

STATE OF NEW YORK

3183--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. REILLY, NOVAKHOV, BROOK-KRASNY, CHANG, BLUMEN-CRANZ, ANGELINO -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to permitting judicial discretion based on dangerousness when issuing a securing order, extending the time period for discovery, permits the immediate issuance of a bench warrant for failure to appear for certain principals, and places restrictions on when appearance tickets may be issued

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

1 Section 1. Subdivisions 1 and 3 of section 510.10 of the criminal
2 procedure law, subdivision 1 as amended by section 1 of subpart C of
3 part UU of chapter 56 of the laws of 2022, and the opening paragraph of
4 subdivision 1 and subdivision 3 as amended by section 2 of subpart A of
5 part VV of chapter 56 of the laws of 2023, are amended to read as
6 follows:
7 1. When a principal, whose future court attendance at a criminal
8 action or proceeding is or may be required, comes under the control of a
9 court, such court shall impose a securing order in accordance with this
10 title. Except as otherwise required by law, the court shall make an
11 individualized determination as to whether the principal poses a danger
12 to a person or the community and make an individualized determination as
13 to whether the principal poses a risk of flight to avoid prosecution,
14 consider the kind and degree of control or restriction necessary to
15 reasonably assure the principal's return to court, and select a securing
16 order consistent with its determination under this subdivision. The
17 court shall explain the basis for its determination and its choice of
18 securing order on the record or in writing. In making a determination
19 under this subdivision, the court must consider and take into account

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

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1 available information about the principal, including, but not limited
2 to:

3 (a) The principal's character, reputation, habits, activities [~~and~~],
4 history and mental condition;

5 (b) If the principal is a defendant, the charges facing the principal;

6 (c) The principal's criminal [~~conviction~~] record if any;

7 (d) The principal's record of previous adjudication as a juvenile
8 delinquent, as retained pursuant to section 354.1 of the family court
9 act, or, of pending cases where fingerprints are retained pursuant to
10 section 306.1 of such act, or a youthful offender, if any;

11 (e) The principal's previous record with respect to responding to
12 court appearances when required or with respect to flight to avoid crim-
13 inal prosecution;

14 (f) If monetary bail is authorized, according to the restrictions set
15 forth in this title, the principal's individual financial circumstances,
16 and, in cases where bail is authorized, the principal's ability to post
17 bail without posing undue hardship, as well as [~~his or her~~] such princi-
18 pal's ability to obtain a secured, unsecured, or partially secured bond;

19 (g) Any violation by the principal of an order of protection issued by
20 any court;

21 (h) The principal's history of use or possession of a firearm;

22 (i) Whether the charge is alleged to have caused serious harm to an
23 individual or group of individuals; [~~and~~]

24 (j) The nature and seriousness of the danger to any other person or
25 the community that would be posed by the principal's release, if appli-
26 cable; and

27 (k) If the principal is a defendant, in the case of an application for
28 a securing order pending appeal, the merit or lack of merit of the
29 appeal.

30 3. In cases other than as described in subdivision four of this
31 section, the court shall release the principal pending trial on the
32 principal's own recognizance, unless the court finds on the record [~~or~~]
33 and in writing that:

34 (a) release on the principal's own recognizance will not reasonably
35 assure the principal's return to court. In such instances, the court
36 shall release the principal under non-monetary conditions as provided
37 for in subdivision three-a of section 500.10 of this title that will
38 reasonably assure the principal's return to court. The court shall
39 explain its choice of securing order on the record or in writing; or

40 (b) the principal poses a risk of danger to a person or the community.
41 In such instances, the court may in its discretion release the principal
42 pending trial under non-monetary conditions or commit the principal to
43 the custody of the sheriff, considering the kind and degree of control
44 or restriction necessary to reasonably assure the safety of such person
45 or the community. A securing order committing the principal to the
46 custody of the sheriff shall be limited to a duration of ninety days
47 where the principal stands charged with a misdemeanor or one hundred
48 eighty days where the principal stands charged with a felony. Where a
49 principal is committed to the custody of the sheriff, the prosecutor may
50 make a motion to extend the duration of such custody beyond the limits
51 imposed pursuant to this paragraph, where such extension is appropriate
52 in the interests of justice. The court shall explain its choice of
53 alternative and conditions on the record and in writing.

