

STATE OF NEW YORK

2282--A

2025-2026 Regular Sessions

IN SENATE

January 16, 2025

Introduced by Sens. HELMING, BORRELLO, CHAN, GALLIVAN, MURRAY, OBERACKER, O'MARA, ORTT, WALCZYK -- 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 executive law and the criminal procedure law, in relation to enacting the "pretrial risk overview for threat evaluation, custody, and treatment (PROTECT) act" and establishing a risk assessment instrument to evaluate certain defendants; and to repeal certain provisions of the criminal procedure law relating thereto

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

1 Section 1. Legislative findings and intent. The legislature finds that
2 localities throughout New York State have struggled to prevent the pre-
3 trial release of individuals who pose a threat to themselves and their
4 communities. Moreover, many municipalities outside of New York City lack
5 adequate funding and resources to develop and appropriate plans and
6 invest in necessary technology, such as GPS monitoring, for successful
7 monitoring of criminal defendants who have been released into the commu-
8 nity pending trial. We also find that the current system for determining
9 remand, coupled with this lack of resources, has enabled individuals to
10 reoffend during their period of pre-trial release. As a result, we have
11 seen an increase in crime and a growing concern about public safety
12 throughout our state. In response, the legislature seeks to create a
13 system that balances reasonable fairness for criminal defendants and the
14 need to protect the public from dangerous offenders. This proposal would
15 create a risk assessment instrument to determine the danger an individ-
16 ual poses to themselves and the community. By using this instrument,
17 courts can make decisions regarding remand which are unrelated to an
18 individual's ability to afford bail, accomplishing the stated goals of
19 previous reforms while also ensuring public safety. This proposal

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

LBD04400-03-5

1 further addresses the threat posed by repeat offenders by ensuring that
2 individuals arrested for a new serious offense after being released
3 remain in custody pending trial. We also find that it is crucial that
4 individuals with serious mental illnesses are quickly evaluated and
5 provided treatment rather than being incarcerated without access to
6 necessary support. Accordingly, this proposal encourages courts to
7 utilize existing statute to refer individuals in need of mental health
8 treatment to the appropriate venue.

9 § 2. Short title. This act shall be known and may be cited as the
10 "pretrial risk overview for threat evaluation, custody, and treatment
11 (PROTECT) act".

12 § 3. The executive law is amended by adding a new section 845-f to
13 read as follows:

14 § 845-f. Risk assessment instrument. 1. The division shall create a
15 risk assessment instrument to be used by all courts in the state to aid
16 judges in determining whether to release or detain a principal, where
17 and when release is appropriate, and, where applicable, necessary condi-
18 tions that should be imposed as part of such release. Such instrument
19 shall be developed based on empirical data and risk factors relevant to
20 the danger that the principal poses to themselves, another person, or the
21 community as a whole, and the likelihood that such principal may attempt
22 to evade or obstruct the criminal justice process. Such tool shall
23 incorporate the following factors, including but not limited to:

24 (a) The nature of the charge and whether it involves allegations of
25 causing or threatening harm to another person or persons;

26 (b) The principal's criminal history, with emphasis on previous
27 convictions for violent felonies, escape, bail jumping, witness tamper-
28 ing and witness intimidation, and any history of failing to appear in
29 court or failing to comply with court orders. Such criminal history
30 shall include, but not be limited to, criminal convictions, juvenile
31 delinquent and youthful offender adjudications;

32 (c) The principal's history of use or possession of firearms or access
33 to deadly weapons or dangerous instruments, as defined in section 10.00
34 of the penal law;

35 (d) The principal's known associations with criminal street gangs as
36 defined in section 10-170 of the administrative code of the city of New
37 York or a criminal enterprise, as defined in section 460.10 of the penal
38 law;

39 (e) Any history of threats or intimidation to witnesses in prior crim-
40 inal proceedings; and

41 (f) The extent of the principal's history within the jurisdiction
42 where the criminal charges are pending, and the extent of ties, includ-
43 ing family ties, outside the state of New York.

44 2. Nothing in this section shall prohibit the division from incorpo-
45 rating any other factors which may aid in determining whether a princi-
46 pal poses a risk of flight or a safety risk.

47 3. Such instrument shall include a recommendation as to whether a
48 principal should be detained, released on bail, or released on non-mone-
49 tary conditions as well as a recommendation as to which non-monetary
50 conditions should be imposed.

