

ASSEMBLY, No. 4085

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Co-Sponsored by:

Assemblywoman Dunn and Assemblyman Danielsen

SYNOPSIS

Clarifies that Division of Mental Health Advocacy in Office of Public Defender is required to represent indigent patients in all mental health commitment proceedings, whether related to inpatient or outpatient treatment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/25/2021)

1 AN ACT concerning legal representation of patients in mental health
2 commitment proceedings, and amending P.L.1987, c.116 and
3 P.L.2005, c.155.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 2 of P.L.1987, c.116 (C.30:4-27.2) is amended to
9 read as follows:

10 2. As used in P.L.1987, c.116 (C.30:4-27.1 et seq.) and
11 P.L.2009, c.112:

12 **[a.]** "Chief executive officer" means the person who is the
13 chief administrative officer of an institution or psychiatric facility.

14 **[b.]** "Clinical certificate" means a form prepared by the
15 division and approved by the Administrative Office of the Courts,
16 that is completed by the psychiatrist or other physician who has
17 examined the person who is subject to commitment within three
18 days of presenting the person for involuntary commitment to
19 treatment, and which states that the person is in need of involuntary
20 commitment to treatment. The form shall also state the specific
21 facts upon which the examining physician has based his conclusion
22 and shall be certified in accordance with the Rules of the Court. A
23 clinical certificate may not be executed by a person who is a
24 relative, by blood or marriage **[to]** of the person who is being
25 screened.

26 **[c.]** "Clinical director" means the person who is designated by
27 the director or chief executive officer to organize and supervise the
28 clinical services provided in a screening service, or in a short-term
29 care facility or psychiatric facility. The clinical director shall be a
30 psychiatrist; however, those persons currently serving in the
31 capacity of clinical director on the effective date of P.L.1987, c.116
32 (C.30:4-27.1 et seq.) will not be affected by this provision. This
33 provision shall not alter any current civil service laws designating
34 the qualifications of such position.

35 **[d.]** "Commissioner" means the Commissioner of Human
36 Services.

37 "County adjuster" means the person appointed pursuant to
38 R.S.30:4-34.

39 **[e.]** "County counsel" means the chief legal officer or advisor
40 of the governing body of a county.

41 **[f.]** "Court" means the Superior Court or a municipal court.

42 **[g.]** "Custody" means the right and responsibility to ensure the
43 provision of care and supervision.

44 **[h.]** "Dangerous to self" means that by reason of mental illness
45 the person has threatened or attempted suicide or serious bodily

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 harm, or has behaved in such a manner as to indicate that the person
2 is unable to satisfy **【his】** the person's need for nourishment,
3 essential medical care, or shelter, 【so】 such that it is probable that
4 substantial bodily injury, serious physical harm, or death will result
5 within the reasonably foreseeable future; however, no person shall
6 be deemed to be unable to satisfy his need for nourishment,
7 essential medical care, or shelter if he is able to satisfy such needs
8 with the supervision and assistance of others who are willing and
9 available. This determination shall take into account a person's
10 history, recent behavior, and any recent act, threat, or serious
11 psychiatric deterioration.

12 **【i.】** "Dangerous to others or property" means that by reason of
13 mental illness there is a substantial likelihood that the person will
14 inflict serious bodily harm upon another person or cause serious
15 property damage within the reasonably foreseeable future. This
16 determination shall take into account a person's history, recent
17 behavior, and any recent act, threat, or serious psychiatric
18 deterioration.

19 **【j.】** "Department" means the Department of Human Services.

20 **【k.】** "Director" means the chief administrative officer of a
21 screening service, short-term care facility, or special psychiatric
22 hospital.

23 **【l.】** "Division" means the Division of Mental Health and
24 Addiction Services in the Department of Human Services.

25 "Geographic area" means a distinct area of the State that is
26 designated by the commissioner to be served by a screening service,
27 and which may include a county, a portion of a county, or a multi-
28 county area.

