

9671

I N   A S S E M B L Y

March 23, 2012

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Introduced by M. of A. MAGEE -- read once and referred 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 ASSEM-  
BLY, 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  
25 twenty of section 1.03 of the mental hygiene law, and (ii) that because  
26 of such condition he currently constitutes a physical danger to himself  
27 OR HERSELF or others.

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

LBD11734-01-1

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

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

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

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

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

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

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

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

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

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

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

51 (o) "Order of conditions" means an order directing a defendant to  
52 comply with this prescribed treatment plan, or any other condition which  
53 the court determines to be reasonably necessary or appropriate, and, in  
54 addition, where a defendant is in custody of the commissioner, not to  
55 leave the facility without authorization. In addition to such condi-  
56 tions, when determined to be reasonably necessary or appropriate, an

1 order of conditions may be accompanied by a special order of conditions  
2 set forth in a separate document requiring that the defendant: (i) stay  
3 away from the home, school, business or place of employment of the  
4 victim or victims, or of any witness designated by the court, of such  
5 offense; or (ii) refrain from harassing, intimidating, threatening or  
6 otherwise interfering with the victim or victims of the offense and such  
7 members of the family or household of such victim or victims as shall be  
8 specifically named by the court in such special order. An order of  
9 conditions or special order of conditions shall be valid for five years  
10 from the date of its issuance, except that, for good cause shown, the  
11 court may extend the period for an additional five years.

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

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

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

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

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

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

51 3. Examination order; place of examination. Upon issuing an examina-  
52 tion order, the court must, except as otherwise provided in this subdi-  
53 vision, direct that the defendant be committed to a secure facility  
54 designated by the commissioner as the place for such psychiatric exam-  
55 ination. The sheriff must hold the defendant in custody pending such  
56 designation by the commissioner, and when notified of the designation,

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

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

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

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

1 is mentally ill. If the court finds that the defendant has a dangerous  
2 mental disorder, it must] issue a commitment order FOR THE TERM OF THE  
3 PERIOD OF CONFINEMENT IMPOSED, PURSUANT TO PARAGRAPH (A) OF SUBDIVISION  
4 TWO OF THIS SECTION, AND TO SUCH A SECURE FACILITY AS SHALL BE SUITABLE  
5 FOR A MENTALLY ILL PERSON OR A PERSON WITH A DANGEROUS MENTAL DISORDER,  
6 AS THE CASE MAY BE, BASED UPON THE EXAMINATION REPORTS. [If the court  
7 finds that the defendant does not have a dangerous mental disorder but  
8 is mentally ill, the provisions of subdivision seven of this section  
9 shall apply.]

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

26 7-a. Whenever the court issues a special order of conditions pursuant  
27 to this section, the commissioner shall make reasonable efforts to noti-  
28 fy the victim or victims or the designated witness or witnesses that a  
29 special order of conditions containing such provisions has been issued,  
30 unless such victim or witness has requested that such notice should not  
31 be provided.

32 8.] First retention order. When a defendant is in the custody of the  
33 commissioner pursuant to a commitment order, the commissioner must, at  
34 least thirty days prior to the expiration of the period prescribed in  
35 the order, apply to the court that issued the order, or to a superior  
36 court in the county where the secure facility is located, for a first  
37 retention order or a release order. The commissioner must give written  
38 notice of the application to the district attorney, the defendant, coun-  
39 sel for the defendant, and the mental hygiene legal service. Upon  
40 receipt of such application, the court may, on its own motion, conduct a  
41 hearing to determine whether the defendant has a dangerous mental disor-  
42 der, and it must conduct such hearing if a demand therefor is made by  
43 the district attorney, the defendant, counsel for the defendant, or the  
44 mental hygiene legal service within ten days from the date that notice  
45 of the application was given to them. If such a hearing is held on an  
46 application for retention, the commissioner must establish to the satis-  
47 faction of the court that the defendant has a dangerous mental disorder  
48 or is mentally ill. The district attorney shall be entitled to appear  
49 and present evidence at such hearing. If such a hearing is held on an  
50 application for release, the district attorney must establish to the  
51 satisfaction of the court that the defendant has a dangerous mental  
52 disorder or is mentally ill. If the court finds that the defendant has a  
53 dangerous mental disorder it must issue a first retention order. If the  
54 court finds that the defendant is mentally ill but does not have a  
55 dangerous mental disorder, it must issue a first retention order and,  
56 pursuant to subdivision [eleven] TEN of this section, a transfer order

