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Empire State Prosecutor  
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## Bail reform is reality starting January 1, 2020



(/wiki/File:Author\_Robert\_Mascari.jpg)

Robert A. Mascari  
Chief Assistant District Attorney  
Madison County

It significantly changes the process of bail recommendations and arraignments. This page was adapted from a memo by Madison County Chief ADA Bob Mascari for county law enforcement and prosecutors. It reflects the official position of the Madison County District Attorney's Office on how to proceed with appearance

tickets, warrantless arrests, and arraignment issues.

A non-exhaustive list of charges for which a defendant must be released from custody, without bail, after January 1, 2020, includes:

- Burglary in the second degree (residential burglary) - PL §140.25  
([https://statutes.nypti.org/\\$PEN140.25\\$\\$](https://statutes.nypti.org/$PEN140.25$$))
- Burglary in the third degree - PL §140.20  
([https://statutes.nypti.org/\\$PEN140.20\\$\\$](https://statutes.nypti.org/$PEN140.20$$))
- Robbery in the second degree (aided by another person) - PL §160.10  
([https://statutes.nypti.org/\\$PEN160.10\\$\\$](https://statutes.nypti.org/$PEN160.10$$))
- Robbery in the third degree - PL §160.05  
([https://statutes.nypti.org/\\$PEN160.05\\$\\$](https://statutes.nypti.org/$PEN160.05$$))
- Manslaughter in the second degree - PL §125.15  
([https://statutes.nypti.org/\\$PEN125.15\\$\\$](https://statutes.nypti.org/$PEN125.15$$))
- Criminally negligent homicide - PL §125.10  
([https://statutes.nypti.org/\\$PEN125.10\\$\\$](https://statutes.nypti.org/$PEN125.10$$))
- Aggravated vehicular homicide- PL §125.14  
([https://statutes.nypti.org/\\$PEN125.14\\$\\$](https://statutes.nypti.org/$PEN125.14$$))
- Vehicular manslaughter in the first and second degrees- PL §125.13  
([https://statutes.nypti.org/\\$PEN125.13\\$\\$](https://statutes.nypti.org/$PEN125.13$$)) & PL §125.12  
([https://statutes.nypti.org/\\$PEN125.12\\$\\$](https://statutes.nypti.org/$PEN125.12$$))
- Assault in the third degree- PL §120.00  
([https://statutes.nypti.org/\\$PEN120.00\\$\\$](https://statutes.nypti.org/$PEN120.00$$))
- Aggravated vehicular assault- PL §120.04-A  
([https://statutes.nypti.org/\\$PEN120.04-A\\$\\$](https://statutes.nypti.org/$PEN120.04-A$$))
- Aggravated assault upon a person less than eleven years old- PL §120.12  
([https://statutes.nypti.org/\\$PEN120.12\\$\\$](https://statutes.nypti.org/$PEN120.12$$))
- Failure to register as a sex offender
- Unlawful imprisonment in the first degree- PL §135.10  
([https://statutes.nypti.org/\\$PEN135.10\\$\\$](https://statutes.nypti.org/$PEN135.10$$))
- Coercion in the first degree- PL §135.65  
([https://statutes.nypti.org/\\$PEN135.65\\$\\$](https://statutes.nypti.org/$PEN135.65$$))
- Arson in the third and fourth degrees- PL §150.10  
([https://statutes.nypti.org/\\$PEN150.10\\$\\$](https://statutes.nypti.org/$PEN150.10$$)) PL §150.05  
([https://statutes.nypti.org/\\$PEN150.05\\$\\$](https://statutes.nypti.org/$PEN150.05$$))
- Grand larceny in the first, second, third, and fourth degrees
  - PL §155.42  
([https://statutes.nypti.org/\\$PEN155.42\\$\\$](https://statutes.nypti.org/$PEN155.42$$))
  - PL §155.40  
([https://statutes.nypti.org/\\$PEN155.40\\$\\$](https://statutes.nypti.org/$PEN155.40$$))
  - PL §155.35  
([https://statutes.nypti.org/\\$PEN155.35\\$\\$](https://statutes.nypti.org/$PEN155.35$$))
  - PL §155.30  
([https://statutes.nypti.org/\\$PEN155.30\\$\\$](https://statutes.nypti.org/$PEN155.30$$))
- Aggravated cruelty to animals, overdriving, torturing and injuring animals-
- Failure to provide proper sustenance to animals-
- Animal fighting-
- Criminal solicitation in the first degree- PL §100.13  
([https://statutes.nypti.org/\\$PEN100.13\\$\\$](https://statutes.nypti.org/$PEN100.13$$))

