STATE OF NEW YORK

5973

2023-2024 Regular Sessions

IN SENATE

March 24, 2023

Introduced by Sen. ASHBY -- 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; to amend the executive law, in relation to establishing a commission on public safety reform; and to repeal certain provisions of the criminal procedure law and the lien law relating thereto

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

Section 1. Subdivisions 2 and 3 of section 140.20 of the criminal procedure law, as amended by chapter 550 of the laws of 1987, are amended to read as follows:

2. If the arrest is for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, the arrested person need not be brought before a local criminal court as provided in subdivision one, and [~~the procedure may instead be as follows:~~

~~(a) A~~] **instead a** police officer may issue and serve an appearance ticket upon the arrested person and release him from custody, as prescribed in subdivision two of section 150.20[~~; or~~

~~(b) The desk officer in charge at a police station, county jail or police headquarters, or any of his superior officers, may, in such place fix pre-arraignment bail and, upon deposit thereof, issue and serve an appearance ticket upon the arrested person and release him from custody, as prescribed in section 150.30~~] **of this title**.

3. If (a) the arrest is for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, and (b) owing to unavailability of a local criminal court the arresting police officer is unable to bring the arrested person before such a court with reasonable promptness, either an appearance ticket must be served unconditionally upon the arrested person [~~or pre-arraignment bail must be fixed, as prescribed in subdivi-~~

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

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~~sion two. If pre-arraignment bail is fixed but not posted, such arrested person may be temporarily held in custody but must be brought before a local criminal court without unnecessary delay~~]. Nothing contained in this subdivision requires a police officer to serve an appearance ticket upon an arrested person or release him from custody at a time when such person appears to be under the influence of alcohol, narcotics or other drug to the degree that he may endanger himself or other persons.

§ 2. Subdivision 3 of section 140.40 of the criminal procedure law, as amended by chapter 550 of the laws of 1987, is amended to read as follows:

3. If the arrest is for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, the arrested person need not be brought before a local criminal court, as provided in subdivision one, and [~~the procedure may instead be as follows:~~

~~(a) An~~] instead an appropriate police officer may issue and serve an appearance ticket upon the arrested person and release him from custody, as prescribed in subdivision two of section 150.20[~~; or~~

~~(b) The desk officer in charge at the appropriate police officer's station, county jail or police headquarters, or any of his superior officers, may, in such place, fix pre-arraignment bail and, upon deposit thereof, issue and serve an appearance ticket upon the arrested person and release him from custody, as prescribed in section 150.30~~] of this title.

§ 3. The section heading and subdivision 7 of section 170.10 of the criminal procedure law are amended to read as follows:

Arraignment upon information, simplified traffic information, prosecutor's information or misdemeanor complaint; defendant's presence, defendant's rights, court's instructions and [~~bail~~] securing order matters.

7. Upon the arraignment, the court, unless it intends to make a final disposition of the action immediately thereafter, must, as provided in subdivision one of section 530.20 of this chapter, issue a securing order either releasing the defendant on his or her own recognizance [~~or fixing bail~~], under non-monetary conditions, or, where authorized, committing the defendant to the custody of the sheriff for his or her future appearance in the action; except that where a defendant appears by counsel pursuant to paragraph (b) of subdivision one of this section, the court must release the defendant on his or her own recognizance.

§ 4. Paragraph (a) and the opening paragraph and subparagraph (xi) of paragraph (b) of subdivision 1 of section 150.20 of the criminal procedure law, paragraph (a) as amended and the opening paragraph of paragraph (b) as added by section 1-a of part JJJ of chapter 59 of the laws of 2019, subparagraph (xi) of paragraph (b) of subdivision 1 as added by section 1 of subpart B of part UU of chapter 56 of the laws of 2022, are amended to read as follows:

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

An officer is not [~~required~~] authorized to issue an appearance ticket if:

(xi) the offense is a qualifying offense pursuant to paragraph [~~(t)~~] **(k)** of subdivision four of section 510.10 of this chapter, or pursuant to paragraph [~~(t)~~] **(k)** of subdivision four of section 530.40 of this chapter.

§ 5. Subdivision 2 of section 170.25 of the criminal procedure law is amended to read as follows:

2. Such order stays the proceedings in the local criminal court pending submission of the charge to the grand jury. Upon the subsequent filing of an indictment in the superior court, the proceedings in the local criminal court terminate and the defendant must be required to appear for arraignment upon the indictment in the manner prescribed in subdivisions one and two of section 210.10 **of this part**. Upon the subsequent filing of a grand jury dismissal of the charge, the proceedings in the local criminal court terminate and the superior court must, if the defendant is not at liberty on his **or her** own recognizance, discharge him **or her** from custody [~~or exonerate his bail, as the case may be~~].

§ 6. Subdivision 3 of section 170.50 of the criminal procedure law is amended to read as follows:

3. Upon dismissing a prosecutor's information or a count thereof pursuant to this section, the court may, upon application of the people, in its discretion authorize the people to resubmit the charge or charges to the same or another grand jury. In the absence of such authorization, such charge or charges may not be resubmitted to a grand jury. The rules prescribed in subdivisions eight and nine of section 210.45 **of this part** concerning the discharge of a defendant from custody [~~or exoneration of bail~~] in the absence of an authorization to resubmit an indictment to a grand jury, and concerning the issuance of a securing order and the effective period thereof where such an authorization is issued, apply equally where a prosecutor's information is dismissed pursuant to this section.

§ 7. Subdivision 2 of section 210.10 of the criminal procedure law, as amended by chapter 681 of the laws of 1990, is amended to read as follows:

2. If a felony complaint against the defendant was pending in a local criminal court or if the defendant was previously held by a local criminal court for the action of the grand jury, and if the defendant is at liberty on his or her own recognizance or [~~on bail~~] **under non-monetary conditions** pursuant to a previous court order issued in the same criminal action, the superior court must, upon at least two days notice to the defendant [~~and his or her surety, to any person other than the defendant who posted cash bail~~] and to any attorney who would be entitled to notice under circumstances prescribed in subdivision one **of this section**, direct the defendant to appear before the superior court for arraignment on a specified date. If the defendant fails to appear on such date, the court may issue a bench warrant [~~and, in addition, may forfeit the bail, if any~~]. Upon taking the defendant into custody pursuant to such bench warrant, the executing police officer must without unnecessary delay bring the defendant before such superior court for arraignment. If such superior court is not available, the executing police officer may bring the defendant to the local correctional facility of the county in which such superior court sits, to be detained there until not later than the commencement of the next session of such court occurring on the next business day.

§ 8. The section heading and subdivision 6 of section 210.15 of the criminal procedure law are amended to read as follows:

Arraignment upon indictment; defendant's rights, court's instructions and [~~bail~~] **securing order** matters.

6. Upon the arraignment, the court, unless it intends to make a final disposition of the action immediately thereafter, must, as provided in section 530.40 **of this chapter**, issue a securing order, releasing the defendant on his **or her** own recognizance or [~~fixing bail~~] **under non-monetary conditions** or committing him **or her** to the custody of the sheriff for his **or her** future appearance in such action.

§ 9. Subdivisions 8 and 9 of section 210.45 of the criminal procedure law are amended to read as follows:

8. When the court dismisses the entire indictment without authorizing resubmission of the charge or charges to a grand jury, it must order that the defendant be discharged from custody if he **or she** is in the custody of the sheriff[~~, or if he is at liberty on bail it must exonerate the bail~~].

9. When the court dismisses the entire indictment but authorizes resubmission of the charge or charges to a grand jury, such authorization is, for purposes of this subdivision, deemed to constitute an order holding the defendant for the action of a grand jury with respect to such charge or charges. Such order must be accompanied by a securing order either releasing the defendant on his **or her** own recognizance or [~~fixing bail~~] **under non-monetary conditions** or committing him **or her** to the custody of the sheriff pending resubmission of the case to the grand jury and the grand jury's disposition thereof. Such securing order remains in effect until the first to occur of any of the following:

(a) A statement to the court by the people that they do not intend to resubmit the case to a grand jury;

(b) Arraignment of the defendant upon an indictment or prosecutor's information filed as a result of resubmission of the case to a grand jury. Upon such arraignment, the arraigning court must issue a new securing order;

(c) The filing with the court of a grand jury dismissal of the case following resubmission thereof;

(d) The expiration of a period of forty-five days from the date of issuance of the order; provided that such period may, for good cause shown, be extended by the court to a designated subsequent date if such be necessary to accord the people reasonable opportunity to resubmit the case to a grand jury.

