



NYSAC
NEW YORK STATE
ASSOCIATION OF COUNTIES

CRIMINAL JUSTICE REFORMS



Criminal Justice Reforms

DECEMBER 2019

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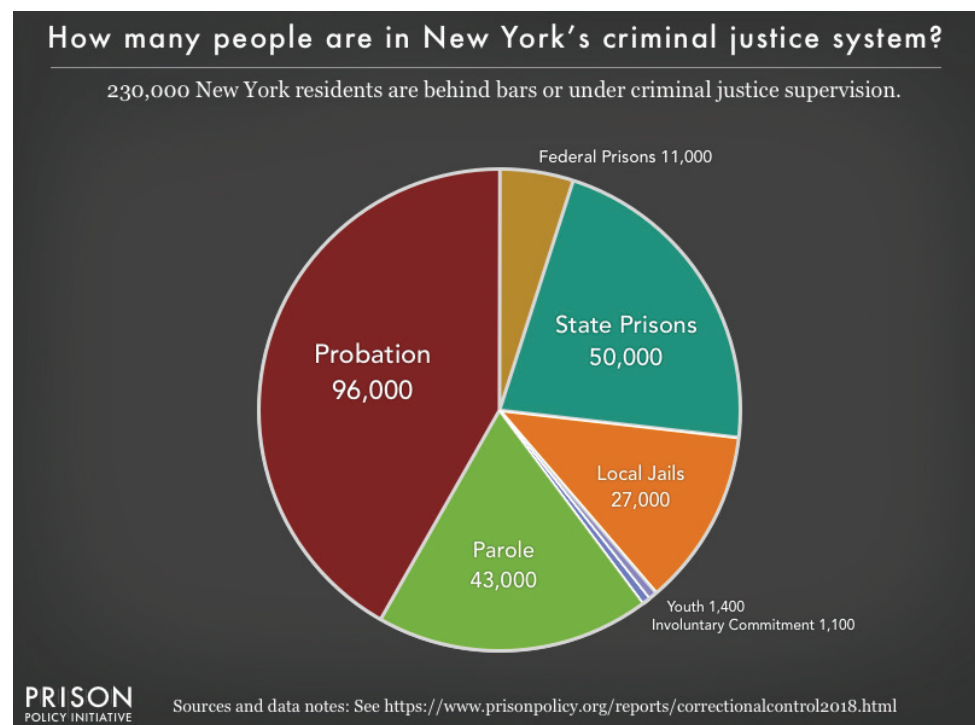


Introduction | The 2019-20 New York State Budget includes criminal justice reforms that limit bail, amend the discovery and speedy trial process, change civil asset forfeiture, and improve the community reentry process. This report provides a review of the reforms that will need to be implemented at the county level. The material has been adapted from budget language, memos, and other documents used to explain these new provisions.

Current Landscape

In a February 2019 report published by the New York State Division of Criminal Justice Services (DCJS), 66% of the New York State jail census are un-sentenced inmates (15,067 out of 22,828). In New York City, 77% of the jail population remains un-sentenced (6,463 out of 8,346) compared to the rest of NYS, where 59% of the jail population remains un-sentenced (8,605 out of 14,482).

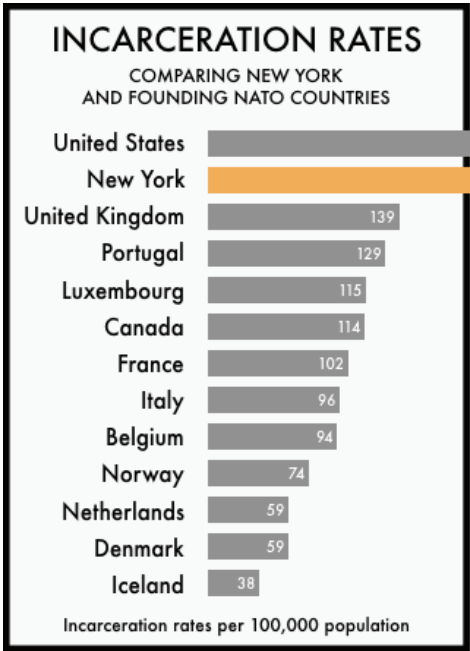
Recently, NYC has reduced the total number of un-sentenced inmates. However, outside of NYC, 22 out of the 57 counties showed an increase in the percentage of un-sentenced inmates from 2009 to 2018. The counties that showed an increase include: Broome, Cattaraugus, Chautauqua, Chenango, Clinton, Cortland, Delaware, Dutchess, Fulton, Genesee, Jefferson, Livingston, Madison, Orange, Oswego, Rensselaer, Saratoga, Schuyler, St. Lawrence, Steuben, Tioga, and Wyoming. This data is representative of the current landscape, prior to the state enacting these reforms.





“The cost of housing New Yorkers in county jails is nearly \$2.5 billion per year—\$1.3 billion per year in New York City, and \$1.15 billion per year in county jails across the rest of New York State. This is in addition to the \$3.7 billion per year New Yorkers spend annually on state prisons,” *JustLeadershipUSA* (2017).

New York State has a lower incarceration rate compared to the average U.S. state. However, when comparing the landscape in New York State internationally, the incarceration rate in our state alone (includes local, state and federal inmates) exceeds that of many industrialized countries (see graph below).



Furthermore, in addition to the 27,000 individuals incarcerated in county jails and 50,000 in state prisons, over 230,000 New York State residents are under a form of supervision (parole or probation).

The Vera Institute of Justice has provided a comprehensive report showing various statistics of county jails.

vera.org/state-of-incarceration/solutions



The 2019-20 Adopted Budget

Elimination of Monetary Bail for Certain Offenses ¹

The SFY 2019-20 Adopted Budget eliminates monetary bail for people facing misdemeanors and non-violent felony offenses. This new law is effective January 1, 2020.

This measure replaces the current statute which was adopted in 1970, when it was designed to “reduce the un-convicted portion of our jail population.” Under the statute, bail was authorized in the current ways: cash bail; 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; an unsecured appearance bond; or with a credit card (CPL 520.10).

