

# THE TRUTH ABOUT BAIL REFORM

A TRANSPARENT EXPLANATION AND REVIEW OF BAIL REFORM  
AND THE DATA USED TO SUPPORT THE CLAIMS MADE BY BAIL REFORMERS  
AND PRETRIAL ADVOCATES



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## I. SUMMARY

Recent scholarly research has exposed major flaws in the factual assertions and data used in support of the claim that bail reform is necessary. These assertions are:

- (1) Bail reform and pretrial release are cost saving measures that will reduce the jail population, saving the municipalities millions of dollars.
- (2) Bail reform is necessary because the jails in New York State are overflowing with indigent defendants who cannot afford nominal bail amounts.
- (3) Misdemeanor and non-violent felonies are victimless crimes and therefore those accused of those crimes should not have any bail set at arraignment.
- (4) Pretrial release programs do not result in increased failure to appear rates or recidivism.
- (5) Defendants accused of crimes are presumed innocent and therefore should not be subject to any securing order at arraignment, particularly bail bonds.
- (6) The commercial bail system is unfair, imposes a non-refundable cost on the defendant, and prevents the poor from being released.
- (7) Risk assessments and black box algorithms like those offered by the Arnold Foundation are nondiscriminatory, accurate predictors of a defendant's likelihood to returning to court.

### WHAT THE FACTUAL DATA SHOWS:

- (1) Bail reform costs are 10 times the original estimates in virtually every state they have been implemented.<sup>1</sup> In New York State, the current legislation proposed would cost upwards of **Five Hundred Million Dollars** (\$500,000,000.00).<sup>2</sup> There has been no significant reduction in jail populations in the states that have implemented non-monetary bail reforms. In some instances, there has been an increase in the minority jail population.
- (2) The estimated number of jail inmates in New York incarcerated on nominal bails is less than 2.5% of the total jail population on average.<sup>3 4</sup> That figure does not account for parole holds, warrant detainers, probation holds, or other restrictions on a defendant's release.
- (3) The illusion is that misdemeanor and non-violent felony crimes have no victim. That would result in misdemeanor crimes like Stalking, Sexual Abuse, Sexual Misconduct, Cemetery Desecration, Arson in the 5<sup>th</sup> Degree, Criminal Possession of a Police Uniform, Escape in the 3<sup>rd</sup> Degree, Bail Jumping, Criminal Contempt, and Criminal Obstruction of Breathing, to name a few, would be mandatory release misdemeanor crimes.

As to “non-violent” felonies: Vehicular Manslaughter, Burglary in the 3<sup>rd</sup> Degree, Illegal Abortion, Robbery in the 3<sup>rd</sup> Degree, Identity Theft in the 1<sup>st</sup> Degree, Escape in the 1<sup>st</sup> Degree, Promoting an Obscene Sexual Performance by a Child, and Rape in the 3<sup>rd</sup> Degree would be mandatory release felony crimes.

All the above crimes would be mandatory release crimes under the new bail reform program proposed by the Governor.<sup>5</sup> Furthermore, the number of previous arrests the defendant has, the number of open cases and failures to appear do not play a part in the decision of release under the new proposed bail reform laws in New York State.

(4) Pretrial release and signature-only release bails have been shown to increase failure to appear rates and increase the recidivism while on release.<sup>6 7 8</sup> In most cases, these programs do not account for open cases or prior failures to appear. Simply stated, when the accused have no incentive to appear, they simply do not appear. Additionally, mandatory release sends the message of revolving door justice system and has no deterrent effect on those who have been arrested.

(5) The “presumption of innocence” argument<sup>9</sup> is a fiction designed to support the non-monetary bail argument. The Presumption of Innocence is a standard that requires the prosecution to meet a burden of proof at trial. The arraignment is not a trial, nor is the prosecutor required to provide evidence at arraignment. The presumption of innocence provides the defendant at arraignment is a right under the 8<sup>th</sup> Amendment to bail.

Our Criminal Justice System in New York routinely imposes punishments on defendants after arrest and before conviction; suspension of driving privileges at arraignment on a DWI or the issuance of an order of protection without a hearing on a Domestic Violence matter as examples.

(6) The bail bond industry operates at a net financial gain to the tax payer, and increases revenue to the Government thru the payment of forfeitures, premium tax and business taxes. The commercial bail bond industry also holds the accused accountable for his actions, and compels his return to court when necessary. All of that, while showing the accused compassion and providing the necessary support services to make them a productive member of society. The statistics do not show the poor are disproportionately held on nominal bail.<sup>10 11</sup> Failure of the court system to allow bail agents 24-hour access to the criminal justice system to post bail is the cause of defendants remaining in jail after arraignment.

Passage of this legislation would not add a new path to freedom for the accused. Instead, the result would be the removal of a pathway to freedom. This legislation imposes a new harsher penalty in the form of pretrial detention.<sup>12</sup> The imposition of pretrial detention on matters that the accused would have otherwise had an opportunity for release on bail results in the opposite effect that this legislation proports to champion.

(7) Non-monetary bail and the use of risk assessments and black box algorithms have been shown to be discriminatory, based on empirical studies.<sup>13 14 15</sup> Further, the use of these systems removes judicial discretion and ignores any fact-specific information about the case before the court.

## II. THE COST OF BAIL REFORM

The bail reform legislation proposed in the Governor's budget has very specific provisions relating to release of the accused at arraignment. On their face they appear to be simple cost-effective measures. However, a careful read of the proposed legislation shows that these measures impose significant infrastructure and personnel costs in their implementation and continued use. The following paragraphs contain examples of the use of pretrial programs in other states which provide a guidepost as to the actual costs associated with pretrial programs and non-monetary bail.

1. Washington D.C. has had a non-monetary bail system in effect since 2008. The Washington D.C. Pretrial Services Agency (P.S.A.) is the government entity in charge of pretrial release and has a statute similar to the proposed legislation in New York. In 2015/2016 the agency processed approximately 44,000 arrests<sup>16</sup> at a cost of sixty-two million dollars (\$62,000,000.00).<sup>17</sup>

If the same figures were applied to New York State, based on the number of arrests at 479,000,<sup>18</sup> the cost would be **Six Hundred Sixty-Nine Million dollars (\$669,000,000.00)**.<sup>19</sup> Remember, every arrested person, regardless of their ultimate release status, is processed through pretrial assessment according to the pending legislation in the Governors proposed budget.<sup>20</sup>

2. One does not have to look far to see other examples of the out of control costs of pretrial supervision. Doctor Daraius Irani, Chief Economist at the Regional Economic Studies Institute at Towson University, was commissioned to conduct a study of New Jersey bail reform and the New Jersey Pretrial Service Unit (NJPSU). After factoring in all costs including startup, operating, and indirect costs, Dr. Irani estimated the cost of the program at **Four Hundred and Sixty-One Million Two Hundred and Fifty-One Thousand, Two Hundred and Eighty dollars (\$461,250,280.00)** for the year.<sup>21</sup> The doctor was quick to point out that these figures do not include additional costs related to increased crime rates or benefit costs, (medical and pension) for additional personnel. He also pointed out that claims by the state of New Jersey that there would be massive cost savings for the decrease in prison costs are unsubstantiated, and are based on certain suppositions that are not necessarily accurate.

Even if you were to give these cost savings guesses credence, the cost of pretrial in New Jersey would be approximately **Three Hundred Million, (\$300,000,000.00)**,<sup>22</sup> again not accounting for the costs increased crime rates, medical and pensions costs for additional personnel.

It is important to note that New Jersey planned the funding of this program for more than a year and increased court fees to fund the project.<sup>23</sup> Those fees were delivered from other crime victim programs and were still insufficient to fund the program. The solution to this was to transfer or impose the costs on individual counties and mandate that they raise taxes to fund these programs.<sup>24 25</sup>

3. Members of the New Jersey legislature have been highly critical of the program. Democratic New Jersey State Assemblyman Bob Andrzejczak, who initially supported the bail reform legislation and advocated for its passage, called the state's program a "disaster", citing exorbitant costs to the taxpayers, as well as increased danger to citizens and denial of the accused's constitutional right to pretrial release. Assemblyman Andrzejczak concluded that the pretrial program is "a powder keg and our citizens are suffering because of it".<sup>26</sup>

With a four-Billion-dollar budget deficit in New York, cuts in funding to schools and other social service programs, and a Federal tax plan that would impose greater taxes on New Yorkers, why would we allow legislation that would increase our taxes by five hundred million dollars? Particularly when this legislation does not provide relief from the problem it claims to solve!

**(Under separate cover we have provided an updated report from Doctor Irani detailing his findings one year after New Jersey Bail reform was enacted)**

### III. THE TRUTH ABOUT THE JAIL POPULATION IN NEW YORK

1. The foundation of the Governors bail reform package is the claim that in New York State there are thousands of people languishing in jail awaiting trial who cannot afford nominal bails. They conclude the indigent are disproportionately suffering, simply because they are poor. This claim simply does not hold up to the facts.
2. The case most often cited in support of bail reform is Kalief Browder, who spent three years in a Rikers Island Jail on a misdemeanor charge and, when finally released, sadly took his life. His story, while tragic, simply has nothing to do with the commercial bail system. It is true that Mr. Browder had bail set on his misdemeanor case, but what is continually overlooked is the fact that Mr. Browder was held in remand status on a violation of probation hold.<sup>27</sup>

Furthermore, despite bail reform advocates efforts to downplay the charges against Mr. Browder as "stealing a backpack", Kalief Browder was in fact charged with felonies including Grand Larceny, Assault, and Robbery in the 2<sup>nd</sup>.<sup>28</sup>

The great irony of reform advocates using Kalief Browder's story to champion their cause is that, under the currently proposed legislation, Mr. Browder would have been remanded with no opportunity to be bailed out, as his charges fall under the definition of a "violent felony" as defined in section 70.02 of the penal law. Therefore, if the currently proposed

bail legislation had been in place at the time of Kalief Browder's arrest, he would have been remanded, and no amount of money his family would be able to raise would get him out.

The excessive duration of Kalief Browder's pretrial detention was certainly a deplorable episode. However, it was a failure of the criminal justice system to afford him a prompt and speedy trial, and was in no way caused by the commercial bail system or indigency.

3. The jail population in New York does not primarily consist of indigent defendants being held on nominal bail. A review of the New York City Criminal Justice Agency Study commissioned in 2012 showed in New York City 284,000 arraigned. Of those 16% were felonies and 74% were misdemeanors. 50% of the cases were disposed of at arraignment. Of the 144,000 remaining, 68% were released on their own recognizance. The number of people with bails in the amount of \$2,000.00 or less in New York City was less than 3% after arraignment.<sup>29</sup>

How long they remain in jail after arraignment depends largely on whether they have any other holds or restrictions on their release. The fact that someone may have a hold with a nominal bail is never factored into analysis of why a person remains in jail on a nominal bail.

4. A recent study showed that 55% of those who have bail set make that bail in 2 to 3 days of arraignment, and 78% make bail within 7 days. The overwhelming number of defendants charged with misdemeanors and violations are released without bail. That number approached 90% in New York city in 2017.<sup>30</sup>
5. With bails ranging from \$2 to over \$100,000 the daily average number of people in jail on bails \$500 and under was 71 or .75% of the jail population. 133 inmates had bails ranging from \$500 to \$1,000, and 306 had bails between \$1,000 to \$2,500. This figure does not account for holds, other detainers or \$1 bails.<sup>31</sup>
6. Roughly these same figures apply state wide. The estimated number of people incarcerated on a daily basis with bails of \$2,500 or less state wide is approximately 750 people, with a total jail population on the average of 16,000.00.<sup>32</sup>
7. In 2015 the statics were similar. In a subsequent study the New York City Criminal Justice Agency indicated that in New York City the likelihood of being detained and unable to make bail is less than half the national average.<sup>33</sup> In New York City in 2017 3% of the jail population were arraigned on bails of \$1,000.00 or less.<sup>34</sup> That number in the first quarter of 2017 amount to 204 people and again does not account for holds or other detainers.<sup>35</sup>
8. The question that must be asked: if there is an average of 510 people in jail on a daily average in New York City who are truly indigent why are they in jail? New York has had charitable bail for the last 3 years, why aren't they being bailed out? There are only two answers. Either these People are not able to be bailed out because of other holds, or charitable bail is failing to bail out the indigent.

9. Under the legislation being proposed it is important to understand exactly how bail would be set. There are two states: one is release or release with conditions, and the second is pretrial detention, or as it is better known, remand. It is also important to understand in New York State, with the exception of certain A felony crimes and prior violent predicate and persistent felons, bail is mandatory.<sup>36</sup> Under the new legislation even those charged with misdemeanors could potentially face remand.

Perhaps the most disturbing realities relating to the use of pretrial services in lieu of commercial bail can be seen in these statistics:

10. Washington D.C., which has been using a non-monetary bail system since 2008, has the highest incarceration rate in the country, with 89% being minorities.<sup>37</sup> New Jersey had a 28% decrease in the jail population from July 2015 to January 1, 2017 when commercial bail was in effect. When non-monetary bail was enacted in January 2017 the decrease dropped to 15%, a net increase of 13%.<sup>38</sup> In Florida, counties with pretrial saw a 61% increase in the jail population on average.<sup>39</sup>
11. The most alarming figures illustrating the failures of bail reform relate to racial disparities in the inmate population. Nationwide, African Americans make up over 40% of inmates, despite only accounting for 13% of the overall population.<sup>40</sup> As appalling as that statistic is, every state that has banned commercial bail and enacted pretrial risk assessment programs is well above the national average in terms of inmate racial disparity.

