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

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2011-2012 Regular Sessions

I N S E N A T E

April 28, 2011

Introduced by Sens. YOUNG, DeFRANCISCO, GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

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:

Section 1. Paragraph 2 of subdivision (f) of section 7.17 of the mental hygiene law, as amended by chapter 158 of the laws of 2005, is amended to read as follows:

(2) The oversight and monitoring role of the program coordinator of the assisted outpatient treatment program shall include each of the following:

(i) that each assisted outpatient receives the treatment provided for in the court order issued pursuant to section 9.60 of this [chapter] TITLE;

(ii) that existing services located in the assisted outpatient's community are utilized whenever practicable;

(iii) that a case manager or assertive community treatment team is designated for each assisted outpatient;

(iv) that a mechanism exists for such case manager, or assertive community treatment team, to regularly report the assisted outpatient's compliance, or lack of compliance with treatment, to the director of the assisted outpatient treatment program;

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

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

(VII) PRIOR TO THE EXPIRATION OF ASSISTED OUTPATIENT TREATMENT ORDERS, 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.

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

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

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

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

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

(1) receiving reports of persons who may be in need of assisted outpatient treatment PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (F) OF SECTION 7.17 OF THIS TITLE AND PURSUANT TO SECTION 9.60 OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO REPORTS RECEIVED FROM FAMILY AND COMMUNITY MEMBERS AND WRITTEN REPORTS RECEIVED FROM HOSPITAL DIRECTORS PURSUANT TO SUBDIVISION (O) OF SECTION 29.15 OF THIS CHAPTER AND SUBDIVISION TWO OF SECTION FOUR HUNDRED FOUR OF THE CORRECTION LAW, and documenting the receipt date of such reports;

(2) conducting timely investigations of such reports RECEIVED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION and providing written notice upon the completion of investigations to reporting persons and program coordinators, appointed by the commissioner [of mental health] pursuant to subdivision (f) of section 7.17 of this title, and documenting the initiation and completion dates of such investigations and the dispositions;

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

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

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

S 3. 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, THE BASIS FOR SUCH DETERMINATION, AND THE DISPOSITION OF ANY SUCH PETITION;

S 4. 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 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 coordi-

nation, and may also include any of the following categories of services: medication; MEDICATION OR SYMPTOM MANAGEMENT TRAINING OR 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; 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 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 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.

(2) The petition shall state:

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

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

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

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

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

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

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

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

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

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

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

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

(3) The court shall not order assisted outpatient treatment unless a physician appearing on behalf of a director testifies to explain the written proposed treatment plan; PROVIDED THAT THE PARTIES MAY STIPULATE UPON MUTUAL CONSENT THAT SUCH PHYSICIAN NEED NOT TESTIFY. Such physician shall state the categories of assisted outpatient treatment recommended, the rationale for each such category, facts which establish that such treatment is the least restrictive alternative, and, if the recommended assisted outpatient treatment plan includes medication, such physician shall state the types or classes of medication recommended, the beneficial and detrimental physical and mental effects of such medication, and whether such medication should be self-administered or administered by an authorized professional. If the subject of the petition has executed a health care proxy, such physician shall state the consideration given to any directions included in such proxy in developing the written treatment plan. If a director is the petitioner, testimony pursuant to this paragraph shall be given at the hearing on the petition. If a person other than a director is the petitioner, such testimony shall be given on the date set by the court pursuant to paragraph three of subdivision (j) of this section.

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

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

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

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

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

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

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

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

(l) 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.

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

(n) Failure to comply with assisted outpatient treatment. Where in the clinical judgment of a physician, (i) the assisted outpatient, has failed or refused to comply with the assisted outpatient treatment, (ii) efforts were made to solicit compliance, and (iii) such assisted outpatient may be in need of involuntary admission to a hospital pursuant to section 9.27 of this article or immediate observation, care and treatment pursuant to section 9.39 or 9.40 of this article, such physician may request the director of community services, the director's designee, or any physician designated by the director of community services pursuant to section 9.37 of this article, to direct the removal of such assisted outpatient to an appropriate hospital for an examination to determine if such person has a mental illness for which HE OR SHE IS IN NEED OF hospitalization is necessary pursuant to section 9.27, 9.39 or 9.40 of this article[. Furthermore, if such assisted outpatient refuses to take medications as required by the court order, or he or she refuses to take, or fails a blood test, urinalysis, or alcohol or drug test as required by the court order, such physician may consider such refusal or failure when determining whether]; PROVIDED THAT IF, AFTER EFFORTS TO SOLICIT COMPLIANCE, SUCH PHYSICIAN DETERMINES THAT THE ASSISTED OUTPATIENT'S FAILURE TO COMPLY WITH THE ASSISTED OUTPATIENT TREATMENT INCLUDES A SUBSTANTIAL FAILURE TO TAKE MEDICATION, SUBMIT TO BLOOD TESTING OR URINALYSIS, OR RECEIVE TREATMENT FOR ALCOHOL OR SUBSTANCE ABUSE, SUCH PHYSICIAN SHALL PRESUME THAT the assisted outpatient is in need of an examination to determine whether he or she has a mental illness for which hospitalization is necessary. Upon the request of such physician, the director, the director's designee, or any physician designated pursuant to section 9.37 of this article, may direct 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 assisted outpatient into custody and transport him or her to the hospital operating the assisted outpatient treatment program or to any hospital authorized by the director of community services to receive such persons. Such law enforcement officials shall carry out such directive. Upon the request of such physician, the director, the director's designee, or any physician designated pursuant to section 9.37 of this article, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, or an approved mobile crisis outreach team as defined in section 9.58 of this article shall be authorized to take into custody and transport any such person to the hospital operating the assisted outpatient treatment program, or to any other hospital authorized by the director of community services to receive such persons. Any director of community services, or designee, shall be authorized to direct the removal of an assisted outpatient who is present in his or her county to an appropriate hospital, in accordance with the provisions of this subdivision, based upon a determination of the appropriate director of community services directing the removal of such assisted outpatient pursuant to this subdivision. Such person may be retained for observation, care and treatment and further examination in the hospital for up to seventy-two hours to permit a physician to determine whether such person has a mental illness and is in need of involuntary care and treatment in a hospital pursuant to the provisions of this article. Any continued involuntary retention

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

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

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

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

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

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

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

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

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

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

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

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

S 8. This act shall take effect immediately; provided, however, that the amendments to subdivision (f) of section 7.17 of the mental hygiene law made by section one of this act shall not affect the repeal of such subdivision and shall expire and be deemed repealed therewith; that the amendments to subdivision (b) of section 9.47 of the mental hygiene law made by section two of this act shall not affect the repeal of such subdivision and shall expire and be deemed repealed therewith; that the amendments to subdivision (b) of section 9.48 of the mental hygiene law made by section three of this act shall not affect the repeal of such section and shall expire and be deemed repealed therewith; and that the amendments to section 9.60 of the mental hygiene law made by section four of this act shall not affect the repeal of such section and shall expire and be deemed repealed therewith.