

STATE OF NEW YORK

8163

2023-2024 Regular Sessions

IN ASSEMBLY

October 18, 2023

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

AN ACT to amend the penal law, in relation to enhancing sentences for certain offenses involving weapons on or near school grounds; to amend the family court act and the criminal procedure law, in relation to the availability of certain records; to amend the retirement and social security law, in relation to annual earnings limitations for certain retired police officers; to amend the criminal procedure law, in relation to adding a defendant's identifiable ties to the community, state and/or county to consider whether to fix a securing order; to amend the civil practice law and rules and the criminal procedure law, in relation to allowing courts to hold a pre-trial community safety and well-being hearing; to amend the criminal procedure law, in relation to the court's consideration of the existence of extraordinary circumstances and significant physical injury in determining whether to remove adolescent offenders to family court; to amend the criminal procedure law, in relation to adolescent offenders authorized to be removed to family court; and to amend the penal law, in relation to modifying the crime of criminal solicitation in the third degree

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

1 Section 1. The penal law is amended by adding a new section 70.11 to
2 read as follows:

3 § 70.11 Sentences of imprisonment for weapons offenses on or near school
4 grounds; aggravating factors.

5 Matters occurring while on or within five thousand feet of school
6 grounds, as defined in subdivision fourteen of section 220.00 of this
7 chapter, shall result in the following enhancement of such sentence:

8 (a) For offenses committed under section 265.01 of this chapter, the
9 sentence shall reflect a class E felony;

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

LBD13281-03-3

1 (b) For offenses committed under section 265.01-a of this chapter, the
2 sentence shall reflect a class D felony;

3 (c) For offenses committed under section 265.01-b of this chapter, the
4 sentence shall reflect a class D felony;

5 (d) For offenses committed under section 265.01-c of this chapter, the
6 sentence shall reflect a class E felony;

7 (e) For offenses committed under section 265.01-d of this chapter, the
8 sentence shall reflect a class D felony;

9 (f) For offenses committed under section 265.01-e of this chapter, the
10 sentence shall reflect a class D felony;

11 (g) For offenses committed under section 265.02 of this chapter, the
12 sentence shall reflect a class C felony;

13 (h) For offenses committed under section 265.03 of this chapter, the
14 sentence shall reflect a class B felony;

15 (i) For offenses committed under section 265.04 of this chapter, the
16 sentence shall reflect a class A felony;

17 (j) For offenses committed under section 265.06 of this chapter, the
18 sentence shall reflect a misdemeanor;

19 (k) For offenses committed under section 265.07 of this chapter, the
20 sentence shall reflect a class D felony;

21 (l) For offenses committed under section 265.08 of this chapter, the
22 sentence shall reflect a class B felony;

23 (m) For offenses committed under section 265.09 of this chapter, the
24 sentence shall reflect a class A felony;

25 (n) (1) For offenses committed under subdivision one, two, or three of
26 section 265.10 of this chapter relating to the manufacture, transport,
27 shipping, or disposing of a machine-gun, assault weapon, large capacity
28 ammunition feeding device or disguised gun, or the transporting, ship-
29 ping or disposing of a firearm silencer, the sentence shall reflect a
30 class C felony;

31 (2) For offenses committed under subdivision one, two, or three of
32 section 265.10 of this chapter relating to a rapid-fire modification
33 device, the sentence shall reflect a class D felony;

34 (3) For offenses committed under subdivision three of section 265.10
35 of this chapter relating to knowingly buying, receiving, disposing of or
36 concealing a machine-gun, firearm, large capacity feeding device, rifle
37 or shotgun which has been defaced for the purpose of concealment or
38 prevention of the detection of a crime or misrepresenting such machine-
39 gun, firearm, large capacity ammunition feeding device, rifle or shot-
40 gun, the sentence shall reflect a class C felony;

41 (4) For offenses committed under subdivision four of section 265.10 of
42 this chapter, the sentence shall reflect a class E felony and a class C
43 felony if they have previously been convicted of any crime;

