

STATE OF NEW YORK

8567

2025-2026 Regular Sessions

IN SENATE

November 7, 2025

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

AN ACT to amend the criminal procedure law, the mental hygiene law and the penal law, in relation to persons who enter a plea or are found responsible but for mental disease or defect

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 6 of section 220.10 of the criminal procedure
2 law, as added by chapter 548 of the laws of 1980, is amended to read as
3 follows:

4 6. The defendant may, with both the permission of the court and the
5 consent of the people, enter a plea of [~~not~~] responsible [~~by reason of~~]
6 but for mental disease or defect to the indictment in the manner
7 prescribed in section 220.15 of this [~~chapter~~] article.

8 § 2. Section 220.15 of the criminal procedure law, as added by chapter
9 548 of the laws of 1980, subdivisions 1, 2 and 5 as amended by chapter
10 668 of the laws of 1984, is amended to read as follows:

11 § 220.15 Plea; plea of [~~not~~] responsible [~~by reason of~~] but for mental
12 disease or defect.

13 1. The defendant may, with both the permission of the court and the
14 consent of the people, enter a plea of [~~not~~] responsible [~~by reason of~~]
15 but for mental disease or defect to the entire indictment. The district
16 attorney must state to the court either orally on the record or in a
17 writing filed with the court that the people consent to the entry of
18 such plea and that the people are satisfied that the affirmative defense
19 of lack of criminal responsibility by reason of mental disease or defect
20 would be proven by the defendant at a trial by a preponderance of the
21 evidence. The district attorney must further state to the court in
22 detail the evidence available to the people with respect to the offense
23 or offenses charged in the indictment, including all psychiatric
24 evidence available or known to the people. If necessary, the court may

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

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1 conduct a hearing before accepting such plea. The district attorney
2 must further state to the court the reasons for recommending such plea.
3 The reasons shall be stated in detail and not in conclusory terms.

4 2. Counsel for the defendant must state that in ~~[his]~~ such counsel's
5 opinion defendant has the capacity to understand the proceedings and to
6 assist in ~~[his]~~ such defendant's own defense and that the defendant
7 understands the consequences of a plea of not responsible ~~[by reason of]~~
8 but for mental disease or defect. Counsel for the defendant must
9 further state whether in ~~[his]~~ such counsel's opinion defendant has any
10 viable defense to the offense or offenses charged in the indictment
11 other than the affirmative defense of lack of criminal responsibility by
12 reason of mental disease or defect. Counsel for the defendant must
13 further state in detail the psychiatric evidence available to the
14 defendant with respect to such latter affirmative defense.

15 3. Before accepting a plea of ~~[not]~~ responsible ~~[by reason of]~~ but
16 for mental disease or defect, the court must address the defendant in
17 open court and determine that ~~[he]~~ such defendant understands each of
18 the following:

19 (a) The nature of the charge to which the plea is offered, and the
20 consequences of such plea;

21 (b) That ~~[he]~~ such defendant has the right to plead not guilty or to
22 persist in that plea if it has already been entered;

23 (c) That ~~[he]~~ such defendant has the right to be tried by a jury, the
24 right to the assistance of counsel, the right to confront and cross-exa-
25 mine witnesses against ~~[him]~~ such defendant, and the right not to be
26 compelled to incriminate ~~[himself]~~ themselves;

27 (d) That if ~~[he]~~ such defendant pleads ~~[not]~~ responsible ~~[by reason~~
28 ~~of]~~ but for mental disease or defect there will be no trial with respect
29 to the charges contained in the indictment, so that by offering such
30 plea ~~[he]~~ such defendant waives the right to such trial;

31 (e) That if ~~[he]~~ such defendant pleads ~~[not]~~ responsible ~~[by reason~~
32 ~~of]~~ but for mental disease or defect the court will ask ~~[him]~~ such
33 defendant questions about the offense or offenses charged in the indict-
34 ment and that ~~[he]~~ such defendant will thereby waive ~~[his]~~ such defend-
35 ant's right not to be compelled to incriminate ~~[himself]~~ themselves; and

36 (f) That the acceptance of a plea of ~~[not]~~ responsible ~~[by reason of]~~
37 but for mental disease or defect is the equivalent of a verdict of ~~[not]~~
38 responsible ~~[by reason of]~~ but for mental disease or defect after trial.

39 4. The court shall not accept a plea of ~~[not]~~ responsible ~~[by reason~~
40 ~~of]~~ but for mental disease or defect without first determining that
41 there is a factual basis for such plea. The court must address the
42 defendant personally in open court and determine that the plea is volun-
43 tary, knowingly made, and not the result of force, threats, or promises.
44 The court must inquire whether the defendant's willingness to plead
45 results from prior discussions between the district attorney and counsel
46 for the defendant. The court must be satisfied that the defendant
47 understands the proceedings against ~~[him]~~ such defendant, has sufficient
48 capacity to assist in ~~[his]~~ such defendant's own defense and understands
49 the consequences of a plea of ~~[not]~~ responsible ~~[by reason of]~~ but for
50 mental disease or defect. The court may make such inquiry as it deems
51 necessary or appropriate for the purpose of making the determinations
52 required by this section.

53 5. Before accepting a plea of ~~[not]~~ responsible ~~[by reason of]~~ but
54 for mental disease or defect, the court must find and state each of the
55 following on the record in detail and not in conclusory terms:

(a) That it is satisfied that each element of the offense or offenses charged in the indictment would be established beyond a reasonable doubt at a trial;

(b) That the affirmative defense of lack of criminal responsibility by reason of mental disease or defect would be proven by the defendant at a trial by a preponderance of the evidence;

(c) That the defendant has the capacity to understand the proceedings against ~~him~~ such defendant and to assist in ~~his~~ such defendant's own defense;

(d) That such plea by the defendant is knowingly and voluntarily made and that there is a factual basis for the plea;

(e) That the acceptance of such plea is required in the interest of the public in the effective administration of justice.

6. When a plea of ~~not~~ responsible ~~by reason of~~ but for mental disease or defect is accepted by the court and recorded upon the minutes, the provisions of section 330.20 of this ~~chapter~~ title shall govern all subsequent proceedings against the defendant.

