

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

March 8, 2011

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

IN ASSEMBLY -- Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to increasing the availability of professionals to perform evaluations regarding a defendant's fitness to proceed to trial in a criminal proceeding

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

1 Section 1. Section 730.10 of the criminal procedure law, subdivision 2  
2 as amended by chapter 566 of the laws of 1994, subdivisions 3 and 4 as  
3 amended by chapter 440 of the laws of 1987, subdivision 5 as amended by  
4 chapter 435 of the laws of 1976, subdivisions 6, 7 and 8 as renumbered  
5 by chapter 629 of the laws of 1974, and subdivision 8 as separately  
6 amended by chapters 615 and 629 of the laws of 1974, is amended to read  
7 as follows:

8 S 730.10 Fitness to proceed; definitions.  
9 As used in this article, the following terms have the following mean-  
10 ings:

11 1. "Incapacitated person" means a defendant who as a result of mental  
12 [disease] ILLNESS or [defect] DEVELOPMENTAL DISABILITY lacks capacity to  
13 understand the proceedings against him OR HER or to assist in his OR HER  
14 own defense.

15 2. "Order of examination" means an order issued to an appropriate  
16 director by a criminal court wherein a criminal action is pending  
17 against a defendant, or by a family court pursuant to section 322.1 of  
18 the family court act wherein a juvenile delinquency proceeding is pend-  
19 ing against a juvenile, directing that such person be examined for the  
20 purpose of determining if he OR SHE is an incapacitated person.

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

1 3. "Commissioner" means the state commissioner of THE OFFICE OF mental  
2 health or the state commissioner of [mental retardation and] develop-  
3 mental disabilities.

4 4. "Director" means (a) the director of a state hospital operated by  
5 the office of mental health or the director of a developmental center  
6 operated by the office [of mental retardation and] FOR PEOPLE WITH  
7 developmental disabilities, or (b) the director of a hospital operated  
8 by any local government of the state that has been certified by the  
9 commissioner as having adequate facilities to examine a defendant to  
10 determine if he OR SHE is an incapacitated person, or (c) the director  
11 of community [mental health] services UNDER ARTICLE FORTY-ONE OF THE  
12 MENTAL HYGIENE LAW.

13 5. "Qualified psychiatrist" means a physician LICENSED UNDER ARTICLE  
14 ONE HUNDRED THIRTY-ONE OF THE EDUCATION LAW who:

15 (a) is a diplomate of the American board of psychiatry and neurology  
16 or is eligible to be certified by that board; or,

17 (b) is certified by the American osteopathic board of neurology and  
18 psychiatry or is eligible to be certified by that board.

19 6. "[Certified psychologist] PSYCHOLOGIST" means a person who is  
20 [registered] LICENSED as a [certified] psychologist under article one  
21 hundred fifty-three of the education law.

22 7. "LICENSED CLINICAL SOCIAL WORKER" MEANS A PERSON WHO IS LICENSED AS  
23 A LICENSED CLINICAL SOCIAL WORKER UNDER ARTICLE ONE HUNDRED FIFTY-FOUR  
24 OF THE EDUCATION LAW.

25 8. "QUALIFIED NURSE PRACTITIONER" MEANS A PERSON WHO IS CERTIFIED AS A  
26 NURSE PRACTITIONER UNDER ARTICLE ONE HUNDRED THIRTY-NINE OF THE EDUCA-  
27 TION LAW WITHIN THE SPECIALTY AREA OF PSYCHIATRY.

28 9. "Psychiatric examiner" means a qualified psychiatrist [or a certi-  
29 fied] A psychologist, A LICENSED CLINICAL SOCIAL WORKER OR A QUALIFIED  
30 NURSE PRACTITIONER who has been designated by a director to examine a  
31 defendant pursuant to an order of examination.

32 [8.] 10. "Examination report" means a report made by a psychiatric  
33 examiner wherein he OR SHE sets forth [his] SUCH EXAMINER'S opinion as  
34 to whether the defendant is or is not an incapacitated person, the  
35 nature and extent of [his] THE examination and, if [he] THE EXAMINER  
36 finds that the defendant is an incapacitated person, [his] SUCH EXAMIN-  
37 ER'S diagnosis and prognosis and a detailed statement of the reasons for  
38 [his] SUCH opinion by making particular reference to those aspects of  
39 the proceedings wherein the defendant lacks capacity to understand or to  
40 assist in his OR HER own defense. The state administrator and the  
41 commissioner must jointly adopt the form of the examination report; and  
42 the state administrator shall prescribe the number of copies thereof  
43 that must be submitted to the court by the director.