44 (5) For offenses committed under subdivision five or seven of section
45 265.10 of this chapter, the sentence shall reflect a class E felony;

46 (6) For offenses committed under subdivision six of section 265.10 of
47 this chapter, the sentence shall reflect a class C felony;

48 (7) For offenses committed under subdivision eight of section 265.10
49 of this chapter, the sentence shall reflect a class C felony;

50 (o) For offenses committed under section 265.11 of this chapter, the
51 sentence shall reflect a class C felony;

52 (p) For offenses committed under section 265.12 of this chapter, the
53 sentence shall reflect a class B felony;

54 (q) For offenses committed under section 265.13 of this chapter, the
55 sentence shall reflect a class B felony;

1 (r) For offenses committed under section 265.14 of this chapter, the
2 sentence shall reflect a class A felony;

3 (s) For offenses committed under section 265.16 of this chapter, the
4 sentence shall reflect a class B felony;

5 (t) For offenses committed under section 265.17 of this chapter, the
6 sentence shall reflect a class C felony;

7 (u) For offenses committed under section 265.19 of this chapter, the
8 sentence shall reflect a class B felony;

9 (v) For offenses committed under section 265.25 of this chapter, the
10 sentence shall reflect a class E felony;

11 (w) For offenses committed under section 265.26 of this chapter, the
12 sentence shall reflect a class E felony;

13 (x) (1) For offenses committed under subdivision one or three of
14 section 265.35 of this chapter, the sentence shall reflect a class E
15 felony;

16 (2) For offenses committed under subdivision two of section 265.35 of
17 this chapter where the safety of a person is endangered, the sentence
18 shall reflect a class C felony and for every other case the sentence
19 shall reflect a class D felony;

20 (y) For offenses committed under section 265.37 of this chapter, the
21 sentence shall reflect a class A misdemeanor for a first offense and a
22 class E felony for a second or subsequent offense;

23 (z) For offenses committed under section 265.38 of this chapter, the
24 sentence shall reflect a class E felony;

25 (aa) For offenses committed under section 265.45 of this chapter, the
26 sentence shall reflect a class E felony;

27 (bb) For offenses committed under section 265.50 of this chapter
28 relating to the criminal manufacture, sale, or transport of an undetect-
29 able firearm, rifle or shotgun, the sentence shall reflect a class C
30 felony;

31 (cc) For offenses committed under section 265.50 of this chapter
32 relating to failure to safely store rifles, shotguns and firearms in the
33 second degree, the sentence shall reflect a misdemeanor;

34 (dd) For offenses committed under section 265.55 of this chapter, the
35 sentence shall reflect a class D felony;

36 (ee) For offenses committed under section 265.60 of this chapter, the
37 sentence shall reflect a class D felony;

38 (ff) For offenses committed under section 265.61 of this chapter, the
39 sentence shall reflect a class C felony;

40 (gg) For offenses committed under section 265.63 of this chapter, the
41 sentence shall reflect a class D felony;

42 (hh) For offenses committed under section 265.64 of this chapter, the
43 sentence shall reflect a class C felony;

44 (ii) For offenses committed under section 265.65 of this chapter, the
45 sentence shall reflect a class D felony; and

46 (jj) For offenses committed under section 265.66 of this chapter, the
47 sentence shall reflect a class D felony.

