

**HOUSE . . . . . No. 3587**

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**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:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/20/2017</i>

**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.