

4881--A

2011-2012 Regular Sessions

I N S E N A T E

April 28, 2011

Introduced by Sens. YOUNG, ALESI, BONACIC, DeFRANCISCO, GOLDEN, LANZA, LARKIN, LIBOUS, MAZIARZ, McDONALD, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- recommitted to the Committee on Mental Health and Developmental Disabilities in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law and the correction law, in relation to enhancing the assisted outpatient treatment program; and to amend Kendra's Law, in relation to making the provisions thereof permanent

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

1 Section 1. Paragraph 2 of subdivision (f) of section 7.17 of the
2 mental hygiene law, as amended by chapter 158 of the laws of 2005, is
3 amended to read as follows:
4 (2) The oversight and monitoring role of the program coordinator of
5 the assisted outpatient treatment program shall include each of the
6 following:
7 (i) that each assisted outpatient receives the treatment provided for
8 in the court order issued pursuant to section 9.60 of this [chapter]
9 TITLE;
10 (ii) that existing services located in the assisted outpatient's
11 community are utilized whenever practicable;
12 (iii) that a case manager or assertive community treatment team is
13 designated for each assisted outpatient;
14 (iv) that a mechanism exists for such case manager, or assertive
15 community treatment team, to regularly report the assisted outpatient's
16 compliance, or lack of compliance with treatment, to the director of the
17 assisted outpatient treatment program;

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

LBD10473-07-2

1 (v) that directors of community services establish procedures [which]
2 THAT provide that reports of persons who may be in need of assisted
3 outpatient treatment are appropriately investigated in a timely manner;
4 [and]

5 (vi) that assisted outpatient treatment services are delivered in a
6 timely manner[.];

7 (VII) THAT, PRIOR TO THE EXPIRATION OF ASSISTED OUTPATIENT TREATMENT
8 ORDERS, THE CLINICAL NEEDS OF ASSISTED OUTPATIENTS ARE ADEQUATELY
9 REVIEWED IN DETERMINING THE NEED TO PETITION FOR CONTINUED ASSISTED
10 OUTPATIENT TREATMENT PURSUANT TO SUBDIVISION (M) OF SECTION 9.60 OF THIS
11 TITLE;

12 (VIII) THAT THE APPROPRIATE DIRECTOR IS DETERMINED FOR EACH ASSISTED
13 OUTPATIENT, PURSUANT TO SUBDIVISIONS (K) AND (L) OF SECTION 9.60 OF THIS
14 TITLE; AND

15 (IX) THAT THE OFFICE FULFILLS ITS DUTIES PURSUANT TO SUBDIVISION (T)
16 OF SECTION 9.60 OF THIS TITLE TO MEET LOCAL NEEDS FOR TRAINING OF JUDGES
17 AND COURT PERSONNEL.

18 S 2. Subdivision (b) of section 9.47 of the mental hygiene law, as
19 amended by chapter 158 of the laws of 2005, is amended to read as
20 follows:

21 (b) All directors of community services shall be responsible for:

22 (1) receiving reports of persons who may be in need of assisted outpa-
23 tient treatment PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (F) OF SECTION
24 7.17 OF THIS TITLE and documenting the receipt date of such reports;

25 (2) conducting timely investigations of such reports RECEIVED PURSUANT
26 TO PARAGRAPH ONE OF THIS SUBDIVISION and providing written notice upon
27 the completion of investigations to reporting persons and program coor-
28 dinators, appointed by the commissioner [of mental health] pursuant to
29 subdivision (f) of section 7.17 of this title, and documenting the
30 initiation and completion dates of such investigations and the disposi-
31 tions;

32 (3) filing of petitions for assisted outpatient treatment pursuant to
33 [paragraph] SUBPARAGRAPH (vii) of PARAGRAPH ONE OF subdivision [(e)] (F)
34 of section 9.60 of this article, and documenting the petition filing
35 [date] DATES and the [date] DATES of the court [order] ORDERS;

36 (4) coordinating the timely delivery of court ordered services with
37 program coordinators and documenting the date assisted outpatients begin
38 to receive the services mandated in the court order; and

39 (5) reporting on a quarterly basis to program coordinators the infor-
40 mation collected pursuant to this subdivision.

41 S 3. Paragraphs (viii) and (ix) of subdivision (b) of section 9.48 of
42 the mental hygiene law are renumbered paragraphs (ix) and (x) and a new
43 paragraph (viii) is added to read as follows:

44 (VIII) AN ACCOUNT OF ANY COURT ORDER EXPIRATION, INCLUDING BUT NOT
45 LIMITED TO THE DIRECTOR'S DETERMINATION AS TO WHETHER TO PETITION FOR
46 CONTINUED ASSISTED OUTPATIENT TREATMENT, PURSUANT TO SECTION 9.60 OF
47 THIS ARTICLE, THE BASIS FOR SUCH DETERMINATION, AND THE DISPOSITION OF
48 ANY SUCH PETITION;

49 S 4. Section 9.60 of the mental hygiene law, as amended by chapter 158
50 of the laws of 2005, paragraph 1 of subdivision (a) as amended by
51 section 1 of part E of chapter 111 of the laws of 2010, paragraph 5 of
52 subdivision (c) as amended by chapter 137 of the laws of 2005, is
53 amended to read as follows:

54 S 9.60 Assisted outpatient treatment.

55 (a) Definitions. For purposes of this section, the following defi-
56 nitions shall apply:

