CHAPTER 7

AN ACT to amend the mental hygiene law, the executive law, the correction law, the criminal procedure law, the family court act, the judiciary law, the penal law and the county law, in relation to the treatment, supervision, and civil commitment of sex offenders requiring continuing management and the criminal punishment of sex offenders

Became a law March 14, 2007, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "sex offender management and treatment act."

§ 2. The mental hygiene law is amended by adding a new article 10 to read as follows:

ARTICLE 10

SEX OFFENDERS REQUIRING CIVIL COMMITMENT OR SUPERVISION

§ 10.01 Legislative findings. The legislature finds as follows:

(a) That recidivistic sex offenders pose a danger to society that should be addressed through comprehensive programs of treatment and management. Civil and criminal processes have distinct but overlapping goals, and both should be part of an integrated approach that is based on evolving scientific understanding, flexible enough to respond to current needs of individual offenders, and sufficient to provide meaningful treatment and to protect the public.

(b) That some sex offenders have mental abnormalities that predispose them to engage in repeated sex offenses. These offenders may require long-term specialized treatment modalities to address their risk to reoffend. They should receive such treatment while they are incarcerated as a result of the criminal process, and should continue to receive treatment when that incarceration comes to an end. In extreme cases, confinement of the most dangerous offenders will need to be extended by civil process in order to provide them such treatment and to protect the public from their recidivistic conduct.

(c) That for other sex offenders, it can be effective and appropriate to provide treatment in a regimen of strict and intensive outpatient

EXPLANATION--Matter in ***italics*** is new; matter in brackets [-] is old law to be omitted.

supervision. Accordingly, civil commitment should be only one element in a range of responses to the need for treatment of sex offenders. The goal of a comprehensive system should be to protect the public, reduce recidivism, and ensure offenders have access to proper treatment.

(d) That some of the goals of civil commitment - protection of society, supervision of offenders, and management of their behavior - are appropriate goals of the criminal process as well. For some recidivistic sex offenders, appropriate criminal sentences, including long-term post-release supervision, may be the most appropriate way to achieve those goals.

(e) That the system for responding to recidivistic sex offenders with civil measures must be designed for treatment and protection. It should

be based on the most accurate scientific understanding available, including the use of current, validated risk assessment instruments. Ideally, effective risk assessment should begin to occur prior to sentencing in the criminal process, and it should guide the process of civil commitment.

(f) That the system should offer meaningful forms of treatment to sex offenders in all criminal and civil phases, including during incarceration, civil commitment, and outpatient supervision.

(g) That sex offenders in need of civil commitment are a different population from traditional mental health patients, who have different treatment needs and particular vulnerabilities. Accordingly, civil commitment of sex offenders should be implemented in ways that do not endanger, stigmatize, or divert needed treatment resources away from such traditional mental health patients.

§ 10.03 Definitions.

As used in this article, the following terms shall have the following meanings:

(a) "Agency with jurisdiction" as to a person means that agency which, during the period in question, would be the agency responsible for supervising or releasing such person, and can include the department of correctional services, the office of mental health, the office of mental retardation and developmental disabilities, and the division of parole.

(b) "Commissioner" means the commissioner of mental health or the commissioner of mental retardation and developmental disabilities.

(c) "Correctional facility" means a correctional facility as that term is defined in section two of the correction law.

(d) "Counsel for respondent" means any counsel that has been retained or appointed for respondent, or if no other counsel has been retained or appointed, or prior counsel cannot be located with reasonable efforts, then the mental hygiene legal service.

(e) "Dangerous sex offender requiring confinement" means a person who is a detained sex offender suffering from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility.

(f) "Designated felony" means any felony offense defined by any of the following provisions of the penal law: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in

the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

(g) "Detained sex offender" means a person who is in the care, custody, control, or supervision of an agency with jurisdiction, with respect to a sex offense or designated felony, in that the person is either:

(1) A person who stands convicted of a sex offense as defined in

subdivision (p) of this section, and is currently serving a sentence for, or subject to supervision by the division of parole, whether on parole or on post-release supervision, for such offense or for a related offense;

(2) A person charged with a sex offense who has been determined to be an incapacitated person with respect to that offense and has been committed pursuant to article seven hundred thirty of the criminal procedure law, but did engage in the conduct constituting such offense;

(3) A person charged with a sex offense who has been found not responsible by reason of mental disease or defect for the commission of that offense;

(4) A person who stands convicted of a designated felony that was sexually motivated and committed prior to the effective date of this article;

(5) A person convicted of a sex offense who is, or was at any time after September first, two thousand five, a patient in a hospital operated by the office of mental health, and who was admitted directly to such facility pursuant to article nine of this title or section four hundred two of the correction law upon release or conditional release from a correctional facility, provided that the provisions of this article shall not be deemed to shorten or lengthen the time for which such person may be held pursuant to such article or section respectively; or

(6) A person who has been determined to be a sex offender requiring civil management pursuant to this article.

(h) "Licensed psychologist" means a person who is registered as a psychologist under article one hundred fifty-three of the education law.

(i) "Mental abnormality" means a congenital or acquired condition, disease or disorder that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct.

(j) "Psychiatric examiner" means a qualified psychiatrist or a licensed psychologist who has been designated to examine a person pursuant to this article; such designee may, but need not, be an employee of the office of mental health or the office of mental retardation and developmental disabilities.

(k) "Qualified psychiatrist" means a physician licensed to practice medicine in New York state who: (1) is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or (2) is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

(l) "Related offenses" include any offenses that are prosecuted as part of the same criminal action or proceeding, or which are part of the same criminal transaction, or which are the bases of the orders of commitment received by the department of correctional services in connection with an inmate's current term of incarceration.

(m) "Release" and "released" means release, conditional release or discharge from confinement, from supervision by the division of parole, or from an order of observation, commitment, recommitment or retention.

(n) "Respondent" means a person referred to a case review team for evaluation, a person as to whom a sex offender civil management petition has been recommended by a case review team and not yet filed, or filed by the attorney general and not dismissed, or sustained by procedures under this article.

(o) "Secure treatment facility" means a facility or a portion of a facility, designated by the commissioner, that may include a facility located on the grounds of a correctional facility, that is staffed with personnel from the office of mental health or the office of mental retardation and developmental disabilities for the purposes of providing care and treatment to persons confined under this article, and persons defined in paragraph five of subdivision (g) of this section. Personnel from these same agencies may provide security services, provided that such staff are adequately trained in security methods and so equipped as to minimize the risk or danger of escape.

(p) "Sex offense" means an act or acts constituting: (1) any felony defined in article one hundred thirty of the penal law, including a sexually motivated felony; (2) patronizing a prostitute in the first degree as defined in section 230.06 of the penal law, incest in the

second degree as defined in section 255.26 of the penal law, or incest in the first degree as defined in section 255.27 of the penal law; (3) a felony attempt or conspiracy to commit any of the foregoing offenses set forth in this subdivision; or (4) a designated felony, as defined in subdivision (f) of this section, if sexually motivated and committed prior to the effective date of this article.

(q) "Sex offender requiring civil management" means a detained sex offender who suffers from a mental abnormality. A sex offender requiring civil management can, as determined by procedures set forth in this article, be either (1) a dangerous sex offender requiring confinement or (2) a sex offender requiring strict and intensive supervision.

(r) "Sex offender requiring strict and intensive supervision" means a detained sex offender who suffers from a mental abnormality but is not a dangerous sex offender requiring confinement.

(s) "Sexually motivated" means that the act or acts constituting a designated felony were committed in whole or in substantial part for the purpose of direct sexual gratification of the actor.

§ 10.05 Notice and case review.

(a) The commissioner of mental health, in consultation with the commissioner of the department of correctional services and the commissioner of mental retardation and developmental disabilities, shall establish a case review panel consisting of at least fifteen members, any three of whom may sit as a team to review a particular case. At least two members of each team shall be professionals in the field of mental health or the field of mental retardation and developmental disabilities, as appropriate, with experience in the treatment, diagnosis, risk assessment or management of sex offenders. To the extent practicable, the workload of the case review panel should be evenly distributed among its members. Members of the case review panel and psychiatric examiners should be free to exercise independent professional judgment without pressure or retaliation for the exercise of that judgment from any source.

(b) When it appears to an agency with jurisdiction, other than the division of parole, that a person who may be a detained sex offender is nearing an anticipated release, the agency shall give notice of that fact to the attorney general and to the commissioner of mental health. When the division of parole is the agency with jurisdiction, it may give such notice. The agency with jurisdiction shall seek to give such notice at least one hundred twenty days prior to the person's anticipated release, but failure to give notice within such time period shall not affect the validity of such notice or any subsequent action, including the filing of a sex offender civil management petition.

(c) The notice to the attorney general and the commissioner of mental health shall, to the extent possible, contain the following:

(1) The person's name, aliases, and other identifying information such as date of birth, sex, physical characteristics, and anticipated future residence;

(2) A photograph and a set of fingerprints;

(3) A description of the act or acts that constitute the sex offense and a description of the person's criminal history, including the person's most recent sentence and any supervisory terms that it includes;

(4) The presentence reports prepared pursuant to article three hundred ninety of the criminal procedure law and other available materials concerning the person's sex offense; and

(5) A description of the person's institutional history, including his or her participation in any sex offender treatment program.

(d) The commissioner shall be authorized to designate multidisciplinary staff, including clinical and other professional personnel, to provide a preliminary review of the need for detained sex offenders to be evaluated under the procedures of this section. When the commissioner receives notice pursuant to subdivision (b) of this section, such staff shall review and assess relevant medical, clinical, criminal, or institutional records, actuarial risk assessment instruments or other records and reports, including records and reports provided by the district attorney of the county where the person was convicted, or in the case of persons determined to be incapacitated or not responsible by reason of mental disease or defect, the county where the person was

charged. Upon such review and assessment, the staff shall determine whether the person who is the subject of the notice should be referred to a case review team for evaluation.

(e) If the person is referred to a case review team for evaluation, notice of such referral shall be provided to the respondent. Upon such referral, the case review team shall review relevant records, including

those described in subdivisions (c) and (d) of this section, and may arrange for a psychiatric examination of the respondent. Based on the review and assessment of such information, the case review team shall consider whether the respondent is a sex offender requiring civil management.

(f) If the case review team determines that the respondent is not a sex offender requiring civil management, it shall so notify the respondent and the attorney general, and the attorney general shall not file a sex offender civil management petition.

(g) If the case review team finds that the respondent is a sex offender requiring civil management, it shall so notify the respondent and the attorney general, in writing. The written notice must be accompanied by a written report from a psychiatric examiner that includes a finding as to whether the respondent has a mental abnormality. Where the notice indicates that a respondent stands convicted of or was charged with a designated felony, it shall also include the case review team's finding as to whether the act was sexually motivated. The case review team shall provide its written notice to the attorney general and the respondent within forty-five days of the commissioner receiving the notice of anticipated release. However, failure to do so within that time period shall not affect the validity of such notice or finding or any subsequent action, including the attorney general's filing of a sex offender civil management petition subsequent to receiving the finding of the case review team.

§ 10.06 Petition and hearing.

(a) If the case review team finds that a respondent is a sex offender requiring civil management, then the attorney general may file a sex offender civil management petition in the supreme court or county court of the county where the respondent is located. In determining whether to file such a petition, the attorney general shall consider information about any continuing supervision to which the respondent will be subject as a result of criminal conviction, and shall take such supervision into account when assessing the need for further management as provided by this article. If the attorney general elects to file a sex offender civil management petition, he or she shall serve a copy of the petition upon the respondent. The petition shall contain a statement or statements alleging facts of an evidentiary character tending to support the allegation that the respondent is a sex offender requiring civil management. The attorney general shall seek to file the petition within thirty days after receiving notice of the case review team's finding, but failure to do so within that period shall not affect the validity of the petition.

