

6799

2013-2014 Regular Sessions

I N A S S E M B L Y

April 18, 2013

Introduced by M. of A. LENTOL -- (at request of the Office of Court Administration) -- read once and referred 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:

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

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

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

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

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1 ensure that the state's bail statutes are implemented fairly and that
2 poor persons charged with crime should not be at any special disadvan-
3 tage when it comes to decisions regarding release pending trial.

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

7 With respect to any principal, the court must consider the kind and
8 degree of control or restriction that is necessary to secure his OR HER
9 court attendance when required AND TO ASSURE THE SAFETY OF ANY OTHER
10 PERSON OR THE COMMUNITY. In determining [that matter] THESE MATTERS,
11 the court must, on the basis of available information, consider and take
12 into account:

13 S 3. The section heading of section 510.40 of the criminal procedure
14 law is amended and a new subdivision 1-a is added to read as follows:
15 Application for recognizance or bail; determination thereof, FIXING
16 CONDITIONS THEREFOR, form of securing order and execution
17 thereof.

18 1-A. THE COURT MAY MAKE ANY SECURING ORDER SPECIFIED IN PARAGRAPH (A)
19 OR (B) OF SUBDIVISION ONE OF THIS SECTION SUBJECT TO ANY CONDITION OR
20 CONDITIONS THAT, IN ITS DETERMINATION, WILL REASONABLY ASSURE THE
21 APPEARANCE OF THE PRINCIPAL IN COURT WHEN REQUIRED OR THAT WILL REASON-
22 ABLY ASSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY. SUCH CONDI-
23 TION OR CONDITIONS MAY INCLUDE ANY THAT TO THE COURT SEEM APPROPRIATE
24 PROVIDED THAT THEY REPRESENT THE LEAST RESTRICTIVE CONDITION OR CONDI-
25 TIONS NECESSARY. NOTWITHSTANDING THE FOREGOING, THIS SUBDIVISION SHALL
26 NOT AFFECT A COURT'S AUTHORITY PURSUANT TO SECTIONS 530.12 AND 530.13 OF
27 THIS TITLE.

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

31 1. When the defendant is charged[, by information, simplified informa-
32 tion, prosecutor's information or misdemeanor complaint,] with an
33 offense or offenses [of less than felony grade only] OTHER THAN A
34 VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF
35 THE PENAL LAW OR THE COMMISSION OR ATTEMPTED COMMISSION OF A CLASS A
36 FELONY OR MANSLAUGHTER IN THE SECOND DEGREE AS PROVIDED IN SECTION
37 125.15 OF THE PENAL LAW, the court must order recognizance [or bail]
38 UNLESS THE COURT DETERMINES THAT SUCH A SECURING ORDER WILL NOT REASON-
39 ABLY SECURE THE DEFENDANT'S COURT ATTENDANCE WHEN REQUIRED OR WILL
40 ENDANGER THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY IN WHICH EVENT
41 THE COURT MUST ORDER BAIL.

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

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

51 1. When the defendant is charged with an offense or offenses [of less
52 than felony grade only] OTHER THAN A VIOLENT FELONY OFFENSE AS DEFINED
53 IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW OR THE COMMISSION
54 OR ATTEMPTED COMMISSION OF A CLASS A FELONY OR MANSLAUGHTER IN THE
55 SECOND DEGREE AS PROVIDED IN SECTION 125.15 OF THE PENAL LAW, the court
56 must order recognizance [or bail] UNLESS THE COURT DETERMINES THAT SUCH

1 A SECURING ORDER WILL NOT REASONABLY SECURE THE DEFENDANT'S COURT
2 ATTENDANCE WHEN REQUIRED OR WILL ENDANGER THE SAFETY OF ANY OTHER PERSON
3 OR THE COMMUNITY IN WHICH EVENT THE COURT MUST ORDER RECOGNIZANCE OR
4 BAIL.

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

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

27 S 6. The criminal procedure law is amended by adding a new section
28 530.42 to read as follows:

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

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

51 S 7. This act shall take effect on the first of November next succeed-
52 ing the date on which it shall have become a law.