STATE OF NEW YORK

8402--A

2021-2022 Regular Sessions

IN ASSEMBLY

October 20, 2021

Introduced by M. of A. GUNTHER, ZINERMAN -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the mental hygiene law, in relation to determining the capacity of a defendant to stand trial

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

Section 1. Subdivision 1 of section 730.10 of the criminal procedure law is amended to read as follows:

1. "Incapacitated person" means a defendant who as a result of mental disease or defect lacks capacity to understand the proceedings against [~~him~~] **such defendant** or to assist in his **or her** own defense.

§ 2. Subdivision 8 of section 730.10 of the criminal procedure law, as separately amended by chapters 615 and 629 of the laws of 1974, is amended to read as follows:

8. "Examination report" means a report made by a psychiatric examiner wherein he **or she** sets forth his **or her** opinion as to whether the defendant is or is not an incapacitated person, the nature and extent of his **or her** examination and, if he **or she** finds that the defendant is an incapacitated person, his **or her** diagnosis and prognosis and a detailed statement of the reasons for his **or her** opinion by making particular reference to those aspects of the proceedings wherein the defendant lacks capacity to understand or to assist in his **or her** own defense. **The report must also state the examiner's professional opinion as to whether or not there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time.** The state administrator and the commissioner must jointly adopt the form of the examination report; and the state administrator shall prescribe the

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

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number of copies thereof that must be submitted to the court by the director.

§ 3. Section 730.10 of the criminal procedure law is amended by adding a new subdivision 10 to read as follows:

10. "Restoration services" means those services including but not limited to medication support, classroom-based competency instruction, mock trials, symptom management, and rehabilitative services provided to an incapacitated person which are designed to improve his or her mental state or developmental status to the extent that they can understand the charges against them and participate in their own defense. Restoration services are not intended to be mental health treatment aimed at recovery from mental illness or services aimed at improving a developmentally disabled person's ability to function on a day-to-day basis.

§ 4. Section 730.20 of the criminal procedure law, subdivisions 1 and 5 as amended by chapter 693 of the laws of 1989, subdivision 7 as amended by chapter 692 of the laws of 1972, is amended to read as follows:

§ 730.20 Fitness to proceed; generally.

1. [~~The appropriate director to whom a criminal court issues an order of examination must be determined in accordance with rules jointly adopted by the judicial conference and the commissioner.~~] Upon receipt of an examination order, the director **to whom the court has issued an order** must designate two qualified psychiatric examiners, of whom he **or she** may be one, to examine the defendant to determine if [~~he~~] **the defendant** is an incapacitated person. In conducting their examination, the psychiatric examiners [~~may~~] **shall** employ [~~any~~] **a** method [~~which is accepted by the medical profession for the examination of persons alleged to be mentally ill or mentally defective~~] **as set forth in standards set by the commissioner to determine if the defendant is an incapacitated person**. The court may authorize a psychiatrist or psychologist retained by the defendant to be present at such examination.

2. When the defendant is not in custody at the time a court issues an order of examination, because [~~he~~] **the defendant** was theretofore released on bail or on [~~his~~] **the defendant's** own recognizance, the court [~~may~~] **shall** direct that the examination be conducted on an out-patient basis, and at such time and place as the director shall designate **and the court shall order the defendant to appear for such examination**. If, however, the director informs the court that hospital confinement of the defendant is necessary for an effective examination**, or if the defendant refuses to appear as ordered for the examination**, the court may direct that the defendant be confined in a hospital [~~designated by the director~~] **operated or approved by the commissioner only** until the examination is completed**. In no event shall the need for such examination be a basis for incarcerating a defendant who has been released on bail or his or her own recognizance**.

3. When the defendant is in custody at the time a court issues an order of examination, the examination must be conducted at the place where the defendant is being held in custody. If, however, the director determines that hospital confinement of the defendant is necessary for an effective examination, the sheriff must deliver the defendant to a hospital designated by the [~~director~~] **commissioner** and hold [~~him~~] **the defendant** in custody therein, under sufficient guard, until the examination is completed.

