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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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

AN ACT to amend the criminal procedure law and the mental hygiene law,
in relation to orders of observation for the purpose of determining
incapacitation

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

1 Section 1. Subdivision 1 of section 730.40 of the criminal procedure
2 law, as amended by section 2 of part Q of chapter 56 of the laws of
3 2012, is amended to read as follows:
4 1. When a local criminal court, following a hearing conducted pursuant
5 to subdivision three or four of section 730.30 OF THIS ARTICLE, is
6 satisfied that the defendant is not an incapacitated person, the crimi-
7 nal action against him or her must proceed. If it is satisfied that the
8 defendant is an incapacitated person, or if no motion for such a hearing
9 is made, such court must issue a final or temporary order of observation
10 committing him or her to the custody of the commissioner for care and
11 treatment in an appropriate institution for a period not to exceed nine-
12 ty days from the date of the order, provided, however, that the commis-
13 sioner may designate an appropriate hospital for placement of a defend-
14 ant for whom a final order of observation has been issued, where such
15 hospital is licensed by the office of mental health and has agreed to
16 accept, upon referral by the commissioner, defendants subject to final
17 orders of observation issued under this subdivision. When a local crimi-
18 nal court accusatory instrument other than a felony complaint has been
19 filed against the defendant, such court must issue a final order of
20 observation. When a felony complaint has been filed against the defend-
21 ant, such court must issue a temporary order of observation committing
22 him or her to the custody of the commissioner for care and treatment in
23 an appropriate institution or, upon the consent of the district attor-

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

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1 ney, committing him or her to the custody of the commissioner for care
2 and treatment on an out-patient basis, for a period not to exceed ninety
3 days from the date of such order, except that, with the consent of the
4 district attorney, it may issue a final order of observation. UPON THE
5 ISSUANCE OF A FINAL ORDER OF OBSERVATION, THE DISTRICT ATTORNEY SHALL
6 IMMEDIATELY TRANSMIT TO THE COMMISSIONER, IN A MANNER INTENDED TO
7 PROTECT THE CONFIDENTIALITY OF THE INFORMATION, A LIST OF NAMES AND
8 CONTACT INFORMATION OF PERSONS WHO MAY REASONABLY BE EXPECTED TO BE THE
9 VICTIM OF ANY ASSAULT OR ANY VIOLENT FELONY OFFENSE, AS DEFINED IN THE
10 PENAL LAW, OR ANY OFFENSE LISTED IN SECTION 530.11 OF THIS CHAPTER WHICH
11 WOULD BE CARRIED OUT BY THE COMMITTED PERSON; PROVIDED THAT THE PERSON
12 WHO REASONABLY MAY BE EXPECTED TO BE A VICTIM DOES NOT NEED TO BE A
13 MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE COMMITTED PERSON.

14 S 2. Subdivision 2 of section 730.40 of the criminal procedure law, as
15 amended by chapter 476 of the laws of 2012, is amended to read as
16 follows:

17 2. When a local criminal court has issued a final order of observa-
18 tion, it must dismiss the accusatory instrument filed in such court
19 against the defendant and such dismissal constitutes a bar to any
20 further prosecution of the charge or charges contained in such accusato-
21 ry instrument. When the defendant is in the custody of the commissioner
22 pursuant to a final order of observation, the commissioner [must] OR HIS
23 OR HER DESIGNEE, WHICH MAY INCLUDE THE DIRECTOR OF AN APPROPRIATE INSTI-
24 TUTION, immediately upon the discharge of the defendant, MUST certify to
25 such court that he or she has complied with the notice provisions set
26 forth in PARAGRAPH (A) OF subdivision six of section 730.60 of this
27 article. When the defendant is in the custody of the commissioner at
28 the expiration of the period prescribed in a temporary order of observa-
29 tion, the proceedings in the local criminal court that issued such order
30 shall terminate for all purposes and the commissioner must promptly
31 certify to such court and to the appropriate district attorney that the
32 defendant was in his or her custody on such expiration date. Upon
33 receipt of such certification, the court must dismiss the felony
34 complaint filed against the defendant.

35 S 3. Paragraphs (a) and (b) of subdivision 6 of section 730.60 of the
36 criminal procedure law, paragraph (a) as amended by chapter 476 of the
37 laws of 2012, and paragraph (b) as added by chapter 549 of the laws of
38 1980, are amended to read as follows:

39 (a) Notwithstanding any other provision of law, no person committed to
40 the custody of the commissioner pursuant to this article, or continuous-
41 ly thereafter retained in such custody, shall be discharged, released on
42 condition or placed in any less secure facility or on any less restric-
43 tive status, including, but not limited to vacations, furloughs and
44 temporary passes, unless the commissioner OR HIS OR HER DESIGNEE, WHICH
45 MAY INCLUDE THE DIRECTOR OF AN APPROPRIATE INSTITUTION, shall deliver
46 written notice, at least four days, excluding Saturdays, Sundays and
47 holidays, in advance of the change of such committed person's facility
48 or status, or in the case of a person committed pursuant to a final
49 order of observation written notice upon discharge of such committed
50 person, to all of the following:

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

53 (2) The superintendent of state police;

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

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

(5) Any person who may reasonably be expected to be the victim of any assault or any violent felony offense, as defined in the penal law, or any offense listed in section 530.11 of this part which would be carried out by the committed person; provided that the person who reasonably may be expected to be a victim does not need to be a member of the same family or household as the committed person; and

(6) Any other person the court may designate.

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

(b) The notice required by this subdivision shall also be given immediately upon the departure of such committed person from the [commissioner's] actual custody OF THE COMMISSIONER OR AN APPROPRIATE INSTITUTION, without proper authorization. Nothing in this subdivision shall be construed to impair any other right or duty regarding any notice or hearing contained in any other provision of law.

