

Inter-County Association of Western New York

% Steuben County Legislature, 3 East Pulteney Square, Bath, New York 14810

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Representing the Counties of Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming, and Yates

RESOLUTION NO. 010-24

TITLE: MEMORIALIZING THE NEW YORK STATE LEGISLATURE TO REFORM THE STATE'S COMPETENCY RESTORATION PROCESS AND SUPPORT THE PASSAGE OF SENATE BILL S.1874 AND ASSEMBLY BILL A.5063.

WHEREAS, Criminal Procedure Law, §730, provides that defendants charged with felonies, who are mentally ill and/or developmentally disabled and who are determined by a court to be unable to understand the charges against them or participate in their own defense, are sent to New York State-operated forensic hospitals solely for the purpose of trying to restore them to competency so they can stand trial; and

WHEREAS, the original of CPL §730 dates back over five decades to the Laws of 1970, and parts of it have been declared to be unconstitutional; and

WHEREAS, competency restoration provides necessary medications, but primarily provides services such as courtroom training, to familiarize the defendant with courtroom procedures so they can participate in their trial; and

WHEREAS, many judges incorrectly believe that by ordering a §730 commitment, they are helping the mentally ill and/or developmentally disabled defendant to get treatment; and

WHEREAS, for those cases in which restoration is appropriate, most defendants can generally be restored within 90 – 150 days; and

WHEREAS, there are also, unfortunately, numerous situations where defendants have been kept in forensic hospitals for restoration for periods of three, six, or even ten years; and

WHEREAS, these lengthy commitments have been declared unconstitutional by the U.S. Supreme Court, as shown in the case of Jackson v. Indiana (1972), which provides that states may not indefinitely confine criminal defendants solely based on the basis of incompetence to stand trial; and

WHEREAS, the Office of Mental Health (OMH) has diverged from agreements with the county Mental Health Commissioners / Directors of Community Services to provide specific and timely information on the clients/defendants ordered to restoration; and

WHEREAS, the SFY 2020 – 2021 budget required counties to pay 100 percent of the OMH State Operations costs for individuals receiving court-ordered mental health competency restoration services at state-operated forensic psychiatric centers; and

WHEREAS, as the payors of these services, the county Mental Health Commissioners / Director of Community Services must have timely access to any pertinent client information as deemed necessary to effectively manage their responsibilities under the Mental Hygiene Law; and

WHEREAS, the cost to the counties for these services is over \$1,300 per day, and current statute does not require a timeline be established for when a defendant is deemed unable to be restored; and

WHEREAS, the county cost of restoration for one defendant can be upwards of \$400,000 per year; and

WHEREAS, in New York State, counties, through the county tax levy, already bear an overwhelming portion of the financial burden for supporting individuals suffering from serious mental illness, and the requirement to assume 100 percent of the §730 competency restoration costs has taken away millions of dollars from critical behavioral health programming in the community; and

WHEREAS, given the advances in behavioral health and the modernization of the criminal justice system, it is time for New York State to reform the statutory authority governing competency restoration to ensure that only individuals who are appropriate subject of §730 court orders are sent for restoration in accordance with the current state of these two systems; and

WHEREAS, the New York State Legislature has introduced Senate Bill S.1874 (Brouck) and Assembly Bill A.5063 (Gunther), which seeks to address the reforms necessary to update the archaic requirements of the current statute, many of which have been deemed unconstitutional, and includes a critical requirement to invest any savings derived by the counties back into the local mental hygiene systems of care.

NOW THEREFORE, BE IT RESOLVED, that the Inter-County Association of Western New York urges the New York State Legislature to support the following reforms:

- **CPL §730.10**
Shall be modified to make clear that restoration is not mental treatment; so the judiciary is better informed that a 730 order does not treat underlying mental health conditions.
- **CPL §730.20**
Shall be reformed to establish specific criteria for 730 examiners, streamlining the process to establish equity across the system, and that the psychiatrist or psychologist conducting the psychiatric exam tell the court whether or not there is a reasonable chance of restoration, thereby granting the court an opportunity to allow diversion to mental health treatment.
- **CPL §730.20**
Shall adjust the fee for reimbursing psychiatric examiners.
- **CPL §730.50**
Shall limit the time defendants are ordered for restoration services.
- **MHL §9.33**
Shall allow individuals to be transferred to Article 9 facilities if it is determined that a defendant is unable to be restored.
- **MHL §43.03**
Shall require Local Governmental Units (counties) to reinvest savings from these reforms into community mental health services.

; AND BE IT FURTHER

RESOLVED, the Inter-County Association of Western New York, representing 2.9 million citizens in the State of New York, hereby urges the Office of Mental Health to consistently follow their agreements with the county Mental Health Commissioners / Directors of Community Services to provide specific and timely information on the clients / defendants ordered to restoration; and be it further

RESOLVED, copies of this resolution shall be forwarded to the Honorable Kathy Hochul, New York State Governor; the New York State Senate, the New York State Assembly, and the New York State Association of Counties.

STATE OF NEW YORK)

ss.:

COUNTY OF STEUBEN)

I hereby certify that the foregoing is a true and correct transcript of a resolution duly adopted by the Inter-County Association of Western New York while in session in Orleans County on the 21st day of June, 2024.

Dated: July 24, 2024
Bath, New York



Amanda L. Chapman, Secretary
Inter-County Association of Western New York