

STATE OF NEW YORK

3800

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

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

AN ACT to amend the criminal procedure law, in relation to the "Justice for Rachael" act

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

1 Section 1. This act shall be known and may be cited as the "Justice
2 for Rachael" act.

3 § 2. The criminal procedure law is amended by adding a new section
4 510.55 to read as follows:

5 § 510.55 Pretrial detention; dangerousness hearing.

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, the people may make a motion seeking pretrial detention due to
9 the dangerousness of the principal. The people may seek the pretrial
10 detention of a principal:

11 (a) charged with a felony that involves the use, attempted use or
12 threatened use of physical force against the person of another or any
13 other felony that, by its nature, involves a substantial risk that phys-
14 ical force against the person of another may result;

15 (b) charged with a misdemeanor or felony which has as an element the
16 violation of a court order;

17 (c) charged with a misdemeanor or felony where the victim was
18 subjected to physical, sexual or psychological abuse inflicted by a
19 member of the same family or household, as such term is defined in
20 subdivision one of section 530.11 of this title, as the applicant;

21 (d) charged with an offense for which a minimum term of three years or
22 more is prescribed;

23 (e) charged with intimidating a victim or witness in the first degree
24 as defined in section 215.17 of the penal law, intimidating a victim or
25 witness in the second degree as defined in section 215.16 of the penal

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

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1 law, or intimidating a victim or witness in the third degree as defined
2 in section 215.15 of the penal law;

3 (f) charged with a third or subsequent violation of section eleven
4 hundred ninety-two of the vehicle and traffic law within ten years;

5 (g) charged with a felony which has as an element the use, attempted
6 use or threatened use of physical force or a deadly weapon against the
7 person of another;

8 (h) charged with burglary in the first degree as defined in section
9 140.30 of the penal law, burglary in the second degree as defined in
10 section 140.25 of the penal law, or burglary in the third degree as
11 defined in section 140.20 of the penal law, grand larceny in the second
12 degree as defined in section 155.40 of the penal law, or grand larceny
13 in the fourth degree as defined in section 155.30 of the penal law;

14 (i) charged under article one hundred fifty of the penal law;

15 (j) charged with kidnapping in the first degree as defined in section
16 135.25 of the penal law or kidnapping in the second degree as defined in
17 section 135.20 of the penal law;

18 (k) charged with a crime which involved the use of explosives;

19 (l) otherwise involves conduct that presents a serious risk of phys-
20 ical injury to another for which a term of imprisonment was served and
21 arrested and charged with a second or subsequent offense under article
22 two hundred sixty-five of the penal law; or

23 (m) charged with a felony under article twenty-six of the agriculture
24 and markets law.

25 2. (a) Upon the appearance of the principal charged with an offense
26 listed in subdivision one of this section before a supreme court or
27 district court judge and upon the motion of the people, the judge shall
28 hold a hearing pursuant to subdivision four of this section and shall
29 issue an order that, pending trial, the individual shall either be
30 released on his or her own recognizance, released on conditions of
31 release as set forth by the judge, or detained under subdivision three
32 of this section. The individual shall be released unless the judge
33 determines that releasing the principal on his or her own recognizance
34 will endanger the safety of any other person or the community but does
35 not find by clear and convincing evidence that no conditions of release
36 will reasonably assure the safety of any other person or the community,
37 the judge shall order the pretrial release of the principal:

38 (i) subject to the condition that the person not commit a federal,
39 state or local crime during the period of release; and

40 (ii) subject to the least restrictive further condition, or combina-
41 tion of conditions, that such judge determines will reasonably assure
42 the safety of any other person and the community that the principal:

43 (A) remain in the custody of a designated person, who agrees to assume
44 supervision and to report any violation of a release condition to the
45 court, if the designated person is reasonably able to assure the judi-
46 cial officer that the person will appear as required and will not pose a
47 danger to the safety of any other person or the community;

48 (B) maintain employment, or, if unemployed, actively seek employment;

49 (C) maintain or commence an educational program;

50 (D) abide by specified restrictions on personal associations, living
51 accommodations or travel;

52 (E) avoid all contact with an alleged victim of the crime and with any
53 potential witness or witnesses who may testify concerning the offense;

54 (F) report on a regular basis to a designated law enforcement agency,
55 pretrial service agency, or other agency;

