

2225

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sens. YOUNG, ADAMS, ADDABBO, AVELLA, BALL, BONACIC, BOYLE, DeFRANCISCO, FARLEY, GALLIVAN, GOLDEN, GRIFFO, HASSELL-THOMPSON, LANZA, LARKIN, LIBOUS, LITTLE, MARCELLINO, MARCHIONE, MARTINS, MAZIARZ, NOZZOLIO, RITCHIE, SEWARD, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law and the correction law, in relation to enhancing the assisted outpatient treatment program; 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
16 compliance, or lack of compliance with treatment, to the director of the
17 assisted outpatient treatment program;
18 (v) that directors of community services establish procedures [which]
19 THAT provide that reports of persons who may be in need of assisted

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

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1 outpatient treatment are appropriately investigated in a timely manner;
2 [and]

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (6) reporting on a quarterly basis to program coordinators the infor-
55 mation collected pursuant to this subdivision.

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

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

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

14 S 9.60 Assisted outpatient treatment.

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

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

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

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

45 (4) "assisted outpatient treatment program" shall mean a system to
46 arrange for and coordinate the provision of assisted outpatient treat-
47 ment, to monitor treatment compliance by assisted outpatients, to evalu-
48 ate the condition or needs of assisted outpatients, to take appropriate
49 steps to address the needs of such individuals, and to ensure compliance
50 with court orders.

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

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

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

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

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

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

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

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

(2) is suffering from a mental illness; and

(3) is unlikely to survive safely in the community without supervision, based on a clinical determination; and

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

(i) [prior to the filing of the petition,] at least twice within the [last] thirty-six months PRIOR TO THE FILING OF THE PETITION been a significant factor in necessitating hospitalization in a hospital, or receipt of services in a forensic or other mental health unit of a correctional facility or a local correctional facility[, not including]; PROVIDED THAT SUCH THIRTY-SIX MONTH PERIOD SHALL BE EXTENDED BY THE LENGTH OF any current period[, or period ending] OF HOSPITALIZATION OR INCARCERATION, AND ANY SUCH PERIOD THAT ENDED within the last six months[, during which the person was or is hospitalized or incarcerated]; or

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

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

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

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

(d) Health care proxy. Nothing in this section shall preclude a person with a health care proxy from being subject to a petition pursuant to

1 this chapter and consistent with article twenty-nine-C of the public
2 health law.

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

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

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

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

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

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

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

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

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

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

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

38 (2) THE COMMISSIONER SHALL PROMULGATE REGULATIONS PURSUANT TO WHICH
39 PERSONS INITIATING A PETITION, PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF
40 PARAGRAPH ONE OF THIS SUBDIVISION, MAY RECEIVE ASSISTANCE IN FILING SUCH
41 PETITIONS, WHERE APPROPRIATE, AS DETERMINED PURSUANT TO SUBDIVISION (E)
42 OF THIS SECTION.

43 (3) The petition shall state:

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

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

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

51 [(3)] (4) The petition shall be accompanied by an affirmation or affi-
52 davit of a physician, who shall not be the petitioner, stating THAT SUCH
53 PHYSICIAN IS WILLING AND ABLE TO TESTIFY AT THE HEARING ON THE PETITION
54 AND THAT either [that]:

55 (i) such physician has personally examined the subject of the petition
56 no more than ten days prior to the submission of the petition[,] AND

1 recommends assisted outpatient treatment for the subject of the peti-
2 tion[, and is willing and able to testify at the hearing on the peti-
3 tion]; or

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

12 [(4)] (5) In counties with a population of less than seventy-five
13 thousand, the affirmation or affidavit required by paragraph [three]
14 FOUR of this subdivision may be made by a physician who is an employee
15 of the office. The office is authorized AND DIRECTED to make available,
16 at no cost to the county, a qualified physician for the purpose of
17 making such affirmation or affidavit consistent with the provisions of
18 such paragraph.

