

# STATE OF NEW YORK

2414

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

Introduced by M. of A. GUNTHER, ZEBROWSKI, PAULIN, THIELE, JAFFEE, ENGLEBRIGHT, COOK, WEPRIN, OTIS, STECK, WILLIAMS, CUSICK, COLTON, MONTESANO, PALUMBO, WALLACE -- Multi-Sponsored by -- M. of A. ABBATE, ABINANTI, ARROYO, BUCHWALD, CROUCH, DenDEKKER, DINOWITZ, GOODELL, HAWLEY, JOHNS, LUPARDO, McDONOUGH, MOSLEY, PALMESANO, PERRY, PRETLOW, RAIA, RIVERA, STEC, WALSH -- read once and referred to the Committee on Mental Health

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;

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

LBD01829-01-9

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

5 (vi) that assisted outpatient treatment services are delivered in a  
6 timely manner[~~+~~];

7 (vii) that, prior to the expiration of assisted outpatient treatment  
8 orders, the clinical needs of assisted outpatients are adequately  
9 reviewed in determining the need to petition for continued assisted  
10 outpatient treatment pursuant to subdivision (m) of section 9.60 of this  
11 title;

12 (viii) that the appropriate director is determined for each assisted  
13 outpatient, pursuant to subdivisions (k) and (l) of section 9.60 of this  
14 title; and

15 (ix) that the office fulfills its duties pursuant to subdivision (t)  
16 of section 9.60 of this title to meet local needs for training of judges  
17 and court personnel.

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

20 (5) The commissioner shall develop an educational pamphlet on the  
21 process of petitioning for assisted outpatient treatment for dissem-  
22 ination to individuals seeking to submit reports of persons who may be  
23 in need of assisted outpatient treatment, and individuals seeking to  
24 file a petition pursuant to subparagraph (i) or (ii) of paragraph one of  
25 subdivision (f) of section 9.60 of this title. Such pamphlet shall set  
26 forth, in plain language: the criteria for assisted outpatient treat-  
27 ment, resources available to such individuals, the responsibilities of  
28 program coordinators and directors of community services, a summary of  
29 current law, the process for petitioning for continued assisted outpa-  
30 tient treatment, and other such information the commissioner determines  
31 to be pertinent.

32 § 3. Subdivision (b) of section 9.47 of the mental hygiene law, as  
33 amended by chapter 158 of the laws of 2005, paragraphs 5 and 6 as added  
34 and paragraph 7 as renumbered by chapter 1 of the laws of 2013, is  
35 amended to read as follows:

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

37 (1) receiving reports of persons who may be in need of assisted outpa-  
38 tient treatment pursuant to section 9.60 of this article and documenting  
39 the receipt date of such reports;

40 (2) conducting timely investigations of such reports received pursuant  
41 to paragraph one of this subdivision and providing written notice upon  
42 the completion of investigations to reporting persons and program coor-  
43 dinators, appointed by the commissioner [~~of mental health~~] pursuant to  
44 subdivision (f) of section 7.17 of this title, and documenting the  
45 initiation and completion dates of such investigations and the disposi-  
46 tions;

47 (3) filing of petitions for assisted outpatient treatment pursuant to  
48 [~~paragraph~~] subparagraph (vii) of paragraph one of subdivision [~~(e)~~] (f)  
49 of section 9.60 of this article, and documenting the petition filing  
50 [~~date~~] dates and the [~~date~~] dates of the court [~~order~~] orders;

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

54 (5) ensuring evaluation of the need for ongoing assisted outpatient  
55 treatment pursuant to subdivision [~~(k)~~] (m) of section 9.60 of this

1 article prior to the expiration of any assisted outpatient treatment  
2 order;

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

14 (7) notifying program coordinators when assisted outpatients cannot be  
15 located after reasonable efforts or are believed to have taken residence  
16 outside of the local governmental unit served; and

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

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

22 (viii) an account of any court order expiration, including but not  
23 limited to the director's determination as to whether to petition for  
24 continued assisted outpatient treatment, pursuant to section 9.60 of  
25 this article, the basis for such determination, and the disposition of  
26 any such petition;

27 § 5. Section 9.60 of the mental hygiene law, as amended by chapter 158  
28 of the laws of 2005, paragraph 1 of subdivision (a) as amended by  
29 section 1 of part E of chapter 111 of the laws of 2010, paragraph 3 of  
30 subdivision (a), paragraphs 2 and 5 of subdivision (j), and subdivisions  
31 (k) and (n) as amended by chapter 1 of the laws of 2013, paragraph 5 of  
32 subdivision (c) as amended by chapter 137 of the laws of 2005, paragraph  
33 4 of subdivision (e) as amended by chapter 382 of the laws of 2015, is  
34 amended to read as follows:

35 § 9.60 Assisted outpatient treatment.

