

# STATE OF NEW YORK

8603

2025-2026 Regular Sessions

## IN ASSEMBLY

May 22, 2025

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

AN ACT to amend the criminal procedure law, in relation to enacting the "forensic rehabilitation act"; and to repeal subdivision 14 of section 330.20 of such law, relating to recommitment orders

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

1 Section 1. This act shall be known and may be cited as the "forensic  
2 rehabilitation act".

3 § 2. Paragraphs (c), (d), (e), (g), (h) and (i) of subdivision 1 of  
4 section 330.20 of the criminal procedure law, paragraphs (c), (e), (g),  
5 (h) and (i) as added by chapter 548 of the laws of 1980 and paragraph  
6 (d) as amended by chapter 479 of the laws of 2022, is amended to read as  
7 follows:

8 (c) [~~"Dangerous mental disorder"~~] "Qualifying condition and level of  
9 imminent serious risk" means at the time of any examination or determi-  
10 nation as to whether or not a defendant has a qualifying condition and  
11 level of imminent serious risk or mental illness or should be granted a  
12 furlough or any other privilege: (i) that a [~~defendant currently suffers~~  
13 ~~from~~] person at the time of examination or determination has a "mental  
14 illness" as that term is defined in subdivision twenty of section 1.03  
15 of the mental hygiene law, and (ii) that because of such condition [~~he~~]  
16 such person currently constitutes a risk of imminent serious physical  
17 danger to [~~himself~~] themselves or others based on the individual's actions  
18 at that time. All assessments of the risk of imminent serious physical  
19 danger shall take into account any and all evidence indicating that the  
20 individual at that time does not currently pose such a danger, including  
21 assessments made by psychologists and psychiatrists and the individual's  
22 current behaviors, participation in treatment and programming, and  
23 growth and development.

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

LBD13182-01-5

(d) [~~"Mentally ill"~~] "Person with mental health, developmental, cognitive, or intellectual challenges" means that a [~~defendant currently suffers from~~] person at the time of any examination or determination as to whether or not a person has a qualifying condition and level of imminent serious risk or mental illness or should be granted a furlough or any other privilege has a mental illness for which care and treatment as a patient, in the in-patient services of a psychiatric center under the jurisdiction of the state office of mental health, is essential to such [~~defendant's~~] person's welfare and that [~~his or her~~] such person's judgment is so impaired that [~~he~~] such person is unable to understand the need for such care and treatment; and, where a defendant has [~~a~~] developmental [~~disability~~], cognitive or intellectual challenges, the term [~~"mentally ill"~~] "person with mental health, developmental, cognitive, or intellectual challenges" shall also mean, for purposes of this section, that the defendant is in need of care and treatment as a resident in the in-patient services of a developmental center or other residential facility for [~~individuals~~] people with developmental [~~disabilities~~], cognitive or intellectual challenges under the jurisdiction of the state office for people with developmental disabilities.

(e) "Examination order" means an order directed to the commissioner requiring that a defendant submit to a psychiatric examination to determine whether the defendant has a [~~dangerous mental disorder~~] qualifying condition and level of imminent serious risk, or if [~~he~~] such defendant does not have [~~dangerous mental disorder~~] a qualifying condition and level of imminent serious risk, whether [~~he~~] such defendant is [~~mentally ill~~] a person with mental health, developmental, cognitive, or intellectual challenges.

(g) "First retention order" means an order which is effective at the expiration of the period prescribed in a commitment order [~~for~~] or a recommitment order, authorizing continued custody of a defendant by the commissioner for a period not to exceed [~~one year~~] ninety days.

(h) "Second retention order" means an order which is effective at the expiration of the period prescribed in a first retention order, authorizing continued custody of a defendant by the commissioner for a period not to exceed [~~two years~~] ninety days.

(i) "Subsequent retention order" means an order which is effective at the expiration of the period prescribed in a second retention order or a prior subsequent retention order authorizing continued custody of a defendant by the commissioner for a period not to exceed [~~two years~~] six months.

§ 3. Subdivisions 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15 of section 330.20 of the criminal procedure law, subdivision 2 as amended by chapter 693 of the laws of 1989, the opening paragraph of subdivision 2 as amended by chapter 479 of the laws of 2022, the closing paragraph of subdivision 2 as amended by chapter 107 of the laws of 2004, subdivisions 5, 8, 9, 10, 11, 12 and 13 as amended by chapter 789 of the laws of 1985 and subdivisions 6, 7 and 15 as added by chapter 548 of the laws of 1980, are amended to read as follows:

2. Examination order; psychiatric examiners. Upon entry of a verdict of not responsible by reason of mental disease or defect, or upon the acceptance of a plea of not responsible by reason of mental disease or defect, the court must immediately issue an examination order. Upon receipt of such order, the commissioner must designate two qualified psychiatric examiners to conduct the examination to examine the defendant within fifteen days of such receipt. In conducting their examination, the psychiatric examiners may employ any method which is accepted

1 by the medical profession for the examination of persons alleged to [~~be~~  
2 ~~suffering from~~] have a [~~dangerous mental disorder~~] qualifying condition  
3 and level of imminent serious risk or to be [~~mentally ill or having~~] a  
4 person with mental health, developmental [~~disability~~], cognitive, or  
5 intellectual challenges. The court may authorize a psychiatrist or  
6 psychologist retained by a defendant to be present at such examination.  
7 The clerk of the court must promptly forward a copy of the examination  
8 order to the mental hygiene legal service and such service may thereaft-  
9 er participate in all subsequent proceedings under this section.

