

STATE OF NEW YORK

3621

2021-2022 Regular Sessions

IN SENATE

January 30, 2021

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Substance Abuse

AN ACT to amend the mental hygiene law, in relation to emergency intervention for persons impaired by 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 amended by
2 section 1 of part D of chapter 69 of the laws of 2016, is amended to
3 read as follows:

4 § 22.09 Emergency services for persons intoxicated, impaired, or inca-
5 pacitated by alcohol [~~and/or substances~~].

6 (a) As used in this article:

7 1. "Intoxicated or impaired person" means a person whose mental or
8 physical functioning is substantially impaired as a result of the pres-
9 ence of alcohol [~~and/or substances~~] in his or her body.

10 2. "Incapacitated" means that a person, as a result of the use of
11 alcohol [~~and/or substances~~], is unconscious or has his or her judgment
12 otherwise so impaired that he or she is incapable of realizing and
13 making a rational decision with respect to his or her need for treat-
14 ment.

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

22 4. "Emergency services" means immediate physical examination, assess-
23 ment, care and treatment of an incapacitated person for the purpose of
24 confirming that the person is, and continues to be, incapacitated by

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

LBD07683-01-1

1 alcohol [~~and/or substances~~] to the degree that there is a likelihood to
2 result in harm to the person or others.

3 5. "Treatment facility" means a facility designated by the commission-
4 er which may only include a general hospital as defined in article twen-
5 ty-eight of the public health law, or a medically managed or medically
6 supervised withdrawal, inpatient rehabilitation, or residential stabili-
7 zation treatment program that has been certified by the commissioner to
8 have appropriate medical staff available on-site at all times to provide
9 emergency services and continued evaluation of capacity of individuals
10 retained under this section.

11 (b) 1. An intoxicated or impaired person may come voluntarily for
12 emergency services to a chemical dependence program or treatment facili-
13 ty authorized by the commissioner to provide such emergency services. A
14 person who appears to be intoxicated or impaired and who consents to the
15 proffered help may be assisted by any peace officer acting pursuant to
16 his or her special duties, police officer, or by a designee of the
17 director of community services to return to his or her home, to a chemi-
18 cal dependence program or treatment facility, or to any other facility
19 authorized by the commissioner to provide such emergency services. In
20 such cases, the peace officer, police officer, or designee of the direc-
21 tor of community services shall accompany the intoxicated or impaired
22 person in a manner which is reasonably designed to assure his or her
23 safety, as set forth in regulations promulgated in accordance with
24 subdivision (d) of this section.

25 2. A person who appears to be incapacitated by alcohol [~~and/or~~
26 ~~substances~~] to the degree that there is a likelihood to result in harm
27 to the person or to others may be taken by a peace officer acting pursu-
28 ant to his or her special duties, or a police officer who is a member of
29 the state police or of an authorized police department or force or of a
30 sheriff's department or by the director of community services or a
31 person duly designated by him or her to a treatment facility for
32 purposes of receiving emergency services. Every reasonable effort shall
33 be made to protect the health and safety of such person, including but
34 not limited to the requirement that the peace officer, police officer,
35 or director of community services or his or her designee shall accompany
36 the apparently incapacitated person in a manner which is reasonably
37 designed to assure his or her safety, as set forth in regulations
38 promulgated in accordance with subdivision (d) of this section.

39 3. A person who comes voluntarily or is brought without his or her
40 objection to any such facility or program in accordance with this subdi-
41 vision shall be given emergency care and treatment at such place if
42 found suitable therefor by authorized personnel, or referred to another
43 suitable facility or treatment program for care and treatment, or sent
44 to his or her home.

45 4. The director of a treatment facility may receive as a patient in
46 need of emergency services any person who appears to be incapacitated as
47 defined in this section.

