

# STATE OF NEW YORK

4451

2023-2024 Regular Sessions

## IN ASSEMBLY

February 14, 2023

Introduced by M. of A. GUNTHER, ZEBROWSKI, PAULIN, THIELE, COOK, WEPRIN,  
OTIS, STECK, WILLIAMS, WALLACE -- read once and referred to the  
Committee on Mental Health

AN ACT to amend the mental hygiene law and the correction law, in  
relation to enhancing the assisted outpatient treatment program; and  
to amend Kendra's Law, in relation to making the provisions thereof  
permanent

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

1 Section 1. Paragraph 2 of subdivision (f) of section 7.17 of the  
2 mental hygiene law, as amended by chapter 158 of the laws of 2005, is  
3 amended to read as follows:  
4 (2) The oversight and monitoring role of the program coordinator of  
5 the assisted outpatient treatment program shall include each of the  
6 following:  
7 (i) that each assisted outpatient receives the treatment provided for  
8 in the court order issued pursuant to section 9.60 of this [~~chapter~~  
9 title];  
10 (ii) that existing services located in the assisted outpatient's  
11 community are utilized whenever practicable;  
12 (iii) that a case manager or assertive community treatment team is  
13 designated for each assisted outpatient;  
14 (iv) that a mechanism exists for such case manager, or assertive  
15 community treatment team, to regularly report the assisted outpatient's  
16 compliance, or lack of compliance with treatment, to the director of the  
17 assisted outpatient treatment program;  
18 (v) that directors of community services establish procedures [~~which~~  
19 that provide that reports of persons who may be in need of assisted  
20 outpatient treatment are appropriately investigated in a timely manner;  
21 [~~and~~]

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

LBD08031-01-3

1 (vi) that assisted outpatient treatment services are delivered in a  
2 timely manner[~~-~~];

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

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

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

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

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

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

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

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

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

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

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

50 (5) ensuring evaluation of the need for ongoing assisted outpatient  
51 treatment pursuant to subdivision [~~(k)~~] (m) of section 9.60 of this  
52 article prior to the expiration of any assisted outpatient treatment  
53 order;

54 (6) if he or she has been ordered to provide for or arrange for  
55 assisted outpatient treatment pursuant to paragraph five of subdivision  
56 [~~(j)~~] (k) of section 9.60 of this article or became the appropriate

1 director pursuant to this paragraph or subdivision (c) of section 9.48  
2 of this article, notifying the director of community services of the new  
3 county of residence when he or she has reason to believe that an  
4 assisted outpatient has or will change his or her county of residence  
5 during the pendency of an assisted outpatient treatment order. Upon such  
6 change of residence, the director of the new county of residence shall  
7 become the appropriate director, as such term is defined in section 9.60  
8 of this article; [~~and~~]

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

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

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

17 (viii) an account of any court order expiration, including but not  
18 limited to the director's determination as to whether to petition for  
19 continued assisted outpatient treatment, pursuant to section 9.60 of  
20 this article, the basis for such determination, and the disposition of  
21 any such petition;

22 § 5. Section 9.60 of the mental hygiene law, as amended by chapter 158  
23 of the laws of 2005, paragraph 1 of subdivision (a) as amended by  
24 section 1 of part E of chapter 111 of the laws of 2010, paragraph 3 of  
25 subdivision (a), paragraphs 2 and 5 of subdivision (j), and subdivisions  
26 (k) and (n) as amended by chapter 1 of the laws of 2013, paragraph 5 of  
27 subdivision (c) as amended by chapter 137 of the laws of 2005, paragraph  
28 4 of subdivision (e) as amended by chapter 382 of the laws of 2015,  
29 paragraph 4 of subdivision (c), paragraph 2 of subdivision (h) as  
30 amended and subdivision (s) as added by section 2 of subpart H of part  
31 UU of chapter 56 of the laws of 2022, is amended to read as follows:

32 § 9.60 Assisted outpatient treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (i) except as otherwise provided in subparagraph (iii) of this para-  
50 graph, prior to the filing of the petition, at least twice within the  
51 last thirty-six months been a significant factor in necessitating hospi-  
52 talization in a hospital, or receipt of services in a forensic or other  
53 mental health unit of a correctional facility or a local correctional  
54 facility [~~, not including~~]; provided that such thirty-six month period  
55 shall be extended by the length of any current period [~~, or period~~

