

6548

I N S E N A T E

February 24, 2012

Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to orders of observation for the purpose of determining incapacitation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 2 of section 730.40 of the criminal procedure  
2 law is amended to read as follows:  
3 2. When a local criminal court has issued a final order of observa-  
4 tion, it must dismiss the accusatory instrument filed in such court  
5 against the defendant [and such dismissal constitutes], EXCEPT THAT UPON  
6 MOTION OF THE DISTRICT ATTORNEY THE DISMISSAL DATE CAN BE ADJOURNED FOR  
7 UP TO ONE YEAR FOR THE PURPOSE OF ISSUANCE OF AN ORDER OF PROTECTION  
8 PURSUANT TO SECTION 530.11 OR 530.12 OF THIS PART FOR THE PROTECTION OF  
9 THE COMPLAINANT. UPON SUCH DISMISSAL IT SHALL CONSTITUTE a bar to any  
10 further prosecution of the charge or charges contained in such accusato-  
11 ry instrument. WHEN THE DEFENDANT IS IN THE CUSTODY OF THE COMMISSIONER  
12 AT THE EXPIRATION OF THE PERIOD PRESCRIBED IN A FINAL ORDER OF OBSERVA-  
13 TION THE COMMISSIONER MUST PROMPTLY CERTIFY TO SUCH COURT AND TO THE  
14 APPROPRIATE DISTRICT ATTORNEY THAT THE DEFENDANT WAS IN HIS OR HER  
15 CUSTODY ON SUCH EXPIRATION DATE. When the defendant is in the custody of  
16 the commissioner at the expiration of the period prescribed in a tempo-  
17 rary order of observation, the proceedings in the local criminal court  
18 that issued such order shall terminate for all purposes and the commis-  
19 sioner must promptly certify to such court and to the appropriate  
20 district attorney that the defendant was in his custody on such expira-  
21 tion date. Upon receipt of such certification, the court must dismiss  
22 the felony complaint filed against the defendant, EXCEPT THAT UPON  
23 MOTION OF THE DISTRICT ATTORNEY THE DISMISSAL DATE CAN BE ADJOURNED FOR  
24 UP TO ONE YEAR FOR THE PURPOSE OF ISSUANCE OF AN ORDER OF PROTECTION  
25 PURSUANT TO SECTION 530.11 OR 530.12 OF THIS PART FOR THE PROTECTION OF  
26 THE COMPLAINANT.

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

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1 S 2. Subdivision 1 of section 730.50 of the criminal procedure law, as  
2 amended by chapter 231 of the laws of 2008, is amended to read as  
3 follows:

4 1. When a superior court, following a hearing conducted pursuant to  
5 subdivision three or four of section 730.30 OF THIS ARTICLE, is satis-  
6 fied that the defendant is not an incapacitated person, the criminal  
7 action against him must proceed. If it is satisfied that the defendant  
8 is an incapacitated person, or if no motion for such a hearing is made,  
9 it must adjudicate him an incapacitated person, and must issue a final  
10 order of observation or an order of commitment. When the indictment does  
11 not charge a felony or when the defendant has been convicted of an  
12 offense other than a felony, such court (a) must issue a final order of  
13 observation committing the defendant to the custody of the commissioner  
14 for care and treatment in an appropriate institution for a period not to  
15 exceed ninety days from the date of such order, provided, however, that  
16 the commissioner may designate an appropriate hospital for placement of  
17 a defendant for whom a final order of observation has been issued, where  
18 such hospital is licensed by the office of mental health and has agreed  
19 to accept, upon referral by the commissioner, defendants subject to  
20 final orders of observation issued under this subdivision, and (b) must  
21 dismiss the indictment filed in such court against the defendant, EXCEPT  
22 THAT UPON MOTION OF THE DISTRICT ATTORNEY THE DISMISSAL DATE CAN BE  
23 ADJOURNED FOR UP TO ONE YEAR FOR THE PURPOSE OF ISSUANCE OF AN ORDER OF  
24 PROTECTION PURSUANT TO SECTION 530.11 OR 530.12 OF THIS PART FOR THE  
25 PROTECTION OF THE COMPLAINANT, and UPON such dismissal [constitutes] IT  
26 SHALL CONSTITUTE a bar to any further prosecution of the charge or  
27 charges contained in such indictment. When the indictment charges a  
28 felony or when the defendant has been convicted of a felony, it must  
29 issue an order of commitment committing the defendant to the custody of  
30 the commissioner for care and treatment in an appropriate institution  
31 for a period not to exceed one year from the date of such order. Upon  
32 the issuance of an order of commitment, the court must exonerate the  
33 defendant's bail if he was previously at liberty on bail.

34 S 3. This act shall take effect immediately.