STATE OF NEW YORK

4409

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

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 Assembly, do enact as follows:

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

§ 330.20 Procedure following verdict or plea of not responsible by reason of mental disease or defect.

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

(a) "Commissioner" means the [~~state~~] commissioner of mental health or the [~~state~~] commissioner of [~~mental retardation and~~] developmental [~~disability~~] **disabilities**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. [~~**Examination**~~] **Sentence; examination** order; psychiatric examiners. Upon entry of a verdict of not responsible by reason of mental disease or defect, or upon the acceptance of a plea of not responsible by reason of mental disease or defect, the court must immediately **(a) impose a period of confinement in the custody of the commissioner which is equal to the sentence of imprisonment such defendant would have received pursuant to article seventy of the penal law, upon conviction of the crime with which he or she was charged; and (b)** issue an examination order. Upon receipt of such order, the commissioner must designate two qualified psychiatric examiners to conduct the examination to examine the defendant. In conducting their examination, the psychiatric examiners may employ any method which is accepted by the medical profession for the examination of persons alleged to be suffering from a dangerous mental disorder or to be mentally ill or retarded. The court may authorize a psychiatrist or psychologist retained by a defendant to be present at such examination. The clerk of the court must promptly forward a copy of the examination order to the mental hygiene legal service and such service may thereafter participate in all subsequent proceedings under this section.

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

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

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

4. Examination order, duration. Confinement in a secure facility pursuant to an examination order shall be for a period not exceeding thirty days, except that, upon application of the commissioner, the court may authorize confinement for an additional period not exceeding thirty days when a longer period is necessary to complete the examination. [~~If the initial hearing required by subdivision six of this section has not commenced prior to the termination of such examination period, the commissioner shall retain custody of the defendant in such secure facility until custody is transferred to the sheriff in the manner prescribed in subdivision six of this section.~~] During the period of such confinement, the physician in charge of the facility may administer or cause to be administered to the defendant such emergency psychiatric, medical or other therapeutic treatment as in his **or her** judgment should be administered. [~~If the court has directed that the examination be conducted on an out-patient basis, the examination shall be completed within thirty days after the defendant has first reported to the place designated by the commissioner, except that, upon application of the commissioner, the court may extend such period for a reasonable time if a longer period is necessary to complete the examination.~~]

5. Examination order; reports. After he **or she** has completed his **or her** examination of the defendant, each psychiatric examiner must promptly prepare a report of his **or her** findings and evaluation concerning the defendant's mental condition, and submit such report to the commissioner. If the psychiatric examiners differ in their opinion as to whether the defendant is mentally ill or is suffering from a dangerous mental disorder, the commissioner must designate another psychiatric examiner to examine the defendant. Upon receipt of the examination reports, the commissioner must submit them to the court that issued the examination order. If the court is not satisfied with the findings of these psychi-

atric examiners, the court may designate one or more additional psychiatric examiners pursuant to subdivision [~~fifteen~~] fourteen of this section. [~~The court must furnish a copy of the reports to the district attorney, counsel for the defendant and the mental hygiene legal service.~~]

6. [~~Initial hearing; commitment~~] Commitment order. After the examination reports are submitted, the court must[~~, within ten days of the receipt of such reports, conduct an initial hearing to determine the defendant's present mental condition. If the defendant is in the custody of the commissioner pursuant to an examination order, the court must direct the sheriff to obtain custody of the defendant from the commissioner and to confine the defendant pending further order of the court, except that the court may direct the sheriff to confine the defendant in an institution located near the place where the court sits if that institution has been designated by the commissioner as suitable for the temporary and secure detention of mentally disabled persons. At such initial hearing, the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill. If the court finds that the defendant has a dangerous mental disorder, it must~~] issue a commitment order for the term of the period of confinement imposed, pursuant to paragraph (a) of subdivision two of this section, and to such a secure facility as shall be suitable for a mentally ill person or a person with a dangerous mental disorder, as the case may be, based upon the examination reports. [~~If the court finds that the defendant does not have a dangerous mental disorder but is mentally ill, the provisions of subdivision seven of this section shall apply.~~]

