

STATE OF NEW YORK

1004--B

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

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Introduced by Sens. BROUK, BAILEY, FAHY, FERNANDEZ, MURRAY, O'MARA, RIVERA, WALCZYK, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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-

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

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1 sional opinion as to whether or not there is at least a reasonable
2 expectation that restoration services could have a substantial probabili-
3 ty of restoring the defendant to competence within a reasonable period
4 of time. The state administrator and the commissioner must jointly adopt
5 the form of the examination report; and the state administrator shall
6 prescribe the number of copies thereof that must be submitted to the
7 court by the director.

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

10 10. "Restoration services" means those services which may include
11 medication support, classroom-based competency instruction, mock trials,
12 symptom management, and rehabilitative services provided to an incapacit-
13 ated person which are designed to improve their mental state or devel-
14 opmental status to the extent that they can understand the charges
15 against them and participate in their own defense. Restoration services
16 may supplement mental health treatment aimed at recovery from mental
17 illness or services aimed at improving a developmentally disabled
18 person's ability to function on a day-to-day basis.

19 § 4. Section 730.20 of the criminal procedure law, subdivisions 1 and
20 5 as amended by chapter 693 of the laws of 1989 and subdivision 7 as
21 amended by chapter 692 of the laws of 1972, is amended to read as
22 follows:

23 § 730.20 Fitness to proceed; generally.

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

38 2. When the defendant is not in custody at the time a court issues an
39 order of examination, because [~~he~~] the defendant was theretofore
40 released on bail or on [~~his~~] the defendant's own recognizance, the court
41 [~~may~~] shall direct that the examination be conducted on an out-patient
42 basis, and at such time and place as the director shall designate and
43 the court shall order the defendant to appear for such examination. If,
44 however, the director informs the court that hospital confinement of the
45 defendant is necessary for an effective examination, the court may
46 direct that the defendant be confined in a hospital [~~designated by the~~
47 ~~director~~] operated or approved by the commissioner only until the exam-
48 ination is completed. In no event shall the need for such examination be
49 a basis for incarcerating a defendant who has been released on bail or
50 their own recognizance.

51 3. When the defendant is in custody at the time a court issues an
52 order of examination, the examination must be conducted at the place
53 where the defendant is being held in custody. If, however, the director
54 determines that hospital confinement of the defendant is necessary for
55 an effective examination, the sheriff must deliver the defendant to a
56 hospital designated by the [~~director~~] commissioner and hold [~~him~~] the

1 defendant in custody therein, under sufficient guard, until the examina-
2 tion is completed.

3 4. Hospital confinement under subdivisions two and three shall be for
4 a period not exceeding [~~thirty~~] ten days, except that, upon application
5 of the director, the court may authorize confinement for an additional
6 period not exceeding [~~thirty~~] ten days if it is satisfied that a longer
7 period is necessary to complete the examination. During the period of
8 hospital confinement, the physician in charge of the hospital may admin-
9 ister or cause to be administered to the defendant such emergency
10 psychiatric, medical or other therapeutic treatment as in [~~his~~] such
11 physician's judgment should be administered.

12 5. Each psychiatric examiner, after [~~he has completed his~~] completing
13 the examination of the defendant, must promptly prepare and submit to
14 the director an examination report [~~and submit it to the director~~]
15 setting forth the examiner's opinion as to whether or not there is at
16 least a reasonable expectation that restoration services could have a
17 substantial probability of restoring the defendant to competence within
18 a reasonable period of time. If the psychiatric examiners are not unani-
19 mous in their opinion as to whether the defendant is or is not an inca-
20 pacitated person, the director must designate another qualified psychi-
21 atric examiner to examine the defendant to determine if [~~he~~] the
22 defendant is an incapacitated person and, if so, whether or not there is
23 at least a reasonable expectation that restoration services could have a
24 substantial probability of restoring the defendant to competence within
25 a reasonable period of time. Upon receipt of the examination reports,
26 the director must submit them to the court that issued the order of
27 examination. The court must furnish a copy of the reports to counsel
28 for the defendant and to the district attorney.

