

# 「Bail Bond Industry Compliance」

An Examination of Commercial Bail Bond  
Consumer Protection Practices in New York City



November 2019

# INTRODUCTION

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In 2017, the Brooklyn Community Bail Fund (BCBF) released a report on the commercial bail bond industry in New York City, which documented numerous instances where bail bond companies openly violated state laws and engaged in deceptive business practices. Around the same time, BCBF joined with other grassroots organizations and service providers in New York City to form the Bail Bond Accountability Coalition to push for the responsible regulation, reduction and eventual elimination of the bail bond industry.

The work of the Bail Bond Accountability Coalition greatly raised awareness of the harm caused by the commercial bail bond industry and its rampant bad practices. In response, in August 2018, the New York City Council passed two local laws to provide consumers with basic know-your-rights information when using bail bondsmen. Also in response to the Coalition's work, the Department of Financial Services (DFS) - the ultimate regulator of the bail bond industry in New York State - began the process of revising bail bond industry regulations, which we expect will be finalized in the coming months. Since the new regulations are not yet finalized, this report focuses on compliance with existing regulations.

This report serves as a follow up to the 2017 report to monitor compliance with recently passed City and existing State laws. We found a high level of compliance with the City's new laws, but ongoing noncompliance with existing State rules meant to protect consumers. It is clear that additional steps that must be taken to protect consumers.

While the ultimate solution to prevent the abuses and harms of the commercial bail system is its complete elimination, in the interim the city and state agencies responsible for oversight of the bail bond industry must proactively enforce the regulations meant to ensure meaningful protection of vulnerable consumers.

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## New York's Bail Bond Industry

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This year, New York State passed a historic package of bail, discovery and speedy trial legislation, which will be implemented on January 1, 2020. While the legislation eliminated money bail for most charges, it will still compel many presumptively innocent people to turn to predatory for-profit companies to secure their release.<sup>1</sup>

Although New York Criminal Procedure Law provides for nine different forms of bail that a judge can set at arraignment, bail has, to date, almost exclusively been set in the two most onerous forms: commercial bail bond or cash bail.<sup>2</sup> When consumers use commercial bail bonds, they must pay up to ten percent of their bond amount in non-refundable premiums -- and often far more than that in illegal charges. This is money that could have been used for basic living expenses, such as rent or food. Consumers oftentimes must also put up additional collateral when contracting with bail bond companies, which can be as much as the deed to their house or car. Even as arrests have fallen, the use of commercial bail bond agents has been growing and now accounts for more than half of all bail postings.<sup>3</sup>

Unlike bail payments made directly to the courts, including cash bail and other alternative forms of bail, premiums paid to private bail bond companies are generally non-refundable at the conclusion of the case, even if the person appears at all court hearings and even if the case is dismissed or ends in a non-criminal disposition. While bail bond companies are legally required to refund collateral at the conclusion of a case, our experience shows that bail bond companies routinely charge exorbitant collateral and fail to return it at the end of a case. Consequently, the New York City Comptroller's Office estimates that during FY 2017 the private bail bond industry extracted between \$16 million and \$27 million in nonrefundable fees from people arrested in New York City and their family and friends.<sup>4</sup> This sum represents a sizeable transfer of wealth from already low-income communities to the pockets of for-profit bail bond companies and the large insurance companies that back them. Further, the difficulty for the city to assess precisely the economic harms caused by the industry also speaks to the opacity of the bail bond system itself.

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1 For a complete breakdown of the new legislation, visit: <https://www.courtinnovation.org/publications/bail-reform-NYS>

2 NY CPL § 520.10. Accessed at: <https://www.nysenate.gov/legislation/laws/CPL/520.10>

3 Office of the New York City Comptroller. "The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC." 2018. Accessed at <https://comptroller.nyc.gov/reports/the-public-cost-of-private-bail-a-proposal-to-ban-bail-bonds-in-nyc/>

4 Ibid.

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## Statewide Bail Bond Industry Regulations

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In 2017, the Brooklyn Community Bail Fund released a comprehensive report on the commercial bail bond industry in New York City to shed light on an industry that is not meaningfully regulated and lacks basic consumer accountability.<sup>4</sup> The report documented numerous instances where bail bond companies openly violated laws promulgated by the New York State Department of Financial Services (DFS)<sup>5</sup> and engaged in deceptive business practices and consumer obfuscation.

The findings from the Brooklyn Community Bail Fund's 2017 report, coupled with years of its and other advocates' experience working with individuals routinely harmed by the commercial bail industry, left no question that -- barring the complete elimination of the industry -- much more was needed to truly rein in the industry and to protect consumers. In November 2018, in response to proposed amended regulations drafted by the DFS aimed at curbing harmful bail bond industry practices, the Bail Bond Accountability Coalition<sup>6</sup> submitted comments demanding increased regulation and mechanisms to ensure better compliance. In July 2019, the DFS released a second draft of proposed regulations for the state's bail bond industry after extensive input from the public and relevant stakeholders.<sup>7</sup> Since the newly proposed regulations are not yet in effect, they are beyond the scope of this report and this report will solely focus on compliance with current DFS regulations.

