

What is bail?

“Bail is the *right to release* pretrial.”

U.S. Supreme Court

Stack v. Boyle (1951)

“The amount must be no more than is necessary to guarantee his presence at trial.” People ex rel Lobell v. McDonnell,

296 NY 109, 111 (1947).

But what is it really?

“[U]sually one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money. How much money does the defendant have?” —Robert F. Kennedy

Bail over the decades:

In 1990, 37% of felony cases in the us had money bail set.

1990

2009

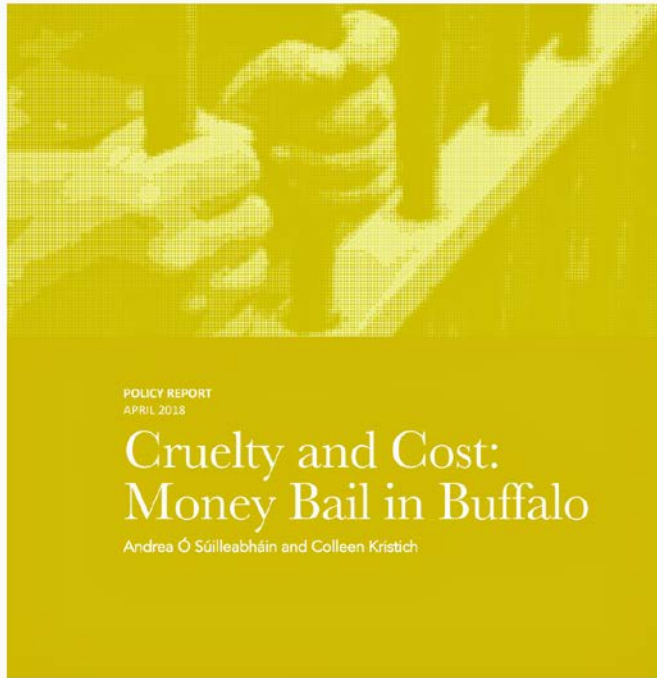
By 2009, that percentage increased to 61% of all felony cases.

Money bail is out of reach

The average felony bail set in the US is \$10,000.

Yet almost half of all Americans do not have \$400 on hand in case of emergency.

Erie county's criminal justice system



- Buffalo's Partnership for Public Good published Cruelty and Cost: Money Bail in Buffalo in April 2018. They found:
- 1,200 people incarcerated in Erie County on any given day
- 64% are people held pretrial
- Observed 240 arraignments handled by six city court judges
- Median bail observed on those 240 cases was
- \$1,000 for a violation,
- \$5,000 for a misdemeanor, and
- \$10,000 for a felony

Kunkeli v.
Anderson
(January 31,
2018)

“It is clear to this court that a lack of consideration of a defendant’s ability to pay the bail being set at an arraignment is a violation of the equal protection and due process clause of the Fourteenth Amendment and of the New York State Constitution.”

Judge Maria Rosa
State Supreme Court
Dutchess County, NY

Pushing ability to pay at a bail hearing

The Vera institute of Justice has developed a bail “calculator” that produces an assessment of a person’s ability to pay based on answers to 30 questions about a person’s sources of income, liquid assets, and financial obligations. Prior to arraignment, attorneys should conduct an initial interview and assess the amount and form of bail that would be appropriate, and then provide that information to the court.

Bail Calculator

BACKGROUND INFORMATION	CASE INFORMATION
NAME: _____	DATE (M/D/Y) ____/____/2018
CELL PHONE: (____) _____	AR: _____
ZIP CODE: _____	DOCKET #: 2018BX _____
NYSID: _____	TOP CHARGE: _____
DOB: ____/____/____	<input type="checkbox"/> DAY SHIFT <input type="checkbox"/> BRONX DEFENDERS
GENDER <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> NON BINARY	<input type="checkbox"/> EVENING SHIFT <input type="checkbox"/> LEGAL AID SOCIETY
	<input type="checkbox"/> WEEKEND SHIFT <input type="checkbox"/> 18(B) <input type="checkbox"/> OTHER