In Kentucky African Americans represent nearly 30% of inmates, despite accounting for only 8% of the state's overall population.<sup>41</sup> In Illinois the African American population is approximately 15%, yet they account for more than 56% of the state's inmates.<sup>42</sup> Oregon's percentage of African American inmates is five times the state population percentage.<sup>43</sup> In Wisconsin, African Americans account for 38% all inmates, despite representing only 6% of the state population.<sup>44</sup> and in Maryland African Americans make up 68% of all inmates, despite an overall population of just 29%.<sup>45</sup>

**AFRICAN AMERICAN INMATES IN BAIL REFORM STATES**

STATE	AFRICAN AMERICAN POPULATION	% OF AFRICAN AMERICAN INMATES
Kentucky	8%	29%
Illinois	15%	56%
Oregon	2%	10%
Wisconsin	6%	38%

Clearly, the use of pretrial risk assessments and release option restrictions in bail reform legislation have resulted in increased minority jail populations, and have been shown to



increase systemic bias.

So, the question becomes, where are the statistics that suggest that the current bail system does not work? Are we going to use a single example to justify expending hundreds of millions of dollars on a pretrial system that actually increases the jail population?

#### **IV. THE REAL FACTS ABOUT MISDEMEANOR AND NON-VIOLENT FELONY CRIME**

1. The proposed legislation calls for mandatory release on “misdemeanors and non-violent felonies”.<sup>46</sup> The illusion is misdemeanor and felony non-violent crimes have no victim and are not crimes of moral turpitude. This legislation, if passed, would mean crimes like Stalking, Sexual Abuse, Sexual Misconduct, Cemetery Desecration, Arson in the 5th degree, Criminal Possession of a Police Uniform, Escape in the 3rd degree, Bail Jumping, Criminal Contempt, and Criminal Obstruction of Breathing, to name a few, would be mandatory release misdemeanor crimes.
2. As to felonies, Vehicular Manslaughter, Burglary in the 3rd degree, Illegal Abortion, Robbery in the 3rd degree, Identity Theft in the 1st degree, Escape in the 1st degree, Promoting an Obscene Sexual Performance by a Child, and Rape in the 3rd degree would all be mandatory release Felony crimes.<sup>47 48</sup>
3. All the above crimes would be mandatory release crimes under the new bail reform program proposed. Further, the number of arrests the defendant has, the number of open cases and failures to appear do not play a part in the decision of release under the new proposed bail reform laws in New York State.
4. The unanswered question in considering the effects of these mandatory release provisions is, what will happen to those accused of drug crimes? We all are aware that there is an opioid crisis in New York State, and a further crisis in finding adequate treatment facilities for those who suffer from addiction. Under this legislation those accused of drug offenses, including drug dealers, would be released back into society, regardless of how many cases they have open.
5. This mandatory release concept further affects the rights of crime victims, who now can be assured that those who perpetrate crimes against them will be released on a mandatory basis. Just because a crime is labeled as a misdemeanor or a non-violent felony does not mean that there is not a victim.

This legislation also calls for mandatory hearings on any case where pretrial detention is recommended, further victimizing the victim by forcing them to appear at a bail hearing with 5 days of the defendant’s arraignment, or face the idea of the accused being released.<sup>49</sup>

6. In the commercial bail system, the defendant released is monitored by the bail bond company and, in the event he violates the law or an order of the court, he is brought before the court, at zero cost to the taxpayer. Who is going to carry out this type of proactive monitoring and return under this legislation? This is unknown, because the legislation is silent on that issue of who will pay for it.

## **V. INCREASED CRIME RATES AND FAILURE TO APPEAR ON NON-MONETARY BAIL**

1. One of the key advantages of the commercial bail system is that the defendant and his family have a financial stake in his continued appearance in court. The defendant has an incentive to return. Similarly, the bail bond agency has the same incentive, so they monitor the defendant closely, and make sure he returns to court. This is simply not the case with pretrial. The fact remains removal of this incentive results in higher failure to appear rates and an increase in crime.
2. Non-monetary bail and pretrial release increase failure to appear rates and increase criminal recidivism. A review of Kentucky's risk assessment program showed that Public Safety Assessment resulted in higher failure to appear and pretrial arrest rates. In Ohio the use of the Public Safety Assessment program resulted in a failure to appear rate of 28.8 percent with a high of 47.1 percent for high risk released defendants.<sup>50</sup>
3. The benchmark of bail reform failures comes from a review of the removal of commercial bail in Philadelphia, where private bail was abolished in the 1970s, with court officials administering the pretrial disposition of suspects.<sup>51</sup> In a series of articles in the Philadelphia Inquirer entitled "Justice: Delayed, dismissed, denied", the failure to appear rate skyrocketed to 28%, leaving some 47,000 criminals out on the street of Philadelphia unapprehended.<sup>52 53</sup> This is a very important statistic to New York, because the bail system in Philadelphia that led to such catastrophic failures used the exact same types of bail suggested in the Governor's legislation, that bail is either personal recognizance or 10% signature bond.<sup>54 55</sup> In that system the defendant either signs a non-monetary personal recognizance bond, or signs and pays 10% of the bail amount, which is returned after the case is disposed of. That system was an abysmal failure. Beside the high failure to appear rate, the city was ultimately owed one Billion dollars (\$1, 000,000,000.00) in unpaid forfeitures of bail.<sup>56</sup>

In the few instances that commercial bail was imposed in Philadelphia, the failure to appear rate was 1% and within a year 0%.<sup>57</sup> Philadelphia is now considering the restoration of commercial bail. The estimated continuing cost of pretrial would be one hundred and forty-four million dollars (\$144,000,000.00).<sup>58</sup>

4. Crime rates have also been shown to increase with pretrial. Washington D.C. now has the highest number of arrests per capita in the country, with 6,340 arrests per 100,000 people.<sup>59</sup>  
<sup>60</sup> The mandatory release of defendants based on the Black Box algorithm created by the

Arnold foundation has led to a significant number of dangerous criminals being released. In just the first year of bail reform in New Jersey, a wave of articles in the press have illustrated the automatic release of dangerous criminals back into the community. For example:

- A teacher charged with having sex with underage student, released.<sup>61</sup>
- Five charged with 3 kilograms of cocaine, 30 pounds of marijuana, and one ounce of heroin with intent to distribute while in a school zone and possession of a firearm while committing a controlled dangerous substance crime, released.<sup>62</sup>
- Man arrested with a high capacity hand gun after being automatically released twice on separate drug dealing charges in less than two weeks.<sup>63</sup>
- Kid's soccer referee arrested for possession of child pornography, released.<sup>64</sup>
- Man involved in shooting arrested for assault and gun charges released, the next day arrested again with another loaded hand gun and hollow point bullets.<sup>65 66</sup>
- Man arrested with 14 kilograms of Fentanyl, released.<sup>67</sup>

The above is but a small sampling of cases in which dangerous criminals have been released back onto the streets with no supervision.

## VI. THE PRESUMPTION OF INNOCENCE

1. In New York there has been much comment about the how people can be incarcerated awaiting trial who are presumed innocent. The presumption of innocence argument is a fiction, designed to support the non-monetary bail argument.

The presumption of innocence is a standard that requires the prosecution to meet a burden of proof at trial. The arraignment is not a trial, nor is the prosecutor required to provide proofs at arraignment. What the presumption of innocence does provide the defendant at arraignment is a right under the 8<sup>th</sup> amendment to bail. Our criminal justice system in New York has many circumstances that contain far more onerous punishments imposed on defendants after arrest and before conviction; suspension of driving privileges at arraignment on a DWI, or the issuance of an order of protection without a hearing on a domestic violence matter, as examples.

2. What is not mentioned in the discussion of mandatory release on misdemeanors and non-violent felonies is pretrial detention. In consideration of crimes that are not mandatory release, the court has and shall exercise its right to **REMAND THE DEFENDANT**, with no bail, for the duration of the case. That seems like an oxymoron. How can we claim that no restrictions can be put on a person who is accused of a crime, yet allow presumption of innocence to fall away simply because the accusation is based on more serious allegations?

If the foundation of the entire bail reform movement is based on a person's presumption of innocence, how can you justify remand with no bail, just because the nature of the crime is violent? Further, this type of bail system produces a greater percentage of minority

incarceration, and takes all discretion away from the Court to hear any mitigating factors or information in formulating the decision on setting Bail.

3. In a letter from the Alliance of California Judges to the California legislature, they stated:

“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.)”<sup>68</sup>

## **VII. THE TRUE COST OF COMMERCIAL BAIL**

1. There seems to be a growing sentiment that charging people accused of crimes for bail bond services is somehow wrong. The often-heard complaint is that the fee must be paid, even if the accused is found not guilty. However, one must question how this argument is valid, when the government takes a 3% surcharge for cash bail, imposes a court surcharge on pleas to non-criminal offenses, or pretrial release imposes a fee to participate in the program the accused has been mandated to. New York has the lowest premium rates in the country. Further, premium is paid one time during the duration of the case, not on an annual basis like all other types of insurance.
2. If one accepts the argument that the bond agent should not be paid if the accused is found not guilty, then it should follow that the lawyer who represented the defendant not be paid, the officer who made the arrest not be paid, the judge who presided over the case not be paid, or any other person associated with the arrest. Taking it a step further, premiums should then be refunded for any form of insurance if no claim is made at maturity of the policy.
3. The bail bond industry operates at a net financial gain to the tax payer, holds the accused accountable for his actions, and compels his return to court when necessary. All of that while showing the accused compassion and providing the necessary support services to help make them a productive member of society. Bail bond agents are the protectors of the accused’s right to fight the accusations against him from outside the jail. No other entity does this more efficiently, or with greater compassion. Bail agents are the ones who meet with the defendant’s family, provide them a means to free their loved one, and guide them in navigating through the criminal justice system.

## VIII. THE USE OF THE ARNOLD FOUNDATION PUBLIC SAFETY ASSESSMENT AND SIMILAR BLACK BOX ALGORITHMS

Though not specifically mentioned in the current legislation offered by the Governor, he has in the past indicated his preference for this system.

1. The use of The Arnold Foundation Public Safety Assessment (PSA) and other black box algorithms have resulted in increases in incarceration of minority defendants, and overall jail populations. The AI Now 2017 report from the AI Institute at New York University called for the discontinuance of the use of computer based risk assessments:

“Core public agencies, such as those responsible for criminal justice, healthcare, welfare, and education (e.g “high stakes” domains) should no longer use ‘black box’ AI and algorithmic systems... The use of such systems by public agencies raises serious due process concerns”<sup>69</sup>

2. In addition to concerns of due process, statistics indicate such systems are inherently biased based on the data used to create the algorithm. In fact, the Human Rights Watch has recently raised serious concerns over the use of risk assessment tools in bail reform, citing inherent racial bias and the likelihood that such tools will actually increase harsh pretrial requirements.

## IX. CONCLUSION

The New York State Bail system is not broken. In the Governors own words, it was considered when enacted one of the most progressive in the Country. Inaccurate information and special interest groups looking to turn a profit have created a misleading atmosphere of desperation and dire consequence.

What New York State needs is a common sense transparent approach sponsored by the State in conjunction with the bail bond Industry and Office of Court Administration to form a public and private partnership to improve the way bail is administered. That system needs to account for the rights of the accused, as well as the victims and the tax paying public.

## SOURCES

<sup>1</sup> Based upon review and analysis of original bail reform legislation cost estimates as compared to actual implementation and continued operational costs after passage of legislation.

<sup>2</sup> NYS pretrial supervision cost estimate, based on extrapolation of FY16 Washington D.C. P.S.A. data  
<https://drive.google.com/open?id=1aurZ-00L2hfAjTMel3a9ZEtc-RJHeZrx>

<sup>3</sup> Bail amounts set for pretrial defendants in NYC DOC custody  
<https://drive.google.com/open?id=1C3Nqkuf86p5UwaDISxiOFG4e-GOR6yyA>

<sup>4</sup> NYS jail population estimates extrapolated from NYC bail data  
<https://drive.google.com/open?id=1bDaK25ggW6ALjmfXUCeRBR926yM2DWE8>

<sup>5</sup> Public Protection and General Government Article VII Legislation, pg. 22, lines 15-19  
<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>

<sup>6</sup> Assessing Risk Assessment in Action. George Mason Law & Economics Research Paper No. 17-36  
Pgs. 44-48, section E. Risk Assessment's Impacts on Pretrial Misconduct  
<https://drive.google.com/open?id=1AaOczwp3k3Wc2U7BariVUD-q4Np8Vy35>

<sup>7</sup> Report of the Advisory Committee on the Criminal Justice System in Philadelphia, pg. 97-98  
<https://drive.google.com/open?id=1tEIHUpU iwEDMIL6tVSARTX7ISG80SI->

<sup>8</sup> Justice: Delayed, Dismissed, Denied; The Philadelphia Inquirer, 12/13/2009  
<https://drive.google.com/open?id=1OKd02Wl6oSNteOEGvWSiV O3uR1kU6gg>

<sup>9</sup> Public Protection and General Government Article VII Legislation, pg. 19, lines 16-17  
<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>

<sup>10</sup> Bail amounts set for pretrial defendants in NYC DOC custody  
<https://drive.google.com/open?id=1C3Nqkuf86p5UwaDISxiOFG4e-GOR6yyA>

<sup>11</sup> NYS jail population estimates extrapolated from NYC bail data.  
<https://drive.google.com/open?id=1bDaK25ggW6ALjmfXUCeRBR926yM2DWE8>

<sup>12</sup> Public Protection and General Government Article VII Legislation, pg. 45  
<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>

<sup>13</sup> Machine bias risk assessments in criminal sentencing; Propublica.org  
<https://drive.google.com/open?id=1pDrwvzgxUP0-rBXlIZC27l9XsdmJ8S-i>