44 S 2. Section 730.20 of the criminal procedure law, subdivisions 1 and  
45 5 as amended by chapter 693 of the laws of 1989 and subdivision 7 as  
46 amended by chapter 692 of the laws of 1972, is amended to read as  
47 follows:

48 S 730.20 Fitness to proceed; generally.

49 1. The appropriate director to whom a criminal court issues an order  
50 of examination must be determined in accordance with rules jointly  
51 adopted by the judicial conference and the commissioner. Upon receipt  
52 of an examination order, the director must designate two qualified  
53 psychiatric examiners, of whom he OR SHE may be one, to examine the  
54 defendant to determine if he OR SHE is an incapacitated person. In  
55 conducting their examination, the psychiatric examiners may employ any  
56 method which is accepted by the medical profession for the examination

1 of persons alleged to be mentally ill or [mentally defective] DEVELOP-  
2 MENTALLY DISABLED. The court may authorize a psychiatrist [or],  
3 psychologist, LICENSED CLINICAL SOCIAL WORKER OR QUALIFIED NURSE PRACTI-  
4 TIONER retained by the defendant to be present at such examination.

5 2. When the defendant is not in custody at the time a court issues an  
6 order of examination, because he OR SHE was theretofore released on bail  
7 or on his OR HER own recognizance, the court may direct that the exam-  
8 ination be conducted on an out-patient basis, and at such time and place  
9 as the director shall designate. If, however, the director informs the  
10 court that hospital confinement of the defendant is necessary for an  
11 effective examination, the court may direct that the defendant be  
12 confined in a hospital designated by the director until the examination  
13 is completed.

14 3. When the defendant is in custody at the time a court issues an  
15 order of examination, the examination must be conducted at the place  
16 where the defendant is being held in custody. If, however, the director  
17 determines that hospital confinement of the defendant is necessary for  
18 an effective examination, the sheriff must deliver the defendant to a  
19 hospital designated by the director and hold [him] THE DEFENDANT in  
20 custody therein, under sufficient guard, until the examination is  
21 completed.

22 4. Hospital confinement under subdivisions two and three shall be for  
23 a period not exceeding thirty days, except that, upon application of the  
24 director, the court may authorize confinement for an additional period  
25 not exceeding thirty days if it is satisfied that a longer period is  
26 necessary to complete the examination. During the period of hospital  
27 confinement, the physician in charge of the hospital may administer or  
28 cause to be administered to the defendant such emergency psychiatric,  
29 medical or other therapeutic treatment as in his OR HER judgment should  
30 be administered.

31 5. Each psychiatric examiner, after he OR SHE has completed his OR  
32 HER examination of the defendant, must promptly prepare an examination  
33 report and submit it to the director. If the psychiatric examiners are  
34 not unanimous in their opinion as to whether the defendant is or is not  
35 an incapacitated person, the director must designate another qualified  
36 psychiatric examiner to examine the defendant to determine if he OR SHE  
37 is an incapacitated person. Upon receipt of the examination reports,  
38 the director must submit them to the court that issued the order of  
39 examination. The court must furnish a copy of the reports to counsel  
40 for the defendant and to the district attorney.

41 6. When a defendant is subjected to examination pursuant to an order  
42 issued by a criminal court in accordance with this article, any state-  
43 ment made by [him] SUCH DEFENDANT for the purpose of the examination or  
44 treatment shall be inadmissible in evidence against [him] SUCH DEFENDANT  
45 in any criminal action on any issue other than that of his OR HER mental  
46 condition, but such statement is admissible upon that issue whether or  
47 not it would otherwise be deemed a privileged communication.