4. Hospital confinement under subdivisions two and three shall be for a period not exceeding [~~thirty~~] **ten** days, except that, upon application of the director, the court may authorize confinement for an additional

period not exceeding [~~thirty~~] ten days if it is satisfied that a longer period is necessary to complete the examination. [~~During the period of hospital confinement, the physician in charge of the hospital may administer or cause to be administered to the defendant such emergency psychiatric, medical or other therapeutic treatment as in his judgment should be administered.~~]

5. Each psychiatric examiner, after [~~he has completed his~~] completing the examination of the defendant, must promptly prepare and submit to the director an examination report [~~and submit it to the director~~] setting forth the examiner's opinion as to whether or not there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time. If the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not an incapacitated person, the director must designate another qualified psychiatric examiner to examine the defendant to determine if [~~he~~] the defendant is an incapacitated person and, if so, whether or not there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time. Upon receipt of the examination reports, the director must submit them to the court that issued the order of examination. The court must furnish a copy of the reports to counsel for the defendant and to the district attorney.

6. When a defendant is subjected to examination pursuant to an order issued by a criminal court in accordance with this article, any statement made by [~~him~~] such defendant for the purpose of the examination or treatment shall be inadmissible in evidence against [~~him~~] such defendant in any criminal action on any issue other than that of [~~his~~] such defendant's mental condition[~~, but such statement is admissible upon that issue whether or not it would otherwise be deemed a privileged communication~~].

7. A psychiatric examiner, who is not regularly employed by the county or the state of New York, is entitled to his or her reasonable traveling expenses[~~, a~~] and to a reasonable fee [~~of fifty dollars~~] to be negotiated with the examiner by the director or the county or, if no such fee is agreed upon, to be set by the court for each examination of a defendant and [~~a fee of fifty dollars~~] for each appearance at a court hearing or trial [~~but not exceeding two hundred dollars in fees for examination and testimony in any one case~~]; except that if such psychiatric examiner be an employee of the county or of the state of New York he or she shall be entitled only to reasonable traveling expenses, unless such psychiatric examiner makes the examination or appears at a court hearing or trial outside his or her hours of state or county employment in a county in which the director of community [~~mental health~~] services certifies to the fiscal officer thereof that there is a shortage of qualified [~~psychiatrists~~] examiners available to conduct examinations under [~~the criminal procedure law~~] this chapter in such county, in which event [~~he~~] such examiner shall be entitled to [~~the foregoing~~] such fees and reasonable traveling expenses as approved by the court. Such fees and traveling expenses and the costs of sending a defendant to another place of detention or to a hospital for examination[~~, of his maintenance therein~~] and the cost of returning [~~him~~] the defendant shall, when approved and so ordered by the court, be a charge of the county in which the defendant is being tried, and the cost of the maintenance of such defendant therein shall be a cost to the state.

§ 5. Section 730.30 of the criminal procedure law, subdivision 3 as amended by chapter 629 of the laws of 1974, is amended to read as follows:

§ 730.30 Fitness to proceed; order of examination.

1. At any time after a defendant is arraigned upon an accusatory instrument other than a felony complaint and before the imposition of sentence, or at any time after a defendant is arraigned upon a felony complaint and before he **or she** is held for the action of the grand jury**, or upon arraignment on an indictment by a grand jury**, the court wherein the criminal action is pending [~~must~~] **may** issue an order of examination when it [~~is of the opinion~~] **has a reasonable basis to believe** that the defendant may be an incapacitated person.

2. When the examination reports submitted to the court show that each psychiatric examiner is of the opinion that the defendant is not an incapacitated person, the court may, on its own motion, conduct a hearing to determine the issue of capacity, and it must conduct a hearing upon motion therefor by the defendant or by the district attorney. If **the court does not decide to hold a hearing on its own motion and** no motion for a hearing is made**, or if, following a hearing the court is satisfied that the defendant is not an incapacitated person**, the criminal action against the defendant must proceed. [~~If, following a hearing, the court is satisfied that the defendant is not an incapacitated person, the criminal action against him must proceed; if the court is not so satisfied, it must issue a further order of examination directing that the defendant be examined by different psychiatric examiners designated by the director.~~]

3. When the examination reports submitted to the court show that each psychiatric examiner is of the opinion that the defendant is an incapacitated person **and that there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time**, the court [~~may, on its own motion,~~] **shall** conduct a hearing to determine the issue of capacity [~~and it must conduct such hearing upon motion therefor by the defendant or by the district attorney~~].

