STATE OF NEW YORK

3310

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sens. GALLIVAN, O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to bail reform; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 500.10 of the criminal procedure law is amended by adding a new subdivision 23 to read as follows:

23. "Risk and needs assessment" means a risk and needs assessment instrument, approved by the chief administrative judge of the unified court system. Such approved assessment instrument shall be objective, standardized and developed based on analysis of empirical data and risk factors relevant to the principal's danger to the community and risk of failure of a principal to appear. Such approved assessment instrument shall not be discriminatory based on race, national origin, sex, any other protected class or socioeconomic status.

§ 2. Section 510.10 of the criminal procedure law, as amended by section 2 of part JJJ of chapter 59 of the laws of 2019, subdivision 4 as amended by section 2 of part UU of chapter 56 of the laws of 2020, is amended to read as follows:

§ 510.10 Securing order; when required; alternatives available; standard to be applied.

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~~] **request of the applicable county pre-trial services agency that a risk and needs assessment be conducted on the eligible principal and such court shall take into account the risk and needs assessment, but such assessment shall not be the sole determinative factor, for the purpose of determining whether such principal should be released** on the principal's own recognizance, [~~release the~~

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

LBD07327-01-1

~~principal~~] **released** 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, the court shall release the principal pending trial on the principal's own recognizance, unless [~~it is~~] **the risk and needs assessment has** demonstrated and the court [~~makes an individualized determination~~] **determines** that the principal **is a danger to the community or** poses a risk of flight to avoid prosecution. If such a finding **specific to risk of flight to avoid prosecution** is made, the court must 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. A principal is entitled to representation by counsel under this chapter in preparing an application for release, when a securing order is being considered and when a securing order is being reviewed for modification, revocation or termination. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.

[~~3. In cases other than as described in subdivision four of this section the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.~~

~~4. 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;~~

~~(b) a crime involving witness intimidation under section 215.15 of the penal law;~~

~~(c) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;~~

~~(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;~~

~~(e) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or a felony sex offense defined in section 70.80 of the penal law;, or a crime involving incest as defined in section 255.25, 255.26 or 255.27 of such law, or a misdemeanor defined in article one hundred thirty of such law;~~

~~(f) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that~~

~~the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law;~~

~~(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;~~

~~(h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;~~

~~(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 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;~~

~~(j) any crime that is alleged to have caused the death of another person;~~

~~(k) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;~~

~~(l) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;~~

~~(m) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;~~

~~(n) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;~~

~~(o) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;~~

~~(p) failure to register as a sex offender pursuant to section one hundred sixty-eight-t of the correction law or endangering the welfare of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under~~

~~article six-C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law;~~

~~(q) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;~~

~~(r) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;~~

~~(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.~~

~~5. Notwithstanding the provisions of subdivisions three and four of this section, with~~] **3. With** respect to any charge for which bail or remand is not ordered, and for which the court would not [~~or could not~~] otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

[~~6.~~] **4.** When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and the principal is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

§ 3. Subdivision 1 of section 510.20 of the criminal procedure law, as amended by section 3 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

1. Upon any occasion when a court has issued a securing order with respect to a principal and the principal is confined in the custody of the sheriff as a result of the securing order or a previously issued securing order, the principal may make an application for recognizance, release under non-monetary conditions or bail. **Any such decision by the court for a change in a securing order with respect to a principal shall take into account the risk and needs assessment conducted by the applicable county pre-trial services agency, but such assessment shall not be the sole determinative factor.**

§ 4. 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:

1. 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 **unless such principal poses a danger to the community**. In determining that matter, the court [~~must~~] **in addi-**

tion to taking into account the risk and needs assessment conducted by the applicable county pre-trial services agency may, 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:

(a) The principal's activities and history;

(b) If the principal is a defendant, the charges facing the principal;

(c) The principal's criminal conviction record if any;

(d) The principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any;

(e) The principal's previous record with respect to flight to avoid criminal prosecution;

(f) If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances, and, in cases where bail is authorized, the principal's ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond;

(g) Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, the following factors:

(i) any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, whether or not such order of protection is currently in effect; and

(ii) the principal's history of use or possession of a firearm; and

(h) If the principal is a defendant, in the case of an application for a securing order pending appeal, the merit or lack of merit of the appeal.

§ 5. Paragraph (a) of subdivision 3 of section 510.45 of the criminal procedure law, as added by section 8 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

[~~(a) Any questionnaire, instrument or tool~~] The risk and needs assessment instrument used with a principal in the process of considering or determining the principal's possible release on recognizance, release under non-monetary conditions or on bail, or used with a principal in the process of considering or determining a condition or conditions of release or monitoring by a pretrial services agency, shall be promptly made available to the principal and the principal's counsel upon [~~written~~] request. [~~Any such blank form questionnaire, instrument or tool~~] Any such blank risk and needs assessment instrument regularly used in the county for such purpose or a related purpose shall be made available to any person promptly upon written request.

§ 6. Paragraph (b) of subdivision 3 of section 510.45 of the criminal procedure law is REPEALED.

