

6987

2011-2012 Regular Sessions

I N A S S E M B L Y

April 7, 2011

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

AN ACT to amend the mental hygiene law and the correction law, in relation to enhancing the assisted outpatient treatment program

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;
18 (v) that directors of community services establish procedures which
19 provide that reports of persons who may be in need of assisted outpa-
20 tient treatment are appropriately investigated in a timely manner; [and]
21 (vi) that assisted outpatient treatment services are delivered in a
22 timely manner[.];
23 (VII) PRIOR TO THE EXPIRATION OF ASSISTED OUTPATIENT TREATMENT ORDERS,
24 THE CLINICAL NEEDS OF ASSISTED OUTPATIENTS ARE ADEQUATELY REVIEWED IN

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

LBD10473-02-1

1 DETERMINING THE NEED TO PETITION FOR CONTINUED ASSISTED OUTPATIENT
2 TREATMENT PURSUANT TO SUBDIVISION (K) OF SECTION 9.60 OF THIS TITLE;

3 (VIII) CAUSE THE TIMELY TRANSMISSION TO THE DIRECTOR OF COMMUNITY
4 SERVICES OF THE LOCAL GOVERNMENT UNIT TO WHICH AN ASSISTED OUTPATIENT
5 RELOCATES OR IS BELIEVED TO HAVE RELOCATED, A COPY OF THE COURT ORDER
6 AND TREATMENT PLAN FOR THE ASSISTED OUTPATIENT; AND

7 (IX) THE OFFICE FULFILLS ITS DUTIES PURSUANT TO SUBDIVISION (R) OF
8 SECTION 9.60 OF THIS TITLE TO MEET LOCAL NEEDS FOR TRAINING OF JUDGES
9 AND COURT PERSONNEL.

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

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

14 (1) receiving reports of persons who may be in need of assisted outpa-
15 tient treatment PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (F) OF SECTION
16 7.17 OF THIS TITLE AND PURSUANT TO SECTION 9.60 OF THIS ARTICLE, INCLUD-
17 ING BUT NOT LIMITED TO REPORTS RECEIVED FROM FAMILY AND COMMUNITY
18 MEMBERS AND WRITTEN REPORTS RECEIVED FROM HOSPITAL DIRECTORS PURSUANT TO
19 SUBDIVISION (O) OF SECTION 29.15 OF THIS CHAPTER AND SUBDIVISION TWO OF
20 SECTION FOUR HUNDRED FOUR OF THE CORRECTION LAW, and documenting the
21 receipt date of such reports;

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

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

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

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

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

41 (VIII) AN ACCOUNT OF ANY COURT ORDER EXPIRATION, INCLUDING BUT NOT
42 LIMITED TO THE DIRECTOR'S DETERMINATION AS TO WHETHER TO PETITION FOR
43 CONTINUED ASSISTED OUTPATIENT TREATMENT, THE BASIS FOR SUCH DETERMI-
44 NATION, AND THE DISPOSITION OF ANY SUCH PETITION;

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

50 S 9.60 Assisted outpatient treatment.

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

53 (1) "assisted outpatient treatment" shall mean categories of outpa-
54 tient services which have been ordered by the court pursuant to this
55 section. Such treatment shall include case management services or
56 assertive community treatment team services to provide care coordi-

1 nation, and may also include any of the following categories of
2 services: medication; MEDICATION OR SYMPTOM MANAGEMENT TRAINING OR
3 EDUCATION; periodic blood tests or urinalysis to determine compliance
4 with prescribed medications; individual or group therapy; day or partial
5 day programming activities; educational and vocational training or
6 activities; APPOINTMENT OF A REPRESENTATIVE PAYEE OR OTHER FINANCIAL
7 MANAGEMENT SERVICES; alcohol or substance abuse treatment and counseling
8 and periodic OR RANDOM tests for the presence of alcohol or illegal
9 drugs for persons with a history of alcohol or substance abuse; super-
10 vision of living arrangements; and any other services within a local
11 services plan developed pursuant to article forty-one of this chapter,
12 CLINICAL OR NON-CLINICAL, prescribed to treat the person's mental
13 illness and to assist the person in living and functioning in the commu-
14 nity, or to attempt to prevent a relapse or deterioration that may
15 reasonably be predicted to result in suicide or the need for hospitali-
16 zation.

