

4799

2011-2012 Regular Sessions

I N   S E N A T E

April 25, 2011

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Introduced by Sen. FLANAGAN -- 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 denial of recognizance or bail in certain cases

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

1     Section 1. Section 500.10 of the criminal procedure law is amended by  
2     adding a new subdivision 21 to read as follows:

3     21. "PERSON WHO MUST BE COMMITTED TO THE CUSTODY OF THE SHERIFF" MEANS  
4     A PERSON WHO:

5     (A) IS CHARGED BY FELONY COMPLAINT OR INDICTMENT WITH ONE OR MORE OF  
6     THE FOLLOWING CRIMES. MURDER IN THE FIRST DEGREE, MURDER IN THE SECOND  
7     DEGREE, ARSON IN THE FIRST DEGREE, ARSON IN THE SECOND DEGREE, AGGRA-  
8     VATED ASSAULT UPON A POLICE OFFICER OR A PEACE OFFICER, CRIMINAL USE OF  
9     A FIREARM IN THE FIRST DEGREE, CRIMINAL USE OF A FIREARM IN THE SECOND  
10    DEGREE, RAPE IN THE FIRST DEGREE, SODOMY IN THE FIRST DEGREE, ATTEMPT TO  
11    COMMIT ANY OF THE FOREGOING CRIMES, MANSLAUGHTER IN THE FIRST DEGREE,  
12    ROBBERY IN THE FIRST DEGREE, BURGLARY IN THE FIRST DEGREE, ROBBERY IN  
13    THE SECOND DEGREE AS DEFINED BY SUBDIVISION TWO OF SECTION 160.10 OF THE  
14    PENAL LAW, OR BURGLARY IN THE SECOND DEGREE AS DEFINED BY SUBDIVISION  
15    ONE OF SECTION 140.25 OF THE PENAL LAW; AND

16    (B) EITHER (I) PREVIOUSLY HAS BEEN CONVICTED OF ONE OR MORE OF THE  
17    CRIMES SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, OR (II) PREVIOUS-  
18    LY HAS BEEN CONVICTED OF ANY FELONY IN THIS STATE, OR ANY OFFENSE  
19    COMMITTED IN ANOTHER JURISDICTION THAT WOULD BE A FELONY IF COMMITTED IN  
20    THIS STATE, PROVIDED SUCH CRIME WAS COMMITTED WITHIN FIVE YEARS PRECED-  
21    ING THE DATE THE CRIME FOR WHICH A SECURING ORDER IS TO BE MADE IS  
22    ALLEGED TO HAVE BEEN COMMITTED, OR (III) IS SUBJECT TO AN ORDER OF  
23    RECOGNIZANCE OR BAIL MADE BY A COURT OF THIS STATE IN THE COURSE OF  
24    ANOTHER CRIMINAL ACTION BASED UPON A CHARGE OF FELONY, OR HAD ESCAPED  
25    FROM A DETENTION FACILITY IN THIS STATE, AND THE CRIME PRESENTLY CHARGED

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

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1 IS ALLEGED TO HAVE BEEN COMMITTED WHILE THE DEFENDANT WAS AT LIBERTY  
2 PURSUANT TO SUCH ORDER OR AS A RESULT OF SUCH ESCAPE.

3 S 2. Section 510.20 of the criminal procedure law is amended by adding  
4 a new subdivision 3 to read as follows:

5 3. WHERE IT APPEARS THAT A DEFENDANT IS A PERSON WHO MUST BE COMMITTED  
6 TO THE CUSTODY OF THE SHERIFF AS DEFINED IN SUBDIVISION TWENTY-ONE OF  
7 SECTION 500.10 OF THIS TITLE, THE DEFENDANT MUST BE GIVEN AN OPPORTUNITY  
8 TO BE HEARD FOR THE PURPOSE OF CONTROVERTING ANY FACTOR SPECIFIED IN  
9 PARAGRAPH (B) OF SUCH SUBDIVISION RELIED UPON TO SUPPORT SUCH APPEAR-  
10 ANCE. IF THE DEFENDANT DOES CONTEST ANY SUCH FACTOR, THE BURDEN OF PROOF  
11 SHALL BE UPON THE PEOPLE TO PROVE THE CONTESTED FACTOR BY A PREPONDER-  
12 ANCE OF THE EVIDENCE AND THE COURT MAY RECEIVE ANY RELEVANT EVIDENCE NOT  
13 LEGALLY PRIVILEGED. FOR THE PURPOSES OF ANY SUCH HEARING THE DATE SHOWN  
14 ON THE FINGERPRINT REPORT AS THE DATE OF ARREST FOR A PRIOR CRIME SHALL  
15 BE DEEMED PRIMA FACIE EVIDENCE OF THE DATE ON WHICH THAT CRIME WAS  
16 COMMITTED.

