

# STATE OF NEW YORK

5567

2025-2026 Regular Sessions

## IN ASSEMBLY

February 14, 2025

Introduced by M. of A. SIMON, ZINERMAN, KELLES, SHIMSKY, MAHER -- read once and referred to the Committee on Codes

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:

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

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

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

9 8. "Examination report" means a report made by a psychiatric examiner  
10 wherein [~~he~~] such examiner sets forth [~~his~~] their opinion as to whether  
11 the defendant is or is not an incapacitated person, the nature and  
12 extent of [~~his~~] their examination and, if [~~he or she finds~~] they find  
13 that the defendant is an incapacitated person, [~~his~~] their diagnosis and  
14 prognosis and a detailed statement of the reasons for [~~his~~] their opin-  
15 ion by making particular reference to those aspects of the proceedings  
16 wherein the defendant lacks capacity to understand or to assist in [~~his~~]  
17 their own defense. The report must also state the examiner's profes-  
18 sional opinion as to whether or not there is at least a reasonable  
19 expectation that restoration services could have a substantial probabil-  
20 ity of restoring the defendant to competence within a reasonable period  
21 of time. The state administrator and the commissioner must jointly adopt  
22 the form of the examination report; and the state administrator shall  
23 prescribe the number of copies thereof that must be submitted to the  
24 court by the director.

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

LBD01866-01-5

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

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

12 § 4. Section 730.20 of the criminal procedure law, subdivisions 1 and  
13 5 as amended by chapter 693 of the laws of 1989 and subdivision 7 as  
14 amended by chapter 692 of the laws of 1972, is amended to read as  
15 follows:

16 § 730.20 Fitness to proceed; generally.

17 1. [~~The appropriate director to whom a criminal court issues an order~~  
18 ~~of examination must be determined in accordance with rules jointly~~  
19 ~~adopted by the judicial conference and the commissioner.~~] Upon receipt  
20 of an examination order, the director to whom the court has issued an  
21 order must designate two qualified psychiatric examiners, of whom [~~he~~]  
22 such director may be one, to examine the defendant to determine if [~~he~~]  
23 the defendant is an incapacitated person. In conducting their examina-  
24 tion, the psychiatric examiners [~~may~~] shall employ [~~any~~] a method [~~which~~  
25 ~~is accepted by the medical profession for the examination of persons~~  
26 ~~alleged to be mentally ill or mentally defective~~] as set forth in stand-  
27 ards set by the commissioner to determine if the defendant is an inca-  
28 pacitated person. The court may authorize a psychiatrist or psychol-  
29 ogist retained by the defendant to be present at such examination.

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

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

52 4. Hospital confinement under subdivisions two and three shall be for  
53 a period not exceeding [~~thirty~~] ten days, except that, upon application  
54 of the director, the court may authorize confinement for an additional  
55 period not exceeding [~~thirty~~] ten days if it is satisfied that a longer  
56 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]~~ their 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]~~ they 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]~~ their 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:

1 § 730.30 Fitness to proceed; order of examination.

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

10 2. When the examination reports submitted to the court show that each  
11 psychiatric examiner is of the opinion that the defendant is not an  
12 incapacitated person, the court may, on its own motion, conduct a hear-  
13 ing to determine the issue of capacity, and it must conduct a hearing  
14 upon motion therefor by the defendant or by the district attorney. If  
15 the court does not decide to hold a hearing on its own motion and no  
16 motion for a hearing is made, or if, following a hearing the court is  
17 satisfied that the defendant is not an incapacitated person, the crimi-  
18 nal action against the defendant must proceed. ~~[If, following a hearing,~~  
19 ~~the court is satisfied that the defendant is not an incapacitated~~  
20 ~~person, the criminal action against him must proceed; if the court is~~  
21 ~~not so satisfied, it must issue a further order of examination directing~~  
22 ~~that the defendant be examined by different psychiatric examiners desig-~~  
23 ~~nated by the director.]~~

