

STATE OF NEW YORK

5265

2021-2022 Regular Sessions

IN ASSEMBLY

February 12, 2021

Introduced by M. of A. REILLY -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to permitting judicial discretion based on dangerousness when issuing a securing order, extending the time period for discovery, permits the immediate issuance of a bench warrant for failure to appear for certain principals, and places restrictions on when appearance tickets may be issued

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

- 1 Section 1. Subdivisions 1 and 3 of section 510.10 of the criminal
2 procedure law, subdivision 1 as amended and subdivision 3 as added by
3 section 2 of part JJJ of chapter 59 of the laws of 2019, are amended to
4 read as follows:
- 5 1. When a principal, whose future court attendance at a criminal
6 action or proceeding is or may be required, comes under the control of a
7 court, such court shall, in accordance with this title, by a securing
8 order release the principal on the principal's own recognizance, release
9 the principal under non-monetary conditions, or, where authorized, fix
10 bail or commit the principal to the custody of the sheriff. In all such
11 cases, except where another type of securing order is shown to be
12 required by law, the court shall release the principal pending trial on
13 the principal's own recognizance, unless it is demonstrated and the
14 court makes an individualized determination that the principal poses a
15 risk of flight to avoid prosecution or that the principal poses a danger
16 to a person or the community. If such a finding is made, the court must
17 select the least restrictive alternative and condition or conditions
18 that will reasonably assure the principal's return to court. The court
19 shall explain its choice of release, release with conditions, bail or
20 remand on the record [~~ex~~] and in writing.
- 21 3. In cases other than as described in subdivision four of this
22 section the court shall release the principal pending trial on the prin-

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

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1 cipal's own recognizance, unless the court finds on the record [~~or~~] and
2 in writing that:

3 (a) release on the principal's own recognizance will not reasonably
4 assure the principal's return to court. In such instances, the court
5 shall release the principal under non-monetary conditions, selecting the
6 least restrictive alternative and conditions that will reasonably assure
7 the principal's return to court. The court shall explain its choice of
8 alternative and conditions on the record [~~or~~] and in writing; or

9 (b) the principal poses a danger to a person or the community. In such
10 instances, the court may in its discretion release the principal pending
11 trial on the principal's own recognizance or under non-monetary condi-
12 tions or commit the principal to the custody of the sheriff, selecting
13 the least restrictive alternative and conditions that will reasonably
14 assure the safety of such person or the community. A securing order
15 committing the principal to the custody of the sheriff shall be limited
16 to a duration of ninety days where the principal stands charged with a
17 misdemeanor or one hundred eighty days where the principal stands
18 charged with a felony. Where a principal is committed to the custody of
19 the sheriff, the prosecutor may make a motion to extend the duration of
20 such custody beyond the limits imposed pursuant to this paragraph, where
21 such extension is appropriate in the interests of justice. The court
22 shall explain its choice of alternative and conditions on the record and
23 in writing.

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

27 (a) In cases other than as described in paragraph (b) of this subdivi-
28 sion the court shall release the principal pending trial on the princi-
29 pal's own recognizance, unless the court finds on the record [~~or~~] and in
30 writing that:

31 (i) release on the principal's own recognizance will not reasonably
32 assure the principal's return to court. In such instances, the court
33 shall release the principal under non-monetary conditions, selecting the
34 least restrictive alternative and conditions that will reasonably assure
35 the principal's return to court. The court shall explain its choice of
36 alternative and conditions on the record [~~or~~] and in writing; or

37 (ii) the principal poses a danger to a person or the community. In
38 such instances, the court may in its discretion release the principal
39 pending trial on the principal's own recognizance or under non-monetary
40 conditions or commit the principal to the custody of the sheriff,
41 selecting the least restrictive alternative and conditions that will
42 reasonably assure the safety of such person or the community. A securing
43 order committing the principal to the custody of the sheriff shall be
44 limited to a duration of ninety days where the principal stands charged
45 with a misdemeanor or one hundred eighty days where the principal stands
46 charged with a felony. Where a principal is committed to the custody of
47 the sheriff, the prosecutor may make a motion to extend the duration of
48 such custody beyond the limits imposed pursuant to this subparagraph,
49 where such extension is appropriate in the interests of justice. The
50 court shall explain its choice of alternative and conditions on the
51 record and in writing.

