

10546

I N A S S E M B L Y

June 1, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Lentol) --
read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to judicial bail
determinations and securing orders

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

1 Section 1. Section 500.10 of the criminal procedure law is amended by
2 adding three new subdivisions 21, 22 and 23 to read as follows:
3 21. "RISK ASSESSMENT TOOL" MEANS A VALIDATED STATISTICAL METHODOLOGY,
4 DEVELOPED BASED ON AN ANALYSIS OF EMPIRICAL DATA AND RISK FACTORS, THAT
5 PROVIDES RISK SCORES ASSESSING A DEFENDANT'S RISK OF FAILURE TO APPEAR
6 IN COURT WHEN REQUIRED AND RISK OF DANGER TO OTHER PERSONS OR THE COMMU-
7 NITY WHILE ON PRETRIAL RELEASE.
8 22. "RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY" MEANS THE LIKE-
9 LIHOOD THAT A DEFENDANT WILL COMMIT A CRIME OF VIOLENCE.
10 23. "CRIME OF VIOLENCE" MEANS (I) A VIOLENT FELONY OFFENSE AS DEFINED
11 IN SECTION 70.02 OF THE PENAL LAW; (II) ANY CLASS A FELONY; (III) ANY
12 FELONY DEFINED IN ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED TWENTY-FIVE,
13 ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, ONE HUNDRED SIXTY, TWO
14 HUNDRED FORTY-TWO, TWO HUNDRED SIXTY, TWO HUNDRED SIXTY-THREE, TWO
15 HUNDRED SIXTY-FIVE, FOUR HUNDRED SIXTY OR FOUR HUNDRED NINETY OF THE
16 PENAL LAW; (IV) ANY MISDEMEANOR OR FELONY DEFINED IN ARTICLE ONE HUNDRED
17 THIRTY OR ONE HUNDRED FIFTY OF THE PENAL LAW; (V) ANY ACT CONSTITUTING A
18 VIOLATION OF SECTION 140.17, 140.25, 140.30, 195.07, 195.17, 215.15,
19 215.16, 215.17, 230.13, 230.33, 230.34 OR 240.06 OF THE PENAL LAW; OR
20 (VI) ANY FAMILY OFFENSE AS DEFINED IN SECTION 530.11 OF THIS TITLE THAT
21 IS NOT OTHERWISE COVERED BY THIS SUBDIVISION AND THAT CONSTITUTES STALK-
22 ING IN THE FIRST DEGREE, STALKING IN THE SECOND DEGREE, STALKING IN THE
23 THIRD DEGREE, STALKING IN THE FOURTH DEGREE, CRIMINAL OBSTRUCTION OF
24 BREATHING OR BLOOD CIRCULATION, ASSAULT IN THE THIRD DEGREE, ATTEMPTED
25 ASSAULT OR COERCION IN THE SECOND DEGREE AS SET FORTH IN SUBDIVISIONS
26 ONE, TWO AND THREE OF SECTION 135.60 OF THE PENAL LAW.
27 S 2. The criminal procedure law is amended by adding a new section
28 510.16 to read as follows:

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

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1 S 510.16 ASSESSMENT OF FLIGHT RISK AND RISK OF DANGER.

2 1. WHEN A PRINCIPAL WHO IS A DEFENDANT INITIALLY COMES UNDER CONTROL
3 OF THE COURT, THE PRINCIPAL'S RISK OF FAILURE TO APPEAR IN COURT WHEN
4 REQUIRED AND, IN THE CASE OF A PRINCIPAL CHARGED BY AN ACCUSATORY
5 INSTRUMENT WITH A CRIME OF VIOLENCE, THE PRINCIPAL'S RISK OF DANGER TO
6 OTHER PERSONS OR THE COMMUNITY WHILE ON PRETRIAL RELEASE, MUST BE
7 ASSESSED ON THE BASIS OF ANY RELEVANT FACTORS CONSISTENT WITH SECTION
8 510.30 OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO THE USE OF A RISK
9 ASSESSMENT TOOL, PRIOR TO THE COURT RELEASING THE PRINCIPAL ON THE PRIN-
10 CIPAL'S OWN RECOGNIZANCE, FIXING BAIL, OR REMANDING THE PRINCIPAL TO THE
11 CUSTODY OF THE SHERIFF.

