

STATE OF NEW YORK

2832--B

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sens. RAMOS, BIAGGI, RIVERA, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to the issuance of temporary orders of protection when an action is pending in a local criminal court

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

Section 1. The criminal procedure law is amended by adding a new section 530.15 to read as follows:

§ 530.15 Temporary order of protection hearing.

Where a court has issued a temporary order of protection pursuant to subdivision one of section 530.12 of this article or subdivision one of section 530.13 of this article, upon application of a defendant, the court shall hold an evidentiary hearing where the prosecutor must show, by clear and convincing evidence, that the temporary order of protection is the least restrictive means of protecting a designated witness or complainant from intimidation or injury.

(a) The defendant shall be entitled to such hearing within three days of requesting such hearing. Notice must be given by the court to both parties, as well as the party protected by the order of protection, in advance of the hearing.

(b) At the hearing, the prosecution must present witness testimony, subject to cross-examination, though the witness need not be the party protected by the order. Hearsay is admissible.

(c) The court shall state on the record or in writing its findings of facts and conclusions of law, the reasons for maintaining, vacating, or modifying the temporary order of protection, and, where applicable, why

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

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1 the temporary order of protection is the least restrictive means of
2 protecting a designated witness or complainant from intimidation or
3 injury.

4 § 2. Section 530.30 of the criminal procedure law, the section heading
5 and subdivisions 1 and 2 as amended by section 17 of part JJJ of chapter
6 59 of the laws of 2019, is amended to read as follows:

7 § 530.30 Order of recognizance, release under non-monetary conditions or
8 bail or issuance of a temporary order of protection; by supe-
9 rior court judge when action is pending in local criminal
10 court.

11 1. When a criminal action is pending in a local criminal court, other
12 than one consisting of a superior court judge sitting as such, a judge
13 of a superior court holding a term thereof in the county, upon applica-
14 tion of a defendant, may order recognizance, release under non-monetary
15 conditions or, where authorized, bail when such local criminal court:

16 (a) Lacks authority to issue such an order, pursuant to the relevant
17 provisions of section 530.20 of this article; or

18 (b) Has denied an application for recognizance, release under non-mon-
19 etary conditions or bail; or

20 (c) Has fixed bail, where authorized, which is excessive; or

21 (d) Has set a securing order of release under non-monetary conditions
22 which are more restrictive than necessary to reasonably assure the
23 defendant's return to court.

24 In such case, such superior court judge may vacate the order of such
25 local criminal court and release the defendant on recognizance or under
26 non-monetary conditions, or where authorized, fix bail in a lesser
27 amount or in a less burdensome form, whichever are the least restrictive
28 alternative and conditions that will reasonably assure the defendant's
29 return to court. The court shall explain its choice of alternative and
30 conditions on the record or in writing.

31 2. When a criminal action is pending in a local criminal court, other
32 than one consisting of a superior court judge sitting as such, and the
33 local criminal court has denied a request to modify or limit a temporary
34 order of protection issued pursuant to subdivision one of section 530.12
35 of this article or subdivision one of section 530.13 of this article,
36 upon application of a defendant, a judge of the superior court holding a
37 term thereof in the county shall review the determination of the local
38 criminal court de novo and may vacate or modify the order of the local
39 criminal court. A court's failure to comply with the requirements of
40 section 530.15 of this article is reviewable under this section.

41 3. Notwithstanding the provisions of subdivision one or two of this
42 section, when the defendant is charged with a felony in a local criminal
43 court, a superior court judge may not order recognizance, release under
44 non-monetary conditions or, where authorized, bail, or vacate or modify
45 a temporary order of protection unless and until the district attorney
46 has had an opportunity to be heard in the matter and such judge and
47 counsel for the defendant have been furnished with a report as described
48 in subparagraph (ii) of paragraph (b) of subdivision two of section
49 530.20 of this article.

50 ~~[3-]~~ 4. Not more than one application may be made pursuant to each
51 subdivision of this section.

52 § 3. This act shall take effect immediately.