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

37 7. A psychiatric examiner, who is not regularly employed by the coun-
38 ty, state, or city of New York, is entitled to [~~his~~] their reasonable
39 traveling expenses[~~, a~~] and to a reasonable fee [~~of fifty dollars~~] to be
40 negotiated with the examiner by the director or the county or, if no
41 such fee is agreed upon, to be set by the court for each examination of
42 a defendant and [~~a fee of fifty dollars~~] for each appearance at a court
43 hearing or trial [~~but not exceeding two hundred dollars in fees for~~
44 ~~examination and testimony in any one case~~]; except that if such psychi-
45 atric examiner be an employee of the county or of the state of New York
46 [~~he~~] they shall be entitled only to reasonable traveling expenses,
47 unless such psychiatric examiner makes the examination or appears at a
48 court hearing or trial outside [~~his~~] their hours of state or county
49 employment in a county in which the director of community [~~mental~~
50 ~~health~~] services certifies to the fiscal officer thereof that there is a
51 shortage of qualified [~~psychiatrists~~] examiners available to conduct
52 examinations under [~~the criminal procedure law~~] this chapter in such
53 county, in which event [~~he~~] such examiner shall be entitled to [~~the~~
54 ~~foregoing~~] such fees and reasonable traveling expenses as approved by
55 the court. Such fees and traveling expenses and the costs of sending a
56 defendant to another place of detention or to a hospital for examina-

1 tion[~~, of his maintenance therein~~] and the cost of returning [~~him~~] the
2 defendant shall, when approved and so ordered by the court, be a charge
3 of the county in which the defendant is being tried, and the cost of the
4 maintenance of such defendant therein shall be a cost to the state.

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

8 § 730.30 Fitness to proceed; order of examination.

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

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

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

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

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

52 1. When a local criminal court, following a hearing conducted pursuant
53 to subdivision two, three or four of section 730.30 of this article, is
54 satisfied that the defendant is not an incapacitated person, the crimi-
55 nal action against [~~him or her~~] such defendant must proceed. If [~~it~~] a
56 local criminal court accusatory instrument other than a felony complaint

1 ~~has been filed against the defendant and the court~~ is satisfied that the
2 defendant is an incapacitated person, [~~or if no motion for such a hear-~~
3 ~~ing is made, such court must issue a final or temporary order of obser-~~
4 ~~vation committing him or her to the custody of the commissioner for care~~
5 ~~and treatment in an appropriate institution for a period not to exceed~~
6 ~~ninety days from the date of the order, provided, however, that the~~
7 ~~commissioner may designate an appropriate hospital for placement of a~~
8 ~~defendant for whom a final order of observation has been issued, where~~
9 ~~such hospital is licensed by the office of mental health and has agreed~~
10 ~~to accept, upon referral by the commissioner, defendants subject to~~
11 ~~final orders of observation issued under this subdivision. When a local~~
12 ~~criminal court accusatory instrument other than a felony complaint has~~
13 ~~been filed against the defendant,~~] such court must issue a final order
14 of observation. When a felony complaint has been filed against the
15 defendant, such court must issue a temporary order of observation
16 committing [~~him or her~~] such defendant to the custody of the commis-
17 sioner for [~~care and treatment~~] restoration services in an appropriate
18 institution or, [~~upon the consent of the district attorney~~] in the
19 discretion of the court, committing [~~him or her~~] such defendant to the
20 custody of the commissioner for [~~care and treatment~~] restoration
21 services on an out-patient basis, for a period not to exceed ninety days
22 from the date of such order[~~, except that, with the consent of the~~
23 ~~district attorney,~~] or it may issue a final order of observation. Upon
24 the issuance of a final order of observation, the district attorney
25 shall immediately transmit to the commissioner, in a manner intended to
26 protect the confidentiality of the information, a list of names and
27 contact information of persons who may reasonably be expected to be the
28 victim of any assault or any violent felony offense, as defined in the
29 penal law, or any offense listed in section 530.11 of this [~~chapter~~]
30 part which would be carried out by the committed person; provided that
31 the person who reasonably may be expected to be a victim does not need
32 to be a member of the same family or household as the committed person.

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

37 § 730.50 Fitness to proceed; indictment.

