STATE OF NEW YORK

2398

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sen. BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to establishing the statewide emergency and crisis response council to plan and provide support regarding the operation and financing of high-quality emergency and crisis response services for persons experiencing a mental health, alcohol use, or substance use crisis

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

Section 1. Short title. This act shall be known and may be cited as "Daniel's law".

§ 2. Legislative findings and intent. It is the purpose of this act to promote the public health, safety and welfare of all citizens by broadly ensuring a public health-based response to anyone in New York experiencing a mental health, alcohol use or substance use crisis; to offer and ensure the most appropriate response to, and treatment of, individuals experiencing crisis due to mental health conditions, alcohol use or substance use conditions; and to deescalate crisis situations so that as few New Yorkers as possible experience nonconsensual transport, use of force, or criminal consequences as a result of mental health, alcohol use or substance abuse crises.

§ 3. Section 41.01 of the mental hygiene law, as amended by chapter 37 of the laws of 2011, is amended to read as follows:

§ 41.01 Declaration of purpose.

(a) This article is designed to enable and encourage local governments to develop in the community preventive, rehabilitative, **crisis response,** and treatment services offering continuity of care; to improve and to expand existing community programs for persons with mental illness, **and** developmental disabilities, and those [~~suffering from the diseases of alcoholism~~] **with alcohol use disorder** and substance [~~abuse~~] **use disorder**; to plan for the integration of community and state services

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

LBD04260-01-3

and facilities for individuals with mental disabilities, alcohol use disorders, and substance use disorders; and to cooperate with other local governments and with the state in the provision of joint services and sharing of [~~manpower~~] personnel resources.

(b) Effective implementation of this article requires the [~~direction~~] establishment and administration, by each local governmental unit, of a local comprehensive planning process for its geographic area in which all providers of services shall participate and cooperate in the provision of all necessary information. [~~It~~] This article also initiates a planning effort involving the state, local governments and other providers of service for the purpose of promoting continuity of care through the development of integrated systems of care and treatment for individuals with mental illness, developmental disabilities, and for those [~~suffering from the diseases of alcoholism~~] with alcohol use disorder and substance [~~abuse~~] use disorder.

(c) Such planning effort must also specifically address the development of an effective crisis response system that includes the use of non-police, community-run crisis first responder teams utilizing peers and independent emergency medical technicians as first responders. To ensure the development of a comprehensive and inclusive plan, the crisis services planning effort must include at least fifty-one percent peers and family peers, and the remaining forty-nine percent must be family members and emergency medical response providers who shall be independent of any local government's emergency services department, and operated by a non-governmental organization via a contract with the local government providers of crisis services, 9-8-8 personnel, and other non-governmental community agencies which may come in contact with a person experiencing a mental health or alcohol use or substance use crisis.

§ 4. Section 41.03 of the mental hygiene law is amended by adding six new subdivisions 14, 15, 16, 17, 18 and 19 to read as follows:

14. "emergency and crisis services plan" means a plan which is part of, and submitted with, the local services plan, but is planned and developed specifically to ensure that all services, policies, training, procedures, expenditures and contracts for services and processes used to assist people experiencing mental health or alcohol use or substance use crises are peer-focused, designed to decrease contact with police and centered on increased access to care of the highest quality.

15. "eligible emergency and crisis response services" means services eligible for funding under section 41.18 of this article, including but not limited to, crisis response teams, crisis stabilization services and centers, peer living rooms, peer support centers, mobile crisis teams not utilizing law enforcement as part of the team, crisis collaboratives, peer crisis services, and crisis system oversight and management, which are included in an emergency and crisis services plan.

16. "crisis response team" means one extensively-trained peer acting as a crisis worker and one emergency medical technician independent of any local government's emergency services department, and operated by a non-governmental agency via a contract with the local government.

17. "peer" means an individual with lived mental health experience and/or alcohol use or substance use disorder experience, who has experience navigating systems such as the healthcare, mental health, judicial, criminal legal, housing, education, and employment systems.

18. "family peer" means an individual with lived experience as the biological, foster, or adoptive parent, or the primary caregiver, of children/youth with social, emotional, behavioral, mental health or

alcohol use or substance use disorders, who have experience navigating systems such as the healthcare, mental health, judicial, criminal legal, housing, education, and employment systems.

19. "statewide emergency and crisis response council" means the council created pursuant to section 5.08 of this chapter.

