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:

Section 1. Section 510.10 of the criminal procedure law is amended by adding three new subdivisions 5-a, 5-b and 5-c to read as follows:

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

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

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

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

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

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

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

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

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5-b. Upon the commitment of such principal to the custody of the sheriff, or an available, less restrictive means of confinement and supervision, the court shall order a duly licensed professional to monitor such principal as needed to evaluate the principal's need for treatment and/or medications, and to complete an evaluation for addiction to a controlled substance. Treatment, including but not limited to medications, shall be provided to the principal without unnecessary delay, as recommended by such licensed professional. The principal's complete evaluation, including recommendations for the continued custody of such principal, considerations for participation in a judicial diversion program, immediate release from custody, and any other proposals for the care and treatment of such principal shall be provided to the court without unnecessary delay and within no more than seventy-two hours from the completion of such principal's evaluation. The principal, such principal's counsel and the district attorney's office shall be provided a copy of the principal's evaluation upon request to the court.

5-c. The principal shall be afforded the opportunity for a hearing to request the principal's immediate release from the custody of the sheriff or confinement in a treatment or mental health facility, prior to the arraignment of such principal. If within seventy-two hours of the court's receipt of the principal's request for such hearing, the principal is not brought before a local criminal court, the principal shall be immediately released from the sheriff's custody or confinement in a treatment facility or mental health facility and served an appearance ticket. The principal shall be entitled to introduce their controlled substance evaluation including any recommendations made by a licensed physician that principal should not be held in custody of the sheriff or confined at a treatment or mental health facility and that the principal is not in substantial risk for substance abuse, or there is not a likelihood of the principal inflicting serious harm upon their release from custody. The court shall consider the principal's complete evaluation including treatment recommendations, record of arrests, convictions and any record of participation in any drug court 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.

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

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

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

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

[~~or~~]

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

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

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

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

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

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

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

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

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

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

(e) Upon the commitment of such principal to the custody of the sheriff, or an available, less restrictive means of confinement and supervision, the court shall order a duly licensed professional to monitor such principal as needed to evaluate the principal's need for treatment and/or medications, and to complete an evaluation for addiction to a controlled substance. Treatment, including but not limited to medications, shall be provided to the principal without unnecessary delay, as recommended by such licensed professional. The principal's complete evaluation, including recommendations for the continued custody of such principal, immediate release from custody, and any other proposals for the care and treatment of such principal shall be provided to the court without unnecessary delay and within no more than seventy-two hours from the completion of such principal's evaluation. The principal, such principal's counsel and the district attorney's office shall be provided a copy of the principal's evaluation upon request to the court.

(f) The principal shall be afforded the opportunity for a hearing to request the principal's immediate release from the custody of the sheriff or confinement in a treatment or mental health facility, prior to the arraignment of such principal. If within seventy-two hours of the court's receipt of the principal's request for such hearing, the principal is not brought before a local criminal court, the principal shall be immediately released from the sheriff's custody or confinement in a treatment facility or mental health facility and served an appearance ticket. The principal shall be entitled to introduce their controlled substance evaluation including any recommendations made by a licensed physician that principal should not be held in custody of the sheriff or confined at a treatment or mental health facility and that the principal is not in substantial risk for substance abuse, or there is not a likelihood of the principal inflicting serious harm upon their release from custody. The court shall consider the principal's complete evaluation including treatment recommendations, record of arrests, convictions and any record of participation in any drug court 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. Section 530.40 of the criminal procedure law is amended by adding three new subdivisions 5-a, 5-b and 5-c to read as follows:

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

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

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

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

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

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

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

5-b. Upon the commitment of such principal to the custody of the sheriff, or an available, less restrictive means of confinement and supervision, the court shall order a duly licensed professional to monitor such principal as needed to evaluate the principal's need for treatment and/or medications, and to complete an evaluation for addiction to a controlled substance. Treatment, including but not limited to medications, shall be provided to the principal without unnecessary delay, as recommended by such licensed professional. The principal's complete evaluation, including recommendations for the continued custody of such principal, immediate release from custody, and any other proposals for the care and treatment of such principal shall be provided to the court without unnecessary delay and within no more than seventy-two hours from the completion of such principal's evaluation. The principal, such principal's counsel and the district attorney's office shall be provided a copy of the principal's evaluation upon request to the court.

5-c. The principal shall be afforded the opportunity for a hearing to request the principal's immediate release from the custody of the sheriff or confinement in a treatment or mental health facility, prior to the arraignment of such principal. If within seventy-two hours of the court's receipt of the principal's request for such hearing, the principal is not brought before a local criminal court, the principal shall be immediately released from the sheriff's custody or confinement in a treatment facility or mental health facility and served an appearance ticket. The principal shall be entitled to introduce their controlled substance evaluation including any recommendations made by a licensed physician that principal should not be held in custody of the sheriff or confined at a treatment or mental health facility and that the principal is not in substantial risk for substance abuse, or there is not a likelihood of the principal inflicting serious harm upon their release from custody. The court shall consider the principal's complete evaluation including treatment recommendations, record of arrests, convictions and any record of participation in any drug court 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.

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

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

ing[.], which shall include, but not be limited to, whether the principal has a substantial risk of continued substance abuse and there is a likelihood of serious harm to such principal and there exists no alternative less restrictive means available to confine or supervise such principal in order to prevent the principal's substantial risk of continued substance abuse upon release from custody. Alternative and less restrictive means of confinement and supervision shall mean available immediate commitment of such principal in a state licensed substance abuse treatment center, drug rehabilitation center or mental health facility. In making its determination, the court may consider the following factors, including but not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7. This act shall take effect immediately.