

# SUMMARY OF NEW AMENDMENTS TO BAIL, DISCOVERY & MORE

## I. BAIL

The new bail law still excludes dangerousness, but expands eligibility for money bail and pre-trial detention. It takes effect in 90 days. (Bill text: See Part UU [here.](#))

### EXPANSION OF QUALIFYING OFFENSES:

#### ***VIOLENT FELONIES:***

- BURGLARY 2<sup>ND</sup> (140.25(2)) “only where the defendant is charged with entering the living area of the dwelling” (excludes vestibules, hallways in apt. buildings, and attached garages)
- STRANGULATION 2<sup>ND</sup> (note: this is a D violent so it was already a qualifying)
- SEX TRAFFICKING 230.34(note: 230.34(5)(a) &(b) were already violent B felonies so already a qualifying)
- SEX TRAFFICKING – CHILD, 230.34-a (B violent, so already a qualifying)

#### ***NON-VIOLENT FELONIES:***

- CLASS A-I DRUG FELONIES
- ALL HOMICIDES (manslaughters, negligent homicides)
  - And, because language is “ANY CRIME THAT THAT IS ALLEGED TO HAVE CAUSED THE DEATH OF ANOTHER PERSON” it could include VTL 511 (if accidentally causes death), VTL 600 (leaving the scene of an accident).
- FAILURE TO REGISTER UNDER SORA WHERE DEFENDANT IS CLASSIFIED LEVEL 3, Corr. L. 168 et al. (1<sup>ST</sup> offense, E felony)
- SEX TRAFFICKING, 230.34(1)-(4) and (5)(c – h) (B felony)
- MONEY LAUNDERING IN SUPPORT OF TERRORISM 3<sup>RD</sup> AND 4<sup>TH</sup>, 470.22 (D felony) & 470.21(E felony)
- PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD, 263.15 (D felony)
- AGGRAVATED VEHICULAR ASSAULT, 120.04-a (C felony), VEHICULAR ASSAULT 1<sup>ST</sup>, 120.04 (D felony)
- ASSAULT IN THE 3<sup>RD</sup> AS **HATE CRIME** (E FELONY)
- ARSON 3<sup>RD</sup> AS **HATE CRIME** (B FELONY)
- AGGRAVATED ASSAULT UPON A PERSON LESS THAN 11 YEARS OLD, 120.12 (E FELONY)
- CRIMINAL POSSESSION OF A WEAPON ON SCHOOL GROUNDS, 265.01-a (E felony) (a student brings a pocket knife to school)
- GRAND LARCENY 1<sup>ST</sup>, 155.42 (B felony)(\$1M)
- ENTERPRISE CORRUPTION, 460.20 (B FELONY)
- MONEY LAUNDERING 1<sup>ST</sup>, 470.20 (B FELONY)
- BAIL JUMPING 1<sup>ST</sup> AND 2<sup>ND</sup>, 215.57 & 215.56 (D AND E FELONIES)
- ESCAPE 1<sup>ST</sup> AND 2<sup>ND</sup> 205.15 & 205.10 (D AND E FELONIES)

- UNLAWFUL IMPRISONMENT 1<sup>ST</sup>, 135.10 (E felony)
- FOR REPEAT OFFENSES/ARRESTS
  - ANY FELONY WHILE ON PROBATION OR POST RELEASE SUPERVISION
  - ANY FELONY IF QUALIFIES FOR LIFE SENTENCE AS A DISCRETIONARY PERSISTENT OFFENDER UNDER PENAL LAW 70.10
  - FELONY WHERE “**HARM**” OCCURRED TO AN IDENTIFIABLE PERSON OR PROPERTY WHILE OUT ON A SEPARATE FELONY OR CLASS A MISDEMEANOR WHERE HARM OCCURRED TO AN IDENTIFIABLE PERSON OR PROPERTY. PROSECUTORS MUST SHOW “REASONABLE CAUSE” THAT THE DEFENDANT COMMITTED BOTH OFFENSES.

