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:

Section 1. Subdivisions 1 and 3 of section 510.10 of the criminal procedure law, subdivision 1 as amended and subdivision 3 as added by section 2 of part JJJ of chapter 59 of the laws of 2019, are amended to read as follows:

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 on the principal's own recognizance, release the principal 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 demonstrated and the court makes an individualized determination that the principal poses a risk of flight to avoid prosecution **or that the principal poses a danger to a person or the community**. If such a finding 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~~] **and** in writing.

3. In cases other than as described in subdivision four of this 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.

LBD08924-01-1

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

(a) 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~~] and in writing; or

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

§ 2. 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 court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record [~~or~~] and in writing that:

(i) 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~~] and in writing; or

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

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

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

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

(a) 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~~] and in writing; or

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

§ 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. In determining that matter, the court must, 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, including but not limited to, whether such principal has a history of violence;

(b) If the principal is a defendant, the charges facing the principal, including but not limited to, the use or threatened use of physical force by such 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[~~.~~]**; and**

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

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

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

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

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

§ 510.50 Enforcement of securing order.

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

2. Except when the principal is charged with a new crime while at liberty **or when a principal fails to appear for a scheduled court appearance involving a charge of a hate crime as defined in section 485.05 of the penal law**, absent relevant, credible evidence demonstrating that a principal's failure to appear for a scheduled court appearance was willful, the court, prior to issuing a bench warrant for a failure to appear for a scheduled court appearance, shall provide at least forty-eight hours notice to the principal or the principal's counsel that the principal is required to appear, in order to give the principal an opportunity to appear voluntarily.

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

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

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

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

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

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

§ 8. This act shall take effect immediately.