

Chapter 3

New York State Laws and Options Open to Mental Health Staff

INTRODUCTION

The role played by the mental health clinician in local correctional settings can be pivotal for the inmate with mental illness, the mental health agency, and for the criminal justice system.

In order to function effectively in this environment, the clinician must not only be skilled at diagnosis, assessment and crisis intervention, but must also be knowledgeable of the various legal restrictions and alternatives governing the person with mental illness within the criminal justice system. To accomplish this, the worker:

- | must be aware of the relevant laws which govern the mental health and criminal justice systems in New York State; and
- | must develop good working relationships with not only the jail/lockup staff but also with the district attorney and his/her staff, the local justices and magistrates and with local probation, alternatives to incarceration and parole officials.

It is through these working relationships that the clinician can become knowledgeable about the options available to inmates with mental illness as they are affected by local policies and procedures.

This chapter of the handbook is designed to familiarize mental health staff with the laws that affect the care, treatment, and management of persons with mental illness who are involved in the Criminal Justice System. It includes a description of these laws and reviews the subdivisions within each law which govern psychiatric inpatient commitments and court ordered assessments. In this review, the purpose, liability, and treatment setting requirements applicable to each commitment and assessment are described. Additionally, the impact of various legal alternatives (e.g. bail, probation) on hospitalization of adults involved with the Criminal Justice System is explained. The required procedures and forms necessary to effect inpatient commitments and court ordered assessments are described in Chapters 6 and 7 of this manual.

MAJOR NEW YORK STATE LAWS GOVERNING FORENSIC PATIENTS

Forensic staff should be familiar with four areas of New York State law: Mental Hygiene Law (MHL), Criminal Procedure Law (CPL), Penal Law (PL), and the Correction Law (CL). An annotated version of each is contained within the McKinney's Consolidated Laws of New York. These laws, as illustrated in Chart I, provide the general statutes governing New York's mental health, judicial, and correctional systems and include specific statutes which must be used in hospitalizing forensic patients or in conducting court ordered examinations.

MENTAL HYGIENE AND CORRECTION LAW COMMITMENTS

Description

Psychiatric commitments pursuant to the MHL and CL are intended for persons who have a mental illness for which inpatient care and treatment in a hospital is appropriate. The primary reason for these commitments is to address the service needs of the patient and to protect society.

The Mental Hygiene Law commitment statutes are used when hospitalizing the following patients:

- | Civil patients;
- | Pre-arraigned persons: includes persons incarcerated within police lockups as well as persons released from or not placed within police custody during the pre-arraignment period;
- | Arraigned but not sentenced persons who are released from sheriff custody during the pretrial or pre-sentence period;
- | Persons sentenced on probation or parole within the community;
- | [CPL §330.20](#) (7) Civil Patients: persons found not responsible for a criminal offense by reason of mental disease or defect who are mentally ill but no not have

a dangerous mental disorder.

1 [CPL §330.20](#) patients released on an Order of Conditions and an Order of Release who during their conditional release period are in need of inpatient care and treatment but who do not have a dangerous mental disorder.

The Correction Law commitment statutes are used when hospitalizing persons who are in need of care and treatment and who are incarcerated within county/ municipal jails or state prisons. Prisoners who are arraigned but non-sentenced are hospitalized pursuant to [CL §508\(3\)](#). Sentenced prisoners and parole violators are hospitalized pursuant to [CL §402](#). Probation violators detained within jail

are hospitalized pursuant to [CL §508](#). The CL commitments are very similar to the MHL commitments. In fact, (with the exception of [CL Section §402\(2\)](#) which is only applicable to New York City) the MHL Article 9 Admission criteria must be met for hospitalizations under both of the CL commitment statutes. There are three ways in which prisoners can be hospitalized pursuant to [CL §508](#) and four ways, including [CL §402\(2\)](#), in which they can be hospitalized under [CL §402](#). These different provisions enable both non-sentenced and sentenced prisoners to be hospitalized on either an emergency or non-emergency basis.

