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# Cuomo, Lawmakers Announce Deal on State Budget, Criminal Justice Reforms

The budget deal includes changes to the state's laws on cash bail, criminal discovery and the right to a speedy trial.

By Dan M. Clark | March 31, 2019



(Photo: Shutterstock)

Lawmakers in New York are poised to approve a set of sweeping reforms to the state's criminal justice system, including an end to cash bail for most criminal charges, new deadlines on criminal discovery and stronger court oversight to ensure the right to a speedy trial.

Bail reform, which was a major sticking point among lawmakers in recent weeks, will leave the option of cash bail in place for most violent felony offenses, Class A felonies and a list of other charges outlined in the bill.

Approximately 90 percent of people charged but not convicted of a crime would be released without bail under the legislation, which will be included in the state budget that could be passed by lawmakers later Sunday night.

“Ninety percent of the people who are charged will remain out of jail. You want to talk about a life-changing measure ... these are people who would’ve been sent to Rikers in New York City,” Gov. Andrew Cuomo told reporters Sunday. “We did not handle the violent felonies ... and that’s something we’re going to continue to work on.”

Among the felony charges that would still be eligible for cash bail, if not immediate remand, are sex offenses, money laundering in support of terrorism, using a child in a sexual performance and a handful of other charges. Any of those offenses would also be eligible for pretrial incarceration.

The legislation largely leaves discretion up to the judge overseeing the criminal proceeding as to whether bail should be set, the defendant should be released or if the individual should be held in jail before trial. Judges will be allowed to consider the defendant’s record of criminal convictions, the actual charges facing that person, their history of flight risk, their “activities and history” and other factors.

Judges also would have to consider, when choosing whether to set bail for a defendant, “the principal’s ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured or partially secured bond.” That section appears to address concerns from Democrats who have argued that bail sets an undue hardship on low-income defendants while allowing wealthier individuals to remain out of jail before trial.

A defendant’s so-called dangerousness, or threat to public safety, will not be allowed to be considered by judges, which is the same as the current law. Many Democrats in both the Senate and Assembly were opposed to including the factor as a way to end cash bail altogether.

Judges can, instead of setting bail for a defendant, release them under non-monetary conditions, such as electronic monitoring or the supervision of a pretrial services agency. But the legislation includes standards under which a defendant could be electronically monitored.

Only those charged with a felony, misdemeanor domestic violence, a handful of other offenses or convicted of a violent felony offense within a five-year period would be eligible for electronic monitoring. Electronic monitoring of the defendant would be allowed for two months but could be renewed.

Defendants would have the option to make an application with the court at any point to ask for their release or have bail set after a judge has previously ordered that they be incarcerated before their trial. Those defendants would have access to counsel when making that application.

Judges also could impose tighter restrictions on a defendant, if prosecutors can show clear and convincing evidence that the individual violated any conditions set as part of their release.

Police officers now also will be limited to issuing appearance tickets, rather than making an arrest, for most low-level crimes. Those tickets will be required when an individual is accused of any charge other than a Class A, B, C, or D felony or has allegedly violated a few other charges listed in the legislation, like rape in the third degree, a Class E felony.

Officers would have the option of making an arrest, if certain conditions are met, like if the person has an outstanding warrant or if the alleged crime is between members of the same family or household. After an appearance ticket is issued, the local criminal court would be responsible for issuing reminders, according to the bill.

## **Criminal Discovery Reform**

Changes to the state's laws on criminal discovery will require prosecutors and the defense to exchange the first phase of material to be used at trial within 15 days of a person's arraignment. The legislation closely resembles a bill sponsored this year by state Sen. Jamaal Bailey, D-Bronx, and Assemblyman Joseph Lentol, D-Brooklyn.

That sort of deadline currently doesn't exist in state law. Defense attorneys and criminal justice advocates have claimed that's led to situations where defendants aren't told what will be used against them at trial until days before their court date. State law will now mandate that prosecutors make that material available to the defense within 15 days after their arraignment.