4. When the examination reports submitted to the court show that the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not an incapacitated person[~~, or when the examination reports submitted to the superior court show that the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not a dangerous incapacitated person~~] **and that there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time**, the court must conduct a hearing to determine the issue of capacity [~~or dangerousness~~] **and expectation of restoration within a reasonable time**.

§ 6. Subdivision 1 of section 730.40 of the criminal procedure law, as amended by chapter 7 of the laws of 2013, is amended to read as follows:

1. When a local criminal court, following a hearing conducted pursuant to subdivision **two,** three or four of section 730.30 of this article, is satisfied that the defendant is not an incapacitated person, the criminal action against him or her must proceed. If [~~it~~] **a local criminal court accusatory instrument other than a felony complaint has been filed against the defendant and the court** is satisfied that the defendant is an incapacitated person, [~~or if no motion for such a hearing is made, such court must issue a final or temporary order of observation committing him or her to the custody of the commissioner for care and treat-~~

~~ment in an appropriate institution for a period not to exceed ninety days from the date of the order, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this subdivision. When a local criminal court accusatory instrument other than a felony complaint has been filed against the defendant,~~] such court must issue a final order of observation. When a felony complaint has been filed against the defendant, such court must issue a temporary order of observation committing him or her to the custody of the commissioner for [~~care and treatment~~] **restoration services** in an appropriate institution or, [~~upon the consent of the district attorney~~] **in the discretion of the court**, committing him or her to the custody of the commissioner for care and treatment on an out-patient basis, for a period not to exceed ninety days from the date of such order[~~, except that, with the consent of the district attorney,~~] **or** it may issue a final order of observation. Upon the issuance of a final order of observation, the district attorney shall immediately transmit to the commissioner, in a manner intended to protect the confidentiality of the information, a list of names and contact information of persons who may reasonably be expected to be the victim of any assault or any violent felony offense, as defined in the penal law, or any offense listed in section 530.11 of this chapter which would be carried out by the committed person; provided that the person who reasonably may be expected to be a victim does not need to be a member of the same family or household as the committed person.

§ 7. Section 730.50 of the criminal procedure law, subdivision 1 as amended by chapter 7 of the laws of 2013, subdivision 2 as amended by chapter 789 of the laws of 1985, subdivision 5 as amended by chapter 629 of the laws of 1974, is amended to read as follows:

§ 730.50 Fitness to proceed; indictment.

1. When a superior court, following a hearing conducted pursuant to subdivision **two,** three or four of section 730.30 of this article, is satisfied that the defendant is not an incapacitated person, the criminal action against him or her must proceed. If [~~it is satisfied~~] **after a hearing, the court makes a finding** that the defendant is an incapacitated person, [~~or if no motion for such a hearing is made~~] **and that there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time**, it must adjudicate him or her an incapacitated person[~~, and must issue a final order of observation or an order of commitment~~]. When the indictment does not charge a felony or when the defendant has been convicted of an offense other than a felony, such court (a) must issue a final order of observation [~~committing the defendant to the custody of the commissioner for care and treatment in an appropriate institution for a period not to exceed ninety days from the date of such order, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this subdivision~~], and (b) must dismiss the indictment filed in such court against the defendant, and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in such indictment. Upon the issuance of a

