

HOUSE No. 3587

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 adoption of the accompanying bill:

An Act to increase effectiveness and improve outcomes for treating persons with severe mental illness in our communities.

PETITION OF:

NAME:

Kay Khan

DISTRICT/ADDRESS:

11th Middlesex

HOUSE No. 3587

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 3587) of Kay Khan relative to the petitioning of district courts for assisted outpatient treatment of individuals. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to increase effectiveness and improve outcomes for treating persons with severe mental illness in our communities.

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 2014
2 Official Edition, is hereby amended by inserting after the definition of “Funds”, in lines 15 to 18,
3 inclusive, the following definition:-

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

8 SECTION 2. Said section 1 of said chapter 123, as so appearing, is hereby further
9 amended by inserting after the definition of “Likelihood of serious harm”, in lines 25 to 35,
10 inclusive, the following definition:-

11 "Outpatient Treatment", any treatment that does not require continuous inpatient
12 hospitalization.

13 SECTION 3. Section 6 of said chapter 123, as so appearing, is hereby amended by
14 striking out, in line 2 and 3 the words "paragraph (a) of section 10" and inserting in place thereof
15 the following words:- paragraph (e) of section 8A, paragraph (a) of section 10.

16 SECTION 4. Said chapter 123 of the General Laws is further amended by inserting after
17 section 7 the following section:-

18 Section 7A. (a) For the purposes of this section, "eligible person" shall mean, (i) a
19 physician licensed pursuant to section 2 of chapter 112 after examining a patient; (ii) an
20 employee of the department of mental health; (iii) a person 18 years of age or older with whom
21 the subject of the petition resides; (iv) the parent, spouse, sibling, or child of the subject of the
22 petition; provided, that said sibling or child is 18 years of age or older; or (v) the superintendent
23 of any public or private facility or hospital authorized for the commitment or treatment of
24 mentally ill persons pursuant subsection (a) of section 8 or subsection (a) of section 12.

25 (b) An eligible person may petition any district court for the assisted outpatient treatment
26 of an individual: (1) suffering from a mental illness; (2) 18 years of age or older; (3) who has
27 received a clinical determination that said individual is unlikely to survive safely in the
28 community without supervision; (4) who has a history of a lack of compliance with treatment for
29 mental illness evidenced by the fact that the individual's mental illness has: (A) at least twice
30 within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of
31 services in a forensic or other mental health unit of a state correctional facility or local
32 correctional facility, not including any period during which the individual was hospitalized or

33 incarcerated immediately preceding the filing of the petition or (B) resulted in 1 or more acts of
34 serious and violent behavior, threats, or attempts to cause serious physical harm the individual or
35 another person within the last 48 months, not including any period in which the individual was
36 hospitalized or incarcerated immediately preceding the filing of the petition; (5) who's condition
37 has substantially deteriorated and will not improve without treatment; (6) who is likely to benefit
38 from assisted outpatient treatment and participation in the assisted outpatient treatment program
39 would be the least restrictive placement necessary to ensure the individual's recovery and
40 stability; and (7) considering the individual's treatment history and current behavior, the
41 individual is in need of assisted outpatient treatment in order to prevent a relapse or deterioration
42 that would be likely to result in: (A) grave disability or (B) serious harm to the individual or
43 another person.

44 (c) If the individual is receiving services from the department of mental health at the time
45 the petition is filed, an outpatient treatment plan shall be submitted for review and approval. If
46 the individual is not receiving services from the department of mental health, an application shall
47 be submitted to the department and attached to the petition. The court may issue a temporary
48 order pending approval of services from the department of mental health. Upon approval by the
49 department, an outpatient treatment plan shall be submitted for court review and approval.

50 The written outpatient treatment plan shall be prepared in consultation with, if possible,
51 those familiar with the individual's case history and the superintendent or physician in charge of
52 the individual's care. The plan shall include: (i) a statement of the individual's requirements for
53 supervision, medication, and assistance in obtaining the basic needs such as employment, food,
54 clothing, and shelter; (ii) the address of the residence where the individual resides, if known, and
55 the name of the person in charge of the residence; (iii) the name and address of a person, agency,

56 or organization, if known, assigned to supervise an outpatient treatment plan or care for the
57 individual; (4) the conditions for continued outpatient treatment, which may require reporting,
58 continuation of medication, submission to testing, or other reasonable conditions; and (5) a
59 statement of services, which may include peer support respite, assertive community treatment,
60 psychotherapy, medication management, crisis intervention, nursing, substance abuse
61 counseling, support for housing, benefits, education, and employment, and other services focused
62 on increasing patient engagement in ongoing and future treatment.

63 (d) A petition to include antipsychotic medication in the treatment plan should be filed in
64 accordance with section 8B; provided, that the individual has responded favorably to previous
65 treatment with such medication and without treatment the individual's prognosis is poor.

66 (e) The hearing shall be commenced within 4 days of the filing of the petition, calculated
67 pursuant to rule 6 of the Massachusetts rules of civil procedure. Adjournments shall be
68 permitted only for good cause shown. In granting adjournments, the court shall consider the need
69 for further examination by a physician or the potential need to provide treatment expeditiously.

