FOR THE RECORD

NYC Criminal Justice

Mayor's Office of Criminal Justice
New York City Council
Committees on Public Safety and Fire & Criminal Justice Services
January 17, 2016

Good morning, Chairs Gibson and Crowley and members of the Committees on Public Safety and Fire and Criminal Justice Services. On behalf of the Mayor's Office of Criminal Justice ("MOCJ"), we are pleased to submit this statement regarding Intro. 1373.

The Mayor's Office of Criminal Justice advises the Mayor on public safety strategy and, together with partners inside and outside of government, develops and implements policies aimed at reducing crime, reducing unnecessary arrests and incarceration, promoting fairness, and building strong and safe neighborhoods.

The topic of today's hearing – arraignment screening and bail – can be seen in a larger context. New York City's use of jail has declined precipitously in the last several decades. While jail and prison populations increased 11% between 1996 and 2013 in the rest of the country, New York City's jail population fell by 53%. Low-level enforcement has also reduced dramatically – the number of summonses issued citywide has dropped 34% since 2009, for example. This sharp reduction has happened alongside a **76%** decline in major crime, unique proof that jurisdictions can both be safer and reduce reliance on jail.

The current challenge – one that the Mayor's office has confronted head on – is to solve these difficult system problems that remain. Working to solve these problems will allow New York City both to continue to be the safest big city in the country and to reduce unnecessary detention even further.

To drive toward the balancing point between safety and the lightest possible criminal justice touch, MOCJ is pursuing an array of initiatives in the pre-trial context that drive at two main goals: moving the City toward a more risk-driven criminal justice system with decreased reliance on money bail, while simultaneously reducing the negative repercussions associated with money bail.

In order to move to a more risk-based system and reduce reliance on money bail, we have launched a number of key initiatives. Chief among them is the citywide launch of supervised release, which allows judges to release eligible defendants to a supervisory program that allows them to remain at home to wait for trial, rather than go to jail. Currently over 2,400 people have been enrolled in the program who would have otherwise been detained at Rikers. Additionally, we are working with the New York City Criminal Justice Agency ("CJA") and

national experts in pre-trial risk assessment instruments to develop an updated failure to appear risk assessment tool that will be used at arraignment to better inform judges about a defendant's risk of missing a court date. Finally, we have advocated for legislative change in Albany. Currently, New York is one of only four states that prohibit judges from considering public safety risk when setting bail; with a few narrow exceptions, judges are limited to considering risk of flight when making bail determinations. The Mayor has called for this change to state law.

Additionally, the City is working to improve the bail payment process, by:

- Creating a remote bail payment system, accessible by internet, phone and kiosk;
- 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 when they plead or are found guilty; and
- Adding ATMs in the courthouses to better facilitate bail payments

The Mayor's Office of Criminal Justice contracts with CJA, a not-for-profit corporation, to oversee pretrial services citywide. CJA's historic work pioneered, tested, and demonstrated that defendants with strong community ties released without bail return to court on their own as frequently as those who post bail. Currently, CJA performs a brief interview with all individuals prior to arraignment. The individual's answers to the interview questions are entered into a scientifically validated instrument that provides judges with a recommendation about the defendant's likelihood of returning to court. Intro. 1373 requires CJA to evaluate the amount of bail or bond a defendant has the capacity to pay. Although we believe the intention behind this bill is laudable, the City opposes this bill.

As a threshold matter, Intro. 1373 mandates an immediate system-change without allowing for the necessary input and participation from all key criminal justice actors. The Mayor's Office of Criminal Justice mission is to coordinate the effective and fair functioning of the criminal justice system, which is done in close partnership with other Mayoral agencies, with the Courts, defense attorneys, prosecutors, and members of the public.

A key example of this work is supervised release. The successful rollout of supervised release involved a year-long planning process that engaged all of the affected criminal justice actors in order to account for their various viewpoints regarding how the program should be structured and to ensure the program's successful implementation. This bill, however, prevents that sort of engagement. Instead, court actors would be faced with a new element of the arraignment process without having the ability to opine on the wisdom or practicality of such a proposal. This concern is exacerbated by the latest draft of the bill that requires CJA to provide this

information only to the defense bar, something that diminishes CJA's ability to serve as a neutral and trusted actor in the arraignment process.

Additionally, our office is not convinced that this bill can be implemented in practice. The risk assessment tool that CJA currently employs rests on decades of empirical research across a wide range of jurisdictions and the tool's development relies on the analysis of large amounts of administrative data and a scientific validation process. In contrast, there is no proven method for assessing an individual's ability to pay bail. To our knowledge, no other jurisdiction has such a process in place, and the determination of an individual's ability to pay necessarily raises a number of policy and practical questions. What counts as being able to afford bail? Is this determination made based on the amount of money the individual has readily accessible at arraignment? Does it include money available to relatives and friends? How are expenses factored in? We are not convinced these questions have ready answers.

Finally, this bill could significantly burden the arraignment process. CJA has an extremely limited amount of time to engage with defendants prior to arraignment, and this time is currently used to collect basic information about the defendant as well as information directly related to the risk assessment instrument. In order to accurately assess an individual's ability to pay bail – assuming that is even feasible and possible - CJA would have to spend a significant amount of time with a defendant and do subsequent corroborating research and analysis. This additional burden would interfere with the City's ability to ensure that individuals continue to be arraigned within 24 hours of arrest. We also expect that the budgetary impact of this bill on the City will not be insignificant.

We share the Council's goals in creating a system that reduces the use of money bail and creating a more safe and fair criminal justice system. Unfortunately, we believe this bill falls short of accomplishing those goals.

Thank you for the opportunity to submit this statement today.

Testimony of

Commissioner Joseph Ponte,
New York City Department of Correction

before the

New York City Council committees on
Fire and Criminal Justice Services and **Public Safety**

regarding

Prosecuting Violence in the City's Jails

January 17, 2017

Good morning Chair Crowley, Chair Gibson, and members of the City Council committees on Fire and Criminal Justice Services and Public Safety. I am Joseph Ponte, Commissioner of the Department of Correction (DOC). Thank you for the opportunity to testify today about prosecuting violence in the city's jails. I am pleased to be testifying alongside the Bronx District Attorney (DA), Darcel Clark, who has been vocal about her commitment to prosecuting violence in our jails. DA Clark and her staff have been exceptional and engaged partners. Overall, the partnership and communication between our teams has improved dramatically.

The vast majority of our inmate population is located within the Bronx – either on Rikers Island or our Bronx borough house, VCBC – so the Bronx District Attorney prosecutes the majority of the jail violence cases. Incidents that take place in the other borough facilities or in the courts are prosecuted by the District Attorney of that county.

We take the issue of violence in our jails very seriously and have taken significant steps, as part of our 14-Point Anti-Violence Reform Agenda, to address the root causes of violence in our jails. These steps have included:

- Creating a new system for classifying inmates based on their propensity for violence and housing them in ways that are designed to produce less conflict;
- Offering more programming to reduce idleness and help inmates build skills inside the jails and upon release;
- Installing cameras throughout our facilities to deter violence and aid in the investigation of violence; cameras have now been installed in all housing areas on Rikers Island;
- Providing specialized training, including on crisis management and de-escalation, for staff who work with our most difficult populations – young adults, adolescents, the seriously mentally ill and those who are persistently violent;

- Implementing new strategies to prevent and detect contraband, including uniforms, additional staff dedicated to search teams, and new scanners that can better detect the non-metal weapons that are increasingly used by inmates;
- Restarting housing units with physical renovations, trained steady staff, on-unit programming, and inmates assigned with the new classification system.

As a result of these efforts, DOC has been able to drive down many measures of violence. In 2016, DOC reduced total assaults on staff by 11% and serious assaults by 31%. We reduced our uses of force by 3% and uses of force involving serious injury by 35%.

The Department has significantly improved efforts to find contraband. We have increased the number of canine search units and now have them in the facilities. We have installed Cell Sense machines to pick up on cell phones and metal that might not be picked up by traditional metal detectors, have increased front gate procedures to meet TSA search standards, and are purchasing new TSA-style scanners to look for additional non-metal contraband. As the Council is aware, we are currently not able to use the ionizing radiation body scanners, but we will work again this year to amend state law to allow these critical tools to be used.

Our new approaches to searches have yielded notable results; from 2015 to 2016, contraband finds increased by:

- 37% more weapons
- 13% more drugs
- 33% more total contraband

At the central visit house on Rikers Island, we have increased canine searches and are installing TSA-style scanners. From 2015 to 2016, drug contraband finds at visits increased by 45% and weapon contraband finds increased by 538%. A significant number of these finds are made because of our amnesty program, which allows people to drop their contraband without ramification, before coming into the visit house. DA Clark's dedication to consistently and immediately prosecuting visitors who attempt to smuggle in dangerous items is a critical factor to the success of this amnesty program, because visitors know that their actions will have repercussions. This is one of the many areas in which our partnership has yielded real results.

Because inmate fights and stabbings and slashings continue to be issues of concern for the Department, we continue to aggressively pursue additional strategies to reduce violence. We are expanding the new housing model that we piloted, because it has been successful in reducing violence. Our "Restart Units," newly revamped housing areas that feature physical upgrades, our new classification system, steady staffing and expanded programming, have much lower rates of violence than traditional general population units. In these units, rates of slashing/stabbings, assaults on staff, uses of force and inmates fights are very low. Since the first unit opened in September 2015, there have only been three uses of force involve serious injury, seven serious injuries stemming from fights, and nine assaults on staff. Today, there are thirty-four restarted units, housing approximately 1,000 inmates.

These efforts have shown results, but reducing violence is not something the Department does alone. The District Attorneys are critical partners in addressing violence in the jails. DOC is committed

to working with all of the District Attorneys, and particularly the Bronx DA, given that most incidents in the jails fall within her jurisdiction. With additional funding and support from the City, DOC has been able to strengthen the partnership with DA Clark. Most significantly, we have supported the Bronx DA's office creation of a new Rikers Island Prosecution Bureau. DOC identified office space on Rikers Island for the new bureau, which opened in September 2016, and the Bronx DA now has staff assigned to the office who can respond immediately after violent incidents in our jails. The new Rikers Island bureau has been instrumental in increasing communication at all levels which is key to facilitating the investigation, arrest, and prosecution process.

DOC provides important support to the prosecutors. When an inmate or visitor violates the law, our Correction Intelligence Bureau Arrest Unit works with the District Attorney's office to investigate, collect evidence, and carry out the arrest. Incidents of particular focus include stabbings, slashings, serious assaults on staff or another inmate, arson, possession of contraband and dangerous article, and escape, though arrests are not limited to these crimes.

We have also been improving our collection evidence protocols, and continue to raise our standards. DOC established its first Evidence Control Section (ECS) in September 2015 in order to improve the collection of evidence and help expedite the prosecution of crimes on Rikers. The ECS is housed in its own climate-controlled sprung, replacing old facility storage areas that were not designed for proper evidence storage. This new ECS brings DOC evidence collection into the 21st century and enables DOC to meet the Bronx DA's evidence requirements. Working with the ECS, DOC's Crime Scene Investigation Unit was also created to respond to each serious incident and professionally collect the evidence at the crime scene. The ECS has been evaluated for accreditation by the International Association for Property and Evidence, Inc. (IAPE), which provides accreditation only to those that meet IAPE professional standards. If accredited, DOC will be the first correctional facility in the country to have this accreditation.

The Department is pleased to have such a strong partnership with the Bronx District Attorney, particularly with the Rikers Island Prosecution Bureau. We look forward to continuing to work well together to address violence in the jails.

Office of the District Attorney
Bronx County

PROSECUTING VIOLENCE IN NYC JAILS

The Council of the City of New York
Committee on Public Safety
Committee on Fire and Criminal Justice Services
January 17, 2017

Darcel D. Clark
District Attorney

Good Morning. Chairwoman Gibson and Members of the Public Safety Committee, and Chairwoman Crowley and Members of the Fire and Criminal Justice Services Committee, it is my honor to appear before you today.

I first want to explain that as the Bronx District Attorney, I have jurisdiction over all offenses committed on Rikers Island.

Even though the bridge to the island runs from Queens, I have legal jurisdiction over any offense committed at any of the facilities on that piece of land.

* * * *

I was here nearly 10 months ago, in March, 2016, asking for your help in providing funding that would allow me to transform Rikers Island, my toughest neighborhood, to a facility where people are treated humanely and can work or visit without fear.

In that same month, I created the Rikers Island Prosecution Bureau, and the Public Integrity Bureau, which work together to prosecute crimes at Rikers. The Rikers Island Prosecution Bureau focuses on crimes by inmates and visitors, while the Public Integrity Bureau has official misconduct as its focus.

You came through for me. And, I thank you.

The City provided the necessary funds to open a satellite office to house the bureau on Rikers Island, and it officially opened its doors almost four months ago.

I promised to jumpstart reforms, and I believe we have made progress in the few months we have been working there on the front lines with the Department of Correction.

We can measure success in numbers--of arrests, of convictions of brutal attackers and contraband smugglers, and of years behind bars that offenders will serve.

The Rikers Island Prosecution and Public Integrity Bureaus now have a combined total of 27 Assistant District Attorneys and 10 support staff members, and I am seeking to hire more personnel for both Bureaus.

The two Bureaus work seamlessly with each other, and with the Department of Correction and Department of Investigation.

The Rikers Island Prosecution Bureau is currently handling over 100 pending indictments and 81 pending felony investigations involving inmates and visitors.

Last year, my Office prosecuted almost 1,100 cases of crimes committed on Rikers Island. Approximately 350 of those cases were felonies and over 700 were misdemeanors. Those charged included inmates as well as family, friends, and correction staff that actively participated in the smuggling of contraband into the jails.

Since the creation of the Public Integrity Bureau in March 2016, we have convicted 17 Correction Officers at Rikers Island on charges of promoting prison contraband, assault, offering false instruments for filing, falsifying business records and official misconduct.

I have focused my Office's efforts on creating better communication with DOC and other prosecutors' offices about the defendants who commit violent offenses on Rikers Island. We are trying to work on global dispositions of pending felony matters, or to get those defendants' cases tried so we can get them off the island as soon as possible.

Now, we can always prosecute violence that has occurred. But, isn't it better to PREVENT violence in the first place? Of course it is. So, let's talk about ways to reduce violence at Rikers Island.

You and I have seen the grisly reports of crimes that happen on Rikers Island. Just two weeks ago, an inmate was slashed on a bus enroute to a Rikers jail, and news reports showed a long gash marring his face.

Why do these things continue to happen? Here is what I have learned.

Take a look at this $2 roll of black electrical tape.

Simple rolls of tape like this one can help inmates to smuggle scalpels and other dangerous instruments that have maimed – and in some cases nearly killed – inmates, correction officers, and DOC staff.

Now, how's that, you may ask? Well, when a scalpel is completely wrapped in black electrical tape it will bypass the metal detector at the entrance to the Rikers jails.

So, how much does a scalpel cost?

One hundred scalpel blades can be bought online for less than ten dollars on most sites, and you can even get a hundred for about five bucks on Ebay.

In jail, they are worth fifty dollars EACH.

A scalpel is contraband. Contraband is any item that is not permitted in a jail. A scalpel is contraband because it can be used as a weapon and is inherently dangerous. In addition, objects like tobacco are invaluable commodities behind bars and are therefore contraband. Marihuana also is contraband as are other illegal drugs.

Trafficking in contraband can lead to violence at Rikers.

For example, in a recent investigation into a tobacco smuggling ring, DOC investigative staff intercepted packages of tobacco and small amounts of marijuana.

When the inmate-dealer and his cohorts didn't get the packages, they assumed they were stolen. The inmates were heard on surveillance plotting to brutally attack other inmates over the theft. Fortunately, arrests were made before tobacco could fuel such violence.

Unfortunately, this is just one of many examples of how contraband is a catalyst for violence. And, it is a very clear and present danger for both staff and inmates. Small amounts of tobacco and marijuana can rake in thousands of dollars on Rikers Island.

We see contraband as a leading trigger of violence because we have seen it time and time again.

But there is state-of-the-art technology that, if available to the DOC, would detect weapons and contraband. More than half the contraband smuggled into Rikers is brought in by secreting it in body cavities.

I support Commissioner Ponte's recommendations on this technology – TSA-style body scanners, and the Cellsense Plus portable scanners – along with the enabling legislation.

I have dedicated significant resources of my Office to prosecuting the violence on Rikers Island. But as much as we are committed to working hard on prosecuting cases of contraband and the devastating assaults they produce, investigators simply cannot uncover items smuggled into facilities without the proper technology at their disposal.

The other leading factor in violence is gangs.

It is well known that gangs turn to violence to retaliate against members suspected of cooperating with law enforcement. It is also not merely coincidence that the targeted efforts against gangs by the District Attorneys and the NYPD have further caused beatdowns and slashings behind bars.

Moreover, large take downs of specific gangs have led to larger concentrations of these gangs held on Rikers Island. Once again, the response to this is brutality as larger gangs want to assert their dominance while on Rikers Island.

And Rikers is the hub of a criminal network that has tentacles throughout the city.

The Rikers Island Bureau assisted my Gangs Bureau to make a case against the leader of the Bloodhound Brims, who was ordering shootings and stabbings of rivals from his cell at Rikers.

A major deterrent to such violence, I believe, is consecutive sentencing for crimes committed in correctional facilities.

