

STATE OF NEW YORK

9210

IN ASSEMBLY

February 9, 2022

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

AN ACT to amend the civil practice law and rules and the criminal procedure law, in relation to allowing courts to hold a pre-trial community safety and well-being hearing

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

- 1 Section 1. Subdivision 2 of section 6342 of the civil practice law and
2 rules, as added by chapter 19 of the laws of 2019, is amended to read as
3 follows:
4 2. (a) In determining whether grounds for a temporary extreme risk
5 protection order exist, the court shall consider any relevant factors
6 including, but not limited to, the following acts of the respondent:
7 ~~[(a)]~~ (i) a threat or act of violence or use of physical force
8 directed toward self, the petitioner, or another person;
9 ~~[(b)]~~ (ii) a violation or alleged violation of an order of protection;
10 ~~[(c)]~~ (iii) any pending charge or conviction for an offense involving
11 the use of a weapon;
12 ~~[(d)]~~ (iv) the reckless use, display or brandishing of a firearm,
13 rifle or shotgun;
14 ~~[(e)]~~ (v) any history of a violation of an extreme risk protection
15 order;
16 ~~[(f)]~~ (vi) evidence of recent or ongoing abuse of controlled
17 substances or alcohol; or
18 ~~[(g)]~~ (vii) evidence of recent acquisition of a firearm, rifle, shot-
19 gun or other deadly weapon or dangerous instrument, or any ammunition
20 therefor.
21 (b) In considering the factors under this subdivision, the court shall
22 consider:
23 (i) the time that has elapsed since the occurrence of such act or acts
24 ~~[and]~~;
25 (ii) the age of the person at the time of the occurrence of such act
26 or acts; and

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

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1 (iii) the community safety and well-being of all residents of the
2 state.

3 (c) The court shall use any mental health evaluations the respondent
4 has undergone when making a consideration regarding the community safety
5 and well-being of all residents of the state.

6 (d) For the purposes of this subdivision, "recent" means within the
7 six months prior to the date the petition was filed.

8 § 2. The criminal procedure law is amended by adding a new section
9 510.55 to read as follows:

10 § 510.55 Pretrial detention; community safety and well-being hearing.

11 1. When a principal, whose future court attendance at a criminal
12 action or proceeding is or may be required, comes under the control of a
13 court, the people may make a motion seeking pretrial detention due to
14 the mental health of the principal. The people may seek the pretrial
15 detention of a principal:

16 (a) charged with a felony that involves the use, attempted use or
17 threatened use of physical force against the person of another or any
18 other felony that, by its nature, involves a substantial risk that phys-
19 ical force against the person of another may result;

20 (b) charged with a misdemeanor or felony which has as an element the
21 violation of a court order;

22 (c) charged with a misdemeanor or felony where the victim was
23 subjected to physical, sexual or psychological abuse inflicted by a
24 member of the same family or household, as such term is defined in
25 subdivision one of section 530.11 of this title, as the applicant;

26 (d) charged with an offense for which a minimum term of three years or
27 more is prescribed;

28 (e) charged with intimidating a victim or witness in the first degree
29 as defined in section 215.17 of the penal law, intimidating a victim or
30 witness in the second degree as defined in section 215.16 of the penal
31 law, or intimidating a victim or witness in the third degree as defined
32 in section 215.15 of the penal law;

33 (f) charged with a third or subsequent violation of section eleven
34 hundred ninety-two of the vehicle and traffic law within ten years;

35 (g) charged with a felony which has as an element the use, attempted
36 use or threatened use of physical force or a deadly weapon against the
37 person of another;

38 (h) charged with burglary in the first degree as defined in section
39 140.30 of the penal law, burglary in the second degree as defined in
40 section 140.25 of the penal law, or burglary in the third degree as
41 defined in section 140.20 of the penal law, grand larceny in the second
42 degree as defined in section 155.40 of the penal law, or grand larceny
43 in the fourth degree as defined in section 155.30 of the penal law;

44 (i) charged under article one hundred fifty of the penal law;

45 (j) charged with kidnapping in the first degree as defined in section
46 135.25 of the penal law or kidnapping in the second degree as defined in
47 section 135.20 of the penal law;

48 (k) charged with a crime which involved the use of explosives;

49 (l) otherwise involves conduct that presents a serious risk of phys-
50 ical injury to another for which a term of imprisonment was served and
51 arrested and charged with a second or subsequent offense under article
52 two hundred sixty-five of the penal law; or

53 (m) charged with a felony under article twenty-six of the agriculture
54 and markets law.

