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## Go Fund Me, Please: Crowdsourcing for Bail As an Insufficient Surety

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## NOTE

# GO FUND ME, PLEASE: CROWDSOURCING FOR BAIL AS AN INSUFFICIENT SURETY

### I. INTRODUCTION

A “modern day bake sale with . . . fewer brownies.”<sup>1</sup> This was an analogy used to describe the newfound use of crowdsourcing websites like GoFundMe.com (“Go Fund Me”) to obtain money for bail.<sup>2</sup> While a bake sale or its equivalent may be an acceptable way to raise money for bail, the implications of crowdsourcing websites being used for this same purpose are troubling and the possibilities for abuse vast.<sup>3</sup> Crowdsourcing, which has been defined as “the practice of obtaining needed services, ideas, or content by soliciting contributions from a large group of people and especially from the online community,”<sup>4</sup> has

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1. Rachel Belle, *Need to Make Bail? GoFundMe Is a Modern Day Bail Bondsman*, MYNORTHWEST.COM (Feb. 4, 2015, 7:40 AM), <http://mynorthwest.com/874/2703369/Need-to-make-bail-GoFundMe-is-a-modern-day-bail-bondsman>.

2. *Id.* (“[I]t shouldn’t be too surprising that a lot of people are using GoFundMe to raise bail money . . .”); Caroline Grueskin, *Need Cash to Hire a Lawyer? Try Crowdfunding*, MARSHALL PROJECT (Nov. 13, 2015, 7:15 AM), <https://www.themarshallproject.org/2015/11/13/need-cash-to-hire-a-lawyer-try-crowdfunding#.i2juV1ddR> (“Crowdfunding . . . has become a tool for dealing with the criminal justice system. It’s not uncommon to find requests for bail money, legal fees, fines, [etc.] . . .”); see *infra* Part III.D.

3. See *United States v. Ellis DeMarchena*, 330 F. Supp. 1223, 1226 (S.D. Cal. 1971); *Johnson v. Crane*, 568 N.Y.S.2d 22, 23 (App. Div. 1991); *People v. Esquivel*, 601 N.Y.S.2d 541, 543 (Sup. Ct. 1993); Veronica Rocha & Joseph Serna, *Mom of ‘Handsome’ Felon Starts ‘Free Jeremy’ Page Seeking \$25,000*, L.A. TIMES (June 20, 2014, 12:15 PM), <http://www.latimes.com/local/lanow/la-me-ln-handsome-felon-mother-free-jeremy-fundraiser-20140620-story.html>; *infra* Part III; see also Grueskin, *supra* note 2 (stating about crowdfunding generally that “there’s nothing new in trying to raise money for a cause, but that the Internet [changes] . . . ‘who, and how, and when we can ask people for money’”).

4. *Crowdsourcing*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/crowdsourcing> (last visited July 24, 2016) [hereinafter *Crowdsourcing*, MERRIAM-WEBSTER]; see also *Crowdsourcing*, BLACK’S LAW DICTIONARY (10th ed. 2014) [hereinafter *Crowdsourcing*, BLACK’S] (defining crowdsourcing as “[t]he activity or practice of involving a great many people to develop ideas, produce content, or accomplish huge or tedious tasks, as by soliciting help via the Internet”). When crowdsourcing is used for the purpose of fundraising, it can also be called crowdfunding. *Crowdfunding*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Collectively, fundraising efforts that involve the use of the Internet to appeal to potential donors who might

become an increasingly popular way to obtain money.<sup>5</sup> There are many different websites that host crowdsourcing, such as Go Fund Me, LendingClub.com (“Lending Club”), Indiegogo.com (“Indiegogo”), Upstart.com, Kickstarter.com, and the list goes on.<sup>6</sup> Some of these can be described as “personal fundraising” websites,<sup>7</sup> while others are “peer-to-peer lending” websites.<sup>8</sup> The uses of these websites range from donating to those affected by a natural disaster to helping finance the purchase of a home;<sup>9</sup> however, use of these websites may not be appropriate in every situation.<sup>10</sup> In the context of bail, crowdsourcing websites could easily be used to undermine and circumvent the rules prescribed for posting bail.<sup>11</sup>

Laws in New York give courts broad authority to examine bail that is being posted, including “whether any feature of the undertaking contravenes public policy.”<sup>12</sup> This inquiry, usually conducted at the

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support the fundraiser’s purpose, as with charitable undertakings, artistic endeavors, political campaigning, research and development, etc.”). This Note considers these terms as interchangeable.

5. Jason Krause, *Crowdfunding Can Be a Great Way to Finance Your Case—or Destroy It*, A.B.A. J., Sept. 2015, at 32.

6. See generally GOFUNDME, <https://www.gofundme.com> (last visited July 24, 2016); LENDING CLUB, <https://www.lendingclub.com> (last visited July 24, 2016); INDIEGOGO, <https://www.indiegogo.com> (last visited July 24, 2016); UPSTART, <https://www.upstart.com> (last visited July 24, 2016); KICKSTARTER, <https://www.kickstarter.com> (last visited July 24, 2016).

7. See, e.g., GOFUNDME, *supra* note 6. Personal fundraising websites allow users to create custom fundraising campaign pages on the website, which enables people to donate money directly to the user, also known as the campaign owner. *Common Questions*, GOFUNDME, <https://www.gofundme.com/questions> (last visited July 24, 2016); *Terms of Use*, INDIEGOGO, <https://www.indiegogo.com/about/terms> (last visited July 24, 2016). Since these are donations, there is no obligation to pay back the donors. See *Common Questions*, *supra*.

8. See, e.g., LENDING CLUB, *supra* note 6. Peer-to-peer lending websites provide online marketplaces for loans. *About Us*, LENDING CLUB, <https://www.lendingclub.com/public/about-us.action> (last visited July 24, 2016). By simply signing up on one of these websites, anyone can request a loan or invest in loans. *Id.* The fact that any individual can become an investor on peer lending websites is what distinguishes them from more traditional means of obtaining loans. Mandi Woodruff, *Here’s What You Need to Know Before Taking Out a Peer-to-Peer Loan*, YAHOO! FINANCE (Aug. 29, 2014, 2:47 PM), <http://finance.yahoo.com/news/what-is-peer-to-peer-lending-173019140.html>. Since these are loans, borrowers are obligated to pay them back. See *How Does an Online Credit Marketplace Work?*, LENDING CLUB, <https://www.lendingclub.com/public/how-peer-lending-works.action> (last visited July 24, 2016).

9. See, e.g., GOFUNDME, *supra* note 6; LENDING CLUB, *supra* note 6. Peer lending websites are generally used for home purchases, auto purchases, home improvements, business expenses, weddings, medical expenses, etc. See, e.g., LENDING CLUB, *supra* note 6 (showing a drop-down list of options for what a requested loan is to be used for). Fundraising websites are used for many of the same general categories but also for things like charities and memorials. See, e.g., GOFUNDME, *supra* note 6 (showing a list of the most common categories and all categories for campaigns).

10. See *infra* Part III.

11. See N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009); *United States v. Nebbia*, 357 F.2d 303, 304 (2d Cir. 1966); *People v. McIntyre*, 640 N.Y.S.2d 386, 391 (Sup. Ct. 1996).

12. CRIM. PROC. § 520.30; *Johnson v. Crane*, 568 N.Y.S.2d 22, 23 (App. Div. 1991).

request of the prosecution,<sup>13</sup> involves two main public policy concerns: (1) whether the posted money will help guarantee the defendant's return to court;<sup>14</sup> and (2) whether the money involves the proceeds of criminal activity.<sup>15</sup> Crowdsourcing websites fail in both of these respects.<sup>16</sup> First, crowdsourcing websites can easily be used to disguise the true source of money offered for bail, which can be anonymously contributed by the defendant's associates, family, or others.<sup>17</sup> This creates an easy way to legitimize money, which would have otherwise been rejected by the court due to its likely being the proceeds of criminal activity.<sup>18</sup> Second, a source of money that is legitimate, but too remote from the defendant, may not be sufficient because it does not guarantee the defendant's return to court.<sup>19</sup> Contributors on crowdsourcing websites are often inherently anonymous,<sup>20</sup> and, even if not, they are usually removed from the defendant's close social network.<sup>21</sup> If there is little or no relationship between the defendant and those supplying the money, the bail money provides no incentive to prevent the defendant from simply fleeing the jurisdiction.<sup>22</sup> This is especially true if the money does not have to be paid back<sup>23</sup> or, even if it does, if lenders are unlikely to collect.<sup>24</sup> Moreover, besides these main public policy concerns, there are many other ancillary issues that crowdsourcing presents, such as the burden placed on the prosecution, the lack of regulation as opposed to other entities in the bail industry, and the potential for the defendant and surety to actually profit from this scheme.<sup>25</sup>

Therefore, due to the longstanding policies and purposes behind the posting of bail—as well as other policy concerns—crowdsourcing is not

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13. CRIM. PROC. § 520.30.

14. *People v. Baker*, 729 N.Y.S.2d 580, 584 (Sup. Ct. 2001).

15. CRIM. PROC. § 520.30; *McIntyre*, 640 N.Y.S.2d at 390.

16. *See infra* Part III.

17. *See, e.g., Privacy Policy*, LENDING CLUB, <https://www.lendingclub.com/public/privacy-policy.action> (last updated Nov. 24, 2015) (stating that lenders are anonymous).

18. *See, e.g., About Us*, *supra* note 8 (stating that you can build an investment account in minutes); *see* CRIM. PROC. § 520.30.

19. *McIntyre*, 640 N.Y.S.2d at 387 n.1.

20. *See, e.g., Privacy Policy*, *supra* note 17.

21. *See Crowdsourcing*, BLACK'S, *supra* note 4; *Crowdsourcing*, MERRIAM-WEBSTER, *supra* note 4.

22. *McIntyre*, 640 N.Y.S.2d at 390-91.

23. *See, e.g., Common Questions*, *supra* note 7.

24. *See, e.g., Diversification*, LENDING CLUB, <http://www.lendingclub.com/public/diversification.action> (last visited July 24, 2016); *What Tools Does Lending Club Have to Deal with Delinquent Borrowers?*, LENDING CLUB, <http://kb.lendingclub.com/investor/articles/Investor/What-tools-does-Lending-Club-have-to-deal-with-delinquent-borrowers> (last visited July 24, 2016).

25. *See infra* Part III.C.

an appropriate means of obtaining money for bail.<sup>26</sup> It is contrary to public policy and is also materially different from other currently acceptable means of obtaining money for bail.<sup>27</sup> Thus, when presented with bail money obtained through crowdsourcing websites, judges should use their significant discretion to deny the bail as insufficient in most cases.<sup>28</sup> Alternatively, legislation could be passed to specifically address and regulate the problem of crowdsourcing websites.<sup>29</sup> It would be most effective to simply prevent the use of crowdsourcing websites as a method to collect bail entirely, by amending the bail statutes to specifically disallow it.<sup>30</sup> However, if this remedy is considered too stringent, legislation should at least limit the use of crowdsourcing websites, as was done for bail bondsmen and, most recently, charitable bail organizations.<sup>31</sup>

This Note begins by looking at the historical background of bail, including why it exists and its purposes, as well as the current state of the law, in Part II.<sup>32</sup> Part II also examines what acceptable means of obtaining bail money currently exist.<sup>33</sup> Part III discusses the legal issues and public policy concerns created by the use of crowdsourcing websites for bail, as well as some recent examples of crowdsourcing being used, or attempting to be used, for this purpose.<sup>34</sup> Part IV argues that crowdsourcing websites for bail are not appropriate and should be prohibited by either judicial ruling or legislation.<sup>35</sup> Finally, if crowdsourcing websites are not prohibited outright, Part IV suggests factors for judicial consideration or legislation, which could be used to regulate their use.<sup>36</sup>

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26. See N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009); Holly J. Joiner, Note, *Private Police: Defending the Power of Professional Bail Bondsmen*, 32 IND. L. REV. 1413, 1414 (1999); *infra* Part III.A–C.

27. See CRIM. PROC. §§ 520.10, 520.30; N.Y. INS. LAW § 6805 (McKinney 2009); *infra* Part III and notes 203–13 and accompanying text.