10 In all subsequent proceedings under this section, prior to the issu-  
11 ance of a special order of conditions, the court shall consider whether  
12 any order of protection had been issued prior to a verdict of not  
13 responsible by reason of mental disease or defect in the case, or prior  
14 to the acceptance of a plea of not responsible by reason of mental  
15 disease or defect in the case.

16 5. Examination order; reports. After [~~he has completed his~~] completion  
17 of the examination of the defendant, each psychiatric examiner must  
18 promptly prepare a report of [~~his~~] their findings and evaluation  
19 concerning the defendant's mental condition, and submit such report to  
20 the commissioner no later than seven days after conducting the examina-  
21 tion. If the psychiatric examiners differ in their opinion as to wheth-  
22 er the defendant is [~~mentally ill~~] a person with mental health, develop-  
23 mental, cognitive, or intellectual challenges or [~~is suffering from a~~  
24 ~~dangerous mental disorder~~] has a qualifying condition and level of immi-  
25 nent serious risk, the commissioner must designate another psychiatric  
26 examiner to examine the defendant. Upon receipt of the examination  
27 reports, the commissioner must submit them to the court that issued the  
28 examination order. If the court is not satisfied with the findings of  
29 these psychiatric examiners, the court may designate one or more addi-  
30 tional psychiatric examiners pursuant to subdivision fifteen of this  
31 section. The court must furnish a copy of the reports to the district  
32 attorney, counsel for the defendant and the mental hygiene legal  
33 service.

34 6. Initial hearing; commitment order. After the examination reports  
35 are submitted, the court must, within ten days of the receipt of such  
36 reports, conduct an initial hearing to determine the defendant's present  
37 mental condition. If the defendant is in the custody of the commissioner  
38 pursuant to an examination order, the court must direct the sheriff to  
39 obtain custody of the defendant from the commissioner and to confine the  
40 defendant pending further order of the court, except that the court may  
41 direct the sheriff to confine the defendant in an institution located  
42 near the place where the court sits if that institution has been desig-  
43 nated by the commissioner as suitable for the temporary and secure  
44 detention of mentally disabled persons. At such initial hearing, the  
45 district attorney must establish to the satisfaction of the court that  
46 the defendant has a [~~dangerous mental disorder~~] qualifying condition and  
47 level of imminent serious risk or is [~~mentally ill~~] a person with mental  
48 health, developmental, cognitive, or intellectual challenges. If the  
49 court finds that the defendant has a [~~dangerous mental disorder~~] quali-  
50 fying condition and level of imminent serious risk, [~~it~~] the court must  
51 issue a commitment order. If the court finds that the defendant does not  
52 have a [~~dangerous mental disorder~~] qualifying condition and level of  
53 imminent serious risk but is [~~mentally ill~~] a person with mental health,  
54 developmental, cognitive, or intellectual challenges, the provisions of  
55 subdivision seven of this section shall apply.

1 7. Initial hearing civil commitment and order of conditions. If, at  
2 the conclusion of the initial hearing conducted pursuant to subdivision  
3 six of this section, the court finds that the defendant is [~~mentally~~  
4 ~~ill~~] a person with mental health, developmental, cognitive, or intellec-  
5 tual challenges but does not have a [~~dangerous mental disorder~~] qualify-  
6 ing condition and level of imminent serious risk, the provisions of  
7 articles nine or fifteen of the mental hygiene law shall apply at that  
8 stage of the proceedings and at all subsequent proceedings. Having found  
9 that the defendant is [~~mentally ill~~] a person with mental health, devel-  
10 opmental, cognitive, or intellectual challenges, the court must issue an  
11 order of conditions and an order committing the defendant to the custody  
12 of the commissioner. The latter order shall be deemed an order made  
13 pursuant to the mental hygiene law and not pursuant to this section, and  
14 further retention, conditional release or discharge of such defendant  
15 shall be in accordance with the provisions of the mental hygiene law.  
16 If, at the conclusion of the initial hearing, the court finds that the  
17 defendant does not have a [~~dangerous mental disorder~~] qualifying condi-  
18 tion and level of imminent serious risk and is not [~~mentally ill~~] a  
19 person with mental health, developmental, cognitive, or intellectual  
20 challenges, the court must discharge the defendant either uncondi-  
21 tionally or subject to an order of conditions.

