

# Bench Card

## New York's Bail Statute: Pretrial Options

Updated May 2023

After [New York's 2019](#) reforms and subsequent amendments, courts must base pretrial decisions on an individualized determination of whether the accused person poses a risk of flight to avoid prosecution, and courts must choose the kind and degree of control or restriction necessary to ensure the individual will return to court. This bench card summarizes pretrial options, incorporating the [April 2020](#), [April 2022](#), and [May 2023](#) amendments.

Offenses	ROR <sup>1</sup>	Non-Monetary Conditions <sup>2,3</sup>	Electronic Monitoring <sup>4</sup>	Money Bail <sup>5</sup>	Remand
<b>MISDEMEANORS</b>					
Misdemeanors generally, <i>exceptions below</i>	✓	✓	NO	NO	NO
Domestic Violence Offenses generally, <i>exceptions below</i>	✓	✓	✓	NO	NO
VFO Conviction in Past 5 Years, <i>as defined in PL 70.02</i>	✓	✓	✓	NO	NO
Sex Offenses, <i>as defined in PL Art. 130<sup>6</sup></i>	✓	✓	✓	✓	NO
Criminal Contempt and Criminal Obstruction of Breathing or Blood Circulation, <i>PL 215.50(3) and 121.11, if underlying charge is a domestic violence offense<sup>7</sup></i>	✓	✓	✓	✓	NO
Endangering the Welfare of a Child, <i>PL 260.10, if the individual is required to be registered as a sex offender and is designated a Level 3 offender</i>	✓	✓	✓	✓	NO
Bail Jumping 3rd and Escape 3rd, <i>PL 215.55 and PL 205.05</i>	✓	✓	✓	✓	NO
<b>DRUG FELONIES</b>					
Drug Felonies generally, <i>exceptions below</i>	✓	✓	✓	NO	NO
Operating as a Major Drug Trafficker, <i>PL 220.77</i>	✓	✓	✓	✓	✓
Criminal Possession of a Controlled Substance 1st, <i>PL 220.21</i>	✓	✓	✓	✓	✓
Criminal Sale of a Controlled Substance 1st, <i>PL 220.43</i>	✓	✓	✓	✓	✓
<b>GUN FELONIES</b>					
Criminal Possession of a Weapon on School Grounds, <i>PL 265.01-a</i>	✓	✓	✓	✓	✓
Criminal Possession of a Weapon 3rd, Subsection 3, <i>PL 265.02(3)<sup>8</sup></i>	✓	✓	✓	✓	✓
Criminal Sale of a Firearm to a Minor, <i>PL 265.16</i>	✓	✓	✓	✓	✓

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Offenses	ROR <sup>1</sup>	Non-Monetary Conditions <sup>2,3</sup>	Electronic Monitoring <sup>4</sup>	Money Bail <sup>5</sup>	Remand
<b>NONVIOLENT FELONIES</b>					
Nonviolent Felonies generally, <i>exceptions below</i>	✓	✓	✓	NO	NO
Incest <sup>9</sup> and Sex Offenses, PL 255.25, 255.26, and sex offenses as defined in PL Art. 130 and in PL 70.80 <sup>10</sup>	✓	✓	✓	✓	✓
Criminal Contempt and Unlawful Imprisonment 1st, PL 215.51(b)(c)(d), 215.52 and 135.10, if underlying charge is a domestic violence offense <sup>11</sup>	✓	✓	✓	✓	✓
Witness Intimidation and Tampering, PL 215.11, 215.12, 215.13, and 215.15	✓	✓	✓	✓	✓
Conspiracy to Commit Murder, PL 105.15	✓	✓	✓	✓	✓
Money Laundering in Support of Terrorism, PL 470.21, 470.22, 470.23, and 470.24 <sup>12</sup>	✓	✓	✓	✓	✓
Offenses involving Sexual Performance by Children, PL 263.30, 263.05, 263.10, 263.15, and 120.70(1)	✓	✓	✓	✓	✓
Assault 3rd and Arson 3rd, PL 120.00 and PL 150.10, if committed as a hate crime, pursuant to PL 480.05 <sup>13</sup>	✓	✓	✓	✓	✓
Vehicular Assault 1st and Aggravated Vehicular Assault, PL 120.04, 120.04-a	✓	✓	✓	✓	✓
Aggravated Assault Upon a Person Less Than 11 years old, PL 120.12	✓	✓	✓	✓	✓
Grand Larceny 1st, PL 155.42	✓	✓	✓	✓	✓
Enterprise Corruption, PL 460.20	✓	✓	✓	✓	✓
Money Laundering 1st, PL 470.20	✓	✓	✓	✓	✓
Failure to Register as a Sex Offender, <i>Corr. Law 168-t, if the individual is required to be registered as a sex offender and is designated a Level 3 offender</i>	✓	✓	✓	✓	✓
Bail Jumping and Escape, PL 215.56, 215.57, 205.10, and 205.15	✓	✓	✓	✓	✓
Sex Trafficking, PL 230.34 <sup>14</sup>	✓	✓	✓	✓	✓