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

32 4. When the examination reports submitted to the court show that the  
33 psychiatric examiners are not unanimous in their opinion as to whether  
34 the defendant is or is not an incapacitated person~~[, or when the exam-~~  
35 ~~ination reports submitted to the superior court show that the psychiat-~~  
36 ~~ric examiners are not unanimous in their opinion as to whether the~~  
37 ~~defendant is or is not a dangerous incapacitated person]~~ and that there  
38 is at least a reasonable expectation that restoration services could  
39 have a substantial probability of restoring the defendant to competence  
40 within a reasonable period of time, the court must conduct a hearing to  
41 determine the issue of capacity ~~[or dangerousness]~~ and expectation of  
42 restoration within a reasonable time.

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

45 1. When a local criminal court, following a hearing conducted pursuant  
46 to subdivision two, three or four of section 730.30 of this article, is  
47 satisfied that the defendant is not an incapacitated person, the crimi-  
48 nal action against ~~[him or her]~~ such defendant must proceed. If ~~[it]~~ a  
49 local criminal court accusatory instrument other than a felony complaint  
50 has been filed against the defendant and the court is satisfied that the  
51 defendant is an incapacitated person, ~~[or if no motion for such a hear-~~  
52 ~~ing is made, such court must issue a final or temporary order of obser-~~  
53 ~~vation committing him or her to the custody of the commissioner for care~~  
54 ~~and treatment in an appropriate institution for a period not to exceed~~  
55 ~~ninety days from the date of the order, provided, however, that the~~  
56 ~~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]~~ such defendant 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]~~ such defendant 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]~~ 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.

§ 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]~~ such defendant 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]~~ them 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 confi-

1 dentiality of the information, a list of names and contact information  
2 of persons who may reasonably be expected to be the victim of any  
3 assault or any violent felony offense, as defined in the penal law, or  
4 any offense listed in section 530.11 of this ~~chapter~~ part which would  
5 be carried out by the committed person; provided that the person who  
6 reasonably may be expected to be a victim does not need to be a member  
7 of the same family or household as the committed person. When the  
8 indictment charges a felony ~~[or when the defendant has been convicted of~~  
9 ~~a felony]~~ and the court has determined that there is at least a reason-  
10 able expectation that restoration services could have a substantial  
11 probability of restoring the defendant to competence within a reasonable  
12 period of time, it must issue an order of commitment committing the  
13 defendant to the custody of the commissioner ~~[for care and treatment]~~ to  
14 receive restoration services in an appropriate institution or~~[, upon the~~  
15 ~~consent of the district attorney,~~] committing ~~[him or her]~~ such defend-  
16 ant to the custody of the commissioner for care and treatment on an  
17 out-patient basis, for a period not to exceed ~~[one year]~~ ninety days  
18 from the date of such order. Upon the issuance of an order of commit-  
19 ment, the court must exonerate the defendant's bail if ~~[he or she was]~~  
20 they were previously at liberty on bail; provided, however, that exoner-  
21 ation of bail is not required when a defendant is committed to the  
22 custody of the commissioner for care and treatment on an out-patient  
23 basis. ~~[When the defendant is in the custody of the commissioner pursu-~~  
24 ~~ant to a final order of observation, the commissioner or his or her~~  
25 ~~designee, which may include the director of an appropriate institution,~~  
26 ~~immediately upon the discharge of the defendant, must certify to such~~  
27 ~~court that he or she has complied with the notice provisions set forth~~  
28 ~~in paragraph (a) of subdivision six of section 730.60 of this article]~~  
29 In the event that the court determines there is not a reasonable expect-  
30 ation that restoration services could have a substantial probability of  
31 restoring the defendant to competence within a reasonable period of time  
32 the matter shall be referred to the supreme court for a hearing  
33 conducted in accordance with section 9.33 or 15.31 of the mental  
34 hygiene law.

