

STATE OF NEW YORK

6276

2019-2020 Regular Sessions

IN ASSEMBLY

March 4, 2019

Introduced by M. of A. WALKER -- 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:

1 Section 1. Subdivisions 1, 2, 4, 5, 6, 7, 8 and 9 of section 500.10 of
2 the criminal procedure law are amended and a new subdivision 3-a is
3 added to read as follows:

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

12 2. "Release on own recognizance." A court releases a principal on
13 ~~his~~ the principal's own recognizance when, having acquired control
14 over ~~his~~ the principal's person, it permits ~~him~~ the principal to be
15 at liberty during the pendency of the criminal action or proceeding
16 involved upon condition that ~~he~~ the principal will appear thereat
17 whenever ~~his~~ the principal's attendance may be required and will at
18 all times render ~~himself~~ the principal amenable to the orders and
19 processes of the court.

20 3-a. "Release under non-monetary conditions." A court releases a prin-
21 cipal under non-monetary conditions when, having acquired control over a
22 person, it authorizes the person to be at liberty during the pendency of
23 the criminal action or proceeding involved under conditions ordered by
24 the court, which shall be the least restrictive conditions that will
25 reasonably assure the principal's return to court. Such conditions may

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

LBD08471-01-9

1 include, among other conditions reasonable under the circumstances:
2 that the principal be in contact with a pretrial services agency serving
3 principals in that county; that the principal abide by reasonable, spec-
4 ified restrictions on travel that are reasonably related to an actual
5 risk of intentional flight from the jurisdiction; that the principal
6 refrain from possessing a firearm, destructive device or other dangerous
7 weapon; that, when it is shown pursuant to subdivision four of section
8 510.45 of this title that no other realistic monetary condition or set
9 of non-monetary conditions will suffice to reasonably assure the
10 person's return to court, the person be placed in reasonable pretrial
11 supervision with a pretrial services agency serving principals in that
12 county; that, when it is shown pursuant to paragraph (a) of subdivision
13 four of section 510.40 of this title that no other realistic non-mone-
14 tary condition or set of non-monetary conditions will suffice to reason-
15 ably assure the principal's return to court, the principal's location be
16 monitored with an approved electronic monitoring device, in accordance
17 with such subdivision four of section 510.40 of this title. A principal
18 shall not be required to pay for any part of the cost of release on
19 non-monetary conditions.

20 4. "Commit to the custody of the sheriff." A court commits a principal
21 to the custody of the sheriff when, having acquired control over [~~his~~]
22 the principal's person, it orders that [~~he~~] the principal be confined in
23 the custody of the sheriff during the pendency of the criminal action or
24 proceeding involved.

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

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

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

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

41 9. "Bail" means cash bail [~~or~~], a bail bond or money paid with a cred-
42 it card.

43 § 1-a. Section 500.10 of the criminal procedure law is amended by
44 adding two new subdivisions 21 and 22 to read as follows:

45 21. "Qualifies for electronic monitoring," for purposes of subdivision
46 four of section 510.40 of this title, means a person charged with a
47 felony, a misdemeanor crime of domestic violence, a misdemeanor defined
48 in article one hundred thirty of the penal law, a crime and the circum-
49 stances of paragraph (b) of subdivision two of section 530.60 of this
50 title apply, or any misdemeanor where the defendant stands previously
51 convicted, within the past five years, of a violent felony offense as
52 defined in section 70.02 of the penal law. For the purposes of this
53 subdivision, in calculating such five year period, any period of time
54 during which the defendant was incarcerated for any reason between the
55 time of the commission of any such previous crime and the time of
56 commission of the present crime shall be excluded and such five year

1 period shall be extended by a period or periods equal to the time served
2 under such incarceration.

3 22. "Misdemeanor crime of domestic violence," for purposes of subdivi-
4 sion twenty-one of this section, means a misdemeanor under the penal law
5 provisions and circumstances described in subdivision one of section
6 530.11 of this title.

7 § 2. Section 510.10 of the criminal procedure law, as amended by chap-
8 ter 459 of the laws of 1984, is amended to read as follows:

9 § 510.10 Securing order; when required; alternatives available; standard
10 to be applied.

