



TOWN OF SENECA FALLS POLICE DEPARTMENT
GENERAL ORDER



GENERAL ORDER #: 560	RESCINDS: 07/01/13
SUBJECT: Mental Hygiene Arrests	NYS ACCREDITATION: 43.8
EFFECTIVE DATE: 12/15/2020	
BY ORDER OF: Stuart W. Peenstra, Chief of Police	

I. PURPOSE

The purpose of this directive is to establish guidelines for handling persons suspected of suffering from mental illnesses.

II. DEFINITIONS

- A. Mental Illness:** A disorder in which individuals experience periodic problems with feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment, and rehabilitation. Mental illness may be acute and time limited or chronic and lifelong. Mental illness may occur in anyone.
- B. Facility:** Any place in which services for the mentally disabled are provided and includes, but is not limited to, a psychiatric center, developmental center, institute, clinic, ward, institution, or building, except that in the case of a hospital...it should mean only a ward, wing, unit, or a part thereof. It should not include a place where the services rendered consist of solely non-residential services...nor shall it include domestic care...to a person in the home" (NYSMHL Article 1, Section 1.03(6)).
- C. Psychiatric Assignment Officer (PAO):** A qualified mental health professional physically present in the Emergency Department of a hospital who performs mental health evaluations and consults with a physician before determining the disposition of patients.
- D. Voluntary:** Any person REQUESTING admission, care, and treatment for themselves.
- E. Involuntary:** A person suffering from a mental illness that requires immediate observation, care and treatment and appears likely to result in serious harm to himself or others if left untreated (usually brought in for evaluation against their will).

III. POLICY

- A.** Members of the Seneca Falls Police Department, when dealing with persons during contacts on the street as well as during interviews and interrogations, will be understanding of and attentive to the problems of persons experiencing mental or emotional difficulties and who may require police assistance and community mental health resources.
- B.** Members will use judgment based on training, experience and discretion when exercising their powers of arrest under the New York State Mental Hygiene Law (NYSMHL) without compromising member and/or patient safety.
- C.** Members making arrests and/or transporting individuals to a hospital pursuant to the NYSMHL will share information surrounding the individual's conduct and/or arrest with hospital personnel involved in the evaluation of the person.

- D.** Members exercising any use of force when taking a person into custody pursuant to the NYSMHL must keep in perspective the goal of obtaining care and treatment for the mentally ill person.
1. Officers may use force comparable to what would be justified in performing any other legal duty against any other person, such as, one that is resisting arrest.
 2. The use of force must be reasonable and consistent with the Seneca Falls Police Department General Order 335.
 3. The criteria for the use of deadly physical force remains as defined in Article 35 of the NYS Penal Law and Seneca Falls Police Department General Order 340.

IV. GENERAL PROCEDURES FOR INVOLUNTARY CARE

A. NYSMHL 9.41 - Evaluation and Custody by Police

1. Section 9.41 of the NYSMHL authorizes police officers to take into custody and transport “any person who appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others.”
2. Involuntary emergency admissions by a police officer are Constitutional and no hearing is required before admission (Fhagen V. Miller, 29 NY 2d 348, 1972).
3. Officers may take custody of an individual for evaluation under Section 9.41 if:
 - a. The individual displays 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 serious physical harm; or
 - b. The individual displays a substantial risk of physical harm to himself as manifested by threats of, or attempts at, suicide or serious bodily harm; or shows other conduct demonstrating that he is dangerous to himself, such as, the person’s refusal or inability to meet his or her essential need for food, shelter, clothing, or health care, provided that such refusal or inability is likely to result in serious harm if there is not immediate hospitalization.

B. NYSMHL 9.39 - Evaluation by Hospital Personnel

Section 9.39 authorizes medical facilities to accept an individual who is under a mental hygiene arrest by a police officer.

1. Before an individual can be admitted to a hospital, they must be examined by a staff physician and found to meet emergency admission standards. If the standards are not met, the individual must be released.
2. The decision to admit in an emergency situation is entirely up to the staff physician. There exists no procedure to ensure hospital retention of the individual. Therefore, the arresting member will relate all information concerning the individual to the hospital’s Psychiatric Assignment Officer (PAO) or other appropriate attending medical personnel.

C. NYSMHL 22.09

Section 22.09 of the NYSMHL authorizes a police officer to take into custody a person who appears to be incapacitated by alcohol and/or drugs to the degree that there is a

- D. Members exercising any use of force when taking a person into custody pursuant to the transported to an appropriate facility for care.