48 § 2. Subdivision 3 of section 380.1 of the family court act, as
49 amended by chapter 181 of the laws of 2000, is amended to read as
50 follows:

51 3. Except where specifically required by statute, no person shall be
52 required to divulge information pertaining to the arrest of the respond-
53 ent or any subsequent proceeding under this article; provided, however,
54 whenever a person adjudicated a juvenile delinquent [~~has been placed~~
55 ~~with the office of children and family services pursuant to section~~
56 ~~353.3 of this article, and~~] is [~~thereafter~~] enrolled as a student in a

1 public or private elementary or secondary school, the court that has
2 adjudicated such person shall provide notification of such adjudication
3 and provide records related to such adjudication necessary to ascertain
4 the nature of the conduct leading to the adjudication including but not
5 limited to delinquency petitions, orders of the family court pursuant to
6 sections 352.1 and 352.2 of this article and probations reports, to the
7 designated educational official of the school in which such person is
8 enrolled as a student. Such notification shall be used by the designated
9 educational official only for purposes related to the execution of the
10 student's educational plan, where applicable, successful school adjust-
11 ment, developing a safety plan to ensure such student does not create a
12 risk for the community, and reentry into the community. Such notifica-
13 tion shall be kept separate and apart from such student's school records
14 and shall be accessible only by the designated educational official.
15 Such notification shall not be part of such student's permanent school
16 record and shall not be appended to or included in any documentation
17 regarding such student and shall be destroyed at such time as such
18 student is no longer enrolled in the school district. At no time shall
19 such notification be used for any purpose other than those specified in
20 this subdivision. An order by the family court to seal records pursuant
21 to section 375.2 or expunge records pursuant to section 375.3 of this
22 article shall not impact the obligation of the family court to provide
23 such notification and records.

24 § 3. Section 381.3 of the family court act is amended by adding a new
25 subdivision 4 to read as follows:

26 4. Notwithstanding any other provision of law, police records relating
27 to the arrest and disposition of any person under this article shall be
28 accessible by law enforcement and the designated educational official of
29 any public or private elementary or secondary school where such person
30 is enrolled.

31 § 4. Subdivisions 2 and 3 of section 720.35 of the criminal procedure
32 law, subdivision 2 as amended by section 87 of subpart B of part C of
33 chapter 62 of the laws of 2011 and subdivision 3 as added by chapter 181
34 of the laws of 2000, are amended to read as follows:

35 2. Except where specifically required or permitted by statute or upon
36 specific authorization of the court, all official records and papers,
37 whether on file with the court, a police agency or the division of crim-
38 inal justice services, relating to a case involving a youth who has been
39 adjudicated a youthful offender, are confidential and may not be made
40 available to any person or public or private agency, other than the
41 designated educational official of the public or private elementary or
42 secondary school in which the youth is enrolled as a student [~~provided~~
43 ~~that such local educational official shall only have made available a~~
44 ~~notice of such adjudication and shall not have access to any other offi-~~
45 ~~cial records and papers~~], such youth or such youth's designated agent
46 (but only where the official records and papers sought are on file with
47 a court and request therefor is made to that court or to a clerk there-
48 of), law enforcement for the purpose of investigating and prosecuting
49 crimes subsequently committed by the youthful offender, an institution
50 to which such youth has been committed, the department of corrections
51 and community supervision and a probation department of this state that
52 requires such official records and papers for the purpose of carrying
53 out duties specifically authorized by law; provided, however, that
54 information regarding an order of protection or temporary order of
55 protection issued pursuant to section 530.12 of this [~~chapter~~] part or a
56 warrant issued in connection therewith may be maintained on the state-

1 wide automated order of protection and warrant registry established
2 pursuant to section two hundred twenty-one-a of the executive law during
3 the period that such order of protection or temporary order of
4 protection is in full force and effect or during which such warrant may
5 be executed. Such confidential information may be made available pursu-
6 ant to law only for purposes of adjudicating or enforcing such order of
7 protection or temporary order of protection and, where provided to a
8 designated educational official, as defined in section 380.90 of this
9 chapter, for purposes related to the execution of the student's educa-
10 tional plan, where applicable, successful school adjustment, developing
11 a safety plan to ensure such student does not create a safety risk for
12 the community, and reentry into the community. Such notification shall
13 be kept separate and apart from such student's school records and shall
14 be accessible only by the designated educational official. Such notifi-
15 cation shall not be part of such student's permanent school record and
16 shall not be appended to or included in any documentation regarding such
17 student and shall be destroyed at such time as such student is no longer
18 enrolled in the school district. At no time shall such notification be
19 used for any purpose other than those specified in this subdivision.

