

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the criminal procedure law, the judiciary law and the executive law, in relation to providing for the remand of a defendant during the pendency of a case; and to repeal certain provisions of the criminal procedure law relating thereto (Part __);

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

1 PART __

2 Section 1. Subdivisions 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and
3 19 of section 500.10 of the criminal procedure law are REPEALED.

4 § 2. Subdivisions 3-a, 6, 7, 20, 21 and 22 of section 500.10 of the
5 criminal procedure law, subdivision 3-a as added and subdivisions 6 and
6 7 as amended by section 1-e of part JJJ of chapter 59 of the laws of
7 2019, subdivisions 21 and 22 as added by section 1-f of part JJJ of
8 chapter 59 of the laws of 2019, are amended to read as follows:

9 3-a. "Release under non-monetary conditions." A court releases a prin-
10 cipal under non-monetary conditions when, having acquired control over a
11 person, it authorizes the person to be at liberty during the pendency of
12 the criminal action or proceeding involved under conditions ordered by
13 the court, which shall be the least restrictive conditions that will
14 reasonably assure the principal's return to court or prevent the princi-
15 pal from committing a crime involving serious physical injury to another
16 person based on the facts of the instant case. A principal shall not be
17 required to pay for any part of the cost of release on non-monetary

1 conditions. Such conditions may include, among other conditions reason-
2 able under the circumstances:

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

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

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

10 (d) that, when it is shown pursuant to subdivision four of section
11 510.45 of this title that no other realistic monetary condition or set
12 of non-monetary conditions will suffice to reasonably assure the
13 person's return to court or prevent the principal from committing a
14 crime involving serious physical injury to another person based on the
15 facts of the instant case, the person be placed in reasonable pretrial
16 supervision with a pretrial services agency serving principals in that
17 county;

18 (e) that the principal refrain from associating with certain persons
19 who are connected with the instant case, including victims, witnesses,
20 or co-defendants;

21 (f) that the principal be referred to a pretrial services agency for
22 placement in mandatory programming, including counseling, treatment, and
23 intimate partner violence intervention programs. Where applicable, the
24 court may direct the principal be removed to a hospital pursuant to
25 section 9.43 of the mental hygiene law;

26 (g) that the principal maintain employment, housing, or enrollment in
27 school or educational programming;

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

4 (i) that the principal obey conditions set by the court in order to
5 implement a safety plan made by an alleged victim of a family offense as
6 defined in section 530.11 of this title and a law enforcement agency, a
7 victims services agency, or a pretrial services agency;

8 (j) that, when it is shown pursuant to paragraph (a) of subdivision
9 four of section 510.40 of this title that no other realistic non-mone-
10 tary condition or set of non-monetary conditions will suffice to reason-
11 ably assure the principal's return to court or prevent the principal
12 from committing a crime involving serious physical injury to another
13 person based on the facts of the instant case, the principal's location
14 be monitored with an approved electronic monitoring device, in accord-
15 ance with such subdivision four of section 510.40 of this title. [A
16 principal shall not be required to pay for any part of the cost of
17 release on non-monetary conditions.]

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

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

26 [20.] 8. "Court" includes, where appropriate, a judge authorized to
27 act as described in a particular statute, though not as a court.

1 [21.] 9. "Qualifies for electronic monitoring," for purposes of subdivi-
2 vision four of section 510.40 of this title, means a person charged with
3 a felony, a misdemeanor crime of domestic violence, a misdemeanor
4 defined in article one hundred thirty of the penal law, a crime and the
5 circumstances of paragraph (b) of subdivision two of section 530.60 of
6 this title apply, or any misdemeanor where the defendant stands previ-
7 ously convicted, within the past five years, of a violent felony offense
8 as defined in section 70.02 of the penal law. For the purposes of this
9 subdivision, in calculating such five year period, any period of time
10 during which the defendant was incarcerated for any reason between the
11 time of the commission of any such previous crime and the time of
12 commission of the present crime shall be excluded and such five year
13 period shall be extended by a period or periods equal to the time served
14 under such incarceration.

15 [22.] 10. "Misdemeanor crime of domestic violence," for purposes of
16 subdivision [twenty-one] nine of this section, means a misdemeanor under
17 the penal law provisions and circumstances described in subdivision one
18 of section 530.11 of this title.

19 § 3. Subdivisions 1, 3, 4 and 5 of section 510.10 of the criminal
20 procedure law, subdivision 1 as amended and subdivisions 3, 4 and 5 as
21 added by section 2 of part JJJ of chapter 59 of the laws of 2019, are
22 amended to read as follows:

23 1. When a principal, whose future court attendance at a criminal
24 action or proceeding is or may be required, comes under the control of a
25 court, such court shall, in accordance with this title, by a securing
26 order release the principal on the principal's own recognizance, release
27 the principal under non-monetary conditions, or, where authorized, [fix
28 bail or] commit the principal to the custody of the sheriff. In all such

1 cases, except where another type of securing order is shown to be
2 [required] authorized by law, the court shall release the principal
3 pending trial on the principal's own recognizance, unless [it is demon-
4 strated and the court makes an individualized determination that the
5 principal poses a risk of flight to avoid prosecution. If such a finding
6 is made, the court must select the least restrictive alternative and
7 condition or conditions that will reasonably assure the principal's
8 return to court] the court has found that the prosecution has rebutted
9 the presumption of release. The court shall explain its choice of
10 release, release with conditions[, bail] or remand on the record or in
11 writing.

12 3. In cases other than as described in subdivision four of this
13 section the court shall release the principal pending trial on the prin-
14 cipal's own recognizance, unless the court finds on the record or in
15 writing that release on the principal's own recognizance will not
16 reasonably assure the principal's return to court or prevent the princi-
17 pal from committing a crime involving serious physical injury to another
18 person based on the facts of the instant case. In such instances, the
19 court shall release the principal under non-monetary conditions, select-
20 ing the least restrictive alternative and conditions that will reason-
21 ably assure the principal's return to court or prevent the principal
22 from committing a crime involving serious physical injury to another
23 person based on the facts of the instant case. The court shall explain
24 its choice of alternative and conditions on the record or in writing.

25 4. Where the principal stands charged with a qualifying offense, the
26 court, unless otherwise prohibited by law, may in its discretion release
27 the principal pending trial on the principal's own recognizance or under
28 non-monetary conditions[, fix bail,] or, where [the defendant is charged

1 with a qualifying offense which is a felony, the court may] authorized,
2 commit the principal to the custody of the sheriff. The court may
3 commit the defendant to the custody of the sheriff prior to a hearing to
4 determine commitment to the custody of the sheriff during the pendency
5 of the case pursuant to section 530.20 or 530.40 of this title. A prin-
6 cipal stands charged with a qualifying offense [for the purposes of this
7 subdivision] when he or she stands charged with:

8 (a) a felony enumerated in section 70.02 of the penal law, other than
9 [burglary in the second degree as defined in subdivision two of section
10 140.25 of the penal law or] robbery in the second degree as defined in
11 subdivision one of section 160.10 of the penal law, provided, however,
12 that a charge of burglary in the second degree as defined in subdivision
13 two of section 140.25 of the penal law shall not be a qualifying offense
14 for the purposes of this section where the defendant is charged with
15 entering an area of the dwelling that is shared between multiple units;

16 (b) a crime involving witness intimidation under section 215.15 of the
17 penal law;

18 (c) a crime involving witness tampering under section 215.11, 215.12
19 or 215.13 of the penal law;

