



# Stop the merry-go-round: a practical approach to effective delivery of mental health treatment

*Judge Milton L. Mack, Jr.*

*State Court Administrator Emeritus*

*Chair, Mental Health Diversion Council*

# Mental health code revisions and assisted outpatient treatment



# Background



Michigan Mental Health Commission  
2004 key findings:

1. Mental Health Code an inpatient model in an outpatient world.
2. The system waits for crisis to act which results in delay in treatment.
3. Delay is harmful.

# Potential harms in delaying treatment



1. Risks permanent incapacity and guardianship due to loss of resiliency
2. Incarceration
3. Poverty, homelessness, isolation and poor health
4. Increased risk of dementia, drug abuse and suicide

With early intervention, much of this risk can be reduced.

# The criminal justice capacity limited and too late

- Michigan's 203 problem solving courts served 7,089 people last year but rejected 3,828.
- From 2006-2014 ED patient volume nationwide increased 15%, but psychiatric patient volume increased 44%.



# The greatest opportunity for diversion is the civil system

- MDHHS reports that for at least the last 3 years, the number one reason for Emergency Room visits in Michigan was psychiatric care.
- 165,712 visits in 2020, over 200,000 in 2018 and 2019.



# Digging deeper

- In 2020, 18,000 petitions for mental health treatment filed in Michigan.
- These persons were screened, had 2 certs, hospitalized and petition filed for hearing in 7 days.
- 10,500, or 58% of these petitions were dismissed, withdrawn or deferred before the hearing date.



# Digging deeper

- Wayne County's CMH serves 38,000 adults with serious mental illness.
- Over the last 5 years 16,000 petitions for 9,000 persons.
- 59% of the petitions did not make it to court.





# Digging deeper

- 600 persons, less than 1% of the persons petitioned accounted for 36% of all petitions filed.
- Do less than 1% of persons petitioned statewide represent 36% of all filings?



# Digging deeper

- Just 57 individuals had at least 10 petitions filed with the probate court in the last 5 years.
- The hospitalization cost in the last fiscal year for these individuals was nearly \$5,000,000.
- One person cost \$600,000 and made 45 visits to the ER.