29 "Indigent patient" means a person who is admitted, on an
30 inpatient basis, to a short-term care facility, psychiatric facility, or
31 special psychiatric hospital, or who is assigned, on an outpatient
32 basis, to an outpatient treatment provider, for the purposes of
33 mental health treatment pursuant to P.L.1987, c.116 (C.30:4-
34 27.1 et seq.), and who, in accordance with the provisions of section
35 33 of P.L.2005, c.155 (C.52:27EE-33), is determined to be eligible
36 for mental health advocacy services on the basis of financial need or
37 is awaiting the results of a financial need determination undertaken
38 by the Division of Mental Health Advocacy pursuant to that section.

39 **【m.】** "In need of involuntary commitment" or "in need of
40 involuntary commitment to treatment" means that an adult with
41 mental illness, whose mental illness causes the person to be
42 dangerous to self or dangerous to others or property, and who is
43 unwilling to accept appropriate treatment voluntarily after it has
44 been offered, **【needs】** is in need of outpatient treatment at an
45 outpatient treatment provider or inpatient care at a short-term care
46 facility or psychiatric facility or special psychiatric hospital because

1 other services are not appropriate or available to meet the person's
2 mental health care needs.

3 **【n.】** "Institution" means any State or county facility providing
4 inpatient care, supervision, and treatment for persons with
5 developmental disabilities; except that with respect to the
6 maintenance provisions of Title 30 of the Revised Statutes,
7 institution also means any psychiatric facility for the treatment of
8 persons with mental illness.

9 "Least restrictive environment" means the available setting and
10 form of treatment that appropriately addresses a person's need for
11 care and the need to respond to dangers to the person, others, or
12 property, and that respects, to the greatest extent practicable, the
13 person's interests in freedom of movement and self-direction.

14 **【o.】** "Mental health agency or facility" means a legal entity
15 which receives funds from the State, county, or federal government
16 to provide mental health services.

17 **【p.】** "Mental health screener" means a psychiatrist,
18 psychologist, social worker, registered professional nurse, licensed
19 marriage and family therapist, or other individual who is trained to
20 do outreach only for the purposes of psychological assessment
21 **【who】**, is employed by a screening service, and possesses the
22 license, academic training, or experience**【, as】** required by the
23 commissioner pursuant to regulation; except that a psychiatrist and
24 a State licensed clinical psychologist who meet the requirements for
25 mental health screener shall not have to comply with any additional
26 requirements adopted by the commissioner.

27 **【q.】** "Mental hospital" means, for the purposes of the payment
28 and maintenance provisions of Title 30 of the Revised Statutes, a
29 psychiatric facility.

30 **【r.】** "Mental illness" means a current, substantial disturbance
31 of thought, mood, perception, or orientation which significantly
32 impairs judgment, capacity to control behavior, or capacity to
33 recognize reality, but does not include simple alcohol intoxication,
34 transitory reaction to drug ingestion, organic brain syndrome, or
35 developmental disability unless it results in the severity of
36 impairment described herein. The term mental illness is not limited
37 to "psychosis" or "active psychosis," but shall include all conditions
38 that result in the severity of impairment described herein.

39 "Outpatient treatment" means clinically appropriate care, which
40 is based on proven or promising treatments directed to wellness and
41 recovery, and which is provided to a patient, who is not in need of
42 inpatient treatment, by a member of the patient's treatment team.
43 Outpatient treatment may include, but shall not be limited to, day
44 treatment services, case management, residential services,
45 outpatient counseling and psychotherapy, and medication-assisted
46 treatment.

1 "Outpatient treatment provider" means a community-based
2 provider, which is designated as an outpatient treatment provider
3 pursuant to section 8 of P.L.1987, c.116 (C.30:4-27.8), and which
4 provides or coordinates the provision of outpatient treatment to
5 persons in need of involuntary commitment to treatment.

6 **【s.】** "Patient" means a person over the age of 18 who has been
7 admitted to, but not discharged from, a short-term care **【or】** facility,
8 psychiatric facility, or special psychiatric hospital, or who has been
9 assigned to, but not discharged from an outpatient treatment
10 provider.

11 **【t.】** "Physician" means a person who is licensed to practice
12 medicine in any one of the United States or its territories, or the
13 District of Columbia.