1 (1) "assisted outpatient treatment" shall mean categories of outpa-
2 tient services [which] THAT have been ordered by the court pursuant to
3 this section. Such treatment shall include case management services or
4 assertive community treatment team services to provide care coordi-
5 nation, and may also include any of the following categories of
6 services: medication SUPPORT; MEDICATION EDUCATION OR SYMPTOM MANAGEMENT
7 EDUCATION; periodic blood tests or urinalysis to determine compliance
8 with prescribed medications; individual or group therapy; day or partial
9 day programming activities; educational and vocational training or
10 activities; APPOINTMENT OF A REPRESENTATIVE PAYEE OR OTHER FINANCIAL
11 MANAGEMENT SERVICES, SUBJECT TO FINAL APPROVAL OF THE SOCIAL SECURITY
12 ADMINISTRATION, WHERE APPLICABLE; alcohol or substance abuse treatment
13 and counseling and periodic OR RANDOM tests for the presence of alcohol
14 or illegal drugs for persons with a history of alcohol or substance
15 abuse; supervision of living arrangements; and any other services within
16 a local services plan developed pursuant to article forty-one of this
17 chapter, CLINICAL OR NON-CLINICAL, prescribed to treat the person's
18 mental illness and to assist the person in living and functioning in the
19 community, or to attempt to prevent a relapse or deterioration that may
20 reasonably be predicted to result in suicide or the need for hospitali-
21 zation.

22 (2) "director" shall mean the director of community services of a
23 local governmental unit, or the director of a hospital licensed or oper-
24 ated by the office of mental health which operates, directs and super-
25 vises an assisted outpatient treatment program.

26 (3) "director of community services" and "local governmental unit"
27 shall have the same meanings as provided in article forty-one of this
28 chapter.

29 (4) "assisted outpatient treatment program" shall mean a system to
30 arrange for and coordinate the provision of assisted outpatient treat-
31 ment, to monitor treatment compliance by assisted outpatients, to evalu-
32 ate the condition or needs of assisted outpatients, to take appropriate
33 steps to address the needs of such individuals, and to ensure compliance
34 with court orders.

35 (5) "assisted outpatient" shall mean the person under a court order to
36 receive assisted outpatient treatment.

37 (6) "subject of the petition" or "subject" shall mean the person who
38 is alleged in a petition, filed pursuant to the provisions of this
39 section, to meet the criteria for assisted outpatient treatment.

40 (7) "correctional facility" and "local correctional facility" shall
41 have the same meanings as provided in section two of the correction law.

42 (8) "health care proxy" and "health care agent" shall have the same
43 meanings as provided in article twenty-nine-C of the public health law.

44 (9) "program coordinator" shall mean an individual appointed by the
45 commissioner [of mental health], pursuant to subdivision (f) of section
46 7.17 of this chapter, who is responsible for the oversight and monitor-
47 ing of assisted outpatient treatment programs.

48 (b) Programs. The director of community services of each local govern-
49 mental unit shall operate, direct and supervise an assisted outpatient
50 treatment program. The director of a hospital licensed or operated by
51 the office [of mental health] may operate, direct and supervise an
52 assisted outpatient treatment program, upon approval by the commission-
53 er. Directors of community services shall be permitted to satisfy the
54 provisions of this subdivision through the operation of joint assisted
55 outpatient treatment programs. Nothing in this subdivision shall be
56 interpreted to preclude the combination or coordination of efforts

1 between and among local governmental units and hospitals in providing
2 and coordinating assisted outpatient treatment.

3 (c) Criteria. A person may be ordered to receive assisted outpatient
4 treatment if the court finds that such person:

5 (1) is eighteen years of age or older; and

6 (2) is suffering from a mental illness; and

7 (3) is unlikely to survive safely in the community without super-
8 vision, based on a clinical determination; and

9 (4) has a history of lack of compliance with treatment for mental
10 illness that has:

11 (i) prior to the filing of the petition, at least twice within the
12 last thirty-six months been a significant factor in necessitating hospi-
13 talization in a hospital, or receipt of services in a forensic or other
14 mental health unit of a correctional facility or a local correctional
15 facility, not including any current period, or period ending within the
16 last six months, during which the person was or is hospitalized or
17 incarcerated; or

18 (ii) prior to the filing of the petition, resulted in one or more acts
19 of serious violent behavior toward self or others or threats of, or
20 attempts at, serious physical harm to self or others within the last
21 forty-eight months, not including any current period, or period ending
22 within the last six months, in which the person was or is hospitalized
23 or incarcerated; and

24 (5) is, as a result of his or her mental illness, unlikely to volun-
25 tarily participate in outpatient treatment that would enable him or her
26 to live safely in the community; and

27 (6) in view of his or her treatment history and current behavior, is
28 in need of assisted outpatient treatment in order to prevent a relapse
29 or deterioration which would be likely to result in serious harm to the
30 person or others as defined in section 9.01 of this article; and

31 (7) is likely to benefit from assisted outpatient treatment.

32 (d) Health care proxy. Nothing in this section shall preclude a person
33 with a health care proxy from being subject to a petition pursuant to
34 this chapter and consistent with article twenty-nine-C of the public
35 health law.

