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CJA is a not-for-profit corporation that provides a variety of criminal justice services under a contract with the City of New York. CJA staff interview defendants arrested in New York City, make recommendations for pretrial release, and notify released defendants of upcoming court dates. Within the Agency, the Research Department conducts studies covering a broad array of criminal justice policy concerns. The Research Brief series summarizes the results of some of these studies.

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COMMERCIAL BAIL BONDS IN NEW YORK CITY

By Mary T. Phillips, Ph.D.

This report expands upon a recent study of bail making by the New York City Criminal Justice Agency, Inc. (CJA), which found that bail bondsmen play a much larger role in New York City than they did 30 years ago (*Research Brief #23*, 2010).

Commercial bail bonds are the most common form of pretrial release throughout the country, but for decades New York City has been different. Release on recognizance (ROR) accounts for two thirds of releases at arraignment in NYC. And when bail is set, it is more likely to be made by posting cash directly with the court than by posting a bond.

However, the use of commercial bonds has increased in New York City in recent years, to well over 3,000 bonds annually. For cases with bail set at \$1,000 or more, commercial bonds account for one in five bail releases. Defendants buy bonds because the amount of cash required up front can be

considerably less than would be needed to post cash bail. The drawback is that a bond is much more expensive in the long run because cash bail is refunded. In addition, the bondsman can revoke the bond, sending the defendant back to jail, without giving the courts a reason.

Citywide data are presented describing characteristics of bond agents, insurance companies, and co-signers. The research focused primarily on the financial aspects of commercial bonds and identified significant borough differences. These findings were used to devise a tool — the “effective cash discount” — that would enable the courts

to set cash alternatives at a level calculated to remove the financial incentive for posting a bond rather than cash, tailored to the borough and bond amount.

The report concludes with several recommendations, including use of an effective cash discount, that would lessen reliance on bondsmen.

This *Research Brief* is adapted from
Commercial Bail Bonds In New York City: Characteristics And Implications (2011)
by Mary T. Phillips, Ph.D., Project Director

The full report is available on CJA’s web site:
www.nycja.org/research/research.htm

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Bail Options

In setting bail, New York judges specify not only the amount, but also the form in which bail may be posted. If a single bail amount is specified, it may be posted as either bond or cash (unless the judge specifies “cash only,” which happens occasionally). Cash bail is deposited directly with the court; bonds are usually posted through the services of a bail bondsman.

Judges often set two amounts: one amount for a bond, and the other as a “cash alternative.” For example, bail written as \$1,000/\$500 indicates that the defendant may post a bond for \$1,000, or cash in the lesser amount of \$500—the *cash alternative*.

Judges also have various options as to the type of bond that may be posted. In addition to insurance company bonds sold by bail bondsmen, there are several other types allowed by New York law. These include bonds secured by property and posted directly with the court; bonds partially secured by a deposit of 10% of the bond amount; and unsecured bonds, secured only by the defendant’s signature. These other types of bonds are rarely used in New York City.

The current research is restricted to a subsample of cases in which the defendant posted a bond. Every bond in the sample was a commercial bond posted by a bail bondsman; we did not encounter any other bond types in the research sample.

Datasets Used In The Research

The research sample was drawn from all prosecuted arrests during July through September, 2005, in the four largest boroughs of New York City. Cases with a defendant who made bail were identified from data in the CJA database. The form of bail making (cash or bond) was identified from documents in courthouses and corrections facilities, as well as the Office of Court Administration (OCA) database. The final sample consisted of 788 cases with a defendant who posted a bond by December 31, 2005. This tracking period allowed a minimum of three months following arrest for the bond to be posted. Most analyses included in the current report were further restricted to a subset of 656 bond cases with supplementary data collected from case files in each courthouse.

An annual dataset of all arrests in 2009, drawn from the CJA database, was used to make some comparisons with the research sample.

