

# STATE OF NEW YORK

5465

2019-2020 Regular Sessions

## IN ASSEMBLY

February 12, 2019

Introduced by M. of A. SALKA -- 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:

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, subdivision 2-a as added by  
6 chapter 1 of the laws of 2013, subdivisions 5, 8, 9, 10, 11, 12, 13 and  
7 14 as amended by chapter 789 of the laws of 1985, subdivision 21 as  
8 added by chapter 976 of the laws of 1983, and subparagraph (ii) of para-  
9 graph (a) of subdivision 21 as amended by chapter 330 of the laws of  
10 1993, is amended to read as follows:

11 § 330.20 Procedure following verdict or plea of not responsible by  
12 reason of mental disease or defect.

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

15 (a) "Commissioner" means the [~~state~~] commissioner of mental health or  
16 the [~~state~~] commissioner of [~~mental retardation and~~] the office for  
17 people with developmental [~~disability~~] disabilities.

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

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

LBD08522-01-9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 2-a. Firearm, rifle or shotgun surrender order. Upon entry of a  
2 verdict of not responsible by reason of mental disease or defect, or  
3 upon the acceptance of a plea of not responsible by reason of mental  
4 disease or defect, or upon a finding that the defendant is an incapacitated  
5 person pursuant to article seven hundred thirty of this chapter,  
6 the court shall revoke the defendant's firearm license, if any, inquire  
7 of the defendant as to the existence and location of any firearm, rifle  
8 or shotgun owned or possessed by such defendant and direct the surrender  
9 of such firearm, rifle or shotgun pursuant to subparagraph (f) of para-  
10 graph one of subdivision a of section 265.20 and subdivision six of  
11 section 400.05 of the penal law.

12 3. Examination order; place of examination. Upon issuing an examina-  
13 tion order, the court must, except as otherwise provided in this subdivi-  
14 sion, direct that the defendant be committed to a secure facility  
15 designated by the commissioner as the place for such psychiatric exam-  
16 ination. The sheriff must hold the defendant in custody pending such  
17 designation by the commissioner, and when notified of the designation,  
18 the sheriff must promptly deliver the defendant to such secure facility.  
19 ~~[When the defendant is not in custody at the time of such verdict or~~  
20 ~~plea, because he was previously released on bail or on his own recogni-~~  
21 ~~zance, the court, in its discretion, may direct that such examination be~~  
22 ~~conducted on an out-patient basis, and at such time and place as the~~  
23 ~~commissioner shall designate. If, however, the commissioner informs the~~  
24 ~~court that confinement of the defendant is necessary for an effective~~  
25 ~~examination, the court must direct that the defendant be confined in a~~  
26 ~~facility designated by the commissioner until the examination is~~  
27 ~~completed.]~~

28 4. Examination order, duration. Confinement in a secure facility  
29 pursuant to an examination order shall be for a period not exceeding  
30 thirty days, except that, upon application of the commissioner, the  
31 court may authorize confinement for an additional period not exceeding  
32 thirty days when a longer period is necessary to complete the examina-  
33 tion. ~~[If the initial hearing required by subdivision six of this~~  
34 ~~section has not commenced prior to the termination of such examination~~  
35 ~~period, the commissioner shall retain custody of the defendant in such~~  
36 ~~secure facility until custody is transferred to the sheriff in the~~  
37 ~~manner prescribed in subdivision six of this section.]~~ During the period  
38 of such confinement, the physician in charge of the facility may admin-  
39 ister or cause to be administered to the defendant such emergency  
40 psychiatric, medical or other therapeutic treatment as in his or her  
41 judgment should be administered. ~~[If the court has directed that the~~  
42 ~~examination be conducted on an out-patient basis, the examination shall~~  
43 ~~be completed within thirty days after the defendant has first reported~~  
44 ~~to the place designated by the commissioner, except that, upon applica-~~  
45 ~~tion of the commissioner, the court may extend such period for a reason-~~  
46 ~~able time if a longer period is necessary to complete the examination.]~~