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

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

~~8.~~] First retention order. When a defendant is in the custody of the commissioner pursuant to a commitment order, the commissioner must, at least thirty days prior to the expiration of the period prescribed in the order, apply to the court that issued the order, or to a superior court in the county where the secure facility is located, for a first retention order or a release order. The commissioner must give written notice of the application to the district attorney, the defendant, coun-

sel for the defendant, and the mental hygiene legal service. Upon receipt of such application, the court may, on its own motion, conduct a hearing to determine whether the defendant has a dangerous mental disorder, and it must conduct such hearing if a demand therefor is made by the district attorney, the defendant, counsel for the defendant, or the mental hygiene legal service within ten days from the date that notice of the application was given to them. If such a hearing is held on an application for retention, the commissioner must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill. The district attorney shall be entitled to appear and present evidence at such hearing. If such a hearing is held on an application for release, the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill. If the court finds that the defendant has a dangerous mental disorder it must issue a first retention order. If the court finds that the defendant is mentally ill but does not have a dangerous mental disorder, it must issue a first retention order and, pursuant to subdivision [~~eleven~~] **ten** of this section, a transfer order and an order of conditions. If the court finds that the defendant does not have a dangerous mental disorder and is not mentally ill, it must issue a release order and an order of conditions pursuant to subdivision [~~twelve~~] **eleven** of this section.

[~~9.~~] **8.** Second and subsequent retention orders. When a defendant is in the custody of the commissioner pursuant to a first retention order, the commissioner must, at least thirty days prior to the expiration of the period prescribed in the order, apply to the court that issued the order, or to a superior court in the county where the facility is located, for a second retention order or a release order. The commissioner must give written notice of the application to the district attorney, the defendant, counsel for the defendant, and the mental hygiene legal service. Upon receipt of such application, the court may, on its own motion, conduct a hearing to determine whether the defendant has a dangerous mental disorder, and it must conduct such hearing if a demand therefor is made by the district attorney, the defendant, counsel for the defendant, or the mental hygiene legal service within ten days from the date that notice of the application was given to them. If such a hearing is held on an application for retention, the commissioner must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill. The district attorney shall be entitled to appear and present evidence at such hearing. If such a hearing is held on an application for release, the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill. If the court finds that the defendant has a dangerous mental disorder it must issue a second retention order. If the court finds that the defendant is mentally ill but does not have a dangerous mental disorder, it must issue a second retention order and, pursuant to subdivision [~~eleven~~] **ten** of this section, a transfer order and an order of conditions. If the court finds that the defendant does not have a dangerous mental disorder and is not mentally ill, it must issue a release order and an order of conditions pursuant to subdivision [~~twelve~~] **eleven** of this section. When a defendant is in the custody of the commissioner prior to the expiration of the period prescribed in a second retention order, the procedures set forth in this subdivision for the issuance of a second retention order shall govern the application for and the issuance of any subsequent retention order.

[~~10.~~] 9. Furlough order. The commissioner may apply for a furlough order, pursuant to this subdivision, when a defendant is in his or her custody pursuant to a [~~commitment order,~~] recommitment order[~~,~~] or retention order and the commissioner is of the view that, consistent with the public safety and welfare of the community and the defendant, the clinical condition of the defendant warrants a granting of the privileges authorized by a furlough order. The application for a furlough order may be made to the court that issued the commitment order, or to a superior court in the county where the secure facility is located. The commissioner must give ten days written notice to the district attorney, the defendant, counsel for the defendant, and the mental hygiene legal service. Upon receipt of such application, the court may, on its own motion, conduct a hearing to determine whether the application should be granted, and must conduct such hearing if a demand therefor is made by the district attorney. If the court finds that the issuance of a furlough order is consistent with the public safety and welfare of the community and the defendant, and that the clinical condition of the defendant warrants a granting of the privileges authorized by a furlough order, the court must grant the application and issue a furlough order containing any terms and conditions that the court deems necessary or appropriate. If the defendant fails to return to the secure facility at the time specified in the furlough order, then, for purposes of subdivision [~~nineteen~~] eighteen of this section, he or she shall be deemed to have escaped.