28. See CRIM. PROC. § 520.30; *Johnson v. Crane*, 568 N.Y.S.2d 22, 23 (App. Div. 1991); *infra* Part IV.A.

29. See, e.g., INS. §§ 6801–6805 (regulating bail bondsmen and charitable bail organizations); see *infra* Part IV.B.

30. See *infra* note 227 and accompanying text.

31. See INS. §§ 6801–6805; *infra* notes 230, 234 and accompanying text.

32. See *infra* Part II.A–B.

33. See *infra* Part II.C.

34. See *infra* Part III.

35. See *infra* Part IV.

36. See *infra* Part IV.

## II. THE HISTORY OF BAIL: MEDIEVAL TO MODERN DAY

The concept of bail has existed for centuries, although the exact mechanism and rules surrounding it have changed over the years.<sup>37</sup> However, despite minor revisions, the concepts underlying of the system of bail have remained substantially unchanged.<sup>38</sup> Below, this Note discusses the early origins of bail, its transition into the American criminal justice system, the current state of the law on bail, and some presently acceptable means of obtaining bail money.<sup>39</sup>

### A. Origins of Bail

“Bail” has been in existence for hundreds of years—since medieval times when it originated in England—as a means of allowing the accused to be free until trial, but still assuring his return to court.<sup>40</sup> At that time, the local sheriff could simply trust the defendant’s promise to return to court or require a third party to assure that the defendant was reliable.<sup>41</sup> As time went on and bail became more regulated, these third parties—known as “sureties”<sup>42</sup>—would be required to pay money or surrender themselves if the defendant failed to return to court.<sup>43</sup> This large responsibility placed on the surety allowed them to take “custody” of the defendant, in order to guarantee his return to court.<sup>44</sup> Additionally, sureties were traditionally either friends or family members of the defendant, due to their perceived ability to effectively take custody.<sup>45</sup>

### B. Current Law on Bail

This traditional system of bail—with a defendant’s return being secured by a surety—has lasted through the years and become part of the

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37. See Joiner, *supra* note 26, at 1414-15; Donald B. Verrilli, Jr., Note, *The Eighth Amendment and the Right to Bail: Historical Perspectives*, 82 COLUM. L. REV. 328, 329 (1982).

38. Joiner, *supra* note 26, at 1415-16.

39. See *infra* Part II.A-C.

40. Joiner, *supra* note 26, at 1414; Verrilli, *supra* note 37, at 329-30.

41. Joiner, *supra* note 26, at 1414.

42. *Id.* “Surety” is a term generally used to describe anyone who is “liable for paying another’s debt or performing another’s obligation.” *Surety*, BLACK’S LAW DICTIONARY (10th ed. 2014); see also Joseph Buro, Comment, *BAIL—Defining Sufficient Sureties: The Constitutionality of Cash-Only Bail*. State v. Briggs, 666 N.W.2d 573 (Iowa 2003), 35 RUTGERS L.J. 1407, 1411 (2004) (defining a surety as “a responsible third party who guaranteed the prisoner’s appearance at trial”).

43. Joiner, *supra* note 26, at 1414.

44. *Id.*; Buro, *supra* note 42, at 1411. Custody of a defendant permitted sureties “broad power to regulate the activity of the accused,” including the ability to “apprehend an escaped defendant using any reasonably necessary means.” Joiner, *supra* note 26, at 1414-15.

45. Joiner, *supra* note 26, at 1414.

American criminal justice system as well.<sup>46</sup> Now, bail is usually money given to the court by a surety to secure the defendant's release while his case is resolved.<sup>47</sup> However, bail is not a payment, it is a form of security, the purpose of which is to ensure the defendant's return to court.<sup>48</sup> Thus, due to the importance of assuring the future appearance of the defendant, as well as other public policy concerns,<sup>49</sup> courts have long had discretion to inquire into the sufficiency of bail.<sup>50</sup> The following Subparts explain the current law on bail in New York and throughout the United States.<sup>51</sup>

### 1. Sufficiency of Bail in New York

Currently, the sufficiency of bail in New York is mainly governed by statute,<sup>52</sup> with case law supplementing the otherwise broad specifications of what may or may not be acceptable.<sup>53</sup> Pursuant to

46. *Id.* at 1415; Buro, *supra* note 42, at 1412. The continued relevance of this history is evidenced in the current conception of bail, as being excessive if set at an amount higher than that necessary to assure the presence of the defendant. *Stack v. Boyle*, 342 U.S. 1, 5 (1951). In *Stack*, the court explicitly stated that “[l]ike the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused.” *Id.*

47. *See, e.g.*, N.Y. CRIM. PROC. LAW § 500.10 (McKinney 2009) (“A court fixes bail when . . . it designates a sum of money and stipulates that, if bail in such amount is posted on behalf of the principal and approved, it will permit him to be at liberty during the pendency of the criminal action or proceeding involved.”).

48. CRIM. PROC. § 500.10 (defining cash bail as money posted that “will become forfeit . . . if the principal does not comply with the directions of the court requiring his attendance” and a bail bond as “a written undertaking” that the principal will appear in court when required and if not that the “obligor or obligors will pay . . . a specified sum of money, in the amount designated in the order fixing bail”); CRIM. PROC. § 520.15 (“Money posted as cash bail is and shall remain the property of the person posting it unless forfeited to the court.”); CRIM. PROC. § 540.10 (“If, without sufficient excuse, a principal does not appear when required . . . the bail bond or the cash bail, as the case may be, is thereupon forfeited.”); *see also* *People v. Baker*, 729 N.Y.S.2d 580, 584 (Sup. Ct. 2001).

49. *United States v. Nebbia*, 357 F.2d 303, 304 (2d Cir. 1966); *see, e.g.*, *People v. McIntyre*, 640 N.Y.S.2d 386, 390 (Sup. Ct. 1996).

50. *See People v. Follette*, 240 P. 502, 520 (Cal. Dist. Ct. App. 1925) (stating that “[i]t is the duty of a magistrate, in accepting bail, to the very limit of his knowledge and in the exercise of the greatest care” to make sure that the bail posted is legal, the sureties are who they say they are, and that they can pay the full amount of the bail “in case the principal fails to comply with the conditions of said bond”); *People v. Davis*, 107 N.Y.S. 426, 428 (App. Div. 1907) (“It is clear . . . that the sufficiency of [a] surety is the subject of judicial inquiry.”); Buro, *supra* note 42, at 1412 (stating that almost every state constitution adopted after 1776 contained a provision giving the right to bail with “sufficient sureties”); *see also State v. Briggs*, 666 N.W.2d 573, 582 (Iowa 2003) (holding that the state constitution’s *sufficient* sureties provision implies an ability to inquire and is consistent with the historical purpose of bail to assure a defendant’s appearance in court (emphasis added)).

51. *See infra* Part II.B.1–2.

52. *See* CRIM. PROC. § 520.30.

53. *See, e.g.*, *People v. Esquivel*, 601 N.Y.S.2d 541, 541 (Sup. Ct. 1993); *see* CRIM. PROC.

section 520.30 of the New York Criminal Procedure Law, when bail is posted the court may inquire into “the reliability of the obligors or person posting cash bail, the value and sufficiency of any security offered, and whether any feature of the undertaking contravenes public policy.”<sup>54</sup> This inquiry may involve, but is not limited to, several enumerated considerations, including (1) “[t]he background, character, and reputation” of anyone posting, contributing to, or indemnifying the bail; (2) “[t]he source of any money or property” posted or deposited as cash, security, or indemnity; and (3) “whether any such money or property constitutes the fruits of criminal or unlawful conduct.”<sup>55</sup>

Although there is no formal opinion by a New York court—or any other for that matter—regarding the sufficiency of bail funds obtained by crowdsourcing, an examination of cases interpreting section 520.30 gives a framework from which this modern issue can be analyzed.<sup>56</sup> Judges in New York have substantial discretion when conducting an inquiry into the source of money being used for bail.<sup>57</sup> This inquiry extends beyond the money directly posted, for example, to that used to pay the premium on or indemnify a bond.<sup>58</sup> If this were not so, “any defendant . . . could shield himself or herself from a bail source inquiry”

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§ 520.30.

54. CRIM. PROC. § 520.30. In order for such inquiry to occur, the prosecution must make an application to do so based on “reasonable cause.” *Id.*

55. *Id.* While conducting this inquiry, “the court may examine, under oath or otherwise, the obligors and any other persons who may possess material information.” *Id.* The prosecution may also ask to “adjourn the proceeding for a reasonable period to allow him to investigate the matter.” *Id.* The court must then either approve or disapprove of the bail. *Id.*

56. *See id.*; *Johnson v. Crane*, 568 N.Y.S.2d 22, 23 (App. Div. 1991) (determining sufficiency of a bail bond which was fully secured by money from questionable sources); *People v. Baker*, 729 N.Y.S.2d 580, 581 (Sup. Ct. 2001) (determining sufficiency of bail posted by strangers who were doing so for personal motives after reading about the defendant in the newspaper); *People v. McIntyre*, 640 N.Y.S.2d 386, 389 (Sup. Ct. 1996) (determining sufficiency of bail when the defendant’s uncle was loaned the money by friends); *Esquivel*, 601 N.Y.S.2d at 542 (determining sufficiency of bail when a couple who barely knew the defendant posted their house as collateral).

57. *Johnson*, 568 N.Y.S.2d at 23.

58. *Id.*; *see also Esquivel*, 601 N.Y.S.2d at 546-47 (holding that a court may inquire into the motives of indemnitors of a bond); *People v. Agnello*, 705 N.Y.S.2d 525, 528 (Sup. Ct. 2000) (holding that a court may inquire into the source of money used to pay the premium on a bond). In *Johnson*, the testimony of a proposed surety who offered \$35,000 in cash bail was held to be not credible and the bail was therefore disapproved. 568 N.Y.S.2d at 22-23. Later, a second bail source hearing was held, in which a bail bondsman offered to post the \$35,000, to be secured by \$35,000 in cash from the defendant’s grandmother. *Id.* at 23. Although the circumstances tended to show that the money used to secure the bond was the same as the money that was originally rejected, the judge at the hearing felt that he could not inquire further into its source. *Id.* However, the appellate division held that the “facile manipulation of . . . funds by converting cash into a bail bond upon payment of a modest premium should not operate to bar judicial inquiry into their source.” *Id.*



by using a bail bondsman or other similar means.<sup>59</sup> The ability to make this inquiry is essential since “[b]ail must comply with the court’s order by being, not only the amount fixed by the court, but also of such nature and quality to be likely to ensure the petitioner’s return,” as well as being in compliance with section 520.30.<sup>60</sup> This leads to two basic queries: the relationship of those providing the bail money to the defendant and the legality of the money used.<sup>61</sup>

The relationship between the defendant and those posting money for bail is a vital inquiry in terms of public policy.<sup>62</sup> It is assumed “that a defendant will have incentive to appear if a defendant’s assets or those of a family member are put at a risk if the defendant absconds.”<sup>63</sup> Thus, “a bail source so remote from the defendant may well render the bail an ineffective guarantee of the defendant’s future appearance in court.”<sup>64</sup> Furthermore, “when virtual strangers put up substantial assets, the court is compelled to question their motives.”<sup>65</sup> One of these motives may be the promise of repayment—plus interest—using criminal proceeds, which is the second main concern of courts.<sup>66</sup>

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59. *Esquivel*, 601 N.Y.S.2d at 547.

60. CRIM. PROC. § 520.30; *Baker*, 729 N.Y.S.2d at 584.

61. See CRIM. PROC. § 520.30; *McIntyre*, 640 N.Y.S.2d at 390.

62. *McIntyre*, 640 N.Y.S.2d at 390.

63. *Baker*, 729 N.Y.S.2d at 585. These were not the circumstances in *Baker*, where bail was posted by two people who did not know the defendant or anything about him, “except what they read in a newspaper and learned from the [defendant’s] attorney.” *Id.* at 581. These individuals claimed to be posting the money due to “personal motives which had no specific relevance to the [defendant],” in particular, their opposition to certain drug laws. *Id.* at 581 & n.1. The court held that “it was not unreasonable . . . to find that the total lack of a relationship between the [defendant] and those posting bail did not comply with its order and contravened public policy.” *Id.* at 585.

64. *McIntyre*, 640 N.Y.S.2d at 387 n.1. In *McIntyre*, \$40,000 of the bail was indemnified by the defendant’s uncle, who had obtained the money via loans from two of his long-time friends. *Id.* at 38-89. Despite the strong relationship between the uncle and his friends, the court held that “[t]he crux of the inquiry is on the relationship between the defendant and the persons putting up the cash,” not that of the person posting bail and those he obtained that money from. *Id.* at 391.

65. *Id.* (“[T]he circumstances surrounding the pledging of the collateral are as a matter of law, common sense and practicality so inherently suspicious as to suggest the existence of a scheme which would clearly circumvent the purpose of the bail statute.”); see also *People v. Esquivel*, 601 N.Y.S.2d 541, 543 (Sup. Ct. 1993). In *Esquivel*, the indemnitors of the bail bond pledged their home as collateral. 601 N.Y.S.2d at 542. They only knew the defendant as a real estate broker, did not know any personal information—including non-business contact information—about the defendant, and said they only expected a thank you in return. *Id.* The court stated:

It is inherently suspect that a family would be willing to risk its only significant asset for a defendant it hardly knows and has no reason to trust. . . . Therefore, this court must conclude that either some unknown arrangement exists between the Rodriguez family and the defendant or that the defendant induced the family to post their home as collateral through threats or bribes.

