

DEAN'S HOUR:
UPDATE ON NEW YORK'S
BAIL LAWS

PRESENTED BY
THE NASSAU ACADEMY OF LAW

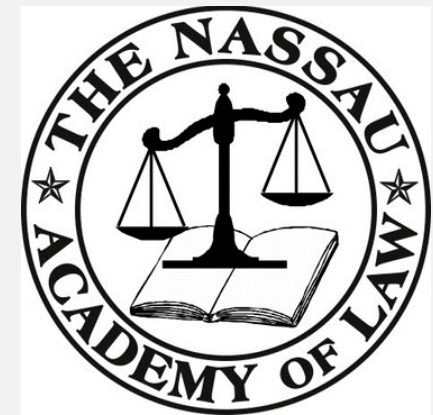
WITH THE CRIMINAL COURT LAW AND
PROCEDURE COMMITTEE

AND THE NASSAU COUNTY COUNSEL
DEFENDER PLAN

JUNE 13, 2023



Nassau County
Bar Association
Founded in 1899



GUEST SPEAKERS

HON. MICHAEL MONTESANO

Nassau County District Court

ALI AJAMU

Chief, County Court Trial Bureau, Nassau County District Attorney's Office

MARC C. GANN

Collins Gann McCloskey & Barry, PLLC

TIMOTHY NAPLES

Deputy Chief, County Court Bureau, The Legal Aid Society of Nassau County

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HON. MICHAEL MONTESANO

- Judge Michael Montesano has served as a Judge of the Nassau County District Court since July 2022. Prior to joining the bench, he served as a member of the New York State Assembly, representing the 15th District, from 2010 until 2022. Judge Montesano also served as acting village justice and a village prosecutor for Roslyn Harbor. He practiced law for over 30 years and specialized in various areas including criminal law. He received his law degree from the City University of New York School of Law at Queens College in 1989, and his bachelor's degree in criminal justice from St. John's University in 1986. Prior to practicing law, Judge Montesano was a police officer and detective for the New York City Police Department.

ALI AJAMU

- Ali Ajamu is a nineteen-year veteran of the Nassau County District Attorney's Office (NCDAO). He is currently the Bureau Chief of the NCDAO's County Court Trial Bureau (CCTB). The CCTB is responsible for prosecuting a wide range of felony cases – from simple department store shoplifting to violent attempted murder with firearms. During Chief Ajamu's time in the NCDAO he has been assigned to the County Court Trial Bureau, the Street Narcotics and Gangs Bureau (SNAG), and the Major Offense Bureau (MOB) as a trial attorney. Chief Ajamu has also been a manager in the District Court Trial Bureau, the Major Crimes Bureau, and the Narcotics Firearms and Gangs Bureau. Prior to joining the NCDAO Chief Ajamu was a police officer in the New York City Police Department.

MARC C. GANN

- Marc C. Gann is one of the most highly regarded criminal defense lawyers on Long Island and has handled countless high-profile cases across the New York metropolitan area. He holds an AV rating from Martindale Hubbell, their highest rating in skill and ethics. Before becoming a criminal defense attorney Marc served as a prosecutor in Nassau County. He is a founding partner of Collins Gann McCloskey and Barry, PLLC. Marc has served as the president of the Nassau County Bar Association and a co-chair of its charitable arm, the We Care Fund. He currently serves on the Executive Committee of the Criminal Justice section of the New York State Bar Association and frequently lectures for bar associations and local schools.

TIMOTHY NAPLES

Timothy Naples is a graduate of Dartmouth College and the Fordham University School of Law. After graduating from Fordham Law, he joined the Legal Aid Society of Nassau County in the Fall of 2003. He has handled appeals in the Appellate Division and Appellate Term, as well as Parole Revocation hearings at the Nassau County Jail. As a staff attorney, he has represented clients in the County and District Courts. Since 2011, he has been a supervisor at Nassau Legal Aid, first as Deputy Chief in the District Court Bureau. Since the Fall of 2021, he has been a Deputy Chief in the County Court Bureau. Tim lives in Nassau County with his wife and two children.

