

5589

2011-2012 Regular Sessions

I N S E N A T E

June 3, 2011

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

AN ACT to amend the criminal procedure law, in relation to retention of custody of persons found not guilty by reason of mental disease or defect

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

1 Section 1. Section 330.20 of the criminal procedure law, as added by
2 chapter 548 of the laws of 1980, paragraph (o) of subdivision 1, the
3 closing paragraph of subdivision 2 and subdivisions 7-a and 22 as
4 amended by chapter 107 of the laws of 2004, subdivisions 2 and 20 as
5 amended by chapter 693 of the laws of 1989, subdivisions 5, 8, 9, 10,
6 11, 12, 13 and 14 as amended by chapter 789 of the laws of 1985, subdi-
7 vision 21 as added by chapter 976 of the laws of 1983, and subparagraph
8 (ii) of paragraph (a) of subdivision 21 as amended by chapter 330 of the
9 laws of 1993, is amended to read as follows:
10 S 330.20 Procedure following verdict or plea of not responsible by
11 reason of mental disease or defect.
12 1. Definition of terms. As used in this section, the following terms
13 shall have the following meanings:
14 (a) "Commissioner" means the [state] commissioner of mental health or
15 the [state] commissioner of [mental retardation and] developmental
16 [disability] DISABILITIES.
17 (b) "Secure facility" means a facility within the [state] office of
18 mental health or the [state] office [of mental retardation and] FOR
19 PEOPLE WITH developmental disabilities which is staffed with personnel
20 adequately trained in security methods and is so equipped as to minimize
21 the risk or danger of escapes, and which has been so specifically desig-
22 nated by the commissioner.
23 (c) "Dangerous mental disorder" means: (i) that a defendant currently
24 suffers from a "mental illness" as that term is defined in subdivision

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

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1 twenty of section 1.03 of the mental hygiene law, and (ii) that because
2 of such condition he currently constitutes a physical danger to himself
3 OR HERSELF or others.

4 (d) "Mentally ill" means that a defendant currently suffers from a
5 mental illness for which care and treatment as a patient, in the in-pa-
6 tient services of a psychiatric center under the jurisdiction of the
7 [state] office of mental health, is essential to such defendant's
8 welfare and that his OR HER judgment is so impaired that he OR SHE is
9 unable to understand the need for such care and treatment; and, where a
10 defendant is mentally retarded, the term "mentally ill" shall also mean,
11 for purposes of this section, that the defendant is in need of care and
12 treatment as a resident in the in-patient services of a developmental
13 center or other residential facility for the mentally retarded and
14 developmentally disabled under the jurisdiction of the [state] office
15 [of mental retardation and] FOR PEOPLE WITH developmental disabilities.

16 (e) "Examination order" means an order directed to the commissioner
17 requiring that a defendant submit to a psychiatric examination to deter-
18 mine whether the defendant has a dangerous mental disorder, or if he OR
19 SHE does not have A dangerous mental disorder, whether he OR SHE is
20 mentally ill.

21 (f) "Commitment order" [or "recommitment order"] means an order
22 committing a defendant to the custody of the commissioner for confine-
23 ment in a secure facility for care and treatment [for six months from
24 the date of the order].

25 (g) "First retention order" means an order which is effective at the
26 expiration of the period prescribed in a commitment order [for] OR a
27 recommitment order, authorizing continued custody of a defendant by the
28 commissioner for a period not to exceed one year.

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

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

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

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

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

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

51 (n) "Discharge order" means an order terminating an order of condi-
52 tions or unconditionally discharging a defendant from supervision under
53 the provisions of this section.

54 (o) "Order of conditions" means an order directing a defendant to
55 comply with this prescribed treatment plan, or any other condition which
56 the court determines to be reasonably necessary or appropriate, and, in

1 addition, where a defendant is in custody of the commissioner, not to
2 leave the facility without authorization. In addition to such condi-
3 tions, when determined to be reasonably necessary or appropriate, an
4 order of conditions may be accompanied by a special order of conditions
5 set forth in a separate document requiring that the defendant: (i) stay
6 away from the home, school, business or place of employment of the
7 victim or victims, or of any witness designated by the court, of such
8 offense; or (ii) refrain from harassing, intimidating, threatening or
9 otherwise interfering with the victim or victims of the offense and such
10 members of the family or household of such victim or victims as shall be
11 specifically named by the court in such special order. An order of
12 conditions or special order of conditions shall be valid for five years
13 from the date of its issuance, except that, for good cause shown, the
14 court may extend the period for an additional five years.