final order of observation, the district attorney shall immediately transmit to the commissioner, in a manner intended to protect the confidentiality of the information, a list of names and contact information of persons who may reasonably be expected to be the victim of any assault or any violent felony offense, as defined in the penal law, or any offense listed in section 530.11 of this chapter which would be carried out by the committed person; provided that the person who reasonably may be expected to be a victim does not need to be a member of the same family or household as the committed person. When the indictment charges a felony [~~or when the defendant has been convicted of a felony~~] **and the court has determined that there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time**, it must issue an order of commitment committing the defendant to the custody of the commissioner [~~for care and treatment~~] **to receive restoration services** in an appropriate institution or[~~, upon the consent of the district attorney,~~] committing him or her to the custody of the commissioner for care and treatment on an out-patient basis, for a period not to exceed [~~one year~~] **ninety days** from the date of such order. Upon the issuance of an order of commitment, the court must exonerate the defendant's bail if he or she was previously at liberty on bail; provided, however, that exoneration of bail is not required when a defendant is committed to the custody of the commissioner for care and treatment on an out-patient basis. [~~When the defendant is in the custody of the commissioner pursuant to a final order of observation, the commissioner or his or her designee, which may include the director of an appropriate institution, immediately upon the discharge of the defendant, must certify to such court that he or she has complied with the notice provisions set forth in paragraph (a) of subdivision six of section 730.60 of this article~~] **In the event that the court determines there is not a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time the matter shall be referred to supreme court for a hearing conducted in accordance with section 9.33 or 15.31 of the mental hygiene law**.

2. When a defendant is in the custody of the commissioner immediately prior to the expiration of the period prescribed in a temporary order of commitment and the superintendent of the institution wherein the defendant is confined is of the opinion that the defendant continues to be an incapacitated person, such superintendent must apply to the court that issued such order for an order of retention **for an additional period of ninety days. The court must hold a hearing on this application to determine if there is a substantial probability of recovery in the foreseeable future. If the court determines that there is such reasonable expectation of restoration, it shall issue an order of retention for an additional ninety days. If the court finds that the defendant is still incapacitated and there is not a substantial probability of restoration in the foreseeable future, it shall refer the matter to the civil section of the supreme court in the county where the defendant's case is pending, for a hearing pursuant to article nine or fifteen of the mental hygiene law to determine if the defendant shall be hospitalized or otherwise retained on an involuntary basis**. [~~Such application must be made within sixty days prior to the expiration of such period on forms that have been jointly adopted by the judicial conference and the commissioner.~~] The superintendent must give written notice of the application **for such order** to the defendant and to the mental hygiene legal

service. Upon receipt of such application, the court [~~may, on its own motion,~~] shall conduct a hearing [~~to determine the issue of capacity, and it must conduct such hearing if a demand therefor is made by the defendant or the mental hygiene legal service within ten days from the date that notice of the application was given them. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court is satisfied that the defendant is no longer an incapacitated person, the criminal action against him must proceed. If it is satisfied that the defendant continues to be an incapacitated person, or if no demand for a hearing is made, the court must adjudicate him an incapacitated person and must issue an order of retention which shall authorize continued custody of the defendant by the commissioner for a period not to exceed one year~~] pursuant to the provisions of article nine or fifteen of the mental hygiene law and the court shall order that the defendant shall be maintained in the custody of the commissioner but transferred to a hospital or other appropriate institution to be involuntarily admitted pursuant to article nine or fifteen of the mental hygiene law subject to the retention provisions of section 9.33 or 15.31 of the mental hygiene law except as specifically provided herein. Such order shall not be deemed in any way to be the order of a criminal court.

3. [~~When~~] Before a defendant is [~~in~~] released from the custody of the commissioner [~~immediately prior to the expiration of the period prescribed in the first order of retention, the procedure set forth in subdivision two shall govern the application for and the issuance of any subsequent order of retention, except that any subsequent orders of retention must be for periods not to exceed two years each; provided, however,~~] either pursuant to this section or pursuant to article nine or fifteen of the mental hygiene law, the court shall hold a hearing to determine whether or not the defendant continues to be an incapacitated person. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court is satisfied that the defendant is no longer an incapacitated person, the criminal action against him or her must proceed except that the court shall have the discretion to dismiss the case in the interests of justice. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court finds that the defendant continues to be an incapacitated person then the court shall make an order in accordance with section 9.33 or 15.31 of the mental hygiene law. In any case that the aggregate of periods prescribed in the temporary order of commitment[~~, the first order of retention and all subsequent orders of retention~~] and any order of retention pursuant to this article or article nine or fifteen of the mental hygiene law must not exceed two-thirds of the authorized maximum term of imprisonment for the highest class felony charged in the indictment [~~or for the highest class felony of which he was convicted~~].

