

STATE OF NEW YORK

6564

2021-2022 Regular Sessions

IN ASSEMBLY

March 19, 2021

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Mental Health

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 disability"; 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 Section 28 of the general construction law is REPEALED and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. The term mental disability shall have the
4 same meaning as it is defined pursuant to section 1.03 of the mental
5 hygiene law.

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

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

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

15 3. Committee of incompetent or conservator of a conservatee. Any court
16 having jurisdiction to appoint a trustee, guardian, receiver, committee
17 of the estate of a [~~mentally ill~~] person with a mental disability,
18 mentally retarded person or alcohol abuser or conservator of the estate
19 of a conservatee, or to make any fiduciary appointment, may appoint any
20 trust company to be such trustee, guardian, receiver, committee or
21 conservator, or to act in any other fiduciary capacity.

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

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1 § 4. Section 402 of the correction law, as added by chapter 766 of the
2 laws of 1976, subdivision 3 as amended by chapter 789 of the laws of
3 1985, subdivisions 9 and 12 as amended by chapter 164 of the laws of
4 1986, subdivisions 10 and 11 as renumbered by chapter 551 of the laws of
5 1978, and subdivision 13 as added by chapter 7 of the laws of 2007, is
6 amended to read as follows:

7 § 402. Commitment of [~~mentally ill~~] inmates with a mental disability.

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

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

49 3. Upon such certificates of the examining physicians being so made,
50 it shall be delivered to the superintendent who shall thereupon apply by
51 petition forthwith to a judge of the county court or justice of the
52 supreme court in the county, annexing such certificate to his petition,
53 for an order committing such inmate to a hospital for [~~the mentally ill~~]
54 persons with mental disabilities. Upon every such application for such
55 an order of commitment, notice thereof in writing, of at least five
56 days, together with a copy of the petition, shall be served personally

1 upon the alleged [~~mentally ill~~] person with a mental disability, and in
2 addition thereto such notice and a copy of the petition shall be served
3 upon either the wife, the husband, the father or mother or other nearest
4 relative of such alleged [~~mentally ill~~] person with a mental disability,
5 if there be any such known relative within the state; and if not, such
6 notice shall be served upon any known friend of such alleged [~~mentally~~
7 ~~ill~~] person with a mental disability within the state. If there be no
8 such known relative or friend within the state, the giving of such
9 notice shall be dispensed with, but in such case the petition for the
10 commitment shall recite the reasons why service of such notice on a
11 relative or friend of the alleged [~~mentally ill~~] person with a mental
12 disability was dispensed with and, in such case, the order for commit-
13 ment shall recite why service of such a notice on a relative or friend
14 of the alleged [~~mentally ill~~] person with a mental disability was
15 dispensed with. Copies of the notice, the petition and the certificates
16 of the examining physicians shall also be given the mental hygiene legal
17 service. The mental hygiene legal service shall inform the inmate and,
18 in proper cases, others interested in the inmate's welfare, of the
19 procedures for placement in a hospital and of the inmate's right to have
20 a hearing, to have judicial review with a right to a jury trial, to be
21 represented by counsel and to seek an independent medical opinion. The
22 mental hygiene legal service shall have personal access to such inmate
23 for such purposes.

24 4. The judge to whom such application for the commitment of the
25 alleged [~~mentally ill~~] person with a mental disability is made may, if
26 no demand is made for a hearing on behalf of the alleged [~~mentally ill~~]
27 person with a mental disability, proceed forthwith on the return day of
28 such notice to determine the question of mental illness and, if satis-
29 fied that the alleged [~~mentally ill~~] person [~~is mentally ill~~] with a
30 mental disability has a mental disability and in need of care and treat-
31 ment, may immediately issue an order for the commitment of such alleged
32 [~~mentally ill~~] person with a mental disability to a hospital for a peri-
33 od not to exceed six months from the date of the order.

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

1 person with a mental disability shall be received into such hospital and
2 retained there until he is determined to be no longer in need of care
3 and treatment by the director of such hospital or legally discharged or
4 for the period specified in the order of commitment or in any subsequent
5 order authorizing continued retention of such person in said hospital.
6 Such superintendent, before delivering said [~~mentally ill~~] person with a
7 mental disability, shall see that he is bodily clean. If such judge
8 shall refuse to issue an order of commitment, he shall certify in writ-
9 ing his reasons for such refusal.

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

20 7. The costs necessarily incurred in determining the question of
21 mental illness, including the fees of the medical examiners, shall be a
22 charge upon the state or the municipality, as the case may be, at whose
23 expense the institution is maintained, which has custody of the alleged
24 [~~mentally ill~~] person with a mental disability at the time of the appli-
25 cation for his commitment to the hospital under the provisions of this
26 section.

27 8. During the pendency of such proceeding the judge may forthwith
28 commit such alleged [~~mentally ill~~] person with a mental disability to a
29 hospital for [~~the mentally ill~~] persons with mental disabilities upon
30 petition and the affidavit of two examining physicians that the super-
31 intendent is not able to properly care for such person at the institu-
32 tion where he is confined and that such person is in immediate need of
33 care and treatment. Any person so committed shall be delivered to the
34 director of the appropriate hospital as designated in the rules and
35 regulations of the department of mental hygiene.

