

# STATE OF NEW YORK

10275

## IN ASSEMBLY

May 13, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. K. Brown) --  
read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the mental hygiene law,  
in relation to allowing for principals to be remanded into custody for  
drug treatment where there is a risk of continued substance abuse

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

1 Section 1. Section 510.10 of the criminal procedure law is amended by  
2 adding three new subdivisions 5-a, 5-b and 5-c to read as follows:

3 5-a. Notwithstanding the provisions of subdivisions three and four of  
4 this section, the court may, in its discretion, commit the principal to  
5 the custody of the sheriff for a period of no more than fifteen days, if  
6 such principal has a substantial risk of continued substance abuse and  
7 there is a likelihood of serious harm to such principal and there exists  
8 no alternative less restrictive means available to confine or supervise  
9 such principal in order to prevent the principal's substantial risk of  
10 continued substance abuse upon release from custody. Alternative and  
11 less restrictive means of confinement and supervision shall mean avail-  
12 able immediate commitment of such principal in a state licensed  
13 substance abuse treatment center, drug rehabilitation center or mental  
14 health facility. In making its determination, the court may consider the  
15 following factors, including but not limited to:

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

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

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

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

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

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

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

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1 5-b. Upon the commitment of such principal to the custody of the sher-  
2 iff, or an available, less restrictive means of confinement and super-  
3 vision, the court shall order a duly licensed professional to monitor  
4 such principal as needed to evaluate the principal's need for treatment  
5 and/or medications, and to complete an evaluation for addiction to a  
6 controlled substance. Treatment, including but not limited to medica-  
7 tions, shall be provided to the principal without unnecessary delay, as  
8 recommended by such licensed professional. The principal's complete  
9 evaluation, including recommendations for the continued custody of such  
10 principal, immediate release from custody, and any other proposals for  
11 the care and treatment of such principal shall be provided to the court  
12 without unnecessary delay and within no more than seventy-two hours from  
13 the completion of such principal's evaluation. The principal, such  
14 principal's counsel and the district attorney's office shall be provided  
15 a copy of the principal's evaluation upon request to the court.

16 5-c. The principal shall be afforded the opportunity for a hearing to  
17 request the principal's immediate release from the custody of the sher-  
18 iff or confinement in a treatment facility or mental health facility,  
19 prior to his or her arraignment. If within seventy-two hours of the  
20 court's receipt of the principal's request for such hearing, the princi-  
21 pal is not brought before a local criminal court, the principal shall be  
22 immediately released from the sheriff's custody or confinement in a  
23 treatment facility or mental health facility and served an appearance  
24 ticket. The principal shall be entitled to introduce his or her  
25 controlled substance evaluation including any recommendations made by a  
26 licensed physician that such principal should not be held in custody of  
27 the sheriff or confined at a treatment or mental health facility and  
28 that the principal is not in substantial risk for substance abuse, or  
29 there is not a likelihood of serious harm to the principal upon his or  
30 her release from custody. The court shall consider the principal's  
31 complete evaluation including treatment recommendations, record of  
32 arrests, convictions and any record of participation in any drug court  
33 and shall decide whether to immediately release such principal from the  
34 custody of the sheriff or confinement in a treatment facility or mental  
35 health facility, or to remand the principal to the custody of the sher-  
36 iff or confinement in a treatment facility or mental health facility for  
37 the remainder of the principal's fifteen day period of custody or  
38 confinement.

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

42 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this  
43 subdivision, the court may, in its discretion, commit the principal to  
44 the custody of the sheriff for a period of no more than fifteen days, if  
45 such principal has a substantial risk of continued substance abuse and  
46 there is a likelihood of serious harm to such principal and there exists  
47 no alternative less restrictive means available to confine or supervise  
48 such principal in order to prevent the principal's substantial risk of  
49 continued substance abuse upon release from custody. Alternative and  
50 less restrictive means of confinement and supervision shall mean avail-  
51 able immediate commitment of such principal in a state licensed  
52 substance abuse treatment center, drug rehabilitation center or mental  
53 health facility. In making its determination, the court may consider the  
54 following factors, including but not limited to:

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

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

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

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

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

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

11 (e) Upon the commitment of such principal to the custody of the sher-  
12 iff, or an available, less restrictive means of confinement and super-  
13 vision, the court shall order a duly licensed professional to monitor  
14 such principal as needed to evaluate the principal's need for treatment  
15 and/or medications, and to complete an evaluation for addiction to a  
16 controlled substance. Treatment, including but not limited to medica-  
17 tions, shall be provided to the principal without unnecessary delay, as  
18 recommended by such licensed professional. The principal's complete  
19 evaluation, including recommendations for the continued custody of such  
20 principal, immediate release from custody, and any other proposals for  
21 the care and treatment of such principal shall be provided to the court  
22 without unnecessary delay and within no more than seventy-two hours from  
23 the completion of such principal's evaluation. The principal, such  
24 principal's counsel and the district attorney's office shall be provided  
25 a copy of the principal's evaluation upon request to the court.