36 (e) INVESTIGATION OF REPORTS. THE COMMISSIONER SHALL PROMULGATE REGU-
37 LATIONS ESTABLISHING A PROCEDURE TO ENSURE THAT REPORTS OF A PERSON WHO
38 MAY BE IN NEED OF ASSISTED OUTPATIENT TREATMENT, INCLUDING THOSE
39 RECEIVED FROM FAMILY AND COMMUNITY MEMBERS OF SUCH PERSON, ARE INVESTI-
40 GATED IN A TIMELY MANNER AND, WHERE APPROPRIATE, RESULT IN THE FILING OF
41 PETITIONS FOR ASSISTED OUTPATIENT TREATMENT.

42 (F) Petition to the court. (1) A petition for an order authorizing
43 assisted outpatient treatment may be filed in the supreme or county
44 court in the county in which the subject of the petition is present or
45 reasonably believed to be present. Such petition may be initiated only
46 by the following persons:

47 (i) any person eighteen years of age or older with whom the subject of
48 the petition resides; or

49 (ii) the parent, spouse, sibling eighteen years of age or older, or
50 child eighteen years of age or older of the subject of the petition; or

51 (iii) the director of a hospital in which the subject of the petition
52 is hospitalized; or

53 (iv) the director of any public or charitable organization, agency or
54 home providing mental health services to the subject of the petition or
55 in whose institution the subject of the petition resides; or

1 (v) a qualified psychiatrist who is either supervising the treatment
2 of or treating the subject of the petition for a mental illness; or
3 (vi) a psychologist, licensed pursuant to article one hundred fifty-
4 three of the education law, or a social worker, licensed pursuant to
5 article one hundred fifty-four of the education law, who is treating the
6 subject of the petition for a mental illness; or
7 (vii) the director of community services, or his or her designee, or
8 the social services official, as defined in the social services law, of
9 the city or county in which the subject of the petition is present or
10 reasonably believed to be present; or
11 (viii) a parole officer or probation officer assigned to supervise the
12 subject of the petition[.]; OR
13 (IX) THE DIRECTOR OF THE HOSPITAL OR THE SUPERINTENDENT OF A CORREC-
14 TIONAL FACILITY IN WHICH THE SUBJECT OF THE PETITION IS IMPRISONED,
15 PURSUANT TO SECTION FOUR HUNDRED FOUR OF THE CORRECTION LAW.
16 (2) THE COMMISSIONER SHALL PROMULGATE REGULATIONS PURSUANT TO WHICH
17 PERSONS INITIATING A PETITION, PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF
18 PARAGRAPH ONE OF THIS SUBDIVISION, MAY RECEIVE ASSISTANCE IN FILING SUCH
19 PETITIONS, WHERE APPROPRIATE, AS DETERMINED PURSUANT TO SUBDIVISION (E)
20 OF THIS SECTION.
21 (3) The petition shall state:
22 (i) each of the criteria for assisted outpatient treatment as set
23 forth in subdivision (c) of this section;
24 (ii) facts which support the petitioner's belief that the subject of
25 the petition meets each criterion, provided that the hearing on the
26 petition need not be limited to the stated facts; and
27 (iii) that the subject of the petition is present, or is reasonably
28 believed to be present, within the county where such petition is filed.
29 [(3)] (4) The petition shall be accompanied by an affirmation or affi-
30 davit of a physician, who shall not be the petitioner, stating either
31 that:
32 (i) such physician has personally examined the subject of the petition
33 no more than ten days prior to the submission of the petition, recom-
34 mends assisted outpatient treatment for the subject of the petition, and
35 is willing and able to testify at the hearing on the petition; or
36 (ii) no more than ten days prior to the filing of the petition, such
37 physician or his or her designee has made appropriate attempts but has
38 not been successful in eliciting the cooperation of the subject of the
39 petition to submit to an examination, such physician has reason to
40 suspect that the subject of the petition meets the criteria for assisted
41 outpatient treatment, and such physician is willing and able to examine
42 the subject of the petition and testify at the hearing on the petition.
43 [(4)] (5) In counties with a population of less than seventy-five
44 thousand, the affirmation or affidavit required by paragraph [three]
45 FOUR of this subdivision may be made by a physician who is an employee
46 of the office. The office is authorized AND DIRECTED to make available,
47 at no cost to the county, a qualified physician for the purpose of
48 making such affirmation or affidavit consistent with the provisions of
49 such paragraph.
50 [(f)] (G) Service. The petitioner shall cause written notice of the
51 petition to be given to the subject of the petition and a copy thereof
52 to be given personally or by mail to the persons listed in section 9.29
53 of this article, the mental hygiene legal service, the health care agent
54 if any such agent is known to the petitioner, the appropriate program
55 coordinator, and the appropriate director of community services, if such
56 director is not the petitioner.

1 [(g)] (H) Right to counsel. The subject of the petition shall have the
2 right to be represented by the mental hygiene legal service, or private-
3 ly financed counsel, at all stages of a proceeding commenced under this
4 section.

