

ASSESSING LEVEL OF JUDICIAL INVOLVEMENT IN ASSISTED OUTPATIENT TREATMENT

BACKGROUND

Community mental health services are effective in improving clinical and public health outcomes among adults with serious mental illness (SMI).^{1,2} However, the community-based service system often struggles to engage and maintain contact with highly symptomatic and chronically ill individuals.³ Assisted outpatient treatment (AOT) programs were developed as a means for improving engagement in community-based treatment services and thus circumventing the “revolving-door” of repeated inpatient hospitalizations and/or arrests among this population.⁴

In AOT, a judge or magistrate legally mandates that a person with SMI participate in community-based services, such as intensive case management or assertive community treatment. This civil court process is intended to leverage the authority of the courts to improve treatment engagement and adherence among AOT clients. Indeed, advocates have proposed that this judicial involvement, rather than the AOT order itself, is the key mechanism through which AOT works.⁵ This phenomenon is often referred to as the black robe effect. However, while the black robe effect has been well-defined conceptually, it has not been sufficiently operationalized to support research into whether judicial involvement is associated with improved outcomes among AOT clients. Moreover, the structure and degree of judicial involvement may vary widely in practice.

The purpose of this brief was to develop and describe a measure that captures relevant judicial characteristics and differentiates AOT programs in terms of their level of judicial involvement. Using this approach, we answered the following questions:

- How does judicial involvement vary in and across sites over the course of the AOT order?
- To what extent do key informants perceive value in the level of judicial involvement at their site?

DATA SOURCES AND MEASURES USED TO CAPTURE JUDICIAL INVOLVEMENT

We collected data from a subset of sites participating in the Substance Abuse and Mental Health Services Administration’s (SAMHSA’s) “AOT Grant Program for Individuals with Serious Mental Illness” (SM-16-011). Data were obtained from client-level and site-level instruments used as part of an ongoing evaluation of AOT programs and were supplemented by key informant interviews conducted with each case study site. Specific data sources included:

- **Judicial ratings instrument.** AOT program staff who regularly observe AOT hearings were asked to rate the judge or magistrate on six items (**Figure 1**) intended to capture key judicial behaviors. These items were adapted from a webinar presented by SAMHSA’s Gather, Assess, Integrate, Network, and Stimulate (GAINS) Center for Behavioral Health and Justice Transformation, called “Habits of Highly Effective AOT Judges”.⁶ For each of the six items, the designated respondent rated judges/magistrates

in terms of how frequently they exhibited each behavior on a three-point scale ranging from “not at all” to “always.”

FIGURE 1. Items on the Judicial Ratings Instrument

- Develops a personal connection with the AOT participants.
- Understands and clearly communicates the roles and responsibilities of the AOT team members.
- Creates a court environment that is supportive with clear expectations of all parties.
- Encourages participants to actively engage in their treatment with the goal of recovery and independence.
- Praises successes, no matter how incremental.
- Develops/upholds procedures for consequences for non-adherence to AOT treatment plan.

- **Docket monitoring forms.** Docket monitoring forms were completed by AOT staff who regularly attend AOT hearings. In this brief, we focused on five items: two three-point ratings of the level of interaction between the judge/magistrate and client, as well as the judge/magistrate and the AOT treatment team; words of encouragement; warnings or reminders; and response to non-compliance.
- **AOT characteristics forms.** An AOT characteristics form was completed by AOT program staff on a monthly basis to provide site-level information on target populations, initiation, and post-initiation of AOT. This brief used the following elements from the AOT characteristics form:
 - Length and frequency of hearings.
 - How hearings are used within the AOT program.
 - Individuals present at the hearings.
 - Types of clients and hearings.
 - Level of participation from the clients, family members/caregivers, treatment staff and legal staff in the hearings.
 - Perceptions of the judicial involvement and notable changes in judicial involvement over time and from different judges.
 - Whether treatment planning is discussed during the hearings.
 - Response to non-compliance from judges and AOT staff.
 - Renewal or closeout process.
- **Client interviews.** Preliminary data were gathered from completed interviews with AOT clients at baseline, after the initial hearing was held. For the purpose of this brief, we included items where respondents indicated on a three-point scale the extent to which: (1) the judge exhibited interest, respect, and/or fairness in the hearing; and (2) they were satisfied in how they were treated by the judge and lawyers.
- **Key informant interviews.** To supplement these data sources and elements, we conducted short phone interviews with AOT program staff who directly observe all judicial contact over the course of the AOT order, as well as representatives of the court (e.g., court clerks, judges). These interviews captured information on site-specific civil processes and perceptions of the value of judicial involvement. At sites with multiple judges or magistrates, or where the site experienced changes in the presiding judge or magistrate, additional discussion focused on whether program staff perceived differences in the level of involvement across different judges.

