

STATE OF NEW YORK

7061

2021-2022 Regular Sessions

IN ASSEMBLY

April 21, 2021

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

AN ACT to amend the criminal procedure law, in relation to establishing a five-county, three-year pilot program enabling counties to opt-in to allow county jails to operate jail-based competency restoration services for inmates deemed unfit for trial due to mental incapacity

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 9 of section 730.10 of the criminal procedure
2 law, as added by section 1 of part Q of chapter 56 of the laws of 2012,
3 is amended to read as follows:

4 9. "Appropriate institution" means: (a) a hospital operated by the
5 office of mental health or a developmental center operated by the office
6 for people with developmental disabilities; or (b) a hospital licensed
7 by the department of health which operates a psychiatric unit licensed
8 by the office of mental health, as determined by the commissioner
9 provided, however, that any such hospital that is not operated by the
10 state shall qualify as an "appropriate institution" only pursuant to the
11 terms of an agreement between the commissioner and the hospital, or
12 between the commissioner and a jail-based facility pursuant to subdivi-
13 sion seven of section 730.60 of this article. Nothing in this article
14 shall be construed as requiring a hospital to consent to providing care
15 and treatment to an incapacitated person at such hospital.

16 § 2. Subdivisions 1 and 2 of section 730.60 of the criminal procedure
17 law, subdivision 1 as amended by chapter 231 of the laws of 2008 and
18 subdivision 2 as amended by chapter 57 of the laws of 1984, are amended
19 and a new subdivision 7 is added to read as follows:

20 1. When a local criminal court issues a final or temporary order of
21 observation or an order of commitment, it must forward such order and a
22 copy of the examination reports and the accusatory instrument to the
23 commissioner, and, if available, a copy of the pre-sentence report. Upon

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

LBD10685-01-1

1 receipt thereof, the commissioner must designate an appropriate institu-
2 tion operated by the department of mental hygiene, or a county jail-
3 based competency restoration program pursuant to subdivision seven of
4 this section, in which the defendant is to be placed, provided, however,
5 that the commissioner may designate an appropriate hospital for place-
6 ment of a defendant for whom a final order of observation has been
7 issued, where such hospital is licensed by the office of mental health
8 and has agreed to accept, upon referral by the commissioner, defendants
9 subject to final orders of observation issued under this subdivision.
10 The sheriff must hold the defendant in custody pending such designation
11 by the commissioner, and when notified of the designation, the sheriff
12 must deliver the defendant to the superintendent of such institution.
13 The superintendent must promptly inform the appropriate director of the
14 mental hygiene legal service of the defendant's admission to such insti-
15 tution. If a defendant escapes from the custody of the commissioner, the
16 escape shall interrupt the period prescribed in any order of observa-
17 tion, commitment or retention, and such interruption shall continue
18 until the defendant is returned to the custody of the commissioner.

19 2. Except as otherwise provided in subdivisions four and five of this
20 section, when a defendant is in the custody of the commissioner pursuant
21 to a temporary order of observation or an order of commitment or an
22 order of retention, or a county jail-based competency restoration
23 program pursuant to subdivision seven of this section, the criminal
24 action pending against the defendant in the court that issued such order
25 is suspended until the superintendent of the institution in which the
26 defendant is confined or a clinical psychiatrist for a county jail-based
27 competency restoration program pursuant to subdivision seven of this
28 section determines that he is no longer an incapacitated person. In that
29 event, the court that issued such order and the appropriate district
30 attorney must be notified, in writing, by the superintendent of his
31 determination. The court must thereupon proceed in accordance with the
32 provisions of subdivision two of section 730.30 of this [~~chapter~~] arti-
33 cle; provided, however, if the court is satisfied that the defendant
34 remains an incapacitated person, and upon consent of all parties, the
35 court may order the return of the defendant to the institution in which
36 he had been confined for such period of time as was authorized by the
37 prior order of commitment or order of retention. Upon such return, the
38 defendant shall have all rights and privileges accorded by the
39 provisions of this article.

40 7. (a) The office of mental health shall promulgate rules and regu-
41 lations for the development and implementation of a program allowing for
42 county jails to provide competency restoration services to inmates of
43 such facilities in no more than five counties in the state. County
44 participation in a jail-based restoration program shall be voluntary.

45 (b) Each county may provide competency restoration services either
46 directly or through contract.

47 (c) Counties participating in a jail-based restoration program may
48 appoint a working group to develop rules, guidance and policies for such
49 program. The workgroup may include the following:

50 (1) one member who is a sheriff;

51 (2) one member who represents a local mental health authority;

52 (3) one member who is a county commissioner, county judge, or elected
53 county officer;

54 (4) one member who is a district attorney or county attorney with
55 criminal jurisdiction;

56 (5) one member who is a defense attorney;

1 (6) one member who is a judge of a district criminal court or county
2 criminal court;

3 (7) two members who are mental health advocates; and

4 (8) any other member the department considers appropriate to appoint
5 to the stakeholder workgroup.

6 (d) Providers of jail-based restoration services must:

7 (1) have provided such services in jail-based settings for at least
8 two years; and

9 (2) be a local mental health organization with prior experience
10 providing such services.

11 (e) A jail-based restoration program must:

12 (1) use a multidisciplinary team including an advanced psychiatric
13 provider, a qualified forensic examiner, mental health professional, and
14 competency educator;

15 (2) be directed toward the goal of restoring a defendant's fitness to
16 stand trial; and

17 (3) provide services similar to those provided in a hospital.

18 (f) A county participating in a jail-based restoration program shall:

19 (1) ensure the safety of defendants who participate in the jail-based
20 restoration of competency pilot program;

21 (2) designate a separate space in the jail for the provider to conduct
22 the pilot program;

23 (3) provide the same basic care to the participants as is provided to
24 other inmates of a jail;

25 (4) supply clinically appropriate psychoactive medications as
26 warranted; and

27 (5) have in place an agreement with a hospital possessing a valid
28 operating certificate issued pursuant to article twenty-eight of the
29 public health law that can petition the court for and enforce treatment
30 over objection for individuals court ordered to restoration services who
31 refuse medication.

32 (g) If at any time during a defendant's participation in the jail-
33 based restoration pilot program the psychiatrist or psychologist for the
34 provider determines that the defendant has attained fitness to proceed:

35 (1) the psychiatrist or psychologist for the provider shall promptly
36 issue and send to the court a report demonstrating that fact; and

37 (2) the court shall consider that report as the report of an expert
38 stating an opinion that the defendant has been restored to fitness.

39 (h) If at any time during a defendant's participation in the jail-
40 based restoration pilot program the psychiatrist or psychologist for the
41 provider determines that the defendant's fitness to stand trial is
42 unlikely to be restored in the foreseeable future, the psychiatrist or
43 psychologist for the provider shall promptly issue and send to the court
44 a report demonstrating that fact.

45 (i) If the psychiatrist or psychologist for the provider determines
46 that a defendant ordered to participate in the pilot program has not
47 been restored to fitness, but is believed to be restorable to fitness
48 with additional treatment by the end of the ninetieth day after the date
49 the defendant began to participate in the pilot program, the defendant
50 shall be transferred, without unnecessary delay, to the first available
51 facility that is appropriate for that defendant pursuant to subdivision
52 nine of section 730.10 of this article.

53 § 3. This act shall take effect immediately.