The Cost of Bail: Cash vs. Bond

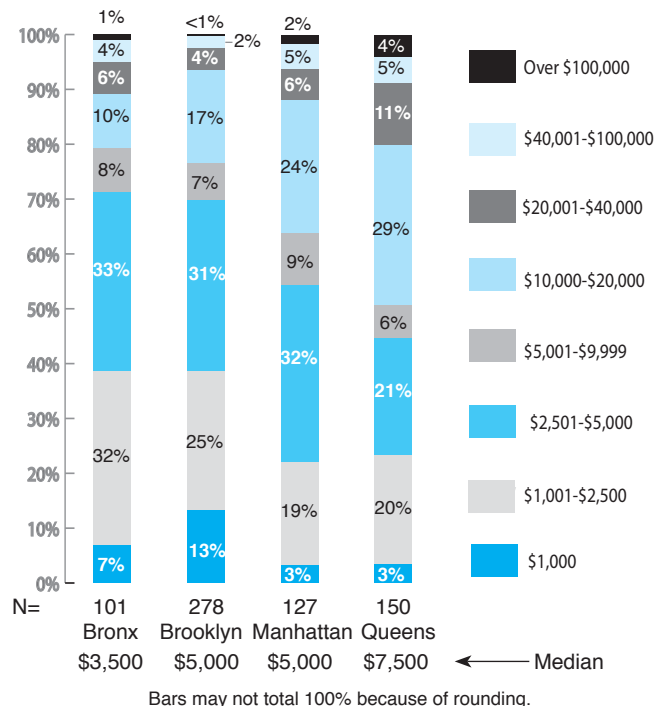
Cash bail — When cash bail is deposited directly with the court, the entire amount is refunded at the end of the case if the defendant is not convicted, unless bail was forfeited for failure to appear. If the defendant is convicted, a 3% fee is retained and the balance is refunded after sentencing.

Commercial bond — Fees for bonds are regulated by the New York State Insurance Department and are pegged to the face value of the bond according to an additive formula: 10% for the first \$3,000, 8% for the next \$7,000; 6% for amounts over \$10,000. The fee is not refunded regardless of the outcome of the case. The initial cash outlay needed for a bond generally includes collateral as well, which is refunded at the end of the case unless bail was forfeited for nonappearance. (Sometimes a portion of the collateral is kept by the bondsman to cover miscellaneous fees incurred during case processing.) The amount of collateral is not regulated but must be approved by the judge. Property is sometimes accepted as collateral in lieu of or in addition to cash.

Bond Amounts

Bonds posted for cases in the sample ranged in amount from \$1,000 to \$500,000. Bonds were highest in Queens (median \$7,500) and lowest in the Bronx (median \$3,500), as shown in Figure 1.

Figure 1
Bond Amount By Borough



THE PRINCIPALS: Bond Agents, Insurance Underwriters, and Indemnitors

Bond Agents

Bonds in the research sample were written by 25 different agents, coded from A to Y. There was wide variation in the number of bonds written by each agent, as shown in Figure 2. Four agents wrote more than 50 bonds each (H, L, O, and U), while five others wrote no more than 3 each (A, E, S, X, and Y).

Insurance Underwriters

Eight insurance companies, listed in the box at right, underwrote all of the sample bonds. The insurance company is responsible for paying the court the full amount of the bond in the event of forfeiture for failure to appear.

Three companies were located in or near New York City: Allegheny and Fidelity in Newark, NJ, and Seneca in Manhattan. The companies that underwrote the most bonds were not the local ones, but rather Fairmont (168 bonds) and Safety (133 bonds), in Houston and St. Louis respectively (Figure 3).