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

50 10. If the director of a hospital for [~~the mentally ill~~] persons with
51 mental disabilities shall deem that the condition of such [~~mentally ill~~]
52 person with a mental disability requires his further retention in a
53 hospital he shall, during the period of retention authorized by the last
54 order of the court, apply to the supreme court or county court in the
55 county where such hospital is located, for an order authorizing contin-
56 ued retention of such [~~mentally ill~~] person with a mental disability.

1 The procedures for obtaining any order pursuant to this subdivision
2 shall be in accordance with the provisions of the mental hygiene law for
3 the retention of involuntary patients.

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

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

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

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

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

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

14 § 4519. Personal transaction or communication between witness and
15 decedent or ~~mentally ill~~ person with a mental disability. Upon the
16 trial of an action or the hearing upon the merits of a special proceed-
17 ing, a party or a person interested in the event, or a person from,
18 through or under whom such a party or interested person derives his
19 interest or title by assignment or otherwise, shall not be examined as a
20 witness in his own behalf or interest, or in behalf of the party
21 succeeding to his title or interest against the executor, administrator
22 or survivor of a deceased person or the committee of a ~~mentally ill~~
23 person with a mental disability, or a person deriving his title or
24 interest from, through or under a deceased person or ~~mentally ill~~
25 person with a mental disability, by assignment or otherwise, concerning
26 a personal transaction or communication between the witness and the
27 deceased person or ~~mentally ill~~ person with a mental disability,
28 except where the executor, administrator, survivor, committee or person
29 so deriving title or interest is examined in his own behalf, or the
30 testimony of the ~~mentally ill~~ person with a mental disability or
31 deceased person is given in evidence, concerning the same transaction or
32 communication. A person shall not be deemed interested for the purposes
33 of this section by reason of being a stockholder or officer of any bank-
34 ing corporation which is a party to the action or proceeding, or inter-
35 ested in the event thereof. No party or person interested in the event,
36 who is otherwise competent to testify, shall be disqualified from testi-
37 fying by the possible imposition of costs against him or the award of
38 costs to him. A party or person interested in the event or a person
39 from, through or under whom such a party or interested person derives
40 his interest or title by assignment or otherwise, shall not be qualified
41 for the purposes of this section, to testify in his own behalf or inter-
42 est, or in behalf of the party succeeding to his title or interest, to
43 personal transactions or communications with the donee of a power of
44 appointment in an action or proceeding for the probate of a will, which
45 exercises or attempts to exercise a power of appointment granted by the
46 will of a donor of such power, or in an action or proceeding involving
47 the construction of the will of the donee after its admission to
48 probate.

49 Nothing contained in this section, however, shall render a person
50 incompetent to testify as to the facts of an accident or the results
51 therefrom where the proceeding, hearing, defense or cause of action
52 involves a claim of negligence or contributory negligence in an action
53 wherein one or more parties is the representative of a deceased or
54 incompetent person based upon, or by reason of, the operation or owner-
55 ship of a motor vehicle being operated upon the highways of the state,
56 or the operation or ownership of aircraft being operated in the air

1 space over the state, or the operation or ownership of a vessel on any
2 of the lakes, rivers, streams, canals or other waters of this state, but
3 this provision shall not be construed as permitting testimony as to
4 conversations with the deceased.

5 § 7. Section 251 of the debtor and creditor law, as amended by chapter
6 115 of the laws of 1981, is amended to read as follows:

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

24 § 8. Subdivisions (c) and (f) of section 140 of the domestic relations
25 law, as amended by chapter 550 of the laws of 1978, are amended to read
26 as follows:

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

55 (f) Incurable mental [~~illness~~] disability for five years. An action
56 to annul a marriage upon the ground that one of the parties has been

1 incurably mentally [~~ill~~] disabled for a period of five years or more may
2 be maintained by or on behalf of either of the parties to such marriage.

