STATE OF NEW YORK

416

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. PERRY -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the removal of cases, contacts and carriers of communicable diseases who are potentially dangerous to the public health

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

Section 1. The public health law is amended by adding a new section 2120-a to read as follows:

§ 2120-a. Removal and detention of cases, contacts and carriers who are or may be a danger to public health; other orders. 1. The provisions of this section shall be utilized in the event that the governor declares a state of health emergency due to an epidemic of any communicable disease.

2. Upon determining by clear and convincing evidence that the health of others is or may be endangered by a case, contact or carrier, or suspected case, contact or carrier of a contagious disease that, in the opinion of the governor, after consultation with the commissioner, may pose an imminent and significant threat to the public health resulting in severe morbidity or high mortality, the governor or his or her delegee, including, but not limited to the commissioner or the heads of local health departments, may order the removal and/or detention of such a person or of a group of such persons by issuing a single order, identifying such persons either by name or by a reasonably specific description of the individuals or group being detained. Such person or group of persons shall be detained in a medical facility or other appropriate facility or premises designated by the governor or his or her delegee and complying with subdivision five of this section.

3. A person or group removed or detained by order of the governor or his or her delegee pursuant to subdivision two of this section shall be

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

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detained for such period and in such manner as the department may direct in accordance with this section.

4. Notwithstanding any inconsistent provision of this section:

(a) A confirmed case or a carrier who is detained pursuant to subdivision two of this section shall not continue to be detained after the department determines that such person is no longer contagious.

(b) A suspected case or suspected carrier who is detained pursuant to subdivision two of this section shall not continue to be detained after the department determines, with the exercise of due diligence, that such person is not infected with or has not been exposed to such a disease, or if infected with or exposed to such a disease, no longer is or will become contagious.

(c) A person who is detained pursuant to subdivision two of this section as a contact of a confirmed case or a carrier shall not continue to be detained after the department determines that the person is not infected with the disease or that such contact no longer presents a potential danger to the health of others.

(d) A person who is detained pursuant to subdivision two of this section as a contact of a suspected case shall not continue to be detained:

(i) after the department determines, with the exercise of due diligence, that the suspected case was not infected with such a disease, or was not contagious at the time the contact was exposed to such individual; or

(ii) after the department determines that the contact no longer presents a potential danger to the health of others.

5. A person who is detained pursuant to subdivision two of this section shall, as is appropriate to the circumstances:

(a) have his or her medical condition and needs assessed and addressed on a regular basis, and

(b) be detained in a manner that is consistent with recognized isolation and infection control principles in order to minimize the likelihood of transmission of infection to such person and to others.

6. When a person or group is ordered to be detained pursuant to subdivision two of this section for a period not exceeding three business days, such person or member of such group shall, upon request, be afforded an opportunity to be heard. If a person or group detained pursuant to subdivision two of this section needs to be detained beyond three business days, they shall be provided with an additional commissioner's order pursuant to subdivisions two and eight of this section.

7. When a person or group is ordered to be detained pursuant to subdivision two of this section for a period exceeding three business days, and such person or member of such group requests release, the governor or his or her delegee shall make an application for a court order authorizing such detention within three business days after such request by the end of the first business day following such Saturday, Sunday, or legal holiday, which application shall include a request for an expedited hearing. After any such request for release, detention shall not continue for more than five business days in the absence of a court order authorizing detention. Notwithstanding the foregoing provisions, in no event shall any person be detained for more than sixty days without a court order authorizing such detention. The governor or his or her delegee shall seek further court review of such detention within ninety days following the initial court order authorizing detention and thereafter within ninety days of each subsequent court review. In any court proceeding to enforce an order of the governor or his or her delegee for

the removal or detention of a person or group issued pursuant to this subdivision or for review of the continued detention of a person or group, the governor or his or her delegee shall prove the particularized circumstances constituting the necessity for such detention by clear and convincing evidence.

8. (a) A copy of any detention order of the governor or his or her delegee issued pursuant to subdivision two of this section shall be given to each detained individual; however, if the order applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the detention premises. Any detention order of the commissioner issued pursuant to subdivision two of this section shall set forth:

(i) the purpose of the detention and the legal authority under which the order is issued, including the particular sections of this article or other law or regulation;

(ii) a description of the circumstances and/or behavior of the detained person or group constituting the basis for the issuance of the order;

(iii) the less restrictive alternatives that were attempted and were unsuccessful and/or the less restrictive alternatives that were considered and rejected, and the reasons such alternatives were rejected;

(iv) a notice advising the person or group being detained that they have a right to request release from detention, and including instructions on how such request shall be made;

(v) a notice advising the person or group being detained that they have a right to be represented by legal counsel and that upon request of such person or group access to counsel will be facilitated to the extent feasible under the circumstances; and

(vi) a notice advising the person or group being detained that they may supply the addresses and/or telephone numbers of friends and/or relatives to receive notification of the person's detention, and that the department shall, at the detained person's request and to the extent feasible, provide notice to a reasonable number of such people that the person is being detained.

(b) In addition, an order issued pursuant to subdivisions two and seven of this section, requiring the detention of a person or group for a period exceeding three business days, shall:

(i) advise the person or group being detained that the detention shall not continue for more than five business days after a request for release has been made in the absence of a court order authorizing such detention;

(ii) advise the person or group being detained that, whether or not they request release from detention, the governor or his or her delegee must obtain a court order authorizing detention within sixty days following the commencement of detention and thereafter must further seek court review of the detention within ninety days of such court order and within ninety days of each subsequent court review; and

(iii) advise the person or group being detained that they have the right to request that legal counsel be provided, that upon such request counsel shall be provided if and to the extent possible under the circumstances, and that if counsel is so provided, that such counsel will be notified that the person or group has requested legal representation.

9. A person who is detained in a medical facility, or other appropriate facility or premises, shall not conduct himself or herself in a

disorderly manner, and shall not leave or attempt to leave such facility or premises until he or she is discharged pursuant to this section.

10. Where necessary and feasible under the circumstances, language interpreters and persons skilled in communicating with vision and hearing impaired individuals shall be provided.

11. The provisions of this section shall not apply to the issuance of orders pursuant to § 11.21 of the New York City Health Code.

12. In addition to the removal or detention orders referred to in subdivision two of this section, and without affecting or limiting any other authority that the commissioner may otherwise have, the governor or his or her delegee may, in his or her discretion, issue and seek enforcement of any other orders that he or she determines are necessary or appropriate to prevent dissemination or transmission of contagious diseases or other illnesses that may pose a threat to the public health including, but not limited to, orders requiring any person or persons who are not in the custody of the department to be excluded; to remain isolated or quarantined at home or at a premises of such person's choice that is acceptable to the department and under such conditions and for such period as will prevent transmission of the contagious disease or other illness; to require the testing or medical examination of persons who may have been exposed to or infected by a contagious disease or who may have been exposed to or contaminated with dangerous amounts of radioactive materials or toxic chemicals; to require an individual who has been exposed to or infected by a contagious disease to complete an appropriate, prescribed course of treatment, preventive medication or vaccination, including directly observed therapy to treat the disease and follow infection control provisions for the disease; or to require an individual who has been contaminated with dangerous amounts of radioactive materials or toxic chemicals such that said individual may present a danger to others, to undergo decontamination procedures deemed necessary by the department. Such person or persons shall, upon request, be afforded an opportunity to be heard, but the provisions of subdivisions two through eleven of this section shall not otherwise apply.

13. The provisions of this section shall not be construed to permit or require the forcible administration of any medication without a prior court order.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.