

ASSEMBLY, No. 4116

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Provides alternate standard for involuntary commitment to treatment in outpatient setting.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning involuntary commitment to treatment and
2 amending P.L.1987, c.116 and P.L.2009, c.112.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 2 of P.L.1987, c.116 (C.30:4-27.2) is amended to
8 read as follows:

9 2. As used in P.L.1987, c.116 (C.30:4-27.1 et seq.) and
10 P.L.2009, c.112:

11 a. "Chief executive officer" means the person who is the chief
12 administrative officer of an institution or psychiatric facility.

13 b. "Clinical certificate" means a form prepared by the division
14 and approved by the Administrative Office of the Courts, that is
15 completed by the psychiatrist or other physician who has examined
16 the person who is subject to commitment within three days of
17 presenting the person for involuntary commitment to treatment, and
18 which states that the person is in need of involuntary commitment
19 to treatment. The form shall also state the specific facts upon which
20 the examining physician has based his conclusion and shall be
21 certified in accordance with the Rules of the Court. A clinical
22 certificate may not be executed by a person who is a relative by
23 blood or marriage to the person who is being screened.

24 c. "Clinical director" means the person who is designated by
25 the director or chief executive officer to organize and supervise the
26 clinical services provided in a screening service, short-term care or
27 psychiatric facility. The clinical director shall be a psychiatrist;
28 however, those persons currently serving in the capacity will not be
29 affected by this provision. This provision shall not alter any current
30 civil service laws designating the qualifications of such position.

31 d. "Commissioner" means the Commissioner of Human
32 Services.

33 e. "County counsel" means the chief legal officer or advisor of
34 the governing body of a county.

35 f. "Court" means the Superior Court or a municipal court.

36 g. "Custody" means the right and responsibility to ensure the
37 provision of care and supervision.

38 h. (1) "Dangerous to self" means that by reason of mental
39 illness the person has threatened or attempted suicide or serious
40 bodily harm, or has behaved in such a manner as to indicate that the
41 person is unable to satisfy his need for nourishment, essential
42 medical care or shelter, so that it is probable that substantial bodily
43 injury, serious physical harm, or death will result within the
44 reasonably foreseeable future; however, no person shall be deemed
45 to be unable to satisfy his need for nourishment, essential medical

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 care, or shelter if he is able to satisfy such needs with the
2 supervision and assistance of others who are willing and available.
3 This determination shall take into account a person's history, recent
4 behavior, and any recent act, threat, or serious psychiatric
5 deterioration.

6 (2) With respect to outpatient treatment and as an alternative to
7 paragraph (1) of this subsection, "dangerous to self" means that
8 there is a substantial likelihood that the failure to provide
9 immediate, intensive psychiatric therapy will create in the
10 reasonably foreseeable future a genuine risk of irreversible or
11 significant harm to the person. This determination shall take into
12 account a person's history, recent behavior, and any recent act,
13 threat, or serious psychiatric deterioration.

14 i. (1) "Dangerous to others or property" means that by reason
15 of mental illness there is a substantial likelihood that the person will
16 inflict serious bodily harm upon another person or cause serious
17 property damage within the reasonably foreseeable future. This
18 determination shall take into account a person's history, recent
19 behavior, and any recent act, threat, or serious psychiatric
20 deterioration.

21 (2) With respect to outpatient treatment and as an alternative to
22 paragraph (1) of this subsection, "dangerous to others or property"
23 means that there is a substantial likelihood that the failure to
24 provide immediate, intensive psychiatric therapy will create in the
25 reasonably foreseeable future a genuine risk of irreversible or
26 significant harm to another person or to property. This
27 determination shall take into account a person's history, recent
28 behavior and any recent act, threat or serious psychiatric
29 deterioration.

30 j. "Department" means the Department of Human Services.

31 k. "Director" means the chief administrative officer of a
32 screening service, short-term care facility, or special psychiatric
33 hospital.