52 § 3. Subdivision 3 of section 530.40 of the criminal procedure law, as
53 amended by section 18 of part JJJ of chapter 59 of the laws of 2019, is
54 amended to read as follows:

55 3. In cases other than as described in subdivision four of this
56 section the court shall release the principal pending trial on the prin-

1 cipal's own recognizance, unless the court finds on the record [~~or~~] and
2 in writing that:

3 (a) release on the principal's own recognizance will not reasonably
4 assure the principal's return to court. In such instances, the court
5 shall release the principal under non-monetary conditions, selecting the
6 least restrictive alternative and conditions that will reasonably assure
7 the principal's return to court. The court shall explain its choice of
8 alternative and conditions on the record [~~or~~] and in writing; or

9 (b) the principal poses a danger to a person or the community. In such
10 instances, the court may in its discretion release the principal pending
11 trial on the principal's own recognizance or under non-monetary condi-
12 tions or commit the principal to the custody of the sheriff, selecting
13 the least restrictive alternative and conditions that will reasonably
14 assure the safety of such person or the community. A securing order
15 committing the principal to the custody of the sheriff shall be limited
16 to a duration of ninety days where the principal stands charged with a
17 misdemeanor or one hundred eighty days where the principal stands
18 charged with a felony. Where a principal is committed to the custody of
19 the sheriff, the prosecutor may make a motion to extend the duration of
20 such custody beyond the limits imposed pursuant to this paragraph, where
21 such extension is appropriate in the interests of justice. The court
22 shall explain its choice of alternative and conditions on the record and
23 in writing.

24 § 4. Subdivision 1 of section 510.30 of the criminal procedure law, as
25 amended by section 5 of part JJJ of chapter 59 of the laws of 2019, is
26 amended to read as follows:

27 1. With respect to any principal, the court in all cases, unless
28 otherwise provided by law, must impose the least restrictive kind and
29 degree of control or restriction that is necessary to secure the princi-
30 pal's return to court when required. In determining that matter, the
31 court must, on the basis of available information, consider and take
32 into account information about the principal that is relevant to the
33 principal's return to court, including:

34 (a) The principal's activities and history, including but not limited
35 to, whether such principal has a history of violence;

36 (b) If the principal is a defendant, the charges facing the principal,
37 including but not limited to, the use or threatened use of physical
38 force by such principal;

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

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

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

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

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

55 (i) any violation by the principal of an order of protection issued by
56 any court for the protection of a member or members of the same family

1 or household as that term is defined in subdivision one of section
2 530.11 of this title, whether or not such order of protection is
3 currently in effect; and

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

5 (h) If the principal is a defendant, in the case of an application for
6 a securing order pending appeal, the merit or lack of merit of the
7 appeal[~~-~~]; and

8 (i) The nature and seriousness of the danger to any other person or
9 the community that would be posed by the principal's release, if appli-
10 cable.

11 § 5. Subparagraph (iii) of paragraph (a) and paragraph (b) of subdivi-
12 sion 1 of section 245.10 of the criminal procedure law, subparagraph
13 (iii) of paragraph (a) as amended by section 1 of part HHH of chapter 56
14 of the laws of 2020 and paragraph (b) as added by section 2 of part LLL
15 of chapter 59 of the laws of 2019, are amended to read as follows:

16 (iii) Notwithstanding the timelines contained in the opening paragraph
17 of this paragraph, the prosecutor's discovery obligation under subdivi-
18 sion one of section 245.20 of this article shall be performed as soon as
19 practicable, but not later than [~~fifteen~~] forty-five days before the
20 trial of a simplified information charging a traffic infraction under
21 the vehicle and traffic law, or by an information charging one or more
22 petty offenses as defined by the municipal code of a village, town,
23 city, or county, that do not carry a statutorily authorized sentence of
24 imprisonment, and where the defendant stands charged before the court
25 with no crime or offense, provided however that nothing in this subpara-
26 graph shall prevent a defendant from filing a motion for disclosure of
27 such items and information under subdivision one of such section 245.20
28 of this article at an earlier date.

