STATE OF NEW YORK

3750--B

2023-2024 Regular Sessions

IN ASSEMBLY

February 7, 2023

Introduced by M. of A. SEPTIMO, HEVESI, JACKSON, SEAWRIGHT, KELLES, GONZALEZ-ROJAS, KIM, BURGOS, EPSTEIN, MAMDANI, DICKENS, SIMON, ZEBROWSKI, FORREST, GALLAGHER, JACOBSON, WALKER, RAGA, REYES, PRETLOW, LEVENBERG -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 the issuance of temporary orders of protection when an action is pending in a local criminal court

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

Section 1. The criminal procedure law is amended by adding a new section 530.15 to read as follows:

§ 530.15 Temporary order of protection hearing.

Where a court has issued a temporary order of protection pursuant to subdivision one of section 530.12 of this article or subdivision one of section 530.13 of this article, upon application of a defendant, the court shall hold an evidentiary hearing where the prosecutor must show, by an articulated reasonable basis, that the temporary order of protection is likely to achieve its purpose in the absence of such a condition, of protecting a designated witness or complainant from intimidation or injury.

(a) The defendant shall be entitled to such hearing within five business days of requesting such hearing. Notice must be given by the court to both parties, as well as the party protected by the order of protection, in advance of the hearing. Such notice shall detail the rights of the protected party with respect to the hearing and describe the different types of temporary orders of protection available.

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

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(b) At the hearing, the prosecution must present relevant witness testimony, or admissible evidence, subject to cross-examination, though the witness need not be the party protected by the order. Hearsay is admissible.

(c) The court shall state on the record or in writing its findings of facts and conclusions of law, the reasons for maintaining, vacating, or modifying the temporary order of protection, and, where applicable, why the temporary order of protection is necessary to achieve its purpose in the absence of such a condition, of protecting a designated witness or complainant from intimidation or injury.

§ 2. Section 530.30 of the criminal procedure law, the section heading and subdivisions 1 and 2 as amended by section 17 of part JJJ of chapter 59 of the laws of 2019, the closing paragraph of subdivision 1 as amended by section 7 of subpart A of part VV of chapter 56 of the laws of 2023, is amended to read as follows:

§ 530.30 Order of recognizance, release under non-monetary conditions or bail **or issuance of a temporary order of protection**; by superior court judge when action is pending in local criminal court.

1. When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, a judge of a superior court holding a term thereof in the county, upon application of a defendant, may order recognizance, release under non-monetary conditions or, where authorized, bail when such local criminal court:

(a) Lacks authority to issue such an order, pursuant to the relevant provisions of section 530.20 of this article; or

(b) Has denied an application for recognizance, release under non-monetary conditions or bail; or

(c) Has fixed bail, where authorized, which is excessive; or

(d) Has set a securing order of release under non-monetary conditions which are more restrictive than necessary to reasonably assure the defendant's return to court.

In such case, such superior court judge may vacate the order of such local criminal court and release the defendant on recognizance or under non-monetary conditions, or where authorized, fix bail in a lesser amount or in a less burdensome form, or order non-monetary conditions in conjunction with fixing bail, including fixing bail in a lesser amount or in a less burdensome form, 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.

2. **When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, and the local criminal court has denied a request to modify or limit a temporary order of protection issued pursuant to subdivision one of section 530.12 of this article or subdivision one of section 530.13 of this article, upon application of a defendant, a judge of the superior court holding a term thereof in the county shall review the determination of the local criminal court de novo and may vacate or modify the order of the local criminal court. A court's failure to comply with the requirements of section 530.15 of this article is reviewable under this section.**

3. Notwithstanding the provisions of subdivision one **or two** of this section, when the defendant is charged with a felony in a local criminal court, a superior court judge may not order recognizance, release under non-monetary conditions or, where authorized, bail**, or vacate or modify a temporary order of protection** unless and until the district attorney

has had an opportunity to be heard in the matter and such judge and counsel for the defendant have been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20 of this article.

[~~3.~~] **4.** Not more than one application may be made pursuant to **each subdivision of** this section.

§ 3. This act shall take effect immediately.