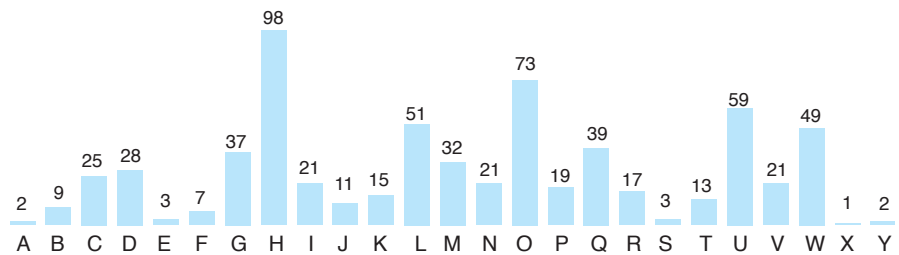
Figure 3 also shows which agents worked with which companies. A handful of agents worked with two different underwriters (B, D, E, H, O, Q, and S) but most agents used the same underwriter for all their bonds.

Indemnitors

The indemnitor is the person who co-signs for the bond, pays the fee, and deposits the collateral. Indemnitors were usually family members of the defendant: mother (27%), father (7%), sister (9%), brother (6%), or other blood relative (usually an aunt or cousin, 18%). An additional 3% of indemnitors had the same last name as the defendant but the relationship was not stated on the affidavit. A spouse or in-law accounted for 10%, and some other intimate relationship (such as boyfriend or girlfriend) accounted for 6%. The rest of the indemnitors identified themselves as a friend (14%) or fell into a miscellaneous category (1%), which included one defendant who co-signed his own bond, an employer, a counselor, and a “sitter.”

Figure 2

Number of Bonds By Bond Agent (N = 656)



Insurance Companies

- Accredited Surety & Casualty Company, Inc. (Winter Park, FL)
- Allegheny Casualty Company (Newark, NJ)
- American Reliable Insurance Company (Scottsdale, AZ)
- Evergreen National Indemnity Company (Columbus, OH)
- Fairmont Specialty Insurance Company (Houston, TX)
- International Fidelity Insurance Company (Newark, NJ)
- Safety National Casualty Corporation (St. Louis, MO)
- Seneca Insurance Company (New York, NY)

Figure 3

Number of Bonds By Insurance Underwriter (N = 656)

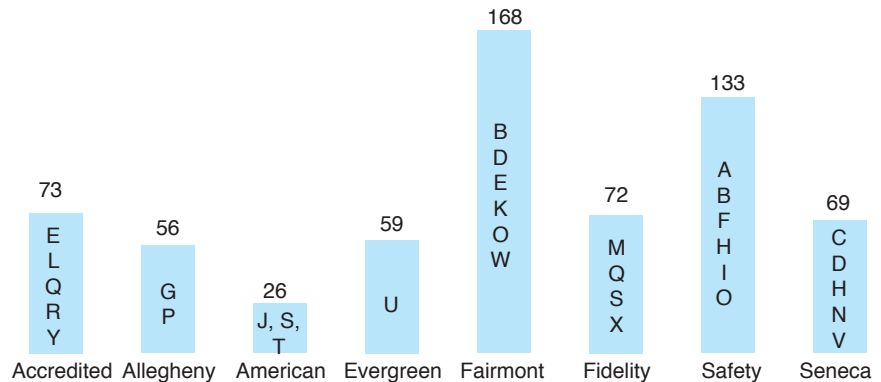
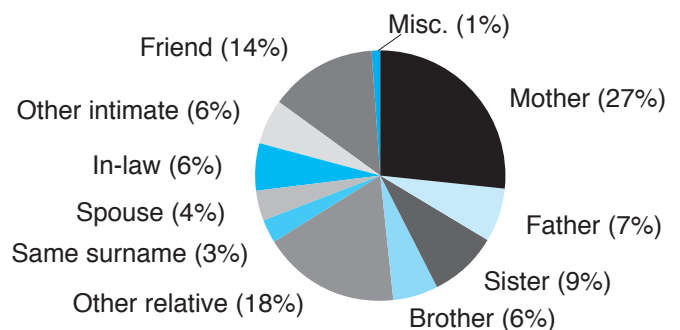


Figure 4

Indemnitor-Defendant Relationship (N = 598)
(58 excluded because of missing data)



Family and friends came from throughout the City and elsewhere — both within and outside New York State — to post bonds for the defendants in the sample. Bond agents were also dispersed throughout the City and in Hempstead, L.I. (in Nassau County, adjacent to Queens).