4. When a defendant is in the custody of the commissioner either at the expiration of the authorized period prescribed in the last order of retention or any order of retention issued pursuant to article nine or fifteen of the mental hygiene law, the criminal action pending against him or her in the superior court that issued such order shall terminate for all purposes, and the commissioner must promptly certify to such court and to the appropriate district attorney that the defendant was in his or her custody on such expiration date. Upon receipt of such certification, the court must dismiss the indictment, and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in such indictment.

[~~5. When, on the effective date of this subdivision, any defendant remains in the custody of the commissioner pursuant to an order issued under former code of criminal procedure section six hundred sixty-two-b, the superintendent or director of the institution where such defendant is confined shall, if he believes that the defendant continues to be an incapacitated person, apply forthwith to a court of record in the county where the institution is located for an order of retention. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with the provisions of subdivisions two, three and four of this section, except that the period of retention pursuant to the first order obtained under this subdivision shall be for not more than one year and any subsequent orders of retention must be for periods not to exceed two years each; provided, however, that the aggregate of the time spent in the custody of the commissioner pursuant to any order issued in accordance with the provisions of former code of criminal procedure section six hundred sixty-two-b and the periods prescribed by the first order obtained under this subdivision and all subsequent orders of retention must not exceed two-thirds of the authorized maximum term of imprisonment for the highest class felony charged in the indictment or the highest class felony of which he was convicted.~~]

§ 8. Section 730.60 of the criminal procedure law, subdivisions 1 and 3 as amended by chapter 231 of the laws of 2008, subdivision 2 as amended by chapter 57 of the laws of 1984, subdivisions 4 and 5 as renumbered by chapter 629 of the laws of 1974, subdivision 6 as added by chapter 549 of the laws of 1980, paragraphs (a) and (b) of subdivision 6 as amended by chapter 7 of the laws of 2013, is amended to read as follows:

§ 730.60 Fitness to proceed; procedure following custody by commissioner.

1. When a local criminal court issues a [~~final or~~] temporary order of observation or an order of commitment, it must forward such order and a copy of the examination reports and the accusatory instrument to the commissioner[~~, and, if available, a copy of the pre-sentence report~~]. Upon receipt thereof, the commissioner must designate an appropriate institution operated by the department of mental hygiene in which the defendant is to be placed[~~, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this subdivision~~]. The sheriff [~~must hold the defendant in custody pending such designation by the commissioner, and~~] when notified of the designation, [~~the sheriff~~] must deliver the defendant to the superintendent of such institution. The superintendent must promptly inform the appropriate director of the mental hygiene legal service of the defendant's admission to such institution. If a defendant escapes from the custody of the commissioner, the escape shall interrupt the period prescribed in any order of observation, commitment or retention, and such interruption shall continue until the defendant is returned to the custody of the commissioner.

2. Except as otherwise provided in subdivisions four and five **of this section**, when a defendant is in the custody of the commissioner pursuant to a temporary order of observation or an order of commitment or an order of retention, the criminal action pending against the defendant in the court that issued such order is suspended [~~until~~] **pending further order of the court. If** the superintendent of the institution in which

the defendant is confined determines that he **or she** is no longer an incapacitated person[**. In that event**], the court that issued such order and the appropriate district attorney must be notified, in writing, by the superintendent of his **or her** determination. The court must thereupon proceed in accordance with the provisions of subdivision two of section 730.30 of this [**chapter**] **article**; provided, however, if the court is satisfied that the defendant remains an incapacitated person, and upon consent of all parties, the court may order the return of the defendant to the institution in which he **or she** had been confined for such period of time as was authorized by the prior order of commitment or order of retention. Upon such return, the defendant shall have all rights and privileges accorded by the provisions of this article.

