

6548--A

Cal. No. 343

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 a bar to any
6 further prosecution of the charge or charges contained in such accusato-
7 ry instrument. WHEN THE DEFENDANT IS IN THE CUSTODY OF THE COMMISSIONER
8 PURSUANT TO A FINAL ORDER OF OBSERVATION THE COMMISSIONER MUST, IMME-
9 DIATELY UPON THE DISCHARGE OF THE DEFENDANT, CERTIFY TO SUCH COURT THAT
10 HE OR SHE HAS COMPLIED WITH THE NOTICE PROVISIONS SET FORTH IN SUBDIVI-
11 SION SIX OF SECTION 730.60 OF THIS ARTICLE. When the defendant is in the
12 custody of the commissioner at the expiration of the period prescribed
13 in a temporary order of observation, the proceedings in the local crimi-
14 nal court that issued such order shall terminate for all purposes and
15 the commissioner must promptly certify to such court and to the appro-
16 priate district attorney that the defendant was in his OR HER custody on
17 such expiration date. Upon receipt of such certification, the court must
18 dismiss the felony complaint filed against the defendant.
19 S 2. Paragraph (a) of subdivision 6 of section 730.60 of the criminal
20 procedure law, as added by chapter 549 of the laws of 1980, and the
21 opening paragraph as amended by chapter 440 of the laws of 1987, is
22 amended to read as follows:
23 (a) Notwithstanding any other provision of law, no person committed to
24 the custody of the commissioner pursuant to this article, or continuous-
25 ly thereafter retained in such custody, shall be discharged, released on

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

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1 condition or placed in any less secure facility or on any less restric-
2 tive status, including, but not limited to vacations, furloughs and
3 temporary passes, unless the commissioner shall deliver written notice,
4 at least four days, excluding Saturdays, Sundays and holidays, in
5 advance of the change of such committed person's facility or status, OR
6 IN THE CASE OF A PERSON COMMITTED PURSUANT TO A FINAL ORDER OF OBSERVA-
7 TION WRITTEN NOTICE UPON DISCHARGE OF SUCH COMMITTED PERSON, to all of
8 the following:

9 (1) The district attorney of the county from which such person was
10 committed;

11 (2) The superintendent of state police;

12 (3) The sheriff of the county where the facility is located;

13 (4) The police department having jurisdiction of the area where the
14 facility is located;

15 (5) Any person who may reasonably be expected to be the victim of any
16 assault or any violent felony offense, as defined in the penal law, OR
17 ANY OFFENSE LISTED IN SECTION 530.11 OF THIS PART which would be carried
18 out by the committed person; PROVIDED THAT THE PERSON WHO REASONABLY
19 MAY BE EXPECTED TO BE A VICTIM DOES NOT NEED TO BE A MEMBER OF THE SAME
20 FAMILY OR HOUSEHOLD AS THE COMMITTED PERSON; and

21 (6) Any other person the court may designate.

22 Said notice may be given by any means reasonably calculated to give
23 prompt actual notice.

24 S 3. This act shall take effect immediately.