§ 7. Paragraph (a) of subdivision 1 of section 530.20 of the criminal procedure law, as added by section 16 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

(a) [~~In cases other than as described in paragraph (b) of this subdivision the~~] When the principal is charged with an offense or offenses of less than felony grade only, the court shall [~~release the~~] request of the applicable county pre-trial services agency a risk and needs assessment be conducted on the eligible principal and the court shall take

into account the risk and needs assessment, but such assessment shall not be the sole determinative factor, for the purpose of determining whether such principal should be released pending trial on the principal's own recognizance, [~~unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court~~] released under non-monetary conditions, or where authorized, fix bail or commit the principal to the custody of the sheriff. The court shall explain its choice of [~~alternative and~~] release, release with conditions, bail or remand on the record or in writing.

§ 8. Paragraph (b) of subdivision 1 of section 530.20 of the criminal procedure law is REPEALED.

§ 9. Paragraph (d) of subdivision 1 of section 530.20 of the criminal procedure law, as added by section 16 of part JJJ of chapter 59 of the laws of 2019, is relettered paragraph (b) and amended to read as follows:

(b) [~~Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, with~~] With respect to any charge for which bail or remand is not ordered, and for which the court would not [~~or could not~~] otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

§ 10. The opening paragraph of subdivision 2 of section 530.20 of the criminal procedure law, as amended by section 16 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

When the defendant is charged, by felony complaint, with a felony, the court [~~may, in its discretion, order~~] shall, request of the applicable county pre-trial services agency a risk and needs assessment be conducted on the eligible defendant and the court shall take into account the risk and needs assessment, but such assessment shall not be the sole determinative factor, for the purpose of determining whether such defendant should be released on the defendant's own recognizance, [~~release~~] released under non-monetary conditions, or, where authorized, bail or commit the defendant to the custody of the sheriff except as otherwise provided in [~~subdivision one of this section or~~] this subdivision:

§ 11. Section 530.40 of the criminal procedure law, as amended by section 18 of part JJJ of chapter 59 of the laws of 2019, and subdivision 4 as amended by section 4 of part UU of chapter 56 of the laws of 2020, is amended to read as follows:

§ 530.40 Order of recognizance, release under non-monetary conditions or bail; by superior court when action is pending therein.

When a criminal action is pending in a superior court, such court, upon application of a defendant, must or may order recognizance or bail as follows:

1. When the defendant is charged with an offense or offenses of less than felony grade only, the court must, request of the applicable county pre-trial services agency a risk and needs assessment be conducted on the eligible defendant and the court shall take into account the risk and needs assessment, but such assessment shall not be the sole determinative factor, for the purpose of determining whether such defendant,

unless otherwise provided by law, **should be released on an** order **of** recognizance or **bail or** release under non-monetary conditions [~~in accordance with this section~~] **or commit the defendant to the custody of the sheriff**.

2. When the defendant is charged with a felony, the court [~~may, unless otherwise provided by law in its discretion, order~~] **shall request of the applicable county pre-trial services agency a risk and needs assessment be conducted on the eligible defendant and the court shall take into account the risk and needs assessment, but such assessment shall not be the sole determinative factor, for the purpose of determining whether such defendant should be released on the defendant's own** recognizance, [~~release~~] **released** under non-monetary conditions or, where authorized, bail **or commit the defendant to the custody of the sheriff**. In any such case in which an indictment (a) has resulted from an order of a local criminal court holding the defendant for the action of the grand jury, or (b) was filed at a time when a felony complaint charging the same conduct was pending in a local criminal court, and in which such local criminal court or a superior court judge has issued an order of recognizance, release under non-monetary conditions or, where authorized, bail which is still effective, the superior court's order may be in the form of a direction continuing the effectiveness of the previous order.

[~~3. In cases other than as described in subdivision four of this section the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.~~

~~4. 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;~~

~~(b) a crime involving witness intimidation under section 215.15 of the penal law;~~

~~(c) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;~~

~~(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;~~

~~(e) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or a felony sex offense defined in section 70.80 of the~~

penal law or a crime involving incest as defined in section 255.25, 255.26 or 255.27 of such law, or a misdemeanor defined in article one hundred thirty of such law;

(f) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law;

(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;

(h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;

(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 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;

(j) any crime that is alleged to have caused the death of another person;

(k) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;

(l) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;

(m) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;

(n) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;

(o) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the

~~penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;~~

~~(p) failure to register as a sex offender pursuant to section one hundred sixty-eight-t of the correction law or endangering the welfare of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under article six-C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law;~~

~~(q) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;~~

~~(r) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;~~

~~(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.~~

~~5. Notwithstanding the provisions of subdivisions three and four of this section, with~~] **3. With** respect to any charge for which bail or remand is not ordered, and for which the court would not [~~or could not~~] otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

[~~6.~~] **4.** Notwithstanding the provisions of [~~subdivisions~~] **subdivision** two[~~, three and four~~] of this section, a superior court may not order recognizance, release under non-monetary conditions or, where authorized, bail, or permit a defendant to remain at liberty pursuant to an existing order, after the defendant has been convicted of either: (a) a class A felony or (b) any class B or class C felony as defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age. In either case the court must commit or remand the defendant to the custody of the sheriff.

[~~7.~~] **5.** Notwithstanding the provisions of [~~subdivisions~~] **subdivision** two[~~, three and four~~] of this section, a superior court may not order recognizance, release under non-monetary conditions or, where authorized, bail when the defendant is charged with a felony unless and until the district attorney has had an opportunity to be heard in the matter and such court 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.

§ 12. This act shall take effect immediately.