

CHAPTER 112

AN ACT concerning involuntary commitment to treatment and amending and supplementing chapter 4 of Title 30 of the Revised Statutes and amending P.L.1991, c.270.

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

1. Section 1 of P.L.1987, c.116 (C.30:4-27.1) is amended to read as follows:

C.30:4-27.1 Findings, declarations.

1. The Legislature finds and declares that:

- a. The State is responsible for providing care, treatment and rehabilitation services to mentally ill persons who are disabled and cannot provide basic care for themselves or who are dangerous to themselves, others or property; and because some of these mentally ill persons do not seek treatment or are not able to benefit from voluntary treatment provided on an outpatient basis, it is necessary that State law provide for the voluntary admission and the involuntary commitment to treatment of these persons as well as for the public services and facilities necessary to fulfill these responsibilities.

- b. Because involuntary commitment to treatment entails certain deprivations of liberty, it is necessary that State law balance the basic value of liberty with the need for safety and treatment, a balance that is difficult to effect because of the limited ability to predict behavior; and, therefore, it is necessary that State law provide clear standards and procedural safeguards that ensure that only those persons who are dangerous to themselves, others or property, are involuntarily committed to treatment.

- c. It is the policy of this State that persons in the public mental health system receive inpatient treatment and rehabilitation services in the least restrictive environment in accordance with the highest professional standards and which will enable those persons committed to treatment to return to full autonomy in their community as soon as it is clinically appropriate. In addition, it is the policy of this State to ensure that appropriate outpatient treatment services are readily available to all persons with mental illness, such that involuntary commitment to treatment is rarely required; but that persons with mental illness who are determined to be dangerous to themselves, others or property should be subject to involuntary treatment in the least restrictive environment possible, in an inpatient or outpatient setting clinically appropriate to their condition.

Further, it is the policy of this State that the public mental health system shall be developed in a manner which protects individual liberty and provides advocacy and due process for persons receiving treatment and insures that treatment is provided in a manner consistent with a person's clinical condition.

- d. It is the policy of this State to encourage each county or designated mental health service area to develop a screening service, outpatient treatment provider and short-term care facility which will meet the needs for evaluation and treatment of mentally ill persons in the county or service area. The State encourages the development of screening services as the public mental health system's entry point in order to provide accessible crisis intervention, evaluation and referral services to mentally ill persons in the community; to offer mentally ill persons clinically appropriate alternatives to inpatient care, if any; and, when necessary, to provide a means for involuntary commitment to treatment. Similarly, the State encourages the development of community-based outpatient treatment providers and short-term care facilities to enable a mentally ill person to receive outpatient or acute, inpatient care near the person's community. Development and use of screening services, outpatient treatment providers and short-term care facilities throughout the State are necessary to strengthen the

Statewide community mental health system, lessen inappropriate hospitalization and reliance on psychiatric institutions and enable State and county facilities to provide the rehabilitative care needed by some mentally ill persons following their receipt of acute care.

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

C.30:4-27.2 Definitions.

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

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

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

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

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

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

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

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

h. "Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical harm or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available. This determination shall take into account a person's history, recent behavior and any recent act, threat or serious psychiatric deterioration.

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

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

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

l. "Division" means the Division of Mental Health Services in the Department of Human Services.

m. "In need of involuntary commitment" or "in need of involuntary commitment to treatment" means 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.

n. "Institution" means any State or county facility providing inpatient care, supervision and treatment for persons with developmental disabilities; except that with respect to the maintenance provisions of Title 30 of the Revised Statutes, institution also means any psychiatric facility for the treatment of persons with mental illness.

o. "Mental health agency or facility" means a legal entity which receives funds from the State, county or federal government to provide mental health services.

p. "Mental health screener" means a psychiatrist, psychologist, social worker, registered professional nurse or other individual trained to do outreach only for the purposes of psychological assessment who is employed by a screening service and possesses the license, academic training or experience, as required by the commissioner pursuant to regulation; except that a psychiatrist and a State licensed clinical psychologist who meet the requirements for mental health screener shall not have to comply with any additional requirements adopted by the commissioner.

q. "Mental hospital" means, for the purposes of the payment and maintenance provisions of Title 30 of the Revised Statutes, a psychiatric facility.

r. "Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

s. "Patient" means a person over the age of 18 who has been admitted to, but not discharged from a short-term care or psychiatric facility, or who has been assigned to, but not discharged from an outpatient treatment provider.

t. "Physician" means a person who is licensed to practice medicine in any one of the United States or its territories, or the District of Columbia.