14 **【u.】** "Plan of outpatient treatment" means a plan for recovery
15 from mental illness that is approved by a court pursuant to section
16 17 of P.L.2009, c.112 (C.30:4-27.15a), that is to be carried out in an
17 outpatient setting, and that is prepared by an outpatient treatment
18 provider for a patient who has a history of responding to treatment.
19 The plan may include medication as a component thereof; however,
20 medication shall not be involuntarily administered in an outpatient
21 setting.

22 "Psychiatric facility" means a State psychiatric hospital listed in
23 R.S.30:1-7, a county psychiatric hospital, or a psychiatric unit of a
24 county hospital.

25 **【v.】** "Psychiatrist" means a physician who has completed the
26 training requirements of the American Board of Psychiatry and
27 Neurology.

28 **【w.】** "Psychiatric unit of a general hospital" means an inpatient
29 unit of a general hospital that restricts its services to the care and
30 treatment of persons with mental illness who are admitted on a
31 voluntary basis.

32 **【x.】** "Psychologist" means a person who is licensed as a
33 psychologist by the **【New Jersey】** State Board of Psychological
34 Examiners.

35 **【y.】** "Reasonably foreseeable future" means a timeframe that
36 may be beyond the immediate or imminent, but that is not longer
37 than a time frame as to which reasonably certain judgments about a
38 person's likely behavior can be reached.

39 "Screening certificate" means a clinical certificate executed by a
40 psychiatrist or other physician affiliated with a screening service.

41 **【z.】** "Screening service" means a public or private ambulatory
42 care service, whether or not affiliated with a hospital, designated by
43 the commissioner, which provides mental health services including
44 assessment, emergency, and referral services to persons with mental
45 illness in a specified geographic area.

46 **aa.】** "Screening outreach visit" means an evaluation of a person,
47 which is provided by a mental health screener wherever the person

1 may be when clinically relevant information indicates the person
2 may need involuntary commitment to treatment and is unable or
3 unwilling to come to a screening service.

4 **【bb.】** “Screening service” means a public or private
5 ambulatory care service designated by the commissioner, which
6 provides mental health services, including assessment, emergency,
7 and referral services, to persons with mental illness in a specified
8 geographic area.

9 "Short-term care facility" means an inpatient, community based
10 mental health treatment facility that is authorized to serve persons
11 from specified geographic regions and is designated 【to provide】 as
12 a short-term care facility pursuant to section 8 of P.L.1987, c.116
13 (C.30:4-27.8), and which provides acute care and assessment
14 services to a person **【with】** who has a mental illness 【whose mental
15 illness】 that causes the person to be dangerous to self or dangerous
16 to others or property. A short-term care facility **【is authorized to**
17 **serve persons from a specified geographic area,】** may be a part of a
18 general hospital or other appropriate health care facility**【,】** and , in
19 such case, shall meet certificate of need requirements and be
20 licensed and inspected by the Department of Health pursuant to
21 P.L.1971, c.136 (C.26:2H-1 et seq.).

22 **【cc.】** "Special psychiatric hospital" means a public or private
23 hospital licensed by the Department of Health to provide voluntary
24 and involuntary mental health services, including assessment, care,
25 supervision, treatment, and rehabilitation services to persons with
26 mental illness.

27 **【dd.】** "Treatment team" means an integrated group of one or
28 more persons**【, including】** that provides mental health services to a
29 patient of a screening service, of an outpatient treatment provider,
30 of a short-term care facility, or of a psychiatric facility, and which
31 includes at least one psychiatrist or physician **【, and】**. A treatment
32 team may also include a psychologist, social worker, nurse, licensed
33 marriage and family therapist, and other appropriate services
34 providers. **【A treatment team provides mental health services to a**
35 **patient of a screening service, outpatient treatment provider, or**
36 **short-term care or psychiatric facility.】**

37 **【ee.】** "Voluntary admission" means that an adult with mental
38 illness, whose mental illness causes the person to be dangerous to
39 self or dangerous to others or property and is willing to be admitted
40 to a facility voluntarily for care, needs care at a short-term care or
41 psychiatric facility because other facilities or services are not
42 appropriate or available to meet the person's mental health needs. A
43 person may also be voluntarily admitted to a psychiatric facility if
44 his mental illness presents a substantial likelihood of rapid
45 deterioration in functioning in the near future, there are no
46 appropriate community alternatives available, and the psychiatric
47 facility can admit the person and remain within its rated capacity.