11 1. When a principal, whose future court attendance at a criminal
12 action or proceeding is or may be required, [~~initially~~] comes under the
13 control of a court, such court [~~must~~] shall, in accordance with this
14 title, by a securing order[~~,—either~~] release [~~him~~] the principal on
15 [~~his~~] the principal's own recognizance, release the principal under
16 non-monetary conditions, or, where authorized, fix bail or commit [~~him~~]
17 the principal to the custody of the sheriff. In all such cases, except
18 where another type of securing order is shown to be required by law, the
19 court shall release the principal pending trial on the principal's own
20 recognizance, unless it is demonstrated and the court makes an individ-
21 ualized determination that the principal is a significant risk of inten-
22 tional flight to avoid prosecution. If such a finding is made, the court
23 must select the least restrictive alternative and condition or condi-
24 tions that will reasonably assure the principal's return to court.

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

30 3. In cases where the most serious offense with which the defendant
31 stands charged in the case before the court or a pending case is an
32 offense that is not a class A felony defined in the penal law or a felo-
33 ny enumerated in section 70.02 of the penal law (other than burglary in
34 the second degree as defined in subdivision two of section 140.25 of the
35 penal law or robbery in the second degree as defined in subdivision one
36 of section 160.10 of such law or reporting a false incident in the
37 second degree as defined in section 240.55 of such law) or a misdemeanor
38 defined in article one hundred thirty of the penal law, the court shall
39 release the principal pending trial on the principal's own recognizance,
40 unless the court finds on the record or in writing that release on the
41 principal's own recognizance will not reasonably assure the principal's
42 return to court. In such instances, the court shall release the princi-
43 pal under non-monetary conditions, selecting the least restrictive
44 alternative and conditions that will reasonably assure the principal's
45 return to court. The court shall explain its choice of alternative and
46 conditions on the record or in writing.

47 4. Except as provided in subdivision five of this section, in cases
48 where an offense with which the defendant stands charged in the case
49 before the court or a pending case is a felony enumerated in section
50 70.02 of the penal law (except burglary in the second degree as defined
51 in subdivision two of section 140.25 of the penal law or robbery in the
52 second degree as defined in subdivision one of section 160.10 of such
53 law or reporting a false incident in the second degree as defined in
54 section 240.55 of such law) or a misdemeanor defined in article one
55 hundred thirty of the penal law, the court, unless otherwise prohibited
56 by law, shall release the principal pending trial on the principal's own

1 recognizance or under non-monetary conditions, or fix bail. In such
2 instances, the court shall select the least restrictive alternative and
3 conditions that will reasonably assure the principal's return to court.
4 The court shall explain its choice of alternative and conditions on the
5 record or in writing.

6 5. In cases where an offense with which the defendant stands charged
7 in the case before the court or a pending case is a felony sex offense
8 as defined in section 70.80 of the penal law, a felony terrorism offense
9 under section 490.10, 490.15, 490.30, 490.35, 490.37, 490.40, 490.45,
10 490.47, 490.50 or 490.55 of the penal law, a class A felony offense
11 defined in the penal law, a felony offense of witness intimidation under
12 section 215.15, 215.16, or 215.17 of the penal law, a felony offense
13 where a required element thereof is an intent to cause serious physical
14 injury or death to another person and causing such injury or death to
15 such person or a third person, or a felony for when the defendant would
16 be eligible for sentencing under section 70.08 of the penal law, the
17 court, unless otherwise prohibited by law, shall release the principal
18 pending trial under non-monetary conditions, or fix bail, or commit the
19 principal to the custody of the sheriff. In such instances, the court
20 shall select the least restrictive alternative and conditions that will
21 reasonably assure the principal's return to court. The court shall
22 explain its choice of alternative and conditions on the record or in
23 writing.

24 6. Notwithstanding the provisions of subdivisions three, four and five
25 of this section, with respect to any charge for which bail or remand is
26 not ordered, and for which the court would not or could not otherwise
27 require bail or remand, a defendant may, at any time, request that the
28 court set bail in a nominal amount requested by the defendant in the
29 form specified in paragraph (a) of subdivision one of section 520.10 of
30 this title; if the court is satisfied that the request is voluntary, the
31 court shall set such bail in such amount.