34 l. "Division" means the Division of Mental Health and
35 Addiction Services in the Department of Human Services.

36 m. "In need of involuntary commitment" or "in need of
37 involuntary commitment to treatment" means that an adult with
38 mental illness, whose mental illness causes the person to be
39 dangerous to self, as defined in paragraphs (1) or (2) of subsection
40 h. of section 2 of P.L.1987, c.116 (C.30:4-27.2), or dangerous to
41 others or property, as defined in paragraphs (1) or (2) of subsection
42 i. of section 2 of P.L.1987, c.116 (C.30:4-27.2), and who is
43 unwilling to accept appropriate treatment voluntarily after it has
44 been offered, needs outpatient treatment or inpatient care at a short-
45 term care or psychiatric facility or special psychiatric hospital
46 because other services are not appropriate or available to meet the
47 person's mental health care needs.

- 1 n. "Institution" means any State or county facility providing
2 inpatient care, supervision, and treatment for persons with
3 developmental disabilities; except that with respect to the
4 maintenance provisions of Title 30 of the Revised Statutes,
5 institution also means any psychiatric facility for the treatment of
6 persons with mental illness.
- 7 o. "Mental health agency or facility" means a legal entity
8 which receives funds from the State, county, or federal government
9 to provide mental health services.
- 10 p. "Mental health screener" means a psychiatrist, psychologist,
11 social worker, registered professional nurse, licensed marriage and
12 family therapist, or other individual trained to do outreach only for
13 the purposes of psychological assessment who is employed by a
14 screening service and possesses the license, academic training or
15 experience, as required by the commissioner pursuant to regulation;
16 except that a psychiatrist and a State licensed clinical psychologist
17 who meet the requirements for mental health screener shall not have
18 to comply with any additional requirements adopted by the
19 commissioner.
- 20 q. "Mental hospital" means, for the purposes of the payment
21 and maintenance provisions of Title 30 of the Revised Statutes, a
22 psychiatric facility.
- 23 r. "Mental illness" means a current, substantial disturbance of
24 thought, mood, perception, or orientation which significantly
25 impairs judgment, capacity to control behavior, or capacity to
26 recognize reality, but does not include simple alcohol intoxication,
27 transitory reaction to drug ingestion, organic brain syndrome, or
28 developmental disability unless it results in the severity of
29 impairment described herein. The term mental illness is not limited
30 to "psychosis" or "active psychosis," but shall include all conditions
31 that result in the severity of impairment described herein.
- 32 s. "Patient" means a person over the age of 18 who has been
33 admitted to, but not discharged from a short-term care or
34 psychiatric facility, or who has been assigned to, but not discharged
35 from an outpatient treatment provider.
- 36 t. "Physician" means a person who is licensed to practice
37 medicine in any one of the United States or its territories, or the
38 District of Columbia.
- 39 u. "Psychiatric facility" means a State psychiatric hospital
40 listed in R.S.30:1-7, a county psychiatric hospital, or a psychiatric
41 unit of a county hospital.
- 42 v. "Psychiatrist" means a physician who has completed the
43 training requirements of the American Board of Psychiatry and
44 Neurology.
- 45 w. "Psychiatric unit of a general hospital" means an inpatient
46 unit of a general hospital that restricts its services to the care and
47 treatment of persons with mental illness who are admitted on a
48 voluntary basis.