INCOME		
ARE YOU A STUDENT?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
ARE YOU EMPLOYED?	<input type="checkbox"/> YES <input type="checkbox"/> NO	HOW LONG? ____ YEARS ____ MONTHS
EMPLOYER NAME: _____		
HOURLY OR SALARY? <input type="checkbox"/> HOURLY		<input type="checkbox"/> SALARY
HOURLY WAGE: \$ ____ /HR		ANNUAL SALARY: \$ _____
HOURS PER WEEK: ____ /WK		MONTHLY SALARY: \$ _____
TOTAL MONTHLY INCOME: \$ _____		

DEPENDENTS

HOW MANY CHILDREN DO YOU HAVE? ____

HOW MANY ARE UNDER YOUR CARE? ____

ANY OTHER DEPENDENTS? _____

INCOME FROM BENEFITS

DO YOU GET:

☐ CASH BENEFITS: \$ _____

☐ SSD: \$ _____

☐ UNEMPLOYMENT: \$ _____

☐ SOCIAL SECURITY: \$ _____

☐ SSI: \$ _____

☐ PENSION/RETIREMENT: \$ _____

☐ ANY OTHER INCOME?: \$ _____

☐ TANF

☐ HEAP

☐ SNAP

☐ WIC

☐ SECTION 8

☐ MEDICAID/MEDICARE

TOTAL BENEFITS: \$ _____

LIQUID ASSETS

HOW MUCH DO YOU HAVE IN:

CHECKING ACCOUNT: \$ _____ SAVINGS ACCOUNT: \$ _____

HOW MUCH CASH DO YOU HAVE AVAILABLE RIGHT NOW?: \$ _____

IF YOU HAVE A CREDIT CARD, HOW MUCH CAN YOU AFFORD TO CHARGE TO IT RIGHT NOW?: \$ _____

DO YOU OWN: ☐ HOME ☐ VEHICLE

☐ OTHER (HIGH VALUE PROPERTY) _____ APPROXIMATE VALUE: \$ _____

TOTAL LIQUID ASSETS: \$ _____

EXPENSES

HOW MUCH DO YOU PERSONALLY PAY FOR EACH MONTH:

☐ HOUSING: \$ _____ ☐ PHONE: \$ _____ ☐ TV & INTERNET: \$ _____

☐ ELECTRICITY & GAS: \$ _____ ☐ STUDENT LOANS: \$ _____ ☐ OTHER: \$ _____

☐ FOOD & GROCERY: \$ _____ ☐ CHILD SUPPORT: \$ _____

☐ TRANSPORTATION: \$ _____ ☐ MEDICAL : \$ _____

TOTAL EXPENSES: \$ _____

CALCULATIONS

TOTAL MONTHLY INCOME: \$ _____ +

TOTAL LIQUID ASSETS: \$ _____ +

TOTAL BENEFITS: \$ _____ +

TOTAL EXPENSES: \$ _____ -

GROSS MONTHLY DISPOSABLE INCOME: \$ _____

INDIVIDUAL BAIL ESTIMATE

☐ PARTIALLY SECURED: \$ _____

☐ UNSECURED: \$ _____

☐ SECURED: \$ _____

☐ CASH: \$ _____

☐ CREDIT: \$ _____

OTHER PAYERS

IS THERE SOMEONE I CAN CALL TO HELP YOU WITH BAIL?

☐ YES

☐ NO

RELATIONSHIP?

☐ SPOUSE/PARTNER

☐ PARENT

☐ SIBLING

☐ EMPLOYER

☐ OTHER

NAME: _____ PHONE: _____

SURETY CONTRIBUTION: \$ _____

BAIL RECOMMENDATION:

☐ PARTIALLY SECURED:

\$ _____

☐ UNSECURED:

\$ _____

☐ SECURED:

\$ _____

☐ CASH:

\$ _____

☐ CREDIT:

\$ _____

CASE OUTCOME

☐ RESOLVED

☐ RELEASE ON RECOGNIZANCE

☐ SUPERVISED RELEASE

☐ BAIL SET

D.A. REQUEST: \$ _____

BAIL AMOUNT SET: \$ _____

WAS THE BAP RECOMMENDATION MADE ON THE RECORD?

