

6248--A

I N S E N A T E

(PREFILED)

January 6, 2016

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to emergency intervention for persons impaired by alcohol or other substances

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

1 Section 1. Section 22.09 of the mental hygiene law, as added by chap-
2 ter 558 of the laws of 1999, is amended to read as follows:
3 S 22.09 Emergency services for persons intoxicated, impaired, or inca-
4 pacitated by alcohol and/or substances.
5 (a) DEFINITIONS. As used in this article:
6 1. "Intoxicated or impaired person" means a person whose mental or
7 physical functioning is substantially impaired as a result of the pres-
8 ence of alcohol and/or substances in his or her body.
9 2. "Incapacitated" means that a person, as a result of the use of
10 alcohol and/or substances, is unconscious or has his or her judgment
11 otherwise so impaired that he or she is incapable of realizing and
12 making a rational decision with respect to his or her need for treat-
13 ment.
14 3. "Likelihood to result in harm" or "likely to result in harm" means
15 (i) a substantial risk of physical harm to the person as manifested by
16 threats of or attempts at suicide or serious bodily harm or other
17 conduct demonstrating that the person is dangerous to himself or
18 herself, or (ii) a substantial risk of physical harm to other persons as
19 manifested by homicidal or other violent behavior by which others are
20 placed in reasonable fear of serious physical harm.
21 4. ["Hospital" means a general hospital as defined in article twenty-
22 eight of the public health law] "EMERGENCY SERVICES" MEANS IMMEDIATE
23 VOLUNTARY OR INVOLUNTARY PHYSICAL EXAMINATION, ASSESSMENT, CARE AND
24 TREATMENT OF AN INTOXICATED OR IMPAIRED PERSON WHO HAS BECOME INCAPACI-

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

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1 TATED IN ORDER TO ACHIEVE STABILIZATION AND/OR SUBSEQUENT ADMISSION TO
2 EXTENDED VOLUNTARY OR INVOLUNTARY TREATMENT.

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

6 (b) VOLUNTARY EMERGENCY SERVICES. 1. An intoxicated or impaired person
7 may come voluntarily for emergency [treatment] SERVICES to a chemical
8 dependence program or treatment facility authorized by the commissioner
9 to [give] PROVIDE such emergency [treatment] SERVICES. A person who
10 appears to be intoxicated or impaired and who consents to the proffered
11 help [may] SHALL be assisted by any peace officer acting pursuant to his
12 or her special duties, police officer, or by a designee of the director
13 of community services to return to his or her home, to a chemical
14 dependence program or treatment facility, or to any other facility
15 authorized by the commissioner to [give] PROVIDE emergency [treatment]
16 SERVICES. In such cases, the peace officer, police officer, or designee
17 of the director of community services shall accompany the intoxicated or
18 impaired person in a manner which is reasonably designed to assure his
19 or her safety, as set forth in regulations promulgated in accordance
20 with subdivision (f) of this section.

21 [(c) A] 2. CONSISTENT WITH SUBDIVISION (B) OF SECTION 22.07 OF THIS
22 ARTICLE, A person who appears to be incapacitated by alcohol and/or
23 substances to the degree that there is a likelihood to result in harm to
24 the person or to others [may] SHALL be taken by a peace officer acting
25 pursuant to his or her special duties, or a police officer who is a
26 member of the state police or of an authorized police department or
27 force or of a sheriff's department or by the director of community
28 services or a person duly designated by him or her, OR PURSUANT TO PETI-
29 TION TO THE DIRECTOR OF COMMUNITY SERVICES PURSUANT TO SUBDIVISION (D)
30 OF THIS SECTION, to a [general hospital or to any other place authorized
31 by the commissioner in regulations promulgated in accordance with subdi-
32 vision (f) of this section to give emergency treatment,] TREATMENT
33 FACILITY for [immediate observation, care, and] PURPOSES OF RECEIVING
34 emergency [treatment] SERVICES. Every reasonable effort shall be made
35 to protect the health and safety of such person, including but not
36 limited to the requirement that the peace officer, police officer, or
37 director of community services or his or her designee shall accompany
38 the apparently incapacitated person in a manner which is reasonably
39 designed to assure his or her safety, as set forth in regulations
40 promulgated in accordance with subdivision (f) of this section.

