STATE OF NEW YORK

5033--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 6, 2017

Introduced by M. of A. O'DONNELL, LUPARDO, JAFFEE, ORTIZ, D'URSO, RIVERA, BARRON, GOTTFRIED, DAVILA, DE LA ROSA, SEPULVEDA, PELLEGRINO -- Multi-Sponsored by -- M. of A. SIMON -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the judiciary law, in relation to enacting the "bail elimination act of 2018"; and to repeal certain provisions of the criminal procedure law and the insurance law relating to the posting of bail

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 "bail elimination act of 2018".

§ 2. Subdivisions 1, 2, 4, 5 and 6 of section 500.10 of the criminal procedure law are amended and a new subdivision 3-a is added to read as follows:

1. "Principal" means a defendant in a criminal action or proceeding, or a person adjudged a material witness therein, or any other person so involved therein that [~~he~~] **the principal** may by law be compelled to appear before a court for the purpose of having such court exercise control over [~~his~~] **the principal's** person to secure [~~his~~] **the principal's** future attendance at the action or proceeding when required, and who in fact either is before the court for such purpose or has been before it and been subjected to such control.

2. "Release on own recognizance." A court releases a principal on [~~his~~] **the principal's** own recognizance when, having acquired control over [~~his~~] **the principal's** person, it permits [~~him~~] **the principal** to be at liberty during the pendency of the criminal action or proceeding involved upon condition that [~~he~~] **the principal** will appear thereat

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

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whenever [~~his~~] the principal's attendance may be required and will at all times render [~~himself~~] the principal amenable to the orders and processes of the court.

3-a. "Release under non-monetary conditions." A court releases a principal under non-monetary conditions when, having acquired control over a person, it permits the person to be at liberty during the pendency of the criminal action under conditions set by the court, which shall be the least restrictive that will reasonably assure the principal's appearance in court. Such conditions may include, among others, that the principal shall be in contact with a pretrial services agency serving principals in that county; that the principal shall abide by specified restrictions on travel that are reasonably related to an actual risk of intentional flight from the jurisdiction; that the principal shall refrain from possessing a firearm, destructive device or other dangerous weapon; that the person be placed in pretrial supervision with a pretrial services agency serving principals in that county.

4. "Commit to the custody of the sheriff." A court commits a principal to the custody of the sheriff when, having acquired control over his person, it orders that he be confined in the custody of the sheriff [~~during the pendency of the criminal action or proceeding involved~~] pending the outcome of a hearing as to whether the individual shall be ordered into pretrial detention as specified in article five hundred forty-five of this title.

5. "Securing order" means an order of a court [~~committing a principal to the custody of the sheriff, or fixing bail, or releasing him on his own recognizance~~] that either releases a principal on personal recognizance, or releases the principal under non-monetary conditions, all with the direction that the principal return to court for future court appearances and to be at all times amendable to the orders and processes of the court.

6. [~~"Order of recognizance or bail" means a securing order releasing a principal on his own recognizance or fixing bail~~] "Pretrial detention." A court may commit a principal to pretrial detention if, after a hearing and making such findings as specified in article five hundred forty-five of this title, a judge so orders detention.

§ 3. Subdivisions 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of section 500.10 of the criminal procedure law are REPEALED, and subdivision 20 is renumbered subdivision 7.

§ 4. Section 510.10 of the criminal procedure law, as amended by chapter 459 of the laws of 1984, is amended to read as follows:

§ 510.10 Securing order; when required; alternatives available; standard to be applied.

1. When a principal, whose future court attendance at a criminal action or proceeding is or may be required, initially comes under the control of a court, such court [~~must~~] shall, by a securing order, [~~either release him on his own recognizance, fix bail or commit him to the custody of the sheriff~~] release the principal pending trial on the principal's personal recognizance, unless the court finds on the record that release on recognizance will not reasonably assure the individual's court attendance. In such instances, the court will release the individual under non-monetary conditions, selecting the least restrictive alternative that will reasonably assure the principal's court attendance. The court will support its choice of alternative on the record. A principal shall not be required to pay for any part of the cost of release under non-monetary conditions.

2. Notwithstanding the provisions of subdivision one of this section, in cases where the people move for pretrial detention the court may commit the defendant to the custody of the sheriff or issue a securing order in accordance with article five hundred forty-five of this title.

3. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and [~~he~~] **the principal** is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a [~~securing~~] **any** order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of [~~the securing~~] **such** order.