§ 3. Subdivisions 2 and 3 of section 220.60 of the criminal procedure law, subdivision 2 as amended by chapter 1 of the laws of 1995 and subdivision 3 as amended by chapter 548 of the laws of 1980, are amended to read as follows:

2. A defendant who has entered a plea of not guilty to an indictment may, with both the permission of the court and the consent of the people, withdraw such plea at any time before the rendition of a verdict and enter: (a) a plea of guilty to part of the indictment pursuant to subdivision three or four but subject to the limitation in subdivision five of section 220.10 of this article, or (b) a plea of ~~not~~ responsible ~~by reason of~~ but for mental disease or defect to the indictment pursuant to section 220.15 of this ~~chapter~~ article.

3. At any time before the imposition of sentence, the court in its discretion may permit a defendant who has entered a plea of guilty to the entire indictment or to part of the indictment, or a plea of ~~not~~ responsible ~~by reason of~~ but for mental disease or defect, to withdraw such plea, and in such event the entire indictment, as it existed at the time of such plea, is restored.

§ 4. Subdivision 3 and paragraph (d) of subdivision 4 of section 300.10 of the criminal procedure law, subdivision 3 as amended by chapter 668 of the laws of 1984 and paragraph (d) of subdivision 4 as amended by chapter 548 of the laws of 1980, are amended to read as follows:

3. Where a defendant has raised the affirmative defense of lack of criminal responsibility by reason of mental disease or defect, as defined in section 40.15 of the penal law, the court must, without elaboration, instruct the jury as follows: "A jury during its deliberations must never consider or speculate concerning matters relating to the consequences of its verdict. However, because of the lack of common knowledge regarding the consequences of a verdict of ~~not~~ responsible ~~by reason of~~ but for mental disease or defect, I charge you that if this verdict is rendered by you there will be hearings as to the defendant's present mental condition and, where appropriate, involuntary commitment proceedings."

(d) Where appropriate, ~~["not responsible by reason of"]~~ "responsible but for mental disease or defect."

§ 5. Subdivision 2 of section 330.10 of the criminal procedure law, as amended by chapter 548 of the laws of 1980, is amended to read as follows:

2. Upon a verdict of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect, the provisions of section 330.20 of this ~~[chapter]~~ article shall govern all subsequent proceedings against the defendant.

§ 6. Section 330.20 of the criminal procedure law, as added by chapter 548 of the laws of 1980, paragraphs (a) and (b) of subdivision 1 as amended by chapter 672 of the laws of 2019, paragraph (d) of subdivision 1 and the opening paragraph of subdivision 2 as amended by chapter 479 of the laws of 2022, paragraph (o) of subdivision 1, the closing paragraph of subdivision 2 and subdivisions 7-a and 22 as amended by chapter 107 of the laws of 2004, subdivisions 2 and 20 as amended by chapter 693 of the laws of 1989, subdivision 2-a as added by chapter 1 of the laws of 2013, subdivisions 5, 8, 9, 10, 11, 12, 13 and 14 as amended by chapter 789 of the laws of 1985, subdivision 21 as added by chapter 976 of the laws of 1983 and subparagraph (ii) of paragraph (a) of subdivision 21 as amended by chapter 330 of the laws of 1993, is amended to read as follows:

§ 330.20 Procedure following verdict or plea of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect.

1. Definition of terms. As used in this section, the following terms shall have the following meanings:

(a) "Commissioner" means the state commissioner of mental health or the state commissioner of the office for people with developmental disabilities.

(b) "Secure facility" means a facility within the state office of mental health or the state office for people with developmental disabilities which is staffed with personnel adequately trained in security methods and is so equipped as to minimize the risk or danger of escapes, and which has been so specifically designated by the commissioner.

(c) "Dangerous mental disorder" means: (i) that a defendant currently suffers from a "mental illness" as that term is defined in subdivision twenty of section 1.03 of the mental hygiene law, and (ii) that because of such condition ~~[he]~~ such defendant currently constitutes a physical danger to ~~[himself]~~ themselves or others.

(d) "Mentally ill" means that a defendant currently suffers from a mental illness for which care and treatment as a patient, in the in-patient services of a psychiatric center under the jurisdiction of the state office of mental health, is essential to such defendant's welfare and that ~~[his or her]~~ their judgment is so impaired that ~~[he]~~ such defendant is unable to understand the need for such care and treatment; and, where a defendant has a developmental disability, the term "mentally ill" shall also mean, for purposes of this section, that the defendant is in need of care and treatment as a resident in the in-patient services of a developmental center or other residential facility for individuals with developmental disabilities under the jurisdiction of the state office for people with developmental disabilities.

(e) "Examination order" means an order directed to the commissioner requiring that a defendant submit to a psychiatric examination to determine whether the defendant has a dangerous mental disorder, or if ~~[he]~~ such defendant does not have a dangerous mental disorder, whether ~~[he]~~ such defendant is mentally ill.

(f) "Commitment order" or "recommitment order" means an order committing a defendant to the custody of the commissioner for confinement in a secure facility for care and treatment ~~[for six months from the date of the order]~~.

(g) "First retention order" means an order which is effective ~~[at the expiration of the period prescribed in a commitment order for a recom-~~

~~mitment order, authorizing continued custody of a defendant by the commissioner for a period not to exceed one year]~~ after the defendant has served the minimum period of imprisonment imposed at the time of sentencing.

(h) "Second retention order" means an order which is effective at the expiration of the period prescribed in a first retention order, authorizing continued custody of a defendant by the commissioner for a period not to exceed two years.

(i) "Subsequent retention order" means an order which is effective at the expiration of the period prescribed in a second retention order or a prior subsequent retention order authorizing continued custody of a defendant by the commissioner for a period not to exceed two years.

(j) "Retention order" means a first retention order, a second retention order or a subsequent retention order.

(k) "Furlough order" means an order directing the commissioner to allow a defendant in confinement pursuant to a commitment order, commitment order or retention order to temporarily leave the facility for a period not exceeding fourteen days, either with or without the constant supervision of one or more employees of the facility.