Indeed, consecutive sentencing is what my office seeks to achieve in making recommendations to judges at sentencing proceedings for violent inmates.

When individuals commit crimes in custody, my ADAs are instructed to recommend consecutive sentences. What that means is that the defendant will begin to serve his prison term for the crime committed in Rikers only after he has completely served his term for the crime that placed him in Rikers in the first place.

It is, of course, the judge who has the final say, whether to impose such a consecutive sentence. But, our Rikers Island Prosecution Bureau is having positive results in this area through preparation and zealous advocacy.

We need to show inmates who commit these devastating assaults that there will be real consequences, and that they will come at a steep price.

For example, a defendant who slashed an inmate at Rikers received four years for that, and the judge made it consecutive to—or on top of—the prison term he got for his underlying case.

We consider that a success, because swift and certain consecutive sentences for violence committed in a DOC facility should deter violence.

* * * *

Finally, the question is: where do we go from here?

There are impediments to making it safer that are inherent in the very nature of what a jail is required to do: to provide care, custody, and control of those accused of crimes.

When an assault occurs in the jails many times we face obstacles to prosecutions because DOC staff needs to secure the perpetrators and clean up areas in order resume normal operations in the facility, before the investigative DOC personnel arrive.

That, of course, is the nature of running that sort of facility; Rikers cannot stop being a jail, and we cannot stop being prosecutors who have a need to preserve a crime scene. There is a natural tension there, and we all have to do the best we can.

The use of video surveillance and defendant statements has significantly assisted my Office's efforts to hold violent offenders accountable. We continue to work together to explore technology that is being used by other law enforcement that allow for the quick gathering of data and the essential preservation of the crime scene.

My Office has arranged for the NYPD to provide training to a greater number of DOC investigative staff as well as my Rikers Bureau detective investigators and DOI personnel.

We will find a means through which the Department of Corrections can become certified in evidence collection in the same way as NYPD. We also believe DOC investigators should receive training similar to that of detectives in the NYPD and Fire Marshals in the Fire Department. We would also like to have DOC obtain 3D evidence scanners.

As to the courts, with the assistance of the Honorable George Grasso, the New York City Criminal Court's Citywide Administrative Judge for Arraignments, we successfully cleared a backlog of over 100 Rikers cases that had been pending arraignment for long periods of time. More importantly, through better communication and coordination with DOC and the Court, my Office should never be placed in the position of having that sort of backlog again.

I believe my Office and its new practices and procedures have had a positive impact on Rikers Island.

However, challenges remain; as I said at the outset, this is my toughest neighborhood. I knew when I started that there would be no quick fix, but we are making progress more quickly than I thought. We have begun to make some inroads in just four months, and now are identifying what we need to do to go further.

My Office is committed to being a strong partner in the efforts to reform Rikers Island. I intend to use our presence there to ensure that crimes are investigated and prosecuted more quickly.

I am confident that we are moving in the right direction. Thank you so much for your continued support.

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119-2016
For Immediate Release
December 30, 2016

MANHATTAN MAN INDICTED FOR ATTEMPTED MURDER OF FELLOW INMATE IN RIKERS ISLAND

Defendant Slashed Victim's Throat, Inflicting Near-Fatal Injury

Bronx District Attorney Darcel D. Clark today announced that a Manhattan man has been charged with Attempted Murder and other crimes for slashing the throat of a fellow Rikers Island inmate, causing a life-threatening injury.

District Attorney Clark said "The defendant allegedly slashed the inmate's throat, inflicting a wound that nearly caused the victim's death. We will prosecute such vicious attacks to the fullest extent to eradicate inmate-on-inmate violence, and all violence, in Rikers Island jails."

District Attorney Clark said that the defendant, Shawn Young, 32, of 2363 Seventh Ave., Manhattan, has been charged with second-degree Attempted Murder, first- and third-degree Assault, three counts of second-degree Assault, first- and second-degree Promoting Prison Contraband and fourth-degree Criminal Possession of a Weapon. He was arraigned today before Deputy Administrative Bronx Supreme Court Justice Eugene Oliver, who set bail at $50,000. Young is due back in court on March 27, 2017 and faces up 25 years in prison if convicted of the top charge.

According to the investigation, on September 9, 2016, Young was involved in an altercation with another inmate in an intake cell at the Anna M. Kross Center, and slashed the inmate's throat with a sharp metal object. He required surgery at Bellevue Hospital.

The case is being prosecuted by Assistant District Attorney Ricardo Rodriguez of the Rikers Island Prosecution Bureau, under the supervision of Sonya Tennell, Supervisor of the Rikers Island Prosecution Bureau, James Brennan, Deputy Chief of the Rikers Island Prosecution Bureau, and Deanna G. Logan, Chief of the Rikers Island Prosecution Bureau, under the overall supervision of Stuart Levy, Deputy Chief of the Investigations Division, and Jean T. Walsh, Chief of the Investigations Division.

An indictment is an accusatory instrument and not proof of a defendant's guilt.

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79/2016
For Immediate Release
September 16, 2016

CORRECTION OFFICERS SENTENCED IN ASSAULT OF INMATE AND ATTEMPT TO COVER IT UP

Former Department of Correction Security Chief Receives 6 ½ Years in Prison, Captain Gets 5 ½ Years in Beating of Inmate Who Glared at Chief

Bronx District Attorney Darcel D. Clark today announced that eight New York City Department of Correction Officers—including a former DOC security chief—have been sentenced for their roles in assaulting an inmate and attempting to cover up the beating in a Rikers Island jail.

District Attorney Clark said, "I hope these sentences will deter those who think a uniform and a badge gives them license to brutalize inmates or cover for officers who do. A security chief and a captain received 6 ½ and 5 ½ years respectively, proving that neither rank nor position will protect you from prosecution. These Correction Officers must now pay the price, as will anyone who commits a crime of violence or corruption on Rikers Island."

District Attorney Clark said Eliseo Perez Jr., former Assistant Chief for Security who ordered the beating of Jahmal Lightfoot, was sentenced to 6½ years in prison and three years post-release supervision, and Captain Gerald Vaughn was sentenced to 5½ years in prison and three years post-release supervision. Correction Officers Alfred Rivera, Tobias Parker, David Rodriguez and Jose Parra were sentenced to 4½ years in prison and 2 ½ years post-release supervision.

District Attorney Clark said that the defendants were convicted in June after a 12-week trial before Bronx Supreme Court Justice Steven Barrett of first-degree Attempted Gang Assault, first-degree Attempted Assault, second-degree Assault, first-degree Falsifying Business Records, and Official Misconduct. Rivera, Parker, Rodriguez, and Parra, were also found guilty of first-degree Offering a False Instrument for Filing, and Vaughn was also convicted of first-degree Offering a False Instrument for Filing and Official Misconduct.

(MORE)

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Correction Officers Harmon Frierson and Dwayne Maynard, convicted of Official Misconduct, a Class A Misdemeanor, were sentenced to one-year Conditional Discharge and 500 hours of community service.

According to trial testimony, on July 11, 2012, Perez, while overseeing an institutional search of the jail, ordered members of the Emergency Services Unit to assault inmate Jahmal Lightfoot in the intake area at the George R. Vierno Center.

According to testimony, after Lightfoot locked eyes with him, Perez said, "This guy thinks he's tough; when you get him to the intake area, take him to the Intake Search Pen and knock his ------ teeth out."

Minutes later, Rivera, Parker, Parra, and Rodriguez carried out the order in the Intake Search Pen, which was covered with a sheet and had no video surveillance cameras. An officer held down Lightfoot's arms, another held down his legs and the other three kicked Lightfoot in the face with their boots about a dozen times, causing fractures to both of his eye sockets and other facial bones. While the beating was taking place, Perez, Vaughn, Frierson, and Maynard stood guard directly outside the search pen.

The defendants were convicted of falsifying their DOC Use of Force Reports. They had claimed that Lightfoot had attacked Rivera with a sharpened piece of metal and they used force to restrain Lightfoot. Frierson and Maynard, who did not participate in the beating, were found guilty of Official Misconduct for making false entries in their reports to conceal the commission of the crime.

The case was prosecuted by Assistant District Attorneys Lawrence Piergrossi, now Deputy Chief of Trial Bureau 50; Pishoy Yacoub, now Deputy Director of the Litigation Training Unit; and Raymond Valerio, Director of DNA prosecutions. They had tried the case as assistants in the Public Integrity Bureau.

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For Immediate Release
August 16, 2016

BRONX MAN PLEADS GUILTY TO SEX TRAFFICKING AND WILL BE DESIGNATED SEX OFFENDER

Also Pleads Guilty to Slashing Inmate in Rikers Island: Faces Up to 11 Years

Bronx District Attorney Darcel D. Clark today announced that a 35-year-old Bronx man has pleaded guilty to sex trafficking related to a prostitution business he operated with his cousin, as well as an assault that took place while he was jailed in Rikers Island.

District Attorney Clark said, "This defendant forced a runaway girl into prostitution on the streets of Hunts Point, and in Brooklyn and Queens, by instilling fear of physical injury. Sex trafficking is a despicable offense and this victim is slowly trying to recover from her exploitation.

"The defendant also pleaded guilty to slashing an inmate while he was incarcerated, contributing to the culture of brutality at Rikers Island that we have been battling for the last eight months."

District Attorney Clark said the defendant, Shakiem Washington, 35, of 374 East 209th Street, pleaded guilty yesterday, August 15, 2016, to Sex Trafficking and second-degree Assault before Bronx Supreme Court Justice Alvin Yearwood. Washington faces 2 1/3 to 7 years in prison for Sex Trafficking, and four years for Assault, to run consecutively, when he is sentenced on September 1, 2016. He will also be designated a sex offender and receive three years post-release supervision.

According to the investigation, Washington's cousin Daniel Washington found the girl, then 18 years old, in early 2011 in Atlantic City, where another pimp had abandoned her. Daniel Washington handed her over to Washington, who forced her to work as a prostitute until June, 2011. An investigation was conducted by Bronx Vice Detective Rose Muckenthaler.

(MORE)

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On August 10, 2015, while in the George R. Vierno Center on Rikers Island, Washington participated in an attack with three other inmates on another inmate, slashing him in the face with a sharp object.

The cases were prosecuted by Assistant District Attorney Ilya Kharkover of the Criminal Enterprise Bureau and Assistant District Attorney Lauren DiChiara of the Child Abuse/Sex Crimes Bureau, under the supervision of James Goward, Chief of the Criminal Enterprise Bureau.

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44/2016
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For Immediate Release
May 19, 2016

CORRECTION OFFICER, INMATES AND CIVILIANS INDICTED IN SCHEMES TO SMUGGLE SCALPELS COMMONLY USED IN SLASHINGS INTO RIKERS ISLAND

Bronx DA's Office/Department of Investigation Probe Uncovers Web of Corruption; Two Correction Officers Received Thousands of Dollars in Bribes for Contraband

Bronx District Attorney Darcel D. Clark and Department of Investigation Commissioner Mark G. Peters today announced that 17 people, including two New York City Department of Correction officers, a DOC-employed cook and six inmates, have been indicted for conspiring to bring scalpels, narcotics and other contraband into Rikers Island in exchange for thousands of dollars in bribes.

District Attorney Clark said, "These alleged schemes fed the climate of danger and fear that makes Rikers Island notorious for brutality, and they reveal the true scope of corruption that goes far beyond its shoreline. But these cases also show our determination to work with DOI to prosecute any and all perpetrators of crime inside Rikers Island.

"Aside from tarnishing his badge by taking bribes from inmates, Correction Officer Kevin McKoy allegedly smuggled in scalpels," District Attorney Clark continued. "Even after his fellow Correction Officer, Ray Calderon, was slashed on his face requiring 20 stitches and photos of his grisly wound were publicized, McKoy allegedly continued to bring in these weapons."

Commissioner Peters said, "This case, a truly joint effort by DOI and the Bronx District Attorney, is the largest contraband smuggling takedown in more than a decade at Rikers Island. It involved an organized network of weapon and drug smugglers designed to spread contraband and create disorder within the jail, according to the indictment. The officer defendants not only sold out their badges and honor through their charged actions, but the safety of their fellow officers."

District Attorney Clark said the defendants are charged in four indictments with a total of 84 counts including bribery, bribe receiving, promoting prison contraband, attempted possession and attempted sale of controlled substances and conspiracy. The two Correction Officers and the cook are also charged with official misconduct.

According to the investigation, the alleged center of the main conspiracy is Kevin McKoy, 31, who was a Correction Officer assigned to the Anna M. Kross Center (AMKC) Quad "12 Upper" housing area. He allegedly received bribes totaling at least $10,000 for bringing in scalpels wrapped in duct tape to avoid metal detector, K2, (synthetic marijuana) and suboxone (opioid) strips to inmates.

The main conspiracy allegedly took place from September 12, 2015 to November 24, 2015. Inmates would call family members or friends and instruct them to give

44/2016
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contraband and cash to McKoy, whom they referred to as "The Plug," "Ticks-and-Fleas" and other nicknames, and McKoy would contact them to arrange pickup of the items.

McKoy was arrested on November 24, 2015 at AMKC with seven scalpels tucked in a leg of his longjohns. Nine other scalpels were found in a search at his Brooklyn home, which McKoy admitted were also headed for the jail. McKoy made statements after his arrest that he had been bringing in contraband to inmates for money for about a year.

According to a separate indictment, another Correction Officer, Mohammed Sufian, 25, agreed to bring tobacco into AMKC for $1,000. He was arrested there on February 3, 2016 with the leafy substance in his socks.

McKoy and Sufian and other defendants were arraigned today, May 19, 2016, in Bronx Supreme Court before Bronx Supreme Court Justice Steven Barrett. If convicted, McKoy and Sufian face up to seven years in prison on each of the top counts of third-degree Bribe Receiving.

Other defendants have been arrested over the past six months by DOI investigators. They include Darnell Wilson, 27, a cook in AMKC who was arrested at the front gate of the facility on February 25, 2016 with K2 (synthetic marijuana) and tobacco which he brought in inside his shoes. Wilson made statements after his arrest that he was receiving $200 a week since the summer of 2015 for bringing in K2 and tobacco.

District Attorney Clark thanked DOI's Office of the Inspector General for the Department of Correction, specifically Assistant Inspector General Richard Askin and Special Investigator Michael Garcia, under the supervision of Inspector General Jennifer Sculco, Associate Commissioner Paul Cronin, Deputy Commissioner/Chief of Investigations Michael Carroll and First Deputy Commissioner Lesley Brovner.

The cases are being prosecuted by Assistant District Attorney Ann Lee of the Public Integrity Bureau, under the supervision of Omer Wiczyk, Deputy Chief of the Public Integrity Bureau; James Goward, Chief of the Criminal Enterprise Bureau; Wanda Perez-Maldonado, Chief of the Public Integrity Bureau; Deanna G. Logan, Chief of the Rikers Island Prosecution Bureau; Mary Jo Blanchard, Counsel to the Investigations Division; Stuart Levy, Deputy Chief of the Investigations Division; and Jean T. Walsh, Executive Assistant District Attorney and Chief of the Investigations Division.

An indictment is an accusatory instrument and not proof of a defendant's guilt.

DEFENDANTS: McKoy/Sufian Conspiracy

- JACLYN ARCANGEL, 21, Civilian
- DUNTRELL CALDERON, (aka "True") 21, Inmate
- BONITTI COOK, 21, Inmate
- KELLY COPPINGER, 22, Civilian
- RAFFAELE DESANTIS, 22, Civilian
- VITTORIA DESANTIS, 22, Civilian
- KEVIN MCKOY, 31, Correction Officer

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- TARA MEEKS, 23, Civilian
- ANTHONY NICOLETTI, (aka "Mayhem") 24, Inmate
- MAURICE PARRISH, 28, Civilian
- MOHAMMED SUFIAN, 25, Correction Officer
- MICHAEL WILLIAMS (aka "B.M.") 24, Inmate
- MICHAEL WILLIAMS (note: B.M.'s brother), 19, Civilian
- BRANDON VILELLA (aka: "Mook Money"), 29, Inmate

DEFENDANTS: AMKC Cook case

- DARRYL WILSON, 27, DOC cook
- ERNEST SOBERANIS, (aka "Intel") 46, Inmate
- CARINA HOLDER, 20, Civilian

APPENDIX 1

SEE Legislative Proposal

STATE OF NEW YORK

8002
2015-2016 Regular Sessions
IN ASSEMBLY
June 3, 2015

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the use of body scanners in local correctional facilities; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 3502 of the public health law is amended by adding a new subdivision 6 to read as follows:

6. (a) (i) Notwithstanding the provisions of this section or any other provision of law, rule or regulation to the contrary, licensed practitioners, persons licensed under this article and unlicensed personnel employed at a local correctional facility may utilize body imaging scanning equipment for purposes of screening persons committed to such facility, in connection with the implementation of such facility's security program.

(ii) Such utilization shall be in accordance with a plan or protocol approved by the department, or in cities of a population of two million or more, it shall be in accordance with a plan or protocol approved by the local health department.

