

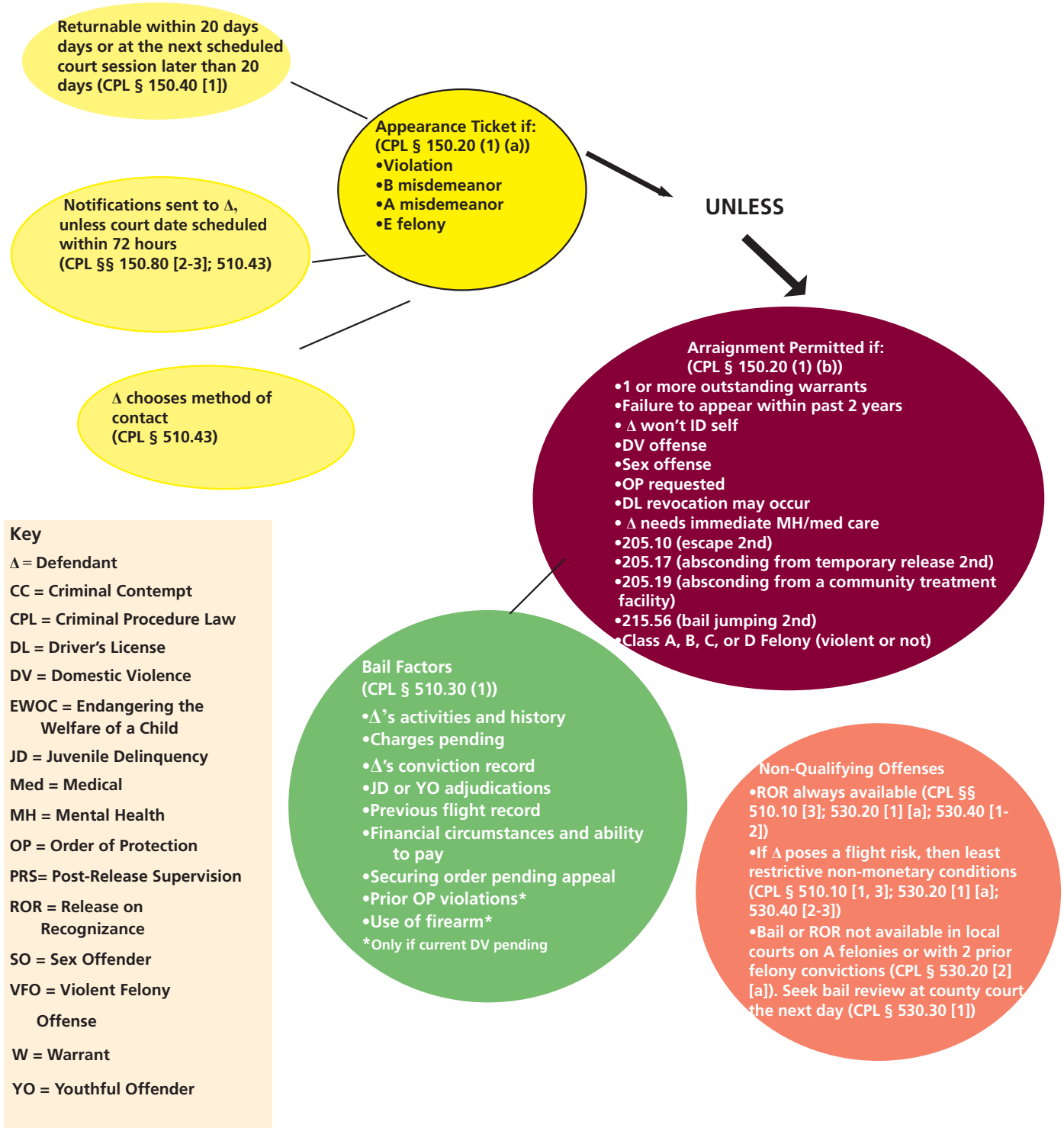
Working with the New Bail Statutes

By Leah R. Nowotarski

UPDATE TO THE CHART PREVIOUSLY PUBLISHED IN JANUARY 2020 TO REFLECT RECENT STATUTORY CHANGES IN BAIL. This flow chart is a simple, visual, and graphical description of the new bail statutes that will start on July 3, 2020. The Criminal Justice Section hopes that it will assist law enforcement, attorneys, and judges during arrest and arraignment. It is intended to help those parties incorporate the new changes in bail quicker and easier by consulting the chart whenever needed. The Section encourages those parties to review the new statutes to enhance their individual knowledge and experience. Spe-

cial thanks goes out to the invaluable assistance from Andrew Kossover, criminal defense attorney and former public defender, Ulster County.

