

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

6987--B

2011-2012 Regular Sessions

I N A S S E M B L Y

April 7, 2011

Introduced by M. of A. GUNTHER, MAISEL, ZEBROWSKI, REILLY, CALHOUN, THIELE, GABRYSZAK, WEISENBERG, SCHIMEL, ROBINSON, PAULIN, JAFFEE, ROBERTS, LATIMER, ENGLEBRIGHT, COOK -- Multi-Sponsored by -- M. of A. ABBATE, ABINANTI, ARROYO, BOYLAND, CASTELLI, CERETTO, CONTE, CROUCH, DenDEKKER, DINOWITZ, GOODELL, JEFFRIES, JOHNS, JORDAN, LUPARDO, MARKEY, McDONOUGH, McENENY, MENG, D. MILLER, MILLMAN, PALMESANO, PERRY, PRETLOW, RABBITT, RAIA, SALADINO, TENNEY, TITONE -- read once and referred to the Committee on Mental Health -- recommitted to the Committee on Mental Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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

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

LBD10473-12-2

1 compliance, or lack of compliance with treatment, to the director of the
2 assisted outpatient treatment program;

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

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

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

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

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

20 S 2. Subdivision (f) of section 7.17 of the mental hygiene law is
21 amended by adding a new paragraph 5 to read as follows:

22 (5) THE COMMISSIONER SHALL DEVELOP AN EDUCATIONAL PAMPHLET ON THE
23 PROCESS OF PETITIONING FOR ASSISTED OUTPATIENT TREATMENT FOR DISSEM-
24 INATION TO INDIVIDUALS SEEKING TO SUBMIT REPORTS OF PERSONS WHO MAY BE
25 IN NEED OF ASSISTED OUTPATIENT TREATMENT, AND INDIVIDUALS SEEKING TO
26 FILE A PETITION PURSUANT TO SUBPARAGRAPH (I) OR (II) OF PARAGRAPH ONE OF
27 SUBDIVISION (F) OF SECTION 9.60 OF THIS TITLE. SUCH PAMPHLET SHALL SET
28 FORTH, IN PLAIN LANGUAGE: THE CRITERIA FOR ASSISTED OUTPATIENT TREAT-
29 MENT, RESOURCES AVAILABLE TO SUCH INDIVIDUALS, THE RESPONSIBILITIES OF
30 PROGRAM COORDINATORS AND DIRECTORS OF COMMUNITY SERVICES, A SUMMARY OF
31 CURRENT LAW, THE PROCESS FOR PETITIONING FOR CONTINUED ASSISTED OUTPA-
32 TIENT TREATMENT, AND OTHER SUCH INFORMATION THE COMMISSIONER DETERMINES
33 TO BE PERTINENT.

34 S 3. Subdivision (b) of section 9.47 of the mental hygiene law, as
35 amended by chapter 158 of the laws of 2005, is amended to read as
36 follows:

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

38 (1) receiving reports of persons who may be in need of assisted outpa-
39 tient treatment PURSUANT TO SECTION 9.60 OF THIS ARTICLE and documenting
40 the receipt date of such reports;

41 (2) conducting timely investigations of such reports RECEIVED PURSUANT
42 TO PARAGRAPH ONE OF THIS SUBDIVISION and providing written notice upon
43 the completion of investigations to reporting persons and program coor-
44 dinators, appointed by the commissioner [of mental health] pursuant to
45 subdivision (f) of section 7.17 of this title, and documenting the
46 initiation and completion dates of such investigations and the disposi-
47 tions;

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

52 (4) coordinating the timely delivery of court ordered services with
53 program coordinators and documenting the date assisted outpatients begin
54 to receive the services mandated in the court order; [and]

(5) NOTIFYING PROGRAM COORDINATORS WHEN ASSISTED OUTPATIENTS CANNOT BE LOCATED AFTER REASONABLE EFFORTS OR ARE BELIEVED TO HAVE TAKEN RESIDENCE OUTSIDE OF THE LOCAL GOVERNMENTAL UNIT SERVED; AND

(6) reporting on a quarterly basis to program coordinators the information collected pursuant to this subdivision.

