



*State of New Jersey
Commission of Investigation*

INSIDE **OUT**

**Questionable and Abusive Practices
in New Jersey's
Bail-Bond Industry**

May 2014

State of New Jersey
Commission of Investigation



INSIDE
OUT

**Questionable and Abusive Practices
in New Jersey's
Bail-Bond industry**

SCI

**28 West State St.
P.O. Box 045
Trenton, N.J.
08625-0045
609-292-6767**

www.state.nj.us/sci



State of New Jersey

COMMISSION OF INVESTIGATION

28 WEST STATE STREET

PO Box - 045

TRENTON, NEW JERSEY 08625-0045

Telephone (609) 292-6767

Fax (609) 633-7366

Patrick E. Hobbs

Chair

Joseph F. Scancarella

Eric S. Pennington

Commissioners

Philip James Degnan

Executive Director

May 2014

Governor Christopher J. Christie
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M, herewith submits its final report of findings and recommendations stemming from an investigation of bail-bond practices in New Jersey.¹

Respectfully,

Patrick E. Hobbs
Chair

Joseph F. Scancarella
Commissioner

Eric S. Pennington
Commissioner

¹ Chair Patrick Hobbs resigned from the Commission effective May 16, 2014.

TABLE OF CONTENTS

<i>Executive Summary</i>	1
<i>Introduction</i>	7
<i>Jailhouse Bail Runners</i>	11
<i>Discount Bail, System Fails.</i>	35
<i>License to Disobey.</i>	43
<i>Bail Forfeitures: Lax Recovery.</i>	52
<i>Referrals and Recommendations</i>	56
<i>Appendix</i>	A-1

EXECUTIVE SUMMARY

Bail is a central element of the criminal justice system. Enshrined as a constitutional right, it is intended to strike a balance between shielding criminal defendants from excessive pretrial detention while simultaneously holding them accountable to attend required court proceedings. The accused may gain release by posting cash and/or property directly with the court or by paying a percentage of the total bail for a surety bond through a licensed commercial bail-bond agency.¹ Much is at stake in maintaining the integrity of a properly functioning bail process, including public safety, the credibility of law enforcement and judicial institutions and the appropriate administration of justice.

Against that backdrop, the State Commission of Investigation examined the bail-bond system in New Jersey and found it highly prone to subversion by unscrupulous and improper practices that make a mockery of the public trust. Operating in the shadows of poor government oversight, the system is dominated by an amalgam of private entrepreneurs who profit from the process but are subject to weak controls easily manipulated or ignored with little or no consequence.

The Commission found instances in which bail-bond agencies are operated by unlicensed individuals, some with extensive criminal records. These include former agents who forfeited bail licenses or registrations for engaging in illegal or improper activity but returned to the business using various subterfuges. In some cases, these unlicensed agents have been operating

¹ All persons except those charged with a crime punishable by death are entitled to bail. N.J. Ct. R. 3:26-1(a).

in the industry for years, continuing to engage in the same abuses that led to their expulsion in the first place.

The investigation also revealed that bail agents, seeking an edge on their competitors, often make arrangements that have the practical effect of circumventing and undercutting court-imposed bail set by judges. Out of view of the court, some agents routinely cut deals that enable clients to get out of jail for the cash equivalent of as little as 1 percent or less of the total bail – a down payment substantially below the standard bond “premium” of 10 percent. The remaining premium balance is then owed by installment over time with no effective guarantee that it will ever be paid. This means that a criminal defendant held on \$50,000 bail for a serious offense can gain immediate release for as little as a few hundred dollars, far less than the standard premium of \$5,000. Beyond subverting judicial intent – and doing so with no transparency – these arrangements put dangerous offenders back on the street for minimal cash and make it nearly impossible for prosecutors to verify the true source of the bail funds.

Perhaps most disturbing is that bail agencies have come to rely heavily on accused criminals in the form of county jail inmates to drum up business and gain customers – a practice that, strikingly, is not a crime here as in other states. Indeed, the Commission found that in New Jersey it is quite common – and has been for years in some instances – for bail-bond agents to recruit prisoners as freelance subcontractors acting at their behest and to offer cash and other incentives to those who steer new clients to them. These arrangements, sometimes initiated via flyers mailed directly to inmates, are maintained through the jail telephone system with agents openly striking deals with those who agree to serve as “runners” behind bars. This occurs even though it is a regulatory violation for non-licensed individuals to solicit bail and despite the fact

that both parties to such conversations are on notice that their phone traffic may be monitored and recorded by jail authorities. Commission investigators reviewed scores of such recordings obtained from 14 county jails – more than half of all county correctional facilities in the State – and found clear evidence of this practice virtually across the entire sample spectrum.

This investigation, in part, was an outgrowth of the Commission’s examination of the impact on New Jersey’s state prison system of the burgeoning population of inmates linked to organized criminal street gangs.² The findings in that matter included widespread evidence that gang-affiliated and other inmates have found ways to exploit various state prison operating systems, including the prison phone system, in order to communicate and deal with criminal cohorts on the outside. In one such ploy, known as a “three-way call,” an inmate places a call to one individual, who then surreptitiously forwards the call or otherwise connects the inmate to one or more other parties whose phone numbers and identities remain hidden. The county jail system is vulnerable to similar abuse because three-way calls are a key element of the rewards package offered by bail agents to inmates who do their bidding.

Exacerbating these questionable and improper business practices and outright abuses is a diminished and archaic government regulatory apparatus that treats New Jersey’s bail system like a bureaucratic afterthought. Even though bail is an inextricable component of the criminal justice system, regulation of bail-bond agencies, agent licensing and other aspects of the business is housed within the state Department of Banking and Insurance (DOBI). This is so because elements of the insurance industry underwrite the risk and financial exposure assumed by bail agents when they issue bonds, thus accepting responsibility for the full amount of bail if a client

² See SCI report, *Gangland Behind Bars*, May 2009.

absconds. Oversight of bail, however, has long been a lower-tier priority at DOBI, and few resources are devoted to it. Apart from lax oversight, there is little in the way of effective deterrence against unscrupulous activity because the laws and regulations that govern the bail-bond process are weak, and violations carry minimal penalties. Furthermore, the Commission found instances in which fines imposed by DOBI against violators went uncollected.

The Commission also found that New Jersey's counties collectively are failing every year to capture tens of millions of dollars in forfeited bails they are legally entitled and empowered to recover after defendants fail to appear for required judicial proceedings. Despite guidelines issued by the Office of the Attorney General a decade ago to tighten procedures and improve the recovery rate, bail forfeitures typically are negotiated and settled for pennies on the dollar. In 2004 and, again, in 2007, the Office of the State Auditor noted persistent inconsistency in the use and application of these forfeiture guidelines, resulting in significant and widespread recovery-rate disparities among the various counties. Such disparities prevail to this day.

During the course of the investigation, prosecutors, judges and jail personnel expressed mounting frustration with the distorted state of affairs that characterizes New Jersey's current bail system. Indeed, in the absence of meaningful systemic reforms, they have begun to take matters into their own hands. In one instance, the Presiding Judge of the Superior Court in Bergen County put bail agents on formal notice that 1-percent bail-bond installment deals would no longer be tolerated in her courtroom. Another Superior Court Judge stopped permitting the release of defendants from custody until all installment payments on a bond premium were fulfilled. Meanwhile, some county jail personnel, cognizant of the institutional security threat posed by rampant jailhouse bail solicitations, cash payoffs and three-way phone calls by inmates,

have taken the initiative to curtail the practice. Such individual actions are laudable, but they beg the need for wider reforms.

Based on these findings, the Commission recommends a series of statutory and regulatory measures to provide stronger oversight of the bail industry, particularly related to the licensure of bail agents and agencies and the operation of those businesses.

At a minimum, given the longstanding improper activity by unlicensed and unscrupulous individuals as detailed in this report, the Legislature and Governor should consider legislation making it a criminal offense for any individual not licensed as a bail-bond agent to solicit, negotiate and/or write bail. Likewise, any bail-bond agency that uses unlicensed persons to solicit business should face similar criminal prosecution, as well as immediate administrative action to cause license revocation. Legislation should also be enacted making it a crime to facilitate three-way telephone calls for incarcerated inmates, with license revocation mandatory for any bail agent who orchestrates or otherwise knowingly participates in such arrangements.

Furthermore, the terms and conditions of any privately negotiated bail-bond arrangement that enables a criminal defendant to gain release by posting less than 10 percent of the total amount of bail should be made subject to review by the court and disclosure to the appropriate prosecutorial authorities. Also, to the extent that such arrangements allow for payment of premiums in installments over time, the fulfillment of such terms should be made a condition of whether or not the defendant's release is continued.

These and other recommendations cover significant areas in need of reform, but they should not be addressed in isolation to other problematic matters involving bail that already have received considerable attention apart from the issues targeted in this investigation. It is well-

documented, for example, that substantial numbers of criminal defendants – many of them charged with minor drug violations and other nonviolent offenses – remain behind bars at taxpayer expense pending court proceedings because they cannot afford to pay even nominal bail. One study completed in the spring of 2013 found that, while most county jail inmates in New Jersey are awaiting trial rather than serving actual adjudicated sentences, nearly 40 percent have the option to post bail but lack the financial resources to do so.³ At the same time, one serious consequence of the system’s inconsistency and porosity – the ability afforded violent repeat offenders to return to the streets by overcoming high bail requirements through discounted installment plans and other means – has aroused serious public-safety concerns, prompting calls for a constitutional amendment allowing judges to deny bail for any defendant deemed a threat to society.

Thus, through this report, the Commission brings a new body of facts to the broader discussion of what is wrong with the State’s bail system and what should be done to fix it. While it could be argued that, at its foundation, the current system is functional, this is true only in the narrowest sense of that word; that is, generally speaking in New Jersey, most defendants released after posting bail do return for trial and other required court proceedings, if only to avoid forfeiture. But when it comes to the larger issues – issues involving operational integrity, credibility, security, fairness and oversight – that system is plainly open to subversion, abuse and other consequences that will only worsen over time in the absence of proper and appropriate remedial action.

³ See report, *New Jersey Jail Population Analysis – Identifying Opportunities to Safely and Responsibly Reduce the Jail Population*, provided by Luminosity in partnership with the Drug Policy Alliance, March 2013.

INTRODUCTION

Handled properly, the setting and posting of bail is an orderly process that balances the rights of defendants with the requirements of the criminal justice system.

Any person accused of committing a non-capital crime is entitled to bail under New Jersey's Constitution, and state law requires that bail be set within 12 hours of the issuance of a criminal complaint.⁴ Immediate responsibility for setting bail typically rests with a Municipal Court Judge, but bail can also be established by a designated court administrator.⁵ If a defendant is unable to post bail and remains in jail, that defendant may request a bail reduction hearing during which a Superior Court Judge may revise the conditions of release and lower the bail amount.

Although judges generally have wide latitude in determining the magnitude and conditions of bail, court rules require they take into account a number of specific factors, including the nature and gravity of the offense, the defendant's personal and criminal history and any previous record on bail.⁶ A defendant with no criminal record and/or strong community ties may be released on his/her own recognizance with no bail. On the other hand, those accused of certain serious crimes, such as murder, face mandatory bail requirements as do defendants with

⁴ N.J. Const. art. I, para. 11: "All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great."

⁵ Bail for murder, kidnapping, manslaughter, aggravated manslaughter, aggravated sexual assault, sexual assault, an arrest in an extradition hearing or for arrests under N.J.S.A. 2C:29-9(b) for violating a restraining order must be set by a Superior Court Judge. N.J. Ct. R. 3:26-2(a).

⁶ State v. Johnson, 61 N.J. 351, 364-365 (1972). The eight factors considered are the seriousness of the crime, the apparent likelihood of conviction and the extent of punishment permitted; the defendant's prior criminal record, if any, and previous record on bail, if any; the defendant's reputation and mental condition; the length of defendant's residence in the community; the defendant's employment status, employment record and financial condition; the identity of responsible members of the community who would vouch for the defendant's reliability and any other factors that would indicate defendant's mode of life, or ties to the community or bearing on the risk of failure to appear.

two or more pending indictable offenses or two or more prior convictions for first- or second-degree crimes or a prior conviction for murder, aggravated manslaughter, aggravated sexual assault, kidnapping or bail jumping.⁷ If the accused fails to comply with the conditions of the bail, he/she may be re-arrested and the bail revoked. When the defendant appears again before the court, a judge decides whether to reinstate the bail or set a new one. In instances where the defendant flees and becomes a fugitive, any bail payment deposited with the court is forfeited.