48 7. A psychiatric examiner is entitled to his OR HER reasonable trav-  
49 eling expenses, a fee of fifty dollars for each examination of a defend-  
50 ant and a fee of fifty dollars for each appearance at a court hearing or  
51 trial but not exceeding two hundred dollars in fees for examination and  
52 testimony in any one case; except that if such psychiatric examiner be  
53 an employee of the state of New York he OR SHE shall be entitled only to  
54 reasonable traveling expenses, unless such psychiatric examiner makes  
55 the examination or appears at a court hearing or trial outside his OR  
56 HER hours of state employment in a county in which the director of

1 community [mental health] services certifies to the fiscal officer ther-  
2 eof that there is a shortage of qualified [psychiatrists] PSYCHIATRIC  
3 EXAMINERS available to conduct examinations under the criminal procedure  
4 law in such county, in which event he OR SHE shall be entitled to the  
5 foregoing fees and reasonable traveling expenses. Such fees and travel-  
6 ing expenses and the costs of sending a defendant to another place of  
7 detention or to a hospital for examination, of his OR HER maintenance  
8 therein and of returning [him] SUCH DEFENDANT shall, when approved by  
9 the court, be a charge of the county in which the defendant is being  
10 tried.

11 S 3. Subdivision 1 of section 730.30 of the criminal procedure law is  
12 amended to read as follows:

13 1. At any time after a defendant is arraigned upon an accusatory  
14 instrument other than a felony complaint and before the imposition of  
15 sentence, or at any time after a defendant is arraigned upon a felony  
16 complaint and before he OR SHE is held for the action of the grand jury,  
17 the court wherein the criminal action is pending must issue an order of  
18 examination when it is of the opinion that the defendant may be an inca-  
19 pacitated person.

20 S 4. Subdivisions 2 and 5 of section 730.40 of the criminal procedure  
21 law are amended to read as follows:

22 2. When a local criminal court has issued a final order of observa-  
23 tion, it must dismiss the accusatory instrument filed in such court  
24 against the defendant and such dismissal constitutes a bar to any  
25 further prosecution of the charge or charges contained in such accusato-  
26 ry instrument. When the defendant is in the custody of the commissioner  
27 at the expiration of the period prescribed in a temporary order of  
28 observation, the proceedings in the local criminal court that issued  
29 such order shall terminate for all purposes and the commissioner must  
30 promptly certify to such court and to the appropriate district attorney  
31 that the defendant was in his OR HER custody on such expiration date.  
32 Upon receipt of such certification, the court must dismiss the felony  
33 complaint filed against the defendant.

34 5. When an indictment is timely filed against the defendant after the  
35 issuance of a temporary order of observation or after the expiration of  
36 the period prescribed in such order, the superior court in which such  
37 indictment is filed must direct the sheriff to take custody of the  
38 defendant at the institution in which he OR SHE is confined and bring  
39 him OR HER before the court for arraignment upon the indictment. After  
40 the defendant is arraigned upon the indictment, such temporary order of  
41 observation or any order issued pursuant to the mental hygiene law after  
42 the expiration of the period prescribed in the temporary order of obser-  
43 vation shall be deemed nullified. Notwithstanding any other provision of  
44 law, an indictment filed in a superior court against a defendant for a  
45 crime charged in the felony complaint is not timely for the purpose of  
46 this subdivision if it is filed more than six months after the expira-  
47 tion of the period prescribed in a temporary order of observation issued  
48 by a local criminal court wherein such felony complaint was pending. An  
49 untimely indictment must be dismissed by the superior court unless such  
50 court is satisfied that there was good cause for the delay in filing  
51 such indictment.

52 S 5. Section 730.50 of the criminal procedure law, subdivision 1 as  
53 amended by chapter 231 of the laws of 2008, subdivision 2 as amended by  
54 chapter 789 of the laws of 1985 and subdivision 5 as amended by chapter  
55 629 of the laws of 1974, is amended to read as follows:

56 S 730.50 Fitness to proceed; indictment.

1 1. When a superior court, following a hearing conducted pursuant to  
2 subdivision three or four of section 730.30, is satisfied that the  
3 defendant is not an incapacitated person, the criminal action against  
4 him OR HER must proceed. If it is satisfied that the defendant is an  
5 incapacitated person, or if no motion for such a hearing is made, it  
6 must adjudicate him OR HER an incapacitated person, and must issue a  
7 final order of observation or an order of commitment. When the indict-  
8 ment does not charge a felony or when the defendant has been convicted  
9 of an offense other than a felony, such court (a) must issue a final  
10 order of observation committing the defendant to the custody of the  
11 commissioner for care and treatment in an appropriate institution for a  
12 period not to exceed ninety days from the date of such order, provided,  
13 however, that the commissioner may designate an appropriate hospital for  
14 placement of a defendant for whom a final order of observation has been  
15 issued, where such hospital is licensed by the office of mental health  
16 and has agreed to accept, upon referral by the commissioner, defendants  
17 subject to final orders of observation issued under this subdivision,  
18 and (b) must dismiss the indictment filed in such court against the  
19 defendant, and such dismissal constitutes a bar to any further prose-  
20 cution of the charge or charges contained in such indictment. When the  
21 indictment charges a felony or when the defendant has been convicted of  
22 a felony, it must issue an order of commitment committing the defendant  
23 to the custody of the commissioner for care and treatment in an appro-  
24 priate institution for a period not to exceed one year from the date of  
25 such order. Upon the issuance of an order of commitment, the court must  
26 exonerate the defendant's bail if he OR SHE was previously at liberty on  
27 bail.

