

STATE OF NEW YORK

3183

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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

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:

1 Section 1. The opening paragraph of subdivision 1 and subdivision 3 of
2 section 510.10 of the criminal procedure law, subdivision 1 as amended
3 by section 1 of subpart C of part UU of chapter 56 of the laws of 2022,
4 and subdivision 3 as added by section 2 of part JJJ of chapter 59 of the
5 laws of 2019, are amended to read as follows:

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

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

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1 the court must consider and take into account available information
2 about the principal, including:

3 3. In cases other than as described in subdivision four of this
4 section the court shall release the principal pending trial on the prin-
5 cipal's own recognizance, unless the court finds on the record [~~or~~] and
6 in writing that:

7 (a) release on the principal's own recognizance will not reasonably
8 assure the principal's return to court. In such instances, the court
9 shall release the principal under non-monetary conditions, selecting the
10 least restrictive alternative and conditions that will reasonably assure
11 the principal's return to court. The court shall explain its choice of
12 alternative and conditions on the record [~~or~~] and in writing; or

13 (b) the principal poses a danger to a person or the community. In such
14 instances, the court may in its discretion release the principal pending
15 trial on the principal's own recognizance or under non-monetary condi-
16 tions or commit the principal to the custody of the sheriff, selecting
17 the least restrictive alternative and conditions that will reasonably
18 assure the safety of such person or the community. A securing order
19 committing the principal to the custody of the sheriff shall be limited
20 to a duration of ninety days where the principal stands charged with a
21 misdemeanor or one hundred eighty days where the principal stands
22 charged with a felony. Where a principal is committed to the custody of
23 the sheriff, the prosecutor may make a motion to extend the duration of
24 such custody beyond the limits imposed pursuant to this paragraph, where
25 such extension is appropriate in the interests of justice. The court
26 shall explain its choice of alternative and conditions on the record and
27 in writing.

28 § 2. Paragraph (a) of subdivision 1 of section 530.20 of the criminal
29 procedure law, as added by section 3 of subpart C of part UU of chapter
30 56 of the laws of 2022, is amended to read as follows:

31 (a) In cases other than as described in paragraph (b) of this subdivi-
32 sion the court shall release the principal pending trial on the princi-
33 pal's own recognizance, unless the court finds on the record [~~or~~] and in
34 writing that release on the principal's own recognizance will not
35 reasonably assure the principal's return to court. In such instances,
36 the court shall release the principal under non-monetary conditions,
37 selecting the least restrictive alternative and conditions that will
38 reasonably assure the principal's return to court. The court shall
39 explain its choice of alternative and conditions on the record [~~or~~] and
40 in writing. In making its determination, the court must consider and
41 take into account available information about the principal, including,
42 but not limited to:

- 43 (i) the principal's activities and history;
- 44 (ii) if the principal is a defendant, the charges facing the princi-
45 pal;
- 46 (iii) the principal's criminal conviction record if any;
- 47 (iv) the principal's record of previous adjudication as a juvenile
48 delinquent, as retained pursuant to section 354.1 of the family court
49 act, or of pending cases where fingerprints are retained pursuant to
50 section 306.1 of such act, or a youthful offender, if any;
- 51 (v) the principal's previous record with respect to flight to avoid
52 criminal prosecution;
- 53 (vi) if monetary bail is authorized, according to the restrictions set
54 forth in this title, the principal's individual financial circumstances,
55 and, in cases where bail is authorized, the principal's ability to post

1 bail without posing undue hardship, as well as his or her ability to
2 obtain a secured, unsecured, or partially secured bond;

3 (vii) any violation by the principal of an order of protection issued
4 by any court;

5 (viii) the principal's history and use or possession of a firearm;

6 (ix) whether the charge is alleged to have caused serious harm to an
7 individual or group of individuals; [~~and~~]

8 (x) if the principal is a defendant, in the case of an application for
9 a securing order pending appeal, the merit or lack of merit of the
10 appeal[~~+~~]; and

11 (xi) if the principal poses a danger to a person or the community. In
12 such instances, the court may in its discretion release the principal
13 pending trial on the principal's own recognizance or under non-monetary
14 conditions or commit the principal to the custody of the sheriff,
15 selecting the least restrictive alternative and conditions that will
16 reasonably assure the safety of such person or the community. A securing
17 order committing the principal to the custody of the sheriff shall be
18 limited to a duration of ninety days where the principal stands charged
19 with a misdemeanor or one hundred eighty days where the principal stands
20 charged with a felony. Where a principal is committed to the custody of
21 the sheriff, the prosecutor may make a motion to extend the duration of
22 such custody beyond the limits imposed pursuant to this subparagraph,
23 where such extension is appropriate in the interests of justice. The
24 court shall explain its choice of alternative and conditions on the
25 record and in writing.

