

9506

I N A S S E M B L Y

March 7, 2012

Introduced by M. of A. SIMOTAS -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing the detective Peter Figoski act of 2012 including the risk to public safety as a factor in bail determinations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "detective Peter Figoski act of 2012".
3 S 2. Subdivisions 2 and 3 of section 510.30 of the criminal procedure
4 law, subparagraph (v) of paragraph (a) of subdivision 2 as amended by
5 chapter 920 of the laws of 1982, subparagraphs (vi), (vii) and (viii) of
6 paragraph (a) of subdivision 2 as renumbered by chapter 447 of the laws
7 of 1977 and subdivision 3 as added by chapter 788 of the laws of 1981,
8 are amended to read as follows:
9 2. To the extent that the issuance of an order of recognizance or
10 bail and the terms thereof are matters of discretion rather than of law,
11 an application is determined on the basis of the following factors and
12 criteria:
13 (a) With respect to any principal, the court [must] SHALL consider
14 the kind and degree of control or restriction that is necessary to
15 secure his OR HER court attendance when required. In determining that
16 matter, the court must, on the basis of available information, consider
17 and take into account:
18 (i) The principal's character, reputation, habits and mental condi-
19 tion;
20 (ii) His OR HER employment and financial resources; and
21 (iii) His OR HER family ties and the length of his OR HER residence if
22 any in the community; and
23 (iv) His OR HER criminal record if any; and
24 (v) His OR HER record of previous adjudication as a juvenile delin-
25 quent, as retained pursuant to section 354.2 of the family court act,
26 or, of pending cases where fingerprints are retained pursuant to section
27 306.1 of such act, or a youthful offender, if any; and

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

LBD14055-03-2

1 (vi) His OR HER previous record if any in responding to court appear-
2 ances when required or with respect to flight to avoid criminal prose-
3 cution; and

4 (vii) If he OR SHE is a defendant, the weight of the evidence against
5 him OR HER in the pending criminal action and any other factor indicat-
6 ing probability or improbability of conviction; or, in the case of an
7 application for bail or recognizance pending appeal, the merit or lack
8 of merit of the appeal; and

9 (viii) If he OR SHE is a defendant, the sentence which may be or has
10 been imposed upon conviction; AND

11 (IX) IF HE OR SHE IS A DEFENDANT (A) WHO HAS PREVIOUSLY BEEN CONVICTED
12 OF A VIOLENT FELONY, AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, OR
13 (B) CHARGED WITH ANY FELONY OFFENSE AND HE OR SHE HAS FAILED TO APPEAR
14 IN COURT IN THE PAST WHEN CHARGED WITH A FELONY,

15 THE COURT MAY CONSIDER WHETHER THE NATURE AND SERIOUSNESS OF THE
16 DANGER TO ANY PERSON OR THE COMMUNITY THAT WOULD BE POSED BY THE DEFEND-
17 ANT'S RELEASE REQUIRES THE PREVENTIVE DETENTION OF THAT DEFENDANT.

18 (b) Where the principal is a defendant-appellant in a pending appeal
19 from a judgment of conviction, the court must also consider the likeli-
20 hood of ultimate reversal of the judgment. A determination that the
21 appeal is palpably without merit alone justifies, but does not require,
22 a denial of the application, regardless of any determination made with
23 respect to the factors specified in paragraph (a) OF THIS SUBDIVISION.

24 3. When bail or recognizance is ordered, the court shall inform the
25 principal, if he OR SHE is a defendant charged with the commission of a
26 felony, that the release is conditional and that the court may revoke
27 the order of release and commit the principal to the custody of the
28 sheriff in accordance with the provisions of subdivision two of section
29 530.60 of this chapter if he OR SHE commits a subsequent felony while at
30 liberty upon such order.

31 S 3. This act shall take effect on the sixtieth day after it shall
32 have become a law.