FINANCIAL LIABILITY AND TREATMENT SETTING

CHART I

Mental Hygiene, Criminal Procedure, Penal and Correctional Laws:
General Purpose and Statutes Governing Psychiatric Hospital Commitments and Court Ordered Examinations Applicable to the Adult Forensic Patient

LAWS				
	Mental Hygiene Law	Criminal Procedure Law	Penal Law	Correction Law
General Purpose	Standards and Procedures for the administration and delivery of services to persons with a mental disability.	Standards and Procedures for criminal pre-trial, trial and appeal proceedings and legal alternatives to incarceration (e.g., bail, appearance ticket).	Standards and Procedures for infractions, misdemeanors, and felony offenses.	Standards and Procedures for the administration and establishment of state and local correctional facilities and other programs for prisoners.
Statutes Governing Court Ordered Examinations	None	CPL §730.20, 250.10, 330.20 , 390.30. Court ordered exams associated with the defendant's criminal proceedings.	None (PL §40.15 provides legal criteria for mental disease or defect.)	None
Statutes Governing Psychiatric Hospital Commitments	Article 9 Civil Psychiatric Commitment Standards for persons in need of care and treatment.	CPL §730.40, 730.50 and 330.20 . Court ordered psychiatric commitments associated with the defendant's criminal proceedings.	None	CL §508 and 402 Psychiatric commitment standards for incarcerated persons who are in need of care and treatment.

FOR CORRECTIONS LAW ADMISSIONS

The liable party for the costs of hospitalizations pursuant to the MHL and the CL and the treatment settings where these hospitalizations may occur are illustrated below:

CHART II

Financial Liability and Treatment Setting for CL Admissions

** Costs for Sheriff guard coverage during hospitalization rests with sending county.*

Commitments	Financial Liability for Hospital Services	Treatment Settings
MHL Article 9	Patient responsible	State or local civil PC
CL §508 (3)	Admissions to State PC and State Regional Forensic Units: County responsible for hospital costs	State or local civil PC* Regional Forensic Unit
CL §402	for Upstate & Long Island State responsible	Central New York Psychiatric Center
	for NYC Region County responsible	Bellevue of Kings County Hospitals

CPL COMMITMENTS AND COURT ORDERED
MENTAL HEALTH EXAMINATIONS**Description**

The Mental Hygiene and Correction law commitment statutes are utilized in response to the person's treatment needs. In contrast, the Criminal Procedure law commitment and examination statutes are intended to assist with criminal proceedings. These commitments and examinations can occur only following a court order and pertain to:

- | The issue of fitness to proceed with the criminal process;
- | A plea or finding of not responsible for a criminal offense by reason of mental disease or defect; or
- | The pre-sentence investigation.

The specific examination and commitment statutes which relate to these issues and the legal status of patients who may be served under each statute are outlined on the following pages:

STATUTE	LEGAL STATUS
FITNESS TO PROCEED (CAPACITY)	
<p>The issue of a defendant's capacity to stand trial may be raised by the Court, the defense attorney or the district attorney. Capacity applies to both felony and misdemeanor defendants. Consistent with the Ritter v. Surles decision rendered in Supreme Court, County of Westchester, when the defendant is charged with a misdemeanor and determined to lack capacity to stand trial, the charges are dismissed and, following the issuance of a final order of observation, individuals are only hospitalized for a period of up to 72 hours unless it is determined that they meet the MHL hospitalization admission criteria. When defendants charged with felonies are determined to lack capacity to stand trial, the Commissioner is required by statute to take custody of the defendant for the purposes of restoring his/her capacity to stand trial. By virtue of the obligation to maintain custody status during the period of treatment, the OMH places these defendants in secure forensic facilities.</p>	
<p>CPL §730.20 (Capacity Exam) – Mental health exam ordered by court to determine if a person is incapacitated (lacks the capacity to understand the proceedings against him or to assist in his own defense).</p>	<p>Arraigned, charged, indicated and/or convicted (violation, misdemeanor or felony)</p>
<p>CPL §730.40 (Final Order of Observation) – Psychiatric commitment ordered by a local criminal court for an incapacitated person. The defendant's charges are dismissed with the issuance of this order.</p>	<p>Arraigned and charged (violation or misdemeanor)</p>
<p>The defendant is then hospitalized for a period of up to 72 hours for determination of whether continued hospitalization is needed under the Mental Hygiene Law.</p>	
<p>CPL §730.40 (Temporary Order of Observation) – Psychiatric commitment ordered by local criminal court for an incapacitated person. Charges are not dismissed. The primary purpose of this commitment is restoration of competency and return to court for the criminal proceedings. Order is valid for 90 days from date of issuance.</p>	<p>Arraigned and charged but not indicated (felony)</p>
<p>CPL §730.50 (Order of Commitment) – Psychiatric commitment ordered by a superior court for an incapacitated person charged with or convicted of a felony. Charges are not discussed with the issuance of this order. The primary purpose of this commitment is restoration of capacity and return to court for the criminal proceedings. Order is valid for 1 year from date of issuance.</p>	<p>Indicted or convicted but not sentenced (felony)</p>
<p>This statute provides for a felony defendant committed pursuant to this part to be retained in the custody of the Commissioner for the purpose of restoring capacity to stand trial for a period not to exceed two-thirds of the authorized maximum term of imprisonment for the highest class felony charged in the indictment. Upon reaching two-thirds of the maximum sentence, the District Attorney must certify that the defendant has been retained under CPL §730.50 for the requisite period. At that point the indictment is dismissed and the Commissioner must either release the defendant or convert the defendant's legal status according to the provisions of the Mental Hygiene Law.</p>	

STATUTE

LEGAL STATUS

The 1972 U.S. Supreme Court decision **Jackson v. Indiana** pertains to defendants committed to OMH custody under this part. In deciding the case of Theon Jackson, the Supreme Court limited the period of time that a defendant could be held in custody under capacity statutes. While the court did not set a specific period of time that a defendant could be held, it did establish a standard for continued retention. Specifically the Court stated that such defendants “cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that (s)he will attain capacity in the foreseeable future.”

In NYS, a defendant afforded relief under **Jackson v. Indiana** must either be discharged from the Commissioner’s custody or converted to a legal status in accordance with the provisions of Articles 9 or 15 of the Mental Hygiene Law. Relief under Jackson v. Indiana does not automatically result in the dismissal of the accusatory instrument.

[CPL §730.50](#) (Final Orders of Observation) – Psychiatric commitment ordered by a superior court for an incapacitated person charged with or convicted of a violation or misdemeanor. **Charges are dismissed** with the issuance of this order and upon hospital discharge the person is returned to the community.

Indicted or convicted
but not sentenced
(violation or misdemeanor)

NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT
(AS DEFINED IN [PL §40.15](#))

[CPL §250.10](#) (**Notice of Intent to Proffer Psychiatric Evidence, Examination of Defendant Upon Application of Prosecutor**) – Mental health exam ordered by the court to provide the District Attorney with psychiatric evidence in connection with a defendant’s affirmative defense of lack of criminal responsibility by reason of mental disease or defect.

Arraigned and charged
(violation or misdemeanor)

[CPL §330.20](#) (**Exam**) – Mental health exam ordered by the court following its acceptance or finding that a defendant is not responsible by reason of mental disease or defect. The purpose of the exam is to determine if the person has a dangerous mental disorder, is mentally ill but does not have a dangerous mental disorder or is not mentally ill.

Charges resolved via finding
of not responsible by reason
of mental disease or defect.

[CPL §330.20](#) (**Order of Commitment**) – Initial Psychiatric commitment ordered by the court for six months following its finding that a person has a dangerous mental disorder. Defendant is placed in a secure facility.

Charges resolved via finding
of not responsible by reason
of mental disease or defect.