V. TRANSPORTING PROCEDURES

- A. All transports of persons arrested under NYSMHL will be made by a Police Officer.
[Revised: 12/15/2020]
- B. Transports shall be made by ambulance when a medical situation may arise during transport; e.g. highly intoxicated persons, persons suspected of ingesting poisons, drugs, or medicines in excess of normal amounts, significant injury and/or bleeding.
- C. If transport is made by ambulance, members shall follow the ambulance to the hospital at a close distance. Members shall ride in the ambulance if the situation warrants it or if specifically requested by ambulance personnel.
- D. Before being transported, either in an ambulance or police vehicle, to a medical or community mental health facility, all persons will be searched for weapons, dangerous articles, or any other items with which the individual may harm himself or others. This search will include, but not be limited to, a pat down of all clothing and body surfaces.
- E. Any weapons, dangerous articles, or items found will be properly secured. Weapons of any kind and items of evidentiary nature will be placed into evidence. A copy of the Property Custody Report will be given to the individual as a receipt for any property taken into custody. All other property will accompany the individual to the hospital, where it will be returned to the individual after evaluation and release.

VI. HOSPITAL ARRIVAL PROCEDURES

- A. Upon arriving at a medical facility, members shall immediately notify hospital security personnel and the attending medical official and/or PAO.
- B. When taking custody of a mental hygiene patient, the member will ask that hospital security personnel to do a thorough pat-down search of the patient in the presence of the member.
- C. The mental hygiene patient is the responsibility of the arresting member and at no time is the patient to be left unattended unless hospital or security personnel properly relieve the member. Members are not required to remain in the hospital once properly relieved.

VII. REPORTING PROCEDURES

- A. Members affecting a Mental Hygiene Arrest will complete a The Mental Hygiene 9.41 Form and any other hospital form(s) required for patient admission.
- B. The 9.41 Mental Hygiene Form provides limited space for the arresting officer to document the circumstances of the incident, statements made by the patient, concerns communicated by family, friends, and/or witnesses, possible drug use and/or history of psychiatric problems. The arresting officer can greatly assist hospital staff by taking a few minutes to communicate any relevant information not documented on the Mental Hygiene Form.

VIII. CRIMINAL CHARGES PENDING PROCEDURES

- A.** If a mental hygiene patient is also to be charged criminally, that information must be noted on the 9.41 Mental Hygiene Form and relayed to both the Psychiatric Assignment Officer (PAO) and hospital security staff.
- B.** An appearance ticket may be issued if the patient is eligible for one pursuant to departmental policy.
- C.** If an appearance ticket cannot be issued, and it is determined that the subject will be examined within a reasonable period of time, the officer may remain at the hospital until a medical decision has been made to admit or release the individual.
- D.** If the wait is expected to be beyond a reasonable time (approximately 1 hour), and the criminal charges are minor in nature, members may leave the patient to the custody of hospital staff.
 - 1. Members shall advise hospital staff and security that criminal charges are pending and request that the Seneca Falls Police Department be contacted prior to releasing the patient.
 - 2. If members complete their tour of duty prior to such decision, they will advise their shift supervisor.
 - 3. Supervisors will relate all details and leave relevant paperwork with the on-coming shift supervisor.
 - 4. When informed by hospital staff that the subject is to be released, the responsible supervisor will ensure that the subject is arrested for the pending criminal charges.
 - 5. If an appearance ticket cannot be issued and the patient cannot remain unguarded, procedures concerning prisoner guards will be followed pursuant to G.O. 520, Prisoner Transporting and Processing.

IX. COURT ORDERED INVOLUNTARY CARE PROCEDURES

Under NYSMHL Section 9.43 members may be directed by a court to take into custody, and transport, a person identified as needing immediate observation, care, and treatment. When presented with a completed NYS Office of Mental Health (OMH) Form 465, members will take into custody, and transport the individual to the location indicated on the Court Order.

X. SPECIAL REQUESTS FROM DESIGNATED PHYSICIANS

- A.** Under circumstances other than defined above, the Seneca County Director of Community Services, or designee, may request members to take into custody, and transport a person identified as needing immediate observation, care, and treatment. Such authority is defined under the following sections:
 - 1. NYSMHL 9.37 (Involuntary Admissions) - Powers of the Director of Community Services Section 9.37 authorizes the Seneca County Director of Community Services, or "Health Officer Designee," to direct a police officer to take a person into custody and transport the individual to a mental health facility for the purpose of evaluation.

