STATE OF NEW YORK

7649

IN SENATE

February 4, 2020

Introduced by Sen. JACOBS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to controlled substance offenses qualifying for bail and allowing courts to consider the risk of continued substance abuse

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

Section 1. The opening paragraph and paragraphs (a), (d), (h) and (i) of subdivision 4 of section 510.10 of the criminal procedure law, as added by section 2 of part JJJ of chapter 59 of the laws of 2019, are amended and a new paragraph (j) is added to read as follows:

Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged with a qualifying offense [~~which is a felony~~], the court may commit the principal to the custody of the sheriff. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:

(a) 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 the penal law~~];

(d) a class A felony **as** defined in the penal law[~~, other than in article two hundred twenty of such law with the exception of section 220.77 of such law~~];

(h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article; [~~or~~]

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

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(i) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law[~~.~~]; or

(j) a controlled substance offense as defined in article two hundred twenty of the penal law.

§ 2. Section 510.10 of the criminal procedure law is amended by adding three new subdivisions 5-a, 5-b and 5-c to read as follows:

5-a. Notwithstanding the provisions of subdivisions three and four of this section, the court may, in its discretion, commit the principal to the custody of the sheriff for a period of no more than fifteen days, if such principal has a substantial risk of continued substance abuse and there is a likelihood of serious harm to such principal and there exists no alternative less restrictive means available to confine or supervise such principal in order to prevent the principal's substantial risk of continued substance abuse upon release from custody. Alternative and less restrictive means of confinement and supervision shall mean available immediate commitment of such principal in a state licensed substance abuse treatment center, drug rehabilitation center or mental health facility. In making its determination, the court may consider the following factors, including but not limited to:

(a) knowledge of the principal's failed attempts to complete drug court;

(b) admission by the principal that he or she is addicted to a controlled substance;

(c) requests by the principal's immediate family members to hold the principal in custody to prevent the likelihood of serious harm;

(d) a record of the principal's arrests for similar offenses related to substance abuse;

(e) the arresting officer's testimony of the principal's intoxication or of witnessing the principal's use of a controlled substance; and

(f) the principal's possession of a controlled substance or possession of paraphernalia related thereto.

5-b. Upon the commitment of such principal to the custody of the sheriff, or an available, less restrictive means of confinement and supervision, the court shall order a duly licensed professional to monitor such principal as needed to evaluate the principal's need for treatment and/or medications, and to complete an evaluation for addiction to a controlled substance. Treatment, including but not limited to medications, shall be provided to the principal without unnecessary delay, as recommended by such licensed professional. The principal's complete evaluation, including recommendations for the continued custody of such principal, immediate release from custody, and any other proposals for the care and treatment of such principal shall be provided to the court without unnecessary delay and within no more than seventy-two hours from the completion of such principal's evaluation. The principal, such principal's counsel and the district attorney's office shall be provided a copy of the principal's evaluation upon request to the court.

5-c. The principal shall be afforded the opportunity for a hearing to request the principal's immediate release from the custody of the sheriff or confinement in a treatment or mental health facility, prior to his or her arraignment. If within seventy-two hours of the court's receipt of the principal's request for such hearing, the principal is not brought before a local criminal court, the principal shall be immediately released from the sheriff's custody or confinement in a treat-

ment facility or mental health facility and served an appearance ticket. The principal shall be entitled to introduce his or her controlled substance evaluation including any recommendations made by a licensed physician that principal should not be held in custody of the sheriff or confined at a treatment or mental health facility and that the principal is not in substantial risk for substance abuse, or there is not a likelihood of serious harm to the principal upon his or her release from custody. The court shall consider the principal's complete evaluation including treatment recommendations, record of arrests, convictions and any record of participation in any drug court and shall decide whether to immediately release such principal from the custody of the sheriff or confinement in a treatment facility or mental health facility, or to remand the principal to the custody of the sheriff or confinement in a treatment facility or mental health facility for the remainder of the principal's fifteen day period of custody or confinement.

§ 3. The opening paragraph and subparagraphs (i), (viii) and (ix) of paragraph (b) of subdivision 1 of section 530.20 of the criminal procedure law, as added by section 16 of part JJJ of chapter 59 of the laws of 2019, are amended and a new subparagraph (x) is added to read as follows:

Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged with a qualifying offense [~~which is a felony~~], the court may commit the principal to the custody of the sheriff. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing. A principal stands charged with a qualifying offense when he or she stands charged with:

(i) 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 the penal law~~];

(viii) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article; [~~or~~]

(ix) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law[~~.~~]; or

(x) a controlled substance offense as defined in article two hundred twenty of the penal law.

