

# STATE OF NEW YORK

7342

## IN SENATE

January 21, 2020

Introduced by Sen. MARTINEZ -- 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 bail and pre-trial detention and domestic violence charges

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

1 Section 1. Section 510.10 of the criminal procedure law, as amended by  
2 section 2 of part JJJ of chapter 59 of the laws of 2019, is amended to  
3 read as follows:  
4 § 510.10 Securing order; when required; alternatives available; standard  
5 to be applied.  
6 1. When a principal, whose future court attendance at a criminal  
7 action or proceeding is or may be required, comes under the control of a  
8 court, such court shall, in accordance with this title, by a securing  
9 order release the principal on the principal's own recognizance, release  
10 the principal under non-monetary conditions, or, where authorized, fix  
11 bail or commit the principal to the custody of the sheriff. In all such  
12 cases, except where another type of securing order is shown to be  
13 required by law, the court shall release the principal pending trial on  
14 the principal's own recognizance, unless it is demonstrated and the  
15 court makes an individualized determination that the principal poses a  
16 risk of flight to avoid prosecution. If such a finding is made, the  
17 court must select the least restrictive alternative and condition or  
18 conditions that will reasonably assure the principal's return to court.  
19 The court shall explain its choice of release, release with conditions,  
20 bail or remand on the record or in writing.  
21 2. A principal is entitled to representation by counsel under this  
22 chapter in preparing an application for release, when a securing order  
23 is being considered and when a securing order is being reviewed for  
24 modification, revocation or termination. If the principal is financially  
25 unable to obtain counsel, counsel shall be assigned to the principal.  
26 3. In cases other than as described in [~~subdivision~~] subdivisions four  
27 and five of this section the court shall release the principal pending  
28 trial on the principal's own recognizance, unless the court finds on the

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

LBD14750-01-0

1 record or in writing that release on the principal's own recognizance  
2 will not reasonably assure the principal's return to court. In such  
3 instances, the court shall release the principal under non-monetary  
4 conditions, selecting the least restrictive alternative and conditions  
5 that will reasonably assure the principal's return to court. The court  
6 shall explain its choice of alternative and conditions on the record or  
7 in writing.

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

16 (a) a felony enumerated in section 70.02 of the penal law, other than  
17 burglary in the second degree as defined in subdivision two of section  
18 140.25 of the penal law or robbery in the second degree as defined in  
19 subdivision one of section 160.10 of the penal law;

20 (b) a crime involving witness intimidation under section 215.15 of the  
21 penal law;

22 (c) a crime involving witness tampering under section 215.11, 215.12  
23 or 215.13 of the penal law;

24 (d) a class A felony defined in the penal law, other than in article  
25 two hundred twenty of such law with the exception of section 220.77 of  
26 such law;

27 (e) a felony sex offense defined in section 70.80 of the penal law or  
28 a crime involving incest as defined in section 255.25, 255.26 or 255.27  
29 of such law, or a misdemeanor defined in article one hundred thirty of  
30 such law;

31 (f) conspiracy in the second degree as defined in section 105.15 of  
32 the penal law, where the underlying allegation of such charge is that  
33 the defendant conspired to commit a class A felony defined in article  
34 one hundred twenty-five of the penal law;

35 (g) money laundering in support of terrorism in the first degree as  
36 defined in section 470.24 of the penal law; money laundering in support  
37 of terrorism in the second degree as defined in section 470.23 of the  
38 penal law; or a felony crime of terrorism as defined in article four  
39 hundred ninety of the penal law, other than the crime defined in section  
40 490.20 of such law; or

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

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

1 5. Where the principal stands charged with a crime or crimes against a  
2 member or members of the same family or household as that term is  
3 defined in subdivision one of section 530.11 of this title, the court,  
4 unless otherwise prohibited by law, may in its discretion release the  
5 principal pending trial on the principal's own recognizance or under  
6 non-monetary conditions, fix bail, or commit the principal to the custo-  
7 dy of the sheriff.

