

2019 NYSAC FALL CONFERENCE

BAIL REFORM

A Review of the 2019 PreTrial Justice Reform Act
Effective Date January 1, 2020

YOUR PRESENTER: Joy Bennett/Tioga County Probation Director



HISTORICAL CONTEXT



NYS Bail Statute was adopted in 1970 on the tail end of a major reform movement around bail in the 1960s. The goal was to “reduce the un-convicted portion of our jail population” by creating less restrictive options to secure a defendant’s future court attendance.

Bail is authorized in the following ways: cash, an insurance company bail bond, a surety bond, a secured appearance bond, a partially secured surety bond, a partially secured appearance bond, an unsecured surety bond or appearance bond, and/or credit card.

Judges rarely impose unsecured or partially secured bonds, instead two of the most restrictive forms of bail are used: cash bail and commercial bond.

Judges are to consider a list of factors before imposing bail but ability to pay bail is not often one of them.

NYS IS NOT THE FIRST TO ENACT BAIL REFORM

In August 2018, California became the first state to eliminate cash bail with an effective date of October 2019.

Washington D.C. is the only other municipality to eliminate cash bail.

In California's reform, there is no bail or bail bond agents. Local Courts decide on whom is to remain in custody and whom is to be released based on an algorithm created by the courts in each jurisdiction.

Non Violent misdemeanor cases are released within 12 hours. Other cases are scored on seriousness of the crime, likelihood of recidivism and likelihood of appearing in court.



WHAT DROVE THE CHANGE FOR BAIL REFORM ?

Jail Name	Census	Boarded Out	Boarded In	# of Other Unsentenced	% of Unsentenced
Albany County Jail	588	1	42	316	53.7% *
Allegany County Jail	107	2	4	32	29.9%
Broome County Jail	457	0	24	341	74.6% *
Cattaraugus Co Jail	133	2	0	61	45.9%
Cayuga County Jail	156	0	10	73	46.8%
Chautauqua Co Jail	260	0	0	176	67.7% *
Chemung Co Jail	155	1	7	80	51.6% *
Chenango Co Jail	93	0	0	51	54.8% *
Clinton County Jail	217	0	2	102	47.0%
Columbia County Jail	70	0	16	63	90.0% *
Cortland County Jail	92	11	0	54	58.7% *
Delaware Co Jail	68	0	12	48	70.6% *
Dutchess Co Jail	379	8	0	268	70.7% *
Erie County CF	543	0	0	298	54.9% *
Erie County Jail	415	1	0	304	73.3% *
Essex Co Jail	73	0	1	17	23.3%
Franklin Co Jail	91	1	0	51	56.0% *
Fulton County Jail	100	0	14	76	76.0% *
Genesee County Jail	105	22	0	47	44.8%
Greene County Jail	48	41	0	5	10.4%
Hamilton County Jail	2	0	0	1	50.0% *
Herkimer County Jail	62	34	0	19	30.6%
Jefferson County Jail	167	7	0	119	71.3% *
Lewis County Jail	31	1	0	19	61.3% *
Livingston County Jail	132	1	11	59	44.7%
Madison County Jail	91	3	0	51	56.0% *
Monroe County CF	218	0	0	70	32.1%
Monroe County Jail	867	2	4	531	61.2% *
Montgomery Co Jail	100	1	0	58	58.0% *
Nassau County CF	1094	7	6	816	74.6% *
Niagara County Jail	380	0	3	176	46.3%

WHAT DROVE THE CHANGE FOR BAIL REFORM?