(b) Prior to establishing, maintaining or operating in a local correc-

15 tional facility any body imaging scanning equipment, the chief adminis-
16 trative officer of the facility shall ensure that such facility is in
17 compliance with otherwise applicable requirements consistent with this
18 subdivision for the registration, maintenance, operation and inspection
19 of installation with radiation equipment.
20 (c) (i) Prior to operating body imaging scanning equipment, unlicensed
21 personnel employed at local correctional facilities shall have success-
22 fully completed a training course approved by the department, or in
23 cities of two million or more, approved by the local health department.
EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[ ] is old law to be omitted.
LBD11119-04-5
A. 8002 2
1 (ii) No person who operates or who is scanned by the body imaging
2 scanning equipment shall be exposed to more than fifty per cent of the
3 annual exposure limits for manmade radiation as specified by applicable
4 regulations.
5 (d) For the purpose of this subdivision, "body imaging scanning equip-
6 ment" or "equipment" means equipment that utilizes a low dose of ioniz-
7 ing radiation to produce an anatomical image capable of detecting
8 objects placed on, attached to or secreted within a person's body.
9 (e) For the purposes of this subdivision, "local correctional facili-
10 ty" shall have the same meaning as found in subdivision sixteen of
11 section two of the correction law.
12 (f) Any local government agency that utilizes body imaging scanning
13 equipment in any local correctional facility under its jurisdiction
14 shall submit an annual report to the department, the speaker of the

15 assembly, and the temporary president of the senate. Such report shall
16 be submitted within eighteen months after the initial date of registra-
17 tion and annually thereafter and shall contain the following information
18 as to each such facility:
19 (i) the number of times the equipment was used on inmates upon intake,
20 after visits, and upon the suspicion of contraband, as well as any other
21 event that triggers the use of such equipment;
22 (ii) the average, median, and highest number of times the equipment
23 was used on any individual;
24 (iii) the number of times the use of the equipment detected drug
25 contraband, weapon contraband, and any other category of contraband;
26 (iv) incidents otherwise reportable by the local correctional facility
27 related to, or injuries resulting from, the use of equipment; and
28 (v) any other information the department may reasonably require.
29 § 2. This act shall take effect immediately and shall expire and be
30 deemed repealed five years after such date.

NEW YORK STATE ASSEMBLY MEMORANDUM IN SUPPORT OF LEGISLATION submitted in accordance with Assembly Rule III, Sec 1(f)
BILL NUMBER: A8002 Revised 06/05/15
SPONSOR: Gottfried
TITLE OF BILL:
An act to amend the public health law, in relation to the use of body scanners in local correctional facilities; and providing for the repeal of such provisions upon expiration thereof
PURPOSE OR GENERAL IDEA OF BILL:
Would permit the use of low dosage ionizing radiation upon persons committed to local correctional facilities for the purpose of discovering contraband objects.
SUMMARY OF SPECIFIC PROVISIONS:
Adds a new Subdivision 6 to Section 3502 of the Public Health Law relat-

ing to the licensure of radiation technology personnel to permit persons
in addition to radiation technologists to operate body scanners under certain conditions; require approval by either the state or the New York
City health department as appropriate; require initial and annual reporting; and provide a 5 year sunset.

JUSTIFICATION:

The introduction of dangerous contraband is a common concern within the
correctional setting and puts both officers and inmates in harm's way. The use of body scanning equipment is critical in maintaining the safety
and security of local correctional facilities. Evidence demonstrates that the use of body imaging scanning equipment to conduct searches for
contraband can be performed in a safe manner.

In April of 2014 the State Commission on Correction issued a ruling that
identified that body scanning devices then in use were not being operated in accordance with public health law relating to the use of ionizing radiation. However PHL Article 35 is written in contemplation of medical uses, applying variable levels of ionizing radiation, rather than the use of very low levels necessary for security purposes.

This legislation will allow NYC Department of Corrections (DOC) and
other local correction facilities to resume using the devices once they have received approval from the New York State Department of Health or
the New York City Department of Health and Mental Hygiene (DOHMH) of a
plan or protocol governing their operation. Prior to resuming use, NYC
DOC and local correctional facilities shall ensure that operators have successfully completed a training course approved by the Department or DOHMH.

NYC DOC is seeking the ability to use these devices for the detection of
weapons made from materials such as titanium and plastic that are not detected through ordinary searches and magnometers. In addition, the

equipment acts as a deterrent in discouraging inmates from carrying weapons, as inmates know that these devices are better able to detect small items.

PRIOR LEGISLATIVE HISTORY:
New bill

FISCAL IMPLICATIONS:
None

EFFECTIVE DATE:
Immediately and sunset after five years.

SEE DOC BODY SCANNER Hand out Information

How do body scanners work and why are they important?

Body scanners are devices that can detect items on a person's body without the need for clothing removal or a physical search. The X-ray type image enables the operator to see any contraband that someone is hiding. Importantly, these devices can detect both metal and non-metal objects, meaning they can detect contraband that metal detectors cannot, including:

- Titanium (e.g. scalpels)
- Small amounts of metal (e.g. small razors)
- Metal that is hidden from metal detectors (e.g. being wrapped in electrical tape)
- Non-metal weapons (e.g. plastic, ceramic)
- Drugs

Since DOC stopped using body scanners in March 2014, monthly stabbings/slashings have nearly doubled from an average of 5.3 to an average of 10.1. Better tools to find weapons is key to reducing these violent incidents.

How much radiation is a person (an inmate in a jail setting) exposed to during a scan?

Each scan exposes the inmate to 0.25 μSV.

- This is comparable to the external radiation dose during three minutes of flight on an aircraft.
- 400 scans through the system equals approximately one chest x-ray.

What are the health risks associated with this exposure?
A radiation safety professional (board-certified health physicist) with 25 years of experience with issues relating to radiation safety determined that:

- To be exposed to the lowest radiation dose ever shown to have any measurable short term medical impact, 25,000 millirem, a person would need to be scanned approximately two million times in a single day.
- To be exposed to the lowest radiation dose ever shown to have any measurable long term medical impact (i.e. a 0.5% increase in a person's odds of developing fatal cancer), a person would need to be scanned over 700,000 times over the course of a lifetime.
- The machines [used] on Rikers Island [did] not emit harmful levels of radiation, even if an individual were to be scanned hundreds of times over the course of a year.

What controls will DOC put in place for scanner use in order to ensure inmate health and safety?
DOC would work with DOHMH to develop a plan for safely operating the scanners in the jails. All usage would adhere to the national standards set by the American National Standards Institute (ANSI). Scan frequency would be limited such that no one is exposed to more than 250 μSv. With the scanners DOC purchased, that works out to:

- 2 scans per day
- 19 scans per week
- 83 scans per month
- 1,000 scans per year

During the time that DOC used body scanners, exposure was well within these limits. According to DOC's use records, most inmates were scanned only once. Additionally, of the individual inmates scanned, approximately:

- 93.9% were scanned <1 time per month
- 6.0% were scanned 1-5 times per month
- 0.1% were scanned 5 or more per month

BODY SCANNERS

Are body scanners being used in other states or localities?

New York State
Both Livingston and Steuben Counties purchased body scanners prior to being notified that their use was prohibited by the NYS Public Health Law.

Nationally
Body scanners are used in at least one county in approximately 28 states and by the federal prison system. In 2016, AZ and NJ authorized the use of body scanners, bringing the total to 30 once their laws go into effect. Over the last few years, several states, including FL and OH, have adopted rules to allow for the use of body scanners in correctional settings. These laws and rules achieve the same goal as set forth in the NY bill.

European Union (EU)
The European Union previously used body scanners in their airports, but use was discontinued in response to political concerns. Their 2012 assessment confirmed that the health risk was negligible.

"PROSECUTING JAIL VIOLENCE"

COBA PRESIDENT ELIAS HUSAMUDEEN

TESTIMONY BEFORE THE FIRE AND CRIMINAL JUSTICE SERVICES COMMITTEE AND THE PUBLIC SAFETY COMMITTEE NEW YORK CITY COUNCIL

JANUARY 17, 2017

Good morning Chairwoman Crowley and Chairwoman Gibson and members of your oversight committees. My name is Elias Husamudeen and I am president of the Correction Officers Benevolent Association, the second-largest law enforcement union in the City of New York. Our members, as you know, provide care, custody, and control of over 8,000 inmates daily and over 60,000 inmates just last year alone.

We are here today to discuss the topic of prosecuting jail violence. Before I begin with my testimony, I would first like to express my gratitude to the Mayor and the Office of Labor Relations for negotiating with our union and incorporating in a contract the provision for a Rikers Island Arrest Bureau overseen by the Bronx District Attorney's Office. We thank Bronx District Attorney Darcel Clark for committing vital resources to the re-arrests and prosecutions of inmates and visitors who commit crimes on Rikers Island. We also appreciate the Department of Correction's new commitment to taking seriously the re-arrests of inmates who assault correction officers. Last but not least, we appreciate your oversight committees and the committee members for always keeping correction officers in the forefront.

I want to admonish our City's Criminal Justice System which has a backlog of over 800 inmates who have yet to be arrested for their crimes committed against staff and other inmates on Rikers Island. There should be no delay in prosecuting

these inmates and I am here today to call on your committees to immediately look into what is holding up this process. The public has a right to know and this union has a right to know.

The public also has a right to know about the facts concerning the ramifications of major policy changes that Commissioner Ponte, the Mayor, the City Council, and the Board of Correction have hailed all in the name of "progressive reform." If progress forms the basis of the term "progressive" then it would seem that the reform measures supported by this Council and the Mayor would be generating positive outcomes following the elimination of punitive segregation for inmates 21 and under last October. But while on the one hand this Mayor and certain Council Members and members of the Board of Correction want to brag about reform, the violence continues to rise. In fact, by the Department's own account, there was an 18% rise in the number of inmate on inmate slashings last year over the previous year. There are three distinct indicators of jail violence that the Mayor's Office, the City Council, the Correction Commissioner, and the Board of Correction have not been able to bring down. One category is serious injury to inmates, which is inmate on inmate assaults. The second one is inmate on inmate stabbings. The third one is inmate on inmate slashings. And a new category is the slashings and stabbings of correction officers. In the last three years under this administration, three out of the four categories continue to increase. The reason why they have not been able to

reduce the numbers in these categories is because of the insane policy of eliminating punitive segregation for 16-21 year olds which existed three years ago and because they do not understand the culture of jails and specifically, Rikers Island.

Hailing reform to reduce jail violence while the reality only demonstrates the complete opposite, that jail violence continues to soar, is nothing short of systemic hypocrisy. To be blunt the Mayor's Office is guilty of hypocrisy, certain members this Council are guilty of hypocrisy, as is the Board of Correction and the Correction Commissioner who are entrusted to prosecute crime.

For example, just a couple weeks ago, 35 individuals were arrested in Brooklyn for violent crimes, weapon possession, drug possession, and gang violence. Everyone's concern from the police to the District Attorney determined that these 35 individuals were too violent and have too much potential for violence to remain on the streets. As a result, they were given high bails or remanded in some cases. So all the criminal justice policy makers have decided to protect the general public from these violent predators and put them on Rikers and in the custody of who else? New York City Correction officers.

According to Assistant Police Chief James Essig, "These are notorious gang members who have terrorized Brooklyn for years. That's what gangs usually do

with guns, violence, and drugs. 16 of them have been involved in shooting incidents. 17 have been arrested for weapons possession and 25 have been arrested for robberies."

At the same time, these same policymakers have stripped correction officers of all the critical tools necessary to maintain safety and security within the confines of the City's jails. These reform-minded lawmakers place these violent predators in our custody and then accuse us of making them more violent once they're incarcerated. They have declared these individuals to be too violent to remain free on our streets, but yet they are apparently not violent enough to segregate inside the jails from other inmates in general population. This hypocrisy from lawmakers and policymakers will no longer be tolerated by the Correction Officers' Benevolent Association. As we conveyed to the constituents of Council Member Dromm in Council District 25 last week, you cannot continue to demonize and scapegoat correction officers for the policy failures of those who have been elected to keep this city safe. Unlike the police, the District Attorneys, the Judges, and the court officers, and even the Correction Commissioner, we have to live with these violent predators not just for a few hours, but for literally 24 hours a day, 7 days a week, 365 days a year. For us this is not just some theoretic progressive exercise, this, ladies and gentlemen, is life and death.

Kalief Browder was arrested and jailed for allegedly stealing a back pack that was never found. He remained on Rikers Island for more than three years. He was by all accounts, the victim of a failed criminal justice system. He was given a very high bail and inadequate legal representation. He eventually was released from Rikers Island and two years later tragically kills himself. Correction officers as has become the new norm, are scapegoated and demonized for his death that did not even occur while in our custody. Neither the Judges, the District Attorneys, the Public Defender, nor the Department of Mental Health are responsible in any way shape or form for this man's tragic spiral to death. Only the correction officers. This again ladies and gentlemen, is the worst form of hypocrisy.

The Governor of the State of New York hails the closure of over a dozen state prisons and pushes to pass legislation to try to stop trying 16 and 17 year olds as adults. But yet the State's criminal justice system fails to remove inmates after they are sentenced for 25 years to life for murder, like the inmate who cut his mother's head off and instead are left to languish for weeks with our officers, who end up being assaulted by these inmates, instead of being immediately placed in a state facility where punitive segregation exists.

This union has taken many steps to meet with the Mayor and his staff including Elizabeth Glazier, the Director of Criminal Justice Services, and recommended many proposals to reduce jail violence and make our facilities safer. We have met

with the District Attorneys and requested processes for the DA's to expedite cases such as "John Doe" who faces charges in a Brooklyn Case from a 2011 gun charge in addition to numerous assault cases against correction officers and other inmates. Inmate John Doe and other inmates like him, know full well that they will continue to be held at Rikers instead of being sent to a State Facility because the Brooklyn DA is not going to try his case in Brooklyn until the Bronx DA first tries his Rikers Island cases. The inmates routinely commit infractions at Rikers for this very reason. They play the game. And unfortunately, all too often, they are winning. These committees must find a way to put an end to this immediately.

We aren't here today solely to point out hypocrisy, we're here to propose solutions that we sincerely hope will be adopted and incorporated into the prosecution of jail violence. Recently, Governor Cuomo has proposed eliminating the prosecution of 16 and 17 year old juveniles that are tried as adults. We couldn't agree more. New York is one of two states that still tries 16 and 17 year olds as adults and if this administration is desirous of leading the nation in reform, then why not lead the nation in rolling back this policy and keep the adolescents off Rikers Island completely?

Secondly, in a recent report by the New York City Comptroller's Office it was revealed that we spend $132,000 on each incarcerated inmate. We spend more than $300 million to incarcerate the adolescents alone. Why isn't the City's upcoming

budget focused on community youth programs to offer troubled adolescents and those at risks with positive alternatives to a life behind bars?

Third, because the Judges in this city seem more intent on political activism then on law and order, we need to ensure the most dangerous criminals who repeat their crimes in jail face minimum sentencing with consecutive sentences imposed on the worst of the worst. We're not talking about petty misdemeanors, larceny, or minor drug offenses. We're talking about the gang members, rapists, and murderers who prey on our officers and other inmates.

Fourth, the Department has needlessly spent over $275 million on overtime and unbudgeted posts that has needlessly jeopardized our members' safety and wasted valuable resources. Put this money towards ending the back log of 800+ inmates waiting for their cases to be prosecuted.

Fifth, recently Ipads have been given to the new recruits at the Correction Academy. Let's provide all officers with smart phones and I pads and the necessary technology to detect weapons, monitor gang behavior, and fight jail crime the way it should be fought in the year 2017.

Sixth, provide every single correction officer with individual gas masks the same way stab resistant vests are allocated.

Finally, and certainly not least of all, we need to change the way we talk about Use of Force incidents. Last year some 97,000 arrests were made by the NYPD and of those arrests, 60,000 inmates were placed under the custody of correction officers. Much of the jail reform debate references 8,000 inmates and factors in the Use of Force incidents within the smaller figure which is misleading. When the Use of Force rate of 538 per 1,000 inmates is calculated using the 60,000 figure it is obvious that correction officers have performed exceptionally well in maintaining care, custody, and control of DOC facilities.

Around the country, and as close as New Jersey, correction officers have been killed in the line of duty at the hands of an inmate. That hasn't happened here in over 40 years. But the ill-advised policy changes that have been recently implemented by the Mayor, the City Council, their Oversight Committees, the Board of Correction, and the Correction Commissioner, makes that risk all the more greater for us here in New York.

If you are going to impose radical reform, then that reform must be anchored by secure system that puts law and order ahead of politics with no exceptions. Correction officers must not continue to be demonized when those reforms fail. We are not shrinking from our responsibility. We are asking for shared accountability among all the stakeholders in our criminal justice system and let this

hearing serve as our notice to all that we will continue to hold everyone accountable to ensure justice is served behind bars just as it is on the streets.

With that, I am happy to answer any questions you may have.

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JOINT TESTIMONY

Committee on Fire and Criminal Justice Services
Committee on Public Safety
New York City Council
250 Broadway (Committee Room / 14th Floor)
(Tuesday, January 17, 2017 / 10:00 A.M.)

Good morning to Council Chairs Crawley, and Lancman and members of both committees

1. Madame Chairpersons, my name is Faisal Zouhbi, and I am the President of the *Assistant Deputy Wardens - Deputy Wardens Association* for the New York City Department of Correction. My union represents the uniformed ranks of Assistant Deputy Wardens, Deputy Wardens, and Deputy Wardens-in-Command, also known as Warden - Level I and Warden - Level II. These ranks are the equivalent in pay and supervisory responsibilities to the NYPD ranks of Lieutenant, Captain, and Deputy Inspector.