§ 5. Section 510.20 of the criminal procedure law is amended to read as follows:

§ 510.20 Application for [~~recognizance or bail; making and determination thereof in general~~] **a change in securing order based on a material change of circumstances**.

1. Upon any occasion when a court [~~is required to issue~~] **has issued** a securing order with respect to a principal, [~~or at any time when a principal is confined in the custody of the sheriff as a result of a previously issued securing order, he~~] **the principal or the people** may make an application for [~~recognizance or bail~~] **a different securing order due to a material change of circumstances**.

2. Upon such application, the principal **or the people** must be accorded an opportunity to be heard and to contend that [~~an order of recognizance or bail~~] **a different securing order** must or should issue[~~, that the court should release him on his own recognizance rather than fix bail, and that if bail is fixed it should be in a suggested amount and form~~] **because, due to a material change in circumstances, the current order is either too restrictive or not restrictive enough to reasonably ensure a defendant's appearance in court. The court shall select the least restrictive non-monetary condition or conditions that will reasonably assure the principal's court attendance**.

3. Where the people make an application for a different securing order on the basis of a violation of an existing securing order, the court shall consider the nature, willfulness, and seriousness of the violation and shall select the least restrictive non-monetary condition or conditions that will reasonably assure the principal's court attendance.

§ 6. Section 510.30 of the criminal procedure law, subparagraph (v) of paragraph (a) of subdivision 2 as amended by chapter 920 of the laws of 1982, subparagraph (vi) of paragraph (a) of subdivision 2 as renumbered by chapter 447 of the laws of 1977, subparagraph (vii) as added and subparagraphs (viii) and (ix) of paragraph (a) of subdivision 2 as renumbered by section 1 of part D of chapter 491 of the laws of 2012 and subdivision 3 as added by chapter 788 of the laws of 1981, is amended to read as follows:

§ 510.30 Application for [~~recognizance or bail~~] **securing order**; rules of law and criteria controlling determination.

[~~1. Determinations of applications for recognizance or bail are not in all cases discretionary but are subject to rules, prescribed in article five hundred thirty and other provisions of law relating to specific kinds of criminal actions and proceedings, providing (a) that in some circumstances such an application must as a matter of law be granted, (b) that in others it must as a matter of law be denied and the principal committed to or retained in the custody of the sheriff, and (c) that~~

~~in others the granting or denial thereof is a matter of judicial discretion.~~

~~2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:~~

~~(a)~~] With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

[~~(i) The principal's character, reputation, habits and mental condition;~~

~~(ii) His employment and financial resources; and~~

~~(iii) His family ties and the length of his residence if any in the community; and~~

~~(iv) His~~]

1. Information about the principal that is relevant to court appearance, including, but not limited to, the principal's activities, history and community ties;

2. If the principal is a defendant, the charges facing the principal;

3. The principal's criminal record if any; [~~and~~

~~(v) His~~] 4. The principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; [~~and~~

~~(vi) His~~] 5. The principal's previous record if any in responding to court appearances when required or with respect to intentional flight to avoid criminal prosecution; [~~and~~

~~(vii)~~] 6. Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, the following factors:

[~~(A)~~] (i) any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, whether or not such order of protection is currently in effect; and

[~~(B)~~] (ii) the principal's history of use or possession of a firearm; [~~and~~

~~(viii)~~] 7. If [~~he~~] the principal is a defendant, the weight of the evidence against [~~him~~] the principal in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for [~~bail or recognizance~~] a securing order pending appeal, the merit or lack of merit of the appeal; [~~and~~

~~(ix)~~] 8. If [~~he~~] the principal is a defendant, the sentence which may be or has been imposed upon conviction[~~.~~

~~(b) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraph (a).~~

~~3. When bail or recognizance is ordered, the court shall inform the principal, if he is a defendant charged with the commission of a felony, that the release is conditional and that the court may revoke the order~~

~~of release and commit the principal to the custody of the sheriff in accordance with the provisions of subdivision two of section 530.60 of this chapter if he commits a subsequent felony while at liberty upon such order.~~]; and

9. If the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in this paragraph.

§ 7. Section 510.40 of the criminal procedure law is amended to read as follows:

§ 510.40 [~~Application for recognizance or bail; determination thereof, form of securing order and execution thereof~~] Notification to principal by court of conditions of release and penalties for violations of release.