THE LAW BEFORE BAIL REFORM

Prior to January 1, 2020, courts could release a defendant on his own recognizance (ROR), set bail, or remand the defendant into custody.

When deciding whether to set bail, judges were required to consider the kind and degree of control or restriction necessary to secure the defendant's return to court. Judges could consider factors including the defendant's character and reputation, employment and financial resources, family and community ties, criminal record, and history of showing up (or not) to court.

Judges had flexibility to modify a defendant's bail status for a variety of reasons, including if he failed to return to court or committed a new crime.

BAIL REFORMS
EFFECTIVE
JANUARY 1, 2020

In April 2019, New York reformed its bail laws. The changes eliminated monetary bail and pre-trial detention for most people charged with misdemeanors and nonviolent felonies.

In addition to ROR, bail, and remand, the reforms added non-monetary conditions of release, including contact with a pre-trial services agency and electronic monitoring.

A judge could only impose bail or non-monetary conditions if the defendant was charged with a “qualifying offense” and if the judge found that such condition was necessary to ensure the defendant’s return to court.

The changes restricted judges’ abilities to change a defendant’s bail status for failing to return to court and committing new crimes.

THE “LEAST RESTRICTIVE ALTERNATIVE” RULE

An overarching principle of the bail reforms was that courts were required to ROR defendants unless they made an individualized determination that the defendant was a flight risk.

If a judge found that the defendant posed a risk of flight to avoid prosecution, the court was required to “select the least restrictive alternative and condition or conditions that will reasonably assure the principal’s return to court.” CPL 510.10(1).

The “least restrictive alternative” rule was eliminated in the 2023 changes.

FURTHER CHANGES TO THE BAIL LAWS IN 2020 AND 2022

Later in 2020, and again in 2022, New York made further changes to its bail laws.

These changes added more qualifying offenses and provided additional bases for which judges could impose monetary or non-monetary conditions of release.

2023 CHANGES TO THE BAIL LAWS

In May 2023, the state made further changes to its bail laws as part of the 2023-2024 state budget legislation.*

These changes took effect on June 2, 2023.

**See S-4006-c/A-3006-c, the Education, Labor, and Family Assistance Article VII Budget Bill, Subpart A of Part VV.*

WHAT REMAINS THE SAME DESPITE THE 2023 CHANGES

The stated overarching principle for securing order proceedings is to ensure a defendant's return to court.

The list of qualifying offenses.

The enumerated factors for judges to consider in setting bail, non-monetary conditions, or remand.

The presumption of ROR for non-qualifying offenses.

A SUMMARY OF THE 2023 CHANGES TO THE BAIL LAWS

- The “least restrictive alternative” standard was eliminated.
- There is no longer a presumption of ROR for qualifying offenses.
- “Compliance with court conditions” can be considered in certain securing order revocation proceedings when setting a new securing order.
- Certain rules already followed by the courts, including combining monetary and non-monetary conditions, were explicitly added in these revisions.

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THE ELIMINATION OF THE “LEAST RESTRICTIVE ALTERNATIVE” RULE

CPL Article 510 was amended to eliminate the “least restrictive” alternative/condition standard.

CPL 510.10(1) eliminated the presumption for ROR for qualifying offenses and replaced the “least restrictive” conditions standard with one that requires the court to consider “the kind and degree of control or restriction necessary to reasonably assure the principal’s return to court, and select a securing order consistent with its determination [that the principal poses a risk of flight to avoid prosecution].”

THE ELIMINATION OF THE “LEAST RESTRICTIVE ALTERNATIVE” RULE

CPL 510.10(1), as amended, now reads as follows:

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall[,] **impose a securing order** in accordance with this title **[, by a securing order release the principal on the principal's own recognizance, release the principal under non-monetary conditions, or, where authorized, fix bail or commit the principal to the custody of the sheriff. In all such cases, except where another type of securing order is shown to be required by law, the court shall release the principal pending trial on the principal's own recognizance, unless it is demonstrated and].** **Except as otherwise required by law, the court [makes]** shall make and individualized determination **[that] as to** whether the principal poses a risk of flight to avoid prosecution, **consider the kind and degree of control or restriction necessary to reasonably assure the principal's return to court, and select and securing order consistent with its determination under this subdivision. [If such a finding is made, the court must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court.]**

Unchanged language appears in black, eliminated language appears in red, added language appears in green.

