

4525--B

Cal. No. 1003

2011-2012 Regular Sessions

I N   S E N A T E

April 11, 2011

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Introduced by Sens. McDONALD, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the mental hygiene law, in relation to authorizing nurse practitioners to admit a patient to an inpatient mental health unit on a voluntary or involuntary basis

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 1.03 of the mental hygiene law is amended by adding  
2     a new subdivision 9-a to read as follows:  
3     9-A. "NURSE PRACTITIONER" MEANS A CERTIFIED NURSE PRACTITIONER ACTING  
4     WITHIN HIS OR HER LAWFUL SCOPE OF PRACTICE PURSUANT TO SECTION  
5     SIXTY-NINE HUNDRED TWO OF THE EDUCATION LAW.  
6     S 2. The section heading, the opening paragraph of subdivision (a) and  
7     subdivision (b) of section 9.05 of the mental hygiene law, such section  
8     as renumbered by chapter 978 of the laws of 1977, are amended to read as  
9     follows:  
10     Examining physicians and NURSE PRACTITIONERS AND medical certificates.  
11     A person is disqualified from acting as an examining physician OR  
12     NURSE PRACTITIONER in the following cases:  
13     (b) A certificate, as required by this article, must show that the  
14     person is mentally ill and shall be based on an examination of the  
15     person alleged to be mentally ill made within ten days prior to the date  
16     of admission. The date of the certificate shall be the date of such  
17     examination. All certificates shall contain the facts and circumstances  
18     upon which the judgment of the physicians OR NURSE PRACTITIONERS is  
19     based and shall show that the condition of the person examined is such

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD03971-06-1

1 that he OR SHE needs involuntary care and treatment in a hospital and  
2 such other information as the commissioner may by regulation require.

3 S 3. Subdivisions (a), (d), (e) and (i) of section 9.27 of the mental  
4 hygiene law, subdivision (i) as amended by chapter 847 of the laws of  
5 1987 and such section as renumbered by chapter 978 of the laws of 1977,  
6 are amended to read as follows:

7 (a) The director of a hospital may receive and retain therein as a  
8 patient any person alleged to be mentally ill and in need of involuntary  
9 care and treatment upon [the] TWO certificates [of two examining physi-  
10 cians], EACH COMPLETED BY AN EXAMINING PHYSICIAN OR A NURSE  
11 PRACTITIONER, accompanied by an application for the admission of such  
12 person. The examination may be conducted jointly but each examining  
13 physician OR NURSE PRACTITIONER shall execute a separate certificate.

14 (d) Before an examining physician OR NURSE PRACTITIONER completes the  
15 certificate of examination of a person for involuntary care and treat-  
16 ment, he OR SHE shall consider alternative forms of care and treatment  
17 that might be adequate to provide for the person's needs without requir-  
18 ing involuntary hospitalization. If the examining physician OR NURSE  
19 PRACTITIONER knows that the person he OR SHE is examining for involun-  
20 tary care and treatment has been under prior treatment, he OR SHE shall,  
21 insofar as possible, consult with the physician or psychologist furnish-  
22 ing such prior treatment prior to completing his OR HER certificate.  
23 Nothing in this section shall prohibit or invalidate any involuntary  
24 admission made in accordance with the provisions of this chapter.

25 (e) The director of the hospital where such person is brought shall  
26 cause such person to be examined forthwith by a physician, OTHER THAN AN  
27 EXAMINING PHYSICIAN WHOSE CERTIFICATE ACCOMPANIED THE APPLICATION, who  
28 shall be a member of the psychiatric staff of such hospital [other than  
29 the original examining physicians whose certificate or certificates  
30 accompanied the application and, if]. IF such person is found to be in  
31 need of involuntary care and treatment, he OR SHE may be admitted there-  
32 to as a patient as herein provided.

33 (i) After an application for the admission of a person has been  
34 completed [and both physicians have examined such person and separately  
35 certified either], AND TWO SEPARATE CERTIFICATES, EACH COMPLETED BY AN  
36 EXAMINING PHYSICIAN OR A NURSE PRACTITIONER, SHOW that he or she is  
37 mentally ill and in need of involuntary care and treatment in a hospi-  
38 tal, ANY EXAMINING physician OR NURSE PRACTITIONER MAKING SUCH A CERTIF-  
39 ICATION is authorized to request peace officers, when acting pursuant to  
40 their special duties, or police officers, who are members of an author-  
41 ized police department or force or of a sheriff's department, to take  
42 into custody and transport such person to a hospital for determination  
43 by the director whether such person qualifies for admission pursuant to  
44 this section. Upon the request of [either] ANY EXAMINING physician OR  
45 NURSE PRACTITIONER MAKING SUCH A CERTIFICATION, an ambulance service, as  
46 defined by subdivision two of section three thousand one of the public  
47 health law, is authorized to transport such person to a hospital for  
48 determination by the director whether such person qualifies for admis-  
49 sion pursuant to this section.