20 (d) a class A felony defined in the penal law, [other than in article
21 two hundred twenty of such law with the exception of section 220.77 of
22 such law] provided, however, that criminal possession of a controlled
23 substance in the second degree as defined in section 220.18 of the penal
24 law and criminal possession of a controlled substance in the first
25 degree as defined in section 220.21 shall only be qualifying offenses if
26 the defendant is not a resident of the state of New York;

27 (e) a felony sex offense defined in section 70.80 of the penal law or
28 a crime involving incest as defined in section 255.25, 255.26 or 255.27

1 of such law, or a misdemeanor defined in article one hundred thirty of
2 such law;

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

7 (g) money laundering in support of terrorism in the first degree as
8 defined in section 470.24 of the penal law; money laundering in support
9 of terrorism in the second degree as defined in section 470.23 of the
10 penal law; money laundering in support of terrorism in the third degree
11 as defined in section 470.22 of the penal law; money laundering in
12 support of terrorism in the fourth degree as defined in section 470.21
13 of the penal law; or a felony crime of terrorism as defined in article
14 four hundred ninety of the penal law[, other than the crime defined in
15 section 490.20 of such law];

16 (h) criminal contempt in the second degree as defined in subdivision
17 three of section 215.50 of the penal law, criminal contempt in the first
18 degree as defined in subdivision (b), (c) or (d) of section 215.51 of
19 the penal law or aggravated criminal contempt as defined in section
20 215.52 of the penal law, and the underlying allegation of such charge of
21 criminal contempt in the second degree, criminal contempt in the first
22 degree or aggravated criminal contempt is that the defendant violated a
23 duly served order of protection where the protected party is a member of
24 the defendant's same family or household as defined in subdivision one
25 of section 530.11 of this article; [or]

26 (i) facilitating a sexual performance by a child with a controlled
27 substance or alcohol as defined in section 263.30 of the penal law, use
28 of a child in a sexual performance as defined in section 263.05 of the

1 penal law or luring a child as defined in subdivision one of section
2 120.70 of the penal law[.], promoting an obscene sexual performance by a
3 child as defined in section 263.10 of the penal law or promoting a sexu-
4 al performance by a child as defined in section 263.15 of the penal law;
5 (j) any crime that is alleged to have resulted in the death of another
6 person;
7 (k) criminal obstruction of breathing or blood circulation as defined
8 in section 121.11 of the penal law, strangulation in the second degree
9 as defined in section 121.12 of the penal law or unlawful imprisonment
10 in the first degree as defined in section 135.10 of the penal law, and
11 is alleged to have committed the offense against a member of the defend-
12 ant's same family or household as defined in subdivision one of section
13 530.11 of this article;
14 (l) aggravated vehicular assault as defined in section 120.04-a of the
15 penal law or vehicular assault in the first degree as defined in section
16 120.04 of the penal law;
17 (m) assault in the third degree as defined in section 120.00 of the
18 penal law or arson in the third degree as defined in section 150.10 of
19 the penal law, when such crime is charged as a hate crime as defined in
20 section 485.05 of the penal law;
21 (n) aggravated assault upon a person less than eleven years old as
22 defined in section 120.12 of the penal law, criminal possession of a
23 weapon on school grounds as defined in section 265.01-a of the penal law
24 or criminal sale of a firearm to a minor as defined in section 265.16 of
25 the penal law;
26 (o) grand larceny in the first degree as defined in section 155.42 of
27 the penal law, enterprise corruption as defined in section 460.20 of the

1 penal law, or money laundering in the first degree as defined in section
2 470.20 of the penal law;

3 (p) failure to register as a sex offender pursuant to section one
4 hundred sixty-eight-t of the correction law or endangering the welfare
5 of a child as defined in subdivision one of section 260.10 of the penal
6 law, where the defendant is required to maintain registration under
7 article six-C of the correction law and designated a level three offen-
8 der pursuant to subdivision six of section one hundred sixty-eight-1 of
9 the correction law; or

10 (q) aggravated cruelty to animals as defined in section three hundred
11 fifty-three-a of the agriculture and markets law.

12 5. Notwithstanding the provisions of subdivisions three and four of
13 this section, with respect to any charge for which [bail or] remand is
14 not ordered, and for which the court would not or could not otherwise
15 require [bail or] remand, a defendant may, at any time, request that the
16 court [set bail in a nominal amount requested by the defendant in the
17 form specified in paragraph (a) of subdivision one of section 520.10 of
18 this title] order the defendant committed to the custody of the sheriff;
19 if the court is satisfied that the request is voluntary and the defend-
20 ant would otherwise be incarcerated, the court [shall set such bail in
21 such amount] may order the defendant remanded.

22 § 4. Paragraph (b) of subdivision 2 of section 510.20 of the criminal
23 procedure law, as amended by section 3 of part JJJ of chapter 59 of the
24 laws of 2019, is amended to read as follows:

25 (b) Upon such application, the principal must be accorded an opportu-
26 nity to be heard, present evidence and to contend that an order of
27 recognizance[,] or release under non-monetary conditions [or, where
28 authorized, bail must or] should issue, and that the court should

1 release the principal on the principal's own recognizance or under non-
2 monetary conditions rather than [fix bail, and that if bail is author-
3 ized and fixed it should be in a suggested amount and form] remand the
4 principal to the custody of the sheriff.

5 § 5. Subdivisions 1 and 3 of section 510.30 of the criminal procedure
6 law, as amended by section 5 of part JJJ of chapter 59 of the laws of
7 2019, are amended to read as follows:

8 1. [With respect to any principal, the court in all cases, unless
9 otherwise provided by law, must impose the least restrictive kind and
10 degree of control or restriction that is necessary to secure the princi-
11 pal's return to court when required.] In determining [that matter]
12 whether to release the principal on his or her own recognizance, release
13 the defendant under non-monetary conditions or commit the defendant to
14 the custody of the sheriff, the court must, on the basis of available
15 information, consider and take into account information [about the prin-
16 cipal that is relevant to the principal's return to court,] including
17 the following factors, and shall state on the record the court's find-
18 ings for each factor and its impact on the court's decision to remand or
19 release the principal:

20 (a) [The principal's activities and history;

21 (b)] If the principal is a defendant[, the]:

22 (i) The nature of the charges [facing the principal], including the
23 degree and nature of harm alleged to have been caused to the victim;

24 (ii) Whether the defendant had been released on his or her own recog-
25 nizance on a separate charge at the time of the commission of the charg-
26 es alleged in the instant case;

27 (iii) The weight of the evidence against the defendant in the pending
28 criminal action and any other factor indicating probability or improba-

1 bility of conviction; or, in the case of an application for securing
2 order pending appeal, the merit or lack of merit of the appeal;

3 (iv) The sentence which may be or has been imposed upon conviction;

4 [(c)] (b) The principal's criminal conviction record, if any, and the
5 recency of such convictions;

6 [(d)] (c) The principal's record of previous adjudication as a juve-
7 nile delinquent, as retained pursuant to section 354.2 of the family
8 court act, or, of pending cases where fingerprints are retained pursuant
9 to section 306.1 of such act, or a youthful offender, if any, and the
10 recency of such adjudications;

11 [(e)] (d) The principal's [previous record with respect to flight to
12 avoid criminal prosecution] past history of flight or failures to appear
13 in court, and the willfulness of any failures to appear, when known;

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

19 (e) The principal's ties to the community and length of residence, if
20 any, in the community;

21 [(g)] (f) Where the principal is charged with a crime or crimes
22 against a member or members of the same family or household as that term
23 is defined in subdivision one of section 530.11 of this title, the
24 following factors:

25 (i) any violation by the principal of an order of protection issued by
26 any court for the protection of a member or members of the same family
27 or household as that term is defined in subdivision one of section

1 530.11 of this title, whether or not such order of protection is
2 currently in effect; [and]

3 (ii) the principal's history of use or possession of a firearm; and

4 (iii) the principal's past convictions of family offenses, as defined
5 by section 530.11 of this title, if any; and

6 [(h) If the principal is a defendant, in the case of an application
7 for a securing order pending appeal, the merit or lack of merit of the
8 appeal]

9 (g) The principal's past violations of court orders, including
10 violations of conditions of release and violations of orders of
11 protection.

