

# STATE OF NEW YORK

8565--A

## IN SENATE

February 14, 2024

Introduced by Sens. ASHBY, WEBER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

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

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

1 with a qualifying offense when [~~he or she~~] such principal stands charged  
2 with:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 5-a. Notwithstanding the provisions of subdivisions three and four of  
47 this section, 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 (a) admission by the principal that they are addicted to a controlled  
4 substance;

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

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

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

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

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

15 5-b. 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 prin-  
28 icipal's counsel and the district attorney's office shall be provided a  
29 copy of the principal's evaluation upon request to the court.

30 5-c. 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 or mental health facility, prior to  
33 the arraignment of such principal. 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 their controlled  
39 substance evaluation including any recommendations made by a licensed  
40 physician that principal should not be held in custody of the sheriff or  
41 confined at a treatment or mental health facility and that the principal  
42 is not in substantial risk for substance abuse, or there is not a like-  
43 lihood of the principal inflicting serious harm upon their release from  
44 custody. The court shall consider the principal's complete evaluation  
45 including treatment recommendations, record of arrests, convictions and  
46 any record of participation in any drug court and shall decide whether  
47 to immediately release such principal from the custody of the sheriff or  
48 confinement in a treatment facility or mental health facility, or to  
49 remand the principal to the custody of the sheriff or confinement in a  
50 treatment facility or mental health facility for the remainder of the  
51 principal's fifteen day period of custody or confinement.

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

55 1. With respect to any principal, the court in all cases, unless  
56 otherwise provided by law, must impose a securing order in accordance

1 with section 510.10 of this article, and shall explain the basis for its  
2 determination and choice of securing order on the record or in writ-  
3 ing[-], which shall include, but not be limited to, whether the princi-  
4 pal has a substantial risk of continued substance abuse and there is a  
5 likelihood of serious harm to such principal and there exists no alter-  
6 native less restrictive means available to confine or supervise such  
7 principal in order to prevent the principal's substantial risk of  
8 continued substance abuse upon release from custody. Alternative and  
9 less restrictive means of confinement and supervision shall mean avail-  
10 able immediate commitment of such principal in a state licensed  
11 substance abuse treatment center, drug rehabilitation center or mental  
12 health facility. In making its determination, the court may consider the  
13 following factors, including but not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56 § 7. This act shall take effect immediately.