

STATE OF NEW YORK

3378

2025-2026 Regular Sessions

IN SENATE

January 27, 2025

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to retention of custody of persons found not guilty by reason of mental disease or defect

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

1 Section 1. Section 330.20 of the criminal procedure law, as added by
2 chapter 548 of the laws of 1980, paragraphs (a) and (b) of subdivision 1
3 as amended by chapter 672 of the laws of 2019, paragraph (d) of subdivi-
4 sion 1 and the opening paragraph of subdivision 2 as amended by chapter
5 479 of the laws of 2022, paragraph (o) of subdivision 1, the closing
6 paragraph of subdivision 2 and subdivisions 7-a and 22 as amended by
7 chapter 107 of the laws of 2004, subdivisions 2 and 20 as amended by
8 chapter 693 of the laws of 1989, subdivision 2-a as added by chapter 1
9 of the laws of 2013, subdivisions 5, 8, 9, 10, 11, 12, 13 and 14 as
10 amended by chapter 789 of the laws of 1985, subdivision 21 as added by
11 chapter 976 of the laws of 1983, and subparagraph (ii) of paragraph (a)
12 of subdivision 21 as amended by chapter 330 of the laws of 1993, is
13 amended to read as follows:

14 § 330.20 Procedure following verdict or plea of not responsible by
15 reason of mental disease or defect.

16 1. Definition of terms. As used in this section, the following terms
17 shall have the following meanings:

18 (a) "Commissioner" means the [~~state~~] commissioner of mental health or
19 the [~~state~~] commissioner of the office for people with developmental
20 disabilities.

21 (b) "Secure facility" means a facility within the [~~state~~] office of
22 mental health or the [~~state~~] office for people with developmental disa-
23 bilities which is staffed with personnel adequately trained in security

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

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1 methods and is so equipped as to minimize the risk or danger of escapes,
2 and which has been so specifically designated by the commissioner.

3 (c) "Dangerous mental disorder" means: (i) that a defendant currently
4 suffers from a "mental illness" as that term is defined in subdivision
5 twenty of section 1.03 of the mental hygiene law, and (ii) that because
6 of such condition [~~he~~] the defendant currently constitutes a physical
7 danger to [~~himself~~] themselves or others.

8 (d) "Mentally ill" means that a defendant currently suffers from a
9 mental illness for which care and treatment as a patient, in the in-pa-
10 tient services of a psychiatric center under the jurisdiction of the
11 [~~state~~] office of mental health, is essential to such defendant's
12 welfare and that [~~his or her~~] such defendant's judgment is so impaired
13 that [~~he~~] the defendant is unable to understand the need for such care
14 and treatment; and, where a defendant has a developmental disability,
15 the term "mentally ill" shall also mean, for purposes of this section,
16 that the defendant is in need of care and treatment as a resident in the
17 in-patient services of a developmental center or other residential
18 facility for individuals with developmental disabilities under the
19 jurisdiction of the [~~state~~] office for people with developmental disa-
20 bilities.

21 (e) "Examination order" means an order directed to the commissioner
22 requiring that a defendant submit to a psychiatric examination to deter-
23 mine whether the defendant has a dangerous mental disorder, or if [~~he~~]
24 the defendant does not have a dangerous mental disorder, whether [~~he~~]
25 the defendant is mentally ill.

26 (f) "Commitment order" [~~or "recommitment order"~~] means an order
27 committing a defendant to the custody of the commissioner for confine-
28 ment in a secure facility for care and treatment [~~for six months from~~
29 ~~the date of the order~~].

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

34 (h) "Second retention order" means an order which is effective at the
35 expiration of the period prescribed in a first retention order, author-
36 izing continued custody of a defendant by the commissioner for a period
37 not to exceed two years.

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

42 (j) "Retention order" means a first retention order, a second
43 retention order or a subsequent retention order.

44 (k) "Furlough order" means an order directing the commissioner to
45 allow a defendant in confinement pursuant to a commitment order, recom-
46 mitment order or retention order to temporarily leave the facility for a
47 period not exceeding fourteen days, [~~either~~] with [~~or without~~] the
48 constant supervision of one or more employees of the facility.

49 (l) "Transfer order" means an order directing the commissioner to
50 transfer a defendant from a secure facility to a non-secure facility
51 under the jurisdiction of the commissioner or to any non-secure facility
52 designated by the commissioner.

53 (m) "Release order" means an order directing the commissioner to
54 terminate a defendant's in-patient status without terminating the
55 commissioner's responsibility for the defendant.