Ending Cash Bail

Beginning January 2020, bail will only be available to a limited cohort of crimes deemed “qualifying offenses.” A qualifying offense includes but is not limited to: all violent felonies (except Burglary 2nd, Robbery 2nd), all Article 130 (sex related) offenses, all non-drug class A felonies, all felony terrorism offenses, all incest offenses, domestic violence-related contempt’s, as well as witness intimidation, witness tampering, operating as a major trafficker, conspiracy to violate Article 124, child sexual performances and luring a child. If a qualifying offense is charged, the court will make a determination for bail if the accused poses a flight risk.

For the non-qualifying offenses, this legislation mandates that police issue appearance tickets only (therefore not place in custody) in misdemeanor and class E felony cases with enumerated exceptions. Some exceptions include but are not limited to: a charge with a crime between members of the same household; charged with a crime or offense involving sexual misconduct; a person is in such distress that he or she would face harm without immediate medical or mental health care.

Non-qualifying offenses, which are largely comprised of misdemeanors and non-violent felonies, will be governed under a system of pre-trial release services that include release on recognizance (ROR) or release under the least-restrictive non-monetary conditions (LRNMC) as options for a court. Pre-trial service agencies (PTSAs) are mandated to exist in every county in order to assist with individuals that have been released (both ROR and LRNMC). All forms of pre-arraignment bail will be abolished and there will be restrictions established on law enforcement detaining individuals pending arraignment.

In a case that involves a qualifying offense and the judge determines that the defendant is a flight risk, then the defendant can be released under non-monetary conditions. These can include electronic monitoring, and/or mandated check-ins with a “pre-trial services agency.”

¹ Part JJJ, Revenue Bill



The State’s Office of Court Administration (OCA) shall certify and regularly review for recertification one or more pretrial services agencies in each court to monitor principals released under non-monetary conditions. Every such agency shall be 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 can 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 purposes.

The supervision by a pre-trial services agency may be ordered as a non-monetary condition if the court finds that no other realistic non-monetary conditions will assure the principal’s return to court. The court or a certified pretrial services agency shall notify all principals released under non-monetary conditions and on ROR of all court appearances in advance by text message, telephone call, electronic mail or first-class mail.

Each pretrial service agency certified by the OCA shall at the end of each year prepare, file, and publish with such office an annual report on its pretrial services and make available upon request to members of the public on its website.

Defendant’s will be entitled to representation by counsel at any point where conditional release, bail, detention, or release from detention is being considered.

Key Components

Pre-Trial Services (PTSA)
Counties must have PTSAs in-house or on contract
PTSAs must be OCA certified and reviewed
PTSAs area an option for monitoring defendants at liberty
Court appearance reminders are mandated

Least Restrictive Non-Monetary Conditions (LRNMC)
LRNMCs may include any “condition reasonable under the circumstances,” and specifically may include restrictions on travel related to flight from jurisdiction, restrictions on weapons possession, PTSA monitoring, and, where applicable, electronic monitoring.
Electronic Monitoring: Only available for felonies, DV misdemeanors, Article. 130 offenses, misdemeanors where the defendant has prior Violent Felony Override in the past 4 years and “530.60(2)(b) scenarios.”

Appearance Tickets
Required on Misdemeanors & Class E Felonies
Stationhouse bail is repealed entirely
Returnable ASAP (20-day outside limit), unless diversion
AT Exceptions: open warrant; FTAs within 2 years
OP or DMV restriction; Art. 130 or DV offense; Escape 3rd
Bail Jumping 2 nd ; need court assistance with a medical issue

Presumptions and Process
In every case, a court shall ROR unless the court makes “individualized determination” of flight risk. A court may progress to a higher level of securing order only when such a finding has been made, with its explanation on the record or in writing.
In every case, the court must utilize the least restrictive terms to ensure a defendant’s return to court. A bail review may be launched on grounds the court did not use the least restrictive means.

Summary of Bail Reform, Courtesy of Nassau County District Attorney’s Office
 Written by Jed Painter, Counsel to the DA
 (Painter, DANC)

Bail Review

According to Jed Painter, Council to the Nassau County District Attorney, “The law eliminates three existing considerations determining bail, including (1) the defendant’s family ties and length of residence in the community; (2) the weight of evidence against the defendant; (3) the sentence that may be imposed upon conviction. These are no longer to be considered. In various places of the revised statute, it is noted that the purpose of any securing order is solely to ensure a defendant’s return to court.” (Painter, DANC).

At the same time, superior court reviews of local criminal court bail determinations will be expanded to allow an enumerated standard of review where the lower court “has set a securing order of release under non-monetary conditions which are more restrictive than necessary to reasonably assure the defendant’s return to court,” (CPL 530.20). Additionally, as a court must always use the least restrictive terms to ensure a defendant’s return and must always explain its determination on the record or in writing, there will be a record for any superior court review. (Painter, DANC).

Finally, under any conditions of release, courts are encouraged to consider a “lessening of conditions” to a less burdensome form as the case progresses “based on the defendants compliance with the conditions of release.” Additional conditions may be imposed on the record or in writing only after notice and a hearing. All conditions of release must be in writing in an “individualized written document” and explained “in plain language and a manner sufficiently clear and specific.” (Painter, DANC).

*Promoting Bail Alternatives**

A judge must provide three different mechanisms, for a list of alternatives, for a defendant to post bail. Among those three, they must include an unsecured or partially secured surety bond. (Painter, DANC).