While we expect that the proposed amendments will provide stronger regulations for the industry, there will remain opportunities for abusive practices. Greater oversight is required to truly be effective at mitigating the most acute harms and predatory aspects of the bail bond industry.<sup>8</sup> Regulations alone will not change the industry. They must be implemented side-by-side with robust enforcement and transparency priorities.

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4 Brooklyn Community Bail Fund. "License & Registration, Please..." June 2017. Accessed at: [https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport\\_ExecSummary.pdf](https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport_ExecSummary.pdf)

5 The Department of Financial Services regulates and licenses all bail bond companies that conduct business in New York State.

6 The Bail Bond Advocacy Coalition is a group of grassroots organizations and service providers who seek the responsible regulation, reduction and eventual elimination of the commercial bail bonds industry. For more information: <https://bailbonds-nyc.com/>

7 Proposed 4th Amendment to Insurance Regulation 42 (11 NYCRR 28) Accessed at: <https://www.dfs.ny.gov/system/files/documents/2019/07/nstxt-rpc-424-1203-763.pdf>

8 See Appendices A & B for initial (2018) and new (2019) Bail Bond Accountability Coalition comments submitted to the DFS.

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## NYC's New Know-Your-Rights Laws

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In August 2018, the New York City Council passed Local Laws 142 and 143, which require New York City-based bail bond companies make certain disclosures meant to protect vulnerable consumers.<sup>9</sup> Local Law 142 requires bail bond agents to post a sign containing fee information at the location where transactions are executed. Local Law 143, among other things, requires bail bond agents to provide a consumer bill of rights to prospective customers.

In May 2019, the Department of Consumer Affairs (DCA)<sup>10</sup> adopted rules to implement Local Laws 142 and 143 requiring all NYC-based commercial bail bond companies to display know-your-rights information in their office so it is visible, including the name and license number of bail bond agents, maximum fee permitted, and information on how to file a complaint, as well as provide consumers with a copy of a “Bail Bond Consumer Bill of Rights” before they sign a contract.<sup>11</sup>

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## Methodology

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The findings detailed in this report were gathered in July and August of 2019 by volunteers from public defender agencies and legal services organizations in coordination with the Bail Bond Accountability Coalition.

Volunteers conducted site visits to thirty-six bail bond offices in the New York City area. The list of offices was compiled using a list of bail bond company locations verified in 2017 through site visits, combined with license information available on the DFS website for active bail bond agents. Although we conducted a review of bail bond offices with known addresses, previous research points to the possibility that there may be additional companies not covered by our analysis that are operating at unlisted locations.

We were primarily concerned with instances of noncompliance with the newly enacted

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9 NYC Consumer Affairs. “Bail Bonds.” Accessed at: <https://www1.nyc.gov/site/dca/consumers/Consumer-Rights-Bail-Bonds.page>

10 The Department of Consumer Affairs is a New York City consumer protection agency that oversees bail agents’ interactions with vulnerable consumers.

11 “Amendment of Bail Bond Disclosure Requirements.” Accessed at: <https://rules.cityofnewyork.us/content/amendment-bail-bond-disclosure-requirements-1>

DCA (citywide) and existing DFS (statewide) regulations. Specifically:

1. Per DFS regulations, whether the bail bond company operating at each address was registered with the Department of Financial Services.
2. Per DCA regulations, whether the office had conspicuously posted on 8.5 x 11 inch paper the names and license numbers of all bail agents, registered address and phone number, and the name of any sublicensee registered under the license.
3. Per DCA regulations, whether the office had conspicuously posted a sign detailing the maximum fees allowed under law and notifying consumers that they are entitled to a bill of rights, and information on how to file a complaint
4. Per DCA regulations, whether the office was able to produce the Bail Bond Consumer. Bill of Rights in English and in all designated citywide languages.

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## Key Findings

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**Through this research, we have found that a number of bail bond companies continue to operate in violation of the DFS regulations, as well as a number of operational trends that make it difficult to protect consumers.** Our findings are in line with a 2017 report released by the Brooklyn Community Bail Fund that revealed a number of bail bond companies engaging in questionable or illegal business practices and purposeful consumer obfuscation. This suggests that DFS regulation and enforcement of the existing regulations are still lacking and vulnerable consumers are not receiving meaningful protection.

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Pursuant to New York State law, all bail bond businesses must be licensed by the DFS.<sup>12</sup> Existing DFS regulations state that the superintendent must be notified of a change of address within 15 days.<sup>13</sup> All primary addresses and satellite offices registered to bail bond companies are published on the DFS website, which is updated daily. Our research shows that bail bond companies are failing to comply with this address update requirement.

- One bail bond company is still conducting business at an unregistered office.

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<sup>12</sup> NY Ins L § 6802(a). 2012. Available at: <https://www.nysenate.gov/legislation/laws/ISC/6802>

<sup>13</sup> Department of Financial Services. "Agents and Brokers." Accessed at: [https://www.dfs.ny.gov/apps\\_and\\_licensing/agents\\_and\\_brokers/home](https://www.dfs.ny.gov/apps_and_licensing/agents_and_brokers/home)



- 11 of the 36 offices we visited are now either closed or have moved to a different location. Although the storefronts are now vacant, five companies are still listed on the DFS website as active.