1 (n) "Discharge order" means an order terminating an order of condi-
2 tions or unconditionally discharging a defendant from supervision under
3 the provisions of this section.

4 (o) "Order of conditions" means an order directing a defendant to
5 comply with this prescribed treatment plan, or any other condition which
6 the court determines to be reasonably necessary or appropriate, and, in
7 addition, where a defendant is in custody of the commissioner, not to
8 leave the facility without authorization. In addition to such condi-
9 tions, when determined to be reasonably necessary or appropriate, an
10 order of conditions may be accompanied by a special order of conditions
11 set forth in a separate document requiring that the defendant: (i) stay
12 away from the home, school, business or place of employment of the
13 victim or victims, or of any witness designated by the court, of such
14 offense; or (ii) refrain from harassing, intimidating, threatening or
15 otherwise interfering with the victim or victims of the offense and such
16 members of the family or household of such victim or victims as shall be
17 specifically named by the court in such special order. An order of
18 conditions or special order of conditions shall be valid for five years
19 from the date of its issuance, except that, for good cause shown, the
20 court may extend the period for an additional five years.

21 (p) "District attorney" means the office which prosecuted the criminal
22 action resulting in the verdict or plea of not responsible by reason of
23 mental disease or defect.

24 (q) "Qualified psychiatrist" means a physician who (i) is a diplomate
25 of the American board of psychiatry and neurology or is eligible to be
26 certified by that board; or (ii) is certified by the American osteopath-
27 ic board of neurology and psychiatry or is eligible to be certified by
28 that board.

29 (r) "Licensed psychologist" means a person who is registered as a
30 psychologist under article one hundred fifty-three of the education law.

31 (s) "Psychiatric examiner" means a qualified psychiatrist or a
32 licensed psychologist who has been designated by the commissioner to
33 examine a defendant pursuant to this section, and such designee need not
34 be an employee of the department of mental hygiene.

35 2. [~~Examination~~] Sentence; examination order; psychiatric examiners.
36 Upon entry of a verdict of not responsible by reason of mental disease
37 or defect, or upon the acceptance of a plea of not responsible by reason
38 of mental disease or defect, the court must immediately (a) impose a
39 period of confinement in the custody of the commissioner which is equal
40 to the sentence of imprisonment such defendant would have received
41 pursuant to article seventy of the penal law, upon conviction of the
42 crime with which the defendant was charged; and (b) issue an examination
43 order. Upon receipt of such order, the commissioner must designate two
44 qualified psychiatric examiners to conduct the examination to examine
45 the defendant. In conducting their examination, the psychiatric examiners
46 may employ any method which is accepted by the medical profession
47 for the examination of persons alleged to be suffering from a dangerous
48 mental disorder or to be mentally ill or having a developmental disabili-
49 ty. The court may authorize a psychiatrist or psychologist retained by
50 a defendant to be present at such examination. The clerk of the court
51 must promptly forward a copy of the examination order to the mental
52 hygiene legal service and such service may thereafter participate in all
53 subsequent proceedings under this section.

54 In all subsequent proceedings under this section, [~~prior to the issu-~~
55 ~~ance of a special order of conditions,~~] the court shall consider whether
56 any order of protection had been issued prior to a verdict of not

1 responsible by reason of mental disease or defect in the case, or prior
2 to the acceptance of a plea of not responsible by reason of mental
3 disease or defect in the case.

4 2-a. Firearm, rifle or shotgun surrender order. Upon entry of a
5 verdict of not responsible by reason of mental disease or defect, or
6 upon the acceptance of a plea of not responsible by reason of mental
7 disease or defect, or upon a finding that the defendant is an incapacitated
8 person pursuant to article seven hundred thirty of this chapter,
9 the court shall revoke the defendant's firearm license, if any, inquire
10 of the defendant as to the existence and location of any firearm, rifle
11 or shotgun owned or possessed by such defendant and direct the surrender
12 of such firearm, rifle or shotgun pursuant to subparagraph (f) of para-
13 graph one of subdivision a of section 265.20 and subdivision six of
14 section 400.05 of the penal law.

15 3. Examination order; place of examination. Upon issuing an examina-
16 tion order, the court must, except as otherwise provided in this subdivi-
17 sion, direct that the defendant be committed to a secure facility
18 designated by the commissioner as the place for such psychiatric exam-
19 ination. The sheriff must hold the defendant in custody pending such
20 designation by the commissioner, and when notified of the designation,
21 the sheriff must promptly deliver the defendant to such secure facility.