Bail may be posted with the court in the form of cash, property or corporate surety bond. Sometimes a combination of payment methods may be used. With the exception of cases that trigger mandatory bail restrictions, defendants in most instances may fulfill their obligation by depositing the cash equivalent of 10 percent of the full bail with the court.⁸ Under this so-called 10 percent “option,” the defendant is released from custody once that amount is paid and a recognizance for the remaining 90 percent is executed. This option is presumed when the judge initially sets bail, unless ordered otherwise.⁹

Defendants who cannot afford or choose not to post money or property directly with the court may obtain a corporate surety bond through a commercial bail-bond agent, who, in exchange for a fee, posts the bond with the court. Bail agents are licensed by the State Department of Banking and Insurance and serve as representatives of insurance companies that provide surety bonds. A surety bond essentially is a contract between the court and the insurance company in which the insurer agrees to cover the full amount of the bail if the defendant fails to appear. Typically, relatives and/or friends of the accused agree to put up

⁷ N.J.S.A. 2A:162-12(a), (c).

⁸ N.J. Ct. R. 3:26-4(g).

⁹ State v. Casavina, 163 N.J. Super. 27, 31 (App. Div. 1978)

money or assets to secure a surety bond. Under these arrangements, the bail-bond agency charges the purchaser a percentage of the total bail – the industry standard, like the court option, traditionally has been 10 percent – in exchange for posting a promissory note for the entire amount with the court. This percentage fee, known as a premium, is paid to the bail agency for the risk that it and the insurance company assume on the defendant’s behalf. However, unlike the cash option deposited directly with the court, which is returned at the conclusion of the legal proceedings if the defendant attends all court appearances, any money paid to a bail agent/agency is not refunded.

In New Jersey, there are approximately 844 licensed agents who specifically have the authority to write bail bonds and 187 licensed businesses which operate under similar authority.¹⁰ These entities range in size from small single-location outlets to a handful of larger multi-branch commercial operations that tend to dominate the bail marketplace in various counties or regions of the State. Beginning about two decades ago, business opportunities surged within the industry with enactment of a statute that effectively eliminated the 10 percent cash option in court for defendants charged with first- and second-degree crimes. Individuals accused of these serious offenses were now required either to pay full cash bail or post a surety bond or a bond secured by real property to cover it.¹¹

This shift was one of a number of circumstances that coincided with the widening proliferation of questionable and unscrupulous practices detailed in this report. In the contest for customers, some bail agencies began to rely heavily on unconventional methods to draw

¹⁰ Insurance producers licensed under the casualty line of insurance also have the authority to write bail bonds but typically do not do so.

¹¹ N.J.S.A. 2A:162-12(b).

business, including using and compensating jail inmates to recruit clients behind bars. Further, in an effort to gain a larger share of prospective customers from among criminal defendants, including those now barred from pursuing the 10 percent cash option through the courts, enterprising bail agents seized the opportunity to undercut the traditional bail premium fee. Rather than being constrained by a fixed percentage that was not required by law, they offered – and even began to advertise – sharp discounts, requiring as little as 1 percent down with custom installment plans but no guarantee that the balance due actually would be paid. Those who have conducted business in this fashion include individuals operating flagrantly without proper licensure.

All of this has unfolded largely out of view and beyond the control of any meaningful or effective oversight mechanism whether through the court system, the regulatory community or law enforcement. The result is a disorderly process driven by private profit rather than public interest and one that is dangerously out of balance when it comes to both the rights of defendants and the requirements of the criminal justice system. While not all bail-bond agents or agencies in New Jersey engage in the practices described in this report, the Commission found that such activity is sufficiently widespread at this point as to constitute an endemic condition across the industry.

JAILHOUSE BAIL RUNNERS

With fierce competition a hallmark of the bail-bond industry, commercial bail agencies employ a variety of marketing strategies to gain an edge. Beyond conventional media and Yellow Pages advertising, they circulate handouts, distribute business cards, maintain websites and use Facebook, Twitter, YouTube and other social media via the internet. For some bail entrepreneurs, however, limiting their promotional repertoire to a handful of legitimate tools and techniques like these is not sufficient in the scramble for new fee-paying customers. Instead, they follow a far more direct path to the targeted clientele, and the money: They recruit and compensate accused criminals who pitch bail on their behalf behind bars, treating New Jersey's county jails like branch offices, exploiting a captive audience of potential patrons and attaching a profit motive to going to jail.

Paying inmates to drum up business is an extension of the longstanding unsavory practice by which some elements of the bail industry augment their ability to solicit customers on the street by hiring touts known as "runners." Typically unlicensed, these individuals hang around outside courthouses, handing out cards and talking up the presumed merits of particular bail-bond agencies. During this inquiry, investigators discovered a busy commerce by such runners, notably outside the Hudson County Central Judicial Processing Court in Jersey City and the City of Paterson Municipal Court. Witnesses told the Commission of circumstances in which heated arguments and sidewalk altercations have broken out between bail runners vying for potential customers.

Running bail on the street is one thing, but bringing actual inmates into the mix – in effect, taking the game inside – has added a sharply disturbing dimension to the practice.¹² Jails, by definition, are dangerous places. Authorities are on constant guard against violence, the intrusion of weapons, drugs and other contraband and a host of related security threats. On the best day, it is a hostile, volatile environment – even absent what essentially constitutes a black-market bazaar of bail referrals, complete with aggressive jockeying for business among inmates retained by competing bail agencies. Furthermore, it is sustained and facilitated by a central component of the various county jails’ communications infrastructure – their pay-telephone systems. Worse still, the business of this bazaar is conducted so flagrantly that the deal-making, including the various perks and benefits offered to inmates who agree to sign up with a particular bail agency, is easily discoverable by anyone who cares to listen.

In some venues, it has been going on for years. For example, in a letter dated June 5, 1996 – more than 17 years ago – the Middlesex County Counsel’s Office called on the then-state Department of Insurance “to investigate what appears to be unlawful inducements, splits of bail commission and coercive acts within the Middlesex County Correctional facility.”¹³ Citing information from inmates who said they were being solicited by agents of a company called Lucky 7 Bail Bonds to make bail referrals, County Counsel Bruce J. Kaplan warned the State that, left unchecked, the situation could trigger “an immediate danger to all involved in the correctional facility.” The letter further stated that “it has come to our attention that gangs within the

¹² County jails throughout the state provide non-promotional information on bail agencies to new inmates in a variety of ways. Some post a list of bail bond agencies with telephone numbers at a location within the facility visible to inmates. Others provide such information on request.

¹³ At the time, the Department of Insurance was in the process of merging with the Department of Banking to form DOBI.

community are being recruited for the purpose of [bail] referral As you can imagine, if one gang gets involved, and another comes in to compete, a gang war could ensue causing harm in the community.”¹⁴

Kaplan’s letter also alleged that Lucky 7 was providing bail under unusual circumstances to individuals with a high risk of flight and consequent default, and that “this type of activity . . . has started to spread to Union and Monmouth County (sic). This may mushroom into a Central Jersey issue or possibly a statewide problem for all involved with the judicial system.” The letter urged the then-Department of Insurance to suspend or revoke Lucky 7’s license “immediately... until it investigates further this potentially explosive situation.” The department’s subsequent investigative process took seven years to complete and ultimately, in 2003, resulted in fines and license revocation for Lucky 7’s owner, John Ostrander.¹⁵

Notwithstanding DOBI’s response to this complaint, the Commission found dozens of instances in recent years through 2013 in which multiple bail-bond agencies – including another entity operated by the yet-unlicensed Ostrander – have continued to recruit and use inmates at the Middlesex County Jail as a conduit for referrals.

But Middlesex is not alone. Indeed, in some respects, the County Counsel’s 1996 letter warning of potential statewide ramifications proved prophetic. During this inquiry, the Commission found that the practice of recruiting and compensating jail inmates for the purpose of bail referrals has become prevalent in county jails across New Jersey. Investigators were able to reach this conclusion based, in part, upon information provided by confidential informants and

¹⁴ Kaplan went on to serve two terms as Middlesex County Prosecutor until January 2013.

¹⁵ For a more detailed account of Ostrander’s problematic history in New Jersey’s bail-bond industry, see p. 44 of this report.

jail personnel, but more importantly, by listening to a broad sample of hundreds of recorded calls placed by inmates from pay telephones within each of 14 of the State's county correctional facilities.¹⁶ Of more than 800 inmate calls scrutinized by the Commission overall during the period 2009-2014, nearly two-thirds involved substantive discussion with representatives of bail-bond agencies of matters involving bail solicitations and referrals emanating from within the jail.

Here is how it works: Bail agencies that engage in this practice covertly establish a link with someone inside, preferably an inmate who can reach a large number of prospective clients on a regular basis. In particular, anyone who serves in the capacity of "inmate-trusty" – an inmate selected and vetted by correction officers to assist in the kitchen, library or other menial aspects of the facility's operations – is a favored point of contact because an individual in that position has wide access to the general jail population, especially those freshly arrived at the intake unit with limited options for immediate release. Referrals then are arranged via collect calls placed by the trusty/runner or by the newly recruited inmate/client to the bail agency representative.

The telephone system used by county jails automatically records most calls placed by inmates. To listen to the tapes of these conversations is to tune in to the workings of an underworld. Inmates and their bail agency contacts can be heard discussing instructions on how and when to approach prospective bail clients. Multiple phone numbers are provided for easy access. Methods of payment are discussed under terms of *quid pro quos* typically dictated by the bail agents. In exchange for providing business, inmates might be offered any of a variety of inducements, including cash. In some instances, the amount paid is based upon a formulation

¹⁶ The Commission analyzed inmate telephone calls from jails in Middlesex, Hudson, Monmouth, Camden, Mercer, Morris, Atlantic, Burlington, Cumberland, Union, Bergen, Somerset, Essex and Cape May counties.

equal to 1 percent of a new customer's total bail package. Thus, if the bail is \$25,000, the share paid to the referring inmate would be \$250. Aside from money, cooperating inmates sometimes are offered special discounts through the agency on their own bail-bond arrangements. In other instances, the bail agency representative may offer the services of an attorney. One of the most popular gratuities is a three-way collect call orchestrated by the agent at his expense. This puts the inmate in direct contact with anyone of his choosing without exposing the third party's phone number or identity to jail authorities. In effect, it enables inmates to avoid dialing a new call through the jail's telephone system. This not only deprives the counties of pay-phone revenue but it can pose a serious impediment to criminal investigations because it serves to shield the identity of the third party, according to jail officials and other law enforcement authorities.

Occasionally, inmates and bail representatives can be heard arranging to cloak certain matters in a rudimentary form of code – for example, using terms like “credit” or “minutes” when talking about money or other compensation. Sometimes, they disguise their names by using initials or other expedients. For the most part, though, the deals are cut with minimal discretion, as evidenced by the fact that despite the periodic interruption of calls over the jail phone system by a message stating, “This call may be recorded or monitored,” the conversations generally proceed without missing a beat.

Although it is a violation of state Department of Banking and Insurance regulations for any unlicensed individual, such as a jail inmate, to solicit bail, or be retained to solicit bail, this practice is not a criminal violation in New Jersey. By contrast, at least nine other states have adopted statutes making it a crime to pitch bail without a license and/or to engage in bail

solicitation on jail grounds and/or to use inmates in that endeavor.¹⁷ Meanwhile, at the local level here, attempts by the counties themselves to control and regulate such activity pursuant to the operational integrity of their own jails have been weak, inconsistent and largely ineffectual. Only one of New Jersey's 21 counties – Monmouth – has established a written policy explicitly prohibiting bail solicitation by incarcerated inmates. Similarly, just six counties have set forth written rules prohibiting or otherwise addressing unauthorized access by inmates to three-way calls. Other counties rely on their telephone service provider to detect and terminate such calls, a method the Commission found is not always successful. Despite such policies, procedures and rules, the Commission found that, as presently constituted, they do not present a serious or meaningful impediment to the recruitment and use of jail-based bail runners.

The following transcribed and edited excerpts of recorded telephone conversations between county jail inmates and bail agency representatives around New Jersey are emblematic of these findings:

“When you get out, wouldn't it be nice to have a nice \$5,000 piece of change?”

