



Statement before the  
**New York City Council**  
**Committee on Criminal Justice Services**  
Keith Powers, Chairperson  
and  
**Committee on the Justice System**  
Rory Lancman, Chairperson  
**By Hazel Jennings, Chief of Department**  
**NYC Department of Correction**  
**on Bail Processes and Reforms**

**December 3, 2018**

Good Morning, Chair Powers, Chair Lancman, members of the Committee on Criminal Justice, and members of the Committee on the Justice System. I am Hazel Jennings, the Chief of Department of the New York City Department of Correction (DOC). My colleagues and I are here today to discuss the city's bail processes, reforms that we have implemented over the last few years, and improvements that we are enacting now. As the Council is aware, the City has implemented several important bail reform initiatives over the last few years. DOC has been a partner in several of these initiatives and has implemented a number of improvements to the bail process. These include several changes that were guided by local law.

To begin, I will briefly walk through the bail process and discuss how DOC process bails. From there, I will discuss our recent reforms and our plans for future improvements, and then comment on Intro. 944, which is the second bill being considered today.

**Bail Procedures**

If a defendant receives bail and is not able to pay it immediately in the court, he or she is turned over to DOC custody. The DOC officers in the courthouse accept custody of the individual and book him/her into the system. From there, the detainee is transferred to a housing facility, where new admission processing is completed and the individual is housed. As soon as the person is entered into DOC's system, DOC may accept bail for the individual.

When a bail is paid, there are several steps required to accept the bail and release the detainee. When the surety requests to pay bail, the facility where the individual is housed must confirm his/her bail and case information, to ensure that the correct bail is being paid. At this point, staff also check to see whether there are any warrants in the system and determine whether or not the person could be released upon bail payment.

With that information, the cashier can accept the surety's bail payment. Once the bail is collected and the surety is given a bail receipt, the housing facility is notified and the discharge process begins.

To release someone, facility staff must check the system and the court paperwork to reconfirm all of the case details and confirm whether any warrants or holds have been received for the individual. The required paperwork review confirms that the bailed out individual can be released.

The next step is to confirm that the correct individual is released, so staff must interview the individual and take his/her fingerprints to confirm identification. These processes are repeated by supervisors, who must sign off on the discharge. Once the discharge has been approved, the individual is provided with a MetroCard and his/her valuable property. This time of year, the person is also given a coat. The discharge process is similar for everyone, regardless of what is triggering the discharge (bail payment, warrant lifted, sentence completed, etc.).

### **Process Reforms and Future Improvements**

As mentioned, we have implemented reforms within this system over the past few years and we continue to identify areas to improve.

Several of these were guided by local laws. For example:

- With CJA, we have expanded the Bail Expedition – or “BEX” – program, so that more people can held in the court facilities for longer periods after arraignment, giving loved ones time to pay bail before the defendant is transferred to a jail facility. In compliance with the law, we now hold individuals for at least four hours when a hold is requested. CJA, which operates the BEX program, has expanded eligibility in all boroughs, so that everyone whose bail is less than \$5,000 and all adolescents now qualify.
- We eliminated the “blackout” period that used to prevent bail from being paid while a detainee was being transported from the courts to a jail. Now, loved ones can pay a bail while the defendant is on the bus, so that he or she can be processed for release immediately upon arriving at the facility.
- We have also reduced the length of time that is permissible to release someone after bail is paid. Outside of specific circumstances, everyone must be released within three hours of the bail payment process being completed.

In addition to complying with these local law requirements, DOC has been working on our own and with MOCJ to implement significant reforms. For example:

- Earlier this year, DOC implemented a formal system to notify individuals when they are in custody on just \$1 bail. Our IT department generates daily reports of all individuals who are in custody on just \$1 bail, with no other cases or holds. This list is sent to the Bureau Chief of Facility Operations and to each facility that has someone in custody on just \$1. Staff are required to notify the individuals of the bails, ask them whether they want to pay the \$1 from their commissary accounts. If they do not have \$1 in their commissary, they are able to call possible sureties to pay the bail. So far, this policy has been effective to ensure that no one remains in custody just because of \$1.

- Perhaps most notably, in April of this year, we launched the online bail payment system. The online system allows sureties to pay eligible bails from any computer, tablet, or smartphone, so that the surety does not have to travel to a DOC facility and wait for checks to be conducted in person. Instead, the surety simply requests to pay bail and then receives email notifications informing him/her whether the detainee will be released. This does not just make paying bail easier for local sureties. The system allows bail to be paid by people who live far away and allows payments to be split among several individuals.

We continue to look for ways to improve the bail payment process. Starting last month, I have begun having weekly meetings with key staff to oversee the implementation of several improvements. These initiatives include improvements on existing policies and development of new policies. For example:

- We have reimaged the bail facilitator role, which was created by local law last year. At the time the bill was implemented, we decided that the best way to fulfill the bail facilitator's obligations was to incorporate them into several positions that were already doing similar work. This plan was discussed in the hearing about the bill. Over the last several weeks, we have reassessed this and determined that compliance would be better achieved by designating specific posts as bail facilitators, in both the courts and the jails.
- We have increased the number of ways bail information is shared with detainees. Previously, information had been provided in the Inmate Handbook. Now, all new detainees receive a bail information pamphlet, receive the printout of their bail amounts and court case information, and are shown an informational video. We have created this bail information video, in both English and Spanish, and installed televisions to show the video all new admission court areas and facility intakes. Posters about bails and bonds have been created to hang in new admission areas and in visit areas, to provide information to friends and family, not just those in custody. The bail facilitator in the courts ensures that everyone receives all of these things and that all newly admitted individuals are afforded access to the phone to contact sureties. We have updated our intake processing paperwork to require that the officer confirm in writing that the required information has been provided to the detainee.
- Our next step is to go live with online bail kiosks in the new admission court areas, so those who qualify for online bail payment can pay their own bails at the courthouse and never have to be transferred to a jail. The kiosks have been installed already and we hope to have them up and running by the end of the year.

We have already shared several of these policy implementations with Council, but today we have two new innovations to announce.

- 1) Money orders and checks for bail payments may be made out to the "NYC Department of Correction." They no longer have to be made out to the individual facility where the bail is being paid. We hope that this makes the process easier for sureties, because the previous requirement had caused some confusion about how to make out the checks.

- 2) Bond payment cut slips may be delivered to any DOC facility, regardless of where the detainee is being housed. Previously, a cut slip for someone on Rikers Island had to be brought to Rikers Island. Now, that slip may be delivered to any of the borough facilities. Again, we hope that this makes the process easier for sureties, who do not have to choose between traveling to Rikers or paying a bail bondsman to do so.

Each of these new policies has come out of our bail working group.

DOC is constantly looking for ways to make the bail payment process simpler. We are not waiting for state bail reform; we are identifying and implementing what changes we can.

#### **Introduction 944**

DOC certainly supports the spirit of Intro. 944. As mentioned earlier, we are already in compliance a large portion of the bill, notifying individuals of their \$1 bail status. We notify incarcerated individuals of their bail amounts and will certainly continue to do so. We would like to request that the attorney and court notifications requirements be removed from the bill. The success of our existing program indicates that notifications to people other than the detainee are not necessary to ensure that people are bailed out efficiently. We are happy to continue to discuss this with the Council moving forward, to ensure that the best policy is enacted.

Thank you again for the opportunity to testify today. We are happy to answer any questions that you may have.

**Why Does the City Make It So Hard To Pay Bail**  
**Committee on Justice System Jointly with the Committee on Criminal Justice**  
**December 3, 2018 10:00AM**  
**Council Chambers - City Hall**

Good morning, Chair Lancman, Chair Powers and members of the Justice System Committee and Criminal Justice Committee. My name is Erin Pilnyak, and I am the Deputy Director of Crime Strategies for the Mayor's Office of Criminal Justice ("MOCJ"). Thank you for the opportunity to testify today.

MOCJ advises the Mayor on public safety strategy and, together with partners inside and outside government, develops and implements policies that promote public safety and fairness and reduce unnecessary incarceration.

Since the beginning of the de Blasio administration, the jail population has declined by 27%, with the steepest four-year decline since 1998. The City now has the lowest incarceration rate of any big U.S. city. Meanwhile, major crime has fallen by 76% in the last thirty years and by 9% in the last four. 2017 was the safest year in Compstat history. This success is shared by our partners in the criminal justice system, the government, and all New Yorkers.

The number of people in city jails has fallen across almost every category. During this Administration, for example, the number of people held on bail of under \$2,000 has fallen by around 60%, the number of people serving city sentences has fallen by 17%, and the number of 16- and 17-year-olds in detention has fallen by more than 60%.

Reduction in our jail population is not just due to a decrease in arrest; it is also a result of intentional diversion activities, with a primary driver being Supervised Release, a diversion program supported by this Council. Supervised Release recently reached the milestone of diverting over 10,000 people from a jail stay. This pioneering program was developed in close partnership with the courts, the five District Attorneys' offices, and the defense bar, with the District Attorney of Manhattan providing the initial funding to help get this program running. Since the program launched, 87% of defendants under supervised release have attended all their court dates.

More work needs to be done to reduce the jail population; reforming New York's bail statute to eliminate cash bail would go a long way to attaining the goal of a smaller and fairer criminal justice system. The impact of this antiquated system is felt primarily by men and women of color who lack adequate funding to post cash bail. This is a reform that this Administration has supported, and we hope that the New York State legislature will help move New York forward by passing bail reform next session.

We intend over the next year to work to accomplish shared goals of comprehensive criminal justice reform. Passing measures such as bail reform and other criminal justice reforms will allow us to safely reduce our population on Rikers Island. The amount of money in one's pocket or bank account should not determine whether a person is incarcerated.

Until we see the necessary reforms enacted in Albany, New York City is committed to doing all we can to make the system as efficient and fair as possible. Indeed, our office works every day with stakeholders to make investments and reforms both to improve the experience and reduce our reliance on incarceration.

While the City strongly supports bail reforms, it is also important to understand the vital roles played by multiple parties in the criminal justice system – a system that has no one "boss." The

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setting of bail is a good example of this. When a person is arrested and then arraigned, the prosecutor may request bail, the defense counsel may argue, on behalf of his or her client, for release or some other condition, and then the judge makes the final decision.

In the event that a judge sets bail, the individual is held in the custody of the Department of Correction until at least one of the forms of bail that has been set by the judge has been provided, either by the individuals or by another person on the individual's behalf.

The various processes for paying bail involve certain challenges, including reaching someone who can make the payment quickly. The Mayor's office has worked closely with the courts, DOC and providers in various ways to address these difficult system problems.

Speeding up the bail payment process can have significant impact. Last year, approximately 17,000 individuals made bail after they were booked into jail, with 77% making bail within one week of being detained. This suggests that these defendants may be able to afford bail, but that the time it takes to gather the funds, as well as inefficiencies in the bail payment process, could be leading to delays that result in unnecessary time behind bars. To address these inefficiencies, the City rolled out several programs to make it easier to post bail more quickly, and has supported DOC's efforts to improve the bail process. These programs and initiatives include:

- Creating an online bail payment system, accessible by internet, phone, and kiosk that became operational this spring.
- Creating an alert to notify defense attorneys and court staff when a defendant has the potential to be detained solely on \$1 bail, which is an administrative hold used by the Court system, in order to ensure these defendants are released promptly.
- Eliminating the 3% fee taken from an individual's bail after plea or found guilty.
- Installing ATMs in every courthouse to ensure people have access to cash to post bail.

The launch of online bail has made payments easier and provides an additional avenue for family and friends, regardless of location, to provide financial assistance to make bail payments. The online bail payment system is the first of its kind, and the flexibility to allow the use of multiple credit cards can help individuals pool resources. The availability of online bail means that individuals posting bail no longer need to make payments in person at a courthouse or DOC facility. For many of New York's most vulnerable populations, this means they no longer need to take a day off of work or find alternatives for childcare, which create additional costs for families.

Currently, the Council is considering Intro 1199-2018, sponsored by Chairman Powers, which would remove the fees associated with credit card bail payments. Additionally, the bill would allow online bail payment to be made by direct deposit and electronic check. In that regard we note, first, that neither DOC nor the Office of Court Administration accepts payments with direct deposit, electronic check, or personal checks. Due to security reasons, checks do not clear timely, and may take 3 to 5 business days. In order to ensure bail is paid, cashier's checks and credit cards protect against fraud and provide increased security. We are open to exploring

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additional payment options such as cashier's checks to be paid online. Second, the City does not collect any fees associated with online bail payments. DOC has a contract with a vendor that is offering one of the lowest surety fees in the country.

Thank you for the opportunity to speak today and for your continued support and partnership in improving the bail system and creating a smaller, safer, and fairer justice system that works for all New Yorkers.

# **THE BRONX FREEDOM FUND**

New York City Council  
Committee on Criminal Justice & Committee on the Justice System  
“Why is it So Hard to Pay Bail?”  
Testimony of The Bronx Freedom Fund  
December 3, 2018

Councilmember Lancman, Councilmember Powers, and members of the Committees, thank you for the opportunity to testify about the shortfalls of the bail system in New York City. At The Bronx Freedom Fund, we see these issues play out every single day and are keenly aware of the human costs of these procedural injustices.

The Bronx Freedom Fund is New York’s first licensed charitable bail organization. Since 2007, we have secured the release of thousands of New Yorkers who would otherwise be incarcerated for their poverty. We fight tirelessly for our clients’ freedom and to restore the presumption of innocence for all, by empowering our clients to fight their cases from a position of freedom rather than going to jail for their poverty. We each navigate the bail system every day and are deeply acquainted with its processes for payment and release, along with the many ways it can prevent people from accessing their freedom.

This testimony discusses the need for the proposed legislation along with several modifications to ensure effectiveness, the failed implementation of Local Laws 123-127, and the impact of these bail payment problems on our clients’ lives.

## **Background**

Every day, thousands of New Yorkers sit in jail without having been convicted of a crime. They are legally innocent, awaiting trial, trapped simply by their inability to pay bail and purchase their freedom. Bail was never intended as punishment, but it certainly serves as one for the 8 in 10 New Yorkers who cannot afford to pay it. They face an impossible choice between maintaining their presumption of innocence and right to trial but waiting indefinitely behind bars, or pleading guilty and getting a criminal record just to go home.

In May 2017, we testified to the Council about the need for procedural changes to the bail payment system. The Bail Easement Package was passed by City Council a few weeks later, encompassing Local Laws 123, 124, 125, 126, and 127. While we continue to push for systemic change that ends the criminalization of poverty, incremental changes like those codified by these laws are critical measures that address an urgent need.

We commend the Council for passing Local Laws 123-127, and doing its part to address the procedural injustices of our bail system. However, implementation of these laws is not even nominal. We now call on the relevant agencies to follow these laws and to treat this crisis with the urgency it demands. As is explained further in the Findings section below, our data indicate an implementation rate, at best, of 22%.

If the City is serious about closing Rikers, these common-sense reforms are a necessary precursor. Thousands of New Yorkers are jailed each year who could easily be freed if these laws were followed.

With most people making bail after 3-4 days in jail, the City should be doing everything in its power to avoid these stays altogether. If the Bail Easement Package laws were followed, this would be the case: individuals could access contact information before they are even arraigned, identify a surety who would have ample time to secure their freedom, post their own bail if they have no outside contacts with financial resources, and be back in their shelters and jobs within a few hours if they were taken to jail at all. Instead, as our data indicate, the vast majority of people who are lucky enough to make bail are subject to illegal hurdles and delays that turn the process of accessing their freedom into a punishment in itself.

This is oftentimes not a question of shortening jail stays, but rather one of avoiding incarceration altogether. When even one night in jail can cost someone their job, home, and family, this makes all the difference in the world.

### **Proposed Legislation**

We commend Councilmember Lancman on the introduction of Int. No. 944 related to \$1 bail. We receive referrals almost every single day for people who are held in jail on \$1 after their cases are resolved, trapped by an administrative hold that is treated like money bail. State law governs this administrative quagmire, but Int. 944 would provide a critical workaround absent any statutory reform. By ensuring communication between personnel in the jails, courts, and defender offices, this bill would avoid one of the most exasperating illustrations of our cash bail system – people stuck in jail for days at a time on \$1 bail they might not even know about or have the opportunity to pay.

We propose that the bill text be modified to extend the notification system to anyone held on a single-digit bail amount, such that those individuals with multiple \$1 bail cases not be excluded. Oftentimes, the referrals we see are not just for \$1, but for \$2 or \$5 if the individual had two or five pending cases, not just one. Furthermore, we propose that the individual themselves be notified to ensure an opportunity for self-payment rather than exclusively relying on outside parties to communicate and take action.

