STATE OF NEW YORK

9564

IN ASSEMBLY

January 24, 2020

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Codes

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 Assembly, do enact as follows:

Section 1. The opening paragraph and paragraphs (h) and (i) of subdivision 4 of section 510.10 of the criminal procedure law, as added by section 2 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. 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**

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

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(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 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.

§ 2. The opening subparagraph and subparagraphs (viii) and (ix) of paragraph (b) of subdivision 1 of section 530.20 of the criminal procedure law, as added by section 16 of part JJJ of chapter 59 of the laws of 2019, are amended and a new subparagraph (x) 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 when he or she stands charged with:

(viii) 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~~]

(ix) 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

(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

(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 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.

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