32 7. When a securing order is revoked or otherwise terminated in the
33 course of an uncompleted action or proceeding but the principal's future
34 court attendance still is or may be required and [he] the principal is
35 still under the control of a court, a new securing order must be issued.
36 When the court revokes or otherwise terminates a securing order which
37 committed the principal to the custody of the sheriff, the court shall
38 give written notification to the sheriff of such revocation or termi-
39 nation of the securing order.

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

42 § 510.20 Application for [~~recognizance or bail, making and determi-~~
43 ~~nation thereof in general~~] a change in securing order.

44 1. Upon any occasion when a court [~~is required to issue~~] has issued a
45 securing order with respect to a principal[, ~~or at any time when a~~] and
46 the principal is confined in the custody of the sheriff as a result of
47 the securing order or a previously issued securing order, [he] the prin-
48 cipal may make an application for recognizance, ~~release under non-mone-~~
49 ~~tary conditions~~ or bail.

50 2. (a) The principal is entitled to representation by counsel in the
51 making and presentation of such application. If the principal is finan-
52 cially unable to obtain counsel, counsel shall be assigned to the prin-
53 cipal.

54 (b) Upon such application, the principal must be accorded an opportu-
55 nity to be heard, ~~present evidence~~ and to contend that an order of
56 recognizance, ~~release under non-monetary conditions~~ or, where author-

1 ized, bail must or should issue, that the court should release [~~him~~~~on~~
2 ~~his~~] the principal on the principal's own recognizance or under non-mon-
3 etary conditions rather than fix bail, and that if bail is authorized
4 and fixed it should be in a suggested amount and form.

5 § 4. The criminal procedure law is amended by adding a new section
6 510.25 to read as follows:

7 § 510.25 Rehearing after five days in custody.

8 1. In addition to any other available pre-conviction motion or proce-
9 dure, a principal for whom bail is authorized and was fixed, or who was
10 remanded to the custody of the sheriff but is legally eligible for
11 release, and who is in custody five days thereafter, shall be brought
12 before the court the next business day for a hearing on the securing
13 order.

14 2. The people must establish by clear and convincing evidence that the
15 principal poses a significant risk of intentional flight to avoid prose-
16 cution, and that no condition or combination of conditions will reason-
17 ably assure the principal's return to court. Where the principal has not
18 been indicted, and reasonable cause has not previously been established
19 pursuant to the relevant provisions of sections 180.60, 180.70, 180.75
20 and 180.80 of this chapter or this section, the people must also estab-
21 lish probable cause that the principal committed the charged offense.

22 3. If the people fail pursuant to subdivision two of this section to
23 establish that the principal poses a significant risk of intentional
24 flight to avoid prosecution and that no other condition or combination
25 of conditions will reasonably assure the principal's return to court, or
26 in a case where there is no indictment and no previous finding pursuant
27 to sections 180.60, 180.70, 180.75 and 180.80 or this section and the
28 people fail to establish probable cause that the defendant committed the
29 charged offense, the court shall, by a new securing order, release the
30 principal on the principal's own recognizance or, where authorized
31 pursuant to this title and articles one hundred seventy and one hundred
32 eighty of this chapter, under non-monetary conditions, except where
33 another type of securing order is shown to be required by law.

34 4. At the hearing, the principal shall have the right to be repres-
35 ented by counsel and, if financially unable to obtain counsel, to have
36 counsel assigned. The principal shall be afforded an opportunity to
37 testify, present witnesses, cross-examine witnesses who appear at the
38 hearing and present information by proffer or otherwise. The prose-
39 cution must present competent, reliable evidence and may not rely on
40 hearsay evidence to satisfy its burden.

