Testimony of New York City Department of Consumer Affairs
before the
New York City Council Committee on Consumer Affairs and Business Licensing
jointly with
Committee on the Justice System

Hearing on
Introductions 510-A and 724, regarding For-Profit Bail Bonds

May 2, 2018

Good morning Chairs Espinal, Lancman, and members of the Committees on Consumer Affairs and Business Licensing and the Justice System. My name is Casey Adams and I am the Director of City Legislative Affairs for the New York City Department of Consumer Affairs (DCA). I am joined today by some of my colleagues from the department and I would like to thank you for inviting DCA to testify about Introductions 510-A and 724, both of which relate to the regulation of the for-profit bail bond industry in New York City. DCA supports both of these bills and we commend their sponsors, Speaker Johnson and Chairs Lancman and Espinal, as well as the members of both committees, for focusing on an issue that has a crucial impact on the lives of vulnerable New Yorkers. Today, I will offer brief comments about possible adjustments that we think would strengthen these proposals and enhance DCA's ability to ensure that consumers are armed with the information they need to protect themselves and hold businesses that wrong them accountable.

New Yorkers are forced to turn to the for-profit bail bond industry at moments of desperation: when a loved one is behind bars and counting on them for help getting home. Bail can run into thousands of dollars, often requiring far more money than the average New Yorker can produce unexpectedly and at a moment's notice. According to recent reports, the for-profit bail bond industry has grown to a size of $14 billion nationally by offering people in need the opportunity to bring their loved ones home in exchange for a percentage of the bail amount and temporary posting of collateral by the consumer. Large insurance companies called sureties issue the bonds posted in court. They control bail bond agents through webs of contracted managers. Bail bond agents do the work of actually arranging transactions with desperate consumers. It is these low-level bail bond agencies, which often operate out of neighborhood storefronts clustered around courthouses, that are the most visible part of the for-profit bail bond industry. Unfortunately, the services provided by this industry have all too often been accompanied by deceit, deception, and abuse of those who come for help when they are at their most vulnerable.

Sureties and bail bond agents must be licensed by the New York State Department of Financial Services (DFS). State law imposes a number of requirements on bail bond agents, the most important of which is a limit on the premium or compensation that may be charged for posting a bond or property as bail. According to data obtained from the DFS database, there are currently 20 business entities licensed as bail bond agents operating a total of 29 offices across New York City. In addition, there are 84 individuals licensed as bail bond agents in our city. These entities and individuals work with 25 sureties registered with DFS. All but four of these sureties are headquartered in states other than New York. Because bail bond agents are the individuals and

companies that consumers interact with directly, entrust with their collateral, and pay premiums and compensation to in exchange for services, they are the source of many of the complaints about unacceptable practices in the industry.

Unlike DFS, DCA does not have broad regulatory authority over the for-profit bail bond industry. However, companies involved in this industry, like all businesses that engage in consumer transactions in New York City, are covered by the Consumer Protection Law (CPL). The CPL, which DCA enforces, prohibits deceptive or unconscionable trade practices. In February, DCA used this authority to bring an action in New York State Supreme Court against bail bond agent Marvin Morgan, as well as the sureties and management companies that worked with him, for engaging in deceptive and unlawful trade practices. In our complaint, DCA alleges numerous violations of the CPL, including repeatedly and persistently deceiving consumers by charging illegal fees in excess of the compensation cap, failing to refund collateral to consumers after bail had been discharged, refusing to provide consumers with required documentation of transactions, and providing incomplete or misleading information on receipts. We are asking the court to award almost $60,000 in fines and restitution for 16 consumers, and to establish a restitution fund for affected consumers who may come forward in the future. While I will only be able to discuss this case in general terms today because the litigation is still pending, DCA is proud of this action. The filing of this case puts all corporate insurance companies, management companies, and bail bond agents on notice that illegal and exploitative behavior will not be tolerated.

I will now turn to Intros. 510-A and 724, which would arm consumers with information about their rights and the legal responsibilities of entities engaged in the for-profit bail bond industry and give DCA new tools to ensure consumers are educated and informed.

Introduction 510-A

Intro. 510-A, sponsored by Chairs Lancman and Espinal, requires bail bond businesses to post a disclosure informing consumers of the premium and compensation limit imposed by state law. In addition, it requires DCA to establish a complaint mechanism for consumers to report violations of this law and refer any complaints received to the New York police department for investigation. DCA strongly supports this effort to give consumers the information they need to protect themselves and guide complaints to the agency empowered to take action when consumer harm occurs. We would like to offer the Council a few brief suggestions that we think will clarify and strengthen the proposal.

First, we think the bill would benefit from giving DCA greater flexibility to specify the content of the required disclosure by rule. Currently, the bill includes language that must be included on a disclosure and cannot be modified except by law. Revising the language to specify the substantive points the disclosure must cover, at a minimum, and allowing DCA to update or add information by rule would give the Department the flexibility to ensure that the disclosure stays up to date with changes in state laws and rules. This approach is already taken in similar disclosures required in other industries, and we believe this change would make the law more responsive to any future changes in the legal landscape.

Next, DCA supports the development of robust complaint mechanisms- indeed, we do this for all of the laws we enforce- and we want to make sure that consumers are directed to the government agency that is best equipped to help them in the first instance. It is all too easy for a consumer who is passed between different agencies at different levels of government to become discouraged and give up on getting help. Because DFS is the entity charged by state law with licensing bail bond agents, they are better positioned than DCA to respond to complaints on a routine basis. We believe that Council shares these understandings and goals, as the other bill, Intro. 724, mandates that DCA's consumer bill of rights direct consumers to file complaints with the appropriate city and state agencies. Under both bills, DCA would continue to refer any and all complaints that fall outside our jurisdiction to the correct agency. Of course, if DCA were to discover particularly egregious cases of deceptive practices, we would also conduct our own investigation and evaluate all appropriate remedies, as we have done in the past.

DCA looks forward to working with the Council on our suggestions, and others we will hear from advocates today, as Intro. 510-A moves through the legislative process. I will now turn to the second bill, Intro. 724.

Introduction 724

Intro. 724, sponsored by Speaker Johnson, provides consumers of the for-profit bail bond industry with information regarding their rights and basic information about the businesses and individuals to whom they turn for help bringing a loved one home. Specifically, the bill requires bail bond businesses, and those that refer consumers to these businesses for a fee, to post and distribute to customers a bill of rights to be developed by DCA. In addition, the bill requires covered entities to provide consumers with a copy of all documents they sign. As with Intro. 510-A, we strongly support this effort and will offer suggestions on strengthening the bill for the Council's consideration.

First, we are glad to see that the bill requires bail bond agents to provide a detailed receipt at the time of a transaction. During the investigation that led to our February case, DCA attorneys found that some bail bond agents either refuse to provide receipts altogether or provide receipts with incomplete or inaccurate information. Without detailed and accurate records of a transaction, it is very difficult for consumers to hold bail bond agents accountable. We think that this provision could be strengthened by requiring more specific information about a transaction, for example, the amount of a bond, the name of the surety that issued the bond, a description of collateral or security, and a clear statement of any money paid to a third party and the purpose for that payment. This change could be accomplished either by amending the bill's language or giving DCA the authority to specify additional required information by rule. Requiring bail bond agents to provide detailed receipts will help consumers both to protect themselves and seek effective redress when they are harmed.

Second, we suggest that bail bond businesses be required to retain an initialed copy of each consumer bill of rights. Requiring an initialed copy of the consumer bill of rights be retained, as is done in other industries with these types of documents like paid income tax preparers and secondhand car dealers, will help ensure that each consumer is given the chance to review the

document and give DCA an important tool for holding businesses accountable if a consumer later complains.

Similarly, we believe that businesses should be required to keep detailed records of transaction documents and receipts for a period of years and make them available to the Department upon request. While these entities are already required to keep certain records, as well as produce receipts as I described earlier, under DFS rules, these mandates are not enforceable by DCA. Codifying robust recordkeeping and receipt provisions in local law will help DCA investigate and remedy consumer harm as well as monitor compliance with new requirements.

Conclusion

DCA would like to thank both committees for the opportunity to testify today. Through our recent investigation, we saw first-hand how certain players within the for-profit bail bond industry prey on vulnerable New Yorkers desperate to help bring their loved ones home. Speaker Johnson and Chairs Lancman and Espinal should be commended for shining a spotlight on this complex and important issue. We support the intent of Intros. 510-A and 724 and appreciate the chance to offer suggestions on how they could be clarified and strengthened. We look forward to discussing our suggestions, and other minor technical amendments, in greater detail with the Council. Thank you, and I will be happy to take your questions.

URBAN
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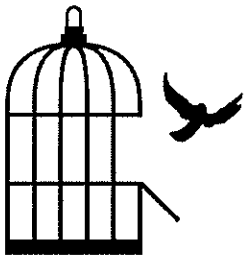

CORRECTIONS
ACCOUNTABILITY
PROJECT

New York City Council
Committee on the Justice System
Rory I. Lancman, Chair

Int 510 – In relation to fees charged by bail bondsmen
Int 724 – In relation to requiring that bail bond businesses make certain disclosures

May 2, 2018
12:00 P.M.
New York, New York

Bianca Tylek, Director
Corrections Accountability Project
Urban Justice Center

URBAN JUSTICE CENTER

CORRECTIONS ACCOUNTABILITY PROJECT

Good afternoon. My name is Bianca Tylek and I am the Director of the Corrections Accountability Project at the Urban Justice Center. We are a non-profit, criminal justice advocacy organization committed to eliminating the influence of commercial interests on the criminal legal system and ending the exploitation of those it touches.

I want to thank Chair Lancman and fellow members of the Committee on the Justice System for the opportunity to speak to you today in favor of your efforts to regulate the commercial bail bonds industry, and to strongly urge that you encourage our state legislators to eliminate the commercial bail bonds industry and eventually money bail.

Passing Intros 510 and 724 is an important step toward regulating the commercial bail bonds industry and curbing their predatory practices. Like many other industries that intentionally exploit the low-income and minority communities targeted by our criminal legal system, the commercial bail bonds industry has long gone without oversight. It is refreshing to see New York City's interest in increasing accountability of the industry with these two bills.

But quite frankly, these reforms are nowhere near enough. Beyond the abusive practices and illegally assessed fees is an irreparably immoral business model that draws on the limited resources of economically distressed communities. The only way that we will ever address mass incarceration in our city, or more broadly, is by rooting out the industry reliant on it. Money bail puts a price tag on freedom, and in doing so, it creates an exploitative opportunity for profit-driven bail bonds companies that barter with people's lives. In short, they capitalize on poverty in selling freedom at a discount, but nevertheless at a detrimental cost to communities devastated by the injustice of our criminal legal system. New York City must protect those most vulnerable—low income and minority communities—from these predatory companies.

In closing, I want share a recent experience that helps put this discussion into greater perspective. Last weekend I traveled to Montgomery, Alabama for the opening of The National Memorial for Peace and Justice and the Legacy Museum: Slavery to Mass Incarceration. I was reminded that commodifying black and brown bodies is an age old practice that goes back to our country's racist roots. Just as companies in the 18th and 19th centuries sold insurance on enslaved Africans to enslavers, the commercial bail bond industry is part of a broader effort to extract resources, wealth, and dignity from black and brown people. Let us work to ensure that we are not extending the legacy of slavery with our acceptance of the commercial bail bonds industry, but instead liberating our communities with its abolishment.

I urge the committee members to pass Intros 510 and 724, but to also look further and begin paving a road towards Albany that ends of the commercial bail bonds industry throughout New York State.

URBAN JUSTICE CENTER

TESTIMONY OF TEDMUND WAN BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING
REGARDING BAIL BOND BUSINESS DISCLOSURES

Wednesday, May 2, 2018

Thank you for the opportunity to testify today. My name is Tedmund Wan, and I am a Staff Attorney at the Community Development Project of the Urban Justice Center. The Community Development Project ("CDP") was founded in September 2001 to provide legal, participatory research, and policy support to strengthen the work of grassroots and community-based groups in New York City to dismantle racial, economic and social oppression. CDP partners with grassroots and community-based groups who take the lead in determining the priorities and goals for our work, and advance our understanding of justice. We believe in a theory of change where short-term and individual successes help build the capacity and power of our partners, who in turn can have longer-term impact on policies, laws and systems that affect their communities. Our work has greater impact because it is done in connection with organizing, building power and leadership development. The Consumer Justice Practice Group at the Community Development Project provides our community partners and their members with access to free consumer justice resources intended to increase the impact of grassroots organizations in New York's low income and other excluded communities, and to help build capacity, power, and public awareness around consumer justice and financial empowerment issues.

The Consumer Justice Practice Group of the Community Development Project represents low-income consumers who are faced with issues such as unscrupulous debt collection practices and fraudulent business practices. In our practice, we have come across consumers, namely the friends and relatives of the criminally accused, who had either been defrauded by bail bonds businesses, or worse, had been unable to obtain their loved one's freedom because of the exorbitant and often illegal fees charged by these bail bonds agents. We are here to support the passage of Intro 510 and Intro 724. In tandem, these two legislation would educate consumers on

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their rights when dealing with commercial bail bond businesses, give them a venue to assert these rights when they have been violated, and give city agencies the power of regulatory oversight against unethical bail bonds companies.

The bail bond industry unscrupulously profits from families desperate to secure their loved-one's freedom. Others have testified, and will continue to testify to, the reasons why the commercial bail bonds system is an unnecessary evil, and the toll that it takes on the criminally accused. We as consumer advocates will focus on the burdens and the injustice inflicted upon bail bond customers and their communities. Who are these bail bond customers? They are the innocent NYC residents operating as consumers in the bail bond marketplace. Friends and relatives of the criminally accused are the ones who actually interact with bail bond businesses. They are the ones who, knowing that their loved ones are behind bars, seek out bail bond businesses to assist in obtaining their loved ones' freedom. At such a stressful time, these bail bond consumers are extremely vulnerable to the well-documented tactics that unscrupulous bail bond entities use to fleece them of their limited resources. These tactics include: gross overcharge of the legally mandated premium; requesting an exorbitant amount of collateral, such as a house or large sums of cash, to secure a relatively paltry bond amount; charging extra premium, which in itself is illegal, for arbitrary reasons, such as the immigration status of the criminally accused or their loved ones; coercing multiple friends and relatives of the accused to sign multiple confessions of judgment. These confessions of judgment are legal instruments that, in effect, allow bail bond agents to collect many times more than the actual bond amount if the accused is judged by a court to have "jumped" bail, regardless of whether the accused have actually done so. Consumers are often coerced to sign them without any explanation of what is being signed, or what its implications may be.

As you've heard from previous testimony, even if the loved ones of the accused actually made all payments of requested premiums and collaterals, bail bonds entities often take their time in obtaining release of the accused, and sometimes even orchestrate re-arrests under false pretenses in order to obtain more illegal fees from the consumer. However, in the event that the accused was actually released and returns to court as required, their loved ones are still not out of the woods yet. Although bail bond businesses are required to return all collateral once the accused has returned to court and the bond is no longer necessary, in reality the bail bond entities

have no incentive to return collateral in a timely manner, if at all. Consumers often have to engage in multiple visits to different offices in different boroughs in order to have their collateral returned-the epitome of being given the run-around. This occurs even when the consumer is represented by legal services attorneys. As you can imagine, unrepresented consumers, which is more common, have almost no chance of getting their collateral back.

To add insult to injury, while the tactics described above are all illegal, it is near impossible to bring unethical bail bond businesses to justice in court, because almost none of these bail bond transactions are properly recorded. Throughout the life of this campaign, which has lasted for the better part of the last two years, we have seen exactly **one** copy of a bail bond contract. While bail bond businesses often request multiple signatures on multiple documents, consumers are almost invariably denied a copy of whatever documents they have executed. As a result, a consumer often has no proof of the amount of money paid, what their money paid for, what they are entitled to have returned, what they will be responsible for if the accused are judged to have jumped bail, or even who is the entity responsible for bailing out the accused or returning the collateral once the case ends. Since there is typically no paper proof of any of the above, it is near impossible for loved ones to obtain any relief from a court of law when they have been taken advantage of by a bail bonds entity. However, bail bond entities have no such limitation and when they bring a consumer to civil court to recover on an alleged bail bond debt, it is necessarily an uneven playing field that further harms the innocent bail bond customer-who lacks any documentary proof to support their defense.

We are here today because we believe the New York City Council can help fix this issue, and moreover, we believe that the New York City Council has the responsibility to help fix this issue. For far too long, bail bonds businesses of this state, but specifically those in this city, have gone largely unregulated, and they have taken this vacuum of oversight to prey on loved ones of the accused with impunity. The New York City Council can start by educating consumers, making sure that there is clear signage in each and every bail bond office to let consumer knows how much they can be charged, what their rights are when they're overcharged, and where they can seek assistance if they are overcharged. It can ensure that every consumer who walks out of a bail bonds office with a bail bond for their loved ones also walks out with a written contract fully detailing the responsibilities of both parties, and in a language that they can understand. It can

make certain that no consumer seeking a bail bonds for their loved ones will be discriminated against based on creed, religion, place of origin, or immigration status.

The passage of Intro 510 and Intro 724 will go far in accomplishing these goals. However, certain additions in these two legislation will ensure that New York City consumers' rights are truly protected when they have the unenviable task of obtaining a bail bond. These additions include the setting of a timeline for quick return of collateral, and designating a NYC agency to enforce such returns. It would also be beneficial to require a disclaimer to advise consumers explicitly that premiums are non-refundable, and that no additional fees may be charged by the bail bonds entities on top of the premium. Finally, commercial bail bonds entities often impose burdensome conditions to a bond, such as curfews, frequent check-ins, phone calls, and GPS monitoring. These conditions often interfere with the accused's ability to continue their employment, or serve as a pretext for bail bond businesses to cancel the bond when they decide that these unreasonable conditions are not met. Consumers should be notified if additional terms required by a commercial bail bonds entity are not required by law, such that consumers understand they have the right to negotiate for a less onerous bail bond contract.

I'm sure that you are aware, an overwhelming majority of criminal defendants in New York City are members of low-income, communities of color; so too are their loved ones, the consumers who try to obtain their freedom through commercial bail bonds. The predatory bail bond industry has flourished by sucking dry the limited assets and financial resources of these communities. While the monetary costs to these communities are astronomical, the damages caused to these communities, in the forms of innocent people in jail because they cannot afford commercial bail bonds, in the form of families not being able to afford basic necessities because large sums of money have gone to unscrupulous bail bondsmen, are incalculable. We now have the opportunity to not only mitigate, but eradicate, the damage caused by unethical members of this industry. Today, we ask council members to give serious thought to passing Intro 510 and Intro 724, along with additional provisions to provide New York City consumers with all the protections and safeguards that they deserve. We ask you not to wait for Albany to decide on bail bond reform that may or may not happen. We ask you not to assume that the laws and regulations in place are being followed or enforced at the state level, and we ask you to start reversing damage caused to low-income communities of color by this industry in NYC.

Thank you for the opportunity to testify. If you have any questions about my testimony, I can be reached at twan@urbanjustice.org or (646) 459-3048.

TESTIMONY OF STEVEN ZALEWSKI, ESQ.
NEW YORK STATE BAIL BONDSMAN ASSOCIATION VICE CHAIRMAN
OWNER OF AFFORDABLE BAILS NEW YORK INC.

02 May 2018

GOOD AFTERNOON.

MY NAME STEVEN ZALEWSKI, I AM THE VICE PRESIDENT OF THE NEW YORK STATE BAIL BONDS MEN ASSOCIATION.

I WOULD FIRST LIKE TO TAKE THE OPPORTUNITY TO THANK THE MEMBERS OF THIS COMMITTEE FOR ALLOWING ME TO BE HEARD.

I AM HERE TO SPEAK ON BEHALF OF THE BAIL BOND INDUSTRY ON THE TWO INITIATIVES THE COMMITTEE IS CONSIDERING 724-2018 BY COUNSEL CHAIR JOHNSON AND 510-2018 BY COUNSEL MEMBER LANCEMAN.

RESPECTFULLY I AM GOING TO RESERVE ANY COMMENTS WITH RESPECT TO 510-2018. IT IS MY BELIEF THAT THEIR MAY BE A LEGAL IMPEDIMENT TO 510-2018, IN THAT THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES HAS ORIGINAL AND I BELIEVE EXCLUSIVE JURISDICTION OVER MATTERS RELATING TO THE DISCIPLINE OF BAIL BOND AGENTS.

BY WAY OF BRIEF BACKGROUND; I AM A PRACTICING ATTORNEY ADMITTED TO THE BAR IN 1987. MY PRIMARY FOCUS BEFORE I ENTERED THE BAIL BOND INDUSTRY WAS CRIMINAL DEFENSE. I WORKED FOR THE LEGAL AID SOCIETY AS WELL AS BEING APPOINTED THE QUEENS COUNTY BAR ASSOCIATION 18B BAR PANEL CHAIRMAN.

BASED ON MY MANY YEARS OF EXPERIENCE WORKING IN CRIMINAL DEFENSE AND PARTICULARLY INDIGENT CRIMINAL DEFENSE I AM WELL VERSED IN THE PLIGHT OF THOSE WHO ARE ACCUSED OF CRIMINAL CONDUCT. I BELIEVE I BRING A UNIQUE PERSPECTIVE TO THE BAIL BOND INDUSTRY.

2018 SEEMS TO HAVE BECOME THE YEAR OF CRIMINAL JUSTICE REFORM. MANY ORGANIZATIONS AND PUBLIC INTEREST GROUPS HAVE

TAKEN UP THE CAUSE OF CRIMINAL JUSTICE REFORM AND HOW THE ACCUSED IS TREATED FROM ARRAIGNMENT TO SENTENCE.

UNFORTUNATELY, RATHER THAN FOCUSING ON THE REAL ISSUES THAT PLAGUING THE CRIMINAL JUSTICE SYSTEM: NAMELY THE FAILURE TO PROVIDE MEANINGFUL PRE-INDICTMENT AND PRETRIAL DISCOVERY TO THE DEFENSE COUNSEL CAN PROPERLY ADVISE HIS OR HER CLIENT HOW TO PROCEED AND THE FACT THAT NO ONE IS HELD ACCOUNTABLE FOR THE COMPLETE FAILURE TO SAFEGUARD THE ACCUSED'S RIGHTS FOR A SPEEDY TRIAL.

THE DISCUSSION INSTEAD SEEMS TO BE FOCUSED ON BAIL REFORM AND THE COMMERCIAL BAIL INDUSTRY. WE SEEM TO BE AN EASY TARGET. BRANDED AS AN INDUSTRY WHO PREYS UPON THE UNSUSPECTING CONSUMER.

NOTHING COULD BE FURTHER FROM THE TRUTH.

THE COMMERCIAL BAIL INDUSTRY HAS OPERATED AS AN INTEGRAL PART OF THE CRIMINAL JUSTICE SYSTEM FOR MORE THAN 50 YEARS IN THIS STATE. WE PROVIDE A VALUABLE AND ESSENTIAL SERVICE TO THOSE ACCUSED OF A CRIME IN THIS CITY ON A 24 HOUR 7 DAY A WEEK BASIS.

WE ENSURE THAT THE ACCUSED ARE ENTITLED TO EXERCISE THEIR RIGHTS UNDER THE 8TH AMENDMENT TO BE RELEASED ON BAIL AND DEFEND THE ACCUSATIONS AGAINST THEM WITHOUT THE PRESSURE AND OPPRESSION OF PRETRIAL INCARCERATION.

THE BAIL BOND AGENTS OF THIS GREAT CITY OPERATE 24 HOURS A DAY, 7 DAYS A WEEK, TO ASSIST THE FAMILIES AND LOVED ONES OF THOSE ACCUSED'S OF CRIMES IN SECURING THEIR PRETRIAL RELEASE.

WE ARE MOST OFTEN THE FIRST CONTACT THE CONSUMER HAS WITH THE CRIMINAL JUSTICE SYSTEM, AND WE PROVIDE GUIDANCE ON HOW

TO DEAL WITH THE ARREST OF A FAMILY MEMBER OR LOVED ONE. WE PROVIDE THE MOST VALUABLE THING TO THE CONSUMER AT THE TIME OF THE ACCUSED'S ARREST; ACCURATE INFORMATION FREE OF CHARGE!

WE AS BAIL AGENTS EXPLAIN THE ARREST AND ARRAIGNMENT PROCESS TO CONSUMERS AT ALL HOURS OF THE DAY AN NIGHT WHEN NO ONE ELSE IS AWAKE OR AVAILABLE TO HELP. MANY OF THESE INTERACTIONS DO NOT RESULT IN BAIL BUSINESS FOR AGENTS. HOWEVER, BAIL AGENTS FEEL AN OBLIGATION TO MEMBERS OF THEIR COMMUNITY TO PROVIDE HELP AND GUIDANCE AT THIS CRITICAL TIME IN THE ARREST PROCESS.

IN RECENT MONTHS THE BAIL BOND INDUSTRY HAS BE VILIFIED AND MALIGNED BY POLITICIANS, THE MEDIA, AND CERTAIN NOT FOR PROFIT ORGANIZATIONS.

CLEARLY, THE TRUE MOTIVE OF THESE ENTITLES IS THE ERADICATION OF THE COMMERCIAL BAIL BOND INDUSTRY SO THEY MAY PROFIT FROM THE ARREST THROUGH THE USE OF PRETRIAL PROGRAMS AND MONITORING CONTRACTS.

PERHAPS THE MOST SHOCKING PART OF THIS VILIFICATION BY THESE ENTITLES AND INDIVIDUALS IS THE USE OF FALSE ASSUMPTIONS AND MANIPULATED DATA TO MISLEAD THE PUBLIC AS TO WHAT THE TRUE FACTS ARE ABOUT HOW COMMERCIAL BAIL OPERATES AND WHAT CHANGES REALLY NEED TO BE MADE TO PROTECT THE CONSUMER AND THE PUBLIC.

SADLY, ALL MISINFORMATION IS AT THE EXPENSE OF THE TRULY INDIGENT WHO NEED CRIMINAL JUSTICE REFORM THE MOST.

IN THE PAST YEAR THERE HAVE BEEN NUMEROUS MEETINGS, FORUMS, WORKSHOPS, SEMINARS, AND WEB POSTINGS CALLING FOR THE END OF COMMERCIAL BAIL.

THEY ALL PROVIDE WHAT APPEAR TO BE IMPRESSIVE STATICS AND CHARTS IN SUPPORT OF THEIR CLAIMS. UNTIL YOU START TO ASK QUESTIONS.

QUESTIONS LIKE WHAT IS THE SOURCE OF YOUR DATA? HOW DID YOU ACQUIRE THAT INFORMATION? CAN YOU PROVIDE THE NAME OF WHO YOU SPOKE TO IN ORDER TO OBTAIN THAT INFORMATION? THAT'S WHEN THE ROOM GOES SILENT; THAT'S WHEN THE ENTITIES REFUSE TO DISCLOSE THE SOURCES OF THEIR PRESUMPTIONS.

I SIT BEFORE THIS ESTEEMED PANEL AND UNEQUIVOCALLY CAN STATE NOT ONE OF THESE INDIVIDUALS OR ENTITIES HAVE EVER SPOKEN TO ANY ONE WHO ACTUALLY WORKS IN THE BAIL BOND INDUSTRY. I KNOW THIS BECAUSE I HAVE ASKED AND HAVE BEEN TOLD THAT SUCH RESEARCH IS NOT WANTED OR NEEDED.

IMAGINE THAT! INSTEAD, THEY MALIGN THE INDUSTRY WITH NOTHING SHORT OF MYTH AND MISINFORMATION.

IT ALL STARTS WITH THIS PREMISE; THE COMMERCIAL BAIL INDUSTRY IS MALIGNANT BECAUSE WE ARE PAID FOR THE SERVICE OF POSTING BAIL.