§ 5. Section 41.07 of the mental hygiene law is amended by adding a new subdivision (d) to read as follows:

(d) In developing the emergency and crisis services plan defined by subdivision fourteen of section 41.03 of this article and mandated by paragraph seventeen of subdivision (a) of section 41.13 of this article, local governments are encouraged to develop joint plans for a regional or sub-regional service area to maximize the use and availability of crisis and emergency services for all persons experiencing a mental health or alcohol use or substance use crisis in that region or sub-region.

§ 6. Subdivision (a) of section 41.13 of the mental hygiene law is amended by adding a new paragraph 17 to read as follows:

17. submit an emergency and crisis services plan, either alone or with other local governments in a region or sub-region, as required by subdivision fourteen of section 41.03 of this article to comprehensively plan for emergency and crisis services as is required by this chapter.

(i) The emergency and crisis services planning process shall include peers, family peers, family members, emergency medical response providers, 9-8-8 personnel and personnel of other community agencies which may come in contact with a person experiencing a mental health or alcohol use or substance use crisis. Peers and family peers shall constitute at least fifty-one percent of the planning group.

(ii) The emergency and crisis services plan shall be consistent with the commissioner's regulations for crisis services plans, developed pursuant to subdivision (f) of section 5.05 of this chapter after consultation with the statewide emergency and crisis response council.

§ 7. Subdivision (b) of section 41.18 of the mental hygiene law is amended by adding a new paragraph (vi) to read as follows:

(vi) Notwithstanding any other provision of this subdivision, local governments, individually or jointly, shall be granted state aid of one hundred percent of the net operating costs expended by such local governments, and by voluntary agencies which have contracted with such local governments, for eligible emergency and crisis services as defined by subdivision fifteen of section 41.03 of this article that are included in an approved emergency and crisis services plan. Funding provided pursuant to this paragraph shall be authorized only for services that have a non-police, non-law enforcement, or non-criminal legal component and include peers.

§ 8. Section 5.05 of the mental hygiene law is amended by adding four new subdivisions (f), (g), (h) and (i) to read as follows:

(f) The commissioner of mental health and the commissioner of addiction services and supports shall be jointly responsible for developing and revising as necessary, in regulation, specific standards and procedures for the operation and financing of crisis and emergency services, after consultation with the statewide emergency and crisis response council. Such standards and procedures shall require that the emergency and crisis services plans include a comprehensive approach to oversee and measure the approved plan's effectiveness in delivering high-quality, peer-focused crisis services, including response time standards, and periodic reporting requirements. The commissioners shall require specific metrics that approved plans shall utilize to evaluate

system progress, effectiveness, and appropriate response times to crises, which shall be the same as or less than current response times for other health crises.

(g) The commissioner of mental health and the commissioner of addiction services and supports shall be jointly responsible to ensure that:

(1) a non-police, community-run public health-based response that utilizes trained peer and independent emergency medical technician crisis response teams for anyone experiencing a mental health, alcohol use or substance use crisis is established. Any crisis response team may request that a peace officer as defined by section 2.10 of the criminal procedure law, or police officer as defined by section 1.20 of the criminal procedure law, transport a person in distress due to mental health conditions or alcohol use or substance use, when such team has exhausted alternative methods for obtaining consent from such person, such person refuses treatment or transport from the crisis response team; and:

(i) such person poses 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 imminent serious physical harm; or

(ii) such crisis response team makes an assessment, in light of the totality of the circumstances, that the crisis response team is at risk of imminent physical violence due to the person's actions;

(2) the crisis response teams operate twenty-four hours a day, three hundred sixty-five days a year;

(3) the crisis response teams receive culturally competent, trauma-informed, experientially-based, and peer-led training;

(4) the average response time for the crisis response teams is the same as or less than the current response time for other health crises;

(5) the crisis response teams de-escalate any situation involving individuals experiencing crisis due to mental health conditions, alcohol use, or substance use and avoid the use of nonconsensual treatment, transport, or force wherever possible;

(6) the most appropriate treatment is provided to individuals experiencing a mental health, alcohol use or substance use crisis;

(7) voluntary assessment and referral of individuals experiencing a mental health, alcohol use or substance use crisis are maximized;

(8) arrest, detention, and contact with the criminal legal system of individuals experiencing a mental health, alcohol use or substance use crisis are minimized;

(9) the number of individuals who experience physical harm and/or trauma as a result of a mental health, alcohol use or substance use crisis are minimized;

(10) 9-8-8 personnel respond to individuals experiencing a mental health, alcohol use or substance use crisis and are optimally utilized and integrated in the emergency and crisis services plan;

(11) a detailed plan to manage, oversee, monitor and regularly report on the operation of the proposed crisis response system which meets the requirements for these activities as required by subdivision (i) of this section is established;

(12) whenever an emergency hotline in New York state, such as 911 or 311, receives a call regarding an individual experiencing a mental health, alcohol use or substance use crisis, such hotline will refer such call to the crisis response team for the relevant geographic area; and

(13) the crisis response teams effectively respond to all individuals experiencing a mental health, alcohol use or substance use crisis with culturally competent, trauma-informed care and without regard to source of funding.