2. I am thankful for this opportunity to testify on the important issue of jail violence and its effect on custodial staff and the inmate population that we are entrusted to manage and protect. For all accounts, jail violence has increased and is at an all-time high during this DOC's administration and leadership, both in assaults on inmates with weapons and the increased viciousness of the assaults on uniformed staff members. It has been an on-going problem of our Department's inability to deal with the increasing number of inmates committing disciplinary infractions who are not being segregated from the general population. These inmates then continue to commit further violent acts, when they should have been "locked-down" within punitive segregation status.

3. The violence in our city jails continues to escalate as a direct result of a weak internal disciplinary process for inmates in which there are no consequences following violent crimes.

4. With the reduction of the use of punitive segregation, inmates have no respect for authority within our jails. This has created a situation where many uniformed staff feel intimidated and threatened to go to work.

5. This leaves the Criminal Justice System, where too long inmates who commit violent acts in jail have their sentences combined, only to have been given a concurrent sentence, when clearly the law called for consecutive sentences.

6. There is no doubt in my mind that violent episodes will be reduced by initiating proper sentencing guidelines in an intelligent and judicious administration of justice.

7. Another one of the challenges we face within DOC is the sophistication with the inmate smuggling-in titanium scalpels. Many of these inmates have managed to circumvent magnetometers by utilizing these types of titanium metals and black electrical tape to escape detection. DOC needs better and more sophisticated detectors to combat this trend.

8. With violence comes its high costs. Correction personnel injured within our jails is cost- prohibitive in the many hours of overtime needed to replace them for periods while out sick. Every inmate seriously assaulted by other inmates carries with it extensive medical costs, along with uniformed staff needed to escort them to city hospitals. Violence is costly.

9. In concluding, I would like to thank both the committees and chairs for holding these hearings. I hope the information presented today serves as a catalyst to identify and confront problems and accepting responsibilities for creating a safer environment for our staff and inmates entrusted in our care. Violence is deadly, costly, and must be contained and controlled with adequate staff who are properly trained. Thank you again for the opportunity to testify and I am prepared to answer any questions that you may have.

TESTIMONY OF THE LEGAL AID SOCIETY

The New York City Council

Committee on Fire and Criminal Justice Services

Committee on Public Safety

Public Hearing on

Prosecuting Violence in City Jails

January 17, 2017

New York, New York

Presented by:

Joshua Norkin
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The Legal Aid Society Criminal Practice
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Introduction

Thank you for the opportunity to testify concerning our clients' and attorneys' experiences with the current operation of the bail system in New York City. We submit this testimony on behalf of The Legal Aid Society, and thank Chair Rory Lancman and the Committees on Fire and Criminal Justice and Public Safety for inviting our thoughts on the subject. We applaud the Council for its concern about the devastating impact of bail can have on the people of New York City. The problem is particularly acute in low-income neighborhoods, and disproportionately impacts people of color.

Since 1876, The Legal Aid Society has been committed to providing quality legal representation to low-income New Yorkers. We are dedicated to ensuring that no New Yorker is denied access to justice because of poverty. The Criminal Defense Practice of The Legal Aid Society ("The Society") is the largest defender organization in New York City, representing a very substantial proportion of the persons charged with crimes in New York City. The Special Litigation Unit observes city-wide trends in policing, prosecutorial, and judicial decision-making, prepares strategic impact litigation and consults on policy reform with multiple levels of government. The Society also pursues impact litigation and other law reform initiatives on behalf of our clients.

In June, the Society launched the Decarceration Project, with the goal of eradicating the detention of New Yorkers because they are too poor to buy their way out of jail. Every day our attorneys provide assistance to people who are held on Rikers Island, fighting to ensure that all New Yorkers have a fair chance at obtaining their freedom.

Legislative Underpinnings

We support Intro # 1373-A which is intended to support the greater use of unsecured and partially secured bonds in New York City courts. The legislation has roots in a bail reform movement in New York that stretches back to 1960 and the Manhattan Bail Project.[1] In 1964, while addressing the American Bar Association at the Americana Hotel in New York City, Attorney General Robert F. Kennedy said: "Usually only one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant.[2] That factor is, simply, money." In response, a "first wave" of bail reform to sought to liberalize pre-trial release through the addition of conditional release and deposit bail programs – greater use of personal recognizance, unsecured and partially secured bonds.[3] In

[1] https://www.vera.org/publications/manhattan-bail-project-official-court-transcripts-october-1961-june-1962

[2] https://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-10-1964.pdf

[3] http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6469&context=jclc

1966, Congress passed The Bail Reform Act, explicitly requiring the release of defendants on an "unsecured appearance bond in an amount specified by the judicial officer."[4] In 2012, the Bureau of Justice Statistics reported that 39% defendants in federal district court were released on unsecured bonds, including 34% of defendants accused of a violent crime.[5]

The bail reform conversation reached the New York State Legislature in the late '60s and early '70s.[6] In 1972, the Legislature approved a revised Criminal Procedure Law, and reformed the state's bail system. Specifically, the Legislature created new forms of bail, including unsecured and partially secured bonds. The "Memorandum in Support and Explanation of Proposed Criminal Procedure Law" explained the Legislature's adoption of a more liberal bail system as follows:

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[4] Bail Reform Act of 1966, Pub. L. No. 89-465, 80 Stat. 214 (1966) (repealed 1984). http://uscode.house.gov/statutes/pl/89/465.pdf

[5] https://www.bjs.gov/content/pub/pdf/prmfdc0810.pdf

[6] The underpinnings of the "first wave" bail reform movement are not dissimilar from those that define the current discussion. In the Department of Justice's much heralded Statement of Interest in Varden v. City of Clanton, the federal government relies on a series of Supreme Court cases from this time period, writing that "Incarcerating individuals solely because of their inability to pay for their release, whether through the payment of fines, fees, or a cash bond, violates the Equal Protection Clause of the Fourteenth Amendment. See Tate v. Short, 401 U.S. 395, 398 (1971); Williams v. Illinois, 399 U.S. 235, 240-41 (1970); Smith v. Bennett, 365 U.S. 708, 709 (1961)." In 1972, in Barker v. Wingo, 407 U.S. 514, 532-533 the Court further wrote that "time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. It is especially unfortunate to impose them on those persons who are ultimately found to be innocent."

> Among the innovations are . . . a reformulated system of bail and release on recognizance (Arts. 500-540) . . . [the goal of which was] to reduce the unconvicted portion of our jail population.
>
> With this in mind, the proposal inserts two intermediate devices, one termed unsecured bail bond and the other a partially secured bail bond. . .The possible advantages of these new devices may be hypothetically illustrated by a case of a young man charged with burglary who has previously been embroiled with the law but resides in the community and whose father is a reputable person long employed in the same position at a fairly modest but adequate salary. Here, a judge not inclined to release the defendant on his own recognizance, doubtless would, under present law, fix bail, in a fairly substantial and possibly burdensome amount owing to the seriousness of the crime. If so authorized, however, he might well be satisfied to release the defendant upon his father's undertaking to pay $1,000 (possibly accompanied by a $100 deposit) in the event of the defendant's failure to appear.

As explained later in this testimony, the commentator's assumption that unsecured and partially secured bonds might be particularly effective for releasing felony defendants, is corroborated by Legal Aid's experiences. This also corroborated by the success of their use in federal court and other jurisdictions.

More recently, in People ex rel. McManus v. Horn, 18 N.Y.3d 660, 665 (2012), the Court of Appeals reaffirmed the intent of New York State Legislature was to encourage the use unsecured and partially secured bonds:

> Providing flexible bail alternatives to pretrial detainees – who are presumptively innocent until proven guilty beyond a reasonable doubt – is consistent with the underlying purpose of article 520.
>
> The legislation was intended to reform the restrictive bail scheme that existed in the former Code of Criminal Procedure in order to improve the availability of pretrial release (see e.g. Bellamy v. Judges in N.Y. City Crim. Ct., 41 AD2d 196, 202 (1st Dept. 1973), affd 32 NY2d 886 (1973); Mem of

Commission on Revision of the Penal Law and Criminal Code, Bill Jacket, L 1970, ch 996, at 10). Subsequent amendments further loosened those strictures (see Preiser, Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL 520.10, at 51).

Current State of Bail in New York City

While the legislature and high courts may have intended to reform the bail laws, the reality is that little on the ground has changed in the past 40 years. The most recent official estimate of the daily population at Rikers Island was that over 7,300 inmates were detained pre-trial on any given day, the overwhelming majority of whom are people of color and cannot pay even modest bail.[7]

While the revamped legislative scheme introduced nine ways for judges to set bail in 1972,[8] including unsecured and partially secured bonds, New York City judges still only set cash or insurance company bond with any regularity. While a credit card option has recently become more prolific, it is subject to a $2,500 cap, can only be posted in the courthouse, and has generally benefited few of our clients who often do not have access to these types of accounts.[9]

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[7] See Figure 1, attached to this testimony. Legal Aid is providing the Council with release information based on our 2016 cases. The Criminal Justice Agency's report on 2015, available at http://www.nycja.org/library.php. More information about Rikers can be found at http://www1.nyc.gov/site/criminaljustice/data-analytics/reports.page.

[8] A byproduct of the legislature's attempt to broaden options for poor defendants, these are cash, insurance company bail bond, secured surety bond, secured appearance bond, partially secured surety bond, partially secured appearance bond, unsecured surety bond, unsecured appearance bond and credit card or a similar device. CPL § 520.10.

[9] Yet critically, research shows that where a credit card option is utilized defendants return at the same rate as when using cash or insurance company bond. One can conclude return rates would

We know now that while New York's progressive bail law hoped to usher in a new era of reform, it has not worked entirely as the legislature intended. The question is why?

As public defenders we continue to fight the battle for bail reform both inside and outside of the courtroom every day. Our attorneys continue appeal bad bail decisions, build bail packages and push for judges to set unsecured and partially secured bonds whenever our clients are unjustly detained. In June we launched the Decarceration Project, a policy and litigation initiative which aims to modernize New York's bail practices in new ways.[10] By raising awareness, gathering and analyzing data and bail setting trends and training defenders throughout the City and state, we are working hard to increase the current statute's use.

Based on these efforts, we can say unequivocally that on the rare occasion that judges are willing to set an unsecured or partially secured bond, clients are

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be similar for unsecured and partially secured bonds. *New York's Credit Card Bail Experiment,* Mary T. Phillips, New York City Criminal Justice Agency, (2014). Available at http://www.nycja.org/resources/details.php?id=801

[10] A pilot project will add an additional attorney, paralegal and social worker to a complex of twenty attorneys to build bail packages for poor clients, litigate bad bail decisions and file appeals in the appellate division. Another seeks to enhance the frequency with which bail challenges are brought in the appellate division.

released and successfully return to court.[11] These experiences lead us to believe that the increased use of unsecured and partially secured appearance bonds has the potential to dramatically reform the current bail system by reducing the number of people being held pre-trial.

Currently, dozens of Legal Aid clients have been released on unsecured or partially secured bonds and are making all of their court appearances. Time and time again, releasing people on these less restrictive options has proven to be beneficial for our clients, their communities and the City of New York.

In the Bronx, a Legal Aid client facing attempted murder charges was released on an unsecured bond in October, 2015. The client has not been rearrested, has made all appearances, and the case is likely to be dismissed on speedy trial grounds within the next few months. In Queens, a client charged with robbery, and dealing with addiction issues, is currently in a residential treatment program after a judge was willing to release him on an unsecured bond. The client has made all his court appearances and has not be rearrested. The help the client has received for his addiction problems as proved enormously beneficial.

In Brooklyn, a client charged with felony assault had $50 on him, and a judge willing to set a partially secured appearance bond of $500 so he could walk

[11] These have often been referred to as "alternative bail" because of their sporadic use. We refuse to accept that term. Unsecured and partially secured bonds are given the same standing in the Criminal Procedure Law as cash and insurance company bail.

out of arraignments. A felony first arrest, the case was never indicted and it was dismissed two weeks later.

In a Bronx domestic violence case, the defendant was accused of criminal contempt for violating a court-issued order of protection. The defendant was unemployed, but had a sister who worked as a full-time nurse. After collecting the necessary financial paperwork to show the court her good financial standing, the sister came in on the C.P.L 170.70 release date. When the defendant was not released pursuant to the statute, the judge granted the defendant's application for a partially secured surety bond and the sister gave the court 10% of the bond and promised to return the defendant to court. The defendant made his next two appearances before the case went to trial, where he was acquitted of all charges. Had he not been released, the pressure to plead guilty would have been enormous.[12]

In Manhattan, Legal Aid arraigned a case where the defendant was accused of assaulting a co-worker. The defendant had a number of prior contacts with the criminal justice system and an open case in another jurisdiction. The defendant was employed, but made only enough to get by and was unable to afford cash bail. The defendant's wife was also in the audience with $200 cash. The judge set a partially

[12] See Figures 2 and 3, attached to the back of this testimony. The incentive to plead guilty once bail has been set disproportionately skews conviction rates and harms those who cannot afford their freedom.

secured surety bond at $2,000, accepted the $200 as partial security for the bond, and swore in the wife as the surety. The defendant made all his court appearances and the case was dismissed after the District Attorney conceded they couldn't meet their burden of proof.

These examples prove that increased awareness of the statute, and its intended us, is a powerful force in informing the judiciary that the many other release options available to them are effective, and do not require money to be used.

Providing Help to the Judiciary

In spite of a clear legislative intent and a record of success, the promise of bail reform remains largely unfulfilled in New York. The question is why? The sample of cases provided above is hardly representative of the day to day workings of the bail system. If the legislature and executive reformed the bail system in the '70s, and the Court of Appeals and Supreme Court have offered further guidance dictating that people cannot be detained for their poverty, why are the above cases exceptions, and imprisonment on Rikers the rule?

The answer is complicated, clearly no single actor is responsible for the system's shortcomings. Change comes slowly, and unlike federal court, unsecured and partially secured bonds have never taken their proper place in the lexicon of the City's criminal courts. As Legal Aid has pushed for more unsecured and

partially secured bonds throughout New York City over the past few years the response from judges has been lukewarm. Judges have difficult jobs, they must make split second decisions about a person's liberty with a minimal amount of information and must hear dozens of cases in any given arraignment shift. If the judge has no experience in federal court, unsecured and partially secured bonds may be entirely new concepts them. They require additional paperwork, time and consultation with staff and attorneys.

Currently, the bench is near uniform in its rejection of unsecured and partially secured bonds. Given that nobody keeps regular track of this information, it is difficult to get an accurate idea of just how frequently this type of bail is being set. Review can only be done by combing through arraignment calendars by hand to look for notations by court clerks.

Recently we randomly selected two months of Queens County arraignment data and reviewed the calendars. The total sample of cases was 8,199. Of those cases 1,417 had bail set, yet we could identify less than a dozen instances in which judges had used an unsecured or partially secured bond to release somebody. There were far more instances of credit card bail, which we have found far less effective.

Conclusion

The Legal Aid of New York supports Intro # 1373-A because we believe that the additional information provided to judges will allow them to make more

informed decisions about unsecured and partially secured bonds. It provides an opportunity to overcome an obstacle to true reform: the widespread failure to implement a bail practice that does not punish the poor through the use of unsecured and partially secured bonds. By having a credible, uninterested, and entirely independent agency issue detailed recommendations about partially secured and unsecured bonds we believe that judges will be more willing to utilize the these options provided and release our clients to their communities and families.

We urge the City Council and Mayor to take this possibility seriously.

- Provide the pre-arraignment screening organization the proper time to complete this in-depth investigation into our clients' lives, the appropriate funding to staff the program, and the necessary resources to help friends and family complete the required forms and paperwork.[13]
- Simply asking our clients if they can afford bail will not be sufficient to convince judges to embrace unsecured or partially secured bonds. City investigators will need the time and resources to contact family, friends, employers, pull financial information and further verify

[13] One of the biggest complaints from judges, clerks and attorneys is that the forms take time and are difficult to understand. We have attached copies of these forms to the back of our testimony. Providing clients, attorneys and staff help completing this forms is important.

community ties. By making this a credible, thorough, and functional piece of the system it will be more likely to be embraced by reluctant judges.

- Ensure that this type of review is done for only those who would have bail set to begin with, and not the 70% of New Yorkers who are released on their own recognizance without any restrictions whatsoever.
- Make sure that the Department of Corrections makes the necessary accommodations to assist in this process, and work with stakeholders to ease the process in which incorrect bail decisions can be appealed.

Since 2013, this City, aided by both the City Council and the Mayor, has taken great strides in answering the call to reform. Supervised release, the expansion of community bail funds, court notification services, improved payment options, as well as recent legislation aimed at eradicating $1 bail and the 3% fee collected are all welcome steps toward a greater goal.

Yet, the current situation still presents an insurmountable problem for thousands of indigent defendants who cannot afford the hefty financial cost of freedom. Those who are too poor to post bail continue to languish on Riker's Island, where they face physical violence, lasting damage to family and community relationships, the loss of employment and a unconscionable disadvantage in the

plea-bargaining process. Many defendants who sit in jail long enough eventually reach the conclusion that it is more beneficial to plead guilty, and get released, than it is to continue to wait for a trial in jail.

We know this is not justice. And we know that it does not have to remain that way. Given the liberal leanings of New York's current bail law we know we have the power to eradicate the unnecessary detention of poor people in New York City today. We believe this bill is another step in that direction.

