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

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2015-2016 Regular Sessions

I N S E N A T E

October 9, 2015

Introduced by Sens. GIANARIS, BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to requiring criminal defendants to be interviewed by a pretrial services agent and providing for the consideration of recommendations of such agent by the court prior to the issuance of securing orders; and establishing a presumption of release on own recognizance

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

Section 1. Section 500.10 of the criminal procedure law is amended by adding a new subdivision 21 to read as follows:

21. "PRETRIAL SERVICES AGENT" MEANS AN INDEPENDENT PRETRIAL SERVICES AGENT APPOINTED PURSUANT TO ARTICLE FIVE HUNDRED FIVE OF THIS TITLE.

S 2. The criminal procedure law is amended by adding a new article 505 to read as follows:

ARTICLE 505

PRETRIAL SERVICES

SECTION 505.10 INDEPENDENT PRETRIAL SERVICES AGENTS.

505.15 INTERVIEW OF CRIMINAL DEFENDANTS.

S 505.10 INDEPENDENT PRETRIAL SERVICES AGENTS.

EACH COUNTY AND EACH CITY WHICH WHOLLY ENCOMPASSES A COUNTY, SHALL APPOINT AND PROVIDE COMPENSATION, TO SUCH INDEPENDENT PRETRIAL SERVICES AGENTS AS SHALL BE NECESSARY TO INTERVIEW AND EVALUATE PERSONS CHARGED WITH A CRIMINAL OFFENSE IN SUCH COUNTY OR CITY PRIOR TO SUCH PERSONS' INITIAL APPEARANCE IN COURT ON SUCH OFFENSE. THE QUALIFICATIONS AND PROCESS OF APPOINTMENT OF INDEPENDENT PRETRIAL SERVICES AGENTS SHALL BE ESTABLISHED BY RULE OF THE CHIEF ADMINISTRATIVE JUDGE.

S 505.15 INTERVIEW OF CRIMINAL DEFENDANTS.

1. PRIOR TO THE INITIAL APPEARANCE OF A DEFENDANT IN A CRIMINAL ACTION BEFORE A LOCAL OR SUPERIOR CRIMINAL COURT, SUCH DEFENDANT SHALL BE INTERVIEWED AND EVALUATED BY A PRETRIAL SERVICES AGENT.

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

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2. EACH PRETRIAL SERVICES AGENT SHALL PERSONALLY INTERVIEW EACH DEFENDANT TO WHOM HE OR SHE IS ASSIGNED. THE PURPOSE OF SUCH INTERVIEW SHALL BE TO IDENTIFY:

(A) THE CRIMINAL CHARGES TO BE PRESENTED AGAINST THE DEFENDANT;

(B) THE DEFENDANT'S TIES TO THE COMMUNITY;

(C) THE DEFENDANT'S PLACE OF RESIDENCE AND THE LENGTH OF RESIDENCE AT SUCH PLACE;

(D) THE DEFENDANT'S COMMITMENTS TO AND CONTACT WITH HIS OR HER FRIENDS AND FAMILY;

(E) THE DEFENDANT'S EMPLOYMENT HISTORY AND SOURCES OF INCOME;

(F) THE DEFENDANT'S ABILITY TO VERIFY ANY INFORMATION HE OR SHE PROVIDES TO THE AGENT;

(G) THE DEFENDANT'S PAST HISTORY OF APPEARING AND FAILING TO APPEAR AT PROCEEDINGS AS REQUIRED BY A COURT;

(H) THE DEFENDANT'S CHARACTER, REPUTATION, HABITS AND MENTAL CONDITION;

(I) ANY PENDING CRIMINAL CHARGES AGAINST THE DEFENDANT; AND

(J) SUCH OTHER INFORMATION AS THE PRETRIAL SERVICES AGENT SHALL DEEM NECESSARY TO EVALUATE THE DEFENDANT.

3. AFTER INTERVIEWING A DEFENDANT IN A CRIMINAL ACTION, A PRETRIAL SERVICES AGENT SHALL REVIEW THE INFORMATION PROVIDED IN THE INTERVIEW WITH THE DEFENDANT PURSUANT TO SUBDIVISION TWO OF THIS SECTION, SEEK TO VERIFY SUCH INFORMATION AND EVALUATE THE SUITABILITY OF THE DEFENDANT FOR RELEASE ON HIS OR HER OWN RECOGNIZANCE.