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

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

6 6. [~~Initial hearing, commitment~~] Commitment order. After the examina-  
7 tion reports are submitted, the court must[~~, within ten days of the~~  
8 ~~receipt of such reports, conduct an initial hearing to determine the~~  
9 ~~defendant's present mental condition. If the defendant is in the custody~~  
10 ~~of the commissioner pursuant to an examination order, the court must~~  
11 ~~direct the sheriff to obtain custody of the defendant from the commis-~~  
12 ~~sioner and to confine the defendant pending further order of the court,~~  
13 ~~except that the court may direct the sheriff to confine the defendant in~~  
14 ~~an institution located near the place where the court sits if that~~  
15 ~~institution has been designated by the commissioner as suitable for the~~  
16 ~~temporary and secure detention of mentally disabled persons. At such~~  
17 ~~initial hearing, the district attorney must establish to the satisfac-~~  
18 ~~tion of the court that the defendant has a dangerous mental disorder or~~  
19 ~~is mentally ill. If the court finds that the defendant has a dangerous~~  
20 ~~mental disorder, it must~~] issue a commitment order for the term of the  
21 period of confinement imposed, pursuant to paragraph (a) of subdivision  
22 two of this section, and to such a secure facility as shall be suitable  
23 for a mentally ill person or a person with a dangerous mental disorder,  
24 as the case may be, based upon the examination reports. [~~If the court~~  
25 ~~finds that the defendant does not have a dangerous mental disorder but~~  
26 ~~is mentally ill, the provisions of subdivision seven of this section~~  
27 ~~shall apply.~~]

28 7. [~~Initial hearing civil commitment and order of conditions. If, at~~  
29 ~~the conclusion of the initial hearing conducted pursuant to subdivision~~  
30 ~~six of this section, the court finds that the defendant is mentally ill~~  
31 ~~but does not have a dangerous mental disorder, the provisions of arti-~~  
32 ~~cles nine or fifteen of the mental hygiene law shall apply at that stage~~  
33 ~~of the proceedings and at all subsequent proceedings. Having found that~~  
34 ~~the defendant is mentally ill, the court must issue an order of condi-~~  
35 ~~tions and an order committing the defendant to the custody of the~~  
36 ~~commissioner. The latter order shall be deemed an order made pursuant to~~  
37 ~~the mental hygiene law and not pursuant to this section, and further~~  
38 ~~retention, conditional release or discharge of such defendant shall be~~  
39 ~~in accordance with the provisions of the mental hygiene law. If, at the~~  
40 ~~conclusion of the initial hearing, the court finds that the defendant~~  
41 ~~does not have a dangerous mental disorder and is not mentally ill, the~~  
42 ~~court must discharge the defendant either unconditionally or subject to~~  
43 ~~an order of conditions.~~]

44 ~~7-a. Whenever the court issues a special order of conditions pursuant~~  
45 ~~to this section, the commissioner shall make reasonable efforts to noti-~~  
46 ~~fy the victim or victims or the designated witness or witnesses that a~~  
47 ~~special order of conditions containing such provisions has been issued,~~  
48 ~~unless such victim or witness has requested that such notice should not~~  
49 ~~be provided.~~

