Mayor's Office of Criminal Justice
New York City Council
Committee on Fire and Criminal Justice Services
May 2, 2017

Good afternoon, Chair Crowley and members of the Committee on Fire and Criminal Justice Services. My name is Alex Crohn and I am the General Counsel of the Mayor's Office of Criminal Justice ("MOCJ"). Thank you for the opportunity to testify today. Molly Cohen, Associate Counsel from my office, is here with me to answer questions.

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 that reduce crime, reduce unnecessary incarceration, and promote fairness.

In the last three years in New York City, we have seen an acceleration of the trends that have defined the public safety landscape in this city over the last three decades. While jail and prison populations around the country increased, New York City's jail population has fallen by half since 1990. And in the last three years, the jail population dropped by 18% — the largest three year decline in the last twenty years. This declining use of jail has happened alongside record crime lows. Major crime has fallen by 76% in the last thirty years and by 9% in the last three. 2016 was the safest year in CompStat history, with homicides down 5%, shootings down 12%, and burglaries down 15% from 2015. New York City's experience is continued and unique proof that we can have both more safety and smaller jails.

The number of jail admissions for misdemeanor detainees has dropped by 25% since 2014, suggesting we are getting closer to the goal of reserving jail for those who pose a risk. As the overall size of the jail population has fallen, and fewer people who pose a low risk are detained, jail has been increasingly reserved in New York City for those who pose a risk, either of flight or to public safety. The proportion of the jail population detained on violent offenses has increased from 29% to 45% over the past 20 years, while the number of people held on felony drug charges declined by 78% and the number of people held on misdemeanor drug charges declined by 62%. Finally, the jail population detained on bail under $2,000 has dropped by 36% since 2014.

The current challenge – one that the Mayor's office has confronted head on – is to solve the 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 3,000 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. Moreover, 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.

We have also worked to improve the bail payment process. Each year, approximately 17,000 individuals are able to make bail after they are booked into Rikers Island jails, with 77% making bail within one week of being detained. This suggests that these defendants may be able to afford bail, but that inefficiencies in the bail payment process could be leading to delays that result in unnecessary time behind bars. To address these inefficiencies, the City rolled out several programs to make it easier to post bail more quickly, by:

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

BEX bill

As to Intro. 1541, our office contracts with CJA, a not-for-profit corporation, to oversee pretrial services citywide. Currently, CJA operates the City's bail expediting program (BEX). Under this program, CJA identifies individuals who have had bail set under a certain threshold ($3,500 in Manhattan, Queens, Brooklyn, and $2,500 in the Bronx) and immediately interviews them to obtain names of potential sureties and contact information. CJA then attempts to contact the sureties and inform them of the bail amount. If the sureties, often friends or family members of the defendants, indicate that they are able to post bail, CJA notifies DOC, which then holds the defendant for 2 to 4 hours for the purposes of facilitating bail payment. If the surety posts bail from the courthouse, the defendant is not transported to Rikers Island, and ultimately avoids unnecessary detention.

The City supports the expansion of the BEX program and therefore is aligned with the intention of Intro. 1541. We share the Council's goals in creating a system that reduces the unnecessary detention and creating a safer and fairer criminal justice system. We look forward to working with the Council on this bill to ensure that the legislation ensures inmate safety.

NYPD Bail bill

The City supports Intro 1576, which allows individuals to obtain telephone information from their phones after they are arrested. This will greatly assist individuals in contacting friends and family in order to assist them in making bail before they are transported to Rikers. We are committed to figuring out how to implement this and we look forward to continued conversations with Council and relevant stakeholders so that we can to identify the appropriate way to operationalize such a policy.

OCA Signage bill

As to Intro 1581, the City is committed to improving the bail payment process and we support the goal of using signage as a tool for increasing procedural justice. With regard to signage in courthouses, the City is working with the Center for Court Innovation (CCI) to test a comprehensive set of strategies designed to increase procedural justice in a busy criminal court. Through this initiative, CCI will consider a range of improvements, including revamped directional and information signage and information stations throughout the courthouse; improved lighting and audibility in select courtrooms; and procedural justice training for security officers. The centerpiece of the proposed reforms will take place in select courtrooms.

Nonetheless, the City has concerns about legislation that requires coordination with a State agency not under the control of the Mayor.

Thank you for the opportunity to testify here today. I would be happy to answer any questions.

Statement before the
New York City Council

Committee on Fire and Criminal Justice Services
Elizabeth Crowley, Chairperson

By Timothy Farrell, Deputy Commissioner
NYC Department of Correction

May 2, 2017

Good morning, Chair Crowley and members of the Fire and Criminal Justice Services committee. I am Timothy Farrell, Deputy Commissioner of Custody Management at the New York City Department of Correction (DOC). I am here today to speak about two recently introduced bills regarding bail.

The first bill is Intro. 1531. Primarily, this bill would require DOC to discharge all inmates within a few hours of bail being paid. The Department appreciates the importance of this issue. Certainly, we work to release people as soon as possible. Processing people to be discharged is a meticulous process that must be done carefully. The bill itself acknowledges that there are times when the process can take some time, as there is a list of exceptions to the mandated timeframe. These circumstances include instances when someone requires discharge planning or medical care. Other situations, such as emergencies, should be included, as well.

Even under ideal circumstances, it takes a few hours to process an inmate to be discharged, because it is critical to confirm that the correct person is being released. There is a fifteen step checklist that must be performed for each discharge. These steps include checking for warrants, interviewing the inmate, and comparing fingerprints. Each step must be performed at least twice by supervisory staff: once by a captain and then once by an assistant deputy warden. These steps happen after an officer has conducted the preliminary assessment. The process is intentionally redundant, because it largely relies on paper records. This diligence minimizes the possibility of an erroneous discharge, but it does increase the time it takes to release someone.

The legislation would also require DOC to accept cash bail payments at many courthouses throughout the city. Implementing this policy would of course involve collaboration among several city and state agencies, as DOC does not have public-facing operations in the courts. The city is already undergoing efforts to increase bail payment options and is concerned about where cash bail payments would have to be accepted, so we will continue to work with the Council on these options.

This bill address important concerns. We appreciate the Council's efforts and we look forward to further discussions on this legislation.

The second bill I am discussing today would require DOC to ensure that inmates are aware of how they may post bail. The Department fully supports this idea. It is critical that everyone in custody on bail or bond is aware of how that bail or bond can be paid. In fact, several requirements of this legislation are in place already: all inmates are provided with their identification numbers and information about how to pay bail as part of the intake process. Bail payment information is also available to the public on our website. We can modify the intake process to ensure that each inmate is provided with full information about newly given bail, as well.

This bill also describes a new role of "bail facilitator." The bail facilitator's duties would include "communicating directly with eligible inmates, assisting such inmates in understanding how to post bail or bond, communicating directly with or facilitating inmate communication with possible sureties, and taking any other measures to assist inmates in posting bail or bond." We believe that the bail facilitator role could be incorporated into the work that some of our programs and social services staff already perform, so we welcome the opportunity to collaborate with the Council on achieving this goal of the legislation.

I thank the Council for the opportunity to testify here today and I am happy to answer any questions that you may have.

CJA | NEW YORK CITY CRIMINAL JUSTICE AGENCY

Committee on Fire and Criminal Justice Services
City Council Hearing
May 2, 2017
Testimony of Aubrey Fox
Executive Director, NYC Criminal Justice Agency (CJA), Inc.

I want to thank the City Council for offering me the opportunity to speak to you today. I want to thank Speaker Mark-Viverito, Council Members Crowley, Gibson, Lancman, and Reynoso for their interest in improving the criminal justice system in New York City.

I am the Executive Director of the New York City Criminal Justice Agency, the city's main pretrial services agency. One crucial role we play is to interview almost all arrestees before their first court appearance and make a release recommendation to the Judge. This is based on our assessment of the likelihood that the defendant will return for their required court dates. In part because of CJA's work, New York City has the highest pretrial release rate in the country. Seventy percent of defendants whose cases are not resolved immediately at arraignment are released to the community without conditions other than the requirement that they show up to court for future court dates. Defendant failure to appear in court is rare, which gives the court confidence in continuing to set these liberal release conditions. We seek to ensure that defendants show up to court for all their required court dates, which includes making hundreds of thousands of reminder phone calls and sending a similar number of letters every year.

Having said that, there is still a substantial number of people who receive cash bail in New York City. In 2015, that number was close to 45,000.

Taking an even deeper look at the data, in only about 10 percent of cases were defendants able to pay their bail immediately at court. An additional 10,000 defendants paid bail and were released within two days of arraignment, and an additional 8,400 paid bail and were released within a week. About half of those bailed were jailed until the conclusion of their case, which in many instances may be for just a few days.

Why is that important? Because we know that even a few days of incarceration impose high costs on defendants and on the city. Short-term jail sentences are not only costly and inefficient, but increase the likelihood of future criminal behavior for the defendants who have been jailed.

That's why I commend the City Council for taking into consideration the bills that are before it today. Clearly there are a number of gaps to prompt bail payment that if filled, could not only increase the total number of people who are safely released into the community, but also increase the number who are released earlier on in the process.

CJA has a unique perspective on this problem because of another program we operate, the Bail Expediting Program, or BEX. For defendants who meet eligibility criteria (bail set in the amount of $3,500 or less in Manhattan, Brooklyn and Queens, and $2,500 or less in the Bronx), CJA staff members interview defendants post-arraignment, contact family members and friends who can pay bail and operate a help desk in the Bronx where people can call with questions about the bail payment process.

BEX has been operational in the Bronx and Queens for over two decades and was expanded in 2010 to include Brooklyn and Manhattan. In 2015, of the 45,000 defendants who had money bail set at their arraignment appearance, BEX helped over 6,000 pay bail and obtain release within two days of arraignment (as well as 2,000 who paid bail at court without ever going to Rikers). Defendants who receive CJA assistance were 80 percent more likely to obtain release within two days of arraignment than defendants who did not receive assistance from the program.