Upon the termination of the effectiveness of the securing order pursuant to paragraph (a), (c) or (d) **of this subdivision**, the court must immediately order that the defendant be discharged from custody if he **or she** is in the custody of the sheriff[~~, or if he is at liberty on bail it must exonerate the bail~~]. Although expiration of the period of time specified in paragraph (d) without any resubmission or grand jury disposition of the case terminates the effectiveness of the securing order, it does not terminate the effectiveness of the order authorizing resubmission.

§ 10. Subdivision 6 and paragraph (c) of subdivision 9 of section 216.05 of the criminal procedure law, as amended by chapter 435 of the laws of 2021, are amended to read as follows:

6. Upon an eligible defendant's agreement to abide by the conditions set by the court, the court shall issue a securing order providing for [~~bail or~~] release on the defendant's own recognizance and conditioning any release upon the agreed upon conditions. The period of alcohol or substance use treatment shall begin as specified by the court and as soon as practicable after the defendant's release, taking into account

the availability of treatment, so as to facilitate early intervention with respect to the defendant's substance use or condition and the effectiveness of the treatment program. In the event that a treatment program is not immediately available or becomes unavailable during the course of the defendant's participation in the judicial diversion program, the court may release the defendant pursuant to the securing order.

(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~~] 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 subdivision 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 use 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 use 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 use treatment program.

§ 11. Subdivision 4 of section 290.10 of the criminal procedure law is amended to read as follows:

4. Upon issuing a trial order of dismissal which dismisses the entire indictment, the court must immediately discharge the defendant from custody if he is in custody of the sheriff[~~, or, if he is at liberty on bail, it must exonerate the bail~~].

§ 12. Subdivision 1 of section 330.10 of the criminal procedure law is amended to read as follows:

1. Upon a verdict of complete acquittal, the court must immediately discharge the defendant if he is in the custody of the sheriff[~~, or, if he is at liberty on bail, it must exonerate the bail~~].

§ 13. 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.

§ 14. Subdivision 1 of section 410.70 of the criminal procedure law, as amended by chapter 17 of the laws of 2014, is amended to read as follows:

1. In general. The court may not revoke a sentence of probation or a sentence of conditional discharge, or extend a period of probation, unless (a) the court has found that the defendant has violated a condition of the sentence and (b) the defendant has had an opportunity to be heard pursuant to this section. The defendant is entitled to a hearing in accordance with this section promptly after the court has filed a declaration of delinquency or has committed him [~~or has fixed bail~~] pursuant to this article.

§ 15. Paragraph (e) of subdivision 1 of section 420.10 of the criminal procedure law is REPEALED.

§ 16. Subdivisions 1 and 6 of section 460.50 of the criminal procedure law, subdivision 1 as amended by chapter 884 of the laws of 1971, subdivision 6 as added by chapter 168 of the laws of 1981, are amended to read as follows:

1. Upon application of a defendant who has taken an appeal to an intermediate appellate court from a judgment or from a sentence of a criminal court, a judge designated in subdivision two **of this section** may issue an order both (a) staying or suspending the execution of the judgment pending the determination of the appeal, and (b) [~~either~~] releasing the defendant on his **or her** own recognizance or [~~fixing bail~~] **under non-monetary conditions** pursuant to the provisions of article five hundred thirty **of this chapter**. That phase of the order staying or suspending execution of the judgment does not become effective unless and until the defendant is released[~~, either on his own recognizance or upon the posting of bail~~].

6. Upon application of a defendant who has been granted a certificate granting leave to appeal pursuant to section 460.15 of this chapter, and in accordance with the procedures set forth in subdivisions three, four and five of this section, the intermediate appellate court may issue an order both (a) staying or suspending the execution of the judgment pending the determination of the appeal, and (b) [~~either~~] releasing the defendant on his **or her** own recognizance or [~~fixing bail~~] **under non-monetary conditions** pursuant to the provisions of article five hundred thirty **of this chapter**. That phase of the order staying or suspending execution of the judgment does not become effective unless and until the defendant is released[~~, either on his own recognizance or upon the posting of bail~~].

§ 17. Subdivision 1 of section 460.60 of the criminal procedure law, as amended by chapter 168 of the laws of 1981, is amended to read as follows:

1. (a) A judge who, pursuant to section 460.20 of this [~~chapter~~] **article**, has received an application for a certificate granting a defendant leave to appeal to the court of appeals from an order of an intermediate appellate court affirming or modifying a judgment including a sentence of imprisonment, a sentence of imprisonment, or an order appealed pursuant to section 450.15 of this [~~chapter~~] **title**, of a criminal court, may,

upon application of such defendant-appellant issue an order both (i) staying or suspending the execution of the judgment pending the determination of the application for leave to appeal, and, if that application is granted, staying or suspending the execution of the judgment pending the determination of the appeal, and (ii) either releasing the defendant on his **or her** own recognizance or [~~**continuing bail as previously determined or fixing bail**~~] **under non-monetary conditions** pursuant to the provisions of article five hundred thirty **of this chapter**. Such an order is effective immediately and that phase of the order staying or suspending execution of the judgment does not become effective unless and until the defendant is released[~~**, either on his own recognizance or upon the posting of bail**~~].

(b) If the application for leave to appeal is denied, the stay or suspension pending the application automatically terminates upon the signing of the certificate denying leave. Upon such termination, the certificate denying leave must be sent to the criminal court in which the original judgment was entered, and the latter must proceed in the manner provided in subdivision five of section 460.50 of this [~~**chapter**~~] **article**.

§ 18. Section 470.45 of the criminal procedure law is amended to read as follows:

§ 470.45 Remission of case by appellate court to criminal court upon reversal or modification of judgment; action by criminal court.

Upon reversing or modifying a judgment and directing corrective action, an appellate court must remit the case to the criminal court in which the judgment was entered. Such criminal court must execute the direction of the appellate court and must, depending upon the nature of such direction, either discharge the defendant from custody[~~**, exonerate his bail**~~] or issue a securing order.

§ 19. The article heading of article 500 of the criminal procedure law is amended to read as follows:

RECOGNIZANCE[~~**, BAIL**~~] AND COMMITMENT--DEFINITIONS OF TERMS

§ 20. Section 500.10 of the criminal procedure law, subdivisions 1, 2, 4, 5, 6, 7 and 9 as amended by section 1-e and subdivisions 21 and 22 as added by section 1-f of part JJJ of chapter 59 of the laws of 2019, subdivision 3-a as amended and subdivision 3-b as added by section 1 of part UU of chapter 56 of the laws of 2020, subdivision 3-c as added by section 1 of subpart F of part UU of chapter 56 of the laws of 2022, subdivision 16 as further amended by section 104 of part A of chapter 62 of the laws of 2011, paragraph (b) of subdivision 17 as amended by chapter 305 of the laws of 2011, is amended to read as follows:

§ 500.10 Recognizance[~~**, bail**~~] and commitment; definitions of terms.

As used in this title, and in this chapter generally, the following terms have the following meanings:

1. "Principal" means a defendant in a criminal action or proceeding, or a person adjudged a material witness therein, or any other person so involved therein that the principal may by law be compelled to appear before a court for the purpose of having such court exercise control over the principal's person to secure the principal's future attendance at the action or proceeding when required, and who in fact either is before the court for such purpose or has been before it and been subjected to such control.

2. "Release on own recognizance." A court releases a principal on the principal's own recognizance when, having acquired control over the

principal's person, it permits the principal to be at liberty during the pendency of the criminal action or proceeding involved upon condition that the principal will appear thereat whenever the principal's attendance may be required and will at all times render the principal amenable to the orders and processes of the court.