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

1 sel for the defendant, and the mental hygiene legal service. Upon  
2 receipt of such application, the court may, on its own motion, conduct a  
3 hearing to determine whether the defendant has a dangerous mental disorder,  
4 and it must conduct such hearing if a demand therefor is made by  
5 the district attorney, the defendant, counsel for the defendant, or the  
6 mental hygiene legal service within ten days from the date that notice  
7 of the application was given to them. If such a hearing is held on an  
8 application for retention, the commissioner must establish to the satisfaction  
9 of the court that the defendant has a dangerous mental disorder  
10 or is mentally ill. The district attorney shall be entitled to appear  
11 and present evidence at such hearing. If such a hearing is held on an  
12 application for release, the district attorney must establish to the  
13 satisfaction of the court that the defendant has a dangerous mental  
14 disorder or is mentally ill. If the court finds that the defendant has a  
15 dangerous mental disorder it must issue a first retention order. If the  
16 court finds that the defendant is mentally ill but does not have a  
17 dangerous mental disorder, it must issue a first retention order and,  
18 pursuant to subdivision [~~eleven~~] ten of this section, a transfer order  
19 and an order of conditions. If the court finds that the defendant does  
20 not have a dangerous mental disorder and is not mentally ill, it must  
21 issue a release order and an order of conditions pursuant to subdivision  
22 [~~twelve~~] eleven of this section.

23 [~~9-~~] 8. Second and subsequent retention orders. When a defendant is in  
24 the custody of the commissioner pursuant to a first retention order, the  
25 commissioner must, at least thirty days prior to the expiration of the  
26 period prescribed in the order, apply to the court that issued the  
27 order, or to a superior court in the county where the facility is  
28 located, for a second retention order or a release order. The commissioner  
29 must give written notice of the application to the district  
30 attorney, the defendant, counsel for the defendant, and the mental  
31 hygiene legal service. Upon receipt of such application, the court may,  
32 on its own motion, conduct a hearing to determine whether the defendant  
33 has a dangerous mental disorder, and it must conduct such hearing if a  
34 demand therefor is made by the district attorney, the defendant, counsel  
35 for the defendant, or the mental hygiene legal service within ten days  
36 from the date that notice of the application was given to them. If such  
37 a hearing is held on an application for retention, the commissioner must  
38 establish to the satisfaction of the court that the defendant has a  
39 dangerous mental disorder or is mentally ill. The district attorney  
40 shall be entitled to appear and present evidence at such hearing. If  
41 such a hearing is held on an application for release, the district  
42 attorney must establish to the satisfaction of the court that the  
43 defendant has a dangerous mental disorder or is mentally ill. If the  
44 court finds that the defendant has a dangerous mental disorder it must  
45 issue a second retention order. If the court finds that the defendant is  
46 mentally ill but does not have a dangerous mental disorder, it must  
47 issue a second retention order and, pursuant to subdivision [~~eleven~~] ten  
48 of this section, a transfer order and an order of conditions. If the  
49 court finds that the defendant does not have a dangerous mental disorder  
50 and is not mentally ill, it must issue a release order and an order of  
51 conditions pursuant to subdivision [~~twelve~~] eleven of this section. When  
52 a defendant is in the custody of the commissioner prior to the expiration  
53 of the period prescribed in a second retention order, the procedures  
54 set forth in this subdivision for the issuance of a second  
55 retention order shall govern the application for and the issuance of any  
56 subsequent retention order.

1     ~~[10-]~~ 9. Furlough order. The commissioner may apply for a furlough  
2 order, pursuant to this subdivision, when a defendant is in his or her  
3 custody pursuant to a ~~[commitment order,]~~ recommitment order~~[,]~~ or  
4 retention order and the commissioner is of the view that, consistent  
5 with the public safety and welfare of the community and the defendant,  
6 the clinical condition of the defendant warrants a granting of the priv-  
7 ileges authorized by a furlough order. The application for a furlough  
8 order may be made to the court that issued the commitment order, or to a  
9 superior court in the county where the secure facility is located. The  
10 commissioner must give ten days written notice to the district attorney,  
11 the defendant, counsel for the defendant, and the mental hygiene legal  
12 service. Upon receipt of such application, the court may, on its own  
13 motion, conduct a hearing to determine whether the application should be  
14 granted, and must conduct such hearing if a demand therefor is made by  
15 the district attorney. If the court finds that the issuance of a  
16 furlough order is consistent with the public safety and welfare of the  
17 community and the defendant, and that the clinical condition of the  
18 defendant warrants a granting of the privileges authorized by a furlough  
19 order, the court must grant the application and issue a furlough order  
20 containing any terms and conditions that the court deems necessary or  
21 appropriate. If the defendant fails to return to the secure facility at  
22 the time specified in the furlough order, then, for purposes of subdivi-  
23 sion ~~[nineteen]~~ eighteen of this section, he or she shall be deemed to  
24 have escaped.