54 § 2. Paragraph (a) and the opening paragraph of paragraph (b) of
55 subdivision 1 of section 530.20 of the criminal procedure law, as

1 amended by section 6 of subpart A of part VV of chapter 56 of the laws
2 of 2023, are amended to read as follows:

3 (a) In cases other than as described in paragraph (b) of this subdivi-
4 sion, the court shall release the principal pending trial on the princi-
5 pal's own recognizance [~~or~~], release the principal pending trial under
6 non-monetary conditions, or commit the principal to the custody of the
7 sheriff, the determination for which shall be made in accordance with
8 subdivision one of section 510.10 of this title. The court shall explain
9 the basis for its determination and choice of securing order on the
10 record or in writing.

11 Where the principal stands charged with a qualifying offense, the
12 court, unless otherwise prohibited by law, may in its discretion release
13 the principal pending trial on the principal's own recognizance or under
14 non-monetary conditions, fix bail, order non-monetary conditions in
15 conjunction with fixing bail, or, where the defendant is charged with a
16 qualifying offense [~~which is a felony~~], the court may commit the princi-
17 pal to the custody of the sheriff. The court shall explain its choice of
18 securing order on the record or in writing. A principal stands charged
19 with a qualifying offense when [~~he or she~~] such principal stands charged
20 with:

21 § 3. Subdivision 3 of section 530.40 of the criminal procedure law, as
22 amended by section 8 of subpart A of part VV of chapter 56 of the laws
23 of 2023, is amended to read as follows:

24 3. In cases other than as described in subdivision four of this
25 section the court shall release the principal pending trial on the prin-
26 cipal's own recognizance [~~or~~], release the principal pending trial under
27 non-monetary conditions, or commit the principal to the custody of the
28 sheriff, the determination for which shall be made in accordance with
29 section 510.10 of this title. The court shall explain the basis for its
30 determination and choice of securing order on the record or in writing.

31 § 4. Subparagraphs (i), (ii) and (iv) of paragraph (a) of subdivision
32 1 of section 245.10 of the criminal procedure law, as amended by section
33 1 of part HHH of chapter 56 of the laws of 2020, are amended to read as
34 follows:

35 (i) When a defendant is in custody during the pendency of the criminal
36 case, the prosecution shall perform its initial discovery obligations
37 within [~~twenty~~] forty-five calendar days after the defendant's arraign-
38 ment on an indictment, superior court information, prosecutor's informa-
39 tion, information, simplified information, misdemeanor complaint or
40 felony complaint.

41 (ii) When the defendant is not in custody during the pendency of the
42 criminal case, the prosecution shall perform its initial discovery obli-
43 gations within [~~thirty-five~~] sixty calendar days after the defendant's
44 arraignment on an indictment, superior court information, prosecutor's
45 information, information, simplified information, misdemeanor complaint
46 or felony complaint.

47 (iv)(A) Portions of materials claimed to be non-discoverable may be
48 withheld pending a determination and ruling of the court under section
49 245.70 of this article; but the defendant shall be notified in writing
50 that information has not been disclosed under a particular subdivision
51 of such section, and the discoverable portions of such materials shall
52 be disclosed to the extent practicable. Information related to or
53 evidencing the identity of a 911 caller, the victim or witness of any
54 felony defined under article one hundred twenty-five of the penal law or
55 an offense defined under article one hundred thirty or sections 230.34
56 and 230.34-a of the penal law, or any other victim or witness of a crime

1 where the defendant has substantiated affiliation with a criminal enter-
2 prise as defined in subdivision three of section 460.10 of the penal
3 law, or a confidential informant may be withheld, provided, however, the
4 defendant may move the court for disclosure.

5 (B) When the discoverable materials are exceptionally voluminous or,
6 despite diligent, good faith efforts, are otherwise not in the actual
7 possession of the prosecution, the time period in this paragraph may be
8 extended pursuant to a motion pursuant to subdivision two of section
9 245.70 of this article. For purposes of this article, voluminous materi-
10 als may include, but are not limited to, video footage from body worn
11 cameras, surveillance cameras or dashboard cameras.

12 § 5. The opening paragraph and paragraphs (c), (h) and (u) of subdivi-
13 sion 1 of section 245.20 of the criminal procedure law, the opening
14 paragraph and paragraphs (h) and (u) as added by section 2 of part LLL
15 of chapter 59 of the laws of 2019, and paragraph (c) as amended by
16 section 2 of part HHH of chapter 56 of the laws of 2020, are amended to
17 read as follows:

18 The prosecution shall disclose to the defendant, and permit the
19 defendant to discover, inspect, copy, photograph and test, all items and
20 information that [~~relate~~] are relevant to the subject matter of the case
21 and are in the possession, custody or control of the prosecution or
22 persons under the prosecution's direction or control, including but not
23 limited to:

24 (c) The names and adequate contact information for all persons other
25 than law enforcement personnel whom the prosecutor knows to have
26 evidence or information relevant to any offense charged or to any poten-
27 tial defense thereto, including a designation by the prosecutor as to
28 which of those persons may be called as witnesses. Nothing in this para-
29 graph shall require the disclosure of physical addresses; provided,
30 however, upon a motion and good cause shown the court may direct the
31 disclosure of a physical address. Information under this subdivision
32 relating to the identity of a 911 caller, the victim or witness of any
33 felony defined under article one hundred twenty-five of the penal law or
34 an offense defined under article one hundred thirty or section 230.34 or
35 230.34-a of the penal law, any other victim or witness of a crime where
36 the defendant has substantiated affiliation with a criminal enterprise
37 as defined in subdivision three of section 460.10 of the penal law, or a
38 confidential informant may be withheld, and redacted from discovery
39 materials, without need for a motion pursuant to section 245.70 of this
40 article; but the prosecution shall notify the defendant in writing that
41 such information has not been disclosed, unless the court rules other-
42 wise for good cause shown.

43 (h) All photographs and drawings made or completed by a public servant
44 engaged in law enforcement activity, or which were made by a person whom
45 the prosecutor intends to call as a witness at trial or a pre-trial
46 hearing, or which [~~relate~~] are relevant to the subject matter of the
47 case.

48 (u) (i) A copy of all electronically created or stored information
49 seized or obtained by or on behalf of law enforcement from: (A) the
50 defendant as described in subparagraph (ii) of this paragraph; or (B) a
51 source other than the defendant which [~~relates~~] is relevant to the
52 subject matter of the case.

53 (ii) If the electronically created or stored information originates
54 from a device, account, or other electronically stored source that the
55 prosecution believes the defendant owned, maintained, or had lawful
56 access to and is within the possession, custody or control of the prose-

1 cution or persons under the prosecution's direction or control, the
2 prosecution shall provide a complete copy of the electronically created
3 or stored information from the device or account or other source.

4 (iii) If possession of such electronically created or stored informa-
5 tion would be a crime under New York state or federal law, the prose-
6 cution shall make those portions of the electronically created or stored
7 information that are not criminal to possess available as specified
8 under this paragraph and shall afford counsel for the defendant access
9 to inspect contraband portions at a supervised location that provides
10 regular and reasonable hours for such access, such as a prosecutor's
11 office, police station, or court.

12 (iv) This paragraph shall not be construed to alter or in any way
13 affect the right to be free from unreasonable searches and seizures or
14 such other rights a suspect or defendant may derive from the state
15 constitution or the United States constitution. If in the exercise of
16 reasonable diligence the information under this paragraph is not avail-
17 able for disclosure within the time period required by subdivision one
18 of section 245.10 of this article, that period shall be stayed without
19 need for a motion pursuant to subdivision two of section 245.70 of this
20 article, except that the prosecution shall notify the defendant in writ-
21 ing that such information has not been disclosed, and such disclosure
22 shall be made as soon as practicable and not later than forty-five
23 calendar days before the first scheduled trial date, unless an order is
24 obtained pursuant to section 245.70 of this article.

25 § 6. Subdivision 1 of section 245.30 of the criminal procedure law, as
26 added by section 2 of part LLL of chapter 59 of the laws of 2019, is
27 amended to read as follows:

28 1. Order to preserve evidence. At any time, a party may move for a
29 court order to any individual, agency or other entity in possession,
30 custody or control of items which ~~[relate]~~ are relevant to the subject
31 matter of the case ~~[or are otherwise relevant,]~~ requiring that such
32 items be preserved for a specified period of time. The court shall hear
33 and rule upon such motions expeditiously. The court may modify or vacate
34 such an order upon a showing that preservation of particular evidence
35 will create significant hardship to such individual, agency or entity,
36 on condition that the probative value of that evidence is preserved by a
37 specified alternative means.

38 § 7. Subdivision 2 of section 245.55 of the criminal procedure law, as
39 added by section 2 of part LLL of chapter 59 of the laws of 2019, is
40 amended to read as follows:

41 2. Provision of law enforcement agency files. Absent a court order or
42 a requirement that defense counsel obtain a security clearance mandated
43 by law or authorized government regulation, upon request by the prose-
44 cution, each New York state and local law enforcement agency shall make
45 available to the prosecution a ~~[complete]~~ copy of its complete records
46 and files ~~[related]~~ relevant to the investigation of the case or the
47 prosecution of the defendant for compliance with this article.

