

# New York's Amended Bail Statute

## Pretrial Options



The court must release defendants on their own recognizance, unless there is a demonstrated risk of flight to avoid prosecution. If there is a risk of flight, the court must select the least restrictive condition(s) permissible to reasonably assure a defendant's court appearance and compliance with court conditions.

Offenses	ROR <sup>1</sup>	Non-Monetary Conditions <sup>2,3</sup>	Electronic Monitoring <sup>4</sup>	Money Bail <sup>5</sup>	Remand
<b>MISDEMEANORS</b>					
Misdemeanors generally, exceptions below	✓	✓	NO	NO	NO
Domestic Violence Offenses	✓	✓	✓	NO	NO
VFO Conviction in Past 5 Years, as defined in PL 70.02	✓	✓	✓	NO	NO
Sex Offenses, as defined in PL Art. 130 <sup>6</sup>	✓	✓	✓	✓	NO
Criminal Contempt and Criminal Obstruction of Breathing or Blood Circulation, PL 215.50(3) and 121.11, if underlying charge is a domestic violence offense <sup>7</sup>	✓	✓	✓	✓	NO
Endangering the Welfare of a Child, PL 260.10, if the defendant is required to be registered as a sex offender and is designated a Level 3 offender	✓	✓	✓	✓	NO
Bail Jumping 3rd and Escape 3rd, PL 215.55 and PL 205.05	✓	✓	✓	✓	NO
<b>DRUG FELONIES</b>					
Drug Felonies generally, exceptions below	✓	✓	✓	NO	NO
Operating as a Major Drug Trafficker, PL 220.77	✓	✓	✓	✓	✓
Criminal Possession of a Controlled Substance 1st, PL 220.21	✓	✓	✓	✓	✓
Criminal Sale of a Controlled Substance 1st, PL 220.43	✓	✓	✓	✓	✓
<b>OTHER NONVIOLENT FELONIES</b>					
Nonviolent Felonies generally, exceptions below	✓	✓	✓	NO	NO
Incest <sup>8</sup> and Sex Offenses, PL 255.25, 255.26, and sex offenses as defined in PL Art. 130 and in PL 70.80 <sup>9</sup>	✓	✓	✓	✓	✓
Criminal Contempt and Unlawful Imprisonment 1st, PL 215.51(b)(c)(d), 215.52 and 135.10, if underlying charge is a domestic violence offense <sup>10</sup>	✓	✓	✓	✓	✓

Offenses	ROR <sup>1</sup>	Non-Monetary Conditions <sup>2,3</sup>	Electronic Monitoring <sup>4</sup>	Money Bail <sup>5</sup>	Remand
<b>OTHER NONVIOLENT FELONIES (continued)</b>					
Witness Intimidation and Tampering, PL 215.11, 215.12, 215.13, and 215.15	✓	✓	✓	✓	✓
Conspiracy to Commit Murder, PL 105.15	✓	✓	✓	✓	✓
Money Laundering in Support of Terrorism, PL 470.21, 470.22, 470.23, and 470.24 <sup>11</sup>	✓	✓	✓	✓	✓
Offenses involving Sexual Performance by Children, PL 263.30, 263.05, 263.10, 263.15, and 120.70(1)	✓	✓	✓	✓	✓
Assault 3rd and Arson 3rd, PL 120.00 and PL 150.10, if committed as a hate crime, pursuant to PL 480.05 <sup>12</sup>	✓	✓	✓	✓	✓
Vehicular Assault 1st and Aggravated Vehicular Assault, PL 120.04, 120.04-a	✓	✓	✓	✓	✓
Aggravated Assault Upon a Person Less Than 11 years old, PL 120.12	✓	✓	✓	✓	✓
Criminal Possession of a Weapon on School Grounds, PL 265.01-a	✓	✓	✓	✓	✓
Grand Larceny 1st, PL 155.42	✓	✓	✓	✓	✓
Enterprise Corruption, PL 460.20	✓	✓	✓	✓	✓
Money Laundering 1st, PL 470.20	✓	✓	✓	✓	✓
Failure to Register as a Sex Offender, Corr. Law 168-t, if the defendant is required to be registered as a sex offender and is designated a Level 3 offender	✓	✓	✓	✓	✓
Bail Jumping and Escape, PL 215.56, 215.57, 205.10, and 205.15	✓	✓	✓	✓	✓
Sex Trafficking, PL 234.34 <sup>13</sup>	✓	✓	✓	✓	✓
<b>VIOLENT FELONY OFFENSES</b>					
Robbery 2nd degree, Subsection (1), PL 160.10(1)	✓	✓	✓	NO	NO
Burglary 2nd degree, Subsection (2), PL 140.25(2), if NOT in the living area of a dwelling <sup>14</sup>	✓	✓	✓	NO	NO
Burglary 2nd degree, Subsection (2), PL 140.25(2), if IN the living area of a dwelling	✓	✓	✓	✓	✓
All Other Violent Felony Offenses, as defined in PL 70.02, including violent felony sex offenses <sup>15</sup>	✓	✓	✓	✓	✓
<b>CLASS A FELONIES</b>					
Class A Felonies other than A-II drug felonies	✓	✓	✓	✓	✓