1. [~~An application for recognizance or bail must be determined by a securing order which either:~~

~~(a) Grants the application and releases the principal on his own recognizance; or~~

~~(b) Grants the application and fixes bail; or~~

~~(c) Denies the application and commits the principal to, or retains him in, the custody of the sheriff.~~

~~2.~~] Upon ordering that a principal be released on [~~his~~] the principal's own recognizance, or released under non-monetary conditions the court must direct [~~him~~] the principal to appear in the criminal action or proceeding involved whenever [~~his~~] the principal's attendance may be required and to [~~render himself~~] be at all times amenable to the orders and processes of the court. If the principal is a defendant, the court shall also direct the defendant not to commit a crime while at liberty upon the court's securing order. If such principal is in the custody of the sheriff [~~or at liberty upon bail~~] at the time of the order, the court must direct that [~~he~~] the principal be discharged from such custody [~~or, as the case may be, that his bail be exonerated~~].

[~~3. Upon the issuance of an order fixing bail, and upon the posting thereof, the court must examine the bail to determine whether it complies with the order. If it does, the court must, in the absence of some factor or circumstance which in law requires or authorizes disapproval thereof, approve the bail and must issue a certificate of release, authorizing the principal to be at liberty, and, if he is in the custody of the sheriff at the time, directing the sheriff to discharge him therefrom. If the bail fixed is not posted, or is not approved after being posted, the court must order that the principal be committed to the custody of the sheriff.~~]

2. If the principal is released under non-monetary conditions, the court shall, in the document authorizing the principal's release, notify the principal of:

(a) any of the conditions under which the principal is subject, in addition to the directions in subdivision one of this section, in a manner sufficiently clear and specific to serve as a guide for the principal's conduct; and

(b) the consequences for violation of those conditions, which could include revoking of the securing order, setting of a more restrictive securing order, or, after the hearing as specified in article five hundred forty-five of this title, pretrial detention.

3. The court shall notify all principals released under non-monetary conditions and on recognizance of all court appearances in advance by text message, telephone call, electronic mail, or first class mail.

§ 8. The criminal procedure law is amended by adding two new sections 510.43 and 510.45 to read as follows:

§ 510.43 Court appearance reminders.

The court shall notify all principals released on recognizance or under non-monetary conditions of all court appearances by text message, telephone call, electronic mail, or first class mail. The court may partner with the certified pretrial services agency or agencies in that county to provide such notifications.

§ 510.45 Pretrial service agencies.

The office of court administration shall certify a pretrial services agency or agencies in each county to monitor principals released under conditions of non-monetary release. Such agency or agencies shall be a public entity under the supervision and control of a county or municipality or a non-profit entity under contract to the county or municipality. A county shall be authorized to enter in to a contract with another county or municipality in the state to monitor principals released under conditions of non-monetary release in its county but shall not contract with any private entity for such purposes. Any criteria, instrument, or tool used to determine a principal's eligibility for non-monetary conditions or to determine the condition or conditions to be monitored by a pretrial services agency shall be made available to any person upon written or oral request.

§ 9. Section 510.50 of the criminal procedure law is amended to read as follows:

§ 510.50 Enforcement of securing order.

When the attendance of a principal confined in the custody of the sheriff **or pursuant to a pretrial detention order** is required at the criminal action or proceeding at a particular time and place, the court may compel such attendance by directing the sheriff to produce him **or her** at such time and place. If the principal is at liberty on [~~his~~] **the principal's** own recognizance [~~or on bail, his~~] **or non-monetary conditions the principal's** attendance may be achieved or compelled by various methods, including notification and the issuance of a bench warrant, prescribed by law in provisions governing such matters with respect to the particular kind of action or proceeding involved. **Prior to issuing a bench warrant, the court must provide the principal forty-eight hours advance notice that he or she is required to appear in court in order to give the principal the opportunity to appear voluntarily.**

§ 10. Article 520 of the criminal procedure law is REPEALED.

§ 11. The article heading of article 530 of the criminal procedure law is amended to read as follows:

SECURING ORDERS [~~**OF RECOGNIZANCE OR BAIL**~~] WITH RESPECT TO DEFENDANTS IN CRIMINAL ACTIONS AND PROCEEDINGS--WHEN AND BY WHAT COURTS AUTHORIZED

§ 12. Section 530.10 of the criminal procedure law is amended to read as follows:

§ 530.10 [~~**Order of recognizance or bail**~~] **Securing order**; in general.