On the afternoon of March 25, 2013, an inmate at the Morris County Jail placed a collect call to a representative of AAA Bailmaster Bail Bonds, an agency based in Mt. Arlington. Accepting the charges was Wilbur Figueroa, a AAA employee who identified himself as “Anthony” Figueroa. Possessing an extensive criminal record and a former resident of the Morris County Jail himself – indeed, he spent part of his time there as an inmate-trusty and worked as a runner for AAA – the unlicensed Figueroa (**A.F.**) went into considerable detail describing to the receptive

¹⁷ Criminal statutes outlawing these practices have been adopted in California, Connecticut, Florida, Maryland, Ohio, Oklahoma, North Carolina, South Dakota and Texas.

inmate how to go about referring new clients to the agency and how much money he could make doing so on a regular basis:

A.F. *My name is Anthony Figueroa, I don't know if you were there when I was there.*

Inmate *Yeah, I know you. . . . You're a runner. I remember you.*

A.F. *Sorry, man, I can't picture your face, bro.*

Inmate *Yeah, I remember you, man . . .*

. . . .

A.F. *Well I'll tell you what . . . you have my cell phone number now. You know what, when I was a trusty there, bro . . . they extradited me to Vermont. In Vermont they gave me a bail of \$200,000, lowered it to \$100,000. But you know what, with what I was doing there . . . let me just put it to you this way: I forked out \$10,000 cash to bail out.*

Inmate *Damn . . . That's what's up.*

A.F. *Yeah.*

Inmate *If anyone comes in wanting a bail man I'll just f---ing hop on the phone and call you.*

A.F. *Well, you know what, that's what I'm telling you, bro. You know what, we have to be very discreet, if you know what I'm saying, you know what I mean?*

Inmate *I got you, one hundred percent.*

A.F. *When we talk . . . (begins speaking in Spanish).*

Inmate *No.*

A.F. *You don't speak Spanish? . . . Well, . . . check this out. How long are you supposed to be in there for?*

Inmate *Pending grand jury right now.*

A.F. *All right, well, listen, while you're in there you may as well . . . You saw how I was always in a . . . good mood, right?*

Inmate *Hell yeah . . .*

A.F. *And you know why? 'Cause I was banking . . . you know what I mean?*

Inmate *Absolutely, I hear you.*

A.F. *Big time. Let me just put it to you this way. I walked out of there with \$32,000 and change on me.*

Inmate *That's serious. Serious, serious, serious.*

A.F. *Yeah, man. I'm not even f---ing playing, bro. Take my cell. . . . When a new inmate comes in, you know what, this is the way I did it. . . . "Hey how you doing . . . my name is Ant. I'm the trusty over here, you know, if you have any questions . . . you have any problems, just ask me." And the COs [correction officers] like that . . . I keep basically all the new guys that come in 'cause it means less yelling for them, you know? Basically . . . you get them talking and so how much is your bail? You know, you could get out of here with such and such, before you call anyone else, you know, call me. Let's say, for example, somebody has a \$50,000 bail . . . they need \$5,000 to get out. Out of that \$5,000 . . .*

**Interrupted by the following announcement audible to both parties:
"This call may be recorded or monitored."**

A.F. *When we talk, when we talk about money, we're going to talk in minutes, okay?*

Inmate *Okay.*

A.F. *So out of that you make 500 "minutes" (\$500).*

Inmate *That's what's up.*

A.F. *You know what I'm saying?*

Inmate *Yeah.*

A.F. *Once the person gets out, and I'll know it was from you because basically anytime anybody calls me on my cell phone from Morris I know it was you already. You know what I'm saying?*

Inmate *Yeah.*

A.F. *So when they call me on my cell phone . . . I'll go to bat for them and I'll call 24/7 for them, and I'll make sure, you know, try my best. They can call collect on my phone, no problem. . . . But I'm going to go ahead and write a list in my book, and then, you know, basically if you need a three-way [call] or whatever, you know, I'll hook that up for you. And then, you know, your minutes will be acquiring. (sic) So at least, bro . . . when you get out, wouldn't it be nice to have a nice \$5,000 piece of change or something, you know?*

Inmate *That would be beautiful. Beautiful.*

Five days later, the two spoke again, and Figueroa sweetened his offer:

A.F. *Let me ask you a question.*

Inmate *What?*

A.F. *Give me a couple of bails; I got an attorney that will take care of you.*

Inmate *Really?*

. . . .

"I want you to find me a bail inside that jail!"

Several weeks later, in April 2013, Kevin Walsh, the licensed owner of AAA Bailmaster Bail Bonds, fielded a collect call from a Morris County Jail inmate who asked for help contacting his family to raise money for bail. Walsh (**K.W.**) suggested he could arrange a three-way call but only on the condition that the inmate go to work for him referring prospective clients:

K.W. *Bail Bonds.*

Inmate *Hi, sir, we got disconnected. It's Kevin?*

K.W. *Yep.*

Inmate *Yeah, I'm sorry about that, sir, I don't know what happened. I am working, too. I'm working part time. . . . I can definitely get you the money. Not a problem, sir. . . . I just can't get in touch with my family. I don't know what to do.*

. . .

K.W. *All right. Now here's the issue with this, okay? If I'm gonna help you, you're gonna help me.*

Inmate *Okay, all right. No problem, sir, you got it.*

K.W. *This is how it's gonna go. . . . [Y]ou need somebody to come there with two hundred fifty bucks and get you out of there, okay?*

Inmate *Okay.*

K.W. *Now, if you want me to be making phone calls for you and spending time . . . then what's in it for me? Nothing. Zero. Okay? Now if you get me a bail in there then I'll put you on three-way with your people. . . . [T]hat's the deal. 'Cause what am I getting out of this?*

Inmate *What I thought is . . .*

K.W. *I'm making phone calls, you know what I mean, you understand what I'm saying?*

Inmate *I do understand what you're saying.*

K.W. *I'm making phone calls going out of my way to help you here, but if I'm getting nothing out of it, then why do it?*

Inmate *All right, so then what do you want out of it, sir . . . ? Whatever you want.*

K.W. *I want you to find me a bail inside that jail! Get me a bail, and, once I get the bail then I'll – you do it in the next five minutes and someone's ready to go for a bail. . . I'll put you on three-way with your people and then you can bail out.*

Inmate *Wait a minute, I'm lost. What do you mean 'get a bail . . .?' That's what I don't understand, sir.*

K.W. *Yeah, find me somebody in that jail that needs to be bailed out.*

Inmate *Oh, you want somebody else to get bailed out.*

K.W. *Yeah. How am I supposed to get paid? . . . Am I going to do this all for nothing? Just to help people? . . . If you're helping me, I'm helping you. . . .*

Inmate *You need someone to get bailed out, that's what you're asking? Okay, hold on one minute, okay?*

K.W. *Go ahead.*

"This call may be recorded or monitored."

Inmate *No, I can't find nobody, sir.*

K.W. *All right, well, you will. You go in there and find somebody, and you get them on the phone with me, and then I'll take care of that bail and put you on three-way with your family.*

AAA Bailmaster's various jailhouse bail solicitations came to the attention of Morris County officials last year when they received a subpoena from the SCI for records, a circumstance

that prompted an investigator in the jail's Internal Affairs Unit to listen to recordings of phone calls between Walsh and various inmates. Although the Sheriff's Department, which administers the jail, determined that the solicitations presented a security threat, subsequent attempts to curtail the practice became entangled in bureaucratic confusion. In a June 17, 2013 letter to Walsh, the County Counsel's Office described the inmate solicitations as being "in contravention to the established procedures" of the jail and instructed Walsh to "be guided accordingly." It was subsequently discovered, however, that the county has no procedure, rule, regulation or policy governing the solicitation of inmates by bail agencies. In light of that gap, the Internal Affairs Unit investigator told the Commission that the county reached out to the state Department of Banking and Insurance for guidance on how to proceed in the matter but that calls to DOBI were not returned.

. . .

"You tell me how you want it, and that's how you got it."

Last October, a Middlesex County Jail inmate who apparently was shopping around his bail-running skills placed a call to Speedy Bail Bonds, based in Woodbridge. During the conversation, the inmate quizzed a Speedy bail agent about whether the agency would "work with" potential customers inside the jail to offer discounts reducing the 10 percent premium down-payment typically required of those seeking bail. On the matter of compensation for referrals, the inmate asked for a raise from "five" (\$500) to "six" (\$600) and for different payment arrangements from the terms he was currently working under with a Speedy competitor. In response, the bail agent cautioned him to choose his words carefully:

Inmate . . . I'm getting paid by the week right now. But, you know, this guy – sometimes, you know, he pays me on time, sometimes I got to wait a few days. So that's why I'm calling. . . You know Georgie G . . . ?

Agent Yeah. Yeah, yeah, yeah.

Inmate He told me to call you guys. I don't know how you want to do this . . . I'm going to be here for a year, bro. I'm fighting right now.

Agent You tell me.

Inmate . . . You guys do like bro . . . What percentage? . . . Ten?

Agent What?

Inmate I'm talking about the bail-bonds . . .

Agent Yeah. . . We charge . . .

Inmate Ten percent? Right? You guys work with the people?

Agent Yeah, I would take as low as 3 percent down.

Inmate Yeah? And what do you want to do? You want to do it weekly? You want to do it . . . I don't know. You tell me man.

Agent Weekly, whatever you want, buddy. You just tell me how you want it. That's it.

Inmate Because this . . .

Agent You tell me how you want it, and that's how you got it.

. . .

Inmate . . . Friday, like, pay me every . . . Friday. Don't make me, you know . . . What do you want to give me every week? Tell me, man . . .

Agent . . . [L]isten – numbers. I can't talk over the phone like that, you know what mean?

Inmate Yeah.

Agent You gotta understand that . . . What do you want?

Inmate Man, let's do this, bro. Why don't you talk to Frank . . . and whoever they tell me and say, look, this is what we got for you . . . [W]hat do you think?

Agent Yeah, but you're not making anything easier, bro. I told you we can't say . . .

Inmate Yeah, well, right now I'm getting every week, you know? But, like I told you, man, sometimes . . . he tell me to wait another week. I mean, I do get paid for both weeks but, you know, I want my money . . . every week, you feel me?

Agent Yeah.

Inmate What do you want me to do? You want me to call you back?

Agent So basically you want five a week?

Inmate No, no. That's what I'm getting right now. I was . . . I don't know. I was going to ask you for six, man.

Agent All right, I'll talk to the guys and see what they tell me. Call me tomorrow.

. . .

“I can help you, you can help me.”

A month later, on November 14, 2013, another inmate – who identified himself only as “Q” – introduced himself over the phone to a Speedy bail agent named Jay and offered his services as a runner. Again, it is noteworthy that this agent cautioned the inmate against being too open – “talking reckless” – about the business they are transacting, reminding him that the call is recorded by jail authorities:

Q . . . *I’m actually a trusty in the unit – in N unit in the reception. I wanted to know . . . if we can, you know, I’ve been seeing other guys do things with bails. I heard you guys were pretty good, you know? I don’t like to talk too much over the phone, but if you catch my drift. I’m real smart, you know what I’m saying? You know, maybe I can help you, you can help me.*

Later that same day, in another call, their conversation resumed:

Q *Am I speaking to Jay?*

Agent *This is Jay. What’s up?*

Q *Hey, Jay, man, I was speaking to you earlier, you just hung up on me.*

Agent *You was talking reckless, brother.*

Q *I was talking reckless?*

Agent *Of course. You know, this . . . is being recorded, and you’re . . . here talking about all this stuff like you’re on the streets.*

Q *All right, well, I apologize. . . .*

Agent . . . *All you gotta do is to say I’m going to, you know . . . and we already know.*

Q *All right. Look, Jay, I wanna, you know, do what I do.*

Agent . . . *Do what you got to do, brother. Say no more . . . you know what I’m saying?*

Q *All right, so just remember my name, and then we’ll take it from there.*

Six days later, Q was back in touch and ready to “bring some business”:

Q *Hey bro, this Jay?*

Agent *Yeah, who’s this?*

Q *This is Q, man. Remember, we were talking previously, man. The trusty in N unit.*

Agent *Okay, yeah, what’s up?*

Q *All right, man, you got a pen and paper, man? I’m ready for you, man. I told you I was gonna bring ‘em, bring you some business.*

Q then is heard providing the agent with information on four inmates as possible referrals.

