

STATE OF NEW YORK

2101--A

2019-2020 Regular Sessions

IN SENATE

January 22, 2019

Introduced by Sens. GIANARIS, BAILEY, BENJAMIN, BIAGGI, BRESLIN, COMRIE, HARCKHAM, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MONTGOMERY, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the judiciary law, in relation to enacting the "bail elimination act of 2019"; and to repeal certain provisions of the criminal procedure law and the insurance law relating to the posting of bail

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "bail elimination act of 2019".
3 § 2. Subdivisions 1, 2, 4, 5 and 6 of section 500.10 of the criminal
4 procedure law are amended and a new subdivision 3-a is added to read as
5 follows:
6 1. "Principal" means a defendant in a criminal action or proceeding,
7 or a person adjudged a material witness therein, or any other person so
8 involved therein that [~~he~~] the principal may by law be compelled to
9 appear before a court for the purpose of having such court exercise
10 control over [~~his~~] the principal's person to secure [~~his~~] the princi-
11 pal's future attendance at the action or proceeding when required, and
12 who in fact either is before the court for such purpose or has been
13 before it and been subjected to such control.
14 2. "Release on own recognizance." A court releases a principal on
15 [~~his~~] the principal's own recognizance when, having acquired control
16 over [~~his~~] the principal's person, it permits [~~him~~] the principal to be
17 at liberty during the pendency of the criminal action or proceeding
18 involved upon condition that [~~he~~] the principal will appear thereat
19 whenever [~~his~~] the principal's attendance may be required and will at

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

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1 all times render [~~himself~~] the principal amenable to the orders and
2 processes of the court.

3 3-a. "Release under non-monetary conditions." A court releases a prin-
4 cipal under non-monetary conditions when, having acquired control over a
5 person, it permits the person to be at liberty during the pendency of
6 the criminal action under conditions set by the court, which shall be
7 the least restrictive that will reasonably assure the principal's
8 appearance in court. Such conditions may include, among others, that the
9 principal shall be in contact with a pretrial services agency serving
10 principals in that county; that the principal shall abide by specified
11 restrictions on travel that are reasonably related to an actual risk of
12 intentional flight from the jurisdiction; that the principal shall
13 refrain from possessing a firearm, destructive device or other dangerous
14 weapon; that the person be placed in pretrial supervision with a
15 pretrial services agency serving principals in that county. A principal
16 shall not be required to submit to mandatory drug testing as a condition
17 of release under non-monetary conditions.

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

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

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

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

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

42 § 510.10 Securing order; when required; alternatives available; stand-
43 ard to be applied.

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

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

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

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

15 § 510.20 Application for [~~recognizance or bail, making and determi-~~
16 ~~nation thereof in general~~] a change in securing order based
17 on a material change of circumstances.

18 1. Upon any occasion when a court [~~is required to issue~~] has issued a
19 securing order with respect to a principal, [~~or at any time when a prin-~~
20 ~~cipal is confined in the custody of the sheriff as a result of a previ-~~
21 ~~ously issued securing order, he~~] the principal or the people may make an
22 application for [~~recognizance or bail~~] a different securing order due to
23 a material change of circumstances.

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

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

39 4. When any principal who was previously issued an appearance ticket
40 pursuant to article one hundred fifty of this chapter initially comes
41 under the control of the court, appearing as required by the appearance
42 ticket, and whose future court attendance at a criminal action or
43 proceeding is or may be required, such court shall, by securing order,
44 release the principal pending trial on the principal's personal recogni-
45 zance.

46 § 6. Section 510.30 of the criminal procedure law, subparagraph (v) of
47 paragraph (a) of subdivision 2 as amended by chapter 920 of the laws of
48 1982, subparagraph (vi) of paragraph (a) of subdivision 2 as renumbered
49 by chapter 447 of the laws of 1977, subparagraph (vii) as added and
50 subparagraphs (viii) and (ix) of paragraph (a) of subdivision 2 as
51 renumbered by section 1 of part D of chapter 491 of the laws of 2012 and
52 subdivision 3 as added by chapter 788 of the laws of 1981, is amended to
53 read as follows:

54 § 510.30 Application for [~~recognizance or bail~~] securing order; rules of
55 law and criteria controlling determination.

