STATE OF NEW YORK

6106

2021-2022 Regular Sessions

IN SENATE

April 9, 2021

Introduced by Sen. OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, the family court act, the general municipal law, the insurance law, the judiciary law and the administrative code of the city of New York, in relation to eliminating cash bail; to repeal Part JJJ of chapter 59 of the laws of 2019 amending the criminal procedure law relating to the issuance of securing orders; to repeal Part UU of chapter 56 of the laws of 2020 amending the criminal procedure law, the judiciary law and the executive law relating to securing orders and pretrial proceedings; and to repeal certain provisions of the criminal procedure law relating to cash bail

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

Section 1. Part JJJ of chapter 59 of the laws of 2019 amending the criminal procedure law relating to the issuance of securing orders relating to making conforming changes is REPEALED.

§ 2. Part UU of chapter 56 of the laws of 2020 amending the criminal procedure law, the judiciary law and the executive law relating to securing orders and pretrial proceedings relations thereto is REPEALED.

§ 3. Subdivision 2 of section 210.10 of the criminal procedure law, as amended by chapter 681 of the laws of 1990, is amended to read as follows:

2. If a felony complaint against the defendant was pending in a local criminal court or if the defendant was previously held by a local criminal court for the action of the grand jury, and if the defendant is at liberty on his or her own recognizance or on bail pursuant to a previous court order issued in the same criminal action, the superior court must, upon at least two days notice to the defendant and his or her surety, to any person other than the defendant who posted [~~cash~~] bail and to any attorney who would be entitled to notice under circumstances prescribed

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

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in subdivision one, direct the defendant to appear before the superior court for arraignment on a specified date. If the defendant fails to appear on such date, the court may issue a bench warrant and, in addition, may forfeit the bail, if any. Upon taking the defendant into custody pursuant to such bench warrant, the executing police officer must without unnecessary delay bring the defendant before such superior court for arraignment. If such superior court is not available, the executing police officer may bring the defendant to the local correctional facility of the county in which such superior court sits, to be detained there until not later than the commencement of the next session of such court occurring on the next business day.

§ 4. Paragraph (e) of subdivision 1 of section 420.10 of the criminal procedure law, as amended by chapter 618 of the laws of 1992, is amended to read as follows:

(e) Where [~~cash~~] bail has been posted by the defendant as the principal and is not forfeited or assigned, the court at its discretion may order that bail be applied toward payment of any order of restitution or reparation or fine. If the court so orders, the bail proceeds shall be applied to payment first of the restitution or reparation and then of the fine.

§ 5. Subdivision 9 of section 500.10 of the criminal procedure law is amended to read as follows:

9. "Bail" means [~~cash bail or~~] a bail bond.

§ 6. Subdivision 10 of section 500.10 of the criminal procedure law is REPEALED.

§ 7. Paragraph (a) of subdivision 1 of section 520.10 of the criminal procedure law is REPEALED.

§ 8. Section 520.15 of the criminal procedure law is REPEALED.

§ 9. The opening paragraph of subdivision 1 of section 520.30 of the criminal procedure law, as amended by chapter 384 of the laws of 1984, is amended to read as follows:

Following the posting of a bail bond and the justifying affidavit or affidavits [~~or the posting of cash bail~~], the court may conduct an inquiry for the purpose of determining the reliability of the obligors or person posting [~~cash~~] bail, the value and sufficiency of any security offered, and whether any feature of the undertaking contravenes public policy; provided that before undertaking an inquiry, of a person posting [~~cash~~] bail the court, after application of the district attorney, must have had reasonable cause to believe that the person posting [~~cash~~] bail is not in rightful possession of money posted as [~~cash~~] bail or that such money constitutes the fruits of criminal or unlawful conduct. The court may inquire into any matter stated or required to be stated in the justifying affidavits, and may also inquire into other matters appropriate to the determination, which include but are not limited to the following:

§ 10. Paragraphs (e) and (f) of subdivision 1 of section 520.30 of the criminal procedure law are REPEALED.

§ 11. Section 520.40 of the criminal procedure law is REPEALED.