ALL INSURANCE TYPES CHARGE A FEE CALLED A PREMIUM. THE FEE IS CHARGED TO ASSUME RISK. YET WE DO NOT SEE WEEKLY PROTESTS AND A MEDIA BLITZ ABOUT FEES CHARGES FOR CAR INSURANCE, HOME OWNERS INSURANCE OR LIFE INSURANCE. THE PUBLIC NATURALLY UNDERSTAND THAT INSURANCE THAT ASSUMES RISK COSTS MONEY.

BAIL BONDS ARE AN INSURANCE PRODUCT. HOWEVER, WE ARE UNIQUE IN THAT WE CHARGE A FEE SET BY A NEW YORK STATE STATUTE TO ASSUME RISK AND ALLOW THE ACCUSED TO BE RELEASE TO FIGHT THE CHARGES AGAINST HIM/HER WITHOUT HAVING TO PAY THE FULL COST OF THE BOND.

OUR FEES ARE NOT GOVERNED BY RISK AS ALL OTHER INSURANCE PRODUCTS ARE; THOSE PRODUCTS WORK ON A MODEL OF THE GREATER THE RISK THE GREATER THE FEE. NOT SO WITH BAIL BONDS. THE DOLLAR AMOUNT OF THE BOND SETS THE FEE NOT THE NATURE OF THE CRIME OR THE RISK OF LOSS.

FURTHER, BAIL BONDS ARE THE ONLY INSURANCE PRODUCT THAT HAVE NO EXPIRATION OF COVERAGE. ONCE THE FEE IS PAID IT COVERS THE ENTIRE LIFE OF THE BOND. CAN YOU IMAGINE WHAT THE COST OF CAR INSURANCE WOULD BE IF YOU ONLY PAID YOUR PREMIUM ONCE FOR THE ENTIRE TIME YOU OWNED THE CAR?

THE FEES CHARGED FOR POSTING BAIL BONDS IN NEW YORK STATE ARE THE LOWEST IN THE COUNTRY AND WERE SET IN THE 1970'S. THE AMOUNTS THAT A BAIL IS SET ON INDIVIDUAL CASES ARE ALSO AMONG THE LOWEST NATIONWIDE. WE OPERATE IN ONE OF THE MOST EXPENSIVE CITES TO LIVE IN AND OPERATE A BUSINESS.

ONE OF THE MANY FALSEHOODS PERPETUATED BY THESE GROUPS IS THAT COMMERCIAL BAIL IS UNAFFORDABLE AND WE PRAY UPON THE CONSUMER.

FIRST, LET'S UNDERSTAND THESE CONSUMERS COME TO US, WE DON'T SOLICIT THEM. THERE ARE THIRTY OR SO BOND AGENTS IN NEW YORK CITY; ALL A PHONE CALL AWAY AND ALL WHO POST BONDS THROUGHOUT NEW YORK CITY. THE CONSUMER HAS MANY OPTIONS TO SHOP AND COMPARE AND FACT CHECK FEES BEING CHARGED.

SECOND, BAIL BONDS DO NOT COST THE CONSUMER EXORBITANT FEES. A $500.00 DOLLAR BOND COSTS THE CONSUMER A FEE OF $50.00 AND A $1,000.00 DOLLAR BOND A FEE OF $100.00. HARDLY EARTH SHATTERING.

IN FACT, AS THE BOND AMOUNTS GET HIGHER THE FEE PERCENTAGE DROPS TO 6.25%. THAT RATE IS NOT COMMON IN ANY STATES THAT HAVE COMMERCIAL BAIL. IT IS BY FAR THE LOWEST OR AMONG THE LOWEST IN THE NATION.

IN SUPPORT OF THIS BAIL REFORM ADVOCATES STATE THAT BAIL BOND COMPANIES DON'T POST SMALL BAILS BECAUSE THERE IS NO PROFIT IN POSTING THEM. THAT IS SIMPLY NOT TRUE. I AM IN TOUCH WITH ALL THE MAJOR COMPANIES IN NEW YORK CITY INCLUDING MY OWN AND WE ALL POST $250-$500 DOLLAR BONDS.

NOT ONCE HAS ANY ORGANIZATION OR ENTITY EVER SPOKEN TO ANYONE IN OUR INDUSTRY AND ASKED THAT QUESTION. WHY? SIMPLE OUR ANSWERS ARE NOT CONSISTENT WITH THEIR NARRATIVE.

ANOTHER MYTH AND CONSISTENT FALSEHOOD IS THAT THERE ARE THOUSANDS OF INDIGENT PEOPLE LANGUISHING IN THE NEW YORK CITY JAILS ON BAILS OF ONE THOUSAND DOLLARS OR LESS.

I HAVE SEEN NEWS REPORTS, AND ELECTED OFFICIALS MAKING THESE CLAIMS OVER AND OVER AGAIN. THESE CLAIMS ARE SIMPLY NOT TRUE; THEY ARE A MANIPULATION OF STATISTICS TO SERVE A CAUSE AND CONTINUE A NARRATIVE.

HERE ARE THE TRUE FACTS BASED ON INFORMATION PUBLISHED BY THE CITY OF NEW YORK.

IN 2012 A STUDY OF ARRAIGNMENTS IN NEW YORK CITY DONE BY THE CRIMINAL JUSTICE AGENCY SHOWED APPROXIMATELY 74% OF THOSE ARRAIGNED IN NEW YORK CITY ARE MISDEMEANORS AND 16% ARE

FELONIES. OF THE MISDEMEANORS 50% ARE DISPOSED OF AT ARRAIGNMENTS, OF THE REST 68% ARE RELEASED WITH OUT ANY FORM OF BAIL.

A FURTHER ANALYSIS DONE BY THE CITY IN 2017 SHOWS THAT THE ALMOST 90% OF THOSE ARRAIGNED ON VIOLATIONS OR MISDEMEANOR CHARGES ARE RELEASED WITHOUT BAIL AT ARRAIGNMENTS.

AS TO THOSE WHO HAVE BAIL SET ON FELONIES AND MISDEMEANORS 55% MADE BAIL WITHIN 48 HOURS AND 78% WITH IN 7 DAYS.

A SURVEY OF THE DAILY AVERAGE INMATE POPULATION IN NEW YORK CITY SHOWS AN AVERAGE OF 71 PEOPLE IN ON BAILS OF $500.00 OR LESS AND 133 PEOPLE ON BAILS BETWEEN $500-$1000.

BASED ON AN AVERAGE JAIL POPULATION OF 9000 THESE FIGURES REPRESENT LESS THAN 2.5 % OF THE JAIL POPULATION. THESE NUMBERS DO NOT ACCOUNT FOR $1 BAILS AND OTHER HOLDS.

SO HOW DO WE ADDRESS THE CLAIM THAT THE MAJORITY OF PEOPLE IN RIKERS ISLAND ARE NOT CONVICTED OF ANY CRIME?

AGAIN, THIS STATEMENT IS SIMPLY A MANIPULATION OF FACTS. FIRST THERE ARE THREE CLASSES OF PEOPLE IN THE NEW YORK CITY JAIL SYSTEM. PEOPLE SENTENCED TO LESS THAN A YEAR IN JAIL. THEY HAVE NO BAIL. STATE PRISONERS, THEY ALSO HAVE NO BAIL. SO THAT LEAVES THOSE NOT YET CONVICTED. HENCE THE CLAIM.

SO, IT IS IMPORTANT TO UNDERSTAND THAT THE POPULATION OF THE JAIL IS NOT STAGNANT IT CHANGES EVERY DAY. THE ADVOCATES OF BAIL REFORM DO NOT ACCOUNT FOR INMATES WHO HAVE MULTIPLE CASES AND CAN NOT BAIL OUT, THOSE WHO HAVE IMMIGRATION,

PROBATION OR PAROLE HOLDS OR THOSE WHO HAVE OTHER INTERCITY OR STATE DETAINERS OR THOSE WHO HAVE ALREADY POSTED BAIL AND ARE PENDING RELEASE.

THE NUMBERS ALSO DO NOT ACCOUNT FOR THE FACT THAT IT TAKES ON THE AVERAGE 48 HOURS TO MAKE BAIL AND THAT IT TAKES 12 TO 24 HOURS TO BE RELEASED ONCE THE RELEASE ORDER IS RECEIVED BY THE JAIL.

THE PUBLISHED STATICS SHOW THAT 58% OF THOSE IN JAIL MAKE BAIL IN 48 HOURS AND THAT NUMBER RISES TO 78 % IN 7 DAYS.

SO NOW THAT YOU HAVE A CLEARER PICTURE OF THE ACTUAL NUMBERS OF PEOPLE HELD IN JAIL ON BAIL HERE ARE THREE IMPORTANT FACTS TO CONSIDER:

1. NO AGENCY IN THIS CITY HAS DATA TO SHOW WHY SOME ONE DOES NOT MAKE BAIL, BECAUSE THERE ARE OTHER RESTRICTIONS ON THEIR RELEASE AS MENTIONED ABOVE.
2. NO AGENCY IN THIS CITY HAS EVER PRODUCED DATA PROVING THAT A PERSON HAS NOT MADE BAIL BECAUSE THEY ARE INDIGENT OR CAN'T AFFORD THE BAIL SET. IT IS SIMPLY PRESUMED THAT THOSE ON BAIL WHO CAN NOT AFFORD BAIL DON'T PAY BAIL.
3. IN NEW YORK CITY, UNLIKE OTHER PARTS OF THIS STATE, COMMERCIAL BAIL CAN NOT BE POSTED 24 HOURS A DAY. THE CITY THAT NEVER SLEEPS GOES TO BED WHEN THE COURT CLOSES. IN MANY OTHER PARTS OF THIS STATE COMMERCIAL BAIL CAN BE POSTED AT THE JAIL 24 HOURS A DAY,
4. SO, FOR EXAMPLE IF A FAMILY COMES TO THE BAIL BOND COMPANY AT 4 PM ON FRIDAY AND THE DAY COURT SESSION IS CLOSED, THAT BAIL GETS POSTED ON MONDAY, TUESDAY IF MONDAY IS A HOLIDAY. OF COURSE, THIS FACT CONTRIBUTES TO

THE INCREASE IN JAIL POPULATION AND CHALLENGES THE INDIGENCY MYTH.

THAT BRINGS US TO ANOTHER OFTEN STATED POINT OF BAIL REFORMERS. THAT PEOPLE ACCUSED OF CRIMES SHOULD NOT BE SUBJECT TO BAIL BECAUSE THEY ARE PRESUMED INNOCENT.

I AM NOT SURE WHERE THIS STARTED, BUT THE PREMISE IS FULL OF HOLES. THE SUPREME COURT OF THE UNITED STATES IN ADDRESSING THIS VERY ISSUE; IN BELL V. WOLFISH 441 U.S. 520 STATED THAT THE PRESUMPTION OF INNOCENTS IS A CONCEPT THAT APPLIES TO THE PROSECUTORS BURDEN OF PROOF AT TRIAL, NOT AT ARRAIGNMENT AND IN THE SETTING OF BAIL.

IN FACT, I WOULD VENTURE TO SAY THAT THE PRESUMPTION OF INNOCENCE IS WHAT ALLOWS YOU TO ENGAGE YOUR 8TH AMENDMENT RIGHT TO BAIL.

FURTHER THE COURT HAS INDICATED THAT HAVING A RIGHT TO BAIL DOES NOT AUTOMATICALLY MEAN THAT IT HAS TO BE A BAIL YOU CAN AFFORD.

THE SAME BAIL REFORM ADVOCATES STATE THAT COMMERCIAL BAIL IMPOSES A PUNITIVE COST ON THE ACCUSED. UNDER THAT THEORY ALL CRIMINAL LEGAL REPRESENTATION SHOULD BE FREE UNTIL PROVEN GUILTY.

PERHAPS MORE ON POINT IS THE FACT THAT OUR LEGAL SYSTEM IS REPLETE WITH ECONOMIC PUNISHMENT OF THOSE ACCUSED OF CRIMES BEFORE CONVICTION. FOR EXAMPLE, THE

SUSPENSION OF A DRIVERS LICENSE AND SEIZURE OF A VEHICLE AT ARRAIGNMENT ON A DWI CHARGE AND THE COURTS ROUTINE ISSUANCE OF ORDERS OF PROTECTION ON DOMESTIC VIOLENCE CASES PRECLUDING PEOPLE FORM THEIR HOME WITHOUT DUE PROCESS OR TRIAL. BOTH OF THESE HAVE A SIGNIFICANT ECONOMIC IMPACT ON THOSE WHO ARE ACCUSED AND NOT CONVICTED. YET, THOSE WHO ADVOCATE BAIL REFORM ARE THE VERY SAME PEOPLE WHO SUPPORT THESE PUNISHMENTS.

THAT BRINGS US TO THE CURRENT STATE LEGISLATIVE PROPOSALS ON BAIL REFORM. THEY ALL CALL FOR THE ERADICATION OF COMMERCIAL BAIL AND ADVOCATE SOME TYPE OF PRETRIAL SCREENING AND PROGRAM PARTICIPATION.

A STUDY OF THESE PROGRAMS CONDUCTED BY TOWSEN UNIVERSITY ESTIMATES THE COST FOR IMPLEMENTATION OF THESE PROGRAMS TO BE MORE THAN 287 MILLION DOLLARS IN THE FIRST YEAR AN 200 MILLION EACH YEAR THEREAFTER. ALL OF THESE COSTS WOULD BE BORN BY THE CITY AND TAXPAYERS.

THE TWO MAJOR PROPOSALS FOR BAIL REFORM IN THE STATE CALL FOR THE SCREENING OF ALL WHO ARE ARRESTED TO DETERMINE ELIGIBILITY FOR RELEASE. THERE ARE ONLY TWO BAIL STATES IN THESE PROPOSALS. RELEASE OR REMAND. RELEASE CALLS FOR SCREENING AND POSSIBLE COMPULSORY PROGRAM PARTICIPATION AS A CONDITION OF RELEASE. VERY SIMILAR TO PROBATION. SOME HAVE SUGGESTED ELECTRONIC MONITORING AS ANOTHER METHOD OF PRETRIAL SUPERVISION. IN EFFECT, WE ARE GOING TO RETURN TO SHACKLING DEFENDANTS.

YOU HAVE TO ASK WHAT HAPPENED TO THE PRESUMPTION OF INNOCENCE? HOW CAN A PERSON WHO IS MERELY ACCUSED OF A CRIME BE REMANDED IF HE IS PRESUMED INNOCENT? THE BAIL REFORM ADVOCATES DON'T HAVE AN ANSWER TO THAT QUESTION. SO, UNDER THIS SYSTEM MANY OF THOSE WHO WOULD HAVE BEEN ELIGIBLE FOR BAIL WILL NOW BE REMANDED UNTIL THE CASE IS OVER. STUDIES SHOW THAT IN SOME INSTANCES REMAND RATES INCREASED BY 30% WHERE BAIL REFORM HAS BEEN IMPLEMENTED ANOTHER PATTERN THAT EMERGES IS THAT REQUEST FOR REMAND ARE MUCH HIGHER IN THE MINORITY POPULATION.

ANOTHER PROPOSAL MADE IN RESPONSE TO THE CRITICISM OF THE PENDING LEGISLATION IS THE OFFER OF MANDATORY RELEASE ON "NON-VIOLENT FELONIES" AND MISDEMEANORS. WITH NO REGARD FOR CRIMINAL RECORD, OPEN CASES OR FAILURES TO APPEAR.

TO BE CLEAR "NON-VIOLENT" DOES NOT EQUAL NON-VICTIM. THE CRIMES ELIGIBLE FOR MANDATORY RELEASE WOULD INCLUDE RAPE IN THE 3RD DEGREE, ROBBERY IN THE 3RD DEGREE, BURGLARY IN THE 3RD DEGREE AND SEX ABUSE. YOU HAVE TO ASK WHAT ABOUT PUBLIC SAFETY AND VICTIMS RIGHTS.

OF COURSE, THESE PROGRAMS TOO CALL FOR REMAND OF VIOLENT FELONS. AGAIN, THE PRESUMPTION OF INNOCENCE DOES NOT SEEM TO APPLY.

THERE ARE TWO OTHER IMPORTANT POINT TO NOTE:

FIRST ACCORDING TO THE FBI VIOLENT CRIME STATICS, IN EVERY STATE WITH BAIL REFORM, VIOLENT CRIME RATES HAVE SKYROCKETED, IN SOME INSTANCES AS HIGH AS 30%.

THE SECOND IS THAT THE REMOVAL OF COMMERCIAL BAIL FROM THE CRIMINAL JUSTICE SYSTEM RESULTS IN INCREASED FAILURE TO APPEAR RATES.

IT'S SIMPLE; THE CIRCLE OF LOVE IS REMOVED. THE FAMILY THAT HAS A FINANCIAL STAKE IN THE ACCUSED'S RETURN TO COURT ARE NOW OUT OF THE PICTURE AND THE INCENTIVE TO RETURN IS REMOVED. ONE ONLY HAS TO LOOK ACROSS THE RIVER TO NEW JERSEY TO SEE DRAMATIC INCREASES IN FAILURES TO APPEAR AND CRIME RATES.

FURTHER, WHO IS GOING TO RETURN ALL THOSE WHO FAIL TO APPEAR TO COURT UNDER THESE PROPOSED SYSTEMS? THE ANSWER NO ONE. THE OVER TAXED NEW YORK CITY POLICE ARE NOT GOING TO DO IT. THE BAIL REFORMERS DO NOT ADDRESS THAT IN ANY PROPOSAL THEY HAVE MADE. APPREHENSION WILL ONLY HAPPEN WHEN THE NEXT CRIME IS COMMITTED.

THE LAST THING THIS CITY NEEDS IS TO BE VIEWED AS CRIME INFESTED AND DANGEROUS WITH A REVOLVING DOOR JUSTICE SYSTEM. THINK OF THE IMPACT THAT KIND OF BRANDING WOULD HAVE ON OUR TOURIST INDUSTRY.

COMMERCIAL BAIL HAS AN EXTENSIVE RECORD OF SUCCESS IN RETURNING THOSE WHO DO NOT APPEAR IN COURT. OUR ACTION IS AT NO COST TO THE PUBLIC AND THE TAX PAYER. WE ARE INVOLVED IN SUCCESSFUL RETURN OF THE ACCUSED IN OVER 95% OF CASES.

SO NOW THAT WE HAVE DETERMINED THAT THE CRISIS OF INDIGENCY IS A MYTH, AND THAT THE COMMERCIAL BAIL INDUSTRY PROVIDES AN INVALUABLE AND EFFICIENT SERVICE AT NO COST THE TAXPAYER, THERE IS ANOTHER IMPORTANT QUESTION TO ASK; WHAT ABOUT THOSE WHO ARE TRULY INDIGENT AND GENUINELY CAN NOT AFFORD BAIL?

THE BAIL BOND INDUSTRY UNEQUIVOCALLY SUPPORT ALL MEASURES THAT ALLOW TRULY INDIGENT PEOPLE TO BE RELEASED WITH OUT BAIL SO, THEY CAN FIGHT THEIR CASE WITH OUT THE BURDEN OF INCARCERATION.

IRONICALLY, NO ONE HAS ASKED FOR OUR HELP! THIS IS WHAT WE DO EVERY DAY AND WOULD GLADY MAKE OURSELVES AVAILABLE TO ASSIST IN THE MONITORING OF THOSE WHO ARE RELEASED. WE IN THIS INDUSTRY LOOK AT THIS AS A PUBLIC SERVICE; A DUTY WE HAVE TO THE CITY.

INSTEAD THE LEGISLATURE HAS CREATED AND FOSTERED CHARITABLE BAIL ORGANIZATIONS TO FILL THIS VOID. MY QUESTION IS WHERE ARE THEY? IF THE REFORMERS ARE CLAIMING THAT THOUSANDS ARE LANGUISHING IN JAIL PRETRIAL ON NOMINAL BAIL, WHY HAVEN'T THEY BEEN BAILED OUT BY THESE ORGANIZATIONS?

THESE ORGANIZATIONS ARE UNREGULATED AND DO NOT HAVE TO ACCOUNT FOR THEIR ACTIONS OR HOW THEY ARRIVE AT DETERMINATIONS OF WHO TO BAIL OUT AND UNDER WHAT CRITERIA.

THE STATUTE WAS AMENDED TO ALLOW THESE ORGANIZATIONS TO POST BAIL FOR INDIGENT PEOPLE ONLY. YET THEY WILL NOT

DISCLOSE HOW THEY MAKE THE DETERMINATION OF INDIGENCY OR IF ANY SUCH DETERMINATION IS EVER MADE IN THE FIRST PLACE. THEY HAVE TAKEN TO THE ARRAIGNMENT SOLICITING PEOPLE IN THE PENS AND PASSING FLYERS IN DISADVANTAGE NEIGHBORHOODS TO SOLICIT CLIENTS TO KEEP THEIR STATICS CONSISTENT.

WHEN LEGISLATION WAS INTRODUCED IN THE STATE LEGISLATURE REQUIRING ACCOUNTABILITY AND COMPLIANCE OF THESE ORGANIZATIONS IT WAS MET WITH FIERCE OPPOSITION.

CHARITABLE BAIL HAS NO PLAN TO ADDRESS FAILURE TO APPEAR EXCEPT TO PLACE THE BURDEN ON THE TAXPAYER.

IN CONSIDERING THESE NEW PROPOSED REGULATIONS, THIS COMMITTEE SHOULD ASK WHY WE NEED MORE REGULATION OF COMMERCIAL BAIL?

WHAT HAVE THEY DONE AS AN INDUSTRY THAT REQUIRES FURTHER REGULATION?

WE ARE GOVERNED BY THE DEPARTMENT OF FINANCIAL SERVICES WHICH HAS MANDATED SPECIFIC RULES AND REGULATIONS THAT GOVERN OUR CONDUCT. UNLIKE THOSE WHO ADVOCATE CHARITABLE BAIL WE WELCOME CHANGE AND PROGRESSIVE REGULATION THAT PROTECT THE BAIL INDUSTRY AND THE CONSUMER.

THERE ARE GAPS TO FILL AND CHANGES THAT MUST BE MADE. TO THAT EXTENT WE THE INDUSTRY HAVE SPONSORED LEGISLATION TO REQUIRE BAIL AGENT TO TAKE CONTINUING EDUCATION FOR LICENSING AND RELICENSING.

ADDITIONALLY, WE HAVE ADVOCATED FOR A COMPLETE OVER HALL OF THE EXISTING BAIL STATUTES TO BETTER DEFINE THE

RIGHTS AND RESPONSIBILITIES OF BOTH THE CONSUMER AND THE BAIL INDUSTRY. THE INADEQUATE STATUTORY STRUCTURE OF THE BAIL STATUTES FIND BAIL AGENTS DISCOVERING CONDUCT THEY WERE PERMITTED ONE DAY IS NOW PRECLUDED BY NEW CASE LAW. THE DEPARTMENT OF FINANCIAL SERVICES DOES NOT PROVIDE ADVISORY OPINIONS AS IT ONCE DID SO QUESTIONS ON CONDUCT ARE LEFT UP TO THE BEST GUESS OF THE AGENT.

THE CREATION OF A CONSUMER BILL OF RIGHTS WOULD BE AN EXCELLENT START TO THIS PROCESS.

THE BAIL BOND INDUSTRY AND THE NEW YORK STATE BAIL BOND ASSOCIATION WELCOME A WORKING PARTNERSHIP TO BETTER SERVE THE CONSUMER AND THE INDUSTRY.

ADDENDUM A

TESTIMONY
NEW YORK STATE ASSOCIATION OF PBA'S, INC.
&
POLICE CONFERENCE OF NEW YORK, INC.

Joint Budget Hearing

Public Protection
General Government

Tuesday, January 30, 2018

~Testimony~

New York State Association of PBAs, Inc.
&
Police Conference of New York, Inc.

The New York State Association of PBAs and the Police Conference of New York, "umbrella" organizations collectively representing the vast majority of professional police and law enforcement unions in New York State, offer the following testimony:

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In his 2018-2019 New York State budget proposal, the Governor has proffered a very substantial modification to the state's system of bail in connection with criminal charges in Part C of the Public Protection and General Government Article VII Legislation. The proposed legislation almost entirely replaces commercial bail with release on pretrial orders with non-monetary conditions, calls for mandatory release on misdemeanors and non-violent felonies and calls for mandatory hearings in violent felony cases where pretrial detention is recommended with a very high standard of proof required of the prosecution before detention can be ordered.

While we agree that there may be areas in the criminal justice system regarding bail that could be reformed *after careful study*, we oppose the proposed legislation as submitted because we firmly believe its scope is far overreaching.

On behalf of our membership, our organizations oppose this proposed legislation for reasons that follow:

- Police Officers have an abiding interest in ensuring that the subjects they arrest on criminal charges be required to return to court following arraignment to face the charges brought against them. It is a very serious matter to us that there be in place some system to compel those arrested to return to court for an appropriate disposition of their cases. Bail helps assure their return. New York State currently has a commercial bail system that serves its intended purpose and ensures that individuals charged with crimes appear when they are required to do so by the courts, and that subjects who are simply too dangerous to be released be detained pending trial. The current system applies to all regardless of their race, creed, color or financial circumstances. In the absence of a demonstration that there is some major problem with the current system, we believe that there are far more important problems in the State of New York deserving the attention of the legislature.

- Mandatory release on misdemeanors and non-violent felonies is just wrong. The proposed legislation provides that under no circumstances could a person charged with a misdemeanor or a non-violent felony be required to post bail or be detained pending trial. Some of the misdemeanors that would be included under this mandatory release provision would include stalking, sexual abuse, sexual misconduct, resisting arrest, arson in the fifth degree, criminal
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possession of a police uniform, escape in the third degree, bail jumping, criminal contempt and criminal obstruction of breathing, and obstructing governmental administration. The non-violent felonies that would be covered by the proposed mandatory release provisions would include vehicular manslaughter, burglary in the third degree, illegal abortion, robbery in the third degree, arson in the third degree, identity theft in the first degree, escape in the first degree, promotion of an obscene sexual performance by a child and rape in the third degree. Neither list is exhaustive. No one charged with such crimes should have the right to leave the courthouse after arraignment with immunity from bail or detention pending trial as a matter of law! Some of the aforementioned crimes demonstrate total lack of respect for the criminal justice system and the members we represent. Even worse, the proposed provisions provide that the number of arrests that the defendant has, the number of open cases against him or her and even the number of failures to appear on prior criminal charges may not play any part in the decision to release him or her. That simply isn't fair to the victims of the criminal conduct, to the witnesses to the criminal conduct, and to the public at large. There may well be reasons why the perpetrator of any misdemeanor or non-violent felony should not be released without cash bail or, in some cases, detained pending trial, but under this proposal that would be impossible.

- Replacing commercial bail with a system based on orders bearing non-monetary conditions is a bad idea and would be very costly to implement. If cash bail is eliminated from all but the most serious of cases as this proposal would do, the commercial bail bondsmen of our state would be out of business. It is our commercial bail bondsmen who make our current system work. If their clients don't show up for their court appearances, the bail bondsmen forfeit their bonds, which gives them a very strong incentive to play a vital role in assisting the criminal justice system to ensure future court appearances. If we substitute for that a system of non-monetary release orders bearing conditions, then someone is going to have to see to it that those conditions are fulfilled, and it will not be the commercial bail bondsmen. Every municipality in the state that operates a criminal court will have to hire additional personnel to monitor compliance with the non-monetary conditional release orders. In even a minimally busy criminal court, that would mean additional employees on the public payroll. Such a change would effectively create a pretrial parole system along with the attendant need for space, computers, equipment, training, pensions, health insurance, etc. The federal bail system works largely on such a system, and the federal courts employ very substantial pretrial staff to serve these functions. If New York is facing a $4 billion dollar deficit this

year, this seems like a very bad time to consider any program that would involve so much additional cost.

