

Office for the Prevention of Domestic Violence

## 2020 DV Legislation of Note

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### Focus On

- Employment
  - Reasonable Accommodations
  - Paid Sick/Safe Time
- Safe Homes and Families Act
- Bail Reform Amendments
- Equitable Distribution



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### Additional

- Smart Home Tech Abuse
- “Protect Our Courts Act”
- Expansion of Definition of “Serious Offense”



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## Reasonable Accommodation

- Exec L. § 296(22)(c)
  - Employers must allow victims to be absent from work for reasonable time for listed purposes, for victim or child
  - Unless absences cause “undue hardship”
  - Employees may be required to charge time where available, but cannot be fired for taking unpaid leave

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## Reasonable Accommodation

- Situations requiring RA
  - Medical attention for victim or child
  - Psychological counseling
  - Safety planning or other actions to increase safety, including temporary or permanent relocation
  - Obtaining legal services or otherwise appearing in court

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## Reasonable Accommodation

- All of these must be directly related to the domestic violence
- A perpetrator of domestic violence may not use the provision of this law
- Employers must maintain confidentiality of information re employee's status as victim of domestic violence

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### Reasonable Accommodation

- Undue hardship factors
  - Overall size of business
    - Number of employees
    - Number and type of facilities
    - Size of budget
  - Type of operation, including structure and composition of workforce

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### Paid Sick/Safe Time

- Labor Law §196-b
- Time started accruing upon enactment of statute (September 30, 2020)
- Employees could start using time on January 1, 2021

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### Paid Sick/Safe Time

- Does **not** apply to federal, state or local government employees
- Does apply to
  - Charter schools
  - Private schools
  - Not-for-profits

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**Paid Sick/Safe Time**

- Employers may provide more, but not less than statutory requirements
- Time may be
  - Accrued throughout year (1 hour/30 hours worked)
  - Whole amount given at beginning of calendar year

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**Paid Sick/Safe Time**

- Purposes for use
  - Diagnosis, care, treatment, or preventive care, for self or family member
  - “Safe” time
    - Absence from work for following reasons
    - When employee or family member has been victim of domestic violence, family offense, sexual offense, stalking, or human trafficking

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**Paid Sick/Safe Time**

- Reasons to use safe time
  - Obtain services from domestic violence program, rape crisis center, or other such program
  - Participate in safety planning, temporarily or permanently relocate, or take other actions to increase safety of employee or family members

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**Paid Sick/Safe Time**

- Reasons to use safe time
  - Meet with attorney or other provider to discuss court proceeding
  - File complaint or DIR with law enforcement
  - Meet with DA's office
  - Enroll children in new school

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**Paid Sick/Safe Time**

- Reasons to use safe time
  - Take any other actions necessary to ensure the health and safety of the employee or family member, or to protect those who associate or work with the employee

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**Paid Sick/Safe Time**

- Family member = employee's
  - Child
  - Spouse
  - Domestic partner
  - Parent
  - Sibling
  - Grandchild or grandparent
  - Child or parent of employee's spouse or domestic partner

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**Paid Sick/Safe Time**

- Upon return, employee must be restored to job with same pay and other terms and conditions of employment
- Record of accrual and use must be provided to employee, upon request, within three business days

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**Important Comparisons**

<p><b>RA</b></p> <ul style="list-style-type: none"> <li>• Applies only to employee and child(ren)</li> <li>• Use limited to when employee or child are victims of domestic violence</li> </ul>	<p><b>Paid Sick/Safe Time</b></p> <ul style="list-style-type: none"> <li>• Broad definition of family member</li> <li>• Employee does not have to be victim in order to use leave – can use to assist a family member who is a victim</li> <li>• Includes domestic violence, sexual assault, stalking and human trafficking</li> </ul>
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**“Safe Homes and Families Act”**

- LE responding to family offense (FO) **may** take temporary custody of firearm in plain sight or found in lawful search
- **Must** take firearm in possession of person arrested for, or suspected of, FO
- Must hold for at least 48 hours, but absent OP or other reason to hold, must return

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**“Safe Homes and Families Act”**

- Also gives FCt judges right to issue search warrants where party willfully refuses to hand over weapons
- OCA doing trainings for judges and court personnel about this law

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**Bail Law Changes**

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**Release under non-monetary conditions (RUNMC)**

- Obey an Order of Protection issued by Court
- Obey conditions set by Court to address safety of victim of family offense, including those requested by, or on behalf of, victim

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**Possible RUNMCs**

- ROR – No conditions
- ROR – With conditions
- ROR – Pretrial services
- ROR – Travel restrictions
- ROR – Firearms prohibitions
- Pretrial supervision
- Electronic monitoring

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**Qualifying Offenses**

- Criminal Contempt 2<sup>nd</sup> (PL 215.50(3))
- Criminal Contempt 1<sup>st</sup> (PL 215.51(b),(c),(d))
- Aggravated Criminal Contempt (PL 215.52) –
  - > all where they relate to violations of OPs for members of same family or household
- Facilitating sexual performance of a child
- Promoting obscene performance of a child

