

2225--C

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sens. YOUNG, ADDABBO, AVELLA, BALL, BONACIC, BOYLE, DeFRANCISCO, FARLEY, GALLIVAN, GOLDEN, GRIFFO, HASSELL-THOMPSON, LANZA, LARKIN, LIBOUS, LITTLE, MARCELLINO, MARCHIONE, MARTINS, MAZIARZ, NOZZOLIO, RANZENHOFER, RITCHIE, ROBACH, SEWARD, STAVISKY, VALESKY, ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Mental Health and Developmental Disabilities in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, 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;

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

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1 (iii) that a case manager or assertive community treatment team is
2 designated for each assisted outpatient;
3 (iv) that a mechanism exists for such case manager, or assertive
4 community treatment team, to regularly report the assisted outpatient's
5 compliance, or lack of compliance with treatment, to the director of the
6 assisted outpatient treatment program;
7 (v) that directors of community services establish procedures [which]
8 THAT provide that reports of persons who may be in need of assisted
9 outpatient treatment are appropriately investigated in a timely manner;
10 [and]
11 (vi) that assisted outpatient treatment services are delivered in a
12 timely manner[.];
13 (VII) THAT, PRIOR TO THE EXPIRATION OF ASSISTED OUTPATIENT TREATMENT
14 ORDERS, THE CLINICAL NEEDS OF ASSISTED OUTPATIENTS ARE ADEQUATELY
15 REVIEWED IN DETERMINING THE NEED TO PETITION FOR CONTINUED ASSISTED
16 OUTPATIENT TREATMENT PURSUANT TO SUBDIVISION (M) OF SECTION 9.60 OF THIS
17 TITLE;
18 (VIII) THAT THE APPROPRIATE DIRECTOR IS DETERMINED FOR EACH ASSISTED
19 OUTPATIENT, PURSUANT TO SUBDIVISIONS (K) AND (L) OF SECTION 9.60 OF THIS
20 TITLE; AND
21 (IX) THAT THE OFFICE FULFILLS ITS DUTIES PURSUANT TO SUBDIVISION (T)
22 OF SECTION 9.60 OF THIS TITLE TO MEET LOCAL NEEDS FOR TRAINING OF JUDGES
23 AND COURT PERSONNEL.

24 S 2. Subdivision (f) of section 7.17 of the mental hygiene law is
25 amended by adding a new paragraph 5 to read as follows:
26 (5) THE COMMISSIONER SHALL DEVELOP AN EDUCATIONAL PAMPHLET ON THE
27 PROCESS OF PETITIONING FOR ASSISTED OUTPATIENT TREATMENT FOR DISSEM-
28 INATION TO INDIVIDUALS SEEKING TO SUBMIT REPORTS OF PERSONS WHO MAY BE
29 IN NEED OF ASSISTED OUTPATIENT TREATMENT, AND INDIVIDUALS SEEKING TO
30 FILE A PETITION PURSUANT TO SUBPARAGRAPH (I) OR (II) OF PARAGRAPH ONE OF
31 SUBDIVISION (F) OF SECTION 9.60 OF THIS TITLE. SUCH PAMPHLET SHALL SET
32 FORTH, IN PLAIN LANGUAGE: THE CRITERIA FOR ASSISTED OUTPATIENT TREAT-
33 MENT, RESOURCES AVAILABLE TO SUCH INDIVIDUALS, THE RESPONSIBILITIES OF
34 PROGRAM COORDINATORS AND DIRECTORS OF COMMUNITY SERVICES, A SUMMARY OF
35 CURRENT LAW, THE PROCESS FOR PETITIONING FOR CONTINUED ASSISTED OUTPA-
36 TIENT TREATMENT, AND OTHER SUCH INFORMATION THE COMMISSIONER DETERMINES
37 TO BE PERTINENT.

38 S 3. Subdivision (b) of section 9.47 of the mental hygiene law, as
39 amended by chapter 158 of the laws of 2005, paragraphs 5 and 6 as added
40 and paragraph 7 as renumbered by chapter 1 of the laws of 2013, is
41 amended to read as follows:
42 (b) All directors of community services shall be responsible for:
43 (1) receiving reports of persons who may be in need of assisted outpa-
44 tient treatment PURSUANT TO SECTION 9.60 OF THIS ARTICLE and documenting
45 the receipt date of such reports;
46 (2) conducting timely investigations of such reports RECEIVED PURSUANT
47 TO PARAGRAPH ONE OF THIS SUBDIVISION and providing written notice upon
48 the completion of investigations to reporting persons and program coord-
49 inators, appointed by the commissioner [of mental health] pursuant to
50 subdivision (f) of section 7.17 of this title, and documenting the
51 initiation and completion dates of such investigations and the disposi-
52 tions;
53 (3) filing of petitions for assisted outpatient treatment pursuant to
54 [paragraph] SUBPARAGRAPH (vii) of PARAGRAPH ONE OF subdivision [(e)] (F)
55 of section 9.60 of this article, and documenting the petition filing
56 [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) ensuring evaluation of the need for ongoing assisted outpatient treatment pursuant to subdivision [(k)] (M) of section 9.60 of this article prior to the expiration of any assisted outpatient treatment order;

