

STATE OF NEW YORK

1004--A

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

Introduced by Sens. BROUK, FAHY, 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

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

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

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

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

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

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

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

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1 prescribe the number of copies thereof that must be submitted to the
2 court by the director.

3 § 3. Subdivision 9 of section 730.10 of the criminal procedure law, as
4 added by section 1 of part Q of chapter 56 of the laws of 2012, is
5 amended and a new subdivision 10 is added to read as follows:

6 9. "Appropriate institution" means: (a) a hospital operated by the
7 office of mental health or a developmental center operated by the office
8 for people with developmental disabilities; ~~or~~ (b) a hospital licensed
9 by the department of health which operates a psychiatric unit licensed
10 by the office of mental health, as determined by the commissioner
11 provided, however, that any such hospital that is not operated by the
12 state shall qualify as an "appropriate institution" only pursuant to the
13 terms of an agreement between the commissioner and the hospital; or (c)
14 a mental health unit operating within a local correctional facility,
15 provided, however, that any such mental health unit operating within a
16 local correctional facility shall qualify as an "appropriate institu-
17 tion" only pursuant to the terms of an agreement between the commission-
18 er of mental health and the mental health unit. Nothing in this article
19 shall be construed as requiring a hospital to consent to providing care
20 and treatment to an incapacitated person at such hospital.

21 10. "Restoration services" means those services which may include
22 medication support, classroom-based competency instruction, mock trials,
23 symptom management, and rehabilitative services provided to an incapac-
24 itated person which are designed to improve their mental state or devel-
25 opmental status to the extent that they can understand the charges
26 against them and participate in their own defense. Restoration services
27 may supplement mental health treatment aimed at recovery from mental
28 illness or services aimed at improving a developmentally disabled
29 person's ability to function on a day-to-day basis.

30 § 4. Section 730.20 of the criminal procedure law, subdivisions 1 and
31 5 as amended by chapter 693 of the laws of 1989 and subdivision 7 as
32 amended by chapter 692 of the laws of 1972, is amended to read as
33 follows:

34 § 730.20 Fitness to proceed; generally.

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

49 2. When the defendant is not in custody at the time a court issues an
50 order of examination, because ~~[he]~~ the defendant was theretofore
51 released on bail or on ~~[his]~~ the defendant's own recognizance, the court
52 ~~[may]~~ shall direct that the examination be conducted on an out-patient
53 basis, and at such time and place as the director shall designate and
54 the court shall order the defendant to appear for such examination. If,
55 however, the director informs the court that hospital confinement of the
56 defendant is necessary for an effective examination, the court may

1 direct that the defendant be confined in a hospital [~~designated by the~~
2 ~~director~~] operated or approved by the commissioner only until the exam-
3 ination is completed. In no event shall the need for such examination be
4 a basis for incarcerating a defendant who has been released on bail or
5 their own recognizance.

6 3. When the defendant is in custody at the time a court issues an
7 order of examination, the examination must be conducted at the place
8 where the defendant is being held in custody. If, however, the director
9 determines that hospital confinement of the defendant is necessary for
10 an effective examination, the sheriff must deliver the defendant to a
11 hospital designated by the [~~director~~] commissioner and hold [~~him~~] the
12 defendant in custody therein, under sufficient guard, until the examina-
13 tion is completed.

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

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

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

48 7. A psychiatric examiner, who is not regularly employed by the coun-
49 ty, state, or city of New York, is entitled to [~~his~~] their reasonable
50 traveling expenses[~~, a~~] and to a reasonable fee [~~of fifty dollars~~] to be
51 negotiated with the examiner by the director or the county or, if no
52 such fee is agreed upon, to be set by the court for each examination of
53 a defendant and [~~a fee of fifty dollars~~] for each appearance at a court
54 hearing or trial [~~but not exceeding two hundred dollars in fees for~~
55 ~~examination and testimony in any one case~~]; except that if such psychi-
56 atric examiner be an employee of the county or of the state of New York

1 ~~[he]~~ they shall be entitled only to reasonable traveling expenses,
2 unless such psychiatric examiner makes the examination or appears at a
3 court hearing or trial outside ~~[his]~~ their hours of state or county
4 employment in a county in which the director of community ~~[mental~~
5 ~~health]~~ services certifies to the fiscal officer thereof that there is a
6 shortage of qualified ~~[psychiatrists]~~ examiners available to conduct
7 examinations under ~~[the criminal procedure law]~~ this chapter in such
8 county, in which event ~~[he]~~ such examiner shall be entitled to ~~[the~~
9 ~~foregoing]~~ such fees and reasonable traveling expenses as approved by
10 the court. Such fees and traveling expenses and the costs of sending a
11 defendant to another place of detention or to a hospital for examina-
12 tion~~[, of his maintenance therein]~~ and the cost of returning ~~[him]~~ the
13 defendant shall, when approved and so ordered by the court, be a charge
14 of the county in which the defendant is being tried, and the cost of the
15 maintenance of such defendant therein shall be a cost to the state.