S 4. Paragraphs (viii) and (ix) of subdivision (b) of section 9.48 of the mental hygiene law are renumbered paragraphs (ix) and (x) and a new paragraph (viii) is added to read as follows:

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

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

S 9.60 Assisted outpatient treatment.

(a) Definitions. For purposes of this section, the following definitions shall apply:

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

(2) "director" shall mean the director of community services of a local governmental unit, or the director of a hospital licensed or operated by the office of mental health which operates, directs and supervises an assisted outpatient treatment program.

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

(4) "assisted outpatient treatment program" shall mean a system to arrange for and coordinate the provision of assisted outpatient treatment, to monitor treatment compliance by assisted outpatients, to evaluate the condition or needs of assisted outpatients, to take appropriate steps to address the needs of such individuals, and to ensure compliance with court orders.

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

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

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

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

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

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

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

(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 PRIOR TO THE FILING OF THE PETITION 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]; PROVIDED THAT SUCH THIRTY-SIX MONTH PERIOD SHALL BE EXTENDED BY THE LENGTH OF any current period[, or period ending] OF HOSPITALIZATION OR INCARCERATION, AND ANY SUCH PERIOD THAT ENDED within the last six months[, during which the person was or is hospitalized or incarcerated]; or

(ii) WITHIN FORTY-EIGHT MONTHS 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]; PROVIDED THAT SUCH FORTY-EIGHT MONTH PERIOD SHALL BE EXTENDED BY THE LENGTH OF any current period[, or period ending] OF HOSPITALIZATION OR INCARCERATION, AND ANY SUCH PERIOD THAT ENDED 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

1 or deterioration which would be likely to result in serious harm to the
2 person or others as defined in section 9.01 of this article; and

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

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

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

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

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

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

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

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

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

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

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

38 (viii) a parole officer or probation officer assigned to supervise the
39 subject of the petition[.]; OR

40 (IX) THE DIRECTOR OF THE HOSPITAL OR THE SUPERINTENDENT OF A CORREC-
41 TIONAL FACILITY IN WHICH THE SUBJECT OF THE PETITION IS IMPRISONED,
42 PURSUANT TO SECTION FOUR HUNDRED FOUR OF THE CORRECTION LAW.

43 (2) THE COMMISSIONER SHALL PROMULGATE REGULATIONS PURSUANT TO WHICH
44 PERSONS INITIATING A PETITION, PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF
45 PARAGRAPH ONE OF THIS SUBDIVISION, MAY RECEIVE ASSISTANCE IN FILING SUCH
46 PETITIONS, WHERE APPROPRIATE, AS DETERMINED PURSUANT TO SUBDIVISION (E)
47 OF THIS SECTION.

48 (3) The petition shall state:

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

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

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

1 [(3)] (4) The petition shall be accompanied by an affirmation or affi-
2 davit of a physician, who shall not be the petitioner, stating THAT SUCH
3 PHYSICIAN IS WILLING AND ABLE TO TESTIFY AT THE HEARING ON THE PETITION
4 AND THAT either [that]:

5 (i) such physician has personally examined the subject of the petition
6 no more than ten days prior to the submission of the petition[,] AND
7 recommends assisted outpatient treatment for the subject of the peti-
8 tion[, and is willing and able to testify at the hearing on the peti-
9 tion]; or

10 (ii) no more than ten days prior to the filing of the petition, such
11 physician or his or her designee has made appropriate attempts but has
12 not been successful in eliciting the cooperation of the subject of the
13 petition to submit to an examination, such physician has reason to
14 suspect that the subject of the petition meets the criteria for assisted
15 outpatient treatment, and such physician is willing and able to examine
16 the subject of the petition [and testify at the hearing on the petition]
17 PRIOR TO PROVIDING TESTIMONY.