35 2. When a defendant is in the custody of the commissioner immediately  
36 prior to the expiration of the period prescribed in a temporary order of  
37 commitment and the superintendent of the institution wherein the defend-  
38 ant is confined is of the opinion that the defendant continues to be an  
39 incapacitated person, such superintendent must apply to the court that  
40 issued such order for an order of retention for an additional period of  
41 ninety days. The court must hold a hearing on this application to  
42 determine if there is a substantial probability of recovery in the fore-  
43 seeable future. If the court determines that there is such reasonable  
44 expectation of restoration, it shall issue an order of retention for an  
45 additional ninety days. If the court finds that the defendant is still  
46 incapacitated and there is not a substantial probability of restoration  
47 in the foreseeable future, it shall refer the matter to the civil  
48 section of the supreme court in the county where the defendant's case is  
49 pending, for a hearing pursuant to article nine or fifteen of the mental  
50 hygiene law to determine if the defendant shall be hospitalized or  
51 otherwise retained on an involuntary basis. ~~[Such application must be~~  
52 ~~made within sixty days prior to the expiration of such period on forms~~  
53 ~~that have been jointly adopted by the judicial conference and the~~  
54 ~~commissioner.]~~ The superintendent must give written notice of the appli-  
55 cation for such order to the defendant and to the mental hygiene legal  
56 service. Upon receipt of such application, the court ~~[may, on its own~~

1 ~~motion,~~ shall conduct a hearing [~~to determine the issue of capacity,~~  
2 ~~and it must conduct such hearing if a demand therefor is made by the~~  
3 ~~defendant or the mental hygiene legal service within ten days from the~~  
4 ~~date that notice of the application was given them. If, at the conclu-~~  
5 ~~sion of a hearing conducted pursuant to this subdivision, the court is~~  
6 ~~satisfied that the defendant is no longer an incapacitated person, the~~  
7 ~~criminal action against him must proceed. If it is satisfied that the~~  
8 ~~defendant continues to be an incapacitated person, or if no demand for a~~  
9 ~~hearing is made, the court must adjudicate him an incapacitated person~~  
10 ~~and must issue an order of retention which shall authorize continued~~  
11 ~~custody of the defendant by the commissioner for a period not to exceed~~  
12 ~~one year] pursuant to the provisions of article nine or fifteen of the  
13 mental hygiene law and the court shall order that the defendant shall be  
14 maintained in the custody of the commissioner but transferred to a  
15 hospital or other appropriate institution to be involuntarily admitted  
16 pursuant to article nine or fifteen of the mental hygiene law subject  
17 to the retention provisions of section 9.33 or 15.31 of the mental  
18 hygiene law except as specifically provided herein. Such order shall  
19 not be deemed in any way to be the order of a criminal court.~~

20 3. [~~When~~] Before a defendant is [~~in~~] released from the custody of the  
21 commissioner [~~immediately prior to the expiration of the period~~  
22 ~~prescribed in the first order of retention, the procedure set forth in~~  
23 ~~subdivision two shall govern the application for and the issuance of any~~  
24 ~~subsequent order of retention, except that any subsequent orders of~~  
25 ~~retention must be for periods not to exceed two years each; provided,~~  
26 ~~however,~~] either pursuant to this section or pursuant to article nine or  
27 fifteen of the mental hygiene law, the court shall hold a hearing to  
28 determine whether or not the defendant continues to be an incapacitated  
29 person. If, at the conclusion of a hearing conducted pursuant to this  
30 subdivision, the court is satisfied that the defendant is no longer an  
31 incapacitated person, the criminal action against them must proceed  
32 except that the court shall have the discretion to dismiss the case in  
33 the interests of justice. If, at the conclusion of a hearing conducted  
34 pursuant to this subdivision, the court finds that the defendant contin-  
35 ues to be an incapacitated person then the court shall make an order in  
36 accordance with section 9.33 or 15.31 of the mental hygiene law. In any  
37 case that the aggregate of periods prescribed in the temporary order of  
38 commitment [~~, the first order of retention and all subsequent orders of~~  
39 ~~retention]~~ and any order of retention pursuant to this article or arti-  
40 cle nine or fifteen of the mental hygiene law must not exceed two-thirds  
41 of the authorized maximum term of imprisonment for the highest class  
42 felony charged in the indictment [~~or for the highest class felony of~~  
43 ~~which he was convicted~~].