20 3. If a youth who has been adjudicated a youthful offender is enrolled
21 as a student in a public or private elementary or secondary school the
22 court that has adjudicated the youth as a youthful offender shall
23 provide notification of such adjudication and provide records related to
24 such adjudication necessary to ascertain the nature of the conduct lead-
25 ing to the conviction and adjudication of the youth, including but not
26 limited to accusatory instruments, certificates of disposition, and
27 probation reports, to the designated educational official of the school
28 in which such youth is enrolled as a student. Such notification shall
29 be used by the designated educational official only for purposes related
30 to the execution of the student's educational plan, where applicable,
31 successful school adjustment, developing a safety plan to ensure such
32 student does not create a risk for the community, and reentry into the
33 community. Such notification shall be kept separate and apart from such
34 student's school records and shall be accessible only by the designated
35 educational official. Such notification shall not be part of such
36 student's permanent school record and shall not be appended to or
37 included in any documentation regarding such student and shall be
38 destroyed at such time as such student is no longer enrolled in the
39 school district. At no time shall such notification be used for any
40 purpose other than those specified in this subdivision.

41 § 5. Section 720.15 of the criminal procedure law is amended by adding
42 a new subdivision 5 to read as follows:

43 5. Notwithstanding any other provision of law, where an eligible youth
44 is charged with an offense defined in article two hundred sixty-five of
45 the penal law where allegations involve the use, possession or sale of a
46 firearm, the arresting agency is authorized to release to the public
47 identifying information including the name and booking photograph of the
48 youth.

49 § 6. Section 212 of the retirement and social security law is amended
50 by adding a new subdivision 4 to read as follows:

51 4. Notwithstanding the provisions of subdivisions one and two of this
52 section, such annual earnings limitations for a retired police officer
53 employed by a school district or a board of cooperative educational
54 services, in either the classified or unclassified service as a school
55 resource officer, school safety officer, school security officer or any
56 other substantially similar position or office that is designed to

provide safety and/or security on school grounds, provided that such retired police officer is duly qualified, competent and physically fit for performance of the duties of the position in which he or she is to be employed as determined by the school district or board of cooperative educational services and is properly certified where such certification is required, shall be fifty thousand dollars for the year two thousand twenty-four and thereafter.

§ 7. Paragraphs (i) and (j) of subdivision 1 of section 510.10 of the criminal procedure law, as added by section 1 of subpart C of part UU of chapter 56 of the laws of 2022, are amended and a new paragraph (k) is added to read as follows:

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

(j) 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~~[-]~~; and

(k) If the principal is a defendant, whether the principal has two or more identifiable ties to the community, state, and/or county, including, but not limited to:

(i) residence;

(ii) employment;

(iii) enrollment with an educational institution;

(iv) immediate family.

§ 8. Subdivision 2 of section 6342 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, is amended to read as follows:

2. (a) In determining whether grounds for a temporary extreme risk protection order exist, the court shall consider any relevant factors including, but not limited to, the following acts of the respondent:

~~(a)~~ (i) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;

~~(b)~~ (ii) a violation or alleged violation of an order of protection;

~~(c)~~ (iii) any pending charge or conviction for an offense involving the use of a weapon;

~~(d)~~ (iv) the reckless use, display or brandishing of a firearm, rifle or shotgun;

~~(e)~~ (v) any history of a violation of an extreme risk protection order;

~~(f)~~ (vi) evidence of recent or ongoing abuse of controlled substances or alcohol; or

~~(g)~~ (vii) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor.

(b) In considering the factors under this subdivision, the court shall consider:

(i) the time that has elapsed since the occurrence of such act or acts ~~and~~;

(ii) the age of the person at the time of the occurrence of such act or acts; and

(iii) the community safety and well-being of all residents of the state.

