

Bail Reform and Domestic Violence

Summary of New York's Reform Law

Effective January 2020, New York State has passed a series of reforms intended to promote fairness and due process throughout the criminal justice system. Described in a separate publication, the bail reform law eliminates money bail and pretrial detention for nearly all misdemeanor and non-violent felony defendants. This summary explains several important provisions intended to protect victims and uses data from New York City to explore the reform's potential implications in domestic violence cases.

Legal Definition of Domestic Violence

In New York, “domestic violence” does not exclusively refer to cases involving intimate partners. Along with individuals who are or have been in an intimate relationship, the definition includes familial relationships (such as among siblings, parents and children, and extended kin), married or formerly married individuals, and those sharing a child in common.

Money Bail in Misdemeanors and Non-Violent Felonies

The reform law eliminates money bail in nearly all misdemeanors and non-violent felonies. However, there are nine categories of offenses for which judges may still set bail, three of which include domestic violence cases: (1) criminal contempt where there is an alleged violation of an order of protection and the protected party is in a domestic relationship, (2) sex offenses, and (3) witness tampering or intimidation. In New York City in 2018, there were 4,370 criminal contempt cases involving domestic violence, 1,216 sex offense misdemeanors or non-violent felonies, and 35 witness tampering or intimidation cases, of which only 6 involved domestic violence.

Money Bail in Violent Felonies

The reform law permits the use of money bail in nearly all violent felony cases (domestic violence or otherwise). In New York City in 2018, there were 2,316 violent felonies that involved domestic violence.

Electronic Monitoring

All felonies, or cases where the defendant has been convicted of a violent felony in the previous five years, can be subject to electronic monitoring as a condition of release pretrial. In addition, electronic monitoring is expressly permitted for any domestic violence or sex offense misdemeanor—but not in the case of any other misdemeanors.

Criteria for Domestic Violence Release Decisions

In making release decisions, the new law maintains two special factors judges must consider exclusively in cases of domestic violence:

1. current or prior violations of an order of protection, and
2. a history of possessing or using a firearm. (Prior research has found a history of order

of protection violations or firearms arrests is associated with future domestic violence re-arrest.)

Non-Monetary Conditions

When judges deem release on recognizance to be inappropriate, the reform requires them to set the least restrictive condition(s) to reasonably assure an individual's court appearance. Under the statute, judges can set non-monetary conditions, such as supervised release. However, in 2018, less than 1% of domestic violence cases were mandated to supervised release pretrial in New York City. When the new law is implemented in 2020, there will be a need for New York City and counties across the state to develop and establish non-monetary conditions that can be used in domestic violence cases.

Responses to Noncompliance

Following a hearing establishing that a defendant has violated their pretrial conditions of release in an "important respect," the court can change the release status. Among the reasons allowing a judge to upgrade to electronic monitoring or money bail is a violation of an order of protection. (Other reasons for upgrading the release status include persistently and willfully failing to appear, a charge of witness intimidation during the pretrial period, or being re-arrested or charged related to a new felony.)

Desk Appearance Tickets and Domestic Violence

The new law requires law enforcement officials to issue Desk Appearance Tickets (DATs) in misdemeanors and most Class E felonies, allowing defendants to return on their own for their initial court date. However, police officers have discretion to make a custodial arrest in delineated exceptions—including cases involving domestic violence, a sex offense, or when an order of protection is likely to be issued at arraignment.

Current Practices in Domestic Violence Cases

In 2018, 30,128 domestic violence cases were arraigned in the New York City criminal courts: 85% were charged with a misdemeanor, 7% with a non-violent felony, and 8% with a violent felony. The most common charges were assault and criminal contempt. Among these domestic violence cases, 83% of the misdemeanors, 34% of the non-violent felonies, and 41% of the violent felonies were released at arraignment (generally with a condition to obey an order of protection).

Implications of Bail Reform

Were the impending bail reform in effect in 2018, money bail would have been a legally permissible option in 22% of domestic violence cases in New York City, compared to only 7% of all other cases. The gap was especially pronounced among misdemeanors and non-violent felonies, where the option to set bail is preserved in criminal contempt cases if there is a domestic violence allegation. Among misdemeanors, 12% of domestic violence cases but only 1% of all other misdemeanors would have been eligible for bail in 2018; among cases classified as non-violent felonies—such as criminal contempt—64% of domestic violence cases and only 1% of all other non-violent felonies would have been eligible.

For More Information

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