



## HERKIMER COUNTY LEGISLATURE

No. 203

### **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 (BROUK) / A. 5063 (GUNTHER) IN THE 2024 LEGISLATIVE SESSION**

**Sponsored by: Committee on Administration/Veterans' Affairs  
Committee on Human Resources**

WHEREAS, section § 730 of the Criminal Procedure Law (CPL) 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 (often called "730's") 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 § 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 or developmentally disabled person to get treatment; and

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

WHEREAS, unfortunately, there are also numerous situations where defendants have been kept in restoration for periods of three, six, or even 10 years; and

WHEREAS, these lengthy confinements have been declared to be 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 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 2020-21 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; and

WHEREAS, as the full payors of these services, the commissioners 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 county cost of these services is over \$1,300 per day and current statute does not require a timeline be established for when a defendant is 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% of 730.20 competency restoration costs has taken away millions of dollars from critical behavioral health programming in the community; and

WHEREAS, given the advances in the 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 in accordance with the current state of these two systems; and

WHEREAS, the Legislature has introduced S.1874 (Brouk)/A.5063 (Gunther), which seeks to address the reforms necessary to update the archaic requirements of current statute, many which have been deemed unconstitutional and includes 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, CPL § 730.10 shall be modified to make clear that restoration is not mental health treatment, so the judiciary is better informed that a 730 order does not treat underlying mental health conditions; and, be it further

RESOLVED, 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; and, be it further

RESOLVED, OMH will 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, CPL § 730.20 shall adjust the fee for reimbursing psychiatric examiners; and, be it further

RESOLVED, CPL § 730.50 shall limit the time defendants are ordered for restoration services; and, be it further

RESOLVED, 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; and, be it further

RESOLVED, 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, Herkimer County calls on the State to support all provisions outlined in S.1874 (Brouk)/A.5063 (Gunther); and, be it further

RESOLVED, that certified copies of this Resolution be forwarded to Governor Kathy Hochul, Assemblyman Brian Miller, Assemblyman Robert Smullen, Senator Mark Walczyk, Senator Joseph A. Griffo, New York State Association of Counties, and Director of Community Services.

Dated: June 12, 2024.

STATE OF NEW YORK            )  
COUNTY OF HERKIMER        )     SS.  
LEGISLATURE CHAMBERS       )

I, BRITTNEY R. VISCOMI, Clerk of the Legislature of Herkimer County, do hereby certify that I have compared the foregoing copy of Resolution No. 203 with the original duly adopted by the Herkimer County Legislature at a regular session held on the 12<sup>th</sup> day of June, 2024, and that the same is a true copy of said original and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said Legislature on this 13<sup>th</sup> day of June, 2024.

L.S.

 \_\_\_\_\_, Clerk