

STATE OF NEW YORK

10837

IN ASSEMBLY

May 23, 2018

Introduced by M. of A. FERNANDEZ -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to bail of pregnant women

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

1 Section 1. Subdivisions 3 and 4 of section 120.90 of the criminal
2 procedure law, as amended by chapter 424 of the laws of 1998, are
3 amended to read as follows:

4 3. Upon arresting a defendant for an offense other than a felony
5 pursuant to a warrant of arrest in a county other than the one in which
6 the warrant is returnable or one adjoining it, a police officer, if he
7 or she be one to whom the warrant is addressed, must inform the defend-
8 ant that he or she has a right to appear before a local criminal court
9 of the county of arrest for the purpose of being released on his or her
10 own recognizance or having bail fixed. If the defendant does not desire
11 to avail himself or herself of such right, the officer must request him
12 or her to endorse such fact upon the warrant, and upon such endorsement
13 the officer must without unnecessary delay bring him or her before the
14 court in which the warrant is returnable. If the defendant does desire
15 to avail himself or herself of such right, or if he or she refuses to
16 make the aforementioned endorsement, the officer must without unneces-
17 sary delay bring him or her before a local criminal court of the county
18 of arrest. Such court must release the defendant on his or her own
19 recognizance or fix bail for his or her appearance on a specified date
20 in the court in which the warrant is returnable. There shall be a
21 rebuttable presumption that any pregnant woman should be released on her
22 own recognizance without the posting of bail. If the defendant is in
23 default of bail, the officer must without unnecessary delay bring him or
24 her before the court in which the warrant is returnable.

25 4. Upon arresting a defendant for an offense other than a felony
26 pursuant to a warrant of arrest in a county other than the one in which
27 the warrant is returnable or one adjoining it, a police officer, if he
28 or she be one delegated to execute the warrant pursuant to section

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

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120.60 of this article, may hold the defendant in custody in the county of arrest for a period not exceeding two hours for the purpose of delivering him or her to the custody of the officer by whom he or she was delegated to execute such warrant. If the delegating officer receives custody of the defendant during such period, he or she must proceed as provided in subdivision three of this section. Otherwise, the delegated officer must inform the defendant that he or she has a right to appear before a local criminal court for the purpose of being released on his or her own recognizance or having bail fixed. If the defendant does not desire to avail himself or herself of such right, the officer must request him or her to make, sign and deliver to him or her a written statement of such fact, and if the defendant does so, the officer must retain custody of him or her but must without unnecessary delay deliver him or her or cause him or her to be delivered to the custody of the delegating police officer. If the defendant does desire to avail himself or herself of such right, or if he or she refuses to make and deliver the aforementioned statement, the delegated or arresting officer must without unnecessary delay bring him or her before a local criminal court of the county of arrest and must submit to such court a written statement reciting the material facts concerning the issuance of the warrant, the offense involved, and all other essential matters relating thereto. Upon the submission of such statement, such court must release the defendant on his or her own recognizance or fix bail for his or her appearance on a specified date in the court in which the warrant is returnable. There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail. If the defendant is in default of bail, the officer must retain custody of him or her but must without unnecessary delay deliver him or her or cause him or her to be delivered to the custody of the delegating officer. Upon receiving such custody, the latter must without unnecessary delay bring the defendant before the court in which the warrant is returnable.

§ 2. Paragraph (b) of subdivision 2 of section 140.20 of the criminal procedure law, as amended by chapter 550 of the laws of 1987, is amended to read as follows:

(b) The desk officer in charge at a police station, county jail or police headquarters, or any of his or her superior officers, may, in such place fix pre-arraignment bail and, upon deposit thereof, issue and serve an appearance ticket upon the arrested person and release him or her from custody, as prescribed in section 150.30 of this title. There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.

§ 3. Paragraph (b) of subdivision 3 of section 140.40 of the criminal procedure law, as amended by chapter 550 of the laws of 1987, is amended to read as follows:

(b) The desk officer in charge at the appropriate police officer's station, county jail or police headquarters, or any of his or her superior officers, may, in such place, fix pre-arraignment bail and, upon deposit thereof, issue and serve an appearance ticket upon the arrested person and release him or her from custody, as prescribed in section 150.30 of this title. There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.

§ 4. Subdivisions 1, 2 and 3 of section 150.30 of the criminal procedure law, subdivision 1 as amended by chapter 111 of the laws of 1987, subdivision 2 as amended and subdivision 3 as added by chapter 708 of

1 the laws of 1986, paragraph (a) of subdivision 2 as added and paragraphs
2 (b), (c) and (d) of subdivision 2 as relettered by chapter 549 of the
3 laws of 1987, are amended to read as follows:

4 1. Issuance and service of an appearance ticket by a police officer
5 following an arrest without a warrant, as prescribed in subdivision two
6 of section 150.20 of this article, may be made conditional upon the
7 posting of a sum of money, known as pre-arraignment bail unless the
8 person arrested is a pregnant woman, in which case, if an appearance
9 ticket is issued, no bail shall be required. In such case, the bail
10 becomes forfeit upon failure of such person to comply with the
11 directions of the appearance ticket. The person posting such bail must
12 complete and sign a form which states (a) the name, residential address
13 and occupation of each person posting cash bail; and (b) the title of
14 the criminal action or proceeding involved; and (c) the offense or
15 offenses which are the subjects of the action or proceeding involved,
16 and the status of such action or proceeding; and (d) the name of the
17 principal and the nature of his or her involvement in or connection with
18 such action or proceeding; and (e) the date of the principal's next
19 appearance in court; and (f) an acknowledgement that the cash bail will
20 be forfeited if the principal does not comply with the directions of the
21 appearance ticket; and (g) the amount of money posted as cash bail. Such
22 pre-arraignment bail may be posted as provided in subdivision two or
23 three of this section.

