

Criminal Procedure Law

§ 510.30 Application for recognizance or bail; rules of law and criteria controlling determination.

1. Determinations of applications for recognizance or bail are not in all cases discretionary but are subject to rules, prescribed in article five hundred thirty and other provisions of law relating to specific kinds of criminal actions and proceedings, providing (a) that in some circumstances such an application must as a matter of law be granted, (b) that in others it must as a matter of law be denied and the principal committed to or retained in the custody of the sheriff, and (c) that in others the granting or denial thereof is a matter of judicial discretion.

2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

(a) With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

(i) The principal's character, reputation, habits and mental condition;

(ii) His employment and financial resources; and

(iii) His family ties and the length of his residence if any in the community; and

(iv) His criminal record if any; and

(v) His record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; and

(vi) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution;

(vii) Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, the following factors:

(A) any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, whether or not such order of protection is currently in effect; and

(B) the principal's history of use or possession of a firearm;

(viii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and

(ix) If he is a defendant, the sentence which may be or has been imposed upon conviction.

(b) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraph (a).

3. When bail or recognizance is ordered, the court shall inform the principal, if he 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 commit the principal to the custody of the sheriff in accordance with the provisions of subdivision two of section 530.60 of this chapter if he commits a subsequent felony while at liberty upon such order.