38 1. When a superior court, following a hearing conducted pursuant to
39 subdivision two, three or four of section 730.30 of this article, is
40 satisfied that the defendant is not an incapacitated person, the crimi-
41 nal action against [~~him or her~~] such defendant must proceed. If [~~it is~~
42 ~~satisfied~~] after a hearing, the court makes a finding that the defendant
43 is an incapacitated person, [~~or if no motion for such a hearing is made~~]
44 and that there is at least a reasonable expectation that restoration
45 services could have a substantial probability of restoring the defendant
46 to competence within a reasonable period of time, it must adjudicate
47 [~~him or her~~] them an incapacitated person[~~, and must issue a final order~~
48 ~~of observation or an order of commitment~~]. When the indictment does not
49 charge a felony or when the defendant has been convicted of an offense
50 other than a felony, such court (a) must issue a final order of observa-
51 tion [~~committing the defendant to the custody of the commissioner for~~
52 ~~care and treatment in an appropriate institution for a period not to~~
53 ~~exceed ninety days from the date of such order, provided, however, that~~
54 ~~the commissioner may designate an appropriate hospital for placement of~~
55 ~~a defendant for whom a final order of observation has been issued, where~~
56 ~~such hospital is licensed by the office of mental health and has agreed~~

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

42 2. When a defendant is in the custody of the commissioner immediately
43 prior to the expiration of the period prescribed in a temporary order of
44 commitment and the superintendent of the institution wherein the defend-
45 ant is confined is of the opinion that the defendant continues to be an
46 incapacitated person, such superintendent must apply to the court that
47 issued such order for an order of retention for an additional period of
48 ninety days. The court must hold a hearing on this application to
49 determine if there is a substantial probability of recovery in the fore-
50 seeable future. If the court determines that there is such reasonable
51 expectation of restoration, it shall issue an order of retention for an
52 additional ninety days. If the court finds that the defendant is still
53 incapacitated and there is not a substantial probability of restoration
54 in the foreseeable future, it shall refer the matter to the civil
55 section of the supreme court in the county where the defendant's case is
56 pending, for a hearing pursuant to article nine or fifteen of the mental

1 hygiene law to determine if the defendant shall be hospitalized or
2 otherwise retained on an involuntary basis. [~~Such application must be~~
3 ~~made within sixty days prior to the expiration of such period on forms~~
4 ~~that have been jointly adopted by the judicial conference and the~~
5 ~~commissioner.~~] The superintendent must give written notice of the appli-
6 cation for such order to the defendant and to the mental hygiene legal
7 service. Upon receipt of such application, the court [~~may, on its own~~
8 ~~motion,~~] shall conduct a hearing [~~to determine the issue of capacity,~~
9 ~~and it must conduct such hearing if a demand therefor is made by the~~
10 ~~defendant or the mental hygiene legal service within ten days from the~~
11 ~~date that notice of the application was given them. If, at the conclu-~~
12 ~~sion of a hearing conducted pursuant to this subdivision, the court is~~
13 ~~satisfied that the defendant is no longer an incapacitated person, the~~
14 ~~criminal action against him must proceed. If it is satisfied that the~~
15 ~~defendant continues to be an incapacitated person, or if no demand for a~~
16 ~~hearing is made, the court must adjudicate him an incapacitated person~~
17 ~~and must issue an order of retention which shall authorize continued~~
18 ~~custody of the defendant by the commissioner for a period not to exceed~~
19 ~~one year] pursuant to the provisions of article nine or fifteen of the
20 mental hygiene law and the court shall order that the defendant shall be
21 maintained in the custody of the commissioner but transferred to a
22 hospital or other appropriate institution to be involuntarily admitted
23 pursuant to article nine or fifteen of the mental hygiene law subject
24 to the retention provisions of section 9.33 or 15.31 of the mental
25 hygiene law except as specifically provided herein. Such order shall
26 not be deemed in any way to be the order of a criminal court.~~

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

51 4. When a defendant is in the custody of the commissioner either at
52 the expiration of the authorized period prescribed in the last order of
53 retention or any order of retention issued pursuant to article nine or
54 fifteen of the mental hygiene law, the criminal action pending against
55 [~~him~~] such defendant in the superior court that issued such order shall
56 terminate for all purposes, and the commissioner must promptly certify

1 to such court and to the appropriate district attorney that the defend-
2 ant was in [~~his~~ **their**] custody on such expiration date. Upon receipt of
3 such certification, the court must dismiss the indictment, and such
4 dismissal constitutes a bar to any further prosecution of the charge or
5 charges contained in such indictment.