- 1 x. "Psychologist" means a person who is licensed as a
2 psychologist by the New Jersey Board of Psychological Examiners.
- 3 y. "Screening certificate" means a clinical certificate executed
4 by a psychiatrist or other physician affiliated with a screening
5 service.
- 6 z. "Screening service" means a public or private ambulatory
7 care service, whether or not affiliated with a hospital, designated by
8 the commissioner, which provides mental health services including
9 assessment, emergency, and referral services to persons with mental
10 illness in a specified geographic area.
- 11 aa. "Screening outreach visit" means an evaluation provided by
12 a mental health screener wherever the person may be when
13 clinically relevant information indicates the person may need
14 involuntary commitment to treatment and is unable or unwilling to
15 come to a screening service.
- 16 bb. "Short-term care facility" means an inpatient, community
17 based mental health treatment facility that is designated to provide
18 acute care and assessment services to a person with mental illness
19 whose mental illness causes the person to be dangerous to self, as
20 defined in paragraph (1) of subsection h. of section 2 of P.L.1987,
21 c.116 (C.30:4-27.2), or dangerous to others or property, as defined
22 in paragraph (1) of subsection i. of section 2 of P.L.1987, c.116
23 (C.30:4-27.2). A short-term care facility is authorized to serve
24 persons from a specified geographic area, may be a part of a general
25 hospital or other appropriate health care facility, and shall meet
26 certificate of need requirements and be licensed and inspected by
27 the Department of Health pursuant to P.L.1971, c.136 (C.26:2H-1 et
28 seq.).
- 29 cc. "Special psychiatric hospital" means a public or private
30 hospital licensed by the Department of Health to provide voluntary
31 and involuntary mental health services, including assessment, care,
32 supervision, treatment, and rehabilitation services to persons with
33 mental illness.
- 34 dd. "Treatment team" means one or more persons, including at
35 least one psychiatrist or physician, and may include a psychologist,
36 social worker, nurse, licensed marriage and family therapist, and
37 other appropriate services providers. A treatment team provides
38 mental health services to a patient of a screening service, outpatient
39 treatment provider, or short-term care or psychiatric facility.
- 40 ee. "Voluntary admission" means that an adult with mental
41 illness, whose mental illness causes the person to be dangerous to
42 self, as defined in paragraph (1) of subsection h. of section 2 of
43 P.L.1987, c.116 (C.30:4-27.2), or dangerous to others or property,
44 as defined in paragraph (1) of subsection i. of section 2 of P.L.1987,
45 c.116 (C.30:4-27.2), and is willing to be admitted to a facility
46 voluntarily for care, needs care at a short-term care or psychiatric
47 facility because other facilities or services are not appropriate or
48 available to meet the person's mental health needs. A person may

also be voluntarily admitted to a psychiatric facility if his mental illness presents a substantial likelihood of rapid deterioration in functioning in the near future, there are no appropriate community alternatives available, and the psychiatric facility can admit the person and remain within its rated capacity.

ff. "County adjuster" means the person appointed pursuant to R.S.30:4-34.

gg. "Least restrictive environment" means 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.

hh. "Outpatient treatment" means clinically appropriate care based on proven or promising treatments directed to wellness and recovery, provided by a member of the patient's treatment team to a person not in need of inpatient treatment. Outpatient treatment may include, but shall not be limited to, day treatment services, case management, residential services, outpatient counseling and psychotherapy, and medication treatment.

ii. "Outpatient treatment provider" means a community-based provider, designated as an outpatient treatment provider pursuant to section 8 of P.L.1987, c.116 (C.30:4-27.8), that provides or coordinates the provision of outpatient treatment to persons in need of involuntary commitment to treatment.

jj. "Plan of outpatient treatment" means a plan for recovery from mental illness approved by a court pursuant to section 17 of P.L.2009, c.112 (C.30:4-27.15a) 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.

kk. "Reasonably foreseeable future" means 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.

ll. "Geographic area" means a distinct area of the State that is designated by the commissioner to be served by a screening service and may be a county, portion of a county, or multi-county area.

(cf: P.L.2019, c.391, s.1)

2. Section 5 of P.L.1987, c.116 (C.30:4-27.5) is amended to read as follows:

5. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) regarding a screening service and its staff that effectuate the following purposes and procedures:

1 a. A screening service shall serve as the facility in the public
2 mental health care treatment system wherein a person believed to be
3 in need of involuntary commitment to outpatient treatment, a short-
4 term care facility, psychiatric facility or special psychiatric hospital
5 undergoes an assessment to determine what mental health services
6 are appropriate for the person and where those services may be
7 most appropriately provided in the least restrictive environment.

