

STATE OF NEW YORK

6355

2021-2022 Regular Sessions

IN SENATE

April 23, 2021

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

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

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

1 Section 1. The opening paragraph and paragraphs (a), (d), (s) and (t)
2 of subdivision 4 of section 510.10 of the criminal procedure law, the
3 opening paragraph and paragraphs (a) and (d) as amended and paragraphs
4 (s) and (t) as added by section 2 of part UU of chapter 56 of the laws
5 of 2020, are amended and a new paragraph (u) is added to read as
6 follows:

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

15 (a) a felony enumerated in section 70.02 of the penal law[~~, other than~~
16 ~~robbery in the second degree as defined in subdivision one of section~~
17 ~~160.10 of the penal law, provided, however, that burglary in the second~~
18 ~~degree as defined in subdivision two of section 140.25 of the penal law~~
19 ~~shall be a qualifying offense only where the defendant is charged with~~
20 ~~entering the living area of the dwelling~~];

21 (d) a class A felony as defined in the penal law[~~, provided that for~~
22 ~~class A felonies under article two hundred twenty of the penal law, only~~
23 ~~class A-I felonies shall be a qualifying offense~~];

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

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(s) a felony, where the defendant qualifies for sentencing on such charge as a persistent felony offender pursuant to section 70.10 of the penal law; ~~[or]~~

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance or released under conditions for a separate felony or class A misdemeanor involving harm to an identifiable person or property, provided, however, that the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime. For the purposes of this ~~[subparagraph]~~ paragraph, any of the underlying crimes need not be a qualifying offense as defined in this subdivision~~[-]~~; or

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

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

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

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

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

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

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

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

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

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

1 5-c. The principal shall be afforded the opportunity for a hearing to
2 request the principal's immediate release from the custody of the sher-
3 iff or confinement in a treatment or mental health facility, prior to
4 his or her arraignment. If within seventy-two hours of the court's
5 receipt of the principal's request for such hearing, the principal is
6 not brought before a local criminal court, the principal shall be imme-
7 diately released from the sheriff's custody or confinement in a treat-
8 ment facility or mental health facility and served an appearance ticket.
9 The principal shall be entitled to introduce his or her controlled
10 substance evaluation including any recommendations made by a licensed
11 physician that principal should not be held in custody of the sheriff or
12 confined at a treatment or mental health facility and that the principal
13 is not in substantial risk for substance abuse, or there is not a like-
14 lihood of serious harm to the principal upon his or her release from
15 custody. The court shall consider the principal's complete evaluation
16 including treatment recommendations, record of arrests, convictions and
17 any record of participation in any drug court and shall decide whether
18 to immediately release such principal from the custody of the sheriff or
19 confinement in a treatment facility or mental health facility, or to
20 remand the principal to the custody of the sheriff or confinement in a
21 treatment facility or mental health facility for the remainder of the
22 principal's fifteen day period of custody or confinement.

23 § 3. The opening paragraph and subparagraphs (i), (xix) and (xx) of
24 paragraph (b) of subdivision 1 of section 530.20 of the criminal proce-
25 dure law, as amended by section 3 of part UU of chapter 56 of the laws
26 of 2020, are amended and a new subparagraph (xxi) is added to read as
27 follows:

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

37 (i) a felony enumerated in section 70.02 of the penal law[~~, other than~~
38 ~~robbery in the second degree as defined in subdivision one of section~~
39 ~~160.10 of the penal law, provided, however, that burglary in the second~~
40 ~~degree as defined in subdivision two of section 140.25 of the penal law~~
41 ~~shall be a qualifying offense only where the defendant is charged with~~
42 ~~entering the living area of the dwelling~~];

43 (xix) a felony, where the defendant qualifies for sentencing on such
44 charge as a persistent felony offender pursuant to section 70.10 of the
45 penal law; [~~or~~]

46 (xx) any felony or class A misdemeanor involving harm to an identifi-
47 able person or property, where such charge arose from conduct occurring
48 while the defendant was released on his or her own recognizance or
49 released under conditions for a separate felony or class A misdemeanor
50 involving harm to an identifiable person or property, provided, however,
51 that the prosecutor must show reasonable cause to believe that the
52 defendant committed the instant crime and any underlying crime. For the
53 purposes of this subparagraph, any of the underlying crimes need not be
54 a qualifying offense as defined in this subdivision[~~+~~]; or

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

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

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

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

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

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

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

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

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

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

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

likelihood of serious harm to the principal upon his or her release from custody. The court shall consider the principal's complete evaluation including treatment recommendations, record of arrests, convictions and any record of participation in any drug court and shall decide whether to immediately release such principal from the custody of the sheriff or confinement in a treatment facility or mental health facility, or to remand the principal to the custody of the sheriff or confinement in a treatment facility or mental health facility for the remainder of the principal's fifteen day period of custody or confinement.