50 S 4. Subdivisions (a), (b) and (c) of section 9.37 of the mental  
51 hygiene law, subdivision (a) as amended by chapter 723 of the laws of  
52 1989, subdivision (c) as amended by chapter 230 of the laws of 2004 and  
53 such section as renumbered by chapter 978 of the laws of 1977, are  
54 amended to read as follows:

55 (a) The director of a hospital, upon application by a director of  
56 community services or an examining physician duly designated by him or

1 her, may receive and care for in such hospital as a patient any person  
2 who, in the opinion of the director of community services or the direc-  
3 tor's designee, has a mental illness for which immediate inpatient care  
4 and treatment in a hospital is appropriate and which is likely to result  
5 in serious harm to himself or herself or others.

6 The need for immediate hospitalization shall be confirmed by a staff  
7 physician OR NURSE PRACTITIONER of the hospital prior to admission.  
8 Within seventy-two hours, excluding Sunday and holidays, after such  
9 admission, if such patient is to be retained for care and treatment  
10 beyond such time and he or she does not agree to remain in such hospital  
11 as a voluntary patient, the certificate of another examining physician  
12 OR NURSE PRACTITIONER who is a member of the psychiatric staff of the  
13 hospital that the patient is in need of involuntary care and treatment  
14 shall be filed with the hospital. From the time of his or her admission  
15 under this section the retention of such patient for care and treatment  
16 shall be subject to the provisions for notice, hearing, review, and  
17 judicial approval of continued retention or transfer and continued  
18 retention provided by this article for the admission and retention of  
19 involuntary patients, provided that, for the purposes of such  
20 provisions, the date of admission of the patient shall be deemed to be  
21 the date when the patient was first received in the hospital under this  
22 section.

23 (b) The application for admission of a patient pursuant to this  
24 section shall be based upon a personal examination by a director of  
25 community services or his OR HER designee. It shall be in writing and  
26 shall be filed with the director of such hospital at the time of the  
27 patient's reception, together with a statement in a form prescribed by  
28 the commissioner giving such information as he OR SHE may deem appropri-  
29 ate.

30 (c) Notwithstanding the provisions of subdivision (b) of this section,  
31 in counties with a population of less than two hundred thousand, a  
32 director of community services who is a licensed psychologist pursuant  
33 to article one hundred fifty-three of the education law or a licensed  
34 clinical social worker pursuant to article one hundred fifty-four of the  
35 education law but who is not a physician may apply for the admission of  
36 a patient pursuant to this section without a medical examination by a  
37 designated physician, if a hospital approved by the commissioner pursu-  
38 ant to section 9.39 of this article is not located within thirty miles  
39 of the patient, and the director of community services has made a  
40 reasonable effort to locate a designated examining physician but such a  
41 designee is not immediately available and the director of community  
42 services, after personal observation of the person, reasonably believes  
43 that he OR SHE may have a mental illness which is likely to result in  
44 serious harm to himself OR HERSELF or others and inpatient care and  
45 treatment of such person in a hospital may be appropriate. In the event  
46 of an application pursuant to this subdivision, a STAFF physician OR  
47 NURSE PRACTITIONER of the receiving hospital shall examine the patient  
48 and shall not admit the patient unless he or she determines that the  
49 patient has a mental illness for which immediate inpatient care and  
50 treatment in a hospital is appropriate and which is likely to result in  
51 serious harm to himself OR HERSELF or others. If the patient is admit-  
52 ted, the need for hospitalization shall be confirmed by another staff  
53 physician OR NURSE PRACTITIONER within twenty-four hours. An application  
54 pursuant to this subdivision shall be in writing and shall be filed with  
55 the director of such hospital at the time of the patient's reception,  
56 together with a statement in a form prescribed by the commissioner

1 giving such information as he OR SHE may deem appropriate, including a  
2 statement of the efforts made by the director of community services to  
3 locate a designated examining physician prior to making an application  
4 pursuant to this subdivision.