*Id.* at 543.

66. See *Esquivel*, 601 N.Y.S.2d at 543, 547.

Courts look to whether the money used for bail is the “fruit[] of criminal or unlawful conduct” for two main reasons.<sup>67</sup> First, a defendant’s return to court may not be sufficiently guaranteed if the money used for bail is the proceeds of illegal activity.<sup>68</sup> For example, the court in *People v. Esquivel* stated as follows:

[I]t is clear to any court with experience in organized crime/narcotics cases that many defendants have obtained vast amounts of money and property through the illegal trafficking of drugs. If the funds posted are the fruits of criminal or unlawful conduct, then a defendant may choose simply to forfeit the collateral and flee. This is a small price to pay for the “privilege” of reaping hundreds of thousands of dollars in illegal profits prior to apprehension.<sup>69</sup>

Second, the use of illegal proceeds for bail is explicitly included as an area of inquiry in section 520.30 to determine “whether any feature of the undertaking” is contrary to public policy, indicating the legislature’s desire to prevent this.<sup>70</sup>

Although the relationship of those providing the bail money to the defendant and the legality of the money used are usually the focus, courts do have the discretion to see if “any feature of the undertaking contravenes public policy.”<sup>71</sup> Thus, the sufficiency of bail has been questioned for other public policy reasons as well, such as when a pastor used his church’s money for collateral and indemnity on a bond,<sup>72</sup> or when a movie production company paid part of a bond’s premium for the rights to a defendant’s story.<sup>73</sup> Finally, in New York, if the

67. See N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009); *Esquivel*, 601 N.Y.S.2d at 545.

68. *Esquivel*, 601 N.Y.S.2d at 545.

69. *Id.* Similarly, this has been described as “merely a ‘business’ expense for a dealer in contraband.” *United States v. Ellis DeMarchena*, 330 F. Supp. 1223, 1226 (S.D. Cal. 1971).

70. CRIM. PROC. § 520.30; see *People v. Martinez*, 635 N.Y.S.2d 424, 425 (Sup. Ct. 1995) (stating that section 520.30 was designed to “prevent criminal associations from serving as collateral providers for its members”); *McIntyre*, 640 N.Y.S.2d at 390 (stating that inquiry into the source of bail is essential because “[w]ithout it the court cannot ascertain with any degree of certainty if an otherwise legitimate obligor is being unwittingly used as a front to conceal illicit sources of cash in contravention of New York State’s public policy”).

71. See CRIM. PROC. § 520.30 (emphasis added); *McIntyre*, 640 N.Y.S.2d at 390.

72. *In re Inquiry as Provided for in Section 520.30 of the Criminal Procedure Law*, 356 N.Y.S.2d 749, 750-51 (Sup. Ct. 1974). In this case, the court said that the potential loss of a little over \$100,000, which could have instead been used for church purposes, was contrary to public policy. *Id.* at 751. The court also noted that the use of this money for bail was not in accordance with the church’s by-laws. *Id.* at 752. The bail was therefore disapproved. *Id.* at 754.

73. John T. McQuiston, *Amy Fisher’s Bond Upheld Despite Prosecutor’s Outcry*, N.Y. TIMES (July 30, 1992), <http://www.nytimes.com/1992/07/30/nyregion/amy-fisher-s-bond-upheld-despite-prosecutor-s-outcry.html>; Diane Ketcham, *About Long Island; 3 TV Films, 3 Versions of Amy Fisher Case*, N.Y. TIMES (Dec. 6, 1992), <http://www.nytimes.com/1992/12/06/nyregion/about-long-island-3-tv-films-3-versions-of-amy-fisher-case.html?pagewanted=all>. In this highly publicized

prosecution does challenge the sufficiency of bail, courts have held that the burden of proof is upon the defense to show that the money or its source should be deemed acceptable by the court.<sup>74</sup> This is because “the defendant is uniquely suited to know the source of the bail funds” and otherwise, as a practical matter, it may “be impossible . . . to make any determination about the source of the funds whatsoever.”<sup>75</sup>

## 2. Sufficiency of Bail Throughout the United States

The sufficiency of bail is not only examined under New York state law but also under federal law<sup>76</sup> and the laws of other states.<sup>77</sup> Under federal law, courts hold what is known as a “*Nebbia* hearing” to determine the source of money used for bail.<sup>78</sup> The term “*Nebbia* hearing” derives from the case of *United States v. Nebbia*, in which the Court of Appeals for the Second Circuit held that bail requires more than just a deposit of cash—it must also create a confidence that the defendant will return to court.<sup>79</sup> Federal courts also have concerns similar to those in New York, regarding whether the money used for bail was illegally obtained.<sup>80</sup> Additionally, most states have either a sufficient sureties provision in their constitution<sup>81</sup> or have sufficiency of bail statutes.<sup>82</sup> Therefore, although the analysis of this Note focuses on New

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case, the prosecutor argued that it was “against the public policy of the state to allow defendants to sell their rights to how they committed a crime and then profit by that.” McQuiston, *supra*; see Marcelle S. Fischler, *That Was Then, This Is Now*, N.Y. TIMES (Oct. 24, 2004), <http://www.nytimes.com/2004/10/24/nyregion/that-was-then-this-is-now.html>. Still, the prior decision to accept the bail was upheld—perhaps because the defendant had already been released or because the \$60,000 given by the movie company was relatively small compared to the total amount of bail, which had been set at two million dollars. McQuiston, *supra*.

74. *Esquivel*, 601 N.Y.S.2d at 545; see also *People v. Agnello*, 705 N.Y.S.2d 525, 528 (Sup. Ct. 2000); *McIntyre*, 640 N.Y.S.2d at 388.

75. *Esquivel*, 601 N.Y.S.2d at 545.

76. See *United States v. Nebbia*, 357 F.2d 303, 304-05 (2d Cir. 1966).

77. See, e.g., 725 ILL. COMP. STAT. 5/110-5 (2015); N.J. STAT. ANN. § 2A:162-13 (West 2011); 12 R.I. GEN. LAWS § 12-13-23 (1991).

78. *United States v. Hammond*, 204 F. Supp. 2d 1157, 1160 n.2 (E.D. Wis. 2002).

79. *Nebbia*, 357 F.2d at 304.

80. See *United States v. Ellis DeMarchena*, 330 F. Supp. 1223, 1225-26 (S.D. Cal. 1971) (rejecting bail where the method used to post it, a corporate surety, was a calculated way to provide anonymity as to the source of the funds, which were thought to be drug proceeds); *United States v. Dussuyer*, 526 F. Supp. 883, 883 (S.D. Fla. 1981) (stating that illegally obtained funds may not ensure a defendant’s return to court); see also *United States v. Sharma*, No. 12-20272, 2012 WL 1902919, at \*5 (E.D. Mich. May 25, 2012).

81. Buro, *supra* note 42, at 1412.

82. See, e.g., ILL. COMP. STAT. 5/110-5; N.J. STAT. ANN. § 2A:162-13; R.I. GEN. LAWS § 12-13-23. In fact, these three statutes—Illinois, New Jersey, and Rhode Island—contain almost identical language to New York’s bail sufficiency statute. See 5/110-5; § 2A:162-13; N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009); § 12-13-23. The only significant difference is that neither the New Jersey nor Illinois statute contains the broad language of “contravenes public policy,”

York law, the arguments made in regard to crowdsourcing websites<sup>83</sup> may be similarly applicable throughout the United States.<sup>84</sup>

### C. *Acceptable Means of Obtaining Money for Bail in New York*

There are currently many authorized forms of bail in New York, such as cash, insurance company bail bonds, and most recently credit cards.<sup>85</sup> The variety of forms of bail that are available exist due to persistent efforts to create flexibility in payment methods.<sup>86</sup> However, if those wishing to post bail cannot personally—meaning individually or within their own social network—produce the required amount, there are only two main methods to acquire the money: professional bail bondsmen and charitable bail organizations.<sup>87</sup> Since both of these

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although, they still enumerate the same areas of inquiry. Compare 5/110-5, and § 2A:162-13, with CRIM. PROC. § 520.30, and § 12-13-23. However, in interpreting these statutes, states disagree about who should bear the burden of proof in these inquiries. See, e.g., *State v. Wright*, 980 A.2d 17, 26 (N.J. Sup. Ct. Law Div. 2009) (holding that the prosecution initially bears the burden of proof).

83. See *infra* Parts III–IV.

84. See *Nebbia*, 357 F.2d at 304; *Ellis DeMarchena*, 330 F. Supp. at 1226; R.I. GEN. LAWS § 12-13-23.

85. CRIM. PROC. § 520.10 (authorizing cash, insurance company bail bonds, secured surety bonds, secured appearance bonds, partially secured surety bonds, partially secured appearance bonds, unsecured surety bonds, unsecured appearance bonds, and credit cards). Credit cards were originally only accepted as a form of bail for violations of the vehicle and traffic laws. N.Y. State Assemb. 7561A, 2005-2006 Reg. Sess. (N.Y. 2005). The statute was amended, effective in 2005, to allow credit cards to be used for bail no matter what the offense. CRIM. PROC. § 520.10. The legislative history seems to suggest that the primary purpose of this amendment was to increase the efficiency of revenue collection. N.Y. State Assemb. 7561A.

86. CRIM. PROC. § 520.10; Peter Preiser, Practice Commentaries, CRIM. PROC. § 520.10. Efforts continue to create more flexibility in the ways to post bail, such as increased use of alternative methods, as seen in Chief Judge Jonathan Lippman's recent judicial bail reform proposal. Press Release, Chief Judge Jonathan Lippman, Chief Judge Jonathan Lippman Announces Series of Reforms to Address Injustices of NY's Current Bail System (Oct. 1, 2015), [https://www.nycourts.gov/press/PDFs/PR15\\_13.pdf](https://www.nycourts.gov/press/PDFs/PR15_13.pdf) (“[W]e need to make much better use of every available option that will allow those who are presumed innocent to more readily post bail.”). The concern behind these efforts is usually the inability of indigent defendants to pay even small amounts of bail, thereby causing them to “languish” in jail until their cases are resolved. See *id.*; Press Release, Governor Cuomo, Governor Cuomo Signs Legislation to Help Low-Income Defendants Meet Bail Requirements (July 18, 2012), <http://www.governor.ny.gov/news/governor-cuomo-signs-legislation-help-low-income-defendants-meet-bail-requirements>.

87. See CRIM. PROC. § 520.10; N.Y. INS. LAW § 6801 (McKinney 2009). It is significant that besides professional bail bondsmen and charitable bail organizations, no other “person, firm, or corporation shall engage in a bail business.” *Id.* The statute defines a “bail business” as follows:

Any person, firm or corporation in any court having criminal jurisdiction or in any criminal action or proceeding who shall for another deposit money or property as bail or execute as surety any bail bond who within a period of one month prior thereto shall have made such a deposit or given such bail in more than two cases not arising out of the same transaction.

*Id.* It appears that this requirement is meant to substantially limit the ability of those other than

methods of acquiring money for bail may raise similar concerns to crowdsourcing websites, they are discussed in more detail below.<sup>88</sup>

### 1. Professional Bail Bondsmen

Professional bail bondsmen are permitted in New York, albeit subject to fairly extensive regulation under article 68 of the New York Insurance Law.<sup>89</sup> Bail bondsmen have helped to allow the traditional idea of a surety, who takes custody of the defendant, to progress into the current criminal justice system.<sup>90</sup> In exchange for money, a bail bondsman takes custody of a defendant and guarantees his appearance in court.<sup>91</sup> Bail bondsmen are therefore liable for the full amount of bail if the defendant does not return—just like a typical surety.<sup>92</sup> To reduce the risk of this liability, bail bondsmen will often require a third party to co-sign or post collateral for indemnification of the bond, usually a family member or friend.<sup>93</sup>

### 2. Charitable Bail Organizations

Recently, New York enacted legislation that allows the use of charitable bail organizations to post bail for certain people.<sup>94</sup> This legislation was made in response to the decision rendered in *People v. Miranda*, which rejected bail posted by the Bronx Freedom Fund (“Freedom Fund”).<sup>95</sup> In *Miranda*, the court was concerned with the unknown identities of those who donated the money, especially since there was no system in place to screen those individuals.<sup>96</sup> In fact, a

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personal acquaintances of the defendant to act as sureties. *See id.*

88. *See infra* Part II.C.1–2.