Under circumstances prescribed in this article, a court, upon application of a defendant charged with or convicted of an offense, is required [~~**or authorized to order bail or recognizance**~~] **to issue a securing order** for the release or prospective release of such defendant during the pendency of either:

1. A criminal action based upon such charge; or
2. An appeal taken by the defendant from a judgment of conviction or a sentence or from an order of an intermediate appellate court affirming or modifying a judgment of conviction or a sentence.

§ 13. Subdivision 4 of section 530.11 of the criminal procedure law, as added by chapter 186 of the laws of 1997, is amended to read as follows:

4. When a person is arrested for an alleged family offense or an alleged violation of an order of protection or temporary order of protection or arrested pursuant to a warrant issued by the supreme or family court, and the supreme or family court, as applicable, is not in session, such person shall be brought before a local criminal court in the county of arrest or in the county in which such warrant is returnable pursuant to article one hundred twenty of this chapter. Such local criminal court may issue any order authorized under subdivision eleven of section 530.12 of this article, section one hundred fifty-four-d or one hundred fifty-five of the family court act or subdivision three-b of section two hundred forty or subdivision two-a of section two hundred fifty-two of the domestic relations law, in addition to discharging other arraignment responsibilities as set forth in this chapter. In making such order, the local criminal court shall consider the [~~bail recommendation~~] **securing order**, if any, made by the supreme or family court as indicated on the warrant or certificate of warrant. Unless the petitioner or complainant requests otherwise, the court, in addition to scheduling further criminal proceedings, if any, regarding such alleged family offense or violation allegation, shall make such matter returnable in the supreme or family court, as applicable, on the next day such court is in session.

§ 14. Paragraph (a) of subdivision 8 of section 530.13 of the criminal procedure law, as added by chapter 388 of the laws of 1984, is amended to read as follows:

(a) revoke [~~an order of recognizance or bail~~] **a securing order** and commit the defendant to custody; or

§ 15. The opening paragraph of subdivision 1 of section 530.13 of the criminal procedure law, as amended by chapter 137 of the laws of 2007, is amended to read as follows:

When any criminal action is pending, and the court has not issued a temporary order of protection pursuant to section 530.12 of this article, the court, in addition to the other powers conferred upon it by this chapter, may for good cause shown issue a temporary order of protection in conjunction with any securing order [~~committing the defendant to the custody of the sheriff or as a condition of a pre-trial release, or as a condition of release on bail or an adjournment in contemplation of dismissal~~]. In addition to any other conditions, such an order may require that the defendant:

§ 16. Subdivisions 9 and 11 of section 530.12 of the criminal procedure law, subdivision 9 as amended by section 81 of subpart B of part C of chapter 62 of the laws of 2011, subdivision 11 as amended by chapter 498 of the laws of 1993, the opening paragraph of subdivision 11 as amended by chapter 597 of the laws of 1998, paragraph (a) of subdivision 11 as amended by chapter 222 of the laws of 1994 and paragraph (d) of subdivision 11 as amended by chapter 644 of the laws of 1996, are amended to read as follows:

9. If no warrant, order or temporary order of protection has been issued by the court, and an act alleged to be a family offense as defined in section 530.11 of this [~~chapter~~] **article** is the basis of the

arrest, the magistrate shall permit the complainant to file a petition, information or accusatory instrument and for reasonable cause shown, shall thereupon hold such respondent or defendant, [~~admit to, fix or accept bail,~~] **establish a securing order** or parole him or her for hearing before the family court or appropriate criminal court as the complainant shall choose in accordance with the provisions of section 530.11 of this [~~chapter~~] **article**.

11. If a defendant is brought before the court for failure to obey any lawful order issued under this section, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, the court may:

(a) revoke [~~an order of recognizance or revoke an order of bail or order forfeiture of such bail~~] **a securing order** and commit the defendant to custody; or

(b) restore the case to the calendar when there has been an adjournment in contemplation of dismissal and commit the defendant to custody; or

(c) revoke a conditional discharge in accordance with section 410.70 of this chapter and impose probation supervision or impose a sentence of imprisonment in accordance with the penal law based on the original conviction; or

(d) revoke probation in accordance with section 410.70 of this chapter and impose a sentence of imprisonment in accordance with the penal law based on the original conviction. In addition, if the act which constitutes the violation of the order of protection or temporary order of protection is a crime or a violation the defendant may be charged with and tried for that crime or violation.

§ 17. Section 530.20 of the criminal procedure law, as amended by chapter 531 of the laws of 1975, subparagraph (ii) of paragraph (b) of subdivision 2 as amended by chapter 218 of the laws of 1979, is amended to read as follows:

§ 530.20 [~~Order of recognizance or bail;~~] **Securing order** by local criminal court when action is pending therein.

