

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES

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May 2, 2017

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HELD AT: 250 Broadway - Committee Rm.
14th Fl

B E F O R E: ELIZABETH S. CROWLEY
Chairperson

COUNCIL MEMBERS: Elizabeth S. Crowley
Mathieu Eugene
Fernando Cabrera
Rory I. Lancman
Paul A. Vallone

A P P E A R A N C E S (CONTINUED)

Timothy Farrell, Deputy Commissioner
Custody Management
NYC Department of Correction

Alex Crohn, General Counsel
Mayor's Office of Criminal Justice

Molly Cohen, Associate Counsel
Mayor's Office of Criminal Justice

Aubrey Fox, Executive Director
New York Criminal Justice Agency, CJA

Elizabeth Bender, Staff Attorney
Special Litigation Unit
Legal Aid society

Scott Hechinger, Senior Staff Attorney
Brooklyn Defender Services

Sergio De La Pava, Attorney
Special Litigation Unit
New York County Defender Services Special

Scott Levy, Special Counsel
Criminal Practice, Bronx Defenders

Peter Goldberg
Brooklyn Community Bail Fund

Alexander Horowitz
Director, Liberty Funds
Chief of Staff, Doe Fund

Alexandra Anthony
Bronx Freedom Fund

Elana Weissman
Bronx Freedom Fund

Ezra Ritchin
Bronx Freedom Fund

2 [sound check, pause]

3 CHAIRPERSON CROWLEY: Good afternoon. My
4 name is Elizabeth Crowley. I'm the Chair of the Fire
5 and Criminal Justice Services Committee. Today, this
6 committee will hearing five bills related to the
7 Department of Correction, specifically regarding the
8 process of posting bail with the DOC. This committee
9 and the City Council have taken a deep look at Rikers
10 Island other city jails during this session, and much
11 of our focus has been on trying to reduce the number
12 of people incarcerated solely because they are too
13 poor to afford bail. One aspect of this issue that
14 has not been widely discussed is the experience of
15 those who actually post bail. A report commissioned
16 by the Mayor's Office of Criminal Justice and
17 authored by the Center for Court Innovation was
18 released last year, and it highlighted numerous
19 problems with this system that cause far too many
20 detainees to be incarcerated for longer than
21 necessary. These recommendations were echoed in the
22 recently released report of the Independent
23 Commission on New York City Criminal Justice and
24 Incarceration Reform commonly known as the Rikers
25 Commission Chaired for former New York State Chief

2 Judge Jonathan Lippman. Last year 10.6% of those
3 whom bail was set, posted that bail right from the
4 courthouse, and a further 33.2% posted bail at some
5 point later. Importantly, over 75% of those who
6 posted bail did so within a week. What this data
7 tells us is clear: Making bail more efficient can
8 save tens of thousands of people from unnecessary
9 periods of incarceration. Furthermore, the data is
10 clear that we must do more to—to permit people to
11 post bail from courthouses instead of being sent to
12 Rikers. Tens of thousands of individuals are sent to
13 Rikers each year only to post bail within a few days,
14 and all of these people undergo a costly and labor
15 intensive intake process within the first 24 hours of
16 their admission, and in most cases that turns out to
17 be wasteful. As the city do not control—as the city—
18 as our city does not control the court judges who set
19 bail on these individuals or the state law that
20 governs the bail process, we do control our
21 Department of Correction, and it is our duty to do
22 whatever we can do to speed up the bail process, and
23 avoid sending people through the intake process in
24 the first place. The package of bills we are hearing
25 today will do just that and more.

2 The first bill in our package is Intro
3 1531, sponsored by our Speaker Melissa Mark-Viverito.
4 This bill requires the DOC to accept bail
5 immediately, and continuously throughout a case
6 eliminating so-called blackout periods where a
7 detainee—detainee is in DOC custody, but the
8 department will not accept bail for that person. The
9 bill will also ensure that detainees for whom bail is
10 posted are released quickly, and that the DOC will
11 accept bail in or near courts. This will eliminate
12 any time during which a person is being incarcerated
13 solely because their family or friends must travel
14 hours to get from the Criminal Courts in Queens,
15 Staten Island or the Bronx to Rikers Island or
16 another DOC facility in order to post bail.

17 The second bill being heard today is
18 Intro 1541 sponsored by Council Member Gibson, which
19 increase the time during which detainees may be held
20 in a courthouse immediately after bail is set to give
21 their friends or family a few additional hours to
22 come up with the bail money to avoid being sent to
23 Rikers Island for intake. This bill has the
24 potential to save thousand of people from a needless
25 trip to Rikers Island, and to save the DOC from

2 performing costly and needless intake procedures for
3 such detainees. The third bill we are hearing today
4 is Intro 1561, which I sponsored to address a
5 fundamental problem with our bail system. Too many
6 detainees do not know how the bail system works, how
7 to post bail or even how much bail has been set on
8 them. Judges often inform defendants of their bail
9 amounts quickly, and ensure that many do defendants
10 do not understand. Furthermore, there are often
11 unfounded rumors about how bail can be posted. While
12 some ways in which bail can actually be posted are
13 not well known. This bill would require the DOC to
14 inform detainees in writing of the amount of bail
15 that has been set on them, and inform them of their
16 basics on how bail can be posted. Intro 1576
17 sponsored by Council Member Lancman addresses a very
18 straightforward issue allowing those arrested for
19 crimes to write down the contact information from
20 their mobile phones or other property so they know
21 the numbers to call in order post bail or for any
22 other reason. This issue is important because
23 without the ability to access phone numbers from
24 their personal property, detainees might never be
25 able to access this information.

2 Our final bill is Intro 1581 sponsored by
3 Council Member Reynoso, which also works to ensure
4 that correct information regarding the bail process
5 is available where it matters, in the courthouse in
6 which bail is set so that friends and family of those
7 with bail can know exactly where and how to post it.
8 I am proud to support all five bills this committee
9 is hearing today. I look forward to a productive
10 discussion with the Administration, Criminal Justice
11 advocates and all interested members of public about
12 their positions on the merit of these bills. I would
13 like to thank our Speaker who has been a leader in
14 Criminal Justice reform, our Speaker-City Council
15 Speaker Melissa Mark-Viverito, who is here and who
16 has an opening statement as well.

17 SPEAKER MARK-VIVERITO: Thank you, Madam
18 Chair for organizing this important hearing. To my
19 colleagues that are here as well, to the
20 representatives from the Administration, thank you
21 for the work we've done to shine light—the spotlight
22 on our city's jail system. This hearing comes exactly
23 one month after Judge Lippman's Independent Commission
24 on New York City Criminal Justice and incarceration
25 reform released its report. The Rikers Commission,

2 which I established in my State of the City speech in
3 2016, has called for Rikers Island to permanently
4 closed, but the Commission did more than this. It
5 also called for numerous reforms that can make our
6 system more efficient immediately, and eliminate
7 periods of unnecessary incarceration. This
8 legislation is designed to facilitate the bail
9 process and make our Criminal Justice system fair.
10 Right now, those who have bail set, and their friends
11 and families face a number of logistical obstacles in
12 posting bail that are frankly unacceptable. Perhaps
13 the biggest issue is that there is a period of up to
14 24 hours after bail is set that the DOC will not
15 accept bail due to a person being in transport or in
16 the intake process. It is simply unacceptable that a
17 person can be in DOC custody, but be unable to post
18 bail. That is why I am proud to be the prime sponsor
19 of Intro 1531, which will require the Department of
20 Correction to accept bail immediately and
21 continuously after it is set.

22 Intro 1531 also requires the Department
23 of Correction to accept bail at all relevant
24 locations. Right now, bail is set in Manhattan or
25 Brooklyn. The family or friend of an inmate can walk

2 a block or two to a DOC facility and post bail 24
3 hours a day. However, those in other boroughs need
4 to travel either to a Manhattan and Brooklyn DOC
5 locations or all the way to Rikers Island. This is
6 simply not fair.

7 Intro 1531 will require the Department of
8 Correction to establish a public-facing bail
9 acceptance facility either inside or near the
10 courthouses in Queens, the Bronx, and Staten Island
11 to afford those residents the same opportunities
12 afforded those in Brooklyn and Manhattan, and finally
13 Intro 1531 will ensure that once bail is posted,
14 inmates are released without undue delay. In short,
15 Intro 1531 proposes simple solutions to fundamental
16 problems. We as a city are not willing to accept an
17 inmate being incarcerated for an hour longer than is
18 necessary much less a day. Intro 1531 along with the
19 other four bills being heard today will go a long way
20 to eliminating undue periods of incarceration, and
21 I'm proud to support all of them. So, I look forward
22 to hearing from the Administration, from advocates
23 and members of the public on all of these bills that
24 we're listening to today. With that, we'll turn it
25 back to Chair Crowley.

1 COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES 11

2 CHAIRPERSON CROWLEY: Thank you, Speaker
3 and we've also been joined by Council Member Lancman,
4 Council Member Vallone, Council Member Gibson,
5 Council Member Reynoso, and I know that Council
6 Member Lancman and Council Member Gibson have
7 openings on their bills, and I'm going to recognize
8 Council Member Lancman first and the followed by
9 Council Member Gibson.

10 COUNCIL MEMBER LANCMAN: Thank you. Very
11 briefly because I know we want to get to the
12 testimony. [coughs] Bail is one of the significant
13 problems that we're trying to confront in the
14 Criminal Justice system particularly the fact that
15 there's so many people sitting on Rikers Island, I
16 think approximately three-quarters who were there
17 just because they can't make bail. And in most of
18 those cases, these are individuals who are imprisoned
19 because of their poverty. I really want to commend
20 the—the chair Council Member Crowley and especially
21 the Speaker for the amount of focus that we are
22 giving to bail and its myriad problems, and—and
23 potential fixes. The legislation that addresses the—
24 a very practical problem that people who—when they
25 are arrested have their phone taken away from them,

2 and for almost all of us nowadays, that's where we
3 have our contact information, and I will say on the
4 record that I could not tell you my children's phone
5 numbers even though I call them repeatedly because
6 like almost everybody else, I pull my phone out, I
7 press their face and then I hear their voice a few
8 second later. So we need to come up with a practical
9 solution for that very, very practical problem.

10 Nobody should be sitting in jail because they
11 couldn't get someone on the phone who could make a
12 payment for them, and together with all these other
13 bills and—and the other things that we've been
14 looking at in terms of reforming the bail system I
15 think that we can make—make a real dent on the number
16 of people who are sitting on Rikers Island who don't
17 need to be. I do look forward to hearing the
18 Administration's testimony and hearing from legal
19 service providers on what is the best way to address
20 everyone's legitimate concerns. Thank you.

21 COUNCIL MEMBER GIBSON: Thank you, Chair
22 Elizabeth Crowley, good afternoon colleagues and it's
23 great see our Speaker her of the City Council. I am
24 Council Member Vanessa Gibson of the 16th District in
25 the Bronx, and I am thankful to be here, and I want

2 to thank Chari Elizabeth Crowley for convening
3 today's very important hear, and certainly for
4 including Intro 1541 in today's discussion. We know
5 that that many of those who can post bail will do so
6 within a few hours to a few days of being arraigned.
7 Putting detainees through the intake process only to
8 be quickly released is a waste of the department's
9 time and taxpayers' dollars. It is a process that
10 takes 24 hours and cannot be interrupted even if bail
11 has been posted. This current process unnecessarily
12 raises the prison population putting both detainees
13 and many of our staff including Corrections officers
14 at risk. To make matters worse, there is no set
15 amount of time that the Department of Corrections
16 must wait to hold a detainee at the court after their
17 hearing. Whether or not a detainee's family, friends
18 or loved ones have the time to post bail is
19 essentially determined by when the next DOC transport
20 bus shows up. This is ineffective and I believe that
21 we can and should do better.