12 2. SUCH RISK ASSESSMENT TOOL SHALL BE SELECTED AND ADMINISTERED BY AN
13 ENTITY, AGENCY, OR OFFICER DESIGNATED BY EITHER: (I) THE CHIEF EXECUTIVE
14 OF THE COUNTY IN WHICH THE COURT IS LOCATED; (II) WHERE A CITY CONTAINS
15 MORE THAN ONE COUNTY, THE MAYOR OF SUCH CITY; OR (III) WHERE THE COUNTY
16 DOES NOT HAVE A CHIEF EXECUTIVE, THE GOVERNING BODY OF SUCH COUNTY.

17 3. SUCH DESIGNATED ENTITY, AGENCY, OR OFFICER SHALL ENSURE THAT SUCH
18 RISK ASSESSMENT TOOL IS (I) DEVELOPED IN CONSULTATION WITH INDIVIDUALS
19 WITH PROFESSIONAL RESEARCH EXPERIENCE AND EXPERTISE IN CRIMINAL JUSTICE
20 AS WELL AS APPLIED MATHEMATICS, PSYCHOMETRICS AND/OR STATISTICS; (II)
21 SUBJECT TO PERIODIC EMPIRICAL VALIDATION TO ENSURE ITS RELIABILITY; AND
22 (III) ANALYZED, TO THE GREATEST EXTENT POSSIBLE, TO EVALUATE ANY DISPA-
23 RATE IMPACT ON OUTCOMES BASED ON RACE, SEX, SEXUAL ORIENTATION, NATIONAL
24 ORIGIN, ECONOMIC STATUS, AND ANY CONSTITUTIONALLY PROTECTED CLASS,
25 REGARDING THE USE OF SUCH INSTRUMENT. SUCH DESIGNATED ENTITY, AGENCY, OR
26 OFFICER SHALL TAKE INTO CONSIDERATION ANY RECOMMENDATIONS GIVEN BY SUCH
27 DEVELOPER INVOLVING IMPROVEMENTS THAT COULD BE MADE TO SUCH INSTRUMENT
28 AND TO THE PROCESS FOR ASSESSING PRINCIPALS USING THE INSTRUMENT.

29 4. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY COURT
30 SHALL PROVIDE SUCH DESIGNATED ENTITY, AGENCY OR OFFICER WITH SUCH INFOR-
31 MATION, IN THE TIME AND MANNER REASONABLY REQUIRED BY SUCH ENTITY, AGEN-
32 CY OR OFFICER, AS IT IS NECESSARY TO DETERMINE THE VALIDITY AND EFFICACY
33 OF A RISK ASSESSMENT TOOL AND TO ANALYZE ANY DISPARATE IMPACT ON
34 OUTCOMES IN ACCORDANCE WITH THIS SECTION. SUCH INFORMATION SHALL BE USED
35 AND SHARED ONLY FOR THE PURPOSES OF THIS SECTION AND IN ACCORDANCE WITH
36 THIS SECTION, IN A MANNER THAT PROTECTS THE CONFIDENTIALITY OF THE
37 INFORMATION. THE SHARING, USE, DISCLOSURE AND REDISCLOSURE OF SUCH
38 INFORMATION TO ANY PERSON, OFFICER, OR OTHER ENTITY NOT SPECIFICALLY
39 AUTHORIZED TO RECEIVE IT PURSUANT TO THIS SECTION OR ANY OTHER LAW IS
40 PROHIBITED.