18 [(4)] (5) In counties with a population of less than seventy-five
19 thousand, the affirmation or affidavit required by paragraph [three]
20 FOUR of this subdivision may be made by a physician who is an employee
21 of the office. The office is authorized AND DIRECTED to make available,
22 at no cost to the county, a qualified physician for the purpose of
23 making such affirmation or affidavit consistent with the provisions of
24 such paragraph.

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

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

36 [(h)] (I) Hearing. (1) Upon receipt of the petition, the court shall
37 fix the date for a hearing. Such date shall be no later than three days
38 from the date such petition is received by the court, excluding Satur-
39 days, Sundays and holidays. Adjournments shall be permitted only for
40 good cause shown. In granting adjournments, the court shall consider the
41 need for further examination by a physician or the potential need to
42 provide assisted outpatient treatment expeditiously. The court shall
43 cause the subject of the petition, any other person receiving notice
44 pursuant to subdivision [(f)] (G) of this section, the petitioner, the
45 physician whose affirmation or affidavit accompanied the petition, and
46 such other persons as the court may determine to be advised of such
47 date. Upon such date, or upon such other date to which the proceeding
48 may be adjourned, the court shall hear testimony and, if it be deemed
49 advisable and the subject of the petition is available, examine the
50 subject of the petition in or out of court. If the subject of the peti-
51 tion does not appear at the hearing, and appropriate attempts to elicit
52 the attendance of the subject have failed, the court may conduct the
53 hearing in the subject's absence. In such case, the court shall set
54 forth the factual basis for conducting the hearing without the presence
55 of the subject of the petition.

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

10 (3) If the subject of the petition has refused to be examined by a
11 physician, the court may request the subject to consent to an examina-
12 tion by a physician appointed by the court. If the subject of the peti-
13 tion does not consent and the court finds reasonable cause to believe
14 that the allegations in the petition are true, the court may order peace
15 officers, acting pursuant to their special duties, or police officers
16 who are members of an authorized police department or force, or of a
17 sheriff's department to take the subject of the petition into custody
18 and transport him or her to a hospital for examination by a physician.
19 Retention of the subject of the petition under such order shall not
20 exceed twenty-four hours. The examination of the subject of the petition
21 may be performed by the physician whose affirmation or affidavit accom-
22 panied the petition pursuant to paragraph three of subdivision [(e)] (F)
23 of this section, if such physician is privileged by such hospital or
24 otherwise authorized by such hospital to do so. If such examination is
25 performed by another physician, the examining physician may consult with
26 the physician whose affirmation or affidavit accompanied the petition as
27 to whether the subject meets the criteria for assisted outpatient treat-
28 ment.

29 (4) A physician who testifies pursuant to paragraph two of this subdivi-
30 sion shall state: (i) the facts [which] AND CLINICAL DETERMINATIONS
31 THAT support the allegation that the subject meets each of the criteria
32 for assisted outpatient treatment, (ii) that the treatment is the least
33 restrictive alternative, (iii) the recommended assisted outpatient
34 treatment, and (iv) the rationale for the recommended assisted outpa-
35 tient treatment. If the recommended assisted outpatient treatment
36 includes medication, such physician's testimony shall describe the types
37 or classes of medication which should be authorized, shall describe the
38 beneficial and detrimental physical and mental effects of such medica-
39 tion, and shall recommend whether such medication should be self-admin-
40 istered or administered by authorized personnel.