2 We identified several instances where an address is registered to one licensed bail bond company, yet another licensed company with the same sublicensees is actually operating at the address. Although it is unclear whether DFS prohibits this practice, these instances of “office swapping” appear to demonstrate purposeful obfuscation by bail bond companies to make it difficult for consumers to know with whom they are dealing.

3 Our research revealed one licensed bail bond company operating under a trade name not licensed with DFS. This makes it next to impossible for a consumer to file a complaint and seems to be in violation of DFS regulations.<sup>14</sup>

4 We continue to document instances of ambiguous signage, where companies only advertise themselves as “Bail Bonds,” making it unclear which company is operating at the address.

5 Bail bond companies are mostly compliant with newly promulgated DCA regulations. The regulations require all bail bond companies to (1) post in a conspicuous manner the names and license numbers of all bail agents, registered address and phone number and the name of any sublicensee registered under the license; (2) post a sign detailing the maximum fees allowed under law and notifying consumers that they are entitled to a bill of rights, and information on how to file a complaint; and (3) give every consumer a “Bail Bond Consumer Bill of Rights,” available in English and in all designated citywide languages, before the consumer signs a contract. Our research shows:

- 14 of the 16 offices we visited that were open and had staff present knew about the new regulations.
- Every office except four bail bond offices had a poster with the required

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<sup>14</sup> “OGC Op. No 08-07-17.” Names of insurers in advertisements. 2008. Accessed at: <https://www.dfs.ny.gov/insurance/ogco2008/rg080717.htm>

license information. One bail bond company said they have all the information on a sheet they give to clients, but not a poster.

- ▷ 15 of the 16 offices that were open and had staff present had a poster with required know-your-rights information (maximum fees, how to file a complaint, etc.) Although not required, a few offices had the information from the poster available in multiple languages.
- ▷ 15 of the 16 offices that were open and had staff present was able to produce a copy of the Bail Bond Consumer Bill of Rights. Most offices had the Bill of Rights in English and Spanish, a few office only had the Bill of Rights printed in English and a few offices had the document available in multiple languages. While our investigation shows that bail bond offices have the Bill of Rights available on premises, we cannot conclude for certain whether bail agents provide consumers with the document. Thus, it is impossible to know the true activities of the bail bond industry without engaging actual consumers in an ongoing fashion.



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## Conclusion

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While New York City has had some success in increasing consumer transparency and accountability of the bail bond industry, there remain clear gaps in compliance at the statewide level. Based on our research, the Department of Financial Services should conduct an immediate audit of the industry to address ongoing issues with licensing and registration requirements.

Our findings give us cause for concern regarding whether bail bonds companies will comply with the revised and expanded DFS regulations, expected to be released towards the end of 2019. We will take an active role in ensuring there is continued investigation and enforcement of bail bond company compliance.<sup>15</sup>

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**The Department of  
Financial Services  
should conduct an  
immediate audit of  
the industry**

Although we expect city and state agencies to carry out increased and continued oversight of the bail bond industry, vulnerable communities will continue to be exploited by bail bonds agencies as long as the money bail system exists and commercial conglomerates are legally allowed to profit off the freedom of presumptively innocent New Yorkers. Therefore, we maintain that the only true solution to ensure meaningful protection of consumers is the complete elimination of the predatory for-profit bail bond industry and the money bail system.

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<sup>15</sup> See Appendix B for the Bail Bond Accountability Coalition's comments on newly proposed bail bond regulations submitted to the DFS on September 16, 2019.

## Appendix A

BAIL  
BOND  
ACCOUNTABILITY  
COALITION

### **Bail Bond Accountability Coalition Response to Department of Financial Services Proposed Amended Regulations**

**November 2, 2018**

We, the members of the Bail Bond Accountability Coalition (the “Coalition”), write in response to the Department of Financial Services’ (the “Department” or “DFS”) proposed amendments to the following regulations: Fourth Amendment to 11 NYCRR 28 (Insurance Regulation 42) Professional Bail Agents; Third Amendment to 11 NYCRR 33 (Insurance Regulation 120) Managing General Agents; Third Amendment to 11 NYCRR 66 (Insurance Regulation 76) Surety Bond Forms - Waiver of the Filing and Prior Approval Requirements of Section 2307 of the Insurance Law (collectively, the “Amendments”).

The Coalition is comprised of grassroots organizations and service providers who seek the responsible regulation, reduction and eventual replacement of the commercial bail bonds industry (the “Industry”) through increased utilization of other forms of bail already available and release without conditions. We aim to reduce the pre-trial jail population, eliminate the multi-million dollar transfer of wealth that occurs each year between low-income communities of color and the pockets of private industry and prevent new restrictive monitoring regimes from being developed.

We applaud the Department’s recent actions to combat this predatory industry through investigation and increased regulation and its commitment “to raise the standards of integrity in the bail business [and] protect vulnerable New Yorkers from abuses in the industry.”<sup>1</sup> The Coalition has seen first-hand the devastating consequences of an industry “riddled with harmful practices and abuses of vulnerable New Yorkers, frequently those from marginalized groups.”<sup>2</sup> We hope the Department will engage with impacted people, other advocates and service providers on an ongoing basis, as industry practices will likely evolve after the implementation of the regulations.

