

STATE OF NEW YORK

6536

2021-2022 Regular Sessions

IN ASSEMBLY

March 19, 2021

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

AN ACT to amend the criminal procedure law, in relation to authorizing the court the discretion to release persons charged with certain crimes involving possession of a firearm on their own recognizance or under non-monetary conditions, fix bail, or commit the person to the custody of the sheriff

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

1 Section 1. Subdivision 1 of section 510.10 of the criminal procedure
2 law, as amended by section 2 of part JJJ of chapter 59 of the laws of
3 2019, is amended to read as follows:

4 1. When a principal, whose future court attendance at a criminal
5 action or proceeding is or may be required, comes under the control of a
6 court, such court shall, in accordance with this title, by a securing
7 order release the principal on the principal's own recognizance, release
8 the principal under non-monetary conditions, or, where authorized, fix
9 bail or commit the principal to the custody of the sheriff. In all such
10 cases, except where another type of securing order is shown to be
11 required by law, or unless otherwise provided by law, the court shall
12 release the principal pending trial on the principal's own recognizance,
13 unless it is demonstrated and the court makes an individualized determi-
14 nation that the principal poses a risk of flight to avoid prosecution.
15 If such a finding is made, the court must, unless otherwise provided by
16 law, select the least restrictive alternative and condition or condi-
17 tions that will reasonably assure the principal's return to court. The
18 court shall explain its choice of release, release with conditions, bail
19 or remand on the record or in writing.

20 § 2. Paragraphs (s) and (t) of subdivision 4 of section 510.10 of the
21 criminal procedure law, as added by section 2 of part UU of chapter 56

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

LBD10391-02-1

1 of the laws of 2020, are amended and a new paragraph (u) is added to
2 read as follows:

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

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

15 (u) any felony offense involving criminal possession of a firearm or
16 criminal possession of a weapon in violation of article two hundred
17 sixty-five of the penal law.

18 § 3. Section 510.10 of the criminal procedure law is amended by adding
19 a new subdivision 7 to read as follows:

20 7. When the principal is charged with a crime as defined in article
21 two hundred sixty-five of the penal law that involves a machine-gun,
22 firearm silencer, firearm, rifle, shotgun, disguised gun, ghost gun or
23 assault weapon, the court may in its discretion release the principal
24 pending trial on the principal's own recognizance or under non-monetary
25 conditions, fix bail, or the court may commit the principal to the
26 custody of the sheriff. In instances where the principal is charged
27 with crimes defined in article two hundred sixty-five of the penal law,
28 the court must consider the least restrictive means and what will
29 produce the best likelihood the defendant will return to court, however
30 the court does not have to select the least restrictive means and in its
31 discretion shall release the principal pending trial on the principal's
32 own recognizance or under non-monetary conditions, fix bail, or the
33 court may commit the principal to the custody of the sheriff.

34 § 4. The opening paragraph of subdivision 1 of section 510.30 of the
35 criminal procedure law, as amended by section 5 of part JJJ of chapter
36 59 of the laws of 2019, is amended to read as follows:

37 With respect to any principal, the court ~~[in all cases]~~, unless other-
38 wise provided by law, must impose the least restrictive kind and degree
39 of control or restriction that is necessary to secure the principal's
40 return to court when required. In determining that matter, the court
41 must, on the basis of available information, consider and take into
42 account information about the principal that is relevant to the princi-
43 pal's return to court, including:

44 § 5. Section 510.30 of the criminal procedure law is amended by adding
45 a new subdivision 4 to read as follows:

46 4. When the principal is charged with a crime as defined in article
47 two hundred sixty-five of the penal law that involves a machine-gun,
48 firearm silencer, firearm, rifle, shotgun, disguised gun, ghost gun or
49 assault weapon, the court may in its discretion release the principal
50 pending trial on the principal's own recognizance or under non-monetary
51 conditions, fix bail, or the court may commit the principal to the
52 custody of the sheriff. In instances where the principal is charged
53 with crimes defined in article two hundred sixty-five of the penal law,
54 the court must consider the least restrictive means and what will
55 produce the best likelihood the defendant will return to court, however
56 the court does not have to select the least restrictive means and in its

discretion shall release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or the court may commit the principal to the custody of the sheriff.

§ 6. Subparagraphs (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 a new subparagraph (xxi) is added to read as follows:

(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; [✗]

(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[✗]; or

(xxi) any felony offense involving criminal possession of a firearm or criminal possession of a weapon in violation of article two hundred sixty-five of the penal law.

§ 7. Paragraphs (s) and (t) of subdivision 4 of section 530.40 of the criminal procedure law, as added by section 4 of part UU of chapter 56 of the laws of 2020, are amended and a new paragraph (u) is added to read as follows:

(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; [✗]

(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[✗]; or

(u) any felony offense involving criminal possession of a firearm or criminal possession of a weapon in violation of article two hundred sixty-five of the penal law.

§ 8. Subdivision 2 of section 530.60 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(f) When the principal is charged with a crime as defined in article two hundred sixty-five of the penal law that involves a machine-gun, firearm silencer, firearm, rifle, shotgun, disguised gun, ghost gun or assault weapon, the court may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or the court may commit the principal to the custody of the sheriff. In instances where the principal is charged with crimes defined in article two hundred sixty-five of the penal law, the court must consider the least restrictive means and what will produce the best likelihood the defendant will return to court, however the court does not have to select the least restrictive means and in its discretion shall release the principal pending trial on the principal's

1 own recognizance or under non-monetary conditions, fix bail, or the
2 court may commit the principal to the custody of the sheriff.

3 § 9. This act shall take effect immediately.