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

44 [(i)] (J) Written treatment plan. (1) The court shall not order
45 assisted outpatient treatment unless a physician appointed by the appro-
46 priate director, in consultation with such director, develops and
47 provides to the court a proposed written treatment plan. The written
48 treatment plan shall include case management services or assertive
49 community treatment team services to provide care coordination. The
50 written treatment plan also shall include all categories of services, as
51 set forth in paragraph one of subdivision (a) of this section, which
52 such physician recommends that the subject of the petition receive. All
53 service providers shall be notified regarding their inclusion in the
54 written treatment plan. If the written treatment plan includes medica-
55 tion, it shall state whether such medication should be self-administered
56 or administered by authorized personnel, and shall specify type and

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

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

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

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

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

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

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

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

29 (5) If the petitioner is the director of a hospital that operates an
30 assisted outpatient treatment program, the court order shall direct the
31 hospital director to provide or arrange for all categories of assisted
32 outpatient treatment for the assisted outpatient throughout the period
33 of the order. For all other persons, the order shall require the direc-
34 tor of community services of the appropriate local governmental unit to
35 provide or arrange for all categories of assisted outpatient treatment
36 for the assisted outpatient throughout the period of the order. ORDERS
37 ISSUED ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO
38 THOUSAND TWELVE THAT AMENDED THIS SECTION SHALL REQUIRE THE APPROPRIATE
39 DIRECTOR "AS DETERMINED BY THE PROGRAM COORDINATOR" TO PROVIDE OR
40 ARRANGE FOR ALL CATEGORIES OF ASSISTED OUTPATIENT TREATMENT FOR THE
41 ASSISTED OUTPATIENT THROUGHOUT THE PERIOD OF THE ORDER.

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

48 [(k)] (L) RELOCATION OF ASSISTED OUTPATIENTS. THE COMMISSIONER SHALL
49 PROMULGATE REGULATIONS REQUIRING THAT, DURING THE PERIOD OF THE ORDER,
50 AN ASSISTED OUTPATIENT AND ANY OTHER APPROPRIATE PERSONS SHALL NOTIFY
51 THE PROGRAM COORDINATOR WITHIN A REASONABLE TIME PRIOR TO SUCH ASSISTED
52 OUTPATIENT RELOCATING WITHIN THE STATE OF NEW YORK TO AN AREA NOT SERVED
53 BY THE DIRECTOR WHO HAS BEEN DIRECTED TO PROVIDE OR ARRANGE FOR THE
54 ASSISTED OUTPATIENT TREATMENT. UPON RECEIVING NOTIFICATION OF SUCH RELO-
55 CATION, THE PROGRAM COORDINATOR SHALL REDETERMINE WHO THE APPROPRIATE

1 DIRECTOR SHALL BE AND CAUSE A COPY OF THE COURT ORDER AND TREATMENT PLAN
2 TO BE TRANSMITTED TO SUCH DIRECTOR.

3 (M) Petition for [additional periods of] CONTINUED treatment. (1)
4 WITHIN THIRTY DAYS PRIOR TO THE EXPIRATION OF AN ORDER PURSUANT TO THIS
5 SECTION, THE APPROPRIATE DIRECTOR SHALL REVIEW WHETHER THE ASSISTED
6 OUTPATIENT CONTINUES TO MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREAT-
7 MENT. UPON DETERMINING THAT ONE OR MORE OF SUCH CRITERIA ARE NO LONGER
8 MET, SUCH DIRECTOR SHALL NOTIFY THE PROGRAM COORDINATOR IN WRITING THAT
9 A PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT IS NOT WARRANTED.
10 UPON DETERMINING THAT SUCH CRITERIA CONTINUE TO BE MET, HE OR SHE SHALL
11 PETITION THE COURT TO ORDER CONTINUED ASSISTED OUTPATIENT TREATMENT FOR
12 A PERIOD NOT TO EXCEED ONE YEAR FROM THE EXPIRATION DATE OF THE CURRENT
13 ORDER. IF THE COURT'S DISPOSITION OF SUCH PETITION DOES NOT OCCUR PRIOR
14 TO THE EXPIRATION DATE OF THE CURRENT ORDER, THE CURRENT ORDER SHALL
15 REMAIN IN EFFECT UNTIL SUCH DISPOSITION. THE PROCEDURES FOR OBTAINING
16 ANY ORDER PURSUANT TO THIS SUBDIVISION SHALL BE IN ACCORDANCE WITH THE
17 PROVISIONS OF THE FOREGOING SUBDIVISION OF THIS SECTION; PROVIDED THAT
18 THE TIME RESTRICTIONS INCLUDED IN PARAGRAPH FOUR OF SUBDIVISION (C) OF
19 THIS SECTION SHALL NOT BE APPLICABLE. THE NOTICE PROVISIONS SET FORTH IN
20 PARAGRAPH SIX OF SUBDIVISION (K) OF THIS SECTION SHALL BE APPLICABLE.
21 ANY COURT ORDER REQUIRING PERIODIC BLOOD TESTS OR URINALYSIS FOR THE
22 PRESENCE OF ALCOHOL OR ILLEGAL DRUGS SHALL BE SUBJECT TO REVIEW AFTER
23 SIX MONTHS BY THE PHYSICIAN WHO DEVELOPED THE WRITTEN TREATMENT PLAN OR
24 ANOTHER PHYSICIAN DESIGNATED BY THE DIRECTOR, AND SUCH PHYSICIAN SHALL
25 BE AUTHORIZED TO TERMINATE SUCH BLOOD TESTS OR URINALYSIS WITHOUT
26 FURTHER ACTION BY THE COURT.