(6) if he or she has been ordered to provide for or arrange for assisted outpatient treatment pursuant to paragraph five of subdivision [(j)] (K) of section 9.60 of this article or became the appropriate director pursuant to this paragraph or subdivision (c) of section 9.48 of this article, notifying the director of community services of the new county of residence when he or she has reason to believe that an assisted outpatient has or will change his or her county of residence during the pendency of an assisted outpatient treatment order. Upon such change of residence, the director of the new county of residence shall become the appropriate director, as such term is defined in section 9.60 of this article; [and]

(7) 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

(8) 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 3 of subdivision (a), paragraphs 2 and 5 of subdivision (j), and subdivisions (k) and (n) as amended by chapter 1 of the laws of 2013, 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

1 a local services plan developed pursuant to article forty-one of this
2 chapter, CLINICAL OR NON-CLINICAL, prescribed to treat the person's
3 mental illness and to assist the person in living and functioning in the
4 community, or to attempt to prevent a relapse or deterioration that may
5 reasonably be predicted to result in [suicide] SERIOUS PHYSICAL HARM TO
6 ANY PERSON or the need for hospitalization.

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

11 (3) "director of community services" and "local governmental unit"
12 shall have the same meanings as provided in article forty-one of this
13 chapter. The "appropriate director" shall mean the director of community
14 services of the county where the assisted outpatient resides, even if it
15 is a different county than the county where the assisted outpatient
16 treatment order was originally issued.

17 (4) "assisted outpatient treatment program" shall mean a system to
18 arrange for and coordinate the provision of assisted outpatient treat-
19 ment, to monitor treatment compliance by assisted outpatients, to evalu-
20 ate the condition or needs of assisted outpatients, to take appropriate
21 steps to address the needs of such individuals, and to ensure compliance
22 with court orders.

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

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

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

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

32 (9) "program coordinator" shall mean an individual appointed by the
33 commissioner [of mental health], pursuant to subdivision (f) of section
34 7.17 of this chapter, who is responsible for the oversight and monitor-
35 ing of assisted outpatient treatment programs.

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

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

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

50 (2) is suffering from a mental illness; and

51 (3) is unlikely to survive safely in the community without super-
52 vision, based on a clinical determination; and

53 (4) has a history of lack of compliance with treatment for mental
54 illness that has:

55 (i) [prior to the filing of the petition,] at least twice within the
56 [last] thirty-six months PRIOR TO THE FILING OF THE PETITION been a

1 significant factor in necessitating hospitalization in a hospital, or
2 receipt of services in a forensic or other mental health unit of a
3 correctional facility or a local correctional facility[, not including];
4 PROVIDED THAT SUCH THIRTY-SIX MONTH PERIOD SHALL BE EXTENDED BY THE
5 LENGTH OF any current period[, or period ending] OF HOSPITALIZATION OR
6 INCARCERATION, AND ANY SUCH PERIOD THAT ENDED within the last six
7 months[, during which the person was or is hospitalized or incarcerat-
8 ed]; or

9 (ii) WITHIN FORTY-EIGHT MONTHS prior to the filing of the petition,
10 resulted in one or more acts of serious violent behavior toward self or
11 others or threats of, or attempts at, serious physical harm to self or
12 others [within the last forty-eight months, not including]; PROVIDED
13 THAT SUCH FORTY-EIGHT MONTH PERIOD SHALL BE EXTENDED BY THE LENGTH OF
14 any current period[, or period ending] OF HOSPITALIZATION OR INCARCERA-
15 TION, AND ANY SUCH PERIOD THAT ENDED within the last six months[, in
16 which the person was or is hospitalized or incarcerated]; and