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

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

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

50 (2) The court shall not order assisted outpatient treatment unless an
51 examining physician, who recommends assisted outpatient treatment and
52 has personally examined the subject of the petition no more than ten
53 days before the filing of the petition, testifies in person at the hear-
54 ing. Such physician shall state the facts and clinical determinations
55 which support the allegation that the subject of the petition meets each
56 of the criteria for assisted outpatient treatment; PROVIDED THAT THE

1 PARTIES MAY STIPULATE, UPON MUTUAL CONSENT, THAT SUCH PHYSICIAN NEED NOT
2 TESTIFY.

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

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

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

37 [(i)] (J) Written treatment plan. (1) The court shall not order
38 assisted outpatient treatment unless a physician appointed by the appro-
39 priate director, in consultation with such director, develops and
40 provides to the court a proposed written treatment plan. The written
41 treatment plan shall include case management services or assertive
42 community treatment team services to provide care coordination. The
43 written treatment plan also shall include all categories of services, as
44 set forth in paragraph one of subdivision (a) of this section, which
45 such physician recommends that the subject of the petition receive. All
46 service providers shall be notified regarding their inclusion in the
47 written treatment plan. If the written treatment plan includes medica-
48 tion, it shall state whether such medication should be self-administered
49 or administered by authorized personnel, and shall specify type and
50 dosage range of medication most likely to provide maximum benefit for
51 the subject. If the written treatment plan includes alcohol or substance
52 abuse counseling and treatment, such plan may include a provision
53 requiring relevant testing for either alcohol or illegal substances
54 provided the physician's clinical basis for recommending such plan
55 provides sufficient facts for the court to find (i) that such person has
56 a history of alcohol or substance abuse that is clinically related to

1 the mental illness; and (ii) that such testing is necessary to prevent a
2 relapse or deterioration which would be likely to result in serious harm
3 to the person or others. If a director is the petitioner, the written
4 treatment plan shall be provided to the court no later than the date of
5 the hearing on the petition. If a person other than a director is the
6 petitioner, such plan shall be provided to the court no later than the
7 date set by the court pursuant to paragraph three of subdivision [(j)]
8 (K) of this section.

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

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

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

45 (2) If after hearing all relevant evidence, the court finds by clear
46 and convincing evidence that the subject of the petition meets the
47 criteria for assisted outpatient treatment, and there is no appropriate
48 and feasible less restrictive alternative, the court may order the
49 subject to receive assisted outpatient treatment for an initial period
50 not to exceed [six months] ONE YEAR. In fashioning the order, the court
51 shall specifically make findings by clear and convincing evidence that
52 the proposed treatment is the least restrictive treatment appropriate
53 and feasible for the subject. The order shall state an assisted outpa-
54 tient treatment plan, which shall include all categories of assisted
55 outpatient treatment, as set forth in paragraph one of subdivision (a)
56 of this section, which the assisted outpatient is to receive, but shall

1 not include any such category that has not been recommended in [both]
2 the proposed written treatment plan and [the] IN ANY testimony provided
3 to the court pursuant to subdivision [(i)] (J) of this section.

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

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

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

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

41 [(k)] (L) RELOCATION OF ASSISTED OUTPATIENTS. THE COMMISSIONER SHALL
42 PROMULGATE REGULATIONS REQUIRING THAT, DURING THE PERIOD OF THE ORDER,
43 AN ASSISTED OUTPATIENT AND ANY OTHER APPROPRIATE PERSONS SHALL NOTIFY
44 THE PROGRAM COORDINATOR WITHIN A REASONABLE TIME PRIOR TO SUCH ASSISTED
45 OUTPATIENT RELOCATING WITHIN THE STATE OF NEW YORK TO AN AREA NOT SERVED
46 BY THE DIRECTOR WHO HAS BEEN DIRECTED TO PROVIDE OR ARRANGE FOR THE
47 ASSISTED OUTPATIENT TREATMENT. UPON RECEIVING NOTIFICATION OF SUCH RELO-
48 CATION, THE PROGRAM COORDINATOR SHALL REDETERMINE WHO THE APPROPRIATE
49 DIRECTOR SHALL BE AND CAUSE A COPY OF THE COURT ORDER AND TREATMENT PLAN
50 TO BE TRANSMITTED TO SUCH DIRECTOR.

