

1544--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. GUNTHER, MAISEL, ZEBROWSKI, THIELE, GABRYSZAK, WEISENBERG, SCHIMEL, ROBINSON, PAULIN, JAFFEE, ROBERTS, ENGLEBRIGHT, COOK, WEPRIN -- Multi-Sponsored by -- M. of A. ABBATE, ABINANTI, ARROYO, BOYLAND, CERETTO, CROUCH, DenDEKKER, DINOWITZ, GOODELL, JOHNS, JORDAN, LUPARDO, MARKEY, McDONOUGH, MILLMAN, PALMESANO, PERRY, PRETLOW, RABBITT, RAIA, SALADINO, TENNEY, TITONE -- read once and referred to the Committee on Mental Health -- 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;
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.

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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, paragraphs 5 and 6 as added
36 and paragraph 7 as renumbered by chapter 1 of the laws of 2013, is
37 amended to read as follows:

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

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

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

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

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

1 (5) ensuring evaluation of the need for ongoing assisted outpatient
2 treatment pursuant to subdivision [(k)] (M) of section 9.60 of this
3 article prior to the expiration of any assisted outpatient treatment
4 order;

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

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

19 (8) reporting on a quarterly basis to program coordinators the infor-
20 mation collected pursuant to this subdivision.

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

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

29 S 5. Section 9.60 of the mental hygiene law, as amended by chapter 158
30 of the laws of 2005, paragraph 1 of subdivision (a) as amended by
31 section 1 of part E of chapter 111 of the laws of 2010, paragraph 3 of
32 subdivision (a), paragraphs 2 and 5 of subdivision (j), and subdivisions
33 (k) and (n) as amended by chapter 1 of the laws of 2013, paragraph 5 of
34 subdivision (c) as amended by chapter 137 of the laws of 2005, is
35 amended to read as follows:

36 S 9.60 Assisted outpatient treatment.

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

39 (1) "assisted outpatient treatment" shall mean categories of outpa-
40 tient services [which] THAT have been ordered by the court pursuant to
41 this section. Such treatment shall include case management services or
42 assertive community treatment team services to provide care coordi-
43 nation, and may also include any of the following categories of
44 services: medication SUPPORT; MEDICATION EDUCATION OR SYMPTOM MANAGEMENT
45 EDUCATION; periodic blood tests or urinalysis to determine compliance
46 with prescribed medications; individual or group therapy; day or partial
47 day programming activities; educational and vocational training or
48 activities; APPOINTMENT OF A REPRESENTATIVE PAYEE OR OTHER FINANCIAL
49 MANAGEMENT SERVICES, SUBJECT TO FINAL APPROVAL OF THE SOCIAL SECURITY
50 ADMINISTRATION, WHERE APPLICABLE; alcohol or substance abuse treatment
51 and counseling and periodic OR RANDOM tests for the presence of alcohol
52 or illegal drugs for persons with a history of alcohol or substance
53 abuse; supervision of living arrangements; and any other services within
54 a local services plan developed pursuant to article forty-one of this
55 chapter, CLINICAL OR NON-CLINICAL, prescribed to treat the person's
56 mental illness and to assist the person in living and functioning in the

1 community, or to attempt to prevent a relapse or deterioration that may
2 reasonably be predicted to result in [suicide] SERIOUS PHYSICAL HARM TO
3 ANY PERSON or the need for hospitalization.

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

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

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

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

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

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

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

29 (9) "program coordinator" shall mean an individual appointed by the
30 commissioner [of mental health], pursuant to subdivision (f) of section
31 7.17 of this chapter, who is responsible for the oversight and monitor-
32 ing of assisted outpatient treatment programs.

