

STATE OF NEW YORK

8242

2023-2024 Regular Sessions

IN ASSEMBLY

November 6, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to establishing an office of pretrial services; provides for the establishment of a working group to prepare for the transition of pretrial services agencies; and provides for the repeal of such working group upon the expiration thereof

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

1 Section 1. Subdivisions 1, 4 and 5 of section 510.45 of the criminal
2 procedure law, as added by section 8 of part JJJ of chapter 59 of the
3 laws of 2019, are amended and a new subdivision 6 is added to read as
4 follows:

5 1. The office of [~~court administration~~] pretrial services shall certi-
6 fy and [~~regularly~~] review for recertification every three years one or
7 more pretrial services agencies in each county to monitor [~~principals~~]
8 people released under non-monetary conditions. In order to be certified
9 by the office, each pretrial services agency shall demonstrate that such
10 agency has: the ability to perform the responsibilities for pretrial
11 services agency required in accordance with subdivision three-a of
12 section 500.10 of this title; experience working with individuals
13 involved in the criminal legal system; and the capacity to create indi-
14 vidualized plans to support individuals released under non-monetary
15 conditions. Such office shall maintain a listing on its public website
16 identifying by county each pretrial services agency [~~so~~] certified in
17 the state, including a phone number and email contact information for
18 each pretrial services agency.

19 4. Supervision by a pre-trial services agency may be ordered as a
20 non-monetary condition pursuant to this title only if the court finds,
21 after notice, an opportunity to be heard and an individualized determi-
22 nation explained on the record or in writing, that no other realistic

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

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1 non-monetary condition or set of non-monetary conditions will suffice to
2 reasonably assure the ~~[principal's]~~ person's return to court. Under no
3 circumstances shall someone receiving pretrial services be required to
4 pay out-of-pocket for services provided or mandated by the pretrial
5 services agency. Pretrial services agencies shall make every effort to
6 limit transportation and other costs to accessing mandated services.

7 5. ~~[Each]~~ The office of pretrial services shall gather information
8 from each pretrial ~~[service]~~ services agency ~~[certified by]~~ and the
9 office of court administration ~~[pursuant to this section shall]~~ at the
10 end of each year ~~[prepare and file with such office an annual report,]~~
11 which the office of pretrial services shall compile, publish on its
12 website and make available upon request to members of the public. Such
13 reports shall not include any personal identifying information for any
14 individual ~~[defendants]~~. Each such report, in addition to other rele-
15 vant information, shall set forth, disaggregated by each county served:

16 (a) the number of ~~[defendants]~~ individuals supervised by the agency;

17 (b) the length of time (in months) each such person was supervised by
18 the agency prior to acquittal, dismissal, release on recognizance, revo-
19 cation of release on conditions, and sentencing;

20 (c) the race, ethnicity, age ~~[and]~~, sex and gender identity of each
21 person supervised, where available;

22 (d) the crimes with which each person supervised was charged;

23 (e) the number of persons supervised for whom release conditions were
24 modified by the court, describing generally for each person or group of
25 persons the type and nature of the condition or conditions added or
26 removed;

27 (f) the number of persons supervised for whom release under conditions
28 was revoked by the court, and the basis for such revocations; and

29 (g) the court disposition in each supervised case, including sentenc-
30 ing information.

31 6. Pretrial services agency shall be responsible for making periodic,
32 individualized recommendations for each case on whether the conditions
33 of non-monetary release imposed by the court should be modified or elim-
34 inated. The court shall review any recommendations to modify or elimi-
35 nate the non-monetary conditions the court imposed and make an individ-
36 ualized determination on the record or in writing explaining the reasons
37 for the court's determination and for any changes to the conditions
38 imposed.

39 § 2. Subdivision 2 of section 510.45 of the criminal procedure law, as
40 added by section 8 of part JJJ of chapter 59 of the laws of 2019, is
41 amended to read as follows:

42 2. Every such agency shall be a ~~[public entity under the supervision~~
43 ~~and control of a county or municipality or a]~~ non-profit entity under
44 contract to ~~[the county, municipality]~~ one or more counties, munici-
45 palties, or the state. ~~[A county or municipality shall be authorized to~~
46 ~~enter into a contract with another county or municipality in the state~~
47 ~~to monitor principals under non-monetary conditions of release in its~~
48 ~~county, but counties]~~ A pretrial services agency may be certified to
49 provide services in more than one county. Counties, municipalities and
50 the state shall not contract with any private for-profit entity for such
51 purposes.