§ 12. Subdivisions 2 and 3 of section 530.80 of the criminal procedure law, as amended by chapter 384 of the laws of 1984, are amended to read as follows:

2. For the purpose of surrendering the defendant, an obligor or the person who posted [~~cash~~] bail for the defendant may take him into custody at any place within the state, or he may, by a written authority indorsed on a certified copy of the bail bond, empower any person over twenty years of age to do so.

3. At any time before the forfeiture of [~~cash~~] bail, the defendant may surrender himself or the person who posted bail for the defendant may surrender the defendant in the manner prescribed in subdivision one. In such case, the court must order a return of the money to the person who posted it, upon producing the certificate of the sheriff showing the surrender, and upon a notice of five days to the district attorney.

§ 13. Section 540.10 of the criminal procedure law, subdivision 2 as amended by chapter 427 of the laws of 1998 and subdivision 3 as amended by chapter 384 of the laws of 1984, is amended to read as follows:

§ 540.10 Forfeiture of bail; generally.

1. If, without sufficient excuse, a principal does not appear when required or does not render himself amenable to the orders and processes of the criminal court wherein bail has been posted, the court must enter such facts upon its minutes and the bail bond or the [~~cash~~] bail, as the case may be, is thereupon forfeited.

2. If the principal appears at any time before the final adjournment of the court, and satisfactorily excuses his neglect, the court may direct the forfeiture to be discharged upon such terms as are just. If the forfeiture is not so discharged and the forfeited bail consisted of a bail bond, the district attorney, within one hundred twenty days after the adjournment of the court at which such bond was directed to be forfeited, must proceed against the obligor or obligors who executed such bond, in the manner prescribed in subdivision three. [~~If the forfeited bail consisted of cash bail, the county treasurer with whom it is deposited shall give written notice of the forfeiture to the person who posted cash bail for the defendant may at any time after the final adjournment of the court or forty-five days after notice of forfeiture required herein has been given, whichever comes later, apply the money deposited to the use of the county.~~]

3. A bail bond [~~or cash bail~~], upon being forfeited, together with a certified copy of the order of the court forfeiting the same, must be filed by the district attorney in the office of the clerk of the county wherein such order was issued. Such clerk must docket the same in the book kept by him for docketing of judgments and enter therein a judgment against the obligor or obligors who executed such bail bond for the amount of the penalty of said bond or against the person who posted the [~~cash~~] bail for the amount of the [~~cash~~] bail, and the bond and the certified copy of the order of the court forfeiting the bond or the [~~cash~~] bail constitutes the judgment roll. Such judgment constitutes a lien on the real estate of the obligor or obligors who executed such bail bond from the time of the entry of the judgment. An execution may be issued to collect the amount of said bail bond in the same form and with the same effect as upon a judgment recovered in an action in said county upon a debt in favor of the people of the state of New York against such obligor or obligors.

§ 14. Subdivision 2 of section 540.20 of the criminal procedure law is REPEALED.

§ 15. the opening paragraph of subdivision 1 of section 540.30 of the criminal procedure law is amended to read as follows:

After the forfeiture of a bail bond or [~~cash~~] bail, as provided in section 540.10, an application for remission of such forfeiture may be made to a court as follows:

§ 16. Section 155-a of the family court act, as amended by chapter 186 of the laws of 1997, is amended to read as follows:

§ 155-a. Admission to bail. A desk officer in charge at a police station, county jail or police headquarters, or any of his or her supe-

rior officers, may, in such place, take [~~cash~~] bail for his or her appearance before the appropriate court the next morning from any person arrested pursuant to a warrant issued by the family court; provided that such arrest occurs between eleven o'clock in the morning and eight o'clock the next morning, except that in the city of New York bail shall be taken between two o'clock in the afternoon and eight o'clock the next morning. The amount of such [~~cash~~] bail shall be the amount fixed in the warrant of arrest.