Chart continued on page 3

Offenses	ROR <sup>1</sup>	Non-Monetary Conditions <sup>2,3</sup>	Electronic Monitoring <sup>4</sup>	Money Bail <sup>5</sup>	Remand
<b>VIOLENT FELONY OFFENSES cont'd</b>					
<b>Burglary 2nd degree, Subsection (2), PL 140.25(2), if IN the living area of a dwelling</b>	✓	✓	✓	✓	✓
<b>All Other Violent Felony Offenses, as defined in PL 70.02, including violent felony sex offenses and gun offenses<sup>16</sup></b>	✓	✓	✓	✓	✓
<b>CLASS A FELONIES</b>					
<b>Class A Felonies other than A-II drug felonies</b>	✓	✓	✓	✓	✓
<b>BROAD CATEGORIES</b>					
<b>Any Crime Causing the Death of Another Person, e.g. PL 125.10, 125.11, 125.12, 125.13, 125.14, 125.15, 125.20, 125.21, 125.22, and VTL 600(2)(c)<sup>17</sup></b>	✓	✓	✓	✓	✓
<b>Any felony offense committed while on probation or post release supervision, CPL 510.10(4)(r)</b>	✓	✓	✓	✓	✓
<b>Any felony offense where the individual would qualify as a persistent felony offender if sentenced on the current charge, pursuant to PL 70.10, CPL 510.10(4)(s)</b>	✓	✓	✓	✓	✓
<b>Any felony or Class A misdemeanor involving either harm to an identifiable person or property OR criminal possession of a firearm, PL 265.01-b, that occurred while RELEASED on a felony, Class A misdemeanor, or while awaiting arraignment on a DAT involving harm to an identifiable person or property OR criminal possession of a firearm, PL 265.01-b. DEFINITION: Harm to property includes theft, UNLESS the theft is negligible and not in furtherance of another crime. CPL 510.10(4)(t)<sup>18</sup></b>	✓	✓	✓	✓	✓

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## Endnotes

1. Individuals who are released on their own recognizance (ROR) will receive court appearance reminders from the court or a pretrial service agency. However, if the individual intentionally declines to provide contact information, they are forfeiting the notification. Any failure of the court or pretrial service agency to provide such a notification is not a basis for the individual to miss their court appearance. [CPL 510.43(1)-(2)]

2. For all cases, non-monetary conditions should be based on an individualized determination of **whether the accused person poses a risk of flight to avoid prosecution, and courts must choose the**

**kind and degree of control or restriction necessary to ensure the individual will return to court** and comply with court conditions. [CPL 500.10(3-a); CPL 510.10(1)] For the offenses that do not qualify for cash bail (mostly misdemeanors and nonviolent felonies), non-monetary conditions can be used where the court finds that the individual poses a risk of flight [CPL 510.10(3)]. For bail eligible offenses, or “qualifying offenses,” the court may choose to release an individual on their own recognizance, impose non-monetary conditions, set bail, set bail in conjunction with non-monetary conditions, or, if the charge is a felony, order that the individual be held without bail. Non-monetary conditions include contact and supervision by a pretrial service agency, restricting travel, and prohibiting possession of a firearm or other dangerous weapon. The amended reforms of 2020 added several non-monetary conditions, including: mandatory programming through a pretrial service agency (amended in May 2023 to specify mental health and chemical dependency treatment as types of programming the court may order); hospitalization pursuant to Mental Health and Hygiene Law, Section 9.43; maintaining housing, employment and education; refraining from association with victims, witnesses, and co-defendants; in domestic violence cases, conditions addressing victim safety and obeying an order of protection. Non-monetary conditions can be used singularly or in combination, so long as it is reasonable under the circumstances [CPL 500.10(3-b)]. Non-monetary conditions can also be used in conjunction with cash bail, as of the May 2023 amendments [CPL 510.10(4)].

3. Pretrial supervision is one of the non-monetary conditions listed in the statute as a non-monetary condition [CPL 510.10(d)].

4. 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” [CPL 510.40(4)(a)]. When such monitoring is ordered, the individual is considered “in custody” for the purposes of CPL 170.70 and 180.80 [CPL 510.40(4)(d)].

5. When setting monetary bail, the court must consider the individual’s ability to pay bail and ability to post a secured, partially secured, or unsecured bond [CPL 510.10(1)(f)]. The court must set THREE forms of bail, one of which MUST BE a partially secured or unsecured surety bond [CPL 520.10(2)(b)].