The most common geospatial pattern was one in which the defendant’s family (or other indemnitor) lived in the same borough where the arrest took place and where the bond agent was located (Figure 5, Group 1). (Nassau and Suffolk counties were included with Queens, and Westchester County with the Bronx as the “same borough.”) This pattern fit 41% of cases, meaning that in the majority of cases the indemnitor had to travel to a different borough to attend the defendant’s arraignment or other court hearings (Groups 3, 4, and 5) or to meet with the bond agent (Groups 2, 3, and 4), or both (Groups 3 and 4).

Our data indicate that over a third of indemnitors took their business to a bond agent who was near neither home nor courthouse (Groups 2 and 4), but this could be misleading. The agent’s address as given on the court papers may not reflect the business location in every case. Some bondsmen advertise that they have offices in all five boroughs, yet each agent gave the same office address in court papers for all clients, regardless of the borough of prosecution.

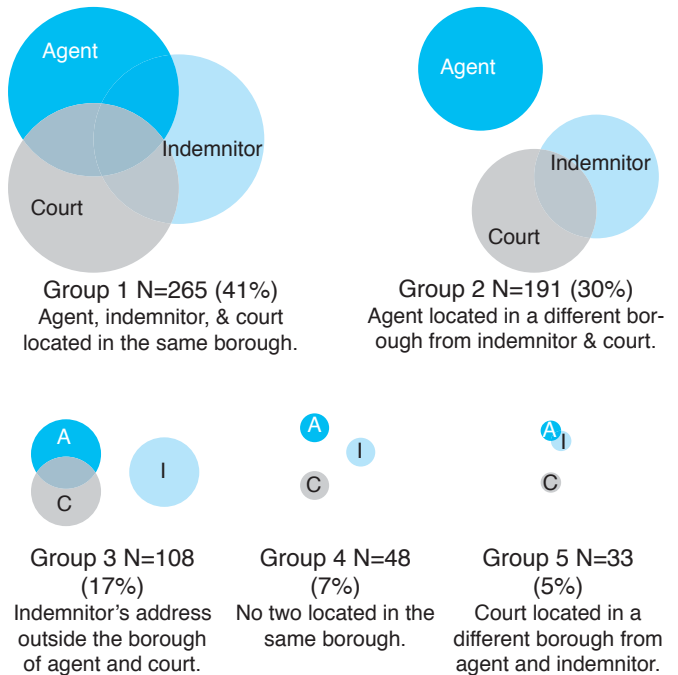
Nonrefundable Bond Fees

Bond fees are regulated by law; they are calculated as a percentage of the face amount of the bond, on a sliding scale depending on the size of the bond (see page 2).

The fee in sample cases was usually set at precisely the legal limit. Departures from the norm consisted of 22 bonds (3%) with a fee lower than the legal limit and 33 (5%) with an illegal fee that exceeded the limit. Fee information was missing for 18 bonds.

There were more illegal fees in Brooklyn (8%) than in the other boroughs, where illegal fees ranged from

Figure 5
Geospatial Relationships Among Agent, Indemnitor, and Court
Overlap indicates location in same borough; circle size reflects the proportion of all bond cases in each group.



1% in Manhattan to 5% in Queens (Figure 6).

Eight agents were responsible for all the illegal fees, and for most of the below-limit fees as well (B, C, D, H, K, O, V, W; Figure 7). An additional 4 agents charged some fees below but none above the limit (G, I, M, P).

Agent C, who charged an illegal fee for 44% of his bonds, was the worst offender. However, the overcharges were generally small, often the result of a 10% charge applied to the entire bond amount when a lower rate should have been applied to the portion over \$3,000.