Int. No. 1199 also proposes a much-needed administrative change to our bail system, and we applaud Councilmember Powers for pushing this bill forward. The non-refundable fee associated with paying bail with a credit card is a major hurdle for sureties for whom the jail facilities are inaccessible, whether because of a work or childcare schedule, geographic location, or physical abilities. With cash bail as unaffordable as it is for the majority of New Yorkers, there is no reason for a payment option to be subject to such financial exploitation. There is an extremely high non-refundable fee of 2.49 percent tacked onto all payments made online, which shoots up to 8 percent for credit card payments made in person or by phone. The existing bail structure already extracts wealth from communities of color and attaches a price tag to freedom, and this policy makes it even more burdensome. An added non-refundable fee of a few hundred dollars for a bail payment could mean the difference between incarceration and freedom, especially when only 12 percent of New Yorkers can afford their bail whatsoever.

We urge the Committee to take our study of the Bail Easement Laws' implementation seriously, sign 1199 and 944 into law with the proposed improvements, and to promote agency accountability with the full extent of its powers.

## Findings

The Bronx Freedom Fund has gathered data about compliance with Local Laws 123-126 based on public information and conversations with our clients. We have found that compliance is minimal from the moment of arrest to the point of release. Overall compliance on the part of DOC hovers around 20 percent.

### Local Law 123

Local Law 123 requires the Department of Correction (DOC) to accept cash bail payments “immediately and continuously,” to release clients who have been bailed out within a “required time period” as enumerated in the legislation, and to accept or facilitate bail payment at or within a half mile of a courthouse. DOC currently does not accept bail payment at the courthouse in the Bronx, or within any half-mile radius. The closest DOC payment facility is The Vernon C. Bain Center (“The Boat”), which is three miles away from the Bronx courthouse. Our staff consistently spends hours waiting for DOC to accept payment at this facility, and can attest to the fact that payment is not accepted immediately nor continuously. It can take anywhere from an hour to twenty hours for DOC to accept a cash bail payment – and we are paid professionals who know how to navigate the process. In Queens, DOC began accepting payment adjacent to Criminal Court in September 2018, almost a full year after the law took effect. With this Queens Detention Center (QDC) bail window we have had mixed success attempting bail payments during what is known as the “blackout” period – when a defendant is listed as “in transit.” Thus far, we have only been able to post bail during a “blackout” period if the defendant was arraigned that same day at Queens Criminal Court.

Local Law 123 mandates that DOC release people from jail within a certain time frame after bail payment, beginning with 5 hours in October 2017, 4 hours in April 2018, and 3 hours as of this October. Our organization has consistently tracked the release times for our clients who were incarcerated at any NYC jail facility since January 2018, from the time bail was accepted, as recorded by DOC on the bail receipt, to the time of release, as reported by DOC public information.

From January to April, during the first installment of the release timeframe requirement, only 23 percent of our clients were released in the required 5 hours. The average release time during this period was 7 hours and 16 minutes, and the median was 5 hours and 55 minutes. During this period, one of our clients’ release took 34 hours and 37 minutes. Upon posting bail for this client, the attorney and the Office of Court Administration (OCA) both verified that no warrants were holding in this client, and specifically confirmed that a listed warrant from 1987 had been vacated, leaving no issue with the client’s release. However, their release from jail took nearly seven times the legal limit.

Following the second installment of the release time provision, from April to October, only 24 percent of our clients were released within the required 4 hours. During this period, the average release times rose dramatically, with a mean of 24 hours and 6 minutes, and a median release time of 6 hours and 53 minutes. In this period, we had 16 clients released at least a full 24 hours after their bails had been posted, six of whom were released over 48 hours after payment. Many of these delays in release appear to be due to negligence and miscommunication between OCA and DOC, when holds were listed on a defendant’s account despite the fact that each client’s attorney confirmed that the holds were vacated and would not keep the client incarcerated. Whether the reason was a lack of communication, willful

indifference, under-resourced departments, the result was the same: administrative errors caused our clients to be held in processing cells for hours on end without food or a bed.

Beginning in October 2018, Local Law 123 requires that the release from jail must be within 3 hours of bail payment. So far, only 7% of our clients have been released in accordance with the law. And of those released beyond the 3-hour limit, 28% were released after twelve hours or more. One client in particular was released from the Vernon C. Bain Center nearly 16 hours after we posted their bail. At noon on a blisteringly cold Veteran's Day, our client was released in the beige DOC jumpsuit with none of his property or a winter coat, having been told that the property window was closed for the holiday.

Overall, from January through November, only 21% of our clients have been released in compliance with the law. Nearly a quarter of those released outside the legal parameters were discharged over 12 hours since the time of bail payment, and nearly 6 percent of said clients were released in over 24 hours. Likely because of lack of coordination between OCA and DOC, release times are drastically longer for people incarcerated on \$1 bail.

#### Local Law 124

Local Law 124, which went into effect summer 2017, permits the delay of recently arraigned defendants into DOC custody to expedite bail payment, anywhere from 4 to 12 hours. Nevertheless, we have seen holds violated over a dozen times within just 1 hour and have not seen a single client held for more than 2 hours. When this occurs, our clients are labeled "in transit" at a jail for an additional 24 hours until they can finally be bailed out, even though our staff was present to post bail and avoid incarceration altogether.

Hold violations commonly occur close to the 1:00 PM and 6:00 PM scheduled buses departing to jail facilities. At a similar rate, our clients are not granted their legally mandated meeting with the Criminal Justice Agency (CJA) as part of the Bail Expediting Program, preventing us from placing a hold whatsoever and robbing defendants of the opportunity to reach out to sureties.

#### Local Law 125

Local Law 125 calls for DOC to facilitate bail posting by providing "bail facilitators" all incarcerated individuals within 1-2 days of entering custody. Of the sliver of our clients who did report meeting with someone who assisted with bail, further conversation has revealed they were referencing either Freedom Fund staff or the Legal Aid paralegals who connect us by phone. In testimony presented to the Board of Correction in November, DOC staff confirmed that they have only recently begun identifying the individuals who will serve as "bail facilitators."

#### Local Law 126

Local Law 126 requires the NYPD to aid arrestees in accessing their loved ones' contact information before arraignment. Accessing contact information is crucial for ensuring loved ones' presence at arraignment (which can demonstrate community ties to a judge and avoid bail being set) and for enabling bail payment itself. However, only 29 percent of our clients reported that they were provided access to contact information, and a NYPD officer reported to the Appeal that he was surprised that number wasn't even lower.

## Local Law 127

We have seen no evidence of Local Law 127's implementation, though it is the simplest in the package. It requires the administration to display signs about how to pay bail in courthouses, and despite us providing graphics to several offices in the last year, there are no signs to this effect in either the Bronx or Queens Criminal Courthouses.

### **Impact**

We at the Bronx Freedom Fund see every day how noncompliance within DOC and NYPD on Local Laws 123-127 affect our clients, their families, and their communities.

Since the laws in the Bail Easement Package strengthen and rely on one another, a violation of one compounds the violation of another. Our typical client cannot afford their bail or post it themselves if they can, recall the phone number of a potential surety, remain at court while a surety makes their way to come post bail, or expect a reasonable release to ensure their job or shelter bed remains available. If these laws were implemented effectively and in unison, countless New Yorkers could avoid spending any time in jail.

At present, there are about 2,100 people with no warrants or holds in New York City jails who could be freed with a bail payment. Based on surveying our clients, it is clear to us that an overwhelming majority of these people in on bail most likely have not been given adequate support and assistance in helping facilitate their bail payment.

To take Local Law 123 as an example, the Department of Corrections has failed to create a location to post bail near the Bronx courthouse. For the Freedom Fund and the loved ones of anyone incarcerated in the Bronx, the closest payment facility is the Vernon C. Bain Center, aka the Boat. The Boat is not accessible by subway and is a 15-minute walk from the nearest bus stop, and it is not handicap accessible. There are no public restrooms or access to drinking water and the waiting room is often not heated or cooled, making it burdensome and unsafe for the elderly and those with children.

Local Law 123 also requires individuals to be released within in three hours of bail being posted. Last weekend, we posted bail for a client on a Saturday at 1:45 PM, and our client was not released from the Vernon C. Bain Center until Sunday at 11:35 AM – about 22 hours after we posted his bail. This individual was already unjustly incarcerated on unaffordable cash bail, and the additional 22-hours are in clear violation of a local mandate. The majority of New Yorkers with bail set are subject to these systematic violations, but don't have an office like ours to advocate against their over-incarceration. We ask that the Council take up this role of protecting all New Yorkers from over-incarceration and ensuring that the Department of Correction no longer goes unchecked.

This conversation surrounding "Why is it so hard to pay bail?" would be remiss without an acknowledgment that 8 in 10 New Yorkers simply cannot afford their bail. That is the underlying reason why over two thousand New Yorkers are incarcerated every day. When people are incarcerated on bail they cannot afford, they risk losing their housing, livelihood, and even custody of their children. This leads to trauma and collateral harm that affect individuals, their families, and our broader communities. The bail system is one of the major fuels for mass incarceration in New York City and throughout our

nation, and we know that to truly end the criminalization of race and poverty we must abolish the money bail system and replace it with one that restores the presumption of innocence for all.

Our work as a community bail fund is a temporary stopgap measure, focused on harm reduction and decarceration until we reach meaningful reform. These proposed laws and the enforced compliance of Local Laws 123-127 could seriously mitigate the harm of a system that allows wealth-based detention while we focus our long-term energies on fighting for systemic change.

We urge the Council to take our testimony seriously and to continue its leadership in championing policies like the ones outlined here.



*Why Does New York City Make It So Hard To Post Bail?*

The New York City Council  
Committees On the Justice System and Criminal Justice  
City Hall  
December 3, 2018, 10:00 AM

Presented By:

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The Legal Aid Society is the largest not-for-profit legal services organization in the country, handling over 300,000 legal matters annually. The majority of those are matters pending in criminal court, where we represent clients accused of felonies and misdemeanors. Our advocates have long called for reforms to our City's pretrial legal system—a system that detains a daily average of more than 6,100 New Yorkers who are presumed innocent and awaiting trial. They are held in one of our country's most violent jail systems, and the majority of them are there because they lack the money to pay their bail.

To be sure, the Department of Correction did not put those New Yorkers in jail. Overcharging by prosecutors, excessive bail decisions by judges, and police practices defined by entrenched racism and anti-poverty bias are the drivers of our City's current crisis of mass pretrial incarceration. But once those actors cause the detention of presumptively innocent New Yorkers, it is the Department's responsibility to keep them safe, and to release them as soon as the law requires it. Our lawyers—and certainly, our clients and their families—have known for years that the Department often falls tragically short in fulfilling both duties.

Last year, in an effort to reform and streamline the bail payment process so that people who can pay or have paid bail are not detained when they should be free, the Council passed five “bail easement laws.” Three of them are aimed at the Department's bail practices. Administrative Code Section 9-148 requires the Department to accept bail payments continuously after arraignment at or near criminal courthouses or online, and to promptly release people whose bail has been posted. Section 9-149 provides for delays in transporting people from court to jail so that their bail can be posted in court. And Section 9-150 requires the Department to provide “bail facilitators” to explain to each detained person what their bail status is and, significantly, to give people in custody access to their own property so they can post their bail. Two other laws require

the City to post bail-payment information in courthouses, and the NYPD to provide arrested people with access to their cell phones to obtain the loved ones' contact information, which is essential to their upcoming bail hearing. We have not seen any evidence of compliance with the former, and data from the Bronx Freedom Fund as well as reporting by *The Appeal*, discussed in greater detail below, show that the Police Department is not following the latter. In our view, the Department of Correction's utter failure to comply with this Council's modest reforms has cost our clients more time in jail than have violations of those two laws, and it results from a pernicious culture of inefficiency and negligence that requires the direction of this body's full attention and resources. Therefore our testimony focuses on the three laws applicable to the Department.

Our experience shows that the laws have had little impact, if any, on the Department's behavior. Inefficiency and delay continue to plague the bail payment and release processes, and our clients and their families suffer as a result. The Council should take seriously its duty to conduct meaningful oversight of the Department's compliance with these laws.

First, the Council must scrutinize closely any assertions by the Department that it has complied with these laws, and demand documentation of any claim that the Department has implemented any changes as a result of their passage. Second, the Council's Committee for Oversight and Investigation should undertake its own investigation of the Department's compliance with the easement laws. The Council must demand and monitor full compliance, and require regular reporting thereof, including plans for training and allocating staff to perform new functions and for creating accountability when staff violate these laws and cause the wrongful detention of New Yorkers. The Council should publish its findings. Finally, the Council must take practical steps to give defenders and other advocates the tools they need to ensure their

clients receive the benefits of these laws. The Department of Correction is a vast agency, and no one staff person is ever solely responsible for violations of these laws that cause our clients to be unlawfully detained. Information is decentralized and often inconsistent. This makes it difficult for lawyers to advocate for clients whose families are attempting to post bail, or for clients whose bail has already been paid. The problem is amplified on nights and weekends. The City should prioritize a modernized, accessible communication system that allows lawyers, advocates, and court staff to quickly communicate with the Department—and that compels immediate action by Department staff to free detained people when the law says it must.

### **The Council Should Reject the Department's False Assurances of Compliance**

It is clear to anyone who encounters the bail processing system that the Department is not following the Administrative Codes passed last year—the last of which went into effect in January 2018. Just last week, *The Appeal* published a Bronx Freedom Fund study that documented the Department's widespread noncompliance.<sup>1</sup> From January to April 2018, when the Department was required to release people within five hours of bail being posted, less than a quarter of the Fund's clients were released in that timeframe. The Department routinely ignored holds that the Fund's staff requested, and took people to jail before they could be interviewed by staff. And the Fund's data suggest that their clients were not meeting with bail facilitators while in jail.

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<sup>1</sup> George Joseph, *Despite New Rules, NYC Is Still Jailing People Long After They Post Bail*, *The Appeal*, Nov. 26, 2018 (attached and available <https://theappeal.org/despite-new-rules-nyc-is-still-jailing-people-long-after-they-post-bail/>).

The Department conceded it was noncompliant on November 13, 2018, when it testified before the Board of Correction.<sup>2</sup> That concession was buried beneath repeated attempts to obfuscate its failures to follow the law. At the Board hearing, the Department's representative made several vague and general assurances that the agency had already followed, or had concrete plans to follow, sections 9-148, 9-149, and 9-150. But those assurances were quickly belied by the Department's own admissions that it had yet to implement several essential components of these laws.

The Council should not allow the Department to hide behind those tactics now.

For example, the Department's representative initially said that it had "established" bail facilitators as required by section 9-150. But when the Board asked how many people those facilitators had helped to date, the Department confessed that it had merely identified staff who would serve as the bail facilitators, that they had yet to be trained, and that they were not yet serving clients. The Department also cited a plan to install televisions that would play recorded bail-posting information in intake areas, raising the question of whether the Department believes that such recorded messages can take the place of an officer actually helping a detained person access his or her own vouchered money to post bail—an essential function of that law, and one that a television obviously cannot fulfill. Without explaining why it has not been compliant for a year or more with the bulk of these laws, the Department assured the Board that it would be in full compliance with each of them by mid-December.

But even the most charitable look at the Department's current performance warrants deep skepticism of its promise of full compliance two weeks from now.

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<sup>2</sup> Video of the Department's testimony is available on the Board's website (<https://www1.nyc.gov/site/boc/meetings/nov-13-2018.page>).

The Bronx Freedom Fund is submitting its report to the Committees today, and we urge the Committees to examine it closely. Our experiences are consistent with the Freedom Fund's data. As a Staff Attorney with the Legal Aid Society's Decarceration Project, I am one of several attorneys our trial lawyers can contact when their clients are not being released when they should be. In October 2018, our project staff fielded an average of three complaints a week from lawyers whose clients were not being released when they should have been—and that is in addition to advocacy that trial lawyers do on their own when their clients' releases are delayed. One of those clients, D.R., was featured in the article in *The Appeal* last week. He was detained for 27 hours after his mother posted his bail—and more than six hours after I personally spoke to Department staff who told me that they had his paperwork and that he would be released shortly. Last Thursday, another client was detained for seven-and-a-half hours after his bond paperwork was delivered to the jail, with no explanation. A week before that, a client was ordered released by a judge at 5:15 pm and was not released for another 30 hours. In repeated conversations with one of our lawyers, Department staff at the jail insisted they had not received the release paperwork from the court. This was either untrue or the result of a mind-numbing failure of the Department to maintain the most basic internal communication channels: the court clerk hand delivered the release paperwork to Department staff at the courthouse, and Department staff there confirmed to our lawyer that they had received it, logged it, and sent it to the jail via courier. Yet the jail insisted they did not have it, and the client was not released until the court sent the paperwork again via fax the following day.

It is clear that the delays and inefficiencies these laws aimed to resolve still persist. This oversight hearing is a crucial opportunity to scrutinize not just where the Department is not compliant, but why, and to create a roadmap for accountability going forward.

