

STATE OF NEW YORK

4246

2023-2024 Regular Sessions

IN ASSEMBLY

February 13, 2023

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

AN ACT to amend the criminal procedure law, in relation to qualifying offenses for pre-trial detention and bail

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

Section 1. Subdivision 4 of section 510.10 of the criminal procedure law, as amended by section 2 of part UU of chapter 56 of the laws of 2020, paragraphs (s) and (t) as amended and paragraph (u) as added by section 2 of subpart B of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

4. 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, 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. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:

(a) a felony enumerated in section 70.02 of the penal law~~[, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling]~~;

(b) a crime involving witness intimidation under section 215.15 of the penal law;

(c) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;

(d) a class A felony defined in the penal law, provided that for class A felonies under article two hundred twenty of the penal law, only

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

LBD02594-01-3

1 ~~[class A-I felonies]~~ offenses defined in sections 220.18, 220.21,
2 220.41, 220.43, 220.44 and 220.77 of such law shall be ~~[a]~~ qualifying
3 ~~[offense]~~ offenses;

4 (e) a sex trafficking offense defined in section 230.34 or 230.34-a of
5 the penal law, or a felony sex offense defined in section 70.80 of the
6 penal law, ~~[or a crime involving]~~ incest in the third degree as defined
7 in section 255.25~~[, 255.26 or 255.27]~~ of such law, ~~[or]~~ a misdemeanor
8 defined in article one hundred thirty of such law, promoting prostitu-
9 tion in the first degree as defined in section 230.32 of the penal law,
10 or compelling prostitution as defined in section 230.33 of the penal
11 law;

12 (f) conspiracy in the second degree as defined in section 105.15 of
13 the penal law, where the underlying allegation of such charge is that
14 the defendant conspired to commit a class A felony defined in article
15 one hundred twenty-five of the penal law, criminal solicitation in the
16 first degree as defined in section 100.13 of the penal law or criminal
17 facilitation in the first degree as defined in section 115.08 of the
18 penal law;

19 (g) money laundering in support of terrorism in the first degree as
20 defined in section 470.24 of the penal law; money laundering in support
21 of terrorism in the second degree as defined in section 470.23 of the
22 penal law; money laundering in support of terrorism in the third degree
23 as defined in section 470.22 of the penal law; money laundering in
24 support of terrorism in the fourth degree as defined in section 470.21
25 of the penal law; or a felony crime of terrorism as defined in article
26 four hundred ninety of the penal law, other than the crime defined in
27 section 490.20 of such law;

28 (h) criminal contempt in the second degree as defined in subdivision
29 three of section 215.50 of the penal law, criminal contempt in the first
30 degree as defined in subdivision (b), (c) or (d) of section 215.51 of
31 the penal law or aggravated criminal contempt as defined in section
32 215.52 of the penal law, and the underlying allegation of such charge of
33 criminal contempt in the second degree, criminal contempt in the first
34 degree or aggravated criminal contempt is that the defendant violated a
35 duly served order of protection where the protected party is a member of
36 the defendant's same family or household as defined in subdivision one
37 of section 530.11 of this title;

38 (i) prostitution in a school zone as defined in section 230.03 of the
39 penal law, promoting prostitution in a school zone as defined in section
40 230.19 of the penal law, facilitating a sexual performance by a child
41 with a controlled substance or alcohol as defined in section 263.30 of
42 the penal law, use of a child in a sexual performance as defined in
43 section 263.05 of the penal law ~~[or]~~, patronizing a person for prostitu-
44 tion in a school zone as defined in section 230.08 of the penal law,
45 luring a child as defined in subdivision one of section 120.70 of the
46 penal law, promoting an obscene sexual performance by a child as defined
47 in section 263.10 of the penal law ~~[or]~~, promoting a sexual performance
48 by a child as defined in section 263.15 of the penal law, possessing an
49 obscene sexual performance by a child as defined in section 263.11 of
50 the penal law, or possessing a sexual performance by a child as defined
51 in section 263.16 of the penal law;

52 (j) any crime that is alleged to have caused the death of or serious
53 physical injury to another person;

54 (k) criminal obstruction of breathing or blood circulation as defined
55 in section 121.11 of the penal law, strangulation in the second degree
56 as defined in section 121.12 of the penal law or unlawful imprisonment