41 5. Prior to the hearing, in addition to the discovery required by
42 section 240.44 of this chapter, and subject to a protective order, the
43 prosecution shall disclose to the principal, and permit the principal to
44 discover, inspect, copy or photograph, on an ongoing basis continuing
45 after such hearing, all statements and reports that relate or related to
46 the prosecution's request for continued detention which are in the
47 possession, custody or control of the prosecution, or persons under the
48 prosecution's direction and control, including:

49 a. the charging documents, such as the complaint and any information,
50 and the documents and materials supporting the charging documents;

51 b. police and law enforcement reports;

52 c. all statements, written or recorded or summarized in any writing or
53 recording, and the substance of all oral statements, made by the princi-
54 pal or a co-defendant;

55 d. all statements, written or recorded or summarized in any writing or
56 recording, made by persons whom the prosecutor knows to have evidence or

information that relates to the subject matter of the case or proceeding;

e. all statements or reports on which, as applicable, the prosecution intends to rely or relied at the hearing; and

f. all facts, evidence and information favorable to the principal, including but not limited to information that tends to negate risk of flight or the principal's guilt or that tends to mitigate the principal'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 is relevant to a witness's credibility, without regard to the materiality of the information, or that would tend to mitigate or reduce punishment if the principal were convicted.

6. 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

1 elapsed since the occurrence of such crime or crimes and the age of the
2 principal at the time of the occurrence of such crime or crimes; [and
3 ~~(v) His]~~ (d) The principal's record of previous adjudication as a
4 juvenile delinquent, as retained pursuant to section 354.2 of the family
5 court act, or, of pending cases where fingerprints are retained pursuant
6 to section 306.1 of such act, or a youthful offender, if any provided
7 that the court must also consider and take into account the time that
8 has elapsed since the occurrence of such delinquency or youthful offen-
9 der conduct and the age of the principal at the time of such delinquency
10 or youthful offender conduct; [and

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

14 ~~(vii)]~~ (f) If monetary bail is authorized, according to the
15 restrictions set forth in this title, the principal's individual finan-
16 cial circumstances;

17 (g) Where the principal is charged with a crime or crimes against a
18 member or members of the same family or household as that term is
19 defined in subdivision one of section 530.11 of this title, the follow-
20 ing factors:

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

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

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

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

35 [~~(b)]~~ 2. Where the principal is a defendant-appellant in a pending
36 appeal from a judgment of conviction, the court must also consider the
37 likelihood of ultimate reversal of the judgment. A determination that
38 the appeal is palpably without merit alone justifies, but does not
39 require, a denial of the application, regardless of any determination
40 made with respect to the factors specified in [~~paragraph (a)]~~ subdivi-
41 sion one of this section.

42 3. When bail or recognizance is ordered, the court shall inform the
43 principal, if [~~he~~] the principal is a defendant charged with the commis-
44 sion of a felony, that the release is conditional and that the court may
45 revoke the order of release and may be authorized to commit the princi-
46 pal to the custody of the sheriff in accordance with the provisions of
47 subdivision two of section 530.60 of this chapter if [~~he~~] the principal
48 commits a subsequent felony while at liberty upon such order.

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

51 § 510.40 [~~Application for recognizance or bail, determination thereof,~~
52 ~~form of securing order and execution thereof]~~ Court notifi-
53 cation to principal of conditions of release and of alleged
54 violations of conditions of release.

55 1. [~~An application for recognizance or bail must be determined by a~~
56 ~~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 the defendant qualifies for electronic monitoring in accordance with subdivision twenty-one of section 500.10 of this title, and 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 restric-

1 tive procedure and method that will reasonably assure the principal's
2 return to court, and unobtrusive to the greatest extent practicable.

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

11 (d) Electronic monitoring of a principal's location may be for a maxi-
12 mum period of sixty days, and may be renewed for such period, after
13 notice, an opportunity to be heard and a de novo, individualized deter-
14 mination in accordance with this subdivision, which shall be explained
15 on the record or in writing.

16 A defendant subject to electronic location monitoring under this
17 subdivision shall be considered held or confined in custody for purposes
18 of section 180.80 of this chapter and shall be considered committed to
19 the custody of the sheriff for purposes of section 170.70 of the chap-
20 ter, as applicable.

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

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

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

30 § 7. The criminal procedure law is amended by adding a new section
31 510.43 to read as follows:

32 § 510.43 Court appearances: additional notifications.