While the Amendments represent progress, further changes are necessary to truly rein in the industry and to protect consumers. While we detail specific provisions below, needed improvements fall into four categories:

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<sup>1</sup> Department of Financial Services, “Governor Cuomo Announces Reforms to Improve Standards and Increase Transparency in the Bail Bond Industry,” August 21, 2018. Accessed at: <https://www.dfs.ny.gov/about/press/pr1808211.htm>

<sup>2</sup> Ibid.

1. Continued Investigation. The Amendments must provide for -- and the Department must commit to -- continued, periodic investigation and audits of the Industry. A 2017 report documented numerous instances of bail businesses and agents routinely flouting the most basic requirements of law.<sup>3</sup> The Department must be proactive if it is to identify bail businesses and agents not complying with New York State law and regulations. As currently proposed, the identification of bad actors either falls on already disadvantaged consumers or through self-reporting by Industry actors. *Therefore, the regulations must stipulate with specificity the steps the Department will take to identify bad actors through continued investigations and periodic audits.*
2. Transparency. Related to continued investigation, the Amendments must ensure that there is transparency regarding the Industry and the Department's regulation thereof, including easy public access to information on complaints received by the Department and dispositions of investigations. *Therefore, the Department must make information - including information regarding consumer rights and actions taken against bondsmen - accessible and publicly available.*
3. Meaningful Enforcement. The Amendments must contain robust enforcement mechanisms and meaningful penalties for bad actors; only then will they have their intended effect. It is also essential that penalties include restitution for harmed consumers. It is estimated that commercial bondsmen siphon \$27 million dollars a year in nonrefundable fees from New York City alone.<sup>4</sup> We should expect commercial bondsmen to continue to flout the law unless meaningful penalties are enforced. *Therefore, any noncompliance with regulations must entail monetary penalties and multiple instances of noncompliance must lead to license revocation.*
4. Specificity. The Amendments require specificity, both to hold bad actors accountable and to avoid bondsmen who attempt to comply with the Amendments finding themselves in violation of it. *Therefore, the Department should clarify its standards, wherever possible.*

The Coalition makes the following specific recommendations based on the language of the proposed regulations. With these changes, the Department will have the tools it needs under its statutory authority to “crack down on predatory practices in the bail bond industry and protect New Yorkers from unscrupulous activity and ensure that everyone, regardless of economic status, is provided fair and equal treatment under the law.”<sup>5</sup>

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<sup>3</sup> Brooklyn Community Bail Fund, “License & Registration, Please...” June 2017. Accessed at: [https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport\\_ExecSummary.pdf](https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport_ExecSummary.pdf)

<sup>4</sup> New York City Comptroller, “The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC,” January 17, 2018. Accessed at: <https://comptroller.nyc.gov/reports/the-public-cost-of-private-bail-a-proposal-to-ban-bail-bonds-in-nyc/>

<sup>5</sup> Department of Financial Services, “Governor Cuomo Announces Reforms to Improve Standards and Increase Transparency in the Bail Bond Industry,” August 21, 2018. Accessed at: <https://www.dfs.ny.gov/about/press/pr1808211.htm>

### Transparency & Accountability

DFS should regularly collect documentation from bail bond companies and their insurers to show that they are complying with the proposed regulations. Documentation of compliance should be mandatory to renew a bail bond agent license and failure to produce that documentation should result in license suspension, or, for prolonged or repeated violations, revocation and fines.

DFS should publish on its website, in readily searchable format, consumer complaints and the dispositions thereof. This includes complaints that bail bond agents have violated these regulations or any other federal, state, or local law.

DFS should publish on its website, in readily searchable format, the identification, contact information, and other relevant information about the surety(ies) that back each licensed agent.

Insurer supervision of bail agents under § 28.14 suggests liability for the latter's violations, but with no clear standards or penalties. The Department should clarify that violations of any of the regulations by bail bond agents will trigger substantial financial penalties against the insurer backing the bond.

DFS should collect the information that bail bond agents are required to maintain under section 28.16. The submission of this information should be required at least as frequently as bond agents are required to re-register. DFS should monitor the submissions for violations and irregularities so that it can promptly take enforcement action.

### Forms and Disclosure

While the Amendments take positive steps to clarify some consumer rights and eliminate some common abuses, they largely leave in place the fundamental power imbalance faced by bail bond consumers. In announcing these regulations, the Governor and state officials repeatedly acknowledged the immense vulnerability of people interacting with the bail industry as well as the imbalance in the contract transaction—that principals and indemnitors do not in fact negotiate the terms. Yet, the state's approach is primarily based on disclosure of terms, rather than limiting abuses that people have no real ability to reject. Simply disclosing harmful or unlawful contract terms is not sufficient protection against abuse. The state has an opportunity to act far more strongly to protect New Yorkers by clearly restricting bail industry terms, rather than relying simply on disclosing terms to consumers.

To that end, the Department must place clear limits on the kinds of restrictions that bail bond agents can impose on principals' liberty. It is well-settled that the only purpose of bail--any form of bail--in New York is to ensure the return of the accused person to court. Bond agents should not be permitted to impose any liberty restrictions on principals unless they directly impact that principal's ability to appear in court. DFS should clearly forbid any restrictions or conditions on principals or indemnitors that do not reasonably and immediately relate to

preventing the forfeiture of the bond due to non-appearance in court. DFS should forbid requirements that do or may interfere with principals' or indemnitors' ability to work, go to school, or fulfill family or other personal obligations (e.g., DFS should prohibit bond agents from requiring in-person check-ins during business hours for principals who work during the day). DFS should explicitly forbid any requirements that are reasonably likely to cause a principal or his or her loved ones to incur significant personal costs.

