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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 500.10 of the criminal procedure law is amended by adding three new subdivisions 21, 22 and 23 to read as follows:

21. "RISK ASSESSMENT TOOL" MEANS A VALIDATED STATISTICAL METHODOLOGY, DEVELOPED BASED ON AN ANALYSIS OF EMPIRICAL DATA AND RISK FACTORS, THAT PROVIDES RISK SCORES ASSESSING A DEFENDANT'S RISK OF FAILURE TO APPEAR IN COURT WHEN REQUIRED AND RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY WHILE ON PRETRIAL RELEASE.

22. "RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY" MEANS THE LIKELIHOOD THAT A DEFENDANT WILL COMMIT A CRIME OF VIOLENCE.

23. "CRIME OF VIOLENCE" MEANS (I) A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW; (II) ANY CLASS A FELONY; (III) ANY FELONY DEFINED IN ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED TWENTY-FIVE, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, ONE HUNDRED SIXTY, TWO HUNDRED FORTY-TWO, TWO HUNDRED SIXTY, TWO HUNDRED SIXTY-THREE, TWO HUNDRED SIXTY-FIVE, FOUR HUNDRED SIXTY OR FOUR HUNDRED NINETY OF THE PENAL LAW; (IV) ANY MISDEMEANOR OR FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OR ONE HUNDRED FIFTY OF THE PENAL LAW; (V) ANY ACT CONSTITUTING A VIOLATION OF SECTION 140.17, 140.25, 140.30, 195.07, 195.17, 215.15, 215.16, 215.17, 230.13, 230.33, 230.34 OR 240.06 OF THE PENAL LAW; OR (VI) ANY FAMILY OFFENSE AS DEFINED IN SECTION 530.11 OF THIS TITLE THAT IS NOT OTHERWISE COVERED BY THIS SUBDIVISION AND THAT CONSTITUTES STALKING IN THE FIRST DEGREE, STALKING IN THE SECOND DEGREE, STALKING IN THE THIRD DEGREE, STALKING IN THE FOURTH DEGREE, CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION, ASSAULT IN THE THIRD DEGREE, ATTEMPTED ASSAULT OR COERCION IN THE SECOND DEGREE AS SET FORTH IN SUBDIVISIONS ONE, TWO AND THREE OF SECTION 135.60 OF THE PENAL LAW.

S 2. The criminal procedure law is amended by adding a new section 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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S 510.16 ASSESSMENT OF FLIGHT RISK AND RISK OF DANGER.

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

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

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

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

5. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, DATA NECESSARY FOR COMPLETION OF A RISK ASSESSMENT TOOL MAY BE SHARED AMONG LAW ENFORCEMENT, PROBATION, OTHER PUBLIC AGENCIES AND THE ATTORNEY FOR THE DEFENDANT UPON RETENTION OR APPOINTMENT SOLELY FOR THE PURPOSE OF ACCURATE COMPLETION AND SUBSEQUENT LAWFUL USE OF SUCH INSTRUMENT, AND A COPY OF THE COMPLETED RISK ASSESSMENT TOOL SHALL BE MADE AVAILABLE TO SUCH ATTORNEY AND THE APPLICABLE COURT.

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

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

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

ISSUE A SECURING ORDER PROVIDING FOR SUCH COMMITMENT OR RETENTION PURSUANT TO THIS ARTICLE, BASED UPON THE COURT'S DETERMINATION THAT THE PRINCIPAL POSES A RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY. A SECURING ORDER BASED UPON SUCH DETERMINATION MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, WITH THE REASONS FOR THE ISSUANCE OF SUCH ORDER STATED ON THE RECORD. PRIOR TO MAKING A DETERMINATION ON WHETHER SUCH AN ORDER WILL BE ISSUED, THE COURT MUST, UPON THE REQUEST OF THE PRINCIPAL, HOLD A HEARING WITH RESPECT TO WHETHER THE PRINCIPAL POSES SUCH A RISK. AT SUCH HEARING, THE COURT SHALL RECEIVE ANY RELEVANT, ADMISSIBLE EVIDENCE NOT LEGALLY PRIVILEGED. THE PRINCIPAL MAY CROSS-EXAMINE WITNESSES AND MAY PRESENT RELEVANT, ADMISSIBLE EVIDENCE ON THE PRINCIPAL'S OWN BEHALF. SUCH HEARING MAY BE CONSOLIDATED WITH, AND CONDUCTED AT THE SAME TIME AS, ANY OTHER CRIMINAL PROCEEDING. A TRANSCRIPT OF TESTIMONY TAKEN BEFORE THE GRAND JURY UPON PRESENTATION OF ANY PENDING CHARGED CRIME SHALL BE ADMISSIBLE AS EVIDENCE DURING THE HEARING. THE DISTRICT ATTORNEY MAY MOVE TO INTRODUCE GRAND JURY TESTIMONY OF A WITNESS IN LIEU OF THAT WITNESS' APPEARANCE AT THE HEARING.

S 4. 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] THE PRINCIPAL'S court attendance when required. WITH RESPECT TO ANY PRINCIPAL WHO IS CHARGED WITH A CRIME OF VIOLENCE, THE COURT MAY ADDITIONALLY CONSIDER THE RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY POSED BY THE PRINCIPAL, PROVIDED THAT THE COURT SHALL COMPLY WITH SUBDIVISION THREE OF SECTION 510.20 OF THIS ARTICLE PRIOR TO ISSUING ANY SECURING ORDER DENYING AN APPLICATION FOR RECOGNIZANCE OR BAIL ON THE BASIS THAT THE PRINCIPAL POSES A RISK OF DANGER TO OTHER PERSONS OR THE COMMUNITY. In determining that matter, the court must, on the basis of available information, consider and take into account:

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

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

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

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

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

S 7. Subdivision 1 of section 530.20 of the criminal procedure law, as amended by chapter 531 of the laws of 1975, is 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, the court must PRESUMPTIVELY order recognizance [or] UNLESS THE COURT DETERMINES THAT SUCH A SECURING ORDER WILL NOT REASONABLY SECURE THE DEFENDANT'S COURT ATTENDANCE WHEN REQUIRED, IN WHICH EVENT THE COURT SHALL ORDER bail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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