22 8. First retention order. When a defendant is in the custody of the  
23 commissioner pursuant to a commitment order, the commissioner must, at  
24 least thirty days prior to the expiration of the period prescribed in  
25 the order, apply to the court that issued the order, or to a superior  
26 court in the county where the secure facility is located, for a first  
27 retention order or a release order. The commissioner must give written  
28 notice of the application to the district attorney, the defendant, coun-  
29 sel for the defendant, and the mental hygiene legal service. Upon  
30 receipt of such application, the court may, on its own motion, conduct a  
31 hearing to determine whether the defendant has a [~~dangerous mental~~  
32 ~~disorder~~] qualifying condition and level of imminent serious risk, and  
33 it must conduct such hearing if a demand therefor is made by [~~the~~  
34 ~~district attorney,~~] the defendant, counsel for the defendant, or the  
35 mental hygiene legal service within ten days from the date that notice  
36 of the application was given to them. If such a hearing is held on an  
37 application for retention, the commissioner must establish to the satis-  
38 faction of the court that the defendant has a [~~dangerous mental disor-~~  
39 ~~der~~] qualifying condition and level of imminent serious risk or is  
40 [~~mentally ill~~] a person with mental health, developmental, cognitive, or  
41 intellectual challenges. [~~The district attorney shall be entitled to~~  
42 ~~appear and present evidence at such hearing. If such a hearing is held~~  
43 ~~on an application for release, the district attorney must establish to~~  
44 ~~the satisfaction of the court that the defendant has a dangerous mental~~  
45 ~~disorder or is mentally ill.~~] If the court finds that the defendant has  
46 a [~~dangerous mental disorder~~] qualifying condition and level of imminent  
47 serious risk it must issue a first retention order. If the court finds  
48 that the defendant is [~~mentally ill~~] a person with mental health, devel-  
49 opmental, cognitive, or intellectual challenges but does not have a  
50 [~~dangerous mental disorder~~] qualifying condition and level of imminent  
51 serious risk, it must issue a first retention order and, pursuant to  
52 subdivision eleven of this section, a transfer order and an order of  
53 conditions. If the commissioner makes an application for release or if  
54 the court finds that the defendant does not have a [~~dangerous mental~~  
55 ~~disorder~~] qualifying condition and level of imminent serious risk and is  
56 not [~~mentally ill~~] a person with mental health, developmental, cogni-

1 tive, or intellectual challenges, [~~it~~] the court must issue a release  
2 order and an order of conditions pursuant to subdivision twelve of this  
3 section.

4 9. Second and subsequent retention orders. When a defendant is in the  
5 custody of the commissioner pursuant to a first retention order, the  
6 commissioner must, at least thirty days prior to the expiration of the  
7 period prescribed in the order, apply to the court that issued the  
8 order, or to a superior court in the county where the facility is  
9 located, for a second retention order or a release order. The commis-  
10 sioner must give written notice of the application to the district  
11 attorney, the defendant, counsel for the defendant, and the mental  
12 hygiene legal service. Upon receipt of such application for a retention  
13 order, the court may, on its own motion, conduct a hearing to determine  
14 whether the defendant has a [~~dangerous mental disorder~~] qualifying  
15 condition and level of imminent serious risk, and it must conduct such  
16 hearing if a demand therefor is made by [~~the district attorney,~~] the  
17 defendant, counsel for the defendant, or the mental hygiene legal  
18 service within ten days from the date that notice of the application was  
19 given to them. If such a hearing is held on an application for  
20 retention, the commissioner must establish to the satisfaction of the  
21 court that the defendant has a [~~dangerous mental disorder~~] qualifying  
22 condition and level of imminent serious risk or is [~~mentally ill~~] a  
23 person with mental health, developmental, cognitive, or intellectual  
24 challenges. [~~The district attorney shall be entitled to appear and pres-~~  
25 ~~ent evidence at such hearing. If such a hearing is held on an applica-~~  
26 ~~tion for release, the district attorney must establish to the satisfac-~~  
27 ~~tion of the court that the defendant has a dangerous mental disorder or~~  
28 ~~is mentally ill.~~] If the court finds that the defendant has a [~~dangerous~~  
29 ~~mental disorder~~] qualifying condition and level of imminent serious risk  
30 it must issue a second retention order. If the court finds that the  
31 defendant is [~~mentally ill~~] a person with mental health, developmental,  
32 cognitive, or intellectual challenges but does not have a [~~dangerous~~  
33 ~~mental disorder~~] qualifying condition and level of imminent serious  
34 risk, it must issue a second retention order and, pursuant to subdivi-  
35 sion eleven of this section, a transfer order and an order of condi-  
36 tions. If the commissioner makes an application for release or if the  
37 court finds that the defendant does not have a [~~dangerous mental disor-~~  
38 ~~der~~] qualifying condition and level of imminent serious risk and is not  
39 [~~mentally ill~~] a person with mental health, developmental, cognitive, or  
40 intellectual challenges, it must issue a release order and an order of  
41 conditions pursuant to subdivision twelve of this section. When a  
42 defendant is in the custody of the commissioner prior to the expiration  
43 of the period prescribed in a second retention order, the procedures set  
44 forth in this subdivision for the issuance of a second retention order  
45 shall govern the application for and the issuance of any subsequent  
46 retention order. Any time a commitment or retention order is issued, the  
47 commissioner or their designee shall work with the person in custody to  
48 develop a detailed and extensive treatment plan that includes what  
49 services, treatment, programs, and/or corrective action the person needs  
50 to take to obtain release, a transfer order, and/or a furlough order.  
51 The commissioner or designee shall then provide access to such services,  
52 treatment, and programs, and the individual shall be released, issued a  
53 transfer order, and/or issued a furlough order if they substantially  
54 complete what was required for the particular outcome.