51 § 4. The criminal procedure law is amended by adding a new section
52 510.16 to read as follows:

53 § 510.16 Completion of risk assessment instrument.

54 1. The court shall order the completion of a risk assessment instru-
55 ment created by the division of criminal justice services pursuant to
56 section eight hundred forty-seven-f of the executive law for all princi-

pals who are charged with a felony or class A misdemeanor. Once a principal is arraigned on a felony or class A misdemeanor, the court shall direct the applicable pretrial services agency to complete a risk assessment instrument. The court shall order the detention of a principal pending the completion of such risk assessment instrument. Absent extraordinary circumstances, the court shall make a decision on detention within forty-eight hours.

2. No court may release a principal charged with a felony or a class A misdemeanor unless and until it has had an opportunity to review and consider a completed risk assessment instrument.

§ 5. Subdivision 1 of section 510.10 of the criminal procedure law, as amended by section 1 of subpart C of part UU of chapter 56 of the laws of 2022, the opening paragraph as amended by section 2 of subpart A of part VV of chapter 56 of the laws of 2023, is amended to read as follows:

1. When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall impose a securing order in accordance with this title. Except as otherwise required by law, the court shall make an individualized determination as to whether the principal poses a risk of flight to avoid prosecution and/or a risk to the safety and security of the community, themselves, or another person, consider the kind and degree of control or restriction necessary to reasonably assure the principal's return to court, and select a securing order consistent with its determination under this subdivision. The court shall explain the basis for its determination and its choice of securing order on the record or in writing. In making a determination under this subdivision, the court must consider and take into account the risk assessment instrument, the recommendation of the pretrial services agencies, the arguments of the prosecutor and principal and available information about the principal, including:

(a) The principal's character, reputation, habits, mental condition, activities and history;

(b) If the principal is a defendant, the charges facing the principal and the weight of the evidence against such principal in the pending criminal action;

(c) The principal's criminal conviction record if any;

(d) The principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.1 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any;

(e) The principal's previous record with respect to flight to avoid criminal prosecution and lack of compliance with court orders;

~~(f) [If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances, and, in cases where bail is authorized, the principal's ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond;~~

~~(g)~~ Any violation by the principal of an order of protection issued by any court;

~~(h)~~ (g) The principal's history of use or possession of a firearm;

~~(i)~~ (h) Whether the charge is alleged to have caused serious harm to an individual or group of individuals; ~~and~~

~~(j)~~ (i) If the principal is a defendant, in the case of an application for a securing order pending appeal, the merit or lack of merit of the appeal~~[-]~~;

(j) Whether the principal has any known associations with criminal street gangs or criminal enterprises;

(k) The principal's ties to the jurisdiction where the court sits and whether the principal has any ties outside the state of New York; and

(l) The charges facing the principal and the weight of the evidence against such principal in the pending criminal action.

§ 6. Subdivision 4 of section 510.10 of the criminal procedure law is REPEALED and two new subdivisions 4 and 7 are added to read as follows:

4. Where a principal is arrested on a new offense of a felony or class A misdemeanor which was committed after being released pending trial, or being issued an appearance ticket, such principal shall be committed to the custody of the sheriff until appearing before a judge for arraignment. Upon arraignment, the court shall remand the principal to the custody of the sheriff unless and until the judge, after reviewing all relevant information, including the risk assessment instrument created pursuant to section 510.16 of this title, determines that the risk that the principal will reoffend has been mitigated with appropriate conditions of release. Should the court determine that such risk cannot be mitigated with any reasonable conditions of release, the court shall order that the principal remain in the custody of the sheriff during the pendency of the proceeding.

7. Nothing in this section shall prohibit the court from directing that a defendant who presents an immediate risk of serious harm to themselves or others be transported to a hospital for a psychiatric assessment and appropriate treatment pursuant to paragraph (b) of subdivision three-c of section 500.10 of this title.

§ 7. Subdivisions 3 and 5 of section 510.10 of the criminal procedure law, subdivision 3 as amended by section 2 of subpart A of part VV of chapter 56 of the laws of 2023 and subdivision 5 as added by section 2 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

~~3. [In cases other than as described in subdivision four of this section, the]~~ The court ~~[shall]~~ may commit the principal to the custody of the sheriff, fix bail, release the principal pending trial on the principal's own recognizance, ~~[unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall]~~ or release the principal under non-monetary conditions as provided for in subdivision three-a of section 500.10 of this title that will reasonably assure the principal's return to court. The court shall explain its choice of securing order on the record or in writing.