51 (M) Petition for [additional periods of] CONTINUED treatment. (1)
52 WITHIN THIRTY DAYS PRIOR TO THE EXPIRATION OF AN ORDER PURSUANT TO THIS
53 SECTION, THE APPROPRIATE DIRECTOR SHALL REVIEW WHETHER THE ASSISTED
54 OUTPATIENT CONTINUES TO MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREAT-
55 MENT. UPON DETERMINING THAT ONE OR MORE OF SUCH CRITERIA ARE NO LONGER
56 MET, SUCH DIRECTOR SHALL NOTIFY THE PROGRAM COORDINATOR IN WRITING THAT

1 A PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT IS NOT WARRANTED.
2 UPON DETERMINING THAT SUCH CRITERIA CONTINUE TO BE MET, HE OR SHE SHALL
3 PETITION THE COURT TO ORDER CONTINUED ASSISTED OUTPATIENT TREATMENT FOR
4 A PERIOD NOT TO EXCEED ONE YEAR FROM THE EXPIRATION DATE OF THE CURRENT
5 ORDER. IF THE COURT'S DISPOSITION OF SUCH PETITION DOES NOT OCCUR PRIOR
6 TO THE EXPIRATION DATE OF THE CURRENT ORDER, THE CURRENT ORDER SHALL
7 REMAIN IN EFFECT UNTIL SUCH DISPOSITION. THE PROCEDURES FOR OBTAINING
8 ANY ORDER PURSUANT TO THIS SUBDIVISION SHALL BE IN ACCORDANCE WITH THE
9 PROVISIONS OF THE FOREGOING SUBDIVISION OF THIS SECTION; PROVIDED THAT
10 THE TIME RESTRICTIONS INCLUDED IN PARAGRAPH FOUR OF SUBDIVISION (C) OF
11 THIS SECTION SHALL NOT BE APPLICABLE. THE NOTICE PROVISIONS SET FORTH IN
12 PARAGRAPH SIX OF SUBDIVISION (K) OF THIS SECTION SHALL BE APPLICABLE.
13 ANY COURT ORDER REQUIRING PERIODIC BLOOD TESTS OR URINALYSIS FOR THE
14 PRESENCE OF ALCOHOL OR ILLEGAL DRUGS SHALL BE SUBJECT TO REVIEW AFTER
15 SIX MONTHS BY THE PHYSICIAN WHO DEVELOPED THE WRITTEN TREATMENT PLAN OR
16 ANOTHER PHYSICIAN DESIGNATED BY THE DIRECTOR, AND SUCH PHYSICIAN SHALL
17 BE AUTHORIZED TO TERMINATE SUCH BLOOD TESTS OR URINALYSIS WITHOUT
18 FURTHER ACTION BY THE COURT.

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

40 (3) IF NEITHER THE APPROPRIATE DIRECTOR NOR THE CURRENT PETITIONER
41 PETITION FOR CONTINUED ASSISTED OUTPATIENT TREATMENT PURSUANT TO THIS
42 PARAGRAPH AND THE ORDER OF THE COURT EXPIRES, ANY OTHER PERSON AUTHOR-
43 IZED TO PETITION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (F) OF THIS
44 SECTION MAY BRING A NEW PETITION FOR ASSISTED OUTPATIENT TREATMENT. IF
45 SUCH NEW PETITION IS FILED LESS THAN SIXTY DAYS AFTER THE EXPIRATION OF
46 SUCH ORDER, THE TIME RESTRICTIONS PROVIDED IN PARAGRAPH FOUR OF SUBDIVI-
47 SION (C) OF THIS SECTION SHALL NOT BE APPLICABLE TO THE NEW PETITION.