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

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

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

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

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

35 (F) Petition to the court. (1) A petition for an order authorizing
36 assisted outpatient treatment may be filed in the supreme or county
37 court in the county in which the subject of the petition is present or
38 reasonably believed to be present. WHEN A DIRECTOR OF COMMUNITY
39 SERVICES HAS REASON TO BELIEVE THAT AN ASSISTED OUTPATIENT HAS CHANGED
40 HIS OR HER COUNTY OF RESIDENCE, FUTURE PETITIONS AND APPLICATIONS UNDER
41 THIS SECTION MAY BE FILED IN THE SUPREME OR COUNTY COURT IN THE NEW
42 COUNTY OF RESIDENCE, WHICH SHALL HAVE CONCURRENT JURISDICTION WITH THE
43 COURT THAT INITIALLY ORDERED SUCH TREATMENT. Such petition may be initi-
44 ated only by the following persons:

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

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

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

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

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

1 (vi) a psychologist, licensed pursuant to article one hundred fifty-
2 three of the education law, or a social worker, licensed pursuant to
3 article one hundred fifty-four of the education law, who is treating the
4 subject of the petition for a mental illness; or
5 (vii) the director of community services, or his or her designee, or
6 the social services official, as defined in the social services law, of
7 the city or county in which the subject of the petition is present or
8 reasonably believed to be present; or
9 (viii) a parole officer or probation officer assigned to supervise the
10 subject of the petition[.]; OR
11 (IX) THE DIRECTOR OF THE HOSPITAL OR THE SUPERINTENDENT OF A CORREC-
12 TIONAL FACILITY IN WHICH THE SUBJECT OF THE PETITION IS IMPRISONED,
13 PURSUANT TO SECTION FOUR HUNDRED FOUR OF THE CORRECTION LAW.
14 (2) THE COMMISSIONER SHALL PROMULGATE REGULATIONS PURSUANT TO WHICH
15 PERSONS INITIATING A PETITION, PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF
16 PARAGRAPH ONE OF THIS SUBDIVISION, MAY RECEIVE ASSISTANCE IN FILING SUCH
17 PETITIONS, WHERE APPROPRIATE, AS DETERMINED PURSUANT TO SUBDIVISION (E)
18 OF THIS SECTION.
19 (3) The petition shall state:
20 (i) each of the criteria for assisted outpatient treatment as set
21 forth in subdivision (c) of this section;
22 (ii) facts which support the petitioner's belief that the subject of
23 the petition meets each criterion, provided that the hearing on the
24 petition need not be limited to the stated facts; and
25 (iii) that the subject of the petition is present, or is reasonably
26 believed to be present, within the county where such petition is filed.
27 [(3)] (4) The petition shall be accompanied by an affirmation or affi-
28 davit of a physician, who shall not be the petitioner, stating THAT SUCH
29 PHYSICIAN IS WILLING AND ABLE TO TESTIFY AT THE HEARING ON THE PETITION
30 AND THAT either [that]:
31 (i) such physician has personally examined the subject of the petition
32 no more than ten days prior to the submission of the petition[,] AND
33 recommends assisted outpatient treatment for the subject of the peti-
34 tion[, and is willing and able to testify at the hearing on the peti-
35 tion]; or
36 (ii) no more than ten days prior to the filing of the petition, such
37 physician or his or her designee has made appropriate attempts but has
38 not been successful in eliciting the cooperation of the subject of the
39 petition to submit to an examination, such physician has reason to
40 suspect that the subject of the petition meets the criteria for assisted
41 outpatient treatment, and such physician is willing and able to examine
42 the subject of the petition [and testify at the hearing on the petition]
43 PRIOR TO PROVIDING TESTIMONY.
44 [(4)] (5) In counties with a population of less than seventy-five
45 thousand, the affirmation or affidavit required by paragraph [three]
46 FOUR of this subdivision may be made by a physician who is an employee
47 of the office. The office is authorized AND DIRECTED to make available,
48 at no cost to the county, a qualified physician for the purpose of
49 making such affirmation or affidavit consistent with the provisions of
50 such paragraph.
51 [(f)] (G) Service. The petitioner shall cause written notice of the
52 petition to be given to the subject of the petition and a copy thereof
53 to be given personally or by mail to the persons listed in section 9.29
54 of this article, the mental hygiene legal service, the health care agent
55 if any such agent is known to the petitioner, the appropriate program

1 coordinator, and the appropriate director of community services, if such
2 director is not the petitioner.

