November 15, 2019

THEODORE ROOSEVELT
AMERICAN INN OF COURT

"Bail Reform, Red Flag Law
And Other Criminal Justice Changes In 2019"

November 21, 2019 Program

Presenters: Hon. Helen Voutsinas
Richard Eisenberg, Esq.
Harry Kutner, Jr., Esq.
Joseph LoPiccolo, Esq.
Cliff LaFemina, Hofstra Law Student
Joe Percario, Hofstra Law Student

Agenda

Overview of Program/Introductions – 10 minutes

Lecture – Bail Reform, New Criminal Discovery Procedures, Red Flag Law – 40 minutes

Mock Hearings – Permanent ERPO's: "Billy Donahue" and "Kyle Williams" – 30 minutes

Panel Discussion/Audience Participation
Adjusting to Massive Change – 30 minutes

Program Exhibits

Presenters' Biographies

Lecture Outline: Bail
Discovery
Extreme Risk Protective Orders

Fact Patterns: Two "Red Flag" Hearings

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BIOGRAPHY OF HELEN VOUTSINAS

Justice Voutsinas was elected to the Supreme Court in 2018. She was first elected to the District Court in 2011. During her tenure in the District Court she presided over criminal cases and served as the Presiding Judge of the DWI and Domestic Violence Misdemeanor parts.

Justice Voutsinas began her career at a private law firm handling various cases including, personal injury and commercial litigation from inception to trial. She decided to devote her life to public service and began her career in government as an Assistant Town Attorney and Counsel to the Board of Zoning and Appeals for the Town of North Hempstead handling all types of litigation. She later served as Deputy Majority Counsel to the Nassau County Legislature. She served as Principal Law Clerk to the Honorable Steven M. Jaeger from 2005-2011, in the County, Family, and Supreme Court. In her role as law secretary she handled serious criminal felony cases and other specialized cases including Domestic Violence and Drug Diversion.

In addition to being an active trial judge, Justice Voutsinas is an active leader in her community and amongst her peers. Justice Voutsinas served as President of the Long Island Hispanic Bar Association, (LIHBA) from 2017 to October 2019. She has served in various positions on the Board of the LIHBA throughout the years. She is Past President of the Nassau County Women's Bar Association (NCWBA) (2006-2007), where she advocated for women's rights, pay equity and work/life balance. She previously served as a member of the Board of Directors and held the officer positions of Corresponding Secretary, Treasurer, Vice President and Delegate to the New York State Women's Bar Association. During her tenure as President of the NCWBA she co-founded the Nassau County Women's Bar Foundation in furtherance of her desire to help women advance in both their professional and personal lives. She also served as President of the Nassau County District Court Judge's Association and on the Board of the NYS Latino Judges Association (2015-2017). She currently serves on the Board of Directors to the Theodore Roosevelt INNS of Court and is a member of the Nassau County Bar Association.

In 2014 Justice Voutsinas received the "Virginia Duncombe, Esq." award from the NCWBA for her work and commitment to enhancing legal education. In 2013, she was recognized by the Consulate General of the Dominican Republic for her achievements as a Judge of Dominican Heritage in the United States. She has also received numerous citations from the County of Nassau and Villages of Freeport and Hempstead for her contributions to the community.

Both of Justice Voutsinas' parents immigrated to the United States in the 1970's. She is the eldest of three siblings and is fluent in both Spanish and Greek. Justice Voutsinas is happily married to Antonio and is a proud and devoted mother to her son, Dean and daughter, Daphne Ana.

Richard Eisenberg

Of Counsel

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Practice Areas

Corporate Law

Corporate Finance

Real Estate Law

Litigation & Dispute Resolution

Alternative Dispute Resolution

Local Government, Land Use Law & Environmental Compliance Real Estate Law

Education

Boston University Law School
J.D., 1976

University of Rochester
B.A., 1973

Memberships

Nassau County Bar Association

Theodore Roosevelt Inn of Court

Alexander Hamilton Inn of Court

United States District Court, Eastern District of New York Mediation Panel

Usdan Center for the Creative and Performing Arts, Board of Trustees

Touro Law Center Institute For Land Use and Sustainable Development, Chair

Admissions

New York State

U.S. Supreme Court

Second Circuit Court of Appeals

U.S. District Court, Southern and Eastern Districts of New York

U.S. Tax Court

Since January 2008, Richard Eisenberg has been Of Counsel to Meyer, Suozzi, English & Klein, P.C. located in Garden City, Long Island, N.Y., practicing in the Corporate law, Corporate Finance, Real Estate and Litigation and Dispute Resolution practices. Mr. Eisenberg has a broad range of litigation experience in areas including contracts, securities fraud, RICO, anti-trust, land title matters, patent infringement, insurance coverage disputes, construction claims, corporate valuations and criminal matters. He has conducted jury and non-jury trials to verdict, as well as arbitrations and mediations, in the State and Federal courts throughout the New York metropolitan area. His appellate practice includes appearances before the Appellate Division, Second Department, the New York State Court of Appeals, the Second Circuit Court of Appeals and the United States Supreme Court. In his transactional work, Mr. Eisenberg has counseled clients in corporate reorganizations, internal investigations, bankruptcy, real estate financing, contracts, deferred compensation programs, intellectual property matters, mergers and acquisitions, tax matters, environmental compliance and the selection and supervision of outside counsel and accountants.

Notable experience includes:

- Has served as the owner's representative or project executive on approximately 100 million dollars of completed real estate development projects, both public and private. For these projects, he was responsible for land acquisition, planning, zoning, commercial and retail leasing, mortgage lending, property management, construction agreements and supervision of architects, engineers and contractors.

- Has served as General Counsel to numerous privately held corporations with interests in military manufacturing, software consulting, consumer products, engineering, construction and property management. In that position, he has directed mergers and acquisitions, corporate finance, government and commercial contracts, regulatory compliance and the supervision of litigation throughout the United States.

- Served as the Executive Secretary to a major private family charitable foundation on Long Island; supervised grant-making and administration.

- From 1984-2005 he was a member of the Valley Stream, New York Board of Education. During that period he served several terms as Board President. He worked closely with school district attorneys regarding litigation matters on behalf of the school district, and was responsible for the supervision of a multimillion dollar bond issue for school construction and renovation. In addition, Mr. Eisenberg served as the employer's representative for the negotiation of public employee contracts over a 14 year period.

Mr. Eisenberg began his career as a Kings County Assistant District Attorney, where he prosecuted felony cases including homicides and public corruption matters. During part of his tenure as an Assistant DA, he was assigned to the Office of the Special Narcotics Prosecutor for the City of New York from 1977 to 1978.

CLIFF J. LAFEMINA

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clafemina1@pride.hofstra.edu | 516-445-7156

EDUCATION

Maurice A. Deane School of Law at Hofstra University, Hempstead, NY
Juris Doctor expected May 2021
GPA: 3.80; Rank: Top 4.02% (10/249)
Honors: *Hofstra Law Review*, Staff Member, Volume 48; Dean's List (Fall 2018 and Spring 2019); Champion, 2019 Spring Dispute Resolution Society Negotiation Competition; Best Direct / Cross Examination, Judith S. Kaye Arbitration Competition
Activities: Judith S. Kaye Arbitration Competition; Hofstra Dispute Resolution Society; Hofstra Trial Advocacy Association; Theodore Roosevelt Inn of Court; Public Justice Foundation

University of Delaware, Newark, DE
Master of Business Administration, August 2016
GPA: 4.0

University of Delaware, Newark, DE
Bachelor of Science, *summa cum laude*, Sport Management, January 2014
GPA: 3.94
Honors: Dean's List (all semesters); Outstanding Junior in Sport Management Award; Highest Cumulative GPA in Kappa Delta Rho (2012 and 2013); General Honors Award
Activities: President, Kappa Delta Rho; B+ Foundation/UDance; Sport Management Club; Intramural Sports

EXPERIENCE

National Labor Relations Board, Region 2, New York, NY
Board Agent Intern, June 2019 - August 2019
Investigated alleged unfair labor practices. Conducted interviews with parties and take sworn affidavits. Drafted request for evidence letters. Prepared legal memoranda, including final investigation reports, and advised the Regional Director on how to proceed. Calculated backpay for charging parties. Assisted with union representation elections. Participated in weekly training sessions covering all aspects of the investigation and trial processes.

Columbia University in the City of New York, New York, NY
Events Manager, University Programs and Events, Office of the President, September 2016 - July 2017
Worked on the planning team for the 25 Year Club Dinner, Community Breakfast, and Fireside Chats. Negotiated with and selected outside vendors. Compiled documents for senior administrators and others. Coordinated marketing initiatives, such as mass campus emails, website updates, and print material creation. Assisted with the event logistics and management of the World Leaders Forum, Heads of State Week, the opening of the Manhattanville Campus, and the Trustees Dinners.

University of Delaware, Newark, DE
Events Manager, Athletics Department, August 2014 - June 2016
Provided support as the primary event manager for numerous sporting events. Worked closely with marketing, media relations, multimedia, development and auxiliary services on all event logistics. Managed evening and weekend operations of the Athletics Complex. Planned outside events with clients such as Special Olympics, Bands of America, and the March of Dimes. Hired, trained, scheduled and supervised 75 students for 200+ events.

University of Delaware, Newark, DE
Event Operations Intern, Athletics Department, August 2013 - May 2014
Assisted with the setup, facilitation, and breakdown of 100+ varsity and outside events. Handled credential and walkie-talkie distribution for events. Conducted facility checks, and maintenance. Managed inventory of equipment.

INTERESTS

Touring every Major League Baseball stadium; space exploration; cooking; hiking

JOSEPH A. PERCARIO III

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EDUCATION

Maurice A. Deane School of Law at Hofstra University, Hempstead, NY
Juris Doctor expected December 2020
GPA: 3.52; Rank: Top 22% (56/249) [as of Spring 2019, not including Summer semester GPA]
Activities: Hofstra Trial Advocacy Association Intramural Competition; Public Justice Foundation; The Inn of Court

Rutgers, The State University of New Jersey, New Brunswick, NJ
Bachelor of Arts, English, Minor in Music, May 2012

EXPERIENCE

Senator Nicholas P. Scutari, Union County, NJ
Intern, June 2019 – August 2019
I interned for the Senator over the Summer and assisted in his legislative roles by researching constitutionality of proposed bills as well as aiding in writing proposed bills. I was able to frequent the State House where voting took place, sit in on caucus meetings, and attended various committees in which the Senator was the legislative chair. I spent most of my time in the Senator's legal practice where he is a personal injury/criminal defense attorney. I conducted legal research, wrote memorandums in office as well as to the courts, consulted clients, accompanied Nick to depositions, arbitrations, trials, and settlement conferences. I also aided the Senator once a week where he worked as a prosecutor for the New Jersey municipality of Carteret.

Joe Percario General Contractors, LLC, Roselle, NJ
Marketing Manager & Property Manager, May 2013 – Present
Oversee the marketing department, which entails working directly with the sales department and the organization of events as well as the creation of modules to be used by production and sales departments. Control web administration for web presence. Handle the variance process for homeowners when their remodeling project requires one with the zoning board and board of adjustment for their respective municipality. Manage the maintenance of properties for 44 tenants.

Lethal Affection, LLC, Warren, NJ
Guitarist & Owner/Operator, March 2012 – Present
Responsible for the formation of this rock band and composition of musical pieces. Handle all event booking, marketing, and communication.

Percario, Nitti & Struben LLC, Linden, NJ
Paralegal & Investigation, June 2010 – May 2013
Conducted case investigation for personal injury claims. Drafted complaints, prepared interrogatories, and worked as the client's main form of contact.

Business Today Magazine/International Profit Associates, Buffalo Grove, IL
Sales and Marketing Intern, July 2007 – August 2007/July 2008 – August 2008
Developed various products that have been launched. Maintained statistics of results of research and findings. Utilized behavioral profiling to enhance the results of the sales of the corporation. Created correspondence with businesses throughout North America to promote future sales.

Private Guitar Teacher, Somerset/Morris County, NJ
January 2006 – January 2008
Developed a roster of over twenty students between the ages of 8 and 55. Taught my pupils to play the guitar and the rich history of the instrument.

CERTIFICATIONS

Lexis Advance Proficiency Certification; WestLaw Legal Research Certification

INTERESTS

Musical composition; animation; animals and animal welfare; historical fiction/fantasy novels; writing short stories; baroque music; voice acting

"Red Flag" – Adult

Billy Donahue is a 36-year-old resident of Fresh Meadows in Queens, where he lives with his wife Moniea Gonzales. Billy grew up in Elizabeth, New Jersey, where he watched his father struggle with drug and alcohol addiction and take his aggression out on his mother, himself, and his two younger brothers.

After high school, Billy decided to move to Queens, NY to distance himself from his family, and later receiving a Bachelor's Degree from Queens College in Psychology. Afterwards, he was appointed as a NYPD police officer, going on thirteen years. Billy has also purchased some commercial real estate, including mainly cash businesses like a hair salon and an auto-body shop, in Brownsville and East New York, collecting rent monthly. One of his buildings had just been broken into, and Billy had to find time from his jobs to go assess and repair the damage and find new tenants after the previous ones left.

Monica knew that Billy had been under extra stress recently, and she worried because he wouldn't talk to her about it. They had been unsuccessfully trying to get pregnant, and Billy was crestfallen when a doctor's visit revealed that Billy was sterile. Billy was also recently named in a lawsuit, which Monica thought eating him alive. Whenever he was home he drank excessively until incapacitated. Some nights she watched him incessantly pacing back and forth, and grew frightened that he was going to become dangerous to her or himself.

Billy would watch his body camera videos at night, re-running his police tours, over and over again. Monica thought he was slowly becoming a different person because of his police work, and his failure to take a break from his buildings. The highly stressful police work was taking its toll as Billy obsessed over the dread that he could be injured or killed on any given day while on duty. The nature of his work also was to desensitizing him as he was obsessing over the

traumatic content matter even at home. Monica feared Billy's obsessive thinking, despondency, dissociation, while the alcohol misuse exacerbated his downward spiral.

Monica was growing more afraid, and she suggested that Billy seek help, for his mental well-being and his alcoholism. He looked at her dumfounded, "Are you crazy? If I go to them, not only could I lose my ability to carry my gun or be on duty in the field, I'd never get promoted. They're going to bench me. My brothers would just look at me as a liability. Nobody would want to work with me. I could lose my job." She didn't pry anymore but felt more convinced of her fears. He refused to come to bed, and more and more she found him passed out on the couch for hours, most recently clutching his pistol.

The next day when Billy went to work, Monica decided that she was not going to take the risk. She had read recently about the growing number of NYPD suicides, terrified that he would get the same idea. Monica filed for a temporary extreme risk protection order describing what she believed were risk factors, including isolation, previous trauma, hopelessness, alcohol use, and unrestricted access to a weapon. She wanted to get Billy help at any cost and didn't want to lose him because he would feel stigmatized for reaching out on his own. Monica hopes he will understand that she only has his best interests at heart. She was hesitant to do so up to that point knowing what it could mean for his career, reputation, his self-esteem. But after concluding that there were severe risk factors and a growing suicidal trend, Monica knew it was the right decision to ensure his safety.

"Red Flag" – High School Student

Kyle Williams, an eighteen year old sophomore at Plainedge High School, has always been a "bad seed," constantly in trouble in and out of school. Beginning in kindergarten and throughout elementary school, it seemed he fell almost daily into verbal and physical altercations with other students. Once, he got in a rock throwing fight and seriously injured another student. Once a teenager, Kyle started to show a propensity for violence towards small animals, and expressed enthusiasm for guns and other weapons. Suggestions and later stronger "recommendations" that he get therapy were rejected by his parents. However, despite these textbook warnings signs that Kyle could be dangerous and pleas from neighbors to school authorities and later, law enforcement, no one had ever taken action.

Now most recently, the past few months have been extremely rough: his girlfriend broke up with him unexpectedly for which he has been taunted without let-up. Physically small, he has been bullied more and more. Kyle is known as the social outcast of the entire high school. This semester, Kyle has been the typical nuisance for the school as he continues to get in fights, but when bullied and even sometimes spontaneously, he has also started to threaten to kill students, even going so far to introduce himself as a "school shooter," and tweeted "You're all gonna get what's coming to you." Kyle has become such a problem at school that the administration has debated whether to expel him.

Another student, Howard Smith tried to calm-intervene but recently, has become increasingly frightened by Kyle's behavior and has sought the help of her teacher, Mr. Jefferson. She related that Kyle constantly mentions "his bunch of guns, and would love to kill someone." Even worse, Howard found Kyle's personal website where he posted violent videos as well as tributes to school shooters, such as Eric Harris and Dylan Klebold. Many students are aware of Kyle's posts, all know his behavior and tendencies, and some even refuse to come to school.

Luckily, Mr. Jefferson is well-versed in New York law, and knows about New York's new "Extreme Risk Protection Order" law. He confidently informs Howard that he will apply to the courts for temporary removal of Kyle's guns from his possession as well as an order preventing Kyle from purchasing any guns, and to get the final order, he must show by clear and convincing evidence that Kyle "will likely engage in conduct that will result in serious harm to others."

Kwilliams98
@Skeww1Shuter

Follow

I got 99 guns and bitch will get one.

2:48 PM - 6 May 2015

KWilliams98
@SkewlShuter

Follow

I'm shooting up the next person who comes through the library doors, can't deal with these respawn points.

2:48 PM - 2 May 2015


6
7
8
X
GROUP
THERAPY

Kyle Williams
Yesterday at 2:55am

Thots and prayers to all who cross me. Like and I'll spare ya

Like · Comment · Share

4 people like this.

Write a comment ...

Kwilliams98
@skewvishuter

Follow

You're all gonna get what's coming to you.

1:32 AM - 4 May 2015

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Article 510 - NY Criminal Procedure Law

RECOGNIZANCE, BAIL AND COMMITMENT-DETERMINATION OF APPLICATION FOR RECOGNIZANCE OR BAIL, ISSUANCE OF SECURING ORDERS, AND RELATED MATTERS

S 510.10 Securing order; when required.

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, initially comes under the control of a court, such court must, by a securing order, either release him on his own recognizance, fix bail or commit him to the custody of the sheriff. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and he is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

S 510.15 Commitment of principal under sixteen.

1. When a principal who is under the age of sixteen is committed to the custody of the sheriff the court must direct that the principal be taken to and lodged in a place certified by the state division for youth as a juvenile detention facility for the reception of children. Where such a direction is made the sheriff shall deliver the principal in accordance therewith and such person shall although lodged and cared for in a juvenile detention facility continue to be deemed to be in the custody of the sheriff. No principal under the age of sixteen to whom the provisions of this section may apply shall be detained in any prison, jail, lockup, or other place used for adults convicted of a crime or under arrest and charged with the commission of a crime without the approval of the state division for youth in the case of each principal and the statement of its reasons therefor. The sheriff shall not be liable for any acts done to or by such principal resulting from negligence in the detention of and care for such principal, when the principal is not in the actual custody of the sheriff.

2. Except upon consent of the defendant or for good cause shown, in any case in which a new securing order is issued for a principal previously committed to the custody of the sheriff pursuant to this section, such order shall further direct the sheriff to deliver the

principal from a juvenile detention facility to the person or place specified in the order.

S 510.20 Application for recognizance or bail; making and determination thereof in general.

1. Upon any occasion when a court is required to issue a securing order with respect to a principal, or at any time when a principal is confined in the custody of the sheriff as a result of a previously issued securing order, he may make an application for recognizance or bail.

2. Upon such application, the principal must be accorded an opportunity to be heard and to contend that an order of recognizance or bail must or should issue, that the court should release him on his own recognizance rather than fix bail, and that if bail is fixed it should be in a suggested amount and form.

S 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; and

(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; and

(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.

S 510.40 Application for recognizance or bail; determination thereof, form of securing order and execution thereof.

1. An application for recognizance or bail must be determined by a securing order which either:

(a) Grants the application and releases the principal on his own recognizance; or

(b) Grants the application and fixes bail; or

(c) Denies the application and commits the principal to, or retains him in, the custody of the sheriff.

2. Upon ordering that a principal be released on his own recognizance, the court must direct him to appear in the criminal action or proceeding involved whenever his attendance may be required and to render himself at all times amenable to the orders and processes of the court. If such principal is in the custody of the sheriff or at liberty upon bail at the time of the order, the court must direct that he be discharged from such custody or, as the case may be, that his bail be exonerated.

3. Upon the issuance of an order fixing bail, and upon the posting thereof, the court must examine the bail to determine whether it complies with the order. If it does, the court must, in the absence of some factor or circumstance which in law requires or authorizes disapproval thereof, approve the bail and must issue a certificate of release, authorizing the principal to be at liberty, and, if he is in the custody of the sheriff at the time, directing the sheriff to discharge him therefrom. If the bail fixed is not posted, or is not approved after being posted, the court must order that the principal be committed to the custody of the sheriff.

S 510.50 **Enforcement of securing order.**

When the attendance of a principal confined in the custody of the sheriff is required at the criminal action or proceeding at a particular time and place, the court may compel such attendance by directing the sheriff to produce him at such time and place. If the principal is at liberty on his own recognizance or on bail, his attendance may be achieved or compelled by various methods, including notification and the issuance of a bench warrant, prescribed by law in provisions governing such matters with respect to the particular kind of action or proceeding involved.

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As of 11/06/2019 01:54PM, the Laws database is current through 2019
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Criminal Procedure

§ 500.10 Recognizance, bail and commitment; definitions of terms.

As used in this title, and in this chapter generally, the following terms have the following meanings:

* 1. "Principal" means a defendant in a criminal action or proceeding, or a person adjudged a material witness therein, or any other person so involved therein that he may by law be compelled to appear before a court for the purpose of having such court exercise control over his person to secure his future attendance at the action or proceeding when required, and who in fact either is before the court for such purpose or has been before it and been subjected to such control.