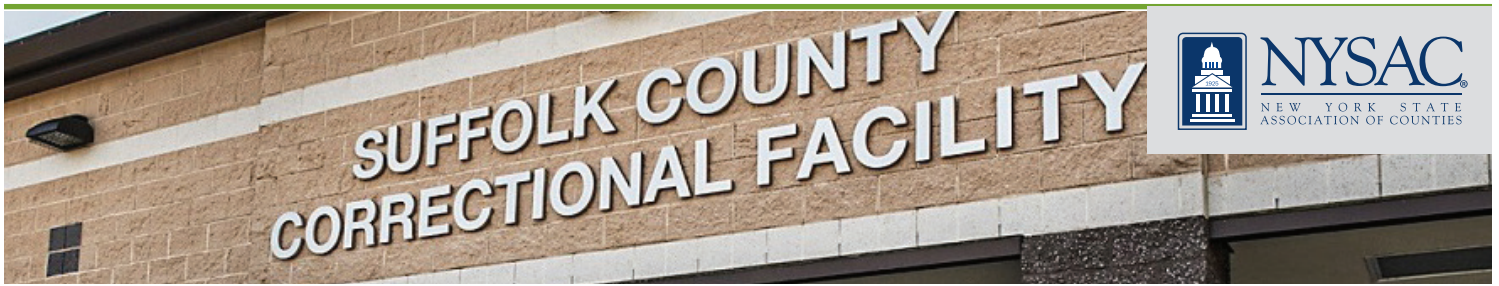
* The authorized alternatives of bail include cash bail, an insurance company bail bond, a secured surety bond, a secured appearance bond, a partially secured surety bond, a partially secured appearance bond, an unsecured surety bond, an unsecured appearance bond, and a credit card or similar device.

Discouraging Bench Warrants

Courts may no longer issue bench warrants immediately, but must instead delay the issuance of a bench warrant for a period of 48 hours after notice is provided to the defendant or defense counsel.

Exceptions: A new arrest or production of relevant, credible evidence demonstrating the failure to appear was willful. (Painter, DANC).





Additional Criminal Justice Reforms Included in the Adopted Budget

In addition to reshaping bail and pretrial detention services, the enacted budget includes additional proposals.

Criminal Trial Discovery²

Criminal discovery is the process that governs when, how, and what information the District Attorney's (DA) Office must share with the defendant and their counsel. The enacted 2019-20 state budget requires prosecutors and the police to share more information, and more quickly, with the defense before a trial takes place. This includes disclosure of evidence and information favorable to the defense; intended exhibits; expert opinion evidence; witnesses' criminal history information; and search warrant information will be made available to defendants in a timely and consistent manner. The law provides prosecutors the ability to petition a court for a protective order, shielding identifying information when necessary to ensure the safety of those witnesses.

Under the new law, prosecutors must perform "automatic" discovery obligations no later than fifteen days after the defendant arraignment on an indictment, superior court information, prosecutor's information, and misdemeanor complaint or felony complaint. "Automatic discovery" means "all items and information that relate to the subject matter of the case and are in the possession, custody, or control of the prosecution." This includes material in the possession of the police. The prosecutor must disclose this material "as soon as practicable" within the 15 day window.

The prosecution must disclose statements of the defendant to any defendant who has been arraigned in a local criminal court upon a currently undisposed felony complaint charging an offense which is the subject of a prospective or pending grand jury proceeding no later than 48 hours before the time scheduled for the defendant to testify at a grand jury proceeding.

The prosecutors must disclose the information expeditiously to the defendant upon its receipt and shall not delay if it is obtained earlier than the time period for disclosure in subdivision one of CPL 245.10.

Sanctions for non-compliance of discovery can now range from preclusion of the evidence up to dismissal of charge.

² Part LLL of the Revenue Bill



Speedy Trial Access ³

Affording the criminally-accused a speedy trial is a constitutional right. In New York, the DA must be ready for trial within six months of the arraignment for a felony, within ninety days when the case is a Class A misdemeanor and within sixty days for a Class B misdemeanor. The difference in time allotted to the DA is in recognition that higher level charges may involve more witnesses and preparation. If the DA fails to declare they are ready for trial on such deadlines, the charges must be dropped. However, delays not caused by the DA and/or agreed to by defense counsel can allow for these speedy trial deadlines to be extended.

This legislation will obligate courts to take a more proactive role in actively advising litigants regarding how time will be charged and will not take at face value an assertion that the prosecutor is ready to proceed with trial. The prosecutor must declare readiness and the defense must be afforded opportunity to be heard on the record to affirm disclosure requirements have been met. The legislation outlines that the court must ask the DA for “actual readiness” for trial. If the court determines that the district attorney is not ready, the statement of readiness is not valid.

The effective date for this legislation is January 1, 2020.

Transforming Civil Asset Forfeiture ⁴

The enacted budget limits asset forfeiture proceedings to cases that have reached conviction. It also expands reporting requirements for local law enforcement and district attorneys. New York’s current reporting procedure only requires these groups to report the total value of assets seized and the distribution of those assets. The State Division of Criminal Justice Services will expand reporting requirements to include additional information, such as demographic and geographic data, to better understand how civil asset forfeiture is used in NYS. Once a more comprehensive data set is created, New York will then evaluate the asset forfeiture systems and make changes to fix any identified issues.

The new legislation will take effect 180 days after it shall have become law and shall only apply to crimes which were committed on or after such date.

