

- 50+ Hospitalizations
- Multiple Incarcerations
- Non-cooperative with providers
- Non-compliant with medication
- **2/19→ Present**
  - No Hospitalizations
  - No Arrests

Patients 2-17

- 4-34+ Hospitalizations
- Multiple Incarcerations
- Non-cooperative w/ providers
- Non-compliant w/ medication
- **Present**
  - None Hospitalized
  - None Incarcerated
  - 95% Engagement

Costs Savings to Kentucky



WHAT DATA ARE NECESSARY TO ASSESS NET AOT COSTS?

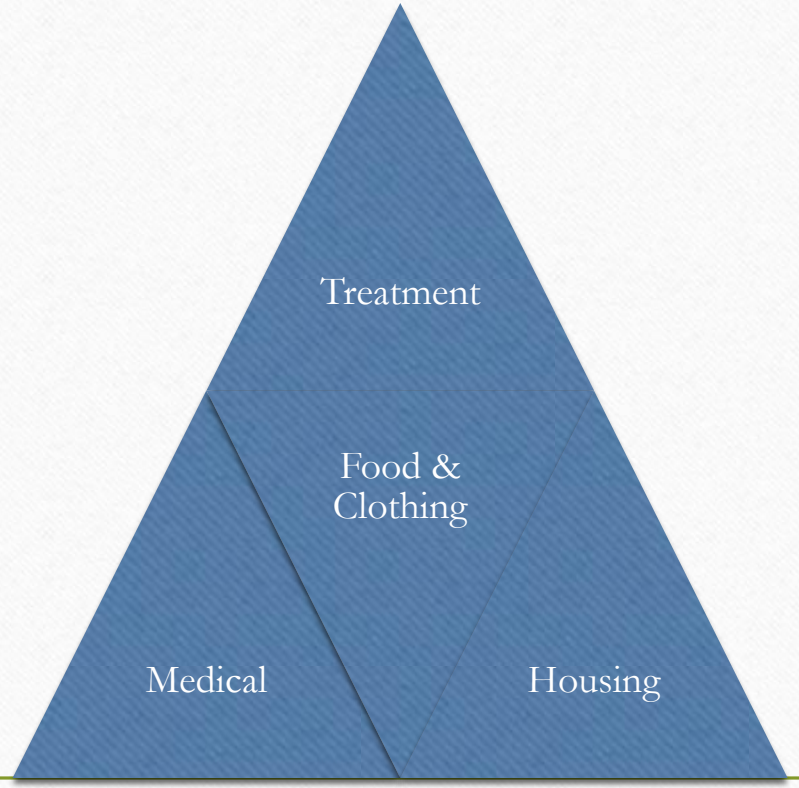
Four basic questions must be answered to project or analyze AOT cost effectiveness:

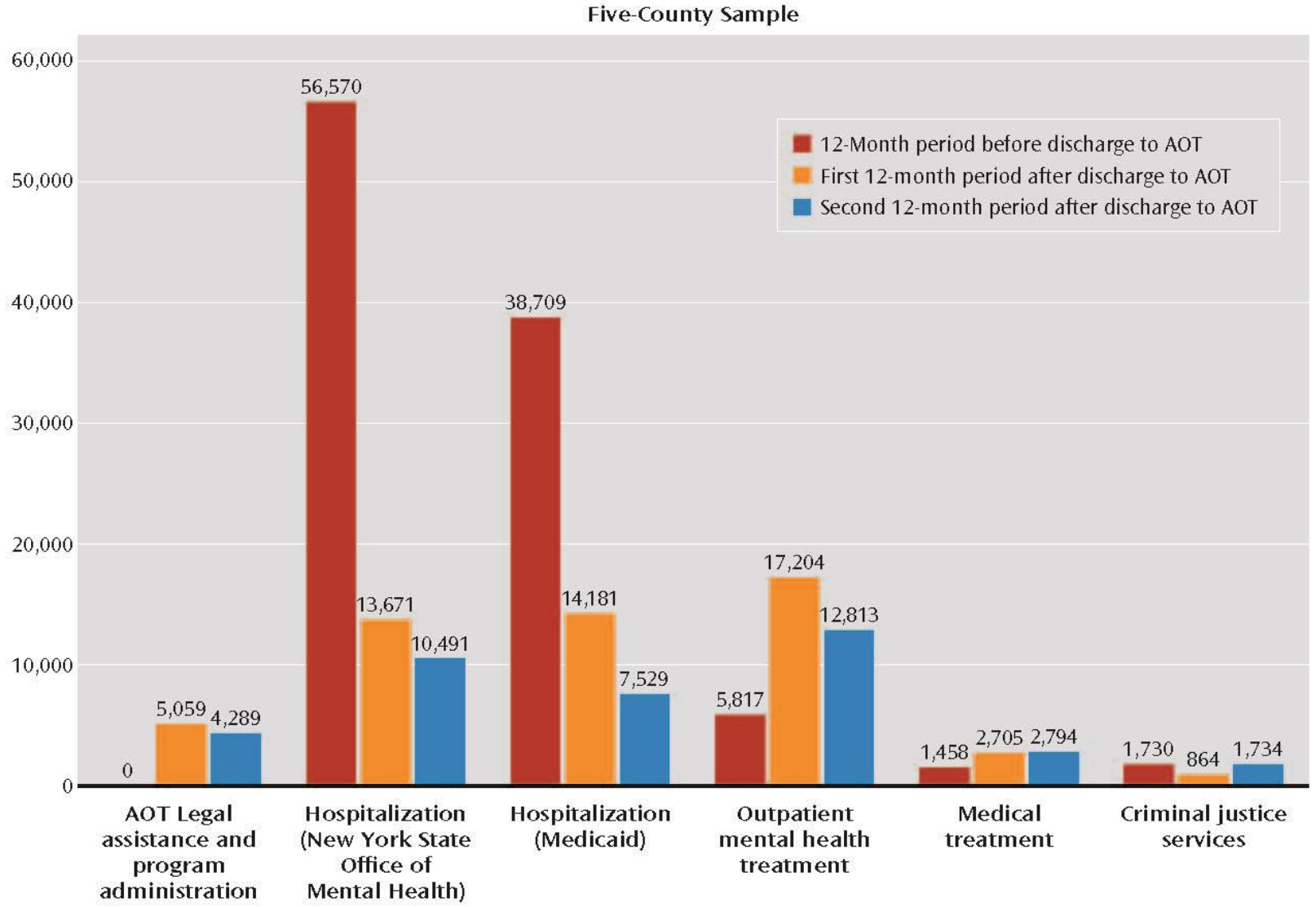
1. What is the size of the jurisdiction's AOT-eligible population?
2. What are the quantifiable direct and indirect public service costs of individuals in this population *prior to* initiation of AOT?
3. What are the quantifiable direct and indirect public service costs of these individuals *during and after* participation in AOT?
4. What are the net savings realized from AOT (the difference between 2 and 3 above)?

Direct vs Indirect Costs

Relevant cost data associated with serving AOT-eligible patients include but are not limited to:

- Direct costs
  - inpatient and outpatient psychiatric services
  - hospitalization for non-psychiatric medical conditions
  - outpatient services for non-psychiatric issues
  - pharmaceutical costs
  - administrative costs for serving these patients, including any civil commitment court costs
- Indirect costs
  - shelter costs (homeless housing/housing supports)
  - law enforcement costs (e.g., police response, transportation)
  - court costs, including legal assistance and court proceedings for implementation
  - jail and/or prison costs, including medication costs





SOURCE:
TREATMENT ADVOCACY CENTER, TREATMENTADVOCACYCENTER.ORG

The Revolving Door

Too many Kentuckians with SMI are caught in the "revolving door" of the mental health and criminal justice systems, at an extraordinary cost. (hospitalization, homelessness, arrest, incarceration)

Recommendations

- Amend Kentucky's AOT statute to ensure our most fragile citizens have access to necessary resources and support to remain safely in our communities.
- Current language unnecessarily limits the class of eligible individuals.

Modify Criteria For Eligibility

202A.0815. Criteria for court-ordered assisted outpatient treatment.