55 2. (a) Upon the appearance of the principal charged with an offense
56 listed in subdivision one of this section before a supreme court or

1 district court judge and upon the motion of the people, the judge shall
2 hold a hearing pursuant to subdivision four of this section and shall
3 issue an order that, pending trial, the individual shall either be
4 released on his or her own recognizance, released on conditions of
5 release as set forth by the judge, or detained under subdivision three
6 of this section. The individual shall be released unless the judge
7 determines that releasing the principal on his or her own recognizance
8 will endanger the community safety and well-being of any other person in
9 the state but does not find by clear and convincing evidence that no
10 conditions of release will reasonably ensure the community safety and
11 well-being of any other person in the state, the judge shall order the
12 pretrial release of the principal:

13 (i) subject to the condition that the person not commit a federal,
14 state or local crime during the period of release; and

15 (ii) subject to the least restrictive further condition, or combina-
16 tion of conditions, that such judge determines will reasonably ensure
17 the community safety and well-being of any other person in the state
18 that the principal:

19 (A) remain in the custody of a designated person, who agrees to assume
20 supervision and to report any violation of a release condition to the
21 court, if the designated person is reasonably able to ensure the judi-
22 cial officer that the person will appear as required and will not pose a
23 danger to the safety of any other person or the community;

24 (B) maintain employment, or, if unemployed, actively seek employment;

25 (C) maintain or commence an educational program;

26 (D) abide by specified restrictions on personal associations, living
27 accommodations or travel;

28 (E) avoid all contact with an alleged victim of the crime and with any
29 potential witness or witnesses who may testify concerning the offense;

30 (F) report on a regular basis to a designated law enforcement agency,
31 pretrial service agency, or other agency;

32 (G) comply with a specified curfew;

33 (H) refrain from possessing a firearm, destructive device, or other
34 dangerous weapon;

35 (I) refrain from excessive use of alcohol, or any use of a narcotic
36 drug or other controlled substance, without a prescription by a licensed
37 medical practitioner;

38 (J) undergo available medical, psychological, or psychiatric treat-
39 ment, including treatment for drug or alcohol dependency and remain in a
40 specified institution if required for that purpose;

41 (K) return to custody for specified hours following release for
42 employment, schooling, or other limited purposes;

43 (L) satisfy any other condition that is reasonably necessary to ensure
44 the appearance of the person as required and to ensure the safety and
45 well-being of any other person and the community; and

46 (M) participates in a community corrections program under the depart-
47 ment of corrections and community supervision, provided, however, that
48 the principal shall not participate in such program without his or her
49 consent to such participation.

50 (b) The judge shall not impose a financial condition that results in
51 the pretrial detention of the person under this section.

52 (c) The judge may at any time amend the order to impose additional or
53 different conditions of release.

54 3. There shall be a rebuttable presumption of release on recognizance
55 for every principal brought before the court. If, after a hearing pursu-
56 ant to the provisions of subdivision four of this section, the district

1 or supreme court judge finds by clear and convincing evidence that no
2 conditions of release will reasonably ensure the community safety and
3 well-being of any other person in the state, said judge shall order the
4 detention of the principal prior to trial. A principal detained under
5 this subdivision shall be brought to a trial as soon as reasonably
6 possible, but in absence of extraordinary circumstances, such principal
7 shall not be detained for a period exceeding one hundred twenty days by
8 the district court or for a period exceeding one hundred eighty days by
9 the supreme court.

10 4. (a) When a principal is held under arrest for an offense listed in
11 subdivision one of this section and upon a motion by the people, the
12 judge shall hold a hearing to determine whether conditions of release
13 will reasonably ensure the community safety and well-being of any other
14 person in the state. A principal shall be offered the appropriate mental
15 health services while being held under arrest for an offense listed in
16 subdivision one of this section.

17 (b) The hearing shall be held immediately upon the principal's first
18 appearance before the court unless such principal or the people seek a
19 continuance. Except for good cause, a continuance on motion of the prin-
20 cipal shall not exceed seven days and a continuance on motion of the
21 people shall not exceed three business days. During a continuance, the
22 principal shall be detained upon a showing that there existed probable
23 cause to arrest the principal or that without detention the principal
24 would result in serious harm to himself, herself, or others, as defined
25 in paragraph one or two of subdivision (a) of section 9.39 of the mental
26 hygiene law. At the hearing, such principal shall have the right to be
27 represented by counsel, and, if financially unable to retain adequate
28 representation, to have counsel appointed. The principal shall be
29 afforded an opportunity to testify, to present witnesses, to cross-exa-
30 mine witnesses who appear at the hearing, and to present information.
31 Prior to the summons of an alleged victim, or a member of the alleged
32 victim's family, to appear as a witness at the hearing, the principal
33 shall demonstrate to the court a good faith basis for the principal's
34 reasonable belief that the testimony from the witness will be material
35 and relevant to support a conclusion that there are conditions of
36 release that will reasonably ensure the community safety and well-being
37 of any other person in the state. The rules concerning admissibility of
38 evidence in criminal trials shall not apply to the presentation and
39 consideration of information at the hearing and the judge shall consider
40 hearsay contained in a police report, the statement of an alleged victim
41 or witness, and shall have access to any mental health evaluation the
42 principal has undergone prior to hearing. The facts the judge uses to
43 support findings pursuant to subdivision three of this section, that no
44 conditions will reasonably ensure the community safety and well-being of
45 any other person in the state, shall be supported by clear and convinc-
46 ing evidence. In a detention order issued pursuant to the provisions of
47 subdivision three of this section the judge shall: (i) include written
48 findings of fact and a written statement of the reasons for the
49 detention; (ii) direct that the principal be committed to custody or
50 confinement in a corrections facility separate, to the extent practica-
51 ble, from principals awaiting or serving sentence or being held in
52 custody pending appeal or a community treatment center; and (iii) direct
53 that the principal be afforded reasonable opportunity for private
54 consultation with his or her counsel. The principal may be detained
55 pending completion of the hearing. The hearing may be reopened by the
56 judge, at any time before trial, or upon a motion of the people or the