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

54 § 837-y. Office of pretrial services. 1. There shall be in the divi-
55 sion of criminal justice services an office of pretrial services, here-
56 inafter in this section referred to as the "office".

2. The office shall have the following duties and responsibilities:

(a) to certify and contract with at least one agency providing pretrial services in each county pursuant to section 510.45 of the criminal procedure law;

(b) to identify and disseminate best practices for the provision of pretrial services that will maximize the likelihood that individuals successfully attend court proceedings;

(c) to develop initial and ongoing training materials for staff working at pretrial services agencies, consistent with guidelines established by the national association of pretrial services agencies. Training materials shall include relevant information regarding pretrial laws in New York, cultural competency, trauma-informed care, risk-needs responsivity, verbal de-escalation and crisis intervention, motivational interviewing, foundational concepts of cognitive-behavioral therapy, and effective practices in community supervision;

(d) to work with pretrial services agencies to identify or develop an appropriate questionnaire, instrument or tool that meets the requirements for such questionnaire, instrument or tool set forth in subdivision three of section 510.45 of the criminal procedure law for use in determining whether a person poses a risk of flight to avoid prosecution in order to inform the agency's recommendation to the court regarding whether to impose non-monetary conditions and, where necessary, on the types of conditions that would be appropriate;

(e) to work with agencies providing pretrial services to establish performance measures;

(f) to identify and develop solutions to address barriers to making court appearances by:

(i) working with pretrial services agencies to identify common challenges and barriers to making court appearances in each county;

(ii) determining services needed to address the challenges and barriers identified in subparagraph (i) of this paragraph including, where necessary, by piloting new strategies to address these challenges using national best practices and research from this and other fields; and

(iii) collaborating with other agencies, including the office of mental health, the office of addiction services and supports, the office for the prevention of domestic violence, the office of temporary and disability assistance, and the department of health to develop strategies for addressing the needs of those under pretrial supervision;

(g) to collect, receive and publish in a machine readable format on the office's website on an annual basis the aggregate information and data required pursuant to section 510.45 of the criminal procedure law regarding the provision of services as well as any other aggregate information or data identified by the office including, but not limited to:

(i) any tool used to make decisions regarding placement with a pretrial services agency and conditions of release, as well as the research validating such tool and demonstrating that such tool is free from discrimination on the basis of race, national origin, sex, or any other protected class, as required pursuant to section 510.45 of the criminal procedure law;

(ii) the categories of supervision used by each pretrial services agency and the number of individuals starting under each level of supervision, disaggregated by race, sex, sexual orientation, gender identity, age, and ethnicity, to the extent such information is easily available;

(iii) pretrial failure to appear rates of individuals receiving pretrial services, including the number who missed one or more court

1 dates, any information collected regarding reasons for failure to appear
2 collected by the pretrial services agency, how many individuals appeared
3 in court voluntarily following a failure to appear, how many warrants
4 for failures to appear were issued, and how many individuals were
5 detained pretrial or placed on electronic monitoring pretrial after a
6 failure to appear in court, broken down by race, sex, sexual orien-
7 tation, gender identity, age, ethnicity, pretrial services agency and
8 conditions of supervision, to the extent such information is easily
9 available;

10 (iv) information on the pretrial rearrest of individuals receiving
11 pretrial services, including the number of individuals arrested and
12 charged with a new misdemeanor offense while released, the number
13 arrested and charged with a new non-violent felony offense while
14 released, and the number arrested and charged with a new violent felony
15 offense while released, the outcome of any rearrest, and how long after
16 release such arrests occurred;

17 (v) the types of services to which each pretrial services agency is
18 making referrals, any challenges identified in linking participants to
19 services and the names of the organizations to whom referrals are being
20 made;

21 (vi) information regarding any evaluation of a pretrial services agen-
22 cy conducted by the office;

