STATE OF NEW YORK

4072

2019-2020 Regular Sessions

IN SENATE

February 27, 2019

Introduced by Sen. BIAGGI -- 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 of pregnant women

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

Section 1. Subdivisions 3 and 4 of section 120.90 of the criminal procedure law, as amended by chapter 424 of the laws of 1998, are amended to read as follows:

3. Upon arresting a defendant for an offense other than a felony pursuant to a warrant of arrest in a county other than the one in which the warrant is returnable or one adjoining it, a police officer, if he **or she** be one to whom the warrant is addressed, must inform the defendant that he **or she** has a right to appear before a local criminal court of the county of arrest for the purpose of being released on his **or her** own recognizance or having bail fixed. If the defendant does not desire to avail himself **or herself** of such right, the officer must request him **or her** to endorse such fact upon the warrant, and upon such endorsement the officer must without unnecessary delay bring him **or her** before the court in which the warrant is returnable. If the defendant does desire to avail himself **or herself** of such right, or if he **or she** refuses to make the aforementioned endorsement, the officer must without unnecessary delay bring him **or her** before a local criminal court of the county of arrest. Such court must release the defendant on his **or her** own recognizance or fix bail for his **or her** appearance on a specified date in the court in which the warrant is returnable. **There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.** If the defendant is in default of bail, the officer must without unnecessary delay bring him **or her** before the court in which the warrant is returnable.

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

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4. Upon arresting a defendant for an offense other than a felony pursuant to a warrant of arrest in a county other than the one in which the warrant is returnable or one adjoining it, a police officer, if he **or she** be one delegated to execute the warrant pursuant to section 120.60 **of this article**, may hold the defendant in custody in the county of arrest for a period not exceeding two hours for the purpose of delivering him **or her** to the custody of the officer by whom he **or she** was delegated to execute such warrant. If the delegating officer receives custody of the defendant during such period, he **or she** must proceed as provided in subdivision three **of this section**. Otherwise, the delegated officer must inform the defendant that he **or she** has a right to appear before a local criminal court for the purpose of being released on his **or her** own recognizance or having bail fixed. If the defendant does not desire to avail himself **or herself** of such right, the officer must request him **or her** to make, sign and deliver to him **or her** a written statement of such fact, and if the defendant does so, the officer must retain custody of him **or her** but must without unnecessary delay deliver him **or her** or cause him **or her** to be delivered to the custody of the delegating police officer. If the defendant does desire to avail himself **or herself** of such right, or if he **or she** refuses to make and deliver the aforementioned statement, the delegated or arresting officer must without unnecessary delay bring him **or her** before a local criminal court of the county of arrest and must submit to such court a written statement reciting the material facts concerning the issuance of the warrant, the offense involved, and all other essential matters relating thereto. Upon the submission of such statement, such court must release the defendant on his **or her** own recognizance or fix bail for his **or her** appearance on a specified date in the court in which the warrant is returnable. **There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.** If the defendant is in default of bail, the officer must retain custody of him **or her** but must without unnecessary delay deliver him **or her** or cause him **or her** to be delivered to the custody of the delegating officer. Upon receiving such custody, the latter must without unnecessary delay bring the defendant before the court in which the warrant is returnable.

§ 2. Paragraph (b) of subdivision 2 of section 140.20 of the criminal procedure law, as amended by chapter 550 of the laws of 1987, is amended to read as follows:

(b) The desk officer in charge at a police station, county jail or police headquarters, or any of his **or her** superior officers, may, in such place fix pre-arraignment bail and, upon deposit thereof, issue and serve an appearance ticket upon the arrested person and release him **or her** from custody, as prescribed in section 150.30 **of this title**. **There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.**

§ 3. Paragraph (b) of subdivision 3 of section 140.40 of the criminal procedure law, as amended by chapter 550 of the laws of 1987, is amended to read as follows:

(b) The desk officer in charge at the appropriate police officer's station, county jail or police headquarters, or any of his **or her** superior officers, may, in such place, fix pre-arraignment bail and, upon deposit thereof, issue and serve an appearance ticket upon the arrested person and release him **or her** from custody, as prescribed in section 150.30 **of this title**. **There shall be a rebuttable presumption that any**

pregnant woman should be released on her own recognizance without the posting of bail.