12 3. When [bail or] recognizance or release on non-monetary conditions
13 is ordered, the court shall inform the principal[, if the principal is a
14 defendant charged with the commission of a felony,] that the release is
15 conditional and that the court may revoke the order of release and may
16 be authorized to commit the principal to the custody of the sheriff in
17 accordance with the provisions of subdivision two of section 530.60 of
18 this [chapter] title if the principal commits a subsequent [felony]
19 crime while at liberty upon such order.

20 § 6. Section 510.40 of the criminal procedure law, as amended by
21 section 6 of part JJJ of chapter 59 of the laws of 2019, is amended to
22 read as follows:

23 § 510.40 Court notification to principal of conditions of release and of
24 alleged violations of conditions of release.

25 1. Upon ordering that a principal be released on the principal's own
26 recognizance[,] or released under non-monetary conditions, [or, if bail
27 has been fixed, upon the posting of bail,] the court must direct the
28 principal to appear in the criminal action or proceeding involved when-

1 ever the principal's attendance may be required and to be at all times
2 amenable to the orders and processes of the court. If such principal is
3 in the custody of the sheriff [or at liberty upon bail] at the time of
4 the order, the court must direct that the principal be discharged from
5 such custody [or, as the case may be, that the principal's bail be exon-
6 erated].

7 2. [Upon the issuance of an order fixing bail, where authorized, and
8 upon the posting thereof, the court must examine the bail to determine
9 whether it complies with the order. If it does, the court must, in the
10 absence of some factor or circumstance which in law requires or author-
11 izes disapproval thereof, approve the bail and must issue a certificate
12 of release, authorizing the principal to be at liberty, and, if the
13 principal is in the custody of the sheriff at the time, directing the
14 sheriff to discharge the principal therefrom. If the bail fixed is not
15 posted, or is not approved after being posted, the court must order that
16 the principal be committed to the custody of the sheriff. In the event
17 of any such non-approval, the court shall explain promptly in writing
18 the reasons therefor.

19 3.] Non-monetary conditions of release shall be individualized and
20 established in writing by the court. At future court appearances, the
21 court shall consider a lessening of conditions or modification of condi-
22 tions to a less burdensome form based on the principal's compliance with
23 such conditions of release. In the event of alleged non-compliance with
24 the conditions of release in an important respect, pursuant to this
25 subdivision, additional conditions may be imposed by the court, on the
26 record or in writing, only after notice of the facts and circumstances
27 of such alleged non-compliance, reasonable under the circumstances,
28 affording the principal and the principal's attorney and the people an

1 opportunity to present relevant, admissible evidence, relevant witnesses
2 and to cross-examine witnesses, and a finding by clear and convincing
3 evidence that the principal violated a condition of release in an impor-
4 tant respect. Following such a finding, in determining whether to impose
5 additional conditions for non-compliance, the court shall consider and
6 may select conditions consistent with the court's obligation to impose
7 the least restrictive condition or conditions that will reasonably
8 assure the defendant's return to court or prevent the principal from
9 committing a crime involving serious physical injury to another person
10 based on the facts of the instant case. The court shall explain on the
11 record or in writing the reasons for its determination and for any
12 changes to the conditions imposed.

13 [4.] 3. (a) Electronic monitoring of a principal's location may be
14 ordered only if the court finds, after notice, an opportunity to be
15 heard and an individualized determination explained on the record or in
16 writing, that the defendant qualifies for electronic monitoring in
17 accordance with subdivision [twenty-one] nine of section 500.10 of this
18 [title] article, and no other realistic non-monetary condition or set of
19 non-monetary conditions will suffice to reasonably assure a principal's
20 return to court or prevent the principal from committing a crime involv-
21 ing serious physical injury to another person based on the facts of the
22 instant case.

23 (b) The specific method of electronic monitoring of the principal's
24 location must be approved by the court. It must be the least restrictive
25 procedure and method that will reasonably assure the principal's return
26 to court, and unobtrusive to the greatest extent practicable.

27 (c) Electronic monitoring of the location of a principal may be
28 conducted only by a public entity under the supervision and control of a

1 county or municipality or a non-profit entity under contract to the
2 county, municipality or the state. A county or municipality shall be
3 authorized to enter into a contract with another county or municipality
4 in the state to monitor principals under non-monetary conditions of
5 release in its county, but counties, municipalities and the state shall
6 not contract with any private for-profit entity for such purposes. Coun-
7 ties, municipalities and the state may contract with a private for-pro-
8 fit entity to supply electronic monitoring devices or other items,
9 provided that any interaction with persons under electronic monitoring
10 or the data produced by such monitoring shall be conducted solely by
11 employees of a county, municipality, the state, or a non-profit entity
12 under contract to such county, municipality or the state.

13 (d) Electronic monitoring of a principal's location may be for a maxi-
14 mum period of sixty days, and may be renewed for such period, after
15 notice, an opportunity to be heard and a de novo, individualized deter-
16 mination in accordance with this subdivision, which shall be explained
17 on the record or in writing.

18 A defendant subject to electronic location monitoring under this
19 subdivision shall be considered held or confined in custody for purposes
20 of section 180.80 of this chapter and shall be considered committed to
21 the custody of the sheriff for purposes of section 170.70 of the chap-
22 ter, as applicable.

23 [5.] 4. If a principal is released under non-monetary conditions, the
24 court shall, on the record and in an individualized written document
25 provided to the principal, notify the principal, in plain language and a
26 manner sufficiently clear and specific:

27 (a) of any conditions to which the principal is subject, to serve as a
28 guide for the principal's conduct; and

1 (b) that the possible consequences for violation of such a condition
2 may include revocation of the securing order and the ordering of a more
3 restrictive securing order.

4 § 7. Subdivision 1 of section 510.50 of the criminal procedure law, as
5 amended by section 9 of part JJJ of chapter 59 of the laws of 2019, is
6 amended to read as follows:

7 1. When the attendance of a principal confined in the custody of the
8 sheriff is required at the criminal action or proceeding at a particular
9 time and place, the court may compel such attendance by directing the
10 sheriff to produce the principal at such time and place. If the princi-
11 pal is at liberty on the principal's own recognizance or non-monetary
12 conditions [or on bail], the principal's attendance may be achieved or
13 compelled by various methods, including notification and the issuance of
14 a bench warrant, prescribed by law in provisions governing such matters
15 with respect to the particular kind of action or proceeding involved.

16 § 8. Paragraph (b) of subdivision 2 of section 520.10 of the criminal
17 procedure law is REPEALED.