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**Qualifying Offenses**

- Crime alleged to have caused death
- Criminal obstruction of breathing or blood circulation, strangulation 2<sup>nd</sup>, or strangulation 1<sup>st</sup>, unlawful imprisonment 1<sup>st</sup> against MSFH
- Assault 3<sup>rd</sup> or Arson 3<sup>rd</sup> charged as hate crime

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### Qualifying Offenses

- Felony or class A misdemeanor
  - Involving harm to identifiable person or property
  - Where occurred while D ROR's or released under conditions due to separate felony or A misdemeanor involving same
  - Prosecution must show RCTB D committed both crimes

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### How Does this Affect DV?

- Improvement from original law
- Disconnect for some DV crimes because of way law is written
  - Assault 3<sup>rd</sup> – only ROR discretionary and bail eligible if charged as hate crime
  - Aggravated Family Offense – AT, ROR, EM, not QO

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### Equitable Distribution

- Courts must consider acts of domestic violence committed by one party against the other and
- Nature, extent, duration, and impact of those acts
- In making ED determinations upon divorce

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**Smart Home Tech Abuse**

- A court may, upon issuing OP
- Prohibit restrained party from remotely controlling connected devices affecting
  - Home
  - Vehicle
  - Property
- Of protected person

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**“Protect Our Courts Act”**

- Creates a “privilege against civil arrest” for people on their way to/from, or participating in, court proceedings
- Allows only judicially-signed warrants or orders to be executed in court buildings
- Must be reviewed by the court where the warrant is sought to be executed

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**“Protect Our Courts Act”**

- Court will determine, for execution of the warrant
  - Time
  - Place
  - Method
- A civil arrest in violation of this law allows arrestee to file in NYS Sup. Ct. to challenge

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**Questions???**

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**Contact Information**

Ellen C Schell  
General Counsel, OPDV  
[ellen.schell@opdv.ny.gov](mailto:ellen.schell@opdv.ny.gov)  
518-457-5757

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# Legislative Update 2020

Ellen C Schell

OPDV General Counsel

## **Gender-neutral Bathrooms** – S. 6937 Salazar/A. 8974 Rosenthal

Requires all single occupancy bathrooms in state-owned or operated buildings and office space to be designated as gender neutral.

Signed: February 3, 2020 Chapter 14

Effective: March 19, 2020

Amends: Public Buildings Law §145

## **Domestic Violence Policies and Training for Hospitals** – Amendment -- A. 9134 Lavine/S. 7192 Salazar

Limits requirement for training to nursing, medical, social work and other clinical personnel, and security personnel working in hospital service units; requires hospitals to designate a staff person to coordinate with a local domestic violence service provider about provision of services to victims, rather than to coordinate services to victims; and requires DOH to provide a list of domestic violence or victim assistance organizations operating within each hospital's geographic area when it provides the model policy to hospitals.

Signed: April 17, 2020 Chapter 37

Effective: December 23, 2020

Amends: Public Health Law §2805-z

## **Mandatory Arrest/Extension** – A. 9505-B/S. 7505-B (§17 of Part A)

Extends the mandatory arrest provision for family offenses for one more year, until September 1, 2021.

Signed: April 3, 2020 Chapter 55 -- Budget Bill: §17 of Part A

Effective: April 3, 2020

Amends: Criminal Procedure Law §140.10(4)

## **Closed-Circuit Television Extension** – A. 9505-B/S. 7505-B (§18 of Part A)

Extends until September 1, 2021, the provision that allows vulnerable child witnesses to testify via closed-circuit television in cases involving sex crimes - a provision established in 1985.

Signed: April 3, 2020 Chapter 55 – budget Bill: §18 of Part A

Effective: April 3, 2020

Amends: Criminal Procedure Law §65.10

**Increased Maximum Duration of Criminal Orders of Protection Extension – A. 9505-B/S. 7505-B (§19 of Part A)**

Extends for one more year, until September 1, 2021, the increased maximum length of criminal court orders of protection. Maximum lengths: eight years for a felony conviction, five years for a misdemeanor conviction and two years for all other offenses/violations.

Signed: April 3, 2020 Chapter 55 – Budget Bill: §19 of Part A

Effective: April 3, 2020

Amends: Criminal Procedure Law §§530.12(5); 530.13(4)

**“Safe Homes and Families Act” -- A. 9505-B/S.7505-B (Part M)**

Allows police responding to a family offense to take temporary custody of any firearm (and related license) that is in plain sight or discovered pursuant to a lawful search; and requires a police officer to take temporary custody of any weapon (and related license) in possession of a person arrested for, or suspected of, committing a family offense. After a period of no less than 48 hours, absent an OP or other order prohibiting the owner from possessing such weapon/license, or a pending charge or conviction prohibiting the owner from possessing such weapon/license, the weapon must be returned. Makes changes to the CPL and the Family Court Act to comply with requirements of this act.

