

Chapter 6

MHL, CL, and CPL Commitments and Examinations: Procedures

MENTAL HYGIENE LAW

Article 9 – Commitment

General Description

MHL Article 9 contains standards and procedures for the commitment of Civil patients who require psychiatric inpatient care and treatment. There are six ways in which persons may be committed under the statute:

1. MHL §9.13 – Voluntary Admission
2. MHL §9.15 – Informal Admission
3. MHL §9.27 – Involuntary Admission on a Medical Certificate (2 PC)
4. MHL §9.37 – Director of Community Services
5. MHL §9.39 – Emergency Admission
6. MHL §9.40 – CPEP

The MHL statutes are used in hospitalizing four groups of forensic patients:

1. Police lockup prisoners;
2. Persons arrested, arraigned, convicted or sentenced, but released from or not placed within police/sheriff custody;
3. CPL §330.20 patients on an Order of Release, Order of Conditions who are mentally ill but do not have dangerous mental disorder; and
4. CPL §330.20 (7) patients who are not responsible for their offense by reason of mental disease or defect and who are mentally ill but do not have a dangerous mental disorder.

Required Referral Forms: *(See Chapter 7 for forms)*

Hospital Settings

Voluntary, Informal, Involuntary (2PC) and DCS Admission

- | Any State or Local Psychiatric Center/Unit

Emergency Admission

- | Approved §9.39 Hospital
- | Approved §9.40 CPEP

Medical and Psychiatric Costs During Hospitalization: Patient is liable.

Police/Sheriff Guard Requirements During MHL Hospitalization

24-hour guard coverage during MHL hospitalization is required only for inmates not released from police custody during the pre-arraignment period. This coverage is provided by the police department with legal custody of the prisoner.

Mental Hygiene Law – Admissions Process

MHL Admission Standard	Who Applies for/ Initiates Request for Hospital Evaluation	Who Examines at Time of Application	Available Transport	Who Evaluates at Hospital Prior to Admission	Who Confirms	Duration of Hospital Stay
Voluntary (§9.13) Standard: person has a mental illness for which care and treatment in a mental hospital is appropriate; person is suitable for admission on a voluntary basis	Patient makes application. <i>(For patients under 18, see reverse #1)</i> [Form OMH 472]	<i>(See " Who Evaluates at Hospital Prior to Admission")</i>	Peace/police officers/ambulance service may transport at patient's request. [No form]	Staff MD of any hospital* must confirm that the person meets the Voluntary Standard. [Form OMH 472]	— — —	Indefinite. Patient to notify hospital in writing prior to leaving. If director objects, he or she must apply within 72 hours for a court order of retention. (MHL §9.13 (b))
Informal (§9.15) Standard: person has a mental illness for which care & treatment in a mental hospital is appropriate; person is suitable for admission on an informal basis and does not pose a substantial threat of harm to self or others.	Patient makes oral request — no written application. (Patient is served with written notice of status and rights upon admission.)	(No application)	Peace/police officers/ambulance service may transport at patient's request. [No form]	Staff MD of any hospital* <i>(See reverse #2)</i> should confirm that the person meets the Informal Standard. [No form]	— — —	Indefinite. Patient must be permitted to leave at any time while on informal status.
Involuntary – Two Physician Certificate (§9.27) Standard: person has a mental illness for which care & treatment in a mental hospital is essential to his/her welfare; person's judgment is too impaired for him/her to understand the need for such care and treatment; as a result of his/her mental illness, the person poses a substantial threat of harm to self or others. <i>(See reverse #3)</i>	Any of eleven parties may make application. <i>(See reverse #4)</i> [Form OMH 471]	Two MDs using Involuntary Standard [Form OMH 471A]	Peace/police officers/ambulance service may transport at examining MD's request [Form OMH 471B]	Staff psychiatrist of any hospital,* other than one of the two original certifying MDs, must examine and confirm that the person meets the involuntary standard. [Form OMH 471]	— — —	Up to 60 days.** Patient may be held involuntarily beyond 60 days if the hospital applies for a court order of retention and the court is satisfied the patient continues to meet the Involuntary Standard. (MHL §9.33)
Involuntary – Director of Community Services (DCS) or Designee (§9.37) Standard: same as Emergency Standard	DCS or Designee makes application. [Form OMH 475]	DCS or Designee using Emergency Standard. <i>(See reverse #5)</i> [Form OMH 475A/475B]	Peace/police officers must transport at DCS or Designee's request. Ambulance service is authorized to transport. [Form OMH 475]	Staff MD of any hospital* must confirm that the person meets the Emergency Standard. [Form OMH 475C]	Staff psychiatrist must, within 72 hours after admission, (excluding Sundays and Holidays) examine and certify that the patient meets the involuntary §9.27 Standard. [Form OMH 475D]	Up to 60 days.** Patient may be held involuntarily beyond 60 days if the hospital applies for a court order of retention and the court is satisfied the patient continues to meet the Involuntary Standard. (MHL §9.33)
Emergency (§9.39) Standard: reasonable cause to believe that the person has a mental illness for which immediate observation, care and treatment in a hospital is appropriate and which is likely to result in serious harm to him/herself or others. "Likelihood of serious harm" means: 1) a substantial risk of physical harm to the person as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to him/herself <i>(See reverse #6)</i> . or 2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.	In accordance with each appropriate section of the MHL the following parties may initiate (no application): A. §9.39 Not specified B. §9.41 Peace or police officers. <i>(See reverse #7)</i> C. §9.43 Court (through Civil Order). D. §9.45 DCS or Designee. <i>(See reverse #8)</i> E. §9.55 Qualified psychiatrist supervising or providing treatment in an OMH licensed or operated facility without a psychiatric inpatient unit. <i>(See reverse #9)</i> F. §9.57 Director of a general hospital without a psychiatric inpatient unit, upon the recommendation of an Emergency Room MD; or, director of a C.P.E.P., upon the recommendation of a C.P.E.P. MD. <i>(See reverse #9)</i> G. §9.58 Mobile Crisis Outreach Team physician or qualified mental health professional. <i>(See reverse #10)</i>	(No application)	Peace/police officers must transport at initiator's request. Ambulance service is authorized to transport. [A–F: Form OMH 474A/476A] [G: Form OMH 482]	Staff MD of §9.39 hospital must examine and determine that the person meets the Emergency Standard. [Form OMH 474]	Staff psychiatrist must, within 48 hours after admission, examine the patient and confirm the first MD's finding that the patient meets the Emergency Standard. [Form OMH 474]	Up to 15 days.** Patient may be held involuntarily beyond 15 days if he/she meets the Involuntary Standard and is converted to a §9.27 involuntary admission, in accordance with the process described above.*** (MHL §9.39 (b))
C.P.E.P.**** Emergency (§9.40) Standard: person may have a mental illness for which immediate observation, care and treatment in a C.P.E.P. is appropriate and which is likely to result in serious harm to him/herself or others. "Likelihood of serious harm" means: 1) a substantial risk of physical harm to the person as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to him/herself <i>(See reverse #6)</i> . or 2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.	In accordance with each appropriate section of the MHL the following parties may initiate (no application): A. §9.40 Not specified B. §9.41 C. §9.43 D. §9.45 E. §9.55 F. §9.57 G. §9.58 } <i>Same as for Emergency (§9.39) Admission</i>	(No application)	Peace/police officers must transport at initiator's request. Ambulance service is authorized to transport. [A–F: Form OMH 474A/476A] [G: Form OMH 482]	Staff MD of C.P.E.P. must, within 6 hours after the person is received in the C.P.E.P. emergency room examine and determine that he/she meets the C.P.E.P. Emergency Standard. [Form OMH 476]	Staff psychiatrist must, within 24 hours after the patient is received in the C.P.E.P. emergency room, examine the patient and confirm the first MD's finding that the patient meets the C.P.E.P. Emergency Standard (in which case the patient must be moved to an extended observation bed). [Form OMH 476]	Up to 72 hours (after which the patient must be discharged from C.P.E.P.).** Patient may subsequently be held involuntarily if he/she meets the Involuntary Standard (§9.27) or Emergency Standard (§9.39) and is admitted to an appropriate facility in accordance with the processes described above.***** (MHL §9.40 (e) (f))

* As defined in MHL §1.03 (10). Includes any facility operated or certified by OMH which provides inpatient care or treatment of the mentally ill, including a certified ward, wing or unit of a general hospital.