* NB Effective until January 1, 2020

* 1. "Principal" means a defendant in a criminal action or proceeding, or a person adjudged a material witness therein, or any other person so involved therein that the principal may by law be compelled to appear before a court for the purpose of having such court exercise control over the principal's person to secure the principal's future attendance at the action or proceeding when required, and who in fact either is before the court for such purpose or has been before it and been subjected to such control.

* NB Effective January 1, 2020

* 2. "Release on own recognizance." A court releases a principal on his own recognizance when, having acquired control over his person, it permits him to be at liberty during the pendency of the criminal action or proceeding involved upon condition that he will appear thereat whenever his attendance may be required and will at all times render himself amenable to the orders and processes of the court.

* NB Effective until January 1, 2020

* 2. "Release on own recognizance." A court releases a principal on the principal's own recognizance when, having acquired control over the principal's person, it permits the principal to be at liberty during the pendency of the criminal action or proceeding involved upon condition that the principal will appear thereat whenever the principal's attendance may be required and will at all times render the principal amenable to the orders and processes of the court.

* NB Effective January 1, 2020

3. "Fix bail." A court fixes bail when, having acquired control over the person of a principal, it designates a sum of money and stipulates that, if bail in such amount is posted on behalf of the principal and approved, it will permit him to be at liberty during the pendency of the criminal action or proceeding involved.

* 3-a. "Release under non-monetary conditions." A court releases a principal under non-monetary conditions when, having acquired control over a person, it authorizes the person to be at liberty during the pendency of the criminal action or proceeding involved under conditions ordered by the court, which shall be the least restrictive conditions that will reasonably assure the principal's return to court. Such conditions may include, among other conditions reasonable under the circumstances: that the principal be in contact with a pretrial services agency serving principals in that county; that the principal abide by reasonable, specified restrictions on travel that are reasonably related to an actual risk of flight from the jurisdiction; that the principal refrain from possessing a firearm, destructive device or other dangerous weapon; that, when it is shown pursuant to subdivision four of section 510.45 of this title that no other realistic monetary condition or set of non-monetary conditions will suffice to reasonably assure the person's return to court, the person be placed in reasonable pretrial supervision with a pretrial services agency serving principals in that county; that, when it is shown pursuant to paragraph (a) of subdivision

four of section 510.40 of this title that no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure the principal's return to court, the principal's location be monitored with an approved electronic monitoring device, in accordance with such subdivision four of section 510.40 of this title. A principal shall not be required to pay for any part of the cost of release on non-monetary conditions.

* NB Effective January 1, 2020

* 4. "Commit to the custody of the sheriff." A court commits a principal to the custody of the sheriff when, having acquired control over his person, it orders that he be confined in the custody of the sheriff during the pendency of the criminal action or proceeding involved.

* NB Effective until January 1, 2020

* 4. "Commit to the custody of the sheriff." A court commits a principal to the custody of the sheriff when, having acquired control over the principal's person, it orders that the principal be confined in the custody of the sheriff during the pendency of the criminal action or proceeding involved.

* NB Effective January 1, 2020

* 5. "Securing order" means an order of a court committing a principal to the custody of the sheriff, or fixing bail, or releasing him on his own recognizance.

* NB Effective until January 1, 2020

* 5. "Securing order" means an order of a court committing a principal to the custody of the sheriff or fixing bail, where authorized, or releasing the principal on the principal's own recognizance or releasing the principal under non-monetary conditions.

* NB Effective January 1, 2020

* 6. "Order of recognizance or bail" means a securing order releasing a principal on his own recognizance or fixing bail.

* NB Effective until January 1, 2020

* 6. "Order of recognizance or bail" means a securing order releasing a principal on the principal's own recognizance or under non-monetary conditions or, where authorized, fixing bail.

* NB Effective January 1, 2020

* 7. "Application for recognizance or bail" means an application by a principal that the court, instead of committing him to or retaining him in the custody of the sheriff, either release him on his own recognizance or fix bail.

* NB Effective until January 1, 2020

* 7. "Application for recognizance or bail" means an application by a principal that the court, instead of committing the principal to or retaining the principal in the custody of the sheriff, either release the principal on the principal's own recognizance, release under non-monetary conditions, or, where authorized, fix bail.

* NB Effective January 1, 2020

8. "Post bail" means to deposit bail in the amount and form fixed by the court, with the court or with some other authorized public servant or agency.

* 9. "Bail" means cash bail or a bail bond.

* NB Effective until January 1, 2020

* 9. "Bail" means cash bail, a bail bond or money paid with a credit card.

* NB Effective January 1, 2020

10. "Cash bail" means a sum of money, in the amount designated in an order fixing bail, posted by a principal or by another person on his behalf with a court or other authorized public servant or agency, upon

the condition that such money will become forfeit to the people of the state of New York if the principal does not comply with the directions of a court requiring his attendance at the criminal action or proceeding involved or does not otherwise render himself amenable to the orders and processes of the court.

11. "Obligor" means a person who executes a bail bond on behalf of a principal and thereby assumes the undertaking described therein. The principal himself may be an obligor.

12. "Surety" means an obligor who is not a principal.

13. "Bail bond" means a written undertaking, executed by one or more obligors, that the principal designated in such instrument will, while at liberty as a result of an order fixing bail and of the posting of the bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event that he fails to do so the obligor or obligors will pay to the people of the state of New York a specified sum of money, in the amount designated in the order fixing bail.

14. "Appearance bond" means a bail bond in which the only obligor is the principal.

15. "Surety bond" means a bail bond in which the obligor or obligors consist of one or more sureties or of one or more sureties and the principal.

16. "Insurance company bail bond" means a surety bond, executed in the form prescribed by the superintendent of financial services, in which the surety-obligor is a corporation licensed by the superintendent of financial services to engage in the business of executing bail bonds.

17. "Secured bail bond" means a bail bond secured by either:

(a) Personal property which is not exempt from execution and which, over and above all liabilities and encumbrances, has a value equal to or greater than the total amount of the undertaking; or

(b) Real property having a value of at least twice the total amount of the undertaking. For purposes of this paragraph, value of real property is determined by either:

(i) dividing the last assessed value of such property by the last given equalization rate or in a special assessing unit, as defined in article eighteen of the real property tax law, the appropriate class ratio established pursuant to section twelve hundred two of such law of the assessing municipality wherein the property is situated and by deducting from the resulting figure the total amount of any liens or other encumbrances upon such property; or

(ii) the value of the property as indicated in a certified appraisal report submitted by a state certified general real estate appraiser duly licensed by the department of state as provided in section one hundred sixty-j of the executive law, and by deducting from the appraised value the total amount of any liens or other encumbrances upon such property. A lien report issued by a title insurance company licensed under article sixty-four of the insurance law, that guarantees the correctness of a lien search conducted by it, shall be presumptive proof of liens upon the property.

18. "Partially secured bail bond" means a bail bond secured only by a deposit of a sum of money not exceeding ten percent of the total amount of the undertaking.

19. "Unsecured bail bond" means a bail bond, other than an insurance company bail bond, not secured by any deposit of or lien upon property.

20. "Court" includes, where appropriate, a judge authorized to act as described in a particular statute, though not as a court.

* 21. "Qualifies for electronic monitoring," for purposes of subdivision four of section 510.40 of this title, means a person charged with a felony, a misdemeanor crime of domestic violence, a misdemeanor defined in article one hundred thirty of the penal law, a crime and the circumstances of paragraph (b) of subdivision two of section 530.60 of this title apply, or any misdemeanor where the defendant stands previously convicted, within the past five years, of a violent felony offense as defined in section 70.02 of the penal law. For the purposes of this subdivision, in calculating such five year period, any period of time during which the defendant was incarcerated for any reason between the time of the commission of any such previous crime and the time of commission of the present crime shall be excluded and such five year period shall be extended by a period or periods equal to the time served under such incarceration.

* NB Effective January 1, 2020

* 22. "Misdemeanor crime of domestic violence," for purposes of subdivision twenty-one of this section, means a misdemeanor under the penal law provisions and circumstances described in subdivision one of section 530.11 of this title.

* NB Effective January 1, 2020

As of 11/06/2019 01:54PM, the Laws database is current through 2019 Chapters 1-105, 107-444

Criminal Procedure

* § 510.10 Securing order; when required.

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, initially comes under the control of a court, such court must, by a securing order, either release him on his own recognizance, fix bail or commit him to the custody of the sheriff. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and he is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

* NB Effective until January 1, 2020

* § 510.10 Securing order; when required; alternatives available; standard to be applied.

1. When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall, in accordance with this title, by a securing order release the principal on the principal's own recognizance, release the principal under non-monetary conditions, or, where authorized, fix bail or commit the principal to the custody of the sheriff. In all such cases, except where another type of securing order is shown to be required by law, the court shall release the principal pending trial on the principal's own recognizance, unless it is demonstrated and the court makes an individualized determination that the principal poses a risk of flight to avoid prosecution. If such a finding is made, the court must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing.

2. A principal is entitled to representation by counsel under this chapter in preparing an application for release, when a securing order is being considered and when a securing order is being reviewed for modification, revocation or termination. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.

3. In cases other than as described in subdivision four of this section the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.

4. Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged with a qualifying offense which is a felony, the court may commit the principal to the custody of the sheriff. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:

(a) a felony enumerated in section 70.02 of the penal law, other than burglary in the second degree as defined in subdivision two of section 140.25 of the penal law or robbery in the second degree as defined in subdivision one of section 160.10 of the penal law;

(b) a crime involving witness intimidation under section 215.15 of the penal law;

(c) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;

(d) a class A felony defined in the penal law, other than in article two hundred twenty of such law with the exception of section 220.77 of such law;

(e) a felony sex offense defined in section 70.80 of the penal law or a crime involving incest as defined in section 255.25, 255.26 or 255.27 of such law, or a misdemeanor defined in article one hundred thirty of such law;

(f) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law;

(g) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;

(h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article; or

(i) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law.

5. Notwithstanding the provisions of subdivisions three and four of this section, with respect to any charge for which bail or remand is not ordered, and for which the court would not or could not otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

6. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and the principal is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

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Criminal Procedure

* § 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; and

(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; and

(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.

* NB Effective until January 1, 2020

* § 510.30 Application for securing order; rules of law and criteria controlling determination.

1. With respect to any principal, the court in all cases, unless otherwise provided by law, must impose the least restrictive kind and degree of control or restriction that is necessary to secure the principal's return to court when required. In determining that matter, the court must, on the basis of available information, consider and take into account information about the principal that is relevant to the principal's return to court, including:

(a) The principal's activities and history;

(b) If the principal is a defendant, the charges facing the principal;

(c) The principal's criminal conviction record if any; (d) The principal's 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; (e) The principal's previous record with respect to flight to avoid criminal prosecution; (f) If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances, and, in cases where bail is authorized, the principal's ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond;

(g) 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:

(i) 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

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

(h) If the principal is a defendant, in the case of an application for a securing order pending appeal, the merit or lack of merit of the appeal.

2. 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 subdivision one of this section.

3. When bail or recognizance is ordered, the court shall inform the principal, if the principal 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 may be authorized to 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 the principal commits a subsequent felony while at liberty upon such order.

* NB Effective January 1, 2020

New York Laws

New York State Law

Criminal Procedure Law

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Article 150 - NY Criminal Procedure Law

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THE APPEARANCE TICKET

Section	Description
150.10	Appearance ticket; definition, form and content.
150.20	Appearance ticket; when and by whom issuable.
150.30	Appearance ticket; issuance and service thereof after arrest upon posting of pre-arraignment bail.
150.40	Appearance ticket; where returnable; how and where served.
150.50	Appearance ticket; filing a local criminal court accusatory instrument; dismissal of insufficient instrument.
150.60	Appearance ticket; defendant`s failure to appear.
150.70	Appearance ticket; fingerprinting of defendant.
150.75	Appearance ticket; certain cases.

S 150.10 Appearance ticket; definition, form and content.

1. An appearance ticket is a written notice issued and subscribed by a police officer or other public servant authorized by state law or local law enacted pursuant to the provisions of the municipal home rule law to issue the same, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his alleged commission of a designated offense. A notice conforming to such definition constitutes an appearance ticket regardless of whether it is referred to in some other provision of law as a summons or by any other name or title.

2. When an appearance ticket as defined in subdivision one of this section is issued to a person in conjunction with an offense charged in a simplified information, said appearance ticket shall contain the language, set forth in subdivision four of section 100.25, notifying the defendant of his right to receive a supporting deposition.

S 150.20 Appearance ticket; when and by whom issuable.

1. Whenever a police officer is authorized pursuant to section 140.10 to arrest a person without a warrant for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, he may, subject to the provisions of subdivisions three and four of section 150.40, instead issue to and serve upon such person an appearance ticket.

2. (a) Whenever a police officer has arrested a person without a warrant for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law pursuant to section 140.10, or (b) whenever a peace officer, who is not authorized by law to issue an appearance ticket, has arrested a person for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law pursuant to section 140.25, and has requested a police officer to issue and serve upon such arrested person an appearance ticket pursuant to subdivision four of section 140.27, or (c) whenever a person has been arrested for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law and has been delivered to the custody of an appropriate police officer pursuant to section 140.40, such police officer may, instead of bringing such person before a local

criminal court and promptly filing or causing the arresting peace officer or arresting person to file a local criminal court accusatory instrument therewith, issue to and serve upon such person an appearance ticket. The issuance and service of an appearance ticket under such circumstances may be conditioned upon a deposit of pre-arraignment bail, as provided in section 150.30.

3. A public servant other than a police officer, who is specially authorized by state law or local law enacted pursuant to the provisions of the municipal home rule law to issue and serve appearance tickets with respect to designated offenses other than class A, B, C or D felonies or violations of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, may in such cases issue and serve upon a person an appearance ticket when he has reasonable cause to believe that such person has committed a crime, or has committed a petty offense in his presence.

S 150.30 Appearance ticket; issuance and service thereof after arrest upon posting of pre-arraignment bail.

1. Issuance and service of an appearance ticket by a police officer following an arrest without a warrant, as prescribed in subdivision two of section 150.20, may be made conditional upon the posting of a sum of money, known as pre-arraignment bail. In such case, the bail becomes forfeit upon failure of such person to comply with the directions of the appearance ticket. The person posting such bail must complete and sign a form which states (a) the name, residential address and occupation of each person posting cash bail; and (b) the title of the criminal action or proceeding involved; and (c) the offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and (d) the name of the principal and the nature of his involvement in or connection with such action or proceeding; and (e) the date of the principal`s next appearance in court; and (f) an acknowledgement that the cash bail will be forfeited if the principal does not comply with the directions of the appearance ticket; and (g) the amount of money posted as cash bail. Such pre-arraignment bail may be posted as provided in subdivision two or three.

2. A desk officer in charge at a police station, county jail, or police headquarters, or any of his superior officers, may in such place, fix pre-arraignment bail, in an amount prescribed in this subdivision, and upon the posting thereof must issue and serve an appearance ticket

upon the arrested person, give a receipt for the bail, and release such person from custody. Such pre-arraignment bail may be fixed in the following amounts:

(a) If the arrest was for a class E felony, any amount not exceeding seven hundred fifty dollars.

(b) If the arrest was for a class A misdemeanor, any amount not exceeding five hundred dollars.

(c) If the arrest was for a class B misdemeanor or an unclassified misdemeanor, any amount not exceeding two hundred fifty dollars.

(d) If the arrest was for a petty offense, any amount not exceeding one hundred dollars.

3. A police officer, who has arrested a person without a warrant pursuant to subdivision two of section 150.20 of this chapter for a traffic infraction, may, where he reasonably believes that such arrested person is not licensed to operate a motor vehicle by this state or any state covered by a reciprocal compact guaranteeing appearance as is provided in section five hundred seventeen of the vehicle and traffic law, fix pre-arraignment bail in the amount of fifty dollars; provided, however, such bail shall be posted by means of a credit card or similar device. Upon the posting thereof, said officer must issue and serve an appearance ticket upon the arrested person, give a receipt for the bail, and release such person from custody.

4. The chief administrator of the courts shall establish a system for the posting of pre-arraignment bail by means of credit card or similar device, as is provided by section two hundred twelve of the judiciary law. The head of each police department or police force and of any state department, agency, board, commission or public authority having police officers who fix pre-arraignment bail as provided herein may elect to use the system established by the chief administrator or may establish such other system for the posting of pre-arraignment bail by means of credit card or similar device as he or she may deem appropriate.

S 150.40 Appearance ticket; where returnable; how and where served.

1. An appearance ticket must be made returnable in a local criminal court designated in section 100.55 as one with which an information for the offense in question may be filed.

2. An appearance ticket, other than one issued for a traffic infraction relating to parking, must be served personally.

3. An appearance ticket may be served anywhere in the county in which

the designated offense was allegedly committed or in any adjoining county, and may be served elsewhere as prescribed in subdivision four.

4. A police officer may, for the purpose of serving an appearance ticket upon a person, follow him in continuous close pursuit, commencing either in the county in which the alleged offense was committed or in an adjoining county, in and through any county of the state, and may serve such appearance ticket upon him in any county in which he overtakes him.

S 150.50 Appearance ticket; filing a local criminal court accusatory instrument; dismissal of insufficient instrument.

1. A police officer or other public servant who has issued and served an appearance ticket must, at or before the time such appearance ticket is returnable, file or cause to be filed with the local criminal court in which it is returnable a local criminal court accusatory instrument charging the person named in such appearance ticket with the offense specified therein. Nothing herein contained shall authorize the use of a simplified information when not authorized by law.

2. If such accusatory instrument is not sufficient on its face, as prescribed in section 100.40, and if the court is satisfied that on the basis of the available facts or evidence it would be impossible to draw and file an accusatory instrument which is sufficient on its face, it must dismiss such accusatory instrument.

S 150.60 Appearance ticket; defendant`s failure to appear.

If after the service of an appearance ticket and the filing of a local criminal court accusatory instrument charging the offense designated therein, the defendant does not appear in the designated local criminal court at the time such appearance ticket is returnable, the court may issue a summons or a warrant of arrest based upon the local criminal court accusatory instrument filed.

S 150.70 Appearance ticket; fingerprinting of defendant.

Upon the arraignment of a defendant who has not been arrested and whose court attendance has been secured by the issuance and service of an appearance ticket pursuant to subdivision one of section 150.20, the court must, if an offense charged in the accusatory instrument is one specified in subdivision one of section 160.10, direct that the defendant be fingerprinted by the appropriate police officer or agency, and that he appear at an appropriate designated time and place for such

purpose.

S 150.75 Appearance ticket; certain cases.

1. The provisions of this section shall apply in any case wherein the defendant is alleged to have committed an offense defined in section 221.05 of the penal law, and no other offense is alleged, notwithstanding any provision of this chapter or any other law to the contrary.

2. Whenever the defendant is arrested without a warrant, an appearance ticket shall promptly be issued and served upon him, as provided in this article. The issuance and service of the appearance ticket may be made conditional upon the posting of pre-arraignment bail as provided in section 150.30 of this chapter but only if the appropriate police officer (a) is unable to ascertain the defendant`s identity or residence address; or (b) reasonably suspects that the identification or residence address given by the defendant is not accurate; or (c) reasonably suspects that the defendant does not reside within the state. No warrant of arrest shall be issued unless the defendant has failed to appear in court as required by the terms of the appearance ticket or by the court.

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New York's Bail Reform Law
Summary of Major Components

On April 1, 2019, New York State passed sweeping criminal justice reform legislation that eliminates money bail and pretrial detention for nearly all misdemeanor and nonviolent felony cases. The measure goes into effect in January 2020. This summary explains the reform's potential implications.

Money Bail and Pretrial Detention Are Eliminated in Most Cases

- **Misdemeanors:** Money bail is eliminated with only two exceptions: sex offense misdemeanors and criminal contempt charges for an order of protection violation in a domestic violence case. Also, straight pretrial detention ("remand") is eliminated in all misdemeanor cases.

- **Nonviolent Felonies:** Both money bail and pretrial detention are eliminated in virtually all nonviolent felonies, with a limited number of exceptions: witness intimidation or tampering, conspiracy to commit murder, felony criminal contempt charges involving domestic violence, and a limited number of offenses against children, sex offenses, and terrorism-related charges.

- **Violent Felonies:** Money bail and detention are still permitted in virtually all violent felonies, except for specific sub-sections of burglary and robbery in the second degree. Bail and detention are also permitted in cases classified as Class A felonies, most of which also involve violence. A notable caveat is that bail and detention are eliminated for all Class A drug felonies, with the sole exception of operating as a major trafficker.

Overall, of the almost 205,000 criminal cases arraigned in New York City in 2018, only 10 percent would have been eligible for money bail under the new law.

Judges Are Required to Consider Financial Resources When Setting Bail

Even where money bail remains permissible, the new law imposes new requirements designed to ensure that defendants can afford bail when it is set. First, the court must always set at least three forms of bail and must include a partially secured or unsecured bond—two of the least onerous forms. A partially secured bond allows defendants (or their friends or family) to pay 10 percent or less of the total bail amount up front; the balance is only paid if the defendant skips court. An unsecured bond works the same way, but no up-front payment is required. Just as important, the law requires judges to consider each defendant's ability to pay bail before setting an amount.

Judges Are Encouraged to Release Defendants While Their Cases Are Pending

The bail reform law includes specific provisions encouraging courts to release defendants "on recognizance" while their cases are pending. In these cases, defendants are under no restriction and must simply appear at their appointed court dates. The court must release defendants on recognizance unless they pose "a risk of flight."

