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:

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

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

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

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

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

LBD04890-01-3

receipt thereof, the commissioner must designate an appropriate institution operated by the department of mental hygiene**, or a county jail-based competency restoration program pursuant to subdivision seven of this section,** 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, **or a county jail-based competency restoration program pursuant to subdivision seven of this section,** the criminal action pending against the defendant in the court that issued such order is suspended until the superintendent of the institution in which the defendant is confined **or a clinical psychiatrist for a county jail-based competency restoration program pursuant to subdivision seven of this section** determines that he 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 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 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.

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

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

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

(1) one member who is a sheriff;

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

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

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

(5) one member who is a defense attorney;

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

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

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

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

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

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

(e) A jail-based restoration program must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3. This act shall take effect immediately.