No person shall be court-ordered to assisted outpatient mental health treatment unless the person:

(1) ~~Has been involuntarily hospitalized pursuant to KRS 202A.051 for at least two (2) times in the past twenty-four (24) months;~~

~~(2)~~ Is diagnosed with a serious mental illness;

(2) Has a history of repeated nonadherence with mental health treatment, which has:

(a) at least twice within the last forty-eight (48) months, been a significant factor in necessitating hospitalization or arrest of the person; or

(b) within the last twenty-four (24) months, resulted in an act, threat or attempt at serious physical harm to self or others.

(3) Is unlikely to adequately adhere to outpatient treatment on a voluntary basis based on a qualified mental health professional's:

(a) Clinical observation; and

(b) ~~Review of treatment history, including the person's prior history of repeated treatment nonadherence; and~~

~~(c)~~ Identification of specific characteristics of the person's clinical condition ~~described as anosognosia, or failure to recognize his or her diagnosis of serious mental illness~~ that significantly impair the person's ability to make and maintain a rational and informed decision as to whether to engage in outpatient treatment voluntarily; and

(4) Is in need of court-ordered assisted outpatient treatment as the least restrictive alternative mode of treatment presently available and appropriate.

What this accomplishes:

- Eliminates requirement that prior hospitalizations were involuntary. (This is often an arbitrary distinction. Many patients who are brought to the ER in a crisis are persuaded to voluntarily admit themselves. There is no reason a pattern of such "voluntary" hospitalizations shouldn't count in the AOT analysis.)
- Relocates the requirement of a history of treatment non-adherence, to require a nexus between that history and negative outcomes. (This is a patient-rights change, since the current law requires no finding that your noncompliance history had anything to do with your hospitalization history.)
- Doubles the look-back period for prior hospitalizations to 48 months
- Offers alternatives to a repeated hospitalization history, for those whose non-compliance led to repeated arrest or to acts/threats/attempts of serious physical harm to self or others.
- Replaces requirement of a specific clinical finding of anosognosia with a more general clinical finding that the person has impaired ability to make and maintain a decision to engage in voluntary treatment.

Amend Statute to Address Due Process Issues

- KRS 202A.0811 has two critical defects
  - Inconsistent use of word ‘examination’
  - Due process issues created by error in language pertaining to calculation of time (lack of reasonable notice)
  - Practical impossibilities

(d) Whether, within five (5) days prior to the filing of the petition, the respondent has been examined by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment pursuant to KRS 202A.0815.

(5) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified mental health professional, the court may dispense with the examination.

(6) If, after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the court shall:

(a) Order the respondent to be examined without unnecessary delay by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment set forth in KRS 202A.0815, unless the court has already received the certified findings of such an examination conducted no earlier than five (5) days prior to the filing of the petition. The qualified mental health professional shall certify his or her findings within seventy-two (72) hours, excluding weekends and holidays; and

(b) Set a date for a hearing within six (6) days from the date of the examination under the provisions of this section, excluding weekends and holidays, to determine if the respondent should be court-ordered to assisted outpatient treatment.

(7) If the court finds there is no probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the proceedings against the respondent shall be dismissed.

Effective: June 29, 2017

History: Created 2017 Ky. Acts ch. 154, sec. 3, effective June 29, 2017.

(d) Whether, within five (5) days prior to the filing of the petition, the respondent has been ~~examined~~ ***evaluated*** by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment pursuant to KRS 202A.0815.