The Legislation Allows for Conditions of Release Other Than Money Bail in Certain Circumstances

In those cases where a risk of flight exists, the legislation requires judges to set the "least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court." Examples that courts are likely to use include supervised release, enhanced court date reminders, travel restrictions, or limitations on firearms or weapons possession during the pretrial period. At a minimum, the law also requires that all released defendants be reminded of any upcoming court appearances by text, phone, email, or first-class mail—and each defendant must be able to select a preferred notification method.

Electronic monitoring is allowed for 60 days (with an option to renew) in the following cases: (1) felonies, (2) misdemeanor domestic violence, (3) misdemeanor sex offenses, (4) misdemeanors where the defendant was convicted of a violent felony in the past 5 years, and (5) a limited number of circumstances where a judge finds that defendants have engaged in pretrial misbehavior. The law states that electronic monitoring may only be ordered if "no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure a principal's return to court."

Other Key Reform Provisions

- **Risk Assessment:** Courts may consider information from formal release assessment tools that are designed to predict a defendant's likelihood of appearing in court. Any such tools are required to be publicly available, free of racial or gender bias, and validated for predictive accuracy. Release decisions may *not* be based on an assessment of the defendant's future dangerousness or risk to public safety.
- **Bench Warrant Grace Period:** The new law prohibits courts from issuing a warrant for 48 hours whenever a defendant fails to appear, unless the defendant is charged with a new crime or there is evidence of a "willful" failure to appear. During the 48-hour period, the defense attorney can contact the defendant and encourage a voluntary return.
- **Responses to Noncompliance:** The new law allows courts to revoke release conditions and set new conditions, including money bail and detention, in response to specified forms of pretrial misbehavior. They include committing a new felony where the defendant was initially charged with a felony, intimidating a witness, persistently and willfully failing to appear at scheduled court dates, or violating an order of protection. In such cases, the court must first hold a hearing where the defendant may present evidence or cross-examine witnesses.

Potential Impacts

The precise effects of the law cannot be predicted in advance, since they partly depend on how new provisions are implemented on the ground. However, a preliminary analysis suggests that the bail reform law will significantly reduce pretrial detention. Currently in New York City, 43 percent of the almost 5,000 people detained pretrial would have been released under the new legislation as they would no longer be eligible for either bail or detention. (This analysis excludes people held pretrial for a parole violation or after a sentence is imposed.) The impacts outside of New York City could be even greater, because many upstate jurisdictions currently have higher rates of detention with misdemeanors.

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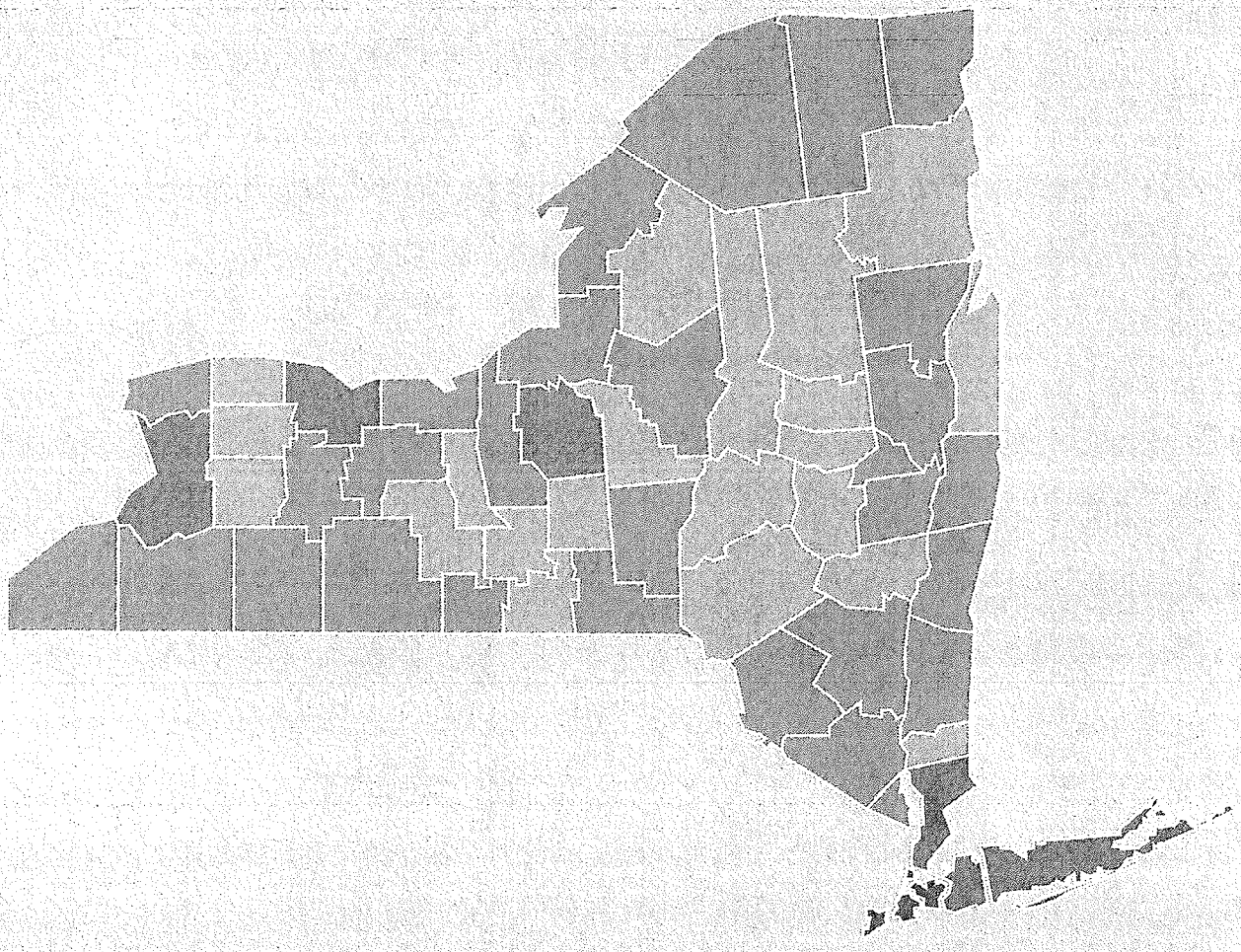
New York, New York: Highlights of the 2019 Bail Reform Law

Insha Rahman



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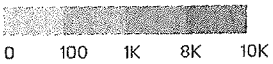
Cover image from Vera Institute of Justice, *Empire State of Incarceration* (New York: Vera Institute of Justice, 2018), "Jail Census" (showing average daily number of people held in jail in each county), https://www.vera.org/state-of-incarceration/data-clearinghouse.



Source: Non-New York City data is from the New York State Division of Criminal Justice Services and New York City data is from the New York City Department of Correction.

Contents

Introduction

In April 2019, New York passed legislation on bail reform to update a set of state pretrial laws that had remained largely untouched since 1971. Compared to California's Senate Bill 10, passed in August 2018, or New Jersey's Bail Reform and Speedy Trial Act, enacted in January 2017, New York's new bail law received relatively little media coverage or national press. To many interested in bail and pretrial justice, New York's reform seemed un-newsworthy as it didn't go as far as originally promised to eliminate money bail entirely.

If implemented effectively, a conservative estimate of the legislation's impact suggests that New York can expect at least a 40 percent reduction overall in the state's pretrial jail population.

Yet the relative lack of fanfare over the passage of New York's new bail law belies its historic and transformative potential to end mass incarceration at the local level. If implemented effectively, a conservative estimate of the legislation's impact suggests that New York can expect at least a 40 percent reduction overall in the state's pretrial jail population.[1] That bests the 30.4 percent reduction achieved by bail reform in New Jersey, and the anticipated impact of Senate Bill 10 in California—which is currently on hold pending a challenge by the bail bond industry—if it goes into effect in 2020.[2]

What exactly comprises New York's new bail law? What inspired this set of reforms? Can bail reform truly claim to be bold if money isn't eliminated entirely? And what precedent might New York's model of bail reform set for other jurisdictions?

This primer provides historical context and an overview of the legislation itself, highlights five unique aspects of the legislation, and offers a few thoughts for how the wins in New York can inspire more comprehensive and transformative bail reform elsewhere.

The origins of New York's new bail law

In recent years, New York City has experienced a remarkable decline in its jail population, from more than 20,000 people in jail on any given day in the early 1990s to less than 8,000 people today.[3] Yet across the rest of the state, jail populations have remained steady or, in many rural and suburban areas, increased despite historic declines in arrests statewide. In 2018, the average daily jail population in New York State was slightly less than 24,000 people on any given day.[4] Almost 70 percent of those in jail were held pretrial.[5] The median amount of bail on which people were incarcerated across the state varied widely—from $1,000 on a misdemeanor in New York City to $5,000 for that same offense in Buffalo.[6] Despite the variation in bail amounts, the end result was the same—thousands of New Yorkers, predominantly people of color, were jailed every single day because they were unable to afford the dollar amount of their freedom.

In 2015, the death of Kalief Browder, a young man from the Bronx who spent three years incarcerated at Rikers Island on $3,000 bail and tragically took his own life shortly after his release from jail, inspired real momentum for bail reform in New York.

In January 2018, Governor Andrew Cuomo declared in his State of the State address, "Kalief Browder did not die in vain," as he announced a set of reforms to the existing bail statute that would mandate release for most misdemeanors and nonviolent felonies and reserve bail only for the more serious cases, including domestic violence and violent felonies. Under his proposal, if bail were set, judges would have to consider a person's ability to pay and set multiple forms of bail to make it easier to pay. Importantly, his proposal would allow, for the first time in New York's history, for judges to impose preventive detention—remand with no bail—in serious cases if a person posed a risk to public safety. Building on the governor's proposal, the New York State Assembly passed a similar bail reform bill in the spring of 2018, but with one notable exception: they rejected the public safety provision amidst concerns about introducing a new basis for detention under New York law.

Despite this momentum, bail reform stood no chance in the then Republican-led New York State Senate. All of that changed on November 6, 2018, when New York

voted in a Democratic majority in the Senate, ushering in a new era of "triple blue" from the legislature to the governor's office.

The governor and the legislature entered the 2019 legislative session under heightened scrutiny from advocates and progressive reformers to truly reform New York's criminal justice system.

In 2019, Governor Cuomo released another bail proposal, this time recommending that New York eliminate money bail entirely. What prompted the evolution from the 2018 bill that permitted bail to remain for serious cases to the 2019 proposal that eliminated it entirely? For one, the national landscape on bail reform had transformed in just one year. In August 2018, California passed and Governor Jerry Brown signed into law Senate Bill 10, making it the first state in the country to fully eliminate money bail. Suddenly, it was no longer radical to propose taking money out of the pretrial equation entirely. Second, the same organizing and advocacy that flipped the New York Senate from red to blue had changed the narrative on criminal justice reform. The governor and the legislature entered the 2019 legislative session under heightened scrutiny from advocates and progressive reformers to deliver on their campaign promises to truly reform New York's criminal justice system, starting with bail.

With the bar set by Governor Cuomo at a full elimination of money bail, New York State Senate Majority Leader Andrea Stewart-Cousins signaled her support for ending money bail, and Assembly Speaker Carl Heastie followed suit. Throughout January, February, and into March of 2019, the debate over the bail reform proposal didn't even touch on the money bail question. Rather, it centered on two key provisions of rivaling bills—what charges were in the "detention eligibility net," or slated for mandatory release versus eligible for detention; and whether any consideration of risk to public safety would be added to the law.

In the final few weeks leading up to the budget deadline of April 1, it was clear that the major impasse was over the public safety provision introduced by Governor Cuomo that allowed judges to, on serious charges, impose preventive

detention if a person "posed a current risk to the physical safety of a reasonably identifiable person or persons."

A little bit of context is important here. New York was, and remains, the only state in the country that precludes judges from taking into account any consideration of public safety when setting bail or imposing pretrial detention. Until the 1970s, all bail statutes only considered failure to appear. With the advent of "tough on crime" rhetoric and policies, several states began to amend their bail laws to include a consideration of risk to public safety. In 1984, Congress passed the Federal Bail Reform Act, which introduced public safety in the federal bail system and survived a constitutional challenge in *United States v. Salerno*.[7] Since then, 49 states, all except New York, have changed their bail laws to allow judges to consider both risk of failure to appear and public safety in pretrial decisions.

Public safety was a non-issue in bail reform efforts in places like California and New Mexico, where it was already part of the law, but it proved to be a lightning rod in New York's fight. Opponents to the public safety provision included many justice reform advocates, especially the defense bar and several members of the Assembly, who feared that adding public safety to the bail statute would justify yet another reason to impose detention above and beyond the current standard of failure to appear. Supporters of the public safety provision argued that judges were already factoring public safety into the pretrial calculus by setting extremely high bail as a means of imposing detention. Allowing judges to openly consider public safety would simply bring transparency to that decision. Many in the law enforcement field, including police and prosecutors, criticized the proposed provision as not going far enough to protect public safety, as it was limited to instances of potential physical injury.

Ultimately, no public safety provision made it into the final bill but, as a compromise, money bail remained for the kinds of serious cases—most violent felonies, all sex-related charges, some domestic violence offenses—that trigger concerns about public safety. Those offenses are the minority of cases—only one out of 10—that come through the criminal justice system in New York. The final bill that passed eliminated money bail and mandated release for 90 percent of all arrests statewide.

Key elements of New York's new bail law

New York's new bail law will take effect in January 2020. Pretrial decisions—for release, conditions of supervision and, in eligible cases, to set bail—will be guided by a consideration of whether a person poses a risk of flight to avoid prosecution. The overall framework of the new law takes a charge-based approach, where the level of the offense and the specific charge—whether it is a misdemeanor, nonviolent felony, or violent felony; and if it involves domestic violence or a sex-related or other specific offense—for the most part will dictate whether the case is mandated for release, either on recognizance or under certain kinds of pretrial nonmonetary conditions, or eligible for bail to be set.

- On misdemeanors, judges must either release the person on their own recognizance or set nonmonetary conditions, including court-ordered pretrial supervision. Electronic monitoring may not be imposed on most misdemeanor offenses, unless the charge involves domestic violence or sex-related offenses or the individual has a prior violent felony conviction within the past five years. Bail may not be set on misdemeanor offenses except in sex-related misdemeanors and one specific domestic violence charge, criminal contempt, based on allegations of violating a stay-away order.

- On all nonviolent felonies, if release on recognizance isn't granted, judges may impose nonmonetary pretrial conditions, including electronic monitoring. They may also set bail on a select number of nonviolent felony charges, including sex offenses, witness tampering, terrorism-related offenses and, again, felony-level criminal contempt in domestic violence cases.

- On violent felonies, judges may set bail if they do not find that release on recognizance, nonmonetary conditions, or electronic monitoring is sufficient to assure a person will return to court. There are two exceptions to bail on violent felonies, which include specific subsections of burglary in the second degree and robbery in the second degree where no actual violent conduct is alleged. On those burglary and robbery in the second degree cases, judges may

not set bail and must either release on recognizance or under nonmonetary conditions.

Under the new law, when judges set bail they must consider a person's ability to pay bail and the hardship it will impose. Judges must also offer bail in an unsecured or partially secured form, where the person is not required to deposit any money upfront (an unsecured bond) or only deposit up to 10 percent of the bail amount (a partially secured bond) with the court in order to be released. This provision mandates the use of forms of bail that have been in New York's bail statute since 1971 but have been used relatively infrequently even though they are much easier for people to afford than the full cash amount.[8] Importantly, mandating a partially secured or unsecured bail option undermines the for-profit bail bond industry as it gives families and loved ones the option to pay a portion of the bail directly to the court instead of turning to a bail bond agency if they can't come up with the full bail amount.

Under the new law, when judges set bail they must consider a person's ability to pay bail and the hardship it will impose.

The new law also requires judges, in imposing conditions of pretrial supervision, to consider the least restrictive conditions that will reasonably ensure a person appears for their court dates. It also requires judges to actively revisit the conditions of supervision. For example, if the person has demonstrated compliance, these conditions should be lessened or lifted entirely at subsequent court appearances. The use of electronic monitoring is prohibited in the vast majority of misdemeanor cases and is primarily reserved for people charged with felonies or offenses involving domestic violence or sex-related charges. Electronic monitoring may only be imposed after a finding by the court that no other nonmonetary conditions will realistically ensure a person's return to court and for a maximum period of 60 days (with the potential for an extension if the court deems it necessary). Importantly, the costs of electronic monitoring—which in most jurisdictions are borne by the person wearing the monitor—cannot be imposed on that individual. All expenses related to pretrial supervision—from electronic monitors to programs and mandates—must be paid for by the county.

Five distinctions that set New York's new bail law apart from other efforts at bail reform

Although the overall framework of New York's new bail law resembles the kinds of bail reform legislation passed in other jurisdictions, there are five provisions that distinguish and set it apart as the bail reform bill most likely to produce transformative outcomes and result in fewer people in jail. The common thread between those five provisions—outlined below—is that they remove or severely restrict the discretion law enforcement, prosecutors, and judges have traditionally enjoyed in the criminal justice system at large and in the bail and pretrial calculus in particular.

1. Mandatory appearance tickets

The option for police to issue an appearance ticket at the time of arrest—essentially a summons to appear in court at a later date—on misdemeanors and the lowest level of felonies has existed in New York's bail statute for decades, yet remains underutilized by officers who have discretion to ignore it. Under the new law, police officers will now be required to issue an appearance ticket for any misdemeanor or class E felony arrest, with limited exceptions. If implemented effectively, this mandatory appearance ticket provision has the potential to transform fundamental fairness on low-level offenses, from significantly increasing pretrial release rates to limiting the amount of time people spend in police custody to only a few hours.

2. Mandatory release on a wide swath of offenses

The language of every other bail reform statute in the country—from Washington, DC, to New Jersey, California, and beyond—requires the courts to consider a presumption of pretrial release for most offenses. New York's new bail law goes a critical step further to mandate, not simply presume, pretrial release for a wide

swath of offenses that constitute the majority of all arrests in New York State. This small but significant tweak to the statutory language is nothing short of remarkable. Under the new law, discretion to override a presumption of release in favor of setting bail or imposing detention is eliminated in most misdemeanor, nonviolent felony, and even two common violent felony offenses. It is, of all the provisions in the new law, the one that strikes hardest at curtailing the discretion prosecutors and judges have held in the pretrial calculus.

3. Parsimony in the conditions imposed on release

Most jurisdictions routinely impose mandates such as drug testing, electronic monitoring, participation in programs and counseling, and frequent check-ins as standard conditions of pretrial release. In many of those places, people are required to pay for their conditions of supervision, often at a cost between $5 to upwards of $20 a day. Under New York's new law, there are provisions to ensure judges set the least restrictive conditions that will reasonably assure a person's appearance in court and do not require people to pay for those conditions. Electronic monitoring may only be used on felony and select misdemeanor cases and, when imposed, must be reviewed after no longer than 60 days to determine whether it is still needed to ensure a person's pretrial compliance. The requirement that all conditions of pretrial release must be paid for by the county will serve as a check on unnecessary monitoring and conditions so that localities are not bearing unnecessary pretrial costs.

4. Discrete role of risk assessment instruments

Until New York's new law, every effort at bail reform assumed that using a risk assessment instrument was an essential part of a pretrial framework or, at least, a necessary evil. Alaska, California, New Jersey, and Washington, DC, all codified the use of risk assessment instruments into their reforms, and hundreds of jurisdictions across the country use them to inform pretrial decisions.

In recent years, there has been growing criticism about the potential of risk assessments to bake in and reinforce racial and other biases, and New York's

new law noticeably does not incorporate risk assessment into the overall pretrial framework. In the new law, these instruments are only mentioned in the context of assessing whether a person is to be released on recognizance or, if released under conditions, to assess what services are needed. They are not to be used as the sole basis to justify setting bail or imposing detention. Moreover, any instruments used must be transparent and developed so that they are free of bias, and data must be collected and reported by the agencies responsible for pretrial services agencies. These limitations and explicit requirements are a huge step forward to address the concerns that risk assessment instruments pose in the pretrial field.

5. Mandate for ability to pay and more affordable forms of bail

To the extent that New York's bail reform law came up short—in that money bail remains for more serious offenses—the new statute goes further than any other jurisdiction that uses money bail to make bail easier to afford. The new law requires judges to consider a person's "ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond." The law also requires judges, when setting bail, to set at least three or more forms of bail, one of which must be an unsecured or partially secured bond. No other statute directs judges to consider a person's ability to pay bail in such stark language, and no other statute mandates the imposition of a less restrictive form of bail that, if heeded, will essentially spell the end of the for-profit bail bond industry in New York.

Food for thought in implementation

Of course, the most carefully drafted law will not achieve its stated objectives if implementation falls short. New York is an especially challenging ecosystem in which to roll out new policies and practices, given the diversity of size, geography, and resources across the 62 counties that hold more than 1,300 courts and process approximately 400,000 criminal cases each year.

Implementation involves many moving parts, but three rise to the top as key to having the new law take full effect.

1. A centralized pretrial process and community-based pretrial services

Counties need to invest in both court- and community-based resources to ensure that people released under the new law—who may otherwise have been in jail pretrial—have access to the types of services they need to support their release.

For court-based resources, each county should have a centralized arraignment part in lieu of conducting arraignments across multiple courts. Several pilot centralized arraignment parts already exist in New York in counties as diverse as Onondaga, a large and metropolitan county with Syracuse as its biggest city; to rural Washington, where the total county population is a fraction of Syracuse's size. A representative from the pretrial services program should staff the centralized arraignment part to facilitate information about pretrial needs and, if bail may be set, provide an assessment of a person's ability to pay.