5. Notwithstanding the provisions of ~~[subdivisions]~~ subdivision ~~three and four~~ of this section, with respect to any charge for which bail or remand is not ordered, and for which the court would not or could not otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

§ 8. Subparagraphs (ix), (x) and (xi) of paragraph (b) of subdivision 1 of section 150.20 of the criminal procedure law, as added by section 1 of subpart B of part UU of chapter 56 of the laws of 2022, are amended to read as follows:

(ix) the person is eighteen years of age or older and charged with criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law; or

(x) the person is eighteen years of age or older and charged with a hate crime as defined in section 485.05 of the penal law[~~;- or~~
~~(xi) the offense is a qualifying offense pursuant to paragraph (t) of subdivision four of section 510.10 of this chapter, or pursuant to paragraph (t) of subdivision four of section 530.40 of this chapter~~].

§ 9. Subdivision 1 of section 530.20 of the criminal procedure law, as amended by section 16 of part JJJ of chapter 59 of the laws of 2019, paragraph (a) and the opening paragraph of paragraph (b) as amended by section 6 of subpart A of part VV of chapter 56 of the laws of 2023, paragraph (b) as amended by section 3 of part UU of chapter 56 of the laws of 2020, subparagraphs (xix) and (xx) of paragraph (b) as amended and subparagraph (xxi) of paragraph (b) as added by section 4 of subpart C of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

1. (a) [~~In cases other than as described in paragraph (b) of this subdivision, the~~] The court shall commit the principal to the custody of the sheriff, fix bail, release the principal pending trial on the principal's own recognizance or release the principal pending trial under non-monetary conditions, the determination for which shall be made in accordance with subdivision one of section 510.10 of this title. The court shall explain the basis for its determination and choice of securing order on the record or in writing.

(b) [~~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 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;~~

(ii) ~~a crime involving witness intimidation under section 215.15 of the penal law;~~

(iii) ~~a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;~~

(iv) ~~a class A felony defined in the penal law, provided, that for class A felonies under article two hundred twenty of such law, only class A-I felonies shall be a qualifying offense;~~

(v) ~~a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or a felony sex offense defined in section 70.80 of the penal law or a crime involving incest as defined in section 255.25, 255.26 or 255.27 of such law, or a misdemeanor defined in article one hundred thirty of such law;~~

(vi) ~~conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty five of the penal law;~~

(vii) ~~money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the~~

~~penal law; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;~~

~~(viii) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;~~

~~(ix) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;~~

~~(x) any crime that is alleged to have caused the death of another person;~~

~~(xi) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;~~

~~(xii) aggravated vehicular assault as defined in section 120.04 a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;~~

~~(xiii) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;~~

~~(xiv) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01 a of the penal law;~~

~~(xv) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;~~

~~(xvi) failure to register as a sex offender pursuant to section one hundred sixty-eight t of the correction law or endangering the welfare of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under article six C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight l of the correction law;~~

~~(xvii) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;~~

~~(xviii) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;~~

~~(xix) a felony, where the defendant qualifies for sentencing on such charge as a persistent felony offender pursuant to section 70.10 of the penal law;~~

~~(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 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 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.~~

~~(d)~~ Notwithstanding the provisions of ~~[paragraphs]~~ paragraph (a) ~~[and (b)]~~ of this subdivision, with respect to any charge for which bail or remand is not ordered, and for which the court would not or could not otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

§ 10. Section 530.20 of the criminal procedure law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. Where a principal is arrested on a new offense of a felony or class A misdemeanor which was committed after being released pending trial, or being issued an appearance ticket, such principal shall be committed to the custody of the sheriff until appearing before a judge for arraignment. Upon arraignment, the court shall remand the principal to the custody of the sheriff unless and until the judge, after reviewing all relevant information, including the risk assessment instrument created pursuant to section 510.16 of this title, determines that the risk that the principal will reoffend has been mitigated with appropriate conditions of release. Should the court determine that such risk cannot be mitigated with any reasonable conditions of release, the court shall order that the principal remain in the custody of the sheriff during the pendency of the proceeding.