33 The court or, upon direction of the court, a certified pretrial
34 services agency, shall notify all principals released under non-monetary
35 conditions and on recognizance of all court appearances in advance by
36 text message, telephone call, electronic mail or first class mail. The
37 chief administrator of the courts shall, pursuant to subdivision one of
38 section 10.40 of this chapter, develop a form which shall be offered to
39 the principal at court appearances. On such form, which upon completion
40 shall be retained in the court file, the principal may select one such
41 preferred manner of notice.

42 § 8. The criminal procedure law is amended by adding a new section
43 510.45 to read as follows:

44 § 510.45 Pretrial services agencies.

45 1. The office of court administration shall certify and regularly
46 review for recertification one or more pretrial services agencies in
47 each county to monitor principals released under non-monetary condi-
48 tions. Such office shall maintain a listing on its public website iden-
49 tifying by county each pretrial services agency so certified in the
50 state.

51 2. Every such agency shall be a public entity under the supervision
52 and control of a county or municipality or a non-profit entity under
53 contract to the county, municipality or the state. A county or muni-
54 city shall be authorized to enter into a contract with another county
55 or municipality in the state to monitor principals under non-monetary
56 conditions of release in its county, but counties, municipalities and

1 the state shall not contract with any private for-profit entity for such
2 purposes.

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

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

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

19 (ii) empirically validated and regularly revalidated, with such vali-
20 dation and revalidation studies and all underlying data, except personal
21 identifying information for any defendant, publicly available upon
22 request.

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

29 5. Each pretrial service agency certified by the office of court
30 administration pursuant to this section shall at the end of each year
31 prepare and file with such office an annual report, which the office
32 shall compile, publish on its website and make available upon request to
33 members of the public. Such reports shall not include any personal iden-
34 tifying information for any individual defendants. Each such report, in
35 addition to other relevant information, shall set forth, disaggregated
36 by each county served:

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

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

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

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

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

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

49 (g) the court disposition in each monitoring case, including sentenc-
50 ing information.

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

53 § 510.50 Enforcement of securing order.

54 1. When the attendance of a principal confined in the custody of the
55 sheriff is required at the criminal action or proceeding at a particular
56 time and place, the court may compel such attendance by directing the

1 sheriff to produce [~~him~~] the principal at such time and place. If the
2 principal is at liberty on [~~his~~] the principal's own recognizance or
3 non-monetary conditions or on bail, [~~his~~] the principal's attendance
4 may be achieved or compelled by various methods, including notification
5 and the issuance of a bench warrant, prescribed by law in provisions
6 governing such matters with respect to the particular kind of action or
7 proceeding involved.

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

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

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

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

27 § 530.10 Order of recognizance release under non-monetary conditions or
28 bail; in general.

29 Under circumstances prescribed in this article, a court, upon applica-
30 tion of a defendant charged with or convicted of an offense, is required
31 [~~or authorized to order bail or recognizance~~] to issue a securing order
32 for [~~the release or prospective release of~~] such defendant during the
33 pendency of either:

34 1. A criminal action based upon such charge; or

35 2. An appeal taken by the defendant from a judgment of conviction or
36 a sentence or from an order of an intermediate appellate court affirming
37 or modifying a judgment of conviction or a sentence.

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

41 4. When a person is arrested for an alleged family offense or an
42 alleged violation of an order of protection or temporary order of
43 protection or arrested pursuant to a warrant issued by the supreme or
44 family court, and the supreme or family court, as applicable, is not in
45 session, such person shall be brought before a local criminal court in
46 the county of arrest or in the county in which such warrant is return-
47 able pursuant to article one hundred twenty of this chapter. Such local
48 criminal court may issue any order authorized under subdivision eleven
49 of section 530.12 of this article, section one hundred fifty-four-d or
50 one hundred fifty-five of the family court act or subdivision three-b of
51 section two hundred forty or subdivision two-a of section two hundred
52 fifty-two of the domestic relations law, in addition to discharging
53 other arraignment responsibilities as set forth in this chapter. In
54 making such order, the local criminal court shall consider de novo the
55 [~~bail~~] recommendation and securing order, if any, made by the supreme or
56 family court as indicated on the warrant or certificate of warrant.

1 Unless the petitioner or complainant requests otherwise, the court, in
2 addition to scheduling further criminal proceedings, if any, regarding
3 such alleged family offense or violation allegation, shall make such
4 matter returnable in the supreme or family court, as applicable, on the
5 next day such court is in session.