55 10. Furlough order. The commissioner may apply for a furlough order,  
56 pursuant to this subdivision, when a defendant is in [~~his~~] the commis-

1 ~~itioner's~~ custody pursuant to a commitment order, recommitment order, or  
2 retention order and the commissioner is of the view that, consistent  
3 with the public safety and welfare of the community and the defendant,  
4 the clinical condition of the defendant warrants a granting of the priv-  
5 ileges authorized by a furlough order. The application for a furlough  
6 order may be made to the court that issued the commitment order, or to a  
7 superior court in the county where the secure facility is located. The  
8 commissioner must give ten days written notice to the district attorney,  
9 the defendant, counsel for the defendant, and the mental hygiene legal  
10 service. Upon receipt of such application, the court may, on its own  
11 motion, conduct a hearing to determine whether the application should be  
12 granted~~[, and must conduct such hearing if a demand therefor is made by~~  
13 ~~the district attorney]~~. If the ~~[court finds]~~ commissioner has found that  
14 the issuance of a furlough order is consistent with the public safety  
15 and welfare of the community and the defendant, and that the clinical  
16 condition of the defendant warrants a granting of the privileges author-  
17 ized by a furlough order, the court must grant the application and issue  
18 a furlough order containing any terms and conditions that the court  
19 deems necessary or appropriate. ~~[If the defendant fails to return to the~~  
20 ~~secure facility at the time specified in the furlough order, then, for~~  
21 ~~purposes of subdivision nineteen of this section, he shall be deemed to~~  
22 ~~have escaped]~~ A person in custody shall be provided an opportunity to  
23 earn progressively more permissive furloughs, including being escorted  
24 within a facility, unescorted within a facility, escorted in the commu-  
25 nity outside a facility, unescorted community furloughs, and unescorted  
26 community furloughs with community integration, where an individual is  
27 able to spend time with their family, work, pursue education, and pursue  
28 community-based treatment. Each person in custody shall have the oppor-  
29 tunity to move to a more permissive furlough at least every six months  
30 unless they have engaged in specific behavior within the previous six  
31 months demonstrating that they pose a risk of imminent serious physical  
32 danger to themselves or others. If an individual has participated in  
33 unescorted community furloughs for six months, they shall be released or  
34 receive an order of transfer. If they are transferred, they shall  
35 continue on the same furlough progression level.

36 11. (a) Transfer order and order of conditions. The commissioner may  
37 apply for a transfer order, pursuant to this subdivision, when a defend-  
38 ant is in ~~[his]~~ the commissioner's custody pursuant to a retention order  
39 or a recommitment order, and the commissioner is of the view that the  
40 defendant does not have a ~~[dangerous mental disorder]~~ qualifying condi-  
41 tion and level of imminent serious risk or that, consistent with the  
42 public safety and welfare of the community and the defendant, the clin-  
43 ical condition of the defendant warrants ~~[his]~~ such defendant's transfer  
44 from a secure facility to a non-secure facility under the jurisdiction  
45 of the commissioner or to any non-secure facility designated by the  
46 commissioner. The application for a transfer order may be made to the  
47 court that issued the order under which the defendant is then in custo-  
48 dy, or to a superior court in the county where the secure facility is  
49 located. The commissioner must give ten days written notice to the  
50 district attorney, the defendant, counsel for the defendant, and the  
51 mental hygiene legal service. Upon receipt of such application, the  
52 court ~~[may, on its own motion, conduct a hearing to determine whether~~  
53 ~~the application should be granted, and must conduct such hearing if the~~  
54 ~~demand therefor is made by the district attorney. At such hearing, the~~  
55 ~~district attorney must establish to the satisfaction of the court that~~  
56 ~~the defendant has a dangerous mental disorder or that the issuance of a~~