These calls and others like them within recent months involving representatives of Speedy Bail Bonds are notable because the company had already been caught and penalized – more than four years earlier – for recruiting and compensating Middlesex Jail inmates for bail referrals. County authorities at the time banned the company from underwriting bail for anyone at the facility pending an internal investigation. Within days, however, despite clear evidence of widespread jail bail-running at Speedy’s behest, the company was reinstated after threatening legal action to reverse the ban. The circumstances that allowed the company to resume business as usual reflect blatant weaknesses in official control and oversight of the system. This is particularly troubling given Middlesex County’s experience with this activity going back at least to 1996 and the fact that the jail has banned solicitation “for any purpose.”

Speedy’s activities were first discovered by Middlesex authorities early in 2009 when an attorney complained that one of his clients had been approached and threatened inside the jail by an inmate-trusty. According to the complaint, the trusty told the inmate that if he did not use the company’s bail services, the charges against him – child endangerment and aggravated sexual assault – would be revealed to other inmates and he would suffer bodily harm. The investigating officer, Sgt. Paul De Amicis, now-head of Internal Affairs Special Investigations for the county’s Department of Adult Corrections, listened to tapes of phone calls placed by the trusty and quickly found a pattern of bail referrals to Speedy in exchange for compensation, including three-way calls prohibited by jail policy. Testifying before the Commission during the present investigation, De Amicis described the trusty’s calls to Speedy agents:

. . . [H]e would . . . tell them, ‘I got six for you’ or whatever, and he would read off the inmates’ names, their MC number, which is their identifying number in our facility, and what their bail [amount] was, and then he would proceed to give them

contact numbers for the inmates' family members or friends that were going to sign for the bail or put the money up for bail.

De Amicis also listened to a sampling of calls by other inmates at the time of the attorney's complaint and found that they were acting internally as runners for Speedy as well.

Summoned to a meeting with jail officials in late February 2009, Speedy's owner, Jose Taveras, and two of his agents acknowledged a relationship with the trusty and admitted granting him three-way calls in exchange for referrals. They agreed to stop providing those calls, and Taveras offered to reimburse the county for revenue lost to it through circumvention of the jail's pay-telephone system. But according to a memo authored by De Amicis at the time, the Speedy representatives were non-responsive when asked about telephonic evidence suggesting the company was offering other forms of compensation as well, especially given the fact that some inmates could be heard on the tapes demanding "credit" for referrals. The agency officials were told the matter would be referred to the Middlesex County Prosecutor's Office and that, pending completion of the jail's investigation, Speedy would not be permitted to handle any new bails at the facility.

During a second meeting a week later, however, attorneys for Speedy stated they were prepared to take legal action against the county if it continued to bar the agency from doing business at the jail. On subsequent advice from the County Counsel's Office, the ban was lifted.

According to De Amicis's sworn testimony before the Commission, the county Prosecutor's Office determined the matter was beyond its jurisdiction and advised him to contact DOBI instead. De Amicis testified that he called a DOBI investigator and was told to forward the information. He memorialized this contact in a letter dated March 26, 2009, stating, "We have found, through our research, activities that we feel are improper, and it is our understanding that

your department is responsible for governing the manner in which bondsmen conduct business. Your anticipated assistance in this matter is greatly appreciated.” Over the course of three pages, he provided a detailed account of the jail’s investigation and its findings. He also enclosed copies of recorded inmate phone conversations with Speedy personnel. De Amicis told the Commission in sworn testimony he never received a response from DOBI. Documentary material obtained from DOBI yielded no record of the department ever having received this letter.

In a follow-up memo nearly two months later on May 13, 2009, De Amicis told then-Warden Edmond C. Cicchi that “the investigation into the dealings of Speedy Bail Bonds in this facility has revealed that the bond company has resumed activities that they were specifically told were prohibited. There are several recorded phone calls placed to their office per day where three-way calls are permitted. Some of the calls contain as many as four three-way call attempts during one call. [On] other calls agents are heard telling inmates to eliminate any competing bondsmen’s advertising drawn up by inmates in the unit.” De Amicis also told the Warden that in “listening to the calls it is evident that tension is created between inmates who are working for Speedy and inmates who are choosing to use other bondsmen.”

Ironically, an attorney for Speedy confirmed in writing that the three-way call is a primary tool used in the competition for bail business in the Middlesex Jail. In a letter to the County Counsel dated August 3, 2009, this attorney stated, “My client has received information that other bonding company’s (sic) still conduct these calls. As a result, my client has suffered considerable financial loss.” The attorney further wrote:

As agreed, my client will continue not to conduct 3-way telephone calls with inmates, but would appreciate if the Warden would prohibit them for all other bondsmen (sic) as well. As agreed, perhaps notices or other warnings could be

disseminated to other bonding companies. If 3-way calls are now permitted, kindly advice (sic) so my client may resume this practice.

Several weeks later, the following official notice from then-Deputy Warden Frank Masone was posted in the jail:

IT HAS COME TO OUR ATTENTION THAT BAIL BONDING COMPANIES HAVE BEEN GIVING INMATES 3 WAY TELEPHONE CALLS. THESE CALLS ARE PROHIBITED AND A SECURITY BREACH.

THIS PRACTICE MUST CEASE IMMEDIATELY.

Notwithstanding that notice, De Amicis – who told the Commission he has witnessed fights between inmates running bail for competing agencies – testified that currently, based upon what he has seen and heard around the jail, most, if not all, bail agencies doing business at the facility are involved in recruiting inmates to solicit clients in exchange for three-way calls. In an effort to counter this activity, De Amicis stated he has taken it upon himself to transfer inmate-trustees out of the jail’s intake unit on a regular basis. However, he has found that some of these inmates will commit minor infractions that cause them to be transferred back to intake for reclassification – and resumption of bail solicitations.

. . .

“I look you out with free calls, and you look me out with the new guys that are getting locked up.”

Aaron Bail Bonds is the largest commercial bail-bond agency in New Jersey, with approximately 114 employees – of which only a handful are licensed – and locations in Jersey City, Paterson, Freehold, Mays Landing, Perth Amboy, Newark, Fairfield, Hackensack and Toms

River. The agency also takes a decidedly high-tech approach in its dealings with inmate bail runners. In an initial call to Aaron, an inmate typically is offered one free three-way call to discuss bail with a friend or family member. The inmate is warned that this “courtesy call” must be about bail or it will be disconnected. An agent then explains that, going forward, the inmate must refer a client to receive a three-way. When an inmate does refer a customer, the referral is noted in the agency’s computer system to keep a running tally of how many free calls are owed. With every subsequent contact, the inmate simply provides his name and date of birth, which enables the responding agent to instantly retrieve information about that inmate’s referral and three-way-call history.

In the following phone conversation on October 5, 2013 with an experienced inmate-runner at the Essex County Jail, an Aaron agent sought to make sure his contact was doing everything possible to recruit new business, including signing up clients on weekends. The agent also offered an incentive – a two-for-one deal on three-way calls – if the inmate could connect him with a jail trusty:

Inmate . . . [Y]ou see how many I done referred already.

Agent Oh yeah, I know you do your thing.

Inmate . . . The thing is, over here, that this pod just opened where we at . . . we’re waiting for new people to come in.

Agent And is there activity on Saturdays or no?

Inmate At who?

Agent Are – Is there activity on Saturdays? Do they bring new people in on Saturday?

Inmate Oh.

Agent Do they bring new people in on Saturday?

Inmate Yes, everyday. Saturday, Sunday, every day of the week.

Agent . . . I’ll tell you what . . . if you can also refer me a trusty, which is the guys that work in the kitchen or the law library.

Inmate Uh huh.

Agent If you’re able to refer me those guys, I will give you two free calls for each one of them

Inmate puts agent on hold. Call then resumes with trusty on the line (Inmate2).

Inmate2 *Hello?*

Agent *How you doing, sir?*

Inmate2 *All right.*

Agent *All right, thank you for your time, man. The only thing why I asked [the other inmate] to bring . . . a trusty to the phone was for the following: Um, I'm going to give him two free calls so he can speak with his family or what not. And the only thing I'm going to ask you is just for your name, nothing more. And I'm gonna also give you two free calls . . . at no charge or none of that.*

Interrupted by a warning that the call will be disconnected in five minutes.

The only thing in return I'm going to ask from you is if you see the new guys coming in so you can just refer them to me, to Aaron Bail Bonds. In other words, I look you out with free calls, and you look me out with the new guys that are getting locked up. Would you be willing to do that?

Inmate2 *Yeah, sure.*

. . . .

“You can beg, cry, scream, kick – I don’t care. You have to refer a client to get a call.”

Less than two weeks later, on October 16, 2013, an Essex County jail inmate pleaded with an Aaron bail agent to place a three-way call for her based upon a variety of things she had done to boost the agency’s profile, including removing the contact phone numbers of competing bail-bond agencies from an official posting inside the jail. In response, the Aaron representative bluntly set forth a fundamental agency rule that three-way calls are arranged solely in exchange for client referrals:

Agent *Do you have any referrals for me? Are you referring a client or . . . ?*

Inmate *No, actually I was checking to see if you could place, make a quick phone call for me actually.*

Agent *. . . Not without a client.*

Inmate *What?*

Agent *You know, we need clients. You want a three-way? We need clients.*

Inmate *I wrote all your numbers up here for you and everything like that.*

Agent Nah, you need to refer clients to get three-ways.

Inmate Yeah, I can't even come out. I have like an hour out, that's it.

Agent . . . Nope, not without a client. We don't make three-way calls . . . for any inmate without a client. You have to refer a client.

Inmate . . . try to get you clients. Can you do, like, a two-second call really quick for me, please? I wrote your number like all over the phone and everything, for real. Please?

Agent Writing the phone numbers really doesn't matter. You need to put somebody on the phone who is not in our system who needs help with their bail.

Inmate Yeah, but I did it for you, and I took off the other bail bondman numbers. Please. You could do that for me for two seconds?

Agent . . . I just told you. You have to refer a client to get a call. That's it. You can beg, cry, scream, kick – I don't care. You have to refer a client to get a call.

. . .

“Every person you refer to us we'll mark in the computer in your file . . .”

In a phone conversation last October with an inmate at the Cumberland County Jail, an Aaron agent briefly explained how the agency maintains a record of referral activity by its runners and a tally of what they are owed as payment in the form of complimentary three-way calls. She also reminded the inmate that keeping the referrals flowing is vital because placement of three-ways costs the agency money:

Agent . . . [D]o you have our four phone numbers?

Inmate Yeah, I got 'em.

Agent All right. Make sure that you try to refer new people to us, okay? 'Cause every person that you refer to us we'll mark in the computer in your file to give you a free phone call.

Inmate All right, I got . . .

Agent So that you can, you know, so that you can at least . . .

Inmate Explain better . . .

Agent . . . Yeah, exactly, exactly . . . It sounds better coming from you. It's just that we can't make phone calls for . . . everyone who's locked up constantly 'cause it costs us money.

Inmate I feel you.

Agent So at least if you refer people to us it's like . . .

Inmate A possible bail out.

Agent *Exactly, exactly.*

Inmate *. . . I get you.*

Agent *Yeah, you know.*

Inmate *Yeah.*

Agent *So just really try to refer people. 'Cause like I said, we'll get you those phone calls that help and get you out.*

. . . .

"If I get paid, we all get paid."

On October 26, 2013, an inmate at the Monmouth County Jail offered to refer potential bail customers to Aw-Rite 24 Seven Bail Bonds, an agency located in Perth Amboy. In response, the agency representative urged the inmate to continue the referral arrangement despite his pending transfer to the Ocean County Jail. He also told the inmate to make sure the individuals he referred mentioned his (the inmate's) name so he could be properly paid:

Agent *. . . If you could do me a favor, man, put my name around, tell people, you know, call up this guy . . . he's all right.*

Inmate *I'm waiting for two other people to come in. They're going to need bails, too. So I'm gonna forward you that, too. So I got you.*

Agent *All right. Even when you go to Ocean. Help a brother out, you know? I'll look you out. If I get paid, we all get paid.*

. . . .