<sup>14</sup> Electronic Privacy Information Center, Algorithmic Transparency-Nov2017  
<https://drive.google.com/open?id=1h-Wkwb4kikDcisgPNe 6tWKOv VIGw6L>

<sup>15</sup> AI Now 2017 Report, The AI Now Institute at New York University, pg. 1, section 1  
<https://drive.google.com/open?id=1kyUXcUd4L623W0Ke2yPfl5LjyAAz-dfk>

<sup>16</sup> DC Metro Police Department Annual Report 2016, pg. 32. Total arrests 2016  
<https://drive.google.com/open?id=1llb hBUozJndbJs4lzk1bkpaDQ669jig>

<sup>17</sup> FY 2018 PSA Congressional Budget Justification, pg. 33  
<https://drive.google.com/open?id=1Yu5gkWkza5QS8Gz7ajSBdOICLon-IVqg>

<sup>18</sup> Adult Arrests in NY State 2007-2016, NY State division of criminal justice services, 2016 total arrests  
<https://drive.google.com/open?id=1I4TKkPTAQhm7yG-t6L9pK haYbLHE94p>

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- <sup>19</sup> Cost estimate based on FY 2016 Washington D.C. P.S.A. data  
<https://drive.google.com/open?id=1aurZ-00L2hfAjTMel3a9ZEtc-RJHeZrx>
- <sup>20</sup> Public Protection and General Government Article VII Legislation, pg. 25-26  
<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>
- <sup>21</sup> Cost Estimates for Activities Resulting from New Jersey Criminal Justice Reform, 2014, pg. 27  
[https://drive.google.com/open?id=1xC\\_J9dABbMKhEFDZsm29rA1qINyJgDv0](https://drive.google.com/open?id=1xC_J9dABbMKhEFDZsm29rA1qINyJgDv0)
- <sup>22</sup> Cost Estimates for Activities Resulting from New Jersey Criminal Justice Reform, 2014, pg. 5  
[https://drive.google.com/open?id=1xC\\_J9dABbMKhEFDZsm29rA1qINyJgDv0](https://drive.google.com/open?id=1xC_J9dABbMKhEFDZsm29rA1qINyJgDv0)
- <sup>23</sup> Legislative Fiscal Estimate [Third Reprint] Senate, No. 946 State of New Jersey 216<sup>th</sup> Legislature  
<https://drive.google.com/open?id=1okDziOrCOYfxtvXwHU2mWKP7bZVd3gk2>
- <sup>24</sup> New Jersey counties seeing sticker shock ahead of bail reform  
<https://drive.google.com/open?id=1if90EwUYZUTIWjoMuPbHBh3350V5TZZG>
- <sup>25</sup> New Jersey Association of Counties - Criminal Justice Reform  
[https://drive.google.com/open?id=1xHXw4-NRyWrOBE2ZTjEgmKy2sRF\\_HGsT](https://drive.google.com/open?id=1xHXw4-NRyWrOBE2ZTjEgmKy2sRF_HGsT)
- <sup>26</sup> NJ Assemblyman Andrzejczak letter to Speaker of the California State Assembly, July 2017  
[https://drive.google.com/open?id=12m33RnEBs6YxYeouyZQ4i4CGxx0NDu\\_V](https://drive.google.com/open?id=12m33RnEBs6YxYeouyZQ4i4CGxx0NDu_V)
- <sup>27</sup> No Bail, Less Hope: The Death of Kalief Browder, The Marshall Project, paragraph 11  
[https://drive.google.com/open?id=1dQi-0u\\_1lwDCo46GkvtSB1oxdoj2FHqe](https://drive.google.com/open?id=1dQi-0u_1lwDCo46GkvtSB1oxdoj2FHqe)
- <sup>28</sup> Before the Law; The New York, 06 October 2014  
[https://drive.google.com/open?id=1jP\\_SMkYBAm9ITbicRQg5dXpkuphCQ7Jy](https://drive.google.com/open?id=1jP_SMkYBAm9ITbicRQg5dXpkuphCQ7Jy)
- <sup>29</sup> A Decade of Bail Research in New York City – NYC Criminal Justice Agency  
<https://drive.google.com/open?id=1BEp1PCIXl-k8jui8eEnZHQoiGEmDtg30>
- <sup>30</sup> The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC  
<https://drive.google.com/open?id=1ev1cQZbScXB4AeVcAFey3RVKZz6H5ram>
- <sup>31</sup> Bail amounts set for pretrial defendants in NYC DOC custody  
<https://drive.google.com/open?id=1C3Nqkuf86p5UwaDISxiOFG4e-GOR6yyA>
- <sup>32</sup> NYS jail population estimates extrapolated from NYC bail data.  
<https://drive.google.com/open?id=1bDaK25ggW6ALjmfXUCeRBR926yM2DWE8>
- <sup>33</sup> New York City Criminal Justice Agency Annual Report 2015  
[https://drive.google.com/open?id=1Oqv6qt8tLkDsesGHohC8xd\\_5Yd6RyBN7](https://drive.google.com/open?id=1Oqv6qt8tLkDsesGHohC8xd_5Yd6RyBN7)
- <sup>34</sup> New York City Bail Statistics, First Quarter 2017  
<https://drive.google.com/open?id=1NucYj8LSiVHUXGDwHPOTtfdqpQz8e8MT>
- <sup>35</sup> New York City Bail Statistics, First Quarter 2017  
<https://drive.google.com/open?id=1NucYj8LSiVHUXGDwHPOTtfdqpQz8e8MT>
- <sup>36</sup> Public Protection and General Government Article VII Legislation, pgs. 22-23  
<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>
- <sup>37</sup> Pew research center – The Long Reach of American Corrections

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<https://drive.google.com/open?id=12LPsZRsv3s4y4A-qdQi7zjHeB7jDKyoL>

<sup>38</sup> New Jersey Pretrial Jail Population - Nonsentenced Pretrial Jail Population  
[https://drive.google.com/open?id=1tKeL8\\_iLIX1BzuiHzA0r4VDmgN1-NmYK](https://drive.google.com/open?id=1tKeL8_iLIX1BzuiHzA0r4VDmgN1-NmYK)

<sup>39</sup> Florida County Detention Facilities Average Inmate Population March 2017  
[https://drive.google.com/open?id=16aq3OMMW5MqBfhloQ\\_bLFqSI5-QyU100](https://drive.google.com/open?id=16aq3OMMW5MqBfhloQ_bLFqSI5-QyU100)

<sup>40</sup> Breaking Down Mass Incarceration - Prison Policy Initiative  
<https://drive.google.com/open?id=1DJGxhN1tuqsL0rxCZELnrxE1JsU16Eo>

<sup>41</sup> Racial and ethnic disparities in prisons and jails in Kentucky, Prison Policy Initiative  
[https://drive.google.com/open?id=1yfc8eBIEXTQVGNT1LNxKeGK1WpJ\\_qosg](https://drive.google.com/open?id=1yfc8eBIEXTQVGNT1LNxKeGK1WpJ_qosg)

<sup>42</sup> Racial and ethnic disparities in prisons and jails in Illinois, Prison Policy Initiative  
<https://drive.google.com/open?id=1gqdV83yzTDYX6FGvBxhcAeSpWrEwwsaQ>

<sup>43</sup> Racial and ethnic disparities in prisons and jails in Oregon, Prison Policy Initiative  
[https://drive.google.com/open?id=1MO7PBLQysj7EiUEerChAZck\\_QkueoiLA](https://drive.google.com/open?id=1MO7PBLQysj7EiUEerChAZck_QkueoiLA)

<sup>44</sup> Racial and ethnic disparities in prisons and jails in Wisconsin, Prison Policy Initiative  
<https://drive.google.com/open?id=1-hyJ2QvRDC4-6tysDz0jVDjXzQP24yWR>

<sup>45</sup> Racial and ethnic disparities in prisons and jails in Maryland, Prison Policy Initiative  
<https://drive.google.com/open?id=1n4d-dAE3k6hVnA5dBduWYBcdmq1ggZhk>

<sup>46</sup> Public Protection and General Government Article VII Legislation, pg. 19, lines 17-21  
<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>

<sup>47</sup> Public Protection and General Government Article VII Legislation, pg. 19, lines 17-21  
<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>

<sup>48</sup> New York Penal Law § 70.02 Sentence of imprisonment for a violent felony offense, pg. 22 lines 17-19  
[https://drive.google.com/open?id=1FEVd2lWSWpQHVsyP0nJH1Jxm\\_Oenp5nGPUUwDbgkEEew](https://drive.google.com/open?id=1FEVd2lWSWpQHVsyP0nJH1Jxm_Oenp5nGPUUwDbgkEEew)

<sup>49</sup> Public Protection and General Government Article VII Legislation  
pg. 45 § 545.30 Pretrial detention hearing  
<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>

<sup>50</sup> Assessing Risk Assessment in Action. George Mason Law & Economics Research Paper No. 17-36  
Pgs. 44-48, section E. Risk Assessment's Impacts on Pretrial Misconduct  
<https://drive.google.com/open?id=1AaQczwp3k3Wc2U7BariVUD-q4Np8Vy35>

<sup>51</sup> Report of the Advisory Committee on the Criminal Justice System in Philadelphia, pg. 20, paragraph 3  
[https://drive.google.com/open?id=1tEiHUpU\\_iwEDMIL6tVSARTX7ISG80SI-](https://drive.google.com/open?id=1tEiHUpU_iwEDMIL6tVSARTX7ISG80SI-)

<sup>52</sup> Report of the Advisory Committee on the Criminal Justice System in Philadelphia, pg. 97-98  
[https://drive.google.com/open?id=1tEiHUpU\\_iwEDMIL6tVSARTX7ISG80SI-](https://drive.google.com/open?id=1tEiHUpU_iwEDMIL6tVSARTX7ISG80SI-)

<sup>53</sup> Justice: Delayed, Dismissed, Denied; The Philadelphia Inquirer, 12/13/2009  
[https://drive.google.com/open?id=1OKd02Wl6oSNteOEGvWSiV\\_O3uR1kU6gg](https://drive.google.com/open?id=1OKd02Wl6oSNteOEGvWSiV_O3uR1kU6gg)

<sup>54</sup> Report of the Advisory Committee on the Criminal Justice System in Philadelphia, pg. 99  
[https://drive.google.com/open?id=1tEiHUpU\\_iwEDMIL6tVSARTX7ISG80SI-](https://drive.google.com/open?id=1tEiHUpU_iwEDMIL6tVSARTX7ISG80SI-)

<sup>55</sup> Public Protection and General Government Article VII Legislation, pg. 22, line 19



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<https://drive.google.com/open?id=1OXSt3N1muszEnOSFEFYozIvTjBMgPiCe>

<sup>56</sup> Justice: Delayed, Dismissed, Denied; The Philadelphia Inquirer, 12/13/2009, pg. 3, paragraph 9  
[https://drive.google.com/open?id=1OKd02Wl6oSNteOEGvWSiV\\_O3uR1kU6gg](https://drive.google.com/open?id=1OKd02Wl6oSNteOEGvWSiV_O3uR1kU6gg)

<sup>57</sup> Report of the Advisory Committee on the Criminal Justice System in Philadelphia, pg. 100  
[https://drive.google.com/open?id=1tEiHUpU\\_iwEDMIL6tVSARTX7ISG80SI-](https://drive.google.com/open?id=1tEiHUpU_iwEDMIL6tVSARTX7ISG80SI-)

<sup>58</sup> Report of the Advisory Committee on the Criminal Justice System in Philadelphia, pg. 39, endnote 43  
[https://drive.google.com/open?id=1tEiHUpU\\_iwEDMIL6tVSARTX7ISG80SI-](https://drive.google.com/open?id=1tEiHUpU_iwEDMIL6tVSARTX7ISG80SI-)

<sup>59</sup> \*44,000 arrests in a population of 693,972  
DC Metro Police Department Annual Report 2016, pg. 32. Total arrests 2016  
[https://drive.google.com/open?id=1lIb\\_hBUozJndbJs4lzk1bkpaDQ669jig](https://drive.google.com/open?id=1lIb_hBUozJndbJs4lzk1bkpaDQ669jig)

<sup>60</sup> US Census Bureau - Washington D.C. QuickFacts  
[https://drive.google.com/open?id=1RkK98N\\_ylvzeLf66DgLgrqfWjwKvtA5](https://drive.google.com/open?id=1RkK98N_ylvzeLf66DgLgrqfWjwKvtA5)

<sup>61</sup> Catholic High School Teacher Accused of Having Sexual Relationship with Student, CBS News  
<https://drive.google.com/open?id=1gPTOI5xyPaJbMrOnutgXnZVrccYhQKTQ>

<sup>62</sup> Drug Mill Bust Nets 3 Kilos of Cocaine, 30lbs Marijuana, 181K Cash, Free to go  
<https://drive.google.com/open?id=1KpVa8tQANSPCIAG18v7X6KAYSmurwCb0>

<sup>63</sup> Man Arrested for High-Capacity Weapon in Newark; Third Arrest Since February 1<sup>st</sup>, rlsmedia.com  
<https://drive.google.com/open?id=1hxLoVXQ84JcpSrM5FxrTiejfOKSC18UG>

<sup>64</sup> Piscataway Soccer Referee Charged with Child Porn Possession, New Brunswick Today  
[https://drive.google.com/open?id=15\\_ylQfDRtkLMwEjHmC9X5dVp0xmieLFO](https://drive.google.com/open?id=15_ylQfDRtkLMwEjHmC9X5dVp0xmieLFO)

<sup>65</sup> Suspect linked to Fetty Wap incident released after court appearance  
<https://drive.google.com/open?id=1oKN8YGm43KLSGmvNJcY7A3jSom8IsWRX>