5 S 5. Subdivision (a) of section 9.37 of the mental hygiene law is  
6 amended to read as follows:

7 (a) The director of a hospital, upon application by a director of  
8 community services or an examining physician duly designated by him OR  
9 HER, may receive and care for in such hospital as a patient any person  
10 who, in the opinion of the director of community services or his OR HER  
11 designee, has a mental illness for which immediate inpatient care and  
12 treatment in a hospital is appropriate and which is likely to result in  
13 serious harm to himself OR HERSELF or TO others[; "likelihood of serious  
14 harm" shall mean:

15 1. substantial risk of physical harm to himself as manifested by  
16 threats of or attempts at suicide or serious bodily harm or other  
17 conduct demonstrating that he is dangerous to himself, or

18 2. a substantial risk of physical harm to other persons as manifested  
19 by homicidal or other violent behavior by which others are placed in  
20 reasonable fear or serious physical harm].

21 The need for immediate hospitalization shall be confirmed by a staff  
22 physician OR NURSE PRACTITIONER of the hospital prior to admission.  
23 Within seventy-two hours, excluding Sunday and holidays, after such  
24 admission, if such patient is to be retained for care and treatment  
25 beyond such time and he OR SHE does not agree to remain in such hospital  
26 as a voluntary patient, the certificate of another examining physician  
27 OR NURSE PRACTITIONER who is a member of the psychiatric staff of the  
28 hospital that the patient is in need of involuntary care and treatment  
29 shall be filed with the hospital. From the time of his OR HER admission  
30 under this section the retention of such patient for care and treatment  
31 shall be subject to the provisions for notice, hearing, review, and  
32 judicial approval of continued retention or transfer and continued  
33 retention provided by this article for the admission and retention of  
34 involuntary patients, provided that, for the purposes of such  
35 provisions, the date of admission of the patient shall be deemed to be  
36 the date when the patient was first received in the hospital under this  
37 section.

38 S 6. Subdivisions (b) and (c) of section 9.40 of the mental hygiene  
39 law, as added by chapter 723 of the laws of 1989, are amended to read as  
40 follows:

41 (b) The director shall cause examination of such persons to be initi-  
42 ated by a staff physician OR NURSE PRACTITIONER of the program as soon  
43 as practicable [and in any event within], BUT NO LONGER THAN six hours  
44 after the person is received into the program's emergency room. Such  
45 person may be retained for observation, care and treatment, and further  
46 examination for up to twenty-four hours if, at the conclusion of such  
47 examination, such physician OR NURSE PRACTITIONER determines that such  
48 person may have a mental illness for which immediate observation, care  
49 and treatment in a comprehensive psychiatric emergency program is appro-  
50 priate, and which is likely to result in serious harm to the person or  
51 others.

52 (c) No person shall be involuntarily retained in accordance with this  
53 section for more than twenty-four hours, unless (i) within that time the  
54 determination of the INITIAL examining staff physician OR NURSE PRACTI-  
55 TIONER has been confirmed after examination by another physician OR  
56 NURSE PRACTITIONER who is a member of the psychiatric staff of the

1 program and (ii) the person is admitted to an extended observation bed,  
2 as such term is defined in section 31.27 of this chapter. At the time of  
3 admission to an extended observation bed, such person shall be served  
4 with written notice of his OR HER status and rights as a patient under  
5 this section. Such notice shall contain the patient's name. The notice  
6 shall be provided to the same persons and in the manner as if provided  
7 pursuant to subdivision (a) of section 9.39 of this article. Written  
8 requests for court hearings on the question of need for immediate obser-  
9 vation, care and treatment shall be made, and court hearings shall be  
10 scheduled and held, in the manner provided pursuant to subdivision (a)  
11 of section 9.39 of this article, provided however, if a person is  
12 removed or admitted to a hospital pursuant to subdivision (e) or (f) of  
13 this section the director of such hospital shall be substituted for the  
14 director of the comprehensive psychiatric emergency program in all legal  
15 proceedings regarding the continued retention of the person.

16 S 7. Section 9.55 of the mental hygiene law, as amended by chapter 598  
17 of the laws of 1994, is amended to read as follows:

18 S 9.55 Emergency admissions for immediate observation, care and treat-  
19 ment; powers of qualified psychiatrists OR NURSE PRACTITIONERS.