** Note that the patient (or the patient's representative) may, at any time, request a court hearing regarding the patient's commitment, which generally must be held within 5 days after receipt of the request. If the court denies the application for the patient's release, and the patient is on involuntary status under §9.27 or §9.37, he/she may be held for the remainder of the 60-day commitment period or for up to 30 days, after the application for release is denied, whichever is later.

*** Note that such patient's 60-day commitment period will be calculated from the day he/she was first admitted under §9.39.

**** Comprehensive Psychiatric Emergency Program.

***** Note that such patient's 60-day commitment period (pursuant to §9.27) or 15-day commitment period (pursuant to §9.39) will be calculated from the time he/she was initially received in the C.P.E.P. emergency room.

1. (MHL §9.13) The following four parties may apply for a voluntary MHL §9.13 admission when the **patient is under 16 years of age**: 1) child's parent, legal guardian or next-of-kin; 2) social services official or authorized agency with care and custody of such child, subject to the terms of any court order or any instrument executed pursuant to Social Services Law §384(a); 3) Director of Division for Youth, acting in accordance with section five hundred nine of the executive law, or 4) having custody of the child pursuant to an order issued pursuant to Family Court Act §756 or §1055. **If the patient is over 16 and under 18 years of age**, the director may, in his or her discretion, admit such child as a voluntary patient on his or her own application, or on the application of any of the four parties described above.
2. Note that for policy rather than legal reasons, some hospitals, including most OMH psychiatric centers, do not accept informal admissions.
3. "Substantial threat of harm" may encompass (i) the person's refusal or inability to meet his or her essential need for food, shelter, clothing or health care, or (ii) the person's history of dangerous conduct associated with noncompliance with mental health treatment programs.
4. (MHL §9.27) The following eleven parties may be applicants for a person's involuntary admission: 1) someone residing with the person; 2) person's father, mother, spouse, sibling, child or nearest relative; 3) committee of person; 4) officer of any public or well recognized charitable agency or home in whose institution the person resides; 5) DCS or Director of Social Services; 6) Director of hospital in which the person is hospitalized; 7) Director of a facility providing care to alcoholics, substance abusers or substance dependent persons; 8) Director of Division for Youth; 9) Social Services official or authorized agency with custody or guardianship of children over 16 years of age; 10) someone having custody of a child pursuant to Family Court Act §756 or §1055; or, 11) qualified psychiatrist who is either supervising the treatment of or treating person for a mental illness in a facility licensed or operated by OMH.
5. (MHL §9.37) A DCS or Designee authorized to certify persons pursuant to this provision includes: a) a DCS, if also a physician, b) a physician designated by the DCS and approved by the State Commissioner of Mental Health, or c) in counties with a population of less than 200,000, a DCS who is a licensed psychologist or certified social worker, if a §9.39 hospital is not located within 30 miles of the person and a designated physician is not immediately available. If a certificate of examination is completed by a DCS who is not a physician, the receiving hospital must have the patient evaluated by a second staff physician within 24 hours after admission (in addition to complying with all the other confirmation requirements). **[Form OMH 475C]**
6. Such "other conduct" includes the person's refusal or inability to meet his or her essential need for food, shelter, clothing or health care, provided that such refusal or inability is likely to result in serious harm if the person is not hospitalized immediately.
7. (MHL §9.41) Peace or Police officers may take custody and transport to a §9.39 hospital or C.P.E.P. "any person who **appears** to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others." Pending the person's examination at such hospital or C.P.E.P., such officers may temporarily detain him or her "in another safe and comfortable place, in which event, the officer shall immediately notify the director of community services or, if there be none, the health officer of the city or county of such action."
8. (MH §9.45) The DCS or Designee must receive a report from one of the following that the person meets the Emergency Standard: a parent, spouse, child, adult sibling or committee of the person; a licensed psychologist, registered professional nurse or certified social worker currently responsible for providing services to the person; or, a licensed physician, health officer, peace or police officer. A DCS or Designee authorized to direct the removal of the person pursuant to this provision includes: a) a DCS or Designee as defined in MHL §9.37 (see No. 5 above); or b) a Designee of the DCS who is a licensed psychologist, certified social worker or registered psychiatric nurse, or who otherwise meets the education and experience requirements established in Part 102 of NYCRR Title 14.
9. The qualified psychiatrist (MHL §9.55) or physician (MHL §9.57) must determine, upon an examination of the person, that he or she **appears** to meet the Emergency Standard.
10. (MHL §9.58) A physician or qualified mental health professional who is a member of an approved mobile crisis outreach team is authorized to remove, or direct the removal of, a person to a §9.39 hospital or C.P.E.P. for the purpose of evaluation for admission, "if such person **appears** to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others." "Qualified mental health professional" means a licensed psychologist, certified social worker or registered professional nurse approved by OMH to serve in a mobile crisis outreach program. (Note that this statute **does not** make reference to the appropriateness of or need for **immediate** observation, care and treatment in a hospital.) **[Form OMH 482]**

CORRECTION LAW

§508 (3)

General Description

CL §508 (3) provides standards and procedures for the psychiatric commitment of pre-trial and pre-sentence county/ municipal jail inmates. There are two (2) ways in which these inmates are hospitalized under this statute:

1. MHL §9.27 – Involuntary admission on a Medical Certificate (“2 PC-Commitment”)
2. MHL §9.37 – Director of Community Services or Designee (“DCS-Commitment”)

NOTE: Correction Law §509 (3) Admissions at State Regional Forensic Units are pursuant to MHL Sections 9.27 & 9.37. These units are not authorized to accept CL §508 (3) admissions made pursuant to MHL §9.39.

Hospital Settings**CL §508 (3) Commitments pursuant to MHL §9.27 or 9.37**

For 40 counties these commitments occur at the Northeast Central or the Rochester Regional Forensic Units. The remaining counties utilize either State Civil PC's or locally operated general hospitals with approved prison wards. (See *Appendix D for Regional Forensic Unit and State PC catchment areas.*)

Inmates who are 17 years old and under: Outside of the City of New York – referrals for hospitalization pursuant to CL §508 must be made to the appropriate Children's Unit or Center **before transport**. Requests for access to any other inpatient unit (e.g., OMH Regional Forensic Unit) must be made by the Children's Program through OMH Field Offices.

CL §508 (3) Commitments pursuant to MHL §9.39

Designated MHL §9.39 hospitals

Medical Psychiatric and Sheriff Guard Costs and Responsibilities During Hospitalization

Psychiatric Treatment – County Responsibility.

Medical Treatment – County Responsibility.

Sheriff Guard* – Sending County Sheriff Department.