48 5. A person who comes voluntarily or is brought with his or her
49 objection to a treatment facility shall be examined as soon as possible
50 but not more than twelve hours after arriving at such treatment facility
51 by an examining physician. If such examining physician determines that
52 such person is incapacitated by alcohol [~~and/or substances~~] to the
53 degree that there is a likelihood to result in harm to the person or
54 others, he or she may be retained to receive emergency services and
55 shall be regularly reevaluated to confirm continued incapacity by alco-
56 hol [~~and/or substances~~] to the degree that there is a likelihood to

1 result in harm to the person or others. If the examining physician
2 determines at any time that such person is not incapacitated by alcohol
3 [~~and/or substances~~] to the degree that there is a likelihood to result
4 in harm to the person or others, he or she must be released. Notwith-
5 standing any other law, in no event may such person be retained against
6 his or her objection beyond whichever is the shorter of the following:
7 (i) the time that he or she is no longer incapacitated by alcohol
8 [~~and/or substances~~] to the degree that there is a likelihood to result
9 in harm to the person or others or (ii) a period longer than seventy-two
10 hours.

11 6. Every reasonable effort must be made to obtain the person's consent
12 to give prompt notification of a person's retention in a facility or
13 program pursuant to this section to his or her closest relative or
14 friend, and, if requested by such person, to his or her attorney and
15 personal physician, in accordance with federal confidentiality regu-
16 lations.

17 7. A person may not be retained pursuant to this section beyond a
18 period of seventy-two hours without his or her consent. Persons suitable
19 therefor may be voluntarily admitted to a chemical dependence program or
20 facility pursuant to this article.

21 (c) Discharge procedures. 1. The discharge procedure process shall
22 begin as soon as the patient is admitted to the treatment facility and
23 shall be considered a part of the treatment planning process. The
24 discharge plan shall be developed in collaboration with the patient and
25 any significant other(s) the patient chooses to involve. If the patient
26 is a minor, the discharge plan must also be developed in consultation
27 with his or her parent or guardian, unless the minor is being treated
28 without parental consent as authorized by section 22.11 of this [~~chap-~~
29 ~~ter~~] article.

30 2. No patient shall be discharged without a discharge plan which has
31 been completed and reviewed by the multi-disciplinary team prior to the
32 discharge of the patient. This review may be part of a regular treatment
33 plan review. The portion of the discharge plan which includes the refer-
34 rals for continuing care shall be given to the patient upon discharge.
35 This requirement shall not apply to patients who refuse continuing care
36 planning, provided, however, that the treatment facility shall make
37 reasonable efforts to provide information about the dangers of long term
38 substance use as well as information related to treatment including, but
39 not limited to, the OASAS HOPELINE and the OASAS Bed Availability Dash-
40 board.

41 3. The discharge plan shall be developed by the responsible clinical
42 staff member, who, in the development of such plan, shall consider the
43 patient's self-reported confidence in maintaining abstinence and follow-
44 ing an individualized relapse prevention plan. The responsible clinical
45 staff member shall also consider an assessment of the patient's home and
46 family environment, vocational/educational/employment status, and the
47 patient's relationships with significant others. The purpose of the
48 discharge plan shall be to establish the level of clinical and social
49 resources available to the patient upon discharge from the inpatient
50 service and the need for the services for significant others. The
51 discharge plan shall include, but not be limited to, the following:

52 (i) identification of continuing chemical dependence services includ-
53 ing management of withdrawal or continuing stabilization and any other
54 treatment, rehabilitation, self-help and vocational, educational and
55 employment services the patient will need after discharge;

(ii) identification of the type of residence, if any, that the patient will need after discharge;

(iii) identification of specific providers of these needed services; and

(iv) specific referrals and initial appointments for these needed services.

4. A discharge summary which includes the course and results of care and treatment must be prepared and included in each patient's case record within twenty days of discharge.

(d) The commissioner shall promulgate all rules and 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 services and for minimizing the role of the police in obtaining treatment of such persons necessary to implement the provisions of this section, including but not limited to establishing procedures for transporting incapacitated persons to a treatment facility for emergency services.

§ 2. The mental hygiene law is amended by adding a new section 22.10 to read as follows:

§ 22.10 Emergency services for persons impaired or incapacitated by substances.

(a) Definitions. As used in this article:

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

2. "Incapacitated" means that a person, as a result of the use of 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. "Emergency services" means immediate voluntary or involuntary physical examination, assessment, care and treatment of an impaired person who has become incapacitated in order to achieve stabilization and/or subsequent admission to extended voluntary or involuntary treatment.

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.