15 (p) "District attorney" means the office which prosecuted the criminal
16 action resulting in the verdict or plea of not responsible by reason of
17 mental disease or defect.

18 (q) "Qualified psychiatrist" means a physician who (i) is a diplomate
19 of the American board of psychiatry and neurology or is eligible to be
20 certified by that board; or (ii) is certified by the American osteopath-
21 ic board of neurology and psychiatry or is eligible to be certified by
22 that board.

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

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

29 2. [Examination] SENTENCE; EXAMINATION order; psychiatric examiners.
30 Upon entry of a verdict of not responsible by reason of mental disease
31 or defect, or upon the acceptance of a plea of not responsible by reason
32 of mental disease or defect, the court must immediately (A) IMPOSE A
33 PERIOD OF CONFINEMENT IN THE CUSTODY OF THE COMMISSIONER WHICH IS EQUAL
34 TO THE SENTENCE OF IMPRISONMENT SUCH DEFENDANT WOULD HAVE RECEIVED
35 PURSUANT TO ARTICLE SEVENTY OF THE PENAL LAW, UPON CONVICTION OF THE
36 CRIME WITH WHICH HE OR SHE WAS CHARGED; AND (B) issue an examination
37 order. Upon receipt of such order, the commissioner must designate two
38 qualified psychiatric examiners to conduct the examination to examine
39 the defendant. In conducting their examination, the psychiatric examiners
40 may employ any method which is accepted by the medical profession
41 for the examination of persons alleged to be suffering from a dangerous
42 mental disorder or to be mentally ill or retarded. The court may author-
43 ize a psychiatrist or psychologist retained by a defendant to be present
44 at such examination. The clerk of the court must promptly forward a copy
45 of the examination order to the mental hygiene legal service and such
46 service may thereafter participate in all subsequent proceedings under
47 this section.

48 In all subsequent proceedings under this section, [prior to the issu-
49 ance of a special order of conditions,] the court shall consider whether
50 any order of protection had been issued prior to a verdict of not
51 responsible by reason of mental disease or defect in the case, or prior
52 to the acceptance of a plea of not responsible by reason of mental
53 disease or defect in the case.

54 3. Examination order; place of examination. Upon issuing an examina-
55 tion order, the court must, except as otherwise provided in this subdi-
56 vision, direct that the defendant be committed to a secure facility

1 designated by the commissioner as the place for such psychiatric exam-
2 ination. The sheriff must hold the defendant in custody pending such
3 designation by the commissioner, and when notified of the designation,
4 the sheriff must promptly deliver the defendant to such secure facility.
5 [When the defendant is not in custody at the time of such verdict or
6 plea, because he was previously released on bail or on his own recogni-
7 zance, the court, in its discretion, may direct that such examination be
8 conducted on an out-patient basis, and at such time and place as the
9 commissioner shall designate. If, however, the commissioner informs the
10 court that confinement of the defendant is necessary for an effective
11 examination, the court must direct that the defendant be confined in a
12 facility designated by the commissioner until the examination is
13 completed.]

14 4. Examination order, duration. Confinement in a secure facility
15 pursuant to an examination order shall be for a period not exceeding
16 thirty days, except that, upon application of the commissioner, the
17 court may authorize confinement for an additional period not exceeding
18 thirty days when a longer period is necessary to complete the examina-
19 tion. [If the initial hearing required by subdivision six of this
20 section has not commenced prior to the termination of such examination
21 period, the commissioner shall retain custody of the defendant in such
22 secure facility until custody is transferred to the sheriff in the
23 manner prescribed in subdivision six of this section.] During the period
24 of such confinement, the physician in charge of the facility may admin-
25 ister or cause to be administered to the defendant such emergency
26 psychiatric, medical or other therapeutic treatment as in his OR HER
27 judgment should be administered. [If the court has directed that the
28 examination be conducted on an out-patient basis, the examination shall
29 be completed within thirty days after the defendant has first reported
30 to the place designated by the commissioner, except that, upon applica-
31 tion of the commissioner, the court may extend such period for a reason-
32 able time if a longer period is necessary to complete the examination.]