**Questions regarding Guard (custody) coverage should be directed to the NYS Commission of Correction, (518) 474-1180*

Regional Forensic Units

For many counties the problem of directly providing the 24-hour Sheriff guard has been alleviated by the State Regional Forensic Units located on the grounds of the Rochester PC and Northeast Central RFU (Central New York PC). On these units, this coverage is provided by the Sheriff's Department located in the same county as the Regional Forensic Unit. Sheriff Departments from other counties who utilize these units do not directly provide the 24-hour guard. Instead the legal custody of the inmate during his/her hospitalization is transferred to the local Sheriff's Department on the Regional Forensic Unit. However, the sending county Sheriff reimburses the receiving county Sheriff for coverage at a pre-established daily rate. The contact telephone numbers for the above Regional Forensic Units are as follows:

Regional Forensic Unit	Work Hours	After Hours, Holidays/Weekends
Northeast Central RFU (Marcy, NY)	(315) 765-2920 (Medical Records)	(315) 736-8271, Ext 2350 (Nurse Administrator)
Rochester RFU (Rochester, NY)	(716) 473-3230, Ext. 1105 (RFU Administration)	(716) 473-3230, Ext. 1288 (Nurse Administrator)

§508 (3) – Two Physician Certificate Commitment (MHL §9.27)

Admission Criteria: A non-sentenced inmate/patient:

1. who has a mental illness for which care and treatment in a mental hospital is essential to his/her welfare;
2. whose judgment is too impaired for him/her to understand the need for such care and treatment; and
3. who as a result of his/her mental illness, poses a substantial threat of harm to self or others (“substantial threat of harm” may encompass (i) the person’s refusal or inability to meet his or her essential need for food, shelter, clothing or health care, or (ii) the person’s history of dangerous conduct associated with non-compliance with mental health treatment programs).

Commitment Duration: Up to 60 Days.

Required Referral Forms: The following forms must be completed by the referring county and must accompany patient upon his transport to hospital:

1. OMH 471 Admission Application
2. OMH 471A Certificate of Examining Physician (one for each physician)
3. Detainees medical record
4. 601A Health and Custodial Transfer Information
5. Copy of the Securing Order.

(See Chapter 7 for copies of OMH 471, OMH 471A and CL §601A forms.)

Admission Process

1. Jail notifies the Mental Health provider that the inmate requires examination to determine eligibility for inpatient care.
2. **Petitioner:** The Director of Community Services (or his designee) or any other “director” as defined in CL §508 completes Form OMH 471 to petition for inmate’s hospitalization. *(NOTE: The Sheriff and the examiners can not be the petitioner.)*
3. **Medical Certificates:** Two physicians examine the inmate and certify that the inmate meets the admission criteria. Each physician completes a separate OMH 471A form, “Certificate of Examining Physician.”
4. Both the 471 and 471A must be completed within a ten (10) day period prior to admission to a hospital.
5. **Hospital Contact:** Jail Administrator and one examiner and/or mental health clinician with knowledge of inmate’s mental illness contacts appropriate psychiatric hospital to discuss inmate’s mental health status and his anticipated time of arrival at hospital.

Outside the City of N.Y. – Referrals of inmates who are 17 years old and under for hospitalization pursuant to CL §508 must be made to the appropriate Children’s Unit or Center before transport. Requests for access to any other inpatient unit (e.g., OMH Field Forensic Units) must be made by the Children’s Program to OMH Field Offices.

See Appendix D for appropriate hospital for adults and appropriate hospital for children.

6. **Substitute Jail Order – CL §504:** For commitment to a psychiatric hospital not within the sending jail’s county the Sheriff’s Office must call the NYS Commission of Correction [day (518) 485-2463; nights and weekends (518) 485-2466] for a Substitute Jail Order.
7. **Transport:** The referring county Sheriff’s Office must transport inmate to hospital with those forms listed above. Upon the inmate’s hospital discharge such Sheriff must transport inmate back to jail.
8. **Admission Decision:** One staff psychiatrist at receiving hospital examines inmate and as appropriate authorizes admission.

Director of Community Services Commitment (MHL §9.37)

Admission Criteria: A non-sentenced inmate of any age who has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others.

“Likelihood of serious harm” means:

1. A substantial risk of physical harm to the person as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to him/herself (such “other conduct” includes the person’s refusal or inability to meet his or her essential need for food, shelter, clothing or health care, provided that such refusal or inability is likely to result in serious harm if the person is not hospitalized immediately); or
2. A substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

Commitment Duration: Up to 60 days.

Required Referral Forms: The following forms must be completed by the referring county and must accompany patient upon his/her transport to hospital:

1. OMH 475 Application for Involuntary Admission
2. OMH 475A or 475B (non physician) Certificate of Director of Community Services
3. 601A Health and Custodial Transfer information
4. Copy of Securing Order.

(See Chapter 7 for copies of OMH 475, OMH 475 A & B and CL §601A forms.)

Admission Process

1. Jail notifies the Director of Community Services or designee that inmate requires inpatient care.
2. **Petitioner:** The Director of Community Services (or his/her designee) or any other “director” as defined in CL §508 completed Form OMH 475 to petition for inmate’s hospitalization. Sheriff can not be the petitioner.
3. **Medical Certificate: One examiner** examines inmate and certifies that inmate meets admission criteria. Examiner completes Form OMH 475A or B, Certificate of Examination by Director of Community Services or his/her designee. The examiner must be:
 - a. The Director of Community Services (if a qualified physician) (Form 475A);
 - b. A physician who is designated by the Director of Community Services and approved by the Commissioner of Mental Health; or
 - c. In counties of less than 200,000 people and when a physician is not available, a Director of Community Services who is a licensed psychologist or certified social worker (Form 475B).

NOTE: The examiner may also be the petitioner.

4. **Substitute Jail Order – CL §504:** For commitment to a psychiatric hospital not within the sending jail’s county, the Sheriff’s Office must call the NYS Commission of Correction [day (518) 474-6759; nights and weekends (518) 474-1108 for a Substitute Jail Order.
5. **Hospital Contact:** Jail Administrator and the examiner or a mental health clinician with knowledge of the inmate’s mental illness contacts receiving psychiatric hospital to discuss inmate’s mental health status and his/her anticipated time of hospital arrival.

Outside the City of N.Y. – Referrals of inmates who are 17 years old and under for hospitalization pursuant to CL §508 must be made to the appropriate Children’s Unit or Center **before transport**. Requests for access to any other inpatient unit (e.g. OMH Regional Forensic Units) must be made by the Children’s Program to OMH Field Offices.

(See Appendix D for appropriate hospital.)

6. **Transport:** The referring county Sheriff’s Office must transport inmate with those forms listed above to hospital and upon the inmate’s discharge must transport inmate back to jail.

Director of Community Services Commitment (MHL §9.37)

7. **Admission Decision:** One staff physician at receiving hospital immediately examines and, as appropriate, authorizes admission. However, if inmate is to be hospitalized beyond the 72 hours, a second physician who is a member of the hospital psychiatric staff must also examine inmate and certify that inmate is in need of involuntary care and treatment. This second examination enables the patient to be hospitalized for a period of up to 60 days.

§508 (3) – Emergency Commitment (MHL §9.39)

Admission Criteria: A non-sentenced inmate has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others. “Likelihood of serious harm” means:

1. A substantial risk of physical harm to the person as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to him/herself (such “other conduct” includes the person’s refusal or inability to meet his or her essential need for food, shelter, clothing or health care, provided that such refusal or inability is likely to result in serious harm if the person is not hospitalized immediately); or
2. A substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear or serious physical harm.

Commitment Duration: Up to 15 days.

NOTE: After 15 days the patient can be converted to involuntary status and retained for a longer period.

Required Referral Forms: None

Admission Process

1. Jail Administrator observes that inmate has a mental illness which is likely to result in serious harm to himself or others and for which care in a psychiatric hospital is appropriate.
2. **Petitioner:** None required.
3. **Medical Certificates:** None required.
4. **Substitute Jail Order:** Not appropriate – Legal custody of inmate is not changed during hospitalization stay. At MHL §9.39 hospital sending Sheriff provides 24 hour coverage.
5. **Hospital Contact:** Jail contacts appropriate MHL §9.39 hospital to discuss inmates mental health status and inmate’s anticipated time of arrival at hospital.
6. **Transport:** The referring county Sheriff’s Office must transport inmate to hospital and upon the inmate’s discharge must transport inmate back to jail.
7. **Admission Decision:** Staff physician at receiving MHL §9.39 hospital immediately examines and as appropriate authorizes admission. Within 48 hours a second physician who is a member of the hospital psychiatric staff must examine and confirm the first physician’s findings. Following the second physician’s confirmation, hospitalization may be continued for a period up to 15 days from the initial admission date.

