

STATE OF NEW YORK

4777--A

Cal. No. 528

2021-2022 Regular Sessions

IN SENATE

February 11, 2021

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general construction law, the banking law, the correction law, the civil practice law and rules, the debtor and creditor law, the domestic relations law, the mental hygiene law, the real property actions and proceedings law, the New York City civil court act, the uniform city court act, the uniform district court act, and the uniform justice court act, in relation to replacing certain instances of the word "mentally ill person" with "person with a mental illness" or "person with a mental disability" or a variation thereof; and to repeal certain provisions of the general construction law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 28 of the general construction law is REPEALED and
2 a new section 28 is added to read as follows:

3 § 28. Mental disability, mental illness, developmental disability,
4 addictive disorder and addiction disorder. The terms mental disability,
5 mental illness, developmental disability, addictive disorder and
6 addiction disorder shall have the same meaning as they are defined
7 pursuant to section 1.03 of the mental hygiene law.

8 § 2. Paragraph (a) of subdivision 3 of section 100 of the banking law,
9 as amended by chapter 115 of the laws of 1981, is amended to read as
10 follows:

11 (a) As guardian, receiver, trustee, committee or conservator of the
12 estate of any minor, [~~mentally ill~~] person with a mental disability,
13 [~~mentally retarded person, person of unsound mind, alcohol abuser~~] or
14 conservatee or in any other fiduciary capacity;

15 § 3. Subdivision 3 of section 100-a of the banking law, as amended by
16 chapter 115 of the laws of 1981, is amended to read as follows:

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

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1 3. Committee of incompetent or conservator of a conservatee. Any court
2 having jurisdiction to appoint a trustee, guardian, receiver, committee
3 of the estate of a [~~mentally ill~~] person with a mental disability,
4 [~~mentally retarded person or alcohol abuser~~] or conservator of the
5 estate of a conservatee, or to make any fiduciary appointment, may
6 appoint any trust company to be such trustee, guardian, receiver,
7 committee or conservator, or to act in any other fiduciary capacity.

8 § 4. Section 402 of the correction law, as added by chapter 766 of the
9 laws of 1976, subdivision 3 as amended by chapter 789 of the laws of
10 1985, subdivisions 9 and 12 as amended by chapter 164 of the laws of
11 1986, subdivisions 10 and 11 as renumbered by chapter 551 of the laws of
12 1978, and subdivision 13 as added by chapter 7 of the laws of 2007, is
13 amended to read as follows:

14 § 402. Commitment of [~~mentally ill~~] inmates with a mental illness. 1.
15 Whenever the physician of any correctional facility, any county peniten-
16 tiary, county jail or workhouse, any reformatory for women, or of any
17 other correctional institution, shall report in writing to the super-
18 intendent that any person undergoing a sentence of imprisonment or adju-
19 dicated to be a youthful offender or juvenile delinquent confined there-
20 in [~~is~~] has, in his opinion, [~~mentally ill~~] a mental illness, such
21 superintendent shall apply to a judge of the county court or justice of
22 the supreme court in the county to cause an examination to be made of
23 such person by two examining physicians. Such physicians shall be desig-
24 nated by the judge to whom the application is made. Each such physician,
25 if satisfied, after a personal examination, that such inmate [~~is mental-~~
26 ~~ly ill~~] has a mental illness and in need of care and treatment, shall
27 make a certificate to such effect. Before making such certificate,
28 however, he shall consider alternative forms of care and treatment
29 available during confinement in such correctional facility, peniten-
30 tiary, jail, reformatory or correctional institution that might be
31 adequate to provide for such inmate's needs without requiring hospitali-
32 zation. If the examining physician knows that the person he is examining
33 has been under prior treatment, he shall, insofar as possible, consult
34 with the physician or psychologist furnishing such prior treatment prior
35 to making his certificate.

36 2. In the city of New York, if the physician of a workhouse, city
37 prison, jail, penitentiary or reformatory reports in writing to the
38 superintendent of such institution that a prisoner confined therein,
39 serving a sentence of imprisonment, [~~is~~] in his opinion [~~mentally ill~~]
40 has a mental illness, the superintendent of said institution shall
41 either transfer said prisoner to Bellevue or Kings county hospital for
42 observation as to his mental condition by two examining physicians or
43 shall secure two examining physicians to make such examination in his
44 institution. Each such physician, if satisfied after a personal examina-
45 tion and observation that the prisoner [~~is mentally ill~~] has a mental
46 illness and in need of care and treatment, shall make a certificate to
47 such effect. Before making such certificate, however, he shall consider
48 alternative forms of care and treatment available during confinement in
49 such correctional facility, penitentiary, jail, reformatory or correc-
50 tional institution that might be adequate to provide for such inmate's
51 needs without requiring hospitalization. If the examining physician
52 knows that the person he is examining has been under prior treatment, he
53 shall, insofar as possible, consult with the physician or psychologist
54 furnishing such prior treatment prior to making his certificate.

55 3. Upon such certificates of the examining physicians being so made,
56 it shall be delivered to the superintendent who shall thereupon apply by

1 petition forthwith to a judge of the county court or justice of the
2 supreme court in the county, annexing such certificate to his petition,
3 for an order committing such inmate to a hospital for ~~[the mentally ill]~~
4 persons with mental illnesses. Upon every such application for such an
5 order of commitment, notice thereof in writing, of at least five days,
6 together with a copy of the petition, shall be served personally upon
7 the alleged ~~[mentally ill]~~ person with a mental illness, and in addition
8 thereto such notice and a copy of the petition shall be served upon
9 either the wife, the husband, the father or mother or other nearest
10 relative of such alleged ~~[mentally ill]~~ person with a mental illness, if
11 there be any such known relative within the state; and if not, such
12 notice shall be served upon any known friend of such alleged ~~[mentally~~
13 ~~ill]~~ person with a mental illness within the state. If there be no such
14 known relative or friend within the state, the giving of such notice
15 shall be dispensed with, but in such case the petition for the commit-
16 ment shall recite the reasons why service of such notice on a relative
17 or friend of the alleged ~~[mentally ill]~~ person with a mental illness was
18 dispensed with and, in such case, the order for commitment shall recite
19 why service of such a notice on a relative or friend of the alleged
20 ~~[mentally ill]~~ person with a mental illness was dispensed with. Copies
21 of the notice, the petition and the certificates of the examining physi-
22 cians shall also be given the mental hygiene legal service. The mental
23 hygiene legal service shall inform the inmate and, in proper cases,
24 others interested in the inmate's welfare, of the procedures for place-
25 ment in a hospital and of the inmate's right to have a hearing, to have
26 judicial review with a right to a jury trial, to be represented by coun-
27 sel and to seek an independent medical opinion. The mental hygiene legal
28 service shall have personal access to such inmate for such purposes.