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

7 [(h)] (I) Hearing. (1) Upon receipt of the petition, the court shall
8 fix the date for a hearing. Such date shall be no later than three days
9 from the date such petition is received by the court, excluding Satur-
10 days, Sundays and holidays. Adjournments shall be permitted only for
11 good cause shown. In granting adjournments, the court shall consider the
12 need for further examination by a physician or the potential need to
13 provide assisted outpatient treatment expeditiously. The court shall
14 cause the subject of the petition, any other person receiving notice
15 pursuant to subdivision [(f)] (G) of this section, the petitioner, the
16 physician whose affirmation or affidavit accompanied the petition, and
17 such other persons as the court may determine to be advised of such
18 date. Upon such date, or upon such other date to which the proceeding
19 may be adjourned, the court shall hear testimony and, if it be deemed
20 advisable and the subject of the petition is available, examine the
21 subject of the petition in or out of court. If the subject of the peti-
22 tion does not appear at the hearing, and appropriate attempts to elicit
23 the attendance of the subject have failed, the court may conduct the
24 hearing in the subject's absence. In such case, the court shall set
25 forth the factual basis for conducting the hearing without the presence
26 of the subject of the petition.

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

36 (3) If the subject of the petition has refused to be examined by a
37 physician, the court may request the subject to consent to an examina-
38 tion by a physician appointed by the court. If the subject of the peti-
39 tion does not consent and the court finds reasonable cause to believe
40 that the allegations in the petition are true, the court may order peace
41 officers, acting pursuant to their special duties, or police officers
42 who are members of an authorized police department or force, or of a
43 sheriff's department to take the subject of the petition into custody
44 and transport him or her to a hospital for examination by a physician.
45 Retention of the subject of the petition under such order shall not
46 exceed twenty-four hours. The examination of the subject of the petition
47 may be performed by the physician whose affirmation or affidavit accom-
48 panied the petition pursuant to paragraph three of subdivision [(e)] (F)
49 of this section, if such physician is privileged by such hospital or
50 otherwise authorized by such hospital to do so. If such examination is
51 performed by another physician, the examining physician may consult with
52 the physician whose affirmation or affidavit accompanied the petition as
53 to whether the subject meets the criteria for assisted outpatient treat-
54 ment.

55 (4) A physician who testifies pursuant to paragraph two of this subdi-
56 vision shall state: (i) the facts [which] AND CLINICAL DETERMINATIONS

1 THAT support the allegation that the subject meets each of the criteria
2 for assisted outpatient treatment, (ii) that the treatment is the least
3 restrictive alternative, (iii) the recommended assisted outpatient
4 treatment, and (iv) the rationale for the recommended assisted outpa-
5 tient treatment. If the recommended assisted outpatient treatment
6 includes medication, such physician's testimony shall describe the types
7 or classes of medication which should be authorized, shall describe the
8 beneficial and detrimental physical and mental effects of such medica-
9 tion, and shall recommend whether such medication should be self-admin-
10 istered or administered by authorized personnel.

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

14 [(i)] (J) Written treatment plan. (1) The court shall not order
15 assisted outpatient treatment unless a physician appointed by the appro-
16 priate director, in consultation with such director, develops and
17 provides to the court a proposed written treatment plan. The written
18 treatment plan shall include case management services or assertive
19 community treatment team services to provide care coordination. The
20 written treatment plan also shall include all categories of services, as
21 set forth in paragraph one of subdivision (a) of this section, which
22 such physician recommends that the subject of the petition receive. All
23 service providers shall be notified regarding their inclusion in the
24 written treatment plan. If the written treatment plan includes medica-
25 tion, it shall state whether such medication should be self-administered
26 or administered by authorized personnel, and shall specify type and
27 dosage range of medication most likely to provide maximum benefit for
28 the subject. If the written treatment plan includes alcohol or substance
29 abuse counseling and treatment, such plan may include a provision
30 requiring relevant testing for either alcohol or illegal substances
31 provided the physician's clinical basis for recommending such plan
32 provides sufficient facts for the court to find (i) that such person has
33 a history of alcohol or substance abuse that is clinically related to
34 the mental illness; and (ii) that such testing is necessary to prevent a
35 relapse or deterioration which would be likely to result in serious harm
36 to the person or others. If a director is the petitioner, the written
37 treatment plan shall be provided to the court no later than the date of
38 the hearing on the petition. If a person other than a director is the
39 petitioner, such plan shall be provided to the court no later than the
40 date set by the court pursuant to paragraph three of subdivision [(j)]
41 (K) of this section.