4. Nothing in this section shall prohibit the court from directing that a defendant who presents an immediate risk of serious harm to themselves or others be transported to a hospital for a psychiatric assessment

1 and appropriate treatment pursuant to paragraph (b) of subdivision
2 three-c of section 500.10 of this title.

3 § 11. Subdivision 4 of section 530.40 of the criminal procedure law is
4 REPEALED and two new subdivisions 4 and 8 are added to read as follows:

5 4. Where a principal is arrested on a new offense of a felony or class
6 A misdemeanor which was committed after being released pending trial, or
7 being issued an appearance ticket, such principal shall be committed to
8 the custody of the sheriff until appearing before a judge for arraignment.
9 Upon arraignment, the court shall remand the principal to the
10 custody of the sheriff unless and until the judge, after reviewing all
11 relevant information, including the risk assessment instrument created
12 pursuant to section 510.16 of this title, determines that the risk that
13 the principal will reoffend has been mitigated with appropriate condi-
14 tions of release. Should the court determine that such risk cannot be
15 mitigated with any reasonable conditions of release, the court shall
16 order that the principal remain in the custody of the sheriff during the
17 pendency of the proceeding.

18 8. Nothing in this section shall prohibit the court from directing
19 that a defendant who presents an immediate risk of serious harm to them-
20 self or others be transported to a hospital for a psychiatric assessment
21 and appropriate treatment pursuant to paragraph (b) of subdivision
22 three-c of section 500.10 of this title.

23 § 12. Subdivisions 2, 5, 6 and 7 of section 530.40 of the criminal
24 procedure law, subdivision 5 as added and subdivisions 2, 6 and 7 as
25 amended by section 18 of part JJJ of chapter 59 of the laws of 2019, are
26 amended to read as follows:

27 2. ~~[When the defendant is charged with a felony, the]~~ The court may~~[,~~
28 ~~unless otherwise provided by law in its discretion,]~~ order recognizance,
29 release under non-monetary conditions or, ~~[where authorized,]~~ bail. In
30 any such case in which an indictment (a) has resulted from an order of a
31 local criminal court holding the defendant for the action of the grand
32 jury, or (b) was filed at a time when a felony complaint charging the
33 same conduct was pending in a local criminal court, and in which such
34 local criminal court or a superior court judge has issued an order of
35 recognizance, release under non-monetary conditions or, where author-
36 ized, bail which is still effective, the superior court's order may be
37 in the form of a direction continuing the effectiveness of the previous
38 order.

39 5. Notwithstanding the provisions of ~~[subdivisions]~~ subdivision three
40 ~~[and four]~~ of this section, with respect to any charge for which bail or
41 remand is not ordered, and for which the court would not or could not
42 otherwise require bail or remand, a defendant may, at any time, request
43 that the court set bail in a nominal amount requested by the defendant
44 in the form specified in paragraph (a) of subdivision one of section
45 520.10 of this title; if the court is satisfied that the request is
46 voluntary, the court shall set such bail in such amount.

47 6. Notwithstanding the provisions of subdivisions two~~[,~~ and three
48 ~~[and four]~~ of this section, a superior court may not order recognizance,
49 release under non-monetary conditions or, where authorized, bail, or
50 permit a defendant to remain at liberty pursuant to an existing order,
51 after the defendant has been convicted of either: (a) a class A felony
52 or (b) any class B or class C felony as defined in article one hundred
53 thirty of the penal law committed or attempted to be committed by a
54 person eighteen years of age or older against a person less than eigh-
55 teen years of age. In either case the court must commit or remand the
56 defendant to the custody of the sheriff.

1 7. Notwithstanding the provisions of subdivisions two[~~7~~] ~~and~~ three
2 [~~and four~~] of this section, a superior court may not order recognizance,
3 release under non-monetary conditions or, where authorized, bail when
4 the defendant is charged with a felony unless and until the district
5 attorney has had an opportunity to be heard in the matter and such court
6 and counsel for the defendant have been furnished with a report as
7 described in subparagraph (ii) of paragraph (b) of subdivision two of
8 section 530.20 of this article.

9 § 13. This act shall take effect immediately; provided, however, that
10 the provisions of sections four, five, six, seven, eight, nine, ten,
11 eleven and twelve of this act shall take effect on the one hundred twen-
12 tieth day after it shall have become a law.