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

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

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

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

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

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

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

39 (9) "program coordinator" shall mean an individual appointed by the
40 commissioner [of mental health], pursuant to subdivision (f) of section
41 7.17 of this chapter, who is responsible for the oversight and monitor-
42 ing of assisted outpatient treatment programs.

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

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

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

(2) is suffering from a mental illness; and
(3) is unlikely to survive safely in the community without supervision, based on a clinical determination; and
(4) has a history of lack of compliance with treatment for mental illness that has:

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

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

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

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

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

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

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

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

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

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

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

(v) a qualified psychiatrist who is either supervising the treatment of or treating the subject of the petition for a mental illness; or

(vi) a psychologist, licensed pursuant to article one hundred fifty-three of the education law, or a social worker, licensed pursuant to article one hundred fifty-four of the education law, who is treating the subject of the petition for a mental illness; or

(vii) the director of community services, or his or her designee, or the social services official, as defined in the social services law, of the city or county in which the subject of the petition is present or reasonably believed to be present; or

(viii) a parole officer or probation officer assigned to supervise the subject of the petition.

1 (2) The petition shall state:

2 (i) each of the criteria for assisted outpatient treatment as set
3 forth in subdivision (c) of this section;

4 (ii) facts which support the petitioner's belief that the subject of
5 the petition meets each criterion, provided that the hearing on the
6 petition need not be limited to the stated facts; and

7 (iii) that the subject of the petition is present, or is reasonably
8 believed to be present, within the county where such petition is filed.

9 (3) The petition shall be accompanied by an affirmation or affidavit
10 of a physician, who shall not be the petitioner, stating either that:

11 (i) such physician has personally examined the subject of the petition
12 no more than ten days prior to the submission of the petition, recom-
13 mends assisted outpatient treatment for the subject of the petition, and
14 is willing and able to testify at the hearing on the petition; or

15 (ii) no more than ten days prior to the filing of the petition, such
16 physician or his or her designee has made appropriate attempts but has
17 not been successful in eliciting the cooperation of the subject of the
18 petition to submit to an examination, such physician has reason to
19 suspect that the subject of the petition meets the criteria for assisted
20 outpatient treatment, and such physician is willing and able to examine
21 the subject of the petition and testify at the hearing on the petition.

22 (4) In counties with a population of less than seventy-five thousand,
23 the affirmation or affidavit required by paragraph three of this subdi-
24 vision may be made by a physician who is an employee of the office. The
25 office is authorized AND DIRECTED to make available, at no cost to the
26 county, a qualified physician for the purpose of making such affirmation
27 or affidavit consistent with the provisions of such paragraph.

28 (f) Service. The petitioner shall cause written notice of the petition
29 to be given to the subject of the petition and a copy thereof to be
30 given personally or by mail to the persons listed in section 9.29 of
31 this article, the mental hygiene legal service, the health care agent if
32 any such agent is known to the petitioner, the appropriate program coor-
33 dinator, and the appropriate director of community services, if such
34 director is not the petitioner.

35 (g) Right to counsel. The subject of the petition shall have the right
36 to be represented by the mental hygiene legal service, or privately
37 financed counsel, at all stages of a proceeding commenced under this
38 section.

39 (h) Hearing. (1) Upon receipt of the petition, the court shall fix the
40 date for a hearing. Such date shall be no later than three days from the
41 date such petition is received by the court, excluding Saturdays,
42 Sundays and holidays. Adjournments shall be permitted only for good
43 cause shown. In granting adjournments, the court shall consider the need
44 for further examination by a physician or the potential need to provide
45 assisted outpatient treatment expeditiously. The court shall cause the
46 subject of the petition, any other person receiving notice pursuant to
47 subdivision (f) of this section, the petitioner, the physician whose
48 affirmation or affidavit accompanied the petition, and such other
49 persons as the court may determine to be advised of such date. Upon such
50 date, or upon such other date to which the proceeding may be adjourned,
51 the court shall hear testimony and, if it be deemed advisable and the
52 subject of the petition is available, examine the subject of the peti-
53 tion in or out of court. If the subject of the petition does not appear
54 at the hearing, and appropriate attempts to elicit the attendance of the
55 subject have failed, the court may conduct the hearing in the subject's
56 absence. In such case, the court shall set forth the factual basis for

conducting the hearing without the presence of the subject of the petition.