BEX plays a very important role in making life easier for both the defendant and his potential surety. The bail payment process is bewildering for family members and reliable information can be hard to get. With BEX, an associate calls the family member or friend of an arrestee with bail and can give that person important information about how much bail needs to be paid, how to pay and where to go.

We are also indispensable to the current nonprofit bail funds for several reasons. We establish whether a defendant has a personal surety able to pay bail (a key eligibility criteria for the funds – they can only pay bail for a defendant who could otherwise not pay bail on their own). We let the bail funds know that a case they are interested in has come out of arraignment. And we provide space for bail fund staff to meet with their client.

For both bail funds and personal sureties, CJA has the authority to place "holds" on defendants in DOC custody to prevent their transfer to Rikers Island as bail payment is arranged and we deliver cut slips to DOC after bail is paid to ensure that the defendant is brought out of correctional holding cells in a timely fashion. These activities often make the difference

between getting a defendant out at court or having them go into pretrial detention. Once they leave the courthouse, it becomes more complicated and difficult to get them out, even if there is already someone identified who is willing to pay their bail.

Regarding the bills under consideration by the Council, we are very supportive of the effort to increase the amount of time we are able to "hold" defendants before they go to Rikers Island. As the agency responsible for placing and managing holds with DOC, we have long experience in making sure that they do not place undue burdens on the court and DOC staff. Most importantly, we only place holds on defendants when we have a high degree of confidence that bail will be paid. We place holds on about 2,000 cases a year, and in 70 percent of cases defendants pay their bail. However, there are many instances where we are unable to arrange for bail payment at court because of insufficient hold time. I have no doubt that increasing the length of time we can hold defendants at court would allow us to assist more bail payments.

We are also supportive of legislation designed to increase the likelihood that a defendant has access to contact information at the time of arrest. This matters in at least two ways. First, if during our pre-arraignment interview, we get and can confirm that contact information provided by the defendant, it increases the likelihood that we would recommend this person for release. Second, not every defendant interviewed by BEX personnel is able to provide us with the contact information for a potential surety. In 2015 approximately 60 percent of defendants provided us with the contact information for a potential surety.

Finally, we are supportive of legislation that improves how DOC manages bail payment procedures after a defendant has been arraigned

and has left court. There may be lessons worth taking from CJA's experience with bail expediting that could be usefully applied. We are happy to explore those potential lessons and their application with representatives at DOC.

We are also exploring expanding our BEX program to ensure that all defendants who are potentially eligible receive our assistance. That includes expanding our program to Staten Island, improving our ability to identify eligible cases and potentially raising the dollar amount threshold for elibiilty into the program.

Thank you for your time and for the opportunity to share CJA's work with you. I am happy to answer any questions you may have.

BROOKLYN DEFENDER SERVICES

TESTIMONY OF:

Scott Hechinger – Senior Staff Attorney, Criminal Defense Practice
BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on Fire and Criminal Justice Services

In relation to Int. 1531-2017, Int. 1541-2017, 1561-2017, Int. 1576-2017 & Int. 1581-2017

May 2, 2017

I. Introduction

My name is Scott Hechinger and I am a Senior Staff Attorney at Brooklyn Defender Services. BDS provides multi-disciplinary and client-centered criminal, family and immigration defense, civil legal services, social work support and advocacy to more than 30,000 indigent Brooklyn residents every year. Over the last six years, I have represented thousands of clients facing misdemeanor and felony charges, from arraignment to trial. I see the consequences of bail and the administration of bail first hand, day in and out.

BDS deeply appreciates the work of council members on the Committee on Fire and Criminal Justice Services to minimize the criminal justice system's reliance on pre-trial detention and bail. I am grateful to be here to give voice to the experience of my clients and my fellow practitioners and add support to the practical and productive process-oriented reform proposals being considered today.

II. Background

"Will I be going home?"

Those are often the first words I hear my client say when I meet them behind the arraignment courtroom, bars or glass separating us. I first try to deflect and talk about the allegations and find out more about them, their story, their community ties, what brought them there.

But I can only deflect for so long. For most of my clients, the answer is "no, you're not going home. Not if bail is set, at least."

No matter the important process reform proposals being discussed today, when bail is set, most of clients will face the hell that is Rikers. That is because most of my clients cannot afford any amount of bail or the amount of bail set by judges. They will lose jobs. They will lose housing. They will leave those in need of caretaking without caretakers. They'll miss medical necessities. And they ultimately will also have worse case outcomes.

Yet for those who may be able to afford some amount of bail, all too often the answer to that first question is also "no." Not because of their inability to pay. But because of flaws in NYPD, court, and DOC processes that operate as barriers to accessibility and transparency. Flaws that undermine the purpose of New York's bail statute: "to improve the availability of pre-trial release."[1]

Financial conditions of release are on their face obviously unfair, but they also make for astoundingly poor public policy. It costs New York City taxpayers approximately $247,000 a year (nearly a $677 day) to keep someone incarcerated in Department of Correction (DOC) custody.[2] Research has shown that spending even two days incarcerated during the pendency of a case can increase the likelihood of a harsher sentence, can cause a permanent decrease in employment prospects, promote future criminal behaviors and have long-lasting negative health implications.

New York's multi-layered bureaucracy and flawed practices involved in the process of the payment of bail results in individuals being unnecessarily sent to Rikers Island when bail could be paid prior to leaving criminal court, and/or held far longer once there.

Brooklyn Defender Services supports the proposals before this committee today, with some recommendations for increasing impact. Together, these proposals would:

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[1] *People ex rel. McManus v. Horn*, 18 N.Y.3d 660 (2012).
[2] Independent Commission on New York City Criminal Justice and Incarceration Reform, *A More Just New York City* (2017), available at https://static1.squarespace.com/static/577d72ee2e69cfa9dd2b7a5e/t/58f67e6846c3c424ad706463/1492549229112/Lippman+Commission+FINAL+4.18.17+Singles.pdf.

- Enhance accessibility, making it easier for individuals and families to secure timely pre-trial release, preferably before ever entering Rikers Island;
- Reduce unnecessary obstacles that now stand in the way of individuals and families who may be able to afford bail from paying it; and
- Promote transparency around the system of pre-trial detention by providing better information on the payment of bail to loved ones and by reporting outcomes so that law and policymakers can work toward reducing the numbers of those detained pre-trial.

III. Bills

a. ***Intro No. 1531-2017*** - *in relation to requiring the department of correction to efficiently facilitate the processing of bail payments*

BDS strongly supports the introduction of this bill which would require DOC to accept cash bail payments immediately and continuously after a person is admitted to the custody of the DOC. The bill also requires that the Department release inmates within two hours of payment. The bill also requires DOC to accept cash bail at the courthouse if there is not another location within one half mile of the courthouse.

Once bail is set at arraignments and the NYPD transfers custody to DOC in criminal court, bail cannot be paid until the person is first transported to Rikers, processed, and admitted, a process which often takes upwards of twelve hours. Until then, the person is "in transit." Family members are forced to continuously check back in at bail windows, or online, to see when their loved one has finally made it through intake so they can finally post bail at that time, an arduous and time consuming process. For individuals with jobs, children and other family obligations, and those who live far away from Court, Rikers, or a Rikers borough facility, this means that bail usually will not get paid until sometime the following day. A person is thus forced unnecessarily to spend the night at Rikers, in intake, where there are no beds, no showers or access to medical staff. This bill would allow family members and others to pay bail while a person is "in transit" and begin the process of getting their loved one released from custody.

Yet in BDS's experience, *even after bail is finally paid,* it takes clients *a minimum of ten hours* to be released from DOC custody. ***Indeed, we recently had a case where a client was not released for more than 27 hours.***

Our client, who I will call Mr. B, was incarcerated at Brooklyn Detention Complex in February 2017. In early February he was transported to Brooklyn Supreme Court where he was placed in a room with another inmate in the Brooklyn Supreme Court "pens" on the third floor. He fell asleep on a bench and awoke to the other inmate sexually assaulting him. He immediately reported the assault to his attorney. After court, he verbally reported the incident to a DOC captain and requested to make a written report. He was not able to get an officer's attention so he resorted to cutting his wrist, which

finally prompted him to be seen by mental health and medical staff and file an incident report for the sexual assault.

Mr. B's defense attorney was able to get into contact with Mr. B's family, all of whom live in Ohio. Despite the distance and significant hardship, the family got the money together to pay a bail bondsman to bail Mr. B out and get him out of custody nearly three weeks after the sexual assault. However, the bail bonds agent paid the bail on the instant case, but not the $1 bail on a separate case. The bail bondsman told the family he would not pay the $1 bail unless they paid him an additional $125, which the family could not afford, so Mr. B remained in custody until the next day in late February, when our jail services social worker was able to go to Brooklyn Detention Complex to pay the $1 at 9 am.

Bail was officially paid by 11:10 am after a two-hour process, yet Mr. B was not released for another 27 hours. BXDC did not even transfer Mr. B from his housing unit to intake until 11 pm, 12 hours after bail was paid. They then said he needed to be cleared by mental health before being released. DOC transferred Mr. B from intake to the clinic at BKDC at 4 am the following day. He waited several hours before being seen by mental health staff and was later discharged from DOC custody at 2 pm, 27 hours after bail was paid.

This bill is a critical step forward if the end result is that people like Mr. B are released in two hours, as compared to 27, but we fear that the bill will only function as designed if DOC is held accountable in instances where they fail to comply. As currently written, there is no enforcement mechanism or cause of action for defendants who are not released within the two hour period. Without these protections, we believe that DOC will not have an incentive to change current practice.

We are also concerned that section (b) of the statute, as currently written, could be used to allow Mr. B to be held for 27 hours, as he was here, when mental health issues are implicated. It is not uncommon, in our experience, for abuse and assault experienced in detention to be the catalyst for mental health problems. However, a person who has paid bail to escape abuse should not be held even longer than someone who was not. We are not suggesting that someone who is experiencing an intense and immediate psychotic episode be released to the streets (there is already a competency process in place to handle cases like this), but we do want to point out the potential for abuse in the bill as currently written. If facts like Mr. B's never see the light of day, these instances of abuse will continue to occur. In short, we need to have a review process for DOC decisions to hold city agencies accountable in individual cases where injustices occur.

b. ***Intro No. 1541-2017*** – *to permit the delay of the formal admission of inmates to the custody of the department of correction in order to facilitate the posting of bail*

BDS supports the introduction of this bill that would authorize DOC, in their discretion, to hold someone for no more than 12 hours to allow the person's family or friends to come to the courthouse to pay bail and avoid DOC detention altogether. The bill, however, effectively precludes delay in felony cases and DWIs.