At the same time, counties should invest in community-based pretrial services for referrals to treatment, counseling, and other types of pretrial assistance. While many pretrial programs have traditionally been housed in probation departments, New York's new law is an opportunity to move away from a pretrial "monitoring" model to one that responds to "needs." Connecting people to services in the community allows them to stay engaged even after their cases are finished and pretrial supervision ends.

If you can make it in New York, you can make it anywhere

Even though New York's new bail law has not been celebrated to the extent that the reforms in New Jersey, or even California, were heralded as groundbreaking, there are many subtle and not-so-subtle lessons for other jurisdictions here.

The most important one to highlight is the re-examination of failure to appear as a basis for bail or imposing detention. Even though the new law doesn't explicitly say this, by mandating release on a majority of offenses the legislation effectively eliminates failure to appear as a justification for bail or detention. The underlying assumption is that risk of failure to appear can and should be managed in the community through pretrial supervision, and not jail. It sounds simple, but what it represents is a seismic shift in the underlying principles of a pretrial system.

The hard work of implementing and defending these reforms is already underway. And, across the country, other cities and states should and will be looking to New York as a model for pretrial justice. After all, if bail reform succeeds in New York—a vast state with varied geographies—it can succeed anywhere.

Endnotes

1 Vera conducted an unpublished analysis of county-level jail data to estimate the potential impact of the new law on local jail populations.

2 For New Jersey statistics, see New Jersey Administrative Office of the Courts, "Criminal Justice Reform Data, January 1–December 31, 2018," https://perma.cc/M7HQ-KUL5.

3 See Vera Institute of Justice, "Incarceration Trends," database, www.trends.vera.org, for early 1990s jail incarceration data. See New York City Open Data, "Daily Inmates in Custody," https://perma.cc/TM27-BLDN, for 2019 jail incarceration data.

4 New York State Division of Criminal Justice Services, *New York State Jail Population 10 Year Trends: 2009–2018* (Albany, NY: New York State Division of Criminal Justice Service, 2019), https://perma.cc/R4JP-F859.

5 Vera institute of Justice, "Empire State of Incarceration," December 2017, www.vera.org/state-of-incarceration.

6 For New York City, see New York City Criminal Justice Agency (CJA), *Annual Report 2016* (New York: CJA, 2018), 21, https://perma.cc/KC5W-9KXX. For Buffalo, see Andrea Ó Súilleabháin and Colleen Kristich, *Cruelty and Cost: Money Bail in Buffalo* (Buffalo, NY: Buffalo Partnership for the Public Good, 2018), 5, https://perma.cc/VJ5D-HPKN.

7 *United States v. Salerno*, 481 U.S. 739 (1987).

8 N.Y. Criminal Procedure Law § 520.10.

About citations

As researchers and readers alike rely more and more on public knowledge made available through the Internet, "link rot" has become a widely-acknowledged problem with creating useful and sustainable citations. To address this issue, the Vera Institute of Justice is experimenting with the use of Perma.cc (https://perma.cc/), a service that helps scholars, journals, and courts create permanent links to the online sources cited in their work.

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The Vera Institute of Justice is a justice reform change agent. Vera produces ideas, analysis, and research that inspire change in the systems people rely upon for safety and justice, and works in close partnership with government and civic leaders to implement it. Vera is currently pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America's increasingly diverse communities. For more information, visit www.vera.org.

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Bail Reform in New York

Legislative Provisions and Implications for New York City

Center for Court Innovation

Bail Reform in New York: Legislative Provisions and Implications for New York City

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Bail Reform in New York

Legislative Provisions and Implications for New York City

On April 1, 2019, New York State passed sweeping criminal justice reform legislation that eliminates money bail and pretrial detention for nearly all misdemeanor and nonviolent felony defendants; requires prosecutors to disclose their evidence to the defense earlier in case proceedings; promotes speedy trial rights; and reduces the maximum length of a jail sentence for people convicted of a misdemeanor from one year to 364 days (avoiding deportation exposure for many immigrants convicted of minor crimes). This document reviews the major components of the first of these changes, bail reform, and includes data indicating the scope of its potential impact in New York City.

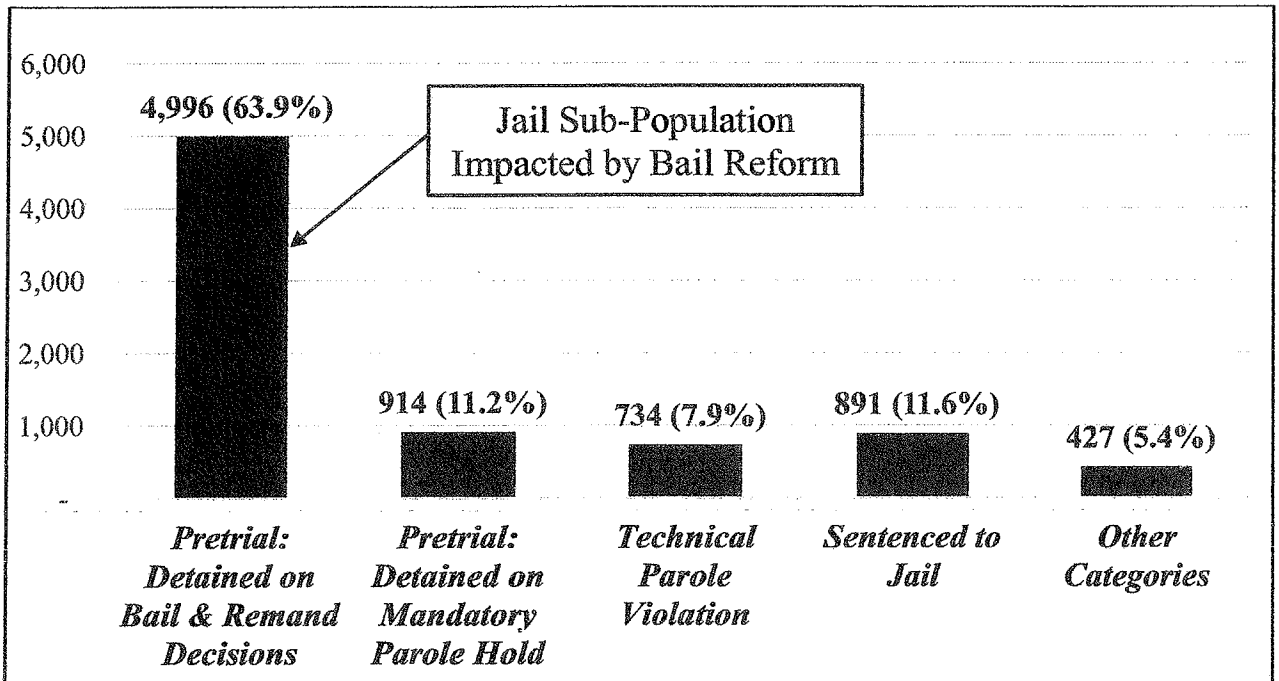
On any given day in early 2019, more than 22,000 New Yorkers were incarcerated in a local jail—about 8,000 in New York City and 14,000 in the rest of the state. As is the case in local jails across the country, more than six in ten of these individuals were held pretrial, prior to a conviction, usually stemming from an inability to afford money bail. The stakes for how bail reform impacts this pretrial population are especially high in New York City, given the city's efforts to close the jail complex on Rikers Island. Bail reform, along with the other reform measures, is scheduled to go into effect on January 1, 2020.

Elimination of Money Bail and Pretrial Detention in Most Cases

New York's bail reform requires most defendants to be released during the pretrial period, eliminating both money bail and pretrial detention in nearly all misdemeanors and nonviolent felonies, while preserving bail and detention as options in most violent felonies. Our analysis indicates that of the almost 205,000 criminal cases that were arraigned in New York City in 2018, the new legislation leaves money bail as an option in just 10 percent. For those one in ten cases, the law also requires judges to explicitly consider what defendants can afford to pay before setting bail.

Shown in the graphic on the next page, of the 7,822 people held in a New York City jail on April 1, 2019, almost 5,000 were held pretrial and potentially impacted by the changes in the bail law.[1] Our analysis finds that 43 percent of these 5,000 individuals (excluding those held on a parole violation or after a sentence is imposed) would have been released under the State's bail reform, were it already in effect, since they would no longer be eligible for money bail or pretrial detention.

The New York City Jail Population on April 1, 2019:
Total = 7,822



Source: New York City Department of Correction data via NYC Open Data (analysis by the Center for Court Innovation).

Misdemeanors

Bail reform disallows money bail in almost all cases charged with a misdemeanor, with two exceptions: (1) sex offense misdemeanors, and (2) misdemeanor criminal contempt (PL 215.50) where there is an underlying allegation of domestic violence. Of people charged with misdemeanor or lesser offenses and held in jail in New York City on April 1, 2019, 12 percent met one of these exceptions. The bail law also eliminates the possibility of straight pretrial detention ("remand") in *all* cases charged with a misdemeanor or lesser offense.

Felonies

The law establishes nine criteria where both money bail and remand remain permissible in felony cases, while also indicating a range of other options that should be considered in these cases, including release on the defendant's own recognizance or non-monetary conditions such as pretrial supervision. As a practical matter, the nine criteria permit bail and detention with nearly all violent felonies but rule it out with nearly all nonviolent felonies. The nine criteria are as follows:

1. **Violent Felony Offense (VFOs), with the exception that bail and detention are disallowed if the charge is the second subsection of burglary in the second degree (PL 140.25(2)) or the first subsection of robbery in the second degree (PL 160.10(1)):** In practice, most second degree robbery cases do not involve the exempted subsection, so among violent felonies, it is really only burglary in the second degree cases that cannot routinely face bail or detention under the new law.[2]

2. **Nonviolent Felony Witness Intimidation (PL 215.15):** On April 1, there were only three such cases in pretrial detention in New York City.

3. **Nonviolent Felony Witness Tampering (PL 215.11, 215.12, 215.13):** On April 1, there was just one case in pretrial detention in New York City.

4. **Class A Felony, *except* Class A drug felonies other than PL 220.77:** Although most Class A felonies involve violent charges such as murder, predatory sexual assault, and arson, according to the New York State Penal Law, Class A felonies are technically in their own category. The new law allows all Class A felonies to continue to face money bail or detention, with the exceptions of four of five Class A drug felonies in the penal law. The only Class A drug felony that may still face money bail or detention is operating as a major trafficker (PL 220.77).

5. **Sex Offenses:** This provision allows bail or detention for any "felony sex offense" as listed in section 70.80 in the Penal Law (encompassing rape, sexual abuse, sexual assault, and several other sex offenses); or for incest (PL 255.25, 255.26, or 255.27). Most of these charges are classified either as violent or Class A felonies. On April 1, 2019, there were only 13 individuals charged with applicable nonviolent felonies in pretrial detention in New York City.

6. **Conspiracy to Commit Murder:** On April 1, there were 48 individuals with the underlying charge of conspiracy in the second degree (PL 105.15) in pretrial detention in New York City. Available data does not indicate the exact subset who specifically conspired to commit murder.

7. **Terrorism Related Offenses:** This provision encompasses: (1) money laundering in support of terrorism in the first or second degrees (PL 470.24 or 470.23); or (2) any felony terrorism charge defined in PL 490, except PL 490.20 (making a terroristic threat). Not a single individual with these charges was in the New York City pretrial jail population on April 1.

8. **Felony Criminal Contempt with an Underlying Allegation of Domestic Violence (PL 215.51(b), (c), or (d), or 215.52):** This provision encompasses felony order of protection violations in cases of domestic violence. There were an estimated 78 such cases in pretrial detention in New York City on April 1.[3]

9. **Select Offenses Against Children:** This provision specifies three charges technically classified as nonviolent felonies: (1) facilitating a sexual performance by a child with drugs or alcohol (PL 263.30), (2) use of a child in a sexual performance (PL 263.05), or (3) luring a child (120.70.1). On April 1, three people were in detention with these charges in New York City.

Requirements for Considering Financial Resources When Setting Bail

In principle, the purpose of bail has never been to detain, but to incentivize court attendance by exposing defendants to the potential loss of money if they skip court. However, because courts routinely set bail amounts that are unaffordable, bail has the practical effect of detaining thousands of defendants. In 2018, New York City defendants posted bail at arraignment in only 15 percent of criminal cases where bail was set. The defendants in the remaining cases were all incarcerated after arraignment. Of those sent to pretrial detention who had to post bail to secure their release, 51 percent were able to post bail before their case was resolved.[4]

The new law adds requirements designed to help ensure that defendants can pay bail when it is set.

- **Alternative Forms of Bail:** Judges are required to set at least three forms of bail, which must include a partially secured or unsecured bond—two of the least onerous forms of bail. A partially secured bond allows defendants (or their friends or family) to pay 10 percent or less of the total bail amount up front; the balance is only paid if the defendant skips court. An unsecured bond works the same way, but no up-front payment is required. In the preexisting status quo, the use of these "alternative" forms of bail is rare. However, research by the Vera Institute of Justice demonstrates that people who pay bail in this fashion are as likely to attend their court dates as people who pay the full bail amount up front.[5]

- **Explicit Consideration of Ability to Pay:** The new law also requires judges to consider each defendant's (1) "individual financial circumstances," (2) "ability to post bail without posing undue hardship," and (3) "ability to obtain a secured, unsecured, or partially secured bond." The clear legislative intent is that bail should be set in forms and amounts that are affordable.

Release on Recognizance

The bail reform law also encourages courts to release defendants on their own recognizance while their cases are pending. In these cases, defendants are under no restriction and must simply appear at their appointed court dates. The court must release defendants on

recognizance unless they pose "a risk of flight." Release decisions, including on recognizance, may *not* be based the defendant's perceived future dangerousness or risk to public safety.

Non-Monetary Release Conditions

The new law also describes several non-monetary conditions (other than money bail) to help defendants attend their court dates.

- **Non-Monetary Conditions:** In those cases where a risk of flight exists, judges must have the option of setting non-monetary conditions. The law states that judges must select the "least restrictive" conditions that will "reasonably assure the principal's return to court." Judges must also explain their decision "on the record or in writing." Examples of non-monetary conditions that courts are likely to use include supervised release, additional court date reminders, travel restrictions, and limitations on firearms or weapons possession. The legislation also includes language indicating that jurisdictions must establish more types of non-monetary conditions than supervised release alone and can only order supervision when less intensive conditions cannot reasonably assure court attendance.

- **Pretrial Services Agencies:** The law requires the New York State Office of Court Administration to certify one or more pretrial services agencies in each county. These agencies must be public or nonprofit entities. They are responsible for supervising defendants released with non-monetary conditions and must submit an annual report to the court system.

- **Court Appearance Reminders:** Either the court or its pretrial services agency must notify all defendants released on recognizance or with non-monetary conditions of court appearances by text, phone, email, or first-class mail. The court must also allow all defendants to select a preferred notification method.

- **Electronic Monitoring:** Electronic monitoring is allowed for 60 days (with an option to renew after a subsequent court hearing) in (1) felony cases, (2) misdemeanor domestic violence cases, (3) misdemeanor sex offenses (defined in Penal Law Article 130), and (4) misdemeanors where the defendant was convicted of a violent felony in the past 5 years. Electronic monitoring may only be ordered if "no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure a principal's return to court." When such monitoring is ordered, the defendant is considered "in custody" for the purposes of sections 170.70 and 180.80 of the Criminal Procedure Law. These sections limit custody to six days from arrest to grand jury action in felony cases or five days from criminal court arraignment to the filing of corroborating documents in misdemeanor cases.

- **Changes to Release Conditions:** At future court dates, the court must consider easing non-monetary conditions in response to compliance and may impose additional conditions in response to noncompliance – the latter so long as defendants have an opportunity for a hearing, and the court finds "by clear and convincing evidence" that the defendant violated a release condition. Whenever a defendant is in pretrial detention, the defense attorney may also proactively apply for a review of the prior release decision and must be able to present evidence supporting a less onerous condition. Finally, the defense may also apply to a judge of the superior court for a review of any prior release decision by a local criminal court judge.

Permitted Responses to Pretrial Noncompliance

The new law delineates several specific criteria allowing the court to revoke release on recognizance, non-monetary conditions, or money bail. In all instances, the court must first hold a hearing where the defendant can present evidence or cross-examine witnesses.

Circumstances Where Sanctions May Include Money Bail or Remand

If the defendant was initially charged with a felony and the court "finds reasonable cause to believe the defendant committed" a new Class A felony, violent felony, or witness intimidation, the court may revoke the prior release order and either set bail or remand the defendant.

Circumstances Where Sanctions May Include Money Bail or Electronic Monitoring

In cases involving any of the following four forms of pretrial noncompliance, the court may set money bail (even if bail was not previously allowed at arraignment) but may *not* remand the defendant. The four forms of noncompliance are (1) "persistently and willfully failed to appear" in the current case; (2) violated an order of protection (PL 215.51.b, c, or d); (3) initially charged with a misdemeanor or violation and then charged with felony witness intimidation or tampering during the pretrial period; or (4) initially charged with a felony and charged with a new felony while the first case is pending. A defendant also qualifies for electronic monitoring in response to the above four forms of noncompliance.

Other Important Bail Reform Provisions

- **Risk Assessment:** Courts may consider information from formal release assessment tools that are designed to predict a defendant's likelihood of appearing in court. Any such tools must be publicly available, unbiased by "race, national origin, sex, or any other protected class," and validated for predictive accuracy (with validation data made publicly

available in de-identified form). Further, an individual defendant's assessment results must be made available to the defense, upon written request.

- **Bench Warrant Grace Period:** The new law prohibits courts from issuing a warrant for 48 hours whenever a defendant fails to appear, unless the defendant is charged with a new crime or there is evidence of a "willful" failure to appear. During the 48-hour period, the defense attorney can contact the defendant and encourage a voluntary return.

- **Domestic Violence:** Either detention or money bail is allowed for all violent felonies involving domestic violence as well as for criminal contempt cases technically classified as nonviolent felonies. Money bail, but not remand, is allowed in criminal contempt cases classified as misdemeanors. Electronic monitoring is allowed in all domestic violence cases, and money bail, but not detention, is also allowed in response to an order of protection violation while the current case is pending. In addition, the amendment to section 530.13(8)(a) adds that non-monetary conditions can be revoked for an alleged violation of a temporary order of protection previously issued by any Supreme or Family Court judge.

- **Annual Report:** The Office of Court Administration must make publicly available the annual reports that each pretrial services agency submits. These reports must provide the number of defendants supervised with a breakdown by race/ethnicity and charge. The reports must also indicate the frequency and nature of court-imposed modifications to conditions during the pretrial period, average length of time on pretrial supervision, number and reasons for supervision revocations, and final case dispositions and sentences in cases supervised.

Pre-Arraignment Detention Reform

In lieu of taking a defendant into custody for the approximately 24-hour period between arrest and arraignment, if a defendant is charged with a misdemeanor or a Class E felony, the arresting officer must issue a Desk Appearance Ticket (DAT), which allows the defendant to be released and then return to court on a preset arraignment date. This date must be no more than 20 days later, unless the defendant is participating in a pre-arraignment diversion program that requires more time.

There are several exceptions to Desk Appearance Ticket eligibility: domestic violence cases, sex offense cases, several Class E felony charges that involve either escape from custody or bail jumping, cases where it is reasonably expected that an order of protection will be issued, cases where a driver's license may be suspended or revoked, cases where the defendant has an outstanding warrant or history of failing to appear in court, and cases where the defendant cannot establish identity—although a formal photo identification is *not* required. Police officers also have discretion not to issue a Desk Appearance Ticket if the defendant appears to "face harm without immediate medical or mental health care."

In 2018, just under 40,000 Desk Appearance Tickets were issued by law enforcement in misdemeanor and Class E felony cases in New York City. By comparison, allowing that the frequency of some exceptions to the new Desk Appearance Ticket requirement cannot be quantified (such as how often defendants cannot establish identity or how often they present with severe mental health needs), available data suggests that as many as 90,000 Desk Appearance Tickets would have been issued if the new legislation had been in effect.[6]

The Impact of Bail Reform

New York's criminal justice reform legislation significantly curtails the use of both money bail and pretrial detention. We estimate that, were it in effect today, 2,138—or 43 percent—of the 4,996 defendants held pretrial in New York City on April 1, 2019 would be released.[7] Under the new regime, these defendants would face charges that would make them ineligible for money bail and detention, and they would instead be released on recognizance, non-monetary conditions, or, in limited circumstances, electronic monitoring. (This analysis excludes defendants held in jail on April 1 due to a parole violation or after a sentence was imposed, who are *not* impacted by bail reform.)