THE ELIMINATION OF THE “LEAST RESTRICTIVE ALTERNATIVE” RULE

CPL 510.10(1) still enumerates factors for judges to consider in selecting a securing order. Those conditions include:

- Activities and history
- Charges against the defendant
- Criminal conviction record
- Record of flight to avoid criminal prosecution (e.g. warrant history and failures to appear)
- Financial circumstances and ability to post bail without posing an undue hardship, as well as defendant’s ability to secure a bond.
- Violations of court-issued orders of protection
- History of use/possession of firearm
- Whether defendant is charged with causing serious harm to other persons.

THE ELIMINATION OF THE “LEAST RESTRICTIVE ALTERNATIVE” RULE

CPL 510.10(3) was revised to state that ROR is required for non-qualifying offenses *unless* such release would not “reasonably assure the principal’s return to court.”

And if ROR would not reasonably ensure the defendant’s return to court, the court must set non-monetary conditions of release that *would* reasonably ensure the defendant’s return to court.

THE ELIMINATION OF THE “LEAST RESTRICTIVE ALTERNATIVE” RULE

CPL 510.10(3), as amended, now reads as follows:

In cases other than as described in subdivision four of this section, the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions **[,selecting the least restrictive alternative and conditions]** **as provided for in subdivision three-a of section 500.10 of this title** that will reasonably assure the principal's return to court. The court shall explain its choice of **[alternative and conditions]** securing order on the record or in writing.

Unchanged language appears in black, eliminated language appears in red, added language appears in green.

THE ELIMINATION OF THE “LEAST RESTRICTIVE ALTERNATIVE” RULE

CPL 510.40(3) was amended to remove the “least restrictive alternative” requirement for non-monetary conditions in general.

CPL 510.40 (4)(b) was amended to remove the “least restrictive alternative” requirement specifically for electronic monitoring.

THE
PRESUMPTION
OF ROR APPLIES
TO NON-
QUALIFYING
OFFENSES BUT
NOT TO
QUALIFYING
OFFENSES

The elimination of the language “In all such cases, except where another type of securing order is shown to be required by law, the court shall release the principal pending trial on the principal’s own recognizance...” from CPL 510.10(1) removes the explicit presumption of ROR for qualifying offenses.

The explicit presumption of ROR still applies to non-qualifying offenses, as that language was not removed from CPL 510.10(3).

COURTS MAY
IMPOSE
ADDITIONAL
CONDITIONS OF
RELEASE DURING
SECURING ORDER
REVOCAATION
PROCEEDINGS

Courts can impose additional conditions of release based on a determination that such conditions are reasonably necessary to ensure a defendant returns to court.

CPL 530.60 (2)(d)(ii) was revised to eliminate the “least restrictive” condition standard with the same standard as in the amended CPL 510.10 (“the kind and degree of control or restriction necessary to reasonably assure the principal’s return to court”).

AN ADDITIONAL
CONSIDERATION
IN SECURING
ORDER
REVOCATION
PROCEEDINGS:

“COMPLIANCE
WITH COURT
CONDITIONS”

Subparagraph (iii) was added to CPL 530.60 (2)(d). This subparagraph provides new authority for a court to set a new securing order during a revocation proceeding and impose conditions that are reasonably necessary to ensure the defendant's return to court and to ensure compliance with court conditions.

AN ADDITIONAL
CONSIDERATION
IN SECURING
ORDER
REVOCATION
PROCEEDINGS:

“COMPLIANCE
WITH COURT
CONDITIONS”

CPL 530.60 (2)(d)(iii) provides that when issuing a new securing order after revoking the prior securing order, the court must “consider the kind and degree of control or restriction necessary to reasonably assure the principal’s return to court and compliance with court conditions (emphasis added), and select a securing order consistent with its determination” taking into account the factors enumerated in CPL 510.10, the circumstances warranting revocation of the prior order, and the nature and extent of the defendant’s noncompliance with the prior securing order.