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

19 § 730.30 Fitness to proceed; order of examination.

20 1. At any time after a defendant is arraigned upon an accusatory
21 instrument other than a felony complaint and before the imposition of
22 sentence, or at any time after a defendant is arraigned upon a felony
23 complaint and before ~~[he]~~ such defendant is held for the action of the
24 grand jury, or upon arraignment on an indictment by a grand jury, the
25 court wherein the criminal action is pending ~~[must]~~ may issue an order
26 of examination when it ~~[is of the opinion]~~ has a reasonable basis to
27 believe that the defendant may be an incapacitated person.

28 2. When the examination reports submitted to the court show that each
29 psychiatric examiner is of the opinion that the defendant is not an
30 incapacitated person, the court may, on its own motion, conduct a hear-
31 ing to determine the issue of capacity, and it must conduct a hearing
32 upon motion therefor by the defendant or by the district attorney. If
33 the court does not decide to hold a hearing on its own motion and no
34 motion for a hearing is made, or if, following a hearing the court is
35 satisfied that the defendant is not an incapacitated person, the crimi-
36 nal action against the defendant must proceed. ~~[If, following a hearing,~~
37 ~~the court is satisfied that the defendant is not an incapacitated~~
38 ~~person, the criminal action against him must proceed; if the court is~~
39 ~~not so satisfied, it must issue a further order of examination directing~~
40 ~~that the defendant be examined by different psychiatric examiners desig-~~
41 ~~nated by the director.]~~

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

50 4. When the examination reports submitted to the court show that the
51 psychiatric examiners are not unanimous in their opinion as to whether
52 the defendant is or is not an incapacitated person~~[, or when the exam-~~
53 ~~ination reports submitted to the superior court show that the psychiat-~~
54 ~~ric examiners are not unanimous in their opinion as to whether the~~
55 ~~defendant is or is not a dangerous incapacitated person]~~ and that there
56 is at least a reasonable expectation that restoration services could

1 have a substantial probability of restoring the defendant to competence
2 within a reasonable period of time, the court must conduct a hearing to
3 determine the issue of capacity [~~or dangerousness~~] and expectation of
4 restoration within a reasonable time.

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

7 1. When a local criminal court, following a hearing conducted pursuant
8 to subdivision two, three or four of section 730.30 of this article, is
9 satisfied that the defendant is not an incapacitated person, the criminal
10 action against [~~him or her~~] such defendant must proceed. If [~~it~~] a
11 local criminal court accusatory instrument other than a felony complaint
12 has been filed against the defendant and the court is satisfied that the
13 defendant is an incapacitated person, [~~or if no motion for such a hear-~~
14 ~~ing is made, such court must issue a final or temporary order of obser-~~
15 ~~vation committing him or her to the custody of the commissioner for care~~
16 ~~and treatment in an appropriate institution for a period not to exceed~~
17 ~~ninety days from the date of the order, provided, however, that the~~
18 ~~commissioner may designate an appropriate hospital for placement of a~~
19 ~~defendant for whom a final order of observation has been issued, where~~
20 ~~such hospital is licensed by the office of mental health and has agreed~~
21 ~~to accept, upon referral by the commissioner, defendants subject to~~
22 ~~final orders of observation issued under this subdivision. When a local~~
23 ~~criminal court accusatory instrument other than a felony complaint has~~
24 ~~been filed against the defendant,~~] such court must issue a final order

25 of observation. When a felony complaint has been filed against the
26 defendant, such court must issue a temporary order of observation
27 committing [~~him or her~~] such defendant to the custody of the commission-
28 er for [~~care and treatment~~] restoration services in an appropriate
29 institution or, [~~upon the consent of the district attorney~~] in the
30 discretion of the court, committing [~~him or her~~] such defendant to the
31 custody of the commissioner for [~~care and treatment~~] restoration
32 services on an out-patient basis, for a period not to exceed ninety days
33 from the date of such order[, ~~except that, with the consent of the~~
34 ~~district attorney,~~] or it may issue a final order of observation. Upon
35 the issuance of a final order of observation, the district attorney
36 shall immediately transmit to the commissioner, in a manner intended to
37 protect the confidentiality of the information, a list of names and
38 contact information of persons who may reasonably be expected to be the
39 victim of any assault or any violent felony offense, as defined in the
40 penal law, or any offense listed in section 530.11 of this [~~chapter~~]
41 part which would be carried out by the committed person; provided that
42 the person who reasonably may be expected to be a victim does not need
43 to be a member of the same family or household as the committed person.

