

6539

I N   S E N A T E

February 23, 2012

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Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to determinations of applications for recognizance or bail

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraph (b) of subdivision 2 of section 510.30 of the  
2 criminal procedure law is relettered paragraph (c) and a new paragraph  
3 (b) is added to read as follows:  
4     (B) (I) WITH RESPECT TO ANY PRINCIPAL, THE DISTRICT ATTORNEY MAY MOVE,  
5 BASED ON DANGEROUSNESS, FOR A SECURING ORDER REMANDING A PRINCIPAL TO  
6 THE CUSTODY OF THE SHERIFF; OR AN ORDER RELEASING THE PRINCIPAL UPON  
7 FIXING OF BAIL WITH CERTAIN CONDITIONS AS SET FORTH IN THIS PARAGRAPH;  
8 OR AN ORDER RELEASING THE PRINCIPAL ON HIS OR HER OWN RECOGNIZANCE WITH  
9 CONDITIONS AS SET FORTH IN THIS PARAGRAPH, WHERE THE DEFENDANT IS  
10 CHARGED WITH: (1) A FELONY OFFENSE AN ELEMENT OF WHICH IS THE USE,  
11 ATTEMPTED USE OR THREATENED USE OF PHYSICAL FORCE AGAINST ANOTHER OR ANY  
12 OTHER FELONY THAT, BY ITS NATURE, INVOLVES A SUBSTANTIAL RISK THAT PHYS-  
13 ICAL FORCE AGAINST THE PERSON OF ANOTHER MAY RESULT, WHETHER OR NOT A  
14 PERSON HAS BEEN PLACED AT RISK THEREOF; (2) A VIOLATION OF A COURT ORDER  
15 OR ORDER OF PROTECTION ISSUED PURSUANT TO SECTION TWO HUNDRED FORTY OF  
16 THE DOMESTIC RELATIONS LAW, OR SECTION FIVE HUNDRED FIFTY, FIVE HUNDRED  
17 FIFTY-ONE, SIX HUNDRED FIFTY-FIVE OR SIX HUNDRED FIFTY-SEVEN OF THE  
18 FAMILY COURT ACT OR SECTION 530.12 OR 530.13 OF THIS CHAPTER; OR (3)  
19 CHARGED WITH A VIOLATION OF SECTION 265.02, 265.03 OR 265.04 OF THE  
20 PENAL LAW.  
21     (II) UPON THE FIRST APPEARANCE BEFORE THE COURT OF A DEFENDANT CHARGED  
22 WITH AN OFFENSE LISTED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COURT  
23 SHALL HOLD A HEARING AND DETERMINE WHETHER (1) A SECURING ORDER REMAND-  
24 ING THE DEFENDANT TO THE CUSTODY OF THE SHERIFF IS NECESSARY, OR (2)  
25 WHETHER TO ISSUE AN ORDER RELEASING THE DEFENDANT ON HIS OR HER OWN  
26 RECOGNIZANCE, OR (3) FIXING BAIL WITH THE CONDITIONS OF SUCH RECOGNI-  
27 ZANCE OR BAIL AS SET FORTH HEREIN.

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

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(III) THE COURT SHALL DETERMINE IF ANY CONDITIONS OF RELEASE WILL REASONABLY ASSURE THE SAFETY OF THE COMPLAINANT OR ANY OTHER PERSON.

(1) THE HEARING SHALL BE HELD UPON THE DEFENDANT'S FIRST APPEARANCE BEFORE THE COURT PROVIDED THAT THE DISTRICT ATTORNEY IS PRESENT AT SUCH APPEARANCE, OR NO LATER THAN THREE BUSINESS DAYS AFTER THE DEFENDANT'S FIRST APPEARANCE UPON NOTICE BY THE COURT TO THE DISTRICT ATTORNEY OF SUCH FIRST APPEARANCE. THE DEFENDANT SHALL REMAIN IN CUSTODY UNTIL SUCH HEARING IS HELD. EXCEPT FOR GOOD CAUSE SHOWN, AN ADJOURNMENT BY THE DEFENDANT MAY NOT EXCEED SEVEN DAYS. DURING ANY SUCH ADJOURNMENT THE DEFENDANT SHALL REMAIN IN THE CUSTODY OF THE SHERIFF.