§ 4. Subdivision 1 of section 530.20 of the criminal procedure law is amended by adding three new paragraphs (e), (f) and (g) to read as follows:

(e) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, the court may, in its discretion, commit the principal to the custody of the sheriff for a period of no more than fifteen days, if

such principal has a substantial risk of continued substance abuse and there is a likelihood of serious harm to such principal and there exists no alternative less restrictive means available to confine or supervise such principal in order to prevent the principal's substantial risk of continued substance abuse upon release from custody. Alternative and less restrictive means of confinement and supervision shall mean available immediate commitment of such principal in a state licensed substance abuse treatment center, drug rehabilitation center or mental health facility. In making its determination, the court may consider the following factors, including but not limited to:

(i) knowledge of the principal's failed attempts to complete drug court;

(ii) admission by the principal that he or she is addicted to a controlled substance;

(iii) requests by the principal's immediate family members to hold the principal in custody to prevent the likelihood of serious harm;

(iv) a record of the principal's arrests for similar offenses related to substance abuse;

(v) the arresting officer's testimony of witnessing the principal's use of a controlled substance; and

(vi) the principal's possession of a controlled substance or possession of paraphernalia related thereto.

(f) Upon the commitment of such principal to the custody of the sheriff, or an available, less restrictive means of confinement and supervision, the court shall order a duly licensed professional to monitor such principal as needed to evaluate the principal's need for treatment and/or medications, and to complete an evaluation for addiction to a controlled substance. Treatment, including but not limited to medications, shall be provided to the principal without unnecessary delay, as recommended by such licensed professional. The principal's complete evaluation, including recommendations for the continued custody of such principal, immediate release from custody, and any other proposals for the care and treatment of such principal shall be provided to the court without unnecessary delay and within no more than seventy-two hours from the completion of such principal's evaluation. The principal, such principal's counsel and the district attorney's office shall be provided a copy of the principal's evaluation upon request to the court.

(g) The principal shall be afforded the opportunity for a hearing to request the principal's immediate release from the custody of the sheriff or confinement in a treatment or mental health facility, prior to his or her arraignment. If within seventy-two hours of the court's receipt of the principal's request for such hearing, the principal is not brought before a local criminal court, the principal shall be immediately released from the sheriff's custody or confinement in a treatment facility or mental health facility and served an appearance ticket. The principal shall be entitled to introduce his or her controlled substance evaluation including any recommendations made by a licensed physician that principal should not be held in custody of the sheriff or confined at a treatment or mental health facility and that the principal is not in substantial risk for substance abuse, or there is not a likelihood of serious harm to the principal upon his or her release from custody. The court shall consider the principal's complete evaluation including treatment recommendations, record of arrests, convictions and any record of participation in any drug court and shall decide whether to immediately release such principal from the custody of the sheriff or confinement in a treatment facility or mental health facility, or to

remand the principal to the custody of the sheriff or confinement in a treatment facility or mental health facility for the remainder of the principal's fifteen day period of custody or confinement.

§ 5. The opening paragraph and paragraphs (a), (h) and (i) of subdivision 4 of section 530.40 of the criminal procedure law, as added by section 18 of part JJJ of chapter 59 of the laws of 2019, are amended and a new paragraph (j) is added to read as follows:

Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged with a qualifying offense [~~which is a felony~~], the court may commit the principal to the custody of the sheriff. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:

(a) 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 the penal law~~];

(h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article; [~~or~~]

(i) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law[~~.~~]; or

(j) a controlled substance offense as defined in article two hundred twenty of the penal law.

§ 6. Section 530.40 of the criminal procedure law is amended by adding three new subdivisions 5-a, 5-b and 5-c to read as follows:

5-a. Notwithstanding the provisions of subdivisions three and four of this section, the court may, in its discretion, commit the principal to the custody of the sheriff for a period of no more than fifteen days, if such principal has a substantial risk of continued substance abuse and there is a likelihood of serious harm to such principal and there exists no alternative less restrictive means available to confine or supervise such principal in order to prevent the principal's substantial risk of continued substance abuse upon release from custody. Alternative and less restrictive means of confinement and supervision shall mean available immediate commitment of such principal in a state licensed substance abuse treatment center, drug rehabilitation center or mental health facility. In making its determination, the court may consider the following factors, including but not limited to:

(a) knowledge of the principal's failed attempts to complete drug court;

(b) admission by the principal that he or she is addicted to a controlled substance;

(c) requests by the principal's immediate family members to hold the principal in custody to prevent the likelihood of serious harm;

(d) a record of the principal's arrests for similar offenses related to substance abuse;

(e) the arresting officer's testimony of the principal's intoxication or of witnessing the principal's use of a controlled substance; and

(f) the principal's possession of a controlled substance or possession of paraphernalia related thereto.