26 § 3. Subdivision 3 of section 530.40 of the criminal procedure law, as
27 amended by section 3 of subpart B of part UU of chapter 56 of the laws
28 of 2022, is amended to read as follows:

29 3. In cases other than as described in subdivision four of this
30 section the court shall release the principal pending trial on the prin-
31 cipal's own recognizance, unless the court finds on the record [~~or~~] and
32 in writing that release on the principal's own recognizance will not
33 reasonably assure the principal's return to court. In such instances,
34 the court shall release the principal under non-monetary conditions,
35 selecting the least restrictive alternative and conditions that will
36 reasonably assure the principal's return to court. The court shall
37 explain its choice of alternative and conditions on the record [~~or~~] and
38 in writing. In making its determination, the court must consider and
39 take into account available information about the principal, including,
40 but not limited to:

41 (a) the principal's activities and history;

42 (b) if the principal is a defendant, the charges facing the principal;

43 (c) the principal's criminal conviction record if any;

44 (d) the principal's record of previous adjudication as a juvenile
45 delinquent, as retained pursuant to section 354.1 of the family court
46 act, or of pending cases where fingerprints are retained pursuant to
47 section 306.1 of such act, or a youthful offender, if any;

48 (e) the principal's previous record with respect to flight to avoid
49 criminal prosecution;

50 (f) if monetary bail is authorized, according to the restrictions set
51 forth in this title, the principal's individual financial circumstances,
52 and, in cases where bail is authorized, the principal's ability to post
53 bail without posing undue hardship, as well as his or her ability to
54 obtain a secured, unsecured, or partially secured bond;

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

1 (h) the principal's history and use or possession of a firearm;

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

4 (j) if the principal is a defendant, in the case of an application for
5 a securing order pending appeal, the merit or lack of merit of the
6 appeal[~~-~~]; and

7 (k) the principal poses a danger to a person or the community. In such
8 instances, the court may in its discretion release the principal pending
9 trial on the principal's own recognizance or under non-monetary condi-
10 tions or commit the principal to the custody of the sheriff, selecting
11 the least restrictive alternative and conditions that will reasonably
12 assure the safety of such person or the community. A securing order
13 committing the principal to the custody of the sheriff shall be limited
14 to a duration of ninety days where the principal stands charged with a
15 misdemeanor or one hundred eighty days where the principal stands
16 charged with a felony. Where a principal is committed to the custody of
17 the sheriff, the prosecutor may make a motion to extend the duration of
18 such custody beyond the limits imposed pursuant to this paragraph, where
19 such extension is appropriate in the interests of justice. The court
20 shall explain its choice of alternative and conditions on the record and
21 in writing.

22 § 4. Subdivision 1 of section 510.30 of the criminal procedure law, as
23 amended by section 2 of subpart C of part UU of chapter 56 of the laws
24 of 2022, is amended to read as follows:

25 1. With respect to any principal, the court in all cases, unless
26 otherwise provided by law, must impose the least restrictive kind and
27 degree of control or restriction that is necessary to secure the princi-
28 pal's return to court when required. In determining that matter, the
29 court must, on the basis of available information, consider and take
30 into account information about the principal that is relevant to the
31 principal's return to court, including, but not limited to:

32 (a) The principal's activities and history, including but not limited
33 to, whether such principal has a history of violence;

34 (b) If the principal is a defendant, the charges facing the principal,
35 including but limited to, the use or threatened use of physical force by
36 such principal;

37 (c) The principal's criminal conviction record if any;

38 (d) The principal's record of previous adjudication as a juvenile
39 delinquent, as retained pursuant to section 354.2 of the family court
40 act, or, of pending cases where fingerprints are retained pursuant to
41 section 306.1 of such act, or a youthful offender, if any;

42 (e) The principal's previous record with respect to flight to avoid
43 criminal prosecution;

44 (f) If monetary bail is authorized, according to the restrictions set
45 forth in this title, the principal's individual financial circumstances,
46 and, in cases where bail is authorized, the principal's ability to post
47 bail without posing undue hardship, as well as his or her ability to
48 obtain a secured, unsecured, or partially secured bond;

49 (g) [~~any~~] Any violation by the principal of an order of protection
50 issued by any court;

51 (h) [~~the~~] The principal's history of use or possession of a firearm;

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

54 (j) If the principal is a defendant, in the case of an application for
55 a securing order pending appeal, the merit or lack of merit of the
56 appeal[~~-~~]; and

1 (k) The nature and seriousness of the danger to any other person or
2 the community that would be posed by the principal's release, if appli-
3 cable.