89. N.Y. INS. LAW §§ 6801–6804 (McKinney 2009). Note that some states have prohibited the use of bail bondsmen due to various incidents of scandal, corruption, and violence. Joiner, *supra* note 26, at 1413 n.4, 1418; Alysia Santo, *When Freedom Isn't Free*, MARSHALL PROJECT (Feb. 23, 2015, 7:15 AM), <https://www.themarshallproject.org/2015/02/23/buying-time#.4RjtZZXBZ>.

90. Joiner, *supra* note 26, at 1416 (solving the issue created by population growth of “[t]he inability of a judge to ascertain the reliability of sureties he did not know”).

91. *Id.* at 1415. Bail bondsmen usually charge a nonrefundable fee of ten percent of the total bail. *Id.* at 1417. It is worth noting that bail bondsmen have often been criticized for not being willing to post bail for defendants whose bail is too low due to the lack of profit. *Id.* at 1418. This mirrors criticisms of the bail system in general. *See* Press Release, Chief Judge Jonathan Lippman, *supra* note 86; Press Release, Governor Cuomo, *supra* note 86.

92. Joiner, *supra* note 26, at 1415.

93. *Id.* at 1422.

94. INS. § 6805.

95. No. 012208C2009, slip op. at 1, 20 (N.Y. Sup. Ct. June 22, 2009). The Freedom Fund was the first charitable bail organization to exist in New York. *About the Fund*, BRONX FREEDOM FUND, <https://alyssa-work.squarespace.com/what-we-do> (last visited July 24, 2016). They post bail for impoverished defendants in the Bronx who cannot afford even small amounts of bail. *Id.*

96. *Miranda*, slip op. at 7.

person could donate by the mere click of a “Donate” button on the Freedom Fund website.<sup>97</sup>

Shortly after this decision, a bill was proposed to specifically address the issue of charitable bail organizations and was later passed in the state senate.<sup>98</sup> However, the original bill was vetoed by the governor because of a lack of regulation and oversight—in an area already prone to abuse.<sup>99</sup> The amended bill, which was eventually passed in 2012, contains more restrictive provisions for those who can qualify as a charitable bail organization,<sup>100</sup> but still does not impose the normal financial burdens of a bail business.<sup>101</sup> The finalized statute also provides narrowly defined circumstances in which the use of a charitable bail organization is appropriate, namely for defendants who (1) are charged with one or more misdemeanors; (2) have bail set at \$2000 or less; and (3) are unable to afford that bail.<sup>102</sup>

The legislative history of this bill is illuminating in terms of whom charitable bail organizations were envisioned to help.<sup>103</sup> For example, during a New York legislative session, Senator Gustavo Rivera spoke about a man who was assisted in posting \$1000 bail and whose charges were later dropped.<sup>104</sup> He also listed various statistics about those who have been helped by the Freedom Fund, with ninety-five percent of the defendants returning for every court date and fifty-four percent having their charges dropped.<sup>105</sup> Further, Assemblyman Karim Camara mentioned the benefit of charitable bail organizations for those who maintain their innocence but take a guilty plea simply to avoid jail

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97. *Id.* This is quite similar to the ease of donating or lending on crowdsourcing websites. *See, e.g., Renee’s Bail*, GOFUNDME, <https://www.gofundme.com/fif8qw> (last visited July 24, 2016) (“Donate Now” button). The Freedom Fund’s website is substantially the same now. *See Donate Now*, BRONX FREEDOM FUND, <https://alyssa-work.squarespace.com/take-action> (last visited July 24, 2016).

98. N.Y. State Sen. Deb. 5377-78 (June 20, 2011).

99. Governor’s Veto Message #84, N.Y. State Legis. Ann., at 456 (2011). The initial proposition was the antithesis of the usual requirements for bail entities, which are typically quite regulated. *Id.*

100. N.Y. INS. LAW § 6805 (McKinney 2009). The charitable bail organization must be licensed by the superintendent and must not charge a premium or receive compensation for its services. *Id.*

101. Memorandum of the Assembly Rules Committee, N.Y. State Legis. Ann., at 123 (2012). This is appropriate since charitable bail organizations would not be charging a premium or receiving compensation, as required by the statute. *See* INS. § 6805; Memorandum of the Assembly Rules Committee, N.Y. State Legis. Ann., *supra*.

102. INS. § 6805.

103. *See* N.Y. State Sen. Deb. 5379 (June 20, 2011) (statement of Sen. Rivera); N.Y. State Sen. Deb. 5236-37 (June 21, 2012) (statement of Sen. Rivera); Press Release, Governor Cuomo, *supra* note 86.

104. N.Y. Sen. Deb. 5236-37.

105. *Id.* at 5237.

time when they cannot afford bail.<sup>106</sup> Senator Rivera also clarified that this bill was designed to ensure “that the people that actually are going through the system are folks that are actually committing serious crimes.”<sup>107</sup>

### III. THE USE OF CROWDSOURCING WEBSITES FOR BAIL IS CONTRARY TO PUBLIC POLICY

With the history of bail, its purposes, and the current law in mind, the discussion now turns to how crowdsourcing websites fit within this framework.<sup>108</sup> Below, this Part examines the problems and public policy concerns created by crowdsourcing when used for bail.<sup>109</sup> This Part also discusses some recent examples of attempted crowdsourcing for bail to illustrate how these abstract policy concerns can materialize in reality.<sup>110</sup>

#### A. *Crowdsourced Bail Does Not Guarantee a Defendant’s Return to Court*

One of the principal public policy concerns regarding the source of money for bail is its ability to ensure the defendant’s return to court—usually judged by the strength of the relationship between the defendant and surety.<sup>111</sup> Crowdsourcing websites are often meant to be totally anonymous<sup>112</sup> and, even if they are not,<sup>113</sup> are by their nature meant to reach a large group of people beyond those with close relationships to the defendant.<sup>114</sup> Moreover, on Go Fund Me, for example, if someone would like to donate to a campaign, all they must do is click “Donate Now.”<sup>115</sup> This means that anyone—even total strangers—can easily contribute to someone’s bail by simply clicking a button.<sup>116</sup> Therefore, since there may be little or no relationship between the defendant

106. Press Release, Governor Cuomo, *supra* note 86.

107. N.Y. Sen. Deb. 5379.

108. *See supra* Part II; *infra* Part III.A–D.

109. *See infra* Part III.A–C.

110. *See infra* Part III.D.

111. *People v. McIntyre*, 640 N.Y.S.2d 386, 390 (Sup. Ct. 1996).

112. *See, e.g., Privacy Policy*, *supra* note 17 (“For privacy purposes, borrowers and investors remain anonymous on the site and are identified only by their chosen screen names.”).

113. *See, e.g., Do I Have to Show My Name When I Contribute?*, INDIEGOGO, <https://support.indiegogo.com/hc/en-us/articles/526856-How-to-Contribute-Anonymously> (last visited July 24, 2016) (“Please note that visibility status only refers to what the public can see. Campaign owners will still be able to view your full name, email address, and shipping information for perk fulfillment purposes, even if you have elected to contribute anonymously.”).

114. *See Crowdsourcing*, MERRIAM-WEBSTER, *supra* note 4.

115. *See, e.g., Renee’s Bail*, *supra* note 97 (“Donate Now” button).

116. *See, e.g., id.*; *see also Belle*, *supra* note 1 (stating that some of the donations were made by strangers).

and those supplying the money, there is nothing to keep the defendant from simply fleeing the jurisdiction to avoid prosecution.<sup>117</sup> This is especially true for fundraising websites, since the money is a donation that does not need to be paid back, and therefore, it will not matter if it is forfeited.<sup>118</sup>

This potential for the defendant to flee may also be true of loans obtained from peer lending websites, since they may be easier to avoid paying back than traditional loans.<sup>119</sup> While a surety theoretically must pay back a loan obtained from a peer lending website, it is unclear if an institution like Lending Club will aggressively follow-up on the loan if the borrower defaults.<sup>120</sup> Also, unlike a more traditional loan, individual lenders do not have significant incentive to follow-up on a loan because each is usually only lending a small amount of money, and the risk of default is part of the business model.<sup>121</sup> Plus, the individual lenders, who have the most concentrated interest in any particular loan, are not allowed to contact borrowers directly.<sup>122</sup> Therefore, a defendant may simply choose not to return to court, since there may not be any significant repercussions.<sup>123</sup>

### *B. Crowdsourcing Can Allow the Proceeds of Criminal Activity to Be Used for Bail*

Another key public policy concern regarding bail is to ensure that the money used is not “the fruits of criminal or unlawful conduct.”<sup>124</sup> Courts and prosecutors have always had to be wary of the simple technique of passing the fruits of crime through a “front man,”<sup>125</sup> who

117. See *People v. Baker*, 729 N.Y.S.2d 580, 585 (Sup. Ct. 2001).

118. See N.Y. CRIM. PROC. LAW § 540.10 (McKinney 2009); *Common Questions*, *supra* note 7 (stating that donations are “yours to keep”).

119. See Lending Club Corp., Prospectus Supplement (Form 8-K) (Apr. 17, 2014); *Diversification*, *supra* note 24; *What Tools Does Lending Club Have to Deal with Delinquent Borrowers?*, *supra* note 24.

120. See, e.g., *What Tools Does Lending Club Have to Deal with Delinquent Borrowers?*, *supra* note 24.

121. See Prospectus Supplement, *supra* note 119 (“Notes involve a high degree of risk. Investing in the Notes should be considered only by persons who can afford the loss of their entire investment.”); *Diversification*, *supra* note 24 (suggesting that lenders invest small amounts of money in many loans to reduce risk); *What Tools Does Lending Club Have to Deal with Delinquent Borrowers?*, *supra* note 24 (“Delinquencies are a natural component of investing in Notes, and diversification can help to lower your exposure to any individual loan loss . . .”).

122. *What Tools Does Lending Club Have to Deal with Delinquent Borrowers?*, *supra* note 24.

123. See *People v. Baker*, 729 N.Y.S.2d 580, 584 (Sup. Ct. 2001); *What Tools Does Lending Club Have to Deal with Delinquent Borrowers?*, *supra* note 24.

124. N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009).

125. A front man is simply defined as “a person serving as a front or figurehead.” *Front Man*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/front%20man> (last visited July



acts as the apparent surety, as a means of posting bail.<sup>126</sup> By using a crowdsourcing website like Go Fund Me or Lending Club, the necessity of a physical front man to disguise the source of money disappears, since the website itself acts as the front.<sup>127</sup> A crowdsourcing website could easily be used to temporarily hide the source of money, by receiving contributions of legitimate funds and then immediately paying back the loan or alleged donors using profits from illegal ventures, much like the supposed “unknown arrangement” in *Esquivel*.<sup>128</sup>

Or, by simply using a crowdsourcing website, anyone, including the defendant’s associates or family, can anonymously contribute to the loan, thereby legitimizing money that would have otherwise been rejected by the court.<sup>129</sup> Anonymity is key here because it may prevent law enforcement from identifying contributors and, thereby, would preclude their ability to investigate the legality of funds used.<sup>130</sup> This

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24, 2016). In *McIntyre*, the court referred to this concept, describing “an otherwise legitimate obligor . . . being . . . used as a front to conceal illicit sources of cash.” 640 N.Y.S.2d 386, 390 (Sup. Ct. 1996). For example, in a recent case, a distant family friend who “consider[ed] himself a millionaire” and had substantial assets offered to post \$50,000 in cash for the defendant. *People v. Shi Shen Yu*, 23 N.Y.S.3d 814, 815-16 (Sup. Ct. 2015). Although the court presumed the money in his bank account was legitimate, the friend admitted that it had been guaranteed that he would be reimbursed for any loss sustained. *Id.* This guarantee came from the brother of a woman who had been behind an earlier attempt to post bail, which had been rejected by the court. *Id.* at 820. Therefore, the court rejected the bail due to the unknown nature of “[t]he real surety.” *Id.*

126. See *United States v. Ellis DeMarchena*, 330 F. Supp. 1223, 1226, 1227 (S.D. Cal. 1971) (rejecting bail because the method used to post it, a corporate surety, was a calculated way to make the real source of the funds anonymous); *Johnson v. Crane*, 568 N.Y.S.2d 22, 23 (App. Div. 1991) (holding bail insufficient when cash bail was rejected, and then, a bail bond was proffered with that same cash being used as collateral); *People v. Esquivel*, 601 N.Y.S.2d 541, 543, 548 (Sup. Ct. 1993) (holding bail insufficient when indemnitors pledged their home as collateral, which was thought to likely be the product of “some unknown arrangement”).

127. See, e.g., *Renee’s Bail*, *supra* note 97. *Contra Shi Shen Yu*, 23 N.Y.S.3d at 820. This is no different than what the court in *Johnson* called a “facile manipulation of . . . funds . . . upon payment of a modest premium.” 568 N.Y.S.2d at 23.

