

**SENATE . . . . . No. 906**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Kenneth J. Donnelly***

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*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 relative to assisted outpatient treatment.

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PETITION OF:

NAME:

*Kenneth J. Donnelly*

DISTRICT/ADDRESS:

*Fourth Middlesex*

**SENATE . . . . . No. 906**

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By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 906) of Kenneth J. Donnelly for legislation relative to assisted outpatient treatment. Mental Health and Substance Abuse.

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Thirteen**  
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An Act relative to 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  
5 result of a mental disorder, becomes likely to come to serious harm or serious illness because of  
6 his inability to provide for his basic physical needs, including medical and psychiatric treatment  
7 and shelter.

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

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

14 "Outpatient Treatment" means any treatment that does not require continuous inpatient  
15 hospitalization.

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

18 SECTION 4. Chapter 123 of the General Laws, as so appearing, is amended by inserting,  
19 after section 7, the following new section:-

20 Section 71/2. (a) Any physician licensed pursuant to section 2 of chapter 112 after  
21 examining a patient; the Department of Mental Health; any person eighteen years of age or older  
22 with whom the subject of the petition resides; the parent, spouse, sibling eighteen years of age  
23 or older, or child eighteen years of age or older of the subject of the petition; or the  
24 superintendent of any public or private facility or hospital authorized for the commitment or  
25 treatment of mentally ill persons under section 8(a) or 12(a) of this chapter, may petition the  
26 district court in whose jurisdiction the facility is located for the assisted outpatient treatment of  
27 any individual who (1) is mentally ill, and (2) displays one or more of the following:

28 (i) likelihood of creating serious harm, or

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

30 (iii) grave disability, and

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

32 (c) The petition shall include a written outpatient treatment plan prepared in  
33 consultation with, when possible, those familiar with the patient's case history and the  
34 superintendent or physician in charge of the patient's care and the patient. The plan shall include  
35 each of the following:

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

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

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

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

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

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

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

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

57 (i) likelihood of creating serious harm, or

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

59 (iii) grave disability, and

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

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

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

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

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

76 (d) If the court finds by clear and convincing evidence that the subject of the petition  
77 meets the criteria for assisted outpatient treatment, , the court may order the director of  
78 appropriate treatment program to oversee such plan.

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

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

83 (1) During any period of the assisted outpatient treatment, if the court, on motion by the  
84 supervising mental health professional in charge of a patient's assisted outpatient treatment,  
85 determines that the patient is not complying with the terms of the order and that the outpatient

86 plan no longer remains appropriate, the court may enter an order amending its original order. The  
87 amended order may alter the outpatient treatment plan, or request an emergency evaluation to  
88 determine whether the failure to hospitalize such person would create a likelihood of serious  
89 harm.

90 (2) If a patient refuses to comply with an amended outpatient plan, further amendments  
91 may be made as the court deems necessary including the inpatient commitment of the patient  
92 where the court finds that failure to hospitalize such person would create a likelihood of serious  
93 harm.

94 (3) If the court determines the person meets the standard for inpatient commitment and  
95 the patient refuses to comply with an amended order, the court may authorize and direct a peace  
96 officer to take the patient into protective custody and transport him to the agency specified for  
97 inpatient treatment.

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

101 SECTION 6. Chapter 123 of the General Laws, as so appearing, is hereby amended by  
102 inserting, after section 8, the following section-

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

107 (b) The supervising mental health professional shall require periodic reports, not more  
108 frequently than every 30 days, concerning the condition of patients committed to outpatient  
109 treatment from any person, agency, or organization assigned to supervise such patients.

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

112 (d) The supervising mental health professional may amend any part of the outpatient  
113 treatment plan during the course of commitment, subject to judicial review after notice to and  
114 objection of the patient.

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

119 (f) The supervising mental health professional may, at any time, petition the court for  
120 termination of a patient's assisted outpatient treatment order if the supervising mental health  
121 professional determines that assisted outpatient treatment is no longer the least restrictive  
122 appropriate treatment available.

123 (g) Nothing in this section shall prevent the supervising mental health professional from  
124 authorizing involuntary commitment and treatment in an emergency under section 12 of this  
125 chapter.

126 SECTION 7. Section 9 of said chapter 123 of the General Laws, as so appearing, is  
127 hereby amended by inserting, in line 37, after the words "of section eight B." the following:-  
128 Any person may apply to the court stating his or her belief that a person currently treated on an  
129 assisted outpatient basis under section 8 1/2 should no longer be so treated.