u. "Psychiatric facility" means a State psychiatric hospital listed in R.S.30:1-7, a county psychiatric hospital, or a psychiatric unit of a county hospital.

v. "Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

w. "Psychiatric unit of a general hospital" means an inpatient unit of a general hospital that restricts its services to the care and treatment of persons with mental illness who are admitted on a voluntary basis.

x. "Psychologist" means a person who is licensed as a psychologist by the New Jersey Board of Psychological Examiners.

y. "Screening certificate" means a clinical certificate executed by a psychiatrist or other physician affiliated with a screening service.

z. "Screening service" means a public or private ambulatory care service designated by the commissioner, which provides mental health services including assessment, emergency and referral services to persons with mental illness in a specified geographic area.

aa. "Screening outreach visit" means an evaluation provided by a mental health screener wherever the person may be when clinically relevant information indicates the person may need involuntary commitment to treatment and is unable or unwilling to come to a screening service.

bb. "Short-term care facility" means an inpatient, community based mental health treatment facility which provides acute care and assessment services to a person with mental illness whose mental illness causes the person to be dangerous to self or dangerous to others or property. A short-term care facility is so designated by the commissioner and is authorized by the commissioner to serve persons from a specified geographic area. A short-term care facility may be a part of a general hospital or other appropriate health care facility and shall meet certificate of need requirements and shall be licensed and inspected by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) and in accordance with standards developed jointly with the Commissioner of Human Services.

cc. "Special psychiatric hospital" means a public or private hospital licensed by the Department of Health and Senior Services to provide voluntary and involuntary mental health services, including assessment, care, supervision, treatment and rehabilitation services to persons with mental illness.

dd. "Treatment team" means one or more persons, including at least one psychiatrist or physician, and may include a psychologist, social worker, nurse and other appropriate services providers. A treatment team provides mental health services to a patient of a screening service, outpatient treatment provider, or short-term care or psychiatric facility.

ee. "Voluntary admission" means that adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and is willing to be admitted to a facility voluntarily for care, needs care at a short-term care or psychiatric facility because other facilities or services are not appropriate or 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.

3. Section 3 of P.L.1987, c.116 (C.30:4-27.3) is amended to read as follows:

C.30:4-27.3 Involuntary commitment.

3. The standards and procedures in this act apply to all adults involuntarily committed to treatment, including those assigned to an outpatient treatment provider or admitted to a short-term care facility, psychiatric facility or special psychiatric hospital and all adults voluntarily admitted from a screening service to a short-term care facility or psychiatric facility. The standards and procedures in this act shall not apply to adults voluntarily admitted to psychiatric units in general hospitals or special psychiatric hospitals, except as provided in section 11 or 20 of P.L.1987, c.116 (C.30:4-27.11 or C.30:4-27.20).

4. Section 4 of P.L.1987, c.116 (C.30:4-27.4) is amended to read as follows:

C.30:4-27.4 Screening service.

4. The commissioner, in consultation with the appropriate county mental health board and consistent with the approved county mental health plan, shall designate one or more mental health agencies or facilities in each county or multi-county region in the State as a screening service. The commissioner shall so designate an agency or facility only with the approval of the agency's or facility's governing body. In designating the screening services, the commissioner shall ensure that screening services are accessible to all persons in the State who need these services and that screening service evaluation is the preferred process for entry into outpatient treatment, short-term care facilities or psychiatric facilities so that appropriate consideration is given to less restrictive treatment alternatives.

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

C.30:4-27.5 Screening service procedures.

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:

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

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

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

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

(1) inpatient treatment for the person if he is immediately or imminently dangerous or if outpatient treatment is deemed inadequate to render the person unlikely to be dangerous to self, others or property within the reasonably foreseeable future; and

(2) 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, the screening service staff shall consult with an outpatient treatment provider to arrange, if possible, for an appropriate interim plan of outpatient treatment in accordance with section 9 of P.L.2009, c.112 (C.30:4-27.8a).

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

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

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

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

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

6. Section 6 of P.L.1987, c.116 (C.30:4-27.6) is amended to read as follows:

C.30:4-27.6 Custody.

6. A State or local law enforcement officer shall take custody of a person and take the person immediately and directly to a screening service if:

a. On the basis of personal observation, the law enforcement officer has reasonable cause to believe that the person is in need of involuntary commitment to treatment;

b. A mental health screener has certified on a form prescribed by the division that based on a screening outreach visit the person is in need of involuntary commitment to treatment and has requested the person be taken to the screening service for a complete assessment;

c. The court orders that a person subject to an order of conditional discharge issued pursuant to subsection c. of section 15 of P.L.1987, c.116 (C.30:4-27.15) who has failed to follow the conditions of the discharge be taken to a screening service for an assessment; or

d. An outpatient treatment provider has certified on a form prescribed by the division that the provider has reasonable cause to believe the person is in need of evaluation for commitment to treatment.

