

# STATE OF NEW YORK

7062

2023-2024 Regular Sessions

## IN ASSEMBLY

May 10, 2023

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

AN ACT to amend the criminal procedure law, in relation to removing the requirement that certain orders releasing a principal on such principal's own recognizance, releasing a principal under non-monetary conditions, or fixing bail, be tailored according to the least restrictive means

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

1 Section 1. The opening paragraph of subdivision 1 and subdivision 3 of  
2 section 510.10 of the criminal procedure law, the opening paragraph of  
3 subdivision 1 as amended by section 1 of subpart C of part UU of chapter  
4 56 of the laws of 2022 and subdivision 3 as added by section 2 of part  
5 JJJ of chapter 59 of the laws of 2019, are amended to read as follows:  
6 When a principal, whose future court attendance at a criminal action  
7 or proceeding is or may be required, comes under the control of a court,  
8 such court shall, in accordance with this title, by a securing order  
9 release the principal on the principal's own recognizance, release the  
10 principal under non-monetary conditions, or, where authorized, fix bail  
11 or commit the principal to the custody of the sheriff. In all such  
12 cases, except where another type of securing order is shown to be  
13 required by law, the court shall release the principal pending trial on  
14 the principal's own recognizance, unless it is demonstrated and the  
15 court makes an individualized determination that the principal poses a  
16 risk of flight to avoid prosecution. If such a finding is made, the  
17 court must select [~~the least restrictive alternative and~~] a condition or  
18 conditions that will reasonably assure the principal's return to court.  
19 The court shall explain its choice of release, release with conditions,  
20 bail or remand on the record or in writing. In making its determination,  
21 the court must consider and take into account available information  
22 about the principal, including:

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

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1 3. In cases other than as described in subdivision four of this  
2 section the court shall release the principal pending trial on the prin-  
3 cipal's own recognizance, unless the court finds on the record or in  
4 writing that release on the principal's own recognizance will not  
5 reasonably assure the principal's return to court. In such instances,  
6 the court shall release the principal under non-monetary conditions,  
7 selecting [~~the least restrictive alternative and~~] conditions that will  
8 reasonably assure the principal's return to court. The court shall  
9 explain its choice of [~~alternative and~~] conditions on the record or in  
10 writing.

11 § 2. The opening paragraph of subdivision 1 of section 510.30 of the  
12 criminal procedure law, as amended by section 2 of subpart C of part UU  
13 of chapter 56 of the laws of 2022, is amended to read as follows:

14 With respect to any principal, the court in all cases, unless other-  
15 wise provided by law, must impose the [~~least restrictive~~] kind and  
16 degree of control or restriction that is necessary to secure the princi-  
17 pal's return to court when required. In determining that matter, the  
18 court must, on the basis of available information, consider and take  
19 into account information about the principal that is relevant to the  
20 principal's return to court, including:

21 § 3. Subdivision 3 and paragraph (b) of subdivision 4 of section  
22 510.40 of the criminal procedure law, as added by section 6 of part JJJ  
23 of chapter 59 of the laws of 2019, are amended to read as follows:

24 3. Non-monetary conditions of release shall be individualized and  
25 established in writing by the court. At future court appearances, the  
26 court shall consider a lessening of conditions or modification of condi-  
27 tions to a less burdensome form based on the principal's compliance with  
28 such conditions of release. In the event of alleged non-compliance with  
29 the conditions of release in an important respect, pursuant to this  
30 subdivision, additional conditions may be imposed by the court, on the  
31 record or in writing, only after notice of the facts and circumstances  
32 of such alleged non-compliance, reasonable under the circumstances,  
33 affording the principal and the principal's attorney and the people an  
34 opportunity to present relevant, admissible evidence, relevant witnesses  
35 and to cross-examine witnesses, and a finding by clear and convincing  
36 evidence that the principal violated a condition of release in an impor-  
37 tant respect. Following such a finding, in determining whether to impose  
38 additional conditions for non-compliance, the court shall consider and  
39 may select conditions consistent with the court's obligation to impose  
40 [~~the least restrictive~~] a condition or conditions that will reasonably  
41 assure the defendant's return to court. The court shall explain on the  
42 record or in writing the reasons for its determination and for any  
43 changes to the conditions imposed.

44 (b) The specific method of electronic monitoring of the principal's  
45 location must be approved by the court. It must be [~~the least restric-~~  
46 ~~tive~~] a procedure and method that will reasonably assure the principal's  
47 return to court, and unobtrusive to the greatest extent practicable.

48 § 4. This act shall take effect on the first of November next succeed-  
49 ing the date upon which it shall have become a law.