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

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

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

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

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

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

52 (i) [prior to the filing of the petition,] at least twice within the
53 [last] thirty-six months PRIOR TO THE FILING OF THE PETITION been a
54 significant factor in necessitating hospitalization in a hospital, or
55 receipt of services in a forensic or other mental health unit of a
56 correctional facility or a local correctional facility[, not including];

1 PROVIDED THAT SUCH THIRTY-SIX MONTH PERIOD SHALL BE EXTENDED BY THE
2 LENGTH OF any current period[, or period ending] OF HOSPITALIZATION OR
3 INCARCERATION, AND ANY SUCH PERIOD THAT ENDED within the last six
4 months[, during which the person was or is hospitalized or incarcerat-
5 ed]; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 days, Sundays and holidays. Adjournments shall be permitted only for
2 good cause shown. In granting adjournments, the court shall consider the
3 need for further examination by a physician or the potential need to
4 provide assisted outpatient treatment expeditiously. The court shall
5 cause the subject of the petition, any other person receiving notice
6 pursuant to subdivision [(f)] (G) of this section, the petitioner, the
7 physician whose affirmation or affidavit accompanied the petition, and
8 such other persons as the court may determine to be advised of such
9 date. Upon such date, or upon such other date to which the proceeding
10 may be adjourned, the court shall hear testimony and, if it be deemed
11 advisable and the subject of the petition is available, examine the
12 subject of the petition in or out of court. If the subject of the peti-
13 tion does not appear at the hearing, and appropriate attempts to elicit
14 the attendance of the subject have failed, the court may conduct the
15 hearing in the subject's absence. In such case, the court shall set
16 forth the factual basis for conducting the hearing without the presence
17 of the subject of the petition.

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

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

46 (4) A physician who testifies pursuant to paragraph two of this subdi-
47 vision shall state: (i) the facts [which] AND CLINICAL DETERMINATIONS
48 THAT support the allegation that the subject meets each of the criteria
49 for assisted outpatient treatment, (ii) that the treatment is the least
50 restrictive alternative, (iii) the recommended assisted outpatient
51 treatment, and (iv) the rationale for the recommended assisted outpa-
52 tient treatment. If the recommended assisted outpatient treatment
53 includes medication, such physician's testimony shall describe the types
54 or classes of medication which should be authorized, shall describe the
55 beneficial and detrimental physical and mental effects of such medica-

1 tion, and shall recommend whether such medication should be self-admin-
2 istered or administered by authorized personnel.

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

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

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

47 (3) The court shall not order assisted outpatient treatment unless a
48 physician appearing on behalf of a director testifies to explain the
49 written proposed treatment plan; PROVIDED THAT THE PARTIES MAY STIPU-
50 LATE, UPON MUTUAL CONSENT, THAT SUCH PHYSICIAN NEED NOT TESTIFY. Such
51 physician shall state the categories of assisted outpatient treatment
52 recommended, the rationale for each such category, facts which establish
53 that such treatment is the least restrictive alternative, and, if the
54 recommended assisted outpatient treatment plan includes medication, such
55 physician shall state the types or classes of medication recommended,
56 the beneficial and detrimental physical and mental effects of such medi-

1 cation, and whether such medication should be self-administered or
2 administered by an authorized professional. If the subject of the peti-
3 tion has executed a health care proxy, such physician shall state the
4 consideration given to any directions included in such proxy in develop-
5 ing the written treatment plan. If a director is the petitioner, testi-
6 mony pursuant to this paragraph shall be given at the hearing on the
7 petition. If a person other than a director is the petitioner, such
8 testimony shall be given on the date set by the court pursuant to para-
9 graph three of subdivision [(j)] (K) of this section.

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

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

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

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

47 (5) If the petitioner is the director of a hospital that operates an
48 assisted outpatient treatment program, the court order shall direct the
49 hospital director to provide or arrange for all categories of assisted
50 outpatient treatment for the assisted outpatient throughout the period
51 of the order. In all other instances, the order shall require the appro-
52 priate director, as that term is defined in this section, to provide or
53 arrange for all categories of assisted outpatient treatment for the
54 assisted outpatient throughout the period of the order. ORDERS ISSUED
55 ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOU-
56 SAND THIRTEEN THAT AMENDED THIS SECTION SHALL REQUIRE THE APPROPRIATE

1 DIRECTOR "AS DETERMINED BY THE PROGRAM COORDINATOR" TO PROVIDE OR
2 ARRANGE FOR ALL CATEGORIES OF ASSISTED OUTPATIENT TREATMENT FOR THE
3 ASSISTED OUTPATIENT THROUGHOUT THE PERIOD OF THE ORDER.