22 Intro 1541, which is on today's agenda
23 I'm proud to sponsor seeks to remedy this issue by
24 requiring the Department of Corrections to hold
25 detainees at court for no less than four, but no more

2 12 hours providing detainees whose family and friends
3 meet certain criteria, the time to post bail before
4 their loved one is transferred. This is a common
5 sense and reasonable Criminal Justice reform measure,
6 and I want to thank Chair Elizabeth Crowley, our
7 Speaker Melissa Mark-Viverito as well as Council
8 Members Daniel Dromm, Steve Levin and Donovan
9 Richards for joining me on this legislation. This is
10 obviously an issue that this Council has not only
11 been passionate about, but extremely aggressive in
12 our priority to make sure that we can keep
13 individuals off of the island and out of city jails.
14 The majority of those that are incarcerated awaiting
15 their day in court are there because they cannot make
16 bail, and we simply want to make it easier to allow
17 them a chance to stay home if they're able to post
18 bail. I really want to thank our Speaker because not
19 only in her State of the City Address, but everyday
20 in all of the work we do she has always been
21 absolutely consistent on this particular issue, and
22 we know that there is a disproportionate impact that
23 this has on low-income communities of color and
24 immigrant communities. And so, if we can do anything
25 to make their lives easier to keep them out of the

1 COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES 15

2 Criminal Justice system, then we need to do so. So,
3 I want to thank DOC and as well as the Mayor's Office
4 of Criminal Justice for being here, and I look
5 forward to today's hearing, and thank you once again
6 Chair Crowley for leading today's discussion. Thank
7 you.

8 CHAIRPERSON CROWLEY: Thank you Council
9 Member Gibson. I'd like recognize Council Member
10 Reynoso who is—who is the main sponsor on Intro 1581
11 to give an opening.

12 COUNCIL MEMBER REYNOSO: Thank you,
13 Chair. My bill 1581 is going to speak to information
14 being posted publicly and conspicuously in courtrooms
15 and other locations to make sure that people get the
16 information that they—they have the right to—to have,
17 and understand how posting bail actually works. At
18 the moment, it's very hard to find that a lot of
19 people don't understand that information, and don't
20 know enough information. As usual, education is key.
21 So I'm excited to be pushing Bill 1581 or Intro No.
22 1581. I look forward to your testimony. Thank you
23 again Chair and to Speaker Melissa Mark-Viverito for
24 championing on this issue.

25

2 CHAIRPERSON CROWLEY: Thank you, Council
3 Member Reynoso. I'd like to ask the Administration
4 to take the oath that we—that we have a part of the
5 process before you give your testimony. If everybody
6 who plans to give testimony or answer questions could
7 raise their right hands, and answer the question. Do
8 you affirm to tell the whole truth and nothing but
9 the truth in your testimony today and in the
10 questions posted to you by this committee?

11 DEPUTY COMMISSIONER FARRELL: We do.

12 CHAIRPERSON CROWLEY: Thank you and Mr.
13 Fallon you can begin if you're giving testimony
14 first.

15 DEPUTY COMMISSIONER FARRELL: Good
16 afternoon, Chair Crowley and members of the Fire and
17 Criminal Justice Services Committee. I'm Timothy
18 Farrell, Deputy Commissioner of Custody Management,
19 New York City Department of Correction. I'm here
20 today to speak about two recently introduced bills
21 regarding bail. The first bill is Intro 1531.
22 Primarily, this bill would require DOC to discharge
23 all inmates within a few hours of bail being paid.
24 The Department appreciates importance of this issue
25 and certainly we are going to work to release people

2 as soon as possible. Processing people to be
3 discharged is a meticulous process, and it needs to
4 be done carefully. The bill itself acknowledges that
5 are times when the process can take some time as
6 there is a list of exemptions to the mandated
7 timeframe. These circumstances include instances
8 when someone requires discharge planning or medical
9 care. Other situations such as emergencies should be
10 included as well. Even under ideal circumstances it
11 does take a few hours to process an inmate to be
12 discharged. Because it's critical to confirm that
13 the correct person is, in fact, being released.
14 There's a 15-step checklist that must be performed
15 for each discharge. These steps include checking for
16 warrants, interviewing the inmate, comparing
17 fingerprints and other pedigree information. Each
18 step must be performed and verified by—twice by
19 supervisory staff, once by the captain and once by
20 the Assistant Deputy Warden. These steps happen
21 after the officer has conducted the preliminary
22 assessment. The process is intentionally redundant
23 because this largely relies of paper records. This
24 diligent—diligence minimizes the possibility of an
25 erroneous discharge, but it does increase the time it

2 takes to release someone. The legislation would also
3 require DOC to accept cash bail payments at many
4 courthouses throughout the city. Implementing this
5 policy would, of course, involve collaboration among
6 several city and state agencies as the DOC does not
7 have public-facing operations in the courts. The
8 city is already undergoing efforts to increase bail
9 payment option and is concerned about where cash bail
10 payments would have to be accepted. So we will
11 continue to work with the Council on these options.
12 The bill addresses some important concerns. We
13 appreciate the Council's effort, and we look forward
14 to further discussion on this legislation. The
15 second bill on discussion today would require DOC to
16 ensure that inmates are aware of how they may post
17 bail. The department is in full support of this
18 idea. It is critical that everyone in custody being
19 held on bail is aware of that bail or bond can be
20 paid and the amount. In fact, several requirements
21 of this legislation are already in place. All
22 inmates are provided with identification numbers and
23 information about how to pay bail as part of the
24 intake process. Bail payment information is also
25 available to the public on our website. We can

2 modify the intake process to ensure that each inmate
3 is provided with full information about newly given
4 bail as well. This bill also describes a new role of
5 a Bail Facilitator. The Bail Facilitator's duties
6 would include communicating directly with eligible
7 inmates, assisting such inmates in understanding how
8 to post bail or bond, and communicating directly with
9 a facilitating inmate communication with possible
10 sureties in taking any other measures to assist the
11 inmates in their posting bail or bond. We believe
12 that the--the bail facilitator role couldn't (sic) be
13 incorporated into our--into the work that some of our
14 programs and social services staff already perform.
15 So, we welcome the opportunity to collaborate with
16 the Council on achieving this goal with the
17 legislation. I thank the Council for the opportunity
18 to testify here today, and I'm happy to answer any
19 questions that you may have.

20 CHAIRPERSON CROWLEY: Is-is that--does
21 anyone else have testimony from--? Yes, okay.

22 Good afternoon, Speaker Melissa Mark-
23 Viverito, Chair Crowley and members of the Committee
24 on Fire and Criminal Just--Criminal Justice Services.
25 My name is Alex Crohn, and I'm the General Counsel of

2 the Mayor's Office of Criminal Justice. Thank you
3 for this opportunity to testify today. Molly Cohen,
4 Associate Counsel for my office is here with me to
5 answer any questions you may have. The Mayor's
6 Office of Criminal Justice advises the Mayor on
7 public safety strategy and together with partners
8 inside and outside of government, develops and
9 implements policies that reduce crime, reduce
10 unnecessary incarceration and promotes fairness. In
11 the last three years in New York City we've seen an
12 acceleration of the trends that have defined the
13 public safety landscape in the city over the last
14 three decades. While jail and prison populations
15 around the country increased, New York City's jail
16 population has fallen by half since 1990, and in the
17 last three years the jail population has dropped by
18 18%, the largest three-year decline in the last 20
19 years. This decline in the use of jail has happened
20 alongside record crime lows. Major crime has fallen
21 by 76% in the last 30 years and by 9% in the last
22 three. 2016 was the safest year in CompStat history
23 with homicides down 5%, shootings down 12% and
24 burglaries down 15% from 2013. New York City's
25 experience is continued and unique proof that we can

2 have both more safety and smaller jails. The number
3 of jail admissions from misdemeanor detainees has
4 dropped by 25% since 2014 suggesting we are getting
5 closer to the goal of reserving jail for those who
6 pose a risk. The overall size of jail population has
7 fallen and fewer people who pose a low risk are
8 detained. Jail has been increasingly reserved in New
9 York City for those who pose a risk either a flight
10 or to public safety. The proportion of the jail
11 population detained on violent felonies has increased
12 from 29% to 45% over the last 20 years where the
13 number of people held in felony drug charges have
14 declined by 78%, and the number of people held on
15 misdemeanor drug charges has declined by 62%.
16 Finally, the jail population detained on bail under
17 \$2,000 has dropped by 36% since 2014. The current
18 challenge, and one that the Mayor's office has
19 confronted head-on is to solve the difficult system
20 problems that remain. Working to solve these
21 problems will allow New York City both to continue to
22 be the safest big city in the country, and to reduce
23 unnecessary detention even further. To drive towards
24 the balancing point between and the lightest possible
25 Criminal Justice touch, MOCJ is pursuing an array of

2 initiatives in the pre-trial context that drives at
3 two angles moving the city toward a more risk-driven
4 Criminal Justice System with decreased reliance on
5 money bail while simultaneously reducing the negative
6 repercussions of associated with money bail. In
7 order to move toward a more risk-based system and
8 reduce reliance on money bail, we have launched a
9 number of key initiatives. Chief among them is the
10 citywide launch of supervised release, which allow
11 judges to release eligible defendants to a
12 supervisory program that allows them to remain home
13 to wait for trial rather than to go to jail.
14 Currently, over 3,000 people have been enrolled in
15 the program who would otherwise have been detained at
16 Rikers. Additionally, we are working with the
17 Criminal Justice agency, and national experts in pre-
18 trial risk assessment instruments to develop an
19 updated failure to appear risk assessment tool that
20 would be used at arraignment to better inform judges
21 of a defendant's risk of missing a court date.
22 Moreover, we had advocated for legislative change in
23 Albany to the New York State bail laws. Currently,
24 New York City is one of only—New York State is one of
25 only four states that prohibits judges from

2 considering public safety risks when setting bail
3 with a few narrow exceptions. Judges are limited to
4 considering risk of flight when making bail
5 determinations. The Mayor has called for a change to
6 the state law. We have also worked to improve the
7 bail payment process. Each year approximately 17,000
8 individuals are able to make bail after they are
9 booked into Rikers Island jails with 77% making bail
10 within one week of being detained. This suggests
11 that these defendants may be able to afford bail, but
12 that inefficiencies in the bail payment process could
13 be leading to delays that result in unnecessary time
14 behind bars. To address these inefficiencies, the
15 city has rolled out several programs to make it
16 easier to post bail more quickly. These include
17 creating an online down payment system creating an
18 alert to notify defense attorneys and court staff
19 when a defendant has potential to be detained solely
20 on a dollar bail. Eliminating the 3% fee taken from
21 an individual's bail, when they plead or are found
22 guilty and installing ATMs in every courthouse to
23 ensure people have access to cash to post bail.

24 As to Intro 1541, our office contracts
25 with CJA, an not-for-profit corporation to oversee

2 pre-trial services citywide. Currently, CJA operates
3 the City's Bail Expediting Program or BEPS. Under
4 this program, CJA identifies individuals who have had
5 bail set under a certain threshold, \$3,500 in
6 Manhattan, Queens and Brooklyn, and \$2,500 in the
7 Bronx, and immediately interviews them to obtain
8 names of potential sureties and contact information.
9 CJA then attempts to contact the sureties and inform
10 them of the bail amount. If the surety, often
11 friends or family members of the defendant, indicate
12 that they are able to come and post bail, CJA
13 notifies DOC, which puts a hold on the defendant for
14 two to four hours for the purposes of facility bail
15 payment. If the surety post bail from the
16 courthouse, the defendant is now transported to
17 Rikers Island and ultimately avoids unnecessary
18 detention. The City supports the expansion of the
19 BEPS program and is, therefore, aligned with
20 intention of Intro 1541. We share the Council's
21 goals in creating a system that reduces the
22 unnecessary detention and creating a fairer and
23 fair Criminal Justice System. We look forward to
24 working with the Council on this bill to ensure that
25 the legislation ensures inmate safety. The cities

2 also supports Intro 1576, which allows individuals to
3 obtain telephone numbers from their phones after they
4 are arrested. This will greatly assist individuals
5 in contacting friends and family in order to assist
6 them making bail before they are transported Riser-
7 Rikers. We are committed to figuring out how to
8 implement this, and we are looking forward to
9 continued conversations with the Council and relevant
10 stakeholders so that we can identify the appropriate
11 way to operationalize such a policy.