(This procedure is not applicable for admissions to NYS OMH Regional Forensic Units.)

CORRECTION LAW

§402 – Hospitalization

General Description

CL §402 provides standards for the psychiatric hospitalization of prisoners sentenced by a Criminal Court who are incarcerated within county/municipal jails or the State prisons. There are four (4) ways in which a sentenced person may be hospitalized under this statute:

1. Signed Commitment (CL §402.4) – Prisoners is mentally ill and requires inpatient care and treatment.
2. Forthwith Commitment (CL §402.8) – Prisoners is mentally ill, and requires immediate inpatient care and treatment.
3. Emergency Admission (CL §402.9) – Prisoners is mentally ill and dangerous to self or others.
4. Observation and Examination (CL §402.2) – Prisoners needs observation as to inmate's mental condition (NYC only).

Required Referral Forms *

The following forms must be completed by the referring county and accompany patient upon his transport to Northeast Central RFU:

	Signed	Forthwith	Emergency
1. Report to Physician (402.1)	x	x	
2. Application for Order to Examine (402.2)	x	x	x
3. Order to Examine (403.3)	x	x	
4. Certificate of Examining Physician (402.4)	x	x	
5. Notice of Application (for Commit. 402.5)	x	x	
6. Petition (for Commitment 402.6)	x	x	
7. Affidavit of Service (402.7)	x	x	
8. Order of Hearing (402.8)	As needed		
9. Decision (after hearing 402.9)	As needed		
10. Order for Commitment (402.10)	x	x	
11. Petition to Forthwith		x	
12. Application for Admission of Patient (OMH 471)			x
13. Certificate of Examining Physician (OMH 471A)-two			x
14. Detainee's Medical Record	x	x	x
15. 601A Health & Custodial Transfer Info.	x	x	x
16. Sentencing Papers	x	x	x

Hospital Settings

All sentenced inmates from the upstate and Long Island county/municipal jails are hospitalized (pursuant to CL §402.4, 402.8 or 402.9) at Northeast Central RFU. For locally incarcerated inmates within the City of New York, current practices only involve use of CL §402.2 (observation & examination). Such hospitalizations occur at Bellevue or Kings County Hospitals.

* (See Chapter 7 for forms.)

§402 - Hospitalization (Continued)**Costs and Sheriff Guard Requirements**

Admission to Northeast Central RFU: State is liable for the psychiatric hospitalization costs. However, the county is liable for the costs of the two physician exams performed at Northeast Central RFU in relation to CL §402 Emergency Admissions. Sheriff guard coverage is not required for CL §402 admissions at Northeast Central RFU.

Northeast Central RFU Telephone Numbers

Work Hours: (315) 765-2920 (Medical Records)

After Hours, Holidays and Weekends: (315) 736-8271 Ext. 2350 (Nurse Administrator)

§402 – Signed Commitment Process

Admission Criteria: A sentenced inmate has a mental illness for which inpatient care and treatment is necessary.

Commitment Duration: 6 Months.

Admission Process: (Typically takes between two–three weeks)

1. **Report of Physician:** A physician providing services to the correctional facility writes a report (Form 402.1) to the Superintendent/Sheriff that an inmate is mentally ill.
2. **Application for Order to Exam:** The Superintendent/Sheriff petitions his county or Supreme Court to assign two physicians to examine the inmate (Form 402.2).
3. **Order to Examine:** County or Supreme Court judge appoints the physicians (Form 402.3). These physicians must meet the following criteria: 1) cannot be employed by the Correction Facility in which the inmate is housed and 2) must be a licensed NYS Physician (not necessarily psychiatrists).
4. **Certificate of Physician:** The two physicians examine the inmate and each writes a report (Form 402.4).
5. **Notice of Petition:** The inmate, the local Mental Hygiene Legal Service (MHLS) representative, and a relative of the inmate, are informed that he is about to be committed to a mental hospital.
 - a. A Petition (402.6) and Notice of Application (402.5) are completed and signed by the Superintendent. Copies are then served on the following parties:

The **alleged mentally ill inmate**; The **inmate's nearest known relative** within NY State; or (If no relative w/in State) **any known friend of patient who is within the State**. (*NOTE: Above parties must receive these forms at least five days before the Judge acts on the petition. If relative/friend cannot be found, such must be stated on the Petition & on the Order of Commitment.*)
 - b. Copies of Petition, Notice and the two Physician Certificates are given to MHLS.
 - c. Person(s) serving the notice on the prisoner (Section A above) and sending a copy of such notice to MHLS sign an affidavit of such service (Form 402.7). This signature must be notarized.
6. **Commitment Order:** If inmate/relative does not contest the Commitment, the Judge (on or following the return date specified in the original notice) signs commitment order (Form 402.10). If inmate wishes to contest commitment, inmate (on the return date specified in the original notice) requests a hearing. Judge sets a date for the hearing (Form 402.8) which allows inmate preparation time. At this hearing Judge may commit inmate over his protest. Judge then signs Form (402.9) Decision of the Court and (402.10) Order of Commitment.
7. **Hospital Contact:** Corrections and mental health staff with knowledge of the inmate's mental illness contacts Northeast Central RFU to discuss inmate's condition and anticipated time of hospital arrival.
8. **Transport:** The referring county/municipal Sheriff's Department transports inmate to Northeast Central RFU with all required forms. Upon inmate's discharge from Northeast Central RFU, such department transports inmate back to jail. (*See page 6.5 for Northeast Central RFU telephone numbers*)

§402 - Emergency Commitment

Admission Criteria: A sentenced inmate suffers from mental illness which is likely to result in serious harm to himself or others. "Likelihood of serious harm" means:

1. Substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or
2. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

Commitment Duration: A CL §402 Signed Commitment must be initiated immediately by Northeast Central RFU in order for the inmate to remain at Northeast Central RFU.

Emergency and Forthwith: Emergency Commitments in contrast to Forthwith Commitments do not require a court order. They are used to quickly hospitalize inmates who as a result of a serious suicide attempt or a psychotic episode are in imminent danger to themselves or others.

Admission Process: (Typically occurs as soon as the physician examinations are completed and transportation is arranged.)

1. **Medical Certificates: Two physicians** examine inmate and certify that the inmate suffers from a mental illness that is likely to result in serious harm to himself or others as defined in MHL §9.39. Each Physician completes Form 471A (Certification of Examining Physician). (NOTE: Physician may be employed at the correctional facility.)
2. **Petitioner:** Sheriff and/or Superintendent of the Correctional Facility completes Part A of form OMH 471 (Application) to petition for inmate's Northeast Central RFU admission. Additionally, Part B of Form OMH 471 is completed and signed by a Correctional or Mental Health staff member who can detail the behavior of the inmate which leads staff to believe that he is a danger to himself or others due to a mental illness.
3. **Application to Examine:** Sheriff/Superintendent of the Correctional Facility signs form 402.2 (Application for Order to Examine) petitioning the Oneida County Supreme Court (Judge's name left blank) to appoint two physicians to examine inmate upon his arrival at Northeast Central RFU.
4. **Hospital Contact:** Corrections representative and examiner or mental health staff with knowledge of the inmate's mental illness contact Northeast Central RFU to discuss patient's condition and anticipated arrival. Northeast Central RFU telephone number: (315) 736-8271.
5. **Transport:** The referring county Sheriff's Office transports inmate to Northeast Central RFU with all required forms. Upon inmate's discharge, such department transports inmate back to jail. Under current law inmates must be received at Northeast Central RFU within 24 hours of the physician's examination.
6. **Commitment Order:** The above steps essentially authorize the inmate's transfer to Northeast Central RFU and the initiation of the admission process. Upon inmate's arrival at Northeast Central RFU, Northeast Central RFU must initiate the Signed Commitment admission process on behalf of the referring Correctional Facility. This requires a two physician exam. The referring county is liable for the cost of these exams.