6. "Substance" shall have the same meaning as set forth in subdivision thirty-nine of section 1.03 of this chapter.

(b) Voluntary emergency services. 1. An impaired person may come voluntarily for emergency services to a chemical dependence program or treatment facility authorized by the commissioner to provide such emergency services. A person who appears to be impaired and who consents to the proffered help shall 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 provide emergency services.

1 In such cases, the peace officer, police officer, or designee of the
2 director of community services shall accompany the impaired person in a
3 manner which is reasonably designed to assure his or her safety, as set
4 forth in regulations promulgated in accordance with subdivision (f) of
5 this section.

6 2. Consistent with subdivision (b) of section 22.07 of this article, a
7 person who appears to be incapacitated by substances to the degree that
8 there is a likelihood to result in harm to the person or to others shall
9 be taken by a peace officer acting pursuant to his or her special
10 duties, or a police officer who is a member of the state police or of an
11 authorized police department or force or of a sheriff's department or by
12 the director of community services or a person duly designated by him or
13 her, or pursuant to petition to the director of community services
14 pursuant to subdivision (d) of this section, to a treatment facility for
15 purposes of receiving emergency services. Every reasonable effort shall
16 be made to protect the health and safety of such person, including but
17 not limited to the requirement that the peace officer, police officer,
18 or director of community services or his or her designee shall accompany
19 the apparently incapacitated person in a manner which is reasonably
20 designed to assure his or her safety, as set forth in regulations
21 promulgated in accordance with subdivision (f) of this section.

22 3. A person who comes voluntarily or is brought without his or her
23 objection to any such treatment facility in accordance with paragraph
24 two of this subdivision shall be provided emergency services at such
25 place if found suitable by authorized personnel, or referred to another
26 suitable facility or treatment program for emergency services, or sent
27 to his or her home.

28 4. A person who is brought with his or her objection to any treatment
29 facility in accordance with paragraph two of this subdivision shall be
30 examined as soon as possible by an examining physician. If such examin-
31 ing physician determines that such person is incapacitated by substances
32 to the degree that there is a likelihood to result in harm to the person
33 or others, he or she may be retained for emergency treatment to achieve
34 stabilization. If the examining physician determines that such person is
35 not incapacitated by substances to the degree that there is a likelihood
36 to result in harm to the person or others, he or she must be released.
37 Except as provided in subdivision (c) of this section, in no event may
38 such person be retained against his or her objection beyond whichever is
39 the shorter of the following:

40 (i) the time that he or she is no longer incapacitated by substances
41 to the degree that there is a likelihood to result in harm to the person
42 or others or;

43 (ii) a period longer than seventy-two hours.

44 5. Every reasonable effort must be made to obtain the person's consent
45 to give prompt notification of a person's retention in a facility or
46 program pursuant to this subdivision to his or her closest relative or
47 friend, and, if requested by such person, to his or her attorney and
48 personal physician, in accordance with federal confidentiality regu-
49 lations.

50 (c) Involuntary emergency services on certificate of a director of
51 community services or designee. 1. The director of a treatment facility
52 designated by the commissioner to provide emergency services shall upon
53 the certificate of a local director of community services or a physician
54 duly designated by the director of community services, receive and care
55 for in such facility as a patient any person who, in the opinion of the
56 director of community services or his or her designee sought by petition

1 pursuant to subdivision (d) of this section, is incapacitated such that
2 such person's use or abuse of chemical substances is likely to result in
3 harm to himself, herself or others and for whom immediate involuntary
4 emergency services is appropriate.

5 2. The need for immediate involuntary emergency services shall be
6 confirmed prior to admission by a physician affiliated with the facili-
7 ty. Excluding Sundays and holidays, if the physician recommends such
8 patient be retained for emergency services beyond seventy-two hours and
9 the patient does not agree to remain in such facility as a voluntary
10 patient, the certificate of such physician attesting that the patient is
11 in need of extended involuntary emergency services shall be filed with
12 the facility. From the time of such patient's admission under this
13 subdivision the retention of such patient for emergency services beyond
14 seventy-two hours shall be subject to the provisions for notice, hear-
15 ing, review, and judicial approval provided by this article for the
16 admission and retention of involuntary patients, provided that, for the
17 purposes of such provisions, the date of admission of the patient shall
18 be deemed to be the date when the patient was first received in the
19 facility pursuant to this subdivision.

