STATE OF NEW YORK

7156

IN SENATE

January 9, 2020

Introduced by Sens. MARTINEZ, GAUGHRAN, BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to eliminating bail and providing for pretrial detention; to amend the judiciary law, in relation to an annual report on pretrial release and detention outcomes; and to repeal certain provisions of the criminal procedure law and the insurance law relating to bail and bail bonds

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

Section 1. Subparagraph (viii) of paragraph (b) of subdivision 1 of section 150.20 of the criminal procedure law, as added by section 1-a of part JJJ of chapter 59 of the laws of 2019, is amended and a new subparagraph (ix) is added, to read as follows:

(viii) it reasonably appears to the officer, based on the observed behavior of the individual in the present contact with the officer and facts regarding the person's condition that indicates a sign of distress to such a degree that the person would face harm without immediate medical or mental health care, that bringing the person before the court would be in such person's interest in addressing that need; provided, however, that before making the arrest, the officer shall make all reasonable efforts to assist the person in securing appropriate services[~~.~~]**; and**

(ix) the person is unlikely to return to court on the return date of an appearance ticket for reasons specific to the facts of the case that the officer can articulate in the information or misdemeanor complaint. These reasons cannot rely solely on the defendant's prior criminal history or place of residence.

§ 2. Subdivisions 3-a, 4 and 5 of section 500.10 of the criminal procedure law, subdivision 3-a as added and subdivisions 4 and 5 as amended by section 1-e of part JJJ of chapter 59 of the laws of 2019, are amended and a new subdivision 6-a is added to read as follows:

3-a. "Release under non-monetary conditions." A court releases a principal under non-monetary conditions when, having acquired control over a person, it authorizes the person to be at liberty during the pendency of

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

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the criminal action or proceeding involved under conditions ordered by the court, which shall be the least restrictive conditions that will reasonably assure the principal's return to court. Such conditions may include, among other conditions reasonable under the circumstances: that the principal be in contact with a pretrial services agency serving principals in that county; that the principal abide by reasonable, specified restrictions on travel that are reasonably related to an actual risk of flight from the jurisdiction; that the principal refrain from possessing a firearm, destructive device or other dangerous weapon; [~~that, when it is shown pursuant to subdivision four of section 510.45 of this title that no other realistic monetary condition or set of non-monetary conditions will suffice to reasonably assure the person's return to court, the person be placed in~~] reasonable pretrial supervision with a pretrial services agency serving principals in that county; [~~that, when it is shown pursuant to paragraph (a) of subdivision four of section 510.40 of this title that no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure the principal's return to court,~~] the principal's location be monitored with an approved electronic monitoring device, in accordance with [~~such~~] subdivision [~~four~~] **three** of section 510.40 of this title. A principal shall not be required to pay for any part of the cost of release on non-monetary conditions.

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

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

6-a. "Pretrial detention." A county or superior court may commit a principal to pretrial detention if, after a hearing and making such findings as specified in article five hundred forty-five of this title, a judge so orders detention.

§ 3. Subdivisions 21 and 22 of section 500.10 of the criminal procedure law are REPEALED.

§ 4. Subdivision 1 of section 510.10 of the criminal procedure law, as amended by section 2 of part JJJ of chapter 59 of the laws of 2019, is amended and a new subdivision 1-a is added to read as follows:

1. When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall, in accordance with this title, by a securing order release the principal on the principal's own recognizance, release the principal under non-monetary conditions, [~~or, where authorized, fix bail~~] or commit the principal to the custody of the sheriff. In all such cases, except where another type of securing order is shown to be required by law, the court shall release the principal pending trial on the principal's own recognizance, unless it is demonstrated and the court makes an individualized determination that the principal poses a

risk of flight to avoid prosecution **or the court finds that release on recognizance will not reasonably assure the individual's court attendance**. If such a finding is made, the court must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court. The court shall explain its choice of release, release with conditions[~~, bail~~] or remand on the record or in writing.

1-a. Notwithstanding subdivision one of this section, in cases where the people indicate that they intend to move for pretrial detention as set forth in article five hundred forty-five of this title, the court may commit the defendant to the custody of the sheriff or issue a security order in accordance with article five hundred forty-five of this title.