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

55 (3) The court shall not order assisted outpatient treatment unless a
56 physician appearing on behalf of a director testifies to explain the

1 written proposed treatment plan; PROVIDED THAT THE PARTIES MAY STIPU-
2 LATE, UPON MUTUAL CONSENT, THAT SUCH PHYSICIAN NEED NOT TESTIFY. Such
3 physician shall state the categories of assisted outpatient treatment
4 recommended, the rationale for each such category, facts which establish
5 that such treatment is the least restrictive alternative, and, if the
6 recommended assisted outpatient treatment plan includes medication, such
7 physician shall state the types or classes of medication recommended,
8 the beneficial and detrimental physical and mental effects of such medi-
9 cation, and whether such medication should be self-administered or
10 administered by an authorized professional. If the subject of the peti-
11 tion has executed a health care proxy, such physician shall state the
12 consideration given to any directions included in such proxy in develop-
13 ing the written treatment plan. If a director is the petitioner, testi-
14 mony pursuant to this paragraph shall be given at the hearing on the
15 petition. If a person other than a director is the petitioner, such
16 testimony shall be given on the date set by the court pursuant to para-
17 graph three of subdivision [(j)] (K) of this section.

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

22 (2) If after hearing all relevant evidence, the court finds by clear
23 and convincing evidence that the subject of the petition meets the
24 criteria for assisted outpatient treatment, and there is no appropriate
25 and feasible less restrictive alternative, the court may order the
26 subject to receive assisted outpatient treatment for an initial period
27 not to exceed one year. In fashioning the order, the court shall specif-
28 ically make findings by clear and convincing evidence that the proposed
29 treatment is the least restrictive treatment appropriate and feasible
30 for the subject. The order shall state an assisted outpatient treatment
31 plan, which shall include all categories of assisted outpatient treat-
32 ment, as set forth in paragraph one of subdivision (a) of this section,
33 which the assisted outpatient is to receive, but shall not include any
34 such category that has not been recommended in [both] the proposed writ-
35 ten treatment plan and [the] IN ANY testimony provided to the court
36 pursuant to subdivision [(i)] (J) of this section.

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

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

55 (5) If the petitioner is the director of a hospital that operates an
56 assisted outpatient treatment program, the court order shall direct the

1 hospital director to provide or arrange for all categories of assisted
2 outpatient treatment for the assisted outpatient throughout the period
3 of the order. In all other instances, the order shall require the appro-
4 priate director, as that term is defined in this section, to provide or
5 arrange for all categories of assisted outpatient treatment for the
6 assisted outpatient throughout the period of the order. ORDERS ISSUED
7 ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOU-
8 SAND FOURTEEN THAT AMENDED THIS SECTION SHALL REQUIRE THE APPROPRIATE
9 DIRECTOR "AS DETERMINED BY THE PROGRAM COORDINATOR" TO PROVIDE OR
10 ARRANGE FOR ALL CATEGORIES OF ASSISTED OUTPATIENT TREATMENT FOR THE
11 ASSISTED OUTPATIENT THROUGHOUT THE PERIOD OF THE ORDER.

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

18 [(k)] (L) RELOCATION OF ASSISTED OUTPATIENTS. THE COMMISSIONER SHALL
19 PROMULGATE REGULATIONS REQUIRING THAT, DURING THE PERIOD OF THE ORDER,
20 AN ASSISTED OUTPATIENT AND ANY OTHER APPROPRIATE PERSONS SHALL NOTIFY
21 THE PROGRAM COORDINATOR WITHIN A REASONABLE TIME PRIOR TO SUCH ASSISTED
22 OUTPATIENT RELOCATING WITHIN THE STATE OF NEW YORK TO AN AREA NOT SERVED
23 BY THE DIRECTOR WHO HAS BEEN DIRECTED TO PROVIDE OR ARRANGE FOR THE
24 ASSISTED OUTPATIENT TREATMENT. UPON RECEIVING NOTIFICATION OF SUCH RELO-
25 CATION, THE PROGRAM COORDINATOR SHALL REDETERMINE WHO THE APPROPRIATE
26 DIRECTOR SHALL BE AND CAUSE A COPY OF THE COURT ORDER AND TREATMENT PLAN
27 TO BE TRANSMITTED TO SUCH DIRECTOR.