33 5. Examination order; reports. After he OR SHE has completed his OR
34 HER examination of the defendant, each psychiatric examiner must prompt-
35 ly prepare a report of his OR HER findings and evaluation concerning the
36 defendant's mental condition, and submit such report to the commission-
37 er. If the psychiatric examiners differ in their opinion as to whether
38 the defendant is mentally ill or is suffering from a dangerous mental
39 disorder, the commissioner must designate another psychiatric examiner
40 to examine the defendant. Upon receipt of the examination reports, the
41 commissioner must submit them to the court that issued the examination
42 order. If the court is not satisfied with the findings of these psychi-
43 atric examiners, the court may designate one or more additional psychi-
44 atric examiners pursuant to subdivision fifteen of this section. [The
45 court must furnish a copy of the reports to the district attorney, coun-
46 sel for the defendant and the mental hygiene legal service.]

47 6. [Initial hearing; commitment] COMMITMENT order. After the examina-
48 tion reports are submitted, the court must[, within ten days of the
49 receipt of such reports, conduct an initial hearing to determine the
50 defendant's present mental condition. If the defendant is in the custody
51 of the commissioner pursuant to an examination order, the court must
52 direct the sheriff to obtain custody of the defendant from the commis-
53 sioner and to confine the defendant pending further order of the court,
54 except that the court may direct the sheriff to confine the defendant in
55 an institution located near the place where the court sits if that
56 institution has been designated by the commissioner as suitable for the

1 temporary and secure detention of mentally disabled persons. At such
2 initial hearing, the district attorney must establish to the satisfac-
3 tion of the court that the defendant has a dangerous mental disorder or
4 is mentally ill. If the court finds that the defendant has a dangerous
5 mental disorder, it must] issue a commitment order FOR THE TERM OF THE
6 PERIOD OF CONFINEMENT IMPOSED, PURSUANT TO PARAGRAPH (A) OF SUBDIVISION
7 TWO OF THIS SECTION, AND TO SUCH A SECURE FACILITY AS SHALL BE SUITABLE
8 FOR A MENTALLY ILL PERSON OR A PERSON WITH A DANGEROUS MENTAL DISORDER,
9 AS THE CASE MAY BE, BASED UPON THE EXAMINATION REPORTS. [If the court
10 finds that the defendant does not have a dangerous mental disorder but
11 is mentally ill, the provisions of subdivision seven of this section
12 shall apply.]

13 7. [Initial hearing civil commitment and order of conditions. If, at
14 the conclusion of the initial hearing conducted pursuant to subdivision
15 six of this section, the court finds that the defendant is mentally ill
16 but does not have a dangerous mental disorder, the provisions of arti-
17 cles nine or fifteen of the mental hygiene law shall apply at that stage
18 of the proceedings and at all subsequent proceedings. Having found that
19 the defendant is mentally ill, the court must issue an order of condi-
20 tions and an order committing the defendant to the custody of the
21 commissioner. The latter order shall be deemed an order made pursuant to
22 the mental hygiene law and not pursuant to this section, and further
23 retention, conditional release or discharge of such defendant shall be
24 in accordance with the provisions of the mental hygiene law. If, at the
25 conclusion of the initial hearing, the court finds that the defendant
26 does not have a dangerous mental disorder and is not mentally ill, the
27 court must discharge the defendant either unconditionally or subject to
28 an order of conditions.

29 7-a. Whenever the court issues a special order of conditions pursuant
30 to this section, the commissioner shall make reasonable efforts to noti-
31 fy the victim or victims or the designated witness or witnesses that a
32 special order of conditions containing such provisions has been issued,
33 unless such victim or witness has requested that such notice should not
34 be provided.

35 8.] First retention order. When a defendant is in the custody of the
36 commissioner pursuant to a commitment order, the commissioner must, at
37 least thirty days prior to the expiration of the period prescribed in
38 the order, apply to the court that issued the order, or to a superior
39 court in the county where the secure facility is located, for a first
40 retention order or a release order. The commissioner must give written
41 notice of the application to the district attorney, the defendant, coun-
42 sel for the defendant, and the mental hygiene legal service. Upon
43 receipt of such application, the court may, on its own motion, conduct a
44 hearing to determine whether the defendant has a dangerous mental disor-
45 der, and it must conduct such hearing if a demand therefor is made by
46 the district attorney, the defendant, counsel for the defendant, or the
47 mental hygiene legal service within ten days from the date that notice
48 of the application was given to them. If such a hearing is held on an
49 application for retention, the commissioner must establish to the satis-
50 faction of the court that the defendant has a dangerous mental disorder
51 or is mentally ill. The district attorney shall be entitled to appear
52 and present evidence at such hearing. If such a hearing is held on an
53 application for release, the district attorney must establish to the
54 satisfaction of the court that the defendant has a dangerous mental
55 disorder or is mentally ill. If the court finds that the defendant has a
56 dangerous mental disorder it must issue a first retention order. If the