§ 5. Subdivisions 3, 4 and 5 of section 510.10 of the criminal procedure law are REPEALED and subdivision 6 is renumbered subdivision 3.

§ 6. Section 510.20 of the criminal procedure law, as amended by section 3 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 510.20 Application for a change in securing order **based on a material change in circumstances**.

1. Upon any occasion when a court has issued a securing order with respect to a principal and the principal is confined in the custody of the sheriff as a result of the securing order or a previously issued securing order, the principal may make an application for recognizance, release under non-monetary conditions [~~or bail~~]. **Upon any occasion when a court has issued a securing order with respect to the principal, the principal or other people may make an application for a different securing order due to a material change in circumstances.**

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

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

(c) Upon such application, the people must be accorded an opportunity to be heard, present evidence and to contend that a different securing order must or should issue because, due to a material change in circumstances, the current order is either too restrictive or not restrictive enough to reasonably ensure a principal's appearance in court. In acting upon such an application, the court shall select the least restrictive alternative that will reasonably ensure a court appearance.

§ 7. Section 510.30 of the criminal procedure law, as amended by section 5 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 510.30 Application for securing order; rules of law and criteria controlling determination.

1. With respect to any principal, the court in all cases, unless otherwise provided by law, must impose the least restrictive kind and degree of control or restriction that is necessary to secure 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 information about the principal that is relevant to the principal's return to court, including:

(a) [~~The~~] **Information about the** principal's activities [~~and~~]**,** history **and community ties that is relevant to court appearance**;

(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 the time that has elapsed since the occurrence of the crime and the age of the principal at the time of the occurrence of such delinquent or youthful offender conduct;**

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

(e) The principal's previous record**, if any, responding to court appearances when required or** with respect to flight to avoid criminal prosecution;

(f) [~~If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances, and, in cases where bail is authorized, the principal's ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond;~~

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

(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

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

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

(h) If the principal is a defendant, the sentence which may be or has been imposed upon conviction.

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

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

§ 8. Section 510.40 of the criminal procedure law, as amended by section 6 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 510.40 Court notification to principal of conditions of release and of alleged violations of conditions of release.

1. Upon ordering that a principal be released on 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 the principal to appear in the criminal action or proceeding involved whenever the principal's attendance may be required and to 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 the principal be discharged from such custody or, as the case may be, that the principal's bail be exonerated~~] 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.

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 the principal is in the custody of the sheriff at the time, directing the sheriff to discharge 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. The court shall notify the principal of any of the conditions under which the principal is subject, in addition to the directions in subdivision one of this section, in a manner sufficiently clear and specific to serve as a guide for the principal's conduct and the consequences for violations of those conditions, which could include revoking of the securing order, setting of a more restrictive securing order or after a motion and a hearing prescribed in article five hundred forty-five of this title, pretrial detention. 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.~~] 3. (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~~] **the defendant is charged with a felony or a misdemeanor crime involving a person of the same household as defined in subdivision one of section 530.11 of this title and the court finds, after notice and an opportunity to be heard, that no other nonmonetary condition or sets of conditions will reasonably ensure a principal's return to court**.

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

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

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

[~~A defendant subject to electronic location monitoring under this subdivision shall be considered held or confined in custody for purposes of section 180.80 of this chapter and shall be considered committed to the custody of the sheriff for purposes of section 170.70 of the chapter, as applicable.~~

~~5.~~] **4.** If a principal is released under non-monetary conditions, the court shall, on the record and in an individualized written document provided to the principal, notify the principal, in plain language and a manner sufficiently clear and specific:

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

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

5. In the event of noncompliance with the conditions of release, the court, upon motion by the people and only after affording the defendant and defendant's counsel notice of the alleged noncompliance and an opportunity to be heard, may revoke and modify the securing order. In determining whether to revoke and modify the securing order, the court must consider the facts, nature, willfulness and the seriousness of the noncompliance. The court may only set a more restrictive condition or conditions if it finds that such conditions are necessary to reasonably ensure the defendant's appearance in court.

§ 9. Section 510.43 of the criminal procedure law, as added by section 7 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 510.43 Court appearances: additional notifications.