26 (f) The principal shall be afforded the opportunity for a hearing to  
27 request the principal's immediate release from the custody of the sher-  
28 iff or confinement in a treatment facility or mental health facility,  
29 prior to his or her arraignment. If within seventy-two hours of the  
30 court's receipt of the principal's request for such hearing, the princi-  
31 pal is not brought before a local criminal court, the principal shall be  
32 immediately released from the sheriff's custody or confinement in a  
33 treatment facility or mental health facility and served an appearance  
34 ticket. The principal shall be entitled to introduce his or her  
35 controlled substance evaluation including any recommendations made by a  
36 licensed physician that such principal should not be held in custody of  
37 the sheriff or confined at a treatment or mental health facility and  
38 that the principal is not in substantial risk for substance abuse, or  
39 there is not a likelihood of serious harm to the principal upon his or  
40 her release from custody. The court shall consider the principal's  
41 complete evaluation including treatment recommendations, record of  
42 arrests, convictions and any record of participation in any drug court  
43 and shall decide whether to immediately release such principal from the  
44 custody of the sheriff or confinement in a treatment facility or mental  
45 health facility, or to remand the principal to the custody of the sher-  
46 iff or confinement in a treatment facility or mental health facility for  
47 the remainder of the principal's fifteen day period of custody or  
48 confinement.

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

51 5-a. Notwithstanding the provisions of subdivisions three and four of  
52 this section, the court may, in its discretion, commit the principal to  
53 the custody of the sheriff for a period of no more than fifteen days, if  
54 such principal has a substantial risk of continued substance abuse and  
55 there is a likelihood of serious harm to such principal and there exists  
56 no alternative less restrictive means available to confine or supervise

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

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

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

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

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

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

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

20 5-b. Upon the commitment of such principal to the custody of the sher-  
21 iff, or an available, less restrictive means of confinement and super-  
22 vision, the court shall order a duly licensed professional to monitor  
23 such principal as needed to evaluate the principal's need for treatment  
24 and/or medications, and to complete an evaluation for addiction to a  
25 controlled substance. Treatment, including but not limited to medica-  
26 tions, shall be provided to the principal without unnecessary delay, as  
27 recommended by such licensed professional. The principal's complete  
28 evaluation, including recommendations for the continued custody of such  
29 principal, immediate release from custody, and any other proposals for  
30 the care and treatment of such principal shall be provided to the court  
31 without unnecessary delay and within no more than seventy-two hours from  
32 the completion of such principal's evaluation. The principal, such  
33 principal's counsel and the district attorney's office shall be provided  
34 a copy of the principal's evaluation upon request to the court.

35 5-c. The principal shall be afforded the opportunity for a hearing to  
36 request the principal's immediate release from the custody of the sher-  
37 iff or confinement in a treatment facility or mental health facility,  
38 prior to his or her arraignment. If within seventy-two hours of the  
39 court's receipt of the principal's request for such hearing, the princi-  
40 pal is not brought before a local criminal court, the principal shall be  
41 immediately released from the sheriff's custody or confinement in a  
42 treatment facility or mental health facility and served an appearance  
43 ticket. The principal shall be entitled to introduce his or her  
44 controlled substance evaluation including any recommendations made by a  
45 licensed physician that such principal should not be held in custody of  
46 the sheriff or confined at a treatment or mental health facility and  
47 that the principal is not in substantial risk for substance abuse, or  
48 there is not a likelihood of serious harm to the principal upon his or  
49 her release from custody. The court shall consider the principal's  
50 complete evaluation including treatment recommendations, record of  
51 arrests, convictions and any record of participation in any drug court  
52 and shall decide whether to immediately release such principal from the  
53 custody of the sheriff or confinement in a treatment facility or mental  
54 health facility, or to remand the principal to the custody of the sher-  
55 iff or confinement in a treatment facility or mental health facility for

1 the remainder of the principal's fifteen day period of custody or  
2 confinement.