Figure 1
2016 LAS Release Rates By Borough

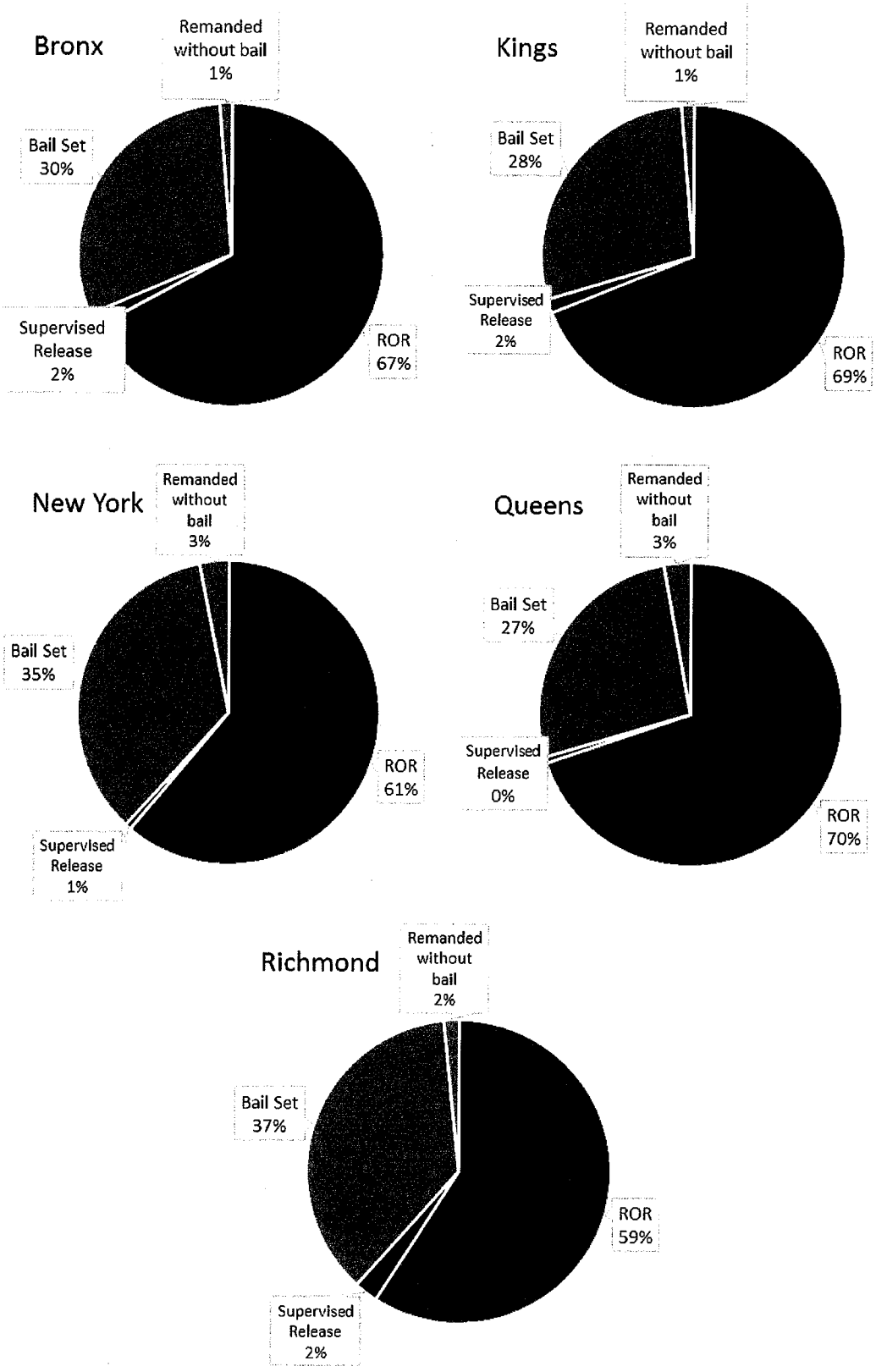


Figure 2
Guilty Plea by Release Status

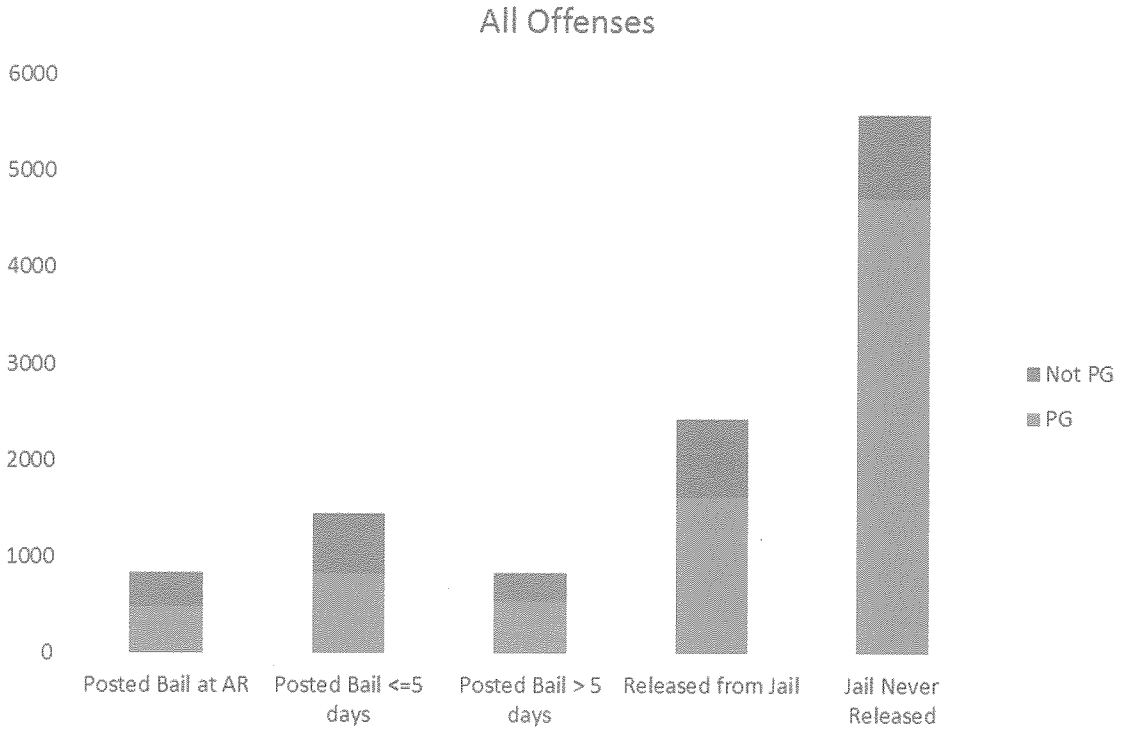
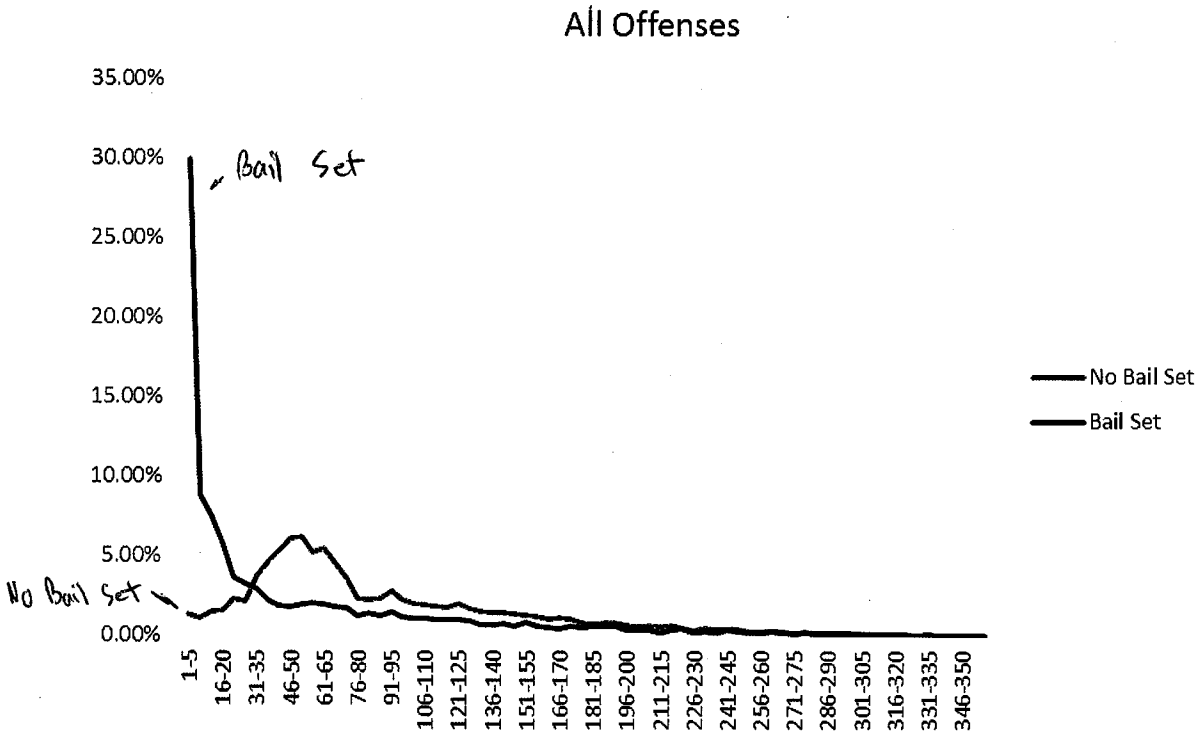


Figure 3

Distribution of Guilty Pleas by Bail Status by Case Duration[14]



[14] This excludes cases that are closed in arraignments. In cases that went beyond arraignments, 40% of clients with bail set plead guilty in the first two weeks. Comparatively, 1.3% of clients with no bail set plead guilty in the same time frame.

JUSTIFYING AFFIDAVIT
UNSECURED BAIL BOND
PART. SECURED BAIL BOND

SUPREME COURT OF THE STATE OF NEW YORK

county:_____ **part** _____

X

PEOPLE OF THE STATE OF NEW YORK

-against-

_____, DEFENDANT

DOCKET NO.:_____

ADJ. DATE: _____

ADJ. PART: _____

_____, being duly sworn, deposes and says:

That I am (the surety) (one of the sureties) (the defendant) named in the bail bond in the above-entitled action.

That I reside at _____.

That my occupation is _____.

That I am presently employed by _____, located at _____, and that I have been employed by said employer for a period of _____.

That I own my own business which is called _____, located at _____, and that I have been engaged in said business for a period of _____.

That my income for the past year was _____ ($_____) dollars.

That my average income for the past five years was _____ ($_____) dollars.

That within one month prior hereto I did not, for another in more than two cases not arising out of the same transaction, deposit money or property as bail or execute as surety a bail bond in any court having criminal jurisdiction or in any criminal action or proceeding.

□ That no previous application for this bail has been made.

□ That a previous application for this bail was made to _____, and was denied for the following reasons: _____, and except for such application no previous application has been made.

_____ **Dated**

_____ **County, City of New York**

_____

Affiant

Sworn to before me this _____ day of _____.

_____

Judge

_____

Notary Public

*(*Necessary only if not signed before a judge in open court.)*

BAIL BOND FORM

SUPREME COURT OF THE STATE OF NEW YORK
county:_____ part _____

PEOPLE OF THE STATE OF NEW YORK

-against-

_____, DEFENDANT

X

DOCKET NO.:_____

ADJ. DATE: _____

ADJ. PART: _____

BAIL BOND TYPE: _____

An accusatory instrument having been filed in this Court on _____, charging the defendant herein with the offense(s) of _____, and having been duly admitted to bail in the sum of $_____ ($_____) dollars,

(I) (We), _____, the defendant herein, residing at _____, by occupation a _____,

(I) (We), _____, the surety herein, residing at _____, by occupation a _____,

Hereby (jointly and severally) undertake that (I) (the above-named defendant) shall appear in the above-entitled action whenever required and will at all times render (myself) (himself/herself) amenable to the orders and processes of this Court, and that in the event that (I) (the defendant) do/does not comply any such requirement, order or process, (I) (We) will pay to the People of the State of New York the sum of _____ ($ _____) dollars.

To partially secure payment of which I, _____, the (defendant) (surety), herewith deposit the sum of ($ _____) dollars.

_____ **Dated**

_____ **County, City of New York**

_____

Principal

_____

Surety

Sworn to before me this _____ day of _____.

_____

Judge

_____

Notary Public

*(*Necessary only if not signed before a judge in open court)*

TESTIMONY

The New York City Council

Committee on Fire and Criminal Justice Services

Committee on Public Safety

Public Hearing on

Prosecuting Violence in City Jails

January 17, 2017

New York, New York

Presented by:
Peter Jones, Attorney-in-Charge
The Legal Aid Society Criminal Practice
Bronx Office
260 E. 161 St
Bronx, NY 10451
718-579-8903

Testimony of the Legal Aid Society

Thank you for the opportunity to testify concerning our experiences with the investigation of violence at Rikers Island. We submit this testimony on behalf of The Legal Aid Society, and thank the Committee on Fire and Criminal Justice Services and the Committee on Public Safety for inviting our thoughts on the subject. We applaud the Council for its concern about violence on Rikers Island.

Since 1876, The Legal Aid Society has been committed to providing quality legal representation to low-income New Yorkers. We are dedicated to ensuring that no New Yorker is denied access to justice because of poverty. The Criminal Defense Practice of The Legal Aid Society ("The Society") is the largest defender organization in New York City, representing a very substantial proportion of the persons charged with crimes in New York City. Our Bronx Criminal Defense office represents the majority of indigent people accused of criminal offenses in the Bronx. This practice includes the representation of prisoners on Rikers Island who are charged with crimes. The Legal Aid Society Prisoners' Right Project is one of the foremost prisoner advocacy groups in the country. Over many years it has advocated for the reduction of violence at Rikers Island. Together with the United States Justice Department, it is now in a monitoring phase in a class action, *Nunez et al. v. City of New York et al.*, regarding brutality of prisoners at Rikers. The Criminal Practice Special Litigation Unit observes city-wide trends in policing, prosecutorial, and judicial decision-making, prepares strategic impact litigation and consults on policy reform with multiple levels of government. At the present time it is litigating

a class action Complaint, *Jane Doe 1 et al. v. City of New York et al.*, regarding the rape of women prisoners at the Rose M. Singer Center.

The Legal Aid Society communicates daily with individuals confined in New York City Department of Correction's ("DOC") custody about a wide range of issues including guard brutality, rape and sexual abuse. Sexual violence is at record proportions within DOC, part of the unprecedented levels of violence in DOC documented by the New York City Board of Correction ("Board") in its report on stabbing and slashing incidents.[1] Sexual violence is a product of the long-standing problems in DOC recognized by the Mayor[2] and the "deep-seated culture of violence" identified by the United States Department of Justice.[3]

Throughout the Society, on a daily basis, we defend people who are charged with crimes that occur on Rikers Island. We also investigate and litigate various forms of violence committed by correction officers against prisoners.

Defense Services for Prisoners

The Bronx District Attorney's Office recently opened an office on Rikers Island that was intended to facilitate the prompt investigation and prosecution of crimes committed by prisoners against other prisoners and against correction officers. Assaults *by* staff against inmates are

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[1] The Board of Correction documented a 335.4% increase in the rate of slashing and stabbing incidents from 2009 to 2014. The number of slashing and stabbing incidents increased 260.0% from 25 in 2009 to 90 in 2014, during a period when the average daily population of the jails dropped 17.3%, from 13,194 inmates in 2009 to 10,909 inmates in 2014. Board of Correction Report "Violence in New York City Jails, Slashing and Stabbing Incidents," at p. 1, April 27, 2015, available at: http://www.nyc.gov/html/boc/downloads/pdf/reports/Slashings_stabbings_CRP_2015_04_27_FINAL.pdf.

[2] "The problems at Rikers have literally been decades in the making. The things that have come out in the last year or two didn't just happen recently – they were the results of policies and choices and realities that went on for decades." Transcript of December 17, 2014 press conference available at: http://www1.nyc.gov/office-of-the-mayor/news/567-14/transcript-mayor-de-blasio-commissioner-ponte-end-punitive-segregation-adolescent.

[3] See Department of Justice "CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island," at p. August 4, 2014, available at: p.3.

prosecuted by a different office. However, the very close nexus between inmate assaults on staff, and staff assaults on inmates, requires cooperation and coordination among these offices.

Our experience representing dozens of inmates injured by staff, and reviewing thousands of use of force records, has shown us that many arrests for assaults on staff have their roots in the use of force by correction officers. Assault on staff is the classic "cover charge" meant to justify a bad use of force. It is imperative, therefore, that the district attorney's office obtain the use of force investigation materials routinely generated following use of force incidents, and in turn provide those to defense counsel. For example, pursuant to department policy and the *Nunez* consent decree, within a few days of any use of force incident, a member of the DOC Investigation Division will have reviewed written statement by all involved parties, the "Injury to Inmate" report on which clinical staff document any injuries, and any videotape of the incident. Given the blanket video surveillance being rolled out aggressively pursuant to *Nunez*, video footage should be available of most incidents, and is part of the "Preliminary Review" file. Clearly, if these materials indicate credible concerns that the inmate was in fact the crime victim rather than perpetrator, they should be obtained at the earliest possible moment.

