

Judicial Power and Discretion Under the Current Bail Law

General Power and Discretion of Judges

1. Set bail in cases involving violent felony or class A felony charges, or allegations of sex offenses (including incest), money laundering in support of terrorism & acts of terrorism, witness intimidation and tampering, and violations of orders of protection in domestic violence cases.
2. Order a wide range of conditions of release including, but not limited to, check-ins with pretrial service agencies, restrictions on travel, restrictions on owning/possessing firearms, supervised release and electronic monitoring. (Supervised release in NYC also provides court reminders and a wide range of voluntary services to individuals).
3. Issue an order of protection requiring the accused to stay away from a person or place; violations of orders of protection may, in many circumstances, result in bail or remand (see below)
4. Set insurance company bond in bail eligible cases which requires the posting of collateral and regular check-ins with the bondsman company.
5. Order electronic monitoring for all felonies, domestic violence, and sex offenses, which can help assure accused individuals meet a curfew, are limited to where they can go and that they are not violating an order of protection.
6. Monitor and supervise the accused by adjourning cases for a very short time to ensure compliance with conditions of release.
7. Make plea offers and attach conditions that are appropriately tailored to the facts and circumstances of the case, the needs of the accused, and the desires of the complainant. Judges are more limited in their power to jail someone and impose conditions at the pre-trial phase because the person is presumed innocent, there has been no evidence presented, and the person has not pleaded guilty or been convicted of anything. Once a case has been resolved, judges have the full range of sentencing options.

Additional Power and Discretion in Specific Cases

Driving While Intoxicated

- a. The accused's driver's license can be suspended or revoked while the case is pending.
- b. Judges can order a drug and alcohol assessment at the arraignment which must be completed within five days of the arraignment.
- c. Judges can order a person to wear a SCRAM ankle bracelet which indicates if the individual has consumed alcohol

Mental Health Issues

- a. A judge can order that an accused person be committed under Mental Hygiene Law 9.43. In such cases, the person is taken to the hospital directly from court and held for 3 days. Within 3 days, a psychiatrist, not a judge, will decide if the person is a "danger to themselves or others." If they find the person is a "danger to themselves or others," they can keep the person until that is no longer the case. This is a "civil commitment," which makes the person eligible for a Mental Hygiene Legal Services attorney to protect their rights in the mental health system. While in the hospital, the patient receives mental health services designed to treat their illness and when they are ready to leave the hospital, they receive discharge planning, which addresses the underlying problem and is a better option than incarcerating the person, which would likely make their illness worse.

Domestic Violence

- a. The judge can set bail or remand if the person violates an order of protection both on the underlying case regardless of whether it was a non-qualifying (non-bail) case, as well as bail on the new “contempt” case.
- b. The judge can consider whether the person has a history of violating orders of protection and whether an order of protection is still in effect, as well as whether the person has a history of possessing firearms when determining the type of “securing order”(i.e. release on recognizance, pre-trial services, electronic monitoring, bail or remand).
 - i. The judge can also forbid the person from owning or purchasing a firearm as part of an order of protection. This law is in alliance with federal laws.
 - ii. The new “extreme risk order of protection” law permits a prosecutor, police officer, family member or intimate partner to ask for an order requiring a person to immediately surrender any known or suspected weapons. A police officer may also search the person or the home to look for such weapons.
 - iii. Some jurisdictions are developing pretrial conditions and programming specific to cases involving allegations of domestic violence.

Re-Arrest

- a. If someone is released on a felony charge and gets re-arrested on another felony charge, the court can set bail on the original felony. If the new charge is bail eligible, the court can, of course, also set bail on that case.
- b. If someone is re-arrested, the judge can also require additional conditions of releases such as more frequent and in-person monitoring.

Non-appearance in court

The judge can set bail if a person willfully and persistently misses court on their case