8 The screening service may provide emergency and consensual
9 treatment to the person receiving the assessment and may transport
10 the person or detain the person up to 24 hours for the purposes of
11 providing the treatment and conducting the assessment.

12 b. When a person is assessed by a mental health screener and
13 involuntary commitment to treatment seems necessary, the screener
14 shall provide, on a screening document prescribed by the division,
15 information regarding the person's history and available alternative
16 facilities and services that are deemed inappropriate for the person.
17 When appropriate and available, and as permitted by law, the
18 screener shall make reasonable efforts to gather information from
19 the person's family or significant others for the purposes of
20 preparing the screening document. If a psychiatrist, in
21 consideration of this document and in conjunction with the
22 psychiatrist's own complete assessment, concludes that the person is
23 in need of commitment to treatment, the psychiatrist shall complete
24 the screening certificate. The screening certificate shall be
25 completed by a psychiatrist except in those circumstances where the
26 division's contract with the screening service provides that another
27 physician may complete the certificate.

28 Upon completion of the screening certificate, screening service
29 staff shall determine, in consultation with the psychiatrist or another
30 physician, as appropriate, the least restrictive environment for the
31 appropriate treatment to which the person shall be assigned or
32 admitted, taking into account the person's prior history of
33 hospitalization and treatment and the person's current mental health
34 condition. Screening service staff shall designate:

35 (1) inpatient treatment for the person if he is immediately or
36 imminently dangerous or if outpatient treatment is deemed
37 inadequate to render the person unlikely to be dangerous to self, as
38 defined in paragraph (1) of subsection h. of section 2 of P.L.1987,
39 c.116 (C.30:4-27.2), or dangerous to others or property, as defined
40 in paragraph (1) of subsection i. of section 2 of P.L.1987, c.116
41 (C.30:4-27.2), within the reasonably foreseeable future; and

42 (2) outpatient treatment for the person when outpatient
43 treatment is deemed sufficient to render the person unlikely to be
44 dangerous to self, others or property within the reasonably
45 foreseeable future, or the person appears to be dangerous to self, as
46 defined in paragraphs (1) or (2) of subsection h. of section 2 of
47 P.L.1987, c.116 (C.30:4-27.2), or dangerous to others or property,

1 as defined in paragraphs (1) or (2) of subsection i. of section 2 of
2 P.L.1987, c.116 (C.30:4-27.2).

3 If the screening service staff determines that the person is in
4 need of involuntary commitment to outpatient treatment, the
5 screening service staff shall consult with an outpatient treatment
6 provider to arrange, if possible, for an appropriate interim plan of
7 outpatient treatment in accordance with section 9 of P.L.2009, c.112
8 (C.30:4-27.8a).

9 If a person has been admitted three times or has been an inpatient
10 for 60 days at a short-term care facility during the preceding 12
11 months, consideration shall be given to not placing the person in a
12 short-term care facility.

13 The person shall be admitted to the appropriate facility or
14 assigned to the appropriate outpatient treatment provider, as
15 appropriate for treatment, as soon as possible. Screening service
16 staff are authorized to coordinate initiation of outpatient treatment
17 or transport the person or arrange for transportation of the person to
18 the appropriate facility.

19 c. If the mental health screener determines that the person is
20 not in need of assignment or commitment to an outpatient treatment
21 provider, or admission or commitment to a short-term care facility,
22 psychiatric facility or special psychiatric hospital, the screener shall
23 refer the person to an appropriate community mental health or
24 social services agency or appropriate professional or inpatient care
25 in a psychiatric unit of a general hospital.

26 d. A mental health screener shall make a screening outreach
27 visit if the screener determines, based on clinically relevant
28 information provided by an individual with personal knowledge of
29 the person subject to screening, that the person may need
30 involuntary commitment to treatment and the person is unwilling or
31 unable to come to the screening service for an assessment.