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

38 (1) "assisted outpatient treatment" shall mean categories of outpa-  
39 tient services [~~which~~] that have been ordered by the court pursuant to  
40 this section. Such treatment shall include case management services or  
41 assertive community treatment team services to provide care coordi-  
42 nation, and may also include any of the following categories of  
43 services: medication support; medication education or symptom management  
44 education; periodic blood tests or urinalysis to determine compliance  
45 with prescribed medications; individual or group therapy; day or partial  
46 day programming activities; educational and vocational training or  
47 activities; appointment of a representative payee or other financial  
48 management services, subject to final approval of the Social Security  
49 Administration, where applicable; alcohol or substance abuse treatment  
50 and counseling and periodic or random tests for the presence of alcohol  
51 or illegal drugs for persons with a history of alcohol or substance  
52 abuse; supervision of living arrangements; and any other services within  
53 a local services plan developed pursuant to article forty-one of this  
54 chapter, clinical or non-clinical, prescribed to treat the person's  
55 mental illness and to assist the person in living and functioning in the  
56 community, or to attempt to prevent a relapse or deterioration that may

1 reasonably be predicted to result in [~~suicide~~] serious physical harm to  
2 any person or the need for hospitalization.

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

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

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

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

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

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

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

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

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

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

- 45 (1) is eighteen years of age or older; and
- 46 (2) is suffering from a mental illness; and
- 47 (3) is unlikely to survive safely in the community without super-  
48 vision, based on a clinical determination; and
- 49 (4) has a history of lack of compliance with treatment for mental  
50 illness that has:

51 (i) [~~prior to the filing of the petition,~~] at least twice within the  
52 [~~last~~] thirty-six months prior to the filing of the petition been a  
53 significant factor in necessitating hospitalization in a hospital, or  
54 receipt of services in a forensic or other mental health unit of a  
55 correctional facility or a local correctional facility[~~, not including~~];  
56 provided that such thirty-six month period shall be extended by the

1 length of any current period[~~, or period ending~~] of hospitalization or  
2 incarceration, and any such period that ended within the last six  
3 months[~~, during which the person was or is hospitalized or incarcerated~~  
4 ~~ed~~]; or

5 (ii) within forty-eight months prior to the filing of the petition,  
6 resulted in one or more acts of serious violent behavior toward self or  
7 others or threats of, or attempts at, serious physical harm to self or  
8 others [~~within the last forty-eight months, not including~~]; provided  
9 that such forty-eight month period shall be extended by the length of  
10 any current period[~~, or period ending~~] of hospitalization or incarcera-  
11 tion, and any such period that ended within the last six months[~~, in~~  
12 ~~which the person was or is hospitalized or incarcerated~~]; and

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

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

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

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

25 (e) Investigation of reports. The commissioner shall promulgate regu-  
26 lations establishing a procedure to ensure that reports of a person who  
27 may be in need of assisted outpatient treatment, including those  
28 received from family and community members of such person, are investi-  
29 gated in a timely manner and, where appropriate, result in the filing of  
30 petitions for assisted outpatient treatment.

31 (f) Petition to the court. (1) A petition for an order authorizing  
32 assisted outpatient treatment may be filed in the supreme or county  
33 court in the county in which the subject of the petition is present or  
34 reasonably believed to be present. When a director of community  
35 services has reason to believe that an assisted outpatient has changed  
36 his or her county of residence, future petitions and applications under  
37 this section may be filed in the supreme or county court in the new  
38 county of residence, which shall have concurrent jurisdiction with the  
39 court that initially ordered such treatment. Such petition may be initi-  
40 ated only by the following persons:

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

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

45 (iii) the director of a hospital in which the subject of the petition  
46 is hospitalized, or pursuant to section four hundred four of the  
47 correction law; or

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

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

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

1 (vii) the director of community services, or his or her designee, or  
2 the social services official, as defined in the social services law, of  
3 the city or county in which the subject of the petition is present or  
4 reasonably believed to be present; or

5 (viii) a parole officer or probation officer assigned to supervise the  
6 subject of the petition~~[r]~~; or

7 (ix) the director of the hospital or the superintendent of a correc-  
8 tional facility in which the subject of the petition is imprisoned,  
9 pursuant to section four hundred four of the correction law.