22 ~~[When the defendant is not in custody at the time of such verdict or~~
23 ~~plea, because he was previously released on bail or on his own recogni-~~
24 ~~zance, the court, in its discretion, may direct that such examination be~~
25 ~~conducted on an out-patient basis, and at such time and place as the~~
26 ~~commissioner shall designate. If, however, the commissioner informs the~~
27 ~~court that confinement of the defendant is necessary for an effective~~
28 ~~examination, the court must direct that the defendant be confined in a~~
29 ~~facility designated by the commissioner until the examination is~~
30 ~~completed.]~~

31 4. Examination order, duration. Confinement in a secure facility
32 pursuant to an examination order shall be for a period not exceeding
33 thirty days, except that, upon application of the commissioner, the
34 court may authorize confinement for an additional period not exceeding
35 thirty days when a longer period is necessary to complete the examina-
36 tion. ~~[If the initial hearing required by subdivision six of this~~
37 ~~section has not commenced prior to the termination of such examination~~
38 ~~period, the commissioner shall retain custody of the defendant in such~~
39 ~~secure facility until custody is transferred to the sheriff in the~~
40 ~~manner prescribed in subdivision six of this section.]~~ During the period
41 of such confinement, the physician in charge of the facility may admin-
42 ister or cause to be administered to the defendant such emergency
43 psychiatric, medical or other therapeutic treatment as in ~~[his]~~ such
44 physician's judgment should be administered. ~~[If the court has directed~~
45 ~~that the examination be conducted on an out-patient basis, the examina-~~
46 ~~tion shall be completed within thirty days after the defendant has first~~
47 ~~reported to the place designated by the commissioner, except that, upon~~
48 ~~application of the commissioner, the court may extend such period for a~~
49 ~~reasonable time if a longer period is necessary to complete the examina-~~
50 ~~tion.]~~

51 5. Examination order; reports. After ~~[he]~~ a psychiatric examiner has
52 completed ~~[his]~~ an examination of the defendant, each psychiatric exam-
53 iner must promptly prepare a report of ~~[his]~~ such examiner's findings
54 and evaluation concerning the defendant's mental condition, and submit
55 such report to the commissioner. If the psychiatric examiners differ in
56 their opinion as to whether the defendant is mentally ill or is suffer-

1 ing from a dangerous mental disorder, the commissioner must designate
2 another psychiatric examiner to examine the defendant. Upon receipt of
3 the examination reports, the commissioner must submit them to the court
4 that issued the examination order. If the court is not satisfied with
5 the findings of these psychiatric examiners, the court may designate one
6 or more additional psychiatric examiners pursuant to subdivision
7 [~~fifteen~~] fourteen of this section. [~~The court must furnish a copy of~~
8 ~~the reports to the district attorney, counsel for the defendant and the~~
9 ~~mental hygiene legal service.~~]

10 6. [~~Initial hearing, commitment~~] Commitment order. After the examina-
11 tion reports are submitted, the court must[~~, within ten days of the~~
12 ~~receipt of such reports, conduct an initial hearing to determine the~~
13 ~~defendant's present mental condition. If the defendant is in the custody~~
14 ~~of the commissioner pursuant to an examination order, the court must~~
15 ~~direct the sheriff to obtain custody of the defendant from the commis-~~
16 ~~sioner and to confine the defendant pending further order of the court,~~
17 ~~except that the court may direct the sheriff to confine the defendant in~~
18 ~~an institution located near the place where the court sits if that~~
19 ~~institution has been designated by the commissioner as suitable for the~~
20 ~~temporary and secure detention of mentally disabled persons. At such~~
21 ~~initial hearing, the district attorney must establish to the satisfac-~~
22 ~~tion of the court that the defendant has a dangerous mental disorder or~~
23 ~~is mentally ill. If the court finds that the defendant has a dangerous~~
24 ~~mental disorder, it must~~] issue a commitment order for the term of the
25 period of confinement imposed, pursuant to paragraph (a) of subdivision
26 two of this section, and to such a secure facility as shall be suitable
27 for a mentally ill person or a person with a dangerous mental disorder,
28 as the case may be, based upon the examination reports. [~~If the court~~
29 ~~finds that the defendant does not have a dangerous mental disorder but~~
30 ~~is mentally ill, the provisions of subdivision seven of this section~~
31 ~~shall apply.~~]