DFS should publish on its website the forms that consumers will see when contracting with a bond agent. This should include forms that are or would be approved pursuant to proposed Section 28.13 and forms that have been or would be disapproved. The latter should be accompanied by a clear explanation of their defects and the rules that they violate. DFS should solicit and consider public input on and questions about submitted and sample forms.

DFS should adopt at least the standards for disclosure contained in New York City Admin. Code Section 20-832. DFS should require these disclosures be made in languages that are commonly spoken in the county where the bond agent is located. DFS should ensure that forms are easily understood by the average consumer. The disclosure must always include the Insurance Law limits on premium fees that a bond agent may charge. The disclosure should further list every obligation that the principal and indemnitors will have to meet for the duration of the bond (e.g., regular phone calls, appearance in court when required).

Finally, DFS should ensure that any disclosure requirements do not limit consumers' ability to bring claims where they have been harmed by abusive or unlawful contract terms. Specifically, DFS should add language clarifying that courts should not interpret the required disclosures as limiting consumers' ability to bring claims sounding in deception or unlawfulness, or interpret the approval process as conclusive evidence that the contract terms are lawful. In a regulation designed to ensure that consumers are protected against well-documented abuses, DFS must ensure that--in the event of abuse by a bond company, its surety, or any other actor--the right to sue for and recover damages is protected.

The bottom line is this: due to the inherent power imbalance between bond agents and indemnitors whose loved ones are in jail, vulnerable consumers will face tremendous pressure to agree to terms they may not understand and cannot refuse. For this reason, DFS should go beyond merely requiring disclosure and provide the strongest possible protection to consumers when violations of these Amendments occur.

### Community Engagement and Involvement

The Listening sessions hosted by the Department made clear the Department's commitment to hearing and learning from directly impacted individuals. These conversations were necessary to bring to light the abuses in the industry and the myriad abuses to which vulnerable New Yorkers were subjected. Going forward, the Department must continue to collaborate with consumers and

advocates to ensure that the Amendments address the community's concerns. Therefore, on a periodic basis - no less than yearly - the Department should include community members, advocates and industry actors in an ongoing conversation about the practical effects of the Amendments, including any shortcomings and additional opportunities to improve them. This inclusive process could take the form of additional listening sessions. In any event, the process must be inclusive of - and accessible to - low-income New Yorkers. In this vein, getting community input should not rely solely on the Department's formal complaint process.

### Insurer Supervision

The ultimate beneficiaries of the Industry are the large insurance companies that underwrite the bonds written by bail bond companies here in New York State. These insurance companies underwrote nearly \$16 billion dollars a year in bonds nationally in 2017. Insurance companies must act to ensure compliance with New York State law and regulations and be held accountable when the bail bond companies they work with violate the law and any of the requirements set forth in the Amendments.

Section 28.14 of the Amendments requires that insurers "establish a supervision system that is reasonably designed to achieve compliance" with the Amendments. The Department must set forth in reasonable detail the requirements of such supervision and should include periodic audits by insurers of the bail bond companies with which they work; the requirement that insurers investigate any bad acts that come to light from the audit; the actions insurers will take when any such bad acts are identified. As discussed further below in "Penalties, Remedies, and Restitution", Insurers should also create a restitution fund to make whole any consumers who are owed money and cannot collect from a bail bond company, and the insurers should provide such restitution within 30 days of nonpayment by a bail bond company. Any insurers non-compliance with the Amendments must trigger substantial financial penalties and repeated non-compliance must result in an insurer losing its ability to underwrite bail bonds in New York State.

### Collateral

DFS should clearly define what collateral is "reasonable" under section 28.11(b)(1). We strongly suggest that DFS recommend collateral be no more than 10% of the bond amount for bonds where the security is posted as cash. DFS should require a written explanation in the event bond agents require more than 10% of the bond amount in cash to secure a bond. The Criminal Procedure Law caps collateral at 10% for partially secured bonds. CPL 500.10(18). DFS is aware of the history of bond agents in New York failing to return collateral to indemnitors after cases resolve; this measure would ensure that indemnitors are deprived of no more money than necessary in the event of a (not-infrequent) illegal retention of collateral.

### Premiums or Compensation

DFS has already rightly recognized that the “premium or compensation” capped according to a formula enumerated in N.Y. Ins. Law § 6804 includes all fees and other forms of compensation. The proposed regulations codify this basic consumer protection and require that premiums be reported to the Department. Further, interest, fees, or other charges for the payment of a premium in installments are rightly prohibited.

Importantly, these additional forms of compensation have long been illegal, yet they are standard practice. The most common illegal add-ons we encounter are -- or are represented by bail bond agents to be -- courier fees, apprehension fees, costs attributed to payment plans, in addition to simple premiums that significantly exceed the statutory cap. Yet, complaints with documentation of regulatory or statutory violations that we and others have submitted to the Department have only very rarely resulted in any kind of enforcement action.