Agent *Do me a favor: Refer me some people. Just tell them, hey . . . Jarrell told me to call to make sure they tell me that so I can, you know, credit you. . . .*

Inmate *All right, well, thank you, man. I appreciate it.*

Aside from illustrating recent bail-running activity inside the Monmouth County Jail, this call is significant because a principal of Aw-Rite 24 Seven Bail Bonds, Benny Machado, was fined \$5,000 three years ago after county and state investigators found that another of his agencies, 24 Seven Bail Bonds, had earlier engaged in the same improper jail solicitation. Indeed, the findings in that matter prompted the Monmouth County Sheriff's Office in 2010 to adopt new

rules and procedures expressly prohibiting the employment of jail inmates to solicit business. Notwithstanding the fine and the change in policy, the Commission found during its inquiry that not only have bail entities owned and/or operated by Machado continued to flout the rules but also that at least four of his competitors have followed suit.

Machado's efforts to recruit runners and clients inside the jail first came to the attention of Monmouth authorities in 2009 and, again, in the spring of 2010 when an officer assigned to the mailroom took note of multiple envelopes bearing identical return addresses, all postmarked with the same date but addressed to different inmates. Each contained a flyer from 24 Seven Bail Bonds soliciting business and providing a contact phone number. Confiscated and turned over to the Investigations Unit, these materials triggered an inquiry by staff Investigator Selma Morris, who soon discovered additional evidence of jail solicitation. In one instance, a female inmate – a known member of the Five Percenters, an organization linked to gang-related criminal activity – was found to be recruiting inmates for the 24 Seven agency by sending them letters within the jail. In one such letter, an inmate was told:

The flyer that you got is going to help you make money. Call the number collect and let them know you got the flyer from me. Also let them know your (sic) trying to make some money. If your account is messed up, you can have them put money in somebody else (sic) account, you trust. Or they'll hold the money 'til you get out. Or either you can work for them to bail yourself out. It's basically up to you on how you wanna do it.

Inv. Morris brought the matter of the jailhouse solicitations to the attention of the Department of Banking and Insurance, and, together with a DOBI investigator, reviewed recordings of the

female inmate's phone calls.¹⁸ The review showed that she attempted to call the 24 Seven agency 96 times over a seven-week period and that some of the discussion involved bail referrals and payment arrangements for such referrals.

Based upon the findings of that investigation, DOBI on November 14, 2011 ordered Machado to pay a \$5,000 fine for having “engaged an inmate, who was not licensed as an insurance producer, to solicit bail bonds while incarcerated in a correctional facility,” in violation of state regulations. Prior to that action, in August 2010, the Monmouth County Sheriff's Office – prompted in large part by Inv. Morris' findings and recommendations – put all bail-bond agencies on formal notice via letter that rules governing the operation of the county jail had been amended expressly to prohibit the employment of inmates for the purpose of bail solicitation. In addition to citing security concerns, the letter stated the new policy was part of an effort to ensure inmates are free from harassment, threats and coercion when seeking agents to post bail. The letter further stated that any bail agency found in violation would be reported to DOBI and barred from writing any bail for those held at the institution for a period of up to three years.

Since that policy took effect in 2010, multiple bail agencies have attempted on various occasions to skirt it by continuing to mail solicitation flyers directly to Monmouth County Jail inmates. These include Aw-Rite 24 Seven Bail Bonds of Perth Amboy, Ace Bail Bonds of Asbury Park, Aaron Bail Bonds of Perth Amboy and Speedy Bail Bonds of Freehold.

¹⁸ Morris also brought this matter to the attention of the Monmouth County Prosecutor's Office, which responded that its jurisdiction was limited to matters involving potential violation of criminal statutes. As investigators began tracking this inmate's activity, she was transferred from the Monmouth County Jail to the Edna Mahan Correctional Facility for Women in Clinton, Hunterdon County. The review included phone calls placed by her from the Clinton facility.

. . .

“I just got your letter in the mail . . . and I can bring you some sales tomorrow.”

On April 4, 2013, an inmate in the female wing of the Burlington County Jail placed a call to Second Chance Bail Bonds of Mount Holly after receiving a written solicitation from the agency. Over the phone, she immediately began negotiating for three-way calls and offered to recruit customers from among a newly arriving group of inmates:

Agent *Bail bonds.*

Inmate *Yes, um, I just got your letter in the mail from the Burlington County Jail.*

Agent *Uh, hold on . . .*

Agent picks up a ringing phone, then returns to the call.

Agent *What’s your name?*

Inmate *Um, my name is Frances . . . Listen, if I work with y’all, all right . . . I usually run bails, right? If I work with y’all, right, can I get a free phone call? ‘Cause there’s 18 girls coming over tomorrow, and I can bring you some sales tomorrow.*

Agent *Yes, yes I got you, Frances . . .*

. . .

Agent *Okay, um, I’ll tell you what, just tell them . . . when they call [us] just, you know, say Frances told me to call . . . and then that way I’ll know.*

Inmate *I’m gonna do the calling*

Agent *Oh, you’re gonna to do the calling?*

Inmate *Yes . . .*

Agent *Okay, okay, good*

Inmate *Listen, can you do me a favor today, though? Can I get a phone call today? . . . I’ll be on it (referring other inmates) tomorrow ‘cause I do keep to my word.*

. . .

“I’m making money with him while I’m in here.”

On April 3, 2013, an inmate at the Union County Jail in Elizabeth contacted Rapid Bail Bonds of Perth Amboy to redeem three-way calls he was owed under a customer referral

arrangement with the firm. The agent he spoke with quickly obliged, and the inmate proceeded to brag to the third party how well he was doing working for the agency:

Inmate *Hey, what's up, big guy?*

Agent *What's up, man? Give me the number real quick.*

Inmate *I found out I go to court on Friday. I just want to make two calls to my family.*

Agent *Give me the number, give me the number.*

The inmate recites a phone number, and the agent puts him on hold to place the three-way. During that call, the inmate says:

I'm calling you through the bail bondsman, through a three-way.

. . .

No, I don't have any bail, baby. If I had a bail, I would have been out . . . [T]hey my friend. I'm making money with him while I'm here. I told you . . . I'm working with the bail bondsman getting him bails while I'm in here so he gives me calls. You know what I be doing. I made a couple bucks already.

DISCOUNT BAIL, SYSTEM FAILS

Shop around and you can easily find a way to post substantial five-figure bail in New Jersey for far less than you might imagine – as little as a few hundred dollars – even if you are a repeat criminal offender with multiple felony convictions and a history of jumping bail.

Case in point: Hanif Thompson.

Last December 11, Thompson was released from the Essex County Jail after an arrest on charges stemming from a Newark burglary. His bail, initially set at \$50,000, was reduced by more than half to \$20,000, but even that number had no particular bearing on reality. Nor, it turns out, did \$2,000, the cash equivalent of a 10 percent premium option a defendant typically is required to pay if posting bail directly with the court.

Instead, Thompson cut a private deal with Aaron Bail Bonds, a large commercial bail-bond agency. Legally, but out of view of the court – and despite the fact that he had jumped bail on three prior occasions – Aaron offered a bond covering his release for an initial charge of just 1 percent down – \$200 – with the balance of the premium to be paid in \$100 installments over 18 weeks. His girlfriend and brother signed as co-indemnitors, and the \$200 down payment plus a \$30 fee were charged to a credit card. With that, the defendant was free to go.

Four days later, according to Essex County prosecutors, Thompson and three other men with extensive criminal records confronted a couple inside a parking garage at the Short Hills Mall. During the ensuing carjacking, the husband, a Hoboken attorney, was killed with a gunshot to the head. Records show that one of Thompson's alleged cohorts – Karif Ford – also was out on bail at the time on a similar discount installment plan. Arrested in Newark in March 2013 for

unlawful possession of a handgun, Ford had been released on \$60,000 bail after paying \$1,200 – an amount equal to one-fifth of the full 10 percent premium of \$6,000 – to a branch of Ace Bail Bonds in Jersey City and agreeing to pay the difference at a rate of \$250 a month.

Facing murder charges, Thompson, Ford and their co-defendants are back in custody, this time on \$2 million bail each with no 10 percent option.

The Short Hills carjacking shocked and outraged the public and the political community, but it was not widely known until publication of this report just how handily Thompson and Ford were able to escape the grip of law enforcement in the first place. Furthermore, egregious as this case is on its face, the circumstances suggest that it may also be emblematic of a broader systemic dysfunction spurred by the wide availability and popularity of discounted bail-bond premiums and no- and low-money-down bail installment plans across New Jersey. Advertised and offered by bail-bond agencies as a way to attract clients, these incentives also can serve as hinges on a revolving door of crime.

During this investigation, the Commission found that bail-bond agencies have developed an array of customized payment plans. All work to the advantage of criminal defendants but none – in contrast to what judges typically consider in setting bail – take into account an individual’s criminal history, the seriousness of the offense charged or the possibility that he or she is or has been delinquent in making payments to other bail-bond installment plans for earlier offenses. In some instances, bail agencies offer flat discounts with upfront fees set several percentage points or more below the typical 10-percent premium amount. In others, agencies offer to charge a minimal percentage of the full bail upfront – often, as in Thompson’s case, as

low as 1 percent, and sometimes for no money down – with the balance of the 10 percent premium amount due in regular installments over time.

Proponents of these practices consider them legitimate business development tactics for small businesses struggling to remain viable in a highly competitive marketplace. Others argue that without discounted bail premiums and installment payment plans, many more low-income defendants would remain behind bars for extended periods before trial because they could not afford the standard bail-bond premium option.

On the other hand, these types of customized bail payment arrangements typically are crafted with no outside regulation and little or no transparency. There is no requirement that the terms of such a deal worked out privately between a bail agent and a defendant be reported to law enforcement or to the court, often leaving judges in the dark when the magnitude of bail they have ordered is effectively diminished. The Commission also found that there is no guarantee that defendants and/or their indemnitors will make good on the required bail-bond payments even under the terms of generous installment plans. Indeed, in many instances examined by the Commission, investigators found that criminal defendants and/or responsible indemnitors generally stopped making the payments after one or two installments. Case in point, again: Hanif Thompson. Records show that, prior to his recent arrest for murder, Thompson himself made no payments on his pending installment plan with Aaron. Likewise, available payment records for Ford show that he has an unpaid balance of \$3,600 on the Ace Bail Bonds installment plan that opened the door for his release on a firearms charge early last year.

During this investigation, the Commission examined these and numerous other instances involving discounted and installment plan bail-bond arrangements, including the following examples:

- ***Fararhd Gunter***

A member of the G-Shine set of the Bloods, New Jersey's largest and most notorious criminal street gang, Gunter was a career criminal with nine felony convictions when he was arrested in Newark on March 14, 2013 on drug and firearms charges. Held on \$100,000 bail, he gained release after his wife paid Aaron Bail Bonds \$1,500 – 1.5 percent of the total bail – with a credit card and agreed to an installment plan with weekly payments of \$200 to cover the balance of the \$10,000 premium.

Two months later, on May 17, 2013, Gunter allegedly was one of three individuals who approached a man walking with his 12-year-old son along Rutgers Avenue in Jersey City, according to prosecutors. Gunfire erupted, both father and son were shot, and the boy later died from his injuries. Gunter's connection to this incident came to light in August 2013 when he was arrested on charges stemming from a motor vehicle incident during which he fled the scene tossing packets of heroin and crack cocaine. Taking Gunter into custody, police discovered an outstanding warrant issued by the Hudson County Prosecutor's Office charging him with the child's murder. He is currently incarcerated. There is no evidence that any payments were made to satisfy the premium balance remaining on the Aaron Bail bonds installment plan.

- ***Ronald Daniels, Jr.***

Also a member of the Bloods, Daniels has made prolific use of bail-bond installment plans in recent years. Charged in August 2012 with resisting arrest in connection with an outstanding warrant, he was released on \$6,000 bail after relatives posted \$300 cash with Ace Bail Bonds as part of a deal that called for \$50 monthly payments to cover the full premium. Also charged with threatening an officer, Daniels was held on \$35,000 bail but gained release after \$700 cash was

posted with Ace by one of the same relatives who agreed this time to pay monthly installments of \$150 toward the full premium. In September 2012, Daniels was arrested yet again, charged with receiving stolen property and various weapons offenses. Held on \$100,000 bail, he was released after relatives paid \$3,000 cash to Ace and agreed to monthly installments of \$150.

