

STATE OF NEW YORK

9675

IN ASSEMBLY

April 3, 2024

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

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

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

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

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1 5-b. Upon the commitment of such principal to the custody of the sher-
2 iff, or an available, less restrictive means of confinement and super-
3 vision, the court shall order a duly licensed professional to monitor
4 such principal as needed to evaluate the principal's need for treatment
5 and/or medications, and to complete an evaluation for addiction to a
6 controlled substance. Treatment, including but not limited to medica-
7 tions, shall be provided to the principal without unnecessary delay, as
8 recommended by such licensed professional. The principal's complete
9 evaluation, including recommendations for the continued custody of such
10 principal, considerations for participation in a judicial diversion
11 program, immediate release from custody, and any other proposals for the
12 care and treatment of such principal shall be provided to the court
13 without unnecessary delay and within no more than seventy-two hours from
14 the completion of such principal's evaluation. The principal, such prin-
15 cipal's counsel and the district attorney's office shall be provided a
16 copy of the principal's evaluation upon request to the court.

17 5-c. The principal shall be afforded the opportunity for a hearing to
18 request the principal's immediate release from the custody of the sher-
19 iff or confinement in a treatment or mental health facility, prior to
20 the arraignment of such principal. If within seventy-two hours of the
21 court's receipt of the principal's request for such hearing, the princi-
22 pal is not brought before a local criminal court, the principal shall be
23 immediately released from the sheriff's custody or confinement in a
24 treatment facility or mental health facility and served an appearance
25 ticket. The principal shall be entitled to introduce their controlled
26 substance evaluation including any recommendations made by a licensed
27 physician that principal should not be held in custody of the sheriff or
28 confined at a treatment or mental health facility and that the principal
29 is not in substantial risk for substance abuse, or there is not a like-
30 lihood of the principal inflicting serious harm upon their release from
31 custody. The court shall consider the principal's complete evaluation
32 including treatment recommendations, record of arrests, convictions and
33 any record of participation in any drug court and shall decide whether
34 to immediately release such principal from the custody of the sheriff or
35 confinement in a treatment facility or mental health facility, or to
36 remand the principal to the custody of the sheriff or confinement in a
37 treatment facility or mental health facility for the remainder of the
38 principal's fifteen day period of custody or confinement.

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

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

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

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

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

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

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

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

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

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

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

54 (iv) documentation of reasons for any failed attempts to complete drug
55 court;

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

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

5 (e) 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 prin-
18 cipal's counsel and the district attorney's office shall be provided a
19 copy of the principal's evaluation upon request to the court.

20 (f) 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 or mental health facility, prior to
23 the arraignment of such principal. 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 their controlled
29 substance evaluation including any recommendations made by a licensed
30 physician that principal should not be held in custody of the sheriff or
31 confined at a treatment or mental health facility and that the principal
32 is not in substantial risk for substance abuse, or there is not a like-
33 lihood of the principal inflicting serious harm upon their release from
34 custody. The court shall consider the principal's complete evaluation
35 including treatment recommendations, record of arrests, convictions and
36 any record of participation in any drug court and shall decide whether
37 to immediately release such principal from the custody of the sheriff or
38 confinement in a treatment facility or mental health facility, or to
39 remand the principal to the custody of the sheriff or confinement in a
40 treatment facility or mental health facility for the remainder of the
41 principal's fifteen day period of custody or confinement.

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

44 5-a. Notwithstanding the provisions of subdivisions three and four of
45 this section, the court may, in its discretion, commit the principal to
46 the custody of the sheriff for a period of no more than fifteen days, if
47 such principal has a substantial risk of continued substance abuse and
48 there is a likelihood of serious harm to such principal and there exists
49 no alternative less restrictive means available to confine or supervise
50 such principal in order to prevent the principal's substantial risk of
51 continued substance abuse upon release from custody. Alternative and
52 less restrictive means of confinement and supervision shall mean avail-
53 able immediate commitment of such principal in a state licensed
54 substance abuse treatment center, drug rehabilitation center or mental
55 health facility. In making its determination, the court may consider the
56 following factors, including but not limited to:

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

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

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

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

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

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

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

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

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

53 1. With respect to any principal, the court in all cases, unless
54 otherwise provided by law, must impose a securing order in accordance
55 with section 510.10 of this article, and shall explain the basis for its
56 determination and choice of securing order on the record or in writ-

1 ing[-], which shall include, but not be limited to, whether the princi-
2 pal has a substantial risk of continued substance abuse and there is a
3 likelihood of serious harm to such principal and there exists no alter-
4 native less restrictive means available to confine or supervise such
5 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) admission by the principal that they are addicted to a controlled
13 substance;

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

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

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

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

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

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

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

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

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

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

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

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

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

54 § 7. This act shall take effect immediately.