# STATE OF NEW YORK

9947--A

# IN SENATE

November 13, 2024

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the executive law, in relation to establishing an office of pretrial services

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

Section 1. Subdivisions 1, 2, 4 and 5 of section 510.45 of the criminal procedure law, as added by section 8 of part JJJ of chapter 59 of the laws of 2019, are amended and three new subdivisions 1-a, 2-a, and 6 are added to read as follows:

1. The office of [~~court administration~~] **pretrial services** shall certify and [~~regularly~~] review for recertification **every three years** one or more pretrial services agencies in each county to [~~monitor principals~~] **provide services to people** released under non-monetary conditions. **In order to be certified by the office, each pretrial services agency shall demonstrate that such agency has the ability to perform the responsibilities required of pretrial services agencies as described in subdivision three-a of section 500.10 of this title and meets the minimum standards established by the office of pretrial services as described in subdivision two-a of this section.** Such office shall maintain a listing on its public website identifying by county each pretrial services agency [~~so~~] certified in the state**, including a phone number and email contact information for each pretrial services agency**.

**1-a. If the office determines that it is appropriate to decertify a pretrial services agency pursuant to paragraph (n) of subdivision two of section eight hundred thirty-seven-y of the executive law, but no suitable alternative agency exists, the office may permit the existing agency to continue providing services on a probationary basis, and the office shall identify and impose appropriate remedies and remedial measures, where appropriate, to bring the agency back in line with minimum standards. Remedial measures may include, but shall not be limited to, additional staff training, expanded supervision both within the agency**

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

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and from the office, and increased reporting requirements. If an agency is placed on probation, the office shall reevaluate the agency every six months for three consecutive periods. If there are no further infractions, then the agency shall be removed from their probationary basis. If infractions are found, the agency shall continue on a probationary basis until three periods are achieved without infractions.

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~~] one or more counties, municipalities, or the state, or a public entity under the supervision and control of a county or municipality. [~~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,~~] A pretrial services agency may be certified to provide services in more than one county. The office shall identify and certify as a county's pretrial services agency a non-profit entity able to fulfill the minimum standards set forth in subdivision two-a of this section. If the office is unable to identify a non-profit entity able to meet these requirements, the office may certify a public entity. Counties, municipalities and the state shall not contract with any private for-profit entity [~~for such purposes~~] to serve as a pretrial services agency.

2-a. The office shall certify as pretrial services agencies only such entities that meet the minimum standards set forth by the office. The office may certify an entity that, by virtue of its relationships, contracts, or other agreements, can demonstrate its ability to meet the minimum standards in collaboration with other entities. The full and complete set of minimum standards shall be determined by the office in consultation with the advisory board, and shall include, but not be limited to, the following:

(a) Demonstrated ability to support individuals released to supervision in complying with the terms of their release;

(b) Demonstrated ability to create individualized plans to support individuals released to supervision that are informed by the results of a comprehensive needs assessment that includes, but is not limited to, the areas listed in paragraph (e) of this subdivision;

(c) Demonstrated ability to engage in sustained, reliable, and supportive outreach to individuals released to supervision to ensure they return to court, using the methods and in the settings that will best meet the individual's needs;

(d) Demonstrated ability and capacity to support the number of individuals expected to be released to supervision;

(e) Demonstrated ability to connect individuals with available service providers consistent with the requirements of an individual's pretrial release, or their emergent needs and interests, including, but not limited to, in the areas of mental health treatment, substance use treatment, other medical treatment, emergency or transitional housing, and workforce development;

(f) Demonstrated ability to ensure the protection of participating individuals' personal information;

(g) Demonstrated ability to ensure organizational and staff completion of training mandated by the office, and compliance with such training; and

(h) For an agency seeking recertification pursuant to subdivision one of this section, satisfactory completion of organizational and staff

training requirements and demonstrated history of successfully supporting individuals over the prior three years.

4. Supervision by a [~~pre-trial~~] pretrial 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~~] person's return to court. Under no circumstances shall a person receiving pretrial services be required to pay out-of-pocket for services provided or mandated by the pretrial services agency, the office, or the court. Subject to appropriations, services mandated by the office of pretrial services or the court shall be eligible for funding from the office. Pretrial services agencies shall make efforts to limit costs and other barriers to accessing mandated services.

5. [~~Each~~] The office of pretrial services shall gather information from each pretrial [~~service~~] services agency [~~certified by~~] and 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 of pretrial services 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,~~] shall include but not be limited to the following data disaggregated by each county served:

(a) the total number of [~~defendants~~] individuals supervised by the agency during the course of the prior year;

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

(c) the race, ethnicity, age [~~and~~], sex and gender identity of each person supervised, where available;

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

(e) the number of persons supervised who were subsequently released on recognizance;

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

[~~(g)~~] (h) the court disposition in each supervised case, including sentencing information.