1 ~~ending~~] within the last six months[~~, during which the person was or is~~  
2 ~~hospitalized or incarcerated~~]; or

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

12 (iii) notwithstanding subparagraphs (i) and (ii) of this paragraph,  
13 resulted in the issuance of a court order for assisted outpatient treat-  
14 ment which has expired within the last six months, and since the expira-  
15 tion of the order, the person has experienced a substantial increase in  
16 symptoms of mental illness and such symptoms substantially interferes  
17 with or limits one or more major life activities as determined by a  
18 director of community services who previously was required to coordinate  
19 and monitor the care of any individual who was subject to such expired  
20 assisted outpatient treatment order. The applicable director of communi-  
21 ty services or their designee shall arrange for the individual to be  
22 evaluated by a physician. If the physician determines court ordered  
23 services are clinically necessary and the least restrictive option, the  
24 director of community services may initiate a court proceeding.

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

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

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

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

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

43 (f) Petition to the court. (1) A petition for an order authorizing  
44 assisted outpatient treatment may be filed in the supreme or county  
45 court in the county in which the subject of the petition is present or  
46 reasonably believed to be present. When a director of community  
47 services has reason to believe that an assisted outpatient has changed  
48 his or her county of residence, future petitions and applications under  
49 this section may be filed in the supreme or county court in the new  
50 county of residence, which shall have concurrent jurisdiction with the  
51 court that initially ordered such treatment. Such petition may be initi-  
52 ated only by the following persons:

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

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

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

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

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

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

13 (vii) the director of community services, or his or her designee, or  
14 the social services official, as defined in the social services law, of  
15 the city or county in which the subject of the petition is present or  
16 reasonably believed to be present; or

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

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

22 (2) The commissioner shall promulgate regulations pursuant to which  
23 persons initiating a petition, pursuant to subparagraphs (i) and (ii) of  
24 paragraph one of this subdivision, may receive assistance in filing such  
25 petitions, where appropriate, as determined pursuant to subdivision (e)  
26 of this section.

27 (3) The petition shall state:

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

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

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

35 [~~3~~] (4) The petition shall be accompanied by an affirmation or affi-  
36 davit of a physician, who shall not be the petitioner, stating that such  
37 physician is willing and able to testify at the hearing on the petition  
38 and that either [~~that~~]:

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

44 (ii) no more than ten days prior to the filing of the petition, such  
45 physician or his or her designee has made appropriate attempts but has  
46 not been successful in eliciting the cooperation of the subject of the  
47 petition to submit to an examination, such physician has reason to  
48 suspect that the subject of the petition meets the criteria for assisted  
49 outpatient treatment, and such physician is willing and able to examine  
50 the subject of the petition [~~and testify at the hearing on the petition~~  
51 prior to providing testimony.

52 [~~4~~] (5) In counties with a population of less than eighty thousand,  
53 the affirmation or affidavit required by paragraph [~~three~~] four of this  
54 subdivision may be made by a physician who is an employee of the office.  
55 The office is authorized and directed to make available, at no cost to

1 the county, a qualified physician for the purpose of making such affir-  
2 mation or affidavit consistent with the provisions of such paragraph.

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

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

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

34 (2) The court shall not order assisted outpatient treatment unless an  
35 examining physician, who recommends assisted outpatient treatment and  
36 has personally examined the subject of the petition no more than ten  
37 days before the filing of the petition, testifies in person or by video-  
38 conference at the hearing. Provided however, a physician shall only be  
39 authorized to testify by video conference when it has been: (i) shown  
40 that diligent efforts have been made to attend such hearing in person  
41 and the subject of the petition consents to the physician testifying by  
42 video conference; or (ii) the court orders the physician to testify by  
43 video conference upon a finding of good cause. Such physician shall  
44 state the facts and clinical determinations which support the allegation  
45 that the subject of the petition meets each of the criteria for assisted  
46 outpatient treatment; provided that the parties may stipulate, upon  
47 mutual consent, that such physician need not testify.