4 § 5. Paragraph (b) of subdivision 1 of section 245.10 of the criminal
5 procedure law, as added by section 2 of part LLL of chapter 59 of the
6 laws of 2019, is amended to read as follows:

7 (b) The prosecution shall perform its supplemental discovery obli-
8 gations under subdivision three of section 245.20 of this article as
9 soon as practicable but not later than [~~fifteen~~] forty-five calendar
10 days prior to the first scheduled trial date.

11 § 6. Section 510.50 of the criminal procedure law, as amended by
12 section 9 of part JJJ of chapter 59 of the laws of 2019, is amended to
13 read as follows:

14 § 510.50 Enforcement of securing order.

15 1. When the attendance of a principal confined in the custody of the
16 sheriff is required at the criminal action or proceeding at a particular
17 time and place, the court may compel such attendance by directing the
18 sheriff to produce the principal at such time and place. If the princi-
19 pal is at liberty on the principal's own recognizance or non-monetary
20 conditions or on bail, the principal's attendance may be achieved or
21 compelled by various methods, including notification and the issuance of
22 a bench warrant, prescribed by law in provisions governing such matters
23 with respect to the particular kind of action or proceeding involved.

24 2. Except when the principal is charged with a new crime while at
25 liberty or when a principal fails to appear for a scheduled court
26 appearance involving a charge of a hate crime as defined in section
27 485.05 of the penal law, absent relevant, credible evidence demonstrat-
28 ing that a principal's failure to appear for a scheduled court appear-
29 ance was willful, the court, prior to issuing a bench warrant for a
30 failure to appear for a scheduled court appearance, shall provide at
31 least forty-eight hours notice to the principal or the principal's coun-
32 sel that the principal is required to appear, in order to give the prin-
33 cipal an opportunity to appear voluntarily.

34 § 7. Paragraph (a) of subdivision 1 and subdivision 2 of section
35 150.20 of the criminal procedure law, paragraph (a) of subdivision 1 as
36 amended by section 1-a of part JJJ of chapter 59 of the laws of 2019,
37 subdivision 2 as amended by chapter 550 of the laws of 1987, are amended
38 and a new paragraph (c) is added to subdivision 1 to read as follows:

39 (a) Whenever a police officer is authorized pursuant to section 140.10
40 of this title to arrest a person without a warrant for an offense other
41 than a class A, B, C or D felony or a violation of section 130.25,
42 130.40, 205.10, 205.17, 205.19 [~~or~~], 215.56 or 265.55 of the penal law,
43 he shall, except as set out in [~~paragraph~~] paragraphs (b) and (c) of
44 this subdivision, subject to the provisions of subdivisions three and
45 four of section 150.40 of this title, instead issue to and serve upon
46 such person an appearance ticket.

47 (c) An officer shall not issue an appearance ticket if:

48 (i) the person has a pending case for the same offense within the
49 previous six months;

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

52 2. (a) Whenever a police officer has arrested a person without a
53 warrant for an offense other than a class A, B, C or D felony or a
54 violation of section 130.25, 130.40, 205.10, 205.17, 205.19 [~~or~~], 215.56
55 or 265.55 of the penal law pursuant to section 140.10, or (b) whenever a
56 peace officer, who is not authorized by law to issue an appearance tick-

1 et, has arrested a person for an offense other than a class A, B, C or D
2 felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19
3 [~~ex~~], 215.56 or 265.55 of the penal law pursuant to section 140.25, and
4 has requested a police officer to issue and serve upon such arrested
5 person an appearance ticket pursuant to subdivision four of section
6 140.27, or (c) whenever a person has been arrested for an offense other
7 than a class A, B, C or D felony or a violation of section 130.25,
8 130.40, 205.10, 205.17, 205.19 [~~ex~~], 215.56 or 265.55 of the penal law
9 and has been delivered to the custody of an appropriate police officer
10 pursuant to section 140.40, such police officer may, instead of bringing
11 such person before a local criminal court and promptly filing or causing
12 the arresting peace officer or arresting person to file a local criminal
13 court accusatory instrument therewith, issue to and serve upon such
14 person an appearance ticket. The issuance and service of an appearance
15 ticket under such circumstances may be conditioned upon a deposit of
16 pre-arraignment bail, as provided in section 150.30.
17 § 8. This act shall take effect immediately.