128. See, e.g., *Renee’s Bail*, *supra* note 97; *About Us*, *supra* note 8; see *Esquivel*, 601 N.Y.S.2d at 543.

129. See CRIM. PROC. § 520.30; *How Do I Make My Donation Anonymous?*, GOFUNDME, <http://support.gofundme.com/hc/en-us/articles/203687114-How-do-I-make-my-donation-anonymous> (last visited July 24, 2016); *Privacy Policy*, *supra* note 17. This could actually be a form of money laundering, which is generally defined as “[t]he act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced.” See *Money-Laundering*, BLACK’S LAW DICTIONARY (10th ed. 2014); see also N.Y. PENAL LAW §§ 470.10–470.20 (McKinney 2008) (New York statutes for money laundering in the first, second, and third degrees); 18 U.S.C. § 1956 (2012) (federal money laundering statute).

130. See Gary L. Beaver et al., *Social Media Evidence—How to Find It and How to Use It*, A.B.A. 5-6 (Aug. 2013), [http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/aba-annual-2013/written\\_materials/15\\_1\\_social\\_media\\_evidence.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/aba-annual-2013/written_materials/15_1_social_media_evidence.authcheckdam.pdf). Websites may not want to disclose their users’ information or may not be able to due to the Stored Communications Act (“SCA”). See 18 U.S.C. §§ 2510, 2701–2711 (2012); Beaver et al., *supra*, at 2-3, 5-6. Under the SCA, courts have required discovery requests to be made to the party whose

anonymity would definitely be the case on a peer lending website.<sup>131</sup> Conversely, fundraising websites tend to only allow public anonymity, with the campaign owner always able to see some identifying information of the donors.<sup>132</sup> However, on Go Fund Me, it is possible to use a fake name and still make a donation.<sup>133</sup> Therefore, since a Go Fund Me campaign owner can only see a donor's name, using a fake name can make it just as anonymous and inaccessible to law enforcement as a peer lending website.<sup>134</sup>

### C. Other Public Policy Concerns and Problems Created by Using Crowdsourcing for Bail

Another problem created by allowing the use of crowdsourcing websites for bail is the significant burden it puts on prosecutors when investigating the source of bail.<sup>135</sup> It may be difficult or impossible for a prosecutor to ascertain the identities of those contributing the money—especially on websites that allow for anonymity.<sup>136</sup> Further, even if the identities of contributors on a crowdsourcing website are available, it will take a significant amount of time to fully investigate the legitimacy

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internet content is desired, who must then request the desired information from the website, rather than subpoenaing the website directly. Beaver et. al., *supra*, at 6. For non-parties, courts especially prefer a subpoena to the individual rather than the website. *Id.* If the website does not have to disclose that information and the contributors are anonymous on the website, they cannot be individually subpoenaed. *See id.* at 5-6; *How Do I Make My Donation Anonymous?*, *supra* note 129; *Privacy Policy*, *supra* note 17. Therefore, it may be impossible for a prosecutor to actually ascertain the identity of contributors. *See, e.g., Privacy Policy*, *supra* note 17; *see* Beaver et. al., *supra*, at 5-6.

131. *See, e.g., Privacy Policy*, *supra* note 17 (“For privacy purposes, borrowers and investors remain anonymous on the site and are identified only by their chosen screen names.”).

132. *See, e.g., How Do I Make My Donation Anonymous?*, *supra* note 129 (“Please note that the person you donate to will always be able to see your name and comment . . . .”); *Do I Have to Show My Name When I Contribute?*, *supra* note 113 (“Please note that visibility status only refers to what the public can see. Campaign owners will still be able to view your full name, email address, and shipping information . . . even if you have elected to contribute anonymously.”).

133. *See Help Jasmine Walk Again!!*, GOFUNDME (Feb. 9, 2016, 8:50 PM), <https://www.gofundme.com/6jnsedy4> (showing donation to Go Fund Me page by “E Z”); E-mail from GoFundMe to Susan Loeb (Feb. 9, 2016, 08:49 EST) (on file with author). While writing this Note, I made a five-dollar donation to a Go Fund Me campaign using a fake name. *Help Jasmine Walk Again!!*, *supra*. I used the fake name “E Z” as the name to be shown on the campaign page and be seen by the campaign owner, and also used this fake name when inputting payment information for my debit card. *Id.* The information used for my email address, zip code, and debit card number was all real. Despite the use of the fake name, I received a confirmation email of my donation along with a five-dollar deduction from my bank account. E-mail from GoFundMe to Susan Loeb, *supra*.

134. *See* Beaver et. al., *supra* note 130, at 5-6; *Privacy Policy*, *supra* note 17; *supra* note 133 and accompanying text.

135. *See* N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009); *infra* notes 136-40 and accompanying text.

136. *See, e.g., Privacy Policy*, *supra* note 17 (stating that lenders are anonymous); *see* Beaver et al., *supra* note 130, at 5-6.

of the numerous sources—a potentially unlimited quantity.<sup>137</sup> In New York at the least, the defendant is supposed to have the burden of proof to show that the money posted as bail is acceptable.<sup>138</sup> However, in the context of crowdsourcing websites, it appears that the burden is essentially being shifted to prosecutors to prove that the money or its sources are *not* legitimate, due to the difficulty of discovering their true character.<sup>139</sup> This apparent shifting of the burden is further supported by the fact that the surety could have chosen another means of securing the money but did not.<sup>140</sup>

An additional concern with the use of crowdsourcing for bail is the comparative lack of enforceable regulations when considered alongside other methods of obtaining money for this purpose.<sup>141</sup> Other methods of obtaining money for bail—such as bail bondsmen and charitable bail organizations<sup>142</sup>—have significant limitations imposed on them by statute.<sup>143</sup> Crowdsourcing websites not only have less regulation, but they also present barriers to enforcement of those regulations that do exist.<sup>144</sup> Peer lending websites are regulated by a variety of laws, including the Federal Securities Act of 1933,<sup>145</sup> but this is only in their

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137. See, e.g., *Ferguson Defense Fund*, INDIEGOGO, <https://www.indiegogo.com/projects/ferguson-defense-fund#/funders> (last visited July 24, 2016) (showing 3820 donations for legal funds for protestors in Ferguson, Missouri); see CRIM. PROC. § 520.30; *People v. Esquivel*, 601 N.Y.S.2d 541, 545 (Sup. Ct. 1993).

138. *Esquivel*, 601 N.Y.S.2d at 545.

139. See *id.*; *infra* notes 136-37 and accompanying text. One of the reasons that the defense is supposed to carry the burden of proof is that “[i]f the prosecution were required to investigate the source of any and all funds and/or property posted, the court would be required to grant the People an adjournment to conduct the investigation.” *Esquivel*, 601 N.Y.S.2d at 545.

140. See CRIM. PROC. § 520.10 (stating several forms of acceptable bail); *Esquivel*, 601 N.Y.S.2d at 545.

141. See, e.g., *Terms & Conditions*, GOFUNDME, <https://www.gofundme.com/terms> (last updated Dec. 9, 2015); see N.Y. INS. LAW §§ 6801–6805 (McKinney 2009); PETER MANBECK & MARC FRANSON, *THE REGULATION OF MARKETPLACE LENDING: A SUMMARY OF THE PRINCIPAL ISSUES (2015 UPDATE)* 4 (2015), <http://www.aba.com/Tools/Offer/Document/Chapman.pdf>.

142. See *supra* Part II.C.1–2.

143. INS. §§ 6801–6805. However, notice that some of these regulations could potentially apply to a crowdsourcing website if it qualified as a “bail business.” See INS. § 6801; *supra* note 87 (quoting statutory definition of a bail business). Besides charitable bail organizations and authorized entities, no one else can engage in a bail business. INS. § 6801. Crowdsourcing websites do not necessarily qualify as bail businesses, as they do not deposit the money for bail themselves. See *id.* Still, these statutes are clearly meant to narrowly define those who post bail to those with high regulation and those who can only aid minor offenders, neither of which apply to crowdsourcing websites. See INS. §§ 6801–6805. Furthermore, if crowdsourcing websites do actually qualify, they could become bail businesses if enough people use them for that purpose. See INS. § 6801. This would directly contradict the statute but be almost impossible to actually enforce, with the task of determining how often a particular website is being used for bail being left to individual prosecutors. See *id.*

144. See MANBECK & FRANSON, *supra* note 141; *Terms & Conditions*, *supra* note 141.

145. 15 U.S.C. §§ 77(a)–(aa) (2012).

capacity as lenders, not in regards to bail specifically.<sup>146</sup> Fundraising websites are not regulated by any outside source, and, therefore, users are only subject to the website's own guidelines.<sup>147</sup> For example, Go Fund Me's Terms and Conditions prohibit use of the website for "the defense or support of anyone alleged to be involved in criminal activity."<sup>148</sup> Fundraising for bail would certainly seem to fit within this prohibition. However, there are many pages on Go Fund Me that expressly request money for bail and have received contributions, apparently without any intervention from the website.<sup>149</sup>

A final problem, created specifically by fundraising websites, is the defendant or surety's potential to profit from the situation.<sup>150</sup> Bail is only forfeited if the defendant does not appear in court when he is supposed to.<sup>151</sup> If the defendant does in fact appear at all court appearances, the money posted as bail, whether crowdsourced or not, will eventually be returned.<sup>152</sup> Thus, when bail money is obtained from a fundraising website, the defendant may receive a windfall if charges are dropped or there is no conviction, because he would retain the money without an obligation to repay or any form of punishment.<sup>153</sup> Further, even if the defendant is convicted, the crowdsourced money will still be in the possession of whoever posted it.<sup>154</sup> Due to the likelihood of crowdsourced money being donated in small amounts, from a large

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146. See MANBECK & FRANSON, *supra* note 141.

147. See, e.g., *Terms & Conditions*, *supra* note 141.

148. *Id.*

149. See, e.g., *Help Bail Rachel Out of Jail/Legal Fund*, GOFUNDME, <https://www.gofundme.com/1mwjsg> (last visited July 24, 2016) (asking for bail money for an unknown crime); see *Terms & Conditions*, *supra* note 141. It appears removal is the default remedy for campaigns that Go Fund Me does not approve of or violate its Terms and Conditions, but seemingly, only if the campaign is controversial enough to be brought to its attention. See, e.g., Abby Ohlheiser, *After GoFundMe Shuts Down Christian Bakery Crowdfunding, It Bans 'Discriminatory' Campaigns*, WASH. POST (May 1, 2015), <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/05/01/after-gofundme-shuts-down-christian-bakery-crowdfunding-it-bans-discriminatory-fundraising-campaigns>; Sarah Parvini, *GoFundMe Shuts Down Fund-Raising Page for Baltimore Police*, L.A. TIMES (May 2, 2015, 1:59 PM), <http://www.latimes.com/nation/la-na-gofundme-baltimore-cops-20150502-story.html>; see *Terms & Conditions*, *supra* note 141. But, notice that even if a campaign is removed, the campaign owner is still able to keep the donations made up to that point, which in one case was nearly \$110,000. Ohlheiser, *supra*.

150. See N.Y. CRIM. PROC. LAW § 500.10 (McKinney 2009); *infra* notes 151-57 and accompanying text.

151. CRIM. PROC. §§ 520.15, 540.10.

152. *Id.*

153. See CRIM. PROC. § 520.15; *Common Questions*, *supra* note 7. Of course the defendant or surety could have made a personal obligation to pay back those who donated, but would be under no legal obligation to do so. See *Umscheid v. Simmacher*, 482 N.Y.S.2d 295, 297 (App. Div. 1984) ("The law is well settled that 'in order for a promise to be enforceable as a contract, the promise must be supported by valid consideration.'").

154. See CRIM. PROC. § 520.15; *Common Questions*, *supra* note 7.

group of people who are not necessarily within the defendant's close social circle, contributors are not likely to make significant efforts to get their money back.<sup>155</sup> Additionally, contributors probably do not even expect to get their money back due to the very nature of fundraising websites, as platforms to request and make *donations*.<sup>156</sup> This means that a defendant, or whoever posts bail, using money gained from a fundraising website would in effect be able to profit from the defendant's being charged with a crime.<sup>157</sup>

#### D. Recent Examples of Crowdsourcing for Bail

The use of crowdsourcing websites for bail has not become commonplace yet, but it is gaining popularity.<sup>158</sup> There have been several recent attempts to use crowdsourcing websites for bail,<sup>159</sup> some very public and others not.<sup>160</sup> Both can be useful in evaluating the problems created by crowdsourcing for bail and demonstrating how abstract policy concerns can materialize into reality.<sup>161</sup>

##### 1. Everyday Uses of Crowdsourcing for Bail

There are many ordinary people who have recently used crowdsourcing websites to obtain money for bail.<sup>162</sup> By doing a simple keyword search on Go Fund Me, one can easily find several fundraising campaigns for bail, such as "Help Bail Rachel Out of Jail/Legal Fund," "Please Help My Son Lucas Davis Post Bail," "Renee's Bail," and "Free Jordan LaLande."<sup>163</sup> Each page has its own story, with some claiming

155. See, e.g., *Renee's Bail*, *supra* note 97 (showing eleven donations, most between five and two hundred dollars); see *Crowdsourcing*, BLACK'S, *supra* note 4.