STEPS TOWARD MEASURING THE BLACK ROBE EFFECT

The first step in developing a measure of the black robe effect was to determine whether the judicial ratings instrument captured the intended judicial behaviors. To accomplish this, we triangulated data from AOT characteristics forms, docket monitoring forms, client interviews, and key informant interviews to match key elements on the judicial ratings instrument (**Table 1**) and determined whether results were consistent across data sources. Qualitative content analysis showed strong consistency between the judicial ratings items and secondary measurements. Based on this finding, we concluded that the judicial ratings instrument was sufficiently reliable for assessing judicial engagement in interactions with AOT clients.

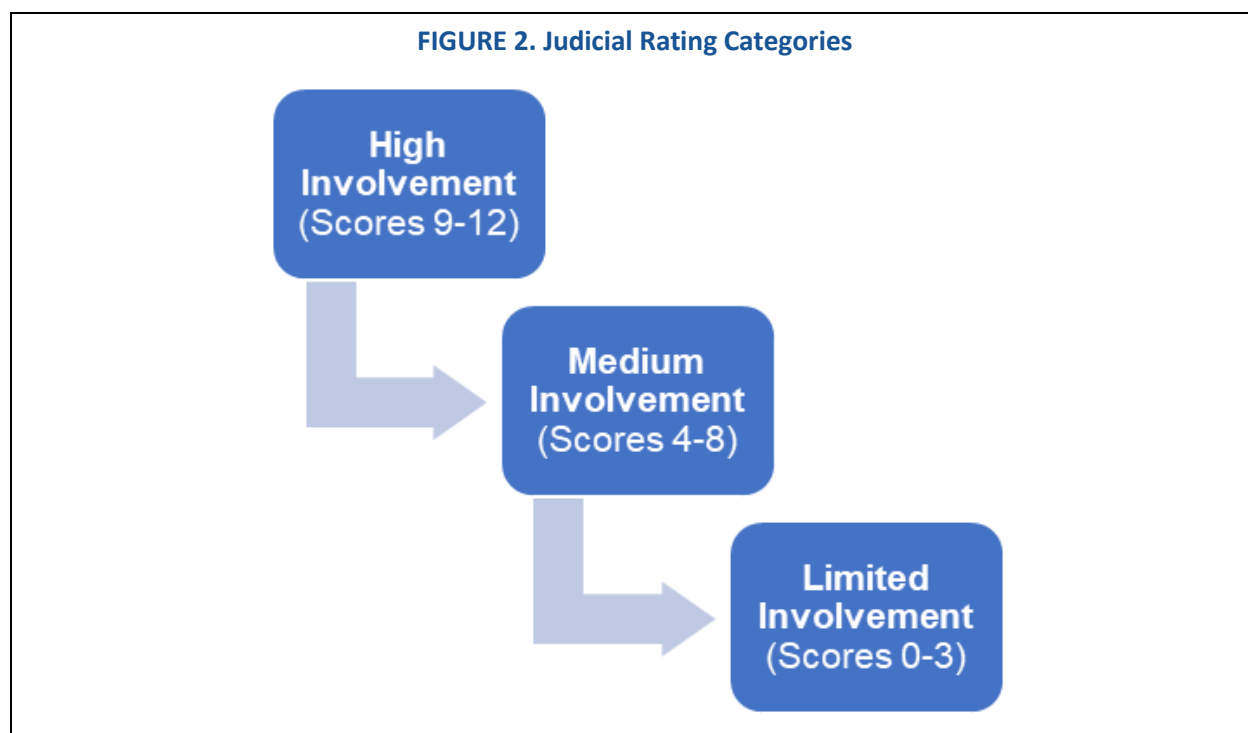
TABLE 1. Item-Level Matrix of Judicial Ratings Instrument and Reference Measures