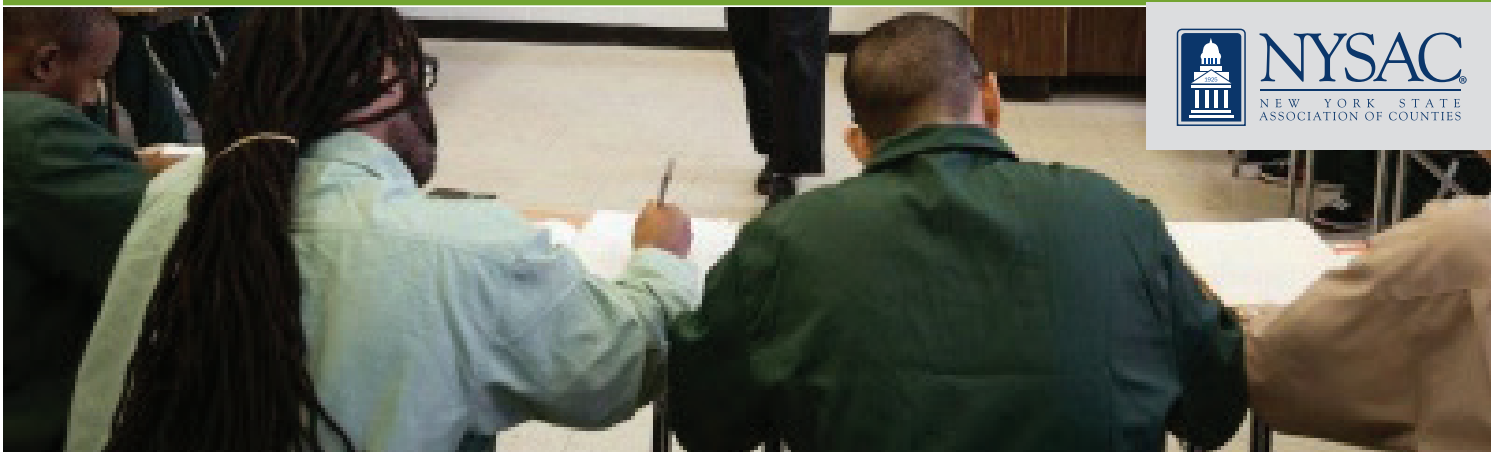
Improving Re-entry Process ⁵

Finally, the budget also removes outdated statutory bans on occupational licensing for professionals outside law enforcement, and instead, applicants will be assessed on an individual basis.

³ Part KKK of the Revenue Bill

⁴ Part PP of the PPGG Bill

⁵ Part II of the PPGG Bill



The mandatory suspension of driver's licenses following a drug conviction will also be removed to allow people to travel to work and attend drug treatment, if the crimes did not involve driving.

Prohibiting Distribution of Mugshots

This legislation also prohibits disclosure of mugshots and arrest information, and allows for increased probability of parole for incarcerated individuals over the age of 55 who have incapacitating medical conditions exacerbated by age.

The State Budget amends New York's Public Officer's Law 89(2)(b), which is the Freedom of Information Laws (FOIL) section that governs and lists what is to be considered "an unwarranted invasion of personal privacy..." The State budget adds language regarding arrest or booking photographs. These photographs are commonly taken by arresting agencies (State and local police/Sheriff) as well as the booking agency (Sheriff and/State prison). Prior to this State Budget arrest/booking photographs were considered subject to FOIL laws and therefore, typically, available to the public upon request or proactively distributed to the public by the arresting or booking agency.

The new legislation amends FOIL law by adding the following: "...disclosure of law enforcement arrest or booking photographs of an individual, unless public release of such photographs will serve a specific law enforcement purpose and disclosure is not precluded by any state or federal laws." Opinion/Guidance from the State's Committee on Open Government is expected in the near future regarding this change in the law.

NYSAC Bail and Criminal Justice Reform Taskforce

In response to the new law, NYSAC created a Bail and Criminal Justice Reform task force to discuss implementation of this new statute. The mission of the Bail and Criminal Justice Reform task force is to help local leaders facilitate the implementation of the new law and provide leadership, guidance, assistance and track the fiscal impact so the counties can be fully reimbursed for the expanding impacted programs.

The vision of the task force is to develop a county task force that will influence the new state law that will be implemented at the county level.



The task force goals are to:

- Generate and collect concerns and recommendations from all the county departments that will be affected by the new law;
- Report concerns and recommendations to that state to most effectively implement this new law;
- Engage local government and the state to work together to make sure the intention of the law is fulfilled, while providing the county departments responsible for implementation maintain funding and assistance from the state;
- Produce a model that can assist all the county departments that will be affected by the implementation of the new law.

Taskforce members represent the county departments most directly affected by the law, and include:

- Bob Iusi, Warren County Probation Director (Chair)
- Craig Apple, Albany County Sheriff
- Steven Bayle, Saratoga County Probation Director & President of COPA
- Steven Bass, Westchester County Executive's Office
- Bob Carney, Schenectady County District Attorney
- Tim Donaher, Monroe County Public Defender
- Robert A. Durr, Onondaga County Attorney
- Ruth Doyle, St. Lawrence County Administrator
- Elizabeth Glazer, Director of the NYC Mayor's Office of Criminal Justice
- David Hoovler, Orange County District Attorney & President of DAASNY
- John Flynn, Erie County District Attorney
- Gene Funicelli, Putnam County Probation Director
- Jason Molino, Tompkins County Manager
- Jed Painter, Counsel to the District Attorney at Nassau County
- Scott Samuelson, Sullivan County Legislator & NYSAC President
- Mark Scimone, Madison County Administrator

The task force has served as a vehicle to collect county concerns and feedback regarding implementing the new criminal justice reforms (bail and discovery). To date, NYSAC has held seven conference calls with members of our Task Force, which has helped NYSAC shape our fiscal asks and bring awareness of potential statutory reforms to the State in order to make the implementation process more effective and efficient.



Update on Fiscal Estimate

From responses that we have received to date, counties are budgeting increases in both the District Attorney and Probation departments. Many of these costs include additional personnel, including crime victim advocates, IT staff, Assistant District Attorney's. Counties have also identified a need for additional technology needs, including desktop scanners, storage backup, servers, cloud-based discovery data sharing tools, etc. Some (not all) counties fund crime laboratories that are used to process or verify discovery used in the criminal justice process. The workload and the costs are expected to increase for crime laboratory services due to the reforms.

For the county submissions we have received to date, the financial need is about \$4.00 per capita per county. If additional county budgets show a similar trend, we can safely expect that these reforms will cost in the tens of millions of dollars for counties.

Update from State Bail Reform Task Force

NYSAC has participated in three state bail reform task force meetings. This task force is spearheaded and run by the State Executive branch and is not affiliated with the NYSAC task force. Along with other county representatives from probation and the district attorney's offices, collectively, we have advocated for adjustments to the statutory language and funding for counties to implement the reforms. Specifically, the state task force is considering guidance on electronic monitoring and the expectation of discovery as it relates to traffic infractions. These are two areas of legislative concern that need to be addressed in order to provide some level of clarification to counties.

Outstanding Areas of Concern

Electronic monitoring

What will be the acceptable practice and process for administering electronic monitoring to individuals who are court-ordered to receive this level of supervision.

OCA has provided NYSAC with a letter explaining their interpretation of the statute with respect to electronic monitoring. A copy of this letter is included as part of the appendix at the end of this document.