The data further indicates that of those in pretrial detention on April 1, 2019, 88 percent charged with a misdemeanor or lesser offense and 91 percent charged with a nonviolent felony would be released under the new law (shown in the graphic on the next page).[8]

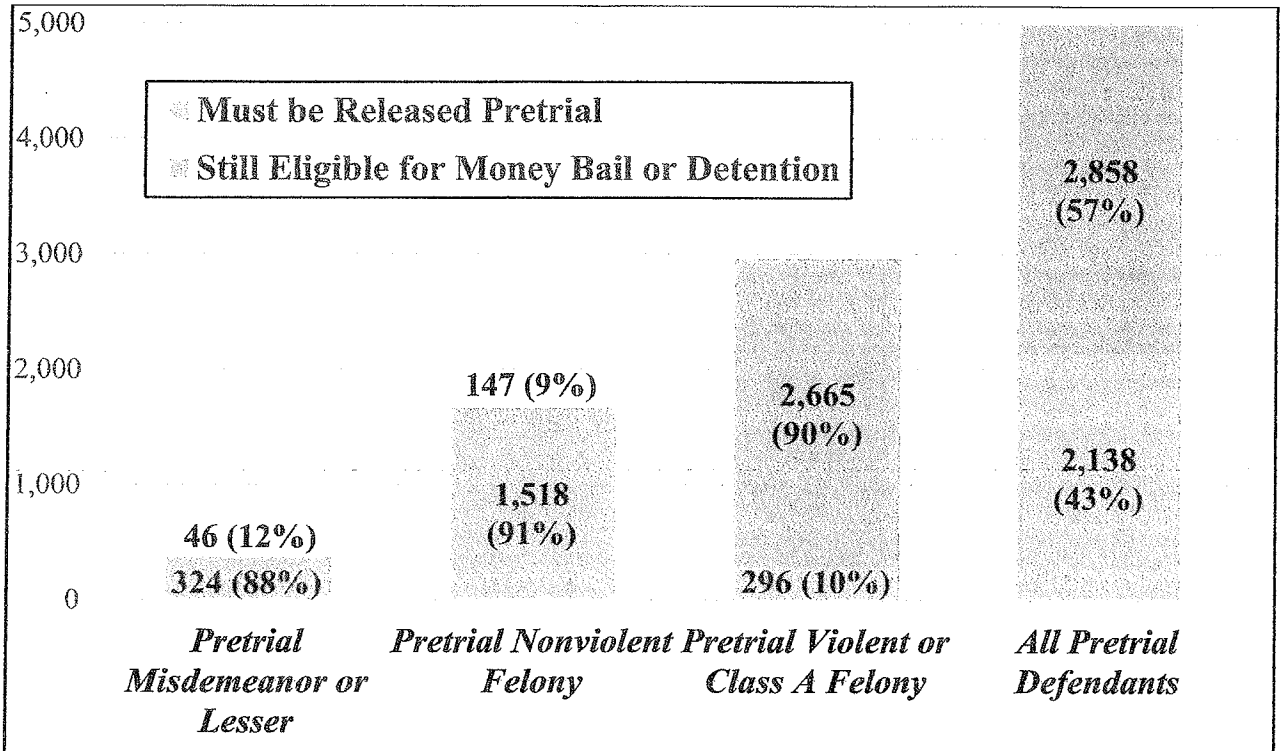
Three important qualifications are worth noting:

- At least some of the defendants who would no longer be detained according to the above analysis could, in fact, be detained *later* in the pretrial period if they met one of the circumstances where money bail or detention may be imposed in response to pretrial misbehavior.

- The data employed to derive the above estimates is imperfect. For instance, Department of Correction data only indicates the "top charge" for each defendant in jail, and in some cases, it is possible that other attached charges still qualify a defendant for detention even if the top charge does not. Also, isolating domestic violence cases held in New York City jails is a somewhat inexact science (see endnote 3).

- The analysis above omits 914 defendants who were detained pretrial on April 1, 2019 because a new criminal case triggered a parole violation on an older case. The filing of a parole violation creates a mandatory "parole hold" that bail reform does not remove.

The Potential Scope of Bail Reform:
Impacted Defendants in New York City's Pretrial Detention Population on April 1, 2019 (Total = 4,996 Defendants in Pretrial Detention)



Source: New York City Department of Correction data via NYC Open Data (analysis by the Center for Court Innovation). The pretrial jail population reflected in this chart omits defendants whose pretrial detention resulted from a parole violation.

Conclusions

Based on available data for who was in jail in New York City on April 1, 2019, bail reform will reduce the pretrial jail population by at least 2,100 people. Jail reductions are likely to be significantly greater outside New York City, given that many upstate jurisdictions currently detain a greater proportion of misdemeanor defendants during the pretrial period.

Unlike other recently passed bail reforms in New Jersey and California, New York's approach did not eliminate money bail for all cases. For some cases—mainly violent felonies—New York sought to reform the use of bail with provisions requiring a partially secured or unsecured bond and other measures to make bail more affordable. By retaining the option of money bail, the logic of New York's approach is that judges will take advantage of the continued option to set bail in violent felonies where they might have detained the defendant outright if bail had been eliminated. In theory, the defendants in these cases may be able to pay bail *more often than in the past* due to the new provisions requiring that bail amounts consider defendants' ability to pay. New York's reform law also includes

clear language throughout requiring courts to set the "least restrictive" pretrial condition that can reasonably secure court attendance. In short, even where it is allowed, the legislation strongly discourages money bail or detention absent a clear justification linked to court attendance.

It is possible, however, that courts will respond to bail reform in ways that limit its scope. For one, courts may elect to rely less on money bail, and more on straight remand, in cases where either is permissible. Second, in adherence to the legislation, courts may take some account of defendants' financial resources but, for the many indigent defendants who pass through the criminal courts every day, in practice, bail amounts may continue to be unaffordable.

On the other hand, it is also possible that the implementation of the law will minimize the possibility of pretrial detention and lead to reductions in New York City's jail population of closer to 3,000 individuals, rather than the 2,100 suggested above. Under this scenario, bail reform would bring the city's jail population under the 5,000 number widely cited as necessary to close the Rikers Island jail complex.

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Notes

[1] New York City jail population data included throughout this document is based on publicly available Department of Correction data for a snapshot date of April 1, 2019. The specific source is: NYC Open Data, *Daily Inmates in Custody*.

[2] Of cases arraigned on robbery in the second degree in New York City in 2018, only 27 percent involved the first sub-section for which money bail and detention would be disallowed. By contrast, of cases arraigned on burglary in the second degree, 91 percent involved the relevant second sub-section, meaning that nearly all second-degree burglary charges could not face bail or detention.

[3] Department of Correction data solely indicates the penal law charge for individuals held pretrial, and this charge does not per se communicate whether the case involved domestic violence. However, for purposes of preparing this document, the proportion of common domestic violence charges, including criminal contempt, that involved domestic violence was estimated using a methodology developed previously for the Independent Commission on New York City Criminal Justice and Incarceration Reform (known as the Lippman Commission). The method is discussed in Appendix B of the Commission's April 2017 report, *A More Just New York City*.

[4] Bail payment outcomes are based on data provided by the New York State Office of Court Administration. The analysis excludes cases involving bail amounts of one dollar, which typically signify that a mandatory hold is in effect, precluding the defendant's release until the hold is lifted.

[5] Rahman, I. (2017). *Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts*. New York, NY: Vera Institute of Justice.

[6] Based upon data provided by the New York State Office of Court Administration, of just over 170,000 misdemeanors and Class E felonies arraigned in 2018, 61 percent, totaling just over 104,000 cases, qualified for a Desk Appearance Ticket, after ruling out sex offenses, domestic violence, other types of assaults (which might elicit an order of protection), the excluded escape and bail jumping charges, defendants with an outstanding or prior warrant for failure to appear, and driving while intoxicated (DWI) or reckless driving cases. (Besides DWI and reckless driving, other Vehicle and Traffic Law misdemeanors were not ruled out in the analysis, because almost half of them already received a Desk Appearance Ticket in 2018, making it likely that police officers would continue to issue Desk Appearance Tickets in such cases under the new law.) Allowing that the analysis omits several exceptions to mandatory Desk Appearance Ticket issuance, including certain Vehicle and Traffic Law offenses, cases where defendants cannot make their identity known, defendants with an open warrant in a summons case, or defendants who appear to require immediate mental health or medical care, it is plausible that the actual percentage of misdemeanors and Class E felonies who would have received a Desk Appearance Ticket under the new law falls closer to 50 to 55 percent, which would have involved about 85,000 to 95,000 cases in 2018. In this regard, there is significant uncertainty in any estimate. On one hand, additional individuals might fall under the exceptions, which could make the resulting Desk Appearance Ticket numbers lower, while, on the other hand, police officers have discretion to issue Desk Appearance Tickets even when some exceptions apply, which could make the future numbers higher.

[7] These results indicate the number of people held pretrial in a New York City jail on April 1, 2019 who would no longer be there under bail reform. However, over the course of 2018, for example, over 27,000 unique individuals cycled in and out of the city's jails during the pretrial period for as few as several days to more than a year. This significantly larger number of individuals who currently experience pretrial detention each year are not all represented in a one-day snapshot.

[8] For purposes of this computation, violent and Class A felonies are combined. An exception is that four nonviolent drug felonies (PL 220.18, 220.21, 220.41, and 220.43), which are technically part of Class A, but are ineligible for detention under bail reform, are grouped with the nonviolent felonies. This grouping closely follows standard convention in most New York State research.

STATE OF NEW YORK

S. 2451 A. 2689

2019-2020 Regular Sessions

SENATE - ASSEMBLY

January 24, 2019

IN SENATE -- Introduced by Sens. KAVANAGH, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KAPLAN, KRUEGER, LIU, MARTINEZ, MAYER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, STAVISKY, STEWART-COUSINS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. SIMON, LENTOL, HEASTIE, PEOPLES-STOKES, ORTIZ, DICKENS, PICHARDO, GOTTFRIED, MOSLEY, GALEF, GLICK, JOYNER, L. ROSENTHAL, O'DONNELL, FAHY, SEAWRIGHT, D'URSO, ENGLEBRIGHT, QUART, CARROLL, PAULIN, MAGNARELLI, HUNTER, DE LA ROSA, TAYLOR, ABINANTI, LAVINE, RIVERA, BARRON, VANEL, ZEBROWSKI, NIOU, STECK, DINOWITZ, SIMOTAS, BLAKE, JAFFEE, ROZIC, AUBRY, WRIGHT, OTIS, WEPRIN, DAVILA, BICHOTTE, ARROYO, BUCHWALD, BURKE, GRIFFIN, JACOBSON, McMAHON, STERN, BRONSON, CRUZ, REYES, SAYEGH, FRONTUS -- Multi-Sponsored by -- M. of A. EPSTEIN, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules and the penal law, in relation to establishing extreme risk protection orders as court-issued orders of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun

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

Section 1. The civil practice law and rules is amended by adding a new article 63-A to read as follows:

ARTICLE 63-A

EXTREME RISK PROTECTION ORDERS

Section 6340. Definitions.

6341. Application for an extreme risk protection order.

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

SA LBD08628-02-9

6342. Issuance of a temporary extreme risk protection order.
6343. Issuance of a final extreme risk protection order.
6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order.
6345. Request for renewal of an extreme risk protection order.
6346. Expiration of an extreme risk protection order.
6347. Effect of findings and determinations in subsequent proceedings.

§ 6340. Definitions. For the purposes of this article:

1. "Extreme risk protection order" means a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

2. "Petitioner" means: (a) a police officer, as defined in section 1.20 of the criminal procedure law, or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides; (b) a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, of the person against whom the order is sought; or (c) a school administrator as defined in section eleven hundred twenty-five of the education law, or a school administrator's designee, of any school in which the person against whom the order is sought is currently enrolled or has been enrolled in the six months immediately preceding the filing of the petition. For purposes of this article, a school administrator's designee shall be employed at the same school as the school administrator and shall be any of the following who has been designated in writing to file a petition with respect to the person against whom the order is sought: a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, or other school personnel required to hold a teaching or administrative license or certificate, and full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate.

3. "Respondent" means the person against whom an extreme risk protection order is or may be sought under this article.

4. "Possess" shall have the same meaning as defined in subdivision eight of section 10.00 of the penal law.

§ 6341. Application for an extreme risk protection order. In accordance with this article, a petitioner may file an application, which shall be sworn, and accompanying supporting documentation, setting forth the facts and circumstances justifying the issuance of an extreme risk protection order. Such application and supporting documentation shall be filed in the supreme court in the county in which the respondent resides. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. Such application form shall include inquiry as to whether the petitioner knows, or has reason to believe, that the respondent owns, possesses or has access to a firearm, rifle or shotgun and if so, a request that the petitioner list or describe such firearms, rifles and shotguns, and the respective locations thereof, with as much specificity as possible.

§ 6342. Issuance of a temporary extreme risk protection order. 1. Upon application of a petitioner pursuant to this article, the court may issue a temporary extreme risk protection order, ex parte or otherwise, to prohibit the respondent from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun, upon a finding that there is probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others,

as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. Such application for a temporary order shall be determined in writing on the same day the application is filed.

2. In determining whether grounds for a temporary extreme risk protection order exist, the court shall consider any relevant factors including, but not limited to, the following acts of the respondent:

(a) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;

(b) a violation or alleged violation of an order of protection;

(c) any pending charge or conviction for an offense involving the use of a weapon;

(d) the reckless use, display or brandishing of a firearm, rifle or shotgun;

(e) any history of a violation of an extreme risk protection order;

(f) evidence of recent or ongoing abuse of controlled substances or alcohol; or

(g) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor.

In considering the factors under this subdivision, the court shall consider the time that has elapsed since the occurrence of such act or acts and the age of the person at the time of the occurrence of such act or acts.

For the purposes of this subdivision, "recent" means within the six months prior to the date the petition was filed.

3. The application of the petitioner and supporting documentation, if any, shall set forth the factual basis for the request and probable cause for issuance of a temporary order. The court may conduct an examination under oath of the petitioner and any witness the petitioner may produce.

4. A temporary extreme risk protection order, if warranted, shall issue in writing, and shall include:

(a) a statement of the grounds found for the issuance of the order;

(b) the date and time the order expires;

(c) the address of the court that issued the order;

(d) a statement to the respondent: (i) directing that the respondent may not purchase, possess or attempt to purchase or possess a firearm, rifle or shotgun while the order is in effect and that any firearm, rifle or shotgun possessed by such respondent shall be promptly surrendered to any authorized law enforcement official in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law;

(ii) informing the respondent that the court will hold a hearing no sooner than three nor more than six business days after service of the temporary order, to determine whether a final extreme risk protection order will be issued and the date, time and location of such hearing, provided that the respondent shall be entitled to more than six days upon request in order to prepare for the hearing; and (iii) informing the respondent the he or she may seek the advice of an attorney and that an attorney should be consulted promptly; and

(e) a form to be completed and executed by the respondent at the time of service of the temporary extreme risk protection order which elicits a list of all firearms, rifles and shotguns possessed by the respondent and the particular location of each firearm, rifle or shotgun listed.

5. If the application for a temporary extreme risk protection order is not granted, the court shall notify the petitioner and, unless the application is voluntarily withdrawn by the petitioner, nonetheless

schedule a hearing on the application for a final extreme risk protection order. Such hearing shall be scheduled to be held promptly, but in any event no later than ten business days after the date on which such application is served on the respondent, provided, however, that the respondent may request, and the court may grant, additional time to allow the respondent to prepare for the hearing. A notice of such hearing shall be prepared by the court and shall include the date and time of the hearing, the address of the court, and the subject of the hearing.

6. (a) The court shall, in the manner specified in paragraph (b) of this subdivision, arrange for prompt service of a copy of the temporary extreme risk protection order, if any, the application therefor and, if separately applied for or if a temporary extreme risk protection order was not granted, the application for an extreme risk protection order, any notice of hearing prepared by the court, along with any associated papers including the petition and any supporting documentation, provided, that the court may redact the address and contact information of the petitioner from such application and papers where the court finds that disclosure of such address or other contact information would pose an unreasonable risk to the health or safety of the petitioner.

(b) The court shall provide copies of such documents to the appropriate law enforcement agency serving the jurisdiction of the respondent's residence with a direction that such documents be promptly served, at no cost to the petitioner, on the respondent; provided, however, that the petitioner may voluntarily arrange for service of copies of such order and associated papers through a third party, such as a licensed process server.

7. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the division of criminal justice services of the issuance of a temporary extreme risk protection order and provide a copy of such order no later than the next business day after issuing the order to such persons or agencies. The court also shall promptly notify such persons and agencies and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. The court also shall report such demographic data as required by the state division of criminal justice services at the time such order is transmitted thereto. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a temporary extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of any such protection order, any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

8. A law enforcement officer serving a temporary extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all

firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for firearms, rifles and shotguns in the respondent's possession in a manner consistent with the procedures of article six hundred ninety of the criminal procedure law.

9. Upon issuance of a temporary extreme risk protection order, or upon setting a hearing for a final extreme risk protection order where a temporary order is denied or not requested, the court shall direct the law enforcement agency having jurisdiction to conduct a background investigation and report to the court and, subject to any appropriate redactions to protect any person, each party regarding whether the respondent:

(a) has any prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence;

(b) has any criminal charge or violation currently pending against him or her;

(c) is currently on parole or probation;

(d) possesses any registered firearms, rifles or shotguns; and

(e) has been, or is, subject to any order of protection or has violated or allegedly violated any order of protection.

§ 6343. Issuance of a final extreme risk protection order. 1. In accordance with this article, no sooner than three business days nor later than six business days after service of a temporary extreme risk protection order and, alternatively, no later than ten business days after service of an application under this article where no temporary extreme risk protection order has been issued, the supreme court shall hold a hearing to determine whether to issue a final extreme risk protection order and, when applicable, whether a firearm, rifle or shotgun surrendered by, or removed from, the respondent should be returned to the respondent. The respondent shall be entitled to more than six business days if a temporary extreme risk protection order has been issued and the respondent requests a reasonable period of additional time to prepare for the hearing. Where no temporary order has been issued, the respondent may request, and the court may grant, additional time beyond the ten days to allow the respondent to prepare for the hearing.

2. At the hearing pursuant to subdivision one of this section, the petitioner shall have the burden of proving, by clear and convincing evidence, that the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. The court may consider the petition and any evidence submitted by the petitioner, any evidence submitted by the respondent, any testimony presented, and the report of the relevant law enforcement agency submitted pursuant to subdivision nine of section sixty-three hundred forty-two of this article. The court shall also consider the factors set forth in subdivision two of section sixty-three hundred forty-two of this article.

3. (a) After the hearing pursuant to subdivision one of this section, the court shall issue a written order granting or denying the extreme risk protection order and setting forth the reasons for such determination. If the extreme risk protection order is granted, the court shall direct service of such order in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

(b) Upon issuance of an extreme risk protection order: (i) any firearm, rifle or shotgun removed pursuant to a temporary extreme risk protection order or such extreme risk protection order shall be retained by the law enforcement agency having jurisdiction for the duration of the order, unless ownership of the firearm, rifle or shotgun is legally transferred by the respondent to another individual permitted by law to own and possess such firearm, rifle or shotgun; (ii) the supreme court shall temporarily suspend any existing firearm license possessed by the respondent and order the respondent temporarily ineligible for such a license; (iii) the respondent shall be prohibited from purchasing or possessing, or attempting to purchase or possess, a firearm, rifle or shotgun; and (iv) the court shall direct the respondent to surrender any firearm, rifle or shotgun in his or her possession in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law.

(c) An extreme risk protection order issued in accordance with this section shall extend, as specified by the court, for a period of up to one year from the date of the issuance of such order; provided, however, that if such order was immediately preceded by the issuance of a temporary extreme risk protection order, then the duration of the extreme risk protection order shall be measured from the date of issuance of such temporary extreme risk protection order.

(d) A law enforcement officer serving a final extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for firearms, rifles and shotguns in a respondent's possession consistent with the procedures of article six hundred ninety of the criminal procedure law.

4. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the division of criminal justice services of the issuance of a final extreme risk protection order and provide a copy of such order to such persons and agencies no later than the next business day after issuing the order. The court also shall promptly notify such persons and agencies and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a final extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of such protection order and any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

5. (a) If, in accordance with a temporary extreme risk protection order, a firearm, rifle or shotgun has been surrendered by or removed

from the respondent, and the supreme court subsequently finds that the petitioner has not met the required standard of proof, the court's finding shall include a written order, issued to all parties, directing that any firearm, rifle or shotgun surrendered or removed pursuant to such temporary order shall be returned to the respondent, upon a written finding that there is no legal impediment to the respondent's possession of such firearm, rifle or shotgun.

(b) If any other person demonstrates that he or she is the lawful owner of any firearm, rifle or shotgun surrendered or removed pursuant to a protection order issued in accordance with this article, and provided that the court has made a written finding that there is no legal impediment to the person's possession of a surrendered or removed firearm, rifle or shotgun, the court shall direct that such firearm, rifle or shotgun be returned to such lawful owner and inform such person of the obligation to safely store such firearm, rifle, or shotgun in accordance with section 265.45 of the penal law.

6. The respondent shall be notified on the record and in writing by the court that he or she may submit one written request, at any time during the effective period of an extreme risk protection order, for a hearing setting aside any portion of such order. The request shall be submitted in substantially the same form and manner as prescribed by the chief administrator of the courts. Upon such request, the court shall promptly hold a hearing, in accordance with this article, after providing reasonable notice to the petitioner. The respondent shall bear the burden to prove, by clear and convincing evidence, any change of circumstances that may justify a change to the order.

§ 6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order. 1. When a law enforcement officer takes any firearm, rifle or shotgun pursuant to a temporary extreme risk protection order or a final extreme risk protection order, the officer shall give to the person from whom such firearm, rifle or shotgun is taken a receipt or voucher for the property taken, describing the property in detail. In the absence of a person, the officer shall leave the receipt or voucher in the place where the property was found, mail a copy of the receipt or voucher, retaining proof of mailing, to the last known address of the respondent and, if different, the owner of the firearm, rifle or shotgun, and file a copy of such receipt or voucher with the court. All firearms, rifles and shotguns in the possession of a law enforcement official pursuant to this article shall be subject to the provisions of applicable law, including but not limited to subdivision six of section 400.05 of the penal law; provided, however, that any such firearm, rifle or shotgun shall be retained and not disposed of by the law enforcement agency for at least two years unless legally transferred by the respondent to an individual permitted by law to own and possess such firearm, rifle or shotgun.

2. If the location to be searched during the execution of a temporary extreme risk protection order or extreme risk protection order is jointly occupied by two or more parties, and a firearm, rifle or shotgun located during the execution of such order is owned by a person other than the respondent, the court shall, upon a written finding that there is no legal impediment to the person other than the respondent's possession of such firearm, rifle or shotgun, order the return of such firearm, rifle or shotgun to such lawful owner and inform such person of their obligation to safely store their firearm, rifle, or shotgun in accordance with section 265.45 of the penal law.

