S T A T E O F N E W Y O R K

7014

I N S E N A T E

April 11, 2014

Introduced by Sen. BOYLE -- (at request of the Office of Alcoholism and Substance Abuse Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law, in relation to requests for emergency services for persons intoxicated, impaired or incapacitated by alcohol or substances

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 22.09 of the mental hygiene law, as added by chapter 558 of the laws of 1999, is amended to read as follows:

S 22.09 Emergency services for persons intoxicated, impaired, or incapacitated by alcohol and/or substances.

(a) As used in this article:

1. "Intoxicated or impaired person" means a person whose mental or physical functioning is substantially impaired as a result of the presence of alcohol and/or substances in his or her body.

2. "Incapacitated" means that a person, as a result of the use of alcohol and/or substances, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment.

3. "Likelihood to result in harm" or "likely to result in harm" means (i) a substantial risk of physical harm to the person as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to himself or herself, or (ii) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

4. ["Hospital" means a general hospital as defined in article twenty-eight of the public health law] *"EMERGENCY SERVICES" MEANS IMMEDIATE PHYSICAL EXAMINATION, ASSESSMENT, CARE AND EMERGENCY TREATMENT TO ACHIEVE STABILIZATION, AND EVALUATION OR REFERRAL FOR FURTHER TREATMENT.*

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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5. "TREATMENT FACILITY" MEANS A HOSPITAL AS DEFINED IN ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, OR A CHEMICAL DEPENDENCE PROGRAM FACILITY CERTIFIED OR APPROVED BY THE COMMISSIONER.

(b) An intoxicated or impaired person may come voluntarily for emergency [treatment] SERVICES to a chemical dependence program or treatment facility authorized by the commissioner to give such emergency [treatment] SERVICES. A person who appears to be intoxicated or impaired and who consents to the proffered help may be assisted by any peace officer acting pursuant to his or her special duties, police officer, or by a designee of the director of community services to return to his or her home, to a chemical dependence program or treatment facility, or to any other facility authorized by the commissioner to give emergency [treatment] SERVICES. In such cases, the peace officer, police officer, or designee of the director of community services shall accompany the intoxicated or impaired person in a manner which is reasonably designed to assure his or her safety[, as set forth in regulations promulgated in accordance with subdivision (f) of this section].

(c) A person who appears to be incapacitated by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or to others may be taken by a peace officer acting pursuant to his or her special duties, or a police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department or by the director of community services or a person duly designated by him or her, OR UPON APPLICATION TO THE DIRECTOR OF COMMUNITY SERVICES PURSUANT TO SUBDIVISION (F) OF THIS SECTION, to a [general hospital or to any other place authorized by the commissioner in regulations promulgated in accordance with subdivision (f) of this section to give emergency treatment,] TREATMENT FACILITY for immediate observation, ASSESSMENT, care, and emergency treatment. Every reasonable effort shall be made to protect the health and safety of such person, including but not limited to the requirement that the peace officer, police officer, or director of community services or his or her designee shall accompany the apparently incapacitated person in a manner which is reasonably designed to assure his or her safety[, as set forth in regulations promulgated in accordance with subdivision (f) of this section].

(d) A person who comes voluntarily or is brought without his or her objection to any such [facility or program] TREATMENT FACILITY in accordance with subdivision (c) of this section shall be given emergency care and treatment at such place if found suitable [therefor] by authorized personnel, or referred to another suitable facility or treatment program for care and treatment, or sent to his or her home.

(e) A person who is brought with his or her objection to any [facility or treatment program] TREATMENT FACILITY in accordance with subdivision (c) of this section shall be examined as soon as possible by an examining physician. If such examining physician determines that such person is incapacitated by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or others, he or she may be retained for ASSESSMENT, CARE AND emergency treatment TO ACHIEVE STABILIZATION. If the examining physician determines that such person is not incapacitated by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or others, he or she must be released. Notwithstanding any other law, in no event may such person be retained against his or her objection beyond whichever is the shorter of the following: (i) the time that he or she is no longer incapacitated by alcohol and/or substances to the degree that there is a

likelihood to result in harm to the person or others or (ii) a period longer than [forty-eight] SEVENTY-TWO hours.