Signed: April 3, 2020 Chapter 55 – Budget Bill: Part M

Effective: November 1, 2020

Amends: Criminal Procedure Law §140.10 by adding new subdivision 6; amends CPL §530.14; Family Court Act § 842-a

**Expansion of Definition of “Serious Offense” -- A. 9505-B/S.7505-B (Part N)**

Changes the definition of “serious offense” in relation to determining whether certain misdemeanor crimes are serious offenses under the Penal Law. Convictions for “serious offenses” prohibit someone from getting a pistol permit. Penal Law 265.00(17)(b) applies to offenses defined in the current Penal Law, and any offense in any jurisdiction or under the former Penal Law, where the defendant and the person against whom the offense was committed were members of the same family or household as defined in CPL §530.11(1) and CPL §370.15. Requires DCJS to establish, post, and maintain a list of offenses in all states and territories that include all essential elements of a serious offense.

Signed: April 3, 2020 Chapter 55 – Budget Bill: Part N

Effective: April 3, 2020, except that sections one and two take effect April 3, 2021 and apply to out-of-state convictions entered in such jurisdictions on or after such date.

Amends: Penal Law §265.00(17)(a)(b)(c); PL § 400 by adding subsection 1-a; Executive Law § 837 by adding subsection 22.

**Procedure for Reporting Crimes Qualifying as Misdemeanor Crimes of Domestic Violence to DCJS for Inclusion in NICS System -- A. 9505-B/S.7505-B (Part Q)**

Requires prosecution to file notice for certain misdemeanor crimes alleging that defendant and victim were members of same family or household and specifying the nature of the relationship. If these allegations are proven, the court “shall” report the conviction to DCJS within three business days. This will assure that these convictions are included in databases of those prohibited from possessing or purchasing firearms.

Signed: April 3, 2020 Chapter 55 – Budget Bill: Part Q

Effective: April 3, 2020

Amends: Criminal Procedure Law §370.15

**Domestic Violence as a Factor in Equitable Distribution of Marital Property Upon Divorce – A. 9505-B/S.7505-B (Part PP)**

Amends the Domestic Relations Law to require courts to consider acts of domestic violence committed by one party against the other, and the nature, extent, duration and impact of those acts, in making determinations regarding equitable distribution of marital property upon divorce.

Signed: April 3, 2020 Chapter 55 – Budget Bill: Part PP

Effective: May 3, 2020, and shall apply to matrimonial actions commenced on or after such date.

Amends: Domestic Relations Law §236B(5)(d)(14) by adding a new section with that number and renumbering the previous subparagraph (14) as (15).

**Rights of Victims of Sexual Offenses – A. 9505-B/S.7505-B (Part XX (A))**

Amends the “Safe Way Home Act” of 2019 (S.3966-A/A.5775-A) by repealing the Executive Law section requiring OVS to pay expenses incurred in transporting victims of sexual offenses home from hospitals after sexual assault examinations, and amending the relevant Public Health Law sections to require that a rape crisis or victim services organization providing victim assistance within the geographic area served by the hospital provide such transportation within the organization’s service area at no cost to victims.

Signed: April 3, 2020 Chapter 55 – Budget Bill: Subpart A of Part XX

Effective: March 22, 2020, the same date and manner as the law it amends

Repeals: §631-b of the Executive Law

Amends: Public Health Law §2805-i (1)(b); (4-b)(b)(3); and (6)(a)(1)

### **Aging Veterans/LGBTQ Elders/Elder Abuse -- A. 9505-B/S.7505-B (Part XX (J))**

Provides for periodic consultation with veterans' services to ensure needs of aging veterans are being met; authorizes public education campaign emphasizing zero tolerance for elder abuse and containing information about signs and symptoms, causes, reporting options, and resources; and authorizes creation and provision of a training program for designated agencies regarding LGBTQ/TG/GNC older adults – their unique barriers and needs for services, reasons they may not self-identify; and tools that may be used to incorporate these perspectives into direct care, and other steps that may be taken in order to improve quality of services.

Signed: April 3, 2020 Chapter 55 – Budget Bill: Subpart J of Part XX

Effective: June 17, 2020, the same date and manner as the law it amends

Repeals: Elder Law § 203(13) and (14)

Amends: Elder Law §202(15) and (16) and adds a new subdivision numbered (17)

### **HIV Post-exposure Prophylaxis -- A. 9505-B/S.7505-B (Part XX (s))**

Amends law enacted in 2019 (S.2279-A/A.1204-A) regarding no-cost HIV post-exposure prophylaxis by limiting eligibility for the full regimen of drugs to those under the age of 18 and providing for a seven-day starter pack for adults. The costs of these meds are to be covered directly by the Office of Victim Services, but do not automatically qualify victims for other OVS services or compensation. An annual report regarding the costs of the sexual assault examination direct reimbursement program is required to be provided to OVS, the Governor, and the Legislature on or before September 1<sup>st</sup> of each year.