8 6. Notwithstanding the provisions of subdivisions three [~~and~~], four  
9 and five of this section, with respect to any charge for which bail or  
10 remand is not ordered, and for which the court would not or could not  
11 otherwise require bail or remand, a defendant may, at any time, request  
12 that the court set bail in a nominal amount requested by the defendant  
13 in the form specified in paragraph (a) of subdivision one of section  
14 520.10 of this title; if the court is satisfied that the request is  
15 voluntary, the court shall set such bail in such amount.

16 [~~6.~~] 7. When a securing order is revoked or otherwise terminated in  
17 the course of an uncompleted action or proceeding but the principal's  
18 future court attendance still is or may be required and the principal is  
19 still under the control of a court, a new securing order must be issued.  
20 When the court revokes or otherwise terminates a securing order which  
21 committed the principal to the custody of the sheriff, the court shall  
22 give written notification to the sheriff of such revocation or termi-  
23 nation of the securing order.

24 § 2. Paragraph (g) of subdivision 1 of section 510.30 of the criminal  
25 procedure law is amended by adding three new subparagraphs (iii), (iv)  
26 and (v) to read as follows:

27 (iii) any history of prior acts of violence or threats of violence  
28 against a witness in the pending criminal action; and

29 (iv) any order of protection issued by any court against the principal  
30 for the protection of a member or members of the same family or house-  
31 hold as that term is defined in subdivision one of section 530.11 of  
32 this title, whether or not such order of protection is currently in  
33 effect; and

34 (v) any prior arrest or conviction for a crime or violation against a  
35 member or members of the same family or household as that term is  
36 defined in subdivision one of section 530.11 of this title; and

37 § 3. Subdivision 1 of section 530.20 of the criminal procedure law, as  
38 amended by section 16 of part JJJ of chapter 59 of the laws of 2019, is  
39 amended to read as follows:

40 1. (a) In cases other than as described in paragraph (b) or (c) of  
41 this subdivision the court shall release the principal pending trial on  
42 the principal's own recognizance, unless the court finds on the record  
43 or in writing that release on the principal's own recognizance will not  
44 reasonably assure the principal's return to court. In such instances,  
45 the court shall release the principal under non-monetary conditions,  
46 selecting the least restrictive alternative and conditions that will  
47 reasonably assure the principal's return to court. The court shall  
48 explain its choice of alternative and conditions on the record or in  
49 writing.

50 (b) Where the principal stands charged with a qualifying offense, the  
51 court, unless otherwise prohibited by law, may in its discretion release  
52 the principal pending trial on the principal's own recognizance or under  
53 non-monetary conditions, fix bail, or, where the defendant is charged  
54 with a qualifying offense which is a felony, the court may commit the  
55 principal to the custody of the sheriff. The court shall explain its  
56 choice of release, release with conditions, bail or remand on the record

1 or in writing. A principal stands charged with a qualifying offense when  
2 he or she stands charged with:

3 (i) a felony enumerated in section 70.02 of the penal law, other than  
4 burglary in the second degree as defined in subdivision two of section  
5 140.25 of the penal law or robbery in the second degree as defined in  
6 subdivision one of section 160.10 of the penal law;

7 (ii) a crime involving witness intimidation under section 215.15 of  
8 the penal law;

9 (iii) a crime involving witness tampering under section 215.11, 215.12  
10 or 215.13 of the penal law;

11 (iv) a class A felony defined in the penal law, other than in article  
12 two hundred twenty of such law with the exception of section 220.77 of  
13 such law;

14 (v) a felony sex offense defined in section 70.80 of the penal law or  
15 a crime involving incest as defined in section 255.25, 255.26 or 255.27  
16 of such law, or a misdemeanor defined in article one hundred thirty of  
17 such law;

18 (vi) conspiracy in the second degree as defined in section 105.15 of  
19 the penal law, where the underlying allegation of such charge is that  
20 the defendant conspired to commit a class A felony defined in article  
21 one hundred twenty-five of the penal law;