[~~11.~~] 10. Transfer order and order of conditions. The commissioner may apply for a transfer order, pursuant to this subdivision, when a defendant is in his or her custody pursuant to a retention order or a recommitment order, and the commissioner is of the view that the defendant does not have a dangerous mental disorder or that, consistent with the public safety and welfare of the community and the defendant, the clinical condition of the defendant warrants his or her transfer from a secure facility to a non-secure facility under the jurisdiction of the commissioner or to any non-secure facility designated by the commissioner. The application for a transfer order may be made to the court that issued the order under which the defendant is then in custody, or to a superior court in the county where the secure facility is located. The commissioner must give ten days written notice to the district attorney, the defendant, counsel for the defendant, and the mental hygiene legal service. Upon receipt of such application, the court may, on its own motion, conduct a hearing to determine whether the application should be granted, and must conduct such hearing if the demand therefor is made by the district attorney. At such hearing, the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or that the issuance of a transfer order is inconsistent with the public safety and welfare of the community. The court must grant the application and issue a transfer order if the court finds that the defendant does not have a dangerous mental disorder, or if the court finds that the issuance of a transfer order is consistent with the public safety and welfare of the community and the defendant and that the clinical condition of the defendant, warrants his or her transfer from a secure facility to a non-secure facility. A court must also issue a transfer order when, in connection with an application for a first retention order pursuant to subdivision [~~eight~~] seven of this section or a second or subsequent retention order pursuant to subdivision [~~nine~~] eight of this section, it finds that a defendant is mentally

ill but does not have a dangerous mental disorder. Whenever a court issues a transfer order it must also issue an order of conditions.

[~~12.~~] **11.** Release order and order of conditions. The commissioner may apply for a release order, pursuant to this subdivision, when a defendant is in his **or her** custody pursuant to a retention order or recommitment order, and the commissioner is of the view that the defendant no longer has a dangerous mental disorder and is no longer mentally ill. The application for a release order may be made to the court that issued the order under which the defendant is then in custody, or to a superior court in the county where the facility is located. The application must contain a description of the defendant's current mental condition, the past course of treatment, a history of the defendant's conduct subsequent to his **or her** commitment, a written service plan for continued treatment which shall include the information specified in subdivision (g) of section 29.15 of the mental hygiene law, and a detailed statement of the extent to which supervision of the defendant after release is proposed. The commissioner must give ten days written notice to the district attorney, the defendant, counsel for the defendant, and the mental hygiene legal service. Upon receipt of such application, the court must promptly conduct a hearing to determine the defendant's present mental condition. At such hearing, the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill. If the court finds that the defendant has a dangerous mental disorder, it must deny the application for a release order. If the court finds that the defendant does not have a dangerous mental disorder but is mentally ill, it must issue a transfer order pursuant to subdivision [~~eleven~~] **ten** of this section if the defendant is then confined in a secure facility. If the court finds that the defendant does not have a dangerous mental disorder and is not mentally ill, it must grant the application and issue a release order. A court must also issue a release order when, in connection with an application for a first retention order pursuant to subdivision [~~eight~~] **seven** of this section or a second or subsequent retention order pursuant to subdivision [~~nine~~] **eight** of this section, it finds that the defendant does not have a dangerous mental disorder and is not mentally ill. Whenever a court issues a release order it must also issue an order of conditions. If the court has previously issued a transfer order and an order of conditions, it must issue a new order of conditions upon issuing a release order. The order of conditions issued in conjunction with a release order shall incorporate a written service plan prepared by a psychiatrist familiar with the defendant's case history and approved by the court, and shall contain any conditions that the court determines to be reasonably necessary or appropriate. It shall be the responsibility of the commissioner to determine that such defendant is receiving the services specified in the written service plan and is complying with any conditions specified in such plan and the order of conditions.

[~~13.~~] **12.** Discharge order. The commissioner may apply for a discharge order, pursuant to this subdivision, when a defendant has been continuously on an out-patient status for three years or more pursuant to a release order, and the commissioner is of the view that the defendant no longer has a dangerous mental disorder and is no longer mentally ill and that the issuance of a discharge order is consistent with the public safety and welfare of the community and the defendant. The application for a discharge order may be made to the court that issued the release order, or to a superior court in the county where the defendant is then residing. The commissioner must give ten days written notice to the

district attorney, the defendant, counsel for the defendant, and the mental hygiene legal service. Upon receipt of such application, the court may, on its own motion, conduct a hearing to determine whether the application should be granted, and must conduct such hearing if a demand therefor is made by the district attorney. The court must grant the application and issue a discharge order if the court finds that the defendant has been continuously on an out-patient status for three years or more, that he **or she** does not have a dangerous mental disorder and is not mentally ill, and that the issuance of the discharge order is consistent with the public safety and welfare of the community and the defendant.