3. [~~"Fix bail." A court fixes bail when, having acquired control over the person of a principal, it designates a sum of money and stipulates that, if bail in such amount is posted on behalf of the principal and approved, it will permit him to be at liberty during the pendency of the criminal action or proceeding involved.~~

~~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 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 and reasonably assure the principal's compliance with court conditions. A principal shall not be required to pay for any part of the cost of release on non-monetary conditions. Such conditions may include, among other conditions reasonable under the circumstances:

(a) that the principal be in contact with a pretrial services agency serving principals in that county;

(b) that the principal abide by reasonable, specified restrictions on travel that are reasonably related to an actual risk of flight from the jurisdiction, or that the principal surrender his or her passport;

(c) that the principal refrain from possessing a firearm, destructive device or other dangerous weapon;

(d) that, when it is shown pursuant to subdivision four of section 510.45 of this title that no other realistic non-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;

(e) that the principal refrain from associating with certain persons who are connected with the instant charge, including, when appropriate, specified victims, witnesses, or co-defendants;

(f) that the principal be referred to a pretrial services agency for placement in mandatory programming, including counseling, treatment, and intimate partner violence intervention programs. Where applicable, the court may direct the principal be removed to a hospital pursuant to section 9.43 of the mental hygiene law;

(g) that the principal make diligent efforts to maintain employment, housing, or enrollment in school or educational programming;

(h) that the principal obey an order of protection issued by the court, including an order issued pursuant to section 530.11 of this title;

(i) that the principal obey conditions set by the court addressed to the safety of a victim of a family offense as defined in section 530.11 of this title including conditions that may be requested by or on behalf of the victim; and

(j) 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 of section 510.40 of this title.

[~~3-b.~~] 4. Subdivision [~~three-a~~] three of this section presents a non-exclusive list of conditions that may be considered and imposed by law, singularly or in combination, when reasonable under the circumstances of the defendant, the case, and the situation of the defendant. The court need not necessarily order one or more specific conditions first before ordering one or more or additional conditions.

[~~3-c.~~] 5. (a) "Release for mental health assessment and evaluation." When a principal appearing before the court appears, by clear and convincing evidence, to be mentally ill at the present moment such that if left unattended their conduct may result in harm to himself or herself or others, the court may: order as a condition of release under supervision that the principal seek a voluntary psychiatric assessment under section 9.13 of the mental hygiene law if the principal has a recently documented history of mental illness or psychiatric hospitalization, and the defense consents to the assessment.

(b) "Involuntary assessment pending release." When a principal appearing before the court appears, by clear and convincing evidence, to be mentally ill at the present moment such that if left unattended their conduct may result in immediate serious harm to himself or herself or others, the court may order as a condition of release under supervision that the principal be taken by an entity, including but not limited to, pretrial services agencies, or another qualified provider, to a local hospital for immediate psychiatric assessment involuntarily under section 9.43 of the mental hygiene law if the principal is conducting himself or herself before the court, in such a manner which in a person who is not mentally ill would be deemed disorderly conduct which is likely to result in immediate serious harm to himself or herself or others. The court is also authorized to request peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department, to take into custody and transport such person to a hospital for determination by the director of community services when such person qualifies for admission pursuant to this section. The court may authorize an ambulance service, as defined by subdivision two of section three thousand one of the public health law, to transport such person to any hospital specified in subdivision (a) of section 9.39 of the mental hygiene law or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 of the mental hygiene law, that is willing to receive such person. Upon removal, there shall be a determination made by the director of such hospital or program whether such person should be retained therein pursuant to section 9.39 of the mental hygiene law. If the principal is hospitalized, at the time of release the hospital shall complete a discharge plan with linkages to community-based mental health treatment, including services that are provided after the individual has stabilized, if applicable and other community-based services as may be deemed necessary and appropriate and notify pretrial services agencies and the defense counsel of the person's discharge. Pretrial services agencies are responsible for ensuring continuity of care for the principal in the community.

(c) "Pretrial services." Pretrial services agencies shall be required, upon the request of the court to provide a summary of the assessment, limited to necessary and relevant information relating to the principal's completion of an assessment and evaluation, placement, treatment, and discharge from the hospital solely for the purpose of ensuring compliance with the conditions of release and in accordance with any

applicable state and federal confidentiality laws. Conditions of release may not be revoked solely based on noncompliance with treatment.

(d) "Confidential." Any clinical record produced as a part of the assessment, services or treatment plans required pursuant to this subdivision shall be considered confidential and shall not be considered part of the public record, and access to such records shall be limited in accordance with applicable federal and state privacy laws. Such information shall not be used as part of the criminal proceeding and shall be expunged upon the resolution of the case.

(e) "Referral." Courts shall refer the principal, where appropriate, to a judicial diversion program as defined in section 216.00 of this chapter or to any other appropriate treatment court.

[~~4.~~] 6. "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.

[~~5.~~] 7. "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.

[~~6.~~] 8. "Order of recognizance or [~~bail~~] non-monetary conditions" means a securing order releasing a principal on the principal's own recognizance or under non-monetary conditions [~~or, where authorized, fixing bail~~].

[~~7.~~] 9. "Application for recognizance or [~~bail~~] non-monetary conditions" means an application by a principal that the court, instead of committing the principal to or retaining the principal in the custody of the sheriff, either release the principal on the principal's own recognizance, or release under non-monetary conditions[~~, or, where authorized, fix bail~~].

[~~8. "Post bail" means to deposit bail in the amount and form fixed by the court, with the court or with some other authorized public servant or agency.~~

~~9. "Bail" means cash bail, a bail bond or money paid with a credit card.~~

~~10. "Cash bail" means a sum of money, in the amount designated in an order fixing bail, posted by a principal or by another person on his behalf with a court or other authorized public servant or agency, upon the condition that such money will become forfeit to the people of the state of New York if the principal does not comply with the directions of a court requiring his attendance at the criminal action or proceeding involved or does not otherwise render himself amenable to the orders and processes of the court.~~

~~11. "Obligor" means a person who executes a bail bond on behalf of a principal and thereby assumes the undertaking described therein. The principal himself may be an obligor.~~

~~12. "Surety" means an obligor who is not a principal.~~

~~13. "Bail bond" means a written undertaking, executed by one or more obligors, that the principal designated in such instrument will, while at liberty as a result of an order fixing bail and of the posting of the bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event that he fails to do so the obligor or obligors will~~

~~pay to the people of the state of New York a specified sum of money, in the amount designated in the order fixing bail.~~

~~14. "Appearance bond" means a bail bond in which the only obligor is the principal.~~

~~15. "Surety bond" means a bail bond in which the obligor or obligors consist of one or more sureties or of one or more sureties and the principal.~~

~~16. "Insurance company bail bond" means a surety bond, executed in the form prescribed by the superintendent of financial services, in which the surety-obligor is a corporation licensed by the superintendent of financial services to engage in the business of executing bail bonds.~~

~~17. "Secured bail bond" means a bail bond secured by either:~~

~~(a) Personal property which is not exempt from execution and which, over and above all liabilities and encumbrances, has a value equal to or greater than the total amount of the undertaking; or~~

~~(b) Real property having a value of at least twice the total amount of the undertaking. For purposes of this paragraph, value of real property is determined by either:~~

~~(i) dividing the last assessed value of such property by the last given equalization rate or in a special assessing unit, as defined in article eighteen of the real property tax law, the appropriate class ratio established pursuant to section twelve hundred two of such law of the assessing municipality wherein the property is situated and by deducting from the resulting figure the total amount of any liens or other encumbrances upon such property; or~~

~~(ii) the value of the property as indicated in a certified appraisal report submitted by a state certified general real estate appraiser duly licensed by the department of state as provided in section one hundred sixty-j of the executive law, and by deducting from the appraised value the total amount of any liens or other encumbrances upon such property. A lien report issued by a title insurance company licensed under article sixty-four of the insurance law, that guarantees the correctness of a lien search conducted by it, shall be presumptive proof of liens upon the property.~~

~~18. "Partially secured bail bond" means a bail bond secured only by a deposit of a sum of money not exceeding ten percent of the total amount of the undertaking.~~

~~19. "Unsecured bail bond" means a bail bond, other than an insurance company bail bond, not secured by any deposit of or lien upon property.~~

~~20.~~] 10. "Court" includes, where appropriate, a judge authorized to act as described in a particular statute, though not as a court.