4. AFTER INTERVIEWING AND EVALUATING A DEFENDANT IN A CRIMINAL ACTION, THE PRETRIAL SERVICES AGENT SHALL SUBMIT A RECOMMENDATION TO THE APPROPRIATE CRIMINAL COURT FOR THE TERMS OF THE SECURING ORDER FOR SUCH DEFENDANT. EACH SUCH AGENT SHALL RECOMMEND THAT THE DEFENDANT BE:

(A) RELEASED ON HIS OR HER OWN RECOGNIZANCE;

(B) RELEASED SUBJECT TO NON-MONETARY CONDITIONS, WHICH ARE THE LEAST RESTRICTIVE TO ENSURE THE DEFENDANTS' FUTURE COURT ATTENDANCE; OR

(C) COMMITTED TO THE CUSTODY OF THE SHERIFF.

5. ALL INFORMATION COLLECTED AND EVALUATIONS DERIVED PURSUANT TO THIS ARTICLE, EXCEPT THE RECOMMENDATION PROVIDED TO THE COURT PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY THE PRETRIAL SERVICES AGENT OR ANY OF HIS OR HER EMPLOYEES.

S 3. Section 510.10 of the criminal procedure law, as amended by chapter 459 of the laws of 1984, is amended to read as follows:

S 510.10 Securing order; when required.

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, initially comes under the control of a court, such court must, AFTER SUBMISSION AND ITS REVIEW OF THE RECOMMENDATIONS OF THE PRETRIAL SERVICES AGENT, by a securing order, either release him OR HER on his OR HER own recognizance, [fix bail] RELEASE HIM OR HER SUBJECT TO SUCH CONDITIONS AS SHALL BE ESTABLISHED BY THE COURT or commit him OR HER to the custody of the sheriff. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and he OR SHE is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

S 4. The criminal procedure law is amended by adding a new section 530.05 to read as follows:

S 530.05 SECURING ORDERS; IN GENERAL.

1. NOTWITHSTANDING ANY PROVISION OF THIS TITLE TO THE CONTRARY, A COURT MAY ONLY SECURE ATTENDANCE AT FUTURE PROCEEDINGS OF A DEFENDANT IN A CRIMINAL PROCEEDING BY:

(A) RELEASING THE DEFENDANT ON HIS OR HER OWN RECOGNIZANCE;

(B) RELEASING THE DEFENDANT SUBJECT TO CONDITIONS ESTABLISHED BY THE COURT. SUCH CONDITIONS MAY INCLUDE, BUT SHALL NOT BE LIMITED TO:

(I) REQUIRING THE DEFENDANT TO CONTINUE TO RESIDE AT HIS OR HER CURRENT RESIDENCE, AND, IF HE OR SHE IS REQUIRED TO MOVE, PROVIDE THE COURT WITH HIS OR HER NEW ADDRESS;

(II) REQUIRING THE DEFENDANT TO MAINTAIN ATTENDANCE AT AN EDUCATION INSTITUTION, IF HE OR SHE IS CURRENTLY ATTENDING SUCH INSTITUTION;

(III) REQUIRING THE DEFENDANT TO MAINTAIN ATTENDANCE AT HIS OR HER PLACE OF EMPLOYMENT, IF EMPLOYED;

(IV) REQUIRING THE DEFENDANT TO COMPLY WITH ALL ORDERS OF PROTECTION AND TEMPORARY ORDERS OF PROTECTION ISSUED AGAINST HIM OR HER;

(V) PROHIBITING THE DEFENDANT FROM TRAVELING, INCLUDING THE SURRENDER OF HIS OR HER PASSPORT, WHEN SUCH PROHIBITION WILL NOT AFFECT THE DEFENDANT'S ABILITY TO REMAIN EMPLOYED;

(VI) REQUIRING THE DEFENDANT TO COMPLY WITH A CURFEW WHICH DOES NOT IMPAIR SUCH DEFENDANT'S EMPLOYMENT OR FAMILY RESPONSIBILITIES;

(VII) REQUIRING THE DEFENDANT TO STAY AWAY FROM SUCH LOCATION OR LOCATIONS AS THE COURT SHALL DESIGNATE;