56 (G) comply with a specified curfew;

1 (H) refrain from possessing a firearm, destructive device, or other
2 dangerous weapon;

3 (I) refrain from excessive use of alcohol, or any use of a narcotic
4 drug or other controlled substance, without a prescription by a licensed
5 medical practitioner;

6 (J) undergo available medical, psychological, or psychiatric treat-
7 ment, including treatment for drug or alcohol dependency and remain in a
8 specified institution if required for that purpose;

9 (K) return to custody for specified hours following release for
10 employment, schooling, or other limited purposes;

11 (L) satisfy any other condition that is reasonably necessary to assure
12 the appearance of the person as required and to assure the safety of any
13 other person and the community; and

14 (M) participates in a community corrections program under the depart-
15 ment of corrections and community supervision, provided, however, that
16 the principal shall not participate in such program without his or her
17 consent to such participation.

18 (b) The judge shall not impose a financial condition that results in
19 the pretrial detention of the person under this section.

20 (c) The judge may at any time amend the order to impose additional or
21 different conditions of release.

22 3. There shall be a rebuttable presumption of release on recognizance
23 for every principal brought before the court. If, after a hearing
24 pursuant to the provisions of subdivision four of this section, the
25 district or supreme court judge finds by clear and convincing evidence
26 that no conditions of release will reasonably assure the safety of any
27 other person or the community, said judge shall order the detention of
28 the principal prior to trial. A principal detained under this subdivi-
29 sion shall be brought to a trial as soon as reasonably possible, but in
30 absence of extraordinary circumstances, such principal shall not be
31 detained for a period exceeding one hundred twenty days by the district
32 court or for a period exceeding one hundred eighty days by the supreme
33 court.

34 4. (a) When a principal is held under arrest for an offense listed in
35 subdivision one of this section and upon a motion by the people, the
36 judge shall hold a hearing to determine whether conditions of release
37 will reasonably assure the safety of any other person or the community.

38 (b) The hearing shall be held immediately upon the principal's first
39 appearance before the court unless such principal or the people seek a
40 continuance. Except for good cause, a continuance on motion of the prin-
41 cipal shall not exceed seven days and a continuance on motion of the
42 people shall not exceed three business days. During a continuance, the
43 principal shall be detained upon a showing that there existed probable
44 cause to arrest the principal. At the hearing, such principal shall have
45 the right to be represented by counsel, and, if financially unable to
46 retain adequate representation, to have counsel appointed. The principal
47 shall be afforded an opportunity to testify, to present witnesses, to
48 cross-examine witnesses who appear at the hearing, and to present infor-
49 mation. Prior to the summons of an alleged victim, or a member of the
50 alleged victim's family, to appear as a witness at the hearing, the
51 principal shall demonstrate to the court a good faith basis for the
52 principal's reasonable belief that the testimony from the witness will
53 be material and relevant to support a conclusion that there are condi-
54 tions of release that will reasonably assure the safety of any other
55 person or the community. The rules concerning admissibility of evidence
56 in criminal trials shall not apply to the presentation and consideration

1 of information at the hearing and the judge shall consider hearsay
2 contained in a police report or the statement of an alleged victim or
3 witness. The facts the judge uses to support findings pursuant to subdivi-
4 vision three of this section, that no conditions will reasonably assure
5 the safety of any other person or the community, shall be supported by
6 clear and convincing evidence. In a detention order issued pursuant to
7 the provisions of said subdivision three of this section the judge
8 shall: (i) include written findings of fact and a written statement of
9 the reasons for the detention; (ii) direct that the principal be commit-
10 ted to custody or confinement in a corrections facility separate, to the
11 extent practicable, from principals awaiting or serving sentence or
12 being held in custody pending appeal; and (iii) direct that the princi-
13 pal be afforded reasonable opportunity for private consultation with his
14 or her counsel. The principal may be detained pending completion of the
15 hearing. The hearing may be reopened by the judge, at any time before
16 trial, or upon a motion of the people or the principal detained if the
17 judge finds that: (A) information exists that was not known at the time
18 of the hearing or that there has been a change in circumstances; and (B)
19 that such information or change in circumstances has a material bearing
20 on the issue of whether there are conditions of release that will
21 reasonably assure the safety of any other person or the community.