5 [(h)] (I) Hearing. (1) Upon receipt of the petition, the court shall
6 fix the date for a hearing. Such date shall be no later than three days
7 from the date such petition is received by the court, excluding Satur-
8 days, Sundays and holidays. Adjournments shall be permitted only for
9 good cause shown. In granting adjournments, the court shall consider the
10 need for further examination by a physician or the potential need to
11 provide assisted outpatient treatment expeditiously. The court shall
12 cause the subject of the petition, any other person receiving notice
13 pursuant to subdivision [(f)] (G) of this section, the petitioner, the
14 physician whose affirmation or affidavit accompanied the petition, and
15 such other persons as the court may determine to be advised of such
16 date. Upon such date, or upon such other date to which the proceeding
17 may be adjourned, the court shall hear testimony and, if it be deemed
18 advisable and the subject of the petition is available, examine the
19 subject of the petition in or out of court. If the subject of the peti-
20 tion does not appear at the hearing, and appropriate attempts to elicit
21 the attendance of the subject have failed, the court may conduct the
22 hearing in the subject's absence. In such case, the court shall set
23 forth the factual basis for conducting the hearing without the presence
24 of the subject of the petition.

25 (2) The court shall not order assisted outpatient treatment unless an
26 examining physician, who recommends assisted outpatient treatment and
27 has personally examined the subject of the petition no more than ten
28 days before the filing of the petition, testifies in person at the hear-
29 ing. Such physician shall state the facts and clinical determinations
30 which support the allegation that the subject of the petition meets each
31 of the criteria for assisted outpatient treatment; PROVIDED THAT THE
32 PARTIES MAY STIPULATE, UPON MUTUAL CONSENT, THAT SUCH PHYSICIAN NEED NOT
33 TESTIFY.

34 (3) If the subject of the petition has refused to be examined by a
35 physician, the court may request the subject to consent to an examina-
36 tion by a physician appointed by the court. If the subject of the peti-
37 tion does not consent and the court finds reasonable cause to believe
38 that the allegations in the petition are true, the court may order peace
39 officers, acting pursuant to their special duties, or police officers
40 who are members of an authorized police department or force, or of a
41 sheriff's department to take the subject of the petition into custody
42 and transport him or her to a hospital for examination by a physician.
43 Retention of the subject of the petition under such order shall not
44 exceed twenty-four hours. The examination of the subject of the petition
45 may be performed by the physician whose affirmation or affidavit accom-
46 panied the petition pursuant to paragraph three of subdivision [(e)] (F)
47 of this section, if such physician is privileged by such hospital or
48 otherwise authorized by such hospital to do so. If such examination is
49 performed by another physician, the examining physician may consult with
50 the physician whose affirmation or affidavit accompanied the petition as
51 to whether the subject meets the criteria for assisted outpatient treat-
52 ment.

53 (4) A physician who testifies pursuant to paragraph two of this subdi-
54 vision shall state: (i) the facts [which] AND CLINICAL DETERMINATIONS
55 THAT support the allegation that the subject meets each of the criteria
56 for assisted outpatient treatment, (ii) that the treatment is the least

1 restrictive alternative, (iii) the recommended assisted outpatient
2 treatment, and (iv) the rationale for the recommended assisted outpa-
3 tient treatment. If the recommended assisted outpatient treatment
4 includes medication, such physician's testimony shall describe the types
5 or classes of medication which should be authorized, shall describe the
6 beneficial and detrimental physical and mental effects of such medica-
7 tion, and shall recommend whether such medication should be self-admin-
8 istered or administered by authorized personnel.

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

12 [(i)] (J) Written treatment plan. (1) The court shall not order
13 assisted outpatient treatment unless a physician appointed by the appro-
14 priate director, in consultation with such director, develops and
15 provides to the court a proposed written treatment plan. The written
16 treatment plan shall include case management services or assertive
17 community treatment team services to provide care coordination. The
18 written treatment plan also shall include all categories of services, as
19 set forth in paragraph one of subdivision (a) of this section, which
20 such physician recommends that the subject of the petition receive. All
21 service providers shall be notified regarding their inclusion in the
22 written treatment plan. If the written treatment plan includes medica-
23 tion, it shall state whether such medication should be self-administered
24 or administered by authorized personnel, and shall specify type and
25 dosage range of medication most likely to provide maximum benefit for
26 the subject. If the written treatment plan includes alcohol or substance
27 abuse counseling and treatment, such plan may include a provision
28 requiring relevant testing for either alcohol or illegal substances
29 provided the physician's clinical basis for recommending such plan
30 provides sufficient facts for the court to find (i) that such person has
31 a history of alcohol or substance abuse that is clinically related to
32 the mental illness; and (ii) that such testing is necessary to prevent a
33 relapse or deterioration which would be likely to result in serious harm
34 to the person or others. If a director is the petitioner, the written
35 treatment plan shall be provided to the court no later than the date of
36 the hearing on the petition. If a person other than a director is the
37 petitioner, such plan shall be provided to the court no later than the
38 date set by the court pursuant to paragraph three of subdivision [(j)]
39 (K) of this section.

40 (2) The physician appointed to develop the written treatment plan
41 shall provide the following persons with an opportunity to actively
42 participate in the development of such plan: the subject of the peti-
43 tion; the treating physician, if any; and upon the request of the
44 subject of the petition, an individual significant to the subject
45 including any relative, close friend or individual otherwise concerned
46 with the welfare of the subject. THE APPOINTED PHYSICIAN SHALL MAKE A
47 REASONABLE EFFORT TO GATHER RELEVANT INFORMATION FOR THE DEVELOPMENT OF
48 THE TREATMENT PLAN FROM THE SUBJECT OF THE PETITION'S FAMILY MEMBER OR
49 MEMBERS, OR HIS OR HER SIGNIFICANT OTHER. If the subject of the petition
50 has executed a health care proxy, the appointed physician shall consider
51 any directions included in such proxy in developing the written treat-
52 ment plan.