§402 – Forthwith Commitment

Admission Criteria: A sentenced inmate is mentally ill and is not able to be properly cared for at the place where he is confined and is in need of immediate care and treatment within a hospital.

Commitment Duration: 6 Months.

Forthwith and Signed Commitments: Forthwith Commitments are very similar to signed Commitments but they do not include the five day notification period. Forthwith is employed when the examining physician believes that inmate is so mentally ill that the five day notice period should be waived. The forthwith proceeding is rarely utilized since the legal proceedings pursuant to this provision are held in the county of the sending facility.

Admission Process: (Typically takes between one to two weeks)

1. **Report of Physician:** A Physician providing services to the correctional facility writes a report (Form 402.1) to the Jail Administrator/Sheriff that an inmate is mentally ill.
2. **Application:** The Jail Administrator/Sheriff petitions his county or Supreme Court to assign two physicians to examine the inmate (Form 402.2).
3. **Order to Examine:** County or Supreme court judge appoints the physicians (Form 402.3), These physicians must meet the following criteria: 1) cannot be employed by the Correction Facility in which the inmate is housed and 2) must be a licensed NYS Physician (not necessarily psychiatrists).
4. **Certificate of Two Physicians and Forthwith Petition:** Two physicians examine inmate and each writes a report (Form 402.4). Additionally, each physician completes Form 402.12 (Petition to Forthwith). Form 402.12 must be notarized.
5. **Notice & Petition:** Same as Signed Commitment but no 5 day waiting period.
6. **Commitment Order:** Judge signs Form 401.12 (Commitment Order). If inmate contests Commitment, the inmate is still admitted to Northeast Central RFU and a hearing date is set. This hearing is held within the county which initiated the hospitalization. The Sheriff or Jail Administrator within such county transports the inmate to the hearing on a date designated by the Judge. At the hearing the Judge may commit the inmate over his objection. Judge then signs Forms 402.9 (Decision of the Court) and 402.10 (Order of Commitment).
7. **Hospital Contact:** Corrections representative and mental health staff with knowledge of the inmate's mental illness contact Northeast Central RFU to discuss inmate's condition and anticipated time of hospital arrival.
8. **Transport:** The referring county/municipal Sheriff's Department transports inmate to Northeast Central RFU with all required forms. Upon inmate's discharge from Northeast Central RFU, such department transports inmate back to jail.

§402 - Admission Process - Observation and Examination

Hospitalizations under this statute are only applicable for sentenced inmates in a New York City (NYC) jail, prison, workhouse, penitentiary or reformatory. They must occur at either Bellevue or King's County hospitals. These admissions are made to obtain examinations as to the inmate's mental condition by two physicians. They are initiated by the Superintendent of a NYC Local Correctional Facility following his receipt of a written report, by a facility physician, that in the physician's opinion the inmate is mentally ill. There is no requirement regarding the duration of this hospitalization but they usually occur for a period of less than thirty days. Pending the outcome of the two physicians examination the patient may be returned to the local correctional facility or a CL §402 Commitment may be initiated.

CRIMINAL PROCEDURE LAW

§730.20 – Competency Exam

General Description

Examination of a criminal defendant (arraigned but not sentenced) to determine if the defendant is incapacitated. An “incapacitated person” is a defendant who as the result of mental disease or defect lacks the capacity to understand the proceedings against him or to assist in his own defense.

Required Forms & Documents: *(See Chapter 7 for forms)*

1. Order of Examination To Determine If Defendant Is An Incapacitated Person.
2. AHR §704 Examination Report.

Cost of Examination: County Responsibility.

Examination Setting: Most exams are conducted within a local outpatient setting. For incarcerated persons, such outpatient settings include the jail. If hospital confinement is necessary to complete the exam, it may be provided within a local or state hospital.

Sheriff Guard: If defendant is in Sheriff’s custody at the time of the order and if the exam is provided within an inpatient setting, the Sheriff must provide 24-hour guard coverage for the defendant during hospital stay.

Examination Process:

1. The issue of a defendant’s competency is brought up during the trial or sentencing process. This issue is usually raised by the defense attorney.
2. **Court Order:** A criminal court, wherein a criminal action is pending against a defendant, orders a CPL §730.20 exam.* This order is usually directed to the County Director of Mental Health Services (DCS). However, it may be directed to the director of a state hospital operated by the Office of Mental Health or the director of a local governmental unit hospital which has been certified by the Commissioner as having adequate facilities to provide this exam.
3. **Facility Designation:** Upon receipt of the examination order, the DCS or another appropriate director to whom the order for exam was issued designates the inpatient or outpatient facility where the exam will be rendered. Hospital confinement is for a period not exceeding 30 days, unless further time is authorized by the Court.

Examiners: Upon receipt of the examination order the director designates appropriate examiners. Appropriate examiners include two psychiatrists, or two psychologists or one from each discipline.

Examination: The designated examiners either independently or collectively examine defendant. Each examiner completes Form AHR §704 and returns it to the above director. If the examiners are not unanimous in their opinion, the director must designate another qualified psychiatrist to examine the defendant. Upon receipt of the exam reports, the director submits them to the Court that issued the order of exam.

4. **Hospital Confinement:** Hospital confinement for the exam may be for a period not exceeding 30 days, unless further time is authorized by the court.
5. **Disposition:** Court reviews the examination reports and issues its findings. Defendants found fit to proceed continue with the trial process. Defendants found not fit to proceed are hospitalized under the appropriate section of the CPL §730.20 Law.

* Forms related to CPL §730 proceedings can be found in “West/McKinney’s Forms, CPL, West Publishing Co., St. Paul, Minn.

CRIMINAL PROCEDURE LAW

§730.40 and §730.50 Commitments

General Description

CPL §730.20 and §730.50 provide for the psychiatric commitment of incapacitated defendants. CPL §730.40 is used for hospitalizing defendants judged incapacitated prior to indictment or sentencing. There are two types of commitments under CPL §730.40. Final Order of Observation and Temporary Order of Observation. The Final Order is used for committing defendants charged with misdemeanors or violations, while the Temporary Order is employed in committing defendants charged with a felony. Final Orders may also (upon the written consent of the District Attorney) be issued for defendants charged with a felony. CPL §730.50 is used for committing incapacitated defendants who have been indicted or convicted on a felony charge but who have not yet been sentenced.

Required Forms and Documents: *(See Chapter 7 for forms)*

Appropriate Local or Superior Court Order:

1. Temporary Order of Observation
2. Final Order of Observation or;
3. Order of Commitment

Cost of Hospitalization: County Responsibility.

Hospital Setting

Final Order, usually State Civil PC

Temporary Order and Order of Commitment – Mid-Hudson Forensic PC, Kirby Forensic PC or the Regional Forensic Units.

Sheriff Guard Coverage: None

Commitment Process

1. **Court Order:** Following the CPL §730.20 exam and a Court finding that a defendant is not fit to proceed, the appropriate Court issues the Court Order: Local Criminal Courts issue §730.40 Final and Temporary Orders and Superior Courts issue CPL §730.50 Commitment Orders or §730.40 Final Orders of Observation.
2. **Facility Designation:** The Court clerk, local correctional facility staff or person with the signed Court Order contacts the NYSOMH Bureau of Forensic Services (518) 474-7219 for the hospital designation.
NYSOMH Bureau of Forensic Services personnel designate the appropriate facility where the incapacitated defendant will be hospitalized. *(See Decision: Ritter vs. Surlles, page 6-20)*
3. **Transport:** Sheriff's Department in the county where the charges were lodged contacts the receiving hospital to discuss arrival time and transports the defendant (with the appropriate Court Order) to the receiving hospital. Upon the discharge of defendants on a Temporary or Commitment Order such department transports the defendant back to jail.

Duration of Hospitalization

§730.40 (Temporary) – Period not to exceed 90 days.

§730.40 (Final Order) – Period not to exceed 72 hours followed by either release or conversion to Legal Status Article 9 of MHL. *(see Ritter vs Surlles on page 6-20)*

§730.50 (Commitment) – Period not to exceed 1 year.

