

# STATE OF NEW YORK

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Cal. No. 528

2021-2022 Regular Sessions

## IN SENATE

February 11, 2021

Introduced by Sens. MANNION, BROUK, GAUGHRAN -- 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 -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to 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 Section 28 of the general construction law is REPEALED and  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:

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

LBD08905-06-1

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

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

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

14 § 4. Section 402 of the correction law, as added by chapter 766 of the  
15 laws of 1976, subdivision 3 as amended by chapter 789 of the laws of  
16 1985, subdivisions 9 and 12 as amended by chapter 164 of the laws of  
17 1986, subdivisions 10 and 11 as renumbered by chapter 551 of the laws of  
18 1978, and subdivision 13 as added by chapter 7 of the laws of 2007, is  
19 amended to read as follows:

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

42 2. In the city of New York, if the physician of a workhouse, city  
43 prison, jail, penitentiary or reformatory reports in writing to the  
44 superintendent of such institution that a prisoner confined therein,  
45 serving a sentence of imprisonment, [~~is~~] in his opinion [~~mentally ill~~]  
46 has a mental illness, the superintendent of said institution shall  
47 either transfer said prisoner to Bellevue or Kings county hospital for  
48 observation as to his mental condition by two examining physicians or  
49 shall secure two examining physicians to make such examination in his  
50 institution. Each such physician, if satisfied after a personal examina-  
51 tion and observation that the prisoner [~~is mentally ill~~] has a mental  
52 illness and in need of care and treatment, shall make a certificate to  
53 such effect. Before making such certificate, however, he shall consider  
54 alternative forms of care and treatment available during confinement in  
55 such correctional facility, penitentiary, jail, reformatory or correc-  
56 tional institution that might be adequate to provide for such inmate's

1 needs without requiring hospitalization. If the examining physician  
2 knows that the person he is examining has been under prior treatment, he  
3 shall, insofar as possible, consult with the physician or psychologist  
4 furnishing such prior treatment prior to making his certificate.

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

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

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

1 and treatment. If such judge cannot hear the application, he may, in his  
2 order directing the hearing, name some referee who shall hear the testi-  
3 mony and report the same forthwith, with his opinion thereon, to such  
4 judge, who shall, if satisfied with such report, render his decision  
5 accordingly. If it be determined that such person [~~is mentally ill~~] has  
6 a mental illness and in need of care and treatment, the judge shall  
7 forthwith issue his order committing him to a hospital for a period not  
8 to exceed six months from the date of the order. Such superintendent  
9 shall thereupon cause such [~~mentally ill~~] person with a mental illness  
10 to be delivered to the director of the appropriate hospital as desig-  
11 nated by the commissioner of mental hygiene and such [~~mentally ill~~]  
12 person with a mental illness shall be received into such hospital and  
13 retained there until he is determined to be no longer in need of care  
14 and treatment by the director of such hospital or legally discharged or  
15 for the period specified in the order of commitment or in any subsequent  
16 order authorizing continued retention of such person in said hospital.  
17 Such superintendent, before delivering said [~~mentally ill~~] person with a  
18 mental illness, shall see that he is bodily clean. If such judge shall  
19 refuse to issue an order of commitment, he shall certify in writing his  
20 reasons for such refusal.

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

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

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

47 9. Except as provided in subdivision two pertaining to prisoners  
48 confined in the city of New York, an inmate of a correctional facility  
49 or a county jail may be admitted on an emergency basis to the Central  
50 New York Psychiatric Center upon the certification by two examining  
51 physicians, including physicians employed by the office of mental health  
52 and associated with the correctional facility in which such inmate is  
53 confined, that the inmate suffers from a mental illness which is likely  
54 to result in serious harm to himself or others as defined in subdivision  
55 (a) of section 9.39 of the mental hygiene law. Any person so committed  
56 shall be delivered by the superintendent within a twenty-four hour peri-

1 od, to the director of the appropriate hospital as designated in the  
2 rules and regulations of the office of mental health. Upon delivery of  
3 such person to a hospital operated by the office of mental health, a  
4 proceeding under this section shall immediately be commenced.

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

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

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

1 13. Notwithstanding any provision of law to the contrary, when an  
2 inmate is being examined in anticipation of his or her conditional  
3 release, release to parole supervision, or when his or her sentence to a  
4 term of imprisonment expires, the provisions of subdivision one of  
5 section four hundred four of this article shall be applicable and such  
6 commitment shall be effectuated in accordance with the provisions of  
7 article nine or ten of the mental hygiene law, as appropriate.

