

3092

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to directing courts of law, upon request, to seal the files of certain former outpatients of mental health facilities after ten years

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

1 Section 1. Subdivision (b) of section 33.14 of the mental hygiene law
2 is relettered subdivision (c) and a new subdivision (b) is added to read
3 as follows:
4 (B) (1) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, UPON
5 REQUEST BY A PERSON WHO HAS BEEN ADMITTED TO RECEIVE INPATIENT OR OUTPA-
6 TIENT SERVICES FOR MENTAL ILLNESS, A COURT OF COMPETENT JURISDICTION
7 SHALL RENDER AN ORDER DIRECTING THE SEALING OF RECORDS HELD BY THE
8 OFFICE OF MENTAL HEALTH, A FACILITY, OR ANY OTHER INDIVIDUAL OR PUBLIC
9 OR PRIVATE ENTITY, WHICH IDENTIFY A PERSON AS A RECIPIENT OF SERVICES
10 FOR MENTAL ILLNESS, SUBJECT TO SUCH LIMITATIONS OR EXCEPTIONS AS THE
11 COURT MAY IMPOSE, UPON A FINDING THAT COMPETENT MEDICAL EVIDENCE HAS
12 DEMONSTRATED THAT THE PERSON IDENTIFIED IN SUCH RECORDS IS NOT CURRENTLY
13 SUFFERING FROM A MENTAL ILLNESS, HAS NOT FOR A PERIOD OF TEN YEARS
14 RECEIVED OUTPATIENT SERVICES FOR THE TREATMENT OF A MENTAL ILLNESS, AND
15 THE INTERESTS OF SUCH PERSON AND SOCIETY WOULD BEST BE SERVED BY SEALING
16 SUCH PERSON'S RECORDS. IT SHALL BE PRESUMED THAT IT WOULD BE IN THE BEST
17 INTERESTS OF SUCH PERSON AND SOCIETY TO SEAL ANY RECORD OF A PERSON'S
18 RECEIPT OF SERVICES FOR THE TREATMENT OF MENTAL ILLNESS PRIOR TO HIS OR
19 HER SIXTEENTH BIRTHDAY.
20 (2) SUCH REQUEST SHALL BE IN A FORM PRESCRIBED BY THE COURT AND SHALL
21 INCLUDE AN AFFIDAVIT EXECUTED BY SUCH PETITIONER AND FILED WITH THE
22 COURT ALONG WITH COMPETENT MEDICAL EVIDENCE PURSUANT TO PARAGRAPH ONE OF
23 THIS SUBDIVISION. A PETITIONER SHALL NOT BE REQUIRED TO COMMENCE A
24 SPECIAL PROCEEDING UNDER THIS SUBDIVISION, PROVIDED, HOWEVER, THAT THIS

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

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1 SUBDIVISION SHALL NOT ADVERSELY AFFECT A PETITIONER'S RIGHT TO A SPECIAL
2 PROCEEDING, HEARING OR ANY OTHER RIGHT UNDER THIS CHAPTER.

3 (3) EXCEPT FOR SUCH LIMITATIONS AS THE COURT MAY IMPOSE, A COURT ORDER
4 DIRECTING THE OFFICE OF MENTAL HEALTH, A FACILITY, OR OTHER INDIVIDUAL
5 OR ENTITY TO SEAL RECORDS SHALL REQUIRE THE OFFICE OF MENTAL HEALTH,
6 FACILITY OR OTHER INDIVIDUAL OR ENTITY TO RESPOND TO ANY OFFICIAL OR
7 UNOFFICIAL INQUIRY CONCERNING A PERSON'S HISTORY OF MENTAL ILLNESS,
8 WHOSE RECORDS HAVE BEEN SEALED, AS THOUGH THE ADMISSION OR RECEIPT OF
9 SERVICES DOCUMENTED IN THE SEALED RECORDS HAD NEVER OCCURRED.

10 (4) A PERSON WHO IS THE SUBJECT OF AN ORDER DIRECTING THAT HIS OR HER
11 RECORDS BE SEALED MAY RESPOND TO ANY OFFICIAL OR UNOFFICIAL INQUIRY BY
12 ANY PERSON OR AGENCY CONCERNING SUCH PERSON'S HISTORY OF MENTAL ILLNESS
13 AS THOUGH THE ADMISSION OR RECEIPT OF SERVICES DOCUMENTED IN THE SEALED
14 RECORDS HAD NEVER OCCURRED.

15 S 2. This act shall take effect on the ninetieth day after it shall
16 have become a law; provided, however, that effective immediately, the
17 addition, amendment and/or repeal of any rule or regulation necessary
18 for the implementation of this act on its effective date are authorized
19 and directed to be made and completed on or before such effective date.