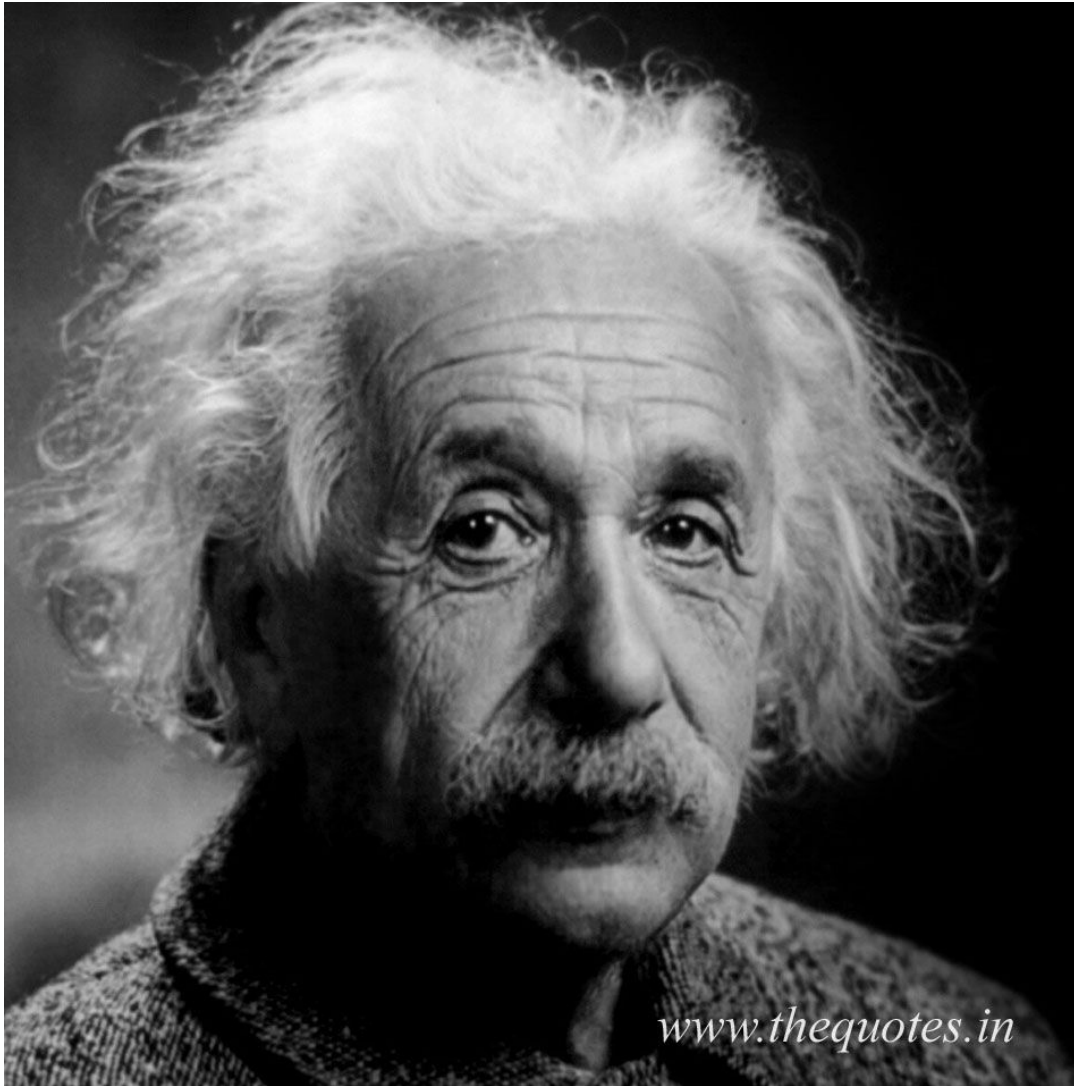


# The revolving door

- Repeated, short hospital stays, without effective follow up, accomplishes nothing, except to create a revolving door.
- This is a stunning waste of scarce resources that produces nothing of value, but does produce the risk of tragedy.



# Sage Advice



Insanity: doing the same thing  
over and over again and expecting  
different results.

*Albert Einstein*

*www.thequotes.in*

# Now what?

- Michigan has opened the door for early intervention.
- Court-ordered outpatient treatment is now a viable alternative to hospitalization.





## Section 401(A): Risk of serious harm



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

# New standard interpreted

- Dangerousness or threat of immediate harm not required.
- Court of Appeals held an act from years earlier can be the act that substantially supports the expectation that the individual can reasonably be expected in the near future to seriously injure someone.
- *In re Tchakarova*, 328 App 172, 936 NW2d 863 (2019)





# New standard interpreted

- Another panel of the Court of Appeals held that an “act” from two years ago could be the act that would support a finding the person needed treatment citing the doctor’s statement that past history is more predictive of future behavior than current statements.

- In re Nicholas Heidarisaifa, March 11, 2021 (No. 353582)



## Section 401(c)



Lack of understanding of need for treatment, refusing treatment, creating risk of physical or mental harm

- (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.

# New standard interpreted

- Court of Appeals held that testimony from a doctor that untreated schizophrenia increased the risk of dementia, drug abuse, suicide, and further decompensation, including delusions and paranoia sufficient to order involuntary treatment.
- *In re Daniel Spaulding* (CA #354408, March 11, 2021)



# New standard interpreted

In Spaulding the doctor testified that the respondent was not at risk of harm at the hearing, but was at risk of harm due to lack of insight and history of decompensation.



# The questions to be answered in ordering treatment

- Does the individual have a mental illness?
- Is the person's judgement impaired?
- Does the impairment in judgement cause a lack of understanding of the need for treatment?
- Is the person unwilling to engage in voluntary treatment?
- Is that treatment necessary to prevent a relapse or harmful deterioration of the person's condition?
- Will this present a substantial risk of significant physical or mental harm to the person or others?

# First responder catch phrase

Old Standard:

“Immediate risk of harm to self or others.”

New Standard:

“Substantial risk of harm due to impaired judgment.”



# Assisted outpatient treatment (AOT)

- An evidence-based tool that promotes recovery, reduces harmful behavior, lowers hospitalization and emergency room use as well as reducing costs.



