STATE OF NEW YORK

9955

IN ASSEMBLY

February 28, 2018

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

AN ACT to amend the criminal procedure law, in relation to the issuance of securing orders and in relation to making conforming changes

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

Section 1. Subdivisions 1, 2, 4, 5, 6, 7, 8 and 9 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 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 authorizes the person to be at liberty during the pendency of the criminal action or proceeding involved under conditions ordered by the court, which shall be the least restrictive conditions that will reasonably assure the principal's return to court. Such conditions may include, among other conditions reasonable under the circumstances: that the principal be in contact with a pretrial services agency serving principals in that county; that the principal abide by reasonable, spec-

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

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ified restrictions on travel that are reasonably related to an actual risk of intentional flight from the jurisdiction; that the principal refrain from possessing a firearm, destructive device or other dangerous weapon; that, when it is shown pursuant to subdivision four of section 510.45 of this title that no other realistic monetary condition or set of non-monetary conditions will suffice to reasonably assure the person's return to court, the person be placed in reasonable pretrial supervision with a pretrial services agency serving principals in that county; that, when it is shown pursuant to paragraph (a) of subdivision four of section 510.40 of this title that no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure the principal's return to court, the principal's location be monitored with an approved electronic monitoring device, in accordance with such subdivision four of section 510.40 of this title. A principal shall not be required to pay for any part of the cost of release on non-monetary conditions.

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~~] the principal's person, it orders that [~~he~~] the principal be confined in the custody of the sheriff during the pendency of the criminal action or proceeding involved.

5. "Securing order" means an order of a court committing a principal to the custody of the sheriff[~~,~~] or fixing bail, where authorized, or releasing [~~him on his~~] the principal on the principal's own recognizance or releasing the principal under non-monetary conditions.

6. "Order of recognizance or bail" means a securing order releasing a principal on [~~his~~] the principal's own recognizance or under non-monetary conditions or, where authorized, fixing bail.

7. "Application for recognizance or bail" means an application by a principal that the court, instead of committing [~~him~~] the principal to or retaining [~~him~~] the principal in the custody of the sheriff, either release [~~him on his own~~] the principal on the principal's own recognizance [~~or~~], release under non-monetary conditions, or, where authorized, fix bail.

8. "Post bail" means to deposit bail in the amount and form fixed by the court, with the court or with some other authorized public servant or agency.

9. "Bail" means cash bail [~~or~~], a bail bond or money paid with a credit card.

§ 2. 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, in accordance with this title, by a securing order[~~, either~~] release [~~him~~] the principal on [~~his~~] the principal's own recognizance, release the principal under non-monetary conditions, or, where authorized, fix bail or commit [~~him~~] the principal to the custody of the sheriff. In all such cases, except where another type of securing order is shown to be required by law, the court shall release the principal pending trial on the principal's own recognizance, unless it is demonstrated and the court makes an individualized determination that the principal is a significant risk of intentional flight to avoid prosecution. If such a finding is made, the court

must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court.

2. A principal is entitled to representation by counsel under this chapter in preparing an application for release, when a securing order is being considered and when a securing order is being reviewed for modification, revocation or termination. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.

3. In cases where the most serious offense with which the defendant stands charged in the case before the court or a pending case is an offense that is not a class A felony defined in the penal law or a felony enumerated in section 70.02 of the penal law (other than burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of such law or reporting a false incident in the second degree as defined in section 240.55 of such law), the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

4. Except as provided in subdivision five of this section, in cases where an offense with which the defendant stands charged in the case before the court or a pending case is a felony enumerated in section 70.02 of the penal law (except burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of such law or reporting a false incident in the second degree as defined in section 240.55 of such law), the court, unless otherwise prohibited by law, shall release the principal pending trial on the principal's own recognizance or under non-monetary conditions, or fix bail. In such instances, the court shall select the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

5. In cases where an offense with which the defendant stands charged in the case before the court or a pending case is a felony sex offense as defined in section 70.80 of the penal law, a felony terrorism offense under section 490.10, 490.15, 490.30, 490.35, 490.37, 490.40, 490.45, 490.47, 490.50 or 490.55 of the penal law, a class A felony offense defined in the penal law, a felony offense of witness intimidation under section 215.15, 215.16, or 215.17 of the penal law, a felony offense where a required element thereof is an intent to cause serious physical injury or death to another person and causing such injury or death to such person or a third person, or a felony for when the defendant would be eligible for sentencing under section 70.08 of the penal law, the court, unless otherwise prohibited by law, shall release the principal pending trial under non-monetary conditions, or fix bail, or commit the principal to the custody of the sheriff. In such instances, the court shall select the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

6. 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 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 order.