The involvement of the law enforcement authority shall continue at the screening service as long as necessary to protect the safety of the person in custody and the safety of the community from which the person was taken.

7. Section 7 of P.L.1987, c.116 (C.30:4-27.7) is amended to read as follows:

C.30:4-27.7 Immunity from liability.

7. a. A law enforcement officer, screening service, outpatient treatment provider or short-term care facility designated staff person or their respective employers, acting in good faith pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) and P.L.2009, c.112 who takes reasonable steps to assess, take custody of, detain or transport an individual for the purposes of mental health assessment or treatment is immune from civil and criminal liability.

b. An emergency services or medical transport person or their respective employers, acting in good faith pursuant to this act and pursuant to the direction of a person designated in subsection a. of this section, who takes reasonable steps to take custody of, detain or transport an individual for the purpose of mental health assessment or treatment is immune from civil and criminal liability.

For the purposes of this subsection, "emergency services or medical transport person" means a member of a first aid, ambulance, rescue squad or fire department, whether paid or volunteer, auxiliary police officer or paramedic.

8. Section 8 of P.L.1987, c.116 (C.30:4-27.8) is amended to read as follows:

C.30:4-27.8 Short-term care facilities designated.

8. a. The commissioner, in consultation with the Commissioner of Health and Senior Services, shall designate one or more mental health agencies or facilities in each county or multi-county region in the State as short-term care facilities. The commissioner shall so

designate an agency or facility only with the approval of the agency's or facility's governing body.

b. The commissioner shall designate one or more mental health agencies in each county or multi-county region in the State as an outpatient treatment provider, and shall authorize the designated outpatient treatment provider to provide services to persons from a specified geographic area. The commissioner shall so designate an agency only with the approval of the agency's governing body.

C.30:4-27.8a Plan of outpatient treatment developed by provider.

9. a. An outpatient treatment provider shall develop a plan of outpatient treatment, in cooperation with screening service or short term care facility staff or the court, as applicable, for patients committed and assigned to outpatient treatment by screening service staff or order of a court, or both. 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.

b. 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 shall provide and coordinate the provision of care consistent with the plan of outpatient treatment.

c. 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 of outpatient treatment is inadequate to meet the patient's mental health needs, the provider shall notify the screening service of the material noncompliance or plan inadequacy, as applicable, and the patient shall be referred to a screening service for an assessment to determine what mental health services are appropriate and where those services may be provided, in accordance with section 5 of P.L.1987, c.116 (C.30:4-27.5). In such a case, the patient shall be afforded the protections and procedures provided for in P.L.1987, c.116 and P.L.2009, c.112.

d. If a patient fails to materially comply with the plan of outpatient treatment during the time the patient is assigned by a court to the outpatient treatment provider for services pursuant to a commitment to outpatient treatment, or if the outpatient treatment provider determines that the plan of outpatient treatment is inadequate to meet the patient's mental health needs, the provider shall notify the court and screening service of the material noncompliance or plan inadequacy, as applicable, and the patient shall be referred to a screening service for an assessment to determine what mental health services are appropriate and where those services may be provided, in accordance with section 5 of P.L.1987, c.116 (C.30:4-27.5). In such a case, the patient shall be afforded the protections and procedures provided for in P.L.1987, c.116 and P.L.2009, c.112.

e. If an outpatient treatment 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, the patient's attorney and the county adjuster of the request for court approval of such modification.

10. Section 9 of P.L.1987, c.116 (C.30:4-27.9) is amended to read as follows:

C.30:4-27.9 Purposes, procedures.

9. Outpatient treatment providers, short-term care facilities, psychiatric facilities and special psychiatric hospitals shall effectuate the following purposes and procedures:

a. An outpatient treatment provider to which a person has been assigned pursuant to an order of continued involuntary commitment to treatment pursuant to section 15 of P.L.1987, c.116 (C.30:4-27.15) shall maintain the plan of outpatient treatment approved by the court pursuant to section 17 of P.L.2009, c.112 (C.30:4-27.15a), and shall notify the court, the person's attorney and the county adjuster of any material non-compliance with the plan by the person and of the inadequacy of the plan of outpatient treatment to meet the person's mental health needs, if applicable, and seek court approval for a modification to a plan of outpatient treatment, as provided for in section 9 of P.L.2009, c.112 (C.30:4-27.8a).