1 court finds that the defendant is mentally ill but does not have a
2 dangerous mental disorder, it must issue a first retention order and,
3 pursuant to subdivision [eleven] TEN of this section, a transfer order
4 and an order of conditions. If the court finds that the defendant does
5 not have a dangerous mental disorder and is not mentally ill, it must
6 issue a release order and an order of conditions pursuant to subdivision
7 [twelve] ELEVEN of this section.

8 [9.] 8. Second and subsequent retention orders. When a defendant is in
9 the custody of the commissioner pursuant to a first retention order, the
10 commissioner must, at least thirty days prior to the expiration of the
11 period prescribed in the order, apply to the court that issued the
12 order, or to a superior court in the county where the facility is
13 located, for a second retention order or a release order. The commis-
14 sioner must give written notice of the application to the district
15 attorney, the defendant, counsel for the defendant, and the mental
16 hygiene legal service. Upon receipt of such application, the court may,
17 on its own motion, conduct a hearing to determine whether the defendant
18 has a dangerous mental disorder, and it must conduct such hearing if a
19 demand therefor is made by the district attorney, the defendant, counsel
20 for the defendant, or the mental hygiene legal service within ten days
21 from the date that notice of the application was given to them. If such
22 a hearing is held on an application for retention, the commissioner must
23 establish to the satisfaction of the court that the defendant has a
24 dangerous mental disorder or is mentally ill. The district attorney
25 shall be entitled to appear and present evidence at such hearing. If
26 such a hearing is held on an application for release, the district
27 attorney must establish to the satisfaction of the court that the
28 defendant has a dangerous mental disorder or is mentally ill. If the
29 court finds that the defendant has a dangerous mental disorder it must
30 issue a second retention order. If the court finds that the defendant is
31 mentally ill but does not have a dangerous mental disorder, it must
32 issue a second retention order and, pursuant to subdivision [eleven] TEN
33 of this section, a transfer order and an order of conditions. If the
34 court finds that the defendant does not have a dangerous mental disorder
35 and is not mentally ill, it must issue a release order and an order of
36 conditions pursuant to subdivision [twelve] ELEVEN of this section. When
37 a defendant is in the custody of the commissioner prior to the expira-
38 tion of the period prescribed in a second retention order, the proce-
39 dures set forth in this subdivision for the issuance of a second
40 retention order shall govern the application for and the issuance of any
41 subsequent retention order.

42 [10.] 9. Furlough order. The commissioner may apply for a furlough
43 order, pursuant to this subdivision, when a defendant is in his OR HER
44 custody pursuant to a [commitment order,] recommitment order[,], or
45 retention order and the commissioner is of the view that, consistent
46 with the public safety and welfare of the community and the defendant,
47 the clinical condition of the defendant warrants a granting of the priv-
48 ileges authorized by a furlough order. The application for a furlough
49 order may be made to the court that issued the commitment order, or to a
50 superior court in the county where the secure facility is located. The
51 commissioner must give ten days written notice to the district attorney,
52 the defendant, counsel for the defendant, and the mental hygiene legal
53 service. Upon receipt of such application, the court may, on its own
54 motion, conduct a hearing to determine whether the application should be
55 granted, and must conduct such hearing if a demand therefor is made by
56 the district attorney. If the court finds that the issuance of a

1 furlough order is consistent with the public safety and welfare of the
2 community and the defendant, and that the clinical condition of the
3 defendant warrants a granting of the privileges authorized by a furlough
4 order, the court must grant the application and issue a furlough order
5 containing any terms and conditions that the court deems necessary or
6 appropriate. If the defendant fails to return to the secure facility at
7 the time specified in the furlough order, then, for purposes of subdivi-
8 sion [nineteen] EIGHTEEN of this section, he OR SHE shall be deemed to
9 have escaped.