We hope this codification is indicative of the agency’s renewed commitment to protect consumers from illegal gouging, both in response to complaints and through proactive investigations.

We also urge the Department to clarify the intended meaning of “special bail conditions imposed by the court” in Section 28.8(a)(1). We do not want to hear of bail bond agents charging courier fees because, for example, court bureaucracy erects logistical hurdles to paying bail. The Department should set forth in reasonable detail the fees related to “special bail conditions” it believes could be imposed by the court.

### Surrender

DFS should restrict to the greatest possible extent the ability of bond agents to surrender principals. It should track this practice closely, and sanction bond agents who surrender principals unreasonably.

DFS proposes an Amendment that requires a bail bond agent to submit in writing the basis for any surrender but does not require a burden or threshold of proof or provide for consequences if it isn’t met. This regulation must have more teeth than that. DFS should clearly and narrowly define the circumstances under which surrender is permitted. DFS should prohibit the surrender of any principal except where the principal has engaged in behavior that creates a real and immediate threat that the bond will be forfeited because of non-appearance in court. DFS should state that a mere failure to check in with the bond agent or answer a bond agent’s call(s) cannot, by itself, create a basis for forfeiture.

DFS should require any bond agent, insurer, or charitable bail organization that wishes to surrender a principal, to provide the principal and indemnitors with actual notice of that intent and give them at least 48 hours to contact the bond agent to discuss the basis for the purported



surrender before the bond agent takes any action to effect the surrender. The bond agent must give the principal an opportunity to rectify the behavior that purportedly provides the basis for the surrender.

As DFS is aware, the Criminal Procedure Law (CPL 530.80) sets no standard for judges sitting in a criminal court to refuse to accept a surrender. DFS should use its regulatory power to fill that vacuum. DFS should require that bond agents who surrender principals submit the reason, in a sworn written affidavit, to DFS within 24 hours. DFS should review those affidavits for sufficiency and immediately suspend the license of any agent who has caused the detention of a principal without good cause, under the definition above, for six months or longer.

DFS should require at the time of license re-application a sworn affidavit listing the number of surrenders a bond agent has made since their last application. Any bond agent surrendering two principals within a year of each other must be investigated by DFS, and any practices tending to cause improper surrenders must be eliminated under penalty of fine or license suspension.

Any bond agent who surrenders two principals without good cause within one year of each other must have his or her license suspended for a year.

Any bond agent who surrenders three or more principals without good cause within one year of each other must have his or her license suspended for at least two years, and if DFS finds any aggravating circumstances, it should revoke the license.

DFS should also fine bond agents for improper surrenders, and those funds should provide for restitution for consumers who have been defrauded by bond agents.

#### Timeliness of Posting an Executed Commercial Bond

The Department should make it explicit that a bail bond agent post a bond within 12 hours following the execution of a contract or the receipt of any premium or collateral. To ensure compliance, the Department should require a bail bondsman to return 25% of both the premium and the collateral for every 24-hour period following the execution of the contract or the receipt of any premium or collateral.

#### Solicitation

Investigations of the bail bond industry conducted by state regulators, investigators and prosecutors in California (leading to indictments), Minnesota (leading to industry-wide consent decrees), New Jersey (leading to the constitutional elimination of most money bail), and others have repeatedly found rampant exploitation and misconduct in the solicitation of detained people and their indemnitors by bail agents.<sup>6</sup> This misconduct ranged from misleading sales practices to

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<sup>6</sup> See for example, Consent Order, In the Matter of Lexington National Insurance Corporation, State of Minnesota Commissioner of Commerce, December 21, 2015. Accessed at:

misuse of data and private information, to paying for in-jail referrals. In Section 28.2, New York's regulations bar advance bail agreements, but do not address solicitation with specificity. The regulations should restrict misuse of information, and explicitly restrict abusive solicitation practices and payments for referrals.

#### Penalties, Remedies, and Restitution

Paramount to us is repairing the harm done to people who have been exploited by bail bond agents. That must include a viable and effective mechanism to obtain monetary restitution. Any fines issued and collected by the Department should be directed to a reserve pool for restitution for past and current victims. Where these regulations have been materially violated, consumers should have viable means to obtain refunds for any expenses incurred plus damages. We also urge DFS to impose fines and license suspensions or revocations on those who violate these regulations to prevent further harm. Lastly, the regulations should stipulate that "nothing in these regulations should be construed to abrogate, prevent, or restrict a person's private right of action."