<sup>66</sup> Suspect in Fetty Wap incident to remain detained  
[https://drive.google.com/open?id=1XaA2MzWQu\\_weDb30U7U\\_xrGbNihxWK\\_m](https://drive.google.com/open?id=1XaA2MzWQu_weDb30U7U_xrGbNihxWK_m)

<sup>67</sup> State Police and U.S. Homeland Security Investigations Seize 14 Kilos of Fentanyl  
<https://drive.google.com/open?id=1OVwi8cIBGgT3cOosJs3KSqZ03d93pkOn>

<sup>68</sup> Bail Reform Bills in State Legislature Strongly Opposed by Alliance of California Judges  
[https://drive.google.com/open?id=1GAm\\_H3WQip7EIfBDU9BNLS9JbfefSHIH7OYDmRnJtKI](https://drive.google.com/open?id=1GAm_H3WQip7EIfBDU9BNLS9JbfefSHIH7OYDmRnJtKI)

<sup>69</sup> AI Now 2017 Report, The AI Now Institute at New York University, pg. 1, section 1  
<https://drive.google.com/open?id=1kyUXcUd4L623W0Ke2yPfl5LjyAAz-dfk>

# **ADDENDUM A**

## **NEW YORK CRIMINAL JUSTICE SURVEY**

January 15, 2018

# New York Criminal Justice Survey

Monday, January 15, 2018


Powered by  SurveyMonkey

# 100

Total Responses

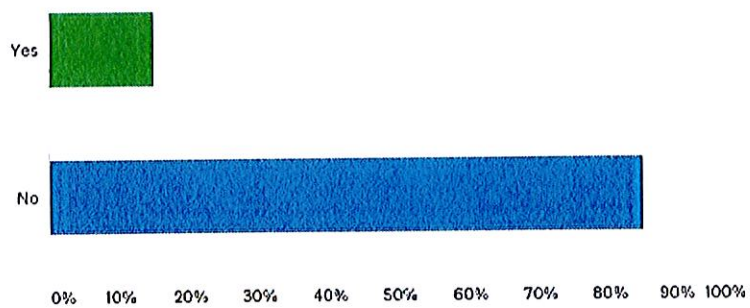
Date Created: Friday, January 12, 2018

Complete Responses: 100

Powered by  SurveyMonkey

# Q1: If someone is arrested and then unable to post bail, should the State of New York simply release that person from jail for free?

Answered: 100 Skipped: 0



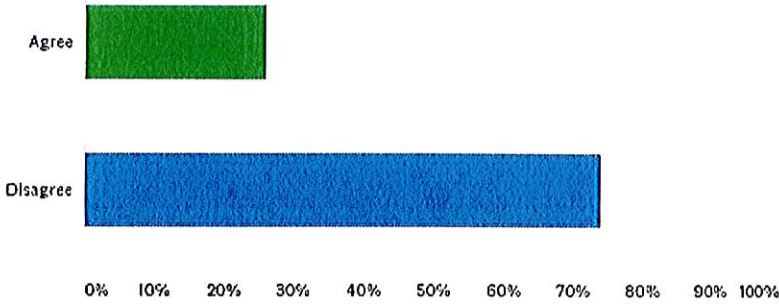
**Q1: If someone is arrested and then unable to post bail, should the State of New York simply release that person from jail for free?**

Answered: 100 Skipped: 0

<b>ANSWER CHOICES</b>	<b>RESPONSES</b>	
Yes	15.00%	15
No	85.00%	85
<b>TOTAL</b>		<b>100</b>

**Q4. The New York Legislature is trying to reform the bail system so many criminal defendants will not have to post bail and automatically be released . Do you agree or disagree with this move?**

Answered: 100 Skipped: 0



**Q2. The New York Legislature is trying to reform the bail system so many criminal defendants will not have to post bail and automatically be released . Do you agree or disagree with this move?**

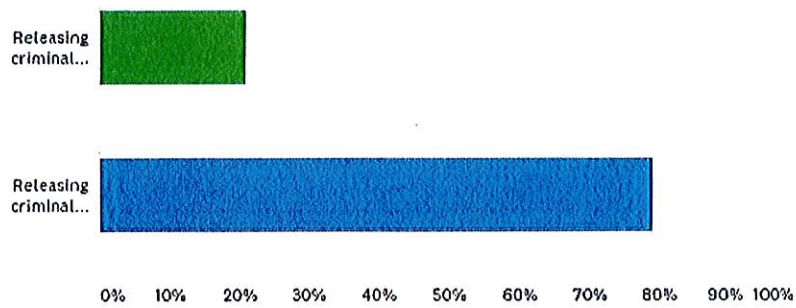
Answered: 100 Skipped: 0

<b>ANSWER CHOICES</b>	<b>RESPONSES</b>	
Agree	26.00%	26
Disagree	74.00%	74
TOTAL		100



### Q3: Which option below is best when it comes to ensuring public safety for New York?

Answered: 100 Skipped: 0



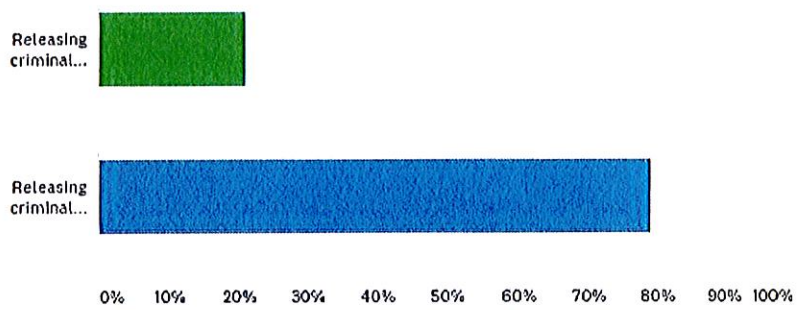
### Q3: Which option below is best when it comes to ensuring public safety for New York?

Answered: 100 Skipped: 0

ANSWER CHOICES	RESPONSES
Releasing criminal defendants from jail for FREE under the supervision of a public sector employee who is not financially accountable for their appearance in court	21.00% 21
Releasing criminal defendants from jail, who have paid for a bail bond, under the supervision of a private sector bail agent who is financially accountable for the defendants appearance in court.	79.00% 79
TOTAL	100

## Q4: Which option below is best when it comes to protecting the rights of crime victims in New York?

Answered: 100 Skipped: 0



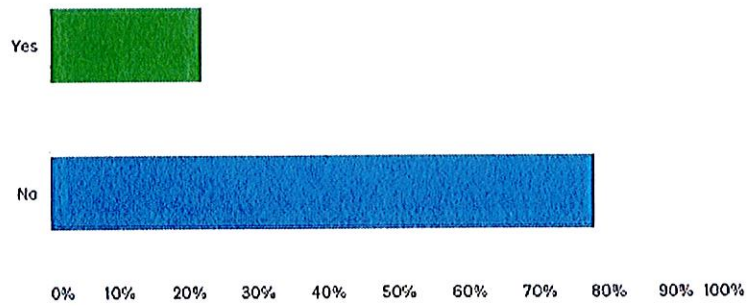
## Q4: Which option below is best when it comes to protecting the rights of crime victims in New York?

Answered: 100 Skipped: 0

ANSWER CHOICES	RESPONSES
Releasing criminal defendants from jail for FREE under the supervision of a public sector employee who is not financially accountable for the defendant's appearance in court	21.00% 21
Releasing criminal defendants from jail, who have paid for a bail bond, under the supervision of a private sector bail agent who monitors the defendant and is financially accountable for the defendant's appearance in court	79.00% 79
TOTAL	100

Q9. As you consider the opioid drug crisis in New York, do you feel that we should be making it easier for repeat offenders to get out of jail without having to post bail?

Answered: 100 Skipped: 0



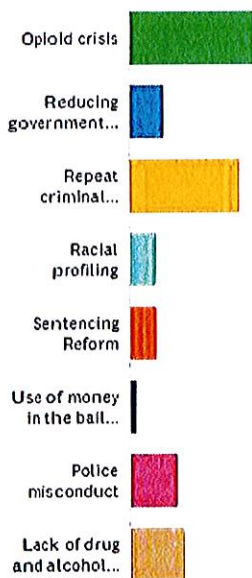
**Q3. As you consider the opioid drug crisis in New York, do you feel that we should be making it easier for repeat offenders to get out of jail without having to post bail?**


Answered: 100 Skipped: 0

<b>ANSWER CHOICES</b>	<b>RESPONSES</b>	
Yes	22.00%	22
No	78.00%	78
TOTAL		100

Q6. When you think about criminal justice reform in New York, select what you believe should be the number one issue among this list that the State Legislature should look at this year:

Answered: 100 Skipped: 0




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**Q6. When you think about criminal justice reform in New York, select what you believe should be the number one issue among this list that the State Legislature should look at this year:**

Answered: 100 Skipped: 0

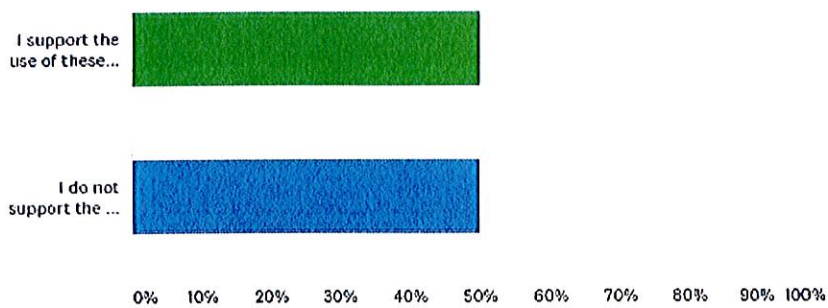
ANSWER CHOICES	RESPONSES	
Oploid crisis	18.00%	18
Reducing government spending on criminal justice	5.00%	5
Repeat criminal behavior	16.00%	16
Racial profiling	4.00%	4
Sentencing Reform	4.00%	4
Use of money in the bail system	1.00%	1
Police misconduct	7.00%	7
Lack of drug and alcohol treatment	8.00%	8
Speedy trial reform	1.00%	1
Government corruption in the criminal justice system	11.00%	11
Violent crime	18.00%	18
Sexual offenders	7.00%	7

Powered by  S



such as when persons get bail or what sentence such persons may serve.  
Are you in support of using these new computers, or are you concerned with their use in the criminal justice system?

Answered: 100 Skipped: 0



such as when persons get bail or what sentence such persons may serve.  
**Are you in support of using these new computers, or are you concerned with their use in the criminal justice system?**

Answered: 100 Skipped: 0

**ANSWER CHOICES**

I support the use of these systems in criminal justice system

I do not support the use of these systems in the criminal justice system

TOTAL

**RESPONSES**

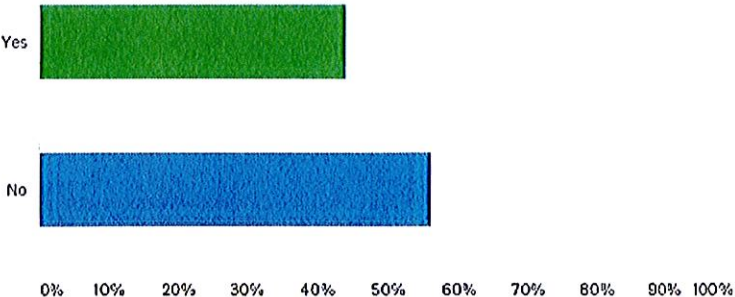
50.00% 50

50.00% 50

100

**Q8: Are you concerned that using new computers to predict risk of criminal defendants will discriminate based on race?**

Answered: 100 Skipped: 0



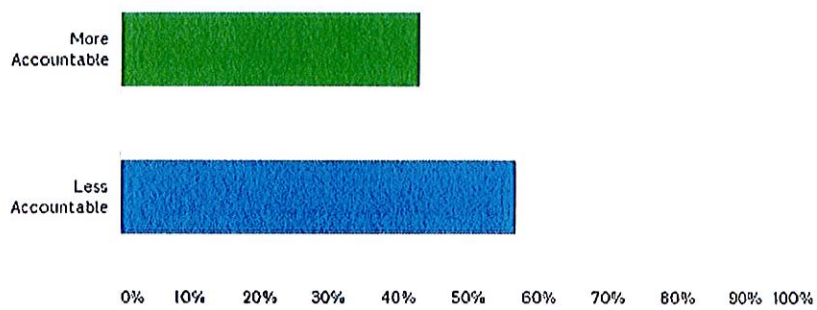
## Q8: Are you concerned that using new computers to predict risk of criminal defendants will discriminate based on race?