44 § 7. Section 730.50 of the criminal procedure law, subdivision 1 as
45 amended by chapter 7 of the laws of 2013, subdivision 2 as amended by
46 chapter 789 of the laws of 1985, subdivision 5 as amended by chapter 629
47 of the laws of 1974, is amended to read as follows:

48 § 730.50 Fitness to proceed; indictment.

49 1. When a superior court, following a hearing conducted pursuant to
50 subdivision two, three or four of section 730.30 of this article, is
51 satisfied that the defendant is not an incapacitated person, the criminal
52 action against [~~him or her~~] such defendant must proceed. If [~~it is~~
53 ~~satisfied~~] after a hearing, the court makes a finding that the defendant
54 is an incapacitated person, [~~or if no motion for such a hearing is made~~]
55 and that there is at least a reasonable expectation that restoration
56 services could have a substantial probability of restoring the defendant

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

53 2. When a defendant is in the custody of the commissioner immediately
54 prior to the expiration of the period prescribed in a temporary order of
55 commitment and the superintendent of the institution wherein the defend-
56 ant is confined is of the opinion that the defendant continues to be an

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

38 3. [~~When~~] Before a defendant is [~~in~~] released from the custody of the
39 commissioner [~~immediately prior to the expiration of the period~~
40 ~~prescribed in the first order of retention, the procedure set forth in~~
41 ~~subdivision two shall govern the application for and the issuance of any~~
42 ~~subsequent order of retention, except that any subsequent orders of~~
43 ~~retention must be for periods not to exceed two years each; provided,~~
44 ~~however,~~] either pursuant to this section or pursuant to article nine or
45 fifteen of the mental hygiene law, the court shall hold a hearing to
46 determine whether or not the defendant continues to be an incapacitated
47 person. If, at the conclusion of a hearing conducted pursuant to this
48 subdivision, the court is satisfied that the defendant is no longer an
49 incapacitated person, the criminal action against them must proceed
50 except that the court shall have the discretion to dismiss the case in
51 the interests of justice. If, at the conclusion of a hearing conducted
52 pursuant to this subdivision, the court finds that the defendant contin-
53 ues to be an incapacitated person then the court shall make an order in
54 accordance with section 9.33 or 15.31 of the mental hygiene law. In any
55 case that the aggregate of periods prescribed in the temporary order of
56 commitment[, ~~the first order of retention and all subsequent orders of~~

~~retention]~~ and any order of retention pursuant to this article or article nine or fifteen of the mental hygiene law must not exceed two-thirds of the authorized maximum term of imprisonment for the highest class felony charged in the indictment ~~[or for the highest class felony of which he was convicted]~~.

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

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

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

§ 730.60 Fitness to proceed; procedure following custody by commissioner.

1. When a local criminal court issues a ~~[final or]~~ temporary order of observation or an order of commitment, it must forward such order and a copy of the examination reports and the accusatory instrument to the commissioner~~[, and, if available, a copy of the pre-sentence report]~~. Upon receipt thereof, the commissioner must designate an appropriate institution operated by the department of mental hygiene in which the defendant is to be placed~~[, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of~~

1 ~~observation issued under this subdivision~~. The sheriff ~~[must hold the~~
2 ~~defendant in custody pending such designation by the commissioner, and]~~
3 when notified of the designation, ~~[the sheriff]~~ must deliver the defend-
4 ant to the superintendent of such institution. The superintendent must
5 promptly inform the appropriate director of the mental hygiene legal
6 service of the defendant's admission to such institution. If a defendant
7 escapes from the custody of the commissioner, the escape shall interrupt
8 the period prescribed in any order of observation, commitment or
9 retention, and such interruption shall continue until the defendant is
10 returned to the custody of the commissioner.

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

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

43 4. When a defendant is in the custody of the commissioner pursuant to
44 an order of commitment or an order of retention, [he] they may make any
45 motion authorized by this chapter which is susceptible of fair determi-
46 nation without [his] their personal participation. If the court denies
47 any such motion it must be without prejudice to a renewal thereof after
48 the criminal action against the defendant has been ordered to proceed.
49 If the court enters an order dismissing the indictment and does not
50 direct that the charge or charges be resubmitted to a grand jury, the
51 court must direct that such order of dismissal be served upon the
52 commissioner.