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

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

20 (M) Petition for [additional periods of] CONTINUED treatment. (1)
21 [Prior] WITHIN THIRTY DAYS PRIOR to the expiration of an order pursuant
22 to this section, the appropriate director shall review whether the
23 assisted outpatient continues to meet the criteria for assisted outpa-
24 tient treatment. [If, as documented in the petition, the director deter-
25 mines that such criteria continue to be met or has made appropriate
26 attempts to, but has not been successful in eliciting, the cooperation
27 of the subject to submit to an examination, within thirty days prior to
28 the expiration of an order of assisted outpatient treatment, such direc-
29 tor may petition the court to order continued assisted outpatient treat-
30 ment pursuant to paragraph two of this subdivision. Upon determining
31 whether such criteria continue to be met, such director shall notify the
32 program coordinator in writing as to whether a petition for continued
33 assisted outpatient treatment is warranted and whether such a petition
34 was or will be filed.] UPON DETERMINING THAT ONE OR MORE OF SUCH CRITE-
35 RIA ARE NO LONGER MET, SUCH DIRECTOR SHALL NOTIFY THE PROGRAM COORDINA-
36 TOR IN WRITING THAT A PETITION FOR CONTINUED ASSISTED OUTPATIENT TREAT-
37 MENT IS NOT WARRANTED. UPON DETERMINING THAT SUCH CRITERIA CONTINUE TO
38 BE MET, HE OR SHE SHALL PETITION THE COURT TO ORDER CONTINUED ASSISTED
39 OUTPATIENT TREATMENT FOR A PERIOD NOT TO EXCEED ONE YEAR FROM THE EXPI-
40 RATION DATE OF THE CURRENT ORDER. IF THE COURT'S DISPOSITION OF SUCH
41 PETITION DOES NOT OCCUR PRIOR TO THE EXPIRATION DATE OF THE CURRENT
42 ORDER, THE CURRENT ORDER SHALL REMAIN IN EFFECT UNTIL SUCH DISPOSITION.
43 THE PROCEDURES FOR OBTAINING ANY ORDER PURSUANT TO THIS SUBDIVISION
44 SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THE FOREGOING SUBDIVISION
45 OF THIS SECTION; PROVIDED THAT THE TIME RESTRICTIONS INCLUDED IN PARA-
46 GRAPH FOUR OF SUBDIVISION (C) OF THIS SECTION SHALL NOT BE APPLICABLE.
47 THE NOTICE PROVISIONS SET FORTH IN PARAGRAPH SIX OF SUBDIVISION (K) OF
48 THIS SECTION SHALL BE APPLICABLE. ANY COURT ORDER REQUIRING PERIODIC
49 BLOOD TESTS OR URINALYSIS FOR THE PRESENCE OF ALCOHOL OR ILLEGAL DRUGS
50 SHALL BE SUBJECT TO REVIEW AFTER SIX MONTHS BY THE PHYSICIAN WHO DEVEL-
51 OPED THE WRITTEN TREATMENT PLAN OR ANOTHER PHYSICIAN DESIGNATED BY THE
52 DIRECTOR, AND SUCH PHYSICIAN SHALL BE AUTHORIZED TO TERMINATE SUCH BLOOD
53 TESTS OR URINALYSIS WITHOUT FURTHER ACTION BY THE COURT.

54 (2) Within thirty days prior to the expiration of an order of assisted
55 outpatient treatment, [the appropriate director or] the current peti-
56 tioner, if the current petition was filed pursuant to subparagraph (i)

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

19 (3) IF NEITHER THE APPROPRIATE DIRECTOR NOR THE CURRENT PETITIONER
20 PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT PURSUANT TO THIS
21 PARAGRAPH AND THE ORDER OF THE COURT EXPIRES, ANY OTHER PERSON AUTHOR-
22 IZED TO PETITION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (F) OF THIS
23 SECTION MAY BRING A NEW PETITION FOR ASSISTED OUTPATIENT TREATMENT. IF
24 SUCH NEW PETITION IS FILED LESS THAN SIXTY DAYS AFTER THE EXPIRATION OF
25 SUCH ORDER, THE TIME RESTRICTIONS PROVIDED IN PARAGRAPH FOUR OF SUBDIVI-
26 SION (C) OF THIS SECTION SHALL NOT BE APPLICABLE TO THE NEW PETITION.