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

9 (a) revoke an order of recognizance, release under non-monetary condi-
10 tions or bail and commit the defendant to custody; or

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

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

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

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

34 (a) revoke an order of recognizance or release under non-monetary
35 conditions or revoke an order of bail or order forfeiture of such bail
36 and commit the defendant to custody; or

37 (b) restore the case to the calendar when there has been an adjourn-
38 ment in contemplation of dismissal and commit the defendant to custody;
39 or

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

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

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

54 § 530.20 [~~Order of recognizance or bail,~~] Securing order by local crimi-
55 nal court when action is pending therein.

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

4 1. [~~When the defendant is charged, by information, simplified informa-~~
5 ~~tion, prosecutor's information or misdemeanor complaint, with an offense~~
6 ~~or offenses of less than felony grade only, the court must order recog-~~
7 ~~nizance or bail.~~] (a) In cases where the most serious offense with which
8 the defendant stands charged in the case before the court or a pending
9 case is an offense that is not a class A felony defined in the penal law
10 or a felony enumerated in section 70.02 of the penal law (other than
11 burglary in the second degree as defined in subdivision two of section
12 140.25 of the penal law or robbery in the second degree as defined in
13 subdivision one of section 160.10 of such law or reporting a false inci-
14 dent in the second degree as defined in section 240.55 of such law) or a
15 misdemeanor defined in article one hundred thirty of the penal law, the
16 court shall release the principal pending trial on the principal's own
17 recognizance, unless the court finds on the record or in writing that
18 release on the principal's own recognizance will not reasonably assure
19 the principal's return to court. In such instances, the court shall
20 release the principal under non-monetary conditions, selecting the least
21 restrictive alternative and conditions that will reasonably assure the
22 principal's return to court. The court shall explain its choice of
23 alternative and conditions on the record or in writing.

24 (b) Except as provided in paragraph (c) of this subdivision, in cases
25 where an offense with which the defendant stands charged in the case
26 before the court or a pending case is a felony enumerated in section
27 70.02 of the penal law (except burglary in the second degree as defined
28 in subdivision two of section 140.25 of the penal law or robbery in the
29 second degree as defined in subdivision one of section 160.10 of such
30 law or reporting a false incident in the second degree as defined in
31 section 240.55 of such law) or a misdemeanor defined in article one
32 hundred thirty of the penal law, the court, unless otherwise prohibited
33 by law, shall release the principal pending trial on the principal's own
34 recognizance, or release the principal under non-monetary conditions, or
35 fix bail. In such instances, the court shall select the least restric-
36 tive alternative that will reasonably assure the principal's return to
37 court. The court shall explain its choice of alternative and conditions
38 on the record or in writing.

39 (c) In cases where an offense with which the defendant stands charged
40 in the case before the court or a pending case is a felony sex offense
41 as defined in section 70.80 of the penal law, a felony terrorism offense
42 under section 490.10, 490.15, 490.30, 490.35, 490.37, 490.40, 490.45,
43 490.47, 490.50 or 490.55 of the penal law, a class A felony offense
44 defined in the penal law, a felony offense of witness intimidation under
45 section 215.15, 215.16, or 215.17 of the penal law, a felony offense
46 where a required element thereof is an intent to cause serious physical
47 injury or death to another person and causing such injury or death to
48 such person or a third person, or a felony for which the defendant would
49 be eligible for sentencing under section 70.08 of the penal law, the
50 court, unless otherwise prohibited by law, shall release the principal
51 pending trial under non-monetary conditions, or fix bail, or commit the
52 principal to the custody of the sheriff. In such instances, the court
53 shall select the least restrictive alternative and conditions that will
54 reasonably assure the principal's return to court. The court shall
55 explain its choice of alternative and conditions on the record or in
56 writing.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this subdivision, with respect to any charge for which bail or remand is not ordered, and for which the court would not or could not otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

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) or a misdemeanor defined in article one hundred thirty of the penal 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

1 return to court. The court shall explain its choice of alternative and
2 conditions on the record or in writing.