41 [(d)] 3. A person who comes voluntarily or is brought without his or
42 her objection to any such [facility or program] TREATMENT FACILITY in
43 accordance with [subdivision (c) of this section] PARAGRAPH TWO OF THIS
44 SUBDIVISION shall be [given emergency care and treatment] PROVIDED EMER-
45 GENCY SERVICES at such place if found suitable [therefor] by authorized
46 personnel, or referred to another suitable facility or treatment program
47 for [care and treatment] EMERGENCY SERVICES, or sent to his or her home.

48 [(e)] 4. A person who is brought with his or her objection to any
49 [facility or treatment program] TREATMENT FACILITY in accordance with
50 [subdivision (c) of this section] PARAGRAPH TWO OF THIS SUBDIVISION
51 shall be examined as soon as possible by an examining physician. If such
52 examining physician determines that such person is incapacitated by
53 alcohol and/or substances to the degree that there is a likelihood to
54 result in harm to the person or others, he or she may be retained for
55 emergency treatment TO ACHIEVE STABILIZATION. If the examining physi-
56 cian determines that such person is not incapacitated by alcohol and/or

1 substances to the degree that there is a likelihood to result in harm to
2 the person or others, he or she must be released. [Notwithstanding any
3 other law,] EXCEPT AS PROVIDED IN SUBDIVISION (C) OF THIS SECTION, in no
4 event may such person be retained against his or her objection beyond
5 whichever is the shorter of the following:

6 (i) the time that he or she is no longer incapacitated by alcohol
7 and/or substances to the degree that there is a likelihood to result in
8 harm to the person or others or;

9 (ii) a period longer than [forty-eight] SEVENTY-TWO hours.

10 [1.] 5. Every reasonable effort must be made to obtain the person's
11 consent to give prompt notification of a person's retention in a facili-
12 ty or program pursuant to this [section] SUBDIVISION to his or her clos-
13 est relative or friend, and, if requested by such person, to his or her
14 attorney and personal physician, in accordance with federal confiden-
15 tiality regulations.

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

20 (f) The commissioner shall promulgate regulations, after consulting
21 with representatives of appropriate law enforcement and chemical depend-
22 ence providers of services, establishing procedures for taking intoxi-
23 cated or impaired persons and persons apparently incapacitated by alco-
24 hol and/or substances to their residences or to appropriate public or
25 private facilities for emergency treatment and for minimizing the role
26 of the police in obtaining treatment of such persons.]

27 (C) INVOLUNTARY EMERGENCY SERVICES ON CERTIFICATE OF A DIRECTOR OF
28 COMMUNITY SERVICES OR DESIGNEE. 1. THE DIRECTOR OF A TREATMENT FACILITY
29 DESIGNATED BY THE COMMISSIONER TO PROVIDE EMERGENCY SERVICES SHALL UPON
30 THE CERTIFICATE OF A LOCAL DIRECTOR OF COMMUNITY SERVICES OR A PHYSICIAN
31 DULY DESIGNATED BY THE DIRECTOR OF COMMUNITY SERVICES, RECEIVE AND CARE
32 FOR IN SUCH FACILITY AS A PATIENT ANY PERSON WHO, IN THE OPINION OF THE
33 DIRECTOR OF COMMUNITY SERVICES OR HIS OR HER DESIGNEE SOUGHT BY PETITION
34 PURSUANT TO SUBDIVISION (D) OF THIS SECTION, IS INCAPACITATED SUCH THAT
35 SUCH PERSON'S USE OR ABUSE OF CHEMICAL SUBSTANCES IS LIKELY TO RESULT IN
36 HARM TO HIMSELF, HERSELF OR OTHERS AND FOR WHOM IMMEDIATE INVOLUNTARY
37 EMERGENCY SERVICES IS APPROPRIATE.