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

43 [12.] 11. Release order and order of conditions. The commissioner may
44 apply for a release order, pursuant to this subdivision, when a defend-
45 ant is in his OR HER custody pursuant to a retention order or recommit-
46 ment order, and the commissioner is of the view that the defendant no
47 longer has a dangerous mental disorder and is no longer mentally ill.
48 The application for a release order may be made to the court that issued
49 the order under which the defendant is then in custody, or to a superior
50 court in the county where the facility is located. The application must
51 contain a description of the defendant's current mental condition, the
52 past course of treatment, a history of the defendant's conduct subse-
53 quent to his OR HER commitment, a written service plan for continued
54 treatment which shall include the information specified in subdivision
55 (g) of section 29.15 of the mental hygiene law, and a detailed statement
56 of the extent to which supervision of the defendant after release is

1 proposed. The commissioner must give ten days written notice to the
2 district attorney, the defendant, counsel for the defendant, and the
3 mental hygiene legal service. Upon receipt of such application, the
4 court must promptly conduct a hearing to determine the defendant's pres-
5 ent mental condition. At such hearing, the district attorney must
6 establish to the satisfaction of the court that the defendant has a
7 dangerous mental disorder or is mentally ill. If the court finds that
8 the defendant has a dangerous mental disorder, it must deny the applica-
9 tion for a release order. If the court finds that the defendant does not
10 have a dangerous mental disorder but is mentally ill, it must issue a
11 transfer order pursuant to subdivision [eleven] TEN of this section if
12 the defendant is then confined in a secure facility. If the court finds
13 that the defendant does not have a dangerous mental disorder and is not
14 mentally ill, it must grant the application and issue a release order. A
15 court must also issue a release order when, in connection with an appli-
16 cation for a first retention order pursuant to subdivision [eight] SEVEN
17 of this section or a second or subsequent retention order pursuant to
18 subdivision [nine] EIGHT of this section, it finds that the defendant
19 does not have a dangerous mental disorder and is not mentally ill. When-
20 ever a court issues a release order it must also issue an order of
21 conditions. If the court has previously issued a transfer order and an
22 order of conditions, it must issue a new order of conditions upon issu-
23 ing a release order. The order of conditions issued in conjunction with
24 a release order shall incorporate a written service plan prepared by a
25 psychiatrist familiar with the defendant's case history and approved by
26 the court, and shall contain any conditions that the court determines to
27 be reasonably necessary or appropriate. It shall be the responsibility
28 of the commissioner to determine that such defendant is receiving the
29 services specified in the written service plan and is complying with any
30 conditions specified in such plan and the order of conditions.

31 [13.] 12. Discharge order. The commissioner may apply for a discharge
32 order, pursuant to this subdivision, when a defendant has been contin-
33 uously on an out-patient status for three years or more pursuant to a
34 release order, and the commissioner is of the view that the defendant no
35 longer has a dangerous mental disorder and is no longer mentally ill and
36 that the issuance of a discharge order is consistent with the public
37 safety and welfare of the community and the defendant. The application
38 for a discharge order may be made to the court that issued the release
39 order, or to a superior court in the county where the defendant is then
40 residing. The commissioner must give ten days written notice to the
41 district attorney, the defendant, counsel for the defendant, and the
42 mental hygiene legal service. Upon receipt of such application, the
43 court may, on its own motion, conduct a hearing to determine whether the
44 application should be granted, and must conduct such hearing if a demand
45 therefor is made by the district attorney. The court must grant the
46 application and issue a discharge order if the court finds that the
47 defendant has been continuously on an out-patient status for three years
48 or more, that he OR SHE does not have a dangerous mental disorder and is
49 not mentally ill, and that the issuance of the discharge order is
50 consistent with the public safety and welfare of the community and the
51 defendant.

52 [14] 13. Recommitment order. At any time during the period covered by
53 an order of conditions an application may be made by the commissioner or
54 the district attorney to the court that issued such order, or to a supe-
55 rior court in the county where the defendant is then residing, for a
56 recommitment order when the applicant is of the view that the defendant