48 (3) If the subject of the petition has refused to be examined by a  
49 physician, the court may request the subject to consent to an examina-  
50 tion by a physician appointed by the court. If the subject of the peti-  
51 tion does not consent and the court finds reasonable cause to believe  
52 that the allegations in the petition are true, the court may order peace  
53 officers, acting pursuant to their special duties, or police officers  
54 who are members of an authorized police department or force, or of a  
55 sheriff's department to take the subject of the petition into custody  
56 and transport him or her to a hospital for examination by a physician.

1 Retention of the subject of the petition under such order shall not  
2 exceed twenty-four hours. The examination of the subject of the petition  
3 may be performed by the physician whose affirmation or affidavit accom-  
4 panied the petition pursuant to paragraph [~~three~~ four] of subdivision  
5 [~~(e)~~ (f)] of this section, if such physician is privileged by such  
6 hospital or otherwise authorized by such hospital to do so. If such  
7 examination is performed by another physician, the examining physician  
8 may consult with the physician whose affirmation or affidavit accompa-  
9 nied the petition as to whether the subject meets the criteria for  
10 assisted outpatient treatment.

11 (4) A physician who testifies pursuant to paragraph two of this subdi-  
12 vision shall state: (i) the facts [~~which~~ and clinical determinations  
13 that] support the allegation that the subject meets each of the criteria  
14 for assisted outpatient treatment, (ii) that the treatment is the least  
15 restrictive alternative, (iii) the recommended assisted outpatient  
16 treatment, and (iv) the rationale for the recommended assisted outpa-  
17 tient treatment. If the recommended assisted outpatient treatment  
18 includes medication, such physician's testimony shall describe the types  
19 or classes of medication which should be authorized, shall describe the  
20 beneficial and detrimental physical and mental effects of such medica-  
21 tion, and shall recommend whether such medication should be self-admin-  
22 istered or administered by authorized personnel.

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

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

54 (2) The physician appointed to develop the written treatment plan  
55 shall provide the following persons with an opportunity to actively  
56 participate in the development of such plan: the subject of the peti-



1 tion; the treating physician, if any; and upon the request of the  
2 subject of the petition, an individual significant to the subject  
3 including any relative, close friend or individual otherwise concerned  
4 with the welfare of the subject. The appointed physician shall make a  
5 reasonable effort to gather relevant information for the development of  
6 the treatment plan from the subject of the petition's family member or  
7 members, or his or her significant other. If the subject of the petition  
8 has executed a health care proxy, the appointed physician shall consider  
9 any directions included in such proxy in developing the written treat-  
10 ment plan.

11 (3) The court shall not order assisted outpatient treatment unless a  
12 physician appearing on behalf of a director testifies to explain the  
13 written proposed treatment plan; provided that the parties may stipu-  
14 late, upon mutual consent, that such physician need not testify. Such  
15 physician shall state the categories of assisted outpatient treatment  
16 recommended, the rationale for each such category, facts which establish  
17 that such treatment is the least restrictive alternative, and, if the  
18 recommended assisted outpatient treatment plan includes medication, such  
19 physician shall state the types or classes of medication recommended,  
20 the beneficial and detrimental physical and mental effects of such medi-  
21 cation, and whether such medication should be self-administered or  
22 administered by an authorized professional. If the subject of the peti-  
23 tion has executed a health care proxy, such physician shall state the  
24 consideration given to any directions included in such proxy in develop-  
25 ing the written treatment plan. If a director is the petitioner, testi-  
26 mony pursuant to this paragraph shall be given at the hearing on the  
27 petition. If a person other than a director is the petitioner, such  
28 testimony shall be given on the date set by the court pursuant to para-  
29 graph three of subdivision [~~(j)~~] (k) of this section.