38 2. THE NEED FOR IMMEDIATE INVOLUNTARY EMERGENCY SERVICES SHALL BE
39 CONFIRMED PRIOR TO ADMISSION BY A PHYSICIAN AFFILIATED WITH THE FACILI-
40 TY. EXCLUDING SUNDAYS AND HOLIDAYS, IF THE PHYSICIAN RECOMMENDS SUCH
41 PATIENT BE RETAINED FOR EMERGENCY SERVICES BEYOND SEVENTY-TWO HOURS AND
42 THE PATIENT DOES NOT AGREE TO REMAIN IN SUCH FACILITY AS A VOLUNTARY
43 PATIENT, THE CERTIFICATE OF SUCH PHYSICIAN ATTESTING THAT THE PATIENT IS
44 IN NEED OF EXTENDED INVOLUNTARY EMERGENCY SERVICES SHALL BE FILED WITH
45 THE FACILITY. FROM THE TIME OF SUCH PATIENT'S ADMISSION UNDER THIS
46 SUBDIVISION THE RETENTION OF SUCH PATIENT FOR EMERGENCY SERVICES BEYOND
47 SEVENTY-TWO HOURS SHALL BE SUBJECT TO THE PROVISIONS FOR NOTICE, HEAR-
48 ING, REVIEW, AND JUDICIAL APPROVAL PROVIDED BY THIS ARTICLE FOR THE
49 ADMISSION AND RETENTION OF INVOLUNTARY PATIENTS, PROVIDED THAT, FOR THE
50 PURPOSES OF SUCH PROVISIONS, THE DATE OF ADMISSION OF THE PATIENT SHALL
51 BE DEEMED TO BE THE DATE WHEN THE PATIENT WAS FIRST RECEIVED IN THE
52 FACILITY PURSUANT TO THIS SUBDIVISION.

53 (D) PETITION TO LOCAL DIRECTOR OF COMMUNITY SERVICES FOR VOLUNTARY OR
54 INVOLUNTARY EMERGENCY SERVICES. 1. A PETITION FOR EMERGENCY SERVICES MAY
55 BE SOUGHT FOR AN ADULT OR FOR A MINOR BY PETITION TO A LOCAL GOVERN-
56 MENTAL UNIT'S DIRECTOR OF COMMUNITY SERVICES IN ACCORDANCE WITH THIS

SUBDIVISION. ANY ONE OF THE FOLLOWING PERSONS MAY PETITION 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 ADULT WHO HAS PERSONAL KNOWLEDGE OF A PERSON'S SUBSTANCE ABUSE IMPAIRMENT; OR

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

2. PETITION FOR ADMISSION OF A PATIENT TO A TREATMENT FACILITY FOR EMERGENCY SERVICES PURSUANT TO THIS SECTION SHALL BE BASED UPON A PERSONAL EXAMINATION BY A DIRECTOR OF COMMUNITY SERVICES OR HIS OR HER DESIGNEE. IT SHALL BE IN WRITING AND SHALL BE FILED WITH THE DIRECTOR OF A FACILITY AT THE TIME OF THE PATIENT'S RECEPTION, TOGETHER WITH A STATEMENT IN A FORM PRESCRIBED BY THE COMMISSIONER GIVING SUCH INFORMATION AS HE OR SHE MAY DEEM APPROPRIATE. A PETITION FOR ADMISSION FOR EMERGENCY SERVICES MUST ESTABLISH THE REASON THE PETITIONER BELIEVES THAT THERE IS A LIKELIHOOD TO RESULT IN HARM TO THE PERSON OR OTHERS UNLESS HE OR SHE IS ADMITTED FOR IMMEDIATE EMERGENCY SERVICES. A PETITION MUST INCLUDE:

(I) THE NAME OF THE PERSON TO BE ADMITTED, THE NAME AND SIGNATURE OF THE PETITIONER, THE RELATIONSHIP BETWEEN THE PERSON TO BE ADMITTED AND THE APPLICANT; AND

(II) THE REASON THE PETITIONER BELIEVES THAT BECAUSE OF SUCH IMPAIRMENT THE PERSON HAS LOST THE POWER OF SELF-CONTROL WITH RESPECT TO SUBSTANCE ABUSE; AND

(III) THE REASON THE PETITIONER BELIEVES THAT THE PERSON'S REFUSAL TO VOLUNTARILY RECEIVE EMERGENCY SERVICES IS BASED ON JUDGEMENT 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 PETITION, THE DIRECTOR OF COMMUNITY SERVICES OR A PERSON DULY DESIGNATED BY HIM OR HER SHALL REVIEW SUCH PETITION AND MAY TAKE ACTIONS PURSUANT TO SUBDIVISIONS (B) OR (C) OF THIS SECTION.

(E) EACH PERSON ADMITTED TO A TREATMENT FACILITY FOR EMERGENCY SERVICES PURSUANT TO THIS SECTION SHALL BE PROVIDED WITH WRITTEN NOTICE REGARDING PATIENT RIGHTS PURSUANT TO SECTION 22.03 OF THIS ARTICLE, ACCESS TO HIS OR HER PERSONAL ATTORNEY UPON REQUEST, AND NOTICE AS TO THE AVAILABILITY OF THE MENTAL HYGIENE LEGAL SERVICE FOR LEGAL COUNSEL AND SHALL BE PROVIDED ACCESS TO THE SERVICE UPON REQUEST.

(F) THE COMMISSIONER SHALL PROMULGATE REGULATIONS ESTABLISHING PROCEDURES FOR TAKING INTOXICATED OR IMPAIRED PERSONS AND PERSONS APPARENTLY INCAPACITATED BY ALCOHOL AND/OR SUBSTANCES TO THEIR RESIDENCE OR TO APPROPRIATE PUBLIC OR PRIVATE TREATMENT FACILITIES FOR EMERGENCY SERVICES AND MINIMIZING THE ROLE OF THE POLICE IN OBTAINING TREATMENT OF SUCH PERSONS.

S 2. The mental hygiene law is amended by adding a new section 22.13 to read as follows:

S 22.13 COURT AUTHORIZATION TO RETAIN AN INVOLUNTARY PATIENT.

(A) IF THE DIRECTOR OF A FACILITY SHALL DETERMINE THAT A PATIENT ADMITTED PURSUANT TO SUBDIVISION (C) OF SECTION 22.09 OF THIS ARTICLE, FOR WHOM THERE IS NO PRIOR COURT ORDER AUTHORIZING RETENTION FOR A SPECIFIED PERIOD, IS IN NEED OF RETENTION BEYOND SEVENTY-TWO HOURS AND IF SUCH PATIENT DOES NOT AGREE TO REMAIN IN SUCH FACILITY AS A VOLUNTARY PATIENT, THE DIRECTOR SHALL APPLY TO THE SUPREME COURT OR THE COUNTY COURT IN THE COUNTY WHERE THE FACILITY IS LOCATED FOR AN ORDER AUTHORIZING CONTINUED RETENTION. THE FACILITY IS AUTHORIZED TO RETAIN THE PATIENT FOR SEVENTY-TWO HOURS OR DURING THE PERIOD IN WHICH THE APPLICA-