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

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

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

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

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

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

~~(iv) His~~

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

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

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

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

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

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

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

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

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

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

~~(b) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likeli-~~

~~hood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraph (a).~~

~~3. When bail or recognizance is ordered, the court shall inform the principal, if he is a defendant charged with the commission of a felony, that the release is conditional and that the court may revoke the order of release and commit the principal to the custody of the sheriff in accordance with the provisions of subdivision two of section 530.60 of this chapter if he commits a subsequent felony while at liberty upon such order.]; and~~

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

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

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

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

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

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

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

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

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

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

(a) any of the conditions under which the principal is subject, in addition to the directions in subdivision one of this section, in a

1 manner sufficiently clear and specific to serve as a guide for the prin-
2 cipal's conduct; and

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

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

10 § 8. The criminal procedure law is amended by adding four new sections
11 510.42, 510.44, 510.46 and 510.48 to read as follows:

12 § 510.42 Court appearance reminders.

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

18 § 510.44 Pretrial service agencies.

19 The office of court administration shall certify a pretrial services
20 agency or agencies in each county to monitor principals released under
21 conditions of non-monetary release. Such agency or agencies shall be a
22 public entity under the supervision and control of a county or munici-
23 pality or a non-profit entity under contract to the county or munici-
24 pality. A county shall be authorized to enter in to a contract with
25 another county or municipality in the state to monitor principals
26 released under conditions of non-monetary release in its county but
27 shall not contract with any private entity for such purposes. Any crite-
28 ria, instrument, or tool used to determine a principal's eligibility for
29 non-monetary conditions or to determine the condition or conditions to
30 be monitored by a pretrial services agency shall be made available to
31 any person upon written or oral request. Pretrial service agencies shall
32 be prohibited from denying services to any principal released under
33 conditions of non-monetary release.

34 § 510.46. Pretrial risk assessment tool.

35 1. No algorithmic pretrial risk assessment tool should be used for
36 decisions that may result in detention or electronic monitoring and may
37 only recommend release or release with conditions.

38 2. Any questionnaire, instrument or tool used with a principal in the
39 process of considering or determining the principal's possible release
40 on recognizance, release under non-monetary conditions or used with a
41 principal in the process of considering or determining a condition or
42 conditions of release or monitoring by a pretrial services agency, shall
43 be promptly made available to the principal and the principal's counsel
44 upon written request. Any such blank form questionnaire, instrument or
45 tool regularly used in the county for such purpose or a related purpose
46 shall be made available to any person promptly upon request.

47 3. Any such questionnaire, instrument or tool shall be:

48 (a) free from discriminatory and disparate impact on detention and
49 other outcomes based on age, race, creed, color, national origin, sexual
50 orientation, gender identity or expression, military status, sex, mari-
51 tal status, disability, or any other constitutionally protected class,
52 regarding the use thereof; and

53 (b) empirically validated and regularly revalidated, with such vali-
54 dation and revalidation studies and all underlying data, except personal
55 identifying information for any defendant, publicly available upon
56 request.

1 § 510.48. Electronic monitoring.

2 When it is shown pursuant to subdivision one of this section that no
3 other realistic non-monetary condition or set of non-monetary conditions
4 will suffice to reasonably assure the principal's return to court, the
5 principal's location may be monitored with an approved electronic moni-
6 toring device, in accordance with this section. A principal shall not be
7 required to pay for any part of the cost of release on non-monetary
8 conditions.

9 1. Electronic monitoring of a principal's location may be ordered only
10 if the court finds, after notice, an opportunity to be heard and an
11 individualized determination that is not based on a risk assessment tool
12 and that is explained on the record or in writing, that the defendant
13 qualifies for electronic monitoring in accordance with subdivision twen-
14 ty-one of section 500.10 of this title, and no other realistic non-mone-
15 tary condition or set of non-monetary conditions will suffice to reason-
16 ably assure a principal's return to court.

