

STATE OF NEW YORK

1004--B

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

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

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

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

1 Section 1. Subdivision 1 of section 730.10 of the criminal procedure
2 law is amended to read as follows:
3 1. "Incapacitated person" means a defendant who as a result of mental
4 disease or defect lacks capacity to understand the proceedings against
5 ~~[him]~~ such defendant or to assist in ~~[his]~~ their own defense.
6 § 2. Subdivision 8 of section 730.10 of the criminal procedure law, as
7 separately amended by chapters 615 and 629 of the laws of 1974, is
8 amended to read as follows:
9 8. "Examination report" means a report made by a psychiatric examiner
10 wherein ~~[he]~~ such examiner sets forth ~~[his]~~ their opinion as to whether
11 the defendant is or is not an incapacitated person, the nature and
12 extent of ~~[his]~~ their examination and, if ~~[he or she finds]~~ they find
13 that the defendant is an incapacitated person, ~~[his]~~ their diagnosis and
14 prognosis and a detailed statement of the reasons for ~~[his]~~ their opin-
15 ion by making particular reference to those aspects of the proceedings
16 wherein the defendant lacks capacity to understand or to assist in ~~[his]~~
17 their own defense. The report must also state the examiner's profes-

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

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

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

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

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

§ 730.20 Fitness to proceed; generally.

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

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

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

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

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

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

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

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

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

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

§ 730.30 Fitness to proceed; order of examination.

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

2. When the examination reports submitted to the court show that each psychiatric examiner is of the opinion that the defendant is not an incapacitated person, the court may, on its own motion, conduct a hearing to determine the issue of capacity, and it must conduct a hearing upon motion therefor by the defendant or by the district attorney. If the court does not decide to hold a hearing on its own motion and no motion for a hearing is made, or if, following a hearing the court is satisfied that the defendant is not an incapacitated person, the criminal action against the defendant must proceed. [~~If, following a hearing, the court is satisfied that the defendant is not an incapacitated person, the criminal action against him must proceed; if the court is not so satisfied, it must issue a further order of examination directing that the defendant be examined by different psychiatric examiners designated by the director.~~]

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

4. When the examination reports submitted to the court show that the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not an incapacitated person[, ~~or when the examination reports submitted to the superior court show that the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not a dangerous incapacitated person~~] and that there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time, the court must conduct a hearing to determine the issue of capacity [~~or dangerousness~~] and expectation of restoration within a reasonable time.

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

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

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

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

37 § 730.50 Fitness to proceed; indictment.

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

~~to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this subdivision~~, and (b) must dismiss the indictment filed in such court against the defendant, and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in such indictment. Upon the issuance of a final order of observation, the district attorney shall immediately transmit to the commissioner, in a manner intended to protect the confidentiality of the information, a list of names and contact information of persons who may reasonably be expected to be the victim of any assault or any violent felony offense, as defined in the penal law, or any offense listed in section 530.11 of this ~~chapter~~ part which would be carried out by the committed person; provided that the person who reasonably may be expected to be a victim does not need to be a member of the same family or household as the committed person. When the indictment charges a felony ~~[or when the defendant has been convicted of a felony]~~ and the court has determined that there is at least a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time, it must issue an order of commitment committing the defendant to the custody of the commissioner ~~[for care and treatment] to receive restoration services~~ in an appropriate institution or ~~[, upon the consent of the district attorney,]~~ committing ~~[him or her]~~ such defendant to the custody of the commissioner for care and treatment on an out-patient basis, for a period not to exceed ~~[one year]~~ ninety days from the date of such order. Upon the issuance of an order of commitment, the court must exonerate the defendant's bail if ~~[he or she was]~~ they were previously at liberty on bail; provided, however, that exoneration of bail is not required when a defendant is committed to the custody of the commissioner for care and treatment on an out-patient basis. ~~[When the defendant is in the custody of the commissioner pursuant to a final order of observation, the commissioner or his or her designee, which may include the director of an appropriate institution, immediately upon the discharge of the defendant, must certify to such court that he or she has complied with the notice provisions set forth in paragraph (a) of subdivision six of section 730.60 of this article]~~ In the event that the court determines there is not a reasonable expectation that restoration services could have a substantial probability of restoring the defendant to competence within a reasonable period of time the matter shall be referred to the supreme court for a hearing conducted in accordance with section 9.33 or 15.31 of the mental hygiene law.

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

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

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

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

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

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

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

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

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

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

3. When a defendant is in the custody of the commissioner pursuant to an order issued in accordance with this article, the commissioner may transfer ~~[him]~~ such defendant to any appropriate institution operated by the department of mental hygiene, 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 observation issued under this section. The commissioner may discharge a defendant in ~~[his]~~ their custody under a final order of observation at any time prior to the expiration date of such order, or otherwise treat or transfer such defendant in the same manner as if ~~[he]~~ such defendant were a patient not in confinement under a criminal court order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11. Subdivision (a) of section 15.33 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 resident 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 resident does not agree to remain in such school

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

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

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

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

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