25     ~~[11-]~~ 10. Transfer order and order of conditions. The commissioner may  
26 apply for a transfer order, pursuant to this subdivision, when a defend-  
27 ant is in his or her custody pursuant to a retention order or a recom-  
28 mitment order, and the commissioner is of the view that the defendant  
29 does not have a dangerous mental disorder or that, consistent with the  
30 public safety and welfare of the community and the defendant, the clin-  
31 ical condition of the defendant warrants his or her transfer from a  
32 secure facility to a non-secure facility under the jurisdiction of the  
33 commissioner or to any non-secure facility designated by the commission-  
34 er. The application for a transfer order may be made to the court that  
35 issued the order under which the defendant is then in custody, or to a  
36 superior court in the county where the secure facility is located. The  
37 commissioner must give ten days written notice to the district attorney,  
38 the defendant, counsel for the defendant, and the mental hygiene legal  
39 service. Upon receipt of such application, the court may, on its own  
40 motion, conduct a hearing to determine whether the application should be  
41 granted, and must conduct such hearing if the demand therefor is made by  
42 the district attorney. At such hearing, the district attorney must  
43 establish to the satisfaction of the court that the defendant has a  
44 dangerous mental disorder or that the issuance of a transfer order is  
45 inconsistent with the public safety and welfare of the community. The  
46 court must grant the application and issue a transfer order if the court  
47 finds that the defendant does not have a dangerous mental disorder, or  
48 if the court finds that the issuance of a transfer order is consistent  
49 with the public safety and welfare of the community and the defendant  
50 and that the clinical condition of the defendant, warrants his or her  
51 transfer from a secure facility to a non-secure facility. A court must  
52 also issue a transfer order when, in connection with an application for  
53 a first retention order pursuant to subdivision ~~[eight]~~ seven of this  
54 section or a second or subsequent retention order pursuant to subdivi-  
55 sion ~~[nine]~~ eight of this section, it finds that a defendant is mentally

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

3 [~~12-~~] 11. Release order and order of conditions. The commissioner may  
4 apply for a release order, pursuant to this subdivision, when a defend-  
5 ant is in his or her custody pursuant to a retention order or recommit-  
6 ment order, and the commissioner is of the view that the defendant no  
7 longer has a dangerous mental disorder and is no longer mentally ill.  
8 The application for a release order may be made to the court that issued  
9 the order under which the defendant is then in custody, or to a superior  
10 court in the county where the facility is located. The application must  
11 contain a description of the defendant's current mental condition, the  
12 past course of treatment, a history of the defendant's conduct subse-  
13 quent to his or her commitment, a written service plan for continued  
14 treatment which shall include the information specified in subdivision  
15 (g) of section 29.15 of the mental hygiene law, and a detailed statement  
16 of the extent to which supervision of the defendant after release is  
17 proposed. The commissioner must give ten days written notice to the  
18 district attorney, the defendant, counsel for the defendant, and the  
19 mental hygiene legal service. Upon receipt of such application, the  
20 court must promptly conduct a hearing to determine the defendant's pres-  
21 ent mental condition. At such hearing, the district attorney must  
22 establish to the satisfaction of the court that the defendant has a  
23 dangerous mental disorder or is mentally ill. If the court finds that  
24 the defendant has a dangerous mental disorder, it must deny the applica-  
25 tion for a release order. If the court finds that the defendant does not  
26 have a dangerous mental disorder but is mentally ill, it must issue a  
27 transfer order pursuant to subdivision [~~eleven~~] ten of this section if  
28 the defendant is then confined in a secure facility. If the court finds  
29 that the defendant does not have a dangerous mental disorder and is not  
30 mentally ill, it must grant the application and issue a release order. A  
31 court must also issue a release order when, in connection with an appli-  
32 cation for a first retention order pursuant to subdivision [~~eight~~] seven  
33 of this section or a second or subsequent retention order pursuant to  
34 subdivision [~~nine~~] eight of this section, it finds that the defendant  
35 does not have a dangerous mental disorder and is not mentally ill. When-  
36 ever a court issues a release order it must also issue an order of  
37 conditions. If the court has previously issued a transfer order and an  
38 order of conditions, it must issue a new order of conditions upon issu-  
39 ing a release order. The order of conditions issued in conjunction with  
40 a release order shall incorporate a written service plan prepared by a  
41 psychiatrist familiar with the defendant's case history and approved by  
42 the court, and shall contain any conditions that the court determines to  
43 be reasonably necessary or appropriate. It shall be the responsibility  
44 of the commissioner to determine that such defendant is receiving the  
45 services specified in the written service plan and is complying with any  
46 conditions specified in such plan and the order of conditions.