20 A qualified psychiatrist OR NURSE PRACTITIONER shall have the power to  
21 direct the removal of any person[, ] whose treatment for a mental illness  
22 he or she is either supervising or providing in a facility licensed or  
23 operated by the office of mental health, which does not have an inpa-  
24 tient psychiatric service, to a hospital approved by the commissioner  
25 pursuant to subdivision (a) of section 9.39 of this article or to a  
26 comprehensive psychiatric emergency program, if he or she determines  
27 upon examination of such person that such person appears to have a  
28 mental illness for which immediate observation, care and treatment in a  
29 hospital is appropriate and which is likely to result in serious harm  
30 [to himself or herself or others] AS DEFINED IN SECTION 9.01 OF THIS  
31 ARTICLE. Upon the request of such qualified psychiatrist OR NURSE PRAC-  
32 TITIONER, peace officers, when acting pursuant to their special duties,  
33 or police officers[, ] who are members of an authorized police department  
34 or force or of a sheriff's department shall take into custody and trans-  
35 port any such person. Upon the request of a qualified psychiatrist OR  
36 NURSE PRACTITIONER an ambulance service, as defined by subdivision two  
37 of section three thousand one of the public health law, is authorized to  
38 transport any such person. Such person may then be admitted to a hospi-  
39 tal in accordance with the provisions of section 9.39 of this article or  
40 to a comprehensive psychiatric emergency program in accordance with the  
41 provisions of section 9.40 of this article.

42 S 8. Section 9.55 of the mental hygiene law, as amended by chapter 847  
43 of the laws of 1987, is amended to read as follows:

44 S 9.55 Emergency admissions for immediate observation, care and treat-  
45 ment; powers of qualified psychiatrists OR NURSE PRACTITIONERS.

46 A qualified psychiatrist OR NURSE PRACTITIONER shall have the power to  
47 direct the removal of any person[, ] whose treatment for a mental illness  
48 he OR SHE is either supervising or providing in a facility licensed or  
49 operated by the office of mental health, which does not have an inpa-  
50 tient psychiatric service, to a hospital approved by the commissioner  
51 pursuant to subdivision (a) of section 9.39 of this article, OR TO A  
52 COMPREHENSIVE PSYCHIATRIC EMERGENCY PROGRAM if he OR SHE determines upon  
53 examination of such person that such person appears to have a mental  
54 illness for which immediate observation, care and treatment in a hospi-  
55 tal is appropriate and which is likely to result in serious harm [to  
56 himself or others], as defined in section [9.39] 9.01 of this article.

1 Upon the request of such qualified psychiatrist OR NURSE PRACTITIONER,  
2 peace officers, when acting pursuant to their special duties, or police  
3 officers[,] who are members of an authorized police department or force  
4 or of a sheriff's department shall take into custody and transport any  
5 such person. Upon the request of a qualified psychiatrist OR NURSE PRAC-  
6 TITIONER an ambulance service, as defined by subdivision two of section  
7 three thousand one of the public health law, is authorized to transport  
8 any such person. Such person may then be admitted in accordance with the  
9 provisions of section 9.39 of this article.

10 S 9. Section 9.57 of the mental hygiene law, as amended by chapter 598  
11 of the laws of 1994, is amended to read as follows:

12 S 9.57 Emergency admissions for immediate observation, care and treat-  
13 ment; powers of emergency room physicians OR NURSE PRACTI-  
14 TIONERS.

15 A physician OR NURSE PRACTITIONER who has examined a person in an  
16 emergency room or provided emergency medical services at a general  
17 hospital, as defined in article twenty-eight of the public health law,  
18 which does not have an inpatient psychiatric service, or a physician OR  
19 NURSE PRACTITIONER who has examined a person in a comprehensive psychi-  
20 atric emergency program shall be authorized to request that the director  
21 of the program or hospital, or the director's designee, direct the  
22 removal of such person to a hospital approved by the commissioner pursu-  
23 ant to subdivision (a) of section 9.39 of this article or to a compre-  
24 hensive psychiatric emergency program, if the physician OR NURSE PRACTI-  
25 TIONER determines upon examination of such person that such person  
26 appears to have a mental illness for which immediate care and treatment  
27 in a hospital is appropriate and which is likely to result in serious  
28 harm [to himself or others] AS DEFINED IN SECTION 9.01 OF THIS ARTICLE.  
29 Upon the request of the physician OR NURSE PRACTITIONER, the director of  
30 the program or hospital or the director's designee, is authorized to  
31 direct peace officers, when acting pursuant to their special duties, or  
32 police officers[,] who are members of an authorized police department or  
33 force or of a sheriff's department to take into custody and transport  
34 any such person. Upon the request of an emergency room physician, A  
35 NURSE PRACTITIONER, or the director of the program or hospital, or the  
36 director's designee, an ambulance service, as defined by subdivision two  
37 of section three thousand one of the public health law, is authorized to  
38 take into custody and transport any such person. Such person may then be  
39 admitted to a hospital in accordance with the provisions of section 9.39  
40 of this article or to a comprehensive psychiatric emergency program in  
41 accordance with the provisions of section 9.40 of this article.