~~transfer order is inconsistent with the public safety and welfare of the community. The court~~ must grant the application and issue a transfer order if the ~~court finds~~ commissioner has concluded that the defendant does not have a ~~dangerous mental disorder~~ qualifying condition and level of imminent serious risk, or ~~if the court finds~~ that the issuance of a transfer order is consistent with the public safety and welfare of the community and the defendant and that the clinical condition of the defendant, warrants ~~his~~ such defendant's transfer from a secure facility to a non-secure facility. A court must also issue a transfer order when, in connection with an application for a first retention order pursuant to subdivision eight of this section or a second or subsequent retention order pursuant to subdivision nine of this section, it finds that a defendant is ~~mentally ill~~ a person with mental health, developmental, cognitive, or intellectual challenges but does not have a ~~dangerous mental disorder~~ qualifying condition and level of imminent serious risk. Whenever a court issues a transfer order it must also issue an order of conditions. A person who is transferred must begin their new placement with at least the same level of all privileges, conditions, and furlough progression level as they had at the time of their transfer.

(b) Notwithstanding any other section of law, and regardless of whether any application is filed, a court shall automatically issue a release order or a transfer order from a secure facility to a non-secure facility to any person in the custody of the commissioner pursuant to a commitment order or a retention order who has spent a total of three years in a secure facility and/or a state or local correctional facility, or who has spent a total period of time in a secure facility and/or a state or local correctional facility equal to the minimum sentence they could have received for the charge for which they received a verdict of, or accepted a plea of, not responsible by reason of mental disease or defect, whichever period of time expires first. For a person who has spent a total period of time in a secure facility equal to the minimum sentence they could have received for the charge for which they received a verdict of, or accepted a plea of, not responsible by reason of mental disease or defect, a court shall issue a release order. For any release order or transfer order, the person shall be released or transferred on or before the day the time period expires.

(c) Time spent in a secure facility and/or state or local correctional facility prior to a verdict, plea, and/or a sentence, shall be included as part of the total time periods set forth in this section.

12. (a) Release order and order of conditions. The commissioner may apply for a release order, pursuant to this subdivision, when a defendant is in ~~his~~ the commissioner's custody pursuant to a retention order or recommitment order, and the commissioner is of the view that the defendant no longer has a ~~dangerous mental disorder~~ qualifying condition and level of imminent serious risk and is no longer ~~mentally ill~~ a person with mental health, developmental, cognitive, or intellectual challenges. The application for a release order may be made to the court that issued the order under which the defendant is then in custody, or to a superior court in the county where the facility is located. The application must contain a description of the defendant's current mental condition, the past course of treatment, a history of the defendant's conduct subsequent to ~~his~~ such defendant's commitment, a written service plan for continued treatment which shall include the information specified in subdivision (g) of section 29.15 of the mental hygiene law, and a detailed statement of the extent to which supervision of the

1 defendant after release is proposed. The commissioner must give ten days  
2 written notice to the district attorney, the defendant, counsel for the  
3 defendant, and the mental hygiene legal service. Upon receipt of such  
4 application, the court must promptly [~~conduct a hearing to determine the~~  
5 ~~defendant's present mental condition. At such hearing, the district~~  
6 ~~attorney must establish to the satisfaction of the court that the~~  
7 ~~defendant has a dangerous mental disorder or is mentally ill. If the~~  
8 ~~court finds that the defendant has a dangerous mental disorder, it must~~  
9 ~~deny the application for a release order. If the court finds that the~~  
10 ~~defendant does not have a dangerous mental disorder but is mentally ill,~~  
11 ~~it must issue a transfer order pursuant to subdivision eleven of this~~  
12 ~~section if the defendant is then confined in a secure facility. If the~~  
13 ~~court finds that the defendant does not have a dangerous mental disorder~~  
14 ~~and is not mentally ill, it must]~~ grant the application and issue a  
15 release order. A court must also issue a release order when, in  
16 connection with an application for a first retention order pursuant to  
17 subdivision eight of this section or a second or subsequent retention  
18 order pursuant to subdivision nine of this section, it finds that the  
19 defendant does not have a [~~dangerous mental disorder~~] qualifying condi-  
20 tion and level of imminent serious risk and is not [~~mentally ill~~] a  
21 person with mental health, developmental, cognitive, or intellectual  
22 challenges. Whenever a court issues a release order it must also issue  
23 an order of conditions. If the court has previously issued a transfer  
24 order and an order of conditions, it must issue a new order of condi-  
25 tions upon issuing a release order. The order of conditions issued in  
26 conjunction with a release order shall incorporate a written service  
27 plan prepared by a psychiatrist familiar with the defendant's case  
28 history and approved by the court, and shall contain any conditions that  
29 the court determines to be reasonably necessary or appropriate. It shall  
30 be the responsibility of the commissioner to determine that such defend-  
31 ant is receiving the services specified in the written service plan and  
32 is complying with any conditions specified in such plan and the order of  
33 conditions.