3. When a defendant is in the custody of the commissioner pursuant to an order issued in accordance with this article, the commissioner may transfer him **or her** to any appropriate institution operated by the department of mental hygiene, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this section. The commissioner may discharge a defendant in his **or her** custody under a final order of observation at any time prior to the expiration date of such order, or otherwise treat or transfer such defendant in the same manner as if he **or she** were a patient not in confinement under a criminal court order.

4. When a defendant is in the custody of the commissioner pursuant to an order of commitment or an order of retention, he **or she** may make any motion authorized by this chapter which is susceptible of fair determination without his **or her** personal participation. If the court denies any such motion it must be without prejudice to a renewal thereof after the criminal action against the defendant has been ordered to proceed. If the court enters an order dismissing the indictment and does not direct that the charge or charges be resubmitted to a grand jury, the court must direct that such order of dismissal be served upon the commissioner.

5. When a defendant is in the custody of the commissioner pursuant to an order of commitment or an order of retention, the superior court that issued such order may, upon motion of the defendant, and with the consent of the district attorney, dismiss the indictment when the court is satisfied that (a) the defendant is a resident or citizen of another state or country and that he **or she** will be removed thereto upon dismissal of the indictment, or (b) the defendant has been continuously confined in the custody of the commissioner**, either pursuant to this article or pursuant to article nine or fifteen of the mental hygiene law,** for a period of more than two years. Before granting a motion under this subdivision, the court must be further satisfied that dismissal of the indictment is consistent with the ends of justice and that custody of the defendant by the commissioner pursuant to an order of commitment or an order of retention is not necessary for the protection of the public and that care and treatment can be effectively administered to the defendant without the necessity of such order. If the court enters an order of dismissal under this subdivision, it must set forth in the record the reasons for such action, and must direct that such order of dismissal be served upon the commissioner. The dismissal of an indictment pursuant to this subdivision constitutes a

bar to any further prosecution of the charge or charges contained in such indictment.

[~~6. (a) Notwithstanding any other provision of law, no person committed to the custody of the commissioner pursuant to this article, or continuously thereafter retained in such custody, shall be discharged, released on condition or placed in any less secure facility or on any less restrictive status, including, but not limited to vacations, furloughs and temporary passes, unless the commissioner or his or her designee, which may include the director of an appropriate institution, shall deliver written notice, at least four days, excluding Saturdays, Sundays and holidays, in advance of the change of such committed person's facility or status, or in the case of a person committed pursuant to a final order of observation written notice upon discharge of such committed person, to all of the following:~~

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

~~(2) The superintendent of state police;~~

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

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

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

~~(6) Any other person the court may designate.~~

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

~~(b) The notice required by this subdivision shall also be given immediately upon the departure of such committed person from the actual custody of the commissioner or an appropriate institution, without proper authorization. Nothing in this subdivision shall be construed to impair any other right or duty regarding any notice or hearing contained in any other provision of law.~~

~~(c) Whenever a district attorney has received the notice described in this subdivision, and the defendant is in the custody of the commissioner pursuant to a final order of observation or an order of commitment, he may apply within three days of receipt of such notice to a superior court, for an order directing a hearing to be held to determine whether such committed person is a danger to himself or others. Such hearing shall be held within ten days following the issuance of such order. Such order may provide that there shall be no further change in the committed person's facility or status until the hearing. Upon a finding that the committed person is a danger to himself or others, the court shall issue an order to the commissioner authorizing retention of the committed person in the status existing at the time notice was given hereunder, for a specified period, not to exceed six months. The district attorney and the committed person's attorney shall be entitled to the committed person's clinical records in the commissioner's custody, upon the issuance of an order directing a hearing to be held.~~

~~(d) Nothing in this subdivision shall be construed to impair any other right or duty regarding any notice or hearing contained in any other provision of law.~~]

§ 9. Section 730.70 of the criminal procedure law, as amended by chapter 629 of the laws of 1974, is amended to read as follows:

§ 730.70 Fitness to proceed; procedure following termination of custody by commissioner.