12 As to Intro 1581, the city is committed
13 to improving the bail payment process, and we support
14 the goal of using signage as a tool for increasing
15 procedural justice. With regards to signage in
16 courthouses, the city is working with the Center for
17 Court Innovation to test a comprehensive set of
18 strategies designed to increase procedural justice in
19 a busy criminal court. Through this initiative, CCI
20 will consider a range of improvements including
21 revamped directional and informational signage and
22 information stations throughout the courthouse,
23 improve lighting and audibility in select courtrooms,
24 and procedural justice training for security
25 officers. The centerpiece of the proposed reforms

2 will take place in select courtrooms. Nonetheless,
3 the city has concerns about legislation that requires
4 coordination with a state agency not under the
5 control of the Mayor. Thank you for the opportunity
6 to testify here today, and I'd be more than happy to
7 answer any questions you may have.

8 SPEAKER MARK-VIVERITO: I think I'm must
9 going to jump to this, but-but thank-thank you for
10 the testimony and-and Mr. Crohn, I will just say that
11 in terms of the highlights of some of the existing
12 reforms that have been done with the bail system, I
13 think we can take joint credit in some of that work.
14 So, I think it's indicative also of-of how long we've
15 been dealing with this issue as well that we think
16 consisted on it. So, I think that that needs to be
17 said, but just clarity on-and either one of you. I'm
18 sure who would answer the question in this case, but
19 with regards to-to my bill in particular, clearly the
20 concern here is about these blackout periods, right,
21 and obviously the bill calls for immediately and
22 continuously having the inmate, the-the person
23 incarcerated being held to be able to--for bail to be
24 paid for them. So, it seems really unacceptable,
25 right, that someone who lives in DOC custody does not

2 have access or cannot get bailed out. So, what is it
3 that in looking at that issue in particular.

4 Obviously, we have this bill before us. That is what
5 we're presenting, but what has the DOC been doing to
6 look at that issue in particular to try to eliminate
7 that?

8 HASAJAY VIANABUSHI: Okay, good
9 afternoon. [off mic] I'm Hasajay Vianabushi (sic?)
10 from the Criminal Justice Group.

11 SPEAKER MARK-VIVERITO: [interposing]
12 Maybe you want to put the mic a little closer.
13 Great. Thank you.

14 HASAJAY VIANABUSHI: Yeah, so one of the
15 things that we have done is to look at each one of
16 our court facilities, there in question, which will
17 be Staten Island, Queens and the Bronx to come up
18 with public facing areas to actually collect bail.
19 The Queens House, which is the easier the state
20 predominantly had housed inmates there. So there is
21 a bail window and that would just take some
22 renovation to that that we're readily available to do
23 so. So, we've already looked at all of the necessary
24 equipment that we would have to outfit each area with
25 to start the ball rolling on the procurement of those

2 items. And we're also looking at places or spaces
3 within Staten Island and the Bronx courts so that we
4 could facilitate those bail areas.

5 SPEAKER MARK-VIVERITO: Okay, and so
6 what-what is the timeline on that?

7 HASAJAY VIANABUSHI: So they gave us
8 several weeks for the procurement of the space, and
9 the rest of the material, which we would need
10 predominantly we already have because we are doing
11 bail at RICC and at the borough facilities. So it's
12 predominantly the space, which we would have to
13 procure.

14 SPEAKER MARK-VIVERITO: Okay, I
15 appreciate that update. I may have more questions on
16 the bill. Let's just--one of the other issues that--
17 that I wanted to get at my understanding is that
18 communications regarding posting bail are done in
19 EFX.

20 HASAJAY VIANABUSHI: Correct.

21 SPEAKER MARK-VIVERITO: So that is
22 accurate.

23 HASAJAY VIANABUSHI: So, we're looking
24 at some operational and procedure issues that we
25

2 have. We know that some of our procedures may be a
3 little outdated that we will have to--

4 SPEAKER MARK-VIVERITO: [interposing] A
5 little, I think is so understated.

6 HASAJAY VIANABUSHI: Yeah, but it is, in
7 fact. We will be working on putting our new
8 procedures for operational as to how we're going to
9 combat that.

10 SPEAKER MARK-VIVERITO: So, I--we've heard
11 anecdotally right, and I would like you to affirm or
12 deny it, but, you know, of instances were inmates
13 have been held longer than necessary because a DOC
14 employee had not checked the fax machine.

15 HASAJAY VIANABUSHI: So as part of the
16 fax not only is the person required to fax the
17 transmittal to request for the bail, they're also
18 obligated to telephone--telephonically notify and
19 actually speak to someone in the command. So I don't
20 know if that's true per se, but they are required to
21 do both fax and telephone.

22 SPEAKER MARK-VIVERITO: Well, I'm going
23 to give you one case here. So on April 8th of this
24 year a bail fund posted bail at the Manhattan
25 Detention Center at 1:30 p.m. The person was not

2 released until 11:00 p.m. the next day, April 9th,
3 and the bail fund was told that someone probably
4 didn't check the fax machine. Are you aware of this
5 incident?

6 HASAJAY VIANABUSHI: No, I'm not.

7 SPEAKER MARK-VIVERITO: Or at MOCJ aware
8 of this incident?

9 ALEX CROHN: We—we were notified by them
10 as well. I know—I think we—we did look into it and
11 there are definitely things that need to be improved
12 in that process. I don't think anyone will say that
13 it works fluidly everybody included. So those are
14 issues that we sort of told the Defense Bar, and the
15 bail function it applies immediately. So we can try
16 to remedy those problems as soon as they come up.
17 But they're very real issues that we take very
18 seriously.

19 SPEAKER MARK-VIVERITO: Alright. So then
20 other than the legislation that's the importance of
21 this legislation, right. It's the—it may be
22 inconvenient from your perspective, but it's going to
23 force us to have to deal with something that it
24 seriously needs to be overhauled. I mean we're
25 talking about almost a day and a half that a person

2 was--almost two days that a person was held extra
3 because a person didn't check the fax machine. I
4 mean really of the--you know, it's--it's just pretty
5 ridiculous I think. So, you know, I know you've
6 expressed concerns about this bill, but I think that
7 that is an example, and as I said in my opening
8 statement we don't want people to be held, you know,
9 a minute longer than they need to be. And so, we
10 have to be very diligent about trying to figure out
11 ways that we can get up to speed and--and use existing
12 technology to our advantage, and obviously to the
13 benefit of our constituents. So, you're not opposed
14 to moving away from paper and fax based system across
15 City Management?

16 DEPUTY COMMISSIONER FARRELL: We would
17 love to get modernized and eliminate the paper yes.
18 It would be more effective for us in managing how we
19 process the bail pay--payments and get inmates
20 released as soon as possible.

21 SPEAKER MARK-VIVERITO: Okay, we have
22 that in--in your--along the same lines obviously. An
23 additional question with regards to this. The--the
24 issue of how do you--how is it that currently track
25 inmate locations? I mean I understand there's a

2 pilot project that you're looking to do in regards to
3 that, right?

4 DEPUTY COMMISSIONER FARRELL: Right now
5 there is a pilot project at one of our facilities
6 where we're using our RFI bracelets. Similar
7 bracelet, similar that you'd have as far as in a
8 hospital or something along those lines. It's a
9 bracelet with the inmate's photo on it, and necessary
10 information, and as from point to point destination
11 those bracelets are scanned in such as if they leave
12 their housing unit, that unit-bracelet will be
13 scanned and then when they arrive at their intended
14 destination whether it be the intake, medical or some
15 other location, they would again be scanned and that
16 tracking, that-that timeline is maintained in a
17 computer database. So, therefore, it's kind of like
18 when you're-you know, we've got the-it gives you the
19 time and location, arrival, departure. So we are
20 piloting that and the plan is that we'll continue to
21 roll out throughout the agency.

22 SPEAKER MARK-VIVERITO: So, when-has the
23 pilot started?

24 DEPUTY COMMISSIONER FARRELL: The pilot
25 has started at-at the-RMBC facility yes it has.

2 SPEAKER MARK-VIVERITO: And how many
3 individuals are-how-how--

4 DEPUTY COMMISSIONER FARRELL: Right now
5 it's-it's one facility. So, the count of that
6 facility is fluid somewhere in the vicinity of 800 or
7 so, and our IT Department has been working with that
8 assessing the productivity of it, and the success,
9 and we will be rolling that out throughout the agency
10 in the coming months.

11 SPEAKER MARK-VIVERITO: Okay. That's-it-
12 it sounds interesting and promising I guess, you
13 know. Now, obviously a lot of-of what we're
14 discussing in this bill and probably some of the
15 others as well it has to do with upgrades, you know,
16 infrastructure and costs obviously. Have you done
17 any sort of assessment of the cost of upgrading your
18 computers and infrastructure to try to eliminate some
19 of this blackout period, and some of the concerns
20 that this bill is looking to address?

21 DEPUTY COMMISSIONER FARRELL: I know the
22 IT, our IT Department is involved in that. I do not
23 have specific figures on what those costs would be
24 for the same. (sic)

2 SPEAKER MARK-VIVERITO: [interposing] But
3 there has been analysis done towards that?

4 DEPUTY COMMISSIONER FARRELL: There's an
5 analysis done on the tracking, and we're always
6 looking for some-- The thing is working with OCA and
7 getting those documents and having that information
8 shared among a computer database is something that
9 needs to be looked into.

10 SPEAKER MARK-VIVERITO: Right. I think
11 those are some of the main questions I-I wanted to
12 ask you to answer. I may come back, but I will allow
13 some of my other colleagues to also ask questions
14 specifically about their bills, and again thank you
15 for-for the answers.

16 CHAIRPERSON CROWLEY: Thank you to our
17 Speaker. Right now I see we've been joined Council
18 Member Mathieu Eugene. So, I imagine you're all
19 familiar with the McKenzie 14-Point \$25 million
20 slated, right. I wanted to know if the Department of
21 Correction whether going to electronic files and
22 electronic keeping of inmates to, you know, cut our
23 any redundancy or any type of delay that would occur
24 when trying to release a detainee whose family has
25 put up bail. Is that part of this 14-Point Plan? Is

2 that part of this big overhaul to the Department of
3 Correction?

4 DEPUTY COMMISSIONER FARRELL: I believe
5 there has been some review with that, and some
6 activity with that but we still rely mainly on what
7 our existing system was, the IES system in tracking
8 and maintaining the inmate movement from facility to
9 facility, unit to unit.

10 CHAIRPERSON CROWLEY: Bud do you have—you
11 have a way of doing that electronically?

12 DEPUTY COMMISSIONER FARRELL: Yes.

13 CHAIRPERSON CROWLEY: Does that inmate
14 have like bar code?

15 DEPUTY COMMISSIONER FARRELL: No, no.
16 It's—it's manually entered in through the booking
17 case number and the NYSA information is entered in,
18 and as the inmate travels from destinations point to
19 point that information is updated manually. It's not
20 done electronically as far as scanned or
21 automatically.

22 CHAIRPERSON CROWLEY: And you don't know
23 with certainty the Department of Corrections has a
24 plan to eliminate the redundancy and go more
25 electronic as far past of this overhaul?

2 DEPUTY COMMISSIONER FARRELL: Well, I
3 believe part of the RFI pilot that we are currently
4 involved with RMBC, and we plan to roll that out
5 agency wide is a step in that direction.

6 CHAIRPERSON CROWLEY: When you talk about
7 delays such as emergencies, what does that mean?
8 What would be considered an emergency that may delay
9 a detainee from being released for a long period of
10 time?

11 DEPUTY COMMISSIONER FARRELL: It could be
12 a facility based emergency that is involving staff
13 required to respond and deal that. It could be some
14 type of medical emergency where the individual needs
15 to have urgent medical care. It could be a wide
16 range of instances, which we'd fall under that
17 definition.

18 CHAIRPERSON CROWLEY: Now, why is it that
19 the Department of Correction's responsibility to do
20 steps such as warrant reviews before releasing an
21 inmate, wouldn't that already have been done by the
22 Criminal Justice Coordinator's Office prior to the
23 judge posting or setting bail?