8 § 5. Subparagraph (i) of paragraph b of subdivision 2 of section 508  
9 of the correction law, as added by chapter 656 of the laws of 1974 and  
10 as renumbered by chapter 33 of the laws of 2009, is amended to read as  
11 follows:

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

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

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

1 power, or in an action or proceeding involving the construction of the  
2 will of the donee after its admission to probate.

3 Nothing contained in this section, however, shall render a person  
4 incompetent to testify as to the facts of an accident or the results  
5 therefrom where the proceeding, hearing, defense or cause of action  
6 involves a claim of negligence or contributory negligence in an action  
7 wherein one or more parties is the representative of a deceased or  
8 incompetent person based upon, or by reason of, the operation or owner-  
9 ship of a motor vehicle being operated upon the highways of the state,  
10 or the operation or ownership of aircraft being operated in the air  
11 space over the state, or the operation or ownership of a vessel on any  
12 of the lakes, rivers, streams, canals or other waters of this state, but  
13 this provision shall not be construed as permitting testimony as to  
14 conversations with the deceased.

15 § 7. Section 251 of the debtor and creditor law, as amended by chapter  
16 115 of the laws of 1981, is amended to read as follows:

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

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

37 (c) Party a [~~mentally retarded~~] person with a developmental illness  
38 or [~~mentally ill~~] person with a mental illness. An action to annul a  
39 marriage on the ground that one of the parties thereto was a [~~mentally~~  
40 ~~retarded~~] person with a developmental disability may be maintained at  
41 any time during the life-time of either party by any relative of a  
42 [~~mentally retarded~~] person with a developmental disability, who has an  
43 interest to avoid the marriage. An action to annul a marriage on the  
44 ground that one of the parties thereto was a [~~mentally ill~~] person with  
45 a mental illness may be maintained at any time during the continuance of  
46 the mental illness, or, after the death of the [~~mentally ill~~] person  
47 with a mental illness in that condition, and during the life of the  
48 other party to the marriage, by any relative of the [~~mentally ill~~]  
49 person with a mental illness who has an interest to avoid the marriage.  
50 Such an action may also be maintained by the [~~mentally ill~~] person with  
51 a mental illness at any time after restoration to a sound mind; but in  
52 that case, the marriage should not be annulled if it appears that the  
53 parties freely cohabited as husband and wife after the [~~mentally ill~~]  
54 person with a mental illness was restored to a sound mind. Where one of  
55 the parties to a marriage was a [~~mentally ill~~] person with a mental  
56 illness at the time of the marriage, an action may also be maintained by

1 the other party at any time during the continuance of the mental  
2 illness, provided the plaintiff did not know of the mental illness at  
3 the time of the marriage. Where no relative of the [~~mentally-retarded~~]  
4 person with a developmental disability or [~~mentally-ill~~] person with a  
5 mental illness brings an action to annul the marriage and the [~~mentally~~  
6 ~~ill~~] person with a mental illness is not restored to sound mind, the  
7 court may allow an action for that purpose to be maintained at any time  
8 during the life-time of both the parties to the marriage, by any person  
9 as the next friend of the [~~mentally-retarded person or mentally-ill~~]  
10 person with a mental illness or person with a developmental disability.

11 § 9. Section 141 of the domestic relations law, as amended by chapter  
12 550 of the laws of 1978, subdivision 1 as amended and subdivisions 2, 3  
13 and 4 as renumbered by chapter 281 of the laws of 1980, is amended to  
14 read as follows:

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

53 2. Judgment annulling a marriage on such ground shall not be rendered  
54 until, in addition to any other proofs in the case, a thorough examina-  
55 tion of the alleged [~~mentally-ill~~] party with a mental illness shall  
56 have been made by three physicians who are recognized authorities on



1 mental disease, to be appointed by the court, all of whom shall have  
2 agreed that such party [~~is incurably mentally ill~~] has an incurable  
3 mental illness and shall have so reported to the court. In such action,  
4 the testimony of a physician attached to a state hospital in the depart-  
5 ment of mental hygiene as to information which he acquired in attending  
6 a patient in a professional capacity at such hospital, shall be taken  
7 before a referee appointed by a judge of the court in which such action  
8 is pending if the court in its discretion shall determine that the  
9 distance such physician must travel to attend the trial would be a great  
10 inconvenience to him or the hospital, or that other sufficient reason  
11 exists for the appointment of a referee for such purpose; provided,  
12 however, that any judge of such court at any time in his discretion,  
13 notwithstanding such deposition, may order that a subpoena issue for the  
14 attendance and examination of such physician upon the trial of the  
15 action. In such case a copy of the order shall be served together with  
16 the subpoena.