- The standard of proof on detention hearings is too high. This bill provides for mandatory hearings in any case where the crime involved is a violent felony and detention is recommended by the prosecution, and it provides that the standard of proof on any such detention hearing would be "clear and convincing evidence" as to both flight risk and public safety. We contend that it is imperative to maintain the current bail system in these violent felony cases. Moreover, the proposed legislation, by establishing mandatory hearings with such a very high standard of legal proof – second only to the criminal conviction standard of "beyond a reasonable doubt" and significantly beyond the civil standard of "preponderance of the evidence" – it effectively requires the prosecution to try the case twice; once at the pretrial detention hearing and again at the trial on the substantive charge. We feel that this inappropriately elevates the rights of a perpetrator charged with a violent felony over the rights of his or her victim(s), any witnesses to the crime, prosecutorial staffs and the general public. A standard of preponderance of the evidence would be sufficient.

- This matter needs further study. A number of other states have adopted bail reforms similar to what the Governor is proposing, including Kentucky, Illinois, Oregon, Wisconsin, New Jersey, and cities including Washington D.C., and Philadelphia; some of them did so many years ago. The Federal Courts have long employed a system much like what the Governor is proposing. There is a great deal of information available through those jurisdictions. Before the State of New York disrupts a viable bail system and undertakes reforms that will cost many millions of dollars, a study should be made to determine whether and to what extent the jurisdictions that have adopted such systems have eliminated the evils and injustices that the Governor professes to be addressing with this legislation. Cash bail has been an integral part of American jurisprudence since the Eighth Amendment to the U.S. Constitution precluding "excessive bail" was adopted in 1791. We should not abandon a system based on it without careful study and thorough reflection, and we clearly should not be considering a plan to change such a fundamental part of our system of justice in haste in the context of our State's budget.

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ADDENDUM B

NYS DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

1. Authority
2. Adjudicatory Proceedings
3. Hearing Procedure

NYS Department of State **Administrative Hearings**

GUIDE TO STATUTES AND RULES RELATING TO HEARINGS

Article 4--Licenses

§ 401. Licenses

1. When licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning adjudicatory proceedings apply. For purposes of this act, statutes providing an opportunity for hearing shall be deemed to include statutes providing an opportunity to be heard.

2. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid agency action then in effect summarily suspending such license.

3. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

4. When the hearing seeks the revocation of a license or permit previously granted by the agency, either party shall, upon demand and at least seven days prior to the hearing, disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses, provided, however, the provisions of this subdivision shall not be deemed to require the disclosure of information or material otherwise protected by law from disclosure, including information and material protected because of privilege or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.

Article 5--Representation

§ 501. Representation

Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before an agency, every party or person shall be accorded the right to appear in person or by or with counsel. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency.

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GUIDE TO STATUTES AND RULES RELATING TO HEARINGS

New York State Department of State

Introduction

The Office of Administrative Hearings conducts administrative hearings, in which the Office of General Counsel represents the department's Division of Licensing Services, to determine where discipline of licensees regulated by the department is warranted. This *Guide to Statutes and Rules Relating to Hearings* provides information to those who are respondents in a hearing and their attorneys. Included in the Guide are excerpts from the State Administrative Procedure Act and the Rules of the Department of State (19 NYCRR), and a summary of those rules.

Additional information may be obtained by writing to:

Department of State
Office of General Counsel
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231

Contents

Summary of Hearing Rules of Procedure

The Department of State's Rules of Procedure for Adjudicatory Proceedings are set forth in Part 400 of

19 NYCRR. The following is a summary of such rules:

1. All hearings will be conducted in accordance with the State Administrative Procedure Act. Pertinent provisions are as follows:

    a. All hearings will be commenced on reasonable notice (generally 10 days under our statutes). The notice will apprise the respondent of matters asserted and of any statutes or rules involved. Parties may present written and/or oral argument on any issue.

    b. The department will make a record of all hearing proceedings including a transcript of the hearing and shall furnish a copy of the record or any part thereof to the respondent at cost. All parties have the usual rights of parties in civil proceedings, i.e., to examine and cross-examine witnesses, make objections, etc.

    c. The administrative law judge will preside over the hearing in a fair and impartial manner. Generally, an administrative law judge has the authority of any judge in a civil matter and may order discovery and depositions. The judge rules on the admissibility of evidence and is not bound by strict rules of evidence.

    d. The administrative law judge or other person assigned to render a decision does so by including findings of fact and conclusions of law or reasons for his/her decision. The judge will not consult with any party about his/her decision except upon notice to all parties.

2. The rules require a decision to be made in the format of findings of fact and conclusions of law. Parties may propose findings of fact and the decision will contain a ruling on such findings.

3. Subpoenas compelling attendance of witnesses or documents may be issued by the administrative law judge or any attorney duly admitted to practice in the State of New York.

4. Motions may be made to dismiss the complaint upon failure of proof.

5. Every person is entitled to representation and someone who is not a lawyer may represent a respondent. Every representative must file a notice in accordance with Section 166 of the Executive Law on forms to be provided by the department.

6. A maximum of two adjournments of a hearing may be granted and requests must be made by affidavit addressed to the administrative law judge and must be received no later than three working days prior to the date of the hearing.

7. All adjudicatory proceedings must be finally disposed of within 150 days of the date of the hearing unless the hearing is adjourned by mutual consent or by request of the respondent; or the time is extended by mutual consent or the Secretary of State or administrative law judge makes a written declaration of necessity to extend citing his/her reasons therefor.

STATE ADMINISTRATIVE PROCEDURE ACT
§ 102. Definitions

3. "Adjudicatory proceeding" means any activity which is not a rule making proceeding or an employee disciplinary action before an agency, except an administrative tribunal created by statute to hear or

determine allegations of traffic infractions which may also be heard in a court of appropriate jurisdiction, in which a determination of the legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity for a hearing.

4. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

5. "Licensing" includes any agency activity respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, recall, cancellation or amendment of a license.

6. "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency engaged in the particular rule making, declaratory ruling, or adjudication.

7. "Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

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NYS Department of State **Administrative Hearings**

GUIDE TO STATUTES AND RULES RELATING TO HEARINGS

Article 3--Adjudicatory Proceedings

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§ 301. Hearings

1. In an adjudicatory proceeding, all parties shall be afforded an opportunity for hearing within reasonable time.

2. All parties shall be given reasonable notice of such hearing, which notice shall include (a) a statement of the time, place, and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved, where possible; (d) a short and plain statement of matters asserted; and (e) a statement that interpreter services shall be made available to deaf persons, at no charge, pursuant to this section. Upon application of any party, a more definite and detailed statement shall be furnished whenever the agency finds that the statement is not sufficiently definite or not sufficiently detailed. The finding of the agency as to the sufficiency of definiteness or detail of the statement or its failure or refusal to furnish a more definite or detailed statement shall not be subject to judicial review. Any statement furnished shall be deemed, in all respects, to be a part of the notice of hearing.

3. Agencies shall adopt rules governing the procedures on adjudicatory proceedings and appeals, in accordance with provisions of article two of this chapter, and shall prepare a summary of such procedures in plain language. Agencies shall make such summaries available to the public upon request, and a copy of such summary shall be provided to any party cited by the agency for violation of the laws, rules or orders enforced by the agency.

4. All parties shall be afforded an opportunity to present written argument on issues of law and an opportunity to present evidence and such argument on issues of fact, provided however that nothing contained herein shall be construed to prohibit an agency from allowing parties to present oral argument within a reasonable time. In fixing the time and place for hearings and oral argument, due regard shall be had for the convenience of the parties.

5. Unless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.

6. Whenever any deaf person is a party to an adjudicatory proceeding before an agency, or a witness therein, such agency in all instances shall appoint a qualified interpreter who is certified by a

recognized national or New York state credentialing authority to interpret the proceedings to, and the testimony of, such deaf person. The agency conducting the adjudicatory proceeding shall determine a reasonable fee for all such interpreting services which shall be a charge upon the agency.

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§ 302. Record

1. The record in an adjudicatory proceeding shall include: (a) all notices, pleadings, motions, intermediate rulings; (b) evidence presented; (c) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose; (d) questions and offers of proof, objections thereto, and rulings thereon; (e) proposed findings and exceptions, if any; (f) any findings of fact, conclusions of law or other recommendations made by a presiding officer; and (g) any decision, determination, opinion, order or report rendered.

2. The agency shall make a complete record of all adjudicatory proceedings conducted before it. For this purpose, unless otherwise required by statute, the agency may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Upon request made by any party upon the agency within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the agency shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to any party as he may request. Except when any statute provides otherwise, the agency is authorized to charge not more than its cost for the preparation and furnishing of such record or transcript or any part thereof, or the rate specified in the contract between the agency and a contractor if prepared by a private contractor.

3. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

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§ 303. Presiding officers

Except as otherwise provided by statute, the agency, one or more members of the agency, or one or more hearing officers designated and empowered by the agency to conduct hearings shall be presiding officers. Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding. Whenever a presiding officer is disqualified or it becomes impractical for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

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§ 304. Powers of presiding officers

Except as otherwise provided by statute, presiding officers are authorized to:

1. Administer oaths and affirmations.

2. Sign and issue subpoenas in the name of the agency, at the request of any party, requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence and said subpoenas shall be regulated by the civil practice law and rules.

Nothing herein contained shall affect the authority of an attorney for a party to issue such subpoenas under the provisions of the civil practice law and rules.

3. Provide for the taking of testimony by deposition.

4. Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.

5. Direct the parties to appear and confer to consider the simplification of the issues by consent to the parties.

6. Recommend to the agency that a stay be granted in accordance with section three hundred four, three hundred six or three hundred seven of the military law.

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§ 305. Disclosure

Each agency having power to conduct adjudicatory proceedings may adopt rules providing for discovery and depositions to the extent and in the manner appropriate to its proceedings.

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§ 306. Evidence

1. Irrelevant or unduly repetitious evidence or cross-examination may be excluded. Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceeding. No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence. Unless otherwise provided by any statute, agencies need not observe the rules of evidence observed by courts, but shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, an agency may, for the purpose of expediting hearings, and when the interests of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

2. All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

3. A party shall have the right of cross-examination.

4. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

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§ 307. Decisions, determinations and orders

1. A final decision, determination or order adverse to a party in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his attorney of record.

2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice an opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

   This subdivision does not apply (a) in determining applications for initial licenses for public utilities or carriers; or (b) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers.

3. (a) Each agency shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the agency in adjudicatory proceedings. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying. Each decision, determination and order shall be indexed within sixty days after having been rendered.

   (b) An agency may delete from any such index, decision, determination or order any information that, if disclosed, would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of the public officers law and may also delete at the request of any person all references to trade secrets that, if disclosed, would cause substantial injury to the competitive position of such person. Information which would reveal confidential material protected by federal or state statute, shall be deleted from any such index, decision, determination or order.

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NYS Department of State **Administrative Hearings**

GUIDE TO STATUTES AND RULES RELATING TO HEARINGS

19 NYCRR PART 400
Hearing Rules of Procedure

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§ 400.1 Intent and purpose.

The Secretary of State has authority under Article 3 of the State Administrative Procedure Act to provide for adjudicatory proceedings and appeals pertaining to matters within the Secretary's statutory jurisdiction. It is the intent and purpose of these regulations to afford all those appearing in any hearing subject to this part due process of law and an opportunity to be heard, while at the same time ensuring protection of the public health, safety and general welfare.

§ 400.2 Office of Administrative Hearings.

(a) There is hereby established within the Department of State an office of administrative hearings which shall conduct all adjudicatory proceedings which devolve upon the Secretary of State by requirement of statute. All adjudicatory proceedings shall be conducted by the office of administrative hearings through the service of administrative law judges who will have all the power and authority of presiding officers or hearing officers as defined by the State Administrative Procedure Act (SAPA), and other pertinent statutes, and these regulations.

(b) All administrative law judges shall be licensed to practice law and shall not serve in any other capacity within the Department of State.

(c) For administrative and personnel purposes the administrative law judges shall report directly to the Secretary of State or the Secretary of State's designee.

(d) The fact that an administrative law judge's rulings, decisions or other actions favor or disfavor the Department of State or any other party shall not be considered in establishing the administrative law judge's salary, promotion, benefits, working conditions, case assignments or opportunities for

employment or promotion, and shall not be the cause of any disciplinary proceedings, removal, reassignment, reclassification, or relocation. There shall not be established any quotas or similar expectations for any administrative law judge that relate in any way to whether the administrative law judge's rulings, decisions or other actions favor or disfavor the Department of State. The work of the administrative law judge shall be evaluated only on the following general areas of performance: competence, objectivity, fairness, productivity, diligence and temperament.

(e) In any pending adjudicatory proceeding, the administrative law judge may not be ordered or otherwise directed to make any finding of fact, to reach any conclusion of law, or to make or recommend any specific disposition of a charge, allegation, question or issue.

(f) Unless otherwise authorized by law, an administrative law judge shall not communicate in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending before the administrative law judge with any person except upon notice and opportunity for all parties to participate, except that an administrative law judge may consult on questions of law and ministerial matters with other administrative law judges and support staff of the office, provided that such other administrative law judges or support staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding or would not be disqualified pursuant to (g), below.

(g) An administrative law judge shall not participate in any proceeding to which he or she is a party; in which he or she has been attorney, counsel or representative; in which he or she is interested; or if he or she is related by consanguinity or affinity to any party to the controversy. An administrative law judge shall recuse him or herself from any case in which he or she believes that there is, or there may be perceived to be, a conflict of interest.

(h) Matters shall be referred by other divisions of the Department of State to the office of administrative hearings for hearing.

(i) The administrative law judge assigned shall set the location and time at which a hearing, and any adjournments or continuations thereof, will be held. The office of administrative hearings shall prepare the notice of hearing and transmit it to the person assigned to litigate the matter for proper service. Notices of adjournment or continuation shall be transmitted directly to the parties by the office of administrative hearings.

(j) After the hearing the administrative law judge shall issue a decision based on findings of fact and conclusions of law. Such decision shall be final and binding when issued unless an appeal is taken pursuant to (k), below.

(k) Any of the parties may appeal the decision or the grant or denial of an interim order of suspension to the Secretary of State within thirty calendar days of receipt. Such an appeal shall be made by filing with the Secretary of State, and serving on the other party or parties, a written memorandum stating the appellant's arguments and setting forth specifically the questions of procedure, fact, law or policy to which exceptions are taken, identifying that part of the administrative law judge's decision and order to which objection is made, specifically designating the portions of the record relied upon, and stating the grounds for exceptions. A party upon whom an adverse party has served an appeal may file and serve a memorandum in opposition and cross-appeal within thirty calendar days after such service. A response to a cross-appeal may be filed and served within fifteen calendar days after service of the cross-appeal. The failure of any party to respond shall not be deemed a waiver or admission. The record on appeal shall consist of the evidentiary exhibits from and transcript of the hearing, and the memorandums of

appeal, opposition, and cross-appeal. The Secretary of State or his or her designee may, in his or her discretion, stay the effective date of the decision, and shall, based solely on the record on appeal unless he or she directs in his or her sole discretion that there be oral argument, either confirm the decision in writing, make a written, superseding decision including a statement as to why he or she has not confirmed the administrative law judge's decision, or remand the matter to the administrative judge for additional proceedings.

(l) Following the administrative law judge's decision, and pending the filing of an appeal therefrom, any party may immediately apply to the Secretary or the Secretary's designee for a stay pending determination of the appeal. The application for a stay shall be in writing and based upon evidence contained in the record and shall be served on opposing parties who shall have the opportunity to rebut the application in writing within two business days of receipt. The Secretary or the Secretary's designee shall forthwith rule on the application, and may grant the stay and reserve decision on the appeal; or may deny the stay and either reach a decision on the merits of the appeal or reserve such decision.

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§ 400.3 Conduct of adjudicatory proceedings.

All adjudicatory proceedings will be conducted under the rules enunciated by articles 3, 4 and 5 of the State Administrative Procedure Act, the definitions of the State Administrative Procedure Act pertaining thereto, any other licensing statute under the jurisdiction of the Secretary of State, the Civil Practice Law and Rules as the same may be reasonably be applied and the Constitution of the State of New York as these statutes and Constitution are now stated or may be amended in the future. In all instances, due process of law will be observed. An administrative law judge shall have all the authority which the Secretary of State may grant pursuant to the State Administrative Procedure Act or any other pertinent statute, including, but without limitation, the authority to direct disclosure under section 305 of the State Administrative Procedure Act.

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§ 400.4 Commencement of disciplinary proceedings.

(a) Every adjudicatory proceeding which may result in a determination to revoke or suspend a license or to fine or reprimand a licensee will be commenced by the service of a notice of hearing together with a statement of charges (also known as a complaint), which shall consist of plain and concise statement which shall sufficiently give the administrative law judge and the respondent notice of the alleged misconduct of incompetence. Notice of hearing and statement of charges (or complaint) shall be communicated in any manner permitted by the applicable regulatory statute or the Civil Practice Law and Rules. Respondent may, at his option, serve an answer denying such charges and interposing affirmative defenses, if any. Absent an answer, all charges are deemed denied and all rights are reserved.

(b) The Department of State shall, before making a final determination to deny an application for a license, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notification shall be served personally or by certified mail or in any manner authorized by the Civil Practice Law and Rules. If the applicant is a real estate salesman or has applied to become a salesman, the department shall also notify the broker with whom such salesman is associated, or with whom such salesman or applicant is about to become associated, of such proposed denial. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe. If the applicant fails to make a written request for a hearing within 35 days after receipt of such notification, then the notification of denial shall become the final determination of the department. Upon receipt of such demand, and adjudicatory proceeding will be commenced in the manner set forth in subdivision (a) of this section, except that the reasons for denial will be set forth in the stead of charges.

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§ 400.5 Subpoenas.

Subpoenas may be issued by the administrative law judge or any attorney for a party who has been duly admitted to the practice of law in the State of New York. Subpoenas shall be served in any manner permitted by the Civil Practice Law and Rules unless otherwise provided by applicable statutes administered by this department.

§ 400.6 Motions.

(a) A motion to dismiss the complaint or statement of charges for failure of proof may be made at the conclusion of the direct case presented by the complaining division of the Department of State. The administrative law judge may make a determination:

(1) granting the motion;

(2) denying the motion and continuing the hearing; or

(3) reserving decision on the motion and continuing the hearing.

(b) A denial of a motion made under this section is not a final disposition and a right to appeal to the Secretary of State or to commence a proceeding under article 78 of the Civil Practice Law and Rules shall not accrue until a final decision on the merits is rendered.

§ 400.7 Affidavits.

When a verified statement is required or deemed desirable by any party, it shall be sufficient for the deponent to subscribe a statement at the end thereof that the "foregoing statement is affirmed under penalties of perjury." A statement verified before a notary public will be equally acceptable.

§ 400.8 Evidence and proof.

The strict rules of evidence do not apply with respect to administrative adjudicatory proceedings.

§ 400.9 Service of rules.

Every notice of hearing served shall be served with a copy of these rules, a copy of articles 3, 4 and 5 of the State Administrative Procedure Act and relevant definitions under section 102 of the State Administrative Procedure Act. A summary of these rules will be prepared and made available to the public on request and served with a notice of hearing on any respondent.

§ 400.10 Representation.

Any person compelled to appear in person or who voluntarily appears before the agency shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before the agency, every party or person shall be accorded the right to appear in person or by or with counsel. Nothing in this section shall be construed either to grant or deny to any person who is not a lawyer the right to appear for or represent others before the agency. In accordance with section 166 of the Executive Law, any such representative will file a notice of appearance with the administrative law judge on forms provided by the Department of State and state whether a fee is being paid therefore.

§ 400.11 Adjournments.

(a) Adjournments of adjudicatory hearings will be granted only for good cause, and no party shall be granted more than two adjournments.

(b) Requests for adjournment must be made by written affidavit addressed to the presiding officer, and must be received at the office of the Department of State in which the presiding officer maintains his regular office no later than three business days prior to the scheduled date of hearing. The affidavit must contain sufficient details to explain the reason for the request so as to enable the presiding officer to rule thereon.

§ 400.12 Proposed findings of fact.

Any party may submit proposed findings of fact within time limitations set by the administrative law judge. Such findings of fact shall be captioned, entitled as such, shall be consecutively numbered and shall be typed legibly on plain, white bond, standard weight paper, 8½ x 11 inches in size. Such proposed findings of fact shall recite basic facts and not evidentiary facts and shall not be conclusions of law. A basic fact would be "John Jones visited Syracuse," and not "John Jones testified that he visited Syracuse," which is an evidentiary fact. A conclusion of law would be "John Jones has demonstrated untrustworthiness within the meaning of section 441-c of the Real Property Law." In general, it is expected that the complaint will allege the basic facts which would otherwise be contained in a statement of proposed findings of fact. In accordance with section 301(1) of the State Administrative Procedure Act, the person assigned to render a decision will rule on each finding of fact. Such decision maker will do so by marking the instrument setting forth the proposed findings of fact a part of the decision and noting in the margin thereof the ruling, i.e., "Found," "Not Found," "Irrelevant," "Evidentiary," "Conclusion of Law," which rulings may be abbreviated meaningfully. The body of the decision will contain such findings of fact as the decision maker deems relevant, but need not be expressed in the same language as presented in the proposed findings.

§ 400.13 Time periods.

(a) Except by consent of the parties or otherwise determined under subdivision (c) of this section, every adjudicatory proceeding under the jurisdiction of the Secretary of State shall be brought to completion within 150 days of the date of the hearing specified in the service of the notice of hearing. An adjournment or continuance granted at the request of respondent or by mutual consent of the parties will extend the period of 150 days in which the Secretary of State must act by the length of time the adjournment or continuance is granted.

(b) With respect to applications for a license or a commission, the Secretary of State shall grant or deny such application within 150 days of the date of the submission of a completed application. If the application is denied, the Secretary of State shall state the reasons for denial in writing by letter to the applicant and offer the applicant an opportunity for a hearing by demanding the same in writing within 30 days of the date of the letter of denial. If a hearing is demanded, a decision shall be issued within 150 days of the receipt of the demand.

(c) The Secretary of State or an administrative law judge may, prior to the expiration period, extend the time periods established by subdivision (a) of this section by making a determination in writing that the adjudicatory proceeding cannot be completed within 150 days and stating sufficient reasons therefor. Such an extension shall be for no longer than an additional 120 days. Such determination shall be promptly mailed to all parties.

(d) A failure of the Secretary of State to observe the time limitations established by this section, or the failure of an administrative law judge to make the determination required by subdivision (c) of this

section shall be reviewable under article 78 of the Civil Practice Law and Rules in a proceeding in the nature of mandamus.

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ADDENDUM C

ATTORNEY'S TESTIMONIALS

LAW OFFICES OF DANIEL B. FRIEDMAN P.C.

ATTORNEY AT LAW

114 OLD COUNTRY ROAD SUITE 560
MINEOLA, NEW YORK 11501

(516)721-0412
(516)294-4290 fax

Danfriedmanlaw@gmail.com

April 27, 2018

Affordable Bails- c/o Nelson Robles Sr.
90 Main Street
Hempstead, NY 11550

To The New York City City Council;

I wanted to thank you for the last case your office in Suffolk handled for my officemate. Because of your colleague's efforts we were able to be prepared for the issue of bail even though the Defendant was turning herself into a Village Court on multiple felonies on a Friday in the East End of Long Island.

It has come to my attention that the Bail Bond business is facing some legislative challenges in the upcoming months. As you know I have been doing business with Affordable Bails for over 6 years now but I have been a criminal defense attorney for over 25 years. I have been doing business with various bail agencies since I started with the Nassau Legal Aid Society back in 1992. Your agency has always treated my clients fairly and with respect. You go out of your way to make sure that a defendant who has a bail bond posted for them is out of jail as quickly as possible and I have personally known you to be as considerate as possible when dealing with family members who are already enduring a difficult time with their loved one in jail facing serious criminal offenses.

As you know I am a former President of the Nassau Criminal Courts Bar Association and I serve on the Board of Directors for the Nassau Legal Aid Society. I belong to many criminal bar associations and defense groups. I was just talking with a few of my colleagues the other day and discussing how the Court system gets 3% of the bail returned to them for administrative costs and all they do is collect the money and keep track of which fund it goes into. Your business involves the processing of the bond, the release and monitoring of the Defendant as well as dealing with the family members, the paperwork for the courts in addition to keeping track of which fund the money gets invested into and all of that is done for on average only 5% more. In addition your agency is responsible for the entire bond if the Defendant does not appear while the County Clerk just fills out papers transferring the money deposited for bail from one account to another. It amazes me that the Legislature is discussing lowering your fees instead of increasing them.

As always, thank you for all of your help. Please feel free to contact me at the above address or number. I look forward to hearing from you.

Sincerely,

Daniel Friedman

MICHAEL R. FRANZESE
ATTORNEY AT LAW
114 OLD COUNTRY ROAD
SUITE 680
MINEOLA, NEW YORK 11501
(516) 746-2400
(516) 873-8790 FAX

TAMMY KRASNOFF
Paralegal

Suffolk Office
320 Carleton Avenue
Ste. 4200
Central Islip, New York 11772

April 27, 2018

To whom it may concern:

I am attorney for the past 27 years who has spent most of my time in the field of criminal defense. I've dealt with many bail bond companies but mostly Affordable Bails NY. I can say without hesitation I have not received a complaint from any of my clients regarding fees that were charged in connection with the posting of a bond.

To the contrary, I can site many instances where my clients were thankful for the assistance that the bail bond company provided them. Should you want to discuss my experiences in more detail, please feel free to contact me.

Sincerely Yours,

MICHAEL R. FRANZESE

GAITMAN & RUSSO
ATTORNEYS AT LAW

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email steven@gaitmanrussolaw.com

STEVEN J. GAITMAN*
JASON L. RUSSO
*ALSO ADMITTED IN NJ

April 30, 2018

Re: Affordable Bails New York, Inc.

Dear NYC City Counsel:

My name is Steven Gaitman. I am a criminal defense attorney. I have practiced in the State of New York for close to twenty five (25) years. I served for a short period of time as a staff attorney for the Nassau County Legal Aid Society prior to entering private practice in 1998.

Throughout the years, I have had the opportunity to interact and refer clients to various bail bond companies. Approximately ten (10) years ago, I was introduced to Affordable Bail Bonds, Inc. (hereinafter ABNY). Since that time, I have only referred my clients to ABNY so as to secure a bail bond. I believe that often the bail industry is labeled unfairly and misunderstood. The gentleman that not only own ABNY, but its employees are professional, courteous, and knowledgeable. They have been without question as asset to my practice.

I am aware of the current climate regarding bail reform and offer this letter as my opposition to such reform. In the years that I have been doing business with ABNY I have never received one complaint from any client regarding the overcharging of fees or any other misdeed.

Thank you.

Sincerely,

Steven Gaitman, Esq.

THE LAW OFFICE OF WILLIAM J. KEPHART

666 Old Country Road
Suite 305
Garden City, New York 11530

Phone: 516-877-0701 Fax: 516-741-9171

April 27, 2018

New York City Council,

I am writing to you regarding Affordable Bails New York, Inc.. I have run my law office since January, 2001 here in Nassau County and prior to that was an Assistant District Attorney in Nassau County for five years. In 2011, I began using Affordable Bails New York, Inc. to assist my clients with their bail needs on my cases. I have used them for clients with cases in the five boroughs of New York City, as well as, in Nassau and Suffolk County. During the past seven years that I have referred clients to Affordable Bails New York, Inc. I have only heard positive reviews from my clients regarding the professional manner in which they handled themselves, the timeliness in which they posted the bail, and the overall experience they have had with Affordable Bails New York, Inc.. In addition, not one client has ever stated they had any issue with any of the fees that were charged in connection with the posting of a bond. Overall, my clients, as well as my firm, have had a universally positive experience with Affordable Bails New York, Inc..