18 § 9. The section heading of section 530.10 of the criminal procedure
19 law, as amended by section 11 of part JJJ of chapter 59 of the laws of
20 2019, is amended to read as follows:

21 Order of recognizance release under non-monetary conditions [or bail];
22 in general.

23 § 10. Paragraph (a) of subdivision 8 of section 530.13 of the criminal
24 procedure law, as amended by section 13 of part JJJ of chapter 59 of the
25 laws of 2019, is amended to read as follows:

26 (a) revoke an order of recognizance[,] or release under non-monetary
27 conditions [or bail] and commit the defendant to custody; or

1 § 11. Paragraph (a) of subdivision 11 of section 530.12 of the crimi-
2 nal procedure law, as amended by section 15 of part JJJ of chapter 59 of
3 the laws of 2019, is amended to read as follows:

4 (a) revoke an order of recognizance or release under non-monetary
5 conditions [or revoke an order of bail or order forfeiture of such bail]
6 and commit the defendant to custody; or

7 § 12. Section 530.20 of the criminal procedure law is amended by
8 adding a new subdivision 11 to read as follows:

9 11. The securing order of a defendant who was committed to the custody
10 of the sheriff, released on his or her own recognizance, or released
11 under non-monetary conditions prior to the enactment of this subdivision
12 shall be valid absent a challenge to the securing order by either party
13 and a showing of exigent circumstances including an inability to reason-
14 ably assure the defendant's return to court or to prevent the defendant
15 from committing a crime involving serious physical injury to another
16 person based on the facts of the instant case. The court shall place on
17 its calendar any case subject to a securing order fixing bail for the
18 purposes of revoking such securing order and setting a new securing
19 order pursuant to this section.

20 § 13. Section 530.20 of the criminal procedure law, as amended by
21 section 16 of part JJJ of chapter 59 of the laws of 2019, is amended to
22 read as follows:

23 § 530.20 Securing order by local criminal court when action is pending
24 therein.

25 When a criminal action is pending in a local criminal court, such
26 court, upon application of a defendant, shall proceed as follows:

27 1. (a) In cases other than as described in paragraph (b) of this
28 subdivision the court shall release the principal pending trial on the

1 principal's own recognizance, unless the court finds on the record or in
2 writing that release on the principal's own recognizance will not
3 reasonably assure the principal's return to court or prevent the princi-
4 pal from committing a crime involving serious physical injury to another
5 person based on the facts of the instant case. In such instances, the
6 court shall release the principal under non-monetary conditions, select-
7 ing the least restrictive alternative and conditions that will reason-
8 ably assure the principal's return to court or prevent the principal
9 from committing a crime involving serious physical injury to another
10 person based on the facts of the instant case. The court shall explain
11 its choice of alternative and conditions on the record or in writing.

12 (b) Where the principal stands charged with a qualifying offense[, the
13 court, unless otherwise prohibited by law, may in its discretion release
14 the principal pending trial on the principal's own recognizance or under
15 non-monetary conditions, fix bail, or, where the defendant is charged
16 with a qualifying offense which is a felony, the court may commit the
17 principal to the custody of the sheriff. The court shall explain its
18 choice of release, release with conditions, bail or remand on the record
19 or in writing. A principal stands charged with a qualifying offense when
20 he or she stands charged with:

21 (i) a felony enumerated in section 70.02 of the penal law, other than
22 burglary in the second degree as defined in subdivision two of section
23 140.25 of the penal law or robbery in the second degree as defined in
24 subdivision one of section 160.10 of the penal law;

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

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

1 (iv) a class A felony defined in the penal law, other than in article
2 two hundred twenty of such law with the exception of section 220.77 of
3 such law;

4 (v) a felony sex offense defined in section 70.80 of the penal law or
5 a crime involving incest as defined in section 255.25, 255.26 or 255.27
6 of such law, or a misdemeanor defined in article one hundred thirty of
7 such law;

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

12 (vii) money laundering in support of terrorism in the first degree as
13 defined in section 470.24 of the penal law; money laundering in support
14 of terrorism in the second degree as defined in section 470.23 of the
15 penal law; or a felony crime of terrorism as defined in article four
16 hundred ninety of the penal law, other than the crime defined in section
17 490.20 of such law;

18 (viii) criminal contempt in the second degree as defined in subdivi-
19 sion three of section 215.50 of the penal law, criminal contempt in the
20 first degree as defined in subdivision (b), (c) or (d) of section 215.51
21 of the penal law or aggravated criminal contempt as defined in section
22 215.52 of the penal law, and the underlying allegation of such charge of
23 criminal contempt in the second degree, criminal contempt in the first
24 degree or aggravated criminal contempt is that the defendant violated a
25 duly served order of protection where the protected party is a member of
26 the defendant's same family or household as defined in subdivision one
27 of section 530.11 of this article; or

1 (ix) facilitating a sexual performance by a child with a controlled
2 substance or alcohol as defined in section 263.30 of the penal law, use
3 of a child in a sexual performance as defined in section 263.05 of the
4 penal law or luring a child as defined in subdivision one of section
5 120.70 of the penal law] as defined in subdivision four of section
6 510.10 of this title, there shall be a rebuttable presumption of
7 release, unless the qualifying offense carries a potential term of
8 imprisonment of life in prison.

9 2. When the defendant is charged, by felony complaint, with a felony,
10 the court may, in its discretion, order recognizance, release under
11 non-monetary conditions[, or, where authorized, bail] or commit the
12 defendant to the custody of the sheriff except [as otherwise provided in
13 subdivision one of this section or this subdivision]:

14 (a) A city court, a town court or a village court may not order recog-
15 nizance or [bail] release on non-monetary conditions when (i) the
16 defendant is charged with a class A felony, or (ii) the defendant has
17 two previous felony convictions;

18 (b) No local criminal court may order recognizance[,] or release under
19 non-monetary conditions [or bail] with respect to a defendant charged
20 with a felony unless and until:

21 (i) The district attorney has been heard in the matter or, after know-
22 ledge or notice of the application and reasonable opportunity to be
23 heard, has failed to appear at the proceeding or has otherwise waived
24 his right to do so; and

25 (ii) The court and counsel for the defendant have been furnished with
26 a report of the division of criminal justice services concerning the
27 defendant's criminal record, if any, or with a police department report
28 with respect to the defendant's prior arrest and conviction record, if

1 any. If neither report is available, the court, with the consent of the
2 district attorney, may dispense with this requirement; provided, howev-
3 er, that in an emergency, including but not limited to a substantial
4 impairment in the ability of such division or police department to time-
5 ly furnish such report, such consent shall not be required if, for
6 reasons stated on the record, the court deems it unnecessary. When the
7 court has been furnished with any such report or record, it shall
8 furnish a copy thereof to counsel for the defendant or, if the defendant
9 is not represented by counsel, to the defendant.

10 3. If the defendant is charged with a qualifying offense, at any point
11 in the proceeding, including at arraignment, the prosecutor may file a
12 motion with the court seeking that the defendant be committed to the
13 custody of the sheriff. Upon such a request, the court shall set a date
14 for a hearing to determine whether the defendant shall be committed to
15 the custody of the sheriff for the pendency of the case. Such hearing
16 shall be set no later than forty-eight hours after the request is made,
17 or, in the event that a Saturday, Sunday, or legal holiday occurs during
18 such period of time, one hundred twenty hours; provided, however, that
19 the defendant may request the hearing be scheduled at a later date.

20 (a) If the request is made at arraignment, the defendant may be
21 committed to the custody of the sheriff until the hearing only if the
22 prosecutor makes a prima facie case showing a likelihood of success at
23 the hearing.

24 (b) If the request is made when the defendant has been released on his
25 or her own recognizance or on non-monetary conditions in the instant
26 case, the defendant shall remain released until the hearing.

27 (c) No later than twenty-four hours prior to the hearing, the prosecu-
28 tor shall disclose to the defendant the arrest report, and prior

1 recorded statements of any witnesses the prosecutor intends to call, any
2 material that may be exculpatory, and any evidence the prosecutor
3 intends to introduce at the hearing.

4 4. At the hearing to determine whether a defendant charged with a
5 qualifying offense will be committed to the custody of the sheriff
6 during the pendency of the case, the presumption of release can be
7 rebutted by a showing of clear and convincing evidence by the prose-
8 cution that no conditions of release would reasonably assure the defend-
9 ant's return to court, or would prevent the defendant from committing a
10 crime involving serious physical injury to another person. Either party
11 may introduce evidence that would otherwise be excluded as hearsay.