[CPL §330.20](#) (**7) Civil Commitment** – Initial Psychiatric Commitment ordered by the court following its finding that a person with mental illness does not have a dangerous mental disorder. Further retention, release or discharge of these patients is in accordance with the Mental Hygiene Law. Defendant is placed in non-secure facility. Person is also subject to Court Order of Commitment.

STATUTE**LEGAL STATUS**

PRESENTENCE

[CPL §390.30 \(Exam\)](#) – CPL §390.30 pertains to the gathering of information to assist the court in imposing a sentence on a convicted defendant. CPL §390.30 includes provisions for psychiatric exam as part of the information gathering. A defendant may be confined in a psychiatric hospital for a period of 30 days. The purpose of this report is to provide the court with information regarding the defendant's mental status which may impact on its sentencing disposition.

Court decisions (*People v. Crosby*, 1976; *People v. Spagna*, 1981) have extended the application of CPL §390.20 and its related sections to the prepleading and transitional phases of felony cases in the local criminal court process. As a result of these rulings, an examination pursuant to CPL §390.30 can be ordered at any point in the process prior to sentencing. These decisions recognized the lack of any statutory prohibition for such application in CPL §390.20 and concluded that "strong public policy considerations mandate a prepleading investigation and report whenever it will reasonably aid in expediting the administration of justice: (*People v. Crosby*).

FINANCIAL LIABILITY AND TREATMENT SETTING FOR CRIMINAL PROCEDURE LAW EVALUATIONS

The party liable for the costs of hospitalization or examination pursuant to the Criminal Procedure law and the treatment settings where such hospitalizations and examinations may occur are illustrated below: **NOTE: As indicated below, counties are liable for the costs associated with specific CPL Examinations and Commitments.** If the CPL exam is performed within a locally operated program, the county assumes 100% responsibility for the costs associated with this exam. However, for commitments and exams occurring within a state PC the county is billed at a pre-established unified or local service program rate and therefore pays only a percent of the actual cost. The remaining portion is assumed by the state.

CHART III Financial Liability and Treatment Setting for CPL Evaluations

Commitment Exam	Financial Liability for Hospital Service and Examination	Treatment Setting
Fitness to Proceed		
CPL §730.20 (Capacity Exam)	County*	Usually provided at a county operated mental health program. Most exams are performed within an outpatient setting (including the jail) but may as authorized by the appropriate Director of Community Services (DSC) or psychiatric hospital director be performed within an inpatient setting.
CPL §730.40 (Final) and §730.50 (Final) Order of Observation	Patient	Usually State Civil PC
CPL §730.40 (Temp.) CPL §730.50 (Order of Commitment)	County	Usually State Forensic PC/Unit
Not Responsible		
CPL §250.10 (Inpatient Exam)	County*	Usually w/in local outpatient setting (including jail). Rare, but may be performed at local/state PC if hospitalization is necessary for exam.
CPL §330.20 (Outpatient Exam)	**	Usually State outpatient setting.
CPL §330.20 (Commitment)	Patient	State Forensic PC/Unit
CPL §330.20 (7) (Civil Commitment)	Patient	State Civil PC
Pre-Sentence Investigation		
CPL §390.30 (Exam)	County*	Same as CPL §250.10 (Exam)

* Costs for Sheriff guard coverage during hospitalization rests with sending county.

** Under current practices the State covers the cost of the CPL 330.20 outpatient exam when it is performed at a State outpatient program.

LEGAL ALTERNATIVES AND THEIR IMPACT ON PSYCHIATRIC HOSPITALIZATION

The range of options open to the clinician in hospitalizing a criminal justice client is dependent upon the client's legal status and the client's eligibility for the various legal alternatives (e.g., appearance ticket, probation) that are available for managing the client within the criminal justice system. The use of these alternatives may avoid unnecessary police/sheriff guard coverage during the hospitalization period and result in the patient being placed in a more appropriate (secure vs. non-secure) hospital setting. Clinicians should work with police and correctional administrators, the defense attorney, the district attorney's office, probation and parole departments, and judges to determine local practices governing utilization of these alternatives and, as applicable to determine if they are appropriate for a particular patient. These alternatives and their impact on the criminal justice client's hospitalization during the pre-arraignment, pre-sentenced and sentencing or post-sentencing stages of the criminal justice process are described below and illustrated in Chart IV on page 10.