Should you have any questions regarding this matter I would be happy to discuss anything with you.

Yours,

William J. Kephart, Esq.

DAVID MIRSKY
Attorney at Law

114 Old Country Rd.

Mineola, NY 11501

APRIL 30, 2018

OFFICE OF THECITY COUNCIL
CITY OF NEW YORK

RE: NELSON ROBLES, SR
AFFORDABLE BAILS

TO WHO IT MAY CONCERN:

I HAVE KNOWN NELSON ROBLES FOR APPROXIMATELY 10 YEARS OR MORE. I HAVE SENT LITERALLY HUNDREDS OF DEFENDANTS TO HIM FOR HELP WITH BAILS. EVERYONE, WITHOUT EXCEPTION, HAS COMMENTED ON HIM BEING DECENT AND HELPFUL DURING DIFFICULT TIMES.

UNLIKE OTHER BAIL BOND AGENTS NELSON IS AVAILABLE 24/7 WITH INFORMATION AND SERVICES. HE ALWAYS RETURNS CALLS EVEN IN THE MIDDLE OF THE NIGHT.

MY OFFICE HAS 5 ATTORNEYS. WE ALL FORMALLY USED THE OTHER LOCAL COMPANIES IN NASSAU COUNTY. WE WERE ALL DISAPPOINTED FOR ONE OR ANOTHER REASON; INCLUDING CLIENT COMPLAINTS.

BETWEEN NELSON, AND HIS STAFF, THE JOB GETS DONE. NO COMPLAINTS.

WITH HUNDREDS OF SATISFIED CLIENTS, WHO HE SERVED, BEHIND ME I WRITE TO TELL YOU THAT YOU WONT FIND A BETTER BAIL BONDSMAN IN THE CITY OR LONG ISLAND.

IF YOU WOULD LIKE ANY ADDITIONAL INFORMATION PLEASE FEEL FREE TO CALL ME.

VERY TRULY YOURS,

DAVID MIRSKY
1-516-741-4350

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April 27, 2018

Via email @ RLancman@council.nyc.gov
Committee on Justice System
Rory I. Lancman
Committee Chair

Re: Affordable Bails NY
Bail bonds
Proposed Legislation

Dear Council Member:

Please be advised that I have been practicing criminal law in the New York City area for the past 25 years and have maintained my own law practice for the past 20 years. During this time I had numerous clients who had bail bonds posted by Affordable Bails NY. Affordable handled all these matters in a professional and courteous fashion. They were efficient, helpful and responsive to my clients and families. My clients and their families held them in high regard and never lodged any complaints with my office about their services.

Additionally, Affordable Bail NY provides much needed services in the criminal justice system. They always stay in contact with the clients and their families and insure that they appear in court on each court date. This just doesn't happen when cash bail is posted. In fact, the number of warrants issued for failing to appear is much lower with Affordable Bails NY and other qualified agencies because of their constant communication with the clients and attorneys. The proposed legislation is unnecessary and penalizes agencies like Affordable who do an exemplary job.

Sincerely,

Deron Castro, Esq.

Cc: Committee on Consumer Affairs and Business Licensing

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CHARLES J. CASOLARO
FRANK LIVOTI
MEREDITH FRIEDMAN

Legal Assistants
IRENE KONTONICOLAS
JESSICA SNOW

April 30, 2018

NYC City Council
NYC City Hall
City Hall Park, NY 10007

Dear NYC City Council:

I offer this letter in support of the bail bond industry, which I understand has faced and is potentially still facing some legislative challenges in the near future.

I have been doing business with Affordable Bails New York Inc. for almost ten [10] years now, and have practicing criminal law as both a prosecutor and defense attorney for over forty [30] years.

I have done business with various bail agencies, and Affordable Bails has consistently treated my clients fairly and with respect. In all of our interactions, I have never had a client complain to me about the fees that were charged. They go out of their way to make sure that a defendant who has a bail bond posted for them is released from jail as quickly as possible, and I have personally known more than one of their primary bondsmen. Mr. Nelson Robles is one of those individuals, who I have always found to be as considerate as possible when dealing with family members who are already enduring a difficult time with their loved ones in jail facing serious criminal offenses.

Please feel free to contact me at your convenience if I can be of any further assistance, and thank you for your time and consideration

Respectfully yours,

LAW OFFICES OF ALAN J. SCHWARTZ, P. C.

Alan J. Schwartz
AJS:ik
cc: Nelson Robles
F:\Office Documents\Alan\Letters\BailBonds.wpd

THE BRONX FREEDOM FUND

New York City Council
Committee on Consumer Affairs and Business Licensing
Testimony of The Bronx Freedom Fund
Presented May 2, 2018

Int. No. 510, a Local Law to amend the administrative code of the city of New York, in relation to fees charged by bail bondsmen.

Testimony of Elena Weissmann

Councilmembers Lancman and Espinal, Speaker Johnson, and members of the Committee, thank you for the opportunity to testify. My name is Elena Weissmann, and I am the Director of The Bronx Freedom Fund, a community bail fund which for over ten years has provided bail assistance to New Yorkers who would otherwise be incarcerated for their poverty. We are New York's first licensed charitable bail organization, and would be required and thrilled to comply with Int. No. 510-A should it pass.

As a charitable bail organization, The Bronx Freedom Fund does not charge a premium to our clients, nor do we post bond. However, this bill would directly impact our operations as we are governed by Section 6801 of New York State Insurance Law. We are committed to seeing its passage and implementation, and in fact have long been taking steps in this direction. Because we serve as a resource for clients and community members alike, we regularly educate members of the public about their rights when approaching a bail bond company to free a loved one. Each of our staff members are licensed bail bond agents, and are well versed in the legal requirements of bail bond companies. We ensure that community members know their rights and are equipped with the knowledge necessary to avoid exploitation.

However, we are also well versed in the rampant abuses of these regulations, along with the lack of oversight to investigate such abuses. As critical as community education is, knowledge is inadequate when a person is systematically disempowered and desperate to free a loved one from hellish conditions at Rikers Island or the Boat. Similarly, without a more significant fine structure and the risk of losing a license or insurance backing, this bill is an inadequate protection against industry abuses.

We are committed to continuing to educate members of the public about their rights with bail bonds companies. We will comply in full with this bill and will do our best to serve as a watchdog group, ensuring that bail bond companies do the same until we systematically reform our system and eliminate the option for wealth-based detention. Given our insider knowledge of this industry, we also recommend several changes to the bill to aid in its impact and implementation. Our work as a community bail fund is a temporary stopgap measure, focused on harm reduction before we reach meaningful reform. These proposed changes will further mitigate the harm of a system that allows wealth-based detention while we focus our long-term energies on fighting for systemic change.

First, as my colleague Alex notes, we would like to underscore our testimony by emphasizing a vision that New York judges make full use of the state bail statute,[1] relying on alternative forms of bail so that no New Yorkers are forced into exploitative financial relationships in the first place. To that end, the disclosure statement proposed by the bill should also indicate that consumers have a choice in the type of bail they pay. It should instruct consumers how to identify their options and pay other forms of bail available to them, and should explicitly differentiate between nonrefundable premiums and refundable cash bail payments.

Second, we propose several adjustments to the public disclosure. The disclosure should be posted not only "at the location where its principal business transactions are executed," but where any business transactions are executed. Consumers who engage bail bond companies through online portals, or at remote sites, should also know the maximum premium amounts. Further, this disclosure should also include explicit language surrounding common illegal fees (such as "courier fees") that should be included in the maximum premium equation, and should be translated into other languages as most commonly used in the business area.

Third, regarding enforcement of this bill, we implore the committee to adopt a more rigorous accountability metric in the bill text. Bail bond companies in New York City extract almost $30 million dollars in nonrefundable fees from residents every year and the vast majority of their operations are underwritten by a handful of multinational multi-billion dollar corporations, so a $250 fine amounts to less than a slap on the wrist. Especially at a time in which our Republican legislature is gutting consumer protections at the federal level, New York should lead the fight for consumer protections and against abusive industry practices. A fine proportional to a business' profits and a regulated measure for returning illegally extracted fees should be included in this legislation. Fourth, any fees collected should be earmarked for reinvestment into the communities which have long been exploited by unregulated bail bond company practices and dedicated to racial and socioeconomic justice.

Thank you for your commitment to fair regulations and for the opportunity to testify. As an organization with both staff members and clients directly impacted by the industry, we hope that our testimony is taken seriously and that the committee continues to push for true reform.

Int. No. 724, a Local Law to amend the administrative code of the city of New York, in relation to requiring that bail bond businesses make certain disclosures.

Testimony of Alex Anthony

Speaker Johnson and members of the Committee, my name is Alex Anthony. I am the Director of Queens Operations at The Bronx Freedom Fund, a nonprofit that provides cash bail assistance of $2,000 or less to New Yorkers accused of misdemeanors who cannot afford to buy their freedom. We restore the presumption of innocence by allowing our clients to return to their jobs,

[1] New York C.P.L. §510.30.

families, and communities and fight their cases from a position of freedom rather than going to jail for their poverty. Thank you for considering our testimony today.

Each year, tens of thousands of New Yorkers spend time in City jails simply because they cannot afford to pay bail. For many families, the only way to buy a loved one's release from jail is through the for-profit commercial bail bond industry. As noted in the City Comptroller's January report, The Public Cost of Private Bail, commercial bail bonds now account for more than half of all bail postings in New York City.[2] And while the number of cash bail postings has been decreasing since FY 2015, bail bond postings have actually increased by 12 percent over this same time period, and the total value of these private bonds increased 18 percent.[3] This powerful for-profit industry requires meaningful oversight and regulation, as abuses such as charging impermissible fees, failing to return collateral upon case completion, conducting arbitrary re-arrests, and causing unreasonable delays in bond posting and release have been reported.

Despite the fact that New York has one of the most progressive bail statutes in the country, allowing judges to set nine (9) forms of bail including credit card as well as unsecured and partially secured bonds (where individuals can execute bonds by signing affidavits and posting refundable fees or collateral directly with the courts), alternative forms of bail that do not require upfront financial payments are rarely used and bail is almost exclusively set in the forms of cash or commercial bail bond.

Because for-profit commercial bond companies generally require upfront payment of nonrefundable premiums regardless of case outcome as well as additional requirements such as collateral, GPS monitoring, and in-person check-ins, commercial bonds tend to be one the costliest and most onerous forms of bail. The Comptroller's Office estimates that for-profit commercial bond companies collect between $16 million and $27 million dollars a year in nonrefundable fees, while individuals detained because they are unable to pay bail lose $28 million dollars in wages annually.[4]

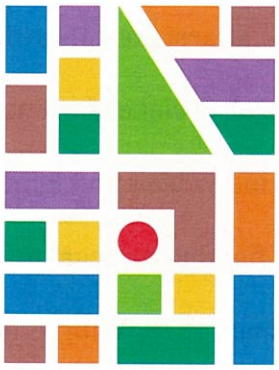
These figures do not account for the collection of improper fees by commercial bond companies such as premiums above the legal limit or illegal additional fees like "courier fees." The disclosures required in this bill should include a clear description of the fees for-profit commercial bail bonds companies are legally allowed to charge under state law, including

[2] Scott M. Stringer, NYC Comptroller, *The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC* 5 (2018), https://comptroller.nyc.gov/wp-content/uploads/documents/The_Public_Cost_of_Private_Bail.pdf.

[3] *Id.* at 23.
[4] *Id.* at 5-6.

examples of impermissible fees, as well as options for relief for consumers who believe they have been charged improperly.

The Bronx Freedom Fund strongly supports this bill. However, to achieve true bail reform, judges need to set the least restrictive forms of bail necessary to ensure individuals' return to court and utilize the alternative, less financially burdensome forms of bail currently authorized under New York law. Thank you again to the Council for inviting us and for your careful consideration of our testimony.



THE LEGAL AID SOCIETY

New York City Council
Committees on Consumer Affairs and Business Licensing and Criminal Justice
City Hall
May 2, 2017
12:00 PM
New York, New York

Regulating Bail Bond Agents, Protecting Consumers, and Creating Transparency in a Historically Exploitative Industry

Presented By:

Elizabeth Bender, Staff Attorney, Decarceration Project

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is an indispensable component of the legal, social and economic fabric of New York City—passionately advocating for low-income individuals and families across a variety of criminal, civil and juvenile rights matters, while also fighting for legal reform. The Society has performed this role in City, State and federal courts since 1876. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Legal Aid Society operates three major practices — Criminal, Civil and Juvenile Rights—and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program.

The Society's Criminal Practice is the primary public defender in the City of New York. During the last year, our Criminal Practice represented over 200,000 indigent New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. The breadth of The Legal Aid Society's representation places us in a unique position to address the issues before you today.

Bail Reform is Overdue in New York

Our clients who are charged in Criminal Court are too often subjected to the fundamental injustices of the monetary bail system. The need for massive bail reform is undeniable: when the Mayor boasts that "only" 9,000 New Yorkers are being detained in one of the country's most

violent jail complexes,[1] it's clear that we are in a humanitarian crisis. Legal Aid and our community partners will never stop fighting for a better New York, a free New York, where no one is ever held in jail just because they don't have enough money to pay bail. While we demand those reforms, we recognize that as long as New York refuses to abandon its discriminatory money bail system, we must hold that system accountable for our current clients. The bail bond industry is one of the bail system's most exploitative features, and the Council must address that in every way that it can.

Although New York law gives judges nine forms of bail to choose from—if they decide to set bail at all, which is a matter of discretion—they almost always set only the two most onerous types of bail: cash and insurance company bail bonds.[2] At first blush, the bail bond option often appears much more affordable: the nonrefundable premium and collateral usually add up to around 20% of the total bond amount, whereas cash bail requires the entire amount to be paid upfront. But what at first seems like a discount belies the steep cost of a commercial bail bond in the long run: while cash bail is returned after the case over, bond agents keep premiums paid for bail bonds. And that's before taking into account the hidden fees and seemingly endless opportunities for abuse that have come to define the commercial bail bond industry.

The New York Legislature has created a statutory climate where these abuses can flourish virtually unchecked. Those scant regulations that do exist allow bond agents to act with shocking flippancy and greed. For example, section 530.80 of the Criminal Procedure Law allows a bond agent to surrender an accused person to the court or to jail—for any reason. Other

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[1] Office of the New York City Mayor, *Mayor de Blasio Announces City Jail Population is Below 9,000 for the First Time in 35 Years*, Dec. 27, 2017 (http://www1.nyc.gov/office-of-the-mayor/news/778-17/mayor-de-blasio-city-jail-population-below-9-000-the-first-time-35-years)

[2] Vera Institute of Justice, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts*, Sept. 2017, p. 2 (https://www.vera.org/publications/against-the-odds-bail-reform-new-york-city-criminal-courts)

states, like Tennessee, at least require a showing of good cause before a bond agent can unilaterally break a contract and forfeit someone else's freedom. But New York gives bond agents unchecked power to accept a fee, post a bond, then change their minds, take the accused person into custody, and turn them over to the Department of Correction. Even bond agents themselves acknowledge that New York's laws are "open for exploitation": one agent spoke with the New York Times in 2011 and said the laws governing his profession "need to be more specific" because "if I bail a guy out today and I don't like him, I can put him back in jail, and it's O.K. To me, that's screwed up."[3] But apparently, these laws are not "screwed up" enough for Albany to act. The State Legislature's failure to regulate the industry adequately means that this Council must do what it can to educate consumers, protect the accused, and create systems of accountability for an industry that for too long has profited off of communities of color and people experiencing poverty.

The two bills before you are an opportunity to do that. People must be given all the relevant facts before contracting with a commercial bond agent. They must have recourse when the bond agent treats them unfairly or unlawfully. And the City must hold those agents accountable when they exploit people in what is, for many, their most desperate and vulnerable moments.

Int. 724: The City Must Accurately and Completely Inform Potential Bail Bond Customers

"I can get that money back?!" This is the far-too-common response my colleagues and I receive when we tell our clients that the collateral they posted to secure an insurance company bond must be refunded. Many times, the bond agent keeps it—on top of the nonrefundable

[3] John Eligon, *For Poor, Bail Systems Can Be an Obstacle to Freedom*, N.Y. Times, Jan. 9, 2011 (https://www.nytimes.com/2011/01/10/nyregion/10bailbonds.html)

premium, and any other unlawful but still prevalent additional fees they may have collected. This is plainly illegal, but our clients and their families often don't know that. Moreover, because a commercial bail bond may be the only way they can afford to post their loved one's bond, they might not have a meaningful choice anyway. That imbalance of power allows exploitation to run rampant.

Int. 724 creates a "consumer's bill of rights" for people seeking a commercial bail bond. Arming communities with accurate information about the bond industry is essential. But the Council must ensure that the information in the flier is keeping up with the industry's attempts to charge illegal fees.

The definition of "premium" must state that it includes all fees that can ever be charged by a bond agent, and must include common terms for unlawful additional fees: "courier fees," "court fees", "apprehension fees", etc. It must also include the statutory calculation for a premium (10% of bond amount to $3,000; 8% of the amount between $3,000 and $10,000; 6% of amount above $10,000) and should list premium amounts for commonly imposed bond amounts, starting with $2,500 and increasing in increments of $2,500. While this equation also appears in Int. 510, it should appear wherever a premium is defined or discussed pursuant to either bill's provisions.

The City should also consult with the Department of Financial Services to determine the typical timetable for return of collateral at the close of a case, and list that on the disclosure. It should advise people that if they have not received their collateral in that time, they should inquire with DFS and consider making a complaint under Int. 510.

The City must also inform consumers that they do not have to consent to many of the terms that often appear in our clients' bond contracts. Agents often impose curfews, phone

check-ins, in-person appointments, and other invasive requirements that the law does not mandate and that are not subject to any regulatory or judicial oversight—and then will return the accused person to jail for even a minor violation. These terms are fully negotiable, but people who are desperate to get their loved ones out of jail might feel that if they object the bond agent will refuse to post bond, or they may not know that these terms are not mandatory. Educating consumers that they can reject these terms and seek another bond agent's services will help reclaim a small amount of their bargaining power, even if it does not curtail the practice completely.

Int. 510: There Must Be Consequences When Bond Agents Exploit New Yorkers

An educated consumer community cannot hold the bail bond industry in check by itself. The City must create robust enforcement mechanisms for bail bond agents who charge unlawful fees or otherwise exploit their customers.

The complaint mechanism this bill creates must be accessible for all New Yorkers, from all language backgrounds and all abilities. It must be staffed by people with knowledge of the laws and rules governing bail bondsmen so that a variety of complaints can be meaningfully and quickly addressed.

The investigation of these complaints cannot be restricted to the New York Police Department. First, the NYPD already has jurisdiction to investigate bond agents who steal collateral or overcharge customers—these are petit and grand larcenies under the Penal Law. A bill that directs these complaints to the NYPD does not increase agency capacity to investigate or prosecute; acknowledging that the police can investigate crimes is redundant. Second, many of the people whose freedom depends on bond agents are accused by police in their open cases, and

virtually all of them will have been arrested by police. Their families may be understandably skeptical that the same law enforcement body would simultaneous testify against their loved ones *and* seek justice on their behalf. Third, investigations of long-term fraud and consumer rights violations are an equally good if not better fit with the Attorney General, the Department of Consumer Affairs, and the Department of Financial Services, all of which focus more on consumer protections than the NYPD does. The bill should require that complaints are referred to all applicable agencies, rather than limiting it only to the NYPD.

There must be reporting requirements for complaints made under this rule. The Council should track not just how many referrals were made, but how quickly they were referred to applicable agencies, which agencies responded, when they responded, how they responded, what investigations occurred, and the results of those investigations. The results of substantiated investigations must be made publicly available on a searchable website. The rule should also require bond agents who violated the rule or otherwise broke the law while acting as a bondsman to post that information wherever they do business. If a New York restaurant has to disclose a failed health inspection because of an unclean kitchen, a bond agent should have to announce that he has unclean hands.

The rules should also create a mechanism for restitution for consumers defrauded by bond agents, including attorneys' fees and other costs incurred in reporting and pursuing the complaint.

Legal Aid recognizes that, without changes to the statutes governing bond agents and, more broadly, without reforms to the bail system as a whole, the City's ability to rein in predatory bond agents is limited. Creating automatic penalties for failure to comply with

reporting requirements will hopefully inspire better behavior by bond agents, but that is not enough. Judges must be encouraged to adhere to the law and only set bail when it is *necessary* to ensure someone's return to court. Through the Decarceration Project, we have focused additional resources on litigating bad bail decisions, and part of that effort has been to promote the use of unsecured and partially secured bonds in place of insurance company bonds. Judges could effectively put the bail bond industry out of business today by setting bail in these more accessible forms. The Council should use its access and platform to urge them to do so.

Testimony of Nicholas Encalada-Malinowski, Civil Rights Campaign Director at VOCAL-NY, before the NYC Council Committee Hearing on Consumer Affairs, held jointly with the Committee on Criminal Justice.

May 2, 2018

On bills Intro 510 and Intro 724 -- we support.

My name is Nick Encalada-Malinowski and I am here today representing VOCAL-NY. In my work at VOCAL, and previously with Brooklyn Defender Services, I have met with dozens of consumers who have had problems with commercial bail bonds companies. These companies have been allowed operate virtually unregulated, predatory and exploitative businesses due to a total lack of oversight and attention at every level of government. These consumers are left without any protections, negotiating complicated, lengthy legal contracts at a moment of acute stress – while their loved one is stuck on Rikers Island and the only way to get them off is to pay money that the family does not have.

The Commercial Bail Bond Industry exists in just two countries, the United State and the Philippines. The rest of the world – as well as several states and localities in the U.S. -- has determined that the profit motive is in direct conflict with the aspects of liberty and equity that are supposed to underpin judicial systems. These we ignore in New York City. According to the New York City Comptroller, commercial bail bonds are one of the most costly and punitive aspects of the criminal legal system in New York City. And yet in 2017, more than 12,300 private bail bonds were posted in New York City courts with a total bond value of $268 million. The number of bonds has grown 12 percent in the last year; the total value of the bonds has risen 18 percent. In 1985 there were almost no commercial bonds posted in New York City court – this is a relatively new phenomenon. Commercial bail bonds now, however, make up roughly 50% of all bails paid in New York City.

The Industry is almost entirely unregulated. People are routinely asked to pay illegal fees, have their collateral withheld, are given the runaround in trying to get back money they are owed, often wait days and sometimes weeks after paying for their loved one to be released from jail, and perhaps, most sinister, people are often rearrested by bail bondsmen for petty or specious violations of the contract and returned to custody while the bondsman keeps their money. Dozens of storefronts throughout the city operate without licenses, while others hide behind various DBAs to confuse customers and regulators alike. We have met multiple times with state regulators at the Department of Financial Services, the Attorney General's office, State Legislators, City Council members and the Department of Consumer Affairs over the past two years and the status quo largely remains. Most agencies have told us they simply do not have the capacity, or authority, to properly regulate the industry.

Through our advocacy, we were able to get one bad actor shut down – Marvin Morgan bail bonds – which was a positive result. Yet last month I received a complaint from a consumer who had done business with the new tenant at the old Marvin's storefront. Same problem, just under a different name. So removing the bad actor did not demonstrably decrease the problems across the industry. Even an industry that worked entirely within the law and was accountable and well regulated would still be needlessly extracting millions of dollars from low income communities of color. There is no defense for the industry at all – it provides no positive public service and creates a great deal of harm.

I want to discuss a few other general points before turning to the bills.

1) We need to end money bail altogether. The whole conceit of money being used to bring people back to court is based on the false belief that it is effective. Furthermore it obviously discriminates against people without financial resources and fills up our jails. It's within that larger fight that we are here talking about consumer protections.

2) It is now the City's policy that we are going to Close Rikers Island. Last year there were 33,000 admissions to City jails from people who were unable to pay bail at their first court hearing. Many of those people were eventually released. 12,300 people a year are released through commercial bail bonds, almost all of which require at least several days stay in jail -- for others many more. Moving all of these bail bond cases to unsecured bonds would reduce Rikers admissions by 12,300 each year. There is a role for the council to play in advocating with District Attorneys and Judges to move away from the status quo.

3) The use of commercial bail bonds drives economic inequality in the City. The Comptroller estimates $28 million in lost wages every year due to jail stays. As much as $27 million is extracted through legally allowable premiums, likely millions more in illegal fees and illegally withheld collateral. Commercial bail bond fees, unlike cash bail or partially secured bonds are unrefundable and have a generational impact.

4) While we support the bills before the council today – we would also recommend a resolution supporting NY Senate Bill S8146 – which would ban the industry throughout the State. New York City is especially well-positioned to move away from commercial bail bonds toward unsecured bonds.

On the bills before the Council today

Both bills need to be passed in tandem as they tackle different aspects of a consumer's experience purchasing a commercial bail bond.

As to 510, it's important that consumers know how much they may be legally charged under the statute.

1) We actually haven't seen a great deal of overcharging on the premiums. Typically we see the legally allowable premium being charged and than additional fees on top of that being recovered as well. These fees might relate to ankle monitors, notary fees, courier fess, terminal fees, expediting fees etc. Language

added to the signage stating "this premium is the maximum amount that a bail bond company can keep from you at the end of a case" would clarify this.

2) I'm not sure that NYPD is the right agency to enforce these administrative rules, and wonder if the DCA instead would be able to take direct action upon receiving a complaint to collect a fine when warranted.

3) A fine of $250 is not enough to dissuade wrongdoing and may merely be considered the price of doing business by bail bond companies. We've seen "courier fees" in individual cases that were $1000, for example.

4) Can we add a reporting component to this bill, or in another, to gauge the effectiveness of the complaint mechanism and any enforcement actions.

Regarding Intro 724

1) How do we make sure that consumers who have lost money are made whole? Is there a path for restitution and compensation?

2) Can we add language that consumers have a right to negotiate the purchase of a bail bond with a licensed bail agent as described in 6802 of the NYS insurance law. Many individuals working for bail bond companies are not actually licensed by the state, which is illegal, but also makes accountability challenging.

3) Require in the signage for bail bond companies to disclose all DBAs associated with the license in Section c-3?

4) Can we require document retention from the bail bond companies to shore up the potential for accountability?

5) Can we provide a reporting component into the bill?

6) Can we raise the fine?

Thank you very much for allowing me time to testify here today and for holding this hearing. Most importantly thank you for taking action to extend to the greatest possibility the City's efforts to protect vulnerable consumers and to eventually to eradicate this industry.

nycds
Fighting for your rights, one person at a time

Stanislao A. Germán, Executive Director
Carolyn P. Wilson, Director

5/01/2018 CITY COUNCIL HEARING

Int. 0510-2018; Int. 0724-2018

TESTIMONY OF NEW YORK COUNTY DEFENDER SERVICES

Pretrial detention, that is, the widespread incarceration of mostly indigent people who have not been found guilty of any wrongdoing, is inherently unjust. The presumption of innocence is one our bedrock principles, but to the inmate, time spent in jail while presumed innocent by the law is indistinguishable from time spent serving a sentence after being found guilty of a crime. Worse than that, the one greatly interferes with the other, as both logic and the available research tell us that the incarcerated defendant is more likely to be convicted, and to serve more time following that conviction, than the defendant at liberty. Also increased, naturally, is the incidence of wrongful convictions—convictions driven not by analyses of guilt, innocence, or evidence, but by an overriding need to get out of jail. It's a well-understood phenomenon readily apparent to any public defender in this city and it's directly attributable to our misguided cash-based bail system.

And perhaps the most troubling aspect of our current system is the longstanding prominence of insurance company bail bonds and the many who unjustly profit from their prominence. This is a form of bail that, simply put, should not exist. These bonds introduce the elements of commerce and profit-taking where they most certainly do not belong. A person's liberty and constitutional rights should not be a venue for commercial exploitation and predictably the resulting industry is rife with abuse and bad faith.