[~~21.~~] 11. "Qualifies for electronic monitoring," for purposes of subdivision four of section 510.40 of this title, means a person charged with a felony, a misdemeanor crime of domestic violence, a misdemeanor defined in article one hundred thirty of the penal law, a crime and the circumstances of paragraph (b) of subdivision two of section 530.60 of this title apply, or any crime where such conduct arose while the principal was released on his or her own recognizance, released under conditions or had yet to be arraigned after the issuance of a desk appearance ticket for a separate offense, or any misdemeanor where the defendant stands previously convicted, within the past [~~five~~] ten years, of [~~a violent felony offense as defined in section 70.02 of the penal law~~] any crime. For the purposes of this subdivision, in calculating such [~~five~~] ten year period, any period of time during which the defendant was incarcerated for any reason between the time of the commission of any such previous crime and the time of commission of the present crime

shall be excluded and such [~~five~~] **ten** year period shall be extended by a period or periods equal to the time served under such incarceration.

[~~22.~~] **12.** "Misdemeanor crime of domestic violence," for purposes of subdivision [~~twenty-one~~] **eleven** of this section, means a misdemeanor under the penal law provisions and circumstances described in subdivision one of section 530.11 of this title.

§ 21. The article heading of article 510 of the criminal procedure law is amended to read as follows:

RECOGNIZANCE[~~, BAIL~~] AND COMMITMENT--
DETERMINATION OF APPLICATION FOR RECOGNIZANCE
[~~OR BAIL~~], ISSUANCE OF SECURING ORDERS, AND
RELATED MATTERS

§ 22. Section 510.10 of the criminal procedure law, as amended by section 2 of part JJJ of chapter 59 of the laws of 2019, subdivision 1 as amended by section 1 of subpart C of part UU of chapter 56 of the laws of 2022, subdivision 4 as amended by section 2 of part UU of chapter 56 of the laws of 2020, paragraphs (s) and (t) of subdivision 4 as amended and paragraph (u) as added by section 2 of subpart B of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

§ 510.10 Securing order; when required; alternatives available; standard to be applied.

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 poses a danger to themselves, another person or the community as a whole**. [~~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. In making its determination, the court must consider and take into account available information about the principal, including:

(a) The principal's **character, reputation, habits, mental condition,** activities and history;

(b) If the principal is a defendant, the charges facing the principal **and the weight of the evidence against him or her in the pending criminal action and any other factor indicating the probability or improbability of conviction**;

(c) The principal's criminal conviction record if any;

(d) The principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.1 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 **in complying with court orders, including orders to appear 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)~~] Any violation by the principal of an order of protection issued by any court;

[~~(h)~~] (g) The principal's history of use or possession of a firearm;

[~~(i)~~] (h) Whether the charge is alleged to have caused serious harm to an individual or group of individuals; and

[~~(j)~~] (i) 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.

2. A principal is entitled to representation by counsel under this chapter in preparing an application for release, when a securing order is being considered and when a securing order is being reviewed for modification, revocation or termination. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.

3. In cases other than as described in subdivision four or five 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,~~] felony, except a class E felony under title J or K of the penal law, or a qualifying misdemeanor, or where the court has found that committing the principal to the custody of the sheriff is warranted under subdivision five of this section, 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. A principal stands charged with a qualifying [~~offense~~] misdemeanor 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;~~

~~(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, provided that for class A felonies under article two hundred twenty of the penal law, only class A-I felonies shall be a qualifying offense;~~

~~(e) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or 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; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 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 title;~~

~~(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, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;~~

~~(j) any crime that is alleged to have caused the death of another person;~~

~~(k) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;~~

~~(l) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;~~

~~(m) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;~~

~~(n) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;~~

~~(o) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;~~

~~(p) failure to register as a sex offender pursuant to section one hundred sixty-eight-t of the correction law or endangering the welfare~~

~~of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under article six-C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law;~~

~~(q) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;~~

~~(r) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;~~

~~(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;~~

~~(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, 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, any of the underlying crimes need not be a qualifying offense as defined in this subdivision. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; or~~

~~(u) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law~~]

witness tampering in the fourth degree as defined in section 215.10 of the penal law;

(b) a misdemeanor under article one hundred thirty of the penal law;

(c) conspiracy in the fifth degree as defined in section 105.05 of the penal law where the underlying allegations of such charge is that the defendant conspired to commit a felony or misdemeanor that otherwise qualifies for bail;

(d) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law;

(e) a specified offense enumerated in subdivision two of section 240.75 of the penal law where such offense is alleged to have been committed against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;

(f) any misdemeanor when such crime is charged as a hate crime as defined in section 485.05 of the penal law;

(g) bail jumping in the third degree as defined in section 215.55 of the penal law;

(h) escape in the third degree as defined in section 205.05 of the penal law;

(i) any misdemeanor involving intentionally causing harm to another person or an animal;

(j) any misdemeanor involving the use and possession of a firearm, shotgun or rifle;

(k) any class A misdemeanor where such charge arose from conduct while the defendant was released on his or her own recognizance, released under conditions or had yet to be arraigned after the issuance of a desk appearance ticket for a separate offense;

(l) any other offense that the division of criminal justice services has identified pursuant to article fifty of the executive 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~~] Where a defendant is charged with an offense that does not qualify for pretrial detention under subdivision four of this section, the court may commit the principal to the custody of the sheriff if the court makes an individualized determination that the principal poses a substantial risk of harm to themselves, others or the community as a whole, or where the court determines that the defendant has an established history of disobeying directives of the court.

(a) The court may consider the following factors when determining whether a principal poses a risk of harm:

(i) the nature of the principal's prior convictions, including whether the principal has been convicted of any violent felonies listed in section 70.02 of the penal law;

(ii) the principal's access to weapons;

(iii) whether the principal has any association with a criminal street gang, as defined in section 10-170 of the administrative code of the city of New York or a criminal enterprise, as defined in section 460.10 of the penal law; and

(iv) any history of threats or intimidation to witnesses in prior criminal proceedings.

(b) The court may consider the following factors when determining whether a principal has an established history of disobeying directives of the court:

(i) any history of bench warrants failures to appear;

(ii) previous violation of orders of protection;

(iii) any history of rearrests while other charges are pending; and

(iv) any history of witness intimidation or tampering.

6. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and the principal is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

§ 23. 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:

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[~~,~~] **or** release under non-monetary conditions [~~**or bail**~~].

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[~~,~~] **or** 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**~~].

§ 24. Subdivision 1 of section 510.30 of the criminal procedure law, as amended by section 2 of subpart C of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

1. With respect to any principal, [~~**the court in all cases, unless otherwise provided by law, must impose the least restrictive**~~] **must consider the** kind and degree of control or restriction that is necessary to secure the principal's return to court when required **or mitigate the risk of danger to the principal, another person or the community**. 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 principal's **character, reputation, habits, mental condition,** activities and history;

(b) If the principal is a defendant, the charges facing the principal **and the weight of the evidence against him or her** in the pending criminal action and any other factor indicating the probability or improbability of conviction;

(c) The principal's criminal conviction record if any;

(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 **in complying with court orders, including orders to appear 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)**~~] Any violation by the principal of an order of protection issued by any court;

[~~**(h)**~~] **(g)** The principal's history of use or possession of a firearm;

[~~**(i)**~~] **(h)** Whether the charge is alleged to have caused serious harm to an individual or group of individuals; and

[~~**(j)**~~] **(i)** 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.

§ 25. Section 510.40 of the criminal procedure law, as amended by section 6 of part JJJ of chapter 59 of the laws of 2019, paragraph (c)

of subdivision 4 as amended by section 7 of part UU of chapter 56 of the laws of 2020, 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~~].

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. 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 **or mitigate the risk of danger to the principal, another person or the community**. 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~~] **eleven** 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.

(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~~] **In determining what method or procedure to approve, the court must consider those methods or procedures which will reasonably assure the principal's return to court or mitigate the risk of danger to the principal, another person or the community**.

(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. Counties, municipalities and the state may contract with a private for-profit entity to supply electronic monitoring devices or other items, provided that any interaction with persons under electronic monitoring or the data produced by such monitoring shall be conducted solely by employees of a county, municipality, the state, or a non-profit entity under contract with such county, municipality or the state.

[~~**(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.

§ 26. Section 510.45 of the criminal procedure law, as added by section 8 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 510.45 Pretrial services agencies.