- Vehicular assault in the first and second degrees- PL §120.04 ([https://statutes.nypti.org/\\$\\$PEN120.04\\$\\$](https://statutes.nypti.org/$$PEN120.04$$))
  - Criminal possession of a weapon on school grounds- PL §265.04-A ([https://statutes.nypti.org/\\$\\$PEN265.01-A\\$\\$](https://statutes.nypti.org/$$PEN265.01-A$$))
  - Criminal possession of a firearm- PL §265.01-B ([https://statutes.nypti.org/\\$\\$PEN265.05-B\\$\\$](https://statutes.nypti.org/$$PEN265.05-B$$))
  - Criminal possession of a weapon in the fourth degree- PL §265.01 ([https://statutes.nypti.org/\\$\\$PEN265.01\\$\\$](https://statutes.nypti.org/$$PEN265.01$$))
  - Criminal sale of a firearm to a minor- PL §265.14 ([https://statutes.nypti.org/\\$\\$PEN265.14\\$\\$](https://statutes.nypti.org/$$PEN265.14$$))
  - Criminal possession of a controlled substance in the first and second degrees- PL §220.21 ([https://statutes.nypti.org/\\$\\$PEN220.21\\$\\$](https://statutes.nypti.org/$$PEN220.21$$)) PL §220.18 ([https://statutes.nypti.org/\\$\\$PEN220.18\\$\\$](https://statutes.nypti.org/$$PEN220.18$$))
  - Criminal sale of a controlled substance in the first and second degrees- PL §220.43 ([https://statutes.nypti.org/\\$\\$PEN220.43\\$\\$](https://statutes.nypti.org/$$PEN220.43$$)) and PL §220.41 ([https://statutes.nypti.org/\\$\\$PEN220.41\\$\\$](https://statutes.nypti.org/$$PEN220.41$$))
    - Criminal sale of a controlled substance in or near school grounds- PL §220.44 ([https://statutes.nypti.org/\\$\\$PEN220.44\\$\\$](https://statutes.nypti.org/$$PEN220.44$$))
    - Use of a child to commit a controlled substance offense - PL §220.28 ([https://statutes.nypti.org/\\$\\$PEN220.28\\$\\$](https://statutes.nypti.org/$$PEN220.28$$))
    - Criminal sale of a controlled substance to a child- PL §220.48 ([https://statutes.nypti.org/\\$\\$PEN220.48\\$\\$](https://statutes.nypti.org/$$PEN220.48$$))
    - Patronizing a person for prostitution in a school zone- PL §230.19 ([https://statutes.nypti.org/\\$\\$PEN230.19\\$\\$](https://statutes.nypti.org/$$PEN230.19$$))
    - Promoting an obscene sexual performance by a child- PL §263.10 ([https://statutes.nypti.org/\\$\\$PEN263.10\\$\\$](https://statutes.nypti.org/$$PEN263.10$$))
    - Possessing an obscene sexual performance by a child- PL §263.11 ([https://statutes.nypti.org/\\$\\$PEN263.11\\$\\$](https://statutes.nypti.org/$$PEN263.11$$))
    - Promoting a sexual performance by a child- PL §263.15 ([https://statutes.nypti.org/\\$\\$PEN263.15\\$\\$](https://statutes.nypti.org/$$PEN263.15$$))
    - Bribery in the first degree- PL §200.04 ([https://statutes.nypti.org/\\$\\$PEN200.04\\$\\$](https://statutes.nypti.org/$$PEN200.04$$))
    - Bribe giving for public office- PL §200.40 ([https://statutes.nypti.org/\\$\\$PEN200.40\\$\\$](https://statutes.nypti.org/$$PEN200.40$$))
    - Bribe receiving in the first degree- PL §200.27 ([https://statutes.nypti.org/\\$\\$PEN200.27\\$\\$](https://statutes.nypti.org/$$PEN200.27$$))
  - Criminal facilitation in the first degree- PL §115.08 ([https://statutes.nypti.org/\\$\\$PEN115.08\\$\\$](https://statutes.nypti.org/$$PEN115.08$$))
  - Money laundering in support of terrorism in the third and fourth degrees- PL §470.22 ([https://statutes.nypti.org/\\$\\$PEN470.22\\$\\$](https://statutes.nypti.org/$$PEN470.22$$))
- PL §470.21 ([https://statutes.nypti.org/\\$\\$PEN470.21\\$\\$](https://statutes.nypti.org/$$PEN470.21$$))
- Making a terroristic threat- PL §490.20 ([https://statutes.nypti.org/\\$\\$PEN490.20\\$\\$](https://statutes.nypti.org/$$PEN490.20$$))
  - Obstructing governmental administration in the first and second degree- PL §195.07 ([https://statutes.nypti.org/\\$\\$PEN195.07\\$\\$](https://statutes.nypti.org/$$PEN195.07$$))
- PL §195.05 ([https://statutes.nypti.org/\\$\\$PEN195.05\\$\\$](https://statutes.nypti.org/$$PEN195.05$$))
- Obstructing governmental administration by means of a self-defense spray device- PL §195.08 ([https://statutes.nypti.org/\\$\\$PEN195.08\\$\\$](https://statutes.nypti.org/$$PEN195.08$$))
  - Promoting prison contraband in the first and second degrees- PL §205.25 ([https://statutes.nypti.org/\\$\\$PEN205.25\\$\\$](https://statutes.nypti.org/$$PEN205.25$$)) PL §205.20 ([https://statutes.nypti.org/\\$\\$PEN205.20\\$\\$](https://statutes.nypti.org/$$PEN205.20$$))
  - Resisting arrest- PL §205.30 ([https://statutes.nypti.org/\\$\\$PEN205.30\\$\\$](https://statutes.nypti.org/$$PEN205.30$$))
  - Hindering prosecution- PL §205.50 ([https://statutes.nypti.org/\\$\\$PEN205.50\\$\\$](https://statutes.nypti.org/$$PEN205.50$$))
  - Tampering with a juror-
  - Tampering with physical evidence- PL §215.35 ([https://statutes.nypti.org/\\$\\$PEN215.35\\$\\$](https://statutes.nypti.org/$$PEN215.35$$))
  - Aggravated harassment in the first degree- PL §240.31 ([https://statutes.nypti.org/\\$\\$PEN240.31\\$\\$](https://statutes.nypti.org/$$PEN240.31$$))
  - Directing a laser at an aircraft in the first degree- PL §240.76 ([https://statutes.nypti.org/\\$\\$PEN240.76\\$\\$](https://statutes.nypti.org/$$PEN240.76$$))
  - Enterprise corruption - PL §460.20 ([https://statutes.nypti.org/\\$\\$PEN460.20\\$\\$](https://statutes.nypti.org/$$PEN460.20$$))
  - Money laundering in the first degree- PL §470.20 ([https://statutes.nypti.org/\\$\\$PEN470.20\\$\\$](https://statutes.nypti.org/$$PEN470.20$$))

The new laws significantly change how we do business and we must accept the new reality even if we disagree with it. This document, while longer than hoped, tries to set out and answer questions you might have about bail reform.

The short takeaways going forward? The District Attorney's Office should not be contacted about bail issues when the issuance of an appearance ticket is mandatory (see below); The District Attorney's Office should be contacted when an arraignment is required and/or discretionary (see below).

## When is an arraignment necessary?

Under CPL § 150.20(1)(a) ([https://statutes.nypti.org/\\$\\$CPL150.20\\$\\$](https://statutes.nypti.org/$$CPL150.20$$)), an appearance ticket cannot be issued for the following offenses and an arraignment must be done:

- A, B, C, or D Felony;
- PL §130.25 ([https://statutes.nypti.org/\\$\\$PEN130.25\\$\\$](https://statutes.nypti.org/$$PEN130.25$$)) – Rape 3<sup>rd</sup> (E Felony);
- PL §130.40 ([https://statutes.nypti.org/\\$\\$PEN130.25\\$\\$](https://statutes.nypti.org/$$PEN130.25$$)) – Criminal Sexual Act 3<sup>rd</sup> (E Felony);
- PL §205.10 ([https://statutes.nypti.org/\\$\\$PEN205.10\\$\\$](https://statutes.nypti.org/$$PEN205.10$$)) – Escape 2<sup>nd</sup> (E Felony);
- PL §205.17 ([https://statutes.nypti.org/\\$\\$PEN205.17\\$\\$](https://statutes.nypti.org/$$PEN205.17$$)) – Absconding From Temporary Release 1<sup>st</sup> (E Felony) (Expires 9/1/2019);
- PL §205.19 ([https://statutes.nypti.org/\\$\\$PEN205.19\\$\\$](https://statutes.nypti.org/$$PEN205.19$$)) – Absconding from a Community Treatment Facility (E Felony) (Expires 9/1/2019);
- PL §215.56 ([https://statutes.nypti.org/\\$\\$PEN215.56\\$\\$](https://statutes.nypti.org/$$PEN215.56$$)) – Bail Jumping 2<sup>nd</sup> (E Felony)

## Arraignment Possible?

Even if the arrest is for an appearance ticket eligible offense, when can an arraignment still be done? If an arraignment can be done, should it be done?