The director or chief executive officer of a short-term care facility, psychiatric facility or special psychiatric hospital shall have custody of a person while that person is detained in the facility and shall notify:

(1) appropriate public or private agencies to arrange for the care of any dependents and to ensure the protection of the person's property; and (2) appropriate ambulatory mental health providers for the purposes of beginning discharge planning.

If a person is admitted to a psychiatric facility, the chief executive officer of the facility shall promptly notify the county adjuster of the person's county of residence that the person has been admitted to the facility.

The facility is authorized to provide assessment, treatment and rehabilitation services and shall provide discharge planning services as required pursuant to section 18 of P.L.1987, c.116 (C.30:4-27.18).

The facility is authorized to detain persons involuntarily committed to the facility.

b. A person shall not be involuntarily committed to treatment at an outpatient treatment provider, short-term care or psychiatric facility, or special psychiatric hospital unless the person is in need of involuntary commitment to treatment.

The person shall be assigned involuntarily to an outpatient treatment provider or admitted involuntarily to a facility only by referral from a screening service or temporary court order. The person may be admitted voluntarily to a short-term care or psychiatric facility or special psychiatric hospital only after the person has been advised orally and in writing of the discharge provisions established pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) and P.L.2009, c.112 (C.30:4-27.8a et al.) and of the subsequent possibility that the facility may initiate involuntary commitment proceedings for the person.

c. A short-term care or psychiatric facility, or special psychiatric hospital may detain a person, admitted to the facility involuntarily by referral from a screening service without a temporary court order, for no more than 72 hours from the time the screening certificate was executed. During this period of time the facility shall initiate court proceedings for the involuntary commitment of the person pursuant to section 10 of P.L.1987, c.116 (C.30:4-27.10).

d. A person shall not be assigned to an outpatient treatment provider by referral from a screening service without a temporary court order, for more than 72 hours from the time the screening certificate was executed. During this period of time the provider shall initiate court proceedings for the involuntary commitment of the person pursuant to section 10 of P.L.1987, c.116 (C.30:4-27.10).

11. Section 10 of P.L.1987, c.116 (C.30:4-27.10) is amended to read as follows:

C.30:4-27.10 Court proceedings.

10. a. (1) A short-term care or psychiatric facility or a special psychiatric hospital shall initiate court proceedings for involuntary commitment to inpatient or outpatient treatment by submitting to the court a clinical certificate completed by a psychiatrist on the patient's treatment team and the screening certificate which authorized admission of the patient to the facility; provided, however, that both certificates shall not be signed by the same psychiatrist unless the psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

(2) A screening service or outpatient treatment provider shall initiate court proceedings for commitment to outpatient treatment by submitting to the court a clinical certificate completed by a psychiatrist on the patient's treatment team and the screening certificate which authorized assignment of the patient to outpatient treatment with the outpatient treatment provider; provided, however, that both certificates shall not be signed by the same psychiatrist unless the psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

b. Court proceedings for the involuntary commitment to treatment of any person not referred by a screening service may be initiated by the submission to the court of two clinical certificates, at least one of which is prepared by a psychiatrist. The person shall not be involuntarily committed before the court issues a temporary court order.

c. A court proceeding for involuntary commitment to treatment of an inmate who is scheduled for release upon expiration of a maximum term of incarceration shall be initiated by the Attorney General or county prosecutor by submission to the court of two clinical certificates, at least one of which is prepared by a psychiatrist.

d. The Attorney General, in exercise of the State's authority as *parens patriae*, may initiate a court proceeding for the involuntary commitment to treatment of any person in accordance with the procedures set forth in subsection a. or b. of this section. When the Attorney General determines that the public safety requires initiation of a proceeding pursuant to subsection b. of this section, the Attorney General may apply to the court for an order compelling the psychiatric evaluation of the person. The court shall grant the Attorney General's application if the court finds that there is reasonable cause to believe that the person may be in need of involuntary commitment to treatment. The Attorney General may delegate the authority granted pursuant to this subsection, on a case by case basis, to the county prosecutor.

e. Any person who is a relative by blood or marriage of the person being screened who executes a clinical certificate, or any person who signs a clinical certificate for any purpose or motive other than for purposes of care, treatment and confinement of a person in need of involuntary commitment to treatment, shall be guilty of a crime of the fourth degree.