§ 3. 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**.

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~~] **and the** principal is confined in the custody of the sheriff as a result of **the securing order or** a previously issued securing order, [~~he~~] **the principal** may make an application for recognizance**, release under non-monetary conditions** or bail.

2. **(a) The principal is entitled to representation by counsel in the making and presentation of such application. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.**

(b) Upon such application, the principal must be accorded an opportunity to be heard**, present evidence** and to contend that an order of recognizance**, release under non-monetary conditions** or**, where authorized,** bail must or should issue, that the court should release [~~him on his~~] **the principal on the principal's** own recognizance **or under non-monetary conditions** rather than fix bail, and that if bail is **authorized and** fixed it should be in a suggested amount and form.

§ 4. The criminal procedure law is amended by adding a new section 510.25 to read as follows:

§ 510.25 Rehearing after five days in custody.

In addition to any other available pre-conviction motion or procedure, a principal for whom bail is authorized and was fixed, or who was remanded to the custody of the sheriff but is legally eligible for release, and who is in custody five days thereafter shall be brought before the court the next business day for a rehearing on the securing order. The court shall consider the matter in accordance with section 510.10 of this article, de novo, including the principal's individual financial circumstances, hear from the defense and, if they so desire, the people, consider relevant testimony and cross-examination presented, consider any relevant, admissible evidence not legally privileged, and order a new securing order in accordance with the principles and procedures in this article. This process shall continue with additional rehearings, held promptly on reasonable written request of defense counsel, made on notice to the people.

§ 5. 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 **in all cases, unless otherwise provided by law,** must [~~consider the~~] **impose the least restrictive** kind and degree of control or restriction that is necessary to secure [~~his court attendance~~] **the principal's return to court** 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~~] **information about the principal that is relevant to the principal's return to court, including:**

(a) The principal's activities and history;

(b) If the principal is a defendant, the charges facing the principal;

(c) The principal's criminal **conviction** record if any **provided that the court must also consider and take into account the time that has elapsed since the occurrence of such crime or crimes and the age of the principal at the time of the occurrence of such crime or crimes**; [~~and~~

~~(v) His~~] **(d) 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 **provided that the court must also consider and take into account the time that has elapsed since the occurrence of such delinquency or youthful offender conduct and the age of the principal at the time of such delinquency or youthful offender conduct**; [~~and~~

~~(vi) His~~] (e) **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)~~] **(f) If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances;**

(g) 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)~~] (h) If [~~he~~] the principal is a defendant, [~~the weight of the evidence against him 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) If he is a defendant, the sentence which may be or has been imposed upon conviction~~].

[~~(b)~~] 2. 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)~~] subdivision one of this section.

3. When bail or recognizance is ordered, the court shall inform the principal, if [~~he~~] the principal 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 may be authorized to 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~~] the principal commits a subsequent felony while at liberty upon such order.

§ 6. 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~~] Court notification to principal of conditions of release and of alleged violations of conditions 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, or, if bail has been fixed, upon the posting of bail, 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 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~~] the principal's bail be exonerated.

[~~3.~~] 2. Upon the issuance of an order fixing bail, where authorized, 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~~] the principal is in the custody of the sheriff at the time, directing the sheriff to discharge [~~him~~] the principal 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. In the event of any such non-approval, the court shall explain promptly in writing the reasons therefor.