Offenses	ROR <sup>1</sup>	Non-Monetary Conditions <sup>2,3</sup>	Electronic Monitoring <sup>4</sup>	Money Bail <sup>5</sup>	Remand
<b>BROAD CATEGORIES</b>					
Any Crime Causing the Death of Another Person, e.g. 125.10, 125.11, 125.12, 125.13, 125.14, 125.15, 125.20, 125.21, 125.22, and VTL 600(2)(c) <sup>16</sup>	✓	✓	✓	✓	✓
Any felony offense committed while on probation or parole release supervision, CPL 510.10(4)(r)	✓	✓	✓	✓	✓
Any felony offense where the defendant would qualify as a persistent felony offender if sentenced on the current charge, pursuant to PL 70.10, CPL 510.10(4)(s)	✓	✓	✓	✓	✓
Any felony or a misdemeanor involving harm to an identifiable person or property, that occurred while released on a felony or Class A misdemeanor involving harm to an identifiable person or property, CPL 510.10(4)(t)	✓	✓	✓	✓	✓

## Endnotes

- Defendants who are released on their own recognizance (ROR) will receive court appearance reminders from the court or a pretrial service agency. However, if the defendant intentionally declines to provide contact information, they are forfeiting the notification. Any failure of the court or pretrial service agency to provide such a notification is not a basis for the defendant to miss their court appearance. [CPL 510.43(1)-(2)]
- Non-monetary condition(s) can be used where the court finds that the defendant poses a risk of flight [CPL 510.10(3)]. Such conditions include contact and supervision by a pretrial service agency, restricting a defendant's travel, and prohibiting possession of a firearm or other dangerous weapon [CPL 500.10(3-a)]. The amended reforms add several non-monetary conditions, including: mandatory programming through a pretrial service agency; hospitalization pursuant to Mental Health and Hygiene Law, Section 9.43; maintaining housing, employment and education; refraining from association with victims, witnesses, and co-defendants; in domestic violence cases, conditions addressing victim safety and obeying an order of protection. Non-monetary conditions can be used singularly or in combination, so long as it is reasonable under the circumstances [CPL 500.10(3-b)].
- Pretrial supervision is one of the non-monetary conditions listed in the statute. It should be used when no other non-monetary conditions can reasonably assure the defendant's return to court [CPL 500.10(3-a)(d)].
- Electronic monitoring may only be ordered if "no other realistic non-monetary condition [including pretrial supervision] or set of non-monetary conditions will suffice to reasonably assure a principal's return to court" [CPL 500.10(3-a)(j), CPL 510.40(4)(a)]. When such monitoring is ordered, the defendant is considered "in custody" for the purposes of CPL 170.70 and 180.80 [CPL 510.40(4)(d)].
- When setting monetary bail, the court must consider the defendant's ability to pay bail and ability to post a secured, partially secured, or unsecured bond [CPL 510.30(1)(f)]. The court must set THREE forms of bail, one of which MUST BE a partially secured or unsecured surety bond [CPL 520.10(2)(b)].
- Misdemeanor sex offenses, defined in PL Art. 130, include: sexual misconduct, forcible touching, and sexual abuse in the 2nd and 3rd degrees [CPL 510.10(4)(e)].