24 2. A desk officer in charge at a police station, county jail, or
25 police headquarters, or any of his or her superior officers, may in such
26 place, fix pre-arraignment bail, in an amount prescribed in this subdivi-
27 sion, and upon the posting thereof must issue and serve an appearance
28 ticket upon the arrested person, unless the person arrested is a preg-
29 nant woman, in which case, if an appearance ticket is issued, no bail
30 shall be required, give a receipt for the bail, and release such person
31 from custody. Such pre-arraignment bail may be fixed in the following
32 amounts:

33 (a) If the arrest was for a class E felony, any amount not exceeding
34 seven hundred fifty dollars.

35 (b) If the arrest was for a class A misdemeanor, any amount not
36 exceeding five hundred dollars.

37 (c) If the arrest was for a class B misdemeanor or an unclassified
38 misdemeanor, any amount not exceeding two hundred fifty dollars.

39 (d) If the arrest was for a petty offense, any amount not exceeding
40 one hundred dollars.

41 3. A police officer, who has arrested a person without a warrant
42 pursuant to subdivision two of section 150.20 of this ~~chapter~~ article
43 for a traffic infraction, may, where he or she reasonably believes that
44 such arrested person is not licensed to operate a motor vehicle by this
45 state or any state covered by a reciprocal compact guaranteeing appear-
46 ance as is provided in section five hundred seventeen of the vehicle and
47 traffic law, fix pre-arraignment bail in the amount of fifty dollars;
48 provided, however, that no such bail shall be required for pregnant
49 women who must be released with an appearance ticket without posting
50 bail, and such bail shall be posted by means of a credit card or similar
51 device. Upon the posting thereof, said officer must issue and serve an
52 appearance ticket upon the arrested person, give a receipt for the bail,
53 and release such person from custody.

54 § 5. Subdivision 2 of section 150.75 of the criminal procedure law, as
55 added by chapter 360 of the laws of 1977, is amended to read as follows:

2. Whenever the defendant is arrested without a warrant, an appearance ticket shall promptly be issued and served upon him or her, as provided in this article. The issuance and service of the appearance ticket may be made conditional upon the posting of pre-arraignment bail as provided in section 150.30 of this ~~[chapter]~~ article but only if the appropriate police officer (a) is unable to ascertain the defendant's identity or residence address; or (b) reasonably suspects that the identification or residence address given by the defendant is not accurate; ~~[or]~~ (c) reasonably suspects that the defendant does not reside within the state; or (d) is able to ascertain that the defendant is not a pregnant woman. No warrant of arrest shall be issued unless the defendant has failed to appear in court as required by the terms of the appearance ticket or by the court.

§ 6. Section 510.10 of the criminal procedure law, as amended by chapter 459 of the laws of 1984, is amended to read as follows:

§ 510.10 Securing order; when required.

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, initially comes under the control of a court, such court must, by a securing order, either release him or her on his or her own recognizance, fix bail or commit him or her to the custody of the sheriff. There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without posting bail. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and he or she is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

§ 7. Section 510.20 of the criminal procedure law is amended to read as follows:

§ 510.20 Application for recognizance or bail; making and determination thereof in general.

1. Upon any occasion when a court is required to issue a securing order with respect to a principal, or at any time when a principal is confined in the custody of the sheriff as a result of a previously issued securing order, he or she may make an application for recognizance or bail.

2. Upon such application, the principal must be accorded an opportunity to be heard and to contend that an order of recognizance or bail must or should issue, that the court should release him or her on his or her own recognizance rather than fix bail, and that if bail is fixed it should be in a suggested amount and form. There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.

§ 8. Subdivision 1 of section 530.20 of the criminal procedure law, as amended by chapter 531 of the laws of 1975, is amended to read as follows:

1. When the defendant is charged, by information, simplified information, prosecutor's information or misdemeanor complaint, with an offense or offenses of less than felony grade only, the court must order recognizance or bail. There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.

1 § 9. Subdivision 2 of section 530.20 of the criminal procedure law is
2 amended by adding a new paragraph (c) to read as follows:

3 (c) There shall be a rebuttable presumption that any pregnant woman
4 should be released on her own recognizance without the posting of bail.

5 § 10. Section 530.40 of the criminal procedure law is amended by
6 adding a new subdivision 5 to read as follows:

7 5. Notwithstanding the provisions of subdivision one and two of this
8 section, there shall be a rebuttable presumption that any pregnant woman
9 should be released on her own recognizance without the posting of bail.

10 § 11. This act shall take effect on the ninetieth day after it shall
11 have become a law.