**The Council Should Investigate the Department's Compliance With These Laws and Hold it Accountable for Noncompliance**

At the Board of Correction hearing, the Department provided few details about its plan to reach full compliance by mid-December 2018. This baseless promise seems almost flippant when our clients continue to suffer. The Department cannot be left to police itself any longer.

Instead, the Council should use its resources to ensure compliance. The Council should continue to hold regular oversight hearings like this one where the Department is mandated to provide detailed, fact-based reporting—not vague predictions of its future behavior. In addition, the Council's Committee on Oversight and Investigation should begin an investigation into the Department's efforts to comply with these laws, and hold the Department accountable for failing to implement these laws. Existing reporting requirements, like that in section 9-149, must be enforced to their fullest extent.

The Committee should undertake its own investigations of release delays, hold requests that are not honored, failures to accept bail while a person is in transit, lack of bail payment sites near courthouses, and the absence of bail facilitators. It should regularly consult the City's public defenders and bail funds about violations of these laws, and create easy-to-use, confidential reporting tools to log those violations.

Most importantly, the Committee and every Councilmember must also engage their constituent New Yorkers in conversations about these laws and make sure that people who are impacted by the Department's negligence are heard.

**The Department Must Make Fundamental Changes to Its Communication Systems**

Many of the violations we have observed resulted from the Department's failure to facilitate accurate and efficient with the courts, with detained people's attorneys, and among its

own staff. As this Council well knows, much of the Department's communication with the courts occurs via fax machine or by hand delivery of documents. Even if working perfectly, these means are patently outdated and inefficient. But in our experience they rarely work perfectly. Fax machines are frequently broken or go unchecked. Several times in the two weeks before this hearing, when our lawyers were advocating with Department staff for clients who had been ordered released by judges, we were told that the courts should fax the court orders to a different number—a number that had never been given to the courts before. The Department insists on communicating with courts through faxes, yet it cannot maintain reliable fax lines. This is unacceptable.

Attorneys often have an even more difficult time exchanging information with the Department. Our staff know firsthand that there are several incredibly helpful Department officers and captains who are willing to help ensure our clients' speedy release from jail, some even when they are not at work. That we know them by name demonstrates how rare they are. While we appreciate their efforts—and rely on them—it is obviously unsustainable to shoulder a small group of staff with ensuring that the Department processes releases properly.

No amount of policy change will correct a culture that allows for this level of inefficiency. In order to follow these laws, the Department must undergo a fundamental overhaul in how it communicates with the rest of the legal system.

The Department must modernize its communications with courts and advocates. The Department must work with the Office of Court Administration to improve these lines of communication. The Department's inability to reliably receive release information from court staff means that our lawyers often must ask courts to send release paperwork more than once. It is not uncommon for us to meet reluctance from court staff, either because they are busy or they

do not want to send paperwork twice. Something as important as our clients' liberty should not depend on the ability of an individual attorney to persuade a clerk to re-issue a release order. Both agencies must work to improve their own lines of communication so our lawyers are not responsible for connecting the dots.

Courts ought to be able to email release and bail paperwork to a centralized address, and the Department must be able to receive and enforce it immediately. The same must be available for attorneys whose clients are being held unlawfully. Among its staff, the Department must create a way to transmit updated release and bail information, so that no matter which facility houses an accused person, he or she is immediately processed for release when legally eligible. Our client D.R. waited for three hours in a cell with two other people while correction officers—according to their own statements to the group of detained men—waited for a captain to sign his release paperwork. A three hour deprivation of liberty for want of a single signature is not just inefficient. It is inhumane. Last year, the Council rightly tried to prevent unlawful detentions like the one D.R. suffered by passing these bail easement laws. After nearly a year of non-compliance, the Department has demonstrated that it cannot, or will not, comply with them on its own. Council must investigate and monitor the Department to ensure that it follows these laws.

### **The Council Should Pass Intros. 944 and 1199**

We support the passage of both the proposed Local Laws under consideration today, and suggests a minor amendment to Intro. 944. No client should ever be held on a single dollar bail. The practice of requesting and setting \$1 bail is a product of New York's sentencing laws and the desire of the accused and their attorneys to ensure that, in the event they are sentenced to jail time, they receive credit for every day they were in custody, on every case for which they were

held. Dollar bail is never set because a judge believes it is the appropriate bail under the Criminal Procedure Law; it is a sort of legal fiction. Yet it too frequently results in the very real loss of liberty for clients. Intro. 944 should be amended to provide for immediate notification upon the Department receiving notice that someone is detained due to one dollar bail, not notification within 24 hours. Additionally, the Department should alert the accused person of the dollar bail as well, so that he or she can post it if possible—using the assistance of a bail facilitator under Section 9-150. Finally, the law should be broadened so that its notification requirement applies to anyone held on a single digit bail amount. It is not uncommon for people to have more than one case where \$1 is set. Those people would not benefit from the law as written, making this a necessary amendment.

**George Joseph**

Nov 26, 2018

SHARE



## DESPITE NEW RULES, NYC IS STILL JAILING PEOPLE LONG AFTER THEY POST BAIL

A new Bronx Freedom Fund report documents these extended pretrial lockups, which threaten people’s jobs and destabilize families.

In October, D.R., a Bronx resident in his 20s, was arrested on an assault charge and spent the night in jail. The next morning, his mother posted his bail. That should have been the end of his stay in jail. But instead of getting out, D.R. was moved to the Vernon C. Bain Center, a floating jail barge in the Bronx. The line to use the jail phone was too long for him to call his family, so he spent another night behind bars, unsure of what was happening.

“You got me into your system fast as hell,” D.R. says he remembered thinking. “Why can’t you get me out just as fast?”

His family, meanwhile, was trying to find him. The staff promised he would be released that morning, says Elizabeth Bender, an attorney at the Legal Aid Society. But D.R. stayed in jail through the afternoon. A fight broke out and his unit was placed on lockdown. D.R. had to wait several more hours before corrections officers finally took him out and began his departure process. Twenty-seven hours after his mother posted his bail, he was released, according to Bender.

Mayor Bill de Blasio visits young people housed at Rikers Island in 2014.

Susan Watts - Pool/Getty Images

Last year, New York's City Council passed a raft of new rules intended to protect people like D.R. from unnecessary detention after they have posted bail. One law extended the deadline for a defendant's family members or friends to get to court and pay someone's bail before they would be transferred to jail. Another requires that the Department of Corrections release people a few hours after their bail had been posted.

But the Department of Corrections regularly flouts these release rules, according to a [new analysis](#) conducted by the [Bronx Freedom Fund](#), an organization that posts bail for poor Bronx residents to help them avoid pretrial detention.

Of the 238 clients the Bronx Freedom Fund bailed out from jail between April and September 2018, 76 percent were not released within four hours of their bail being posted, as required by one of the new 2017 laws. Of their 93 clients bailed out from jail January through March 2018, when the law's rollout allowed for a five-hour post-bail release, 62 percent were not let out within the legally required time frame.

“

**You got me into your system fast as hell. Why can't you get me out just as fast?**

D.R., a Bronx resident

The report also criticized the DOC for failing to give defendants' families and friends adequate time to bail them out. Before the new laws were passed, the DOC could give someone two hours to bail out an arrestee after arraignment, and delay transferring the person to jail. One of the 2017 laws extended that time window to between four and 12 hours. But since the law's enactment, the Bronx Freedom Fund says it has not seen “a single client held for more than 2 hours” before being shipped to jail. This failure results in detainees spending a full additional day behind bars, the report notes.

Even just a short stint in pretrial detention can [destabilize people's lives](#), making it harder to stay employed and take care of children, while making it more likely they will [plead guilty](#) just to get out of jail. D.R. says the extended stay was especially painful. In March, he got into a car accident and hurt his back and right knee. But instead of spending the day going to rehab, he was stuck on the hard floor of the jail's crowded intake area, struggling to lie down comfortably. “My right knee, I couldn't keep it straight, so I tried to sleep through the pain,” he said.

At the Board of Correction's monthly meeting on Nov. 13, a [DOC representative](#) acknowledged that the department was still not in compliance with the City Council's bail reforms, several months after they went into effect. The representative told the board that the DOC “expected to be in compliance no later than mid December.”

Jason Kersten, the DOC's press secretary, responded to the findings in a statement to The Appeal, noting that the department is “always looking for ways to improve the bail process and make it faster.” Kersten pointed to recent improvements in their release system, such as a “sophisticated online bail system” and “a twenty-four hour bail window at the Queens Detention Complex.”

**Despite New Rules, NYC Is Still Jailing People Long After They Post Bail** - The Appeal  
 The DOC said its stated policy, after bail has been paid, is to discharge people in custody within three hours. It noted that legal exemptions allow for some discharges to take longer, but said average discharge time generally ranges from two to five hours. It also told The Appeal that it regularly holds people at court, when requested, to help them make bail before they are bused to jail. From January through June, the department said, it delayed the transfers of 1,029 people, 741 of whom were released as a result.



**Codifying policy is one thing, but until they start treating this as the humanitarian crisis that it is, the impact doesn't make it past paper.**

**Elena Weissmann**, director of the Bronx Freedom Fund

The NYPD also appears to be flouting a bail reform law passed in September 2017, the report found. The law requires NYPD officers to help people they arrest access their contact information, which is often stored on phones that police have seized. Such information is important for people trying to find someone to pay their bail. But a survey of 141 Bronx Freedom Fund clients, included in the report, found that 70 percent said they were not given access to their contacts while in NYPD custody.

Sgt. Jessica McRorie, an NYPD representative, said in an email that the law allows for “the release of contact information to the extent practicable and in a manner consistent with all applicable laws and officer safety.” McRorie continued that such “information, when it is stored in a person’s personal property, will be offered to them while they are in the department’s custody and when the individual is due to be arraigned within 24 hours.”

But Pedro Serrano, an NYPD officer in the Bronx, argued to The Appeal that some officers don’t give people access to their phone numbers as a form of retaliation. “In the precinct they don’t want you to contact anybody,” he said in a phone call. “Grabbing their property is a form of punishment.” He said that he has never heard of any training about this relatively new City Council requirement, adding, “I’m surprised the percentage is not higher.” The NYPD did not respond to The Appeal’s inquiry about whether they have trained officers on this issue.

Elena Weissmann, director of the Bronx Freedom Fund, said in a phone call that the DOC and the NYPD need to make major departmental overhauls to comply with the new laws. “The NYPD and DOC simply need to prioritize this as the crisis that it is,” she said in an email. “Codifying policy is one thing, but until they start treating this as the humanitarian crisis that it is, the impact doesn’t make it past paper.”

Such failures can permanently weaken clients’ faith in the legal system’s ability to give them a fair trial, says Bender, the Legal Aid Society attorney. “It’s one type of arbitrary injustice to be held there on bail you cannot pay. It’s another to be held even though you have paid your bail,” she said in an email. “It’s easy to understand how that experience would undermine a client’s faith in our legal system, and people who lose faith in the legal system may choose to take a plea just to get themselves out of it.”

At a hearing on Thursday, New York City Council members are expected to publicly raise the DOC’s apparent inability to release detainees promptly after they have paid their bail. In an email, Rory Lancman, a councilmember from

Despite New Rules, NYC Is Still Jailing People Long After They Post Bail. The Appeal Queens who is running in the borough's 2019 district attorney election, criticized the DOC and NYPD's apparent lack of compliance with bail reform laws.

"It is a disgrace that the city has failed to implement key bail reform measures passed by the City Council last year, including my bill to ensure individuals have access to loved ones' contact information after an arrest," he said, referring to the bill he sponsored that requires NYPD officers to give people access to their contact information. "I will be demanding answers from the administration at Thursday's hearing, along with a detailed plan to make certain that the city promptly complies with these laws." □

- INCARCERATION
- BAIL
- BRONX
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NYC Council Testimony: Intro. No. 1199

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Good morning. I want to thank Council Members Power, Lancman, Brannan, Cohen, Dromm and Yeger for proposing Intro. No. 1199, to eliminate fees associated with credit card bail payments. Following 741, Intro 1199 will be another step towards ending the disproportionate harms fines and fees exact on poor communities and communities of color in New York City.

My name is Joanna Weiss. I am the Co-Director of the Fines and Fees Justice Center, a national organization that seeks to eliminate fees in the justice system and ensure that fines are equitably imposed and enforced. Fines and fees hurt New Yorkers and New York City. They make our communities less safe, they perpetuate and exacerbate poverty, and they extract millions of dollars from our most vulnerable communities, particularly communities of color.

There are currently two fees associated with paying bail by credit card. One credit card fee is assessed by the City itself if bail is paid before a person is booked into Rikers. While the state is responsible for reforming our inequitable cash bail system, the City should not make it harder for people to secure their freedom, by adding additional fees on top of the bail payments.

The second and far higher credit card fee, up to 8% of the entire bail payment, is assessed when a person is already in the custody of the Department of Corrections (DOC) by the time they are able to come up with the money to make their bail payment. The reason that fee is far higher is because a private company called JPay, a subsidiary of Securus, the company that currently charges unconscionably for jail phone calls in New York City and around the country, has been allowed to profiteer off of people trying to pay bail.

The Fines and Fees Justice Center strongly supports Intro 1199, but this reform is not enough. We ask the City Council to eliminate all fees in New York City. That includes fees imposed by the City itself, such as the DWI probation fee, and fees for diversion that are assessed by the Mayor's Office of Criminal Justice. We also ask the Council to ensure that the City ends the use of fees that are assessed by private entities, including diversion fees and the array of fees charged to people who are incarcerated in City Jails.

Though Intro 1199 is without question a step in the right direction, it will not prevent JPay, Securus and other companies from continuing to extract millions of dollars in fees from people who are incarcerated in City jails, as well as from their loved ones. For example, when families and friends put money into their loved ones' commissary accounts to support their basic needs, JPay keeps a fee of at least 20% of the deposited funds. This private profiteering from our most vulnerable communities must end, and we are asking for the Council's help.

The Council should also require that the Department of Corrections make public all of its contracts with private entities that provide services to people who are incarcerated in City jails. Contracts with private entities must explicitly prohibit profiteering through fees, markups, interest or other costs imposed on people who are incarcerated and their communities.

Finally, the Council should ensure that anyone who is eligible for a diversion program be able to participate in that program regardless of their financial circumstances. When the City or third-party providers charge fees for diversion programs, it can prevent people who can't afford those fees from participating. Diversion programs are good for us all. Diversion programs allow people who do not need to be incarcerated to remain productive members of their communities, keep their jobs and support their families. Diversion programs improve public safety in New York City because they address the underlying problems – like drug addiction and mental illness – that can result in criminal conduct. Finally, diversion programs also can result in huge savings for tax payers, since incarcerating someone at Rikers Island can cost nearly \$200,000 a year. No one should be denied access to diversion simply because they are poor.

Thank you. We look forward to continuing to work with the Council to abolish fees in the justice system and to ensure that the criminal justice system in New York City is funded equitably.

**Testimony on Intro 944 & Intro 1199 - submitted by Harvey Murphy, Community Organizer at JustLeadershipUSA**

My name is Harvey Murphy and I am an Organizer at JustLeadershipUSA from the South Bronx, working on city and statewide criminal justice reform and community reinvestment. I was detained on Rikers Island and the Boat. I have the experience of attempting to post bail in New York City and in Albany, NY. In 2002, I went to Rikers Island for the first time. I had to choose between having my family post my bail and becoming homeless or remaining locked in a cage so that my family did not have to take that risk. My family chose bail out of their love for and connection to me and we still face those struggles -- a lack of affordable housing and resources -- today.

For this city and its elected officials to prove a full commitment to transforming justice and creating healthy communities, we cannot allow a wealth-based system of detention to survive. This system criminalizes poor New Yorkers and people of color as it subjects our families and loved ones to the abuse, torture, and trauma of Rikers Island.

On average, an individual can spend up to 6 months in a jail cell before being proven innocent or guilty. In those 6 months, people will lose their progress towards any potential education, lose their jobs, their homes, and possibly their families.

(1) Support Council's efforts in making bail payments easier (online, ATMS in courthouses, etc.)

(2) Hold agencies accountable: DOC should do immediate release upon bail payment, DAs should keep and release data on bail requests, and bail bonds companies should be banned from operating in NYC

Thank you Council Members for beginning to reduce the impact that excessive fees on bail payments have in our communities. You must continue to do everything in your power to end pre-trial detention and, on the way, do not forget the individuals who are currently incarcerated, suffering in New York City Jails. We request an investigation into how long people wait to be released even after posting bail. We know that the Department of Corrections does not release people in a timely fashion and many folks are left to suffer for days after posting bail. Investigate more ways to hold agencies accountable to reducing the jail population.