29 4. The judge to whom such application for the commitment of the
30 alleged ~~[mentally ill]~~ person with a mental illness is made may, if no
31 demand is made for a hearing on behalf of the alleged ~~[mentally ill]~~
32 person with a mental illness, proceed forthwith on the return day of
33 such notice to determine the question of mental illness and, if satis-
34 fied that the alleged ~~[mentally ill]~~ person ~~[is mentally ill]~~ with a
35 mental illness has a mental illness and in need of care and treatment,
36 may immediately issue an order for the commitment of such alleged
37 ~~[mentally ill]~~ person with a mental illness to a hospital for a period
38 not to exceed six months from the date of the order.

39 5. Upon the demand for a hearing by any relative or near friend on
40 behalf of such alleged ~~[mentally ill]~~ person with a mental illness, the
41 judge shall, or he may upon his own motion where there is no demand for
42 a hearing, issue an order directing the hearing of such application
43 before him at a time not more than five days from the date of such
44 order, which shall be served upon the parties interested in the applica-
45 tion and upon such other persons as the judge, in his discretion, may
46 name. Upon such day or upon such other day to which the proceedings
47 shall be regularly adjourned, he shall hear the testimony introduced by
48 the parties and shall examine the alleged ~~[mentally ill]~~ person with a
49 mental illness, if deemed advisable in or out of court, and render a
50 decision in writing as to such person's mental illness and need for care
51 and treatment. If such judge cannot hear the application, he may, in his
52 order directing the hearing, name some referee who shall hear the testi-
53 mony and report the same forthwith, with his opinion thereon, to such
54 judge, who shall, if satisfied with such report, render his decision
55 accordingly. If it be determined that such person ~~[is mentally ill]~~ has
56 a mental illness and in need of care and treatment, the judge shall

1 forthwith issue his order committing him to a hospital for a period not
2 to exceed six months from the date of the order. Such superintendent
3 shall thereupon cause such [~~mentally ill~~] person with a mental illness
4 to be delivered to the director of the appropriate hospital as designa-
5 nated by the commissioner of mental hygiene and such [~~mentally ill~~]
6 person with a mental illness shall be received into such hospital and
7 retained there until he is determined to be no longer in need of care
8 and treatment by the director of such hospital or legally discharged or
9 for the period specified in the order of commitment or in any subsequent
10 order authorizing continued retention of such person in said hospital.
11 Such superintendent, before delivering said [~~mentally ill~~] person with a
12 mental illness, shall see that he is bodily clean. If such judge shall
13 refuse to issue an order of commitment, he shall certify in writing his
14 reasons for such refusal.

15 6. When an order of commitment is made, such order and all papers in
16 the proceeding shall be presented to the director of the appropriate
17 hospital at the time when the [~~mentally ill~~] person with a mental
18 illness is delivered to such institution and a copy of the order and of
19 each such paper shall be filed with the department of mental hygiene and
20 also in the office of the county clerk of the county wherein the court
21 is located which made the order of commitment. The judge shall order all
22 such papers so filed in the county clerk's office to be sealed and
23 exhibited only to parties to the proceedings, or someone properly inter-
24 ested, upon order of the court.

25 7. The costs necessarily incurred in determining the question of
26 mental illness, including the fees of the medical examiners, shall be a
27 charge upon the state or the municipality, as the case may be, at whose
28 expense the institution is maintained, which has custody of the alleged
29 [~~mentally ill~~] person with a mental illness at the time of the applica-
30 tion for his commitment to the hospital under the provisions of this
31 section.

32 8. During the pendency of such proceeding the judge may forthwith
33 commit such alleged [~~mentally ill~~] person with a mental illness to a
34 hospital for [~~the mentally ill~~] persons with mental illnesses upon peti-
35 tion and the affidavit of two examining physicians that the superinten-
36 dent is not able to properly care for such person at the institution
37 where he is confined and that such person is in immediate need of care
38 and treatment. Any person so committed shall be delivered to the direc-
39 tor of the appropriate hospital as designated in the rules and regu-
40 lations of the department of mental hygiene.

41 9. Except as provided in subdivision two pertaining to prisoners
42 confined in the city of New York, an inmate of a correctional facility
43 or a county jail may be admitted on an emergency basis to the Central
44 New York Psychiatric Center upon the certification by two examining
45 physicians, including physicians employed by the office of mental health
46 and associated with the correctional facility in which such inmate is
47 confined, that the inmate suffers from a mental illness which is likely
48 to result in serious harm to himself or others as defined in subdivision
49 (a) of section 9.39 of the mental hygiene law. Any person so committed
50 shall be delivered by the superintendent within a twenty-four hour peri-
51 od, to the director of the appropriate hospital as designated in the
52 rules and regulations of the office of mental health. Upon delivery of
53 such person to a hospital operated by the office of mental health, a
54 proceeding under this section shall immediately be commenced.