(l) "Transfer order" means an order directing the commissioner to transfer a defendant from a secure facility to a non-secure facility under the jurisdiction of the commissioner or to any non-secure facility designated by the commissioner.

(m) "Release order" means an order directing the commissioner to terminate a defendant's in-patient status without terminating the commissioner's responsibility for the defendant.

(n) "Discharge order" means an order terminating an order of conditions or unconditionally discharging a defendant from supervision under the provisions of this section.

(o) "Order of conditions" means an order directing a defendant to comply with this prescribed treatment plan, or any other condition which the court determines to be reasonably necessary or appropriate, and, in addition, where a defendant is in custody of the commissioner, not to leave the facility without authorization. In addition to such conditions, when determined to be reasonably necessary or appropriate, an order of conditions may be accompanied by a special order of conditions set forth in a separate document requiring that the defendant: (i) stay away from the home, school, business or place of employment of the victim or victims, or of any witness designated by the court, of such offense; or (ii) refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the offense and such members of the family or household of such victim or victims as shall be specifically named by the court in such special order. An order of conditions or special order of conditions shall be valid for five years from the date of its issuance, except that, for good cause shown, the court may extend the period for an additional five years.

(p) "District attorney" means the office which prosecuted the criminal action resulting in the verdict or plea of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect.

(q) "Qualified psychiatrist" means a physician who (i) is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or (ii) is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

(r) "Licensed psychologist" means a person who is registered as a psychologist under article one hundred fifty-three of the education law.

(s) "Psychiatric examiner" means a qualified psychiatrist or a licensed psychologist who has been designated by the commissioner to examine a defendant pursuant to this section, and such designee need not be an employee of the department of mental hygiene.

2. Examination order; psychiatric examiners. Upon entry of a verdict of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect, or upon the acceptance of a plea of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect, the court must immediately issue an examination order. Upon receipt of such order, the commissioner must designate two qualified psychiatric examiners to conduct the examination to examine the defendant. In conducting their examination, the psychiatric examiners may employ any method which is accepted by the medical profession for the examination of persons alleged to be suffering from a dangerous mental disorder or to be mentally ill or having a developmental disability. The court may authorize a psychiatrist or psychologist retained by a defendant to be present at such examination. The clerk of the court must promptly forward a copy of the examination order to the mental hygiene legal service and such service may thereafter participate in all subsequent proceedings under this section.

In all subsequent proceedings under this section, prior to the issuance of a special order of conditions, the court shall consider whether any order of protection had been issued prior to a verdict of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect in the case, or prior to the acceptance of a plea of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect in the case.

2-a. Firearm, rifle or shotgun surrender order. Upon entry of a verdict of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect, or upon the acceptance of a plea of ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect, or upon a finding that the defendant is an incapacitated person pursuant to article seven hundred thirty of this chapter, the court shall revoke the defendant's firearm license, if any, inquire of the defendant as to the existence and location of any firearm, rifle or shotgun owned or possessed by such defendant and direct the surrender of such firearm, rifle or shotgun pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law.

3. Examination order; place of examination. Upon issuing an examination order, the court must, except as otherwise provided in this subdivision, direct that the defendant be committed to a secure facility designated by the commissioner as the place for such psychiatric examination. The sheriff must hold the defendant in custody pending such designation by the commissioner, and when notified of the designation, the sheriff must promptly deliver the defendant to such secure facility. ~~[When the defendant is not in custody at the time of such verdict or plea, because he was previously released on bail or on his own recognizance, the court, in its discretion, may direct that such examination be conducted on an out-patient basis, and at such time and place as the commissioner shall designate. If, however, the commissioner informs the court that confinement of the defendant is necessary for an effective examination, the court must direct that the defendant be confined in a facility designated by the commissioner until the examination is completed.]~~

4. Examination order, duration. Confinement in a secure facility pursuant to an examination order shall be for a period not exceeding thirty days, except that, upon application of the commissioner, the court may authorize confinement for an additional period not exceeding

1 thirty days when a longer period is necessary to complete the examina-
2 tion. If the initial hearing required by subdivision six of this section
3 has not commenced prior to the termination of such examination period,
4 the commissioner shall retain custody of the defendant in such secure
5 facility until custody is transferred to the sheriff in the manner
6 prescribed in subdivision six of this section. During the period of such
7 confinement, the physician in charge of the facility may administer or
8 cause to be administered to the defendant such emergency psychiatric,
9 medical or other therapeutic treatment as in ~~[his]~~ such physician's
10 judgment should be administered. ~~[If the court has directed that the~~
11 ~~examination be conducted on an out patient basis, the examination shall~~
12 ~~be completed within thirty days after the defendant has first reported~~
13 ~~to the place designated by the commissioner, except that, upon applica-~~
14 ~~tion of the commissioner, the court may extend such period for a reason-~~
15 ~~able time if a longer period is necessary to complete the examination.]~~

16 5. Examination order; reports. After ~~[he]~~ a psychiatric examiner has
17 completed ~~[his]~~ their examination of the defendant, each psychiatric
18 examiner must promptly prepare a report of ~~[his]~~ their findings and
19 evaluation concerning the defendant's mental condition, and submit such
20 report to the commissioner. If the psychiatric examiners differ in their
21 opinion as to whether the defendant is mentally ill or is suffering from
22 a dangerous mental disorder, the commissioner must designate another
23 psychiatric examiner to examine the defendant. Upon receipt of the exam-
24 ination reports, the commissioner must submit them to the court that
25 issued the examination order. If the court is not satisfied with the
26 findings of these psychiatric examiners, the court may designate one or
27 more additional psychiatric examiners pursuant to subdivision ~~[fifteen]~~
28 fourteen of this section. The court must furnish a copy of the reports
29 to the district attorney, counsel for the defendant and the mental
30 hygiene legal service.