Lastly, we call on you to support the #FREEnewyork campaign and our fight to eliminate cash bail and completely overhaul bail practices in 2019. The #CLOSErikers and #FREEnewyork campaigns are led by formerly incarcerated leaders and communities who have been directly impacted by mass incarceration and know the harm it continues to cause... Stand with us in New York City and beyond.

**Testimony on Intro 944 & Intro 1199 - submitted by Lanette Howard, #CLOSErikers  
Campaign Member at JustLeadershipUSA**

Thank you to the Council Members with us today, proposing legislation that will begin to address the harms of cash bail and hopefully reduce the number of people wrongfully enslaved by \$1 bail amounts.

While I was on Rikers Island, I was just another one of the 5 million people that was given an \$80,000 bail. Whether I committed the crime or not the judge stated "pay cash or stay incarcerated." Putting a price tag on my freedom. So my question is what if I had the \$80,000 ? Did it matter that I was accused of assaulting three individuals? What about the fact that I was a young troubled teen struggling at home? Trying my best to help my single mother and care for my sisters.

\$80,000 was a label for my get out of jail free card, a sufficient payment for my freedom until I was convicted. My name and my life did not matter. All that mattered were the numbers assigned to my body and my case. If my family was able to pay, the courts would have let me go. The excessive bail clause of the eighth amendment of the United States Constitution forbids excessive bail pre trial. But for whom?

Putting up a house... A car... My life savings was not an option. Cash is the only thing that has value when you are trapped in a jail cell. The bail bonds industry brings in roughly \$2 billion dollars in profit each year across the nation. In New York State, the bail bonds industry will steal around \$20 million each year from our communities. My wife called a bail bondsmen over a three-way conference call while I was inside Rikers. As he said hello, I began to say "Hi, my name is--"... He cut me off and said "Forget what your name is. How much is the bail? Better yet, what's the book and case to look it up?" And immediately broke down the numbers.. \$80K bail.. about \$5,000 upfront.. not including collateral.. not considering my innocence.. Keeping our home.. having to feed our family. The price of my freedom was far beyond the value of my every day resources. How bad I wish I had a silver spoon in my mouth. I stayed in jail.. and I fought my case from inside.. fighting for my sanity as well.

I recognize that these two bills will create more reporting and transparency regarding who is

incarcerated on outrageous \$1 bail amounts and significantly reduce the financial burden on families and loved ones posting bail by credit card payments. What we need now is true reform that restricts judges and prosecutors ability to incarcerate people pre-trial and completely eliminates the use of money bail which enforces race and wealth based detention across New York City and State. New York City officials must demand statewide action and a complete overhaul to our current pretrial justice system.



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**TESTIMONY OF:**  
**Ash Stephens, Co-Manager of Bail Operations, Brooklyn Community Bail Fund**

**PRESENTED BEFORE:**  
**The New York City Council, Committee on Criminal Justice**

**December 3, 2018**

Good morning, and thank you to the Committee on Criminal Justice for the invitation to testify today. My name is Ash Stephens, co-Manager of Bail Operations at the Brooklyn Community Bail Fund. We're the largest of three charitable bail funds here in New York City, and the largest in the country. Although we started out three years ago serving only people arraigned in Brooklyn, we now also operate in Manhattan and Staten Island. We pay bail for more than 100 of our fellow New Yorkers every month who can't afford it, nearly 4,000 individuals to date. Unable to afford a few hundred dollars, they would either remain in jail or plead guilty just to go home.

I appreciate the committee for calling this hearing to ensure that people aren't held in jail on a dollar bail, that additional fees aren't levied against vulnerable individuals when paying bail, and that the bail easement laws previously passed by city council are effectively implemented. I also want to thank City Council for its efforts to better regulate the predatory commercial bail bond industry. The Council's efforts stem from the understanding that money bail is a pernicious evil that makes a mockery of our notions of justice, imprisons New Yorkers for their poverty, and is one of the primary mechanisms that perpetuates a racist criminal legal system.

The local laws passed in June of 2017 to make bail payment process easier (the "Bail Easement Laws") were introduced because we know that individuals are subjected to unspeakable harm *even when they or a loved one can afford to pay bail*. As we testified last year, this is just one reason that a true solution must be the abolition of bail and wealth-based detention. Last year, we detailed how people are often unable to reach loved ones for help with bail because they do not have phone numbers memorized. We described how incarcerated people and their families need easily accessible information in order to navigate the confusing, byzantine bail paying process. We emphasized the importance of giving families enough time to get to the courthouse to pay bail and of requiring that the Department of Corrections accept bail payments immediately and continuously after bail has been set. Finally, we pointed out that our clients are often held 6-12 hours - and sometime days - after their bail has been posted and called for a more rapid release process.

We the passage of the Bail Easement laws because we saw people struggle every day to get their loved ones out when the system was clearly designed to keep them in. We regret to report that are not finding the relief that the Bail Easement Laws require.

I would direct you all to take a look at the Bronx Freedom Fund's report on the implementation of the City Council's Bail Easement laws, which documents the failure of the Department of Corrections and other agencies to comply with the laws, which were set to have been implemented throughout this past year. We have also found blatant disregard for the laws in our work this year and would like to share relevant information based on our experience posting bail in Brooklyn and Manhattan.

Like the Bronx Freedom Fund, we have found that the Department of Corrections ("DOC") will not accept bail payment immediately and continuously after bail has been set, as required by Local Law 123. At the Brooklyn Detention Center, staff repeatedly tell us and family members that *DOC's own rules* do not allow them to accept bail payment for someone until they are in the jail's "custody." This means that DOC staff repeatedly refuse bail payment when someone is "in transit", both from arraignment to a detention center and from a detention center back to court. When we have pointed out that this is not in compliance with City law, we have been told that DOC does not have the capacity to accept bail payment because of their reliance on faxing physical paperwork, which cannot be done "in transit" on a bus.

In addition to being unable to pay bail when someone is "in transit," we routinely experienced a number of other difficulties paying bail when the courts and DOC do not communicate effectively or efficiently. Just this past Friday, we tried to post bail for someone held in the Manhattan Detention Center ("MDC") who had a court date scheduled in Manhattan Criminal Court. Since this client was never brought to court and was still at the jail in DOC custody, we tried to pay at MDC. However, since he was not taken to and from court with his paperwork, the jail did not have the paperwork telling them when his next court date was going to be. Because of this, we were told that we would not be able to pay bail until Monday. This person was going to be held in jail from Friday until Monday because DOC didn't know when his next court date was. Since we're accustomed to navigating this system, we asked the client's attorney to ask the court clerk to send the necessary paperwork to DOC staff at MDC, and we were able to post the bail late Friday evening. If this had been a family member unable to facilitate that information transfer, the person would have been held in an extra two days because of a failure in communication.

We have also found a refusal to release clients within the time frame mandated by Local Law 123. In the majority of our encounters with clients after their release from jail, we learn that they were released in the early hours of the morning, even though we consistently pay in the afternoon and evening the day before. In some cases people are held 24 hours after we have paid their bail. Just this past October, we paid for two clients who were held for so long that they missed their subsequent court appearances. In both cases, we paid bail around 4pm on a Monday, and by 4pm the next afternoon, they still had not been released from MDC.

We also would like to draw attention to uneven implementation of Local Law 124 which is designed to hold people at the courthouse long enough for their families to arrive and pay their bail. Though we have seen increased hold times on occasion, we still routinely see family members forced to pay bail at DOC facilities because they were turned away at court. We continue to see court staff refuse to accept bail payments when someone is in DOC custody, even if the detained individual is in the court building, just because court staff do not have proper paperwork. And, finally, family members are often not able to make it to the courthouse to pay bail because they have not been notified that bail has been set--a result of failed compliance with local law 126.

In the vast majority of cases, when we speak with someone who has had bail set, they have still not been able to write down the phone numbers for their loved ones. In fact, we continue

to hear that even those who ask NYPD officers for an opportunity to write down phone numbers are routinely denied. In our three years interviewing people who are incarcerated, we have experienced no change in people's access to phone numbers. Instead, generations raised relying on cell phones to save numbers means that less and less of our clients have any phone numbers memorized and are unable to contact anyone for assistance with bail.

Finally, we have not yet seen implementation of Local Law 127 which requires that information about the bail payment process be made available in criminal courthouses. The bail process continues to be difficult for families to navigate, and we have seen no marked changes in the relay of information from court or corrections staff to people trying to post bail. Because of this, we still make frequent use of the pocket guide, "Bail's Set, What's Next," that we produced in collaboration with the Center for Urban Pedagogy. We would be happy to work with the City Council, the Office of Court Administration and others so that copies of this booklet are provided to people in jail and available in the courthouses.

In sum, in the past year we have not seen significant changes since the Bail Easement laws were passed by City Council last year. This means that we still see people struggle for days to navigate the unfriendly bail system. Of the 30,000 New Yorkers imprisoned last year for the inability to afford bail, over half ultimately were able to pay within three days. We are not hopeful that this system, designed as it is, will ever be friendly to incarcerated people and their families, which is why we call for an end to cash bail and broken windows policing. In the meantime, we also push for the harm reduction that would result from the proper implementation of last year's Bail Easement Package.

We also support the proposed bill Int 1199-2018, which would remove fees associated with credit card bail payments and in allow online bail payment to be made by direct deposit and electronic check. The cash bail system already diverts tens of millions of dollars from New York's low-income communities and communities of color to secure the release of loved ones, and the credit card fees charged on top of bail amounts add to this burden. We applaud the Council's success in removing fees on phone calls from city jails. This new bill is a necessary next step in the larger fight to take profit out of the equation entirely. We would look forward to working with council to do this in the areas of commissary as well as bail paid in court, which currently includes a fee of 3% for credit card bail.

Finally, with respect to Int 0944-2018, which would require DOC to notify incarcerated people, their defense attorneys, and court personnel when someone is detained solely on a bail amount of one dollar, we hope that the Committee makes a broader effort to end the practice of detaining people on what are simply administrative holds, or markers. Since, in our experience, a dollar bail is often set in order for someone to get "credit" for the time that they're incarcerated, it is meant to be for their benefit. If the courts set that dollar bail as a courtesy to the client, we expect that it is fully possible for them to take the courtesy of lifting the dollar when it is no longer necessary. We encourage the Council to push for a system that would allow attorneys to quickly ask the judge to lift the \$1 hold in order to avoid the cumbersome process of paying a dollar bail, which takes hours of time and unnecessary paperwork. In the meantime, notification that the dollar bail is the only thing holding someone in jail is urgent and necessary.

If implemented properly, the Bail Easement Laws from last year and the two new bills discussed today could significantly reduce harm. However, none of these laws will solve the nationwide and local crisis of mass incarceration. Here in New York City, the massive amount of people we arrest annually based on our wrong-headed reliance on the criminal legal system means that the court system and DOC simply cannot process people from court to cage quickly enough. Therefore, in addition to these laws, we need City Council to use its power to bring an end to broken-windows policing and shift resources away from incarceration and punishment and towards solutions that address harm. If the thousands of New Yorkers arrested every year were

instead provided affordable housing and health care, and jobs, I would not need to be here advocating for better bail laws. This Council *can* prioritize true investment in communities that are currently overpoliced, ensuring health and well-being. This can begin by eliminating the reliance on the criminal punishment system that steals the resources, time, and well-being of people of color and low-income New Yorkers.

The City Council has an incredible opportunity and obligation to end the caging of so many New Yorkers in city jails. I applaud the City Council's efforts so far to get more people out of jail by simply allowing them to pay their bail. As I have pointed out, the city has to do much more to ensure that the current legislation is implemented and to make sure that bail is never set on so many New Yorkers in the first place. I am grateful for the opportunity to testify to this imperative. Thank you for the invitation and for your efforts.



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

**Catherine Gonzalez – Staff Attorney, Criminal Defense Practice**

***BROOKLYN DEFENDER SERVICES***

**Presented before**

**The New York City Council**

**Committees on Criminal Justice and the Justice System**

**Oversight Hearing:**

**'Why does the City make it so hard to post bail?'**

**December 3, 2018**

My name is Catherine Gonzalez and I am a Staff Attorney in the Criminal Defense Practice at Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy in nearly 35,000 cases in Brooklyn every year. I thank the New York City Council Committees on Criminal Justice and the Justice System, and in particular Chairs Keith Powers and Rory Lancman, for this opportunity to testify on obstacles to release for the people we represent who *are* able to afford to pay bail. The vast majority of people for whom bail is set cannot afford the amount and form sought by prosecutors and set by judge – a critical injustice that we and many others are working to end in court and through the State Legislature – but even those who do have the resources to pay often cannot do so in a timely manner because of inexcusable bureaucratic obstacles.

**Background**

Last year, heeding the call from public defenders and others, the Council introduced a package of legislation intended to enhance the accessibility of paying bail, reduce unnecessary obstacles, and promote transparency for bail-payers and policymakers. At a May 2, 2017 hearing on the

bills, my BDS colleague Scott Hechinger testified in strong support of these bills and offered some amendments that were ultimately adopted.<sup>1</sup> We continue to appreciate the Council's work on these critical issues. However, one issue we raised was left unaddressed: None of the bills contained any enforcement mechanisms or cause of action for people who, after their bail is paid, are not released within the timeframe required by Intro 1531A-2017. As we noted then, "Without these protections, we believe that the New York City Department of Correction (DOC) will not have an incentive to change current practice." Unfortunately, our fears have borne out.

While exact figures are not available, we know that many New Yorkers have spent hours or days in jail, amidst a well-documented culture of violence and deprivation, while presumed innocent and *after* loved ones manage to pay bail, or attempt to do so, in violation of the 2017 laws. Of the 93 people bailed out by the Bronx Freedom Fund from January through March of 2018, 62% were not released within the required 5-hour timeframe, according to their recent report. From April 2018 through September 2018, when the law required people to be released within 4 hours of bail being paid, more than three-quarters (76%) of the 238 people they bailed out were not released within this timeframe. It remains unclear how many people are now being released within 3 hours of bail being paid, as required under the full implementation of the new law which commenced on October 1 of 2018, but we know from experience many have been left behind.<sup>2</sup>

### **SYSTEMIC REFORMS REQUIRED TO PREVENT HUMAN "ERRORS"**

One fundamental problem that plagues the bail system in New York City is human error. On a near daily basis, people we represent and their families struggle to raise the funds necessary to post bail or bond, only to discover that the bail amount that DOC has recorded does not match the amount that the judge ordered. The errors generally take three forms: First, DOC staff at the bail window provide misinformation. Second, DOC staff regularly record the wrong bail amount in its system entirely, leaving detained people or their advocates no recourse other than to resolve the error before posting bail or bond. Third, even when DOC's internal system is accurate, errors run rampant in the public-facing "inmate lookup," rendering bail essentially inaccessible if a person's family needs to rely on a bondsman or nonprofit bail fund to post bail or bond, who, themselves, rely on this look-up. Any legitimacy of our pre-trial justice system is categorically undermined in cases where the courts' orders are modified by clerical errors that mean the difference between incarceration and liberty.

People whose bail or bond amount is improperly recorded in the DOC system rely on our office to advocate on their behalf for the court-ordered amount to be reflected in this system, which is far from straightforward. Because the court records the bail amount on the securing order that is handed to DOC officers in the courtroom, defense attorneys are sent scrambling, seeking "proof" from the court of a bail amount, while DOC already has that documentation in hand. Court staff regularly tell us that they have provided that documentation to the DOC officers in the courtroom and there is no other order available. Resolving these errors often takes multiple calls and written

<sup>1</sup> On June 21, 2017, the Council passed Int. 1531A, Int. 1541A, Int. 1561A, Int. 1576A, and Int. 1581A, all of which were signed by Mayor Bill de Blasio the following month.

<sup>2</sup> George Joseph, *DESPITE NEW RULES, NYC IS STILL JAILING PEOPLE LONG AFTER THEY POST BAIL*, The Appeal, Nov. 26, 2018 at <https://theappeal.org/despote-new-rules-nyc-is-still-jailing-people-long-after-they-post-bail/>.

advocacy to the court DOC, BOC, and even the Mayor's office. The holiday season exacerbates these problems, when the courts and DOC administrative offices are closed and no higher-up is available to sign off on the resolved error. People are regularly locked up for days or weeks beyond when they or their loved ones are able to pay and/or have paid bail.

Those clients whose bail is properly recorded in the internal DOC system but improperly reported in the "inmate look-up" face a variation of this often insurmountable hurdle. Families and friends pool their resources to post bond, only to be rejected by a bondsman who claims that they did not provide collateral for the full bond amount. Advocates arrange for charitable bail funds to post bail or bond with clients, only to have the process delayed when the amount online does not match what the advocate said. Again, without a copy of the documentation that the court provided to DOC, we and the people we represent have no choice but to seek correction of the error on DOC's public look-up. Yet correcting these errors often proves even more difficult, as DOC represents that they have the correct amount in their internal database so there will be no problem if the bail bonds agent comes to pay. Until we can persuade the agency to correct the public-facing website, however, bail bond agents often refuse to even try to pay the true amount, leaving people confined in jail cells for what amounts to a typo.