10 (2) The commissioner shall promulgate regulations pursuant to which  
11 persons initiating a petition, pursuant to subparagraphs (i) and (ii) of  
12 paragraph one of this subdivision, may receive assistance in filing such  
13 petitions, where appropriate, as determined pursuant to subdivision (e)  
14 of this section.

15 (3) The petition shall state:

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

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

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

23 ~~[(3)]~~ (4) The petition shall be accompanied by an affirmation or affi-  
24 davit of a physician, who shall not be the petitioner, stating that such  
25 physician is willing and able to testify at the hearing on the petition  
26 and that either ~~[that]~~:

27 (i) such physician has personally examined the subject of the petition  
28 no more than ten days prior to the submission of the petition~~[r]~~ and  
29 recommends assisted outpatient treatment for the subject of the peti-  
30 tion~~[, and is willing and able to testify at the hearing on the peti-~~  
31 ~~tion]~~; or

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

40 ~~[(4)]~~ (5) In counties with a population of less than eighty thousand,  
41 the affirmation or affidavit required by paragraph ~~[three]~~ four of this  
42 subdivision may be made by a physician who is an employee of the office.  
43 The office is authorized and directed to make available, at no cost to  
44 the county, a qualified physician for the purpose of making such affir-  
45 mation or affidavit consistent with the provisions of such paragraph.

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

53 ~~[(g)]~~ (h) Right to counsel. The subject of the petition shall have the  
54 right to be represented by the mental hygiene legal service, or private-  
55 ly financed counsel, at all stages of a proceeding commenced under this  
56 section.

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

21     (2) The court shall not order assisted outpatient treatment unless an  
22 examining physician, who recommends assisted outpatient treatment and  
23 has personally examined the subject of the petition no more than ten  
24 days before the filing of the petition, testifies in person at the hear-  
25 ing. Such physician shall state the facts and clinical determinations  
26 which support the allegation that the subject of the petition meets each  
27 of the criteria for assisted outpatient treatment; provided that the  
28 parties may stipulate, upon mutual consent, that such physician need not  
29 testify.

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

49     (4) A physician who testifies pursuant to paragraph two of this subdivi-  
50 sion shall state: (i) the facts ~~which~~ and clinical determinations  
51 that support the allegation that the subject meets each of the criteria  
52 for assisted outpatient treatment, (ii) that the treatment is the least  
53 restrictive alternative, (iii) the recommended assisted outpatient  
54 treatment, and (iv) the rationale for the recommended assisted outpa-  
55 tient treatment. If the recommended assisted outpatient treatment  
56 includes medication, such physician's testimony shall describe the types

1 or classes of medication which should be authorized, shall describe the  
2 beneficial and detrimental physical and mental effects of such medica-  
3 tion, and shall recommend whether such medication should be self-admin-  
4 istered or administered by authorized personnel.

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

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

36 (2) The physician appointed to develop the written treatment plan  
37 shall provide the following persons with an opportunity to actively  
38 participate in the development of such plan: the subject of the peti-  
39 tion; the treating physician, if any; and upon the request of the  
40 subject of the petition, an individual significant to the subject  
41 including any relative, close friend or individual otherwise concerned  
42 with the welfare of the subject. The appointed physician shall make a  
43 reasonable effort to gather relevant information for the development of  
44 the treatment plan from the subject of the petition's family member or  
45 members, or his or her significant other. If the subject of the petition  
46 has executed a health care proxy, the appointed physician shall consider  
47 any directions included in such proxy in developing the written treat-  
48 ment plan.