32 e. If the mental health screener pursuant to this assessment
33 determines that there is reasonable cause to believe that a person is
34 in need of involuntary commitment to treatment, the screener shall
35 so certify the need on a form prepared by the division.

36 (cf: P.L.2009, c.112, s.5)

37
38 3. Section 15 of P.L.1987, c.116 (C.30:4-27.15) is amended to
39 read as follows:

40 15. a. If the court finds by clear and convincing evidence that
41 the patient needs continued involuntary commitment to treatment, it
42 shall issue an order authorizing the involuntary commitment of the
43 patient and the assignment or admission of the patient pursuant to
44 section 17 of P.L.2009, c.112 (C.30:4-27.15a) and shall schedule a
45 subsequent court hearing in the event the patient is not
46 administratively discharged pursuant to section 17 of P.L.1987,
47 c.116 (C.30:4-27.17) prior thereto.

1 b. If the court finds that the patient does not need continued
2 involuntary commitment to treatment, the court shall so order. A
3 patient who is serving a term of incarceration shall be returned to
4 the appropriate State, county or local authority to complete service
5 of the term of incarceration imposed until released in accordance
6 with law, and any other patient shall be discharged by the facility
7 within 48 hours of the court's verbal order or by the end of the next
8 working day, whichever is longer, with a discharge plan prepared
9 pursuant to section 18 of P.L.1987, c.116 (C.30:4-27.18).

10 c. (1) The court may discharge the patient subject to
11 conditions, if the court finds that the person does not need
12 involuntary or continued involuntary commitment to treatment and
13 the court finds:

14 (a) that the patient's history indicates a high risk of
15 rehospitalization because of the patient's failure to comply with
16 discharge plans; or

17 (b) that there is substantial likelihood that by reason of mental
18 illness the patient will be dangerous to himself , as defined in
19 paragraphs (1) or (2) of subsection h. of section 2 of P.L.1987,
20 c.116 (C.30:4-27.2), or dangerous to others or property, as defined
21 in paragraphs (1) or (2) of subsection i. of section 2 of P.L.1987,
22 c.116 (C.30:4-27.2), if the patient does not receive other appropriate
23 and available services that render involuntary commitment to
24 treatment unnecessary.

25 (2) Conditions imposed pursuant to this section shall include
26 those recommended by the facility and mental health agency and
27 developed with the participation of the patient. Conditions imposed
28 on the patient shall be specific and their duration shall not exceed
29 90 days unless the court determines, in a case in which the Attorney
30 General or a county prosecutor participated, that the conditions
31 should be imposed for a longer period. If the court imposes
32 conditions for a period exceeding six months, the court shall
33 provide for a review hearing on a date the court deems appropriate
34 but in no event later than six months from the date of the order.
35 The review hearing shall be conducted in the manner provided in
36 this section, and the court may impose any order authorized
37 pursuant to this section.

38 (3) The designated mental health agency staff person shall
39 notify the court if the patient fails to meet the conditions of the
40 discharge plan, and the court shall issue an order directing that the
41 person be taken to a screening service for an assessment. The court
42 shall determine, in conjunction with the findings of a screening
43 service, if the patient needs to be rehospitalized and, if so, the
44 patient shall be returned to the facility. The court shall hold a
45 hearing within 20 days of the day the patient was returned to the
46 facility to determine if the order of conditional discharge should be
47 vacated.

1 d. Notwithstanding subsection a. of this section, or any
2 provision of section 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27.16,
3 30:4-27.17 or 30:4-27.18), no person committed while serving a
4 term of incarceration shall be discharged by the court or
5 administratively discharged prior to the date on which the person's
6 maximum term would have expired had he not been committed. If
7 the person is no longer in need of involuntary commitment to
8 treatment, the person shall be returned to the appropriate State,
9 county or local authority to complete service of the term of
10 incarceration imposed until released in accordance with law, and
11 the person shall be given day for day credit for all time during
12 which the person was committed.