55 10. If the director of a hospital for [~~the mentally ill~~] persons with
56 mental illnesses shall deem that the condition of such [~~mentally ill~~]

1 person with a mental illness requires his further retention in a hospi-
2 tal he shall, during the period of retention authorized by the last
3 order of the court, apply to the supreme court or county court in the
4 county where such hospital is located, for an order authorizing contin-
5 ued retention of such [~~mentally-ill~~] person with a mental illness. The
6 procedures for obtaining any order pursuant to this subdivision shall be
7 in accordance with the provisions of the mental hygiene law for the
8 retention of involuntary patients.

9 11. If [~~a mentally ill~~] person with a mental illness whose commitment,
10 retention or continued retention has been authorized pursuant to this
11 section, or any relative or friend in his behalf, be dissatisfied with
12 any such order, he may, within thirty days after the making of any such
13 order, obtain a rehearing and a review of the proceedings already had
14 and of such order, upon a petition to a justice of the supreme court
15 other than the judge or justice presiding over the court making such
16 order. Such justice shall cause a jury to be summoned and shall try the
17 question of the mental illness and the need for care and treatment of
18 the person so committed or so authorized to be retained. Any such
19 [~~mentally-ill~~] person with a mental illness or the person applying on
20 his behalf for such review may waive the trial of the fact by a jury and
21 consent in writing to trial of such fact by the court. No such petition
22 for the hearing and review shall be made by anyone other than the person
23 so committed or authorized to be retained or the father, mother,
24 husband, wife or child of such person, unless the petitioner shall have
25 first obtained the leave of the court upon good cause shown. If the
26 verdict of the jury, or the decision of the court when jury trial has
27 been waived, be that such person [~~is~~] does not [~~mentally-ill~~] have a
28 mental illness, the justice shall order the removal of such person from
29 the hospital and such person shall forthwith be transferred to a state
30 correctional facility, or returned to the superintendent of the institu-
31 tion from which he was received if such institution was not a state
32 correctional facility. Where the verdict of the jury, or the decision of
33 the court where a jury trial has been waived, be that such person [~~is~~
34 mentally-ill] has a mental illness, the justice shall certify that fact
35 and make an order authorizing continued retention under the original
36 order. Proceedings under the order shall not be stayed pending an
37 appeal therefrom, except upon an order of a justice of the supreme
38 court, and made upon notice and after hearing, with provision made ther-
39 ein for such temporary care and confinement of the alleged [~~mentally~~
40 ill] person with a mental illness as may be deemed necessary.

41 12. The notice provided for herein shall be served by the sheriff of
42 the counties of the state of New York, in which case the charges of such
43 sheriff shall be a disbursement in such proceeding, or by registered
44 mail on all persons required to be served, except that the superinten-
45 dent of a correctional facility or the director of a hospital for [~~the~~
46 mentally-ill] persons with mental illnesses, or their designees, shall
47 be authorized to personally serve notice upon an alleged [~~mentally-ill~~]
48 person with a mental illness or a [~~mentally-ill~~] person with a mental
49 illness, as provided in this section.

50 13. Notwithstanding any provision of law to the contrary, when an
51 inmate is being examined in anticipation of his or her conditional
52 release, release to parole supervision, or when his or her sentence to a
53 term of imprisonment expires, the provisions of subdivision one of
54 section four hundred four of this article shall be applicable and such
55 commitment shall be effectuated in accordance with the provisions of
56 article nine or ten of the mental hygiene law, as appropriate.

1 § 5. Subparagraph (i) of paragraph b of subdivision 2 of section 508
2 of the correction law, as added by chapter 676 of the laws of 1974 and
3 as renumbered by chapter 33 of the laws of 2009, is amended to read as
4 follows:

5 (i) "Director" means (a) the director of a state hospital operated by
6 the department of mental hygiene, or (b) the director of a hospital
7 operated by any local government of the state that has been certified by
8 the commissioner of mental hygiene as having adequate facilities to
9 treat a [~~mentally ill~~] person with a mental illness or (c) the director
10 of community mental health services or the designees of any of the fore-
11 going. The appropriate director to whom a jailer or warden shall certify
12 the need for involuntary care and treatment and who shall have the
13 responsibility for such care and treatment shall be determined in
14 accordance with rules jointly adopted by the judicial conference and the
15 commissioner of mental hygiene.

16 § 6. Section 4519 of the civil practice law and rules, as amended by
17 chapter 550 of the laws of 1978, is amended to read as follows:

18 § 4519. Personal transaction or communication between witness and
19 decedent or [~~mentally ill~~] person with a mental illness. Upon the trial
20 of an action or the hearing upon the merits of a special proceeding, a
21 party or a person interested in the event, or a person from, through or
22 under whom such a party or interested person derives his interest or
23 title by assignment or otherwise, shall not be examined as a witness in
24 his own behalf or interest, or in behalf of the party succeeding to his
25 title or interest against the executor, administrator or survivor of a
26 deceased person or the committee of a [~~mentally ill~~] person with a
27 mental illness, or a person deriving his title or interest from, through
28 or under a deceased person or [~~mentally ill~~] person with a mental
29 illness, by assignment or otherwise, concerning a personal transaction
30 or communication between the witness and the deceased person or [~~mental-~~
31 ~~ly ill~~] person with a mental illness, except where the executor, admin-
32 istrator, survivor, committee or person so deriving title or interest is
33 examined in his own behalf, or the testimony of the [~~mentally ill~~]
34 person with a mental illness or deceased person is given in evidence,
35 concerning the same transaction or communication. A person shall not be
36 deemed interested for the purposes of this section by reason of being a
37 stockholder or officer of any banking corporation which is a party to
38 the action or proceeding, or interested in the event thereof. No party
39 or person interested in the event, who is otherwise competent to testi-
40 fy, shall be disqualified from testifying by the possible imposition of
41 costs against him or the award of costs to him. A party or person inter-
42 ested in the event or a person from, through or under whom such a party
43 or interested person derives his interest or title by assignment or
44 otherwise, shall not be qualified for the purposes of this section, to
45 testify in his own behalf or interest, or in behalf of the party
46 succeeding to his title or interest, to personal transactions or commu-
47 nications with the donee of a power of appointment in an action or
48 proceeding for the probate of a will, which exercises or attempts to
49 exercise a power of appointment granted by the will of a donor of such
50 power, or in an action or proceeding involving the construction of the
51 will of the donee after its admission to probate.