Regulations and guidance for pretrial services

DCJS is working with CJA (NYC) and the NYS Association of Pretrial Agencies, to develop guidance material for OCA to share with counties. This guidance was originally going to be sent to counties in November. We do not know when this guidance will be released.

Pretrial court notification reminders

We have been told that OCA will administer pretrial court notification reminders for all counties with the exception of NYC. It is our understanding from OCA, that the courts will be coordinating appearance notifications for every future appearance.

The document included as part of the appendix provides the process OCA is planning to follow outside of NYC.

Pre-Trial Release Programs

In a recent survey of Probation Directors, 40 county Probation Departments currently operate Pre-Trial Release (PTR) programs and therefore we have some expertise in supervising persons placed under pre-trial release with conditions. In the other counties with PTR programs, agencies other than Probation or local non-profits, operate those programs. There remain a number of Counties which will have to develop PTR programs from scratch to meet the requirements of the legislation. According to the annual report filed by DCJS for the contract year July 2017 to June 2018, there were over 19,000 persons being supervised under PTR programs. Data indicates that 51% of those interviewed while in jail were subsequently released.

The presumption of release for most misdemeanors and non-violent felonies is release on recognize with no contact or conditions of release with Pre-Trial Release (PTR) programs. If the courts deviate from this standard of release on recognizance and probation departments become inundated with Release under Supervision (RUS) cases, many departments will be unable to cope with the quantity of released individuals as they simply lack the capacity to deal with this added obligation. Every person does not need specialized conditions if released without bail. PTR conditions should be minimal in nature and the least restrictive possible to ensure a defendant's appearance in court.

If the expectation of this law is to have PTR become more robust and rehabilitative oriented for these individuals prior to any conviction, then the entire philosophy and infrastructure of these programs need to be examined. Pretrial supervision should not be used a pre-probation "try out." We find that many persons are placed on PTR so the court and attorneys can "see how the person will do under community supervision".



The NYS Criminal Procedure Law already provides for that opportunity with terms of “interim” probation. It is imperative that the courts and attorneys understand that PTSA is to ensure the individuals return to court, and not a period to determine if probation would be a viable sentencing option.

NYSAC Recommendations & Policy Positions

Counties support the reforms outlined in the 2019-20 Adopted Budget. However, there will be increased costs to County Sheriffs, Probation Departments, and District Attorney offices. These added costs should be considered and accounted for by the state.

In addition, the State Commission on Corrections should revise the minimum staffing requirement for each local correctional facility as set forth in 9 CRR-NY 7041.2 NY-CRR upon implementation of this legislation to adjust for expected reductions in local jail census. Otherwise, counties will not see a reduction in county jail costs.

NYSAC urges the Governor and State Legislature to create a taskforce to understand the true costs of implementing these criminal justice reforms. This taskforce must work to determine the full impact to the criminal justice system, and recommend appropriate state funding support to assist counties with continued effective implementation.

Attribution

A special thank you to members of the District Attorney Association of New York, especially Jed Painter and the Nassau County District Attorney’s Office. Their work and knowledgebase on this issue was essential to providing these needed facts.

Appendix A



NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

EILEEN D. MILLETT
COUNSEL

December 12, 2019

Steven Acquario
Executive Director
New York State Association of Counties
540 Broadway
Albany, NY 12207

Dear Mr. Acquario

As we get closer to the effective date of the new criminal justice legislation (L. 2019 c. 59, *eff.* January 1, 2020), Counsel's Office at the Office of Court Administration has been fielding questions about the Chief Administrative Judge's certification process for Pretrial Services Agencies (PTSA), especially in the context of electronic monitoring.

One question we have repeatedly been asked by various counties is whether the Chief Administrative Judge will certify a PTSA that seeks to comply with a court order for electronic monitoring by entering into a contract with a for-profit equipment supplier to handle certain technical aspects of electronic monitoring. The question arises because the relevant language of the statute provides, "[e]lectronic 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" (CPL 510.40(4)(c)). The concern is that this provision could be construed as requiring that every aspect of electronic monitoring be done by a public or non-profit entity – including installation of the device and ancillary equipment, assuring signal integrity, and delivering the signal to those performing the continuous monitoring function. We have been advised that if the statute is strictly construed to include this broad range of functions, no county in the state will be able to comply with a court's directive that a condition of release include electronic monitoring of the defendant.

It is a basic tenet of statutory interpretation that where there are ambiguities in statutory language, courts must look to the purpose of the legislation as well as the statutory context to resolve those ambiguities (*see State v. Kerry K.*, 157 A.D.3d 172 (2d Dept 2017), *citing Matter of Shannon*, 25 N.Y.3d 345, 351–352; *People v. Ballman*, 15 N.Y.3d 68 (2010)). Moreover, even where the statutory language is plain, "where . . . adherence to a statute's plain meaning produces an 'unreasonable' result, 'plainly at variance with the policy of the legislation as a whole,' the courts will 'follow that purpose, rather than the literal words' (*id.*, at p 183, *citing New York Psychiatric Assn., Inc. v. New York State Dept. of Health*, 19 N.Y.3d at 25–26). Finally, a court should not interpret a statute in a manner where such interpretation would "impose an impossible condition and create a self-contradictory statute" (*Long v. State*, 7 N.Y.3d 269 (2006)).

The new law will require the court to release arrested individuals at arraignment in all but the most serious misdemeanor and violent felonies. In turn, where a court determines that the

individual poses a risk of flight to avoid prosecution, the court may, applying the least restrictive alternative, choose to apply conditions of release as a means to assure the individual's return to court. The most restrictive of these conditions is electronic monitoring, to be imposed only upon qualifying defendants (*see* CPL 500.10(21)) and only when the court determines, after a hearing, that no other realistic non-monetary condition or conditions will suffice to reasonably assure the defendant's return to court (*see* CPL 510.40(4)(b)). The legislature clearly intended that electronic monitoring be available for courts to use in a narrowly and carefully drawn set of circumstances and only with appropriate safeguards. One of those safeguards is that electronic monitoring be conducted by a public or non-profit entity. In our view, this requirement addresses the duty to review continuously the whereabouts of defendants through the monitoring system, and report upon and act upon violations of monitoring restraints – not the technical tasks of installing the monitoring device, ensuring signal integrity, and performing similar technological functions. We believe that the statute imposes a general prohibition against a private or for-profit entity engaging in review of the data that identifies a defendant's location or making a subjective assessment about whether terms of release have been violated. Indeed, a more expansive interpretation could effectively eviscerate the electronic monitoring option entirely, by creating an "impossible condition" that would thwart the legislature's intent.