156. See, e.g., *Renee's Bail*, *supra* note 97 (characterizing contributions as donations).

157. See CRIM. PROC. § 520.15; *Simmacher*, 482 N.Y.S.2d at 297; *Common Questions*, *supra* note 7. This problem does not apply to peer lending websites, since they involve loans—which will need to be paid back. See *How Does an Online Credit Marketplace Work?*, *supra* note 8.

158. See *Belle*, *supra* note 1.

159. See *Grueskin*, *supra* note 2. This Subpart is unfortunately limited to discussing examples involving fundraising websites, since loans on peer lending websites are only accessible if one has an account and probably would not be expressly labeled as for bail anyway.

160. See, e.g., *Rocha & Serna*, *supra* note 3; *Help Bail Rachel Out of Jail/Legal Fund*, *supra* note 149. One highly publicized attempt to use crowdsourcing for bail was the "handsome felon." See *Rocha & Serna*, *supra* note 3 (internal quotations omitted); *infra* Part III.D.2. For examples of more discreet Go Fund Me pages, see *Help Bail Rachel Out of Jail/Legal Fund*, *supra* note 149; *Please Help My Son Lucas Davis Post Bail*, GOFUNDME, <https://www.gofundme.com/HelpLucas> (last visited July 24, 2016); and *Renee's Bail*, *supra* note 97. See *infra* Part III.D.1.

161. See *supra* Part III.A–C; *infra* Part III.D.1–2.

162. See *Belle*, *supra* note 1; Search Results for Bail, GOFUNDME, <https://www.gofundme.com/mvc.php?route=search&term=bail> (last visited July 24, 2016).

163. *Free Jordan LaLande*, GOFUNDME, <https://www.gofundme.com/freejordan> (last visited July 24, 2016); *Help Bail Rachel Out of Jail/Legal Fund*, *supra* note 149; *Please Help My Son*

the defendant was falsely accused, some saying the defendant simply made a bad decision, and others not specifying what happened at all.<sup>164</sup> The common thread among them is that they are all trying to crowdsource for bail.<sup>165</sup> While these campaigns may be totally legitimate attempts to raise money, they still implicate many of the public policy concerns that this Note discusses.<sup>166</sup>

These fundraising campaigns may receive donations from anyone, including total strangers, and some have in fact received these types of donations.<sup>167</sup> Even if the donors do know the defendant, they may not have a very close relationship.<sup>168</sup> This does not provide the strong personal relationship usually required for sureties.<sup>169</sup> Additionally, these donors could simply be contributing the money now, only to be paid back by the defendant or surety using illegally obtained money.<sup>170</sup> It will be difficult for a prosecutor to fully investigate this though, due to the number of contributors—in the campaigns mentioned here ranging from eleven to thirty-two—and the potential inability to ascertain their true identities.<sup>171</sup> These campaigns also appear to be violating Go Fund Me's Terms and Conditions, but have probably not even been investigated

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*Lucas Davis Post Bail*, *supra* note 160; *Renee's Bail*, *supra* note 97; Search Results for Bail, *supra* note 162.

164. See *Help Bail Rachel Out of Jail/Legal Fund*, *supra* note 149 (stating only that defendant has been in jail for sixteen days already); *Please Help My Son Lucas Davis Post Bail*, *supra* note 160 (stating that son is “suffering the consequences of his poor decisions” after getting in an altercation with his girlfriend); *Renee's Bail*, *supra* note 97 (stating that daughter was with her mother, the defendant, when the alleged burglary occurred).

165. See *Free Jordan LaLande*, *supra* note 163; *Help Bail Rachel Out of Jail/Legal Fund*, *supra* note 149; *Please Help My Son Lucas Davis Post Bail*, *supra* note 160; *Renee's Bail*, *supra* note 97.

166. See, e.g., *Help Bail Rachel Out of Jail/Legal Fund*, *supra* note 149; see *supra* Part III.A–C. However, it is worth noting that due to the need to solicit donations, especially from strangers, the stories posted for campaigns are always ones which attempt to elicit sympathy for the defendant. See, e.g., *Free Jordan LaLande*, *supra* note 163 (describing defendant as a hardworking father); *Renee's Bail*, *supra* note 97 (describing defendant as an elderly woman with serious medical conditions). While these stories surely could be accurate, they could also be exaggerated, omitting information, or simply untrue, a result which seems especially likely when the facts do not seem to add up. See, e.g., *Free Jordan LaLande*, *supra* note 163 (claiming that defendant, who supposedly was drugged and has no recollection of the incident leading to arrest, is being falsely accused of breaking and entering, aggravated assault, destruction of property, and being a heroin user; bail was set at \$300,000); *Renee's Bail*, *supra* note 97 (claiming elderly woman who uses a walker and is on oxygen was falsely accused of burglary and possession of stolen property).

167. See *Belle*, *supra* note 1 (stating that defendant has been released on bail “thanks to generous, compassionate people from all around the country, some of them strangers”).

168. See *id.* (stating that defendant's daughter received one Go Fund Me donation “for \$1,500 from a compassionate Facebook friend [she] barely knows”).

169. See *People v. McIntyre*, 640 N.Y.S.2d 386, 387, 390 (Sup. Ct. 1996).

170. See *People v. Esquivel*, 601 N.Y.S.2d 541, 543 (Sup. Ct. 1993).

171. See *id.* at 545; *Beaver et al.*, *supra* note 130, at 5-6; *Help Bail Rachel Out of Jail/Legal Fund*, *supra* note 149; *Renee's Bail*, *supra* note 97.

because they have not been brought to the website's attention.<sup>172</sup> Finally, none of these campaigns mention what will happen to the donated money once the bail is returned, assuming the defendant appears in court.<sup>173</sup> It is unlikely the money will be given back to the donors, especially if they are strangers, thus allowing the defendant or surety to potentially profit from the situation.<sup>174</sup>

## 2. A Publicized Attempt to Use Crowdsourcing for Bail: The "Handsome Felon"

There have also been a few more publicized attempts to use crowdsourcing for bail recently.<sup>175</sup> For example, Jeremy Meeks is a man who became an Internet sensation last year because of how attractive he was perceived to be in his booking photo.<sup>176</sup> The photo was posted on a local police department's Facebook page and quickly accumulated widespread attention, including "50,000 'likes,' 14,700 comments and more than 5,400 shares" within a few days.<sup>177</sup> Several fan pages for Meeks were also created on Facebook, which now total well over 300,000 likes.<sup>178</sup> Although reactions to the "handsome felon" were varied, comments such as the following were not uncommon: "He's too fine to be a criminal. I got \$10 on his bail"; and "He's too pretty [to] go to jail . . ."<sup>179</sup> Amidst all this, Meeks's mother started a Go Fund Me campaign titled "Free Jeremy" seeking \$25,000, which raised \$3000 in the first three days.<sup>180</sup>

172. See, e.g., Parvini, *supra* note 149; see *Terms & Conditions*, *supra* note 141.

173. See, e.g., *Help Bail Rachel Out of Jail/Legal Fund*, *supra* note 149; see N.Y. CRIM. PROC. LAW § 520.15 (McKinney 2009).

174. See *supra* notes 151-57 and accompanying text.

175. See Rocha & Serna, *supra* note 3; see also *A GoFundMe for Suge Knight's Bail Came . . . and Went*, VIBE (April 8, 2015, 3:15 PM), <http://www.vibe.com/2015/04/suge-knight-bail-gofundme>.

176. Rocha & Serna, *supra* note 3. Meeks was arrested in a raid conducted by several agencies including the FBI and Bureau of Alcohol, Tobacco, Firearms, and Explosives. *Id.* He was charged with gun possession and gang-related charges. *Id.*

177. *Id.*

178. *Jeremy Meeks*, FACEBOOK, <https://www.facebook.com/JeremyMeeksDreamyMcMugShot> (last visited July 24, 2016) [hereinafter *Jeremy Meeks*, Fan Page 1]; *Jeremy Meeks*, FACEBOOK, <https://www.facebook.com/Jeremy-Meeks-733375386726001/?fref=ts> (last visited July 24, 2016) [hereinafter *Jeremy Meeks*, Fan Page 2]; *Jeremy Meeks*, FACEBOOK, <https://www.facebook.com/JeremyRayMeeks.Official> (last visited July 24, 2016) [hereinafter *Jeremy Meeks*, Fan Page 3].

179. Rocha & Serna, *supra* note 3; Joseph Serna & Robert J. Lopez, *Felon's 'Handsome' Mugshot Goes Viral, But Reaction Is Mixed*, L.A. TIMES (June 20, 2014, 6:35 AM), <http://www.latimes.com/local/lanow/la-me-ln-handsome-mugshot-married-20140620-story.html>.

180. Rocha & Serna, *supra* note 3; Alex Heigl, *Mother of Photogenic Felon Jeremy Meeks Now Crowdsourcing Funds for His Legal Defense*, PEOPLE (June 23, 2014, 4:30 PM), <http://www.people.com/article/jeremy-meeks-mother-gofundme>. The Go Fund Me campaign no longer exists. See Rocha & Serna, *supra* note 3 (providing link to Meeks's Go Fund Me campaign);

Although the Jeremy Meeks campaign was shut down prematurely, it is not hard to see how this and similar situations could evoke several of the public policy concerns that this Note discusses.<sup>181</sup> Preliminarily, it may not be difficult to raise the money for bail, even if the bail is set quite high, for a defendant such as Meeks who has a fan base.<sup>182</sup> All that would be needed is many very small donations, which fans would be likely to provide due to the negligible amount of money and the desire for the defendant to continue doing whatever made them popular in the first place.<sup>183</sup> Therefore, while use of criminal proceeds for bail could still be a problem, the main concern here is that crowdsourcing websites allow people to help post bail for a defendant with whom they have absolutely no relationship.<sup>184</sup> Since there is no personal connection between the defendant and his fans, as well as no presumption of being paid back, at least monetarily, the defendant has no reason to care if the bail is forfeited.<sup>185</sup> Therefore, bail money crowdsourced in this scenario in no way guarantees the defendant's return to court.<sup>186</sup> Moreover, if this type of defendant does show up for court, the potential profit from the returned bail money

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Avery Thompson, *Jeremy Meeks: 5 Things to Know About the Sexy Mug Shot Felon*, HOLLYWOOD LIFE (June 20, 2014, 8:00 AM), <http://hollywoodlife.com/2014/06/20/jeremy-meeks-sexy-mug-shot-felon-viral> (providing link to Meeks's Go Fund Me campaign); *Campaign Not Found*, GOFUNDME, <https://www.gofundme.com/aih9m8> (last visited July 24, 2016) (showing same broken link from both articles mentioned). It is unclear exactly when and why the page was shut down, as well as how much money was eventually raised. See Heigl, *supra* (describing the state of the Go Fund Me campaign as of June 23, 2014, which appears to be around when it was shut down). However, it is likely that the page was shut down by Go Fund Me when it began to receive widespread media attention, due to their tendency to shut down controversial campaigns. See Ohlheiser, *supra* note 149; Parvini, *supra* note 149.

181. See Rocha & Serna, *supra* note 3; *Campaign Not Found*, *supra* note 180; *supra* Part III.A–C.

182. See, e.g., *Jeremy Meeks*, Fan Page 1, *supra* note 178; see Rocha & Serna, *supra* note 3; Serna & Lopez, *supra* note 179.

183. See Rocha & Serna, *supra* note 3; Serna & Lopez, *supra* note 179. For example, even if each person who had “liked” a Jeremy Meek’s fan page on Facebook page gave one dollar, he could easily raise a large amount of money for bail. See *Jeremy Meeks*, Fan Page 1, *supra* note 178; *Jeremy Meeks*, Fan Page 2, *supra* note 178; *Jeremy Meeks*, Fan Page 3, *supra* note 178. Further, note that it is even more likely that fans will contribute to the bail of, for example, a popular music artist, so that the artist can continue producing music. See, e.g., *A GoFundMe for Suge Knight’s Bail Came . . . and Went*, *supra* note 175.

