

STATE OF NEW YORK

2322--B

2025-2026 Regular Sessions

IN ASSEMBLY

January 16, 2025

Introduced by M. of A. McDONALD, WEPRIN, WOERNER -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to establishing a program enabling counties to opt-in to allow county jails to operate jail-based competency restoration services for incarcerated individuals deemed unfit for trial due to mental incapacity

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

1 Section 1. Subdivision 9 of section 730.10 of the criminal procedure
2 law, as added by section 1 of part Q of chapter 56 of the laws of 2012,
3 is amended to read as follows:
4 9. "Appropriate institution" means: (a) a hospital operated by the
5 office of mental health or a developmental center operated by the office
6 for people with developmental disabilities; ~~or~~ (b) a hospital licensed
7 by the department of health which operates a psychiatric unit licensed
8 by the office of mental health; or (c) a mental health unit operating
9 within a local correctional facility, as determined by the commissioner
10 provided, however, that any such hospital or local correctional health
11 authority that is not operated by the state shall qualify as an "appro-
12 priate institution" only pursuant to the terms of an agreement between
13 the commissioner and the hospital or local correctional health authori-
14 ty, or between the commissioner and a jail-based facility pursuant to
15 subdivision seven of section 730.60 of this article. Nothing in this
16 article shall be construed as requiring a hospital or locality to
17 consent to providing care and treatment to an incapacitated person at
18 such hospital or local correctional health authority. The commissioner
19 of mental health shall promulgate regulations for the local correctional

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

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1 health authority to implement restoration to competency within a local
2 correctional facility.

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

7 1. When a local criminal court issues a final or temporary order of
8 observation or an order of commitment, it must forward such order and a
9 copy of the examination reports and the accusatory instrument to the
10 commissioner, the local governmental unit as defined in section 41.03 of
11 the mental hygiene law, and director of community services, or their
12 designee, as defined in section 9.01 of the mental hygiene law, of the
13 county of the participating local correctional facility, and, if avail-
14 able, a copy of the pre-sentence report. Upon receipt thereof, the
15 commissioner must designate an appropriate institution operated by the
16 department of mental hygiene, or a county jail-based competency restora-
17 tion program pursuant to subdivision seven of this section, in which the
18 defendant is to be placed, provided, however, that the commissioner may
19 designate an appropriate hospital for placement of a defendant for whom
20 a final order of observation has been issued, where such hospital is
21 licensed by the office of mental health and has agreed to accept, upon
22 referral by the commissioner, defendants subject to final orders of
23 observation issued under this subdivision. The sheriff must hold the
24 defendant in custody pending such designation by the commissioner, and
25 when notified of the designation, the sheriff must deliver the defendant
26 to the superintendent of such institution. The superintendent must
27 promptly inform the appropriate director of the mental hygiene legal
28 service of the defendant's admission to such institution. If a defendant
29 escapes from the custody of the commissioner, the escape shall interrupt
30 the period prescribed in any order of observation, commitment or
31 retention, and such interruption shall continue until the defendant is
32 returned to the custody of the commissioner.

33 2. Except as otherwise provided in subdivisions four and five of this
34 section, when a defendant is in the custody of the commissioner pursuant
35 to a temporary order of observation or an order of commitment or an
36 order of retention, or a county jail-based competency restoration
37 program pursuant to subdivision seven of this section, the criminal
38 action pending against the defendant in the court that issued such order
39 is suspended until the superintendent of the institution in which the
40 defendant is confined or a clinical psychiatrist for a county jail-based
41 competency restoration program pursuant to subdivision seven of this
42 section determines that [~~he~~] the defendant is no longer an incapacitated
43 person. In that event, the court that issued such order and the appro-
44 priate district attorney must be notified, in writing, by the super-
45 intendent of [~~his~~] the superintendent's determination. The court must
46 thereupon proceed in accordance with the provisions of subdivision two
47 of section 730.30 of this [~~chapter~~] article; provided, however, if the
48 court is satisfied that the defendant remains an incapacitated person,
49 and upon consent of all parties, the court may order the return of the
50 defendant to the institution in which [~~he~~] the defendant had been
51 confined for such period of time as was authorized by the prior order of
52 commitment or order of retention. Upon such return, the defendant shall
53 have all rights and privileges accorded by the provisions of this arti-
54 cle.

55 7. (a) The office of mental health shall promulgate rules and regu-
56 lations for the development and implementation of a program allowing for

1 county jails to provide competency restoration services to incarcerated
2 individuals of such facilities. County participation in a jail-based
3 restoration program shall be voluntary.

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

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

9 (1) one member who is a sheriff;

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

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

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

15 (5) one member who is a defense attorney;

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

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

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

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

22 (1) have provided mental health services in jail-based settings for at
23 least two years; and

24 (2) be a local mental health organization or a correctional health
25 agency with prior experience providing mental health services.

26 (e) A jail-based restoration program must:

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

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

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

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

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

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

38 (3) provide the same basic care to the participants as is provided to
39 other incarcerated individuals of a jail;

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

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

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

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

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

54 (h) If at any time during a defendant's participation in the jail-
55 based restoration program the psychiatrist or psychologist for the
56 provider determines that the defendant's fitness to stand trial is

1 unlikely to be restored in the foreseeable future, the psychiatrist or
2 psychologist for the provider shall promptly issue and send to the court
3 a report demonstrating that fact.

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

12 § 3. This act shall take effect immediately.