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

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

39 [10.] 9. Furlough order. The commissioner may apply for a furlough  
40 order, pursuant to this subdivision, when a defendant is in his OR HER  
41 custody pursuant to a [commitment order,] recommitment order[, or  
42 retention order and the commissioner is of the view that, consistent  
43 with the public safety and welfare of the community and the defendant,  
44 the clinical condition of the defendant warrants a granting of the priv-  
45 ileges authorized by a furlough order. The application for a furlough  
46 order may be made to the court that issued the commitment order, or to a  
47 superior court in the county where the secure facility is located. The  
48 commissioner must give ten days written notice to the district attorney,  
49 the defendant, counsel for the defendant, and the mental hygiene legal  
50 service. Upon receipt of such application, the court may, on its own  
51 motion, conduct a hearing to determine whether the application should be  
52 granted, and must conduct such hearing if a demand therefor is made by  
53 the district attorney. If the court finds that the issuance of a  
54 furlough order is consistent with the public safety and welfare of the  
55 community and the defendant, and that the clinical condition of the  
56 defendant warrants a granting of the privileges authorized by a furlough

1 order, the court must grant the application and issue a furlough order  
2 containing any terms and conditions that the court deems necessary or  
3 appropriate. If the defendant fails to return to the secure facility at  
4 the time specified in the furlough order, then, for purposes of subdivi-  
5 sion [nineteen] EIGHTEEN of this section, he OR SHE shall be deemed to  
6 have escaped.

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

40 [12.] 11. Release order and order of conditions. The commissioner may  
41 apply for a release order, pursuant to this subdivision, when a defend-  
42 ant is in his OR HER custody pursuant to a retention order or recommit-  
43 ment order, and the commissioner is of the view that the defendant no  
44 longer has a dangerous mental disorder and is no longer mentally ill.  
45 The application for a release order may be made to the court that issued  
46 the order under which the defendant is then in custody, or to a superior  
47 court in the county where the facility is located. The application must  
48 contain a description of the defendant's current mental condition, the  
49 past course of treatment, a history of the defendant's conduct subse-  
50 quent to his OR HER commitment, a written service plan for continued  
51 treatment which shall include the information specified in subdivision  
52 (g) of section 29.15 of the mental hygiene law, and a detailed statement  
53 of the extent to which supervision of the defendant after release is  
54 proposed. The commissioner must give ten days written notice to the  
55 district attorney, the defendant, counsel for the defendant, and the  
56 mental hygiene legal service. Upon receipt of such application, the

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

28 [13.] 12. Discharge order. The commissioner may apply for a discharge  
29 order, pursuant to this subdivision, when a defendant has been contin-  
30 uously on an out-patient status for three years or more pursuant to a  
31 release order, and the commissioner is of the view that the defendant no  
32 longer has a dangerous mental disorder and is no longer mentally ill and  
33 that the issuance of a discharge order is consistent with the public  
34 safety and welfare of the community and the defendant. The application  
35 for a discharge order may be made to the court that issued the release  
36 order, or to a superior court in the county where the defendant is then  
37 residing. The commissioner must give ten days written notice to the  
38 district attorney, the defendant, counsel for the defendant, and the  
39 mental hygiene legal service. Upon receipt of such application, the  
40 court may, on its own motion, conduct a hearing to determine whether the  
41 application should be granted, and must conduct such hearing if a demand  
42 therefor is made by the district attorney. The court must grant the  
43 application and issue a discharge order if the court finds that the  
44 defendant has been continuously on an out-patient status for three years  
45 or more, that he OR SHE does not have a dangerous mental disorder and is  
46 not mentally ill, and that the issuance of the discharge order is  
47 consistent with the public safety and welfare of the community and the  
48 defendant.

49 [14] 13. Recommitment order. At any time during the period covered by  
50 an order of conditions an application may be made by the commissioner or  
51 the district attorney to the court that issued such order, or to a supe-  
52 rior court in the county where the defendant is then residing, for a  
53 recommitment order when the applicant is of the view that the defendant  
54 has a dangerous mental disorder. The applicant must give written notice  
55 of the application to the defendant, counsel for the defendant, and the  
56 mental hygiene legal service, and if the applicant is the commissioner



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

29 [15] 14. Designation of psychiatric examiners. If, at any hearing  
30 conducted under this section to determine the defendant's present mental  
31 condition, the court is not satisfied with the findings of the psychiat-  
32 ric examiners, the court may direct the commissioner to designate one or  
33 more additional psychiatric examiners to conduct an examination of the  
34 defendant and submit a report of their findings. In addition, the court  
35 may on its own motion, or upon request of a party, may designate one or  
36 more psychiatric examiners to examine the defendant and submit a report  
37 of their findings. The district attorney may apply to the court for an  
38 order directing that the defendant submit to an examination by a psychi-  
39 atric examiner designated by the district attorney, and such psychiatric  
40 examiner may testify at the hearing.

