

# STATE OF NEW YORK

1161

2017-2018 Regular Sessions

## IN ASSEMBLY

January 11, 2017

Introduced by M. of A. SIMANOWITZ, SALADINO, MONTESANO, HIKIND, COOK, BENEDETTO, GALEF, SIMOTAS, RAMOS, HOOPER, WEPRIN, McDONOUGH, M. G. MILLER -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, BARCLAY, CRESPO, CROUCH, DenDEKKER, JAFFEE, McKEVITT, ORTIZ, PERRY, RA, THIELE, WALTER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to authorizing detention when a defendant presents a clear and convincing likelihood that a defendant would be a danger to society

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

- 1 Section 1. Subdivisions 2 and 3 of section 510.30 of the criminal  
2 procedure law, subparagraph (v) of paragraph (a) of subdivision 2 as  
3 amended by chapter 920 of the laws of 1982, subparagraph (vi) of para-  
4 graph (a) of subdivision 2 as renumbered by chapter 447 of the laws of  
5 1977, subparagraph (vii) of paragraph (a) of subdivision 2 as added and  
6 subparagraphs (viii) and (ix) of paragraph (a) of subdivision 2 as  
7 renumbered by section 1 of part D of chapter 491 of the laws of 2012,  
8 and subdivision 3 as added by chapter 788 of the laws of 1981, are  
9 amended to read as follows:
- 10 2. To the extent that the issuance of an order of recognizance or bail  
11 and the terms thereof are matters of discretion rather than of law, an  
12 application is determined on the basis of the following factors and  
13 criteria:
- 14 (a) With respect to any principal, the court [~~must~~] shall consider the  
15 kind and degree of control or restriction that is necessary to secure  
16 his or her court attendance when required. In determining that matter,  
17 the court must, on the basis of available information, consider and take  
18 into account:
- 19 (i) The principal's character, reputation, habits and mental condi-  
20 tion;
- 21 (ii) His or her employment and financial resources; and

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

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1 (iii) His or her family ties and the length of his or her residence if  
2 any in the community; and

3 (iv) His or her criminal record if any; and

4 (v) His or her record of previous adjudication as a juvenile delin-  
5 quent, as retained pursuant to section 354.2 of the family court act,  
6 or, of pending cases where fingerprints are retained pursuant to section  
7 306.1 of such act, or a youthful offender, if any; and

8 (vi) His or her previous record if any in responding to court appear-  
9 ances when required or with respect to flight to avoid criminal prose-  
10 cution; and

11 (vii) Where the principal is charged with a crime or crimes against a  
12 member or members of the same family or household as that term is  
13 defined in subdivision one of section 530.11 of this title, the follow-  
14 ing factors:

15 (A) any violation by the principal of an order of protection issued by  
16 any court for the protection of a member or members of the same family  
17 or household as that term is defined in subdivision one of section  
18 530.11 of this title, whether or not such order of protection is  
19 currently in effect; and

20 (B) the principal's history of use or possession of a firearm; and

21 (viii) If he or she is a defendant, the weight of the evidence against  
22 him or her in the pending criminal action and any other factor indicat-  
23 ing probability or improbability of conviction; or, in the case of an  
24 application for bail or recognizance pending appeal, the merit or lack  
25 of merit of the appeal; and

26 (ix) If he or she is a defendant, the sentence which may be or has  
27 been imposed upon conviction; and

28 (x) If he or she is a defendant, the court may consider whether the  
29 likelihood that he or she would be a danger to society, the community or  
30 any person if at liberty during the pendency of the action or proceeding  
31 requires the detention of that defendant. Clear and convincing evidence  
32 of danger to any person or the community shall be required for the  
33 detention of such defendant.

34 (b) Where the principal is a defendant-appellant in a pending appeal  
35 from a judgment of conviction, the court must also consider the likeli-  
36 hood of ultimate reversal of the judgment. A determination that the  
37 appeal is palpably without merit alone justifies, but does not require,  
38 a denial of the application, regardless of any determination made with  
39 respect to the factors specified in paragraph (a) of this subdivision.

40 3. When bail or recognizance is ordered, the court shall inform the  
41 principal, if he or she is a defendant charged with the commission of a  
42 felony, that the release is conditional and that the court may revoke  
43 the order of release and commit the principal to the custody of the  
44 sheriff in accordance with the provisions of subdivision two of section  
45 530.60 of this chapter if he or she commits a subsequent felony while at  
46 liberty upon such order.

47 § 2. This act shall take effect on the sixtieth day after it shall  
48 have become a law.