3. Non-monetary conditions of release shall be individualized and established in writing by the court. At future court appearances, the court shall consider a lessening of conditions or modification of conditions to a less burdensome form based on the principal's compliance with such conditions of release. In the event of alleged non-compliance with the conditions of release in an important respect, pursuant to this subdivision, additional conditions may be imposed by the court, on the record or in writing, only after notice of the facts and circumstances of such alleged non-compliance, reasonable under the circumstances, affording the principal and the principal's attorney and the people an opportunity to present relevant, admissible evidence, relevant witnesses and to cross-examine witnesses, and a finding by clear and convincing evidence that the principal violated a condition of release in an important respect. Following such a finding, in determining whether to impose additional conditions for non-compliance, the court shall consider and may select conditions consistent with the court's obligation to impose the least restrictive condition or conditions that will reasonably assure the defendant's return to court. The court shall explain on the record or in writing the reasons for its determination and for any changes to the conditions imposed.

4. (a) Electronic monitoring of a principal's location may be ordered only if the court finds, after notice, an opportunity to be heard and an individualized determination explained on the record or in writing, that no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure a principal's return to court.

(b) The specific method of electronic monitoring of the principal's location must be approved by the court. It must be the least restrictive procedure and method that will reasonably assure the principal's return to court, and unobtrusive to the greatest extent practicable.

(c) Electronic monitoring of the location of a principal may be conducted only by a public entity under the supervision and control of a county or municipality or a non-profit entity under contract to the county, municipality or the state. A county or municipality shall be authorized to enter into a contract with another county or municipality in the state to monitor principals under non-monetary conditions of release in its county, but counties, municipalities and the state shall not contract with any private for-profit entity for such purposes.

(d) Electronic monitoring of a principal's location may be for a maximum period of sixty days, and may be renewed for such period, after notice, an opportunity to be heard and a de novo, individualized determination in accordance with this subdivision, which shall be explained on the record or in writing.

5. If a principal is released under non-monetary conditions, the court shall, on the record and in an individualized written document provided to the principal, notify the principal, in plain language and a manner sufficiently clear and specific:

(a) of any conditions to which the principal is subject, to serve as a guide for the principal's conduct; and

(b) that the possible consequences for violation of such a condition may include revocation of the securing order and the ordering of a more restrictive securing order.

§ 7. The criminal procedure law is amended by adding a new section 510.43 to read as follows:

§ 510.43 Court appearances: additional notifications.

The court or, upon direction of the court, a certified pretrial services agency, 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. The chief administrator of the courts shall, pursuant to subdivision one of section 10.40 of this chapter, develop a form which shall be offered to the principal at court appearances. On such form, which upon completion shall be retained in the court file, the principal may select one such preferred manner of notice.

§ 8. The criminal procedure law is amended by adding a new section 510.45 to read as follows:

§ 510.45 Pretrial services agencies.

1. The office of court administration shall certify and regularly review for recertification one or more pretrial services agencies in each county to monitor principals released under non-monetary conditions. Such office shall maintain a listing on its public website identifying by county each pretrial services agency so certified in the state.

2. Every such agency 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, municipality or the state. A county or municipality shall be authorized to enter into a contract with another county or municipality in the state to monitor principals under non-monetary conditions of release in its county, but counties, municipalities and the state shall not contract with any private for-profit entity for such purposes.

3. (a) Any questionnaire, instrument or tool used with a principal in the process of considering or determining the principal's possible release on recognizance, release under non-monetary conditions or on bail, or used with a principal in the process of considering or determining a condition or conditions of release or monitoring by a pretrial services agency, shall be promptly made available to the principal and the principal's counsel upon written request. Any such blank form questionnaire, instrument or tool regularly used in the county for such purpose or a related purpose shall be made available to any person promptly upon request.

(b) Any such questionnaire, instrument or tool shall be:

(i) free from discriminatory and disparate impact on detention and other outcomes based on age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, disability, or any other constitutionally protected class, regarding the use thereof; and

(ii) empirically validated and regularly revalidated, with such validation and revalidation studies and all underlying data, except personal identifying information for any defendant, publicly available upon request.

4. Monitoring by a pre-trial services agency may be ordered as a non-monetary condition pursuant to this title only if the court finds, after notice, an opportunity to be heard and an individualized determination explained on the record or in writing, that no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure the principal's return to court.