1 in the first degree as defined in section 135.10 of the penal law, and
2 is alleged to have committed the offense against a member of the defend-
3 ant's same family or household as defined in subdivision one of section
4 530.11 of this title;

5 (l) aggravated vehicular assault as defined in section 120.04-a of the
6 penal law or vehicular assault in the first degree as defined in section
7 120.04 of the penal law;

8 (m) assault in the third degree as defined in section 120.00 of the
9 penal law or arson in the third degree as defined in section 150.10 of
10 the penal law~~[, when such crime is charged as a hate crime as defined in~~
11 ~~section 485.05 of the penal law];~~

12 (n) aggravated assault upon a person less than eleven years old as
13 defined in section 120.12 of the penal law or criminal possession of a
14 weapon on school grounds as defined in section 265.01-a of the penal
15 law;

16 (o) grand larceny in the first degree as defined in section 155.42 of
17 the penal law, enterprise corruption as defined in section 460.20 of the
18 penal law, or money laundering in the first degree as defined in section
19 470.20 of the penal law;

20 (p) failure to register as a sex offender pursuant to section one
21 hundred sixty-eight-t of the correction law or endangering the welfare
22 of a child as defined in subdivision one of section 260.10 of the penal
23 law, where the defendant is required to maintain registration under
24 article six-C of the correction law and designated a level three offen-
25 der pursuant to subdivision six of section one hundred sixty-eight-l of
26 the correction law;

27 (q) a crime involving bail jumping under section 215.55, 215.56 or
28 215.57 of the penal law, or a crime involving escaping from custody
29 under section 205.05, 205.10 or 205.15 of the penal law;

30 (r) any felony offense committed by the principal while serving a
31 sentence of probation or while released to post release supervision;

32 (s) a felony, where the defendant qualifies for sentencing on such
33 charge as a persistent felony offender pursuant to section 70.10 of the
34 penal law;

35 (t) any felony or class A misdemeanor involving harm to an identifi-
36 able person or property, or any charge of criminal possession of a
37 firearm as defined in section 265.01-b of the penal law, where such
38 charge arose from conduct occurring while the defendant was released on
39 his or her own recognizance, released under conditions, or had yet to be
40 arraigned after the issuance of a desk appearance ticket for a separate
41 felony or class A misdemeanor involving harm to an identifiable person
42 or property, or any charge of criminal possession of a firearm as
43 defined in section 265.01-b of the penal law, provided, however, that
44 the prosecutor must show reasonable cause to believe that the defendant
45 committed the instant crime and any underlying crime. For the purposes
46 of this subparagraph, any of the underlying crimes need not be a quali-
47 fying offense as defined in this subdivision. For the purposes of this
48 paragraph, "harm to an identifiable person or property" shall include
49 but not be limited to theft of or damage to property. However, based
50 upon a review of the facts alleged in the accusatory instrument, if the
51 court determines that such theft is negligible and does not appear to be
52 in furtherance of other criminal activity, the principal shall be
53 released on his or her own recognizance or under appropriate non-mone-
54 tary conditions; [ex]

1 (u) criminal possession of a weapon in the third degree as defined in
2 subdivision three of section 265.02 of the penal law or criminal sale of
3 a firearm to a minor as defined in section 265.16 of the penal law[+];

4 (v) obstructing governmental administration in the second degree as
5 defined in section 195.05 of the penal law, killing or injuring a police
6 animal as defined in section 195.06 of the penal law, killing a police
7 work dog or police work horse as defined in section 195.06-a of the
8 penal law, obstructing governmental administration in the first degree
9 as defined in section 195.07, obstructing governmental administration by
10 means of a self-defense spray device as defined in section 195.08,
11 bribery in the first degree as defined in section 200.04 of the penal
12 law, bribe receiving in the first degree as defined in section 200.12 of
13 the penal law, bribe giving for public office as defined in section
14 200.45 of the penal law, promoting prison contraband in the second
15 degree as defined in section 205.20 of the penal law, promoting prison
16 contraband in the first degree as defined in section 205.25 of the penal
17 law, resisting arrest as defined in section 205.30 of the penal law,
18 hindering prosecution in the first degree as defined in section 205.65
19 of the penal law, tampering with a juror in the first degree as defined
20 in section 215.25 of the penal law or tampering with physical evidence
21 as defined in section 215.40 of the penal law;