3 4. Except as provided in subdivision five of this section, in cases
4 where an offense with which the defendant stands charged in the case
5 before the court or a pending case is a felony enumerated in section
6 70.02 of the penal law (except burglary in the second degree as defined
7 in subdivision two of section 140.25 of the penal law or robbery in the
8 second degree as defined in subdivision one of section 160.10 of such
9 law or reporting a false incident in the second degree as defined in
10 section 240.55 of such law) or a misdemeanor defined in article one
11 hundred thirty of the penal law the court, unless otherwise prohibited
12 by law, shall release the principal pending trial on the principal's own
13 recognizance, or release the principal under non-monetary conditions, or
14 fix bail, selecting the least restrictive alternative and conditions
15 that will reasonably assure the principal's return to court. The court
16 shall explain its choice of alternative and conditions on the record or
17 in writing.

18 5. In cases where an offense with which the defendant stands charged
19 in the case before the court or a pending case is a felony sex offense
20 as defined in section 70.80 of the penal law, a felony terrorism offense
21 under section 490.10, 490.15, 490.30, 490.35, 490.37, 490.40, 490.45,
22 490.47, 490.50 or 490.55 of the penal law, a class A felony offense
23 defined in the penal law, a felony offense of witness intimidation under
24 section 215.15, 215.16, or 215.17 of the penal law, a felony offense
25 where a required element thereof is an intent to cause serious physical
26 injury or death to another person and causing such injury or death to
27 such person or a third person, or a felony for which the defendant is
28 eligible for sentencing under section 70.08 of the penal law, the court,
29 unless otherwise prohibited by law, shall release the principal pending
30 trial under non-monetary conditions, or fix bail, or commit the princi-
31 pal to the custody of the sheriff, selecting the least restrictive
32 alternative and conditions that will reasonably assure the principal's
33 return to court. The court shall explain its choice of alternative and
34 conditions on the record or in writing.

35 6. Notwithstanding the provisions of subdivisions three, four and five
36 of this section, with respect to any charge for which bail or remand is
37 not ordered, and for which the court would not or could not otherwise
38 require bail or remand, a defendant may, at any time, request that the
39 court set bail in a nominal amount requested by the defendant in the
40 form specified in paragraph (a) of subdivision one of section 520.10 of
41 this title; if the court is satisfied that the request is voluntary, the
42 court shall set such bail in such amount.

43 7. Notwithstanding the provisions of [~~subdivision two~~] subdivisions
44 two, three, four and five of this section, a superior court may not
45 order recognizance, release under non-monetary conditions or, where
46 authorized, bail, or permit a defendant to remain at liberty pursuant to
47 an existing order, after [~~he~~] the defendant has been convicted of
48 either: (a) a class A felony or (b) any class B or class C felony as
49 defined in article one hundred thirty of the penal law committed or
50 attempted to be committed by a person eighteen years of age or older
51 against a person less than eighteen years of age. In either case the
52 court must commit or remand the defendant to the custody of the sheriff.

53 [~~4-~~] 8. Notwithstanding the provisions of [~~subdivision two~~] subdivi-
54 sions two, three, four and five of this section, a superior court may
55 not order recognizance, release under non-monetary conditions or, where
56 authorized, bail when the defendant is charged with a felony unless and

1 until the district attorney has had an opportunity to be heard in the
2 matter and such court ~~[has]~~ and counsel for the defendant have been
3 furnished with a report as described in subparagraph (ii) of paragraph
4 (b) of subdivision two of section 530.20 of this article.

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

8 1. When the defendant is at liberty in the course of a criminal action
9 as a result of a prior order of recognizance, release under non-monetary
10 conditions or bail and the court revokes such order and then ~~[either]~~,
11 where authorized, fixes no bail or fixes bail in a greater amount or in
12 a more burdensome form than was previously fixed and remands or commits
13 defendant to the custody of the sheriff, or issues a more restrictive
14 securing order, a judge designated in subdivision two of this section,
15 upon application of the defendant following conviction of an offense
16 other than a class A felony or a class B or class C felony offense as
17 defined in article one hundred thirty of the penal law committed or
18 attempted to be committed by a person eighteen years of age or older
19 against a person less than eighteen years of age, and before sentencing,
20 may issue a securing order and ~~[either]~~ release the defendant on ~~[his]~~
21 the defendant's own recognizance, release the defendant under non-mone-
22 tary conditions, or, where authorized, fix bail~~[r]~~ or fix bail in a
23 lesser amount or in a less burdensome form, or issue a less restrictive
24 securing order, than fixed by the court in which the conviction was
25 entered.

