

HOUSE No. 1888

By Ms. Khan of Newton, petition of Kay Khan and others relative to involuntary outpatient commitment for mentally ill persons. Mental Health and Substance Abuse.

The Commonwealth of Massachusetts

PETITION OF:

Kay Khan	Douglas W. Petersen
Robert A. Antonioni	Gloria L. Fox
Timothy J. Toomey, Jr.	Carl M. Sciortino, Jr.
John P. Fresolo	David B. Sullivan
William N. Brownsberger	Theodore C. Speliotis

In the Year Two Thousand and Seven.

AN ACT ESTABLISHING ASSISTED OUTPATIENT TREATMENT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 123 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 inserting, in line 18, after the word “program” the following:—
4 “Gravely disabled” means a condition evidenced by behavior in
5 which a person, as a result of a mental disorder, becomes likely to
6 come to serious harm or serious illness because of his inability to
7 provide for his basic physical needs, including medical and
8 psychiatric treatment and shelter.

1 SECTION 2. Said section 1 of said chapter 123, as so
2 appearing, is further amended by inserting, in line 20, after the
3 word “review” the following:—
4 “Informed decision” means a voluntary decision following
5 presentation of all facts necessary to form the basis of an intelli-
6 gent consent by a patient, or guardian, who is aware of the effects
7 of his psychiatric disorder and has the capacity to make a well-
8 reasoned, willful, and knowing decision concerning his medical or
9 psychiatric treatment.

10 “Outpatient Treatment” means any treatment that does not
11 require continuous inpatient hospitalization.

1 SECTION 3. Said section 6 of said chapter 123, as so appearing
2 is further amended by inserting, in line 2, after the words “provi-
3 sions of” the following:— paragraph (e) of section 8½.

1 SECTION 4. Said Chapter 123 of the General Laws, as so
2 appearing, is further amended by inserting after section 7 the
3 following new section:— Section 7½.

4 (a) The superintendent of any public or private facility or
5 hospital authorized for the commitment or treatment of mentally
6 ill persons under section 8(a) or 12(a) of this chapter, may petition
7 the district court in whose jurisdiction the facility is located for
8 the assisted outpatient treatment of any patient at such facility
9 whom the superintendent determines (1) is mentally ill, and
10 (2) displays one or more of the following:

11 (i) likelihood of creating serious harm, or
12 (ii) incapacity to make an informed decision regarding
13 treatment, or
14 (iii) grave disability, and
15 (3) the patient’s condition will likely either deteriorate or not
16 improve without treatment.

17 (b) Any physician licensed pursuant to section 2 of chapter 112
18 after examining a patient, may petition the district court in whose
19 jurisdiction such patient resides for the assisted outpatient
20 treatment of such patient whom the physician determines (1) is
21 mentally ill, and (2) displays one or more of the following:

22 (i) likelihood of creating serious harm, or
23 (ii) incapacity to make an informed decision regarding
24 treatment, or
25 (iii) grave disability, and
26 (3) the patient’s condition will either likely deteriorate or not
27 improve without treatment.

28 (c) If the petitioner seeks to provide the assisted outpatient
29 treatment, the petition shall include a written outpatient treatment
30 plan prepared in consultation with, when possible, those familiar
31 with the patient’s case history and the superintendent or physician
32 in charge of the patient’s care and the patient. The plan shall
33 include each of the following:

34 (1) A statement of the patient's requirements for supervision,
35 medication, and assistance in obtaining the basic needs such as
36 employment, food, clothing, and shelter.

37 (2) If known, the address of the residence where the patient
38 resides and the name of the person(s) in charge of the residence.

39 (3) If known, the name and address of any person, agency, or
40 organization assigned to supervise an outpatient treatment plan or
41 care for the patient.

42 (4) The conditions for continued outpatient treatment, which
43 may require reporting, continuation of medication, submission to
44 testing, or other such reasonable conditions.

45 (d) The hearing shall be commenced within 4 days of the filing
46 of the petition. The periods of time prescribed or allowed under
47 the provisions of this section shall be computed pursuant to Rule 6
48 of the Massachusetts Rules of Civil Procedure. Adjournments
49 shall be permitted only for good cause shown. In granting
50 adjournments, the court shall consider the need for further exami-
51 nation by a physician or the potential need to provide treatment
52 expeditiously.

53 (e) A petition for assisted outpatient treatment may be filed
54 along with and in the alternative to a petition for inpatient
55 commitment brought pursuant to section 7.