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

34 (2) If after hearing all relevant evidence, the court finds by clear  
35 and convincing evidence that the subject of the petition meets the  
36 criteria for assisted outpatient treatment, and there is no appropriate  
37 and feasible less restrictive alternative, the court may order the  
38 subject to receive assisted outpatient treatment for an initial period  
39 not to exceed one year. In fashioning the order, the court shall specif-  
40 ically make findings by clear and convincing evidence that the proposed  
41 treatment is the least restrictive treatment appropriate and feasible  
42 for the subject. The order shall state an assisted outpatient treatment  
43 plan, which shall include all categories of assisted outpatient treat-  
44 ment, as set forth in paragraph one of subdivision (a) of this section,  
45 which the assisted outpatient is to receive, but shall not include any  
46 such category that has not been recommended in [~~both~~] the proposed writ-  
47 ten treatment plan and [~~the~~] in any testimony provided to the court  
48 pursuant to subdivision [~~(i)~~](j) of this section.

49 (3) If after hearing all relevant evidence presented by a petitioner  
50 who is not a director, the court finds by clear and convincing evidence  
51 that the subject of the petition meets the criteria for assisted outpa-  
52 tient treatment, and the court has yet to be provided with a written  
53 proposed treatment plan and testimony pursuant to subdivision [~~(i)~~] (j)  
54 of this section, the court shall order the appropriate director to  
55 provide the court with such plan and testimony no later than the third  
56 day, excluding Saturdays, Sundays and holidays, immediately following

1 the date of such order; provided that the parties may stipulate, upon  
2 mutual consent, that such testimony need not be provided. Upon receiv-  
3 ing such plan and any required testimony, the court may order assisted  
4 outpatient treatment as provided in paragraph two of this subdivision.

5 (4) A court may order the patient to self-administer psychotropic  
6 drugs or accept the administration of such drugs by authorized personnel  
7 as part of an assisted outpatient treatment program. Such order may  
8 specify the type and dosage range of such psychotropic drugs and such  
9 order shall be effective for the duration of such assisted outpatient  
10 treatment.

11 (5) If the petitioner is the director of a hospital that operates an  
12 assisted outpatient treatment program, the court order shall direct the  
13 hospital director to provide or arrange for all categories of assisted  
14 outpatient treatment for the assisted outpatient throughout the period  
15 of the order. In all other instances, the order shall require the appro-  
16 priate director, as that term is defined in this section, to provide or  
17 arrange for all categories of assisted outpatient treatment for the  
18 assisted outpatient throughout the period of the order. Orders issued  
19 on or after the effective date of the chapter of the laws of two thou-  
20 sand twenty-three that amended this section shall require the appropri-  
21 ate director "as determined by the program coordinator" to provide or  
22 arrange for all categories of assisted outpatient treatment for the  
23 assisted outpatient throughout the period of the order.

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

30 ~~(k)~~ (l) Relocation of assisted outpatients. The commissioner shall  
31 promulgate regulations requiring that, during the period of the order,  
32 an assisted outpatient and any other appropriate persons shall notify  
33 the program coordinator within a reasonable time prior to such assisted  
34 outpatient relocating within the state of New York to an area not served  
35 by the director who has been directed to provide or arrange for the  
36 assisted outpatient treatment. Upon receiving notification of such relo-  
37 cation, the program coordinator shall redetermine who the appropriate  
38 director shall be and cause a copy of the court order and treatment plan  
39 to be transmitted to such director.

40 ~~(m)~~ (m) Petition for [additional periods of] continued treatment. (1)  
41 ~~[Prior]~~ Within thirty days prior to the expiration of an order pursuant  
42 to this section, the appropriate director shall review whether the  
43 assisted outpatient continues to meet the criteria for assisted outpa-  
44 tient treatment. ~~[If, as documented in the petition, the director deter-~~  
45 ~~mines that such criteria continue to be met or has made appropriate~~  
46 ~~attempts to, but has not been successful in eliciting, the cooperation~~  
47 ~~of the subject to submit to an examination, within thirty days prior to~~  
48 ~~the expiration of an order of assisted outpatient treatment, such direc-~~  
49 ~~tor may petition the court to order continued assisted outpatient treat-~~  
50 ~~ment pursuant to paragraph two of this subdivision. Upon determining~~  
51 ~~whether such criteria continue to be met, such director shall notify the~~  
52 ~~program coordinator in writing as to whether a petition for continued~~  
53 ~~assisted outpatient treatment is warranted and whether such a petition~~  
54 ~~was or will be filed.] Upon determining that one or more of such crite-  
55 ria are no longer met, such director shall notify the program coordina-  
56 tor in writing that a petition for continued assisted outpatient treat-~~