5. Each pretrial service agency certified by the office of court administration pursuant to this section shall at the end of each year prepare and file with such office an annual report, which the office shall compile, publish on its website and make available upon request to

members of the public. Such reports shall not include any personal identifying information for any individual defendants. Each such report, in addition to other relevant information, shall set forth, disaggregated by each county served:

(a) the number of defendants monitored by the agency;

(b) the length of time (in months) each such person was monitored by the agency prior to acquittal, dismissal, release on recognizance, revocation of release on conditions, and sentencing;

(c) the race, ethnicity, age and sex of each person monitored;

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

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

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

(g) the court disposition in each monitoring case, including sentencing information.

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

§ 510.50 Enforcement of securing order.

1. When the attendance of a principal confined in the custody of the sheriff 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~~] the principal at such time and place. If the principal is at liberty on [~~his~~] the principal's own recognizance or non-monetary conditions or on bail, [~~his~~] 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.

2. Except when the principal is charged with a new crime while at liberty, absent relevant, admissible evidence demonstrating that a principal's failure to appear for a scheduled court appearance was willful, the court, prior to issuing a bench warrant for a failure to appear for a scheduled court appearance, shall provide at least forty-eight hours notice to the principal or the principal's counsel that the principal is required to appear, in order to give the principal an opportunity to appear voluntarily.

§ 10. Paragraph (b) of subdivision 2 of section 520.10 of the criminal procedure law, as amended by chapter 784 of the laws of 1972, is amended to read as follows:

(b) The court [~~may~~] shall direct that the bail be posted in any one of [~~two~~] three or more of the forms specified in subdivision one of this section, designated in the alternative, and may designate different amounts varying with the forms[~~:~~], except that one of the forms shall be either an unsecured or partially secured surety bond, as selected by the court.

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

§ 530.10 Order of recognizance release under non-monetary conditions or bail; 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.

§ 12. 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 **de novo** the [~~bail~~] recommendation **and 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.

§ 13. 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**, release under non-monetary conditions** or bail and commit the defendant to custody; or

§ 14. 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:

§ 15. Subdivision 11 of section 530.12 of the criminal procedure law, as amended by chapter 498 of the laws of 1993, the opening paragraph as amended by chapter 597 of the laws of 1998, paragraph (a) as amended by chapter 222 of the laws of 1994, paragraph (d) as amended by chapter 644 of the laws of 1996, is amended to read as follows:

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 release under non-monetary conditions** or revoke an order of bail or order forfeiture of such bail 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~~] **establish a securing order**; 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.

§ 16. 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.

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~~] **shall proceed** 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.~~] **(a) In cases where the most serious offense with which the defendant stands charged in the case before the court or a pending case is an offense that is not a class A felony defined in the penal law or a felony enumerated in section 70.02 of the penal law (other than burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of such law or reporting a false incident in the second degree as defined in section 240.55 of such law), the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.**

(b) Except as provided in paragraph (c) of this subdivision, in cases where an offense with which the defendant stands charged in the case before the court or a pending case is a felony enumerated in section 70.02 of the penal law (except burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of such law or reporting a false incident in the second degree as defined in section 240.55 of such law), the court, unless otherwise prohibited by law, shall release the principal pending trial on the principal's own recognizance, or release the principal under non-monetary conditions, or

fix bail. In such instances, the court shall select the least restrictive alternative that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

(c) In cases where an offense with which the defendant stands charged in the case before the court or a pending case is a felony sex offense as defined in section 70.80 of the penal law, a felony terrorism offense under section 490.10, 490.15, 490.30, 490.35, 490.37, 490.40, 490.45, 490.47, 490.50 or 490.55 of the penal law, a class A felony offense defined in the penal law, a felony offense of witness intimidation under section 215.15, 215.16, or 215.17 of the penal law, a felony offense where a required element thereof is an intent to cause serious physical injury or death to another person and causing such injury or death to such person or a third person, or a felony for which the defendant would be eligible for sentencing under section 70.08 of the penal law, the court, unless otherwise prohibited by law, shall release the principal pending trial under non-monetary conditions, or fix bail, or commit the principal to the custody of the sheriff. In such instances, the court shall select the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

2. When the defendant is charged, by felony complaint, with a felony, the court may, in its discretion, order recognizance, release under non-monetary conditions, or, where authorized, bail or commit the defendant to the custody of the sheriff except as otherwise provided in subdivision one of this section or 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) No local criminal court may order recognizance, release under non-monetary conditions or bail 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 court [~~has~~] and counsel for the defendant 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.