[~~14~~] **13**. Recommitment order. At any time during the period covered by an order of conditions an application may be made by the commissioner or the district attorney to the court that issued such order, or to a superior court in the county where the defendant is then residing, for a recommitment order when the applicant is of the view that the defendant has a dangerous mental disorder. The applicant must give written notice of the application to the defendant, counsel for the defendant, and the mental hygiene legal service, and if the applicant is the commissioner he **or she** must give such notice to the district attorney or if the applicant is the district attorney he **or she** must give such notice to the commissioner. Upon receipt of such application the court must order the defendant to appear before it for a hearing to determine if the defendant has a dangerous mental disorder. Such order may be in the form of a written notice, specifying the time and place of appearance, served personally upon the defendant, or mailed to his **or her** last known address, as the court may direct. If the defendant fails to appear in court as directed, the court [~~may~~] **shall** issue a warrant to an appropriate peace officer directing him **or her** to take the defendant into custody and bring him **or her** before the court. In such circumstance, the court [~~may~~] **shall** direct that the defendant be confined in an appropriate institution located near the place where the court sits. The court must conduct a hearing to determine whether the defendant has a dangerous mental disorder. At such hearing, the applicant, whether he **or she** be the commissioner or the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder. If the applicant is the commissioner, the district attorney shall be entitled to appear and present evidence at such hearing; if the applicant is the district attorney, the commissioner shall be entitled to appear and present evidence at such hearing. If the court finds that the defendant has a dangerous mental disorder, it must issue a recommitment order. When a defendant is in the custody of the commissioner pursuant to a recommitment order, the procedures set forth in subdivisions **seven and** eight [~~and nine~~] of this section for the issuance of retention orders shall govern the application for and the issuance of a first retention order, a second retention order, and subsequent retention orders.

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

order directing that the defendant submit to an examination by a psychiatric examiner designated by the district attorney, and such psychiatric examiner may testify at the hearing.

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

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

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

(a) the district attorney.

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

(c) any other person the court may designate.

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

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

[~~20~~] **19**. Required affidavit. No application may be made by the commissioner under this section without an accompanying affidavit from at least one psychiatric examiner supportive of relief requested in the

application, which affidavit shall be served on all parties entitled to receive the notice of application. Such affidavit shall set forth the defendant's clinical diagnosis, a detailed analysis of his or her mental condition which caused the psychiatric examiner to formulate an opinion, and the opinion of the psychiatric examiner with respect to the defendant. Any application submitted without the required affidavit shall be dismissed by the court.

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

(i) the commissioner may appeal from any release order, retention order, transfer order, discharge order, order of conditions, or recommitment order, for which he **or she** has not applied;

(ii) a defendant, or the mental hygiene legal service on his or her behalf, may appeal from any [~~commitment order,~~] retention order, recommitment order, or, if the defendant has obtained a rehearing and review of any such order pursuant to subdivision [~~sixteen~~] **fifteen** of this section, from an order, not otherwise appealable as of right, issued in accordance with the provisions of section 9.35 or 15.35 of the mental hygiene law authorizing continued retention under the original order, provided, however, that a defendant who takes an appeal from a [~~commitment order,~~] retention order, or recommitment order may not subsequently obtain a rehearing and review of such order pursuant to subdivision [~~sixteen~~] **fifteen** of this section;

(iii) the district attorney may appeal from any release order, transfer order, discharge order, order of conditions, furlough order, or order denying an application for a recommitment order which he **or she** opposed.

(b) An aggrieved party may appeal from a final order of the intermediate appellate court to the court of appeals by permission of the intermediate appellate court granted before application to the court of appeals, or by permission of the court of appeals upon refusal by the intermediate appellate court or upon direct application.

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

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

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

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

[~~22~~] 21. Any special order of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of this section shall bear in a conspicuous manner the term "special order of conditions" and a copy shall be filed by the clerk of the court with the sheriff's office in the county in which anyone intended to be protected by such special order resides, or, if anyone intended to be protected by such special order resides within a city, with the police department of such city. The absence of language specifying that the order is a "special order of conditions" shall not affect the validity of such order. A copy of such special order of conditions may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, or school of anyone intended to be protected by such special order. A copy of such special order may also be filed by anyone intended to be protected by such provisions at the appropriate police department or sheriff's office having jurisdiction. Any subsequent amendment or revocation of such special order may be filed in the same manner as provided in this subdivision. Such special order of conditions shall plainly state the date that the order expires.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to criminal offenses committed on or after such date.