184. See N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009); *People v. McIntyre*, 640 N.Y.S.2d 386, 390 (Sup. Ct. 1996).

185. See CRIM. PROC. § 540.10; *McIntyre*, 640 N.Y.S.2d at 390. It would be unreasonable for fans to believe that their money would be paid back by a celebrity defendant, due to the large number of potential donors and lack of personal relationship—they would be much more likely to expect a non-monetary reward, such as an artist putting out new music. See *Jeremy Meeks*, Fan Page 1, *supra* note 178.

186. See *People v. Baker*, 729 N.Y.S.2d 580, 584 (Sup. Ct. 2001).



could be enormous, with absolutely no expectation of having to pay the money back.<sup>187</sup> Finally, this type of campaign likely violates a crowdsourcing website's own policies and—if it were to gain enough popularity—might come to the attention of the website and be shut down; however, the defendant would still be able to keep any money received up to that point.<sup>188</sup>

#### IV. CROWDSOURCING FOR BAIL SHOULD BE RESTRICTED BY USE OF JUDICIAL DISCRETION OR ENACTMENT OF LEGISLATION

Due to serious policy concerns, the use of crowdsourcing websites for bail is contrary to public policy and, thus, should be prohibited or at least limited.<sup>189</sup> This Note suggests that judges should use their discretion to simply deny crowdsourced bail, as contrary to public policy under New York law, in most circumstances.<sup>190</sup> This result could similarly be achieved by legislation specifically prohibiting crowdsourcing for bail.<sup>191</sup> Alternatively, this Note suggests that the use of crowdsourcing for bail should at least be limited—judicially or by legislation—thereby minimizing the impact of the public policy concerns discussed.<sup>192</sup>

##### *A. Crowdsourcing for Bail Contravenes Public Policy and Should Usually Be Disapproved by Judges When Sufficiency of Bail Is Challenged*

Judges have significant discretion in determining the sufficiency of bail and, therefore, should use this discretion to disapprove bail obtained by crowdsourcing—unless the defendant can truly carry his burden of proof.<sup>193</sup> Generally, crowdsourcing for bail is contrary to public policy under New York law because it does not guarantee the defendant's return to court and may allow for illegal funds to be used.<sup>194</sup> It is imperative that bail money incentivize a defendant's return to court.<sup>195</sup>

187. See CRIM. PROC. §§ 500.10, 520.15; *supra* note 185 and accompanying text.

188. See, e.g., Ohlheiser, *supra* note 149; see *Terms & Conditions*, *supra* note 141.

189. See CRIM. PROC. § 520.30; *supra* Part III.

190. See *infra* Part IV.A.

191. See *infra* Part IV.B.

192. See *infra* Part IV.A–B.

193. See CRIM. PROC. LAW § 520.30; *Johnson v. Crane*, 568 N.Y.S.2d 22, 23 (App. Div. 1991); *People v. Esquivel*, 601 N.Y.S.2d 541, 545 (Sup. Ct. 1993).

194. See CRIM. PROC. § 520.30; *People v. Baker*, 729 N.Y.S.2d 580, 584 (Sup. Ct. 2001); *supra* Part III.A–B.

195. See *United States v. Nebbia*, 357 F.2d 303, 304 (2d Cir. 1966); *Baker*, 729 N.Y.S.2d at 584; *Joiner*, *supra* note 26, at 1414. Not only has this been bail's purpose for centuries, but without this guarantee, the initial arrest of the defendant would be a useless exercise. See *Nebbia*, 357 F.2d

Since crowdsourcing is by definition meant to reach large groups of people, it does not provide the requisite close relationship with the defendant usually required for this guarantee.<sup>196</sup> Moreover, crowdsourced bail from fundraising websites is made up of donations and, therefore, is more likely to simply be forfeited for the chance to flee, unlike if it was the hard-earned money of the defendant's family or friends.<sup>197</sup> This may also be true of money obtained from peer lending websites, which, even if lent by those with close relationships to the defendant, may be easy to avoid paying back.<sup>198</sup>

Furthermore, crowdsourcing websites could easily be used as a front, in order to actually use the proceeds of criminal activities for bail.<sup>199</sup> This could be achieved by paying back seemingly legitimate donors using these proceeds or by directly using the proceeds under the shield of anonymity that crowdsourcing websites can provide.<sup>200</sup> Both the lack of guarantee of the defendant's return and potential use of illegal proceeds are explicitly contrary to public policy under New York statutory and common law.<sup>201</sup> Further, not only is this against public policy, it is also extremely difficult for prosecutors to investigate, due to the nature of the websites and current law.<sup>202</sup>

Crowdsourcing also differs materially from other ways of obtaining bail money, like credit cards, bail bondsmen, and charitable bail organizations.<sup>203</sup> Unlike most of these methods, crowdsourcing is almost totally unregulated and is certainly unregulated in its use for bail specifically.<sup>204</sup> Further, allowing this alternative method of obtaining

at 304; Joiner, *supra* note 26, at 1414.

196. See *People v. McIntyre*, 640 N.Y.S.2d 386, 390 (Sup. Ct. 1996); *Crowdsourcing*, MERRIAM-WEBSTER, *supra* note 4.

197. See CRIM. PROC. § 540.10; *McIntyre*, 640 N.Y.S.2d at 390; *Baker*, 729 N.Y.S.2d at 585; *Common Questions*, *supra* note 7.

198. See Prospectus Supplement, *supra* note 119; *Diversification*, *supra* note 24; *What Tools Does Lending Club Have to Deal with Delinquent Borrowers?*, *supra* note 24.

199. See CRIM. PROC. § 520.30; *Johnson v. Crane*, 568 N.Y.S.2d 22, 23 (App. Div. 1991); *People v. Shi Shen Yu*, 23 N.Y.S.3d 814, 820 (Sup. Ct. 2015); *Front Man*, *supra* note 125.

200. See, e.g., *How Do I Make My Donation Anonymous?*, *supra* note 129; *Privacy Policy*, *supra* note 17; see *United States v. Ellis DeMarchena*, 330 F. Supp. 1223, 1226 (S.D. Cal. 1971); *People v. Esquivel*, 601 N.Y.S.2d 541, 543 (Sup. Ct. 1993); *Beaver et al.*, *supra* note 130, at 5-6; *supra* note 133 and accompanying text.

201. See CRIM. PROC. § 520.30; *Baker*, 729 N.Y.S.2d at 584.

202. See, e.g., *Ferguson Defense Fund*, *supra* note 137; see CRIM. PROC. § 520.30; *Esquivel*, 601 N.Y.S.2d at 545; *Beaver et al.*, *supra* note 130, at 5-6; *Privacy Policy*, *supra* note 17; *supra* note 133 and accompanying text; *supra* notes 133, 135-40 and accompanying text.

203. See *supra* Part II.C.

204. See N.Y. INS. LAW §§ 6801-6805 (McKinney 2009); Erica Sandberg, *5 Key Federal Laws Help Protect Credit Cardholders*, CREDITCARDS.COM (Nov. 25, 2009), <http://www.creditcards.com/credit-card-news/5-key-laws-protect-credit-cardholders-1377.php>; *supra* notes 142-49 and accompanying text.

bail would be contrary to the narrow categories of entities allowed to provide bail under section 6801 of the New York Insurance Law.<sup>205</sup> Another major difference is that for crowdsourced money, there is no one party—whether that be a family member, credit card company, bail bondsman, or otherwise—who has a significant stake in getting the money back.<sup>206</sup> Additionally, it should be determined to be against public policy for a defendant or his associates to profit from the need to post bail.<sup>207</sup> This issue, created by fundraising websites specifically, is unique among all other currently accepted methods of obtaining bail.<sup>208</sup>

It is especially important to compare the use of crowdsourcing websites to charitable bail organizations, since they are very similar on their face, but have several key differences.<sup>209</sup> First, donations to charitable bail organizations, like the Freedom Fund, are not applied to a specific defendant chosen by the donor; rather, they go into a general fund to be used for all defendants.<sup>210</sup> Another important difference between fundraising websites and charitable bail organizations is that charitable bail organizations get the bail money back to be used for other defendants once a defendant's case is over, eliminating the potential for the defendant to profit and discouraging the use of criminal proceeds.<sup>211</sup> Next, crowdsourcing websites barely have any type of regulation or oversight, which was exactly the governor's concern when he initially

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205. See INS. § 6801; *supra* note 143 and accompanying text.

206. See, e.g., *Diversification*, *supra* note 24; see *Crowdsourcing*, MERRIAM-WEBSTER, *supra* note 4. For example, although the bail bondsman system has been criticized due to a perceived lack of incentive for both the defendant to reappear in court and the bail bondsman to make him, these concerns have not materialized. See *Joiner*, *supra* note 26, at 1417, 1422, 1425. This is due to the huge potential for loss for the bail bondsman and the practice of requiring family indemnitors, which gives the defendant and his family a large stake as well. See *id.* at 1422, 1424. Crowdsourcing websites do not provide these same incentives because there is no big stakeholder. See *Crowdsourcing*, BLACK'S, *supra* note 4.

207. See *McQuiston*, *supra* note 73 (arguing that it should be against public policy for defendants to get out of jail and profit by selling how they committed a crime); *supra* notes 150-57 and accompanying text.

208. See N.Y. CRIM. PROC. LAW § 520.10 (McKinney 2009); *Common Questions*, *supra* note 7.

209. See, e.g., *Renee's Bail*, *supra* note 97 ("Donate Now" button); see *People v. Miranda*, No. 012208C2009, slip op. at 7 (N.Y. Sup. Ct. June 22, 2009) (stating that all you have to do to donate is click a button that says "Donate"); *supra* Part II.C.2.

210. See THE BRONX FREEDOM FUND, SECOND ANNUAL REPORT (2015), <http://static1.squarespace.com/static/54e106e1e4b05fac69f108cf/t/5681561eb204d52319b86854/1451316766890/2015+Annual+Report.pdf>. This significantly reduces the likelihood that the proceeds of criminal activity will be used because a defendant's associates probably would not want that money to be used for other people. See *id.*

211. See *id.* Similarly, this reduces the likelihood of criminal proceeds being used because the defendant's associates probably would not want that money to be permanently lost. See *id.*

vetoed the charitable bail organization bill.<sup>212</sup> Moreover, the legislators had specific people in mind when developing and enacting that bill, to whom crowdsourcing websites are not limited.<sup>213</sup>

Due to these public policy considerations and the significant differences between crowdsourcing websites and other methods of obtaining money for bail, judges should not allow the use of crowdsourcing websites in most situations.<sup>214</sup> In fact, it would be most effective to deny crowdsourced bail no matter what the circumstances.<sup>215</sup> However, to allow the most people the opportunity to make bail, use of crowdsourcing may be acceptable if the defendant can carry the burden of proof in showing that the above concerns do not apply in his situation.<sup>216</sup> This should be a heavy burden for the defendant to prove, since it is likely that, in most instances, at least one of the concerns that this Note discusses will be present.<sup>217</sup>

In determining whether this burden has been met, judges should consider several factors.<sup>218</sup> These factors should include whether (1) the defendant can provide all requested information about those contributing to the bail or acquire that information from the website,<sup>219</sup> (2) the defendant has a close relationship with each person contributing money or the person obtaining the loan,<sup>220</sup> (3) there is a substantial likelihood that the website is being used as a front for illegal proceeds or that the defendant or surety plans to pay back contributors using illegal

212. See Governor's Veto Message #84, N.Y. State Legis. Ann., at 456 (2011); MANBECK & FRANSON, *supra* note 141; *Terms & Conditions*, *supra* note 141.

213. See INS. § 6805; N.Y. State Sen. Deb. 5236 (June 21, 2012) (statement of Sen. Rivera); N.Y. State Sen. Deb. 5379 (June 20, 2012) (statement of Sen. Rivera); Press Release, Governor Cuomo, *supra* note 86. Section 6805 precludes all felony offenders and those with bail over \$2000, while crowdsourcing websites have no such limitations. See, e.g., *Free Jordan LaLande*, *supra* note 163; see INS. § 6805. Therefore, serious offenders who, according to the legislature, are meant to be "going through the system" could be released, when they otherwise would not have been able to. See N.Y. Sen. Deb. 5379. Further, defendants aided by charitable bail organizations who are facing only minor charges would not have as great an incentive to flee while out on bail, whereas someone facing serious charges would. See INS. § 6805; N.Y. Sen. Deb. 5236-37.

214. See N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009); *supra* Parts II.C, III.A-C.

215. See CRIM. PROC. § 520.30; *supra* Part III.A-C.

216. See CRIM. PROC. § 520.30; *People v. Esquivel*, 601 N.Y.S.2d 541, 545 (Sup. Ct. 1993); *supra* Part III.A-C; see also Press Release, Chief Judge Jonathan Lippman, *supra* note 86. This would really only be the case in situations where close family or friends of the defendant are truly only using the crowdsourcing website as a means of consolidating their funds in one place or are in good faith taking out a loan. See generally GOFUNDME, *supra* note 6; LENDING CLUB, *supra* note 6.

