

FREEDOM FROM INDEFINITE FORENSIC DETENTION

A bill to amend the procedures and lengths of confinement under New York's Criminal Procedure Law §§ 330.20 & 730.50.

- Place time limits on confinement under 330.20 equal to minimum sentences or five years in a secure facility and 10 years total in secure or non-secure facilities.
 - Require that any person who has been confined in a secure facility under 330.20 for the minimum sentence for their charge, or for five years, whichever comes first, at least be transferred to a non-secure civil facility.
 - Require the release of any person who has been confined in a secure or non-secure facility under 330.20 for a total of 10 years, or for the minimum sentence for their charge if it is more than 5 years, whichever comes first.
- Ensure decisions about the need for retention in mental health custody are driven by mental health clinicians and officials, rather than initial prosecutors in the original case.
- Modifying the definition of “dangerous” that is used for committing and retaining people to be based on current actions and current risk and to actually involve serious danger.
- Adjust procedural protections, including shortening time frames for hearings, ensuring progressive system of furloughs, protecting privileges, better ensuring right to appeal.
- Treat people who have been released from confinement under 330.20 the same as everyone else, rather than having lowering standards for re-confining them.
- Place time limits on 730.50 confinement consistent with those under 330.20.
 - Require the release of any person who has been confined under 730.50 for the minimum sentence for their charge, two-thirds the maximum sentence for their charge, or a total of ten years, whichever comes first.

What is confinement under 330.20 and 730.50?

- 330.20: If it is determined that a person is not responsible for their charged conduct because of their mental health needs, they can be committed to a secure forensic facility and then subsequently retained in that forensic facility, for an indefinite period of time.
- 730.50: If it is determined that a person is not competent to stand trial for an alleged charge for which they have been indicted, they can be committed to a forensic facility and then subsequently retained in that forensic facility.

The Problem:

- People with mental health needs are languishing for years and decades in confinement in secure forensic facilities under the New York State Office of Mental Health
- People are confined in abusive secure facilities under 330.20 for lengths of time well beyond the sentences they would have received if they had been found guilty at trial or taken a plea bargain for the charges they faced.
- Evidence shows that longer periods of time in forensic facilities have little impact on re-arrest rates and no impact on re-arrest rates for violence after people are released from confinement.
- Prosecutors and judges control decisions about the confinement and treatment of people with mental health needs, rather than mental health professionals and officials let alone people with mental health needs or their families.
- Prosecutors, judges, and mental health staff & officials use a vague definition of “dangerous” to continue to lock people in secure facilities based on past conduct.
- The procedures that keep people confined in secure facilities are unfair.
- After release, people are too often re-committed to secure facilities when they do not pose harm to others and would be much healthier receiving services in the community.