Jail Name	Census	Boarded Out	Boarded In	# of Other Unsentenced	% of Unsentenced
Oneida County Jail	395	0	24	235	59.5% *
Onondaga County CF	377	2	10	44	11.7%
Onondaga County Jail	561	9	2	504	89.8% *
Ontario County Jail	162	6	0	94	58.0% *
Orange County Jail	695	1	1	339	48.8%
Orleans County Jail	60	0	1	32	53.3% *
Otsego County Jail	65	2	0	40	61.5% *
Putnam County Jail	75	0	3	47	62.7% *
Rensselaer County Jail	321	1	0	105	32.7%
Rockland County Jail	150	0	1	104	69.3% *
Saratoga County Jail	188	0	0	96	51.1% *
Schenectady Co Jail	275	2	0	173	62.9% *
Schoharie County Jail	19	19	0	0	0.0%
Schuyler County Jail	17	4	0	7	41.2%
Seneca County Jail	76	2	2	30	39.5%
St. Lawrence Co Jail	139	2	0	89	64.0% *
Steuben Co Jail	189	1	2	103	54.5% *
Suffolk County CF- Riverhead	592	8	17	408	68.9% *
Suffolk County CF- Yapank	698	0	3	458	65.6% *
Sullivan County Jail	140	5	0	86	61.4%
Tioga County Jail	61	1	5	41	67.2% *
Tompkins County Jail	72	3	0	40	55.6% *
Ulster County Jail	247	0	33	164	66.4% *
Warren County Jail	140	0	0	87	62.1% *
Washington County Jail	81	0	0	37	45.7%
Wayne County Jail	93	7	11	44	47.3%
Westchester Co Annex	79	0	0	54	68.4% *
Westchester Co Jail	633	3	7	432	68.2% *
Westchester Co Pen	316	0	0	183	57.9% *
Wyoming County Jail	56	0	5	37	66.1% *
Yates County Jail	42	0	4	20	47.6%
New York City	8346	6	0	6463	77.4% *
Non-New York City	14464	250	287	8595	59.4% *
New York State	22810	256	287	15058	66.0% *

SUDDENLY, IT IS REAL AND MOST EVERYBODY GETS ONE

Chance



**GET OUT
OF JAIL, FREE**

THIS CARD CAN BE KEPT UNTIL NEEDED OR SOLD

PRESUMPTION OF RELEASE-APPEARANCE TICKET

2019 Pretrial Justice Reform Act is based on a Presumption of Release

- ❖ An Appearance Ticket is to be issued by a Police Officer for most Misdemeanor and most E Felony charges.
- ❖ Before issuing the ticket, the Police Officer shall inform the arrestee that they may provide their contact information for the purpose of being reminded of their court appearance date. Such contact information may include phone number(s), a residential address or an address where the arrestee receives mail, or an email address.
- ❖ The Appearance Ticket and the contact information is to be recorded and sent to the local criminal court within 24 hours of issuance.

PRESUMPTION OF RELEASE-APPEARANCE TICKET

- ❖ Upon receipt of the Appearance Ticket and contact information, the court shall issue a court appearance reminder to the principal by text, telephone call, email or first class mail, unless the court date is within 72 hours of its issuance.

NOTE: The legislation indicates that the court MAY partner with a certified pretrial services agency to provide this reminder notification to the ROR arrestee. This will be an added responsibility for Pretrial Release agencies.



How will PTR agencies be notified of the Appearance Ticket/contact information in a timely way?

Will additional technology be needed for Counties to provide the text communication ?

GO TO ARRAIGNMENT

A Police Officer is not required to issue the Appearance Ticket IF:

- ❖ the person is charged with an A, B, C, or D Felony;
- ❖ the person is charged with one of the following E Felony offenses: Escape 1st, Absconding 1st, Absconding From a Community Treatment Facility, or Bail Jumping;
- ❖ the person has one or more outstanding warrants;
- ❖ the person has failed to appear in court proceedings in the last two years;

GO TO ARRAIGNMENT..... CONTINUED

- ❖ the person is unwilling or unable to verify their identity after being given a reasonable opportunity;
- ❖ the person is charged with a crime between members of the same household;
- ❖ the person is charged with a Penal Law 130 offense;
- ❖ the person should be brought to the court for consideration of an Order of Protection;
- ❖ the person is charged with a crime for which the driver's license may be revoked/suspended; and
- ❖ the person's condition is such that the police officer believes there is a risk of harm, without medical or mental health care.

A WORD ABOUT MISDEMEANORS



Money bail is eliminated with only two exceptions:

- ❖ Sex offenses and
- ❖ Criminal Contempt, Second Degree charges for an Order of Protection violation in a domestic violence case.

Straight pretrial detention (remand) is eliminated in all misdemeanor cases.