(h) (1) Within twelve months after the effective date of this subdivision, the commissioner of mental health and the commissioner of addiction services and supports shall select an independent organization to conduct an evaluation of the statewide impact of the emergency and crisis response services mandated by this section on:

(i) the number of calls to, and responses sent by, dispatch services including 311, 911, and 988 in response to people experiencing mental health, alcohol use, or substance use crises;

(ii) the types of crises responded to;

(iii) the disposition and brief description of the result of each such call, anonymized to protect individuals' privacy;

(iv) demographic information including the race, ethnicity, gender, disability, and age of any individual who is the subject of any dispatch call or interaction by a local crisis response team;

(v) the details and destination of transport of any person experiencing a mental health, alcohol use or substance use crisis;

(vi) the services provided to such individuals;

(vii) the impact of emergency and crisis response services mandated by this section on emergency room visits, use of ambulatory services, hospitals as defined in article twenty-eight of the public health law and/or mental health facilities as defined in section 1.03 of the mental hygiene law; and

(viii) the involvement of law enforcement in mental health, alcohol use or substance use crises, including any use of force or restraint tactics or devices.

(2) The commissioner of mental health and the commissioner of addiction services and supports shall direct the organization selected under paragraph one of this subdivision to issue its evaluation within six months of the first operating date of any approved regional emergency and crisis services plan, and shall include data from any regional plan then approved and operating in the state. Such evaluation shall be made publicly available and posted on the department's website upon receipt by such commissioners. In addition to the reporting requirements established pursuant to paragraph one of this subdivision, the commissioner of mental health and the commissioner of addiction services and supports shall collect all data listed under paragraph one of this subdivision, and shall report such data in a form and manner that is accessible to the public via the department's website. The first data report required by this paragraph, after the effective date of this subdivision, shall be made public within ninety days of the approval of any regional emergency and crisis response plan, and shall be made public in an ongoing manner every ninety days thereafter and include data from every active regional emergency and crisis response plan approved by the commissioners of mental health and the commissioner of addiction services and supports.

(3) No later than twelve months after the approval by the commissioner of mental health and the commissioner of addiction services and supports of any regional emergency and crisis response plan, the commissioner of mental health and the commissioner of addiction services and supports shall prepare a comprehensive report to the governor and the legislature specifying:

(i) the results of the evaluation carried out under paragraph one of this subdivision;

(ii) the number of individuals who received qualifying community-based crisis response services;

(iii) demographic information regarding such individuals when available, including the race, ethnicity, age, disability, sex, sexual orientation, gender identity, and geographic location of such individuals;

(iv) the processes and models developed by local governments in their emergency and crisis services plans to provide community-based crisis response services, including the processes developed to provide referrals for, or coordination with, follow-up care and services;

(v) the diversion of individuals from jails, incarceration, or similar settings;

(vi) the diversion of individuals from psychiatric hospitals, commitments under chapter four hundred eight of the laws of nineteen hundred ninety-nine, constituting Kendra's law, and other involuntary services;

(vii) the experiences of individuals who receive community-based crisis response services;

(viii) the successful connection of individuals with follow-up services;

(ix) the utilization of services by underserved and historically excluded communities, including black, indigenous and people of color (BIPOC) populations;

(x) the cost or cost savings attributable to such emergency and crisis response services;

(xi) other relevant outcomes identified by the commissioner of mental health and the commissioner of addiction services and supports and the statewide advisory emergency and crisis response council;

(xii) how all on-going aspects of assessment compare with the historical measures of such assessments; and

(xiii) recommendations for improvements to the emergency and crisis services systems throughout the state.

(4) All reports and evaluations conducted by the commissioner of mental health and the commissioner of addiction services and supports shall be made publicly available, including on the website of the department.

(i) The commissioners of mental health and addiction services and supports and the council created pursuant to section 5.08 of this article, shall be jointly responsible for approval of the emergency and crisis services plan component of a local services plan submitted by one or more local governmental units. Each plan shall have an attestation that such plan was developed as prescribed in paragraph seventeen of subdivision (a) of section 41.13 of this chapter to be considered for approval. Such approval shall serve as the basis for funding eligible emergency and crisis services pursuant to paragraph (vi) of subdivision (b) of section 41.18 of this chapter.