Signed: April 3, 2020 Chapter 55 – Budget Bill: Subpart S of Part XX

Effective: April 3, 2020, except sections 1, 2, and 3 take effect June 15, 2020, the same date and manner as the law they amend

Amends: Public Health Law §2805-i(1)(c); Public Health Law §201(1) by adding a new paragraph (x); and Executive Law §631(13)

### **Sick Leave/Safe Time -- S.7506-B/A.9506-B (Part J)**

Amends the Labor Law to require that every employer provide sick leave, either paid or unpaid depending on size of business, to employees. Employees may use sick time for physical or mental health-related purposes for themselves or family members. Employees may use sick time as “safe time” for purposes related to domestic violence, family offenses, sexual offenses, stalking or human trafficking for themselves, or to assist family members, to obtain victim services, safety planning, meet with law enforcement or civil attorneys, relocate, enroll children in a new school, or take any other actions necessary to ensure safety for themselves or others. Perpetrators of these offenses are not allowed to use sick time for these purposes.

Signed: April 3, 2020 Chapter 56 – Budget Bill: Part J

Effective: September 30, 2020, except that employees may not use sick time, family sick time, or safe time until January 1, 2021.

Amends: Labor Law by adding a new section, 196-b.

## **Surrogacy -- S.7506-B/A. 9506-B (Part L)**

Creates Article 5-C of the Family Court Act, “Judgments of Parentage of Children Conceived Through Assisted Reproduction or Pursuant to Surrogacy Agreements.” Contains legal and procedural requirements for obtaining judgments of parentage, as well as setting forth requirements for surrogacy agreements, payments by intended parents to surrogates, and establishes the “Surrogates’ Bill of Rights.” Amends the Public Health Law by adding a new Article 25-B, “Gestational Surrogacy,” requiring promulgation of rules, regulations, guidelines and tracking for gestational surrogacy. Amends other laws to comport with the requirements of each of these new laws.

Signed: April 3, 2020 Chapter 56 – Budget Bill: Part L

Effective: February 15, 2021.

Amends: Family Court Act by adding Article 5-C; Public Health Law by adding Article 25-B; and other sections of the Family Court Act; Public Health Law; Social Services Law; Insurance Law; and Estates, Powers and Trusts Law.

## **Bail Reform Amendments – S.7506-B/A. 9506-B (Part UU)**

Expands the list of offenses that are “qualified offenses” (bail eligible) to include, among others: any crime alleged to have caused the death of another person; criminal obstruction of breathing or blood circulation, strangulation 2<sup>nd</sup>, unlawful imprisonment 1<sup>st</sup> (all when committed against member of same family or household); assault 3<sup>rd</sup> or arson 3<sup>rd</sup> as a hate crime; a felony committed while on probation or released on supervision; a felony or class A misdemeanor involving harm to an identifiable person or property while the person is ROR’d or released under conditions on separate felony or class A misdemeanor involving harm to an identifiable person or property. Increases the list of potential conditions under which an arrestee may be released under non-monetary conditions, to include: refrain from contact with certain people; mandatory programming; obey an Order of Protection; obey other conditions set by court relating to the safety of a victim of a family offense. Requires the chief administrator of the courts, in conjunction with DCJS, to collect detailed data and report regarding pretrial release and detention.

Signed: April 3, 2020 Chapter 56 – Budget Bill: Part UU

Effective: July 2, 2020.

Amends: Multiple sections of the Criminal Procedure Law; §216 of the Judiciary Law, by adding a new subdivision 5; and Executive Law by adding a new section 873-u.

## **Transit Crimes -- S.7506-B/A. 9506-B (Part VV)**

Upon sentencing for crimes involving sexual assault against a passenger, customer or employee, or assault against an employee, of the MTA, a person is prohibited from using or entering and MTA subways, trains, buses or other conveyances or facilities for up to three years, or for the period of probation or conditional discharge, whichever is less. A court may modify this if the person relies on MTA conveyances for necessities such as employment, school, medical appointments, grocery shopping, etc. A person subject to these prohibitions is



entitled to apply for a refund of any prepaid fare amounts unable to be used due to restrictions imposed.

Signed: April 3, 2020 Chapter 56 – Budget Bill: Part VV

Effective: July 2, 2020.

Amends: Penal Law § 65.10(2) by adding a new paragraph (k-2).

**Eligibility of Domestic Partners for Crime Victim Compensation – Amendment -- S. 7168 Parker/A. 8959 Glick**

Amendments to Chapter 690 of the Laws of 2019, which expanded eligibility for crime victims' compensation awards to include domestic partners if their partners die as a result of a crime, to realign the law with the structure of the current Article 22 of the Executive Law.