(VIII) REQUIRING THE DEFENDANT TO PERIODICALLY APPEAR AT OR TO TELEPHONICALLY CONTRACT A LAW ENFORCEMENT AGENCY TO VERIFY HIS OR HER PRESENCE IN THE COMMUNITY. IN ORDERING SUCH CONDITION THE COURT SHALL CONSIDER WHETHER THE DEFENDANT OWNS A TELEPHONE OR WIRELESS COMMUNICATIONS DEVICE, AND SHALL ENSURE THAT SUCH CONDITION DOES NOT UNDULY PLACE A BURDEN ON THE DEFENDANT'S EMPLOYMENT, EDUCATION AND FAMILY RESPONSIBILITIES; AND

(IX) ESTABLISHING SUCH CONDITIONS AS THE COURT SHALL DEEM TO BE NECESSARY; OR

(C) COMMITTING THE DEFENDANT TO THE CUSTODY OF THE SHERIFF.

2. EVERY COURT IN THE ISSUANCE OF A SECURING ORDER SHALL GRANT A PREFERENCE TO RELEASE ON HIS OR HER OWN RECOGNIZANCE WHEN THE MOST SEVERE CHARGE AGAINST THE DEFENDANT IS A VIOLATION OR A MISDEMEANOR.

3. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE ATTENDANCE OF A DEFENDANT SHALL NOT BE SECURED BY MEANS OF BAIL. FURTHERMORE, EVERY COURT, IN THE ISSUANCE OF A SECURING ORDER, SHALL UTILIZE THE LEAST RESTRICTIVE MEANS NECESSARY TO SECURE THE DEFENDANT'S ATTENDANCE AT FUTURE PROCEEDINGS, INCLUDING THE LEAST RESTRICTIVE CONDITIONS WHEN RELEASE SUBJECT TO CONDITIONS IS PERMITTED.

4. IN EVERY CASE IN WHICH A COURT ISSUES A SECURING ORDER EITHER RELEASING THE DEFENDANT ON HIS OR HER OWN RECOGNIZANCE OR RELEASING THE DEFENDANT SUBJECT TO CONDITIONS, THE COURT SHALL CAUSE THE DEFENDANT TO BE NOTIFIED OF EACH SUBSEQUENT COURT PROCEEDING AT WHICH SUCH DEFENDANT'S ATTENDANCE IS REQUIRED, NOT MORE THAN FOURTEEN DAYS NOR LESS THAN FIVE DAYS BEFORE EACH SUCH PROCEEDING. NOTICE TO THE DEFENDANT SHALL BE PROVIDED BY MEANS OF A POSTCARD MAILED FIRST CLASS MAIL, OR, IF THE DEFENDANT HAS PROVIDED THE COURT WITH A TELEPHONE NUMBER, BY A TELEPHONE CALL OR TEXT MESSAGE, OR HAS PROVIDED AN ELECTRONIC MAIL ADDRESS, BY AN ELECTRONIC MAIL MESSAGE. EACH NOTICE PROVIDED PURSUANT TO THIS SUBDIVISION SHALL INCLUDE THE TIME, DATE AND LOCATION OF THE REQUIRED COURT APPEARANCE, AND THE POTENTIAL PENALTIES FOR THE FAILURE OF THE DEFENDANT TO APPEAR.

5. IN EACH INSTANCE IN WHICH A COURT ISSUES A SECURING ORDER WHICH (A) DOES COMPLY WITH THE RECOMMENDATION OF THE PRETRIAL SERVICES AGENT, SUBMITTED PURSUANT TO SUBDIVISION FOUR OF SECTION 505.15 OF THIS TITLE; OR (B) RELEASES THE DEFENDANT SUBJECT TO CONDITIONS OR COMMITS THE DEFENDANT TO THE CUSTODY OF THE SHERIFF WHEN THE MOST SEVERE CHARGE AGAINST THE DEFENDANT IS A VIOLATION OR A MISDEMEANOR, THE COURT SHALL ON THE RECORD AT THE TIME OF ISSUING SUCH SECURING ORDER, STATE THE REASON OR REASONS FOR ORDERING SUCH MEANS TO SECURE THE DEFENDANT'S FUTURE COURT APPEARANCES.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.