1 has a dangerous mental disorder. The applicant must give written notice
2 of the application to the defendant, counsel for the defendant, and the
3 mental hygiene legal service, and if the applicant is the commissioner
4 he OR SHE must give such notice to the district attorney or if the
5 applicant is the district attorney he OR SHE must give such notice to
6 the commissioner. Upon receipt of such application the court must order
7 the defendant to appear before it for a hearing to determine if the
8 defendant has a dangerous mental disorder. Such order may be in the form
9 of a written notice, specifying the time and place of appearance, served
10 personally upon the defendant, or mailed to his OR HER last known
11 address, as the court may direct. If the defendant fails to appear in
12 court as directed, the court [may] SHALL issue a warrant to an appropri-
13 ate peace officer directing him OR HER to take the defendant into custo-
14 dy and bring him OR HER before the court. In such circumstance, the
15 court [may] SHALL direct that the defendant be confined in an appropri-
16 ate institution located near the place where the court sits. The court
17 must conduct a hearing to determine whether the defendant has a danger-
18 ous mental disorder. At such hearing, the applicant, whether he OR SHE
19 be the commissioner or the district attorney must establish to the
20 satisfaction of the court that the defendant has a dangerous mental
21 disorder. If the applicant is the commissioner, the district attorney
22 shall be entitled to appear and present evidence at such hearing; if the
23 applicant is the district attorney, the commissioner shall be entitled
24 to appear and present evidence at such hearing. If the court finds that
25 the defendant has a dangerous mental disorder, it must issue a recommit-
26 ment order. When a defendant is in the custody of the commissioner
27 pursuant to a recommitment order, the procedures set forth in subdivi-
28 sions SEVEN AND eight [and nine] of this section for the issuance of
29 retention orders shall govern the application for and the issuance of a
30 first retention order, a second retention order, and subsequent
31 retention orders.

32 [15] 14. Designation of psychiatric examiners. If, at any hearing
33 conducted under this section to determine the defendant's present mental
34 condition, the court is not satisfied with the findings of the psychiat-
35 ric examiners, the court may direct the commissioner to designate one or
36 more additional psychiatric examiners to conduct an examination of the
37 defendant and submit a report of their findings. In addition, the court
38 may on its own motion, or upon request of a party, may designate one or
39 more psychiatric examiners to examine the defendant and submit a report
40 of their findings. The district attorney may apply to the court for an
41 order directing that the defendant submit to an examination by a psychi-
42 atric examiner designated by the district attorney, and such psychiatric
43 examiner may testify at the hearing.

44 [16] 15. Rehearing and review. Any defendant who is in the custody of
45 the commissioner pursuant to a [commitment order,] a retention order, or
46 a recommitment order, if dissatisfied with such order, may, within thir-
47 ty days after the making of such order, obtain a rehearing and review of
48 the proceedings and of such order in accordance with the provisions of
49 section 9.35 or 15.35 of the mental hygiene law.

50 [17] 16. Rights of defendants. Subject to the limitations and
51 provisions of this section, a defendant committed to the custody of the
52 commissioner pursuant to this section shall have the rights granted to
53 patients under the mental hygiene law.

54 [18] 17. Notwithstanding any other provision of law, no person
55 confined by reason of a [commitment order,] recommitment order or
56 retention order to a secure facility may be discharged or released

1 unless the commissioner shall deliver written notice, at least four days
2 excluding Saturdays, Sundays and holidays, in advance of such discharge
3 or release to all of the following:

4 (a) the district attorney.

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

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

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

14 [19] 18. Escape from custody; notice requirements. If a defendant is
15 in the custody of the commissioner pursuant to an order issued under
16 this section, and such defendant escapes from custody, immediate notice
17 of such escape shall be given by the department facility staff to: (a)
18 the district attorney, (b) the superintendent of state police, (c) the
19 sheriff of the county where the escape occurred, (d) the police depart-
20 ment having jurisdiction of the area where the escape occurred, (e) any
21 person the facility staff believes to be in danger, and (f) any law
22 enforcement agency and any person the facility staff believes would be
23 able to apprise such endangered person that the defendant has escaped
24 from the facility. Such notice shall be given as soon as the facility
25 staff know that the defendant has escaped from the facility and shall
26 include such information as will adequately identify the defendant and
27 the person or persons believed to be in danger and the nature of the
28 danger. The notices required by this subdivision shall be given by the
29 facility staff physician who was treating the defendant or, if unavail-
30 able, by the defendant's treatment team leader, but if neither is imme-
31 diately available, notice must be given by some other member of the
32 clinical staff of the facility. Such notice must be given by any means
33 reasonably calculated to give prompt actual notice. The defendant may be
34 apprehended, restrained, transported to, and returned to the facility
35 from which he escaped by any peace officer, and it shall be the duty of
36 the officer to assist any representative of the commissioner to take the
37 defendant into custody upon the request of such representative.