1 ment is not warranted. Upon determining that such criteria continue to  
2 be met, he or she shall petition the court to order continued assisted  
3 outpatient treatment for a period not to exceed one year from the expi-  
4 ration date of the current order. If the court's disposition of such  
5 petition does not occur prior to the expiration date of the current  
6 order, the current order shall remain in effect until such disposition.  
7 The procedures for obtaining any order pursuant to this subdivision  
8 shall be in accordance with the provisions of the foregoing subdivision  
9 of this section; provided that the time restrictions included in para-  
10 graph four of subdivision (c) of this section shall not be applicable.  
11 The notice provisions set forth in paragraph six of subdivision (k) of  
12 this section shall be applicable. Any court order requiring periodic  
13 blood tests or urinalysis for the presence of alcohol or illegal drugs  
14 shall be subject to review after six months by the physician who devel-  
15 oped the written treatment plan or another physician designated by the  
16 director, and such physician shall be authorized to terminate such blood  
17 tests or urinalysis without further action by the court.

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

39 [~~(1)~~] (3) If neither the appropriate director nor the current peti-  
40 tioner petition for continued assisted outpatient treatment pursuant to  
41 this paragraph and the order of the court expires, any other person  
42 authorized to petition pursuant to paragraph one of subdivision (f) of  
43 this section may bring a new petition for assisted outpatient treatment.  
44 If such new petition is filed less than sixty days after the expiration  
45 of such order, the time restrictions provided in paragraph four of  
46 subdivision (c) of this section shall not be applicable to the new peti-  
47 tion.

48 (4) If, thirty days prior to the expiration of an order, the assisted  
49 outpatient is deemed by the appropriate director to be missing and  
50 thereby unavailable for evaluation as to whether he or she continues to  
51 meet the criteria for assisted outpatient treatment, such director shall  
52 petition the court to extend the term of the current order until sixty  
53 days after such time as the assisted outpatient is located. If the court  
54 grants the extension, the director shall continue reasonable efforts to  
55 locate the assisted outpatient. Upon location of the assisted outpa-  
56 tient, the director shall review whether the assisted outpatient contin-

1 ues to meet the criteria for assisted outpatient treatment, pursuant to  
2 paragraph two of this subdivision.

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

10 (2) The appropriate director shall petition the court for approval  
11 before instituting a proposed material change in the assisted outpatient  
12 treatment plan, unless such change is authorized by the order of the  
13 court. Such petitions to change an assisted outpatient treatment plan,  
14 as well as petitions for continued treatment, may be made to any judge  
15 of the supreme or county courts in the county in which the subject of  
16 the petition is present or reasonably believed to be present. Such peti-  
17 tion shall be filed on notice to all parties entitled to notice under  
18 subdivision [~~(f)~~] (g) of this section. Not later than five days after  
19 receiving such petition, excluding Saturdays, Sundays and holidays, the  
20 court shall hold a hearing on the petition; provided that if the  
21 assisted outpatient informs the court that he or she agrees to the  
22 proposed material change, the court may approve such change without a  
23 hearing. Non-material changes may be instituted by the director without  
24 court approval. For the purposes of this paragraph, a material change is  
25 an addition or deletion of a category of services to or from a current  
26 assisted outpatient treatment plan, or any deviation without the  
27 assisted outpatient's consent from the terms of a current order relating  
28 to the administration of psychotropic drugs.