Under CPL § 150.10(1)(b) ([https://statutes.nypti.org/\\$\\$CPL150.10\\$\\$](https://statutes.nypti.org/$$CPL150.10$$)) an appearance ticket is not required and an arraignment can still be done when:

- i. The person has one or more outstanding local criminal court or superior court warrants;
- ii. The person has failed to appear in court proceedings in the last two years;
- iii. The person has been given a reasonable opportunity to make their verifiable identity and a method of contact known, and has been unable or unwilling to do so, so that a custodial arrest is necessary to subject the individual to the jurisdiction of the court (but see CPL 150.10(1)(b)(iii) ([https://statutes.nypti.org/\\$\\$CPL150.10\\$\\$](https://statutes.nypti.org/$$CPL150.10$$)) for examples of how identification can be verified);
- iv. The person is charged with a crime between members of the same family or household, as defined in subdivision one of section 530.11 ([https://statutes.nypti.org/\\$\\$CPL530.11\\$\\$](https://statutes.nypti.org/$$CPL530.11$$)) of this chapter (domestic violence/family offense);
- v. The person is charged with a crime defined in article 130 ([https://statutes.nypti.org/\\$\\$@SLPEN0P3THA130\\$\\$](https://statutes.nypti.org/$$@SLPEN0P3THA130$$)) of the penal law (sex offenses);
- vi. It reasonably appears the person should be brought before the court for consideration of issuance of an order of protection, pursuant to CPL § 530.13 ([https://statutes.nypti.org/\\$\\$CPL530.13\\$\\$](https://statutes.nypti.org/$$CPL530.13$$)) of this chapter, based on the facts of the crime or offense that the officer has reasonable cause to believe occurred;
- vii. The person is charged with a crime for which the court may suspend or revoke his or her driver license;
- viii. It reasonably appears to the officer, based on the observed behavior of the individual in the present contact with the officer and facts regarding the person's condition that indicates a sign of distress to such a degree that the person would face harm without immediate medical or mental health care, that bringing the person before

the court would be in such person's interest in addressing that need; provided, however, that before making the arrest, the officer shall make all reasonable efforts to assist the person in securing appropriate services.

The position of the Madison County District Attorney's Office is that if one of these exceptions do apply, an arraignment should be done and can include pre-arraignment detention prior to the Defendant being brought before a centralized arraignment (off-hours) court;

i. The purpose of doing an arraignment if one of these exceptions apply is ensure that the issue present in the exception is adequately addressed (order of protection, suspension of license, mental health evaluation, etc.) thus preventing, to the extent possible, catastrophes that we will end up reading about or seeing in the news.

## When is an appearance ticket required?

Stated differently, if the arrest is for an appearance ticket eligible offense and the CPL § 150.10(1)(b) (<https://statutes.nypti.org/§CPL150.10>) exceptions do not apply, must an appearance ticket be issued?

a. **YES.** Under CPL § 150.10(1)(a) (<https://statutes.nypti.org/§CPL150.10>), "Whenever a police officer is authorized pursuant to section 140.10 (<https://statutes.nypti.org/§CPL140.10>) of this title to arrest a person without a warrant for an offense .... he shall .... subject to the provisions of subdivisions three and four of section 150.40 (<https://statutes.nypti.org/§CPL150.40>) of this title, instead issue to and serve upon such person an appearance ticket."

i. CPL § 140.10 (<https://statutes.nypti.org/§CPL140.10>) deals with when an arrest without a warrant is authorized;

ii. CPL § 150.40(3)(4) (<https://statutes.nypti.org/§CPL150.40>) deals with the service of appearance ticket in an adjoining county or after a "continuous close pursuit".

## When an appearance ticket is going to be issued, can the defendant still be processed (fingerprinted, etc.) before being released?

**YES, BUT.** The answer to this question is not 100% clear and will not be clear until the laws are amended and/or an appellate court issues a decision on this question. The problem is the somewhat conflicting language of CPL §§ 150.10 (<https://statutes.nypti.org/§CPL150.10>) and 150.20 (<https://statutes.nypti.org/§CPL150.20>) which appears to view the issuance of an appearance ticket as a mandated alternative to an arrest unless certain exceptions apply;

Until such time as a court decides differently, the position of the Madison County District Attorney's Office is that the following provisions control and lead to the conclusion that processing is still permitted even when an appearance ticket is going to be issued:

i. CPL § 140.20(1) (<https://statutes.nypti.org/§CPL140.20>) remains unchanged after bail reform. This section provides that "upon arresting a person without a warrant, a police officer, after performing without unnecessary delay all recording, fingerprinting and other preliminary police duties required in the particular case, must...without unnecessary delay bring the arrested person or cause him to be brought before a local criminal court....";

1. This section and other related sections also provide that the individual may thereafter be "released from custody" on an appearance ticket which implies that processing can take place before the issuance of an appearance ticket.;

ii. CPL § 140.20(5) (<https://statutes.nypti.org/§CPL140.20>) seems directly on point which provides: "Before service of an appearance ticket upon an arrested person pursuant to subdivision two or three, the issuing police

officer must, if the offense designated in such appearance ticket is one of those specified in subdivision one of section 160.10 (<https://statutes.nypti.org/§CPL160.10>), cause such person to be fingerprinted in the same manner as would be required were no appearance ticket to be issued or served."

iii. The view that processing is allowed is also supported by the fact that the peace officer and civilian arrest procedures were not changed and provide that an individual may be held "in custody" (see, e.g., 140.40(1) (<https://statutes.nypti.org/§CPL140.40>): A person making an arrest...must without unnecessary delay deliver or attempt to deliver the person arrested to the custody of an appropriate police officer.... [t]he appropriate police officer must, upon receiving custody of the arrested person, perform all recording, fingerprinting, and other preliminary police duties required in the particular case....")

iv. Finally, the proper processing of someone being charged with an offense would be required to exclude the first two exceptions for an appearance ticket: (1) having an "outstanding local criminal court or superior court warrant" (150.20(1)(b)(i) (<https://statutes.nypti.org/§CPL150.20>)) [note that this is in-state warrants due to definitions of the criminal procedure law] and (2) having "failed to appear in court proceedings in the last two years" (150.20(1)(b)(ii) (<https://statutes.nypti.org/§CPL150.20>)) [note that this can apply to all warrants nationally and even internationally].

## Does the bail reform statute impose any new obligation on law enforcement when issuing an appearance ticket?

a. YES. CPL § 150.10(3) (<https://statutes.nypti.org/§CPL150.10>) states, "Before issuing an appearance ticket a police officer or other public servant must inform the arrestee' that they may provide their contact information for the purposes of receiving a court notification to remind them of their court appearance date from the court or a certified pretrial services agency.";

i. The contact information may include one or more phone numbers, a residential address or address at which the arrestee receives mail, or an email address.

ii. The contact information shall be recorded and be transmitted to the local criminal court as required by section 150.80 (<https://statutes.nypti.org/§CPL150.80>) of this article;

b. CPL § 150.80 (<https://statutes.nypti.org/§CPL150.80>), entitled "Court appearance reminders", reads as follows:

1. A police officer or other public servant who has issued and served an appearance ticket must, within twenty-four hours of issuance, file or cause to be filed with the local criminal court the appearance ticket and any contact information made available pursuant to subdivision three of section 150.10 (<https://statutes.nypti.org/§CPL150.10>) of this article.

2. Upon receipt of the appearance ticket and any contact information made available pursuant to subdivision three of section 150.10 (<https://statutes.nypti.org/§CPL150.10>) of this article, the local criminal court shall issue a court appearance reminder and notify the arrestee of their court appearances by text message, telephone call, electronic mail, or first-class mail. The local criminal court may partner with a certified pretrial services agency or agencies in that county to provide such notification and shall include copy of the appearance ticket.

3. A local criminal court is not required to issue a court appearance reminder if the appearance ticket requires the arrestee's appearance within seventy-two hours of its issuance, or no contact information has been provided.

# When an arraignment does take place, can the court always set bail?

a. **NO.** Bail can only be set under at least one of the following three situations:

i. A defendant is arrested for a “**qualifying offense**” under CPL § 510.10(4) (<https://statutes.nypti.org/§CPL510.10>);

ii. A defendant is charged with the **commission of certain conduct while out** under “**least restrictive non-monetary conditions**” (CPL § 530.60(2)(b) (<https://statutes.nypti.org/§CPL530.60>))

iii. The Defendant **voluntarily requests bail** under CPL § 510.10(5) (<https://statutes.nypti.org/§CPL510.10>).

