S T A T E O F N E W Y O R K

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:

Section 1. Subdivision (b) of section 33.14 of the mental hygiene law is relettered subdivision (c) and a new subdivision (b) is added to read as follows:

(B) (1) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, UPON REQUEST BY A PERSON WHO HAS BEEN ADMITTED TO RECEIVE INPATIENT OR OUTPATIENT SERVICES FOR MENTAL ILLNESS, A COURT OF COMPETENT JURISDICTION SHALL RENDER AN ORDER DIRECTING THE SEALING OF RECORDS HELD BY THE OFFICE OF MENTAL HEALTH, A FACILITY, OR ANY OTHER INDIVIDUAL OR PUBLIC OR PRIVATE ENTITY, WHICH IDENTIFY A PERSON AS A RECIPIENT OF SERVICES FOR MENTAL ILLNESS, SUBJECT TO SUCH LIMITATIONS OR EXCEPTIONS AS THE COURT MAY IMPOSE, UPON A FINDING THAT COMPETENT MEDICAL EVIDENCE HAS DEMONSTRATED THAT THE PERSON IDENTIFIED IN SUCH RECORDS IS NOT CURRENTLY SUFFERING FROM A MENTAL ILLNESS, HAS NOT FOR A PERIOD OF TEN YEARS RECEIVED OUTPATIENT SERVICES FOR THE TREATMENT OF A MENTAL ILLNESS, AND THE INTERESTS OF SUCH PERSON AND SOCIETY WOULD BEST BE SERVED BY SEALING SUCH PERSON'S RECORDS. IT SHALL BE PRESUMED THAT IT WOULD BE IN THE BEST INTERESTS OF SUCH PERSON AND SOCIETY TO SEAL ANY RECORD OF A PERSON'S RECEIPT OF SERVICES FOR THE TREATMENT OF MENTAL ILLNESS PRIOR TO HIS OR HER SIXTEENTH BIRTHDAY.

(2) SUCH REQUEST SHALL BE IN A FORM PRESCRIBED BY THE COURT AND SHALL INCLUDE AN AFFIDAVIT EXECUTED BY SUCH PETITIONER AND FILED WITH THE COURT ALONG WITH COMPETENT MEDICAL EVIDENCE PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION. A PETITIONER SHALL NOT BE REQUIRED TO COMMENCE A 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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SUBDIVISION SHALL NOT ADVERSELY AFFECT A PETITIONER'S RIGHT TO A SPECIAL PROCEEDING, HEARING OR ANY OTHER RIGHT UNDER THIS CHAPTER.

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

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

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