STATE OF NEW YORK

5508

2023-2024 Regular Sessions

IN SENATE

March 6, 2023

Introduced by Sen. SCARCELLA-SPANTON -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to clarifying the standards for involuntary in-patient care and treatment

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

Section 1. Short title. This act shall be known as the "New York State Mental Health Reform Act".

§ 2. Legislative findings. With the intent of restoring dignity and transparency to our state's treatment and care of mentally ill patients, the state engaged in reforming procedures and policies in implementing preferred outpatient treatment through a structured outpatient treatment process commonly referred to as Kendra's Law. The law was to ensure those individuals requiring mental health treatment were afforded a dignified process in treatment while allowing the patient's liberty to be free to pursue their daily lives without stigma or negative connotations attached to mental health.

Unfortunately, the practical application of the state's mental hygiene laws has allowed thousands of people who require more stringent mental health protocols for treatment to go without appropriate oversight to ensure their treatment is pursued thus, resulting in severe behavioral transgression to include a large degree of homelessness, criminal behavior, toxic drug use and alcoholism. The severity of abhorrent outcomes as the result of a failure to give medical professionals, as well as judicial direction in determining certain behavioral dysfunction(s) that display a need for in-patient care, has severely impacted patient's health, welfare, and their ability to regularly function in society. All too often, we are seeing unsuspecting citizens killed or maimed as the result of violent behavior by patients who have either disregarded or rejected available or mandated mental health services due to their deteriorating mental state, which compounds the deleterious outcome for the

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

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patient as well as society. Although outpatient commitment is the preferred mode of treatment for patients seeking mental health services, the occasion arises where judicial intervention to seek immediate, mandated treatment through court ordered in-patient treatment, in order to facilitate an expedited pathway for seeking medical or psychiatric help is necessary to prevent on-going negative behavioral episodes that places the patient or the public at risk of physical injury or death.

§ 3. The second, third and fourth undesignated paragraphs of section 9.01 of the mental hygiene law, as amended by chapter 723 of the laws of 1989, are amended to read as follows:

"in need of involuntary care and treatment" means that a person has a mental illness for which care and treatment as a patient in a hospital is essential to such person's welfare and [~~whose~~] **which so impairs the person's** judgment [~~is so impaired that he~~] **that the person** is unable to understand the need for such care and treatment. **Care and treatment in a hospital shall be considered essential to a person's welfare if, in the absence of such care and treatment, the person's mental illness is likely to result in serious harm.**

[~~"likelihood to result in serious harm" or~~] "likely to result in serious harm" means **presenting a substantial risk of:** (a) [~~a substantial risk of~~] physical **or mental** harm to the person as manifested by**:**

(i) threats of or attempts at suicide or serious bodily harm**;**

(ii) substantial interference with the person's ability to meet the person's needs for food, clothing, shelter or medical care; or

(iii) other conduct demonstrating that the person is dangerous to himself or herself, or (b) [~~a substantial risk of physical harm to other persons as manifested by~~] homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm. **Evaluation of the likelihood that a person's mental illness will result in serious harm shall include consideration of all relevant information, including credible reports of the person's recent behavior and any known relevant aspects of the person's medical and behavioral history.**

"need for retention" means [~~that~~] **the need of** a person who has been admitted to a hospital pursuant to this article [~~is in need~~] **for a further period** of involuntary care and treatment in a hospital [~~for a further period~~]. **Evaluation of need for retention shall include consideration of the person's preparedness, with appropriate and available support, to adhere to essential outpatient treatment.**

§ 4. Subdivision (a) of section 9.39 of the mental hygiene law, as amended by chapter 789 of the laws of 1985, is amended to read as follows:

(a) The director of any hospital maintaining adequate staff and facilities for the observation, examination, care, and treatment of persons alleged to be mentally ill and approved by the commissioner to receive and retain patients pursuant to this section may receive and retain therein as a patient for a period of fifteen days any person alleged to have a mental illness for which immediate observation, care, and treatment in a hospital is appropriate and which is likely to result in serious harm to himself**, herself** or others. [~~"Likelihood to result in serious harm" as used in this article shall mean:~~

~~**1. substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or**~~

~~**2. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.**~~]

The director shall cause to be entered upon the hospital records the name of the person or persons, if any, who have brought such person to the hospital and the details of the circumstances leading to the hospitalization of such person.

The director shall admit such person pursuant to the provisions of this section only if a staff physician of the hospital upon examination of such person finds that such person qualifies under the requirements of this section. Such person shall not be retained for a period of more than forty-eight hours unless within such period such finding is confirmed after examination by another physician who shall be a member of the psychiatric staff of the hospital. Such person shall be served, at the time of admission, with written notice of his **or her** status and rights as a patient under this section. Such notice shall contain the patient's name. At the same time, such notice shall also be given to the mental hygiene legal service and personally or by mail to such person or persons, not to exceed three in number, as may be designated in writing to receive such notice by the person alleged to be mentally ill. If at any time after admission, the patient, any relative, friend, or the mental hygiene legal service gives notice to the director in writing of request for court hearing on the question of need for immediate observation, care, and treatment, a hearing shall be held as herein provided as soon as practicable but in any event not more than five days after such request is received, except that the commencement of such hearing may be adjourned at the request of the patient. It shall be the duty of the director upon receiving notice of such request for hearing to forward forthwith a copy of such notice with a record of the patient to the supreme court or county court in the county where such hospital is located. A copy of such notice and record shall also be given the mental hygiene legal service. The court which receives such notice shall fix the date of such hearing and cause the patient or other person requesting the hearing, the director, the mental hygiene legal service and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and examine the person alleged to be mentally ill, if it be deemed advisable in or out of court, and shall render a decision in writing that there is reasonable cause to believe that the patient has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself**, herself** or others. If it be determined that there is such reasonable cause, the court shall forthwith issue an order authorizing the retention of such patient for any such purpose or purposes in the hospital for a period not to exceed fifteen days from the date of admission. Any such order entered by the court shall not be deemed to be an adjudication that the patient is mentally ill, but only a determination that there is reasonable cause to retain the patient for the purposes of this section.

§ 5. This act shall take effect on the sixtieth day after it shall have become a law.