1 【ff. "County adjuster" means the person appointed pursuant to
2 R.S.30:4-34.

3 gg. "Least restrictive environment" means the available setting
4 and form of treatment that appropriately addresses a person's need
5 for care and the need to respond to dangers to the person, others, or
6 property and respects, to the greatest extent practicable, the person's
7 interests in freedom of movement and self-direction.

8 hh. "Outpatient treatment" means clinically appropriate care
9 based on proven or promising treatments directed to wellness and
10 recovery, provided by a member of the patient's treatment team to a
11 person not in need of inpatient treatment. Outpatient treatment may
12 include, but shall not be limited to, day treatment services, case
13 management, residential services, outpatient counseling and
14 psychotherapy, and medication treatment.

15 ii. "Outpatient treatment provider" means a community-based
16 provider, designated as an outpatient treatment provider pursuant to
17 section 8 of P.L.1987, c.116 (C.30:4-27.8), that provides or
18 coordinates the provision of outpatient treatment to persons in need
19 of involuntary commitment to treatment.

20 jj. "Plan of outpatient treatment" means a plan for recovery
21 from mental illness approved by a court pursuant to section 17 of
22 P.L.2009, c.112 (C.30:4-27.15a) that is to be carried out in an
23 outpatient setting and is prepared by an outpatient treatment
24 provider for a patient who has a history of responding to treatment.
25 The plan may include medication as a component of the plan;
26 however, medication shall not be involuntarily administered in an
27 outpatient setting.

28 kk. "Reasonably foreseeable future" means a time frame that
29 may be beyond the immediate or imminent, but not longer than a
30 time frame as to which reasonably certain judgments about a
31 person's likely behavior can be reached.

32 ll. "Geographic area" means a distinct area of the State that is
33 designated by the commissioner to be served by a screening service
34 and may be a county, portion of a county, or multi-county area.】

35 (cf: P.L.2019, c.391, s.1)

36

37 2. Section 11 of P.L.1987, c.116 (C.30:4-27.11) is amended to
38 read as follows:

39 11. A patient admitted to a short-term care **【or】** facility,
40 psychiatric facility, or special psychiatric hospital, or assigned to an
41 outpatient treatment provider, either on a voluntary or involuntary
42 basis, **【or assigned to an outpatient treatment provider has】** shall
43 have the following rights:

44 a. The right to have examinations and services provided in the
45 patient's primary means of communication, including, as soon as
46 possible, the aid of an interpreter if needed because the patient is of
47 limited English-speaking ability or suffers from a speech or hearing
48 impairment;

1 b. The right to receive a verbal explanation of : (1) the reasons
2 for the patient's admission to the inpatient facility or hospital, or
3 assignment to the outpatient treatment provider, as applicable, (2)
4 the availability of an attorney, and (3) the rights provided in
5 P.L.1987, c.116 (C.30:4-27.1 et seq.) and P.L.2009, c.112; and

6 c. The right to be represented by **【an attorney and】** private
7 legal counsel or, if **【unrepresented or】** unable to afford **【an**
8 **attorney】** private legal counsel, the right to be provided with **【an**
9 **attorney】** legal counsel paid for by the **【appropriate government**
10 **agency】** Division of Mental Health Advocacy in the Office of the
11 Public Defender. **【An attorney】** Legal counsel representing a
12 patient has the right to inspect and copy the patient's clinical chart.

13 The clinical director of the inpatient facility or hospital, or the
14 outpatient treatment provider, as appropriate, shall ensure that a
15 written statement of the rights provided in P.L.1987, c.116 (C.30:4-
16 27.1 et seq.) and P.L.2009, c.112 is provided to patients at the time
17 of admission or assignment, as applicable, or as soon as possible
18 thereafter, and to patients and their families upon request.