42 S 10. Section 9.57 of the mental hygiene law, as amended by chapter  
43 847 of the laws of 1987, is amended to read as follows:

44 S 9.57 Emergency admissions for immediate observation, care and treat-  
45 ment; powers of emergency room physicians OR NURSE PRACTI-  
46 TIONERS.

47 A physician OR NURSE PRACTITIONER who has examined a person in an  
48 emergency room or provided emergency medical services at a general  
49 hospital, as defined in article twenty-eight of the public health law,  
50 which does not have an inpatient psychiatric service, shall be author-  
51 ized to request that the director of the hospital, or his OR HER desig-  
52 nee, direct the removal of such person to a hospital approved by the  
53 commissioner pursuant to subdivision (a) of section 9.39 of this arti-  
54 cle, if the physician OR NURSE PRACTITIONER determines upon examination  
55 of such person that such person appears to have a mental illness for  
56 which immediate care and treatment in a hospital is appropriate and

1 which is likely to result in serious harm [to himself or others], as  
2 defined in section [9.39] 9.01 of this article. Upon the request of the  
3 physician OR NURSE PRACTITIONER, the director of the hospital or his OR  
4 HER designee, is authorized to direct peace officers, when acting pursu-  
5 ant to their special duties, or police officers, who are members of an  
6 authorized police department or force or of a sheriff's department to  
7 take into custody and transport any such person. Upon the request of an  
8 emergency room physician, A NURSE PRACTITIONER, or the director of the  
9 hospital, or his OR HER designee, an ambulance service, as defined by  
10 subdivision two of section three thousand one of the public health law,  
11 is authorized to take into custody and transport any such person. Such  
12 person may then be admitted in accordance with the provisions of section  
13 9.39 of this article.

14 S 11. Subparagraph (v) of paragraph 1 and paragraphs 3 and 4 of subdi-  
15 vision (e) and subdivisions (h), (i), (k) and (n) of section 9.60 of the  
16 mental hygiene law, as amended and paragraph 4 of subdivision (e) as  
17 added by chapter 158 of the laws of 2005, are amended to read as  
18 follows:

19 (v) a qualified psychiatrist OR NURSE PRACTITIONER who is either  
20 supervising the treatment of or treating the subject of the petition for  
21 a mental illness; or

22 (3) The petition shall be accompanied by an affirmation or affidavit  
23 of a physician OR NURSE PRACTITIONER, who shall not be the petitioner,  
24 stating either that:

25 (i) such physician OR NURSE PRACTITIONER has personally examined the  
26 subject of the petition no more than ten days prior to the submission of  
27 the petition, recommends assisted outpatient treatment for the subject  
28 of the petition, and is willing and able to testify at the hearing on  
29 the petition; or

30 (ii) no more than ten days prior to the filing of the petition, such  
31 physician OR NURSE PRACTITIONER, or his or her designee, has made appro-  
32 priate attempts but has not been successful in eliciting the cooperation  
33 of the subject of the petition to submit to an examination, such physi-  
34 cian OR NURSE PRACTITIONER has reason to suspect that the subject of the  
35 petition meets the criteria for assisted outpatient treatment, and such  
36 physician OR NURSE PRACTITIONER is willing and able to examine the  
37 subject of the petition and testify at the hearing on the petition.

38 (4) In counties with a population of less than seventy-five thousand,  
39 the affirmation or affidavit required by paragraph three of this subdi-  
40 vision may be made by a physician OR NURSE PRACTITIONER who is an  
41 employee of the office. The office is authorized to make available, at  
42 no cost to the county, a qualified physician OR NURSE PRACTITIONER for  
43 the purpose of making such affirmation or affidavit consistent with the  
44 provisions of such paragraph.