48 § 8. Subdivision 2 of section 510.50 of the criminal procedure law,
49 as added by section 9 of part JJJ of chapter 59 of the laws of 2019, is
50 amended to read as follows:

51 2. Except when the principal is charged with a new crime while at
52 liberty, or when a principal fails to appear for a scheduled court
53 appearance involving a charge of a hate crime as defined in section
54 485.05 of the penal law, absent relevant, credible evidence demonstrat-
55 ing that a principal's failure to appear for a scheduled court appear-
56 ance was willful, the court, prior to issuing a bench warrant for a

1 failure to appear for a scheduled court appearance, shall provide at
2 least forty-eight hours notice to the principal or the principal's coun-
3 sel that the principal is required to appear, in order to give the prin-
4 cipal an opportunity to appear voluntarily.

5 § 9. Paragraph (a) of subdivision 1 and subdivision 2 of section
6 150.20 of the criminal procedure law, paragraph (a) of subdivision 1 as
7 separately amended by section 1 of subpart B of part VV of chapter 56 of
8 the laws of 2023 and chapter 23 of the laws of 2024, and subdivision 2
9 as amended by section 2 of subpart B of part VV of chapter 56 of the
10 laws of 2023, are amended and a new paragraph (c) is added to subdivi-
11 sion 1 to read as follows:

12 (a) Whenever a police officer is authorized pursuant to section 140.10
13 of this title to arrest a person without a warrant for an offense other
14 than a class A, B, C or D felony or a violation of section 130.25,
15 former section 130.40, section 205.10, 205.17, 205.19 ~~[or]~~, 215.56 or
16 265.55 of the penal law, or other than where an arrest is required to be
17 made pursuant to subdivision four of section 140.10 of this title, the
18 officer shall, except as set out in ~~[paragraph]~~ paragraphs (b) and (c)
19 of this subdivision, subject to the provisions of subdivisions three and
20 four of section 150.40 of this title, instead issue to and serve upon
21 such person an appearance ticket.

22 (c) An officer shall not issue an appearance ticket if:

23 (i) the person has a pending case for the same offense within the
24 previous six months; or

25 (ii) the person has been convicted of the same offense within the
26 previous two years.

27 2. (a) Whenever, pursuant to section 140.10 of this title, a police
28 officer has arrested a person without a warrant for an offense other
29 than a class A, B, C or D felony or a violation of section 130.25,
30 130.40, 205.10, 205.17, 205.19 ~~[or]~~, 215.56 or 265.55 of the penal law
31 or other than where an arrest was required to be made pursuant to subdivi-
32 sion four of section 140.10 of this title, or (b) whenever a peace
33 officer, who is not authorized by law to issue an appearance ticket, has
34 arrested a person for an offense other than a class A, B, C or D felony
35 or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 ~~[or]~~,
36 215.56 or 265.55 of the penal law pursuant to section 140.25 of this
37 title, and such peace officer has requested a police officer to issue
38 and serve upon such arrested person an appearance ticket pursuant to
39 subdivision four of section 140.27 of this title, or (c) whenever a
40 person has been arrested for an offense other than a class A, B, C or D
41 felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19
42 ~~[or]~~, 215.56 or 265.55 of the penal law and such person has been deliv-
43 ered to the custody of an appropriate police officer pursuant to section
44 140.40 of this title, such police officer may, instead of bringing such
45 person before a local criminal court and promptly filing or causing the
46 arresting peace officer or arresting person to file a local criminal
47 court accusatory instrument therewith, issue to and serve upon such
48 person an appearance ticket.

49 § 10. Paragraph (a) of subdivision 1 of section 150.20 of the criminal
50 procedure law, as amended by section 1 of subpart B of part VV of chap-
51 ter 56 of the laws of 2023, is amended to read as follows:

52 (a) Whenever a police officer is authorized pursuant to section 140.10
53 of this title to arrest a person without a warrant for an offense other
54 than a class A, B, C or D felony or a violation of section 130.25,
55 130.40, 205.10, 205.17, 205.19 ~~[or]~~, 215.56 or 265.55 of the penal law,
56 or other than where an arrest is required to be made pursuant to subdivi-

1 vision four of section 140.10 of this title, the officer shall, except
2 as set out in paragraph (b) of this subdivision, subject to the
3 provisions of subdivisions three and four of section 150.40 of this
4 title, instead issue to and serve upon such person an appearance ticket.
5 § 11. This act shall take effect immediately; provided, however, that
6 section nine of this act shall take effect on the same date and in the
7 same manner as chapter 23 of the laws of 2024, takes effect.