The court or, upon direction of the court, a certified pretrial services agency, shall notify all principals released under non-monetary conditions and on recognizance of all court appearances in advance by text message, telephone call, electronic mail or first class mail. The chief administrator of the courts shall, pursuant to subdivision one of section 10.40 of this chapter, develop a form which shall be offered to the principal at court appearances. On such form, which upon completion

shall be retained in the court file, the principal may select one such preferred manner of notice. **In no instance, however, shall the principal's failure to receive such additional notifications in addition to verbal notification at court appearances, constitute grounds to excuse the principal's failure to appear at court proceedings.**

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

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

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

§ 12. Section 530.10 of the criminal procedure law, as amended by section 11 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 530.10 [~~**Order of recognizance release under non-monetary conditions or bail**~~] **Securing orders**; in general.

Under circumstances prescribed in this article, a court, upon application of a defendant charged with or convicted of an offense, is required to issue a securing order for such defendant during the pendency of either:

1. A criminal action based upon such charge; or

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

§ 13. Subdivision 4 of section 530.11 of the criminal procedure law, as amended by section 12 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

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

§ 14. Subdivisions 9 and 11 of section 530.12 of the criminal procedure law, subdivision 9 as amended by section 81 of subpart B of part C of chapter 62 of the laws of 2011, subdivision 11 as amended by section 15 of part JJJ of chapter 59 of the laws of 2019, are amended to read as follows:

9. If no warrant, order or temporary order of protection has been issued by the court, and an act alleged to be a family offense as

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

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

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

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

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

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

§ 15. Paragraph (a) of subdivision 8 of section 530.13 of the criminal procedure law, as amended by section 13 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

(a) revoke an order of recognizance, release under non-monetary conditions [~~or bail~~] and commit the defendant to custody; or

§ 16. Section 530.20 of the criminal procedure law, as amended by section 16 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 530.20 Securing order by local criminal court when action is pending therein.

When a criminal action is pending in a local criminal court, such court, upon application of a defendant, shall proceed as follows:

1. (a) In cases other than as described in paragraph (b) of this subdivision the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

(b) [~~Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged~~

~~with a qualifying offense which is a felony, the court may commit the principal to the custody of the sheriff. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing. A principal stands charged with a qualifying offense when he or she stands charged with:~~

~~(i) a felony enumerated in section 70.02 of the penal law, other than burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of the penal law;~~

~~(ii) a crime involving witness intimidation under section 215.15 of the penal law;~~

~~(iii) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;~~

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

~~(v) a felony sex offense defined in section 70.80 of the penal law or a crime involving incest as defined in section 255.25, 255.26 or 255.27 of such law, or a misdemeanor defined in article one hundred thirty of such law;~~

~~(vi) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law;~~

~~(vii) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;~~

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

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

~~(d) Notwithstanding the provisions of paragraphs (a) and (b) 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) the defendant has two previous felony convictions;~~

~~(b)~~] Notwithstanding paragraph (a) of this subdivision, in cases where the people indicate that they intend to move for pretrial detention as set forth in article five hundred forty-five of this title, 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.

2. Notwithstanding subdivision one of this section, in cases where the defendant is facing a charge of 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 section 70.10 of the penal law; the 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.

3. 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~~] the court 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, as amended by section 17 of part JJJ of chapter 59 of the laws of 2019, 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~~] a securing order when such local criminal court:

(a) Lacks authority to issue such an order, pursuant to 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 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~~] **issue a securing order** until the district attorney has had an opportunity to be heard in the matter and such judge and counsel for the defendant have been furnished with a report as described in [~~subparagraph (ii) of paragraph (b) of~~] subdivision [~~two~~] **three** of section 530.20 of this article.