§ 17. The section heading and subdivision 1 of section 99-m of the general municipal law, as amended by chapter 166 of the laws of 1991, are amended to read as follows:

[~~Cash bail~~] **Bail** and partially secured bail bond; fee for deposit of money. 1. When, pursuant to the provisions of title P of the criminal procedure law or the provisions of the family court act, a sum of money deposited in connection with [~~a cash~~] bail or a partially secured bail bond is received by a court or other authorized public servant or agency, such money shall be deposited in the same manner as may be by law provided for the deposit of money generally received by such court, public servant or agency. Except as otherwise provided herein, the county treasurer, or, in the city of New York, the commissioner of finance, shall be entitled to a fee of two per centum of the amount of money so deposited and an additional fee of one per centum as provided in subdivision three of this section. Where the money received by a state-paid court hereunder is not deposited with any other officer or agency but is retained by the court, the clerk of such court shall be entitled to a fee of two per centum of the amount of money so retained, and an additional fee of one per centum to be disbursed as provided in subdivision three of this section. All fees collected hereunder by the clerk of a state-paid court shall be paid to the state commissioner of taxation and finance on a monthly basis not later than ten days after the last day of each month. Except as otherwise provided by an order issued pursuant to section 420.10 of the criminal procedure law, upon the exoneration or remission of the bail, the money so deposited, less such fee, shall, by order of the appropriate court, be refunded to the person who originally deposited such money. Upon a termination of the criminal action or proceeding in favor of the accused, as defined in subdivision two of section 160.50 of the criminal procedure law, the two per centum fee so retained shall, by order of the appropriate court, be refunded to the person who originally deposited such money.

§ 18. Subsection (o) of section 6802 of the insurance law is amended to read as follows:

(o) This section shall not apply to any insurer authorized in this state to execute and issue policies of motor vehicle and aircraft insurance as specified in paragraphs thirteen, fourteen and nineteen of subsection (a) of section one thousand one hundred thirteen of this chapter or to any agent of such insurer or to any broker who, as an incident to the execution and issuance of any such policy or to the solicitation, negotiation or procurement thereof undertakes to pay, in addition to the applicable limits of liability, the cost of bail bonds required of the insured because of accident or asserted traffic law violations arising out of the use of a vehicle insured under the terms of the policy, provided the cost of each such bail bond does not exceed one hundred dollars, or who otherwise arranges for the execution of a bail bond or deposit in lieu of [~~cash~~] bail on behalf of the insured in the event of the insured's arrest or detention by reason of an asserted violation of any law relating to the use of a motor vehicle.

§ 19. Section 798 of the judiciary law, as amended by chapter 708 of the laws of 1986, is amended to read as follows:

§ 798. Remitting fines and penalties and discharging recognizances. Upon the application of a person, who has been fined by a court, or of a person whose recognizance has become forfeited, or of his surety or of a person who has posted [~~cash bail, or~~] bail by credit card or similar device which has been forfeited, the county court of the county in which the term of the court was held, where the fine was imposed, or the recognizance taken, may, except as otherwise prescribed in section seven hundred and ninety-nine; upon good cause shown, and upon such terms as it deems just, make an order, remitting the fine, wholly or partly, or the forfeiture of the recognizance, or part of the penalty thereof; or it may discharge the recognizance. If a fine so remitted has been paid, the county treasurer, or other officer, in whose hands the money remains, must pay the same, or the part remitted, according to the order.

§ 20. Subdivisions a and c of section 9-148 of the administrative code of the city of New York, as added by local law number 123 of the city of New York for the year 2017, are amended to read as follows:

a. The department shall accept [~~cash~~] bail payments immediately and continuously after an inmate is admitted to the custody of the department, except on such dates on which an inmate appears in court other than an arraignment in criminal court.

c. The department shall accept or facilitate the acceptance of [~~cash~~] bail payments for inmates in the custody of the department: (i) at any courthouse of the New York City Criminal Court, (ii) at any location within one half mile of any such courthouse during all operating hours of such courthouse and at least two hours subsequent to such courthouse's closing, or (iii) online.

§ 21. Paragraph 9 of subdivision a of section 20-831 of the administrative code of the city of New York, as added by local law number 143 of the city of New York for the year 2018, is amended to read as follows:

9. A statement that a consumer may be eligible for refundable [~~cash~~] bail.

§ 22. This act shall take effect immediately.