6. Misdemeanor sex offenses, defined in PL Art. 130, include: sexual misconduct, forcible touching, and sexual abuse in the 2nd and 3rd degrees [CPL 510.10(4)(e)].

7. Criminal Contempt as a Misdemeanor and Criminal Obstruction of Breathing or Blood Circulation are bail eligible ONLY IF the alleged crime is committed against a family member, as defined by CPL 530.11 [CPL 510.10(4)(h) and (k)].

8. Criminal Possession of a Weapon 3rd, subsections 5-10 are already qualifying offenses subject to bail by virtue of being classified as violent felonies, listed in PL 70.02.

9. Incest in the 1st, 2nd, and 3rd degrees (PL 255.25, 255.26, 255.27) are bail eligible [CPL 510.10(4)(e)].

10. Felony sex offenses, defined in PL 70.80, include: any felony defined in PL Article 130; a sexually motivated felony (defined in PL 130.91); Patronizing a Person for Prostitution in the 1st and 2nd degrees, PL 230.05, 230.06; Aggravated Patronizing a Minor for Prostitution in the 1st, 2nd, and 3rd degrees, PL 230.11, 230.12, 230.13; and a felony attempt or conspiracy to commit any of the above [CPL 510.10(4)(e)].

11. Criminal Contempt as a Felony [PL 215.51(b)(c)(d) and 215.52] and Unlawful Imprisonment (PL

135.10) are bail eligible ONLY IF the alleged crime is committed against a family member, as defined by CPL 530.11 [CPL 510.10(4)(h)].

12. Making a Terroristic Threat, PL 490.20, is NOT bail-eligible. Other violent felony terrorism offenses that are eligible for monetary bail include: Soliciting or Providing Support for an Act of Terrorism in the 1st and 2nd degrees, PL 490.10, 490.15; Crime of Terrorism, PL 490.25; Hindering Prosecution of Terrorism in the 1st and 2nd degrees, PL 490.30, 490.35; Criminal Possession of Chemical or Biological Weapon in the 1st, 2nd, and 3rd degrees, PL 490.37, 490.40, 490.45; Criminal Use of Chemical or Biological Weapon in the 1st, 2nd, and 3rd degrees, PL 490.47, 490.50, 490.55 [CPL 510.10(4)(g)].

13. Designating an offense as a hate crime elevates the category for misdemeanors and C, D, and E felonies. Thus, Assault in the 3rd degree, normally an A misdemeanor, committed as a hate crime elevates the offense to a nonviolent Class E felony. Likewise, Arson in the 3rd degree as a hate crime is elevated from a C nonviolent felony to a B nonviolent felony [PL 485.10(2)].

14. Sex Trafficking, PL 230.34, contains subsections designated as violent and others designated as nonviolent. Subsections (5)(a) & (b) were included as eligible for bail and remand in the reform law passed in 2019, as they are designated violent felony offenses, whereas, subsections (1), (2), (3), (4) and (5)(c)-(h) are designated nonviolent felony offenses, but are now eligible for monetary bail and remand [CPL 510.10(4)(e)].

15. Burglary in the 2nd degree, subsection 2, is only bail and remand eligible when such burglary is alleged to have occurred within the “living area” of a dwelling. Cases where the allegations occur elsewhere (a lobby, for example) are not “qualifying offenses” for the purposes of bail and remand [CPL 510.10(4)(a)].

16. Violent felony offenses are listed in PL 70.02 and include, among other violent felonies: Intimidating a Victim or Witness in the 1st and 2nd degrees, PL 215.16, 215.17; violent felony sex offenses (e.g. incest, rape, criminal sexual act, and course of sexual conduct against a child); and violent felony firearms and weapons offenses (e.g., criminal possession of a weapon 1st and 2nd; criminal use of a firearm, and aggravated criminal possession of a weapon). It also includes select sex trafficking charges, PL 230.34(5)(a) & (b) and 230.34-a, and Strangulation in the 2nd degree, PL 121.12, which, although already bail-eligible, they were individually added to the list of qualifying offenses for bail and remand in the 2020 bail reform amendments.

17. The 2020 amendments to the bail statute made any crime that is alleged to have caused the death of another person eligible for monetary bail. If the crime is a felony, then remand is also an option. The listed charges are examples of offenses that involve such allegations, some of which are technically deemed nonviolent felonies.

18. For both the current crime alleged and the pending case, the prosecution must demonstrate reasonable cause to believe the individual committed the alleged offenses. The 2022 amendment to the statute adds that “harm to an identifiable person or property” includes crimes of theft or damage to property, making such offenses qualify for bail, and thus, pretrial detention. However, the statute also indicates that if a theft offense is “negligible” and is not committed to further other criminal activity, then the court must release the individual under their own recognizance or may set non-monetary conditions.