

STATE OF NEW YORK

2748

2019-2020 Regular Sessions

IN ASSEMBLY

January 25, 2019

Introduced by M. of A. FERNANDEZ, SOLAGES, PICHARDO, WILLIAMS, JAFFEE, ORTIZ, D'URSO, ARROYO, AUBRY, DICKENS, COOK, GOTTFRIED, RIVERA, DAVILA, TAYLOR, JOYNER, MONTESANO, LAWRENCE -- Multi-Sponsored by -- M. of A. CROUCH, SIMON -- 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

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

LBD03527-01-9

1 default of bail, the officer must without unnecessary delay bring him or
2 her before the court in which the warrant is returnable.

3 4. Upon arresting a defendant for an offense other than a felony
4 pursuant to a warrant of arrest in a county other than the one in which
5 the warrant is returnable or one adjoining it, a police officer, if he
6 or she be one delegated to execute the warrant pursuant to section
7 120.60 of this article, may hold the defendant in custody in the county
8 of arrest for a period not exceeding two hours for the purpose of deliv-
9 ering him or her to the custody of the officer by whom he or she was
10 delegated to execute such warrant. If the delegating officer receives
11 custody of the defendant during such period, he or she must proceed as
12 provided in subdivision three of this section. Otherwise, the delegated
13 officer must inform the defendant that he or she has a right to appear
14 before a local criminal court for the purpose of being released on his
15 or her own recognizance or having bail fixed. If the defendant does not
16 desire to avail himself or herself of such right, the officer must
17 request him or her to make, sign and deliver to him or her a written
18 statement of such fact, and if the defendant does so, the officer must
19 retain custody of him or her but must without unnecessary delay deliver
20 him or her or cause him or her to be delivered to the custody of the
21 delegating police officer. If the defendant does desire to avail himself
22 or herself of such right, or if he or she refuses to make and deliver
23 the aforementioned statement, the delegated or arresting officer must
24 without unnecessary delay bring him or her before a local criminal court
25 of the county of arrest and must submit to such court a written state-
26 ment reciting the material facts concerning the issuance of the warrant,
27 the offense involved, and all other essential matters relating thereto.
28 Upon the submission of such statement, such court must release the
29 defendant on his or her own recognizance or fix bail for his or her
30 appearance on a specified date in the court in which the warrant is
31 returnable. There shall be a rebuttable presumption that any pregnant
32 woman should be released on her own recognizance without the posting of
33 bail. If the defendant is in default of bail, the officer must retain
34 custody of him or her but must without unnecessary delay deliver him or
35 her or cause him or her to be delivered to the custody of the delegating
36 officer. Upon receiving such custody, the latter must without unneces-
37 sary delay bring the defendant before the court in which the warrant is
38 returnable.

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

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

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

52 (b) The desk officer in charge at the appropriate police officer's
53 station, county jail or police headquarters, or any of his or her supe-
54 rior officers, may, in such place, fix pre-arraignment bail and, upon
55 deposit thereof, issue and serve an appearance ticket upon the arrested
56 person and release him or her from custody, as prescribed in section

1 150.30 of this title. There shall be a rebuttable presumption that any
2 pregnant woman should be released on her own recognizance without the
3 posting of bail.

4 § 4. Subdivisions 1, 2 and 3 of section 150.30 of the criminal proce-
5 dure law, subdivision 1 as amended by chapter 111 of the laws of 1987,
6 subdivision 2 as amended and subdivision 3 as added by chapter 708 of
7 the laws of 1986, paragraph (a) of subdivision 2 as added and paragraphs
8 (b), (c) and (d) of subdivision 2 as relettered by chapter 549 of the
9 laws of 1987, are amended to read as follows:

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

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

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

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

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

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

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

1 device. Upon the posting thereof, said officer must issue and serve an
2 appearance ticket upon the arrested person, give a receipt for the bail,
3 and release such person from custody.

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

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

19 § 6. Section 510.10 of the criminal procedure law, as amended by chap-
20 ter 459 of the laws of 1984, is amended to read as follows:

21 § 510.10 Securing order; when required.

22 When a principal, whose future court attendance at a criminal action
23 or proceeding is or may be required, initially comes under the control
24 of a court, such court must, by a securing order, either release him or
25 her on his or her own recognizance, fix bail or commit him or her to the
26 custody of the sheriff. There shall be a rebuttable presumption that any
27 pregnant woman should be released on her own recognizance without post-
28 ing bail. When a securing order is revoked or otherwise terminated in
29 the course of an uncompleted action or proceeding but the principal's
30 future court attendance still is or may be required and he or she is
31 still under the control of a court, a new securing order must be issued.
32 When the court revokes or otherwise terminates a securing order which
33 committed the principal to the custody of the sheriff, the court shall
34 give written notification to the sheriff of such revocation or termi-
35 nation of the securing order.

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

38 § 510.20 Application for recognizance or bail; making and determination
39 thereof in general.

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

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

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

55 1. When the defendant is charged, by information, simplified informa-
56 tion, prosecutor's information or misdemeanor complaint, with an offense

1 or offenses of less than felony grade only, the court must order recog-
2 nizance or bail. There shall be a rebuttable presumption that any preg-
3 nant woman should be released on her own recognizance without the post-
4 ing of bail.

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

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

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

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

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