§ 4. Subdivisions 1, 2 and 3 of section 150.30 of the criminal procedure law, subdivision 1 as amended by chapter 111 of the laws of 1987, subdivision 2 as amended and subdivision 3 as added by chapter 708 of the laws of 1986, paragraph (a) of subdivision 2 as added and paragraphs (b), (c) and (d) of subdivision 2 as relettered by chapter 549 of the laws of 1987, are amended to read as follows:

1. Issuance and service of an appearance ticket by a police officer following an arrest without a warrant, as prescribed in subdivision two of section 150.20 **of this article**, may be made conditional upon the posting of a sum of money, known as pre-arraignment bail **unless the person arrested is a pregnant woman, in which case, if an appearance ticket is issued, no bail shall be required**. In such case, the bail becomes forfeit upon failure of such person to comply with the directions of the appearance ticket. The person posting such bail must complete and sign a form which states (a) the name, residential address and occupation of each person posting cash bail; and (b) the title of the criminal action or proceeding involved; and (c) the offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and (d) the name of the principal and the nature of his **or her** involvement in or connection with such action or proceeding; and (e) the date of the principal's next appearance in court; and (f) an acknowledgement that the cash bail will be forfeited if the principal does not comply with the directions of the appearance ticket; and (g) the amount of money posted as cash bail. Such pre-arraignment bail may be posted as provided in subdivision two or three **of this section**.

2. A desk officer in charge at a police station, county jail, or police headquarters, or any of his **or her** superior officers, may in such place, fix pre-arraignment bail, in an amount prescribed in this subdivision, and upon the posting thereof must issue and serve an appearance ticket upon the arrested person, **unless the person arrested is a pregnant woman, in which case, if an appearance ticket is issued, no bail shall be required,** give a receipt for the bail, and release such person from custody. Such pre-arraignment bail may be fixed in the following amounts:

(a) If the arrest was for a class E felony, any amount not exceeding seven hundred fifty dollars.

(b) If the arrest was for a class A misdemeanor, any amount not exceeding five hundred dollars.

(c) If the arrest was for a class B misdemeanor or an unclassified misdemeanor, any amount not exceeding two hundred fifty dollars.

(d) If the arrest was for a petty offense, any amount not exceeding one hundred dollars.

3. A police officer, who has arrested a person without a warrant pursuant to subdivision two of section 150.20 of this [~~chapter~~] **article** for a traffic infraction, may, where he **or she** reasonably believes that such arrested person is not licensed to operate a motor vehicle by this state or any state covered by a reciprocal compact guaranteeing appearance as is provided in section five hundred seventeen of the vehicle and traffic law, fix pre-arraignment bail in the amount of fifty dollars; provided, however, **that no such bail shall be required for pregnant women who must be released with an appearance ticket without posting bail, and** such bail shall be posted by means of a credit card or similar device. Upon the posting thereof, said officer must issue and serve an

appearance ticket upon the arrested person, give a receipt for the bail, and release such person from custody.

§ 5. Subdivision 2 of section 150.75 of the criminal procedure law, as added by chapter 360 of the laws of 1977, is amended to read as follows:

2. Whenever the defendant is arrested without a warrant, an appearance ticket shall promptly be issued and served upon him **or her**, as provided in this article. The issuance and service of the appearance ticket may be made conditional upon the posting of pre-arraignment bail as provided in section 150.30 of this [~~chapter~~] **article** but only if the appropriate police officer (a) is unable to ascertain the defendant's identity or residence address; or (b) reasonably suspects that the identification or residence address given by the defendant is not accurate; [~~or~~] (c) reasonably suspects that the defendant does not reside within the state**; or (d) is able to ascertain that the defendant is not a pregnant woman**. No warrant of arrest shall be issued unless the defendant has failed to appear in court as required by the terms of the appearance ticket or by the court.

§ 6. 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.

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. **There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without posting bail.** 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 **or she** 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.

§ 7. 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.

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 **or she** may make an application for recognizance or bail.

2. Upon such application, the principal must be accorded an opportunity to be heard and to contend that an order of recognizance or bail must or should issue, that the court should release him **or her** on his **or her** own recognizance rather than fix bail, and that if bail is fixed it should be in a suggested amount and form. **There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.**

§ 8. Subdivision 1 of section 530.20 of the criminal procedure law, as amended by chapter 531 of the laws of 1975, is amended to read as follows:

1. When the defendant is charged, by information, simplified information, prosecutor's information or misdemeanor complaint, with an offense or offenses of less than felony grade only, the court must order recog-

nizance or bail. **There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.**

§ 9. Subdivision 2 of section 530.20 of the criminal procedure law is amended by adding a new paragraph (c) to read as follows:

(c) There shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.

§ 10. Section 530.40 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. Notwithstanding the provisions of subdivision one and two of this section, there shall be a rebuttable presumption that any pregnant woman should be released on her own recognizance without the posting of bail.

§ 11. This act shall take effect on the ninetieth day after it shall have become a law.