

STATE OF NEW YORK

99

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

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

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

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

1 Section 1. The public health law is amended by adding a new section
2 2120-a to read as follows:

3 § 2120-a. Removal and detention of cases, contacts and carriers who
4 are or may be a danger to public health; other orders. 1. The provisions
5 of this section shall be utilized in the event that the governor
6 declares a state of health emergency due to an epidemic of any communi-
7 cable disease.

8 2. Upon determining by clear and convincing evidence that the health
9 of others is or may be endangered by a case, contact or carrier, or
10 suspected case, contact or carrier of a contagious disease that, in the
11 opinion of the governor, after consultation with the commissioner, may
12 pose an imminent and significant threat to the public health resulting
13 in severe morbidity or high mortality, the governor or his or her dele-
14 gee, including, but not limited to the commissioner or the heads of
15 local health departments, may order the removal and/or detention of such
16 a person or of a group of such persons by issuing a single order, iden-
17 tifying such persons either by name or by a reasonably specific
18 description of the individuals or group being detained. Such person or
19 group of persons shall be detained in a medical facility or other appro-
20 priate facility or premises designated by the governor or his or her
21 delegee and complying with subdivision five of this section.

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

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

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

3 4. Notwithstanding any inconsistent provision of this section:

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

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

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

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

21 (i) after the department determines, with the exercise of due dili-
22 gence, that the suspected case was not infected with such a disease, or
23 was not contagious at the time the contact was exposed to such individ-
24 ual; or

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

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

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

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

34 6. When a person or group is ordered to be detained pursuant to subdivi-
35 vision two of this section for a period not exceeding three business
36 days, such person or member of such group shall, upon request, be
37 afforded an opportunity to be heard. If a person or group detained
38 pursuant to subdivision two of this section needs to be detained beyond
39 three business days, they shall be provided with an additional commis-
40 sioner's order pursuant to subdivisions two and eight of this section.

41 7. When a person or group is ordered to be detained pursuant to subdivi-
42 vision two of this section for a period exceeding three business days,
43 and such person or member of such group requests release, the governor
44 or his or her delegee shall make an application for a court order
45 authorizing such detention within three business days after such request
46 by the end of the first business day following such Saturday, Sunday, or
47 legal holiday, which application shall include a request for an exped-
48 ited hearing. After any such request for release, detention shall not
49 continue for more than five business days in the absence of a court
50 order authorizing detention. Notwithstanding the foregoing provisions,
51 in no event shall any person be detained for more than sixty days with-
52 out a court order authorizing such detention. The governor or his or her
53 delegee shall seek further court review of such detention within ninety
54 days following the initial court order authorizing detention and there-
55 after within ninety days of each subsequent court review. In any court
56 proceeding to enforce an order of the governor or his or her delegee for

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

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

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

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

19 (iii) the less restrictive alternatives that were attempted and were
20 unsuccessful and/or the less restrictive alternatives that were consid-
21 ered and rejected, and the reasons such alternatives were rejected;

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

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

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

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

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

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

48 (iii) advise the person or group being detained that they have the
49 right to request that legal counsel be provided, that upon such request
50 counsel shall be provided if and to the extent possible under the
51 circumstances, and that if counsel is so provided, that such counsel
52 will be notified that the person or group has requested legal represen-
53 tation.

54 9. A person who is detained in a medical facility, or other appropri-
55 ate facility or premises, shall not conduct himself or herself in a

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

3 10. Where necessary and feasible under the circumstances, language
4 interpreters and persons skilled in communicating with vision and hear-
5 ing impaired individuals shall be provided.

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

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

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

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