Therefore, provided appropriate controls and procedures are in place to ensure that all monitoring of a defendant subject to electronic monitoring is done by a public or non-profit entity, the Chief Administrative Judge will not deny certification to a PTSA on the ground that the county or PTSA intends to use a for-profit equipment supplier. In order to satisfy this standard, however, the equipment supplier should be working with and reporting solely to the public or non-profit entity and not with the defendant, and should take appropriate steps to protect the confidentiality of the information transmitted through its equipment. The equipment supplier should have no subjective input into whether a defendant has violated a condition of the electronic monitoring but should serve wholly as a pass-through entity for any signals that are to be conveyed to the public or non-profit entity. All determinations regarding whether a defendant is complying with electronic monitoring must be done by the public or non-profit entity.

The Chief Administrative Judge's approval of a plan that provides for electronic monitoring using a for-profit equipment supplier does not supplant judicial review of the statute by an appropriate court. However, until the issue is tested in the courts, the views expressed herein will be followed for any review of a plan submitted by a county.

If you have any questions, feel free to call me.

Very truly yours,



Paul McDonnell

Deputy Counsel (Criminal Justice)

Appendix B

Rev. 12/11/2019 **APPEARANCE NOTIFICATION TIMETABLE**

Method:	Contact Info entered:	Period of time before next appearance:	Result:
Text*	Cell/Phone # (Text)	</= 1 day prior	NO Text message sent before the appearance
		2-3 days prior	Text message sent 1 day before the appearance
		4-7 days prior	Text message sent 1 day & 3 days before the appearance
		>/= 8 days prior	Text message sent 1, 3 & 7 days before the appearance
E-Mail	E-Mail Address	</= 1 day prior	NO E-Mail sent before the appearance
		2-3 days prior	E-Mail sent 1 day before the appearance
		4-7 days prior	E-Mail sent 1 day & 3 days before the appearance
		>/= 8 days prior	E-Mail sent 1, 3 & 7 days before the appearance
Voice*	Phone # (Voice)	</= 1 day prior	NO Call made before the appearance
		2-3 days prior	Call made 1 day before the appearance
		4-7 days prior	Call made 1 day & 3 days before the appearance
		>/= 8 days prior	Call made 1, 3 & 7 days before the appearance
Mail/Message	-Spanish available-	</= 8 days prior	NO Appearance letter automatically produced or mailed
		>/= 9 days prior	Automated Appearance letter produced and mailed
Letter	Mailing Address entered		

***NOTE:** If the phone number includes an **Extension**, there will be **no notification** sent through this method. Defendants who appear to be **incarcerated** as designated in the case management system, will **NOT** receive notifications.

Text Message Content Example: Reminder, John Doe should appear on Monday, January 7, 2020 at 10:00AM @ Tompkins County Court located at 320 N. Tioga Street, Ithaca, NY. Please show up & avoid a warrant. Questions? Reply HELP for help. To stop receiving these text message reminders reply S to cancel.

E-Mail Message Content Example: This is an important message on behalf of the New York State Unified Court System. John Doe has a court appearance and must appear at Tompkins County Court on January 7, 2020 10:00AM. To avoid the possibility of a warrant being issued for your arrest, you are required to show up to the court 320 N. Tioga Street, Ithaca, NY 14850. If you have an attorney, you should consult with him or her if you have a question about this appearance in court. If you need further assistance, please contact your attorney. Alternatively, you may call the court (607)555-5555 regarding your case number(s): CR-000113-BX, CR-000272-BX.

For additional information, please go to the following website <https://nycourts.gov/courthelp>.

Court personnel can check the status of notification at: <https://notify.nycourts.gov/>

IMPORTANT: Electronic notifications will begin with 1/3/2020 & later appearances; letter notifications will begin with 1/9/2020 & later appearances

Appendix C

UNIFORM APPEARANCE TICKET

UCS-150
(rev. 12/1/19)

The People of the State of New York

vs.

Date of Birth

Appearance Ticket # (if assigned):

Arrest/Complaint #s (if assigned):

DEFENDANT CONTACT INFORMATION

Address on ID:

Mailing Address:

(if different than ID address)

Cell Phone:

Home Phone:

Email Address:

CHARGES

You have been charged with the following offenses:

Charge Description

Law/Section/Subsection

City/Town/Village of Occurrence

County of Occurrence

COURT DATE

You are hereby directed to appear in the following court to answer the above charge(s):

Court:

Location:

Part/Room:

Date: ____/____/____

Time: ____:____ AM ☐ PM ☐

If you do not appear to answer the above charges, a warrant may be issued for your arrest, and you may face additional charges that could subject you to a fine, imprisonment or both if you are convicted.

NOTICE: You are advised to consult an attorney as soon as possible regarding this matter.

Arresting Agency:

Signature of Issuing Officer

Shield

Command/PCT/TZS

Date

Time

AM ☐

PM ☐

Appendix D

New York State Department of Health Recommendations for County Jails in preparation of NYS Bail Reform

Please note the audience for this document is county jail facilities across New York State.
Please direct all questions relating to medication for addiction treatment and buprenorphine provision to: buprenorphine@health.ny.gov

On April 1, 2019, New York State passed criminal justice reform legislation that eliminates money bail and pretrial detention for nearly all misdemeanor and nonviolent felony defendants. The measures go into effect in January 2020. It is anticipated this reform will expedite the release of individuals that fit the criteria set forth by legislation. With this streamlined release, there lies a significant need for care coordination and enhanced re-entry mechanisms for all individuals and specifically those with a Substance Use disorder, including Opioid Use Disorder, (OUD). Research supports this with studies showing the risk of overdose is 129 times higher for those with OUD within the first 2 weeks after release from the correctional setting compared to the general population¹. Other substance use disorders (e.g. Alcohol and Benzodiazepines) can result in life threatening withdrawal symptoms if not addressed properly.

