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I N A S S E M B L Y

March 22, 2012

Introduced by M. of A. SIMANOWITZ, SALADINO, P. RIVERA, MONTESANO, HIKIND, ROBINSON, COOK, LINARES, TOBACCO, BENEDETTO, MAISEL, GALEF, SCHIMEL, CASTRO, LOSQUADRO, LAVINE, LANCMAN, SIMOTAS -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, BARCLAY, CALHOUN, CERETTO, CRESPO, CROUCH, DenDEKKER, JAFFEE, McKEVITT, J. MILLER, ORTIZ, PERRY, RA, THIELE, WALTER, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to authorizing detention when a defendant presents a clear and convincing likelihood that a defendant would be a danger to society

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

- 1 Section 1. Subdivisions 2 and 3 of section 510.30 of the criminal
2 procedure law, subparagraph (v) of paragraph (a) of subdivision 2 as
3 amended by chapter 920 of the laws of 1982, subparagraphs (vi), (vii),
4 and (viii) of paragraph (a) of subdivision 2 as renumbered by chapter
5 447 of the laws of 1977 and subdivision 3 as added by chapter 788 of the
6 laws of 1981, are amended to read as follows:
7 2. To the extent that the issuance of an order of recognizance or
8 bail and the terms thereof are matters of discretion rather than of law,
9 an application is determined on the basis of the following factors and
10 criteria:
11 (a) With respect to any principal, the court [must] SHALL consider
12 the kind and degree of control or restriction that is necessary to
13 secure his OR HER court attendance when required. In determining that
14 matter, the court must, on the basis of available information, consider
15 and take into account:
16 (i) The principal's character, reputation, habits and mental condi-
17 tion;
18 (ii) His OR HER employment and financial resources; and
19 (iii) His OR HER family ties and the length of his OR HER residence
20 if any in the community; and
21 (iv) His OR HER criminal record if any; and

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

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1 (v) His OR HER record of previous adjudication as a juvenile delin-
2 quent, as retained pursuant to section 354.2 of the family court act,
3 or, of pending cases where fingerprints are retained pursuant to section
4 306.1 of such act, or a youthful offender, if any; and

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

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

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

15 (IX) IF HE OR SHE IS A DEFENDANT, THE COURT MAY CONSIDER WHETHER THE
16 LIKELIHOOD THAT HE OR SHE WOULD BE A DANGER TO SOCIETY, THE COMMUNITY OR
17 ANY PERSON IF AT LIBERTY DURING THE PENDENCY OF THE ACTION OR PROCEEDING
18 REQUIRES THE DETENTION OF THAT DEFENDANT. CLEAR AND CONVINCING EVIDENCE
19 OF DANGER TO ANY PERSON OR THE COMMUNITY SHALL BE REQUIRED FOR THE
20 DETENTION OF SUCH DEFENDANT.

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

27 3. When bail or recognizance is ordered, the court shall inform the
28 principal, if he OR SHE is a defendant charged with the commission of a
29 felony, that the release is conditional and that the court may revoke
30 the order of release and commit the principal to the custody of the
31 sheriff in accordance with the provisions of subdivision two of section
32 530.60 of this chapter if he OR SHE commits a subsequent felony while at
33 liberty upon such order.

34 S 2. This act shall take effect on the sixtieth day after it shall
35 have become a law.