

STATE OF NEW YORK

6839

2019-2020 Regular Sessions

IN SENATE

November 8, 2019

Introduced by Sens. SERINO, GALLIVAN -- read twice and ordered printed,
and when printed to be committed to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to adding
certain offenses committed by a family member to the list of crimes
qualifying for bail

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

1 Section 1. The opening paragraph and paragraphs (h) and (i) of subdi-
2 vision 4 of section 510.10 of the criminal procedure law, as added by
3 section 2 of part JJJ of chapter 59 of the laws of 2019, are amended and
4 a new paragraph (j) is added to read as follows:

5 Where the principal stands charged with a qualifying offense, the
6 court, unless otherwise prohibited by law, may in its discretion release
7 the principal pending trial on the principal's own recognizance or under
8 non-monetary conditions, fix bail, or, where the defendant is charged
9 with a qualifying offense [~~which is a felony~~], the court may commit the
10 principal to the custody of the sheriff. A principal stands charged with
11 a qualifying offense for the purposes of this subdivision when he or she
12 stands charged with:

13 (h) criminal contempt in the second degree as defined in subdivision
14 three of section 215.50 of the penal law, criminal contempt in the first
15 degree as defined in subdivision (b), (c) or (d) of section 215.51 of
16 the penal law or aggravated criminal contempt as defined in section
17 215.52 of the penal law, and the underlying allegation of such charge of
18 criminal contempt in the second degree, criminal contempt in the first
19 degree or aggravated criminal contempt is that the defendant violated a
20 duly served order of protection where the protected party is a member of
21 the defendant's same family or household as defined in subdivision one
22 of section 530.11 of this article; [~~or~~]

23 (i) facilitating a sexual performance by a child with a controlled
24 substance or alcohol as defined in section 263.30 of the penal law, use

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

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1 of a child in a sexual performance as defined in section 263.05 of the
2 penal law or luring a child as defined in subdivision one of section
3 120.70 of the penal law~~[-]~~; or

4 (j) any of the following aggravated family offenses as defined in
5 section 240.75 of the penal law where the principal and the person
6 against whom the offense was committed were members of the same family
7 or household as defined in subdivision one of section 530.11; an offense
8 defined in section 120.00 (assault in the third degree); section 120.13
9 (menacing in the first degree); section 120.14 (menacing in the second
10 degree); section 120.15 (menacing in the third degree); section 120.20
11 (reckless endangerment in the second degree); section 120.45 (stalking
12 in the fourth degree); section 120.50 (stalking in the third degree);
13 section 120.55 (stalking in the second degree); section 121.11 (criminal
14 obstruction of breathing or blood circulation); subdivision one of
15 section 125.15 (manslaughter in the second degree); section 135.05
16 (unlawful imprisonment in the second degree); section 135.10 (unlawful
17 imprisonment in the first degree); section 135.60 (coercion in the third
18 degree); section 135.61 (coercion in the second degree); section 135.65
19 (coercion in the first degree); section 140.20 (burglary in the third
20 degree); section 140.25 (burglary in the second degree); section 145.00
21 (criminal mischief in the fourth degree); section 145.05 (criminal
22 mischief in the third degree); section 145.10 (criminal mischief in the
23 second degree); section 145.12 (criminal mischief in the first degree);
24 section 145.14 (criminal tampering in the third degree); section 240.25
25 (harassment in the first degree); subdivision one, two or four of
26 section 240.30 (aggravated harassment in the second degree); or any
27 attempt or conspiracy to commit any of the foregoing offenses.