38 [20] 19. Required affidavit. No application may be made by the
39 commissioner under this section without an accompanying affidavit from
40 at least one psychiatric examiner supportive of relief requested in the
41 application, which affidavit shall be served on all parties entitled to
42 receive the notice of application. Such affidavit shall set forth the
43 defendant's clinical diagnosis, a detailed analysis of his or her mental
44 condition which caused the psychiatric examiner to formulate an opinion,
45 and the opinion of the psychiatric examiner with respect to the defend-
46 ant. Any application submitted without the required affidavit shall be
47 dismissed by the court.

48 [21] 20. Appeals. (a) A party to proceedings conducted in accordance
49 with the provisions of this section may take an appeal to an intermedi-
50 ate appellate court by permission of the intermediate appellate court as
51 follows:

52 (i) the commissioner may appeal from any release order, retention
53 order, transfer order, discharge order, order of conditions, or recom-
54 mitment order, for which he OR SHE has not applied;

55 (ii) a defendant, or the mental hygiene legal service on his or her
56 behalf, may appeal from any [commitment order,] retention order, recom-

1 mitment order, or, if the defendant has obtained a rehearing and review
2 of any such order pursuant to subdivision [sixteen] FIFTEEN of this
3 section, from an order, not otherwise appealable as of right, issued in
4 accordance with the provisions of section 9.35 or 15.35 of the mental
5 hygiene law authorizing continued retention under the original order,
6 provided, however, that a defendant who takes an appeal from a [commit-
7 ment order,] retention order, or recommitment order may not subsequently
8 obtain a rehearing and review of such order pursuant to subdivision
9 [sixteen] FIFTEEN of this section;

10 (iii) the district attorney may appeal from any release order, trans-
11 fer order, discharge order, order of conditions, furlough order, or
12 order denying an application for a recommitment order which he OR SHE
13 opposed.

14 (b) An aggrieved party may appeal from a final order of the intermedi-
15 ate appellate court to the court of appeals by permission of the inter-
16 mediate appellate court granted before application to the court of
17 appeals, or by permission of the court of appeals upon refusal by the
18 intermediate appellate court or upon direct application.

19 (c) An appeal taken under this subdivision shall be deemed civil in
20 nature, and shall be governed by the laws and rules applicable to civil
21 appeals; provided, however, that a stay of the order appealed from must
22 be obtained in accordance with the provisions of paragraph (d) [hereof]
23 OF THIS SUBDIVISION.

24 (d) The court from or to which an appeal is taken may stay all
25 proceedings to enforce the order appealed from pending an appeal or
26 determination on a motion for permission to appeal, or may grant a
27 limited stay, except that only the court to which an appeal is taken may
28 vacate, limit, or modify a stay previously granted. If the order
29 appealed from is affirmed or modified, the stay shall continue for five
30 days after service upon the appellant of the order of affirmance or
31 modification with notice of its entry in the court to which the appeal
32 was taken. If a motion is made for permission to appeal from such an
33 order, before the expiration of the five days, the stay, or any other
34 stay granted pending determination of the motion for permission to
35 appeal, shall:

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

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

40 [22] 21. Any special order of conditions issued pursuant to subpara-
41 graph (i) or (ii) of paragraph (o) of subdivision one of this section
42 shall bear in a conspicuous manner the term "special order of condi-
43 tions" and a copy shall be filed by the clerk of the court with the
44 sheriff's office in the county in which anyone intended to be protected
45 by such special order resides, or, if anyone intended to be protected by
46 such special order resides within a city, with the police department of
47 such city. The absence of language specifying that the order is a
48 "special order of conditions" shall not affect the validity of such
49 order. A copy of such special order of conditions may from time to time
50 be filed by the clerk of the court with any other police department or
51 sheriff's office having jurisdiction of the residence, work place, or
52 school of anyone intended to be protected by such special order. A copy
53 of such special order may also be filed by anyone intended to be
54 protected by such provisions at the appropriate police department or
55 sheriff's office having jurisdiction. Any subsequent amendment or revo-
56 cation of such special order may be filed in the same manner as provided

1 in this subdivision. Such special order of conditions shall plainly
2 state the date that the order expires.
3 S 2. This act shall take effect on the first of January next succeed-
4 ing the date on which it shall have become a law and shall apply to
5 criminal offenses committed on or after such date.