Signed: April 17, 2020 Chapter 70

Effective: June 17, 2020

Amends: Executive Law §§ 621,626, 631

**Appearance Enhancement Professionals Training – Amendment – S. 7169 Benjamin/A. 8975 Rosenthal**

Adds requirement that the New York State Coalition Against Sexual Assault (“an advocacy group recognized by the federal DHHS or DOJ which has the ability to coordinate statewide and with local communities.....”) be included in creation of training for AEPs (persons working in profession relating to nails, waxing, natural hair styling, esthetics and cosmetology).

Signed: April 17, 2020 Chapter 71

Effective: June 17, 2020

Amends: General Business Law § 408-b

**Extension of Child Victims Act “Revival Window” – S. 7082 Hoylman/A. 9036 Rosenthal**

Extends “revival window” for filing of cases regarding child sexual abuse by one additional year, so window stays open until August, 2021.

Signed: August 3, 2020 Chapter 130

Effective: August 3, 2020

Amends: Civil Practice Law and Rules § 214-g

**Amendments to OPDV Enabling Statute – A. 8023 Williams/S. 6665 Benjamin**

Adds the Commissioner of the Division of Housing and Community Renewal to the Domestic Violence Advisory Council, adds the authority to promote best practices for abusive partner intervention to the statute, and repeals the section providing for pilot projects and funding for batterer intervention programs.

Signed: October 7, 2020 Chapter 204

Effective: October 7, 2020

Amends: Executive Law §575; repeals § 576

**Report on Human Trafficking** – A. 8645 Hevesi/S. 8743 Liu

Requires the commissioner of social services, in consultation with DCJS, to submit a report annually on the services provided to human trafficking survivors for the purpose of assessing the availability, utilization and necessity for such services.

Signed: November 11, 2020 Chapter 257

Effective: May 10, 2021

Amends: Social Services Law § 17

**Smart Home Tech Abuse** – A. 10039 Rozic/S. 7926 Bailey

Allows a court, when issuing an order of protection, to prohibit the restrained party from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order.

Signed: November 11, 2020 Chapter 261

Effective: November 11, 2020

Amends: Family Court Act §§ 352.3, 446, 551, 656, 759, 842, 1056; Criminal Procedure Law §§ 530.12, 530.13; Domestic Relations Law §§ 240, 252

**“Protect Our Courts Act** – A. 2176-A Solages/S. 425-A Hoylman

Creates a “privilege against civil arrest” for those traveling to or from, or participating in, court proceedings – for themselves or as support for family or household members appearing in court. Only judicially-signed warrants or orders may be executed in court buildings, and those must be reviewed by the court where a federal officer is seeking to execute the warrant or order. The court will determine the time, place, and method by which the warrant or order may be executed. If someone is civilly arrested in violation of this act, they may file an action in NYS Supreme Court to challenge the arrest.

Signed: December 15, 2020 Chapter 322

Effective: December 15, 2020

Amends: Civil Rights Law by adding new § 28; Judiciary Law by adding new § 4-a, and amending subdivision 2 of § 212 by adding a new paragraph (aa)

## Bail Provisions and Domestic Violence: 2020 Amendments

*(New conditions are listed in italics- eff. 7/2/2020)*

Prepared by Ellen C. Schell  
OPDV General Counsel

General Rule:

Police must ask person to provide their contact information – address, phone number and/or email address.

If arrestees provide their contact information, and police are otherwise authorized to arrest without a warrant, police must issue and serve an appearance ticket for E felonies and misdemeanor crimes.

Exceptions:

**Appearance tickets are not allowed** for the following crimes (this is not a new provision)

- Rape 3<sup>rd</sup>
- Criminal Sexual Act 3<sup>rd</sup>
- Escape 2<sup>nd</sup>
- Absconding from temporary release 2<sup>nd</sup>
- Absconding from community treatment facility
- Bail jumping 2<sup>nd</sup>

Appearance tickets **are not required** (discretionary – police can decide) where

- Outstanding warrants
- Failed to appear within last two years
- Refuse to provide verifiable identity and method of contact
- Charged with crime between members of the same family or household, as defined in subdivision one of section 530.11 of CPL
- Charged with sex crime
- Appears need to bring arrestee in front of court to request order of protection under 530.13 of CPL (this is for non-family offenses, but where a witness needs an OP)
- Charged with offense for which driver license may be suspended or revoked
- Reasonably appears to officer that arrestee is in distress to such a degree that the person would face harm without immediate medical or mental health care, so it would be in best interest to bring before court in order to address that need

Pretrial release on recognizance (ROR) necessary, unless

- Some other type of securing order required by law
- Court determines risk of flight to avoid prosecution



Release under non-monetary conditions – must use least restrictive conditions necessary to assure return to court *and reasonably assure compliance with court conditions. Person released may not be required to pay for any conditions, including electronic monitoring. This is a non-exclusive list. Conditions can be imposed singularly or in combination, when reasonable for circumstances and situation of defendant. This is not a hierarchical list. A court does not have to order one set before ordering a different condition or set of conditions.*