22 (w) public sensibilities and the right to privacy including aggravated
23 harassment in the first degree as defined in section 240.31 of the penal
24 law or directing a laser at an aircraft in the first degree as defined
25 in section 240.77 of the penal law;

26 (x) criminal possession of a weapon in the fourth degree as defined in
27 section 265.01 of the penal law, criminal sale of a firearm to a minor
28 as defined in section 265.16 of the penal law, criminal purchase or
29 disposal of a weapon as defined in section 265.17 of the penal law, or
30 aggravated criminal possession of a weapon as defined in section 265.19
31 of the penal law;

32 (y) aggravated cruelty to animals as defined in section three hundred
33 fifty-three-a of the agriculture and markets law, overdriving, torturing
34 and injuring animals; failure to provide proper sustenance as defined in
35 section three hundred fifty-three of the agriculture and markets law, or
36 animal fighting as defined in section three hundred fifty-one of the
37 agriculture and markets law;

38 (z) a hate crime as defined in section 485.05 of the penal law;

39 (a-1) any of the following offenses where the defendant is required to
40 maintain registration under article six-C of the correction law and
41 designated a level two or level three offender pursuant to subdivision
42 six of section one hundred sixty-eight-1 of the correction law: endan-
43 gering the welfare of a child as defined in section 260.10 of the penal
44 law; public lewdness as defined in section 245.00 of the penal law;
45 exposure of a person as defined in section 245.01 of the penal law;
46 public lewdness in the first degree as defined in section 245.03 of the
47 penal law;

48 (b-1) reckless assault of a child by a child day care provider as
49 defined in section 120.01 of the penal law, stalking in the fourth
50 degree as defined in section 120.45 of the penal law, stalking in the
51 third degree as defined in section 120.50 of the penal law, stalking in
52 the second degree as defined in section 120.55 of the penal law, crimi-
53 nally negligent homicide as defined in section 125.10 of the penal law,
54 vehicular manslaughter in the second degree as defined in section 125.12
55 of the penal law, vehicular manslaughter in the first degree as defined
56 in section 125.13 of the penal law, aggravated vehicular homicide as

defined in section 125.14 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, or criminal possession of a firearm as defined in section 265.01-b of the penal law;

(c-1) an aggravated family offense as defined in section 240.75 of the penal law;

(d-1) 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 engaging in a riot as defined in article two hundred forty of the penal law;

(e-1) use of a child to commit a controlled substance offense as defined in section 220.28 of the penal law and criminal sale of a controlled substance to a child as defined in section 220.48 of the penal law; or

(f-1) any crime in violation of article two hundred sixty-five of the penal law involving the use of a machine-gun, firearm silencer, firearm, rifle, shotgun, disguised gun or assault weapon, as such terms are defined in section 265.00 of the penal law.

§ 2. 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, subparagraphs (xix) and (xx) as amended and subparagraph (xxi) as added by section 4 of subpart C of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

(b) 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, 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 release, release with conditions, bail or remand on the record or in writing. A principal stands charged with a qualifying offense when he or she stands charged with:

(i) a felony enumerated in section 70.02 of the penal law [~~other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling~~];

(ii) a crime involving witness intimidation under section 215.15 of the penal law;

(iii) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;

(iv) a class A felony defined in the penal law, provided, that for class A felonies under article two hundred twenty of such law, only [~~class A-I felonies~~] offenses defined in sections 220.18, 220.21, 220.41, 220.43, 220.44 and 220.77 of such law shall be [~~a~~] qualifying [~~offense~~] offenses;

(v) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or a felony sex offense defined in section 70.80 of the penal law [~~or a crime involving~~], incest in the third degree as defined in section 255.25[~~, 255.26 or 255.27~~] of such law, or a misdemeanor defined in article one hundred thirty of such law; or promoting prosti-

tution in the first degree as defined in section 230.32 of the penal law, compelling prostitution as defined in section 230.33 of the penal law;

(vi) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law, criminal solicitation in the first degree as defined in section 100.13 of the penal law or criminal facilitation in the first degree as defined in section 115.08 of the penal law;

(vii) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;

(viii) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;