53 (3) The court shall not order assisted outpatient treatment unless a
54 physician appearing on behalf of a director testifies to explain the
55 written proposed treatment plan; PROVIDED THAT THE PARTIES MAY STIPU-
56 LATE, UPON MUTUAL CONSENT, THAT SUCH PHYSICIAN NEED NOT TESTIFY. Such

1 physician shall state the categories of assisted outpatient treatment
2 recommended, the rationale for each such category, facts which establish
3 that such treatment is the least restrictive alternative, and, if the
4 recommended assisted outpatient treatment plan includes medication, such
5 physician shall state the types or classes of medication recommended,
6 the beneficial and detrimental physical and mental effects of such medi-
7 cation, and whether such medication should be self-administered or
8 administered by an authorized professional. If the subject of the peti-
9 tion has executed a health care proxy, such physician shall state the
10 consideration given to any directions included in such proxy in develop-
11 ing the written treatment plan. If a director is the petitioner, testi-
12 mony pursuant to this paragraph shall be given at the hearing on the
13 petition. If a person other than a director is the petitioner, such
14 testimony shall be given on the date set by the court pursuant to para-
15 graph three of subdivision [(j)] (K) of this section.

16 [(j)] (K) Disposition. (1) If after hearing all relevant evidence, the
17 court does not find by clear and convincing evidence that the subject of
18 the petition meets the criteria for assisted outpatient treatment, the
19 court shall dismiss the petition.

20 (2) If after hearing all relevant evidence, the court finds by clear
21 and convincing evidence that the subject of the petition meets the
22 criteria for assisted outpatient treatment, and there is no appropriate
23 and feasible less restrictive alternative, the court may order the
24 subject to receive assisted outpatient treatment for an initial period
25 not to exceed [six months] ONE YEAR. In fashioning the order, the court
26 shall specifically make findings by clear and convincing evidence that
27 the proposed treatment is the least restrictive treatment appropriate
28 and feasible for the subject. The order shall state an assisted outpa-
29 tient treatment plan, which shall include all categories of assisted
30 outpatient treatment, as set forth in paragraph one of subdivision (a)
31 of this section, which the assisted outpatient is to receive, but shall
32 not include any such category that has not been recommended in [both]
33 the proposed written treatment plan and [the] IN ANY testimony provided
34 to the court pursuant to subdivision [(i)] (J) of this section.

35 (3) If after hearing all relevant evidence presented by a petitioner
36 who is not a director, the court finds by clear and convincing evidence
37 that the subject of the petition meets the criteria for assisted outpa-
38 tient treatment, and the court has yet to be provided with a written
39 proposed treatment plan and testimony pursuant to subdivision [(i)] (J)
40 of this section, the court shall order the appropriate director to
41 provide the court with such plan and testimony no later than the third
42 day, excluding Saturdays, Sundays and holidays, immediately following
43 the date of such order; PROVIDED THAT THE PARTIES MAY STIPULATE UPON
44 MUTUAL CONSENT THAT SUCH TESTIMONY NEED NOT BE PROVIDED. Upon receiving
45 such plan and ANY REQUIRED testimony, the court may order assisted
46 outpatient treatment as provided in paragraph two of this subdivision.

47 (4) A court may order the patient to self-administer psychotropic
48 drugs or accept the administration of such drugs by authorized personnel
49 as part of an assisted outpatient treatment program. Such order may
50 specify the type and dosage range of such psychotropic drugs and such
51 order shall be effective for the duration of such assisted outpatient
52 treatment.

53 (5) If the petitioner is the director of a hospital that operates an
54 assisted outpatient treatment program, the court order shall direct the
55 hospital director to provide or arrange for all categories of assisted
56 outpatient treatment for the assisted outpatient throughout the period

1 of the order. For all other persons, the order shall require the direc-
2 tor of community services of the appropriate local governmental unit to
3 provide or arrange for all categories of assisted outpatient treatment
4 for the assisted outpatient throughout the period of the order. ORDERS
5 ISSUED ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO
6 THOUSAND TWELVE THAT AMENDED THIS SECTION SHALL REQUIRE THE APPROPRIATE
7 DIRECTOR "AS DETERMINED BY THE PROGRAM COORDINATOR" TO PROVIDE OR
8 ARRANGE FOR ALL CATEGORIES OF ASSISTED OUTPATIENT TREATMENT FOR THE
9 ASSISTED OUTPATIENT THROUGHOUT THE PERIOD OF THE ORDER.

10 (6) The director shall cause a copy of any court order issued pursuant
11 to this section to be served personally, or by mail, facsimile or elec-
12 tronic means, upon the assisted outpatient, the mental hygiene legal
13 service or anyone acting on the assisted outpatient's behalf, the
14 original petitioner, identified service providers, and all others enti-
15 tled to notice under subdivision [(f)] (G) of this section.