§ 17. 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, release under non-monetary conditions or bail; 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, may order recognizance, release under non-monetary conditions or, where authorized, bail when such local criminal court:

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

(b) Has denied an application for recognizance, release under non-monetary conditions or bail; or

(c) Has fixed bail, where authorized, which is excessive; or

(d) Has set a securing order of release under non-monetary conditions which are more restrictive than necessary to reasonably assure the defendant's return to court.

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 under non-monetary conditions, or where authorized, fix bail in a lesser amount or in a less burdensome form, whichever are the least restrictive alternative and conditions that will reasonably assure the defendant's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

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, release under non-monetary conditions or, where authorized, bail unless and until the district attorney has had an opportunity to be heard in the matter and such judge [~~has~~] and counsel for the defendant have been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20 of this article.

§ 18. 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, release under non-monetary conditions or bail; 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 as follows:

1. When the defendant is charged with an offense or offenses of less than felony grade only, the court must, unless otherwise provided by law, order recognizance or [~~bail~~] release under non-monetary conditions in accordance with this section.

2. When the defendant is charged with a felony, the court may, in its discretion, order recognizance [~~or~~], release under non-monetary conditions or, where authorized, 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~~], release under non-monetary conditions or, where authorized, 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.

3. In cases where the most serious offense with which the defendant stands charged in the case before the court or a pending case is an offense that is not a class A felony defined in the penal law or a felony enumerated in section 70.02 of the penal law (other than burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of such law or reporting a false incident in the second degree as defined in section 240.55 of such law), the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

4. Except as provided in subdivision five of this section, in cases where an offense with which the defendant stands charged in the case before the court or a pending case is a felony enumerated in section 70.02 of the penal law (except burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of such law or reporting a false incident in the second degree as defined in section 240.55 of such law) the court, unless otherwise prohibited by law, shall release the principal pending trial on the principal's own recognizance, or release the principal under non-monetary conditions, or fix bail, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

5. In cases where an offense with which the defendant stands charged in the case before the court or a pending case is a felony sex offense as defined in section 70.80 of the penal law, a felony terrorism offense under section 490.10, 490.15, 490.30, 490.35, 490.37, 490.40, 490.45, 490.47, 490.50 or 490.55 of the penal law, a class A felony offense defined in the penal law, a felony offense of witness intimidation under section 215.15, 215.16, or 215.17 of the penal law, a felony offense where a required element thereof is an intent to cause serious physical injury or death to another person and causing such injury or death to such person or a third person, or a felony for which the defendant is eligible for sentencing under section 70.08 of the penal law, the court, unless otherwise prohibited by law, shall release the principal pending trial under non-monetary conditions, or fix bail, or commit the principal to the custody of the sheriff, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

6. Notwithstanding the provisions of [~~subdivision two~~] subdivisions two, three, four and five of this section, a superior court may not order recognizance, release under non-monetary conditions or, where authorized, bail, 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 as 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.~~] 7. Notwithstanding the provisions of [~~subdivision two~~] subdivisions two, three, four and five of this section, a superior court may not order recognizance, release under non-monetary conditions or, where authorized, bail 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 defendant have been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20 of this article.

§ 19. 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, release under non-monetary conditions or bail and the court revokes such order and then [~~either~~], where authorized, 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, or issues a more restrictive securing order, a judge designated in subdivision two of this section, 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 as 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 the defendant on [~~his~~] the defendant's own recognizance, release the defendant under non-monetary conditions, or, where authorized, fix bail[~~,~~] or fix bail in a lesser amount or in a less burdensome form, or issue a less restrictive securing order, than fixed by the court in which the conviction was entered.

