

NYS Safe Act Information for LGUs

On January 15, 2013, Governor Cuomo signed a new law (Chapter 1 of the Laws of 2013) entitled the New York Secure Ammunition and Firearms Enforcement Act of 2013, commonly referred to as the SAFE-Act. The SAFE Act primarily addresses issues related to firearms however; the new law includes amendments to the Mental Hygiene Law which impact your duties as a DCS effective March 16, 2013.

The purpose of this document is to provide all DCSs with an overview of the changes to the Mental Hygiene Law made in the SAFE ACT. The major changes are the addition of a new section 9.46 which requires each DCS to make certain reports to DCJS and some changes to Assisted Outpatient Treatment (AOT) procedures.

MAJOR MENTAL HYGIENE LAW PROVISIONS OF THE NY SAFE ACT

Section 9.46 MHL[1] - Duty to report to the Division of Criminal Justice Services (DCJS). The SAFE Act adds a new section 9.46 to the MHL which requires treating mental health professionals (MHP) defined in the law as a physician, psychologist, registered nurse or licensed clinical social worker (**DOES NOT include an LMSW or MSW, an LMHC, an LMFT or any other professional**), to report to the DCS, or your designee, the names of persons they are treating whom they believe are likely to engage in conduct that will result in serious harm to self or others.

The statute requires the MHP to make a report to the Director of Community Services (DCS) or your designee, who then has the duty to report the name and other non-clinical information to DCJS if the DCS "agrees" with the report.

The purpose of the 9.46 report from the DCS or your 9.46 designee to DCJS is to enable DCJS to check its database(s) to determine if the reported individual holds or has applied for a firearms license and to initiate appropriate procedures with local law enforcement.

Many DCSs have asked questions about the impact of 9.46 MHL on other existing Article 9 MHL sections, such as 9.25, 9.27, 9.37, 9.41 or 9.45. A report by a MHP to the DCS under 9.46 is a report only and does not require the DCS to take any further action other than to submit the report to DCJS if you agree with the report.

There are numerous other provisions under the MHL that exist for the purpose of providing for the examination, evaluation, assessment and transport of persons who are thought to suffer from a mental illness that creates imminent danger of their causing harm either to themselves or others. These statutes involve many people in the process including examining physicians, the DCS, law enforcement, ambulance services and others. Nothing in the NY SAFE Act changes any of these provisions of law.

All mental health practitioners should be aware that Section 9.46 involves reporting a name to a database; it will not help a mentally ill person in need of emergency services. **Nothing in the new section 9.46 changes any of the current sections of the Mental Hygiene Law with reference to emergency evaluations or transport and therefore all mental health services providers should continue to follow current procedures in emergency situations separate from to any additional reporting obligation they may have under section 9.46.**

The OMH "Integrated SAFE Act Reporting System" or ISARS Portal:

The Conference vehemently opposed the unfunded mandate imposed on local mental hygiene departments under the SAFE-Act. Counties and the City could not absorb the cost of staff and technology needed to accept and evaluate thousands of 9.46 reports from MHPs. As a result of our advocacy, the Office of Mental Health created the Integrated SAFE Act Reporting System or "ISARS" portal. The development of the ISARS portal significantly reduced the workload burden to counties.

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ISARS - How it works:

When a MHP makes a 9.46 report, they enter information into the ISARS portal, which is housed and operated by OMH. The MHP makes the reports to ISARS and, in so doing, attests to the accuracy of the identifying information and attests that, in the MHPs clinical judgment, the individual is “likely to engage in conduct that could result in serious harm to self or others.”

The ISARS Portal receives the report, verifies the category and licensure of the reporting MHP and identifies the County of Residence of the individual. The report, which includes clinical information, is forwarded to the DCS and your designees who also have approved access to ISARS.

If the DCS/Designee “agrees” with the report, when the report is forwarded to the Division of Criminal Justice Services (DCJS), the ISARS portal eliminates the clinical information from the report and the report with the non-clinical identifying information is sent to DCJS.

DCJS receives the report and begins the process to determine if the individual holds a pistol permit.

Protection from professional liability:

The SAFE Act DOES NOT provide protection and professional liability to DCSs. The law only provides protection against liability for reporting Mental Health Professionals.

Section 9.48[2] – Assisted Outpatient Treatment (AOT)

The SAFE Act makes the following changes to the AOT statute.

- Changes the original AOT order period to “not to exceed on year” instead of the current “not to exceed six months”.
- Extends the AOT law until June 30, 2017.
- Requires the Director of AOT to evaluate the need for ongoing AOT prior to expiration of the original order. If the DCS determines that AOT criteria continue to be met **OR** the DCS has made appropriate attempts to, but has not been successful in eliciting, the cooperation of the subject to submit to an examination within 30 days prior to the expiration of an AOT order, **THEN** the DCS **MAY** petition the court to order continued AOT.
- Requires the Director of AOT and the DCS to notify the DCS of new county of residence when he/she knows or has reason to believe that the Assisted Outpatient has moved or will move during the pendency of an AOT order. Upon such move, the DCS of the new county becomes the responsible (the statute says “appropriate”) DCS with reference to the AOT order.
- Amends the Correction Law section 404 to provide that before an inmate can be discharged from a State Correctional Facility from a hospital in the Department of Mental Hygiene, to the community, the hospital director shall ensure a clinical assessment for AOT takes place. **If the inmate meets AOT criteria, the hospital director may either petition the court for an AOT order OR make a report in writing to the appropriate DCS (county where the individual will reside) that the individual meets AOT criteria. The DCS would then petition the court for an AOT order.**
- The Central New York Psychiatric Center is the **ONLY** facility which meets the criteria of the statute.