

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.

For More Information

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