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

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2013-2014 Regular Sessions

I N S E N A T E

April 3, 2013

Introduced by Sen. NOZZOLIO -- (at request of the Office of Court Administration) -- 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 the issuance of securing orders

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

Section 1. Legislative findings. The legislature finds and declares that there is a present need to revise New York's procedures regulating release of persons charged with criminal offenses pending trial. These procedures, which are set forth in title P of the criminal procedure law, require criminal courts to issue securing orders releasing such persons on their own recognizance, fixing bail upon the payment of which they must be released from custody, or remanding them to the custody of corrections officials.

Experience has shown that these procedures are ill-designed to meet today's community needs. First, New York remains one of very few states nationally that fails to require judges, in making bail decisions, to weigh defendant's threat to public safety. This makes little sense in modern American life where we as a state need to do all we can to be effective and principled in protecting communities from dangerous persons charged with crime who may otherwise be eligible for release pending trial. Second, as many have recognized, New York's bail rules, as applied, can be particularly unfair to poor persons and their families as bail beyond the financial wherewithal of a criminal defendant is frequently ordered in low-level offenses even where such defendant may pose little risk of flight.

Accordingly, this act has two purposes. First, it seeks to recognize what most other state jurisdictions and the federal government have long accepted - that a defendant's danger to the community is a factor that must be considered by a court charged with determining whether that

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

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defendant should be released pending trial. Second, this act aims to ensure that the state's bail statutes are implemented fairly and that poor persons charged with crime should not be at any special disadvantage when it comes to decisions regarding release pending trial.

S 2. The opening paragraph of paragraph (a) of subdivision 2 of section 510.30 of the criminal procedure law is amended to read as follows:

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 TO ASSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY. In determining [that matter] THESE MATTERS, the court must, on the basis of available information, consider and take into account:

S 3. The section heading of section 510.40 of the criminal procedure law is amended and a new subdivision 1-a is added to read as follows:

Application for recognizance or bail; determination thereof, FIXING CONDITIONS THEREFOR, form of securing order and execution thereof.

1-A. THE COURT MAY MAKE ANY SECURING ORDER SPECIFIED IN PARAGRAPH (A) OR (B) OF SUBDIVISION ONE OF THIS SECTION SUBJECT TO ANY CONDITION OR CONDITIONS THAT, IN ITS DETERMINATION, WILL REASONABLY ASSURE THE APPEARANCE OF THE PRINCIPAL IN COURT WHEN REQUIRED OR THAT WILL REASONABLY ASSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY. SUCH CONDITION OR CONDITIONS MAY INCLUDE ANY THAT TO THE COURT SEEM APPROPRIATE PROVIDED THAT THEY REPRESENT THE LEAST RESTRICTIVE CONDITION OR CONDITIONS NECESSARY. NOTWITHSTANDING THE FOREGOING, THIS SUBDIVISION SHALL NOT AFFECT A COURT'S AUTHORITY PURSUANT TO SECTIONS 530.12 AND 530.13 OF THIS TITLE.

S 4. Subdivision 1 and the opening paragraph of subdivision 2 of section 530.20 of the criminal procedure law, as amended by chapter 531 of the laws of 1975, are amended to read as follows:

1. When the defendant is charged[, by information, simplified information, prosecutor's information or misdemeanor complaint,] with an offense or offenses [of less than felony grade only] OTHER THAN A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW OR THE COMMISSION OR ATTEMPTED COMMISSION OF A CLASS A FELONY OR MANSLAUGHTER IN THE SECOND DEGREE AS PROVIDED IN SECTION 125.15 OF THE PENAL LAW, the court must order recognizance [or bail] UNLESS THE COURT DETERMINES THAT SUCH A SECURING ORDER WILL NOT REASONABLY SECURE THE DEFENDANT'S COURT ATTENDANCE WHEN REQUIRED OR WILL ENDANGER THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY IN WHICH EVENT THE COURT MUST ORDER BAIL.