24 ALEX CROHN: So our office isn't an
25 operational office. It's primarily a policy office.

2 So it would be, you know, OCA does one check, of
3 course, but it's possible that someone picks up a
4 warrant rather in DOC custody. There's possible--
5 there's a lot of different things that can happen to
6 somebody at DOC. So DOC I'm sure they'll say have to
7 do that one check before someone is discharged to
8 make sure that they are legally allowed to discharge
9 that person.

10 CHAIRPERSON CROWLEY: So, it's necessary.

11 ALEX CROHN: [interposing] Yes, it is.

12 CHAIRPERSON CROWLEY: And it couldn't be
13 done prior and--and there could be a situation where
14 someone gets a warrant while they're already
15 incarcerated?

16 DEPUTY COMMISSIONER FARRELL: That is--
17 that's correct. Once they're arraigned, and that
18 information is--is known, an agency that may have a
19 warrant on the individual could produce that warrant
20 thus requiring us to--

21 CHAIRPERSON CROWLEY: [interposing] At a
22 later date.

23 DEPUTY COMMISSIONER FARRELL: Yes.

24

25

2 CHAIRPERSON CROWLEY: Now, overall you
3 support each one of these bills? There's no bill
4 here that the Administration opposes?

5 DEPUTY COMMISSIONER FARRELL: No.

6 ALEX CROHN: I—I think our office does
7 have concerns about the signage bill. I think our
8 office does have concerns about the signage bills
9 solely because of the requirement to—to work with the
10 Office of Court Administration, and we've seen them
11 pass bills like that. It has been difficult since
12 they are not under city control. [off mic] I don't
13 have the exact experience on there. (sic)

14 CHAIRPERSON CROWLEY: [pause] [off mic]
15 Yeah, so—[on mic] so—so what is it about the signage
16 bill that—that you're—you're--?

17 ALEX CROHN: [interposing] We have no
18 objection with the goals and, in fact, we're—we're
19 working towards sort of fulfilling the goals. In the
20 past when the Council has legislated, you know, they—
21 there have been other bills where it has required us
22 to work with the Office of Court Administration and
23 then, of course, when we sit down with them, you
24 know, they have their own ideas, but they're not a
25 city agency. So it can be difficult sometimes when

2 there's a legislative requirement. Even if we, you
3 know, if we talked with them before hand things come
4 up later, and—and it could deviate from sort of the
5 goals of the bill and, you know, they're not sitting
6 here today. You know, they're just an agency. So,
7 that just be difficult. So, we just sort of have like
8 a standing objection to those types of bills, but no
9 opposition to the goal behind the bill.

10 CHAIRPERSON CROWLEY: Okay, I have no
11 further questions. Speaker, do you have any other
12 questions?

13 SPEAKER MARK-VIVERITO: Yes, I just
14 wanted to go back to the—the issue here about your
15 testimony, and Elizabeth just talked a little bit
16 about it, but you talk about the 15 Track list and
17 the—that you have to perform for discharge, and that
18 you rely on paper records. Obviously, some of that
19 information that you're cross-checking has to do with
20 data you're getting from other agencies I'm assuming,
21 right?

22 DEPUTY COMMISSIONER FARRELL: Correct.

23 SPEAKER MARK-VIVERITO: So of that—of the
24 data that you have to look at and review, what is
25 electronic and what is paper? What agencies are you

1 COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES 40

2 having more difficulty communicating with or getting
3 information from?

4 HASAJAY VIANABUSHI: So-

5 SPEAKER MARK-VIVERITO: [interposing]
6 When you say paper is it that you're getting on the
7 phone to confirm certain things? I-I just--

8 HASAJAY VIANABUSHI: That is correct.
9 We don't access to any of the-outside of checking,
10 running rap sheet, we don't have access to OCA's or
11 any of the other databases. So, everything that
12 we're relying on predominantly from any other agency
13 is paper based.

14 SPEAKER MARK-VIVERITO: Okay. So how
15 many other agencies other than OCA, NYPD are you
16 getting information from and cross-checking?

17 HASAJAY VIANABUSHI: So, we're checking
18 for warrants--

19 SPEAKER MARK-VIVERITO: [interposing]
20 Parole.

21 HASHAJAY VIANABUSHI: --probation.

22 SPEAKER MARK-VIVERITO: Uh-huh.

23 HASHAJAY VIANABUSHI: Other jurisdiction
24 warrants.

25

2 SPEAKER MARK-VIVERITO: Coming outside of
3 the state, right? Outside of the city?

4 HASHAJAY VIANABUSHI: Yes, uh-huh.

5 SPEAKER MARK-VIVERITO: So, the parole,
6 the probably information is that—do you have access
7 to that electronically?

8 HASHAJAY VIANABUSHI: No, we don't.

9 SPEAKER MARK-VIVERITO: No, and you don't
10 have access to OCA data electronically either?

11 HASHAJAY VIANABUSHI: No, we don't.

12 SPEAKER MARK-VIVERITO: Obviously the
13 jurisdiction are beyond. I would think that—I'm
14 wonder if there's ways to get around that, not get
15 around it, but get some sort of agreement across city
16 agencies to access this information.

17 ALEX CROHN: On this you're—you're sort
18 of singing our Director's tune. So this is a unique
19 challenge in the Criminal Justice System. You know,
20 nobody runs it, as I'm sure everybody know. It's
21 kind of everybody here together. For what it's
22 worth, as—as far as OCA is concerned, we have been
23 talking to them about making sure there is sort of
24 some data integration between DOC and OCA. The
25 devils I always in the details of things like that.

2 So, there's quite a lot of conversation that goes on,
3 but this is a goal of ours to help, you know,
4 implement some of these bills, and some other things
5 obviously that we'd like to do.

6 SPEAKER MARK-VIVERITO: Well, look,
7 confidentiality of information is important, but
8 there's some inefficiencies here, which just are
9 absurd I think, and we have to figure out how to—how
10 to address it. So, that obviously more to dig into
11 there. We have to look at that obviously. And the
12 issue of—of—of the public-facing facilities going
13 back to that issue, has some of the conversation not
14 only looking at like the Queens House of Detention,
15 which is not functioning right now, but the structure
16 there that you can work has there been any
17 conversation of working with OCA to maybe share space
18 within existing courts and, you know, that kind of a
19 conversation as well?

20 HASHAJAY VIANABUSHI: So, we've actually
21 contacted OCA about some additional space.

22 SPEAKER MARK-VIVERITO: Uh-huh.

23 HASHAJAY VIANABUSHI: But went into the
24 civilianized probing for inmates who were being
25 discharged, and we were never--

2 SPEAKER MARK-VIVERITO: [interposing] A
3 bill that we did. Thank you, yes. Okay, uh-huh.

4 HASHAJAY VIANABUSHI: Yeah, so we're--
5 we're operationally. However, we were not able to
6 obtain any additional space in the court facilities.

7 SPEAKER MARK-VIVERITO: Well, you were
8 not able to because they're not willing to?

9 ALEX CROHN: Well, you know, space in the
10 courthouse is very--

11 SPEAKER MARK-VIVERITO: [interposing]
12 It's very limited.

13 ALEX CROHN: --it's very limited. We
14 have talked to them about space for possible kiosks
15 and associated with our online--

16 SPEAKER MARK-VIVERITO: [interposing]
17 Okay.

18 ALEX CROHN: --call system. I think
19 there's a lot of enthusiasm just sort of across the
20 system about that. So, you know, a kiosk is small
21 ant that's easy. You know, space there was a lot
22 harder so everybody is always competing for space.
23 I'm sure many of the people here are similarly
24 compete for space in the courtroom. So it's always

2 a—a dance that we try to orchestrate as much as
3 possible with the court system.

4 SPEAKER MARK-VIVERITO: Well, looking—

5 DEPUTY COMMISSIONER FARRELL:

6 [interposing] We are working—we are working with the
7 Bronx Courts and Staten Island to—to get that space
8 so we can effectively have all five boroughs covered
9 with that. We own the building in Queens so that's--

10 SPEAKER MARK-VIVERITO: [interposing] Uh-
11 huh, it's easier. I understand, yes.

12 DEPUTY COMMISSIONER FARRELL: --something
13 I guess you could do. That's an internal fix there.
14 Brooklyn and Manhattan are relatively close to the
15 courthouses there in those boroughs. So again, it's—
16 it's the Bronx and—and Staten Island as far as areas
17 where we don't have a physical property, city-owned
18 property that we would be able to establish that, and
19 it's going to require, you know, an agreement with
20 OCA to get that space to have that public facing
21 location.

22 SPEAKER MARK-VIVERITO: Okay, it may be
23 something we could support as well, and advocate for,
24 and I'm sure Laurie probably has some questions, but
25 just the last one here in terms of I want to—that

2 question I asked before about looking at the
3 infrastructure, computer, what it would take of
4 upgrading it. Just to get back at it when we talk
5 bout this fax system, I'm still a little bit [laughs]
6 definitely this is when we communicate these days.
7 But has there been any thought in that study, you're
8 saying that some look at, right? Is it about
9 upgrading the fax--basically taking, getting rid of
10 this fax system and integrating to some other
11 technology? That part of the analysis that you're
12 doing or it's--it's not that?

13 DEPUTY COMMISSIONER FARRELL: It's-it's-
14 we would like it to as far as where they are within
15 our IT Department on looking into eliminating the
16 whole faxing a piece of paper from one point to
17 another. I really-I-I can't speak on that because I
18 have not conferred directly with the IT as far as the
19 step-by-step process that they're-that they're doing
20 and to what extent they are doing it.

21 SPEAKER MARK-VIVERITO: I mean we
22 definitely will be following up and making inquiries
23 into that. It doesn't really sound like there is a
24 lot of promise in what you're saying that that's
25 being looked at.

2 DEPUTY COMMISSIONER FARRELL: It's-it's-
3 it's not for lack of want.

4 SPEAKER MARK-VIVERITO: Understood.

5 DEPUTY COMMISSIONER FARRELL: It's lack
6 of trying to get all the connections and everyone to
7 kind of communicate in order to-to modernizing and
8 get us into a more fluid information exchange.

9 SPEAKER MARK-VIVERITO: Okay, and with
10 that I-I-I'm done with my questions, Madam Chair.

11 CHAIRPERSON CROWLEY: I have no further
12 questions just a comment. We-we have a budget
13 hearing on Monday, and I look forward to discussing
14 this more with the Department of Correction in terms
15 of how they could facilitate the bills, the practice
16 we're trying to put in place, and you know, how we
17 can have a system that we could rely much more on
18 technology for efficiency rather than having a fax
19 machine and-and, you know, our current and especially
20 to-to avoid such races like that. So, I look forward
21 to you assessing these bills a little bit more than
22 when you have some time to incorporate what the
23 overall plan is for Rikers Island and for our jails.
24 And now, that concludes the testimony for the
25 Administration. We are going to have people from the

2 public up. Our first person up to testify is Aubrey
3 Fox from the CJA, Executive Director. [pause] And
4 today we have a number of people who have registered
5 to testify. If you would like to testify, please do
6 register with the sergeant-at-arms and know that you
7 will be limited to three minutes, and so Mr. Fox,
8 once you are ready, please begin your testimony.