22 (vii) money laundering in support of terrorism in the first degree as  
23 defined in section 470.24 of the penal law; money laundering in support  
24 of terrorism in the second degree as defined in section 470.23 of the  
25 penal law; or a felony crime of terrorism as defined in article four  
26 hundred ninety of the penal law, other than the crime defined in section  
27 490.20 of such law; or

28 (viii) [~~criminal contempt in the second degree as defined in subdivi-~~  
29 ~~sion three of section 215.50 of the penal law, criminal contempt in the~~  
30 ~~first degree as defined in subdivision (b), (c) or (d) of section 215.51~~  
31 ~~of the penal law or aggravated criminal contempt as defined in section~~  
32 ~~215.52 of the penal law, and the underlying allegation of such charge of~~  
33 ~~criminal contempt in the second degree, criminal contempt in the first~~  
34 ~~degree or aggravated criminal contempt is that the defendant violated a~~  
35 ~~duly served order of protection where the protected party is a member of~~  
36 ~~the defendant's same family or household as defined in subdivision one~~  
37 ~~of section 530.11 of this article; or~~

38 ~~(ix)]~~ facilitating a sexual performance by a child with a controlled  
39 substance or alcohol as defined in section 263.30 of the penal law, use  
40 of a child in a sexual performance as defined in section 263.05 of the  
41 penal law or luring a child as defined in subdivision one of section  
42 120.70 of the penal law.

43 (c) Where the principal stands charged with a crime or crimes against  
44 a member or members of the same family or household as that term is  
45 defined in subdivision one or section 530.11 of this part, the court,  
46 unless otherwise prohibited by law, may in its discretion release the  
47 principal pending trial on the principal's own recognizance or under  
48 non-monetary conditions, fix bail, or commit the principal to the custo-  
49 dy of the sheriff.

50 (d) Notwithstanding the provisions of paragraphs (a) [~~and~~], (b) and (c)  
51 of this subdivision, with respect to any charge for which bail or remand  
52 is not ordered, and for which the court would not or could not otherwise  
53 require bail or remand, a defendant may, at any time, request that the  
54 court set bail in a nominal amount requested by the defendant in the  
55 form specified in paragraph (a) of subdivision one of section 520.10 of

1 this title; if the court is satisfied that the request is voluntary, the  
2 court shall set such bail in such amount.

3 § 4. Section 530.40 of the criminal procedure law, as amended by  
4 section 18 of part JJJ of chapter 59 of the laws of 2019, is amended to  
5 read as follows:

6 § 530.40 Order of recognizance, release under non-monetary conditions or  
7 bail; by superior court when action is pending therein.

8 When a criminal action is pending in a superior court, such court,  
9 upon application of a defendant, must or may order recognizance or bail  
10 as follows:

11 1. When the defendant is charged with an offense or offenses of less  
12 than felony grade only, the court must, unless otherwise provided by  
13 law, order recognizance or release under non-monetary conditions in  
14 accordance with this section.

15 2. When the defendant is charged with a felony, the court may, unless  
16 otherwise provided by law in its discretion, order recognizance, release  
17 under non-monetary conditions or, where authorized, bail. In any such  
18 case in which an indictment (a) has resulted from an order of a local  
19 criminal court holding the defendant for the action of the grand jury,  
20 or (b) was filed at a time when a felony complaint charging the same  
21 conduct was pending in a local criminal court, and in which such local  
22 criminal court or a superior court judge has issued an order of recogni-  
23 zance, release under non-monetary conditions or, where authorized, bail  
24 which is still effective, the superior court's order may be in the form  
25 of a direction continuing the effectiveness of the previous order.

26 3. In cases other than as described in [~~subdivision~~] subdivisions four  
27 and five of this section the court shall release the principal pending  
28 trial on the principal's own recognizance, unless the court finds on the  
29 record or in writing that release on the principal's own recognizance  
30 will not reasonably assure the principal's return to court. In such  
31 instances, the court shall release the principal under non-monetary  
32 conditions, selecting the least restrictive alternative and conditions  
33 that will reasonably assure the principal's return to court. The court  
34 shall explain its choice of alternative and conditions on the record or  
35 in writing.