28 (M) Petition for [additional periods of] CONTINUED treatment. (1)
29 [Prior] WITHIN THIRTY DAYS PRIOR to the expiration of an order pursuant
30 to this section, the appropriate director shall review whether the
31 assisted outpatient continues to meet the criteria for assisted outpa-
32 tient treatment. [If, as documented in the petition, the director deter-
33 mines that such criteria continue to be met or has made appropriate
34 attempts to, but has not been successful in eliciting, the cooperation
35 of the subject to submit to an examination, within thirty days prior to
36 the expiration of an order of assisted outpatient treatment, such direc-
37 tor may petition the court to order continued assisted outpatient treat-
38 ment pursuant to paragraph two of this subdivision. Upon determining
39 whether such criteria continue to be met, such director shall notify the
40 program coordinator in writing as to whether a petition for continued
41 assisted outpatient treatment is warranted and whether such a petition
42 was or will be filed.] UPON DETERMINING THAT ONE OR MORE OF SUCH CRITE-
43 RIA ARE NO LONGER MET, SUCH DIRECTOR SHALL NOTIFY THE PROGRAM COORDINA-
44 TOR IN WRITING THAT A PETITION FOR CONTINUED ASSISTED OUTPATIENT TREAT-
45 MENT IS NOT WARRANTED. UPON DETERMINING THAT SUCH CRITERIA CONTINUE TO
46 BE MET, HE OR SHE SHALL PETITION THE COURT TO ORDER CONTINUED ASSISTED
47 OUTPATIENT TREATMENT FOR A PERIOD NOT TO EXCEED ONE YEAR FROM THE EXPI-
48 RATION DATE OF THE CURRENT ORDER. IF THE COURT'S DISPOSITION OF SUCH
49 PETITION DOES NOT OCCUR PRIOR TO THE EXPIRATION DATE OF THE CURRENT
50 ORDER, THE CURRENT ORDER SHALL REMAIN IN EFFECT UNTIL SUCH DISPOSITION.
51 THE PROCEDURES FOR OBTAINING ANY ORDER PURSUANT TO THIS SUBDIVISION
52 SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THE FOREGOING SUBDIVISION
53 OF THIS SECTION; PROVIDED THAT THE TIME RESTRICTIONS INCLUDED IN PARA-
54 GRAPH FOUR OF SUBDIVISION (C) OF THIS SECTION SHALL NOT BE APPLICABLE.
55 THE NOTICE PROVISIONS SET FORTH IN PARAGRAPH SIX OF SUBDIVISION (K) OF
56 THIS SECTION SHALL BE APPLICABLE. ANY COURT ORDER REQUIRING PERIODIC

1 BLOOD TESTS OR URINALYSIS FOR THE PRESENCE OF ALCOHOL OR ILLEGAL DRUGS
2 SHALL BE SUBJECT TO REVIEW AFTER SIX MONTHS BY THE PHYSICIAN WHO DEVEL-
3 OPED THE WRITTEN TREATMENT PLAN OR ANOTHER PHYSICIAN DESIGNATED BY THE
4 DIRECTOR, AND SUCH PHYSICIAN SHALL BE AUTHORIZED TO TERMINATE SUCH BLOOD
5 TESTS OR URINALYSIS WITHOUT FURTHER ACTION BY THE COURT.

6 (2) Within thirty days prior to the expiration of an order of assisted
7 outpatient treatment, [the appropriate director or] the current peti-
8 tioner, if the current petition was filed pursuant to subparagraph (i)
9 or (ii) of paragraph one of subdivision [(e)] (F) of this section, and
10 the current petitioner retains his or her original status pursuant to
11 the applicable subparagraph, may petition the court to order continued
12 assisted outpatient treatment for a period not to exceed one year from
13 the expiration date of the current order. If the court's disposition of
14 such petition does not occur prior to the expiration date of the current
15 order, the current order shall remain in effect until such disposition.
16 The procedures for obtaining any order pursuant to this subdivision
17 shall be in accordance with the provisions of the foregoing subdivisions
18 of this section; provided that the time restrictions included in para-
19 graph four of subdivision (c) of this section shall not be applicable.
20 The notice provisions set forth in paragraph six of subdivision [(j)]
21 (K) of this section shall be applicable. Any court order requiring peri-
22 odic blood tests or urinalysis for the presence of alcohol or illegal
23 drugs shall be subject to review after six months by the physician who
24 developed the written treatment plan or another physician designated by
25 the director, and such physician shall be authorized to terminate such
26 blood tests or urinalysis without further action by the court.

27 (3) IF NEITHER THE APPROPRIATE DIRECTOR NOR THE CURRENT PETITIONER
28 PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT PURSUANT TO THIS
29 PARAGRAPH AND THE ORDER OF THE COURT EXPIRES, ANY OTHER PERSON AUTHOR-
30 IZED TO PETITION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (F) OF THIS
31 SECTION MAY BRING A NEW PETITION FOR ASSISTED OUTPATIENT TREATMENT. IF
32 SUCH NEW PETITION IS FILED LESS THAN SIXTY DAYS AFTER THE EXPIRATION OF
33 SUCH ORDER, THE TIME RESTRICTIONS PROVIDED IN PARAGRAPH FOUR OF SUBDIVI-
34 SION (C) OF THIS SECTION SHALL NOT BE APPLICABLE TO THE NEW PETITION.