The New York State Department of Health, AIDS Institute – Office of Drug User Health and the NYS Office of Addiction Services and Supports recognize this potential lapse in care and in preparation for the enactment of the bail reform has developed general recommendations for county jail facilities. These recommendations were designed to offer constructive suggestions for correctional facilities to ensure that reentry for those with substance use disorder is safe and successful. These recommendations fall under the following categories:

Medical Assessment and Evaluation

- **Screen and Assess for Substance Use Disorder (SUD)**
 - ✓ Screening for substance use disorder (including alcohol) should be conducted upon intake into a Correctional Facility.
 - *Ex: The NIDA Modified ASSIST (NM-ASSIST) is a 10-item measure of substance use and the AUDIT-C is a 3-item measure of alcohol use.*
- **Screen and Assess for Opioid Use Disorder (OUD)**
 - ✓ Screening for opioid use should take place by medical staff upon intake into correctional facilities to identify whether a person has signs of OUD
 - *Ex: Rapid Opioid Dependence Screen (RODS) is an 8-item measure of opioid dependence designed for quick, targeted screening in various settings.*
- **Determination if currently incarcerated individuals and those coming into the facility are receiving treatment for SUD, including OUD.**
 - ✓ Establish a process to identify what treatment an individual is/has been receiving and where.
- **Determination if currently incarcerated individuals and those coming into the facility are receiving Medications for Addiction Treatment, MAT, (methadone, buprenorphine or naltrexone)**

¹ Release from Prison — A High Risk of Death for Former Inmates. (2007). New England Journal of Medicine, 356(5), 536-536. doi:10.1056/nejmx070008

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- ✓ Establish processes of identifying those individuals currently being maintained on medications for OUD prior to release.
- **Determination by medical staff if individual is a candidate for MAT if unable to induct prior to release**
 - ✓ Establish mechanisms to inform the individual about MAT; as well as prevention and treatment options available in the community. Discharge planning and care coordination when the individual enters the facility.
 - *Ex: Opioid Treatment Programs (OTPS), NYSDOH Drug User Health Hubs, OASAS Centers of Treatment Innovations (COTIs), Syringe Exchange Programs, Waived Buprenorphine Prescribers in the Community.*

Planning and Coordination

- **Collaborative Case Planning by Multi-Disciplinary Team (Medical Providers, Nurses Counselors, Correctional Officers, Discharge Planners, Community-Based Organizations, Probation Officers, Peer Support and additional supporting staff)**
 - ✓ Reentry plans may be in collaboration by the various staff with input from the individual from either internal corrections staff or community-based providers and should include referrals and connections to ongoing treatment and recovery support services.
- **Coordination with Pre-Trial Service Agencies**
 - ✓ Coordination with non-governmental pretrial service agencies should be included in the community. Pretrial services use a full spectrum of resources in their supervision and monitoring models, including: employment, education, mental health, housing, and substance-use treatment.
- **Facilitating In-Reach Services to Improve Outcomes At and During Transition**
 - ✓ Engage individuals prior to their release to increase rapport building and help ensure treatment is streamlined as they are transitioned into the community. In-reach involves an in-person connection of the person to staff from the community-based treatment provider (i.e., peer recovery support specialist, case manager, or therapist).
- **Bridge Prescriptions**
 - ✓ Medical staff should have coordination with local pharmacies (preferably those that are open 24/7) that are willing to accept short-term “bridge” prescriptions an individual can fill as needed following the discharge from correctional facility.
- **Connection to Insurance Coverage**
 - ✓ Discharge staff from correctional facilities, community-based behavioral health treatment providers, and other social service agencies should ensure that people who have OUD either are enrolled in health care coverage or will have their coverage reinstated immediately upon release from the facility. For staff that do not have an internal Medicaid coordinator to assist in the insurance activation, connection to peer supports and/or community providers is essential to support streamlined enrollment. The connection to insurance coverage should be noted on a formalized discharge plan that also includes any scheduled appointments upon release.

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Discharge and Re-entry

- **SUD/OD Treatment in the community**
 - ✓ Care coordination is in place to ensure that engagement in community-based SUD/OD treatment upon re-entry.
- **MAT Continuation in the Community**
 - ✓ Care coordination is in place to ensure access to MAT is uninterrupted throughout the reentry process. Medications for OUD include Buprenorphine, Methadone and Naltrexone.
- **Overdose Prevention, Naloxone Access & Harm Reduction Education**
 - ✓ The multi-disciplinary team should coordinate to provide naloxone training, materials on overdose prevention and education on harm reduction methods to the individuals; while ensuring accessibility to naloxone kits upon release. Ideally naloxone kits should be placed in the individual's property upon release.
- **Probation and Parole Supervision**
 - ✓ Coordination with probation and parole officers to effectively supervise and connect/ensure individuals maintain medication access when in the community. Probation and parole officers have a presence in these facilities and engage with detained individuals to prepare them for re-entry and community supervision. Coordination can also emphasize the importance of monitoring for signs of potential overdose (especially within the first two weeks).
- **Recovery Support Services in the Community**
 - ✓ Connection to ancillary support services which include a range of programs and resources that help people access systems of care and remain engaged in their treatment and recovery process (i.e., Recovery Centers, housing, employment, education, illness management and peer-led services).
- **Coordination with Local Governmental Units (LGUs)**
 - ✓ Consultation with LGU's is a central piece in local programming as LGUs work in conjunction with all facets of county government and have established linkages within the entire continuum of care, including but not limited to, social services, criminal justice, housing and other supportive services. LGU consultation is recommended as part of any reentry and transition planning guidance.
- **Transportation**
 - ✓ Arrange transportation for releasees from the correctional facility to their release destination and verify that the releasee has access to transportation in some form. Examine an individual's access to transportation to locations mandated by their release plan (e.g., probation office, medical services, employment, etc.)
 - *For the rural facilities, further emphasis on connection to community-based organizations is essential to ensure continuity of care. For those that reside outside of the county they've been incarcerated in it would be beneficial to connect to those various facilities for connection to care.*

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- **Unplanned Releases**

- ✓ An attempt to limit the amount of unplanned releases, for those waiting to be sentenced it would be beneficial to have frequent contact to ensure updated status on events such as upcoming court dates. Continuously informing the individual of available resources will also assist in the navigation to services if released unexpectedly.
- ✓ Placing an identifier on the individual's information file "jacket" that would indicate they need connection to specific services or the medical provider is to be notified.