52 Nothing contained in this section, however, shall render a person
53 incompetent to testify as to the facts of an accident or the results
54 therefrom where the proceeding, hearing, defense or cause of action
55 involves a claim of negligence or contributory negligence in an action
56 wherein one or more parties is the representative of a deceased or

1 incompetent person based upon, or by reason of, the operation or owner-
2 ship of a motor vehicle being operated upon the highways of the state,
3 or the operation or ownership of aircraft being operated in the air
4 space over the state, or the operation or ownership of a vessel on any
5 of the lakes, rivers, streams, canals or other waters of this state, but
6 this provision shall not be construed as permitting testimony as to
7 conversations with the deceased.

8 § 7. Section 251 of the debtor and creditor law, as amended by chapter
9 115 of the laws of 1981, is amended to read as follows:

10 § 251. Authority for committee or conservator to compromise claims. A
11 court exercising jurisdiction over the property of a [~~mentally ill~~]
12 person with a mental illness, [~~mentally retarded person, alcohol abuser~~]
13 or conservatee may, upon the application of the committee of the proper-
14 ty of such incompetent person or the conservator of the conservatee, and
15 for good and sufficient cause shown, and upon such terms as it may
16 direct, authorize the committee or conservator to sell, compromise or
17 compound any claim or debt belonging to the estate of the incompetent
18 person or conservatee. But such authority shall not prevent any party
19 interested in the trust estate, from showing upon the final accounting
20 of such committee or conservator that such debt or claim was fraudu-
21 lently or negligently sold, compounded or compromised. The sale of any
22 debt or claim heretofore made in good faith by any such committee or
23 conservator, shall be valid, subject, however, to the approval of the
24 court, and the committee or conservator shall be charged with and liable
25 for, as a part of the trust fund, any sum which might or ought to have
26 been collected by him.

27 § 8. Subdivision (c) of section 140 of the domestic relations law, as
28 amended by chapter 550 of the laws of 1978, is amended to read as
29 follows:

30 (c) Party a [~~mentally retarded~~] person with a developmental illness
31 or [~~mentally ill~~] person with a mental illness. An action to annul a
32 marriage on the ground that one of the parties thereto was a [~~mentally~~
33 ~~retarded~~] person with a developmental disability may be maintained at
34 any time during the life-time of either party by any relative of a
35 [~~mentally retarded~~] person with a developmental disability, who has an
36 interest to avoid the marriage. An action to annul a marriage on the
37 ground that one of the parties thereto was a [~~mentally ill~~] person with
38 a mental illness may be maintained at any time during the continuance of
39 the mental illness, or, after the death of the [~~mentally ill~~] person
40 with a mental illness in that condition, and during the life of the
41 other party to the marriage, by any relative of the [~~mentally ill~~]
42 person with a mental illness who has an interest to avoid the marriage.
43 Such an action may also be maintained by the [~~mentally ill~~] person with
44 a mental illness at any time after restoration to a sound mind; but in
45 that case, the marriage should not be annulled if it appears that the
46 parties freely cohabited as husband and wife after the [~~mentally ill~~]
47 person with a mental illness was restored to a sound mind. Where one of
48 the parties to a marriage was a [~~mentally ill~~] person with a mental
49 illness at the time of the marriage, an action may also be maintained by
50 the other party at any time during the continuance of the mental
51 illness, provided the plaintiff did not know of the mental illness at
52 the time of the marriage. Where no relative of the [~~mentally retarded~~]
53 person with a developmental disability or [~~mentally ill~~] person with a
54 mental illness brings an action to annul the marriage and the [~~mentally~~
55 ~~ill~~] person with a mental illness is not restored to sound mind, the
56 court may allow an action for that purpose to be maintained at any time

1 during the life-time of both the parties to the marriage, by any person
2 as the next friend of the [~~mentally retarded person or mentally ill~~]
3 person with a mental illness or person with a developmental disability.

4 § 9. Section 141 of the domestic relations law, as amended by chapter
5 550 of the laws of 1978, subdivision 1 as amended and subdivisions 2, 3
6 and 4 as renumbered by chapter 281 of the laws of 1980, is amended to
7 read as follows:

8 § 141. Action to annul marriage on ground of incurable mental illness
9 for five years; procedure; support. 1. If the marriage be annulled on
10 the ground of the mental illness of a spouse, the court may include in
11 the judgment an order providing for his or her suitable support, care
12 and maintenance during life from the property or income of the other
13 spouse. The court shall specify the amount of such support, care and
14 maintenance and, before rendering judgment, may exact security for such
15 support, care and maintenance during life and shall order the filing and
16 recording of the instrument creating such security in the office of the
17 clerk of the county in which the action is brought and the filing of two
18 certified copies thereof with the office of mental health at its Albany
19 office. The provisions of the judgment relating to support, care and
20 maintenance of the [~~mentally ill~~] spouse with a mental illness during
21 his or her life and to security therefor may be modified or amended at
22 any time by the court upon due notice to the other party and other
23 interested parties as the court may direct and in proper case the value
24 of the suitable support, care and maintenance to such spouse during the
25 balance of his or her life based upon appropriate mortality tables may
26 be adjudged and determined by the court in which the estate of a
27 deceased spouse is being administered and the same may be recovered on
28 behalf of the [~~mentally ill~~] spouse with a mental illness from the
29 estate of the deceased spouse. If the [~~mentally ill~~] spouse with a
30 mental illness is maintained in an institution or otherwise under the
31 jurisdiction of the office of mental health, the suitable support, care
32 and maintenance as required in the judgment, unless otherwise directed
33 by the court, shall be the charge established by the commissioner of
34 mental health and such charge may be recovered in the manner provided by
35 law. Such amount shall continue to be so required for the support of the
36 [~~mentally ill~~] spouse with a mental illness in the event of his or her
37 removal from the custody of the office of mental health unless thereaft-
38 er otherwise directed by the court. Any security exacted for the suit-
39 able support, care and maintenance during life of the [~~mentally ill~~]
40 spouse with a mental illness shall be available to that spouse or any
41 person on his or her behalf or to any person or agency providing
42 support, care and maintenance for such spouse in the event that the
43 required payments for such support, care and maintenance have not been
44 made and upon application to the court the other spouse shall be ordered
45 and directed to provide additional or further security.

