

STATE OF NEW YORK

8565--A

IN SENATE

February 14, 2024

Introduced by Sens. ASHBY, WEBER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to allowing courts to consider the risk of continued substance abuse in certain instances

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

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

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

16 (a) admission by the principal that they are addicted to a controlled
17 substance;

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

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

22 (d) documentation of reasons for any failed attempts to complete drug
23 court;

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

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

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

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

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

41 § 2. The opening paragraph and subparagraphs (i), (xx) and (xxi) of
42 paragraph (b) of subdivision 1 of section 530.20 of the criminal proce-
43 dure law, the opening paragraph as amended by section 6 of subpart A of
44 part VV of chapter 56 of the laws of 2023, subparagraph (i) as amended
45 by section 3 of part UU of chapter 56 of the laws of 2020, subparagraph
46 (xx) as amended and subparagraph (xxi) as added by section 4 of subpart
47 C of part UU of chapter 56 of the laws of 2022, are amended and a new
48 subparagraph (xxii) is added to read as follows:

49 Where the principal stands charged with a qualifying offense, the
50 court, unless otherwise prohibited by law, may in its discretion release
51 the principal pending trial on the principal's own recognizance or under
52 non-monetary conditions, fix bail, order non-monetary conditions in
53 conjunction with fixing bail, or, where the defendant is charged with a
54 qualifying offense [~~which is a felony~~], the court may commit the princi-
55 pal to the custody of the sheriff. The court shall explain its choice of
56 securing order on the record or in writing. A principal stands charged

1 with a qualifying offense when [~~he or she~~] such principal stands charged
2 with:

3 (i) a felony enumerated in section 70.02 of the penal law[~~, other than~~
4 ~~robbery in the second degree as defined in subdivision one of section~~
5 ~~160.10 of the penal law, provided, however, that burglary in the second~~
6 ~~degree as defined in subdivision two of section 140.25 of the penal law~~
7 ~~shall be a qualifying offense only where the defendant is charged with~~
8 ~~entering the living area of the dwelling~~];

9 (xx) any felony or class A misdemeanor involving harm to an identifi-
10 able person or property, or any charge of criminal possession of a
11 firearm as defined in section 265.01-b of the penal law where such
12 charge arose from conduct occurring while the defendant was released on
13 [~~his or her~~] their own recognizance, released under conditions, or had
14 yet to be arraigned after the issuance of a desk appearance ticket for a
15 separate felony or class A misdemeanor involving harm to an identifiable
16 person or property, provided, however, that the prosecutor must show
17 reasonable cause to believe that the defendant committed the instant
18 crime and any underlying crime. For the purposes of this subparagraph,
19 any of the underlying crimes need not be a qualifying offense as defined
20 in this subdivision. For the purposes of this paragraph, "harm to an
21 identifiable person or property" shall include but not be limited to
22 theft of or damage to property. However, based upon a review of the
23 facts alleged in the accusatory instrument, if the court determines that
24 such theft is negligible and does not appear to be in furtherance of
25 other criminal activity, the principal shall be released on [~~his or her~~]
26 their own recognizance or under appropriate non-monetary conditions;
27 [~~or~~]

28 (xxi) criminal possession of a weapon in the third degree as defined
29 in subdivision three of section 265.02 of the penal law or criminal sale
30 of a firearm to a minor as defined in section 265.16 of the penal
31 law[~~+~~]; or

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

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

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

50 (i) admission by the principal that they are addicted to a controlled
51 substance;

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

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

1 (iv) documentation of reasons for any failed attempts to complete drug
2 court;

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

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

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

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

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

46 5-a. Notwithstanding the provisions of subdivisions three and four of
47 this section, the court may, in its discretion, commit the principal to
48 the custody of the sheriff for a period of no more than fifteen days, if
49 such principal has a substantial risk of continued substance abuse and
50 there is a likelihood of serious harm to such principal and there exists
51 no alternative less restrictive means available to confine or supervise
52 such principal in order to prevent the principal's substantial risk of
53 continued substance abuse upon release from custody. Alternative and
54 less restrictive means of confinement and supervision shall mean avail-
55 able immediate commitment of such principal in a state licensed
56 substance abuse treatment center, drug rehabilitation center or mental

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

3 (a) admission by the principal that they are addicted to a controlled
4 substance;

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

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

9 (d) documentation of reasons for any failed attempts to complete drug
10 court;

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

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

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

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

52 § 5. Subdivision 1 of section 510.30 of the criminal procedure law, as
53 amended by section 4 of subpart A of part VV of chapter 56 of the laws
54 of 2023, is amended to read as follows:

55 1. With respect to any principal, the court in all cases, unless
56 otherwise provided by law, must impose a securing order in accordance

with section 510.10 of this article, and shall explain the basis for its determination and choice of securing order on the record or in writing[~~-~~], which shall include, but not be limited to, whether the principal has a substantial risk of continued substance abuse and there is a likelihood of serious harm to such principal and there exists no alternative less restrictive means available to confine or supervise such principal in order to prevent the principal's substantial risk of continued substance abuse upon release from custody. Alternative and less restrictive means of confinement and supervision shall mean available immediate commitment of such principal in a state licensed substance abuse treatment center, drug rehabilitation center or mental health facility. In making its determination, the court may consider the following factors, including but not limited to:

(a) admission by the principal that they are addicted to a controlled substance;

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

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

(d) documentation of reasons for any failed attempts to complete drug court;

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

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

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

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

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

(b) admission by the arrested person that they are addicted to a controlled substance;

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

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

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

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

§ 7. This act shall take effect immediately.