# If an arraignment is going to take place and the charge is one for which bail cannot be set (see above), can a defendant still be held in pre-arraignment detentions?

a. **YES.** Bail reform did not change the language of CPL § 140.20(1) (<https://statutes.nypti.org/§CPL140.20>) which requires that the defendant be brought before an arrainging court “without necessary delay”. Court cases have held that by employing the “unnecessary delay” term in enacting CPL § 140.20 (<https://statutes.nypti.org/§CPL140.20>), the Legislature did not set rigid temporal limits and that a delay of up to twenty-four (24) hours is not unreasonable. (See, *People ex rel. Maxian v. Brown*, 77 N.Y.2d 422 (<https://library.nypti.org/LibraryDocument/VL.1991.NY.43548/-1/Index/False>), 427 (1991))

## **8. What is a “qualifying offense” under CPL § 510.10(4) (<https://statutes.nypti.org/§CPL510.10>)?**

a. A felony enumerated in section 70.02 (<https://statutes.nypti.org/§PEN70.02>) of the penal law [**violent felonies**], other than burglary in the second degree as defined in 140.25(2) (<https://statutes.nypti.org/§PEN140.25>) [dwelling] of the penal law or robbery in the second degree as defined in 160.10(1) (<https://statutes.nypti.org/§PEN160.10>) [another person actually present] of the penal law;

b. A crime involving **witness intimidation** under section 215.15 (<https://statutes.nypti.org/§PEN215.15>) of the penal law;

c. A crime involving **witness tampering** under section 215.11 (<https://statutes.nypti.org/§PEN215.15>), 215.12 (<https://statutes.nypti.org/§PEN215.12>) or 215.13 (<https://statutes.nypti.org/§PEN215.13>) 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 (<https://statutes.nypti.org/§PEN220.77>) of such law;

e. A **felony sex offense defined in section 70.80** (<https://statutes.nypti.org/§PEN70.80>) of the penal law or a crime involving **incest** as defined in section 255.25 (<https://statutes.nypti.org/§PEN255.25>), 255.26 (<https://statutes.nypti.org/§PEN255.26>) or 255.27 (<https://statutes.nypti.org/§PEN255.27>) 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 (<https://statutes.nypti.org/§PEN105.15>) 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 ([https://statutes.nypti.org/\\$PEN470.24\\$\\$](https://statutes.nypti.org/$PEN470.24$$)) of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 ([https://statutes.nypti.org/\\$PEN470.23\\$\\$](https://statutes.nypti.org/$PEN470.23$$)) 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 ([https://statutes.nypti.org/\\$PEN490.20\\$\\$](https://statutes.nypti.org/$PEN490.20$$)) [making a terroristic threat] of such law;

h. Criminal contempt in the second degree as defined in subdivision three of section 215.50 ([https://statutes.nypti.org/\\$PEN215.50\\$\\$](https://statutes.nypti.org/$PEN215.50$$)) of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 ([https://statutes.nypti.org/\\$PEN215.51\\$\\$](https://statutes.nypti.org/$PEN215.51$$)) of the penal law or aggravated criminal contempt as defined in section 215.52 ([https://statutes.nypti.org/\\$PEN215.52\\$\\$](https://statutes.nypti.org/$PEN215.52$$)) of the penal law, and the underlying allegation of such charge ..... is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 ([https://statutes.nypti.org/\\$CPL530.11\\$\\$](https://statutes.nypti.org/$CPL530.11$$)) of this article; or

i. Facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 ([https://statutes.nypti.org/\\$PEN263.30\\$\\$](https://statutes.nypti.org/$PEN263.30$$)) of the penal law, use of a child in a sexual performance as defined in section 263.05 ([https://statutes.nypti.org/\\$PEN263.05\\$\\$](https://statutes.nypti.org/$PEN263.05$$)) of the penal law or luring a child as defined in subdivision one of section 120.70 ([https://statutes.nypti.org/\\$PEN120.70\\$\\$](https://statutes.nypti.org/$PEN120.70$$)) of the penal law.

What is the conduct committed while out under “least restrictive non-monetary conditions” that can lead to the setting of bail under CPL § 530.60(2)(b) ([https://statutes.nypti.org/\\$CPL530.60\\$\\$](https://statutes.nypti.org/$CPL530.60$$))?

a. “Whenever in the course of a criminal action or processing a defendant charged with the commission of an offense [i.e. any offense] is at liberty as a result of an order of recognizance, release under non-monetary conditions or bail .... it shall be grounds for revoking such order and fixing bail in such criminal action or proceeding when the court has found, by clear and convincing evidence, that the defendant”:

i. Persistently and willfully failed to appear after notice of scheduled appearances in the case before the court;

ii. Violated an order of protection in a manner prohibited by Penal Law 215.51 ([https://statutes.nypti.org/\\$PEN215.51\\$\\$](https://statutes.nypti.org/$PEN215.51$$))(b), (c), or (d) (Criminal Contempt 1);

iii. Violated 215.15 ([https://statutes.nypti.org/\\$PEN215.15\\$\\$](https://statutes.nypti.org/$PEN215.15$$)), 215.16 ([https://statutes.nypti.org/\\$PEN215.16\\$\\$](https://statutes.nypti.org/$PEN215.16$$)), or 215.17 ([https://statutes.nypti.org/\\$PEN215.17\\$\\$](https://statutes.nypti.org/$PEN215.17$$)) (Witness Intimidation) or violated 215.11 ([https://statutes.nypti.org/\\$PEN215.11\\$\\$](https://statutes.nypti.org/$PEN215.11$$)), 215.12 ([https://statutes.nypti.org/\\$PEN215.12\\$\\$](https://statutes.nypti.org/$PEN215.12$$)), or 215.13 ([https://statutes.nypti.org/\\$PEN215.13\\$\\$](https://statutes.nypti.org/$PEN215.13$$)) (Witness Tampering);

iv. Committed an additional felony while at liberty on a felony charge.

b. It is important to note that to violate under CPL § 530.60(2)(b)(iv) ([https://statutes.nypti.org/\\$CPL530.60\\$\\$](https://statutes.nypti.org/$CPL530.60$$)), an argument can be made that at the original setting of the securing order the Court must have complied with CPL § 510.30(3) ([https://statutes.nypti.org/\\$CPL510.30\\$\\$](https://statutes.nypti.org/$CPL510.30$$)) which reads: “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

(<https://statutes.nypti.org/§CPL530.60>) of this chapter if the principal commits a subsequent felony while at liberty upon such order."

i. The lesson is that to avoid this argument this warning should always be given at an arraignment on a felony even if the defendant is released on his/her own recognizance;

ii. The failure to provide this warning might make it impossible to revoke and set bail under CPL § 530.60(2)(b)(iv) (<https://statutes.nypti.org/§CPL530.60>).

c. Do not overlook that a hearing at the "clear and convincing evidence" level of proof will be required and that this level of proof is greater than the probable cause needed at a preliminary hearing or to return an indictment.