Answered: 100 Skipped: 0

ANSWER CHOICES	RESPONSES	
Yes	44.00%	44
No	56.00%	56
TOTAL		100

**or less accountable when it dramatically expands the number of persons who will not have to post bail to get out of jail and then have an incentive to return to court?**

Answered: 100 Skipped: 0



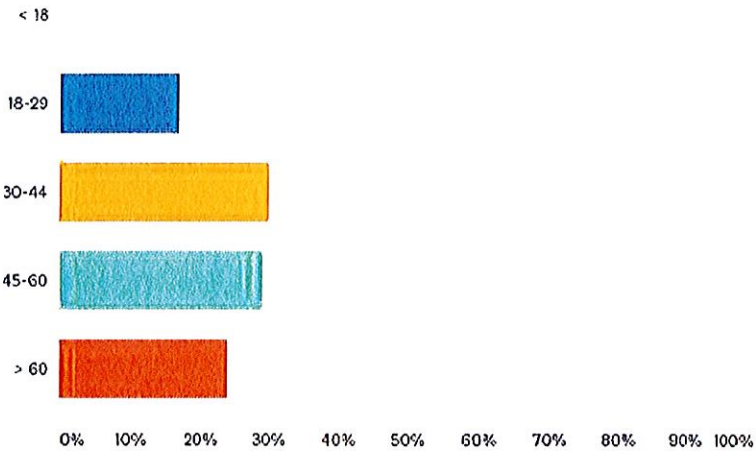
**or less accountable when it dramatically expands the number of persons who will not have to post bail to get out of jail and then have an incentive to return to court?**

Answered: 100 Skipped: 0

<b>ANSWER CHOICES</b>	<b>RESPONSES</b>	
More Accountable	43.00%	43
Less Accountable	57.00%	57
<b>TOTAL</b>		<b>100</b>

# Q10: Age

Answered: 100 Skipped: 0



## Q10: Age

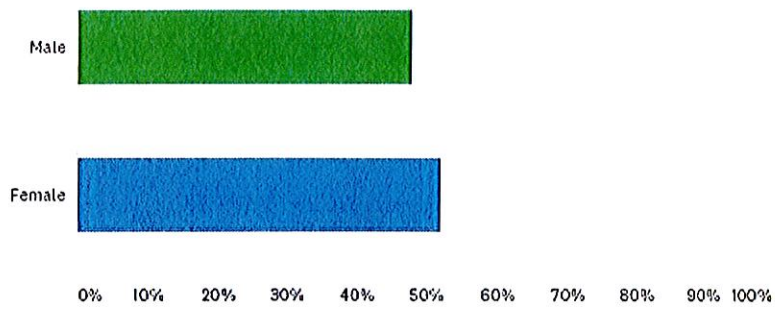
Answered: 100 Skipped: 0

ANSWER CHOICES	RESPONSES	
< 18	0.00%	0
18-29	17.00%	17
30-44	30.00%	30
45-60	29.00%	29
> 60	24.00%	24
TOTAL		100



## Q11: Gender

Answered: 100 Skipped: 0



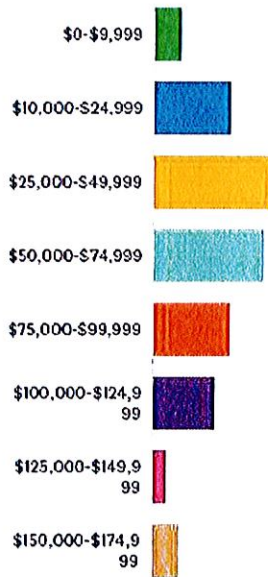
## Q11: Gender

Answered: 100 Skipped: 0

ANSWER CHOICES	RESPONSES	
Male	48.00%	48
Female	52.00%	52
TOTAL		100

## Q12: Household Income


Answered: 100 Skipped: 0



## Q12: Household Income

Answered: 100 Skipped: 0

ANSWER CHOICES	RESPONSES	
\$0-\$9,999	4.00%	4
\$10,000-\$24,999	11.00%	11
\$25,000-\$49,999	17.00%	17
\$50,000-\$74,999	16.00%	16
\$75,000-\$99,999	11.00%	11
\$100,000-\$124,999	9.00%	9
\$125,000-\$149,999	2.00%	2
\$150,000-\$174,999	4.00%	4
\$175,000-\$199,999	2.00%	2
\$200,000+	6.00%	6
Prefer not to answer	18.00%	18
TOTAL		100

Popularity  5

## **ADDENDUM B**

TESTIMONY OF DR. DARAIUS IRANI  
REGIONAL ECONOMIC STUDIES INSTITUTE  
TOWSON UNIVERSITY

TESTIMONY OF DR. DARAIUS IRANI  
REGIONAL ECONOMIC STUDIES  
INSTITUTE  
TOWSON UNIVERSITY

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I will now explain and illustrate our findings to the committee.

Through the use of current pretrial service statistics, RESI enumerated the potential cost to New Jersey based on three separate categories:

- **Start-up costs** consist of the spending necessary to launch the NJPSA. These costs include the hiring and training of staff, the purchasing of equipment, and the furnishing of the workspace required.
- **Operating costs** were those incurred through the year-to-year functioning of

the NJPSU. These costs included employee expenses, software licenses, facilities and upkeep, and programming provisions.

- **Indirect costs** quantify the potential expenses that would be incurred by the State as a result of the change in judicial practices as the bills mandate or as a result of actions by the NJPSU. These costs were collected from additional public defender and courtroom usage, and the failure to appear (FTA) and recidivism of released defendants. FTA and recidivism cost money to the state through rearrest costs and damages to the community. These costs can increase if levels pretrial misconduct are not properly managed through supervision and programming.

## Figure 1: Cost Estimates by Expense Category

<b>Expense</b>	<b>Cost Estimate</b>
Start-Up Costs	\$16,591,360
Operating Costs	\$379,589,599
Indirect Costs	\$65,069,321

Source: RESI

As shown in Figure 1, RESI projected that NJPSU start-up costs would amount to approximately \$16.6 million; the annual operating cost of the NJPSU was estimated to be \$379.6 million; and the indirect cost to the state that would be induced by the bills could potentially reach at least \$65.1 million.



This cost projection was modeled off of the DCPSA program because it best reflects the legislation provided for the NJPSU, because it must provide for similar costs of living, and because it is widely regarded as the most effective pretrial release program. It is important to note that the NJPSU also has a provision that requires it to consider monetary release conditions only as a final resort when non-financial conditions will not reasonably assure the safety of the community and the appearance of the defendant in court. In comparison the DCPSA is to first consider monetary conditions before assigning DCPSA program release. Ultimately, this provides the potential for the NJPSU to experience even higher levels of program spending per arrest than the DCPSA.

RESI also considered the cost saving that would be generated by diverting pretrial defendants away from jail and prison due to release. Using figures from New Jersey's "Report of the Joint Committee on Criminal Justice," RESI found that decreasing the level of pretrial detention by 50 percent could save the New Jersey state budget approximately \$164 million dollars. However, there are several things to consider with this figure. First, the committee's assumption that approximately 50 percent of pretrial detainees are being held needlessly is very generous, because most populations see a total release rate of approximately 50 percent. Furthermore, with each release there is an increased change of FTA and recidivism, incurring additional costs against the state. Finally, still considering the \$164 million in potential savings, RESI projects that the annual

operating costs of the NJPSU would still result in a net budget cost of more than \$215 million per year.

**Figure 2: Potential Net Cost**

<b>Expense</b>	<b>Cost Estimate</b>
Operating Costs	\$379,589,599
Pretrial Detainment	\$164,250,000
Savings	
<b>Net Cost</b>	<b>\$215,339,599</b>

Source: RESI

The NJPSU and associated legislation was designed to shorten the aggregate time-to-trial and, as a result, reduce the time defendants remain in pretrial detention. From streamlining the pretrial process in such a way, a goal of the bills is to save the

State money on the pretrial defendants. However, several provisions from the bills will likely extend the time-to-trial and the associated costs, including:

- Changing the “initial appearance” phase from an informational court appearance into something that more closely resembles an adversarial hearing.
- Granting defendants the right to appeal the release decision made in aforementioned hearing.
- The use of non-monetary release conditions compared to monetary bonds, which can result in a substantial increase in the time-to-pretrial release of a defendant. This does not affect the overall time to trial, but affects the underlying source of cost (time in pretrial detention).

Time-to-trial is also affected by the judicial caseload. The additional appearances that

will be necessary will have to be dispersed among an already overloaded judiciary.

The bills also establish the 21<sup>st</sup> Century Justice Improvement Fund, and grant the Supreme Court the power to increase statutory fees on filings and other matters, funds which are meant to then be distributed to several state judicial departments. However, considering the funding goals and the limit on additional fees (maximum of \$50 per instance), there would need to be approximately:

- 300,000 applicable crimes committed to meet the \$15 million dollar funding cap for the NJPSU
- 640,000 applicable crimes committed to meet the \$17 million funding cap for the e-court initiative

- 842,000 applicable crimes committed to meet the \$10.1 million funding cap for Legal Services of New Jersey.

The number of applicable crimes needed to meet the Legal Services cap is more than twice the number of arrests in 2012 (301,744) and would constitute the commission of an applicable crime by almost 1 of every 10 citizens of New Jersey. The funding of the later programs may become difficult depending on where the courts find it applicable to increase fees.

The bills are also likely to the negatively impact the commercial bonding industry, and likewise hurt the New Jersey economy. If New Jersey enacts the NJPSU it will divert pretrial release traffic to non-financial conditional release, and away from commercial bondsman. The resulting loss in commercial bail usage will be manifested in

the loss of commercial bail employees and eventually the closing of commercial bonding firms. RESI conducted an economic impact analysis using IMPLAN modeling software. For every 10 employees lost in the commercial bail bonds industry, New Jersey would:

- Lose an additional 7 jobs.
- Lose nearly \$2.1 million in output.
- Lose nearly \$0.6 million in wages.
- Resulting in a loss of approximately \$103,000 in tax revenues.

Some of these losses could possibly be offset by the effects of employment gains in the NJPSU; however, the resulting wages would come from the budget of the state government, rather than from the private sector. Spending and employment by commercial bonding firms created a positive net fiscal impact; when the private employment changes to public employment,

the net fiscal impact on the state government will be substantially negative.

A review of pretrial research illustrated the importance of maintaining a highly effective pretrial justice process. The presence of supervision on non-monetary releases is highly important, as the level of pretrial misconduct is highly correlated with the presence of proper supervision over all defendants. This indicates the importance of maintaining high quality supervision for non-monetary releases. Other research also further reinforced the importance of rapid pretrial processing; as the length of pretrial detention was directly correlated with the likelihood of FTA and recidivism. Finally, research indicated that pretrial detention is directly correlated with the trial outcome and imprisonment. Though this correlation is often seen to be an injustice to detained



defendants, it could also be an indication that the judiciary has substantial insight into correctly detaining those defendants who are likely to be guilty.

RESI found the net costs to the State of New Jersey of instituting Senate Bill No. 946 and Assembly Bill No. 1910 to be at least \$215,339,599 considering all potential savings. This cost could likely be higher if the NJPSU does not function quickly and effectively. Depending on the losses experienced by the commercial bail industry, the New Jersey State Government could also lose anywhere from \$100,000 to millions in tax revenue. Additionally, reductions in spending that stem from reductions in programming are likely to bring even greater costs in the form of FTA and recidivism. Considering the use of conservative figures throughout this report,

RESI holds a \$215,339,599 cost to be a conservative estimate of the cost of Senate Bill No. 946, Assembly Bill No. 1910, and the NJPSU.

Thank you for the opportunity to discuss my estimations and further concern over the fiscal economic impact of this proposed legislation.

## **ADDENDUM C**

Select Cost Estimates for Activities Resulting from  
New Jersey Criminal Justice Reform

# Select Cost Estimates for Activities Resulting from New Jersey Criminal Justice Reform

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Daraius Irani, Ph.D., Chief Economist  
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08/09/2016



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## 1.0 Executive Summary

### 1.1 County Costs

As a follow up on work done previously in New Jersey relating to economic analysis of criminal justice reforms, the Regional Economic Studies Institute (RESI) of Towson University has estimated the costs induced on the county governments of New Jersey as a result of the New Jersey Criminal Justice Reform (NJCR). The costs were estimated for three categories of county level criminal and judicial activities that will be affected by the reform. These three categories include prosecutor staffing, sheriff staffing, and facility improvements.

The analysis was conducted using preliminary cost projections by pilot and non-pilot counties as reported in the *Criminal Justice Reform County Impact Statement 2016*, in conjunction with arrest data provided within the *Uniform Crime Report: State of New Jersey 2014*. Based on this data, RESI estimates that:

- Total county costs for the first year of implementation of NJCR will amount to \$65,971,395.
- Subsequent years will incur an estimated cost of \$27,496,427 per year.
- Implementation will result in 404 additional staff at the county level.

Using estimates from a previous RESI analysis of state government costs in combination with the new county level estimates resulted in:

- State and county government estimated operating costs totaling to \$445,560,994.
- Adding estimated state level indirect costs to the total state and county operating costs results in a total yearly cost of \$510,630,315.

The county level estimates were calculated using only the available data from reporting counties and does not include any sources of secondary costs that may be associated with both staff and facility additions. These costs include but are not limited to:

- Ongoing costs such as maintenance and upkeep, depreciation, and utility costs.
- Secondary staff costs such as benefits and pensions, employee turnover, and training costs.
- The necessary county level support staff for new positions were not part of the cost estimate.

The county level costs estimates do not include other expenses that may be imposed upon the counties and include but are not limited to

- Additional costs imposed upon local police departments,
- Loss of forfeited bail bond revenue,
- Increased logistical demands arising from increased transport and detention hearing needs, and
- Costs that may result from potential increases in failure to appear and recidivism.

- Costs to the state government associated with the implementation of the NJCJR

We would conclude that our analysis only represents portion of the costs that the counties could be forced to bear when this bill is fully implemented. We conservatively estimate that the costs not calculated are about 60% to 80% of our estimated costs.

### **1.2 State and County Costs**

Using the finding from RESI's previous study, *Estimating the Cost of the Proposed New Jersey Pretrial Service Unit and the Accompanying Legislation*, an operating cost estimate for both the state and select county costs could be calculated.<sup>1</sup>

- The previous study found that the yearly operating cost to the state government came to \$379,589,599.
- Adding this to the select county costs results in a total operating cost for both state and county governments of \$445,560,994

Additionally the previous study estimated indirect costs of the NJCJR, which included the costs of changing court procedures, adding public defender, and costs of failure to appear and recidivism.

- These indirect costs totaled to \$65,069,321
- Adding indirect costs to the total state and county operating costs results in a total yearly cost of \$510,630,315.