28 2. When a defendant is in the custody of the commissioner immediately  
29 prior to the expiration of the period prescribed in a temporary order of  
30 commitment and the superintendent of the institution wherein the defend-  
31 ant is confined is of the opinion that the defendant continues to be an  
32 incapacitated person, such superintendent must apply to the court that  
33 issued such order for an order of retention. Such application must be  
34 made within sixty days prior to the expiration of such period on forms  
35 that have been jointly adopted by the judicial conference and the  
36 commissioner. The superintendent must give written notice of the appli-  
37 cation to the defendant and to the mental hygiene legal service. Upon  
38 receipt of such application, the court may, on its own motion, conduct a  
39 hearing to determine the issue of capacity, and it must conduct such  
40 hearing if a demand therefor is made by the defendant or the mental  
41 hygiene legal service within ten days from the date that notice of the  
42 application was given them. If, at the conclusion of a hearing conducted  
43 pursuant to this subdivision, the court is satisfied that the defendant  
44 is no longer an incapacitated person, the criminal action against him  
45 must proceed. If it is satisfied that the defendant continues to be an  
46 incapacitated person, or if no demand for a hearing is made, the court  
47 must adjudicate him OR HER AS an incapacitated person and must issue an  
48 order of retention which shall authorize continued custody of the  
49 defendant by the commissioner for a period not to exceed one year.

50 3. When a defendant is in the custody of the commissioner immediately  
51 prior to the expiration of the period prescribed in the first order of  
52 retention, the procedure set forth in subdivision two shall govern the  
53 application for and the issuance of any subsequent order of retention,  
54 except that any subsequent orders of retention must be for periods not  
55 to exceed two years each; provided, however, that the aggregate of the  
56 periods prescribed in the temporary order of commitment, the first order

1 of retention and all subsequent orders of retention must not exceed  
2 two-thirds of the authorized maximum term of imprisonment for the high-  
3 est class felony charged in the indictment or for the highest class  
4 felony of which he OR SHE was convicted.

5 4. When a defendant is in the custody of the commissioner at the expi-  
6 ration of the authorized period prescribed in the last order of  
7 retention, the criminal action pending against him OR HER in the superi-  
8 or court that issued such order shall terminate for all purposes, and  
9 the commissioner must promptly certify to such court and to the appro-  
10 priate district attorney that the defendant was in his OR HER custody on  
11 such expiration date. Upon receipt of such certification, the court must  
12 dismiss the indictment, and such dismissal constitutes a bar to any  
13 further prosecution of the charge or charges contained in such indict-  
14 ment.

15 5. When, on the effective date of this subdivision, any defendant  
16 remains in the custody of the commissioner pursuant to an order issued  
17 under former code of criminal procedure section six hundred sixty-two-b,  
18 the superintendent or director of the institution where such defendant  
19 is confined shall, if he OR SHE believes that the defendant continues to  
20 be an incapacitated person, apply forthwith to a court of record in the  
21 county where the institution is located for an order of retention. The  
22 procedures for obtaining any order pursuant to this subdivision shall be  
23 in accordance with the provisions of subdivisions two, three and four of  
24 this section, except that the period of retention pursuant to the first  
25 order obtained under this subdivision shall be for not more than one  
26 year and any subsequent orders of retention must be for periods not to  
27 exceed two years each; provided, however, that the aggregate of the time  
28 spent in the custody of the commissioner pursuant to any order issued in  
29 accordance with the provisions of former code of criminal procedure  
30 section six hundred sixty-two-b and the periods prescribed by the first  
31 order obtained under this subdivision and all subsequent orders of  
32 retention must not exceed two-thirds of the authorized maximum term of  
33 imprisonment for the highest class felony charged in the indictment or  
34 the highest class felony of which he OR SHE was convicted.