16 [(k)] (L) RELOCATION OF ASSISTED OUTPATIENTS. THE COMMISSIONER SHALL
17 PROMULGATE REGULATIONS REQUIRING THAT, DURING THE PERIOD OF THE ORDER,
18 AN ASSISTED OUTPATIENT AND ANY OTHER APPROPRIATE PERSONS SHALL NOTIFY
19 THE PROGRAM COORDINATOR WITHIN A REASONABLE TIME PRIOR TO SUCH ASSISTED
20 OUTPATIENT RELOCATING WITHIN THE STATE OF NEW YORK TO AN AREA NOT SERVED
21 BY THE DIRECTOR WHO HAS BEEN DIRECTED TO PROVIDE OR ARRANGE FOR THE
22 ASSISTED OUTPATIENT TREATMENT. UPON RECEIVING NOTIFICATION OF SUCH RELO-
23 CATION, THE PROGRAM COORDINATOR SHALL REDETERMINE WHO THE APPROPRIATE
24 DIRECTOR SHALL BE AND CAUSE A COPY OF THE COURT ORDER AND TREATMENT PLAN
25 TO BE TRANSMITTED TO SUCH DIRECTOR.

26 (m) Petition for [additional periods of] CONTINUED treatment. (1)
27 WITHIN THIRTY DAYS PRIOR TO THE EXPIRATION OF AN ORDER PURSUANT TO THIS
28 SECTION, THE APPROPRIATE DIRECTOR SHALL REVIEW WHETHER THE ASSISTED
29 OUTPATIENT CONTINUES TO MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREAT-
30 MENT. UPON DETERMINING THAT ONE OR MORE OF SUCH CRITERIA ARE NO LONGER
31 MET, SUCH DIRECTOR SHALL NOTIFY THE PROGRAM COORDINATOR IN WRITING THAT
32 A PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT IS NOT WARRANTED.
33 UPON DETERMINING THAT SUCH CRITERIA CONTINUE TO BE MET, HE OR SHE SHALL
34 PETITION THE COURT TO ORDER CONTINUED ASSISTED OUTPATIENT TREATMENT FOR
35 A PERIOD NOT TO EXCEED ONE YEAR FROM THE EXPIRATION DATE OF THE CURRENT
36 ORDER. IF THE COURT'S DISPOSITION OF SUCH PETITION DOES NOT OCCUR PRIOR
37 TO THE EXPIRATION DATE OF THE CURRENT ORDER, THE CURRENT ORDER SHALL
38 REMAIN IN EFFECT UNTIL SUCH DISPOSITION. THE PROCEDURES FOR OBTAINING
39 ANY ORDER PURSUANT TO THIS SUBDIVISION SHALL BE IN ACCORDANCE WITH THE
40 PROVISIONS OF THE FOREGOING SUBDIVISION OF THIS SECTION; PROVIDED THAT
41 THE TIME RESTRICTIONS INCLUDED IN PARAGRAPH FOUR OF SUBDIVISION (C) OF
42 THIS SECTION SHALL NOT BE APPLICABLE. THE NOTICE PROVISIONS SET FORTH IN
43 PARAGRAPH SIX OF SUBDIVISION (K) OF THIS SECTION SHALL BE APPLICABLE.
44 ANY COURT ORDER REQUIRING PERIODIC BLOOD TESTS OR URINALYSIS FOR THE
45 PRESENCE OF ALCOHOL OR ILLEGAL DRUGS SHALL BE SUBJECT TO REVIEW AFTER
46 SIX MONTHS BY THE PHYSICIAN WHO DEVELOPED THE WRITTEN TREATMENT PLAN OR
47 ANOTHER PHYSICIAN DESIGNATED BY THE DIRECTOR, AND SUCH PHYSICIAN SHALL
48 BE AUTHORIZED TO TERMINATE SUCH BLOOD TESTS OR URINALYSIS WITHOUT
49 FURTHER ACTION BY THE COURT.

50 (2) Within thirty days prior to the expiration of an order of assisted
51 outpatient treatment, [the appropriate director or] the current peti-
52 tioner, if the current petition was filed pursuant to subparagraph (i)
53 or (ii) of paragraph one of subdivision [(e)] (F) of this section, and
54 the current petitioner retains his or her original status pursuant to
55 the applicable subparagraph, may petition the court to order continued
56 assisted outpatient treatment for a period not to exceed one year from

1 the expiration date of the current order. If the court's disposition of
2 such petition does not occur prior to the expiration date of the current
3 order, the current order shall remain in effect until such disposition.
4 The procedures for obtaining any order pursuant to this subdivision
5 shall be in accordance with the provisions of the foregoing subdivisions
6 of this section; provided that the time restrictions included in para-
7 graph four of subdivision (c) of this section shall not be applicable.
8 The notice provisions set forth in paragraph six of subdivision [(j)]
9 (K) of this section shall be applicable. Any court order requiring
10 periodic blood tests or urinalysis for the presence of alcohol or ille-
11 gal drugs shall be subject to review after six months by the physician
12 who developed the written treatment plan or another physician designated
13 by the director, and such physician shall be authorized to terminate
14 such blood tests or urinalysis without further action by the court.

15 (3) IF NEITHER THE APPROPRIATE DIRECTOR NOR THE CURRENT PETITIONER
16 PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT PURSUANT TO THIS
17 PARAGRAPH AND THE ORDER OF THE COURT EXPIRES, ANY OTHER PERSON AUTHOR-
18 IZED TO PETITION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (F) OF THIS
19 SECTION MAY BRING A NEW PETITION FOR ASSISTED OUTPATIENT TREATMENT. IF
20 SUCH NEW PETITION IS FILED LESS THAN SIXTY DAYS AFTER THE EXPIRATION OF
21 SUCH ORDER, THE TIME RESTRICTIONS PROVIDED IN PARAGRAPH FOUR OF SUBDIVI-
22 SION (C) OF THIS SECTION SHALL NOT BE APPLICABLE TO THE NEW PETITION.