1 principal detained if the judge finds that: (A) information exists that
2 was not known at the time of the hearing or that there has been a change
3 in circumstances; and (B) that such information or change in circum-
4 stances has a material bearing on the issue of whether there are condi-
5 tions of release that will reasonably ensure the community safety and
6 well-being of any other person in the state.

7 5. In his or her determination as to whether there are conditions of
8 release that will reasonably ensure the community safety and well-being
9 of any other person in the state, said judge shall, on the basis of any
10 information which he or she can reasonably obtain, take into account the
11 nature and seriousness of the danger posed to any other person or the
12 community that would result by the principal's release, the nature and
13 circumstances of the offense charged, the potential penalty the princi-
14 pal faces, the principal's family ties, employment record, history of
15 mental illness, and reputation, the risk that the principal will
16 obstruct or attempt to obstruct the judge or threaten, injure or intim-
17 idate or attempt to threaten, injure or intimidate a prospective witness
18 or juror, his or her record of convictions, if any, any illegal drug
19 distribution or present drug dependency, and whether the principal is
20 released pending adjudication of a prior charge.

21 6. Nothing in this section shall be construed as modifying or limiting
22 the presumption of innocence.

23 7. (a) A principal aggrieved by the denial of a district court judge
24 to release him or her on his or her own recognizance with or without
25 surety or condition may petition the supreme court for a review of the
26 order of the recognizance and the judge of the district court shall
27 thereupon immediately notify such principal of his or her right to file
28 a petition for review in the supreme court. When a petition for review
29 is filed in the district court or with the detaining authority subse-
30 quent to the petitioner's district court appearance, the clerk of the
31 district court or the detaining authority, as the case may be, shall
32 immediately notify by telephone, the clerk and probation officer of the
33 district court, the district attorney for the district in which the
34 district court is located, the prosecuting officer, the petitioner's
35 counsel, if any, and the clerk of courts of the county to which the
36 petition is to be transmitted. The clerk of the district court, upon the
37 filing of a petition for review, either in the district court or with
38 the detaining authority, shall forthwith transmit the petition for
39 review, a copy of the complaint and the record of the court, including
40 the appearance of the attorney, if any is entered, and a summary of the
41 court's reasons for denying the release of the principal on his or her
42 own recognizance with or without surety or condition to the supreme
43 court for the county in which the district court is located, if a judge
44 thereof is then sitting, or to the supreme court of the nearest county
45 in which a judge is then sitting. The probation officer of the district
46 court shall transmit forthwith to the probation officer of the supreme
47 court, copies of all records of the probation office of said district
48 court pertaining to the petitioner, including the petitioner's record of
49 prior convictions, if any, as currently verified by inquiry of the
50 commissioner. The district court or the detaining authority, as the case
51 may be, shall cause any petitioner in its custody to be brought before
52 said supreme court within two business days of the petition having been
53 filed. The district court is authorized to order any officer authorized
54 to execute criminal process to transfer the petitioner and any papers
55 herein above described from the district court or the detaining authori-
56 ty to the supreme court, and to coordinate the transfer of the petition-

1 er and the papers by such officer. The petition for review shall
2 constitute authority in the person or officer having custody of the
3 petitioner to transport the petitioner to said supreme court without the
4 issuance of any writ or other legal process; provided, however, that any
5 district or supreme court is authorized to issue a writ of habeas corpus
6 for the appearance forthwith of the petitioner before the supreme court.

7 (b) The supreme court shall hear the petition for review as speedily
8 as practicable and in any event within five business days of the filing
9 of the petition. The supreme court judge hearing the review may consider
10 the record below which the people and the principal may supplement. The
11 judge of the supreme court may, after a hearing on the petition for
12 review, order that the petitioner be released on his or her own recogni-
13 zance without surety or condition, or, in his or her discretion, to
14 reasonably ensure the effective administration of justice, make any
15 other order of bail or recognizance or remand the petitioner in accord-
16 ance with the terms of the process by which he or she was ordered
17 committed by the district court.

18 8. If after a hearing under subdivision four of this section detention
19 under subdivision three of this section is ordered or pretrial release
20 subject to conditions under subdivision two of this section is ordered,
21 then: (a) the clerk shall immediately notify the principal's probation
22 officer of the order; and (b) the order of detention under subdivision
23 three of this section or order of pretrial release subject to conditions
24 under subdivision two of this section shall be recorded in the princi-
25 pal's criminal record.

26 § 3. This act shall take effect on the first of November next succeed-
27 ing the date on which it shall have become a law and shall apply to all
28 criminal cases where the defendant was arraigned on or after such effec-
29 tive date.