f. Upon receiving these documents the court shall immediately review them in order to determine whether there is probable cause to believe that the person is in need of involuntary commitment to treatment.

g. If the court finds that there is probable cause to believe that the person, other than a person whose commitment is sought pursuant to subsection c. of this section, is in need of involuntary commitment to treatment, it shall issue a temporary order authorizing the assignment of the person to an outpatient treatment provider or the admission to or retention of the person in the custody of the facility, that is both appropriate to the person's condition and is the least restrictive environment, pending a final hearing.

h. If the court finds that there is probable cause to believe that a person whose commitment is sought pursuant to subsection c. of this section is in need of involuntary commitment to treatment, it shall issue an order setting a date for a final hearing and

authorizing the Commissioner of the Department of Corrections to arrange for temporary commitment pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2) to the Ann Klein Forensic Center in Trenton or other facility designated for the criminally insane pending the final hearing and prior to the expiration of the person's term. The order shall specifically provide for transfer of custody to the Ann Klein Forensic Center in Trenton or other facility designated for the criminally insane if the person's maximum term will expire prior to the final hearing.

i. In the case of a person committed to treatment at a short-term care facility or special psychiatric hospital, after the facility's treatment team conducts a mental and physical examination, administers appropriate treatment and prepares a discharge assessment, the facility may transfer the patient to a psychiatric facility prior to the final hearing; provided that: (1) the patient, his family and his attorney are given 24 hours' advance notice of the pending transfer; and (2) the transfer is accomplished in a manner which will give the receiving facility adequate time to examine the patient, become familiar with his behavior and condition and prepare for the hearing. In no event shall the transfer be made less than five days prior to the date of the hearing unless an unexpected transfer is dictated by a change in the person's clinical condition.

12. Section 11 of P.L.1987, c.116 (C.30:4-27.11) is amended to read as follows:

C.30:4-27.11 Patient rights.

11. A patient admitted to a short-term care or psychiatric facility or special psychiatric hospital either on a voluntary or involuntary basis, or assigned to an outpatient treatment provider has the following rights:

a. The right to have examinations and services provided in the patient's primary means of communication including, as soon as possible, the aid of an interpreter if needed because the patient is of limited English-speaking ability or suffers from a speech or hearing impairment;

b. The right to a verbal explanation of the reasons for admission to the facility or assignment to the provider, as applicable, the availability of an attorney and the rights provided in P.L.1987, c.116 (C.30:4-27.1 et seq.) and P.L.2009, c.112; and

c. The right to be represented by an attorney and, if unrepresented or unable to afford an attorney, the right to be provided with an attorney paid for by the appropriate government agency. An attorney representing a patient has the right to inspect and copy the patient's clinical chart.

The clinical director of the facility, or the outpatient treatment provider, as appropriate, shall ensure that a written statement of the rights provided in P.L.1987, c.116 (C.30:4-27.1 et seq.) and P.L.2009, c.112 is provided to patients at the time of admission or assignment, as applicable, as soon as possible thereafter, and to patients and their families upon request.

13. Section 12 of P.L.1987, c.116 (C.30:4-27.12) is amended to read as follows:

C.30:4-27.12 Court hearing.

12. a. A patient who is involuntarily committed to treatment and assigned to an outpatient treatment provider or involuntarily committed to treatment and admitted to a short-term care or psychiatric facility or special psychiatric hospital shall receive a court hearing with respect to the issue of continued need for involuntary commitment within 20 days from initial commitment unless the patient has been administratively discharged pursuant to section 17 of

P.L.1987, c.116 (C.30:4-27.17). However, if a person is involuntarily committed pursuant to subsection c. or d. of section 10 of P.L.1987, c.116 (C.30:4-27.10), that person immediately shall be committed to the Ann Klein Forensic Center in Trenton or other facility designated for the criminally insane for the duration of the 20-day waiting period.

b. Except as provided in subsection c. of this section, the assigned county counsel is responsible for presenting the case for the patient's involuntary commitment to the court, unless the county adjuster is licensed to practice law in this State, in which case the county adjuster shall present the case for the patient's involuntary commitment to the court.

c. Notwithstanding the provisions of subsection b. of this section and upon notice to the county adjuster:

(1) The Attorney General, or the county prosecutor acting at the request of the Attorney General, may supersede the county counsel or county adjuster and assume responsibility for presenting any case for involuntary commitment to treatment or may elect to participate with the county counsel or county adjuster in presenting any such case; and

(2) The county prosecutor may supersede the county counsel or county adjuster and assume responsibility for presenting any case for involuntary commitment to treatment initiated by the county prosecutor pursuant to subsection c. of section 10 of P.L.1987, c.116 (C.30:4-27.10) or may elect to participate with the county counsel in the presentation of any such case.

d. A patient subject to involuntary commitment to treatment shall have counsel present at the hearing and shall not be permitted to appear at the hearing without counsel.