- a. When presented with a completed NYS Office of Mental Health (OMH) Form 475, members shall cause the transport of an individual to the location indicated on the form.
 2. NYSMHL Section 9.45 (Emergency Admissions) - Powers of the Director of Community Services
 - a. Section 9.45 authorizes the Seneca County Director of Community Services, or "Health Officer Designee," to direct a police officer to take a person into custody and transport the individual to a mental health facility for the purpose of evaluation.
 - b. When presented with a completed NYS Office of Mental Health (OMH) Form 474A/476A, members shall cause the transport of an individual to the location indicated on the form.
 3. NYSMHL Section 9.55 – Powers of Qualified Psychiatrists

Before taking an individual into custody under NYSMHL Section 9.55, members must be presented with a copy of a completed NYS OMH Form 474A/476A, members shall cause the transport of an individual to the location indicated on the form.
 4. NYSMHL Section 9.57 – Powers of Emergency Room Physicians

Before taking an individual into custody under NYSMHL Section 9.57, members must be presented with a copy of a completed NYS OMH Form 474A/476A, members shall cause the transport of an individual to the location indicated on the form.
 5. NYSMHL Section 9.60 – Assisted Outpatient Treatment

Before taking an individual into custody under NYSMHL Section 9.60, members must be presented with a copy of a completed NYS OMH Form 485; members shall cause the transport of an individual to the location indicated on the form.
- B.** IN ALL SUCH CASES, police action shall be taken only after having verified with LIFELINE, the authority of a physician who identifies himself as either a "Health Officer" or a "Designee" of the Seneca County Director of Community Services.
- C.** No action shall be taken if verification cannot be made through LIFELINE. Members shall direct the physician to contact the Director of the Seneca County Department of Mental Health for approval, authorization, and follow-up.
- D.** Members shall document actions taken pursuant to the transport of a mentally ill patient on the Mental Hygiene Form, citing NYSMHL Section 9.37, 9.45, 9.55, 9.57 or 9.60 and the reason the "designee" authorized the arrest of the individual.

XI. PROCEDURES FOR "TWO PHYSICIAN CERTIFICATE" (2PC) REQUESTS

- A.** NYSMHL Section 9.27 (commonly referred to as "2PC") provides for involuntary admission to a medical facility for the purpose of a mental health evaluation.

- B.** Admission is based upon the certificates of two examining physicians accompanied by an application for admission by one of eleven parties as outlined below. The physicians must be licensed in New York State and cannot be related to the individual being evaluated or on staff at the facility where the individual is being transported to.
- D.** The examination by the certifying physicians may be conducted jointly but each examining physician shall execute a separate certificate.
- E.** The application must have been executed within ten days prior to such admission. It may be executed by any one of the following:
 - 1. Any person with whom the person alleged to be mentally ill resides.
 - 2. The father or mother, husband or wife, brother or sister, or the child of any such person or the nearest available relative.
 - 3. The committee of such person.
 - 4. An officer of any public or well recognized charitable institution or agency or home in whose institution the person alleged to be mentally ill resides.
 - 5. The director of community services or social services official, as defined in the social services law, of the city or county in which any such person may be.
 - 6. The director of the hospital or of a general hospital, as defined in article twenty-eight of the public health law, in which the patient is hospitalized.
 - 7. The director or person in charge of a facility providing care to alcoholics, or substance abusers or substance dependent persons.
 - 8. The director of the division for youth, acting in accordance with the provisions of section five hundred nine of the executive law.
 - 9. Subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or authorized agency which has, pursuant to the social services law, care and custody or guardianship and custody of a child over the age of sixteen.
 - 10. Subject to the terms of any court order a person or entity having custody of a child pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act.
 - 11. A qualified psychiatrist who is either supervising the treatment of or treating such person for a mental illness in a facility licensed or operated by the office of mental health.
- F.** Such application shall contain a statement of the facts upon which the allegation of mental illness and need for care and treatment are based and shall be executed under penalty of perjury but shall not require the signature of a notary public thereon.
- G.** After an application for the admission of a person has been completed and both physicians have examined such person and separately certified that he or she is mentally ill and in need of involuntary care and treatment in a hospital, either physician is authorized to request that a police officer take into custody and transport such person to a hospital for determination by the hospital director whether such person qualifies for admission pursuant to MHL Section 9.27. Upon the request of either physician an ambulance service is also authorized to transport such person in these cases.

XII. ESCAPE FROM POLICE CUSTODY PROCEDURES

When a patient arrested under the NYSMHL escapes the custody of police, that person will be considered a missing person and investigated pursuant to G.O. 530, Missing Persons.

XIII. ESCAPE FROM A MENTAL HEALTH FACILITY PROCEDURES

Section 29.19 of the NYSMHL authorizes a police officer to apprehend, restrain if necessary, and return a person who escapes from a mental health facility. A person is considered an escapee of a facility when he has been admitted to that facility.

XIV. DISTRIBUTION

The Mental Hygiene Report shall be distributed as follows:

- A.** Original: Provided to the hospital's medical staff.
- B.** Copy #2: Records Section Office.

Reviewed: 05/26/2019