- ROR – no conditions
- ROR - Pretrial services
- ROR - Travel restrictions, *including surrender of passport*
- ROR - Firearms prohibitions
- Pretrial supervision – *when shown no other realistic no-monetary conditions will assure return to court*
- *New conditions allowed:*
  - *Refrain from associating with certain persons connected with charge, including specified victims, witnesses, co-defendants*
  - *Referred to PTSA for mandatory services – counseling, treatment, IPV intervention programs*
  - *Removal to a hospital under 9.43 of Mental Hygiene Law*
  - *Make diligent efforts to maintain employment, housing, enrollment in school or educational programming*
  - *Obey an Order of Protection issued by Court*
  - *Obey conditions set by Court addressed to safety of victim of family offense, including conditions that may be requested by or on behalf of victim*
- Electronic monitoring (EM)

Electronic Monitoring **may** be used in cases involving

- Felony charges
- Misdemeanor crime of domestic violence – defined as “a misdemeanor under the penal law provisions and circumstances described in subdivision one of section 530.11”
- Misdemeanor sex crime
- Any misdemeanor where D has conviction, within last five years, for VFO
- May not be used for longer than 60 days
- May be conducted only by a public or non-profit entity under supervision and control of, or under contract with, the municipality, county, or the state. Cannot contract with private for-profit entity for these purposes
- *Counties, municipalities and the state may contract with private for-profit entities to supply EM equipment, so long as interactions with persons subject to EM, or data produced by EM, are conducted solely by employees of a county, municipality, the state, or a non-profit entity under contract with the county, municipality, or the state.*

**Qualifying offenses make ROR discretionary.** Qualifying offenses are:

- Violent felony offenses – some exceptions – *now including Burglary 2<sup>nd</sup> where the charge is for entering the living area of the dwelling*
- Witness intimidation
- Witness tampering
- Class A felony (some exceptions and limitations)
- *Sex trafficking offenses*
- Sex offense
- Conspiracy 2<sup>nd</sup>
- Money laundering in support of terrorism, or felony terrorism
- Criminal contempt 2<sup>nd</sup> (3); Criminal contempt 1<sup>st</sup> (b, c, d); Agg. Criminal contempt, (all relating to violations of OPs against members of same family or household)
- Facilitating sexual performance of a child with controlled substance or alcohol
- *Promoting obscene sexual performance by a child*
- *Any crime alleged to have caused the death of another person*
- *Criminal obstruction of breathing or blood circulation; strangulation 2<sup>nd</sup>; or unlawful imprisonment 1<sup>st</sup> where offense is alleged to have been against a member of same family or household*
- *Aggravated vehicular assault or vehicular assault 1<sup>st</sup>*
- *Assault 3<sup>rd</sup> or Arson 3<sup>rd</sup> when charged as hate crime*
- *Aggravated assault against person under the age of 11 or criminal possession of a weapon on school grounds*
- *Grand larceny 1<sup>st</sup>; enterprise corruption, or money laundering 1<sup>st</sup>*
- *Failure to register as a sex offender or endangering the welfare of a child where defendant is required to maintain registry as a level three sex offender*
- *Bail jumping or escaping from custody*
- *Any felony offense committed while serving sentence of probation or released to post-release supervision*
- *Felony, where defendant qualifies for sentencing on that felony as a persistent felony offender*
- *Any felony or class A misdemeanor involving harm to an identifiable person or property, where such charge arose from conduct occurring while the defendant was ROR'd or released under conditions for a separate felony or class A misdemeanor involving harm to an identifiable person or property, but prosecutor must show reasonable cause to believe the defendant committed both crimes. Underlying crime(s) need not be a qualifying offense*

For qualifying offenses which are felonies, courts can enter any type of securing order allowed by law – from ROR, to bail, to remand without bail

When setting terms of securing order, court must consider

- Info relating to D's likelihood of returning to court
- If family offense
  - History of violation of OPs
  - History of use or possession of a firearm (Note: these are not new)

### Other Provisions:

Pretrial Services Agencies (PTSA):

- OCA will certify "one or more" in each county
- Must be public entity or non-profit entity under contract to state, county, municipal government
- No private, for-profit entities allowed to do this work
- Any risk assessment tool used in making release considerations must be
  - Promptly made available to principal & counsel upon written request
  - Blank copy made available to anyone upon request
  - Shall be
    - Designed and implemented so as to be free from discrimination on basis of race, national origin, sex, or any other protected class; and
    - Empirically validated & regularly revalidated, with validation studies and underlying data publicly available upon request.
- Supervision by pretrial services agency may be used only if court finds, after notice and opportunity to be heard, with individualized determination made and explained on the record or in writing, that no other realistic non-monetary conditions will assure principal's **return to court and reasonably assure compliance with court conditions**
- Each certified PTSA shall prepare, and file with OCA, an annual report, which OCA shall compile
  - # of defendants supervised
  - Duration of supervision prior to acquittal, dismissal, ROR, revocation of release on conditions, and sentencing
  - Race, ethnicity, age and sex of each person supervised
  - Crime(s) each supervisee was charged with
  - # of persons who had release conditions modified, with general description of modifications
  - # of people supervised who had conditions revoked by court, and why
  - Court disposition of each supervised case, including sentencing information
- *Chief administrator of the courts, in conjunction with DCJS, shall collect data and report every six months regarding pretrial release and detention, including:*
  - *Information categorized by gender, racial, and ethnic background*
  - *Nature of criminal offenses including top charge of each case*
  - *# and type of charges in each defendant's criminal record*