## Even if the Court could not otherwise set bail, is it true that a defendant can still request bail and the court must set it?

a. Under CPL § 510.10(5) (<https://statutes.nypti.org/§CPL510.10>), "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;

i. If the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

## If the charge is not a "qualifying offense" or there is not a CPL § 530.60(b) (<https://statutes.nypti.org/§CPL530.60>) situation or the defendant does not request it, can a Court set bail?

a. NO. Note that there is a difference between when an arraignment has to be done (see (1) above), can be done (see (2) above), and whether bail can be set. Bail can only be set under the three exceptions set out above (see 7, 8, and 9 above). Otherwise, the court can only consider the "least restrictive non-monetary conditions".



Is it true that a “release on their own recognizance” is the presumed release status for a defendant facing criminal charges after arraignment? What is the standard that the Court applies in determining the defendant’s release status?

a. YES. While CPL § 510.10(1) (<https://statutes.nypti.org/§CPL510.10>), start off by saying that a Court “shall ... by a securing order release the [defendant] on the [defendant’s] own recognizance, release the [defendant] under non-monetary conditions, or, where authorized, fix bail or commit the [defendant] to the custody of the sheriff”, it goes on to state:

i. “In all such cases, except where another type of securing order is shown to be required by law, the court shall release the [defendant] pending trial on the [defendant’s] own recognizance, unless it is demonstrated and the court makes an individualized determination that the [defendant] poses a risk of flight to avoid prosecution.”;

1. **THE STANDARD:** *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.*’

b. The standard of “least restrictive alternatives” is further emphasized in CPL § 510.30 (<https://statutes.nypti.org/§CPL510.30>) (which is more fully set out below) which says in relevant part that “with respect to any [defendant], 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.

Is a defendant entitled to legal representation at any court appearance (including arraignment) where the terms and conditions of a securing order (release status) are being considered by the Court?

a. YES. While CPL § 510.10(2) (<https://statutes.nypti.org/§CPL510.10>), a “[defendant] is entitled to representation by counsel .... 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.”

i. Note that the effect of this is that defense counsel must be present at all arraignments;

1. In the rare case that defense counsel is not available, the District Attorney’s Office will be taking the position that the arraignment can proceed, that appropriate terms and conditions (even including bail where allowed) can be

set in the absence of counsel, and that the matter must be brought back before the Court with counsel present as soon as possible.

a. "As soon as possible" should be measured in hours, but should be at most the next business day and could include a Saturday or Sunday;

ii. As discussed elsewhere, it is the position of the District Attorney's Office that where an arraignment after arrest is required or permitted (that is, where the issuance of an appearance ticket is not mandatory), that pre-arraignment detention is permissible under the law (see (7) above).

1. Please note that the Madison County policy and procedures for off-hour arraignments and pre-arraignment detention will be separately promulgated after approval of the plan by the 6<sup>th</sup> Judicial District;

2. Until such time as the plan is approved and promulgated, the existing memorandum entitled "02-28-17 Arrest Arraignment Procedures Memorandum Amended" will continue to apply;

a. This document has been previously distributed to Madison County law enforcement and the Courts. It is available upon request made to the Madison County District Attorney's Office.

## What are the "least restrictive non-monetary conditions"?

a. Under CPL § 510.10(3)(a) (<https://statutes.nypti.org/§CPL510.10>), "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.*"

b. Such conditions may include, among other conditions reasonable under the circumstances:

i. That the defendant be in contact with a pretrial services agency serving principals in that county;

ii. That the defendant abide by reasonable, specified restrictions on travel that are reasonably related to an actual risk of flight from the jurisdiction;

iii. That the defendant refrain from possessing a firearm, destructive device or other dangerous weapon;

iv. That, *when it is shown pursuant to subdivision four of section 510.45 (<https://statutes.nypti.org/§CPL510.45>) 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,*

v. That, when it is shown pursuant to paragraph (a) of subdivision four of section 510.40 (<https://statutes.nypti.org/§CPL510.40>) 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 defendant's location be monitored with an approved electronic monitoring device, in accordance with such subdivision four of section 510.40 (<https://statutes.nypti.org/§CPL510.40>) of this title;

1. For reasons not germane to this outline electronic monitoring is not available in Madison County or, for that matter, in almost all of the rest of New York State;

c. Note this the possibilities listed above are not exclusive but rather the language is "include among other conditions reasonable under the circumstances".

d. This section also makes clear that “a defendant shall not be required to pay for any part of the cost of release on non-monetary conditions”.

## Realistically, what are the “least restrictive non-monetary conditions” that will be requested in Madison County?

a. To answer this question, it is necessary to review the examples “least restrictive conditions” provided under CPL § 500.10(3)(a) (<https://statutes.nypti.org/§CPL500.10>) and in doing so remember they are examples. In effect, the statute is using “including but not limited to” language;

i. This means that in an appropriate case additional or different terms and conditions can be imposed. While this allows us to be creative in our recommendations, remember that we will have to make the argument that our suggested term and condition is the “least restrictive” and is supported by evidence we can put before the Court;

b. Remember that among the examples the Court is obligated to select the “least restrictive”. With that in mind, the examples listed with a comment:

i. That the defendant be in contact with a pretrial services agency serving principals in that county;

1. **COMMENT:** At first, we will seldom, if ever, recommend that a defendant “be in contact” with pretrial services.

### 2. RATIONALE:

a. These services are going to be provided by the Madison County Probation Department. How often we could reasonably recommend this option to the Court is going to be a function of Probation's capacity going forward. In short, we will be guided by the Probation Department as to the realistic availability of such services. We will start with the assumption that they do not have adequate resources to provide these services at a level that would allow for this to be a standard recommendation;

b. We should also remember in the vast majority of cases the defendant will be represented by counsel. The practical view is to let the defense attorney be the “contact” for the defendant so that he/she knows when to next appear in Court;

ii. That the defendant abide by reasonable, specified restrictions on travel that are reasonably related to an actual risk of flight from the jurisdiction;

1. **COMMENT:** There is no practical way to monitor this, but this should be a frequent recommendation for those who do not have New York ties. In the case of people who hold a passport – both foreign nationals and U.S. citizens – the surrender of their passport should be a standard recommendation in all felony cases;

### 2. RATIONALE:

a. The surrender of a passport is a very valuable tool to prevent someone from leaving the country and effectively escaping our jurisdictional reach;

b. While restricting travel cannot be monitored under present realities, it should be recommended. The reason is that when someone skips to another state, the fact that they did so in violation of a Court imposed restriction will strengthen our argument for bail when they are brought back. Remember, under CPL § 530.60(b) (<https://statutes.nypti.org/§CPL530.60>), bail can be set when we can show that the defendant “persistently and willfully failed to appear after notice of scheduled appearances in the case before the court”;

iii. That the defendant refrain from possessing a firearm, destructive device or other dangerous weapon;

1. **COMMENT:** There is no practical way to monitor this, but this should always be recommended where the crime alleged involves violence or acts of domestic violence. It should also be recommended when the defendant is exhibiting any emotional issues no matter how slight;

2. **RATIONALE:**

a. It is absolutely consistent to believe in the Second Amendment and also believe that during the pendency of a criminal action that it is a good idea to err on the side of caution. The temporary taking of weapons is better than reading about their use in a future assault or homicide in the paper;

b. Like an order of protection, this "piece of paper" restriction won't stop a bullet, but it is the best we can do and it should be a frequent recommendation;

iv. That, *when it is shown pursuant to subdivision four of section 510.45 (<https://statutes.nypti.org/§CPL510.45>) 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,*