(b) Within ten days after the attorney general files a sex offender civil management petition, the respondent may file in the same court a notice of removal to the county of the underlying criminal sex offense charges. The attorney general may, in the court in which the petition is pending, move for a retention of venue. Such motion shall be made within five days after the attorney general is served with a notice of removal, which time may be extended for good cause shown. The court shall grant the motion if the attorney general shows good cause for such retention. If the attorney general does not timely move for a retention of venue, or does so move and the motion is denied, then the proceedings shall be transferred to the county of the underlying criminal sex offense charges. If the respondent does not timely file a notice of removal, or the attorney general moves for retention of venue and such motion is granted, then the proceedings shall continue where the petition was filed.

(c) Promptly upon the filing of a sex offender civil management petition, or upon a request to the court by the attorney general for an order pursuant to subdivision (d) of this section that a respondent

submit to an evaluation by a psychiatric examiner, whichever occurs earlier, the court shall appoint counsel in any case where the respondent is financially unable to obtain counsel. The court shall appoint the mental hygiene legal service if possible. In the event that the court determines that the mental hygiene legal service cannot accept appointment, the court shall appoint an attorney eligible for appointment pursuant to article eighteen-B of the county law, or an entity, if any, that has contracted for the delivery of legal representation services under subdivision (c) of section 10.15 of this article. Counsel for the respondent shall be provided with copies of the written notice made by the case review team, the petition and the written reports of the psychiatric examiners.

(d) At any time after receiving notice pursuant to subdivision (b) of section 10.05 of this article, and prior to trial, the attorney general may request the court in which the sex offender civil management petition could be filed, or is pending, to order the respondent to submit to an evaluation by a psychiatric examiner. Upon such a request, the court shall order that the respondent submit to an evaluation by a psychiatric examiner chosen by the attorney general and, if the respondent is not represented by counsel, the court shall appoint counsel for the respondent. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the attorney general, to counsel for the respondent, and to the court.

(e) At any time after the filing of a sex offender civil management petition, and prior to trial, the respondent may request the court in which the petition is pending to order that he or she be evaluated by a psychiatric examiner. Upon such a request, the court shall order an evaluation by a psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the respondent or counsel for the respondent, to the attorney general, and to the court.

(f) Notwithstanding any other provision of this article, if it appears that the respondent may be released prior to the time the case review team makes a determination, and the attorney general determines that the protection of public safety so requires, the attorney general may file a securing petition at any time after receipt of written notice pursuant to subdivision (b) of section 10.05 of this article. In such circumstance, there shall be no probable cause hearing until such time as the case review team may find that the respondent is a sex offender requiring civil management. If the case review team determines that the respondent is not a sex offender requiring civil management, the attorney general shall so advise the court and the securing petition shall be dismissed.

(g) Within thirty days after the sex offender civil management petition is filed, or within such longer period as to which the respondent may consent, the supreme court or county court before which the petition is pending shall conduct a hearing without a jury to determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management.

(h) If the respondent was released subsequent to notice under subdivision (b) of section 10.05 of this article, and is therefore at liberty

when the petition is filed, the court shall order the respondent's return to confinement, observation, commitment, recommitment or retention, as applicable, for purposes of the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's return. If the respondent is not at liberty when the petition is filed, but becomes eligible to be released prior to the probable cause hearing, the court shall order the stay of such release pending the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's anticipated release date. In either case, the release of the respondent shall be in accordance with other provisions of law if the hearing does not commence within such period of seventy-two hours, unless: (i) the failure to commence the hearing was due to the respondent's request, action or condition, or occurred with his or her consent; or (ii) the court is

satisfied that the attorney general has shown good cause why the hearing could not so commence. Any failure to commence the probable cause hearing within the time periods specified shall not result in the dismissal of the petition and shall not affect the validity of the hearing or the probable cause determination.

(i) The provisions of subdivision (g) of section 10.08 of this article shall be applicable to the hearing. The hearing should be completed in one session but, in the interest of justice, may be adjourned by the court.

(j) The respondent's commission of a sex offense shall be deemed established and shall not be relitigated at the probable cause hearing, whenever it appears that: (i) the respondent stands convicted of such offense; (ii) the respondent previously has been found not responsible by reason of mental disease or defect for the commission of such offense or for an act or acts constituting such offense; or (iii) the respondent was indicted for such offense by a grand jury but found to be incompetent to stand trial for such offense. Whenever the petition alleges the respondent's commission of a designated felony prior to the effective date of this article, the issue of whether there is probable cause to believe that the commission of such offense was sexually motivated shall be determined by the court.

(k) At the conclusion of the hearing, the court shall determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management. If the court determines that probable cause has not been established, the court shall issue an order dismissing the petition, and the respondent's release shall be in accordance with other applicable provisions of law. If the court determines that probable cause has been established: (i) the court shall order that the respondent be committed to a secure treatment facility designated by the commissioner for care, treatment and control upon his or her release; (ii) the court shall set a date for trial in accordance with subdivision (a) of section 10.07 of this article; and (iii) the respondent shall not be released pending the completion of such trial.

§ 10.07 Trial.

(a) Within sixty days after the court determines, pursuant to subdivision (k) of section 10.06 of this article, that there is probable cause to believe that the respondent is a sex offender requiring civil management, the court shall conduct a jury trial to determine whether the respondent is a detained sex offender who suffers from a mental abnormality. The trial shall be held before the same court that conducted the probable cause hearing unless either the attorney general or counsel for

the respondent has moved for a change of venue and the motion has been granted by the court.

(b) The provisions of article forty-one of the civil practice law and rules shall apply to the formation and conduct of jury trial under this section, except that the provisions of the following sections of the criminal procedure law shall govern to the extent that the provisions of article forty-one of the civil practice law and rules are inconsistent therewith: sections 270.05, 270.10, 270.15, 270.20, subdivision one of section 270.25, and subdivision one of section 270.35 (except for the provisions thereof requiring consent for the replacement of a discharged juror with an alternate). Each side shall have ten peremptory challenges for the regular jurors and two for each alternate juror to be selected. The right to a trial by jury may be waived by the respondent, and upon such waiver, the court shall conduct a trial in accordance with article forty-two of the civil practice law and rules, excluding provisions for decision-making by referees.

(c) The provisions of subdivision (g) of section 10.08 of this article and article forty-five of the civil practice law and rules shall be applicable to trials conducted pursuant to this section. The jury may hear evidence of the degree to which the respondent cooperated with the psychiatric examination. If the court finds that the respondent refused to submit to a psychiatric examination pursuant to this article, upon request it shall so instruct the jury. The respondent's commission of a sex offense shall be deemed established and shall not be relitigated at the trial, whenever it is shown that: (i) the respondent stands convicted of such offense; or (ii) the respondent previously has been found not responsible by reason of mental disease or defect for the

commission of such offense or for an act or acts constituting such offense. Whenever the petition alleges the respondent's commission of a designated felony prior to the effective date of this article, the issue of whether such offense was sexually motivated shall be determined by the jury.

(d) The jury, or the court if a jury trial is waived, shall determine by clear and convincing evidence whether the respondent is a detained sex offender who suffers from a mental abnormality. The burden of proof shall be on the attorney general. A determination, if made by the jury, must be by unanimous verdict. In charging the jury, the court's instructions shall include the admonishment that the jury may not find solely on the basis of the respondent's commission of a sex offense that the respondent is a detained sex offender who suffers from a mental abnormality. In the case of a respondent committed pursuant to article seven hundred thirty of the criminal procedure law for a sex offense, the attorney general shall have the burden of proving by clear and convincing evidence that the respondent did engage in the conduct constituting such offense.

(e) If the jury unanimously, or the court if a jury trial is waived, determines that the attorney general has not sustained his or her burden of establishing that the respondent is a detained sex offender who suffers from a mental abnormality, the court shall dismiss the petition and the respondent shall be released if and as warranted by other provisions of law. If the jury is unable to render a unanimous verdict, the court shall continue any commitment order previously issued and schedule a second trial to be held within sixty days in accordance with the provisions of subdivision (a) of this section. If the jury in such second trial is unable to render a unanimous verdict as to whether the

respondent is a detained sex offender who suffers from a mental abnormality, the court shall dismiss the petition.

(f) If the jury, or the court if a jury trial is waived, determines that the respondent is a detained sex offender who suffers from a mental abnormality, then the court shall consider whether the respondent is a dangerous sex offender requiring confinement or a sex offender requiring strict and intensive supervision. The parties may offer additional evidence, and the court shall hear argument, as to that issue. If the court finds by clear and convincing evidence that the respondent has a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility, then the court shall find the respondent to be a dangerous sex offender requiring confinement. In such case, the respondent shall be committed to a secure treatment facility for care, treatment, and control until such time as he or she no longer requires confinement. If the court does not find that the respondent is a dangerous sex offender requiring confinement, then the court shall make a finding of disposition that the respondent is a sex offender requiring strict and intensive supervision, and the respondent shall be subject to a regimen of strict and intensive supervision and treatment in accordance with section 10.11 of this article. In making a finding of disposition, the court shall consider the conditions that would be imposed upon the respondent if subject to a regimen of strict and intensive supervision, and all available information about the prospects for the respondent's possible re-entry into the community.

§ 10.08 Procedures under this article.

(a) When a respondent submits to an examination pursuant to an order issued in accordance with this article, any statement made by the respondent for the purpose of the examination shall be kept confidential in accordance with the provisions of section 33.13 of this chapter and shall be inadmissible in evidence against him or her in any criminal action or proceeding, provided that such statements may be used in proceedings under this article.

(b) A psychiatric examiner chosen by the attorney general shall have reasonable access to the respondent for the purpose of such examination, as well as to the respondent's relevant medical, clinical, criminal or other records and reports. A psychiatric examiner chosen by or appointed on behalf of the respondent shall have reasonable access to the respondent's relevant medical, clinical or criminal records and reports, except

that such psychiatric examiner shall not have access without court order and for good cause shown to the name of, address of, or any other identifying information about the victim or victims. To the extent possible, such identifying information should be redacted so as to provide the examiner with access to the balance of the document. In conducting examinations under this article, psychiatric examiners may employ any method that is accepted by the medical profession for the examination of persons alleged to be suffering from a mental disability or mental abnormality.

(c) Notwithstanding any other provision of law, the commissioner, the case review panel and the attorney general shall be entitled to request from any agency, office, department or other entity of the state, and such entity shall be authorized to provide upon such request, any and all records and reports relating to the respondent's commission or alleged commission of a sex offense, the institutional adjustment and any treatment received by such respondent, and any medical, clinical or

other information relevant to a determination of whether the respondent is a sex offender requiring civil management. Otherwise confidential materials obtained for purposes of proceedings pursuant to this article shall not be further disseminated or otherwise used except for such purposes. Nothing in this article shall be construed to restrict any right of a respondent to obtain his or her own records pursuant to other provisions of law.

(d) The attorney general shall make records in his or her possession and relevant to the respondent available for inspection or copying by counsel for the respondent for purposes of hearing, trial, and appeal provided, however, that counsel shall not have access to the name of, address of, or any other identifying information about the victim or victims, or to any investigative or other reports that relate to matters beyond the scope of the proceedings and are confidential or privileged from disclosure. To the extent possible, such identifying information should be redacted so as to provide counsel with access to the balance of the document.

(e) At any hearing or trial pursuant to the provisions of this article, the court may change the venue of the trial to any county for good cause, which may include considerations relating to the convenience of the parties or witnesses or the condition of the respondent.

