STATE OF NEW YORK

5590

2023-2024 Regular Sessions

IN ASSEMBLY

March 16, 2023

Introduced by 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 Assembly, do enact as follows:

Section 1. 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;

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

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(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.

5-c. 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 facility 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 such 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 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.

§ 2. 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 facility 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 such 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 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.

§ 3. 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 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.

5-c. 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 facility 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 such 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 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.

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

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

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

1. substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm, a drug overdose requiring the use of an opioid antagonist, or other conduct demonstrating that he is dangerous to himself, or

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

1. substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm, a drug overdose requiring the use of an opioid antagonist, or other conduct demonstrating that he is dangerous to himself, or

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

§ 9.41 Emergency admissions for immediate observation, care, and treatment; powers of certain peace officers and police officers.

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

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

3. "Likelihood to result in harm" or "likely to result in harm" means (i) a substantial risk of physical harm to the person as manifested by threats of or attempts at suicide or serious bodily harm**, a drug overdose requiring the use of an opioid antagonist,** or other conduct demonstrating that the person is dangerous to himself or herself, or (ii) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

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