(c) The court shall use any mental health evaluations the respondent has undergone when making a consideration regarding the community safety and well-being of all residents of the state.

(d) For the purposes of this subdivision, "recent" means within the six months prior to the date the petition was filed.

1 § 9. The criminal procedure law is amended by adding a new section
2 510.55 to read as follows:

3 § 510.55 Pretrial detention; community safety and well-being hearing.

4 1. When a principal, whose future court attendance at a criminal
5 action or proceeding is or may be required, comes under the control of a
6 court, the people may make a motion seeking pretrial detention due to
7 the mental health of the principal. The people may seek the pretrial
8 detention of a principal:

9 (a) charged with a felony that involves the use, attempted use or
10 threatened use of physical force against the person of another or any
11 other felony that, by its nature, involves a substantial risk that phys-
12 ical force against the person of another may result;

13 (b) charged with a misdemeanor or felony which has as an element the
14 violation of a court order;

15 (c) charged with a misdemeanor or felony where the victim was
16 subjected to physical, sexual or psychological abuse inflicted by a
17 member of the same family or household, as such term is defined in
18 subdivision one of section 530.11 of this title, as the applicant;

19 (d) charged with an offense for which a minimum term of three years or
20 more is prescribed;

21 (e) charged with intimidating a victim or witness in the first degree
22 as defined in section 215.17 of the penal law, intimidating a victim or
23 witness in the second degree as defined in section 215.16 of the penal
24 law, or intimidating a victim or witness in the third degree as defined
25 in section 215.15 of the penal law;

26 (f) charged with a third or subsequent violation of section eleven
27 hundred ninety-two of the vehicle and traffic law within ten years;

28 (g) charged with a felony which has as an element the use, attempted
29 use or threatened use of physical force or a deadly weapon against the
30 person of another;

31 (h) charged with burglary in the first degree as defined in section
32 140.30 of the penal law, burglary in the second degree as defined in
33 section 140.25 of the penal law, or burglary in the third degree as
34 defined in section 140.20 of the penal law, grand larceny in the second
35 degree as defined in section 155.40 of the penal law, or grand larceny
36 in the fourth degree as defined in section 155.30 of the penal law;

37 (i) charged under article one hundred fifty of the penal law;

38 (j) charged with kidnapping in the first degree as defined in section
39 135.25 of the penal law or kidnapping in the second degree as defined in
40 section 135.20 of the penal law;

41 (k) charged with a crime which involved the use of explosives;

42 (l) otherwise involves conduct that presents a serious risk of phys-
43 ical injury to another for which a term of imprisonment was served and
44 arrested and charged with a second or subsequent offense under article
45 two hundred sixty-five of the penal law; or

46 (m) charged with a felony under article twenty-six of the agriculture
47 and markets law.

48 2. (a) Upon the appearance of the principal charged with an offense
49 listed in subdivision one of this section before a supreme court or
50 district court judge and upon the motion of the people, the judge shall
51 hold a hearing pursuant to subdivision four of this section and shall
52 issue an order that, pending trial, the individual shall either be
53 released on his or her own recognizance, released on conditions of
54 release as set forth by the judge, or detained under subdivision three
55 of this section. The individual shall be released unless the judge
56 determines that releasing the principal on his or her own recognizance

1 will endanger the community safety and well-being of any other person in
2 the state but does not find by clear and convincing evidence that no
3 conditions of release will reasonably ensure the community safety and
4 well-being of any other person in the state, the judge shall order the
5 pretrial release of the principal:

6 (i) subject to the condition that the person not commit a federal,
7 state or local crime during the period of release; and

8 (ii) subject to the least restrictive further condition, or combina-
9 tion of conditions, that such judge determines will reasonably ensure
10 the community safety and well-being of any other person in the state
11 that the principal:

12 (A) remain in the custody of a designated person, who agrees to assume
13 supervision and to report any violation of a release condition to the
14 court, if the designated person is reasonably able to ensure the judi-
15 cial officer that the person will appear as required and will not pose a
16 danger to the safety of any other person or the community;