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

(3) If the subject of the petition has refused to be examined by a physician, the court may request the subject to consent to an examination by a physician appointed by the court. If the subject of the petition does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order peace officers, acting pursuant to their special duties, or police officers who are members of an authorized police department or force, or of a sheriff's department to take the subject of the petition into custody and transport him or her to a hospital for examination by a physician. IN CONSIDERING THE NEED FOR SUCH ORDER, THE COURT NEED NOT HOLD A HEARING, BUT MAY CHOOSE TO DO SO. Retention of the subject of the petition under such order shall not exceed twenty-four hours. The examination of the subject of the petition may be performed by the physician whose affirmation or affidavit accompanied the petition pursuant to paragraph three of subdivision (e) of this section, if such physician is privileged by such hospital or otherwise authorized by such hospital to do so. If such examination is performed by another physician, the examining physician may consult with the physician whose affirmation or affidavit accompanied the petition as to whether the subject meets the criteria for assisted outpatient treatment.

(4) A physician who testifies pursuant to paragraph two of this subdivision shall state: (i) the facts AND CLINICAL DETERMINATIONS which support the allegation that the subject meets each of the criteria for assisted outpatient treatment, (ii) that the treatment is the least restrictive alternative, (iii) the recommended assisted outpatient treatment, and (iv) the rationale for the recommended assisted outpatient treatment. If the recommended assisted outpatient treatment includes medication, such physician's testimony shall describe the types or classes of medication which should be authorized, shall describe the beneficial and detrimental physical and mental effects of such medication, and shall recommend whether such medication should be self-administered or administered by authorized personnel.

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

(i) Written treatment plan. (1) The court shall not order assisted outpatient treatment unless a physician appointed by the appropriate director, in consultation with such director, develops and provides to the court a proposed written treatment plan. The written treatment plan shall include case management services or assertive community treatment team services to provide care coordination. The written treatment plan also shall include all categories of services, as set forth in paragraph one of subdivision (a) of this section, which such physician recommends that the subject of the petition receive. All service providers shall be notified regarding their inclusion in the written treatment plan. If the

1 written treatment plan includes medication, it shall state whether such
2 medication should be self-administered or administered by authorized
3 personnel, and shall specify type and dosage range of medication most
4 likely to provide maximum benefit for the subject. If the written treat-
5 ment plan includes alcohol or substance abuse counseling and treatment,
6 such plan may include a provision requiring relevant testing for either
7 alcohol or illegal substances provided the physician's clinical basis
8 for recommending such plan provides sufficient facts for the court to
9 find (i) that such person has a history of alcohol or substance abuse
10 that is clinically related to the mental illness; and (ii) that such
11 testing is necessary to prevent a relapse or deterioration which would
12 be likely to result in serious harm to the person or others. If a direc-
13 tor is the petitioner, the written treatment plan shall be provided to
14 the court no later than the date of the hearing on the petition. If a
15 person other than a director is the petitioner, such plan shall be
16 provided to the court no later than the date set by the court pursuant
17 to paragraph three of subdivision (j) of this section.

18 (2) The physician appointed to develop the written treatment plan
19 shall provide the following persons with an opportunity to actively
20 participate in the development of such plan: the subject of the peti-
21 tion; the treating physician, if any; and upon the request of the
22 subject of the petition, an individual significant to the subject
23 including any relative, close friend or individual otherwise concerned
24 with the welfare of the subject. THE APPOINTED PHYSICIAN SHALL MAKE A
25 REASONABLE EFFORT TO GATHER RELEVANT INFORMATION FOR THE DEVELOPMENT OF
26 THE TREATMENT PLAN FROM A MEMBER OF THE SUBJECT OF THE PETITION'S FAMILY
27 OR SIGNIFICANT OTHER. If the subject of the petition has executed a
28 health care proxy, the appointed physician shall consider any directions
29 included in such proxy in developing the written treatment plan.