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Qualifying Offenses for Bail (CPL § 510.10 (4)) [LINK]

One form must be unsecured or partially secured surety bond (CPL § 520.10 [b])

Monetary bail and remand allowed (CPL §§ 510.10 [4]; 530.20 [1] [b]; 530.40 [4])

3 forms of bail required (CPL § 520.10 [b])

ROR still available (CPL §§ 510.10 [4]; 530.20 [1] [b]; 530.40 [4])

- 105.15 Conspiracy 2nd (to commit 125 A Felony)
- 120.00 Assault 3rd (charged as a hate crime under 485.05)
- 120.04 Vehicular Assault 1st
- 120.04-a Aggravated Vehicular Assault
- 120.12 Aggravated Assault
- 120.70 Luring a Child
- 121.11 Criminal Obstruction of Breathing (committed against member of Δ 's same family or household under 530.11)
- 121.12 Strangulation 2nd (committed against member of Δ 's same family or household under 530.11)
- 130 Sex Offense Misdemeanor
- 135.10 Unlawful Imprisonment 1st (committed against member of s same family or household under 530.11)
- 140.25 (2) Burglary 2nd (only where the s charged with entering the living area of the dwelling)
- 150.10 Arson 3rd (charged as a hate crime under 485.05)
- 155.42 Grand Larceny 1st
- 168-t Failure to Register (where Δ is Level 3 SO and must register)
- 205.05 Escape
- 205.10 Escape
- 205.15 Escape
- 215.11 Witness Tampering
- 215.12 Witness Tampering

- 215.13 Witness Tampering
- 215.15 Witness Intimidation
- 215.55 Bail Jumping
- 70.80 Sex Offense Felony
- 105.15 Conspiracy 2nd (to commit 125 A Felony)
- 120.00 Assault 3rd (charged as a hate crime under 485.05)
- 120.04 Vehicular Assault 1st
- 120.04-a Aggravated Vehicular Assault
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- 140.25 (2) Burglary 2nd (only where the Δ is charged with entering the living area of the dwelling)
- 150.10 Arson 3rd (charged as a hate crime under 485.05)
- 155.42 Grand Larceny 1st
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- 205.05 Escape
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- 215.11 Witness Tampering
- 215.12 Witness Tampering
- 215.13 Witness Tampering
- 215.15 Witness Intimidation
- 215.55 Bail Jumping
- 215.56 Bail Jumping
- 215.57 Bail Jumping
- 230.34 Sex Trafficking
- 230.34-a Sex Trafficking
- 255.25 Incest
- 255.26 Incest
- 255.27 Incest
- 260.10 EWOC (where Δ is Level 3 SO and must register)
- 263.05 Use of a Child in Sexual Performance
- 263.10 Promoting an Obscene Sexual Performance by a Child
- 263.15 Promoting a Sexual Performance by a Child
- 263.30 Facilitating Sexual Performance by a Child
- 265.01-a CPW on School Grounds
- 460.20 Enterprise Corruption
- 470.20 Money Laundering 1st
- 470.24 Money Laundering Terror 1st
- 470.23 Money Laundering Terror 2nd
- 470.22 Money Laundering Terror 3rd
- 470.21 Money Laundering Terror 4th
- 490 Terrorism (excludes 490.20)
- Any felony committed while on probation or PRS
- A felony for which the qualifies for persistent felony offender sentencing
- Any felony or Class A misdemeanor involving harm to identifiable person or property while Δ is otherwise released
- Any VFO (excludes 160.10 Robbery 2nd)
- Any crime that allegedly causes the death of another person
- Any Class A Felony (only A-1 felonies under 220, though)

GPS only for felonies and specified misdemeanors. Courts' reasoning must be on record or in writing (CPL § 510.10 [1]). Reviewable and renewable every 60 days (CPL § 510.40 [4] [d])

Imposed pursuant to particular defendant, case, and defendant's circumstances/situation

Least Restrictive Non-monetary Conditions (CPL § 500.10 (3)(a)):

1. Pretrial services and/or supervision
2. Travel restrictions
3. Passport surrender
4. Refrain from firearm, destructive device, or weapon possession
5. Restrictions on associations (with victims, witnesses, or co-defendants)
6. Program placement (counseling, treatment, DV intervention, hospital under MHL § 9.43)
7. Maintain employment, housing, school, education
8. Obey OP
9. GPS monitoring

May be imposed singularly or in combination

Practice Tips

- 510.50 (2) = anytime judge issues W, 48-hour stay to allow defendant to appear
- 170.70 and 180.80 apply, GPS = in custody
- 510.45(3)(a) = risk assessment instrument used for ROR purposes must be made available promptly upon written request
- Court may always set monetary bail upon Δ 's request in any situation (CPL §§ 510.10 [5]; 530.20 [1][d]; 530.40 [5])