☐ YES

☐ NO

Financial Assessment	Responses
Introductory Information	
First Name	
Last Name	
NYSID	
Employment Information	
Are you paid hourly or by salary?	
Hourly wage (if paid hourly)	\$ -
Hours per week (if paid hourly):	0
Weekly income (if hourly):	\$ -
Monthly income (if hourly):	\$ -
Monthly income (if commission):	\$ -
Annual Salary:	\$ -
Monthly income (if salary):	\$ -
Cash Benefits	
Do you receive cash assistance like Temporary Assistance for Needy Families (TANF)?	\$ -
Do you receive unemployment income?	\$ -
Do you receive Supplemental Security Income (SSI)?	\$ -
Do you receive Social Security Disability (SSD/SSDI)?	\$ -
Do you receive Social Security (retirement)?	\$ -
Do you receive any other pension or retirement income?	\$ -
Do you receive any other income?	\$ -
Income from cash benefits:	\$ -
Liquid Assets	
Checking Account	\$ -
Saving Account	\$ -

Bail Recommendations:	
Misdemeanor-Partially secured/unsecured	\$ -
Felony- Partially secured/unsecured	\$ -
Misdemeanor-Cash	\$ -
Felony-Cash	\$ -
Misdemeanor- Credit	\$ -
Felony- Credit	\$ -
Immediate Cash, Partially Secured	\$ -

Outcome	
Bail recommendations made:	
	\$ -
DA Request	
Case outcome:	
Bail Amount Set	
Was BAP recommendation made on record?	

Criminal Procedure Law § 520.10

- Authorized forms of bail:
- (a) cash bail
- (b) an insurance company bail bond
- (c) a secured surety bond
- (d) a secured appearance bond
- (e) a partially secured surety bond
- (f) a partially secured appearance bond
- (g) an unsecured surety bond
- (h) an unsecured appearance bond
- (i) credit card or similar device;...

Vocabulary

- obligor = person paying bail
- principal = defendant
- surety = person other than defendant
- appearance bond = bail where defendant is obligor
- surety bond = bail where someone else, and maybe also defendant, is obligor



Partially secured surety bond

- Bail bond secured only by a deposit of a sum of money not exceeding ten percent of the total amount of the undertaking where the obligor consists of one or more sureties. One of the sureties may be the principal/defendant.



Partially secured appearance bond

- Bail bond secured only by a deposit of a sum of money not exceeding ten percent of the total amount of the undertaking where the obligor is the principal/defendant only.



Unsecured surety bond

- Bond not secured by any deposit of or lien upon property but with a promise to appear in court where the obligor consists of one or more sureties. One of the sureties may be the principal/defendant.

Unsecured appearance bond

- Bond not secured by any deposit of or lien upon property but with a promise to appear in court where the obligor is the principal/defendant only.

- Bail must be set at \$2,500 or less for misdemeanors and felonies Credit card bail must be paid at courthouse Cannot split bail payment between credit card and cash

Credit card

Criminal Procedure Law § 510.30

2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

(a) With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

(i) The principal's character, reputation, habits and mental condition;

(ii) His employment and financial resources; and

(iii) His family ties and the length of his residence if any in the community; and

(iv) His criminal record if any; and

(v) His record of previous adjudication as a juvenile delinquent, as retained pursuant to [section 354.2 \[FN1\] of the family court act](#) , or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; and

Criminal Procedure Law § 530.30

1. When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, a judge of a superior court holding a term thereof in the county, upon application of a defendant, may order recognizance or bail when such local criminal court:
 - (a) Lacks authority to issue such an order, pursuant to [paragraph \(a\) of subdivision two of section 530.20](#) ; or
 - (b) Has denied an application for recognizance or bail; or
 - (c) Has fixed bail which is excessive. In such case, such superior court judge may vacate the order of such local criminal court and release the defendant on his own recognizance or fix bail in a lesser amount or in a less burdensome form.
2. Notwithstanding the provisions of subdivision one, when the defendant is charged with a felony in a local criminal court, a superior court judge may not order recognizance or bail unless and until the district attorney has had an opportunity to be heard in the matter and such judge has been furnished with a report as described in subparagraph (ii) of [paragraph \(b\) of subdivision two of section 530.20](#) .
3. Not more than one application may be made pursuant to this section.

Make your appeal count!

- entitled to only one review under § 530.30 by a county court judge
- OCA directive that a bail review on misdemeanors must be granted within 5 days, but often done the same or very next day for any type of case
- do not have to argue “change of circumstances”
- DA must be notified and given opportunity to be at hearing
- make your arguments again under § 510.30 and § 520.10 for alternative forms of bail and ability to pay