41 5. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, DATA NECES-
42 SARY FOR COMPLETION OF A RISK ASSESSMENT TOOL MAY BE SHARED AMONG LAW
43 ENFORCEMENT, PROBATION, OTHER PUBLIC AGENCIES AND THE ATTORNEY FOR THE
44 DEFENDANT UPON RETENTION OR APPOINTMENT SOLELY FOR THE PURPOSE OF ACCU-
45 RATE COMPLETION AND SUBSEQUENT LAWFUL USE OF SUCH INSTRUMENT, AND A COPY
46 OF THE COMPLETED RISK ASSESSMENT TOOL SHALL BE MADE AVAILABLE TO SUCH
47 ATTORNEY AND THE APPLICABLE COURT.

48 S 3. The section heading of section 510.20 of the criminal procedure
49 law is amended and a new subdivision 3 is added to read as follows:

50 Application for recognizance or bail; making and determination thereof
51 in general; DETERMINATION OF RISK OF DANGER FOR CERTAIN SECURING ORDERS.

52 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WITH RESPECT TO ANY
53 PRINCIPAL WHO IS A DEFENDANT THAT IS CHARGED BY AN ACCUSATORY INSTRUMENT
54 WITH A CRIME OF VIOLENCE, A COURT MAY ISSUE A SECURING ORDER THAT DENIES
55 AN APPLICATION FOR RECOGNIZANCE OR BAIL AND COMMITS THE PRINCIPAL TO, OR
56 RETAINS THE PRINCIPAL IN, THE CUSTODY OF THE SHERIFF, OR MAY OTHERWISE

1 ISSUE A SECURING ORDER PROVIDING FOR SUCH COMMITMENT OR RETENTION PURSU-
2 ANT TO THIS ARTICLE, BASED UPON THE COURT'S DETERMINATION THAT THE PRIN-
3 CIPAL POSES A RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY. A SECUR-
4 ING ORDER BASED UPON SUCH DETERMINATION MUST BE SUPPORTED BY CLEAR AND
5 CONVINCING EVIDENCE, WITH THE REASONS FOR THE ISSUANCE OF SUCH ORDER
6 STATED ON THE RECORD. PRIOR TO MAKING A DETERMINATION ON WHETHER SUCH
7 AN ORDER WILL BE ISSUED, THE COURT MUST, UPON THE REQUEST OF THE PRINCI-
8 PAL, HOLD A HEARING WITH RESPECT TO WHETHER THE PRINCIPAL POSES SUCH A
9 RISK. AT SUCH HEARING, THE COURT SHALL RECEIVE ANY RELEVANT, ADMISSIBLE
10 EVIDENCE NOT LEGALLY PRIVILEGED. THE PRINCIPAL MAY CROSS-EXAMINE
11 WITNESSES AND MAY PRESENT RELEVANT, ADMISSIBLE EVIDENCE ON THE PRINCI-
12 PAL'S OWN BEHALF. SUCH HEARING MAY BE CONSOLIDATED WITH, AND CONDUCTED
13 AT THE SAME TIME AS, ANY OTHER CRIMINAL PROCEEDING. A TRANSCRIPT OF
14 TESTIMONY TAKEN BEFORE THE GRAND JURY UPON PRESENTATION OF ANY PENDING
15 CHARGED CRIME SHALL BE ADMISSIBLE AS EVIDENCE DURING THE HEARING. THE
16 DISTRICT ATTORNEY MAY MOVE TO INTRODUCE GRAND JURY TESTIMONY OF A
17 WITNESS IN LIEU OF THAT WITNESS' APPEARANCE AT THE HEARING.

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

21 With respect to any principal, the court must consider the kind and
22 degree of control or restriction that is necessary to secure [his] THE
23 PRINCIPAL'S court attendance when required. WITH RESPECT TO ANY PRINCI-
24 PAL WHO IS CHARGED WITH A CRIME OF VIOLENCE, THE COURT MAY ADDITIONALLY
25 CONSIDER THE RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY POSED BY
26 THE PRINCIPAL, PROVIDED THAT THE COURT SHALL COMPLY WITH SUBDIVISION
27 THREE OF SECTION 510.20 OF THIS ARTICLE PRIOR TO ISSUING ANY SECURING
28 ORDER DENYING AN APPLICATION FOR RECOGNIZANCE OR BAIL ON THE BASIS THAT
29 THE PRINCIPAL POSES A RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY.
30 In determining that matter, the court must, on the basis of available
31 information, consider and take into account:

32 S 5. Subparagraph (ix) of paragraph (a) of subdivision 2 of section
33 510.30 of the criminal procedure law, as renumbered by section 1 of part
34 D of chapter 491 of the laws of 2012, is amended and a new subparagraph
35 (x) is added to read as follows:

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

38 (X) THE SCORES PROVIDED BY ANY RISK ASSESSMENT TOOL, WHERE APPLICABLE.