49 (3) The court shall not order assisted outpatient treatment unless a  
50 physician appearing on behalf of a director testifies to explain the  
51 written proposed treatment plan; provided that the parties may stipu-  
52 late, upon mutual consent, that such physician need not testify. Such  
53 physician shall state the categories of assisted outpatient treatment  
54 recommended, the rationale for each such category, facts which establish  
55 that such treatment is the least restrictive alternative, and, if the  
56 recommended assisted outpatient treatment plan includes medication, such

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

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

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

31 (3) If after hearing all relevant evidence presented by a petitioner  
32 who is not a director, the court finds by clear and convincing evidence  
33 that the subject of the petition meets the criteria for assisted outpa-  
34 tient treatment, and the court has yet to be provided with a written  
35 proposed treatment plan and testimony pursuant to subdivision [~~(i)~~] (j)  
36 of this section, the court shall order the appropriate director to  
37 provide the court with such plan and testimony no later than the third  
38 day, excluding Saturdays, Sundays and holidays, immediately following  
39 the date of such order; provided that the parties may stipulate upon  
40 mutual consent that such testimony need not be provided. Upon receiving  
41 such plan and any required testimony, the court may order assisted  
42 outpatient treatment as provided in paragraph two of this subdivision.

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

49 (5) If the petitioner is the director of a hospital that operates an  
50 assisted outpatient treatment program, the court order shall direct the  
51 hospital director to provide or arrange for all categories of assisted  
52 outpatient treatment for the assisted outpatient throughout the period  
53 of the order. In all other instances, the order shall require the appro-  
54 priate director, as that term is defined in this section, to provide or  
55 arrange for all categories of assisted outpatient treatment for the  
56 assisted outpatient throughout the period of the order. Orders issued

1 on or after the effective date of the chapter of the laws of two thou-  
2 sand nineteen that amended this section shall require the appropriate  
3 director "as determined by the program coordinator" to provide or  
4 arrange for all categories of assisted outpatient treatment for the  
5 assisted outpatient throughout the period of the order.

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

12 ~~(k)~~ (l) Relocation of assisted outpatients. The commissioner shall  
13 promulgate regulations requiring that, during the period of the order,  
14 an assisted outpatient and any other appropriate persons shall notify  
15 the program coordinator within a reasonable time prior to such assisted  
16 outpatient relocating within the state of New York to an area not served  
17 by the director who has been directed to provide or arrange for the  
18 assisted outpatient treatment. Upon receiving notification of such relo-  
19 cation, the program coordinator shall redetermine who the appropriate  
20 director shall be and cause a copy of the court order and treatment plan  
21 to be transmitted to such director.

22 (m) Petition for ~~additional periods of~~ continued treatment. (1)  
23 ~~Prior~~ Within thirty days prior to the expiration of an order pursuant  
24 to this section, the appropriate director shall review whether the  
25 assisted outpatient continues to meet the criteria for assisted outpa-  
26 tient treatment. ~~If, as documented in the petition, the director deter-~~  
27 ~~mines that such criteria continue to be met or has made appropriate~~  
28 ~~attempts to, but has not been successful in eliciting, the cooperation~~  
29 ~~of the subject to submit to an examination, within thirty days prior to~~  
30 ~~the expiration of an order of assisted outpatient treatment, such direc-~~  
31 ~~tor may petition the court to order continued assisted outpatient treat-~~  
32 ~~ment pursuant to paragraph two of this subdivision. Upon determining~~  
33 ~~whether such criteria continue to be met, such director shall notify the~~  
34 ~~program coordinator in writing as to whether a petition for continued~~  
35 ~~assisted outpatient treatment is warranted and whether such a petition~~  
36 ~~was or will be filed.~~ Upon determining that one or more of such crite-  
37 ria are no longer met, such director shall notify the program coordina-  
38 tor in writing that a petition for continued assisted outpatient treat-  
39 ment is not warranted. Upon determining that such criteria continue to  
40 be met, he or she shall petition the court to order continued assisted  
41 outpatient treatment for a period not to exceed one year from the expi-  
42 ration date of the current order. If the court's disposition of such  
43 petition does not occur prior to the expiration date of the current  
44 order, the current order shall remain in effect until such disposition.  
45 The procedures for obtaining any order pursuant to this subdivision  
46 shall be in accordance with the provisions of the foregoing subdivision  
47 of this section; provided that the time restrictions included in para-  
48 graph four of subdivision (c) of this section shall not be applicable.  
49 The notice provisions set forth in paragraph six of subdivision (k) of  
50 this section shall be applicable. Any court order requiring periodic  
51 blood tests or urinalysis for the presence of alcohol or illegal drugs  
52 shall be subject to review after six months by the physician who devel-  
53 oped the written treatment plan or another physician designated by the  
54 director, and such physician shall be authorized to terminate such blood  
55 tests or urinalysis without further action by the court.

