SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 735

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2008

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 735.

This bill amends the State's civil commitment laws (N.J.S.A.30:4-27.1 et seq.) to allow for involuntary commitment to outpatient treatment of persons who are "in need of involuntary commitment to treatment." The bill defines this term to mean that "an adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to accept appropriate treatment voluntarily after it has been offered, needs outpatient treatment or inpatient care at a short-term care or psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs."

Involuntary commitment to treatment of persons with mental illness is one of the most intrusive exercises of power by the State. New Jersey's involuntary commitment system currently only permits commitment to inpatient care for persons who are established to be dangerous within the reasonably foreseeable future to themselves, others or property. The bill defines "reasonably foreseeable future" to mean a time frame that may be beyond the immediate or imminent, but not longer than a time frame as to which reasonably certain judgments about a person's likely behavior can be reached. In most cases, the small minority of persons with mental illness who present a danger within the reasonably foreseeable future to themselves, others or property, do so because they do not voluntarily engage in treatment. In this regard, the bill recognizes the State's responsibility to make available appropriate voluntary services in the community and clarifies or modifies New Jersey's civil commitment law as described below.

As the treatment for people with mental illness has advanced, many successful treatments are entirely outpatient. For this reason and others, the bill shifts the sense of involuntary commitment from commitment to an inpatient facility to commitment to clinically appropriate treatment, which may be inpatient care, outpatient care, or a combination of inpatient and outpatient care. The finding that a person is in need of involuntary commitment to treatment, then, will
result in an order of commitment to appropriate treatment, rather than commitment to a facility.

The treatment provided after the entry of an order of involuntary commitment to treatment will be governed by the principle of least restrictive environment. The commitment process, then, will have two steps: it will first be determined whether by clear and convincing evidence a person's condition meets the dangerousness standard; then the treatment to which the person is committed will be determined by considering the least restrictive treatment setting appropriate to ameliorate the danger presented and appropriate to provide services directed to the wellness and recovery of the person.

In addition, the bill amends N.J.S.A. 30:4-27.9 to clarify, but not change, the standard for civil commitment and therefore make terminology uniform throughout the law so that the statute provides that a person shall not be involuntarily committed to treatment unless the person is "in need of involuntary commitment to treatment," as that term is defined in N.J.S.A. 30:4-27.2.

The bill also amends the definition of "dangerous to self" to replace the term "serious physical debilitation" with the term "serious physical harm," and make the definition of "dangerous to self" parallel to the definition of "dangerous to others or property" by including language from the latter, that the determination of dangerousness take into account a person's history, recent behavior and any recent acts or threat. The bill also adds to both definitions that the determination of dangerousness shall take into account a person's "serious psychiatric deterioration."

With respect to screening services, the bill amends N.J.S.A.30:4-27.5 to provide that when appropriate and available, and as permitted by law, screening staff shall make reasonable efforts to gather information from the person's family or significant others in preparing screening documents. Upon completion of a screening certificate, screening service staff would determine the least restrictive environment for the appropriate treatment for the person, taking into account the person's prior history and current mental health condition. "Least restrictive environment" is defined in the bill as "the available setting and form of treatment that appropriately addresses a person's need for care and the need to respond to dangers to the person, others or property and respects, to the greatest extent practicable, the person's interests in freedom of movement and self-direction."

The bill specifies that screening service staff shall designate inpatient treatment for the person if that person is immediately or imminently dangerous or when outpatient treatment is deemed inadequate to render the person unlikely to be dangerous to self, others or property within the reasonably foreseeable future. Screening service staff shall designate outpatient treatment for the person when outpatient treatment is deemed sufficient to render the person unlikely
to be dangerous to self, others or property within the reasonably foreseeable future.

If the screening service staff determines that the person is in need of involuntary commitment to outpatient treatment, staff must consult with an outpatient treatment provider to arrange, if possible, for an appropriate interim plan of treatment. The Commissioner of Human Services is required to designate one or more mental health agencies in each county or multi-county region in the State as an outpatient treatment provider, and authorizes the provider to provide services to persons from a specified geographic area. The designation would only be made with the approval of the agency's governing body.

In the case of patients committed and assigned to outpatient treatment by screening service staff or order of the court, or both, the bill provides that an outpatient treatment provider shall develop the plan of outpatient treatment in cooperation with screening service staff, short-term care facility staff or the court, as applicable. When appropriate and available, and as permitted by law, the provider shall make reasonable efforts to gather information from the patient's family or significant others for the purposes of developing the plan of outpatient treatment. The bill defines "plan of outpatient treatment" as a plan for recovery from mental illness approved by a court that is to be carried out in an outpatient setting and is prepared by an outpatient treatment provider for a patient who has a history of responding to treatment. The plan may include medication as a component of the plan; however, medication shall not be involuntarily administered in an outpatient setting.

