

STATE OF NEW YORK

1040

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

Introduced by M. of A. BUTTENSCHON, JONES, WALLACE, GRIFFIN, ABBATE, STERN -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to drug and domestic violence offenses qualifying for bail

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

1 Section 1. The opening paragraph and paragraphs (a), (d), (j), (s) and
2 (t) of subdivision 4 of section 510.10 of the criminal procedure law,
3 the opening paragraph and paragraphs (a) and (d) as amended and para-
4 graphs (j), (s) and (t) as added by section 2 of part UU of chapter 56
5 of the laws of 2020, are amended and two new paragraphs (u) and (v) are
6 added to read as follows:

7 Where the principal stands charged with a qualifying offense, the
8 court, unless otherwise prohibited by law, may in its discretion release
9 the principal pending trial on the principal's own recognizance or under
10 non-monetary conditions, fix bail, or, where the defendant is charged
11 with a qualifying offense [~~which is a felony~~], the court may commit the
12 principal to the custody of the sheriff. A principal stands charged with
13 a qualifying offense for the purposes of this subdivision when he or she
14 stands charged with:

15 (a) a felony enumerated in section 70.02 of the penal law[~~, other than~~
16 ~~robbery in the second degree as defined in subdivision one of section~~
17 ~~160.10 of the penal law, provided, however, that burglary in the second~~
18 ~~degree as defined in subdivision two of section 140.25 of the penal law~~
19 ~~shall be a qualifying offense only where the defendant is charged with~~
20 ~~entering the living area of the dwelling~~];

21 (d) a class A felony as defined in the penal law[~~, provided that for~~
22 ~~class A felonies under article two hundred twenty of the penal law, only~~
23 ~~class A-I felonies shall be a qualifying offense~~];

24 (j) any crime that is alleged to have caused the death or serious
25 physical injury of another person;

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

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(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~~[-]~~;

(u) a class B, C or D felony enumerated in article two hundred twenty of the penal law; or

(v) an aggravated family offense as defined in section 240.75 of the penal law.

§ 2. The opening paragraph and subparagraphs (i), (iv), (x), (xix) and (xx) of paragraph (b) of subdivision 1 of section 530.20 of the criminal procedure law, as amended by section 3 of part UU of chapter 56 of the laws of 2020, are amended and two new subparagraphs (xxi) and (xxii) are added to read as follows:

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 when he or she stands charged with:

(i) 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]~~;

(iv) a class A felony as 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]~~;

(x) any crime that is alleged to have caused the death or serious physical injury of another person;

(xix) 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]~~

(xx) 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~~[-]~~;

(xxi) a class B, C or D felony enumerated in article two hundred twenty of the penal law; or

1 (xxii) an aggravated family offense as defined in section 240.75 of
2 the penal law.

3 § 3. The opening paragraph and paragraphs (a), (d), (j), (s) and (t)
4 of subdivision 4 of section 530.40 of the criminal procedure law, the
5 opening paragraph and paragraphs (a) and (d) as amended and paragraphs
6 (j), (s) and (t) as added by section 4 of part UU of chapter 56 of the
7 laws of 2020, are amended and two new paragraphs (u) and (v) are added
8 to read as follows:

9 Where the principal stands charged with a qualifying offense, the
10 court, unless otherwise prohibited by law, may in its discretion release
11 the principal pending trial on the principal's own recognizance or under
12 non-monetary conditions, fix bail, or, where the defendant is charged
13 with a qualifying offense [~~which is a felony~~], the court may commit the
14 principal to the custody of the sheriff. The court shall explain its
15 choice of release, release with conditions, bail or remand on the record
16 or in writing. A principal stands charged with a qualifying offense for
17 the purposes of this subdivision when he or she stands charged with:

18 (a) a felony enumerated in section 70.02 of the penal law[~~, other than~~
19 ~~robbery in the second degree as defined in subdivision one of section~~
20 ~~160.10 of the penal law, provided, however, that burglary in the second~~
21 ~~degree as defined in subdivision two of section 140.25 of the penal law~~
22 ~~shall be a qualifying offense only where the defendant is charged with~~
23 ~~entering the living area of the dwelling~~];

24 (d) a class A felony as defined in the penal law[~~, provided that for~~
25 ~~class A felonies under article two hundred twenty of such law, only~~
26 ~~class A I felonies shall be a qualifying offense~~];

27 (j) any crime that is alleged to have caused the death or serious
28 physical injury of another person;

29 (s) a felony, where the defendant qualifies for sentencing on such
30 charge as a persistent felony offender pursuant to section 70.10 of the
31 penal law; [~~or~~]

32 (t) any felony or class A misdemeanor involving harm to an identifi-
33 able person or property, where such charge arose from conduct occurring
34 while the defendant was released on his or her own recognizance or
35 released under conditions for a separate felony or class A misdemeanor
36 involving harm to an identifiable person or property, provided, however,
37 that the prosecutor must show reasonable cause to believe that the
38 defendant committed the instant crime and any underlying crime. For the
39 purposes of this subparagraph, any of the underlying crimes need not be
40 a qualifying offense as defined in this subdivision[~~-~~];

41 (u) a class B, C or D felony enumerated in article two hundred twenty
42 of the penal law; or

43 (v) an aggravated family offense as defined in section 240.75 of the
44 penal law.

45 § 4. This act shall take effect immediately.