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

39 4. When the plaintiff has been permitted to bring such action or pros-  
40 ecute the same as a poor person and the alleged incurably [~~mentally ill~~]  
41 defendant with a mental illness is present within this state, the court  
42 shall appoint three physicians who are examining physicians, as defined  
43 by section 1.05 of the mental hygiene law, in the employment of the  
44 department of mental hygiene. If the alleged [~~mentally ill~~] person with  
45 a mental illness be outside of this state, the court may, upon proof  
46 thereof, appoint three examining physicians who are qualified under the  
47 laws or regulations of the foreign state or country where the alleged  
48 [~~mentally ill~~] person with a mental illness is present and who have  
49 qualifications comparable to those specified in section 1.05 of the  
50 mental hygiene law of the state, provided, however, that one of such  
51 examining physicians shall be the superintendent or comparable officer  
52 of a state hospital for [~~the mentally ill~~] persons with a mental illness  
53 of such foreign state or country with qualifications as specified in  
54 paragraph four. Such examiners shall make the examination of the alleged  
55 [~~mentally ill~~] party with a mental illness present in this state and  
56 file with the court a verified report of their findings and conclusions

1 without costs to such plaintiff when the plaintiff is a poor person.  
2 Examination of an alleged [~~mentally ill~~] party with a mental illness  
3 present outside of this state shall be made at the expense of the plain-  
4 tiff. Such report shall be received in evidence upon the trial of the  
5 action without the personal appearance or testimony of such examiners.  
6 If the court shall deem it necessary that the testimony of any such  
7 examiners be taken, the court may order the taking of such testimony by  
8 deposition only. The examiners so appointed by the court may be members  
9 of the resident medical staff of any state hospital, whether or not the  
10 alleged [~~mentally ill~~] person with a mental illness is being confined  
11 there.

12 § 10. Section 142 of the domestic relations law, as amended by chapter  
13 550 of the laws of 1978, is amended to read as follows:

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

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

23 HOSPITALIZATION OF [~~THE MENTALLY ILL~~] PERSONS  
24 WITH A MENTAL ILLNESS

25 § 12. Section 9.03 of the mental hygiene law, as amended by chapter  
26 558 of the laws of 1999, is amended to read as follows:

27 § 9.03 Admission to a hospital.

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

38 § 13. Section 9.35 of the mental hygiene law, as renumbered by chapter  
39 978 of the laws of 1977, is amended to read as follows:

40 § 9.35 Review of court authorization to retain an involuntary patient.

41 If a person who has been denied release or whose retention, continued  
42 retention, or transfer and continued retention has been authorized  
43 pursuant to this article, or any relative or friend in his behalf, be  
44 dissatisfied with any such order he may, within thirty days after the  
45 making of any such order, obtain a rehearing and a review of the  
46 proceedings already had and of such order upon a petition to a justice  
47 of the supreme court other than the judge or justice presiding over the  
48 court making such order. Such justice shall cause a jury to be summoned  
49 and shall try the question of the mental illness and the need for  
50 retention of the patient so authorized to be retained. Any such patient  
51 or the person applying on his behalf for such review may waive the trial  
52 of the fact by a jury and consent in writing to trial of such fact by  
53 the court. No such petition for rehearing and review shall be made by  
54 anyone other than the person so authorized to be retained or the father,  
55 mother, husband, wife, or child of such person, unless the petitioner  
56 shall have first obtained the leave of the court upon good cause shown.

