

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. MAZIARZ, FLANAGAN, LITTLE, SALAND -- 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 enacting criteria controlling determination of grant of recognizance or bail

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 "Jilly's law".

3 S 2. Paragraph (a) of subdivision 2 of section 510.30 of the criminal
4 procedure law, subparagraph (v) as amended by chapter 920 of the laws of
5 1982 and subparagraphs (vi), (vii) and (viii) as renumbered by chapter
6 447 of the laws of 1977, is amended to read as follows:

7 (a) With respect to any principal, the court must consider the kind
8 and degree of control or restriction that is necessary to secure his OR
9 HER court attendance when required AND WHETHER THE PRINCIPAL IS A DANGER
10 TO THE ALLEGED VICTIM IN A CRIMINAL ACTION, MEMBERS OF THE COMMUNITY OR
11 TO HIMSELF OR HERSELF. In determining that matter, the court must, on
12 the basis of available information, consider [and take into account]:

13 (i) The principal's character, reputation, habits and mental condi-
14 tion, INCLUDING PRIOR THREATS OF OR ATTEMPTS OF SUICIDE; AND

15 (ii) His OR HER employment and financial resources; and

16 (iii) His OR HER family ties and the length of his OR HER residence
17 if any in the community; and

18 (iv) His OR HER criminal record if any; and

19 (v) His OR HER record of previous adjudication as a juvenile delin-
20 quent, as retained pursuant to section 354.2 of the family court act,
21 or, of pending cases where fingerprints are retained pursuant to section
22 306.1 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.

LBD01587-01-1

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, OR ANY RECORD OF VIOLATIONS OF COURT ORDERS; 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, ANY HISTORY OR PATTERN OF VIOLENT
12 ACTS OR THREATS OF VIOLENT ACTS AGAINST THE ALLEGED VICTIM IN A CRIMINAL
13 ACTION, OR TOWARD OTHERS; AND

14 (X) IF HE OR SHE IS A DEFENDANT, ANY RECORD OF ANY ORDERS OF
15 PROTECTION THAT WERE PREVIOUSLY ISSUED AGAINST THE PRINCIPAL, OR ARE
16 CURRENTLY IN EFFECT AGAINST THE PRINCIPAL, INCLUDING RECORDS OF ANY
17 VIOLATION OF ANY PROTECTION ORDER; AND

18 (XI) IF HE OR SHE IS A DEFENDANT, THE VIOLENT NATURE OF THE CHARGED
19 CRIME AND THE IMPACT OF THE CRIME ON THE ALLEGED VICTIM; AND

20 (XII) ANY OTHER FACTOR DEEMED TO BE RELEVANT BY THE COURT UNDER THE
21 CIRCUMSTANCES OF THE CASE.

22 S 3. Section 510.30 of the criminal procedure law is amended by adding
23 two new subdivisions 4 and 5 to read as follows:

24 4. WHERE THE PRINCIPAL IS A DEFENDANT, THE COURT MAY, IN ITS
25 DISCRETION AND AFTER CONSIDERATION OF THE FACTORS SPECIFIED IN PARAGRAPH
26 (A) OF SUBDIVISION TWO OF THIS SECTION, ORDER THAT THE DEFENDANT SUBMIT
27 TO THE USE OF AN ELECTRONIC MONITORING DEVICE UNDER THE SUPERVISION OF
28 THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES WITH THE FURTHER
29 CONDITION THAT TAMPERING WITH SUCH MONITOR SHALL CONSTITUTE GROUNDS FOR
30 REVOCATION OF BAIL.

31 5. WHERE THE PRINCIPAL IS A DEFENDANT, THE COURT MAY, IN ITS
32 DISCRETION, DENY BAIL IF THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE
33 CHARGE, AND IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE
34 DEFENDANT IS NOT REASONABLY LIKELY TO APPEAR IN COURT WHEN REQUIRED OR
35 IS A DANGER TO THE ALLEGED VICTIM, MEMBERS OF THE COMMUNITY OR TO
36 HIMSELF OR HERSELF IF RELEASED ON BAIL. IF BAIL IS DENIED, THE COURT
37 SHALL PLACE ITS REASONS ON THE RECORD.

38 S 4. This act shall take effect on the first of November next succeed-
39 ing the date on which it shall have become a law.