

# STATE OF NEW YORK

7703

## IN SENATE

January 7, 2022

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the correction law and the mental hygiene law, in relation to certain functions of the office of addiction services and supports, and to use of the term incarcerated individuals; and to amend a chapter of the laws of 2021 amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, in relation to the effectiveness thereof

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

1 Section 1. Section 626 of the correction law, as added by a chapter of  
2 the laws of 2021 amending the correction law relating to the establish-  
3 ment of a program for the use of medication assisted treatment for  
4 inmates; and amending the mental hygiene law relating to the implementa-  
5 tion of substance use disorder treatment and transition services in  
6 jails, as proposed in legislative bills numbers S. 1795 and A. 533, is  
7 amended to read as follows:

8 § 626. Medication assisted treatment in correctional facilities. 1.  
9 For purposes of this section "medication assisted treatment" means  
10 treatment of chemical dependence or abuse and concomitant conditions  
11 with medications requiring a prescription or order from an authorized  
12 prescribing professional.

13 2. (a) The commissioner, in conjunction with the office of [~~alcoholism~~  
14 ~~and substance abuse services~~] addiction services and supports, shall  
15 establish a program to be administered at correctional facilities within  
16 the department in the state, for the purpose of employing medication  
17 assisted treatment for [~~inmates~~] incarcerated individuals in such facil-  
18 ities who are undergoing treatment for a substance use disorder. Such  
19 program shall include all forms of medication assisted treatments  
20 approved for the treatment of a substance use disorder by the Federal  
21 Food and Drug Administration for the duration of an [~~inmate's~~] incarcer-

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

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

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

24 ii. Such program shall provide participating ~~[inmates]~~ incarcerated  
25 individuals preparing for release from prison with a one-week supply of  
26 any necessary medication, where permissible under federal laws and regu-  
27 lations to continue their medication assisted treatment in an effort to  
28 prevent relapse.

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

37 3. The commissioner shall submit within one year of the effective date  
38 of this section and annually thereafter, a report to the governor, the  
39 temporary president of the senate and the speaker of the assembly on the  
40 effectiveness of the program established pursuant to this section. Such  
41 reports shall include an analysis of the impact of such program on the  
42 participating ~~[inmates]~~ incarcerated individuals, including factors such  
43 as institutional adjustment, behavior infractions, reentry rates, HIV  
44 and hepatitis C treatment, and program participation, among related  
45 relevant factors. The reports shall also include the impact on institu-  
46 tional safety and performance and any recommendations for additional  
47 legislative enactments that may be needed or required to improve or  
48 enhance the program as determined to be appropriate by the commissioner.

49 4. Participation in the medication assisted treatment program shall  
50 not be withheld from a qualified ~~[inmate]~~ incarcerated individual. An  
51 ~~[inmate]~~ incarcerated individual may enter into such program at any time  
52 during his or her incarceration. An ~~[inmate]~~ incarcerated individual  
53 using medication assisted treatment prior to such ~~[inmate's]~~ incarcerat-  
54 ed individual's incarceration shall be eligible to, upon request by such  
55 ~~[inmate]~~ incarcerated individual, continue such treatment in the medica-  
56 tion assisted treatment program for any period of time during the dura-

tion of such [~~inmate's~~] incarcerated individual's incarceration. No person shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any person receive a disciplinary infraction for such positive drug screening. No person shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction: (a) before entry into the program; or (b) during participation in the program.

§ 2. Subdivision 18 of section 45 of the correction law, as added by a chapter of the laws of 2021 amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, is amended to read as follows:

18. Establish standards and guidelines for a program of medication assisted treatment for [~~inmates~~] incarcerated individuals in county jails and/or county correctional facilities equivalent to the program established in state correctional facilities pursuant to section six hundred twenty-six of this chapter and submit an annual report consistent with the requirements of subdivision three of such section.

§ 3. Section 19.18-c of the mental hygiene law, as added by a chapter of the laws of 2021 amending the correction law relating to the establishment of a program for the use of medication assisted treatment for inmates; and amending the mental hygiene law relating to the implementation of substance use disorder treatment and transition services in jails, as proposed in legislative bills numbers S. 1795 and A. 533, is amended to read as follows:

§ 19.18-c Corrections-based substance use disorder treatment and transition services.