31 6. Initial hearing; commitment order. After the examination reports
32 are submitted, the court must, within ten days of the receipt of such
33 reports, conduct an initial hearing to determine the defendant's present
34 mental condition and the period of commitment to be imposed. If the
35 defendant is in the custody of the commissioner pursuant to an examina-
36 tion order, the court must direct the sheriff to obtain custody of the
37 defendant from the commissioner and to confine the defendant pending
38 further order of the court, except that the court may direct the sheriff
39 to confine the defendant in an institution located near the place where
40 the court sits if that institution has been designated by the commis-
41 sioner as suitable for the temporary and secure detention of mentally
42 disabled persons. ~~[At such initial hearing, the district attorney must~~
43 ~~establish to the satisfaction of the court that the defendant has a~~
44 ~~dangerous mental disorder or is mentally ill. If the court finds that~~
45 ~~the defendant has a dangerous mental disorder, it must issue a commit-~~
46 ~~ment order. If the court finds that the defendant does not have a~~
47 ~~dangerous mental disorder but is mentally ill, the provisions of subdi-~~
48 ~~vision seven of this section shall apply.]~~ After reviewing the examina-
49 tion reports submitted pursuant to subdivision five of this section and
50 giving the district attorney and counsel for the defendant, as well as
51 any victim in the underlying criminal proceeding, the opportunity to be
52 heard regarding the length of commitment, the court must impose a mini-
53 imum period of commitment and a maximum period of commitment pursuant to
54 section 60.38 of the penal law.

55 7. ~~[Initial hearing civil commitment and order of conditions. If, at~~
56 ~~the conclusion of the initial hearing conducted pursuant to subdivision~~

~~six of this section, the court finds that the defendant is mentally ill but does not have a dangerous mental disorder, the provisions of articles nine or fifteen of the mental hygiene law shall apply at that stage of the proceedings and at all subsequent proceedings. Having found that the defendant is mentally ill, the court must issue an order of conditions and an order committing the defendant to the custody of the commissioner. The latter order shall be deemed an order made pursuant to the mental hygiene law and not pursuant to this section, and further retention, conditional release or discharge of such defendant shall be in accordance with the provisions of the mental hygiene law. If, at the conclusion of the initial hearing, the court finds that the defendant does not have a dangerous mental disorder and is not mentally ill, the court must discharge the defendant either unconditionally or subject to an order of conditions.~~

~~7-a.]~~ Whenever the court issues a special order of conditions pursuant to this section, the commissioner shall make reasonable efforts to notify the victim or victims or the designated witness or witnesses that a special order of conditions containing such provisions has been issued, unless such victim or witness has requested that such notice should not be provided.

8. First retention order. When a defendant is in the custody of the commissioner pursuant to a commitment order, the commissioner must, at least thirty days prior to the expiration of the minimum period prescribed in the order, apply to the court that issued the order, or to a superior court in the county where the secure facility is located, for a first retention order or a release order. The commissioner must give written notice of the application to the district attorney, the defendant, counsel for the defendant, and the mental hygiene legal service. Upon receipt of such application, the court ~~[may, on its own motion,~~ shall conduct a hearing to determine whether the defendant has a dangerous mental disorder~~[, and it must conduct such hearing if a demand therefor is made by the district attorney, the defendant, counsel for the defendant, or the mental hygiene legal service within ten days from the date that notice of the application was given to them]~~ and whether the defendant's release would pose a risk to the safety of another person or the community. If such a hearing is held on an application for retention, the commissioner must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill and that the defendant's release would pose a risk to the safety of another person or the community. The district attorney shall be entitled to appear and present evidence at such hearing. If such a hearing is held on an application for release, the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill. If the court finds that the defendant has a dangerous mental disorder or is mentally ill and poses a risk to the safety of another person or the community, it must issue a first retention order. If the court finds that the defendant is mentally ill but does not have a dangerous mental disorder and does not pose a risk to the safety of another person or the community, it must issue a first retention order and, pursuant to subdivision eleven of this section, a transfer order and an order of conditions. If the court finds that the defendant does not have a dangerous mental disorder and is not mentally ill, it must issue a release order and an order of conditions pursuant to subdivision twelve of this section.

9. Second and subsequent retention orders. When a defendant is in the custody of the commissioner pursuant to a first retention order, the

1 commissioner must, at least thirty days prior to the expiration of the
2 period prescribed in the order, apply to the court that issued the
3 order, or to a superior court in the county where the facility is
4 located, for a second retention order or a release order. The commis-
5 sioner must give written notice of the application to the district
6 attorney, the defendant, counsel for the defendant, and the mental
7 hygiene legal service. Upon receipt of such application, the court [~~may,~~
8 ~~on its own motion,~~] must conduct a hearing to determine whether the
9 defendant has a dangerous mental disorder~~[, and it must conduct such~~
10 ~~hearing if a demand therefor is made by the district attorney, the~~
11 ~~defendant, counsel for the defendant, or the mental hygiene legal~~
12 ~~service within ten days from the date that notice of the application was~~
13 ~~given to them]~~ and whether the defendant's release would pose a risk to
14 the safety of another person or the community. If such a hearing is held
15 on an application for retention, the commissioner must establish to the
16 satisfaction of the court that the defendant has a dangerous mental
17 disorder or is mentally ill and that the defendant's release would pose
18 a risk to the safety of another person or the community. The district
19 attorney shall be entitled to appear and present evidence at such hear-
20 ing. If such a hearing is held on an application for release, the
21 district attorney must establish to the satisfaction of the court that
22 the defendant has a dangerous mental disorder or is mentally ill. If the
23 court finds that the defendant has a dangerous mental disorder or is
24 mentally ill and poses a risk to the safety of another person or the
25 community, it must issue a second retention order. If the court finds
26 that the defendant is mentally ill but does not have a dangerous mental
27 disorder, it must issue a second retention order and, pursuant to subdi-
28 vision eleven of this section, a transfer order and an order of condi-
29 tions. If the court finds that the defendant does not have a dangerous
30 mental disorder and is not mentally ill, it must issue a release order
31 and an order of conditions pursuant to subdivision twelve of this
32 section. When a defendant is in the custody of the commissioner prior to
33 the expiration of the period prescribed in a second retention order, the
34 procedures set forth in this subdivision for the issuance of a second
35 retention order shall govern the application for and the issuance of any
36 subsequent retention order.

