

BAIL REFORM FAQs

Some of the charges that are no longer bail-eligible seem really bad. Why are we letting people out of custody when they're accused of such serious offenses?

- A person charged with a crime is innocent until proven guilty. The purpose of bail is to ensure return to court, and the reform ensures that bail laws remain true to their primary purpose.
- However, under the reform bail is still an option for people charged with violent felonies, all violent sex crimes, and some degrees of other serious offenses, like Sex Trafficking (trafficking of a child and certain adult sex trafficking involving the use or threat of force).
- Judges also have wide discretion under the reform to impose any conditions of release, including supervision, that will reasonably ensure the defendant's return to court. This is not generally available under current law. These conditions include but are not limited to:
 - Checking in with a pretrial services provider (in person or by phone)
 - Attending mental health or substance abuse treatment
 - Maintaining employment
 - Obeying an order of protection
 - Forfeiting firearms
- Electronic monitoring is now available as a condition of release for the following charges:
 - All felonies;
 - Misdemeanor domestic violence crimes;
 - Misdemeanor sex offenses;
 - Persistent violent felony offenses (a charge that would be the defendant's third violent felony conviction, if convicted);
 - Misdemeanors, where the defendant was convicted of a violent felony within the past five years;
 - Defendants whose previous bail or release has been revoked;
- These mechanisms provide for more oversight of defendants than the old laws, under which those who could afford bail were released immediately without any supervision.

Is bail still an option for repeat offenders?

- The purpose of bail is to ensure return to court to face the charges rather than flee the jurisdiction. If defendants are repeat offenders but continue appearing in court, the pre-trial system is working.
- The reform allows for the use of money bail where the defendant has demonstrated an unwillingness to return to court or poses certain dangers to the integrity of the case or the community. Bail is automatically an option if a defendant:

- Willfully and persistently failed to appear in court in the present case,
 - Violated an order of protection while released
 - Intimidated a witness
 - Is charged with a new felony after having been released on a separate felony charge
- In addition, under the reform, the judge has the authority to address repeat misdemeanor charges with escalating conditions of release to ensure return to court.
 - Further, repeat offenders tend to receive harsher sentences (like jail instead of probation) when their cases are completed.

How will defendants from other states be treated differently under the reform?

- Under the old law, there is no requirement for bail to be ordered just because you are from out-of-state.
- Under the old law, if bail is not set or is paid, the situation is the same as when the defendant is charged with a non-bail-eligible offense under the reform.
- Under the old law, if bail is issued after taking into consideration a number of factors including residence and ties to New York State in deciding whether an out-of-state defendant will return to court, those who can afford bail are released with no level of supervision.
- Under the reform, judges have additional tools and can apply different conditions, some of which are outlined above, to ensure return to court, after taking the defendant's state of residence and ties to New York State into consideration among other factors.
- When setting release conditions or bail, under the reform laws, the court must take into consideration the defendant's history, including criminal history and past failures to appear in court or attempts to flee justice.
- Persistent, willful failures to appear can result in the defendant becoming eligible for money bail.

Doesn't bail reform jeopardize the leverage courts have to get people into treatment courts?

- Some courts use the threat of jail to coerce defendants to enter treatment courts instead of letting their case progress through the standard court system.
- Under the reform, defendants will have treatment options as judges can require attending mental health or substance abuse treatment as a condition of release.
- In addition, under the reform, non-compliance with treatment as a diversion option could still result in a conviction.

Is it true courts can no longer consider a defendant's history of failing to appear in court or criminal history, or likelihood of committing crimes while released?

- This is not true. When setting release conditions or bail, the court must take into consideration

the defendant's history, including criminal history and past failures to appear in court or attempts to flee justice.

- Any defendant who is charged with a new felony while released on a different felony charge, or who has violated terms of their release on a separate charge, is automatically eligible for money bail under the reform.

Is it true that police can no longer make arrests for many serious crimes – including domestic violence offenses - and are required to issue desk appearance tickets instead?

- The reform allows the police discretion to make an arrest when there is reason to suspect that the arrestee is dangerous or is likely not to return to court. Importantly, the reform does not change the law that requires arrests to be made in domestic violence situations.
- Police will be permitted to make an arrest instead of issuing an appearance ticket when:
 - The person has a warrant for their arrest;
 - The person cannot or will not identify themselves;
 - The person is charged with a domestic violence crime;
 - An order of protection should be issued;
 - The person is charged with a sex crime;
 - The person is charged with a crime that may result in a suspended or revoked driver's license (ie, a charge of Driving While Intoxicated or Driving While Ability Impaired);
 - The person is in medical or mental health distress, and the officer has tried unsuccessfully to connect the person with the appropriate services;
 - The person has failed to appear in court in the past two years.

Does bail reform put domestic violence survivors in more danger?

- Under the previous law any accused domestic abuser, for whom the court decided to set bail, would be released into the community without supervision if he or she could afford bail.
- Under the reform, all domestic violence misdemeanors and felonies are eligible for pre-trial services and supervision, including electronic monitoring.
- With the combination of electronic monitoring and orders of protection, courts will be able to keep abusers away from survivors.

Is it true that no stakeholders had any input on the new bail reform laws, and the bills were released with no time for legislators to review?

- Bail reform bills had been pending in both houses for years before they were enacted, and the reform legislation was based on those bills.
- Legislators spoke with and took input from numerous stakeholders in the course of drafting the legislation, including the District Attorneys (DA) Association of the State of New York, individual DAs from across the state, police departments, public defenders, and probation departments.