3 § 4. The fourth undesignated paragraph of section 9.01 of the mental  
4 hygiene law, as amended by chapter 723 of the laws of 1989, is amended  
5 to read as follows:

6 "likelihood to result in serious harm" or "likely to result in serious  
7 harm" means (a) a substantial risk of physical harm to the person as  
8 manifested by threats of or attempts at suicide or serious bodily harm,  
9 a drug overdose requiring the use of an opioid antagonist, or other  
10 conduct demonstrating that the person is dangerous to himself or  
11 herself, or (b) a substantial risk of physical harm to other persons as  
12 manifested by homicidal or other violent behavior by which others are  
13 placed in reasonable fear of serious physical harm.

14 § 5. Paragraph 1 of subdivision (a) of section 9.37 of the mental  
15 hygiene law, as amended by chapter 251 of the laws of 1972 and such  
16 section as renumbered by chapter 978 of the laws of 1977, is amended to  
17 read as follows:

18 1. substantial risk of physical harm to himself as manifested by  
19 threats of or attempts at suicide or serious bodily harm, a drug over-  
20 dose requiring the use of an opioid antagonist, or other conduct demon-  
21 strating that he is dangerous to himself, or

22 § 6. Paragraph 1 of subdivision (a) of section 9.39 of the mental  
23 hygiene law, as amended by chapter 789 of the laws of 1985, is amended  
24 to read as follows:

25 1. substantial risk of physical harm to himself as manifested by  
26 threats of or attempts at suicide or serious bodily harm, a drug over-  
27 dose requiring the use of an opioid antagonist, or other conduct demon-  
28 strating that he is dangerous to himself, or

29 § 7. Section 9.41 of the mental hygiene law, as amended by chapter 843  
30 of the laws of 1980, is amended to read as follows:

31 § 9.41 Emergency admissions for immediate observation, care, and treat-  
32 ment; powers of certain peace officers and police officers.

33 Any peace officer, when acting pursuant to his special duties, or  
34 police officer who is a member of the state police or of an authorized  
35 police department or force or of a sheriff's department may take into  
36 custody any person who appears to be mentally ill and is conducting  
37 himself in a manner which is likely to result in serious harm to himself  
38 or others. "Likelihood to result in serious harm" shall mean (1)  
39 substantial risk of physical harm to himself as manifested by threats of  
40 or attempts at suicide or serious bodily harm, a drug overdose requiring  
41 the use of an opioid antagonist, or other conduct demonstrating that he  
42 is dangerous to himself, or (2) a substantial risk of physical harm to  
43 other persons as manifested by homicidal or other violent behavior by  
44 which others are placed in reasonable fear of serious physical harm.  
45 Such officer may direct the removal of such person or remove him to any  
46 hospital specified in subdivision (a) of section 9.39 or, pending his  
47 examination or admission to any such hospital, temporarily detain any  
48 such person in another safe and comfortable place, in which event, such  
49 officer shall immediately notify the director of community services or,  
50 if there be none, the health officer of the city or county of such  
51 action.

52 § 8. Paragraph 3 of subdivision (a) of section 22.09 of the mental  
53 hygiene law, as amended by section 1 of part D of chapter 69 of the laws  
54 of 2016, is amended to read as follows:

55 3. "Likelihood to result in harm" or "likely to result in harm" means  
56 (i) a substantial risk of physical harm to the person as manifested by

1 threats of or attempts at suicide or serious bodily harm, a drug over-  
2 dose requiring the use of an opioid antagonist, or other conduct demon-  
3 strating that the person is dangerous to himself or herself, or (ii) a  
4 substantial risk of physical harm to other persons as manifested by  
5 homicidal or other violent behavior by which others are placed in  
6 reasonable fear of serious physical harm.

7 § 9. This act shall take effect on the thirtieth day after it shall  
8 have become a law; provided, however, that section five of this act  
9 shall take effect on the same date as the reversion of paragraph 1 of  
10 subdivision (a) of section 9.37 of the mental hygiene law as provided in  
11 section 21 of chapter 723 of the laws of 1989, as amended; and provided  
12 further, however, that section seven of this act shall take effect on  
13 the same date as the reversion of section 9.41 of the mental hygiene law  
14 as provided in section 21 of chapter 723 of the laws of 1989, as  
15 amended.