17 S 3. Subdivision 3 of section 510.30 of the criminal procedure law is  
18 renumbered subdivision 4 and a new subdivision 3 is added to read as  
19 follows:

20 3. (A) WHERE AN APPLICATION FOR RECOGNIZANCE OR BAIL HAS BEEN DENIED  
21 SOLELY ON THE GROUND THAT THE DEFENDANT IS A PERSON WHO MUST BE COMMIT-  
22 TED TO THE CUSTODY OF THE SHERIFF, AS DEFINED IN SUBDIVISION TWENTY-ONE  
23 OF SECTION 500.10 OF THIS TITLE, AN APPLICATION FOR RECOGNIZANCE OR BAIL  
24 MAY BE GRANTED BY A JUDGE OF A SUPERIOR COURT PURSUANT TO SECTION 530.30  
25 OF THIS CHAPTER IF THE DEFENDANT HAS NOT BEEN INDICTED, OR PURSUANT TO  
26 SECTION 530.40 OF THIS TITLE IF AN INDICTMENT HAS BEEN FILED, IN ANY  
27 CASE WHERE THE COURT DETERMINES THAT:

28 (I) AN ORDER OF RECOGNIZANCE OR BAIL SHOULD BE ISSUED PURSUANT TO  
29 SUBDIVISION TWO OF THIS SECTION; AND

30 (II) THE RELEASE OF THE DEFENDANT IS IN FURTHERANCE OF THE INTERESTS  
31 OF JUSTICE BASED SOLELY UPON ONE OR MORE OF THE FOLLOWING FACTORS: (1)  
32 MITIGATING CIRCUMSTANCES THAT BEAR DIRECTLY UPON THE MANNER IN WHICH THE  
33 PRESENT CRIME WAS COMMITTED; (2) NO SERIOUS HARM WAS CAUSED OR THREAT-  
34 ENED BY THE PRESENT CRIME; (3) WHERE THE DEFENDANT WAS NOT THE SOLE  
35 PARTICIPANT IN THE PRESENT CRIME, THE DEFENDANT'S PARTICIPATION WAS  
36 RELATIVELY MINOR, ALTHOUGH NOT SO MINOR AS TO CONSTITUTE A DEFENSE TO  
37 THE PROSECUTION; OR

38 (III) THE DEFENDANT HAS NOT BEEN AFFORDED AN OPPORTUNITY FOR TRIAL  
39 WITHIN SIXTY DAYS FROM THE DATE OF ARREST COMPUTED AFTER EXCLUDING THE  
40 NUMBER OF DAYS THE CRIMINAL PROCEEDING HAS BEEN DELAYED PURSUANT TO  
41 REQUEST OR CONSENT OR THE CONDITION OF THE DEFENDANT OR BY REASON OF  
42 MOTIONS MADE OR OTHER ACTION ON THE PART OF THE DEFENDANT; OR

43 (IV) THE PEOPLE HAVE NOT PROCEEDED WITH DUE DILIGENCE AT ANY STAGE OF  
44 THE CRIMINAL ACTION AND THE PEOPLE ARE UNABLE TO SHOW GOOD CAUSE FOR  
45 SUCH FAILURE TO PROCEED, BUT GOOD CAUSE FOR THE PURPOSE OF SUCH SHOWING  
46 SHALL NOT INCLUDE THE LACK OF JUDICIAL OR NONJUDICIAL PERSONNEL OR THE  
47 LACK OF AN AVAILABLE COURTROOM OR ADEQUATE PROSECUTORIAL STAFF.

48 (B) IF THE COURT DETERMINES TO GRANT AN ORDER OF RECOGNIZANCE OR BAIL  
49 PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, IT SHALL STATE ON THE  
50 RECORD THE FACTORS UPON WHICH ITS DETERMINATION IS BASED AND THE COURT  
51 SHALL GIVE ITS REASONS IN DETAIL, NOT IN CONCLUSORY TERMS.