1. **COMMENT:** At first, we will seldom, if ever, recommend that a defendant "be placed in reasonable pretrial supervision" and will recommend this only in cases where the defendant absolutely would have been subject to bail under the old law. Likely, we would most likely seek this only in cases of domestic violence or other cases which would be eligible for electronic monitoring (which does not exist in Madison County) under CPL § 510.40(21) (<https://statutes.nypti.org/§CPL510.40>) (see below);

2. **RATIONALE:**

a. These services are going to be provided by the Madison County Probation Department. How often we could reasonably recommend this option to the Court is going to be a function of Probation's capacity going forward. In short, we will be guided by the Probation Department as to the realistic availability of such services. We will start with the assumption that this recommendation has to be carefully targeted and judiciously requested. It is assumed that Probation will not have adequate resources to provide these services at a level that would allow for this to be a more common recommendation;

b. This recommendation should likely be limited to cases which would qualify for electronic monitoring under CPL § 510.40(21) (<https://statutes.nypti.org/§CPL510.40>). (See below for the list and keep in mind that for the reasons which appear below, electronic monitoring does not exist in Madison County.);

c. If one or more of the qualifiers found in CPL § 510.40(21) (<https://statutes.nypti.org/§CPL510.40>) are present, this recommendation would be even more likely where the defendant presents with real anger issues or other mental/emotional issues. It is an imperfect attempt to keep an eye on the defendant;

d. It should also be remembered that the Court must look to the "least restrictive condition" so it will be our burden to show why this heightened level of restriction is justified;

v. That, *when it is shown pursuant to paragraph (a) of subdivision four of section 510.40 (<https://statutes.nypti.org/§CPL510.40>) 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 defendant's location be monitored with an approved electronic monitoring device, in accordance with such subdivision four of section 510.40 (<https://statutes.nypti.org/§CPL510.40>) of this title;*

1. **COMMENT:** Electronic monitoring is at present simply *not available* in Madison County and will never be sought until and unless we receive word from the Probation Department or such other entity (see the rationale) that it is available;

2. **RATIONALE:** To understand why this is not available, it is necessary to read and understand the applicable sections of CPL § 510.40(4) (<https://statutes.nypti.org/510.40>):

a. The language of the statute is not going to be set out in full. It should be read and understood so that why this option is not available can be explained to victims;

b. The short answer as to why it is not available is that under CPL § 510.40(4)(c) (<https://statutes.nypti.org/510.40>) "electronic monitoring of the location of a principal may be conducted only by a public entity under the supervision and control of a county or municipality or a non-profit entity under contract to the county, municipality or the state. At present, there is only one county in New York State that has attempted to implement such a program. While there are possibly private for-profit companies that would do such monitoring, this is not allowed under the statute. Madison County Probation does not do this and there is no present plan to start doing this. The worst part? The drafters of the statute knew that the exclusion of "for-profits" would mean that electronic home monitoring exists only in theory, not in practice;

c. Even if it was available, under CPL 510.40(21) (<https://statutes.nypti.org/510.40>), the use of electronic monitoring is limited to those situations that "qualify for electronic monitoring" which are limited to:

i. A person charged with a felony;

ii. A misdemeanor crime of domestic violence;

iii. A misdemeanor defined in PL Article 130 (<https://statutes.nypti.org/130.00>) (sex offenses);

iv. A crime for which there was a prior release and there is now a violation proceeding under CPL § 530.60(2)(b) (<https://statutes.nypti.org/530.60>);

v. Any misdemeanor where the defendant stands previously convicted, within the past five years, of a violent felony offense as defined in section 70.02 (<https://statutes.nypti.org/70.02>) of the penal law.

d. It is also important to know that even if available, it is considered the equivalent of being jailed which means the following would apply under CPL § 510.40(d) (<https://statutes.nypti.org/510.40>):

i. It can only be ordered for a "maximum period of sixty days, and may be renewed for such period, after notice, an opportunity to be heard and a de novo, individualized determination in accordance with this subdivision, which shall be explained on the record or in writing";

ii. "A defendant subject to electronic location monitoring under this subdivision shall be considered held or confined in custody for purposes of section 180.80 (<https://statutes.nypti.org/180.80>) of this chapter and shall be considered committed to the custody of the sheriff for purposes of section 170.70 (<https://statutes.nypti.org/170.70>) of the chapter, as applicable.

## When considering the terms and conditions of a securing order, including those

# situations where bail is still available, what factors can the Court consider?

a. CPL § 510.30 (<https://statutes.nypti.org/§CPL510.30>) is entitled "Application for securing order; rules of law and criteria controlling determination";

i. Keep in mind that CPL § 510.30(1) (<https://statutes.nypti.org/§CPL510.30>) makes clear that "*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*";

b. **THE FACTORS THAT CAN BE CONSIDERED:** With that standard in mind, the statute goes on to say that "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 (where it says "principal" substitute "defendant"):

(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 (<https://statutes.nypti.org/§FCT354.2>) of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 (<https://statutes.nypti.org/§FCT306.1>) 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 (<https://statutes.nypti.org/§CPL530.11>) 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 (<https://statutes.nypti.org/§CPL530.11>) 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; CPL § 510.30(2) (<https://statutes.nypti.org/§CPL510.30>) states:

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.

c. It has been noted that among the factors that can be considered under CPL § 510.30 (<https://statutes.nypti.org/510.30>), the following factors that could previously been considered have been eliminated:

- i. Ties to the community;
- ii. Strength of case;
- iii. Possible sentence.

d. It is worth wondering if the factors in (c) above have really been "eliminated". CPL § 510.30 (<https://statutes.nypti.org/510.30>) in listing the factors says "including" and does not present the list as "exhaustive". An argument could be made that the supposedly "eliminated" factors are relevant to making an individualized and appropriate securing order.

e. It is important to remember the language of CPL § 510.30(3) (<https://statutes.nypti.org/510.30>) which may be read as a pre-condition to invoking the revocation provision of CPL § 530.60 (<https://statutes.nypti.org/530.60>). Subsection (3) reads as follows:

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 (<https://statutes.nypti.org/530.60>) of this chapter if the principal commits a subsequent felony while at liberty upon such order.

## Bail reform goes into effect on January 1, 2020, is it retroactive so that people presently in jail will get out and those with bail have their bail exonerated?

a. **NO & YES.** There is no specific provision making the bail statute retroactive, however, as we know a defendant can always ask a Court to revisit the issue of bail. So, when January 1, 2020 rolls around, every defendant who is in jail or even out on bail is going to ask the Court to set a new securing order that employs the "least restrictive conditions" since that revised bail laws will be the standard to employ;

b. Along this line, be aware of the amended CPL § 510.20 (<https://statutes.nypti.org/510.20>) which is entitled "Application for a change in securing order". As amended, the section reads as follows:

(1) Upon any occasion when a court has issued a securing order with respect to a principal and the principal is confined in the custody of the sheriff as a result of the securing order or a previously issued securing order, the principal may make an application for recognizance, release under non-monetary conditions or bail. The principal is entitled to representation by counsel in the making and presentation of such application. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.

(2) (a) The principal is entitled to representation by counsel in the making and presentation of such application. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.