48 (4) IF, THIRTY DAYS PRIOR TO THE EXPIRATION OF AN ORDER, THE ASSISTED
49 OUTPATIENT IS DEEMED BY THE APPROPRIATE DIRECTOR TO BE MISSING AND
50 THEREBY UNAVAILABLE FOR EVALUATION AS TO WHETHER HE OR SHE CONTINUES TO
51 MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT, SUCH DIRECTOR SHALL
52 PETITION THE COURT TO EXTEND THE TERM OF THE CURRENT ORDER UNTIL SIXTY
53 DAYS AFTER SUCH TIME AS THE ASSISTED OUTPATIENT IS LOCATED. IF THE COURT
54 GRANTS THE EXTENSION, THE DIRECTOR SHALL CONTINUE REASONABLE EFFORTS TO
55 LOCATE THE ASSISTED OUTPATIENT. UPON LOCATION OF THE ASSISTED OUTPA-
56 TIENT, THE DIRECTOR SHALL REVIEW WHETHER THE ASSISTED OUTPATIENT CONTIN-

UES TO MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT, PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION.

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

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

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

[(n)] (P) Failure to comply with assisted outpatient treatment. Where in the clinical judgment of a physician, (i) the assisted outpatient, has failed or refused to comply with the assisted outpatient treatment, (ii) efforts were made to solicit compliance, and (iii) such assisted outpatient may be in need of involuntary admission to a hospital pursuant to section 9.27 of this article or immediate observation, care and treatment pursuant to section 9.39 or 9.40 of this article, such physician may request the director of community services, the director's designee, or any physician designated by the director of community services pursuant to section 9.37 of this article, to direct the removal of such assisted outpatient to an appropriate hospital for an examination to determine if such person has a mental illness for which HE OR SHE IS IN NEED OF hospitalization is necessary pursuant to section 9.27, 9.39 or 9.40 of this article[. Furthermore, if such assisted outpatient refuses to take medications as required by the court order, or he or she refuses to take, or fails a blood test, urinalysis, or alcohol or drug test as required by the court order, such physician may consider such refusal or failure when determining whether]; PROVIDED THAT IF, AFTER EFFORTS TO SOLICIT COMPLIANCE, SUCH PHYSICIAN DETERMINES THAT THE ASSISTED OUTPATIENT'S FAILURE TO COMPLY WITH THE ASSISTED OUTPATIENT TREATMENT INCLUDES A SUBSTANTIAL FAILURE TO TAKE MEDICATION, PASS OR SUBMIT TO BLOOD TESTING OR URINALYSIS, OR RECEIVE TREATMENT FOR ALCOHOL OR SUBSTANCE ABUSE, SUCH PHYSICIAN MAY PRESUME THAT the assisted outpatient is in need of an examination to determine whether he or she has a mental illness for which hospitalization is necessary. Upon the request of such physician, the director, the director's designee, or any physician designated pursuant to section 9.37 of this article, may direct peace officers, acting pursuant to their special duties, or police offi-

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

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

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

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

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

55 (2) The office, in consultation with the office of court adminis-
56 tration, shall establish a mental health training program for supreme

1 and county court judges and court personnel, AND SHALL PROVIDE SUCH
2 TRAINING WITH SUCH FREQUENCY AND IN SUCH LOCATIONS AS MAY BE APPROPRIATE
3 TO MEET STATEWIDE NEEDS. Such training shall focus on the use of this
4 section and generally address issues relating to mental illness and
5 mental health treatment.

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

8 (O) IF THE DIRECTOR OF A DEPARTMENT FACILITY DOES NOT PETITION FOR
9 ASSISTED OUTPATIENT TREATMENT PURSUANT TO SECTION 9.60 OF THIS CHAPTER
10 UPON THE DISCHARGE OF AN INPATIENT ADMITTED PURSUANT TO SECTION 9.27,
11 9.39 OR 9.40 OF THIS CHAPTER, OR UPON THE EXPIRATION OF A PERIOD OF
12 CONDITIONAL RELEASE FOR SUCH INPATIENT, SUCH DIRECTOR SHALL REPORT SUCH
13 DISCHARGE OR SUCH EXPIRATION IN WRITING TO THE DIRECTOR OF COMMUNITY
14 SERVICES OF THE LOCAL GOVERNMENTAL UNIT IN WHICH THE INPATIENT IS
15 EXPECTED TO RESIDE.

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

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

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

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

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

49 S 10. This act shall take effect immediately.