§ 9. The mental hygiene law is amended by adding a new section 5.08 to read as follows:

§ 5.08 Statewide emergency and crisis response council.

(a) There is hereby created in the department the statewide emergency and crisis response council to work in conjunction with the commissioner of mental health and the commissioner of addiction services and supports to jointly approve emergency and crisis services plans submitted by one or more local government units, and provide supports on matters regarding the operation and financing of high-quality emergency and crisis

services provided to persons experiencing a mental health, alcohol use or substance use crisis.

(b) Four members of the state council shall be appointed by the governor. Sixteen members of the council shall be appointed by the state legislature, as follows: (1) four members shall be appointed by the speaker of the assembly; (2) four members shall be appointed by the temporary president of the senate; (3) one member shall be appointed by the minority leader of the assembly; (4) one member shall be appointed by the minority leader of the senate; (5) two members shall be appointed by the chairperson of the assembly committee on mental health; (6) two members shall be appointed by the chairperson of the senate committee on mental health; (7) one member shall be appointed by the ranking minority member of the assembly committee on mental health; and (8) one member shall be appointed by the ranking minority member of the senate committee on mental health. The membership shall consist of at least fifty-one percent peers and family peers. The entire statewide emergency and crisis response council shall reflect the state's diversity of race, age, language, national origin, ethnicity, geography, and disability. At least one-third of the council shall have demonstrated certification, training, or employment in culturally competent responses to mental health, alcohol use or substance use crises. Every person appointed to the council shall have demonstrated knowledge of, and skills in, culturally competent provision of trauma-informed mental health, alcohol use, and substance use crisis response services. Each member of the council shall be a family peer; licensed mental health or addiction clinician; a licensed mental health or addiction counselor; a licensed physician, nurse, or mental health or addiction provider; a mental health or addiction counselor; a representative of a not-for-profit disability justice organization; an emergency medical technician; or a crisis health care worker.

(c) The members of the council, upon securing a quorum, shall elect a chairperson from among the members of the council by a majority vote of those council members present.

(d) The term of office of members of the council shall be four years, except that of those members first appointed, at least one-half but not more than two-thirds shall be for terms not to exceed two years. Vacancies shall be filled by appointment for the remainder of an unexpired term. The council members shall continue in office until the expiration of their terms and until their successors are appointed. No council member shall be appointed to the council for more than four consecutive terms.

(e) The council shall advise, oversee, assist and make recommendations to the commissioners on specific policies and procedures regarding the operation and financing of emergency and crisis services which:

(1) ensure a non-police, trauma-informed, and public health-based response to anyone in the state experiencing a mental health, alcohol use, or substance use crisis;

(2) are designed to de-escalate any situation involving individuals experiencing a mental health, alcohol use, or substance use crisis, and which eliminate the use of non-consensual treatment, non-consensual transport, and force;

(3) ensure the most appropriate treatment of individuals experiencing a mental health, alcohol use or substance use crisis;

(4) maximize the use of voluntary assessment and voluntary referral of individuals experiencing a mental health, alcohol use or substance use crisis;

(5) minimize arrest and detention by law enforcement and minimize contact with the criminal legal system for individuals experiencing a mental health, alcohol use, or substance use crisis;

(6) minimize physical harm and trauma for individuals who experience a mental health, alcohol use, or substance use crisis; and

(7) effectively respond to all individuals experiencing a mental health, alcohol use, or substance use crisis with culturally competent care and without regard to source of funding.

(f) The council shall also review emergency and crisis services programs and systems operating within the state or nationally, which could be deployed in this state as model crisis and emergency services systems.

(g) The council shall meet as frequently as its business may require, but no less frequently than four times per year during the first four years of the council's creation, and two times per year subsequently after the first four years. At least one of such meetings per year shall be held in a manner and at a time designed to maximize participation of working members of the public. Meetings of the council shall be governed by the provisions of article seven of the public officers law, and shall be open to and accessible by the public including by video conference or computer to the greatest extent possible.

(h) The presence of twelve voting members of the council, consisting of at least fifty-one percent of peers and family peers, shall constitute a quorum.

(i) The members of the council shall receive no compensation for their services as members, but each shall be allowed the necessary and actual expenses incurred in the performance of their duties under this section, including a reasonable reimbursement rate for travel, lodging, and meals while attending meetings of the council.