1. The office of court administration shall certify and regularly review for recertification one or more pretrial services agencies in each county to monitor principals released under non-monetary conditions. Such office shall maintain a listing on its public website identifying by county each pretrial services agency so certified in the state.

2. Every such agency shall be 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.

3. (a) Any questionnaire, instrument or tool used with a principal in the process of considering or determining the principal's possible release on recognizance[~~,~~] **or** release under non-monetary conditions [~~or on bail,~~] or used with a principal in the process of considering or determining a condition or conditions of release or monitoring by a pretrial services agency, shall be promptly made available to the principal and the principal's counsel upon written request. Any such blank form questionnaire, instrument or tool regularly used in the county for such purpose or a related purpose shall be made available to any person promptly upon request.

(b) Any such questionnaire, instrument or tool used to inform determinations on release or conditions of release shall be:

(i) designed and implemented in a way that ensures the results are free from discrimination on the basis of race, national origin, sex, or any other protected class; and

(ii) empirically validated and regularly revalidated, with such validation and revalidation studies and all underlying data, except personal identifying information for any defendant, publicly available upon request.

4.[~~ Supervision by a pre-trial services agency may be ordered as a non-monetary condition pursuant to this title only if the court finds, after notice, an opportunity to be heard and an individualized determination explained on the record or in writing, that no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure the principal's return to court.~~

~~5.~~] Each pretrial service agency certified by the office of court administration pursuant to this section shall at the end of each year prepare and file with such office an annual report, which the office shall compile, publish on its website and make available upon request to members of the public. Such reports shall not include any personal identifying information for any individual defendants. Each such report, in addition to other relevant information, shall set forth, disaggregated by each county served:

(a) the number of defendants supervised by the agency;

(b) the length of time (in months) each such person was supervised by the agency prior to acquittal, dismissal, release on recognizance, revocation of release on conditions, and sentencing;

(c) the race, ethnicity, age and sex of each person supervised;

(d) the crimes with which each person supervised was charged;

(e) the number of persons supervised for whom release conditions were modified by the court, describing generally for each person or group of persons the type and nature of the condition or conditions added or removed;

(f) the number of persons supervised for whom release under conditions was revoked by the court, and the basis for such revocations; and

(g) the court disposition in each supervised case, including sentencing information.

§ 27. Subdivision 1 of section 510.50 of the criminal procedure law, as amended by section 9 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

1. When the attendance of a principal confined in the custody of the sheriff is required at the criminal action or proceeding at a particular time and place, the court may compel such attendance by directing the

sheriff to produce the principal at such time and place. If the principal is at liberty on the principal's own recognizance or non-monetary conditions [~~or on bail~~], the principal's attendance may be achieved or compelled by various methods, including notification and the issuance of a bench warrant, prescribed by law in provisions governing such matters with respect to the particular kind of action or proceeding involved.

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

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

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

§ 30. 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~~]; 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.

§ 31. The opening paragraph of subdivision 1 and subdivisions 9 and 11 of section 530.12 of the criminal procedure law, the opening paragraph of subdivision 1 as amended by chapter 526 of the laws of 2013, 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:

When a criminal action is pending involving a complaint charging any crime or violation between spouses, former spouses, parent and child, or between members of the same family or household, as members of the same family or household are defined in subdivision one of section 530.11 of this article, the court, in addition to any other powers conferred upon it by this chapter may issue a temporary order of protection in conjunction with any securing order committing the defendant to the custody of the sheriff or as a condition of any order of recognizance or [~~bail~~] **release under non-monetary conditions** or an adjournment in contemplation of dismissal.

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,~~] 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~~] 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.

§ 32. Subdivision 8 of section 530.13 of the criminal procedure law, as added by chapter 388 of the laws of 1984, paragraph (a) as amended by section 13 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

8. If a defendant is brought before the court for failure to obey any lawful order issued under this section 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 bail~~] 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 impose or increase bail~~] pending a trial of the original crime or violation; 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.

§ 33. Section 530.20 of the criminal procedure law, as amended by section 16 of part JJJ of chapter 59 of the laws of 2019, paragraph (a) of subdivision 1 as amended by section 3, subparagraphs (xix) and (xx) of paragraph (b) of subdivision 1 as amended and subparagraph (xxi) of paragraph (b) of subdivision 1 as added by section 4 of subpart C of part UU of chapter 56 of the laws of 2022, paragraph (b) of subdivision 1 as amended by section 3 of part UU of chapter 56 of the laws of 2020, 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~~] **it is demonstrated and the court makes an individualized determination that the principal poses a risk of flight to avoid prosecution or poses a danger to themselves, another person or the community as a whole**. [~~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. In making its determination, the court must consider and take into account available information about the principal, including:

(i) the principal's **character, reputation, habits, mental condition,** activities and history;

(ii) if the principal is a defendant, the charges facing the principal **and the weight of the evidence against him or her in the pending criminal action and any other factor indicating the probability or improbability of conviction**;

(iii) the principal's criminal conviction record if any;

(iv) the principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.1 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;

(v) the principal's previous record **in complying with court orders, including orders to appear when required, or** with respect to flight to avoid criminal prosecution;

(vi) [~~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;~~

~~(vii)~~] any violation by the principal of an order of protection issued by any court;

[~~(viii)~~] **(vii)** the principal's history and use or possession of a firearm;

[~~(ix)~~] **(viii)** whether the charge is alleged to have caused serious harm to an individual or group of individuals; and

[~~(x)~~] **(ix)** 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.

(b) Where the principal stands charged with [~~a qualifying offense~~] **a felony, except a class E felony under title J or K of the penal law, or a qualifying misdemeanor, or where the court has found that committing the principal to the custody of the sheriff is warranted under subdivision two of this section**, 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 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;~~

~~(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, provided, that for class A felonies under article two hundred twenty of such law, only class A-I felonies shall be a qualifying offense;~~

~~(v) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or 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; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 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;~~

~~(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, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;~~

~~(x) any crime that is alleged to have caused the death of another person;~~

~~(xi) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;~~

~~(xii) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;~~

~~(xiii) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;~~

~~(xiv) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;~~

~~(xv) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;~~

~~(xvi) failure to register as a sex offender pursuant to section one hundred sixty-eight-t of the correction law or endangering the welfare of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under article six-C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law;~~

~~(xvii) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;~~

~~(xviii) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;~~

~~(xix) 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;~~

~~(xx) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket 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, any of the underlying crimes need not be a qualifying offense as defined in this subdivision. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; or~~

~~(xxi) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law~~]
witness tampering in the fourth degree as defined in section 215.10 of the penal law;

(ii) a misdemeanor under article one hundred thirty of the penal law;

(iii) conspiracy in the fifth degree as defined in section 105.05 of the penal law where the underlying allegations of such charge is that

the defendant conspired to commit a felony or misdemeanor that otherwise qualifies for bail;

(iv) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law;

(v) a specified offense enumerated in subdivision two of section 240.75 of the penal law where such offense is alleged to have been committed against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;

(vi) any misdemeanor when such crime is charged as a hate crime as defined in section 485.05 of the penal law;

(vii) bail jumping in the third degree as defined in section 215.55 of the penal law;

(viii) escape in the third degree as defined in section 205.05 of the penal law;

(ix) any misdemeanor involving intentionally causing harm to another person or an animal;

(x) any misdemeanor involving the use and possession of a firearm, shotgun or rifle;

(xi) any class A misdemeanor where such charge arose from conduct while the defendant was released on his or her own recognizance, released under conditions or had yet to be arraigned after the issuance of a desk appearance ticket for a separate offense;

(xii) any other offense that the division of criminal justice services has identified pursuant to article fifty of the executive 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. Where a defendant is charged with an offense that does not qualify for pretrial detention under subdivision four of this section, the court may commit the principal to the custody of the sheriff if the court makes an individualized determination that the principal poses a substantial risk of harm to themselves, others or the community as a whole, or where the court determines that the defendant has an established history of disobeying directives of the court.