§ 20. Section 530.60 of the criminal procedure law, subdivision 1 as amended by chapter 565 of the laws of 2011, subdivision 2 as added by chapter 788 of the laws of 1981 and paragraph (a) of subdivision 2 as amended by chapter 794 of the laws of 1986, is amended to read as follows:

§ 530.60 [~~Order of recognizance or bail; revocation thereof~~] Certain modifications of a securing order.

1. Whenever in the course of a criminal action or proceeding a defendant is at liberty as a result of an order of recognizance, release under non-monetary conditions or bail issued pursuant to this chapter, and the court considers it necessary to review such order, [~~it~~] whether due to a motion by the people or otherwise, the court may, and except as provided in subdivision two of section 510.50 of this title concerning a failure to appear in court, by a bench warrant if necessary, require the defendant to appear before the court. Upon such appearance, the court, for good cause shown, may revoke the order of recognizance, release under non-monetary conditions, or bail. If the defendant is entitled to recognizance, release under non-monetary conditions, or bail as a matter of right, the court must issue another such order. If [~~he or she~~] the defendant is not, the court may either issue such an order or commit the defendant to the custody of the sheriff in accordance with this section.

Where the defendant is committed to the custody of the sheriff and is held on a felony complaint, a new period as provided in section 180.80 of this chapter shall commence to run from the time of the defendant's commitment under this subdivision.

2. (a) Whenever in the course of a criminal action or proceeding a defendant charged with the commission of a felony is at liberty as a result of an order of recognizance, **release under non-monetary conditions** or bail issued pursuant to this article it shall be grounds for revoking such order that the court finds reasonable cause to believe the defendant committed one or more specified class A or violent felony offenses or intimidated a victim or witness in violation of [~~sections~~] **section** 215.15, 215.16 or 215.17 of the penal law while at liberty.

(b) Except as provided in paragraph (a) of this subdivision, whenever in the course of a criminal action or proceeding a defendant charged with the commission of an offense is at liberty as a result of an order of recognizance, release under non-monetary conditions or bail issued pursuant to this article it shall be grounds for revoking such order and fixing bail in such criminal action or proceeding when the court has found, by clear and convincing evidence, that the defendant:

(i) persistently willfully failed to appear after notice of scheduled appearances in the case before the court; or

(ii) violated an order of protection in the manner prohibited by subdivision (b), (c) or (d) of section 215.51 of the penal law while at liberty; or

(iii) stands charged in such criminal action or proceeding with a sex offense that would require registration as a sex offender pursuant to article six-C of the correction law and, after being so charged, committed another such sex offense while at liberty;

(iv) stands charged in such criminal action or proceeding with a misdemeanor or violation and, after being so charged, intimidated a victim or witness in violation of section 215.15, 215.16 or 215.17 of the penal law while at liberty; or

(v) stands charged in such action or proceeding with a felony and, after being so charged, committed a felony while at liberty.

(c) Before revoking an order of recognizance**, release under non-monetary conditions,** or bail pursuant to this subdivision, the court must hold a hearing and shall receive any relevant, admissible evidence not legally privileged. The defendant may cross-examine witnesses and may present relevant, admissible evidence on his own behalf. Such hearing may be consolidated with, and conducted at the same time as, a felony hearing conducted pursuant to article one hundred eighty of this chapter. A transcript of testimony taken before the grand jury upon presentation of the subsequent offense shall be admissible as evidence during the hearing. The district attorney may move to introduce grand jury testimony of a witness in lieu of that witness' appearance at the hearing.

[~~(b)~~] **(d)** Revocation of an order of recognizance**, release under non-monetary conditions** or bail and **a new securing order fixing bail or** commitment**, as specified in this paragraph and** pursuant to this subdivision shall be for the following periods[~~, either~~]:

(i) Under paragraph (a) of this subdivision, revocation of the order of recognizance, release under non-monetary conditions or, as the case may be, bail, and a new securing order fixing bail or committing the defendant to the custody of the sheriff shall be as follows:

[~~(i)~~] **(A)** For a period not to exceed ninety days exclusive of any periods of adjournment requested by the defendant; or

[~~(ii)~~] **(B)** Until the charges contained within the accusatory instrument have been reduced or dismissed such that no count remains which charges the defendant with commission of a felony; or

[~~(iii)~~] **(C)** Until reduction or dismissal of the charges contained within the accusatory instrument charging the subsequent offense such that no count remains which charges the defendant with commission of a class A or violent felony offense.