So while the instant reforms are of course welcome, what's truly required is elimination of the industry or at least a pronounced de-emphasizing of this improper practice. Judges must break their entrenched reliance on only commercial bail bonds and cash as means to pretrial release. Education of the judiciary and other stakeholders has proven ineffective in achieving this goal. So New York's bail statute should be amended to require as a matter of law that a court making a bail

determination must specify three forms of bail. This would greatly diminish the role of commercial bonds and thereby reduce the balance of power and the concomitant potential for abuse. It would force our system to begin relying significantly on methods like partially secured bonds and unsecured bonds and inject much needed fairness to the currently unjust system whereby wealth greatly impacts your ability to fully exercise your constitutional rights.

Pretrial detention due to poverty harms not only those directly detained but also our criminal justice system as a whole. But not all means of release are created equal. The exploitation of our low-income communities at their most vulnerable moments to secure the release of their loved ones is particularly damaging to society. It fosters a general derogation of respect for our criminal justice system and for the fundamental principle that the rich and poor alike are entitled to equal justice under the law. In the absence of deep reforms, the instant proposals are at least a step in the right direction.

Sergio De La Pava
Director of Special Litigation
New York County Defender Services

BROOKLYN DEFENDER SERVICES

TESTIMONY OF:

Catherine Gonzalez, Staff Attorney

BROOKLYN DEFENDER SERVICES

Written with: Saye Joseph, Policy Associate, and Jared Chausow, Senior Policy Specialist

Presented before

The New York City Council

Committees on the Justice System and Consumer Affairs & Business Licensing

May 2, 2018

My name is Catherine Gonzalez and I am a staff attorney in the Criminal Defense and Padilla units at Brooklyn Defender Services (BDS). BDS is one of the largest legal services providers in New York City, representing approximately 35,000 low-income Brooklyn residents each year who are arrested, or facing child welfare allegations or deportation. BDS also provides a wide range of other services to our clients, including help with housing, education, employment and immigration. I thank the City Council Committee on Justice and the Committee on Consumer Affairs & Business Licensing for this opportunity to testify about the immense harm of commercial bail bonds on our clients and their families and communities. We support Intro 510 and 724 and the urge the Council to pass these bills to mitigate some of this harm and increase transparency in bail bonds transactions. Ultimately, the City should work toward abolishing this predatory and unnecessary industry. My testimony will center the stories of the people we represent as well as some recommendations to improve the bills.

Recommendations:

Intro 510 should be amended to require that bail bond businesses' posted notices stipulate, in clear language, that the compensation cap applies to total compensation, not just premiums. The fines must be significantly increased if they are to have any effect. In addition, complaints submitted to the Department of Consumer Affairs (DCA) should be referred to all applicable agencies, rather than just the NYPD, and DCA should publicly report on referrals and outcomes. Lastly, the legislation should create an effective mechanism for those who have been victimized by bail bonds businesses to be made whole, including through restitution with treble damages and attorneys' fees.

Intro 724 should be amended to require bail bond businesses to inform consumers of financial risks, including circumstances in which any funds or property provided as collateral might be retained by the business. The bill should also stipulate narrowly-tailored authorized uses of collateral, as there are currently no meaningful restrictions.

Background

The commercial bail industry serves no legitimate purpose and should be abolished. We echo the call of New York City Comptroller Stringer for the City to help make that a reality. There is no place for for-profit actors in determinations of liberty, especially during the pre-trial period when people are presumed innocent.

Though New York's bail statute offers judges nine different options for bail, including options that do not require the defendant to pay anything upfront, the nearly invariable practice of judges is to offer the most onerous and ultimately punitive choices: pay the full amount now or visit a bail bondsman. (I can recall only one case in which a judge allowed for a partially secured bond.) The Lippman report shows that judges and prosecutors rarely spend any time thinking of the defendant's ability to pay.[1] Therefore, most of our clients for whom bail is set in any amount default to spending an uncertain amount of time on Rikers Island because they are unable to pay, even if the bail is set as "low" as $100.[2] Convicted of no crime, 9,000 people are detained in New York City jails until and unless they buy their freedom from a third-party whose only motive is profit. This injustice fuels a thriving for-profit bail bond industry, in which defendants and their families are forced into predatory and often illegal financial agreements with little or no recourse.

Families in this situation pay a non-refundable portion of the total bail amount to a bail bond company, who then writes a bond for the full bail amount. This portion, called a "premium," is capped according to a formula in the bail statute, though many if not most commercial bail bonds charge premiums that exceed the cap, in part because customers are among the most marginalized and disempowered New Yorkers and regulators have largely ignored this industry.[3] Importantly, the cap applies to "premium or compensation." In addition to losing the premium,

[1] Independent Commission on New York City Criminal Justice and Incarceration Reform. (2017). *A More Just New York City.* NYC.
[2] Burdeen, C. F. (2016, April 12). The Dangerous Domino Effect of Not Making Bail. *The Atlantic.*
[3] The Criminal Justice Operations Committee, Criminal Courts Committee and Corrections and Community Reentry Committee. (2017). *Recommendations Concerning the Bail Bond Industry in the State of New York.*

these agreements often include additional terms and conditions, fees, surveillance, and/or property loss, if assets were put up as collateral. Any such additional monetary charges, excluding collateral that is slated to be returned, are illegal, but are routinely charged by the bail bondsman. These illegal charges are not regulated in my experience. Additional terms and conditions, which may be extremely onerous but their enforcement remains a legal grey area. In practice, bail bonds act as extortion—sometimes aided by violence—for an individual's freedom.

Money bail is not a fair, effective, or necessary means to ensure a defendant's return to court; the success of our charitable bail funds, whose clients have no financial "skin in the game," proves this to be true. For this reason, unsecured bonds, for which defendants pay nothing upfront, should be the norm under the existing bail statute. To the extent that courts and District Attorneys continue to require some form of upfront money bail, and continue to be permitted to do so under the law, there is no need to rely on commercial bonds. The better options is for people charged with a crime to pay a bond directly to the court, which would return that money in full if they are not convicted of a crime, or all but 3% if they are convicted, as long as they make their court dates.

Commercial bail is a twisted form of insurance; consumers assume all of the risk and pay substantial premiums and fees. Frankly, this industry would not be allowed to exist were it not principally used by marginalized people. According to Comptroller Stringer, "in the last year alone… the private bail bond industry extracted between $16 million and $27 million in nonrefundable fees from New York City defendants and their families." These are predominately low-income families of color, many forfeiting rent or food money to free loved ones from jail.

For the remainder of the period in which this industry continues to exist, it must be much more tightly regulated. Until recent enforcement actions by DCA, the New York State Department of Financial Services was the only watchdog for the industry, and has abnegated its responsibilities. Complaints that we and our clients submit have never yielded any sanction of the worst actors and, more importantly, it is not clear they have any interest in making whole those who have been victimized.

In truth, it is not only impacted individuals and families who are left feeling powerless when courts order commercial bail. As a public defender, I have little advice to give my clients and their loved ones with respect to bail bonds businesses. They want referrals, but no company can be trusted in this lax regulatory environment. All I can do is provide them with a pamphlet on bail paying that our office helped create with the Brooklyn Community Bail Fund through the Center for Urban Pedagogy, and strongly urge them to get a copy of contracts and receipts. With liberty on the line, and sometimes just hours to pay before DOC's bus is loaded and leaving the courthouse for Rikers Island, there is little opportunity to challenge bail bonds businesses' wrongdoing. The City and State must take action, and courts should cease ordering commercial bail.

BDS supports Intro 510 (CM Lancman) - A Local Law to amend the administrative code of the city of New York, in relation to fees charged by bail bondsmen.

Intro 510 would require that bail bond businesses conspicuously post the state's formula for the cap on premiums. It also requires the Department of Consumer Affairs (DCA) to establish a complaint mechanism for illegal overcharges by bail bonds businesses as well as refer alleged

violations to the New York Police Department for investigation. This bill could begin to protect New Yorkers from the unscrupulous practices of bail bonds businesses. However, it should be amended to require that bail bond businesses' posted notices stipulate, in clear language, that the cap applies to total compensation, not just premiums. So-called fees currently charged by many bail bond businesses, in excess of the cap, are illegal and must be recognized as such. Also, the fines must be significantly increased if they are to have any effect. Bail bond businesses regularly make hundreds if not thousands of dollars in illegal fees; a $250 fine would likely be absorbed as the cost of doing crooked business. In addition, complaints submitted to the Department of Consumer Affairs (DCA) should be referred to all applicable agencies, rather than just the NYPD, and DCA should publicly report on referrals and outcomes disaggregated by enforcement agency. Lastly, the legislation should create an effective mechanism for those who have been overcharged by bail bonds businesses to be made whole, including through restitution with treble damages and attorneys' fees.

BDS supports Intro 724 (Speaker Johnson, CM Williams, CM Lancman, CM Van Bramer, and CM Dromm) - A local law to amend the administrative code of the city of New York, in relation to requiring that bail bond businesses make certain disclosures.

The for-profit bail bonds industry has grown alongside mass incarceration and mass criminalization. The industry has morphed into one with little regulation, and predatory pricing and contracting, which negatively impacts low-income people. Unfortunately, our clients who have no option but to rely on commercial bail bonds become involved in a complex transfer of money and risk. Commercial bail bonds involve "surety" bonds that are primarily financed by large global insurers.[4] Unlike traditional insurance (car, home, etc.), such surety bonds place the risk and requirement to pay the full bond amount, not just the premium amount, onto the family. However, these transactions occur in several layers of opaque structures between corporate entities, bond-insurance operations, and bail bonds' storefronts, all of which is unknown to our clients or the public.

Intro 724 would require DCA to produce a "consumers' bill of rights regarding bail bond businesses" in multiple languages. It would further require bail bond businesses to provide consumers with a flier containing the same information, and conspicuously post signage with basic but important identifying information regarding the licensed bond agents, including all addresses that operate under their license. Much of this information would also be included in all receipts and contracts. Lastly, it would require that bail bond businesses provide each consumer a copy of any document related to the provision of its services that the consumer signed, including but not limited to any contract. For the benefit of our clients and the public, in addition to the proposed disclosures, we recommend that this bill require bail bond businesses to inform consumers of financial risks, including circumstances in which any funds or property provided as collateral may be retained by these businesses. The bill should also stipulate narrowly-tailored authorized uses of collateral, as there are currently no meaningful restrictions. As noted earlier, the bond industry operates within murky transactions, and far too often are our clients entering predatory contracts in moments of desperation when they are not fully aware of their rights and liability.

[4] ibid.

Client Examples

Ms. J went to Marvin Morgan Bail Bonds to get her son out of Rikers Island. She was particularly nervous for him because it was his first arrest. The bond was set at $1,000, and according to state law, the company was allowed to charge her $100 in "premium or compensation" that she would never get back, regardless of the outcome of the case. The company instead charged her $300, comprised of $100 for the premium and $200 in "courier fees" to deliver the paperwork. The courier, Lightning Courier Service Inc, is registered with the New York State Department of State at the same address as Marvin Morgan Bail Bonds. (Other BDS clients have paid $1,000 in courier fees, including at least one who paid that amount to Lightning Courier Service at Marvin's.) Marvin's did not bail her son out of Rikers for five days. According to DFS, there is no statutory requirement that a bail bonds agent actually bail anybody out, and there is certainly no deadline by which they must act as they are paid to do. Finally, the day before Ms. J's son was set to appear in court, he was bailed out. He went to his hearing and his case was dismissed. Nonetheless, Ms. J's money will almost certainly not be returned to her. She has filed a complaint with DFS, but, like all commercial bail customers, she signed a large contract in a time of crisis, was not given a copy, and might have signed a document that, lawfully or not, contained provisions regarding the fees she paid.

$300 is a lot of money for the many extremely low-income New York families who enter our criminal justice system, as evidenced by the majority of the population in Rikers enduring pre-trial incarceration because they cannot afford $500 or less, but Ms. J's loss was relatively small compared to that of other clients who have recently complained to us. **Ms. W** went to ABC Bail Bonds to get her son, who suffers from serious mental illness and addiction, out of Rikers. She paid $3,560 in premiums and fees on a $50,000 bond, or $300 over the legal ceiling. She also provided the deed to her house and paid $5,000 in collateral. Soon after her son was released, however, he was involuntarily committed to a state psychiatric hospital and missed a "check-in" with the bail company. Rather than call Ms. W and ask for her son's whereabouts, the company "apprehended" him from the hospital, returned him to jail, and exonerated the bail in a non-adversarial hearing. They also kept Ms. W's $3,560, along with her $5,000, which it took the liberty of converting from collateral into an "apprehension fee."

One of our social workers recently accompanied a client, **Ms. S**, to Marvin Morgan Bail Bonds to observe the process of securing their services to get her son out of jail. The company charged her an illegally high sum, but she had called around and this company was the cheapest. Informed that the compensation was illegal, she asked, "What choice do I have?" She signed a 24 -page contract and paid as charged, including a $1,000 courier fee to Lightning Courier Service Inc.

We recognize and on a daily basis witness the deeply entrenched judicial practice of cash bail or bond as the only option for pre-trial release that reinforces the market for unscrupulous bail bondsmen, however, we hope to shift the culture towards one that does not punish a person being accused of a crime, but allows them to maintain their innocence unless proven guilty. Commercial bail is a gross distortion of justice. These perpetual patterns bolster not only our support for Intro 724 and 510, but also our advocacy towards abolishing commercial bail.

Thank you for your consideration of my comments and recommendations. If you have any questions regarding my testimony, or any issue, please contact Saye Joseph in my office at scjoseph@bds.org or (718) 254-0700 Ext. 206.

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Testimony of Zamir Khan
SEIU 32BJ
New York City Council
Intro No. 724 and Intro No. 510

Thank you to the New York City Council and the Committee on Consumer Affair and Business Licensing for holding today's hearing. On behalf of myself and our members at SEIU 32BJ, we urge you to join us by supporting two bills to reform the commercial bail industry, Intro No. 724 and Intro No. 510. If passed, Intro No. 510 will create a complaint mechanism for consumers of bail bond services to report violations of the maximum allowed bail bond premiums. Intro No. 724 would provide consumers with information about bail bond businesses as well as information about their rights. These basic consumer protections will defend ordinary New Yorkers from the unscrupulous practices of the commercial bail-bond industry, a sector that perpetuates the very social and economic inequities that we as a union fight so hard to end. As cities and states throughout the nation work to enact criminal justice reform in order to create a more equitable and humane criminal justice system, reforming the cash bail system and bail bond industry are two areas where reform is desperately needed. We are honored to be part of this critical conversation in New York City and New York State, and urge the Council to stand with us on the right side of history.

As a union, we are 163,000 strong. Here in New York City, we represent 85,000 building service workers who keep our City's residential buildings, schools, offices, stadiums, and airports clean and safe. We proudly fight for the rights of all of our members, who are working class and people of color, to live safe and healthy lives with dignity and respect.

According to a report by the Prison Policy Initiative there are nearly 650,000 people populating our local jails, and 70% of those are being held pretrial. One reason, they claim, that number is so high, is because we have a cash bail system here in the U.S. When bail is set by a court, if one cannot afford to pay the sum, a person can either remain in jail until trial or use the services of a commercial bail bondsman to be able to await trial at home.[1] It doesn't matter if someone's arrest is wrongful or if the person is found to be innocent after trial, the money paid to the commercial bail company is non-refundable. When a person is at their most vulnerable and facing the possibility of awaiting trial in jail, they turn to a commercial bond company for support and help. Wealthy individuals, however, do not face the same hardship—they are able to pay their bond and await trial at home.

It is for these reasons, that it is so critical for New York City to place stricter regulations on this industry. We need to insure that already-vulnerable low-income New Yorkers are not forced to pay high-premiums on their bond, pushing them further into debt. Additionally, New Yorkers need to be fully informed of their own rights and whether or not the bail bond company they need to use is credible and reliable. When New Yorkers are most susceptible to

[1] https://www.prisonpolicy.org/reports/incomejails.html

exploitation that is when we need to do everything in our power to ensure they are not taken advantage of. Lastly, we stand firmly in support of the most robust protections for consumers possible and support efforts to strengthen the legislative language.

Thank you for your time.

BROOKLYN COMMUNITY BAIL FUND

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TESTIMONY OF:
Peter Goldberg, Executive Director, Brooklyn Community Bail Fund
PRESENTED BEFORE:
The New York City Council, Committees on Justice System and Consumer Affairs and Business Licensing
May 2, 2018

Good afternoon and thank you to the Justice System and Consumer Affairs and Business Licensing Committees for opportunity to testify today. My name is Peter Goldberg, and I'm the Executive Director of the Brooklyn Community Bail Fund. We're the largest of three charitable bail funds here in New York City and we serve people arraigned in Brooklyn, Manhattan and Staten Island. Every month, we pay bail for over 100 of our fellow New Yorkers, over 3,000 to date. These are men and women who would have been imprisoned for their poverty alone, and who would have been forced to choose between pleading guilty and staying in a jail cell.

In considering these two proposed changes in law (Intros 510 and 724) – which would facilitate the protection of vulnerable consumers from predatory commercial bondsmen – we must recognize that what we ultimately need is the complete elimination of both cash bail and the commercial bail bond industry. As at the time U.S. Attorney General Robert Kennedy noted, "usually only one factor determines whether a defendant stays in jail before trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor simply is money."

Under New York State's Charitable Bail Law, we're limited to serving people accused of misdemeanor offenses in which bail is set at $2,000 or less. Around $1,000 is the average price of our clients' freedom, but we've bailed people out for as little as $150. During the week, we're in criminal courts and local jails across the City, carrying thousands of dollars in cash. We hand over a few hundred dollars to a court officer and someone is freed. It is crude and dehumanizing, and it makes a mockery of our justice system. But our clients – out on bail – are more than twice as likely to have their cases dismissed or resolved favorably compared with similarly situated individuals who are detained pretrial on low amounts of bail and essentially forced to plead guilty, often to unreasonable charges, and to crimes they did not commit. Annually, tens of thousands of New Yorkers end up in jail for weeks, months, or even years because they and their families can't raise the money for bail.

The United States is one of two countries that permits for profit actors to be compensated for securing the release of an individual. Every other country has banned the industry – and for

good reason. First and foremost, it is anathema to fundamental notions of justice to require individuals to pay for-profit actors in order to secure their freedom. It is simply impossible to square commercial bondsmen with the principles of equal protection and due process.

By its very nature, the commercial bail industry will be rife with abuse. There is no way to ensure equal bargaining power when one party to a contract is paying for a loved one's freedom. Individuals don't "choose" to use a bondsman. They are compelled to. They are necessarily vulnerable and in a moment of crisis and they will have little to no ability to comparison shop. For fear of retribution, they will also be unlikely to bring claims when they've been taken advantage of.

Over two years ago we started investigating commercial bail practices in New York City. What we've seen is appalling. Working with allied organizations, we've spoken with scores of New Yorkers who've used bondsmen and found that nearly all of them have been taken advantage of – charged amounts above what's allowed under law, had their collateral stolen, charged currier fees as much as $500. A report we published last summer – appended to this testimony – showed that bondsmen aren't even meaningfully regulated. They operate without licenses and use deceptive practices, and all of this is happening in plan site.

It's crucial to note that even when bondsmen operate above board, New Yorkers who use them are punished. A $10,000 bail bond – the average for individuals in Brooklyn – will require an individual to pay a nonrefundable fee of $860. This is money families desperately need for food or rent or health care. It's also money many New Yorkers do not have – sixty percent of Americans don't have $500 in liquid savings to use in the event of an emergency.[2]

This industry serves no other purpose than to punish low-income individuals, primarily people of color. In 2017 alone, 12,300 private bail bonds were posted in New York City courts with a total bond value of $268 million. If bondsmen only charged legal fees – which we know they don't – this would cost New York City residents nearly $30 million. In addition, a recent report by New York City Comptroller Scott Stringer estimates that individuals detained for the inability to afford bail lose close to an additional $30 million in wages every year.[3] All of this represents a massive transfer of wealth from low-income communities to for-profit insurance companies.

These devastating consequences result from an industry that isn't even necessary. Our work and numerous studies show that money is not what brings people back to court. While our clients have no financial obligation to us, 95% of them to date have made all their required court dates. This is true despite the fact that more than 7 out of 10 were labeled a moderate or high risk of non appearance by Criminal Justice Agency. We call them to provide friendly reminders about upcoming court dates, and we offer to connect them with community-based services that can meet needs they themselves identify – our clients need support, not supervision. Some of our clients overcome great difficulties to get to court. And in the rare event that a client fails to

appear, that person always has a legitimate reason: illness, homelessness, a sick child, faced with losing a hard-won job if they miss a day of work. No one is fleeing: They don't have the desire or the resources to flee. Moreover, New York State law allows for eight types of bail other than commercial bond, forms that do not involve nonrefundable fees or involve for-profit actors.

For the above reasons we support the passage of Intros 510 and 724. Requiring accurate disclosure must go hand in hand with meaningful penalties for bad actors. We would encourage the council to ensure that the penalties for noncompliance are the maximum allowed under law. What we ultimately need is the complete elimination of the commercial bail industry. Simply regulating the industry will not flow the tide of the 33,000 New Yorkers who last year were jailed for the inability to afford bail, over half of whom were ultimately able to pay bail, at great cost to them, their families and communities.[4] There is a New York State bill (NY Senate Bill S8146) that would ban the industry, and we call on the council to pass a resolution in support of S8146.

Thank you for the opportunity to present testimony today.

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[1] http://money.cnn.com/2017/01/12/pf/americans-lack-of-savings/index.html

[2] http://money.cnn.com/2017/01/12/pf/americans-lack-of-savings/index.html

[3] The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC. Found at https://comptroller.nyc.gov/wp-content/uploads/documents/The_Public_Cost_of_Private_Bail.pdf

[4] The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC.

JUNE 2017

LICENSE & REGISTRATION, PLEASE...

An examination of the practices and operations of the commercial bail bond industry in New York City

BROOKLYN COMMUNITY BAIL FUND

INTRODUCTION

The purpose of bail is to allow presumptively innocent people to be free during the pendency of a criminal case. But this is not how bail works in practice. Each year in New York City, 45,000 men and women are imprisoned for their inability to afford bail.

Although New York Criminal Procedure Law[1] provides for nine different forms of bail that a judge can set at arraignment, bail is almost exclusively set in one of two forms: commercial bail bond or cash. Commercial bail bonds transfer the decision-making power of who is free and who is jailed from the courts to for-profit actors, giving them the authority to determine which defendants will secure pretrial release.

Commercial bail bonds are by their nature the most onerous form of bail – it is the only type of bail that requires consumers to pay an upfront, non-refundable fee that families lose no matter the outcome of the case. When consumers use commercial bail bonds, they lose about ten percent or more of their bond amount in non-refundable fees. This is money that could have been used to pay rent or put food on the table. Paying bail via a commercial bail bond also often requires families to put down collateral, in amounts decided by the bail bond companies and agents, as well as additional requirements, such as GPS tracking and required in-person visits. The system even allows for-profit bail bond agents to take measures not allowed by the court or police (such as warrantless searches of an individual's home).

The Brooklyn Community Bail Fund sees the harmful effects of bail and the commercial actors who profit from it every day. The thousands of hours we have spent in criminal courts and detention facilities, meeting and working with individuals who can't afford cash bail and are forced to turn to bondsmen, have made it abundantly clear that commercial bail bond companies routinely charge fees above what is allowed by New York State law, demand exorbitant and discriminatory collateral and then not return it at the conclusion of a criminal case (as they are required to do), perform arbitrary re-arrests, and purposefully do not comply with their contractual obligations by delaying bailing people out. They are able to do this by taking advantage of lax state and city oversight. Some of their practices are clear violations of the Insurance Law and/or outright fraud, while others – while not in violation of the law – are clearly unethical.

Based on public information, it is unclear exactly how many New Yorkers rely on commercial bail bonds to secure the pretrial release of their family and community members, although it is likely to be at least 11,000[2] annually. It is also difficult to know how much New York City residents are paying commercial bondsmen based on a lack of centralized information, but our estimates suggest that in 2016, the industry syphoned between $14-$20 million[3]in legally allowed premiums – primarily from low-income communities – to for-profit entities. This transfer of wealth is concentrated in just a handful of already marginalized New York City neighborhoods, compounding the harm in those communities.

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[1] NY CPL §520.10. Available at: http://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-520-10.html

[2] 'Bonds Posted by Amount Category". Office of Court Administration. 2016.

[3] Estimates based on available information on average bail amounts in New York City and legal premiums charged. However, this estimate does not account for illegal fees charged to consumers, so numbers on total dollar amounts are expected to be much higher.

Despite the extreme power bail bond companies and agents have over the most vulnerable communities that make up their consumer base, there is little information available regarding their operations and oversight of the commercial bail bond industry. The Brooklyn Community Bail Fund undertook a thorough examination of the industry in New York City in order to provide New York City and New York State agencies with the information needed to meaningfully protect consumers.

This report has been forwarded to the Governor, Attorney General, and to the regulatory agencies that have oversight of the bail bond industry. It documents how the commercial bail bond industry operates in New York City and sheds light on an industry that is not meaningfully regulated and lacks basic consumer accountability. We ask that the state and city agencies responsible for protecting New York consumers immediately address the issues raised by the report.

KEY FINDINGS

The report was compiled using multiple research methods carried out in three phases from January – May 2017: (1) Research of publicly available information, including Google and Yellow Pages searches; (2) Phone verification of all internet-listed commercial bail bond phone numbers; and (3) Site visits to confirm all internet-listed physical office locations. Bail bond company information gathered from the three phases of research was also referenced against license information available on the New York State Department of Financial Services (DFS) website for active bail bonds agents[4].

Our findings include blatant violations of DFS regulations and New York State Law, as well as a number of operational trends that make it next to impossible to protect consumers:

- We identified nine bail bond companies operating in New York City that appear to be unlicensed;
- We identified six instances of bail bond companies using fictitious trade names/DBA's that appear to be unlicensed;
- We identified six licensed bail bond companies conducting business at unregistered locations;
- We identified myriad instances of consumer obfuscation by bail bond companies.

All of our findings and their supporting documentation have been forwarded to the Governor, Attorney General, and the Department of Financial Services.

[4] Bail Bonds Active Agent Listing – DFS. https://myportal.dfs.ny.gov/web/guest-applications/bail-bonds-search

RECOMMENDATIONS

We believe that there are immediate steps that can be taken to protect consumers based on our research. This includes:

- Enforce current licensing and registration requirements for all bail bond companies and bail bondsmen;
- Address the gaps in regulations around fictitious names, DBAs, and aliases;
- Require the licensing and oversight of companies claiming to be bail bond aggregators;
- Create a clear set of rules regarding the advertisement of bail bond services and related enforcement;
- Create a clear set of consumer rights when using bail bonds and related enforcement;
- Conduct an immediate audit of the industry, followed by regular periodic audits.

Our review focused on the licensing, advertising, and positioning of bail bond companies and bondsmen. Our review did not address a number of operational issues which we believe also must be confronted including:

- Enforcement of current regulations around maximum premiums, fees, and collateral;
- Rules regarding bail bond contracts and certification of such contracts by DFS;
- Consumer notice of rights with respect to the bail-paying process including premiums, fees, collateral, and contracts;
- A clear process for consumer complaints and questions.

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March 12, 2018

The Honorable Andrew M. Cuomo
Governor of the State of New York
Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Cuomo,

I am a Democratic member of the New Jersey General Assembly representing Legislative District 1, which comprises all of Cape May County, a majority of Cumberland County, and a portion of Atlantic County. I know that you and the New York Legislature are considering bail reform measures similar to those enacted here in New Jersey, and I wanted to make you aware of some of the issues that we have faced in this State since the reform's enactment.

