

STATE OF NEW YORK

910

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

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, paragraph 5 of
3 subdivision (a) as amended by section 9 of part AA of chapter 57 of the
4 laws of 2021, is amended to read as follows:

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

7 (a) As used in this article:

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

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

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

23 4. "Emergency services" means immediate physical examination, assess-
24 ment, care and treatment of an incapacitated person for the purpose of

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

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1 confirming that the person is, and continues to be, incapacitated by
2 alcohol [~~and/or substances~~] to the degree that there is a likelihood to
3 result in harm to the person or others.

4 5. "Treatment facility" means a facility designated by the commission-
5 er which may only include a general hospital as defined in article twen-
6 ty-eight of the public health law, or a medically managed or medically
7 supervised withdrawal, inpatient rehabilitation, or residential stabili-
8 zation treatment program that has been certified by the commissioner to
9 have appropriate medical staff available on-site at all times to provide
10 emergency services and continued evaluation of capacity of individuals
11 retained under this section or a crisis stabilization center licensed
12 pursuant to [~~article~~] section 36.01 of this chapter.

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

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

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

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

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

1 shall be regularly reevaluated to confirm continued incapacity by alcohol [~~and/or substances~~] to the degree that there is a likelihood to
2 result in harm to the person or others. If the examining physician
3 determines at any time that such person is not incapacitated by alcohol
4 [~~and/or substances~~] to the degree that there is a likelihood to result
5 in harm to the person or others, he or she must be released. Notwith-
6 standing any other law, in no event may such person be retained against
7 his or her objection beyond whichever is the shorter of the following:
8 (i) the time that he or she is no longer incapacitated by alcohol
9 [~~and/or substances~~] to the degree that there is a likelihood to result
10 in harm to the person or others or (ii) a period longer than seventy-two
11 hours.
12

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

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

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

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

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

54 (i) identification of continuing chemical dependence services includ-
55 ing management of withdrawal or continuing stabilization and any other

1 treatment, rehabilitation, self-help and vocational, educational and
2 employment services the patient will need after discharge;

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

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

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

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

12 (d) The commissioner shall promulgate all rules and regulations, after
13 consulting with representatives of appropriate law enforcement and chem-
14 ical dependence providers of services, establishing procedures for
15 taking intoxicated or impaired persons and persons apparently incapac-
16 itated by alcohol [~~and/or substances~~] to their residences or to appropri-
17 ate public or private facilities for emergency services and for minimiz-
18 ing the role of the police in obtaining treatment of such persons
19 necessary to implement the provisions of this section, including but not
20 limited to establishing procedures for transporting incapacitated
21 persons to a treatment facility for emergency services.

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

24 § 22.10 Emergency services for persons impaired or incapacitated by
25 substances.

26 (a) Definitions. As used in this article:

27 1. "Impaired person" means a person whose mental or physical function-
28 ing is substantially impaired as a result of the presence of substances
29 in his or her body.

30 2. "Incapacitated" means that a person, as a result of the use of
31 substances, is unconscious or has his or her judgment otherwise so
32 impaired that he or she is incapable of realizing and making a rational
33 decision with respect to his or her need for treatment.

34 3. "Likelihood to result in harm" or "likely to result in harm" means
35 (i) a substantial risk of physical harm to the person as manifested by
36 threats of or attempts at suicide or serious bodily harm or other
37 conduct demonstrating that the person is dangerous to himself or
38 herself, or (ii) a substantial risk of physical harm to other persons as
39 manifested by homicidal or other violent behavior by which others are
40 placed in reasonable fear of serious physical harm.

41 4. "Emergency services" means immediate voluntary or involuntary phys-
42 ical examination, assessment, care and treatment of an impaired person
43 who has become incapacitated in order to achieve stabilization and/or
44 subsequent admission to extended voluntary or involuntary treatment.

45 5. "Treatment facility" means a hospital as defined in article twen-
46 ty-eight of the public health law, or a chemical dependence program
47 facility certified or approved by the commissioner.

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

50 (b) Voluntary emergency services. 1. An impaired person may come
51 voluntarily for emergency services to a chemical dependence program or
52 treatment facility authorized by the commissioner to provide such emer-
53 gency services. A person who appears to be impaired and who consents to
54 the proffered help shall be assisted by any peace officer acting pursu-
55 ant to his or her special duties, police officer, or by a designee of
56 the director of community services to return to his or her home, to a

1 chemical dependence program or treatment facility, or to any other
2 facility authorized by the commissioner to provide emergency services.
3 In such cases, the peace officer, police officer, or designee of the
4 director of community services shall accompany the impaired person in a
5 manner which is reasonably designed to assure his or her safety, as set
6 forth in regulations promulgated in accordance with subdivision (f) of
7 this section.

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

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

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

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

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

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

52 (c) Involuntary emergency services on certificate of a director of
53 community services or designee. 1. The director of a treatment facility
54 designated by the commissioner to provide emergency services shall upon
55 the certificate of a local director of community services or a physician
56 duly designated by the director of community services, receive and care

1 for in such facility as a patient any person who, in the opinion of the
2 director of community services or his or her designee sought by petition
3 pursuant to subdivision (d) of this section, is incapacitated such that
4 such person's use or abuse of chemical substances is likely to result in
5 harm to himself, herself or others and for whom immediate involuntary
6 emergency services is appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

18 § 22.13 Court authorization to retain an involuntary patient.

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

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

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

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

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

(ii) The minor shall be required to sign a form indicating that the treatment is being voluntarily sought, and that he or she has been advised of his or her ability to access the mental hygiene legal service and of his or her rights under this section and section 22.03 of this article. The signed form shall be included in the minor's medical record.

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

(iv) Emergency contacts.

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

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

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

(v) Notice of admission and discharge procedures.

(A) A copy of the facility's admission and discharge procedures shall be provided to the minor and to the minor's consenting parent or guardian at the time of admission by the director of the facility or such person's designee. Such information shall also be mailed to the designated emergency contact person by regular mail.

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

(vi) Each minor admitted for inpatient or residential chemical dependence treatment pursuant to this subdivision shall be provided with written notice regarding the availability of the mental hygiene legal service for legal counsel, and shall be provided access to the service upon request.

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

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

(iii) A copy of the patient's rights established under this section and under section 22.03 of this article shall be given and explained to

1 the minor and to the minor's consenting parent or guardian at the time
2 of admission by the director of the facility or such person's designee.

3 (iv) The minor shall be required to sign a form indicating that he or
4 she has been advised of his or her ability to access the mental hygiene
5 legal service and of his or her rights under this section and section
6 22.03 of this article. The signed form shall be included in the minor's
7 medical record.

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

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

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

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

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

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

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

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

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

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

39 § 5. This act shall take effect immediately.