

## BAIL CHEATSHEET, UPDATED FOR 2020 LEGISLATIVE AMENDMENTS

### MANDATORY APPEARANCE TICKETS (CPL 150.20)

Exceptions:

- A, B, C, or D felonies (CPL 150.20[1][a])
- Escape crimes (PL 205.10, 205.17, 205.19) (CPL 150.20[1][a])
- Arrestee has an outstanding criminal court warrant (CPL 150.20[b][i])
- Arrestee has failed to appear in court proceedings in last 2 years (CPL 150.20[b][ii])
- Arrestee refuses to make identity known (CPL 150.20[b][iii])
- Arrestee is charged with a crime between members of the same household (CPL 150.20[b][iv])
- Arrestee is charged with any crime defined in PL Article 130 (Sex offenses) (CPL 150.20[b][v])
- It reasonably appears that an order of protection is necessary (CPL 150.20[b][vi])
- The charges trigger suspension or revocation of a drivers license (CPL 150.20[b][vii])
- Arrestee is in distress and in need of immediate mental or medical care (CPL 150.20[b][viii])

Must be returnable within 20 days (extended if the court with proper jurisdiction does not meet within 20 days)  
Officer must file appearance ticket and arrestee's contact info within 24 hours of issuance (150.80[3])

### BAIL

Must release on recognizance or set non-monetary conditions unless defendant is charged with a qualifying offense (CPL 530.20[1][a]). For non-qualifying offenses, cash bail MAY BE SET following conviction while pending sentence or appeal.

For qualifying offenses pre-conviction, court may release OR, release on non-monetary conditions, set cash bail, or remand (Remand is only available if the qualifying offense is a felony).

Qualifying offenses (CPL 530.20[b][i-ix]):

- Any violent felony in PL 70.02, except PL 140.25[2] (burglary of a dwelling with no entry into the living area) and PL 160.10[1] (robbery while aided by another person actually present)
- Any charge where there is an allegation that death was caused
- Witness intimidation (PL 215.15) or witness tampering (PL 215.11, 215.12, or 215.13)
- Any Penal Law Class A felony which is NOT in PL Article 220 or Class A-1 felony that is in PL Article 220
- Penal Law 220.77
- A felony sex offense or any misdemeanor listed in PL Article 130
- Incest (PL 255.25, 255.26, or 255.27)
- Conspiracy in the second degree (PL 105.15), if the charge involves a conspiracy to commit a class A felony under PL 125 (murder)
- Money laundering in support of terrorism in the first, second, third, and fourth degrees (PL 470.21, 470.22, 470.23 and 470.24)
- Article 490 terrorism felony offenses, with the exception of 490.20
- Contempts (PL 215.50[3], 215.51[b], [c], or [d]), or 215.52), provided the charge alleges a violation of a duly served order of protection and the protected party is a member of the defendant's family or household
- Facilitating a sexual performance by a child with a controlled substance (263.30)
- Use of a child in a sexual performance (PL 263.05)
- Promoting a sexual performance by a child (PL 263.15)
- Luring a child (PL 120.70)
- Any sex trafficking offense (PL 230.34)
- Failure to register as a sex offender (Level 3 offenders only)
- Aggravated vehicular assault (PL 120.04-a) or vehicular assault in the first degree (PL 120.04)
- Assault in the third degree (PL 120.00) as a hate crime or arson in the third degree (PL 150.10) as a hate crime
- Aggravated assault upon a person less than 11 years old (PL 120.12)
- Criminal possession of a weapon on school grounds (PL 265.01-a)
- Grand larceny in the first degree (PL 155.42)
- Enterprise corruption (PL 460.20)
- Money laundering in the first degree (PL 470.20)
- Bail jumping in the first, second, and third degrees (PL 215.55, 215.56 and 215.57)
- Escape in the first, second, and third degrees (PL 205.05, 205.10 and 205.15)
- Unlawful Imprisonment in the first degree (PL 135.10)
- Obstruction of breathing (PL 121.11)
- Endangering the welfare of a child (PL 260.10) only if defendant is a level 3 sex offender
- ANY FELONY while on probation or post-release supervision
- ANY FELONY where the defendant qualifies as a discretionary persistent felony offender under PL 70.10
- ANY FELONY OR CLASS A MISDEMEANOR where harm occurred to an identifiable person or property while out on bail, recognizance or non-monetary conditions on a separate felony or a class A misdemeanor where harm occurred to an identifiable person or property (Prosecutor must show reasonable cause to believe that the defendant committed both offenses)