I supported this legislation when it was presented in New Jersey, and advocated for its passage. Unfortunately, it has not lived up to expectation. Not only has the reform let out some bad actors that clearly should not have been released, but the reform's implementation has cost much more than anticipated, vastly exceeding the fiscal estimates. While everyone is in agreement that low-level and first time offenders should be given the opportunity of pretrial release, we have seen the release of some much more severe offenders, a number of which have committed additional crimes.

The cost of implementation has also been much higher than expected, and has shifted the cost from the offender to the taxpayer. The bail system supported many functions of the court, and the cost of re-arresting multiple offenders and bail jumpers was borne by the offenders themselves. Now, in New Jersey, we are making taxpayers pay to release criminals back into their neighborhoods, and with no accountability. The State does not have the resources to properly monitor these individuals.

Conversely, some offenders who would otherwise qualify for bail are now being denied the right to pre-trial release altogether as a result of the new public safety assessment (PSA). The assessment tool has denied release to some who deserve it, and allowed the release of some who have not. In January 2017, a convicted child predator was arrested for attempting to lure a12 year old girl to his house for "sexual things." The PSA determined that he was not a threat and was released. The Police Chief in Little Egg Harbor, a community just north of Atlantic City, was so

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distressed that he appealed the release all the way to the New Jersey Supreme Court. His appeal was denied.

To be clear and transparent, I am not "in the bag" for any industry or special interest. In fact, I was fully supportive of this law, and still believe in the concept. But the implementation is key. I am writing to you because of my experience a year and change into the reform's enactment in New Jersey. I simply ask that you fully review the reform measures being proposed. I am trying to rectify a problem here in New Jersey and encourage other states to avoid making the same mistake. I thank you for your time and consideration.

Sincerely,

Bob Andrzejczak
Assemblyman, First Legislative District – New Jersey

cc: John J. Flanagan, Senate Majority Leader
Jeffrey D. Klein, Senate Independent Democratic Conference Leader
Carl E. Heastie, State Assembly Speaker
Catharine M. Young, Senator
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July 3, 2017

Dear Speaker Rendon,

I am a democratic member of the New Jersey Assembly representing Legislative District 1. Prior to joining the Assembly, I served in the Iraq War as a sergeant in the Army's 25th Infantry Division until my discharge following an injury which led to the amputation of my left leg from a grenade explosion in 2009. As a result, I was awarded the Purple Heart and Bronze Star; my recovery was featured on a 2009 episode of The Oprah Winfrey Show.

As you may know, New Jersey passed and has implemented a bail reform policy similar to California's SB10 which you are considering. I supported the legislation when presented to our Assembly and advocated for its passage. The law went into effect this past January and it has been an absolute disaster. The public safety needs of citizens in New Jersey has suffered far greater than could have been imagined. The costs to the state have increased exponentially and, even worse, the constitutional rights of many of the accused are being infringed.

We were told that there would be no danger to citizens because the dangerous criminals would not be released and on "low level" criminals would be eligible. The reality is that dangerous and career criminals are released daily within hours of arrest. We should never have considered free bail to those who commit crimes where a citizen has been victimized. We may only catch a criminal once out of a multitude of crimes in which they commit. They are simply not afraid of committing crimes against citizens and as a result our crime rate has increased at least 13% since January. This law is victimizing law abiding citizens every day.

We were also misled as to the cost of implementation and continuation of this policy. It has become apparent to us now that the cost of incarcerating those held awaiting trial were greatly exaggerated. Additionally, we have transferred the cost of "free" bail to the taxpayer rather than the offender. The bail system supported many functions of the court and the cost of re-arresting multiple offenders and bail jumpers was borne by the offenders themselves rather than the taxpayers. Now we are making taxpayers pay to release criminals back into their neighborhoods and with no accountability. The state does not have the resources to properly monitor these people out on bail so we don't. This is a powder keg and our citizens are suffering because of it.

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Not only are our citizens suffering but now even the accused are being denied their constitutional right to pre-trial release as a result of the new laws. The eighth amendment to the Constitution of the United States guarantees an accused the right to "reasonable bail". However, in New Jersey, many are being denied that right. This is not just happening to dangerous criminals it is happening to low level offenders as well. The risk assessment system is simply not working. In January, a convicted child predator was arrested for attempting to lure a 12 year old girl to his house for "sexual things". The risk assemsment determined he was not a threat and was released. The police chief of Little Egg Harbor was so distressed by this that he appealed the release all the way to our supreme court and was denied. The man was released back into the same neighborhood where the "would be" victim resides. The only recourse for law enforcement was to post on Facebook a warning to the community.

I am not "in the bag" of any industry or special interest. I fully thought this was the right thing to do because of the arguments we heard. I am writing to you because I have experienced this first hand and it has been a disaster. I am trying to rectify a problem in New Jersey that we caused and hopefully encourage you not to make the same mistake. Please listen to the experts on this issue and look at the examples before you because the safety and financial interests of your citizens are at stake. Thank you for your time.

Sincerely,

Bob Andrzejczak
Assemblyman, First Legislative District

JUDICIAL COUNCIL OF CALIFORNIA

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Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

June 30, 2017

Hon. Reginald B. Jones-Sawyer, Sr., Chair
Assembly Public Safety Committee
State Capitol, Room 2117
Sacramento, California 95814

Subject: Senate Bill 10 (Hertzberg), as amended March 27, 2017 – Letter of Concern
Hearing: Assembly Public Safety Committee – July 11, 2017

Dear Assembly Member Jones-Sawyer:

The Judicial Council has a number of significant concerns about SB 10, as amended March 27, 2017. SB 10 would enact major bail/pretrial release reform. While there are some areas of conceptual agreement the Judicial Council continues to have substantial concerns about many elements of the bill including the impact on judicial discretion and independence; the creation of unrealistic or unspecified timelines; the imposition of unrealistic responsibilities and expectations on the pretrial services agencies that courts would rely on for information in making decisions, and the creation of an overly burdensome and complicated system. While expressing these concerns about SB 10, the Judicial Council acknowledges that SB 10 is a work in progress. We have been in communication with the author's office and the sponsors and we understand that the author is considering amendments.

Areas of Conceptual Agreement

While the Judicial Council has a substantial number of very significant concerns about SB 10 in its current form, in concept, the council agrees with the following:

- Providing for pretrial release, with or without conditions as appropriate, for all eligible defendants, and providing for preventive detention for defendants who pose a high risk to public safety or of fleeing the jurisdiction.

- Exploring the implications of moving from a pretrial release and detention system that is implemented primarily through the setting of money bail to a system that focuses on evidence-based risk assessment that considers the risk to public safety and victims with the risk of fleeing the jurisdiction and failure to appear, and is implemented through setting conditions of release, and preventive detention for cases in which no combination of conditions of release will be sufficient to address the risk.

- Providing pretrial services in a manner that: 1) closely coordinates with the courts; 2) delivers risk assessment information, criminal history, and other data relevant to judges' determinations of conditions of release for defendants; 3) includes monitoring and supervision of defendants released pretrial, where appropriate; and 4) is funded at a level to adequately and properly address the costs of such services.

- Use of a validated risk assessment instrument that does not give undue weight to factors that correlate with race, ethnicity, and class to obtain a risk level or score.

- Respect for the constitutional principle of judicial discretion and responsibility for pretrial release and detention decisions, and with aiding judges in their decision-making responsibility by providing risk assessment and other relevant information gathered by pretrial services.

- Improving upon the current system of pretrial detention/release to enable judges to make appropriate decisions as quickly as possible when there is adequate information on which to base such a decision, and so long as there are new and sufficient resources for the system.

Areas of Concern

Judicial discretion and independence

The Judicial Council is concerned that SB 10 would infringe on judicial discretion and independence for the following reasons:

- *Balance of system interests*: The council is concerned that SB 10 does not establish a reasonable or realistic balance between the interest in releasing all defendants who can be safely released pretrial, and a concern for public safety (including safety of victims) and the administration of justice (fleeing jurisdiction/failure to appear). Judges have

constitutional and statutory responsibility for implementing the law in ways that ensure appropriate consideration for protecting the rights of the accused, protecting the public and victim(s), and providing for the fair and efficient administration of justice. In that regard, the council is concerned that SB 10 would require the pre-arraignment release *by the pretrial services agency* of any person charged with a misdemeanor (unless the defendant is already on pretrial release), without providing an opportunity for a judge to determine whether the defendant (who may be charged with a serious misdemeanor, including domestic violence) is a risk to public safety or the safety of the victim(s), or is likely to flee. SB 10 also does not account for those defendants who fail to appear and are cited and released rather than booked.

- *Matters appropriate for Rules of Court*: The bill has a number of detailed requirements for judicial decision-making that are more appropriately addressed in Rules of Court rather than statutes, so they can be more easily revised and updated. For example, the council believes that it is more appropriate for Rules of Court to address certain factors courts must consider in making their determination, such as what the court must consider in making a release decision, what constitutes "substantial hardship" in determining ability to pay, and factors for determining whether the defendant's release would result in great bodily harm to others.

- *Information provided to the court*: The bill appears to significantly limit information provided to the judge at pre-arraignment as a basis for the release determination. As currently drafted the bill would only require information about the current offense, the law enforcement list of charges, and a risk assessment result. The bill, however, does not allow other important information to be provided to the judge such as criminal history, probable cause documentation or other background related to the risk assessment.

- *Balance between judicial authority and pretrial services authority*: Substantial burdens are imposed on judges to justify any departure from recommendations of the pretrial services agency, including requiring courts, if the release decision is inconsistent with the recommendations of the pretrial services agency, to include a statement of reasons. The bill also requires the court to annually report the rate of judicial concurrence with recommended conditions of release without requiring the provision of additional data regarding the decisions made, the conditions actually imposed initially and through the course of the case, etc. Reporting solely the rate of concurrence implies that judges are discouraged from exercising any discretion that departs from the pretrial services recommendations.

- *Judicial determination of risk*: SB 10 would allow the court to impose preventive detention only for those defendants who are charged with a violent or serious crime. The

council is concerned that this makes the bill ineffective and unfair because the determination is charge-based rather than risk-based and appears to not allow the judge to take criminal history or other factors into account. Further, the council believes that courts should have the option of imposing preventive detention for those defendants who, whatever their current charge, score in the highest risk levels and for whom no condition or combination of conditions can provide for safe pretrial release.

- *Release on bail*: The bill provides for release on bail in a manner that places judges in the untenable position of being required to release on bail defendants who are at high risk of failure to appear (FTA) or of danger to public safety. This structure undermines the legislation's goal of judicious use of preventive detention to protect public safety while releasing defendants who are appropriate for pretrial release. For example, the proposed bill would prohibit release on bail *except* when no condition or combination of conditions can assure safe pretrial release. It requires the court to set monetary bail at the least restrictive level necessary and to consider ability to pay without substantial hardship. This arrangement affords "high risk" defendants the opportunity to be released on bail *despite* their risk level, unless they have been charged with a violent or serious offense. Further, the bill appears to limit the court's ability to consider the appropriateness of preventive detention in cases where the defendant has a history of violent offenses but has a current offense for which preventive detention is not statutorily permitted.

- *Violations of release*: The proposed approach for addressing violations of pretrial release is unrealistic and impinges on judicial discretion because the sole option for addressing violations of pretrial release is through contempt of court proceedings, which is not an adequate solution. Contempt is a complex and extended process for courts to impose and implicates Penal Code section 1382 rights. Penal Code section 1382 requires the court, unless good cause is shown to the contrary, to order an action dismissed in specified cases.

Timelines/Resources

The Judicial Council is concerned that the bill would impose unrealistic (and unspecified) timelines on courts. The bill would require informed decision-making on timelines that are unrealistic for courts and criminal justice partners. For example, the bill would: (a) require pretrial services agencies to gather and courts to process a significant amount of information regarding a defendant on very tight timelines; (b) require judges to issue findings of fact and a statement of the reasons for imposing each condition that are specific to the person in each case where conditions are imposed; and (c) require up to five pre-arraignment hearings on very tight timelines. Currently, many of the timelines in SB 10 are yet undefined, to be filled in through later amendments. The council is also concerned that the limitations on hearings are unclear, so it seems they could be as extensive (and time consuming) as a preliminary hearing with

presentation of witnesses, cross-examination, and submission of other evidence. Because the proposed system is so complex, it is unclear whether there is a need for these multiple hearings in order to accomplish the legislation's stated purposes.

Pretrial Services agencies: unrealistic responsibilities and expectations

The Judicial Council is concerned that the bill would impose unrealistic responsibilities and expectations on the pretrial services agencies that courts would rely on for information when making decisions, as follows:

- *Courts' interest in effective pretrial services agencies*: The proposed system requires pretrial services agencies to undertake a variety of tasks that are integral to efficient and effective decision-making by courts. Courts have a vested interest in the effectiveness of agencies with such significant responsibilities that are intertwined with those of the court. In many counties, such agencies either do not currently exist or are relatively small. For a pretrial release and detention system to function, courts must have confidence that pretrial services agencies—whether a separate agency or a unit of an existing agency—are right-sized and well-run so that courts can rely on the agencies' assessments, recommendations, and ability to monitor and supervise defendants granted pretrial release.

- *Risk assessment instrument*: Portions of the bill that define the use of a risk assessment tool by pretrial services raise questions regarding validity, reliability and access. More specifically, the bill would mandate certain criteria for the tool and prohibit other criteria. This approach would undermine the fundamental requirement that the factors in an evidence-based tool, and the algorithm used to weight the factors, have been validated to be predictive of risk for a particular population. Further, the council is concerned that *only* the PSA-Court instrument developed by the Laura & John Arnold Foundation currently appears to meet the requirements of SB 10.

Burdensome and complicated system

Finally, the Judicial Council is concerned that SB 10 would create a non-linear and highly complex system. More specifically, the council is concerned that the operational impact on courts would be profound and, without adequate funding, unachievable. The council is also concerned that SB 10 would attempt to graft at least four different release and detention elements onto the current statutory structure for the bail system: risk-based release; unsecured bonds; ability-to-pay determinations; and preventive detention. Further, in many counties, a significant portion of the pretrial population is ineligible for release due to probation or parole holds, immigration (ICE) holds, holds for multiple failures to appear, or other legal circumstances that prevent their release. The council believes that it would be inefficient to use resources to assess defendants, process paperwork, hold hearings, etc. for defendants who will not be eligible for

release due to circumstances that arise from legal issues unrelated to the current charge. Finally, the council believes that any significant revision to the current pretrial detention and release system should be phased-in with at least a two year "sunrise" so that courts and justice system partners are able to put the necessary structures, processes and training into place, and help to ensure that the revised system will be functional and a genuine improvement.

In closing, the Judicial Council has several substantial concerns about SB 10 in its current form and looks forward to working with the author's office and your committee to address these concerns.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director, Governmental Affairs

CTJ/SR/yc-s
cc: Members, Assembly Public Safety Committee
Hon. Bob Hertzberg, Member of the Senate
Hon. Travis Allen, Member of the Senate
Hon. Joel Anderson, Member of the Senate
Hon. Toni G. Atkins, Member of the Senate
Hon. Jim Beall, Member of the Senate
Hon. Steven Bradford, Member of the Senate
Hon. Ricardo Lara, Member of the Senate
Hon. Holly J. Mitchell, Member of the Senate
Hon. William W. Monning, Member of the Senate
Hon. Bob Wieckowski, Member of the Senate
Hon. Scott D. Wiener, Member of the Senate
Hon. Rob Bonta, Principal coauthor, Member of the Assembly
Ms. Mica Doctoroff, Legislative Advocate, American Civil Liberties Union of California
Ms. Sandy Uribe, Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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Office of the Governor

May 26, 2017

The Honorable Jason Frierson
Speaker of the Nevada State Assembly
The Nevada Legislature
401 South Carson Street
Carson City, NV 89701

RE: Assembly Bill 136 of the 79th Legislative Session

Dear Speaker Frierson:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 136 ("AB 136"), which is entitled:

> AN ACT relating to criminal procedure; revising provisions governing factors to be considered by the court in deciding whether to release a person without bail; prohibiting a court from relying on a bail schedule in setting the amount of bail after a personal appearance by a defendant; and providing other matters properly related thereto.

AB136, while commendable in some respects, would incorporate a new and unproven method for determining whether a criminal defendant should be released from custody without posting bail. No conclusive evidence has been presented showing that the risk assessment methods proposed by AB136 are effective in determining when it may or may not be appropriate to release a criminal defendant without requiring bail. Decisions made by judges during the bail phase of a criminal prosecution are of the utmost importance. It is not clear that the provisions of AB136 will enhance the ability of Nevada's judges to make these determinations in a manner that balances the interests of justice and public safety.

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For these reasons I veto AB136 and return it without my signature or approval.

Sincere regards,

BRIAN SANDOVAL
Governor

Enclosure

cc: The Honorable Mark Hutchison, President of the Senate (without enclosure)
The Honorable Aaron Ford, Senate Majority Leader (without enclosure)
The Honorable Barbara Cegavske, Nevada Secretary of State (without enclosure)
Claire J. Clift, Secretary of the Senate (without enclosure)
Susan Furlong, Chief Clerk of the Assembly (without enclosure)
Brenda Erdoes, Esq., Legislative Counsel (without enclosure)

CDAA
CALIFORNIA
DISTRICT
ATTORNEYS
ASSOCIATION

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11:00 p.m., the police must complete reports, present them to the district attorney on Thursday, and expect the district attorney to make a careful charging decision in time for an afternoon court arraignment. This compressed timeline will undoubtedly result in the release of dangerous individuals.

Even when given a full two days before arraignment, AB 42 makes it extremely onerous to achieve pretrial detention for dangerous defendants. The district attorney must file a written motion at arraignment, containing myriad required allegations, and be expected to prove those allegations in a contested hearing – all of this within 48 hours of the arrest. The existing bail schedule system allows judges to exercise discretion to raise or lower bail for violent felons, in a sensible period of time.

Changing the pretrial release system to address actual injustices is a laudable goal. However, these changes should be careful and measured, particularly for offenses greater than misdemeanors and low-level felonies.

I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

Sean Hoffman
Director of Legislation

Alliance of California Judges

May 9, 2017

The Honorable Rob Bonta
Member of the State Assembly
State Capitol, Room 2148
Sacramento, CA 95814

Re: Assembly Bill 42

Dear Assemblymember Bonta:

As President of the Alliance of California Judges, a group of more than 500 judges and retired judges from across the state, I write to express our strong opposition to Assembly Bill 42 and Senate Bill 10, bills that would radically alter the current bail system.

Our member judges make thousands of rulings on bail issues every day. We recognize that not everyone has the ability to post bail pending trial. We address that concern by adjusting bail amounts and releasing defendants on their own recognizance or on pretrial release under appropriate circumstances. We know that our current bail system needs further reform. But the proposals contained in these bills are simply too drastic, and the effects on public safety and court congestion could be catastrophic.

We note at the outset that these bills run counter to the letter and the spirit of the California Constitution as amended by Proposition 8, the Victim's Bill of Rights, which passed with 83 percent of the popular vote in 1982. Prop 8, which the Legislature voted, with only one dissenting vote, to put on the ballot, added the following language to Article I, § 12:

> "In fixing the amount of bail, the court shall take into **consideration the seriousness of the offense charged, the previous criminal record of the defendant**, and the probability of his or her appearing at the trial or hearing of the case." [Emphasis added.]

If that constitutional mandate weren't clear enough, the voters passed Proposition 9, "Marsy's Law," in 2008. Prop 9 added the following language regarding bail to Article I, § 28 of the Constitution:

> "In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous

> criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. **Public safety and the safety of the victim shall be the primary considerations.**
>
> "A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail." [Emphasis added.]

The proposed bills strip judges of the authority to set bail in the majority of cases, and they substitute a different set of priorities for judges to follow in those cases for which they could still set bail. This new vision for bail cannot be reconciled with the Victim's Bill of Rights and Marsy's Law in our state constitution.

We highlight just a few of the other serious concerns we have with these two bills:

- **The bills would heighten the risk to public safety.** Those arrested for selling drugs, committing identity theft, vandalizing homes and businesses, stealing huge sums of money, or burglarizing dozens of businesses would all presumptively be granted pretrial release—without having to appear before a judge, post bail or submit to any conditions upon release. These bills also inexplicably exclude residential burglary from the list of crimes for which arrestees are not to be considered for release without judicial authorization.

- **These proposals would create more congestion in our busiest courts.** Under the proposed legislation, judges in most cases could set bail or impose pretrial release conditions such as electronic monitoring only after a hearing. We can expect that prosecutors will be requesting lots of these hearings. Our arraignment courts—already the busiest courts in the entire judicial system—would become completely clogged with bail hearings.

- **The bills completely upend the way in which we handle arrest warrants, to the detriment of the court system and the arrestees themselves.** By eliminating the judge's ability to set a bail amount when issuing a warrant, the proposed legislation virtually ensures that wanted suspects will not be brought to justice in a timely manner, if at all. Moreover, those arrested on warrants could not be released until a judge makes an individualized ruling that considers the arrestee's ability to pay. Arrestees who might otherwise simply pay their bail and be released from custody will instead languish until their cases can be heard.

- **The bills place an undue—and wholly unrealistic—burden on the prosecution.** The bills would require in some cases that the prosecuting agency be prepared for a contested hearing with live witness testimony in less than 24 hours, at risk of a dangerous felon being set free. The bills also create a presumption of release pending trial that law enforcement will seldom be able to rebut within the timelines contemplated by the bill, even when the court is faced with a violent criminal facing serious felony charges.

- **The bills inject the concept of the presumption of innocence into a context in which it simply doesn't belong.** The proposed legislation would require judges to consider the presumption of innocence in making pretrial release decisions. This provision makes no sense. While the presumption of innocence is at the heart of our criminal justice system, it's a concept that applies at trial, not in the context of rulings on bail. Both the United States and California Supreme Courts have long maintained that the presumption of innocence "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun." (Bell v. Wolfish (1979) 441 U.S. 520, 533; see also In re York (1995) 9 Cal.4th 1133, 1148.)

AB 42 and SB 10 are well-intended attempts to address the fact that the bail system affects persons of differing income levels differently. But nearly every county now has a pretrial services division in place to screen defendants and recommend their release on appropriate conditions, without bail, when doing so does not pose a serious danger to the public or a significant risk of non-appearance. A bill mandating a pretrial release program in every county, and perhaps providing some limited funding for that purpose, would be a sensible response to the problem. These twin bills go way too far, and their effect would be a near shutdown of the court system and a serious risk to public safety. We urge that these proposals be reconsidered and substantially amended.

Sincerely.

Hon. Steve White
President

cc: ACJ Board of Directors

CRIME VICTIMS UNITED
OF CALIFORNIA

May 23, 2017

The Honorable Ricardo Lara
Chair, Senate Appropriations Committee
State Capitol, Room 5050
Sacramento, CA 95814

RE: SB 10 (Hertzberg) – Oppose

Dear Chairman Lara:

On behalf of Crime Victims United of California (CVUC), I must respectfully oppose SB 10 (Hertzberg) related to bail and pretrial release.

CVUC will be the first to tell you that the current bail and pretrial system in California are not perfect. As a matter of fact, CVUC has serious concerns with the current system and its failures to adequately provide for victims' rights provided under Proposition 9. However, CVUC nonetheless strongly supports the use of monetary bail as a means of accountability, as a backstop to ensure offenders' appearance at hearings and as a deterrent to further victimization. CVUC is open to changes to the current bail and pretrial release system and is willing to work with stakeholders to improve the system and address system concerns that have been highlighted in recent years. Notwithstanding the concerns and deficiencies with the current system as they relate to victims, as an overarching perspective CVUC is highly concerned about the increasing interest in relying almost exclusively on pretrial release in our criminal justice system. Of the utmost importance as part of any reform is it must ensure victim and overall public safety are the primary considerations and the defendant's appearance at court proceedings. We are concerned that the SB 10 and other proposals under consideration fail to sufficiently ensure these critical priorities are addressed. To argue that the new proposed framework is better for victims than the current system is and victims should therefore be less concerned fails to consider that both the current and proposed systems are flawed when it comes to victims – it shouldn't be a matter of leveraging one over another. They both need to be revised. Victims are made such based on another's actions against them – not of their own will. This is lost in the current debate in favor of considerations for the offenders' who victimized them in the first place.

First and foremost, SB 10 fails to explicitly provide for the rights afforded victims under Proposition 9, Marsy's Law. More specifically, Proposition 9 provided the constitutional right of victims to be notified and informed before any pretrial disposition of the case and to be heard upon the request of the victim at any delinquency proceeding involving a post-arrest release decision. Despite voters' approval of these rights under Proposition 9 in 2008, SB 10 fails to account for these constitutional rights. And although we appreciate that under SB 10 a person charged with a serious or violent felony or domestic violence must go before a judge before being released, the bill fails to explicitly account for the right of the victim to be notified or to be heard as part of such an appearance. Further, as discussed in greater detail below, the 48 (or less)

timeframe under which to notify and allow a victim to be heard is wholly insufficient to meaningfully account for these rights.

With regard to the risk assessment tool contemplated under the bill, CVUC is highly concerned it will not sufficiently assess the risk to the victim or public safety posed by an offender for a number of reasons. First, there is currently no tool that we are aware of that incorporates as factors things such as serious injuries inflicted, multiple victims, a victim's impact statement, an offender's use of a weapon, or an offender's prior criminal history. Further, the current framework laid out in SB 10 is inconsistent under Penal Code Section 1275(a)(1) and 1318.3(b)(6) where under 1318.3(b)(6) states that undue weight should not be given to factors such as the offender's criminal history. This is unacceptable as an offender's criminal history is a critical consideration in determining his risk to the victim and overall public safety. Further, in hindering the ability to consider an offender's prior history the bill in turn hinders the ability to consider the prior criminal impact on the victim. The bill should not diminish the importance of this factor, and the associated victim impacts, from being considered and any tool utilized must prioritize consideration of an offender's criminal history and associated victimization to ensure an accurate assessment of the risk to the victim and public are undertaken.

Also problematic, the short amount of time associated with the risk assessment being conducted will inevitably negate the ability to conduct a meaningful assessment to ensure victim and public safety. Additionally, the short time frame will lead to violation of the victim's rights under Proposition 9 as there will not be sufficient time to include the victim in the proceedings, ensure their perspectives and concerns are entered into the record, and more. As an example, for an offender who is arrested on a Wednesday evening where Friday is a court holiday the offender would be brought to court on Thursday leaving less than 24 hours to ensure the victim is notified, much less able to participate in such a short timeframe. Other statutes relating to victim notification where victims have the opportunity and right to be notified and/or heard, particularly in situations of offender release from custody, are 15 or more days (as an example, Penal Code 646.92). Ultimately, to the extent that the assessment is not complete or available during such a short time frame, the bill provides that the offender shall be released – entirely contrary to the suggestion that the bill takes into account the risk to the victim and public safety. The absence of a robust assessment whatsoever will inevitably lead to serious harm for many victims and the overall public going forward. This approach in no way ensures victim and public safety is protected and is a seriously flawed loophole.

Relative to "non-violent" offenses, SB 10 provides that an offender shall be released without any hearing or appearance before a judge. It should be noted that the term "non-violent" is a misnomer as it includes offenses that are serious and potentially violent including crimes such as stalking; violation of a protective or restraining order; criminal threats; solicitation of a serious crime; conspiracy to commit a violent crime; and more. While a violation of a protective or restraining order may not be a violent offense, it could certainly be a precursor to one that would not be considered under this construct. It would essentially allow these offenders who push the limits of the framework to bypass the fact that the bill purportedly attempts to protect domestic violence victims through a hearing or appearance before a judge, but for actual injury being inflicted the victim would be violated and continue to fear for her safety without any assurance that such violations would not be more sufficiently considered in such pretrial release actions for the protection of the victim, which is supposed to be the primary consideration.