1 TION MAY BE PENDING, SUCH PERIOD NOT TO EXCEED NINETY DAYS. THE DIRECTOR
2 SHALL CAUSE WRITTEN NOTICE OF SUCH APPLICATION TO BE GIVEN TO THE
3 PATIENT AND A COPY THEREOF SHALL BE GIVEN PERSONALLY OR BY MAIL TO ANY
4 PERSONS REQUIRED BY THIS ARTICLE TO BE SERVED WITH NOTICE OF SUCH
5 PATIENT'S INITIAL ADMISSION AND TO THE MENTAL HYGIENE LEGAL SERVICE.
6 SUCH NOTICE SHALL STATE THAT A HEARING MAY BE REQUESTED BY THE PATIENT
7 OR THE SERVICE AND THAT FAILURE TO MAKE SUCH A REQUEST WITHIN FIVE DAYS,
8 EXCLUDING SUNDAY AND HOLIDAYS, FROM THE DATE THAT THE NOTICE WAS GIVEN
9 TO THE PATIENT WILL PERMIT THE ENTRY WITHOUT A HEARING OF AN ORDER
10 AUTHORIZING RETENTION FOR A PERIOD NOT TO EXCEED NINETY DAYS FROM THE
11 DATE OF THE ORDER, PROVIDED THE COURT IS SATISFIED THAT THE PATIENT
12 REQUIRES CONTINUED RETENTION.

13 (B) UPON THE DEMAND OF THE PATIENT OR OF ANYONE ON HIS OR HER BEHALF
14 OR UPON REQUEST OF THE MENTAL HYGIENE LEGAL SERVICE, THE COURT SHALL, OR
15 MAY ON ITS OWN MOTION, FIX A DATE FOR THE HEARING OF THE APPLICATION
16 PURSUANT TO COURT PROCEDURE IN THE JURISDICTION OF THE FACILITY.

17 (C) EXCEPT AS PROVIDED IN SUBDIVISION (A) OF THIS SECTION A PERSON MAY
18 NOT BE RETAINED BEYOND A PERIOD OF NINETY DAYS WITHOUT HIS OR HER
19 CONSENT. PERSONS SUITABLE THEREFOR MAY BE VOLUNTARILY ADMITTED TO A
20 CHEMICAL DEPENDENCE PROGRAM OR FACILITY PURSUANT TO THIS ARTICLE.

21 S 3. Subdivision (d) of section 22.11 of the mental hygiene law, as
22 added by chapter 558 of the laws of 1999, is amended to read as follows:

23 (d) Inpatient or residential treatment. 1. [Admission] VOLUNTARY
24 ADMISSION procedures. (i) A copy of the patient's rights established
25 under this section and under section 22.03 of this article shall be
26 given and explained to the minor and to the minor's consenting parent or
27 guardian at the time of admission by the director of the facility or
28 such person's designee.

29 (ii) The minor shall be required to sign a form indicating that the
30 treatment is being voluntarily sought, and that he or she has been
31 advised of his or her ability to access the mental hygiene legal service
32 and of his or her rights under this section and section 22.03 of this
33 article. The signed form shall be included in the minor's medical
34 record.

35 (iii) At the time of admission, any minor so admitted shall be
36 informed by the director of the facility or the director's designee,
37 orally and in writing, of the minor's right to be discharged in accord-
38 ance with the provisions of this [section] SUBDIVISION within twenty-
39 four hours of his or her making a request therefor.

40 (iv) Emergency contacts.

41 (A) At the time of admission, the provider of services shall use its
42 best efforts to obtain from the minor's consenting parent or guardian a
43 telephone number or numbers where he or she may be reached by the facil-
44 ity at any time during the day or night. In addition, such provider of
45 services shall also use its best efforts to obtain from the parent or
46 guardian a name, address and appropriate telephone number or numbers of
47 an adult designated by such parent or guardian as an emergency contact
48 person in the event the facility is unable to reach such parent or guar-
49 dian.

50 (B) If the minor is admitted in accordance with subdivision (c) of
51 this section, the provider of services shall use its best efforts to
52 obtain from the minor the name, address, and telephone number of an
53 adult who may serve as an emergency contact, and the facility shall
54 verify the existence and availability of such contact upon notice to and
55 with the prior written consent of the minor.

(C) Failure to obtain emergency contacts, after reasonable effort, in accordance with this section shall not preclude admission of the minor to treatment.

(v) Notice of admission and discharge procedures.

