STATE OF NEW YORK

2832--B

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sens. RAMOS, BIAGGI, RIVERA, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to the issuance of temporary orders of protection when an action is pending in a local criminal court

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

Section 1. The criminal procedure law is amended by adding a new section 530.15 to read as follows:

§ 530.15 Temporary order of protection hearing.

Where a court has issued a temporary order of protection pursuant to subdivision one of section 530.12 of this article or subdivision one of section 530.13 of this article, upon application of a defendant, the court shall hold an evidentiary hearing where the prosecutor must show, by clear and convincing evidence, that the temporary order of protection is the least restrictive means of protecting a designated witness or complainant from intimidation or injury.

(a) The defendant shall be entitled to such hearing within three days of requesting such hearing. Notice must be given by the court to both parties, as well as the party protected by the order of protection, in advance of the hearing.

(b) At the hearing, the prosecution must present witness testimony, subject to cross-examination, though the witness need not be the party protected by the order. Hearsay is admissible.

(c) The court shall state on the record or in writing its findings of facts and conclusions of law, the reasons for maintaining, vacating, or modifying the temporary order of protection, and, where applicable, why

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

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the temporary order of protection is the least restrictive means of protecting a designated witness or complainant from intimidation or injury.

§ 2. Section 530.30 of the criminal procedure law, the section heading and subdivisions 1 and 2 as amended by section 17 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 530.30 Order of recognizance, release under non-monetary conditions or bail **or issuance of a temporary order of protection**; by superior court judge when action is pending in local criminal court.

1. When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, a judge of a superior court holding a term thereof in the county, upon application of a defendant, may order recognizance, release under non-monetary conditions or, where authorized, bail when such local criminal court:

(a) Lacks authority to issue such an order, pursuant to the relevant provisions of section 530.20 of this article; or

(b) Has denied an application for recognizance, release under non-monetary conditions or bail; or

(c) Has fixed bail, where authorized, which is excessive; or

(d) Has set a securing order of release under non-monetary conditions which are more restrictive than necessary to reasonably assure the defendant's return to court.

In such case, such superior court judge may vacate the order of such local criminal court and release the defendant on recognizance or under non-monetary conditions, or where authorized, fix bail in a lesser amount or in a less burdensome form, whichever are the least restrictive alternative and conditions that will reasonably assure the defendant's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

2. **When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, and the local criminal court has denied a request to modify or limit a temporary order of protection issued pursuant to subdivision one of section 530.12 of this article or subdivision one of section 530.13 of this article, upon application of a defendant, a judge of the superior court holding a term thereof in the county shall review the determination of the local criminal court de novo and may vacate or modify the order of the local criminal court. A court's failure to comply with the requirements of section 530.15 of this article is reviewable under this section.**

3. Notwithstanding the provisions of subdivision one **or two** of this section, when the defendant is charged with a felony in a local criminal court, a superior court judge may not order recognizance, release under non-monetary conditions or, where authorized, bail**, or vacate or modify a temporary order of protection** unless and until the district attorney has had an opportunity to be heard in the matter and such judge and counsel for the defendant have been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20 of this article.

[~~3.~~] **4.** Not more than one application may be made pursuant to **each subdivision of** this section.

§ 3. This act shall take effect immediately.