23 [(1)] (N) Petition for an order to stay, vacate or modify. (1) In
24 addition to any other right or remedy available by law with respect to
25 the order for assisted outpatient treatment, the assisted outpatient,
26 the mental hygiene legal service, or anyone acting on the assisted
27 outpatient's behalf may petition the court on notice to the director,
28 the original petitioner, and all others entitled to notice under subdivi-
29 sion [(f)] (G) of this section to stay, vacate or modify the order.

30 (2) The appropriate director shall petition the court for approval
31 before instituting a proposed material change in the assisted outpatient
32 treatment plan, unless such change is authorized by the order of the
33 court. Such petition shall be filed on notice to all parties entitled to
34 notice under subdivision [(f)] (G) of this section. Not later than five
35 days after receiving such petition, excluding Saturdays, Sundays and
36 holidays, the court shall hold a hearing on the petition; provided that
37 if the assisted outpatient informs the court that he or she agrees to
38 the proposed material change, the court may approve such change without
39 a hearing. Non-material changes may be instituted by the director with-
40 out court approval. For the purposes of this paragraph, a material
41 change is an addition or deletion of a category of services to or from a
42 current assisted outpatient treatment plan, or any deviation without the
43 assisted outpatient's consent from the terms of a current order relating
44 to the administration of psychotropic drugs.

45 [(m)] (O) Appeals. Review of an order issued pursuant to this section
46 shall be had in like manner as specified in section 9.35 of this
47 article; PROVIDED THAT NOTICE SHALL BE PROVIDED TO ALL PARTIES ENTITLED
48 TO NOTICE UNDER SUBDIVISION (G) OF THIS SECTION.

49 [(n)] (P) Failure to comply with assisted outpatient treatment. Where
50 in the clinical judgment of a physician, (i) the assisted outpatient,
51 has failed or refused to comply with the assisted outpatient treatment,
52 (ii) efforts were made to solicit compliance, and (iii) such assisted
53 outpatient may be in need of involuntary admission to a hospital pursu-
54 ant to section 9.27 of this article or immediate observation, care and
55 treatment pursuant to section 9.39 or 9.40 of this article, such physi-
56 cian may request the director of community services, the director's

1 designee, or any physician designated by the director of community
2 services pursuant to section 9.37 of this article, to direct the removal
3 of such assisted outpatient to an appropriate hospital for an examina-
4 tion to determine if such person has a mental illness for which HE OR
5 SHE IS IN NEED OF hospitalization is necessary pursuant to section 9.27,
6 9.39 or 9.40 of this article[. Furthermore, if such assisted outpatient
7 refuses to take medications as required by the court order, or he or she
8 refuses to take, or fails a blood test, urinalysis, or alcohol or drug
9 test as required by the court order, such physician may consider such
10 refusal or failure when determining whether]; PROVIDED THAT IF, AFTER
11 EFFORTS TO SOLICIT COMPLIANCE, SUCH PHYSICIAN DETERMINES THAT THE
12 ASSISTED OUTPATIENT'S FAILURE TO COMPLY WITH THE ASSISTED OUTPATIENT
13 TREATMENT INCLUDES A SUBSTANTIAL FAILURE TO TAKE MEDICATION, PASS OR
14 SUBMIT TO BLOOD TESTING OR URINALYSIS, OR RECEIVE TREATMENT FOR ALCOHOL
15 OR SUBSTANCE ABUSE, SUCH PHYSICIAN MAY PRESUME THAT the assisted outpa-
16 tient is in need of an examination to determine whether he or she has a
17 mental illness for which hospitalization is necessary. Upon the request
18 of such physician, the director, the director's designee, or any physi-
19 cian designated pursuant to section 9.37 of this article, may direct
20 peace officers, acting pursuant to their special duties, or police offi-
21 cers who are members of an authorized police department or force or of a
22 sheriff's department to take the assisted outpatient into custody and
23 transport him or her to the hospital operating the assisted outpatient
24 treatment program or to any hospital authorized by the director of
25 community services to receive such persons. Such law enforcement offi-
26 cials shall carry out such directive. Upon the request of such physi-
27 cian, the director, the director's designee, or any physician designated
28 pursuant to section 9.37 of this article, an ambulance service, as
29 defined by subdivision two of section three thousand one of the public
30 health law, or an approved mobile crisis outreach team as defined in
31 section 9.58 of this article shall be authorized to take into custody
32 and transport any such person to the hospital operating the assisted
33 outpatient treatment program, or to any other hospital authorized by the
34 director of community services to receive such persons. Any director of
35 community services, or designee, shall be authorized to direct the
36 removal of an assisted outpatient who is present in his or her county to
37 an appropriate hospital, in accordance with the provisions of this
38 subdivision, based upon a determination of the appropriate director of
39 community services directing the removal of such assisted outpatient
40 pursuant to this subdivision. Such person may be retained for observa-
41 tion, care and treatment and further examination in the hospital for up
42 to seventy-two hours to permit a physician to determine whether such
43 person has a mental illness and is in need of involuntary care and
44 treatment in a hospital pursuant to the provisions of this article. Any
45 continued involuntary retention OF THE ASSISTED OUTPATIENT in such
46 hospital beyond the initial seventy-two hour period shall be in accord-
47 ance with the provisions of this article relating to the involuntary
48 admission and retention of a person. If at any time during the seventy-
49 two hour period the person is determined not to meet the involuntary
50 admission and retention provisions of this article, and does not agree
51 to stay in the hospital as a voluntary or informal patient, he or she
52 must be released. Failure to comply with an order of assisted outpatient
53 treatment shall not be grounds for involuntary civil commitment or a
54 finding of contempt of court.

