STATE OF NEW YORK

1161

2017-2018 Regular Sessions

IN ASSEMBLY

January 11, 2017

Introduced by M. of A. SIMANOWITZ, SALADINO, MONTESANO, HIKIND, COOK, BENEDETTO, GALEF, SIMOTAS, RAMOS, HOOPER, WEPRIN, McDONOUGH, M. G. MILLER -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, BARCLAY, CRESPO, CROUCH, DenDEKKER, JAFFEE, McKEVITT, ORTIZ, PERRY, RA, THIELE, WALTER -- 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:

Section 1. Subdivisions 2 and 3 of section 510.30 of the criminal procedure law, subparagraph (v) of paragraph (a) of subdivision 2 as amended by chapter 920 of the laws of 1982, subparagraph (vi) of paragraph (a) of subdivision 2 as renumbered by chapter 447 of the laws of 1977, subparagraph (vii) of paragraph (a) of subdivision 2 as added and subparagraphs (viii) and (ix) of paragraph (a) of subdivision 2 as renumbered by section 1 of part D of chapter 491 of the laws of 2012, and subdivision 3 as added by chapter 788 of the laws of 1981, are amended to read as follows:

2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

(a) With respect to any principal, the court [~~must~~] **shall** consider the kind and degree of control or restriction that is necessary to secure his **or her** court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

(i) The principal's character, reputation, habits and mental condition;

(ii) His **or her** employment and financial resources; and

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

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(iii) His **or her** family ties and the length of his **or her** residence if any in the community; and

(iv) His **or her** criminal record if any; and

(v) His **or her** record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; and

(vi) His **or her** previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and

(vii) Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, the following factors:

(A) any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, whether or not such order of protection is currently in effect; and

(B) the principal's history of use or possession of a firearm; and

(viii) If he **or she** is a defendant, the weight of the evidence against him **or her** in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and

(ix) If he **or she** is a defendant, the sentence which may be or has been imposed upon conviction**; and**

(x) If he or she is a defendant, the court may consider whether the likelihood that he or she would be a danger to society, the community or any person if at liberty during the pendency of the action or proceeding requires the detention of that defendant. Clear and convincing evidence of danger to any person or the community shall be required for the detention of such defendant.

(b) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraph (a) **of this subdivision**.

3. When bail or recognizance is ordered, the court shall inform the principal, if he **or she** is a defendant charged with the commission of a felony, that the release is conditional and that the court may revoke the order of release and commit the principal to the custody of the sheriff in accordance with the provisions of subdivision two of section 530.60 of this chapter if he **or she** commits a subsequent felony while at liberty upon such order.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.