

# STATE OF NEW YORK

11254

## IN ASSEMBLY

June 20, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Hooper) --  
read once and referred to the Committee on Codes

AN ACT to establish a temporary blue ribbon commission to study bail and  
the bail industry; and providing for the repeal of such provisions  
upon expiration thereof

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

- 1 Section 1. 1. Establishment. There is hereby established the blue  
2 ribbon commission on bail to examine, evaluate, and make recommendations  
3 on the application of bail in the criminal justice system of the state.  
4 2. Powers and duties. Such commission shall examine issues relating to  
5 bail including, but not limited to:
- 6 a. Administration. (1) Determining the viability of allowing private  
7 citizens and bail agents to post bail bonds for any case in a county or  
8 borough while the arraignment parts are open, including the ability to  
9 post a bail bond at night and on the weekends in the arraignment parts;  
10 (2) Allowing bail bond agents to post bail bonds at correctional  
11 facilities twenty-four hours a day in all counties;  
12 (3) Allowing electronic transmittal of release orders to jails;  
13 (4) Allowing court issued release orders to be listed by docket number  
14 only; and  
15 (5) Issuing state identification to qualified bail bond agents and  
16 staff.
  - 17 b. Arraignments. (1) Examining data regarding the number of individ-  
18 uals arraigned on violations, misdemeanors and felonies, broken down by  
19 county or borough on a monthly basis over the latest two-year period for  
20 which the data is available. Such data shall include a breakdown of the  
21 statistics described in subdivision a of this section, regarding the  
22 number of cases:
    - 23 (a) dismissed at arraignment;
    - 24 (b) pled at arraignment;
    - 25 (c) released without bail, including but not limited to individuals  
26 released on their own recognizance, supervised releases, conditional  
27 releases to probation or other conditional releases;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (d) in which bail was set, including the bail amounts and the types of  
2 crimes charged;

3 (e) whether defendants had holds; and

4 (f) whether bail was paid at arraignment;

5 (2) The number of cases in subparagraph one of this paragraph that  
6 were disposed of on the next court appearance and the type of disposi-  
7 tion;

8 (3) A breakdown by ethnicity of the individuals in cases listed in  
9 subparagraphs one and two of this paragraph;

10 (4) A breakdown by economic status of the individuals in the cases  
11 listed in subparagraphs one and two of this paragraph and how such  
12 arrestee's economic status was determined based on an interview  
13 performed by a criminal justice agency;

14 (5) The number of cases in subparagraphs one and two of this paragraph  
15 in which bail was set using a form of bail other than cash and surety  
16 bond;

17 (6) Warrant and return on warrant rates for individual arrestees list-  
18 ed in subparagraphs one and two of this paragraph, broken down by the  
19 type of securing order and level of crime; and

20 (7) Re-arrest rates for individual arrestees listed in subparagraphs  
21 one and two of this paragraph, broken down by type of securing order,  
22 amount of securing order and level of crime.

23 c. Charitable bail. Determining and examining data regarding how an  
24 arrestee's indigence is determined when being considered for charitable  
25 bail, including:

26 (1) How charitable bail organizations obtain clients;

27 (2) How resources are used to obtain background information on poten-  
28 tial clients to make a proper determination about whether to use chari-  
29 table bail;

30 (3) Failure to appear rates for individuals released on charitable  
31 bail guarantees and, if applicable, number of returns on failure to  
32 appear warrants; and

33 (4) Charitable bail organizations, including such information relating  
34 to:

35 (a) funding sources;

36 (b) expenditures for administration;

37 (c) expenditures for actual bail;

38 (d) expenditures for lobbying;

39 (e) expenditures for forfeitures;

40 (f) expenditures for staff salaries; and

41 (g) how charitable bail organizations adhere to section 6805 of the  
42 insurance law by which they are provided licensure.

43 d. Failure to appear. (1) Determining and examining data regarding the  
44 number of failures to appear reconciled against the number of individ-  
45 uals arraigned during a specific, defined period; and

46 (2) The attending costs of failure to appear, including but not limit-  
47 ed to:

48 (a) expenditures related to the re-arrest of absconders; and

49 (b) municipalities' costs to replace police personnel in court.