1. When a criminal action is pending in a local criminal court, such court, upon application of a defendant, [~~must or may order recognizance or bail as follows:~~

~~1. When the defendant is charged, by information, simplified information, prosecutor's information or misdemeanor complaint, with an offense or offenses of less than felony grade only, the court must order recognizance or bail.~~

~~2. When the defendant is charged, by felony complaint, with a felony, the court may, in its discretion, order recognizance or bail except as otherwise provided in this subdivision:~~

~~(a) A city court, a town court or a village court may not order recognizance or bail when (i) the defendant is charged with a class A felony, or (ii) it appears that the defendant has two previous felony convictions;~~

~~(b)~~] **shall, by a securing order, release the defendant pending trial on the defendant's personal recognizance, unless the court finds on the record that release on recognizance will not reasonably assure the defendant's court attendance. In such instances, the court will release the defendant under non-monetary conditions, selecting the least restrictive alternative that will reasonably assure the defendant's court attendance. The court will support its choice of alternative on**

the record. The defendant shall not be required to pay for any part of the cost of release under non-monetary conditions.

2. Notwithstanding the provisions of subdivision one of this section, in cases where the people move for pretrial detention, the court may commit the defendant to the custody of the sheriff or issue a securing order in accordance with article five hundred forty-five of this title.

3. Notwithstanding the provisions of subdivision one or two of this section, in cases where the defendant is charged by felony complaint with a felony and either is charged with a class A felony, or it appears that the defendant has two previous felony convictions within the meaning of subdivision one of section 70.08 or 70.10 of the penal law; the court, a city court, town court or a village court shall commit the defendant to the custody of the sheriff for the county or superior court to make a determination about a securing order within three days.

4. No local criminal court may order [~~recognizance or bail~~] a securing order with respect to a defendant charged with a felony unless and until[~~:~~

~~(i) The district attorney has been heard in the matter or, after knowledge or notice of the application and reasonable opportunity to be heard, has failed to appear at the proceeding or has otherwise waived his right to do so; and~~

~~(ii) The~~] the court [~~has~~], and counsel for the defense, have been furnished with a report of the division of criminal justice services concerning the defendant's criminal record if any or with a police department report with respect to the defendant's prior arrest and conviction record, if any. If neither report is available, the court, with the consent of the district attorney, may dispense with this requirement; provided, however, that in an emergency, including but not limited to a substantial impairment in the ability of such division or police department to timely furnish such report, such consent shall not be required if, for reasons stated on the record, the court deems it unnecessary. [~~When the court has been furnished with any such report or record, it shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.~~]

§ 18. The section heading and subdivisions 1 and 2 of section 530.30 of the criminal procedure law, subdivision 2 as amended by chapter 762 of the laws of 1971, are amended to read as follows:

[~~Order of recognizance or bail;~~] Securing order by superior court judge when action is pending in local criminal court.

1. When a criminal action is pending in a local criminal court, [~~other than one consisting of a superior court judge sitting as such,~~] a judge of a superior court holding a term thereof in the county, upon application of a defendant, and within one working day, may order [~~recognizance or bail~~] a securing order when such local criminal court:

(a) Lacks authority to issue such an order, pursuant to [~~paragraph (a) of~~] subdivision [~~two~~] four of section 530.20 of this article; or

(b) Has denied an application for recognizance [~~or bail~~]; or

(c) Has [~~fixed bail which is excessive~~] improperly granted a request for a pretrial detention hearing; or

(d) Has set a securing order of release under non-monetary conditions which are more restrictive than necessary to reasonably ensure court attendance. In such case, such superior court judge may vacate the order of such local criminal court and release the defendant on [~~his own~~] recognizance [~~or fix bail in a lesser amount or in a less burdensome form~~] or under release with conditions, whichever is the least restric-

tive alternative that will reasonably assure defendant's appearance in court. The court will support its choice of alternative on the record.

2. Notwithstanding the provisions of subdivision one of this section, when the defendant is charged with a felony in a local criminal court, a superior court judge may not [~~order recognizance or bail~~] issue a securing order unless and until the district attorney has had an opportunity to be heard in the matter and such judge has been furnished with a report as described in [~~subparagraph (ii) of paragraph (b) of~~] subdivision [~~two~~] four of section 530.20 of this article.