17 (B) maintain employment, or, if unemployed, actively seek employment;

18 (C) maintain or commence an educational program;

19 (D) abide by specified restrictions on personal associations, living
20 accommodations or travel;

21 (E) avoid all contact with an alleged victim of the crime and with any
22 potential witness or witnesses who may testify concerning the offense;

23 (F) report on a regular basis to a designated law enforcement agency,
24 pretrial service agency, or other agency;

25 (G) comply with a specified curfew;

26 (H) refrain from possessing a firearm, destructive device, or other
27 dangerous weapon;

28 (I) refrain from excessive use of alcohol, or any use of a narcotic
29 drug or other controlled substance, without a prescription by a licensed
30 medical practitioner;

31 (J) undergo available medical, psychological, or psychiatric treat-
32 ment, including treatment for drug or alcohol dependency and remain in a
33 specified institution if required for that purpose;

34 (K) return to custody for specified hours following release for
35 employment, schooling, or other limited purposes;

36 (L) satisfy any other condition that is reasonably necessary to ensure
37 the appearance of the person as required and to ensure the safety and
38 well-being of any other person and the community; and

39 (M) participates in a community corrections program under the depart-
40 ment of corrections and community supervision, provided, however, that
41 the principal shall not participate in such program without his or her
42 consent to such participation.

43 (b) The judge shall not impose a financial condition that results in
44 the pretrial detention of the person under this section.

45 (c) The judge may at any time amend the order to impose additional or
46 different conditions of release.

47 3. There shall be a rebuttable presumption of release on recognizance
48 for every principal brought before the court. If, after a hearing pursu-
49 ant to the provisions of subdivision four of this section, the district
50 or supreme court judge finds by clear and convincing evidence that no
51 conditions of release will reasonably ensure the community safety and
52 well-being of any other person in the state, said judge shall order the
53 detention of the principal prior to trial. A principal detained under
54 this subdivision shall be brought to a trial as soon as reasonably
55 possible, but in absence of extraordinary circumstances, such principal
56 shall not be detained for a period exceeding one hundred twenty days by

1 the district court or for a period exceeding one hundred eighty days by
2 the supreme court.

3 4. (a) When a principal is held under arrest for an offense listed in
4 subdivision one of this section and upon a motion by the people, the
5 judge shall hold a hearing to determine whether conditions of release
6 will reasonably ensure the community safety and well-being of any other
7 person in the state. A principal shall be offered the appropriate mental
8 health services while being held under arrest for an offense listed in
9 subdivision one of this section.