§ 6345. Request for renewal of an extreme risk protection order. 1. If a petitioner believes a person subject to an extreme risk protection order continues to be likely to engage in conduct that would result in serious harm to himself, herself, or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law, such petitioner may, at any time within sixty days prior to the expiration of such existing extreme risk protection order, initiate a request for a renewal of such order, setting forth the facts and circumstances necessitating the request. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. The court may issue a temporary extreme risk protection order in accordance with section sixty-three hundred forty-two of this article, during the period that a request for renewal of an extreme risk protection order is under consideration pursuant to this section.

2. A hearing held pursuant to this section shall be conducted in the supreme court, in accordance with section sixty-three hundred forty-three of this article, to determine if a request for renewal of the order shall be granted. The respondent shall be served with written notice of an application for renewal a reasonable time before the hearing, and shall be afforded an opportunity to fully participate in the hearing. The court shall direct service of such application and the accompanying papers in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

§ 6346. Expiration of an extreme risk protection order. 1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order and the clerk of the court wherein such proceedings were conducted shall immediately notify the commissioner of the division of criminal justice services, the heads of all appropriate police departments, applicable licensing officers, and all other appropriate law enforcement agencies that the order has expired and that the record of such protection order shall be sealed and not be made available to any person or public or private entity, except that such records shall be made available to:

(a) the respondent or the respondent's designated agent;

(b) courts in the unified court system;

(c) police forces and departments having responsibility for enforcement of the general criminal laws of the state;

(d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the respondent has made application for such a license; and

(e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this subparagraph and afforded an opportunity to make an explanation thereto.

2. Upon expiration of a protection order issued pursuant to this article and upon written application of the respondent who is the subject of such order, with notice and opportunity to be heard to the petitioner and every licensing officer responsible for issuance of a firearm license to the subject of the order pursuant to article four hundred of

the penal law, and upon a written finding that there is no legal impediment to the respondent's possession of a surrendered firearm, rifle or shotgun, the court shall order the return of a firearm, rifle or shotgun not otherwise disposed of in accordance with subdivision one of section sixty-three hundred forty-four of this article. When issuing such order in connection with any firearm subject to a license requirement under article four hundred of the penal law, if the licensing officer informs the court that he or she will seek to revoke the license, the order shall be stayed by the court until the conclusion of any license revocation proceeding.

§ 6347. Effect of findings and determinations in subsequent proceedings. Notwithstanding any contrary claim based on common law or a provision of any other law, no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding.

§ 2. Section 265.45 of the penal law, as amended by section 3 of part FF of chapter 57 of the laws of 2013, is amended to read as follows:

§ 265.45 Safe storage of rifles, shotguns, and firearms.

No person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who such person knows or has reason to know is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g)(1), (4), (8) or (9), or pursuant to a temporary or final extreme risk protection order issued under article sixty-three-A of the civil practice law and rules, shall store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon. For purposes of this section "safe storage depository" shall mean a safe or other secure container which, when locked, is incapable of being opened without the key, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon contained therein. With respect to a person who is prohibited from possessing a firearm pursuant to 18 USC § 922(g)(9), for purposes of this section, this section applies only if such person has been convicted of a crime included in subdivision one of section 370.15 of the criminal procedure law and such gun is possessed within five years from the later of the date of conviction or completion of sentence. Nothing in this section shall be deemed to affect, impair or supersede any special or local act relating to the safe storage of rifles, shotguns or firearms which impose additional requirements on the owner or custodian of such weapons.

A violation of this section shall constitute a class A misdemeanor.

§ 3. Severability. If any part or provision of this act is adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect or impair any other part or provision of this act, but shall be confined in its operation to such part or provision.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.

Laws Affected:

Add Art 63-A §§6340 - 6347, CPLR; amd §265.45, Pen L

Versions Introduced in 2017-2018 Legislative Session:

A11148 (/Legislation/Bills/2017/A11148)

S2451 (ACTIVE) - SUMMARY

Establishes extreme risk protection orders as a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

S2451 (ACTIVE) - SPONSOR MEMO

BILL NUMBER: S2451

SPONSOR: KAVANAGH

TITLE OF BILL:

An act to amend the civil practice law and rules and the penal law, in relation to establishing extreme risk protection orders as court-issued orders of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun

PURPOSE:

To prevent individuals from accessing firearms, rifles, and shotguns who have been deemed, through judicial process, likely to engage in conduct that would result in serious harm to themselves or others.

SUMMARY OF SPECIFIC PROVISIONS:

Section one of the bill creates a new Article 63-A of Civil Practice Law and Rules to establish extreme risk protection orders. The new sections of Article 63-A are summarized as follows:

Section 6340 establishes definitions. It defines "extreme risk protection order" to mean a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

Section 6341 sets forth the application process for those seeking an order of protection. The petitioner files a sworn application describing the circumstances and justification for the request.

Section 6342 describes- the process for the issuance of a temporary extreme risk protection order:

-To grant a temporary extreme risk protection order, the court must find that there is probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to himself, herself, or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. The court must also evaluate other relevant factors specified in the bill.

-If the application is granted, a temporary extreme risk protection order will be issued. This will prohibit the respondent from purchasing, possessing, cr attempting to purchase or possess a firearm, rifle, or shotgun while the order is in effect, and to surrender any firearms, rifles or shotguns to law enforcement pending a court hearing to be held no sooner than three days nor longer than six days after the issuance of a temporary order, unless the respondent requests more time to prepare, to determine whether a final extreme risk protection order will be issued.

Section 6343 describes the issuance of a final extreme risk protection order:

-At the hearing, the petitioner must prove by clear and convincing evidence that the petitioner is likely to engage in conduct that would result in serious harm to himself, herself, or others as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law.
-If the final order is granted by the court, any firearm, rifle, or shotgun removed under a temporary order will be retained by the law enforcement agency and the respondent will be prohibited from purchasing, attempting to purchase, or possessing a firearm, rifle or shotgun for up to one year, subject to renewal. Any firearm license will also be suspended for the duration of the time that the extreme risk protection order is in effect.

-The respondent is permitted to appeal a court's decision to issue an extreme risk protection order under the existing appeals procedure provided in the civil practice laws and rules. Additionally, the respondent is entitled to submit one request, at any time during the effective period of an extreme risk protection order, for a hearing at which said respondent bears the burden to prove, by clear and convincing evidence, any change of circumstances that may justify a change to the order.

Section 6344 sets forth how firearms, rifles, and shotguns shall be surrendered to or removed by law enforcement officers:

-The law enforcement officer must leave or mail a receipt or voucher to the respondent.

-Law enforcement must retain any firearm, rifle or shotgun surrendered or removed pursuant to an extreme risk protection order for at least two years following the expiration of the order unless it is legally transferred by the respondent.

Section 6345 lays out the process for a request for renewal of an extreme risk protection order:

-The petitioner may file a request for a renewal of an extreme risk protection order within 60 days of the expiration of an existing order. A hearing must be conducted to determine if the renewal is justified.

Section 6346 discusses the expiration of an extreme risk protection order. The section provides for sealing of all records upon expiration of an order, with limited availability to relevant parties. The section also outlines how the return of a firearm, rifle, or shotgun shall take place.

Section 6347 states that findings relevant to an extreme risk protection order shall not have any effect on any other action or proceeding.

Section two of the bill amends the penal law to include temporary or final extreme risk protection orders in the safe storage provision.

Section three of the bill provides a severability clause. Section four of the bill sets forth the effective date.

JUSTIFICATION:

Family and household members are often the first to know when someone is experiencing a crisis or exhibiting dangerous behavior. They may even report their fears to law enforcement, but in New York, as in many other states, law enforcement officers may not have the authority to intervene based on the evidence they are provided, sometimes resulting in prevent-

able tragedies, including interpersonal gun violence or suicide involving a gun.

In 2014, California became the first state in the nation to enact a law empowering family members and law enforcement to petition a court to have individuals' access to guns temporarily suspended when they are at risk of harming themselves or others. in 2016, Washington State enacted similar measures through a ballot initiative. Laws providing a procedure for the removal of firearms from at-risk individuals have existed for years in Indiana, and studies have shown that a similar provision of Connecticut law has resulted in a measurable reduction in suicide rates.

Enacting extreme risk protection orders here would keep New Yorkers safe while respecting due process rights.

LEGISLATIVE HISTORY:

2018: S7133A/A8976B - REPORTED FROM JUDICIARY TO CODES/passed Assembly

2017: S5447/A6994 - REFERRED TO JUDICIARY/passed assembly

2016: S6065/A7038 - REFERRED TO CODES/referred to codes

2015: S6065/A7038 - REFERRED TO RULES/referred to codes

FISCAL IMPLICATIONS:

Some costs associated with the implementation and administration of the procedures established by this legislation, possibly offset by a reduction in costs related to gun violence.

Some costs associated with the implementation and administration of the procedures established by this legislation, possibly offset by a reduction in costs related to gun violence.

IMPACT ON REGULATION OF BUSINESSES AND INDIVIDUALS:

Individuals who are subject to an order issued by a court would have their rights to access guns temporarily suspended.

IMPACT ON FINES, IMPRISONMENT, FORFEITURE OF RIGHTS, OR OTHER PENAL SANCTIONS:

An individual who violates an order would be subject to the penalties under existing New York law for a prohibited person who possesses, purchases, or attempts to possess or purchase a firearm, rifle, or shotgun.

EFFECTIVE DATE:
This act shall take effect on the 180th day after it shall have become law.

NYCOURTS.GOV

FORMS - Supreme Court

FORMS & INSTRUCTIONS – Application for an Extreme Risk Protection Order

Steps to Prepare and File an Extreme Risk Protection Order Application

An Extreme Risk Protection Order (ERPO) is a court order issued when a person may be dangerous to themselves or others. An ERPO prohibits a person from purchasing or possessing guns and requires the person to surrender any guns they already own or possess. An ERPO can also direct the police to search a person, premises or a vehicle for guns and remove them. An ERPO case may be started by a district attorney, a police officer, a school official, or a member of the person's family or household. It is a civil case. ERPO cases have no criminal charges or penalties.

The petitioner is the person filing the ERPO application with the court. The respondent is the person you are asking the Court to issue an ERPO against. The petitioner can be a district attorney, a police officer, a school official, or a member of the respondent's family or household. No matter who starts the case, you must follow these steps:

1. **Complete an Application for a Temporary Extreme Risk Protection Order, and print it to file with the court.**

   Use the fillable online ERPO application form to create your ERPO application and print it. Enter as much information as you can to help the judge decide if a temporary ERPO should be issued. In your application, you can ask the judge to keep your address and contact information confidential and/or keep your name anonymous if you think the respondent knowing your name, address or contact information will endanger your health or safety.

   NOTE: You can print a blank ERPO application form if you prefer to complete your ERPO application by hand.

2. **Gather and attach any supporting documents to your application.**

   Supporting documents are not required, but if you have documents that will help the judge decide if an ERPO should be issued, you should attach them to your application.

   NOTE: Your application, supporting documents and any other papers filed in an ERPO case are kept confidential by the court and are not available to the public.

3. **Complete a Request for Judicial Intervention (RJI) form and print it to file with the court.**

   Use the fillable online RJI form, and complete the form fields as shown in the following sample:

1. Select "Supreme" from the drop-down list

2. Select the county where the respondent lives from the drop-down list

REQUEST FOR JUDICIAL INTERVENTION

(rev. 07/23/2019)

SUPREME COURT, COUNTY OF ALBANY

Index No: _____ Date Index Issued: _____

For Court Use Only:
IAS Entry Date
Judge Assigned
RJI Filed Date

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

Jane Doe ← 3. Enter your full name in the Plaintiff/Petitioner section of the caption

Plaintiff(s)/Petitioner(s)

-against-

John Doe ← 4. Enter the full name of the person you want the judge to issue an ERPO against in the Defendant/Respondent section of the caption

Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING Check only one box and specify where indicated.

COMMERCIAL
- ○ Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
- ○ Contract
- ○ Insurance (where insurance company is a party, except arbitration)
- ○ UCC (including sales and negotiable instruments)
- ○ Other Commercial (specify): _____

NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the ***COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C).***

REAL PROPERTY Specify how many properties the application includes: _____
- ○ Condemnation
- ○ Mortgage Foreclosure (specify): ○ Residential ○ Commercial
  Property Address: _____

  NOTE: For Mortgage Foreclosure actions involving a one to four family, owner-occupied residential property or owner-occupied condominium, complete and attach the ***FORECLOSURE RJI ADDENDUM (UCS-840F).***
- ○ Tax Certiorari
- ○ Tax Foreclosure
- ○ Other Real Property (specify): _____

OTHER MATTERS
- ○ Certificate of Incorporation/Dissolution (see *NOTE* in COMMERCIAL section)
- ○ Emergency Medical Treatment
- ○ Habeas Corpus
- ○ Local Court Action
- ○ Mechanic's Lien
- ○ Name Change
- ○ Pistol Permit Revocation Hearing
- ○ Sale or Finance of Religious/Not-for-Profit Property
- ○ Other (specify): _____

MATRIMONIAL
- ○ Contested

  NOTE: If there are children under the age of 18, complete and attach the ***MATRIMONIAL RJI ADDENDUM (UCS-840M).***

  For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (UD-13).

TORTS
- ○ Asbestos
- ○ Child Victims Act
- ○ Environmental (specify): _____
- ○ Medical, Dental or Podiatric Malpractice
- ○ Motor Vehicle
- ○ Products Liability (specify): _____
- ○ Other Negligence (specify): _____
- ○ Other Professional Malpractice (specify): _____
- ○ Other Torts (specify): _____

SPECIAL PROCEEDINGS
- ○ CPLR Article 75 (Arbitration) (see *NOTE* in COMMERCIAL section)
- ○ CPLR Article 78 (Body or Officer)
- ○ Election Law
- ● Extreme Risk Protection Order ← 5. Select "Extreme Risk Protection Order"
- ○ MHL Article 9.60 (Kendra's Law)
- ○ MHL Article 10 (Sex Offender Confinement-Initial)
- ○ MHL Article 10 (Sex Offender Confinement-Review)
- ○ MHL Article 81 (Guardianship)
- ○ Other Mental Hygiene (specify): _____
- ○ Other Special Proceeding (specify): _____

STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

	YES	NO	
Has a summons and complaint or summons with notice been filed?	○	●	If yes, date filed: _____
Has a summons and complaint or summons with notice been served?	○	●	← 6. Select "NO" for all three questions
Is this action/proceeding being filed post-judgment?	○	●	If yes, judgment date: _____

NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.
- ○ Infant's Compromise
- ● Extreme Risk Protection Order Application ← 7. Select "Extreme Risk Protection Order Application"
- ○ Note of Issue/Certificate of Readiness
- ○ Notice of Medical, Dental or Podiatric Malpractice — Date Issue Joined: _____
- ○ Notice of Motion — Relief Requested: _____ — Return Date: _____
- ○ Notice of Petition — Relief Requested: _____ — Return Date: _____
- ○ Order to Show Cause — Relief Requested: _____ — Return Date: _____
- ○ Other Ex Parte Application — Relief Requested: _____
- ○ Poor Person Application
- ○ Request for Preliminary Conference
- ○ Residential Mortgage Foreclosure Settlement Conference
- ○ Writ of Habeas Corpus
- ○ Other (specify): _____

RELATED CASES List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

PARTIES For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Un-Rep	Parties List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3rd party plaintiff, etc.)	Attorneys and Unrepresented Litigants For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	Issue Joined For each defendant, indicate if issue has been joined.	Insurance Carriers For each defendant, indicate insurance carrier, if applicable.
☑	Name: Jane Doe Role(s): Petitioner	123 Main Street, Albany, NY 12205	○ YES ○ NO	
☑	Name: John Doe Role(s): Respondent	456 Pine Street, Albany, NY 12205	○ YES ● NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	

8. Check the "Un-Rep" boxes

9. Enter your full name and select "Petitioner" as your role

10. Enter your address

11. Enter the respondent's full name and select "Respondent" as the role

12. Enter the respondent's address

13. Select "NO"

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: 03/26/2019 — 14. Enter today's date

Signature: Jane Doe — 16. Sign the form

Attorney Registration Number

Print Name: Jane Doe — 15. Enter your full name

Field Name **Field Entry**

Court: Select "Supreme" from the drop-down list.

County: Select the county where the respondent lives from the drop-down list.

Caption: Enter your full name in the Plaintiff/Petitioner field.

Caption: Enter the full name of the person you want the court to issue an ERPO against in the Defendant/Respondent field.

Nature of Action or Proceeding:	Select "Extreme Risk Protection Order" in the Special Proceedings subsection.
Status of Action or Proceeding:	Answer "NO" for all three questions.
Nature of Judicial Intervention:	Select "Extreme Risk Protection Order Application."
Parties	In the first row, 1) check the "Un-Rep" box, 2) enter your full name and select "Petitioner" as your role from the drop-down list in the Parties column, and 3) enter your address in the Attorneys and Unrepresented Litigants column.
Parties:	In the second row, 1) check the "Un-Rep" box, 2) enter the full name of the person you want the court to issue an ERPO against and select "Respondent" as their role from the drop-down list in the Parties column, 3) enter their address in the Attorneys and Unrepresented Litigants column, and 4) select "NO" in the Issue Joined column.
Dated:	In the "Dated" field, enter the date you are completing the form.
Print Name:	In the "Print Name" field enter your full name.
Signature:	In the "Signature" field, sign the form.

NOTE: You can print a blank RJI form if you prefer to complete your RJI form by hand.

4. **Complete an Application to Waive Extreme Risk Protection Order Filing Fees, and print it to file with the court.**

   By law, the court clerk must charge a $210 fee to assign an index number to a Supreme Court case. District attorneys, police and public school officials are not required to pay the fee. But, the law requires school officials from private schools and members of the respondent's family or household to pay. You can ask the court to waive the fee by completing and attaching a fee waiver application form. If you attach this form to your ERPO application, the clerk will take your papers and bring them to the judge without payment of the fee. The judge will decide your application for an ERPO and will also decide if you must pay the fee. The fee waiver decision is completely separate from the judge's decision on your ERPO application. Use the fillable online fee waiver application form to complete and print your fee waiver request, and file it with the court along with your ERPO application.

   NOTE: You can print a blank fee waiver application form if you prefer to complete your fee waiver application by hand.

5. **Bring the completed application, fee waiver and RJI forms and any supporting documents to the Supreme Court of the county where the respondent lives and file the papers.**

   Use the Court Locator search to find the court's address. Select the county where the respondent lives in the "Choose County" list, and select Supreme Court in the "Choose Court Type" list. Then, click "Find the Court" to show the court's address.

6. **What happens when I get to court with my papers?**

   The clerk will take your papers, assign an index number to the case, and bring your papers to the judge. The judge will decide if a temporary ERPO will be issued on the same day that you file the papers. If the judge issues a temporary ERPO, a police officer will bring a copy to the respondent and remove any guns that the respondent owns or possess.

NOTE: If you are a private school official or a member of the respondent's family or household, the judge will also decide your fee waiver application. The judge's decision on the fee waiver application is completely separate and has no impact on the judge's decision on your ERPO application.

7. **What happens next?**

After the judge decides your application for a temporary ERPO, a hearing is scheduled for the judge to decide if a final ERPO will be issued. The hearing is usually held within 3 to 10 days later. The court will notify both you and the respondent of the hearing date. At the hearing, both sides can testify, call witnesses and give evidence to support their side of the story. Then, the judge will decide if a final ERPO will be issued. A final ERPO can be issued for up to one year. If the judge does not issue a final ERPO, the case is over.

8. **What if there is an emergency and the Supreme Court is closed?**

The Supreme Court is normally open Monday through Friday from 9:00AM to 5:00PM. The court is closed at night and on weekends and court holidays. If your application is an emergency and you must file it outside of normal business hours, please follow the appropriate procedure based upon where you are filing your application:

1. If you are filing an off-hours emergency application in one of the five counties (boroughs) of NY City when the Supreme Court is closed, you can go to the Criminal Court in that borough to file your emergency application during the following hours: **Weeknights:** (Monday - Friday) from 5:00PM to 1:00AM, except Richmond County (Staten Island) Criminal Court which is closed at night. **Weekends:** (Saturday - Sunday) and Court Holidays from 9:00AM to 1:00AM, except Richmond County (Staten Island) Criminal Court which is open from 9:30AM to 1:00PM on weekends and closed on court holidays.

   You can find the location of the Criminal Court by using the Court Locator search.

2. If you are filing in any county outside NY City, use the following emergency phone number and/or email address to reach a Supreme Court judge to file your off-hours emergency application when the Supreme Court is closed: 1-800-430-8457 or emergency@nycourts.gov

What can happen AFTER a final ERPO is issued?

- **Change in circumstances.** Only once during the time an ERPO is in effect, the respondent can file an Application to Amend or Vacate Extreme Risk Protection Order if there is a change in circumstances.

  To make an application to vacate or amend the ERPO, complete and print the fillable online application form, and file it with the court. The court must schedule and hold a hearing. The court sends the petitioner a copy of your application form, and the court notifies both you and the petitioner of the hearing date. At the hearing, both sides can testify, call witnesses and give evidence to support their side of the story. Then, the judge will decide if there is a substantial change in circumstances and if the ERPO should be vacated or amended.

  NOTE: You can print a blank application form if you prefer to complete the application by hand.

- **Renew a final ERPO.** Within 60 days before a final ERPO expires, the petitioner can file an Application for Renewal of Extreme Risk Protection Order with the court.