Figure 6
Bond Fee Relative To Legal Limit, By Borough

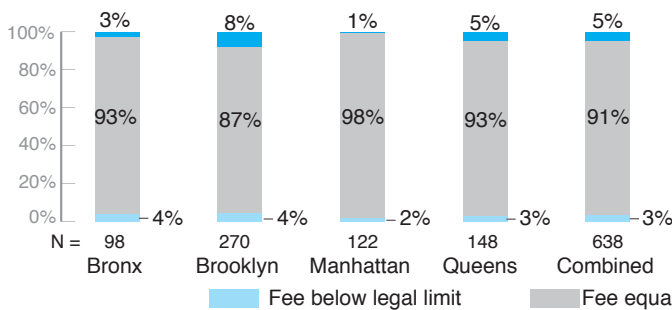
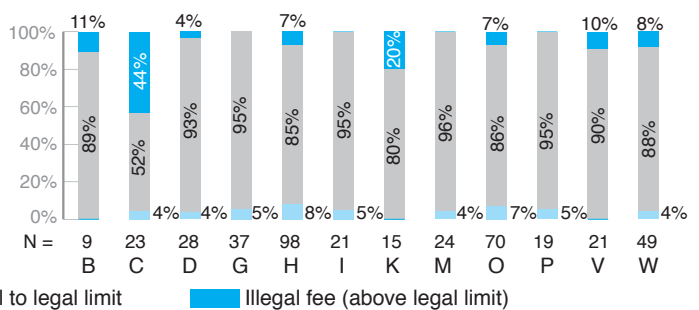


Figure 7
Bond Fee Relative To Legal Limit, By Agent
(12 agents with fees above or below the legal limit)



Types of Collateral

Some type of collateral, usually cash, was required for nearly every bond, in addition to the nonrefundable fee. Collateral is supposed to be refunded at the end of the case if the defendant appears for all scheduled court dates, but extra fees are sometimes withheld.

Cash was the only type of collateral in 88% of bonds overall; and it was combined with property (“mixed collateral”) in an additional 3% of bonds (Figure 8). Property, almost always real estate, was the sole form of collateral in 9% of bonds.

Property played a much larger role as collateral in Queens than elsewhere in the City: 20% of Queens bonds were secured by property (including 1% mixed), compared to 11% or less in every other borough. In two Queens cases no collateral was entered on the bail affidavit; possibly none was required, but this could have been a clerical error.

The factor with the greatest effect on collateral type was the size of the bond. Cash was the only form of collateral for bonds under \$5,000 (Figure 9). Bonds ranging from \$5,000 to \$10,000 included a small proportion with property collateral (7%). Among bonds larger than \$10,000, 46% were secured by property, either alone or in combination with cash.

Collateral/Bond Ratios

The amount of cash collateral deposited to secure the sample bonds ranged from \$100 to \$40,000. Unlike the fee, the amount of cash collateral is not regulated by law. In general, more cash was required to secure larger bonds, but the ratio varied considerably, from 2% to 100% of the bond amount (not shown).

A major factor was whether cash fully or only partially secured the bond. When collateral was in the form of cash alone, the median ratio for the combined boroughs was .37, compared to .11 for cases with mixed collateral (Figure 10). Both ratios were lowest in Queens: .32 for cash-only and .07 for mixed-collateral cases (although there was only one bond with mixed collateral in Queens). Among cases with cash-only collateral, the Bronx and Manhattan had the highest ratios: .40 in each borough.

Another factor was the size of the bond. Proportionately less cash collateral was required for larger bonds than for smaller bonds, even when the bonds with mixed collateral were excluded. Among bonds under \$10,000, the median ratio was .40, compared to .33 among bonds of \$10,000 or more (Figure 11).

Unusually high bond amounts in Queens (Figure 1) represent one reason for the low collateral/bond ratios found there (Figure 10). The median ratio in Brooklyn was just as low as in Queens — .30 — in cases with bond set at the highest level (Figure 11). Even controlling for the size of the bond, however, ratios in Queens and Brooklyn were lower than in the other two boroughs.