39 S 6. Section 510.40 of the criminal procedure law is amended by adding
40 a new subdivision 1-a to read as follows:

41 1-A. A SECURING ORDER ISSUED PURSUANT TO SUBDIVISION ONE OF THIS
42 SECTION MUST REPRESENT THE LEAST RESTRICTIVE OPTION THAT REASONABLY
43 ASSURES THE PRINCIPAL'S APPEARANCE IN COURT WHEN REQUIRED AND, FOR PRIN-
44 CIPALS WHO ARE SUBJECT TO SUBDIVISION THREE OF SECTION 510.20 OF THIS
45 ARTICLE, IS NOT INCONSISTENT WITH ANY DETERMINATION MADE BY THE COURT
46 PURSUANT TO SUCH SUBDIVISION; PROVIDED THAT NOTHING IN THIS SUBDIVISION
47 SHALL AFFECT THE AUTHORITY OF THE COURT PURSUANT TO SECTIONS 530.11,
48 530.12 AND 530.13 OF THIS TITLE. FOR THE PURPOSE OF DETERMINING THE
49 LEAST RESTRICTIVE OPTION THAT REASONABLY ASSURES THE PRINCIPAL'S APPEAR-
50 ANCE IN COURT WHEN REQUIRED, THE COURT, WHEN CONSIDERING WHETHER TO FIX
51 BAIL AND THE FORM OF BAIL TO BE FIXED, MUST CONSIDER WHETHER A LESS
52 RESTRICTIVE FORM OF BAIL DEFINED IN SECTION 520.10 OF THIS TITLE,
53 INCLUDING BUT NOT LIMITED TO AN UNSECURED APPEARANCE BOND, WOULD BE
54 SUFFICIENT IN REASONABLY ASSURING SUCH PRINCIPAL'S APPEARANCE.

1 S 7. Subdivision 1 of section 530.20 of the criminal procedure law, as
2 amended by chapter 531 of the laws of 1975, is amended to read as
3 follows:

4 1. When the defendant is charged, by information, simplified informa-
5 tion, prosecutor's information or misdemeanor complaint, with an offense
6 or offenses of less than felony grade only, the court must PRESUMPTIVELY
7 order recognizance [or] UNLESS THE COURT DETERMINES THAT SUCH A SECURING
8 ORDER WILL NOT REASONABLY SECURE THE DEFENDANT'S COURT ATTENDANCE WHEN
9 REQUIRED, IN WHICH EVENT THE COURT SHALL ORDER bail.

10 S 8. Section 530.20 of the criminal procedure law is amended by adding
11 a new subdivision 3 to read as follows:

12 3. A COURT SHALL NOT ORDER RECOGNIZANCE OR BAIL IF SUCH ORDER WOULD BE
13 INCONSISTENT WITH A DETERMINATION MADE PURSUANT TO SUBDIVISION THREE OF
14 SECTION 510.20 OF THIS TITLE.

15 S 9. Section 530.30 of the criminal procedure law is amended by adding
16 a new subdivision 4 to read as follows:

17 4. A SUPERIOR COURT JUDGE SHALL NOT ORDER RECOGNIZANCE OR BAIL IF SUCH
18 ORDER WOULD BE INCONSISTENT WITH A DETERMINATION MADE PURSUANT TO SUBDI-
19 VISION THREE OF SECTION 510.20 OF THIS TITLE.