1. Every reasonable effort must be made to obtain the person's consent to give prompt notification of a person's retention in a facility or program pursuant to this section to his or her closest relative or friend, and, if requested by such person, to his or her attorney and personal physician, in accordance with federal confidentiality regulations.

2. A person may not be retained pursuant to this section beyond a period of [forty-eight] SEVENTY-TWO hours without his or her consent. Persons suitable therefor may be voluntarily admitted to a chemical dependence program or facility pursuant to this article.

(f) [The commissioner shall promulgate regulations, after consulting with representatives of appropriate law enforcement and chemical dependence providers of services, establishing procedures for taking intoxicated or impaired persons and persons apparently incapacitated by alcohol and/or substances to their residences or to appropriate public or private facilities for emergency treatment and for minimizing the role of the police in obtaining treatment of such persons] EMERGENCY SERVICES MAY BE SOUGHT FOR AN ADULT OR FOR A MINOR BY APPLICATION TO A LOCAL GOVERNMENTAL UNIT'S DIRECTOR OF COMMUNITY SERVICES IN ACCORDANCE WITH THIS SUBDIVISION.

1. THE FOLLOWING PERSONS MAY MAKE APPLICATION TO THE DIRECTOR OF COMMUNITY SERVICES:

(I) IN THE CASE OF AN ADULT, A PHYSICIAN, THE PERSON'S SPOUSE OR GUARDIAN, ANY RELATIVE OF THE PERSON, OR ANY OTHER RESPONSIBLE ADULT WHO HAS PERSONAL KNOWLEDGE OF THE PERSON'S SUBSTANCE ABUSE IMPAIRMENT; OR

(II) IN THE CASE OF A MINOR, THE MINOR'S PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN.

2. AN APPLICATION FOR EMERGENCY SERVICES MUST ESTABLISH THE NEED FOR IMMEDIATE SERVICES AND CONTAIN THE NAME OF THE PERSON TO BE ADMITTED, THE NAME AND SIGNATURE OF THE APPLICANT, THE RELATIONSHIP BETWEEN THE PERSON TO BE ADMITTED AND THE APPLICANT, AND FACTUAL ALLEGATIONS WITH RESPECT TO:

(I) THE REASON FOR THE APPLICANT'S BELIEF THAT THE PERSON IS SUBSTANCE ABUSE IMPAIRED; AND

(II) THE REASON FOR THE APPLICANT'S BELIEF THAT BECAUSE OF SUCH IMPAIRMENT THE PERSON HAS LOST THE POWER OF SELF-CONTROL WITH RESPECT TO SUBSTANCE ABUSE; AND EITHER

(A) THE REASON THE APPLICANT BELIEVES THAT THE PERSON HAS INFLICTED OR IS LIKELY TO INFLICT PHYSICAL HARM ON HIMSELF OR HERSELF OR OTHERS UNLESS ADMITTED; OR

(B) THE REASON THE APPLICANT BELIEVES THAT THE PERSON'S REFUSAL TO VOLUNTARILY RECEIVE SUBSTANCE ABUSE SERVICES IS BASED ON JUDGMENT SO IMPAIRED BY REASON OF SUBSTANCE ABUSE THAT HE OR SHE IS INCAPABLE OF APPRECIATING HIS OR HER NEED FOR SUCH SERVICES AND OF MAKING A RATIONAL DECISION REGARDING HIS OR HER NEED FOR SERVICES.

3. UPON RECEIPT OF SUCH APPLICATION, THE DIRECTOR OF COMMUNITY SERVICES SHALL TAKE ACTIONS PURSUANT TO SUBDIVISION (D) OR (E) OF THIS SECTION.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.