30 (3) The court shall not order assisted outpatient treatment unless a
31 physician appearing on behalf of a director testifies to explain the
32 written proposed treatment plan; PROVIDED THAT THE PARTIES MAY STIPULATE
33 UPON MUTUAL CONSENT THAT SUCH PHYSICIAN NEED NOT TESTIFY. Such physi-
34 cian shall state the categories of assisted outpatient treatment recom-
35 mended, the rationale for each such category, facts which establish that
36 such treatment is the least restrictive alternative, and, if the recom-
37 mended assisted outpatient treatment plan includes medication, such
38 physician shall state the types or classes of medication recommended,
39 the beneficial and detrimental physical and mental effects of such medi-
40 cation, and whether such medication should be self-administered or
41 administered by an authorized professional. If the subject of the peti-
42 tion has executed a health care proxy, such physician shall state the
43 consideration given to any directions included in such proxy in develop-
44 ing the written treatment plan. If a director is the petitioner, testi-
45 mony pursuant to this paragraph shall be given at the hearing on the
46 petition. If a person other than a director is the petitioner, such
47 testimony shall be given on the date set by the court pursuant to para-
48 graph three of subdivision (j) of this section.

49 (j) Disposition. (1) If after hearing all relevant evidence, the court
50 does not find by clear and convincing evidence that the subject of the
51 petition meets the criteria for assisted outpatient treatment, the court
52 shall dismiss the petition.

53 (2) If after hearing all relevant evidence, the court finds by clear
54 and convincing evidence that the subject of the petition meets the
55 criteria for assisted outpatient treatment, and there is no appropriate
56 and feasible less restrictive alternative, the court may order the

1 subject to receive assisted outpatient treatment for an initial period
2 not to exceed [six months] ONE YEAR. In fashioning the order, the court
3 shall specifically make findings by clear and convincing evidence that
4 the proposed treatment is the least restrictive treatment appropriate
5 and feasible for the subject. The order shall state an assisted outpa-
6 tient treatment plan, which shall include all categories of assisted
7 outpatient treatment, as set forth in paragraph one of subdivision (a)
8 of this section, which the assisted outpatient is to receive, but shall
9 not include any such category that has not been recommended in [both]
10 the proposed written treatment plan and [the] IN ANY testimony provided
11 to the court pursuant to subdivision (i) of this section.

12 (3) If after hearing all relevant evidence presented by a petitioner
13 who is not a director, the court finds by clear and convincing evidence
14 that the subject of the petition meets the criteria for assisted outpa-
15 tient treatment, and the court has yet to be provided with a written
16 proposed treatment plan and testimony pursuant to subdivision (i) of
17 this section, the court shall order the appropriate director to provide
18 the court with such plan and testimony no later than the third day,
19 excluding Saturdays, Sundays and holidays, immediately following the
20 date of such order; PROVIDED THAT THE PARTIES MAY STIPULATE UPON MUTUAL
21 CONSENT THAT SUCH TESTIMONY NEED NOT BE PROVIDED. Upon receiving such
22 plan and ANY REQUIRED testimony, the court may order assisted outpatient
23 treatment as provided in paragraph two of this subdivision.

24 (4) A court may order the patient to self-administer psychotropic
25 drugs or accept the administration of such drugs by authorized personnel
26 as part of an assisted outpatient treatment program. Such order may
27 specify the type and dosage range of such psychotropic drugs and such
28 order shall be effective for the duration of such assisted outpatient
29 treatment.

30 (5) If the petitioner is the director of a hospital that operates an
31 assisted outpatient treatment program, the court order shall direct the
32 hospital director to provide or arrange for all categories of assisted
33 outpatient treatment for the assisted outpatient throughout the period
34 of the order. For all other persons, the order shall require the direc-
35 tor of community services of the appropriate local governmental unit to
36 provide or arrange for all categories of assisted outpatient treatment
37 for the assisted outpatient throughout the period of the order. THE
38 ORDER SHALL STATE THAT IF DURING THE PERIOD OF THE ORDER THE ASSISTED
39 OUTPATIENT RELOCATES TO A LOCATION WITHIN THE STATE OF NEW YORK NOT
40 SERVED BY THE DIRECTOR WHO HAS BEEN DIRECTED TO PROVIDE OR ARRANGE FOR
41 THE ASSISTED OUTPATIENT TREATMENT, THE PROGRAM COORDINATOR SHALL CAUSE A
42 COPY OF THE COURT ORDER AND TREATMENT PLAN TO BE TRANSMITTED TO THE
43 DIRECTOR OF COMMUNITY SERVICES OF THE LOCAL GOVERNMENT UNIT IN WHICH THE
44 ASSISTED OUTPATIENT HAS RELOCATED OR IS BELIEVED TO HAVE RELOCATED.