14. Section 13 of P.L.1987, c.116 (C.30:4-27.13) is amended to read as follows:

C.30:4-27.13 Notice of hearing.

13. a. At least 10 days prior to a court hearing, the county adjuster of the admitting county or the Attorney General or county prosecutor if presenting the case for the patient's involuntary commitment to treatment, shall cause notice of the court hearing to be served upon the patient, the patient's guardian if any, the patient's next-of-kin, the patient's attorney, the director, chief executive officer, or other individual who has custody of the patient, the county adjuster of the county in which the patient has legal settlement and any other individual specified by the court. The notice shall contain the date, time and location of the court hearing. The patient and the patient's attorney shall also receive copies of the clinical certificates and supporting documents, the temporary court order and a statement of the patient's rights at the court hearing.

b. A psychiatrist on the patient's treatment team who has conducted a personal examination of the patient as close to the court hearing date as possible, but in no event more than five calendar days prior to the court hearing, shall testify at the hearing to the clinical basis for the need for involuntary commitment to treatment. Other members of the patient's treatment team and any other witness with relevant information offered by the patient or the persons presenting the case for civil commitment shall also be permitted to testify at the hearing.

c. The patient's next-of-kin may attend and testify at the court hearing if the court so determines.

d. The court shall transcribe the court hearing and arrange for the payment of expenses related thereto in the same manner as for other court proceedings.

15. Section 14 of P.L.1987, c.116 (C.30:4-27.14) is amended to read as follows:

C.30:4-27.14 Patient rights at hearing.

14. A person subject to involuntary commitment to treatment has the following rights at a court hearing and any subsequent review court hearing:

- a. The right to be represented by counsel or, if indigent, by appointed counsel;
- b. The right to be present at the court hearing unless the court determines that because of the person's conduct at the court hearing the proceeding cannot reasonably continue while the person is present;
- c. The right to present evidence;
- d. The right to cross examine witnesses; and
- e. The right to a hearing in camera.

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

C.30:4-27.15 Court findings relative to involuntary commitment to treatment.

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

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

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

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

(b) that there is substantial likelihood that by reason of mental illness the patient will be dangerous to himself, others or property if the patient does not receive other appropriate and available services that render involuntary commitment to treatment unnecessary.

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

(3) The designated mental health agency staff person shall notify the court if the patient fails to meet the conditions of the discharge plan, and the court shall issue an order directing that the person be taken to a screening service for an assessment. The court shall determine,

in conjunction with the findings of a screening service, if the patient needs to be rehospitalized and, if so, the patient shall be returned to the facility. The court shall hold a hearing within 20 days of the day the patient was returned to the facility to determine if the order of conditional discharge should be vacated.

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

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

C.30:4-27.15a Court determination of assignment of patient to involuntary commitment to treatment.

17. a. The court shall determine whether a patient who has been found to need continued involuntary commitment to treatment pursuant to section 15 of P.L.1987, c.116 (C.30:4-27.15) should be assigned to an outpatient setting or admitted to an inpatient setting for treatment, and shall issue the order authorizing such placement pursuant to section 15 of P.L.1987, c.116 (C.30:4-27.15), in accordance with this section. In determining the commitment placement, the court shall 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.

b. 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 shall obtain from a designated outpatient treatment provider a proposed plan of outpatient treatment for the patient which the court shall review. The plan of outpatient treatment shall be approved by the court.

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

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

e. At the time the court sets the date for a hearing on the change in placement, notice of the hearing shall be served upon the patient, the patient's guardian, if any, the patient's next-

of-kin, the patient's attorney and the county adjuster of the county in which the patient has legal settlement.

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

18. Section 16 P.L.1987, c.116 (C.30:4-27.16) is amended to read as follows:

C.30:4-27.16 Court review hearings.

16. a. A patient committed pursuant to a court order who is not administratively discharged pursuant to section 17 of P.L.1987, c.116 (C.30:4-27.17) shall be afforded periodic court review hearings of the need for involuntary commitment to treatment and of the least restrictive environment for that commitment. The review hearing shall be conducted in the manner provided in section 15 of P.L.1987, c.116 (C.30:4-27.15). If the court determines at a review hearing that involuntary commitment to treatment shall be continued, it shall execute a new order.