To make an application to renew the ERPO, complete and print the fillable online application form and file it with the court. You must also serve the respondent with a copy of the renewal application. The court must schedule and hold a hearing. The court notifies both you and the respondent of the hearing date. At the hearing, both sides can testify, call witnesses and give evidence to support their side of the story. Then, the judge will decide if the ERPO will be renewed. The ERPO can be renewed for up to one year. If the judge does not renew the ERPO, the case is over.

NOTE: You can print a blank application form if you prefer to complete the renewal application by hand.

- **Return guns to lawful owner.** If the respondent is not the lawful owner of guns that were surrendered to or removed by the police, the lawful owner can apply to have the guns returned.

  To make an application to have your guns returned, complete and print the fillable online application form, and file it with the court. The applicant must attach proof of ownership and show they can legally possess the guns. Then, the court will decide if the guns should be returned to the applicant.

  NOTE: You can print a blank application form if you prefer to complete the application by hand.

- **Return guns to respondent.** When a final ERPO expires and it is not renewed, the respondent can apply to have any guns that were surrendered to or removed by the police returned.
  To make an application to have your guns returned, complete and print the fillable online application form and file it with the court. You must attach proof of ownership and show that you can legally possess the guns. The court will send a copy of the application to the petitioner and any licensing officers who have issued a gun permit to you. If the petitioner or a licensing officer objects to you getting the guns back, the court must schedule and hold a hearing. The court notifies you, the petitioner and the licensing officers of the hearing date. At the hearing, the parties can testify, call witnesses and give evidence to support their side of the story. Then, the court will decide if the guns should be returned to you.

  NOTE: You can print a blank application form if you prefer to complete the application by hand.

EXTREME RISK PROTECTIVE ORDER (ERPO) FORMS

Application Form	Fillable PDF	Plain PDF
Request for Judicial Intervention (UCS-840)	Fillable PDF	Plain PDF
Temporary Extreme Risk Protection Order (UCS-6341)	Fillable PDF	Plain PDF
Waive Extreme Risk Protection Order Filing Fees (UCS-6341W)	Fillable PDF	Plain PDF
Amend or Vacate Extreme Risk Protection Order (UCS-6343V)	Fillable PDF	Plain PDF
Renewal of Extreme Risk Protection Order (UCS-6345A)	Fillable PDF	Plain PDF
Return Weapons to Lawful Owner UCS-6343A	Fillable PDF	Plain PDF

Return Weapons to Respondent UCS-6346A	Fillable PDF	Plain PDF

GUN CONTROL

New York's New 'Red Flag' Law Illustrates the Due Process Problems Posed by Gun Confiscation Orders

When it comes to deciding who should keep their Second Amendment rights, the deck is stacked against gun owners.

JACOB SULLUM | 8.23.2019 2:05 PM

(Office of the Governor)

New York's "red flag" law, which takes effect tomorrow, illustrates the due process issues raised by court orders that suspend people's Second Amendment rights when they are deemed a threat to themselves or others. The law seems designed to compound the problems created by the 2013 SAFE Act, which required mental health specialists to report people they thought "likely to engage in conduct that will cause serious harm to self or others" so police could confiscate their guns.

The new law allows a long list of people to seek an "extreme risk protection order" that bars the respondent from possessing firearms. Potential petitioners include police officers, prosecutors, blood relatives, in-laws, current and former spouses, current and former housemates, current and former girlfriends or boyfriends, people who have produced a child with the respondent, and school administrators or their designees, such as teachers, coaches, and guidance counselors. The "school personnel" covered by the law can even report a *former* student if he graduated within the previous six months.

As usual, "extreme risk protection order" is a misnomer. An initial, ex parte order lasting up to six business days can be obtained based on "probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others." The purported threat need not be "extreme" or imminent. At this stage, the respondent has no opportunity to challenge the claims against him, and the experience of other states suggests that judges will routinely rubber-stamp initial orders.

After a hearing, a final order can be issued based on "clear and convincing evidence" that "the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others." A final order lasts up to a year and can be renewed. Again, there is no requirement that the threat be imminent. And while "clear and convincing evidence" is a more demanding standard of proof than "a preponderance of the evidence" (which is enough in three states and the District of Columbia), "likely" is a slippery concept in this context.

The red flag law refers to the definition used in New York's standard for "emergency" psychiatric commitment, lasting up to 15 days, which requires a "substantial risk of physical harm." That is better than the standard prescribed by many other red flag laws, which typically require a "significant" risk and in some cases merely a "risk," "danger," or "risk of danger." But contrary to the connotations of *extreme* and *likely*, people can lose their Second Amendment rights even when it is quite *un*likely that they would use a gun to harm themselves or others.

Notably, judges may consider "any evidence," and respondents have no right to legal representation if they cannot afford it. Nor do they have a civil cause of action against petitioners who lie, a potentially significant problem in light of all the people who are allowed to file a petition. What is to stop an in-law, cousin, ex-spouse, ex-girlfriend, or former housemate with a grudge from abusing this process by seeking to take away someone's constitutional rights?

Theoretically, they could be prosecuted for lying, but that almost never happens. "The odds of criminal prosecut[ion] are low, even if an affidavit is sworn under
penalty of perjury," David Kopel, a gun policy expert at Denver's Independence Institute, noted in Senate testimony last March. "Perjury prosecutions are rare, and rarer still from civil cases....Without a strong civil remedy, there is little practical deterrent to malicious reports."

Erie County District Attorney John Flynn, who supports New York's red flag law, recently acknowledged the potential for mischief. "This is a huge change," he told a local radio station. "I agree that there's potential for abuse here....If some spouse is mad at their husband or wife, and they get into an argument, and they're trying to just get back at their spouse, can they come to me and lie to me, say, 'My husband's acting erratically, he's got a gun,' etc., etc., when they really might not be mentally disturbed? I agree the potential is there for abuse. But all I can say is that I can see through nonsense....I'm going to be fair. I'm going to be reasonable. I'm going to use common sense. And I'm not going to willy-nilly go in and take people's guns that have a constitutional right to keep them."

But as Flynn acknowledged, "you don't have to come to me": Anyone on the long list of potential petitioners can go directly to a judge and ask for a gun confiscation order. So it's not as if law enforcement officials like Flynn, who describes himself as "a firm believer in the right to bear arms," will act as filters against malicious petitions. And while the judge is supposed to act as a filter, he has a strong incentive to issue an order whenever a petitioner claims someone poses a danger to himself or others. From the judge's perspective, it is better to err on the side of suspending someone's constitutional rights than to take the chance that something terrible will happen if he doesn't.

"New York is proud to pass the first-in-the-nation Red Flag Bill that empowers school teachers to do something when they believe something bad is going to happen," Gov. Andrew Cuomo proclaimed when he signed the bill last February. Cuomo imagines that vigilant, conscientious, and prescient teachers (the kind typically employed by public school systems) will prevent mass shootings by identifying would-be killers before they can strike. But what about teachers who are mistaken, or dislike a particular student, or are mistaken *because* they dislike that student? They can set in motion a legal process that affects not only the student but his parents, whose guns will be confiscated until they demonstrate that they are legally allowed to own them.

Such legal entanglement may seem like a small matter compared to the risk of a mass shooting. But it is bound to happen while the violence-preventing benefit of red flag laws is purely speculative. Likewise, it is certain that many adults who do not actually pose a threat to anyone will nevertheless lose their Second Amendment rights for a year or more. That consideration seems to count for nothing in the calculations of the politicians agitating for more red flag laws.

Touro Law Center
Trial Advocacy and Practice Society

New Criminal Legislation: 2019

Judge Mark D. Cohen
Kent Mosten, Director of Training, Suffolk County Legal Aid Society
Central Islip, New York
October 2, 2019

Overview

- 2019 New Criminal Legislation:
  - New Discovery Legislation
  - New "Extreme Risk" Protection Orders Legislation
  - Miscellaneous Legislative Changes: Willard Eligibility; Certain C.P.L. Art. 440 Motions Involving Misdemeanors; Definite Sentences, Forfeiture, Gravity Knives and More

New Extreme Risk Protection Order (TERPO/ERPO) Legislation Effective 8/24/19

- "Red Flag" Law
- New C.P.L.R Article 63-A
- Petitioner (i.e., Police Officer, DA, Family or Household Member or School Administrator or Other School Designee) May Apply to Supreme Court For "Extreme Risk Protection Order" Involving Firearms
- Civil Proceeding Filed in Supreme Court in County Where Respondent Resides
- No RJI Fees Required by OCA Order; Index Fees Not Applicable for PD, DA and School Officials Anyway – OCA Fee Waiver Form Available For Family/Household Petitioners For Court

New Extreme Risk Protection Order Legislation Effective 8/24/19

- Application Must Be Sworn With "Accompanying Supporting Documentation" Justifying Issuance of Extreme Risk Protective Order That Prohibits Respondent From "Purchasing, or Attempting to Purchase a Firearm, Rifle or Shotgun"
- Basis: PC to Believe Respondent Is "Likely to Engage In Conduct That Would Result in Serious Harm to Him/Herseif or Others," As Defined in Mental Hygiene Law 9.39

New Extreme Risk Protection Order Legislation Effective 8/24/19

- OCA Drafted TERPO/ERPO Form Petitions and Orders Available
- Applications For Temporary Extreme Risk Protection Orders Must Be "Determined in Writing On the Same Day The Application is Filed"
- If Application Denied, Court Must Still Order Hearing on Final ERPO Within 10 Days Unless Petition is Voluntarily Withdrawn by Petitioner

New Extreme Risk Protection Order Legislation Effective 8/24/19

- In Determining Whether to Issue Temporary Order, Relevant Factors Include:
- a) Any Prior Convictions For DV
- b) Any Pending Charge For DV
- c) Is Respondent on Parole or Probation

New Extreme Risk Protection Order Legislation Effective 8/24/19

- d) Prior Reckless Use or Brandishing Firearms
- e) History of Violations of Extreme Protection Orders
- f) Evidence of Recent Drug or Alcohol Abuse
- g) Evidence of Recent Acquisition of Firearm, Rifle or Shotgun, Other Dangerous Instrument or Any Ammunition Therefor
- Court is Required to Consider Time Elapsed Between Occurrence of Any Such Act and Age of Person and "Recent" Means < 6 Months Prior

New Extreme Risk Protection Order Legislation Effective 8/24/19

- Temporary Order, If Issued, Must Be In Writing and Must Include:
- a) Statement of Grounds Found For Issuance
- b) Date and Time Order Expires
- c) Address of Court Issuing Order

New Extreme Risk Protection Order Legislation Effective 8/24/19

- d) Order to Respondent He/She Can't Purchase or Possess Firearm, Rifle or Shotgun While Order is in Effect
- e) Order Requiring Respondent to List All Firearms, Rifles and Shotguns Owned or Possessed
- f) Notice Informing Respondent Hearing Will Be Held Within 3-6 Business Days After Service of Temporary Order and That He/She May Seek Counsel

New Extreme Risk Protection Order Legislation Effective 8/24/19

- Court Must Arrange For Prompt Service of Temporary Risk Protection Order by Appropriate Law Enforcement Agency and May Redact Address and Contact Information of Petitioner in Such Order
- Court May Also Grant Confidentiality Applications re: Name of Petitioner = "Anonymous"
- Court Must Also Inform State Police, Any Other Law Enforcement Agency Within Jurisdiction and DCJS of Issuance of Such Order

New Extreme Risk Protection Order Legislation Effective 8/24/19

- OCA Form TERPO/ERPO Has C.P.L. Art. 690 Consistent Search Provision Endorsements
- On Service of Order, Law Enforcement Officer Must Request Surrender of All Firearms, Rifles and Shotguns From Respondent, "Shall Conduct Any Search Permitted by Law For Such Firearms" of Person, Premises or Vehicle and Take Possession of All Weapons Surrendered or in "Plain Sight"
- Per C.P.L.R. 6344: Law Enforcement Must Generate Vouchers For All Firearms Seized

New Extreme Risk Protection Order Legislation Effective 8/24/19

- Court Must Conduct Hearing on Issuance of Final Extreme Risk Protection Order Within 3-6 Business Days of Service of Temporary Order and Alternatively No Later Than 10 Business Days
- Respondent Entitled to Additional Time to Prepare For Hearing

New Extreme Risk Protection Order Legislation Effective 8/24/19

- Petitioner Has Burden By Clear and Convincing Proof That Respondent is "Likely to Engage In Conduct That Would Result in Serious Harm to Him/Herself or Others"
- If Court Determines to Issue Final Order, It Must Be In Writing and Direct Service on Respondent
- Final Order May Be Effective For Up to One Year, and If Temporary Order, That Time Measured From Issuance of Temporary Order
- Final Order May Be Modified or Vacated on Clear and Convincing Proof, Change of Circumstances

New Extreme Risk Protection Order Legislation Effective 8/24/19

- Final ERPO Order Form Issued by OCA
- Upon Issuance of Final Order:
- Weapons Retained by Law Enforcement
- Court Must Temporarily Suspend Respondent's License to Purchase or Possess Firearms

New Extreme Risk Protection Order Legislation Effective 8/24/19

- Law Enforcement Officer Must Request Respondent to Surrender Weapons With Lawful Search Permitted, Including Seizure of Those in Plain Sight
- If Area Searched Is Jointly Occupied and Other Person May Lawfully Possess Weapons, Court Must Inform Such Person of Obligation to Properly Store Weapons

New Extreme Risk Protection Order Legislation Effective 8/24/19

- Respondent Must Be Prohibited from Purchasing or Possessing Specified Firearms and Directed to Surrender any Such Weapons
- Same Notifications to Law Enforcement As In Temporary Orders Required
- Upon Expiration of Order, Weapons Must Be Returned, Order Sealed With Exceptions (Courts, LE, Etc.), With Notifications and With Renewals Permitted

New Discovery Legislation Effective 1/1/20

- C.P.L. Article 240 is Repealed & New C.P.L. Article 245 Enacted For "Automatic Discovery"
- Per New C.P.L. 245.10: Discovery Obligations of DA Under New C.P.L. 245.20 Must Be Undertaken "As Soon as Possible," But Not Later That 15Days After Arraignment on Accusatory Instrument
- People Must Make "Diligent, Good Faith Efforts" to Obtain Required Material
- If Materials "Exceptionally Voluminous" or Not In People's Actual PossessionDA's Discovery Obligation May Be Stayed 30 Days Without Motion

New Discovery Legislation Effective 1/1/20

- Also, Per C.P.L. 245.10(c), DA Must Disclose D's Statements Prior to Arraigned D Within 48 Hours of Scheduled Date For D to Testify at GJ Presentation
- D's Reciprocal Discovery Must be Provided Within 30 Days of People's Certification of Compliance. C.P.L. 245.20(2)
- Per C.P.L. 245.20(2): DA Has Duty to Make "Diligent, Good Faith Effort to Ascertain Existence" of Discoverable Material, But No Requirement to Subpoena Material Not In Possession, But …

New Discovery Legislation Effective 1/1/20

- All Discoverable Material Related to Prosecution Under This Subdivision in Possession of State Police or Local Police or Law Enforcement "Deemed in Possession" of Prosecution For Disclosure Purposes
- DA Required to Identify "Any Laboratory Having Contact With Evidence Related to the Prosecution of a Charge"
- Per C.P.L. 245.20(6): Either Party May Redact Social Security Numbers and Tax Numbers From Disclosure

New Discovery Legislation Effective 1/1/20

- Per New C.P.L. 245.20(1): DA Must Automatically Disclose 21 Types of Material Within 15 Calendar Days of Arraignment of Accusatory Instrument (Indictment, SCI, Prosecutor's Information, Simplified Information, Misdemeanor Complaint or Felony Complaint) Without Demand:
- (a) Written, Recorded and Substance of All Oral Statements Made by D or Co-D To Law Enforcement or Agent of Law Enforcement
- (b) All GJ Transcripts of a "Person Who Has Testified Before a Grand Jury," Including But Not Limited to D or Co-D
- (c) The "Names and Adequate Contact Information" For All Persons, Excepting Confidential Informants, Other Than Law Enforcement, "Whom the Prosecutor Knows to Have Evidence or Information Relevant to Any Offense Charged"

New Discovery Legislation Effective 1/1/20

- No Requirement of Disclosure of Physical Addresses
- If Information Regarding CI Addresses "Withheld" or "Redacted" Without Motion But DA Must Notify Defense Such Information Not Disclosed

New Discovery Legislation Effective 1/1/20

- (d) The "Names and Work Affiliation of All Law Enforcement Personnel" Who Have Relevant Information or Evidence Who May Be Called As Witnesses
- Information Regarding Undercover Personnel May Be Withheld Without a Motion But DA Required to Notify Defendant in Writing Unless Court Orders Otherwise For "Good Cause Shown"

New Discovery Legislation Effective 1/1/20

- (e) All Statements, "Written or Recorded or Summarized in Any Writing" of Persons Who Have Evidence or Information Relevant to Any Offense Including Police Reports, Notes of Police Investigators Who May Be Called as Witnesses at Trial or Any Pre-Trial Hearing

New Discovery Legislation Effective 1/1/20

- *Rosario* Disclosure Time Period Obviously Changed and Original Paradigm May Have Been Effectively Overruled
- But Per C.P.L. 245.80(3): If Failure to Disclose Witness Statement (i.e., Rosario Material), No New Pre-Trial Hearing, New Trial or Reversal Unless D Shows "Reasonable Possibility" Non-Disclosure Contributed to the Result at Trial or Other Proceeding

New Discovery Legislation Effective 1/1/20

- (f) "Expert Opinion Evidence": Including, Name Business Address, CV, List of Publications, Results of All Proficiency Tests Taken Within Preceding 10 Years, of "Each Expert Witness Whom the Prosecution Intends to Call as a Witness at Trial or a Pre-Trial Hearing"

New Discovery Legislation Effective 1/1/20

- Reports Prepared by Experts Must Be Disclosed Under This Subdivision
- If No Report Exists, a "Written Statement and a Summary of the Facts and Opinions to Which the Expert is Expected to Testify" Must Be Disclosed

New Discovery Legislation Effective 1/1/20

- (g) All Tapes or Other Electronic Recordings, Including 911 Calls Made or Received In Connection With Criminal Incident DA Intends to Introduce at Trial or Pre-Trial Hearing
- If Discoverable Material >10 Hours, People May Disclose Only Recordings They Intend to Present at Trial or Pre-Trial Hearing, Along with List, Source and Approximate Quantity of Recordings With General Subject Matter

New Discovery Legislation Effective 1/1/20

- D May Request Undisclosed Recordings and Absent Protective Order Must Be Produced As Soon as Practicable But Not Less Than 15 Days After Request
- (h) All Photos and Drawing Made by Law Enforcement or By Person DA Intends to Call at Trial or Pre-Trial Hearing or Which Relate to the Subject Matter of the Case

New Discovery Legislation Effective 1/1/20

- (i) All Photographs, or Photocopies, Etc., Of Property Released Per P.L. 450.10
- (j) All "Reports, Documents, Records Data, Calculations or Writings, Including But Not Limited To Preliminary Tests and Screening Results, Including Bench Notes and Analyses" of Mental, Physical or Scientific Tests Made by or at Request of Law Enforcement or Made by Person DA Intends to Call at Trial

New Discovery Legislation Effective 1/1/20

- Includes "Laboratory Management System Records" Concerning "Preliminary or Final Findings of Non-Conformance With Accreditation, Industry or Governmental Standards or Laboratory Protocols"
- If DA Submitted Item For Testing By Forensic Lab Not Under People's Direction or Control, Court on Motion of Party May Issue SDT or Order to Produce Such Material

New Discovery Legislation Effective 1/1/20

- (k) *Brady* Material, Including Information Known to Law Enforcement in Case That Tends to:
- (i) Negate D's Guilt
- (ii) Reduce or Mitigate D's Culpability
- (iii) Support a Potential Defense to Charge
- (iv) "Impeach the Credibility of a Potential Testifying Prosecution Witness"
- (v) Undermine Evidence of the D's Identity
- (vi) Provide a Basis for a Motion to Suppress, or
- (vii) Mitigate Punishment

New Discovery Legislation Effective 1/1/20

- (k) *Brady* Material Under This Subdivision Must Be Disclosed Irrespective of Whether Information is Recorded a Tangible Form = "Oral Brady Material" See *United States v. Rodriguez, 496 F.3d 221 (2nd Cir. 2007)*
- Disclosure of Such Material Required "Expeditiously Upon Receipt" and May Not Be Delayed if Obtained Earlier Than Time Period For Disclosure Under C.P.L. 245.10

New Discovery Legislation Effective 1/1/20

- (l) "A Summary of All Promises, Rewards and Inducements" Made to or in Favor of All Persons Who May Be Called by People as Witnesses, Along With All Documents Relevant Thereto
- (m) A List of, and Right to Inspect, Copy, Photograph and Test All Tangible Objects Obtained From or Allegedly Possessed by D or Co-D, Including Objects Alleged to be Constructively Possessed or Abandoned by the D, Along With an Enumeration of Any Statutory Presumptions DA Intends to Assert at Trial With Specificity Regarding Each Item of Evidence Thereto

New Discovery Legislation Effective 1/1/20

- (n) If Search Warrant, Copy of Warrant, Application and Police Inventory of Items Seized, Along With "A Transcript of All Testimony or Other Oral Communications Offered in Support of the Warrant Application"
- (o) All Tangible Property Relating to Subject Matter of Case DA Intends to Introduce at Trial or Pre-Trial Hearing

New Discovery Legislation Effective 1/1/20

- (p) "A Complete Record of Judgments of Conviction For All Defendants and All Persons Designated as Potential Witnesses Under C.P.L. 245.10(c)"
- (q) When Known by the DA, "The Existence of Any Pending Criminal Action Against All Persons Designated as Potential Witnesses Under C.P.L. 245.10(c)"