12 5. If the court finds that a defendant is a persistent offender who
13 was charged with a new felony or class A misdemeanor involving harm to
14 an identifiable person or property, and such charge arose from conduct
15 occurring while the defendant was released on his or her own recogni-
16 zance or released under conditions for a separate felony or class A
17 misdemeanor involving harm to an identifiable person or property, the
18 prosecutor may rebut the presumption of release by a showing of clear
19 and convincing evidence that no conditions of release would reasonably
20 prevent the defendant from committing a subsequent felony or class A
21 misdemeanor involving harm to an identifiable person or property. If the
22 court finds clear and convincing evidence to remand the defendant, it
23 shall issue a new securing order to that effect on the most recent
24 charge. For the purposes of this subdivision, any of the underlying
25 offenses need not be a qualifying offense as defined in subdivision four
26 of section 510.10 of this article.

27 6. If there is no presumption of release, the court shall set a secur-
28 ing order in its discretion, based on facts and arguments presented by

1 both parties and the factors specified in subdivision one of section
2 510.30 of this chapter.

3 7. A defendant charged with a qualifying offense shall be entitled to
4 present evidence and make arguments to court as to why he or she does
5 not pose a risk of failing to return to court or of committing a crime
6 involving serious physical injury to another person.

7 8. At any point during the pendency of the criminal proceeding, a
8 defendant who has been committed to the custody of the sheriff may
9 request a hearing to reconsider his or her detention to be scheduled by
10 the court pursuant to subdivision two of this section. After the first
11 request for a new hearing, subsequent requests must be based on a
12 substantial change in circumstances.

13 9. If the court does not find that the prosecution has rebutted the
14 presumption of release, or if the prosecution has not sought to commit
15 the defendant to the custody of the sheriff, the court shall set a
16 securing order authorizing the defendant's release on his or her own
17 recognizance or under non-monetary conditions.

18 [(d) Notwithstanding the provisions of paragraphs (a) and (b) of this
19 subdivision, with] 10. With respect to any charge for which [bail or]
20 remand is not ordered, and for which the court would not or could not
21 otherwise require [bail or] remand, a defendant may, at any time,
22 request that the court [set bail in a nominal amount requested by the
23 defendant in the form specified in paragraph (a) of subdivision one of
24 section 520.10 of this title] order the defendant committed to the
25 custody of the sheriff; if the court is satisfied that the request is
26 voluntary and the defendant would otherwise be incarcerated, the court
27 [shall set such bail in such amount] may order the defendant remanded to
28 the custody of the sheriff.

1 § 14. The section heading and subdivisions 1 and 2 of section 530.30
2 of the criminal procedure law, as amended by section 17 of part JJJ of
3 chapter 59 of the laws of 2019, are amended to read as follows:

4 Order of recognizance[,] or release under non-monetary conditions [or
5 bail]; by superior court judge when action is pending in
6 local criminal court.

7 1. When a criminal action is pending in a local criminal court, other
8 than one consisting of a superior court judge sitting as such, a judge
9 of a superior court holding a term thereof in the county, upon applica-
10 tion of a defendant, may order recognizance[,] or release under non-mon-
11 etary conditions [or, where authorized, bail] when the superior court,
12 in reviewing the evidence presented at the original commitment hearing,
13 finds that the prosecution did not sufficiently rebut the presumption of
14 release before the local criminal court and when such local criminal
15 court:

16 (a) Lacks authority to issue such an order, pursuant to the relevant
17 provisions of section 530.20 of this article; or

18 (b) Has denied an application for recognizance[,] or release under
19 non-monetary conditions [or bail]; or

20 (c) [Has fixed bail, where authorized, which is excessive; or

21 (d)] Has set a securing order of release under non-monetary conditions
22 which are more restrictive than necessary to reasonably assure the
23 defendant's return to court.

24 In such case, such superior court judge may vacate the order of such
25 local criminal court and release the defendant on recognizance or under
26 non-monetary conditions[, or where authorized, fix bail in a lesser
27 amount or in a less burdensome form,] whichever are the least restric-
28 tive alternative and conditions that will reasonably assure the defend-

1 ant's return to court. The court shall explain its choice of alternative
2 and conditions on the record or in writing.

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

11 § 15. Section 530.40 of the criminal procedure law is amended by
12 adding a new subdivision 8 to read as follows:

13 8. The securing order of a defendant who was committed to the custody
14 of the sheriff, released on his or her own recognizance, or released
15 under non-monetary conditions prior to the enactment of this subdivision
16 shall be valid absent a challenge to the securing order by either party
17 and a showing of exigent circumstances including an inability to reason-
18 ably assure the defendant's return to court or to committing a crime
19 involving serious physical injury to another person. The court shall
20 place on its calendar any case subject to a securing order fixing bail
21 for the purposes of revoking such securing order and setting a new
22 securing order pursuant to this section.

23 § 16. Section 530.40 of the criminal procedure law, as amended by
24 section 18 of part JJJ of chapter 59 of the laws of 2019, subdivision 8
25 as added by section fifteen of this act, is amended to read as follows:

26 § 530.40 Order of recognizance, release under non-monetary conditions or
27 [bail] remand to the custody of the sheriff; by superior
28 court when action is pending therein.

1 When a criminal action is pending in a superior court, such court[,
2 upon application of a defendant, must or may order recognizance or bail]
3 shall proceed as follows:

4 1. When the defendant is charged with an offense or offenses of less
5 than felony grade only, the court must, unless otherwise provided by
6 law, order recognizance or release under non-monetary conditions in
7 accordance with this section.

8 2. When the defendant is charged with a felony, the court may, unless
9 otherwise provided by law in its discretion, order recognizance, release
10 under non-monetary conditions or, where authorized, [bail] remand the
11 defendant to the custody of the sheriff. In any such case in which an
12 indictment (a) has resulted from an order of a local criminal court
13 holding the defendant for the action of the grand jury, or (b) was filed
14 at a time when a felony complaint charging the same conduct was pending
15 in a local criminal court, and in which such local criminal court or a
16 superior court judge has issued an order of recognizance, release under
17 non-monetary conditions or, where authorized, [bail] remand which is
18 still effective, the superior court's order may be in the form of a
19 direction continuing the effectiveness of the previous order.

20 3. In cases other than as described in subdivision four of this
21 section the court shall release the principal pending trial on the prin-
22 cipal's own recognizance, unless the court finds on the record or in
23 writing that release on the principal's own recognizance will not
24 reasonably assure the principal's return to court or prevent the princi-
25 pal from committing a crime involving serious physical injury to another
26 person based primarily on the facts of the instant case. In such
27 instances, the court shall release the principal under non-monetary
28 conditions, selecting the least restrictive alternative and conditions

1 that will reasonably assure the principal's return to court or prevent
2 the principal from committing a crime involving serious physical injury
3 to another person based primarily on the facts of the instant case. The
4 court shall explain its choice of alternative and conditions on the
5 record or in writing.