Sincerely,

*Listed in alphabetical order by organization name*

- Bronx Defenders
- Bronx Freedom Fund
- Brooklyn Community Bail Fund
- Brooklyn Defender Services
- Color of Change
- Community Development Project, Urban Justice Center
- Corrections Accountability Project, Urban Justice Center
- JustLeadershipUSA
- Legal Aid Society
- Mobilization for Justice
- New York County Defender Services
- VOCAL-NY

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California Department of Insurance, "Update: South Bay bail agents targeted in law enforcement sweep," September 9, 2015. Accessed at: <http://www.insurance.ca.gov/0400-news/0100-press-releases/2015/release083-15.cfm>;

"2012-2013 San Bernadino County Grand Jury Final Report." Accessed at: <http://www.insurance.ca.gov/0400-news/0100-press-releases/2015/upload/SBGrandJuryReport-BailSolicitation.pdf>;

State of New Jersey Commission of Investigation, "Inside Out: Questionable and Abusive Practices in New Jersey's Bail Bond Industry," May 2014, accessed at: <https://www.nj.gov/sci/pdf/BailReportSmall.pdf>

## Appendix B

BAIL  
BOND  
ACCOUNTABILITY  
COALITION

### **Bail Bond Accountability Coalition Response to Department of Financial Services Proposed Amended Regulations**

**September 15, 2019**

We, the members of the Bail Bond Accountability Coalition (the “Coalition”), write in response to the Department of Financial Services’ (the “Department” or “DFS”) proposed amendments to the following regulations: Fourth Amendment to 11 NYCRR 28 (Insurance Regulation 42) Professional Bail Agents; Third Amendment to 11 NYCRR 33 (Insurance Regulation 120) Managing General Agents; Third Amendment to 11 NYCRR 66 (Insurance Regulation 76) Surety Bond Forms - Waiver of the Filing and Prior Approval Requirements of Section 2307 of the Insurance Law (collectively, the “Amendments”).

The Coalition is comprised of grassroots organizations and service providers who seek the responsible regulation, reduction and eventual replacement of the commercial bail bonds industry (the “Industry”) through increased utilization of other forms of bail already available and release without conditions. We aim to reduce the pre-trial jail population, eliminate the multi-million dollar transfer of wealth that occurs each year between low-income communities of color and the pockets of private industry and prevent new restrictive monitoring regimes from being developed.

We have previously applauded the Department’s actions to combat this predatory industry through investigation and increased regulation and its commitment “to raise the standards of integrity in the bail business [and] protect vulnerable New Yorkers from abuses in the industry.”<sup>1</sup> The Coalition has seen first-hand the devastating consequences of an industry “riddled with harmful practices and abuses of vulnerable New Yorkers, frequently those from marginalized groups.”<sup>2</sup>

Throughout this rule-making process we have seen efforts by the Industry to further weaken regulations by, for example, continuing to dispute the definition of compensation and suggesting that the Industry must rely on illegally gotten gains; attempting to narrow the number and class of consumers protected by the new regulations; attempting to reduce corporate liability of bad

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<sup>1</sup> Department of Financial Services, “Governor Cuomo Announces Reforms to Improve Standards and Increase Transparency in the Bail Bond Industry,” August 21, 2018, available at <https://www.dfs.ny.gov/about/press/pr1808211.htm>

<sup>2</sup> Ibid.

acts by employees; and attempting to prevent DFS from being alerted to actual illegal acts by bail agents or officers.

The Amendments, as proposed, will create stronger regulations for the Industry and, if married with a robust enforcement regime and further departmental action, could be effective at mitigating the most obvious harms and predatory or deceptive aspects of the Industry. However, we consider these regulations just one tool, of many, that the Department of Financial Services can wield in order to protect consumers from the Industry. The Department will need to engage with impacted people, other advocates and service providers on both a regular and ongoing basis to ensure enforcement, assess the efficacy of changes, and address evolving industry practices. Ultimately, we would like to see a future where the Industry, and the associated harms, do not exist in New York State. The Industry extracts as much as \$27 million every year from predominantly low-income communities of color in New York City alone -- and there is still no thorough accounting of the scope of the Industry statewide.<sup>3</sup>

With respect to the rules-promulgation at hand, there remain a few areas of acute concern for our coalition.

**Contracts:** Within the rule-making process, DFS stated that it will create model contracts and disclosure forms for the Industry to emulate. DFS also acknowledged that the Industry has produced boilerplate contracts that will be considered for the purpose of the model contracts. It is essential that DFS clearly lay out the process and timeline it is undertaking to create model documents and that advocates and impacted people can participate throughout an open and transparent process. We have viewed many contracts brought to us by people harmed by bail industry abuses, the majority of which are exploitative. It is imperative that DFS does not codify abusive practices through its approval of contracts and disclosure forms.

**Registration as a Bail Bond Agent:** Our experience in the field suggests that bail bond offices continue to employ individuals who are engaged in “soliciting, negotiating or effectuating...bail bonds” as described in N.Y. Ins. Law § 6802(a), but nevertheless are not registered as bail agents. In recent testimony to the New York State legislature, Industry representatives suggested that the Industry employs two thousand people in the state -- there are approximately 200 registered bail bondsmen. A recent analysis of New York City’s municipal consumer protections revealed violations of the spirit, if not the letter of this section of the law. For instance, a secretary, who is not a licensed bail bond agent at the office will greet an individual seeking a bail bond and discuss the terms thereof and the contract for the bail bond.

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<sup>3</sup> Office of the New York City Comptroller Scott M. Singer, *The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC* (Jan 2018), available at <https://comptroller.nyc.gov/newsroom/in-new-report-comptroller-stringer-calls-for-commercial-bail-bonds-to-be-banned-in-new-york-city-as-part-of-larger-overhaul-of-bail-system/>

**Protecting consumers from exploitative charges:** We were pleased to see improvements in 28.8 strengthening protections against extra charges. We question the elimination of what was 28.8(b) in the draft rules issued in December 2018, which stated: “No interest, fee, or other financing or service charge shall be permitted for payment of premium by installment unless the bail agent is licensed as a premium finance company pursuant to Banking Law section 555(1).” DFS’s assessment of public comments is silent as to why the section was cut. We support strengthened oversight and limitation on bail bond companies’ ability to bind customers to any increased charges, interest or fees based on their use of payment or installment plans.

