

ACMHA ARM CHAIR REFLECTIONS
**Favoring Improved Voluntary Mental Health Outreach to Forced
Outpatient Treatment: NYS Legislature Rejects Kendra's Law
Expansion and Permanence**

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The national controversy over the use of Kendra's Law-styled court ordered outpatient mental health treatment continues. In New York, where the law originated, the New York State Legislature recently rejected efforts to expand or make the program permanent and instead extended the program for another 5 years to allow for the greater use of voluntary approaches, especially to communities of color.

Background

A 1999 study of a Bellevue Hospital pilot comparing treatment outcomes for two groups who both received intensive, enhanced discharge planning and follow up services found no significant differences between those who participated voluntarily and those who were court committed.

Nonetheless, amidst a media-charged environment vilifying the 'violent mentally ill', the NYS Legislature passed Kendra's Law in 1999, authorizing a 5 year program of court mandated "assisted outpatient treatment" for individuals deemed to be "at risk" for coming to our causing harm. At the same time, the Legislature boosted local and provider responsibility for serving such individuals, raised standards of hospital and prison discharge planning and created \$125 million worth of new community based care management and residential services.

**2005 Extension for Comparative Study, Addressing Geographic and Racial
Disparities**

In their 2005 review of the Kendra's Law program, state legislators rejected state Office of Mental Health program evaluation data showing improved treatment outcomes as attributable to court mandated treatment because, unlike the Bellevue research, there was no scientific comparison between voluntary and involuntary participation.

Further, the Legislature was troubled by dramatic differences in the use of court ordered and voluntary care between downstate and upstate counties (over ¾ came from New York City's 'AOT First' policies) and the disproportionate 2/3 of New Yorkers from communities of color who were receiving court ordered mental health care.

Accordingly, the Legislature resisted considerable pressure by the Pataki Administration to permanently adopt the program as a preferred and proven approach and instead, extended the

program an additional 5 years, ordering independent scientific research to compare voluntary and involuntary approaches and to examine program disparities.

2009 Duke Study: No Comparison, Continued Disparities

In 2009, Kendra's Law research conducted by Duke University for the legislature failed to develop a design that compared voluntary and involuntary approaches, citing that "available data allow only a limited assessment of whether voluntary agreements are effective alternatives to initiating or continuing (court ordered care)."

On other fronts, the study again found the same patterns, identifying great geographic disparities, with 82% (8,275) of the orders emanating from New York City and Long Island while most other counties offered almost 7,000 individuals a variety of voluntary service packages. The study quoted a psychiatrist from an upstate county: "We don't do it like downstate...we use the voluntary order first. We don't approach it in an adversarial way."

Further, Duke found no change in the overrepresentation of African Americans and Hispanic New Yorkers in the group receiving court ordered care. Just as in the 2005 study, 64 percent of involuntary orders were levied at those groups with one notable difference: court orders for Hispanic New Yorkers jumped up by almost half (from 21% to 31%). This striking imbalance continued to turn up even in areas of the state where those groups were vastly outnumbered. Subsequently, a Columbia University research team concluded that they could not account for which program elements were responsible for higher outcomes and, accordingly, cautioned against "using our results to justify an expansion in coercion in psychiatric treatment."

Administration, OMH Seeks Extender, More Alternatives

In a July 2009 letter accompanying the release of the Duke research, NYS Office of Mental Health Commissioner and President's Mental Health Commission Chairman Michael Hogan remarked that "the critics of AOT are correct in a way. Our mental health system does not now provide sufficient positive experiences and opportunities for people in distress. Thoughtful outreach and engagement by therapists, services that are driven by consumer and family expectations, and culturally competent programs can make receiving care less of a burden..." This time, it was the Paterson Administration rather than the Legislature that proposed extending Kendra's Law another 5 years, in contrast to proposals by proponents to expand the program's reach and to make it permanent.

Strong Support

The proposal to extend but not make permanent or expand the law was strongly backed by a broad array of top state mental health advocacy groups, including many consumer, provider, county government, hospital and advocacy groups, including the state APA and NASW chapters. We were also joined by groups concerned about "unchecked systemic deficiencies in providing effective outreach and engagement services to communities of color" who asked "can't we improve access to mental health services for communities of color without using coercive court mandates? National groups also weighed in as the Bazelon Center for Mental Health Law wrote that "court orders are not treatment,' adding "New York should focus on expanding access to the numerous treatments and services with demonstrated effectiveness..." Others emphasized

that while 44 states have similar laws, proponents themselves acknowledge that “only about eight to 10 states frequently use such laws” (Torrey, Wall Street Journal, Feb. 2006). And Kendra’s Law opponents led by We the People raised strenuous objections to continuing the program at all (<http://www.noioc.org/>)

Going Forward: Care Monitoring and Standards, Housing First and Peer Innovations

This past June, the NYS Legislature approved the straight extender of Kendra’s Law, rejecting proposals to expand or make it permanent. The focus in New York now turns to:

- **improving provider responsiveness** (a NYC Care Monitoring Initiative is focused on helping providers to identify and better engage people ‘falling through the cracks’ and new Clinic Standards emphasize engagement and peer-assisted outreach)
- **examining the results of innovative voluntary engagement and support services**, including Housing First, Peer Bridging, Wellness Coaching and Crisis Diversion/Respite services.

Let’s hope and direct our efforts so that New York’s emphasis on enhancing voluntary alternatives and raising provider responsiveness becomes a national trend.