44 4. When a defendant is in the custody of the commissioner either at  
45 the expiration of the authorized period prescribed in the last order of  
46 retention or any order of retention issued pursuant to article nine or  
47 fifteen of the mental hygiene law, the criminal action pending against  
48 [~~him~~] such defendant in the superior court that issued such order shall  
49 terminate for all purposes, and the commissioner must promptly certify  
50 to such court and to the appropriate district attorney that the defend-  
51 ant was in [~~his~~] their custody on such expiration date. Upon receipt of  
52 such certification, the court must dismiss the indictment, and such  
53 dismissal constitutes a bar to any further prosecution of the charge or  
54 charges contained in such indictment.

55 [~~5. When, on the effective date of this subdivision, any defendant~~  
56 ~~remains in the custody of the commissioner pursuant to an order issued~~

~~1 under former code of criminal procedure section six hundred sixty two b,  
2 the superintendent or director of the institution where such defendant  
3 is confined shall, if he believes that the defendant continues to be an  
4 incapacitated person, apply forthwith to a court of record in the county  
5 where the institution is located for an order of retention. The proce-  
6 dures for obtaining any order pursuant to this subdivision shall be in  
7 accordance with the provisions of subdivisions two, three and four of  
8 this section, except that the period of retention pursuant to the first  
9 order obtained under this subdivision shall be for not more than one  
10 year and any subsequent orders of retention must be for periods not to  
11 exceed two years each; provided, however, that the aggregate of the time  
12 spent in the custody of the commissioner pursuant to any order issued in  
13 accordance with the provisions of former code of criminal procedure  
14 section six hundred sixty two b and the periods prescribed by the first  
15 order obtained under this subdivision and all subsequent orders of  
16 retention must not exceed two thirds of the authorized maximum term of  
17 imprisonment for the highest class felony charged in the indictment or  
18 the highest class felony of which he was convicted.]~~

19 § 8. Section 730.60 of the criminal procedure law, subdivisions 1 and  
20 3 as amended by chapter 231 of the laws of 2008, subdivision 2 as  
21 amended by chapter 57 of the laws of 1984, subdivisions 4 and 5 as  
22 renumbered by chapter 629 of the laws of 1974, subdivision 6 as added by  
23 chapter 549 of the laws of 1980 and paragraphs (a) and (b) of subdivi-  
24 sion 6 as amended by chapter 7 of the laws of 2013, is amended to read  
25 as follows:

26 § 730.60 Fitness to proceed; procedure following custody by commission-  
27 er.

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

49 2. Except as otherwise provided in subdivisions four and five of this  
50 section, when a defendant is in the custody of the commissioner pursuant  
51 to a temporary order of observation or an order of commitment or an  
52 order of retention, the criminal action pending against the defendant in  
53 the court that issued such order is suspended [~~until~~] pending further  
54 order of the court. If the superintendent of the institution in which  
55 the defendant is confined determines that [~~he~~] such defendant is no  
56 longer an incapacitated person[~~. In that event~~], the court that issued

1 such order and the appropriate district attorney must be notified, in  
2 writing, by the superintendent of [~~his~~] their determination. The court  
3 must thereupon proceed in accordance with the provisions of subdivision  
4 two of section 730.30 of this [~~chapter~~] article; provided, however, if  
5 the court is satisfied that the defendant remains an incapacitated  
6 person, and upon consent of all parties, the court may order the return  
7 of the defendant to the institution in which [~~he~~] they had been confined  
8 for such period of time as was authorized by the prior order of commit-  
9 ment or order of retention. Upon such return, the defendant shall have  
10 all rights and privileges accorded by the provisions of this article.