In December 2012, while out on this third bail, Daniels was among 52 people arrested and charged with drug-trafficking in an investigation of the heroin trade in Monmouth and Ocean counties. Authorities described him as a ringleader of that enterprise. Two months later, while incarcerated, Daniels was additionally but separately charged in the shooting death of a man in Asbury Park dating back to September 1, 2012 – an incident that occurred while he was free on two bail-bond installment arrangements.

- ***Jaron Flowers***

By the time he finally pled guilty and was sentenced to 11 years in prison in October 2013, Flowers spent a full year committing multiple drug-related crimes while out on various bail-bond installment plans. Indicted seven times between January 2012 and the end of that year mainly on charges involving heroin and cocaine distribution, Flowers utilized the services of three different bail agencies that in most instances charged him no more than a 2 percent premium upfront on bail amounts ranging as high as \$50,000. In most cases, records show, the bulk of the remaining balance owed through installments went unpaid.

In one instance, no down payment was required prior to his release from jail. That occurred in May 2012 when Flowers, already free on three separate bail installment plans, was arrested for drug manufacturing and for distribution on school property in New Brunswick. Ordered held on \$50,000 bail with no 10 percent cash option through the court, Flowers worked out a deal with Bail Monsters Inc., a bail agency in Elizabeth which called for weekly installments of \$250 to pay down a premium of \$5,000. The bail agency's records, obtained via subpoena, show no payment was made prior to his

release. Flowers went on to be arrested three more times prior to his ultimate guilty plea.

- ***Taurean Houston***

In May 2010, Houston was arrested and charged with attempted murder and aggravated assault and ordered held at the Camden County Jail on \$175,000 bail. Records obtained by subpoena from ABC Bail Bonds of Camden show that approximately one month later that agency posted a bond to secure Houston's release under the terms of a discounted premium and installment payment plan. A down payment of \$8,000 – 4.6 percent of the total bail instead of a 10 percent premium of \$17,500 – was made by his aunt with the balance subject to a \$350-per-month payment schedule.

Six months later, on January 20, 2011, Houston was charged in the shooting death of an innocent bystander in Camden during what police described as a territorial dispute over narcotics distribution. Held this time on \$750,000 bail, he is currently incarcerated in East Jersey State Prison, facing murder and weapons charges. Meanwhile, court records show that the balance owed ABC Bail Bonds was never paid. The agency filed suit against Houston and five indemnitors who signed promissory notes on his behalf, but the case was disposed via default judgment in January 2012.

- ***Terell Sandifer***

On October 30, 2012, Sandifer was arrested and charged with burglary, theft and obstruction when Jersey City police caught him in the act of looting a retail athletic shoe outlet during a power blackout in the aftermath of Superstorm Sandy. At the time, Sandifer, charged in a separate matter with drug possession with intent to distribute, was free on \$30,000 bail under an installment plan with Ace Bail Bonds that had required \$700 down – little more than 2 percent of the total bail – and monthly payments of \$100. A review of records obtained from Ace via subpoena turned up no evidence that any installments were ever paid. For the Sandy-related charges,

meanwhile, Sandifer was ordered held on \$75,000 bail. He gained release early in December, however, through an installment deal arranged with an Ace competitor, Aaron Bail Bonds. An amount of \$750 – equal to just 1 percent of the total bail and 10 percent of a \$7,500 premium – was posted by a friend while she and other friends and family members agreed to act as indemnitors on a payment plan of \$200 per week for the balance. A review of Aaron's records showed no payments beyond January 15, 2013.

In April 2013, Sandifer was again arrested on drug charges but remained incarcerated. In August he pled guilty under a global plea offer resolving all pending charges against him and was sentenced to five years in prison.

- ***Joseph Fallo***

Fallo's criminal record of two dozen arrests and eight felony convictions, including six for aggravated assault, was no impediment to his gaining quick release from jail in June 2013 on charges stemming from the beating of his girlfriend. Charged in that case with aggravated assault with a weapon, making terroristic threats and other counts, Fallo was ordered held on a combined bail of \$120,000. In an installment plan worked out with John's Bail Bonds, however, two family members acting as co-indemnitors made a down payment of \$7,798 – 6.5 percent of the total bail – toward the full \$12,000 premium and agreed to weekly payments of \$100 to cover the difference.

In late July, little more than a month later, Fallo was arrested again in connection with an attack on his now-former girlfriend. Held this time on \$75,000 bail, he was charged with multiple felonies, including aggravated assault, criminal mischief, unlawful possession of a weapon and resisting arrest. The same two family members returned to John's Bail Bonds and arranged a credit-card down payment of \$2,500 on the \$7,500 premium and agreed to monthly installments of \$500 to pay off the balance. Less than two weeks later, Fallo was charged with violating a judicial restraining order by attempting to contact his ex-girlfriend.

It is noteworthy that one of Fallo's bail indemnitors was the target of a lawsuit filed in 2005 by another bail agency for defaulting on an earlier installment plan. The other co-signer is an individual who receives Social Security disability. On the two bails detailed above, the combined monthly payments total \$900 a month.

LICENSE TO DISOBEY

On paper, New Jersey's regulation of the bail-bond industry and, in particular, the licensing process required for prospective bail agents, appear to provide a substantial bulwark against intrusion by dishonest and unscrupulous operators. By law, applicants must undergo criminal background checks, submit to an electronic fingerprint scan, complete ten hours of training on bail procedures and pass a licensing exam. While there are no automatic disqualifiers, there are circumstances – such as certain felony convictions or the commission of certain fraudulent acts – that can prompt the Department of Banking and Insurance to deny an application or to suspend, revoke or refuse to renew an existing license.

The problem is that, in reality, this entire licensing and regulatory structure can be ignored and circumvented with impunity. That's because scant resources are devoted to oversight, DOBI's posture toward bail matters is predominantly reactive, and the bail-bond industry has evolved to be largely self-policing.

The Commission found instances in which bail agents, despite having been caught and penalized for employing unlicensed personnel, soon resumed the same activity virtually without interruption. Further, not only are unlicensed runners widely used to solicit business but some individuals acting as bail agents themselves solicit, negotiate and sell bail bonds without a license. These include individuals who were booted from the industry for engaging in illegal, unethical or improper conduct but who returned to the business through various subterfuges, such as using a spouse, relative or other close associate as a seemingly legitimate front. Some have continued to operate in this kind of surreptitious fashion for years.

Operating without a license is not a crime in New Jersey but rather a regulatory violation punishable by civil penalties such as fines. Evidence suggests this is not an effective deterrent.¹⁹ Indeed, according to numerous individuals familiar with the workings of the bail-bond industry who were interviewed by Commission investigators, the involvement of unlicensed personnel is hardly uncommon.

In one case, a former agent who had been fined and whose license had been revoked for, among other things, using jail inmates to solicit business nonetheless continued to offer his services, openly lying about possessing proper credentials on the internet website of a bail-bond agency owned by his wife. More systemically, the Commission found that many employees of New Jersey's largest bail agency, Aaron Bail Bonds, actively participate in the negotiation and sale of bail bonds even though only a handful are actually licensed by the State to do so.

The following examples illustrate how certain individuals have continued to profit from the bail system in defiance of state oversight and regulation:

- ***John Ostrander***

Known in the business by the nickname "Johnny O," Ostrander, as referenced earlier in this report, lost his bail credentials in 2003 after DOBI found that he was recruiting jail inmates to solicit business and that he and his girlfriend/partner failed to refund money to a client whose bond was never posted with the court. DOBI also imposed fines totaling \$15,000. The Commission found no evidence that the fines were ever paid or collected. More significantly,

¹⁹ At least eight other states have enacted legislation making it a crime punishable by prison for anyone convicted of soliciting or selling bail bonds without proper licensure. They are Connecticut, California, Florida, Oklahoma, North Carolina, South Dakota, Ohio and Texas.

despite his license revocation, Ostrander for years continued to function as a bail agent and to use inmates to gather new customers.

Ostrander first registered with the State in 1994, the same year he opened Lucky 7 Bail Bonds in Perth Amboy.²⁰ In March 1996, his business practices were called into question when an inmate at the Middlesex County Jail told a corrections officer that he had made a deal with “John from Lucky 7” to solicit bail business in exchange for money to pay off his own bail. A subsequent county investigation found evidence that at least six inmates had referred prospective customers to Lucky 7, including some who said cash compensation was funneled through others to disguise the connection to Ostrander’s agency.

Shortly after the county launched its investigation, Ostrander, in what would soon be revealed as a transparent ploy to throw the authorities off track, issued a memo to his own employees declaring that paying jail inmates for referrals would not be tolerated and that any individual involved in such activity would face termination. About the same time, Middlesex Jail officials met with Ostrander and the principals of other bail agencies and told them that agents who solicited inmates could be banned from business involving criminal defendants housed at the facility. Within a month, despite Ostrander’s assurances that his agency was no longer engaged in the practice, jail officials found evidence that Lucky 7’s inmate contacts had resumed, according to an internal report.

Concurrently, DOBI opened a separate inquiry after receiving letter from the then-County Counsel warning that use of inmates by bail agents posed a potential security threat, particularly

²⁰ Prior to 2004, bail agents were only required to be registered with the State as limited insurance representatives. A formal licensing requirement was introduced in phases under provisions of the New Jersey Insurance Producers Act of 2001. The license is technically known as an “insurance producer’s license.”

in connection with rival gang involvement in the bail process. In 1999, while the State's investigation proceeded, Ostrander sold Lucky 7 and opened a new firm, Quick Bonding. Within two years, however, DOBI's case expanded when a Quick Bonding client complained that Ostrander and his then-girlfriend (now-wife) Silkia Rios, a registered bail agent, failed to return \$50,000 after the agency refused to secure a bond.

Ostrander never responded when DOBI attempted to accommodate his request to schedule an administrative hearing to dispute the charges. In 2003, the department issued a final order revoking the registrations of both Ostrander and Rios and jointly fined them \$5,000. Ostrander separately was fined an additional \$10,000 for recruiting inmates. Ostrander and Rios both told the Commission under oath that they never paid the fines. Rios stated she was unaware of the fine against her and that she was told by her attorney at the time that he was handling the matter. Likewise, Ostrander told the Commission he was unaware of the details of the case and that his attorney told him "he took care of it and that everything was okay."²¹ A review of DOBI's files turned up no evidence that the fines were ever collected by the State.

Despite these regulatory sanctions, Rios applied for a new bail license and DOBI granted it in 2009, the same year she opened Rapid Bail Bonds in Perth Amboy.²² Although she is recorded as Rapid's legal owner, the Commission determined that Ostrander – functioning behind the scenes without a license – is in charge of the agency's day-to-day operations, working out of the main office and at another Rapid location in Linden. Rapid also maintains offices in Atlantic City

²¹ It should be noted that Ostrander's attorney was disbarred in 2006 on various grounds, including failure to keep clients reasonably informed.

²² Under provisions of N.J.A.C. 11:17D-2.7(a), an agent whose license has been revoked may reapply after five years, but DOBI has the option to reject the renewal.

and Freehold. Rios serves as the managing agent at both of these locations, but they are operated by other individuals who share profits with her under arrangements brokered by Ostrander. The Commission also found that Ostrander's involvement with Rapid extended to the hiring of three individuals to perform bounty hunting services without proper licensing. In March 2013, the three were arrested by the State Police and charged with illegal weapons possession and bounty hunting without a license.

Not only did Ostrander negotiate and execute bail-bond arrangements during this investigation, but recordings of jailhouse phone calls reveal that he also continued to work with inmates on customer referrals. For example, in an April 26, 2013 phone conversation with an inmate at the Union County Jail, Ostrander can be heard discussing a bail bond arrangement for another inmate. Ostrander explained that he had already negotiated a deal with the inmate's father:

Inmate *Hey listen, I got this kid here . . . I'm taking this kid under my wing. He's a good kid. His bail is \$275,000. He's got 7-5 . . .*

Ostrander *Yeah, yeah.*

Inmate *\$7,500 and . . .*

Ostrander *No, no. I talked to his father . . . I made a deal with his father.*

Inmate *You made a deal with his father?*

Ostrander *He said he was going to call me back.*

In sworn testimony before the Commission, Ostrander denied involvement in bail-bond matters and stated that his responsibilities at Rapid are limited to maintenance and promotional activities. Rios also testified that her husband does not get involved in handling bails or dealing with clients. At the same time, however, she acknowledged that the individual speaking in the jailhouse recordings is that of John Ostrander.

