§ 430.20 Commitment of defendant.

1. In general. When a sentence of imprisonment is pronounced, or when th sentence consists of a fine and the court has directed that the defendant be imprisoned until it is satisfied, the defendant must forthwith be committed to the custody of the appropriate public servant and detained until the sentence is complied with.

* 2. Indeterminate and determinate sentences. In the case of an indeterminate or determinate sentence of imprisonment, commitment must be to the custody of the state department of corrections and community supervision as provided in subdivision one of section 70.20 of the penal law. The order of commitment must direct that the defendant be delivered to an institution designated by the commissioner of corrections and community supervision in accordance with the provisions of the correction law.

* NB Effective until September 1, 2027

* 2. Indeterminate sentences. In the case of an indeterminate sentence of imprisonment, commitment must be to the custody of the state department of corrections and community supervision as provided in subdivision one of section 70.20 of the penal law. The order of commitment must direct that the defendant be delivered to an institution designated by the commissioner of corrections and community supervision in accordance with the provisions of the correction law.

* NB Effective September 1, 2027

3. Definite and intermittent sentences. In the case of a definite or intermittent sentence of imprisonment, commitment must be as follows:

(a) In counties contained within New York City or in any county that has a county department of correction, commitment must be to the custody of the department of correction of such city or county;

(b) In any other case, commitment must be to the county jail, workhouse or penitentiary, or to a penitentiary outside the county and the order of commitment must specify the institution to which the defendant is to be delivered.

* 4. Certain resentences. When a sentence of imprisonment that has been imposed on a defendant is vacated and a new sentence is imposed on such defendant for the same offense, or for an offense based upon the

same act, if the term of the new definite or determinate sentence or the maximum term of the new indeterminate sentence so imposed is less than or equal to that of the vacated sentence:

(a) where the time served by the defendant on the vacated sentence is equal to or greater than the term or maximum term of the new sentence, the new sentence shall be deemed to be served in its entirety and the defendant shall not be committed to a correctional facility pursuant to said sentence; and

(b) where the defendant was under the supervision of a local conditional release commission or the department of corrections and community supervision at the time the sentence was vacated, then the commitment shall direct that said conditional release or parole be recommenced, and the defendant shall not be committed to a correctional facility pursuant to said sentence, except as a result of revocation of parole or of conditional release; and

(c) where the defendant was not under the supervision of the department of corrections and community supervision at the time the indeterminate or determinate sentence was vacated, but would immediately be eligible for conditional release from the new indeterminate or determinate sentence, the court shall ascertain from the department of corrections and community supervision whether the defendant has earned a sufficient amount of good time under the vacated sentence so as to require the conditional release of the defendant under the new sentence; in the event the defendant has earned a sufficient amount of good time, the court shall stay execution of sentence until the defendant surrenders at a correctional facility pursuant to the direction of the department of corrections and community supervision, which shall occur no later than sixty days after imposition of sentence; upon said stay of execution, the court clerk shall immediately mail to the commissioner of corrections and community supervision a certified copy of the commitment reflecting said stay of execution and the name, mailing address and telephone number of the defendant's legal representative; in the event the defendant fails to surrender as directed by the department of corrections and community supervision, the department shall notify the court which shall thereafter remand the defendant to custody pursuant to section 430.30 of this article; and

(d) upon the resentence of a defendant as described in this

subdivision, the court clerk shall immediately mail a certified copy of the commitment to the commissioner of corrections and community supervision if the vacated sentence or the new sentence is an indeterminate or determinate sentence and no mailing is required by paragraph (c) of this subdivision; additionally, the court clerk shall immediately mail a certified copy of the new commitment to the head of the appropriate local correctional facility if the vacated sentence or the new sentence is a definite sentence.

* NB Effective until September 1, 2027

* 4. Certain resentences. When a sentence of imprisonment that has been imposed on a defendant is vacated and a new sentence is imposed on such defendant for the same offense, or for an offense based upon the same act, if the term of the new definite sentence or the maximum term of the new indeterminate sentence so imposed is less than or equal to that of the vacated sentence:

(a) where the time served by the defendant on the vacated sentence is equal to or greater than the term or maximum term of the new sentence, the new sentence shall be deemed to be served in its entirety and the defendant shall not be committed to a correctional facility pursuant to said sentence; and

(b) where the defendant was under the supervision of a local conditional release commission or the department of corrections and community supervision at the time the sentence was vacated, then the commitment shall direct that said conditional release or parole be recommenced, and the defendant shall not be committed to a correctional facility pursuant to said sentence, except as a result of revocation of parole or of conditional release; and

(c) where the defendant was not under the supervision of the department of corrections and community supervision at the time the indeterminate sentence was vacated, but would immediately be eligible for conditional release from the new indeterminate sentence, the court shall ascertain from the department of corrections and community supervision whether the defendant has earned a sufficient amount of good time under the vacated sentence so as to require the conditional release of the defendant under the new sentence; in the event the defendant has earned a sufficient amount of good time, the court shall stay execution of sentence until the defendant surrenders at a correctional facility

pursuant to the direction of the department of corrections and community supervision, which shall occur no later than sixty days after imposition of sentence; upon said stay of execution, the court clerk shall immediately mail to the commissioner of corrections and community supervision a certified copy of the commitment reflecting said stay of execution and the name, mailing address and telephone number of the defendant's legal representative; in the event the defendant fails to surrender as directed by the department of corrections and community supervision, the department shall notify the court which shall thereafter remand the defendant to custody pursuant to section 430.30 of this article; and

(d) upon the resentence of a defendant as described in this subdivision, the court clerk shall immediately mail a certified copy of the commitment to the commissioner of corrections and community supervision if the vacated sentence or the new sentence is an indeterminate sentence and no mailing is required by paragraph (c) of this subdivision; additionally, the court clerk shall immediately mail a certified copy of the new commitment to the head of the appropriate local correctional facility if the vacated sentence or the new sentence is a definite sentence.

* NB Effective September 1, 2027

5. Commitment for failure to pay fine. Where the sentence consists of a fine and the court has directed that the defendant be imprisoned until it is satisfied, commitment must be as follows:

(a) If the sentence also includes a term of imprisonment, commitment must be to the same institution as is designated for service of the term of imprisonment, and the period of commitment commences (i) when the term of imprisonment is satisfied, or (ii) with the approval of the state board of parole, when the defendant becomes eligible for parole, or (iii) when the defendant becomes eligible for conditional release, whichever occurs first; provided, however, that the court may direct that the period of imprisonment for the fine run concurrently with the term of imprisonment; and

(b) In any other case, commitment must be to the agency or institution that would be designated in the case of a definite sentence.