37 10. Furlough order. The commissioner may apply for a furlough order,
38 pursuant to this subdivision, when a defendant is in [~~his~~] such commis-
39 sioner's custody pursuant to a commitment order, recommitment order, or
40 retention order and the commissioner is of the view that, consistent
41 with the public safety and welfare of the community and the defendant,
42 the clinical condition of the defendant warrants a granting of the priv-
43 ileges authorized by a furlough order. The application for a furlough
44 order may be made to the court that issued the commitment order, or to a
45 superior court in the county where the secure facility is located. The
46 commissioner must give ten days written notice to the district attorney,
47 the defendant, counsel for the defendant, and the mental hygiene legal
48 service. Upon receipt of such application, the court may, on its own
49 motion, conduct a hearing to determine whether the application should be
50 granted, and must conduct such hearing if a demand therefor is made by
51 the district attorney. If the court finds that the issuance of a
52 furlough order is consistent with the public safety and welfare of the
53 community and the defendant, and that the clinical condition of the
54 defendant warrants a granting of the privileges authorized by a furlough
55 order, the court must grant the application and issue a furlough order
56 containing any terms and conditions that the court deems necessary or

1 appropriate. If the defendant fails to return to the secure facility at
2 the time specified in the furlough order, then, for purposes of subdivi-
3 sion ~~[nineteen]~~ eighteen of this section, ~~[he]~~ such defendant shall be
4 deemed to have escaped.

5 11. Transfer order and order of conditions. The commissioner may apply
6 for a transfer order, pursuant to this subdivision, when a defendant is
7 in ~~[his]~~ such commissioner's custody pursuant to a retention order or a
8 recommitment order, and the commissioner is of the view that the defend-
9 ant does not have a dangerous mental disorder or that, consistent with
10 the public safety and welfare of the community and the defendant, the
11 clinical condition of the defendant warrants ~~[his]~~ their transfer from a
12 secure facility to a non-secure facility under the jurisdiction of the
13 commissioner or to any non-secure facility designated by the commission-
14 er. The application for a transfer order may be made to the court that
15 issued the order under which the defendant is then in custody~~[, or to a~~
16 ~~superior court in the county where the secure facility is located]~~. The
17 commissioner must give ten days written notice to the district attorney,
18 the defendant, counsel for the defendant, and the mental hygiene legal
19 service. Upon receipt of such application, the court may, on its own
20 motion, conduct a hearing to determine whether the application should be
21 granted, and must conduct such hearing if the demand therefor is made by
22 the district attorney. At such hearing, the district attorney must
23 establish to the satisfaction of the court that the defendant has a
24 dangerous mental disorder or that the issuance of a transfer order is
25 inconsistent with the public safety and welfare of the community. The
26 court must grant the application and issue a transfer order if the court
27 finds that the defendant does not have a dangerous mental disorder, or
28 if the court finds that the issuance of a transfer order is consistent
29 with the public safety and welfare of the community and the defendant
30 and that the clinical condition of the defendant, warrants ~~[his]~~ such
31 defendant's transfer from a secure facility to a non-secure facility. A
32 court must also issue a transfer order when, in connection with an
33 application for a first retention order pursuant to subdivision eight of
34 this section or a second or subsequent retention order pursuant to
35 subdivision nine of this section, it finds that a defendant is mentally
36 ill but does not have a dangerous mental disorder. Whenever a court
37 issues a transfer order it must also issue an order of conditions.

38 12. Release order and order of conditions. ~~[The]~~ After the defendant
39 has completed the minimum term of commitment set forth in the commitment
40 order, the commissioner may apply for a release order, pursuant to this
41 subdivision, when a defendant is in ~~[his]~~ such commissioner's custody
42 pursuant to a retention order or recommitment order, and the commission-
43 er is of the view that the defendant no longer has a dangerous mental
44 disorder ~~[and]~~, is no longer mentally ill, and no longer poses a risk to
45 the safety of another person or the community. The application for a
46 release order may be made to the court that issued the order under which
47 the defendant is then in custody~~[, or to a superior court in the county~~
48 ~~where the facility is located]~~. The application must contain a
49 description of the defendant's current mental condition, the past course
50 of treatment, a history of the defendant's conduct subsequent to ~~[his]~~
51 such defendant's commitment, a written service plan for continued treat-
52 ment which shall include the information specified in subdivision (g) of
53 section 29.15 of the mental hygiene law, and a detailed statement of the
54 extent to which supervision of the defendant after release is proposed.
55 The commissioner must give ten days written notice to the district
56 attorney, the defendant, counsel for the defendant, and the mental

1 hygiene legal service. Upon receipt of such application, the court must
2 promptly conduct a hearing to determine the defendant's present mental
3 condition. At such hearing, the district attorney must establish to the
4 satisfaction of the court that the defendant has a dangerous mental
5 disorder ~~[or]~~, is mentally ill, or poses a risk to the safety of another
6 person or the community. If the court finds that the defendant has a
7 dangerous mental disorder, it must deny the application for a release
8 order. If the court finds that the defendant does not have a dangerous
9 mental disorder but is mentally ill, it must issue a transfer order
10 pursuant to subdivision eleven of this section if the defendant is then
11 confined in a secure facility. If the court finds that the defendant
12 does not have a dangerous mental disorder and is not mentally ill, it
13 must grant the application and issue a release order. A court must also
14 issue a release order when, in connection with an application for a
15 first retention order pursuant to subdivision eight of this section or a
16 second or subsequent retention order pursuant to subdivision nine of
17 this section, it finds that the defendant does not have a dangerous
18 mental disorder and is not mentally ill. Whenever a court issues a
19 release order it must also issue an order of conditions. If the court
20 has previously issued a transfer order and an order of conditions, it
21 must issue a new order of conditions upon issuing a release order. The
22 order of conditions issued in conjunction with a release order shall
23 incorporate a written service plan prepared by a psychiatrist familiar
24 with the defendant's case history and approved by the court, and shall
25 contain any conditions that the court determines to be reasonably neces-
26 sary or appropriate. It shall be the responsibility of the commissioner
27 to determine that such defendant is receiving the services specified in
28 the written service plan and is complying with any conditions specified
29 in such plan and the order of conditions. Where the defendant has been
30 committed to the custody of the commissioner until the expiration of the
31 maximum term set forth in the commitment order, the defendant must be
32 released unless the court determines that the defendant continues to
33 have a dangerous mental illness or a mental illness and poses a risk to
34 the safety of another person or the community. Where the court makes
35 such a determination, the court must refer the matter to the appropriate
36 supreme court for a proceeding pursuant to article nine of the mental
37 hygiene law.

