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:

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

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

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

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

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

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

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

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

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

§ 4. The opening paragraph 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, is amended to read as follows:

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

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

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

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

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

(xx) any felony or class A misdemeanor involving harm to an identifiable person or property, where such charge arose from conduct occurring

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

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

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

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

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

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

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

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

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

§ 9. This act shall take effect immediately.