# Assisted outpatient treatment

- Data from NY, OH, WA, FL, AZ, NC, NV and MI demonstrates value in promoting recovery and reducing ER visits, hospitalization, arrests and incarceration with high levels of satisfaction





# Assisted outpatient treatment



- Results in substantially higher levels of personal engagement in treatment.
- Patients no more likely to feel coerced.
- Best predictor of perceived coercion or stigma was patient's perception of being treated with dignity and respect by mental health professionals.

# The mental health code is now an out-patient model in an out-patient world

- Intervention can take place before crisis and the court can order Assisted Outpatient Treatment.
- No special provision to order AOT. A history of hospitalization or incarceration not required.
- There are no review hearings. In the event of noncompliance a hearing or status conference can be held.

## If found to require treatment:

- Order the individual to receive AOT for up to 180 days through a community mental health services provider or other entity designated by MDHHS.
- If ordering AOT only:
  - Must consider preferences and experiences
  - If conflicts with advance directive, an independent psychiatrist must review



# Specific AOT orders

- Case management services
- Medication
- Blood/urinalysis tests to determine compliance with or effectiveness of prescribed medications
- Individual/group therapy
- Educational/vocational training
- Supervised living
- Assertive community treatment team services
- Alcohol/substance use disorder treatment, or both
- Alcohol/substance use disorder testing, or both
  - Subject to review every 6 months
- Any other services prescribed

# Specific AOT orders

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



# Enforcement

- Treatment plan enforceable to extent ordered by court.
- Psychiatrist can request amendment to plan to provide other treatment.
- For non-compliance, status conferences work.
- Court can authorize injectables in the community.



## Two pathways to care

The Mental Health Code now provides two pathways to obtain court ordered AOT:

1. The first is the traditional method of filing petitions for mental health treatment from the hospital.
2. The second is AOT only, bypassing the hospital.



# New pathway

- If only seeking outpatient treatment, the petition can be filed with the court without a certification by a physician.
- If the person refuses to be examined, the Court can order an examination and the police can be ordered to transport the individual for an evaluation.

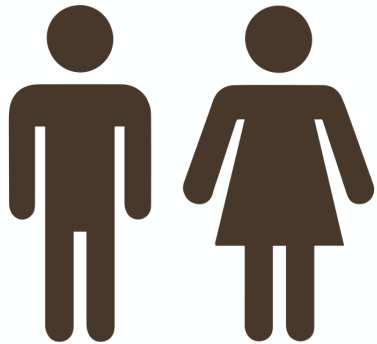




# It takes a community to make the mental health system work



- ✓ Courts
- ✓ Law enforcement
- ✓ Families
- ✓ Community treatment providers
- ✓ Emergency departments
- ✓ Hospitals
- ✓ Mental health advocates

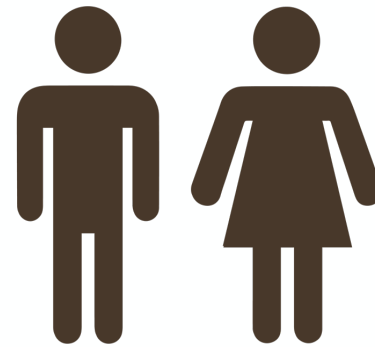


# Courts

- Convene stakeholders
- Regular meetings
- All MI hearings remote
- Hear discharges (if petition requested hospital & AOT) voluntariness, deferrals, waiver and stip
- Set non-compliance for status conference
- Track AOT orders
- Have provider file summary of treatment plan

# It takes a community to make the mental health system work

Everyone plays a role; connection and communication are vital to assuring warm handoffs to connect people with treatment.



# Where to start?

- Convene the stakeholders
- Identify the familiar faces
- Focusing on these individuals presents the greatest opportunity to improve lives and relieve pressure on our ERs and law enforcement
- Successful intervention will free up resources for more people



## Where can this take us?

We can stop the endless cycling of individuals through the ERs and jails by working together and using the tools we now have to improve people's lives. We can intervene before it is too late. We now have a clear path to use assisted outpatient treatment.

# Contact Information

**Judge Milton Mack (ret)**  
State Court Administrator Emeritus  
Michigan Supreme Court  
Email: [mackm@courts.mi.gov](mailto:mackm@courts.mi.gov)