(ix) prostitution in a school zone as defined in section 230.03 of the penal law, promoting prostitution in a school zone as defined in section 230.19 of the penal law, facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law ~~[or]~~, patronizing a person for prostitution in a school zone as defined in section 230.08 of the penal law, luring a child as defined in subdivision one of section 120.70 of the penal law, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law ~~[or]~~, promoting a sexual performance by a child as defined in section 263.15 of the penal law, possessing an obscene sexual performance by a child as defined in section 263.11 of the penal law, or possessing a sexual performance by a child as defined in section 263.16 of the penal law;

(x) any crime that is alleged to have caused the death of or serious physical injury to another person;

(xi) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;

(xii) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;

(xiii) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law~~[, when such crime is charged as a hate crime as defined in section 485.05 of the penal law]~~;

(xiv) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;

(xv) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;

(xvi) failure to register as a sex offender pursuant to section one hundred sixty-eight-t of the correction law or endangering the welfare of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under article six-C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law;

(xvii) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;

(xviii) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;

(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, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket 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. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; ~~[ex]~~

(xxi) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law~~[,];~~

(xxii) obstructing governmental administration in the second degree as defined in section 195.05 of the penal law, killing or injuring a police animal as defined in section 195.06 of the penal law, killing a police work dog or police work horse as defined in section 195.06-a of the penal law, obstructing governmental administration in the first degree as defined in section 195.07, obstructing governmental administration by means of a self-defense spray device as defined in section 195.08,

bribery in the first degree as defined in section 200.04 of the penal law, bribe receiving in the first degree as defined in section 200.12 of the penal law, bribe giving for public office as defined in section 200.45 of the penal law, promoting prison contraband in the second degree as defined in section 205.20 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, resisting arrest as defined in section 205.30 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, tampering with a juror in the first degree as defined in section 215.25 of the penal law or tampering with physical evidence as defined in section 215.40 of the penal law;

(xxiii) public sensibilities and the right to privacy including aggravated harassment in the first degree as defined in section 240.31 of the penal law or directing a laser at an aircraft in the first degree as defined in section 240.77 of the penal law;

(xxiv) criminal possession of a weapon in the fourth degree as defined in section 265.01 of the penal law, criminal sale of a firearm to a minor as defined in section 265.16 of the penal law, criminal purchase or disposal of a weapon as defined in section 265.17 of the penal law, or aggravated criminal possession of a weapon as defined in section 265.19 of the penal law;

(xxv) aggravated cruelty to animals as defined in section three hundred fifty-three-a of the agriculture and markets law, overdriving, torturing and injuring animals; failure to provide proper sustenance as defined in section three hundred fifty-three of the agriculture and markets law, or animal fighting as defined in section three hundred fifty-one of the agriculture and markets law;

(xxvi) a hate crime as defined in section 485.05 of the penal law;

(xxvii) any of the following offenses where the defendant is required to maintain registration under article six-C of the correction law and designated a level two or level three offender pursuant to subdivision six of section one hundred sixty-eight-1 of the correction law: endangering the welfare of a child as defined in section 260.10 of the penal law; public lewdness as defined in section 245.00 of the penal law; exposure of a person as defined in section 245.01 of the penal law; public lewdness in the first degree as defined in section 245.03 of the penal law;

(xxviii) reckless assault of a child by a child day care provider as defined in section 120.01 of the penal law, stalking in the fourth degree as defined in section 120.45 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, vehicular manslaughter in the second degree as defined in section 125.12 of the penal law, vehicular manslaughter in the first degree as defined in section 125.13 of the penal law, aggravated vehicular homicide as defined in section 125.14 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, or criminal possession of a firearm as defined in section 265.01-b of the penal law;

(xxix) an aggravated family offense as defined in section 240.75 of the penal law;

(xxx) 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 engaging in a riot as defined in article two hundred forty of the penal law;

(xxxi) use of a child to commit a controlled substance offense as defined in section 220.28 of the penal law and criminal sale of a controlled substance to a child as defined in section 220.48 of the penal law; or

(xxxii) any crime in violation of article two hundred sixty-five of the penal law involving the use of a machine-gun, firearm silencer, firearm, rifle, shotgun, disguised gun or assault weapon, as such terms are defined in section 265.00 of the penal law.