This pattern of errors takes other forms as well. Just last week, the public "inmate lookup" showed that a person represented by BDS had a warrant from parole that would prevent his release even if he posted bail. Following multiple calls and emails, DOC and the New York City Board of Correction (BOC) over a weekend, the DOC general counsel's office eventually said that there was no parole hold and the notation on the public facing system would not prevent the client's release. Nonetheless, the error was never addressed.

Staff from the Mayor's Office of Criminal Justice and the Mayor's Office of Immigrant Affairs have assisted us in individual cases, but the City should identify point people at DOC whom defense attorneys can call at all hours, including on holidays, when our clients' liberty is beholden to correcting a clerical error of any kind.

## **ABSURD OBSTACLES TO SECURING LIBERTY WITH MORE THAN ONE OPEN CASE**

One the biggest challenges in securing a person's release from pre-trial detention arises when they have two or more open cases in different courts. Often, people will be detained on one-dollar bail on one case to receive "jail credit" while detained on bail for another case. However, once they are able to secure release on that latter case while in one court, perhaps through a loved one paying the bail on it or because the court simply releases that person, they cannot simply pay the dollar bail for the other case if it is in a different court. This is true both for cases in different boroughs and for cases within a single borough but in both Criminal and Supreme Courts. Instead, people are returned to jail, after which they may pay the dollar bail or a loved one may post in the court of jurisdiction. This is because they are deemed by DOC to be "in transit" rather than at the courthouse. (This is not an issue if all open cases are in the same court.) If DOC used a fully electronic database, this totally absurd problem would mostly be resolved, but they rely on fax machines – and, we add - those machines sometimes break down. However it is achieved, DOC should be compelled to accept bail payments for any case in any criminal court at any criminal court, regardless of the amount. Int. 1531A-2017 should have addressed

this issue, but perhaps because subdivision c says “or” rather than “and,” new legislation may be necessary to clarify DOC’s obligation.

## **CREDIT CARD BAIL STILL UNAVAILABLE IN SUPREME COURTS ACROSS NYC**

Inexplicably, credit card bail remains unavailable in all five Supreme Courts in New York City. We understand these courts lack credit card machines. When a person is in Supreme Court, a family member cannot use a credit card to bail that person out. Instead, they must wait for that person to be returned to DOC custody. The Legislature authorized this form of bail in 1986.<sup>3</sup> More than three decades later, it remains out of reach in the cases for which the highest bail amounts are generally set. This must change.

## **FAILURE TO ACCEPT BAIL PAYMENTS WHILE PEOPLE ARE “IN TRANSIT” ON NON-ARRAIGNMENT COURT DATES**

Int. 1531A-2017 requires DOC to accept cash bail payments “immediately and continuously after an inmate is admitted to the custody of the department, except on such dates on which an inmate appears in court other than an arraignment in criminal court.” Simply put, in the 21<sup>st</sup> century, the City of New York should be able to process bail payments whenever families or other loved ones are able to remit them and DOC should be able to release people within the law’s allotted three hours. This loophole allows DOC to not accept bail when the individual is in court. As stated above, if bail is paid in court on one case, there is no other way to pay bail until that individual is returned to their DOC facility – even if the bail amount is one dollar.

## **CLIENT STORIES**

### DOC Staff Misallocation

*Prosecutors sought and a judge set bail on Miguel in the amount of \$5,000 bond or \$2,500 cash or credit card, which is just over the state-imposed cap on charitable bail funds, and well beyond what Miguel and his family could ever afford. This was Miguel’s first arrest, so he very clearly had no record of failing to appear. After pursuing every legal avenue to get his bail amount reduce, his attorney finally succeeded in persuading a judge to reset it at \$1,500 and then immediately requested the Brooklyn Community Bail Fund interview Miguel. Already, he had spent ten days in jail. Unfortunately, the bail fund could not gain access to Miguel at Brooklyn House because DOC was short-staffed for the Thanksgiving holiday. [Note: NYC DOC already has an exceptionally high officer-to-incarcerated person ratio, so we would not advocate for hiring more staff but rather allocating them more effectively.] After they were finally able to interview him, they paid his bail and he was released; he spent a full 16 days incarcerated and missed both Thanksgiving and the following weekend, and all while presumed innocent.*

<sup>3</sup> Insha Rahman, Against the Odds: Experimenting with Alternative Forms of Bail in New York City’s Criminal Courts (Vera Inst. of Justice 2017), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy\\_downloads/Against\\_the\\_Odds\\_Bail\\_report\\_FINAL3.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy_downloads/Against_the_Odds_Bail_report_FINAL3.pdf).

## Errors in DOC's Database

*John was arraigned on a Saturday night on 3 dockets. On Tuesday, his BDS attorney was able to get his bail reduced from \$6,000 to \$2,002. This was the difference between Rikers and Freedom for John, because his family could afford the premium and collateral for the new amount, if a bail bonds agent would post the bond. His BDS attorney advocated with DOC to update their system as soon as possible to reflect the new reduced bail because that is what bail bonds agents typically rely on. Because Thanksgiving was the following day, many staff at DOC were out of the office and nobody seemed to know who could fix this problem. Finally, the attorney got through to a person who was able to assist and, on Friday, DOC's system showed the correct bail amount and a bail bonds agent was willing to post it. That day, the family returned to the bail bonds agent, who said he tried to post the bond, but because the courtroom was closed at the time, John's file had to be sent to arraignment, and the court staff apparently would not do it. After additional hurdles, the agent was finally able to post the bond that Sunday, and John was released on Monday. John spent almost an entire week in jail because the system and its many actors failed him.*

*On a Wednesday, the Court ordered James detained on \$500 bail/\$500 bond. When his mother attempted to pay his bail, she was told the amount was \$500,000, a thousand times what the judge ordered. DOC's database reflected \$500,000 bail, seemingly an unintentional typo from \$500 bail/\$500 bond. Even though WebCrimis showed the proper amount, DOC refused to make any adjustments without a revised securing order from the court. Following advocacy with MOCJ, the court issued a new securing order on Friday morning.*

*Randy was held on \$3,501 bail/\$7,001 bond. Because of an error entering the bond amount, the public facing system reflected \$3,501 bail or \$7,501 bond, \$500 more in bond than the court ordered. Randy's family raised the premium and collateral for the ordered bond, but the bondsman refused to try to post bond because of the discrepancy in the system. DOC acknowledged the proper amount and that the public system reflected an error but refused to provide documentation to give the bondsman or a timeline for fixing the entry. The error was eventually resolved following advocacy with the court clerk, DOC headquarters, and the facility and the bondsman posted bail on Randy's behalf.*

This pattern of errors takes other forms as well. DOC refuses to honor non-cash forms of bail or includes nonexistent "holds" on the public "inmate lookup."

*George has never been on parole, but when his attorney checked the public lookup to confirm the bail amount, it showed a warrant from parole. Although the bail amount was correct, the DOC lookup showed that if bail was posted he would still be held because of a parole warrant. Calls to DOC's Legal Division and Custody Management went unanswered and our office sent a letter accompanied by George's RAP sheet showing that he was never on parole. After the Board of Correction responded by email, Custody Management responded saying that the error was resolved. The public-facing lookup was never fixed and still reflects that parole warrant. In this case, bail was set so high that George and his loved ones will likely never be able to pay it, but if, for example, the courts or the Legislature were to end wealth-based pre-trial detention, DOC might still keep people like George locked up because of errors like this one.*

### Lack of Understanding by DOC Staff

*The judge in Henry's case determined that Henry could satisfy bond with a personal appearance assurance. Henry signed the papers and the judge determined that bond was satisfied on a Friday. When Henry returned to Rikers, DOC staff told him that they did not understand the paperwork and refused to release him. At the request of Henry's attorney, the court clerk faxed documentation saying that Henry had satisfied his bond, but DOC still refused to release Henry. After a weekend of calls and letters to DOC's Legal Division and the Mayor's Office of Criminal Justice, Henry was finally released on Monday evening, three days after the court determined that he had satisfied his bond.*

### DOC Staff Do Not Understand and Follow 'Sanctuary City' Policy

BDS has had a number of other instances in which staff at the bail window have given incorrect information regarding ICE detainer requests to clients' family members who are trying to post bail. In each case, we have been able to clear up the issue with some advocacy by BDS attorneys, but the DOC bail window staff is apparently unaware of New York's detainer discretion policy, resulting in delays of the release of our immigrant clients. That said, our staff has raised this issue with the Mayor's Office of Immigrant Affairs and they have been very responsive. We have not encountered this issue since July of this year, and we hope to never do so again. Nonetheless, we want to flag it for the Council to monitor.

*Ramon was detained at Brooklyn House on bail for pending charges. On a Thursday, his family tried twice to pay bail at Brooklyn House and was turned away because they told him there is an "ICE warrant." An immigration detainer is not a warrant and Ramon was not subject to being held for ICE under New York City's Detainer Discretion Law. A BDS Padilla attorney tried to correct the issue by calling DOC and the family returned on Friday afternoon to pay bail. On Friday, the family was told a third time that the bail window would not accept their bail because there was a hold. Ramon had no previous criminal convictions (and therefore no parole holds) or cross-county warrants; this was his first arrest and it was clearly an issue of the staff at the bail window not understanding the DOC detainer discretion law. BDS staff then advocated with the Mayor's Office of Immigrant Affairs and the Department of Corrections to correct the error. Ramon's sister was finally able to pay bail late in the evening on Friday and he was woken up at 2:30 a.m. on Saturday, detained until 6am, and then finally released on Saturday.*

### NYPD Continuing to Deny Access to Phone Contacts

In contravention of the spirit, if not the letter, of Int. 1576A-2017, the NYPD continues to routinely deny people in their custody access to their cell phone contacts, which often include loved ones who may be able to show up to support them in court and, if needed, pay their bail. That bill contained many exceptions that could be eliminated or at least narrowed, as it seems few if any of our clients are currently getting access to their phones.

*William was arrested and had his phone and wallet confiscated by the police. He could not remember his mom's phone number to ask her to pay his bail. Finally, his mother tracked down his BDS attorney by calling the court and was able to pay his bail, but not until after he had been*

*incarcerated for several days. (His attorney had already sent an investigator to find her, too, but this all could have been obviated if William had access to his contacts.)*

## **ADDITIONAL ACTION NEEDED**

Ultimately, New York State and City must end wealth-based detention, eliminate racial disparities in all facets of the criminal legal system, and substantially decarcerate to achieve equal justice. The commercial bail industry and all profit motives in the system must be abolished. While we fight alongside allies across the state toward these ends, it is critical that the people we represent and their families have the best possible shot at securing liberty and deference to their presumption of innocence.

The 2017 laws were an important step toward ensuring that people who may be able to pay bail are in fact able to pay bail and avoid additional pre-trial detention. However, there is still more that we must do if the City is committed to substantially limiting pre-trial detention sufficiently to close Rikers Island.

1. *We must hold DOC accountable when they fail to comply with these proposed laws.*

These 2017 laws should be amended to include a cause of action and other sanctions if DOC fails to follow their legislative mandate. Without a consequence, we have little hope for the kind of systematic change that justice requires.

2. *We must hold prosecutors and judges accountable for relying solely on cash bail and commercial bond as the keys to freedom, as New York Legislators intentionally provided courts with other options.*

The express purpose of bail is to enable the pretrial liberty of all defendants, regardless of their financial means. For this reason, New York Criminal Procedure Law Article 520 authorizes multiple forms of bail other than cash and bond to fulfill its purpose of not conditioning liberty on the defendant's ability to pay money upfront. The stated goal of bail reform in 1970, in which these forms were created, was "reduce the un-convicted portion of our jail population."<sup>4</sup> Yet New York judges nearly uniformly neglect to consider non-monetary forms of bail. Instead, judges are firmly entrenched in the culture of setting only bond or cash, the two most restrictive forms of bail. The City must work with judges and prosecutors to encourage them to allow for unsecured appearance bonds or partially-secured appearance bonds that are actually within a person's reach.

3. *We must make it possible for people to pay bail for themselves if they have the money.*

*For a person detained in the holding cells at the courthouse:* Currently, a person's personal effects including wallet, keys, MetroCard (and even critical assistive devices such as canes,

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<sup>4</sup> Insha Rahman, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts* (Vera Inst. of Justice 2017), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy\\_downloads/Against\\_the\\_Odds\\_Bail\\_report\\_FINAL3.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy_downloads/Against_the_Odds_Bail_report_FINAL3.pdf).

walkers and crutches<sup>5</sup>) often remain back at the precinct and rarely travel with her to her arraignments. Even if she is allowed to take her debit card with her, staff will not escort her to an ATM while in custody, and there are no ATMs located in the holding cells. Most ATMs have withdrawal limits that are too low for cash bail, anyway, but premiums for commercial bonds may be in reach. If the point of bail is to set an amount that a person can actually afford to ensure their return to court, then we must allow people who *can* pay to do so on their own.

*People who are already in a DOC facility:* People who are incarcerated can pay bail through their commissary account, but if they have a credit card/benefit card in their property with DOC, they cannot access it nor use it themselves to pay their bail. This becomes a huge obstacle for people who do not have family or community support who can help pay. We recommend that people be allowed to access their personal effects so that they can pay their own bail and be released.

4. *Revoke operating licenses from bail bonds companies that exploit marginalized consumers in violation of the law.*

While the challenges of paying bail directly through the City are important, we note that most people who pay bail do so through bail bond agencies. The families and other loved ones of the people we represent continue to be exploited by these companies. Much of this exploitation is both legal and inherent to the industry and our criminal legal system's reliance upon it, but key elements violate longstanding consumer protection laws. First and foremost, bail bond agencies continue to charge illegal fees and premiums. We appreciate the Council's recent legislation to better inform consumers and strengthen the City's enforcement efforts, but more is needed. The City and State must shut down and prevent from reopening bail bond agencies that overcharge people. Another major widespread industry problem involves delays in actually securing people's release, often until a later court date at which they would be released, anyway; this practice is of questionable legality and the City and State should investigate further.

## **BDS SUPPORTS INT. 0944-2018**

Int. 0944, sponsored by Councilmember Rory Lancman, would require DOC to notify, verbally and in writing, defense attorneys, court personnel and the incarcerated people themselves when that person is detained solely on a bail amount of one dollar within 24 hours. BDS supports this bill and we note that we are currently exploring ways in which statutory bail reform at the state level could obviate the practice of "dollar bail." There should be a mechanism by which people can get "jail credit" on a case without this clerical trick and, in the meantime, it should either be automatically paid or people should be allowed to pay it on their own as soon as they are released on the unaffordable bail case.

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<sup>5</sup> See BDS's June 23, 2016 City Council testimony on access to court facilities for people with disabilities, available at <http://bds.org/wp-content/uploads/06.23.2016-BDS-Testimony-City-Council-Committees-on-Disability-Mental-Health-Legal-Services.pdf>.

## **BDS SUPPORTS INT. 1199-2018**

Int. 1199, sponsored by Councilmember Keith Powers, would remove the 2.49% fee charged on credit card payments of cash bail made using the online bail payment system, and would also remove the 8% fee charged on credit card payments made in person in DOC facilities. This bill would also require the Department of Corrections to add an option to make online bail payments by direct deposit or electronic check. BDS supports this legislation, which ends an inexcusable two forms of wealth extraction from the people we represent and their families and communities. We note that the 3% fee for using credit cards to pay bail at the courthouse would remain under this law and we ask the City to call on the State to remove this fee, as well. We also note that we are exploring ways in which statutory bail reform at the state level could remove credit card payments as a “form” of bail available to the court and instead make all forms of money bail payable by credit card. While a very small portion of people for whom bail is set in New York City have the means to pay bail by credit card, all of those who are able should be provided with that option.

## **CONCLUSION**

This hearing demonstrates the Council’s commitment to making our bail system fairer and more just, a critical component to reducing pre-trial detention and ending the horror that is Rikers Island. BDS looks forward to continuing to work with the Council to achieve our shared goals. Please do not hesitate to reach out to Jared Chausow, Senior Policy Specialist, with any questions about these or other issues at (718) 254-0700 (ext. 380) or [jchausow@bds.org](mailto:jchausow@bds.org).



Stanislao A. Germán, Executive Director  
Carolyn P. Wilson, Director

## 12/03/2018 CITY COUNCIL HEARING

Int. 0944-2018; Int. 1199-2018

### TESTIMONY OF NEW YORK COUNTY DEFENDER SERVICES

Thank you for the opportunity to be heard in support of these two proposals. Bail reform must be at the heart of any attempt at meaningful criminal justice reform. We testify today to applaud attempts, such as these, at easing the burden on those striving for the release of a pretrial detainee, but also to advocate on behalf of an even more radical rethinking of this city's procedures and practices in the area of bail.