19 (cf: P.L.2009, c.112, s.12)

20
21 3. Section 12 of P.L.1987, c.116 (C.30:4-27.12) is amended to
22 read as follows:

23 12. a. A patient who is involuntarily committed to treatment and
24 assigned to an outpatient treatment provider, or who is involuntarily
25 committed to treatment and admitted to a short-term care 【or】
26 facility, psychiatric facility, or special psychiatric hospital shall
27 receive a court hearing **【with respect to the issue of】** to evaluate the
28 continued need for involuntary commitment, within 20 days from
29 initial commitment, unless the patient has been administratively
30 discharged pursuant to section 17 of P.L.1987, c.116 (C.30:4-
31 27.17). However, if a person is involuntarily committed pursuant to
32 subsection c. or d. of section 10 of P.L.1987, c.116 (C.30:4-27.10),
33 that person immediately shall be committed to the Ann Klein
34 Forensic Center in Trenton or other facility designated for the
35 criminally insane for the duration of the 20-day waiting period.

36 b. Except as provided in subsection c. of this section, the
37 assigned county counsel is responsible for presenting the case for
38 the patient's involuntary commitment to the court, unless the county
39 adjuster is licensed to practice law in this State, in which case the
40 county adjuster shall present the case for the patient's involuntary
41 commitment to the court.

42 c. Notwithstanding the provisions of subsection b. of this
43 section, and upon notice to the county adjuster:

44 (1) The Attorney General, or the county prosecutor acting at the
45 request of the Attorney General, may supersede the county counsel
46 or county adjuster and assume responsibility for presenting any case
47 for involuntary commitment to treatment, or may elect to participate

1 with the county counsel or county adjuster in presenting any such
2 case; and

3 (2) The county prosecutor may supersede the county counsel or
4 county adjuster and assume responsibility for presenting any case
5 for involuntary commitment to treatment that is initiated by the
6 county prosecutor pursuant to subsection c. of section 10 of
7 P.L.1987, c.116 (C.30:4-27.10), or may elect to participate with the
8 county counsel in the presentation of any such case.

9 d. A patient subject to involuntary commitment to treatment
10 shall have legal counsel present at the involuntary commitment
11 hearing, which is held pursuant to subsection a. of this section, and
12 shall not be permitted to appear at the hearing without legal
13 counsel. The Division of Mental Health Advocacy, in the Office of
14 the Public Defender, shall provide legal counsel for any indigent
15 patient who is the subject of an involuntary commitment hearing
16 initiated pursuant to this section.

17 (cf: P.L.2009, c.112, s.13)

18

19 4. Section 14 of P.L.1987, c.116 (C.30:4-27.14) is amended to
20 read as follows:

21 14. A person subject to involuntary commitment to treatment
22 has the following rights at a court hearing and any subsequent
23 review court hearing:

24 a. The right to be represented by private legal counsel or, if an
25 indigent patient, to be represented by court appointed legal counsel
26 from the Division of Mental Health Advocacy, in the Office of the
27 Public Defender;

28 b. The right to be present at the court hearing unless the court
29 determines that , because of the person's conduct at the court
30 hearing, the proceeding cannot reasonably continue while the
31 person is present;

32 c. The right to present evidence;

33 d. The right to cross examine witnesses; and

34 e. The right to a hearing in camera.

35 (cf: P.L.2009, c.112, s.15)

36

37 5. Section 12 of P.L.2005, c.155 (C.52:27EE-12) is amended to
38 read as follows:

39 12. Definitions.

40 As used in sections 27, 32, 33, 48, 50, 51 and 64 of P.L.2005,
41 c.155 (C.52:27EE-27, C.52:27EE-32, C.52:27EE-33, C.52:27EE-
42 48, C.52:27EE-50, C.52:27EE-51 and C.52:27EE-64):

43 **["consumer]** "Consumer insurance rate increases" means prior
44 approval rate increases for: personal lines property casualty
45 coverages; Medicare supplemental coverages; or a rating system
46 change pursuant to section 14 of P.L.1997, c.151 (C.17:29A-
47 46.1 **[et seq.]** **[:]** .

1 **["correctional"]** "Correctional facility" means a jail, prison,
2 lockup, penitentiary, reformatory, training school, or other similar
3 facility within the State of New Jersey **[:]** .