A WORD ABOUT NONVIOLENT FELONIES


Both money bail and pretrial detention are eliminated in virtually all nonviolent felonies with the following exceptions:

- ❖ Witness Intimidation or Tampering;
- ❖ Conspiracy to Commit Murder;
- ❖ Felony Criminal Contempt charges involving DV (Criminal Contempt 1st & Aggravated Criminal Contempt); and
- ❖ a limited number of offenses against children, sex offenses and terrorism-related charges.

A WORD ABOUT VIOLENT FELONIES

Money bail and detention are still permitted in virtually all violent felonies except specific sub-sections of Burglary, 2nd and Robbery 2nd.

Bail and detention are also permitted in cases classified as Class A Felonies, most of which also involve violence.

 A notable caveat: bail and detention are eliminated for all Class A drug felonies, with the sole exception of operating as a major trafficker.

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FIVE RELEASE OPTIONS AT ARRAIGNMENT (OR SUBSEQUENT)

ROR is the presumptive option unless court makes “individualized determination” of flight risk.

If flight risk is determined, the court can move up the ladder of 5 options from least to most restrictive as follows:

1. Release Under Non-Monetary Conditions- least restrictive conditions that will reasonably assure the principle’s return to court. Conditions may include:

- ❖ Be in contact with a certified pretrial services agency;
- ❖ Abide by reasonable specified restrictions on travel;
- ❖ Refrain from possession a firearm, destructive device or other dangerous weapon.

2. When no other realistic monetary or non-monetary conditions will suffice to assure court appearance, the principal can be placed in reasonable pretrial supervision with a pretrial services agency.

RELEASE OPTIONS CONTINUED

3. When no other realistic monetary or non-monetary conditions will suffice to assure court appearance, the principal's location can be monitored with an approved electronic monitoring device (at no cost to the principal).

NOTE: The language in the legislation is written in such a way (can only use EM from a not for profit EM company) that use of EM is not an option. Not for profit EM companies do not exist. Counties do not budget for satellite time.....DCJS opinion.

4. Fix Bail

4. Commit to the Custody of the Sheriff



RELEASE CONSIDERATIONS BY THE COURT:

- ❖ The principal's activities and history;
- ❖ If the principal is a defendant, the charges facing the principal;
- ❖ The principal's record of previous adjudication as a JD or pending cases where fingerprints were retained, or Youthful Offender
- ❖ The principal's previous record with respect to flight to avoid prosecution; and
- ❖ If monetary bail is set, the principal's individual financial circumstances: ability to post bail without posing undue hardship and ability to obtain a secured/unsecured or partially secured bond.



How is the court going to obtain this information at arraignment?

RELEASE CONSIDERATIONS BY COURT CONTINUED

DV OFFENSES

*Where the principal is charged with a crime against a member(s) of the same household, the following factors must be considered:

- ❖ Any violation by the principal of an Order of Protection issued by any court
- ❖ The principal's history of use or possession of a firearm.

*This has not changed from current law.

RELEASE UNDER NON-MONETARY CONDITIONS

If a principal is released under non-monetary conditions, the Court shall, on the record:

- ❖ provide an individualized written document in clear and specific language as to the conditions the principal is subject; and
- ❖ Notify the principal of the possible consequences for violation of a release condition, including revocation and the ordering of a more restrictive order.

In addition, the court must provide notification, or direct a certified PTR agency to notify the principal under non monetary conditions AND principals under ROR, of all court appearances in advance by text message, telephone call, electronic mail or first class mail.

WHEN ELECTRONIC MONITORING IS ORDERED

- ❖ EM may be ordered only if the court finds no other realistic non-monetary condition(s) will suffice.
- ❖ The specific method of EM of the principal's location must be approved by the court-it must be the least restrictive procedure and method and unobtrusive to the greatest extent practicable.
- ❖ "EM 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. A county or municipality shall be authorized to enter into a contract with another county or municipality in the state to monitor principals under non-monetary conditions of release in its county, but **counties, municipalities and the state shall not contract with any private for profit entity for such purpose.**"
- ❖ NOTE: The language in the legislation regarding the last bullet requires clarification as it is open to interpretation.

PER STATUTE WHO QUALIFIES FOR ELECTRONIC MONITORING ?