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

31 § 530.60 ~~[Order of recognizance or bail, revocation thereof]~~ Certain
32 modifications of a securing order.

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

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

51 2. (a) Whenever in the course of a criminal action or proceeding a
52 defendant charged with the commission of a felony is at liberty as a
53 result of an order of recognizance, release under non-monetary condi-
54 tions or bail issued pursuant to this article it shall be grounds for
55 revoking such order that the court finds reasonable cause to believe the
56 defendant committed one or more specified class A or violent felony

1 offenses or intimidated a victim or witness in violation of [~~sections~~
2 section 215.15, 215.16 or 215.17 of the penal law while at liberty.

3 (b) Except as provided in paragraph (a) of this subdivision or any
4 other law, whenever in the course of a criminal action or proceeding a
5 defendant charged with the commission of an offense is at liberty as a
6 result of an order of recognizance, release under non-monetary condi-
7 tions or bail issued pursuant to this article it shall be grounds for
8 revoking such order and fixing bail in such criminal action or proceed-
9 ing when the court has found, by clear and convincing evidence, that the
10 defendant:

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

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

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

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

22 (c) Before revoking an order of recognizance, release under non-mone-
23 tary conditions, or bail pursuant to this subdivision, the court must
24 hold a hearing and shall receive any relevant, admissible evidence not
25 legally privileged. The defendant may cross-examine witnesses and may
26 present relevant, admissible evidence on his own behalf. Such hearing
27 may be consolidated with, and conducted at the same time as, a felony
28 hearing conducted pursuant to article one hundred eighty of this chap-
29 ter. A transcript of testimony taken before the grand jury upon presen-
30 tation of the subsequent offense shall be admissible as evidence during
31 the hearing. The district attorney may move to introduce grand jury
32 testimony of a witness in lieu of that witness' appearance at the hear-
33 ing.

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

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

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

44 [~~(ii)~~] (B) Until the charges contained within the accusatory instru-
45 ment have been reduced or dismissed such that no count remains which
46 charges the defendant with commission of a felony; or

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

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

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

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

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

30 (a) If at any time during the defendant's participation in the judi-
31 cial diversion program, the court has reasonable grounds to believe that
32 the defendant has violated a release condition in an important respect
33 or has willfully failed to appear before the court as requested, the
34 court except as provided in subdivision two of section 510.50 of this
35 chapter regarding a failure to appear, shall direct the defendant to
36 appear or issue a bench warrant to a police officer or an appropriate
37 peace officer directing him or her to take the defendant into custody
38 and bring the defendant before the court without unnecessary delay;
39 provided, however, that under no circumstances shall a defendant who
40 requires treatment for opioid abuse or dependence be deemed to have
41 violated a release condition on the basis of his or her participation in
42 medically prescribed drug treatments under the care of a health care
43 professional licensed or certified under title eight of the education
44 law, acting within his or her lawful scope of practice. The relevant
45 provisions of ~~[subdivision one of]~~ section 530.60 of this chapter relat-
46 ing to ~~[revocation of recognizance or bail]~~ issuance of securing orders
47 shall apply to such proceedings under this subdivision.

48 § 22. The opening paragraph of section 240.44 of the criminal proce-
49 dure law, as added by chapter 558 of the laws of 1982, is amended to
50 read as follows:

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

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

3 § 410.60 Appearance before court.

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

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

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

23 (a) If the bail is posted and approved by the court, the witness
24 must, as provided in subdivision [~~three~~] two of section 510.40 of this
25 part, be released and be permitted to remain at liberty; provided that,
26 where the bail is posted by a person other than the witness himself, he
27 may not be so released except upon his signed written consent thereto;

28 (b) If the bail is not posted, or if though posted it is not approved
29 by the court, the witness must, as provided in subdivision [~~three~~] two
30 of section 510.40 of this part, be committed to the custody of the sher-
31 iff.

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