27 (2) Within thirty days prior to the expiration of an order of assisted
28 outpatient treatment, [the appropriate director or] the current peti-
29 tioner, if the current petition was filed pursuant to subparagraph (i)
30 or (ii) of paragraph one of subdivision [(e)] (F) of this section, and
31 the current petitioner retains his or her original status pursuant to
32 the applicable subparagraph, may petition the court to order continued
33 assisted outpatient treatment for a period not to exceed one year from
34 the expiration date of the current order. If the court's disposition of
35 such petition does not occur prior to the expiration date of the current
36 order, the current order shall remain in effect until such disposition.
37 The procedures for obtaining any order pursuant to this subdivision
38 shall be in accordance with the provisions of the foregoing subdivisions
39 of this section; provided that the time restrictions included in para-
40 graph four of subdivision (c) of this section shall not be applicable.
41 The notice provisions set forth in paragraph six of subdivision [(j)]
42 (K) of this section shall be applicable. Any court order requiring
43 periodic blood tests or urinalysis for the presence of alcohol or ille-
44 gal drugs shall be subject to review after six months by the physician
45 who developed the written treatment plan or another physician designated
46 by the director, and such physician shall be authorized to terminate
47 such blood tests or urinalysis without further action by the court.

48 (3) IF NEITHER THE APPROPRIATE DIRECTOR NOR THE CURRENT PETITIONER
49 PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT PURSUANT TO THIS
50 PARAGRAPH AND THE ORDER OF THE COURT EXPIRES, ANY OTHER PERSON AUTHOR-
51 IZED TO PETITION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (F) OF THIS
52 SECTION MAY BRING A NEW PETITION FOR ASSISTED OUTPATIENT TREATMENT. IF
53 SUCH NEW PETITION IS FILED LESS THAN SIXTY DAYS AFTER THE EXPIRATION OF
54 SUCH ORDER, THE TIME RESTRICTIONS PROVIDED IN PARAGRAPH FOUR OF SUBDIVI-
55 SION (C) OF THIS SECTION SHALL NOT BE APPLICABLE TO THE NEW PETITION.

1 (4) IF, THIRTY DAYS PRIOR TO THE EXPIRATION OF AN ORDER, THE ASSISTED
2 OUTPATIENT IS DEEMED BY THE APPROPRIATE DIRECTOR TO BE MISSING AND
3 THEREBY UNAVAILABLE FOR EVALUATION AS TO WHETHER HE OR SHE CONTINUES TO
4 MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT, SUCH DIRECTOR SHALL
5 PETITION THE COURT TO EXTEND THE TERM OF THE CURRENT ORDER UNTIL SIXTY
6 DAYS AFTER SUCH TIME AS THE ASSISTED OUTPATIENT IS LOCATED. IF THE COURT
7 GRANTS THE EXTENSION, THE DIRECTOR SHALL CONTINUE REASONABLE EFFORTS TO
8 LOCATE THE ASSISTED OUTPATIENT. UPON LOCATION OF THE ASSISTED OUTPA-
9 TIENT, THE DIRECTOR SHALL REVIEW WHETHER THE ASSISTED OUTPATIENT CONTIN-
10 UES TO MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT, PURSUANT TO
11 PARAGRAPH TWO OF THIS SUBDIVISION.