9 AUBREY FOX: Thank you and good
10 afternoon. Thanks to Chair Crowley, to Council
11 Member Mark-Viverito, and there other members of the
12 Council today. As I mentioned, I'm—I'm Aubrey Fox.
13 I'm the Executive Director of the New York Criminal
14 Justice Agency. We are the city's main pre-trial
15 services agency, and one crucial role we play I that
16 we interview almost all defendants before they see a
17 judge and we make a release recommendation to the
18 judge, and that's based on our assessment of the
19 likelihood that the defendants will return for the
20 required court dates. In part because of our work,
21 New York City has the highest pre-trial release rate
22 in the country, and I think it's worth noting that
23 70% of defendants whose cases are not resolved
24 immediately at-at arraignment are released to the
25 community without any conditions other than the

2 requirement that they show up to court for future
3 court dates. Defendant failure to appear in court is
4 rare, which gives the court confidence in continuing
5 to set these liberal release conditions, and we play
6 a role in-in helping to ensure that return rates to
7 courts are so low. We make hundreds of thousands of
8 phone calls to remind people of their court dates.
9 We send out hundreds of thousands of letter, and we
10 are now sending text messages. And as the Mayor's
11 Office mentioned in their testimony, the tool that
12 we're using to assess defendant risk of failure to
13 appear is going through some revisions, and we think
14 one result of that is that we may be able to
15 confidently and safely increase the number of people
16 that we recommend for release to the court, which
17 have the-hopefully the impact of reducing the amount
18 of people are released to the community. So, I
19 wanted to commend the Council for taking a look at
20 these very important issues around bail and bail
21 payment, and CJ has a unique perspective on this
22 problem because in addition to the basic work we do
23 in interviewing all arrestees before they come to
24 court, we operate the Bail Expediting Program, which
25 has been mentioned many times today. And essentially

2 what we do with bail expediting is we're the human
3 face where we re-interview people who have had bail
4 set on their case, and we tried to resolve as best we
5 can the problems that they face in-in paying bail.
6 And so we contact family members, and we try to walk
7 them through the process of what it means to come to
8 court and pay their bail. We also have the power to
9 place hold on defendants, and one of the pieces of
10 legislation under discussion today would increase the
11 amount of time that we can place hold-holds on
12 defendants.

13 In 20015, of the 45,000 defendants who
14 had money bail set at their arraignment, we helped
15 over 6,000 pay bail, and we know from research the
16 defendants who receive bail expediting assistance are
17 more-80% more likely to obtain release within two
18 days of arraignment than defendants who did not
19 receive assistance from the program. So, I think one
20 of the comments I would make generally is there
21 something about the fact that we are present in the
22 courthouse 24/7 and there's something about
23 presenting a human face to the defendant that's very
24 important. We're also indis-indispensable to the
25 non-profit funds, and we help them with their program

2 by ensuring that there's no personal surety available
3 to pay bail, which is one of their criteria, and
4 letting them know in a case they're interested in has
5 come out of arraignment. [bell] So, just one final
6 comment before I conclude, you know, I think many of
7 the pieces of legislation under consideration talk
8 about how to bring better bail expediting procedures
9 to DOC, and we think there may be some lessons that
10 we can offer from the program that we operate
11 currently in the courthouse that we're willing to
12 share it the DSC as we move forward. So again, I
13 want to thank you for the opportunity to testify
14 today.

15 CHAIRPERSON CROWLEY: Thank you, Mr. Fox
16 and thank you for what do, and for testifying. Could
17 you say—let us know why there's—although you do help
18 a lot of those who have jail—I mean bail to post, but
19 you vote—you said 6,000 out of the 45. Why? Is it
20 because of staffing--

21 AUBREY FOX: [interposing] Yes.

22 CHAIRPERSON CROWLEY: --that you're
23 limited?

24 AUBREY FOX: Well, currently we have
25 eligibility criteria in which we only interview—we

2 only re-interview and seek to help people who have
3 bail set below 3,500 or less in Manhattan, Queens and
4 Brooklyn and 2,500 or less in the Bronx. We do offer
5 the service to low misdemeanors and felons. So, our
6 criteria is more expansive than the bail for
7 criteria. We've—we re-interview about 10,000 people
8 a year. So, that's the number that we seek to help.
9 If we could fill some staffing shortages, we think we
10 would be able to re-interview an additional 7,500.
11 So these are people who would meet our criteria
12 today, but--

13 CHAIRPERSON CROWLEY: [interposing] You
14 could double the work that you do?

15 AUBREY FOX: Well, yeah, almost double so
16 we go--

17 CHAIRPERSON CROWLEY: And where your
18 funding comes from?

19 AUBREY FOX: So we receive our funding
20 from the Mayor's Office for Criminal Justice to
21 operate the program, but we are speaking to the
22 Council and the Mayor's Office about expansion. So
23 if we—we also could--if we were to increase the
24 threshold that—at which we've included people into
25 our program to \$5,000 from its current limits, we

2 think we would interview--re-interview an addition
3 5,000, and we don't operate in Staten Island now. If
4 we were to expand to Staten Island, that would bring
5 us to another 1,600 people.

6 CHAIRPERSON CROWLEY: And you don't
7 operate on --within the jails? You only operate in
8 the courthouses?

9 AUBREY FOX: Currently--currently, we only
10 operate in the courthouses, but I think there may be
11 something in the spirit of the program we run in the
12 courthouses that we could offer in the jails.

13 CHAIRPERSON CROWLEY: So, that you could
14 expedite it in the jails?

15 AUBREY FOX: Potentially, yes.

16 CHAIRPERSON CROWLEY: Okay, I have no
17 further questions. No, I appreciate your testimony.
18 Thank you.

19 AUBREY FOX: Thank you. [pause] Okay,
20 next up we have Sergio De La Pava from the New York
21 City County Defender Services; Scott Levy from the
22 Bronx Defenders; Scott Hechinger, Brooklyn Defender
23 Services; Elizabeth Bender from the Legal Aid
24 Society. [background comments, pause] I just want
25 to remind those testifying they will have a limit of

2 three minutes, and if you can keep those three
3 minutes, I'd appreciate it. I'd like each one of the
4 four of you testify first, and then we're going to
5 ask some questions. Thank you.

6 ELIZABETH BENDER: Alright, I can start.
7 Good afternoon. [background comments] Thank you.
8 Good afternoon and thank you, Madam, or is that
9 better? Okay. Good afternoon and thank you. My
10 name is Elizabeth Bender. I'm the staff attorney at
11 the Special Litigation Unit of the Legal Aid Society.
12 I want to spend most of my time today speaking about
13 Council Member Lancman's bill. We think this is an
14 incredibly important bill that could really benefit a
15 lot of people, but there are ways that it needs to be
16 strengthened in order to be as effective as possible.
17 We believe that the exceptions that are currently
18 contained are too broad and unnecessary, and we also
19 believe that some enforcement—excuse me—enforcement
20 measures—measures should be added to the bill.
21 First, it's essential for arrestees to have their
22 loved one's phone numbers with them at their
23 arraignment. If they cannot provide a phone number
24 of someone local, they're automatically ineligible
25 for the Supervised Release Program. Second,

2 arraignment judges by law must consider a client's
3 community ties in setting bail. Phone number are
4 part of that, and furthermore, not having a phone
5 number will decrease a client's CJA release score so
6 that someone who may have been recommended for
7 release might instead be classified as a risk just
8 because they don't know their family's phone number
9 by heart. The exceptions in this bill we believe
10 will swallow its well meaning idea and making it
11 likely that those who could benefit it the most will
12 not. Taker a low-level drug offender, for example.
13 He's accused of selling a small amount of narcotics
14 to an undercover officer. She may have used her
15 phone to text or call someone that she thinks might
16 be able to sell the officer the drugs he wants.
17 Under this bill, that officer would be able to
18 deprive that woman of access to her cell phone after
19 she's arrested, and then- Excuse me. This offender
20 she stands a good chance of resolving her case with
21 drug treatment rather than jail time ultimately, but-
22 and at arraignment she would be eligible for
23 supervised release based on the charge if she has a
24 loved one's phone number with her, but if she doesn't
25 have that number, she's not eligible. A judge who

2 sees no family in the audience for her, might be
3 inclined to set bail, and then this woman goes to
4 Rikers Island for lack of having a phone number on a
5 case where she has a very good chance of never
6 receiving a jail sentence at all. The bill in its
7 current state would not have helped her to get the
8 phone numbers that could have gotten her out of jail.
9 And we are also concerned that without clear
10 guidelines for enforcement, the NYPD could use this
11 bill to gather evidence from our clients' phones
12 without a warrant since officers will be observing
13 them presumably while they are searching their phones
14 in order to meet public safety interest that we know
15 the NYPD is going to have. So we propose the
16 drafting of written instructions with the input of
17 Legal Aid and other defender agencies, but these
18 instructions give clients in the precinct advice the
19 helps--well, not advice, but instructions to allow
20 them to avoid incriminating themselves. And a woman--
21 like a Miranda waiver, both the officer and the
22 client should sign off that these instructions were
23 given, that the officer gave adequate time and
24 supplies to the client in order to access his contact
25 information, and that the client made the choice

2 whether to do that or not. And I've drafted specific
3 suggestions as to that language. It's on page 9 of
4 our written submission. [bell] We're happy to speak
5 more about it, and we just want to make sure that the
6 officers must never be allowed to search clients'
7 phones while this is going on. Otherwise, this bill
8 could easily function as an end-run around the Fourth
9 Amendment, which we know is not its intent, but
10 these--these--these guidelines and enforcement measures
11 would certainly help to prevent that from happening.
12 Thank you so much.

13 SCOTT HECHINGER: Thank you for that. My
14 name is Scott Hechinger. I am a Senior Staff
15 Attorney at Brooklyn Defender Services. I've been
16 working as a public defender for six years and
17 represented thousands of people from arraignment to
18 hearings and trial. So I've seen the practices of
19 bail hurt my clients, but I've also seen a lot of
20 these practices and flaws in this system as the
21 proposals are up to address in practice. I wanted to
22 tell the story of--a client's story from kind of start
23 to finish. I don't have enough time to do that, but
24 what I can say is that a lot of clients who can't
25 afford bail and those are in the minority, do go

2 through—do often face and—and feel the impact of
3 these practices and policies and flaws in the system
4 from start to finish. I want to first talk about
5 Bill 1576, and just point out just from the
6 perspective of my clients why contacts are so
7 critical. Number 1, CJA talked about it's critical
8 for their verification process, and for the CJA
9 release score. It also is critical for supervised
10 release. It's also critical from my bail argument to
11 able to show that they have family in the audience.
12 It's even more critical when those—you know, the
13 clients of mine are young. Often judges will not
14 release people that are 16, and 17 years old without
15 a family member in the audience, and it's also
16 important for the—the proposal that's up for 1541,
17 the delay proposal. Delay is only going to be
18 allowed if CJ or DOC is allowed to actually make
19 contact with someone who—with a family member.
20 Without contacts, obviously this will be an issue.
21 One thing I want to point out that's critical is that
22 this question that I asked my clients, who can I call
23 if bail is set? I don't ask them how much can you
24 afford? Now, this is a critical point none of the
25 proposals address. Right now, for clients there's no

2 mechanism with which—which our clients could actually
3 post their own bail. Let's say they have an ATM
4 card, right now they'll ask me hey can I get—can I
5 give you my ATM? Can you go to the ATM and take out
6 money for me to pay my bill. I can't do that. I
7 can't even hand their ATM cards to—to their family
8 member. They're stuck even if they can afford bail
9 not to mention the fact that when I ask for an
10 unsecured appearance bond, which is one of the least
11 restrictive forms of bail that would enable them to
12 make a promise to pay if they're released. Without
13 painting it—paying any bail money upfront, they will
14 not be able to do that. So all of these proposals
15 are fantastic, but they still don't solve the problem
16 that our clients cannot pay their bail, and the
17 problem persists in Rikers Island. Really briefly
18 because I only have 20 more seconds. Three minutes
19 flies by quite quickly. Proposal 1541 some of the—
20 one of the issues I want to point out is the fact
21 that it excludes bail on the amount of \$10,000 or
22 more. \$10,000 or more are all felonies. Felony
23 bails are usually \$10,000 or more, and I just wonder
24 if that is the [bell] Council's intention. I also
25 have concern about the DOC's discretion to determine

2 whether someone is intoxicated, or have medical
3 issues. First of all, often these are the people who
4 need to be release most if they medical issues, but a
5 lot of my clients when they come in after having been
6 arrested and being incarcerated for 24 hours look
7 like they could be intoxicated. Their eyes are red.
8 They're not in their best shape, and so that's a
9 concern of mine putting the discretion in the hands
10 of the DOC to determine that. Last but not least,
11 with regard to Bill 1531, I just want to tell a
12 really brief story. I promise no more than 25
13 seconds that regarding the facts issue. I had the
14 experience of trying to pay a dollar bail for a
15 colleague of mine. I was in arraignments that night,
16 and I was going back and forth between Brooklyn House
17 of Detention, and the issue here was not the fact
18 that the facts could be sent, but the person on the
19 other end wasn't there, and every time I came back,
20 they would call over and no one was actually present,
21 and I came back over the course of seven hours from 5
22 o'clock, and I would tell judge who was arraigning
23 clients in front of—just give me a moment. I got to
24 hop over to Brooklyn House of Detention, but over the
25 course of seven hours, there was either a change of

2 the guard or there wasn't anyone over on the other
3 side of the fax machine. And it took me, who's just
4 next to the court—and I had childcare set up because
5 I was in arraignments that night seven hours with my
6 clients who live in Bay Ridge who work full time.
7 Those clients are just going to home and wait to the
8 following day because they cannot afford to go back
9 and forth between court. And so, I think the
10 Council's attention to the fax machine and the—the
11 problems with the current state of technology and the
12 DOC is a major issue and something that needs to be
13 paid attention to. So thank you very much. I'm
14 sorry for going over my time.

