

STATE OF NEW YORK

6536--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 19, 2021

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to authorizing the court the discretion to release persons charged with certain crimes involving possession of a firearm on their own recognizance or under non-monetary conditions, fix bail, or commit the person to the custody of the sheriff

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

1 Section 1. Subdivision 1 of section 510.10 of the criminal procedure
2 law, as amended by section 2 of part JJJ of chapter 59 of the laws of
3 2019, is amended to read as follows:

4 1. When a principal, whose future court attendance at a criminal
5 action or proceeding is or may be required, comes under the control of a
6 court, such court shall, in accordance with this title, by a securing
7 order release the principal on the principal's own recognizance, release
8 the principal under non-monetary conditions, or, where authorized, fix
9 bail or commit the principal to the custody of the sheriff. In all such
10 cases, except where another type of securing order is shown to be
11 required by law, or unless otherwise provided by law, the court shall
12 release the principal pending trial on the principal's own recognizance,
13 unless it is demonstrated and the court makes an individualized determi-
14 nation that the principal poses a risk of flight to avoid prosecution.
15 If such a finding is made, the court must, unless otherwise provided by
16 law, select the least restrictive alternative and condition or condi-
17 tions that will reasonably assure the principal's return to court. The
18 court shall explain its choice of release, release with conditions, bail
19 or remand on the record or in writing.

20 § 2. Paragraphs (s) and (t) of subdivision 4 of section 510.10 of the
21 criminal procedure law, as added by section 2 of part UU of chapter 56
22 of the laws of 2020, are amended and a new paragraph (u) is added to
23 read as follows:

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

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1 (s) a felony, where the defendant qualifies for sentencing on such
2 charge as a persistent felony offender pursuant to section 70.10 of the
3 penal law; [~~or~~]

4 (t) any felony or class A misdemeanor involving harm to an identifi-
5 able person or property, where such charge arose from conduct occurring
6 while the defendant was released on his or her own recognizance or
7 released under conditions for a separate felony or class A misdemeanor
8 involving harm to an identifiable person or property, provided, however,
9 that the prosecutor must show reasonable cause to believe that the
10 defendant committed the instant crime and any underlying crime. For the
11 purposes of this subparagraph, any of the underlying crimes need not be
12 a qualifying offense as defined in this subdivision[~~+~~]; or

13 (u) any felony offense involving criminal possession of a firearm or
14 criminal possession of a weapon in violation of article two hundred
15 sixty-five of the penal law.

16 § 3. Section 510.10 of the criminal procedure law is amended by adding
17 a new subdivision 7 to read as follows:

18 7. When the principal is charged with a crime as defined in article
19 two hundred sixty-five of the penal law that involves a machine-gun,
20 firearm silencer, firearm, rifle, shotgun, disguised gun, ghost gun or
21 assault weapon, the court may in its discretion release the principal
22 pending trial on the principal's own recognizance or under non-monetary
23 conditions, fix bail, or the court may commit the principal to the
24 custody of the sheriff without considering the likelihood that the
25 defendant will return for court or selecting the least restrictive means
26 necessary to ensure their return to court.

27 § 4. The opening paragraph of subdivision 1 of section 510.30 of the
28 criminal procedure law, as amended by section 5 of part JJJ of chapter
29 59 of the laws of 2019, is amended to read as follows:

30 With respect to any principal, the court [~~in all cases~~], unless other-
31 wise provided by law, must impose the least restrictive kind and degree
32 of control or restriction that is necessary to secure the principal's
33 return to court when required. In determining that matter, the court
34 must, on the basis of available information, consider and take into
35 account information about the principal that is relevant to the princi-
36 pal's return to court, including:

37 § 5. Section 510.30 of the criminal procedure law is amended by adding
38 a new subdivision 4 to read as follows:

39 4. When the principal is charged with a crime as defined in article
40 two hundred sixty-five of the penal law that involves a machine-gun,
41 firearm silencer, firearm, rifle, shotgun, disguised gun, ghost gun or
42 assault weapon, the court may in its discretion release the principal
43 pending trial on the principal's own recognizance or under non-monetary
44 conditions, fix bail, or the court may commit the principal to the
45 custody of the sheriff without considering the likelihood that the
46 defendant will return for court or selecting the least restrictive means
47 necessary to ensure their return to court.