§ 3. 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, paragraphs (s) and (t) as amended and paragraph (u) as added by section 4 of subpart B of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

4. 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, 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 release, release with conditions, bail or remand on the record or in writing. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:

(a) a felony enumerated in section 70.02 of the penal law~~[, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling];~~

(b) a crime involving witness intimidation under section 215.15 of the penal law;

(c) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;

(d) a class A felony defined in the penal law, provided that for class A felonies under article two hundred twenty of such law, only ~~[class A-I felonies]~~ offenses defined in sections 220.18, 220.21, 220.41, 220.43, 220.44 and 220.77 of such law shall be ~~[a]~~ qualifying ~~[offense]~~ offenses;

(e) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or a felony sex offense defined in section 70.80 of the penal law ~~[or a crime involving]~~, incest in the third degree as defined in section 255.25~~[, 255.26 or 255.27]~~ of such law, ~~[or]~~ a misdemeanor defined in article one hundred thirty of such law; or promoting prostitution in the first degree as defined in section 230.32 of the penal law, or compelling prostitution as defined in section 230.33 of the penal law;

(f) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law, criminal solicitation in the first degree as defined in section 100.13 of the penal law or criminal facilitation in the first degree as defined in section 115.08 of the penal law;

(g) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;

(h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;

(i) prostitution in a school zone as defined in section 230.03 of the penal law, promoting prostitution in a school zone as defined in section 230.19 of the penal law, facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law ~~[e]~~, patronizing a person for prostitution in a school zone as defined in section 230.08 of the penal law, luring a child as defined in subdivision one of section 120.70 of the penal law, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law, possessing an obscene sexual performance by a child as defined in section 263.11 of the penal law, or possessing a sexual performance by a child as defined in section 263.16 of the penal law;

(j) any crime that is alleged to have caused the death or physical injury of another person;

(k) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article;

(l) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;

(m) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law ~~[, when such crime is charged as a hate crime as defined in section 485.05 of the penal law]~~;

(n) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;

(o) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the

1 penal law, or money laundering in the first degree as defined in section
2 470.20 of the penal law;

3 (p) failure to register as a sex offender pursuant to section one
4 hundred sixty-eight of the correction law or endangering the welfare
5 of a child as defined in subdivision one of section 260.10 of the penal
6 law, where the defendant is required to maintain registration under
7 article six-C of the correction law and designated a level three offen-
8 der pursuant to subdivision six of section one hundred sixty-eight of
9 the correction law;

10 (q) a crime involving bail jumping under section 215.55, 215.56 or
11 215.57 of the penal law, or a crime involving escaping from custody
12 under section 205.05, 205.10 or 205.15 of the penal law;

13 (r) any felony offense committed by the principal while serving a
14 sentence of probation or while released to post release supervision;

15 (s) a felony, where the defendant qualifies for sentencing on such
16 charge as a persistent felony offender pursuant to section 70.10 of the
17 penal law;

18 (t) any felony or class A misdemeanor involving harm to an identifi-
19 able person or property, or any charge of criminal possession of a
20 firearm as defined in section 265.01-b of the penal law, where such
21 charge arose from conduct occurring while the defendant was released on
22 his or her own recognizance, released under conditions, or had yet to be
23 arraigned after the issuance of a desk appearance ticket for a separate
24 felony or class A misdemeanor involving harm to an identifiable person
25 or property, or any charge of criminal possession of a firearm as
26 defined in section 265.01-b of the penal law, provided, however, that
27 the prosecutor must show reasonable cause to believe that the defendant
28 committed the instant crime and any underlying crime. For the purposes
29 of this subparagraph, any of the underlying crimes need not be a quali-
30 fying offense as defined in this subdivision. For the purposes of this
31 paragraph, "harm to an identifiable person or property" shall include
32 but not be limited to theft of or damage to property. However, based
33 upon a review of the facts alleged in the accusatory instrument, if the
34 court determines that such theft is negligible and does not appear to be
35 in furtherance of other criminal activity, the principal shall be
36 released on his or her own recognizance or under appropriate non-mone-
37 tary conditions; [ex]

38 (u) criminal possession of a weapon in the third degree as defined in
39 subdivision three of section 265.02 of the penal law or criminal sale of
40 a firearm to a minor as defined in section 265.16 of the penal law[+];