(e-1) Records or reports provided to the respondent in accordance with this article shall be disclosed in the circumstances and in the same manner as records and reports disclosed pursuant to the provisions of section 33.16 of this chapter.

(f) Time periods specified by provisions of this article for actions by state agencies are goals that the agencies shall try to meet, but failure to act within such periods shall not invalidate later agency action except as explicitly provided by the provision in question. The court may extend any time period at the request, or on the consent, of the respondent. No provision of this article shall be interpreted so as to prevent a respondent, after opportunity to consult with counsel for respondent, from consenting to the relief which could be sought by an agency with jurisdiction by means of a court proceeding under this article.

(g) In preparing for or conducting any hearing or trial pursuant to the provisions of this article, and in preparing any petition under the provisions of this article, the respondent shall have the right to have counsel represent him or her, provided that the respondent shall not be entitled to appointment of counsel prior to the time provided in section 10.06 of this article. The attorney general shall represent the state. Any relevant written reports of psychiatric examiners shall be admissible, regardless of whether the author of the report is called to testify, so long as they are certified pursuant to subdivision (c) of rule forty-five hundred eighteen of the civil practice law and rules, in any proceeding or hearing held pursuant to subdivision (g) or (h) of section 10.06 of this article, paragraph two of subdivision (a), or paragraph four of subdivision (d), or subdivision (e), (g) or (h) of section 10.11 of this article. In all other proceedings or hearings held pursuant to this article, such admissibility shall require a showing of the author's unavailability to testify, or other good cause. All plea minutes and prior trial testimony from the underlying criminal proceeding, and

records from previous proceedings under this article, shall be admissible. Each witness, whether called by the attorney general or the respondent, must, unless he or she would be authorized to give unsworn evidence at a trial, testify under oath, and may be cross-examined. The

respondent may, as a matter of right, testify in his or her own behalf, call and examine other witnesses, and produce other evidence in his or her behalf. The respondent may not, however, cause a subpoena to be served on the person against whom the sex offense was committed or alleged to have been committed by the respondent, except upon order of the court for good cause shown. Either party may request closure of the courtroom, or sealing of papers, for good cause shown.

(h) The procedures and standards set forth in this article governing the imposition of conditions upon the respondent are intended to be the minimum required to provide for the protection of the public and treatment of the respondent. Nothing in this article shall be construed to require the availability or imposition of forms of treatment or supervision other than those for which this article specifically provides.

§ 10.09 Annual examinations and petitions for discharge.

(a) The commissioner shall provide the respondent and counsel for respondent with an annual written notice of the right to petition the court for discharge. The notice shall contain a form for the waiver of the right to petition for discharge.

(b) The commissioner shall also assure that each respondent committed under this article shall have an examination for evaluation of his or her mental condition made at least once every year by a psychiatric examiner who shall report to the commissioner his or her written findings as to whether the respondent is currently a dangerous sex offender requiring confinement. At such time, the respondent also shall have the right to be evaluated by an independent psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following such evaluation, each psychiatric examiner shall report his or her findings in writing to the commissioner and to counsel for respondent. The commissioner shall review relevant records and reports, along with the findings of the psychiatric examiners, and shall make a determination in writing as to whether the respondent is currently a dangerous sex offender requiring confinement.

(c) The commissioner shall annually forward the notice and waiver form, along with a report including the commissioner's written determination and the findings of the psychiatric examination, to the supreme or county court where the respondent is located.

(d) The court shall hold an evidentiary hearing as to retention of the respondent within forty-five days if it appears from one of the annual submissions to the court under subdivision (c) of this section (i) that the respondent has petitioned, or has not affirmatively waived the right to petition, for discharge, or (ii) that even if the respondent has waived the right to petition, and the commissioner has determined that the respondent remains a dangerous sex offender requiring confinement, the court finds on the basis of the materials described in subdivision (b) of this section that there is a substantial issue as to whether the respondent remains a dangerous sex offender requiring confinement. At an evidentiary hearing on that issue under this subdivision, the attorney general shall have the burden of proof.

(e) If, at any time, the commissioner determines that the respondent no longer is a dangerous sex offender requiring confinement, the commissioner shall petition the court for discharge of the respondent or for the imposition of a regimen of strict and intensive supervision and treatment. The petition shall be served upon the attorney general and the respondent, and filed in the supreme or county court where the

person is located. The court, upon review of the petition, shall either order the requested relief or order that an evidentiary hearing be held.

(f) The respondent may at any time petition the court for discharge and/or release to the community under a regimen of strict and intensive supervision and treatment. Upon review of the respondent's petition, other than in connection with annual reviews as described in subdivi-

sions (a), (b) and (d) of this section, the court may order that an evidentiary hearing be held, or may deny an evidentiary hearing and deny the petition upon a finding that the petition is frivolous or does not provide sufficient basis for reexamination prior to the next annual review. If the court orders an evidentiary hearing under this subdivision, the attorney general shall have the burden of proof as to whether the respondent is currently a dangerous sex offender requiring confinement.

(g) In connection with any evidentiary hearing held pursuant to subdivision (d), (e), or (f) of this section, upon the request of either party or upon its own motion, the court may direct the submission of evidence, and may order a psychiatric evaluation if the court finds that any available examination reports are not current or otherwise not sufficient.

(h) At the conclusion of an evidentiary hearing, if the court finds by clear and convincing evidence that the respondent is currently a dangerous sex offender requiring confinement, the court shall continue the respondent's confinement. Otherwise the court, unless it finds that the respondent no longer suffers from a mental abnormality, shall issue an order providing for the discharge of the respondent to a regimen of strict and intensive supervision and treatment pursuant to section 10.11 of this article.

§ 10.10 Treatment and confinement.

(a) If the respondent is found to be a dangerous sex offender requiring confinement and committed to a secure treatment facility, that facility shall provide care, treatment, and control of the respondent until such time that a court discharges the respondent in accordance with the provisions of this article.

(b) The commissioner shall, for persons committed pursuant to this article, develop and implement a treatment plan in accordance with the provisions of section 29.13 of this chapter. The commissioner shall give due regard to any relevant standards, guidelines, and best practices recommended by the office of sex offender management.

(c) The commissioner, or the commissioner of the department of correctional services, or other government entity responsible for the care and custody of respondents, shall be authorized to employ appropriate safety and security measures, as he or she deems necessary to ensure the safety of the public, during court proceedings and in the transport of persons committed or undergoing any proceedings under this article. Such commissioner shall provide training in the use of safe and appropriate security interventions to employees responsible for transporting persons under this article.

(d) The commissioner shall have the discretion to enter into agreements with the department of correctional services for the provision of security services relating to this article.

(e) Persons in the custody of the commissioner pursuant to this article shall be kept separate from other persons in the care, custody and control of the commissioner, and shall be segregated from such other persons, provided, however, that persons committed or subject to proceedings under this article need not be segregated from other sex

offenders committed or subject to proceedings under this article, article nine of this title, or section four hundred two of the correction law. If any dangerous sex offenders requiring confinement are committed to a secure treatment facility located on the grounds of a correctional facility, they shall be kept separate from persons in custody as a result of criminal cases, and shall be segregated from such persons. Occasional instances of supervised, incidental contact between persons required by this subdivision to be segregated shall not be considered a violation of such segregation requirements.

(f) In accordance with security procedures developed by the commissioner, a person committed under this article may be granted an escorted privilege by the director of the secure treatment facility in which he or she is receiving care and treatment but only for the purposes of allowing the person to receive medical or dental care or treatment not available at the facility, to visit a family member who is seriously ill or to attend the funeral of a family member. A person granted an escorted privilege shall be under the constant supervision of one or more facility employees who have been designated by the commissioner or

other specially trained personnel approved by the commissioner to provide care and supervision of such persons.

(g) If a person is in the custody of the commissioner pursuant to an order issued under this article, and such person escapes from custody, notice of such escape shall be given as soon as the facility staff learns of such escape, and shall include such information as will adequately identify the escaped individual, any person or persons believed to be in danger, and the nature of the danger. Such notice shall be given by any means reasonably calculated to give prompt actual notice, and shall be given to:

(1) the district attorney of the county where the person was convicted, adjudicated, or charged; the attorney general; and counsel for respondent or the mental hygiene legal service;

(2) the superintendent of the state police;

(3) the sheriff of the county where the escape occurred;

(4) the police department having jurisdiction of the area where the escape occurred;

(5) any victim or victims who submitted the notification form described in subdivision four of section 380.50 of the criminal procedure law;

(6) any person the facility staff reasonably believes could be in danger;

(7) any law enforcement agency and any person the facility staff believes would be able to apprise such victim or victims that the person escaped from the facility; and

(8) any other person the committing court may designate.

(h) The person may be apprehended, restrained, transported, and returned to the facility from which he or she escaped by any police officer or peace officer, and it shall be the duty of such officer to assist any representative of the commissioner to take the person into custody upon the request of such representative.

(i) The commissioner shall submit to the governor and the legislature no later than December first of each year, a report on the implementation of this article. Such report shall include, but not be limited to, the census of each existing treatment facility, the number of persons reviewed by the case review teams for proceedings under this article, the number of persons committed pursuant to this article, their crimes of conviction, and projected future capacity needs.

§ 10.11 Regimen of strict and intensive supervision and treatment.

(a) (1) Before ordering the release of a person to a regimen of strict and intensive supervision and treatment pursuant to this article, the court shall order that the division of parole recommend supervision requirements to the court. These supervision requirements, which shall be developed in consultation with the commissioner, may include but need not be limited to, electronic monitoring or global positioning satellite tracking for an appropriate period of time, polygraph monitoring, specification of residence or type or residence, prohibition of contact with identified past or potential victims, strict and intensive supervision by a parole officer, and any other lawful and necessary conditions that may be imposed by a court. In addition, after consultation with the psychiatrist, psychologist or other professional primarily treating the respondent, the commissioner shall recommend a specific course of treatment. A copy of the recommended requirements for supervision and treatment shall be given to the attorney general and the respondent and his or her counsel a reasonable time before the court issues its written order pursuant to this section.

(2) Before issuing its written order, the court shall afford the parties an opportunity to be heard, and shall consider any additional submissions by the respondent and the attorney general concerning the proposed conditions of the regimen of strict and intensive supervision and treatment. The court shall issue an order specifying the conditions of the regimen of strict and intensive supervision and treatment, which shall include specified supervision requirements and compliance with a specified course of treatment. A written statement of the conditions of the regimen of strict and intensive supervision and treatment shall be given to the respondent and to his or her counsel, any designated service providers or treating professionals, the commissioner, the attorney general and the supervising parole officer. The court shall

require the division of parole to take appropriate actions to implement the supervision plan and assure compliance with the conditions of the regimen of strict and intensive supervision and treatment. A regimen of strict and intensive supervision does not toll the running of any form of supervision in criminal cases, including but not limited to post-release supervision and parole.

(b) (1) Persons ordered into a regimen of strict and intensive supervision and treatment pursuant to this article shall be subject to a minimum of six face-to-face supervision contacts and six collateral contacts per month. Such minimum contact requirements shall continue unless subsequently modified by the court or the division of parole.

(2) Any agency, organization, professional or service provider designated to provide treatment to the person shall, unless otherwise directed by the court, submit every four months to the court, the commissioner, the attorney general and the supervising parole officer a report describing the person's conduct while under a regimen of strict and intensive supervision and treatment.

(c) An order for a regimen of strict and intensive supervision and treatment places the person in the custody and control of the state division of parole. A person ordered to undergo a regimen of strict and intensive supervision and treatment pursuant to this article is subject to lawful conditions set by the court and the division of parole.

