



NYS Bail Bondsman Association  
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## **February 8, 2016** **Albany Bail Agent Meeting Agenda**

I. **Background:** Founded by Michelle Esquenazi (President/CEO of Empire Bail Bonds & Empire Bonding & Insurance Co.) and Eric Paykert (President/CEO of American Liberty Bail Bonds) in 1997, The New York State Bail Bondsman Association is a 501 C 6 Not-for-profit organization.

### **II. Why we need to come together:**

1- The bail industry overall is no longer in the shadows  
Page 191 - Gov. Cuomo State of the State "The legislation will also reform **bail bondsman** (first time a sitting Governor has addressed us directly) practices.

2- Bail industry under siege in every state  
NYCLU Testimony before NYC Council 6/17/2015 ..."Cash bail costs the City, it costs the poor, and it doesn't work. **So who does benefit? The for-profit bail bond industry.**" "Four states and at least two localities have banned the involvement of for-profit, private bail bond companies in their bail system: Kentucky; Wisconsin; Illinois; Oregon; Broward County; Texas and Philadelphia, Pennsylvania".

3- NYS is not immune, virus has taken the form of NYC Criminal Justice agency created THE BAIL LAB [www.bail-lab.nyc](http://www.bail-lab.nyc) to experiment on "our broken bail system".

### **III. 2016 NY State of the State:**

1- **The public Safety Issue:** Virtually All States allow the court to factor in the potential danger to the community a defendant pose to society if he is released on bail based on the crime he is charged with. New York is one of four states that do not have that as one of the factors the court should consider in setting bail. The Governor believes that this is an essential element in the decision on the setting of bail and intends to have legislation introduced to include that as one of the factors judges are to consider in setting bail. We support the right of an independent judiciary to consider the safety of the community in setting bail.

**2- The Risk Assessment Issue:** The Governor believes that the best way to modify the setting of bail is to use what is commonly known as a risk assessment tool. The Gold standard of risk assessment is the JOHN and LAURAARNOLD MODEL (LJAF). This model is based on a study of 750,000 cases. It devises a set of 8- 12 risk factors for the judge to use to give the defendant a “score” and based on that score set a bail. This system does not involve any interview of the defendant. The study does indicate that it should not take the place of an independent judiciary. What is the problem with this system for us bail agents? The public defender agencies hate this program and believe it will lead to un- warranted pretrial detention however, the Governor’s office is strong on this. The feeling is that these defender organizations will try to strike a bargaining and get any legislation to have certain crimes presumptive release on own recognizance. That as an industry is what we have to oppose. Any presumptive release legislation for criminal offenses, will damage or industry. Further this again takes the decision making process out of the courts hands. We do not Support the use of the risk assessment tool in the setting of bail

**3- The increase of regulation of bail agents:** As first blush it would seem that we would oppose any increase regulation of bail agents. However we need to look at this as an opportunity to fix what is essentially a broken bail statute. Article 68 and its five sections are poorly drafted and not in step with today’s modern bail industry. We as bail agents are subject to the arbitrary and very often conflicting enforcement actions of Department investigators. I have represented many agents in matters before the Department and time and again when I have asked can you cite a specific regulation, rule or even an opinion that supports your position the response is “that’s just Department policy”. We as the industry need to decide what legislation and rules we need in place and present them to our senators and assemblymen in Albany. For that reason we support new bail regulation. There are three more issues not covered in the Governors Speech that we need to start talking about.

#### **IV: More Issues:**

##### **1- Charitable Bail Organizations:**

Bronx Freedom Fund and the Bronx Defender Services Organization have established the step by step guide to create a charitable Bail Fund in any city in New York. Pursuant to Insurance Law section 6805 there is a sister organization in Brooklyn New York. The problem with these organizations is twofold. The first is that they are unregulated and have no set guideline as to what and who are exactly eligible to receive theses “free” bail bond services. As we all know the public defender organizations in this state do virtually no screening for

eligibility and are now trying to tie themselves to these bail programs for one reason only grant money.

Second these organizations perpetuate the myth that thousands upon thousands of people are in jail all over this state on bails of \$1,000.00 or less. We have personally seen State Senators stating to news media that the number of people in jail on bails on \$1,000.00 or less range over 15,000 when the actual number is less than 400. Why one simple answer the Criminal Justice Agency and Mary Philips. This agency consistency has issued reports using outdated and misinterpreted facts to draw inaccurate conclusions to support the eradication of commercial bail.

**2- Pre Trial Release:** There have been numerous studies of pretrial release throughout the country. In fact in our sister state New Jersey complete study of the cost of pretrial release was done by an economist. It showed that the cost overrun in the first year alone would be \$250,000,000.00 and that in several counties the inmate population increased.

In other States the analysis of pretrial showed 24-48 hours delay in arraignment or release and a 30-40% Failure to appear rate.

**3- Alternatives to Cash/ Surety bail:** There is a push by the defender organizations and the charitable bail organization to push for the setting of bail other than Surety bail. This is being done trying to support the myth that surety bail cost too much and is somehow evil. Well let me use an example, if you set a Surety bond in NYC of \$25,000.00 the fee would be \$1,760.00. But if you did the bond with the court you would have to provide a certified appraisal at a cost of about \$2,500.00. Further in all states where alternative bails are used the warrant rates have increased by 50%. Further there are no provisions in these alternatives on how to address those defendant who fail to appear.

## **V: Risk Assessment Tools (Tennessee's Model)**

**1- CLE for Agents**

**2- Bail Tax**

**3- Self-Policed**

**4- Bail Legislation Passed**

**VI: Lobbying in Albany: Please see checklist**

**VII: Bubble Chain: Please see sign up sheet**