



Establishing Clear and Convincing Evidence for AOT

Demonstrating Criteria

What does 'clear and convincing evidence' *actually* mean?

In plain language, 'clear and convincing evidence' means evidence strong enough to create a firm belief in the decision maker's (Judge's) mind that the claims being made are true.

In assisted outpatient treatment proceedings, testimony from a psychiatrist is required. Psychiatrists are essentially acting as an expert witness in these hearings.

The psychiatrist who is testifying may be asked in the court to state their credentials, how long they have been practicing, and will be asked questions by both the prosecutor and the defense attorney. They will be asked about their experience with the individual being petitioned, whether they reviewed prior medical and treatment records and what are their recommendations for the order.

Psychiatrists, unlike most others who may be called to testify are able to use 'hearsay' in court. This is to ensure that they are able to share insights from the treatment team. Oftentimes peers, case managers and supervisors have more frequent interactions with the individual and can provide supplemental information to support what the supervising psychiatrist is recommending.

Case managers, peers, and others on the treatment team should communicate clearly with the testifying psychiatrist any pertinent information. Updated and comprehensive case notes are imperative. Case managers are rarely called to testify, so your notes must be detailed and specific enough for the psychiatrist to use them in court.

Burden of Proof

- The burden of proof is on the petitioner to demonstrate that the individual meets the criteria for AOT.
- The 'clear and convincing' level of evidence required in these probate cases is more than 'it is more likely than not, but less than 'beyond a reasonable doubt.
- Clinical certificates completed by a psychiatrist, licensed psychologist, or physician, often serve as the basis for 'clear and convincing evidence' in AOT cases.

Criteria for AOT

In order for someone to be placed on an AOT order, they must meet the criteria.

The individual must:

1. Be at least 18 years of age.
2. Have a mental illness, and as a result of that illness are unable to attend to their basic needs. Alternatively, their untreated mental illness may result in a risk of harm to themselves or others.
3. Lack insight into their need for treatment and are unable to voluntarily engage in treatment as a result.