1 SECTION 5. Said Chapter 123 of the General Laws, as so
2 appearing, is hereby amended by inserting after section 8 the
3 following:—

4 Section 8½. (a) After a hearing, unless the subject waives the
5 hearing in writing, the district court shall not order the commit-
6 ment of a person to outpatient treatment or shall not renew such
7 order unless it finds (1) the patient is mentally ill, and (2) the
8 illness results in one or more of the following:

- 9 (i) likelihood of creating serious harm, or
10 (ii) incapacity to make an informed decision regarding
11 treatment, or
12 (iii) grave disability, and

13 (3) the patient does not require continuous inpatient hospital-
14 ization, and will be more appropriately treated in an outpatient
15 treatment program, and (4) the patient's condition will either
16 likely deteriorate or not improve without treatment and such dete-
17 rioration could result in harm to the patient or others.

18 (b) Assisted outpatient treatment shall not be ordered unless the
19 court approves a written treatment plan presented to the court
20 which conforms to the requirements of section 7½; of this chapter,
21 and which contains the name of the designated director of the
22 mental health treatment agency that will supervise and administer
23 the patient's treatment program.

24 (c) The court may order only that portion of the treatment plan
25 submitted pursuant to section 7½ of this chapter which,
26 considering all available alternatives for treatment, it determines
27 appropriate and the least restrictive treatment alternative
28 available.

29 (d) If the court finds by clear and convincing evidence that the
30 subject of the petition meets the criteria for assisted outpatient
31 treatment, and the court has yet to be provided with a written
32 proposed treatment plan, the court may order the willing director
33 of appropriate treatment program to provide the court with such
34 plan and testimony no later than the third day, excluding saturday
35 days, sundays and holidays, immediately following the date of
36 such order. Upon receiving such plan, the court may order assisted
37 outpatient treatment.

38 (e) The first order for assisted outpatient treatment shall not
39 exceed 180 days, and any subsequent order shall not exceed
40 365 days.

41 (f) If the court orders outpatient treatment pursuant to this
42 section, all of the following will apply:

43 (1) During any period of the assisted outpatient treatment, if the
44 court, on motion by the supervising mental health professional in
45 charge of a patient's assisted outpatient treatment, determines that
46 the patient is not complying with the terms of the order and that
47 the outpatient plan no longer remains appropriate, the court may
48 enter an order amending its original order. The amended order
49 may alter the outpatient's treatment plan, or commit the patient to
50 inpatient treatment.

51 (2) If a patient refuses to comply with an amended outpatient
52 plan, further amendments may be made as the court deems
53 necessary including the inpatient commitment of the patient.

54 (3) If the patient refuses to comply with an amended order for
55 inpatient hospitalization and treatment, the court may authorize
56 and direct a peace officer to take the patient into protective

57 custody and transport him to the agency specified for inpatient
58 treatment.

59 (4) When reporting or being returned to a treatment facility for
60 inpatient treatment pursuant to an amended order, the patient shall
61 retain all rights to judicial review, and the right to counsel.

1 SECTION 6. Said Chapter 123 of the General Laws, as so
2 appearing, is hereby amended by inserting after section 8 the
3 following:—

4 Section 8³/₄. (a) Before commitment for outpatient treatment,
5 the patient shall be provided with copies of the court order and
6 full explanations of the approved treatment plan. The approved
7 treatment plan shall be filed with the court and the supervising
8 mental health professional in charge of the patient's outpatient
9 treatment.

10 (b) The supervising mental health professional shall require
11 periodic reports, not to exceed 30 days, concerning the condition
12 of patients committed to outpatient treatment from any person,
13 agency, or organization assigned to supervise such patients.

14 (c) The supervising mental health professional shall review the
15 condition of a patient committed to outpatient treatment at least
16 once every 30 days.

17 (d) The supervising mental health professional may amend any
18 part of the outpatient treatment plan during the course of commit-
19 ment, subject to judicial review after notice to and complaint of
20 the patient.

21 (e) The supervising mental health professional may, at any time
22 during the course of the ordered outpatient treatment, petition the
23 court for inpatient commitment of the patient if, in the supervising
24 mental health professional's judgment, the patient has failed to
25 comply with a term of the outpatient treatment plan and outpatient
26 treatment no longer remains appropriate.

27 (f) The supervising mental health professional may, at any time,
28 petition the court for termination of a patient's assisted outpatient
29 treatment or order if the supervising mental health professional
30 determines that assisted outpatient treatment is no longer the least
31 restrictive appropriate treatment alternative available.

32 (g) Nothing in this section prevents the supervising mental
33 health professional from authorizing involuntary commitment and
34 treatment in an emergency situation under section 12 of this
35 chapter.

1 SECTION 7. Section 9 of said Chapter 123 of the General
2 Laws, as so appearing, is hereby amended by adding at the end
3 thereof the following:— Any person may apply to the court
4 stating their belief that a person currently treated on an assisted
5 outpatient basis under section 8½ should no longer be so treated.