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

33 [~~(n)~~] (p) Failure to comply with assisted outpatient treatment. Where  
34 in the clinical judgment of a physician, (i) the assisted outpatient,  
35 has failed or refused to comply with the assisted outpatient treatment,  
36 (ii) efforts were made to solicit compliance, and (iii) such assisted  
37 outpatient may be in need of involuntary admission to a hospital pursu-  
38 ant to section 9.27 of this article or immediate observation, care and  
39 treatment pursuant to section 9.39 or 9.40 of this article, such physi-  
40 cian may request the appropriate director of community services, the  
41 director's designee, or any physician designated by the director of  
42 community services pursuant to section 9.37 of this article, to direct  
43 the removal of such assisted outpatient to an appropriate hospital for  
44 an examination to determine if such person has a mental illness for  
45 which he or she is in need of hospitalization is necessary pursuant to  
46 section 9.27, 9.39 or 9.40 of this article[~~. Furthermore, if such~~  
47 ~~assisted outpatient refuses to take medications as required by the court~~  
48 ~~order, or he or she refuses to take, or fails a blood test, urinalysis,~~  
49 ~~or alcohol or drug test as required by the court order, such physician~~  
50 ~~may consider such refusal or failure when determining whether]; provided  
51 that if, after efforts to solicit compliance, such physician determines  
52 that the assisted outpatient's failure to comply with the assisted  
53 outpatient treatment includes a substantial failure to take medication,  
54 pass or submit to blood testing or urinalysis, or receive treatment for  
55 alcohol or substance abuse, such physician may presume that the assisted  
56 outpatient is in need of an examination to determine whether he or she~~

1 has a mental illness for which hospitalization is necessary. Upon the  
2 request of such physician, the appropriate director, the director's  
3 designee, or any physician designated pursuant to section 9.37 of this  
4 article, may direct peace officers, acting pursuant to their special  
5 duties, or police officers who are members of an authorized police  
6 department or force or of a sheriff's department to take the assisted  
7 outpatient into custody and transport him or her to the hospital operat-  
8 ing the assisted outpatient treatment program or to any hospital author-  
9 ized by the director of community services to receive such persons. Such  
10 law enforcement officials shall carry out such directive. Upon the  
11 request of such physician, the appropriate director, the director's  
12 designee, or any physician designated pursuant to section 9.37 of this  
13 article, an ambulance service, as defined by subdivision two of section  
14 three thousand one of the public health law, or an approved mobile  
15 crisis outreach team as defined in section 9.58 of this article shall be  
16 authorized to take into custody and transport any such person to the  
17 hospital operating the assisted outpatient treatment program, or to any  
18 other hospital authorized by the appropriate director of community  
19 services to receive such persons. Any director of community services, or  
20 designee, shall be authorized to direct the removal of an assisted  
21 outpatient who is present in his or her county to an appropriate hospi-  
22 tal, in accordance with the provisions of this subdivision, based upon a  
23 determination of the appropriate director of community services direct-  
24 ing the removal of such assisted outpatient pursuant to this subdivi-  
25 sion. Such person may be retained for observation, care and treatment  
26 and further examination in the hospital for up to seventy-two hours to  
27 permit a physician to determine whether such person has a mental illness  
28 and is in need of involuntary care and treatment in a hospital pursuant  
29 to the provisions of this article. Any continued involuntary retention  
30 of the assisted outpatient in such hospital beyond the initial seventy-  
31 two hour period shall be in accordance with the provisions of this arti-  
32 cle relating to the involuntary admission and retention of a person. If  
33 at any time during the seventy-two hour period the person is determined  
34 not to meet the involuntary admission and retention provisions of this  
35 article, and does not agree to stay in the hospital as a voluntary or  
36 informal patient, he or she must be released. Failure to comply with an  
37 order of assisted outpatient treatment shall not be grounds for involun-  
38 tary civil commitment or a finding of contempt of court.

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

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

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

53 [~~(r)~~] (t) Education and training. (1) The office [~~of mental health~~],  
54 in consultation with the office of court administration, shall prepare  
55 educational and training materials on the use of this section, which  
56 shall be made available to local governmental units, providers of

1 services, judges, court personnel, law enforcement officials and the  
2 general public.

3 (2) The office, in consultation with the office of court adminis-  
4 tration, shall establish a mental health training program for supreme  
5 and county court judges and court personnel, and shall provide such  
6 training with such frequency and in such locations as may be appropriate  
7 to meet statewide needs. Such training shall focus on the use of this  
8 section and generally address issues relating to mental illness and  
9 mental health treatment.