- ***Ronny Morales***

At Mr. Lopez Bail Bonds in Linden, the individual who operates the office and conducts business there is known as “Mr. Lopez.” But there is no Mr. Lopez at this small agency, only Ronny Morales, a convicted felon without a valid bail-bond license who has no problem letting customers believe he is the business’s namesake.

Morales has a colorful history in New Jersey’s bail-bond industry. He has been active in the business for decades. In the mid-90s, he was the office manager of Lucky 7 Bail Bonds in Perth Amboy, the agency then-owned by Ostrander. When Ostrander sold the business in 1999, the new owner demoted Morales, precipitating an altercation that ended with Morales shooting his new boss in the shoulder. Charged with aggravated assault and possession of firearms for an unlawful purpose, Morales was convicted and served seven years in state prison.

Mr. Lopez Bail Bonds was established in 2011. Although Morales’ wife, who does possess a valid bail license, is recorded as the official owner, the Commission found that Morales himself is the primary operator, routinely negotiating and handling transactions there, despite the fact that DOBI has no record of his ever holding a license. During a surveillance of the agency in August 2013, investigators witnessed Morales on the phone agreeing to meet a potential bail client. Further, a former customer told the Commission in sworn testimony that she obtained bail bonds on behalf of her criminal-defendant son on two occasions through an individual she identified as Morales. The witness said Morales came to her home, filled out the appropriate bail-bond paperwork and accepted a check for the premium. After the bond was posted in one of those instances, Morales picked up her son from jail and returned him to her home.

Appearing under oath before the Commission, Morales initially denied the allegations before admitting that he does negotiate bail-bond deals and performs other bail-related tasks on behalf of the Mr. Lopez agency. He also admitted that he has signed his wife's name on bail documents, which require the signature of a licensed bail-bond agent.

- ***Thomas Dobrek***

Visitors to the office of Atlantic Bail Bonds in Mount Holly last year said they met with a bail agent identifying himself as "Tom," who took their down payments and provided paperwork for installment plans to pay off the various bonds the agency would issue. One client said Tom even accompanied him to the Burlington County Courthouse to confirm the amount of bail. Unknown to these customers, however, was that Tom – Thomas Dobrek – was operating without a license. DOBI had revoked it six years earlier for multiple violations and then later rejected his application for a new one, concluding that he was "unfit" for the industry.

Dobrek was first registered to conduct bail business in 1999 when he became the majority owner of a firm called Mr. Lucky Bail Bonds with offices in Mount Holly, Asbury Park, Camden, Atlantic City and North Brunswick. He sold that firm a year later, and in 2003, after his wife Weiran received her bail license, the couple opened Atlantic Bail Bonds in Mount Holly.

Over the course of the following four years, however, customer complaints about Dobrek's activities while at Mr. Lucky drew DOBI's attention and triggered an investigation. In 2007, the department pulled his license, finding that he had misappropriated \$10,000 in collateral posted by a client, charged excessive and/or discriminatory bail-bond premiums and made false statements on an application to work as an agent for an insurance company. DOBI

also imposed fines and penalties totaling \$21,175 and ordered Dobrek to refund the misappropriated collateral and pay more than \$18,000, plus interest, in customer restitution. The department stated in writing at the time that his “conduct was at best incompetent and, at worst, dishonest. His low standards of operation demonstrate that he is unfit to hold an insurance producer’s license.”

Notwithstanding that observation and his failure to pay any of the fines or restitution levied against him, Dobrek, at his earliest possible legal opportunity, approached DOBI approximately five years later and asked that his license be reinstated. The application was denied. In a March 25, 2013 letter, the department told him that, aside from the unpaid penalties, Dobrek was now additionally in violation of New Jersey’s insurance laws because his post-revocation employment included data entry and other office work at Atlantic Bail Bonds, now owned by his wife.²³ Another factor in the denial was that Dobrek and his wife, in a separate matter, were facing insurance fraud charges stemming from their involvement in questionable circumstances surrounding a 2007 motor vehicle accident.²⁴

Despite the revocation of his bail-bond license and the denial of its renewal, Dobrek continues to work as a bail bond agent. Two former customers of Atlantic Bail Bonds who had separate unrelated dealings with the agency in 2013, both identified a photograph of Dobrek as the person who handled their bail transactions. One of these individuals told the Commission in sworn testimony that Dobrek identified himself as a bail agent, accepted a down payment and

²³ Under N.J.A.C. 11:17D-2.5 (e), insurance producers, including bail agent, whose licenses are revoked are prohibited from employment in any capacity by another licensed producer.

²⁴ In 2009, Weiran Dobrek entered into a Consent Order with the New Jersey Office of the Insurance Fraud Prosecutor to resolve the charges but still faces potential loss of her bail-bond license. If Dobrek himself is found in violation of the Insurance Fraud Act, he may face fines of up to \$15,000 per violation.

provided paperwork for a plan to pay off the remainder of the bond premium. Later in the day, this client met with another Atlantic Bail Bonds representative who actually signed the documents executing the bond. The other customer, a former inmate at the Corrections and Work Release Center in Burlington County, testified that Dobrek was the Atlantic Bail Bonds employee with whom she spoke in recorded jailhouse phone calls and, later, with whom she met to sign paperwork at the agency's office.

Questioned under oath about whether it is his voice on the jailhouse recordings, whether he conducts bail transactions without a license and whether he ever misrepresented himself as Weiran Dobrek in order to conduct bail business, Dobrek invoked his Fifth Amendment constitutional right against possible self-incrimination and refused to respond substantively.

BAIL FORFEITURES: LAX RECOVERY

While most criminal defendants released on bail return for required court appearances, some do not, and that is a phenomenon which triggers a process called forfeiture. Under such circumstances, a judge typically issues a warrant for the fugitive's arrest, the bail is revoked and any bail money posted is relinquished to the court. At least that is how it is supposed to work. In practice, however, the forfeiture process is anything but clear-cut, especially when the money is tied up in a surety bond obtained through a bail agency.

As an outgrowth of this inquiry, the Commission reviewed forfeiture outcomes in each of New Jersey's 21 counties and found that the amount of bail imposed by the court is rarely, if ever, collected. In fact, only pennies on the dollar are recovered when a defendant fails to appear and a judgment is entered for the full amount of the bond. This picture is further complicated by the fact that the methods used by counties to craft bail forfeiture settlements are plagued by wide disparities that impact collection rates. As one former County Prosecutor told the Commission, "the public would be appalled" if it knew how little of the forfeited bail owed was turned over by the surety companies that provide bail bonds.

During 2013 alone, 1,836 bail forfeiture cases were resolved through negotiated settlements. Of the \$51.7 million worth of outstanding judgments due to the court, only \$6.5 million was collected. The average negotiated settlement was approximately 12.5 percent of the original bond amount. In 2012, the average statewide collection rate was less than 9 percent.

Here is how the process works: If a defendant with a bail bond misses court, a bail agent is given a 75-day grace period, from the date of the official notice, to recover the fugitive. If the grace period expires and the defendant is not located and/or returned, the court can enter a

judgment of default against the surety and bail agency.²⁵ Once the fugitive is captured, the surety usually files a motion to vacate the judgment. This filing may include a recitation of the steps taken by the bail agency and expenses incurred in the effort to apprehend the fugitive. Next, negotiations occur between the surety and the County Counsel, acting as a representative of the Office of the Attorney General, to determine a remission settlement. A judge is required to sign off on the terms of whatever agreement is finally reached. In virtually every case, the negotiated amount winds up significantly lower than the value of the original bond.

There are numerous elements that may influence the final settlement. When deciding the amount of forfeited bail that should be collected, the court, based upon a complex set of remission guidelines established by the Attorney General, considers factors such as the degree of the surety's supervision of the defendant, the length of time the defendant was a fugitive and whether the defendant committed another crime while a fugitive. Further, while balancing those factors, the court is authorized to provide an incentive to the surety to recapture a fugitive defendant and provide substantial remission in order to not deter the surety from posting future bails.

Complicating the collection rates further is the fact that some counties have developed unique policies and procedures for handling certain forfeiture matters. While most County Counsel use the remission guidelines established by the Attorney General as a starting point in negotiations, some County Counsel do not become involved in the actual process until a formal judgment is rendered (after 75 days). Others utilize the guidelines immediately upon a

²⁵ A surety that fails to satisfy judgments may be precluded from writing bails by the Clerk of the Superior Court. Also, any bail agent or agency that executes a bail resulting in an unsatisfied judgment shall be placed on the preclusion list by the Clerk of the Superior Court. N.J.S.A. 17:31-11(a) and N.J. Ct. R. 1:13-3(e)(2).

defendant's return. In certain instances, sureties are permitted to factor in costs incurred while capturing a fugitive. However, this is not a universally accepted practice. As a result, forfeiture collection rates vary from county to county with some doing better than others.

This is not a new problem. Deficiencies in the collection of bail forfeiture monies were noted in reviews conducted by the Office of the State Auditor in 2004 and 2007. Following the 2007 audit, the Attorney General's Office submitted a written response agreeing to work with the counties to ensure consistent application of the guidelines throughout the State. Since then, however, the issues of inconsistency among the counties and low collection rates have only worsened. Last year's statewide average collection rate for bail forfeiture settlements was 12.5 percent, significantly below the 18 percent rate reported by the Auditor for 2007.

The challenge of recovering forfeited bail, of course, is not unique to New Jersey. For example, Connecticut has adopted different strategies aimed at improving the collection process. During the 1990s, Connecticut incorporated its bail forfeiture system into law with key provisions designed to streamline the process and strike an effective compromise between the State's collection obligations and the interests of the bail-bond industry. As in New Jersey, bail agents and sureties are entitled to rebates depending on how soon the defendant is returned, but unlike New Jersey, which gives sureties/bail bond agencies four years or more to recover a fugitive and collect some percentage rebate, any opportunity to seek such remission expires after one year in Connecticut. Furthermore, all rebates of forfeiture payment there are governed by a precise, clearly delineated schedule based upon the number of days a defendant was at large at the time of return. Unlike New Jersey, where such remissions are subject to negotiation and can vary widely by county, Connecticut requires statewide adherence to the rebate schedule. Thus,

centralization of the entire bail forfeiture process in Connecticut, including rebates, advances
consistency regarding how bail forfeitures are handled.

REFERRALS and RECOMMENDATIONS

The Commission refers the findings of this investigation to the following agencies of government for whatever action is deemed appropriate:

- New Jersey Department of Banking and Insurance
- Office of the Attorney General of New Jersey
- Offices of the Prosecutor, Sheriff and appropriate Corrections authorities in each of New Jersey's 21 counties

• • •

Evidence developed during this investigation amply demonstrates that regulation of New Jersey's bail system – a public system vulnerable to worsening abuse and manipulation by unscrupulous private interests – requires wholesale strengthening and reform. If the State, as a matter of policy and practice, is going to continue to allow commercial bail-bond agencies to operate within that system, it must establish appropriate and effective statutory, regulatory and administrative controls to hold those entities accountable through proper licensing and oversight. Moreover, the rampant recruitment and compensation of criminal defendants by bail agencies to drum up business – in effect, attaching a profit motive to going to jail – constitutes a threat to institutional security and public safety. It has made a mockery of official regulations prohibiting solicitation by unlicensed individuals and should be outlawed by statute with appropriate criminal penalties for violators. Furthermore, to the extent that the widespread, loosely regulated and non-transparent practice of discounting bail premiums serves to create a revolving door for violent offenders to commit more crime, as detailed in this report, it should

be curtailed immediately. Finally, action should be taken by the State to compel improvements in the processes used by county governments to capture millions of dollars lost to taxpayers each year as a result of unrecovered bail forfeitures.

As noted at the outset of this report, while these recommendations cover significant areas in need of reform, they should not be addressed in isolation to other problematic bail matters that have received considerable attention apart from the issues targeted in this investigation. This is particularly important in the context of crafting a sensible long-term strategy to deal with the full ramifications of discounted bail premiums and bail installment plans. While it is plainly in the public's best interest to prevent violent repeat offenders from circumventing high bail requirements to gain easy immediate release from jail, imposing severe limits on discounts or eliminating them altogether with no alternative would likely pose a separate set of undesirable consequences. It is well-documented that substantial numbers of bail-eligible criminal defendants – many charged with minor drug violations and other nonviolent offenses – already remain in jail at taxpayer expense for unreasonable periods of time because they cannot afford even nominal bail. Taking any steps that would have the effect of diminishing their release options still further would serve to undermine the whole purpose of bail and exacerbate jail overcrowding with all the attendant costs and security problems associated with that phenomenon. Thus, any solution will require striking a careful balance between efforts on one hand to bolster public safety and, on the other, to contain costs, safeguard institutional security and ensure constitutional access to bail.