35 (4) IF, THIRTY DAYS PRIOR TO THE EXPIRATION OF AN ORDER, THE ASSISTED
36 OUTPATIENT IS DEEMED BY THE APPROPRIATE DIRECTOR TO BE MISSING AND
37 THEREBY UNAVAILABLE FOR EVALUATION AS TO WHETHER HE OR SHE CONTINUES TO
38 MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT, SUCH DIRECTOR SHALL
39 PETITION THE COURT TO EXTEND THE TERM OF THE CURRENT ORDER UNTIL SIXTY
40 DAYS AFTER SUCH TIME AS THE ASSISTED OUTPATIENT IS LOCATED. IF THE COURT
41 GRANTS THE EXTENSION, THE DIRECTOR SHALL CONTINUE REASONABLE EFFORTS TO
42 LOCATE THE ASSISTED OUTPATIENT. UPON LOCATION OF THE ASSISTED OUTPA-
43 TIENT, THE DIRECTOR SHALL REVIEW WHETHER THE ASSISTED OUTPATIENT CONTIN-
44 UES TO MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT, PURSUANT TO
45 PARAGRAPH TWO OF THIS SUBDIVISION.

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

53 (2) The appropriate director shall petition the court for approval
54 before instituting a proposed material change in the assisted outpatient
55 treatment plan, unless such change is authorized by the order of the
56 court. SUCH PETITIONS TO CHANGE AN ASSISTED OUTPATIENT TREATMENT PLAN,

1 AS WELL AS PETITIONS FOR CONTINUED TREATMENT, MAY BE MADE TO ANY JUDGE
2 OF THE SUPREME OR COUNTY COURTS IN THE COUNTY IN WHICH THE SUBJECT OF
3 THE PETITION IS PRESENT OR REASONABLY BELIEVED TO BE PRESENT. Such peti-
4 tion shall be filed on notice to all parties entitled to notice under
5 subdivision [(f)] (G) of this section. Not later than five days after
6 receiving such petition, excluding Saturdays, Sundays and holidays, the
7 court shall hold a hearing on the petition; provided that if the
8 assisted outpatient informs the court that he or she agrees to the
9 proposed material change, the court may approve such change without a
10 hearing. Non-material changes may be instituted by the director without
11 court approval. For the purposes of this paragraph, a material change is
12 an addition or deletion of a category of services to or from a current
13 assisted outpatient treatment plan, or any deviation without the
14 assisted outpatient's consent from the terms of a current order relating
15 to the administration of psychotropic drugs.

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

20 [(n)] (P) Failure to comply with assisted outpatient treatment. Where
21 in the clinical judgment of a physician, (i) the assisted outpatient,
22 has failed or refused to comply with the assisted outpatient treatment,
23 (ii) efforts were made to solicit compliance, and (iii) such assisted
24 outpatient may be in need of involuntary admission to a hospital pursu-
25 ant to section 9.27 of this article or immediate observation, care and
26 treatment pursuant to section 9.39 or 9.40 of this article, such physi-
27 cian may request the appropriate director of community services, the
28 director's designee, or any physician designated by the director of
29 community services pursuant to section 9.37 of this article, to direct
30 the removal of such assisted outpatient to an appropriate hospital for
31 an examination to determine if such person has a mental illness for
32 which HE OR SHE IS IN NEED OF hospitalization is necessary pursuant to
33 section 9.27, 9.39 or 9.40 of this article[. Furthermore, if such
34 assisted outpatient refuses to take medications as required by the court
35 order, or he or she refuses to take, or fails a blood test, urinalysis,
36 or alcohol or drug test as required by the court order, such physician
37 may consider such refusal or failure when determining whether]; PROVIDED
38 THAT IF, AFTER EFFORTS TO SOLICIT COMPLIANCE, SUCH PHYSICIAN DETERMINES
39 THAT THE ASSISTED OUTPATIENT'S FAILURE TO COMPLY WITH THE ASSISTED
40 OUTPATIENT TREATMENT INCLUDES A SUBSTANTIAL FAILURE TO TAKE MEDICATION,
41 PASS OR SUBMIT TO BLOOD TESTING OR URINALYSIS, OR RECEIVE TREATMENT FOR
42 ALCOHOL OR SUBSTANCE ABUSE, SUCH PHYSICIAN MAY PRESUME THAT the assisted
43 outpatient is in need of an examination to determine whether he or she
44 has a mental illness for which hospitalization is necessary. Upon the
45 request of such physician, the appropriate director, the director's
46 designee, or any physician designated pursuant to section 9.37 of this
47 article, may direct peace officers, acting pursuant to their special
48 duties, or police officers who are members of an authorized police
49 department or force or of a sheriff's department to take the assisted
50 outpatient into custody and transport him or her to the hospital operat-
51 ing the assisted outpatient treatment program or to any hospital author-
52 ized by the director of community services to receive such persons. Such
53 law enforcement officials shall carry out such directive. Upon the
54 request of such physician, the appropriate director, the director's
55 designee, or any physician designated pursuant to section 9.37 of this
56 article, an ambulance service, as defined by subdivision two of section