(a) The court may consider the following factors when determining whether a principal poses a risk of harm:

(i) the nature of the principal's prior convictions, including whether the principal has been convicted of any violent felonies listed in section 70.02 of the penal law;

(ii) the principal's access to weapons;

(iii) whether the principal has any association with a criminal street gang, as defined in section 10-170 of the administrative code of the city of New York or a criminal enterprise, as defined in section 460.10 of the penal law; and

(iv) any history of threats or intimidation to witnesses in prior criminal proceedings.

(b) The court may consider the following factors when determining whether a principal has an established history of disobeying directives of the court:

(i) any history of bench warrants failures to appear;

(ii) previous violation of orders of protection;

(iii) any history of rearrests while other charges are pending; and
(iv) any history of witness intimidation or tampering.

3. 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) No local criminal court may order recognizance[~~,~~] or 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 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.

§ 34. Section 530.30 of the criminal procedure law, the section heading and subdivisions 1 and 2 as amended by section 17 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 530.30 Order of recognizance[~~,~~] or 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[~~,~~] or release under non-monetary conditions [~~or, where authorized, bail~~] 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[~~,~~] or 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 must make an individualized determination

that any conditions imposed are necessary to secure the principal's return to court when required or mitigate the risk of danger to the principal, another person or the community. 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[~~,~~] or release under non-monetary conditions [~~or, where authorized, bail~~] unless and 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.

3. Not more than one application may be made pursuant to this section.

§ 35. Section 530.40 of the criminal procedure law, as amended by section 18 of part JJJ of chapter 59 of the laws of 2019, subdivision 3 as amended by section 3 of subpart B of part UU of chapter 56 of the laws of 2022, subdivision 4 as amended by section 4 of part UU of chapter 56 of the laws of 2020, paragraphs (s) and (t) of subdivision 4 as amended and paragraph (u) as added by section 4 of subpart B of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

§ 530.40 Order of recognizance[~~,~~] or 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~~] 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~~] committing the principal to the custody of the sheriff. 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~~] committing the principal to the custody of the sheriff 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~~] it is demonstrated and the court makes an individualized determination that the principal poses a risk of flight to avoid prosecution or poses a danger to themselves, another person, or the community as a whole. [~~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. In making its determination, the court must consider and take into account available information about the principal, including:

(a) the principal's **character, reputation, habits, mental condition,** activities and history;

(b) if the principal is a defendant, the charges facing the principal **and the weight of the evidence against him or her in the pending criminal action and any other factor indicating the probability or improbability of conviction**;

(c) the principal's criminal conviction record if any;

(d) the principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.1 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 **in complying with court orders, including orders to appear 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)~~] any violation by the principal of an order of protection issued by any court;

[~~(h)~~] **(g)** the principal's history and use or possession of a firearm;

[~~(i)~~] **(h)** whether the charge is alleged to have caused serious harm to an individual or group of individuals; and

[~~(j)~~] **(i)** 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.

4. Where the principal stands charged with a [~~qualifying offense~~] **felony, except a class E felony under title J or K of the penal law, or a qualifying misdemeanor, or where the court has found that committing the principal to the custody of the sheriff is warranted under subdivision two of this section**, 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~~] **or** 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;~~

~~(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, provided that for class A felonies under article two hundred twenty of such law, only class A-I felonies shall be a qualifying offense;~~

~~(e) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or 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; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 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;~~

~~(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, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;~~

~~(j) any crime that is alleged to have caused the death of another person;~~

~~(k) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;~~

~~(l) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;~~

~~(m) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;~~

~~(n) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;~~

~~(o) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;~~

~~(p) failure to register as a sex offender pursuant to section one hundred sixty-eight-t of the correction law or endangering the welfare of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under article six-C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law;~~

~~(q) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;~~

~~(r) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;~~

~~(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;~~

~~(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, 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, any of the underlying crimes need not be a qualifying offense as defined in this subdivision. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; or~~

~~(u) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law~~]

witness tampering in the fourth degree as defined in section 215.10 of the penal law;

(b) a misdemeanor under article one hundred thirty of the penal law;

(c) conspiracy in the fifth degree as defined in section 105.05 of the penal law where the underlying allegations of such charge is that the defendant conspired to commit a felony or misdemeanor that otherwise qualifies for bail;

(d) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law;

(e) a specified offense enumerated in subdivision two of section 240.75 of the penal law where such offense is alleged to have been committed against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;

(f) any misdemeanor when such crime is charged as a hate crime as defined in section 485.05 of the penal law;

(g) bail jumping in the third degree as defined in section 215.55 of the penal law;

(h) escape in the third degree as defined in section 205.05 of the penal law;

(i) any misdemeanor involving intentionally causing harm to another person or an animal;

(j) any misdemeanor involving the use and possession of a firearm, shotgun or rifle;

(k) any class A misdemeanor where such charge arose from conduct while the defendant was released on his or her own recognizance, released under conditions or had yet to be arraigned after the issuance of a desk appearance ticket for a separate offense; or

(l) any other offense that the division of criminal justice services has identified pursuant to article fifty of the executive 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~~] Where a defendant is charged with an offense that does not qualify for pretrial detention under subdivision four of this section, the court may commit the principal to the custody of the sheriff if the court makes an individualized determination that the principal poses a substantial risk of harm to themselves, others or the community as a whole, or where the court determines that the defendant has an established history of disobeying directives of the court.

(a) The court may consider the following factors when determining whether a principal poses a risk of harm:

(i) the nature of the principal's prior convictions, including whether the principal has been convicted of any violent felonies listed in section 70.02 of the penal law;

(ii) the principal's access to weapons;

(iii) whether the principal has any association with a criminal street gang, as defined in section 10-170 of the administrative code of the city of New York or a criminal enterprise, as defined in section 460.10 of the penal law; and

(iv) any history of threats or intimidation to witnesses in prior criminal proceedings.

(b) The court may consider the following factors when determining whether a principal has an established history of disobeying directives of the court:

(i) any history of bench warrants failures to appear;

(ii) previous violation of orders of protection;

(iii) any history of rearrests while other charges are pending; and

(iv) any history of witness intimidation or tampering.

6. Notwithstanding the provisions of subdivisions two, three and four of this section, a superior court may not order recognizance, release under non-monetary conditions [~~or, where authorized, bail,~~] 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. Notwithstanding the provisions of subdivisions two, three and four of this section, a superior court may not order recognizance[~~,~~] or release under non-monetary conditions [~~or, where authorized, bail~~] 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.

§ 36. The section heading and subdivision 1 of section 530.45 of the criminal procedure law, the section heading as added by chapter 435 of the laws of 1974, subdivision 1 as amended by section 19 of part JJJ of chapter 59 of the laws of 2019, are amended to read as follows:

Order of recognizance [~~or bail~~] non-monetary conditions; after conviction and before sentence.

1. When the defendant is at liberty in the course of a criminal action as a result of a prior order of recognizance[~~,~~] or 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 a less restrictive securing order, than fixed by the court in which the conviction was entered.

§ 37. Section 530.50 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, subdivision 1 as designated and subdivision 2 as added by section 10 of part UU of chapter 56 of the laws of 2020, subdivision 3 as added by section 4 of subpart D of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

§ 530.50 Order of recognizance or [~~bail~~] non-monetary conditions; during pendency of appeal.

1. A judge who is otherwise authorized pursuant to section 460.50 or section 460.60 of this chapter to issue an order of recognizance or [~~bail~~] non-monetary conditions pending the determination of an appeal, may do so unless the defendant received a class A felony sentence or a sentence for any class B or class C felony offense 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.

2. Notwithstanding the provisions of subdivision four of section 510.10 of this title, paragraph (b) of subdivision one of section 530.20 and subdivision four of section 530.40 of this [~~title~~] article, when a defendant charged with an offense that is not such a qualifying offense applies, pending determination of an appeal, for an order of recognizance or release on non-monetary conditions, where authorized, [~~or~~

~~fixing bail,~~] a judge identified in subdivision two of section 460.50 or paragraph (a) of subdivision one of section 460.60 of this chapter may, in accordance with law, and except as otherwise provided by law, issue a securing order: releasing the defendant on the defendant's own recognizance or under non-monetary conditions where authorized, [~~fixing bail,~~] or remanding the defendant to the custody of the sheriff where authorized.