22 5. In his determination as to whether there are conditions of release
23 that will reasonably assure the safety of any other person or the commu-
24 nity, said judge shall, on the basis of any information which he or she
25 can reasonably obtain, take into account the nature and seriousness of
26 the danger posed to any other person or the community that would result
27 by the principal's release, the nature and circumstances of the offense
28 charged, the potential penalty the principal faces, the principal's
29 family ties, employment record and history of mental illness, the prin-
30 cipal's reputation, the risk that the principal will obstruct or attempt
31 to obstruct the judge or threaten, injure or intimidate or attempt to
32 threaten, injure or intimidate a prospective witness or juror, his or
33 her record of convictions, if any, any illegal drug distribution or
34 present drug dependency, and whether the principal is released pending
35 adjudication of a prior charge.

36 6. Nothing in this section shall be construed as modifying or limiting
37 the presumption of innocence.

38 7. (a) A principal aggrieved by the denial of a district court judge
39 to release him or her on his or her own recognizance with or without
40 surety or condition may petition the supreme court for a review of the
41 order of the recognizance and the judge of the district court shall
42 thereupon immediately notify such principal of his or her right to file
43 a petition for review in the supreme court. When a petition for review
44 is filed in the district court or with the detaining authority subse-
45 quent to the petitioner's district court appearance, the clerk of the
46 district court or the detaining authority, as the case may be, shall
47 immediately notify by telephone, the clerk and probation officer of the
48 district court, the district attorney for the district in which the
49 district court is located, the prosecuting officer, the petitioner's
50 counsel, if any, and the clerk of courts of the county to which the
51 petition is to be transmitted. The clerk of the district court, upon the
52 filing of a petition for review, either in the district court or with
53 the detaining authority, shall forthwith transmit the petition for
54 review, a copy of the complaint and the record of the court, including
55 the appearance of the attorney, if any is entered, and a summary of the
56 court's reasons for denying the release of the principal on his or her

1 own recognizance with or without surety or condition to the supreme
2 court for the county in which the district court is located, if a judge
3 thereof is then sitting, or to the supreme court of the nearest county
4 in which a judge is then sitting. The probation officer of the district
5 court shall transmit forthwith to the probation officer of the supreme
6 court, copies of all records of the probation office of said district
7 court pertaining to the petitioner, including the petitioner's record of
8 prior convictions, if any, as currently verified by inquiry of the
9 commissioner. The district court or the detaining authority, as the case
10 may be, shall cause any petitioner in its custody to be brought before
11 said supreme court within two business days of the petition having been
12 filed. The district court is authorized to order any officer authorized
13 to execute criminal process to transfer the petitioner and any papers
14 herein above described from the district court or the detaining authori-
15 ty to the supreme court, and to coordinate the transfer of the petition-
16 er and the papers by such officer. The petition for review shall consti-
17 tute authority in the person or officer having custody of the petitioner
18 to transport the petitioner to said supreme court without the issuance
19 of any writ or other legal process; provided, however, that any district
20 or supreme court is authorized to issue a writ of habeas corpus for the
21 appearance forthwith of the petitioner before the supreme court.

22 (b) The supreme court shall hear the petition for review as speedily
23 as practicable and in any event within five business days of the filing
24 of the petition. The supreme court judge hearing the review may consider
25 the record below which the people and the principal may supplement. The
26 judge of the supreme court may, after a hearing on the petition for
27 review, order that the petitioner be released on his or her own recogni-
28 zance without surety or condition, or, in his or her discretion, to
29 reasonably assure the effective administration of justice, make any
30 other order of bail or recognizance or remand the petitioner in accord-
31 ance with the terms of the process by which he or she was ordered
32 committed by the district court.

33 8. If after a hearing under subdivision four of this section detention
34 under subdivision three of this section is ordered or pretrial release
35 subject to conditions under subdivision two of this section is ordered,
36 then: (a) the clerk shall immediately notify the probation officer of
37 the order; and (b) the order of detention under subdivision three of
38 this section or order of pretrial release subject to conditions under
39 subdivision two of this section shall be recorded in the principal's
40 criminal record.

41 § 3. This act shall take effect on the first of November next succeed-
42 ing the date on which it shall have become a law and shall apply to all
43 criminal cases where the defendant was arraigned on or after such effec-
44 tive date.