20 (d) Petition to local director of community services for voluntary or
21 involuntary emergency services. 1. A petition for emergency services may
22 be sought for an adult or for a minor by petition to a local govern-
23 mental unit's director of community services in accordance with this
24 subdivision. Any one of the following persons may petition the director
25 of community services:

26 (i) in the case of an adult, a physician, the person's spouse or guar-
27 dian, any relative of the person, or any other adult who has personal
28 knowledge of a person's substance abuse impairment; or

29 (ii) in the case of a minor, the minor's parent, legal guardian, or
30 legal custodian.

31 2. Petition for admission of a patient to a treatment facility for
32 emergency services pursuant to this section shall be based upon a
33 personal examination by a director of community services or his or her
34 designee. It shall be in writing and shall be filed with the director of
35 a facility at the time of the patient's reception, together with a
36 statement in a form prescribed by the commissioner giving such informa-
37 tion as he or she may deem appropriate. A petition for admission for
38 emergency services must establish the reason the petitioner believes
39 that there is a likelihood to result in harm to the person or others
40 unless he or she is admitted for immediate emergency services. A peti-
41 tion must include:

42 (i) the name of the person to be admitted, the name and signature of
43 the petitioner, the relationship between the person to be admitted and
44 the applicant; and

45 (ii) the reason the petitioner believes that because of such impair-
46 ment the person has lost the power of self-control with respect to
47 substance abuse; and

48 (iii) the reason the petitioner believes that the person's refusal to
49 voluntarily receive emergency services is based on judgement so impaired
50 by reason of substance abuse that he or she is incapable of appreciating
51 his or her need for such services and of making a rational decision
52 regarding his or her need for services.

53 3. Upon receipt of such petition, the director of community services
54 or a person duly designated by him or her shall review such petition and
55 may take actions pursuant to subdivisions (b) or (c) of this section.

1 (e) Each person admitted to a treatment facility for emergency
2 services pursuant to this section shall be provided with written notice
3 regarding patient rights pursuant to section 22.03 of this article,
4 access to his or her personal attorney upon request, and notice as to
5 the availability of the mental hygiene legal service for legal counsel
6 and shall be provided access to the service upon request.

7 (f) The commissioner shall promulgate regulations establishing proce-
8 dures for taking intoxicated or impaired persons and persons apparently
9 incapacitated by alcohol and/or substances to their residence or to
10 appropriate public or private treatment facilities for emergency
11 services and minimizing the role of the police in obtaining treatment of
12 such persons.

13 § 3. The mental hygiene law is amended by adding a new section 22.13
14 to read as follows:

15 § 22.13 Court authorization to retain an involuntary patient.

16 (a) If the director of a facility shall determine that a patient
17 admitted pursuant to subdivision (c) of section 22.10 of this article,
18 for whom there is no prior court order authorizing retention for a spec-
19 ified period, is in need of retention beyond seventy-two hours and if
20 such patient does not agree to remain in such facility as a voluntary
21 patient, the director shall apply to the supreme court or the county
22 court in the county where the facility is located for an order authoriz-
23 ing continued retention. The facility is authorized to retain the
24 patient for seventy-two hours or during the period in which the applica-
25 tion may be pending, such period not to exceed ninety days. The director
26 shall cause written notice of such application to be given to the
27 patient and a copy thereof shall be given personally or by mail to any
28 persons required by this article to be served with notice of such
29 patient's initial admission and to the mental hygiene legal service.
30 Such notice shall state that a hearing may be requested by the patient
31 or the service and that failure to make such a request within five days,
32 excluding Sunday and holidays, from the date that the notice was given
33 to the patient will permit the entry without a hearing of an order
34 authorizing retention for a period not to exceed ninety days from the
35 date of the order, provided the court is satisfied that the patient
36 requires continued retention.

37 (b) Upon the demand of the patient or of anyone on his or her behalf
38 or upon request of the mental hygiene legal service, the court shall, or
39 may on its own motion, fix a date for the hearing of the application
40 pursuant to court procedure in the jurisdiction of the facility.