While most of our clients cannot afford any significant amount of bail, we do have some clients who would be able to pay bail if they had sufficient time. More time is critical for our clients as bail payers often do not yet know about the arrest at the time of arraignment, work full time jobs and cannot just leave work, live far away, need to cobble together funds from family and friends, or need to secure the help of a bail bondsmen. Currently, when bail is set, we as public defenders have to scramble to delay the transfer of custody from NYPD to DOC, but the success of the request depends on factors outside of our control: the mood of NYPD personnel, the number of individuals in the holding pen, the Rikers bus schedule, or the time of day. In any case, thirty minutes is the norm and three hours is the absolute maximum delay now allowed before an individual is transported to Rikers.

We believe that 12 hours would, in some cases, be sufficient time to prevent unnecessary incarceration in DOC custody.

The permissive language in this statute would not require DOC to comply with the outlines proscribed, but it would require DOC to report on how often they voluntarily comply with the statute. Thus we support this bill with the understanding that it appears to be intended to function more as a voluntary pilot program than as a bill to actually facilitate the posting of bail.

We recommend amending the bill to actually require DOC to comply rather than permit them to delay transportation at their discretion. We also recommend amending the language in 1(a)(2) so that it is more clear; the current language is confusing.

The bill also leaves unanswered questions. How would this proposal work in night arraignments? Is this only for people who are arraigned during the day? Delay is "not permissible" for anyone who has bail set in an amount of $10,000 or more: essentially all felony cases. Given that the vast majority of cases where bail is set involve felonies – not misdemeanors, why was this particular threshold selected? Moreover, bail in the amount of $10,000 or more is usually paid using bail bondsmen, a more time consuming process. If the purpose of the bill is to serve as a pilot experiment, then many of these issues could be ironed out over the coming months. But we recommend that the Council consider all of the language carefully before signing anything into law.

c. ***Intro No. 1561-2017*** - *in relation to requiring the department of correction to facilitate the posting of bail or bond*

BDS supports hiring someone to work in DOC to assist inmates to pay bond. Critically, this bill would ensure that a bail facilitator meet with inmates within 48 hours of

admission to DOC custody and provide inmates with key information, including the amount of their bail or bond, their NYSID and other identifying information, and options for bail payment.

We strongly recommend that the bail facilitator position not be staffed by a corrections officer, but instead by a non-profit or other independent entity to improve collaboration and trust between the eligible person fighting for their release and the bail facilitator. We also request that there be a facilitator for each facility, as moving between the various facilities presents many challenges.

We also wonder how the facilitator will work with bond companies. Bond agents use a host of abusive practice to prey on those in need of their services. These practices have flourished unchecked. The bail facilitator should be trained to know the legal obligations of bail bonds companies and help mediate and advocate for the incarcerated person and their family.

d. ***Intro No. 1576-2017*** - *in relation to requiring the New York City police department to permit arrestees to access contact information*

BDS supports this bill and has long called on the NYPD and court staff to allow detained individuals access to contact information in their phones. Now more than ever, individuals do not remember phone numbers of loved ones, friends, and family. Cell phone contact lists and speed dials have overtaken memories.

Without contact information, there is no way for defenders or the client to make contact with anyone who may be able to pay bail for the client, or simply support him or her in arraignments, which would strengthen defense counsel's application for release. In addition, without contact information, the Criminal Justice Agency (CJA) will have a difficult time verifying community contacts, and for purposes of the delay proposals outlined in ***Intro No. 1541-2017*** neither DOC nor the CJA will be able to make "direct contact with a person who reports that he or she will post bail . . . ."

We would recommend amending the language to ensure that arrestees are able to look at their own phones and write down the numbers themselves. As currently written, the bill would allow the officer to record the contact information for the detained person. We are concerned that this language would facilitate infringement of our clients' Fourth Amendment right to be free of unlawful searches and seizures. It would be improper for officers to use this well-intentioned and long overdue policy change to violate the warrant requirement and inspect the contents of our clients' phones in the hopes of finding incriminating evidence.

There is an existing workable model for this procedure at the Red Hook Community Justice Court. There, a detained individual's personal effects, including their wallet, keys and cell phone, are transported from the 72nd, 76th, and 78th precincts to the courthouse in a manila envelope along with the defendant. While in the pens at Red Hook awaiting

arraignments, the individual, with the assistance of court officers, is generally permitted to pull up the contact information for a few individuals to allow them to provide verifiable contact information to the CJA and to the court to make a stronger argument for release on recognizance.

Furthermore, transporting a person's personal effects in a manila envelope to the courthouse means that a person may then have the means to pay bail with cash or credit card in his wallet. However, even if the person has access to his debit or credit card, under current practice, he cannot actually use the ATM to withdraw money because there are no ATMs located in the pens and staff refuse to escort our clients to the ATM in the courthouse.

e. ***Intro No. 1581-2017*** *- in relation to requiring the mayor's office of criminal justice (MOCJ) to post public information regarding posting bail in courtrooms*

BDS supports this bill, which would require MOCJ to work with the Office of Court Administration (OCA) to display information regarding posting bail conspicuously in all locations in courthouses. Information shall include how to determine the amount and type of bail ordered and all processes required to post bail, including where and how to post bail.

We recommend providing the public with more information, including the maximum fee that a bondsman can charge and other information about bail bonds to limit the abusive practices that bail bonds agents engage in as a matter of course. Rather than recreating the wheel, in addition to posting clear information about the processes required to post bail in the courthouse, we recommend that MOCJ distribute a resource called "Bail's Set...What's Next?" created by the Center for Urban Pedagogy in partnership with the Brooklyn Community Bail Fund.[3]

IV. Additional Action Needed

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

a. *We must hold DOC accountable if they fail to comply with these proposed laws.*

These bills must include a cause of action or sanctions if DOC fails to follow its legislative mandate. Without a consequence, we have little hope for the kind of systematic change that closing Rikers Island requires.

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[3] Available at http://welcometocup.org/Store?product_id=141.

b. *We must hold prosecutors and judges accountable for relying solely on cash bail and commercial bond as forms of relief, even though New York law provides courts other options*

The express purpose of bail is to enable the pretrial liberty of all defendants, regardless of their financial means. For this reason, New York Criminal Procedure Law Article 520 authorizes multiple forms of bail other than cash and bond to fulfill its purpose of not conditioning liberty on the defendant's ability to pay money upfront. Yet New York judges uniformly neglect to consider non-monetary forms of bail. Instead, judges are firmly entrenched in the culture of setting only bond or cash, the two most restrictive forms of bail. The City must work with judges and prosecutors to encourage them to allow for unsecured appearance bonds and other bail alternatives that are actually within a person's reach.

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

Practically, if a person can pay bail for herself, she should be able to do so. She therefore needs access to both her wallet (with her credit or debit card and/or cash) and an ATM.

i. <u>For a person detained in the pens at the courthouse:</u>

Currently, a person's personal effects including wallet, keys, MetroCard (and even critical assistive devices such as canes, walkers and crutches[4]) remain back at the precinct and do not travel with the accused to arraignments. Even if she is allowed to take her debit card with her, staff will not escort her to an ATM while in custody, and there are no ATMs located in the pens. While these bills address the ability of family and friends to pay bail, they do nothing to help people pay their own bail. If the point of bail is to set an amount that a person can actually afford to ensure their return to court, then we must allow people who *can* pay to do so on their own. Moreover, Unsecured Appearance Bonds, an authorized alternative form of bail that would allow a defendant to be released upon the promise to pay a set amount if he or she does not come back to court, are never ordered, despite the requests and best efforts of public defenders.

ii. <u>People who are already in DOC custody at a DOC facility:</u>

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

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

V. Conclusion

These bills demonstrate the Council's commitment to making our bail system fairer and more just, a critical component to reducing pre-trial detention and ending the horror that is Rikers Island. BDS looks forward to working with the Council to achieve our shared goals. Please do not hesitate to reach out to me with any questions about these or other issues at (718) 254-0700 (ext. 276) or shechinger@bds.org.

THE BRONX FREEDOM FUND

New York City Council
Committee on Fire and Criminal Justice Services
Testimony of The Bronx Freedom Fund
May 2, 2017

Int. No. 1531, a Local Law to amend the administrative code of the city of New York, in relation to requiring the Department of Correction to efficiently facilitate the processing of bail payments.

Testimony of Ezra Ritchin

Speaker Mark-Viverito and members of the Committee, my name is Ezra Ritchin. I am the Executive Director of The Bronx Freedom Fund, a nonprofit founded in 2007. The Freedom Fund pays bail of $2,000 or less for indigent New Yorkers, restoring the presumption of innocence and allowing clients to return to their jobs, families, and communities while they fight misdemeanor charges. The Freedom Fund secures the release of New York City's most marginalized every day, and in the course of our work we have become extremely familiar with the bail payment process. I personally have paid bail for several hundred people. My colleagues Elena Weissmann and Alex Anthony, who have also submitted testimony, have significant experience with this process as well.

The bail payment process is arcane. Our staff routinely spend four or more hours at DOC jails attempting to pay bails, and family members who are less familiar with the process can encounter even longer delays. A *Vice* reporter, John Surico, wrote about it in a 2015 article entitled: "'The DMV on Steroids': Paying Bail in New York is Next to Impossible." Only once bail is paid does the lengthy release process begin.

The three major components of this bill -- eliminating the "blackout period", shortening release times, and accepting bail at the courthouse -- strengthen and rely on one another. Taken together these changes would modernize and streamline our bail system, preventing thousands of New Yorkers and their families from spending unnecessary hours and days in jail facilities every year.

The Bronx Freedom Fund strongly supports this bill, with the sincere hope that the Council and Mayor will do right by taxpayers and by the City's most vulnerable in finally bringing our bail system into the modern era.

