

# 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 subdivi-  
2 sion 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; [~~ex~~]

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

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

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

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

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

48 (i) facilitating a sexual performance by a child with a controlled  
 49 substance or alcohol as defined in section 263.30 of the penal law, use  
 50 of a child in a sexual performance as defined in section 263.05 of the  
 51 penal law or luring a child as defined in subdivision one of section  
 52 120.70 of the penal law[~~+~~]; or

53 (j) any of the following aggravated family offenses as defined in  
 54 section 240.75 of the penal law where the principal and the person  
 55 against whom the offense was committed were members of the same family  
 56 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.