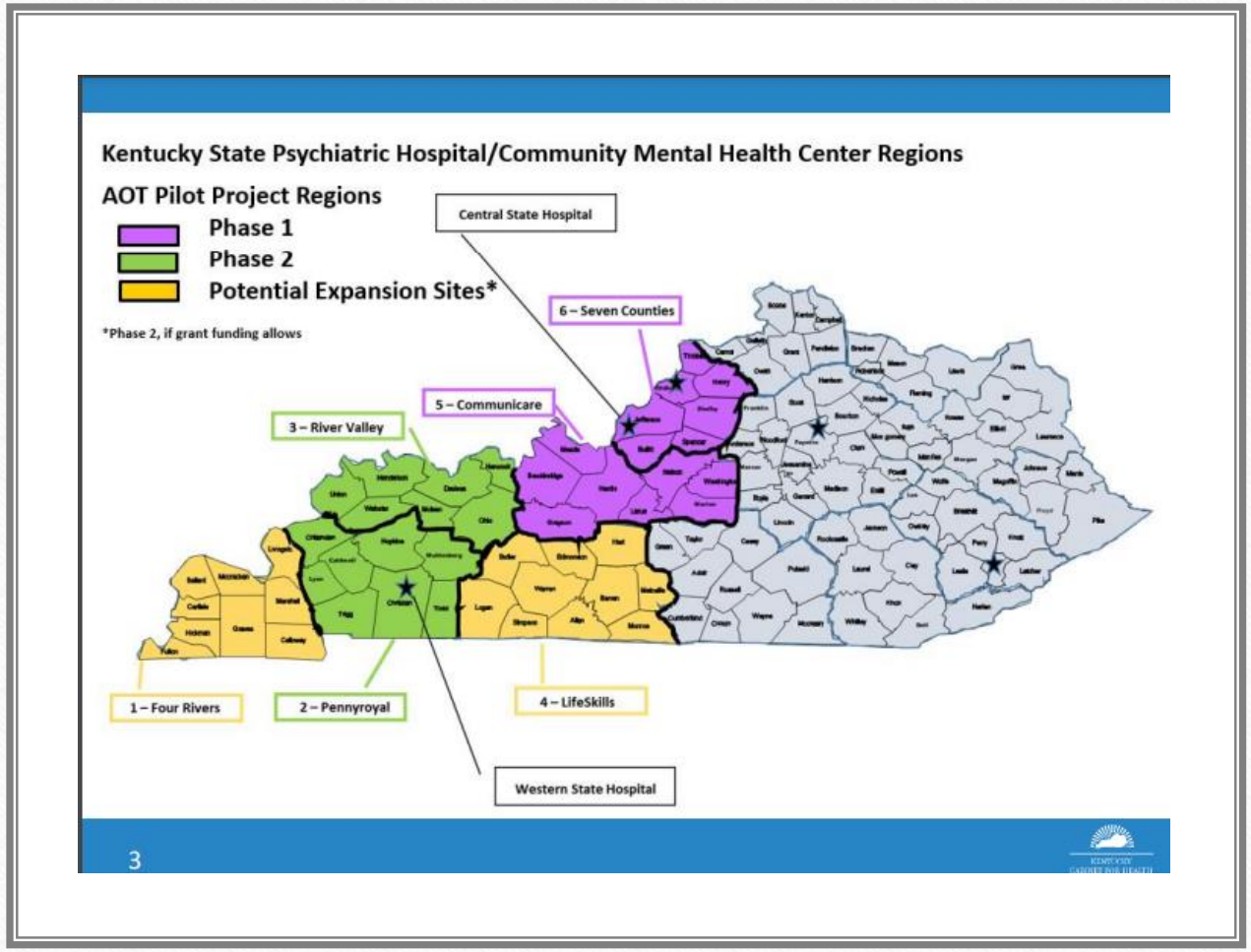
(5) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified mental health professional, the court may dispense with the examination.

(6) If, after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the court shall:

(a) Order the respondent to be ~~examined~~ ***evaluated*** without unnecessary delay by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment set forth in KRS 202A.0815, unless the court has already received the certified findings of such an ~~examination~~ ***evaluation*** conducted no earlier than five (5) days prior to the filing of the petition. The qualified mental health professional shall certify his or her findings ***to the court*** within seventy-two (72) hours ***from receipt of the order,*** excluding weekends and holidays; and

(b) Set a date for a hearing within six (6) days from the date of the ~~Examination~~ ***filing of the petition*** under the provisions of this section, excluding weekends and holidays, to determine if the respondent should be court-ordered to assisted outpatient treatment.

(7) If the court finds there is no probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the proceedings against the respondent shall be dismissed.



Thoughts on Expansion

- Create grant program for counties to apply
- Provide funding for staff and service enhancements
- TAC to provide technical assistance
- Expand to all state hospitals

Thank You

JUDGE STEPHANIE PEARCE BURKE

stephanieburke@kycourts.net

COMMONWEALTH OF KENTUCKY
30TH JUDICIAL DISTRICT, DIVISION 14
LOUIS D. BRANDEIS HALL OF JUSTICE
600 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202
PHONE 502-595-4983 FAX 502-595-3270