

Comparing AOT with Other Tools

AOT vs. Mental Health Criminal Diversion Court (Mental Health Court)

“Mental health court” is the most common term for specialized criminal courts or special dockets that seek to provide alternatives to incarceration for criminal defendants with mental illness. Like AOT, mental health courts seek to help participants receive and remain in community-based treatment. The key difference is that AOT takes place in a civil court and does not involve criminal processes. There is no need in AOT for an antecedent criminal charge to qualify a person for court-ordered support for care.

Another key difference is that a mental health court is ultimately a voluntary program. An eligible criminal defendant can always choose to have their charges addressed in regular criminal court, with no expectation of pre-sentence treatment participation, or they may choose to have their case considered in a mental health court. (Treatment participation may ultimately be required as a condition of parole or probation.) By contrast, the decision whether to initiate an AOT case is always left to the eligible petitioner.

The potential consequences of treatment non-adherence are quite different between the two models. Failure to adhere to the treatment plan in mental health court can potentially lead to restoration of criminal charges and/or post-conviction punishment. In AOT, there is potential consequence for a court order violation for treatment non-adherence (typically, a short-term hold for psychiatric evaluation followed by a court hearing), but no threat of punishment or incarceration.

AOT vs. treatment under voluntary agreement (or similar arrangement without a court order)

AOT, by definition, involves an individual being ordered by a civil court judge to adhere to treatment. The practice is supported by research clearly establishing that for a small percentage of individuals with serious mental illness (i.e., those who have historically struggled to maintain engagement with voluntary

services), there is clear value in adding a court order to an appropriate service package. No engagement strategy designed for this population that does not involve placing participants under court order should be labeled as “AOT.” This includes any program that invites participants to execute voluntary treatment agreements without court oversight or court authority to respond to violations of the agreement terms.

AOT vs. Guardianship

Guardianship, known in some states as conservatorship, is a process by which a civil court appoints a competent adult to make decisions for a person adjudicated incompetent to make certain or all personal decisions. Like AOT laws, guardianship laws vary among the states. The type of guardianship determines the type of decisions a guardian (or conservator) can make for the incompetent person. “Guardianship of estate” denotes that only financial decisions come under the purview of the guardian. When someone is assigned a “guardian of person,” the guardian is empowered to make a range of decisions concerning the incompetent person’s day-to-day life, including medical care, housing, services received, etc. Because guardianship significantly limits an individual’s basic right to live autonomously and is long-enduring and onerous to reverse, it should only be considered after alternatives have proven ineffective or are unavailable.¹ By contrast, AOT does not involve designation of an alternative decision-maker for the individual; it merely delineates terms of treatment to which the individual is expected to adhere.

A common feature of AOT and guardianship is that both make it possible for a provider to work with an individual who chooses not to sign a consent for treatment, as would ordinarily be required as a precursor to any provider-patient relationship.

To clarify, treatment without signed consent does not mean the person can actually be forced to engage in treatment. Under either AOT or guardianship, a person can refuse to attend an appointment or participate in treatment without facing punitive consequences. It is only when there is genuine concern of an AOT participant’s or guardianship recipient’s decline in mental condition that they can be forcibly transported to a treatment facility for evaluation. Depending on state law, there may be differences between AOT and guardianship in terms of the observations or evidence that trigger a clinician’s authority to seek emergency evaluation.

The appointment of a family member as guardian can intensify friction in a relationship that is often already fraught due to symptoms of serious mental illness, particularly when the individual does not like the decisions being made on

their behalf. Family members should consider this risk prior to agreeing to serve as guardian. This precise issue does not typically arise under AOT, because the court-ordered treatment is based on the recommendations of the treatment team. But similar tensions may ensue when a family member petitions the court for an AOT order, as some states allow.

The following table compares guardianship and AOT:

	Guardianship / Conservatorship	AOT
What needs to be proven for the court order	Respondent lacks capacity to make decisions (potentially limited to certain areas such as medical and financial decisions)	Varies by state, but typically history of non-adherence with outpatient treatment and unlikelihood of voluntary engagement. Capacity to make decisions is generally not at issue.
Involuntary medication	A guardian can consent to treatment. Depending on jurisdiction this may include consent to psychiatric medication over the objection of the incapacitated person, or that may require a separate court order.	In most states AOT does not authorize or facilitate involuntary administration of medication.
Rights other than consent to treatment	Guardianship may remove the right of the ward to: <ul style="list-style-type: none"> • Determine residence • Manage their money • Possess a driver's license • Buy or sell property • Marry 	No impact on fundamental rights but the order requires adherence to the terms of treatment (without authorizing involuntarily administered medication), with a review of clinical needs if there is non-adherence.
Frequency of review of necessity of the court order	Typically, years between reviews. Guardian/Conservator may need to provide written reports to the court.	AOT is time limited by statute, with periods varying by state. For example, AOT orders may need to be renewed by the court initially at six months and then yearly.

References ¹ National Guardianship Association. (2021). What is guardianship? Retrieved from <https://www.guardianship.org/what-is-guardianship/>

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