11 3. When a defendant is in the custody of the commissioner pursuant to  
12 an order issued in accordance with this article, the commissioner may  
13 transfer [~~him~~] such defendant to any appropriate institution operated by  
14 the department of mental hygiene, provided, however, that the commis-  
15 sioner may designate an appropriate hospital for placement of a defend-  
16 ant for whom a final order of observation has been issued, where such  
17 hospital is licensed by the office of mental health and has agreed to  
18 accept, upon referral by the commissioner, defendants subject to final  
19 orders of observation issued under this section. The commissioner may  
20 discharge a defendant in [~~his~~] their custody under a final order of  
21 observation at any time prior to the expiration date of such order, or  
22 otherwise treat or transfer such defendant in the same manner as if [~~he~~]  
23 such defendant were a patient not in confinement under a criminal court  
24 order.

25 4. When a defendant is in the custody of the commissioner pursuant to  
26 an order of commitment or an order of retention, [~~he~~] they may make any  
27 motion authorized by this chapter which is susceptible of fair determi-  
28 nation without [~~his~~] their personal participation. If the court denies  
29 any such motion it must be without prejudice to a renewal thereof after  
30 the criminal action against the defendant has been ordered to proceed.  
31 If the court enters an order dismissing the indictment and does not  
32 direct that the charge or charges be resubmitted to a grand jury, the  
33 court must direct that such order of dismissal be served upon the  
34 commissioner.

35 5. When a defendant is in the custody of the commissioner pursuant to  
36 an order of commitment or an order of retention, the superior court that  
37 issued such order may, upon motion of the defendant, and with the  
38 consent of the district attorney, dismiss the indictment when the court  
39 is satisfied that (a) the defendant is a resident or citizen of another  
40 state or country and that [~~he~~] they will be removed thereto upon  
41 dismissal of the indictment, or (b) the defendant has been continuously  
42 confined in the custody of the commissioner, either pursuant to this  
43 article or pursuant to article nine or fifteen of the mental hygiene  
44 law, for a period of more than two years. Before granting a motion  
45 under this subdivision, the court must be further satisfied that  
46 dismissal of the indictment is consistent with the ends of justice and  
47 that custody of the defendant by the commissioner pursuant to an order  
48 of commitment or an order of retention is not necessary for the  
49 protection of the public and that care and treatment can be effectively  
50 administered to the defendant without the necessity of such order. If  
51 the court enters an order of dismissal under this subdivision, it must  
52 set forth in the record the reasons for such action, and must direct  
53 that such order of dismissal be served upon the commissioner. The  
54 dismissal of an indictment pursuant to this subdivision constitutes a  
55 bar to any further prosecution of the charge or charges contained in  
56 such indictment.

~~1 [6. (a) Notwithstanding any other provision of law, no person commit-~~  
~~2 ted to the custody of the commissioner pursuant to this article, or~~  
~~3 continuously thereafter retained in such custody, shall be discharged,~~  
~~4 released on condition or placed in any less secure facility or on any~~  
~~5 less restrictive status, including, but not limited to vacations,~~  
~~6 furloughs and temporary passes, unless the commissioner or his or her~~  
~~7 designee, which may include the director of an appropriate institution,~~  
~~8 shall deliver written notice, at least four days, excluding Saturdays,~~  
~~9 Sundays and holidays, in advance of the change of such committed~~  
~~10 person's facility or status, or in the case of a person committed pursu-~~  
~~11 ant to a final order of observation written notice upon discharge of~~  
~~12 such committed person, to all of the following:~~

~~13 (1) The district attorney of the county from which such person was~~  
~~14 committed;~~

~~15 (2) The superintendent of state police;~~

~~16 (3) The sheriff of the county where the facility is located;~~

~~17 (4) The police department having jurisdiction of the area where the~~  
~~18 facility is located;~~

~~19 (5) Any person who may reasonably be expected to be the victim of any~~  
~~20 assault or any violent felony offense, as defined in the penal law, or~~  
~~21 any offense listed in section 530.11 of this part which would be carried~~  
~~22 out by the committed person; provided that the person who reasonably may~~  
~~23 be expected to be a victim does not need to be a member of the same~~  
~~24 family or household as the committed person; and~~

~~25 (6) Any other person the court may designate.~~

~~26 Said notice may be given by any means reasonably calculated to give~~  
~~27 prompt actual notice.~~