§ 19. Section 530.40 of the criminal procedure law, subdivision 3 as amended by chapter 264 of the laws of 2003 and subdivision 4 as amended by chapter 762 of the laws of 1971, is amended to read as follows:

§ 530.40 [~~Order of recognizance or bail;~~] Securing order by superior court when action is pending therein.

When a criminal action is pending in a superior court, such court, upon application of a defendant, [~~must or may order recognizance or bail~~] shall issue a securing order as follows:

1. [~~When the defendant is charged with an offense or offenses of less than felony grade only, the court must order recognizance or bail.~~

~~2. When the defendant is charged with a felony, the court may, in its discretion, order recognizance or bail. In any such case in which an indictment (a) has resulted from an order of a local criminal court holding the defendant for the action of the grand jury, or (b) was filed at a time when a felony complaint charging the same conduct was pending in a local criminal court, and in which such local criminal court or a superior court judge has issued an order of recognizance or bail which is still effective, the superior court's order may be in the form of a direction continuing the effectiveness of the previous order.~~] Release the defendant pending trail on the defendant's personal recognizance, unless the court finds on the record that release on recognizance will not reasonably assure the defendant's court attendance. In such instances, the court will release the defendant under non-monetary conditions, selecting the least restrictive alternative that will reasonably assure the defendant's court attendance. The court will support its choice of alternative on the record. The defendant shall not be required to pay for any part of the cost of release under non-monetary conditions.

2. Notwithstanding the provisions of subdivision one of this section, in cases where the people move for pretrial detention, the court may commit the defendant to the custody of the sheriff or issue a securing order in accordance with article five hundred forty-five of this title.

3. Notwithstanding the provisions of subdivision [~~two~~] one of this section, a superior court may not [~~order recognizance or bail~~] issue a securing order, or permit a defendant to remain at liberty pursuant to an existing order, after [~~he~~] the defendant has been convicted of either: (a) a class A felony or (b) any class B or class C felony defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age. In either case the court must commit or remand the defendant to the custody of the sheriff.

4. Notwithstanding the provisions of subdivision [~~two~~] one of this section, a superior court may not [~~order recognizance or bail~~] issue a securing order when the defendant is charged with a felony unless and until the district attorney has had an opportunity to be heard in the matter and such court [~~has~~] and counsel for the defense have been

furnished with a report as described in [~~subparagraph (ii) of paragraph (b) of~~] subdivision [~~two~~] four of section 530.20 of this article.

§ 20. Subdivision 1 of section 530.45 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

1. When the defendant is at liberty in the course of a criminal action as a result of a prior [~~order of recognizance or bail~~] securing order and the court revokes such order [~~and then either fixes no bail or fixes bail in a greater amount or in a more burdensome form than was previously fixed and remands or commits defendant to the custody of the sheriff, a judge designated in subdivision two, upon application of the defendant following conviction of an offense other than a class A felony or a class B or class C felony offense defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age, and before sentencing, may issue a securing order and either release defendant on his own recognizance, or fix bail, or fix bail in a lesser amount or~~], such court may issue a more restrictive securing order in a less [~~burdensome~~] restrictive form than fixed by the court in which the conviction was entered.

§ 21. Section 530.60 of the criminal procedure law is REPEALED.

§ 22. Title P of the criminal procedure law is amended by adding a new article 545 to read as follows:

ARTICLE 545--PRETRIAL DETENTION

Section 545.10 Pretrial detention; when ordered.
545.20 Eligibility for a pretrial detention hearing.
545.30 Pretrial detention hearing.
545.40 Order for pretrial detention.
545.50 Reopening of pretrial hearing.
545.60 Length of detention for defendant held under a pretrial detention order.

§ 545.10 Pretrial detention; when ordered.

A county or superior court may order, before trial, the detention of a defendant if the people seek detention of the defendant under section 545.20 of this article, and, after a hearing pursuant to section 545.30 of this article, the court finds clear and convincing evidence that the defendant poses a high risk of intentional flight for the purpose of evading criminal prosecution and that no conditions or combination of conditions in the community will reasonably assure the defendant's return to court.

§ 545.20 Eligibility for a pretrial detention hearing.

1. The people may make a motion seeking pretrial detention of a defendant at any time, except that where the people did not so move when the defendant initially came under control of the court, the people must show a change of circumstances or that information exists that was not known to the people when the defendant initially came under control of the court. The people may seek the pretrial detention of a defendant:

(a) charged with a felony where there is an allegation that the defendant, with intent to cause serious physical injury to another person, caused such injury to such person or to a third person, or attempted to cause such injury to such person or to a third person;

(b) charged with an offense where, if convicted, the defendant would be subject to a sentence under section 70.08 of the penal law;

(c) charged with offenses involving witness intimidation under section 215.15, 215.16, or 215.17 of the penal law; or

(d) who has willfully and persistently failed to appear in court in the instant case.