S 4. Subdivision 1 of section 730.50 of the criminal procedure law, as amended by section 3 of part Q of chapter 56 of the laws of 2012, is amended to read as follows:

1. When a superior court, following a hearing conducted pursuant to subdivision three or four of section 730.30 of this article, is satisfied that the defendant is not an incapacitated person, the criminal action against him or her must proceed. If it is satisfied that the defendant is an incapacitated person, or if no motion for such a hearing is made, it must adjudicate him or her an incapacitated person, and must issue a final order of observation or an order of commitment. When the indictment does not charge a felony or when the defendant has been convicted of an offense other than a felony, such court (a) must issue a final order of observation committing the defendant to the custody of the commissioner for care and treatment in an appropriate institution for a period not to exceed ninety days from the date of such order, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this subdivision, and (b) must dismiss the indictment filed in such court against the defendant, and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in such indictment. UPON THE ISSUANCE OF A FINAL ORDER OF OBSERVATION, THE DISTRICT ATTORNEY SHALL IMMEDIATELY TRANSMIT TO THE COMMISSIONER, IN A MANNER INTENDED TO PROTECT THE CONFIDENTIALITY OF THE INFORMATION, A LIST OF NAMES AND CONTACT INFORMATION OF PERSONS WHO MAY REASONABLY BE EXPECTED TO BE THE VICTIM OF ANY ASSAULT OR ANY VIOLENT FELONY OFFENSE, AS DEFINED IN THE PENAL LAW, OR ANY OFFENSE LISTED IN SECTION 530.11 OF THIS CHAPTER WHICH WOULD BE CARRIED OUT BY THE COMMITTED PERSON; PROVIDED THAT THE PERSON WHO REASONABLY MAY BE EXPECTED TO BE A VICTIM DOES NOT NEED TO BE A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE COMMITTED PERSON. When the indictment charges a felony or when the defendant has been convicted of a felony, it must issue an order of commitment committing the defendant to the custody of the commissioner for care and treatment in an appropriate institution or, upon the consent of the district attorney, committing him or her to the custody of the commissioner for care and treatment on an out-patient basis, for a period not to exceed one year from the date of such order. Upon the issuance of an order of commitment, the court must exonerate the defendant's bail if he or she was previously at liberty on bail; provided,

1 however, that exoneration of bail is not required when a defendant is
2 committed to the custody of the commissioner for care and treatment on
3 an out-patient basis. WHEN THE DEFENDANT IS IN THE CUSTODY OF THE
4 COMMISSIONER PURSUANT TO A FINAL ORDER OF OBSERVATION, THE COMMISSIONER
5 OR HIS OR HER DESIGNEE, WHICH MAY INCLUDE THE DIRECTOR OF AN APPROPRIATE
6 INSTITUTION, IMMEDIATELY UPON THE DISCHARGE OF THE DEFENDANT, MUST
7 CERTIFY TO SUCH COURT THAT HE OR SHE HAS COMPLIED WITH THE NOTICE
8 PROVISIONS SET FORTH IN PARAGRAPH (A) OF SUBDIVISION SIX OF SECTION
9 730.60 OF THIS ARTICLE.

10 S 5. Subdivision (h) of section 29.11 of the mental hygiene law, as
11 added by chapter 549 of the laws of 1980, is amended to read as follows:

12 (h) Notwithstanding any other provision of law, no person committed to
13 the custody of the commissioner of mental hygiene pursuant to article
14 seven hundred thirty of the criminal procedure law, or continuously
15 thereafter retained in such custody, shall be discharged, released on
16 condition or placed in any less secure facility or on any less restric-
17 tive status, including, but not limited to vacations, furloughs and
18 temporary passes, unless the commissioner OR HIS OR HER DESIGNEE, WHICH
19 MAY INCLUDE THE DIRECTOR OF AN APPROPRIATE INSTITUTION AS DEFINED IN
20 SECTION 730.10 OF THE CRIMINAL PROCEDURE LAW, shall deliver written
21 notice, at least four days, excluding Saturdays, Sundays and holidays,
22 in advance of the change of such committed person's facility or status,
23 OR IN THE CASE OF A PERSON COMMITTED PURSUANT TO A FINAL ORDER OF OBSER-
24 VATION WRITTEN NOTICE UPON DISCHARGE OF SUCH COMMITTED PERSON, to all of
25 the following:

26 1. the district attorney of the county from which such person was
27 committed;

28 2. the superintendent of state police;

29 3. the sheriff of the county where the facility is located;

30 4. the police department having jurisdiction of the area where the
31 facility is located;

32 5. any person who may reasonably be expected to be the victim of any
33 assault or any violent felony offense, as defined in the penal law, OR
34 ANY OFFENSE LISTED IN SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW which
35 would be carried out by the committed person; PROVIDED THAT THE PERSON
36 WHO REASONABLY MAY BE EXPECTED TO BE A VICTIM DOES NOT NEED TO BE A
37 MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE COMMITTED PERSON;

38 6. the attorney for the committed person, where the attorney shall so
39 request; and

40 7. any other person the court may designate.

41 Said notice may be given by any means reasonably calculated to give
42 prompt actual notice. The notice required by this subdivision shall also
43 be given immediately upon the departure of such committed person from
44 the [commissioner's] actual custody OF THE COMMISSIONER OR AN APPROPRI-
45 ATE INSTITUTION, without proper authorization. Nothing in this subdivi-
46 sion shall be construed to impair any other right or duty regarding any
47 notice or hearing contained in any other provision of law.

48 S 6. This act shall take effect immediately.