

# 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:

1 Section 1. Subdivision 2 of section 6342 of the civil practice law and  
2 rules, as added by chapter 19 of the laws of 2019, is amended to read as  
3 follows:  
4 2. (a) In determining whether grounds for a temporary extreme risk  
5 protection order exist, the court shall consider any relevant factors  
6 including, but not limited to, the following acts of the respondent:  
7 [~~a~~] (i) a threat or act of violence or use of physical force  
8 directed toward self, the petitioner, or another person;  
9 [~~b~~] (ii) a violation or alleged violation of an order of protection;  
10 [~~c~~] (iii) any pending charge or conviction for an offense involving  
11 the use of a weapon;  
12 [~~d~~] (iv) the reckless use, display or brandishing of a firearm,  
13 rifle or shotgun;  
14 [~~e~~] (v) any history of a violation of an extreme risk protection  
15 order;  
16 [~~f~~] (vi) evidence of recent or ongoing abuse of controlled  
17 substances or alcohol; or  
18 [~~g~~] (vii) evidence of recent acquisition of a firearm, rifle, shot-  
19 gun or other deadly weapon or dangerous instrument, or any ammunition  
20 therefor.  
21 (b) In considering the factors under this subdivision, the court shall  
22 consider:  
23 (i) the time that has elapsed since the occurrence of such act or acts  
24 [~~and~~];  
25 (ii) the age of the person at the time of the occurrence of such act  
26 or acts; and

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

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

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

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

8 § 2. The criminal procedure law is amended by adding a new section  
9 510.55 to read as follows:

10 § 510.55 Pretrial detention; community safety and well-being hearing.

11 1. When a principal, whose future court attendance at a criminal  
12 action or proceeding is or may be required, comes under the control of a  
13 court, the people may make a motion seeking pretrial detention due to  
14 the mental health of the principal. The people may seek the pretrial  
15 detention of a principal:

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

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

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

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

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

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

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

38 (h) charged with burglary in the first degree as defined in section  
39 140.30 of the penal law, burglary in the second degree as defined in  
40 section 140.25 of the penal law, or burglary in the third degree as  
41 defined in section 140.20 of the penal law, grand larceny in the second  
42 degree as defined in section 155.40 of the penal law, or grand larceny  
43 in the fourth degree as defined in section 155.30 of the penal law;

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

45 (j) charged with kidnapping in the first degree as defined in section  
46 135.25 of the penal law or kidnapping in the second degree as defined in  
47 section 135.20 of the penal law;

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

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

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

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

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

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

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

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

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

25 (C) maintain or commence an educational program;

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

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

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

32 (G) comply with a specified curfew;

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

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

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

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

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

46 (M) participates in a community corrections program under the depart-  
47 ment of corrections and community supervision, provided, however, that  
48 the principal shall not participate in such program without his or her  
49 consent to such participation.

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

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

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

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

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

17 (b) The hearing shall be held immediately upon the principal's first  
18 appearance before the court unless such principal or the people seek a  
19 continuance. Except for good cause, a continuance on motion of the prin-  
20 cipal shall not exceed seven days and a continuance on motion of the  
21 people shall not exceed three business days. During a continuance, the  
22 principal shall be detained upon a showing that there existed probable  
23 cause to arrest the principal or that without detention the principal  
24 would result in serious harm to himself, herself, or others, as defined  
25 in paragraph one or two of subdivision (a) of section 9.39 of the mental  
26 hygiene law. At the hearing, such principal shall have the right to be  
27 represented by counsel, and, if financially unable to retain adequate  
28 representation, to have counsel appointed. The principal shall be  
29 afforded an opportunity to testify, to present witnesses, to cross-exa-  
30 mine witnesses who appear at the hearing, and to present information.  
31 Prior to the summons of an alleged victim, or a member of the alleged  
32 victim's family, to appear as a witness at the hearing, the principal  
33 shall demonstrate to the court a good faith basis for the principal's  
34 reasonable belief that the testimony from the witness will be material  
35 and relevant to support a conclusion that there are conditions of  
36 release that will reasonably ensure the community safety and well-being  
37 of any other person in the state. The rules concerning admissibility of  
38 evidence in criminal trials shall not apply to the presentation and  
39 consideration of information at the hearing and the judge shall consider  
40 hearsay contained in a police report, the statement of an alleged victim  
41 or witness, and shall have access to any mental health evaluation the  
42 principal has undergone prior to hearing. The facts the judge uses to  
43 support findings pursuant to subdivision three of this section, that no  
44 conditions will reasonably ensure the community safety and well-being of  
45 any other person in the state, shall be supported by clear and convinc-  
46 ing evidence. In a detention order issued pursuant to the provisions of  
47 subdivision three of this section the judge shall: (i) include written  
48 findings of fact and a written statement of the reasons for the  
49 detention; (ii) direct that the principal be committed to custody or  
50 confinement in a corrections facility separate, to the extent practica-  
51 ble, from principals awaiting or serving sentence or being held in  
52 custody pending appeal or a community treatment center; and (iii) direct  
53 that the principal be afforded reasonable opportunity for private  
54 consultation with his or her counsel. The principal may be detained  
55 pending completion of the hearing. The hearing may be reopened by the  
56 judge, at any time before trial, or upon a motion of the people or the

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

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

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

23 7. (a) A principal aggrieved by the denial of a district court judge  
24 to release him or her on his or her own recognizance with or without  
25 surety or condition may petition the supreme court for a review of the  
26 order of the recognizance and the judge of the district court shall  
27 thereupon immediately notify such principal of his or her right to file  
28 a petition for review in the supreme court. When a petition for review  
29 is filed in the district court or with the detaining authority subse-  
30 quent to the petitioner's district court appearance, the clerk of the  
31 district court or the detaining authority, as the case may be, shall  
32 immediately notify by telephone, the clerk and probation officer of the  
33 district court, the district attorney for the district in which the  
34 district court is located, the prosecuting officer, the petitioner's  
35 counsel, if any, and the clerk of courts of the county to which the  
36 petition is to be transmitted. The clerk of the district court, upon the  
37 filing of a petition for review, either in the district court or with  
38 the detaining authority, shall forthwith transmit the petition for  
39 review, a copy of the complaint and the record of the court, including  
40 the appearance of the attorney, if any is entered, and a summary of the  
41 court's reasons for denying the release of the principal on his or her  
42 own recognizance with or without surety or condition to the supreme  
43 court for the county in which the district court is located, if a judge  
44 thereof is then sitting, or to the supreme court of the nearest county  
45 in which a judge is then sitting. The probation officer of the district  
46 court shall transmit forthwith to the probation officer of the supreme  
47 court, copies of all records of the probation office of said district  
48 court pertaining to the petitioner, including the petitioner's record of  
49 prior convictions, if any, as currently verified by inquiry of the  
50 commissioner. The district court or the detaining authority, as the case  
51 may be, shall cause any petitioner in its custody to be brought before  
52 said supreme court within two business days of the petition having been  
53 filed. The district court is authorized to order any officer authorized  
54 to execute criminal process to transfer the petitioner and any papers  
55 herein above described from the district court or the detaining authori-  
56 ty to the supreme court, and to coordinate the transfer of the petition-

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

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

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

26 § 3. This act shall take effect on the first of November next succeed-  
27 ing the date on which it shall have become a law and shall apply to all  
28 criminal cases where the defendant was arraigned on or after such effec-  
29 tive date.