(d) (1) A person's regimen of strict and intensive supervision and treatment may be revoked if such a person violates a condition of strict and intensive supervision. If a parole officer has reasonable cause to believe that the person has violated a condition of the regimen of

strict and intensive supervision and treatment or, if there is an oral or written evaluation or report by a treating professional indicating that the person may be a dangerous sex offender requiring confinement, a parole officer authorized in the same manner as provided in subparagraph (i) of paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law may take the person into custody and transport the person for lodging in a secure treatment facility or a local correctional facility for an evaluation by a psychiatric examiner, which evaluation shall be conducted within five days. A parole officer may take the person, under custody, to a psychiatric center for prompt evaluation, and at the end of the examination, return the person to the place of lodging. A parole officer, as authorized by this paragraph, may direct a peace officer, acting pursuant to his or her special duties, or a police officer who is a member of an authorized police department or force or of a sheriff's department, to take the person into custody and transport the person as provided in this paragraph. It shall be the duty of such peace officer or police officer to take into custody and transport any such person upon receiving such direction. The division of parole shall promptly notify the attorney general and the mental hygiene legal service, when a person is taken into custody pursuant to this paragraph. No provision of this section shall preclude the division of parole from proceeding with a revocation hearing as authorized by subdivision three of section two hundred fifty-nine-i of the executive law.

(2) After the person is taken into custody for the evaluation, the attorney general may file: (i) a petition for confinement pursuant to paragraph four of this subdivision and/or (ii) a petition pursuant to subdivision (e) of this section to modify the conditions of a regimen of strict and intensive supervision and treatment. Either petition shall be filed in the court that issued the order imposing the regimen of strict and intensive supervision and treatment. The attorney general shall seek to file the petition within five days after the person is taken into custody for evaluation. If no petition is filed within that time, the respondent shall be released immediately, subject to the terms of the previous order imposing the regimen of strict and intensive supervision, but failure to file a petition within such time shall not affect the validity of such petition or any subsequent action.

(3) A petition filed under paragraph two of this subdivision shall be served promptly on the respondent and the mental hygiene legal service. The court shall appoint legal counsel in accordance with subdivision (c) of section 10.06 of this article. Counsel for respondent shall be provided with a copy of the written report, if any, of the psychiatric

examiner who conducted the evaluation pursuant to this section.

(4) A petition for confinement shall contain the parole officer's sworn allegations demonstrating reasonable cause to believe that the respondent violated a condition of his or her strict and intensive supervision, and shall be accompanied by any written evaluations or reports by a treating professional indicating that the respondent may be a dangerous sex offender requiring confinement. If a petition is filed within the five-day period seeking the respondent's confinement, then the court shall promptly review the petition and, based on the allegations in the petition and any accompanying papers, determine whether there is probable cause to believe that the respondent is a dangerous sex offender requiring confinement. Upon the finding of probable cause, the respondent may be retained in a local correctional facility or a secure treatment facility pending the conclusion of the proceeding. In

the absence of such a finding, the respondent shall be released, but the court may impose revised conditions of supervision and treatment pending completion of the hearing. Within thirty days after a petition for confinement is filed under paragraph two of this subdivision, the court shall conduct a hearing to determine whether the respondent is a dangerous sex offender requiring confinement. Any failure to commence the hearing within the time period specified shall not result in the dismissal of the petition and shall not affect the validity of the hearing or the determination. The court shall make its determination of whether the respondent is a dangerous sex offender requiring confinement in accordance with the standards set forth in subdivision (f) of section 10.07 of this article. If the court finds that the attorney general has not met the burden of showing by clear and convincing evidence that the respondent is a dangerous sex offender requiring confinement, but finds that the respondent continues to be a sex offender requiring strict and intensive supervision, the court shall order the person to be released under the previous order imposing a regimen of strict and intensive supervision and treatment, unless it modifies the order imposing a regimen of strict and intensive supervision and treatment pursuant to subdivision (f) of this section. If the court determines that the attorney general has met the burden of showing by clear and convincing evidence that the respondent is a dangerous sex offender requiring confinement, the court shall order that the respondent be committed to a secure treatment facility immediately. The respondent shall not be released pending the completion of the hearing.

(e) If the attorney general files only a petition for modification under paragraph two of subdivision (d) of this section, the respondent shall be released but the court may impose revised conditions of supervision and treatment pending completion of the hearing. Within five days after filing of the petition for modification, the court shall conduct a hearing to determine whether the respondent's conditions of treatment and supervision should be modified. The attorney general shall have the burden of showing that the modifications sought are warranted, and the court shall order such modifications to the extent that it finds that the attorney general has met that burden.

(f) The court may modify or terminate the conditions of the regimen of strict and intensive supervision and treatment on the petition of the supervising parole officer, the commissioner or the attorney general. Such petition shall be served on the respondent and the respondent's counsel. A person subject to a regimen of strict and intensive supervision and treatment pursuant to this article may petition every two years for modification or termination, commencing no sooner than two years after the regimen of strict and intensive supervision and treatment commenced, with service of such petition on the attorney general, the division of parole, and the commissioner. Upon receipt of a petition for modification or termination pursuant to this section, the court may require the division of parole and the commissioner to provide a report concerning the person's conduct while subject to a regimen of strict and intensive supervision and treatment. If more than one petition is filed, the petitions may be considered in a single hearing.

(g) Upon receipt of a petition for modification pursuant to this section, the court may hold a hearing on such petition. The party seeking modification shall have the burden of showing that those modifications are warranted, and the court shall order such modifications to the

extent that it finds that the party has met that burden.

(h) Upon receipt of a petition for termination pursuant to this section, the court may hold a hearing on such petition. When the petition is filed by the respondent, the attorney general shall have the burden of showing by clear and convincing evidence that the respondent is currently a sex offender requiring civil management. If the court finds that the attorney general has not sustained that burden, it shall order the respondent's discharge from the regimen of strict and intensive supervision and treatment. Otherwise the court shall continue the regimen of strict and intensive supervision and treatment but may revise conditions of supervision and treatment as warranted.

§ 10.13 Appeals.

(a) The attorney general may, in the appellate division of the supreme court, seek a stay of any order under this article releasing a person under this article.

(b) The attorney general may appeal as of right from an order entered pursuant to subdivision (k) of section 10.06 of this article dismissing the petition following a determination that probable cause to believe that the respondent is a sex offender requiring civil management has not been established. No appeal may be taken from an order entered pursuant to subdivision (k) of section 10.06 of this article determining that probable cause has been established to believe the respondent is a sex offender requiring civil management. Both the respondent and the attorney general may appeal from any final order entered pursuant to this article. The provisions of articles fifty-five, fifty-six, and fifty-seven of the civil practice law and rules shall govern appeals taken from orders entered pursuant to this article.

(c) In connection with any appeal, a respondent who is or becomes financially unable to obtain counsel shall have the right to have appellate counsel appointed on his or her behalf. Such counsel shall be appointed by the court to which an appeal is taken. If possible, the court shall appoint the mental hygiene legal service. In the event that the court determines that the mental hygiene legal service cannot accept appointment, the court shall appoint an attorney eligible for appointment pursuant to article eighteen-B of the county law, or an entity, if any, that has contracted for the delivery of legal representation services under subdivision (c) of section 10.15 of this article.

§ 10.15 Compensation, fees and expenses.

(a) Any compensation, fee or expense paid pursuant to the provisions of this article and article eighteen-B of the county law shall be a state charge payable on vouchers approved by the court which fixed the same, after audit by and on the warrant of the comptroller. Any compensation, fee or expense paid to such counsel so appointed shall be paid out of funds appropriated to the administrative office for the courts. Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source. The appropriate court shall review and determine the reasonableness of the claims, including the number of hours expended out of court by counsel and psychiatric examiners. When a court appoints counsel pursuant to article eighteen-B of the county law, such counsel shall be compensated in accordance with the provisions of that article. Notwithstanding any other provision of law, psychiatric examiners who are appointed by a court under this article, and who perform such examinations other than as government employees, shall be compensated at an hourly rate to be set by the administrative board of the judicial conference.

(b) Members of the case review panel established by subdivision (a) of section 10.05 of this article shall be entitled to reimbursement for expenses reasonably incurred for the performance of duties under this article.

(c) The state may contract with entities for the provision of legal representation services to respondents in proceedings under this article, within the amounts appropriated therefor.

§ 10.17 Release of information authorized.

The commissioner is authorized to release information in accordance with subparagraph (vii) of paragraph nine of subdivision (c) of section 33.13 of this chapter to appropriate persons and entities when necessary to protect the public concerning a specific sex offender requiring civil management under this article, and to release information in accordance with subparagraph (viii) of paragraph nine of subdivision (c) of section 33.13 of this chapter to the attorney general and case review panel when such persons or entities request such information in the exercise of their statutory functions, powers, and duties under this article.

§ 3. The executive law is amended by adding a new section 837-r to read as follows:

§ 837-r. Office of sex offender management. 1. Establishment of office. There is hereby established within the division of criminal justice services the office of sex offender management, hereinafter in this section referred to as "the office."

2. Duties and responsibilities. The office, in consultation with the commissioner of mental health, shall be responsible for policy matters relating to sex offenders and the management of their behavior. Its activities as to such matters shall include, but not be limited to:

(a) Studying issues relating to management of sex offender behavior in consultation with experts, service providers and representative organizations in the field of sex offender management;

(b) Serving as a clearinghouse for information and materials including lists of treatment providers and other community resources for sex offender management;

(c) Advising the governor and the legislature on the most effective ways for state government to address issues of sex offender management;

(d) Coordinating and recommending sex offender management policy and interagency initiatives including matters relating to risk assessment; provision of treatment; supervision policy; the use of videoconferencing and other tools to expedite hearings; the use of polygraphs, electronic monitoring, and other supervisory tools; the sharing of information among relevant agencies; residential issues; and other matters relating to re-entry and integration into society;

(e) Developing recommendations as to standards, guidelines, best practices, and qualifications for sex offender assessment, treatment, and supervision;

(f) Acting as an advocate for sex offense victims and programs and coordinating activities of other agencies with related functions;

(g) Developing and implementing campaigns of public awareness, community outreach, and sex offense prevention;

(h) Coordinating programs of training and education for law enforcement and treatment providers, judges, attorneys, and other professionals; and

(i) Developing case management systems and other information technology to support state activities in the management of sex offender behavior.

3. Other state agencies shall provide cooperation and assistance to the office so as to assist it in the effective performance of its duties.

§ 4. The opening paragraph of subdivision (c) of section 33.13 of the mental hygiene law, as amended by chapter 912 of the laws of 1984, is amended to read as follows:

Such information about patients or clients reported to the offices, including the identification of patients or clients, [~~and~~] clinical records or clinical information tending to identify patients or clients, **and records and information concerning persons under consideration for proceedings pursuant to article ten of this chapter,** at office facilities shall not be a public record and shall not be released by the offices or its facilities to any person or agency outside of the offices except as follows:

§ 5. Paragraph 9 of subdivision (c) of section 33.13 of the mental hygiene law is amended by adding two new subparagraphs (vii) and (viii) to read as follows:

(vii) appropriate persons and entities when necessary to protect the public concerning a specific sex offender requiring civil management under article ten of this chapter.

(viii) to the attorney general, case review panel, or psychiatric

examiners described in article ten of this chapter, when such persons or entities request such information in the exercise of their statutory functions, powers and duties under article ten of this chapter.

§ 6. Subdivision (c) of section 43.03 of the mental hygiene law, as amended by chapter 855 of the laws of 1985, is amended to read as follows:

(c) Patients receiving services while being held pursuant to order of a criminal court, other than patients committed to the department pursuant to section 330.20 of the criminal procedure law, or for examination pursuant to an order of the family court shall not be liable to the department for such services. Fees due the department for such services shall be paid by the county in which such court is located except that counties shall not be responsible for the cost of services rendered patients committed to the department pursuant to section 330.20 of the criminal procedure law **or patients committed to the department pursuant to article ten of this chapter**.