52 (C) FOR THE PURPOSE OF MAKING A DETERMINATION PURSUANT TO PARAGRAPH  
53 (A) OF THIS SUBDIVISION, THE COURT MAY MAKE SUCH INQUIRY AS IT DEEMS  
54 NECESSARY. ANY EVIDENCE WHICH IS NOT LEGALLY PRIVILEGED MAY BE INTRO-  
55 DUCED. IF THE DEFENDANT TESTIFIES, HIS OR HER TESTIMONY MAY NOT BE  
56 INTRODUCED AGAINST HIM OR HER ON THE TRIAL OF ANY CRIME ARISING OUT OF

1 THE CRIMINAL TRANSACTION UPON WHICH THE PENDING CHARGE IS BASED, EXCEPT  
2 TO IMPEACH HIS OR HER TESTIMONY AT SUCH TRIAL AS INCONSISTENT WITH PRIOR  
3 TESTIMONY.

4 S 4. Section 530.10 of the criminal procedure law is amended to read  
5 as follows:

6 S 530.10 Order of recognizance or bail; in general.

7 Under circumstances prescribed in this article, a court, upon applica-  
8 tion of a defendant charged with or convicted of an offense, is required  
9 or authorized to order OR TO DENY bail or recognizance for the release  
10 or prospective release of such defendant during the pendency of either:

11 1. A criminal action based upon such charge; or

12 2. An appeal taken by the defendant from a judgment of conviction or a  
13 sentence or from an order of an intermediate appellate court affirming  
14 or modifying a judgment of conviction or a sentence.

15 S 5. Section 530.20 of the criminal procedure law, as amended by chap-  
16 ter 531 of the laws of 1975, subparagraph (ii) of paragraph (b) of  
17 subdivision 2 as amended by chapter 218 of the laws of 1979, is amended  
18 to read as follows:

19 S 530.20 Order of recognizance or bail; by local criminal court when  
20 action is pending therein.

21 When a criminal action is pending in a local criminal court, such  
22 court, upon application of a defendant, must or may order recognizance  
23 or bail as follows:

24 1. When the defendant is charged, by information, simplified informa-  
25 tion, prosecutor's information or misdemeanor complaint, with an offense  
26 or offenses of less than felony grade only, the court must order recog-  
27 nizance or bail.

28 2. When the defendant is charged, by felony complaint, with a felony,  
29 the court may, in its discretion, order OR DENY recognizance or bail  
30 except as otherwise provided in this subdivision:

31 (a) A city court, a town court or a village court may not order  
32 recognizance or bail when (i) the defendant is charged with a class A  
33 felony, or (ii) THE DEFENDANT IS CHARGED WITH THE CRIME OF AGGRAVATED  
34 ASSAULT UPON A POLICE OFFICER OR A PEACE OFFICER, OR (III) it appears  
35 that the defendant has two previous felony convictions;

36 (b) NO LOCAL CRIMINAL COURT MAY ORDER RECOGNIZANCE OR BAIL WHEN IT  
37 APPEARS THAT THE DEFENDANT IS A PERSON WHO MUST BE COMMITTED TO THE  
38 CUSTODY OF THE SHERIFF AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION  
39 500.10 OF THIS TITLE.

40 (C) No local criminal court may order recognizance or bail with  
41 respect to a defendant charged with a felony unless and until:

42 (i) The district attorney has been heard in the matter or, after  
43 knowledge or notice of the application and reasonable opportunity to be  
44 heard, has failed to appear at the proceeding or has otherwise waived  
45 his right to do so; and

46 (ii) The court has been furnished with a report of the division of  
47 criminal justice services concerning the defendant's criminal record if  
48 any or with a police department report with respect to the defendant's  
49 prior arrest record. If neither report is available, the court, with  
50 the consent of the district attorney, may dispense with this require-  
51 ment; provided, however, that in an emergency, including but not limited  
52 to a substantial impairment in the ability of such division or police  
53 department to timely furnish such report, such consent shall not be  
54 required if, for reasons stated on the record, the court deems it unnec-  
55 essary. When the court has been furnished with any such report or

record, it shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.

