

# STATE OF NEW YORK

3066

2023-2024 Regular Sessions

## IN SENATE

January 27, 2023

Introduced by Sens. RAMOS, KAVANAGH, MYRIE, RIVERA, SALAZAR, SEPULVEDA  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Codes

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 Assem-  
bly, do enact as follows:

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

3 § 530.15 Temporary order of protection hearing.

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

11 (a) The defendant shall be entitled to such hearing within three days  
12 of requesting such hearing. Notice must be given by the court to both  
13 parties, as well as the party protected by the order of protection, in  
14 advance of the hearing. Such notice shall detail the rights of the  
15 protected party with respect to the hearing and describe the different  
16 types of temporary orders of protection available.

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

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

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

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1 protecting a designated witness or complainant from intimidation or  
2 injury.

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

6 § 530.30 Order of recognizance, release under non-monetary conditions or  
7 bail or issuance of a temporary order of protection; by supe-  
8 rior court judge when action is pending in local criminal  
9 court.

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

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

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

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

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

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

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

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

49 [~~3-~~] 4. Not more than one application may be made pursuant to each  
50 subdivision of this section.

51 § 3. This act shall take effect immediately.