3. Where an appeal by the people has been taken from an order dismissing one or more counts of an accusatory instrument for failure to comply with a discovery order pursuant to subdivision twelve of section 450.20 of this chapter and the defendant is charged with a qualifying offense in the remaining counts in the accusatory instrument, pending determination of an appeal, the defendant may apply for an order of recognizance or release on non-monetary conditions, where authorized[~~, or fixing bail~~]. A judge identified in subdivision two of section 460.50 of this chapter or paragraph (a) of subdivision one of section 460.60 of this chapter may, in accordance with law, and except as otherwise provided by law, issue a securing order releasing the defendant on the defendant's own recognizance or under non-monetary conditions where authorized, [~~fixing bail,~~] or remanding the defendant to the custody of the sheriff where authorized.

§ 38. Section 530.60 of the criminal procedure law, as amended by section 20 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 530.60 Certain modifications of a securing order.

1. Whenever in the course of a criminal action or proceeding a defendant is at liberty as a result of an order of recognizance[~~,~~] **or** release under non-monetary conditions [~~or bail~~] issued pursuant to this chapter, and the court considers it necessary to review such order, whether due to a motion by the people or otherwise, the court may, and except as provided in subdivision two of section 510.50 of this title concerning a failure to appear in court, by a bench warrant if necessary, require the defendant to appear before the court. Upon such appearance, the court, for good cause shown, may revoke the order of recognizance[~~,~~] **or** release under non-monetary conditions, [~~or bail~~] **and commit the principal to the custody of the sheriff**. [~~If the defendant is entitled to recognizance, release under non-monetary conditions, or bail as a matter of right, the court must issue another such order. If the defendant is not, the court may either issue such an order or commit the defendant to the custody of the sheriff in accordance with this section.~~]

Where the defendant is committed to the custody of the sheriff and is held on a felony complaint, a new period as provided in section 180.80 of this chapter shall commence to run from the time of the defendant's commitment under this subdivision.

2. (a) Whenever in the course of a criminal action or proceeding a defendant charged with the commission of a felony is at liberty as a result of an order of recognizance[~~,~~] **or** release under non-monetary conditions [~~or bail~~] issued pursuant to this article it shall be grounds for revoking such order that the court finds reasonable cause to believe the defendant committed one or more [~~specified class A or violent felony offenses or intimidated a victim or witness in violation of section 215.15, 215.16 or 215.17 of the penal law~~] **felony offenses or misdemeanor offenses enumerated in subdivision four of section 510.10 of this title** while at liberty.

(b) Except as provided in paragraph (a) of this subdivision or any other law, whenever in the course of a criminal action or proceeding a

defendant charged with the commission of an offense is at liberty as a result of an order of recognizance[~~,~~] or release under non-monetary conditions [~~or bail~~] issued pursuant to this article it shall be grounds for revoking such order and fixing bail in such criminal action or proceeding when the court has found, by clear and convincing evidence, that the defendant:

(i) persistently and willfully failed to appear after notice of scheduled appearances in the case before the court; or

(ii) violated an order of protection in the manner prohibited by subdivision (b), (c) or (d) of section 215.51 of the penal law while at liberty; or

(iii) stands charged in such criminal action or proceeding with a misdemeanor or violation and, after being so charged, intimidated a victim or witness in violation of section 215.15, 215.16 or 215.17 of the penal law or tampered with a witness in violation of section 215.11, 215.12 or 215.13 of the penal law, [~~law~~] while at liberty; or

(iv) stands charged in such action or proceeding with a felony and, after being so charged, committed a felony while at liberty.

(c) Before revoking an order of recognizance[~~,~~] or release under non-monetary conditions, [~~or bail~~] pursuant to this subdivision, the court must hold a hearing and shall receive any relevant, admissible evidence not legally privileged. The defendant may cross-examine witnesses and may present relevant, admissible evidence on his own behalf. Such hearing may be consolidated with, and conducted at the same time as, a felony hearing conducted pursuant to article one hundred eighty of this chapter. A transcript of testimony taken before the grand jury upon presentation of the subsequent offense shall be admissible as evidence during the hearing. The district attorney may move to introduce grand jury testimony of a witness in lieu of that witness' appearance at the hearing.

(d) Revocation of an order of recognizance[~~,~~] or release under non-monetary conditions [~~or bail~~] and a new securing order [~~fixing bail~~] or commitment, as specified in this paragraph and pursuant to this subdivision shall be for the following periods:

(i) Under paragraph (a) of this subdivision, revocation of the order of recognizance[~~,~~] or release under non-monetary conditions [~~or, as the case may be, bail~~], and a new securing order [~~fixing bail~~] or committing the defendant to the custody of the sheriff shall be as follows:

(A) For a period not to exceed ninety days exclusive of any periods of adjournment requested by the defendant; or

(B) Until the charges contained within the accusatory instrument have been reduced or dismissed such that no count remains which charges the defendant with commission of a felony; or

(C) Until reduction or dismissal of the charges contained within the accusatory instrument charging the subsequent offense such that no count remains which charges the defendant with commission of a class A or violent felony offense.

Upon expiration of any of the three periods specified within this subparagraph, whichever is shortest, the court may grant or deny release upon an order of [~~bail or~~] recognizance in accordance with the provisions of this article. Upon conviction to an offense the provisions of [~~article five hundred thirty of~~] this [~~chapter~~] article shall apply; and

(ii) Under paragraph (b) of this subdivision, revocation of the order of recognizance[~~,~~] or release under non-monetary conditions [~~or, as the case may be, bail~~] shall result in the issuance of a new securing order

which may, if otherwise authorized by law, permit the principal's release on recognizance or release under non-monetary conditions, but shall also render the defendant eligible for an order [~~fixing bail provided, however, that in accordance with the principles in this title the court must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court~~] **of commitment to the custody of the sheriff**. Nothing in this subparagraph shall be interpreted as shortening the period of detention, or requiring or authorizing any less restrictive form of a securing order, which may be imposed pursuant to any other law.

(e) Notwithstanding the provisions of paragraph (a) or (b) of this subdivision a defendant, against whom a felony complaint has been filed which charges the defendant with commission of a class A or violent felony offense or violation of section 215.15, 215.16 or 215.17 of the penal law committed while he was at liberty as specified therein, may be committed to the custody of the sheriff pending a revocation hearing for a period not to exceed seventy-two hours. An additional period not to exceed seventy-two hours may be granted by the court upon application of the district attorney upon a showing of good cause or where the failure to commence the hearing was due to the defendant's request or occurred with his consent. Such good cause must consist of some compelling fact or circumstance which precluded conducting the hearing within the initial prescribed period.

§ 39. The section heading of section 530.70 of the criminal procedure law is amended to read as follows:

Order of recognizance or [~~bail~~] **non-monetary conditions**; bench warrant.

§ 40. Section 530.80 of the criminal procedure law is REPEALED.

§ 41. Article 540 of the criminal procedure law is REPEALED.

§ 42. Subdivisions 2 and 3 of section 550.10 of the criminal procedure law is amended to read as follows:

2. If the defendant has been arraigned in the action and, by virtue of a securing order, is either in the custody of the sheriff or at liberty within the state on his **or her** own recognizance or [~~on bail~~] **under non-monetary conditions**, his **or her** attendance may be secured as follows:

(a) If the defendant is confined in the custody of the sheriff, the court may direct the sheriff to produce him **or her**;

(b) If the defendant is at liberty within the state as a result of an order releasing him **or her** on his **or her** own recognizance or [~~on bail~~] **under non-monetary conditions**, the court may secure his **or her** attendance by notification or by the issuance of a bench warrant.

3. If the defendant's attendance cannot be secured by methods described in subdivisions one and two **of this section**, either because he **or she** is outside the state or because [~~he~~] **such defendant** is confined in an institution within the state as a result of an order issued in some other action, proceeding or matter, his **or her** attendance may, under indicated circumstances, be secured by procedures prescribed in the ensuing articles of this title.

§ 43. Section 570.36 of the criminal procedure law is amended to read as follows:

§ 570.36 Commitment to await requisition[~~; bail~~].

If from the examination before the local criminal court it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 570.14 or 570.16 **of this article**, that he **or she** has fled from justice, the local criminal court must, by a warrant reciting the accusation, commit him **or**

her to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense[~~, unless the accused gives bail as provided in the next section,~~] or until he or she shall be legally discharged.