730.40 and 730.50 Commitments

Hospital Discharge

§730.40 (Final) – Discharge to the community and charges are dismissed with the order.

§730.40 (Temporary) – Discharged to the Sheriff's Dept. in the county where charges were lodged to proceed with the trial process.

§730.50 Commitment – Discharged to the Sheriff's Dept. to proceed with the trial process.

NOTE: Decision in Ritter vs. Surles: Justice John C. Marbach of State Supreme Court, Westchester County decided the case of Ritter vs. Surles. In this case, the court addressed the constitutional aspects of Criminal Procedure Law (CPL) Section 730 pertaining to misdemeanor defendants found incompetent to stand trial.

Briefly, CPL Sections 730.40 (1) and 730.50 (1) direct local criminal and superior courts to issue a Final Order of Observation or Commitment when a defendant is charged with a misdemeanor offense and is determined to be an incapacitated person. The issuance of a Final Order of Observation or Commitment dismisses the accusatory instrument against the defendant and commits the defendant to the custody of the Commissioner for a period not to exceed ninety (90) days. In this case, the court held that automatic commitment of individuals, no longer subject to the criminal prosecution, was unconstitutional. Further, the court held that a determination that these individuals meet the civil commitment standard must be made in order for continued involuntary custody by OMH. In addition to this finding, the court ruled that subjecting these individuals to administrative proceedings reserved for criminal defendants in accordance with 14NYCRR Part 540 was also unconstitutional.

Individuals subject to a Final Order of Observation or Commitment need to be evaluated for the purpose of determining their need for continued involuntary care and treatment. Those individuals not meeting the civil commitment standard should either be converted to a voluntary legal status or released. Those individuals subject to a Final Order of Observation or Commitment and awaiting admission to an OMH facility should be evaluated to determine the need for involuntary care and treatment within 72 hours of admission. Facilities are required to notify mandated authorities but not delay implementation of the status change.

CRIMINAL PROCEDURE LAW DESIGNATION PROCEDURES**Procedural Overviews**

The Bureau of Forensic Services (BFS) is responsible for designating individuals committed to the custody of the Office of Mental Health pursuant to the provisions of Criminal Procedure Law (CPL) to appropriate facilities and programs. The primary objective in performing this function is to place CPL patients in settings which are consistent with both public safety and treatment concerns.

Once a local criminal or superior court has issued an Order under the provisions of the CPL, local correctional facility or court personnel contact BFS at (518) 474-7219 to request a facility designation. The following information must be provided to BFS:

- Name
- NYSPIN
- DOB
- Address
- Order Type/Effective Date
- Court/Judge
- Docket/Indictment/Charges
- Commissioner Designated
- Outstanding Warrants
- Medical Problems
- Caller's Name
- Caller's Location
- Caller's Telephone

The decision on where an individual is placed is based on five factors:

1. Type of CPL Order
2. Individual's most recent address
3. History of conviction for violent crimes against persons
4. Facility census levels
5. Presence of outstanding warrants or other detainers

Designations are generally completed by BFS within one hour of the initial call from the local correctional facility. Once a facility designation has been determined, BFS informs the local correctional facility or court contact person by telephone and notifies the designated facility. The local correctional facility then must:

1. Contact the designated facility Admission Service to arrange for a mutually convenient time for transfer of custody.
2. Transport the patient with the original CPL order and available clinical documents (including examination reports) to the facility at the agreed upon time. In view of prevalence of HIV and tuberculosis among inmates, information as to precautions and current medical status should also be delivered to the designated facility.
3. Forward copies of the order and examination reports to the Bureau of Forensic Services, Office of Mental Health, 44 Holland Avenue, Albany, NY 12229.

CRIMINAL PROCEDURE LAW

§250.10 – Examination of a Defendant Upon Application of Prosecutor

General Description

Examination of a criminal defendant to provide the district attorney with independent psychiatric evidence in connection with a defendant's affirmative defense of lack of criminal responsibility by reason of mental disease or defect.

Required Forms

Examination Order; No specified format for the examination report.

Cost of Examination: County Responsibility.

Sheriff Guard: Only required if exam is provided in an inpatient setting for a defendant who is in Sheriff's custody.

Examination Setting and Process

If the defense attorney intends to present psychiatric evidence in connection with a defendant's affirmative defense of lack of criminal responsibility by reason of mental disease or defect, the district attorney may then apply to the court for an order directing the defendant to submit to an examination. In New York State, the defendant's attorney has the burden of affirmatively raising and supporting the defense of not responsible by reason of mental disease or defect. A defense of "not responsible" must be supported by formal psychiatric testimony which proves by a preponderance of the evidence that the defendant, by virtue of mental disease or defect was unable to 1) appreciate the consequences of his/her criminal behavior and/or 2) know that such behavior was wrong. This examination may be provided by a psychiatrist or a licensed psychologist designated by the district attorney. The psychiatrist or psychologist named in the order is given the discretion to identify the time and place of the examination. These exams are usually conducted by county mental health staff on an outpatient basis (including the jail if the defendant is in Sheriff's custody).

This statute does not provide the authority to mandate the defendant's involuntary hospitalization. However, in those instances where a defendant is hospitalized pursuant to another legal mandate, examination under §250.10 may be conducted during that period of hospitalization. The cost for conducting the examination under these other circumstances remains a county responsibility.

CRIMINAL PROCEDURE LAW

§330.20 – Examination and §330.20 – Commitment, Civil Commitment

General Description

Examination and commitment of a defendant who subsequent to a trial verdict or a plea was found not responsible for his/her criminal actions by reason of mental disease or defect.

Required Forms: *(See Chapter 7 for forms)*

Examination

1. Form A Examination Order (Inpatient Examination), or Form B Examination Order (Outpatient Examination).
2. Form Y Examination Report by Qualified Psychiatric Examiner.

Commitment

1. Civil Commitment Order Form F.
2. Commitment Order Form G.

Costs of Examination and Commitment

Exam/Commitment	Responsibility
Civil Commitments	Patient
CPL §330.20 Commitments	Patient
CPL §330.20 Exam (Inpatient)	Patient
CPL §330.20 Exam (Outpatient)	Under current practices the state covers the costs of these exams when they are performed at a state outpatient program.

Sheriff Guard Coverage: None

Examination & Commitment Process

1. **Examination Order:** Subsequent to a finding of not responsible by reason of mental disease or defect, the Court must issue an order for an examination pursuant to CPL §330.20. This order specifies where the examination is to be performed, either in a secure forensic facility or at an outpatient clinic.
2. **Facility Designation:** Subsequent to the signing of the exam order by the Court, the Court clerk, local correctional facility staff must contact the NYS OMH Bureau of Forensic Services (BFS) (518) 474-7219. The BFS will designate the appropriate facility for the examination.
 Appropriate Facility: Outpatient exams are conducted within a State PC Outpatient Clinic. Inpatient exams are conducted at Mid-Hudson Forensic PC, Kirby Forensic PC or a Regional Forensic Unit.
3. Court clerk forwards a copy of the exam order to the Mental Hygiene Legal Service (MHLS) and other persons named on the examination order and a copy of the following documents to the Commissioner and the designated psychiatric examiner:
 - a. Court Order;
 - b. (As applicable) A copy of the indictment;
 - c. A copy of any examination report submitted pursuant to CPL §730, if available;
 - d. Any psychiatric reports or medical records received in evidence at the trial or other proceedings before the Court;
 - e. Any other data or material designated by the Court or requested by the psychiatric examiners including any available and transcribed psychiatric testimony given at the trial or other proceedings before the Court.
 - f. Copies of indictment, police reports, crime scene photos, etc.