AN ADDITIONAL
CONSIDERATION
IN SECURING
ORDER
REVOCATION
PROCEEDINGS:

“COMPLIANCE
WITH COURT
CONDITIONS”

CPL 530.60(2)(d)(iii) references CPL 530.60(2)(b)(ii), (iii), and (iv), and therefore applies when, during a securing order modification proceeding, the court finds by clear and convincing evidence, that defendant:

(ii) committed Criminal Contempt in the First Degree in violation of Penal Law 215.51(b), (c), or (d), for violating an order of protection.

(iii) is charged with a misdemeanor or violation and then intimidated or tampered with a witness in violation of Penal Law 215.11, 215.12, 215.13, 215.15, 215.16, or 215.17.

(iv) committed another felony while at liberty when already charged with a felony.

AN ADDITIONAL
CONSIDERATION
IN SECURING
ORDER
REVOCATION
PROCEEDINGS:

“COMPLIANCE
WITH COURT
CONDITIONS”

Because CPL 530.60(2)(d)(iii) specifically references CPL 530.60(2)(b)(ii), (iii), and (iv), it does not explicitly apply to modifications of a securing order triggered by other provisions of CPL 530.60.

Thus, this provision explicitly does not apply to securing order revocation proceedings triggered by CPL 530.60(b)(i) (defendant persistently and willfully fails to return to court) or CPL 530.60(2)(a) (defendant charged with a felony while at liberty commits a new violent felony, Class A felony, or victim or witness intimidation crime).

COMBINING MONETARY AND NON- MONETARY CONDITIONS OF RELEASE

Courts can impose both monetary and non-monetary conditions of release for qualifying offenses.

CPL 510.20(1) and 510.20(2)(b) were amended to explicitly state that judges may impose “non-monetary conditions in conjunction with bail or a reduction of bail.”

Note: courts had already presumed this authority.

MENTAL HEALTH AND CHEMICAL DEPENDENCE TREATMENT AS A CONDITION OF RELEASE

Courts can order defendants to attend mental health and chemical dependence treatment as a non-monetary condition of release through a pre-trial services agency.

CPL 500.10(f) was amended to explicitly include “mental health and chemical dependence treatment . . .” as a non-monetary condition of release.

Note: courts could already impose treatment and counseling as a condition.

CRISIS STABILIZATION CENTERS

CPL 500.10(f) was also amended to permit the court to refer a defendant to a “crisis stabilization center”, as defined in 14 NYCRR Part 60.

Crisis Stabilization Centers (CSC) are categorized as either a Supportive CSC or an Intensive CSC.

A Supportive CSC means a center that provides support and assistance to individuals with mental health and/or substance use crisis symptoms. Services are for recipients experiencing challenges in daily life that do not pose the likelihood of serious harm to self or others.

An Intensive CSC means a center that provides urgent response and/or treatment services to recipients experiencing an acute mental health and/or substance use crisis. Services are for recipients who need a higher level of care than a Supportive CSC.

Recipients may receive services in a CSC for up to 24 hours.

DEFENDANTS
CONFINED BY
SECURING
ORDERS MAY
SEEK A NEW
SECURING
ORDER

The revisions make clear that a defendant may seek a reduction in bail.

Where a charge supporting a securing order is dismissed or reduced, defendants may apply to the court to issue a new securing order that reflects such dismissal or reduction.

Note: courts were already entertaining such applications.

DISCUSSION

How will courts interpret the statutory language that replaces the “least restrictive alternative/condition” standard?

What are examples of combined monetary and non-monetary conditions of release?

How do these changes affect the court’s ability to order treatment as a condition of release?

How will judges, prosecutors, and defense attorneys view these changes?

THANK YOU TO OUR GUEST SPEAKERS

HON. MICHAEL MONTESANO

ALI AJAMU

MARC C. GANN

TIMOTHY NAPLES