45 (h) Hearing. (1) Upon receipt of the petition, the court shall fix the  
46 date for a hearing. Such date shall be no later than three days from the  
47 date such petition is received by the court, excluding Saturdays,  
48 Sundays and holidays. Adjournments shall be permitted only for good  
49 cause shown. In granting adjournments, the court shall consider the need  
50 for further examination by a physician OR NURSE PRACTITIONER or the  
51 potential need to provide assisted outpatient treatment expeditiously.  
52 The court shall cause the subject of the petition, any other person  
53 receiving notice pursuant to subdivision (f) of this section, the peti-  
54 tioner, the physician OR NURSE PRACTITIONER whose affirmation or affida-  
55 vit accompanied the petition, and such other persons as the court may  
56 determine to be advised of such date. Upon such date, or upon such other

1 date to which the proceeding may be adjourned, the court shall hear  
2 testimony and, if it be deemed advisable and the subject of the petition  
3 is available, examine the subject of the petition in or out of court. If  
4 the subject of the petition does not appear at the hearing, and appro-  
5 priate attempts to elicit the attendance of the subject have failed, the  
6 court may conduct the hearing in the subject's absence. In such case,  
7 the court shall set forth the factual basis for conducting the hearing  
8 without the presence of the subject of the petition.

9 (2) The court shall not order assisted outpatient treatment unless an  
10 examining physician OR NURSE PRACTITIONER, who recommends assisted  
11 outpatient treatment and has personally examined the subject of the  
12 petition no more than ten days before the filing of the petition, testi-  
13 fies in person at the hearing. Such physician OR NURSE PRACTITIONER  
14 shall state the facts and clinical determinations which support the  
15 allegation that the subject of the petition meets each of the criteria  
16 for assisted outpatient treatment.

17 (3) If the subject of the petition has refused to be examined by a  
18 physician OR NURSE PRACTITIONER, the court may request the subject to  
19 consent to an examination by a physician OR NURSE PRACTITIONER appointed  
20 by the court. If the subject of the petition does not consent and the  
21 court finds reasonable cause to believe that the allegations in the  
22 petition are true, the court may order peace officers, acting pursuant  
23 to their special duties, or police officers who are members of an  
24 authorized police department or force, or of a sheriff's department to  
25 take the subject of the petition into custody and transport him or her  
26 to a hospital for examination by a physician. Retention of the subject  
27 of the petition under such order shall not exceed twenty-four hours. The  
28 examination of the subject of the petition may be performed by the  
29 physician OR NURSE PRACTITIONER whose affirmation or affidavit accompa-  
30 nied the petition pursuant to paragraph three of subdivision (e) of this  
31 section, if such physician OR NURSE PRACTITIONER is privileged by such  
32 hospital or otherwise authorized by such hospital to do so. If such  
33 examination is performed by another physician OR NURSE PRACTITIONER, the  
34 examining physician OR NURSE PRACTITIONER may consult with the physician  
35 OR NURSE PRACTITIONER whose affirmation or affidavit accompanied the  
36 petition as to whether the subject meets the criteria for assisted  
37 outpatient treatment.

38 (4) A physician OR NURSE PRACTITIONER who testifies pursuant to para-  
39 graph two of this subdivision shall state: (i) the facts which support  
40 the allegation that the subject meets each of the criteria for assisted  
41 outpatient treatment, (ii) that the treatment is the least restrictive  
42 alternative, (iii) the recommended assisted outpatient treatment, and  
43 (iv) the rationale for the recommended assisted outpatient treatment. If  
44 the recommended assisted outpatient treatment includes medication, such  
45 physician's OR NURSE PRACTITIONER'S testimony shall describe the types  
46 or classes of medication which should be authorized, shall describe the  
47 beneficial and detrimental physical and mental effects of such medica-  
48 tion, and shall recommend whether such medication should be self-admin-  
49 istered or administered by authorized personnel.

50 (5) The subject of the petition shall be afforded an opportunity to  
51 present evidence, to call witnesses on his or her behalf, and to cross-  
52 examine adverse witnesses.

53 (i) Written treatment plan. (1) The court shall not order assisted  
54 outpatient treatment unless a physician OR NURSE PRACTITIONER appointed  
55 by the appropriate director, in consultation with such director, devel-  
56 ops and provides to the court a proposed written treatment plan. The



