



**Memorializing petition by  
Oneida County  
Board of Legislators**

F.N. 2024 XXX

**MEMORIALIZING PETITION calling on members of the New York State Senate and Assembly to reform the state's competency restoration process and support the passage of appropriate modifications to the Criminal Procedure Law and Mental Hygiene Law**

**Cosponsors: Boucher**

**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 more than 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 psychiatric examination or commitment pursuant to CPL Section 730, 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 involves 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, six or even 10 years. These lengthy confinements have been declared unconstitutional by the U.S. Supreme Court. For instance, in *Jackson v. Indiana* (1972), the Court held states may not indefinitely confine criminal defendants solely based on incompetence to stand trial; and

**WHEREAS**, the New York State Office of Mental Health ("OMH") has diverged from agreements with county mental health commissioners/directors of community services ("DCS") to provide specific and timely information on the clients/defendants ordered 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 mental health commissioners/DCS's 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 2024 Oneida County cost of these services averages \$1,588.54 a day for adults and the 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 defendant can be more than \$500,000 a year. In 2023 alone, Oneida County paid \$37,985 in psychiatric examination costs and \$5,942,170 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 hereby

**RESOLVED**, the Oneida County Board of Legislators 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:

- 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 conditions;
- CPL Section 730.20 shall be reformed to establish specific criteria for 730 psychiatric 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;
- CPL Section 730.20 shall adjust the fee for reimbursing psychiatric examiners;
- CPL Section 730.50 shall limit the time defendants are ordered for restoration services;
- 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
- MHL Section 43.03 shall be revised to require counties to reinvest savings from these reforms into community health services; and be it further

**RESOLVED**, that the Clerk of the Board of Legislators shall forward copies of this petition to Governor Kathy Hochul, Senator Joseph A. Griffo, Assembly members Brian D. Miller, Marianne Buttenschon, Ken Blankenbush and Robert Smullen, the New York State Association of Counties, and all others deemed necessary and proper.

Sept. 11, 2024