

BAIL QUICK REFERENCE GUIDE INCLUDING 2022 LEGISLATIVE UPDATES

MANDATORY APPEARANCE TICKETS

(CPL 150.20) 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])

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])
- Arrestee is >18 YO and charged with CPW 265.01-a (CPL 150.20(b)(ix))
- Arrestee is >18 YO charged with a hate crime under 485.05 (CPL 150.20(b)(x))
- Arrestee faces new charge for damage to identifiable person or property while ROR on or facing an appearance ticket arraignment for another charge involving damage to identifiable person or property (CPL 150.20(b)(xi))
- Arrestee faces new charge for CPW 265.01-b while ROR on, or facing an appearance ticket arraignment for another CPW 265.01-b

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 OR CLASS A MISDEMEANOR 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 where arrestee was out on bail, ROR, non monetary conditions or where facing an appearance ticket arraignment for another charge involving harm to identifiable person or property. NOTE: Harm to IPP includes theft or damage to property. NOTE: IF THE COURT DETERMINES THE THEFT OR DAMAGE IN THE 2ND CASE IS NEGLIGIBLE AND NOT IN FURTHERANCE OF OTHER CRIMINAL ACTIVITY THE COURT SHALL ROR OR RELEASE ON NON-MONETARY CONDITIONS (CPL 510.10(t))



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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

WHERE BAIL IS AUTHORIZED (QUALIFYING OFFENSES) (CPL 510.10(1)):

The Court shall (1) release the Arrestee unless the Court makes an individualized Determination that the Arrestee poses a flight risk. (2) Where that determination is made, the Court must select the least restrictive alternative and conditions which reasonably assure the Arrestees return to Court. In making that individualized determination, the Court must consider the following factors and explain its choice of ROR, non-monetary conditions, Bail or Remand in writing or the record:

- the principal's activities and history;
- if the principal is a defendant, the charges facing the principal;
- the principal's criminal conviction record if any;
- the principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.1 of the family court act, or of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any;
- the principal's previous record with respect to flight to avoid criminal prosecution;
- 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;
- any violation by the principal of an order of protection issued by any court;
- the principal's history and use or possession of a firearm;
- whether the charge is alleged to have caused serious harm to an individual or group of individuals; and
- 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

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])

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.

PERMISSIBLE FORMS OF BAIL (CPL 520.10[2][b]): Court must set three or more for

- | | |
|------------------------------|---------------------------------------|
| (A) Cash | (F) Partially Secured Appearance Bond |
| (B) Bail Bond | (G) Unsecured Surety Bond |
| (C) Property Bond | (H) Unsecured Appearance Bond |
| (D) Property Appearance Bond | (I) Credit Card (< \$2500) |
| (E) Partially Secured Surety | |

Initial Discovery from Prosecution to Defense

Within 20 days of arraignment on first accusatory instrument if in custody or 35 days if out of custody (30-day automatic extension for voluminous items including surveillance, body cam, or dash cam, or those not in the prosecution’s possession despite good faith efforts) (CPL 245.10[1][a] and 245.20[1][a]-[u])

NOTE: 911 caller information (name, contact info) must be disclosed as soon as practicable but no later than 15 days before trial, but only if the prosecution intends to call the witness

NOTE: CPL 245 Does not apply to VTL traffic Infractions filed on STIs or municipal code violations that do not involve jail time (CPL 245.10[1][a][iii])

- a. Defendant/Co-D Statements
- b. Grand Jury Transcripts (All witnesses)*
- c. Potential Witness Names/Contact Info
- d. Police Names/Work Affiliation
- e. Prior Statements of any Potential Witness
- f. Expert Opinion Evidence**
- g. Tapes and Recordings***
- h. Photographs/Drawings
- i. Photographs of Returned Stolen Property
- j. Physical/Mental/Scientific Exams
- k. Brady/Giglio
- l. Benefits Conferred or Requested
- m. Tangible Property Seized
- n. Warrants, Applications, Supporting Material
- o. Tangible Evidence Relating to the Case***
- p. Witness Convictions
- q. Witness Pending Cases
- r. Date/Time/Place of Seizure and Arrest
- s. Calibration Logs and other DWI Data****
- t. Computer Trespass Information
- u. Electronically Created or Stored Information*****

Notes:

* Subject to transcription service availability, may be extended up to 30 days without a motion, no later than 30 days before trial date

** If in response to material from a defense expert, disclosure must be within 30 days after receipt, defense then gets 30 days to prepare for trial

*** If prosecution has not formed an intention on whether to admit an item into evidence, must notify the defense in writing and the time period is stayed without a motion (must be as soon as practicable).