New Discovery Legislation Effective 1/1/20

- (r) The Approximate Date, Time and Place of the Offense Charged (i.e., BP's)
- (s) If VTL Prosecution All Calibration Records of Instruments Used to Perform Scientific Tests
- (t) If Computer Crime Prosecution Under P.L. 156.05 and 156.10, Time and Manner of Violation

New Discovery Legislation Effective 1/1/20

- (u) Copy of "All Electronically Created or Stored Information Seized or Obtained by Law Enforcement" Believed to be Owned or Maintained by D Under Custody or Control of Law Enforcement
- If Possession of Electronic Material Would Be Criminal Under State or Federal Law, Only Copies of Non-Contraband Material to Be Disclosed With Contraband Only Disclosed to Counsel For D "At a Supervised Location That Provides Regular and Reasonable Hours (i.e., DA's Office, Police Station or Court"

New Discovery Legislation Effective 1/1/20

- In Summary: While All Disclosure Provisions of C.P.L. 245.20(1) Are Important, Careful Attention to The Following Provisions is Recommended:
- c) Names of Civilians With Information About Case
- d) Names of Law Enforcement Personnel With Information About Case
- e) Broader Expert Witness Disclosure
- f) Early *Rosario*, Including GJ Transcript Disclosure
- g) Electronic Recordings Disclosure [See Also "u" – Electronically Stored or Seized Information]
- k) & l) Enumerated *Brady* Material, Including "Oral *Brady*"

New Discovery Legislation Effective 1/1/20

- When DA Has Provided Discovery Provided by C.P.L. 245.20(1), He/She Must Serve D and File With Court a "Certificate of Compliance"
- If Additional Discovery Provided Prior to Trial After Filing of Certificate, DA Must File Supplemental Certificate
- No Adverse Consequence to DA May Result if Certificate Filed in Good Faith But Court May Grant Sanctions Per C.P.L. 245.80

New Discovery Legislation Effective 1/1/20

- Pre-Indictment Discovery Required In Pleas in Felony Complaint Cases Per C.P.L. 245.25(1):
- At Least Three Calendar Days Prior to Expiration of DA's Plea Offer, DA Must Disclose All C.P.L. 245.20 Material With Possible Protective Orders
- If DA Doesn't Comply, On D's Motion Alleging Violation, Court to Consider Alleged Disclosure Failure on D's Decision to Accept or Reject Plea Offer
- If Court Finds DA's Breach, Materially Affected Plea Decision, and If DA Refuses to Reinstate Lapsed or Withdrawn Plea Offer, "At a Minimum," Court Must Preclude Evidence Not Disclosed at Any Ensuing Trial

New Discovery Legislation Effective 1/1/20

- Defendant's Reciprocal Discovery Required in C.P.L. 245.20(4) Within 30 Days After DA's Certificate of Compliance:
- Names, Addresses and Birthdates, Along With Statements of All Person Defense Intends to Call a Witness at Trial
- Statements of Defense Witness To Be Called to Impeach Prosecution Witness Not Required Until After Prosecution Witness has Testified at Trial

New Discovery Legislation Effective 1/1/20

- Per C.P.L .245.30, Any Party May Apply For a Court Order to Preserve Evidence
- The Court Must Rule on Such Motions "Expeditiously"
- Per C.P.L. 245.55(3): After Filing of Accusatory Instrument, DC Must "Expeditiously Notify" Prosecution of Need to Preserve 911, Police Radio Transmissions, Video and Other Recordings, Including Police Body Camera Recordings and DA Must "Expeditiously" Take Reasonable Steps to Ensure Preservation

New Discovery Legislation Effective 1/1/20

- Per C.P.L. 245.30(2): After the Filing of an Accusatory Instrument, a D May Move, Upon Notice to DA and "Any Impacted Individual," For a Court Order Granting Access to a "Crime Scene" or Other Premises Relevant to the Subject Matter of the Case," With Permission to Inspect and Photograph

New Discovery Legislation Effective 1/1/20

- Per C.P.L. 245.30(3): On Application of a D, the Court May Grant Unenumerated "Discretionary Discovery" If D "Is Unable Without Undue Hardship to Obtain the Substantial Equivalent by Any Other Means" and Thus, Order the Prosecution or Other Entity to Make Available Such Material to the Defense.
- Thus, *People v. Colavito, 87 N.Y.2d 423 (1996)*, Citing *People v. Copicotto, 50 N.Y.2d 222, 226, fn.2 (1980)* Overruled [Unless Constitutionally or Otherwise Specifically Required, Items Not Enumerated in C.P.L. Art. 240 Not Discoverable]

New Discovery Legislation Effective 1/1/20

- To Ensure Compliance, Per C.P.L. 245.35, The Court May:
- (1) Require DA and DC to "Diligently Confer" With Court or Court Staff to Resolve Discovery Issues
- (2) Require Attendance at a Discovery Conference With the Court or Court Staff at a Specified Time

New Discovery Legislation Effective 1/1/20

- (3) Require the DA to File an Additional Certificate of Compliance That States All Reasonable Inquires Have Been Made of Police Investigators About Favorable Information, Including Unwritten (i.e., Oral) Information, and
- (4) Requiring "Other Measures or Proceedings Designed to Carry Into Effect The Goals of This Article"

New Discovery Legislation Effective 1/1/20

- Per C.P.L. 245.20(1)(b): If Court Required to Review GJ Sufficiency, DA to Provide GJ Transcripts to Court "Expeditiously" Notwithstanding Any Other Applicable Time Periods For Disclosure
- Per C.P.L. 245.20(3), ["Supplemental Discovery"]" *Sandoval* and *Molinuex* Applications =All Uncharged "Misconduct and Criminal Acts" Must Be Disclosed Within 15 Days Prior to First Scheduled Trial Date Per C.P.L. 245.10(1)(b), With DA Required to Designate Whether Intention is to Use as Substantive Proof in Case in Chief or as Impeachment of Defendant

New Discovery Legislation Effective 1/1/20

- Per C.P.L. 245.40(1) After Filing of Accusatory Instrument, and on Showing of PC, Court May Order D to:
- (a): Appear in a Lineup
- (b) Speak for ID By a Witness or Potential Witness
- (c) Pose For Photographs, not Involving a Re-Enactment of an Event

New Discovery Legislation Effective 1/1/20

- (d) Permit the Taking of Samples of D's Blood, Hair and Other Materials That Involve "No Unreasonable Intrusion Thereof"
- (e) Provide Handwriting Exemplars, and
- (g) Submit to a Reasonable Physical or Medical Inspection
- But Per C.P.L. 245.40(2): This Does Not Authorize Any Additional Rights Otherwise Available for Such an Order Pre-Accusatory Instrument Filing

New Discovery Legislation Effective 1/1/20

- Per C.P.L .245.45: Court May Order Testing and Comparison of DNA Profile in Possession of Government, Upon D's Showing Such Test is "Material" to the Presentation of a Defense

New Discovery Legislation Effective 1/1/20

- Per C.P.L. 245.50(3): DA Is Not Considered "Ready" For Purposes of C.P.L. 30.30 Unless "Proper" Certificate of Discovery Compliance Filed – But Good Cause Possible Exception

New Discovery Legislation Effective 1/1/20

- Per C.P.L. 240.55(1): DA "Shall Endeavor to Ensure That a Flow of Information is Maintained" Between DAO and Police "Sufficient to Place Within His or Her Possession All Material Pertinent to the Defendant," Including But Not Limited to C.P.L. 245.20 Material
- Per C.P.L. 245.55(2): The Police "Must" Make a Complete Copy of File Available to DA, Absent Court Order

New Discovery Legislation Effective 1/1/20

- Per C.P.L. 245.60: There is a Continuing Duty on Both DA and DC to Provide Expeditious Disclosure of All Material Enumerated in C.P.L. 240.20
- Per C.P.L. 245.65: The Disclosure Requirements of C.P.L. Article 245 Do Not Include, In Essence, "Work Product" and In Particular, Statements of D, Written or Recorded to DC

New Discovery Legislation Effective 1/1/20

- Court May Issue Protective Orders Per C.P.L. 245.70(1), Upon a Showing of Good Cause to Deny, Restrict, Limit or Defer Discovery, Including Discovery Only to DC
- If Limitation of Material Only to DC, Court Must Inform DC on Record
- Applications For Protective Orders May Be Ex Parte, On Record or in Writing With Party "Opposing" Such Order Permitted to Do So, Also Ex Parte or in Camera

New Discovery Legislation Effective 1/1/20

Per C.P.L. 245.80(4): Court Must Conduct "An Appropriate Hearing" Within "3 Business Days" on Protective Order Applications to Determine If "Good Cause" Shown

Party Who Unsuccessfully Sought or Opposed Protective Order May Obtain Expedited Review By New Interlocutory Appeal Process Within Two Business Days By "Intermediate Appellate Court" With Certification Substantial Interests Involved and Diligent Efforts to Resolve Failed

New Discovery Legislation Effective 1/1/20

- Per C.P.L. 245.60(6): "Intermediate Appellate Justice" to Make Determination With Initial Order Stayed "Until The Appellate Justice Renders a Determination"
- Statute Silent on Whether "Intermediate Appellate Court" Means County Count in Upstate Counties or Appellate Term in Downstate Counites On Appeals From Adverse Protective Order Rulings in Local Criminal Courts, But Statute Repeatedly Utilizes Term "Appellate Justice"

New Discovery Legislation Effective 1/1/20

Per C.P.L .240.75: D's Can Waive Discovery But May Do So In Writing at Arraignment

New Discovery Legislation Effective 1/1/20

Court May Impose Remedies For Discovery Failure Per C.P.L 245.80:

Even If No Prejudice Shown by Defense, Continuance May Be Granted For Belated Disclosure

If Discoverable Material Lost or Destroyed, Remedy Must Be "Proportionate to the Potential Ways in Which The Material Could Have Helped the Party Entitled to the Disclosure"

New Discovery Legislation Effective 1/1/20

And Finally, Per C.P.L. 245.20(7): There is a "Presumption in Favor of Openness" When Interpreting C.P.L. 245.10, 245.20(1) and 245.25"

Miscellaneous New Legislation Affecting Sentencing Effective 4/12/19

- Mandatory Driver's License Suspension Provisions Under C.P.L. 510.10(2)(b)(v) For Convictions of P.L. Art. 220 and 221 Misdemeanor and Felony Crimes Repealed; Suspensions Are Thus, Discretionary
- Maximum Jail Sentence For Class A Misdemeanor or Unclassified Misdemeanor is 364 Days, Not One Year, Per Modification to P.L. 70.15

New Legislation Affecting Certain Motions to Vacate Convictions Under C.P.L. 440.10 Effective 4/12/19

- C.P.L. 440.10 Modified: If Judgment of Conviction For Class A or Unclassified Misdemeanor, Rebuttable Presumption That Plea Was Not Knowing, Voluntary and Intelligent, Based Upon "Severe or Ongoing Consequences, Including Actual or Potential Immigration Consequences"
- Thus, Re-Plead and Re-Sentences to 364 Days Possible
- Certainly Impact on Immigration & Other Cases

New Legislation Affecting Forfeiture: C.P.L.R. 13-A Effective 10/12/19

- Per New C.P.L.R. 1311-b: DA Can No Longer Seek Money Judgments For Substituted Proceeds or Instrumentalities of Crime
- D Can Challenge Value of Property Claimed For Money Judgment

New Legislation Affecting Forfeiture Effective 10/12/19

- New C.P.L.R 1311(1)(a) Eliminates Forfeiture of Property Arising From Common Scheme and Plan
- New C.P.L.R. 1352: Owner of Seized Property Must Be Given "Prompt Opportunity" to Be Heard
- New Gen. Mun. Law 6-v: Asset Forfeiture Escrow Fund Required For Deposit of Monies Obtained From Sale of Forfeited Property

New Legislation Affecting Shock Effective May 12, 2019

- Amends P.L. 60.05 to Add a New Subd. 8 & Amends Correction Law 865 to Permit Burglary 2 and Robbery 2 or Attempts of Either to be Eligible For Shock Incarceration

OCA Criminal Justice Legislation Implementation Committee

- Training of Judicial and Non-Judicial Staff Undertaken and Scheduled
- TERPO/ERPO Clerk Personnel Training Conducted Statewide
- Collaboration With OCA Counsel's Office and Judicial Institute
- Development of Scripts & Bench Books & Cards
- OCA Standardized Forms
- Operational Considerations
- Technology Impact

Also Enacted:

- Double Jeopardy: Persons Who Receive Presidential Pardons For Federal Crimes May Still Be Prosecuted For State Crimes, Effective 7/8/19
- Statute of Limitations Increased to 20 Years For Rape 2 and Rape 3 Crimes, Effective 2/14/19
- Decriminalization of Marijuana Possession and Expungement of Certain Records, Effective 8/28/19

Also Enacted:

- New A Misdemeanor Crime of Unlawful Dissemination of an Intimate Image, Effective 9/23/19
- Elimination of "Gay Panic" Defense, Effective 6/30/19; See B. Kamins, *"New York Eliminates a Criminal Defense: A Due Process Violation?"* N.Y.L.J. 8/5/19 @ p. 3

Also Enacted:

- Possession of Gravity Knives No Longer Criminalized, Effective 5/30/19
- "Rapid Fire" and "Bump Stock" Weapons Criminalized, Effective 11/29/19
- C.P.L. 610.20 Modified: No Requirement of One Day Notice For Defendant's SDT's Served on Public Entities Under C.P.L.R. 2703 As Long as Return Date Is Three Days or Longer; Standard For SDT Issuance is "Reasonably Likely to Be Relevant and Material to the Proceeding," Effective 1/1/20

The End

Thanks to Jim Fagan For His Great Help in Preparing This Presentation

9/23/19

New York's Criminal Justice Reform Legislation – Bail & Speedy Trial

October 2019
Touro Law School
Kent Moston, Training Director, Suffolk Legal Aid

The New Bail Statute: Overview Monetary Bail Greatly Reduced

- Governor's Estimate: 90% of arrestees will be released without bail.
- Center for Court Innovation: In NYC, 43% of pretrial detainees held only on bail would be released. (20,000 in 2018)
- Sole Consideration for Release Determination: Risk of Flight, not Future Dangerousness (preventative detention).

APPEARANCE TICKETS

- AT's mandatory for all offenses, except "A, B, C & D" felonies.
  - And certain "E" felonies:
    - Rape 3°, Criminal Sex Act 3°, Escape 2°, Absconding Temporary Release 1°, Absconding Community Treatment Facility, & Bail Jumping 2°.

APPEARANCE TICKETS: When Not Mandatory

- **Not mandatory if arrestee has open warrants, or if he/she failed to appear in court in last 2 yrs.**
- **Not mandatory if arrestee, after reasonable opportunity, has not satisfactorily verified his/her identity.**
- **Not mandatory if Domestic Violence Arrest.**
- **Not mandatory if arrest for any PL Article 130 Sex Offense.**
- **Not mandatory if Order of Protection likely.**

APPEARANCE TICKETS: When Not Mandatory

- **Not mandatory if arrest for offense where driver's license subject to revocation or suspension (e.g. DWI).**
- **Not mandatory if Police Officer reasonably believes arrestee is "in distress" and may harm him/herself.**
- **STATIONHOUSE BAIL REPEALED!**

APPEARANCE TICKETS

- **Must be returnable "as soon as possible" but no later than 20 days.**
- **Friendly Reminders: text messages, telephone, email, or 1st class mail.**

NEW BAIL STATUTE

- **New Rule: Guaranteed Release (CPL 510.10 [1]) . . .**
- ***EXCEPT: QUALIFYING OFFENSES:* Bail, Remand, or imposition of *Non-Monetary* Conditions possible.**
  - ******Remand* available only for felony qualifying offenses.**

QUALIFYING OFFENSES: CPL 510.10

- **All PL 70.02 Violent Felonies;**
  - **Except PL 140.25 (2) - Burglary 2° (residential)**
  - **And Except PL 160.10 (1) -Robbery 2° (committed with another)**
- **All *non-drug* "A" Felonies (e.g., murder)**
  - **Except PL 220.77 drug felony- Operating as Major Trafficker (aka Kingpin)**

Qualifying Offenses: CPL 510.10

- **All sex offenses –felonies & misdemeanors (PL Article 130)**
- **Criminal Contempt/Domestic Violence Misdemeanors**
- **Witness Tampering Offenses (PL Art. 215)**
- **Incest (PL Art. 255)**
- **Conspiracy 2° (if underlying crime "A")**

Qualifying Offenses

- Money laundering in support of terrorism 1°, 2°, or felony terrorism
- Facilitating a performance by a child with a controlled substance or alcohol (PL 263.30)
- Use of a child in a sexual performance (PL 263.05)
- Luring a child (PL 120.70)

QUALIFYING OFFENSES - CPL 510.30 (2)(a): Bail Factors

- Court must consider defendant's "activities and history" (not reputation, employment, family ties, & length of residence)
- Defendant's "criminal conviction record" (not criminal history)
- Record of "flight to avoid criminal prosecution" (not record of responding to court appearances)
- Defendant's individual financial circumstances including "hardships"

Unsecured & Partially Secured Bonds

- ***CPL 520.10: If bail is ordered, court must set three forms of bail, one of which must be either unsecured or partially secured bond.

Friendly Reminders After Release

- Court or pretrial services agency must notify released defendant of next court date by text, phone, email or first-class mail.

Non-Qualifying Offenses: If Flight Risk

- Still, no bail or remand.
- Court may impose least-restrictive *non-monetary conditions* necessary to insure defendant's return to court. CPL 500.10 (3-a).
- Judge must state reasons for imposition of *non-monetary* conditions on the record. *Non-monetary* conditions must be reevaluated on future court dates.

Examples of Non-Monetary Conditions for Non-Qualifying Offenses

- Defendant remains in *contact* with pre-trial services agency
- Reasonable travel restrictions
- No firearms, destructive devices or dangerous weapons
- Pre-trial *supervision* (only if lesser condition[s] inadequate)
- If no lesser non-monetary restriction (or combination) sufficient, electronic monitoring

Non-Qualifying Offenses: Electronic Monitoring

- For felonies, and
- DV & sex misdemeanors
- Any misdemeanor if PVFO conviction within 5 years.

Non-Qualifying Offenses: Electronic Monitoring

- Electronic Monitoring authorized only after notice & opportunity to be heard.
- Only for initial period of 60 days.
  - ***IMPORTANT NOTE: Defendant not required to pay for electronic monitoring or any non-monetary condition.
- Defendant deemed in custody for CPL 170.70 & 180.80 purposes.

CPL 510.40: Non-Compliance "In Important Respect" With Release Order

- More Reasonable Conditions necessary to insure return to court. . .
  - Only after evidentiary hearing with
    - Right to counsel, right to present evidence, right to cross examination.
    - People have burden by Clear and Convincing Evidence.
    - Court must state reasons on record or in writing.

"Persistent & Willful" Failures to Appear (CPL 530.45 [19])

- **Bail (but not remand) allowed after a hearing, if defendant**
  - **"Persistently and willfully fail(s) to appear"**
  - **Violates OOP**
  - **Was initially charged with misdemeanor or violation, and subsequently charged with felony witness intimidation or tampering**
  - **Was initially charged with felony, and arrested for new felony.**

Bench Warrants: Grace Period

- *****In typical case, if defendant fails to appear for court appearance, court must wait 48 hours before issuing a warrant.**
  - **Grace period does not apply:**
    - **Where defendant charged with new crime, or**
    - **Evidence of willful failure to appear.**

Risk Assessment Tools

- **Court may consider Risk Assessment Tool if designed to predict likelihood of defendant returning to court.**
  - **Not likelihood of future dangerousness.**
  - **Instrument must be free of gender and race bias, validated for predictive accuracy.**
  - **Instrument must be publicly available.**

SPEEDY TRIAL: CPL 30.30

- Unlike Discovery Article (CPL 240), CPL 30.30 substantially amended but not repealed.
- Interface with New Discovery Article (CPL 245) Critical.

Speedy Trial: CPL 30.30

- When People announce "ready for trial," court must inquire on record as to actual readiness. "Illusory" announcements to be rejected.
- Before People can announce "ready" they must present a "Certificate of [Good Faith] Compliance" with Discovery Obligations.

Speedy Trial: CPL 30.30
Ready for Trial?

- *People must be ready to commence trial at the time the statement is made. A statement of readiness is not "a prediction or expectation of future readiness."
- *People ready when they have done all that is required of them to bring the case to a point where it can be tried immediately. *People v. England*, 84 NY2d 1 (1994).

Speedy Trial: CPL 30.30

- **Before People can announce "Ready for Trial" . . .**
  - **Prosecution must certify that all counts in accusatory instrument comport with CPL 100.15 &100.40 [Form, Content & Legal Sufficiency] and that non-compliant counts have been dismissed.**

Speedy Trial: CPL 30.30

- *****CPL 30.30 applicable to VTL "infractions." - Now considered "offenses"**
- **Misdemeanors: No "partial" readiness on some counts. (Mostly a NYC Issue)**
- *****CPL 30.30 (2) Release Motions may be made orally without notice.**

Speedy Trial: CPL 30.30: Seaberg Waivers?

- **Denial of CPL 30.30 motion to dismiss, followed by a guilty plea, "*shall* be reviewable on appeal.**
- ***Contrast* CPL 710.70 (1)(3): " An order finally denying a motion to suppress evidence *may* be reviewed upon an appeal . . . notwithstanding the fact that [judgment of conviction] is entered upon a plea of guilty."**
- **CPL 30.20 denials survive guilty pleas & Appeal Waivers *People v. Blakley*, 34 NY2d 3112 (1974)**