32 7. [~~Initial hearing civil commitment and order of conditions. If, at~~
33 ~~the conclusion of the initial hearing conducted pursuant to subdivision~~
34 ~~six of this section, the court finds that the defendant is mentally ill~~
35 ~~but does not have a dangerous mental disorder, the provisions of arti-~~
36 ~~cles nine or fifteen of the mental hygiene law shall apply at that stage~~
37 ~~of the proceedings and at all subsequent proceedings. Having found that~~
38 ~~the defendant is mentally ill, the court must issue an order of condi-~~
39 ~~tions and an order committing the defendant to the custody of the~~
40 ~~commissioner. The latter order shall be deemed an order made pursuant to~~
41 ~~the mental hygiene law and not pursuant to this section, and further~~
42 ~~retention, conditional release or discharge of such defendant shall be~~
43 ~~in accordance with the provisions of the mental hygiene law. If, at the~~
44 ~~conclusion of the initial hearing, the court finds that the defendant~~
45 ~~does not have a dangerous mental disorder and is not mentally ill, the~~
46 ~~court must discharge the defendant either unconditionally or subject to~~
47 ~~an order of conditions.~~]

48 7-a. ~~Whenever the court issues a special order of conditions pursuant~~
49 ~~to this section, the commissioner shall make reasonable efforts to noti-~~
50 ~~fy the victim or victims or the designated witness or witnesses that a~~
51 ~~special order of conditions containing such provisions has been issued,~~
52 ~~unless such victim or witness has requested that such notice should not~~
53 ~~be provided.~~

54 ~~8.~~] First retention order. When a defendant is in the custody of the
55 commissioner pursuant to a commitment order, the commissioner must, at
56 least thirty days prior to the expiration of the period prescribed in

1 the order, apply to the court that issued the order, or to a superior
2 court in the county where the secure facility is located, for a first
3 retention order or a release order. The commissioner must give written
4 notice of the application to the district attorney, the defendant, coun-
5 sel for the defendant, and the mental hygiene legal service. Upon
6 receipt of such application, the court may, on its own motion, conduct a
7 hearing to determine whether the defendant has a dangerous mental disor-
8 der, and it must conduct such hearing if a demand therefor is made by
9 the district attorney, the defendant, counsel for the defendant, or the
10 mental hygiene legal service within ten days from the date that notice
11 of the application was given to them. If such a hearing is held on an
12 application for retention, the commissioner must establish to the satis-
13 faction of the court that the defendant has a dangerous mental disorder
14 or is mentally ill. The district attorney shall be entitled to appear
15 and present evidence at such hearing. If such a hearing is held on an
16 application for release, the district attorney must establish to the
17 satisfaction of the court that the defendant has a dangerous mental
18 disorder or is mentally ill. If the court finds that the defendant has a
19 dangerous mental disorder it must issue a first retention order. If the
20 court finds that the defendant is mentally ill but does not have a
21 dangerous mental disorder, it must issue a first retention order and,
22 pursuant to subdivision [~~eleven~~] ten of this section, a transfer order
23 and an order of conditions. If the court finds that the defendant does
24 not have a dangerous mental disorder and is not mentally ill, it must
25 issue a release order and an order of conditions pursuant to subdivision
26 [~~twelve~~] eleven of this section.

27 [~~9-~~] 8. Second and subsequent retention orders. When a defendant is in
28 the custody of the commissioner pursuant to a first retention order, the
29 commissioner must, at least thirty days prior to the expiration of the
30 period prescribed in the order, apply to the court that issued the
31 order, or to a superior court in the county where the facility is
32 located, for a second retention order or a release order. The commis-
33 sioner must give written notice of the application to the district
34 attorney, the defendant, counsel for the defendant, and the mental
35 hygiene legal service. Upon receipt of such application, the court may,
36 on its own motion, conduct a hearing to determine whether the defendant
37 has a dangerous mental disorder, and it must conduct such hearing if a
38 demand therefor is made by the district attorney, the defendant, counsel
39 for the defendant, or the mental hygiene legal service within ten days
40 from the date that notice of the application was given to them. If such
41 a hearing is held on an application for retention, the commissioner must
42 establish to the satisfaction of the court that the defendant has a
43 dangerous mental disorder or is mentally ill. The district attorney
44 shall be entitled to appear and present evidence at such hearing. If
45 such a hearing is held on an application for release, the district
46 attorney must establish to the satisfaction of the court that the
47 defendant has a dangerous mental disorder or is mentally ill. If the
48 court finds that the defendant has a dangerous mental disorder it must
49 issue a second retention order. If the court finds that the defendant is
50 mentally ill but does not have a dangerous mental disorder, it must
51 issue a second retention order and, pursuant to subdivision [~~eleven~~] ten
52 of this section, a transfer order and an order of conditions. If the
53 court finds that the defendant does not have a dangerous mental disorder
54 and is not mentally ill, it must issue a release order and an order of
55 conditions pursuant to subdivision [~~twelve~~] eleven of this section. When
56 a defendant is in the custody of the commissioner prior to the expira-

1 tion of the period prescribed in a second retention order, the proce-
2 dures set forth in this subdivision for the issuance of a second
3 retention order shall govern the application for and the issuance of any
4 subsequent retention order.

