STATE OF NEW YORK

5984

2021-2022 Regular Sessions

IN ASSEMBLY

March 4, 2021

Introduced by M. of A. WALKER, SIMON, PERRY, TAYLOR, GOTTFRIED, L. ROSENTHAL, JEAN-PIERRE, SEAWRIGHT, WEPRIN, PICHARDO, WILLIAMS, COOK, DICKENS, DAVILA, PRETLOW -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the issuance of securing orders and in relation to making conforming changes

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

Section 1. The criminal procedure law is amended by adding a new section 510.25 to read as follows:

§ 510.25 Rehearing after five days in custody.

1. In addition to any other available pre-conviction motion or procedure, a principal for whom bail is authorized and was fixed, or who was remanded to the custody of the sheriff but is legally eligible for release, and who is in custody five days thereafter, shall be brought before the court the next business day for a hearing on the securing order.

2. The people must establish by clear and convincing evidence that the principal poses a significant risk of intentional flight to avoid prosecution, and that no condition or combination of conditions will reasonably assure the principal's return to court. Where the principal has not been indicted, and reasonable cause has not previously been established pursuant to the relevant provisions of sections 180.60, 180.70, 180.75 and 180.80 of this chapter or this section, the people must also establish probable cause that the principal committed the charged offense.

3. If the people fail pursuant to subdivision two of this section to establish that the principal poses a significant risk of intentional flight to avoid prosecution and that no other condition or combination of conditions will reasonably assure the principal's return to court, or in a case where there is no indictment and no previous finding pursuant to sections 180.60, 180.70, 180.75 and 180.80 or this section and the

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

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people fail to establish probable cause that the defendant committed the charged offense, the court shall, by a new securing order, release the principal on the principal's own recognizance or, where authorized pursuant to this title and articles one hundred seventy and one hundred eighty of this chapter, under non-monetary conditions, except where another type of securing order is shown to be required by law.

4. At the hearing, the principal shall have the right to be represented by counsel and, if financially unable to obtain counsel, to have counsel assigned. The principal shall be afforded an opportunity to testify, present witnesses, cross-examine witnesses who appear at the hearing and present information by proffer or otherwise. The prosecution must present competent, reliable evidence and may not rely on hearsay evidence to satisfy its burden.

5. Prior to the hearing, in addition to the discovery required by section 240.44 of this chapter, and subject to a protective order, the prosecution shall disclose to the principal, and permit the principal to discover, inspect, copy or photograph, on an ongoing basis continuing after such hearing, all statements and reports that relate or related to the prosecution's request for continued detention which are in the possession, custody or control of the prosecution, or persons under the prosecution's direction and control, including:

a. the charging documents, such as the complaint and any information, and the documents and materials supporting the charging documents;

b. police and law enforcement reports;

c. all statements, written or recorded or summarized in any writing or recording, and the substance of all oral statements, made by the principal or a co-defendant;

d. all statements, written or recorded or summarized in any writing or recording, made by persons whom the prosecutor knows to have evidence or information that relates to the subject matter of the case or proceeding;

e. all statements or reports on which, as applicable, the prosecution intends to rely or relied at the hearing; and

f. all facts, evidence and information favorable to the principal, including but not limited to information that tends to negate risk of flight or the principal's guilt or that tends to mitigate the principal's culpability as to a charged offense, or that tends to support a potential defense thereto, or that tends to support a motion to suppress evidence on constitutional or statutory grounds, or that is relevant to a witness's credibility, without regard to the materiality of the information, or that would tend to mitigate or reduce punishment if the principal were convicted.

6. This process shall continue with additional rehearings, held promptly on reasonable written request of defense counsel, made on notice to the people.

§ 2. Paragraphs (c), (d) and (e) of subdivision 1 of section 510.30 of the criminal procedure law, as amended by section 5 of part JJJ of chapter 59 of the laws of 2019, are amended to read as follows:

(c) The principal's criminal conviction record if any provided that the court must also consider and take into account the time that has elapsed since the occurrence of such crime or crimes and the age of the principal at the time of the occurrence of such crime or crimes;

(d) The principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any provided that

the court must also consider and take into account the time that has elapsed since the occurrence of such delinquency or youthful offender conduct and the age of the principal at the time of such delinquency or youthful offender conduct;

(e) The principal's previous record with respect to **intentional** flight to avoid criminal prosecution;

§ 3. Subparagraph (i) of paragraph (b) of subdivision 3 of section 510.45 of the criminal procedure law, as added by section 8 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

(i) designed and implemented in a way that ensures the results are free from discrimination **and any disparate impacts on detention and other outcomes** on the basis of race, **creed, color,** national origin, sex, **sexual orientation, gender identity or expression, military status, disability,** or an other protected class**, regarding the use thereof**; and

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