

2142

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. SIMOTAS, SIMANOWITZ -- 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 2013 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 2013".  
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, subparagraph (vi) of paragraph (a) of  
6     subdivision 2 as renumbered by chapter 447 of the laws of 1977, subpara-  
7     graph (vii) as added and subparagraphs (viii) and (ix) as renumbered by  
8     section 1 of part D of chapter 491 of the laws of 2012, and subdivision  
9     3 as added by chapter 788 of the laws of 1981, are amended to read as  
10    follows:  
11    2. To the extent that the issuance of an order of recognizance or bail  
12    and the terms thereof are matters of discretion rather than of law, an  
13    application is determined on the basis of the following factors and  
14    criteria:  
15    (a) With respect to any principal, the court [must] SHALL consider the  
16    kind and degree of control or restriction that is necessary to secure  
17    his OR HER court attendance when required. In determining that matter,  
18    the court must, on the basis of available information, consider and take  
19    into account:  
20    (i) The principal's character, reputation, habits and mental condi-  
21    tion;  
22    (ii) His OR HER employment and financial resources; and

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

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

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

4 (v) His OR HER record of previous adjudication as a juvenile delin-  
5 quent, as retained pursuant to section 354.2 of the family court act,  
6 or, of pending cases where fingerprints are retained pursuant to section  
7 306.1 of such act, or a youthful offender, if any; and

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

11 (vii) Where the principal is charged with a crime or crimes against a  
12 member or members of the same family or household as that term is  
13 defined in subdivision one of section 530.11 of this title, the follow-  
14 ing factors:

15 (A) any violation by the principal of an order of protection issued by  
16 any court for the protection of a member or members of the same family  
17 or household as that term is defined in subdivision one of section  
18 530.11 of this title, whether or not such order of protection is  
19 currently in effect; and

20 (B) the principal's history of use or possession of a firearm; and

21 (viii) If he OR SHE is a defendant, the weight of the evidence against  
22 him OR HER in the pending criminal action and any other factor indicat-  
23 ing probability or improbability of conviction; or, in the case of an  
24 application for bail or recognizance pending appeal, the merit or lack  
25 of merit of the appeal; and

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

28 (X) IF HE OR SHE IS A DEFENDANT (A) WHO HAS PREVIOUSLY BEEN CONVICTED  
29 OF A VIOLENT FELONY, AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, OR

30 (B) CHARGED WITH ANY FELONY OFFENSE AND HE OR SHE HAS FAILED TO APPEAR  
31 IN COURT IN THE PAST WHEN CHARGED WITH A FELONY,

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

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

41 3. When bail or recognizance is ordered, the court shall inform the  
42 principal, if he OR SHE is a defendant charged with the commission of a  
43 felony, that the release is conditional and that the court may revoke  
44 the order of release and commit the principal to the custody of the  
45 sheriff in accordance with the provisions of subdivision two of section  
46 530.60 of this chapter if he OR SHE commits a subsequent felony while at  
47 liberty upon such order.

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