Pre-Arraignment

This is the period between the arrest of a person and the person's appearance before a judge for arraignment on a criminal charge. During this period, the person (if eligible) may be issued an appearance ticket and allowed to remain at liberty in the community or may be detained in a police lockup or county jail.

Court Appearance Ticket: The issuance of an appearance ticket means that the police do not have to maintain custody of the alleged offender. This option is only applicable as local practice permits for persons charged with violations or misdemeanors. (See [CPL Article 150](#) for appearance ticket criteria and consult with police chief for local practices.) Persons on court appearance tickets may be hospitalized pursuant to MHL Article 9 and do not require police guard coverage.

Incarcerated within the Police Lockup: Persons incarcerated within police lockups during their pre-arraignment period may be hospitalized pursuant to MHL Article 9 and with 24 hour police coverage. These hospitalizations are rarely used due to the staffing problems they present for police agencies and the complications associated with police presence on mental health units of community hospitals. Therefore, in situations where a police lockup prisoner requires hospitalization clinicians should work with their

local police to determine if the detainee could be released on an appearance ticket or immediately arraigned. However, final determination regarding this disposition rests with the police, not the clinician. The impact of the appearance ticket on the detainee's hospitalization is described above. Immediate arraignment opens the possibility of other legal alternatives and applicable inpatient statutes (see alternatives listed under pre-sentence). Additionally, once the person is arraigned the police will no longer have legal custody and therefore will not be responsible for the 24-hour hospital guard coverage.

Pre-Sentence

This is the period between arraignment and sentencing. At arraignment and prior to conviction the court may dismiss charges or adjourn the defendant's case in contemplation of dismissal. Additionally, during any part of the pre-sentence period the court may

- l release the person on bail or release him on his own recognizance (ROR) or under someone else's supervision; or
- l remand the defendant to Sheriff's custody (jail).

The impact of these legal alternatives on the defendant's psychiatric hospitalization are as follows:

Charges Dismissed or Adjourned in Contemplation of Dismissal: These dispositions mean that the criminal proceedings are either dismissed or adjourned. Mentally ill persons with these dispositions must be treated as civil patients. Psychiatric hospitalizations can therefore be made pursuant the voluntary or involuntary statutes of MHL Article 9 and without police or sheriff guard coverage. For the court initiated involuntary hospitalizations the applicable statute is [MHL 9.43](#).

Released on Bail or Released on Recognizance: These dispositions mean that the criminal proceedings are still outstanding but that during these proceedings the defendant will reside in the community as opposed to being remanded to the custody of the sheriff. Hospitalizations may occur pursuant to MHL Article 9 if the primary purpose of hospitalization is related to the criminal proceedings (e.g. capacity to stand trial) the applicable provisions of the Criminal Procedure Law must be followed. In either instance (hospitalizations pursuant to MHL or CPL), police or sheriff guard coverage during the defendant's inpatient stay is not required.

Incarcerated within the County/Municipal Jail: Pre-

sentenced persons incarcerated within a county/municipal jail are hospitalized pursuant to [CL §508 \(3\)](#) if they are in need of care and treatment or pursuant to the appropriate section of the Criminal Procedure Law if the need for hospitalization is related to the court proceedings. Sheriff guard coverage is required by law for [CL §508 \(3\)](#) patients and [CPL §730.20](#) incarcerated patients. Sheriff guard coverage, although not specified in the law, is also necessary for [CPL §250.10](#) & [CPL §390.30](#) incarcerated patients. These patients are still in sheriff guard custody at the time of their hospitalization. Therefore, the local sheriff's department, not the hospital, is responsible for their security. For incarcerated prisoners hospitalized pursuant to [CPL §730.40](#) (Final or Temporary Orders), [CPL §730.50](#) (Order of Commitment or Order of Observation) or [CPL §330.20](#) (Exam or Commitment) sheriff guard coverage during the hospitalization period is not required. The State Commissioner of Mental Health retains custody of these patients.