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

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

29 (c) electronic monitoring of a principal location may be for a maximum
30 period of sixty days, and may be renewed for such period, after notice,
31 an opportunity to be heard and a de novo, individualized determination
32 in accordance with this subdivision, which shall be explained on the
33 record or in writing. A defendant subject to electronic location moni-
34 toring under this subdivision shall be considered held or confined in
35 custody for purposes of section 180.80 of this chapter and shall be
36 considered committed to the custody of the sheriff for purposes of
37 sections 170.70 and 30.30 of this chapter, as applicable.

38 2. Electronic monitoring orders shall be limited to individuals who
39 stand charged in the case before the court or a pending case that is an
40 offense that is a class A felony defined in the penal law or a felony
41 enumerated in section 70.02 of the penal law.

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

44 § 510.50 Enforcement of securing order.

45 When the attendance of a principal confined in the custody of the
46 sheriff or pursuant to a pretrial detention order is required at the
47 criminal action or proceeding at a particular time and place, the court
48 may compel such attendance by directing the sheriff to produce him or
49 her at such time and place. If the principal is at liberty on [~~his~~] the
50 principal's own recognizance [~~or on bail, his~~] or non-monetary condi-
51 tions the principal's attendance may be achieved or compelled by various
52 methods, including notification and the issuance of a bench warrant,
53 prescribed by law in provisions governing such matters with respect to
54 the particular kind of action or proceeding involved. Prior to issuing a
55 bench warrant, the court must provide the principal forty-eight hours

1 advance notice that he or she is required to appear in court in order to
2 give the principal the opportunity to appear voluntarily.

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

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

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

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

12 § 530.10 [~~Order of recognizance or bail~~] Securing order; in general.

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

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

19 2. An appeal taken by the defendant from a judgment of conviction or a
20 sentence or from an order of an intermediate appellate court affirming
21 or modifying a judgment of conviction or a sentence.

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

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

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

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

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

54 When any criminal action is pending, and the court has not issued a
55 temporary order of protection pursuant to section 530.12 of this arti-
56 cle, the court, in addition to the other powers conferred upon it by

1 this chapter, may for good cause shown issue a temporary order of
2 protection in conjunction with any securing order [~~committing the~~
3 ~~defendant to the custody of the sheriff or as a condition of a pre-trial~~
4 ~~release, or as a condition of release on bail or an adjournment in~~
5 ~~contemplation of dismissal~~]. In addition to any other conditions, such
6 an order may require that the defendant:

7 § 16. Subdivisions 9 and 11 of section 530.12 of the criminal proce-
8 dure law, subdivision 9 as amended by section 81 of subpart B of part C
9 of chapter 62 of the laws of 2011, subdivision 11 as amended by chapter
10 498 of the laws of 1993, the opening paragraph of subdivision 11 as
11 amended by chapter 597 of the laws of 1998, paragraph (a) of subdivision
12 11 as amended by chapter 222 of the laws of 1994 and paragraph (d) of
13 subdivision 11 as amended by chapter 644 of the laws of 1996, are
14 amended to read as follows:

15 9. If no warrant, order or temporary order of protection has been
16 issued by the court, and an act alleged to be a family offense as
17 defined in section 530.11 of this [~~chapter~~] article is the basis of the
18 arrest, the magistrate shall permit the complainant to file a petition,
19 information or accusatory instrument and for reasonable cause shown,
20 shall thereupon hold such respondent or defendant, [~~admit to, fix or~~
21 ~~accept bail,~~] establish a securing order or parole him or her for hear-
22 ing before the family court or appropriate criminal court as the
23 complainant shall choose in accordance with the provisions of section
24 530.11 of this [~~chapter~~] article.

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

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

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

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

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

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

51 § 530.20 [~~Order of recognizance or bail,~~] Securing order by local crimi-
52 nal court when action is pending therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (d) Has set a securing order of release under non-monetary conditions
14 which are more restrictive than necessary to reasonably ensure court
15 attendance. In such case, such superior court judge may vacate the order
16 of such local criminal court and release the defendant on ~~[his own]~~
17 recognizance ~~[or fix bail in a lesser amount or in a less burdensome~~
18 ~~form]~~ or under release with conditions, whichever is the least restric-
19 tive alternative that will reasonably assure defendant's appearance in
20 court. The court will support its choice of alternative on the record.