§ 7. Subdivision 5 of section 45.01 of the mental hygiene law, as amended by section 3 of part H of chapter 58 of the laws of 2005, is amended to read as follows:

5. "Mental hygiene facility" means a facility as defined in subdivision six of section 1.03 of this chapter and facilities for the operation of which an operating certificate is required pursuant to article sixteen or thirty-one of this chapter and including family care homes. **"Mental hygiene facility" also means a secure treatment facility as defined by article ten of this chapter.**

§ 8. Subdivision (a) of section 47.01 of the mental hygiene law, as amended by chapter 97 of the laws of 1995, is amended to read as follows:

(a) There shall be a mental hygiene legal service of the state in each judicial department. The service shall provide legal assistance to patients or residents of a facility as defined in section 1.03 of this chapter, or any other place or facility which is required to have an operating certificate pursuant to article sixteen or thirty-one of this chapter, and to persons alleged to be in need of care and treatment in such facilities or places**, and to persons entitled to such legal assist-**

ance as provided by article ten of this chapter. The head of such service in each judicial department and such assistants and such staff as may be necessary shall be appointed and may be removed by the presiding justice of the appellate division of the judicial department. Appointments and transfers to the service shall comply with the provisions of the civil service law. Standards for qualifications of the personnel in the service shall be established by the presiding justice of the appellate division of the judicial department. The presiding justice of the appellate division of the judicial department shall promulgate such rules or regulations as may be necessary to effectuate the purposes of this article.

§ 9. Subdivisions (d) and (e) of section 47.03 of the mental hygiene law, subdivision (d) as amended by chapter 330 of the laws of 1993 and subdivision (e) as added by chapter 789 of the laws of 1985 are amended and a new subdivision (f) is added to read as follows:

(d) To be granted access at any and all times to any facility or place or part thereof described in subdivision (a) of section 47.01 of this article, and to all books, records and data pertaining to any such facility or place deemed necessary for carrying out its functions, powers and duties. The mental hygiene legal service may require from the officers or employees of such facility or place any information deemed necessary for the purpose of carrying out the service's functions, powers and duties. Information, books, records or data which are confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the service. Provided, however, whenever federal regulations restrict, or as a condition of federal aid require that a facility restrict the release of information contained in the clinical record of a patient or client, or restrict disclosure of the identity of a patient or access to that patient, to a greater extent than is allowed under this section, the provisions of such federal law or federal regulation shall be controlling; [~~**and**~~]

(e) To initiate and take any legal action deemed necessary to safe-

guard the right of any patient or resident to protection from abuse or mistreatment, which may include investigation into any such allegations of abuse or mistreatment of any such patient or resident[~~.~~]**; and**

(f) To provide legal services and assistance in accordance with article ten of this chapter.

§ 10. Subdivision 6 of section 168-a of the correction law, as added by chapter 192 of the laws of 1995, is amended to read as follows:

6. "Hospital" means**: (a)** a hospital as defined in subdivision two of section four hundred of this chapter and applies to persons committed to such hospital by order of commitment made pursuant to article sixteen of this chapter**; or (b) a secure treatment facility as defined in section 10.03 of the mental hygiene law and applies to persons committed to such facility by an order made pursuant to article ten of the mental hygiene law**.

§ 11. Subdivision 3 of section 390.50 of the criminal procedure law, as renumbered by chapter 310 of the laws of 1975, is amended to read as follows:

3. Public agencies within this state. A probation department must make available a copy of its pre-sentence report and any medical, psychiatric or social agency report submitted to it in connection with its pre-sentence investigation or its supervision of a defendant, to any court, or to the probation department of any court, within this state that subsequently has jurisdiction over such defendant for the purpose of

pronouncing or reviewing sentence and to any state agency to which the defendant is subsequently committed or certified or under whose care and custody or jurisdiction the defendant subsequently is placed upon the official request of such court or agency therefor. In any such case, the court or agency receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available**, except that an agency with jurisdiction as that term is defined in subdivision (a) of section 10.03 of the mental hygiene law shall make such material available to the commissioner of mental health, attorney general, case review panel, or psychiatric examiners described in article ten of the mental hygiene law when such persons or entities request such material in the exercise of their statutory functions, powers, and duties under article ten of the mental hygiene law**.

§ 12. Subdivisions 4 and 5 of section 380.50 of the criminal procedure law, as added by chapter 1 of the laws of 1998, are amended to read as follows:

4. Regardless of whether the victim requests to make a statement with regard to the defendant's sentence, where the defendant is committed to the custody of the department of correctional services upon a sentence of imprisonment for conviction of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law**, or a sex offense as defined in subdivision (p) of section 10.03 of the mental hygiene law**, within sixty days of the imposition of sentence the prosecutor shall provide the victim with a form, prepared and distributed by the commissioner of the department of correctional services, on which the victim may indicate a demand to be informed of the escape, absconding, discharge, parole, conditional release [~~or~~]**,** release to post-release supervision**, transfer to the custody of the office of mental health pursuant to article ten of the mental hygiene law, or release from confinement under article ten of the mental hygiene law** of the person so imprisoned. If the victim submits a completed form to the prosecutor, it shall be the duty of the prosecutor to mail promptly such form to the department of correctional services.

5. Following the receipt of such form from the prosecutor, it shall be the duty of the department of correctional services **or, where the person is committed to the custody of the office of mental health**, at the time such person is discharged, paroled, conditionally released [~~or~~]**,** released to post-release supervision**, or released from confinement under article ten of the mental hygiene law**, to notify the victim of such occurrence by certified mail directed to the address provided by the victim. In the event such person escapes or absconds from a facility under the jurisdiction of the department of correctional services, it shall be the duty of such department to notify immediately the victim of such occurrence at the most current address or telephone number provided

by the victim in the most reasonable and expedient possible manner. In the event such escapee or absconder is subsequently taken into custody by the department of correctional services, it shall be the duty of such department to notify the victim of such occurrence by certified mail directed to the address provided by the victim within forty-eight hours of regaining such custody. **In the case of a person who escapes or absconds from confinement under article ten of the mental hygiene law, the office of mental health shall notify the victim or victims in accordance with the procedures set forth in subdivision (g) of section 10.10 of the mental hygiene law.** In no case shall the state be held liable for failure to provide any notice required by this subdivision.

§ 13. Subdivision (a) of section 190.71 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(a) Except as provided in subdivision six of section 200.20 of this chapter, a grand jury may not indict (i) a person thirteen years of age for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree) **or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law**; (ii) a person fourteen or fifteen years of age for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; subdivision four of section 265.02 of the penal law, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree**, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law**.

§ 14. Section 720.35 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. Notwithstanding subdivision two of this section, whenever a person is adjudicated a youthful offender and the conviction that was vacated and replaced by the youthful offender finding was for a sex offense as that term is defined in article ten of the mental hygiene law, all records pertaining to the youthful offender adjudication shall be included in those records and reports that may be obtained by the commissioner of mental health or the commissioner of mental retardation and developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

§ 15. Section 725.15 of the criminal procedure law, as added by chapter 481 of the laws of 1978, is amended to read as follows:

§ 725.15 Sealing of records.

Except where specifically required or permitted by statute or upon specific authorization of the court that directed removal of an action to the family court all official records and papers of the action up to and including the order of removal, whether on file with the court, a police agency or the division of criminal justice services, are confidential and must not be made available to any person or public or private agency, provided however that availability of copies of any such records and papers on file with the family court shall be governed by provisions that apply to family court records**, and further provided that**

all official records and papers of the action shall be included in those records and reports that may be obtained upon request by the commissioner of mental health or commissioner of mental retardation and developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

§ 16. Section 508 of the executive law is amended by adding a new subdivision 9 to read as follows:

9. Notwithstanding any provision of law, including section five hundred one-c of this article, the office of children and family services shall make records pertaining to a person convicted of a sex offense as defined in subdivision (p) of section 10.03 of the mental hygiene law available upon request to the commissioner of mental health or the commissioner of mental retardation and developmental disabilities, as appropriate; a case review panel; and the attorney general; in accordance with the provisions of article ten of the mental hygiene law.

§ 17. Section 380.1 of the family court act is amended by adding a new subdivision 4 to read as follows:

4. Notwithstanding any other provision of law, where a finding of juvenile delinquency has been entered, upon request, the records pertaining to such case shall be made available to the commissioner of mental health or the commissioner of mental retardation and developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

§ 18. Section 35 of the judiciary law is amended by adding a new subdivision 4-a to read as follows:

4-a. In any proceeding under article ten of the mental hygiene law, the court which ordered the hearing may appoint no more than two psychiatrists, certified psychologists or physicians to examine and testify at the hearing upon the condition of such person. A psychiatrist, psychologist or physician so appointed shall, upon completion of his or her services, receive reimbursement for expenses reasonably incurred and reasonable compensation for such services, to be fixed by the court in accordance with subdivision (a) of section 10.15 of the mental hygiene law.

§ 19. Subdivision 2 of section 259-a of the executive law, as amended by section 6 of part E of chapter 62 of the laws of 2003, is amended to read as follows:

2. The division shall cause complete records to be kept of every person on presumptive release, parole, conditional release or post-release supervision. Such records shall contain the aliases and photograph of each such person, and the other information referred to in subdivision one of this section, as well as all reports of parole officers in relation to such persons. Such records shall be maintained by the division and may be made available as deemed appropriate by the chairman for use by the department of correctional services, **the commissioner of mental health, the commissioner of mental retardation and developmental disabilities, the case review panel, and the attorney general pursuant to section 10.05 of the mental hygiene law,** the division, and the board of parole. Such records shall be organized in accordance with methods of filing and indexing designed to insure the immediate availability of complete information about such persons.

§ 20. Section 259-a of the executive law is amended by adding a new subdivision 9-a to read as follows:

9-a. The division shall supervise all persons who are subject to a regimen of strict and intensive supervision and treatment pursuant to article ten of the mental hygiene law. The board of parole shall issue

and periodically update rules and regulations concerning the supervision of such persons in consultation with the office of sex offender management in the division of criminal justice services.

§ 21. Section 5 of the correction law is amended by adding a new subdivision 6 to read as follows:

6. The commissioner shall have the discretion to enter into agreements with the commissioner of mental health for the provision of security services relating to article ten of the mental hygiene law.

§ 22. Paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 69 of the laws of 2003 and subpar-

agraph (i) as separately amended by chapters 91 and 320 of the laws of 2006, is amended to read as follows:

(a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of section 235.22 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law **or as a sexually motivated felony defined in section 130.91 of such law**; or

§ 23. Section 402 of the correction law is amended by adding a new subdivision 13 to read as follows:

13. Notwithstanding any provision of law to the contrary, when an inmate is being examined in anticipation of his or her conditional release, release to parole supervision, or when his or her sentence to a term of imprisonment expires, the provisions of subdivision one of section four hundred four of this article shall be applicable and such commitment shall be effectuated in accordance with the provisions of article nine or ten of the mental hygiene law, as appropriate.

§ 24. Subdivision 1 of section 404 of the correction law, as added by chapter 766 of the laws of 1976, is amended to read as follows:

1. Whenever an inmate committed to a hospital in the department of mental hygiene **or whenever an inmate is examined in anticipation of his or her conditional release, release to parole supervision, or when his or her sentence to a term of imprisonment expires and such inmate** shall continue to be mentally ill and in need of care and treatment at the time of his **or her** conditional release, release to parole supervision, or when his **or her** sentence to a term of imprisonment expires, the director of the hospital **or the superintendent of a correctional facility** may apply for the person's admission to a hospital for the care and treatment of the mentally ill in the department of mental hygiene [~~as provided in~~] **pursuant to article nine of the mental hygiene law, or alternatively, the commissioner may apply for the person's admission to a secure treatment facility pursuant to article ten of** the mental hygiene law.

