**§ 29.27 Incarcerated individual-patients placed in the custody of the department.**

(a) As used in this section, the term "incarcerated individual-patient" means a person committed pursuant to the provisions of article sixteen of the correction law to the custody of the department of mental hygiene for care and treatment.

(b) The commissioner shall provide a facility or facilities in which incarcerated individual-patients may be retained for care and treatment.

(c) An incarcerated individual-patient may be retained for care and treatment in the facility designated by the commissioner for the period stated in the order committing the incarcerated individual-patient to the custody of the department unless sooner transferred or discharged in accordance with law. If the incarcerated individual-patient requires inpatient care and treatment for mental illness beyond such authorized period, the director of the facility where he or she is kept in custody shall apply for an order of retention or subsequent orders of retention in accordance with the procedures set forth in article nine of this chapter for the retention of patients. The provisions of this chapter applying to the rights of patients with respect to notices, hearings, judicial review, writ of habeas corpus, and the services of the mental hygiene legal service shall apply to incarcerated individual-patients except that in no case shall an incarcerated individual-patient be discharged or released from custody prior to the time that such incarcerated individual-patient has completed his or her term of imprisonment or that his or her release from custodial confinement in the correctional facility or jail from which he or she was delivered to the department has been duly authorized.

(d) During the period of his or her custody in the department of mental hygiene pursuant to this section, an incarcerated individual-patient shall be entitled to the rights to care and treatment set forth in section 15.03 of this chapter and to such other rights granted to patients by this chapter, as determined by regulation of the commissioner, which are not inconsistent with his or her status as a person legally subject to confinement in a correctional facility or jail or with the mandate of secure custody of such incarcerated individual-patient.

(e) When the director of the facility in which the incarcerated

individual-patient is in custody finds that the incarcerated individual-patient is no longer mentally ill or no longer requires hospitalization for care and treatment, he or she shall so notify the incarcerated individual-patient and commissioner of corrections and community supervision or, in the case of an incarcerated individual-patient coming from a jail or correctional institution operated by local government, the officer in charge of the jail or correctional institution from which the incarcerated individual-patient was committed. The commissioner of corrections and community supervision or such officer, as the case may be, shall immediately arrange to take such incarcerated individual-patient into custody and return him or her to a correctional facility or to the jail or correctional institution operated by local government.

(f) Upon delivery of the incarcerated individual-patient to the representative of the commissioner of corrections and community supervision or of an officer in charge of a jail or correctional institution operated by local government, the responsibility of the department and its facilities for the custody of the incarcerated individual-patient shall terminate. Where the incarcerated individual is returned to a state correctional facility, the department shall continue to be responsible for the incarcerated individual-patient's psychiatric care if the incarcerated individual-patient upon his or her return is in a program established pursuant to section four hundred one of the correction law.

(g) If an incarcerated individual-patient in the custody of the department escapes from custody, immediate notice shall be given to the commissioner of corrections and community supervision or, in the case of an incarcerated individual-patient coming from a jail or correctional institution operated by local government, to the officer in charge of such jail or correctional institution. Notice shall also be given to appropriate law enforcement authorities.

(h) The cost of care and treatment of an incarcerated individual-patient in a department facility shall be a charge upon the department if the incarcerated individual-patient was committed from a state correctional facility or upon the local government from which the incarcerated individual-patient was committed.

(i) Upon release of an incarcerated individual-patient from a

facility, the director shall forward a copy of all health and psychiatric records to the commissioner of corrections and community supervision or to the officer in charge of a jail or correctional institution operated by local government, as the case may be.

(j) If the sentence for which an incarcerated individual-patient is confined expires or is vacated or modified by court order, the director shall so notify the commissioner of corrections and community supervision or such officer in charge of a jail or correctional institution operated by local government, as appropriate.