5 [~~10.~~] 9. Furlough order. The commissioner may apply for a furlough
6 order, pursuant to this subdivision, when a defendant is in [~~his~~] the
7 commissioner's custody pursuant to a [~~commitment order,~~] recommitment
8 order[~~7~~] or retention order and the commissioner is of the view that,
9 consistent with the public safety and welfare of the community and the
10 defendant, the clinical condition of the defendant warrants a granting
11 of the privileges authorized by a furlough order. The application for a
12 furlough order may be made to the court that issued the commitment
13 order, or to a superior court in the county where the secure facility is
14 located. The commissioner must give ten days written notice to the
15 district attorney, the defendant, counsel for the defendant, and the
16 mental hygiene legal service. Upon receipt of such application, the
17 court may, on its own motion, conduct a hearing to determine whether the
18 application should be granted, and must conduct such hearing if a demand
19 therefor is made by the district attorney. If the court finds that the
20 issuance of a furlough order is consistent with the public safety and
21 welfare of the community and the defendant, and that the clinical condi-
22 tion of the defendant warrants a granting of the privileges authorized
23 by a furlough order, the court must grant the application and issue a
24 furlough order containing any terms and conditions that the court deems
25 necessary or appropriate. If the defendant fails to return to the secure
26 facility at the time specified in the furlough order, then, for purposes
27 of subdivision [~~nineteen~~] eighteen of this section, [~~he~~] the defendant
28 shall be deemed to have escaped.

29 [~~11.~~] 10. Transfer order and order of conditions. The commissioner may
30 apply for a transfer order, pursuant to this subdivision, when a defend-
31 ant is in [~~his~~] the commissioner's custody pursuant to a retention order
32 or a recommitment order, and the commissioner is of the view that the
33 defendant does not have a dangerous mental disorder or that, consistent
34 with the public safety and welfare of the community and the defendant,
35 the clinical condition of the defendant warrants [~~his~~] the defendant's
36 transfer from a secure facility to a non-secure facility under the
37 jurisdiction of the commissioner or to any non-secure facility desig-
38 nated by the commissioner. The application for a transfer order may be
39 made to the court that issued the order under which the defendant is
40 then in custody, or to a superior court in the county where the secure
41 facility is located. The commissioner must give ten days written notice
42 to the district attorney, the defendant, counsel for the defendant, and
43 the mental hygiene legal service. Upon receipt of such application, the
44 court may, on its own motion, conduct a hearing to determine whether the
45 application should be granted, and must conduct such hearing if the
46 demand therefor is made by the district attorney. At such hearing, the
47 district attorney must establish to the satisfaction of the court that
48 the defendant has a dangerous mental disorder or that the issuance of a
49 transfer order is inconsistent with the public safety and welfare of the
50 community. The court must grant the application and issue a transfer
51 order if the court finds that the defendant does not have a dangerous
52 mental disorder, or if the court finds that the issuance of a transfer
53 order is consistent with the public safety and welfare of the community
54 and the defendant and that the clinical condition of the defendant,
55 warrants [~~his~~] the defendant's transfer from a secure facility to a
56 non-secure facility. A court must also issue a transfer order when, in

1 connection with an application for a first retention order pursuant to
2 subdivision [~~eight~~] seven of this section or a second or subsequent
3 retention order pursuant to subdivision [~~nine~~] eight of this section, it
4 finds that a defendant is mentally ill but does not have a dangerous
5 mental disorder. Whenever a court issues a transfer order it must also
6 issue an order of conditions.