A) Eliminating the "blackout period"

After making the long journey to the Vernon C. Bain Center (i.e., "The Boat"), or the even longer journey to Rikers Island, we at The Bronx Freedom Fund are routinely told that we cannot pay bail for someone because they are "in transit" or because "the body is not in the building."

Oftentimes, clients are on their way from arraignments or they're being transferred from one facility to another. And once they've arrived at the facility, it can take many hours before DOC will take the bail -- they must be processed before the payment can be accepted. We are usually given an estimate of 12 to 16 hours from the time someone leaves arraignments on a DOC bus until their bail can be posted at a DOC facility.

Coupled with the difficulty of posting bail at arraignments, this 12 to 16 hour "blackout period" is often nothing more than blatantly unnecessary detention -- a time when family members or a bail fund have the money to post but are informed that pretrial incarceration will continue simply because of the inability to accept payment.

I have been told many times that I can't pay bail for someone during the blackout period. So the next day, I go back to the jail to try again, losing another full day of work. Family members may not have the luxury of missing work to go back to the jail. This blackout period then amounts to at least a full day of unnecessary detention, not including the long release times once payment is finally accepted. When I was the Fund's only employee, people could be sent to jail if they were arraigned while I was waiting to pay bails at DOC facilities.

In the course of our work, we constantly encounter family members who are going through a far more pronounced struggle to pay bail than we are. Take one of my trips, in which I met a woman who was attempting to pay bail for her grandson. It was late morning. I was growing frustrated with the wait and asked her how long she'd been attempting to pay. She told me that she had arrived the previous afternoon, after just missing her grandson at arraignments. But she wasn't allowed to pay during the "blackout period" because he had not yet been processed at the facility. So she spent the night in the waiting room of the Perry Control Center on Rikers Island, sleeping upright on a chair with metal armrests. While waiting at Rikers, she was unable to pick up her other grandchildren from school.

B) Shortening release times

On another trip to Rikers Island, I met a woman named Christina who had just sold her car to pay her fiancé's bail. After a three-hour wait, DOC accepted payment at 2:00 that morning, and Christina was told that her fiancé would be released in four to six hours. She did not live within reach of public transportation, and she had to wait to drive him home with the car she had borrowed. The estimate soon became six to eight hours. Like the grandmother I met, she slept in the waiting room on Rikers and ate her breakfast from the vending machines. She was pregnant at the time. Her fiancé was released at 6:30pm, 16 and a half hours after she paid.

Realizing that delays like this were not uncommon for Bronx Freedom Fund clients, we began tracking the time from bail payment to release whenever we could obtain this information. Thus far, we have tracked down this data for 60 clients. We've found an average time from payment to release of 9 hours and 45 minutes. This does not include the long wait to pay bail in the first place, or the delays and errors we often encounter when attempting to post.

One of our clients, A.M., had bail set on a "Theft of Services" case, also known as a turnstile jump. I went to the Boat to pay his bail, but was told that he was in transit to Rikers. DOC's

Inmate Lookup Service still listed him at the Boat. They wouldn't let me post bail at the Boat because he was in transit, and he wouldn't be processed at Rikers for many hours. So the next morning, I went to Rikers to pay his bail. After the typical multiple hour wait, I paid at 1:45pm, as indicated on our bail receipt. He was not released until 10:00 the following morning, 20 hours and 15 minutes after The Bronx Freedom Fund paid his bail and two days after our first attempt at payment.

While a long release process is common -- a dozen of our clients reported delays of over 14 hours -- it is not always the case. Of the 60 clients we interviewed, six reported release times of 2.5 hours or less, demonstrating that it is possible to ensure speedy release. It is a fiscal and moral imperative that we do so for all individuals who make bail.

C) Accepting bail at the courthouse

For those arraigned in Manhattan or Brooklyn, family members are able to post bail just a few blocks away from the courthouse, at the Manhattan Detention Complex (a.k.a. "The Tombs") or the Brooklyn House of Detention. Where we work, in the Bronx and Queens, however, there is no such option. The closest facility to the Queens courthouse is over an hour away by public transportation. In the Bronx you have to travel to the Boat, a floating jail that houses up to 900 men. It is anchored in the East River off of Hunts Point, its driveway wedged between the Department of Sanitation and a wholesale fish market. It is inaccessible by subway, and can only be reached by taking the Bx6 bus to the end of the route. It's about as inconvenient a location as you can find in New York City, likely a conscious decision to keep the City's most marginalized out of reach and out of mind.

Even families who have enough money to pay bail at arraignments or at a court date often end up posting at the Boat because of procedural hurdles. Two-hour holds are violated, or the bail window is closed for lunch or shut down for the day while cases are still being called. And, again, this results in additional delays before bail can be accepted at the Boat because of the "blackout period." After making the journey to the facility, family members and Bronx Freedom Fund staff are essentially stranded on the Boat. The nearest bus stop is 15 minutes away, and for those with access to a car the parking lot is only available to DOC staff. I have seen multiple people leave before bail is paid in order to make it back to work, others miss child care obligations while waiting, and one even spoke about losing his job if he stayed at the jail any longer.

At the Boat, the waiting room to pay bail is nothing more than two sets of four grimy plastic chairs bolted to each other. The room is decrepit. There are no vending machines and there is no restroom. Corrections staff communicate across facilities via fax machines, which are often broken, meaning paying bail for someone who is housed at another facility is difficult or even impossible. At the Freedom Fund, we advise staff, interns, and volunteers to bring meals to the Boat and avoid hydrating beforehand because the wait is hours long and the nearest accessible restroom is at a pizza shop 15 minutes away, which is often closed. A Freedom Fund team member was at the Boat with a woman who was attempting to post bail for a loved one. After a few hours of waiting, she asked a correctional officer if there was a restroom she could use. She was clearly pregnant. The restrooms, however, are inside the facility, only available to those with

security clearance. She was advised that she might be able to go into the parking lot and urinate behind a car.

The status quo is not just inconvenient -- it is inhumane. Making bail payable at the courthouses would take the dystopian edge off of this process, making it less burdensome for the families and loved ones of incarcerated individuals.

If we want to take on overincarceration, streamlining and modernizing bail payment and the subsequent release process is a simple and critical step. This modernization should have happened long ago, and it must happen soon. Let's make it happen now, under this Committee's leadership, before more lives are destroyed by an absurdly dysfunctional system.

A frequent complaint we hear from families of incarcerated individuals is that "They're treating us like we're on the inside." Those posting bail and those who are incarcerated all need to be treated with basic dignity, decency, and humanity. Christina, the woman who spent nearly a full day at Rikers waiting to take her fiancé home, ate her breakfast out of a vending machine in the waiting room. I've had many meals from those machines. They were replaced not too long ago, and they now accept Apple Pay. You can tap your phone and pay for a candy bar -- but you have to wait a full day to pay bail via fax machine to free your loved one. We can't watch the rest of our City move further into the 21st century while our bail system remains in the Dark Ages at the expense of our most vulnerable. We have the technology and the infrastructure to streamline this system. All we need is the will and leadership.

Int. No. 1576, a Local Law to amend the administrative code of the city of New York, in relation to requiring the New York City Police Department to permit arrestees to access contact information.

Testimony of Ezra Ritchin

Council Member Lancman and members of the Committee, thank you again for considering our testimony. I will speak on the merits of this proposed Local Law, with the suggested modification that it apply to all who are arrested. I will leave it to the public defenders and other advocates to outline the potential problems that may arise in its implementation.

We consistently encounter the issue of phone number memorization. Phones are usually taken away at the precinct before people have a chance to write down contact information, so they must rely exclusively on phone numbers they have memorized. This is especially difficult with some of the most vulnerable populations -- our less stable clients, whose family and friends change phone numbers more often, and our younger clients, who have never had to remember phone numbers. Lack of contacts is burdensome for several reasons: clients can't notify their loved ones when they've been arrested, they can't demonstrate their community ties to the court, and they can't call people who might be able to post their bail or assist them during incarceration.

Before intervening on behalf of clients, The Bronx Freedom Fund works with public defenders

and the Criminal Justice Agency (CJA) to determine whether family members or loved ones might be able to pay the bail. Like the City's supervised release program and the Criminal Justice Agency's pretrial release recommendations, we also evaluate contact information in our assessment of clients.

A judge wanted to release one of our clients, M.G., to the City's supervised release program, but the client was unable to remember the phone number of his good friend, with whom he lived, and was therefore ineligible for the program. So the judge set a low bail, and his attorney asked whether there was anyone M.G. could contact to help with the bail. He of course could not call his roommate to ask for assistance, so we stepped in.

M.G. was 22 years old and had no criminal record. If he remained in jail on bail, there is a good chance he would have pled guilty to a misdemeanor in order to go home, taking a criminal record with him for the rest of his life. Had M.G. been able to write down his friend's phone number, he would have been released right away and we could have used the $2,000 in bail money to assist someone with no other option.

Because the stakes are so high, the search for contact information can become desperate. Since clients aren't permitted to write down contact information before their phones are taken, attorneys are forced to seek out much less effective workarounds, including sending investigators to the homes of those who can't recall phone numbers -- assuming they have their addresses memorized. One of the clients who was referred to us may have been able to make bail through his sister. In the absence of phone numbers, the attorney searched for the sister's name on Facebook in the hopes that he could contact her, but was unsuccessful. Often, during the struggle to recall numbers, public defenders and CJA staff will draw 9 numbered boxes on a piece of paper, mimicking a keypad, and hold it up to the metal grating of the cell to see if this might jog the individual's memory. This is not how the thin line between freedom and incarceration should be drawn.

A few weeks ago, I went to the arraignment courthouse in the Bronx to pay $1,000 bail for a young man, W.G., who could not afford it. When I spoke with him, he was distraught. His mother was at home, suffering from osteoporosis and diabetes. He lives with her and he gives her medication multiple times a day. When he is away from home, his uncle comes to take care of her. But after his arrest, his phone was taken away at the precinct and he had no way of reaching his uncle to ask for assistance with his mother -- or with his bail. We paid his bail and he went home, found his mother seriously ill without her medication, and immediately took her to the hospital. He said that had he remained behind bars without his uncle's phone number, his mother likely would have died.