50 e. Jail populations. Determining and examining data regarding method-  
51 ologies used to determine the population of inmates and economic status  
52 of a defendant held on bail. Such methodologies shall include:

53 (1) The ethnic breakdown of individuals held in jail on bail and of  
54 those claiming to be indigent;

1 (2) A statistical breakdown of the number of defendants in jail broken  
2 down by the type of securing order on which they are held, including  
3 remands and sentenced prisoners;

4 (3) The number of defendants who have release holds other than bail  
5 and the type of restriction; and

6 (4) The amount of time defendants spent in jail from arraignment to  
7 release from custody, for the following reasons:

8 (a) bail posted;

9 (b) case dismissed;

10 (c) guilty plea;

11 (d) release without bail;

12 (e) remand or transport to other entity; and

13 (f) sentence imposed.

14 f. Pretrial release programs. (1) Examining data on current statewide  
15 pretrial release numbers broken down by type of crime charged, includ-  
16 ing, violations, misdemeanors, and violent and non-violent felonies.  
17 Such pretrial release information shall include:

18 (a) securing order status;

19 (b) failure to appear rates;

20 (c) re-arrests and type of arrest; and

21 (d) disposition of the case, including the original charge;

22 (2) For each pretrial services program, an annual report describing  
23 the rates of failures to appear, new crimes being committed while  
24 released under pretrial supervision, and the total annual cost of the  
25 pretrial services program within the jurisdiction;

26 (3) Statistics describing pretrial services programs' policies,  
27 including:

28 (a) the methodology to determine indigence;

29 (b) listing of all fees charged for services provided to defendants;  
30 and

31 (c) detailed listings of the total fees collected, by fee category;

32 (4) Effect on pretrial remand rates in states or jurisdictions that  
33 have enacted bail reforms, implemented pretrial supervision programs, or  
34 employed release algorithms;

35 (5) Statistics providing the total population of jails in this state  
36 for the last five years, including:

37 (a) the total percentage of the jail population that is in pretrial  
38 status;

39 (b) the percentage of those in pretrial status that are not bailable  
40 and breakdown of the reasons such persons are not bailable; and

41 (c) the percentage of those who could post bail by posting a bond  
42 which have not posted a bond, with a listing of the amounts of the bonds  
43 pursuant to which such persons are being held;

44 (6) Effect on pretrial crime rates in states or jurisdictions that  
45 have enacted bail reforms, implemented pretrial supervision programs, or  
46 employed release algorithms;

47 (7) Drug overdose rates before and after implementation of reforms in  
48 states or jurisdictions that have enacted automatic non-monetary release  
49 for non-violent misdemeanor crimes; and

50 (8) Cost analysis to determine:

51 (a) startup and annual operating costs of pretrial supervision  
52 programs;

53 (b) implementation and annual operating costs of pre-arraignment  
54 screening programs;

55 (c) increase in funding to law enforcement to counter increased  
56 warrants and crime rates;

1 (d) cost to court system for extra staff and hours required for new  
2 programs and related hearings;

3 (e) loss of tax revenue and licensing fees from bail bond industry;

4 (f) indirect costs of reforms, pension costs for supervision programs,  
5 court officers and police, costs resulting from increased failure to  
6 appear rates and recidivism; and

7 (g) determination of whether the state or local municipalities will  
8 bear the total cost of reforms, and the cost to the taxpayer.

9 3. Membership. a. Such commission shall consist of thirteen members  
10 who shall serve a term of two years and shall be appointed as follows:  
11 five members to be appointed by the governor, of which one member shall  
12 serve as chair of the commission, one member shall be a representative  
13 of the charitable bail organizations chartered in this state, and one  
14 member shall be a representative of the commercial bail industry  
15 licensed in this state; three members to be appointed by the temporary  
16 president of the senate, of which one member shall be a representative  
17 of the charitable bail organizations chartered in this state and one  
18 member shall be a representative of the commercial bail industry  
19 licensed in this state; three members shall be appointed by the speaker  
20 of the assembly, of which one member shall be a representative of the  
21 charitable bail organizations chartered in this state and one member  
22 shall be a representative of the commercial bail industry licensed in  
23 this state; one member shall be appointed by the minority leader of the  
24 senate; and one member shall be appointed by the minority leader of the  
25 assembly.