45 (6) The director shall cause a copy of any court order issued pursuant
46 to this section to be served personally, or by mail, facsimile or elec-
47 tronic means, upon the assisted outpatient, the mental hygiene legal
48 service or anyone acting on the assisted outpatient's behalf, the
49 original petitioner, identified service providers, and all others enti-
50 tled to notice under subdivision (f) of this section.

51 (k) Petition for [additional periods of] CONTINUED treatment. (1)
52 WITHIN THIRTY DAYS PRIOR TO THE EXPIRATION OF AN ORDER PURSUANT TO THIS
53 SECTION, THE APPROPRIATE DIRECTOR SHALL REVIEW WHETHER THE ASSISTED
54 OUTPATIENT CONTINUES TO MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREAT-
55 MENT. UPON DETERMINING THAT SUCH CRITERIA CONTINUE TO BE MET, HE OR SHE
56 SHALL PETITION THE COURT TO ORDER CONTINUED ASSISTED OUTPATIENT TREAT-

MENT PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION. UPON DETERMINING THAT ONE OR MORE OF SUCH CRITERIA ARE NO LONGER MET, SUCH DIRECTOR SHALL NOTIFY THE PROGRAM COORDINATOR IN WRITING THAT A PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT IS NOT WARRANTED, STATING THE BASIS FOR SUCH DETERMINATION.

(2) Within thirty days prior to the expiration of an order of assisted outpatient treatment, the appropriate director or the current petitioner, if the current petition was filed pursuant to subparagraph (i) or (ii) of paragraph one of subdivision (e) of this section, and the current petitioner retains his or her original status pursuant to the applicable subparagraph, may petition the court to order continued assisted outpatient treatment for a period not to exceed one year from the expiration date of the current order. If the court's disposition of such petition does not occur prior to the expiration date of the current order, the current order shall remain in effect until such disposition. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with the provisions of the foregoing subdivisions of this section; provided that the time restrictions included in paragraph four of subdivision (c) of this section shall not be applicable. The notice provisions set forth in paragraph six of subdivision (j) of this section shall be applicable. Any court order requiring periodic blood tests or urinalysis for the presence of alcohol or illegal drugs shall be subject to review after six months by the physician who developed the written treatment plan or another physician designated by the director, and such physician shall be authorized to terminate such blood tests or urinalysis without further action by the court.

(3) IF NEITHER THE APPROPRIATE DIRECTOR NOR THE CURRENT PETITIONER PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT PURSUANT TO THIS PARAGRAPH AND THE ORDER OF THE COURT EXPIRES, ANY OTHER PERSON AUTHORIZED TO PETITION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (E) OF THIS SECTION MAY BRING A NEW PETITION FOR ASSISTED OUTPATIENT TREATMENT. IF SUCH NEW PETITION IS FILED LESS THAN SIXTY DAYS AFTER THE EXPIRATION OF SUCH ORDER, THE TIME RESTRICTIONS PROVIDED IN PARAGRAPH FOUR OF SUBDIVISION (C) OF THIS SECTION SHALL NOT BE APPLICABLE TO THE NEW PETITION.

(1) Petition for an order to stay, vacate or modify. (1) In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, the assisted outpatient, the mental hygiene legal service, or anyone acting on the assisted outpatient's behalf may petition the court on notice to the director, the original petitioner, and all others entitled to notice under subdivision (f) of this section to stay, vacate or modify the order.

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

1 (m) Appeals. Review of an order issued pursuant to this section shall
2 be had in like manner as specified in section 9.35 of this article;
3 PROVIDED THAT NOTICE SHALL BE PROVIDED TO ALL PARTIES ENTITLED TO NOTICE
4 UNDER SUBDIVISION (F) OF THIS SECTION.

