

# STATE OF NEW YORK

1561

2023-2024 Regular Sessions

## IN ASSEMBLY

January 17, 2023

Introduced by M. of A. McDONALD, WEPRIN, WOERNER -- 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.

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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.