20 S 10. Subdivision 1 of section 530.40 of the criminal procedure law is
21 amended and a new subdivision 5 is added to read as follows:

22 1. When the defendant is charged with an offense or offenses of less
23 than felony grade only, the court must PRESUMPTIVELY order recognizance
24 [or] UNLESS THE COURT DETERMINES THAT SUCH A SECURING ORDER WILL NOT
25 REASONABLY SECURE THE DEFENDANT'S COURT ATTENDANCE WHEN REQUIRED, IN
26 WHICH EVENT THE COURT SHALL ORDER bail.

27 5. A SUPERIOR COURT SHALL NOT ORDER RECOGNIZANCE OR BAIL IF SUCH ORDER
28 WOULD BE INCONSISTENT WITH A DETERMINATION MADE PURSUANT TO SUBDIVISION
29 THREE OF SECTION 510.20 OF THIS TITLE.

30 S 11. Subdivision 2 of section 530.60 of the criminal procedure law,
31 as added by chapter 788 of the laws of 1981, paragraph (a) as amended by
32 chapter 794 of the laws of 1986, is amended to read as follows:

33 2. (a) Whenever in the course of a criminal action or proceeding a
34 defendant charged with the commission of a felony OR A CRIME OF VIOLENCE
35 is at liberty as a result of an order of recognizance or bail issued
36 pursuant to this article it shall be grounds for revoking such order
37 that the court finds reasonable cause to believe the defendant committed
38 [one or more specified class A or violent felony offenses or intimidated
39 a victim or witness in violation of sections 215.15, 215.16 or 215.17 of
40 the penal law] A CRIME OF VIOLENCE while at liberty. Before revoking an
41 order of recognizance or bail pursuant to this subdivision, the court
42 must hold a hearing and shall receive any relevant, admissible evidence
43 not legally privileged. The defendant may cross-examine witnesses and
44 may present relevant, admissible evidence on his own behalf. Such hear-
45 ing may be consolidated with, and conducted at the same time as, a felo-
46 ny hearing conducted pursuant to article one hundred eighty of this
47 chapter OR ANY OTHER CRIMINAL PROCEEDING. A transcript of testimony
48 taken before the grand jury upon presentation of the subsequent offense
49 shall be admissible as evidence during the hearing. The district attor-
50 ney may move to introduce grand jury testimony of a witness in lieu of
51 that witness' appearance at the hearing.

52 (b) Revocation of an order of recognizance or bail and commitment
53 pursuant to this subdivision shall be for the following periods, either:

54 (i) For a period not to exceed ninety days exclusive of any periods of
55 adjournment requested by the defendant; or

1 (ii) Until the charges contained within the accusatory instrument have
2 been reduced or dismissed such that no count remains which charges the
3 defendant with commission of a felony OR CRIME OF VIOLENCE; or

4 (iii) Until reduction or dismissal of the charges contained within the
5 accusatory instrument charging the subsequent offense such that no count
6 remains which charges the defendant with commission of a [class A or
7 violent felony offense] CRIME OF VIOLENCE.

8 Upon expiration of any of the three periods specified within this
9 paragraph, whichever is shortest, the court may grant or deny release
10 upon an order of bail or recognizance in accordance with the provisions
11 of this article. Upon conviction [to] OF an offense the provisions of
12 article five hundred thirty of this chapter shall apply.

13 (c) Notwithstanding the provisions of paragraph (a) of this subdivi-
14 sion a defendant, against whom [a felony complaint] AN ACCUSATORY
15 INSTRUMENT has been filed which charges the defendant with commission of
16 a [class A or violent felony offense] CRIME OF VIOLENCE committed while
17 he was at liberty as specified therein, may be committed to the custody
18 of the sheriff pending a revocation hearing for a period not to exceed
19 seventy-two hours. An additional period not to exceed seventy-two hours
20 may be granted by the court upon application of the district attorney
21 upon a showing of good cause or where the failure to commence the hear-
22 ing was due to the defendant's request or occurred with his consent.
23 Such good cause must consist of some compelling fact or circumstance
24 which precluded conducting the hearing within the initial prescribed
25 period.

26 S 12. This act shall take effect on the one hundred twentieth day
27 after it shall have become a law.