1 written treatment plan shall include case management services or asser-  
2 tive community treatment team services to provide care coordination. The  
3 written treatment plan also shall include all categories of services, as  
4 set forth in paragraph one of subdivision (a) of this section, which  
5 such physician OR NURSE PRACTITIONER recommends that the subject of the  
6 petition receive. All service providers shall be notified regarding  
7 their inclusion in the written treatment plan. If the written treatment  
8 plan includes medication, it shall state whether such medication should  
9 be self-administered or administered by authorized personnel, and shall  
10 specify type and dosage range of medication most likely to provide maxi-  
11 mum benefit for the subject. If the written treatment plan includes  
12 alcohol or substance abuse counseling and treatment, such plan may  
13 include a provision requiring relevant testing for either alcohol or  
14 illegal substances provided the physician's OR NURSE PRACTITIONER'S  
15 clinical basis for recommending such plan provides sufficient facts for  
16 the court to find (i) that such person has a history of alcohol or  
17 substance abuse that is clinically related to the mental illness; and  
18 (ii) that such testing is necessary to prevent a relapse or deteri-  
19 oration which would be likely to result in serious harm to the person or  
20 others. If a director is the petitioner, the written treatment plan  
21 shall be provided to the court no later than the date of the hearing on  
22 the petition. If a person other than a director is the petitioner, such  
23 plan shall be provided to the court no later than the date set by the  
24 court pursuant to paragraph three of subdivision (j) of this section.

25 (2) The physician OR NURSE PRACTITIONER appointed to develop the writ-  
26 ten treatment plan shall provide the following persons with an opportu-  
27 nity to actively participate in the development of such plan: the  
28 subject of the petition; the treating physician OR NURSE PRACTITIONER,  
29 if any; and upon the request of the subject of the petition, an individ-  
30 ual significant to the subject including any relative, close friend or  
31 individual otherwise concerned with the welfare of the subject. If the  
32 subject of the petition has executed a health care proxy, the appointed  
33 physician OR NURSE PRACTITIONER shall consider any directions included  
34 in such proxy in developing the written treatment plan.

35 (3) The court shall not order assisted outpatient treatment unless a  
36 physician OR NURSE PRACTITIONER appearing on behalf of a director testi-  
37 fies to explain the written proposed treatment plan. Such physician OR  
38 NURSE PRACTITIONER shall state the categories of assisted outpatient  
39 treatment recommended, the rationale for each such category, facts which  
40 establish that such treatment is the least restrictive alternative, and,  
41 if the recommended assisted outpatient treatment plan includes medica-  
42 tion, such physician OR NURSE PRACTITIONER shall state the types or  
43 classes of medication recommended, the beneficial and detrimental phys-  
44 ical and mental effects of such medication, and whether such medication  
45 should be self-administered or administered by an authorized profes-  
46 sional. If the subject of the petition has executed a health care proxy,  
47 such physician OR NURSE PRACTITIONER shall state the consideration given  
48 to any directions included in such proxy in developing the written  
49 treatment plan. If a director is the petitioner, testimony pursuant to  
50 this paragraph shall be given at the hearing on the petition. If a  
51 person other than a director is the petitioner, such testimony shall be  
52 given on the date set by the court pursuant to paragraph three of subdi-  
53 vision (j) of this section.

54 (k) Petition for additional periods of treatment. Within thirty days  
55 prior to the expiration of an order of assisted outpatient treatment,  
56 the appropriate director or the current petitioner, if the current peti-

1 tion was filed pursuant to subparagraph (i) or (ii) of paragraph one of  
2 subdivision (e) of this section, and the current petitioner retains his  
3 or her original status pursuant to the applicable subparagraph, may  
4 petition the court to order continued assisted outpatient treatment for  
5 a period not to exceed one year from the expiration date of the current  
6 order. If the court's disposition of such petition does not occur prior  
7 to the expiration date of the current order, the current order shall  
8 remain in effect until such disposition. The procedures for obtaining  
9 any order pursuant to this subdivision shall be in accordance with the  
10 provisions of the foregoing subdivisions of this section; provided that  
11 the time restrictions included in paragraph four of subdivision (c) of  
12 this section shall not be applicable. The notice provisions set forth in  
13 paragraph six of subdivision (j) of this section shall be applicable.  
14 Any court order requiring periodic blood tests or urinalysis for the  
15 presence of alcohol or illegal drugs shall be subject to review after  
16 six months by the physician OR NURSE PRACTITIONER who developed the  
17 written treatment plan or another physician OR NURSE PRACTITIONER desig-  
18 nated by the director, and such physician OR NURSE PRACTITIONER shall be  
19 authorized to terminate such blood tests or urinalysis without further  
20 action by the court.