4 **["elderly"]** "Elderly" means a person age 60 years or older **[:]** .

5 **["facility"]** "Facility" means, whenever **[referred to]** referenced
6 in section 64 of P.L.2005, c.155 (C.52:27EE-64), **[means]** any
7 facility or institution, whether public or private, offering health or
8 health related services for the institutionalized elderly, and which is
9 subject to regulation, visitation, inspection, or supervision by any
10 government agency. Facilities include, but are not limited to,
11 nursing homes, skilled nursing homes, intermediate care facilities,
12 extended care facilities, convalescent homes, rehabilitation centers,
13 residential health care facilities, special hospitals, veterans'
14 hospitals, chronic disease hospitals, psychiatric hospitals, mental
15 hospitals, developmental centers or facilities, day care facilities for
16 the elderly, and medical day care centers **[:]** .

17 **["indigent mental hospital admittee"]** "Indigent patient" means a
18 person who **[has been admitted to and is a patient in a mental**
19 hospital, an institution for the care and treatment of persons with
20 mental illness, or a similar facility, whether public or private, State,
21 county or local, or who is the subject of an action for admission as
22 provided by**]** is admitted to a short-term care facility, psychiatric
23 facility, or special psychiatric hospital, or who is assigned to an
24 outpatient treatment provider, for the purposes of mental health
25 treatment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.),
26 who **[does not have the financial ability to secure competent**
27 representation and to provide all other necessary expenses of
28 representation**]** is determined to be eligible for mental health
29 advocacy services on the basis of financial need, in accordance with
30 the provisions of section 33 of P.L.2005, c.155 (C.52:27EE-33), or
31 is awaiting the results of a financial need eligibility determination
32 undertaken by the Division of Mental Health Advocacy pursuant to
33 that section **[:]** .

34 **["institutionalized"]** "Institutionalized elderly" means any person
35 60 years of age or older, who is a patient, resident, or client of any
36 facility, as described herein **[:]** .

37 **["public"]** "Public" interest" means an interest or right arising
38 from the Constitution, decisions of court, common law, or other
39 laws of the United States or of this State inhering in the citizens of
40 this State or in a broad class of such citizens.
41 (cf: P.L.2010, c.50, s.78)

42
43 6. Section 30 of P.L.2005, c.155 (C.52:27EE-30) is amended to
44 read as follows:

45 30. Division of Mental Health Advocacy; objective; duties.

46 a. The Division of Mental Health Advocacy shall promote,
47 advocate, and ensure the adequacy of the care received, and the

1 quality of life experienced, by persons with mental illness,
2 including patients, residents, and clients within the inpatient mental
3 health treatment facilities and outpatient mental health treatment
4 programs that are operated, funded, or licensed by the State. In
5 determining what elements are essential to ensure adequate care and
6 quality of life, the division shall consider the unique medical,
7 social, and economic needs and problems of persons with mental
8 illness as patients, residents, and clients of facilities and as citizens
9 and community members.

10 b. The director shall establish and implement procedures to
11 elicit, receive, process, respond, and resolve complaints from
12 patients, their families, other interested citizens, public officials,
13 and government agencies concerning conditions in the State's
14 inpatient mental health treatment facilities and outpatient mental
15 health treatment programs.

16 (cf: P.L.2005, c.155, s.30)

17
18 7. Section 32 of P.L.2005, c.155 (C.52:27EE-32) is amended to
19 read as follows:

20 32. Division of Mental Health Advocacy; legal representation;
21 medical consultation.

22 a. The Division of Mental Health Advocacy **【may】** shall
23 provide such legal representation and medical consultation, as the
24 director deems appropriate , for any indigent **【mental hospital**
25 **admittee】** patient who is admitted to a short-term care facility,
26 psychiatric facility, or special psychiatric hospital, as those terms
27 are defined by section 2 of P.L.1987, c.116 (C.30:4-27.2), in any
28 proceeding concerning the **【admittee's】** indigent patient's
29 admission to, **【and】** retention in, or release from , confinement in
30 such **【a hospital, institution , or】** inpatient facility.

