STATE OF NEW YORK

9210

IN ASSEMBLY

February 9, 2022

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

AN ACT to amend the civil practice law and rules and the criminal procedure law, in relation to allowing courts to hold a pre-trial community safety and well-being hearing

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

Section 1. Subdivision 2 of section 6342 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, is amended to read as follows:

2. **(a)** In determining whether grounds for a temporary extreme risk protection order exist, the court shall consider any relevant factors including, but not limited to, the following acts of the respondent:

[~~(a)~~] **(i)** a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;

[~~(b)~~] **(ii)** a violation or alleged violation of an order of protection;

[~~(c)~~] **(iii)** any pending charge or conviction for an offense involving the use of a weapon;

[~~(d)~~] **(iv)** the reckless use, display or brandishing of a firearm, rifle or shotgun;

[~~(e)~~] **(v)** any history of a violation of an extreme risk protection order;

[~~(f)~~] **(vi)** evidence of recent or ongoing abuse of controlled substances or alcohol; or

[~~(g)~~] **(vii)** evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor.

(b) In considering the factors under this subdivision, the court shall consider**:**

(i) the time that has elapsed since the occurrence of such act or acts [~~and~~]**;**

(ii) the age of the person at the time of the occurrence of such act or acts**; and**

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

LBD14496-01-2

(iii) the community safety and well-being of all residents of the state.

(c) The court shall use any mental health evaluations the respondent has undergone when making a consideration regarding the community safety and well-being of all residents of the state.

(d) For the purposes of this subdivision, "recent" means within the six months prior to the date the petition was filed.

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

§ 510.55 Pretrial detention; community safety and well-being hearing.

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, the people may make a motion seeking pretrial detention due to the mental health of the principal. The people may seek the pretrial detention of a principal:

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

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

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

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

(e) charged with intimidating a victim or witness in the first degree as defined in section 215.17 of the penal law, intimidating a victim or witness in the second degree as defined in section 215.16 of the penal law, or intimidating a victim or witness in the third degree as defined in section 215.15 of the penal law;

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

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

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

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

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

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

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

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

2. (a) Upon the appearance of the principal charged with an offense listed in subdivision one of this section before a supreme court or

district court judge and upon the motion of the people, the judge shall hold a hearing pursuant to subdivision four of this section and shall issue an order that, pending trial, the individual shall either be released on his or her own recognizance, released on conditions of release as set forth by the judge, or detained under subdivision three of this section. The individual shall be released unless the judge determines that releasing the principal on his or her own recognizance will endanger the community safety and well-being of any other person in the state but does not find by clear and convincing evidence that no conditions of release will reasonably ensure the community safety and well-being of any other person in the state, the judge shall order the pretrial release of the principal:

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

(ii) subject to the least restrictive further condition, or combination of conditions, that such judge determines will reasonably ensure the community safety and well-being of any other person in the state that the principal:

(A) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to ensure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

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

(C) maintain or commence an educational program;

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

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

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

(G) comply with a specified curfew;

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

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

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

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

(L) satisfy any other condition that is reasonably necessary to ensure the appearance of the person as required and to ensure the safety and well-being of any other person and the community; and

(M) participates in a community corrections program under the department of corrections and community supervision, provided, however, that the principal shall not participate in such program without his or her consent to such participation.

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

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

3. There shall be a rebuttable presumption of release on recognizance for every principal brought before the court. If, after a hearing pursuant to the provisions of subdivision four of this section, the district

or supreme court judge finds by clear and convincing evidence that no conditions of release will reasonably ensure the community safety and well-being of any other person in the state, said judge shall order the detention of the principal prior to trial. A principal detained under this subdivision shall be brought to a trial as soon as reasonably possible, but in absence of extraordinary circumstances, such principal shall not be detained for a period exceeding one hundred twenty days by the district court or for a period exceeding one hundred eighty days by the supreme court.

4. (a) When a principal is held under arrest for an offense listed in subdivision one of this section and upon a motion by the people, the judge shall hold a hearing to determine whether conditions of release will reasonably ensure the community safety and well-being of any other person in the state. A principal shall be offered the appropriate mental health services while being held under arrest for an offense listed in subdivision one of this section.