§ 18. Section 530.40 of the criminal procedure law, as amended by section 18 of part JJJ of chapter 59 of the laws of 2019, 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~~] **a securing order** as follows:

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

~~2. When the defendant is charged with a felony, the court may, unless otherwise provided by law in its discretion, order recognizance, 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, 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 other than as described in subdivision four of this section the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.~~

~~4. Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged~~

~~with a qualifying offense which is a felony, the court may commit the principal to the custody of the sheriff. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:~~

~~(a) a felony enumerated in section 70.02 of the penal law, other than burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of the penal law;~~

~~(b) a crime involving witness intimidation under section 215.15 of the penal law;~~

~~(c) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;~~

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

~~(e) a felony sex offense defined in section 70.80 of the penal law or a crime involving incest as defined in section 255.25, 255.26 or 255.27 of such law, or a misdemeanor defined in article one hundred thirty of such law;~~

~~(f) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law;~~

~~(g) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;~~

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

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

~~5. Notwithstanding the provisions of subdivisions three and four of this section, 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.~~

~~6.~~] Release the principal pending trial on the principal's personal recognizance, unless the court finds on the record that release on recognizance will not reasonably ensure the individual's court attend-

ance. In such instances, the court shall release the individual under nonmonetary conditions, selecting the least restrictive alternative that will support its choice of alternative on the record.

2. Notwithstanding subdivision one of this section, in cases where the people indicate that they intend to move for pretrial detention as set out in article five hundred forty-five of this title, the court may commit the defendant to 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 [~~subdivisions two, three and four~~] subdivision one of this section, a superior court may not [~~order recognizance, release under non-monetary conditions or, where authorized, bail,~~] issue a securing order or permit a defendant to remain at liberty pursuant to an existing order, after the defendant has been convicted of either: (a) a class A felony or (b) any class B or class C felony as defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age. In either case the court must commit or remand the defendant to the custody of the sheriff.

[~~7.~~] 4. Notwithstanding the provisions of [~~subdivisions two, three and four~~] subdivision one of this section, a superior court may not [~~order recognizance, release under non-monetary conditions or, where authorized, bail~~] issue a securing order when the defendant is charged with a felony unless and until the district attorney has had an opportunity to be heard in the matter and such court and counsel for the defendant have been furnished with a report as described in [~~subparagraph (ii) of paragraph (b) of~~] subdivision [~~two~~] three of section 530.20 of this article.

§ 19. Subdivision 1 of section 530.45 of the criminal procedure law, as amended by section 19 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

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

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

§ 21. The criminal procedure law is amended by adding a new article 545 to read as follows:

ARTICLE 545 -- PRETRIAL DETENTION

Section 545.10 Pretrial detention; when ordered.
545.20 Eligibility for a pretrial detention hearing.
545.30 Pretrial detention hearing.
545.40 Order for pretrial detention.

545.50 Reopening of pretrial hearing.
545.60 Length of detention for defendant held under a pretrial detention order.
545.70 Oversight board for pretrial detention.

§ 545.10 Pretrial detention; when ordered.

A county or superior court may order, before trial, the detention of a defendant if the people seek detention of the defendant under section 545.20 of this article, and, after a hearing pursuant to section 545.30 of this article, the court finds clear and convincing evidence that the defendant poses a high risk of flight before trial, or that the defendant poses a current threat to the physical safety of a reasonably identifiable person or persons, and that no conditions or combination of conditions in the community will suffice to contain the aforesaid risk or threat. There shall be a rebuttable presumption, except in the circumstances outlined in subdivision four of section 545.30 of this article that some condition or conditions in the community will reasonably contain a high risk of flight or a current threat to the physical safety of a reasonably identifiable person or persons. That presumption may only be overcome by clear and convincing evidence.

§ 545.20 Eligibility for a pretrial detention hearing.

1. The people may make a motion to the court at any time seeking the pretrial detention of a defendant.

2. Upon such motion by the people, the defendant may be committed to the custody of the sheriff pending a hearing on the people's motion, or the court may issue a securing order. The court shall support its choice of an alternative on the record. If the person is at liberty, a warrant shall be issued and the defendant brought into custody of the sheriff.

§ 545.30 Pretrial detention hearing.

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

2. (a) Within at least twenty-four hours of the hearing, the people shall disclose to the defendant and permit the defendant to inspect, copy or photograph all statements and reports that are in the possession, custody or control of the people, or persons under the people's direction and control that:

(i) the people rely upon to establish reasonable cause that the defendant committed the alleged crime or crimes; and

(ii) relate to the people's basis for the pretrial detention motion that either the defendant presents a high risk of flight or a current threat to the physical safety of a reasonably identifiable person or persons.

(b) In addition, the people will produce any statements that are exculpatory in nature.

