STATE OF NEW YORK

6856

2021-2022 Regular Sessions

IN ASSEMBLY

April 12, 2021

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

AN ACT to amend the criminal procedure law, in relation to adding serious crimes to those offenses that qualify for bail and pre-trial detention

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

Section 1. The opening paragraph and paragraphs (a), (d), (g), (i), (s) and (t) of subdivision 4 of section 510.10 of the criminal procedure law, the opening paragraph and paragraphs (a), (d), (g) and (i) as amended and paragraphs (s) and (t) as added by section 2 of part UU of chapter 56 of the laws of 2020, are amended and sixteen new paragraphs (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii) and (jj) are added to read as follows:

Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged with a qualifying offense [~~which is a felony~~], the court may commit the principal to the custody of the sheriff. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:

(a) a felony enumerated in section 70.02 of the penal law[~~, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling~~];

(d) a class A felony defined in the penal law[~~, provided that for class A felonies under article two hundred twenty of the penal law, only class A-I felonies shall be a qualifying offense~~];

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

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(g) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 of the penal law; or a [~~felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law~~] misdemeanor or felony crime defined in article four hundred ninety of the penal law;

(i) [~~facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law~~] a misdemeanor or felony defined in article two hundred sixty-three of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;

(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[~~.~~];

(u) a felony enumerated in article two hundred twenty of the penal law;

(v) a hate crime defined in article four hundred eighty-five of the penal law;

(w) manslaughter in the second degree as defined in section 125.15 of the penal law;

(x) criminally negligent homicide as defined in section 125.10 of the penal law;

(y) reckless assault of a child as defined in section 120.02 of the penal law or reckless assault of a child by a child day care provider as defined in section 120.01 of the penal law;

(z) burglary in the third degree as defined in section 140.20 of the penal law and robbery in the third degree as defined in section 160.05 of the penal law;

(aa) stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of the penal law;

(bb) aggravated vehicular manslaughter as defined in section 125.14 of the penal law;

(cc) vehicular manslaughter in the first degree as defined in section 125.13 of the penal law or vehicular manslaughter in the second degree as defined in section 125.12 of the penal law;

(dd) menacing in the first degree as defined in section 120.13 of the penal law, menacing in the second degree as defined in section 120.14 of

the penal law or menacing in the third degree as defined in section 120.15 of the penal law;

(ee) coercion in the first degree as defined in section 135.65 of the penal law;

(ff) arson in the fourth degree as defined in section 150.05 of the penal law;

(gg) criminal possession of a firearm as defined in section 265.01-b of the penal law;

(hh) patronizing a person for prostitution in a school zone as defined in section 230.08 of the penal law;

(ii) aggravated harassment in the first degree as defined in section 240.31 of the penal law; or

(jj) aggravated cruelty to animals as defined in section three hundred fifty-three-a of the agriculture and markets law, overriding, torturing and injuring animals; failure to provide proper sustenance as defined in section three hundred fifty-three of the agriculture and markets law, or animal fighting as defined in section three hundred fifty-one of the agriculture and markets law.

§ 2. The opening paragraph and subparagraphs (i), (iv), (vii), (ix), (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 sixteen new subparagraphs (xxi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), (xxviii), (xxix), (xxx), (xxxi), (xxxii), (xxxiii), (xxxiv), (xxxv), and (xxxvi) are added to read as follows:

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

(i) a felony enumerated in section 70.02 of the penal law[~~, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling~~];

(iv) a class A felony defined in the penal law[~~, provided, that for class A felonies under article two hundred twenty of such law, only class A-I felonies shall be a qualifying offense~~];

(vii) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 of the penal law; or a [~~felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law~~] misdemeanor or felony crime defined in article four hundred ninety of the penal law;

(ix) [~~facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the~~

~~penal law~~] a misdemeanor or felony defined in article two hundred sixty-three of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;

(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[~~.~~];

(xxi) a felony enumerated in article two hundred twenty of the penal law;

(xxii) a hate crime defined in article four hundred eighty-five of the penal law;

(xxiii) manslaughter in the second degree as defined in section 125.15 of the penal law;

(xxiv) criminally negligent homicide as defined in section 125.10 of the penal law;