Figure 8
Collateral Type By Borough

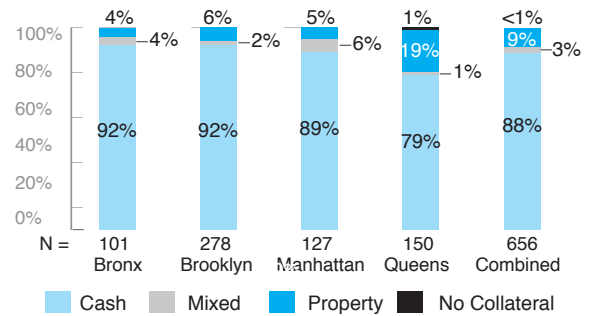


Figure 9
Collateral Type By Bond Amount

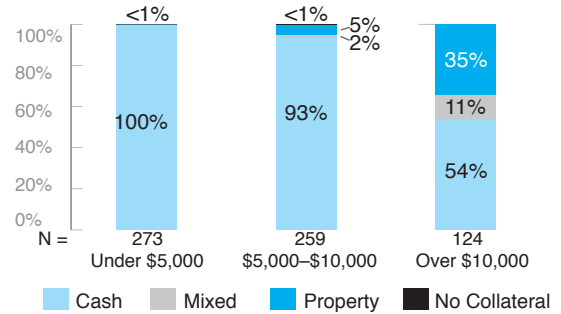


Figure 10
Median Collateral/Bond Ratio
By Collateral Type and Borough
(excluding property-only collateral)

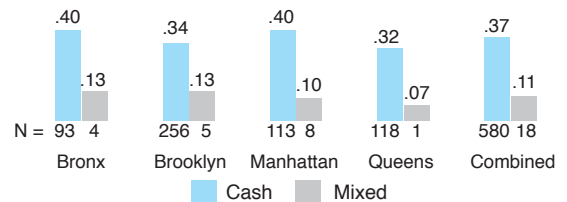
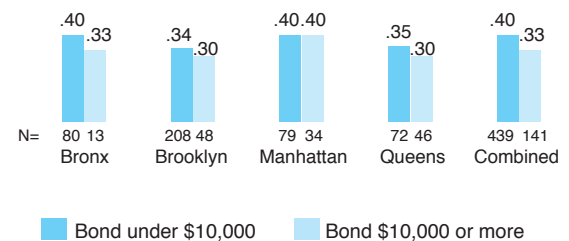


Figure 11
Median Collateral/Bond Ratio
By Size Of Bond And Borough
(excluding property-only and mixed collateral)



Estimating Effective Cash Discounts

By setting a bail amount with a cash alternative, judges can reduce the amount of cash needed to obtain release to no more than the cost of a bond. A cash alternative set at 50% of the bond, for example, would require the same cash outlay as a bond with a 10% fee plus 40% cash collateral.

Yet as we have seen, the fee is lower than 10% for bond amounts over \$3,000; cash collateral is generally less than 40% for large bonds — and in some boroughs for smaller bonds as well. This means that a cash discount of 50% might not be enough to match the deal offered by a bondsman.

Effective Cash Discount:
the lowest cash discount necessary to remove the financial incentive for posting a bond rather than cash in an estimated four out of five cases

In fact, Figure 12 shows that a 50% cash discount would have been competitive with the bondsman’s offer in fewer than a third (31%) of cases in the research sample. Only in the Bronx, and only for bail under \$10,000, would 50% have been competitive for the majority of cases.

We defined an effective cash discount as one that is competitive with a bond in at least 80% of cases. One could use a lower criterion — a simple majority, for instance — but our research suggests that the more stringent criterion could be met with a discount of 60% in cases with bail set under \$10,000 in every borough (Figure 12). The same discount would also be effective for high bail in the Bronx and Manhattan (competitive for 82% and 88% of cases respectively). For high bail in Brooklyn and Queens, meeting our criterion would require a discount of at least 70%.