55 [(o)] (Q) Effect of determination that a person is in need of assisted
56 outpatient treatment. The determination by a court that a person is in

1 need of assisted outpatient treatment shall not be construed as or
2 deemed to be a determination that such person is incapacitated pursuant
3 to article eighty-one of this chapter.

4 [(p)] (R) False petition. A person making a false statement or provid-
5 ing false information or false testimony in a petition or hearing under
6 this section shall be subject to criminal prosecution pursuant to arti-
7 cle one hundred seventy-five or article two hundred ten of the penal
8 law.

9 [(q)] (S) Exception. Nothing in this section shall be construed to
10 affect the ability of the director of a hospital to receive, admit, or
11 retain patients who otherwise meet the provisions of this article
12 regarding receipt, retention or admission.

13 [(r)] (T) Education and training. (1) The office [of mental health],
14 in consultation with the office of court administration, shall prepare
15 educational and training materials on the use of this section, which
16 shall be made available to local governmental units, providers of
17 services, judges, court personnel, law enforcement officials and the
18 general public.

19 (2) The office, in consultation with the office of court adminis-
20 tration, shall establish a mental health training program for supreme
21 and county court judges and court personnel, AND SHALL PROVIDE SUCH
22 TRAINING WITH SUCH FREQUENCY AND IN SUCH LOCATIONS AS MAY BE APPROPRIATE
23 TO MEET STATEWIDE NEEDS. Such training shall focus on the use of this
24 section and generally address issues relating to mental illness and
25 mental health treatment.

26 S 5. Section 29.15 of the mental hygiene law is amended by adding a
27 new subdivision (o) to read as follows:

28 (O) IF THE DIRECTOR OF A DEPARTMENT FACILITY DOES NOT PETITION FOR
29 ASSISTED OUTPATIENT TREATMENT PURSUANT TO SECTION 9.60 OF THIS CHAPTER
30 UPON THE DISCHARGE OF AN INPATIENT ADMITTED PURSUANT TO SECTION 9.27,
31 9.39 OR 9.40 OF THIS CHAPTER, OR UPON THE EXPIRATION OF A PERIOD OF
32 CONDITIONAL RELEASE FOR SUCH INPATIENT, SUCH DIRECTOR SHALL REPORT SUCH
33 DISCHARGE OR SUCH EXPIRATION IN WRITING TO THE DIRECTOR OF COMMUNITY
34 SERVICES OF THE LOCAL GOVERNMENTAL UNIT IN WHICH THE INPATIENT IS
35 EXPECTED TO RESIDE.

36 S 6. Subdivision 1 of section 404 of the correction law, as amended by
37 chapter 7 of the laws of 2007, is amended to read as follows:

38 1. Whenever an inmate committed to a hospital in the department of
39 mental hygiene or whenever an inmate is examined in anticipation of his
40 or her conditional release, release to parole supervision, or when his
41 or her sentence to a term of imprisonment expires and such inmate shall
42 continue to be mentally ill and in need of care and treatment at the
43 time of his or her conditional release, release to parole supervision,
44 or when his or her sentence to a term of imprisonment expires, the
45 director of the hospital or the superintendent of a correctional facili-
46 ty [may] SHALL, WHERE APPROPRIATE, EITHER apply for the person's admis-
47 sion to a hospital for the care and treatment of the mentally ill in the
48 department of mental hygiene pursuant to article nine of the mental
49 hygiene law[,] or [alternatively] INITIATE A PETITION FOR AN ORDER
50 AUTHORIZING ASSISTED OUTPATIENT TREATMENT, PURSUANT TO SECTION 9.60 OF
51 THE MENTAL HYGIENE LAW, OR the commissioner may apply for the person's
52 admission to a secure treatment facility pursuant to article ten of the
53 mental hygiene law.

54 S 7. Section 18 of chapter 408 of the laws of 1999, constituting
55 Kendra's Law, as amended by chapter 139 of the laws of 2010, is amended
56 to read as follows:

1 S 18. This act shall take effect immediately, provided that section
2 fifteen of this act shall take effect April 1, 2000, provided, further,
3 that subdivision (e) of section 9.60 of the mental hygiene law as added
4 by section six of this act shall be effective 90 days after this act
5 shall become law[; and that this act shall expire and be deemed repealed
6 June 30, 2015].

7 S 8. Severability. If any clause, sentence, paragraph, section or part
8 of this act shall be adjudged by any court of competent jurisdiction to
9 be invalid, and after exhaustion of all further judicial review, the
10 judgment shall not affect, impair or invalidate the remainder thereof,
11 but shall be confined in its operation to the clause, sentence, para-
12 graph, section or part thereof directly involved in the controversy.

13 S 9. This act shall take effect immediately.