**PANEL SERVICES:** Request through Defender Data:  
Investigators, Social Workers, Sentencing or pre-plea mitigation  
For legal research or writing, contact Nick at 440-1904  
For case conferences, schedule with Dan, Mark, Nick, Alicia, or Judge Franczyk

## BAIL CHEATSHEET, UPDATED FOR 2020 LEGISLATIVE AMENDMENTS

### BAIL REVOCATION (CPL 530.60 [2][b])

A court may set cash bail when it is shown by clear and convincing evidence that the defendant:

- Persistently and willfully failed to appear after notice of appearances in the case before the court; or
- Violated an order of protection while at liberty; or
- Stands charged with a misdemeanor or violation and, after being so charged, intimidated or tampered with a witness (PL 215.15, 215.16, 215.17, 215.11, 215.12, or 215.13)
- Committed a felony while at liberty on a felony

A court may set cash bail or remand on a felony where a person committed a class A or violent felony or intimidated a witness while at liberty (CPL

### BAIL FACTORS (CPL 510.30[1]):

Must impose the least restrictive kind and degree of control and restriction

Listed factors (CPL 510.30[1][a]-[h]):

- Principal's activities and history
- If the principal is a defendant, the charges faced
- The principal's criminal conviction record
- JD or Youthful Offender records
- The principal's individual financial circumstances as they relate to the ability to post monetary bail
- For any family offense, whether an order of protection was violated and/or whether one is in place
- For any family offense, whether the principal has a history of using or possessing firearms
- If the bail sought is pending appeal, the merit or lack of merit of the appeal (a determination that an appeal is without merit alone justifies, but does not require, a denial of the application)
- Any other information about the principal that bears on the likelihood of future attendance

### ELECTRONIC MONITORING (CPL 510.40[4][a])

Qualifying offenses:

- Felony
- DV misdemeanor
- Article 130 misdemeanor
- Persistent and willful failure to appear
- Violating an order of protection while at liberty
- Tampered with or intimidated a witness while at liberty, or
- Has violent felony conviction in past 5 years

Only available if there is no other realistic set of non-monetary conditions that will reasonably assure future attendance  
Must be the least restrictive procedure and method, and unobtrusive to the greatest extent possible (CPL 510.40[4][b])

Maximum of 60 days, then a de novo determination as to possible renewal

A defendant on electronic monitoring is considered to be 'in custody' for purposes of CPL 170.70 and CPL 180.80 (CPL 510.40[4][d])

### PERMISSIBLE FORMS OF BAIL (CPL 520.10[2][b]):

Court must set three or more forms

One of the forms must be either an unsecured or partially secured bail bond

### SUPERIOR COURT REVIEW OF BAIL (CPL 530.30[1]):

A superior court may set bail upon a remanded individual, release upon recognizance, release on non-monetary conditions, or lower bail where the lower court:

- Lacks authority to issue a bail order pursuant to CPL 530.20
- Has denied an application for recognizance, release under non-monetary conditions, or bail
- Has fixed bail where authorized, which is excessive, or
- Has imposed non-monetary conditions that are more restrictive than necessary

Defense must provide the superior court with a NYSIS report  
Only one such application may be made

### NON-MONETARY CONDITIONS (CPL 500.10[3][a]):

Where the court sets non-monetary conditions, they must be the least restrictive condition necessary to secure future attendance (CPL 530.30[1][b])

Available conditions:

- Contact with a pretrial services agency
- Reasonable travel restrictions that are related to risk of flight
- Restrictions on possession of firearms and/or other weapons
- Only if no other non-monetary conditions will assure return, pretrial supervision with a pretrial services agency (RUS)
- Only if no other non-monetary conditions will assure return, location monitoring with an approved electronic monitoring device
- Surrendering passport
- Restricting association with a person connected to the crime
- Diligent efforts to maintain housing, employment, or education
- Obey an order of protection
- Any conditions designed to protect the victim of a family offense, including reasonable conditions requested by or on behalf of the victim

-Any other conditions reasonable under the circumstances

The principal shall NOT be required to pay any part of the cost of any of these conditions.