15 SERGIO DE LA PAVA: Good afternoon and
16 thank you for this opportunity to be heard. I'm
17 Sergio De La Pava of New York County Defender
18 Services Special Litigation Unit. Certainly all
19 these proposals are laudable attempts to streamline
20 and demystify this critical process. However, some
21 concerns do arise in particular with respect to
22 Proposal 1561 and 1581. I think the propels
23 essentially seek to educate or give information, and
24 while that's certainly a positive, it seems to me
25 that the parties that most need to be educated when

2 it comes bail in this city are judges, and not the-
3 the inmates or the defendants trying to bail out.

4 And one of my concerns, and I certainly would be very
5 interested in seeing what this language ultimately is
6 that seeks to explain these bail processes to our
7 clients, and I hope certainly that they won't

8 continue to harden what has been practiced in the
9 city certainly for my 23 years practicing here where

10 almost exclusively bail is set in two forms, either
11 cash or the use of a bail bondsman. Now, it's well

12 documented that I hope by now that the bail bond
13 industry is rife with abuse, is certainly subject to

14 some rather grave infirmities with respect to how our
15 clients are exploited. I would hate to think that

16 there would--there's going to be some kind of [bell]

17 official signage in the courts that refers to bail

18 bondsmen and how to go about securing their services.

19 I think that that would only serve to perpetuate what

20 is an unjust system as we speak, which is a money

21 based system. As my colleague just pointed out,

22 there are--there are methods that are cited in the--in

23 our Criminal Procedure Law for securing pre-trial

24 release that do not implicate commercial concerns,

25 that do not implicate a profit taking mode of being

2 mixed up with our clients' constitutional rights.

3 And—and our—my concern anyway is that any attempt to
4 inform our clients or under the guise of informing
5 our clients is going to of necessity have to inform
6 them that 99% of the time there's only two options to
7 get out. Now, obviously, we've made great strides in
8 the last few years with the use of charitable bail
9 fines and supervised release. But where those are
10 not an option, which is still a significant portion
11 of cases. For example, every felony where that's not
12 an option, the message is going to be clear to our
13 clients that they have to essentially either come up
14 with the cash or deal with bail bondsmen, and that is
15 to me a—a problematic thing that we would want to
16 have certainly a lot of input in what language
17 exactly is used. Thank you.

18 SCOTT LEVY: [coughs] Thank you. I'm
19 Scott Levy. I am Special Counsel to the Criminal
20 Practice of the Bronx Defenders. I will keep this
21 as—as short as possible. I want to do two things.
22 I want to underline again just the importance of the
23 issues that these bills are addressing, namely
24 facilitating bill payment in those crucial hours
25 after an arraignment, and to some point noted, and

2 just to highlight some of our concerns about a
3 couple of the bills, though. We are supportive of
4 each and every one. The Bronx Defenders represents
5 approximately 30,000 people Bronx Criminal Courts
6 every year. We looked at the—the number of clients
7 whom bail was set in 2016, and found that about
8 2,200 of our clients have bail set at arraignments,
9 and that's including clients who only have \$1.00
10 bail set. Of those, the majority of bail is set in
11 relatively modest amounts. Over 1,600 of those
12 clients had bail set at \$5,000 or less and over
13 1,200 of those clients—of those clients had bail set
14 at \$2,500 or less. So these are amounts that while
15 not insignificant are amounts that are for clients,
16 families and friends, and these circumstances can
17 pay. But far too often because of the problems that
18 have been highlighted here, our clients end up
19 spending many extra hours, if not days, incarcerated
20 because they're unable to overcome the many
21 obstacles that we've been talking about. You know,
22 the hours following—immediately following
23 arraignment are crucial. Once the immediate post-
24 arraignment window has closed, it often takes many
25 hours or day for bail to be posted and our clients

2 to be released, as we've heard here today. Every
3 hour the release is delayed matters. Family and
4 community ties are strained, jobs are lost, housing
5 is disrupted, school exams and assignments are
6 missed, childcare emergencies arise, medical
7 appointments and healthcare plans are disrupted and
8 mental health problems are exacerbated. We know
9 that a number of studies have shown that even short
10 periods of incarceration can lead to higher rates of
11 recidivism. I do want to address Council Member
12 Lancman's bill. Of course, allowing our—our clients
13 access to their cell phones and other property in
14 order to obtain contact information is absolutely
15 crucial to facilitating the—the payment of bail
16 because at a minimum, payment of bail requires the
17 ability to contact—contact families, and-- But we
18 also do echo the concern, and we want to make sur
19 that this bill does not facilitate illegal and
20 warrantless searches of our clients' property and
21 their phones, and look forward to working with the
22 Council and with the city in crafting protocols and
23 procedures to make sure that this—the—the intent of
24 this bill can be fulfilled without compromising
25 constitutional rights. And I did just want to

2 highlight some of the collateral benefits that this
3 bill would have, and in particular in the supervised
4 release [bell] context, and I will finish this story
5 and—and wrap it. But, in a recent arraignment
6 shift, a colleague of mine arraigned three similarly
7 situated clients in the same arraignment shift.

8 They were all charged with non-violent felonies and
9 the prosecutors requested \$10,000 bail in each one
10 of them. Two of those clients were able—were found
11 eligible for supervised release and were ultimately
12 released without bail into supervised release. The
13 third who actually had a family in the Bronx and a
14 job in the Bronx simply couldn't come up with any
15 phone numbers for his family members or his friends.
16 He was denied eligibility for supervised release.

17 Bail was set. He ultimately paid bail within a
18 matter of days, but ended up spending close to a
19 week in jail when he could have been release had he
20 been allowed access to his cell phone. So, as my
21 colleague highlighted, the access to contact
22 information crucial for the payment bill, but it's
23 crucial for a number of aspects of sort of early
24 part of criminal cases that are just so crucial, and
25 I will leave it that.

2 CHAIRPERSON CROWLEY: Yeah. No, I thank
3 all of you for coming in today and for your
4 testimony, your advocacy, and I'd like to recognize
5 my colleague Council Member Lancman to ask some
6 questions.

7 COUNCIL MEMBER LANCMAN: Thank you. So,
8 [coughs] you know, this bill is not in its final
9 form. We're going to—we're having this hearing and
10 we're getting feedback. We're going to continue to—
11 to work with you to get it right, while you're here I
12 want to ask the—the—the—the Police Department makes
13 that a reasonable argument for why there need to be
14 limits, restrictions on giving someone who's arrested
15 access to their cell phone. And, you know, you gave
16 an example that they were given in a different form,
17 which is there might be evidence on the phone, which
18 so and so could delete. So, is your approach to
19 addressing that problem basically on the—on the—on
20 the side of it that involves the person using their
21 phone potentially exposing inculpatory incriminating
22 evidence to—to—to the police who can see to—to just
23 Mirandize them in—in—in that way, just make them
24 aware that, you know, we've got your phone open, and
25 the police can see, and they're going to need to see

2 it because they're the ones writing the number down.
3 Whatever they see, they can use. Is that--that the
4 basic approach for dealing with that aspect of the
5 problem?

6 ELIZABETH BENDER: So, some of those
7 details I would--I would disagree with. I think the
8 general idea we share.

9 COUNCIL MEMBER LANCMAN: Uh-huh.

10 ELIZABETH BENDER: My--I think that we
11 would prefer the least police involvement in the
12 copying of the numbers as possible, understanding the
13 NYPD would never--and--and I understand this position--
14 allow clients to be in private accessing their
15 telephones with no, you know, supervision or
16 observation. We understand that. I think that a
17 practical, you know, as--as you put it, I think this
18 is right that this is a practical problem, and we're
19 looking for practical solutions, and practically
20 speaking I don't see why an officer couldn't stand
21 behind an arrestee, give them this written warning.
22 Again, with language that I think we'd all love to be
23 a part of drafting. And have the person go through
24 it, and--and both officer and client are checking off
25 or initialing each item just like a Miranda Waiver.

2 One of those items that I think is really important
3 is making it very clear to this person that the
4 officer will be standing directly behind you or
5 sitting next to you, and anything that comes up on
6 your screen--

7 COUNCIL MEMBER LANCMAN: [interposing]
8 Sorry, just--

9 ELIZABETH BENDER: --he will see.

10 COUNCIL MEMBER LANCMAN: --just on this,
11 right, so.

12 ELIZABETH BENDER: Yes.

13 COUNCIL MEMBER LANCMAN: So you don't
14 envision a scenario or a process where the officer is
15 not seeing what the person is doing on their phone?

16 ELIZABETH BENDER: I would love that, but
17 I don't think that's going to gain traction.

18 COUNCIL MEMBER LANCMAN: That's not
19 realistic, right?

20 ELIZABETH BENDER: Right, that's where,
21 right.

22 COUNCIL MEMBER LANCMAN: [interposing]
23 Okay.

24 SCOTT LEVY: That's a compromise I've
25 already made in my mind. [laughs]

2 COUNCIL MEMBER LANCMAN: Right, go ahead.

3 SCOTT LEVY: If I could just add that
4 there's--there's a model for this already in practice
5 in Red Hook. I think it's the 72nd, 77th and 79th
6 Precincts actually do have a practice by which
7 individuals, they're usually youth, are actually
8 given their cell phones with a piece of paper and
9 they're given the ability to write down their contact
10 information outside of the view of the police.
11 They're also allowed to actually bring some of their
12 belongings to court, but it is something that the--
13 that you can look to Red Hook I mean as a model for
14 it. We have a--a colleague of mine that--a colleague
15 of mine Alex Perlin is our practitioner there, and it
16 has--it has worked.

17 COUNCIL MEMBER LANCMAN: And I'm just
18 curious. Is that done in--in all cases, or is that
19 done only where somebody's got to determine that
20 there's no evidence on the phone? Like what--what is
21 it that made the Police Department in--in Red Hook--at
22 Red Hook say okay, we can let people have their
23 phones without our seeing what they're doing with it?

24 SCOTT LEVY: I don't know the reasoning
25 behind it. I do know that the population that comes

2 through the Red Hook courts are mostly youth, and so
3 there might be a greater incentive in those cases or
4 more sympathy for those kinds of clients, but that
5 same—the same need as we’ve both been talking about
6 that have those contacts applies whether you’re 16,
7 17 or, you know, or 16. I—I would add that I—I
8 think—I think it’s a real problem and I think a
9 tricky problem, but that you could carve out a number
10 of cases and situations completely without having to
11 deal with the sticky issues. One, is a protocol or a
12 procedure that allows people to get that contact
13 information prior to even handcuffs. If—if, you
14 know, if there is a situation where that can be done
15 where property can be given to a family member or
16 someone who is nearby during the time of arrest. So,
17 that process could happen while they are in the
18 process of being arrested before they’re actually in
19 physical custody. Those sorts of changes happen
20 regularly informally, and I think there could be, you
21 know, something along those lines. A lot of cell
22 phones that are—are—are taken, are done for safe
23 keeping, and have no evidentiary value by the NYPD’s
24 own determination, and it—it seems to be that in

2 those cases, NYPD doesn't need to be involved in
3 these--the retrieving of contact information at all.