217. See *Esquivel*, 601 N.Y.S.2d at 545; *supra* Part III.A-C. Also, it is important to remember that the defendant could always choose another way of obtaining the money. See CRIM. PROC. § 520.10.

218. See *Esquivel*, 601 N.Y.S.2d at 545; *infra* notes 219-23 and accompanying text.

219. See *supra* notes 129-40 and accompanying text.

220. See *People v. McIntyre*, 640 N.Y.S.2d 386, 390-91 (Sup. Ct. 1996); *supra* Part III.A.

proceeds;<sup>221</sup> (4) the defendant or surety is financially able and intends to pay back all contributors in the case of a loan;<sup>222</sup> and (5) the defendant or surety intends to pay back all contributors in the case of donations.<sup>223</sup> In evaluating these factors, judges may also want to take into account various qualities of the defendant, such as the type of crime charged and prior criminal record.<sup>224</sup> Thus, there should be a rebuttable, but strong, presumption that crowdsourced bail is per se insufficient, and judges should disapprove it unless a defendant can carry that heavy burden.<sup>225</sup>

*B. Legislation Should Be Enacted to Either Prohibit or Limit the Use of Crowdsourcing Websites for Bail*

Legislation should be enacted to either prohibit or limit the use of crowdsourcing for bail for the same reasons that judges should use their discretion to disapprove it.<sup>226</sup> In New York, one way to do this would simply be to add an additional subdivision to section 520.10 of the Criminal Procedure Law precluding the use of bail obtained by crowdsourcing:

1. The only authorized forms of bail are the following:  
 . . . .
2. *An otherwise authorized form of bail, obtained using funds collected via a crowdsourcing website, shall no longer be considered an authorized form.*<sup>227</sup>

This explicit prohibition on the use of money obtained by crowdsourcing would be the most effective way to prevent the problems described in

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221. See *supra* Part III.B.

222. See *supra* notes 119-23 and accompanying text.

223. See *supra* notes 117-18, 151-57 and accompanying text.

224. See *supra* notes 219-23 and accompanying text. This would be especially useful in determining the likelihood that illegal proceeds will be used, since certain crimes will provide defendants with large quantities of cash. See *People v. Esquivel*, 601 N.Y.S.2d 541, 545 (Sup. Ct. 1993).

225. See CRIM. PROC. § 520.30; *Esquivel*, 601 N.Y.S.2d at 545; *supra* notes 219-23 and accompanying text.

226. See CRIM. PROC. § 520.30; *supra* Parts III.A–C, IV.A. Legislation may be useful to create more consistency than judicial decision-making, provide some regulation in crowdsourcing for bail, and provide consequences that could not otherwise be enforced by the court. See *supra* notes 141-49 and accompanying text and Part IV.A.; *infra* note 242 and accompanying text.

227. See CRIM. PROC. § 520.10. A definition of “crowdsourcing websites” should also be added to section 500.10:

21. *“Crowdsourcing website” means any website whose purpose is to allow users to solicit money contributions from large groups of people, whether in the form of donations, loans, or otherwise.*

See CRIM. PROC. § 500.10; *Crowdsourcing*, MERRIAM-WEBSTER, *supra* note 4.

this Note.<sup>228</sup> However, if total prohibition is considered too harsh,<sup>229</sup> similarly to this Note's suggestion for judges, the addition to section 520.10 could instead be a rebuttable presumption:

2. *Money obtained using crowdsourcing websites shall not be an authorized form of bail, unless shown to be sufficient pursuant to sections 520.30 and 520.35.*<sup>230</sup>

Here, bail obtained by crowdsourcing would be presumed insufficient unless meeting certain criteria.<sup>231</sup> Furthermore, just as in a judicial determination of sufficiency of bail, the burden to show that the specified conditions are met would be on the defendant.<sup>232</sup> These criteria could be explicitly laid out in an additional section of article 520.<sup>233</sup>

The new section of article 520 would include all rules specifically applying to bail obtained by crowdsourcing and would begin as follows:

*520.35 Bail and bail bonds; additional requirements for crowdsourcing*

1. *When examining bail obtained from a crowdsourcing website, in addition to any inquiry under section 520.30, the bail will not be considered sufficient unless:*
  - (a) *the identity of all those contributing to the bail can be obtained; and*
  - (b) *the defendant has a close relationship with each person contributing money or to the person obtaining the loan; and*
  - (c) *there is no substantial likelihood that the website is being used as a front for illegal proceeds or that the defendant or surety plans to pay back contributors using illegal proceeds; and*
  - (d) *the defendant or surety is financially able and intends to pay back all contributors in the case of a loan; or*
  - (e) *the defendant or surety intends to pay back all contributors in the case of donations.*<sup>234</sup>

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228. See *supra* Part III.A–C and note 227.

229. See Press Release, Chief Judge Jonathan Lippman, *supra* note 86; Press Release, Governor Cuomo, *supra* note 86.

230. See CRIM. PROC. § 520.30; *Esquivel*, 601 N.Y.S.2d at 545; *supra* notes 216–25 and accompanying text. Section 520.35 is a new section being proposed in this Note. See *infra* note 234 and accompanying text.

231. See CRIM. PROC. § 520.30; *infra* note 234 and accompanying text.

232. See *supra* note 225 and accompanying text.

233. See *infra* note 234 and accompanying text.

234. See CRIM. PROC. § 520.30; *supra* notes 219–23.

If the defendant is able to meet all of the above conditions, this will help dispel many of the concerns inherent in crowdsourced bail.<sup>235</sup> Paragraph (a) will eliminate the problem of anonymous contributors, which do not allow prosecutors to adequately investigate the defendant's relationships to those people or the potential use of criminal proceeds.<sup>236</sup> Paragraphs (b) and (c) address the two main public policy concerns already well established in New York—guaranteeing the defendant's return to court and preventing the use of criminal proceeds for bail.<sup>237</sup> Finally, paragraphs (d) and (e) govern what will happen after crowdsourced money is received in the cases of peer lending and fundraising websites, respectively.<sup>238</sup> For peer lending websites, paragraph (d) attempts to ensure that the defendant will actually have a financial incentive to return to court.<sup>239</sup> Paragraph (e) similarly attempts to ensure a financial incentive for fundraising websites, as well as to prevent the defendant from being able to profit from this venture.<sup>240</sup> Whether these criteria have been met, particularly paragraphs (b) through (e), would be questions of fact to be determined by a judge, just as would be necessary in any other bail sufficiency hearing.<sup>241</sup>

Further, to increase the likelihood of compliance with paragraphs (c) through (e), the new section 520.35 could also include the following subdivision:

2. *The district attorney may continue to request information on repayment of bail money obtained by crowdsourcing, throughout the case and afterwards, until it has been paid in full. Such information may be requested from the defendant, surety, or any other contributor to the bail and the court may examine them under oath or otherwise.*
  - (a) *If the district attorney has probable cause to believe that repayment of the loan or donations has been made using illegal proceeds, the person responsible may be charged with*

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235. See *supra* Part III.A–D and note 234 and accompanying text. Of course, none of these conditions can provide any absolute guarantees as to the defendant returning to court, the legality of the money used, etc., but this is true of any bail posted. See CRIM. PROC. § 520.10.

236. See *supra* notes 111-14, 129-40, 234 and accompanying text. If this information still could not be obtained, such as due to the SCA, then the bail will be automatically insufficient. See *supra* note 130 and note 234 and accompanying text.

237. See CRIM. PROC. § 520.30; *People v. Baker*, 729 N.Y.S.2d 580, 584 (Sup. Ct. 2001); *supra* Part III.A–B and note 234 and accompanying text.

238. See, e.g., GOFUNDME, *supra* note 6; LENDING CLUB, *supra* note 6; see *supra* note 234 and accompanying text.

239. See *supra* notes 119-23, 234 and accompanying text.

240. See *supra* notes 117-18, 151-57, 234 and accompanying text.

241. See, e.g., *People v. Agnello*, 705 N.Y.S.2d 525, 528 (Sup. Ct. 2000); see CRIM. PROC. § 520.30; *supra* note 234 and accompanying text.

money laundering in the third degree, regardless of the amount of money at issue.

- (b) If the district attorney has probable cause to believe that the bail money, including non-refundable fees or interest, has purposefully not been repaid, the person responsible will be liable for a fine of double the amount of bail initially obtained by crowdsourcing.<sup>242</sup>

This new subdivision will serve the dual purpose of decreasing the likelihood that illegal proceeds would be used and increasing the likelihood that the crowdsourced money would actually be paid back.<sup>243</sup> The ability to continue to monitor the repayment of the bail money is important to help prevent the use of illegal funds, since these may not be used until later to pay back the “front man.”<sup>244</sup> Moreover, since this repayment could occur at any time, including after trial, this ability to monitor would be useless without some sort of consequence besides the inability to post the money as bail.<sup>245</sup> As such actions are essentially money laundering, even if they do not meet the minimum amount of money statutorily required, this would be an appropriate punishment.<sup>246</sup> Furthermore, even if a prosecutor could find out that the money was not being repaid, to ensure the financial incentives and inability to profit which repayment otherwise provides, there must be some sort of consequence for failing to comply.<sup>247</sup> This can be achieved by simply making it unprofitable to do so, by fining those responsible at a rate double that initially owed.<sup>248</sup> Additionally, since the above proposal would be a court imposed fine, this money could be collected even if the obligor was not complying or the contributors or website failed to enforce repayment.<sup>249</sup>

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242. See also *supra* note 234 and accompanying text.

243. See *supra* notes 234, 242 and accompanying text; *infra* notes 244-49 and accompanying text. The legislation proposed in this subdivision provides the biggest benefit to using legislation to limit crowdsourcing rather than simple judicial decision-making, since legislation can create new punishments and enforcement techniques that an individual judge could not. See *supra* Part IV.A and note 242 and accompanying text. This is very important to making sure that the proposed conditions to using crowdsourced bail are actually followed. See *supra* notes 234, 242 and accompanying text; *infra* notes 244-49 and accompanying text.

244. See *Front Man*, *supra* note 125; *supra* Part III.B and note 242 and accompanying text. The front man could be one or more people on a fundraising website or as much as an entire loan on a peer lending website. See *supra* Part III.B.

245. See *supra* Part III.B and notes 242, 244 and accompanying text.

246. See 18 U.S.C. § 1956 (2012); N.Y. PENAL LAW §§ 470.10-470.20 (McKinney 2009); *supra* Part III.B and notes 129, 242 and accompanying text.

247. See *supra* notes 117-23, 151-57, 242 and accompanying text.

248. See *supra* note 242 and accompanying text.

249. See *7th Judicial District Fines*, NYCOURTS.GOV, <https://www.nycourts.gov/courts/7jd/courts/city/fines.shtml> (last visited July 24, 2016) (listing various penalties for failure to pay court



## V. CONCLUSION

The use of crowdsourcing websites to post bail is contrary to public policy and should be prohibited.<sup>250</sup> Crowdsourcing for bail is contrary to public policy under New York law and similar law in other jurisdictions because it does not protect two main public policy concerns.<sup>251</sup> Crowdsourcing websites do not help guarantee the defendant's return to court and can easily allow illegal proceeds to be used, as well as cause other public policy concerns.<sup>252</sup> Obtaining bail money in this way also differs materially from other ways of obtaining bail money currently deemed acceptable.<sup>253</sup> Finally, as has been seen recently, the use of crowdsourcing websites for bail is gaining popularity and, without regulation, could quickly offer a blueprint for abuse within the bail system.<sup>254</sup> Therefore, this Note suggests that judges use their discretion to prohibit or limit the use of crowdsourcing websites for bail.<sup>255</sup> Alternatively, this Note proposes additions to the existing statutory law to regulate the use of crowdsourcing for bail, thereby eliminating—or at least minimizing—the impact of the public policy concerns discussed herein.<sup>256</sup>

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imposed fines including issuing a warrant for arrest, suspension of one's driver's license, and a civil judgment being filed); *supra* notes 120-22, 155-56, 242 and accompanying text.

250. *See* N.Y. CRIM. PROC. LAW § 520.30 (McKinney 2009); *supra* Part III.

251. *See supra* Parts II.B.1–2, III.A–B.

252. *See supra* Part III.A–C.

253. *See supra* Part II.C and notes 203-13 and accompanying text.

254. *See supra* Part III.D.1–2.

255. *See supra* Part IV.A.

256. *See supra* Parts III.A–C, IV.B.

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