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

72 SECTION 5. Said chapter 123 is hereby amended by inserting after section 8 the
73 following 2 sections:-

74 Section 8A. (a) After a hearing, unless the subject waives the hearing in writing, the
75 district court shall not order the commitment of an individual to assisted outpatient treatment nor
76 renew such order unless the court finds that the individual: (1) is suffering from a mental illness;
77 (2) is 18 years of age or older; (3) has received a clinical determination that said individual is

78 unlikely to survive safely in the community without supervision; (4) has a history of a lack of
79 compliance with treatment for mental illness evidenced by the fact that the individual's mental
80 illness has: (A) at least twice within the last 36 months, been a substantial factor in necessitating
81 hospitalization, or receipt of services in a forensic or other mental health unit of a state
82 correctional facility or local correctional facility, not including any period during which the
83 individual was hospitalized or incarcerated immediately preceding the filing of the petition or
84 (B) resulted in 1 or more acts of serious and violent behavior, threats, or attempts to cause
85 serious physical harm the individual or another person within the last 48 months, not including
86 any period in which the individual was hospitalized or incarcerated immediately preceding the
87 filing of the petition; (5) is in a condition that has substantially deteriorated and will not improve
88 without treatment; (6) is likely to benefit from assisted outpatient treatment and participation in
89 the assisted outpatient treatment program would be the least restrictive placement necessary to
90 ensure the individual's recovery and stability; and (7) considering the individual's treatment
91 history and current behavior, is in need of assisted outpatient treatment in order to prevent a
92 relapse or deterioration that would be likely to result in: (A) grave disability or (B) serious harm
93 to the individual or another person.

94 (b) Assisted outpatient treatment shall not be ordered unless the court approves a written
95 treatment plan presented to the court which conforms to the requirements of section 7A and
96 contains the name of the designated director of an appropriate treatment program that will
97 supervise and administer the patient's treatment program.

98 (c) The court may order only the portion of the treatment plan submitted pursuant to
99 section 7A which, considering all available alternatives for treatment, the court determines
100 appropriate and the least restrictive treatment alternative available.

101 (d) If the court finds by clear and convincing evidence that the individual meets the
102 criteria for assisted outpatient treatment, the court may order the director of appropriate treatment
103 program to oversee such plan.

104 (e) The first order for assisted outpatient treatment shall not exceed 180 days, and a
105 subsequent order shall not exceed 365 days.

106 (f) If the court determines that it is unlikely that the individual will participate in the
107 outpatient treatment plan, the court may amend the plan to require that the individual's condition
108 be monitored and that inpatient commitment be initiated if the individual meets the criteria of
109 section 12.

110 During the assisted outpatient treatment, if the court, on motion by the director of an
111 appropriate treatment program in charge of a patient's assisted outpatient treatment, determines
112 that the individual is not complying with the terms of the order or that the outpatient plan no
113 longer remains appropriate, the court may enter an order amending its original order. The
114 amended order may alter the outpatient treatment plan, or require an emergency evaluation to
115 determine whether the failure to hospitalize such individual would create a likelihood of serious
116 harm.

117 If an individual refuses to comply with an amended outpatient plan, further amendments
118 may be made as the court deems necessary, including the inpatient commitment of the individual
119 if the court finds that failure to hospitalize such individual would create a likelihood of serious
120 harm.

121 If the court determines the individual meets the standard for inpatient commitment and
122 the individual refuses to comply with an amended order, the court may authorize and direct a

123 peace officer to take the patient into protective custody and transport the individual to the agency
124 specified for inpatient treatment.

125 When reporting or being returned to a treatment facility for inpatient treatment pursuant
126 to an amended order, the individual shall retain all rights to judicial review, and the right to
127 counsel.

128 Section 8A 1/2. Before commitment for outpatient treatment, the individual shall be
129 provided with a copy of the court order and a full explanation of the approved treatment plan.
130 The director of an appropriate treatment program shall require periodic reports, not more
131 frequently than every 30 days, concerning the condition of individuals committed to outpatient
132 treatment from any person, agency, or organization assigned to supervise such individuals. The
133 director of an appropriate treatment program shall review the condition of an individual
134 committed to outpatient treatment at least every 30 days. The director of an appropriate treatment
135 program may amend any part of the outpatient treatment plan during the course of commitment,
136 subject to judicial review after notice to and objection of the individual. The director of an
137 appropriate treatment program may, at any time during the course of the ordered outpatient
138 treatment, petition the court for inpatient commitment of the individual, if, in the director's
139 judgment, the individual has failed to comply with a term of the outpatient treatment plan and
140 outpatient treatment no longer remains appropriate. The director of an appropriate treatment
141 program may, at any time, petition the court for termination of an individual's assisted outpatient
142 treatment order if the director of an appropriate treatment program determines that assisted
143 outpatient treatment is no longer the least restrictive appropriate treatment available.

144 Nothing in this section shall prevent the director of an appropriate treatment program
145 from authorizing involuntary commitment and treatment in an emergency pursuant to section 12.

146 SECTION 6. Section 9 of said chapter 123 of the General Laws, as appearing in the 2014
147 Official Edition, is hereby amended by adding the following paragraph:- Any person may apply
148 to the court stating the belief that an individual currently treated on an assisted outpatient basis
149 pursuant to section 8A should no longer be so treated.