# New York Criminal Law and Procedure

A resource for prosecutors, defense attorneys, judges, and others interested in the New York criminal justice system.

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## Field Trips for Insanity Patients?

This week, Washington State's mental health system came under fire after Phillip Arnold Paul, an insanity acquittee -- a person found not guilty by reason of insanity ("mental disease or defect" in New York lingo) -- escaped during an outing to a state fair. The outing had been arranged by the mental hospital. He was captured Sunday afternoon. Paul's escape was apparently motivated by a judge's refusal to grant his request, earlier this month, to be transferred to a residential facility.

Insanity acquittees are not convicted criminals; rather, they are considered patients entitled to rehabilitation and treatment. In New York, a person acquitted by reason of mental disease or defect is usually first committed to one of two secure facilities run by the state Office of Mental Health. These facilities look and feel like prisons, complete with barbed wire, metal detectors, and armed guards. Patients remain in state custody until they are no longer a danger to themselves or society. Some patients are so ill that they remain in secure custody for the rest of their lives.

A patient who is no longer dangerous, but still requires in-patient treatment, is transferred to one of many non-secure facilities around the state. Eventually he or she can be released into the community under an order of conditions. Each level in the step-down process requires judicial consent. OMH, the patient (represented by Mental Hygiene Legal Service, an arm of the Appellate Division), and the District Attorney are each given an opportunity to present evidence and be heard before a patient is transferred from secure to non-secure custody and from non-secure custody to full release.

Furloughs --- temporary releases from non-secure facilities into the community --- serve a therapeutic purpose. Many patients begin their reintegration into society with one-on-one trips with their psychiatrist to the bank, grocery store, and the park. The psychiatrist or other professional is able to observe how the patient handles the stresses of being off-grounds. Later, OMH may seek furloughs of ratios of several patients to one professional. Eventually, the patient may go on unsupervised and even overnight furloughs into the community.

CPL § 330.20(10) governs furlough applications, which can only be made by OMH and only if the agency believes "consistent with the public safety and welfare of the community and the defendant, the clinical condition of the defendant warrants a granting of the privileges authorized by a furlough order." If the court finds public safety and welfare of the community and the defendant would be served by a furlough order, it must grant the application.

In my view, Phillips Arnold Paul would never have been granted a furlough order in New York. During recent releases to the residential facility, the patient's mental status deteriorated. He escaped from a mental hospital in 1990; during his re-apprehension, he injured a deputy sheriff. His underlying crime was particularly heinous: a strangling and slashing of a 78-year-old who the patient believed was a witch casting spells on him. Based on these facts, particularly the recent decompensation and a judge's finding earlier this month that he was dangerous, it is tough to say that the public safety would be served by even supervised visits to the community. (LC)

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