S T A T E O F N E W Y O R K

259

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:

Section 1. Short title. This act shall be known and may be cited as "Jilly's law".

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

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

(i) The principal's character, reputation, habits and mental condition, INCLUDING PRIOR THREATS OF OR ATTEMPTS OF SUICIDE; AND

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

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

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

(v) His OR HER record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 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.

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(vi) His OR HER previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution, OR ANY RECORD OF VIOLATIONS OF COURT ORDERS; and

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

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

(IX) IF HE OR SHE IS A DEFENDANT, ANY HISTORY OR PATTERN OF VIOLENT ACTS OR THREATS OF VIOLENT ACTS AGAINST THE ALLEGED VICTIM IN A CRIMINAL ACTION, OR TOWARD OTHERS; AND

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

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

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

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

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

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

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.