



Judicial Power and Discretion Under New York State's Current Bail Law

1. Judges can set bail in cases involving:
 - a. nearly all violent felonies and all class A-I felony charges (including drug offenses)
 - b. any alleged crime that caused the death of another person
 - c. allegations of sex offenses (including incest)
 - d. money laundering in support of terrorism & acts of terrorism
 - e. witness intimidation and tampering
 - f. a defendant charged with any felony who is currently on probation or post-release supervision
 - g. a defendant charged with any felony who has a bad record of prior felony convictions ("persistent felony offender")
 - h. a domestic violence offense where an order of protection has been violated
2. Judges can order a wide range of conditions of release including but not limited to:
 - a. check-ins with pretrial service agencies
 - b. restrictions on travel and owning/possessing firearms
 - c. supervised release
 - d. electronic monitoring
 - i. Electronic monitoring (EM) can be ordered for all felonies, domestic violence, and sex offenses, ensuring accused individuals meet a curfew, respect limits on their movement, and do not violate an order of protection.
 - ii. EM can be ordered in any case if the person has a violent felony conviction within the last five years.
 - e. an order of protection requiring the accused to stay away from a person or place
 - i. Violations of orders of protection can result in bail or remand.
 - ii. An order of protection can also forbid the person from owning or purchasing a firearm.
 - iii. The new "extreme risk order of protection" law permits a prosecutor, police officer, or family member to ask for an order requiring the accused to immediately surrender any known or suspected weapons. A police officer may also conduct a search for such weapons.
3. Judges can adjourn cases for very short periods to monitor compliance with conditions of release.
4. Judges are more limited in their power to jail someone and impose conditions at the pre-trial phase because the person is presumed innocent. Once a case has been resolved, judges have the full range of sentencing options.

Judicial Power and Discretion in Specific Circumstances

Mental Health Issues

1. A judge can order that an accused person be evaluated for civil commitment under Mental Hygiene Law 9.43. In such cases, the person is taken to the hospital directly from court and held. 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.

2. 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. This system addresses the underlying illness, unlike incarceration, which would likely make their illness worse.

Domestic Violence

1. If the accused violates an order of protection on the original case, whether or not it was a non-bail case, the judge can set bail or remand.
2. Some jurisdictions are developing pretrial conditions and programming specific to cases involving allegations of domestic violence.

Driving While Intoxicated

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

Re-Arrest

1. 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. In some instances, the court can set bail on the new charge, even if it is a misdemeanor and not otherwise bail-eligible.
2. If someone is re-arrested, the judge can also require additional conditions of release such as in-person and more frequent monitoring.

Non-appearance in court

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