It is critical that people be able to contact their loved ones during the fragile moments after arrest. For those who have bail set, their primary means of release -- their wallets and phones -- have been confiscated. We suggest that this bill be modified to ensure that everyone be afforded the opportunity to take down necessary phone numbers, eliminating the loopholes that exclude some people.

There has to be a way to ensure that people can write down phone numbers in a way that is safe,

secure, and protects their legal rights. We cannot allow arbitrary obstacles like phone number memorization to determine the level of justice that people receive.

Thank you again to the Council for inviting us and for your careful consideration of this testimony.

Int. No. 1541, a Local Law to permit the delay of the formal admission of inmates to the custody of the department of correction in order to facilitate the posting of bail.

Testimony of Elena Weissmann

Speaker Mark-Viverito and members of the Committee, my name is Elena Weissmann. I am the Director of Bronx Operations at The Bronx Freedom Fund, a nonprofit which since 2007 has been providing bail assistance of $2,000 and under to New Yorkers accused of misdemeanors who cannot afford to pay for their freedom. We restore the presumption of innocence by allowing our clients to fight their cases from a position of freedom rather than going to jail for their poverty. Along with my colleagues, I navigate the bail system every day and am well acquainted with its processes for payment and release. I am so appreciative of the opportunity to submit testimony in support of this legislation, which would effect urgently needed reform.

This testimony describes the vital need for this legislation, illuminates the impact of the bail system's shortcomings on individuals and their communities, and proposes modifications to ensure full effectiveness of the bill.

When functioning at its best, the system is cumbersome and labyrinthine. When it fails, it is devastating. With little transparency and flexibility built into its processes, failure is often the case. One of the particularly infuriating failings occurs when a defendant is able to identify someone to pay her/his bail (a surety), but s/he is still sent to jail because the surety could not get to court within the two-hour window currently allocated to post bail before transfer to Department of Correction (DOC) facilities. While it is true that sureties can then pay bail from any jail, they cannot do so until the defendant has been processed by the facility, which often takes a full 24 hours. The defendant then spends a needless night and day in jail, missing school, work, and childcare responsibilities -- all at an enormous cost to City taxpayers. Further, sureties are then forced to forfeit their own obligations to spend full days or nights in the bail office, which has no restroom, water, or food. The Freedom Fund's written testimony for Int. No. 1531 includes the trenchant story of a grandmother who could not get to court within two hours, so slept upright in between steel armrests in the Rikers Island bail office. My colleagues and I often endure the jail payment process and encounter defendants' loved ones who like this grandmother have spent full nights in these rooms, sleeping on metal chairs and relieving themselves between cars and barbed wire fences -- all because they could not get to court within two hours.

The presumption of innocence is a cornerstone of our justice system. But when we send people to jail for even one night unnecessarily, this is completely turned on its head. This legislation is a critical step in allowing the bail system to function as it is intended: to keep people in their jobs, homes, and communities while their cases proceed. Even as paid professionals who work

seconds away from the bail payment window, we are often failed by the current two-hour hold system. Because of mismatched schedules between court clerk lunch breaks, bus shuttles from court to jail, and bail window closings, our clients are routinely sent to jail despite the fact that we are physically present, eager to hand over the bail. If the two-hour window is oftentimes not enough for professionals already in the building, how much more is it failing members of the public? This is more than a logistical hurdle: it is a nightmare for defendants and their loved ones each day.

The consequences of such a situation cannot be overstated. We need not inform the Committee and Council of the appalling circumstances endured by Rikers Island detainees and their loved ones; the City's goal to close Rikers speaks for itself. Paying bail expeditiously doesn't just mean that people can avoid these conditions; it means they return to their lives. When we rush to pay our clients' bail within the two-hour window, here are the kinds of things at stake: Three people have gone directly to chemotherapy treatments. Our younger clients return to high school, to Regents exams, and to care for their grandparents. Mothers return to their children. Countless clients have avoided losing a hard-earned job, from which a single day of absence could mean termination. Each person we bail out is able to continue a crucial part of their life, whether it be caring for their families, keeping a job, or simply the ability to live as a free person. By extending holds so that defendants' loved ones can get them home, this bill would afford this right to everyone -- not just those lucky enough to have a friend or family member who lives or works nearby, and who is arraigned when bail, bus, and court schedules align.

The Bronx Freedom Fund is grateful to collaborate with City Council on the Liberty Fund, and is appreciative to be part of a City which prioritizes justice for all. This legislation is urgently needed and is vital for the just functioning of our City's court and jail systems. Because our organization is so deeply involved in the technical elements of this work, we offer three suggestions to ensure that this important piece of legislation will not fall short of its goal of making the bail system function as it is intended.

First, the legislation as it exists frames this change as permissive. It needs to be mandatory. Rather than saying "the Department of Correction *may* delay the transportation of an inmate for admission to a housing facility," it should say "the Department of Correction *must*" do so. It is We laud the inclusion of enforcement methods in this legislation, and urge the Committee to adapt language affording this essential provision to everyone, rather than leaving so much room for discretion.

Second, the text states that this "delay is not permissible for any inmate that ... otherwise indicates that they do not wish to be subject to such delay." This leaves a gaping hole in enforcement, as it would allow officers to determine that any defendant "does not wish" to be given this extra time to secure bail assistance. A requirement for written consent of non-delayed transfer to jail could prevent this type of mishandling.

Third, the legislation should include a provision permitting Charitable Bail Organizations to place holds directly with DOC. Currently, only the Criminal Justice Agency (CJA) can inform DOC that a defendant will be bailed out and should be held in the courthouse instead of being hastily transported to jail. However, Charitable Bail Organizations are well equipped to place

these holds. Allowing them to do so would prevent miscommunications through a third party and ensure that the holds are handled more expediently and reliably. The Bronx Freedom Fund has countless stories establishing the necessity of this amendment: Most commonly, when CJA employees are not available our staff is left helpless as our clients are transported to jail because no one is there to place a hold with DOC. Allowing Charitable Bail Organizations like The Bronx Freedom Fund to circumvent the communication matrices can prevent this and other mishaps involving defendants being sent to jail despite the presence of an available surety.

We meet people on what is often the worst day of their lives. When we explain that we are paying their bail and they are going home, the mood shifts dramatically. But behind our clients, as we peer through the bulletproof glass separating them from their freedom, are a dozen other people who have just had bail set. More often than not, one or more of those who overhear our joyful conversation approach the window and ask for help. They tell us about their mothers, hours away in a different state, or about their best friend who cannot leave their work site before the evening for fear of losing their job. These are people for whom bail *is* an option, and a judicial right. But what's a right with no recourse? A simple extension of the hold system would preserve the option of bail, prevent thousands of innocent people from spending nights and days in jail, and generate significant cost savings for the City.

We are enormously grateful for the opportunity to submit testimony in support of this critical piece of legislation. We respectfully urge the Committee to pass this bill with our recommended adjustments to ensure full effectiveness, the full Council to follow suit, and the Mayor to sign it into law. Thank you.

Int. No. 1581, a Local Law to amend the administrative code of the city of New York, in relation to requiring the Mayor's Office of Criminal Justice to post public information regarding posting bail in courtrooms.

Testimony of Alex Anthony

My name is Alex Anthony and I am the Queens Project Manager at the Bronx Freedom Fund. Through my experience paying bail for indigent New Yorkers in the Bronx and Queens, I have seen firsthand that families and loved ones seeking to post bail are left in the dark. Basic information on bail such as bail amount and type as well as bail payment options is not provided clearly or consistently either in NYC courthouses or in Department of Corrections ("DOC") facilities. This dearth of bail payment information leads to significant delays in the bail payment process, resulting in the unnecessary and prolonged incarceration of New Yorkers every day.

Families are often told they cannot pay bail for their loved ones at court shortly after arraignment because individuals have been placed on a bus heading to Rikers or other borough facilities. These families are often not notified of the long (12-16 hour) blackout period in which bail payment will not be accepted at DOC facilities once an individual enters DOC custody, nor are

they notified of the many procedural requirements to post bail, such as necessary case identifying information or how to access that information, required photo identification, or bail/cashier's window hours. Without this information, families often must make multiple excruciating trips to Rikers or other borough facilities, resulting in days of lost work and missed obligations while their loved ones remain behind bars.

Conspicuously providing clear and consistent information on bail amount, type, and payment options in New York City courthouses would streamline the bail payment process and reduce needless delays in bail payment and release. The bail information provided in NYC courthouses should include how to determine: (1) the exact bail amount and type ordered, and (2) required case and individual identifiers, such as New York State Identification and Book and Case numbers. It should also detail materials required from bail payers, such as photo identification, as well as bail payment options in court and at DOC facilities (including bail/cashier's window locations and hours).

Providing basic information on bail and bail payment in NYC courthouses is the most obvious and immediate remedy to needless delays in the bail payment and release processes. We urge the Committee and the Council to pass this bill and for the Mayor to sign it into law. Thank you.

Int. No. 1561, a Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction to facilitate the posting of bail or bond

Testimony of Alex Anthony

As referenced in the testimony regarding Int. No. 1581, bail payment information is not provided clearly or consistently in NYC courthouses or in DOC facilities, which results in significant delays in bail payment and release and ultimately in unnecessary and prolonged incarceration for New York City's most vulnerable. While families and loved ones seeking to post bail are often given incomplete and inconsistent bail payment information, incarcerated individuals have even less information when it comes to securing their own release.

By providing critical bail payment information and assigning DOC bail facilitators to individuals in DOC custody, this bill would not only streamline the bail payment and release processes, it would also restore a sense of dignity and autonomy to incarcerated individuals by giving them access to the keys to their own freedom.