Relative to the factors a judge must consider when determining the seriousness of the offense, the factors do not include the vulnerability of the victim; whether multiple victims were impacted; prior offenses involving a victim or multiple victims; prior DUIs; and more. Ultimately, a judge would be required to make a pre-trial release decision within 48 hours, impacting victims' rights as previously noted under Proposition 9.

On the issue of fiscal impacts, SB 10 would result in significant costs that are not provided for within the measure. Given the short time frames to conduct risk assessments, review the associated reports and hold hearings/appearances, the framework under SB 10 will require significant staff increases to conduct the risk assessments and review the reports 24 hours a day. Additionally, the bill does not contain any funding or incentive to ensure offenders appear or for intervention when they do not.

According to the 2015 Board of State & Community Corrections (BSCC) Jail Profile Survey, the Average Daly Population (ADP) for all county jails in California is 75,965 with capacity of all facilities being capped at 75,987 (2012 PPIC Report). The Report also highlights that there is an average of 279,102 felony warrants in the system and an average of 1,431,846 misdemeanor warrants in the system – total warrants being at approximately 1,710,948.

Based on these numbers as reported by the BSCC and with a cost per FTA as compared with the Washington, DC Pretrial Program, the costs associated with the elimination of the money bail system and implementation of the SB 10 framework in every county in the state would be over $3 billion. Recall, the Washington, DC Pretrial System costs $65 million for a population of 660,000. Clearly California is a different animal on a number of fronts as compared with DC. And yet these numbers do not even take into account the roughly 300,000 offenders who are currently out on bail at any given time. How will California seek to manage that additional caseload and ensure victim and public safety is protected? Also of note, these costs do not take into account the likelihood based on current experience that many offenders will reoffend resulting in additional criminal justice costs – not to mention additional victim and public safety impacts.

CVUC appreciates your consideration of these concerns associated with the current version of SB 10. If you have any questions regarding CVUC's opposition to this bill, please contact CVUC's Legislative Advocate, Dawn Koepke with McHugh, Koepke & Associates, at (916) 930-1993. Thank you!

Sincerely,

Harriet Salarno

Harriet Salarno
Chair

Cc: The Honorable Bob Hertzberg, Author
Members, Senate Appropriations Committee
Sean Naidu, Consultant, Senate Appropriations Committee
Eric Csizmar, Consultant, Senate Republican Office of Policy

KLAAS KiDS
foundation

July 17, 2017

The Honorable Robert M. Hertzberg
California State Senate
State Capitol
Sacramento, CA 95814

RE: Senate Bill 10 (Oppose)

Dear Senator Hertzberg,

On behalf of the KlaasKids Foundation staff, volunteers and crime victims throughout California, I strongly oppose Senate Bill 10. Beyond its obvious threat to public safety and its fiscal ambiguity, it is a clear violation of the Victim's Bill of Rights, and Marsy's Law. In the final analysis it kneecaps California's community of victims.

In 1982, California voters overwhelmingly approved of Proposition 8, otherwise known as the Victim's Bill of Rights. The nation's first ever Victim's Bill of Rights clearly states that, "In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial of hearing of the case." However, SB 10, as written, only contains information about the current offense and, with exceptions, will allow, "Recommendations on conditions of release for the person immediately upon booking."

Proposition 9 (Marsy's Law) provided the constitutional right of victims to be notified and informed before any pretrial disposition of the case and to be heard upon the request of the victim at any delinquency proceeding involving a post-arrest release decision. SB 10 fails to explicitly account for the right of the victim to be notified or to be heard as part of such an appearance. Furthermore, the speed at which defendants are rushed back onto the streets makes it impossible to facilitate the rights afforded victims under Marsy's Law.

SB 10 will make it very difficult for crime victims to come forward knowing that their assailant will be back on the streets within hours of being arrested. Without a monetary incentive to appear at court dates, many victims will never receive justice.

The KlaasKids Foundation vehemently opposes SB 10. We acknowledge that California's bail system is in need of repair, but do not believe that Senate Bill 10 is the answer. It is ill conceived, and completely disregards public safety and the needs of crime victims. SB 10 follows the current trend in criminal justice legislation by focusing on the needs of defendants and criminals at the expense of crime victims.

Sincerely,

Marc Klaas

Marc Klaas
President, KlaasKids Foundation

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FROM THE DESK OF DEREK P. NELSON
President, MN Professional Bail Bond Association

Minnesota Professional Bail Bond Association
Derek P. Nelson, President

RE: Bail Reform and Bail Funds

New York State Finance Committee

To the members of the Committee,

The entire purpose of the criminal justice system is to succeed when all other interventions have failed or the severity of an alleged crime warrants immediate reaction and consequence. The purpose of commercial bail is to ensure the return of the accused for the sanctity of their own well-being and quality of life, while also ensuring justice is served for not only the State, but the victims as well. It has also been proven that when an accused person is released on a commercial bail, they are less likely to commit the same or new crimes, more likely to voluntarily enter treatment, more likely to appear to all Court hearings and be proactive in ending the cycle of arrest, charge and repeat.

Research and history shows that the commercial bail bond industry has been proven to be the most effective means of accountable pretrial release, at no cost to the tax payer and provides greater success towards the reduction of habitual criminal behavior. Often people relate the term "bail bond" to the term "Bounty Hunter", without understanding what a bail bond is, and its unique purpose within the criminal justice system. Since the 1950's, multiple states have eliminated the industry of commercial bail bonds, while subsequently relying on the Local and State government to handle the supervision of pretrial released defendants. This reliance on court or government run pretrial release programs has negatively impacted and put to risk the public safety of communities and created an incredible burden on the taxpayer. The recent development of "bail funds" has been done in an effort to circumvent the utilization of the private sector bail industry, in favor of a non-profit advocacy system fulfilling the same objective purpose, without the same accountability, recidivism reeducation success.

An individual that cannot afford "bail" is subjective because of the other issues surrounding why they are still in custody are not fully and accurately explored by bail reform advocates. In most States, jails do not accept credit cards or checks for bail payments have restrictions when payments can be received or will impose stipulations as to whom and how the bail is paid. They also have third-party phone systems that may not allow calls to cell phones unless accounts are created and potential large fees are paid per call. Most people when receiving these collect calls on their cell phones will not accept the call because they are unaware of who is calling or they are confused by the process to establish an account. This results in the defendant sitting in custody for potentially weeks at a time before anybody realizes they are in custody or what processes need to be taken to secure their release. This results in jail population overcrowding, and defendants' lives being negatively impacted. Hypothetically, there could be loved ones on the outside that could pay for these bonds to secure the release of the accused. How would the bail fund or bail reform program alleviate these concerns? How would the State identify who can and cannot afford to post bond? Before establishing a bail reform program within any State, have these other issues been truthfully explored and solutions sought?

Arguments being made against the private sector bail industry are not "new" or "revolutionary" ideas. In the 1978 law review by Dr. Virgil L. Williams of The University of Alabama, titled "Nine Reasons to Go Slow on Bail Bond Reform", The arguments being made to support private sector bail bonds, as well as supporting the development of a strong working relationship between courts, bondsmen, bail enforcement [bounty hunting] and law enforcement has stood relevant over 30 years later. Dr. Williams states on (page 11) "Personal recognizance systems [pretrial release programs]

are established to provide relief for suspects who cannot afford to use commercial bail bond companies; however, once established, personal recognizance [pretrial release programs] is available to persons who might otherwise have utilized the services of such companies. The outcome of implementing such reform is destruction of a private industry with government usurping the functions previously performed by private enterprise. The bail bond industry, like other segments of the private sector of our economy, arose in **response to a need for its services.**" (Dr. Virgil Williams, 1978).

Dr. Williams identifying in 1978 that the private sector bail industry "..arose in response to a need for its services.." is a bold statement. As is "The outcome of implementing such reform is destruction of a private industry with government usurping the functions previously performed by private enterprise." These two statements summarize why bail funds areineffective. Bail funds ultimately wish to prey upon the indigent person(s) need by fulfilling the services otherwise offered by the private sector industry, as a declared "social justice" to the public. Their funding comes from Government/private grants, private donors and fundraising activities. Most bail funds only utilize 25-30% of their revenue for the purposes of posting bail, while the remaining funding is utilized for salaries, wages, expenses/costs, marketing/lobbying efforts and additional fundraising activities/functions. This is supported by the most recent tax filings of the Brooklyn Community Bail Fund and Bronx Freedom Fund.

Bail funds are subjective in who they take as clients, as seen by the Bronx Freedom Fund having a policy that ONLY Bronx Defender (a sister organization) clients can receive services, and only if they meet their strict criteria. Brooklyn Community Bail Fund refuses to share their bail client criteria, but, have developed a program called the "Dollar Bail Brigade", an organization that encourages individuals without appropriate authority or licensing to post bail for indigent people. These are methods the bail reform entities utilize in manipulating their success rates, without the public's knowledge.

The aforementioned bail funds boast a "95% success rate". If they held true to helping those that are indigent and not imposing biased and strict criteria or encouraging unapproved third parties to post bail on those that don't meet said criteria, the failure to appear rate would be far higher. In Minnesota, the MN Bail Fund in 2017 saw a 17% failure to appear rate. When an accused person misses court under a private sector bail entity, the bail entity must make every effort to locate and apprehend the now fugitive. A bail fund does not. A private sector bail entity must communicate their efforts to the courts and law enforcement, the bail fund does not. If a private sector bail entity cannot return the accused to custody or provide a legal reason as to why they cannot (extradition etc.) they must pay the face value of the bail in full, the bail fund looses the money they put to the court. This is the only similarity between the private sector bail industry and bail funds.

Publicly run pretrial release programs have been implemented in Wisconsin, Illinois, Oregon, New Jersey and Kentucky because of legislative action being taken to have the State control pretrial release services. In these States, the defendant is given the opportunity to be released on a promise to appear; electronic monitor or a loved one can pay a percentage of the bail due (cash only bail), and be held liable to the court if they fail to appear. (The Sentencing Project, 2015) These States have seen a significant increase in crime and failures to appear as a result of the pretrial services they utilize. (Brian H. Bornstein, 2011) These States have also begun looking to the implementation of the bail fund theory as a means to end their growing issues, instead of reinstituting the effective private sector bail industry.

By definition and process, pretrial release options other than commercial bail, leads to significant burden upon the court, State and law enforcement. For example, if an accused person is released on any alternative to commercial bail, the burden and costs to locate the defendant fall upon the State and law enforcement. The financial burden is the passed to the tax payer. Most law enforcement agencies do not have the financial capabilities or personnel to investigate the whereabouts of individuals' fugitive status. This is most relevant for any crime other than a felony. For those fugitives, the only opportunity of being located and arrested is through routine law enforcement duties such as a traffic stop. Until capture, they remain in the public, typically committing new or similar crimes in order to survive. (Bureau of Justice Statistics, 2016) This not only jeopardizes the safety of the public, but further harms the credibility of the Criminal Justice Systems that participate in these programs. (Tabarrok, 2004)

In Harris County, Texas, upon their implementation of a pretrial release system without private sector bail, failures to appear rose from 5% (bail entity) and 9% (cash only bail) to over 28%. This pretrial program cost over $5million to implement. The assessment tool to determine who is held in jail without option of release, and who is released on their word, covers only nine factors (with little to no verification by the staff giving the assessment). $5million to implement a program that burdens law enforcement, court processes, public safety and hinders justice to victims does not seem responsible. (Reporter, 2017)

In Broward County, Florida, 10,000 defendants were tracked for 2 years. During this two year study it was learned that the predictive algorithms showed racial bias. 45% of African American defendants were likely to be incorrectly assigned higher risk scores than White defendants. 77% of African American defendants were more likely to be incorrectly assigned higher violent crime risk scores than White defendants. When algorithms fail, people that would normally be released on a promise to appear or through the services of the accountable private sector bail entity can be held without any option of release. This increases jail populations and further increases likelihood of racial bias of the criminal justice system. (Jeff Larson, 2016)

Mary T Phillips, Ph.D. indicates in her report from the New York City Criminal Justice agency, Inc. in 2011, that failures to appear substantially increase when cash bail or pretrial release programs are utilized for defendants. Her research shows that in a city such as New York, failures to appear of defendants who post a bail through the services of a bondsman are almost **40% less**, and the average defendant that fails to appear on a bondsman is returned to the custody of the court **90%** of the time. (Mary T. Phillips, 2011).

From 2005-2010 the Bureau of Justice Statistics, a division of the U.S. Department of Justice, analyzed the recidivism rates of defendants released from jail in 30 States. From this information, they created a tool that allows access to the information with varying search parameters. It was found that over **43.4%** of defendants released without private sector bail, were rearrested in less than one year on new charges. (Bureau of Justice Statistics, 2016)

From 1990-2004 and being published in 2007, the U.S. Department of Justice released a special report concerning felony charged defendants, outlining failure to appear rates, pretrial misconduct rates, the percentage of fugitives and rearrested fugitives. The study showed that **81%** of defendants released on a Surety Bond (commercial bail) were returned to custody within the first year. All other types of release averaged a **30-36%** rate of defendants remaining in fugitive status when failed to appear after 1 year. (Thomas H. Cohen, Brian A. Reaves, & Statisticians, 2007) This makes the obvious argument that commercial bail provides a greater accountability in securing the return of a defendant into custody when failed to appear. The most attractive part to this study is that the option private sector bail provides offers the greatest accountability at little to no cost of the public. Taking this point further is to remember that if a defendant when failed to appear is not returned, the commercial bail entity must pay the face value of the bond in most circumstances. (Tabarrok, 2004)

After review of the information and data available, a simple truth is exposed. Private sector bail is still the most effective form of release pretrial. Bail reform supported programs, bail funds and predictive algorithms are nothing more than a current political social justice trend, that is set to replace an already functional industry with a lesser effective non-profit based or Government run theory. The algorithms and programs they advocate for can be racially biased and discriminatory towards the indigent person. This will ultimately result in greater burden upon the criminal justice systems they are allegedly trying to "unburden".

Through the continued use and support of the private sector bail industry, true advocacy of the indigent person can be achieved while truly reducing burden upon the criminal justice system. Reform efforts of various practices and functions within the criminal justice system should be aligned with the private sector bail industry Nationwide, instead of bypassing for the current political trend.

Private sector bail ends recidivism and lowers jail populations by promoting the rehabilitation our criminal justice system is supposed to be supporting. This means less money being poured into our jails, courts and law enforcement agencies

because there is less crime and less burden on the court system. Every State that has eliminated the use of commercial bail has seen drastic increases in crime and failures to appear, resulting in significant increases in budgets to maintain the climbing risks. Who pays those budgets? The tax payer. Who suffers? The Defendant, the victims and the public.

The use of private sector bail reduces recidivism, increases the likelihood of rehabilitation and secures that justice is served, at no cost to the tax payer. With less people getting in trouble as a result of rehabilitation working, that means less people going through the criminal justice system. Private sector bail aids in ending the cycle of arrest, charge and repeat.

Any State or Government entity looking to eliminate the private sector bail industry, in favor of the bail reform or bail fund theory; is similar to an airline discontinuing the use of planes in favor of blimps.

Sincerely,

Derek P. Nelson, President
MN Professional Bail Bond Association
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NYSBBA: association of bail bond agents
80 Main Street, Hempstead, NY 11550
www.NYSBBA.org

March 27, 2014

Dear Governor Cuomo,

Good Day. Allow us to introduce ourselves. NYSBBA (New York State Association of Bail Bond Agents) was founded in 1997 as a non-profit that seeks to maintain the professionalism & integrity of the commercial bail industry in NYS.

In 2013 Chief Justice Lippman in his State of the Judiciary speech, asks that "judges be given the right to consider public safety when determining bail". NYSBBA & its many members throughout NYS believe this is an excellent, "go forward" move for the bench in NY. The consideration of public safety would have saved the lives of Raizy & Nathan Glauber, both 21, were killed in Williamsburg Brooklyn on March 6, 2013. The defendant, ex-con Julio (Wemo) Acevedo faced multiple charges; leaving the scene of an accident, criminally negligent homicide, third degree assault, speeding & reckless driving. This 21 year old Hasidic couple was mowed down in the prime of their lives, and so was their unborn infant son. The Hasidic community demanded that Acevedo be charged with murder! Judge Michael Gary, the arraigning NYC Judge on this case was not given the "legal ability"to consider public safety. If he were, quite possibly that "one" NY family might be alive today.

The second part of Lippmans Crime Bill (S4483) will prove to be dangerous. The Chief Judge is asking that ALL non-violent offenses *must* be released on their own recognizance. Lippman's bill will remove from the statute the Courts option of also setting bail. This would be an abysmal change for ALL Judges throughout NYS & would surely tie their hands, & remove their discretionary powers. The Chief Judge believes that ALL defendants should be released on "the least restrictive condition", & a "presumption of ROR".

The least restrictive confinement possible has already been implemented in NYC in the 78,672 defendants released by desk appearance tickets (DAT's). As per the Criminal Justice Agency's 2012 Annual Report (published in 2014), the failure to appear rate (FTA's) for these offenders is an average of 25%. That is 19,668 defendants that <u>failed to appear</u> for Court. That is more than the average population of every detainee in New York City in 2012, which was 12,287.

Unfortunately, DAT's have become the "carrot" in the new "let's free everyone" movement. NYPD is overwhelmed with warrants. Defendants know there is no "stick" to make them appear in court. Even "Lone Wolf" the would-be bomber Jose Pimentel, who was sentenced to 16 years in prison in Manhattan Supreme Court, asked in 2011 when he was arrested, "Am I going to get a DAT?" (NY Post, 11/5/11)

The commercial bonding industry in NYS has served to micro-manage hundreds of thousands of defendant's at liberty on bail bonds since the beginning of time. This practice is done at a reduced rate to the consumer, as NYS statutory bail premium is approxiamately 6%. For example, the statutory premium on a $50,00.00 bond is $3,260.00. In Nevada the State premium is 15% by statute. NYSBBA does not seek an increase in the filed premium rate, although we operate within one of the most expensive, highest taxed states in the nation. Commercial bonding agency's employ hundreds of people throughout NYS. We are not the cowboys & Indians that are commonly seen on TV. We are Mothers, Fathers, Daughters & Sons. The majority of bail agencies are Mom & Pop shops and passed from generation to generation. We act as an integral component of the Criminal Justice System at absolutely NO taxpayer expense. Our industry forfeiture dollars go towards the betterment of schools & roads. Commercial bondsman take their role in the criminal justice system very seriously, as we are vested financially in the production of a specific defendant to adhere to the orders of the Court. The indemnity of a loved one, the pledge of security, the proffer of collateral has served the United States to insure millions of arraigned individuals to appear in Court throughout our great nation on a daily basis. Commercial bail works for the "public safety" of all US citizens.

Ironically, Chief Judge Lippman has met with the Pre-Trial Release Liberal movement organizers on countless occasion to design his bill, yet he never approached the commercial bonding industry for its opinion prior to the draft of S4483. My grandmother, a Brooklyn-ite, would always say, "Michelle there are 3 sides to every story, yours, mine & the truth". If Chief Judge Lippman is truly concerned about public safety then how does S4483 serve NYS? With all due respect to Justice Lippman, "crime" is not necessarily his area of expertise in that he has never sat on a criminal court bench in his judicial career. Crime in NYC is of particular concern right now, even to the President of The United States. Criminality is newer now, its technologically advanced. The crime of identity theft & fraud is rampant, these are "non-violent" offenses. Should individuals that have the unique ability to operate under the radar get released on the least restrictive condition? Law Enforcement, DA's, Judges & most importantly the good citizens of NYS deserve more. S4483 is a HUGE mistake for NY.

We avail ourselves to you.

Michelle Esquenazi,
Chairperson

JLUSA

justleadershipusa.org

Testimony delivered to City Council

Wednesday May 2nd, 2018

My name is Victor M Herrera and today I provide testimony as a directly impacted individual who has experienced the abuses that are prevalent with the Bail industry and the criminal justice system – an incredible marketing platform that allows for predatory discriminatory practices of this private industry to go unchecked.

I am a member of JustLeadershipUSA, and the #CLOSErikers and #FREEnewyork campaigns to transform our criminal justice systems. Our priority is to decarcerate the jails that are filled with people who have been the subject of the discriminatory policies and penal provisions. Our jails are filled with young adults and adults alike who are majority black and Hispanic. Closing Rikers and reducing jail populations with fair judicial process is what JLUSA demands. JLUSA is an organization of directly and indirectly impacted people who peacefully campaign, and organize to expose the discriminatory and predatory criminal justice policies that treat people of certain classes differently.

If we are to accomplish the closure of such barbaric jails such as Rikers and reduce the jail and prison population, many city and state level policies must be reformed. The constitutional right to presumption of innocence must be restored, and pretrial detention must be eliminated. We must ensure a decent and humane approach to treatment of the poor vulnerable communities. We treat our citizens as if they are cattle, or a commodity to serve the money-making purposes of corporations.

A clear message must be sent by this City Council that New Yorkers will not be treated as a product for profit-making purposes, but as rather citizens to be treated equally and fairly in all our affairs as a United States.

To accomplish our efforts here and nationwide, we as a City should demonstrate the importance of this effort by reigning in and controlling the practices that permit for jail population to grow under the predatory bail industry, and we must overhaul the bail industry by providing regulatory oversight and consumer protection. Bail is a serious factor considered in the initial stages of the criminal process and more importantly the presumption of innocence is seriously undermined when bail is set at levels that cannot be met by poor and minority men and women of color. We must mobilize at all levels of government to end the practice of making people pay for their freedom, and end cash bail entirely. Intros 510 and 724 are good starts that over time and consideration could lay a good foundation for further reforms and protections for all people fairly and equally.

Sincerely,

Victor Herrera

FOR THE RECORD

JLUSA
justleadershipusa.org

Wednesday, May 02, 2018

My name is Harvey Murphy and I am a Community Organizer at JustLeadershipUSA with the #FREEnewyork and #CLOSErikers campaigns. JustLeadershipUSA is dedicated to cutting the US correctional population in #halfby2030. JLUSA empowers people most affected by incarceration to drive policy reform.

I know from my own experience just how predatory private bail bond companies are. Just thinking about the situation brings chills up my spine. Bail bondsmen trick you into believing that they're your friend, and they want to help you get out of jail. My family trusted the bail bondsmen. He shook my hand and smiled in my face. But the whole time, he was profiting off my freedom, and forcing me and my family to chose between getting me out of jail and the financial needs of our household. The for-profit bail bonds industry pretends to help low-income people, but in fact, it's been dragging poor people down for years. It dragged me down for years.

We must take a stand. With the #CLOSErikers & #FREEnewyork campaigns, JustLeadershipUSA and our partners are committed to closing jails and building communities. Through grassroots organizing, advocacy and legislative policy reform, we will close Rikers Island, decarcerate jails across the state, and overhaul the pretrial system.

For-profit, private interests have no place in our justice system. We must reign in and control the predatory private bail industry as we work towards elimination of the industry and ultimate overhaul of the bail system. Intros 510 and 724 are a good start and with some critical amendments can move us towards these goals.

But we must remember that regulation is just a start. Ultimately, we must eliminate the bail bonds industry and overhaul the pretrial system in New York.

Thank you,

Harvey Murphy

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My name is Amanda Perez, and I work as a real estate agent in the Bronx. My little brother, Dilan, is 20—he is a lot younger than me, and I raised him like a son. In July 2017, my little brother, Dilan, was arrested on a gun possession charge and was being held at Rikers. His bail was $40,000, an amount my family could not afford, and so we signed a contract with a bail bonds company. They agreed to post his bail, and in turn, we had to pay a $2,600 fee and give them $3,000 for them to hold as collateral. I do not make a lot of money, and so I used all of my savings and borrowed from loved ones to scrape together the $3,000 and the other fines to pay. According to our contract with the bail bond agent, I would be returned the collateral if my brother voluntarily returned to court for his hearings.

From early July to late September of 2017, my brother was out on bond. During this time, he made all his court appearances and checked in with the bail bonds company every week. In September, my brother made a mistake. He was not mentally healthy and would get depressed and panicked easily. When he came for one of his hearings, he saw the detectives that arrested him initially, and thought they were there to take him to Rikers. He got scared and ran away. I immediately called the bail bonds company to explain, and they assured me they would do everything that they could to make sure Dilan stayed out on bond, as long as I got him to return to court. I frantically called my brother and, once he realized his mistake, he returned to court a few hours later. The part was closed for the day, so the bail bonds representative said we could come back the next day. Dilan agreed, and he and I went to court together the next day to appear before the judge. But as soon as we walked into the courthouse, Dilan was ambushed by two bounty hunters who were waiting for him in court. A few days later, at his bond reinstatement hearing, the judge offered to reinstate the bond. The bail bonds representative said no—they were no longer willing to post his bond and wanted it exonerated. So instead, he went to Rikers.

From the beginning of the bail bond process, representatives of the bail bond company lied to me. First, I was told to contact someone who allegedly worked for a nonprofit agency that would be able to help me as an attorney in securing my brother's release. That was not true. The person the company recommended I speak with was, in fact, a bounty hunter who threatened to garnish my wages and have my real estate license suspended if I did not do what the bail bond company told me to do. Second, rather than help reinstate my brother's bail—as they promised to do—the bail bonds company hired bounty hunters to apprehend him. When the judge at my brother's hearing offered to reinstate his bail, the bail bonds company refused, and instead requested that the bail be exonerated.

Companies like this do not help families in need; they capitalize on people's vulnerabilities for monetary gain. After my brother's bail was exonerated and he was taken into police custody, the bail bond agent refused to return the $3,000 collateral I provided even though my brother voluntarily returned to court for his hearing. The bail bond agent claimed that the collateral would be kept as compensation for its expenditures related to "apprehending" my brother. But the bail bond agent was fully aware that there were no "expenditures" needed to "apprehend" my brother. The bounty hunters that apprehended my brother did so in the courthouse—after my brother voluntarily appeared for his hearing. The bail bond agent even stated in court that my brother had voluntarily returned to the courtroom mere hours after he missed his initial appearance.

I approached the bond company during a vulnerable time for me and my family. I was pregnant, terrified of the legal and financial consequences I was facing, and worried for my brother's safety. The bail bond company took advantage of my precarious position and preyed on my insecurities. The $3,000 the bail bond agent refuses to return to me is a significant amount of money for me and my family. More than that, my brother—who trusts me more than anyone in this world—came to believe I betrayed him as a result of how the bail bond company behaved. What the bail bond company got away with, and continue to get away with, is simply unfair and unjust.

The Bronx Defenders | Redefining public defense.

New York City Council
Committee on Justice System
Committee on Consumer Affairs and Business Licensing
Hearing on Fees Charged by Bail Bondsmen &
Requiring that Bail Bond Businesses Make Certain Disclosures
May 2, 2018

Written Testimony of The Bronx Defenders
By Scott D. Levy

Introduction

My name is Scott Levy. I am Special Counsel to the Criminal Defense Practice at The Bronx Defenders. Thank you for the opportunity to testify today.

The Bronx Defenders provides innovative, holistic, client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people of the Bronx. Our staff of over 300 represents approximately 30,000 individuals each year. In the Bronx and beyond, The Bronx Defenders promotes criminal justice reform to dismantle the culture of mass incarceration.

For decades, New York's bail system has been dominated by the for-profit commercial bail bond industry. While state law provides nine alternative forms of bail and requires judges to set at least two, judges overwhelmingly set bail in only two forms: cash bail and commercial bail bonds. This means that in moments of intense crisis -- when a loved one has been arrested and is threatened with pretrial incarceration -- people are forced to navigate a predatory system designed to exploit their anxiety and their

desperation to obtain liberty for friends and family members. Bail bond companies operate largely in the shadows, with no transparency, accountability, or meaningful recourse for their frequent violations of the law. The impunity with which they operate inevitably leads to abuses -- charging illegal fees, improperly retaining collateral, and causing unnecessary days of detention by delaying the posting of bonds. And even when they operate within the law, bail bondsmen extract millions of dollars from vulnerable New York City families -- overwhelmingly from low-income communities of color -- every year. This tax on freedom is both immoral and unnecessary.