4 COUNCIL MEMBER LANCMAN: May-maybe they
5 would need--maybe--maybe that could be some kind of
6 affirmative determination on--on the arresting
7 officer's part or somewhere in the process that
8 there's likely to be evidence of the phone--

9 SCOTT HECHINGER: [interposing] Well,
10 they're--they're--

11 COUNCIL MEMBER LANCMAN: --and that's why
12 they couldn't access the phone unrestricted.

13 SCOTT HECHINGER: That--that's actually--
14 there already is one of those in place. They--they
15 voucher some cell phones for safekeeping. That is
16 the police don't believe that's there's evidentiary
17 value, and they're--they're just holding it until the
18 person can come back to the--to the property clerk,
19 and then they voucher some cell phones for--as
20 evidence.

21 COUNCIL MEMBER LANCMAN: [interposing]
22 So, whatever cri--whatever criteria they're using now
23 to voucher a cell phone for potential evidence as
24 opposed to we just don't want people to have their
25

2 property just employ that in the—we're going to let
3 people look at their phone and get phone numbers.

4 SCOTT LEVY: Right, and I think. Eric
5 how would you respond?

6 SCOTT HECHINGER: [interposing] I was
7 going to—to finish. In—in the cases in which phones
8 and other property are taken for evidentiary
9 purposes, then I think you have tricky—then you have
10 a tricky question of how you do that safety and
11 respecting constitutional rights and with the proper
12 safeguards and all that. But I think that is a small
13 universe of situations than perhaps—

14 COUNCIL MEMBER LANCMAN: [interposing]
15 It's probably a very small universe.

16 SCOTT HECHINGER: I agree with that.

17 COUNCIL MEMBER LANCMAN: Okay, we are
18 definitely going to continue working on this. We
19 want to get it right by the time the Speaker and the
20 Chair are ready to, you know, move these bills to a
21 vote. Thank you very much.

22 ELIZABETH BENDER: Thank you.

23 SCOTT HECHINGER: Thank you.

24 CHAIRPERSON CROWLEY: Thank you, Lancman.
25 We have up our next, last and final panel. We have

2 Peter Goldberg from Brooklyn Community Bail Fund;
3 Alexander Horowitz from the Liberty Funds; Alexandra
4 Anthony from Bronx Freedom Fund; Elana Weissman from
5 the Bronx Freedom Fund [background comments] and Ezra
6 Ritchin from the Bronx Freedom Fund. [background
7 comments, pause] We've been joined by Council Member
8 Fernando Cabrera from the Bronx. Again, from the
9 panel we are going to limit you to three minutes
10 each. I appreciate your being here, and hearing for
11 that time period. Thank you. [background comments]

12 PETER GOLDBERG: Good afternoon and thank
13 you. My name is Peter Goldberg, and I'm the
14 Executive Director of the Brooklyn Community Bail
15 Fund, the largest of the three charitable bail
16 organizations here in New York City. We pay bail for
17 misdemeanor defendants who can't afford \$2,000 or
18 less. We've served over 1,600 in the past two years,
19 and served around 150 people a month. We operate in
20 Brooklyn, Manhattan and Staten Island. Without our
21 help, all of our clients would have been imprisoned
22 or forced to plead guilty. Each of the five proposed
23 bills, if passed, will help facilitate the payment
24 process for those who can raise money. These are not
25 trivial matters, and I commend the panel and council

2 members who introduced them for finding ways to limit
3 the harms of a deeply unfair system. The real reform
4 requires more than making the payment process easier.
5 They will always punish poor and low-income New
6 Yorkers, and we need solutions that would truly stop
7 incarcerating people for their poverty. \$975 is the
8 average cost of our clients' freedom, but we've paid
9 an amount as little of \$150. Our clients are
10 struggling, but I'd note not uniquely so. Around 60%
11 of Americans do not have \$500 in liquid assets in
12 case of an emergency. Because of the limits of our
13 resources, and the existing law, our bail fund and
14 the other bail funds will only ever serve a tiny
15 fraction of the roughly 45,000 New Yorkers annually
16 who end up in jail for weeks, months or even years
17 because they and their families cannot afford bail.
18 I'd note that bail punishes people who can't afford
19 to pay it. New Yorkers are paying bail instead of
20 paying rent or utilities. They're doing without or
21 they're going into debt. The situation is worse
22 still when someone has to resort to using a
23 commercial bail bondsman. Our research indicates
24 that bondsmen reap tens of millions of dollars in
25 non-refundable fees annually from poor and low-income

2 New Yorkers. This is a massive transfer of wealth
3 from our most disadvantaged citizens to for-profit
4 insurance companies. I'd note again that we pay bail
5 for people, but bail funds are not a long-term
6 solution. I urge the council members—members to frame
7 these five proposed changes as stop-gap measures. As
8 much as we regard our work paying bail for people as
9 an interim harm reduction strategy, and I'd implore
10 the Council to do everything in its power to push
11 forward the recommendations in the Lippman Report.
12 Most importantly bringing fewer people into the
13 system to begin with. In my remaining 41 seconds,
14 I'll quickly talk about two points related to the
15 substance of the proposed bills. First when people
16 have accurate information about the bail payment
17 process, they're less likely to be taken advantage of
18 by unscrupulous bondsmen. We've spoke with hundreds
19 of New Yorkers who've used bondsmen and nearly all of
20 them have been policed, and charged amounts above
21 what's allowed under law, have their collateral
22 stolen, charged courier fees as much as \$1,000 and
23 more. I urge the Council to work with Department of
24 Consumer Affairs, and other agencies to meaningfully
25 regulate these businesses. In addition, notices

2 about the maximum fee bondsmen can charge and other
3 basic item [bell] should be included among the
4 information that's provided to detained individuals
5 in posting courthouses. Along with my testimony,
6 I've submitted copies of Bail Set. What's Next, a
7 pocket guide we've used for users, we've produced
8 with the Center for Urban Pedagogy. We'd be happy to
9 work with all of you and OCA to make these available.
10 I thank you for the opportunity to present today.

11 I'm going to try to do this in one
12 breath.

13 PETER GOLDBERG: Yeah, yeah.

14 ALEXANDER HOROWITZ: Yeah, uh-huh. Thank
15 you very much. Good afternoon and thank you for
16 allowing me to testify today. My name is Alexander
17 Horowitz. I'm here as a representative and member of
18 the Board of Directors of the Liberty Fund, a
19 charitable bail organization formed in partnership
20 with the Office of the Speaker of the City Council
21 and the Mayor's Office of Criminal Justice. I'm also
22 the Chief of Staff of the Doe Fund, which has served
23 formerly incarcerated men for over 30 years. These
24 two organizations that I represent today work at
25 opposite ends of the Criminal Justice System. In

2 success and with luck, they will erode one another's
3 client base until neither is necessary. We're a long
4 way off. Two weeks ago, the Liberty Fund bailed out
5 its first client, a 34-year-old homeless man named
6 William. William has a history of low-level Criminal
7 Justice involvement going back to his teens, almost
8 of it related to a life in poverty. After 18 months
9 of excellent progress with his case worker at the
10 shelter where he lives, a group of teen-agers
11 encountered him on the sidewalk and harassed him for
12 his appearance. When altercation ensued, William was
13 arrested. Thanks to the State's Charitable Bail
14 Statute, and the vision of the Speaker's Office, this
15 Council and the Mayor's Office of Criminal Justice,
16 the Liberty Fund was empowered to save his shelter
17 bed, preserve his progress towards becoming a
18 productive and self-sufficient citizen, and most
19 importantly protect his freedom and the presumption
20 of his innocence. There was no other way for him to
21 post his \$500 day. Rikers was his next stop. Even
22 for defendants who are better than William pre-trial
23 detention is devastating. At minimum it is degrading
24 and dangerous. Too often it precipitates the loss of
25 work and housing in some cases for whole families,

2 none of whom under the law is guilty of anything. To
3 put it plainly, monetary bail is fundamentally unfair
4 and the reason is simple. The value of money changes
5 depending on how much you have. In our era, an era
6 of gross economic inequality pre-trial freedom has
7 become a product. Either you can afford it or you
8 can't, and there should be no economics of justice.
9 The promise of our system equal justice under the
10 laws is corrupted by monetary bail. Even the most
11 promising alternatives to cash bail, however, which
12 we are very grateful to the Mayor's Office of
13 Criminal Justice for exploring and supporting, will
14 face many obstacles from funding to testing to
15 deployment, and ironically there will likely be legal
16 challenges as well. Pre-trial electronic monitoring,
17 for example, may be fairer than cash, but arguments
18 are already being made from some think tanks that the
19 Fourth Amendment of the Constitution favors cash over
20 control. So we have much work to do. Fortunately,
21 this progressive body is address what few legislators
22 traditionally concern themselves, the interim between
23 a broken system and a fair one, and making
24 incremental improvements that ease the burden and the
25 transition on vulnerable people. That's why the

2 Liberty Fund as well as its parent organization, the
3 Doe Fund are pleased and proud to support the
4 initiatives proposed today, initiatives that address
5 some of the most vexing and opaque parts of the
6 process called posting bail. We know the
7 consequences. A Doe Fund client named John told me
8 he never knew what options were available to him
9 after a misdemeanor arrest. His family was afraid of
10 the bail posting process, and what it might mean for
11 them. He had no ability to contact other people who
12 might have been able to help, and he was too ashamed
13 and confused to fight for his rights, and so did
14 [bell] what the attorneys in the room told him to do.
15 He pled guilty. He wasn't, but he went home that
16 night instead of going to Rikers. We have a system
17 that encourages lengthening rap sheets in exchange
18 for freedom. Combine that with disproportionate
19 arrests of people of color, and you might see more
20 than unfairness. You might see bias and that injures
21 civic life. We fully support the structural and
22 procedural changes proposed by Speaker Mark-Viverito
23 and Council Members Crowley, Dromm, Gibson, Lancman,
24 Levin, Reynoso and Richards. We fully support their
25 efforts to bridge the gap between monetary bail and a

2 fairer future, and we encourage this body to support
3 even stronger language in the future and to dig
4 deeper still into the idiosyncrasies of this system.
5 I've listed some of those recommendations from our
6 organization in our testimony, and I'd like to thank
7 you very much for the opportunity.

8 EZRA RITCHIN: My name is Ezra Ritchin.
9 I'm the Executive Director of the Bronx Freedom Fund.
10 We're a non-profit fund founded in 2007 to a bail of
11 \$2,000 ore less for indigent New Yorkers restoring
12 the presumption of innocence, and allowing clients to
13 return to their job—thank you—to their jobs, families
14 and communities while awaiting trial for misdemeanor
15 charges. I've personally paid bail for several
16 hundred people and my colleagues Elana and Alex and
17 Peter as well have all paid bail for may people as
18 well and are very familiar with this system. I want
19 to start by confirming a story that the Speaker
20 raised. One of our volunteers went to pay bail for
21 someone. The bail was lost in a fax machine, and I
22 would like to add a detail that this was for a \$1.00
23 bail. Someone sat in jail for an extra two days
24 because a fax was lost for \$1.00.

