

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing assisted outpatient treatment.

PETITION OF:

NAME:

Kay Khan

DISTRICT/ADDRESS:

11th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1888 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 appearing in the 2004
2 Official Edition, is hereby amended by inserting, in line 18, after the word "program" the
3 following:-

4 "Gravely disabled" means a condition evidenced by behavior in which a person, as a result of a
5 mental disorder, becomes likely to come to serious harm or serious illness because of his
6 inability to provide for his basic physical needs, including medical and psychiatric treatment and
7 shelter.

8

9 SECTION 2. Said section 1 of said chapter 123, as so appearing, is further amended by inserting,
10 in line 20, after the word "review" the following:-

11

12 "Informed decision" means a voluntary decision following presentation of all facts necessary to
13 form the basis of an intelligent consent by a patient, or guardian, who is aware of the effects of
14 his psychiatric disorder and has the capacity to make a well-reasoned, willful, and knowing
15 decision concerning his medical or psychiatric treatment.

16

17 "Outpatient Treatment" means any treatment that does not require continuous inpatient
18 hospitalization.

19 SECTION 3. Said section 6 of said chapter 123, as so appearing is further amended by inserting,
20 in line 2, after the words "provisions of" the following: - paragraph (e) of section 8½.

21
22 SECTION 4. Said Chapter 123 of the General Laws, as so appearing, is further amended by
23 inserting after section 7 the following new section:-Section 71/2.

24
25 (a) The superintendent of any public or private facility or hospital authorized for the commitment
26 or treatment of mentally ill persons under section 8(a) or 12(a) of this chapter, may petition the
27 district court in whose jurisdiction the facility is located for the assisted outpatient treatment of
28 any patient at such facility who(1) is mentally ill, and (2) displays one or more of the following:

29 (i) likelihood of creating serious harm, or

30 (ii) incapacity to make an informed decision regarding treatment, or

31 (iii) grave disability, and

32 (3) the patient's condition will likely either deteriorate or not improve without treatment.

33
34 (b) Any physician licensed pursuant to section 2 of chapter 112 after examining a patient, may
35 petition the district court in whose jurisdiction such patient resides for the assisted outpatient
36 treatment of such patient whom the physician determines (1) is mentally ill, and (2) displays one
37 or more of the following:

38 (i) likelihood of creating serious harm, or

39 (ii) incapacity to make an informed decision regarding treatment, or

40 (iii) grave disability, and

41 (3) the patient's condition will either likely deteriorate or not improve without treatment.

42
43 (c) If the petitioner seeks to provide the assisted outpatient treatment, the petition shall include a
44 written outpatient treatment plan prepared in consultation with, when possible, those familiar
45 with the patient's case history and the superintendent or physician in charge of the patient's care
46 and the patient. The plan shall include each of the following:

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

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

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

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

55

56 (d) The hearing shall be commenced within 4 days of the filing of the petition. The periods of
57 time prescribed or allowed under the provisions of this section shall be computed pursuant to
58 Rule 6 of the Massachusetts Rules of Civil Procedure. Adjournments shall be permitted only for
59 good cause shown. In granting adjournments, the court shall consider the need for further
60 examination by a physician or the potential need to provide treatment expeditiously.

61

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

64

65 SECTION 5. Said Chapter 123 of the General Laws, as so appearing, is hereby amended by
66 inserting after section 8 the following:-

67

68 Section 8 1/2. (a) After a hearing, unless the subject waives the hearing in writing, the district
69 court shall not order the commitment of a person to outpatient treatment or shall not renew such
70 order unless it finds (1) the patient is mentally ill, and (2) the illness results in one or more of the
71 following:

72 (i) likelihood of creating serious harm, or

73 (ii) incapacity to make an informed decision regarding treatment, or

74 (iii) grave disability, and

75 (3) the patient does not require continuous inpatient hospitalization, and will be more
76 appropriately treated in an outpatient treatment program, and (4) the patient's condition will
77 either:

78 (i) likely deteriorate until his or her psychiatric disorder significantly impairs the person's
79 judgment, reason, behavior or capacity to recognize reality and has a substantial probability of
80 causing him or her to suffer or continue to suffer severe psychiatric, emotional or physical harm,
81 or

82 (ii) not improve without treatment and such deterioration could result in harm to the
83 patient or others.

84

85 (b) Assisted outpatient treatment shall not be ordered unless the court approves a written
86 treatment plan presented to the court which conforms to the requirements of section 71/2; of this
87 chapter, and which contains the name of the designated director of the mental health treatment
88 agency that will supervise and administer the patient's treatment program.

89

90 (c) The court may order only that portion of the treatment plan submitted pursuant to section
91 71/2 of this chapter which, considering all available alternatives for treatment, it determines
92 appropriate and the least restrictive treatment alternative available.

93

94 (d) If the court finds by clear and convincing evidence that the subject of the petition meets the
95 criteria for assisted outpatient treatment, and the court has yet to be provided with a written
96 proposed treatment plan, the court may order the willing director of appropriate treatment
97 program to provide the court with such plan and testimony no later than the third day, excluding
98 Saturdays, Sundays and holidays, immediately following the date of such order. Upon receiving
99 such plan, the court may order assisted outpatient treatment.

100

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

103

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

105 (1) During any period of the assisted outpatient treatment, if the court, on motion by the
106 supervising mental health professional in charge of a patient's assisted outpatient treatment,
107 determines that the patient is not complying with the terms of the order and that the outpatient
108 plan no longer remains appropriate, the court may enter an order amending its original order. The
109 amended order may alter the outpatient's treatment plan, or commit the patient to inpatient
110 treatment.

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

113 (3) If the patient refuses to comply with an amended order for inpatient hospitalization
114 and treatment, the court may authorize and direct a peace officer to take the patient into
115 protective custody and transport him to the agency specified for inpatient treatment.

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

119
120 SECTION 6. Said Chapter 123 of the General Laws, as so appearing, is hereby amended by
121 inserting after section 8 the following:-

122
123 Section 8 $\frac{3}{4}$. (a) Before commitment for outpatient treatment, the patient shall be provided with
124 copies of the court order and full explanations of the approved treatment plan. The approved
125 treatment plan shall be filed with the court and the supervising mental health professional in
126 charge of the patient's outpatient treatment.

127
128 (b) The supervising mental health professional shall require periodic reports, not to exceed 30
129 days, concerning the condition of patients committed to outpatient treatment from any person,
130 agency, or organization assigned to supervise such patients.

131
132 (c) The supervising mental health professional shall review the condition of a patient committed
133 to outpatient treatment at least once every 30 days.

134

135 (d) The supervising mental health professional may amend any part of the outpatient treatment
136 plan during the course of commitment, subject to judicial review after notice to and complaint of
137 the patient.

138

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

143

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

148

149 (g) Nothing in this section prevents the supervising mental health professional from authorizing
150 involuntary commitment and treatment in an emergency situation under section 12 of this
151 chapter.

152

153 SECTION 7. Section 9 of said Chapter 123 of the General Laws, as so appearing, is hereby
154 amended by adding at the end thereof the following:- Any person may apply to the court stating
155 their belief that a person currently treated on an assisted outpatient basis under section 8 1/2
156 should no longer be so treated.