1 three thousand one of the public health law, or an approved mobile
2 crisis outreach team as defined in section 9.58 of this article shall be
3 authorized to take into custody and transport any such person to the
4 hospital operating the assisted outpatient treatment program, or to any
5 other hospital authorized by the appropriate director of community
6 services to receive such persons. Any director of community services, or
7 designee, shall be authorized to direct the removal of an assisted
8 outpatient who is present in his or her county to an appropriate hospi-
9 tal, in accordance with the provisions of this subdivision, based upon a
10 determination of the appropriate director of community services direct-
11 ing the removal of such assisted outpatient pursuant to this subdivi-
12 sion. Such person may be retained for observation, care and treatment
13 and further examination in the hospital for up to seventy-two hours to
14 permit a physician to determine whether such person has a mental illness
15 and is in need of involuntary care and treatment in a hospital pursuant
16 to the provisions of this article. Any continued involuntary retention
17 OF THE ASSISTED OUTPATIENT in such hospital beyond the initial seventy-
18 two hour period shall be in accordance with the provisions of this arti-
19 cle relating to the involuntary admission and retention of a person. If
20 at any time during the seventy-two hour period the person is determined
21 not to meet the involuntary admission and retention provisions of this
22 article, and does not agree to stay in the hospital as a voluntary or
23 informal patient, he or she must be released. Failure to comply with an
24 order of assisted outpatient treatment shall not be grounds for involun-
25 tary civil commitment or a finding of contempt of court.

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

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

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

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

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

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

55 (O) IF THE DIRECTOR OF A DEPARTMENT FACILITY DOES NOT PETITION FOR
56 ASSISTED OUTPATIENT TREATMENT PURSUANT TO SECTION 9.60 OF THIS CHAPTER

1 UPON THE DISCHARGE OF AN INPATIENT ADMITTED PURSUANT TO SECTION 9.27,
2 9.39 OR 9.40 OF THIS CHAPTER, OR UPON THE EXPIRATION OF A PERIOD OF
3 CONDITIONAL RELEASE FOR SUCH INPATIENT, SUCH DIRECTOR SHALL REPORT SUCH
4 DISCHARGE OR SUCH EXPIRATION IN WRITING TO THE DIRECTOR OF COMMUNITY
5 SERVICES OF THE LOCAL GOVERNMENTAL UNIT IN WHICH THE INPATIENT IS
6 EXPECTED TO RESIDE.

7 S 7. Subdivision 3 of section 404 of the correction law, as added by
8 chapter 1 of the laws of 2013, is amended to read as follows:

9 3. Within a reasonable period prior to discharge of an inmate commit-
10 ted from a [state correctional facility from a] hospital in the depart-
11 ment of mental hygiene to the community, the director shall ensure that
12 a clinical assessment has been completed to determine whether the inmate
13 meets the criteria for assisted outpatient treatment pursuant to subdivi-
14 sion (c) of section 9.60 of the mental hygiene law. If, as a result of
15 such assessment, the director determines that the inmate meets such
16 criteria, prior to discharge the director of the hospital shall either
17 petition for a court order pursuant to section 9.60 of the mental
18 hygiene law, or report in writing to the director of community services
19 of the local governmental unit in which the inmate is expected to reside
20 so that an investigation may be conducted pursuant to section 9.47 of
21 the mental hygiene law.

22 S 8. Section 18 of chapter 408 of the laws of 1999, constituting
23 Kendra's Law, as amended by chapter 1 of the laws of 2013, is amended to
24 read as follows:

25 S 18. This act shall take effect immediately, provided that section
26 fifteen of this act shall take effect April 1, 2000, provided, further,
27 that subdivision (e) of section 9.60 of the mental hygiene law as added
28 by section six of this act shall be effective 90 days after this act
29 shall become law[; and that this act shall expire and be deemed repealed
30 June 30, 2017].

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

37 S 10. This act shall take effect immediately.