

STATE OF NEW YORK

5590

2023-2024 Regular Sessions

IN ASSEMBLY

March 16, 2023

Introduced by M. of A. K. BROWN -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the mental hygiene law, in relation to allowing for principals to be remanded into custody for drug treatment where there is a risk of continued substance abuse

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

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

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

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

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

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

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1 (e) the arresting officer's testimony of the principal's intoxication
2 or of witnessing the principal's use of a controlled substance; and
3 (f) the principal's possession of a controlled substance or possession
4 of paraphernalia related thereto.

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

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

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

46 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this
47 subdivision, 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 (i) knowledge of the principal's failed attempts to complete drug
4 court;

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

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

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

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

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

15 (e) 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
28 principal's counsel and the district attorney's office shall be provided
29 a copy of the principal's evaluation upon request to the court.

30 (f) 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 facility or mental health facility,
33 prior to his or her arraignment. 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 his or her
39 controlled substance evaluation including any recommendations made by a
40 licensed physician that such principal should not be held in custody of
41 the sheriff or confined at a treatment or mental health facility and
42 that the principal is not in substantial risk for substance abuse, or
43 there is not a likelihood of serious harm to the principal upon his or
44 her release from custody. The court shall consider the principal's
45 complete evaluation including treatment recommendations, record of
46 arrests, convictions and any record of participation in any drug court
47 and shall decide whether to immediately release such principal from the
48 custody of the sheriff or confinement in a treatment facility or mental
49 health facility, or to remand the principal to the custody of the sher-
50 iff or confinement in a treatment facility or mental health facility for
51 the remainder of the principal's fifteen day period of custody or
52 confinement.

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

55 5-a. Notwithstanding the provisions of subdivisions three and four of
56 this section, the court may, in its discretion, commit the principal to

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

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

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

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

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

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

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

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

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

custody of the sheriff or confinement in a treatment facility or mental health facility, or to remand the principal to the custody of the sheriff or confinement in a treatment facility or mental health facility for the remainder of the principal's fifteen day period of custody or confinement.

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

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

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

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

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

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

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

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

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

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

4 3. "Likelihood to result in harm" or "likely to result in harm" means
5 (i) a substantial risk of physical harm to the person as manifested by
6 threats of or attempts at suicide or serious bodily harm, a drug over-
7 dose requiring the use of an opioid antagonist, or other conduct demon-
8 strating that the person is dangerous to himself or herself, or (ii) a
9 substantial risk of physical harm to other persons as manifested by
10 homicidal or other violent behavior by which others are placed in
11 reasonable fear of serious physical harm.

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