47 [~~13-~~] 12. Discharge order. The commissioner may apply for a discharge  
48 order, pursuant to this subdivision, when a defendant has been contin-  
49 uously on an out-patient status for three years or more pursuant to a  
50 release order, and the commissioner is of the view that the defendant no  
51 longer has a dangerous mental disorder and is no longer mentally ill and  
52 that the issuance of a discharge order is consistent with the public  
53 safety and welfare of the community and the defendant. The application  
54 for a discharge order may be made to the court that issued the release  
55 order, or to a superior court in the county where the defendant is then  
56 residing. The commissioner must give ten days written notice to the

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

12 [~~14-~~] 13. Recommitment order. At any time during the period covered  
13 by an order of conditions an application may be made by the commissioner  
14 or the district attorney to the court that issued such order, or to a  
15 superior court in the county where the defendant is then residing, for a  
16 recommitment order when the applicant is of the view that the defendant  
17 has a dangerous mental disorder. The applicant must give written notice  
18 of the application to the defendant, counsel for the defendant, and the  
19 mental hygiene legal service, and if the applicant is the commissioner  
20 he or she must give such notice to the district attorney or if the  
21 applicant is the district attorney he or she must give such notice to  
22 the commissioner. Upon receipt of such application the court must order  
23 the defendant to appear before it for a hearing to determine if the  
24 defendant has a dangerous mental disorder. Such order may be in the form  
25 of a written notice, specifying the time and place of appearance, served  
26 personally upon the defendant, or mailed to his or her last known  
27 address, as the court may direct. If the defendant fails to appear in  
28 court as directed, the court [~~may~~] shall issue a warrant to an appropri-  
29 ate peace officer directing him or her to take the defendant into custo-  
30 dy and bring him or her before the court. In such circumstance, the  
31 court [~~may~~] shall direct that the defendant be confined in an appropri-  
32 ate institution located near the place where the court sits. The court  
33 must conduct a hearing to determine whether the defendant has a danger-  
34 ous mental disorder. At such hearing, the applicant, whether he or she  
35 be the commissioner or the district attorney must establish to the  
36 satisfaction of the court that the defendant has a dangerous mental  
37 disorder. If the applicant is the commissioner, the district attorney  
38 shall be entitled to appear and present evidence at such hearing; if the  
39 applicant is the district attorney, the commissioner shall be entitled  
40 to appear and present evidence at such hearing. If the court finds that  
41 the defendant has a dangerous mental disorder, it must issue a recommit-  
42 ment order. When a defendant is in the custody of the commissioner  
43 pursuant to a recommitment order, the procedures set forth in subdivi-  
44 sions seven and eight [~~and nine~~] of this section for the issuance of  
45 retention orders shall govern the application for and the issuance of a  
46 first retention order, a second retention order, and subsequent  
47 retention orders.