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<sup>1</sup> Regional Economic Studies Institute, Towson University, "Estimating the Cost of the Proposed New Jersey Pretrial Service Unit and the Accompanying Legislation," 2014.

## 2.0 Previous Findings

The scope of this study focuses solely on costs that may be incurred on the county level. However, RESI conducted a study in 2014, *Estimating the Cost of the Proposed New Jersey Pretrial Service Unit and the Accompanying Legislation*, that enumerated the potential costs of NJCJR at the state level. A summary of those findings can be found below.

### 2.1 Summary

Through the use of current pretrial service statistics, RESI enumerated the potential cost to the state of New Jersey based on three separate categories, as described below.

- **Start-up costs** consist of the spending necessary to launch the NJPSA. These costs include the hiring and training of staff, the purchasing of equipment, and the furnishing of the workspace required.
- **Operating costs** were those incurred through the year-to-year functioning of the NJPSU. These costs included employee expenses, software licenses, facilities and upkeep, and programming provisions.
- **Indirect costs** quantify the potential expenses that would be incurred by the State as a result of the change in judicial practices as the bills mandate or as a result of actions by the NJPSU. These costs were collected from additional public defender and courtroom usage, and the failure to appear (FTA) and recidivism of released defendants. FTA and recidivism cost money to the state through rearrest costs and damages to the community. These costs can increase if levels pretrial misconduct are not properly managed through supervision and programming.

The estimated costs for the implementation of the NJCJR for the about three categories can be found in **Table 1: Cost Estimates by Expense Category**.

**Table 2: Cost Estimates by Expense Category**

Expense	Cost Estimate
Start-Up Costs	\$16,591,360
Operating Costs	\$379,589,599
Indirect Costs	\$65,069,321

Source: RESI

## 3.0 County Cost Estimate

### 3.1 Scope of Analysis

In June of 2016, New Jersey Governor Chris Christie signed Executive Order 211 that called for an evaluation by the Attorney General on the potential costs, savings, and administrative challenges of implementing NJCJR. The evaluation will focus on specifically on “County Prosecutors’ Offices, county jails, and local police departments.”<sup>2</sup> RESI used available information on to enumerate 3 of the potential costs involved in the services listed above:

- Facility Improvements
- Additional Prosecutor Staff
- Additional Sheriff Staff

To estimate this portion of the cost of NJCJR on New Jersey counties, RESI utilized the existing cost estimates provided by New Jersey Counties. The most recent county cost estimates were found in the *Criminal Justice Reform County Impact Statement 2016* provided by the New Jersey Association of Counties.<sup>3</sup> Cost projections for each county were reported with five cost variables: Court Facility Improvements, Additional Prosecutor Staff, Projected Prosecutor Staff Cost, Additional Sheriff Staff, and Projected Sheriff Staff Cost.

In conjunction with the county cost estimates, RESI used total county level adult arrest data from the *Uniform Crime Report State of New Jersey* as an indicator of pretrial service program participation levels.<sup>4</sup> The use of arrest data ensured a consistent inter-county variable as a base for pretrial activity levels.

### 3.2 Methodology

Using the *Criminal Justice Reform County Impact Statement 2016* and the *Uniform Crime Report State of New Jersey*, RESI created an index for each cost variable in two steps. First, the average cost of additional staff and facilities per arrest was calculated for each county that reported.<sup>5</sup> The counties’ respective estimated costs per arrest were then conglomerated into a statewide average estimated cost per arrest.<sup>6</sup>

Extrapolating using the above index of average costs, RESI calculated the costs for the counties that did not report cost estimates to the New Jersey Association of Counties in the 2016 impact statement. **Figure 1: Cost Estimates by County** contains the results of the above calculations, as well as the cost projections reported by counties, and reflects the estimated total cost by county.

<sup>2</sup> New Jersey Governor Chris Christie, Executive Order 211, 2016

<sup>3</sup> New Jersey Association Counties, “Criminal Justice Reform County Impact Statement 2016,” 2016

<sup>4</sup> State of New Jersey, Division of State Police, “Uniform Crime Report State of New Jersey 2014,” 2015, 56-57

<sup>5</sup> Appendix A: Figure 4

<sup>6</sup> Appendix A: Figure 5



Select County Government Cost Estimates for Activities Resulting from New Jersey Criminal Justice Reform RESI of Towson University

Figure 1: Cost Estimates by County

County	Adult Arrests	Court Facility Improvements	Additional Prosecutor Staff	Projected Prosecutor Staff Cost	Additional Sheriff Staff	Projected Sheriff Staff Cost	Total Cost for County
Atlantic	12,247	\$1,733,802.45	14*	\$1,124,830.00*	7*	\$376,000.00*	\$3,234,632.45
Bergen	19,163	\$2,712,897.55	16	\$1,465,801.07	12	\$555,282.88	\$4,733,981.51
Burlington	18,992	\$2,688,689.16	5*	\$392,022.13**	4*	\$230,232.00*	\$3,310,943.29
Camden	25,396	\$900,000.00*	14*	\$680,000.00*	16	\$735,895.43	\$2,315,895.43
Cape May	6,842	\$100,000.00*	3*	\$225,000.00*	6*	\$175,000.00*	\$500,000.00*
Cumberland	8,088	\$3,345,000.00*	8*	\$747,000.00*	3*	\$100,000.00*	\$4,192,000.00*
Essex	29,867	\$4,228,258.17	25	\$2,284,562.99	19	\$865,450.81	\$7,378,271.97
Gloucester	13,126	\$1,858,242.10	6*	\$548,000.00*	5*	\$225,000.00*	\$2,631,242.10
Hudson	15,958	\$2,259,167.10	13*	\$990,285.00*	10	\$462,412.16	\$3,711,864.26
Hunterdon	2,438	\$345,146.60	2	\$186,485.57	2	\$70,645.50	\$602,277.67
Mercer	14,517	\$2,055,165.36	12	\$1,110,422.91	9	\$420,656.56	\$3,586,244.83
Middlesex	18,983	\$2,687,415.03	16	\$1,452,032.66	12	\$550,067.06	\$4,689,514.74
Monmouth	24,894	\$3,524,232.72	21	\$1,904,172.20	16	\$721,349.06	\$6,149,753.99
Morris	9,742	\$1,000,000.00*	15*	\$1,500,000.00*	5*	\$373,000.00*	\$2,873,000.00
Ocean	15,870	\$2,246,708.98	13	\$1,213,915.52	10	\$459,862.20	\$3,920,486.70
Passaic	14,451	\$2,045,821.77	12	\$1,105,374.49	14*	\$700,000.00*	\$3,851,196.26
Salem	4,021	\$569,251.22	3	\$307,571.16	3	\$116,515.81	\$993,338.19
Somerset	7,211	\$1,020,858.13	6	\$551,578.12	5	\$208,951.88	\$1,781,388.13
Sussex	3,237	\$458,260.68	5*	\$457,379.00*	2	\$93,797.98	\$1,009,437.66
Union	15,512	\$2,196,027.08	11*	\$705,500.00*	18*	\$731,862.00*	\$3,633,389.08
Warren	3,532	\$500,023.70	3	\$270,166.96	2	\$102,346.14	\$872,536.80
<b>Total All Counties</b>	<b>284,087</b>	<b>\$38,474,967.78</b>	<b>225</b>	<b>\$19,222,099.78</b>	<b>179</b>	<b>\$8,274,327.49</b>	<b>\$65,971,395.04</b>

\* Indicates values reported by counties in *Criminal Justice Reform County Impact Statement 2016*

\*\* See Appendix B – Burlington County Data Note

Source: RESI, State of New Jersey, New Jersey Association of Counties

## 4.0 Conclusion

RESI found total costs to the counties for the first year of implementation to be \$65,971,395. This figure includes the Court Facility Improvements, Projected Prosecutor Staff Cost, and Projected Sheriff Staff Cost cost variables. The total sustaining costs were estimated at \$27,496,427 per year. The sustaining costs included the Projected Prosecutor Staff Cost and Projected Sheriff Staff Cost cost variables, as RESI assumes that all of the Court Facility Improvements will be conducted only in the first year. Additionally, RESI estimates that the implementation will result in 404 additional staff at the county level.

However, RESI's cost estimates did not factor in numerous other costs that include but are not limited to:

- Ongoing costs such as maintenance and upkeep, depreciation, and utility costs.
- Secondary staff costs such as benefits and pensions, employee turnover, and training costs.
- The necessary county level support staff for new positions were not part of the cost estimate.
- Additional costs imposed upon local police departments,
- Loss of forfeited bail bond revenue,
- Increased logistical demands arising from increased transport and detention hearing needs, and
- Costs that may result from potential increases in recidivism.

We conservatively estimate that the costs not calculated are about 60% to 80% of our estimated costs.

## Appendix A—Data Tables

Figure 2: Uniform Crime Report Adult Arrests by County

County	Number of Arrests
Atlantic	12,247
Bergen	19,163
Burlington	18,992
Camden	25,396
Cape May	6,842
Cumberland	8,088
Essex	29,867
Gloucester	13,126
Hudson	15,958
Hunterdon	2,438
Mercer	14,517
Middlesex	18,983
Monmouth	24,894
Morris	9,742
Ocean	15,870
Passaic	14,451
Salem	4,021
Somerset	7,211
Sussex	3,237
Union	15,512
Warren	3,532
<b>Total All Counties</b>	<b>284,087</b>

Source: State of New Jersey, Division of State Police

**Select County Government Cost Estimates for Activities Resulting from New Jersey Criminal Justice Reform RESI of Towson University**

**Figure 3: Projected Costs by Reporting County**

County	Court Facility Improvements	Additional Prosecutor Staff	Projected Prosecutor Staff Cost	Additional Sheriff Staff	Projected Sheriff Staff Cost
Atlantic	TBD	14	\$1,124,830.00	7	\$376,000.00
Burlington	TBD	5	TBD	4	\$230,232.00
Camden	\$900,000.00	14	\$680,000.00	TBD	TBD
Cape May	\$100,000.00	3	\$225,000.00	6	\$175,000.00
Cumberland	\$3,345,000.00	8	\$747,000.00	3	\$100,000.00
Gloucester	TBD	6	\$548,000.00	5	\$225,000.00
Hudson	TBD	13	\$990,285.00	TBD	TBD
Morris	\$1,000,000.00	15	\$1,500,000.00	5	\$373,000.00
Passaic	TBD	TBD	TBD	14	\$700,000.00
Sussex	TBD	5	\$457,379.00	TBD	TBD
Union	TBD	11	\$705,500.00	18	\$731,862.00

Source: New Jersey Association of Counties

**Figure 4: Projected Costs per Adult Arrest by Reporting County**

County	Adult Arrests	Court Facility Improvements	Additional Prosecutor Staff	Projected Prosecutor Staff Cost	Additional Sheriff Staff	Projected Sheriff Staff Cost
Atlantic	12,247	N/A	0.00114	\$91.84535	0.00057	\$30.70140
Burlington	18,992	N/A	0.00026	N/A	0.00021	\$12.12258
Camden	25,396	\$35.43865	0.00055	\$26.77587	N/A	N/A
Cape May	6,842	\$14.61561	0.00044	\$32.88512	0.00088	\$25.57732
Cumberland	8,088	\$413.57567	0.00099	\$92.35905	0.00037	\$12.36400
Gloucester	13,126	N/A	0.00046	\$41.74920	0.00038	\$17.14155
Hudson	15,958	N/A	0.00081	\$62.05571	N/A	N/A
Morris	9,742	\$102.64833	0.00154	\$153.97249	0.00051	\$38.28783
Passaic	14,451	N/A	N/A	N/A	0.00097	\$48.43955
Sussex	3,237	N/A	0.00154	\$141.29719	N/A	N/A
Union	15,512	N/A	0.00071	\$45.48092	0.00116	\$47.18038

Source: RESI

**Figure 5: Average Projected Cost per Adult Arrest**

	Court Facility Improvements	Additional Prosecutor Staff	Projected Prosecutor Staff Cost	Additional Sheriff Staff	Projected Sheriff Staff Cost
<b>Average</b>	\$141.56956	0.00085	\$76.49121	0.00063	\$28.97682

Source: RESI



## Appendix B— Burlington County Data Note

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As reported by the New Jersey Association of Counties, Burlington County provided a number of projected prosecutor staff without providing a projected prosecutor staff cost. This was a unique instance within the data wherein a projection for additional staff was provided without a projected cost. Burlington projected 5 additional staff. If RESI were to use the average per arrest cost to calculate an estimated staff cost for Burlington based solely on the number of arrest, the resulting cost would be \$1,452,721.09. This figure is disproportionately high compared to the projected additional staff. This is likely the result of the projected staff per arrest figure in Burlington County being significantly lower than the average of the other New Jersey Counties. In the interest of providing a more conservative figure, RESI instead used the average cost per prosecutor staff from the other reporting counties (\$78,404.43 per staff member) in conjunction with the 5 additional staff projection to produce a more conservative figure of \$392,022.13 in estimated prosecutor staff costs in Burlington County.



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## **New York Bail Reform Opposition Testimony Provided by President Beth Chapman**

### *Introduction*

For generations in America, monetary bail has proven to be the most effective (and cost effective) way to insure the appearance of the defendant in Court.

The private bail industry has an astounding record of reliability and accountability at no cost to the taxpayer. Bail agents and the insurance company backing the bonds—not the taxpayer—are monetarily responsible for defendants released on commercial bail. If a defendant flees, the bail agent must return the defendant to jail or pay the Court., so bail agents not only have a financial interest in making sure a defendant appears in Court, but they also have a fiduciary commitment to the Courts, taxpayers and victims of crime.