- ❖ Person charged with a Felony;
- ❖ Person charged with a Misdemeanor crime of domestic violence;
- ❖ Person charged with a Misdemeanor PL 130 offense;
- ❖ Person who was released under monetary and nonmonetary conditions and has been found to be in violation of the release conditions;
- ❖ Person charged with any Misdemeanor where there is a violent felony offense conviction in the past 5 years; and
- ❖ Limited number of circumstances where a judge finds that defendants have engaged in pretrial misbehavior.

WHEN ELECTRONIC MONITORING IS ORDERED CONTINUED

- ❖ EM of a principal's location may be for a maximum of 60 days and may be renewed by the court after a hearing.
- ❖ A defendant subject to EM shall be considered held or confined in the custody of the sheriff and shall be considered committed to the custody of the sheriff.
- ❖ The cost of the EM shall not be borne by the principal.

PRETRIAL SERVICES AGENCIES

OCA shall certify and regularly review for recertification pretrial service agencies in each county.

Every agency shall be a public entity under the supervision and control of a county or municipality.

Any questionnaire, instrument or tool used with a principal to consider or determine release recommendations shall be made available to the principal and attorney upon written request.

Any such questionnaire shall be:

- ❖ designed and implemented in a way that ensures results are free from bias; and
- ❖ empirically validated and regularly re-validated (with studies and underlying data publicly available).

BENCH WARRANT GRACE PERIOD

Courts cannot issue a bench 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, a defense attorney can contact the defendant and encourage a voluntary return.



RESPONSES TO NONCOMPLIANCE

Courts may revoke release conditions and set new conditions, including money bail and detention in response to specified forms of pretrial misbehavior, including:

- ❖ 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.

NOTE: In such cases, the court must first hold a hearing where the defendant may present evidence or cross examine witnesses.

POTENTIAL IMPACT

- ❖ Precise effects of the law cannot be predicted in advance since they partly depend on how new provisions are implemented.
- ❖ Preliminary analysis suggest that bail reform law will significantly reduce pretrial detention; estimates for NYC indicate 43% of the almost 5,000 people detained would have been released under the new legislation as they would no longer be eligible for either bail or detention.
- ❖ Impacts outside NYC could be even greater because many upstate jurisdictions have higher rates of detention with misdemeanors.





OCA EXPECTATIONS ?

The Office of Court Administration is now required to certify one or more Pre-Trial Agency in every county in New York State. These agencies must be public or nonprofit agencies. They are responsible for supervising defendants released with non-monetary conditions and must submit an annual report to OCA.

The Office of Court Administration is current meeting with other agencies (NYS Pre-Trial Association, CJA (NYC ATI organization) and DCJS/OPCA) to develop guidance Counties. Guidance / Regulations are expected to be shared in October?

OCA will be asking each county how they intend to fulfill the requirements of bail reform in the county specific to :

- ❖ Principal notifications of court date/time via phone, mail, email or text
- ❖ Use of a judicial decision aid for the court that meets the criteria in the legislation
- ❖ Submission of an annual report with posting to the OCA website for the public with the following data elements:
 - ❖ Number and demographics of defendants supervised by Pretrial Agency
 - ❖ Length of time each person was supervised
 - ❖ Crimes with which each person supervised was charged
 - ❖ Whether release conditions were modified or revoked by the court and reasons for revocations
 - ❖ Dispositions in supervised cases, including sentencing information

Each county will have to submit a written plan to OCA for how they will operate Pre-Trial Release and meet the new regulations

SUGGESTIONS FOR COUNTY RESPONSES TO OCA

1. Be frank about the programming the county has in place, if it has nothing in place, advise OCA of that.
2. Review the statute for issues: such as defendant risk information being supplied to the court- currently there are no approved risk assessments that are validated in compliance with the statute requirements. Counties should not try to create a “Judicial Decision Aid” for the Courts.
3. Electronic Monitoring – currently there are no EM companies servicing NYS that are in compliance with the statute requirements. Counties should not offer a service that is not in compliance. No county contracts directly for satellite time.
4. Notification of court hearings, the statute says it is the responsibility of the courts to notify defendants of court dates and times and the courts MAY request the assistance of a Pre-Trial agency. There is no mandate that counties assume this responsibility.

Thank
You