In the case of a patient who has been admitted to a facility, the court shall conduct the first review hearing three months from the date of the first hearing, the next review hearing nine months from the date of the first hearing and subsequent review hearings 12 months from the date of the first hearing and annually thereafter. The court may schedule additional review hearings but, except in extraordinary circumstances, not more often than once every 30 days.

In the case of a patient who has been assigned to an outpatient treatment provider, the court shall conduct the first review hearing six months from the date of the first hearing, the next review hearing nine months from the date of the first hearing and subsequent review hearings 12 months from the date of the first hearing and annually thereafter. The court may schedule additional review hearings but, except in extraordinary circumstances, not more often than once every 30 days.

b. At a court review hearing, when the advanced age of the patient or the cause or nature of the mental illness renders it appropriate and when it would be impractical to obtain the testimony of a psychiatrist as required in section 13 of P.L.1987, c.116 (C.30:4-27.13), the court may permit a physician on the patient's treatment team, who has personally conducted an examination of the patient as close to the hearing date as possible, but in no event more than five days prior to the hearing date, to testify at the hearing to the clinical basis for the need for involuntary commitment to treatment.

19. Section 17 of P.L.1987, c.116 (C.30:4-27.17) is amended to read as follows:

C.30:4-27.17 Discharge determination.

17. a. The treatment team at an outpatient treatment provider, short-term care or psychiatric facility or special psychiatric hospital shall, subject to the limitations set forth in subsections b. and c. of this section, administratively discharge a patient from involuntary commitment status if the treatment team determines that the patient no longer needs involuntary commitment to treatment. If a discharge plan has not been developed pursuant to section 18 of P.L.1987, c.116 (C.30:4-27.18), it shall be developed forthwith.

b. If the patient is confined pursuant to an order entered under section 15 of P.L.1987, c.116 (C.30:4-27.15) in a case in which the Attorney General or a county prosecutor participated, the treatment team shall, no less than 10 days prior to the proposed date of administrative discharge, provide written notice to the committing court and to the person or persons who presented the case for involuntary commitment to treatment. If, within five days

of receipt of such notice, a person who presented the case for commitment files a request for a hearing on the issue of continued need for commitment and serves notice of that request, in accordance with the provisions of section 13 of P.L.1987, c.116 (C.30:4-27.13), the treatment team shall delay the administrative discharge and the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 15 of P.L.1987, c.116 (C.30:4-27.15).

c. If the patient is confined pursuant to an order entered under N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of insanity or under N.J.S.2C:4-6 concerning lack of mental competence to stand trial, the treatment team shall, no less than 10 days prior to the proposed date of administrative discharge, provide written notice to the committing court and to the prosecutor. If, within five days of receipt of such notice, the prosecutor files a request for a hearing on the issue of continued need for commitment and serves notice of that request, in accordance with the provisions of section 13 of P.L.1987, c.116 (C.30:4-27.13), the treatment team shall delay the administrative discharge and the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 15 of P.L.1987, c.116 (C.30:4-27.15).

20. Section 18 of P.L.1987, c.116 (C.30:4-27.18) is amended to read as follows:

C.30:4-27.18 Discharge plan.

18. A person discharged either by the court or administratively from an outpatient treatment provider, short-term care or psychiatric facility or special psychiatric hospital shall have a discharge plan prepared by the treatment team at the facility or provider, as appropriate, pursuant to this section. The treatment team shall give the patient an opportunity to participate in the formulation of the discharge plan.

In the case of patients committed to treatment at short-term care or psychiatric facilities, a community agency designated by the commissioner shall participate in the formulation of the plan. The facility shall advise the mental health agency of the date of the patient's discharge. The mental health agency shall provide follow-up care to the patient pursuant to regulations adopted by the commissioner.

In the case of patients assigned to outpatient treatment providers, the outpatient treatment provider shall participate in the formulation of the plan.

This section does not preclude discharging a patient to an appropriate professional.

Psychiatric facilities shall give notice of the discharge to the county adjuster of the county in which the patient has legal settlement.

21. Section 1 of P.L.1991, c.270 (C.2A:62A-16) is amended to read as follows:

C.2A:62A-16 Medical or counseling practitioner's immunity from civil liability.