- # of individuals ROR'd
- # of individuals released on non-monetary conditions and conditions imposed
- # of individuals committed to custody of sheriff prior to trial
- Rates of failure to appear and re-arrest
- Outcome of such cases or dispositions
- Length of pretrial detention
- Any other information chief administrator of the courts, and DCJS, find necessary and appropriate

*Data shall be disaggregated to protect identity of individual defendants. Report shall be released publicly and published on OCA and DCJS websites – 1<sup>st</sup> 12 months after effective date of this law, and every six months thereafter.*

#### 48-hour notice to appear:

Except where charged with new crime, or where relevant, credible evidence of willful failure to appear for scheduled court appearance, before issuing bench warrant, court shall provide 48 hours' notice to defendant and/or counsel to provide opportunity for voluntary appearance.

#### Bail Modification or Revocation:

- Defendant may move for modification
  - Must be hearing
  - Counsel, etc.
- Revocation required where
  - Defendant on ROR, ROC, or bail; and
  - Court finds RCTB defendant committed
    - One or more Class A or violent felony
    - Intimidated a witness
- Revocation lasts
  - No more than 90 days; or
  - Until no more felony charges left; or
  - Until no more A felony or VFO charges left.
- After shortest of these periods, court may re-decide bail, ROC, ROR
- Otherwise, must be found by clear and convincing evidence that defendant:
  - Persistently and willfully failed to appear after notice of scheduled appearances; or
  - Violated an OP under subsections b, c, or d of PL § 215.51 (CC 1<sup>st</sup>); or
  - Stands charged with misdemeanor or violation and intimidated a witness in violation of sections 215.15, 215.16 or 215.17, or tampered with a witness in violation of sections 215.11, 215.12, or 215.13 while at liberty; or
  - Stands charged with a felony, and committed a felony while at liberty.
- Must be hearing re: cause for revocation
- If found revocation warranted, set new securing order for bail or remand (even if not previously eligible for bail), ROC or ROR.

- Court must use least restrictive alternative that will reasonably assure principal's **return to court**

In either of these cases, where defendant is charged with:

- Class A felony
- VFO
- Violation of 215.15,215.16 or 215.17 (witness intimidation)
- Committed while at liberty on securing order

Defendant may be placed in custody for up to 72 hours pending revocation hearing, with up to an additional 72 hours upon showing of good cause by DA, or delay of hearing was due to defendant's request or with defendant's consent.