26 b. In addition to these voting members, the commission shall have six  
27 non-voting, ex officio members. The following government agencies or  
28 officials shall appoint one ex officio member each: the attorney gener-  
29 al, the chief judge of the state, the executive director of the division  
30 of criminal justice services, the commissioner of corrections and commu-  
31 nity supervision, the state comptroller, and the superintendent of the  
32 state police.

33 4. Meetings. The commission shall meet at least six times. The meet-  
34 ings of the commission shall be held at the call of the chair or whenev-  
35 er five or more members so request. The locations of the meetings shall  
36 provide for representation of different geographic areas of the state.  
37 The first meeting shall be within ninety days of the effective date of  
38 this act. A majority of the members of the commission shall constitute a  
39 quorum. Approval of any matter shall require the affirmative vote of a  
40 majority of the members voting thereon. Members may designate and  
41 authorize another person to act for him or her by proxy. Proxies shall  
42 be revocable at the discretion of the member executing it.

43 5. Proceedings. The deliberations, meetings and other proceedings of  
44 the commission and any committee thereof shall be governed by article 7  
45 of the public officers law. Any one or more members may participate in a  
46 meeting by means of a conference telephone call, conference video call  
47 or similar communications equipment allowing all persons participating  
48 in the meeting to hear each other at the same time. Participation by  
49 such means shall constitute presence in person at a meeting. At any  
50 meetings of the commission conducted by means of a conference telephone  
51 call, conference video call or similar communications equipment, other  
52 than executive sessions, the public shall be given an opportunity to  
53 listen. If a meeting other than an executive session is to be conducted  
54 by means of a conference telephone call, conference video call or simi-  
55 lar communications equipment, the public notice for the meeting shall

1 inform the public that such equipment will be used, and identify the  
2 means by which the public may listen to such meeting.

3 6. Advisory committees. The commission may form such advisory commit-  
4 tees as it deems necessary, convenient, or desirable to advise and  
5 assist in performing the duties conferred by this act.

6 7. Hearings. The commission shall hold at least four public hearings  
7 where members of the public shall be provided an opportunity to present  
8 oral and/or written testimony relevant to the commission's study. Prior  
9 to the public hearings, the commission shall request from, review, and  
10 consider written input with respect to its mission from relevant stake-  
11 holder organizations, including, but not limited to: Brooklyn Community  
12 Bail Fund, Conference of Mayors, Correction Officers' Benevolent Associ-  
13 ation, District Attorneys Association of the State of New York, New York  
14 State Association of Counties, New York State Association of PBAs, New  
15 York State Bail Bondsman Association, New York State Correction Officers  
16 and Police Benevolent Association, New York State Court Clerks Associ-  
17 ation, New York State Magistrates Association, Patrolmen's Benevolent  
18 Association of the city of New York, Police Conference of New York, The  
19 Association of Towns of the State of New York, and The Bronx Freedom  
20 Fund.

21 8. Reimbursement. The members of the commission shall receive no  
22 compensation for their services, but shall be allowed the actual and  
23 necessary expenses incurred in the performance of their duties pursuant  
24 to this act. Such reimbursements shall be disbursed from the general  
25 fund.

26 9. Report. The commission shall issue an interim report to the gover-  
27 nor and the legislature of its findings, conclusions and recommendations  
28 one year after the effective date of this act. A final report shall be  
29 issued to the governor and legislature two years after the effective  
30 date of this act including further findings, conclusions, and recommen-  
31 dations by the commission and legislative proposals as it deems neces-  
32 sary to implement such recommendations.

33 § 2. This act shall take effect January 1, 2019, and shall expire and  
34 be deemed repealed two years after it shall have become a law. Effective  
35 immediately, the addition, amendment and/or repeal of any rule or regu-  
36 lation necessary for the implementation of this act on its effective  
37 date are authorized to be made and completed on or before such effective  
38 date.