STATE OF NEW YORK

7852

IN SENATE

March 5, 2018

Introduced by Sen. SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to recognizance procedures and bail reform; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The purpose of this legislation is to reform the process by which courts in the state of New York evaluate applications by criminal defendants who seek release on their own recognizance. New York's current bail statute has been applied in a manner that has led to unsatisfactory levels of pre-trial detention. The purpose of this legislation is to ensure decarceration and release of individuals on their own recognizance in the overwhelming majority of criminal cases by applying a rebuttable presumption of recognizance. Courts in New York must consider only admissible evidence at recognizance hearings and must apply the least restrictive measures to ensure an individual's return to court.

§ 2. Subdivisions 3, 6 and 7 of section 500.10 of the criminal procedure law are amended to read as follows:

3. [~~"Fix bail." A court fixes bail when, having acquired control over the person of a principal, it designates a sum of money and stipulates that, if bail in such amount is posted on behalf of the principal and approved, it will permit him to be at liberty during the pendency of the criminal action or proceeding involved~~] **"Recognizance hearing" means a hearing before the court where the principal appears for the purposes of the court considering recognizance or committing the principal to the custody of the sheriff**.

6. "Order of recognizance [~~or bail~~]" means a securing order releasing a principal on his own recognizance [~~or fixing bail~~].

7. "Application for recognizance [~~or bail~~]" means an application by a principal [~~that~~] **to** the court[~~, instead of committing him to or retaining him in~~] **that the principal be released instead of committed to** the

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

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custody of the sheriff[~~, either release him on his own recognizance or fix bail~~].

§ 3. Subdivisions 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of section 500.10 of the criminal procedure law are REPEALED and subdivision 20 is renumbered subdivision 8.

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

§ 510.10 Securing order; when required.

1. 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, by a securing order, either release him or her on his or her own recognizance[~~, fix bail~~] or commit him or her to the custody of the sheriff. Every court when considering an application for recognizance or committing the principal to the custody of the sheriff must apply a rebuttable presumption of recognizance, with the exception of the following felony charges where there is a rebuttable presumption of commitment to the custody of the sheriff:

(a) Criminally negligent homicide as defined in section 125.10 of the penal law;

(b) Aggravated criminally negligent homicide as defined in section 125.11 of the penal law;

(c) Murder in the second degree as defined in section 125.25 of the penal law;

(d) Aggravated murder as defined in section 125.26 of the penal law;

(e) Murder in the first degree as defined in section 125.27 of the penal law;

(f) Rape in the first degree as defined in section 130.35 of the penal law;

(g) Course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law;

(h) Predatory sexual assault as defined in section 130.95 of the penal law;

(i) Predatory sexual assault against a child as defined in section 130.96 of the penal law;

(j) Kidnapping in the first degree as defined in section 135.25 of the penal law;

(k) Arson in the first degree as defined in section 150.20 of the penal law;

(l) Criminal possession of a weapon in the first degree as defined in section 265.04 of the penal law;

(m) Criminal sale of a firearm in the first degree as defined in section 265.13 of the penal law;

(n) Terrorism in the second degree as defined in section 490.10 of the penal law;

(o) Terrorism in the first degree as defined in section 490.15 of the penal law;

(p) Hindering prosecution of terrorism in the first degree as defined in section 490.35 of the penal law;

(q) Criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40 of the penal law;

(r) Criminal possession of a chemical or biological weapon in the first degree as defined in section 490.45 of the penal law;

(s) Criminal use of a chemical or biological weapon in the second degree as defined in section 490.50 of the penal law; or

(t) Criminal use of a chemical or biological weapon in the first degree as defined in section 490.55 of the penal law.

2. The court shall inform the principal that the conditions of the securing order are subject to modification consistent with the provisions of section 510.25 of this article.

3. 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 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.

§ 5. Section 510.20 of the criminal procedure law is amended to read as follows:

§ 510.20 Application for recognizance [~~or bail~~]; [~~making and~~] determination [~~thereof in general~~] and timing.

1. Upon any occasion when a court is required to issue a securing order with respect to a principal, or at any time when a principal is confined in the custody of the sheriff as a result of a previously issued securing order, he may make an application for recognizance [~~or bail~~].

2. Upon such application, the principal must be accorded an opportunity to be heard, present evidence and to contend that an order of recognizance [~~or bail must or should issue, that the court should release him on his own recognizance rather than fix bail, and that if bail is fixed it should be in a suggested amount and form~~] be issued.

3. The court shall make a pre-trial release decision for the principal without unnecessary delay, but in no case later than forty-eight hours after the principal's initial commitment to jail.

§ 6. The criminal procedure law is amended by adding three new sections 510.25, 510.26 and 510.27 to read as follows:

§ 510.25 Prosecutor; motion.

The prosecutor may file with the court at any time, including at any time before or after the principal's release from custody, a motion seeking the pre-trial detention of the principal for which the prosecutor shall present evidence to the court demonstrating that:

1. The principal will not appear in court as required; or

2. The principal will obstruct or attempt to obstruct justice or the criminal process; or

3. The principal would threaten, injure or intimidate, a prospective witness or juror.

§ 510.26 Prosecutor; motion; evidentiary standard.