Pretrial detention, that is, the widespread incarceration of mostly indigent people of color who have not been found guilty of any wrongdoing and are presumed innocent under the law, is inherently unjust. The presumption of innocence is one of our bedrock principles, but to the inmate, time spent in jail while presumed innocent by the law is indistinguishable from time spent serving a sentence after being found guilty of a crime. Worse than that, the one greatly interferes with the other, as both logic and the available research tell us that the incarcerated defendant is more likely to be convicted, and to serve more time following that conviction, than the defendant at liberty. Also increased, naturally, is the incidence of wrongful convictions—convictions driven not by analyses of guilt, innocence, or evidence, but by an overriding need to get out of jail. It's a well-understood phenomenon readily apparent to any public defender in this city and it's directly attributable to our misguided cash-based bail system.

The goal we should all share, therefore, is a pronounced reduction in this city's population of pretrial detainees. The best way to drive such a reduction is to move entirely away from a cash based system. Because the inherent unfairness of pretrial detention is exacerbated greatly when, as in New York City, this critical status that determines so much is inextricably linked to the defendant's financial means. New York City must set as its goal the elimination of cash bail. Jurisdictions like Washington D.C. long ago recognized the wisdom of a system centered not on the

ability to pay money, but on fairer alternate forms of release, many of them available here but severely underutilized. New York must follow suit.

Until then, it is critical that we remove barriers that complicate the release of someone incarcerated due to poverty. For example, the setting of bail in the amount of one dollar is a strategic tool designed to ensure that our clients who are eventually sentenced are properly credited for every terrible day they spend in custody. It is never, in any instance, intended to be even a partial reason that someone is incarcerated.

Every major player in our criminal justice system understands this. Not just defense attorneys but prosecutors, judges, the NYPD and, most importantly, the Department of Correction are perfectly versed in this practice. The critical factor is that D.O.C. is in the best position to recognize whenever this principle is being violated. Creating a statutory obligation on their part to inform the other interested parties who are in a position to take remedial action is highly laudable.

Similarly, reducing the toxic transfer of wealth away from our most vulnerable communities that is our current bail system is a moral mandate. There is no good reason for the harmful fees that are essentially extorted from people already reduced to relying on the exploitative credit card industry out of the desperate need to free a loved one. The Council's proposal would at least strike a blow against this harm. The element of profit-taking does not belong in our criminal justice system. A person's liberty and constitutional rights should not be a venue for commercial exploitation and fees like the one at issue run counter to this principle.

Lastly, while the instant reforms are of course welcome, more must be done. Judges must break their entrenched overreliance on commercial bail bonds and cash as means to pretrial release. Education of the judiciary and other stakeholders has proven ineffective in achieving this goal. So New York's bail statute should be amended to require as a matter of law that a court making a bail determination must specify three forms of bail. This would greatly diminish the role of commercial bonds and credit cards, thereby reducing the potential for abuse. It would force our system to begin relying significantly on methods like partially secured bonds and unsecured bonds and inject much needed fairness to the currently unjust system whereby wealth greatly impacts your ability to fully exercise your constitutional rights.

Pretrial detention due to poverty harms not only those directly detained but also our criminal justice system as a whole. But not all means of release are created equal. The exploitation of our low-income communities at their most vulnerable moments to secure the release of their loved ones is particularly damaging to society. It fosters a general derogation of respect for our criminal justice system and for the fundamental principle that the rich and poor alike are entitled to equal justice under the law. In the absence of deeper reforms, the instant proposals are at least a step in the right direction.

Sergio De La Pava

Legal Director

New York County Defender Services

**The Bronx  
Defenders**

**Redefining  
public  
defense**

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**New York City Council  
Committee on Criminal Justice &  
Committee on Justice System  
Oversight Hearing on  
Why Does the City Make It So Hard to Post Bail?  
December 3, 2018  
Testimony of The Bronx Defenders  
By Scott D. Levy**

Chairman Powers, Chairman Lancman, and members of the Committees, my name is Scott Levy and I am Special Counsel to the Criminal Defense Practice at The Bronx Defenders. I am grateful for the opportunity to testify before you today about this important matter.

The Bronx Defenders is a community-based and nationally recognized holistic public defender office dedicated to serving the people of the Bronx. The Bronx Defenders provides innovative, holistic, client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people of the Bronx. Our staff of over 300 represents approximately 28,000 individuals each year. In the Bronx and beyond, The Bronx Defenders promotes criminal justice reform to dismantle the culture of mass incarceration.

**Introduction**

In 2017, The Bronx Defenders welcomed the enactment of legislation intended to address some of the obstacles facing our clients and their families when attempting to pay bail that needlessly keep people in jail and cause additional pain and frustration. While we recognize that there have been some tangible improvements since their passage, the City — and the Department of Corrections (DOC) in particular — has failed to fully implement and adhere to the laws. The unfortunate reality is that many of our clients and their families continue confront the same obstacles that existed last year. As the Bronx Freedom Fund's recently released report shows, there is still a long way to go.<sup>1</sup> Many of the bills' mandates remain unfulfilled. And significant challenges remain unaddressed. Chief among them are the persistent problems associated with the outdated practice of using nominal \$1 bail as an administrative hold and the barriers to

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<sup>1</sup> Bronx Freedom Fund, *Implementation of City Council's Bail Easement Laws* (Oct. 2018) ("Freedom Fund Report"), available at <http://www.thebronxfreedomfund.org/citycouncil/>.

utilizing the City's new online bail payment system. That is why The Bronx Defenders supports Int. 0944-2018, which would require DOC to notify detainees and their attorneys whenever a person is detained solely on \$1 bail, and Int. 1199-2018, which would remove fees associated with credit card bail payments and allowing payments by direct deposit and electronic check. Also, given our experience with the 2017 bail laws, we urge the Council to take preemptive action to ensure compliance with these new proposals.

### **The Obstacles to Paying Bail**

New York City's bail payment system is riddled with inefficiencies, anachronisms, and unnecessary hurdles that create confusion and anxiety for those trying to pay bail for loved ones on Rikers Island and that lead to hours, and sometimes days, of unnecessary incarceration for people who are presumed innocent.

### ***Impediments to Paying Bail Immediately after Criminal Court Arraignment***

The time from arrest through arraignment is often the most consequential time in a criminal case. Whether or not a person is released at or immediately after arraignment on bail can determine whether that person maintains stable housing, keeps a job and livelihood, stays on track at school, or receives necessary medical care. Thus, the ability to pay bail immediately after arraignment not only prevents a person from being transported to Rikers Island and undergoing a lengthy and costly intake process, but is often the key to maintaining stability in a person's life.

Contacting friends and family to come to court and pay bail is one of the most pressing needs whenever bail is set. Local Law 126, requiring the NYPD to give people access to their cell phones to gather contact information for loved ones, was a critical step toward ensuring that people would actually be able to post bail before being transported to Rikers. The Bronx Freedom Fund, however, found that at least 70% of the people they interviewed had not been given the opportunity to retrieve contact information as required by Local Law 126.<sup>2</sup> My own experience corroborates these findings. Just this past week I worked an arraignment shift in which every single client I interviewed told me that the police had not given them the opportunity to retrieve contact information from their cell phones before they were seized and vouchered. The NYPD's failure to comply with Local Law 126 erects significant barriers to the quick and efficient post of bail immediately after arraignment.

Relatedly, Local Law 124 requires DOC to keep people in the courthouse for a period of time after bail has been set if there is someone available to post bail to facilitate in-court payment and obviate the need to transport people to Rikers. While the system does not always work, we have seen an increased willingness on the part of DOC to honor courthouse holds for our clients to allow for immediate in-court bail payment, saving our clients many hours, if not days, of unnecessary incarceration. We are also encouraged by the recent change by the Criminal Justice

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<sup>2</sup> *Id.* at 6.

Agency's Bail Expeditors allowing holds whenever a person is eligible to be bailed out by one of the city's charitable bail funds. Still, too often, DOC refuses to honor holds and people are unnecessarily taken to Rikers.<sup>3</sup>

Finally, while New York's bail statute clearly contemplates that a person incarcerated on bail may post bail for themselves — such as with a partially secured appearance bond — DOC, NYPD, and OCA refuse to allow our clients to post bail for themselves, even if they have sufficient cash or a credit card with them.

### ***Lack of Accessible Information***

After bail is set, our clients' friends and family often find themselves completely in the dark about where and how to pay bail. The bail payment system is by no means self-explanatory. It is for this reason that the City's failure to meet the mandate of Local Law 127, requiring the posting of information in the courthouse about how the bail system and bail payment work, is particularly confounding. Of all of the bills passed last year, Local Law 127 seemed to be the easiest with which to comply. Yet, as of today, there are still no signs or instructions posted in the courthouse giving people basic information about how to free a loved one.

Every day, we hear stories from our clients and their families about their experiences trying to post bail. In moments of intense crisis — when a loved one has been arrested and is threatened with pretrial incarceration — people are forced to navigate an opaque and confusing system that exacerbates their anxiety and desperation to obtain liberty for friends and family members. The process and mechanics of posting bail can be overwhelming in these moments without basic information, such as how to determine the amount of the bail and where and how to pay it. And while we are encouraged by the long overdue push to expand the use of alternative forms of bail, their increased use only magnifies the need for transparency. The need for information is also especially acute among our non-English speaking clients and their families, who face additional obstacles when trying to post bail, especially in light of the dearth of court interpreters.

### ***Paying Bail at DOC Facilities: Obstacles and Delay***

Because DOC does not have a bail payment facility in or near the Bronx courthouses, our clients' families cannot post bail for their loved ones at the courthouse except on days where the person is physically present in court.<sup>4</sup> Local Law 123 requires DOC to accept or receive bail payments "immediately and continuously" at or within a half mile of the courthouse. As of today, DOC has failed to comply with Local Law 123. As a result, those wishing to pay bail in the Bronx must travel to the Vernon C. Bain Center, known as "the Boat," in Hunts Point, an facility served by a single bus line in an isolated industrial zone. For people in the Bronx, the

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<sup>3</sup> See *id.* at 4.

<sup>4</sup> Even when our clients are in court, bail cannot be posted during the lunch hour, because OCA closes the clerk's window.

difficulty of getting to and from the Boat can add hours to the bail payment process and can be prohibitive for some.

Once someone reaches the Boat — a trip that itself can take hours — they will likely have to wait many more hours to post bail. Despite all of the focus on bail payment across the city, paying bail at a DOC facility remains an unacceptably arduous and lengthy process. Whether due to staffing issues, the outdated reliance on fax machines, the lack of necessary forms and other paperwork, and countless other, often hidden, hindrances, paying bail regularly takes many hours, filled with confusion, misinformation, and frustration. It is also unacceptable that with the City's push to increase the use of credit card bail, DOC is still unable to process credit card payments at its facilities. (It is equally troubling that the City's Supreme Court clerks are similarly unable to process credit card payments.) Payment acceptance and processing is anything but "immediate and continuous" as required by Local Law 123. As the Bronx Freedom Fund reported, it can take up to 20 hours to post bail.<sup>5</sup>

Once bail is paid, our clients often face many more hours of unnecessary incarceration due to delayed processing and discharge. According to the Freedom Fund Report, it took DOC an average of 13 hours to discharge people whose bail had been paid, despite Local Law 123 mandate to expedite release.<sup>6</sup> These delays not only result in needless incarceration, but also act as a destabilizing force in our clients' lives. Our clients are released at odd hours, without notice, so that their families or advocates cannot meet them upon release, making seamless reentry to the community impossible. Clients being released to drug treatment or mental health programs are left to fend for themselves.

### **Dollar Bail**

The obstacles and delays facing our clients and their families are particularly frustrating when our clients are only being held on \$1 bail. Rather than utilize administrative holds, DOC and the courts require the imposition of bail in order for a person to receive credit for time spent in pretrial detention and to be produced to court dates from DOC custody. As a result, judges are forced to set nominal bail in the amount of \$1 whenever a person is incarcerated on one case, but still technically at liberty in another. The practice of setting \$1 bail in lieu of an administrative hold is anachronistic and can lead to absurd and devastating consequences. These consequences arise most commonly when a person has two cases open simultaneously in different counties and one of them is resolved or when a parole hold is lifted, leaving the person in custody on only nominal bail on the remaining case in another borough. In such cases, the person will remain in jail until a friend or family member posts \$1 with a DOC facility.

The experience of James,<sup>7</sup> a 16 year old client, shows how the practice of setting \$1 bail interacts with the rest of the bail payment system to destabilize our clients' lives. This past spring, James was detained on significant bail in the Bronx and \$1 on a case in Manhattan. Unable to afford

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> The client's name has been changed to ensure confidentiality.

the bail, James spent months on Rikers Island before pleading guilty and agreeing to participate in a residential program for adolescents. Representatives from the residential program were present in court for the plea and were prepared to escort James directly from court to the program. The judge released James with the understanding that he would immediately enter the program and comply with the conditions until his sentencing date.

Because James was also held on \$1 bail, however, DOC refused to release him to the program. The \$1 bail could not be paid in the Bronx courthouse because it originated in another county. And because there are no DOC bail payment facilities in or around the Bronx courthouse, the \$1 had to be paid at the Manhattan Detention Center by a volunteer. Thus, instead of being released directly to his program, James was taken back to Rikers and was not released until after midnight. DOC's failure to comply with the laws passed by the City Council, as well as the continued practice of relying on \$1 bail resulted in a child remaining in custody, his family being subjected to unnecessary anxiety and frustration, and a plan carefully crafted by our client's attorney and approved by the court being thrown into disarray.

Because there is no automatic system to alert defense attorneys when their clients are being held on nothing more than \$1 — such as when a case in another borough is resolved or a parole hold is lifted, leaving only nominal bail — we regularly encounter situations in which clients remain unnecessarily incarcerated for days or longer because of a lack of information and communication. Int. 0944-2018 would go a long way toward eliminating these unjustifiable periods of over-incarceration by giving attorneys and other stakeholders the ability to take immediate action whenever a person is detained only on nominal bail. Moreover, efforts must be made to ensure that credit card bail is available whenever \$1 is set to avoid the necessity of traveling to a DOC facility just to pay \$1.

Currently, we rely on a network of volunteers across the city known as the Dollar Bail Brigade to pay bail for our clients held on \$1 bail. While we are grateful and inspired by their work, it is outrageous that their public service is even necessary in light of the obvious absurdity of the practice.

### **Credit Card Bail and Online Bail Payment**

The ability to pay bail online using a credit card has been a welcome improvement that is increasingly being utilized by our clients and their families. We have had multiple instances where family members who live out of state were able to post bail online. The ability to do so has greatly expanded the contacts that our clients can look to when considering who can post bail for them. There have been instances where family members present at arraignments were able to post bail using a credit card at the courthouse and clients were released within an hour. The recent elimination of the \$2,500 cap on online bail payments was also a welcome improvement.

The rollout of the online payment system, however, has not been entirely smooth. Many of the issues arising from the online payment system, however, can be traced to administrative errors within DOC and OCA. For instance, in one case the judge set \$500 cash bail in our client's case,

with a credit card alternative. When our client's sister attempted to pay online, however, she discovered that the system listed the amount as \$1,500. When she attempted to pay the higher amount, the system rejected the payment far higher than what the client and his attorney had told her. Although she was prepared to pay the higher amount, the system still would not allow her to post the bail. In order to resolve the issue, a Bronx Defenders attorney had to alert DOC, inform the court and have corrected information sent to DOC, and then repeatedly follow up with DOC to ensure that the issue was being prioritized. After all was said and done, our client stayed in jail an extra day as a result of a mix-up. In another case, DOC's internal records erroneously showed our client to have a hold that did not actually exist, preventing our client's friend from posting bail online. Only after numerous calls to DOC did an attorney in our office discover that the client was being held on a mistakenly entered immigration detainer.

We would like to note, however, that whenever these issues have been brought to the attention of people at the Mayor's Office of Criminal Justice, they have taken immediate action. Erin Pilnyak at MOCJ has been particularly responsive whenever issues have been brought to her attention. And many issues — such as the rejection of payments when the the cash and credit card amounts are different — have been resolved. But others, such as Supreme Court's inability to process credit card payments, have not.

In particular, many financial obstacles remain for our clients and their families. Fees for credit card payments online, for example, add just another unnecessary burden to the bail payment process and impose a tax on our clients' freedom. A more significant obstacle, however, is the inability to use debit cards, direct deposit, and electronic checks. Many of our clients' families do not have access to credit and are unable to avail themselves of the online payment system. We applaud the Council for its attention to these issues and urge quick passage of Int. 1199-2018, which would remove fees associated with credit card bail payments and allowing payments by direct deposit and electronic check.