The Commission's reform recommendations stemming from this investigation are set forth in greater detail as follows:

1. Reorganize Licensing, Oversight and Enforcement

Responsibility for licensing and oversight of bail-bond agencies and their personnel, as well as for the enforcement of applicable laws and regulations, should be moved from the Department of Banking and Insurance (DOBI) and assigned to the Department of Law and Public Safety.

Historically, the difficult task of maintaining the integrity of the bail system's operational components in the private sector in New Jersey has been assigned to the State's insurance regulator because bail at its most basic is a form of insurance – that is, money and/or property posted against the possibility that a defendant released from custody will flee. In that context, DOBI does perform an appropriate role – to a point – by regulating surety companies and other elements of the insurance industry that underwrite the risk and financial exposure assumed by bail agencies when they issue bonds. But giving DOBI exclusive purview in this area blurs the significant fact that, aside from insurance considerations, bail is an inextricable part of the criminal justice system. It is a nexus of daily interaction among criminal defendants, defense attorneys, prosecutors, judges, corrections personnel – and the private bail-bond entrepreneurs who profit from that interaction.

More significantly, this investigation has revealed that questionable and unscrupulous activity is rife within key segments of the commercial bail-bond industry – and has been for some time – and that the current system for policing that industry simply is not up to the task. One of

DOBI's key responsibilities is to ensure proper licensing of bail-bond practitioners and yet the industry continues to be infiltrated by individuals who operate blatantly without a license, not to mention the scores, perhaps hundreds, of unlicensed criminal defendants who continue to solicit bail inside county jails across New Jersey. Moreover, DOBI itself acknowledges that its bail regulatory functions are spread thin across multiple offices and that those functions are commingled with standard insurance regulatory matters. It is also a fact that at least one key bail-bond oversight responsibility – criminal background checks on license applicants – already is performed by law enforcement, in this case the State Police, which is entirely appropriate. Indeed, DOBI should not be expected to carry out that or any other function which necessarily involves the criminal justice system, especially the enforcement of criminal laws such as those proposed in the recommendation that follows herein.

Thus, the Commission recommends that responsibility for licensing and oversight of bail-bond agencies and their personnel be transferred to and consolidated within the Department of Law and Public Safety and administered as a unit by a dedicated in-house team of investigators, auditors and ancillary personnel supervised by an attorney knowledgeable about the appropriate statutes and regulations. By concentrating and enhancing oversight in this way, the State will be able to investigate and audit the activities of bail-bond licensees, and enforce sanction against violators, on a more consistent and effective basis. Furthermore, DOBI would not be removed from the picture entirely. The Law and Public Safety bail unit would work in concert with DOBI

personnel, who would retain jurisdiction over bail-related entities, such as surety firms, that operate strictly within the regulated insurance sector.²⁶

In order to defray the taxpayer cost associated with this move and to make the State's regulatory machinery more self-supporting, the Commission also recommends that licensing and renewal fees for bail-bond agents and agencies be increased. The current schedule includes a relatively modest initial licensing fee of \$75 with renewals required every two years at a rate of \$75. If the initial fee were increased to at least \$300 and renewals made mandatory on an annual, rather than semi-annual basis, at a rate of at least \$250, more than \$200,000 in additional revenue could be generated each year.²⁷

2. Criminalize Violations of Licensure

Under New Jersey's current statutory structure, N.J.S.A. 17:22A-40 empowers DOBI to take a range of civil disciplinary action against individuals and entities that violate regulations governing the terms of their bail-bond licensure, or who perform bail-bond activities without a valid license. These penalties include fines, probation, license suspension and/or revocation and refusal to issue or renew a license. There are no criminal sanctions in this arena, however, not even for operating without a license or for using or employing unlicensed individuals to solicit bail-bond business. By contrast, a number of states, including California and Florida, have

²⁶ Precedent for this bifurcated approach toward regulating an industry exists in the structure of New Jersey's A-901 system for licensing and regulation of the solid waste industry. The two state agencies charged with protecting the integrity of that industry and with licensing and monitoring the activity of its participants are the Department of Environmental Protection (DEP) and the Department of Law and Public Safety through the Division of Law and the State Police.

²⁷ Given that there are more than 1,000 currently licensed bail agents and agencies in New Jersey, most of the new annual revenue would derive from license renewals.

concluded that administrative penalties alone are insufficient deterrents against unlicensed and unscrupulous bail-bond operations and have enacted laws making such activity a crime. Various states to varying degrees also have made it a crime to solicit bail-bond business within or on the grounds of a jail or prison and to employ or otherwise compensate inmates for that purpose. The findings of this investigation dictate that New Jersey should follow a similar course.

Thus, legislation should be considered to amend the State's Criminal Code to make it a felony to perform the acts of a bail-bond agent or agency without a license or to employ, compensate or otherwise use unlicensed individuals to solicit bail-bond business. Such activity should also result, where relevant, in immediate administrative action to cause license revocation. It should also be a felony punishable by similar sanctions to solicit bail-bond business on the grounds of or within a jail or prison or any other place where criminal defendants and incarcerated inmates appear and/or are confined, or to employ, compensate or otherwise use an inmate or inmates to solicit bail-bond business. Furthermore, legislation should also be enacted making it a crime to facilitate three-way telephone calls for incarcerated inmates, with license revocation automatic for any bail agent or agency that orchestrates or otherwise participates in such arrangements.

3. Reform, Regulate and Require Disclosure of Discount Bail-Bond Deals

There is increasing recognition in New Jersey that something must be done to effectuate a better and more equitable balance between the rights of criminal defendants and the imperatives of public safety and security. As the Supreme Court's Joint Committee on Criminal

Justice recently reported, the current bail structure “presents problems at both sides of the system: some people are held on less serious crimes, with little risk of flight, only because they cannot pay relatively minor amounts of bail; others who pose a significant threat to the community and a substantial risk of flight must be released if they can afford to post bail.”²⁸ The panel recommended a sweeping overhaul centered on the adoption of a “risk-based” approach in which judges could rely on objective factors to assess a level of risk posed by a defendant and then impose appropriate conditions, including but not limited to the posting of money bail, for pretrial release. Similarly, legislation has been introduced in the Assembly and Senate to implement a state constitutional amendment providing for a system of non-monetary bail alternatives for release under certain circumstances and for mandatory pretrial detention under others.²⁹

The salient point in the context of this investigation is that adoption of these proposals in part or in full will not eliminate or rectify problems plaguing the bail-bond system. Monetary bail will remain a significant option for some criminal defendants, which means that questionable, hidden and ill-advised discounts and installment payment plans of the sort detailed in this report likely will persist unless explicitly addressed and brought under control by state regulation.

Thus, the Commission recommends that legislation be enacted to require that the premium charged by bail-bond agencies be no less than the 10 percent option available through the court, unless a judge determines that, in either case, charging a lesser percentage of the full bail and/or offering a special installment plan is appropriate to the circumstances at hand. Also,

²⁸ See *Report of the Joint Committee on Criminal Justice*, March 10, 2014.

²⁹ A-1910 (Burzichelli, Coleman, Wimberly, Spencer and McKeon) and S-946 (Norcross, Scutari and Barnes).

to the extent that such arrangements allow for payment of premiums in installments over time, the fulfillment of such terms should be made a condition of whether or not the defendant's release is continued. Finally, bail agents should be required, as a matter of regular practice, to disclose to the court and to the appropriate prosecutorial authorities the terms and conditions of any such customized bail-bond payment arrangement that departs from the standard 10-percent rule.³⁰

4. Establish Uniform Bail-Agent Access Rules for County Jails

New Jersey's county jails maintain weak and wildly inconsistent policies governing access by commercial bail-bond agents to their inmate populations. Only one county in the State – Monmouth – has established written rules explicitly prohibiting solicitation of inmates for bail purposes. Just six of the counties whose practice were examined by the Commission – Atlantic, Hunterdon, Middlesex, Ocean, Passaic and Warren – have written policies prohibiting three-way calls. Moreover, as this investigation has revealed, even among those jails that have taken action to control and regulate bail-agent access, enforcement of the rules has been spotty and haphazard. Thus, the Legislature should call upon an appropriate statewide organization, such as the New Jersey Jail Wardens Association, to develop a uniform set of best practices in this area that could be adopted by every county jail in the State. These rules and procedures should be backed up by reasonable sanctions, including a schedule of access suspensions for violators and access revocation for repeat offenders. Also, to the extent that they have not already done so,

³⁰ Failure to have the court and prosecutor apprised of the bail payment arrangements could otherwise be used, among other things, to circumvent the purpose of the bail source hearing. Bail source hearings are necessary, in certain instances, to ensure that illicit funds are not used for bail.

jail administrators should designate personnel responsible for monitoring and enforcing compliance.

5. Streamline Bail Forfeiture Recovery Process and Provide Stronger Oversight

Bail forfeitures represent sizable financial obligations that rightfully are owed to and equally shared by the State and its counties. Based upon the summary findings presented in this report, it is plain that New Jersey could do more to maximize its forfeiture collection process, which is currently governed by a complex set of non-statutory guidelines subject to varying degrees of practical application at the county level. The Commission recommends that the Legislature examine the forfeiture collection experience in other states, notably Connecticut's remission process, which has been streamlined and strengthened with clear-cut rules. In particular, Connecticut's rules include non-negotiable rebate amounts on forfeiture payments depending on the length of time a defendant has been a fugitive. Incorporating such requirements into law, rather than leaving them within a set of remission guidelines subject to interpretation, would enable the forfeiture process to be applied consistently in all the counties.

Furthermore, the State should reconsider the wisdom of ceding virtually all responsibility for the handling and execution of forfeiture matters to the various offices of County Counsel in each of the 21 counties. To ensure the process is handled uniformly and consistently, centralized oversight may be more appropriate. Thus, the Commission recommends that the new Bail Unit within the Department of Law and Public Safety – proposed in the first recommendation of this report – have direct supervision of bail forfeiture settlements and collections.

6. Enhance Consumer Protection in the Bail-Bond Industry

During this investigation, the Commission found multiple instances in which criminal defendants seeking bail, or relatives and/or friends seeking to post bail on their behalf, unwittingly entered into bail-bond arrangements with unlicensed individuals who were able to hide or otherwise misrepresent their lack of requisite credentials. In order to safeguard the legitimate interests of consumers doing business with elements of this industry, it is recommended that all bail agents, as a condition of licensure, be required to possess and display identification cards bearing their photograph, license number and other appropriate information. Similarly, all bail agencies should be required to display such licensing information in a prominent location within each of their offices. The Commission also recommends that steps be taken, as necessary, to ensure that all courts and county jails in the State utilize the bail registry as a means of determining which bail agents and agencies have been barred from writing and executing bail bonds in New Jersey.

APPENDIX

N.J.S.A. 52:9M-12.2 provides that:

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following material was submitted pursuant to those statutory requirements.

RESPONSE TO SCI

I, Jose Taveras, being duly sworn according to oath, do hereby state:

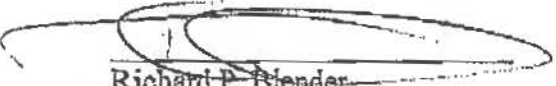
On behalf of Speedy Bail Bonds, in February, 2009, I voluntarily attended meetings with authorities at the Middlesex County Jail. I was truthful and cooperative with them. I denied offering "other forms of compensation" to inmates and no such proof was ever provided to me by the jail authorities. I had no knowledge this matter was ever referred to the Middlesex County Prosecutors Office; even if it was that was over five years and no action has ever been taken by them. I voluntarily agreed not write bails at the jail for a very short period of time, but began writing again and have been writing bails ever since.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. If any of the statements are wilfully false I am aware I am subject to punishment.



Jose Taveras

Sworn and subscribed before me
on this 7th day of May, 2014



Richard P. Blender
Attorney at Law for the
State of New Jersey



***State of New Jersey
Commission of Investigation***