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

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

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

38 [(n)] (P) Failure to comply with assisted outpatient treatment. Where
39 in the clinical judgment of a physician, (i) the assisted outpatient,
40 has failed or refused to comply with the assisted outpatient treatment,
41 (ii) efforts were made to solicit compliance, and (iii) such assisted
42 outpatient may be in need of involuntary admission to a hospital pursu-
43 ant to section 9.27 of this article or immediate observation, care and
44 treatment pursuant to section 9.39 or 9.40 of this article, such physi-
45 cian may request the director of community services, the director's
46 designee, or any physician designated by the director of community
47 services pursuant to section 9.37 of this article, to direct the removal
48 of such assisted outpatient to an appropriate hospital for an examina-
49 tion to determine if such person has a mental illness for which HE OR
50 SHE IS IN NEED OF hospitalization is necessary pursuant to section 9.27,
51 9.39 or 9.40 of this article[. Furthermore, if such assisted outpatient
52 refuses to take medications as required by the court order, or he or she
53 refuses to take, or fails a blood test, urinalysis, or alcohol or drug
54 test as required by the court order, such physician may consider such
55 refusal or failure when determining whether]; PROVIDED THAT IF, AFTER
56 EFFORTS TO SOLICIT COMPLIANCE, SUCH PHYSICIAN DETERMINES THAT THE

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

44 [(o)] (Q) Effect of determination that a person is in need of assisted
45 outpatient treatment. The determination by a court that a person is in
46 need of assisted outpatient treatment shall not be construed as or
47 deemed to be a determination that such person is incapacitated pursuant
48 to article eighty-one of this chapter.

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

54 [(q)] (S) Exception. Nothing in this section shall be construed to
55 affect the ability of the director of a hospital to receive, admit, or

1 retain patients who otherwise meet the provisions of this article
2 regarding receipt, retention or admission.

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

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

16 S 6. Section 29.15 of the mental hygiene law is amended by adding a
17 new subdivision (o) to read as follows:

18 (O) IF THE DIRECTOR OF A DEPARTMENT FACILITY DOES NOT PETITION FOR
19 ASSISTED OUTPATIENT TREATMENT PURSUANT TO SECTION 9.60 OF THIS CHAPTER
20 UPON THE DISCHARGE OF AN INPATIENT ADMITTED PURSUANT TO SECTION 9.27,
21 9.39 OR 9.40 OF THIS CHAPTER, OR UPON THE EXPIRATION OF A PERIOD OF
22 CONDITIONAL RELEASE FOR SUCH INPATIENT, SUCH DIRECTOR SHALL REPORT SUCH
23 DISCHARGE OR SUCH EXPIRATION IN WRITING TO THE DIRECTOR OF COMMUNITY
24 SERVICES OF THE LOCAL GOVERNMENTAL UNIT IN WHICH THE INPATIENT IS
25 EXPECTED TO RESIDE.

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

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

44 S 8. Section 18 of chapter 408 of the laws of 1999, constituting
45 Kendra's Law, as amended by chapter 139 of the laws of 2010, is amended
46 to read as follows:

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

53 S 9. Severability. If any clause, sentence, paragraph, section or part
54 of this act shall be adjudged by any court of competent jurisdiction to
55 be invalid, and after exhaustion of all further judicial review, the
56 judgment shall not affect, impair or invalidate the remainder thereof,

1 but shall be confined in its operation to the clause, sentence, para-
2 graph, section or part thereof directly involved in the controversy.
3 S 10. This act shall take effect immediately.