Additional Resources

Service Locators:

- OASAS Find Addiction Treatment website is a resource to identify local treatment providers with available capacity for new admissions
<https://findaddictiontreatment.ny.gov/>
- SAMHSA Buprenorphine Practitioner and Treatment Locator is a publicly available resource for locating providers authorized to treat opioid dependency with buprenorphine in NYS
<https://www.samhsa.gov/medication-assisted-treatment/practitioner-program-data/treatment-practitioner-locator>
- AIDS Institute Provider Directory includes clinicians and service providers who provide clinical care to people with OUD
<https://providerdirectory.aidsinstituteny.org/>

Providers are encouraged to join the AIDS Institute Provider Directory by accessing link below
<https://providerdirectory.aidsinstituteny.org/Register/RegisterCreate>
- Office of Addiction Services And Supports (OASAS) Provider and Program Search listed by county
https://www.oasas.ny.gov/providerDirectory/index.cfm?search_type=2
- New York State Department of Health (NYSDOH) – Drug User Health Hubs
<https://www.health.ny.gov/diseases/aids/consumers/prevention/>
- Office of Alcoholism and Substance Abuse Services (OASAS) – Centers of Treatment Innovation (COTI) locator. COTIs offer mobile clinical services and link people to other levels of care, including MAT:
<https://www.oasas.ny.gov/RegionalServices/COTI.cfm>
- The Point: The site offers a search function to help find services (e.g., sterile syringes, disposal sites for used syringes and drugs, naloxone, and free HCV testing).
<http://thepointny.org/>

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Trainings / Technical Assistance for Providers

- Providers Clinical Support System (PCSS) Online Buprenorphine Waiver Trainings
<https://pcssnow.org/medication-assisted-treatment/>

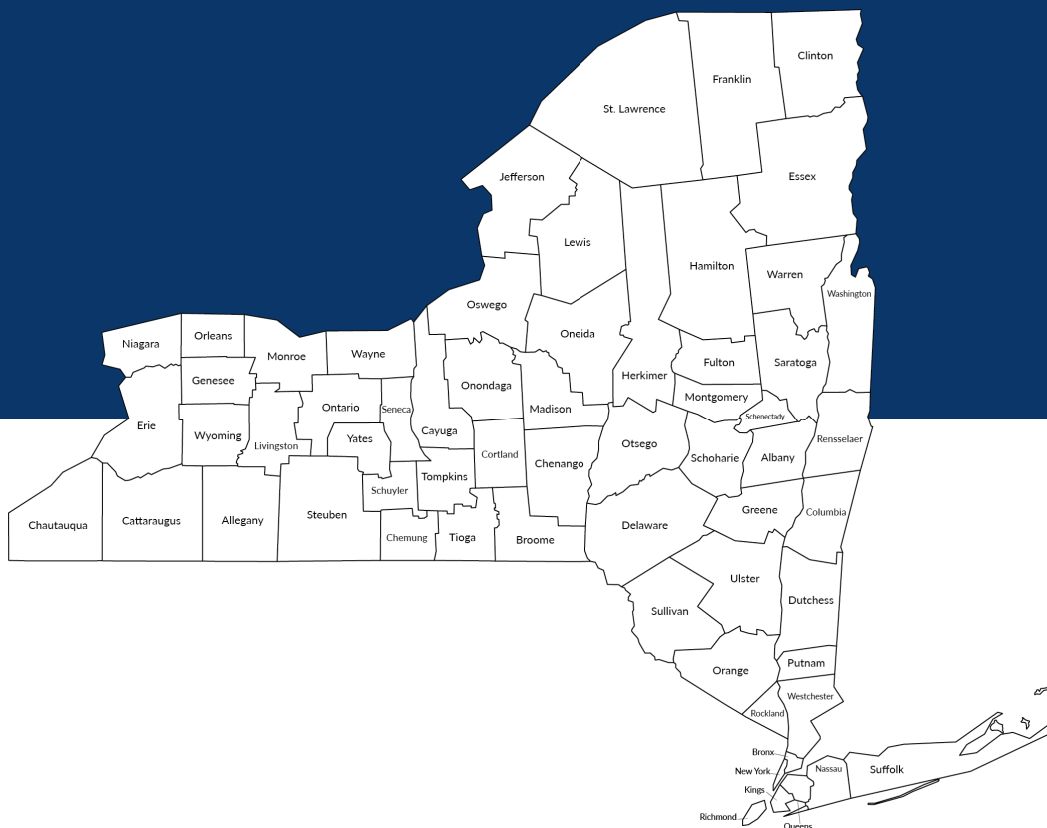
*To see upcoming buprenorphine waiver trainings that have been scheduled through PCSS;
please access link below*

<https://pcssnow.org/calendar-of-events/>

*To see upcoming webinars that showcase evidenced-based clinical practices in the prevention
of OUD through proper opioid prescribing practices, identifying patients with OUD, and the
treatment of opioid use disorder; please access link below*

<https://pcssnow.org/education-training/webinar-events/>

- Requirements of Prescribing Buprenorphine
<https://www.samhsa.gov/medication-assisted-treatment/treatment/buprenorphine>
- NYS HIV/AIDS Hotlines (English and Spanish)
<https://www.health.ny.gov/diseases/aids/general/about/hotlines.htm>
- Clinical Consultation Center focusing on substance use in primary care
<http://nccc.ucsf.edu/wp-content/uploads/2016/12/CCC-Substance-Use-Warmline-Flier-EST-7.25.16.pdf>



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