46 2. Judgment annulling a marriage on such ground shall not be rendered
47 until, in addition to any other proofs in the case, a thorough examina-
48 tion of the alleged [~~mentally ill~~] party with a mental illness shall
49 have been made by three physicians who are recognized authorities on
50 mental disease, to be appointed by the court, all of whom shall have
51 agreed that such party [~~is incurably mentally ill~~] has an incurable
52 mental illness and shall have so reported to the court. In such action,
53 the testimony of a physician attached to a state hospital in the depart-
54 ment of mental hygiene as to information which he acquired in attending
55 a patient in a professional capacity at such hospital, shall be taken
56 before a referee appointed by a judge of the court in which such action

1 is pending if the court in its discretion shall determine that the
2 distance such physician must travel to attend the trial would be a great
3 inconvenience to him or the hospital, or that other sufficient reason
4 exists for the appointment of a referee for such purpose; provided,
5 however, that any judge of such court at any time in his discretion,
6 notwithstanding such deposition, may order that a subpoena issue for the
7 attendance and examination of such physician upon the trial of the
8 action. In such case a copy of the order shall be served together with
9 the subpoena.

10 3. Except as provided in paragraph five of this section, when the
11 person alleged to [~~be incurably mentally ill~~] have an incurable mental
12 illness is confined in a state hospital for [~~the mentally ill~~] persons
13 with mental illnesses of this state, one, and one only, of the physi-
14 cians so appointed shall be a member of the resident medical staff of
15 such hospital designated by the director thereof. If the alleged incur-
16 ably [~~mentally ill~~] person with a mental illness is not confined in a
17 state hospital for [~~the mentally ill~~] persons with mental illnesses of
18 this state, one of the examining physicians named in pursuance of this
19 section shall be the director of a state hospital for [~~the mentally ill~~]
20 persons with mental illnesses if the alleged [~~mentally ill~~] person with
21 a mental illness is within this state, or the superintendent or compara-
22 ble officer of a state hospital for [~~the mentally ill~~] persons with
23 mental illnesses of the state or country where the alleged [~~mentally~~
24 ~~ill~~] person with a mental illness is present if the alleged [~~mentally~~
25 ~~ill~~] person with a mental illness is outside of this state. The report
26 of such superintendent or comparable officer of a state hospital for
27 [~~the mentally ill~~] persons with mental illnesses of such other state or
28 country shall not be received in evidence or considered by the court
29 unless he shall be a well educated physician with at least five years of
30 training and experience in the care and treatment of persons suffering
31 from mental disorders.

32 4. When the plaintiff has been permitted to bring such action or pros-
33 ecute the same as a poor person and the alleged incurably [~~mentally ill~~]
34 defendant with a mental illness is present within this state, the court
35 shall appoint three physicians who are examining physicians, as defined
36 by section 1.05 of the mental hygiene law, in the employment of the
37 department of mental hygiene. If the alleged [~~mentally ill~~] person with
38 a mental illness be outside of this state, the court may, upon proof
39 thereof, appoint three examining physicians who are qualified under the
40 laws or regulations of the foreign state or country where the alleged
41 [~~mentally ill~~] person with a mental illness is present and who have
42 qualifications comparable to those specified in section 1.05 of the
43 mental hygiene law of the state, provided, however, that one of such
44 examining physicians shall be the superintendent or comparable officer
45 of a state hospital for [~~the mentally ill~~] persons with mental illnesses
46 of such foreign state or country with qualifications as specified in
47 paragraph four. Such examiners shall make the examination of the alleged
48 [~~mentally ill~~] party with a mental illness present in this state and
49 file with the court a verified report of their findings and conclusions
50 without costs to such plaintiff when the plaintiff is a poor person.
51 Examination of an alleged [~~mentally ill~~] party with a mental illness
52 present outside of this state shall be made at the expense of the plain-
53 tiff. Such report shall be received in evidence upon the trial of the
54 action without the personal appearance or testimony of such examiners.
55 If the court shall deem it necessary that the testimony of any such
56 examiners be taken, the court may order the taking of such testimony by

1 deposition only. The examiners so appointed by the court may be members
2 of the resident medical staff of any state hospital, whether or not the
3 alleged [~~mentally ill~~] person with a mental illness is being confined
4 there.

5 § 10. Section 142 of the domestic relations law, as amended by chapter
6 550 of the laws of 1978, is amended to read as follows:

7 § 142. Dismissal of complaint in action by next friend to annul a
8 marriage. Where the next friend of an infant, [~~mentally retarded~~] person
9 with a developmental disability or [~~mentally ill~~] person with a mental
10 illness maintains an action annulling a marriage, the court may dismiss
11 the complaint if justice so requires, although, in a like case, the
12 party to the marriage, if plaintiff, would be entitled to judgment.

13 § 11. The article heading of article 9 of the mental hygiene law, as
14 renumbered by chapter 978 of the laws of 1977, is amended to read as
15 follows:

16 HOSPITALIZATION OF [~~THE MENTALLY ILL~~] PERSONS
17 WITH MENTAL ILLNESSES

18 § 12. Section 9.03 of the mental hygiene law, as amended by chapter
19 558 of the laws of 1999, is amended to read as follows:

20 § 9.03 Admission to a hospital.

