STATE OF NEW YORK

3183--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. REILLY, NOVAKHOV, BROOK-KRASNY, CHANG, BLUMENCRANZ, ANGELINO -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 by section 1 of subpart C of part UU of chapter 56 of the laws of 2022, and the opening paragraph of subdivision 1 and subdivision 3 as amended by section 2 of subpart A of part VV of chapter 56 of the laws of 2023, 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 impose a securing order in accordance with this title. Except as otherwise required by law, the court shall make an individualized determination as to whether the principal **poses a danger to a person or the community and make an individualized determination as to whether the principal** poses a risk of flight to avoid prosecution, consider the kind and degree of control or restriction necessary to reasonably assure the principal's return to court, and select a securing order consistent with its determination under this subdivision. The court shall explain the basis for its determination and its choice of securing order on the record or in writing. In making a determination under this subdivision, the court must consider and take into account

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

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available information about the principal, including, but not limited to:

(a) The principal's character, reputation, habits, activities [and], history and mental condition;

(b) If the principal is a defendant, the charges facing the 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 354.1 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 responding to court appearances when required or 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] such principal's ability to obtain a secured, unsecured, or partially secured bond;

(g) Any violation by the principal of an order of protection issued by any court;

(h) The principal's history of use or possession of a firearm;

(i) Whether the charge is alleged to have caused serious harm to an individual or group of individuals; [and]

(j) 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; and

(k) 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.

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

(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 as provided for in subdivision three-a of section 500.10 of this title that will reasonably assure the principal's return to court. The court shall explain its choice of securing order on the record or in writing; or

(b) the principal poses a risk of danger to a person or the community. In such instances, the court may in its discretion release the principal pending trial under non-monetary conditions or commit the principal to the custody of the sheriff, considering the kind and degree of control or restriction necessary to 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) and the opening paragraph of paragraph (b) of subdivision 1 of section 530.20 of the criminal procedure law, as

amended by section 6 of subpart A of part VV of chapter 56 of the laws of 2023, are 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 [~~or~~], release the principal pending trial under non-monetary conditions, **or commit the principal to the custody of the sheriff,** the determination for which shall be made in accordance with subdivision one of section 510.10 of this title. The court shall explain the basis for its determination and choice of securing order on the record or in writing.

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, order non-monetary conditions in conjunction with fixing 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 securing order on the record or in writing. A principal stands charged with a qualifying offense when [~~he or she~~] **such principal** stands charged with:

§ 3. Subdivision 3 of section 530.40 of the criminal procedure law, as amended by section 8 of subpart A of part VV of chapter 56 of the laws of 2023, 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 principal's own recognizance [~~or~~], release the principal pending trial under non-monetary conditions, **or commit the principal to the custody of the sheriff,** the determination for which shall be made in accordance with section 510.10 of this title. The court shall explain the basis for its determination and choice of securing order on the record or in writing.

§ 4. Subparagraphs (i), (ii) and (iv) of paragraph (a) of subdivision 1 of section 245.10 of the criminal procedure law, as amended by section 1 of part HHH of chapter 56 of the laws of 2020, are amended to read as follows:

(i) When a defendant is in custody during the pendency of the criminal case, the prosecution shall perform its initial discovery obligations within [~~twenty~~] **forty-five** calendar days after the defendant's arraignment on an indictment, superior court information, prosecutor's information, information, simplified information, misdemeanor complaint or felony complaint.

(ii) When the defendant is not in custody during the pendency of the criminal case, the prosecution shall perform its initial discovery obligations within [~~thirty-five~~] **sixty** calendar days after the defendant's arraignment on an indictment, superior court information, prosecutor's information, information, simplified information, misdemeanor complaint or felony complaint.

(iv)(A) Portions of materials claimed to be non-discoverable may be withheld pending a determination and ruling of the court under section 245.70 of this article; but the defendant shall be notified in writing that information has not been disclosed under a particular subdivision of such section, and the discoverable portions of such materials shall be disclosed to the extent practicable. Information related to or evidencing the identity of a 911 caller, the victim or witness of **any felony defined under article one hundred twenty-five of the penal law or** an offense defined under article one hundred thirty or sections 230.34 and 230.34-a of the penal law, or any other victim or witness of a crime

where the defendant has substantiated affiliation with a criminal enterprise as defined in subdivision three of section 460.10 of the penal law**, or a confidential informant** may be withheld, provided, however, the defendant may move the court for disclosure.

(B) When the discoverable materials are exceptionally voluminous or, despite diligent, good faith efforts, are otherwise not in the actual possession of the prosecution, the time period in this paragraph may be extended pursuant to a motion pursuant to subdivision two of section 245.70 of this article. For purposes of this article, voluminous materials may include, but are not limited to, video footage from body worn cameras, surveillance cameras or dashboard cameras.