10 (b) The hearing shall be held immediately upon the principal's first
11 appearance before the court unless such principal or the people seek a
12 continuance. Except for good cause, a continuance on motion of the prin-
13 cipal shall not exceed seven days and a continuance on motion of the
14 people shall not exceed three business days. During a continuance, the
15 principal shall be detained upon a showing that there existed probable
16 cause to arrest the principal or that without detention the principal
17 would result in serious harm to himself, herself, or others, as defined
18 in paragraph one or two of subdivision (a) of section 9.39 of the mental
19 hygiene law. At the hearing, such principal shall have the right to be
20 represented by counsel, and, if financially unable to retain adequate
21 representation, to have counsel appointed. The principal shall be
22 afforded an opportunity to testify, to present witnesses, to cross-exa-
23 mine witnesses who appear at the hearing, and to present information.
24 Prior to the summons of an alleged victim, or a member of the alleged
25 victim's family, to appear as a witness at the hearing, the principal
26 shall demonstrate to the court a good faith basis for the principal's
27 reasonable belief that the testimony from the witness will be material
28 and relevant to support a conclusion that there are conditions of
29 release that will reasonably ensure the community safety and well-being
30 of any other person in the state. The rules concerning admissibility of
31 evidence in criminal trials shall not apply to the presentation and
32 consideration of information at the hearing and the judge shall consider
33 hearsay contained in a police report, the statement of an alleged victim
34 or witness, and shall have access to any mental health evaluation the
35 principal has undergone prior to hearing. The facts the judge uses to
36 support findings pursuant to subdivision three of this section, that no
37 conditions will reasonably ensure the community safety and well-being of
38 any other person in the state, shall be supported by clear and convinc-
39 ing evidence. In a detention order issued pursuant to the provisions of
40 subdivision three of this section the judge shall: (i) include written
41 findings of fact and a written statement of the reasons for the
42 detention; (ii) direct that the principal be committed to custody or
43 confinement in a corrections facility separate, to the extent practica-
44 ble, from principals awaiting or serving sentence or being held in
45 custody pending appeal or a community treatment center; and (iii) direct
46 that the principal be afforded reasonable opportunity for private
47 consultation with his or her counsel. The principal may be detained
48 pending completion of the hearing. The hearing may be reopened by the
49 judge, at any time before trial, or upon a motion of the people or the
50 principal detained if the judge finds that: (A) information exists that
51 was not known at the time of the hearing or that there has been a change
52 in circumstances; and (B) that such information or change in circum-
53 stances has a material bearing on the issue of whether there are condi-
54 tions of release that will reasonably ensure the community safety and
55 well-being of any other person in the state.

1 5. In his or her determination as to whether there are conditions of
2 release that will reasonably ensure the community safety and well-being
3 of any other person in the state, said judge shall, on the basis of any
4 information which he or she can reasonably obtain, take into account the
5 nature and seriousness of the danger posed to any other person or the
6 community that would result by the principal's release, the nature and
7 circumstances of the offense charged, the potential penalty the princi-
8 pal faces, the principal's family ties, employment record, history of
9 mental illness, and reputation, the risk that the principal will
10 obstruct or attempt to obstruct the judge or threaten, injure or intimi-
11 date or attempt to threaten, injure or intimidate a prospective witness
12 or juror, his or her record of convictions, if any, any illegal drug
13 distribution or present drug dependency, and whether the principal is
14 released pending adjudication of a prior charge.

15 6. Nothing in this section shall be construed as modifying or limiting
16 the presumption of innocence.

17 7. (a) A principal aggrieved by the denial of a district court judge
18 to release him or her on his or her own recognizance with or without
19 surety or condition may petition the supreme court for a review of the
20 order of the recognizance and the judge of the district court shall
21 thereupon immediately notify such principal of his or her right to file
22 a petition for review in the supreme court. When a petition for review
23 is filed in the district court or with the detaining authority subse-
24 quent to the petitioner's district court appearance, the clerk of the
25 district court or the detaining authority, as the case may be, shall
26 immediately notify by telephone, the clerk and probation officer of the
27 district court, the district attorney for the district in which the
28 district court is located, the prosecuting officer, the petitioner's
29 counsel, if any, and the clerk of courts of the county to which the
30 petition is to be transmitted. The clerk of the district court, upon the
31 filing of a petition for review, either in the district court or with
32 the detaining authority, shall forthwith transmit the petition for
33 review, a copy of the complaint and the record of the court, including
34 the appearance of the attorney, if any is entered, and a summary of the
35 court's reasons for denying the release of the principal on his or her
36 own recognizance with or without surety or condition to the supreme
37 court for the county in which the district court is located, if a judge
38 thereof is then sitting, or to the supreme court of the nearest county
39 in which a judge is then sitting. The probation officer of the district
40 court shall transmit forthwith to the probation officer of the supreme
41 court, copies of all records of the probation office of said district
42 court pertaining to the petitioner, including the petitioner's record of
43 prior convictions, if any, as currently verified by inquiry of the
44 commissioner. The district court or the detaining authority, as the case
45 may be, shall cause any petitioner in its custody to be brought before
46 said supreme court within two business days of the petition having been
47 filed. The district court is authorized to order any officer authorized
48 to execute criminal process to transfer the petitioner and any papers
49 herein above described from the district court or the detaining authori-
50 ty to the supreme court, and to coordinate the transfer of the petition-
51 er and the papers by such officer. The petition for review shall
52 constitute authority in the person or officer having custody of the
53 petitioner to transport the petitioner to said supreme court without the
54 issuance of any writ or other legal process; provided, however, that any
55 district or supreme court is authorized to issue a writ of habeas corpus
56 for the appearance forthwith of the petitioner before the supreme court.