(b) Upon such application, the principal must be accorded an opportunity to be heard, present evidence and to contend that an order of recognizance, release under non-monetary conditions or, where authorized, bail must or

should issue, that the court should release the principal on the principal's own recognizance or under non-monetary conditions rather than fix bail, and that if bail is authorized and fixed it should be in a suggested amount and form.

c. Bottom line is expect the conversion to take place starting January 1, 2020 with resistance likely only possible for defendants in jail on CPL § 510.10(4) ([https://statutes.nypti.org/\\$\\$CPL510.10\\$\\$](https://statutes.nypti.org/$$CPL510.10$$)) "qualifying offenses" or subject to the application of CPL § 530.60(2)(b) ([https://statutes.nypti.org/\\$\\$CPL530.60\\$\\$](https://statutes.nypti.org/$$CPL530.60$$));

i. Remember that even if CPL § 530.60(2)(b) ([https://statutes.nypti.org/\\$\\$CPL530.60\\$\\$](https://statutes.nypti.org/$$CPL530.60$$)) applies, we will be required to hold a hearing at which the "clear and convincing evidence" standard will apply.

## In the News

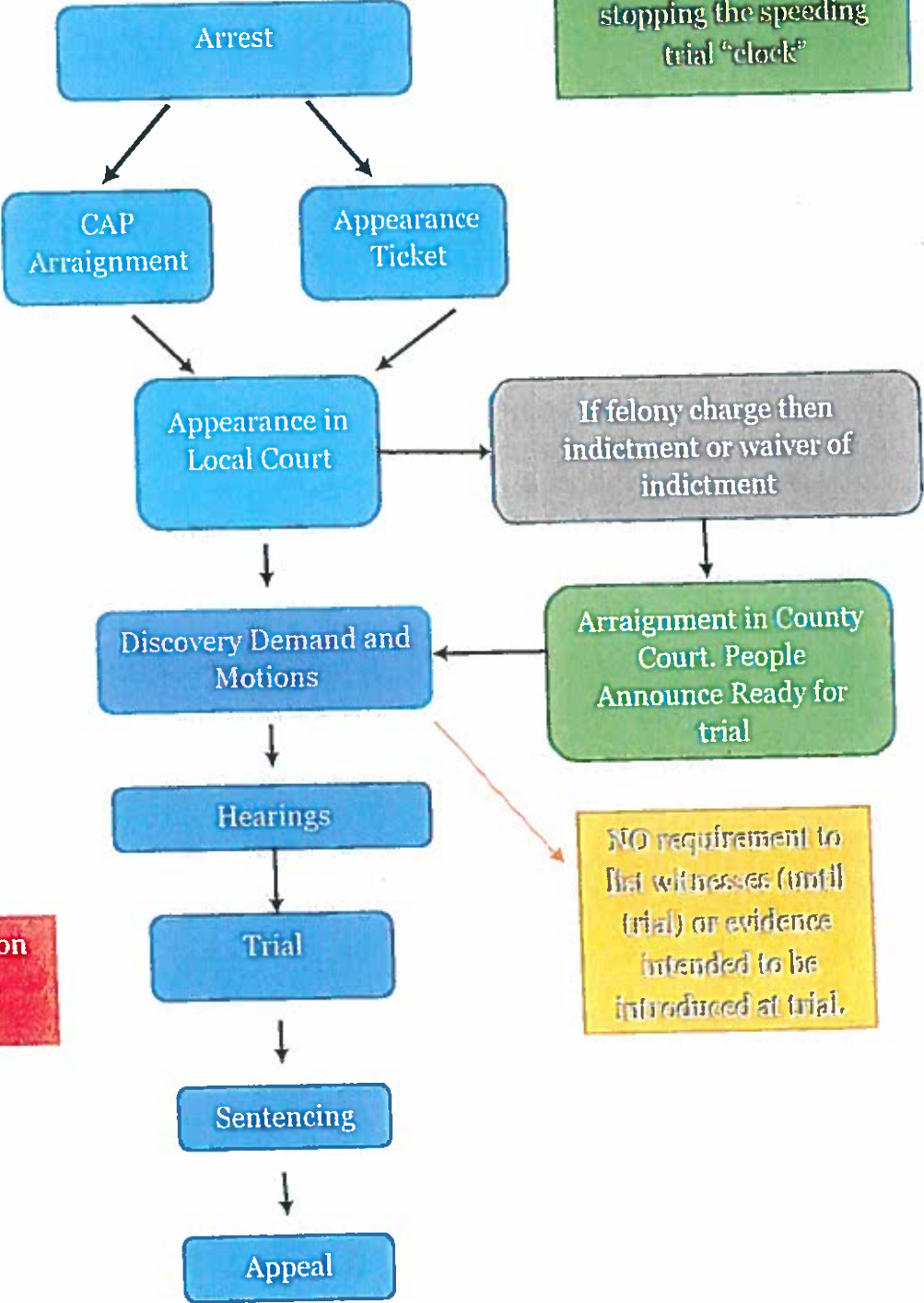
- DA Hoovler Press Release -- Bail Reforms 10-5-2019.docx ([/wiki/File:DA\\_Hoovler\\_Press\\_Release\\_-\\_Bail\\_Reforms\\_10-5-2019.docx](/wiki/File:DA_Hoovler_Press_Release_-_Bail_Reforms_10-5-2019.docx))
- <https://www.hudsonvalley360.com/article/police-prosecutors-brace-new-bail-laws>  
(<https://www.hudsonvalley360.com/article/police-prosecutors-brace-new-bail-laws>)
- Police, prosecutors say new bail laws are threat to public safety ([https://wnyt.com/news/police-and-prosecutors-in-warren-and-washington-counties-say-new-bail-laws-pose-a-threat-to-public-safety/5511109/?fbclid=IwAR2mH\\_lm\\_rYoc6rkKonpCnMok06pfNTGzGW2niLNCUEWfTnFK1F2SmBFmFk](https://wnyt.com/news/police-and-prosecutors-in-warren-and-washington-counties-say-new-bail-laws-pose-a-threat-to-public-safety/5511109/?fbclid=IwAR2mH_lm_rYoc6rkKonpCnMok06pfNTGzGW2niLNCUEWfTnFK1F2SmBFmFk))
- DA Donnelly - Rensselaer County: Bail reform intent noble, unworkable (<https://wnyt.com/news/bail-reform-district-attorney-mary-pat-donnelly-fulton-sheriff-rich-giardino/5515848/>)
- Allegany County District Attorney notes growing public backlash  
(<https://www.eveningtribune.com/news/20191004/da-ny-criminal-justice-reforms-are-nonsense>)
- New York to introduce controversial bail reforms in 2020 ([https://www.fox5ny.com/news/new-york-to-introduce-controversial-bail-reforms-in-2020?fbclid=IwAR1aqQrP\\_4NfnTlwDNIIzYbGCZmrTalKiTcP8iL5hRKP3hDqQi6-vA-RZJU](https://www.fox5ny.com/news/new-york-to-introduce-controversial-bail-reforms-in-2020?fbclid=IwAR1aqQrP_4NfnTlwDNIIzYbGCZmrTalKiTcP8iL5hRKP3hDqQi6-vA-RZJU))
- Chemung County District Attorney talks about New York bail system changes  
([https://www.mytwintiers.com/news-cat/local-news/chemung-county-district-attorney-talks-about-new-york-bail-system-changes/?fbclid=IwAR28YHhdZfDqfjutJRHoIghf2fVr5nBB94vb8sW4VfVcS\\_CHKcdACG3tuYhttps://www.mytwintiers.com/new-cat/local-news/chemung-county-district-attorney-talks-about-new-york-bail-system-changes/?fbclid=IwAR28YHhdZfDqfjutJRHoIghf2fVr5nBB94vb8sW4VfVcS\\_CHKcdACG3tuY](https://www.mytwintiers.com/news-cat/local-news/chemung-county-district-attorney-talks-about-new-york-bail-system-changes/?fbclid=IwAR28YHhdZfDqfjutJRHoIghf2fVr5nBB94vb8sW4VfVcS_CHKcdACG3tuYhttps://www.mytwintiers.com/new-cat/local-news/chemung-county-district-attorney-talks-about-new-york-bail-system-changes/?fbclid=IwAR28YHhdZfDqfjutJRHoIghf2fVr5nBB94vb8sW4VfVcS_CHKcdACG3tuY))
- <https://spectrumlocalnews.com/nys/central-ny/news/2019/10/03/criminal-justice-bail-reform?fbclid=IwAR04EljKIII-Ho5DNndp7S7ACyblQL-LQIsfVy5bz5aQ-bjJFwtwmc5KM4>  
(<https://spectrumlocalnews.com/nys/central-ny/news/2019/10/03/criminal-justice-bail-reform?fbclid=IwAR04EljKIII-Ho5DNndp7S7ACyblQL-LQIsfVy5bz5aQ-bjJFwtwmc5KM4>)
- DA Donald O'Geen - Wyoming County