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

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

45 (2) The appropriate director shall petition the court for approval
46 before instituting a proposed material change in the assisted outpatient
47 treatment plan, unless such change is authorized by the order of the
48 court. SUCH PETITIONS TO CHANGE AN ASSISTED OUTPATIENT TREATMENT PLAN,
49 AS WELL AS PETITIONS FOR CONTINUED TREATMENT, MAY BE MADE TO ANY JUDGE
50 OF THE SUPREME OR COUNTY COURTS IN THE COUNTY IN WHICH THE SUBJECT OF
51 THE PETITION IS PRESENT OR REASONABLY BELIEVED TO BE PRESENT. Such peti-
52 tion shall be filed on notice to all parties entitled to notice under
53 subdivision [(f)] (G) of this section. Not later than five days after
54 receiving such petition, excluding Saturdays, Sundays and holidays, the
55 court shall hold a hearing on the petition; provided that if the
56 assisted outpatient informs the court that he or she agrees to the

1 proposed material change, the court may approve such change without a
2 hearing. Non-material changes may be instituted by the director without
3 court approval. For the purposes of this paragraph, a material change is
4 an addition or deletion of a category of services to or from a current
5 assisted outpatient treatment plan, or any deviation without the
6 assisted outpatient's consent from the terms of a current order relating
7 to the administration of psychotropic drugs.

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

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

1 tal, in accordance with the provisions of this subdivision, based upon a
2 determination of the appropriate director of community services direct-
3 ing the removal of such assisted outpatient pursuant to this subdivi-
4 sion. Such person may be retained for observation, care and treatment
5 and further examination in the hospital for up to seventy-two hours to
6 permit a physician to determine whether such person has a mental illness
7 and is in need of involuntary care and treatment in a hospital pursuant
8 to the provisions of this article. Any continued involuntary retention
9 OF THE ASSISTED OUTPATIENT in such hospital beyond the initial seventy-
10 two hour period shall be in accordance with the provisions of this arti-
11 cle relating to the involuntary admission and retention of a person. If
12 at any time during the seventy-two hour period the person is determined
13 not to meet the involuntary admission and retention provisions of this
14 article, and does not agree to stay in the hospital as a voluntary or
15 informal patient, he or she must be released. Failure to comply with an
16 order of assisted outpatient treatment shall not be grounds for involun-
17 tary civil commitment or a finding of contempt of court.

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

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

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

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

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

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

47 (O) IF THE DIRECTOR OF A DEPARTMENT FACILITY DOES NOT PETITION FOR
48 ASSISTED OUTPATIENT TREATMENT PURSUANT TO SECTION 9.60 OF THIS CHAPTER
49 UPON THE DISCHARGE OF AN INPATIENT ADMITTED PURSUANT TO SECTION 9.27,
50 9.39 OR 9.40 OF THIS CHAPTER, OR UPON THE EXPIRATION OF A PERIOD OF
51 CONDITIONAL RELEASE FOR SUCH INPATIENT, SUCH DIRECTOR SHALL REPORT SUCH
52 DISCHARGE OR SUCH EXPIRATION IN WRITING TO THE DIRECTOR OF COMMUNITY
53 SERVICES OF THE LOCAL GOVERNMENTAL UNIT IN WHICH THE INPATIENT IS
54 EXPECTED TO RESIDE.

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

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

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

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

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

29 S 10. This act shall take effect immediately; provided, however, that
30 if this act shall take effect prior to the effective date of the amend-
31 ments to sections 9.47 and 9.60 of the mental hygiene law and to section
32 404 of the correction law made by chapter 1 of the laws of 2013,
33 sections three, five and seven of this act respectively, shall take
34 effect on the same date and in the same manner as such chapter takes
35 effect.