(b) The supreme court shall hear the petition for review as speedily as practicable and in any event within five business days of the filing of the petition. The supreme court judge hearing the review may consider the record below which the people and the principal may supplement. The judge of the supreme court may, after a hearing on the petition for review, order that the petitioner be released on his or her own recognizance without surety or condition, or, in his or her discretion, to reasonably ensure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he or she was ordered committed by the district court.

8. If after a hearing under subdivision four of this section detention under subdivision three of this section is ordered or pretrial release subject to conditions under subdivision two of this section is ordered, then: (a) the clerk shall immediately notify the principal's probation officer of the order; and (b) the order of detention under subdivision three of this section or order of pretrial release subject to conditions under subdivision two of this section shall be recorded in the principal's criminal record.

§ 10. Paragraph (d) of subdivision 1 of section 722.23 of the criminal procedure law, as added by section 1-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

(d) The court shall deny the motion to prevent removal of the action in youth part unless the court makes a determination upon such motion by the district attorney that extraordinary circumstances exist that should prevent the transfer of the action to family court. For the purposes of this paragraph, the term "extraordinary circumstances" shall mean the existence of highly unusual and heinous facts, in addition to strong proof that the defendant is not amenable or would not benefit in any way from transfer of the action to family court. Factors that shall be considered by the court in determining whether extraordinary circumstances exist shall include, but shall not be limited to, whether the defendant:

(i) committed a series of crimes over multiple days in close proximity;

(ii) acted in an especially cruel and heinous manner; or

(iii) led, threatened, or coerced other reluctant adolescents into participating in the crime or crimes which are the basis of the action.

§ 11. Subdivision 2 of section 722.23 of the criminal procedure law is amended by adding a new paragraph (c-1) to read as follows:

(c-1) For the purposes of paragraph (c) of this subdivision, the term "significant physical injury" shall mean physical injury that involves a risk of death, significant physical pain, protracted and obvious disfigurement, or a protracted loss or impairment of the function of a bodily member, organ, or mental or sensory faculty.

§ 12. Subparagraph (ii) of paragraph (c) of subdivision 2 of section 722.23 of the criminal procedure law, as added by section 1-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

(ii) the defendant [~~displayed~~] was illegally in possession of a loaded firearm[~~, shotgun, rifle or deadly weapon~~] as defined in the penal law [~~in furtherance of such offense~~]; or

§ 13. Section 100.08 of the penal law, as added by chapter 422 of the laws of 1978, is amended to read as follows:

§ 100.08 Criminal solicitation in the third degree.

A person is guilty of criminal solicitation in the third degree when[~~7~~]:

1 1. being over eighteen years of age, with the intent that another
2 person under sixteen years of age engage in conduct that would consti-
3 tute a felony, he or she solicits, requests, commands, importunes or
4 otherwise attempts to cause such other person to engage in such
5 conduct[~~+~~]; or

6 2. being over eighteen years of age, with the intent that another
7 person under eighteen years of age engage in conduct that would consti-
8 tute a crime under article two hundred sixty-five of this chapter, he or
9 she intentionally provides a loaded firearm to such person in order to
10 protect the actor from criminal prosecution.

11 Criminal solicitation in the third degree is a class E felony.

12 § 14. This act shall take effect on the first of November next
13 succeeding the date on which it shall have become a law and shall apply
14 to all criminal cases where the defendant was arraigned on or after such
15 effective date.