§ 24-a. Paragraph (e) of subdivision 1 of section 500-a of the correction law, as amended by chapter 541 of the laws of 1994, is amended and a new paragraph (f) is added to read as follows:

(e) For the confinement of persons convicted of any offense and sentenced to imprisonment therein, or awaiting transportation under sentence to imprisonment in another county[~~.~~]**;**

(f) For the confinement of persons during any proceedings pursuant to article ten of the mental hygiene law.

§ 25. The correction law is amended by adding a new section 622 to read as follows:

§ 622. Sex offender treatment program. 1. The department shall make available a sex offender treatment program for those inmates who are serving sentences for felony sex offenses, or for other offenses defined in subdivision (p) of section 10.03 of the mental hygiene law, and are identified as having a need for such program in accordance with sections eight hundred three and eight hundred five of this chapter. In developing the treatment program, the department shall give due regard to standards, guidelines, best practices, and qualifications recommended by the office of sex offender management. The department shall make such treatment programs available sufficiently in advance of the time of the inmate's consideration by the case review team, pursuant to section 10.05 of the mental hygiene law, so as to allow the inmate to complete the treatment program prior to that time.

2. The primary purpose of the program shall be to reduce the likelihood of reoffending by assisting such offenders to control their chain

of behaviors that lead to sexual offending. The length of participation for each inmate to achieve successful completion shall be dependent upon the initial assessment of the inmate's specific needs and the degree of progress made by the inmate as a participant but shall not be less than six months.

3. The department's sex offender treatment program shall include residential programs, which shall require that at each correctional facility where the residential program is provided, inmate participants shall be housed within the same housing area in order to provide clinically appropriate treatment, and to provide a more structured and controlled setting.

4. Each residential program shall be staffed with a licensed psychologist who shall provide clinical supervision to the treatment staff, review, approve and modify treatment plans as appropriate for individual inmates, provide clinical assessments for participating inmates, observe and participate in group sessions and make treatment recommendations. Each residential program shall also be staffed with a licensed clinical social worker or other mental health professional who shall be knowledgeable about the administration of testing instruments that are designed to measure the degree of a sex offender's psychopathy and his or her program needs. The assigned licensed psychologist shall also be knowledgeable about the application of such testing instruments.

5. Any inmate committed to the custody of the department on or after the effective date of this section for a felony sex offense, or for any of the other offenses listed in subdivision (p) of section 10.03 of the mental hygiene law, shall, as soon as practicable, be initially assessed by staff of the office of mental health who shall be knowledgeable regarding the diagnosis, treatment, assessment or evaluation of sex offenders. The assessment shall include, but not be limited to, the determination of the degree to which the inmate presents a risk of violent sexual recidivism and his or her need for sex offender treatment while in prison.

6. Staff of the office of mental health and the office of mental retardation and developmental disabilities may be consulted about the

inmate's treatment needs and may assist in providing any additional treatment services determined to be clinically appropriate to address the inmate's underlying mental abnormality or disorder. Such treatment services shall be provided using professionally accepted treatment protocols.

§ 26. The mental hygiene law is amended by adding a new section 7.18 to read as follows:

§ 7.18 Secure treatment facilities in the office.

(a) There shall be in the office secure treatment facilities, as defined in subdivision (o) of section 10.03 of this title, as designated by the commissioner for the care and treatment of dangerous sex offenders requiring confinement, as described in article ten of this title.

(b) Such secure treatment facilities may be created on the former grounds of hospitals operated by the office, but shall be considered separate and distinct facilities and shall not be considered or defined as hospitals.

§ 27. Paragraph 4 of subdivision (b) of section 9.27 of the mental hygiene law, as amended by chapter 343 of the laws of 1985, is amended to read as follows:

4. an officer of any public or well recognized charitable institution or agency or home**, including but not limited to the superintendent of a correctional facility, as such term is defined in paragraph (a) of subdivision four of section two of the correction law,** in whose institution the person alleged to be mentally ill resides.

§ 28. Paragraph 4 of subdivision (b) of section 15.27 of the mental hygiene law, such section as renumbered by chapter 978 of the laws of 1977, is amended to read as follows:

4. an officer of any well recognized charitable institution or agency or home **including but not limited to the superintendent of a correctional facility, as such term is defined in paragraph (a) of subdivision four of section two of the correction law,** in whose institution the person alleged to be mentally retarded resides.

§ 29. The penal law is amended by adding two new sections 130.91 and 130.92 to read as follows:

§ 130.91 Sexually motivated felony.

1. A person commits a sexually motivated felony when he or she commits a specified offense for the purpose, in whole or substantial part, of his or her own direct sexual gratification.

2. A "specified offense" is a felony offense defined by any of the following provisions of this chapter: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10,

robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

§ 130.92 Sentencing.

1. When a person is convicted of a sexually motivated felony pursuant to this article, and the specified felony is a violent felony offense, as defined in section 70.02 of this chapter, the sexually motivated felony shall be deemed a violent felony offense.

2. When a person is convicted of a sexually motivated felony pursuant to this article, the sexually motivated felony shall be deemed to be the same offense level as the specified offense the defendant committed.

3. Persons convicted of a sexually motivated felony as defined in section 130.91 of this article, must be sentenced in accordance with the provisions of section 70.80 of this chapter.

§ 30. The penal law is amended by adding a new section 70.80 to read as follows:

§ 70.80 Sentences of imprisonment for conviction of a felony sex offense.

1. Definitions.

(a) For the purposes of this section, a "felony sex offense" means a conviction of any felony defined in article one hundred thirty of this chapter, including a sexually motivated felony, or patronizing a prostitute in the first degree as defined in section 230.06 of this chapter, incest in the second degree as defined in section 255.26 of this chapter, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of the above.

(b) A felony sex offense shall be deemed a "violent felony sex offense" if it is for an offense defined as a violent felony offense in section 70.02 of this article, or for a sexually motivated felony as defined in section 130.91 of this chapter where the specified offense is a violent felony offense as defined in section 70.02 of this article.

(c) For the purposes of this section, a "predicate felony sex offender" means a person who stands convicted of any felony sex offense as defined in paragraph (a) of this subdivision, other than a class A-I felony, after having previously been subjected to one or more predicate felony convictions as defined in subdivision one of section 70.06 or subdivision one of section 70.04 of this article.

(d) For purposes of this section, a "violent felony offense" is any felony defined in subdivision one of section 70.02 of this article, and

a "non-violent felony offense" is any felony not defined therein.

2. In imposing a sentence within the authorized statutory range for any felony sex offense, the court may consider all relevant factors set forth in section 1.05 of this chapter, and in particular, may consider the defendant's criminal history, if any, including any history of sex offenses; any mental illness or mental abnormality from which the defendant may suffer; the defendant's ability or inability to control his sexual behavior; and, if the defendant has difficulty controlling such behavior, the extent to which that difficulty may pose a threat to society.

3. Except as provided by subdivision four, five, six, seven or eight of this section, or when a defendant is being sentenced for a conviction of the class A-II felonies of predatory sexual assault and predatory sexual assault against a child as defined in sections 130.95 and 130.96 of this chapter, or for any class A-I sexually motivated felony for which a life sentence or a life without parole sentence must be imposed, a sentence imposed upon a defendant convicted of a felony sex offense shall be a determinate sentence. The determinate sentence shall be imposed by the court in whole or half years, and shall include as a part thereof a period of post-release supervision in accordance with subdivision two-a of section 70.45 of this article. Persons eligible for sentencing under section 70.07 of this article governing second child sexual assault felonies shall be sentenced under such section and paragraph (j) of subdivision two-a of section 70.45 of this article.

4. (a) Sentences of imprisonment for felony sex offenses. Except as provided in subdivision five, six, seven, or eight of this section, the term of the determinate sentence must be fixed by the court as follows:

(i) for a class B felony, the term must be at least five years and must not exceed twenty-five years;

(ii) for a class C felony, the term must be at least three and one-half years and must not exceed fifteen years;

(iii) for a class D felony, the term must be at least two years and must not exceed seven years; and

(iv) for a class E felony, the term must be at least one and one-half years and must not exceed four years.

(b) Probation. The court may sentence a defendant convicted of a class D or class E felony sex offense to probation in accordance with the provisions of section 65.00 of this title.

(c) Alternative definite sentences for class D and class E felony sex offenses. If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

5. Sentence of imprisonment for a predicate felony sex offender. (a) Applicability. This subdivision shall apply to a predicate felony sex offender who stands convicted of a non-violent felony sex offense and who was previously convicted of one or more felonies.

(b) Non-violent predicate felony offense. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a predicate felony sex offender, and the person's predicate conviction was for a non-violent felony offense, the court must impose a determinate sentence of imprisonment, the term of which must be fixed by the court as follows:

(i) for a class B felony, the term must be at least eight years and must not exceed twenty-five years;

(ii) for a class C felony, the term must be at least five years and must not exceed fifteen years;

(iii) for a class D felony, the term must be at least three years and must not exceed seven years; and

(iv) for a class E felony, the term must be at least two years and must not exceed four years.

(c) Violent predicate felony offense. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a predicate felony sex offender, and the person's predicate conviction was

for a violent felony offense, the court must impose a determinate sentence of imprisonment, the term of which must be fixed by the court as follows:

(i) for a class B felony, the term must be at least nine years and must not exceed twenty-five years;

(ii) for a class C felony, the term must be at least six years and must not exceed fifteen years;

(iii) for a class D felony, the term must be at least four years and must not exceed seven years; and

(iv) for a class E felony, the term must be at least two and one-half years and must not exceed four years.

(d) A defendant who stands convicted of a non-violent felony sex offense, other than a class A-I or class A-II felony, who is adjudicated a persistent felony offender under section 70.10 of this article, shall be sentenced pursuant to the provisions of section 70.10 or pursuant to this subdivision.

6. Sentence of imprisonment for a violent felony sex offense. Except as provided in subdivisions seven and eight of this section, a defendant who stands convicted of a violent felony sex offense must be sentenced pursuant to the provisions of section 70.02, section 70.04, subdivision six of section 70.06, section 70.08, or section 70.10 of this article, as applicable.

7. Sentence for a class A felony sex offense. When a person stands convicted of a sexually motivated felony pursuant to section 130.91 of this chapter and the specified offense is a class A felony, the court must sentence the defendant in accordance with the provisions of:

(a) section 60.06 of this chapter and section 70.00 of this article, as applicable, if such offense is a class A-I felony; and

(b) section 70.00, 70.06 or 70.08 of this article, as applicable, if such offense is a class A-II felony.

8. Whenever a juvenile offender stands convicted of a felony sex offense, he or she must be sentenced pursuant to the provisions of sections 60.10 and 70.05 of this chapter.

9. Every determinate sentence for a felony sex offense, as defined in paragraph (a) of subdivision one of this section, imposed pursuant to any section of this article, shall include as a part thereof a period of post-release supervision in accordance with subdivision two-a of section 70.45 of this article.

§ 31. Section 200.50 of the criminal procedure law, as amended by chapter 467 of the laws of 1974, subdivision 2 as amended by chapter 481 of the laws of 1978, subdivisions 4 and 7 as amended by chapter 300 of the laws of 2001, and subdivision 8 as amended by chapter 209 of the laws of 1990, is amended to read as follows:

§ 200.50 Indictment; form and content.