§330.20 – Examination and §330.20 – Commitment, Civil Commitment (Continued)

4. **Examiners:** Two qualified psychiatrists or one qualified psychiatrist and one licensed psychologist must conduct the exam.
5. **Duration of Exam:** If exam is performed on an outpatient basis, it must be completed thirty (30) days after the patient first reports to the place of examination. If the exam is performed on an inpatient basis, it must be completed thirty (30) days after the patient's admission to the facility. An additional thirty (30) days may be granted by the court for both inpatient and outpatient examinations if a longer period is necessary to complete the exam, and upon the application of the facility director to the court for such extension.
6. **Examination:** The designated examiners either collectively or independently examine the patient to determine if the patient:
 - a. suffers from a dangerous mental disorder,
 - b. is mentally ill but not dangerous, or
 - c. is not mentally ill.
7. **Disposition:** Court reviews examination reports and issues its findings and disposition:
 - a. Mentally ill with a dangerous mental disorder – Court orders a CPL §330.20 Commitment;
 - b. Mentally ill without a dangerous mental disorder – Court orders a MHL Article 9 Commitment;
 - c. Not mentally ill – released to community either with or without an Order of Conditions.

In New York State, a finding of not responsible by reason of mental disease or defect, by either plea or verdict, is formal adjudication of a criminal proceeding. It is a finding that a defendant is not responsible for criminal conduct as a result of mental disease according to the criteria established in Penal Law §40.15

8. **Facility Designation for Commitments:** If a commitment is ordered either pursuant to CPL §330.20 or Article 9, the court clerk or local correctional facility staff must contact the BFS for a facility designation. Patients committed pursuant to CPL §330.20 will be designated to a secure forensic facility. Patients committed pursuant to Article 9 (MHL) will be designated to a civil psychiatric center.
9. **Duration of Hospitalization:** The initial CPL §330.20 commitment is for a period of six (6) months. A First Retention Order may then be issued for a period of up to one year. All subsequent retention orders are for periods of up to two years. If clinically indicated, the patient may be transferred by court (Transfer Order) to a civil PC at any time after the initial six (6) month commitment period. The initial civil commitment is for a period of up to six (6) months. All subsequent retention orders are issued in accordance with the provisions of Article 9 (MHL).
10. **Release and Discharge:** If the court at any time subsequent to the initial six (6) months commitment period finds that a patient hospitalized pursuant to CPL §330.20 is no longer mentally ill or has a dangerous mental disorder, it must issue a Release Order and an Order of Conditions. This allows the patient to return to the community but remain under the authority of the court for a period of up to five (5) years. When a patient has been on an outpatient status for at least three years, the NYS Commissioner of Mental Health may apply to the court for an order discharging the patient from his/her Order of Conditions. Prior to the expiration of the Order of Conditions the Commissioner of Mental Health may apply to the court for an extension of the existing Order of Conditions for additional five (5) year periods.
11. **Monitoring in the Community:** CPL §330.20 delegates the Commissioner of the Office of Mental Health as the agency responsible for delivering mental health services to and monitoring persons found not guilty by reason of mental disease or defect (NGRI). This rather complex statute governs the care and treatment of NGRI's. It provides for continued judicial oversight of treatment decisions affecting the placement of NGRI's in various treatment settings (secure, non-secure and community based).

The statute also provides for the Commissioner of OMH to apply to the court for an order extending the Order of Conditions for additional five year periods in order to treat at-risk patients who, in the absence of a court order, may discontinue treatment and clinically decompensate. Orders of Conditions are imposed on NGRI's by the court as a means to contain the risks of relapse and recidivism and thereby protect public safety. Monitoring is mandatory for these patients even when clinicians believe that the patient is not in need of traditional psychiatric services.

§330.20 - Examination and §330.20 - Commitment, Civil Commitment (Continued)

Monitoring individuals subject to an Order of Conditions is required by statute and notification to appropriate criminal justice agencies is required by regulations promulgated by the Office of Mental Health. If a patient violates the Order of Conditions, the New York Code of Rules and Regulations (4) requires the service provider, on behalf of the Commissioner, to immediately notify the court and the District Attorney. Even though the statute and regulations do not delineate steps to be taken by the service provider to secure an individual's compliance, good clinical practice dictates that service providers initiate reasonable outreach attempts to engage the patient to secure cooperation with prescribed treatment and compliance with the Order of Conditions. In order to fulfill statutory mandates while simultaneously addressing public safety issues and the treatment needs of NGRI's, it is important for State and local providers to develop a coordinated system for delivering services to NGRI's.

12. **Recommitment:** During the period covered by an Order of Conditions, the Commissioner or the District Attorney may apply to a court of appropriate jurisdiction for a Recommitment Order whenever either is of the opinion that the defendant is suffering from a dangerous mental disorder. A Recommitment Order commits the defendant to a secure facility under the Commissioner's jurisdiction for a period of six months. Since the provisions governing Recommitment Orders require the applicant to give the defendant and his/her attorney 10 day advance notice of application to the court, this process seldom results in the expeditious return of the defendant to custody. In situations that require immediate interventions, clinicians should consider implementing the appropriate sections of the Mental Hygiene Law.

CRIMINAL PROCEDURE LAW

§390.30 – Pre-Sentence Mental Health Examination

General Description

Examination of a defendant anytime prior to sentencing to aid the Court in the sentencing process or other disposition. These examinations provide the court with information regarding a defendant's mental condition. This information is used, along with other relevant data obtained during the pre-sentence investigation, to determine an appropriate sentence, or to assist the court in making dispositions at other points in the criminal process.

Required Forms and Documents

1. (Inpatient exam only) Court Order for a CPL §390.30 Inpatient Examination;
2. No specified format for the examination report.

Cost of Examination: County Responsibility.

Examination Setting: Exams are usually conducted within a locally operated outpatient program but may be conducted at any State or Local Psychiatric Inpatient Facility/Unit (excluding Northeast Central RFU).

Sheriff Guard: (Inpatient examination only) If defendant is in sheriff custody at the time the examination is ordered, the sheriff must provide 24-hour coverage during the inpatient stay necessary to complete the exam.

Examination Process

1. These examinations may be conducted within an outpatient or an inpatient setting. However, most CPL §390.30 exams are administered on an outpatient basis.
2. **Outpatient Exam:** The CPL §390.30 outpatient exam is initiated in three ways. **First**, the court may request the exam as part of its order for a pre-sentence investigation. **Second**, the defense attorney or the District Attorney may request the court to agree to this exam and upon the court's consent, directly refer the defendant to a mental health agency. **Finally**, the probation department during its pre-sentence investigation may determine that such an exam is relevant to the question of the appropriate sentence. The probation department may then directly request a local mental health agency to perform this examination. The outpatient examinations are usually conducted via the County Mental Health Department at a local clinic or if the defendant is incarcerated, at the jail. The qualifications of the examiners are not specified under CPL §390.30. In most localities, however, these exams are administered by a psychiatrist, licensed psychologist or certified social worker.
3. **Inpatient Exam:** The CPL §390.30 inpatient exam is initiated by the court via a formal court order. In such cases the court contacts the appropriate director for the facility designation. Appropriate director includes the director of a State Hospital operated by the Office of Mental Health or the Director of Community Mental Health Services. The facility designated in the court order **must** accept the patient for the purpose of the examination however, the patient need remain at the facility only until such time as the examination is completed, up to maximum of thirty days.

Because the costs attendant to inpatient examination under §390.30 are the responsibility of the county (including per diem hospital costs and in certain cases 24-hour sheriff's coverage), care should be taken to ensure that this method of examination is used only when alternative arrangements such as outpatient examination (as described above) are insufficient.

CRIMINAL PROCEDURE LAW

§33.13 – Clinical Records, Confidentiality

A clinical record for each patient or client shall be maintained at each facility licensed or operated by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities, hereinafter referred to as the offices. The record shall contain information on all matters relating to the admission, legal status, care, and treatment of the patient or client and shall include all pertinent documents relating to the patient or client. The commissioners of such offices by regulation, each shall determine the scope and method of recording information, including data pertaining to admission, legal matters affecting the patient or client, records and notation of course of care and treatment, therapies, restriction on patient's or client's rights, periodic examinations, and such other information as he or she may require.