38 ~~13. [Discharge order. The commissioner may apply for a discharge~~
39 ~~order, pursuant to this subdivision, when a defendant has been contin-~~
40 ~~uously on an out-patient status for three years or more pursuant to a~~
41 ~~release order, and the commissioner is of the view that the defendant no~~
42 ~~longer has a dangerous mental disorder and is no longer mentally ill and~~
43 ~~that the issuance of a discharge order is consistent with the public~~
44 ~~safety and welfare of the community and the defendant. The application~~
45 ~~for a discharge order may be made to the court that issued the release~~
46 ~~order, or to a superior court in the county where the defendant is then~~
47 ~~residing. The commissioner must give ten days written notice to the~~
48 ~~district attorney, the defendant, counsel for the defendant, and the~~
49 ~~mental hygiene legal service. Upon receipt of such application, the~~
50 ~~court may, on its own motion, conduct a hearing to determine whether the~~
51 ~~application should be granted, and must conduct such hearing if a demand~~
52 ~~therefor is made by the district attorney. The court must grant the~~
53 ~~application and issue a discharge order if the court finds that the~~
54 ~~defendant has been continuously on an out-patient status for three years~~
55 ~~or more, that he does not have a dangerous mental disorder and is not~~

~~mentally ill, and that the issuance of the discharge order is consistent with the public safety and welfare of the community and the defendant.~~

~~14.]~~ Recommitment order. At any time during the period covered by an order of conditions an application may be made by the commissioner or the district attorney to the court that issued such order, or to a superior court in the county where the defendant is then residing, for a recommitment order when the applicant is of the view that the defendant has a dangerous mental disorder. The applicant must give written notice of the application to the defendant, counsel for the defendant, and the mental hygiene legal service, and if the applicant is the commissioner ~~[he]~~ they must give such notice to the district attorney or if the applicant is the district attorney ~~[he]~~ they must give such notice to the commissioner. Upon receipt of such application the court must order the defendant to appear before it for a hearing to determine if the defendant has a dangerous mental disorder. Such order may be in the form of a written notice, specifying the time and place of appearance, served personally upon the defendant, or mailed to ~~[his]~~ such defendant's last known address, as the court may direct. If the defendant fails to appear in court as directed, the court may issue a warrant to an appropriate peace officer directing ~~[him]~~ them to take the defendant into custody and bring ~~[him]~~ such defendant before the court. In such circumstance, the court may direct that the defendant be confined in an appropriate institution located near the place where the court sits. The court must conduct a hearing to determine whether the defendant has a dangerous mental disorder. At such hearing, the applicant, whether ~~[he]~~ they be the commissioner or the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder. If the applicant is the commissioner, the district attorney shall be entitled to appear and present evidence at such hearing; if the applicant is the district attorney, the commissioner shall be entitled to appear and present evidence at such hearing. If the court finds that the defendant has a dangerous mental disorder, it must issue a recommitment order. When a defendant is in the custody of the commissioner pursuant to a recommitment order, the procedures set forth in subdivisions eight and nine of this section for the issuance of retention orders shall govern the application for and the issuance of a first retention order, a second retention order, and subsequent retention orders.

~~15.]~~ 14. Designation of psychiatric examiners. If, at any hearing conducted under this section to determine the defendant's present mental condition, the court is not satisfied with the findings of the psychiatric examiners, the court may direct the commissioner to designate one or more additional psychiatric examiners to conduct an examination of the defendant and submit a report of their findings. In addition, the court may on its own motion, or upon request of a party, may designate one or more psychiatric examiners to examine the defendant and submit a report of their findings. The district attorney may apply to the court for an order directing that the defendant submit to an examination by a psychiatric examiner designated by the district attorney, and such psychiatric examiner may testify at the hearing.

~~16.]~~ 15. Rehearing and review. Any defendant who is in the custody of the commissioner pursuant to a commitment order, a retention order, or a recommitment order, if dissatisfied with such order, may, within thirty days after the making of such order, obtain a rehearing and review of the proceedings and of such order in accordance with the provisions of section 9.35 or 15.35 of the mental hygiene law.

1 ~~[17-]~~ 16. Rights of defendants. Subject to the limitations and
2 provisions of this section, a defendant committed to the custody of the
3 commissioner pursuant to this section shall have the rights granted to
4 patients under the mental hygiene law.

5 ~~[18-]~~ 17. Notwithstanding any other provision of law, no person
6 confined by reason of a commitment order, recommitment order or
7 retention order to a secure facility may be discharged or released
8 unless the commissioner shall deliver written notice, at least four days
9 excluding Saturdays, Sundays and holidays, in advance of such discharge
10 or release to all of the following:

11 (a) the district attorney.

12 (b) the police department having jurisdiction of the area to which the
13 defendant is to be discharged or released.

14 (c) any other person the court may designate.

15 The notices required by this subdivision shall be given by the facili-
16 ty staff physician who was treating the defendant or, if unavailable, by
17 the defendant's treatment team leader, but if neither is immediately
18 available, notice must be given by some other member of the clinical
19 staff of the facility. Such notice must be given by any means reasonably
20 calculated to give prompt actual notice.