2 CHAIRPERSON CROWLEY: Sorry. How often
3 is \$1.00 bail posted?

4 EZRA RITCHIN: We have a system of
5 volunteers who pay dollar bails, and we get referrals
6 every week, but we do not know of every single dollar
7 bail. I think the Mayor's Office—

8 CHAIRPERSON CROWLEY: [interposing] That
9 is unusual. I didn't realize that actually happens.

10 EZRA RITCHIN: There's a complicated
11 system for dollar bail that can force people to sit
12 in because as was mentioned by the PD's, the public
13 defenders, people cannot pay their own bail. So
14 taken together, the changes proposed in Intro 1531
15 would prevent thousands of New Yorkers and the
16 families from spending unnecessary hours and days in
17 jail facilities every year. The Bronx Freedom Fund
18 strongly supports this bill with sincere hope that
19 the Council and Mayor will finally bring our bail
20 system into the modern era. To pay bail in the
21 Bronx, you have to travel to the boat, which is a
22 floating jail anchored in the East River off of Hunts
23 Point, its driveway wedged between the Department of
24 Sanitation and a wholesale fish market. It is
25 inaccessible by subway. During the excruciatingly

2 slow bail payment process, families and Freedom Fund
3 staff are essentially stranded on the boat. I've
4 seen multiple people leave before bail is paid in
5 order to make it back to work. Others miss childcare
6 obligations while waiting, and spoke about losing his
7 job if he stayed at the jail any longer. The release
8 times are even more delayed. We've interviewed 60
9 clients, and they report an average of almost 10
10 hours I delay from payment to release. One young
11 client was released 20 hours after we paid his bail
12 in turnstile jump, and almost two days after we were
13 prevented from paying his bail during the blackout
14 period. The waiting room to pay bail at the boat is
15 nothing more than two sets of four grimy plastic
16 chairs bolted to each other. There's no food or
17 water, and the room is decrepit. After a few hours
18 of waiting, a woman at the boat asked a correctional
19 officer if there was a restroom she could use. She
20 was clearly pregnant, but the restrooms are only
21 available to those with security clearance. She was—
22 she was advised that she might be able to go into the
23 parking and urinate behind a car. The status quo is
24 not just inconvenient, it is inhumane. On a visit to
25 Rikers, I met a woman named Christina who sold her

2 car to pay her fiancé's bail, and then slept sitting
3 upright on a chair with metal arm rests so she could
4 take him home almost a full day later. She ate
5 breakfast out a vending machine in the waiting room.
6 [bell] I've had many meals from those machines. They
7 were replaced not too long ago, and they now accept
8 Apple Pay. You can tap your phone and pay for a
9 candy bar, but you have to wait a full day to pay
10 bail via fax machine to free your loved one. We have
11 the technology and the infrastructure to modernize
12 this dystopian system. All we need is the will and
13 leadership. Thank you.

14 Good afternoon. My name is Elana
15 Weissman. I'm here also from the Freedom Fund as the
16 Director of Bonds Operations, and more importantly,
17 as a voice for our clients and for our community
18 members who stand to benefit most from this piece of
19 legislation. With regards to Intro No. 1551, the
20 Freedom Fund stands in strong support with a couple
21 of proposed modifications that are listed in my
22 written testimony. The whole system as it exists
23 right now is cumbersome when it works at its best.
24 It's devastating when it malfunctions. That
25 experience happens frequently for us, and expanding

2 the system up to 4 to 12 hours means that the bail
3 process can function as it's actually intended. We
4 are paid professionals who know how to navigate the
5 system, and we work 30 seconds from the bail window.
6 If the process isn't working for us, how much more so
7 are we failing members of the public? Our clients
8 are routinely sent to jail despite the presence of us
9 an available surety eager to hand over the money, but
10 because of scheduling mismatches at the court, we are
11 not ever—often times allowed to pay. There is so
12 much at stake when we rush to pay during that
13 critical hold period. Three of our clients have gone
14 straight to chemo therapy. Our younger clients go
15 back to high school to regents exams and to caring
16 for their ailing grandparents. Mothers return to
17 their children. Many of our clients return to hard
18 earned jobs, a day of absence from which would mean
19 termination. This is more than a logistical hurdle
20 This is a living nightmare for defendants and for
21 their loved ones everyday. A simple expansion from
22 up to—from two hours up to 4 to 12 hours would mean
23 that the lives and communities of defendants and
24 their loved ones are not disrupted nor destroyed by
25 nights and days in jail or in the bail payment

2 facilities located at jails. This also presents
3 enormous cost savings for the city. Since we work so
4 much in the weeds, the technical elements of the bail
5 payment process, like I said, we have suggestions in
6 our written testimony with this bill in particular.
7 The most-chief among them is that the language should
8 be changed from a permissive bill to a mandatory bill
9 that the hold should be expanded to everybody, and
10 doing so could actualize this bill's legislative
11 intent. When we meet our clients, it's often the
12 worst days of their lives, but when we meet with them
13 and we tell them who we are, that we're paying their
14 bail, and that they're going home, the mood alters
15 dramatically. But, as we speak with them, we see
16 through the bulletproof glass where they are being
17 held with dozens of other people who have just had
18 bail set. Inevitably, more than one of them comes up
19 to us and asks us to help when they overhear our
20 conversation. They tell us about their mom who lives
21 four hours away in different state, or about their
22 friend who has the money to pay their bail, but who
23 can't leave work until the end of the day for risk of
24 losing it. These are people for whom bail is an
25 option, and a judicial right, but with a right with

2 no recourse. This bill and other ones that we've
3 heard about today are—represent a critical step
4 forward to preserve the presumption of innocence. We
5 urge the committee and the Council to pass them with
6 our recommended changes and [bell] the Mayor to sign
7 it into law. Thank you so much for the opportunity
8 to testify today, and for all of you for working
9 towards justice for all. We're honored to be part of
10 fight. [background comments]

11 ALEXANDRA ANTHONY: Good afternoon. With
12 respect to Intro 1561 [bell] and 1581, the Bronx
13 Freedom Fund fully supports these bills and thanks
14 the Committee for the opportunity to share our
15 testimony here today. My name is Alex Anthony and I
16 am the Queens Project Manner-Manager at the Bronx
17 Freedom Fund. Through our experience paying bail for
18 indigent New Yorkers in the Bronx and Queens, I've
19 seen first hand that families and loved ones seeking
20 to post bail are left in the dark. Basic bail—basic
21 information on bail and bail payment is not provided
22 clearly or consistently in either New York City
23 courthouses, nor is it provided to those held in DOC
24 custody. This dearth of bail payment information
25 leads to significant delays in the bail payment

2 process resulting in the needless and prolonged
3 incarceration of the New Yorkers everyday. With
4 regards to Intro 1561, by providing critical bail
5 payment information and assigning DOC Bail

6 Facilitators to eligible individuals in DOC custody,
7 this bill will not only streamline the bail payment
8 and release processes, it will also restore a sense
9 of dignity and autonomy to incarcerated individuals
10 by giving them the keys to access their own freedom.

11 With regards to Intro 1581, conspicuously providing
12 clear and consistent information regarding bail
13 amount, type and payment options in New York City
14 courthouses will streamline the bail payment process
15 and reduce unnecessary delays in bail payment and

16 release. Without this information families often
17 must make multiple excruciating trips to Rikers or
18 other borough facilities resulting in days of lost
19 work, and missed obligations while their loved ones
20 remained behind bars. These bills finally place

21 vital bail payment information with those who need it
22 most. Their passage is the most obvious and
23 immediate remedy to needless delays in the bail
24 payment and release processes here in New York City.

25 The Bronx Freedom Fund urges the committee and the

2 Council to pass these bills, and the Mayor to sign
3 them into law. Thank you for giving us the
4 opportunity to share our testimony today.

5 CHAIRPERSON CROWLEY: Council Member
6 Cabrera.

7 COUNCIL MEMBER CABRERA: Thank you, Madam
8 Chair, and thank you for hosing this important
9 committee hearing. I just have one question, just a
10 point of clarification. You mentioned to pay bail in
11 the Bronx you have to go where again?

12 EZRA RITCHIN: It's the Vernon C. Bain
13 Center. It's also known as the boat because it is,
14 in fact, a boat, a military barge that was brought up
15 from New Orleans and docked off the both the East
16 River and Hunts Point.

17 COUNCIL MEMBER CABRERA: And you're—you're
18 talking over there right next to Sanitation like--

19 EZRA RITCHIN: [interposing] Yeah, yeah,
20 depending on which the wind blows, you'll smell
21 either fish or garbage.

22 COUNCIL MEMBER CABRERA: And exactly.
23 It's so difficult to get there. I mean it's—it's
24 like one of the easiest places to get lost in the

2 Bronx. Who—who came up with this bright idea to
3 [laughter] so that--

4 EZRA RITCHIN: [interposing] To put human
5 beings in there.

6 COUNCIL MEMBER CABRERA: [interposing] Do
7 you have any historical context here?

8 EZRA RITCHIN: I think it's—I think it's
9 similar to the context in which Rikers Island exist,
10 which is the idea that we should keep our most
11 marginalized out of reach and out of mind, and I
12 think that's why the notion—where the notion came
13 from to stick people on a boat so we can forget that
14 they're there, and I think--

15 COUNCIL MEMBER CABRERA: Let's—let's say
16 even if—even they—though we stick to that notion and
17 to that philosophy in dealing with—with inmates, but
18 to have the place where you're going to pay bail to
19 be so inaccessible, the most inaccessible place that
20 I could think of in the Bronx. You know, public, you
21 know, transportation and even driving it's a—I don't
22 even think GPS works right--

23 EZRA RITCHIN: [interposing] Yeah.

24

25

2 COUNCIL MEMBER CABRERA: --in-in that
3 area [laughs] because I got lost there, and so I-I
4 would just--and how long has this been going on?

5 EZRA RITCHIN: Paying bail at the boat?

6 COUNCIL MEMBER CABRERA: Yes.

7 EZRA RITCHIN: I don't know what year the
8 boat was brought up from Wellings, but it's been
9 decades.

10 COUNCIL MEMBER CABRERA: That long.

11 EZRA RITCHIN: [interposing] And the
12 state-

13 COUNCIL MEMBER CABRERA: And that long I
14 would imagine you guys have been complaining and
15 been--

16 EZRA RITCHIN: [interposing] Right, we--

17 COUNCIL MEMBER CABRERA: --advocating and-
18 -

19 EZRA RITCHIN: [interposing] Absolutely.
20 I mean for us, there was a point in which I was the
21 only employee of the Bronx Freedom Fund. So I would
22 make a trip to the boat in order to pay someone's
23 bail while I was at the boat or traveling to the stop
24 at the BX6 bus and then walking past a fish market.
25 There were other clients who were having bail set at

2 arraignments who I could not reach. So not only was
3 it inaccessible for us, it was sending other
4 potential clients to JAS (sic) and, you know, this is
5 our struggle as an organization that is
6 professionally, as Elana mentioned, professionally
7 paying bails. That is what we do. That is as an
8 organization we are advocating for a more just system
9 via securing our lease of low-income New Yorkers, and
10 for us it's difficult. So for these families it's—
11 it's far—far more arduous a process.

12 COUNCIL MEMBER CABRERA: Do—do you, and
13 I'm asking because I really don't know the answer to
14 this question. Do you—do you have contact with
15 powers that be on a monthly basis where you get to
16 review, you know, the logistical procedures of how
17 the whole process works? Is there communication
18 going on, or is it, or is there just a little box
19 with suggestions? What do we have in place?

20 EZRA RITCHIN: I think we can all take
21 this, but there—there is communication. I think we
22 would prefer it to be more. The Mayor's Office of
23 Criminal Justice does a great job in hearing from us
24 about what the process is like, and the report that
25 generated a lot of this, the navigating of the bail

2 payment process in New York City via MOCJ and CCI. A
3 lot of those suggestions came from interviews with
4 the bail bondsman.

5 COUNCIL MEMBER CABRERA: And I'm happy to
6 hear that.

7 PETER GOLDBERG: And I'd add that here we
8 are with the powers that be, and we're—we very much
9 appreciate these stop-gap measures, and I think as a
10 group, and I'm sure the public defenders as well,
11 we'd like to push forward on other changes such as
12 diversion, bringing fewer people into the system to
13 begin with.

14 COUNCIL MEMBER CABRERA: Well, a lot of
15 the credit belongs to the Madam Chair for her
16 leadership on this, and with that, I'll give back to—
17 to our chair. Thank you.

18 CHAIRPERSON CROWLEY: Thank you Council
19 Member Cabrera, and thank you to our last and final
20 panel. Thank you for the work that you do. Look
21 forward to doing more work together. This concludes
22 the Fire and Criminal Justice Services hearing of May
23 2, 2017. [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date May 29, 2017