7 [~~12-~~] 11. Release order and order of conditions. The commissioner may
8 apply for a release order, pursuant to this subdivision, when a defend-
9 ant is in [~~his~~] the commissioner's custody pursuant to a retention order
10 or recommitment order, and the commissioner is of the view that the
11 defendant no longer has a dangerous mental disorder and is no longer
12 mentally ill. The application for a release order may be made to the
13 court that issued the order under which the defendant is then in custo-
14 dy, or to a superior court in the county where the facility is located.
15 The application must contain a description of the defendant's current
16 mental condition, the past course of treatment, a history of the defend-
17 ant's conduct subsequent to [~~his~~] the defendant's commitment, a written
18 service plan for continued treatment which shall include the information
19 specified in subdivision (g) of section 29.15 of the mental hygiene law,
20 and a detailed statement of the extent to which supervision of the
21 defendant after release is proposed. The commissioner must give ten days
22 written notice to the district attorney, the defendant, counsel for the
23 defendant, and the mental hygiene legal service. Upon receipt of such
24 application, the court must promptly conduct a hearing to determine the
25 defendant's present mental condition. At such hearing, the district
26 attorney must establish to the satisfaction of the court that the
27 defendant has a dangerous mental disorder or is mentally ill. If the
28 court finds that the defendant has a dangerous mental disorder, it must
29 deny the application for a release order. If the court finds that the
30 defendant does not have a dangerous mental disorder but is mentally ill,
31 it must issue a transfer order pursuant to subdivision [~~eleven~~] ten of
32 this section if the defendant is then confined in a secure facility. If
33 the court finds that the defendant does not have a dangerous mental
34 disorder and is not mentally ill, it must grant the application and
35 issue a release order. A court must also issue a release order when, in
36 connection with an application for a first retention order pursuant to
37 subdivision [~~eight~~] seven of this section or a second or subsequent
38 retention order pursuant to subdivision [~~nine~~] eight of this section, it
39 finds that the defendant does not have a dangerous mental disorder and
40 is not mentally ill. Whenever a court issues a release order it must
41 also issue an order of conditions. If the court has previously issued a
42 transfer order and an order of conditions, it must issue a new order of
43 conditions upon issuing a release order. The order of conditions issued
44 in conjunction with a release order shall incorporate a written service
45 plan prepared by a psychiatrist familiar with the defendant's case
46 history and approved by the court, and shall contain any conditions that
47 the court determines to be reasonably necessary or appropriate. It shall
48 be the responsibility of the commissioner to determine that such defend-
49 ant is receiving the services specified in the written service plan and
50 is complying with any conditions specified in such plan and the order of
51 conditions.

52 [~~13-~~] 12. Discharge order. The commissioner may apply for a discharge
53 order, pursuant to this subdivision, when a defendant has been contin-
54 uously on an out-patient status for three years or more pursuant to a
55 release order, and the commissioner is of the view that the defendant no
56 longer has a dangerous mental disorder and is no longer mentally ill and

1 that the issuance of a discharge order is consistent with the public
2 safety and welfare of the community and the defendant. The application
3 for a discharge order may be made to the court that issued the release
4 order, or to a superior court in the county where the defendant is then
5 residing. The commissioner must give ten days written notice to the
6 district attorney, the defendant, counsel for the defendant, and the
7 mental hygiene legal service. Upon receipt of such application, the
8 court may, on its own motion, conduct a hearing to determine whether the
9 application should be granted, and must conduct such hearing if a demand
10 therefor is made by the district attorney. The court must grant the
11 application and issue a discharge order if the court finds that the
12 defendant has been continuously on an out-patient status for three years
13 or more, that ~~he~~ the defendant does not have a dangerous mental disorder and is not mentally ill, and that the issuance of the discharge
14 order is consistent with the public safety and welfare of the community
15 and the defendant.
16

17 ~~[14.]~~ 13. Recombitment order. At any time during the period covered by
18 an order of conditions an application may be made by the commissioner or
19 the district attorney to the court that issued such order, or to a superior
20 court in the county where the defendant is then residing, for a
21 recommitment order when the applicant is of the view that the defendant
22 has a dangerous mental disorder. The applicant must give written notice
23 of the application to the defendant, counsel for the defendant, and the
24 mental hygiene legal service, and if the applicant is the commissioner
25 ~~he~~ the applicant must give such notice to the district attorney or if
26 the applicant is the district attorney ~~he~~ the applicant must give such
27 notice to the commissioner. Upon receipt of such application the court
28 must order the defendant to appear before it for a hearing to determine
29 if the defendant has a dangerous mental disorder. Such order may be in
30 the form of a written notice, specifying the time and place of appearance,
31 served personally upon the defendant, or mailed to ~~his~~ the
32 defendant's last known address, as the court may direct. If the defendant
33 fails to appear in court as directed, the court ~~may~~ shall issue a
34 warrant to an appropriate peace officer directing ~~him~~ such peace officer
35 cer to take the defendant into custody and bring ~~him~~ the defendant
36 before the court. In such circumstance, the court ~~may~~ shall direct
37 that the defendant be confined in an appropriate institution located
38 near the place where the court sits. The court must conduct a hearing to
39 determine whether the defendant has a dangerous mental disorder. At such
40 hearing, the applicant, whether ~~he~~ the applicant be the commissioner
41 or the district attorney must establish to the satisfaction of the court
42 that the defendant has a dangerous mental disorder. If the applicant is
43 the commissioner, the district attorney shall be entitled to appear and
44 present evidence at such hearing; if the applicant is the district
45 attorney, the commissioner shall be entitled to appear and present
46 evidence at such hearing. If the court finds that the defendant has a
47 dangerous mental disorder, it must issue a recommitment order. When a
48 defendant is in the custody of the commissioner pursuant to a recommitment
49 order, the procedures set forth in subdivisions seven and eight
50 ~~and nine~~ of this section for the issuance of retention orders shall
51 govern the application for and the issuance of a first retention order,
52 a second retention order, and subsequent retention orders.