29 (b) The prosecution shall perform its supplemental discovery obli-
30 gations under subdivision three of section 245.20 of this article as
31 soon as practicable but not later than [~~fifteen~~] forty-five calendar
32 days prior to the first scheduled trial date.

33 § 6. Section 510.50 of the criminal procedure law, as amended by
34 section 9 of part JJJ of chapter 59 of the laws of 2019, is amended to
35 read as follows:

36 § 510.50 Enforcement of securing order.

37 1. When the attendance of a principal confined in the custody of the
38 sheriff is required at the criminal action or proceeding at a particular
39 time and place, the court may compel such attendance by directing the
40 sheriff to produce the principal at such time and place. If the princi-
41 pal is at liberty on the principal's own recognizance or non-monetary
42 conditions or on bail, the principal's attendance may be achieved or
43 compelled by various methods, including notification and the issuance of
44 a bench warrant, prescribed by law in provisions governing such matters
45 with respect to the particular kind of action or proceeding involved.

46 2. Except when the principal is charged with a new crime while at
47 liberty or when a principal fails to appear for a scheduled court
48 appearance involving a charge of a hate crime as defined in section
49 485.05 of the penal law, absent relevant, credible evidence demonstrat-
50 ing that a principal's failure to appear for a scheduled court appear-
51 ance was willful, the court, prior to issuing a bench warrant for a
52 failure to appear for a scheduled court appearance, shall provide at
53 least forty-eight hours notice to the principal or the principal's coun-
54 sel that the principal is required to appear, in order to give the prin-
55 cipal an opportunity to appear voluntarily.

1 § 7. Paragraph (a) of subdivision 1 and subdivision 2 of section
2 150.20 of the criminal procedure law, paragraph (a) of subdivision 1 as
3 amended by section 1-a of part JJJ of chapter 59 of the laws of 2019,
4 subdivision 2 as amended by chapter 550 of the laws of 1987, are amended
5 and a new paragraph (c) is added to subdivision 1 to read as follows:

6 (a) Whenever a police officer is authorized pursuant to section 140.10
7 of this title to arrest a person without a warrant for an offense other
8 than a class A, B, C or D felony or a violation of section 130.25,
9 130.40, 205.10, 205.17, 205.19 [~~ex~~], 215.56 or 265.55 of the penal law,
10 he shall, except as set out in [~~paragraph~~] paragraphs (b) and (c) of
11 this subdivision, subject to the provisions of subdivisions three and
12 four of section 150.40 of this title, instead issue to and serve upon
13 such person an appearance ticket.

14 (c) An officer shall not issue an appearance ticket if:

15 (i) the person has a pending case for the same offense within the
16 previous six months;

17 (ii) the person has been convicted of the same offense within the
18 previous two years.

19 2. (a) Whenever a police officer has arrested a person without a
20 warrant for an offense other than a class A, B, C or D felony or a
21 violation of section 130.25, 130.40, 205.10, 205.17, 205.19 [~~ex~~], 215.56
22 or 265.55 of the penal law pursuant to section 140.10, or (b) whenever a
23 peace officer, who is not authorized by law to issue an appearance tick-
24 et, has arrested a person for an offense other than a class A, B, C or D
25 felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19
26 [~~ex~~], 215.56 or 265.55 of the penal law pursuant to section 140.25, and
27 has requested a police officer to issue and serve upon such arrested
28 person an appearance ticket pursuant to subdivision four of section
29 140.27, or (c) whenever a person has been arrested for an offense other
30 than a class A, B, C or D felony or a violation of section 130.25,
31 130.40, 205.10, 205.17, 205.19 [~~ex~~], 215.56 or 265.55 of the penal law
32 and has been delivered to the custody of an appropriate police officer
33 pursuant to section 140.40, such police officer may, instead of bringing
34 such person before a local criminal court and promptly filing or causing
35 the arresting peace officer or arresting person to file a local criminal
36 court accusatory instrument therewith, issue to and serve upon such
37 person an appearance ticket. The issuance and service of an appearance
38 ticket under such circumstances may be conditioned upon a deposit of
39 pre-arraignment bail, as provided in section 150.30.

40 § 8. This act shall take effect immediately.