

## Reasons for a Securing Order

### Introduction

In *People ex rel. Kon v. Maginley-Liddie*, \_N.Y.3d\_, 2025 NY Slip Op 05785, 2025 WL 2955737 [2025], the Court held that the trial court erred in remanding the defendant without complying with the provisions of CPL 510.10(1). “Specifically, the court ‘shall make an individualized determination as to whether the [defendant] poses a risk of flight to avoid prosecution, consider the kind and degree of control or restriction necessary to reasonably assure the [defendant’s] return to court, and select a securing order consistent with its determination’ (CPL 510.10[1]). In making this determination, the court ‘must consider and take into account available information about the [defendant], including’ certain enumerated factors <sup>1</sup> and must ‘explain the basis for its determination and its choice of securing order on the record or in writing’ (*id.*; see also CPL 530.40[4]).” *Id.* at \*2.

*Kon* added: “To be sure, the court [setting the securing order] is not required to ‘engag[e] in a lengthy catechistic discussion of *all* bail factors.’ But at a minimum, the statute requires the court to provide substantive reasoning for its determination whether the defendant poses a flight risk and its selection of securing order.” *Id.* at \*3 (citations omitted).

Thus, a court must comply with the dictates of CPL 510.10(1). The following formulation is accordingly recommended, unless a defendant’s release on recognizance is required by law – in which case, the court should so state.

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### THE COURT:

Upon hearing the parties and after due consideration, I make the following findings and upon those findings (*specify the securing order*). <sup>1</sup>

In imposing that securing order, I have taken into account the available information about the defendant and have made a determination:

*Select as applicable:*<sup>2</sup>

that the defendant poses a risk of flight to avoid prosecution and that the securing order I have imposed is necessary to reasonably assure the defendant’s return to court.

that the defendant does not pose a risk of flight to avoid prosecution.

The information about the defendant that I have considered and that forms the basis both for the determination that the defendant [poses / does not pose] a risk of flight and the securing order includes the following:

**Note:** The court should here select, as applicable, from among the following factors specified in subdivision (1) of CPL 510.10, and explain the “substantive reasoning for its determination whether the defendant poses a flight risk *and* its selection of securing order.”<sup>3</sup>

- (a) “The [defendant]'s activities and history;
- (b) . . . the charges facing the [defendant];
- (c) The [defendant]'s criminal conviction record if any;
- (d) The [defendant]'s record of previous adjudication as a juvenile delinquent . . . or a youthful offender, if any;
- (e) The [defendant]'s previous record with respect to flight to avoid criminal prosecution;
- (f) If monetary bail is authorized . . . the [defendant]'s individual financial circumstances, and . . . the [defendant]'s ability to post bail without posing undue hardship, as well as [the defendant's] ability to obtain a . . . bond;
- (g) Any violation by the [defendant] of an order of protection issued by any court;
- (h) The [defendant]'s history of use or possession of a firearm;
- (i) Whether the charge is alleged to have caused serious harm to an individual or group of individuals; and
- (j) . . . in the case of an application for a securing order pending appeal, the merit or lack of merit of the appeal.”<sup>4</sup>

**Note:** In addition to those factors, the Court of Appeals has explained that “a court may consider circumstances beyond those factors delineated in [CPL 510.10 (1)] if relevant to risk of flight.”<sup>5</sup>

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<sup>1</sup> “To be clear, a court must make the findings directed by CPL 510.10 (1) before issuing a securing order.” *People ex rel. Kon v. Maginley-Liddie*, \_N.Y.3d\_, 2025 NY Slip Op 05785 \*4, 2025 WL 2955737 [2025].

<sup>2</sup> CPL 510.10 (1); *See Kon*.

<sup>3</sup> *Kon* at N.Y. Slip Op \*3

<sup>4</sup> CPL 510.10 (1).

<sup>5</sup> *People ex rel. Rankin v. Brann*, 41 N.Y.3d 436, 443 (2024).