21 (n) Failure to comply with assisted outpatient treatment. Where in the  
22 clinical judgment of a physician OR NURSE PRACTITIONER, (i) the assisted  
23 outpatient, has failed or refused to comply with the assisted outpatient  
24 treatment, (ii) efforts were made to solicit compliance, and (iii) such  
25 assisted outpatient may be in need of involuntary admission to a hospi-  
26 tal pursuant to section 9.27 of this article or immediate observation,  
27 care and treatment pursuant to section 9.39 or 9.40 of this article,  
28 such physician OR NURSE PRACTITIONER may request the director of commu-  
29 nity services, the director's designee, or any physician OR NURSE PRAC-  
30 TITIONER designated by the director of community services pursuant to  
31 section 9.37 of this article, to direct the removal of such assisted  
32 outpatient to an appropriate hospital for an examination to determine if  
33 such person has a mental illness for which hospitalization is necessary  
34 pursuant to section 9.27, 9.39 or 9.40 of this article. Furthermore, if  
35 such assisted outpatient refuses to take medications as required by the  
36 court order, or he or she refuses to take, or fails a blood test, urina-  
37 lysis, or alcohol or drug test as required by the court order, such  
38 physician OR NURSE PRACTITIONER may consider such refusal or failure  
39 when determining whether the assisted outpatient is in need of an exam-  
40 ination to determine whether he or she has a mental illness for which  
41 hospitalization is necessary. Upon the request of such physician OR  
42 NURSE PRACTITIONER, the director, the director's designee, or any physi-  
43 cian OR NURSE PRACTITIONER designated pursuant to section 9.37 of this  
44 article, may direct peace officers, acting pursuant to their special  
45 duties, or police officers who are members of an authorized police  
46 department or force or of a sheriff's department to take the assisted  
47 outpatient into custody and transport him or her to the hospital operat-  
48 ing the assisted outpatient treatment program or to any hospital author-  
49 ized by the director of community services to receive such persons. Such  
50 law enforcement officials shall carry out such directive. Upon the  
51 request of such physician OR NURSE PRACTITIONER, the director, the  
52 director's designee, or any physician OR NURSE PRACTITIONER designated  
53 pursuant to section 9.37 of this article, an ambulance service, as  
54 defined by subdivision two of section three thousand one of the public  
55 health law, or an approved mobile crisis outreach team as defined in  
56 section 9.58 of this article shall be authorized to take into custody

1 and transport any such person to the hospital operating the assisted  
2 outpatient treatment program, or to any other hospital authorized by the  
3 director of community services to receive such persons. Any director of  
4 community services, or designee, shall be authorized to direct the  
5 removal of an assisted outpatient who is present in his or her county to  
6 an appropriate hospital, in accordance with the provisions of this  
7 subdivision, based upon a determination of the appropriate director of  
8 community services directing the removal of such assisted outpatient  
9 pursuant to this subdivision. Such person may be retained for observa-  
10 tion, care and treatment and further examination in the hospital for up  
11 to seventy-two hours to permit a physician OR NURSE PRACTITIONER to  
12 determine whether such person has a mental illness and is in need of  
13 involuntary care and treatment in a hospital pursuant to the provisions  
14 of this article. Any continued involuntary retention in such hospital  
15 beyond the initial seventy-two hour period shall be in accordance with  
16 the provisions of this article relating to the involuntary admission and  
17 retention of a person. If at any time during the seventy-two hour period  
18 the person is determined not to meet the involuntary admission and  
19 retention provisions of this article, and does not agree to stay in the  
20 hospital as a voluntary or informal patient, he or she must be released.  
21 Failure to comply with an order of assisted outpatient treatment shall  
22 not be grounds for involuntary civil commitment or a finding of contempt  
23 of court.

24 S 12. This act shall take effect immediately; provided, however, that:

25 a. The amendments to subdivision (a) of section 9.37 of the mental  
26 hygiene law made by section four of this act shall be subject to the  
27 expiration and reversion of such subdivision pursuant to section 21 of  
28 chapter 723 of the laws of 1989, as amended, when upon such date the  
29 provisions of section five of this act shall take effect;

30 b. The amendments to subdivisions (b) and (c) of section 9.40 of the  
31 mental hygiene law made by section six of this act shall not affect the  
32 repeal of such section and shall be deemed repealed therewith;

33 c. The amendments to sections 9.55 and 9.57 of the mental hygiene law  
34 made by sections seven and nine of this act shall be subject to the  
35 expiration and reversion of such sections pursuant to section 21 of  
36 chapter 723 of the laws of 1989, as amended, when upon such date the  
37 provisions of sections eight and ten of this act shall take effect; and

38 d. The amendments to section 9.60 of the mental hygiene law made by  
39 section eleven of this act shall not affect the repeal of such section  
40 and shall be deemed repealed therewith.