The Bronx Freedom Fund is grateful for the opportunity to work with the Council to improve our City's bail system, and this bill is an important step. While we support the measures contained in this legislation, we have two suggestions to strengthen the bill and ensure that it achieves its purpose: (1) the written information to be provided within 24 hours of taking custody of an

individual should include information on how to access a defendant's case information online via the NYC DOC lookup website as well as the New York State Unified Court System website; and (2) the department should ensure that bail facilitators meet with eligible individuals within 24 hours, rather than 48 hours, as delays in bail payment and release even as short as a day can have devastating and destabilizing consequences on the lives of incarcerated individuals and the lives of their families.

We urge the Committee and the Council to pass this bill and the Mayor to sign it into law and we thank you for the opportunity to share our testimony.

New York City Council Committee
on Fire and Criminal Justice Services

Facilitating the Payment of Bail and Arrestee Access to Contact Information Before Arraignment

City Hall

May 2, 2017

10:00 A.M.

New York, New York

Presented By:

Elizabeth Bender, Staff Attorney, Criminal Practice Special Litigation Unit

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is an indispensable component of the legal, social and economic fabric of New York City—passionately advocating for low-income individuals and families across a variety of criminal, civil and juvenile rights matters, while also fighting for legal reform. The Society has performed this role in City, State and federal courts since 1876. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Legal Aid Society operates three major practices — Criminal, Civil and Juvenile Rights—and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program.

The Society's Criminal Practice is the primary public defender in the City of New York. During the last year, our Criminal Practice represented over 200,000 indigent New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. The breadth of The Legal Aid Society's representation places us in a unique position to address the issues before you today.

On a daily basis our clients experience the life-altering consequences of pre-trial incarceration that is prolonged and sometimes caused by two logistical problems which the bills you consider today have the potential to remedy: the failure of the Department of Corrections to accept bail at all times after it is set, and the failure of the Police Department to allow arrestees to access and write down contact information that is stored in their cell phones. These bills are

concrete measures whose immediate implementation would allow more people to make bail sooner or be released in the first place, thereby saving them from setting foot on Rikers Island, which Council Speaker Mark-Viverito recently described as a "stain on our great city's reputation."[1]

The Department of Corrections Must Accept Bail on Any Person in its Custody and Release Them Immediately Thereafter

The Society supports the reforms contained in the Speaker's bill mandating that the Department of Correction accept bail continuously after an inmate is admitted into the Department's custody and that the Department release that inmate within two hours of bail being paid. Currently, there is a culture of delay that permeates the bail-paying process city-wide. It deprives our clients of their liberty and it needlessly spends taxpayer money. If the Department follows this bill's requirements, it will result in speedier release times and less time at Rikers Island for thousands of people.

This reform is necessary because the current bail payment system is dysfunctional. Once a court sets bail on a person, his or her family has a matter of hours to ascertain the amount and type of bail required, collect that money, and bring it to court. If not, their loved one enters what is sometimes referred to as a "blackout period": a time during which their relative is being transported, put through intake, medically examined, and otherwise processed by the Department of Corrections.[2] The Department will not accept bail payments during that blackout period. And

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[1] Jonathan Lippman and Melissa Mark-Viverito, *Closing Rikers is a Moral Imperative*, N.Y. TIMES, Mar. 31, 2017, https://www.nytimes.com/2017/03/31/opinion/closing-rikers-island-is-a-moral-imperative.html?_r=0.

[2] Erin Durkin, *City Council Speaker's Bill Would Help Defendants Avoid Rikers by giving Them More Time to Post Bail*, N.Y. DAILY NEWS, Apr. 4, 2017, http://www.nydailynews.com/new-york/council-speaker-bail-bill-defendants-avoid-rikers-article-1.3019321 ("Currently, defendants are typically put on the next bus to Rikers after their arraignment . . . sometimes getting shipped off even as a relative is waiting in line to pay their bail"; describing the "so-called 'blackout' periods where DOC will not accept bail payments because the inmate is in the middle of the intake process or in transport").

it can last for days. Explanations for the blackout period usually amount to "we don't know where the arrestee is," which lawyers and bail fund staff know to mean that the person simply hasn't been assigned to the jail where the Department intends to ultimately house him.

Of course, in reality, the Department of Corrections always knows where a client is when he's in their custody. That's the essence of the Department's job. This refusal to accept bail merely because the Department's intake process takes hours or even days has put New York in the national spotlight for all the wrong reasons. *Vice* magazine wrote an article describing the disrespect that the families of detained people experience at the Department's bail payment windows and the delay that characterizes the bail paying process—experiences with which our clients' families are all too familiar.[3]

Delaying the acceptance of bail and release of an inmate for even a day costs New York City's taxpayers hundreds of dollars—$678, according to the Independent Commission on New York City Criminal Justice and Incarceration Reform.[4] It also exposes that person to detention in an environment that is "inhumane and violent",[5] despite the fact that his family is ready and waiting to post the court-ordered bail amount. There is no discernible benefit to this protracted bail payment system that justifies its continued stranglehold on our clients' liberty. Moreover, it is emblematic of the larger culture of delay, disrespect, and indifference that plagues many the Department of Correction's policies and interactions with our clients and their families. Culture shifts do not happen overnight. But the release of an inmate whose family has posted bail should not take nearly that long.

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[3] John Surico, *'The DMV on Steroids: Paying Bail in New York is Next to Impossible*, VICE, Aug. 17, 2015, https://www.vice.com/en_us/article/the-dmv-on-steroids-paying-bail-in-new-york-is-next-to-impossible-817.
[4] INDEPENDENT COMMISSION ON NEW YORK CITY CRIMINAL JUSTICE AND INCARCERATION REFORM, A MORE JUST NEW YORK CITY 28 (2017), http://www.morejustnyc.com/the-report-1/.
[5] Id. at 3.

It is our view that this bill codifies something that our clients and their families have every right to expect the Department to do: promptly accept bail for and release anyone that is in its custody. Therefore we fully support its provisions.

A Loved One's Phone Number Can be the Difference Between Jail and Release; The NYPD Must Give Arrestees Meaningful Access to Their Cell Phones

The Society supports the idea behind the bill presented by Councilman Lancman to require the Police Department to give arrestees access to their cell phones and the contact information therein before they are arraigned. However, as it stands, the law's loopholes are too easy for police to exploit, and we recommend eliminating those loopholes. The fact that the police will be watching arrestees as they gather contact information from their phones is enough assurance against the destruction of evidence and any other risk to public safety. Leaving those loopholes in the bill will allow the police to deny arrestees access to their phones in too many cases for the bill to be meaningful.

It is difficult to overstate the importance of having at least one relative or friend's phone number when being arraigned in New York City. Beginning with the pre-arraignment interview of an arrestee by the Criminal Justice Agency (CJA), all the way through the bail application to a judge, the ability to demonstrate community ties is one of the most important factors in predicting whether someone will be released or have bail set. Section 510.30 of the Criminal Procedure Law instructs judges to take into account an offender's family ties and length of residence in his community.[6] CJA, which uses a risk assessment tool to make a recommendation for or against release on recognizance for each person arraigned in New York City, deducts two

[6] CPL § 510.30(2)(iii) ("the court must, on the basis of available information, consider and take into account: . . . [the defendant's] family ties and length of residence if any in the community").

points out of a possible ten (with ten being "recommended for ROR") if an offender cannot report a working cellular or residential phone number. Defense attorneys equipped with contact information for their clients' family and friends can make bail applications that address the court's primary concern at arraignment: will this person return to court? A working phone number where the attorney can reach the client and her family is a concrete way of assuring the court that the client will make all her court dates.

Significantly, an arrestee who cannot report the working phone number of a community contact (i.e., a friend, family member, co-worker, or neighbor) is automatically ineligible to participate in the City's Supervised Release program.[7] The program operates in the arraignment parts in all five boroughs. After obtaining permission from the clients' defense attorneys, program staff interview clients who are charged with non-violent felonies or non-domestic violence misdemeanors to calculate their "risk score."[8] If a client is eligible, the arraigning judge, if he decides not to ROR the client, then has the option of releasing the client under supervision instead of setting bail. The Supervised Release program has monitored over 2,600 people between March 2016 and January 2017, and its clients appear for their court dates at a rate of 92% citywide,[9] making it an increasingly attractive option for judges who may otherwise doubt a client's likelihood of returning to court if she were released with no conditions. But this option does not exist for clients who cannot report a working phone number to program staff in arraignments.

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[7] CINDY REDCROSS, MELANIE SKEMER, DANNIA GUZMAN, INSHA RAHMAN & JESSI LACHANCE, NEW YORK CITY'S PRETRIAL SUPERVISED RELEASE PROGRAM: AN ALTERNATIVE TO BAIL 8 (Apr. 2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-citys-pretrial-supervised-release-program/legacy_downloads/Supervised-Release-Brief-2017.pdf ("An eligibility criterion for SR is the confirmation of a residential address or community contacts through whom clients can be reached.").

[8] Id. at 5 ("[the assessment] considers eight factors, including age, number and type of prior arrests and convictions, warrants, open cases, and full-time activity. . . .If a defendant is eligible based on the charge and SR risk assessment score, the SR provider, with defense attorney permission, interviews the defendant to verify community ties").

[9] NEW YORK CITY MAYOR'S OFFICE OF CRIMINAL JUSTICE, SUPERVISED RELEASE SCORECARD 2 (Feb. 2017).

By the time a client hears that she is ineligible because she hasn't memorized her mother's cell phone number or her boyfriend's house phone, it is far too late to retrieve that information from her cell phone. The NYPD regularly seizes arrestees' cell phones at the time of arrest. Many of these phones are held for safekeeping, theoretically recoverable from the precinct or the DA's office after arraignment if the offender requests it and has identification ready; some are held as arrest evidence, recoverable only once the assigned Assistant District Attorney signs a release stating it is no longer needed as evidence and directing the police to return it. In the Bronx, where the DA recently implemented a new program designed to streamline the recovery process,[10] our clients still often must return to the property clerk multiple times over several days to recover their cell phones, if they are granted a release for them at all. In other words, once the client's phone is seized by the police, there is little chance that she and her lawyer will be able to access the information inside it in a timely manner. If bail is set, that likelihood approaches zero.