Effective: July 2, 2020





## **BAIL CHART KEY**

**EFO = Enumerated Family Offense**

**MA = Mandatory Arrest**

**AT = Appearance Ticket**

**RUNMC = Release Under Non-Monetary  
Conditions**

**Bail = Bail Eligible**

**EM = Electronic Monitoring**

**CCS = Commit to Custody of Sheriff**

**R = Required**

**D = Discretionary**

**N = Not allowed**

**Y = Allowed**

**N = Not allowed**

**\* = some limitations or exceptions**

**Common DV Charges no longer bail eligible**

**Particular Issues for DV-Related Cases**

**Qualified Offense only if charged as hate crime**

			2020 A (7/2/2020)					
Crime	Level	EFO (Y/N)	MA (Y/N)	AT (R/D/N)	RUNMC (EM (Y/N)	Bail (Y/N)	CCS	
Disorderly Conduct	Viol	Y	N	D *	R	N	N	N
Harassment 2d	Viol	Y	N	D *	R	N	N	N
Harssment 1st	A misd.	Y	Y*	D	R	Y	N	N
Agg. Har. 2d	A misd.	Y	Y*	D	R	Y	N	N
Sexual Misconduct	A misd.	Y	Y*	D	D	Y	Y	N
Forcible Touching	A misd.	Y	Y*	D	D	Y	Y	N
Sexual Abuse 3d	B misd.	Y	Y*	D	D	Y	Y	N
Sexual Abuse 2d	A misd.	Y	Y*	D	D	Y	Y	N
Stalking 4th	B misd.	Y	Y*	D	R	Y	N	N
Stalking 3d	A misd.	Y	Y*	D	R	Y	N	N
Stalking 2d	E felony	Y	Y	D	R	Y	N	N
Stalking 1st	D felony	Y	Y	D	R	Y	Y	Y
Criminal Mischief 4th	A misd.	Y	Y*	D	R	Y	N	N
Criminal Mischief 3d	E felony	Y	Y	D	R	Y	N	N
Criminal Mischief 2d	D felony	Y	Y	N	R	Y	N	N
Criminal Mischief 1st	B felony	Y	Y	N	R	Y	N	N
Menacing 3d	B misd.	Y	Y*	D	R	Y	N	N
Menacing 2d	A misd.	Y	Y*	D	R	Y	N	N
Reckless Endangerment 2d	A misd.	Y	Y*	D	R	Y	N	N
Reckless Endangerment 1st	D felony	Y	Y	D	R	Y	N	N
COBB*	A misd.	Y	Y*	D	D	Y	Y	N
Strangulation 2d*	D felony	Y	Y	N	D	Y	Y	Y
Strangulation 1st	C felony	Y	Y	N	D	Y	Y	Y
Assault 3d*	A misd.	Y	Y*	D	R (D)	Y	N (Y)	N
Assault 2d	D felony	Y	Y	N	D	Y	Y	Y
Identity Theft 3d	A misd.	Y	Y*	D	R	Y	N	N
Identity Theft 2d	E felony	Y	Y	D	R	Y	N	N
Identity Theft 1st	D felony	Y	Y	N	R	Y	N	N
Grand Larceny 4th*	E felony	Y	N	D	R	Y	N	N
Grand Larceny 3d	D felony	Y	Y	N	R	Y	N	N
Coercion 3d	A misd.	Y	Y*	D	R	Y	N	N
Coercion 2d	E felony	Y	Y	D	R	Y	N	N
Unlawful Sharing/Intimate Image	A misd.	Y	Y*	D	R	Y	N	N
Agg. Family Offense	E felony	N	Y	R	R	Y	N	N
Criminal Contempt 2d *	A misd.	N	Y*	D	D	N	Y	N
Criminal Contempt 1st *	E felony	N	Y	D	D	Y	Y	Y
Agg. Criminal Contempt *	D felony	N	Y	N	D	Y	Y	Y
End. Welfare of a Child*	A misd.	N	Y*	R	R	N	N	N
Rape 3d	E felony	N	Y	N	D	Y	Y	Y
Criminal Sexual Act 3rd	E felony	N	Y	N	D	Y	Y	Y
Unlawful Imprisonment 2d	A misd.	N	Y*	R	R	N	N	N
Unlawful Imprisonment 1st*	E felony	N	Y	R	D	Y	Y	Y
Tampering with a Witness 4th	A misd.	N	Y*	R	R	N	N	N
Tampering with a Witness 3d	E felony	N	Y	R	D	Y	Y	Y
Tampering with a Witness 2d	D felony	N	Y	N	D	Y	Y	Y
Tampering with a Witness 1st	B felony	N	Y	N	D	Y	Y	Y
Intimidating Victim or Witness 3d	E felony	N	Y	R	D	Y	Y	Y
Incest 3d	E felony	N	Y	R	D	Y	Y	Y
Incest 2d	D felony	N	Y	N	D	Y	Y	Y
Incest 1st	B felony	N	Y	N	D	Y	Y	Y
Fac. Sexual Perf. Child CSA	B felony	N	Y	N	D	Y	Y	Y
Use Child in Sexual Performance	C felony	N	Y	N	D	Y	Y	Y
Prom. Obscene Sexual Perf of Child	D felony	N	Y	N	D	Y	Y	Y
Luring a Child	E felony *	N	Y	N	D	Y	Y	Y
Sex Trafficking	B felony	N	Y	N	D	Y	Y	Y
Sex Trafficking of a Child	B felony	N	Y	N	D	Y	Y	Y
Crime alleged to have caused death Felony or A misd involving harm to an identifiable person or property when on release for similar crime			Y	N	D	Y	Y	Y
					D	Y/N*	Y	Y*
VFO *					D	Y	Y	Y
Felony Sex Offense (PL 70.80)					D	Y	Y	Y
Article 130 Misd. Sex Offense					D	Y	Y	Y
Class A Felony *					D	Y	Y	Y

New Information in Red

Ellen C Schell is General Counsel for the NYS Office for the Prevention of Domestic Violence. Previously, she was Counsel to The Legal Project, in Albany, New York, and provided national training and technical assistance to civilian attorneys and advocates working with military-related survivors of intimate partner violence. From 2006 – 2009, Ellen was an Assistant District Attorney in Essex County, New York, where she had primary responsibility for prosecution of domestic violence, stalking, and sexual assault cases. Ellen was also Legal Director at The Legal Project from 2001 until 2006, providing civil legal services to survivors of sexual assault and domestic violence, and supervising other legal services provided by the organization. Ellen graduated from Albany Law School *magna cum laude* in 1993. Prior to law school, she worked in organizations providing direct assistance to survivors of sexual assault and domestic violence.