

Livingston County Board of Supervisors
Geneseo, New York



Resolution No. 2024-215

RESOLUTION CALLING ON MEMBERS OF THE NEW YORK STATE SENATE AND ASSEMBLY TO REFORM THE STATE'S COMPETENCY RESTORATION PROCESS AND SUPPORT THE PASSAGE OF S.1874/A. 5063 IN THE 2024 LEGISLATIVE SESSION

WHEREAS, New York State Criminal Procedure Law ("CPL") Section 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 origin of CPL Section 730 dates back over five decades to the laws of 1970, and parts of it have been declared to be unconstitutional; and

WHEREAS, many judges incorrectly believe that by ordering a 730 commitment, they are helping the mentally ill or developmentally disabled person to get treatment. In reality, while competency restoration does entail providing a defendant with necessary medications, it primarily involved providing services such as courtroom training to familiarize the defendant with courtroom procedures so they can participate in their trial; and

WHEREAS, in the cases for which restoration is appropriate, most defendants can generally be restored within 90-150 days. However, there are also numerous unfortunate situations where defendants have been kept in restoration for periods of three (3), six (6), or even 10 years. These lengthy confinements have been declared unconstitutional by the United States Supreme Court. For instance, in *Jackson v. Indiana* (1972), the Court held states may not indefinitely confine criminal defendants solely on the basis of incompetence to stand trial; and

WHEREAS, the Office of Mental Health ("OMH") has diverged from agreements with 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 2020-21 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. As the full payors of these services, the county commissioners/directors must have timely access to any pertinent client information deemed necessary to effectively manage their responsibilities under the Mental Hygiene Law ("MHL"); and

WHEREAS, the county cost of these services is over \$1,300.00 per day and current statute does not require a timeline be established for when a defendant is unable to be restored. The county cost of restoration for one (1) defendant can be upwards of \$400,000.00 per year. In 2023 alone, Livingston County paid \$34,562.50 in evaluation costs and \$625,362.56 in restoration costs; and

WHEREAS, 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. The requirement to assume 100% of 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 the State to reform the statutory authority governing competency restoration to ensure that only individuals who are appropriate subjects of 730 court orders are sent for restoration; and

WHEREAS, the Legislature has introduced S.1874 and A.5063 which seek to address the reforms necessary to update the archaic requirements of current statute, many which have been deemed unconstitutional. These bills include a critical requirement to reinvest any savings derived by the counties back into the local mental hygiene systems of care; now, therefore, be it

RESOLVED, the Livingston County Board of Supervisors calls on the State to support all provisions outlined in S.1874 and A.5063, including the following modifications to the Criminal Procedure Law and Mental Hygiene Law:

1. CPL Section 730.10 shall be modified to make clear restoration is not mental health treatment to better inform the judiciary a 730 order does not involve the treatment of underlying mental health

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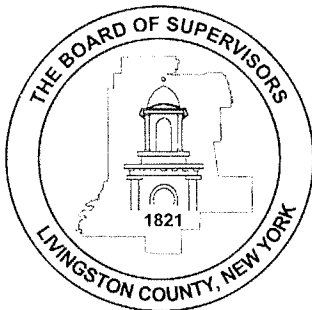
- conditions;
2. CPL Section 730.20 shall be reformed to establish specific criteria for 730 examiners thereby streamlining the process to establish equity across the system, and to require the psychiatrist or psychologist conducting the psychiatric exam to tell the court whether there is a reasonable chance of restoration thereby granting the court an opportunity to allow diversion to mental health treatment;
 3. CPL Section 730.20 shall adjust the fee for reimbursing psychiatric examiners;
 4. CPL Section 730.50 shall limit the time defendants are ordered for restoration services;
 5. MHL Section 9.33 shall be modified to allow individuals to be transferred to Article 9 facilities if it is determined a defendant is unable to be restored; and
 6. MHL Section 43.03 shall be revised to require counties to reinvest savings from these reforms into community mental health services; and be it further

RESOLVED, that the Clerk of the Board of Supervisors shall forward certified copies of this Resolution to Governor Kathy Hochul, Senator Pam Helming, Assemblywoman Marjorie Byrnes, the New York State Association of Counties and all others deemed necessary and proper.

Dated at Geneseo, New York

July 10, 2024

Human Services Committee



This is to Certify that I, the undersigned, Clerk of the Board of Supervisors of the County of Livingston, have compared the foregoing copy of resolution with the original resolution now on file in this office and which was duly adopted by the Board of Supervisors of said County on the 10th day of July, 2024 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof I have hereunto set my hand and the official seal of the Board of Supervisors of the County of Livingston, this 10th day of July, 2024.

Michele R. Rees, Clerk of the Board