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

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

1 such action is pending if the court in its discretion shall determine
2 that the distance such physician must travel to attend the trial would
3 be a great inconvenience to him or the hospital, or that other suffi-
4 cient reason exists for the appointment of a referee for such purpose;
5 provided, however, that any judge of such court at any time in his
6 discretion, notwithstanding such deposition, may order that a subpoena
7 issue for the attendance and examination of such physician upon the
8 trial of the action. In such case a copy of the order shall be served
9 together with 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 disability is confined in a state hospital for ~~[the mentally ill]~~
13 persons with mental disabilities of this state, one, and one only, of
14 the physicians so appointed shall be a member of the resident medical
15 staff of such hospital designated by the director thereof. If the
16 alleged incurably ~~[mentally ill]~~ person with a mental disability is not
17 confined in a state hospital for ~~[the mentally ill]~~ persons with mental
18 disabilities of this state, one of the examining physicians named in
19 pursuance of this section shall be the director of a state hospital for
20 ~~[the mentally ill]~~ persons with mental disabilities if the alleged
21 ~~[mentally ill]~~ person with a mental disability is within this state, or
22 the superintendent or comparable officer of a state hospital for ~~[the~~
23 ~~mentally ill]~~ persons with mental disabilities of the state or country
24 where the alleged ~~[mentally ill]~~ person with a mental disability is
25 present if the alleged ~~[mentally ill]~~ person with a mental disability is
26 outside of this state. The report of such superintendent or comparable
27 officer of a state hospital for ~~[the mentally ill]~~ persons with mental
28 disabilities of such other state or country shall not be received in
29 evidence or considered by the court unless he shall be a well educated
30 physician with at least five years of training and experience in the
31 care and treatment of persons suffering 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 disability is present within this state, the
35 court shall appoint three physicians who are examining physicians, as
36 defined by section 1.05 of the mental hygiene law, in the employment of
37 the department of mental hygiene. If the alleged ~~[mentally ill]~~ person
38 with a mental disability be outside of this state, the court may, upon
39 proof thereof, appoint three examining physicians who are qualified
40 under the laws or regulations of the foreign state or country where the
41 alleged ~~[mentally ill]~~ person with a mental disability is present and
42 who have qualifications comparable to those specified in section 1.05 of
43 the 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 disabili-
46 ties of such foreign state or country with qualifications as specified
47 in paragraph four. Such examiners shall make the examination of the
48 alleged ~~[mentally ill]~~ party with a mental disability present in this
49 state and file with the court a verified report of their findings and
50 conclusions without costs to such plaintiff when the plaintiff is a poor
51 person. Examination of an alleged ~~[mentally ill]~~ party with a mental
52 disability present outside of this state shall be made at the expense of
53 the plaintiff. Such report shall be received in evidence upon the trial
54 of the action without the personal appearance or testimony of such exam-
55 iners. If the court shall deem it necessary that the testimony of any
56 such examiners be taken, the court may order the taking of such testimo-

1 ny by deposition only. The examiners so appointed by the court may be
2 members of the resident medical staff of any state hospital, whether or
3 not the alleged [~~mentally ill~~] person with a mental disability is being
4 confined 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 or [~~mentally ill~~] person with a mental disability maintains an action
10 annulling a marriage, the court may dismiss the complaint if justice so
11 requires, although, in a like case, the party to the marriage, if plain-
12 tiff, 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 DISABILITIES

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 disability shall be admitted to a hospital as
23 an in-patient only pursuant to the provisions of this article, except
24 that chemically dependent patients may be admitted to chemical depend-
25 ence facilities operated by such hospitals under contract or agreement
26 with the office of alcoholism and substance abuse services in accordance
27 with the provisions of article twenty-two of this chapter. The section
28 of the mental hygiene law under which a patient is admitted or under
29 which any change of legal status is subsequently effected shall be stat-
30 ed in the 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 disability or is not in need of retention the justice shall
53 forthwith discharge him, but if the verdict of the jury, or the decision
54 of the court where a jury trial has been waived, be that such person [~~is~~
55 ~~mentally ill~~] has a mental disability 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 disability 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 disabili-
11 ty 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 disabilities.

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 disability within their respective communities who are in need of care
24 and 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 disability, it shall be
29 the 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 disability within their respective communities who are in need of care
39 and 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 disability, it shall be
44 the 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 disability in such program or facil-
54 ity.

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

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

19 § 19. Subdivisions 1, 3 and 4 of section 1651 of the real property
20 actions and proceedings law, as amended by chapter 115 of the laws of
21 1981, is amended to read as follows:

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

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

1 4. Releases so executed have the same validity and effect, as if they
2 were executed by the person in whose behalf they are executed, and as if
3 the infant was of full age, or the mentally retarded person, [~~mentally~~
4 ~~ill~~] person with a mental disability, or alcohol abuser was of sound
5 mind, and competent to manage his affairs, or the conservatee was compe-
6 tent to manage his affairs.

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

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

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

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

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

53 § 1804. Informal and simplified procedure on small claims.

54 The court shall conduct hearings upon small claims in such manner as
55 to do substantial justice between the parties according to the rules of
56 substantive law and shall not be bound by statutory provisions or rules

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

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

21 § 1804-A. Informal and simplified procedure on commercial claims.

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

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

41 § 1804. Informal and simplified procedure on small claims.

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

1 professional association of which the defendant is a member. The
2 provisions of this act and the rules of this court, together with the
3 statutes and rules governing supreme court practice, shall apply to
4 claims brought under this article so far as the same can be made appli-
5 cable and are not in conflict with the provisions of this article; in
6 case of conflict, the provisions of this article shall control.

7 § 25. Section 1804-A of the uniform district court act, as added by
8 chapter 653 of the laws of 1987, is amended to read as follows:

9 § 1804-A. Informal and simplified procedure on commercial claims.

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

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

29 § 1804. Informal and simplified procedure on small claims.

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

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