5 (n) Failure to comply with assisted outpatient treatment. Where in the
6 clinical judgment of a physician, (i) the assisted outpatient, has
7 failed or refused to comply with the assisted outpatient treatment, (ii)
8 efforts were made to solicit compliance, and (iii) such assisted outpa-
9 tient may be in need of involuntary admission to a hospital pursuant to
10 section 9.27 of this article or immediate observation, care and treat-
11 ment pursuant to section 9.39 or 9.40 of this article, such physician
12 may request the director of community services, the director's designee,
13 or any physician designated by the director of community services pursu-
14 ant to section 9.37 of this article, to direct the removal of such
15 assisted outpatient to an appropriate hospital for an examination to
16 determine if such person has a mental illness for which HE OR SHE IS IN
17 NEED OF hospitalization is necessary pursuant to section 9.27, 9.39 or
18 9.40 of this article[. Furthermore, if such assisted outpatient refuses
19 to take medications as required by the court order, or he or she refuses
20 to take, or fails a blood test, urinalysis, or alcohol or drug test as
21 required by the court order, such physician may consider such refusal or
22 failure when determining whether]; PROVIDED THAT IF, AFTER EFFORTS TO
23 SOLICIT COMPLIANCE, SUCH PHYSICIAN DETERMINES THAT THE ASSISTED OUTPA-
24 TIENT'S FAILURE TO COMPLY WITH THE ASSISTED OUTPATIENT TREATMENT
25 INCLUDES A SUBSTANTIAL FAILURE TO TAKE MEDICATION, SUBMIT TO BLOOD TEST-
26 ING OR URINALYSIS, OR RECEIVE TREATMENT FOR ALCOHOL OR SUBSTANCE ABUSE,
27 SUCH PHYSICIAN SHALL PRESUME THAT the assisted outpatient is in need of
28 an examination to determine whether he or she has a mental illness for
29 which hospitalization is necessary. Upon the request of such physician,
30 the director, the director's designee, or any physician designated
31 pursuant to section 9.37 of this article, may direct peace officers,
32 acting pursuant to their special duties, or police officers who are
33 members of an authorized police department or force or of a sheriff's
34 department to take the assisted outpatient into custody and transport
35 him or her to the hospital operating the assisted outpatient treatment
36 program or to any hospital authorized by the director of community
37 services to receive such persons. Such law enforcement officials shall
38 carry out such directive. Upon the request of such physician, the direc-
39 tor, the director's designee, or any physician designated pursuant to
40 section 9.37 of this article, an ambulance service, as defined by subdi-
41 vision two of section three thousand one of the public health law, or an
42 approved mobile crisis outreach team as defined in section 9.58 of this
43 article shall be authorized to take into custody and transport any such
44 person to the hospital operating the assisted outpatient treatment
45 program, or to any other hospital authorized by the director of communi-
46 ty services to receive such persons. Any director of community services,
47 or designee, shall be authorized to direct the removal of an assisted
48 outpatient who is present in his or her county to an appropriate hospi-
49 tal, in accordance with the provisions of this subdivision, based upon a
50 determination of the appropriate director of community services direct-
51 ing the removal of such assisted outpatient pursuant to this subdivi-
52 sion. Such person may be retained for observation, care and treatment
53 and further examination in the hospital for up to seventy-two hours to
54 permit a physician to determine whether such person has a mental illness
55 and is in need of involuntary care and treatment in a hospital pursuant
56 to the provisions of this article. Any continued involuntary retention

1 OF THE ASSISTED OUTPATIENT in such hospital beyond the initial seventy-
2 two hour period shall be in accordance with the provisions of this arti-
3 cle relating to the involuntary admission and retention of a person. If
4 at any time during the seventy-two hour period the person is determined
5 not to meet the involuntary admission and retention provisions of this
6 article, and does not agree to stay in the hospital as a voluntary or
7 informal patient, he or she must be released. Failure to comply with an
8 order of assisted outpatient treatment shall not be grounds for involun-
9 tary civil commitment or a finding of contempt of court.