6 4. Where the principal stands charged with a qualifying offense[, the
7 court, unless otherwise prohibited by law, may in its discretion release
8 the principal pending trial on the principal's own recognizance or under
9 non-monetary conditions, fix bail, or, where the defendant is charged
10 with a qualifying offense which is a felony, the court may commit the
11 principal to the custody of the sheriff. The court shall explain its
12 choice of release, release with conditions, bail or remand on the record
13 or in writing. A principal stands charged with a qualifying offense for
14 the purposes of this subdivision when he or she stands charged with:

15 (a) a felony enumerated in section 70.02 of the penal law, other than
16 burglary in the second degree as defined in subdivision two of section
17 140.25 of the penal law or robbery in the second degree as defined in
18 subdivision one of section 160.10 of the penal law;

19 (b) a crime involving witness intimidation under section 215.15 of the
20 penal law;

21 (c) a crime involving witness tampering under section 215.11, 215.12
22 or 215.13 of the penal law;

23 (d) a class A felony defined in the penal law, other than in article
24 two hundred twenty of such law with the exception of section 220.77 of
25 such law;

26 (e) a felony sex offense defined in section 70.80 of the penal law or
27 a crime involving incest as defined in section 255.25, 255.26 or 255.27

1 of such law, or a misdemeanor defined in article one hundred thirty of
2 such law;

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

7 (g) money laundering in support of terrorism in the first degree as
8 defined in section 470.24 of the penal law; money laundering in support
9 of terrorism in the second degree as defined in section 470.23 of the
10 penal law; or a felony crime of terrorism as defined in article four
11 hundred ninety of the penal law, other than the crime defined in section
12 490.20 of such law;

13 (h) criminal contempt in the second degree as defined in subdivision
14 three of section 215.50 of the penal law, criminal contempt in the first
15 degree as defined in subdivision (b), (c) or (d) of section 215.51 of
16 the penal law or aggravated criminal contempt as defined in section
17 215.52 of the penal law, and the underlying allegation of such charge of
18 criminal contempt in the second degree, criminal contempt in the first
19 degree or aggravated criminal contempt is that the defendant violated a
20 duly served order of protection where the protected party is a member of
21 the defendant's same family or household as defined in subdivision one
22 of section 530.11 of this article; or

23 (i) facilitating a sexual performance by a child with a controlled
24 substance or alcohol as defined in section 263.30 of the penal law, use
25 of a child in a sexual performance as defined in section 263.05 of the
26 penal law or luring a child as defined in subdivision one of section
27 120.70 of the penal law] as defined in subdivision four of section
28 510.10 of this title, there shall be a rebuttable presumption of

1 release, unless the qualifying offense carries a potential term of
2 imprisonment of life in prison.

3 5. [Notwithstanding the provisions of subdivisions three and four of
4 this section, with] If the defendant is charged with a qualifying
5 offense, at any point in the proceeding, including at arraignment, the
6 prosecutor may file a motion with the court seeking that the defendant
7 be committed to the custody of the sheriff. Upon such a request, the
8 court shall set a date for a hearing to determine whether the defendant
9 shall be committed to the custody of the sheriff for the pendency of the
10 case. Such hearing shall be set no later than forty-eight hours after
11 the request is made, or, in the event that a Saturday, Sunday, or legal
12 holiday occurs during such period of time, one hundred twenty hours;
13 provided, however, that the defendant may request the hearing be sched-
14 uled at a later date.

15 (a) If the request is made at arraignment, the defendant may be
16 committed to the custody of the sheriff until the hearing only if the
17 prosecutor makes a prima facie case showing a likelihood of success at
18 the hearing.

19 (b) If the request is made when the defendant has been released on his
20 or her own recognizance or on non-monetary conditions in the instant
21 case, the defendant shall remain released until the hearing.

22 (c) No later than twenty-four hours prior to the hearing, the prosecu-
23 tor shall disclose to the defendant the arrest report, and prior
24 recorded statements of any witnesses the prosecutor intends to call, any
25 material that may be exculpatory, and any evidence the prosecutor
26 intends to introduce at the hearing.

27 6. At the hearing to determine whether a defendant charged with a
28 qualifying offense will be committed to the custody of the sheriff

1 during the pendency of the case, the presumption of release can be
2 rebutted by a showing of clear and convincing evidence by the prose-
3 cution that no conditions of release would reasonably assure the defend-
4 ant's return to court, or would prevent the defendant from committing a
5 crime involving serious physical injury to another person. Either party
6 may introduce evidence that would otherwise be excluded as hearsay.

7 7. If the court finds that a defendant is a persistent offender who
8 was charged with a new felony or class A misdemeanor involving harm to
9 an identifiable person or property, and such charge arose from conduct
10 occurring while the defendant was released on his or her own recogni-
11 zance or released under conditions for a separate felony or class A
12 misdemeanor involving harm to an identifiable person or property, the
13 prosecutor may rebut the presumption of release by a showing of clear
14 and convincing evidence that no conditions of release would reasonably
15 prevent the defendant from committing a subsequent felony or class A
16 misdemeanor involving harm to an identifiable person or property. If the
17 court finds clear and convincing evidence to remand the defendant, it
18 shall issue a new securing order to that effect on the most recent
19 charge. For the purposes of this subdivision, any of the underlying
20 offenses need not be a qualifying offense as defined in subdivision four
21 of section 510.10 of this title.

22 8. If there is no presumption of release, the court shall set a secur-
23 ing order in its discretion, based on facts and arguments presented by
24 both parties and the factors specified in subdivision one of section
25 510.30 of this title.

26 9. A defendant charged with a qualifying offense shall be entitled to
27 present evidence and make arguments to the court as to why he or she

1 does not pose a risk of failing to return to court or of committing a
2 crime involving serious physical injury to another person.

3 10. At any point during the pendency of the criminal proceeding, a
4 defendant who has been committed to the custody of the sheriff may
5 request a hearing to reconsider his or her detention to be scheduled by
6 the court pursuant to subdivision two of this section. After the first
7 request for a new hearing, subsequent requests must be based on a
8 substantial change in circumstances.

9 11. If the court does not find that the prosecution has rebutted the
10 presumption of release, or if the prosecution has not sought to commit
11 the defendant to the custody of the sheriff, the court shall set a
12 securing order authorizing the defendant's release on his or her own
13 recognizance or under non-monetary conditions.

14 12. With respect to any charge for which [bail or] remand is not
15 ordered, and for which the court would not or could not otherwise
16 require [bail or] remand, a defendant may, at any time, request that the
17 court [set bail in a nominal amount requested by the defendant in the
18 form specified in paragraph (a) of subdivision one of section 520.10 of
19 this title] order the defendant committed to the custody of the sheriff;
20 if the court is satisfied that the request is voluntary and the defend-
21 ant would otherwise be incarcerated, the court [shall set such bail in
22 such amount] may order the defendant remanded to the custody of the
23 sheriff.

24 [6. Notwithstanding the provisions of subdivisions two, three and four
25 of this section, a] 13. A superior court may not order recognizance,
26 release under non-monetary conditions [or, where authorized, bail,] or
27 permit a defendant to remain at liberty pursuant to an existing order,
28 after the defendant has been convicted of either: (a) a class A felony

1 or (b) any class B or class C felony as defined in article one hundred
2 thirty of the penal law committed or attempted to be committed by a
3 person eighteen years of age or older against a person less than eigh-
4 teen years of age. In either case the court must commit or remand the
5 defendant to the custody of the sheriff.

6 [7. Notwithstanding the provisions of subdivisions two, three and four
7 of this section, a] 14. A superior court may not order recognizance[,]
8 or release under non-monetary conditions [or, where authorized, bail]
9 when the defendant is charged with a felony unless and until the
10 district attorney has had an opportunity to be heard in the matter and
11 such court and counsel for the defendant have been furnished with a
12 report as described in subparagraph (ii) of paragraph (b) of subdivision
13 two of section 530.20 of this article.