(b) The hearing shall be held immediately upon the principal's first appearance before the court unless such principal or the people seek a continuance. Except for good cause, a continuance on motion of the principal shall not exceed seven days and a continuance on motion of the people shall not exceed three business days. During a continuance, the principal shall be detained upon a showing that there existed probable cause to arrest the principal or that without detention the principal would result in serious harm to himself, herself, or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. At the hearing, such principal shall have the right to be represented by counsel, and, if financially unable to retain adequate representation, to have counsel appointed. The principal shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information. Prior to the summons of an alleged victim, or a member of the alleged victim's family, to appear as a witness at the hearing, the principal shall demonstrate to the court a good faith basis for the principal's reasonable belief that the testimony from the witness will be material and relevant to support a conclusion that there are conditions of release that will reasonably ensure the community safety and well-being of any other person in the state. The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing and the judge shall consider hearsay contained in a police report, the statement of an alleged victim or witness, and shall have access to any mental health evaluation the principal has undergone prior to hearing. The facts the judge uses to support findings pursuant to subdivision three of this section, that no conditions will reasonably ensure the community safety and well-being of any other person in the state, shall be supported by clear and convincing evidence. In a detention order issued pursuant to the provisions of subdivision three of this section the judge shall: (i) include written findings of fact and a written statement of the reasons for the detention; (ii) direct that the principal be committed to custody or confinement in a corrections facility separate, to the extent practicable, from principals awaiting or serving sentence or being held in custody pending appeal or a community treatment center; and (iii) direct that the principal be afforded reasonable opportunity for private consultation with his or her counsel. The principal may be detained pending completion of the hearing. The hearing may be reopened by the judge, at any time before trial, or upon a motion of the people or the

principal detained if the judge finds that: (A) information exists that was not known at the time of the hearing or that there has been a change in circumstances; and (B) that such information or change in circumstances has a material bearing on the issue of whether there are conditions of release that will reasonably ensure the community safety and well-being of any other person in the state.

5. In his or her determination as to whether there are conditions of release that will reasonably ensure the community safety and well-being of any other person in the state, said judge shall, on the basis of any information which he or she can reasonably obtain, take into account the nature and seriousness of the danger posed to any other person or the community that would result by the principal's release, the nature and circumstances of the offense charged, the potential penalty the principal faces, the principal's family ties, employment record, history of mental illness, and reputation, the risk that the principal will obstruct or attempt to obstruct the judge or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror, his or her record of convictions, if any, any illegal drug distribution or present drug dependency, and whether the principal is released pending adjudication of a prior charge.

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

7. (a) A principal aggrieved by the denial of a district court judge to release him or her on his or her own recognizance with or without surety or condition may petition the supreme court for a review of the order of the recognizance and the judge of the district court shall thereupon immediately notify such principal of his or her right to file a petition for review in the supreme court. When a petition for review is filed in the district court or with the detaining authority subsequent to the petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk and probation officer of the district court, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the principal on his or her own recognizance with or without surety or condition to the supreme court for the county in which the district court is located, if a judge thereof is then sitting, or to the supreme court of the nearest county in which a judge is then sitting. The probation officer of the district court shall transmit forthwith to the probation officer of the supreme court, copies of all records of the probation office of said district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the commissioner. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before said supreme court within two business days of the petition having been filed. The district court is authorized to order any officer authorized to execute criminal process to transfer the petitioner and any papers herein above described from the district court or the detaining authority to the supreme court, and to coordinate the transfer of the petition-

er and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to transport the petitioner to said supreme court without the issuance of any writ or other legal process; provided, however, that any district or supreme court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the supreme court.

(b) The supreme court shall hear the petition for review as speedily as practicable and in any event within five business days of the filing of the petition. The supreme court judge hearing the review may consider the record below which the people and the principal may supplement. The judge of the supreme court may, after a hearing on the petition for review, order that the petitioner be released on his or her own recognizance without surety or condition, or, in his or her discretion, to reasonably ensure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he or she was ordered committed by the district court.

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

§ 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to all criminal cases where the defendant was arraigned on or after such effective date.