28 § 2. The opening subparagraph and subparagraphs (viii) and (ix) of
29 paragraph (b) of subdivision 1 of section 530.20 of the criminal proce-
30 dure law, as added by section 16 of part JJJ of chapter 59 of the laws
31 of 2019, are amended and a new subparagraph (x) is added to read as
32 follows:

33 Where the principal stands charged with a qualifying offense, the
34 court, unless otherwise prohibited by law, may in its discretion release
35 the principal pending trial on the principal's own recognizance or under
36 non-monetary conditions, fix bail, or, where the defendant is charged
37 with a qualifying offense ~~[which is a felony]~~, the court may commit the
38 principal to the custody of the sheriff. The court shall explain its
39 choice of release, release with conditions, bail or remand on the record
40 or in writing. A principal stands charged with a qualifying offense when
41 he or she stands charged with:

42 (viii) criminal contempt in the second degree as defined in subdivi-
43 sion three of section 215.50 of the penal law, criminal contempt in the
44 first degree as defined in subdivision (b), (c) or (d) of section 215.51
45 of the penal law or aggravated criminal contempt as defined in section
46 215.52 of the penal law, and the underlying allegation of such charge of
47 criminal contempt in the second degree, criminal contempt in the first
48 degree or aggravated criminal contempt is that the defendant violated a
49 duly served order of protection where the protected party is a member of
50 the defendant's same family or household as defined in subdivision one
51 of section 530.11 of this article; ~~[ex]~~

52 (ix) facilitating a sexual performance by a child with a controlled
53 substance or alcohol as defined in section 263.30 of the penal law, use
54 of a child in a sexual performance as defined in section 263.05 of the
55 penal law or luring a child as defined in subdivision one of section
56 120.70 of the penal law~~[-]~~; or

(x) any of the following aggravated family offenses as defined in section 240.75 of the penal law where the principal and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11; an offense defined in section 120.00 (assault in the third degree); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 121.11 (criminal obstruction of breathing or blood circulation); subdivision one of section 125.15 (manslaughter in the second degree); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.60 (coercion in the third degree); section 135.61 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 145.14 (criminal tampering in the third degree); section 240.25 (harassment in the first degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); or any attempt or conspiracy to commit any of the foregoing offenses.

§ 3. The opening paragraph and paragraphs (h) and (i) of subdivision 4 of section 530.40 of the criminal procedure law, as added by section 18 of part JJJ of chapter 59 of the laws of 2019, are amended and a new paragraph (j) is added to read as follows:

Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged with a qualifying offense [~~which is a felony~~], the court may commit the principal to the custody of the sheriff. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:

(h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article; [~~or~~]

(i) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law[~~or~~]; or

(j) any of the following aggravated family offenses as defined in section 240.75 of the penal law where the principal and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11; an offense

1 defined in section 120.00 (assault in the third degree); section 120.13
2 (menacing in the first degree); section 120.14 (menacing in the second
3 degree); section 120.15 (menacing in the third degree); section 120.20
4 (reckless endangerment in the second degree); section 120.45 (stalking
5 in the fourth degree); section 120.50 (stalking in the third degree);
6 section 120.55 (stalking in the second degree); section 121.11 (criminal
7 obstruction of breathing or blood circulation); subdivision one of
8 section 125.15 (manslaughter in the second degree); section 135.05
9 (unlawful imprisonment in the second degree); section 135.10 (unlawful
10 imprisonment in the first degree); section 135.60 (coercion in the third
11 degree); section 135.61 (coercion in the second degree); section 135.65
12 (coercion in the first degree); section 140.20 (burglary in the third
13 degree); section 140.25 (burglary in the second degree); section 145.00
14 (criminal mischief in the fourth degree); section 145.05 (criminal
15 mischief in the third degree); section 145.10 (criminal mischief in the
16 second degree); section 145.12 (criminal mischief in the first degree);
17 section 145.14 (criminal tampering in the third degree); section 240.25
18 (harassment in the first degree); subdivision one, two or four of
19 section 240.30 (aggravated harassment in the second degree); or any
20 attempt or conspiracy to commit any of the foregoing offenses.

21 § 4. This act shall take effect on the first of November next succeed-
22 ing the date upon which it shall have become a law, provided, however,
23 that if part JJJ of chapter 59 of the laws of 2019 shall not have taken
24 effect on or before such date then this act shall take effect on the
25 same date and in the same manner as part JJJ of chapter 59 of the laws
26 of 2019 takes effect.