14 [8.] 15. The securing order of a defendant who was committed to the
15 custody of the sheriff, released on his or her own recognizance, or
16 released under non-monetary conditions prior to the enactment of this
17 subdivision shall be valid absent a challenge to the securing order by
18 either party and a showing of exigent circumstances including an inabil-
19 ity to reasonably assure the defendant's return to court or to commit-
20 ting a crime involving serious physical injury to another person. The
21 court shall place on its calendar any case subject to a securing order
22 fixing bail for the purposes of revoking such securing order and setting
23 a new securing order pursuant to this section.

24 § 17. Subdivision 1 of section 530.45 of the criminal procedure law,
25 as amended by section 19 of part JJJ of chapter 59 of the laws of 2019,
26 is amended to read as follows:

27 1. When the defendant is at liberty in the course of a criminal action
28 as a result of a prior order of recognizance[,]
29 or release under non-

1 monetary conditions [or bail] and the court revokes such order and
2 then[, where authorized, fixes no bail or fixes bail in a greater amount
3 or in a more burdensome form than was previously fixed and] remands or
4 commits defendant to the custody of the sheriff, or issues a more
5 restrictive securing order, a judge designated in subdivision two of
6 this section, upon application of the defendant following conviction of
7 an offense other than a class A felony or a class B or class C felony
8 offense as defined in article one hundred thirty of the penal law
9 committed or attempted to be committed by a person eighteen years of age
10 or older against a person less than eighteen years of age, and before
11 sentencing, may issue a securing order and release the defendant on the
12 defendant's own recognizance, release the defendant under non-monetary
13 conditions[, or, where authorized, fix bail or fix bail in a lesser
14 amount or in a less burdensome form,] or issue a less restrictive secur-
15 ing order, than fixed by the court in which the conviction was entered.

16 § 18. Section 530.60 of the criminal procedure law, as amended by
17 section 20 of part JJJ of chapter 59 of the laws of 2019, is amended to
18 read as follows:

19 § 530.60 Certain modifications of a securing order.

20 1. Whenever in the course of a criminal action or proceeding a defend-
21 ant is at liberty as a result of an order of recognizance[,] or release
22 under non-monetary conditions [or bail] issued pursuant to this chapter,
23 and the court considers it necessary to review such order, whether due
24 to a motion by the people or otherwise, the court may, and except as
25 provided in subdivision two of section 510.50 of this title concerning a
26 failure to appear in court, by a bench warrant if necessary, require the
27 defendant to appear before the court. Upon such appearance, the court,
28 for good cause shown, may revoke the order of recognizance, release

1 under non-monetary conditions[, or bail. If the defendant is entitled to
2 recognizance, release under non-monetary conditions, or bail as a matter
3 of right, the court must issue another such order. If the defendant is
4 not, the court may either issue such an order or commit the defendant to
5 the custody of the sheriff in accordance with this section] or remand
6 the defendant to the custody of the sheriff.

7 Where the defendant is committed to the custody of the sheriff and is
8 held on a felony complaint, a new period as provided in section 180.80
9 of this chapter shall commence to run from the time of the defendant's
10 commitment under this subdivision.

11 2. (a) Whenever in the course of a criminal action or proceeding a
12 defendant charged with the commission of a felony is at liberty as a
13 result of an order of recognizance[,] or release under non-monetary
14 conditions [or bail] issued pursuant to this article it shall be grounds
15 for revoking such order that the court finds reasonable cause to believe
16 the defendant committed one or more specified class A or violent felony
17 offenses or intimidated a victim or witness in violation of section
18 215.15, 215.16 or 215.17 of the penal law while at liberty.

19 (b) Except as provided in paragraph (a) of this subdivision or any
20 other law, whenever in the course of a criminal action or proceeding a
21 defendant charged with the commission of an offense is at liberty as a
22 result of an order of recognizance[,] or release under non-monetary
23 conditions [or bail] issued pursuant to this article it shall be grounds
24 for revoking such order [and fixing bail] in such criminal action or
25 proceeding when the court has found[, by clear and convincing evidence,]
26 reasonable cause to believe that the defendant:

27 (i) persistently and willfully failed to appear after notice of sched-
28 uled appearances in the case before the court; or

1 (ii) violated an order of protection in the manner prohibited by
2 subdivision (b), (c) or (d) of section 215.51 of the penal law while at
3 liberty; or

4 (iii) stands charged in such criminal action or proceeding with a
5 misdemeanor or violation and, after being so charged, intimidated a
6 victim or witness in violation of section 215.15, 215.16 or 215.17 of
7 the penal law or tampered with a witness in violation of section 215.11,
8 215.12 or 215.13 of the penal law, law while at liberty; or

9 (iv) stands charged in such action or proceeding with a felony and,
10 after being so charged, committed a felony while at liberty.

11 (c) Before revoking an order of recognizance[,] or release under non-
12 monetary conditions[, or bail] pursuant to this subdivision, the court
13 must hold a hearing and shall receive any relevant, admissible evidence
14 not legally privileged. The defendant may cross-examine witnesses and
15 may present relevant, admissible evidence on his or her own behalf. Such
16 hearing may be consolidated with, and conducted at the same time as, a
17 felony hearing conducted pursuant to article one hundred eighty of this
18 chapter. A transcript of testimony taken before the grand jury upon
19 presentation of the subsequent offense shall be admissible as evidence
20 during the hearing. The district attorney may move to introduce grand
21 jury testimony of a witness in lieu of that witness' appearance at the
22 hearing.

23 (d) [Revocation of an order of recognizance, release under non-mone-
24 tary conditions or bail and a new securing order fixing bail or commit-
25 ment, as specified in this paragraph and pursuant to this subdivision
26 shall be for the following periods:

27 (i) Under paragraph (a) of this subdivision, revocation of the order
28 of recognizance, release under non-monetary conditions or, as the case

1 may be, bail, and a new securing order fixing bail or committing the
2 defendant to the custody of the sheriff shall be as follows:

3 (A) For a period not to exceed ninety days exclusive of any periods of
4 adjournment requested by the defendant; or

5 (B) Until the charges contained within the accusatory instrument have
6 been reduced or dismissed such that no count remains which charges the
7 defendant with commission of a felony; or

8 (C) Until reduction or dismissal of the charges contained within the
9 accusatory instrument charging the subsequent offense such that no count
10 remains which charges the defendant with commission of a class A or
11 violent felony offense.

12 Upon expiration of any of the three periods specified within this
13 subparagraph, whichever is shortest, the court may grant or deny release
14 upon an order of bail or recognizance in accordance with the provisions
15 of this article. Upon conviction to an offense the provisions of article
16 five hundred thirty of this chapter shall apply; and

17 (ii) Under paragraph (b) of this subdivision, revocation of the order
18 of recognizance, release under non-monetary conditions or, as the case
19 may be, bail shall result in the issuance of a new securing order which
20 may, if otherwise authorized by law, permit the principal's release on
21 recognizance or release under non-monetary conditions, but shall also
22 render the defendant eligible for an order fixing bail provided, howev-
23 er, that in accordance with the principles in this title the court must
24 select the least restrictive alternative and condition or conditions
25 that will reasonably assure the principal's return to court. Nothing in
26 this subparagraph shall be interpreted as shortening the period of
27 detention, or requiring or authorizing any less restrictive form of a
28 securing order, which may be imposed pursuant to any other law.

1 (e)] Notwithstanding the provisions of paragraph (a) or (b) of this
2 subdivision a defendant, against whom a felony complaint has been filed
3 which charges the defendant with commission of a class A or violent
4 felony offense or violation of section 215.15, 215.16 or 215.17 of the
5 penal law committed while he was at liberty as specified therein, may be
6 committed to the custody of the sheriff pending a revocation hearing for
7 a period not to exceed seventy-two hours. An additional period not to
8 exceed seventy-two hours may be granted by the court upon application of
9 the district attorney upon a showing of good cause or where the failure
10 to commence the hearing was due to the defendant's request or occurred
11 with his consent. Such good cause must consist of some compelling fact
12 or circumstance which precluded conducting the hearing within the
13 initial prescribed period.