21 ~~[19-]~~ 18. Escape from custody; notice requirements. If a defendant is
22 in the custody of the commissioner pursuant to an order issued under
23 this section, and such defendant escapes from custody, immediate notice
24 of such escape shall be given by the department facility staff to: (a)
25 the district attorney, (b) the superintendent of state police, (c) the
26 sheriff of the county where the escape occurred, (d) the police depart-
27 ment having jurisdiction of the area where the escape occurred, (e) any
28 person the facility staff believes to be in danger, and (f) any law
29 enforcement agency and any person the facility staff believes would be
30 able to apprise such endangered person that the defendant has escaped
31 from the facility. Such notice shall be given as soon as the facility
32 staff know that the defendant has escaped from the facility and shall
33 include such information as will adequately identify the defendant and
34 the person or persons believed to be in danger and the nature of the
35 danger. The notices required by this subdivision shall be given by the
36 facility staff physician who was treating the defendant or, if unavail-
37 able, by the defendant's treatment team leader, but if neither is imme-
38 diately available, notice must be given by some other member of the
39 clinical staff of the facility. Such notice must be given by any means
40 reasonably calculated to give prompt actual notice. The defendant may be
41 apprehended, restrained, transported to, and returned to the facility
42 from which ~~[he]~~ such defendant escaped by any peace officer, and it
43 shall be the duty of the officer to assist any representative of the
44 commissioner to take the defendant into custody upon the request of such
45 representative.

46 ~~[20-]~~ 19. Required affidavit. No application may be made by the
47 commissioner under this section without an accompanying affidavit from
48 at least one psychiatric examiner supportive of relief requested in the
49 application, which affidavit shall be served on all parties entitled to
50 receive the notice of application. Such affidavit shall set forth the
51 defendant's clinical diagnosis, a detailed analysis of ~~[his or her]~~ such
52 defendant's mental condition which caused the psychiatric examiner to
53 formulate an opinion, and the opinion of the psychiatric examiner with
54 respect to the defendant. Any application submitted without the required
55 affidavit shall be dismissed by the court.

1 ~~[21-]~~ 20. Appeals. (a) A party to proceedings conducted in accordance
2 with the provisions of this section may take an appeal to an intermedi-
3 ate appellate court by permission of the intermediate appellate court as
4 follows:

5 (i) the commissioner may appeal from any release order, retention
6 order, transfer order, discharge order, order of conditions, or recom-
7 mitment order, for which ~~[he]~~ such commissioner has not applied;

8 (ii) a defendant, or the mental hygiene legal service on ~~[his or her]~~
9 such defendant's behalf, may appeal from any commitment order, retention
10 order, recommitment order, or, if the defendant has obtained a rehearing
11 and review of any such order pursuant to subdivision ~~[sixteen]~~ fifteen
12 of this section, from an order, not otherwise appealable as of right,
13 issued in accordance with the provisions of section 9.35 or 15.35 of the
14 mental hygiene law authorizing continued retention under the original
15 order, provided, however, that a defendant who takes an appeal from a
16 commitment order, retention order, or recommitment order may not subse-
17 quently obtain a rehearing and review of such order pursuant to subdivi-
18 sion ~~[sixteen]~~ fifteen of this section;

19 (iii) the district attorney may appeal from any release order, trans-
20 fer order, discharge order, order of conditions, furlough order, or
21 order denying an application for a recommitment order which ~~[he]~~ such
22 district attorney opposed.

23 (b) An aggrieved party may appeal from a final order of the intermedi-
24 ate appellate court to the court of appeals by permission of the inter-
25 mediate appellate court granted before application to the court of
26 appeals, or by permission of the court of appeals upon refusal by the
27 intermediate appellate court or upon direct application.

28 (c) An appeal taken under this subdivision shall be deemed civil in
29 nature, and shall be governed by the laws and rules applicable to civil
30 appeals; provided, however, that a stay of the order appealed from must
31 be obtained in accordance with the provisions of paragraph (d) ~~[hereof]~~
32 of this subdivision.

33 (d) The court from or to which an appeal is taken may stay all
34 proceedings to enforce the order appealed from pending an appeal or
35 determination on a motion for permission to appeal, or may grant a
36 limited stay, except that only the court to which an appeal is taken may
37 vacate, limit, or modify a stay previously granted. If the order
38 appealed from is affirmed or modified, the stay shall continue for five
39 days after service upon the appellant of the order of affirmance or
40 modification with notice of its entry in the court to which the appeal
41 was taken. If a motion is made for permission to appeal from such an
42 order, before the expiration of the five days, the stay, or any other
43 stay granted pending determination of the motion for permission to
44 appeal, shall:

45 (i) if the motion is granted, continue until five days after the
46 appeal is determined; or

47 (ii) if the motion is denied, continue until five days after the
48 movant is served with the order of denial with notice of its entry.

49 ~~[22-]~~ 21. Any special order of conditions issued pursuant to subpara-
50 graph (i) or (ii) of paragraph (o) of subdivision one of this section
51 shall bear in a conspicuous manner the term "special order of condi-
52 tions" and a copy shall be filed by the clerk of the court with the
53 sheriff's office in the county in which anyone intended to be protected
54 by such special order resides, or, if anyone intended to be protected by
55 such special order resides within a city, with the police department of
56 such city. The absence of language specifying that the order is a

1 "special order of conditions" shall not affect the validity of such
2 order. A copy of such special order of conditions may from time to time
3 be filed by the clerk of the court with any other police department or
4 sheriff's office having jurisdiction of the residence, work place, or
5 school of anyone intended to be protected by such special order. A copy
6 of such special order may also be filed by anyone intended to be
7 protected by such provisions at the appropriate police department or
8 sheriff's office having jurisdiction. Any subsequent amendment or revo-
9 cation of such special order may be filed in the same manner as provided
10 in this subdivision. Such special order of conditions shall plainly
11 state the date that the order expires.

12 § 7. Paragraph 3 of subdivision (g) of section 10.03 of the mental
13 hygiene law, as added by chapter 7 of the laws of 2007, is amended to
14 read as follows:

15 (3) A person charged with a sex offense who has been found [~~not~~]
16 responsible [~~by reason of~~] but for mental disease or defect for the
17 commission of that offense;

18 § 8. Subdivision (d) of section 10.05 of the mental hygiene law, as
19 amended by chapter 363 of the laws of 2012, is amended to read as
20 follows:

21 (d) The commissioner shall be authorized to designate multidiscipli-
22 nary staff, including clinical and other professional personnel, to
23 provide a preliminary review of the need for detained sex offenders to
24 be evaluated under the procedures of this section. When the commissioner
25 receives notice pursuant to subdivision (b) of this section, such staff
26 shall review and assess relevant medical, clinical, criminal, and insti-
27 tutional records, actuarial risk assessment instruments and other
28 records and reports, including records of parole release interviews
29 where applicable, and records and reports provided by the district
30 attorney of the county where the person was convicted, or in the case of
31 persons determined to be incapacitated or [~~not~~] responsible [~~by reason~~
32 ~~of~~] but for mental disease or defect, the county where the person was
33 charged. Upon such review and assessment, the staff shall determine
34 whether the person who is the subject of the notice should be referred
35 to a case review team for evaluation.