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

45 (a) a felony enumerated in section 70.02 of the penal law, other than  
46 burglary in the second degree as defined in subdivision two of section  
47 140.25 of the penal law or robbery in the second degree as defined in  
48 subdivision one of section 160.10 of the penal law;

49 (b) a crime involving witness intimidation under section 215.15 of the  
50 penal law;

51 (c) a crime involving witness tampering under section 215.11, 215.12  
52 or 215.13 of the penal law;

53 (d) a class A felony defined in the penal law, other than in article  
54 two hundred twenty of such law with the exception of section 220.77 of  
55 such law;

1 (e) a felony sex offense defined in section 70.80 of the penal law or  
2 a crime involving incest as defined in section 255.25, 255.26 or 255.27  
3 of such law, or a misdemeanor defined in article one hundred thirty of  
4 such law;

5 (f) conspiracy in the second degree as defined in section 105.15 of  
6 the penal law, where the underlying allegation of such charge is that  
7 the defendant conspired to commit a class A felony defined in article  
8 one hundred twenty-five of the penal law;

9 (g) money laundering in support of terrorism in the first degree as  
10 defined in section 470.24 of the penal law; money laundering in support  
11 of terrorism in the second degree as defined in section 470.23 of the  
12 penal law; or a felony crime of terrorism as defined in article four  
13 hundred ninety of the penal law, other than the crime defined in section  
14 490.20 of such law; or

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

25 ~~(i)]~~ facilitating a sexual performance by a child with a controlled  
26 substance or alcohol as defined in section 263.30 of the penal law, use  
27 of a child in a sexual performance as defined in section 263.05 of the  
28 penal law or luring a child as defined in subdivision one of section  
29 120.70 of the penal law.

30 5. Where the principal stands charged with a crime or crimes against a  
31 member or members of the same family or household as that term is  
32 defined in subdivision one of section 530.11 of this part, the court,  
33 unless otherwise prohibited by law, may in its discretion release the  
34 principal pending trial on the principal's own recognizance or under  
35 non-monetary conditions, fix bail, or commit the principal to the custo-  
36 dy of the sheriff.

37 6. Notwithstanding the provisions of subdivisions three [~~and~~] four,  
38 and five of this section, with respect to any charge for which bail or  
39 remand is not ordered, and for which the court would not or could not  
40 otherwise require bail or remand, a defendant may, at any time, request  
41 that the court set bail in a nominal amount requested by the defendant  
42 in the form specified in paragraph (a) of subdivision one of section  
43 520.10 of this title; if the court is satisfied that the request is  
44 voluntary, the court shall set such bail in such amount.

45 [~~6-~~] 7. Notwithstanding the provisions of subdivisions two, three  
46 [~~and~~] four, and five of this section, a superior court may not order  
47 recognizance, release under non-monetary conditions or, where author-  
48 ized, bail, or permit a defendant to remain at liberty pursuant to an  
49 existing order, after the defendant has been convicted of either: (a) a  
50 class A felony or (b) any class B or class C felony as defined in arti-  
51 cle one hundred thirty of the penal law committed or attempted to be  
52 committed by a person eighteen years of age or older against a person  
53 less than eighteen years of age. In either case the court must commit or  
54 remand the defendant to the custody of the sheriff.

55 [~~7-~~] 8. Notwithstanding the provisions of subdivisions two, three  
56 [~~and~~] four, and five of this section, a superior court may not order

1 recognizance, release under non-monetary conditions or, where author-  
2 ized, bail when the defendant is charged with a felony unless and until  
3 the district attorney has had an opportunity to be heard in the matter  
4 and such court and counsel for the defendant have been furnished with a  
5 report as described in subparagraph (ii) of paragraph (b) of subdivision  
6 two of section 530.20 of this article.

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