

# STATE OF NEW YORK

2161--B

Cal. No. 600

2019-2020 Regular Sessions

## IN SENATE

January 23, 2019

Introduced by Sens. BAILEY, BIAGGI, CARLUCCI, MYRIE, RIVERA, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the correction law, in relation to the establishment of a program for the use of medication assisted treatment for inmates; and to amend the mental hygiene law, in relation to the implementation of substance use disorder treatment and transition services in jails

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The correction law is amended by adding a new section 626  
2 to read as follows:

3 § 626. Medication assisted treatment in correctional facilities. 1.  
4 For purposes of this section "medication assisted treatment" means  
5 treatment of chemical dependence or abuse and concomitant conditions  
6 with medications requiring a prescription or order from an authorized  
7 prescribing professional.

8 2. (a) The commissioner, in conjunction with the office of alcoholism  
9 and substance abuse services, shall establish a program to be adminis-  
10 tered at correctional facilities within the department in the state, for  
11 the purpose of employing medication assisted treatment for inmates in  
12 such facilities who are undergoing treatment for a substance use disor-  
13 der. Such program shall include all forms of medication assisted treat-  
14 ments approved for the treatment of a substance use disorder by the  
15 Federal Food and Drug Administration for the duration of an inmate's

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

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1 incarceration and shall provide an individualized treatment plan for  
2 each participant. After a medical screening, inmates who are determined  
3 to suffer from a substance use disorder, for which FDA approved  
4 addiction medications exist shall be offered placement in the medication  
5 assisted treatment program. Placement in such program shall not be  
6 mandatory. Each participating inmate shall work with an authorized  
7 specialist to determine an individualized treatment plan, including an  
8 appropriate level of counseling. Decisions regarding type, dosage, or  
9 duration of any medication regimen shall be made by a qualified health  
10 care professional licensed or certified under title eight of the educa-  
11 tion law who is authorized to administer such medication in conjunction  
12 with the inmate.

13 (b) i. Such program shall also include conditions for a reentry strat-  
14 egy for inmates who have participated in medication assisted treatment.  
15 Such strategy shall include, but not be limited to, providing each  
16 participating inmate with information on available treatment facilities  
17 in their area, information on available housing and employment  
18 resources, and any other information that will assist the inmate in  
19 continued recovery once released. Such program shall also assist the  
20 inmate in Medicaid enrollment, prior to release.

21 ii. Such program shall provide participating inmates preparing for  
22 release from prison with a one-week supply of any necessary medication,  
23 where permissible under federal laws and regulations to continue their  
24 medication assisted treatment in an effort to prevent relapse.

25 (c) Reentry planning and community supervision should include a colla-  
26 borative relationship between clinical and parole staff including shar-  
27 ing of accurate information regarding the inmate's participation in  
28 medication assisted treatment to ensure that their medication is not  
29 deemed illicit or illegal. Additionally, procedures shall be developed  
30 to assist any reentrant who communicates a relapse with their parole  
31 officer or who fails a drug test, to receive substance use disorder  
32 support in lieu of arrest and/or incarceration.

33 3. The commissioner shall submit within one year of the effective date  
34 of this section and annually thereafter, a report to the governor, the  
35 temporary president of the senate and the speaker of the assembly on the  
36 effectiveness of the program established pursuant to this section. Such  
37 reports shall include an analysis of the impact of such program on the  
38 participating inmates, including factors such as institutional adjust-  
39 ment, behavior infractions, reentry rates, HIV and hepatitis C treat-  
40 ment, and program participation, among related relevant factors. The  
41 reports shall also include the impact on institutional safety and  
42 performance and any recommendations for additional legislative enact-  
43 ments that may be needed or required to improve or enhance the program  
44 as determined to be appropriate by the commissioner.

45 4. Participation in the medication assisted treatment program shall  
46 not be withheld from a qualified inmate. An inmate may enter into such  
47 program at any time during his or her incarceration. An inmate using  
48 medication assisted treatment prior to such inmate's incarceration shall  
49 be eligible to, upon request by such inmate, continue such treatment in  
50 the medication assisted treatment program for any period of time during  
51 the duration of such inmate's incarceration. No person shall be denied  
52 participation in the program on the basis of a positive drug screening  
53 upon entering custody or upon intake into the program; nor shall any  
54 person receive a disciplinary infraction for such positive drug screen-  
55 ing. No person shall be removed from, or denied participation in the  
56 program on the basis of having received any disciplinary infraction: (a)

1 before entry into the program; or (b) during participation in the  
2 program.