53 5. When a defendant is in the custody of the commissioner pursuant to
54 an order of commitment or an order of retention, the superior court that
55 issued such order may, upon motion of the defendant, and with the
56 consent of the district attorney, dismiss the indictment when the court

1 is satisfied that (a) the defendant is a resident or citizen of another
2 state or country and that ~~[he]~~ they will be removed thereto upon
3 dismissal of the indictment, or (b) the defendant has been continuously
4 confined in the custody of the commissioner, either pursuant to this
5 article or pursuant to article nine or fifteen of the mental hygiene
6 law, for a period of more than two years. Before granting a motion
7 under this subdivision, the court must be further satisfied that
8 dismissal of the indictment is consistent with the ends of justice and
9 that custody of the defendant by the commissioner pursuant to an order
10 of commitment or an order of retention is not necessary for the
11 protection of the public and that care and treatment can be effectively
12 administered to the defendant without the necessity of such order. If
13 the court enters an order of dismissal under this subdivision, it must
14 set forth in the record the reasons for such action, and must direct
15 that such order of dismissal be served upon the commissioner. The
16 dismissal of an indictment pursuant to this subdivision constitutes a
17 bar to any further prosecution of the charge or charges contained in
18 such indictment.

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

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

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

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

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

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

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

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

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

52 ~~(c) Whenever a district attorney has received the notice described in~~
53 ~~this subdivision, and the defendant is in the custody of the commission-~~
54 ~~er pursuant to a final order of observation or an order of commitment,~~
55 ~~he may apply within three days of receipt of such notice to a superior~~
56 ~~court, for an order directing a hearing to be held to determine whether~~

~~such committed person is a danger to himself or others. Such hearing shall be held within ten days following the issuance of such order. Such order may provide that there shall be no further change in the committed person's facility or status until the hearing. Upon a finding that the committed person is a danger to himself or others, the court shall issue an order to the commissioner authorizing retention of the committed person in the status existing at the time notice was given hereunder, for a specified period, not to exceed six months. The district attorney and the committed person's attorney shall be entitled to the committed person's clinical records in the commissioner's custody, upon the issuance of an order directing a hearing to be held.~~

~~(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.]~~

§ 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:

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

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 commitment, or on the expiration date of the last order of retention, or on the date an order dismissing an indictment is served upon the commissioner, the superintendent of the institution in which the defendant is confined may retain ~~[him]~~ such defendant for care and treatment for a period of no more than thirty days from such date. If ~~[the]~~ during such time two psychiatric examiners engaged by the superintendent ~~[determines]~~ determine that the defendant is so mentally ill or mentally defective as to require continued care and treatment in an institution, ~~[he]~~ the superintendent may, before the expiration of such thirty day period, apply for an order of ~~[certification]~~ retention in the manner prescribed in section ~~[31-33]~~ 9.33 or 15.33 of the mental hygiene law.

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

(a) If the director shall determine that a patient admitted upon an application supported by medical certification, for whom there is no court order authorizing retention for a specified period, is in need of retention and if such patient does not agree to remain in such hospital as a voluntary patient, the director shall apply to the supreme court or the county court in the county where the hospital is located for an order authorizing continued retention. A court order issued pursuant to article seven hundred thirty of the criminal procedure law shall be deemed an order of retention under this section. Such application shall be made no later than sixty days from the date of involuntary admission on application supported by medical certification or thirty days from the date of an order denying an application for patient's release pursuant to section 9.31, whichever is later; and the hospital is authorized to retain the patient for such further period during which the hospital is authorized to make such application or during which the application may be pending. The director shall cause written notice of such application to be given the patient and a copy thereof shall be given personally or by mail to the persons required by this article to be served with notice of such patient's initial admission and to the mental hygiene legal service. Such notice shall state that a hearing may be requested and that failure to make such a request within five days, excluding Sunday and holidays, from the date that the notice was given

1 to the patient will permit the entry without a hearing of an order
2 authorizing retention.

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

6 (a) If the director shall determine that a resident admitted upon an
7 application supported by medical certification, for whom there is no
8 court order authorizing retention for a specified period, is in need of
9 retention and if such resident does not agree to remain in such school
10 as a voluntary resident, the director shall apply to the supreme court
11 or the county court in the county where the school is located for an
12 order authorizing continued retention. A court order issued pursuant to
13 article seven hundred thirty of the criminal procedure law shall be
14 deemed an order of retention under this section. Such application shall
15 be made no later than sixty days from the date of involuntary admission
16 on application supported by medical certification or thirty days from
17 the date of an order denying an application for resident's release
18 pursuant to section 15.31, whichever is later; and the school is author-
19 ized to retain the resident for such further period during which the
20 school is authorized to make such application or during which the appli-
21 cation may be pending. The director shall cause written notice of such
22 application to be given the resident and a copy thereof shall be given
23 personally or by mail to the persons required by this article to be
24 served with notice of such resident's initial admission and to the
25 mental hygiene legal service. Such notice shall state that a hearing may
26 be requested and that failure to make such a request within five days,
27 excluding Sunday and holidays, from the date that the notice was given
28 to the resident will permit the entry without a hearing of an order
29 authorizing retention.

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

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

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

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