35 S 6. Section 730.60 of the criminal procedure law, subdivisions 1 and  
36 3 as amended by chapter 231 of the laws of 2008, subdivision 2 as  
37 amended by chapter 57 of the laws of 1984, subdivisions 4 and 5 as  
38 renumbered by chapter 629 of the laws of 1974, subdivision 6 as added by  
39 chapter 549 of the laws of 1980 and the opening paragraph of paragraph  
40 (a) of subdivision 6 as amended by chapter 440 of the laws of 1987, is  
41 amended to read as follows:

42 S 730.60 Fitness to proceed; procedure following custody by commission-  
43 er.

44 1. When a local criminal court issues a final or temporary order of  
45 observation or an order of commitment, it must forward such order and a  
46 copy of the examination reports and the accusatory instrument to the  
47 commissioner, and, if available, a copy of the pre-sentence report. Upon  
48 receipt thereof, the commissioner must designate an appropriate institu-  
49 tion operated by the department of mental hygiene in which the defendant  
50 is to be placed, provided, however, that the commissioner may designate  
51 an appropriate hospital for placement of a defendant for whom a final  
52 order of observation has been issued, where such hospital is licensed by  
53 the office of mental health and has agreed to accept, upon referral by  
54 the commissioner, defendants subject to final orders of observation  
55 issued under this subdivision. The sheriff must hold the defendant in  
56 custody pending such designation by the commissioner, and when notified

1 of the designation, the sheriff must deliver the defendant to the super-  
2 intendent of such institution. The superintendent must promptly inform  
3 the appropriate director of the mental hygiene legal service of the  
4 defendant's admission to such institution. If a defendant escapes from  
5 the custody of the commissioner, the escape shall interrupt the period  
6 prescribed in any order of observation, commitment or retention, and  
7 such interruption shall continue until the defendant is returned to the  
8 custody of the commissioner.

9 2. Except as otherwise provided in subdivisions four and five, when a  
10 defendant is in the custody of the commissioner pursuant to a temporary  
11 order of observation or an order of commitment or an order of retention,  
12 the criminal action pending against the defendant in the court that  
13 issued such order is suspended until the superintendent of the institu-  
14 tion in which the defendant is confined determines that he OR SHE is no  
15 longer an incapacitated person. In that event, the court that issued  
16 such order and the appropriate district attorney must be notified, in  
17 writing, by the superintendent of his OR HER determination. The court  
18 must thereupon proceed in accordance with the provisions of subdivision  
19 two of section 730.30 of this chapter; provided, however, if the court  
20 is satisfied that the defendant remains an incapacitated person, and  
21 upon consent of all parties, the court may order the return of the  
22 defendant to the institution in which he OR SHE had been confined for  
23 such period of time as was authorized by the prior order of commitment  
24 or order of retention. Upon such return, the defendant shall have all  
25 rights and privileges accorded by the provisions of this article.

26 3. When a defendant is in the custody of the commissioner pursuant to  
27 an order issued in accordance with this article, the commissioner may  
28 transfer him OR HER to any appropriate institution operated by the  
29 department of mental hygiene, provided, however, that the commissioner  
30 may designate an appropriate hospital for placement of a defendant for  
31 whom a final order of observation has been issued, where such hospital  
32 is licensed by the office of mental health and has agreed to accept,  
33 upon referral by the commissioner, defendants subject to final orders of  
34 observation issued under this section. The commissioner may discharge a  
35 defendant in his OR HER custody under a final order of observation at  
36 any time prior to the expiration date of such order, or otherwise treat  
37 or transfer such defendant in the same manner as if he OR SHE were a  
38 patient not in confinement under a criminal court order.

39 4. When a defendant is in the custody of the commissioner pursuant to  
40 an order of commitment or an order of retention, he OR SHE may make any  
41 motion authorized by this chapter which is susceptible of fair determi-  
42 nation without his OR HER personal participation. If the court denies  
43 any such motion it must be without prejudice to a renewal thereof after  
44 the criminal action against the defendant has been ordered to proceed.  
45 If the court enters an order dismissing the indictment and does not  
46 direct that the charge or charges be resubmitted to a grand jury, the  
47 court must direct that such order of dismissal be served upon the  
48 commissioner.