3 § 2. Section 45 of the correction law is amended by adding a new  
4 subdivision 18 to read as follows:

5 18. Establish standards and guidelines for a program of medication  
6 assisted treatment for inmates in county jails and/or county correction-  
7 al facilities equivalent to the program established in state correction-  
8 al facilities pursuant to section six hundred twenty-six of this chapter  
9 and submit an annual report consistent with the requirements of subdivi-  
10 sion three of such section.

11 § 3. The mental hygiene law is amended by adding a new section  
12 19.18-c to read as follows:

13 § 19.18-c Corrections-based substance use disorder treatment and transi-  
14 tion services.

15 1. The commissioner, in consultation with local governmental units,  
16 county sheriffs, the New York city department of corrections and other  
17 stakeholders, shall implement a jail-based substance use disorder treat-  
18 ment and transition services program that supports the initiation, oper-  
19 ation and enhancement of substance use disorder treatment and transition  
20 services for persons with substance use disorder who are incarcerated in  
21 jails.

22 2. The services to be provided by such program shall be in accordance  
23 with plans developed by participating local governmental units, in  
24 collaboration with county sheriffs, taking into account local needs and  
25 available resources. These plans must be approved by the commissioner  
26 and shall include, but not be limited to, the following:

27 (a) Alcohol, benzodiazepine, heroin and opioid withdrawal management;

28 (b) At least one formulation of every form of medication assisted  
29 treatments approved for the treatment of a substance use disorder by the  
30 Federal Food and Drug Administration necessary to ensure that each indi-  
31 vidual participating in the program receives the particular form found  
32 to be the most effective at treating and meeting their individual needs.  
33 The commissioner may allow jails a limited exemption to providing opioid  
34 full agonist treatment medications where the commissioner determines  
35 that no providers that have received the required accreditation are  
36 located within a reasonable distance of the facility. Jails that do not  
37 have the resources available to meet standards set forth herein may  
38 apply to the commissioner for a limited exception allowing such jail to  
39 enter into an agreement with a community- or jail-based program offering  
40 substance use disorder treatment and transition services to provide such  
41 services to individuals in such jails. Any such determination shall be  
42 reviewed on a regular basis;

43 (c) Group and individual counseling and clinical support;

44 (d) Peer support;

45 (e) Discharge planning; and

46 (f) Re-entry and transitional supports.

47 3. (a) After a medical screening, incarcerated individuals who are  
48 determined to suffer from a substance use disorder for which medication  
49 assisted treatment exists shall be offered placement in the medication  
50 assisted treatment program. Placement in such program shall not be  
51 mandatory.

52 (b) Each participating incarcerated individual shall work with an  
53 authorized specialist to develop an individualized treatment plan,  
54 including an appropriate level of counseling and planning for continuity  
55 of care upon return to the community.

1 (c) Decisions regarding type, dosage, or duration of any medication  
2 regimen shall be made by a qualified health care professional licensed  
3 or certified under title eight of the education law who is authorized to  
4 administer such medication in conjunction with the incarcerated individ-  
5 ual.

6 (d) Participation in the medication assisted treatment program shall  
7 not be unreasonably withheld from a qualified incarcerated individual.  
8 An incarcerated individual using medication assisted treatment prior to  
9 such individual's incarceration shall be eligible to, upon request by  
10 such individual, continue such treatment in the medication assisted  
11 treatment program for any period of time during the duration of such  
12 individual's incarceration.

13 (e) No person shall be denied participation in the program on the  
14 basis of a positive drug screening upon entering custody or upon intake  
15 into the program; nor shall any person receive a disciplinary infraction  
16 for such positive drug screening. No person shall be removed from, or  
17 denied participation in the program on the basis of having received any  
18 disciplinary infraction: (1) before entry into the program; or (2)  
19 during participation in the program.

20 4. Within amounts appropriated therefor, funding shall be made avail-  
21 able pursuant to criteria established by the office of alcoholism and  
22 substance abuse services in consultation with local governmental units,  
23 which shall take into consideration the local needs and resources as  
24 identified by local governmental units, the average daily jail popu-  
25 lation, the average number of persons incarcerated in the jail that  
26 require substance use disorder services and such other factors as may be  
27 deemed necessary.

28 5. Any jail-based substance use disorder treatment and transition  
29 services program that is already in operation at the time this act shall  
30 have become law and meets or exceeds the standards set forth in this  
31 section shall be deemed to have met the requirements of subdivisions one  
32 and two of this section. Such programs shall certify annually in writing  
33 to the commissioner that they have met or exceeded the standards set  
34 forth herein.

35 § 4. This act shall take effect on the one hundred twentieth day after  
36 it shall have become a law. Effective immediately, the addition, amend-  
37 ment and/or repeal of any rule or regulation necessary for the implemen-  
38 tation of this act on its effective date are authorized to be made on or  
39 before such date.