When a defendant is in the custody of the commissioner on the expiration date of a final or temporary order of observation or an order of commitment, or on the expiration date of the last order of retention, or on the date an order dismissing an indictment is served upon the commissioner, the superintendent of the institution in which the defendant is confined may retain him **or her** for care and treatment for a period of **no more than** thirty days from such date. If [~~the~~] **during such time two psychiatric examiners engaged by the** superintendent [~~determines~~] **determine** that the defendant is so mentally ill or mentally defective as to require continued care and treatment in an institution, he **or she** may, before the expiration of such thirty day period, apply for an order of [~~certification~~] **retention** in the manner prescribed in section [~~31.33~~] **9.33 or 15.33** of the mental hygiene law.

§ 10. Subdivision (a) of section 9.33 of the mental hygiene law, as amended by chapter 789 of the laws of 1985, is amended to read as follows:

(a) If the director shall determine that a patient admitted upon an application supported by medical certification, for whom there is no court order authorizing retention for a specified period, is in need of retention and if such patient does not agree to remain in such hospital as a voluntary patient, the director shall apply to the supreme court or the county court in the county where the hospital is located for an order authorizing continued retention**. A court order issued pursuant to article seven hundred thirty of the criminal procedure law shall be deemed an order of retention under this section**. Such application shall be made no later than sixty days from the date of involuntary admission on application supported by medical certification or thirty days from the date of an order denying an application for patient's release pursuant to section 9.31, whichever is later; and the hospital is authorized to retain the patient for such further period during which the hospital is authorized to make such application or during which the application may be pending. The director shall cause written notice of such application to be given the patient and a copy thereof shall be given personally or by mail to the persons required by this article to be served with notice of such patient's initial admission and to the mental hygiene legal service. Such notice shall state that a hearing may be requested and that failure to make such a request within five days, excluding Sunday and holidays, from the date that the notice was given to the patient will permit the entry without a hearing of an order authorizing retention.

§ 11. Subdivision (a) of section 15.33 of the mental hygiene law, as amended by chapter 789 of the laws of 1985, is amended to read as follows:

(a) If the director shall determine that a resident admitted upon an application supported by medical certification, for whom there is no court order authorizing retention for a specified period, is in need of retention and if such resident does not agree to remain in such school as a voluntary resident, the director shall apply to the supreme court or the county court in the county where the school is located for an order authorizing continued retention**. A court order issued pursuant to article seven hundred thirty of the criminal procedure law shall be deemed an order of retention under this section**. Such application shall be made no later than sixty days from the date of involuntary admission on application supported by medical certification or thirty days from

the date of an order denying an application for resident's release pursuant to section 15.31, whichever is later; and the school is authorized to retain the resident for such further period during which the school is authorized to make such application or during which the application may be pending. The director shall cause written notice of such application to be given the resident and a copy thereof shall be given personally or by mail to the persons required by this article to be served with notice of such resident's initial admission and to the mental hygiene legal service. Such notice shall state that a hearing may be requested and that failure to make such a request within five days, excluding Sunday and holidays, from the date that the notice was given to the resident will permit the entry without a hearing of an order authorizing retention.

§ 12. Subdivision (c) of section 43.03 of the mental hygiene law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(c) Patients receiving services while being held **in the custody of the commissioner** pursuant to order of a criminal court, other than patients committed to the department pursuant to section 330.20 of the criminal procedure law, or for examination pursuant to an order of the family court shall not be liable to the department for such services. Fees due the department for such services shall be paid by the county in which such court is located **unless such services are or could be eligible for payment pursuant to the federal medical care assistance program and** except that counties shall not be responsible for the cost of services rendered patients committed to the department pursuant to section 330.20 of the criminal procedure law**, section five hundred eight of the correction law** or patients committed to the department pursuant to article **nine,** ten **or fifteen** of this chapter.

§ 13. In the event that any county or any city with a population of one million or more in any one year reduces payments made to the state for restoration services pursuant to article 730 of the criminal procedure law by an amount which is less than the average of such expenditures for the previous three years, then such county or such city shall utilize such savings for needed services which are identified as needed in the local services plan, as defined in section 41.03 of the mental hygiene law, of such county or such city.

§ 14. This act shall take effect on the ninetieth day after it shall have become a law.