(2) AT THE HEARING, THE DEFENDANT SHALL HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL, AND, IF FINANCIALLY UNABLE TO RETAIN ADEQUATE REPRESENTATION, TO HAVE COUNSEL APPOINTED. THE DEFENDANT SHALL BE AFFORDED AN OPPORTUNITY TO TESTIFY, TO PRESENT WITNESSES, TO CROSS-EXAMINE WITNESSES WHO APPEAR AT THE HEARING, AND TO PRESENT EVIDENCE. THE RULES OF EVIDENCE APPLICABLE TO CRIMINAL PRE-TRIAL HEARINGS SHALL BE APPLICABLE TO SUCH HEARING.

(IV) IN THE DETERMINATION AS TO THE DANGEROUSNESS OF THE DEFENDANT AND WHETHER THERE ARE CONDITIONS OF RELEASE THAT WILL REASONABLY ASSURE THE SAFETY OF THE COMPLAINANT OR ANY OTHER INDIVIDUAL THE COURT SHALL CONSIDER AND TAKE INTO ACCOUNT: (1) THE NATURE AND SERIOUSNESS OF THE DANGER POSED TO ANY PERSON THAT WOULD RESULT BY THE PERSON'S RELEASE; (2) THE NATURE AND CIRCUMSTANCES OF THE OFFENSE CHARGED; (3) THE POTENTIAL PENALTY THE PERSON FACES; (4) THE PERSON'S EMPLOYMENT RECORD AND HISTORY OF MENTAL ILLNESS; (5) THE RISK THAT THE PERSON WILL OBSTRUCT OR ATTEMPT TO OBSTRUCT THE COURT OR THREATEN, INJURE OR INTIMIDATE OR ATTEMPT TO THREATEN, INJURE OR INTIMIDATE A PROSPECTIVE WITNESS OR JUROR; (6) HIS OR HER RECORD OF CONVICTIONS, IF ANY; (7) ANY ILLEGAL DRUG DISTRIBUTION OR PRESENT DRUG DEPENDENCY; (8) WHETHER THE PERSON IS ON BAIL PENDING ADJUDICATION OF A PRIOR CHARGE; (9) WHETHER THE ACTS ALLEGED INVOLVE A FAMILY OFFENSE AS DEFINED IN SECTION 530.11 OF THIS TITLE OR A VIOLATION OF A TEMPORARY OR PERMANENT ORDER OF PROTECTION OR WHETHER THE PERSON HAS ANY HISTORY OF ORDERS ISSUED AGAINST HIM OR HER; (10) WHETHER HE OR SHE IS ON PROBATION, PAROLE OR OTHER RELEASE PENDING COMPLETION OF SENTENCE FOR ANY CONVICTION AND WHETHER HE OR SHE IS ON RELEASE PENDING SENTENCE OR APPEAL FOR ANY CONVICTIONS; AND ANY OTHER INFORMATION THE COURT FINDS RELEVANT AND PROBATIVE ON THE ISSUE OF THE DANGEROUSNESS OF THE PRINCIPAL.

(V) IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT NO CONDITIONS OF BAIL OR RELEASE WILL REASONABLY ASSURE THE SAFETY OF THE COMPLAINANT OR ANY OTHER PERSON, THE COURT SHALL DIRECT THAT THE PERSON BE COMMITTED TO CUSTODY OF THE SHERIFF. THE HEARING MAY BE REOPENED BEFORE OR AFTER A DETERMINATION BY THE COURT AT ANY TIME BEFORE TRIAL IF THE COURT FINDS THAT INFORMATION EXISTS THAT WAS NOT KNOWN AT THE TIME OF THE HEARING AND THAT HAS A MATERIAL BEARING ON THE ISSUE AND WHETHER THERE ARE CONDITIONS OF RELEASE THAT WILL REASONABLY ASSURE THE SAFETY OF THE COMPLAINANT OR ANY OTHER PERSON.

S 2. This act shall take effect immediately.