41 [16] 15. Rehearing and review. Any defendant who is in the custody of  
42 the commissioner pursuant to a [commitment order,] a retention order, or  
43 a recommitment order, if dissatisfied with such order, may, within thir-  
44 ty days after the making of such order, obtain a rehearing and review of  
45 the proceedings and of such order in accordance with the provisions of  
46 section 9.35 or 15.35 of the mental hygiene law.

47 [17] 16. Rights of defendants. Subject to the limitations and  
48 provisions of this section, a defendant committed to the custody of the  
49 commissioner pursuant to this section shall have the rights granted to  
50 patients under the mental hygiene law.

51 [18] 17. Notwithstanding any other provision of law, no person  
52 confined by reason of a [commitment order,] recommitment order or  
53 retention order to a secure facility may be discharged or released  
54 unless the commissioner shall deliver written notice, at least four days  
55 excluding Saturdays, Sundays and holidays, in advance of such discharge  
56 or release to all of the following:

1 (a) the district attorney.

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

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

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

11 [19] 18. Escape from custody; notice requirements. If a defendant is  
12 in the custody of the commissioner pursuant to an order issued under  
13 this section, and such defendant escapes from custody, immediate notice  
14 of such escape shall be given by the department facility staff to: (a)  
15 the district attorney, (b) the superintendent of state police, (c) the  
16 sheriff of the county where the escape occurred, (d) the police depart-  
17 ment having jurisdiction of the area where the escape occurred, (e) any  
18 person the facility staff believes to be in danger, and (f) any law  
19 enforcement agency and any person the facility staff believes would be  
20 able to apprise such endangered person that the defendant has escaped  
21 from the facility. Such notice shall be given as soon as the facility  
22 staff know that the defendant has escaped from the facility and shall  
23 include such information as will adequately identify the defendant and  
24 the person or persons believed to be in danger and the nature of the  
25 danger. The notices required by this subdivision shall be given by the  
26 facility staff physician who was treating the defendant or, if unavail-  
27 able, by the defendant's treatment team leader, but if neither is imme-  
28 diately available, notice must be given by some other member of the  
29 clinical staff of the facility. Such notice must be given by any means  
30 reasonably calculated to give prompt actual notice. The defendant may be  
31 apprehended, restrained, transported to, and returned to the facility  
32 from which he escaped by any peace officer, and it shall be the duty of  
33 the officer to assist any representative of the commissioner to take the  
34 defendant into custody upon the request of such representative.

35 [20] 19. Required affidavit. No application may be made by the  
36 commissioner under this section without an accompanying affidavit from  
37 at least one psychiatric examiner supportive of relief requested in the  
38 application, which affidavit shall be served on all parties entitled to  
39 receive the notice of application. Such affidavit shall set forth the  
40 defendant's clinical diagnosis, a detailed analysis of his or her mental  
41 condition which caused the psychiatric examiner to formulate an opinion,  
42 and the opinion of the psychiatric examiner with respect to the defend-  
43 ant. Any application submitted without the required affidavit shall be  
44 dismissed by the court.

45 [21] 20. Appeals. (a) A party to proceedings conducted in accordance  
46 with the provisions of this section may take an appeal to an intermedi-  
47 ate appellate court by permission of the intermediate appellate court as  
48 follows:

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

52 (ii) a defendant, or the mental hygiene legal service on his or her  
53 behalf, may appeal from any [commitment order,] retention order, recom-  
54 mitment order, or, if the defendant has obtained a rehearing and review  
55 of any such order pursuant to subdivision [sixteen] FIFTEEN of this  
56 section, from an order, not otherwise appealable as of right, issued in

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

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

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

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

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

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

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

37 [22] 21. Any special order of conditions issued pursuant to subpara-  
38 graph (i) or (ii) of paragraph (o) of subdivision one of this section  
39 shall bear in a conspicuous manner the term "special order of condi-  
40 tions" and a copy shall be filed by the clerk of the court with the  
41 sheriff's office in the county in which anyone intended to be protected  
42 by such special order resides, or, if anyone intended to be protected by  
43 such special order resides within a city, with the police department of  
44 such city. The absence of language specifying that the order is a  
45 "special order of conditions" shall not affect the validity of such  
46 order. A copy of such special order of conditions may from time to time  
47 be filed by the clerk of the court with any other police department or  
48 sheriff's office having jurisdiction of the residence, work place, or  
49 school of anyone intended to be protected by such special order. A copy  
50 of such special order may also be filed by anyone intended to be  
51 protected by such provisions at the appropriate police department or  
52 sheriff's office having jurisdiction. Any subsequent amendment or revo-  
53 cation of such special order may be filed in the same manner as provided  
54 in this subdivision. Such special order of conditions shall plainly  
55 state the date that the order expires.

1     S 2. This act shall take effect on the first of January next succeed-  
2     ing the date on which it shall have become a law and shall apply to  
3     criminal offenses committed on or after such date.