3. WHERE A LOCAL CRIMINAL COURT LACKS AUTHORITY TO ORDER RECOGNIZANCE OR BAIL BY REASON OF THE FACT THAT IT APPEARS THE DEFENDANT IS A PERSON WHO MUST BE COMMITTED TO THE CUSTODY OF THE SHERIFF, AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION 500.10 OF THIS TITLE AND AFTER A HEARING FINDS THERE IS REASONABLE CAUSE TO BELIEVE THE DEFENDANT COMMITTED A FELONY BUT THERE IS NOT REASONABLE CAUSE TO BELIEVE THE DEFENDANT COMMITTED ONE OF THE CRIMES SPECIFIED IN PARAGRAPH (A) OF SUCH SUBDIVISION, THE COURT SHALL CONVERT THE FELONY COMPLAINT INTO ONE THAT DOES NOT CHARGE A CRIME SPECIFIED IN SUCH PARAGRAPH BY MAKING APPROPRIATE NOTATIONS UPON OR ATTACHED THERETO AND THE COURT MAY THEN PROCEED TO DETERMINE AN APPLICATION FOR BAIL OR RECOGNIZANCE IN THE SAME MANNER AND IN ACCORDANCE WITH THE SAME CRITERIA AS IT WOULD WITH RESPECT TO A DEFENDANT OTHER THAN ONE WHO MUST BE COMMITTED TO THE CUSTODY OF THE SHERIFF.

S 6. Section 530.30 of the criminal procedure law, subdivision 2 as amended by chapter 762 of the laws of 1971, is amended to read as follows:

S 530.30 Order of recognizance or bail; by superior court judge when action is pending in local criminal court.

1. [When] EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, WHEN a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, a judge of a superior court holding a term thereof in the county, upon application of a defendant, may order recognizance or bail when such local criminal court:

(a) Lacks authority to issue such an order, pursuant to paragraph (a) of subdivision two of section 530.20 OF THIS ARTICLE; or

(b) Has denied an application for recognizance or bail; or

(c) Has fixed bail which is excessive. In such case, such superior court judge may vacate the order of such local criminal court and release the defendant on his own recognizance or fix bail in a lesser amount or in a less burdensome form.

2. WHEN A CRIMINAL ACTION IS PENDING IN A LOCAL CRIMINAL COURT AND SUCH COURT LACKS AUTHORITY TO ORDER RECOGNIZANCE OR BAIL PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION 530.20 OF THIS ARTICLE BY REASON OF THE FACT THAT IT APPEARS THAT THE DEFENDANT IS A PERSON WHO MUST BE COMMITTED TO THE CUSTODY OF THE SHERIFF AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION 500.10 OF THIS TITLE, A JUDGE OF A SUPERIOR COURT HOLDING A TERM THEREOF IN THE COUNTY, UPON APPLICATION OF A DEFENDANT, MAY ORDER RECOGNIZANCE OR BAIL, BUT ONLY IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF SECTION 510.30 OF THIS TITLE.

3. Notwithstanding the provisions of [subdivision] SUBDIVISIONS one AND TWO OF THIS SECTION, when the defendant is charged with a felony in a local criminal court, a superior court judge may not order recognizance or bail unless and until the district attorney has had an opportunity to be heard in the matter and such judge has been furnished with a report as described in subparagraph (ii) of paragraph [(b)] (C) of subdivision two of section 530.20 OF THIS ARTICLE.

[3] 4. Not more than one application may be made pursuant to this section.

S 7. Subdivision 4 of section 530.40 of the criminal procedure law, as amended by chapter 762 of the laws of 1971, is amended and a new subdivision 5 is added to read as follows:

1     4. Notwithstanding the provisions of subdivision two OF THIS SECTION,  
2 a superior court may not order recognizance or bail when the defendant  
3 is charged with a felony unless and until the district attorney has had  
4 an opportunity to be heard in the matter and such court has been  
5 furnished with a report as described in subparagraph (ii) of paragraph  
6 [(b)] (C) of subdivision two of section 530.20 OF THIS ARTICLE.  
7     5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION,  
8 A SUPERIOR COURT MAY NOT ORDER RECOGNIZANCE OR BAIL WHEN IT APPEARS THAT  
9 THE DEFENDANT IS A PERSON WHO MUST BE COMMITTED TO THE CUSTODY OF THE  
10 SHERIFF AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION 500.10 OF THIS  
11 TITLE UNLESS IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF  
12 SECTION 510.30 OF THIS TITLE.  
13     S 8. This act shall take effect on the first of November next succeed-  
14 ing the date on which it shall have become a law.