34 (b) (i) Notwithstanding any other section of law, and regardless of  
35 whether any application is filed, a court shall automatically issue a  
36 release order to any person in the custody of the commissioner pursuant  
37 to a commitment order or a retention order who has spent a total of six  
38 years in such custody in a secure facility, non-secure facility, and/or  
39 a state or local correctional facility, or who has spent a total period  
40 of time in such custody in a secure facility, non-secure facility and/or  
41 a state or local correctional facility equal to the minimum sentence  
42 they could have received for the charge for which they received a  
43 verdict of, or accepted a plea of, not responsible by reason of mental  
44 disease or defect, whichever period of time expires first. The person  
45 shall be released on or before the day the time period expires.

46 (ii) Time spent in a secure facility, non-secure facility, and/or  
47 state or local correctional facility prior to a verdict, a plea, and/or  
48 a sentence, shall be included as part of the total time periods set  
49 forth in this section.

50 (c) All facilities under this section shall all operate the same,  
51 consistent policies, including with respect to treatment plans,  
52 furloughs, retention orders, transfer orders, and release orders.

53 13. Discharge order. The commissioner may apply for a discharge order,  
54 pursuant to this subdivision, when a defendant has been continuously on  
55 an out-patient status for three years or more pursuant to a release  
56 order, and the commissioner is of the view that the defendant no longer

1 has a [~~dangerous mental disorder~~] qualifying condition and level of  
2 imminent serious risk and is no longer [~~mentally ill~~] a person with  
3 mental health, developmental, cognitive, or intellectual challenges and  
4 that the issuance of a discharge order is consistent with the public  
5 safety and welfare of the community and the defendant. The application  
6 for a discharge order may be made to the court that issued the release  
7 order, or to a superior court in the county where the defendant is then  
8 residing. The commissioner must give ten days written notice to the  
9 district attorney, the defendant, counsel for the defendant, and the  
10 mental hygiene legal service. Upon receipt of such application, the  
11 court [~~may, on its own motion, conduct a hearing to determine whether~~  
12 ~~the application should be granted, and must conduct such hearing if a~~  
13 ~~demand therefor is made by the district attorney. The court~~] must grant  
14 the application and issue a discharge order if the [~~court finds~~] commis-  
15 sioner has found that the defendant has been continuously on an out-pa-  
16 tient status for three years or more, that [~~he~~] such defendant does not  
17 have a [~~dangerous mental disorder~~] qualifying condition and level of  
18 imminent serious risk and is not [~~mentally ill~~] a person with mental  
19 health, developmental, cognitive, or intellectual challenges, and that  
20 the issuance of the discharge order is consistent with the public safety  
21 and welfare of the community and the defendant.

22 15. Designation of psychiatric examiners. If, at any hearing conducted  
23 under this section to determine the defendant's present mental condi-  
24 tion, the court is not satisfied with the findings of the psychiatric  
25 examiners, the court may direct the commissioner to designate one or  
26 more additional psychiatric examiners to conduct an examination of the  
27 defendant and submit a report of their findings. In addition, the court  
28 may on its own motion, or upon request of a party, may designate one or  
29 more psychiatric examiners to examine the defendant and submit a report  
30 of their findings. The district attorney may not apply to the court for  
31 an order directing that the defendant submit to an examination by a  
32 psychiatric examiner designated by the district attorney[~~, and such~~  
33 ~~psychiatric examiner may testify at the hearing~~].

34 § 4. Subdivision 14 of section 330.20 of the criminal procedure law is  
35 REPEALED.

36 § 5. Paragraphs (a) and (c) of subdivision 21 of section 330.20 of the  
37 criminal procedure law, as added by chapter 976 of the laws of 1983,  
38 subparagraph (ii) of paragraph (a) as amended by chapter 330 of the laws  
39 of 1993, are amended to read as follows:

40 (a) A party to proceedings conducted in accordance with the provisions  
41 of this section may take an appeal to an intermediate appellate court  
42 [~~by permission of the intermediate appellate court~~] as follows:

43 (i) the commissioner may appeal from any [~~release order,~~] retention  
44 order[~~, transfer order, discharge order,~~] or order of conditions[~~, or~~  
45 ~~recommitment order,~~] for which [~~he~~] such commissioner has not applied;