Figure 12

Effectiveness Of Cash Discounts of 50%, 60%, and 70%
The proportion of bond cases for which a cash discount at each level would have been effective (excluding cases with property-only and mixed collateral)

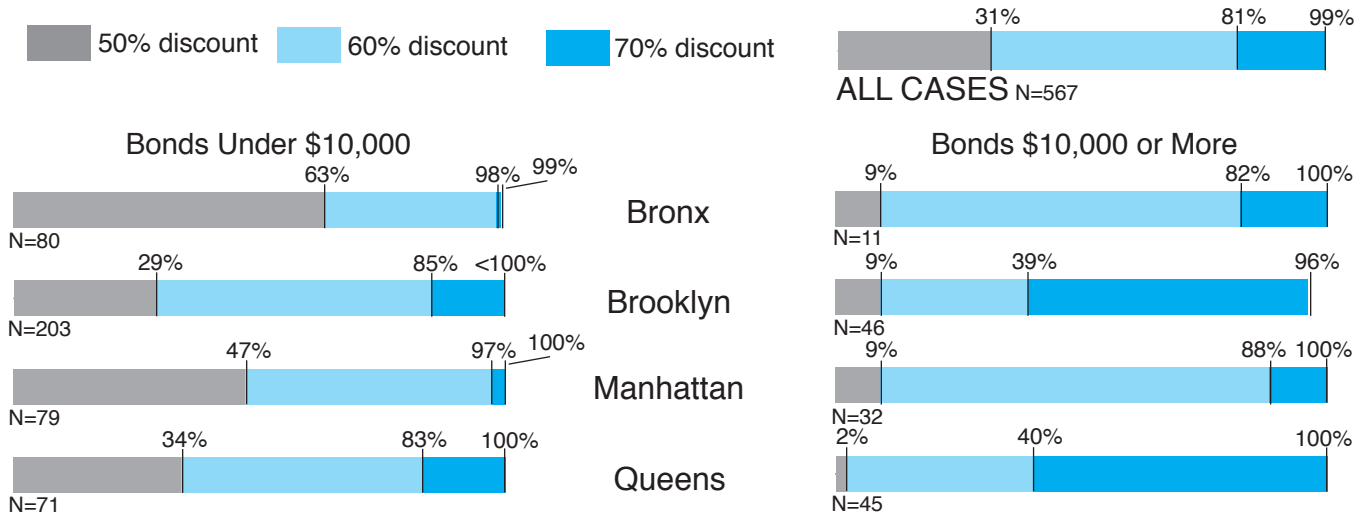
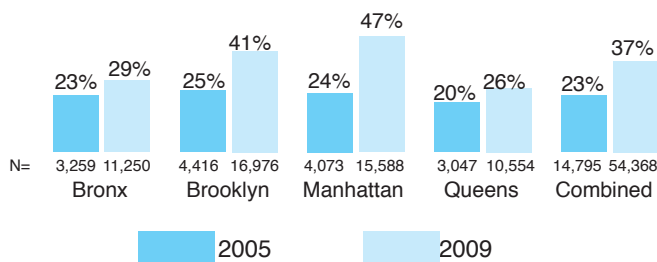


Figure 13

Percent Of Bails With A Cash Alternative
(cases with bail set July-Sept. 2005 compared to annual data for 2009)



At present, effective cash discounts are rarely set in New York City courtrooms. Cash alternatives are found more frequently than they were when this research was initiated — 23% of bail cases had a cash alternative in 2005, compared to 37% in 2009 — but they remain the exception in every borough (Figure 13).

Moreover, cash alternatives are less likely to be competitive with a bond now than in 2005, because cash discounts are smaller than they used to be. In 2005, 30% of cash alternatives were set with a discount greater than 50%. By 2009, that percentage had declined to 11% (not shown).