§ 10. Subdivision (a) of section 9.41 of the mental hygiene law, as amended by section 4 of part AA of chapter 57 of the laws of 2021, is amended to read as follows:

(a) Any peace officer, when acting pursuant to [~~his or her~~] such peace officer's special duties, or police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be [~~mentally ill and~~] experiencing a mental health, alcohol use or substance use crisis in the following circumstances:

1. Such person is conducting [~~himself or herself~~] themself in a manner which is likely to result in [~~serious~~] an imminent risk of serious physical harm to [~~the person or~~] other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm. Such officer may direct the removal of such person or remove [~~him or her~~] such person to any hospital specified in subdivision (a) of section 9.39 of this article, or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 of this article, or pending [~~his or her~~] such person's examination or admission to any such hospital or comprehensive psychiatric emergency program, [~~program,~~] temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify:

(i) the appropriate local crisis response team established pursuant to paragraph sixteen of subdivision (a) of section 41.03 of this chapter, if any, and the director of community services or, if there be none, the health officer of the city or county of such action[~~.~~];

(ii) the state police, or the department or force of which the officer is a member and has been requested or directed to respond by a crisis response team under subdivision sixteen of section 41.03 of this chapter;

(iii) a crisis response team which is present on the scene with the officer and is incapacitated or otherwise unable to communicate a request that the officer take custody of the individual; or

2. Such person is conducting themselves in a manner which is likely to result in imminent serious physical harm to themselves as manifested by threats of or attempts at suicide or serious bodily harm, and either:

(i) no crisis response team has been established in the region where the person is; or

(ii) the crisis response team has not arrived to the place where the person is located, and taking the person is necessary to prevent such person from experiencing serious physical injury or death.

3. If a peace officer, when acting pursuant to such peace officer's special duties, or a police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department comes upon an individual experiencing a mental health, alcohol or substance use crisis and the circumstances under this section have not been met, the proper crisis response team shall be notified.

§ 11. Section 9.41 of the mental hygiene law, as amended by chapter 843 of the laws of 1980, is amended to read as follows:

§ 9.41 Emergency admissions for immediate observation, care, and treatment; powers of certain peace officers and police officers.

(a) Any peace officer, when acting pursuant to [~~his~~] such peace officer's special duties, or a police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be [~~mentally ill and~~] experiencing a mental health, alcohol or substance use crisis in the following circumstances:

1. Such person is conducting [~~himself~~] themselves in a manner which is likely to result in [~~serious harm to himself or others. "Likelihood to result in serious harm" shall mean (1) substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or (2) a substantial~~] an imminent risk of serious 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. Such officer may direct the removal of such person or remove [~~him~~] such person to any hospital specified in subdivision (a) of section 9.39 of this article or, comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 of this article, or pending [~~his~~] their examination or admission to any such hospital or comprehensive psychiatric emergency program, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify:

(i) the appropriate local crisis response team established pursuant to paragraph sixteen of subdivision (a) of section 41.03 of this chapter, if any, and the director of community services or, if there be none, the health officer of the city or county of such action[~~.~~];

(ii) the state police, department, or force of which the officer is a member has been requested or directed to respond by a crisis response team as set forth in subdivision sixteen of section 41.03 of this chapter;

(iii) a crisis response team which is present on the scene with the officer is incapacitated or otherwise unable to communicate a request that the officer take custody of the individual; or

2. Such person is conducting themselves in a manner which is likely to result in imminent serious physical harm to themselves as manifested by threats of or attempts at suicide or serious bodily harm, and either:

(i) no crisis response team has been established in the region where the person is; or

(ii) the crisis response team did not arrive to the place where the person is located, and taking the person is necessary to prevent such person from experiencing serious physical injury or death.

(b) Such officer may direct the removal of such person or remove such person to any hospital specified in subdivision (a) of section 9.39 of this article or, pending their examination or admission to any such hospital, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify appropriate emergency and crisis response services and the director of community services or, if there be none, the health officer of the city or county of such action.

3. If a peace officer, when acting pursuant to such peace officer's special duties, or a police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department comes upon an individual experiencing a mental health, alcohol or substance use crisis and the circumstances under this section have not been met, the proper crisis response team shall be notified.

§ 12. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that the amendments to subdivision (a) of section 9.41 of the mental hygiene law made by section ten of this act shall be subject to the expiration and reversion of such section pursuant to section 21 of chapter 723 of the laws of 1989, as amended, when upon such date the provisions of section eleven of this act shall take effect. 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 effective date.