48 § 6. Subparagraphs (xix) and (xx) of paragraph (b) of subdivision 1 of
49 section 530.20 of the criminal procedure law, as amended by section 3 of
50 part UU of chapter 56 of the laws of 2020, are amended and a new subpar-
51 agraph (xxi) is added to read as follows:

52 (xix) a felony, where the defendant qualifies for sentencing on such
53 charge as a persistent felony offender pursuant to section 70.10 of the
54 penal law; [~~or~~]

55 (xx) any felony or class A misdemeanor involving harm to an identifi-
56 able person or property, where such charge arose from conduct occurring

1 while the defendant was released on his or her own recognizance or
2 released under conditions for a separate felony or class A misdemeanor
3 involving harm to an identifiable person or property, provided, however,
4 that the prosecutor must show reasonable cause to believe that the
5 defendant committed the instant crime and any underlying crime. For the
6 purposes of this subparagraph, any of the underlying crimes need not be
7 a qualifying offense as defined in this subdivision[+]; or

8 (xxi) any felony offense involving criminal possession of a firearm or
9 criminal possession of a weapon in violation of article two hundred
10 sixty-five of the penal law.

11 § 7. Paragraphs (s) and (t) of subdivision 4 of section 530.40 of the
12 criminal procedure law, as added by section 4 of part UU of chapter 56
13 of the laws of 2020, are amended and a new paragraph (u) is added to
14 read as follows:

15 (s) a felony, where the defendant qualifies for sentencing on such
16 charge as a persistent felony offender pursuant to section 70.10 of the
17 penal law; [~~or~~]

18 (t) any felony or class A misdemeanor involving harm to an identifi-
19 able person or property, where such charge arose from conduct occurring
20 while the defendant was released on his or her own recognizance or
21 released under conditions for a separate felony or class A misdemeanor
22 involving harm to an identifiable person or property, provided, however,
23 that the prosecutor must show reasonable cause to believe that the
24 defendant committed the instant crime and any underlying crime. For the
25 purposes of this subparagraph, any of the underlying crimes need not be
26 a qualifying offense as defined in this subdivision[+]; or

27 (u) any felony offense involving criminal possession of a firearm or
28 criminal possession of a weapon in violation of article two hundred
29 sixty-five of the penal law.

30 § 8. Subparagraph (ii) of paragraph (d) of subdivision 2 of section
31 530.60 of the criminal procedure law, as amended by section 20 of part
32 JJJ of chapter 59 of the laws of 2019, is amended and a new subparagraph
33 (iii) is added to read as follows:

34 (ii) Under paragraph (b) of this subdivision, revocation of the order
35 of recognizance, release under non-monetary conditions or, as the case
36 may be, bail shall result in the issuance of a new securing order which
37 may, if otherwise authorized by law, permit the principal's release on
38 recognizance or release under non-monetary conditions, but shall also
39 render the defendant eligible for an order fixing bail provided, howev-
40 er, that in accordance with the principles in this title the court must
41 select the least restrictive alternative and condition or conditions
42 that will reasonably assure the principal's return to court. Nothing in
43 this subparagraph shall be interpreted as shortening the period of
44 detention, or requiring or authorizing any less restrictive form of a
45 securing order, which may be imposed pursuant to any other law[+]; and

46 (iii) When the principal is charged with a crime as defined in article
47 two hundred sixty-five of the penal law that involves a machine-gun,
48 firearm silencer, firearm, rifle, shotgun, disguised gun, ghost gun or
49 assault weapon, the court may in its discretion release the principal
50 pending trial on the principal's own recognizance or under non-monetary
51 conditions, fix bail, or the court may commit the principal to the
52 custody of the sheriff without considering the likelihood that the
53 defendant will return for court or selecting the least restrictive means
54 necessary to ensure their return to court.

55 § 9. This act shall take effect immediately.