Summary & Conclusions

Well over 3,000 bail bonds are bought in New York City each year, a disproportionate number of them in Brooklyn cases. In our sample of cases from 2005, Queens had the largest bonds (median, \$7,500) and the Bronx had the smallest (median, \$3,500). No bonds for less than \$1,000 were posted.

Given the ability to do so, defendants are better off posting cash bail directly with the court because bondsmen charge nonrefundable fees. (So do the courts, but the percentage is much smaller and there is no fee if the defendant is not convicted.) Moreover, bondsmen can refuse clients for any reason or revoke the bond at any time — and then add extra fees for costs incurred. Bondsmen also require a collateral deposit, usually in cash. The collateral should be refunded at the end of the case, but extra fees may be withheld from the refund.

In spite of the savings in the long run made by posting cash, defendants who do not have the money to do so can sometimes afford a bond because the amount required up front may be considerably less. The cash

outlay for a bond, including the fee and the collateral, is typically 30% to 50% of the bond, and less if property is used as collateral. This percentage is affected by the size of the bond (lower for large bonds) and the borough (lower in Brooklyn and Queens).

The courts can facilitate bail making in cash through the already established practice of setting a lower cash alternative along with a bond amount. Currently, cash alternatives are not set in the majority of bail cases, and when they are set, the usual 50% discount is too often too small.

The research findings were used to develop a measure — the **effective cash discount** — that could reduce reliance on bondsmen by enabling defendants to post cash bail instead. We defined the effective cash discount as one that results in a cash alternative no larger than the up-front cost of the bond for at least four out of five cases. The research showed that a 60% discount would suffice for bail under \$10,000; for higher bail, 70% would be required in Brooklyn and Queens.

Policy Implications

- ***The New York State bail law should be amended to omit insurance company bail bonds from the authorized forms of bail.*** If New York were to join the four other states that currently have no commercial bail bonds, all release and detention decisions could be based on empirically assessed risk rather than profit motives, and freedom would be less costly for defendants. To avoid increased detention, this legislative change should be accompanied by adjustments in bail setting practices as described below.

In the absence of a legislative amendment, the following changes would enable anyone who can afford a bond to post cash instead.

- ***The use of cash alternatives should be expanded.*** Setting a cash alternative would not necessarily lessen the amount of money needed for release, but might make it possible for the defendant to post it in cash rather than as a bond. Little over a third of bail cases in 2009 were set with a cash alternative.
- ***When cash alternatives are set, the discount should be 60% for most cases, and 70% in Brooklyn and Queens for high bail.*** The typical cash alternative, when it is set, is too high to remove the financial incentive for buying a bond rather than posting cash. By using the effective cash discount developed in this research (60% for most cases; 70% for bail of

\$10,000 or more in Brooklyn and Queens), the courts could enable thousands of defendants to post cash bail who would otherwise buy a commercial bond.

- ***The use of secured bail bonds should be expanded.*** The courts already have the option of allowing defendants to put up property as collateral, but rarely use it. The effect of expanding the use of secured bail bonds would be felt mostly in Queens, where home ownership is more prevalent than in other boroughs.
- ***The use of partially secured bail bonds should be considered.*** The financial advantage of a bond would be eliminated for virtually all cases if the defendant needed to raise only 10% of the bail amount. The American Bar Association Standards advocate the use of 10% deposit bail and New York law authorizes it as a “partially secured bail bond,” but this, too, is a rarely used option.

The final recommendation addresses improving oversight of bondsmen rather than reducing their role.

- ***The courts should monitor bail affidavits more closely.*** Bond fees and collateral that equal or exceed the cash alternative should raise a red flag: there could be errors or false information on the affidavit, or the defendant could be unaware of the cash alternative. The courts could also minimize illegal fees by being aware of the legal limit and enforcing it.



Research Brief from

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Commercial Bonds In New York City**

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