We are also concerned that an online bail payment system that requires people to provide a social security number creates an unnecessary barrier by prohibiting payment by those who may not readily know their social security number or not have one but can otherwise provide sufficient identifying information. Furthermore, such requirement could disproportionately impact non-citizen New Yorkers by creating additional obstacles for their families. If New York City does not require New Yorker to provide a social security number to get an IDNYC, it should not require them to get their loved one out of its jails.

Even improved online bail payment, however, is not a substitute for in-person payment options, as many of our clients and their families are unable to access the online payment system because they lack access to banking. Indeed, a 2015 report by the Urban Institute found that 21.8% of households in the Bronx do not have a bank account, compared to only 12.7% in Brooklyn, 8.8% in Manhattan, 8.0% in Queens, and 7.2% in Staten Island.<sup>8</sup> DOC must continue to make

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<sup>8</sup> Caroline Ratcliffe, et al., *Where Are the Unbanked and Underbanked in New York City?* (Sept. 2015), at 3, available at

<https://www.urban.org/sites/default/files/publication/71511/2000430-Where-Are-the-Unbanked-and-Underbanked-in-New-York-City.pdf>.

improvements to all of its bail payment processing systems if it is to serve the low-income communities most directly impacted by pretrial incarceration.

### **Court Resistance to Change**

Adding to the obstacles facing our clients, the culture and practices of the court system itself have been slow to change. New York's bail statute provides nine different forms of bail.<sup>9</sup> The New York State Legislature created these alternative forms of bail with the specific intention of giving judges bail options that would facilitate release and be less onerous than traditional cash bail and insurance company bonds.<sup>10</sup> Two forms in particular -- partially secured and unsecured bonds -- do not require clients' friends or families to put up large amounts of nonrefundable premiums or fees at the beginning of a case to secure the release of a loved one. With partially secured bonds, sureties must simply post up to 10% of the value of the bond directly with the court; the full amount is refunded at the end of the case. With unsecured bonds, the surety is not required to put up any cash up front. Partially secured and unsecured bonds function similarly to commercial bail bonds, but do not require a for-profit middleman or the payment of nonrefundable premiums.

Despite the fact that these alternative forms of bail have been on the books for years, the city's Criminal Court judges have largely ignored them, overwhelmingly opting to set bail in only two forms: cash bail and commercial insurance company bonds. In a 2017 study of bail-setting practices across the city, the Vera Institute identified only 99 cases city-wide in which judges set partially secured or unsecured bonds.<sup>11</sup> While we have recently seen an increase in their use in the Bronx, we find that some judges are now requiring clients' families to provide excessive and unnecessary financial documentation to post partially secured and unsecured bonds, erecting yet another set of obstacles.

Moreover, while many judges are becoming increasingly comfortable with setting a credit card alternative in the Bronx, some are still hesitant to do so, making the online bail payment system completely inaccessible to many of our clients. Judges should be encouraged to set a credit card alternative in all cases.

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<sup>9</sup> See C.P.L. § 520.10.

<sup>10</sup> See Insha Rahman, The Vera Institute, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts* (Sept. 2017) ("Vera Report"), at 8, available at [https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy\\_downloads/Against\\_the\\_Odds\\_Bail\\_report\\_FINAL3.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy_downloads/Against_the_Odds_Bail_report_FINAL3.pdf).

<sup>11</sup> *Id.* at 11.

**Mass Bail Out**  
**Robert F. Kennedy Human Rights**  
**Testimony submitted to New York City Council Committees on Justice**  
**System and Criminal Justice, December 3<sup>rd</sup>, 2018:**  
**“Why does the city make it so hard to post bail?”**

New York City Council  
Committee on Justice System  
Chairperson Rory L. Lancman  
RLancman@council.nyc.gov

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**RE: Why does the City make it so hard to post bail?**

The Mass Bail Out team at Robert F. Kennedy Human Rights, offers this testimony in support of Int 0944-2018 A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction to notify inmates, defense attorneys, and court personnel when an inmate is detained solely on a bail amount of one dollar

The following testimony is also offered in support of Int 1199-2018A Local Law to amend the administrative code of the city of New York, in relation to removing fees associated with credit card bail payments and in relation to allowing online bail payment to be made by direct deposit and electronic check.

Additionally, we offer observations regarding our interaction with the overall bail system and recommendations to improve the process of bail payment based on our experience coordinating the month-long Mass Bail Out action.

## **BACKGROUND ON MASS BAIL OUT ACTION**

The Mass Bail Out, an action created by a coalition of NYC grassroots and foundations and hosted by Robert F. Kennedy Human Rights, organized community members to post bail for their neighbors and family from October 1<sup>st</sup> through October 31<sup>st</sup> of 2018. After speaking with the Mayor's Office on Criminal Justice preceding the commencement of the action, plans to post bail continuously over a 24 hour period for one week were amended in response to the understanding that city infrastructure was not able to handle a large volume 24-hour action of that nature. As such, the action was prolonged and posting was limited to morning hours and weekdays, with few exceptions based on needs of those held in pre-trial detention for lack of ability to pay their way to freedom. Volunteer bail payers posted 107 bails totaling almost 1.2 million dollars. While bail was posted at all four of the available windows, due to accessibility for our volunteers, most bails were posted at the Manhattan Detention Complex and the Brooklyn Detention Complex. After experiencing longer wait times and various problems at the Manhattan Detention Complex, we focused the majority of remaining posts at the Brooklyn Detention Complex. Our observations and recommendations are outlined below.

### **I. OBSERVED PROBLEMS WITH BAIL PAYMENT**

#### **a. Accessibility of Bail Windows remains limited**

It is well known that 24 hour posting of bail is not readily available to all New Yorkers. Despite the far-flung location of the bail windows at Rikers and in the Bronx, our action endeavored to use all available windows, but found the trek to the Vernon C. Bain Correction Center in Hunts Point, Bronx and to Rikers Island itself was too onerous. Queens residents have no local option apart from the notoriously hard to arrive at Rikers Island and New Yorkers on Staten Island have no option at all for 24 hour in-person payment in their borough.

What's more, none of the locations have bathrooms on site, most have no air conditioning or heat and there are no accommodations for people who do not speak English. The overwhelming feedback from Mass Bail Out Volunteer Bail Payers was that the preferred place for posting bail was the Brooklyn Detention Complex. This had to do with access to subway lines, proximity of food establishments, and the incredible professionalism of the supervisor in charge of receiving bail payments, Ms. Alba Garcia. The City can and must do more to make the experience of posting hard-earned money for a loved one's release far less onerous, far more accessible and not dependent on the staff person in charge of the operation.

#### **b. The time it takes to post bail is erratic and untenable for working people**

While we are still completing accurate data tracking for the wait times to post each bail, we currently have complete data for 85 different instances of bail posting at each of the four available bail windows. The wait times come from Mass Bail Out volunteers most accurate estimation, having been asked to uniformly track the experience during their volunteer training session..

The shortest wait was unsurprisingly at the Brooklyn Detention Complex bail window. On this day Ms. Garcia kindly received names of those neighbors for whom we sought to post bail ahead of time and professionally and expeditiously processed bail payment in only 31 minutes. In fact, Ms. Garcia and her team processed bail payment in 60 minutes or less 17 times and in 90 minutes or less an additional 18 times. This success shows that posting bail does not have to be so difficult. It is indeed possible to post bail over time allotted for a lunch break and DOC should not be granted any excuses as to why every bail cannot be processed in 60 minutes or less.

On the contrary, the wait time our volunteers experienced at other bail windows greatly exceeded the usual, but not absolute, reasonable wait time at the Brooklyn Detention Complex. The Manhattan Detention Complex offered the longest single wait to post bail, at 5 hours and 53 minutes. A volunteer bail payer at the Rikers Island bail window waited 4 hours and another at the Vernon C. Bain Center (VCBC) waited 4 hours and 30 minutes to successfully post bail and receive the receipts. That same volunteer, Hillary Donnell, who trekked up to VCBC, known as “The Boat” offered the following observations:

*“The Boat itself is so inaccessible, [it] requires at least a quarter of a mile walk down an access road with passing cars where "civilian vehicles" are not supposed to enter. For a family with children coming to visit or pay bail, [this is] already an access barrier.*

*There was one woman ahead of me at the bail pay window, who advised me kindly "just stand there and wait, nothing you do is going to make her come faster". Two other people came in while the CO was out to lunch, presumably because people's lunch breaks are when they are also free to come attempt to pay bail or deal with commissary. They wandered around for a while and then exasperated, they both left.*

*Throughout my time I realized, there's no bathroom here, I tried going in to the visitor window, but they wouldn't let me use that one. How are people with children expected to come and pay bail for their loved ones? A kid can't wait 4 hours if they need to use it... an adult barely can.*

*My CO was kind but LORD did it take forever for her to write 3 receipts. From the time she took my checks to the time I got my receipt was about an hour and 15 minutes. Meanwhile two others had come looking to pay bail and expecting to make it out in time to pick up their kid from daycare and take him to a Halloween party. "Don't they know people have lives? I did not know it was going to take this long. I need to go get my son from school! Looks like we're not going to no Halloween party tonight.*

*All in all I was there about 4.5 hours, but these other folks who didn't stay as long as me either didn't get what they needed and ended up leaving, angry that they had taken time off work for nothing or had to wrestle with the CO to get what was theirs.”*

Likewise, volunteers who attempted to post at the bail window at the Manhattan Detention Complex experienced similar frustrations. In one case, a volunteer attempted to post bail for a person who had multiple open cases, where a dollar bail had been set on all but one of the dockets. After waiting with the correct amount of bail money and forms for almost two hours, the volunteer was informed that the bail would not be processed after all because DOC staff at the window did not have enough blank receipts for the bail amounts. DOC was prepared to leave someone in jail at least another night because they did not have enough available standard paperwork.

- c. Bail windows still have “blackout times” where they will not accept bail if person is deemed “in transit”

While the City Council took commendable action in Int. No. 1531-A of 2017 to limit “blackout periods” of bail payment, the members of the Progressive Caucus who endeavored to post bail as part of the Mass Bail Out Action experienced firsthand that “blackout periods” not only exist but serve to keep New Yorkers in pre-trial detention extra hours and days. In practice, bail is never accepted if the person accused is deemed “in transit” by DOC. This means that even, as when the council members attempted to post, a mistake in communication brings a person to court erroneously, effectively that entire day becomes one in which posting bail is impossible as the “in transit” designation results in staff at bail windows refusing to accept payment of bail until the person is logged back into the DOC system. In the case of the person for whom the Council members sought to pay bail, a staff member had to return 24 hours later to post that bail, meaning the individual was released almost 36 hours after that first attempt to post her bail.

- d. NYC DOC does not comply with the 4 hour time limit from payment to release.

Those bailed out by the Mass Bail Out experienced the same delays in release thoroughly documented in the recent Bronx Freedom Fund report showing consistent lack of compliance with City Council legislation mandating release within 3 hours of payment beginning in October of 2018<sup>1</sup>. The overall experience for those bailed out by our action was that the norm of release did not comply with the legislative mandate.

While we continue to compile our data, current records are complete with release time frames for 53 different people for whom bail was posted. The longest release after receipts were received took a completely unacceptable 12 hours and 20 minutes and only 4 people were released in three hours or under as mandated by city law.

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<sup>1</sup> See article in [The Appeal](https://theappeal.org/despite-new-rules-nyc-is-still-jailing-people-long-after-they-post-bail/), published online November 26th, 2018 “Despite new ruling NYC is still jailing people long after they post bail” Joseph, George. <https://theappeal.org/despite-new-rules-nyc-is-still-jailing-people-long-after-they-post-bail/>

One instance that took over 10 hours from posting to release meant that the person who was finally released after midnight no longer had a social worker waiting and was 7 hours too late for her scheduled intake at her transitional housing site. Many available transitional housing programs, as the one in question does, close their doors at 7pm. Thanks to the violence interrupter teams and credible messengers who staffed the Perry building on Rikers Island on behalf of Mass Bail Out, despite the unconscionable delay she wasn't released into the middle of the night with no ability to improvise a plan. Mass Bail Out staff on Rikers gave her a pre-paid cellphone connected her to other staff who contacted dedicated Women's Prison Association social worker and eventually got her a hotel room for the night with Mass Bail Out funds. But what of the person who is released, 10, 11, 12 hours after their bail is posted and does emerge into the middle of the night without the extra protections of a collaborative action?

These unnecessary and inexplicable delays are incredibly harmful and render someone emerging into the night in that far flung corner of Queens even more vulnerable. While there are countless stories of long delay, we also saw that DOC is absolutely able to comply with the City Council legislation mandating release within 3 hours. This council should conduct regular and frequent audits of their release times and ensure that once bail is posted, the release time is not left to the whim and efficiency of whomever happens to be staffing the facility.

## II. RECOMMENDATIONS

### a. Improve access to online bail and elimination of fees associated with online payment

We offer support of Int 1199-2018A Local Law (R. Lancman) to amend the administrative code of the city of New York, in relation to removing fees associated with credit card bail payments and in relation to allowing online bail payment to be made by direct deposit and electronic check. This will allow working people to avoid the unpredictable and tediously long process of paying bail at an available bail window. However, we recommend including language that makes credit card bail an option no matter the judicial designation. Currently, online payment is only available where credit card bail was deemed a possible payment option by a Judge. This means that only a small percentage of bails are currently available to be paid online. The City Council should include language in Int 1100-2018A that opens the availability of online bail to any bail eligible person, regardless of judicial action. The availability of online payment is a question of access, not of flight risk, it should be available to all with eligible bail, just as payment in person at bail windows is available to all with eligible bail.

### b. **Allow Online Reservations for those who wish to post bail in person**

Similar to the system long implemented with the DMV, the City should create an online system for family members to make a reservation for bail payment in order to decrease

the erratic wait times experienced depending on bail window and staff person working. In our experience, there could often be a 1 to 4 hour wait for the DOC staff to “process” the surety form. Only once the surety form is faxed to the housing facility and confirmed through unknown layers of DOC bureaucracy is the bail payer asked for the actual bail money. An online reservation system could collect the information needed on the surety form and set up an hour-long window reservation for actual payment in person of the bail. This simple technological upgrade would allow working people a fair shot at posting bail during a time that won’t cause them to sacrifice their job security.

**c. Force compliance with City Council legislation requiring the opening of a 24-hour bail window in Queens.**

The City hasn’t complied with City Council legislation to open up 24 hour bail window in Queens. The inefficiency of actually posting payment at the bail windows makes it impossible to pay bail in a timely manner. In our concentrated action over the month of October we found that the time our volunteers spent at the bail window ranged from twenty-nine minutes up to almost four and a half hours. The fastest times were always at the Brooklyn Bail Window and we believe facilitated by the professionalism and courtesy of Ms. Alba Garcia, who offered extra attention and expediency when we emailed her names and identifying information prior to the volunteer bail payers arriving. In general, we noticed that when we were bailing out the expected cohort, women and transgender people housed at RSMC, the process was fast. When we bailed out anyone at other facilities the time it took to post the bail as well as the release time was greatly exaggerated. This seems to suggest that the city is well able to make the process less onerous, but chooses to do so only when there is a public focus on the process.

**d. Post a “Bail Paying Bill of Rights” online and at each bail window**

Include touch screen portals to access DOC “Inmate Lookup” so those without access to internet are able to look up vital information for bail payment process as well as their loved ones housing facility and next court appearance. Include with the bill of rights general information about what is required to post bail, the fact that you cannot be turned away if you have multiple checks to cover one bail, or one check to cover multiple bails. Include information about how to get to Rikers to meet your loved one and the time limit that DOC must observe in releasing your loved one.