§ 5. The opening paragraph and paragraphs (c), (h) and (u) of subdivision 1 of section 245.20 of the criminal procedure law, the opening paragraph and paragraphs (h) and (u) as added by section 2 of part LLL of chapter 59 of the laws of 2019, and paragraph (c) as amended by section 2 of part HHH of chapter 56 of the laws of 2020, are amended to read as follows:

The prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy, photograph and test, all items and information that [~~relate~~] **are relevant** to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control, including but not limited to:

(c) The names and adequate contact information for all persons other than law enforcement personnel whom the prosecutor knows to have evidence or information relevant to any offense charged or to any potential defense thereto, including a designation by the prosecutor as to which of those persons may be called as witnesses. Nothing in this paragraph shall require the disclosure of physical addresses; provided, however, upon a motion and good cause shown the court may direct the disclosure of a physical address. Information under this subdivision relating to the identity of a 911 caller, the victim or witness of **any felony defined under article one hundred twenty-five of the penal law or** an offense defined under article one hundred thirty or section 230.34 or 230.34-a of the penal law, any other victim or witness of a crime where the defendant has substantiated affiliation with a criminal enterprise as defined in subdivision three of section 460.10 of the penal law, or a confidential informant may be withheld, and redacted from discovery materials, without need for a motion pursuant to section 245.70 of this article; but the prosecution shall notify the defendant in writing that such information has not been disclosed, unless the court rules otherwise for good cause shown.

(h) All photographs and drawings made or completed by a public servant engaged in law enforcement activity, or which were made by a person whom the prosecutor intends to call as a witness at trial or a pre-trial hearing, or which [~~relate~~] **are relevant** to the subject matter of the case.

(u) (i) A copy of all electronically created or stored information seized or obtained by or on behalf of law enforcement from: (A) the defendant as described in subparagraph (ii) of this paragraph; or (B) a source other than the defendant which [~~relates~~] **is relevant** to the subject matter of the case.

(ii) If the electronically created or stored information originates from a device, account, or other electronically stored source that the prosecution believes the defendant owned, maintained, or had lawful access to and is within the possession, custody or control of the prose-

cution or persons under the prosecution's direction or control, the prosecution shall provide a complete copy of the electronically created or stored information from the device or account or other source.

(iii) If possession of such electronically created or stored information would be a crime under New York state or federal law, the prosecution shall make those portions of the electronically created or stored information that are not criminal to possess available as specified under this paragraph and shall afford counsel for the defendant access to inspect contraband portions at a supervised location that provides regular and reasonable hours for such access, such as a prosecutor's office, police station, or court.

(iv) This paragraph shall not be construed to alter or in any way affect the right to be free from unreasonable searches and seizures or such other rights a suspect or defendant may derive from the state constitution or the United States constitution. If in the exercise of reasonable diligence the information under this paragraph is not available for disclosure within the time period required by subdivision one of section 245.10 of this article, that period shall be stayed without need for a motion pursuant to subdivision two of section 245.70 of this article, except that the prosecution shall notify the defendant in writing that such information has not been disclosed, and such disclosure shall be made as soon as practicable and not later than forty-five calendar days before the first scheduled trial date, unless an order is obtained pursuant to section 245.70 of this article.

§ 6. Subdivision 1 of section 245.30 of the criminal procedure law, as added by section 2 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

1. Order to preserve evidence. At any time, a party may move for a court order to any individual, agency or other entity in possession, custody or control of items which [~~relate~~] **are relevant** to the subject matter of the case [~~or are otherwise relevant,~~] requiring that such items be preserved for a specified period of time. The court shall hear and rule upon such motions expeditiously. The court may modify or vacate such an order upon a showing that preservation of particular evidence will create significant hardship to such individual, agency or entity, on condition that the probative value of that evidence is preserved by a specified alternative means.

§ 7. Subdivision 2 of section 245.55 of the criminal procedure law, as added by section 2 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

2. Provision of law enforcement agency files. Absent a court order or a requirement that defense counsel obtain a security clearance mandated by law or authorized government regulation, upon request by the prosecution, each New York state and local law enforcement agency shall make available to the prosecution a [~~complete~~] copy of its complete records and files [~~related~~] **relevant** to the investigation of the case or the prosecution of the defendant for compliance with this article.

§ 8. Subdivision 2 of section 510.50 of the criminal procedure law, as added by section 9 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

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.

§ 9. Paragraph (a) of subdivision 1 and subdivision 2 of section 150.20 of the criminal procedure law, paragraph (a) of subdivision 1 as separately amended by section 1 of subpart B of part VV of chapter 56 of the laws of 2023 and chapter 23 of the laws of 2024, and subdivision 2 as amended by section 2 of subpart B of part VV of chapter 56 of the laws of 2023, 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, former section 130.40, section 205.10, 205.17, 205.19 [~~or~~], 215.56 **or 265.55** of the penal law, or other than where an arrest is required to be made pursuant to subdivision four of section 140.10 of this title, the officer 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; or

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

2. (a) Whenever, pursuant to section 140.10 of this title, 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 or other than where an arrest was required to be made pursuant to subdivision four of section 140.10 of this title, 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 of this title, and such peace officer has requested a police officer to issue and serve upon such arrested person an appearance ticket pursuant to subdivision four of section 140.27 of this title, 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 such person has been delivered to the custody of an appropriate police officer pursuant to section 140.40 of this title, 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.

§ 10. Paragraph (a) of subdivision 1 of section 150.20 of the criminal procedure law, as amended by section 1 of subpart B of part VV of chapter 56 of the laws of 2023, is amended 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, or other than where an arrest is required to be made pursuant to subdi-

vision four of section 140.10 of this title, the officer shall, except as set out in paragraph (b) 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.

§ 11. This act shall take effect immediately; provided, however, that section nine of this act shall take effect on the same date and in the same manner as chapter 23 of the laws of 2024, takes effect.