21 Unless otherwise specifically provided for by statute, a [~~mentally~~
22 ~~ill~~] person with a mental illness shall be admitted to a hospital as an
23 in-patient only pursuant to the provisions of this article, except that
24 chemically dependent patients may be admitted to chemical dependence
25 facilities operated by such hospitals under contract or agreement with
26 the office of alcoholism and substance abuse services in accordance with
27 the provisions of article twenty-two of this chapter. The section of the
28 mental hygiene law under which a patient is admitted or under which any
29 change of legal status is subsequently effected shall be stated in the
30 patient's record.

31 § 13. Section 9.35 of the mental hygiene law, as renumbered by chapter
32 978 of the laws of 1977, is amended to read as follows:

33 § 9.35 Review of court authorization to retain an involuntary patient.

34 If a person who has been denied release or whose retention, continued
35 retention, or transfer and continued retention has been authorized
36 pursuant to this article, or any relative or friend in his behalf, be
37 dissatisfied with any such order he may, within thirty days after the
38 making of any such order, obtain a rehearing and a review of the
39 proceedings already had and of such order upon a petition to a justice
40 of the supreme court other than the judge or justice presiding over the
41 court making such order. Such justice shall cause a jury to be summoned
42 and shall try the question of the mental illness and the need for
43 retention of the patient so authorized to be retained. Any such patient
44 or the person applying on his behalf for such review may waive the trial
45 of the fact by a jury and consent in writing to trial of such fact by
46 the court. No such petition for rehearing and review shall be made by
47 anyone other than the person so authorized to be retained or the father,
48 mother, husband, wife, or child of such person, unless the petitioner
49 shall have first obtained the leave of the court upon good cause shown.
50 If the verdict of the jury, or the decision of the court when jury trial
51 has been waived, be that such person [~~is~~] does not [~~mentally ill~~] have a
52 mental illness or is not in need of retention the justice shall forth-
53 with discharge him, but if the verdict of the jury, or the decision of
54 the court where a jury trial has been waived, be that such person [~~is~~
55 ~~mentally ill~~] has a mental illness and is in need of retention the
56 justice shall certify that fact and make an order authorizing continued

1 retention under the original order. Such order shall be presented, at
2 the time of authorization of continued retention of such mentally ill
3 person, to, and filed with, the director of the hospital in which the
4 [~~mentally ill~~] person with a mental illness is authorized to be
5 retained, and a copy thereof shall be forwarded to the department by
6 such director and filed in the office thereof. Proceedings under the
7 order shall not be stayed pending an appeal therefrom, except upon an
8 order of a justice of the supreme court, made upon a notice and after a
9 hearing, with provisions made therein for such temporary care or
10 confinement of the alleged [~~mentally ill~~] person with a mental illness
11 as may be deemed necessary.

12 § 14. The section heading of section 9.47 of the mental hygiene law,
13 as renumbered by chapter 978 of the laws of 1977, is amended to read as
14 follows:

15 Duties of local officers in regard to their [~~mentally ill~~] persons
16 with mental illnesses.

17 § 15. Subdivision (a) of section 9.47 of the mental hygiene law, as
18 designated by chapter 408 of the laws of 1999, is amended to read as
19 follows:

20 (a) All directors of community services, health officers, and social
21 services officials, as defined by the social services law, are charged
22 with the duty of seeing that all [~~mentally ill~~] persons with a mental
23 illness within their respective communities who are in need of care and
24 treatment at a hospital are admitted to a hospital pursuant to the
25 provisions of this article. Social services officials and health offi-
26 cers shall notify the director of community services of any such person
27 coming to their attention. Pending the determination of the condition of
28 an alleged [~~mentally ill~~] person with a mental illness, it shall be the
29 duty of the director of community services and, if there be no such
30 director, of the local health officer to provide for the proper care of
31 such person in a suitable facility.

32 § 16. The opening paragraph of section 9.47 of the mental hygiene law,
33 as renumbered by chapter 978 of the laws of 1977, is amended to read as
34 follows:

35 All directors of community services, health officers, and social
36 services officials, as defined by the social services law, are charged
37 with the duty of seeing that all [~~mentally ill~~] persons with a mental
38 illness within their respective communities who are in need of care and
39 treatment at a hospital are admitted to a hospital pursuant to the
40 provisions of this article. Social services officials and health offi-
41 cers shall notify the director of community services of any such person
42 coming to their attention. Pending the determination of the condition of
43 an alleged [~~mentally ill~~] person with a mental illness, it shall be the
44 duty of the director of community services and, if there be no such
45 director, of the local health officer to provide for the proper care of
46 such person in a suitable facility.

47 § 17. Subparagraph (iii) of paragraph 1 of subdivision (b) of section
48 31.16 of the mental hygiene law, as added by chapter 196 of the laws of
49 1988, is amended to read as follows:

50 (iii) Suspend or limit or cause to be suspended or limited the payment
51 of any governmental funds to the facility provided that such action
52 shall not in any way jeopardize the health, safety and welfare of any
53 [~~mentally ill~~] person with a mental illness in such program or facility.

54 § 18. Subdivision 1 of section 1531 of the real property actions and
55 proceedings law, as amended by chapter 550 of the laws of 1978, is
56 amended to read as follows:

1 1. A final judgment in favor of either party, in an action brought as
2 prescribed in this article, is conclusive, as to the title established
3 in the action, against the other party, known or unknown, including an
4 infant [~~, a mentally retarded person, a mentally ill person, or an alco-~~
5 ~~hol-abuser~~] or a person with a mental disability, and also against every
6 person claiming from, through or under that party, by title accruing
7 after the filing of the judgment roll, or of the notice of the pendency
8 of the action, as prescribed by law; also against each person not in
9 being or ascertained at the commencement of the action, who by any
10 contingency contained in a devise or grant or otherwise, could afterward
11 become entitled to a beneficial estate or interest in the property
12 involved, provided that every person in being who would have been enti-
13 tled to such estate or interest if such event had happened immediately
14 before the commencement of the action is a party thereto, or that a
15 guardian ad litem is appointed, as prescribed by section 1513 of this
16 article.