Prior to initiating hospitalization for a pre-sentenced prisoner, the prisoner's criminal charges should be examined. For prisoners charged with minor offenses, the clinician should contact the prisoner's defense attorney to determine if another alternative may be more appropriate for handling the prisoner's legal situation. In some cases, the defense attorney and the district attorney, in considering the defendant's mental status may agree upon an alternative (e.g. dismissal of charges, conditional discharge) which would allow the prisoner to be hospitalized pursuant to [MHL Article 9](#) without sheriff guard. Although these negotiations are time consuming they can be quite beneficial for the patient, the sheriff's office and the treatment agency.

Sentencing and Post-Sentencing

This is the period in which the judge imposes a sentence on a prisoner and the period in which the person serves that sentence. The various sentencing alternatives and their impact on the patient's hospitalization are as follows:

Sentenced to Incarceration within the County/ Municipal Jail or State Prison: Prisoners sentenced to a period of incarceration can only be hospitalized pursuant to [CL §402](#). These hospitalizations do not require sheriff or state correctional guard coverage.

Conditional Discharge (CD), Unconditional Discharge (UDC), Probation or Parole: Conditional discharge and probation are community sentences which require the person to comply during his/her sentenced period with certain court established conditions. Unconditional discharge means that although the person was convicted, the court did not impose any punishment or conditions. Persons with these dispositions (with the exception of shock probation) and persons on parole from the state prison system are hospitalized pursuant to [MHL Article 9](#) and do not require sheriff guard coverage during the hospitalization period.

Shock probation as defined by the NYS Department of Probation is "a sentence under which the offender serves a jail term not in excess of sixty (60) days plus probation for a misdemeanor; a jail term not in excess of six months plus probation for felony; or a jail term not in excess of four months plus probation in the case of an intermittent sentence (See [Penal Law §60.01 \(2\) \(d\)](#)). [CL §402](#) must be followed in hospitalizing shock probation patients who are in jail at the time of their need for inpatient services. However, during the second part of their probation sentence which is served in the community the patient may be hospitalized pursuant to [MHL Article 9](#) and without guard coverage.

Persons detained as a result of a probation violation are hospitalized pursuant to [CL §508](#) but persons detained as a result of parole violation are hospitalized pursuant to [CL §402](#).

CHART IV

Impact of Various Legal Alternative on the Psychiatric Hospitalization
of Pre-Arraigned, Arraigned but not Sentenced,
and Sentenced Criminal Justice Patients

Legal Status	Legal Alternatives	Statutes Under Which Psychiatric Hospitalizations May Occur		24 Hour Police/Sheriff Guard Required During Hospitalization**
		Primary Purpose Treatment	Criminal Proceedings	Current Practice
Pre-Arraigned	Court Appearance Ticket	MHL Article 9	None*	Not Required
	Detained within Lockup	MHL Article 9	None*	Required
Arraigned but not Sentenced and Probation Violators	Not incarcerated: charges dismissed or ACD or Bail or ROR	MHL Article 9	CPL §730.20, 730.40, 730.50, 250.10, 330.20 or 390.30	Not Required
	Incarcerated within Jail	CL §508	CPL §730.20, 250.10, and 390.30	Required
			CPL §730.40, 730.50 or 330.20 (Exam & Commitment)	Not Required
Sentenced (Including Parole and Violators)	Incarcerated within Jail/Prison	CL §402	None*	Not Required
	Currently residing in the community on Conditional Discharge, Probation or Parole	MHL Article 9	None*	Not Required

* Hospitalizations related to the criminal proceedings are not applicable for these patients as the criminal proceedings have either not started or they have been completed (sentenced).

** This column indicates whether provision of sheriff guard is the responsibility of the county, either through provision of personnel or financial payment.