The commissioners may require that statistical information about patients or clients be reported to the offices. Names of patients treated at outpatient or non-residential facilities, at hospitals licensed by the Office of Mental Health and at general hospitals shall not be required as part of any such reports.

Such information about patients or clients reported to the offices, including the identification of patients or clients, and clinical records or clinical information tending to identify patients or clients, at office facilities shall not be a public record and shall not be released by the offices or its facilities to any person or agency outside of the offices except as follows:

1. pursuant to an order of a court of record requiring disclosure upon a finding by the court that the interests of justice significantly outweigh the need for confidentiality, provided, however, that nothing herein shall be construed to affect existing rights of employees in disciplinary proceedings.
2. to the Mental Hygiene Legal Service.
3. to attorneys representing patients or clients in proceedings in which the patients' or clients' involuntary hospitalization is at issue.
4. to the Commission on Quality of Care for the Mentally Disabled and any person or agency under contract with the commission which provides protection and advocacy services pursuant to the authorization of the commission to administer the protection and advocacy system as provided for by federal law.
5. to the Medical Review Board of the State Commission of Correction when such board has requested such information with respect to the death of a named person, or, with the consent of a patient or client when such board has requested information about the patient or client providing that such board requires such information in the exercise of its statutory functions, powers and duties. Information, books, records or data which are confidential as provided by law shall be kept confidential by the commission and any limitation on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the Medical Review Board.
6. to an endangered individual and a law enforcement agency when a treating psychiatrist or psychologist has determined that a patient or client presents a serious and imminent danger to that individual. The reasons for any such disclosures shall be fully documented in the clinical record. Nothing in this paragraph shall be construed to impose an obligation upon a treating psychiatrist or psychologist to release information pursuant to this paragraph.
7. with the consent of the patient or client or of someone authorized to act on the patient's or client's behalf, to persons and entities who have a demonstrable need for such information and who have obtained such consent, provided that disclosure will not reasonably be expected to be detrimental to the patient, client or another provided, however, that release of such information to a patient or client shall not be governed by this subdivision.
8. to the State Board for Professional Medical Conduct or the Office of Professional Discipline or their respective representatives when such persons or entities request such information in the exercise of their statutory function, power and duties provided, however, that no such information shall be released when it concerns the subject of an inquiry who is also a patient or client, except pursuant to paragraph one of this subdivision.

§33.13 – Clinical Records, Confidentiality (Continued)

9. with the consent of the appropriate commissioner, to;
 - a. governmental agencies, insurance companies licensed pursuant to the insurance law and other third parties requiring information necessary for payments to be made to or on behalf of patients or clients pursuant to contract or in accordance with law, such information to be kept confidential and limited to the information required.
 - b. persons and agencies needing information to locate missing persons or to governmental agencies in connection with criminal investigations, such information to be limited to identifying data concerning hospitalization.
 - c. qualified researchers upon the approval of the institutional review board or other committee specially constituted for the approval of research projects at the facility, provided that the researcher shall in no event disclose information tending to identify a patient or client.
 - d. a coroner, a county medical examiner, or the chief medical examiner for New York City, upon the request of a facility director that an investigation be conducted into the death of a patient or client for whom such record is maintained.
 - e. appropriate persons and entities when necessary to prevent imminent serious harm to the patient or client or another person, provided, however, nothing in this subparagraph shall be construed to impose an obligation to release information pursuant to this subparagraph.
 - f. a district attorney when such request for information is in connection with and necessary to the furtherance of a criminal investigation of patient or client abuse.
10. to a correctional facility, when the chief administrative officer has requested such information with respect to a named inmate of such correctional facility as defined by subdivision three of section forty of the Correction Law or to the Division of Parole, when the Division has requested such information with respect to, a person under its jurisdiction or an inmate of a state correctional facility, when such inmate is within two weeks of release from such institution to the jurisdiction of the Division of Parole. Information released pursuant to this paragraph may be limited to a summary of the record, including but not limited to: the basis for referral to the facility; the diagnosis upon admission and discharge; a diagnosis and description of the patient's or client's current mental condition; the current course of treatment, medication and therapies; and the facility's recommendation for future mental hygiene services, if any. Such information may be forwarded to the department of correctional services staff in need of such information for the purpose of making a determination regarding an inmate's health care, security, safety or ability to participate in programs. In the event an inmate is transferred, the sending correctional facility shall forward, upon request, such summaries to the chief administrative officer of any correctional facility to which the inmate is subsequently incarcerated. The Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities, in consultation with the Commission of Correction and the Division of Parole, shall promulgate rules and regulations to implement the provisions of this paragraph.
11. to a qualified person pursuant to §33.16 of this chapter.
12. to a director of community services as defined in article nine of this chapter or his designee, provided that such director or his designee requests such information in the exercise of his statutory functions, powers and duties pursuant to §9.37, 9.45 or 41.3 of this chapter.

Nothing in this section shall prevent the exchange of information concerning patients or clients, including identification, between (i) facilities or others providing services for such patients or clients pursuant to an approved local or unified services plan, as defined in article forty-one, or pursuant to agreement with the department and (ii) the department or any of its facilities. Information so exchanged shall be kept confidential and any limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information.

§33.13 – Clinical Records, Confidentiality (Continued)

Clinical information tending to identify patients or clients and clinical records maintained at a facility not operated by the offices, shall not be a public record and shall not be released to any person or agency outside such facility except pursuant to subdivisions (b), (c) and (d) of this section. The director of such a facility may consent to the release of such information and records, subject to regulation by the commissioner, pursuant to the exceptions stated in subdivision (c) of this section; provided that, for the purpose of this subdivision, such consent shall be deemed to be the consent otherwise required of the commissioner pursuant to subdivision (c) of this section. Nothing in this subdivision shall be construed to limit, restrict or otherwise affect access to such clinical information or records by the mental health information service, the Commission on Quality of Care for the Mentally Disabled or the offices when such access is authorized elsewhere in law.

Any disclosure made pursuant to this section shall be limited to that information necessary in light of the reason for disclosure. Information so disclosed shall be kept confidential by the party receiving such information and the limitations on disclosure in this section shall apply to such party. Except for disclosures made to the mental health information service, to persons reviewing information or records in the ordinary course of insuring that a facility is in compliance with applicable quality of care standards, or to governmental agents requiring information necessary for payments to be made to or on behalf of patients or clients pursuant to contract or in accordance with law, a notation of all such disclosures shall be placed in the clinical record of that individual who shall be informed of all such disclosures upon request; provided, however, that for disclosures made to insurance companies licensed pursuant to the insurance law, such a notation need only be entered at the time the disclosure is first made.

Section 33.13 of the Mental Hygiene Law provides guidance to the mental health staff in safeguarding the privacy rights of patients and in determining the nature and extent of information that can be released to various persons or agencies. In those instances in which the circumstances of the patient or characteristics of the request for information make a determination difficult, refer to the *Confidentiality Guidebook* provided by the Office of Mental Health. The guidelines most relevant to the circumstances of forensic patients are listed below. In particular cases, other guidelines may be instructive or it may be necessary to seek advice from a staff supervisor or the county attorney.

The following sections of the confidentiality guidelines have particular relevance for forensic patients:

Guidelines	Subject	Page
A	Release of information upon consent of patient	10
B	Release of information pursuant to a court order	12
C	Release of information to the Mental Hygiene Legal Service	13
D	Release of information to attorneys representing a patient	14
N	Release of information to governmental agencies and officers in connection with reporting/investigating of crimes	20
R	Release of information to protect a readily identifiable individual from serious and imminent harm	24
S	Release of information to protect patient or people at large from serious or imminent harm	25
X	Release of information to the Division of Parole	29
Z	Information sharing with other service providers (including aftercare providers)	31
GG	Release of HIV/AIDS information about a patient	40