

STATE OF NEW YORK

4663

2025-2026 Regular Sessions

IN SENATE

February 11, 2025

Introduced by Sens. ASHBY, BORRELLO, HELMING, MARTINS, PALUMBO, RHOADS, WEBER, WEIK -- read twice and ordered printed, and when printed to be committed 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;

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

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1 (e) the arresting officer's testimony of the principal's intoxication
2 or of witnessing the principal's use of a controlled substance; and
3 (f) the principal's possession of a controlled substance or possession
4 of paraphernalia related thereto.

5 5-b. 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, considerations for participation in a judicial diversion
15 program, immediate release from custody, and any other proposals for the
16 care and treatment of such principal shall be provided to the court
17 without unnecessary delay and within no more than seventy-two hours from
18 the completion of such principal's evaluation. The principal, such prin-
19 icipal's counsel and the district attorney's office shall be provided a
20 copy of the principal's evaluation upon request to the court.

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

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

51 Where the principal stands charged with a qualifying offense, the
52 court, unless otherwise prohibited by law, may in its discretion release
53 the principal pending trial on the principal's own recognizance or under
54 non-monetary conditions, fix bail, order non-monetary conditions in
55 conjunction with fixing bail, or, where the defendant is charged with a
56 qualifying offense [~~which is a felony~~], the court may commit the princi-

1 pal to the custody of the sheriff. The court shall explain its choice of
2 securing order on the record or in writing. A principal stands charged
3 with a qualifying offense when [~~he or she~~] such principal stands charged
4 with:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 5-a. Notwithstanding the provisions of subdivisions three and four of
49 this section, the court may, in its discretion, commit the principal to
50 the custody of the sheriff for a period of no more than fifteen days, if
51 such principal has a substantial risk of continued substance abuse and
52 there is a likelihood of serious harm to such principal and there exists
53 no alternative less restrictive means available to confine or supervise
54 such principal in order to prevent the principal's substantial risk of
55 continued substance abuse upon release from custody. Alternative and
56 less restrictive means of confinement and supervision shall mean avail-

1 able immediate commitment of such principal in a state licensed
2 substance abuse treatment center, drug rehabilitation center or mental
3 health facility. In making its determination, the court may consider the
4 following factors, including but not limited to:

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

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

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

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

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

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

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

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

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

1 1. With respect to any principal, the court in all cases, unless
2 otherwise provided by law, must impose a securing order in accordance
3 with section 510.10 of this article, and shall explain the basis for its
4 determination and choice of securing order on the record or in writ-
5 ing[-], which shall include, but not be limited to, whether the princi-
6 pal has a substantial risk of continued substance abuse and there is a
7 likelihood of serious harm to such principal and there exists no alter-
8 native less restrictive means available to confine or supervise such
9 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 witnessing the principal's
25 use of a controlled substance; and

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

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

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

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

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

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

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

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

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

4 § 7. This act shall take effect immediately.