This bill is a meaningful step towards increasing the rate of release for people awaiting trial. However, its benefit will be minimal if the police are not held accountable for complying with the full extent its mandate. Currently, the bill requires that the police offer "reasonable access to their personal property in order to record in writing any personal contact information such individual may wish to record," but it does not apply to people whom the police have "probable cause to believe that permitting such individual access" to their property would "result in the destruction of evidence or otherwise pose a significant public safety risk, or where the department has applied for a warrant to search such property." These exceptions are so broad that they swallow the rule, and they are also unnecessary because a police officer will be there to

[10] Despite being governed by clear rules and timelines contained in § 12-34 of the Rules New York City Laws, the property return process in Bronx County used to routinely take weeks or months, and was frequently a thinly-veiled strategy to extract guilty pleas from defendants: "I'll give him the property release once the case is over."

observe the arrestee as she accesses her phone. If these exceptions remain in the bill, few people will receive the law's intended benefit.

First, the exception allowing police to deny phone access to people where an officer has probable cause to believe that destruction of evidence means that every person accused of a low-level drug sale, for example, is prevented from accessing his phone because an officer thinks there may be text messages related to the alleged sale on it. These offenders very frequently are not facing jail sentences, but rather receive programming. But, if they are arraigned without having accessed their phones, they lack the contact information necessary to be eligible for supervised release, and they don't have the ability to help their attorneys get in touch with their families to make strong bail applications. If bail is then set, these offenders spend time in jail that they should be spending getting medical attention and programming.

Second, there is no need for the exception allowing officers to deny arrestees access to their phones if it poses a public safety risk because that access is already happening under police supervision. These arrestees will be in precinct holding cells under NYPD observation as they copy the contact information they need. That supervision is more than sufficient to prevent any public safety risk from materializing. Allowing officers to deny that access entirely, even though it is happening in a controlled and tightly monitored environment, will defeat this bill's core purpose.

Finally, there is no need to carve out an exception for when the police have sought a warrant for information inside the phone. Again, an arrestee's access to her phone will happen inside a precinct, and it has no effect on an officer's ability to get a judicial warrant to search that phone. The only result of this exception will be to frustrate the bill's goal without achieving any benefit.

Importantly, the presence of supervision while arrestees access their phones must not be distorted to mean surveillance or the eliciting of testimonial or non-testimonial evidence. At no point should an arrestee be asked, told, or forced to share any information with the officer who is allowing phone access. The purpose of this bill is solely to help more arrestees avoid time in jail, and the NYPD must scrupulously honor that principle. Of course, after an arrestee gets the information he needs from his phone, the NYPD may not and must not make any attempt to see, search for, or preserve any information on that device in the absence of a judicial warrant.

In order for all parties to have clarity on what access is permitted under this bill, we suggest that officers who are allowing arrestees access to their phones simultaneously give them written instructions to arrestees that describe the reasons for the access. Legal Aid and other defender agencies need to be involved in the drafting of these instructions so that clients do not inadvertently incriminate themselves while using their phones. The instructions should advise arrestees that they are under arrest and they have the right not to speak with the officer who has handed them these instructions; that they are being given an opportunity to access their phones to get contact information if they want to, but they do not have to; that if they choose to exercise this right an officer will see everything that comes up on their phone screen, and that it could be used against them; that they will ultimately be arraigned in criminal court at which point their cell phone will not be accessible; that having loved ones' phone numbers at arraignment can be beneficial; and that this officer is now giving them an opportunity to write down the phone numbers they want to have with them in court in the presence and full view of the officer. It must also state that the officer may not ask or require to see what numbers or names they have written down. The officer must never search the phone during this process.

These instructions should include a checklist for the officer administering them where she can affirm that she gave the arrestee the written instructions, a writing instrument, paper to write on, and time to take down numbers, and that she in no way obtained or sought to obtain the information that the arrestee wrote down or any information that was contained in his phone. The officer must initial each of these items, and then the arrestee should as well. This will help ensure the transparent and effective implementation of this bill's provisions.

Therefore, while the Society agrees that it is imperative that the NYPD give arrestees access to contact information contained in their cellphones or other property, the exceptions in this bill are overbroad and unnecessary. The bill also must include written guidelines to ensure the NYPD's proper compliance with it, and to guarantee that arrestees genuinely benefit from it. With those changes, the Society supports this bill's passage.

NEW YORK COUNTY DEFENDER SERVICES

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NEW YORK CITY COUNCIL HEARING (5/2/17)

TESTIMONY OF NEW YORK COUNTY DEFENDER SERVICES

We applaud the Council for this effort to streamline and demystify a process so regrettably central to the lives of our indigent clients: the payment of bail to secure the release from jail of a loved one who, while criminally charged, has not been found guilty of any wrongdoing. Genuine bail reform can be a primary and powerful tool to address the grave inequities of this country's mass incarceration program and a critical component of that reform is greater access to information and the removal of bureaucratic barriers. So we testify today both to applaud these steps but also to once again advocate on behalf of a more radical rethinking of this city's procedures and practices in the area of pretrial detention.

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.

So greater reform is needed but until it's achieved the city must, as here, be alert to any opportunity to reduce the population of those incarcerated absent any determination of guilt. The current unjustifiable size of this population is a blight on our criminal justice system. It harms not only those directly detained but also the 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. The laudatory proposals being discussed should not only be enacted but they should also serve as fuel to comprehensive bail reform aimed at moving us decidedly away from our current system, which illegitimately gives great salience to the economic means of the accused or to the use of unscrupulous bail bondsmen. This existing methodology greatly harms our indigent communities and it is long past time for a new approach. Thank you.

Sergio De La Pava
Director of Special Litigation
New York County Defender Services

Testimony of Alexander Horwitz, member of the board of directors of The Liberty Fund and Chief of Staff of The Doe Fund before the Committee on Fire and Criminal Justice Services

May 2, 2017

Good afternoon. Thank you to Committee Chair Crowley, the Speaker of the City Council, the Committee on Fire and Criminal Justice Services, and Councilmembers Dromm, Gibson, Lancman, Levin, Reynoso, and Richards for allowing me to testify today.

I am here as a representative and member of the board of The Liberty Fund, a charitable bail organization formed in partnership with the Office of the Speaker of the City Council and the Mayor's Office of Criminal Justice. I'm also the Chief of Staff of The Doe Fund, which has served formerly incarcerated men for over thirty years.

These two organizations that I represent today work at opposite ends of the criminal justice system. In success, and with luck, they will erode one another's client base until neither is necessary.

Two weeks ago, The Liberty Fund bailed out its first client, a 34 year old homeless man named William. William has a history of low-level criminal justice involvement going back to his teens— almost all of it related to a life of poverty.

After 18 months of excellent progress with his case worker at the shelter where he lives, a group of teenagers encountered William on the sidewalk and began harassing him for his appearance. An altercation ensued and William was arrested.

Thanks to the state's Charitable Bail statute and the vision of the Speaker's Office, this council body, and the Mayor's Office of Criminal Justice, The Liberty Fund was empowered to save his shelter bed, preserve his progress towards becoming a productive, self-sufficient citizen, and most importantly, protect his freedom and the presumption of his innocence.

There was no other way for him to post his $500 bail. Rikers was his next stop.

Even for defendants who are better off than William, pretrial detention is devastating. At minimum, it is degrading and dangerous. Too often, it precipitates the loss of work and housing— in some cases, for whole families. None of whom, under the law, is guilty of anything.

To put it plainly: Monetary bail is fundamentally unfair. The reason is simple: the value of money changes depending on how much you have. In our era, an era of gross economic inequality, pretrial freedom has become a product: either you can afford to purchase it, or you can't.

There should be no economics of justice. And the promise of our system, Equal Justice Under the Law, is corrupted by monetary bail.

But we are a long way off from ending it.

Even the most promising alternatives to cash bail, which we are so grateful to the Mayor's Office of Criminal Justice for exploring and supporting, will face many obstacles: from funding to testing to deploying.

And, ironically, there will be legal challenges as well. Pretrial electronic monitoring, for example, may be fairer than cash, but arguments are already being made that Fourth Amendment of the Constitution favors cash over control.

We have much work to do.

Fortunately, this progressive body is addressing what few legislators traditionally concern themselves with: the interim between a broken system and a fair one, and making incremental improvements that ease the burden— and the transition— for vulnerable people.

That is why The Liberty Fund, as well as its parent organization, The Doe Fund, are pleased and proud to support the initiatives proposed today. Initiatives that address some of the most vexing and opaque parts of the process called "posting bail."

If cash bail itself is onerous for those without the means, the process of engaging it is even more so.

It is a bad sign that only dubious, for-profit bail companies have mastered it. And it has made even a poor substitute for Equal Justice an impossibly high bar.

We know the consequences of this process:

A Doe Fund client named John told me he never knew what options were available to him after a misdemeanor arrest. His family was afraid of the bail posting process and what it might mean for them. He had no ability to contact other people who might have been able to help. He was too ashamed and confused to fight for his rights. And so he did what the attorneys in the room told him to do:

He plead guilty. He wasn't. But he went home that night, instead of going to Rikers.

We have a system that encourages lengthening rap sheets in exchange for freedom. Combine that with disproportionate arrests of people of color and you might see more than simple unfairness: you might see bias. And that injures civic life.

In a frightening moment, when a guilty plea is presented as the quickest path to safety, as the fastest way to restore normalcy for you and your dependents, INFORMATION, and access to it, is the only way to prevent an injustice from becoming a betrayal of the justice system.

We fully support the structural and procedural changes proposed by Speaker Mark-Viverito and Councilmembers Crowley, Dromm, Gibson, Lancman, Levin, Reynoso, and Richards. We fully support their efforts to "bridge the gap" between monetary bail and a fairer future.