(c) Portions of materials claimed to be non-discoverable may be withheld pending a determination and ruling of the court under section 245.70 of this chapter; but the defendant shall be notified in writing that such information has not been disclosed under a particular subdivision of such section, and the discoverable portions of such materials shall be disclosed if practicable.

3. In hearings in cases for which there is no indictment, the people shall establish reasonable cause that the eligible defendant committed the charged offense. The people must establish by clear and convincing evidence that the defendant poses a high risk of flight or a current threat of physical danger to a reasonably identifiable person or persons and that no conditions or combination of conditions in the community will suffice to contain the aforesaid risk or threat.

4. There shall be a rebuttable presumption, which the defendant may overcome by a preponderance of the evidence, that no conditions or combination of conditions in the community will suffice to contain a current threat to the physical safety of a reasonably identifiable person or persons if the court finds reasonable cause that the defendant:

(a) committed a crime for which the defendant would be subject to a term of life imprisonment;

(b) committed a crime involving serious physical injury or threat of serious physical injury, or attempt therein, while the defendant was in the community on recognizance or under non-monetary conditions for a crime involving serious physical injury or the threat of serious physical injury; or

(c) threatened, injured, intimidated, or attempted to threaten, injure or intimidate a prospective witness or juror in a criminal investigation or judicial proceeding.

5. In determining whether the defendant presents a high risk of flight or a current threat of physical danger to a reasonably identifiable person or persons and whether no conditions or combinations of conditions in the community will suffice to contain such risk or threat, the court may take into account the following information:

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

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

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

(d) the nature and the credibility of the threat to the physical danger of a reasonably identifiable person or persons, if applicable; and

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

§ 545.40 Order for pretrial detention.

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

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

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

§ 545.50 Reopening of pretrial hearing.

A pretrial detention hearing may be opened, before or after issuance of a pretrial detention order by the court, by motion of the people or the defendant, at any time before trial, if the court finds either a change of circumstances or that information exists that was not known to the people or to the defendant at the time of the hearing, that has a material bearing on the issue of whether the defendant presents a high risk or failure to appear or a current threat to the physical safety of

a reasonably identifiable person or persons and whether no conditions or combination of conditions will suffice to contain such risk or threat.

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

1. If a pretrial detention order is issued, a defendant shall not remain detained in jail for more than one hundred eighty days after the return of the indictment, if applicable, until the start of trial. In cases where no indictment is required, the defendant shall not remain detained in jail for more than ninety days from the date of the pretrial detention motion until the start of trial.

2. (a) The time within which the trial of the case commences may be extended for one or more additional periods not to exceed twenty days each on the basis of a motion submitted by the people and approved by the court. The additional period or periods of detention may be granted only on the basis of good cause shown, and shall be granted only for the additional time required to prepare for the trial of the person. Good cause may include, but not be limited to, the unavailability of an essential witness, the necessity for forensic analysis of evidence, the ability to conduct a joint trial with a co-defendant or co-defendants, severance of co-defendants which permits only one trial to commence within the time period, complex or major investigations, scheduling conflicts which arise shortly before the trial date, the inability to proceed to trial because of action taken by or at the behest of the defendant, the breakdown of a plea agreement on or immediately before the trial date, and allowing reasonable time to prepare for a trial after the circumstances giving rise to a tolling or extension of the time period no long exists.

(b) In computing the one hundred eighty days from indictment, if applicable, or if no indictment is required, ninety days from the date of the pretrial order, to commencement of trial, the following periods shall be excluded:

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

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

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

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

3. If a trial has not commenced within one hundred eighty days from indictment, if applicable, or ninety days from the pretrial detention order if no indictment is required, as calculated above, and the defendant remains in custody, the defendant shall be released on recognizance or under non-monetary conditions of release pending trial on the underlying charge, unless:

(a) the trial is in progress;

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

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

(d) upon motion of the people, the court finds that a current substantial and unjustifiable risk to the physical safety of a reasonably identifiable person would result from the defendant's release from custody, and that no appropriate conditions for the defendant's release would reasonably address that risk, and also finds that the failure to

commence trial in accordance with the time requirements set forth in this section was not due to unreasonable delay by the people. If the court makes such a finding, the court must set an additional period of time, not to exceed thirty days, in which the defendant's trial must commence. If the trial does not commence within this period, the defendant must be released on recognizance or under non-monetary conditions.