An indictment must contain:

1. The name of the superior court in which it is filed; and

2. The title of the action and, where the defendant is a juvenile offender, a statement in the title that the defendant is charged as a juvenile offender; and

3. A separate accusation or count addressed to each offense charged, if there be more than one; and

4. A statement in each count that the grand jury, or, where the accusatory instrument is a superior court information, the district attorney, accuses the defendant or defendants of a designated offense, provided that in any prosecution under article four hundred eighty-five of the penal law, the designated offense shall be the specified offense,

as defined in subdivision three of section 485.05 of the penal law, followed by the phrase "as a hate crime", and provided further that in any prosecution under section 490.25 of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 490.05 of the penal law, followed by the phrase "as a crime of terrorism"; **and provided further that in any prosecution under section 130.91 of the penal law, the designated offense shall be the specified offense, as defined in subdivision two of section 130.91 of the penal law, followed by the phrase "as a sexually motivated felony";** and

5. A statement in each count that the offense charged therein was

committed in a designated county; and

6. A statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time; and

7. A plain and concise factual statement in each count which, without allegations of an evidentiary nature,

(a) asserts facts supporting every element of the offense charged and the defendant's or defendants' commission thereof with sufficient precision to clearly apprise the defendant or defendants of the conduct which is the subject of the accusation; and

(b) in the case of any armed felony, as defined in subdivision forty-one of section 1.20, states that such offense is an armed felony and specifies the particular implement the defendant or defendants possessed, were armed with, used or displayed or, in the case of an implement displayed, specifies what the implement appeared to be; and

(c) in the case of any hate crime, as defined in section 485.05 of the penal law, specifies, as applicable, that the defendant or defendants intentionally selected the person against whom the offense was committed or intended to be committed; or intentionally committed the act or acts constituting the offense, in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person; and

(d) in the case of a crime of terrorism, as defined in section 490.25 of the penal law, specifies, as applicable, that the defendant or defendants acted with intent to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination or kidnapping; and

(e) in the case of a sexually motivated felony, as defined in section 130.91 of the penal law, asserts facts supporting the allegation that the offense was sexually motivated; and

8. The signature of the foreman or acting foreman of the grand jury, except where the indictment has been ordered reduced pursuant to subdivision one-a of section 210.20 of this chapter or the accusatory instrument is a superior court information; and

9. The signature of the district attorney.

§ 32. Paragraphs (c) and (d) of subdivision 1 of section 70.02 of the penal law, paragraph (c) as amended by chapter 110 of the laws of 2006, and paragraph (d) as separately amended by chapters 764 and 765 of the laws of 2005, are amended to read as follows:

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in

section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, **rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45,** sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, **facilitating a sex offense with a controlled substance as defined in section 130.90,** criminal possession of a weapon in the third degree as defined in subdivision [~~four,~~] five, six, seven or eight of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as

defined in subdivision [~~four,~~] five, six, seven or eight of section 265.02 as a lesser included offense of that section as defined in section 220.20 of the criminal procedure law, **persistent sexual abuse as defined in section 130.53, aggravated sexual abuse in the fourth degree as defined in section 130.65-a,** falsely reporting an incident in the second degree as defined in section 240.55 and placing a false bomb or hazardous substance in the second degree as defined in section 240.61.

§ 33. Subdivisions 1 and 2 of section 70.45 of the penal law, subdivision 1 as added by chapter 1 of the laws of 1998 and subdivision 2 as amended by chapter 738 of the laws of 2004, are amended and two new subdivisions 1-a and 2-a are added to read as follows:

1. In general. Each determinate sentence also includes, as a part thereof, an additional period of post-release supervision. Such period shall commence as provided in subdivision five of this section and a violation of any condition of supervision occurring at any time during such period of post-release supervision shall subject the defendant to a further period of imprisonment of at least six months and up to the balance of the remaining period of post-release supervision, not to exceed five years**; provided, however, that a defendant serving a term of post-release supervision for a conviction of a felony sex offense, as defined in section 70.80 of this article, may be subject to a further period of imprisonment up to the balance of the remaining period of post-release supervision**. Such maximum limits shall not preclude a longer period of further imprisonment for a violation where the defendant is subject to indeterminate and determinate sentences.

1-a. When, following a final hearing, a time assessment has been imposed upon a person convicted of a felony sex offense who owes three years or more on a period of post-release supervision, imposed pursuant to subdivision two-a of this section, such defendant, after serving three years of the time assessment, shall be reviewed by the board of parole and may be re-released to post-release supervision only upon a determination by the board of parole made in accordance with subdivision two of section two hundred fifty-nine-i of the executive law. If re-re-

lease is not granted, the board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same. If a time assessment of less than three years is imposed upon such a defendant, the defendant shall be released upon the expiration of such time assessment, unless he or she is subject to further imprisonment or confinement under any provision of law.

2. Period of post-release supervision **for other than felony sex offenses**. The period of post-release supervision for a determinate sentence**, other than a determinate sentence imposed for a felony sex offense as defined in paragraph (a) of subdivision one of section 70.80 of this article,** shall be five years except that:

(a) such period shall be one year whenever a determinate sentence of imprisonment is imposed pursuant to subdivision two of section 70.70 of this article upon a conviction of a class D or class E felony offense;

(b) such period shall be not less than one year nor more than two years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision two of section 70.70 of this article upon a conviction of a class B or class C felony offense;

(c) such period shall be not less than one year nor more than two years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision three or four of section 70.70 of this article upon conviction of a class D or class E felony offense;

(d) such period shall be not less than one and one-half years nor more than three years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision three or four of section 70.70 of this article upon conviction of a class B felony or class C felony offense;

(e) such period shall be not less than one and one-half years nor more than three years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class D or class E violent felony offense;

(f) such period shall be not less than two and one-half years nor more than five years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class B or class C violent felony offense.

2-a. Periods of post-release supervision for felony sex offenses. The period of post-release supervision for a determinate sentence imposed for a felony sex offense as defined in paragraph (a) of subdivision one of section 70.80 of this article shall be as follows:

(a) not less than three years nor more than ten years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision four of section 70.80 of this article upon a conviction of a class D or class E felony sex offense;

(b) not less than five years nor more than fifteen years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision four of section 70.80 of this article upon a conviction of a class C felony sex offense;

(c) not less than five years nor more than twenty years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision four of section 70.80 of this article upon a conviction of a class B felony sex offense;

(d) not less than three years nor more than ten years whenever a determinate sentence is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class D or class E violent felony sex offense as defined in paragraph (b) of subdivision one of section 70.80 of this article;

(e) not less than five years nor more than fifteen years whenever a determinate sentence is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class C violent felony sex offense as defined in section 70.80 of this article;

(f) not less than five years nor more than twenty years whenever a determinate sentence is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class B violent felony sex offense as defined in section 70.80 of this article;

(g) not less than five years nor more than fifteen years whenever a determinate sentence of imprisonment is imposed pursuant to either section 70.04, section 70.06, or subdivision five of section 70.80 of this article upon a conviction of a class D or class E violent or non-violent felony sex offense as defined in section 70.80 of this article;

(h) not less than seven years nor more than twenty years whenever a determinate sentence of imprisonment is imposed pursuant to either section 70.04, section 70.06, or subdivision five of section 70.80 of this article upon a conviction of a class C violent or non-violent felony sex offense as defined in section 70.80 of this article;

(i) such period shall be not less than ten years nor more than twenty-five years whenever a determinate sentence of imprisonment is imposed pursuant to either section 70.04, section 70.06, or subdivision five of section 70.80 of this article upon a conviction of a class B violent or non-violent felony sex offense as defined in section 70.80 of this article; and

(j) such period shall be not less than ten years nor more than twenty years whenever any determinate sentence of imprisonment is imposed pursuant to subdivision four of section 70.07 of this article.

§ 34. The penal law is amended by adding a new section 60.13 to read as follows:

§ 60.13 Authorized dispositions; felony sex offenses.

When a person is to be sentenced upon a conviction for any felony defined in article one hundred thirty of this chapter, including a sexually motivated felony, or patronizing a prostitute in the first degree as defined in section 230.06 of this chapter, incest in the second degree as defined in section 255.26 of this chapter, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of these crimes, the court must sentence the defendant in accordance with the provisions of section 70.80 of this title.

§ 35. Subdivision 1 of section 60.05 of the penal law, as amended by chapter 738 of the laws of 2004, is amended to read as follows:

1. Applicability. Except as provided in section 60.04 of this article governing the authorized dispositions applicable to felony offenses defined in article two hundred twenty or two hundred twenty-one of this chapter **or in section 60.13 of this article governing the authorized dispositions applicable to felony sex offenses defined in paragraph (a) of subdivision one of section 70.80 of this title**, this section shall

govern the dispositions authorized when a person is to be sentenced upon a conviction of a class A felony, a class B felony or a class C, class D or class E felony specified herein, or when a person is to be sentenced upon a conviction of a felony as a multiple felony offender.

§ 36. Subdivision 1 of section 70.00 of the penal law, as amended by section 28 of chapter 738 of the laws of 2004, is amended to read as follows:

1. Indeterminate sentence. Except as provided in subdivisions four, five and six of this section **or section 70.80 of this article**, a

sentence of imprisonment for a felony, other than a felony defined in article two hundred twenty or two hundred twenty-one of this chapter, shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section.

§ 37. Subdivision 1 of section 70.00 of the penal law, as amended by section 29 of chapter 738 of the laws of 2004, is amended to read as follows:

1. Indeterminate sentence. Except as provided in subdivisions four and five of this section **or section 70.80 of this article**, a sentence of imprisonment for a felony, other than a felony defined in article two hundred twenty or two hundred twenty-one of this chapter, shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section.

§ 38. Subdivisions 2 and 3 of section 70.06 of the penal law, as amended by chapter 3 of the laws of 1995, paragraph (e) of subdivision 3 as amended by chapter 92 of the laws of 1996, are amended to read as follows:

2. Authorized sentence. Except as provided in subdivision five or six of this section, **or as provided in subdivision five of section 70.80 of this article,** when the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender the court must impose an indeterminate sentence of imprisonment. The maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

3. Maximum term of sentence. Except as provided in subdivision five or six of this section, **or as provided in subdivision five of section 70.80 of this article,** the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

(a) For a class A-II felony, the term must be life imprisonment;

(b) For a class B felony, the term must be at least nine years and must not exceed twenty-five years;

(c) For a class C felony, the term must be at least six years and must not exceed fifteen years;

(d) For a class D felony, the term must be at least four years and must not exceed seven years; and

(e) For a class E felony, the term must be at least three years and must not exceed four years; provided, however, that where the sentence is for the class E felony offense specified in section 240.32 of this chapter, the maximum term must be at least three years and must not exceed five years.

§ 39. Subdivisions 2 and 3 of section 70.06 of the penal law, as amended by chapter 410 of the laws of 1979, are amended to read as follows:

2. Authorized sentence. Except as provided in subdivision five of this section, **or as provided in subdivision five of section 70.80 of this article,** when the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender the court must impose an indeterminate sentence of imprisonment. The maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment

under such sentence must be in accordance with subdivision four of this section.

3. Maximum term of sentence. Except as provided in subdivision five of this section, **or as provided in subdivision five of section 70.80 of this article,** the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

(a) For a class A-II felony, the term must be life imprisonment;

(b) For a class B felony, the term must be at least nine years and must not exceed twenty-five years;

(c) For a class C felony, the term must be at least six years and must not exceed fifteen years;

(d) For a class D felony, the term must be at least four years and must not exceed seven years; and

(e) For a class E felony, the term must be at least three years and must not exceed four years.

