STATE OF NEW YORK

9708

IN ASSEMBLY

April 3, 2024

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

AN ACT to amend the criminal procedure law, in relation to requiring courts to consider whether an individual poses a risk or threat of physical danger to the safety of any person or the community when imposing a securing order and making certain crimes qualifying offenses

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

Section 1. The opening paragraph of subdivision 1 of section 510.10 of the criminal procedure law, as amended by section 2 of subpart A of part VV of chapter 56 of the laws of 2023, is amended to read as follows:

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall impose a securing order in accordance with this title. Except as otherwise required by law, the court shall make an individualized determination as to whether the principal **poses a risk or threat of physical danger to the safety of any person or the community and make an individualized determination as to whether the principal** poses a risk of flight to avoid prosecution[~~,~~]**. The court shall** consider the kind and degree of control or restriction necessary to reasonably assure the principal's return to court **and the safety of any person or the community**, and select a securing order consistent with its determination under this subdivision. The court shall explain the basis for its determination and its choice of securing order on the record or in writing. In making a determination under this subdivision, the court must consider and take into account available information about the principal, including:

§ 2. Paragraphs (t) and (u) of subdivision 4 of section 510.10 of the criminal procedure law, paragraph (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, are amended and a new paragraph (v) is added to read as follows:

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a

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

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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~~] such defendant's 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, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, 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~~] such principal's own recognizance or under appropriate non-monetary conditions; [~~or~~]

(u) 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

(v) stalking in the second degree as defined in section 120.55 of the penal law and stalking in the third degree as defined in section 120.50 of the penal law.

§ 3. Subparagraphs (xx) and (xxi) of paragraph (b) of subdivision 1 of section 530.20 of the criminal procedure law, subparagraph (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, are amended and a new subparagraph (xxii) is added to read as follows:

(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~~] such defendant's 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~~] such principal's 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

(xxii) stalking in the second degree as defined in section 120.55 of the penal law and stalking in the third degree as defined in section 120.50 of the penal law.

§ 4. Paragraphs (t) and (u) of subdivision 4 of section 530.40 of the criminal procedure law, 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:

(t) 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~~] **such defendant's** 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, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, 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~~] **such principal's** own recognizance or under appropriate non-monetary conditions; [~~or~~]

(u) 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

(v) stalking in the second degree as defined in section 120.55 of the penal law and stalking in the third degree as defined in section 120.50 of the penal law.

§ 5. Subparagraph (xi) of paragraph (b) of subdivision 1 of section 150.20 of the criminal procedure law, as added by section 1 of subpart B of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

(xi) the offense is a qualifying offense pursuant to paragraph (t) **or (v)** of subdivision four of section 510.10 of this chapter, or pursuant to paragraph (t) **or (v)** of subdivision four of section 530.40 of this chapter.

§ 6. Subparagraph (iv) of paragraph (b) and subparagraph (iii) of paragraph (d) of subdivision 2 of section 530.60 of the criminal procedure law, subparagraph (iv) of paragraph (b) as added by section 20 of part JJJ of chapter 59 of the laws of 2019, and subparagraph (iii) of paragraph (d) as added by section 11 of subpart A of part VV of chapter 56 of the laws of 2023, are amended to read as follows:

(iv) stands charged in such action or proceeding with a felony and, after being so charged, committed a felony **or class A misdemeanor** while at liberty.

(iii) Under subparagraphs (ii), (iii), and (iv) of paragraph (b) of this subdivision, revocation of a previously issued securing order shall result in the issuance of a new securing order which may, if otherwise authorized by law, permit the principal's release on recognizance or release under non-monetary conditions, but shall also render the defendant eligible for an order fixing bail or ordering non-monetary conditions in conjunction with fixing bail. In issuing the new securing order, the court shall consider the kind and degree of control or

restriction necessary to reasonably assure the principal's return to court**, the safety of any person or the community** and compliance with court conditions, and select a securing order consistent with its determination, taking into account the factors required to be considered under subdivision one of section 510.10 of this title, the circumstances warranting such revocation, and the nature and extent of the principal's noncompliance with previously ordered non-monetary conditions of the securing order subject to revocation under this subdivision. Nothing in this subparagraph shall be interpreted as shortening the period of detention, or requiring or authorizing any less restrictive form of a securing order, which may be imposed pursuant to any other law.

§ 7. Subdivision 3 of section 510.30 of the criminal procedure law, as amended by section 5 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

3. When bail or recognizance is ordered, the court shall inform the principal, if the principal is a defendant charged with the commission of a felony, that the release is conditional and that the court may revoke the order of release and may be authorized to commit the principal to the custody of the sheriff in accordance with the provisions of subdivision two of section 530.60 of this [~~**chapter**~~] **title** if the principal commits a subsequent felony **or class A misdemeanor** while at liberty upon such order.

§ 8. This act shall take effect on the sixtieth day after it shall have become a law.