

New York's Bail Statute

Pretrial Options in 2020



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

Offenses	ROR ¹	Non-Monetary Conditions ² and Pretrial Supervision ³	Electronic Monitoring ⁴	Money Bail ⁵	Remand
MISDEMEANORS					
Misdemeanors generally, exceptions below	✓	✓	NO	NO	NO
Domestic Violence Offenses	✓	✓	✓	NO	NO
VFO Conviction in Past 5 Years as defined in PL 70.02	✓	✓	✓	NO	NO
Sex Offenses as defined in PL Art. 130 ⁶	✓	✓	✓	✓	NO
Criminal Contempt PL 215.50(3), if underlying charge is a domestic violence offense ⁷	✓	✓	✓	✓	NO
DRUG FELONIES					
Drug Felonies generally, exception below	✓	✓	✓	NO	NO
Operating as a Major Drug Trafficker PL 220.77	✓	✓	✓	✓	✓
OTHER NONVIOLENT FELONIES					
Nonviolent Felonies generally, exceptions below	✓	✓	✓	NO	NO
Incest ⁸ and Sex Offenses PL 255.25, 255.26, sex offenses as defined in PL Art. 130 and by PL 70.80 ⁹	✓	✓	✓	✓	✓
Criminal Contempt PL 215.51(b)(c)(d) and 215.52, if underlying charge is a domestic violence offense ¹⁰	✓	✓	✓	✓	✓
Witness Intimidation and Tampering PL 215.11, 215.12, 215.13, 215.15	✓	✓	✓	✓	✓
Conspiracy to Commit Murder PL 105.15	✓	✓	✓	✓	✓
Money Laundering in Support of Terrorism PL 470.23, 470.24 ¹¹	✓	✓	✓	✓	✓
Specific Offenses against Children PL 263.30, 263.05, 120.70(1)	✓	✓	✓	✓	✓

Chart continues on page 2

VIOLENT FELONY OFFENSES					
Robbery 2 nd degree, Subsection (1) PL 160.10(1)	✓	✓	✓	NO	NO
Burglary 2 nd degree, Subsection (2) PL 140.25(2)	✓	✓	✓	NO	NO
All Other Violent Felony Offenses as defined in PL 70.02, including violent felony sex offenses ¹²	✓	✓	✓	✓	✓
Class A Felonies non-drugs	✓	✓	✓	✓	✓

¹ Defendants who are **ROR'd** are required to receive court appearance reminders from the court or pretrial service agency [CPL 510.43].

² **Non-Monetary Condition(s)** can be used where the court finds that the defendant poses a risk of flight [CPL 510.10(3)]. Such conditions may include, among others reasonable under the circumstances: contact with a pretrial service agency, restricting a defendant's travel, and prohibiting possession of a firearm or other dangerous weapon [CPL 500.10(3-a)].

³ **Pretrial Supervision** can only be used if no other non-monetary conditions or less restrictive alternative can reasonably assure the defendant's return to court [CPL 500.10(3-a)].

⁴ **Electronic Monitoring** may only be ordered if "no other realistic non-monetary condition [including pretrial supervision] or set of non-monetary conditions will suffice to reasonably assure a principal's return to court" [CPL 500.10(3-a), CPL 510.40(4)(a)]. When such monitoring is ordered, the defendant is considered "in custody" for the purposes of CPL 170.70 and 180.80 [CPL 510.40(4)(d)].

⁵ When setting **Monetary Bail**, the court must consider the defendant's ability to pay bail and post a secured, partially secured, or unsecured bond [CPL 510.30(1)(f)]. The court must set **THREE forms of bail**, one of which **MUST BE** a partially secured or unsecured surety bond [CPL 520.10(2)(b)].

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** PL 215.50(3) is bail eligible **ONLY IF** the underlying Order of Protection is for a family member, as defined by CPL 530.11 [CPL 510.10(4)(h)].

⁸ **Incest** in the 1st, 2nd, and 3rd degrees (PL 255.25, 255.26, 255.27) are bail eligible [CPL 510.10(4)(e)].

⁹ **Felony Sex Offenses**, defined in PL 70.80, include: any felony defined in PL Article 130; a sexually motivated felony (defined in PL 130.91); Patronizing a Person for Prostitution in the 1st and 2nd degrees, PL 230.05, 230.06; Aggravated Patronizing a Minor for Prostitution in the 1st, 2nd, and 3rd degrees, PL 230.11, 230.12, 230.13; and a felony attempt or conspiracy to commit any of the above [CPL 510.10(4)(e)].

¹⁰ **Criminal Contempt as a Felony** PL 215.51(b)(c)(d) and 215.52 is bail eligible **ONLY IF** the underlying Order of Protection is for a member of the defendant's family, as defined by 530.11 [CPL 510.10(4)(h)].

¹¹ **Making a Terroristic Threat** PL 490.20 **IS NOT** bail eligible. Other violent felony terrorism offenses that *are* bail eligible include: Money Laundering in Support of Terrorism in the 1st and 2nd degrees, PL 470.23, 470.24; 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)(h)].

¹² **Violent felony offenses** are listed in PL 70.02 and include, among other violent felonies: Intimidating a Victim or Witness in the 1st and 2nd degrees, PL 215.16, 215.17; and violent felony sex offenses (e.g. incest, rape, criminal sexual act, course of sexual conduct against a child).

For More Information Contact Krystal Rodriguez at rodriguezkc@courtinnovation.org.