

CPL ARTICLE 330:
FROM VERDICT TO SENTENCE.

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Applicable definitions where defendant not responsible by reasons of mental disease/defect:

COMMISSIONER = State Office of Mental Health [OMH]; **OR:** Office of Mental Retardation/Developmental Disability [OMRDD].

MENTALLY ILL: lesser category than "dangerous", but still requiring *in*-patient status.

RETENTION ORDER = 1st, 2nd, **OR:** subsequent.

FURLOUGH = temporary release from facility - either with or without supervision - up to a maximum of 14 days.

TRANSFER = from secure facility to non-secure.

RELEASE = from in-patient; NOT a termination of the Commissioner's responsibility!

DISCHARGE = from Commissioner's supervision.

QUALIFIED PSYCHIATRIST = physician, Board-certified Diplomate of American psychiatry **OR** Osteopath (or where eligible to be so certified).

LICENSED PSYCHOLOGIST = pursuant to education Law.

PSYCHOLOGICAL EXAMINER = *either* "qualified psychiatrist" **OR** "licensed psychologist".

After plea/verdict of "not responsible" due to mental disease/defect, Court **must** order examination. If the defendant is committed to the sheriff, shall be held pending such evaluation. ELSE: *may* be allowed out-patient status, **unless:** Commissioner determines such to be unsafe.

Examination shall be by two (2) examiners, however if they fail to concur, the Commissioner shall designate 1 more. If the Court be ultimately unsatisfied with the report, can designate 1 or more of its own examiners, also *may* appoint those requested by prosecutor/defendant.

Examination order is for a period of up to 30 days. If the defendant is committed, may be continued by Court for not more than additional 30, upon application of Commissioner; else if not convicted, can be extended as long as necessary.

The report is furnished to the Court by the Commissioner; the Court distributes to prosecutor, defendant's attorney, as well as the Mental Health Legal Service. Hearing shall be held within 10 days of report's receipt.

If a defendant is found to be dangerous, shall be committed. If defendant found to be "mentally ill", shall be committed as well, together with an Order of Conditions (such as to comply with treatment plan, not leave facility, etc...). [Special Conditions for protection of victim/witness may also be ordered, Commissioner shall so inform protected party]. A "mentally ill" defendant committed herein is deemed to be operating under Mental Hygiene Law, and all subsequent proceedings are governed thereunder. A defendant ***not*** dangerous OR mentally ill shall be discharged.

Any Order of Special Conditions must specifically identify itself as such, and clearly designate the expiration date (however failure to comply does NOT invalidate it). The CLERK shall file it with the Sheriff of County - and/or Police Department of City - where protected party lives/works/goes to school, etc...

Order of Commitment is good for six (6) months. Commissioner shall apply for "First Retention" at least 30 days before expiration thereof, either to the Court which ordered commitment; OR to Superior Court where detention facility is located. hearing is held within 10 days of application, on notice to D.A.; defendant + counsel; and Mental Health Legal Services).

If defendant is still dangerous, shall issue "First Retention Order"; else is now only "mentally ill", 1st Retention + "Transfer Order", & "Order of Conditions". Discharge if neither. 1st retention is good for one year. 2nd and subsequent retentions are governed by the same procedures outlined above, but are good for 2 years.

A "furlough" is requested by Commissioner, hearing on 10 days' notice to standard parties. A defendant on furlough is deemed "escaped" if not return before expiry.

Commissioner's application for Transfer/Release also on 10 days' notice.

A request to Re-commit released out-patient defendant - if still subject to Order of Conditions - shall be on written notice to defendant by Court; either personal service or mail to last known address. Court may issue a warrant upon failure to appear .

ALL applications must have an affidavit by at least 1 examiner, which must be served on all necessary parties; else shall be dismissed.

Defendant shall be entitled to a "re-hearing" of any commitment/retention order if so requested within 30 days.

With permission of an Intermediate Appellate Court, the following parties may appeal: Commissioner, for a commitment/retention order which was NOT requested;

D.A., for any Release/Discharge/Transfer/Furlough order which it had opposed; Defendant OR Mental Health Legal Service, *any* commitment/retention order (including if already confirmed after re-hearing). However a defendant appealing such an order loses the right to request a re-hearing.

FINAL determination of Intermediate Appellate Court may itself be appealed, with permission of Court of Appeals. All appeals herein are considered civil in nature, and governed by CPLR generally. Stays can be granted either by court from which appeal taken, **OR**: where *to*; HOWEVER, **only** Court where appeal *taken* may vacate/limit/modify an existing stay. Stays continue until 5 days after determining order, subject to CPLR.

No defendant may be discharged/released until Commissioner shall first notify: District Attorney, Police Department, as well as any other person designated by the Court; at least four days before such intended release/discharge (excluding weekends, holidays).

If defendant has escaped: the Treating Staff Physician (else if such be unavailable, by Team Leader; or other Clinical Staffer) shall notify the District Attorney; State Police Superintendent; County Sheriff; local Police Department; and any person deemed to be in danger, as well as any law enforcement personnel who might be able to notify such person.

Juvenile Offenders - EXCEPT where committed Murder 2 - may be removed to Family Court on motion, and with D.A.'s consent.

Any convicted defendant may move *prior* to sentencing for the Court to "set aside" verdict.

GROUND(S):

- 1) reversal would otherwise be warranted on appeal;
- 2) improper out-of-court conduct by juror;
- 3) new evidence.

Request on ground 1 need not be written; but "reasonable" notice to people required.

Grounds 2 & 3 shall be written, and include sworn allegations. People **may** answer. If people concede - and motion included valid sworn legal reasons - Court **must** grant. Else may deny, or can order a hearing. Burden of proof is on defendant = preponderance of evidence.

If the Court grants such motion:

Ground 1 = shall do what appellate court would order;

2 = order new trial;

3 = new trial, ***OR:*** - with People's consent - reduce conviction to any lesser offense which would have been supported by the totality of the evidence.

At any new trial herein: defendant re-tried on all counts not **acquitted** (*dismissed* charges are still re-tried).