STATE OF NEW YORK

8242

2023-2024 Regular Sessions

IN ASSEMBLY

November 6, 2023

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

AN ACT to amend the criminal procedure law and the executive law, in relation to establishing an office of pretrial services; provides for the establishment of a working group to prepare for the transition of pretrial services agencies; and provides for the repeal of such working group upon the expiration thereof

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

Section 1. Subdivisions 1, 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 a new subdivision 6 is 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~~] **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 for pretrial services agency required in accordance with subdivision three-a of section 500.10 of this title; experience working with individuals involved in the criminal legal system; and the capacity to create individualized plans to support individuals 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**, including a phone number and email contact information for each pretrial services agency**.

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

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

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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 someone receiving pretrial services be required to pay out-of-pocket for services provided or mandated by the pretrial services agency. Pretrial services agencies shall make every effort to limit transportation and other costs 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, disaggregated by each county served:

(a) the number of [~~defendants~~] individuals 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 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 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.

6. Pretrial services agency shall be responsible for making periodic, individualized recommendations for each case on whether the conditions of non-monetary release imposed by the court should be modified or eliminated. 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. Subdivision 2 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, is amended to read as follows:

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~~] one or more counties, municipalities, 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~~] A pretrial services agency may be certified to provide services in more than one county. Counties, municipalities and the state shall not contract with any private for-profit entity for such purposes.

§ 3. 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 identify and disseminate best practices for the provision of pretrial services that will maximize the likelihood that individuals successfully attend court proceedings;

(c) 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 relevant information regarding pretrial laws in New York, cultural competency, trauma-informed care, risk-needs responsivity, verbal de-escalation and crisis intervention, motivational interviewing, foundational concepts of cognitive-behavioral therapy, and effective practices in community supervision;

(d) to work with pretrial services agencies 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 for use in determining whether a person poses a risk of flight to avoid prosecution in order to inform the agency's recommendation to the court regarding whether to impose non-monetary conditions and, where necessary, on the types of conditions that would be appropriate;

(e) to work with agencies providing pretrial services to establish performance measures;

(f) 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;

(g) 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, national origin, sex, or any other protected class, as required pursuant to 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 of supervision, disaggregated by race, sex, sexual orientation, gender identity, age, and ethnicity, to the extent such information is easily 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 easily 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 easily available; and

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

(h) 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;

(i) 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 racial or other disparities;

(j) to work with local jurisdictions 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;

(k) 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 that remain unable to meet the standards;

(l) 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;

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

(n) 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;

(o) 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

(p) 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 for the purposes of providing the office with recommendations for improving services. Such advisory board shall consist of pretrial services agency staff, current or former recipients of pretrial services, representatives from the New York state association of pretrial services agencies and national experts or researchers as needed.

4. The office may coordinate with local governments on contracting with certified pretrial services agencies and in collecting data from the agencies.

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 in consultation with local governmental units, which shall take into consideration the local needs and resources as identified by local governmental units, 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.

§ 4. The office of pretrial services, in collaboration with the office of court administration and any other entity deemed necessary, shall establish a working group to prepare for the transition of pretrial services from public entities to private, non-profit entities. The working group shall organize meetings with relevant stakeholders and the general public to provide education and solicit feedback regarding the transition of services.

§ 5. This act shall take effect on April 1, 2024; provided, however, that section two of this act shall take effect three years after it shall have become a law; and provided further, however, that section four of this act shall expire and be deemed repealed on April 1, 2026. 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.