Due to pressure from well-funded “social justice” special interest groups, some states and counties have recently begun a disastrous experiment: taxpayer-funded pretrial services programs that are neither financially or physically responsible for their clients, nor do they attempt to apprehend a defendant if they fail to appear in Court.

Already straddled with a budget deficit of 4.1 billion dollars, New Yorkers are on the chopping block to be the next test subjects in expanding pre-trial services programs...and they aren't being told the whole story.

### *The Costs to the Taxpayer of Pretrial Services*

As New York considers implementing bail reform statewide, its citizens need to realistically consider the impact that will have on public safety and the state's already overburdened budget, as well as think through whether it will actually end up hurting the people it seems designed to help.

In its attempt to placate the various special interest groups that have been banging the drum of so-called "criminal justice reform," the New York State legislature appears to be rushing into the same mistake that states like New Jersey have made. If Gov. Cuomo and the lawmakers in Albany are hell-bent on taking such an extremist position as ending the existing bail system as we know it, they at least owe it to the citizens of New York to provide some factual basis for their decision in the legislation.

But there is none.

In the bill, Part C reads:

*"The legislature finds and declares that there is a present need to revise New York's procedures regulating release of persons charged with criminal offenses pending trial...so that fewer presumed innocent people are held pretrial."*

These claims are made without any citation to a study done to justify the "present need." There's no reference to the numbers of defendants or crime victims that the legislation will impact. There is no mention made at all of the cost of this bill to the taxpayer.

The experience of other states that have implemented bail reform provides clear examples of the criminal chaos and economic disaster of shifting the costs from the defendants to the taxpayer and removing a key element of responsibility from the criminal justice system.

With no cost analysis included in the bill, taxpayers quite literally have no idea what this experiment is going to cost them. However, we can make some estimates.

*Cost Comparison to Washington D.C. and New Jersey*

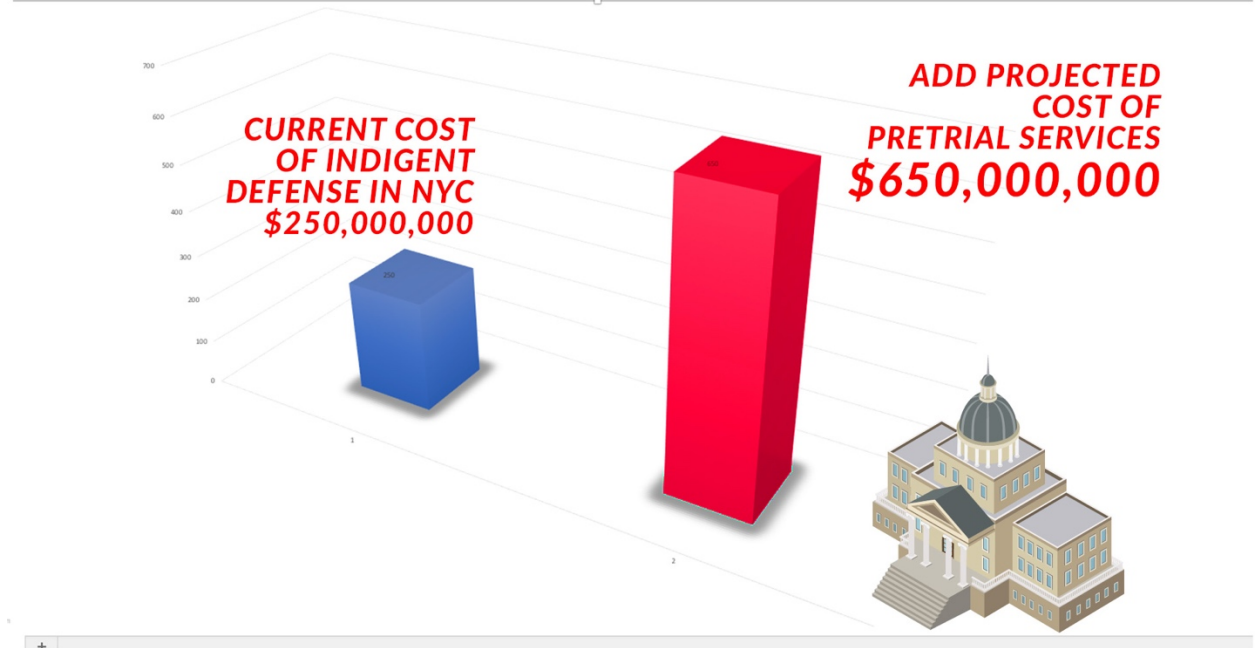
The experiences of Washington, DC and the state of New Jersey illustrate many of the problems that New York will face if they follow this proposal.

New York has twice the crime of neighboring New Jersey, which gives us another way to estimate cost. When bail reform was implemented in New Jersey, it was estimated in an [exhaustive study by Towson University](#) that the net cost would be over \$215,00,000 (215 million dollars).

Based on the FBI crime statistics and given that the population of New York State is well over twice the population of New Jersey, it seems fair to assume that the New York system will cost close to half a billion dollars a year, in the vicinity of \$400 to \$500 million.



## PROJECTED COST TO TAXPAYER: BEFORE & AFTER "BAIL REFORM"



This huge burden will be added to the bill for taxpayers, who already face huge costs in the criminal justice system. In New York City alone, over \$250 million a year is currently spent on indigent defense. Adding just the lower estimate of the cost of pretrial services to just what New York City alone spends, and you're looking at taxpayers putting around \$650 million per year into defending and supervising arrestees.

No wonder there are no cost figures included in the pending legislation.

However the challenge that most of New York's counties will face outside of New York City add to the grim picture. Again, with no supporting studies the current legislation provides little guidance but looking at a smaller city like the nation's capital Washington DC gives us some basis to estimate.

With a population of slightly over 700,000, Washington DC is often used as an example of the benefits of pretrial services, but the numbers tell a very different story. The cost to detain, process, release and supervise just one defendant is between \$3,250 and \$4,062. The District of

Columbia's "free" system costs \$65 million per year and has helped it become one of America's most dangerous cities.

Reading the proposed legislation, it appears that every county in New York would be required to provide pretrial services at taxpayer expense. This is another area where this ill-thought proposal will create unforeseen new problems for New Yorkers, because transitioning to the use of a "Pretrial Services Agency" to handle criminal defendants will create extraordinary new burdens for New York's counties, especially for its many smaller rural counties in Upstate and Western New York.

Look at the numbers. New York State has 62 counties but most of the crime – 60% – comes from just eight of those counties; the ones that make up Metropolitan New York City. In Washington DC, each (taxpayer-funded) pretrial employee services an average of 45 defendants per week. Using this as a baseline, we can make some estimates about just how many employees each county will require based on current crime statistics.



A full 80% of New York counties — 52 of New York 62 counties — simply don't have enough defendants each week to support the need for an agency on an ongoing basis. Since legislation has no cost analysis included, the economic impact of this was hard to calculate. In New Jersey, smaller counties were punished with an unfunded mandate. Will this be the fate of rural counties in New York?

The realities of the criminal justice system will provide even more challenges for the overwhelming majority of New York's counties. Revenues from fines and filing fees will drop, costs currently covered by defendants will be shifted to the taxpayers, and the need for an efficiency docket will dwindle.

The entire state will also lose funds that currently go to the general fund. How much state revenue this currently represents is difficult to track, however City and State New York reported in 2016:

*The city's general fund received \$2.49 million from the two major bail-related sources: fees levied on bail when the defendant is convicted of a crime and bail a judge decides has been forfeited to the city because a defendant did not show up to court or abide by other conditions imposed on them, according to the New York City Independent Budget Office.*

These are the frightening budgetary realities of the bail reform proposal and they don't even take into account the cost of the big jump in crime that New Yorkers can expect if bail reform passes.

### *The Deadly Impact on Crime*

Bad economics aside, the most frightening outcome for New York of this legislation will be the effect it has on crime for the average New Yorker.

One of the immediate impacts of bail reform in New Jersey was a 13% jump in the crime rate. In Washington, DC — one of the "success stories" of pretrial release — one out of every 21 residents will be a victim of property crime in any given year and a staggering 1 out of 70 will be victims of violent crime.

The New York legislation says that:

*The bill also revises existing process remanding individuals in jail before trial, so the pretrial detention is used in limited cases involving high risk of flight or a current risk to the physical safety of a reasonably identifiable person or persons, and comports with Supreme Court jurisprudence regarding required substantive and procedural due process or for detention.*

While the idea of only detaining those who are clear flight risks or who offer a specific threat may appeal to the do-gooder sensibilities of the special-interest groups who are pushing these proposals, it ignores the real world impact of releasing criminals without responsibility and with little supervision.

In metropolitan areas like the city of Houston in Harris County, TX, switching to pretrial supervision has literally doubled the number of people who do not show up for trial. As the Houston Chronicle reported in January 2018, since pretrial services:

*...went into effect in June, more than 8,000 misdemeanor defendants have been released on unsecured bonds, yet more than 40 percent failed to appear for subsequent court*

*hearings. The rate is nearly double that of defendants with personal bonds and far higher than the 8 percent failure rate for those with bail bondsmen providing surety bonds, according to data released by Harris County in November.*

As Detective Joe Indano of South Plainfield, New Jersey said after his state implemented its bail reform legislation:

*“Nobody’s afraid to commit crimes anymore. They’re not afraid of being arrested, because they know at the end of the day, they’re going to be released. It’s catch and release. You’re chasing around the same people over and over again. They’re being released and going back and offending and now you have more people as victims.”*

Another law enforcement official put it more bluntly, saying “we can’t protect you anymore.”

According to the 2016 crime statistics, property crimes such as burglary already have only a 13% arrest rate. The "catch and release" pretrial system just puts the criminals right back out on the street to commit such "nonviolent" offenses as robbery and breaking and entering . The future victims of home invasion and assault do not fit the standard of "easily identifiable."

The misguided bail reform movement has had real-life consequences across the country for victims of crime like Shima Howard, a domestic abuse survivor in Atlanta, Georgia. As Shima recently wrote in a letter to the mayor, sharing her personal experience of being re-victimized by the court system in order to warn her about the "one-sided scare tactics" weaponized by bail reform advocates:

*I attempted to obtain a new restraining order and was told by the Judge he could not grant one because the perpetrator had not physically assaulted me during this latest*

*incident. I argued the only reason he didn't assault me is because he didn't successfully kick in the door before he was arrested on my property. I was still denied the protective order. At the end of the day, I felt like the justice system failed me. I lived in constant fear that my perpetrator was above the law.*

*Domestic violence is a misdemeanor offense in the state of Georgia. As I understand it, federal lawsuits have targeted misdemeanor offenses for unsecured release with no financial accountability for the crime committed. This blanket release of defendants does not take into account the actual crime and the impact of such release for the victims of crime.*

However, one of the dirty little secrets of bail reform is that it doesn't work particularly well for the defendants, either.

The New York proposal discusses the idea of "least restrictive" means of detention, by which they mean doing away with bail and replacing it with other systems that include mandatory drug testing or wearing an electronic monitor. It doesn't take too much thought to realize that these alternatives are not less restrictive in the real world than someone being able to pay bail and continue on with their lives as normal until their trial begins.

#### *Non-Monetary Release Recommendations & Conclusion*

Although we support the commercial bail industry and feel monetary bail is the best option for the criminal justice system, we understand the need for certain occasions when non-monetary or "own recognizance" bonds are necessary or preferred. At no time do we as an industry feel that judicial discretion be removed from the equation totally.

The commercial bail industry stands by the below core principles for release on recognizance (ROR) and non-monetary release:

- **Eligible** - Non-monetary release as a first option for violation of traffic laws, and look at what traffic laws can be completely de-criminalized.

- **Eligible** - Non-monetary release as a first consideration for first time offenders with no criminal history.

- **Eligible** - Non-monetary release as a first consideration for individuals with no failures to appear (FTA)

- **Not Eligible** - Non-monetary option for an individual currently out on a bond for a felony or misdemeanor.

- **Not Eligible** - Non-monetary option for someone convicted of a felony in the past 3 years or misdemeanor in the past 1 year.

- **Not Eligible** - Non-monetary release option for someone with multiple cases or in multiple counties.

- **Not Eligible** - Any release on crimes where there is a victim should be guaranteed and supervised.

- **Not Eligible** - Any defendant who has previously failed to appear on an OR bond on a criminal charge shall only be released with secured bail and would not be eligible for another OR bond for at least one year.

- **Not Eligible** - Any defendant currently released on a secured bond for a felony offense would not be eligible for non-monetary release.

- **Not Eligible** - Any defendant currently on a non-monetary bond would not be eligible for a second non-monetary bond in any county.

- **Not Eligible** - Any defendant who has been charged with a sexual assault on a child/minor causing great bodily harm would not be eligible for non-monetary release.

- **Not Eligible** - Any defendant who has been convicted of a charge of escape in the last five years would not be eligible for non-monetary release.

- Most importantly, a policy should be created that stops unlimited non-monetary release for any defendant.

Simply put: bail works. It's got a proven track record of working for the victims of crime, the criminal justice system and most importantly, the taxpayer.

A risk assessment from Pretrial Services does little to alleviate concerns that someone just arrested is not a risk or is likely to appear, because the risk assessment is based only on information currently available. As Nevada Governor Sandoval said as he vetoed a "free bail" bill recently:

No conclusive evidence has been presented showing that the risk assessment methods are effective in determining when it may or may not be appropriate to release a criminal defendant without requiring bail.

Pretrial services can be an option for the judge to consider but it should never be the starting point or replace the system that has proven effective in every way: the commercial surety bail industry.