Judicial Ratings Instrument	Reference Measures	
	Data Source	Variable
Extent to which the judge or magistrate:		
Develops a personal connection with the AOT participants	Docket Monitoring Form	<ul style="list-style-type: none"> Substantial verbal interaction between judge and client
	Characteristics Form	<ul style="list-style-type: none"> Clients able to participate in meaningfully/appropriate discussions
	Client Interview	<ul style="list-style-type: none"> Client indicated extent to which the judge exhibited interest, respect, and/or fairness in the hearing Client reported level of satisfaction in how they were treated by the judge and lawyers
Understands and clearly communicates the roles and responsibilities of the AOT team members	Docket Monitoring Form	<ul style="list-style-type: none"> Substantial verbal interaction between judge and treatment team
	Characteristics Form	<ul style="list-style-type: none"> Ensures treatment team is on board and able to provide all required services Treatment plan discussed during the docket or reviewed with the treatment team/patient
Creates a court environment that is supportive with clear expectations of all parties	Docket Monitoring Form	<ul style="list-style-type: none"> Substantial verbal interaction between judge and treatment team
	Characteristics Form	<ul style="list-style-type: none"> Perceived level of involvement Involvement of treatment team in this discussion during the docket Inclusion of patient preferences, family/caregiver opinions for treatment planning
Encourages participants to actively engage in their treatment with the goal of recovery and independence	Characteristics Form	<ul style="list-style-type: none"> Solicit patient preferences for treatment plan, including what has or has not worked for them
	Docket Monitoring Form	<ul style="list-style-type: none"> Words of encouragement (frequency and qualitative)
Praises successes, no matter how incremental	Docket Monitoring Form	<ul style="list-style-type: none"> Words of encouragement (frequency and qualitative)
Develops/upholds procedures for consequences for non-adherence to AOT treatment plan	Docket Monitoring and Characteristics Form	<ul style="list-style-type: none"> Warnings or reminders (frequency and qualitative) Response to non-compliance (frequency and qualitative)
NOTE: Key informant interviews with AOT program staff included discussion about each rating.		

The second step in developing a measure of the black robe effect was to determine whether there were any other relevant indicators of judicial involvement not otherwise captured by the judicial rating scale. To accomplish this, we developed a comprehensive analytic matrix to organize relevant judicial measures from all data sources and conducted a thematic analysis to identify emerging patterns in and across sites. This process resulted in the identification of one additional factor: frequency of judicial contact. Specifically, sites differed in the use of status hearings (not legal hearings) over the course of the order. These hearings, when implemented, permit additional judicial monitoring of client progress at specified intervals, which may vary from judge to judge or client to client.

PROFILES OF SITES WITH HIGH, MEDIUM, AND LIMITED JUDICIAL INVOLVEMENT

We developed a categorization scheme to stratify sites into high, medium, and limited judicial involvement (**Figure 2**). The specific cut-points were chosen a priori as a starting point for measuring differences in judicial involvement. To confirm the validity of these cut-points, we next reviewed these classifications and considered whether adjustment was needed based on frequency of contact measured from the AOT docket monitoring forms. However, in this case study we found that there was a strong correlation between frequency of contact and high judicial ratings (**Table 2**). After cross-walking this categorization scheme with the analytic matrix developed in our second analytic step, we began to identify qualitative themes that emerged among sites within each of the categorization stratum. We also leveraged this approach to identify differences in how much value key informants placed on the role of judges in AOT.