If prosecutors can't make that deadline, either because it's too much to exchange within that time or they don't have the actual material in their possession, they'll have an additional 30 days after the initial deadline to get that material to the defense, according to the legislation. They also can ask the court to withhold certain information they claim to be nondiscoverable, but that will be up to the judge.

Discoverable information that defendants would be allowed to access include all written and recorded statements; grand jury transcripts; the names and contact information of witnesses and others who offered evidence; the names and work affiliation of all law enforcement personnel with evidence or information against the defendant; expert opinion; tapes and electronic recordings; any visual reproductions, such as photos; and several other types of material.

The defense will have to exchange their own discoverable material to be used at trial within 30 days of receiving a certificate of compliance from the prosecution.

Either side will be allowed to move the court for a protective order that would deny, restrict or set conditions on discoverable material, including the information of witnesses either side intends to call at trial. That could allow only the defendant's attorney to have access to certain information that couldn't be shared with their client by law.

Defendants also will be allowed to review whatever evidence prosecutors have against them before they decide to plead guilty to a crime, according to the announcement. That's a significant change, since the majority of criminal cases are resolved through a plea deal between prosecutors and defendants.

## **Speedy Trial Changes**

The changes to the state's laws on the right to a speedy trial are intended to offer more oversight into a prosecutor's so-called readiness to go to trial. Current law requires that misdemeanors and felonies be disposed in three and six months, respectively, but those deadlines are often evaded through procedural moves or other hurdles.

If those deadlines are passed, a defendant can move to have the charges against them dropped based on timeliness.

One complaint from defense attorneys has to do with a procedural move where prosecutors have, on occasion, told the court they're ready to go to trial but then would say they weren't ready to go to trial at the next appearance. That stops the clock on the number of days considered to have passed since the defendant's arraignment.

The new changes would require the court to inquire whether a prosecutor is actually ready to go to trial when they say they are. If the court finds the prosecution actually is not ready to go to trial, the statement of readiness wouldn't be accepted. That's intended to prevent prosecutors from procedurally delaying a defendant's trial.

Lawmakers are expected to approve the changes as part of the state budget later Sunday evening. Voting will likely stretch into early Monday morning and possibly later.

## **Prosecutors, Defenders Weigh In**

The District Attorneys Association of the State of New York has been opposed to this year's proposals for criminal justice reform, and that didn't change with Sunday's deal. Albany County District Attorney David Soares, the current president of DAASNY, said in

a statement that lawmakers ignored the views of prosecutors, who have warned against the changes.

“Our hope was that our lawmakers would heed some of the suggestions by prosecutors concerning the procedure involved in the bills related to bail, discovery and speedy trial. Instead they have set up unrealistic, unworkable requirements that ultimately will fail the very people and communities they were intended to benefit,” Soares said. “We once again got the same three people in a room and a race to a press conference to announce a budget.”

Defense attorneys lauded the deal after advocating for the changes for years, but said they’ll continue to advocate for more reform at the state level, including a complete end to cash bail in New York. Tina Luongo, attorney-in-charge of the criminal defense practice at the Legal Aid Society, hailed the decision to leave “dangerousness” out of the legislation, a choice advocates had pushed for in recent weeks.

“Finally after decades of fighting tirelessly for the dignity of New Yorkers, the state has taken a historic stride toward a fairer criminal legal system by reforming our bail, speedy trial and discovery bills,” Luongo said. “However, we are holding the legislatures to their promise to end cash bail for all offenses in New York State. ... We will not rest until the presumption of innocence is truly provided to everyone.”

The reforms have been a top priority this year for lawmakers, who have been negotiating them since January. Cuomo included his own proposals for the changes in his executive budget in January, but those were altered through discussions with lawmakers. Assembly Speaker Carl Heastie, D-Bronx, lauded the reforms in a statement with the announcement.

“Since I became speaker in 2015, it has been my personal mission to correct the tilted scales of justice for New Yorkers, and this year’s budget agreement makes a giant leap toward realizing these goals: reforming our bail system, ensuring the right to a speedy trial, and making critical changes to New York’s discovery process,” Heastie said.

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