2. If, upon such motion by the people, the court finds that the people have shown a likelihood of success on their motion for pretrial detention, the court may order a hearing pursuant to section 545.30 of this article. Upon ordering a hearing pursuant to section 545.30 of this article, the court shall either commit the defendant to the custody of the sheriff or issue a securing order. The court will support its choice of alternative on the record. If the defendant is at liberty, the court may issue a warrant and have the defendant brought into custody of the sheriff, except that, before a bench warrant may be issued, the court must provide the defendant forty-eight hours advanced notice that he or she is required to appear in court in order to give them the opportunity to appear voluntarily.

§ 545.30 Pretrial detention hearing.

1. A hearing shall be held within two working days of the court ordering a pretrial detention hearing. At the hearing, the defendant shall have the right to be represented by counsel, and, if financially unable to obtain counsel, to have counsel assigned. The defendant shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information during the hearing.

2. Prior to the hearing, the prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy or photograph all statements or reports that relate to the prosecution's pretrial detention motion that are in the possession, custody or control of the prosecution, or persons under the prosecution's direction and control, including:

(a) The complaint and supporting documents;

(b) Police reports;

(c) All statements, written or recorded or summarized in any writing or recording, and the substance of all oral statements, made by the defendant or a co-defendant;

(d) All statements, written or recorded or summarized in any writing or recording, made by persons whom the prosecutor knows to have evidence or information that relate to the subject matter of the case;

(e) All statements or reports upon which the prosecution relies in the hearing; and

(f) All facts, evidence, and information favorable to the defendant, including but not limited to information that tends to negate the defendant's guilt or that tends to mitigate the defendant's culpability as to a charged offense, or that tends to support a potential defense thereto, or that tends to support a motion to suppress evidence on constitutional or statutory grounds, or that would tend to reduce the punishment of the defendant, or that is relevant to a witness's credibility, without regard to the materiality of the information.

3. In hearings in cases for which there is no indictment, the people shall establish probable cause that the eligible defendant committed the charged offense. The people must establish by clear and convincing evidence that the defendant poses a high risk of intentional flight for the purpose of evading criminal prosecution and that no condition or combination of conditions in the community will reasonably assure the defendant's return to court.

4. In determining whether the defendant presents a high risk of intentional flight for the purpose of evading criminal prosecution and whether no condition or combination of conditions in the community will reasonably assure the defendant's return to court, the court may take into account the following information:

(a) The nature and circumstances of the charged offense;

(b) The weight of the evidence against the defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

(c) The defendant's current and prior history of failure to appear in court whether such failures to appear were willful; and

(d) Whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on release pending trial, sentencing or completion of a sentence in this state or other jurisdictions.

5. Nothing in this section shall infringe upon the defendant's right to release pursuant to sections 170.70 and 180.80 of this chapter.

§ 545.40 Order for pretrial detention.

In a pretrial detention order issued pursuant to section 545.10 of this article, the court shall:

1. Include written findings of fact and a written statement of the reasons for the detention; and

2. Direct that the eligible defendant be afforded reasonable opportunity for private consultation with counsel.

§ 545.50 Reopening of pretrial hearing.

A pretrial detention hearing may be re-opened, regardless of whether a pretrial detention order has been previously issued, upon a motion by the people or by the defendant, at any time before final disposition, if the court finds either a change of circumstances or that information exists that was not known to the people or to the defendant at the time of the hearing, that has a material bearing on the issue of whether defendant presents a high risk of intentional flight for the purpose of evading criminal prosecution, and whether no condition or combination of conditions in the community will reasonably assure the defendant's return to court.

§ 545.60 Length of detention for defendant held under a pretrial detention order.

1. Where a defendant has been committed to the custody of the sheriff in a criminal action, the defendant must be released on his or her own recognizance or on non-monetary conditions of release if the defendant has not been brought to trial within:

(a) one hundred twenty days from the defendant's arraignment on an indictment or superior court information, or from the defendant's commitment to the custody of the sheriff, whichever is later, in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a felony;

(b) thirty days from the defendant's commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three months and none of which is a felony;

(c) fifteen days from the defendant's commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of not more than three months and none of which is a crime punishable by a sentence of imprisonment of more than three months; or

(d) five days from the defendant's commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a violation or vehicle and traffic law infraction and none of which is a crime.