1 If the verdict of the jury, or the decision of the court when jury trial  
2 has been waived, be that such person [~~is~~ does not [~~mentally ill~~] have a  
3 mental illness or is not in need of retention the justice shall forth-  
4 with discharge him, but if the verdict of the jury, or the decision of  
5 the court where a jury trial has been waived, be that such person [~~is~~  
6 ~~mentally ill~~] has a mental illness and is in need of retention the  
7 justice shall certify that fact and make an order authorizing continued  
8 retention under the original order. Such order shall be presented, at  
9 the time of authorization of continued retention of such mentally ill  
10 person, to, and filed with, the director of the hospital in which the  
11 [~~mentally ill~~] person with a mental illness is authorized to be  
12 retained, and a copy thereof shall be forwarded to the department by  
13 such director and filed in the office thereof. Proceedings under the  
14 order shall not be stayed pending an appeal therefrom, except upon an  
15 order of a justice of the supreme court, made upon a notice and after a  
16 hearing, with provisions made therein for such temporary care or  
17 confinement of the alleged [~~mentally ill~~] person with a mental illness  
18 as may be deemed necessary.

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

22 Duties of local officers in regard to their [~~mentally ill~~] persons  
23 with a mental illness.

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

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

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

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

54 § 17. Subparagraph (iii) of paragraph 1 of subdivision (b) of section  
55 31.16 of the mental hygiene law, as added by chapter 196 of the laws of  
56 1988, is amended to read as follows:

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

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

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

24 § 19. Subdivisions 1, 3 and 4 of section 1651 of the real property  
25 actions and proceedings law, as amended by chapter 115 of the laws of  
26 1981, are amended to read as follows:

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

46 3. If, after due inquiry into the merits of the application, by a  
47 reference or otherwise, the court is of the opinion that the interests  
48 of the infant, or ~~[of the mentally retarded person, mentally ill]~~ person  
49 with a mental disability, ~~[alcohol-abuser]~~ or conservatee, will be  
50 promoted by the partition proposed, it may make an order authorizing the  
51 petitioner to agree to the partition proposed, and in the name of the  
52 infant, ~~[or of the mentally retarded person, mentally ill]~~ person with a  
53 mental disability, ~~[alcohol-abuser]~~ or conservatee, to execute releases  
54 of his right and interest in and to that part of the property which  
55 falls to the shares of the other joint-tenants or tenants in common. The  
56 court may, in its discretion, for the furtherance of the interests of

1 said infant, [~~mentally retarded person, mentally ill~~] person with a  
2 mental disability, [~~alcohol abuser~~] or conservatee, direct partition to  
3 be so made as to set off to him or them his or their share in common  
4 with any of the other owners, provided the consent in writing thereto of  
5 such owners shall be first obtained.

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

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

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

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

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

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

3 § 1804. Informal and simplified procedure on small claims.

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

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

27 § 1804-A. Informal and simplified procedure on commercial claims.

28 The court shall conduct hearings upon commercial claims in such manner  
29 as to do substantial justice between the parties according to the rules  
30 of substantive law and shall not be bound by statutory provisions or  
31 rules 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 commercial claims procedure except upon order of the court on showing  
39 of proper circumstances. The provisions of this act and the rules of  
40 this court, together with the statutes and rules governing supreme court  
41 practice, shall apply to claims brought under this article so far as the  
42 same can be made applicable and are not in conflict with the provisions  
43 of this article; in case of conflict, the provisions of this article  
44 shall control.

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

47 § 1804. Informal and simplified procedure on small claims.

48 The court shall conduct hearings upon small claims in such manner as  
49 to do substantial justice between the parties according to the rules of  
50 substantive law and shall not be bound by statutory provisions or rules  
51 of practice, procedure, pleading or evidence, except statutory  
52 provisions relating to privileged communications and personal trans-  
53 actions or communications with a decedent or [~~mentally ill~~] person with  
54 a mental illness. An itemized bill or invoice, receipted or marked paid,  
55 or two itemized estimates for services or repairs, are admissible in  
56 evidence and are prima facie evidence of the reasonable value and neces-

1 sity of such services and repairs. Disclosure shall be unavailable in  
2 small claims procedure except upon order of the court on showing of  
3 proper circumstances. In every small claims action, where the claim  
4 arises out of the conduct of the defendant's business at the hearing on  
5 the matter, the judge or arbitrator shall determine the appropriate  
6 state or local licensing or certifying authority and any business or  
7 professional association of which the defendant is a member. The  
8 provisions of this act and the rules of this court, together with the  
9 statutes and rules governing supreme court practice, shall apply to  
10 claims brought under this article so far as the same can be made appli-  
11 cable and are not in conflict with the provisions of this article; in  
12 case of conflict, the provisions of this article shall control.

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

15 § 1804-A. Informal and simplified procedure on commercial claims.

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

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

35 § 1804. Informal and simplified procedure on small claims.

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

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