6. Pretrial services agency shall be responsible for conducting periodic, individualized reviews for each individual case. Pretrial services agencies shall conduct such reviews using best practices developed by the office of pretrial services, and at intervals as determined by the office of pretrial services. For each review, the pretrial services agency shall determine whether the conditions of non-monetary release imposed by the court should be modified or eliminated. If the pretrial services agency's review concludes that a modification is warranted, the agency shall make such a recommendation to the court. The court shall review any recommendations to modify or eliminate the non-monetary conditions the court imposed and make an individualized determination on

the record or in writing explaining the reasons for the court's determination and for any changes to the conditions imposed.

§ 2. The executive law is amended by adding a new section 837-y to read as follows:

§ 837-y. Office of pretrial services. 1. There shall be in the division of criminal justice services an office of pretrial services, hereinafter in this section referred to as the "office".

2. The office shall have the following duties and responsibilities:

(a) to certify and contract with at least one agency providing pretrial services in each county pursuant to section 510.45 of the criminal procedure law;

(b) to develop application requirements and an application process for entities seeking certification as a pretrial services agency, and to make such application requirements and process publicly available. As part of the application and selection process, the office may consider input from local stakeholders;

(c) pursuant to and consistent with subdivision two-a of section 510.45 of the criminal procedure law, to develop, in consultation with the advisory board, a comprehensive list of minimum standards that each pretrial services agency must meet prior to becoming certified, and to update and revise such minimum standards based on research, best practices, individual needs, or other relevant factors. The office shall make such standards, including any revisions or updates to such standards, publicly available;

(d) to identify and disseminate best practices for the provision of pretrial services that will maximize the likelihood that individuals successfully attend court proceedings;

(e) to develop initial and ongoing training materials for staff working at pretrial services agencies, consistent with guidelines established by the national association of pretrial services agencies. Training materials shall include but not be limited to relevant information regarding pretrial laws in New York, cultural competency, trauma-informed care, risk-needs responsivity, verbal de-escalation and crisis intervention, overdose response, administration of overdose medication, substance use disorders, mental health diagnoses, motivational interviewing, foundational concepts of cognitive-behavioral therapy, and best practices in community supervision. The office shall develop protocols or best practices to ensure that all staff at pretrial services agencies receive training concerning the state's pretrial laws, cultural competency, and trauma-informed care, and that staff receive additional training that is appropriate based on their role and level of interaction with individuals under supervision. The office shall have the authority to exempt individual staff members of a pretrial services agency from specific training requirements if the office determines that the individual staff member does not have direct, routine interaction with the participants;

(f) to identify and disseminate evidence-based best practices for how and when recommendations regarding the imposition of non-monetary conditions are made to best ensure that people return to court, and to maximize the likelihood of success in the community;

(g) to identify or develop an appropriate questionnaire, instrument or tool that meets the requirements for such questionnaire, instrument or tool set forth in subdivision three of section 510.45 of the criminal procedure law, and to develop best practices for use of such questionnaire, instrument or tool, that may be used in determining whether a person poses a risk of flight to avoid prosecution in order to inform a

recommendation to the court regarding whether to impose non-monetary conditions and, where necessary, on the types of conditions that would be appropriate;

(h) to work with agencies providing pretrial services to establish and implement the use of performance measures;

(i) to identify and develop solutions to address barriers to making court appearances by:

(i) working with pretrial services agencies to identify common challenges and barriers to making court appearances in each county;

(ii) determining services needed to address the challenges and barriers identified in subparagraph (i) of this paragraph including, where necessary, by piloting new strategies to address these challenges using national best practices and research from this and other fields; and

(iii) collaborating with other agencies, including the office of mental health, the office of addiction services and supports, the office for the prevention of domestic violence, the office of temporary and disability assistance, and the department of health to develop strategies for addressing the needs of those under pretrial supervision;

(j) to collect, receive and publish in a machine readable format on the office's website on an annual basis the aggregate information and data required pursuant to section 510.45 of the criminal procedure law regarding the provision of services as well as any other aggregate information or data identified by the office including, but not limited to:

(i) any tool used to make decisions regarding placement with a pretrial services agency and conditions of release, as well as the research validating such tool and demonstrating that such tool is free from discrimination on the basis of race, color, ethnicity, national origin, age, disability, creed, religion, or sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, or any other protected class, as required under section 510.45 of the criminal procedure law;

