§ 500.10 Recognizance, bail and commitment; definitions of terms.

As used in this title, and in this chapter generally, the following terms have the following meanings:

1. "Principal" means a defendant in a criminal action or proceeding, or a person adjudged a material witness therein, or any other person so involved therein that the principal may by law be compelled to appear before a court for the purpose of having such court exercise control over the principal's person to secure the principal's future attendance at the action or proceeding when required, and who in fact either is before the court for such purpose or has been before it and been subjected to such control.

2. "Release on own recognizance." A court releases a principal on the principal's own recognizance when, having acquired control over the principal's person, it permits the principal to be at liberty during the pendency of the criminal action or proceeding involved upon condition that the principal will appear thereat whenever the principal's attendance may be required and will at all times render the principal amenable to the orders and processes of the court.

3. "Fix bail." A court fixes bail when, having acquired control over the person of a principal, it designates a sum of money and stipulates that, if bail in such amount is posted on behalf of the principal and approved, it will permit him to be at liberty during the pendency of the criminal action or proceeding involved.

3-a. "Release under non-monetary conditions." A court releases a principal under non-monetary conditions when, having acquired control over a person, it authorizes the person to be at liberty during the pendency of the criminal action or proceeding involved under conditions ordered by the court. The conditions ordered shall reflect the findings of the individualized determination warranting such imposition of non-monetary conditions to reasonably assure the principal's return to court and reasonably assure the principal's compliance with court conditions. A principal shall not be required to pay for any part of the

cost of release on non-monetary conditions. Such conditions may include, among other conditions reasonable under the circumstances:

(a) that the principal be in contact with a pretrial services agency serving principals in that county;

(b) that the principal abide by reasonable, specified restrictions on travel that are reasonably related to an actual risk of flight from the jurisdiction, or that the principal surrender his or her passport;

(c) that the principal refrain from possessing a firearm, destructive device or other dangerous weapon;

(d) that, upon a finding in accordance with subdivision four of section 510.45 of this title, the person be placed in reasonable pretrial supervision with a pretrial services agency serving principals in that county, provided, however that where non-monetary conditions are imposed in combination with a securing order also fixing bail, the court shall not be required to make such separate finding;

(e) that the principal refrain from associating with certain persons who are connected with the instant charge, including, when appropriate, specified victims, witnesses, or co-defendants;

(f) that the principal be referred to a pretrial services agency for placement in mandatory programming, including counseling, treatment, including but not limited to mental health and chemical dependence treatment, and intimate partner violence intervention programs. Where applicable, the court may refer the principal to a crisis stabilization center or direct that the principal be removed to a hospital pursuant to section 9.43 of the mental hygiene law;

(g) that the principal make diligent efforts to maintain employment, housing, or enrollment in school or educational programming;

(h) that the principal obey an order of protection issued by the court, including an order issued pursuant to section 530.11 of this title;

(i) that the principal obey conditions set by the court addressed to the safety of a victim of a family offense as defined in section 530.11 of this title including conditions that may be requested by or on behalf of the victim; and

(j) that, when it is shown pursuant to paragraph (a) of subdivision four of section 510.40 of this title that no other realistic non-monetary condition or set of non-monetary conditions will suffice to

reasonably assure the principal's return to court, the principal's location be monitored with an approved electronic monitoring device, in accordance with such subdivision four of section 510.40 of this title.

3-b. Subdivision three-a of this section presents a non-exclusive list of conditions that may be considered and imposed by law, singularly or in combination, when reasonable under the circumstances of the defendant, the case, and the situation of the defendant. The court need not necessarily order one or more specific conditions first before ordering one or more or additional conditions.

3-c. (a) "Release for mental health assessment and evaluation." When a principal appearing before the court appears, by clear and convincing evidence, to be mentally ill at the present moment such that if left unattended their conduct may result in harm to himself or herself or others, the court may: order as a condition of release under supervision that the principal seek a voluntary psychiatric assessment under section 9.13 of the mental hygiene law if the principal has a recently documented history of mental illness or psychiatric hospitalization, and the defense consents to the assessment.

(b) "Involuntary assessment pending release." When a principal appearing before the court appears, by clear and convincing evidence, to be mentally ill at the present moment such that if left unattended their conduct may result in immediate serious harm to himself or herself or others, the court may order as a condition of release under supervision that the principal be taken by an entity, including but not limited to, pretrial services agencies, or another qualified provider, to a local hospital for immediate psychiatric assessment involuntarily under section 9.43 of the mental hygiene law if the principal is conducting himself or herself before the court, in such a manner which in a person who is not mentally ill would be deemed disorderly conduct which is likely to result in immediate serious harm to himself or herself or others. The court is also authorized to request peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department, to take into custody and transport such person to a hospital for determination by the director of community services when such person

qualifies for admission pursuant to this section. The court may authorize an ambulance service, as defined by subdivision two of section three thousand one of the public health law, to transport such person to any hospital specified in subdivision (a) of section 9.39 of the mental hygiene law or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 of the mental hygiene law, that is willing to receive such person. Upon removal, there shall be a determination made by the director of such hospital or program whether such person should be retained therein pursuant to section 9.39 of the mental hygiene law. If the principal is hospitalized, at the time of release the hospital shall complete a discharge plan with linkages to community-based mental health treatment, including services that are provided after the individual has stabilized, if applicable and other community-based services as may be deemed necessary and appropriate and notify pretrial services agencies and the defense counsel of the person's discharge. Pretrial services agencies are responsible for ensuring continuity of care for the principal in the community.