53 ~~[15.]~~ 14. Designation of psychiatric examiners. If, at any hearing
54 conducted under this section to determine the defendant's present mental
55 condition, the court is not satisfied with the findings of the psychiatric
56 examiners, the court may direct the commissioner to designate one or

1 more additional psychiatric examiners to conduct an examination of the
2 defendant and submit a report of their findings. In addition, the court
3 may on its own motion, or upon request of a party, may designate one or
4 more psychiatric examiners to examine the defendant and submit a report
5 of their findings. The district attorney may apply to the court for an
6 order directing that the defendant submit to an examination by a psychi-
7 atric examiner designated by the district attorney, and such psychiatric
8 examiner may testify at the hearing.

9 [~~16-~~] 15. Rehearing and review. Any defendant who is in the custody of
10 the commissioner pursuant to [~~a commitment order,~~] a retention order, or
11 a recommitment order, if dissatisfied with such order, may, within thir-
12 ty days after the making of such order, obtain a rehearing and review of
13 the proceedings and of such order in accordance with the provisions of
14 section 9.35 or 15.35 of the mental hygiene law.

15 [~~17-~~] 16. Rights of defendants. Subject to the limitations and
16 provisions of this section, a defendant committed to the custody of the
17 commissioner pursuant to this section shall have the rights granted to
18 patients under the mental hygiene law.

19 [~~18-~~] 17. Notwithstanding any other provision of law, no person
20 confined by reason of a [~~commitment order,~~] recommitment order or
21 retention order to a secure facility may be discharged or released
22 unless the commissioner shall deliver written notice, at least four days
23 excluding Saturdays, Sundays and holidays, in advance of such discharge
24 or release to all of the following:

25 (a) the district attorney.

26 (b) the police department having jurisdiction of the area to which the
27 defendant is to be discharged or released.

28 (c) any other person the court may designate.

29 The notices required by this subdivision shall be given by the facili-
30 ty staff physician who was treating the defendant or, if unavailable, by
31 the defendant's treatment team leader, but if neither is immediately
32 available, notice must be given by some other member of the clinical
33 staff of the facility. Such notice must be given by any means reasonably
34 calculated to give prompt actual notice.

35 [~~19-~~] 18. Escape from custody; notice requirements. If a defendant is
36 in the custody of the commissioner pursuant to an order issued under
37 this section, and such defendant escapes from custody, immediate notice
38 of such escape shall be given by the department facility staff to: (a)
39 the district attorney, (b) the superintendent of state police, (c) the
40 sheriff of the county where the escape occurred, (d) the police depart-
41 ment having jurisdiction of the area where the escape occurred, (e) any
42 person the facility staff believes to be in danger, and (f) any law
43 enforcement agency and any person the facility staff believes would be
44 able to apprise such endangered person that the defendant has escaped
45 from the facility. Such notice shall be given as soon as the facility
46 staff know that the defendant has escaped from the facility and shall
47 include such information as will adequately identify the defendant and
48 the person or persons believed to be in danger and the nature of the
49 danger. The notices required by this subdivision shall be given by the
50 facility staff physician who was treating the defendant or, if unavail-
51 able, by the defendant's treatment team leader, but if neither is imme-
52 diately available, notice must be given by some other member of the
53 clinical staff of the facility. Such notice must be given by any means
54 reasonably calculated to give prompt actual notice. The defendant may be
55 apprehended, restrained, transported to, and returned to the facility
56 from which [~~he~~] the defendant escaped by any peace officer, and it shall

1 be the duty of the officer to assist any representative of the commis-
2 sioner to take the defendant into custody upon the request of such
3 representative.