7. Criminal Contempt as a Misdemeanor and Criminal Obstruction of Breathing or Blood Circulation are bail eligible ONLY IF the underlying Order of Protection is for a family member, as defined by CPL 530.11 [CPL 510.10(4)(h) and (k)].
8. Incest in the 1st, 2nd, and 3rd degrees (PL 255.25, 255.26, 255.27) are bail eligible [CPL 510.10(4)(e)].
9. Felony sex offenses, defined in PL 70.80, include: any felony defined in PL Article 130; a sexually motivated felony (defined in PL 130.91); Patronizing a Person for Prostitution in the 1st and 2nd degrees, PL 230.05, 230.06; Aggravated Patronizing a Minor for Prostitution in the 1st, 2nd, and 3rd degrees, PL 230.11, 230.12, 230.13; and a felony attempt or conspiracy to commit any of the above [CPL 510.10(4)(e)].
10. Criminal Contempt as a Felony [PL 215.51(b)(c)(d) and 215.52] and Unlawful Imprisonment (PL 135.10) are bail eligible ONLY IF the underlying Order of Protection is for a member of the defendant's family, as defined by 530.11 [CPL 510.10(4)(h)].
11. Making a Terroristic Threat, PL 490.20, IS NOT bail-eligible. Other violent felony terrorism offenses that are eligible for monetary bail include: Soliciting or Providing Support for an Act of Terrorism in the 1st and 2nd degrees, PL 490.10, 490.15; Crime of Terrorism, PL 490.25; Hindering Prosecution of Terrorism in the 1st and 2nd degrees, PL 490.30, 490.35; Criminal Possession of Chemical or Biological Weapon in the 1st, 2nd, and 3rd degrees, PL 490.37, 490.40, 490.45; Criminal Use of Chemical or Biological Weapon in the 1st, 2nd, and 3rd degrees, PL 490.47, 490.50, 490.55 [CPL 510.10(4)(g)].
12. Designated hate crime offenses elevate the category of the underlying offense for misdemeanors and C, D, and E felonies. Thus, Assault in the 3rd degree committed as a hate crime elevates the offense to a nonviolent Class E felony. Likewise, Arson in the 3rd degree as a hate crime is elevated to a B nonviolent felony [PL 485.10(2)].
13. Sex Trafficking, PL 230.34, contains subsections designated as violent and others designated as nonviolent. Subsections (5)(a)&(b) were included as eligible for bail and remand in the reform law passed in 2019, as they are designated violent felony offenses, whereas, subsections (1), (2),(3),(4) and (5)(c)-(h) are designated nonviolent felony offenses, but are now eligible for monetary bail and remand [CPL 510.10(4)(e)].
14. Burglary in the 2nd degree, subsection 2, is only bail and remand eligible when such burglary is alleged to have occurred within the "living area" of a dwelling. Cases where the allegations occur elsewhere (a lobby, for example) are not "qualifying offenses" for the purposes of bail and remand [CPL 510.10(4)(a)].
15. Violent felony offenses are listed in PL 70.02 and include, among other violent felonies: Intimidating a Victim or Witness in the 1st and 2nd degrees, PL 215.16, 215.17; and violent felony sex offenses (e.g. incest, rape, criminal sexual act, and course of sexual conduct against a child). It also includes select sex trafficking charges, PL 230.34(5)(a) & (b) and 230.34-a, and Strangulation in the 2nd degree, PL 121.12, which were individually added to the list of qualifying offenses for bail and remand in the 2020 bail reform amendments.
16. The 2020 amendments to the bail statute made any crime that is alleged to have caused the death of another person eligible for monetary bail. If the crime is a felony, then remand is also an option. The listed charges are examples of offenses that involve such allegations, some of which are technically deemed nonviolent felonies.

### **For More Information**

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