2. The time within which a defendant must be brought to trial for the purposes of paragraphs (a) and (b) of subdivision one of this section may be extended upon a showing of exceptional circumstances, but by no more than two periods of up to twenty days each in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a felony, or one period of up to ten days in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three months and none of which is a felony. In computing the time within which a defendant must be brought to trial for the purposes of this subdivision, the following periods shall be excluded:

(a) any period from the filing of the notice of appeal to the issuance of the mandate in an interlocutory appeal;

(b) any period attributable to any examination to determine the defendant's sanity or lack thereof or his or her mental or physical competency to stand trial;

(c) any period attributable to the inability of the defendant to participate in the defendant's defense because of mental incompetency or physical incapacity; and

(d) any period in which the defendant is otherwise unavailable for trial.

3. If the defendant has not been brought to trial within the applicable time period established by this subdivision, the defendant shall be released of his or her own recognizance or under non-monetary conditions of release pending trial, unless:

(a) the trial is in progress;

(b) the trial has been delayed by the timely filing of motions, excluding motions for continuances; or

(c) the trial has been delayed at the request of the defendant.

§ 23. Article 68 of the insurance law is REPEALED.

§ 24. Paragraph (a) of subdivision 9 of section 216.05 of the criminal procedure law, as amended by chapter 258 of the laws of 2015, is amended to read as follows:

(a) If at any time during the defendant's participation in the judicial diversion program, the court has reasonable grounds to believe that the defendant has violated a release condition or has failed to appear before the court as requested, the court shall direct the defendant to appear or issue a bench warrant to a police officer or an appropriate peace officer directing him or her to take the defendant into custody and bring the defendant before the court without unnecessary delay; provided, however, that under no circumstances shall a defendant who requires treatment for opioid abuse or dependence be deemed to have violated a release condition on the basis of his or her participation in medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice. The provisions of [~~subdivision one of~~] section [~~530.60~~] 545.50 of this chapter relating to [~~revocation of recognizance or bail~~] issuance of securing orders shall apply to such proceedings under this subdivision.

§ 25. Subdivision 2 of section 620.40 of the criminal procedure law is amended to read as follows:

2. If the proceeding is adjourned at the prospective witness' instance, for the purpose of obtaining counsel or otherwise, the court must order him to appear upon the adjourned date. The court may further [~~fix bail~~] impose non-monetary conditions to secure his appearance upon such date or until the proceeding is completed [~~and, upon default thereof, may commit him to the custody of the sheriff for such period~~].

§ 26. Subdivisions 2 and 3 of section 620.50 of the criminal procedure law are amended to read as follows:

2. If the court is satisfied after such hearing that there is reasonable cause to believe that the prospective witness (a) possesses information material to the pending action or proceeding, and (b) will not be amenable or respond to a subpoena at a time when his attendance will be sought, it may issue a material witness order, adjudging [~~him~~] the individual a material witness and [~~fixing bail to secure his~~] releasing the individual on the individual's own recognizance unless the court finds on the record that release on recognizance will not reasonably assure the individual's court attendance. In such instances the court will release the individual under non-monetary conditions, selecting the least restrictive alternative that will reasonably ensure the individual's future attendance.

3. [~~A~~] When a material witness order [~~must be~~] is executed [~~as follows:~~

~~(a) If the bail is posted and approved~~], if non-monetary conditions are imposed by the court, the witness must[~~, as provided in subdivision three of section 510.40,~~] be released and be permitted to remain at liberty[~~; provided that, where the bail is posted by a person other than the witness himself, he may not be so released except upon his signed written consent thereto;~~

~~(b) If the bail is not posted, or if though posted it is not approved by the court, the witness must, as provided in subdivision three of section 510.40, be committed to the custody of the sheriff~~].

§ 27. Section 216 of the judiciary law is amended by adding a new subdivision 5 to read as follows:

5. The chief administrator of the courts shall collect data and report annually regarding pretrial release and detention. Such data and report shall contain information categorized by gender, racial and ethnic background, regarding the nature of the criminal offenses, the number of individuals released on recognizance, the number of individuals released on non-monetary conditions, including the conditions imposed, the number of individuals committed to the custody of a sheriff prior to trial, the rates of failure to appear and rearrest and any other such information as the chief administrator may find necessary and appropriate.

§ 28. This act shall take effect November 1, 2019.