We note that the District Attorney is in the early implementation stage of the new office at Rikers. We understand, however, that procedures are now in place that provide a "Preliminary Review" investigation summary that includes available video of any serious incident. Such a summary is usually available within one week of the incident.

If we are to have a fair system of justice for prisoners accused of crimes, along with the ability to gather evidence more efficiently, there should be equal emphasis on early and complete disclosure to the defense lawyer. The utilization of technological improvements over the last year and a half (audio and particularly video) have emphasized creating and promoting greater

confidence in the integrity of enforcement and prosecution. Together with the more effective information gathering should come an obligation for prompt disclosure of generated recordings and investigation findings as well as equal access to the areas where a defense investigation is warranted.

To facilitate an effective defense of people accused of crimes at Rikers we believe the following are essential:

- Early discovery of video and phone recordings
- Access to the facility to investigate the scene
- Prompt receipt of generated incident reports
- Provision of reports of follow up investigations
- Provision of DA generated write ups and reports
- Implementation of and sharing of protocols/guidelines regarding procedures

Investigation of Brutality and Rape

One of the important functions of the Bronx District Attorney is to eliminate the "deep seated culture of violence" that has existed for too long on Rikers Island. In an attempt to remedy the endemic of rape and sexual abuse in the City jails, in April 2015, the New York City Public Advocate Letitia James petitioned the Board of Correction to adopt rules consistent with national standards that the Department of Justice ("DOJ") had promulgated pursuant to the Prison Rape Elimination Act of 2003 ("PREA"), 42 U.S.C. § 15601 (codified in 28 C.F.R. Part

115). In late 2016, the Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities Minimum Standards, were adopted by the Board.[4]

While the Board has taken steps to redress sexual abuse and rape of inmates in DOC custody at Rikers Island, prosecutions of DOC staff for these illegal and egregious acts have been lacking. New York State has long recognized the coercive power correction officers wield over incarcerated women, and the related risk of rape and other sexual abuse, by criminalizing all sexual activity between incarcerated individuals and correctional staff in New York Penal Law § 130.05(3)(f) and New York Penal Law § 130.25(1). Yet, for the women at RMSC this law fails to protect them because it has been largely unenforced by the District Attorney. We believe that a more vigorous approach to the prosecution of sexual assault by officers is necessary in order to help solve this problem and prevent the District Attorney from playing a supporting role in perpetuating the problem. In sharp contrast to the investigation of inmate crimes, once a woman reports that she has been raped or otherwise sexually abused, weeks or months can pass before an investigation begins, if at all. Regardless of what an investigation reveals, officers are rarely disciplined, and women are rarely informed of the outcome. The women are treated as adversaries rather than victims of rape and/ or sexual abuse.

Clients Report a Pervasive Culture of Sexual Abuse at RMSC

The culture of sexual abuse at RMSC is perceived by many of the women that we have interviewed as an "open secret" within the facility. It is common knowledge that correction officers are never arrested or prosecuted for the crimes they perpetuate against the women at

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[4] Available at:http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter5eliminationofsexualabuseandsexua?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_T40C005:

RMSC. Among the examples we have seen at Rikers over the past several years are the following:

- A mentally ill teenager detained at RMSC reported to us that she was groped during a suicide attempt. A male correction officer who had been verbally sexually harassing her discovered her while she attempted suicide and entered the cell and tore down the sheet she attempted to hang herself from and then proceeded to fondle her breasts.

- Women prisoners have reported male correction officers making sexual advances and remarks and then proceeding to masturbate in common areas such as the dayrooms or the control center when they thought it was only themselves and the female inmate.

- Several women have reported correction officers entering their shower areas and watching them shower while sexually verbally abusing them.

- A woman reported that in exchange for a coveted post on the outside work-detail unit at RMSC, she and other women were required to perform oral sex on male correction officers to keep their inmate work assignments where they were allowed to pick up cigarette butts left outside of the facility.

- Several women have reported a culture where women are "passed around" from male correction officer's laps in their housing areas. The expectation was that the male officers are entitled to abusively fondle and touch the women on their breasts, buttocks and vaginal areas as a source of amusement to "pass the time." If the woman refused, they were shunned by the officer and often denied basic entitlements such as hygiene items and out of cell lock out time.

- Several women have reported a practice known as "show me for show me." These women reported that correction officers shine lights with their flashlights into their cell windows in the evening hours or enter their cells and demand that the women expose themselves to the officers. In exchange, the correction officers will expose themselves and in some cases masturbate. Sometimes a token of contraband will be given in exchange for the woman's silence.

- One woman reported that she became pregnant while detained at RMSC for over a year. She was repeatedly raped and sexually abused by more than one correction officer. She miscarried while in custody. She was eventually sent back to RMSC where she received constant threats and mistreatment by DOC staff because she reported the abuse. The mistreatment and stress became so deplorable she attempted suicide and was hospitalized for mental health treatment several times during her detention. She was eventually moved out of DOC custody.

Conclusion

None of the complaints mentioned above were ever prosecuted or even investigated in any meaningful capacity by the District Attorney. We believe the failure of the District Attorney's office to bring meaningful investigations and hold DOC staff accountable by prosecuting them for the sexual abuse and rape of inmates they are charged with the care, custody, and control of, has perpetuated a systemic culture of rape and sexual abuse, particularly of female inmates in custody.

CJA | NEW YORK CITY CRIMINAL JUSTICE AGENCY

Committee on Fire and Criminal Justice Services

City Council Hearing: Prosecuting Violence in City Jails, Int. No. 1373 – In relation to requiring certain types of bail recommendations.

January 17, 2017

Testimony of Peter C. Kiers

Acting Executive Director, NYC Criminal Justice Agency (CJA), Inc.

As you know, the NYC Criminal Justice Agency (CJA) is an outgrowth of a 1961demonstration program of the Vera Foundation for the purpose of eliminating the sole dependence on money bail to achieve pretrial release. The developers of the project rightly realized that the reason why jails were full was because arrested persons could not afford the bail. Persons who could afford the bail were released, while those who could not afford the bail were left to sit in jail. Money was the deciding factor.

The Manhattan Bail Project demonstration was a success using interpersonal contact to reach out to a defendant and see his or her individual personal characteristics and community ties. Today, using more sophisticated assessment, CJA interviews defendants arrested and held by the Police Department, and produces an informational and release recommendation report for the Court, which is distributed as well to the DA and Defense. The result, based upon 2016 data, is an approximate 73% release-on-recognizance rate of arraigned persons whose cases are continued beyond arraignment.

Recently the City has funded a supervised release program in all boroughs giving the court an alternative non-monetary release option for defendants who were likely to receive a money-bail release condition.

Additionally, CJA provides a full range of pretrial options to better assure that defendants who are released receive outreach from us to return to court. Notification of upcoming court appearances - both several days before and on the morning of the court date - using interactive computerized calls, text messages, and letters give appropriate court location information and non-compliance warning. Our Failure-to-Appear Units

identify persons who did not appear in court and the staff reaches out to arrested persons for up to 29 days, counseling them to return voluntarily. The Units have been successful in getting over 40% to return with additional warrant charges dismissed.

The agency is cognizant of those who leave court with low cash bail and who are slated for transport to Rikers Island and other borough facilities. With information gleaned from the defendant, our Bail-Expediting (BEX) Units contact family and friends to alert them about the arrest and the bail amount and to see if they can come to court to post bail before the defendant is transported to a correctional facility. CJA has been very successful in working with DOC and OCA in placing "holds" keeping the defendant at the court so the surety can come to bail the defendant from the court.

Most recently, CJA has been working with the charitable bail funds in Brooklyn and the Bronx in helping them to identify defendants with no available sureties, and placing holds on defendants who have been identified as eligible or likely candidates for their program. These bail funds are being expanded to other boroughs as well.

The core principle in all the initiatives that I just mentioned is the exposure of the arrested person to people who will work with him or her during the pretrial period to encourage court appearance and stress to them the importance of not getting rearrested.

Encouraging a defendant to truthfully participate in the pretrial interview, reaching out for court-date reminder, helping him or her to contact family or friends for release, supervising him more intensely to ensure he returns to court and avoid rearrest and giving him options to address certain behaviors such as drug treatment, anger management or employment/school. Or assisting bail funds who work with the defendant while he avoids jail at no cost to him, provides services that are personal in nature. Even cases processed through a charitable bail-fund are not positively influenced as much by the cash amount, as by the personal interaction – the person-to-person contact that is built in to each initiative.

Money as a Stakeholder

The bill before us today is different. It rests solely on assessing an amount of money to be levied. While recent initiatives in NYC focus on the infusion of making the surety more personal in the process, the language of the bill focuses on using money as that which influences the release decision. When we put into law or statute a mechanism that focuses on using money bail—no matter what the amount—the court relinquishes a certain discretion that is solely the courts, and only the court's, prerogative. If you think about it, only the court can simultaneously maximize the three-pronged consideration necessary for pretrial release – a) weighing the liberty interest involved in the presumption of innocence and the presumption of release (as stated in Salerno: "Liberty

is the norm, and detention prior to trial, or without trial, is the carefully limited exception;") b) making choices that assure court appearance; and c) guarding the public safety in a way that is consistent with the law. Without this personal dynamic, how can an amount of money better assure safety? Can money guarantee appearance better than non-financial or non-secure personal release bonds? Does money better ensure liberty? We already know that is not accurate.

Regarding the proposed bill, how do we arrive at an established amount that a defendant can afford? What do we consider: Salary? Bank accounts? Assets and property? Cost of defending oneself? Number of dependents? Outstanding debt?

And whose money are we talking about – the defendant's or a personal surety? The work necessary to ascertain this information is formidable. And once an amount is determined, and the information goes to the defense attorney to talk about a money-bail alternative with his client, then money is on the same playing field as the other forms of release. What was an individually-informed decision by the Judge to grant ROR, Supervised Release or unsecured personal bond will become largely a mechanical one determined by the nature of the charge, and an amount that a person can afford.

What is the intention of this law?

As I can see, the law is meant to reduce the number of defendants brought to Rikers Island and other Correctional facilities by providing the attorney with defendant financial information obtained by the pretrial services agency, which could be presented to the judge allowing him or her to have more factual knowledge when setting a monetary bail. It is presumed that the judge will use the information to set a bail so that the defendant can bail him- or herself out. It also presumes that the court culture will change if the judge should have this information. The DA will also have the opportunity to speak against it, and to make a bail recommendation. A research report by CJA entitled: *Factors Influencing Release and Bail Decisions in New York City,* by Mary Phillips, has shown that the most important influence in the court's release decision is the DA's bail request.)

Without cultural change, will the court and other players buy into the bail scheme that this law mandates? Just by making it a law, we think not.

What to do right now to alleviate the number of defendants going into DOC from Arraignment?

The estimated current cost of implementing this proposal would be approximately $2,300,000 including personnel and fringe, shift differential, overtime and OTPS. The

number of defendants held on bail in 2016 was about 41,586. However, only 40% of them were employed, and their median earnings was $400 per week. Most of these defendants are unlikely to be able to afford any amount of bail. If the Council is being asked to allocate so much money to facilitate the release of small numbers of defendants on bail, it would make more sense to fund proposals that would give you more "bang for the buck." The following suggestions may be helpful.

1. The Mayor's Office of Criminal Justice along with CJA will be working on a new ROR Risk Assessment that will be updated and hopefully will expand the number of defendants recommended for ROR. This assessment can also be used to identify defendants who can be safely released under supervised release with appropriate release responses. We would certainly recommend funding the expansion of supervised release so that such expansion with graduated responses citywide can service more defendants who would ordinarily be given bail.

2. In the short term, working with charitable bail funds to expand their use

3. Providing money for judges training on the arraignment process and extoling the purpose, law, and liberty interests of the release decision.

4. Working with the Unified Court System in New York City to Stress the other forms of bail allowed by law but usually ignored.

5. Provide funding for the pretrial services agency to review the status of detained defendants on an ongoing basis to determine if there are any changes in eligibility for release or other circumstances that might enable the conditional release of the defendants and provide the court with needed information to facilitate the release under appropriate conditions.

The goal should be to create multiple, non-cash options to help judges realize the actual release of bailable defendants by reducing the use of money. The goal should be elimination of money bail and each small decision that is made regarding the judges release decision should keep that in mind as we move to achieve the ultimate goal. The philosophical and ethical principle of creating a "personal" approach in fashioning each defendant's release—ROR, supervised release, unsecured personal bonds, working with charitable organizations—have their roots in the original concept of bail. Without the use of money, more defendants become eligible and are able to participate. The court, the people and the defendant are the stakeholders in the release decision process. Money should never be a stakeholder at the table. If the focus is shifted to any version of the current money-bail system, it will shift the decision-making focus and hinder the "personal" release decisions that are necessary for the simultaneous consideration of liberty, assurance of court appearance, and public safety.

In conclusion, I want to thank the Council for its concern about this very critical aspect of pretrial release, and for the opportunity you have afforded me and others to offer our comments and suggestions.

1/17/2017

TESTIMONY OF NEW YORK COUNTY DEFENDER SERVICES

Thank you for the opportunity to be heard on this critical issue that must be at the heart of any meaningful attempt at criminal justice reform. We testify today both to applaud any attempt, such as this one, at bail reform but also to advocate on behalf of a more radical rethinking of this city's procedures and practices in this area.

Pretrial detention, that is, the widespread incarceration of mostly indigent people who have not been found guilty of any wrongdoing, is inherently unjust. The presumption of innocence is one 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.

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. The proposed amendment introduces a most welcome element: a determination that recognizes what should be a fundamental truth, judges must tailor bail to fit the resources of the defendant. What concerns us is that this ameliorative measure will reduce the always tenuous incentive for more significant reform. 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 an extensive system of supervised release to be used when appropriate. New York must follow suit.

The proposed statute's explicit reference to insurance company bail bonds is also troubling as this is a form of bail that should be at least strongly disfavored if

not outright banned as they have been elsewhere. These bonds introduce the elements of commerce and profit-taking where they most certainly do not belong. A person's liberty and constitutional rights should not be a venue for commercial exploitation and predictably the resulting industry is rife with abuse and bad faith. What's required here is not further normalization in the form of this statutory language but rather a de-emphasizing of this improper practice.

Pretrial detention due to poverty harms not only those directly detained but also our criminal justice system as a whole. The cost to society is considerable. It consists of not just the financial burden of jailing people, or the increased recidivism, or the disenfranchisement of large swaths of its population, but also in a general derogation of respect for the fundamental principle that the rich and poor alike are entitled to equal justice under the law. If this proposal becomes a means and not an end, if it spurs or contributes to a larger conversation on deeper, urgently-needed reforms, only then can it be said to succeed. Thank you.

TESTIMONY OF:

Nick Malinowski
Brooklyn Defender Services
RE: Int. No. 1373-A

Presented Before
The New York City Council Committee on Fire and Criminal Justice and Committee on Public Safety

January 17, 2017

Brooklyn Defender Services (BDS) provides high-quality multi-disciplinary criminal, family and immigration defense, civil legal services such as housing, benefits, education, social work support and community-based education to approximately 40,000 indigent Brooklyn residents every year.

Our legal practice includes specialized attorneys who represent particularly vulnerable groups of clients, such as veterans, victims of trafficking, people with mental illness, and adolescents. Our specialized social workers and jail services professionals spend an enormous amount of time in the jails helping people cope with the experience of incarceration. We help our clients obtain medical and mental health treatment and address the violence and lock-downs that occur all the time, preventing our clients from having family visits, from getting fresh air, even from being produced in court to hopefully move their case along.

BDS staff are on the front lines working to mitigate the impact that bail policies have on our clients, including the extreme violence, harsh solitary confinement practices, separation of

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families, loss of employment and educational opportunities, and inability to perform parental functions as well as the depression, desolation, trauma and devastation that even a few days in jail can bring. For our clients who can afford to pay bail, other harsh collateral consequences follow, such as a shortage of money to pay for rent, food or other necessities; this impact is felt throughout entire neighborhoods as local economies suffer when resources are tied up in the court system rather than being spent at local businesses. While paying cash bail directly to the court usually means funds will eventually return, because judges privilege commercial bonds over cash bail, many of our clients rely on commercial bail bonds, which extract millions of dollars in unrefundable fees from the communities that can least afford it.

In 2015, approximately 13,000 people arraigned in Brooklyn courts spent time on Rikers Island. To say that New York's current bail practices are a distortion of justice is an understatement. Our reliance on money bail and pre-trial incarceration as a tool by judges and prosecutors to encourage poor people to take guilty pleas is part of the reason that there are significant racial and class tensions in neighborhoods all across the state.

We would like to thank the City Council for allowing a hearing on this topic and considering this potentially useful legislation; we specifically thank the Committees on Courts and Legal Services; Public Safety and Fire and Criminal Justice Services for your continued support and leadership in pushing for reforms in the criminal legal system.

INTRODUCTION

As inconsistent as this is with the current national zeitgeist, defenders' experience about the use of bail is that it is getting worse. Bail and other pre-trial justice issues are no longer collateral damage associated with a serious and provable accusation. Instead they seem to be made in a highly arbitrary and seemingly careless way, typically without anything more than the bare minimum of verified facts about the case at hand and nothing more than the most cursory inquiry into the circumstances of the person who has been accused of, but not convicted of, a crime. After a judge makes a release on recognizance, release on bail, or detention decision at the onset of the case without much information, there are few genuine avenues to revisit this decision as the case progresses. And yet the decision to set bail, and the amount, are among the most significant single decisions made by a judge in every criminal case. Pre-trial incarceration is the single biggest factor in the likelihood of a jail or prison disposition on a case.