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

22 [~~(i)~~] (3) If neither the appropriate director nor the current peti-  
23 tioner petition for continued assisted outpatient treatment pursuant to  
24 this paragraph and the order of the court expires, any other person  
25 authorized to petition pursuant to paragraph one of subdivision (f) of  
26 this section may bring a new petition for assisted outpatient treatment.  
27 If such new petition is filed less than sixty days after the expiration  
28 of such order, the time restrictions provided in paragraph four of  
29 subdivision (c) of this section shall not be applicable to the new peti-  
30 tion.

31 (4) If, thirty days prior to the expiration of an order, the assisted  
32 outpatient is deemed by the appropriate director to be missing and  
33 thereby unavailable for evaluation as to whether he or she continues to  
34 meet the criteria for assisted outpatient treatment, such director shall  
35 petition the court to extend the term of the current order until sixty  
36 days after such time as the assisted outpatient is located. If the court  
37 grants the extension, the director shall continue reasonable efforts to  
38 locate the assisted outpatient. Upon location of the assisted outpa-  
39 tient, the director shall review whether the assisted outpatient contin-  
40 ues to meet the criteria for assisted outpatient treatment, pursuant to  
41 paragraph two of this subdivision.

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

49 (2) The appropriate director shall petition the court for approval  
50 before instituting a proposed material change in the assisted outpatient  
51 treatment plan, unless such change is authorized by the order of the  
52 court. Such petitions to change an assisted outpatient treatment plan,  
53 as well as petitions for continued treatment, may be made to any judge  
54 of the supreme or county courts in the county in which the subject of  
55 the petition is present or reasonably believed to be present. Such peti-  
56 tion shall be filed on notice to all parties entitled to notice under

1 subdivision [~~(f)~~] (g) of this section. Not later than five days after  
2 receiving such petition, excluding Saturdays, Sundays and holidays, the  
3 court shall hold a hearing on the petition; provided that if the  
4 assisted outpatient informs the court that he or she agrees to the  
5 proposed material change, the court may approve such change without a  
6 hearing. Non-material changes may be instituted by the director without  
7 court approval. For the purposes of this paragraph, a material change is  
8 an addition or deletion of a category of services to or from a current  
9 assisted outpatient treatment plan, or any deviation without the  
10 assisted outpatient's consent from the terms of a current order relating  
11 to the administration of psychotropic drugs.

12 [~~(m)~~] (o) Appeals. Review of an order issued pursuant to this section  
13 shall be had in like manner as specified in section 9.35 of this  
14 article; provided that notice shall be provided to all parties entitled  
15 to notice under subdivision (g) of this section.