KENDRA'S LAW

Assisted Outpatient Treatment

New York State has enacted legislation ([MHL §9.60](#)) that provides for court-ordered assisted outpatient treatment (AOT) for certain people with mental illness who, in view of their treatment history and present circumstances, are unlikely to survive safely in the community without supervision.

Eligibility Criteria

A person may be ordered to obtain Assisted Outpatient Treatment (AOT) if the court finds that he or she:

- 1 is at least 18 years of age and suffers from a mental illness: **and**
- 1 is unlikely to survive in the community without supervision, based on a clinical determination: **and**
- 1 has a history of non-compliance with treatment for mental illness which has led to either 2 hospitalizations for mental illness in the preceding 3 years, **or** resulted in at least 1 act of violence toward self or others, or threats of serious physical harm to self or others, within the preceding 4 years; **and**
- 1 is unlikely to accept the treatment recommendation the treatment plan; **and**
- 1 is in need of AOT to avoid a relapse or deterioration that would likely result in serious harm to self or others; **and**
- 1 will likely benefit from AOT.

Before a court may order AOT, it must be satisfied that AOT is the least resistive alternative for the person. This, if a less restrictive program or treatment exists that could effectively deal with the person's mental illness, the court will not issue an order for assisted outpatient treatment.

AOT Process

The first step is filing a petition with the county court or supreme court for the county where the person is present or is believed to be present.

People authorized to file petitions for AOT are:

- 1 a parent, spouse, adult sibling or adult child of the person;
- 1 an adult roommate;
- 1 the director of a hospital in which the person is hospitalized;

- 1 the director of an organization, agency or home in which the person resides and receives mental health services;
- 1 a psychiatrist who is either treating or supervising the person's treatment;
- 1 the mental health director or social services official for the county (or City of New York) where the person is believed to be present;
- 1 a parole or probation officer assigned to supervise the person.

The petition, which is a formal statement of facts demonstrating that the person meets the criteria for AOT, must be accompanied by the affidavit of an examining physician. The affidavit must show that the physician examined the person within 10 days of the filing of the petition, and that he or she meets the criteria for AOT. If the subject of the petition has refused examination, the physician's affidavit must state that attempts at examination were made and that the physician believes the individual meets the AOT criteria. Several other procedural forms must also be filed, and standard fees must be paid at the time of filing. All necessary forms are available through your county mental health department.

Once the petition is filed with the court, copies must be served on:

- 1 the person who is the subject of the petition;
- 1 Mental Hygiene Legal Service;
- 1 any health care agent appointed by the person in a health care proxy, if known;
- 1 the Program Coordinator appointed by the New York State Office of Mental Health to oversee local AOT programs; **and**
- 1 the appropriate county (or City of New York) mental health director.

The court is required to set a hearing date that is no more than 3 days after the court receives the petition. (The hearing may be adjourned to a later date if the court finds good cause for doing so.) At the hearing, the court will hear testimony of the physician whose affidavit was filed with the petition, and may also consider testimony of the petitioner and the subject of the petition. Other forms of admissible evidence may be considered as well. If the court determines by clear and convincing evidence that the criteria for AOT are met, and a written treatment plan has been filed with the court, an order for assisted outpatient treatment is issued.

The court order is directed to both the person receiving AOT and the local director of the AOT program. The order will require the

person to accept the treatment deemed necessary by the court, and will require the local director to furnish such treatment.

The initial court order is effective for up to 6 months from the date of the order. The order can be extended for successive periods of up to 1 year each, but any application to extend AOT requires a showing that the person continues to meet all of the AOT criteria.

Non-compliance with Court Order

If a physician determines that the person may need involuntary admission to a hospital, the physician may recommend that the person be transported to a hospital and retained for up to 72 hours to determine if inpatient care and treatment are necessary. Any refusal of the person to take prescribed medication, or the failure of a test to determine either medication compliance or alcohol or drug use, may be considered by the physician in reaching the clinical determination regarding involuntary admission. Any decision to retain the person beyond the initial 72 hours must be in accordance with the procedures for involuntary admission set forth in Mental Hygiene Law.
