

HOUSE No. 1792

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 establishing assisted outpatient treatment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>1/28/2013</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>1/14/2013</i>

HOUSE No. 1792

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1792) of Kay Khan, Marcos A. Devers and Stephen L. DiNatale relative to involuntary outpatient commitment for mentally ill persons. Mental Health and Substance Abuse.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1419 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 t he 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. Said section 1 of said chapter 123, as so appearing, is further amended by
9 inserting, in 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. Said section 6 of said chapter 123, as so appearing is further amended by
17 inserting, in line 2, after the words "provisions of" the following: - paragraph (e) of section 8½.

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

20 (a) Any physician licensed pursuant to section 2 of chapter 112 after examining a patient;
21 the Department of Mental Health; any person eighteen years of age or older with whom the
22 subject of the petition resides; the parent, spouse, sibling eighteen years of age or older, or child
23 eighteen years of age or older of the subject of the petition; or the superintendent of any public or
24 private facility or hospital authorized for the commitment or treatment of mentally ill persons
25 under section 8(a) or 12(a) of this chapter, may petition the district court in whose jurisdiction
26 the facility is located for the assisted outpatient treatment of any individual who(1) is mentally
27 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 consultation
33 with, when possible, those familiar with the patient's case history and the superintendent or
34 physician in charge of the patient's care and the patient. The plan shall include each of the
35 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. Said Chapter 123 of the General Laws, as so appearing, is hereby amended
52 by inserting after section 8 the following:-

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 person's
64 judgment, reason, behavior or capacity to recognize reality and has a substantial probability of
65 causing him or her to suffer or continue to suffer severe psychiatric, emotional or physical harm,
66 or

67 (ii) not improve without treatment and such deterioration could result in harm to the
68 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. Said Chapter 123 of the General Laws, as so appearing, is hereby amended
102 by inserting after section 8 the following:-

103 Section 8 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 adding at the end thereof the following:- Any person may apply to the court
128 stating his or her belief that a person currently treated on an assisted outpatient basis under
129 section 8 1/2 should no longer be so treated.