13 e. Notwithstanding subsection a. of this section, or any
14 provision of section 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27.16,
15 30:4-27.17 or 30:4-27.18), no person committed pursuant to
16 N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of
17 insanity or pursuant to N.J.S.2C:4-6 concerning lack of mental
18 competence to stand trial shall be discharged by the court or
19 administratively discharged unless the prosecuting attorney in the
20 case receives prior notice and an opportunity to be heard.
21 (cf: P.L.2009, c.112, s.16)

22

23 4. Section 17 of P.L.2009, c.112 (C.30:4-27.15a) is amended to
24 read as follows:

25 17. a. The court shall determine whether a patient who has been
26 found to need continued involuntary commitment to treatment
27 pursuant to section 15 of P.L.1987, c.116 (C.30:4-27.15) should be
28 assigned to an outpatient setting or admitted to an inpatient setting
29 for treatment, and shall issue the order authorizing such placement
30 pursuant to section 15 of P.L.1987, c.116 (C.30:4-27.15), in
31 accordance with this section. In determining the commitment
32 placement, the court shall consider the least restrictive environment
33 for the patient to receive clinically appropriate treatment that would
34 ameliorate the danger posed by the patient and provide the patient
35 with appropriate treatment. As part of the consideration, the court
36 shall review whether the person is dangerous to self, as defined in
37 paragraphs (1) or (2) of subsection h. of section 2 of P.L.1987,
38 c.116 (C.30:4-27.2), or dangerous to others or property, as defined
39 in paragraphs (1) or (2) of subsection i. of section 2 of P.L.1987,
40 c.116 (C.30:4-27.2).

41 b. If the court determines that the least restrictive environment
42 for the patient to receive clinically appropriate treatment would be
43 in an outpatient setting and that there is a likelihood of the patient
44 responding to outpatient treatment, the court shall obtain from a
45 designated outpatient treatment provider a proposed plan of
46 outpatient treatment for the patient which the court shall review.
47 The plan of outpatient treatment shall be approved by the court.

1 c. If the court determines that the least restrictive environment
2 for the patient to receive clinically appropriate treatment would be
3 in an inpatient setting, the court shall issue an order for admission
4 to a psychiatric facility.

5 d. Between the time periods for periodic court review hearings
6 pursuant to section 16 of P.L.1987, c.116 (C.30:4-27.16), the chief
7 executive officer of a psychiatric facility may recommend changing
8 the placement of the patient from an inpatient to outpatient setting,
9 in order to ensure that the patient receives clinically appropriate
10 treatment in the least restrictive environment. The chief executive
11 officer of the facility shall notify the court of the recommendation
12 for the change in placement.

13 e. At the time the court sets the date for a hearing on the
14 change in placement, notice of the hearing shall be served upon the
15 patient, the patient's guardian, if any, the patient's next-of-kin, the
16 patient's attorney and the county adjuster of the county in which the
17 patient has legal settlement.

18 f. The provisions of section 14 of P.L.1987, c.116 (C.30:4-
19 27.14) concerning patient rights at a hearing shall apply to the
20 hearing pursuant to this subsection.

21 (cf: P.L.2009, c.112, s.17)

22
23 5. This act shall take effect on the first day of the 13th month
24 next following the date of enactment.

25
26
27 STATEMENT

28
29 This bill amends the involuntary commitment to treatment law to
30 provide an alternate standard for determining whether a person
31 should be involuntarily committed to outpatient treatment. The
32 alternate standard is similar to what is provided by the New Jersey
33 Rules of Court for determining civil commitment of a minor.

34 The bill provides that, with respect to outpatient treatment and as
35 an alternative to meeting the existing statutory standard for
36 "dangerous to self" or "dangerous to others or property" provided in
37 section 2 of P.L.1987, c.116 (C.30:4-27.2), these terms would also
38 mean that there is a substantial likelihood that the failure to provide
39 immediate, intensive psychiatric therapy will create in the
40 reasonably foreseeable future a genuine risk of irreversible or
41 significant harm to the person subject to commitment or to another
42 person or property.