



Legislation Text

File #: Res 0041-2010, **Version:** *

Res. No. 41

Resolution calling upon the New York State Legislature to amend the state's Criminal Procedure Law to authorize a judge to consider a defendant's "danger to the community" as a factor in bail decisions.

By Council Members Vallone, Fidler, Gennaro, Gentile, Nelson, Van Bramer and Oddo

Whereas, New York State's Criminal Procedure Law (§510.30) does not explicitly authorize a judge to deny bail to a dangerous defendant who poses a "danger to the community;" and

Whereas, In order to protect individuals as well as the community from a dangerous defendant, §510.30 should be amended to explicitly authorize a judge to withhold bail from certain defendants who pose a danger to the community; absent this authority, judges in New York State do not have the full range of options afforded to their counterparts in other jurisdictions; and

Whereas, The federal government and 34 states give a judge the authority to deny a bail application on the grounds that the defendant poses a danger to the community; and

Whereas, According to the Bail Reform Act of 1984 ("The Act"), which grants federal judges such authority, bail may be denied "if no condition will reasonably assure the appearance of the defendant and the safety of the community;" and

Whereas, The Act defines a defendant as a "danger to the community" when, if released on bail, the defendant is likely to commit: (1) a crime of violence; (2) an offense carrying a penalty of life imprisonment or death; (3) a federal drug offense carrying a penalty of ten years or more; or (4) any felony following convictions for two or more of the above three offenses, two or more comparable state or local offenses, or a combination of such offenses; and

Whereas, Many of New York's neighboring states have provisions that a defendant's prospective danger

to the community may be used as a factor in bail decisions, including Connecticut, New Hampshire, Massachusetts, Pennsylvania, and Vermont; and

Whereas, The bail determination process often involves a difficult balance of many factors and judges must exercise proper discretion and ensure that a defendant who may not be a danger to the community receives a fair bail hearing; and

Whereas, New York State has the responsibility to protect its citizens from dangerous individuals who, if released on bail, would continue to engage in criminal activity that would be detrimental to the well-being of the community; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to amend the state's Criminal Procedure Law to authorize a judge to consider a defendant's "danger to the community" as a factor in bail decisions.

JCG
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