§ 44. Section 570.38 of the criminal procedure law is REPEALED.

§ 45. Section 570.40 of the criminal procedure law is amended to read as follows:

§ 570.40 Extension of time of commitment; adjournment.

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond or undertaking, a local criminal court may discharge him or may recommit him for a further period of sixty days, or for further periods not to exceed in the aggregate sixty days[~~, or a supreme court justice or county judge may again take bail for his appearance and surrender, as provided in section 570.38 but within a period not to exceed sixty days after the date of such new bond or undertaking~~].

§ 46. Section 570.42 of the criminal procedure law is REPEALED.

§ 47. Paragraph (c) of subdivision 3 of section 722.20 of the criminal procedure law, as added by section 1-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

(c) If there is not reasonable cause to believe that the defendant committed any criminal act, the court must dismiss the felony complaint and discharge the defendant from custody if he or she is in custody[~~, or if he is at liberty on bail, it must exonerate the bail~~].

§ 48. Paragraph (c) of subdivision 3 of section 722.21 of the criminal procedure law, as added by section 1-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

(c) If there is not reasonable cause to believe that the defendant committed any criminal act, the court must dismiss the felony complaint and discharge the defendant from custody if he or she is in custody[~~, or if he is at liberty on bail, it must exonerate the bail~~].

§ 49. Subdivision 2 of section 730.20 of the criminal procedure law is amended to read as follows:

2. When the defendant is not in custody at the time a court issues an order of examination, because he or she was theretofore released [~~on bail or~~] on his or her own recognizance or under non-monetary conditions, the court may direct that the examination be conducted on an out-patient basis, and at such time and place as the director shall designate. If, however, the director informs the court that hospital confinement of the defendant is necessary for an effective examination, the court may direct that the defendant be confined in a hospital designated by the director until the examination is completed.

§ 50. Subdivision 1 of section 730.50 of the criminal procedure law, as amended by chapter 7 of the laws of 2013, is amended to read as follows:

1. When a superior court, following a hearing conducted pursuant to subdivision three or four of section 730.30 of this article, is satisfied that the defendant is not an incapacitated person, the criminal action against him or her must proceed. If it is satisfied that the defendant is an incapacitated person, or if no motion for such a hearing is made, it must adjudicate him or her an incapacitated person, and must issue a final order of observation or an order of commitment. When the indictment does not charge a felony or when the defendant has been convicted of an offense other than a felony, such court (a) must issue a

final order of observation committing the defendant to the custody of the commissioner for care and treatment in an appropriate institution for a period not to exceed ninety days from the date of such order, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this subdivision, and (b) must dismiss the indictment filed in such court against the defendant, and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in such indictment. Upon the issuance of a final order of observation, the district attorney shall immediately transmit to the commissioner, in a manner intended to protect the confidentiality of the information, a list of names and contact information of persons who may reasonably be expected to be the victim of any assault or any violent felony offense, as defined in the penal law, or any offense listed in section 530.11 of this chapter which would be carried out by the committed person; provided that the person who reasonably may be expected to be a victim does not need to be a member of the same family or household as the committed person. When the indictment charges a felony or when the defendant has been convicted of a felony, it must issue an order of commitment committing the defendant to the custody of the commissioner for care and treatment in an appropriate institution or, upon the consent of the district attorney, committing him or her to the custody of the commissioner for care and treatment on an out-patient basis, for a period not to exceed one year from the date of such order. [~~Upon the issuance of an order of commitment, the court must exonerate the defendant's bail if he or she was previously at liberty on bail; provided, however, that exoneration of bail is not required when a defendant is committed to the custody of the commissioner for care and treatment on an out-patient basis.~~] When the defendant is in the custody of the commissioner pursuant to a final order of observation, the commissioner or his or her designee, which may include the director of an appropriate institution, immediately upon the discharge of the defendant, must certify to such court that he or she has complied with the notice provisions set forth in paragraph (a) of subdivision six of section 730.60 of this article.

§ 51. Section 246-a of the lien law is REPEALED.

§ 52. Article 50 and sections 1000, 1001, 1002 and 1003 of the executive law, as renumbered by chapter 770 of the laws of 1978, are renumbered article 51 and sections 1100, 1101, 1102 and 1103 and a new article 50 is added to read as follows:

ARTICLE 50

COMMISSION ON PUBLIC SAFETY REFORM

Section 1005. Commission on public safety reform.

1006. Powers and duties of the commission.

§ 1005. Commission on public safety reform. 1. There is hereby created in the department, the commission on public safety reform, which shall consist of the following fifteen members:

(a) the commissioner of the division of criminal justice services who shall be chair of the commission;

(b) fourteen members appointed by the governor.

2. Of the members appointed by the governor:

(a) one member shall be a representative of a law enforcement agency located outside of a city with a population of over one million and

shall be appointed upon the recommendation of the commissioner of criminal justice services;

(b) one member shall be a representative of a law enforcement agency located within a city with a population of over one million and shall be appointed upon the recommendation of the mayor of such city;

(c) one member shall be a district attorney of a county outside a city with a population of one million and shall be appointed upon the recommendation of an organization representing district attorneys;

(d) one member shall be a district attorney of a county within a city with a population of greater than one million and shall be appointed upon the recommendation of the mayor of such city;

(e) one member shall be a representative of the public criminal defense bar who shall be appointed upon the recommendation of an organization representing public defense services;

(f) one member shall be a representative of the private criminal defense bar who shall be appointed upon the recommendation of an organization of such bar;

(g) two members shall appointed upon the recommendation of the temporary president of the senate;

(h) two members shall be appointed upon the recommendation of the speaker of the assembly;

(i) one member shall be appointed upon the recommendation of the minority leader of the senate;

(j) one member shall be appointed upon the recommendation of the minority leader of the assembly;

(k) one member shall be appointed upon the recommendation of the attorney general of the state of New York; and

(l) one member, who shall be an attorney or judge shall be appointed upon the recommendation of the chief judge of the court of appeals.

3. Of the members appointed by the governor, each member shall be appointed to serve a two year term. Any member appointed by the governor may be reappointed for additional two year terms.

4. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed by the governor for the unexpired term of the member he or she is to succeed. Any such vacancy shall be filled in the same manner as the original appointment.

5. The commission shall meet at least four times each year and may establish its own rules and procedures concerning the conduct of its meetings and other affairs not inconsistent with law.

6. No member of the commission on public safety reform shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment, by reason of his or her appointment hereunder, and members of the commission shall not be required to take and file oaths of office before serving on the commission.

7. Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

§ 1006. Powers and duties of the commission. 1. The commission shall have the following duties, including, but not limited to:

(a) The commission shall conduct a thorough study and issue a comprehensive report on which crimes should be eligible for pretrial detention. When conducting such study the commission shall seek to find the appropriate balance between public safety and the rights of the accused. The commission shall consider the following factors, including, but not limited to:

(i) data on crime in New York state;

(ii) a review of the successes and challenges faced by other states that have enacted large scale criminal justice reform;

(iii) rates of recidivism; and

(iv) any other factor the commission deems relevant.

(b) The comprehensive report shall contain detailed analysis and justification of the data utilized to determine which crimes shall or shall not be eligible for pretrial detention.

(c) The commission shall draft and publish a model risk analysis tool utilizing crime data from the department of criminal justice services for use by judges in determining if it is appropriate for a judge to remand an individual accused of a crime. The commission will hold at least one public hearing on this model risk analysis tool within eighteen months of the effective date of this section, and shall publish the final model risk analysis tool within ninety days of the public hearing.

2. Within one year of the effective date of this section, the commission on public safety reform shall issue a draft report, which shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly on recommended eligible for pretrial detention crimes with supporting evidence of why certain crimes were included and others were excluded. At least three public hearings shall be held by the commission to provide the public with the opportunity to comment on the report. Notice of such hearings shall be provided on the department of criminal justice services website.

3. Within ninety days of the date of the last public hearing, the commission on public safety reform shall submit a final report to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly. Copies of such report shall also be made available to the public and posted on the websites of the department of criminal justice services.

§ 53. This act shall take effect immediately; provided, however, that sections one through fifty-one of this act shall take effect on the ninetieth day after it shall have become a law.