49 5. When a defendant is in the custody of the commissioner pursuant to  
50 an order of commitment or an order of retention, the superior court that  
51 issued such order may, upon motion of the defendant, and with the  
52 consent of the district attorney, dismiss the indictment when the court  
53 is satisfied that (a) the defendant is a resident or citizen of another  
54 state or country and that he OR SHE will be removed thereto upon  
55 dismissal of the indictment, or (b) the defendant has been continuously  
56 confined in the custody of the commissioner for a period of more than

1 two years. Before granting a motion under this subdivision, the court  
2 must be further satisfied that dismissal of the indictment is consistent  
3 with the ends of justice and that custody of the defendant by the  
4 commissioner pursuant to an order of commitment or an order of retention  
5 is not necessary for the protection of the public and that care and  
6 treatment can be effectively administered to the defendant without the  
7 necessity of such order. If the court enters an order of dismissal under  
8 this subdivision, it must set forth in the record the reasons for such  
9 action, and must direct that such order of dismissal be served upon the  
10 commissioner. The dismissal of an indictment pursuant to this subdivi-  
11 sion constitutes a bar to any further prosecution of the charge or  
12 charges contained in such indictment.

13 6. (a) Notwithstanding any other provision of law, no person committed  
14 to the custody of the commissioner pursuant to this article, or contin-  
15 uously thereafter retained in such custody, shall be discharged,  
16 released on condition or placed in any less secure facility or on any  
17 less restrictive status, including, but not limited to vacations,  
18 furloughs and temporary passes, unless the commissioner shall deliver  
19 written notice, at least four days, excluding Saturdays, Sundays and  
20 holidays, in advance of the change of such committed person's facility  
21 or status, to all of the following:

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

24 (2) The superintendent of state police;

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

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

28 (5) Any person who may reasonably be expected to be the victim of any  
29 assault or any violent felony offense, as defined in the penal law,  
30 which would be carried out by the committed person; and

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

32 Said notice may be given by any means reasonably calculated to give  
33 prompt actual notice.

34 (b) The notice required by this subdivision shall also be given imme-  
35 diately upon the departure of such committed person from the commis-  
36 sioner's actual custody, without proper authorization. Nothing in this  
37 subdivision shall be construed to impair any other right or duty regard-  
38 ing any notice or hearing contained in any other provision of law.

39 (c) Whenever a district attorney has received the notice described in  
40 this subdivision, and the defendant is in the custody of the commis-  
41 sioner pursuant to a final order of observation or an order of commitment,  
42 he OR SHE may apply within three days of receipt of such notice to a  
43 superior court, for an order directing a hearing to be held to determine  
44 whether such committed person is a danger to himself, HERSELF or others.  
45 Such hearing shall be held within ten days following the issuance of  
46 such order. Such order may provide that there shall be no further change  
47 in the committed person's facility or status until the hearing. Upon a  
48 finding that the committed person is a danger to himself, HERSELF or  
49 others, the court shall issue an order to the commissioner authorizing  
50 retention of the committed person in the status existing at the time  
51 notice was given hereunder, for a specified period, not to exceed six  
52 months. The district attorney and the committed person's attorney shall  
53 be entitled to the committed person's clinical records in the commis-  
54 sioner's custody, upon the issuance of an order directing a hearing to  
55 be held.

1 (d) Nothing in this subdivision shall be construed to impair any other  
2 right or duty regarding any notice or hearing contained in any other  
3 provision of law.

4 S 7. Section 730.70 of the criminal procedure law, as amended by chap-  
5 ter 629 of the laws of 1974, is amended to read as follows:

6 S 730.70 Fitness to proceed; procedure following termination of custody  
7 by commissioner.

8 When a defendant is in the custody of the commissioner on the expira-  
9 tion date of a final or temporary order of observation or an order of  
10 commitment, or on the expiration date of the last order of retention, or  
11 on the date an order dismissing an indictment is served upon the commis-  
12 sioner, the superintendent of the institution in which the defendant is  
13 confined may retain him OR HER for care and treatment for a period of  
14 thirty days from such date.

15 If the superintendent determines that the defendant is so mentally ill  
16 or mentally defective as to require continued care and treatment in an  
17 institution, he OR SHE may, before the expiration of such thirty day  
18 period, apply for an order of certification in the manner prescribed in  
19 section 31.33 of the mental hygiene law.

20 S 8. This act shall take effect immediately.