We applaud the Council for attempting to bring some transparency and accountability to a system that for too long has taken advantage of our clients, their families, and their communities. That is why The Bronx Defenders is proud to support the two bills presently before the Council: Int. 724-2018 (Johnson) and Int. 510-2018 (Lancman). By requiring bail bondsmen to provide basic consumer rights information to people seeking their services, Int. 724 would bring some much-needed transparency to the commercial bail bond industry. And Int. 510, by creating a complaint mechanism at the Department of Consumer Affairs, represents an important first step toward giving teeth to industry rules that are rarely enforced. While these proposals highlight the excesses of the commercial bail bond industry, however, they cannot resolve the fundamental tension inherent in the system: a profit-driven industry should have no role in determining anyone's liberty or freedom. In light of this irreconcilable contradiction at the core of the system, the Council should call for the complete elimination of commercial bail bondsmen.

The Need for Transparency and Accountability

The commercial bail bond industry accounts for more than half of bail postings in New York City.[1] A recent report by the New York City Comptroller found that in FY 2017

[1] *See* Office of the New York City Comptroller, *The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC* (Jan. 2018) ("Comptroller Report"), at 5, *available at* https://comptroller.nyc.gov/wp-content/uploads/documents/The_Public_Cost_of_Private_Bail.pdf.

there were more than 12,300 for-profit bail bonds posted in the city's criminal courts, with a total bond value of $268 million.[2] In each of these transactions, bail bondsmen were allowed to charge a surety -- the person seeking the bond, generally a family member or friend of the detainee -- a nonrefundable premium set by state law.[3] These premiums are not returned to the surety at the end of a case, even if the person returns to court each and every time required. In FY 2017 alone, the commercial bail bond industry extracted between $16 million and $27 million in premiums.[4] In many instances, sureties are required to put up additional cash or property as collateral for the value of the bond. These resources are extracted from families already struggling to make ends meet.

Every day, The Bronx Defenders hears stories from our clients and their families about their experiences with the commercial bail bond industry. They are almost uniformly negative. People must navigate a confusing and opaque system with little or no assistance during some of the most stressful and traumatic moments in their lives. There are no guides or rating systems to help people figure out which companies are trustworthy, responsive, or ethical.

Indeed, the process seems *designed* to keep people in the dark. The offices of most bail bondsmen provide little or no information about the bond process or the rights of sureties. Frequently, prospective sureties are not even given copies of the contracts they are required to sign, nor are they given explanations of the myriad, and often illegal, fees that are added to their bills. Bail bond agents regularly operate under

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[2] *Id.*

[3] *See* N.Y. Ins. Law § 6804(a) (McKinney 2000) ("The premium or compensation for giving bail bond or depositing money or property as bail shall not exceed ten per centum of the amount of such bond or deposit in cases where such bonds or deposits do not exceed the sum of three thousand dollars. Where such bonds or deposits exceed the sum of three thousand dollars, the premium shall not exceed ten per centum of the first three thousand dollars and eight per centum of the excess amount over three thousand dollars up to ten thousand dollars and six per centum of the excess amount over ten thousand dollars....").

[4] Comptroller Report, at 6.

multiple business names, with various phone numbers all leading to the same office, making comparison shopping virtually impossible.

The lack of transparency encourages abuses. Though the law provides that premiums charged by bail bondsmen may not exceed certain statutory limits, inclusive of any additional fees, bail bond companies regularly charge extra fees in violation of state insurance law.[5] Because our clients' friends and families are desperate to get their loved ones out of jail, and because consumer rights information is overwhelmingly absent or hidden from view, sureties often have no realistic option but to pay these illegal fees. One company charged our client $300 per month for electronic ankle monitoring until our client was ultimately acquitted at trial. We also regularly hear stories of bond companies illegally retaining collateral after a case is over, refusing to return phone calls until our clients' friends and family members simply give up on trying to recovery their money or property. The exploitative and predatory practices of many bail bond companies add another layer of uncertainty, anxiety, and fear to situations that are already stressful and chaotic. And there is little recourse for families who suffer these abuses -- there is no centralized number to call and complain, and regulatory agencies almost never meaningfully investigate violations.

Delays in the posting of commercial bonds are also a regular occurance, leading to many unnecessary days in jail. In one Bronx Defenders case, the family of a 16-year-old client paid a bail bond company, but the bond agent never posted the bond with the court. After a number of days passed without any action or response, the Bronx Freedom Fund agreed to post the bail. Even when working as intended, relying on bail bond agents to post a bond is time-consuming and often results in additional days of unnecessary pretrial incarceration. These short stays have virtually no public safety or rehabilitative benefits, but they dramatically destabilize a person's life, resulting in lost jobs and wages, housing instability, missed school and medical appointments,

[5] *See* New York State Insurance Department, Opinion of the Office of the General Counsel, Oct. 15, 2002, *available at* https://www.dfs.ny.gov/insurance/ogco2002/rg021016.htm.

and childcare emergencies.[6] Short stays have also been shown to have a criminogenic effect by increasing the likelihood of recidivism.[7]

Alternative Forms of Bail

Reliance on the bail bond industry is neither necessary nor inevitable. Instead, the dominance of this exploitative industry is the result of a lack of political will and moral imagination, and a culture that accepts profit-making at the expense of vulnerable people as the norm.

New York's bail statute provides nine different forms of bail.[8] The New York State Legislature created these alternative forms of bail with the specific intention of giving judges bail options that would facilitate release and be less onerous than traditional cash bail and insurance company bonds.[9] Two forms in particular -- partially secured and unsecured bonds -- do not require clients' friends or families to put up large amounts of nonrefundable premiums or fees at the beginning of a case to secure the release of a loved one. With partially secured bonds, sureties must simply post up to 10% of the value of the bond directly with the court; the full amount is refunded at the end of the case. With unsecured bonds, the surety is not required to put up any cash up front. Partially secured and unsecured bonds function similarly to commercial bail bonds, but do not require a for-profit middleman or the payment of nonrefundable premiums.

Despite the fact that these alternative forms of bail have been on the books for years, the city's Criminal Court judges have largely ignored them, overwhelmingly opting to set

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[6] The Comptroller estimates that pretrial detainees unable to make bail lose approximately $28 million in wages every year. *See* Comptroller Report, at 5.

[7] *See* Erika Eichelberger, "Study: Pretrial Detention Creates More Crime," Mother Jones, Dec. 19, 2013, *available at* https://www.motherjones.com/crime-justice/2013/12/pretrial-detention-repeat-offenders/.

[8] *See* C.P.L. § 520.10.

[9] *See* Insha Rahman, The Vera Institute, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts* (Sept. 2017) ("Vera Report"), at 8, *available at* https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy_downloads/Against_the_Odds_Bail_report_FINAL3.pdf.

bail in only two forms: cash bail and commercial insurance company bonds. In a recent three-month study of bail-setting practices across the city, the Vera Institute identified only 99 cases city-wide in which judges set partially secured or unsecured bonds.[10] These cases represent a tiny drop in the the bucket relative to the thousands and thousands of cases in which judges set commercial bail bonds.

Increasing the use of partially secured and unsecured bonds would dramatically limit the ability of the bail bond industry to take advantage of our clients. Partially secured and unsecured bonds are posted directly with the court, eliminating the ability of bondsmen to extract premiums, charge illegal fees, or improperly retain collateral. Making greater use of alternative forms of bail would also reduce the number of short stays in custody, since release does not require a third party to post a bond with the court. Indeed, Vera found that 52% of people who had partially secured or unsecured bonds were able to make bail at arraignments -- significantly higher than the citywide average of 11% -- saving them from unnecessary and costly days in custody.[11]

As Vera notes, despite the obvious advantages of using partially secured and unsecured bonds, there is still significant cultural resistance to using alternative forms of bail among judges and court staff.[12] Changing that culture will require constant attention and effort over time. The bills before the Council today move the needle in the right direction by highlighting the exploitative nature of the commercial bail bond industry and discouraging the system's reliance on it. But these bill are only one piece of the puzzle. The Council should support efforts to educate stakeholders about the harms of commercial bail bonds, to increase the use alternative forms of bail, and ultimately to remove the for-profit sector from our pretrial justice system altogether.

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[10] *Id.* at 11.
[11] *Id.* at 17-18.
[12] *Id.* at 25.

Looking Forward: Eliminating the Bail Bond Industry

The two bills before the Council today represent an important attempt to bring a modicum of transparency and accountability to an industry that has been exploiting vulnerable families in New York City for far too long. Right now, bail bondsmen are under no obligation to inform potential sureties of their rights under the New York State Insurance Law. Int. 724, by ensuring that basic information is provided to people about their rights under the law, will give our clients' friends and families the information they need to evaluate a bail bond agent's claims and know what they are signing up for. And Int. 510 will give people a place to turn to when their rights have been violated. But transparency and a complaint mechanism will not fix the fundamental problem posed by the bail bond industry -- the exploitation of crisis and trauma for profit. The Council should join Comptroller Scott Stringer, State Assembly Member Blake, and State Senator Benjamin in call for the complete and total elimination of the bail bond industry.

Thank you again for opportunity to appear before your committees.

apba
arkansas professional bail association

May 1, 2018

Michelle Esquenazi, President
NYS Bail Bondsman Association

RE: Secured Bail; A Better Option

To Whom It May Concern,

On scheduled court dates around the country, a significant percentage of defendants fail to appear (FTA). The defendants who FTA impose significant costs on court systems and the public. Direct costs include rearranging and rescheduling court dates, the wasted time of judges, prosecutors, lawyers, law enforcement officers, their support staff, etc.

Public law enforcement has a primary responsibility for pursuing and re-arresting defendants who were released on their own recognizance or on a government program. The flow of FTA warrants has overwhelmed many jurisdictions that no longer use the commercial bail system.

However, defendants who are released on Commercial Bail have an entirely different and an immediate problem. The bail bond agent and bail bond company typically spring into action and pursue FTA's immediately, after they occur.

Bail Bond companies and their agents have a financial incentive to monitor defendants and ensure that they do not skip court.

In Arkansas, an $80 fee is added to each bail bond written. This fee provides funding for law enforcement agencies, the public defender's office, domestic violence and a youth program shepherded by the Sheriff's Association.

Government pretrial programs typically become overwhelmed and underfunded. The employees of these agencies have neither the incentive, nor the resources to maintain a runaway FTA problem, that is sure to escalate.

Sincerely yours,

Marc Oudin, Secretary

Phone: 501-758-2611 • Fax: 870-535-8600

RELIABLE BONDING COMPANY

April 27, 2018

My name is Jennifer D Ricks. Our company has been in business for over thirty years and is a generational business. For the last 19 years as a bail agent I have had countless opportunities to help defendants in our criminal justice system. This helps includes guiding them and their families through the bail bonding process, having the defendant call in weekly, maintaining the defendants' current information and whereabouts and assuring their appearance in the proper courts.

While being a presence as a bondman in the courts and jails there are several opportunities to give back to the courts and communities. I've been able to help with post conviction accountability courts, youth days that provided our local children exposure to the judicial system and out-reaches to the community.

While language as "languishing in jail" has become the nail to hang the Bail Reform hat on, the truth is people find their self "languishing in jail" usually because of their own choices. There are exceptions to most things; however crime usually involves a VICTIM. I heard a Superior Court Judge once say that you usually end up in court (criminal or civil) over three things, money, drugs or some sexual conduct. I'd have to agree. Bail is a tool to insure someone other than the DEFENDANT, who has found their self in jail, will ensure their appearance in court for justice to be served.

Just like cancer, crime touches everyone on some level. While considering Bail Reform, think how you would feel if YOU or YOUR FAMILY were the VICTIM of the same crimes that are now available for the Bail Reform catch and release program. Think how our police officers who are public servants feel to know that their efforts are not appreciated.

My business is located twenty miles east of Atlanta, Georgia. Atlanta offers many sporting events, conferences and tourism locations that bring in millions of dollars to our state. Several states that have implemented Bail Reform have seen the error of this change. As you know people do not want to visit areas where crime is an issue, news of the Caribbean tourist destinations where crime of spiked drinks and drive by shootings on the beach create chaos and drive away tourist dollars.

Please consider your decisions on you to apply Bail Reform, if victims feel violated or let down by the criminal system, chaos will be close behind.

Sincerely,

Jennifer D Ricks, President
678-414-7760

OPBA
Ohio Professional Bail Association, Inc.

I am writing to you to implore you to vote against this bill to eliminate bail agents/agencies in the State of New York. Lucas County, Ohio currently has a pretrial service agency with judges setting some monetary bail. The cost in 2017 to Lucas County was near $5,000,000.00 In Lucas County, for a pretrial service agency and there are only just over 300,000 citizens. In 2016, the city Toledo, that is the largest city in Lucas County was named 15th most dangerous city in the United States.

What does Ohio have to do with New York? Just look above and figure out what the cost will be if this bill will passes. **Especially in New York City alone.**

The bail industry saves taxpayers millions of dollars because we have a financial stake and work endlessly to make sure a defendant has his/her day in court. **Victims** deserve to have their day in court as well and many do not get that when a fail to appear occurs.

There are a few states that did not understand the severity of elimination of surety and regret the decisions they have made. New Mexico's governor is calling for a bail reform to be looked at again. Ohio is realizing that the cost is to high and that private bail agents do not cost the already overburdened taxpayer any money. Who will bring back the fugitives when they fail to appear for court? With New York as a vacation destination and so many traveling to your state, bail agents can cross not only County line but State lines as well to return a fugitive. And we do so with no taxpayer funding. **Public Safety** is a huge issue here.

THERE WILL BE NO ACCOUNTABILITY AND MANY DEFENDANTS WILL FAIL TO APPEAR.

Respectfully Submitted,

Mary Frances Smith

Ohio Professional Bail Bonds Association, Inc.
Ph: 419-865-7300
316 N. Michigan St., Ste 200
Toledo, Ohio 43604

OPBA
Ohio Professional Bail Association, Inc.

January 24, 2018

Dear Sirs and Madams,

The goals of bail reform are to promote fairness for indigent person (s) in custody, reduce jail population and save municipalities money. These objectives are not met by the current bail reform movement due to public safety risk and the financial burden that is passed on to state and local governments.

Professional Surety Bail has been targeted specifically by Bail Reform proponents;

Removing the Professional Surety Bail: there will be an increase of work/case load of the clerk, probation offices, pretrial release offices, and ultimately law enforcement at an increase in cost largely without funding available.

Bail reform at its core may be proven to be unconstitutional as it will hold defendants in jail who could have paid their bail and it will in fact cause overcrowding.

The ability of the Surety to travel beyond local and state boarders to retrieve and return principals to face justice has been an advantage of the American Bail System and at no cost to the taxpayer.

Bail reform is failing in New Jersey and New Mexico with hundreds of dangerous defendants released through mandated bail reform policies.

Bail reform ultimately promotes a soft on crime appearance, a catch and release mentality, holds back judicial discretion and ties the hands of law enforcement.

It also endangers society and increases financial cost to state an local governments.

Respectfully Submitted,

Mary Frances Smith
President

Ohio Professional Bail Bonds Association, Inc.
Ph: 419-865-7300
316 N. Michigan St., Ste 200
Toledo, Ohio 43604

Date Range: 11/23/2017 - 11/23/2017
Court Part(s): APAR4

Modify Search | New Search

Note: To view case details, click the case # link (opens in new window).

November 23, 2017 THURSDAY JUDGE COHEN

Case #	Summons #	Defendant	Calendar Section	Judge	Part
2017KN063762	220.39	Aponte, Ruben B/FEL	PENDING	ROR	NARCOTIC DRU
2017KN063725		Baeto, Emmanuel	PENDING		
2017KN063781	120.00	Baker, Tramelle K A/MIS	PENDING	ROR	ASSAULT
2017KN063777	120.00	Beatty, Laron E A/MIS	PENDING	ROR	ASSAULT
2017KN063772	170.30	Best, Ashley C/FEL	PENDING	2K	FORGD INSTR
2017KN063754	170.30	Best, Steffon H C/FEL	PENDING	1K	FORGD INSTR
2017KN063727	165.40	Bonilla, Angel A/MIS	PENDING	ROR	CRM POSSES
2017KN063753	155.25	Brooks, Vergia L A/MIS	PENDING		PETIT LARCE
2017KN063726	120.00	Burnett, Joshua K A/MIS	PENDING	ROR	ASSAULT
2017KN063737	265.01	Cabrera, Argenys A/MIS	PENDING	ROR	CRM POSS
2017KN063765	120.00	Calle, Angel A/MIS	PENDING	ROR	ASSAULT
2017KN063739	140.20	Carson, Anthony D/FEL	PENDING	20K	BURGLARY
2017KN063750	155.25	Castro, Juan R A/MIS	PENDING	ROR	PETIT LARC
2017KN063709	155.25	Cedres, Paul A/MIS	PENDING	$500	PETIT LARC
2017KN063782		Cueto, Joaits	PENDING		
2017KN063756	120.05	Delacruz, Joseph D/FEL	PENDING	ROR	ASSAULT
2017KN063741	511.A3	Edwards, John MIS	PENDING	$1	UNLICENSED
2017KN063742	215.51	Edwards, John E/FEL	PENDING	3.5K	CRM CONTEM
2017KN063743	215.51	Edwards, John E/FEL	PENDING	2.5K	CRM CONTEM
2017KN063746	120.00	Etienne, Renaldo E A/MIS	PENDING	ROR	ASSAULT
2017KN063784		Folson, Cory T	PENDING		
2017KN063823	140.25	Fernandez, Charles C/FEL	PENDING	ROR	BURGLARY
2017KN063760	220.16	Figueroa, Angel B/FEL	PENDING	ROR	CRM POSS
2017KN063729	220.31	Fletcher, Crisoin A/MIS	PENDING	ROR	CRM POSS
2017KN063748	111.01	Freeman, Abraham	PENDING	CONTRACT	TRAFFIC DEV
2017KN063730	155.25	Frett, Eleandrow A/MIS	PENDING	ROR	PETIT LARCE

Court Calendar Details

CR-029730-17NA	220.44	Sodhi, Sunil K	B/FEL	ARRAIGNMENTS	10K DAY CARE
CR-029731-17NA	220.44	Sodhi, Sunil K	B/FEL	ARRAIGNMENTS	10K DAY CARE
CR-029732-17NA	220.44	Sodhi, Sunil K	B/FEL	ARRAIGNMENTS	10K DAY CARE
CR-029733-17NA	220.03	Sodhi, Sunil K	A/MIS	ARRAIGNMENTS	1K Crm Poss
CR-029716-17NA	265.01	Stone, Thazjay T	A/MIS	ARRAIGNMENTS	ROR Crm Poss
2014NA022240	265.01	Witkowskiiii, Robert J	A/MIS	PENDING	ROR Crm Poss
CR-029726-17NA	155.30	Wright, Lorenzo	E/FEL	ARRAIGNMENTS	2K GRAND LARC

May 1, 2018

Dear Mr. New York City Speaker,

My name is Abel Cedeno. I am 18 years old. You may have heard or read about me in the news. I have been brutally bullied for most of my life just because i happen to be gay. In September of last year I was attacked in school and the upshot of this attack and of defending myself caused me to be arrested for homicide. My bail was $250,000. My family did not have a quarter of a million dollars. Empire Bail Bonds got me out of jail. Without them writing this bail bond--in effect lending me and my family $250,000--I would still be in Rikers Island pre-trial, even though I am innocent and am supposed to be presumed innocent. All for just defending my life. After Empire Bail Bonds got me out, they provided me with an internship opportunity. Here I was-a poor kid from the Bronx growing up gay in a largely hostile environment and I was given this opportunity to obtain my liberty and to learn about bail and the criminal justice system. Bail bond companies need to have the choice to make decisions as to whether loan people like me large sums of money to obtain their liberty pre-trial as guaranteed by the Constitution of the United States. These are things I learnt first hand by being a client of Empire Bail Bonds and then as an intern for the company. Going forward I am determined to continue my education and to win this trial by fighting the false allegations with my liberty. Another most important thing i learned is to always treat people with respect regardless of there positions in society as Empire Bail Bonds treated me and my family. Without being out at liberty on bail this would be difficult if not impossible to properly fight my case.

Respectfully,

Abel Cedeno

← Testimony offered to the NYC Council, May 2, 2018

Testimony offered to the NYC Council, May 2, 2018
By: Michelle Esquenazi, President, Empire Bail Bonds

Mr. Speaker & Esteemed members of the NYC Council,

Allow me to introduce myself, my name is Michelle Esquenazi. I am a lifelong NYer, born & raised in Brooklyn, NY, Canarsie to be exact. My Father, Mario, is one of 5, our entire family are Cuban immigrants to this great country. I am proud to Latina-American.

I am a domestic violence survivor, a crime victim, & a single Mother. It was July 1993 when I changed the locks after he left that morning. I fled with Shayna Rose, my 3 year old daughter, afflicted with CP, my two year old Ilana Gabrielle, & who I would bring into this world 4 months later, my son, Michael Corey. We all bunked up together in my parents basement. My abuser left the State, & we were thrust into a life of no child support, & extreme poverty. I went on public assistance, ADC, WIC, Emergency Medicaid, & food stamps. I quickly went back to college to study paralegal law, with a plan in my mind that I was going to help women like me. Shortly into my studies I was given the opportunity to interview at a bail office. The man I worked for lacked ethics, it was then that I started working with the NYSDOI to rid the industry of bad actors. I left that place, & somehow garnered the strength to open my own bail shop, a huge part of that was my passion for helping people. In an industry controlled by men, I was the only woman. I opened Empire, & shortly thereafter founded NYSBBA as a 501C3 to continue to be able to work in conjunction with our regulators at the DOI, seeking to maintain the professionalism & integrity of our industry.

A consumer complaint in our industry is handled expeditiously by the regulators at the NYSDFS. Once received, whether in writing or online, the DFS will immediately generate an inquiry letter asking the bail agent for supporting documents, and various details about the pending matter. It is common for the DFS to have all such documents within a 15 day turnaround time. Once reviewed the regulator will either ask for more information, or call in the agent for questioning. A copy of the complaint is always sent to the insurer as well. If the DFS finds the agent to be a bad actor, they will move forward toward license revocation or fine.

As the owner of Empire BB, it is not uncommon for me to work around the clock. Moms & Dads call us in the middle of the night, scared & afraid, & it is a big part of my job to explain the arrest to arraignment process to them, & to explain how the bail process works. These calls are answered by my voice, not an answering machine, regardless of the hour. Empire BB employs 25-30 amazing people, from administrators, to bail agents, all of our staff hold themselves out as professionals. I am very proud of the respect that my company gets from Judges & District Attorneys, & the DOC. We take our role very seriously.

One of the biggest issues I have with the "bail reform" movement is that they have scripted messengers. There are now reformers calling people "Black & Brown" & they arent referring to Officers, or Lawyers, & Students, they are referring to criminals & inmates! There are many in my family & in my life that are pigmented that are NOT criminal offenders. In our home you NEVER got to describe people by the color of their skin, sexual orientation or religion. This "Archie Bunker" mentality is an insult to all people of color. People that are "black & brown" are the backbone of success in NYC, & most dont want to be associated & piled into to the criminal offender category. I know so many people of color, they are politicians, pastors, police officers, attorneys, tax paying, law abing, & voting citizens.

Testimony offered to the NYC Council, May 2, 2018

system. I ask this council for the opportunity to hear from the other side, ironically, in all of the public lynching campaign not one time have we been invited to the table. Here I am, & I offer you over two decades of expertise in my field. I am willing to come on board, without salary, as an ombudsman or an ambassador of good will. It is very important that the people of NY have choices in bail options, we are but one of those options, albeit the only one that operates at zero expense to the taxpayer.

The bill that purports to have consumer complaint referred to NYPD for enforcement is unnecessary as we are already a regulated industry. There are approximately 25-30 bondsman that serve NYC. I am certain we can adress all of your concerns as an industry without the looming threat of arrest. We are in a service based industry, facing many challenges, we look forward to a cohesive working relationship with the NYC Council, as we know that working together is what NYC is really all about. I implore you to consider my testimony today, & I hope that hearing from me today will open the long time closed door to an open one...I look forward to maintaining an open dialogue with each & every one of you on how we can remedy all of your concerns in a fair & just manner for all concerned parties.

Respectfully,

MICHELE ESQUENAZI
PRESIDENT, NYSBBA

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Casey Adams, Director of City Legislative Affairs

Address: _____

I represent: NYC Dep't of Consumer Affairs

Address: 42 Broadway

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Michael Tiger, Deputy General Counsel, DCA

Address: 42 Broadway, NY, NY

I represent: DCA

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Glenna Goldis, Staff Counsel

Address: _____

I represent: NYC Dep't of Consumer Affairs

Address: 42 Broadway

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 510 / 724 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Nick Encalada - Malanowski

Address: VOCAL - NY

I represent: _____

Address: 92d Fourth Ave 11217

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 510 + 724 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Amanda Perez

Address: 254 Huntington ave, BX NY 10465

I represent: Myself / Bail Bond Accountability Coalition

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: 5-2-2018

(PLEASE PRINT)

Name: Catherine Gonzalez

Address: _____

I represent: Brooklyn Defender Services

Address: 177 Livingston Street, 7th Flr
Brooklyn, NY 11201

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 510 Res. No. _____

☒ in favor ☐ in opposition

Date: 5/2/2018

(PLEASE PRINT)

Name: Elena Weissmann

Address: 360 E. 161 St Bx NY 10451

I represent: The Bronx Freedom Fund

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 510, 724 Res. No. _____

☒ in favor ☐ in opposition

Date: 2 May 2018

(PLEASE PRINT)

Name: Bianca Tylek, Corrections Accountability Project

Address:

I represent:

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 724/510 Res. No. _____

☒ in favor ☐ in opposition

Date: 5-2-2018

(PLEASE PRINT)

Name: Victor M. Herrera

Address: 794 Sandiker Ave

I represent: JustLeadership USA

Address: 1400 Lexington Ave

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: 5/2/18

(PLEASE PRINT)

Name: Jamir Khan

Address: _____

I represent: 32BJ SEIU

Address: 25 W 18th St

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 724 Res. No. _____

☑ in favor ☐ in opposition

Date: 5/2/18

(PLEASE PRINT)

Name: Alex Anthony

Address: 360 E 161 Street

I represent: The Bronx Freedom Fund

Address: 360 E 161 Street

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 510+724 Res. No. _____

☒ in favor ☐ in opposition

Date: 5/2/18

(PLEASE PRINT)

Name: Tedmund Wan

Address: 123 William St, 16th Fl, NY, NY 10038

I represent: Urban Justice Center

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 510/724 Res. No. _____

☒ in favor ☐ in opposition

Date: 5/2/18

(PLEASE PRINT)

Name: Elizabeth Bender

Address: 199 Water St, 16th Floor NY NY 10038

I represent: The Legal Aid Society

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 510 + 724 Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Peter Goldberg

Address: 195 Montague St, Bk, NY 11201

I represent: Brooklyn Community Bail Fund

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Scott Levy

Address: 360 E. 161st Bronx

I represent: The Bronx Defenders

Address: 360 E. 161st St.

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/2/18

(PLEASE PRINT)

Name: Sergio De La Pava

Address: _____

I represent: New York County Defender Services

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 726 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Steven Zalewsky

Address: 90 Main Street Hempstead NY

I represent: New York State Bail Bonds Assn

Address: same

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☒ in opposition

Date: _____

(PLEASE PRINT)

Name: Michelle Esquenazi

Address: 62 Nichols St.

I represent: EMPIRE & NYSBBA

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☒ in opposition

Date: _____

(PLEASE PRINT)

Name: Jane Rodgers

Address: 118 E Pine St. Melville, NJ

I represent: Alliance for Safe Communities

Address: _____

Please complete this card and return to the Sergeant-at-Arms