31 b. The Division of Mental Health Advocacy shall provide such
32 legal representation and medical consultation, as the director deems
33 appropriate, for any indigent patient who is assigned to an
34 outpatient treatment provider, as that term is defined by section 2 of
35 P.L.1987, c.116 (C.30:4-27.2), in any proceeding concerning the
36 person's assignment to, retention in, or release from, such
37 outpatient treatment.

38 (cf: P.L.2005, c.155, s.32)

39
40 8. This act shall take effect immediately.

41 42 43 STATEMENT

44
45 This bill would clarify that the Division of Mental Health
46 Advocacy, in the Office of the Public Defender, is obligated to
47 provide legal representation for indigent mental health patients in
48 all judicial proceedings related to the patients' involuntary

1 commitment, regardless of whether that commitment is associated
2 with inpatient or outpatient treatment.

3 Existing law expressly authorizes the Division of Mental Health
4 Advocacy to provide legal representation and medical consultation
5 for any indigent person involuntarily committed to treatment and
6 admitted, on an inpatient basis, to a mental hospital or other mental
7 health institution or facility, in any judicial proceeding that
8 concerns the person's admission to, retention in, or release from
9 such inpatient confinement. However, existing law does not
10 similarly authorize the division to provide legal representation and
11 medical consultation for an indigent person who is involuntarily
12 committed to treatment and assigned to an outpatient mental health
13 treatment provider.

14 The use of outpatient treatment in association with the
15 involuntary commitment process is a novel concept, which was
16 recently incorporated into State law through the enactment of
17 P.L.2009, c.112. Although persons assigned to an outpatient
18 treatment provider are entitled, under P.L.2009, c.112, to the same
19 rights to legal representation as are available to persons who are
20 committed to inpatient treatment, there has been some confusion, in
21 practice, as to whether the Division of Mental Health Advocacy is
22 enabled or required by law to provide the requisite legal
23 representation for individuals assigned to an outpatient treatment
24 provider who lack the financial resources to secure private counsel.
25 Accordingly, this bill would clarify that the division is now required
26 by law to provide legal representation both for indigent patients
27 who have been involuntarily admitted to an inpatient facility and for
28 indigent patients who have been involuntarily assigned to an
29 outpatient treatment provider.

30 Section 33 of P.L.2005, c.155 (C.52:27EE-33) provides that the
31 division is authorized to provide representation to any person who
32 is determined to be eligible for advocacy services on the basis of
33 financial need. In addition, the section of law requires the division
34 to provide provisional representation to any patient who is awaiting
35 the results of the division's financial need determination, during the
36 pendency of that determination. Thus, in order to remain consistent
37 with this provision, the bill defines an "indigent patient" – i.e., a
38 patient for whom the division must provide legal representation – as
39 any person who is admitted, on an inpatient basis, to a short-term
40 care facility, psychiatric facility, or special psychiatric hospital, or
41 who is assigned, on an outpatient basis, to an outpatient treatment
42 provider, for the purposes of mental health treatment, and who, in
43 accordance with the provisions of section 33 of P.L.2005, c.155
44 (C.52:27EE-33), is determined to be eligible for mental health
45 advocacy services on the basis of financial need or is awaiting the
46 results of a financial need determination undertaken by the Division
47 of Mental Health Advocacy pursuant to that section.

1 Finally, the bill makes technical and clarifying changes to the
2 existing law in this area, in order to ensure both that statutory
3 language is used consistently from section to section, and that the
4 relevant definitional sections comport with modern tenets of
5 statutory drafting, including those tenets requiring the
6 alphabetization of definitional terms, and providing against the use
7 of subsection demarcations.

8 It is the sponsor's intent to reduce local property taxes through
9 the enactment of this bill. Currently, each county adjuster is
10 burdened with the obligation to provide private representation, at
11 county expense, for each indigent person who is involved in judicial
12 proceedings in that county, in association with the patient's
13 commitment to outpatient mental health treatment. Because
14 counties must rely on property tax revenue to pay the costs
15 associated with this representation, the elimination of this county-
16 level obligation, and the assumption of this obligation by the State,
17 may enable counties to effectively reduce property taxes.