The following profiles provide detailed descriptions and examples of high, medium, and limited judicial involvement as reported by case study sites. Value perceptions of differing levels of involvement of the judges are also reported as shared by key informants. While this brief uses the term “judge” to refer to anyone appointed to oversee AOT civil court proceedings, in practice this role may be held by judges, magistrates, or special masters.

High Judicial Involvement

Six judges across three of the case study sites were categorized as exhibiting high judicial involvement, with judicial rating scores ranging from ten to 12 (**Table 2**) and status hearings routinely used. The use of status hearings provided additional opportunities for judicial contact over the course of the AOT order. Of the six judges represented in this category, two judges scheduled status hearings approximately once a quarter during the AOT order, two judges scheduled monthly status hearings, and two judges scheduled status hearings as-needed (monthly or bimonthly at one site, and as frequently as weekly for clients with substance use at the other).

"[The judge] does a really good job of reading what she has on the clients and then weaving it into her narrative with the client."

- Site A Key Informant

Key informants described highly involved judges as being encouraging and supportive, with clear and tailored communication regarding requirements of the program and expectations of, and praise for, the clients. Words of encouragement captured by the docketing monitoring form illustrate this latter point, with one judge stating in a status hearing, "I am so pleased across the board. You are putting your heart and soul into your healing."

"The individual is often scared, and that [explanation of AOT by the judge] goes a long way."

- Site C Key Informant

A common theme across high involvement sites was how the role of the judge in AOT was clearly defined and understood by the court, provider, and client. Although the specific function and associated focus of the judge could vary from site to site, it was determined in collaboration with the rest of the AOT team. For example, at one site the judges spent much of the hearing on the background and purpose of AOT and why the court is interested in filing the petition for the specific client. The AOT coordinators then communicate specific

information about the terms of the court order and treatment plan. In contrast, at another site the judge used the initial hearing as an opportunity to walk through the client's treatment plan and identify which specific staff members would be responsible for different aspects of treatment.

Overall, AOT program staff perceived high judicial involvement—including both personalized engagement and frequency of contact—as an effective way to leverage judicial authority while "also gaining trust" to increase client motivation and subsequent adherence to treatment. This emphasis on a compassionate, rather than punitive, approach to encourage adherence was echoed by one of the represented judges, who noted that AOT is an opportunity to make court a positive experience for clients.

Medium Involvement

Three judges across two sites were categorized as having medium judicial involvement, with judicial rating scores ranging 6-7 out of 12 (**Table 2**). Sites typically indicated that judges "somewhat" exhibited each of the behaviors indicated by the items. Neither site used status hearings, meaning that judicial contact was generally limited to the initial hearing and any renewal/closeout hearings.

"[During the hearing] it can be difficult for clients to know when to speak, who to speak to... it's more official and people are scared to speak out of turn."

- Site E Key Informant

The three judges with medium levels of involvement were typically described as more authoritative than those with high levels of involvement, with a primary focus on outlining requirements of the program at the initial hearing. For example, one judge would routinely ask clients the same question ("Do you understand the requirements of this court order?") at initial hearings,

while another at renewal hearings would ask clients how the program was working for them as part of a short exchange.

TABLE 2. Judicial Ratings and Use of Status Hearings Among AOT Case Study Sites			
Site/Judge	Judicial Rating Score (0-12)	Use of Status Hearings?	Frequency of Status Hearings
High Judicial Involvement			
Site A Judge	11	✓	Quarterly
Site B Judge	11	✓	As needed
Site C Judge 1	11	✓	Monthly
Site C Judge 2	12	✓	Monthly
Site C Judge 3	10	✓	Quarterly
Site C Judge 4	10	✓	Monthly or bimonthly
Medium Judicial Involvement			
Site D Judge	6	✗	
Site E Judge 1	6	✗	
Site E Judge 2	7	✗	
Limited Judicial Involvement			
Site F Judge 1	0	✗	
Site F Judge 2	0	✗	

This authoritative approach, coupled with a lack of status hearings over the course of each order, resulted in a judicial role that was consistently more scripted and less interactive than observed at high involvement sites. At one site, the lower level of engagement was attributed to the relative newness of the judge, and therefore key informants anticipated that it would change over time. Other key informants believed that lower levels of

“[The judge] plays an active role in striking a balance in what the patient wants and what the doctor/AOT team is recommending for continued care.”