17 § 19. Subdivisions 1, 3 and 4 of section 1651 of the real property
18 actions and proceedings law, as amended by chapter 115 of the laws of
19 1981, are amended to read as follows:

20 1. Where an infant, [~~mentally retarded person, mentally ill~~] person
21 with a mental disability, [~~alcohol-abuser~~] or conservatee holds real
22 property, in joint tenancy or in common, the general guardian of the
23 infant, or the committee of the [~~mentally retarded person, mentally ill~~]
24 person with a mental disability, [~~or alcohol-abuser,~~] or conservator of
25 the conservatee, may apply to the supreme court or to the county court
26 of the county wherein the real property is situated, for authority to
27 agree to a partition of the real property. Where such application
28 affects the interests of an incompetent person or a conservatee who has
29 been committed to a state institution, and is an inmate thereof, notice
30 of such application must be given to the superintendent, acting super-
31 intendent or state officer having special jurisdiction over the institu-
32 tion where the incompetent person or conservatee is confined. Irrespec-
33 tive of the location of any real property held by an infant in joint
34 tenancy or in common, his general guardian may make such application to
35 the surrogate's court which appointed such guardian. A certified copy of
36 the decree entered in the surrogate's court on such application must be
37 recorded in the office of the clerk of each county in which is situated
38 property affected by such decree.

39 3. If, after due inquiry into the merits of the application, by a
40 reference or otherwise, the court is of the opinion that the interests
41 of the infant, or [~~of the mentally retarded person, mentally ill~~] person
42 with a mental disability, [~~alcohol-abuser~~] or conservatee, will be
43 promoted by the partition proposed, it may make an order authorizing the
44 petitioner to agree to the partition proposed, and in the name of the
45 infant, [~~or of the mentally retarded person, mentally ill~~] person with a
46 mental disability, [~~alcohol-abuser~~] or conservatee, to execute releases
47 of his right and interest in and to that part of the property which
48 falls to the shares of the other joint-tenants or tenants in common. The
49 court may, in its discretion, for the furtherance of the interests of
50 said infant, [~~mentally retarded person, mentally ill~~] person with a
51 mental disability, [~~alcohol-abuser~~] or conservatee, direct partition to
52 be so made as to set off to him or them his or their share in common
53 with any of the other owners, provided the consent in writing thereto of
54 such owners shall be first obtained.

55 4. Releases so executed have the same validity and effect, as if they
56 were executed by the person in whose behalf they are executed, and as if

1 the infant was of full age, [~~or the mentally retarded person, mentally~~
2 ~~ill~~] person with a mental disability, [~~or alcohol abuser~~] was of sound
3 mind, and competent to manage his affairs, or the conservatee was compe-
4 tent to manage his affairs.

5 § 20. Section 1804 of the New York city civil court act, as amended by
6 chapter 650 of the laws of 1991, is amended to read as follows:

7 § 1804. Informal and simplified procedure on small claims. The court
8 shall conduct hearings upon small claims in such manner as to do
9 substantial justice between the parties according to the rules of
10 substantive law and shall not be bound by statutory provisions or rules
11 of practice, procedure, pleading or evidence, except statutory
12 provisions relating to privileged communications and personal trans-
13 actions or communications with a decedent or [~~mentally ill~~] person with
14 a mental illness. An itemized bill or invoice, receipted or marked
15 paid, or two itemized estimates for services or repairs, are admissible
16 in evidence and are prima facie evidence of the reasonable value and
17 necessity of such services and repairs. Disclosure shall be unavailable
18 in small claims procedure except upon order of the court on showing of
19 proper circumstances. In every small claims action, where the claim
20 arises out of the conduct of the defendant's business at the hearing on
21 the matter, the judge or arbitrator shall determine the appropriate
22 state or local licensing or certifying authority and any business or
23 professional association of which the defendant is a member. The
24 provisions of this act and the rules of this court, together with the
25 statutes and rules governing supreme court practice, shall apply to
26 claims brought under this article so far as the same can be made appli-
27 cable and are not in conflict with the provisions of this article; in
28 case of conflict, the provisions of this article shall control.

29 § 21. Section 1804-A of the New York city civil court act, as added by
30 chapter 653 of the laws of 1987, is amended to read as follows:

31 § 1804-A. Informal and simplified procedure on commercial claims. The
32 court shall conduct hearings upon commercial claims in such manner as to
33 do substantial justice between the parties according to the rules of
34 substantive law and shall not be bound by statutory provisions or rules
35 of practice, procedure, pleading or evidence, except statutory
36 provisions relating to privileged communications and personal trans-
37 actions or communications with a decedent or [~~mentally ill~~] person with
38 a mental illness. An itemized bill or invoice, receipted or marked
39 paid, or two itemized estimates for services or repairs, are admissible
40 in evidence and are prima facie evidence of the reasonable value and
41 necessity of such services and repairs. Disclosure shall be unavailable
42 in commercial claims procedure except upon order of the court on showing
43 of proper circumstances. The provisions of this act and the rules of
44 this court, together with the statutes and rules governing supreme court
45 practice, shall apply to claims brought under this article so far as the
46 same can be made applicable and are not in conflict with the provisions
47 of this article; in case of conflict, the provisions of this article
48 shall control.

49 § 22. Section 1804 of the uniform city court act, as amended by chap-
50 ter 650 of the laws of 1991, is amended to read as follows:

51 § 1804. Informal and simplified procedure on small claims.

52 The court shall conduct hearings upon small claims in such manner as
53 to do substantial justice between the parties according to the rules of
54 substantive law and shall not be bound by statutory provisions or rules
55 of practice, procedure, pleading or evidence, except statutory
56 provisions relating to privileged communications and personal trans-

1 actions or communications with a decedent or [~~mentally ill~~] person with
2 a mental illness. An itemized bill or invoice, receipted or marked
3 paid, or two itemized estimates for services or repairs, are admissible
4 in evidence and are prima facie evidence of the reasonable value and
5 necessity of such services and repairs. Disclosure shall be unavailable
6 in small claims procedure except upon order of the court on showing of
7 proper circumstances. In every small claims action, where the claim
8 arises out of the conduct of the defendant's business at the hearing on
9 the matter, the judge or arbitrator shall determine the appropriate
10 state or local licensing or certifying authority and any business or
11 professional association of which the defendant is a member. The
12 provisions of this act and the rules of this court, together with the
13 statutes and rules governing supreme court practice, shall apply to
14 claims brought under this article so far as the same can be made appli-
15 cable and are not in conflict with the provisions of this article; in
16 case of conflict, the provisions of this article shall control.

