## STATE OF NEW YORK

5252

2023-2024 Regular Sessions

## IN SENATE

February 28, 2023

Introduced by Sen. WEIK -- 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 ensuring repeat offenders qualify for bail and pre-trial detention

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

Section 1. The opening paragraph and paragraphs (t) and (u) of subdivision 4 of section 510.10 of the criminal procedure law, the opening paragraph as amended by section 2 of part UU of chapter 56 of the laws of 2020, 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:

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 non-monetary conditions, fix bail, or, where the defendant is charged 10 with a qualifying offense [which is a felony], the court may commit the 11 principal to the custody of the sheriff. A principal stands charged with 12 a qualifying offense for the purposes of this subdivision when he or she 13 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 firearm as defined in section 265.01-b of the penal law, where such 17 charge arose from conduct occurring while the defendant was released on 18 his or her own recognizance, released under conditions, or had yet to be 19 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

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

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of this subparagraph, any of the underlying crimes need not be a quali-1 fying offense as defined in this subdivision. For the purposes of this 2 3 paragraph, "harm to an identifiable person or property" shall include 4 but not be limited to theft of or damage to property. However, based 5 upon a review of the facts alleged in the accusatory instrument, if the 6 court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be 7 8 released on his or her own recognizance or under appropriate non-mone-9 tary conditions; [<del>or</del>]

10 (u) criminal possession of a weapon in the third degree as defined in 11 subdivision three of section 265.02 of the penal law or criminal sale of 12 a firearm to a minor as defined in section 265.16 of the penal  $law[+]_{:}$ 13 <u>or</u>

## 14 (v) a misdemeanor or felony offense and the principal has been 15 convicted of one or more misdemeanor or felony offenses within the imme-16 diate preceding five years.

17 § 2. The opening paragraph and subparagraphs (xx) and (xxi) of para-18 graph (b) of subdivision 1 of section 530.20 of the criminal procedure 19 law, the opening paragraph as amended by section 3 of part UU of chapter 20 56 of the laws of 2020, subparagraph (xx) as amended and subparagraph 21 (xxi) as added by section 4 of subpart C of part UU of chapter 56 of the 22 laws of 2022, are amended and a new subparagraph (xxii) is added to read 23 as follows:

24 Where the principal stands charged with a qualifying offense, the 25 court, unless otherwise prohibited by law, may in its discretion release 26 the principal pending trial on the principal's own recognizance or under 27 non-monetary conditions, fix bail, or, where the defendant is charged 28 with a qualifying offense [which is a felony], the court may commit the 29 principal to the custody of the sheriff. The court shall explain its 30 choice of release, release with conditions, bail or remand on the record 31 or in writing. A principal stands charged with a qualifying offense when 32 he or she stands charged with:

33 (xx) any felony or class A misdemeanor involving harm to an identifi-34 able 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 35 36 charge arose from conduct occurring while the defendant was released on 37 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 38 39 felony or class A misdemeanor involving harm to an identifiable person or property, provided, however, that the prosecutor must show reasonable 40 cause to believe that the defendant committed the instant crime and any 41 42 underlying crime. For the purposes of this subparagraph, any of the 43 underlying crimes need not be a qualifying offense as defined in this 44 subdivision. For the purposes of this paragraph, "harm to an identifi-45 able person or property" shall include but not be limited to theft of or 46 damage to property. However, based upon a review of the facts alleged in 47 the accusatory instrument, if the court determines that such theft is 48 negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance 49 50 or under appropriate non-monetary conditions; [er]

51 (xxi) criminal possession of a weapon in the third degree as defined 52 in subdivision three of section 265.02 of the penal law or criminal sale 53 of a firearm to a minor as defined in section 265.16 of the penal 54 law[-]; or

(xxii) a misdemeanor or felony offense and the principal has been 1 convicted of one or more misdemeanor or felony offenses within the imme-2 3 diate preceding five years.  $\S$  3. The opening paragraph and paragraphs (t) and (u) of subdivision 4 4 5 of section 530.40 of the criminal procedure law, the opening paragraph 6 as amended by section 4 of part UU of chapter 56 of the laws of 2020, 7 paragraph (t) as amended and paragraph (u) as added by section 4 of 8 subpart B of part UU of chapter 56 of the laws of 2022, are amended and 9 a new paragraph (v) is added to read as follows: 10 Where the principal stands charged with a qualifying offense, the 11 court, unless otherwise prohibited by law, may in its discretion release 12 the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged 13 14 with a qualifying offense [which is a felony], the court may commit the 15 principal to the custody of the sheriff. The court shall explain its 16 choice of release, release with conditions, bail or remand on the record 17 or in writing. A principal stands charged with a qualifying offense for 18 the purposes of this subdivision when he or she stands charged with: 19 (t) any felony or class A misdemeanor involving harm to an identifi-20 able person or property, or any charge of criminal possession of a 21 firearm as defined in section 265.01-b of the penal law, where such 22 charge arose from conduct occurring while the defendant was released on 23 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 24 25 felony or class A misdemeanor involving harm to an identifiable person 26 or property, or any charge of criminal possession of a firearm as 27 defined in section 265.01-b of the penal law, provided, however, that 28 the prosecutor must show reasonable cause to believe that the defendant 29 committed the instant crime and any underlying crime. For the purposes 30 of this subparagraph, any of the underlying crimes need not be a quali-31 fying offense as defined in this subdivision. For the purposes of this 32 paragraph, "harm to an identifiable person or property" shall include 33 but not be limited to theft of or damage to property. However, based 34 upon a review of the facts alleged in the accusatory instrument, if the 35 court determines that such theft is negligible and does not appear to be 36 in furtherance of other criminal activity, the principal shall be 37 released on his or her own recognizance or under appropriate non-mone-38 tary conditions; [or] 39 (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 40

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[-]; 42 or 43 (u) a minor or follow offerse and the principal has been

(v) a misdemeanor or felony offense and the principal has been
convicted of one or more misdemeanor or felony offenses within the imme diate preceding five years.

46 § 4. This act shall take effect January 1, 2024.