(c) "Pretrial services." Pretrial services agencies shall be required, upon the request of the court to provide a summary of the assessment, limited to necessary and relevant information relating to the principal's completion of an assessment and evaluation, placement, treatment, and discharge from the hospital solely for the purpose of ensuring compliance with the conditions of release and in accordance with any applicable state and federal confidentiality laws. Conditions of release may not be revoked solely based on noncompliance with treatment.

(d) "Confidential." Any clinical record produced as a part of the assessment, services or treatment plans required pursuant to this subdivision shall be considered confidential and shall not be considered part of the public record, and access to such records shall be limited in accordance with applicable federal and state privacy laws. Such information shall not be used as part of the criminal proceeding and shall be expunged upon the resolution of the case.

(e) "Referral." Courts shall refer the principal, where appropriate, to a judicial diversion program as defined in section 216.00 of this chapter or to any other appropriate treatment court.

4. "Commit to the custody of the sheriff." A court commits a principal to the custody of the sheriff when, having acquired control over the principal's person, it orders that the principal be confined in the custody of the sheriff during the pendency of the criminal action or proceeding involved.

5. "Securing order" means an order of a court committing a principal to the custody of the sheriff or fixing bail, where authorized, or releasing the principal on the principal's own recognizance or releasing the principal under non-monetary conditions, or, as otherwise authorized under this title, ordering non-monetary conditions in conjunction with fixing bail.

6. "Order of recognizance or bail" means a securing order releasing a principal on the principal's own recognizance or under non-monetary conditions or, where authorized, fixing bail.

7. "Application for recognizance or bail" means an application by a principal that the court, instead of committing the principal to or retaining the principal in the custody of the sheriff, either release the principal on the principal's own recognizance, release under non-monetary conditions, or, where authorized, fix bail.

8. "Post bail" means to deposit bail in the amount and form fixed by the court, with the court or with some other authorized public servant or agency.

9. "Bail" means cash bail, a bail bond or money paid with a credit card.

10. "Cash bail" means a sum of money, in the amount designated in an order fixing bail, posted by a principal or by another person on his behalf with a court or other authorized public servant or agency, upon the condition that such money will become forfeit to the people of the state of New York if the principal does not comply with the directions of a court requiring his attendance at the criminal action or proceeding involved or does not otherwise render himself amenable to the orders and

processes of the court.

11. "Obligor" means a person who executes a bail bond on behalf of a principal and thereby assumes the undertaking described therein. The principal himself may be an obligor.

12. "Surety" means an obligor who is not a principal.

13. "Bail bond" means a written undertaking, executed by one or more obligors, that the principal designated in such instrument will, while at liberty as a result of an order fixing bail and of the posting of the bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event that he fails to do so the obligor or obligors will pay to the people of the state of New York a specified sum of money, in the amount designated in the order fixing bail.

14. "Appearance bond" means a bail bond in which the only obligor is the principal.

15. "Surety bond" means a bail bond in which the obligor or obligors consist of one or more sureties or of one or more sureties and the principal.

16. "Insurance company bail bond" means a surety bond, executed in the form prescribed by the superintendent of financial services, in which the surety-obligor is a corporation licensed by the superintendent of financial services to engage in the business of executing bail bonds.

17. "Secured bail bond" means a bail bond secured by either:

(a) Personal property which is not exempt from execution and which, over and above all liabilities and encumbrances, has a value equal to or greater than the total amount of the undertaking; or

(b) Real property having a value of at least twice the total amount of the undertaking. For purposes of this paragraph, value of real property is determined by either:

(i) dividing the last assessed value of such property by the last given equalization rate or in a special assessing unit, as defined in article eighteen of the real property tax law, the appropriate class ratio established pursuant to section twelve hundred two of such law of the assessing municipality wherein the property is situated and by deducting from the resulting figure the total amount of any liens or other encumbrances upon such property; or

(ii) the value of the property as indicated in a certified appraisal report submitted by a state certified general real estate appraiser duly licensed by the department of state as provided in section one hundred sixty-j of the executive law, and by deducting from the appraised value the total amount of any liens or other encumbrances upon such property. A lien report issued by a title insurance company licensed under article sixty-four of the insurance law, that guarantees the correctness of a lien search conducted by it, shall be presumptive proof of liens upon the property.

18. "Partially secured bail bond" means a bail bond secured only by a deposit of a sum of money not exceeding ten percent of the total amount of the undertaking.

19. "Unsecured bail bond" means a bail bond, other than an insurance company bail bond, not secured by any deposit of or lien upon property.

20. "Court" includes, where appropriate, a judge authorized to act as described in a particular statute, though not as a court.

21. "Qualifies for electronic monitoring," for purposes of subdivision four of section 510.40 of this title, means a person charged with a felony, a misdemeanor crime of domestic violence, a misdemeanor defined in article one hundred thirty of the penal law, a crime and the circumstances of paragraph (b) of subdivision two of section 530.60 of this title apply, or any misdemeanor where the defendant stands previously convicted, within the past five years, of a violent felony offense as defined in section 70.02 of the penal law. For the purposes of this subdivision, in calculating such five year period, any period of time during which the defendant was incarcerated for any reason between

the time of the commission of any such previous crime and the time of commission of the present crime shall be excluded and such five year period shall be extended by a period or periods equal to the time served under such incarceration.

22. "Misdemeanor crime of domestic violence," for purposes of subdivision twenty-one of this section, means a misdemeanor under the penal law provisions and circumstances described in subdivision one of section 530.11 of this title.