§ 5. The opening paragraph and paragraphs (a), (s) and (t) of subdivision 4 of section 530.40 of the criminal procedure law, the opening paragraph and paragraph (a) as amended and paragraphs (s) and (t) as added by section 4 of part UU of chapter 56 of the laws of 2020, are amended and a new paragraph (u) is added to read as follows:

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

(a) a felony enumerated in section 70.02 of the penal law[~~, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling~~];

(s) a felony, where the defendant qualifies for sentencing on such charge as a persistent felony offender pursuant to section 70.10 of the penal law; [~~or~~]

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance or released under conditions for a separate felony or class A misdemeanor involving harm to an identifiable person or property, provided, however, that the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime. For the purposes of this [~~subparagraph~~] paragraph, any of the underlying crimes need not be a qualifying offense as defined in this subdivision[~~-~~]; or

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

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

5-a. Notwithstanding the provisions of subdivisions three and four of this section, the court may, in its discretion, commit the principal to the custody of the sheriff for a period of no more than fifteen days, if such principal has a substantial risk of continued substance abuse and there is a likelihood of serious harm to such principal and there exists no alternative less restrictive means available to confine or supervise such principal in order to prevent the principal's substantial risk of continued substance abuse upon release from custody. Alternative and less restrictive means of confinement and supervision shall mean available immediate commitment of such principal in a state licensed substance abuse treatment center, drug rehabilitation center or mental

1 health facility. In making its determination, the court may consider the
2 following factors, including but not limited to:

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

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

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

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

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

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

15 5-b. Upon the commitment of such principal to the custody of the sher-
16 iff, or an available, less restrictive means of confinement and super-
17 vision, the court shall order a duly licensed professional to monitor
18 such principal as needed to evaluate the principal's need for treatment
19 and/or medications, and to complete an evaluation for addiction to a
20 controlled substance. Treatment, including but not limited to medica-
21 tions, shall be provided to the principal without unnecessary delay, as
22 recommended by such licensed professional. The principal's complete
23 evaluation, including recommendations for the continued custody of such
24 principal, immediate release from custody, and any other proposals for
25 the care and treatment of such principal shall be provided to the court
26 without unnecessary delay and within no more than seventy-two hours from
27 the completion of such principal's evaluation. The principal, such prin-
28 icipal's counsel and the district attorney's office shall be provided a
29 copy of the principal's evaluation upon request to the court.

30 5-c. The principal shall be afforded the opportunity for a hearing to
31 request the principal's immediate release from the custody of the sher-
32 iff or confinement in a treatment or mental health facility, prior to
33 his or her arraignment. If within seventy-two hours of the court's
34 receipt of the principal's request for such hearing, the principal is
35 not brought before a local criminal court, the principal shall be imme-
36 diately released from the sheriff's custody or confinement in a treat-
37 ment facility or mental health facility and served an appearance ticket.
38 The principal shall be entitled to introduce his or her controlled
39 substance evaluation including any recommendations made by a licensed
40 physician that principal should not be held in custody of the sheriff or
41 confined at a treatment or mental health facility and that the principal
42 is not in substantial risk for substance abuse, or there is not a like-
43 lihood of serious harm to the principal upon his or her release from
44 custody. The court shall consider the principal's complete evaluation
45 including treatment recommendations, record of arrests, convictions and
46 any record of participation in any drug court and shall decide whether
47 to immediately release such principal from the custody of the sheriff or
48 confinement in a treatment facility or mental health facility, or to
49 remand the principal to the custody of the sheriff or confinement in a
50 treatment facility or mental health facility for the remainder of the
51 principal's fifteen day period of custody or confinement.

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

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

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

4 (i) Whether the principal has a substantial risk of continued
5 substance abuse and there is a likelihood of serious harm to such prin-
6 cipal and there exists no alternative less restrictive means available
7 to confine or supervise such principal in order to prevent the princi-
8 pal's substantial risk of continued substance abuse upon release from
9 custody. Alternative and less restrictive means of confinement and
10 supervision shall mean available immediate commitment of such principal
11 in a state licensed substance abuse treatment center, drug rehabili-
12 tation center or mental health facility. In making its determination,
13 the court may consider the following factors, including but not limited
14 to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 § 9. This act shall take effect immediately.