

STATE OF NEW YORK

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IN SENATE

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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 Section 28 of the general construction law is REPEALED and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.

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

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

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

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

§ 402. Commitment of ~~[mentally ill]~~ inmates with a mental illness. 1. Whenever the physician of any correctional facility, any county penitentiary, county jail or workhouse, any reformatory for women, or of any other correctional institution, shall report in writing to the superintendent that any person undergoing a sentence of imprisonment or adjudicated to be a youthful offender or juvenile delinquent confined therein ~~[is]~~ has, in his opinion, ~~[mentally ill]~~ a mental illness, such superintendent shall apply to a judge of the county court or justice of the supreme court in the county to cause an examination to be made of such person by two examining physicians. Such physicians shall be designated by the judge to whom the application is made. Each such physician, if satisfied, after a personal examination, that such inmate ~~[is mentally ill]~~ has a mental illness and in need of care and treatment, shall make a certificate to such effect. Before making such certificate, however, he shall consider alternative forms of care and treatment available during confinement in such correctional facility, penitentiary, jail, reformatory or correctional institution that might be adequate to provide for such inmate's needs without requiring hospitalization. If the examining physician knows that the person he is examining has been under prior treatment, he shall, insofar as possible, consult with the physician or psychologist furnishing such prior treatment prior to making his certificate.

2. In the city of New York, if the physician of a workhouse, city prison, jail, penitentiary or reformatory reports in writing to the superintendent of such institution that a prisoner confined therein, serving a sentence of imprisonment, ~~[is]~~ in his opinion ~~[mentally ill]~~ has a mental illness, the superintendent of said institution shall either transfer said prisoner to Bellevue or Kings county hospital for observation as to his mental condition by two examining physicians or shall secure two examining physicians to make such examination in his institution. Each such physician, if satisfied after a personal examination and observation that the prisoner ~~[is mentally ill]~~ has a mental illness and in need of care and treatment, shall make a certificate to such effect. Before making such certificate, however, he shall consider alternative forms of care and treatment available during confinement in such correctional facility, penitentiary, jail, reformatory or correctional 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-

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

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

11. If a ~~[mentally ill]~~ person with a mental illness whose commitment, retention or continued retention has been authorized pursuant to this section, or any relative or friend in his behalf, be dissatisfied with any such order, he may, within thirty days after the making of any such order, obtain a rehearing and a review of the proceedings already had and of such order, upon a petition to a justice of the supreme court other than the judge or justice presiding over the court making such order. Such justice shall cause a jury to be summoned and shall try the question of the mental illness and the need for care and treatment of the person so committed or so authorized to be retained. Any such ~~[mentally ill]~~ person with a mental illness or the person applying on his behalf for such review may waive the trial of the fact by a jury and consent in writing to trial of such fact by the court. No such petition for the hearing and review shall be made by anyone other than the person so committed or authorized to be retained or the father, mother, husband, wife or child of such person, unless the petitioner shall have first obtained the leave of the court upon good cause shown. If the verdict of the jury, or the decision of the court when jury trial has been waived, be that such person ~~[is]~~ does not ~~[mentally ill]~~ have a mental illness, the justice shall order the removal of such person from the hospital and such person shall forthwith be transferred to a state correctional facility, or returned to the superintendent of the institution from which he was received if such institution was not a state correctional facility. Where the verdict of the jury, or the decision of the court where a jury trial has been waived, be that such person ~~[is mentally ill]~~ has a mental illness, the justice shall certify that fact and make an order authorizing continued retention under the original order. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon notice and after hearing, with provision made therein for such temporary care and confinement of the alleged ~~[mentally ill]~~ person with a mental illness as may be deemed necessary.

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

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

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

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

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

§ 4519. Personal transaction or communication between witness and decedent or ~~[mentally ill]~~ person with a mental illness. Upon the trial of an action or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own behalf or interest, or in behalf of the party succeeding to his title or interest against the executor, administrator or survivor of a deceased person or the committee of a ~~[mentally ill]~~ person with a mental illness, or a person deriving his title or interest from, through or under a deceased person or ~~[mentally ill]~~ person with a mental illness, by assignment or otherwise, concerning a personal transaction or communication between the witness and the deceased person or ~~[mentally ill]~~ person with a mental illness, except where the executor, administrator, survivor, committee or person so deriving title or interest is examined in his own behalf, or the testimony of the ~~[mentally ill]~~ person with a mental illness or deceased person is given in evidence, concerning the same transaction or communication. A person shall not be deemed interested for the purposes of this section by reason of being a stockholder or officer of any banking corporation which is a party to the action or proceeding, or interested in the event thereof. No party or person interested in the event, who is otherwise competent to testify, shall be disqualified from testifying by the possible imposition of costs against him or the award of costs to him. A party or person interested in the event or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be qualified for the purposes of this section, to testify in his own behalf or interest, or in behalf of the party succeeding to his title or interest, to personal transactions or communications with the donee of a power of appointment in an action or proceeding for the probate of a will, which exercises or attempts to 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:

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

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

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

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

1. Where an infant, ~~[mentally retarded person, mentally ill]~~ person with a mental disability, ~~[alcohol-abuser]~~ or conservatee holds real property, in joint tenancy or in common, the general guardian of the infant, or the committee of the ~~[mentally retarded person, mentally ill]~~ person with a mental disability, ~~[or alcohol-abuser]~~ or conservator of the conservatee, may apply to the supreme court or to the county court of the county wherein the real property is situated, for authority to agree to a partition of the real property. Where such application affects the interests of an incompetent person or a conservatee who has been committed to a state institution, and is an inmate thereof, notice of such application must be given to the superintendent, acting superintendent or state officer having special jurisdiction over the institution where the incompetent person or conservatee is confined. Irrespective of the location of any real property held by an infant in joint tenancy or in common, his general guardian may make such application to the surrogate's court which appointed such guardian. A certified copy of the decree entered in the surrogate's court on such application must be recorded in the office of the clerk of each county in which is situated property affected by such decree.

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

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

§ 1804. Informal and simplified procedure on small claims.

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

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

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

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

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

§ 1804. Informal and simplified procedure on small claims.

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

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

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

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

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

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

§ 1804. Informal and simplified procedure on small claims.

The court shall conduct hearings upon small claims in such manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence, except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or ~~mentally ill~~ person with a mental illness. An itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, are admissible in evidence and are prima facie evidence of the reasonable value and necessity of such services and repairs. Disclosure shall be unavailable in small claims procedure except upon order of the court on showing of proper circumstances. In every small claims action, where the claim arises out of the conduct of the defendant's business at the hearing on the matter, the judge or arbitrator shall determine the appropriate state or local licensing or certifying authority and any business or professional association of which the defendant is a member. The provisions of this act and the rules of this court, together with the statutes and rules governing supreme court practice, shall apply to claims brought under this article so far as the same can be made applicable and are not in conflict with the provisions of this article; in 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.