Public defenders seem to be the only actors in the criminal justice system actively working to preserve our clients' pre-trial liberty. Prosecutors almost never stipulate to bail reductions, and judges rarely allow them, despite people sitting in jail for months – strong evidence that the initial bail was set too high, contrary to the spirit of state and federal bail laws. The lack of discovery and near total absence of trials (two issues that go hand in hand) means that in many cases there is never a significant inquiry into the facts of the case.

Our current bail and pre-trial practices are responsible for many people getting deported, losing their jobs, dropping out of school, losing housing, having lack of continuity in their medical or mental health care and other dire and shocking outcomes. Reducing pre-trial detention populations can and will have a profound impact on every aspect of the criminal legal system in New York City, including the overuse of plea bargaining, which itself results in a lack of accountability for all aspects of arrest, prosecution, and judicial decision-making.

Although traditionally seen as a way to encourage people to return to court or face the loss of their money, it is now confirmed that financial conditions of release do not actually impact the likelihood that someone will return to court as much as we might think. National research has shown that unsecured bonds, with no money upfront, can be just as, if not more effective than money bail[i]. Yet they are almost never used. The work of charitable bail funds in New York City, such as the Brooklyn Community Bail Fund, have also disproven this belief about money, as 95 percent of their clients, all people who prosecutors and judges believed would not return to court absent a financial stake in the case, in fact return to court without a financial incentive.[ii] In addition, there is no way around the truth—the current system as applied discriminates against the poor and racially marginalized groups. Almost all our clients incarcerated in lieu of posting bail are black or Hispanic; citywide 89 percent of the daily population of the jails is black or Hispanic[iii]. The impact on entire communities that are already struggling with the challenging prospects for living in NYC, particularly in gentrifying Brooklyn, is seen by Public Defenders every day.

And yet New York's bail statute, as written, is among the most progressive in the country. Our problems with bail and pre-trial detention are not the result of the statute, but of the flawed systems that operate it. Every actor in the system should have a transparent plan for reducing our reliance on pre-trial incarceration, the devastating effects of which are well documented. If pre-trial release is indeed a goal at the onset of a case in which bail is set, what is the prosecutor's role in working toward this in as many cases as possible? What is the judges' role? What is the role of Corrections? Why is it so difficult for Public Defenders here in New York City, and around the state, to get discovery from district attorneys so that we can properly evaluate a case? With legitimacy becoming an ever more-present concern for those of us dedicated to making the criminal legal system work, the punitive misuse of bail has become a flashpoint that, should it be left uncorrected, threatens the foundations of our work, and society as a whole.

BACKGROUND ON BAIL IN NEW YORK STATE

Although bail was used before the existence of the United States, it was the Federal Bail Reform Act of 1966 that prompted many states to pass laws authorizing release on recognizance for nearly all defendants and established risk of failure to appear as the only consideration for conditions of release. The New York State legislature, in 1970, attempting to address many of the same problems we are discussing today, added additional forms of bail to the NY statute, such as partially secured and unsecured surety and appearance bonds, and further required judges

to consider people's ability to pay. When the federal Bail Reform Act of 1984 amended the 1966 law to allow jurisdictions to consider risk to public safety in release decisions, New York State did not follow suit. Because of this, New York's bail statute is among the most progressive in the country.

When determining release conditions the law requires courts in New York State to consider only certain factors (with a few statutory exceptions) related to securing the defendant's appearance in court, such as: character, reputation and mental condition; employment and financial resources; family ties and length of residence in the community; criminal record; juvenile or youthful offender record; and previous failures to appear. The weight of the evidence and possible sentence to be imposed should the case end in conviction can also be considered. Judges have at their disposal nine methods to secure return to court: cash bail, insurance company bond, secured surety bond, secured appearance bond, partially secured surety bond, partially secured appearance bond, unsecured surety bond, unsecured appearance bond. There is nothing in the law that expressly prohibits them from setting other non-financial conditions such as curfews.

Although Courts should always use the least restrictive means possible to secure return (and some jurisdictions require a finding of why less restrictive options are not used), it is the experience of Brooklyn Defender Services that judges in Brooklyn overwhelmingly rely only on two of the MOST restrictive options: Cash Bail and Insurance Company Bond; this is consistent with state level research on the topic[iv]. According to the Criminal Justice Agency, judges in New York City, in general, do not consistently have a familiarity with the many forms of bail they are authorized to set – such as unsecured bonds, even though defenders have been pressing the courts to use other forms of bail for years. In addition, until recently the clerks were also generally unfamiliar with the forms they needed to fill out for any other form of bail.

BAIL SETTING PRACTICES IN BROOKLYN

In 2012 there were 357,042[v] prosecuted arrests in New York City, affecting predominantly people of color: 49 percent of defendants in criminal cases that year were Black and 33 percent were Latino. Just 12 percent were White, despite this demographic making up the majority of the population in our City as a whole. About 80 percent of people arrested in Brooklyn are represented by a Public Defender due to indigence.

The average case has changed since the mid-1990s when felonies and index crimes were a larger percentage of the public defense caseload. Now half of cases that result in jail time in New York City (pre-trial or otherwise) involve misdemeanors or lesser charges. In 2015, there were approximately 95,000 cases in Brooklyn, 80 percent of which were misdemeanors, violations or infractions. There were 11,206 cases involving only violations or infractions, more than 6,000 of which were consumption of alcohol cases[vi]. Citywide, roughly 20 percent of cases involve an injury to a person and about 3 percent of cases involve weapons. According to New York City's Criminal Justice Agency, for about half the cases where a defendant is detained and the top

charge is a misdemeanor or lower level charge, the only time spent incarcerated is during pre-trial detention. This suggests a punishment disproportionate to the offense, and a lack of careful calibration of bail amounts by judges and prosecutors. Citywide, bail was set on 241 cases where the top-charge was a violation or infraction – not even a crime[vii].

About half of our cases in Brooklyn are disposed of at arraignments. Of the rest, roughly 68 percent of the time our clients are released on their own recognizance (ROR) while the others involve some kind of financial conditions for release. Overall, bail was set in roughly 15,000 cases in Brooklyn in 2012. In non-felony cases where bail was set, 72 percent of defendants had bail set at less than $1,000. Nearly 90 percent of non-felony defendants cannot afford $1,000 bail and will be incarcerated as a result, on average for around two weeks. Between 20 and 25 percent of people charged with felonies are able to post bail of that amount at arraignments. Even with bail of $500 or less, 23 percent of people charged with felonies and 43 percent of those charged with misdemeanors and infractions were in jail for the entire duration of their case. Overall, citywide, in 44 percent of felony cases and 47 percent of misdemeanor cases, people are held for the duration of their pre-trial experience. At BDS we often ask judges for reductions to financial conditions after a client has spent a significant time incarcerated; by this time, it is clear that they are unable to pay. Typically judges ignore these appeals, suggesting that there has not been a change in circumstances such that bail should be reduced. To us, this can be viewed as intentional detention of presumably innocent defendants.

Of all cases where bail was set citywide in 2015, less than 13 percent of defendants were able to post the amount necessary to gain release at arraignment. Just 3 percent of people charged with felonies and 5 percent of people charged with misdemeanors were able to post bail of $7500 or more at arraignment. There were also large discrepancies between boroughs: with people most likely to be able to afford their bail when charged in Staten Island, and least likely to be able to afford it in Manhattan. If bail was carefully calibrated to a person's ability to pay, there would not be large discrepancies in these numbers.

In Brooklyn alone, almost 5,000 people in 2015 had bail set at arraignments that they were never able to afford; they then spent the remainder of their case in City Jails, at a cost of nearly $600 a day to the City, until they plead guilty to get out jail and go on with their lives.

Over the past couple of years, bail and preventative detention have been given an elevated level of scrutiny by actors looking to reform the criminal legal system. We thank the City Council for continuing to play a role in probing every possible area for reform. Even so, there remains something of a misunderstanding about how financial conditions of release, or bail, are actually created and acted on on a case-by-case basis. With as many as 75 percent of people who churn through the local jail system being pre-trial detainees rather than people convicted of crimes, the common narrative is that people are in jail simply because they are poor. This omits central aspects of the process and suggests an abstract, passive process through which people simply find themselves locked up on Rikers Island. In reality, people end up on Rikers Island because

they have been accused of a crime, and a judge has set financial conditions of release above and beyond what they have the ability to afford. Long-standing research suggests that District Attorneys, despite not having explicit authority under the statute to be heard on matters of bail, have an outsized role in determining conditions that people cannot afford. It is the financial recommendation of prosecutors – made without even a cursory glance at a person's financial resources – that remains the most persuasive piece of the judicial determination. Meanwhile, Public Defenders typically know more than other parties in the courtroom about our client's financial resources, yet we are routinely ignored by judges on this issue.

That major disparities exist in bail setting practices between boroughs in New York City – discrepancies that appear even more drastic when considering counties upstate with less-resourced public defense offices – suggests that financial conditions are set in an arbitrary manner. While judges are required by New York State law to consider people's ability to pay when setting financial conditions for release, the very fact that we have such an extensive pre-trial population in New York City, provides solid evidence that this is not being done in a thorough, well-researched manner. The irrational and arbitrary nature of these decisions is further reflected by inverse relationships between people's apparent risk to return and bail amounts. We have clients who have missed many court dates yet receive financial conditions of release as low as $500 and other clients with strong community ties, and sterling return rates who are nevertheless required to post bail as high as $50,000 or even greater. We also have clients whose financial resources are less than $100, a bail amount unheard of in New York City. According to the Criminal Justice Agency, just 46 percent of male defendants and 38 percent of female defendants were employed or in school at the time of their arrest in 2015. The system, in so far is it relates to careful calibration of the lowest financial conditions possible to secure a person's return to court, is out of whack.

To provide just one example: we recently had a case where the family of a man accused of driving with a suspended license was in the courtroom at the time of his arraignment. They were there to vouch for his significant community ties and to offer themselves as responsible to return him to court for each court date. The judge however was not keen on releasing the man, because she felt that his driving with a suspended license showed an interest in flouting of the law. (Take note he has only been accused of a crime at this point). The judge asked the prosecutor if she was recommending bail, and the prosecutor said yes: $1000. Our attorney consulted the family as to whether this was an amount they could pay, and they responded that they had $700 in cash on them to secure the man's release. Our attorney relayed this message to the judge, who then set bail at $750 cash, stating on the record that she was not worried about the man's return to court, but with his continued violation of the law – a fact that had yet to be proven. And so a man with strong community ties, family in the courtroom available to secure his release with some financial resources, instead went into NYC Corrections custody, at a cost to the City of $600 a day.

It is not unheard of for judges in the arraignment part in Brooklyn to tell a defendant that the court intends to set bail and at the same time make a non-jail offer like time-served or probation. This type of coercion is not seen as improper by judges and prosecutors who are focused on the reality that everyone will eventually plead guilty. This in turn facilitates the system to shuttle a larger and larger volume of defendants in and out of the system rather than freeing up judicial resources to spend more time on the cases that need the attention.

We recently wrote about low-level drug cases, just one issue where people may be incarcerated based only on an accusation by the New York Police Department[viii]. Many of these cases involve allegations of possession of amounts of "drugs" so small that they are not easily identified. We have had clients who are arrested, have bail set they cannot afford, are incarcerated on Rikers Island, and then released days later after a lab tests confirm that they never possessed drugs in the first place. This type of story cannot be considered simply as a collateral consequence of other judicial policies. This should never, never happen.

THE NEGATIVE CONSEQUENCES OF PRE-TRIAL INCARCERATION

As stated above, roughly 75 percent of people on any given day in New York City jails are there in pretrial detention – presumed innocent under the law and ostensibly waiting for their day in court. In 2013, Brooklyn Defender Services arraigned 26,650 individuals on top-count misdemeanor charges; of these, 51 percent (13,507) had their cases disposed of at arraignments through guilty pleas, dismissals or ACDs (adjournment in contemplation of dismissal). The breakdown was: 6,886 ACDs; 628 outright dismissals; 4,310 guilty pleas to lesser, non-criminal violations or infractions; 269 other types of dispositions.

Another group of 1,416 clients pled guilty to misdemeanor charges at arraignment – either giving them a new criminal record or adding to an old one – in exchange for their freedom after learning that bail was likely to be set and having no way to pay. Of these clients, 428 accepted pleas that included brief jail sentences.

Financial conditions – almost all either cash bail or insurance company bond – were set in 14 percent of the remaining cases that did not dispose at arraignments, and BDS tracked 1,325 of these. Of this group, 940 were never able to afford bail, and 870 were held on $2,000 or less. Of those held on $2,000 or less, 92 percent eventually plead guilty; of the control group at liberty, just 40 percent pled guilty and only 7.5 percent pled guilty to a misdemeanor, the rest pleading to non-criminal violations. **An incarcerated client was nine times more likely to plead guilty to a crime than one who was released.** Overall, for the group of clients held in on bail, 38 percent had cases resolved by dismissal, or a plea to a violation or ACD, compared to 88 percent of "out" clients. **Zero cases in this study of incarcerated clients went to trial – a staggering statistic considering that the purpose of bail is to secure a person's appearance at trial.**

There is a saying in our office that these statistics bear out: if you are in you stay in and if you are out you stay out. National statistics show the same: when controlling for other indicators such

as severity of the charges, being incarcerated during the pendency of a case inevitably leads to less favorable outcomes. The Bureau of Justice Assistance, a division of the U.S. Department of Justice, has found that "[t]hose who are taken into custody are more likely to accept a plea and are less likely to have their charges dropped.[ix]" Numerous analyses included in a report by the VERA Institute of Justice[x], as well as the experiences of BDS clients, affirm this finding. Moreover, research shows that, of those defendants who accept plea deals, those who are detained before trial were far more likely to accept harsher plea deals and receive prison or jail sentences. In addition, of all those who receive prison and jail sentences, those who were incarcerated pre-trial receive sentences that are, on average, three times longer. Furthermore, additional studies have shown that even short jail stints, for people accused of low-level crimes, actually increase the likelihood of rearrest in the future[xi].

It should be obvious to anybody who has experienced even a couple of days in Rikers Island, that when facing the prospect of weeks, months or years inside awaiting trial, a person is more likely to accept a plea that involves an admission of guilt than somebody who is free until trial, regardless of whether or not they are in fact guilty.

The following are a few stories of BDS clients that demonstrate how bail exacts guilty pleas from poor people.

> TB: A thirty-five year-old Black male, on social security disability assistance. He had a youthful offender record, which was sealed, and had successfully completed a five-year probation period. He returned from two month trip visiting family in the mid-west to fabricated revenge allegations by a former girlfriend. Despite no previous warrants, he had bail set at a level he could not afford. Once in jail he no longer had access to his phone and contacts, which would have enabled him to contact his alibi and prove his innocence. After two weeks in jail, he pled guilty to harassment violation. He's currently appealing the conviction.
>
> CO: 18 year-old Black male employed part-time. He was arrested for marijuana possession following a possibly illegal search by NYPD. A judge set unreachable bail because CO had failed to do two days of community service on an earlier marijuana case. He pled guilty to a marijuana misdemeanor a few days later to get out of jail. This gave him a criminal record.
>
> MA: A 50 year-old Black woman who lived in a three-quarters house; she had no previous criminal record. She was arrested for drinking a can of beer outside her house and had an open warrant from a 2012 child endangerment case she thought had been dismissed. She has no kids. Bail was set and she spent 5 days in jail before pleading guilty to child endangerment charges to secure her release. Now she has a criminal record and lost her place in the house.

We have no doubt that there is a growing understanding of the negative consequences of even short jail stays: loss of employment, housing, educational options, and custody of children; problems related to immigration status; complications due to criminal records in addition to the dangerous and at times deadly conditions of the jails themselves. The separation and stigma resulting from periods of incarceration break down the social ties that many see as the truest predictor for positive behavior. Time spent in jail exponentially exacerbates the already chaotic lives of our clients. Losing a family member to the jail system can easily throw an entire family into chaos through lost wages, inability to share childcare or parental care responsibilities and psychological distress.

Paying bail, in addition to being a costly process, is also time-consuming and frustrating. It can take as long as five hours for our clients to pay bail at Department of Correction facilities – and another eight to ten hours for a loved one to be released from custody. Recently, a mother attempting to post $30,000 bail for her son, was robbed at an NYC Correction facility[xii]. On its best days, the process is confusing, and relies on archaic technology, which creates additional lags. Some people remain in jail that would otherwise be free because this process is so challenging.

THE CRIMINAL JUSTICE AGENCY

We direct City Council to the Criminal Justice Agency's 2015 Annual Report, which discusses their process in depth[xiii]. But briefly, the current system CJA employs to make recommendations is based on a formula that incorporates community ties and criminal history to recommend the likelihood that a criminal defendant will appear at scheduled court dates. CJA's recommendation system is based on responses to questions such as:

1) Does the defendant have a working telephone or cellphone?
2) Does the defendant report a NYC area address?
3) Is the defendant employed, in school, in a training program full time?
4) Does the defendant expect someone at arraignment?
5) Does the prior bench warrant count equal zero?
6) Does the open case count equal zero?