**Redress:** DFS comments suggest that consumers who have a dispute over the timely return of collateral must engage with the insurer before bringing a complaint to DFS. This is confusing and likely to be ineffective at holding bail bondsmen accountable or providing redress for consumers who have been harmed. It does not make sense for consumers to be told in disclosure forms to make complaints to DFS, except in so far as those complaints relate to collateral return, in which case they should complain to an insurance company whose name they might not even know. In our experience Insurance companies typically litigate these claims, and bail bond consumers are not necessarily, or typically, well-positioned to proceed through costly litigation in civil court.

The proposed amendments dictate that collateral “shall be reasonable in relation to the amount of bail. Collateral equal to or less than ten percent of the bail amount is presumed to be reasonable.” There are consumers in New York who have signed over property well in excess of what DFS considers reasonable, including homes and vehicles. In such cases where bail agents are currently in possession of collateral exceeding ten percent of the bail amount, DFS should require bail agents and insurers to return to consumers all collateral that violates the new “reasonable” standard.

**Commitment to improvement and accountability beyond the current rulemaking:** Many of our central concerns and suggestions in prior testimonies and comments to DFS were described by the Department as outside the scope of this particular rule-making process. These included, but are not limited to: timeframes for release from custody; records collection; public reporting and accountability, including the adequacy and accessibility of public information; audits; transparency with complaints and substantiated bad acts; questions regarding “build-up funds; funds for redress; the scope of the Industry; limits on surrender; abuse of DBAs to frustrate accountability; enforcement; and on-going communications between DFS and, consumers and advocacy groups. Some of these issues fell into other areas of DFS purview and others implicated other areas of law, such as the Criminal Procedure Law. Many of the concerns we raised are within DFS’s immediate power to put into action. We call upon DFS to work closely

with us to promptly take action on these areas. We seek to begin regular consultations immediately.

Of particular interest:

**Aggressive proactive enforcement:** An analysis of NYC bail bond companies' compliance with city and statewide regulations conducted during August 2019 revealed clear gaps in compliance with existing DFS regulations. There are still instances where licensed insurers are operating under fictitious names; using ambiguous signage to advertise their services; and operating at locations that are not properly registered with the Department; all of which impair accountability. These findings give us cause for concern that bail agents and insurers will comply with the amended and expanded regulations. Given the historic and ongoing failures of compliance with DFS regulations and "unscrupulous activity," which were the explicit impetus for these amendments, it is important that DFS conducts regular and thorough investigations of the Industry and carries out proactive enforcement.

**Public Reporting and Accountability:** In our original comments, we urged that the Amendments ensure transparency in the industry by providing easy public access to information, in a readily searchable format, on complaints received by the Department and dispositions of investigations. This would include any violations of these regulations, or of any federal, state, or local law. Responding to this proposal in its assessment of public comments, the Department stated that summaries of enforcement actions, as well as other information, are already available on its website. In fact, we are now unable to locate these summaries, though we know they were available in the past. Certainly, they are apparently not easily accessible. When we were able to find them, they were buried in PDFs, not a searchable database. Moreover, given the scarcity of enforcement actions against bail bonds agencies to date, and the likely long duration of any investigations going forward, we continue to urge that complaint information be published in an online searchable database, as well. This information would help consumers, advocates, and service providers identify bail bonds agencies with a history of complaints and monitor the Department's enforcement.

Examples of this model of basic transparency can be found on the websites for the New York City Department of Housing Preservation & Development and the New York City Department of Buildings, which publicly report complaints and enforcement actions against apartments and entire buildings, as well as other relevant information. These agencies, which receive and respond to complaints regarding violations of the Warranty of Habitability and building codes, respectively, also make all of this information available to the public through the City's open data portal. It is our understanding that a similar searchable database for complaints and enforcement actions regarding bail bonds would not require new regulations and execution could

begin immediately. In addition, this database need not be limited to bail bonds agencies, but could include all financial services complaints.

Lastly, there are a few technical and typographical revisions that we would respectfully recommend be considered for the final rule:

- In DFS response to comments it refers to 10% as the price of a partially secured bond -- however this is actually the maximum rate of partially secured bond, which may be set lower or require no deposit at all.
- 28.2 (a) -- Typo -- strikes subject from first sentence.
- 28.9 -- Add “promptly” before released.

Cc:

New York State Senator Neil D. Beslin, Chair, Committee on Insurance

New York State Assembly Member Kevin A. Cahill, Chair, Committee on Insurance

New York State Senator Brian Benjamin

New York State Assembly Member Michael Blake

Commissioner Lorelei Salas, New York City Department of Consumer Affairs





**In collaboration with:** Bronx Defenders, Brooklyn Defender Services, Color of Change, Mobilization for Justice, New York County Defender Services, TakeRoot Justice (formerly Urban Justice Center, Community Development Project), VOCAL-NY and Worth Rises