1. [The] Notwithstanding any other provision of this chapter, the commissioner, in consultation with local governmental units, county sheriffs, the New York city department of corrections and other stakeholders, shall implement a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for persons with substance use disorder who are incarcerated in jails.

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

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

(b) At least one formulation of every form of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration necessary to ensure that each individual participating in the program receives the particular form found to be the most effective at treating and meeting their individual needs. The commissioner may allow jails a limited exemption to providing opioid full agonist treatment medications where the commissioner determines that no providers that have received the required accreditation are located within a reasonable distance of the facility. Jails that do not have the resources available to meet standards set forth herein may apply to the commissioner for a limited exception allowing such jail to enter into an agreement with a community- or jail-based program offering

1 substance use disorder treatment and transition services to provide such  
2 services to individuals in such jails. Any such determination shall be  
3 reviewed on a regular basis;

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

5 (d) Peer support;

6 (e) Discharge planning; and

7 (f) Re-entry and transitional supports.

8 3. (a) After a medical screening, incarcerated individuals who are  
9 determined to suffer from a substance use disorder for which medication  
10 assisted treatment exists shall be offered placement in the medication  
11 assisted treatment program. Placement in such program shall not be  
12 mandatory.

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

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

22 (d) Participation in the medication assisted treatment program shall  
23 not be unreasonably withheld from a qualified incarcerated individual.  
24 An incarcerated individual using medication assisted treatment prior to  
25 such individual's incarceration shall be eligible to, upon request by  
26 such individual, continue such treatment in the medication assisted  
27 treatment program for any period of time during the duration of such  
28 individual's incarceration.

29 (e) No person shall be denied participation in the program on the  
30 basis of a positive drug screening upon entering custody or upon intake  
31 into the program; nor shall any person receive a disciplinary infraction  
32 for such positive drug screening. No person shall be removed from, or  
33 denied participation in the program on the basis of having received any  
34 disciplinary infraction: (1) before entry into the program; or (2)  
35 during participation in the program.

36 4. Within amounts appropriated therefor, funding shall be made avail-  
37 able pursuant to criteria established by the office of [~~alcoholism and~~  
38 ~~substance abuse services~~] addiction services and supports in consulta-  
39 tion with local governmental units, which shall take into consideration  
40 the local needs and resources as identified by local governmental units,  
41 the average daily jail population, the average number of persons incar-  
42 cerated in the jail that require substance use disorder services and  
43 such other factors as may be deemed necessary.

44 5. Any jail-based substance use disorder treatment and transition  
45 services program that is already in operation at the time this act shall  
46 have become law and meets or exceeds the standards set forth in this  
47 section shall be deemed to have met the requirements of subdivisions one  
48 and two of this section. Such programs shall certify annually in writing  
49 to the commissioner that they have met or exceeded the standards set  
50 forth herein.

51 § 4. Section 505 of the correction law is amended by adding a new  
52 subdivision 5 to read as follows:

53 5. Corrections-based substance use disorder treatment and transition  
54 services. Local correctional facilities shall operate a substance use  
55 disorder treatment and transition services program pursuant to a plan

1 approved by the commissioner of the office of addiction services and  
2 supports in accordance with section 19.18-c of the mental hygiene law.

3 § 5. Section 4 of a chapter of the laws of 2021 amending the  
4 correction law relating to the establishment of a program for the use of  
5 medication assisted treatment for inmates; and amending the mental  
6 hygiene law relating to the implementation of substance use disorder  
7 treatment and transition services in jails, as proposed in legislative  
8 bills numbers S. 1795 and A. 533, is amended to read as follows:

9 § 4. This act shall take effect [~~on the one hundred twentieth day~~] one  
10 year after it shall have become a law. Effective immediately, the addi-  
11 tion, amendment and/or repeal of any rule or regulation necessary for  
12 the implementation of this act on its effective date are authorized to  
13 be made on or before such date.

14 § 6. This act shall take effect immediately; provided, however,  
15 sections one, two, three, and four of this act shall take effect on the  
16 same date and in the same manner as a chapter of the laws of 2021,  
17 amending the correction law relating to the establishment of a program  
18 for the use of medication assisted treatment for inmates; and amending  
19 the mental hygiene law relating to the implementation of substance use  
20 disorder treatment and transition services in jails, as proposed in  
21 legislative bills numbers S. 1795 and A. 533, takes effect.