A motion to the court seeking pre-trial detention pursuant to section 510.25 of this article must set forth admissible evidence as defined by this chapter. There shall be a rebuttable presumption that the principal be detained pending trial if the court, upon consideration of the admissible evidence, determines by a preponderance of the evidence that:

1. None of the pre-trial supervision services available would ensure the principal's appearance in court when required; or

2. The principal would injure or intimidate a prospective witness or juror if released on his or her own recognizance.

§ 510.27 Motion for rehearing; securing order.

1. The parties, after a determination by the court at a recognizance hearing, at any time before trial, may submit a motion to the court seeking to vacate or modify the securing order. A motion seeking to vacate or modify a securing order must include admissible evidence show-

ing a change of circumstances with respect to the conditions set forth in section 510.25 of this article.

2. The court will determine by a preponderance of the evidence presented whether the securing order should be vacated or modified.

3. The court shall reopen a recognizance hearing upon its own application, at any time before trial, if the court finds that information exists that was not known to the prosecutor or principal at the time of the recognizance hearing that has a material bearing on the conditions set forth in section 510.25 of this article. The court will make this information known to the prosecutor and principal prior to the recognizance hearing.

§ 7. Section 510.30 of the criminal procedure law is REPEALED and a new section 510.30 is added to read as follows:

§ 510.30 Right to counsel.

A principal or defendant has the right to the aid of counsel at a recognizance hearing. If he or she appears upon such recognizance hearing without counsel, he or she has the following rights:

1. To an adjournment for the purpose of obtaining counsel; and

2. To have counsel assigned by the court if he or she is financially unable to obtain the same.

§ 8. Section 510.40 of the criminal procedure law is amended to read as follows:

§ 510.40 Application for recognizance or [~~bail~~] commitment; [~~determination thereof,~~] form of securing order and execution thereof.

1. An application for recognizance or [~~bail~~] commitment must be determined by a securing order which either:

(a) Grants the application and releases the principal on his or her own recognizance; or

(b) [~~Grants the application and fixes bail; or~~

~~(c)~~] Denies the application and commits the principal to, or retains him or her in, the custody of the sheriff.

2. Upon ordering that a principal be released on his or her own recognizance, the court must direct him or her to appear in the criminal action or proceeding involved whenever his or her attendance may be required and to render himself or herself at all times amenable to the orders and processes of the court. If such principal is in the custody of the sheriff [~~or at liberty upon bail at the time of the order~~], the court must direct that he or she be discharged from such custody [~~or, as the case may be, that his bail be exonerated~~]. Any restrictions placed on a principal released on his or her own recognizance must be the least restrictive that will ensure the principal's return to court.

[~~3. Upon the issuance of an order fixing bail, and upon the posting thereof, the court must examine the bail to determine whether it complies with the order. If it does, the court must, in the absence of some factor or circumstance which in law requires or authorizes disapproval thereof, approve the bail and must issue a certificate of release, authorizing the principal to be at liberty, and, if he is in the custody of the sheriff at the time, directing the sheriff to discharge him therefrom. If the bail fixed is not posted, or is not approved after being posted, the court must order that the principal be committed to the custody of the sheriff.~~]

§ 9. Section 510.50 of the criminal procedure law is amended to read as follows:

§ 510.50 Enforcement of securing order.

When the attendance of a principal confined in the custody of the sheriff is required at the criminal action or proceeding at a particular time and place, the court may compel such attendance by directing the sheriff to produce him **or her** at such time and place. If the principal is at liberty on his **or her** own recognizance [~~**or on bail**~~], his **or her** attendance may be achieved or compelled by various methods, including notification and the issuance of a bench warrant, prescribed by law in provisions governing such matters with respect to the particular kind of action or proceeding involved.

§ 10. The criminal procedure law is amended by adding a new section 510.60 to read as follows:

§ 510.60 Statistical reports.

The division of criminal justice services will compile and publish data on the disposition of all recognizance hearings in all courts, disaggregated by county and including the following information:

1. The aggregate number of recognizance hearings;

2. The aggregate number of defendants and principals who were heard at recognizance hearings;

3. The race, ethnicity, age and sex of each defendant or principal;

4. The crimes each defendant or principal were charged with; and

5. The disposition of each hearing whether for recognizance or commitment.

§ 11. Article 520 of the criminal procedure law is REPEALED.

§ 12. Section 530.10 of the criminal procedure law is amended to read as follows:

§ 530.10 Order of recognizance [~~**or bail**~~]; in general.

Under circumstances prescribed in [~~**this**~~] article **510 of this title**, a court, upon application of a **principal charged with a crime or a** defendant [~~**charged with or**~~] convicted of an offense, is required or authorized to order [~~**bail or**~~] recognizance for the release [~~**or prospective release**~~] of such **principal or** defendant**, or commitment of such principal or defendant** during the pendency of either:

1. A criminal action based upon such charge; or

2. An appeal taken by the defendant from a judgment of conviction or a sentence or from an order of an intermediate appellate court affirming or modifying a judgment of conviction or a sentence.

§ 13. Paragraph (a) of subdivision 11 of section 530.12 of the criminal procedure law, as amended by chapter 222 of the laws of 1994, is amended to read as follows:

(a) revoke an order of recognizance [~~**or revoke an order of bail or order forfeiture of such bail**~~] and commit the defendant to custody; or

§ 14. Sections 530.20, 530.30, 530.40, 530.45, 530.50, 530.60, 530.70 and 530.80 of the criminal procedure law are REPEALED.

§ 15. This act shall take effect immediately.