23 (vii) information regarding persons placed on electronic monitoring
24 programs pretrial, including, but not limited to: the number of partic-
25 ipants; the demographics of the participant population, including race,
26 sex, sexual orientation, gender identity, age, and ethnicity; the charg-
27 es on which participants are ordered to the program; and the average
28 length of participation in the program, to the extent such information
29 is easily available; and

30 (viii) the average caseloads of staff providing such services;

31 (h) to request and receive from any department, division, board,
32 bureau, commission or other agency of the state or any political subdi-
33 vision of the state or any public authority such assistance, information
34 and data, subject to limitations on the disclosure of information, as
35 shall enable the office to properly carry out its functions, powers and
36 duties;

37 (i) to analyze and evaluate all collected data, and commission or
38 undertake any necessary research and studies, to improve the delivery of
39 pretrial services in a manner that is consistent with meeting the needs
40 and circumstances of each county and of the individuals receiving
41 services, ensuring the appropriate use of services, and preventing
42 racial or other disparities;

43 (j) to work with local jurisdictions to develop training materials for
44 judges and court staff on research and other relevant information
45 regarding best practices on the use of pretrial services and non-mone-
46 tary release;

47 (k) to evaluate the performance of agencies providing pretrial
48 services, assist agencies to improve services where programs do not meet
49 performance standards set by the office, and decertify programs that
50 remain unable to meet the standards;

51 (l) to assist local jurisdictions to regularly elicit feedback from
52 current and former recipients of pretrial services regarding the court
53 process, the services they received, recommendations to improve such
54 services, and any other information that the office deems appropriate;

55 (m) to investigate and monitor any other matter related to pretrial
56 services as needed;

1 (n) to develop recommendations regarding the distribution and expendi-
2 ture of any monies appropriated for pretrial services. In making such
3 recommendations, the office may consider, in addition to measures of
4 performance, the commitment of local resources to such services and the
5 changes thereto, the geographic balance of funding among the regions of
6 the state, population, crime rates, poverty rates and individual commu-
7 nity needs;

8 (o) to apply for and accept any grant or gift for any of the purposes
9 of the office. Any monies so received may be expended by the office to
10 effectuate any such purpose, subject to the same limitations as to
11 approval of expenditures and audit as are prescribed for state monies
12 appropriated for such purposes; and

13 (p) to target grants in support of innovative and cost-effective
14 solutions that enhance the provision of quality pretrial services,
15 including collaborative efforts serving multiple counties.

16 3. The office shall establish an advisory board on pretrial services
17 for the purposes of providing the office with recommendations for
18 improving services. Such advisory board shall consist of pretrial
19 services agency staff, current or former recipients of pretrial
20 services, representatives from the New York state association of
21 pretrial services agencies and national experts or researchers as need-
22 ed.

23 4. The office may coordinate with local governments on contracting
24 with certified pretrial services agencies and in collecting data from
25 the agencies.

26 5. Within amounts appropriated therefor, funding shall be made avail-
27 able to pay for pretrial services programs certified under this section
28 pursuant to criteria established by the office of pretrial services in
29 consultation with local governmental units, which shall take into
30 consideration the local needs and resources as identified by local
31 governmental units, the average number of people receiving such services
32 at any one time, the level of services required by individuals under
33 supervision, and such other factors as may be deemed necessary.

34 § 4. The office of pretrial services, in collaboration with the office
35 of court administration and any other entity deemed necessary, shall
36 establish a working group to prepare for the transition of pretrial
37 services from public entities to private, non-profit entities. The work-
38 ing group shall organize meetings with relevant stakeholders and the
39 general public to provide education and solicit feedback regarding the
40 transition of services.

41 § 5. This act shall take effect on April 1, 2024; provided, however,
42 that section two of this act shall take effect three years after it
43 shall have become a law; and provided further, however, that section
44 four of this act shall expire and be deemed repealed on April 1, 2026.
45 Effective immediately, the addition, amendment and/or repeal of any rule
46 or regulation necessary for the implementation of this act on its effec-
47 tive date are authorized to be made and completed on or before such
48 effective date.