(xxv) reckless assault of a child as defined in section 120.02 of the penal law, reckless assault of a child by a child day care provider as defined in section 120.01 of the penal law;

(xxvi) burglary in the third degree as defined in section 140.20 of the penal law and robbery in the third degree as defined in section 160.05 of the penal law;

(xxvii) stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of the penal law;

(xxviii) aggravated vehicular manslaughter as defined in section 125.14 of the penal law;

(xxix) vehicular manslaughter in the first degree as defined in section 125.13 of the penal law or vehicular manslaughter in the second degree as defined in section 125.12 of the penal law;

(xxx) menacing in the first degree as defined in section 120.13 of the penal law, menacing in the second degree as defined in section 120.14 of the penal law or menacing in the third degree as defined in section 120.15 of the penal law;

(xxxi) coercion in the first degree as defined in section 135.65 of the penal law;

(xxxii) arson in the fourth degree as defined in section 150.05 of the penal law;

(xxxiii) criminal possession of a firearm as defined in section 265.01-b of the penal law;

(xxxiv) patronizing a person for prostitution in a school zone as defined in section 230.08 of the penal law;

(xxxv) aggravated harassment in the first degree as defined in section 240.31 of the penal law; or

(xxxvi) aggravated cruelty to animals as defined in section three hundred fifty-three-a of the agriculture and markets law, overriding, torturing and injuring animals; failure to provide proper sustenance as defined in section three hundred fifty-three of the agriculture and markets law, or animal fighting as defined in section three hundred fifty-one of the agriculture and markets law.

§ 3. The opening paragraph and paragraphs (a), (d), (g), (i), (s) and (t) of subdivision 4 of section 530.40 of the criminal procedure law, the opening paragraph and paragraphs (a), (d), (g) and (i) as amended and paragraphs (s) and (t) as added by section 4 of part UU of chapter 56 of the laws of 2020, are amended and sixteen new paragraphs (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii) and (jj) are added to read as follows:

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

(a) a felony enumerated in section 70.02 of the penal law[~~, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling~~];

(d) a class A felony defined in the penal law[~~, provided that for class A felonies under article two hundred twenty of such law, only class A-I felonies shall be a qualifying offense~~];

(g) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 of the penal law; or a [~~felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law~~] misdemeanor or felony crime defined in article four hundred ninety of the penal law;

(i) [~~facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law~~] misdemeanor or felony defined in article two hundred sixty-three of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;

(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[~~.~~];

(u) a felony enumerated in article two hundred twenty of the penal law;

(v) a hate crime defined in article four hundred eighty-five of the penal law;

(w) manslaughter in the second degree as defined in section 125.15 of the penal law;

(x) criminally negligent homicide as defined in section 125.10 of the penal law;

(y) reckless assault of a child as defined in section 120.02 of the penal law, reckless assault of a child by a child day care provider as defined in section 120.01 of the penal law;

(z) burglary in the third degree as defined in section 140.20 of the penal law and robbery in the third degree as defined in section 160.05 of the penal law;

(aa) stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of the penal law;

(bb) aggravated vehicular manslaughter as defined in section 125.14 of the penal law;

(cc) vehicular manslaughter in the first degree as defined in section 125.13 of the penal law or vehicular manslaughter in the second degree as defined in section 125.12 of the penal law;

(dd) menacing in the first degree as defined in section 120.13 of the penal law, menacing in the second degree as defined in section 120.14 of the penal law or menacing in the third degree as defined in section 120.15 of the penal law;

(ee) coercion in the first degree as defined in section 135.65 of the penal law;

(ff) arson in the fourth degree as defined in section 150.05 of the penal law;

(gg) criminal possession of a firearm as defined in section 265.01-b of the penal law;

(hh) patronizing a person for prostitution in a school zone as defined in section 230.08 of the penal law;

(ii) aggravated harassment in the first degree as defined in section 240.31 of the penal law; or

(jj) aggravated cruelty to animals as defined in section three hundred fifty-three-a of the agriculture and markets law, overriding, torturing and injuring animals; failure to provide proper sustenance as defined in section three hundred fifty-three of the agriculture and markets law, or animal fighting as defined in section three hundred fifty-one of the agriculture and markets law.

§ 4. This act shall take effect immediately.