

Memorandum in Support

NYSBA #39

A. 5567-A

S. 1004-A

March 18, 2026

By: M. of A. Simon

By: Senator Brouk

Assembly Committee: Codes

Senate Committee: Codes

Effective Date: Ninetieth day after it becomes law

AN ACT to amend the criminal procedure law and the mental hygiene law, in relation to determining the capacity of a defendant to stand trial

LAW AND SECTION REFERRED TO: Amends Subdivision 1 of Section 730 of the criminal procedure law

The New York State Bar Association supports A.5567-A/S.1004-A, a bill which would amend the criminal procedure law to limit the use of restoration services for defendants who are deemed to be unable to understand the charges against them or participate in their own defense to those defendants who are likely to benefit from those services, and to amend those sections of the law that have been deemed unconstitutional under the provisions of the US Supreme Court case of *Jackson v. Indiana* and the NY Supreme Court case of *Ritter v. Surles*.

The New York State Bar Association's Task Force on Mental Health and Trauma Informed Representation studied and expressed support for this bill in their 2023 Report, adopted as policy of the Association in June of 2023.¹ The Report noted that the current provisions of CPL 730 have resulted in the diversion of scarce resources to the attempt to prepare mentally ill people to stand trial rather than helping them to receive the treatment they need. Consequently, local governmental units are forced to expend hundreds of thousands or even millions of dollars, in failed attempts at restoration, particularly for defendants who may have intellectual disabilities or dementia. Often judges will order such restoration on the mistaken belief that they are helping a defendant to receive treatment leading to recovery.

If enacted, the bill would update and modernize article 730 to eliminate provisions which have been deemed unconstitutional and would 1) require that the reports of professionals examining the defendant include the examiner's professional opinion of a reasonable possibility that the person can be restored; 2) create a definition of restoration services to make it clear that restoration is not aimed at recovery but simply at making the defendant legally able to stand trial; 3) delete the provision that the DA must agree to outpatient restoration so a court can make this decision independently and (4) allow the conversion of the defendant from a criminal status to a civil status so the defendant can receive mental health treatment leading to recovery.

¹ *NYSBA Report by the Task Force on Mental Health and Trauma Informed Representation*, June 2023, [final-report-Task-Force-on-Mental-Health-and-Trauma-Informed-Representation-June-2023.pdf](#)

The current law directs that restoration services are geared to making the defendant legally able to stand trial and are not aimed at recovery from the underlying illness. This bill will adjust the evaluation process to ensure that those who are not able to be restored for trial are given the help they need and safeguard defendants from being subject to unconstitutional detainment periods.

Based on the foregoing and the attached report, the New York State Bar Association **SUPPORTS** this legislation.