§ 39-a. Subdivision 2 of section 70.10 of the penal law, as amended by chapter 481 of the laws of 1978, is amended to read as follows:

2. Authorized sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a persistent felony offender, and when it is of the opinion that the history and character of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section 70.00, 70.02, 70.04 [~~or~~], 70.06 **or subdivision five of section 70.80** for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for a class A-I felony. In such event the reasons for the court's opinion shall be set forth in the record.

§ 40. Subdivision 2-a of section 70.25 of the penal law, as amended by section 33 of chapter 738 of the laws of 2004, is amended to read as follows:

2-a. When an indeterminate or determinate sentence of imprisonment is imposed pursuant to section 70.04, 70.06, 70.08, 70.10, subdivision three or four of section 70.70 [~~or~~], subdivision three or four of section 70.71 **or subdivision five of section 70.80** of this article, and such person is subject to an undischarged indeterminate or determinate sentence of imprisonment imposed prior to the date on which the present crime was committed, the court must impose a sentence to run consecutively with respect to such undischarged sentence.

§ 41. Subdivision 2-a of section 70.25 of the penal law, as amended by section 34 of chapter 738 of the laws of 2004, is amended to read as follows:

2-a. When an indeterminate or determinate sentence of imprisonment is imposed pursuant to section 70.04, 70.06, 70.08, 70.10, subdivision three or four of section 70.70 [~~or~~], subdivision three or four of section 70.71 **or subdivision five of section 70.80** of this article, and such person is subject to an undischarged indeterminate sentence of imprisonment imposed prior to the date on which the present crime was committed, the court must impose a sentence to run consecutively with respect to such undischarged sentence.

§ 42. Subparagraph (x) of paragraph (f) of subdivision 3 of section 259-i of the executive law, as amended by section 11 of part E of chapter 62 of the laws of 2003, is amended to read as follows:

(x) If the presiding officer is satisfied that there is a preponderance of evidence that the alleged violator violated one or more condi-

tions of release in an important respect, he or she shall so find. For each violation so found, the presiding officer may (A) direct that the presumptive releasee, parolee, conditional releasee or person serving a period of post-release supervision be restored to supervision; (B) as an alternative to reincarceration, direct the presumptive releasee, parolee, conditional releasee or person serving a period of post-release supervision be placed in a parole transition facility for a period not to exceed one hundred eighty days and subsequent restoration to supervision; (C) in the case of presumptive releasee, parolees or conditional releasees, direct the violator's reincarceration and fix a date for consideration by the board for re-release on presumptive release, or parole or conditional release, as the case may be; or (D) in the case of

persons released to a period of post-release supervision, direct the violator's reincarceration for a period of at least six months and up to the balance of the remaining period of post-release supervision, not to exceed five years**; provided, however, that a defendant serving a term of post-release supervision for a conviction of a felony sex offense defined in section 70.80 of the penal law may be subject to a further period of imprisonment up to the balance of the remaining period of post-release supervision**. Where a date has been fixed for the violator's re-release on presumptive release, parole or conditional release, as the case may be, the board or board member may waive the personal interview between a member or members of the board and the violator to determine the suitability for re-release; provided, however, that the board shall retain the authority to suspend the date fixed for re-release and to require a personal interview based on the violator's institutional record or on such other basis as is authorized by the rules and regulations of the board. If an interview is required, the board shall notify the violator of the time of such interview in accordance with the rules and regulations of the board. If the violator is placed in a parole transition facility or restored to supervision, the presiding officer may impose such other conditions of presumptive release, parole, conditional release, or post-release supervision as he may deem appropriate, as authorized by rules of the board.

§ 43. Paragraph (g) of subdivision 3 of section 259-i of the executive law, as amended by section 11 of part E of chapter 62 of the laws of 2003, is amended to read as follows:

(g) Revocation of presumptive release, parole, conditional release or post-release supervision shall not prevent re-parole or re-release provided such re-parole or re-release is not inconsistent with any other provisions of law. **When there has been a revocation of the period of post-release supervision imposed on a felony sex offender who owes three years or more on such period imposed pursuant to subdivision two-a of section 70.45 of the penal law, and a time assessment of three years or more has been imposed, the violator shall be reviewed by the board of parole and may be restored to post-release supervision only after serving three years of the time assessment, and only upon a determination by the board of parole made in accordance with the procedures set forth in this section. Even if the hearing officer has imposed a time assessment of a certain number of years of three years or more, the violator shall not be released at or before the expiration of that time assessment unless the board authorizes such release, the period of post-release supervision expires, or release is otherwise authorized by law. If a time assessment of less than three years was imposed upon such a defendant, the defendant shall be released upon the expiration of such time**

assessment, unless he or she is subject to further imprisonment or confinement under any other law.

§ 43-a. Subparagraph (ii) of paragraph (a) of subdivision 3 of section 259-i of the executive law, as amended by section 1 of part J of chapter 56 of the laws of 2004, is amended to read as follows:

(ii) Whenever a presumptively released, paroled or conditionally released person or a person under post-release supervision or a prisoner received under the uniform act for out-of-state parolee supervision has, pursuant to this paragraph, **or whenever a person confined during proceedings pursuant to article ten of the mental hygiene law has** been placed in any county jail or penitentiary, or a city prison operated by a city having a population of one million or more inhabitants, for any period that such person is not detained pursuant to commitment based on an indictment, an information, a simplified information, a prosecutor's information, a misdemeanor complaint or a felony complaint, an arrest warrant or a bench warrant, or any order by a court of competent jurisdiction, the state shall pay to the city or county operating such facility the actual per day per capita cost as certified to the state commissioner of correctional services by the appropriate local official for the care of such person and as approved by the director of the budget. The reimbursement rate shall not, however, exceed thirty dollars per day per capita and forty dollars per day per capita on and after the first day of April, nineteen hundred eighty-eight.

§ 44. Section 259-j of the executive law is amended by adding a new subdivision 6 to read as follows:

6. Notwithstanding any other provision of this section to the contrary, where a term of post-release supervision in excess of five years has been imposed on a person convicted of a crime defined in article one hundred thirty of the penal law, including a sexually motivated felony, the division of parole may grant a discharge from post-release supervision prior to the expiration of the maximum term of post-release supervision. Such a discharge may be granted only after the person has served at least five years of post-release supervision, and only to a person who has been on unrevoked post-release supervision for at least three consecutive years. No such discharge shall be granted unless the division of parole: (a) consults with any licensed psychologist, qualified psychiatrist, or other mental health professional who is providing care or treatment to the supervisee; (b) determines that a discharge from post-release supervision is in the best interests of society; and (c) is satisfied that the supervisee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee, or DNA data bank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith. Before making a determination to discharge a person from a period of post-release supervision, the division of parole may request that the commissioner of the office of mental health arrange a psychiatric evaluation of the supervisee. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted.

§ 45. Section 259-j of the executive law is amended by adding a new subdivision 3 to read as follows:

3. Notwithstanding any other provision of this section to the contrary, where a term of post-release supervision in excess of five years has been imposed on a person convicted of a crime defined in article one hundred thirty of the penal law, including a sexually motivated felony, the division of parole may grant a discharge from post-release supervision prior to the expiration of the maximum term of post-release supervision. Such a discharge may be granted only after the person has served at least five years of post-release supervision, and only to a person who has been on unrevoked post-release supervision for at least three consecutive years. No such discharge shall be granted unless the division of parole: (a) consults with any licensed psychologist, qualified psychiatrist, or other mental health professional who is providing care or treatment to the supervisee; (b) determines that a discharge from post-release supervision is in the best interests of society; and (c) is satisfied that the supervisee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee, or DNA data bank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith. Before making a determination to discharge a person from a period of post-release supervision, the division of parole may request that the commissioner of the office of mental health arrange a psychiatric evaluation of the supervisee. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted.

§ 46. Subdivision 42 of section 1.20 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

42. "Juvenile offender" means (1) a person, thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of the penal law**, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** and (2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual

abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; [~~**subdivision four of section 265.02 of the penal law, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law;**~~] or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree**, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law**.

§ 47. Subdivision 18 of section 10.00 of the penal law, as amended by chapter 435 of the laws of 1998 and paragraph 2 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

18. "Juvenile offender" means (1) a person thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of this chapter

or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; and

(2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; [~~**subdivision four of section 265.02 of this chapter, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter;**~~] or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree**, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law**.

§ 48. Subdivision 2 of section 30.00 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

2. A person thirteen, fourteen or fifteen years of age is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible **or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law**; and a person fourteen or fifteen years of age is criminally responsible for acts constituting the crimes defined in section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; [~~**subdivision four of section 265.02 of this chapter, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter;**~~] or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school

grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree**, or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law**.

§ 49. Subdivision (b) of section 117 of the family court act, as amended by chapter 920 of the laws of 1982, the opening paragraph as

amended by chapter 435 of the laws of 1998 and clause (ii) of the opening paragraph as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(b) For every juvenile delinquency proceeding under article three involving an allegation of an act committed by a person which, if done by an adult, would be a crime (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; **or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 135.20 (kidnapping in the second degree), but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree); or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; **or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen or fifteen years of age; **or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; [~~**subdivision four of section 265.02 of the penal law, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law;**~~] or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen or fifteen years of age; **or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen or fifteen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in clause (i), (ii) or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor, committed by a person at least seven but less than sixteen years of age, but only where there has been two prior findings by the court that such person has committed a prior act which, if committed by an adult would be a felony:

(i) There is hereby established in the family court in the city of New York at least one "designated felony act part." Such part or parts shall be held separate from all other proceedings of the court, and shall have jurisdiction over all proceedings involving such an allegation. All such proceedings shall be originated in or be transferred to this part from other parts as they are made known to the court.

(ii) Outside the city of New York, all proceedings involving such an allegation shall have a hearing preference over every other proceeding in the court, except proceedings under article ten.

§ 50. Subdivision 8 of section 301.2 of the family court act, as amended by chapter 435 of the laws of 1998, paragraph (ii) as amended by

chapter 264 of the laws of 2003, is amended to read as follows:

8. "Designated felony act" means an act which, if done by an adult, would be a crime: (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; **or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree) but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree) or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; **or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen or fifteen years of age; **or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; [~~**subdivision four of section 265.02 of the penal law, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law;**~~] or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen or fifteen years of age; **or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;** (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen or fifteen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in paragraph (i), (ii), or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor committed by a person at least seven but less than sixteen years of age, but only where there has been two prior findings by the court that such person has committed a prior felony.

§ 50-a. The opening paragraph of section 722 of the county law, as amended by chapter 453 of the laws of 1999, is amended to read as follows:

The governing body of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law [~~**or**~~]**,** section four hundred seven of the surrogate's court procedure act **or article ten of the mental hygiene**

law, who are financially unable to obtain counsel. Each plan shall also provide for investigative, expert and other services necessary for an adequate defense. The plan shall conform to one of the following:

§ 51. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 52. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that:

(a) the provisions of sections thirteen, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six,

thirty-seven, thirty-eight, thirty-nine, thirty-nine-a, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine and fifty of this act shall only apply to crimes committed after the effective date of this act;

(b) the amendments to subdivision 1 of section 70.00 of the penal law made by section thirty-six of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section thirty-seven of this act shall take effect;

(c) the amendments to subdivisions 2 and 3 of section 70.06 of the penal law made by section thirty-eight of this act shall be subject to the expiration and reversion of such subdivisions pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section thirty-nine of this act shall take effect;

(d) the amendments to subdivision 2-a of section 70.25 of the penal law made by section forty of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section forty-one of this act shall take effect; and

(e) the amendments to section 259-j of the executive law made by section forty-four of this act shall not affect the expiration of such section, and shall expire and be deemed repealed therewith, when upon such date the provisions of section forty-five of this act shall take effect.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly