

# STATE OF NEW YORK

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4484

2023-2024 Regular Sessions

## IN SENATE

February 9, 2023

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Introduced by Sens. GALLIVAN, BORRELLO, HELMING, O'MARA, ORTT, STEC, TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to adding certain offenses committed by a family member to the list of crimes qualifying for bail

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

1 Section 1. The opening paragraph and paragraphs (t) and (u) of subdi-  
2 vision 4 of section 510.10 of the criminal procedure law, the opening  
3 paragraph as amended by section 2 of part UU of chapter 56 of the laws  
4 of 2020, paragraph (t) as amended and paragraph (u) as added by section  
5 2 of subpart B of part UU of chapter 56 of the laws of 2022, are amended  
6 and a new paragraph (v) is added to read as follows:

7 Where the principal stands charged with a qualifying offense, the  
8 court, unless otherwise prohibited by law, may in its discretion release  
9 the principal pending trial on the principal's own recognizance or under  
10 non-monetary conditions, fix bail, or, where the defendant is charged  
11 with a qualifying offense [~~which is a felony~~], the court may commit the  
12 principal to the custody of the sheriff. A principal stands charged with  
13 a qualifying offense for the purposes of this subdivision when he or she  
14 stands charged with:

15 (t) any felony or class A misdemeanor involving harm to an identifi-  
16 able person or property, or any charge of criminal possession of a  
17 firearm as defined in section 265.01-b of the penal law, where such  
18 charge arose from conduct occurring while the defendant was released on  
19 his or her own recognizance, released under conditions, or had yet to be  
20 arraigned after the issuance of a desk appearance ticket for a separate  
21 felony or class A misdemeanor involving harm to an identifiable person  
22 or property, or any charge of criminal possession of a firearm as  
23 defined in section 265.01-b of the penal law, provided, however, that  
24 the prosecutor must show reasonable cause to believe that the defendant  
25 committed the instant crime and any underlying crime. For the purposes  
26 of this subparagraph, any of the underlying crimes need not be a quali-

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

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1 fying offense as defined in this subdivision. For the purposes of this  
2 paragraph, "harm to an identifiable person or property" shall include  
3 but not be limited to theft of or damage to property. However, based  
4 upon a review of the facts alleged in the accusatory instrument, if the  
5 court determines that such theft is negligible and does not appear to be  
6 in furtherance of other criminal activity, the principal shall be  
7 released on his or her own recognizance or under appropriate non-mone-  
8 tary conditions; ~~[or]~~

9 (u) criminal possession of a weapon in the third degree as defined in  
10 subdivision three of section 265.02 of the penal law or criminal sale of  
11 a firearm to a minor as defined in section 265.16 of the penal law~~[+]~~;  
12 or

13 (v) any of the following aggravated family offenses as defined in  
14 section 240.75 of the penal law where the principal and the person  
15 against whom the offense was committed were members of the same family  
16 or household as defined in subdivision one of section 530.11; an offense  
17 defined in section 120.00 (assault in the third degree); section 120.13  
18 (menacing in the first degree); section 120.14 (menacing in the second  
19 degree); section 120.15 (menacing in the third degree); section 120.20  
20 (reckless endangerment in the second degree); section 120.45 (stalking  
21 in the fourth degree); section 120.50 (stalking in the third degree);  
22 section 120.55 (stalking in the second degree); section 121.11 (criminal  
23 obstruction of breathing or blood circulation); subdivision one of  
24 section 125.15 (manslaughter in the second degree); section 135.05  
25 (unlawful imprisonment in the second degree); section 135.10 (unlawful  
26 imprisonment in the first degree); section 135.60 (coercion in the third  
27 degree); section 135.61 (coercion in the second degree); section 135.65  
28 (coercion in the first degree); section 140.20 (burglary in the third  
29 degree); section 140.25 (burglary in the second degree); section 145.00  
30 (criminal mischief in the fourth degree); section 145.05 (criminal  
31 mischief in the third degree); section 145.10 (criminal mischief in the  
32 second degree); section 145.12 (criminal mischief in the first degree);  
33 section 145.14 (criminal tampering in the third degree); section 240.25  
34 (harassment in the first degree); subdivision one, two or four of  
35 section 240.30 (aggravated harassment in the second degree) of the penal  
36 law; or any attempt or conspiracy to commit any of the foregoing  
37 offenses.

38 § 2. The opening paragraph and subparagraphs (xx) and (xxi) of para-  
39 graph (b) of subdivision 1 of section 530.20 of the criminal procedure  
40 law, the opening paragraph as amended by section 3 of part UU of chapter  
41 56 of the laws of 2020, paragraph (xx) as amended and paragraph (xxi) as  
42 added by section 4 of subpart C of part UU of chapter 56 of the laws of  
43 2022, are amended and a new subparagraph (xxii) is added to read as  
44 follows:

45 Where the principal stands charged with a qualifying offense, the  
46 court, unless otherwise prohibited by law, may in its discretion release  
47 the principal pending trial on the principal's own recognizance or under  
48 non-monetary conditions, fix bail, or, where the defendant is charged  
49 with a qualifying offense ~~[which is a felony]~~, the court may commit the  
50 principal to the custody of the sheriff. The court shall explain its  
51 choice of release, release with conditions, bail or remand on the record  
52 or in writing. A principal stands charged with a qualifying offense when  
53 he or she stands charged with:

54 (xx) any felony or class A misdemeanor involving harm to an identi-  
55 fiable person or property, or any charge of criminal possession of a  
56 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; ~~[or]~~

(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~~[-]~~; or

(xxi) any of the following aggravated family offenses as defined in section 240.75 of the penal law where the principal and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11; an offense defined in section 120.00 (assault in the third degree); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 121.11 (criminal obstruction of breathing or blood circulation); subdivision one of section 125.15 (manslaughter in the second degree); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.60 (coercion in the third degree); section 135.61 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 145.14 (criminal tampering in the third degree); section 240.25 (harassment in the first degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree) of the penal law; or any attempt or conspiracy to commit any of the foregoing offenses.

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

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

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

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

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

28 (v) any of the following aggravated family offenses as defined in  
29 section 240.75 of the penal law where the principal and the person  
30 against whom the offense was committed were members of the same family  
31 or household as defined in subdivision one of section 530.11; an offense  
32 defined in section 120.00 (assault in the third degree); section 120.13  
33 (menacing in the first degree); section 120.14 (menacing in the second  
34 degree); section 120.15 (menacing in the third degree); section 120.20  
35 (reckless endangerment in the second degree); section 120.45 (stalking  
36 in the fourth degree); section 120.50 (stalking in the third degree);  
37 section 120.55 (stalking in the second degree); section 121.11 (criminal  
38 obstruction of breathing or blood circulation); subdivision one of  
39 section 125.15 (manslaughter in the second degree); section 135.05  
40 (unlawful imprisonment in the second degree); section 135.10 (unlawful  
41 imprisonment in the first degree); section 135.60 (coercion in the third  
42 degree); section 135.61 (coercion in the second degree); section 135.65  
43 (coercion in the first degree); section 140.20 (burglary in the third  
44 degree); section 140.25 (burglary in the second degree); section 145.00  
45 (criminal mischief in the fourth degree); section 145.05 (criminal  
46 mischief in the third degree); section 145.10 (criminal mischief in the  
47 second degree); section 145.12 (criminal mischief in the first degree);  
48 section 145.14 (criminal tampering in the third degree); section 240.25  
49 (harassment in the first degree); subdivision one, two or four of  
50 section 240.30 (aggravated harassment in the second degree) of the penal  
51 law; or any attempt or conspiracy to commit any of the foregoing  
52 offenses.

53 § 4. This act shall take effect on the first of November next succeed-  
54 ing the date upon which it shall have become a law.