17 § 23. Section 1804-A of the uniform city court act, as added by chap-
18 ter 653 of the laws of 1987, is amended to read as follows:

19 § 1804-A. Informal and simplified procedure on commercial claims.

20 The court shall conduct hearings upon commercial claims in such manner
21 as to do substantial justice between the parties according to the rules
22 of substantive law and shall not be bound by statutory provisions or
23 rules of practice, procedure, pleading or evidence, except statutory
24 provisions relating to privileged communications and personal trans-
25 actions or communications with a decedent or [~~mentally ill~~] person with
26 a mental illness. An itemized bill or invoice, receipted or marked
27 paid, or two itemized estimates for services or repairs, are admissible
28 in evidence and are prima facie evidence of the reasonable value and
29 necessity of such services and repairs. Disclosure shall be unavailable
30 in commercial claims procedure except upon order of the court on showing
31 of proper circumstances. The provisions of this act and the rules of
32 this court, together with the statutes and rules governing supreme court
33 practice, shall apply to claims brought under this article so far as the
34 same can be made applicable and are not in conflict with the provisions
35 of this article; in case of conflict, the provisions of this article
36 shall control.

37 § 24. Section 1804 of the uniform district court act, as amended by
38 chapter 650 of the laws of 1991, is amended to read as follows:

39 § 1804. Informal and simplified procedure on small claims.

40 The court shall conduct hearings upon small claims in such manner as
41 to do substantial justice between the parties according to the rules of
42 substantive law and shall not be bound by statutory provisions or rules
43 of practice, procedure, pleading or evidence, except statutory
44 provisions relating to privileged communications and personal trans-
45 actions or communications with a decedent or [~~mentally ill~~] person with
46 a mental illness. An itemized bill or invoice, receipted or marked paid,
47 or two itemized estimates for services or repairs, are admissible in
48 evidence and are prima facie evidence of the reasonable value and neces-
49 sity of such services and repairs. Disclosure shall be unavailable in
50 small claims procedure except upon order of the court on showing of
51 proper circumstances. In every small claims action, where the claim
52 arises out of the conduct of the defendant's business at the hearing on
53 the matter, the judge or arbitrator shall determine the appropriate
54 state or local licensing or certifying authority and any business or
55 professional association of which the defendant is a member. The
56 provisions of this act and the rules of this court, together with the

1 statutes and rules governing supreme court practice, shall apply to
2 claims brought under this article so far as the same can be made appli-
3 cable and are not in conflict with the provisions of this article; in
4 case of conflict, the provisions of this article shall control.

5 § 25. Section 1804-A of the uniform district court act, as added by
6 chapter 653 of the laws of 1987, is amended to read as follows:
7 § 1804-A. Informal and simplified procedure on commercial claims.

8 The court shall conduct hearings upon commercial claims in such manner
9 as to do substantial justice between the parties according to the rules
10 of substantive law and shall not be bound by statutory provisions or
11 rules of practice, procedure, pleading or evidence, except statutory
12 provisions relating to privileged communications and personal trans-
13 actions or communications with a decedent or [~~mentally ill~~] person with
14 a mental illness. An itemized bill or invoice, receipted or marked paid,
15 or two itemized estimates for services or repairs, are admissible in
16 evidence and are prima facie evidence of the reasonable value and neces-
17 sity of such services and repairs. Disclosure shall be unavailable in
18 commercial claims procedure except upon order of the court on showing of
19 proper circumstances. The provisions of this act and the rules of this
20 court, together with the statutes and rules governing supreme court
21 practice, shall apply to claims brought under this article so far as the
22 same can be made applicable and are not in conflict with the provisions
23 of this article; in case of conflict, the provisions of this article
24 shall control.

25 § 26. Section 1804 of the uniform justice court act, as amended by
26 chapter 650 of the laws of 1991, is amended to read as follows:

27 § 1804. Informal and simplified procedure on small claims.

28 The court shall conduct hearings upon small claims in such manner as
29 to do substantial justice between the parties according to the rules of
30 substantive law and shall not be bound by statutory provisions or rules
31 of practice, procedure, pleading or evidence, except statutory
32 provisions relating to privileged communications and personal trans-
33 actions or communications with a decedent or [~~mentally ill~~] person with
34 a mental illness. An itemized bill or invoice, receipted or marked
35 paid, or two itemized estimates for services or repairs, are admissible
36 in evidence and are prima facie evidence of the reasonable value and
37 necessity of such services and repairs. Disclosure shall be unavailable
38 in small claims procedure except upon order of the court on showing of
39 proper circumstances. In every small claims action, where the claim
40 arises out of the conduct of the defendant's business at the hearing on
41 the matter, the judge or arbitrator shall determine the appropriate
42 state or local licensing or certifying authority and any business or
43 professional association of which the defendant is a member. The
44 provisions of this act and the rules of this court, together with the
45 statutes and rules governing supreme court practice, shall apply to
46 claims brought under this article so far as the same can be made appli-
47 cable and are not in conflict with the provisions of this article; in
48 case of conflict, the provisions of this article shall control.

49 § 27. This act shall take effect immediately, provided, however, that
50 the amendments to subdivision (a) of section 9.47 of the mental hygiene
51 law made by section fifteen of this act shall be subject to the expira-
52 tion and reversion of such subdivision pursuant to chapter 408 of the
53 laws of 1999, as amended, when upon such date the provisions of section
54 sixteen of this act shall take effect.