When the defendant is charged, by felony complaint, with a VIOLENT felony OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW OR THE COMMISSION OR ATTEMPTED COMMISSION OF A CLASS A FELONY OR MANSLAUGHTER IN THE SECOND DEGREE AS PROVIDED IN SECTION 125.15 OF THE PENAL LAW, the court may, in its discretion, order recognizance or bail except as otherwise provided in this subdivision:

S 5. Subdivisions 1, 2 and 3 of section 530.40 of the criminal procedure law, subdivision 3 as amended by chapter 264 of the laws of 2003, are amended to read as follows:

1. When the defendant is charged with an offense or offenses [of less than felony grade only] OTHER THAN A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW OR THE COMMISSION OR ATTEMPTED COMMISSION OF A CLASS A FELONY OR MANSLAUGHTER IN THE SECOND DEGREE AS PROVIDED IN SECTION 125.15 OF THE PENAL LAW, the court

must order recognizance [or bail] UNLESS THE COURT DETERMINES THAT SUCH A SECURING ORDER WILL NOT REASONABLY SECURE THE DEFENDANT'S COURT ATTENDANCE WHEN REQUIRED OR WILL ENDANGER THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY IN WHICH EVENT THE COURT MUST ORDER RECOGNIZANCE OR BAIL.

2. When the defendant is charged with a VIOLENT felony OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW OR THE COMMISSION OR ATTEMPTED COMMISSION OF A CLASS A FELONY OR MANSLAUGHTER IN THE SECOND DEGREE AS PROVIDED IN SECTION 125.15 OF THE PENAL LAW, the court may, in its discretion, order recognizance or bail. In any such case in which an indictment (a) has resulted from an order of a local criminal court holding the defendant for the action of the grand jury, or (b) was filed at a time when a felony complaint charging the same conduct was pending in a local criminal court, and in which such local criminal court or a superior court judge has issued an order of recognizance or bail which is still effective, the superior court's order may be in the form of a direction continuing the effectiveness of the previous order.

3. Notwithstanding the provisions of [subdivision] SUBDIVISIONS ONE AND two OF THIS SECTION, a superior court may not order recognizance or bail, or permit a defendant to remain at liberty pursuant to an existing order, after he OR SHE has been convicted of either: (a) a class A felony or (b) any class B or class C felony defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age. In either case the court must commit or remand the defendant to the custody of the sheriff.

S 6. The criminal procedure law is amended by adding a new section 530.42 to read as follows:

S 530.42 ORDER OF RECOGNIZANCE OR BAIL: REVIEW OF SECURING ORDER.

NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF SECTION 510.20 OF THIS TITLE, UPON A DEFENDANT'S FIRST APPEARANCE BEFORE THE COURT IN A CRIMINAL ACTION OR PROCEEDING IN WHICH HE OR SHE IS CHARGED WITH ONE OR MORE OFFENSES, OCCURRING NOT LESS THAN THIRTY DAYS AFTER HE OR SHE WAS ARRAIGNED THEREON, THE COURT MUST ENTERTAIN AN APPLICATION BY THE DEFENDANT FOR A CHANGE IN ANY SECURING ORDER THEN APPLICABLE TO SUCH DEFENDANT IN SUCH ACTION OR PROCEEDING. UPON SUCH APPLICATION, THE DEFENDANT MUST BE ACCORDED AN OPPORTUNITY TO BE HEARD, AND THE COURT MUST DETERMINE THE APPLICATION DE NOVO, WITHOUT REGARD TO THE EXISTING SECURING ORDER AND IN THE SAME MANNER AS IT WOULD DETERMINE AN APPLICATION FOR RECOGNIZANCE OR BAIL MADE BY A DEFENDANT WHEN HE OR SHE FIRST COMES UNDER THE CONTROL OF THE COURT. NOTWITHSTANDING THE FOREGOING, THIS SECTION SHALL NOT APPLY WHERE (I) A DEFENDANT IS CHARGED WITH ONE OR MORE OFFENSES IN A SUPERIOR COURT BY INDICTMENT OR SUPERIOR COURT INFORMATION FILED AFTER THE DEFENDANT HAS BEEN HELD FOR ACTION OF THE GRAND JURY BY A LOCAL CRIMINAL COURT BEFORE WHICH A FELONY COMPLAINT CHARGING DEFENDANT WITH COMMISSION OF ONE OR MORE OFFENSES WAS PENDING, AND (II) WHILE SUCH FELONY COMPLAINT WAS PENDING, SUCH LOCAL CRIMINAL COURT RECEIVED AND DETERMINED AN APPLICATION BY DEFENDANT PURSUANT TO THIS SECTION IN RELATION TO A SECURING ORDER ISSUED BY SUCH COURT UPON DEFENDANT'S ARRAIGNMENT ON SUCH FELONY COMPLAINT.

S 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.