36 § 9. Subdivision (j) of section 10.06 of the mental hygiene law, as
37 added by chapter 7 of the laws of 2007, is amended to read as follows:

38 (j) The respondent's commission of a sex offense shall be deemed
39 established and shall not be relitigated at the probable cause hearing,
40 whenever it appears that: (i) the respondent stands convicted of such
41 offense; (ii) the respondent previously has been found [~~not~~] responsible
42 [~~by reason of~~] but for mental disease or defect for the commission of
43 such offense or for an act or acts constituting such offense; or (iii)
44 the respondent was indicted for such offense by a grand jury but found
45 to be incompetent to stand trial for such offense. Whenever the petition
46 alleges the respondent's commission of a designated felony prior to the
47 effective date of this article, the issue of whether there is probable
48 cause to believe that the commission of such offense was sexually moti-
49 vated shall be determined by the court.

50 § 10. Subdivision (c) of section 10.07 of the mental hygiene law, as
51 added by chapter 7 of the laws of 2007, is amended to read as follows:

52 (c) The provisions of subdivision (g) of section 10.08 of this article
53 and article forty-five of the civil practice law and rules shall be
54 applicable to trials conducted pursuant to this section. The jury may
55 hear evidence of the degree to which the respondent cooperated with the
56 psychiatric examination. If the court finds that the respondent refused

1 to submit to a psychiatric examination pursuant to this article, upon
2 request it shall so instruct the jury. The respondent's commission of a
3 sex offense shall be deemed established and shall not be relitigated at
4 the trial, whenever it is shown that: (i) the respondent stands
5 convicted of such offense; or (ii) the respondent previously has been
6 found ~~[not]~~ responsible ~~[by reason of]~~ but for mental disease or defect
7 for the commission of such offense or for an act or acts constituting
8 such offense. Whenever the petition alleges the respondent's commission
9 of a designated felony prior to the effective date of this article, the
10 issue of whether such offense was sexually motivated shall be determined
11 by the jury.

12 § 11. Paragraphs 1 and 3 of subdivision (a) of section 67.08 of the
13 mental hygiene law, as added by chapter 306 of the laws of 2019, are
14 amended to read as follows:

15 (1) Such applicant has been committed to and placed in the custody of
16 the department upon a verdict of ~~[not]~~ responsible ~~[by reason of]~~ but
17 for mental disease or defect pursuant to section 330.20 of the criminal
18 procedure law;

19 (3) The transfer nation is either a "treaty nation" under the COE or
20 any other nation with which the United States has a prisoner transfer
21 treaty that permits the transfer of persons committed to psychiatric
22 institutions after a verdict of ~~[not]~~ responsible ~~[by reason of]~~ but for
23 mental disease or defect.

24 § 12. The penal law is amended by adding a new section 60.38 to read
25 as follows:

26 § 60.38 Authorized disposition; verdict or plea of responsible but for
27 mental disease or defect.

28 When a person is to be sentenced upon a verdict or plea of responsible
29 but for mental disease or defect, the provisions of section 330.20 of
30 the criminal procedure law shall apply. When a person is committed to
31 the custody of the commissioner of mental health pursuant to section
32 330.20 of the criminal procedure law for a felony offense, then the
33 following maximum and minimum terms shall apply:

34 1. If the sentence is to be imposed for a class A felony for homicide,
35 then the maximum term shall be life and the minimum term shall be
36 fifteen to twenty years;

37 2. If the sentence is to be imposed for a class A felony other than
38 homicide or a drug related offense, then the maximum term shall be
39 twelve to fifteen years and the minimum term shall be four to six years;

40 3. If the sentence is to be imposed for a class A felony for a drug
41 related offense, then the maximum term shall be ten years and the mini-
42 imum term shall be one third of the maximum term imposed or one half of
43 the maximum term imposed for a second felony offense;

44 4. If the sentence is to be imposed for a class B felony, then the
45 maximum term shall be seven to ten years and the minimum term shall be
46 one third of the maximum term imposed or one half of the maximum term
47 imposed for a second felony offense;

48 5. If the sentence is to be imposed for a class C felony, then the
49 maximum term shall be five to seven years and the minimum term shall be
50 one third of the maximum term imposed or one half of the maximum term
51 imposed for a second felony offense;

52 6. If the sentence is to be imposed for a class D felony, then the
53 maximum term shall be two to four years and the minimum term shall be
54 one third of the maximum term imposed or one half of the maximum term
55 imposed for a second felony offense; and

1 7. If the sentence is to be imposed for a class E felony, then the
2 maximum term shall be two years and the minimum term shall be one third
3 of the maximum term imposed or one half of the maximum term imposed for
4 a second felony offense.

5 Notwithstanding any other provision of this section, when a person who
6 is committed to the custody of the commissioner of mental health pursu-
7 ant to section 330.20 of the criminal procedure law for a felony offense
8 has served the maximum sentence pursuant to this section and the court
9 determines that such person continues to have a dangerous mental illness
10 or a mental illness and poses a risk to the safety of another person or
11 the community, the court must refer the matter to the appropriate
12 supreme court for a proceeding pursuant to article nine of the mental
13 hygiene law in accordance with section 330.20 of the criminal procedure
14 law.

15 § 13. This act shall take effect on the one hundred eightieth day
16 after it shall have become a law. Effective immediately, the addition,
17 amendment and/or repeal of any rule or regulation necessary for the
18 implementation of this act on its effective date are authorized to be
19 made and completed on or before such effective date.