

2411

2013-2014 Regular Sessions

I N A S S E M B L Y

January 15, 2013

Introduced by M. of A. SIMANOWITZ, SALADINO, MONTESANO, HIKIND, ROBINSON, COOK, BENEDETTO, MAISEL, GALEF, SCHIMEL, CASTRO, LOSQUADRO, LAVINE, SIMOTAS, RAMOS, GABRYSZAK, HOOPER, WEPRIN -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, BARCLAY, CERETTO, CRESPO, CROUCH, DenDEKKER, JAFFEE, McKEVITT, 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, subparagraph (vi) of para-
4 graph (a) of subdivision 2 as renumbered by chapter 447 of the laws of
5 1977, subparagraph (vii) of paragraph (a) of subdivision 2 as added and
6 subparagraphs (viii) and (ix) of paragraph (a) of subdivision 2 as
7 renumbered by section 1 of part D of chapter 491 of the laws of 2012,
8 and subdivision 3 as added by chapter 788 of the laws of 1981, are
9 amended to read as follows:
10 2. To the extent that the issuance of an order of recognizance or bail
11 and the terms thereof are matters of discretion rather than of law, an
12 application is determined on the basis of the following factors and
13 criteria:
14 (a) With respect to any principal, the court [must] SHALL consider the
15 kind and degree of control or restriction that is necessary to secure
16 his OR HER court attendance when required. In determining that matter,
17 the court must, on the basis of available information, consider and take
18 into account:
19 (i) The principal's character, reputation, habits and mental condi-
20 tion;

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

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1 (ii) His OR HER employment and financial resources; and
2 (iii) His OR HER family ties and the length of his residence if any in
3 the community; and
4 (iv) His OR HER criminal record if any; and
5 (v) His OR HER record of previous adjudication as a juvenile delin-
6 quent, as retained pursuant to section 354.2 of the family court act,
7 or, of pending cases where fingerprints are retained pursuant to section
8 306.1 of such act, or a youthful offender, if any; and
9 (vi) His OR HER previous record if any in responding to court appear-
10 ances when required or with respect to flight to avoid criminal prose-
11 cution; and
12 (vii) Where the principal is charged with a crime or crimes against a
13 member or members of the same family or household as that term is
14 defined in subdivision one of section 530.11 of this title, the follow-
15 ing factors:
16 (A) any violation by the principal of an order of protection issued by
17 any court for the protection of a member or members of the same family
18 or household as that term is defined in subdivision one of section
19 530.11 of this title, whether or not such order of protection is
20 currently in effect; and
21 (B) the principal's history of use or possession of a firearm; and
22 (viii) If he OR SHE is a defendant, the weight of the evidence against
23 him OR HER in the pending criminal action and any other factor indicat-
24 ing probability or improbability of conviction; or, in the case of an
25 application for bail or recognizance pending appeal, the merit or lack
26 of merit of the appeal; and
27 (ix) If he OR SHE is a defendant, the sentence which may be or has
28 been imposed upon conviction; AND
29 (X) IF HE OR SHE IS A DEFENDANT, THE COURT MAY CONSIDER WHETHER THE
30 LIKELIHOOD THAT HE OR SHE WOULD BE A DANGER TO SOCIETY, THE COMMUNITY OR
31 ANY PERSON IF AT LIBERTY DURING THE PENDENCY OF THE ACTION OR PROCEEDING
32 REQUIRES THE DETENTION OF THAT DEFENDANT. CLEAR AND CONVINCING EVIDENCE
33 OF DANGER TO ANY PERSON OR THE COMMUNITY SHALL BE REQUIRED FOR THE
34 DETENTION OF SUCH 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 2. This act shall take effect on the sixtieth day after it shall
49 have become a law.