Submitted by Beth Chapman

President, Professional Bail Agents of the United States





January 30, 2018

Dear Members of the Joint Legislative Budget Committee:

I travel the nation working on bail reform issues, and I think there are serious considerations and issues with the administration's budget and legislative proposal on bail reform. While certainly I represent a trade association of insurance underwriters of bail who will be affected by this legislation, this legislation directly follows the lead of New Jersey in implementing sweeping bail reform. In so doing, it undoes a generation-long tradition in New York that has continuously rejected the no-money bail system and intentional labeling of persons as dangerous as a general crime control policy for purposes of setting bail or detaining them in jail with no bail. Similarly, this law will trigger massive spending on a large new state bureaucracy that will be put in place to replace self-guarantee, third-party guarantee, or for-profit guarantee posted bail bonds, and also in order to put on the litany of mini-trials on preventative detention that will require new judges, prosecutors, and public defenders.

Prior to 1987 and the Supreme Court's landmark decision in *U.S. v. Salerno*, very few people, including this author, would have believed that the federal constitution allowed persons to be detained by finding that they are dangerous to the community. The purpose of bail had always been to secure appearance in court, and any considerations related thereto were the only relevant considerations. The reason was fundamental—that to go further would be to take a legal sledgehammer to the presumption of innocence. At the time of the passage of the Bail Reform Act of 1984, the ACLU was similarly skeptical, arguing that even with these new computers, we will never be able to accurately predict who is dangerous, which certainly remains the case in our country today.

Of course, Justice Thurgood Marshall dissented in *Salerno*:

This case brings before the Court for the first time a statute in which Congress declares that a person innocent of any crime may be jailed indefinitely, pending the trial of allegations which are legally presumed to be untrue, if the Government shows to the satisfaction of a judge that the accused is likely to commit crimes, unrelated to the pending charges, at any time in the future. Such statutes, consistent with the usages of tyranny and the excesses of what bitter experience teaches us to call the police state, have long been thought incompatible with the fundamental human rights protected by our Constitution. Today a majority of this Court holds otherwise. Its decision disregards basic

principles of justice established centuries ago and enshrined beyond the reach of governmental interference in the Bill of Rights.

Yet, the Supreme Court allowed the power to preventatively detain, i.e., detain with no bail, in a split decision in *Salerno*, and many states and the federal government have embraced it. New York has not embraced preventative detention and is in fact one of four states that disallows considerations of risk of danger in setting bail in first place. Justice Marshall predicted that preventative detention would be abused and expanded, which occurred. In fact, as a result the federal government in eliminating financial conditions of bail, pretrial detention has increased by 267% since 1984 due to using preventative detention so that roughly two thirds of all defendants are detained without bail. New Jersey, which system started January 1, 2017, upon which this legislation appears to be based, is now moving for detention in 43.6% of cases, obtaining it in about 20% of the total cases. In one jurisdiction in New Jersey, one of three defendants are being detained using preventative detention. I'm not quite sure this is what Chief Justice Rehnquist had in mind in his oft-quoted line in the majority opinion: "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."

**This legislation would follow the lead of the federal government and New Jersey and reverse New York legal tradition to allow for expanded preventative detention.** If protecting the presumption of innocence is the goal, then it would be an open question of whether going in this direction of allowing for detention without bail (and the hammer of threatening preventative detention) and a new dragnet of pre-conviction supervision and widespread use of electronic and other correctional technology is a better fit to protect the presumption of innocence. The power to preventatively detain is quite expansive in the proposed legislation, including cases involving "serious violence," all domestic violence arrests, witness intimidation, any and all new crimes while on bail, and willful failures to appear. *Salerno* does not require, but this legislation includes a serious of cases where there is a "rebuttable presumption" of detention that the person accused then has to overcome by a preponderance of the evidence. This will further tip the balance in favor of the state.

In terms of the costs, it will be millions and millions of dollars to implement a system of preventative detention. In each case, the prosecutor must reach a high bar of proving by clear and convincing evidence that the person is a "high risk of flight" or a "current threat." Of course, the legislation makes clear that there is some discovery, specifically noting Section 240.44 of the N.Y. Criminal Procedure Law, which is a rule regarding witness testimony discovery. In both New Jersey and New Mexico, this triggers the equivalent of a mini-trial, and of course all of these trials will have to be held within five working days of a motion having been filed. This will put immense burdens on the police, prosecutors, public defenders, and judges. In New Mexico, because no funding was received by prosecutors, motions are filed in 15% of all cases, whereas in New Jersey it is of course 43.6%. That should be the planned range for budgeting purposes.

This legislation requires the Office of Court Administration to certify a pretrial services agency in each county. **This would require the creation of a pretrial services program in each county, I assume ultimately at the expense of the state.** The bill enumerates with specificity the types of conditions a court has authority to require of these county programs in monitoring defendants who are out on bail. In fact, judges will have unfettered authority to impose supervision by pretrial programs and electronic monitoring in all cases whatsoever. The state will be required to pay for some tremendous portion of the monitoring fees because most defendants will assert indigence. Of course, this allows for consideration of public safety through the back door by allowing for all of these conditions, many of which may have nothing to do with coming back to court. In the end, this will cost a fortune to put all of these programs in place, which coupled with the expansion of putting on the preventative detention mini-trials, will prove quite expensive.

In some states, we have used the Washington, D.C. per-capita costs as an estimate, which in practice are proving to be a little high. In New Jersey, the annual cost would have been \$1.2 billion annually when comparing to D.C., when the actual costs are now estimated at roughly \$542 million annually according to the latest economic analysis. Of course, the New Jersey Attorney General was unable to estimate the costs and indicated the total would not be known until the program is completely implemented. Judge Grant in New Jersey has said the program will run a deficit and face a long term funding issue on July 1, 2018. Thus, if we applied the experience in New Jersey to New York, which is approximately double the size of New Jersey, a \$1.1 billion price tag to implement this does not seem that far off. We assume included in this would be to offset the current costs of programs already in place that are already providing such pretrial services. In other states, such as California, which tried to implement this, independent legislative analysts determined it would cost California hundreds and hundreds of millions of dollars in several different categories in order to implement S.B. 10 and A.B. 42, legislation similar to this proposal.

Calls of justice reinvestment due to the savings from this legislation will be widespread and prove hollow. In New Jersey, the jail population dropped 16% last year (prior to bail reform), and dropped 20% this year. There is no evidence tying the drop to bail reform, and in fact most studies of the drop are blaming it on other factors (dropping crime rates in some categories, changing of the handling of drug cases, etc.). Of course, detaining 20% of persons without bail statewide is significant, and in one jurisdiction, judges are detaining 33% of defendants, which is likely more defendants than prior to bail reform. So, it is hard to say that this will have any overall impact in reducing mass incarceration, and thus there will be funds to spend. Of course the fixed costs of creating supervisory programs and the electronic dragnet will have to be taken into account.

For defendants, this trammels their rights. Basically, now you are going to be on pre-conviction probation by the state and electronic monitoring at your expense or state expense. This is problematic from a perspective of least restrictive, because as the U.S. Supreme Court has said, bail is the right to choose the jailer of one's choice. This means that the state is then out of your

business while you are at liberty. Here, everyone who could have posted a bond or have one provided to them free of charge by a third party, will instead face liberty restricting non-monetary conditions that may not be necessary to guarantee their appearance. On the other hand, the state can threaten preventative detention, and must threaten it early, which will put extreme pressure on a defendant since the state has 180 days of automatic detention available *with no possibility of bail* if the motions are won.

New York's bail system does not suffer from the problems of other states, and the idea that use of financial bail is rote, routine and widespread is false. The bails in New York City are generally lower than many other major cities in the United States. In San Francisco, misdemeanor domestic violence is \$35,000. In fact, according to the Comptroller's report in New York City, 70% of defendants are already released on their own recognizance in New York City. In fact, California is twice the size of New York in terms of population, and in my professional judgment based on numbers I have seen, I would estimate that on a per-capita basis the amount of bail liability written in New York is probably 10-20% of what is written in California.

**Further, this legislation restricts judicial discretion only as against financial conditions of bail, allowing unfettered discretion when it comes to any non-financial liberty-restricting conditions, most of which will be not chargeable to the defendant but to the state.** In setting up procedural hurdles such as making findings on the record and showing "support" of alternatives, this unnecessarily restricts judicial discretion. Judges should have discretion to impose all conditions of bail or any combination of conditions of bail as necessary to meet the purposes of bail, which in New York right now is only to guarantee appearance. No restrictions should hamper that discretion to impose the least restrictive form of release in general, which has always generally been any combination of conditions as allowable by law.

**Of course, the further expansion of releases without the incentives of financial conditions are not proving people will simply show up and not commit new crimes while out on bail if they are not required to post a cash or surety bond. This will spike failures to appear in court.** In Houston, Texas, those released pursuant to a federal court order on a simple promise to appear were failing to appear in 34.46% of all cases in July, 2017. Of course, this was six times higher than the rate of failing to appear on a surety bond (5.7%) and three times higher than the rate of failing to appear on a cash bond (11.3%). In one study of the Dallas County system, it was noted that the use of surety bonds saved the county \$8 million annually. That is not to say that everyone in New York should be on a surety bond, but where it meets the purposes of bail and is otherwise not excessive bail, judges should have discretion to impose financial conditions of bail as necessary to guarantee appearance in court and as another tool to impose that may have greater incentive to return someone to court than an ankle monitor would. Other national studies prove the worth of financial conditions of bail in reducing failures to appear in court, reducing long-term fugitive rates, and in the return of defendants over state lines in misdemeanor cases where state and local governments will not retrieve them. In fact, in one landmark study published

in the *University of Chicago Journal of Law and Economics*, the authors called surety bail agents “the true long-arms of the law.”

While I cannot say for certain that this legislation will entirely eliminate surety bail and underwriting by insurance companies in New York, I can say that the passage of this legislation would absolutely call into question whether it would be viable to continue to operate in New York at both the retail bail and underwriting levels. All retail operations have certain minimums necessary to operate in the first place, as do underwriters. Certainly, the intent of this legislation is to eliminate financial conditions of bail, and while there appears to some discretion to impose financial bail, I could easily see this legislation reducing amount of surety bail used in New York by 50-90%. Of course, the loss of public revenue and loss of small business and jobs caused thereby should be another factor that should be taken into consideration. I would also caution the legislature from believing the arguments that bail will still be an option—in the two other states where this legislation passed, New Jersey and New Mexico, bail was still going to be an option—until court rules and administrative directives then virtually eliminated all financial conditions of bail.

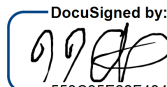
This legislative debate is a rehash of territory that has been considered by New Yorkers many times over the years. New York has one of the purest of bail systems in my view, which does honor the presumption of innocence in a fashion not required of New York but chosen by New York. In New York we ask one question—what is necessary to secure the appearance of the defendant in court? Questions of using bail for other purposes, like trying to stop crimes we have a hard time in predicting, have been rejected for some time. We know that a criminal intervention is going to take place at sentencing anyway. Then, the idea that we are going to give the power to the state to detain large swaths of the population without bail and threaten the same is abhorrent to New York’s tradition of the right to bail. Judges have discretion to set bail in New York, and while adjustments can and should be made to the system (such as the bail review due process section contained in the legislation, for example), moving New York in the direction of New Jersey, New Mexico, Washington, D.C. and the federal system risks not reducing mass incarceration but instead risks increasing mass incarceration and also widening the net of intrusive pre-conviction supervision and a web of electronic and other conditions that will be provided at defendant expense or state expense.

I would instead encourage further study and data gathering regarding New York’s bail system. In other states that have considered such significant reforms, most occurred in relation to a lengthy study that highlighted jurisdiction-specific issues that could be corrected. In some states, they discovered they had no data, like in Ohio, where only four out of fifty-six jurisdictions collected any data regarding failures to appear or new crimes while out on bail. For these reasons, I would call on the legislature to spearhead a study of bail reform prior to the passage of any significant legislation. I would be of course glad to participate in any such efforts in New York.

Finally, I would point out that in an article from the *Journal of Law and Criminology* in 1986 entitled “Preventive Detention: A Constitutional But Ineffective Means of Fighting Pretrial Crime,” the ideal solution to the reduction of pretrial detention, and all other related considerations in the bail process, as noted in the article, is speedier trials. The reason is that when we try to predict who is dangerous, we get it wrong much of the time and risk detaining those who we would have predicted wrongly. In fact, one of the largest bail algorithms in the country, the Arnold Foundation Public Safety Assessment, will recommend preventative detention in category six risk cases. The problem is that the training data one researcher was able to discover indicated that the risk of failing to appear or committing a new crime was 40% in risk six cases. This means that if we recommended and obtained detention in 10 of such cases, 6 of those persons would not have committed a new crime or failed to appear. The article also notes another study showing that 8 defendants in Washington, D.C. would have been detained to stop 1 person who would have committed a new crime while out on bail. **For these reasons, the only true way to fairly, accurately, efficiently, and across all groups reduce pretrial incarceration is to encourage speedy trial reforms.** In the article, the ACLU made this recommendation a generation ago suggesting that speedy trial reforms could reduce pretrial incarceration in total by as much as 50%, and it is a recommendation today that we continue to support. We therefore do support all efforts by the administration to reduce the delays in criminal trials because it is truly the only mechanism that can fairly and neutrally reduce the number of new crimes while on release, reduce pretrial incarceration and the length of pretrial incarceration, reduce failures to appear or violations of bond conditions, reduce the need for expensive intrusive correction technology and/or supervision by a state agency, reduce waste in the process, and get to the end result—justice—more quickly.

I would glad to provide any supporting documents referenced. Thank you for your time and consideration.

Sincerely,

DocuSigned by:  


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Jeffrey J. Clayton, M.S., J.D.  
Executive Director  
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