- Site D Key Informant

involvement were in part due to a lack of clarity around the judge’s role (e.g., “[the judge] is a bit leery of saying too much”) or the fact that the AOT team addressed most client-specific issues prior to the hearing. However, all judges in this category exhibited higher levels of engagement when they deemed it warranted, such as establishing treatment expectations and providing praise in cases of exceptional progress.

In general, key informants believed that the more authoritative direct approach “works well for some individuals” whereas others do not respond well to a high level of pressure from the judge. Key informants generally acknowledged that more individualized engagement and additional contacts through status hearings would be beneficial but cited high volume of hearings coupled with limited availability of the judges and magistrates as major practical barriers.

Limited Involvement

Two judges overseeing separate courts for the same AOT site were categorized as having limited judicial involvement. Although both exhibited the behaviors captured by the judicial rating instrument when they met with clients, many of the AOT initiation hearings were held without the client present due to a stepdown model in which clients were directly discharged to AOT from inpatient commitment. Accordingly, due to the infrequency with which clients were present for AOT court proceedings, the site indicated low ratings for judicial behaviors. Neither of the courts used status hearings, and so judicial contact was minimal throughout

the order. Notably, both individuals were in fact special masters, otherwise serving as private practice attorneys in the community.

The limited judicial involvement and contact reported was overwhelmingly due to structural differences built into the civil process. The AOT treatment team generally took on the bulk of responsibility pertaining to initiation of AOT and managing clients during the order itself. Additionally, treatment plans were routinely completed after hearings, as they are not statutorily required to be reviewed by a judge prior to approving the order. As a result, the input of the judges was generally limited to a brief explanation of AOT and the importance of following the order, including consequences in cases of non-compliance. In the rare event that initiation hearings included both judge and client in attendance, key informants noted that judges were encouraging and supportive. However, as noted above, judges and clients were not present together at most initiation hearings, which minimized potential judicial involvement.

[In cases with direct interaction], “[The judge] talks to them about [AOT] and why it’s important to follow through...he gets on a personal level (‘I want to see you do well’). It’s a conversation.”

- Site F Key Informant

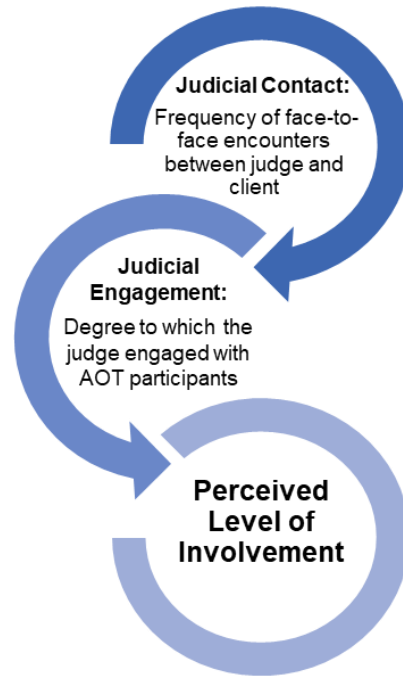
The AOT program staff did not feel that this division of responsibilities between the court and treatment team had any adverse impact on the operation and effectiveness of AOT at their site, stating that “it’s worked for us.” Although members of the AOT treatment team did feel that status hearings could be beneficial, citing similarities to a drug or mental health court, court representatives at the site indicated that they felt that contacts with the judge during the order were only needed in the event of a problem, such as repeated non-compliance.

IMPLICATIONS FOR ASSISTED OUTPATIENT TREATMENT

Findings illustrated that judicial involvement varied within two key categories: engagement and contact (*Figure 3*).