(A) A copy of the facility's admission and discharge procedures shall be provided to the minor and to the minor's consenting parent or guardian at the time of admission by the director of the facility or such person's designee. Such information shall also be mailed to the designated emergency contact person by regular mail.

(B) If the minor is admitted in accordance with subdivision (c) of this section, a copy of the facility's admission and discharge procedures shall be provided to the minor. Such information shall also be mailed to the designated emergency contact person by regular mail.

(vi) Each minor admitted for inpatient or residential chemical dependence treatment pursuant to this subdivision shall be provided with written notice regarding the availability of the mental hygiene legal service for legal counsel, and shall be provided access to the service upon request.

2. INVOLUNTARY ADMISSION PROCEDURES. (I) MINORS ADMITTED PURSUANT TO SECTION 22.09 OF THIS ARTICLE SHALL BE PROVIDED WITH WRITTEN NOTICE REGARDING THE AVAILABILITY OF THE MENTAL HYGIENE LEGAL SERVICE FOR LEGAL COUNSEL, AND SHALL BE PROVIDED ACCESS TO THE SERVICE UPON REQUEST.

(II) NO MINOR RECEIVING INVOLUNTARY INPATIENT EMERGENCY SERVICES PURSUANT TO SUBDIVISION (C) OF SECTION 22.09 OF THIS ARTICLE MAY BE DISCHARGED FROM THE PROGRAM PRIOR TO SEVENTY-TWO HOURS BASED SOLELY ON HIS OR HER REQUEST.

(III) A COPY OF THE PATIENT'S RIGHTS ESTABLISHED UNDER THIS SECTION AND UNDER SECTION 22.03 OF THIS ARTICLE SHALL BE GIVEN AND EXPLAINED TO THE MINOR AND TO THE MINOR'S CONSENTING PARENT OR GUARDIAN AT THE TIME OF ADMISSION BY THE DIRECTOR OF THE FACILITY OR SUCH PERSON'S DESIGNEE.

(IV) THE MINOR SHALL BE REQUIRED TO SIGN A FORM INDICATING THAT HE OR SHE HAS BEEN ADVISED OF HIS OR HER ABILITY TO ACCESS THE MENTAL HYGIENE LEGAL SERVICE AND OF HIS OR HER RIGHTS UNDER THIS SECTION AND SECTION 22.03 OF THIS ARTICLE. THE SIGNED FORM SHALL BE INCLUDED IN THE MINOR'S MEDICAL RECORD.

3. Discharge procedures. All minors admitted pursuant to this subdivision shall be discharged in accordance with the following:

(i) [Any minor admitted to an inpatient or residential chemical dependence treatment facility has the right to be discharged within twenty-four hours of his or her request in accordance with the provisions of this subdivision.

(ii)] If discharge is requested prior to completion of a minor's treatment plan, such minor must request discharge in writing.

(A) Upon receipt of any form of written request for discharge, the director of the facility in which the minor is admitted shall immediately notify the minor's parent or guardian. If the facility is unable to contact such parent or guardian within a reasonable time, or if the minor has been admitted pursuant to subdivision (c) of this section, the facility shall notify the designated emergency contact person.

(B) The minor shall not be discharged from such facility until it is determined:

(1) that the safety and well being of such minor will not be threatened [or the expiration of twenty-four hours, whichever is sooner]; [or]

(2) THAT THE MINOR'S PARENT OR GUARDIAN CONSENTS TO THE RELEASE OF SUCH MINOR; AND

1 (3) that the parent, guardian, or designated emergency contact person
2 has made appropriate and timely departure arrangements with the facili-
3 ty. [However, unless otherwise directed by the minor's parent or guardi-
4 an or designated emergency contact person pursuant to this item, such
5 minor shall be discharged within twenty-four hours after submission of
6 the request.
7 (iii)] (II) Writing materials for use in requesting a discharge shall
8 be made available at all times to all minors admitted under this
9 section.
10 (III) The staff of the facility shall assist such minors in preparing
11 or submitting requests for discharge.
12 S 4. This act shall take effect immediately.