CJA attempts to verify the responses to many of these questions, though often is unable to do so, in part because defendants are not allowed to keep cell-phones or address books through the process of the arrest and are thus unable to provide contact numbers to interviewers. Based on interviewee responses and verifications, CJA assigns a label to most defendants, as low-risk, moderate risk, or high risk of failing to appear for their next court date. Return data suggests however that more appropriate terms would be low-risk, lower-risk, and lowest-risk. Even those scoring as high-risk on CJA's scale, overwhelmingly return to court when granted release on their own recognizance.

Of course, predictions are an incomplete and inexact science. Almost every person released on their own recognizance in New York City, regardless of CJA's risk score, returns to court. In New York City, generally, people with felony cases are more likely to appear in court than people with misdemeanor cases, though both groups appear at very high rates, regardless of risk category. CJA is currently updating their recommendation system, in acknowledgement that the predicative validity of the current system is wanting. It is hard to speculate on CJA's new program as it is not available yet for public review, though the new formula is likely to impact the recommendations CJA makes for conditions of release should the current bill pass into law.

In 2015, citywide, CJA recommended just 31 percent of all defendants for release on their own recognizance, and documented risk labels for the rest. In bears repeating that the CJA recommendation does not consider the severity of the charge currently before the court; in fact CJA recommendations for ROR, comparing felony and misdemeanor cases, were almost identical. When considering bail set by judges however, there is a clear trend towards the influence of criminal charges. In Brooklyn in 2015, judges set bail in just 6 percent of misdemeanor cases where a defendant was recommended for release by CJA but in 37 percent of felony cases with the same recommendation. The percent of people with bail set at arraignment generally increases alongside increases in charge level.

Percent of cases with bail set at arraignment:

1) Violations and other misdemeanors: ~10 percent
2) A misdemeanors: 20 percent
3) E Felonies: 43 percent
4) D Felonies: 48 percent
5) C Felonies: 64 percent
6) A & B Felonies: 61 percent

NO FAILURE TO APPEAR PROBLEM

There is no appearance crisis in New York City. The adjusted failure to appear rate, the percentage of people who miss a court date but return within 30 days, is over 90 percent. The New York Criminal Justice Agency is currently in the process of a longer study on failure to appear, citywide. When terms like failure to appear are typically discussed, people imagine someone absconding from justice, but this is rarely the case. If you discount the non-appearance of someone who could not get childcare, had no carfare, arrived late or had other life-related reasons to miss one of many court appearances, there is almost zero chances of someone absconding. Statewide the rate of failure to appear within supervised release programs is less than 3 percent[xiv].

The true purpose of bail of any type is to ensure the defendant appears for trial. In our current criminal justice system, there are very few trials and almost all cases are resolved by way of plea

bargaining. Defendants are required to appear in court every three weeks or once per month until there is a satisfactory plea bargain.

When the original Manhattan Bail Project started work in the 1960s, the problem they were trying to solve was that people were stuck in jail for two weeks prior to trial. Today, that's just a typical adjournment and cases drag on for months and even years. People are expected to return to court 10 or fifteen times before the resolution of their case. In many cases these court appearances are perfunctory, adjournments for motion practice, scheduling delays or other reasons that have nothing to do with the defendant and offer no possibility for case resolution. Clients should be excused from these types of appearances or be able to reschedule should an important life issue, such as employment, childcare, or a lack of transportation, prevent them from showing up. Rather than punishing people into compliance, we should be considering ways to reevaluate the obligations we require of defendants due to the lengthy delays in court processing that are not of their doing.

In our experience, defendants show up to court because they are prepared to face the consequences of their actions, wish to fight to prove their innocence or simply because they know this is what they are required to do. Most people who are not incarcerated during the pendency of the case are not facing any chance of a jail sentence and are not afraid to come to court. Most of our clients come to court in the hopes of resolving the case. It is only because of the court delays that a small percentage of our clients eventually miss a court date.

While some may suggest that people return to collect their bail money, the City has millions of dollars in unclaimed funds from residents who are owed their bail money at the end of the case. Many people do not actually know that they are entitled to a refund of their cash bail at the end of their case, pointing again to other incentives prompting return to court.

Clients who more frequently miss court appearances tend to be people with mental illness, substance use disorders or those living in extreme poverty. In these cases, the reason for missing the appearance has nothing whatsoever to do with the type of release. This demographic may need support in certain aspects of their lives, but we can't simply deprive them of their liberty because we don't have another way to manage these types of cases.

Similarly, re-arrest for violent felony offenses is not high among people with open criminal matters. A CJA study of the Queens Supervised Release program found that of 1,000 people in the study, only 6 percent, all of whom had been charged with felonies in their initial case and many of whom were not recommended for release by CJA, were rearrested on felony-level charges. Just a third of this small group (so about 2 percent overall) were arrested on violent felony charges. Of course these statistics refer only to arrests and not convictions, so the rates are likely even lower than they would appear if convictions were the measuring stick.

BILL BEFORE THE COUNCIL TODAY

The bill considered by City Council today attempts to get at some of the discrepancies listed above by requiring CJA to report on people's ability to pay so that judges have more information at their disposal when making bail determinations. As detailed above, it is incredibly important for judges to properly consider financial ability to pay when setting bail, which is supposed to be utilized to ensure a person's return to court, and nothing more.

As Brooklyn Defender Services began tracking our cases in which bail was set, a variety of troubling trends were exposed. Most importantly, when these cases were mapped onto census data of average income, we found that the neighborhoods with the heaviest concentration of bail obligations to the City were low-income areas. The lower the income of your zip code, the more money your community is likely paying the court for the administration of criminal legal services. This has a drastic negative impact on entire communities, as liquid assets that would otherwise be spent in the neighborhood, instead are tied up unnecessarily in court accounts, or transferred in unrefundable fees into the hands of unscrupulous commercial bail bondsmen.

Our clients who pay bail, are often forced to make a decision between food, rent, keeping the electricity on in their apartment, or bailing a loved one out of jail. Others borrow money from family members or other people in their communities, which can fracture social ties. Because government actors facilitate this economic hardship, it is crucial that this happens only in the most limited circumstances possible; that it creates the least possible harm. The reality is that the difference between $180 bail amount and a $500 bail amount is incredibly significant to many of our clients, yet this is a consideration never made by judges or district attorneys. Why not? We rarely see bail set under $250, even after our attorneys alert a judge that this is an unreasonable amount for a specific client to make. In general there are only a handful of bail amounts that judges in Brooklyn use, typically advancing in $500 increments, again showing quite plainly that no individualized determination is being made with respect to a defendant's financial resources. CJA data supports what our experiences suggest: judges are not properly and consistently taking into consideration people's actual financial resources when making determinations about bail.

While we believe it is essential for the court to better consider our client's actual financial capacity to pay when setting bail, we also have profound concerns about due process and privacy protections. That public defenders, not prosecutors or even judges, remain the gatekeepers to information about our clients' financial resources, is essential for this bill to be implemented effectively. In some cases, inquiries into financial resources may open up our clients to a line of questioning that could provoke responses prosecutors may use against them during plea negotiations or trial. While this is obviously true of financial crimes, in a more benign situation a client may provide false information to CJA about their employer, in an effort to keep that information private, only to be labeled as a liar based on this affirmation should the case end up at trial. Health and mental health information may also be unwittingly divulged, and people have a right for that information not to be shared in open court. We would like the opportunity to advise our clients on the legal ramifications of their actions – in fact this is essential for due

process – and we believe that our involvement as a safeguard will facilitate the bill being implemented in the way Council intends.

As mentioned above, CJA is currently reworking their failure to appear risk assessment and it is difficult to speculate as to the outcome of that process. Currently CJA is more conservative than judges in making recommendations about risk to return to court. Many people who CJA labels as not suitable for ROR are in fact released on their own recognizance by judges, and return to court. This imbalance could change with the new formula, or it might not. Either way, we are concerned with the possibility of net widening, should CJA make recommendations about bail for people who might otherwise receive ROR from the judge. Just because people can afford a certain amount of bail, does not mean that bail should be set, or that by setting bail in amounts people can pay, judges are not negatively impacting our clients and their communities unnecessarily.

There is a significant segment of our incarcerated population, particularly those who are incarcerated on misdemeanors because they cannot afford low amounts of bail, for whom any amount of bail, in any form, will ensure that they are preventatively detained for the duration of their case. Partially secured bonds, for example, require documentation and community ties – two of the very things a lack of which may lead a judge to set bail in the first place. This cannot mean that these people should be incarcerated if they ever are accused of a crime. While partially secured bond is clearly preferable to other fully secured options, we must also reflect on the growing body of literature that calls into question the very idea that money is the best way to ensure someone's return to court. In fact the evidence suggests that it is not in some, or even most cases.

We have significant concerns about the use of commercial bond. Judges often privilege commercial bail bonds over cash by setting amounts and methods of bail that incentivize families to choose commercial bail bonds because they are more affordable. Our clients regularly report being ripped off and extorted by these companies, which operate under the loosest of regulations. People are charged illegal fees, pay bondsmen who never produce their loved ones from jail, and are not returned collateral in an efficient manner. Because many of the bondsman's fees are not refundable, the industry facilitates a massive transfer of wealth from the lowest income communities in New York City into the pockets of private industry, all facilitated by the criminal legal system. Partially secured bonds are much preferred because they are better regulated and because families have the money returned at the end of the case.

In our experience, in Brooklyn, it is exceedingly rare for bail bondsmen to take bonds lower than $1000, which is the average bail amount for misdemeanors in New York City. Although judges are required to set two forms of bail, setting bond amounts below $1000 does not actually provide a choice for most New Yorkers, because it is exceedingly difficult to find a bondsman to take this type of case.

ADDITIONAL OPTIONS FOR CITY COUNCIL

1) CJA should be tracking district attorney and judicial discretion around bail, as a way of limiting costs associated with pretrial detention. Judges should never be permitted to set bail that results in pretrial detention even after a period of review without public notification. The City, while it does not have the authority to control judges, could provide the public with an essential service by documenting judicial practices and district attorney bail requests. This type of reporting could also be used to look at racial disparities in bail setting, another vital City interest.
2) A major driver of problems we see in the criminal legal system in New York City are a result of the untenable volume of cases brought through the courts by NYPD and district attorneys. While the City is rightly looking at fixes to the administrative code in order to keep some of the least serious cases out of criminal court, we could be more aggressive on the local level advocating for changes in Albany that reduce the number of cases ever brought into court. For example, the City should back efforts to decriminalize work-tools that are misrepresented as "gravity knives," and other similar laws that negatively impact people in New York City, and the legitimacy of the criminal legal system as a whole. If the current reform passed by the state legislature and vetoed by the Governor in 2016 had been made law ten years ago, 60,000 fewer cases would have been brought through New York City courts.
3) The City should also look into expanding supervised release, now that the pilot phase of the project has been up and running for a year. The current set-up allows the City to utilize supervised release on fewer than 10 percent of cases that would otherwise be eligible. The City now has a better idea of what works and what doesn't and should be aggressively expanding the program. The City could pair supervised release with partially secured bonds to incentivize judges to use this option.

NOTE ON STATE LEVEL POSSIBILITIES SUCH AS PREVENTATIVE DETENTION

New York State's unique bail statute provides nearly ever defendant in criminal court proceedings with a path for achieving pre-trial liberty while their case is being adjudicated if judges are held accountable to their clear obligation to consider a person's ability to pay when determining appropriate financial conditions of release. The current law should be lifted up as perhaps the only statute in the nation that allows for a broad enough presumption of release to remain true to that fundamental principle of American law, that no one should be incarcerated before being duly convicted in a court of law. The law only works, however, when judges and prosecutors are held accountable to their obligations; in many cases they are not, and instead set financial conditions of release they know our clients cannot afford for the purpose of holding them in jail during the pendency of a case, a reality that runs contrary to the spirit of the law. The strongest bulwark against prosecutorial and judicial overreach in the area of unfair, if not illegal, financial conditions of release, is a well-funded public defense, with the resources and ability to

fight back. Untenable jail populations and illegal bail amounts are felt most acutely in those counties around the state that lack these resources.

We believe that proper adherence to the New York State bail statute, legislation that was written and designed to address many of the issues we are discussing today is the best way to promote a smaller jail population in this City. But creating an environment where this can happen will not be simple or easy. In his State of the State proposal Governor Andrew Cuomo suggested that adding a risk assessment to predict future dangerousness will improve the obvious inequities we are discussing here today. While the stated goal here is laudable, this type of legislative change will not necessarily have the intended effect of preventing people from being sent to jail. Obviously any legislative solutions will impact New York City as well as other areas of the state. New York City should be monitoring the State's plans with regards to bail and watching the work of the Lippman Commission, which, of course, was authorized by City Council.

Adding a risk assessment for future dangerousness would undo many of the progressive features of New York State's bail statute. It would expand judicial discretion to take away the right to bail, which unless paired with greater accountability measures, very well could result in an increase in jail population in New York City. The research on whether or not considering risk of dangerousness in release decisions actually reduces crime is decidedly mixed. So too is the research on the actual predictive validity of various assessments[xv]. Recently New York has been able to boast both a declining jail and prison population and declining crime numbers, trends we would like to keep pushing downward.

As Public Defenders, we also have strong concerns about risk assessments of this type institutionalizing racial bias. The long history of racial disproportionalities in law enforcement outcomes, and continued racial bias in employment and housing all but assure worse outcomes for groups already marginalized by other public policies and practices. With so many of the risk assessments currently in use proprietary, Public Defenders would not necessarily be able to question appropriately the validity of the tool. It is essential that these assessments be made available to public scrutiny.

Importantly, the current statute provides mechanisms to revisit a bail determination if the facts of a case change. Under a regime of predictive dangerousness, even when the case against someone has fallen apart or it has become clear to everyone involved in the case that the defendant may in fact be innocent, he will still languish in detention until the case concludes. If jail is, in fact criminogenic in some cases, than a person may be more likely to commit a second offense after a case concludes and they've spent time in jail, than they would have been had they not be incarcerated to begin with.

Brooklyn Defender Services robustly supports the legislation considered by City Council today, and looks forward to fine-tuning the details with the committee as the bill moves through the legislative process. Thank you very much for inviting us to testify to City Council today. We remain available to answer any questions you might have about our testimony.

[i]http://www.pretrial.org/download/research/Unsecured+Bonds,+The+As+Effective+and+Most+Efficient+Pretrial+Release+Option+-+Jones+2013.pdf
[ii] http://www.brooklynbailfund.org/
[iii]http://www1.nyc.gov/assets/doc/downloads/pdf/FY16_4TH_QUARTER_INTRO_766_ADP_ADMITS.PDF
[iv] http://www.criminaljustice.ny.gov/opca/pdfs/NYS-Pretrial-Release-Report-7-1-2014.pdf
[v]https://www.nycourts.gov/courts/nyc/criminal/AnnualReport2012.pdf
[vi]https://www.nycourts.gov/COURTS/nyc/criminal/2015_crim_crt_ann_rpt_%20062316_fnl2.pdf
[vii] http://www.nycja.org/library.php
[viii] http://www.gothamgazette.com/opinion/6609-new-york-s-broken-approach-to-drug-arrests-and-prosecutions
[ix]https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf
[x] https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america
[xi] http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf
[xii] http://pix11.com/2016/05/11/woman-tased-robbed-of-30k-in-lower-manhattan-bail-office/
[xiii] http://www.nycja.org/
[xiv] http://www.criminaljustice.ny.gov/opca/pdfs/pretrial-services-2012-year-end.pdf
[xv] http://www.bmj.com/content/345/bmj.e4692

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I represent: Legal Aid Society

Address: _____

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Date: 1/17/17

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Name: Jeff Thamkittikasem

Address: Chief of Staff

I represent: NYC Dept. of Correction

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Name: Joseph Ponte

Address: Commissioner

I represent: NYC Dept. of Correction

Address: _____

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Name: Nick Malinowski

Address: _____

I represent: Brooklyn Defender Services

Address: _____

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Name: PETER C. KIERS

Address: 52 Duane St

I represent: NYC Criminal Justice Agency (CJA)

Address: 52 Duane St

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Name: Scott Levy

Address: 360 E 161st St, Bx, NY

I represent: The Bronx Defenders

Address: Same

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Name: Sergio DeLaPava

Address: 225 Broadway NY, NY 10007

I represent: New York County Defender Services

Address: 225 Broadway - 11th Floor, NY, NY 10007

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Name: Peter Jones

Address: _____

I represent: The Legal Aid Society

Address: 260 East 161st Bronx NY 10451

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Name: DARCEL CLARK - BRONX DA

Address: 198 E 161

I represent: _____

Address: _____

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Name: Rachel Foran

Address: 195 Montague St, 14th Fl Brooklyn, NY

I represent: Brooklyn Community Bail Fund

Address: " "

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(PLEASE PRINT)

Name: Faisal Zouhbi

Address: 364 Decker Ave, SI NY 10302

I represent: ADWDWA - Assistant Deputy Wardens / Deputy Wardens Assoc

Address: 364 Decker Ave, SI NY 10302

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(PLEASE PRINT)

Name: Thomas Farrell

Address: _____

I represent: COBA Legislative Chairman

Address: _____

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(PLEASE PRINT)

Name: Elias Husamudeen

Address: _____

I represent: COBA President

Address: _____

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