**CLASS A MISDEMEANORS**

- DOMESTIC VIOLENCE: OBSTRUCTION OF BREATHING, 121.11
- ENDANGERING WELFARE OF A CHILD, 260.20 – ONLY IF A LEVEL 3 (highest) SEX OFFENDER
- BAIL JUMPING 3<sup>RD</sup>, 215.55
- ESCAPE 3<sup>RD</sup>, 205.05
- FOR REPEAT ARRESTS
  - ANY CLASS A MISDEMEANOR WHILE ON PROBATION OR POST-RELEASE SUPERVISION (BUT NOT PAROLE OR CONDITIONAL RELEASE)
  - ANY CLASS A MISDEMEANOR WHERE HARM OCCURS TO AN IDENTIFIABLE PERSON OR PROPERTY (ASSAULT 3, CRIMINAL MISCHIEF) WHILE OUT ON A SEPARATE FELONY OR CLASS A MISDEMEANOR WHERE HARM OCCURRED TO AN IDENTIFIABLE PERSON OR PROPERTY. PROSECUTORS MUST SHOW “REASONABLE CAUSE” THAT THE DEFENDANT COMMITTED BOTH OFFENSES.

**EXPANSION OF NON-MONETARY CONDITIONS OF RELEASE** – “...shall be the least restrictive conditions that will reasonably assure the principal's return to court and reasonably assure the principal's compliance with court conditions.” NON-EXCLUSIVE (JUDGE CAN ADD MORE NOT SPECIFIED):

- SURRENDERING PASSPORT
- MANDATORY PROGRAMS (counseling, treatment, intimate partner violence, placement in hospital under MHL 9.43) WHILE IN PRE-TRIAL SERVICES – no longer maintaining contact or just “supervision”
- REFRAIN FROM “ASSOCIATING” WITH PERSON CONNECTED TO THE ALLEGED CRIME (not just victims and eyewitnesses, also *co-defendants*)
- MAKE DILIGENT EFFORTS TO MAINTAIN EMPLOYMENT HOUSING OR ENROLLMENT IN SCHOOL/EDUCATIONAL PROGRAMMING
- OBEY AN ORDER OF PROTECTION
- CONDITIONS SET BY COURT ADDRESSED TO SAFETY OF VICTIM OF FAMILY OFFENSE, INCLUDING REASONABLE CONDITIONS REQUESTED BY OR BEHALF OF VICTIM

- ELECTRONIC MONITORING - MUNICIPALITIES CAN CONTRACT WITH PRIVATE COMPANIES BUT THE COMPANIES CANNOT INTERACT WITH DEFENDANT
- DEFENDANT STILL CANNOT BE MADE TO PAY FOR ANY CONDITIONS OF RELEASE, INCLUDING ELECTRONIC MONITORING.

**DATA COLLECTION BY OCA AND DCJS** – DISAGGREGATED TO PROTECT CONFIDENTIALITY OF DEFENDANTS.

- RACE, GENDER, ETHNIC, CHARGE TYPE, RELEASE, RELEASE WITH CONDITIONS, BAIL, DETENTION, LENGTH OF TIME IN JAIL, OUTCOMES

**APPEARANCE TICKETS** – 20 DAY RETURN PERIOD EXTENDED IF COURT DOES NOT MEET WITHIN 20 DAYS OF THE ISSUANCE DATE

CLARIFICATION THAT BAIL/REMAND AUTHORIZED FOR CONVICTION BUT **PENDING SENTENCE OR APPEAL.**

**CONTACT INFORMATION** – IF DEFENDANT REFUSES TO PROVIDE THEN HE OR SHE FORFEITS THE RIGHT TO GET COURT NOTIFICATION.

## II. DISCOVERY

The new law takes effect in 30 days. **See full text at Part HHH [here.](#)**

TIMELINES ***EXPANDED***:

- IF IN CUSTODY while case is pending – 20 days
- IF NOT - 35 days

Under automatic 30-day extension: “VOLUMINOUS” ***clarified*** –may include body worn camera, video surveillance and dashboard cameras

THESE TIMELINES **DO NOT APPLY WHERE:**–

- Simplified information charges a traffic infraction (DWAI, included), or petty offense in a municipal code provided no imprisonment is authorized and no crime is also charged:
  - Then 15 days before trial, unless defense files a written motion to get earlier
- 911 caller information is withheld and DA ***intends*** to call that person
  - Then 15 days - or as soon as practicable - before trial or hearing, only the name and contact information. Not clear whether we can file a motion for earlier disclosure (245.20(1)(g))

***RIGHT OF AUTOMATIC NON-DISCLOSURE*** now extends beyond confidential informants, and includes identify of 911 callers, victims and witnesses in Article 130 offenses, sex trafficking, or other crimes involving a substantiated affiliation with a criminal enterprise (e.g.,

gang cases). DA IS NOT REQUIRED TO SEEK A PROTECTIVE ORDER. But absent “good cause” the prosecutor must disclose that the information is being withheld -in writing. If the defense knows 911 call was made, we may move for disclosure.

- Under (g) “electronic recordings, etc.” Prosecution does not have to disclose names or identifying information of 911 callers UNLESS it intends to call such person

**LIMITED DISCLOSURE:**

- Under (f) “expert opinion, etc.) – the prosecutor needs only provide a “list” of proficiency tests and results – not the actual substantive tests.
- Under (j) “scientific tests, reports, etc.” – the prosecutor does not need to disclose “results” of exams or tests until completed. No more “summaries.”

**PROTECTIVE ORDERS EXPANDED:**

- 911 calls do not have to be turned over. Instead, a transcript can be disclosed. (“good cause” standard still applies)
- If charge is VIOLENT FELONY or any CLASS A FELONY (other than drugs), hearing can be conducted in camera – upon prosecutor’s request and good cause.

OCA MUST PUBLISH **ANNUAL REPORTS** about the impact and implementation procedures.

**WAIVERS OF DISCOVERY:**

- Court must make inquiry about the waiver on the record (no written or signed waiver).
- Court may not force defense counsel to advise client about waiver and refuse to take plea if counsel refuses (to sign any form).
- Waiver can’t be conditioned on 440 repleaders.

**CERTIFICATE OF COMPLIANCE and SPEEDY TRIAL:**

- Prosecutor can file coc where certain material is lost or destroyed.
- Court can find prosecution ready for trial if non-disclosure resulted from lost, destroyed or “otherwise unavailable” material:
  - But there must be diligent, good faith efforts to locate and disclose such material – and those efforts must additionally be reasonable under the circumstances.
  - Sanctions still available for such non-disclosures
- No discovery conferences (?) - **challenges** or **questions** about a coc must be addressed by **motion** (not clear if must be in writing).

### **III. OTHER CHANGES**

**Subway offender ban**

- Gives the court the discretion to ban a person from using or entering MTA’s services and facilities for up to three years for the following offenses:
  - A crime involving assault or attempted assault against MTA personnel;
  - A person convicted of a crime involving sexual assault against a customer, passenger or MTA personnel
- Court can suspend, modify or cancel in the interest of justice if a person depends on the MTA for necessary trips (medical, legal, school, employment)

- Unclear how this will be enforced.
- See text at Part VVV [here](#).

### **Change in terrorism laws**

- Terrorism offenses added to list of hate crimes
- Two new terrorism offenses created:
  - Domestic act of terrorism motivated by hate in the first degree
    - A-I felony
    - Mandatory sentence of life without parole
  - Domestic act of terrorism motivated by hate in the second degree
    - A-I felony
- See full text at Part R [here](#).