46 (ii) a defendant, or the mental hygiene legal service on [~~his or her~~]  
47 a defendant's behalf, may appeal from any commitment order, retention  
48 order, [~~recommitment order,~~] or, if the defendant has obtained a rehear-  
49 ing and review of any such order pursuant to subdivision sixteen of this  
50 section, from an order, not otherwise appealable as of right, issued in  
51 accordance with the provisions of section 9.35 or 15.35 of the mental  
52 hygiene law authorizing continued retention under the original order[~~,  
53 provided, however, that a defendant who takes an appeal from a commit-~~  
54 ~~ment order, retention order, or recommitment order may not subsequently~~  
55 ~~obtain a rehearing and review of such order pursuant to subdivision~~  
56 ~~sixteen of this section,~~

~~(iii) the district attorney may appeal from any release order, transfer order, discharge order, order of conditions, furlough order, or order denying an application for a recommitment order which he opposed].~~

(c) An appeal taken under this subdivision shall be deemed civil in nature, and shall be governed by the laws and rules applicable to civil appeals; provided, however, that any such appeal shall be decided within six months of being filed and that a stay of the order appealed from must be obtained in accordance with the provisions of paragraph (d) ~~[hereof]~~ of this subdivision. If an appeal of a retention order or commitment order is not decided within six months after the date such appeal is filed, the individual held in a secure or non-secure facility under such retention order or commitment order shall be released from a non-secure facility or released or transferred from a secure facility to a non-secure facility, unless the commissioner seeks and obtains from the court a stay of such release or transfer by demonstrating beyond a reasonable doubt that the person currently has a qualifying condition and level of imminent serious risk.

§ 6. Section 330.20 of the criminal procedure law is amended by adding two new subdivisions 23 and 24 to read as follows:

23. The office of mental health shall publish monthly reports on its website, along with semi-annual and annual cumulative reports, of the total number of people held in each secure and non-secure forensic facility in the state.

(a) The number of people in each secure and non-secure forensic facility shall be separately listed, including: (i) those that hold people pursuant to this section and section 730.50 of this chapter or 14 NYCRR Part 57, and including but not limited to the Mid-Hudson Forensic Psychiatric Center, Kirby Forensic Psychiatric Center, Rochester Regional Forensic Unit, and Northeast Regional Forensic Unit; (ii) all secure treatment facilities, as defined in subdivision (o) of section 10.03 of the mental hygiene law, including but not limited to the Central New York Psychiatric Center and St. Lawrence Psychiatric Center; and (iii) all secure mental health facilities holding people pursuant to section four hundred two or five hundred eight of the correction law.

(b) The number of people held in each secure and non-secure forensic facility shall be broken down by: (i) race, (ii) age, (iii) gender identity, (iv) documented mental health status and diagnoses, (v) other documented disability, (vi) pregnancy or postpartum status, (vii) identification as lesbian, gay, bisexual, transgender, intersex, or gender nonconforming, (viii) length of stay at their present facility, (ix) length of stay in a secure or non-secure facility, and (x) length of stay since their initial confinement.

24. (a) Not later than ninety days after the effective date of this subdivision, the senate shall establish a community advisory committee, with no less than five members. Each member of the community advisory committee shall be a person who has been confined in a secure forensic facility, has or has had a loved one confined in a secure forensic facility, or is a faith leader, medical or mental health professional, or civil rights or human rights advocate. All members shall have had some experience engaging in advocacy aimed at enhancing the rights and treatment of people with mental health needs. No less than half of all members shall be people who have been confined in a secure forensic facility or have had a loved one confined in a secure forensic facility.

(b) Members of such community advisory committee shall be appointed for a term of five years, with the possibility of reappointments. The

1 community advisory committee shall have the ability to designate any  
2 person to assist the work of the community advisory committee.

3 (c) Notwithstanding any other provision of law, the community advisory  
4 committee and its designees shall have the ability to make unannounced  
5 visits to, and have access to every area of and all non-classified,  
6 non-privileged data from, all secure and non-secure forensic facilities,  
7 including (i) those that hold people pursuant to this section and  
8 section 730.50 of this chapter or 14 NYCRR Part 57, and including but  
9 not limited to the Mid-Hudson Forensic Psychiatric Center, Kirby Foren-  
10 sic Psychiatric Center, Rochester Regional Forensic Unit, and Northeast  
11 Regional Forensic Unit; (ii) all secure treatment facilities, as defined  
12 in subdivision (o) of section 10.03 of the mental hygiene law, including  
13 but not limited to the Central New York Psychiatric Center and St.  
14 Lawrence Psychiatric Center; and (iii) all secure mental health facili-  
15 ties holding people pursuant to section four hundred two or five hundred  
16 eight of the correction law.

17 (d) The community advisory committee and its designees shall have the  
18 ability to conduct in-person interviews and correspond and communicate  
19 with people held in secure and non-secure forensic facilities and facil-  
20 ity staff freely, privately, and confidentially, upon consent of the  
21 confined person or facility staff. Administrators of each facility shall  
22 meet privately with the community advisory committee or its designees  
23 upon request.