(ii) the categories of supervision used by each pretrial services agency and the number of individuals starting under each level or tier where applicable, of supervision, disaggregated by race, sex, sexual orientation, gender identity, age, and ethnicity, to the extent such information is available;

(iii) pretrial failure to appear rates of individuals receiving pretrial services, including the number who missed one or more court dates, any information collected regarding reasons for failure to appear collected by the pretrial services agency, how many individuals appeared in court voluntarily following a failure to appear, how many warrants for failures to appear were issued, and how many individuals were detained pretrial or placed on electronic monitoring pretrial after a failure to appear in court, broken down by race, sex, sexual orientation, gender identity, age, ethnicity, pretrial services agency and conditions of supervision, to the extent such information is available;

(iv) information on the pretrial rearrest of individuals receiving pretrial services, including the number of individuals arrested and charged with a new misdemeanor offense while released, the number arrested and charged with a new non-violent felony offense while released, and the number arrested and charged with a new violent felony offense while released, the outcome of any rearrest, and how long after release such arrests occurred;

(v) the types of services to which each pretrial services agency is making referrals, any challenges identified in linking participants to services and the names of the organizations to whom referrals are being made;

(vi) information regarding any evaluation of a pretrial services agency conducted by the office;

(vii) information regarding persons placed on electronic monitoring programs pretrial, including, but not limited to: the number of participants; the demographics of the participant population, including race, sex, sexual orientation, gender identity, age, and ethnicity; the charges on which participants are ordered to the program; and the average length of participation in the program, to the extent such information is available; and

(viii) the average caseloads of staff providing such services;

(k) to request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision of the state or any public authority such assistance, information and data, subject to limitations on the disclosure of information, as shall enable the office to properly carry out its functions, powers and duties;

(l) to analyze and evaluate all collected data, and commission or undertake any necessary research and studies, to improve the delivery of pretrial services in a manner that is consistent with meeting the needs and circumstances of each county and of the individuals receiving services, ensuring the appropriate use of services, and preventing any disparities based on an individual's needs or their membership in a protected class;

(m) to work with the office of court administration to develop training materials for judges and court staff on research and other relevant information regarding best practices on the use of pretrial services and non-monetary release;

(n) to evaluate the performance of agencies providing pretrial services, assist agencies to improve services where programs do not meet performance standards set by the office, and decertify programs or place programs on probation that remain unable to meet the standards;

(o) to assist local jurisdictions to regularly elicit feedback from current and former recipients of pretrial services regarding the court process, the services they received, recommendations to improve such services, and any other information that the office deems appropriate;

(p) to investigate and monitor any other matter related to pretrial services as needed;

(q) to develop recommendations regarding the distribution and expenditure of any monies appropriated for pretrial services. In making such recommendations, the office may consider, in addition to measures of performance, the commitment of local resources to such services and the changes thereto, the geographic balance of funding among the regions of the state, population, crime rates, poverty rates and individual community needs;

(r) to apply for and accept any grant or gift for any of the purposes of the office. Any monies so received may be expended by the office to effectuate any such purpose, subject to the same limitations as to approval of expenditures and audit as are prescribed for state monies appropriated for such purposes; and

(s) to target grants in support of innovative and cost-effective solutions that enhance the provision of quality pretrial services, including collaborative efforts serving multiple counties.

3. The office shall establish an advisory board on pretrial services. The office shall determine the size and composition of such advisory board; provided, however, that such advisory board shall include at least one representative from a non-profit pretrial services agency staff, at least two current or former recipients of pretrial services or individuals who were otherwise previously involved in the criminal justice system, the New York state association of pretrial services agencies, probation departments providing pretrial services, the New York state association of counties, and national experts or researchers as needed. The advisory board shall meet no less than two times per year. The advisory board's responsibilities shall include, but not be limited to: providing the office with recommendations for establishing the minimum standards required by subdivision two-a of section 510.45 of the criminal procedure law; reviewing any recommendations developed by the office for ensuring the appropriate use of pretrial services and improving the services that individuals under supervision are provided; and reviewing the data compiled annually by the office.

4. The office shall delegate to a city of one million or more responsibility for collecting data from such agencies within such city's jurisdiction.

5. Within amounts appropriated therefor, funding shall be made available to pay for pretrial services programs certified under this section pursuant to criteria established by the office of pretrial services, which shall take into consideration the local needs and resources, the average number of people receiving such services at any one time, the level of services required by individuals under supervision, and such other factors as may be deemed necessary. Subject to appropriations, pretrial services agencies that receive funding from a local government or municipality shall be eligible for funding from the office of pretrial services.

§ 3. This act shall take effect one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.