10 (o) Effect of determination that a person is in need of assisted
11 outpatient treatment. The determination by a court that a person is in
12 need of assisted outpatient treatment shall not be construed as or
13 deemed to be a determination that such person is incapacitated pursuant
14 to article eighty-one of this chapter.

15 (p) False petition. A person making a false statement or providing
16 false information or false testimony in a petition or hearing under this
17 section shall be subject to criminal prosecution pursuant to article one
18 hundred seventy-five or article two hundred ten of the penal law.

19 (q) Exception. Nothing in this section shall be construed to affect
20 the ability of the director of a hospital to receive, admit, or retain
21 patients who otherwise meet the provisions of this article regarding
22 receipt, retention or admission.

23 (r) Education and training. (1) The office [of mental health], in
24 consultation with the office of court administration, shall prepare
25 educational and training materials on the use of this section, which
26 shall be made available to local governmental units, providers of
27 services, judges, court personnel, law enforcement officials and the
28 general public.

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

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

38 (O) IF THE DIRECTOR OF A HOSPITAL DOES NOT PETITION FOR ASSISTED
39 OUTPATIENT TREATMENT PURSUANT TO SECTION 9.60 OF THIS CHAPTER UPON THE
40 DISCHARGE OF AN INPATIENT ADMITTED PURSUANT TO SECTION 9.27, 9.39 OR
41 9.40 OF THIS CHAPTER, OR UPON THE EXPIRATION OF A PERIOD OF CONDITIONAL
42 RELEASE FOR SUCH INPATIENT, SUCH DIRECTOR SHALL REPORT SUCH DISCHARGE OR
43 SUCH EXPIRATION IN WRITING TO THE DIRECTOR OF COMMUNITY SERVICES OF THE
44 LOCAL GOVERNMENTAL UNIT IN WHICH THE INPATIENT IS EXPECTED TO RESIDE.

45 S 6. Subdivision 2 of section 404 of the correction law, as added by
46 chapter 766 of the laws of 1976, is amended to read as follows:

47 2. The director may discharge any inmate at the expiration of the term
48 for which he was sentenced who is still mentally ill, but who, in the
49 opinion of the director, is reasonably safe to be at large. PRIOR TO
50 SUCH DISCHARGE, THE DIRECTOR SHALL REPORT IN WRITING TO THE DIRECTOR OF
51 COMMUNITY SERVICES OF THE LOCAL GOVERNMENTAL UNIT IN WHICH THE INMATE IS
52 EXPECTED TO RESIDE AND TO THE COMMISSIONER OF MENTAL HEALTH. SUCH REPORT
53 SHALL INCLUDE A RECOMMENDATION AS TO WHETHER THE INPATIENT MEETS THE
54 CRITERIA FOR ASSISTED OUTPATIENT TREATMENT PURSUANT TO SECTION 9.60 OF
55 THE MENTAL HYGIENE LAW, AND STATE THE BASIS FOR SUCH RECOMMENDATION.
56 Such discharged inmate shall be entitled to suitable clothing adapted to

1 the season in which he is discharged, and if it cannot be otherwise
2 obtained, the business officer, or other officer having like duties
3 shall, upon the order of the director, or of the commissioner of mental
4 hygiene, as the case may be, furnish the same, and money in an amount to
5 be fixed by such commissioner with the approval of the director of the
6 budget, to defray his expenses until he can reach his relatives or
7 friends, or find employment to earn a subsistence.

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

14 S 8. This act shall take effect immediately; provided, however, that
15 the amendments to subdivision (f) of section 7.17 of the mental hygiene
16 law made by section one of this act shall not affect the repeal of such
17 subdivision and shall expire and be deemed repealed therewith; that the
18 amendments to subdivision (b) of section 9.47 of the mental hygiene law
19 made by section two of this act shall not affect the repeal of such
20 subdivision and shall expire and be deemed repealed therewith; that the
21 amendments to subdivision (b) of section 9.48 of the mental hygiene law
22 made by section three of this act shall not affect the repeal of such
23 section and shall expire and be deemed repealed therewith; and that the
24 amendments to section 9.60 of the mental hygiene law made by section
25 four of this act shall not affect the repeal of such section and shall
26 expire and be deemed repealed therewith.