**Thank you for your time and consideration of these observations from the team at Mass Bail Out and Robert F. Kennedy Human Rights. Should you have any additional questions or need clarifications, we stand ready to answer as best we are able. Any such inquiries can be directed to Amanda Jack at [jack@rfkhumanrights.org](mailto:jack@rfkhumanrights.org).**



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Phone: 646.676.1940 • E-Mail: [gorgeous212@gmail.com](mailto:gorgeous212@gmail.com)  
Web: <http://www.CloseRosies.org>

December 3, 2018

**NYC Council Committees on Criminal Justice and Justice Systems**

**To:** Councilman Keith Powers NYC Committee Chair Committee on Criminal Justice

**To** Councilman Rori I. Lancman NYC Committee Chair Committee on Justice Systems;

**cc:** Councilwoman Carlina Rivera; Councilman; Councilman Daniel Dromm; Councilman Robert Holden; Councilwoman Alicka Ampry-Samuel

**via email:** Alana Sivin, Associate General Counsel: NYC Committee on Criminal Justice

**Ref: Intro 944**

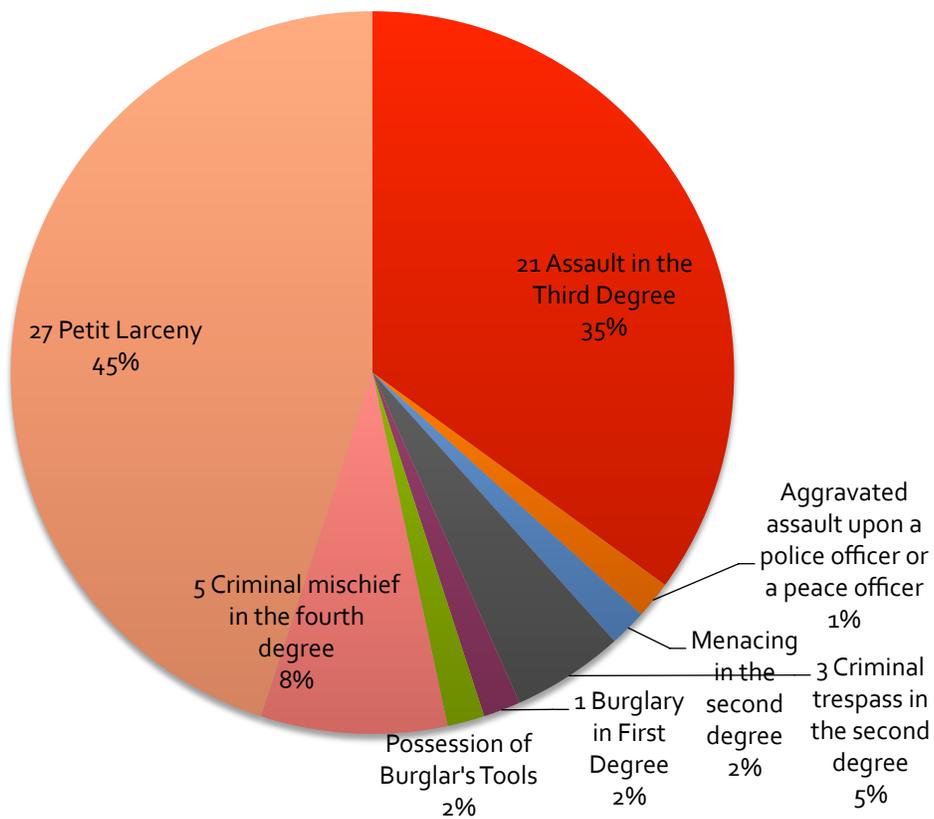
Dear Chair Lancman, Chair Powers, Committee Members and Committee Counsel(s):

I thank you for holding this hearing and also the other members of the council and staff for allowing me to appear today and speak. I am Kelly Grace Price and I ask you to examine the below four charts regarding women, girls, trans, intersex and gender non-conforming people detained on the Rose M. Singer Center. My data analysis derived from a FOIL to the NYCDOC address four areas:

- I. **The number of people admitted onto the Rose M Singer Center (aka "Rosie's") in since May 10, 2018 when Intro 944 went into effect.**
- II. **The number of women, girls, trans, intersex, and gender non-confirming people admitted onto Rosie's on Federal Holds.**
- III. **The racial makeup and class type of people placed on Rosie's on dollar bail since local law 944 went into effect on May 1, 2018.**
- IV. **People on Rosie's detained on \$1.00 USD bail from 2013-2019.**

- I. The number of people admitted onto the Rose M Singer Center (aka "Rosie's") on \$1.00 USD from May 10, 2018 when Intro 944 went into effect to July 1, 2018 is 61. The top charges for these women and girls were:

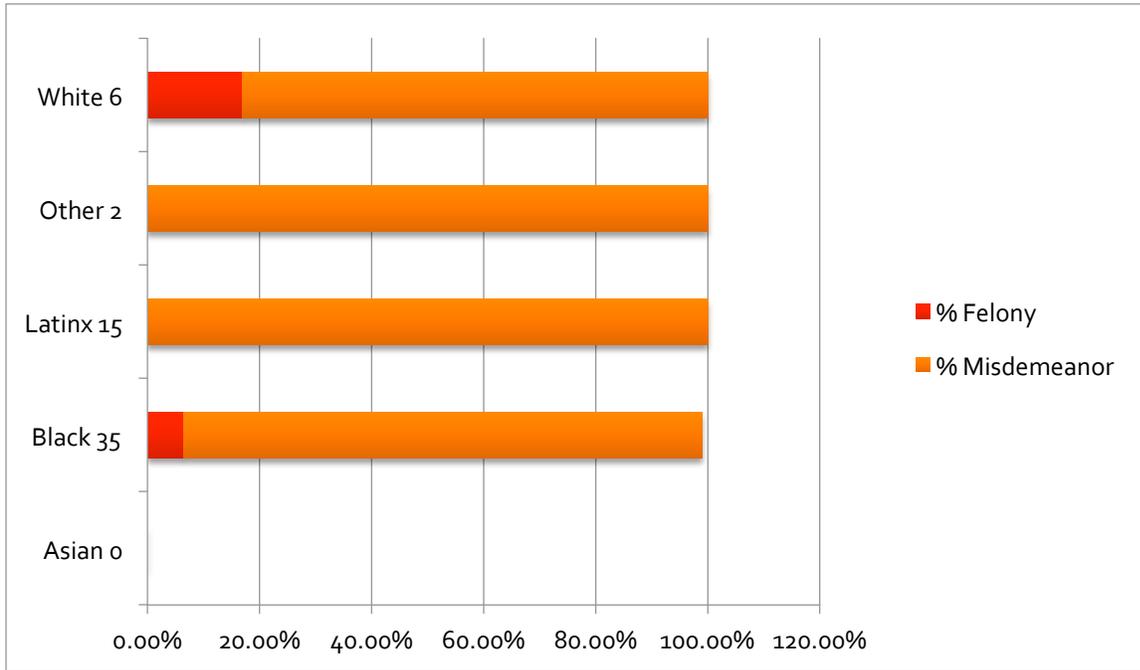
### # Women, Girls, Trans, Gender Non-Conforming and Intersex Detained on Rosie's on \$1.00 Dollar Bail 3/1/18-7/1/18



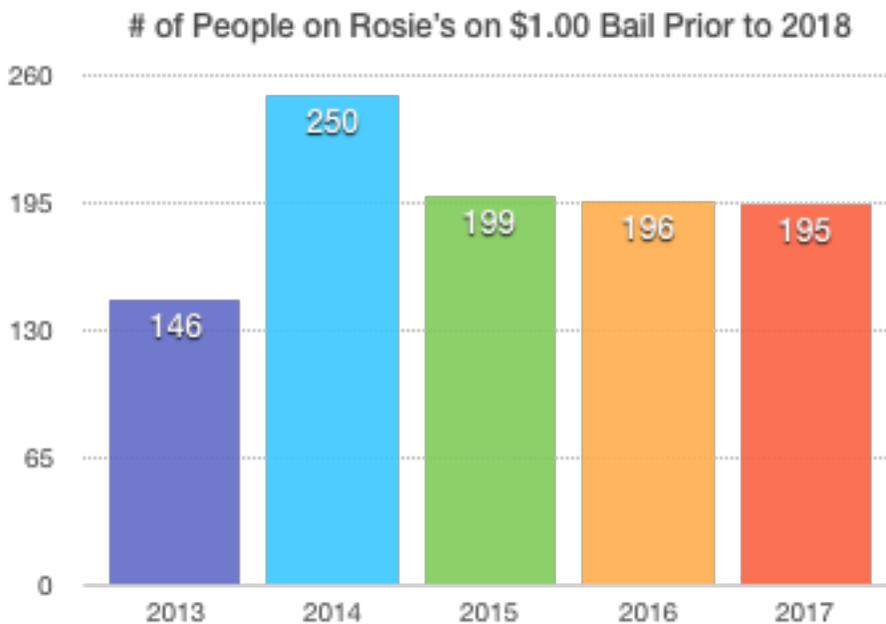
**II. There were 23 women, girls, trans, intersex, and gender non-confirming people admitted onto Rosie's on Federal Holds out of 61 detained on \$1.00 USD bail between May 1, 2018 and July 1, 2018:**

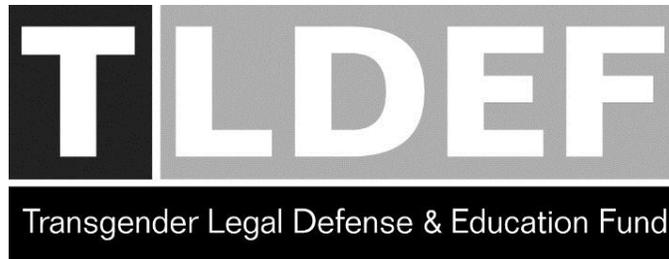
| Charge Name  | F/M         | Class | Hold       |
|--|-------------|-------|------------|
| 155.25 Petit larceny   | Misdemeanor | A     | FOA 900.00 |
| 165.15 Auto stripping in the second degree                                 | Felony      | E     | FOA 900.00 |
| 165.40 Criminal possession of stolen property in the fifth degree          | Misdemeanor | A     | AC 777.77  |
| 190.23 False Personation   | Misdemeanor | B     | FOA 900.00 |
| 120.00 Assault in the 3rd degree   | Misdemeanor | A     | FOA 900.00 |
| 120.00 Assault in the 3rd degree   | Misdemeanor | A     | FOA 900.00 |
| 220.03 Criminal possession of a controlled substance in the seventh degree | Misdemeanor | A     | FOA 900.00 |
| 220.03 Criminal possession of a controlled substance in the seventh degree | Misdemeanor | A     | FOA 900.00 |
| 265.01 Criminal Possession of a Concealed Weapon in the 3rd                | Felony      | D     | FOA 900.00 |
| 120.00 Assault in the 3rd degree   | Misdemeanor | A     | FOA 900.00 |
| 140.15 Criminal trespass in the second degree                              | Misdemeanor | A     | FOA 900.00 |
| 145.00 Criminal Mischief in the 4th degree                                 | Misdemeanor | A     | FOA 900.00 |
| 155.25 Petit larceny   | Misdemeanor | A     | FOA 900.00 |
| 155.25 Petit larceny   | Misdemeanor | A     | FOA 900.00 |
| 205.25 Promoting prison contraband in the first degree                     | Felony      | D     | FOA 900.00 |
| 215.50 Criminal contempt in the second degree                              | Misdemeanor | A     | FOA 900.00 |
| 220.03 Criminal Possession Of A Controlled Substance 7th Degree            | Misdemeanor | A     | FOA 900.00 |
| 220.16 Criminal possession of a controlled substance 3rd degree            | Felony      | B     | FOA 900.00 |
| 260.10 Endangering the welfare of a child                                  | Misdemeanor | A     | FOA 900.00 |
| 265.01 Criminal Possession of a Concealed Weapon in the 3rd                | Felony      | D     | FOA 900.00 |
| VTL 511 Aggravated unlicensed operation of a motor vehicle                 | Misdemeanor |       | FOA 900.00 |
| VTL 000.00 Out of State Hold--Vehicular Offenses                           |             |       | VTL 000.00 |

**III. The racial makeup and class type of people placed on Rosie's on dollar bail since local law 944 went into effect on May 1, 2018:**



**IV. People on Rosie are detained on \$1.00 USD bail from 2013-2019.**





**Testimony before the New York City Council Committee on Justice System jointly with the  
Committee on Criminal Justice  
Concerning Introduction 944 and Introduction 1199  
(Proposed Amendments to the New York City Administrative Code)  
Thursday, November 29, 2018**

My name is AC Dumlao, and I am the Program Manager of Transgender Legal Defense & Education Fund (~~informally known as~~ “TLDEF”). I am writing to offer TLDEF’s full support for Int 944 (*In relation to requiring the department of correction to notify inmates, defense attorneys, and court personnel when an inmate is detained solely on a bail amount of one dollar*), and Int 1199 (*In relation to removing fees associated with credit card bail payments and in relation to allowing online bail payment to be made by direct deposit and electronic check*).

Founded in 2003, Transgender Legal Defense & Education Fund is a 501(c)(3) nonprofit whose mission is to end discrimination and achieve equality for transgender people, particularly those in our most vulnerable communities. Our strategies include pathbreaking trans rights cases and “friend of the court” briefs regarding the key issues of employment, health care, education and public accommodations. Our Name Change Project provides pro bono legal name change services to community members through partnerships with some of nation’s premier law firms and corporate law departments.

Transgender, gender non-conforming, and non-binary (“TGNCNB”) people who find themselves incarcerated in New York City already face immense hostility and bias, simply for living authentically. Many of those same people are already economically disadvantaged from living a world with few opportunities in employment, housing and public accommodations.<sup>1</sup> Due to these barriers, TGNCNB people disproportionately must turn to underground economies to survive, which places them at increased risk of being arrested.<sup>2</sup> People who are visibly TGNCNB are disproportionately targeted by the police or assumed to be sex workers.<sup>3</sup> ~~When you add B~~ barriers such as failing to notify them that their bail is one dollar ~~and~~/or charging them burdensome credit

<sup>1</sup> *The Report of the 2015 U.S. Transgender Survey*, The National Center for Transgender Equality (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

<sup>2</sup> *Id.* at 158 (noting 1 in 5 respondents have participated in the underground economy).

<sup>3</sup> *Id.* at 14.

card fees on bail payments; ~~you add further layers of discrimination-unwarranted hurdles~~ that lead to more lengthy and unnecessary incarcerations and economic hardship.

We strongly support Int 944's requirement that the Department of Correction ("DOC") notify inmates, defense attorneys, and court personnel upon receiving notice that an inmate is detained solely on a bail amount of one dollar. We equally support Int 1199's removal of the 2.49% fee charged on credit card payments of cash bail made using the online bail payment system, and elimination of the 8% fee charged on credit card payments of cash bail made in person. The bill's requirement that the Department of Corrections add an option to make online bail payments by direct deposit or electronic check will also be of great benefit to transgender people who face incarceration because it will give them a much easier way to submit bail fees.

Taken together, these bills will help some of the most marginalized in our communities, those with little resources to begin with and for whom discrimination often makes them more vulnerable to incarceration in the first place. Lifting these bail barriers will help improve their lives and lesson their chances of reincarceration.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 12/3/18

(PLEASE PRINT)

Name: William Evans

Address: 388-90 Grand Concourse 23 Bx  
NY

I represent: Neighborhood Bunches 10457

Address: 388-90 Grand Concourse

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 12/3/18

(PLEASE PRINT)

Name: Lanette Howard

Address: 540 Alexander Ave #1413

I represent: Close Riders Island Campaign

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 12/3/18

(PLEASE PRINT)

Name: Catherine Gonzalez

Address: 177 Livingston St, F17, Brooklyn, NY

I represent: Brooklyn Defender Services

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 12/3/18

(PLEASE PRINT)

Name: William ~~Barney~~ Barnes

Address: Acting Assistant Chief

I represent: NYC DOC

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 12/3/18

(PLEASE PRINT)

Name: Hazel Jennings

Address: Chief of Department

I represent: NYC DOC

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Erin Pilnyak

Address: \_\_\_\_\_

I represent: Mayor's office of criminal justice

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

Bill

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Harvey Murphy (PLEASE PRINT)

Address: 288 Willis Ave

I represent: ICVA

Address: 1900 Leavitt Ave N.Y. N.Y. 10035

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/3/18

Name: Elizabeth Bender (PLEASE PRINT)

Address: 199 Water St. NY NY 10038

I represent: The Legal Aid Society

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Scott Levy (PLEASE PRINT)

Address: 360 E. 161st St. Bronx

I represent: The Bronx Defenders

Address: 360 E. 161st St. Bronx

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. 1199, 944 Res. No. \_\_\_\_\_

in favor     in opposition

Date: 12/3/18

(PLEASE PRINT)

Name: Elena Weissmann

Address: 360 E. 161 St

I represent: Bronx Freedom Fund

Address: 360 E. 161 St

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: 12/03

(PLEASE PRINT)

Name: SARA RAHIMI

Address: 360 EAST 161ST ST. BRONX NY 10451

I represent: BRONX Freedom Fund

Address: 360 EAST 161ST ST. BRONX NY 10451

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: 02/03/18

(PLEASE PRINT)

Name: Yonah Zeitz

Address: 360 E 161st Street Bronx, NY 10451

I represent: The Bronx Freedom Fund

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Ash Stephens

Address: 195 Montague Street, 14<sup>th</sup> Floor, Brooklyn, NY 11201

I represent: Brooklyn Community Bail Fund

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1199 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Joanna Weiss

Address: 185 W. Broadway Brooklyn

I represent: Fines and Fees Justice Center

Address: 155 W Broadway

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 944/2018 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12.3.18

(PLEASE PRINT)

Name: Sergio De LA PAVA

Address: 100 William Street NY, NY

I represent: New York County Defender Services

Address: 100 William St. NY, NY

Please complete this card and return to the Sergeant-at-Arms