- **AOT programs with high levels of judicial involvement included tailored messaging and regular status hearings.** Use of status hearings throughout the AOT order provided additional opportunities for judges to develop personal connections with clients and offer tailored feedback based on reported adherence or non-adherence to treatment, resulting in an operation in which the judge was fully integrated into the AOT program.
- **AOT programs with medium levels of involvement reported more prescriptive language and no regular status hearings.** Generally, these judges had less familiarity or rapport with clients, and were not as integrated into the AOT process compared to those with high levels of involvement.
- **AOT programs with limited judicial involvement had minimal opportunities for judicial contact.** Clients were rarely present at initiation hearings and no status hearings were held over the course of the order, thus seriously restricting judicial involvement. Most program responsibilities were carried out by the AOT treatment team.
- **Generally, AOT programs and court representatives were satisfied with their respective levels of judicial involvement,** though heightened value was placed on conversational interactions between the judge and the client, in which expectations of compliance were balanced with words of encouragement. Status hearings were also seen as a way to develop rapport and increase client motivation to adhere to program requirements.

FIGURE 3. Level of Judicial Involvement



OPPORTUNITIES FOR FUTURE RESEARCH

This brief shows one way to operationalize the concept of the black robe effect. Future studies can learn from the measurement approach detailed in this brief and compare outcomes in sites with greater and lesser judicial involvement as a means of directly testing the black robe effect. The six case study sites included in this brief provide a reasonable approximation of the types of variations likely observed across different AOT programs and statutes in terms of judicial involvement and contact. Moreover, we have highlighted a novel measurement approach for capturing relevant judicial behaviors. Future studies can be expanded to encompass a larger pool of AOT programs. More research will also be needed to determine the extent to which increased judicial involvement may be related to better client-level outcomes.

REFERENCES

1. Bond GR, Drake RE, Mueser KT, Latimer E. Assertive community treatment for people with severe mental illness. *Disease Management and Health Outcomes*. 2001; 9: 141-159.
2. Van Dorn RA, Desmarais SL, Petrila J, Haynes D, Singh JP. Effects of outpatient treatment on risk of arrest of adults with serious mental illness and associated costs. *Psychiatr Serv*. 2013; 64: 856-862. doi.org/10.1176/appi.ps.201200406.
3. Lehner RK, Dopke CA, Cohen K, Edstrom K, Maslar M, Slagg NB, Yohanna D. Outpatient treatment adherence and serious mental illness: A review of interventions. *American Journal of Psychiatric Rehabilitation*. 2007; 10: 245-274.
4. Swanson JW, Swartz MS, George LK, Burns BJ, Hiday VA, Borum R, Wagner HR. Interpreting the effectiveness of involuntary outpatient commitment: a conceptual model. *J Am Acad Psychiatry Law*. 1997; 25: 5-16.
5. Treatment Advocacy Center. No relevance to Assisted Outpatient Treatment (AOT) in the OCTET study of English compulsory treatment. Background paper. 2016.
6. Russell T, Stormer EM, Stettin B. Seven habits of highly effective AOT judges. Webinar, hosted by SAMHSA's GAINS Center. Published 2018.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

200 Independence Avenue SW, Mailstop 447D
Washington, D.C. 20201

For more ASPE briefs and other publications, visit:

aspe.hhs.gov/reports



ABOUT THE AUTHORS

Kiersten L. Johnson, Ph.D., William J. Parish, Ph.D., Elysha Theis, B.A., Sarita L. Karon, Ph.D., and Kristine Rae Olmstead, M.A. work at RTI International.

SUGGESTED CITATION

Johnson, K.L., Parish, W.J., Theis, E., Karon, S.L., & Olmstead, K.R. Assessing Level of Judicial Involvement in Assisted Outpatient Treatment (Issue Brief). Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. March 2024.

COPYRIGHT INFORMATION

All material appearing in this report is in the public domain and may be reproduced or copied without permission; citation as to source, however, is appreciated.

Subscribe to ASPE mailing list to receive email updates on new publications:

aspe.hhs.gov/join-mailing-list

For general questions or general information about ASPE:

aspe.hhs.gov/about