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

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

31 § 530.40 ~~[Order of recognizance or bail,]~~ Securing order by superior
32 court when action is pending therein.

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

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

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

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

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

14 4. Notwithstanding the provisions of subdivision [~~two~~] one of this
 15 section, a superior court may not [~~order recognizance or bail~~] issue a
 16 securing order when the defendant is charged with a felony unless and
 17 until the district attorney has had an opportunity to be heard in the
 18 matter and such court [~~has~~] and counsel for the defense have been
 19 furnished with a report as described in [~~subparagraph (ii) of paragraph~~
 20 ~~(b) of~~] subdivision [~~two~~] four of section 530.20 of this article.

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

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

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

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

42 ARTICLE 545--PRETRIAL DETENTION

43 Section 545.10 Pretrial detention; when ordered.

44 545.20 Eligibility for a pretrial detention hearing.

45 545.30 Pretrial detention hearing.

46 545.40 Order for pretrial detention.

47 545.50 Review of detention orders.

48 545.60 Length of detention for defendant held under a pretrial 49 detention order.

50 § 545.10 Pretrial detention; when ordered.

51 A county or superior court may order, before trial, the detention of a
 52 defendant if the people seek detention of the defendant under section
 53 545.20 of this article, and, after a hearing pursuant to section 545.30
 54 of this article, the court finds clear and convincing evidence that the
 55 defendant poses a high risk of intentional flight for the purpose of
 56 evading criminal prosecution and that no conditions or combination of

1 conditions in the community will reasonably assure the defendant's
2 return to court. There shall be a rebuttable presumption, that some
3 condition or conditions in the community will reasonably contain a high
4 risk of flight. That presumption may only be overcome by clear and
5 convincing evidence.

6 § 545.20 Eligibility for a pretrial detention hearing.

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

13 (a) charged with a class A felony except for class A felonies
14 contained in article two hundred twenty of the penal law;

15 (b) charged with a class B or C violent felony under subdivision (a)
16 or (b) of section 70.02 of the penal law where there is an allegation
17 that the defendant, with intent to cause serious physical injury to
18 another person, either caused such injury to such person or to a third
19 person, or attempted to cause such injury to such person or to a third
20 person;

21 (c) charged with a class B or C violent felony under subdivision (a)
22 or (b) of section 70.02 of the penal law for the offenses found in arti-
23 cle one hundred thirty of the penal law;

24 (d) charged with a felony terrorism offense under section 490.10,
25 490.15, 490.30, 490.35, 490.37, 490.40, 490.45, 490.47, 490.50 or 490.55
26 of the penal law;

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

29 (f) charged with offenses involving witness intimidation under section
30 215.15, 215.16, or 215.17 of the penal law; or

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

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

45 § 545.30 Pretrial detention hearing.

46 1. A hearing shall be held within two working days of the court order-
47 ing a pretrial detention hearing. At the hearing, the defendant shall
48 have the right to be represented by counsel, and, if financially unable
49 to obtain counsel, to have counsel assigned. The defendant shall be
50 afforded an opportunity to testify, to present witnesses, to cross-exa-
51 mine witnesses who appear at the hearing, and to present information by
52 proffer or otherwise.

53 2. Prior to the hearing, the prosecution shall disclose to the defend-
54 ant, and permit the defendant to discover, inspect, copy or photograph
55 all statements or reports that relate to the prosecution's pretrial
56 detention motion that are in the possession, custody or control of the

1 prosecution, or persons under the prosecution's direction and control,
2 including:

3 (a) The complaint and supporting documents;

4 (b) Police reports;

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

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

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

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

21 3. In hearings in cases for which there is no indictment, the people
22 shall establish probable cause that the eligible defendant committed the
23 charged offense. The people must establish by clear and convincing
24 evidence that the defendant poses a high risk of intentional flight for
25 the purpose of evading criminal prosecution and that no condition or
26 combination of conditions in the community will reasonably assure the
27 defendant's return to court. The prosecution must present competent,
28 reliable evidence and may not rely on hearsay evidence to satisfy its
29 burden.

