

STATE OF NEW YORK

3066--A

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 -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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:

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 necessary to achieve its purpose of protecting a designated witness
10 or complainant from intimidation or injury.

11 (a) The defendant shall be entitled to such hearing within five 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 relevant witness
18 testimony, or admissible evidence, subject to cross-examination, though
19 the witness need not be the party protected by the order.

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 necessary to achieve its purpose 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, the closing paragraph of subdivision 1 as
6 amended by section 7 of subpart A of part VV of chapter 56 of the laws
7 of 2023, is amended to read as follows:

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

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

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

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

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

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

25 In such case, such superior court judge may vacate the order of such
26 local criminal court and release the defendant on recognizance or under
27 non-monetary conditions, or where authorized, fix bail in a lesser
28 amount or in a less burdensome form, or order non-monetary conditions in
29 conjunction with fixing bail, including fixing bail in a lesser amount
30 or in a less burdensome form, the determination for which shall be made
31 in accordance with section 510.10 of this title. The court shall explain
32 the basis for its determination and choice of securing order on the
33 record or in writing.

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

44 3. Notwithstanding the provisions of subdivision one or two of this
45 section, when the defendant is charged with a felony in a local criminal
46 court, a superior court judge may not order recognizance, release under
47 non-monetary conditions or, where authorized, bail, or vacate or modify
48 a temporary order of protection unless and until the district attorney
49 has had an opportunity to be heard in the matter and such judge and
50 counsel for the defendant have been furnished with a report as described
51 in subparagraph (ii) of paragraph (b) of subdivision two of section
52 530.20 of this article.

53 [~~3-~~] 4. Not more than one application may be made pursuant to each
54 subdivision of this section.

55 § 3. This act shall take effect immediately.