Upon expiration of any of the three periods specified within this [~~paragraph~~] **subparagraph**, whichever is shortest, the court may grant or deny release upon an order of bail or recognizance in accordance with the provisions of this article. Upon conviction to an offense the provisions of article five hundred thirty of this chapter shall apply[~~.~~]**; and**

[~~(c)~~] **(ii) Under paragraph (b) of this subdivision, revocation of the order of recognizance, release under non-monetary conditions or, as the case may be, bail shall result in the issuance of a new securing order which may, if otherwise authorized by law, permit the principal's release on recognizance or release under non-monetary conditions, but shall also render the defendant eligible for an order fixing bail provided, however, that in accordance with the principles in this title the court must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court. Nothing in this subparagraph shall be interpreted as shortening the period of detention, or requiring or authorizing any less restrictive form of a securing order, which may be imposed pursuant to any other law.**

(e) Notwithstanding the provisions of paragraph (a) **or (b)** of this subdivision a defendant, against whom a felony complaint has been filed which charges the defendant with commission of a class A or violent felony offense **or violation of section 215.15, 215.16 or 215.17 of the penal law** committed while he was at liberty as specified therein, may be committed to the custody of the sheriff pending a revocation hearing for a period not to exceed seventy-two hours. An additional period not to exceed seventy-two hours may be granted by the court upon application of the district attorney upon a showing of good cause or where the failure to commence the hearing was due to the defendant's request or occurred with his consent. Such good cause must consist of some compelling fact or circumstance which precluded conducting the hearing within the initial prescribed period.

§ 21. 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 **in an important respect** or has **willfully** failed to appear before the court as requested, the court **except as provided in subdivision two of section 510.50 of this chapter regarding a failure to appear,** 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 **relevant** provisions of [~~subdivision one of~~] section 530.60 of this chapter relat-

ing to [~~revocation of recognizance or bail~~] **issuance of securing orders** shall apply to such proceedings under this subdivision.

§ 22. The opening paragraph of section 240.44 of the criminal procedure law, as added by chapter 558 of the laws of 1982, is amended to read as follows:

Subject to a protective order, at a pre-trial hearing held in a criminal court at which a witness is called to testify, each party, [~~at the conclusion~~] **prior to the commencement** of the direct examination of each of its witnesses, shall, upon request of the other party, make available to that party to the extent not previously disclosed:

§ 23. Section 410.60 of the criminal procedure law, as amended by chapter 652 of the laws of 2008, is amended to read as follows:

§ 410.60 Appearance before court.

A person who has been taken into custody pursuant to section 410.40 or section 410.50 of this article for violation of a condition of a sentence of probation or a sentence of conditional discharge must forthwith be brought before the court that imposed the sentence. Where a violation of probation petition and report has been filed and the person has not been taken into custody nor has a warrant been issued, an initial court appearance shall occur within ten business days of the court's issuance of a notice to appear. If the court has reasonable cause to believe that such person has violated a condition of the sentence, it may commit [~~him~~] **such person** to the custody of the sheriff [~~or~~]**,** fix bail**, release such person under non-monetary conditions** or release such person on [~~his~~] **such person's** own recognizance for future appearance at a hearing to be held in accordance with section 410.70 of this article. If the court does not have reasonable cause to believe that such person has violated a condition of the sentence, it must direct that [~~he~~] **such person** be released.

§ 24. Subdivision 3 of section 620.50 of the criminal procedure law is amended to read as follows:

3. A material witness order must be executed as follows:

(a) If the bail is posted and approved by the court, the witness must, as provided in subdivision [~~three~~] **two** 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~~] **two** of section 510.40, be committed to the custody of the sheriff.

§ 25. This act shall take effect on the thirtieth day after it shall have become a law.