**** For records of maintenance that come after the arrest, the disclosure must be made as soon as practicable and by the earlier of 15 days following receipt or 15 days prior to trial

***** If the information is not available, prosecution must notify the defense in writing. Automatic stay and must be furnished as soon as practicable and no later than 45 days before trial

Prosecution Certificate of Compliance (CPL 245.50[1])

- Allows prosecution to declare trial readiness
- Can only file once discovery is complete absent any lost, destroyed, or otherwise unavailable material given diligent, good faith, and reasonable efforts, or there is a court order extending the time for discovery of certain items
- Disclosure of Discovery After original COC requires a supplemental COC (SCOC) filing. Where a SCOC is filed, the DA must detail the basis for the delayed disclosure. The Court must determine whether the delayed disclosure affects the propriety of the original COC. The SCOC shall not affect the validity of the Original COC if it was filed in good faith and after exercising due diligence pursuant to 245.20 or if the discovery did not exist at the time of the COC filing. (CPL 245.50(1)-(a))

Reciprocal Discovery from Defense to Prosecution

Within 30 days of receiving the prosecution’s certificate of compliance

- CPL 245.20 (4)(a)- Names, addresses, birthdates, and statements of any intended defense witnesses
- 245.20(1)(f): Expert opinion evidence
- 245.20(1)(g): Tapes and electronic recordings the defense intends to introduce
- 245.20(1)(h): Photographs and drawings the defense intends to introduce
- 245.20(1)(j): Scientific/physical/mental examinations the defense intends to introduce
- 245.20(1)(o): Tangible property the defense intends to introduce

Defense Certificate of Compliance (CPL 245.50[2])

DEFICIENCIES AND CHALLENGES

- Where a party is aware of a deficiency in a COC or SCOC, that party must NOTIFY the filing party AS SOON AS PRACTICABLE (CPL 245.50(4)(b))
- Challenges to sufficiency of COCs and SCOCs (including 30.30 motions for failure to comply with CPL 245) must be made on motion (CPL 245.50(4)(c))

SANCTIONS (CPL 245.80)

-When discoverable material is disclosed late, the Court SHALL impose a sanction appropriate and proportional to the prejudice suffered by the party entitled to disclosure

-Where the court determines that a sanction is warranted, the following sanctions are available:

- An order for further discovery
- A Continuance
- Order re-opening of a hearing
- Order recall of a witness
- Jury adverse inference charge regarding the non-compliance
- Preclude or strike witness testimony
- Preclude or admit evidence
- Order a mistrial
- Dismiss some or all charges (must consider all other remedies first)

Note: Dismissal under CPL 30.30 is not a Sanction under CPL 245.80. Dismissal under 30.30 is its own remedy and accrues when the people fail to file a sufficient COC before the expiration of the relevant 30.30 time period. You may move concurrently for 30.30 dismissal and sanctions. Where a COC and SCOC are both filed, the Judge must refer to 245.50(1-a) to determine whether late filed material affects propriety of original COC when considering 30.30 dismissal if that is your motion.

Pre-Plea Disclosure

3 days prior to the expiration date of an SCI plea to a crime, or 7 days prior to the expiration date of any other plea to a crime, all initial discovery from the prosecution must be complete (CPL 245.25[1] and [2])

A defendant may waive these rights, but a guilty plea may not be conditioned on such a waiver (CPL 245.25[1])

Court must make inquiry about any waiver on the record, and may not refuse to accept plea if counsel refuses to sign a written waiver

Redaction Without Court Order

The prosecution may redact:

-Names and contact information of confidential informants and undercover personnel (CPL 245.20[1][c] and [d];

-Social security numbers and tax numbers (CPL 245.20[6])

-Identity of 911 callers (must be disclosed no later than 15 days before trial if being called as a witness)

-Victims and witnesses in Article 130 offenses, sex trafficking, or other crimes involving a substantiated affiliation with a criminal enterprise

*Absent good cause, the prosecution must disclose that the information that was being withheld in writing

Protective Order Factors

In determining whether good cause exists, the court may consider:

-Constitutional rights or limitations

-Danger to the integrity of physical evidence or the safety of a witness

-Risk of intimidation, economic reprisal, bribery, harassment, or unjustified annoyance or embarrassment of any person

-A risk of an adverse effect upon the legitimate needs of law enforcement, including the protection of the confidentiality of informants, and the nature, severity, and likelihood of that risk

-The nature and history of any witness intimidation and/or tampering

-The nature of the witness identifying information that is sought to be addressed by a protective order, including the option of employing adequate alternative contact information

-Danger to any person stemming from factors such as a defendant's substantiated affiliation with a criminal enterprise as defined in Penal Law 460.10

-Other similar factors found to outweigh the usefulness of the discovery

*For a violent or class A non-drug felony, the hearing may be conducted in camera upon the prosecutor's request and for good cause shown

*A transcript in lieu of a recording of a 911 call may be furnished upon good cause shown

Protective Order Appeals (CPL 245.70[6][a]):

-Order to show cause, within 2 days of the adverse ruling, to the intermediate appellate court (County Court from lower courts, Appellate Division, Fourth Department from superior courts)

-Sworn affirmation must state: that the ruling affects substantial interests, AND EITHER that diligent efforts to reach an accommodation of the underlying dispute failed or that no accommodation was feasible OR that the motion for the protective order was made ex parte