4 ~~[20-]~~ 19. Required affidavit. No application may be made by the
5 commissioner under this section without an accompanying affidavit from
6 at least one psychiatric examiner supportive of relief requested in the
7 application, which affidavit shall be served on all parties entitled to
8 receive the notice of application. Such affidavit shall set forth the
9 defendant's clinical diagnosis, a detailed analysis of ~~[his or her]~~ the
10 defendant's mental condition which caused the psychiatric examiner to
11 formulate an opinion, and the opinion of the psychiatric examiner with
12 respect to the defendant. Any application submitted without the required
13 affidavit shall be dismissed by the court.

14 ~~[21-]~~ 20. Appeals. (a) A party to proceedings conducted in accordance
15 with the provisions of this section may take an appeal to an intermedi-
16 ate appellate court by permission of the intermediate appellate court as
17 follows:

18 (i) the commissioner may appeal from any release order, retention
19 order, transfer order, discharge order, order of conditions, or recom-
20 mitment order, for which ~~[he]~~ the commissioner has not applied;

21 (ii) a defendant, or the mental hygiene legal service on ~~[his or her]~~
22 the defendant's behalf, may appeal from any ~~[commitment order,]~~
23 retention order, recommitment order, or, if the defendant has obtained a
24 rehearing and review of any such order pursuant to subdivision ~~[sixteen]~~
25 fifteen of this section, from an order, not otherwise appealable as of
26 right, issued in accordance with the provisions of section 9.35 or 15.35
27 of the mental hygiene law authorizing continued retention under the
28 original order, provided, however, that a defendant who takes an appeal
29 from a ~~[commitment order,]~~ retention order, or recommitment order may
30 not subsequently obtain a rehearing and review of such order pursuant to
31 subdivision ~~[sixteen]~~ fifteen of this section;

32 (iii) the district attorney may appeal from any release order, trans-
33 fer order, discharge order, order of conditions, furlough order, or
34 order denying an application for a recommitment order which ~~[he]~~ the
35 district attorney opposed.

36 (b) An aggrieved party may appeal from a final order of the intermedi-
37 ate appellate court to the court of appeals by permission of the inter-
38 mediate appellate court granted before application to the court of
39 appeals, or by permission of the court of appeals upon refusal by the
40 intermediate appellate court or upon direct application.

41 (c) An appeal taken under this subdivision shall be deemed civil in
42 nature, and shall be governed by the laws and rules applicable to civil
43 appeals; provided, however, that a stay of the order appealed from must
44 be obtained in accordance with the provisions of paragraph (d) ~~[hereof]~~
45 of this subdivision.

46 (d) The court from or to which an appeal is taken may stay all
47 proceedings to enforce the order appealed from pending an appeal or
48 determination on a motion for permission to appeal, or may grant a
49 limited stay, except that only the court to which an appeal is taken may
50 vacate, limit, or modify a stay previously granted. If the order
51 appealed from is affirmed or modified, the stay shall continue for five
52 days after service upon the appellant of the order of affirmance or
53 modification with notice of its entry in the court to which the appeal
54 was taken. If a motion is made for permission to appeal from such an
55 order, before the expiration of the five days, the stay, or any other

1 stay granted pending determination of the motion for permission to
2 appeal, shall:

3 (i) if the motion is granted, continue until five days after the
4 appeal is determined; or

5 (ii) if the motion is denied, continue until five days after the
6 movant is served with the order of denial with notice of its entry.

7 [~~22-~~] 21. Any special order of conditions issued pursuant to subpara-
8 graph (i) or (ii) of paragraph (o) of subdivision one of this section
9 shall bear in a conspicuous manner the term "special order of condi-
10 tions" and a copy shall be filed by the clerk of the court with the
11 sheriff's office in the county in which anyone intended to be protected
12 by such special order resides, or, if anyone intended to be protected by
13 such special order resides within a city, with the police department of
14 such city. The absence of language specifying that the order is a
15 "special order of conditions" shall not affect the validity of such
16 order. A copy of such special order of conditions may from time to time
17 be filed by the clerk of the court with any other police department or
18 sheriff's office having jurisdiction of the residence, work place, or
19 school of anyone intended to be protected by such special order. A copy
20 of such special order may also be filed by anyone intended to be
21 protected by such provisions at the appropriate police department or
22 sheriff's office having jurisdiction. Any subsequent amendment or revo-
23 cation of such special order may be filed in the same manner as provided
24 in this subdivision. Such special order of conditions shall plainly
25 state the date that the order expires.

26 § 2. This act shall take effect on the first of January next succeed-
27 ing the date on which it shall have become a law and shall apply to
28 criminal offenses committed on or after such date.