16 [~~(n)~~] (p) Failure to comply with assisted outpatient treatment. Where  
17 in the clinical judgment of a physician, (i) the assisted outpatient,  
18 has failed or refused to comply with the assisted outpatient treatment,  
19 (ii) efforts were made to solicit compliance, and (iii) such assisted  
20 outpatient may be in need of involuntary admission to a hospital pursu-  
21 ant to section 9.27 of this article or immediate observation, care and  
22 treatment pursuant to section 9.39 or 9.40 of this article, such physi-  
23 cian may request the appropriate director of community services, the  
24 director's designee, or any physician designated by the director of  
25 community services pursuant to section 9.37 of this article, to direct  
26 the removal of such assisted outpatient to an appropriate hospital for  
27 an examination to determine if such person has a mental illness for  
28 which he or she is in need of hospitalization is necessary pursuant to  
29 section 9.27, 9.39 or 9.40 of this article[~~, Furthermore, if such~~  
30 ~~assisted outpatient refuses to take medications as required by the court~~  
31 ~~order, or he or she refuses to take, or fails a blood test, urinalysis,~~  
32 ~~or alcohol or drug test as required by the court order, such physician~~  
33 ~~may consider such refusal or failure when determining whether]; provided  
34 that if, after efforts to solicit compliance, such physician determines  
35 that the assisted outpatient's failure to comply with the assisted  
36 outpatient treatment includes a substantial failure to take medication,  
37 pass or submit to blood testing or urinalysis, or receive treatment for  
38 alcohol or substance abuse, such physician may presume that the assisted  
39 outpatient is in need of an examination to determine whether he or she  
40 has a mental illness for which hospitalization is necessary. Upon the  
41 request of such physician, the appropriate director, the director's  
42 designee, or any physician designated pursuant to section 9.37 of this  
43 article, may direct peace officers, acting pursuant to their special  
44 duties, or police officers who are members of an authorized police  
45 department or force or of a sheriff's department to take the assisted  
46 outpatient into custody and transport him or her to the hospital operat-  
47 ing the assisted outpatient treatment program or to any hospital author-  
48 ized by the director of community services to receive such persons. Such  
49 law enforcement officials shall carry out such directive. Upon the  
50 request of such physician, the appropriate director, the director's  
51 designee, or any physician designated pursuant to section 9.37 of this  
52 article, an ambulance service, as defined by subdivision two of section  
53 three thousand one of the public health law, or an approved mobile  
54 crisis outreach team as defined in section 9.58 of this article shall be  
55 authorized to take into custody and transport any such person to the  
56 hospital operating the assisted outpatient treatment program, or to any~~

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

22 [~~(e)~~] (g) Effect of determination that a person is in need of assisted  
23 outpatient treatment. The determination by a court that a person is in  
24 need of assisted outpatient treatment shall not be construed as or  
25 deemed to be a determination that such person is incapacitated pursuant  
26 to article eighty-one of this chapter.

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

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

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

42 (2) The office, in consultation with the office of court adminis-  
43 tration, shall establish a mental health training program for supreme  
44 and county court judges and court personnel, and shall provide such  
45 training with such frequency and in such locations as may be appropriate  
46 to meet statewide needs. Such training shall focus on the use of this  
47 section and generally address issues relating to mental illness and  
48 mental health treatment.

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

51 (o) If the director of a department facility does not petition for  
52 assisted outpatient treatment pursuant to section 9.60 of this chapter  
53 upon the discharge of an inpatient admitted pursuant to section 9.27,  
54 9.39 or 9.40 of this chapter, or upon the expiration of a period of  
55 conditional release for such inpatient, such director shall report such  
56 discharge or such expiration in writing to the director of community

1 services of the local governmental unit in which the inpatient is  
2 expected to reside.

3 § 7. Subdivision 3 of section 404 of the correction law, as added by  
4 chapter 1 of the laws of 2013, is amended and a new subdivision 5 is  
5 added to read as follows:

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

19 5. Within a reasonable period prior to release or discharge of an  
20 inmate who is not currently committed to a hospital in the department of  
21 mental hygiene from a state correctional facility to the community, if  
22 such inmate has a serious mental illness pursuant to paragraph (e) of  
23 subdivision six of section one hundred thirty-seven of this chapter, the  
24 department shall notify the director of a hospital who shall ensure that  
25 a clinical assessment has been completed to determine whether the inmate  
26 meets the criteria for assisted outpatient treatment pursuant to subdi-  
27 vision (c) of section 9.60 of the mental hygiene law. If, as a result of  
28 such assessment, the director determines that the inmate meets such  
29 criteria, prior to release or discharge, the director of the hospital  
30 shall either petition for a court order pursuant to section 9.60 of the  
31 mental hygiene law, or report in writing to the director of community  
32 services of the local governmental unit in which the inmate is expected  
33 to reside so that an investigation shall be conducted pursuant to  
34 section 9.47 of the mental hygiene law.

35 § 8. Section 18 of chapter 408 of the laws of 1999, constituting  
36 Kendra's Law, as amended by chapter 67 of the laws of 2017, is amended  
37 to read as follows:

38 § 18. This act shall take effect immediately, provided that section  
39 fifteen of this act shall take effect April 1, 2000, provided, further,  
40 that subdivision (e) of section 9.60 of the mental hygiene law as added  
41 by section six of this act shall be effective 90 days after this act  
42 shall become law[~~, and that this act shall expire and be deemed repealed~~  
43 ~~June 30, 2022~~].

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

50 § 10. This act shall take effect immediately.