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

26 § 8. Section 730.60 of the criminal procedure law, subdivisions 1 and
27 3 as amended by chapter 231 of the laws of 2008, subdivision 2 as
28 amended by chapter 57 of the laws of 1984, subdivisions 4 and 5 as
29 renumbered by chapter 629 of the laws of 1974, subdivision 6 as added by
30 chapter 549 of the laws of 1980 and paragraphs (a) and (b) of subdivi-
31 sion 6 as amended by chapter 7 of the laws of 2013, is amended to read
32 as follows:

33 § 730.60 Fitness to proceed; procedure following custody by commission-
34 er.

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

1 2. Except as otherwise provided in subdivisions four and five of this
2 section, when a defendant is in the custody of the commissioner pursuant
3 to a temporary order of observation or an order of commitment or an
4 order of retention, the criminal action pending against the defendant in
5 the court that issued such order is suspended [~~until~~] pending further
6 order of the court. If the superintendent of the institution in which
7 the defendant is confined determines that [~~he~~] such defendant is no
8 longer an incapacitated person[~~—In that event~~], the court that issued
9 such order and the appropriate district attorney must be notified, in
10 writing, by the superintendent of [~~his~~] their determination. The court
11 must thereupon proceed in accordance with the provisions of subdivision
12 two of section 730.30 of this [~~chapter~~] article; provided, however, if
13 the court is satisfied that the defendant remains an incapacitated
14 person, and upon consent of all parties, the court may order the return
15 of the defendant to the institution in which [~~he~~] they had been confined
16 for such period of time as was authorized by the prior order of commit-
17 ment or order of retention. Upon such return, the defendant shall have
18 all rights and privileges accorded by the provisions of this article.

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

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

43 5. When a defendant is in the custody of the commissioner pursuant to
44 an order of commitment or an order of retention, the superior court that
45 issued such order may, upon motion of the defendant, and with the
46 consent of the district attorney, dismiss the indictment when the court
47 is satisfied that (a) the defendant is a resident or citizen of another
48 state or country and that [~~he~~] they will be removed thereto upon
49 dismissal of the indictment, or (b) the defendant has been continuously
50 confined in the custody of the commissioner, either pursuant to this
51 article or pursuant to article nine or fifteen of the mental hygiene
52 law, for a period of more than two years. Before granting a motion
53 under this subdivision, the court must be further satisfied that
54 dismissal of the indictment is consistent with the ends of justice and
55 that custody of the defendant by the commissioner pursuant to an order
56 of commitment or an order of retention is not necessary for the

1 protection of the public and that care and treatment can be effectively
2 administered to the defendant without the necessity of such order. If
3 the court enters an order of dismissal under this subdivision, it must
4 set forth in the record the reasons for such action, and must direct
5 that such order of dismissal be served upon the commissioner. The
6 dismissal of an indictment pursuant to this subdivision constitutes a
7 bar to any further prosecution of the charge or charges contained in
8 such indictment.

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

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

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

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

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

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

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

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

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

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

~~1 person's clinical records in the commissioner's custody, upon the issuance of an order directing a hearing to be held.~~

~~3 (d) Nothing in this subdivision shall be construed to impair any other right or duty regarding any notice or hearing contained in any other provision of law.]~~

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

8 § 730.70 Fitness to proceed; procedure following termination of custody
9 by commissioner.

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

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

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

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

53 (a) If the director shall determine that a resident admitted upon an
54 application supported by medical certification, for whom there is no
55 court order authorizing retention for a specified period, is in need of
56 retention and if such resident does not agree to remain in such school

1 as a voluntary resident, the director shall apply to the supreme court
2 or the county court in the county where the school is located for an
3 order authorizing continued retention. A court order issued pursuant to
4 article seven hundred thirty of the criminal procedure law shall be
5 deemed an order of retention under this section. Such application shall
6 be made no later than sixty days from the date of involuntary admission
7 on application supported by medical certification or thirty days from
8 the date of an order denying an application for resident's release
9 pursuant to section 15.31, whichever is later; and the school is author-
10 ized to retain the resident for such further period during which the
11 school is authorized to make such application or during which the appli-
12 cation may be pending. The director shall cause written notice of such
13 application to be given the resident and a copy thereof shall be given
14 personally or by mail to the persons required by this article to be
15 served with notice of such resident's initial admission and to the
16 mental hygiene legal service. Such notice shall state that a hearing may
17 be requested and that failure to make such a request within five days,
18 excluding Sunday and holidays, from the date that the notice was given
19 to the resident will permit the entry without a hearing of an order
20 authorizing retention.

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

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

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

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