5-b. Upon the commitment of such principal to the custody of the sheriff, or an available, less restrictive means of confinement and supervision, the court shall order a duly licensed professional to monitor such principal as needed to evaluate the principal's need for treatment and/or medications, and to complete an evaluation for addiction to a controlled substance. Treatment, including but not limited to medications, shall be provided to the principal without unnecessary delay, as recommended by such licensed professional. The principal's complete evaluation, including recommendations for the continued custody of such principal, immediate release from custody, and any other proposals for the care and treatment of such principal shall be provided to the court without unnecessary delay and within no more than seventy-two hours from the completion of such principal's evaluation. The principal, such principal's counsel and the district attorney's office shall be provided a copy of the principal's evaluation upon request to the court.

5-c. The principal shall be afforded the opportunity for a hearing to request the principal's immediate release from the custody of the sheriff or confinement in a treatment or mental health facility, prior to his or her arraignment. If within seventy-two hours of the court's receipt of the principal's request for such hearing, the principal is not brought before a local criminal court, the principal shall be immediately released from the sheriff's custody or confinement in a treatment facility or mental health facility and served an appearance ticket. The principal shall be entitled to introduce his or her controlled substance evaluation including any recommendations made by a licensed physician that principal should not be held in custody of the sheriff or confined at a treatment or mental health facility and that the principal is not in substantial risk for substance abuse, or there is not a likelihood of serious harm to the principal upon his or her release from custody. The court shall consider the principal's complete evaluation including treatment recommendations, record of arrests, convictions and any record of participation in any drug court and shall decide whether to immediately release such principal from the custody of the sheriff or confinement in a treatment facility or mental health facility, or to remand the principal to the custody of the sheriff or confinement in a treatment facility or mental health facility for the remainder of the principal's fifteen day period of custody or confinement.

§ 7. Subparagraph (ii) of paragraph (g) and paragraph (h) of subdivision 1 of section 510.30 of the criminal procedure law, as amended by section 5 of part JJJ of chapter 59 of the laws of 2019, are amended and a new paragraph (i) is added to read as follows:

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

(h) If the principal is a defendant, in the case of an application for a securing order pending appeal, the merit or lack of merit of the appeal[~~.~~]; and

(i) Whether the principal has a substantial risk of continued substance abuse and there is a likelihood of serious harm to such principal and there exists no alternative less restrictive means available

to confine or supervise such principal in order to prevent the principal's substantial risk of continued substance abuse upon release from custody. Alternative and less restrictive means of confinement and supervision shall mean available immediate commitment of such principal in a state licensed substance abuse treatment center, drug rehabilitation center or mental health facility. In making its determination, the court may consider the following factors, including but not limited to:

(i) knowledge of the principal's failed attempts to complete drug court;

(ii) admission by the principal that he or she is addicted to a controlled substance;

(iii) requests by the principal's immediate family members to hold the principal in custody to prevent the likelihood of serious harm;

(iv) a record of the principal's arrests for similar offenses related to substance abuse;

(v) the arresting officer's testimony of witnessing the principal's use of a controlled substance; and

(vi) the principal's possession of a controlled substance or possession of paraphernalia related thereto.

§ 8. Section 140.20 of the criminal procedure law is amended by adding a new subdivision 9 to read as follows:

9. If after arresting a person, for any offense, a police officer reasonably believes the arrested person is likely addicted to a controlled substance, such arrested person may be temporarily held in custody but must be brought before a local criminal court without unnecessary delay for a determination of whether the arrested person should be committed to the custody of the sheriff under subdivision five-a of section 510.10, paragraph (e) of subdivision one of section 530.20 or subdivision five-a of section 530.40 of this chapter. In making a determination that the arrested person is likely addicted to a controlled substance and is at substantial risk for continued substance abuse upon release from custody, a police officer may consider the following factors, including but not limited to:

(a) the arrested person appears intoxicated, impaired or incapacitated at the time of the arrest, or in the hours following the arrest and while the arrested person is in the custody of the arresting officers or while physically present at the police station;

(b) admission by the arrested person that he or she is addicted to a controlled substance;

(c) requests by the arrested person's known immediate family members, or fellow residential cohabitants, to hold the arrested person in custody in order to prevent the likelihood of serious harm;

(d) knowledge of the arrested person's record of arrests for similar offenses directly related to substance abuse;

(e) the arresting officer witnessed the arrested person use a controlled substance; and

(f) the arresting officer found the arrested person in possession of a controlled substance or paraphernalia related thereto at the time of the arrest, or upon a search of such arrested person.

§ 9. This act shall take effect immediately.