48 [~~15-~~] 14. Designation of psychiatric examiners. If, at any hearing  
49 conducted under this section to determine the defendant's present mental  
50 condition, the court is not satisfied with the findings of the psychiat-  
51 ric examiners, the court may direct the commissioner to designate one or  
52 more additional psychiatric examiners to conduct an examination of the  
53 defendant and submit a report of their findings. In addition, the court  
54 may on its own motion, or upon request of a party, may designate one or  
55 more psychiatric examiners to examine the defendant and submit a report  
56 of their findings. The district attorney may apply to the court for an

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

4 [~~16.~~] 15. Rehearing and review. Any defendant who is in the custody of  
5 the commissioner pursuant to a [~~commitment order,~~] a retention order, or  
6 a recommitment order, if dissatisfied with such order, may, within thir-  
7 ty days after the making of such order, obtain a rehearing and review of  
8 the proceedings and of such order in accordance with the provisions of  
9 section 9.35 or 15.35 of the mental hygiene law.

10 [~~17.~~] 16. Rights of defendants. Subject to the limitations and  
11 provisions of this section, a defendant committed to the custody of the  
12 commissioner pursuant to this section shall have the rights granted to  
13 patients under the mental hygiene law.

14 [~~18.~~] 17. Notwithstanding any other provision of law, no person  
15 confined by reason of a [~~commitment order,~~] recommitment order or  
16 retention order to a secure facility may be discharged or released  
17 unless the commissioner shall deliver written notice, at least four days  
18 excluding Saturdays, Sundays and holidays, in advance of such discharge  
19 or release to all of the following:

20 (a) the district attorney.

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

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

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

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

54 [~~20.~~] 19. Required affidavit. No application may be made by the  
55 commissioner under this section without an accompanying affidavit from  
56 at least one psychiatric examiner supportive of relief requested in the

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

8 [~~21-~~] 20. Appeals. (a) A party to proceedings conducted in accordance  
9 with the provisions of this section may take an appeal to an intermedi-  
10 ate appellate court by permission of the intermediate appellate court as  
11 follows:

12 (i) the commissioner may appeal from any release order, retention  
13 order, transfer order, discharge order, order of conditions, or recom-  
14 mitment order, for which he or she has not applied;

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

26 (iii) the district attorney may appeal from any release order, trans-  
27 fer order, discharge order, order of conditions, furlough order, or  
28 order denying an application for a recommitment order which he or she  
29 opposed.

30 (b) An aggrieved party may appeal from a final order of the intermedi-  
31 ate appellate court to the court of appeals by permission of the inter-  
32 mediate appellate court granted before application to the court of  
33 appeals, or by permission of the court of appeals upon refusal by the  
34 intermediate appellate court or upon direct application.

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

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

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

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

1     ~~22.~~ 21. Any special order of conditions issued pursuant to subpara-  
2 graph (i) or (ii) of paragraph (o) of subdivision one of this section  
3 shall bear in a conspicuous manner the term "special order of condi-  
4 tions" and a copy shall be filed by the clerk of the court with the  
5 sheriff's office in the county in which anyone intended to be protected  
6 by such special order resides, or, if anyone intended to be protected by  
7 such special order resides within a city, with the police department of  
8 such city. The absence of language specifying that the order is a  
9 "special order of conditions" shall not affect the validity of such  
10 order. A copy of such special order of conditions may from time to time  
11 be filed by the clerk of the court with any other police department or  
12 sheriff's office having jurisdiction of the residence, work place, or  
13 school of anyone intended to be protected by such special order. A copy  
14 of such special order may also be filed by anyone intended to be  
15 protected by such provisions at the appropriate police department or  
16 sheriff's office having jurisdiction. Any subsequent amendment or revo-  
17 cation of such special order may be filed in the same manner as provided  
18 in this subdivision. Such special order of conditions shall plainly  
19 state the date that the order expires.

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