# Work flow prior to passage of Criminal Justice Reform

At ANY point at, and including the arraignment, a defendant can plead guilty and be sentenced

At any point from arraignment on a misdemeanor, the People are permitted to announce ready for trial, stopping the speeding trial "clock"



Discovery does not apply to traffic infractions and is only required upon the demand of the defendant or the Court

Discovery NOT required on felonies until case is in County Court

NO requirement to list witnesses (until trial) or evidence intended to be introduced at trial.

New discovery statute CPL 245 applies to all level of offenses including traffic tickets, violations, boating tickets, and environmental conservation offenses.

### Work flow after passage of Criminal Justice Reform

CAP arraignment ONLY if charges are Violent Felony, class A non-drug felony, felony terrorism, Sex Offense, Domestic Violence, or request for Order of Protection

Appearance or arraignment in Local Court

Entire file turned over to Defendant within 15 days of arraignment, plus all potential witnesses and a list of all physical evidence seized.  
**THIS APPLIES TO ALL CASES INCLUDING TRAFFIC TICKETS**

Defendant afforded an opportunity to be heard on the record and inquire about Peoples compliance (mini hearing)

If not a Felony, People can announce ready for trial.

People can announce ready for Trial

Defendant afforded an opportunity to be heard on the record and inquire about Peoples compliance (mini hearing)

People can redact portions of materials or not turn over documents but MUST specify type and manner of redaction in a protective order motion to court

Court must hold a hearing WITHIN 3 business days

Expedited Appellate Review Process

Certificate of Compliance with CPL 245 Filed with the Court

If at any point AFTER the a certificate of compliance is filed, the People come into possession of additional discovery materials, the process starts over (likely to happen several times)

15 days to turn over grand jury transcripts and any additional discovery (previously not required until trial)

Court must hold a hearing WITHIN 3 business days

Expedited Appellate Review Process

People can redact portions of grand jury minutes, or other discovery materials in a Protective Order Motion to court

Unlike under the present statutes, in starting January 1<sup>st</sup>, 2020 a defendant is NOT permitted to plead guilty to a crime until the People have filed a certificate of compliance with CPL 245. This means the People MUST provide discovery on every case of every level.

Arrest

Appearance ticket returnable in no more than 20 days

Motions

Hearings

Trial

Appeal

Felony cases: Indictment or waiver of indictment and arraignment in County Court

Certificate of Compliance with CPL 245 Filed with the Court

§ 245.20 Automatic Discovery Checklist - DWI

As soon as possible, law enforcement shall provide the prosecution with:

- (a) Attach all written, recorded, or oral statements of the defendant(s) or co-defendant(s)
- (c) ID by name and contact information individuals with relevant information:
  - Name: \_\_\_\_\_  Name: \_\_\_\_\_  Name: \_\_\_\_\_
  - Phone: \_\_\_\_\_  Phone: \_\_\_\_\_  Phone: \_\_\_\_\_
  - Email: \_\_\_\_\_  Email: \_\_\_\_\_  Email: \_\_\_\_\_
- (d) ID by name and work affiliation the law enforcement personnel with relevant information:
  - Name: \_\_\_\_\_  Name: \_\_\_\_\_  Name: \_\_\_\_\_
  - Badge Number: \_\_\_\_\_  Badge Number: \_\_\_\_\_  Badge Number: \_\_\_\_\_
  - Department: \_\_\_\_\_  Department: \_\_\_\_\_  Department: \_\_\_\_\_
  - Address: \_\_\_\_\_  Address: \_\_\_\_\_  Address: \_\_\_\_\_
- (e) Attach all written or recorded statements, including, but not limited to:
  - police reports (arrest report, incident report, supplemental report, etc.)  notes of police and other investigators
  - supporting deposition(s), including any witness depositions  law enforcement agency reports
  - statement of the defendant(s) or codefendant(s)  the accusatory instrument(s)
  - other: \_\_\_\_\_
- (g) ID all tapes or electronic recordings, including, but not limited to:
  - body worn camera  911 calls  radio transmissions
  - surveillance (private or commercial) \_\_\_\_\_
  - other: \_\_\_\_\_
- (h) Attach all photographs and drawings made by law enforcement relating to the case
- (i) Attach all photographs, photocopies, and reproductions made by or at the direction of law enforcement
- (j) Reports, documents, records, data, calculations, or writings relating to the criminal action, including, but not limited to:
  - field test results (alcohol, narcotics, etc.)  DRE evaluation
  - physical examinations  mental examinations
  - copies of driver's license, registration, and insurance  copy of all traffic tickets issued
  - copy of tow sheet  copy of MVA 104 (if applicable)
  - refusal form (if applicable)  blood consent form (if applicable)
  - all laboratory results (including any conflicting analyses or results)  fingerprint response summary
  - laboratory information management system records  affidavit of service and 710.30 notice (if applicable)
  - compulsory test application and order (if applicable)
  - all records of calibration, certification, inspection, repair, or maintenance of any machine or instrument used to perform any scientific test(s) and experiment(s) from six months prior and six months after the test was conducted
  - miscellaneous/other paperwork: \_\_\_\_\_
- (k) Attach or ID any and all exculpatory evidence, including mitigation as to punishment
- (m) ID tangible objects taken from or allegedly possessed by a the suspect, including a designation as to whether said item was
  - constructively or  physically possessed or  abandoned by the defendant or co-defendant
  - object(s): \_\_\_\_\_
- (n) Attach copies of search warrant(s) and related documents, including, but not limited to:
  - warrant  warrant application
  - supporting affidavits  police inventory of all property seized under warrant
  - transcript of all testimony or oral communications offered in support of the warrant application
- (r) Date, time, and place of offense charged: \_\_\_\_\_
- (r) Date, time, and place of defendant's arrest: \_\_\_\_\_
- (r) Date, time, and place of defendant's seizure: \_\_\_\_\_
- (s) Records related to instruments/devices used to administer scientific tests (only for vehicle and traffic law violations), including, but not limited to:
  - DWI breath test instruments  preliminary breath tests (PBTs), device serial number: \_\_\_\_\_
  - data master operational checklist  data master evidence ticket
  - radars  other: \_\_\_\_\_