41 (c) Except as provided in subdivision (a) of this section a person may
42 not be retained beyond a period of ninety days without his or her
43 consent. Persons suitable therefor may be voluntarily admitted to a
44 chemical dependence program or facility pursuant to this article.

45 § 4. Subdivision (d) of section 22.11 of the mental hygiene law, as
46 added by chapter 558 of the laws of 1999, is amended to read as follows:

47 (d) Inpatient or residential treatment. 1. ~~Admission~~ Voluntary
48 admission procedures. (i) A copy of the patient's rights established
49 under this section and under section 22.03 of this article shall be
50 given and explained to the minor and to the minor's consenting parent or
51 guardian at the time of admission by the director of the facility or
52 such person's designee.

53 (ii) The minor shall be required to sign a form indicating that the
54 treatment is being voluntarily sought, and that he or she has been
55 advised of his or her ability to access the mental hygiene legal service
56 and of his or her rights under this section and section 22.03 of this

1 article. The signed form shall be included in the minor's medical
2 record.

3 (iii) At the time of admission, any minor so admitted shall be
4 informed by the director of the facility or the director's designee,
5 orally and in writing, of the minor's right to be discharged in accord-
6 ance with the provisions of this ~~section~~ subdivision within twenty-
7 four hours of his or her making a request therefor.

8 (iv) Emergency contacts.

9 (A) At the time of admission, the provider of services shall use its
10 best efforts to obtain from the minor's consenting parent or guardian a
11 telephone number or numbers where he or she may be reached by the facil-
12 ity at any time during the day or night. In addition, such provider of
13 services shall also use its best efforts to obtain from the parent or
14 guardian a name, address and appropriate telephone number or numbers of
15 an adult designated by such parent or guardian as an emergency contact
16 person in the event the facility is unable to reach such parent or guar-
17 dian.

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

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

27 (v) Notice of admission and discharge procedures.

28 (A) A copy of the facility's admission and discharge procedures shall
29 be provided to the minor and to the minor's consenting parent or guardi-
30 an at the time of admission by the director of the facility or such
31 person's designee. Such information shall also be mailed to the desig-
32 nated emergency contact person by regular mail.

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

37 (vi) Each minor admitted for inpatient or residential chemical depend-
38 ence treatment pursuant to this subdivision shall be provided with writ-
39 ten notice regarding the availability of the mental hygiene legal
40 service for legal counsel, and shall be provided access to the service
41 upon request.

42 2. Involuntary admission procedures. (i) Minors admitted pursuant to
43 section 22.10 of this article shall be provided with written notice
44 regarding the availability of the mental hygiene legal service for legal
45 counsel, and shall be provided access to the service upon request.

46 (ii) No minor receiving involuntary inpatient emergency services
47 pursuant to subdivision (c) of section 22.10 of this article may be
48 discharged from the program prior to seventy-two hours based solely on
49 his or her request.

50 (iii) A copy of the patient's rights established under this section
51 and under section 22.03 of this article shall be given and explained to
52 the minor and to the minor's consenting parent or guardian at the time
53 of admission by the director of the facility or such person's designee.

54 (iv) The minor shall be required to sign a form indicating that he or
55 she has been advised of his or her ability to access the mental hygiene
56 legal service and of his or her rights under this section and section

1 22.03 of this article. The signed form shall be included in the minor's
2 medical record.

3 3. Discharge procedures. All minors admitted pursuant to this subdivi-
4 sion shall be discharged in accordance with the following:

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

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

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

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

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

21 (2) that the minor's parent or guardian consents to the release of
22 such minor; and

23 (3) that the parent, guardian, or designated emergency contact person
24 has made appropriate and timely departure arrangements with the facili-
25 ty. ~~[However, unless otherwise directed by the minor's parent or guardi-~~
26 ~~an or designated emergency contact person pursuant to this item, such~~
27 ~~minor shall be discharged within twenty-four hours after submission of~~
28 ~~the request.~~

29 ~~(iii)]~~ (ii) Writing materials for use in requesting a discharge shall
30 be made available at all times to all minors admitted under this
31 section.

32 (iii) The staff of the facility shall assist such minors in preparing
33 or submitting requests for discharge.

34 § 5. This act shall take effect immediately.