10 [~~s~~] (u) A director of community services or his or her designee may  
11 require a provider of inpatient psychiatric services operated or  
12 licensed by the office of mental health to provide contemporaneous  
13 information, including but not limited to relevant clinical records,  
14 documents, and other information concerning the person receiving  
15 assisted outpatient treatment pursuant to an active assisted outpatient  
16 treatment order, that is deemed necessary by such director or designee  
17 who is required to coordinate and monitor the care of any individual who  
18 was subject to an active assisted outpatient treatment order to appro-  
19 priately discharge their duties pursuant to section 9.47 of this arti-  
20 cle, and where such provider of inpatient psychiatric services is  
21 required to disclose such information pursuant to paragraph twelve of  
22 subdivision (c) of section 33.13 of this chapter and such disclosure is  
23 in accordance with all other applicable state and federal confidentiali-  
24 ty laws. None of the records or information obtained by the director of  
25 community services pursuant to this subdivision shall be public records,  
26 and the records shall not be released by the director to any person or  
27 agency, except as already authorized by law.

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

30 (o) If the director of a department facility does not petition for  
31 assisted outpatient treatment pursuant to section 9.60 of this chapter  
32 upon the discharge of an inpatient admitted pursuant to section 9.27,  
33 9.39 or 9.40 of this chapter, or upon the expiration of a period of  
34 conditional release for such inpatient, such director shall report such  
35 discharge or such expiration in writing to the director of community  
36 services of the local governmental unit in which the inpatient is  
37 expected to reside.

38 § 7. Subdivision 3 of section 404 of the correction law, as amended by  
39 chapter 322 of the laws of 2021, is amended and a new subdivision 5 is  
40 added to read as follows:

41 3. Within a reasonable period prior to discharge of an incarcerated  
42 individual committed from a [~~state correctional facility from a~~] hospi-  
43 tal in the department of mental hygiene to the community, the director  
44 shall ensure that a clinical assessment has been completed to determine  
45 whether the incarcerated individual meets the criteria for assisted  
46 outpatient treatment pursuant to subdivision (c) of section 9.60 of the  
47 mental hygiene law. If, as a result of such assessment, the director  
48 determines that the incarcerated individual meets such criteria, prior  
49 to discharge the director of the hospital shall either petition for a  
50 court order pursuant to section 9.60 of the mental hygiene law, or  
51 report in writing to the director of community services of the local  
52 governmental unit in which the incarcerated individual is expected to  
53 reside so that an investigation [~~may~~] shall be conducted pursuant to  
54 section 9.47 of the mental hygiene law.

55 5. Within a reasonable period prior to release or discharge of an  
56 incarcerated individual who is not currently committed to a hospital in

1 the department of mental hygiene from a state correctional facility to  
2 the community, if such incarcerated individual has a serious mental  
3 illness pursuant to paragraph (e) of subdivision six of section one  
4 hundred thirty-seven of this chapter, the department shall notify the  
5 director of a hospital who shall ensure that a clinical assessment has  
6 been completed to determine whether the incarcerated individual meets  
7 the criteria for assisted outpatient treatment pursuant to subdivision  
8 (c) of section 9.60 of the mental hygiene law. If, as a result of such  
9 assessment, the director determines that the incarcerated individual  
10 meets such criteria, prior to release or discharge, the director of the  
11 hospital shall either petition for a court order pursuant to section  
12 9.60 of the mental hygiene law, or report in writing to the director of  
13 community services of the local governmental unit in which the incarcer-  
14 ated individual is expected to reside so that an investigation shall be  
15 conducted pursuant to section 9.47 of the mental hygiene law.

16 § 8. Section 18 of chapter 408 of the laws of 1999, constituting  
17 Kendra's Law, as amended by section 1 of subpart H of part UU of chapter  
18 56 of the laws of 2022, is amended to read as follows:

19 § 18. This act shall take effect immediately, provided that section  
20 fifteen of this act shall take effect April 1, 2000, provided, further,  
21 that subdivision (e) of section 9.60 of the mental hygiene law as added  
22 by section six of this act shall be effective 90 days after this act  
23 shall become law[~~, and that this act shall expire and be deemed repealed~~  
24 ~~June 30, 2027~~].

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

31 § 10. This act shall take effect immediately.