During the time a patient is assigned to the outpatient treatment provider for services pursuant to a commitment to outpatient treatment, the outpatient treatment provider must provide and coordinate the provision of care consistent with the plan of outpatient treatment.

If a patient fails to materially comply with the plan of outpatient treatment during the time the patient is assigned by a screening service to the outpatient treatment provider for services pursuant to a commitment to outpatient treatment or if the outpatient treatment provider determines that the plan is inadequate to meet the patient's mental health needs, the provider must notify the screening service of this material noncompliance or plan inadequacy. Similarly, if a patient fails to materially comply with the plan during the time the patient is assigned by a court to the provider or if the plan is inadequate, the provider must notify the court and screening service of this material noncompliance or plan inadequacy. In both cases, the patient would be referred to a screening service for an assessment to determine what services are available and where those services may be provided. The patient would be afforded the protections and procedures provided for in the State's civil commitment laws. The bill also provides that if a provider determines that a plan of outpatient treatment is inadequate
and needs to be modified, but referral to a screening service is not necessary, the provider shall seek court approval for such modification and shall notify the court, patient's attorney and the county adjuster of the request for court approval of the modification.

Similar to procedures for admission to inpatient treatment, the bill:

1. allows a screening service or outpatient treatment provider to initiate court proceedings for commitment to outpatient treatment, and also allows the same psychiatrist to execute the certificate after there has been a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate; and

2. provides that a patient who is involuntarily committed and assigned to an outpatient treatment provider would receive a court hearing with respect to the need for continued involuntary commitment within 20 days from initial commitment, unless administratively discharged by the outpatient treatment provider.

If the court finds by clear and convincing evidence that the patient needs continued involuntary commitment to treatment under N.J.S.A.30:4-27.15, it would issue an order authorizing the commitment as well as the placement of the patient in an outpatient or inpatient setting for treatment.

In determining the commitment placement, the court would consider the least restrictive environment for the patient to receive clinically appropriate treatment that would ameliorate the danger posed by the patient and provide the patient with appropriate treatment. If the court determines that the least restrictive environment for the patient to receive clinically appropriate treatment would be in an outpatient setting and that there is a likelihood of the patient responding to outpatient treatment, the court would obtain from a designated outpatient treatment provider a proposed plan of outpatient treatment for the patient, which the court shall review. The plan must be approved by the court.

Between the time period for periodic court review hearings pursuant to N.J.S.A.30:4-27.16, the chief executive officer of the psychiatric facility may recommend (to the court) changing the placement of a patient from an inpatient to outpatient setting, in order to ensure that the patient receives clinically appropriate treatment in the least restrictive environment. At the time the court sets the date for a hearing on the change in placement, notice would be provided to the patient, the patient's guardian, if any, the patient's next-of-kin, the patient's attorney and the county adjuster. The patient rights provided under N.J.S.A.30:4-27.14 would apply to the hearing.

The bill also requires the Commissioner of Human Services to monitor and evaluate the implementation of involuntary outpatient commitment and report to the Governor and the Legislature two and four years after the bill's effective date on the implementation of involuntary outpatient commitment. The commissioner may contract
with an individual or entity for the evaluation. The evaluation would include specific criteria enumerated in section 23 of the bill. The commissioner shall also include in his reports such recommendations for statutory changes as he deems necessary, including whether or not the provision for involuntary outpatient commitment established in this bill should be continued or revised.

The bill also amends:

-- N.J.S.A.30:4-27.6 to authorize State or local law enforcement officers to take custody of and take to a screening service a patient who needs to be referred to the service, upon certification by an outpatient treatment provider that the provider has reasonable cause to believe the patient is in need of evaluation for commitment to treatment;

-- N.J.S.A.2A:62A-16 and N.J.S.A.30:4-27.7 to add outpatient treatment providers to the list of professionals granted immunity under these sections of law;

-- N.J.S.A.30:4-27.11 to provide that patients assigned to an outpatient treatment provider have the same patient rights under this section of law as are provided to patients admitted to a short-term care or psychiatric facility or special psychiatric hospital;

-- N.J.S.A.30:4-27.16 concerning periodic court hearings to provide that if a patient has been assigned to an outpatient treatment provider, the court would conduct the first review hearing six months from the date of the first hearing, the next hearing nine months from the date of the first hearing and subsequent hearings 12 months from the date of the first hearing and annually thereafter;

-- N.J.S.A.30:4-27.17 to provide for an outpatient treatment provider to administratively discharge a patient; and

-- N.J.S.A.30:4-27.18 to provide for an outpatient treatment provider to participate in the formulation of a discharge plan.

The bill takes effect one year after enactment.

This bill is identical to Assembly Bill No.1618 (McKeon), which is pending before the Assembly Human Services Committee.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.