~~28 (b) The notice required by this subdivision shall also be given imme-~~  
~~29 diately upon the departure of such committed person from the actual~~  
~~30 custody of the commissioner or an appropriate institution, without prop-~~  
~~31 er authorization. Nothing in this subdivision shall be construed to~~  
~~32 impair any other right or duty regarding any notice or hearing contained~~  
~~33 in any other provision of law.~~

~~34 (c) Whenever a district attorney has received the notice described in~~  
~~35 this subdivision, and the defendant is in the custody of the commis-~~  
~~36 sioner pursuant to a final order of observation or an order of commitment,~~  
~~37 he may apply within three days of receipt of such notice to a superior~~  
~~38 court, for an order directing a hearing to be held to determine whether~~  
~~39 such committed person is a danger to himself or others. Such hearing~~  
~~40 shall be held within ten days following the issuance of such order. Such~~  
~~41 order may provide that there shall be no further change in the committed~~  
~~42 person's facility or status until the hearing. Upon a finding that the~~  
~~43 committed person is a danger to himself or others, the court shall issue~~  
~~44 an order to the commissioner authorizing retention of the committed~~  
~~45 person in the status existing at the time notice was given hereunder,~~  
~~46 for a specified period, not to exceed six months. The district attorney~~  
~~47 and the committed person's attorney shall be entitled to the committed~~  
~~48 person's clinical records in the commissioner's custody, upon the iss-~~  
~~49 uance of an order directing a hearing to be held.~~

~~50 (d) Nothing in this subdivision shall be construed to impair any other~~  
~~51 right or duty regarding any notice or hearing contained in any other~~  
~~52 provision of law.]~~

53 § 9. Section 730.70 of the criminal procedure law, as amended by chap-  
54 ter 629 of the laws of 1974, is amended to read as follows:

55 § 730.70 Fitness to proceed; procedure following termination of custody  
56 by commissioner.

1 When a defendant is in the custody of the commissioner on the expira-  
2 tion date of a final or temporary order of observation or an order of  
3 commitment, or on the expiration date of the last order of retention, or  
4 on the date an order dismissing an indictment is served upon the commis-  
5 sioner, the superintendent of the institution in which the defendant is  
6 confined may retain ~~[him]~~ such defendant for care and treatment for a  
7 period of no more than thirty days from such date. If ~~[the]~~ during such  
8 time two psychiatric examiners engaged by the superintendent ~~[deter-~~  
9 ~~mines]~~ determine that the defendant is so mentally ill or mentally  
10 defective as to require continued care and treatment in an institution,  
11 ~~[he]~~ the superintendent may, before the expiration of such thirty day  
12 period, apply for an order of ~~[certification]~~ retention in the manner  
13 prescribed in section ~~[31.33]~~ 9.33 or 15.33 of the mental hygiene law.

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

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

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

44 (a) If the director shall determine that a resident admitted upon an  
45 application supported by medical certification, for whom there is no  
46 court order authorizing retention for a specified period, is in need of  
47 retention and if such resident does not agree to remain in such school  
48 as a voluntary resident, the director shall apply to the supreme court  
49 or the county court in the county where the school is located for an  
50 order authorizing continued retention. A court order issued pursuant to  
51 article seven hundred thirty of the criminal procedure law shall be  
52 deemed an order of retention under this section. Such application shall  
53 be made no later than sixty days from the date of involuntary admission  
54 on application supported by medical certification or thirty days from  
55 the date of an order denying an application for resident's release  
56 pursuant to section 15.31, whichever is later; and the school is author-

1 ized to retain the resident for such further period during which the  
2 school is authorized to make such application or during which the appli-  
3 cation may be pending. The director shall cause written notice of such  
4 application to be given the resident and a copy thereof shall be given  
5 personally or by mail to the persons required by this article to be  
6 served with notice of such resident's initial admission and to the  
7 mental hygiene legal service. Such notice shall state that a hearing may  
8 be requested and that failure to make such a request within five days,  
9 excluding Sunday and holidays, from the date that the notice was given  
10 to the resident will permit the entry without a hearing of an order  
11 authorizing retention.

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

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

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

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