30 4. In determining whether the defendant presents a high risk of inten-
31 tional flight for the purpose of evading criminal prosecution and wheth-
32 er no condition or combination of conditions in the community will
33 reasonably assure the defendant's return to court, the court may take
34 into account the following information:

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

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

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

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

44 5. Nothing in this section shall infringe upon the defendant's right
45 to release pursuant to sections 170.70 and 180.80 of this chapter.
46 § 545.40 Order for pretrial detention.

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

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

51 2. Direct that the eligible defendant be afforded reasonable opportu-
52 nity for private consultation with counsel.

53 § 545.50 Review of detention orders.

54 1. Upon any occasion when the principal appears in court and is
55 confined to the custody of the sheriff, a court:

56 (a) may re-open a pretrial detention hearing on its own motion;

1 (b) shall re-open a pretrial detention hearing upon motion of the
2 principal when the principal has been confined to the custody of the
3 sheriff for at least sixty days on an indictment, or thirty days where
4 no indictment is necessary; or

5 (c) shall release the principal when both the principal and the people
6 consent to release.

7 2. A pretrial detention hearing may be re-opened, regardless of wheth-
8 er a pretrial detention order has been previously issued, upon a motion
9 by the people or by the defendant, at any time before final disposition,
10 if the court finds either a change of circumstances or that information
11 exists that was not known to the people or to the defendant at the time
12 of the hearing, that has a material bearing on the issue of whether
13 defendant presents a high risk of intentional flight for the purpose of
14 evading criminal prosecution, and whether no condition or combination of
15 conditions in the community will reasonably assure the defendant's
16 return to court. In all cases where the principal is not detained and
17 appears in court as required, or after receiving a notice to appear,
18 there shall be a presumption that the hearing will not be re-opened and
19 that the principal shall remain at liberty under the existing securing
20 order.

21 § 545.60 Length of detention for defendant held under a pretrial
22 detention order.

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

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

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

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

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

47 2. The time within which a defendant must be brought to trial for the
48 purposes of paragraphs (a) and (b) of subdivision one of this section
49 may be extended upon a showing of exceptional circumstances, but by no
50 more than two periods of up to twenty days each in a criminal action
51 wherein the defendant is accused of one or more offenses, at least one
52 of which is a felony, or one period of up to ten days in a criminal
53 action wherein the defendant is accused of one or more offenses, at
54 least one of which is a misdemeanor punishable by a sentence of impri-
55 sonment of more than three months and none of which is a felony. In
56 computing the time within which a defendant must be brought to trial for

1 the purposes of this subdivision, the following periods shall be
2 excluded:

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

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

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

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

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

17 (a) the trial is in progress;

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

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

21 § 23. Section 150.10 of the criminal procedure law is amended by
22 adding a new subdivision 3 to read as follows:

23 3. Before issuing an appearance ticket a police officer or other
24 public servant must inform the arrestee that they may provide their
25 contact information for the purposes of receiving a court notification
26 to remind them of their court appearance date from the court or a certi-
27 fied pretrial services agency. Such contact information may include one
28 or more phone numbers, a residential address or address at which the
29 arrestee receives mail, or an email address. The contact information
30 shall be recorded and be transmitted to the local criminal court as
31 required by section 150.80 of this article.

32 § 24. Subdivision 1 of section 150.20 of the criminal procedure law,
33 as amended by chapter 550 of the laws of 1987, is amended to read as
34 follows:

35 1. (a) Whenever a police officer is authorized pursuant to section
36 140.10 of this title to arrest a person without a warrant for an offense
37 other than a class A, B, C or D felony or a violation of section 130.25,
38 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, he [may]
39 shall, except as set out in paragraph (b) of this subdivision, subject
40 to the provisions of subdivisions three and four of section 150.40 of
41 this title, instead issue to and serve upon such person an appearance
42 ticket.