§ 545.70 Oversight board for pretrial detention.

The defendant or the people may make a motion to appeal to an oversight board for pretrial detention. The pretrial detention oversight board shall be comprised of five members and include the following: two sitting judges, two assistant district attorneys, and one defense attorney, to be appointed by the governor and confirmed by the senate. The members shall serve for a period of two years. In the event of a vacancy occurring during a term of appointment by reason of death, resignation, disqualification or otherwise such vacancy shall be filled for the unexpired term in the same manner as the original appointment. The members of the board shall serve without compensation, except that each member shall be allowed their necessary and actual expenses incurred in the performance of his or her duties pursuant to this section. The oversight board will be authorized to overrule any finding for or against pretrial detention.

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

§ 23. Paragraphs (a) and (c) of subdivision 9 of section 216.05 of the criminal procedure law, paragraph (a) as amended by section 21 of part JJJ of chapter 59 of the laws of 2019, and paragraph (c) as added by section 4 of part AAA of chapter 56 of the laws of 2009, are amended to read as follows:

(a) If at any time during the defendant's participation in the judicial diversion program, the court has reasonable grounds to believe that the defendant has violated a release condition in an important respect or has willfully failed to appear before the court as requested, the court except as provided in subdivision two of section 510.50 of this chapter regarding a failure to appear, shall direct the defendant to appear or issue a bench warrant to a police officer or an appropriate peace officer directing him or her to take the defendant into custody and bring the defendant before the court without unnecessary delay; provided, however, that under no circumstances shall a defendant who requires treatment for opioid abuse or dependence be deemed to have violated a release condition on the basis of his or her participation in medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice. The relevant provisions of section [~~530.60~~] 530.10 of this chapter relating to issuance of securing orders shall apply to such proceedings under this subdivision.

(c) If the court determines that the defendant has violated a condition of his or her release under the judicial diversion program, the court may modify the conditions thereof, reconsider the order of recognizance or [~~bail~~] a securing order pursuant to subdivision two of section 510.30 of this chapter, or terminate the defendant's participation in the judicial diversion program; and when applicable proceed with the defendant's sentencing in accordance with the agreement. Notwithstanding any provision of law to the contrary, the court may impose any sentence authorized for the crime of conviction in accordance with the plea agreement, or any lesser sentence authorized to be imposed on a felony drug offender pursuant to paragraph (b) or (c) of subdivi-

sion two of section 70.70 of the penal law taking into account the length of time the defendant spent in residential treatment and how best to continue treatment while the defendant is serving that sentence. In determining what action to take for a violation of a release condition, the court shall consider all relevant circumstances, including the views of the prosecutor, the defense and the alcohol or substance abuse treatment provider, and the extent to which persons who ultimately successfully complete a drug treatment regimen sometimes relapse by not abstaining from alcohol or substance abuse or by failing to comply fully with all requirements imposed by a treatment program. The court shall also consider using a system of graduated and appropriate responses or sanctions designed to address such inappropriate behaviors, protect public safety and facilitate, where possible, successful completion of the alcohol or substance abuse treatment program.

§ 24. Section 410.60 of the criminal procedure law, as amended by section 23 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 410.60 Appearance before court.

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

§ 25. Subdivisions 2 and 3 of section 620.50 of the criminal procedure law, subdivision 3 as amended by section 24 of part JJJ of chapter 59 of the laws of 2019, are amended to read as follows:

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

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

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

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

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

5. (a) The chief administrator of the courts shall collect data at arraignment on all pretrial release and detention decisions, including information on sex, race, criminal charge, the pretrial release decision outcome, whether the individual was detained, whether electronic monitoring was imposed, and information on any pretrial motions made, and motions granted.

(b) The office of court administration shall provide data and information to the division of criminal justice services which will prepare an annual report on pretrial release and detention outcomes, and include information on the sex, race, criminal charge, pretrial decision outcomes, the use of electronic monitoring, pretrial motions, rates of failure to appear and rates of rearrest for individuals released before trial. The report shall also include information on pretrial service agency activity.

§ 27. This act shall take effect January 1, 2021.