

Rules Governing Recognizance, Release, Bail and Remand of a Defendant charged with PL 140.25:

General Rule: When a defendant comes under the control of a court, such court shall, in accordance with [CPL Part 3 Title P](#), by a [securing order](#) release the defendant on the defendant's own [recognizance](#), release the defendant under [non-monetary conditions](#), or, where authorized, [fix bail](#) or [commit the defendant to the custody of the sheriff](#). In all cases, except where another type of securing order is shown to be required by law, the court shall release the defendant pending trial on the defendant's own recognizance, unless it is demonstrated and the court makes an individualized determination that the defendant poses a risk of flight to avoid prosecution. If such a finding is made, the court must select the least restrictive alternative and condition or conditions that will reasonably assure the defendant's return to court. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing (CPL 510.10(1)). Court must base its determination on available information including [statutory factors](#) relevant to defendant's return to court.

Recognizance: Pending trial the court may in its discretion order [recognizance](#) and, unless this charge constitutes a qualifying offense, the court shall release defendant on defendant's own recognizance, unless it finds on the record or in writing that release on recognizance will not reasonably assure defendant's return to court (CPL 510.10(3)).

NB: A local criminal court may not order recognizance or bail when defendant has two previous felony convictions (CPL 530.20(2)(a)); application for recognizance, release or bail may be made to superior court (CPL 530.30(1)(a)).

Release on Conditions: If release on [recognizance](#) would otherwise be authorized or required but the court finds on the record or in writing that release on recognizance will not reasonably assure defendant's return to court, then the court shall [release defendant under non-monetary conditions](#), selecting the least restrictive alternative and conditions that will reasonably assure defendant's return to court (CPL 510.10(3)).

[Electronic monitoring](#) of defendant's location may be ordered only if the court finds, after notice, opportunity to be heard and an individualized determination explained on the record or in writing, that defendant [qualifies for electronic monitoring](#) and no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure defendant's return to court (CPL 510.40(4)).

PL 140.25 qualifies for electronic monitoring because it is a felony (CPL 510.10(21)).

PL 140.25 qualifies for electronic monitoring, as does any crime, if court by clear and convincing evidence has found that defendant :

- (i) has persistently and willfully failed to appear after notice of scheduled appearances in the case before the court; or
- (ii) has violated an order of protection contrary to PL [215.51](#) while at liberty; or

(iii) while charged with a misdemeanor, has intimidated a victim or witness in violation of PL [215.15](#), [215.16](#) or [215.17](#) or tampered with a witness in violation of PL [215.11](#), [215.12](#) or [215.13](#) while at liberty; or
(iv) while charged with a felony, has committed a felony while at liberty

(CPL 510.10([21](#)), 530.60([2](#))([b](#))).

Qualifying Offense: PL 140.25(1) is a qualifying offense pursuant to CPL 510.10(4)([a](#)) because it is a [violent felony offense](#).

PL 140.25(2) is a qualifying offense pursuant to CPL 510.10(4)([a](#)) only if defendant is charged with 'entering the living area of the dwelling.'

PL 140.25 is a qualifying offense pursuant to CPL 510.10(4)([r](#)) if this felony is alleged to have been committed by defendant while 'serving a sentence of probation or ... released to post release supervision.'

PL 140.25 is a qualifying offense pursuant to CPL 510.10(4)([s](#)) if defendant is eligible to be sentenced on this charge as a persistent felony offender pursuant to PL [70.10](#).

PL 140.25 is a qualifying offense pursuant to CPL 510.10(4)([t](#)) if offense is a felony or class A misdemeanor involving harm to an identifiable person or property, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance or released under conditions for a separate felony or class A misdemeanor involving harm to an identifiable person or property, provided the prosecutor shows reasonable cause to believe the defendant committed the instant crime and any underlying crime. For the purposes of this subparagraph, any of the underlying crimes need not be a qualifying offense.

(See [Note](#).)

Bail: If under the above rules this charge constitutes a qualifying offense, the court may [fix bail](#) (CPL 510.10([4](#))).

Ordered bail must be in a form specified in CPL 520.10([1](#)). If court designates an amount of bail without specifying its form (CPL 520.10([2](#))([a](#))), bail may be posted as either an [unsecured surety bond](#) (CPL 520.10(1)([g](#))) or an [unsecured appearance bond](#) (CPL 520.10(1)([h](#))). If court specifies a form of bail, three or more forms must be specified, one of which must be an [unsecured](#) or [partially secured surety bond](#) (CPL 520.10([2](#))([b](#))).

Remand: If under the above rules this felony charge constitutes a qualifying offense, the court may [commit defendant to the custody of the sheriff](#) (CPL 510.10([4](#))).