24 (e) (i) All people held in a secure facility shall have the right and  
25 access to confidentially communicate with the community advisory commit-  
26 tee and its designees, including while the community advisory committee  
27 or its designees are at the facility and through free phone calls, free  
28 mail correspondence, and free email correspondence. Such communications  
29 shall be afforded the same levels of protection, confidentiality, and  
30 privilege as attorney-client correspondence.

31 (ii) No person shall face any form of retaliation or adverse impact  
32 for having contact with, or being perceived to have had contact with,  
33 the community advisory committee.

34 (f) The community advisory committee and its designees shall have the  
35 right to bring and use electronic equipment in any forensic facility,  
36 including video cameras, photographic cameras, audio recording devices,  
37 mobile telephones, computers, and tablets, for the purposes of record-  
38 ing, documentation, administration of surveys, and other related  
39 purposes.

40 (g) (i) The community advisory committee and its designees shall have  
41 the right to receive, access, inspect, and copy all relevant non-classi-  
42 fied, non-privileged information, records, and documents in the  
43 possession or control of any forensic facility, any administrator or  
44 employee of any forensic facility, and any administrator or employee of  
45 the office of mental health.

46 (ii) The community advisory committee and its designees shall receive  
47 any such records within seven days of a request. Where the records  
48 requested by the community advisory committee or its designees pertain  
49 to a death of an incarcerated individual, threats of bodily harm includ-  
50 ing sexual or physical assaults, or the denial of necessary medical  
51 treatment, the records shall be provided within forty-eight hours unless  
52 members of the community advisory committee or their designees consent  
53 to an extension of the deadline.

54 (h) The community advisory committee may make periodic recommendations  
55 to the governor, temporary president of the senate, speaker of the  
56 assembly, any forensic facility or the office of mental health. For any

1 recommendations made by the community advisory committee to a facility  
2 or the office of mental health, the facility and the office of mental  
3 health shall report to the community advisory committee within ninety  
4 days whether it has designed and implemented a remedial action plan to  
5 address the recommendations, and transmit any such remedial action plan  
6 to the community advisory committee. The community advisory committee  
7 may publish its findings and recommendations on the office of mental  
8 health's website.

9 § 7. Subdivisions 3 and 5 of section 730.50 of the criminal procedure  
10 law, subdivision 5 as amended by chapter 629 of the laws of 1974, are  
11 amended to read as follows:

12 3. When a defendant is in the custody of the commissioner immediately  
13 prior to the expiration of the period prescribed in the first order of  
14 retention, the procedure set forth in subdivision two of this section  
15 shall govern the application for and the issuance of any subsequent  
16 order of retention, except that any subsequent orders of retention must  
17 be for periods not to exceed two years each; provided, however, that the  
18 aggregate of the periods prescribed in the temporary order of commit-  
19 ment, the first order of retention and all subsequent orders of  
20 retention must not exceed the authorized minimum term of imprisonment,  
21 or two-thirds of the authorized maximum term of imprisonment for the  
22 highest class felony charged in the indictment or for the highest class  
23 felony of which [~~he~~] the defendant was convicted, or a total period of  
24 six years, whichever period of time expires first.

25 5. When, on the effective date of this subdivision, any defendant  
26 remains in the custody of the commissioner pursuant to an order issued  
27 under former code of criminal procedure section six hundred sixty-two-b,  
28 the superintendent or director of the institution where such defendant  
29 is confined shall, if [~~he believes~~] they believe that the defendant  
30 continues to be an incapacitated person, apply forthwith to a court of  
31 record in the county where the institution is located for an order of  
32 retention. The procedures for obtaining any order pursuant to this  
33 subdivision shall be in accordance with the provisions of subdivisions  
34 two, three and four of this section, except that the period of retention  
35 pursuant to the first order obtained under this subdivision shall be for  
36 not more than one year and any subsequent orders of retention must be  
37 for periods not to exceed two years each; provided, however, that the  
38 aggregate of the time spent in the custody of the commissioner pursuant  
39 to any order issued in accordance with the provisions of former code of  
40 criminal procedure section six hundred sixty-two-b and the periods  
41 prescribed by the first order obtained under this subdivision and all  
42 subsequent orders of retention must not exceed two-thirds of the author-  
43 ized [~~maximum~~] minimum term of imprisonment for the highest class felony  
44 charged in the indictment or the highest class felony of which [~~he~~] the  
45 defendant was convicted, or a total period of six years, whichever peri-  
46 od of time expires first.

47 § 8. All provisions of this act shall apply retroactively to all  
48 people in the custody of the commissioner of mental health or the  
49 commissioner of the office for people with developmental disabilities at  
50 the time this act takes effect, and all time periods set forth in this  
51 act shall apply to each such person beginning when the person was first  
52 in the custody of the commissioner of mental health or the commissioner  
53 of the office for people with developmental disabilities.

54 § 9. This act shall take effect on the thirtieth day after it shall  
55 have become a law.