And we encourage this body to support even stronger language in the future and to dig deeper still into the idiosyncrasies of this system:

BROOKLYN COMMUNITY BAIL FUND
195 Montague Street, 14th Floor
Brooklyn, New York 11201
www.brooklynbailfund.org

TESTIMONY OF:

Peter Goldberg, Executive Director, Brooklyn Community Bail Fund

PRESENTED BEFORE:

The New York City Council, Committee on Fire and Criminal Justice Services

May 2, 2017

Good afternoon, and thank you to the Committee on Fire & Criminal Justice Services for inviting me to testify today. My name is Peter Goldberg, and I'm the executive director of the Brooklyn Community Bail Fund. We're the largest of three charitable bail funds here in New York City, and although we started out two years ago serving only people arraigned in Brooklyn, we now also operate in Manhattan and Staten Island. We pay bail for more than 100 of our fellow New Yorkers every month who can't afford it. Unable to afford a few hundred dollars, they would either remain in jail or pled guilty just to go home.

In considering these five proposed changes in law that would facilitate the process of paying bail, we must recognize that the ultimate solution to is the elimination of cash bail. As at the time U.S. Attorney General Robert Kennedy noted, "usually only one factor determines whether a defendant stays in jail before trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor simply is money,"

So real reform requires more than making the payment process easier, because bail will always punish poor and low-income individuals who simply don't have the money to pay in full or the fee a bondsman requires.

Under New York State's Charitable Bail Law, we're limited to serving people accused of misdemeanor offenses in which bail is set at $2,000 or less. $975 is the price of our clients' freedom,

but we've bailed people out for as little as $150. This may sound surprising, but as a recent study showed, 60 percent of Americans don't have even $500 in liquid savings.[1]

During the week, we're in criminal courts and local jails across the City, carrying thousands of dollars in cash. We hand over a few hundred dollars to a court officer and someone is freed. It is a crude and dehumanizing, and it makes a mockery of our justice system. But our clients – out on bail – are more than twice as likely to have their cases dismissed or resolved favorably compared with similarly situated individuals who are detained pretrial on low amounts of bail and essentially forced to plead guilty, often to unreasonable charges, and to crimes they did not commit. Because of limits in the law and our own resources, we serve a tiny fraction of the roughly 45,000 New Yorkers annually who end up in jail for weeks, months, or even years because they and their families can't raise the money for bail.

Incarceration isn't the only negative consequence. New Yorkers who are paying bail or paying a bondsman instead of paying rent or utilities, or fixing the car they rely on to get to work, or buying clothes for their kids when they start a new school year. They're doing without or they're sinking into debt. A study examining the use of bail in New Orleans, published by the Vera Institute of Justice, found that over the course of a year, roughly 11,000 defendants collectively paid $6.3 million dollars in cash bail – money out of pocket for months or possibly years – and non-refundable bond fees.[2] Our own research shows that in New York, bondsmen reap tens of millions of dollars in fees annually from poor and low-income New Yorkers. This is a massive transfer of wealth from our most disadvantages citizens to for-profit insurance companies.

Bail is not only unfair, it's also unnecessary. Our work and numerous studies show that money is not what brings people back to court. While our clients have no financial obligation to us, 95% of them to date have made all their required court dates. This is true despite the fact that more than 7 out of 10 were labeled a moderate or high risk of nonappearance by Criminal Justice Agency. We call them to provide friendly reminders about upcoming court dates, and we offer to connect them with community-based services that can meet needs they themselves identify – our clients need support, not supervision. Some of our clients overcome great difficulties to get to court. And in the rare event that a client fails to appear, that person always has a legitimate reason: illness, homelessness, a sick child, faced with losing a hard-won job if they miss a day of work. No one is fleeing: They don't have the desire or the resources to flee.

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[1] http://money.cnn.com/2017/01/12/pf/americans-lack-of-savings/index.html

[2] Mathilde Laisne, Jon Wool, and Christian Henrichson. *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*. New York: Vera Institute of Justice, 2017.

We pay bail for people. It's a necessary intervention but it is not the solution, and every day that we show up in court with a pile of cash we're working just as hard to abolish bail. I urge Council Members look at ways to really end the injustices of cash bail. The five proposed changes you are considering today will certainly help facilitate paying bail. But we don't want to just smooth the wheels of injustice, we want to see solutions that will truly stop incarcerating people for being poor.

Although we hope you will find ways to end this system completely, we recognize that the bills in front of you today address what to do with the system in the interim. I'd like to briefly address the substance of each of the five proposed bills, which if passed will certainly help to facilitate the payment process for those who can raise the money to pay bail or purchase a bond.

It is vital that anyone who's arrested be able to contact their loved ones and anyone else who might be helpful in what is a crisis situation, including by paying bail on their behalf. As we all know, those numbers are in our phones not in our heads, and cell phones are taken away when people are arrested. Requiring police not only to allow but to assist people in writing down those numbers is important.

People who are held on bail should receive in writing all the information they need to pay bail or to explain the process to someone paying on their behalf, and it makes sense to post information about the process in all criminal courthouses.

As an important aside, when people have access to accurate information, they are less likely to be taken advantage of by unscrupulous bondsmen, which is a problem here in New York. The Fund has been working with allied organizations to study this issue. We've spoken with scores of New Yorkers who've used bondsmen and what we've found is appalling. Nearly all of them have been taken advantage of – charged amounts above what's allowed under law, had their collateral stolen, charged currier fees as much as $500. I urge the Council to work with the other agencies – such as Department of Consumer Affairs – to ensure that this industry is meaningfully regulated. In addition, the Council must arm the public with the information they need to protect themselves from financial exploitation. Notices about the maximum the fee a bondsman can charge and other basic guidance should be included among the information that's provided to detained individuals and posted in courthouses. Along with my testimony, I'm submitting copies of "Bail's Set, What's Next," a pocket guide for users we produced in collaboration with the Center for Urban Pedagogy. We would be happy to work with the Office of Court Administration and others so that copies of this booklet are provided to people in jail and available in the courthouses.

Our work shows that the current system prioritizes emptying over-crowded holding cells in the courthouses and rushing people from there to jails. Instead our focus must be keeping presumptively innocent people out of jail. Bail facilitators to assist people in jail will certainly help – the payment process can be confusing and traumatic. Facilitators should also be available to defendants in the courthouse prior to and immediately following arraignment. And following on that, the Council should approve the measure allowing defendants held on bail to remain in the courthouse if they might be able to post bail. It only makes sense to inquire about and report on their ability to pay bail. Ideally, that information would also inform the amount of bail judges set, and whether they demand payment in full, in part, or no up-front payment.

The move to require the Department of Correction to accept cash bail payments "immediately and continuously" after someone is detained, and to provide that same service in or near courthouses and with extended hours, is what should be happening already. We should be ashamed it's not. And yes, once bail has been paid, a defendant should be released immediately, at most within two hours. Just in the past two weeks, we have had conversations with 5 different clients who were held on Rikers Island for 6-12 hours after the time we posted the bail until they were released. This does not include the five hours average time it takes for the bail paperwork to process prior to the bail being paid. Three of these individuals were released around 5am; the other two at 10pm. Often our clients are released the day of their scheduled court date, meaning a client released at 5am would be expected to make it home from Rikers and back to court by 9:30am or risk the judge issuing a warrant for their arrest and ultimately ending up back at Rikers.

Moreover, we estimate that nearly all of our clients are held at least six hours after bail is paid, and it is not uncommon to hear that they wait ten to twelve hours to be released, especially on the weekends. Once released they are provided a one-ride metrocard and left to find their way back home. Even if a family member wants to be at Rikers to transport a client home there is no way to accurately predict when the client will be released. Families can be left waiting hours with no idea if or when their loved one would be released.

While these five proposed changes in law are stopgap measures, they are not trivial, and I commend the Council Members who introduced them for finding ways to limit the harms of a deeply unfair system. In addition, I would urge the Council to do everything in its power to push forward the recommendations in the report by the Independent Commission on New York City Criminal Justice and Incarceration Reform, most importantly, bringing fewer people into the system to begin with.

Thank you again for the opportunity to present testimony today.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1576, 1531 Res. No. _____

☒ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Elizabeth Bender

Address: 199 Water Street

I represent: The Legal Aid Society

Address: 199 Water Street

(1531+1567)

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1531+1567 Res. No. _____

☑ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Ezra Ritchin

Address: 360 E. 161st St, Bronx, 10451

I represent: The Bronx Freedom Fund

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Timothy Farrell Deputy Commissioner

Address: DOC

I represent: _____

Address: _____

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Hazel Jennings, Bureau Chief

Address: DOC

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1541 Res. No. _____

☒ in favor ☐ in opposition

Date: 5/2/2017

(PLEASE PRINT)

Name: Elena Weissmann

Address: 360 E. 161 St Bronx NY 10451

I represent: The Bronx Freedom Fund

Address: _____

1561
1581

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1561 Res. No. 1581

☒ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Alexandra Anthony - Bronx Freedom Fund

Address: 360 E. 161 St. Street Bronx, NY 10451

I represent: _____

Address: _____

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1531, 1576 Res. No. _____

☐ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Scott Hechinger

Address: 177 Livingston Street, 7th Floor, BK, NY 11201

I represent: Brooklyn Defender Services

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1531 Res. No. _____

☐ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Scott Levy

Address: 360 E. 161st Bx

I represent: The Bronx Defenders

Address: 360 E. 161st Bx

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/2

(PLEASE PRINT)

Name: AUBREY FOX

Address: 52 DUANE STREET NY NY

I represent: CJA Executive Director

Address:

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Molly Cohen

Address: 1 Centre Street, 10th fl.

I represent: Mayor's Office of Criminal Justice

Address: Associate Counsel

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Alex Crohn

Address: 1 Centre Street, 10th fl.

I represent: Mayor's Office of Criminal Justice

Address: General Counsel

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: 5/2/17

(PLEASE PRINT)

Name: Sergio DE LA PAVA

Address: 225 Broadway - 11TH floor

I represent: New York County Defender Services

Address: 225 Broadway - 11 NY, NY

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1541 Res. No. _____

☒ in favor ☐ in opposition

Date: 5.2.17

(PLEASE PRINT)

Name: Peter Goldberg

Address: 195 Montague, Bk NY 11201

I represent: Brooklyn Community Build Fund

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ALL Res. No. _____

☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: ALEXANDER HORWITZ

Address: 232 E 84th ST

I represent: THE LIBERTY FUND

Address: 232 E 84th ST 10028

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Alexander Horwitz

Address: Doe Fund

I represent: _____

Address: _____

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