41 (v) obstructing governmental administration in the second degree as
42 defined in section 195.05 of the penal law, killing or injuring a police
43 animal as defined in section 195.06 of the penal law, killing a police
44 work dog or police work horse as defined in section 195.06-a of the
45 penal law, obstructing governmental administration in the first degree
46 as defined in section 195.07, obstructing governmental administration by
47 means of a self-defense spray device as defined in section 195.08,
48 bribery in the first degree as defined in section 200.04 of the penal
49 law, bribe receiving in the first degree as defined in section 200.12 of
50 the penal law, bribe giving for public office as defined in section
51 200.45 of the penal law, promoting prison contraband in the second
52 degree as defined in section 205.20 of the penal law, promoting prison
53 contraband in the first degree as defined in section 205.25 of the penal
54 law, resisting arrest as defined in section 205.30 of the penal law,
55 hindering prosecution in the first degree as defined in section 205.65
56 of the penal law, tampering with a juror in the first degree as defined

1 in section 215.25 of the penal law or tampering with physical evidence
2 as defined in section 215.40 of the penal law;

3 (w) public sensibilities and the right to privacy including aggravated
4 harassment in the first degree as defined in section 240.31 of the penal
5 law or directing a laser at an aircraft in the first degree as defined
6 in section 240.77 of the penal law;

7 (x) criminal possession of a weapon in the fourth degree as defined in
8 section 265.01 of the penal law, criminal sale of a firearm to a minor
9 as defined in section 265.16 of the penal law, criminal purchase or
10 disposal of a weapon as defined in section 265.17 of the penal law, or
11 aggravated criminal possession of a weapon as defined in section 265.19
12 of the penal law;

13 (y) aggravated cruelty to animals as defined in section three hundred
14 fifty-three-a of the agriculture and markets law, overdriving, torturing
15 and injuring animals; failure to provide proper sustenance as defined in
16 section three hundred fifty-three of the agriculture and markets law, or
17 animal fighting as defined in section three hundred fifty-one of the
18 agriculture and markets law;

19 (z) a hate crime as defined in section 485.05 of the penal law;

20 (a-1) any of the following offenses where the defendant is required to
21 maintain registration under article six-C of the correction law and
22 designated a level two or level three offender pursuant to subdivision
23 six of section one hundred sixty-eight-1 of the correction law: endan-
24 gering the welfare of a child as defined in section 260.10 of the penal
25 law; public lewdness as defined in section 245.00 of the penal law;
26 exposure of a person as defined in section 245.01 of the penal law;
27 public lewdness in the first degree as defined in section 245.03 of the
28 penal law;

29 (b-1) reckless assault of a child by a child day care provider as
30 defined in section 120.01 of the penal law, stalking in the fourth
31 degree as defined in section 120.45 of the penal law, stalking in the
32 third degree as defined in section 120.50 of the penal law, stalking in
33 the second degree as defined in section 120.55 of the penal law, crimi-
34 nally negligent homicide as defined in section 125.10 of the penal law,
35 vehicular manslaughter in the second degree as defined in section 125.12
36 of the penal law, vehicular manslaughter in the first degree as defined
37 in section 125.13 of the penal law, aggravated vehicular homicide as
38 defined in section 125.14 of the penal law, manslaughter in the second
39 degree as defined in section 125.15 of the penal law, coercion in the
40 first degree as defined in section 135.65 of the penal law, burglary in
41 the third degree as defined in section 140.20 of the penal law, arson in
42 the fourth degree as defined in section 150.05 of the penal law, robbery
43 in the third degree as defined in section 160.05 of the penal law, or
44 criminal possession of a firearm as defined in section 265.01-b of the
45 penal law;

46 (c-1) an aggravated family offense as defined in section 240.75 of the
47 penal law;

48 (d-1) any felony or class A misdemeanor involving harm to an identifi-
49 able person or property, where such charge arose from conduct occurring
50 while the defendant was engaging in a riot as defined in article two
51 hundred forty of the penal law;

52 (e-1) use of a child to commit a controlled substance offense as
53 defined in section 220.28 of the penal law and criminal sale of a
54 controlled substance to a child as defined in section 220.48 of the
55 penal law; or

- 1 (f-1) any crime in violation of article two hundred sixty-five of the
2 penal law involving the use of a machine-gun, firearm silencer, firearm,
3 rifle, shotgun, disguised gun or assault weapon, as such terms are
4 defined in section 265.00 of the penal law.
5 § 4. This act shall take effect immediately.