14 § 19. Section 410.60 of the criminal procedure law, as amended by
15 section 23 of part JJJ of chapter 59 of the laws of 2019, is amended to
16 read as follows:

17 § 410.60 Appearance before court.

18 A person who has been taken into custody pursuant to section 410.40 or
19 section 410.50 of this article for violation of a condition of a
20 sentence of probation or a sentence of conditional discharge must forth-
21 with be brought before the court that imposed the sentence. Where a
22 violation of probation petition and report has been filed and the person
23 has not been taken into custody nor has a warrant been issued, an
24 initial court appearance shall occur within ten business days of the
25 court's issuance of a notice to appear. If the court has reasonable
26 cause to believe that such person has violated a condition of the
27 sentence, it may commit such person to the custody of the sheriff, [fix
28 bail,] release such person under non-monetary conditions or release such

1 person on such person's own recognizance for future appearance at a
2 hearing to be held in accordance with section 410.70 of this article. If
3 the court does not have reasonable cause to believe that such person has
4 violated a condition of the sentence, it must direct that such person be
5 released.

6 § 20. Subdivisions 2 and 3 of section 620.50 of the criminal procedure
7 law, subdivision 3 as amended by section 24 of part JJJ of chapter 59 of
8 the laws of 2019, are amended to read as follows:

9 2. If the court is satisfied after such hearing that there is reason-
10 able cause to believe that the prospective witness (a) possesses infor-
11 mation material to the pending action or proceeding, and (b) will not be
12 amenable or respond to a subpoena at a time when his attendance will be
13 sought, it may issue a material witness order, adjudging him a material
14 witness and [fixing bail to secure his future attendance] either releas-
15 ing the witness under non-monetary conditions or committing the witness
16 to the custody of the sheriff.

17 3. A material witness order must be executed as follows:

18 (a) If [the bail is posted and approved by the court] the court has
19 authorized release or release under non-monetary conditions, the witness
20 must, as provided in subdivision two of section 510.40 of this part, be
21 released and be permitted to remain at liberty[; provided that, where
22 the bail is posted by a person other than the witness himself, he may
23 not be so released except upon his signed written consent thereto];

24 (b) [If the bail is not posted, or if though posted it is not approved
25 by the court,] If the court orders the commitment of the witness to the
26 custody of the sheriff the witness must, as provided in subdivision two
27 of section 510.40 of this part, be committed to the custody of the sher-
28 iff.

1 § 21. Subdivision 1 of section 44 of the judiciary law, as added by
2 chapter 156 of the laws of 1978, is amended to read as follows:

3 1. The commission shall receive, initiate, investigate and hear
4 complaints with respect to the conduct, qualifications, fitness to
5 perform, or performance of official duties of any judge, and, in accord-
6 ance with the provisions of subdivision d of section twenty-two of arti-
7 cle six of the constitution, may determine that a judge be admonished,
8 censured or removed from office for cause, including, but not limited
9 to, misconduct in office, persistent failure to perform his duties,
10 habitual intemperance and conduct, on or off the bench, prejudicial to
11 the administration of justice, racial bias, or that a judge be retired
12 for mental or physical disability preventing the proper performance of
13 his judicial duties. A complaint shall be in writing and signed by the
14 complainant and, if directed by the commission, shall be verified. Upon
15 receipt of a complaint (a) the commission shall conduct an investigation
16 of the complaint; or (b) the commission may dismiss the complaint if it
17 determines that the complaint on its face lacks merit. If the complaint
18 is dismissed, the commission shall so notify the complainant. If the
19 commission shall have notified the judge of the complaint, the commis-
20 sion shall also notify the judge of such dismissal.

21 § 22. Section 216 of the judiciary law is amended by adding a new
22 subdivision 5 to read as follows:

23 5. The chief administrator of the courts, in conjunction with the
24 division of criminal justice services, shall collect data and report
25 every six months regarding pretrial release and detention. Such data and
26 report shall contain information categorized by gender, racial and
27 ethnic background; regarding the nature of the criminal offenses,
28 including the top charge of each case; the number and type of charges in

1 each defendant's criminal record; the number of individuals released on
2 recognizance; the number of individuals released on non-monetary condi-
3 tions, including the conditions imposed; the number of individuals
4 committed to the custody of a sheriff prior to trial; the rates of fail-
5 ure to appear and rearrest; the outcome of such cases or dispositions;
6 the length of the pretrial detention stay and any other such information
7 as the chief administrator and the division of criminal justice services
8 may find necessary and appropriate. Such report shall aggregate the data
9 collected by county; court, including city, town and village courts; and
10 judge. The data shall be disaggregated in order to protect the identity
11 of individual defendants. The report shall be released publicly and
12 published on the websites of the office of court administration and the
13 division of criminal justice services. The first report shall be
14 published twelve months after the effective date of this subdivision,
15 and shall include data from the first six months following the effective
16 date of this subdivison. Reports for subsequent periods shall be
17 published every six months thereafter.

18 § 23. The executive law is amended by adding a new section 837-u to
19 read as follows:

20 § 837-u. Pretrial release and detention reporting. The division of
21 criminal justice services, in conjunction with the chief administrator
22 of the courts, shall collect data and report annually regarding pretrial
23 release and detention. Such data and report shall contain information
24 categorized by gender, racial and ethnic background; regarding the
25 nature of the criminal offenses, including the top charge of each case;
26 the number and type of charges in each defendant's criminal record; the
27 number of individuals released on recognizance; the number of individ-
28 uals released on non-monetary conditions, including the conditions

1 imposed; the number of individuals committed to the custody of a sheriff
2 prior to trial; the rates of failure to appear and rearrest; the outcome
3 of such cases or dispositions; whether the defendant was represented by
4 counsel at every court appearance regarding the defendant's securing
5 order; the length of the pretrial detention stay and any other such
6 information as the chief administrator and the division of criminal
7 justice services may find necessary and appropriate. Such annual report
8 shall aggregate the data collected by county; court, including city,
9 town and village courts; and judge. The data shall be disaggregated in
10 order to protect the identity of individual defendants. The report shall
11 be released publicly and published on the websites of the office of
12 court administration and the division of criminal justice services. The
13 first report shall be published eighteen months after the effective date
14 of this section, and shall include data from the first twelve months
15 following the effective date of this section. Reports for subsequent
16 years shall be published annually on or before that date thereafter.

17 § 24. Subdivision 1 of section 150.40 of the criminal procedure law,
18 as amended by section 1-c of part JJJ of chapter 59 of the laws of 2019,
19 is amended to read as follows:

20 1. An appearance ticket must be made returnable at a date as soon as
21 possible, but in no event later than twenty days from the date of issu-
22 ance[,]; or at the next scheduled session of the appropriate local crim-
23 inal court if such session is scheduled to occur more than twenty days
24 from the date of issuance; or at a later date, with the court's permis-
25 sion due to enrollment in a pre-arraignment diversion program. The
26 appearance ticket shall be made returnable in a local criminal court
27 designated in section 100.55 of this title as one with which an informa-
28 tion for the offense in question may be filed.

1 § 25. This act shall take effect immediately; provided, however, that
2 sections one, two, three, four, five, six, seven, eight, nine, ten,
3 eleven, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen,
4 twenty, twenty-one, twenty-two, twenty-three and twenty-four of this act
5 shall take effect on the ninetieth day after this act shall have become
6 a law.