43 (b) An officer is not required to issue an appearance ticket if the
44 person:

45 (i) has one or more outstanding local criminal court or superior court
46 warrants;

47 (ii) has failed to appear in court proceedings in the last two years;

48 (iii) has been given a reasonable opportunity to make their verifiable
49 identity and a method of contact known, and has been unable or unwilling
50 to do so, so that a custodial arrest is necessary to subject the indi-
51 vidual to the jurisdiction of the court;

52 (iv) is charged with a crime or offense between members of the same
53 family or household, as defined in subdivision one of section 530.11 of
54 this chapter;

55 (v) is charged with a crime or offense involving sexual misconduct
56 under section 130.00 of the penal law;

1 (vi) should, in the officer's estimation, be brought before the court
2 for consideration of issuance of an order of protection, pursuant to
3 section 530.13 of this chapter, based on the facts of the crime or
4 offense that the officer has reasonable cause to believe occurred;

5 (vii) should, in the officer's estimation, be brought before the court
6 for consideration of court-ordered restrictions on operation of a motor
7 vehicle, based on the facts of the crime or offense that the officer has
8 reasonable cause to believe occurred.

9 § 25. Section 150.30 of the criminal procedure law is REPEALED.

10 § 26. Subdivision 1 of section 150.40 of the criminal procedure law is
11 amended to read as follows:

12 1. An appearance ticket must be made returnable at a date as soon as
13 possible, but in no event later than twenty days from the date of issu-
14 ance. The appearance ticket shall be made returnable in a local criminal
15 court designated in section 100.55 of this title as one with which an
16 information for the offense in question may be filed.

17 § 27. The criminal procedure law is amended by adding a new section
18 150.80 to read as follows:

19 § 150.80 Court appearance reminders.

20 1. A police officer or other public servant who has issued and served
21 an appearance ticket must, within twenty-four hours of issuance, file or
22 cause to be filed with the local criminal court the appearance ticket
23 and any contact information made available pursuant to subdivision three
24 of section 150.10 of this article.

25 2. Upon receipt of the appearance ticket and any contact information
26 made available pursuant to subdivision three of section 150.10 of this
27 article, the local criminal court shall issue a court appearance remind-
28 er and notify the arrestee of their court appearances by text message,
29 telephone call, electronic mail, or first class mail. The local criminal
30 court may partner with a certified pretrial services agency or agencies
31 in that county to provide such notification and shall include a copy of
32 the appearance ticket.

33 3. A local criminal court is not required to issue a court appearance
34 reminder if the appearance ticket requires the arrestee's appearance
35 within seventy-two hours of its issuance, or no contact information has
36 been provided.

37 § 28. Article 68 of the insurance law is REPEALED.

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

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

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

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

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

11 2. If the court is satisfied after such hearing that there is reason-
12 able cause to believe that the prospective witness (a) possesses infor-
13 mation material to the pending action or proceeding, and (b) will not be
14 amenable or respond to a subpoena at a time when his attendance will be
15 sought, it may issue a material witness order, adjudging [~~him~~] the indi-
16 vidual a material witness and [~~fixing bail to secure his~~] releasing the
17 individual on the individual's own recognizance unless the court finds
18 on the record that release on recognizance will not reasonably assure
19 the individual's court attendance. In such instances the court will
20 release the individual under non-monetary conditions, selecting the
21 least restrictive alternative that will reasonably ensure the individ-
22 ual's future attendance.

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

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

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

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

36 5. The chief administrator of the courts shall collect data and report
37 annually regarding pretrial release and detention. Such data and report
38 shall contain information categorized by gender, racial and ethnic back-
39 ground, regarding the nature of the criminal offenses, the number of
40 individuals released on recognizance, the number of individuals released
41 on non-monetary conditions, including the conditions imposed, the number
42 of individuals committed to the custody of a sheriff prior to trial, the
43 rates of failure to appear and rearrest, the outcome of such cases or
44 dispositions, the length of the pretrial detention stay and any other
45 such information as the chief administrator may find necessary and
46 appropriate.

47 § 33. This act shall take effect November 1, 2020.