STATE OF NEW YORK

3283

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

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

AN ACT to amend the insurance law, in relation to requiring persons receiving charitable bail to prove that they are indigent

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

Section 1. Paragraph 2 of subsection (b) of section 6805 of the insurance law, as added by chapter 181 of the laws of 2012, is amended to read as follows:

(2) only deposit money as bail on behalf of a person who **has provided proof to such organization that he or she** is [~~**financially unable to post bail**~~] **indigent as determined in accordance with subsection (b-1) of this section**, which may constitute a portion or the whole amount of such bail;

§ 2. Section 6805 of the insurance law is amended by adding a new subsection (b-1) to read as follows:

(b-1) (1) The determination of whether a person is indigent shall be deferred to no later than forty-eight hours from his or her arraignment.

Thereafter, the court shall have the right at any time during the course of the proceedings to determine whether such person is indigent.

Provided, however, that, nothing in this subsection shall prevent the appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel.

However an appointment of counsel shall not automatically qualify him or her for eligibility for charitable bail.

In that event, a person deemed eligible, and the information provided is inaccurate or false and the defendant is determined to not be indigent under the terms of this subsection the charitable bail posted shall be revoked.

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

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(2) In determining whether a person is indigent, or in the case of an unemancipated minor his or her custodial parents or guardians inability to pay a bail bond, the court concerned shall consider such factors as:

(i) income;

(ii) source of income;

(iii) property owned;

(iv) number of motor vehicles owned and in working condition;

(v) other assets;

(vi) outstanding obligations;

(vii) the number and ages of his or her dependents;

(viii) the poverty level income guidelines compiled and published by the federal Department of Labor;

(ix) complexity of the case;

(x) the cost of posting a surety bail or other form of bail allowed by law;

(xi) likelihood that the case will be disposed of by the second court appearance;

(xii) whether the defendant has any holds or other potential restrictions that would prevent his or her release if bail was posted; and

(xiii) any other circumstances presented to the court relevant to financial status. In each case, the person, and if the defendant is an unemancipated minor, his or her custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigence, which shall be provided to the court, the material factors relating to his or her ability to pay a bail bond, in such form as the court prescribes.

(3) The following definitions shall be used in making a determination of indigence:

(i) Income. "Income" means actual available current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit. Income may also include potential wages from seasonal employment when the applicant has a history of seasonal employment. Types of income include, but are not limited to: wages, income from self-employment, rents, royalties, child support, alimony, social security benefits, including social security disability insurance and supplemental security income, temporary assistance for needy families benefits, Veterans Administration benefits, general assistance, cash benefits, unemployment compensation, workers' compensation, insurance or pension benefits, strike benefits, interest, dividends, and military family allotments. Income does not include in-kind assistance such as food stamps or vouchers.

(ii) Cash assets. "Cash assets" means cash on hand, money in savings, checking, individual retirement accounts, certificates of deposit or other readily accessible accounts; stocks or bonds that can be sold; and cash bail unless another person has been designated as the owner of the cash.

(iii) Other assets. "Other assets" include equity in real estate equal to an amount necessary to obtain a home equity loan; cash value of insurance policies; cash value of pension, retirement or profit sharing plans to which the applicant has access; equity value of major personal property items such as boats, snowmobiles and motor vehicles that are not needed for work or family transportation; valuable jewelry; antiques or collections; and any other property that could be sold, exchanged or used to obtain a loan.

(4) The defendant shall be deemed to be indigent without further inquiry if he or she, or in the case of an unemancipated minor his or her custodial parents or guardians, currently receives public assistance benefits through a state or federal program for indigent persons, such as aid to families with dependent children, adult public assistance, general relief, supplemental nutrition assistance program or Medicaid.

(5) If the court does not find that the defendant is presumptively indigent under paragraph four of this subsection, the court shall conduct an inquiry sufficient to determine whether the defendant is indigent and must state specifically on the record the basis that qualities this defendant as indigent.

§ 3. This act shall take effect immediately.