1. a. Any person who is licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work or marriage counseling, whether or not compensation is received or expected, is immune from any civil liability for a patient's violent act against another person or against himself unless the practitioner has incurred a duty to warn and protect the potential victim as set forth in subsection b. of this section and fails to discharge that duty as set forth in subsection c. of this section.

b. A duty to warn and protect is incurred when the following conditions exist:

(1) The patient has communicated to that practitioner a threat of imminent, serious physical violence against a readily identifiable individual or against himself and the

circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out the threat; or

(2) The circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out an act of imminent, serious physical violence against a readily identifiable individual or against himself.

c. A licensed practitioner of psychology, psychiatry, medicine, nursing, clinical social work or marriage counseling shall discharge the duty to warn and protect as set forth in subsection b. of this section by doing any one or more of the following:

(1) Arranging for the patient to be admitted voluntarily to a psychiatric unit of a general hospital, a short-term care facility, a special psychiatric hospital or a psychiatric facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.);

(2) Initiating procedures for involuntary commitment to treatment of the patient to an outpatient treatment provider, a short-term care facility, a special psychiatric hospital or a psychiatric facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.);

(3) Advising a local law enforcement authority of the patient's threat and the identity of the intended victim;

(4) Warning the intended victim of the threat, or, in the case of an intended victim who is under the age of 18, warning the parent or guardian of the intended victim; or

(5) If the patient is under the age of 18 and threatens to commit suicide or bodily injury upon himself, warning the parent or guardian of the patient.

d. A practitioner who is licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work or marriage counseling who, in complying with subsection c. of this section, discloses a privileged communication, is immune from civil liability in regard to that disclosure.

C.30:4-27.18a Reference to mean "in need of involuntary commitment to treatment."

22. Whenever, in any rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to "in need of involuntary commitment" that term shall mean "in need of involuntary commitment to treatment" as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2).

23. a. The Commissioner of Human Services shall monitor and evaluate the implementation of involuntary commitment to outpatient treatment established pursuant to P.L.2009, c.112 and report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature four years after the effective date of P.L.2009, c.112 and again six years after the effective date, on the implementation of involuntary commitment to outpatient treatment. Specifically, the commissioner shall evaluate:

(1) how screening services, courts and mental health professionals apply the standard for determining whether a person is dangerous within the reasonably foreseeable future to self, others or property;

(2) the effect of involuntary commitment to outpatient treatment on persons with severe mental illness;

(3) the rate and geographic distribution of court orders for involuntary commitment to outpatient treatment;

(4) the responses of patients who have been committed to involuntary commitment to outpatient treatment to such treatment;

(5) the extent to which the use of involuntary commitment to outpatient treatment affects the rates of institutionalization and incarceration;

(6) whether sufficient treatment services are available to persons who have been involuntarily committed to outpatient treatment;

(7) whether persons who have been involuntarily committed to outpatient treatment are receiving the mental health treatment services necessary for recovery; and

(8) the effect of involuntary commitment to outpatient treatment on the availability of services to voluntary consumers with severe mental illness.

To carry out the purposes of this subsection, the commissioner may contract with an individual or entity with expertise in the field of evaluating mental health programs.

b. The commissioner shall include in his reports such recommendations for statutory changes as he deems necessary, including whether or not the provision for involuntary commitment to outpatient treatment as established pursuant to P.L.2009, c.112 shall be continued or revised.

24. a. The Commissioner of Human Services shall phase in implementation of involuntary commitment to outpatient treatment established pursuant to P.L.2009, c.112 over a three-year period. The commissioner shall select seven counties in the State to implement the act in the first year after the effective date of this act, seven additional counties to implement the act in the second year after the effective date of this act, and the remaining seven counties to fully implement the act Statewide in the third year after the effective date of this act.

b. For the three-year phase-in period, the commissioner shall monitor the implementation of involuntary commitment to outpatient treatment and report annually to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The commissioner shall include in his reports such recommendations for administrative and statutory changes as he deems necessary. The annual reports shall address the following:

(1) the number of new patients who were involuntarily committed to outpatient treatment as compared to the number of patients committed to outpatient treatment who had previously been committed to inpatient treatment; and

(2) whether sufficient treatment services are available in the respective counties to serve persons who have been involuntarily committed to outpatient treatment and whether persons who have been involuntarily committed to outpatient treatment are receiving the mental health treatment services necessary for recovery.

25. a. The Commissioner of Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to effectuate the purposes of this act.

b. The Supreme Court of New Jersey may adopt court rules to effectuate the purposes of this act.

26. This act shall take effect one year after the date of enactment and the provisions of this act shall be subject to the phased-in implementation as provided in section 24 of this act, but the Commissioner of Human Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of the act.

Approved August 11, 2009.